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# The Best Defense is a Good Offense: Strategies for BPPE School + Student Complaints

presented by  
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# BPPE School Citations

## Why this Matters

- Citations are more common
- Publication on the BPPE website (not that anyone reads it)
- Fines- who doesn't love to pay more \$\$\$ to the state?
- Sanctions
- Reportable to accreditors
- Can spur/support student claims
- Oh, and BDR

## How to Gage Your Risk of a Visit

- High risk factors
  - No visit in the last 5 years
  - Student complaints
  - Adverse accreditor actions
  - Other regulatory issues
  - Actions by other regulators (USDE, VA, etc.)
  - AG or law enforcement actions
  - Your school is in a city with nice weather (esp. on Fridays before a long weekend)

## BPPE Citations Process

- The Letter
  - Informal: fine + order of abatement
  - Formal: Denial, revocation, suspension, or probation
- Accept or contest the finding
- Informal Conference
- Administrative Appeal

## Strategies for Response

- Be prepared for announced visits
  - Review BPPE Unannounced Compliance Inspection Checklist
  - Examples
    - STRF
    - SPFS
    - Advertising + Promotional Materials
    - Catalog, enrollment agreements, etc.
- Often triggered by student complaints

## When You Get the Letter

- Read and respond quickly
- Consider getting counsel involved early
- Clear, organized communication is key
- Demand both informal conference and a hearing
- Always appear at the informal conference
- Nearly always worth an appeal

# Student Complaints and Claims



## Classic Indicators that Student Claims are Near

- The “Petition”
- Student asking for file or refund
- Unresolved low-level gripes
- Consumer complaints (review websites, BBB, etc)
- Social media chatter

## Constantly Changing World of Student Complaints

- Currently Claims are down
  - Zero unemployment
  - Covid loan deferrals
  - Pandemic stimulus payments
  - Hopes of (more) loan forgiveness

## Signs of Trouble

- 18 mos into Biden Administration
  - USDE political appointees' plans are coming into effect
  - BDR, 90-10
  - Large group loan forgiveness (Devry, ITT, Marinello, Corinthian)
  - TPPA shenanigans
- Negative press creating awareness

## Typical Claims

- Misrepresentation claims are “classic” student claims; educational malpractice restyled as fraud
  - State AGs: More frequently asserting claims
- Civil rights actions related to ADA and gender/race/veteran status/etc., harassment and discrimination
- Accreditation misrepresentation claims
- Impact of COVID-19 deferrals

## Why Do Students Make Claims?

- Myth v. Reality
- Variety of influencing factors:
  - Student population
  - Access to information
  - Impact of traditional and social media
  - Political environment

## Historical Causes of Student Claims

- Questions concerning the value proposition
- High unemployment/placement challenges
- Loans entering repayment
- Longer, exotic programs with non-traditional outcomes
- High levels of negative media and political scrutiny
- Instructor fraternization and/or disparagement of your school

## What Can We Do About It?

- Resolve student complaints quickly and effectively
- DOCUMENT, DOCUMENT, DOCUMENT
- Zero tolerance of instructor disparagement
- Prohibit fraternization
- Student handbook [Catalog? Disclosures?] reform
- Dispel group think
- Get students in the habit of repaying loans
- Avoid NGDGU

## Instructors Cause All Student Claims

- Instructor disparagement causes all really bad student claims
- Instructors must not be allowed to complain to students.

Why?

- Our students are vulnerable
- Easily misled by misguided instructors who they come to trust
- Disparagement can come in many forms --- obvious and subtle
- Adopt a Zero Tolerance Policy for disparagement of the school



## Zero Tolerance Policy

- Adopt, train and enforce the Policy
- Review of policy provisions
- Open Door Policy --- “We value your opinion”
  - Complaints go up, never down
  - Instructors must never complain to students about ... anything
- Once trained, instructors who violate the policy are doing so intentionally

## Student Handbooks & Policies

- Your student handbook/catalog is part of your contract
- If you get a claim,
  - You will be expected to know and have followed all your policies
  - It will not matter what the student did or how absurd the policy is
- Read your handbook & policies (blind use other schools' policies is fatal)
- Follow policies or get rid of them

## Managing Complaints

- Confront and deal with complaints immediately
- Do not attempt to bribe students- you can't buy them off
- Do not allow students to complain in groups
- “Beheaded chickens run only so far” complaint management
- Focus on completion and placement
- If a complaint originates from an instructor, terminate
- NGDGU

## Help Students Get Used to Paying Loans

- Preach the virtues of student loan repayment
  - Educate on consequences of not paying loans
  - Also educate on the benefits of paying loans
- Help students form the habit of paying loans
- Start payments in school where possible (private loans or monthly payments of tuition)

## How to Control for BDR

- Scope of the problem
  - Once a student borrows federal money they can claim they were misled and apply for loan forgiveness/refund of payments
  - The process is dramatically unfair to schools
- Prevention is best, but not perfect
  - Focus on quality and value for education
  - Minimize student borrowing
  - Consider refunds when appropriate (to FSA, not to student)

## Preparing to Defend Both BDR & Student Claims

- Develop evidence of student satisfaction (i.e. no fraud) while students are in school.
- Ask students for feedback in surveys for classes and courses
  - Did the class live up to your expectations? Why not?
  - What could we do better?
  - What else would you like to learn?
- Consider a compliance program that includes soliciting students to report fraud or misrepresentation.
  - Students acknowledge the policy when they enroll
  - Invite students to report while enrolled

## Borrower Defense Claims

- NPRM released 7.6.22
- 30-day comment period
- Eliminates arbitration agreements + class action waivers and applies retroactively
- Would apply to BDR claims received on or after 7.1.23 (and pending applications)
- New rule expected by November 1 with effective date of June 30, 2023



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# Questions?

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