

# COMPLIANCE PROGRAM LESSONS FROM RECENT HIGHER EDUCATION ENFORCEMENT ACTIONS

SCCE Higher Education Conference

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## **AGENDA**

### **1. Borrower Defense Issues**

### **2. Recent DOJ and ED Enforcement Case Studies**

# 1. BORROWER DEFENSE ISSUES





## INTRODUCTION

- October 8, 2021, US Department of Education announced an Enforcement Office within Federal Student Aid
  - Restores an office established in 2016
  - New leader was former enforcement director at CFPB
- Four Groups
  - Administrative Actions and Appeals Services Group – Program Reviews
  - Borrower Defense Group – Analyzes Borrower Defense Claims
  - Investigations Group – Collaborates with DOJ, CFPB, FTC and States
  - Resolution and Referral Management Group – Student complaints



## BORROWER DEFENSE DETAILS

- Borrower Defense to Repayment (BDR) allows borrowers of federal student loans to apply to U.S. Department of Education (ED) for forgiveness and reimbursement of loans paid.
  - If successful, ED can seek recoupment of the amount from the school.
  - Standards have changed over the years, and new changes go into effect on July 1.
  - The following are the categories in the current form: “Misled or defrauded”
    - Admission selectivity, Representations to Third Parties, Urgency to Enroll, Educational Services, Employment Prospects, Program Cost and Nature of Loans, Transferring Credits, Career Services, Judgement, Breach of Contract, Other.
  - Currently 60 days to respond, as of July 1, 90 days.

## BDR CASE STUDY #1 – SWEET VS. ED/DEVOS/CARDONA

- Complaint Overview: Borrower BDR claims are not being adjudicated timely.
  - More than 200,000 students/claims
  - \$6BN settlement on June 22, 2022
  - Court granted approval on Nov. 15, 2022; effective as of Jan. 28, 2023
  - April 13, 2023: Supreme Court rejected a request by three private colleges to block the settlement decision; the three colleges may continue to pursue their appeal in the Ninth Circuit



## BDR CASE STUDY #1 – THE RESPONSE

- According to the ED:
  - Anyone who filed borrower defense application prior to June 22, 2022 entitled to relief
  - Automatic discharge if you attended a list of “approved” schools
  - Most schools are “for-profit” and many are closed
  - Post-class applicants must be adjudicated within 3 years



## BDR CASE STUDY #1 – RESULT



- Schools on the list are receiving large numbers of claims
- \$6 Billion settlement – TBD
- New processes starting in July
  - New affidavit process
- Will the Department of Education pursue recoupment?



## BDR CASE STUDY #2 – RECOUPMENT

- Update: In 2022, a large For-Profit school became the first “open” school to be pursued by ED for recoupment. About \$24M.
  - School filed lawsuit against ED/Cardona
  - Recently referred to new judge
  - Process - One claim at a time vs. “group”



## 2. RECENT DOJ/ED ENFORCEMENT ACTIONS





## OVERVIEW

- Significant DOJ and ED enforcement activity, including coordination with other agencies
- Key areas of enforcement include:
  - ADA/accessibility
  - Title IV, VI, and IX
  - Antitrust issues
- Additional enforcement expected
- Incentives to adopt effective ethics & compliance programs

## CASE STUDY #1 – PUBLIC UNIVERSITY IN CALIFORNIA

### THE ALLEGATIONS

- 2014: The National Association of the Deaf filed a complaint with DOJ alleging that deaf or hard-of-hearing individuals could not access a public university in California’s free online content
- 2016: DOJ notified the university about alleged violations of Title II of the ADA
- According to DOJ: The university livestreamed various university events and made classes available on its online platform in a manner that allegedly did not allow for the use of screen readers or other assistive technology. Specifically, some content allegedly lacked captions, transcripts, and alternative text describing visual images for individuals who are blind.





## CASE STUDY #1 – PUBLIC UNIVERSITY IN CALIFORNIA UNIVERSITY RESPONSE

- The university’s response:
  - Removed over 20,000 online resources, including video and audio lectures
  - The Vice Chancellor for Undergraduate Education of the university said in a public comment that the DOJ’s proposed changes would require the university to implement “extremely expensive measures”
- 2022: The university entered into a consent decree with DOJ, agreeing to make “all future and the vast majority of its existing online content accessible to people with disabilities”

## CASE STUDY #1 – PUBLIC UNIVERSITY IN CALIFORNIA THE RESULT



- Under the Consent Decree, the university agreed to:
  - Implement updated Web Accessibility Procedures
  - Implement a Web Accessibility conformance timeline
  - Designate a Web Accessibility Coordinator
  - Provide Web Accessibility training
  - Create platform for feedback on Web Accessibility
  - Retain an independent auditor to conduct Web Accessibility reviews
  - Self-report to DOJ during the term of the decree

In March 2022, DOJ issued guidance and in May 2023, DOJ and ED issued a “dear colleague” letter regarding web access for individuals with disabilities

## CASE STUDY #2 – PUBLIC UNIVERSITY IN ALABAMA THE ALLEGATIONS

- A student at a public university in Alabama filed a complaint with ED Office of Civil Rights (OCR), alleging that her school did not provide reasonable pregnancy-related accommodations
- During her pregnancy, the student alleged she requested accommodations from her professor and the university's Title IX Coordinator
- The professor allegedly refused and the student received a failing grade for one of her classes





## **CASE STUDY #2 – PUBLIC UNIVERSITY IN ALABAMA THE UNIVERSITY RESPONSE**

- Allegations:
  - The university Title IX coordinator allegedly failed to intervene after being aware of the student’s issues in receiving accommodations.
  - The coordinator allegedly failed to respond to the professor’s requests for guidance on how to handle the situation
- In an interview with ED, the professor and the coordinator told ED they were unaware of the university’s official policy related to discrimination against pregnant students
- At the conclusion of the investigation, the university entered into a resolution agreement in January 2023



## CASE STUDY #2 – PUBLIC UNIVERSITY IN ALABAMA THE RESULT



- Under the resolution agreement, the university agreed to:
  - Review practices on providing accommodations to pregnant students
  - Share approved policies with students
  - Train faculty on Title IX rights of pregnant students
  - Track pregnancy-related accommodation requests



## **CASE STUDY #3 – PUBLIC UNIVERSITY IN VERMONT THE ALLEGATIONS**

- Public university in Vermont allegedly failed to respond adequately to antisemitic harassment of Jewish students, including allegations that:
  - A teaching assistant made a series of antisemitic tweets on her public Twitter account
  - Students threw rocks and various items at the campus Hillel building, which housed an organization for Jewish students
  - Students complained that they were excluded from certain student organizations due to their Jewish background



## CASE STUDY #3 – PUBLIC UNIVERSITY IN VERMONT THE UNIVERSITY RESPONSE

- According to ED:
  - The university failed to formally respond to any of the three issues
  - ED’s investigation found that the university did not follow its own established procedures in deciding to investigate the complaints, which may reflect that the university allegedly treated individuals differently on the basis of national origin
- After ED began investigating, the university president sent a letter to the campus community asserting that the ED had advanced “false claims” that the university failed to respond to harassment complaints
- The university took numerous steps to demonstrate support for Jewish students, faculty, and staff

## CASE STUDY #3 – PUBLIC UNIVERSITY IN VERMONT THE RESULT



- Under the resolution agreement, the university agreed to:
  - Review policies on harassment based on national origin
  - Issue a statement to faculty and staff reaffirming commitment to addressing discrimination, including antisemitism
  - Conduct a community-wide campus climate survey
  - Train faculty on responding to discrimination based on national origin

## CASE STUDY #4 – NATIONAL COLLEGE ADMISSION COUNSELING ORG THE ALLEGATIONS

- DOJ alleged that several provisions in a national college admission counseling organization's bylaws violated U.S. antitrust laws
- Specifically, these provisions allegedly:
  - Prohibited colleges from recruiting students once they had committed to another school
  - Banned colleges from soliciting transfer applications from the previous year's applicant pool
  - Prohibited colleges from offering exclusive benefits to students applying under an early decision plan



## CASE STUDY #4 – NATIONAL COLLEGE ADMISSION COUNSELING ORG THE RESPONSE

- As part of its investigation, DOJ sent information requests to individuals who were involved in drafting the provisions
- Prior to any resolution, the organization's members voted to remove the three provisions from its bylaws
- DOJ and the organization entered into a consent decree in December 2019



## CASE STUDY #4 – NATIONAL COLLEGE ADMISSION COUNSELING ORG THE RESULT



- Under the consent decree agreement, the organization agreed to:
  - Appoint an Antitrust Compliance Officer
  - Allow the government office access to inspect organization documents to determine compliance with the consent decree
  - Permit the government to interview employees about the organization's compliance with the agreement
  - Answer written requests about its compliance

## CASE STUDY #5 – PUBLIC UNIVERSITY IN CALIFORNIA THE ALLEGATIONS

- Several female student athletes at a public university in California alleged
  - They were sexually harassed by an athletic trainer; and
  - The harassment continued for more than a decade







## CASE STUDY #5 – PUBLIC UNIVERSITY IN CALIFORNIA THE RESPONSE

- According to ED:
  - After the athletes reported the alleged harassment, the university's equal opportunity office did not reach out to *all* athletes that made reports
  - The athletes made the university aware of other potential victims of the athletic trainer, but the equal opportunity office did not interview them
  - After determining that the trainer had not violated university policy, the university only informed one complainant about the results of the investigation
  - The university did not take measures to limit the trainer's access to student athletes, despite continued complaints
  - Two university athletics employees were allegedly retaliated against for reporting the trainer's conduct

## CASE STUDY #5 – PUBLIC UNIVERSITY IN CALIFORNIA

### THE RESULT



- Under the resolution agreement, the university agreed to:
  - Pay \$1.6 million to 13 student athletes
  - Create a case management system documenting responses to complaints of sexual harassment
  - Provide sufficient staffing for support services for complainants, respondents, and investigation witnesses
  - Conduct a campus-wide survey analyzing understanding of Title IX policies

## HALLMARKS OF AN INSTITUTION'S EFFECTIVE COMPLIANCE PROGRAM

**Management Commitment**

**Autonomy & Resources**

**Risk Assessment**

**Policies & Procedures**

**Third Party Management**

**Mergers & Acquisitions**

**Training & Communications**

**Confidential Reporting & Investigations**

**Compensation Structures & Consequence Management**

**Continuous Improvement, Periodic Testing, and Review**

**Analysis and Remediation of Misconduct**

**QUESTIONS?**



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