



LEGAL SERVICES CENTER OF HARVARD LAW SCHOOL

CENTRO DE SERVICIOS LEGALES

122 Boylston Street

Jamaica Plain, Massachusetts 02130-2246

TEL: (617) 522-3003 • FAX: (617) 522-0715

Testimony of Amanda Mangaser Savage
Attorney, Project on Predatory Student Lending
Legal Services Center of Harvard Law School

Submitted to the Massachusetts Special Commission on Interstate Reciprocity Agreements

Regarding Whether the Board of Higher Education Should Be Authorized to Enter into Interstate
Reciprocity Agreements

September 14, 2016

My name is Amanda Mangaser Savage. I am an attorney with the Project on Predatory Student Lending at the Legal Services Center of Harvard Law School. The Legal Services Center provides civil legal services to over 1,200 low-income clients annually, representing families in debt collection lawsuits, bankruptcies, eviction proceedings, domestic relations cases, and cases involving disability and veterans' benefits.

The Project on Predatory Student Lending represents low-income student loan borrowers who have been harmed by the predatory practices of for-profit schools, including online schools. The Project also brings the experiences of its clients to bear on state and federal higher education policy. Toby Merrill, the Project's director, served as a negotiator representing legal aid organizations and their clients in the 2014 U.S. Department of Education negotiated rulemaking on state authorization requirements for schools providing distance education.¹

Through our work on behalf of our clients and community partners, we are familiar with the unfair and deceptive methods and practices employed by many for-profit schools, including deceptive advertisements, unrelenting recruiting, the absence of promised academic and career development support, and draconian contracts presented to individuals with nontraditional backgrounds or those just barely old enough to sign. Our clients, some of whom have attended online programs offered by out-of-state schools in Massachusetts, come to us with crushing and unaffordable student loan debt in the form of federal, private, and institutional student loans. Their debt often results from enrollment in programs that they never completed, in service of credentials they never obtained. Others complete programs only to find no realistic possibility of obtaining the promised employment opportunities that induced them to incur the debt.

For the following reasons, we have serious concerns about the proposal to enable the Board of Higher Education to enter into an interstate reciprocity agreement.

First, although this Commission has been tasked with examining and making recommendations to the General Court regarding whether the Board of Higher Education should be authorized to enter into "interstate reciprocity agreements," only one such agreement currently exists, operating nationally as NC-SARA (SARA). The purpose of SARA is to enable all participating schools in all participating states to offer distance education—most typically, online programs—to students in any other participating state, without submitting to the distant state's authorizing and oversight procedures. For a state to participate in SARA, it must waive its own requirements, procedures, and standards for the approval of foreign schools providing distance education, and instead use SARA's requirements, procedures, and standards.² Moreover, the state must agree to enforce only "general-purpose laws" against foreign schools participating in SARA, and not laws that specifically regulate the provision of higher education.³

Participation in SARA thus threatens to undermine the critical role that states play in the "triad"

¹ See Negotiated Rulemaking 2013-2014 Program Integrity & Improvement, <http://www2.ed.gov/policy/highered/reg/hearulemaking/2012/programintegrity.html>.

² See National Council for State Authorization Reciprocity Agreements (NC-SARA), State Authorization Reciprocity Agreements Policies and Standards [hereinafter SARA Policies and Standards] § 2-5(g) (May 5, 2016), available at http://nc-sara.org/files/docs/NC-SARA_Policies_Standards.pdf.

³ See *id.* at § 2-5(h).

of higher education oversight.⁴ An institution is eligible to participate in federal financial aid programs only to the extent that it is authorized by the state in which it is operating. Such state authorization is intended to protect a state’s sovereign prerogative of degree-granting authority. States are also expected to act in their traditional consumer protection role by revoking or limiting the authorization of institutions of higher education that harm citizens of the state. This role has become increasingly significant as the federal Department of Education has shown time and again that it is not up to the task of policing the predatory for-profit schools that it funds. When a state joins SARA, it must agree to accept a foreign institution’s accreditation as sufficient evidence of quality to approve it to operate⁵ and must agree not to enforce any state standards or laws regulating institutions of higher education against SARA schools.⁶ These requirements cut the triad from three legs to two at a time when more oversight is sorely needed.

Massachusetts students are protected by rigorous regulations specific to for-profit schools, including online schools.⁷ These regulations were enacted by the Massachusetts Attorney General in 2014, in light of extensive evidence of fraud, malfeasance, and harm to Massachusetts students and borrowers. Under the current SARA, however, the Commonwealth would be required to agree not to apply those regulations to foreign SARA-member institutions providing online education to students in Massachusetts. The Commonwealth’s participation in SARA would thus waive or nullify these important educational and consumer protections, to the detriment of Massachusetts residents and for the benefit of out-of-state institutional providers of online education, many of which have a poor track record of serving and protecting consumers.⁸ While we have serious doubts that an amendment to General Laws Chapter 15A, Section 9 would be sufficient to authorize the Board of Higher Education to override the duly-enacted regulations of the Attorney General, we believe that such an override would be ill-considered and harmful.

Furthermore, the Commonwealth’s participation in the current SARA would create a two-tier system in which Massachusetts students enrolled in out-of-state online programs would be much more vulnerable than otherwise similarly-situated students in in-state online programs. Because not every institution in the Commonwealth would necessarily join SARA, students in Massachusetts would have different rights and protections depending on whether the school they chose was participating. These rights and protections could be extraordinarily disparate, because foreign schools are subject only to the rules of SARA and the rules of their “home” state—allowing for a regulatory race to the bottom by states wishing to attract the revenue of online education providers without concern for the opportunities and products offered to students.⁹

Massachusetts students deserve the continued care and attention of the Commonwealth and its

⁴ See, e.g., A.L. Contreras, *College & State: Resources & Philosophies* (2013). The triad is completed by the federal government, which oversees the participation of institutions and borrowers in federal student loan programs, and accrediting agencies, trade bodies intended to police minimum standards of institutional and educational quality.

⁵ See SARA Policies and Standards, *supra* note 2, at § 2 -5(a).

⁶ See *id.* at § 2-5(h).

⁷ 940 Code Mass. Regs. §§ 31.00 (2014).

⁸ See, e.g., U.S. Government Accountability Office, GAO-12-150, *Experiences of Undercover Students Enrolled in Online Classes at Selected Colleges* (Oct. 31, 2011), available at <http://www.gao.gov/assets/590/586456.pdf>.

⁹ See, e.g., Lammers, *University Removes South Dakota Campus References*, Associated Press (Mar. 6, 2014), available at <http://www.washingtontimes.com/news/2014/mar/6/virginia-university-removes-sd-campus-references/>.

agencies to ensure that the higher education offered here continues to be among the best in the world. Thus, to the extent that any interstate reciprocity agreement, such as the current SARA, bars the Commonwealth from enforcing its own laws, including consumer protection laws and regulations specific to higher education, Massachusetts should not enter it, nor should it authorize any agency to do so on its behalf.

Thank you for your consideration of this testimony. If you have any questions or comments, please contact Amanda Mangaser Savage at 617-390-2710 or asavage@law.harvard.edu.