
The State Consumer Protection Role in the Federal/Accreditor/State Triad: *Trends and Analysis*

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The Triad

States: Authorization to operate, consumer protection, state grant program eligibility

Accreditors: Quality of education

US Department of Education: Title IV program gatekeeper

Under the Higher Education Act, to be eligible for Title IV funds, schools must be authorized by a state and accredited by a US DOE recognized accreditor.

The Shifting Landscape

- **States:** Activist State Attorneys General
- **Accreditors:** Pressure to Police Schools Not Just Improve Institutional Quality
- **U.S. Department of Education:** Growth in Regulation and Increased State Mandates

Activist State Attorneys General



- Approximately 22 State Attorneys General participating in for-profit college working group
- Approximately 24 State Attorneys General currently investigating or suing for-profit and non-profit colleges under state unfair competition/deceptive practices statutes

- Iowa Attorney General leading investigation with AR, AZ, CT, CO, HI, ID, KY, MO, NE, NM, NC, OR, TN, WA and PA joining.
- CA AG lawsuit filed in 2013
- CFPB lawsuit filed 9/2014 (private student loans)
- DOJ investigation - False Claims Act (job placement rate inflation and other misrepresentations)
- DOJ Grand Jury subpoena - job placement rates, graduation rates, credit transfer, marketing, student loans
- SEC investigation

Trends and Analysis



- EDMC, ITT, Career Education Corporation, DeVry, University of Phoenix, Kaplan, Bridgepoint, UTI currently being investigated or sued by states, in addition to several smaller institutions
- *How will or should this unprecedented state AG activity impact the “triad” of federal/accreditor/state oversight of institutions of higher education?*

Common State AG Issues

- Alleged Misrepresentations Regarding --
 - status of institutional or programmatic accreditation
 - inflated completion rates
 - inflated placement rates
 - ability to meet graduate certification and licensing requirements to work in a given occupational field
 - false statements about admissions selectivity
 - false statements about scholarship selectivity
 - false statements about length of time to complete program
 - length or quality of externships
- Private student loans (institutional and third party) - state law compliance
- Enrollment pressure - false urgency, frequent calls, “boiler room” tactics
- Education Quality - equipment, faculty, curriculum, training

AG Settlements: What Results?

- Fines payable to state
- Restitution payable to students
- Additional disclosures to consumers
- Required changes to business practices
- Closure of campuses or programs
- Required independent audits of ongoing compliance obligations
- School specific, state specific solutions

State Legislature Activity



Connecticut - Recent law requires each institution of higher education, including for-profit institutions licensed to operate in the state, to provide uniform financial aid information to every prospective student who has been accepted for admission to the institution. The information to be provided is the financial aid shopping sheet developed by the Consumer Financial Protection Bureau and the U.S. Department of Education.

Maryland - Recent law gives the Maryland Higher Education Commission authority to regulate for-profit colleges. Along with requiring these institutions to provide data to the commission on enrollment, graduation and retention rates, the legislation also prohibits schools from paying commission or incentives to recruiters, creates a guaranty fund to reimburse students in the case of a school going bankrupt or closing, and phases out the use of state student aid at for-profit colleges. Beginning July 1, 2016, state financial assistance can no longer be used at for-profit colleges, except for legislative scholarships and a grant specifically for use at private career schools.

California - California began tying eligibility for its Cal-Grant program to student loan default and graduation rates. The new regulations do not specifically name for-profit institutions, but apply to both public and private institutions that have more than 40 percent of their students taking out federal loans (effectively exempting California community colleges). Many for-profit colleges have lost eligibility to receive Cal-Grant funds as a result of the law.

State Legislature Oversight



Kentucky - Created a new agency, KY Commission on Proprietary Education, to reduce conflicts of interest and added a student compensation fund.

North Carolina - Created a new State Board of Proprietary Schools to oversee proprietary institutions offering associate degree and certificate programs.

Utah- New law empowers Division of Consumer Protection to act against complaints directed toward for-profit colleges.

West Virginia - New law mandates increased consumer disclosures by degree granting schools.

State Agency Challenges



- Funding/Staffing/Appropriations
- Efficiency of Consumer Complaint Response Procedures
- Multiple Responsibilities - ie, education and workforce development
- Conflicts of Interest
- Licensing By Means of Accreditation

The U.S. Department of Education Perspective



- State Authorization Rule
 - On-Ground
 - Distance
 - Intended to set minimum state oversight requirements
 - Mandated state complaint process that is “real”
 - Licensing by Means of Accreditation
 - Unfunded mandate?

The U.S. Department of Education Perspective



- Gainful Employment Rule - July 1, 2015
 - Consumer Disclosure form
 - State and accreditor placement rates if required - aggregated data by GE program
 - Cost of tuition/fees/books/supplies/equipment for GE program, completion rate, withdrawal rate, median loan debt, median earnings, institutional and programmatic accreditation
 - Consumer warnings for programs that could fail

The U.S. Department of Education Perspective



- **Misrepresentation Rule**

- Not historically actively enforced by US Department of Education but recently increasingly invoked (Corinthian)
- Substantial misrepresentations regarding: nature of an educational program, nature of an institution's financial charges, employability of graduates.
- Includes false statements to other entities including state and accrediting agencies
- Statements on GE disclosure forms fall within scope of rule

The U.S. Department of Education Perspective



● Placement Rates

- When a school advertises job placement rates as a means of recruiting students to enroll, it must make available to prospective students at or before they enroll (34 CFR 668.41(d)):
 - Most recent available data concerning employment statistics and graduation statistics
 - “Any other information necessary to substantiate the truthfulness of the its advertising”
 - Relevant State licensing requirements of the State in which the school is located for any job for which the course of instruction is designed to prepare students.

The U.S. Department of Education Perspective



- Gainful Employment Rule - July 1, 2015
 - Required certification as to program compliance with State law under penalty of law
 - As to whether the program satisfies the educational prerequisites for professional licensure in the State in which the institution is located and in any other State included in the institution's Metropolitan Statistical Area

The U.S. Department of Education Perspective



- Retention Rate (34 CFR 668.41(d))
- Must make available to current and prospective students the retention rate of certificate and degree seeking, first time, undergraduate students as reported to IPEDS

The U.S. Department of Education Perspective



- Student Right to Know (34 CFR 668.41(a)-(d), 668.45, 668.8(b)(1)(ii))
 - Make available to prospective and enrolled students, by July 1 annually, the completion or graduation rate of certificate and degree seeking, first time, full time and undergraduate students for the most recent cohort that has completed 150% of normal time for completion by August 31 of the prior year, disaggregated by gender, major racial and ethnic subgroup, Pell recipient status, subsidized loan recipients not receiving Pell, and students who did not receive Pell or subsidized loans. Must be identifiable and separate from any other completion/graduation information provided by the school to the public.

Re-Shaping The Triad - Impacts



1. Federal intervention into state authority to protect consumer of educational services?
2. Accrediting standards discredited by State AGs and questioned by feds?
3. Activist State AG investigations usurping authority of state education agencies to enforce and interpret law?

State Agency Considerations

- Seeking cooperation with institutions prior to launching investigations - consumer benefits and avoidance of unplanned closures due to cost of defense.
 - Investigations can take years to result in changed practices.
- State legislation to hold harmless institutions who voluntarily disclose and remedy problems?
- Uniform Agreement as to placement rates and other best practices.
- Selective enforcement of state statutes - for profit vs. nonprofit institutions: fairness, legality and precedent

2013 Lawsuit by CA Attorney General - Corinthian/Heald (pending)

- Seeking civil penalties, injunctive and other relief
- Based on California Business and Professional Code, Unfair Competition Law and Fair Advertising Law
- Alleges -
 - Misrepresentation of job placement rates to students and investors - placement rates provided in disclosures by school are not supported by schools internal data
 - Advertising programs that are not offered
 - Using military seals in advertising
 - Inserting overly broad, unlawful clauses into enrollment agreements that bar any all claims by students even for fraud
 - Subjecting students to unlawful debt collection practices
 - Misrepresenting ability to transfer of credits to other institutions

California - City of San Francisco



- Settlement with EDMC
 - \$4.4 million to City - costs, scholarship program
 - New disclosure requirements regarding placement rates, actual or average salaries, graduation and completion rates, transfer rates, retention rates, Cohort Default Rates
 - Prescribed calculation methods for placement rates
 - Employee Training
 - Minimum career services employee to student ratio
 - Independent audit of placement rates

CO AG - 2012 Final Consent Judgment [Alta Colleges]

Based on Colorado Consumer Protection Act and Colorado Uniform Consumer Credit Code.

School required to:

- Use only placement rate for a program that is substantiated with actual graduate employment data from the immediately preceding Reporting Year (as required by the school's accrediting body)
- Advertise salary, job titles and functions for graduates only based on data that reflect actual graduates obtaining the advertised titles and functions within the immediately preceding Reporting Year
- Cease stating that accreditation status means credits earned by a student are transferable to other schools
- *Utilize the State's definition of "employed in the field" or "employed in a related field" to calculate a program's employment placement rate*
- Additional state-mandated disclosures of cost of program, transfer of credit, placement rates and underlying data - form of and timing of disclosures prior to and after admission
- 14 day trial period for all students without incurring any financial obligation
- Audits of compliance with settlement agreement
- Required recording of admissions interviews
- Required secret shopping
- \$2 million payment to State and \$2.5 million restitution to students.

CO AG - 2013 Final Consent Judgment [EDMC/Argosy]

Based on Colorado Consumer Protection Act.

Allegations in lawsuit included:

- Knowing false representations that doctoral program would lead to licensure as a psychologist in Colorado. The program was not accredited by the American Psychological Association. Lack of APA accreditation was a limiting factor to obtaining internships, post-doctoral placement, and licensure in the state.

Lawsuit sought civil penalties, disgorgement, and consumer restitution.

Settlement:

- Established a state definition for “Typically Necessary for Employment” meaning 50% or more job opportunities in a particular occupation are open only to graduates who have obtained certification and/or licensure, or where 50 percent or more job opportunities in a particular occupation are open only to graduates of an accredited institution and/or programmatically accredited academic program”
- Required disclosures tied to above definition
- \$2.87 Million payment to State for student refunds, \$500,000 to State for reimbursement and consumer protection and restitution; and \$1 million penalty payable to State.

2012-14 Investigation

Based on Colorado Consumer Protection Act and Colorado Uniform Consumer Credit Code

Areas of investigation:

- Statements made about program preparing students for licensing or certification in various medical specialties
- Accreditation, transfer of credit, marketing/recruitment statements, placement rate documentation, placement services, GED prep program
- in house student financing, scholarships, default management

2014 Lawsuit (Pending)

- Seeking injunction, civil penalties, restitution and disgorgement
- Marketing materials cite to BLS surveys for salary data not data using school's actual graduates
- Alleges that placement rates reported to ACCSC and to public are overstated because they are manipulated by school and ACCSC does not check them thoroughly
- Disclosures provided by school but in font too small

IA AG - 2014 Assurance of Voluntary Compliance (AVC) with [Bridgepoint/Ashford]

- Based on alleged violation of Iowa Consumer Fraud Act
 - False or misleading statements to prospective students to secure enrollment
 - Unfair high pressure sales tactics including emotionally-charged appeals
 - Failure to disclose material facts to students including the need for teaching program graduates to meet additional state-specific training requirements
 - Unfairly imposing a “technology services fee” on all students after enrollment

State AG alleged that as a result of that conduct, many students did not complete programs, could not obtain professional licensure, or could not repay debt.

IA AG - 2014 Assurance of Voluntary Compliance (AVC) with [Bridgepoint/Ashford]

School required to, among other things:

- Disclose additional state teacher certification requirements, lack of program specific accreditation that is a prerequisite to teacher certification in some states
- Obtain student written acknowledgment of disclosures and repeat acknowledgement of disclosures during course of program
- Disclose clearly and conspicuously the graduation rates and median loan debt for each program in all enrollment applications and catalogs (state specific)
- Provide employee training regarding: compliance with AVC, school transfer of credit policies, placement services, financial aid practices, licensure and other requirements of all programs offered by the school, and FERPA.
- Monitor admissions officer phone calls
- Required three week trial period with no cost for withdrawal
- Pay State \$7.25 Million.

Kentucky

Pending State AG Lawsuits [Daymar, National College and Spencerian College]

Basis: Kentucky Consumer Protection Act

Allegations include:

- Making false, misleading and deceptive job placement rate claims
- Claims used in advertising differ from rates reported to accreditor
- Requiring purchase of textbooks from school
- Transfer of credit misrepresentations

CO AG - 2013 Lawsuit [Sullivan & Cogliano Training Centers]

- Pursuant to MA Consumer Protection Act
- Seeking restitution, civil penalties and injunctive relief
- Allegations
 - Misrepresentation as to scope, nature, character and length of programs
 - success in finding jobs in students' field of study
 - employment opportunities available in students' field of study
 - assistance provided by school in obtaining employment in students' field of study
 - availability of internships, together with the training provided by and employment opportunities accompanying the internships

Settlement:

- \$425,000 in loan relief for harmed students;
- shut down its Medical Office Assistant and Office Professional-Medical Concentration programs in Massachusetts;
- identify the actual minimum course completion times in its advertising;
- remove positions from its job placement figures at fast food, big box, and similar non-office jobs;
- make internships available, as promised by S&C, in the field of study to students whose courses require internships.

CO AG 2014 Lawsuit [Corinthian]

- Pursuant to MA Consumer Protection Act
- Seeking restitution, civil penalties and injunctive relief
- Allegations of misrepresentation related to --
 - urgency of enrollment and need to enroll immediately
 - school's influence and success in finding jobs in students' field of study
 - employment opportunities for school graduates
 - earnings of school graduates - based on comparison with MA Office of Labor and Workforce Development wage levels
 - assistance of school to graduates in obtaining employment in field of study
 - nature, character and quality of school programs - unqualified faculty
 - transferability of credits
 - availability of externships
 - nature and availability of financial aid
 - placement rates - false and misleading because school knew or should have known that the placement percentages are inaccurate and that actual success in placing students is much lower.

MN AG - 2013 Assurance of Discontinuance with [Herzing University]

Alleged -

- School misrepresented that an associates degree program in Clinical Medical Assisting was programmatically accredited so that graduates could sit for a required licensing exam.

School was required to:

- make disclosures of accreditation status and impact of programmatic accreditation on eligibility to take CMA exam
- offer students option to withdraw from program that lacks programmatic accreditation and receive full refund or dually enroll in a programmatically accredited program, receive a \$7500 scholarship and have exam preparation and exam fees paid by the school.

MN AG - 2014 Lawsuit [Minnesota School of Business and Globe University]

Allegations of misrepresenting the job opportunities available to graduates of criminal justice program and misleading statements about the transferability of credits, resulting in student loan debt without the ability afterwards to obtain jobs in chosen career fields. The schools allegedly recommended their criminal justice associate degree program to students who told the schools they wanted to become probation officers but the state requires probation officers to have at least a bachelor's degree. As a result, students who obtain an associate degree in criminal justice from the schools are unable to find jobs afterward as probation officers.

The lawsuit describes a sales-oriented culture that places a premium on the enrollment of students by “admissions representatives” who are trained to “master the art of selling.” The schools have told some students that their credits will transfer to other institutions, even though the schools know that little to none of their credits will transfer to most other institutions. Some students who attend the schools learn that their credits will not transfer after deciding to pursue their education at other institutions. The lawsuit seeks injunctive relief, civil penalties, and restitution.

Allegations of making unlicensed private loans with interest rates as high as 18 percent in violation of state licensed lending and usury laws.

NY AG - 2013 Assurance of Discontinuance [Career Education Corporation]

Based on NY General Business Law Article 22-A

- Alleges that for a 3 year period, school employees improperly counted graduates as “placed” to inflate the school’s placement rates as provided to prospective and current students, the schools accrediting agencies and the NY State Department of Education’s Bureau of Proprietary School Supervision
- Improper placements included counting graduates as placed when employed at one day health fairs or when employment was not in a field related to the student’s program of study
- ACICS put school on show cause and due to corrective action taken by school to verify all placements did not suspend schools accreditation
- ABHES put school on show cause and school voluntarily relinquished ABHES accreditation before any action was taken by ABHES
- School took aggressive corrective action changing policies, employees, requirements related to placement

NY AG - 2013 Assurance of Discontinuance [Career Education Corporation]

Required school to:

- *For a period of 5 years, calculate placement rates using a definition of “employed” and “self-employed” established by the state that is different than accreditor requirement.*
- Uses a “placement rate” definition established by the State that differs from the accreditor.
- Mandated disclosures of state-defined placement rates on all school advertising and consumer facing materials used by schools or programs that enrolled New York residents
- Mandates terminating programs that fall below a 47.5% placement rate for up to two years
- Prevents school from offering a non-accredited program that enrolls New York residents except under some circumstances
- \$9.25 Million payment to state, part of which goes to student restitution fund.

New York City

2015 - Pending Investigation by NYC Department of Consumer Affairs

Areas of inquiry:

- faculty qualifications
- compensation of employees
- marketing and advertising
- recruitment practices
- transfer of credit
- debt collection practices
- financial aid policies
- job placement services
- completion rates
- salaries

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Mr. Leyton is co-founder and President of the Washington, D.C. area law firm of Ritzert & Leyton, P.C. and head of the firm's Higher Education Practice Group. Since 1980, Mr. Leyton has represented many institutions of higher education, publicly traded companies, private investment groups and others including foreign institutions with respect to resolving regulatory/compliance matters at the federal and state levels and before accrediting agencies (national, regional and programmatic) and on occasion with respect to legislative matters. His practice also includes achieving desired transactional results through mergers, acquisitions and reorganizations.

The firm's higher education practice group of seven attorneys are involved on a daily basis with matters concerning the U.S. Department of Education (DOE), national, regional and programmatic accrediting agencies, state licensing and other regulatory agencies, other third parties, and when necessary litigation. Mr. Leyton has served three two-year terms on the Association of Private Sector Colleges and Universities and predecessor board of directors and is a frequent speaker on postsecondary education matters. He received his law degree from Catholic University School of Law in 1980, a master's degree in public administration from American University in 1974, and a bachelor's degree in political science from Antioch College in 1971.

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Prior to joining Ritzert & Leyton in July 2014, Mr. Camp served as General Counsel for Remington College for twelve years. He has been representing educational institutions for over twenty years in all aspects of their operations including general business matters, transactions, financing, litigation, conversion from for-profit to non-profit organizational status, marketing and other commercial law compliance, and regulatory matters involving the Department of Education, national, regional and programmatic accrediting agencies and state licensing agencies.

Prior to serving as General Counsel at Remington College, Mr. Camp was a member of the Mitchell Williams law firm in Little Rock, Arkansas where he practiced in the business law section. He was also a partner in the Ivester Skinner & Camp law firm in Little Rock before joining Mitchell Williams. Robby received his law degree from the University of Arkansas in 1979 and bachelor's degree in Public Administration from the University of Arkansas in 1976. He is licensed to practice in Arkansas.

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