

Subject: Some Concerns I have
From: Ki Ki (kiraoso@yahoo.com)
To: peter.gertenrich@state.or.us;
Date: Thursday, January 28, 2016 12:00 PM

Hi Pete:

I was provided with a copy of the proposed permanent rule for the ODA schools. I know this is for ODA schools, and does not necessarily apply right now to PCS schools, however, after reading through it, I have some concerns that much of this same wording will be adopted in the near future as policy for PCS as well, since everything is falling under the discretion of the HECC. Also, even if "some" of the wording is changed a bit for PCS, the likelihood of some of this wording effecting things to do with PCS could be pretty bad for PCS based on decisions being made for ODA schools at this time. In that case I believe that now would be the time to identify, clarify, and/or remedy wording that could have an impact on PCS down the road due to contradiction with ODA rulings.

With that in mind, I copied and pasted some excerpts directly from the proposed permanent rule and made some comments regarding those specific sections as well. You may have suggestions on whom else I might bring my thoughts to the attention of in addition to you, and I would welcome that as I think some careful consideration to the current wording needs to be addressed to avoid unnecessary problems and crisis's that could occur down the road.

Please give me some feed back on the information below, and let me know if there is someone else you think I should share this with as well.

Thank you Pete!
Ki

First thing I would like to address is at the beginning of the proposed rule:

- Regarding the proposed permanent rule for ODA, on the Statement of Need and Fiscal Impact Form, under the heading:

How were small businesses involved in the development of this rule?

The response written there states:

The Office of Degree Authorization Advisory Committee is representative of small businesses in this state. Input was also received from the NW Career Colleges Federation an advocacy group representing proprietary institutions.

Also, under the heading:

Administrative Rule Advisory Committee Consulted? If not, why?

The written response to this question was "No", and the following wording was added:

The Office of Degree Authorization Advisory Committee is representative of small businesses in this state. Input was also received from the NW Career Colleges Federation an advocacy group representing proprietary institutions **Attachment B Page 1 of 7**

In regards to the above, IT IS VERY IMPORTANT TO NOTE THE FOLLOWING:

The North West Career Colleges Federation **DOES NOT** represent all schools in the state of Oregon.

Their actions of appearing in front of legislative bodies, speaking with representatives and other political entities in the state without making it clear that they represent a small percentage of schools in Oregon, and letting the assumption be made that they represent and advocate for all schools in Oregon has been misleading and false in nature. It resulted in previous negative impacts on Oregon schools and created incredible hurdles for education in Oregon.

The NW Career Colleges Federation was officially notified on numerous previous occasions that making false claims that they represent all schools in Oregon, or, omitting information that clarifies the percentage of Oregon schools that they actually represent in comparison to the number of actual schools in Oregon, to promote their concepts, ideas, and/or ideas of rules and regulations is inappropriate, unlawful, and they were requested to cease all action that insinuated such representation, cease making statements that they represent all schools in Oregon, and/or failing to identify the true number and/or percentages of schools that they do represent in Oregon. The last time I checked, the number of Oregon schools who belonged to the NW Career Colleges Federation was "22" or roughly 1% of Oregon schools. That number may have changed since I did my last report however, due to some Oregon school closures, and/or possible new recruits from Oregon, but it still remains relevant.

The NW Career Colleges Federation is not authorized to speak on behalf of all Oregon schools and never has been for good reason. This information was previously provided to each representative in Oregon and all members on legislative bodies. If the ODA and/or the HECC is going to rely on input from the NW Career Colleges Federation for input on legalities and/or legislation relating to Career Colleges in Oregon, those agencies should have a responsibility to perform due diligence to first confirm the name of the schools represented by the Federation, the number of Oregon schools represented, and the percentage of Oregon schools represented compared to the total Career College school population within the State of Oregon, prior to providing weight to their (the federation's) opinions.

- Much of the wording in the proposed permanent rule is identical to the existing wording for PCS and enhanced by the following:

Under 583-001-0000 (1) Pursuant to ORS 351.735(6), the Higher Education Coordinating Commission (Commission) may delegate certain of its powers, duties or functions to the Executive Director of the agency of the Commission. Effective July 1,2012, the Commission delegates to the Executive Director general powers, duties and functions of the Commission under ORS Chapter 348 as described in the following rules under this Chapter:

This wording is granting certain power and authority to one person with no recourse for grievance or remedy. This may seem reasonable right now, but what happens if/when someone else moves into that position and abuses that authority and power? I believe that is the reasoning behind appropriate wording that prevents or safe guards from one individual having complete power and authority to dictate based on personal opinion or feelings. Wouldn't it be wiser to take a closer look at this language and build in safe guards to prevent such a possibility?

Also, another thought I had from reading through the proposed rule, is that there are many things left undefined, vague, or simply insinuated. I believe that it is important to remember. It is one thing to imply something when writing it, or to verbally say, "well the written document will apply to this or that" or, "verbally say, it will be handled this way or that if it comes up", but when something actually happens and it is challenged, or an incident brings up a legal challenge case, it is critical to have the

clear and concise wording of the intent in place within the document. Otherwise, it can be argued that there is no definition of law, regulation, or procedure that allows something, or allows for an action to be made. This lesson was learned long ago with numerous cases, including the old Adverse Impact Law. Tough lesson for everyone and sparked a state wide conflict within the political, media, and community levels.

The rest of my comments are directed at specific sections within the proposed rule. They are as follows:

Under:

583-030-0015
Definitions of Terms

(3) "At risk" means the school demonstrates one or more of the following conditions that the Commission determines may cause potential serious problems for the continued successful operation of the organization: Failure to meet the standards of financial responsibility; Misrepresentation; Frequent substantiated complaints filed with the Commission; Significant decrease in Enrollment from the previous enrollment year; or Significant staff turn over from the previous reporting year.

This does not take into account varying factors that effect each of the things out-lined. There are many factors that effect enrollment at a school from one year to another. The economy for specific regions, cities, towns, and rural areas, as well as nationally. Natural disasters, etc. flooding, earthquakes, fires specific to certain areas, employment rates for specific regions and/or areas.

Failure to meet the standards of financial responsibility can and often do go hand in hand with enrollments for specific areas and what is happening in those areas.

Misrepresentation? Is it different if the Misrepresentation was deliberate or accidental? An example of this would be, suppose someone without realizing it worded something they thought to be correct, and it was brought to their attention that someone else's interpretation of that wording brought to light that it could be interpreted in a different manner. This would not then be a deliberate act of Misrepresentation, and could be looked at for possible correction or clarity. Frequent substantiated complaints? Who will interpret what is substantiated and what is not? I can site numerous instances where this could be incorrectly used.

Significant staff turn over from the previous year? I can see this as being a problem. If you took my staff for instance, 90% of them have been with me for years and years, and a number of them are approaching retirement. In such a case I could have quite a number in one year choosing to retire, this would create a significant staff turn over in one year in that instance. Who will be the person determining what is "appropriate" and what is "not appropriate" for all of these examples? It is my opinion that the wording in this section is very open ended, subject to individual interpretation, and puts the department and schools in a position for possible discrimination claims. Also, I think it important to make sure there is a grievance procedure and due process under the law for the protection of the Commission and the schools.

(11) has a typo where it says: "...except that some assistance may be provided for students faceto-face by school adjuncts..." It should read, face-to-face.

(25) "Probation" means that a school has been officially notified by the Commission that it has deficiencies that must be corrected within a specified time based upon an inspection of other

investigation that reveals lack of compliance with ORS 348.606 to 348.612 or the standards of OAR chapter 583, division 30, or when the school fails to meet the requirements set forth by the Commission while on "at risk" status.

The last sentence of this section is very open-ended and leaves the subject entirely open for interpretation by individuals either at the Commission level or at the school level. I highly recommend this wording be looked at and revised for clarity to prevent future problems and accusations of discrimination.

Under:

583-030-0020

Exercise of Office Authority

(4) "...Inspection of a school and evaluation of its application will be performed by state officials or consultants at the Executive Director's discretion, and results will be utilized as the Commission considers appropriate. Information from other examiners, such as accreditor's or professional licensing agencies, may accompany materials submitted by the school and may be used by the Commission at its discretion.

This wording is also very open ended. Terms that use the wording "at the Executive Director's discretion" or "as the Commission considers appropriate" can often be open to individual interpretation, not clearly defined as to what exactly the rule or procedure is, the due process that an individual may be entitled to under law, and can leave many avenues open for discriminatory action or harm based on one individual or a group of individual's personal interpretation of the matter. There have been numerous law suits in the last couple of years that have been won in a court of law based on these very things. Highly recommend revising this wording to indicate clear and concise meaning, eliminating possibilities for personal or individual interpretation.

583-030-0035

Standards for Schools Offering Degree Programs In or From Oregon

(2) Control, (b) and (C). You might want to revisit the wording for:

"...fixed salary and not by commission. Commission includes monetary and nonmonetary compensation".

New Oregon laws went into effect January 1, 2016 regarding mandatory sick time provided to ALL employees. Things like sick time, paid vacation time, personal time, and other benefits are considered compensation to employees. Also, sometime around March of 2016 there will be new laws that will be effective regarding classifications of employees, compensatory time, the term "salary" and the definition of what "salary" means versus "hourly pay". You may want to research that and think about using the word "salary" versus employee pay, or hourly rate of pay, or some other type of term. According to my auditor, compensation for recruiting can come in many different forms.

(8) (h) "Recruitment" The school shall not contract with a third-party entity, independent contractor or corporation for the recruitment or enrollment of students where payment to the thirdparty is based wholly or in part on a commission basis. Commission includes monetary and nonmonetary compensation.

What is the purpose of this section? Almost all third party servicer's are based on a per student basis. There would be no other way to calculate fees and/or costs for their services. To do a set dollar amount would mean that a school could hire them and possibly get no results for students. Or, alternatively, the third party servicer could work very hard and get very little pay for their work.

Does section (12) "Information" (C) (A) through (ii) conform with, conflict with, or violate previous statutes identified in HB 4019?? Might be worth your time researching this to ensure there are no conflicts or violations with that HB.

Section (17) "Finance"(c) A school unable to demonstrate financial strength may be required permitted at the discretion of the cCommission's Eexecutive Ddirector to increase submit a the amount of its surety bond or letter of credit in an amount equal to the largest amount of prepaid tuition held at any time. The bond or letter of credit would be subject to claims for tuition refund only.

"Financial Strength" is mentioned a couple of times throughout the rules/regulations outlined, but I haven't seen anything yet that details or describes what "Financial Strength" means, or when a school would be in violation of demonstrating it doesn't meet "Financial Strength" regulations. What is the definition of "Financial Strength" What types of identifiers are used to determine the "Financial Strength" of a school?. Who determines if a school meets the requirements for "Financial Strength". What measurements are in place to calculate a school's "Financial Strength"?

Under:

583-030-0043

Duty to Notify Employees and Students of Change in Status

Any school that has been placed on probation, or suspension status shall immediately, in writing, notify all employees, students and prospective students of the change in status. A posting of the change in status should be visible on the school's website, social media or other official platform of the school, including all information bulletins at the school site

Are schools really required to post to all forms of social media a change in status? Wouldn't mandatory posting at the physical facility and written notification to employees, and current students be sufficient? I am not sure that forcing someone to use social media if that is not something that they do as a normal form of business would be appropriate, or legal. Just a thought. Once again the wording appears to only be for degree granting institutions. Is it for ALL schools?

Under:

583-030-0045

At Risk, Probation, Revocation, or Suspension of Authorization

(2) Whenever an inspection or other investigation reveals lack of compliance with Oregon Revised Statutes, ORS 348.606 to 348.612 or standards of OAR chapter 583, division 30, the Commission may determine the school is at risk. (This part seems clear)

(This next part makes it a bit confusing:)

Upon such determination, (Upon the determination of "at risk"?) or when the school fails to meet the requirements set forth by the Commission while on an "at risk" status, (will the school be notified in writing of the "at-risk" status first, and then if it doesn't comply)? the Commission shall

officially notify the school in writing that the school has been placed on probation and provide the school with a report of deficiencies. (This wording makes it confusing, is it saying that when the school is determined to be “at-risk” it will be placed on probation at that time? Or..it will be placed on probation if the school doesn’t meet compliance with the “at-risk status, it seems to be talking about two different things here, but not clear wording on which”? When deemed appropriate, the Commission may initiate immediate suspension or revocation proceedings and schools will be provided due process through the provisions allowed in sections 2 and 3 of this rule. If the Commission elects to place the school on probation, the school shall have 20 calendar days after date of notification to report on actions that have been taken to correct these deficiencies: (If put on “at-risk” status, does the school need to notify employees, current students, prospective students, AND place that status on ALL social media at that time? Or.. does this only come into play if the school is placed on probationary status? Need some clearer wording here to determine what is actually meant.

(c) The school may request a hearing within 21 calendar days of receipt of the commission's notice to revoke or suspend the school's license; and

Also, in reference to the above, it appears that the school can be suspended or revoked when deemed appropriate, and only after the school has been suspended and/or revoked will the school have access to due process. Is this correct? Suspension or revocation for any school literally means the school will not survive, even if it is found that the Commission or a person at the Commission made an error. At that point the school would not recover. Wouldn't it be more appropriate to give the school notice that there is an “intent” to place the school on suspension or revocation within so many days, and then if the school did not respond or access due process within that time frame, then follow through. Doing it this way at least provides an opportunity for schools to access due process under the law, and at least provide evidence, facts, or other pertinent material for their case.

(d) A school and program that has been placed on probation shall not engage in any advertising, recruitment or student enrollment activities, or begin the instruction of any new students during the period of probation. Until it satisfies the requirements set by the Commission, the school must notify enrolled students, employees and any prospective students in writing that the institution has been placed on “probation” by the Commission. The school must also place notice of the probation at the physical site of the school, if there is such, and on any website, social media or other official platform of the school. The notification to students, prospective students, and staff shall be immediate upon the school receiving the Commission’s determination notice.

Would this be required Before due process and final determination, or After due process and final determination?

(11) For schools that are part of a corporate entity, limited liability company, general partnership or similar organization, the Commission may extend the at risk, probation, suspension or revocation determination to all entities owned and controlled by the corporation, limited liability company, general partnership or similar organization in regards to their operations in Oregon. Furthermore, while on probation or suspension the Commission may opt to not review or approve any new programs or submittals from the institution, parent company or subsidiaries until all the deficiencies have been addressed to the satisfaction of the Commission.

Hmmm did you check with legal council to see if this was legal to do? Not sure you can legally put an “at-risk, probation, or revocation” status on a school that is actually in compliance, regardless of what one school may or may not be doing, even if it is a part of a parent entity. You essentially could have two school’s owned by a parent company, and operated by different individuals. One individual could be operating his/her school in compliance with all

Oregon regulations, while the other individual might be violating numerous Oregon regulations. Not sure if you can legally punish both schools for the conduct of one. That would be like punishing all the kids because one kid stole a candy bar.