

September 9, 2016

Katherine Lipper
General Counsel
Executive Office of Education
One Ashburton Place, Room 1403
Boston, MA 02108

Submitted via email: katherine.lipper@state.ma.us

Re: Special Commission on Interstate Reciprocity; Open Meeting

Dear Ms. Lipper:

I appreciate the opportunity to submit public testimony in advance of the Commission's open meeting on September 14, 2016, regarding reciprocity agreements as a means of authorizing distance education programs.

My name is Suzanne Martindale and I am a Staff Attorney at Consumers Union, the policy and advocacy division of Consumer Reports.¹ I represented the interests of consumer advocacy organizations on the 2014 Negotiated Rulemaking Committee for Program Integrity and Improvement, which developed draft versions of the pending Department of Education rule on state authorization of distance education programs.²

Our organization has significant concerns about states joining NC-SARA, the current reciprocity agreement being adopted around the country, because it effectively creates a two-tiered oversight system that could result in weaker protections for distance education students who reside in states with strong state consumer protections. Should the Commission consider adopting a reciprocity agreement, we recommend that the State of Massachusetts take the alternative approach of creating its own reciprocity agreement – with a strong floor for consumer protection – and inviting other states to join.

General Comments

With more than 2.8 million postsecondary education students enrolled in online-only programs,³ the Commission must address the issue of quality in online education

¹ Consumers Union is the public policy and advocacy division of Consumer Reports. Consumers Union works for a fair, just, and safe marketplace for all consumers and to empower consumers to protect themselves, focusing on the areas of telecommunications, health care, food and product safety, energy, and financial services, among others. Consumer Reports is the world's largest independent product-testing organization. Using its more than 50 labs, auto test center, and survey research center, the nonprofit organization rates thousands of products and services annually. Founded in 1936, Consumer Reports has over 8 million subscribers to its magazine, website, and other publications

² To learn more about the Department proposal, *see* Whitney Barkley et al., Comments to U.S. Dep't of Educ. on Program Integrity and Improvement [Docket ID: ED-2016-OPE-0050] (Aug. 24, 2016), *available at* http://consumersunion.org/wp-content/uploads/2016/08/WB_CL_SM_group-comment_state-auth_8-24-2016.pdf.

³ I. ELAINE ALLEN ET AL., ONLINE REPORT CARD: TRACKING ONLINE EDUCATION IN THE UNITED STATES 4 (2016), *available at* <http://onlinelearningsurvey.com/reports/online-reportcard.pdf>.

programs with great urgency. There has been significant growth in the number of students enrolling in out-of-state online programs, a majority of whom enroll in proprietary schools' online programs.⁴

Despite this trend, online-only education has been completely unregulated in all but nine states.⁵ Unfortunately, increasing complaints about fraud at some institutions indicate that the need for state oversight is overwhelming. Online programs offered by for-profit schools are too often purveyors of fraud and debt rather than knowledge and skills. For example, in 2014, Ashford and its parent company Bridgepoint Education, Inc. paid \$7.25 million to Iowa for misleading online recruiting practices, including deceiving prospective students by leading them to believe that online education degrees would allow them to become classroom teachers.⁶

However, in July 2016, Ashford announced that they were currently educating more than 48,000 students online.⁷ Ashford is not alone in doing active business despite being under investigation. The University of Phoenix,⁸ Kaplan⁹ and Ashworth¹⁰ – all of which have been the focus of complaints by state and federal agencies – also continue to have robust distance education programs and are actively enrolling students.

It is crucial that states conduct an active review of schools seeking authorization to operate in their jurisdiction, to prevent schools with poor track records from putting students into debt for questionable programs. However, the use of reciprocity agreements has become increasingly popular as a means of enabling schools to quickly obtain authorization in multiple states at once. The state reciprocity agreement currently in place in several states does not necessarily prevent even schools under active federal or state investigation from participating in the compact.¹¹ Without proper oversight of these schools, states, the federal government, students and taxpayers will continue to watch as education dollars are wasted and abused.

⁴ Program Integrity and Improvement; Proposed Rule, 81 Fed. Reg. 48598, 48607 (proposed July 25, 2016).

⁵ ROBYN SMITH, NAT'L CONSUMER LAW CTR., ENSURING EDUCATIONAL INTEGRITY: 10 STEPS TO IMPROVE STATE OVERSIGHT OF FOR-PROFIT SCHOOLS 18 (2014), available at <http://www.nclc.org/images/pdf/pr-reports/for-profit-report.pdf>.

⁶ Press Release, Iowa Dep't of Justice, Office of the Attorney General, Ashford University and Parent Company Bridgepoint Education Agree to \$7.25 Million Payment Major Changes After Miller Alleges Consumer Fraud (May 16, 2014), <https://www.iowaattorneygeneral.gov/newsroom/ashford-university-and-parent-company-bridgepoint-education-agree-to-7-25-million-payment-and-major/>.

⁷ Press Release, Bridgepoint Educ., Bridgepoint Education Reports Second Quarter 2016 Results (Aug. 2, 2016), <http://www.prnewswire.com/news-releases/bridgepoint-education-reports-second-quarter-2016-results-300307777.html>.

⁸ Apollo Educ. Group, Inc., Current Report (Form 8-K), at 2 (Aug. 7, 2015).

⁹ Press Release, North Carolina Dep't of Justice, Office of the Attorney General, Unlicensed Medical Institute Shut Down for Offering Faulty Classes (Oct. 9, 2015), <http://www.ncdoj.gov/News-and-Alerts/News-Releases-and-Advisories/Press-Releases/Unlicensed-medical-institute-shut-down-for-offerin.aspx>.

¹⁰ Press Release, Fed. Trade Comm'n, Ashworth College Settles FTC Charges It Misled Students About Career Training, Credit Transfers (May 26, 2015), <http://www.ncdoj.gov/News-and-Alerts/News-Releases-and-Advisories/Press-Releases/Unlicensed-medical-institute-shut-down-for-offerin.aspx>.

¹¹ Nat'l Council for State Authorization Reciprocity Agreements (NC-SARA), SARA Policies and Standards 6 (2016), available at <http://www.nc-sara.org/content/sara-policies-and-standards>.

Massachusetts Should Lead the Way

Massachusetts has a long history of setting high standards for consumer protection. By joining the current State Authorization Reciprocity Agreement operated by NC-SARA, however, Massachusetts would largely cede authority to a private third-party entity to approve institutions of higher education offering distance education programs. Though NC-SARA's policies claim that member states' general consumer protection laws remain applicable,¹² SARA would generally require schools to comply only with the laws of their home state – laws which could be comparatively much weaker than Massachusetts laws. SARA would also place final authority for resolving student complaints at the school's home state, further undercutting Massachusetts' ability to protect its students.

Because SARA enables schools to earn regulatory approval in one state, and then enroll students in any other SARA state, the compact creates an incentive for schools to find the state with the lowest bar to initial entry – thereby encouraging a race to the bottom that could put students in harm's way. Given the already-high debt burdens that college students face in Massachusetts and across the country, Massachusetts must maintain a strong commitment to ensuring that students are receiving a quality education – and not taking on debt for questionable programs.

Joining SARA would also result in different levels of protection for students residing in the state, based on which online education provider they choose. SARA would create a two-tiered system in which Massachusetts residents attending in-state online schools are subject to one set of standards, while students attending out-of-state online schools are subject to another, likely weaker set of standards – something that students may not realize until it's too late.

For these reasons, we urge the Commission to establish its own state authorization regime that ensures all students in Massachusetts receive the same, strong protections. The state must ensure that it can enforce its own laws – not just general consumer protection laws, but also consumer protection laws specific to education, as well as other relevant laws of general applicability. If Massachusetts does so by creating a reciprocity agreement with strong consumer protections, and getting other states to join, it could set a better precedent for state authorization of distance education programs around the country.

Thank you very much for the opportunity to submit these comments.

Sincerely,



Suzanne Martindale
Staff Attorney, Consumers Union

¹² Nat'l Council for State Authorization Reciprocity Agreements (NC-SARA), SARA Policies and Standards 5 (2016), available at <http://www.nc-sara.org/content/sara-policies-and-standards>.