

CAPPS Annual Conference

Indian Wells, CA

Washington Update: Recent and Emerging
Title IV Rule Changes That Every School
Should Know About - And How Politics May
Affect the Regulatory Landscape

Friday, October 4, 2024, 10:00 am - 11:00 am

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Legal Disclaimer

- ▶ *These materials and this presentation should not be used as legal advice. Answers to legal questions often depend on specific facts, state and local laws, and institutional policies and practices. Legal questions should be directed to institutional legal counsel.*

Introduction

- ▶ Today's Presentation
 - ▶ Overview of key pending issues, and how to be prepared
- ▶ Political Climate
 - ▶ Presidential election, just one month away.
- ▶ Regulatory Landscape
 - ▶ New regulations and legal challenges
 - ▶ NPRM: Distance Education
 - ▶ Negotiated Rulemaking: State Authorization; Accreditation.

School Perspectives

- ▶ Impact of strict regulatory oversight and constant rule changes.
- ▶ Keeping our compliance teams informed and current.
- ▶ How to organize and manage a successful compliance team.
- ▶ Importance of strong outside support and expertise.
- ▶ Participation in professional associations like CAPPS.
- ▶ Where are rules needed, where are they not?
- ▶ What keeps our school administrators up at night?

Financial Responsibility

- ▶ New audit submission deadline. 34 CFR § 668.23
- ▶ Separate financial protection for each individual trigger.
- ▶ What Are Financial Responsibility Triggers?
- ▶ New Mandatory Triggers include:
 - ▶ 50% Title IV from failing GE programs
 - ▶ Required to submit teach-out plan
- ▶ New Discretionary Triggers include:
 - ▶ Probation or comparable status
 - ▶ “Significant fluctuation” in consecutive award years, up or down.
 - ▶ Pending BDR claims
 - ▶ “Any other event or condition”
- ▶ New Reporting Requirements

Administrative Capability

- ▶ “Geographically accessible” clinical/externship requirements. § 668.16(r)
- ▶ No “repeated or unresolved” “significant negative action or finding” by a state or federal agency, court, or accrediting agency. § 668.16(n)
- ▶ Validating high school diplomas. § 668.16(p)
- ▶ Must provide “adequate career services.” § 668.16(q)

Distance Education Update (Looking Ahead)

- ▶ Proposed Distance Education Rules. NPRM
 - ▶ Clock-hour limitations
 - ▶ Distance education attendance requirements
 - ▶ New “virtual location”
 - ▶ New definition of “distance education course”
- ▶ Potential Future Proposed Rules
 - ▶ 2024 negotiated rulemaking
 - ▶ Department’s proposal to require direct state licensure from all states where the school enrolls more than 500 students, despite SARA

Financial Aid Counseling

- ▶ As of July 1, 2024
- ▶ Schools must not “maintain policies and procedures to encourage, or that condition institutional aid or other student benefits in a manner that induces, a student to limit the amount of Federal student aid . . . except that the institution may provide a scholarship on the condition that a student forego borrowing if the amount of the scholarship provided is equal to or greater than the amount of Federal loan funds that the student agrees not to borrow.” § 668.14(b)(35)
- ▶ Schools must provide “adequate financial aid counseling” and “advise students and families to accept the most beneficial types of financial assistance available to them. . .” § 668.16(h)

Certification Procedures

- ▶ No automatic approval if Department does not act in 1 year. § 668.13(b)(3)
- ▶ PPA signature required from representatives of any entity with direct/indirect majority or controlling ownership of private institution. § 668.14(a)(3)
- ▶ State-by-state programmatic qualification for licensure and certification. § 668.14(b)(32)
- ▶ New limits on program length for GE programs. § 668.14(b)(26)
 - ▶ July 1, 2024, but enjoined by litigation.
- ▶ Conditions for institutions seeking to convert from for-profit to nonprofit following a change in ownership. § 668.14(f)
- ▶ Transcript withholding. § 668.14(b)(33), (34)

Political Update & The Election

- ▶ Election outlook and what's at stake.

RealClearPolitics Election 2024

RCP Poll Averages As Of 9.27.24

Key Battleground States

<u>Georgia</u>	<u>48.8</u>	<u>47.3</u>	<u>Trump +1.5</u>
<u>North Carolina</u>	<u>48.3</u>	<u>47.1</u>	<u>Trump +1.2</u>
<u>Pennsylvania</u>	<u>47.5</u>	<u>48.4</u>	<u>Harris +0.9</u>
<u>Arizona</u>	<u>48.9</u>	<u>46.9</u>	<u>Trump +2.0</u>
<u>Wisconsin</u>	<u>48.1</u>	<u>49.0</u>	<u>Harris +0.9</u>
<u>Michigan</u>	<u>47.3</u>	<u>49.1</u>	<u>Harris +1.8</u>

Political Update & The Election

- ▶ How the outcome may affect regulatory enforcement initiatives and focus.
- ▶ How the outcome may affect our schools.

Questions & Discussion

Rick Wood



Rick Wood is an experienced President/CEO with a demonstrated history of education leadership. With over 40 years of experience in private postsecondary education, Rick holds a Bachelor's degree in Management and Organizational Development, serves as an Institutional Commissioner with ACCET, and is a member of the CAPPS Board of Directors.

Stanley A. Freeman



Stanley A. Freeman is a partner in the Washington, D.C. office of the international law firm Eversheds Sutherland. Stan counsels postsecondary educational institutions from all sectors of higher education regarding strategic issues pertaining to participation in the federal student financial assistance programs, accreditation, licensure, and related regulatory concerns. He was selected by his peers for inclusion in the 2009 - 2020 editions of The Best Lawyers in America in the specialty of Education Law.

Stanley has been actively involved in representing educational institutions for more than 20 years. In his practice, he counsels individual educational institutions, corporate investors in higher education, associations of schools and colleges, and allied educational companies on administrative, transactional, regulatory and litigation matters. He has represented numerous schools before the U.S. Department of Education and before other federal agencies, state educational oversight agencies, and accreditors on compliance matters, financial responsibility concerns, legislative issues, and investigative matters. He has also litigated cases in the state and federal courts. He spends much of his time advising clients concerning regulatory and compliance matters arising under the Higher Education Act of 1965, including program reviews, audits, substantive changes, changes in ownership and control, and other oversight matters.

Stanley has authored numerous articles on federal student financial aid issues for higher education publications and frequently speaks to gatherings of college officials and student aid administrators.

Stanley graduated with distinction from the Honors College of the University of Michigan in 1978 and earned his law degree from the Georgetown University Law Center in 1982. He is admitted to practice law in the District of Columbia, Maryland and Virginia. Stanley is a lifelong resident of the Washington area, and he and his wife Cecilia have five children.

Benjamin E. Reed



Ben Reed is a litigation counsel in the Atlanta office of Eversheds Sutherland, with a focus on higher education. In his litigation practice, Ben advises clients in all aspects of complex commercial disputes, including class actions, contract disputes, business torts, and issues related to regulatory compliance.

Ben advises postsecondary educational institutions on compliance matters arising out of federal and state accrediting agency oversight and regulation, including with respect to institutional participation in the Title IV federal student aid program. Ben also advises education clients in regard to their corporate compliance programs and on regulatory and transactional issues arising from mergers, acquisitions, sales, and investments in educational institutions. Ben has been recognized by *The Legal 500 U.S.* in the area of industry focus: Education (2023, 2024); and named as “Ones to Watch” by *The Best Lawyers in America* in the areas of Commercial Litigation (2024, 2025) and Product Liability Litigation - Defendants (2024, 2025). Ben holds a B.A. in Psychology from Emory University and a J.D. from Duke University School of Law. He is admitted to practice in Georgia and has appeared in trial courts nationwide. He and his wife Caren live in Atlanta with their two children.