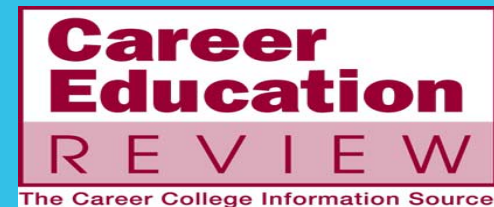


CAREER EDUCATION REVIEW
AND
RITZERT & LEYTON, P.C.
WEBINAR SERIES:
“MANAGING OPEN PROGRAM REVIEWS”

JUNE 5, 2014



DISCLAIMER

- The Views Expressed In This Webinar And Its Accompanying Materials Are Those Of The Speakers And Do Not Necessarily Reflect The Policy Or Position Of Career Education Review.
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OUTLINE AND PURPOSE OF WEBINAR

- Increased Number of Program Reviews
- Areas of Focus by the Department
- Scope, On-Site Work, and Follow-up
- Interaction with ED and its OIG, DOJ and/or FBI, and State Attorneys General
- Reasons for Delays
- Operational Considerations/Proactive Steps

PROGRAM REVIEW TRIGGERS

- Disgruntled employees;
- Student complaints;
- Change in auditors;
- High rate of withdrawals;
- Sharp changes (up or down) in Title IV disbursement (i.e., total volume of aid);
- Adverse media reports;
- Referral from case management; and
- Lapse of time since last Program Review.

CURRENT DEVELOPMENTS

- Administration's Goals
- Agency Focus
 - Incentive Compensation
 - 90/10
 - Misrepresentation/Consumer Protection
 - Disclosures (e.g., Gainful Employment, Campus Crime Reporting)
 - R2T4 Compliance

CAUSES FOR UNRESOLVED FINDINGS AND EXTENDED PERIODS OF UNCERTAINTY

- Agency interaction
 - Accreditation
 - States
 - Other Federal Agencies (e.g., V.A., CFPB, etc.)
- Program Review Team's On-Site Work
 - Employee/Student Interviews
 - Complaints
 - Traditional Whistleblower Complaints-Class Actions/FCA

SIGNS THAT REVIEW WILL REMAIN OPEN

- Team interaction during Program Review
- Input from employees or students
- Status of file reviews (including number of files requested)
- Requests for additional information or data
- Focus on particular department(s)/issue(s)
- Exit interview
 - No complaints and positives but no reported issues
 - Negative input
 - Team's overall demeanor

GENERAL CONSIDERATIONS FOR PROGRAM REVIEW

- Know your operation – day-to-day management
- Prepare for team's visit (e.g., advance notice to staff, file sample data given to team, database(s) available, logistical items)
- HR considerations
- Point(s) of contact
- Responding to questions/inquiries
- Use of consultants/counsel
- Internal compliance reviews
 - Preparation for
 - Following team visit

WHAT IS NORMAL?

- Time period
 - Firm experience: 6 months to 1 year was normal
 - Multiple years may not present a problem
 - Delay not always determination
- Team workload
- Number of investigations
- The “new normal” for the Department

SPECIFIC FACTORS/SITUATIONS

- Areas of on-site focus.
- No signs of trouble just time delay.
- Exit interview.
- Employee behavior/HR considerations.
- Contact from OIG, other agencies, or accreditation.

TYPICAL AREAS OF TEAM FOCUS

- Admissions
- Financial Aid
- Employee Interviews
- Student Interviews

EMPLOYEE BEHAVIOR

- Departmental Management/HR are critical.
- Recent terminations/resignations.
- “Bad Apples” – employee interaction.

FORWARD ACTION STRATEGY OPTIONS

- Contact the team
 - Phone call
 - Email
 - Letter
 - Follow up with supervisors
- Engage consultant/counsel
 - Review to assess situation – need for additional work
 - Written communications/responses to team – privilege considerations
- Interview employees
- Conduct independent or expanded internal review

CONSEQUENCES OF OPEN PROGRAM REVIEW

- Significant and impactful strategy considerations
 - PPA status (new program approvals, additional locations, etc.)
 - Delay recertification/provisional status
 - Proposed acquisition/sale
 - Audit
 - Lender/investment
 - State review
 - Accreditors
 - LOC
 - Payment status (advance or HCM)

HYPOTHETICAL 1

Program review conducted in March 2009. While on-site, numerous admissions representatives are interviewed. Team requests historical policies related to admissions department, including compensation adjustments. Exit interview is brief and no problems are identified. It is September 2010 and the school has not received a Program Review Report.

- Initial considerations
- HR considerations
- Circumstances related to need for Final Program Review Determination
- Consultants/counsel
- Development of forward action plan
 - Interview considerations
 - Prior interviews/communications with interviewees
 - Problems in admissions department
 - Terminations/resignations
 - Overall environment (including employee turnover)

HYPOTHETICAL 2

School received an OIG subpoena in November 2012. The subpoena requests information regarding admissions, 90/10, financial aid, and placement. School initially attempts to produce documents without counsel. Issues arise related to ESI (electronically stored information) and scope. School retains counsel. During production of records, ED notifies school that Program Review will take place in December 2013.

- Email policy
- Preservation of documents
- Relationship between subpoena and Program Review

HYPOTHETICAL 3

ED conducts a Program Review in September 2013 and identifies what the team describes as “concerns” about R2T4 calculations. The team gives no other specifics during the exit interview. When the Program Review Report issues, ED demands the school recalculate all R2T4s for every student who withdrew during the 2010/11, 2011/12, and 2012/13 award years. The school believes ED is mistaken and relying upon an inaccurate reading of the regulation.

HYPOTHETICAL 4

In early 2014, a school signs a lease and begins build-out for an additional location. However, in February 2013 ED conducted a Program Review. ED issues its Program Review Report in July 2013 and the school responded 30 days later. In early September, ED states that it received complaints from students, but does not give the school any more information. It is now May 2014 and ED has not issued a Final Program Review Determination (FPRD). ED also withholds approval for the additional location based upon the open Program Review.

HYPOTHETICAL 5

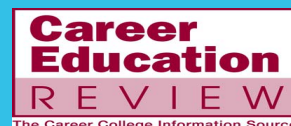
ED conducts a Program Review in October 2013 and identifies some minor issues, which the school resolves prior to the exit interview, at which it receives compliments for cooperation and assistance. The team leader praises the school's quick action to resolve the open issues. But complaints are made with the state regarding the school and investigators interview students and staff. When the Program Review Report issues, the team includes three very serious findings, including that staff misled the team about the issues it said it had fixed. It is now July 2014 and the Program Participation Team will not respond to the school's requests to discuss the matter.

HYPOTHETICAL 6

School hires a new Assistant Admissions Director. During the course of one-year of employment, that employee becomes friends with the Director of Education. School notifies the Assistant Admissions Director that her performance is unacceptable. Soon thereafter, the Assistant Admissions Director begins complaining about management and asserting that School engaged in illegal activity in admissions, financial aid, and other areas. School terminates the Assistant Admissions Director. The Director of Education's performance drops and she makes similar complaints. After a warning, the Director of Education resigns, stating in writing that she cannot tolerate the illegal activity of the school. Six months later ED appears for a surprise Program Review, and conducts numerous employee and student interviews.

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Mr. Gombos represents institutions of higher education in all areas of the Firm's education practice and is the Firm's senior litigator. Those areas include compliance, accreditation, business transactions, litigation in federal and non-federal court related to Title IV or Title IV - related compliance issues, as well as state and accreditation actions. His representation related to R&L's higher education practice has included litigation in federal courts throughout the United States, internal investigations, OIG investigations, qui tam and government false claims actions, and the defense of owner/management in white collar criminal cases. Mr. Gombos also has significant trial experience in cases involving commercial disputes, business torts, employment, and professional liability matters. He brings considerable expertise to the negotiation of mergers and acquisitions and corporate investments in higher education.



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Mr. Mehrotra works extensively with our postsecondary education law group on Title IV compliance and litigation issues. His practice areas include higher education law, civil litigation, employment law, criminal defense and disability law. He also has experience with public-interest law for non-profit organizations, including South Jersey Legal Services, the Pennsylvania Health Law Project and the University of Miami Health Law Clinic.

Prior to joining Ritzert & Leyton, Ashi served as Assistant Regional Counsel with the Office of Criminal Conflict and Civil Regional Counsel in Palm Beach County, Fla., where he handled criminal-defense matters. He has expertise in civil litigation as an associate attorney with Scott and Shuman, LLC, in Delaware, and as a judicial intern to the Honorable Adalberto Jordan of the U.S. District Court for the Southern District of Florida. Ashi is admitted to practice in Virginia, Florida, and New Jersey. He received a B.A. and M.A. from Villanova University, and a J.D. from the University of Miami.

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