

MCRCC The Voice For Maryland Consumers
MARYLAND CONSUMER RIGHTS COALITION

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August 24, 2016

John B. King, Jr., Secretary
U.S. Department of Education
400 Maryland Ave. SW
Washington, DC 20202

RE: Program Integrity and Improvement [Docket ID: ED-2016-OPE-0050]

Dear Secretary King:

The Maryland Consumer Rights Coalition advances fairness and justice for Maryland consumers through research, education, and advocacy. On behalf of our 8,500 individual supporters as well as our coalition members, I appreciate the opportunity to provide comments on the Department's proposed rule on state authorization of postsecondary distance education.

We commend the proposal's requirement all providers of distance education would generally need to obtain state authorization in each state where they intend to enroll students. However, as proposed, I believe that distance education students would have weaker protections under the proposed rule, for the following reasons:

- The proposal would permit state authorization through the use of interstate reciprocity agreements that could restrict a state's authority to protect its own students and students' ability to protect themselves; and,
- The proposal would permit providers to enroll students in professional certificate or licensing programs that lack the required accreditation for students to practice the profession in the students' home state.

State Authorization Reciprocity Agreements

As proposed, the Department's rule would permit states to use reciprocity agreements to enable schools to quickly obtain state authorization in multiple states at once. As proposed, even schools under state or federal investigation would be able to participate in this compact.

Reciprocity agreements enable schools to earn regulatory approval in one state, and then enroll students in any other member state. This model creates an incentive for a school to obtain approval in a state where there is less oversight and an easier process to gain approval-which then precludes other states that recognize the school from engaging in greater scrutiny of the school.

More troubling is the fact that states which sign onto reciprocity agreements undermine their own ability to pass strong regulations which provide greater consumer protections for students enrolled in distance learning programs. By joining a reciprocity agreement, states cede their authority to a private, third-party entity to approve these institutions offering distance-learning.

Even if a state's general consumer protection laws remain applicable, a reciprocity agreement could otherwise require schools to comply only with the laws of the school's home state – laws which could be comparatively much weaker than the laws where a student resides.

Maryland, which has a history of strong consumer protections and a proud tradition of supporting higher education, joined NC-SARA's State Authorization Reciprocity Agreement, commonly known as SARA. Legislation to support Maryland's participation in the compact had been introduced in several previous legislative sessions and defeated. However, in 2015, the Maryland General Assembly supported legislation for Maryland to join SARA. As a member, Maryland institutions of higher education will be able to enroll students from other states for its distance-learning programs.

For consumer advocates and many legislators, SARA is a troubling agreement for many reasons, including:

- States that join SARA give up the right to regulate non-profit and for-profit distance education programs differently, despite documented abuses by for-profit colleges.
- Institutions that participate in SARA are approved for participation by their home state, and States that join SARA must accept that approval – regardless of the effectiveness of the home state's oversight.
- Students wishing to bring a complaint against an institution operating under SARA must do so in the home state of that institution, effectively ceding the authority and oversight of their home state and placing too great of a burden on the complaining student.

Just a few months after SARA legislation was signed by the Governor and approved by Maryland schools, consumer advocates saw many of their concerns about SARA realized during the 2016 legislative session.

In 2016, MCRC released a report “Making the Grade: An Analysis of For-Profit and Career Schools in Maryland” which provided an in-depth examination of for-profit and private career schools in the state¹. MCRC worked with legislators to introduce a bill which contained many of the policy recommendations found within the report. However, many of the policy recommendations had to be modified to reflect Maryland's recent entry into SARA.

In fact, policy recommendations to create a Guaranty Fund for distance learning programs, require disclosure of completion, graduation, and employment rates for online programs, and

¹ White, Marceline and Renee Brown *Making the Grade: An Analysis of For-Profit and Private Career Schools in Maryland*; the Maryland Consumer Rights Coalition; January 2016; [Making the Grade](#).

require use of the CFPB Financial Aid shopping sheet for these schools had to be completely jettisoned for online programs because of Maryland's participation in SARA. The legislation that passed created greater transparency and disclosure requirements, required use of the CFPB Financial Aid shopping sheet, established a new Guaranty Fund for for-profit schools with a physical presence in the state, and prohibited schools from enrolling a student if, upon graduation, that student wouldn't get licensure in their field².

Consequently, Maryland now has strong consumer protections and redress available for students who attend for-profit or private career schools with a brick-and-mortar presence in the state, and far weaker protections for Maryland students enrolled in distance learning programs.

SARA reduces the level of state scrutiny that the Maryland Higher Education Commission (MHEC) applies to fully distance online education programs, and reduces the ability of Maryland's Office of the Attorney General to enforce protections around disclosure, incentive payments, and unfair and deceptive practices that continue to apply to for-profit, private career, and public schools with brick-and-mortar buildings in Maryland. In Maryland, SARA has resulted in a troubling retrenchment of scrutiny and oversight at a time Maryland legislators are eager to find ways to increase consumer protections and provide stronger oversight for students pursuing higher education.

Given Maryland's experience with SARA, I urge the Department to carefully balance to the need for efficiency with states' right to regulate in the interest of their citizens. I urge the Department to preserve states' authority to apply their own laws – including general consumer protection laws, consumer protection laws specific to higher education, *and* other relevant laws of general applicability – to all distance education providers offering programs to their residents.

Currently, MHEC and the Office of the Attorney General address students complaints through several Guaranty Funds as well as the Attorney General's consumer complaint system. It is critical that the final rule permit a student's home state to have final authority over resolving complaints. Furthermore, students should not have to file a complaint with the school first – they should be allowed to go directly to their relevant state agency to file a complaint against a school.

I appreciate the opportunity to share my views, and look forward to working with the Department as it finalizes the rule.

Best,

Marceline White
Executive Director

² Senate Bill 427 [SB 427](#)