

## TOOLKIT FOR INCREASING EFFECTIVE OVERSIGHT

### PROBLEMS WITH STATE AUTHORIZATION RECIPROCITY AGREEMENTS AND HOW TO FIX THEM

#### *Unfair Reciprocity Agreements: Protecting Fraudulent On-Line Schools from State Oversight*

As currently drafted, the four regional state authorization reciprocity agreements (collectively referred to as SARA), contain the following anti-consumer, anti-state oversight provisions:<sup>1</sup>

- **Accreditation in Lieu of State Standards:** The home state must accept institutional accreditation as sufficient initial evidence of academic quality for approving schools' participation in SARA. Distant states may not apply more stringent minimal standards to SARA schools.
- **Treatment of Public, Private Non-Profit and Private For-Profit Schools as If They are the Same:** SARA does not allow a state to sign onto SARA for some types of schools while opting out for those schools it decides pose a higher risk to its citizens.
- **Waiver of State Consumer Protection Laws:** A distant state must waive its oversight laws with respect to covered schools. The state only retains the ability to use general criminal or consumer protection laws against them, such as Unfair and Deceptive Acts and Practices (UDAP) statutes.
- **Lack of Consumer Protections:** SARA only requires that schools provide accurate information to students regarding a number of areas, including refund policies and accreditation. Distant states may not apply more stringent consumer protection provisions to SARA schools:
  - *Student Recovery Funds/Bond Provisions:* It is up to the home state to provide for teach-outs or for "reasonable financial compensation" for the education not

<sup>1</sup> National Council for State Authorization Reciprocity Agreements, "State Authorization Reciprocity Agreements: Policies and Standards" (Feb. 10, 2014). All four regional SARAs include these provisions and are available at each of the following websites: see [www.wiche.edu](http://www.wiche.edu), [www.mhec.org](http://www.mhec.org), [www.nebhe.org](http://www.nebhe.org), [www.sreb.org](http://www.sreb.org).

received when a school closes. This means that distant state students are only entitled to payment from tuition recovery funds or bonds as provided by the home state, if anything.

- *Refunds and Cancellation Provisions:* Distant states may not enact refund or cancellation provisions applicable to SARA schools. It is unclear whether a home state's refund and cancellation rights would be exported to cover distant state students.
- *Private Cause of Action:* SARA does not provide for any private cause of action for harmed students, and would wipe out any such cause of action in existing distant state law.
- **Enrollment Agreements, Disclosures, Language Provisions, Private Rights of Action, Prohibitions Against Deceptive Practices:** These and many other typical consumer provisions in state oversight schemes are not included in SARA.
- **Programs that Lead to Licensure:** SARA allows covered schools to offer programs that lead to a licensed profession in distant states even when the programs do not qualify students for licensure in that state. SARA only requires that schools disclose that the program does not meet state licensure requirements.
- **Inadequate Student Complaint Procedures:** SARA requires students to first try to resolve a complaint with the school through its internal grievance procedure. Only after going through this procedure may a student then submit a complaint to the home state. Although the distant state may work to resolve the complaint, only the home state may make the final decision.

### *Balanced Reciprocity Agreements: Revisions for Fairness to States and Students*

To more equitably address consumer, state, and school interests, SARA could be revised to provide that the distant state will retain the following rights:

- the authority to apply stricter consumer protections to distance education programs, including prohibitions targeted to unfair and deceptive business practices, disclosure requirements, student cancellation and refund rights, student tuition recovery fund provisions, private causes of action, and requirements for enrollment agreements and other important documents.
- the authority to sign onto SARA for some types of schools, but to opt out for types of schools that pose a higher risk to its citizens.
- the jurisdiction to limit or deny approval, or take any other appropriate action, in the event it determines that the school has failed to meet the minimum SARA standards, its own minimum standards, or violated any state law or regulation.
- the responsibility for accepting, investigating and acting on complaints from distant state students (up to and including revoking a school's state authorization), and the school should be required to cooperate with any investigation.

- the right to impose its own record retention requirements, require the school to provide annual data regarding distant state students, and to inspect documents, conduct announced or unannounced site visits, speak with students and employees, and require the school to comply with any other informational requests or audits.
- the right to require that the school notify it in whatever circumstances it deems necessary, for example if ownership or control changes, an accrediting agency proposes to take an adverse action, a law enforcement agency starts an investigation or files an action, etc.
- the authority to charge the school adequate fees to fully fund its investigative oversight.
- the authority to review the school for compliance with any stricter state standards and/or use its more active processes to ensure that a school meets SARA or its standards. For example, if the home state simply accepts accreditation as sufficient for approval and the distant state requires a more in-depth review to ensure that the school satisfies the standards, such as through document review or site visits, the distant state should be able to visit the physical location of the campus, request that the school submit information, and take other actions it deems necessary to grant approval through SARA.

## KEY COMPONENTS FOR CLEAR JOB PLACEMENT AND COMPLETION RATE DEFINITIONS

### *Job Placement:*

- **What types of jobs may be counted as placements?** The job title should match that provided on the certificate or degree or the work routine should predominantly require the use of core skills and knowledge expected to have been taught in the program. This would help prevent schools from manipulating placement rates by counting jobs that are not related or only tangentially related to the occupations trained for. In instances where the completers are continuing in prior employment, the prior position must be reasonably related to the program training and the completer must attest in his/her own handwriting at the time of enrolling and after completion that the training led to maintaining or advancing in his or her position.
- **How soon after graduation must a student obtain employment?** Within six months, since that is the point at which most students must start making their federal student loan payments. This should be adjusted for occupations which require licensure or private certification, with the six-month period starting on the date when the results of the first licensure or certification examination is reasonably available to students after they graduate.
- **How long must employment last in a single job?** Minimum of 13 weeks continuous employment in a single job. Otherwise, schools may count temporary jobs of short duration or accumulate time periods for different jobs that a graduate is not able to keep because he lacks the necessary skills.
- **Are part-time or full-time jobs counted?** Full-time employment should be defined as a minimum number of work hours per week, for example 32. Part-time should only be counted if the student, in his own handwriting, states that he only intends on finding part-time employment upon graduation. Most students enroll in order to obtain full-time employment and will therefore consider the placement rates to accurately reflect students who have obtained full-time employment.
- **Which students are eligible to be counted?** Only those students who complete their programs. Students who have not completed their programs should not be included in this calculation.

### *Completion:*

- **Which students should be included in the completion rate calculation?** The denominator should be the total number of students who enroll within a defined one-year time period.
- **Which of these students may be counted as graduates?** The numerator should only include those who complete their programs within 100% of the original time scheduled to completion when they enrolled. Some schools misrepresent both the time to completion and, as a result, the cost of obtaining a certificate or degree. Schools should not benefit from these misrepresentations with inflated completion rates that include graduates who completed in some greater time period, such as 150% of the represented time to completion. Most students will expect that the completion rate will reflect the 100% rate.
- The numerator should also include students who are able to transfer their credits to another program.

### *Both Job Placement and Completion:*

**Exclusions:** Schools should be allowed to exclude only a few categories of students—those who are unable to complete or obtain employment due to:

- death;
- disability;
- military service;
- continuing education at least half-time (for the placement rate only); or
- incarceration.

## KEY CRITERIA FOR IDENTIFYING SCHOOLS THAT MAY BE ENGAGING IN SYSTEMIC FRAUD

- The nature and severity of violations alleged in student complaints, the extent of potential harm to the student (for example, failure to make required refunds, misrepresentations regarding the likelihood of employment or earning ability after graduation), and evidence of similar violations subsequent or prior to the complaint under consideration;
- Whether the school receives more than 70% of its revenues from Title IV and other federal funding sources (such as benefits for service members or veterans);
- Whether the school's 3-year cohort default rate is above 15%;
- Whether the school has placement rates, completion rates and/or licensure or certification rates that are far higher or lower than comparable programs offered by other for-profit schools;
- Whether a school spends more revenue on marketing, recruitment and advertising than on instruction;
- Whether the school has experienced a dramatic increase in enrollment, has recently expanded its programs or campuses, or has recently consolidated campuses;
- Whether the school offers degree programs to which students are admitted without having to demonstrate their aptitude on a test regularly used for admission decisions by public colleges, such as the SAT or ACT;
- Whether the school offers non-remedial program courses in English, but enrolls more than 10% of students who have limited or no English language proficiency in reading, writing, speaking or understanding;
- Whether the school enrolls more than 50% of its students in on-line programs;
- Whether there has been a recent change of ownership or control or a change in the business organization (from nonprofit to for-profit or vice versa);
- Whether the school's audited financial statements indicate there may be issues with its financial health;
- Whether the school is unable to compensate its employees;
- Whether the school has recently been the subject of a *qui tam* action or an investigation, judgment, settlement or regulatory action involving a government agency; or
- Whether an accreditor has restricted the school's institutional or programmatic accreditation, a government agency has restricted the school's approval or subjected it to an injunction, or the U.S. Department of Education has placed the school on cash-reimbursement or heightened monitoring status.

## KEY CHARACTERISTICS OF AN EFFECTIVE STUDENT COMPLAINT PROCESS

The most effective complaint processes include the following characteristics.

- accessibility, with information about how to submit a complaint by phone, online, *and* by mail clearly provided on the state agency and school website, as well as in writing to all students when they enroll in a for-profit school;
- thorough investigation of all complaints when the allegations, if taken as true, would constitute a violation of the statute or regulations;
- adequate investigative resources, including a minimum number of trained investigators, for example based on the total number of students enrolled in the schools it regulates, to handle complaints in a timely manner;
- the availability and appropriate use of investigative procedures and tools, including the review of prior student complaints, witness interviews, on-site document reviews, unannounced site visits at campuses or internship sites, and audits of relevant institutional data;
- an equal and adequate opportunity for each party to present relevant oral and documentary evidence in response to the other party's evidence;
- a hearing and appeal process equally available to each party and conducted by impartial hearing officers with knowledge of the applicable statute and regulations, and an opportunity for each party to examine the other party's evidence and compel witness attendance;
- a rule that oral and written testimony will be accepted only from witnesses who have personal knowledge of the matters to which they are testifying, and that the agency will make a credibility determination when there is conflicting testimony;
- written determinations for each complaint that state reasons underlying each determination, the statutory or regulatory basis for the determination, and a description of the evidence relied upon; and
- authority to require student refunds if a preponderance of the evidence demonstrates a statutory or regulatory violation, plus penalties or other appropriate relief in the case of systemic violations.