

940 CMR 31.00: FOR-PROFIT AND OCCUPATIONAL SCHOOLS

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31.01: Purpose

In 1978, the Attorney General of Massachusetts promulgated 940 CMR 3.10, relating to Private Home Study, Business, Technological Social Skills and Career Schools, pursuant to the Attorney General's authority in M.G.L. c. 93A, § 2(c). 940 CMR 3.10 was designed to protect Massachusetts consumers seeking to enroll in any course of instruction or educational service offered by certain private business, vocational, and career schools, and to ensure that the private career school industry was operating fairly and honestly by means of legitimate and responsible business acts and practices that are neither unfair nor deceptive.

In recent years, there has been a proliferation of for-profit and occupational post-secondary educational institutions that intensively market degree and non-degree programs to students. Many of these schools accept state and federal funds in the form of student grants and loans to finance student enrollment. Certain widespread acts and practices in the for-profit and occupational school industry continue to unfairly harm consumers, frequently leaving students with few career opportunities and significant student debt. The Attorney General, therefore, has updated and amended the 1978 regulations by replacing 940 CMR 3.10 with 940 CMR 31.00, to address problems experienced by consumers when they seek or are enrolled in for-profit schools or occupational programs.

31.02: Scope

940 CMR 31.00 defines unfair or deceptive acts or practices. They are not intended to be all inclusive as to the types of activities prohibited by M.G.L. c. 93A, § 2(a). Acts or practices not specifically prohibited by 940 CMR 31.00 are not necessarily consistent with M.G.L. c. 93A or otherwise deemed legitimate by the absence of regulation here. 940 CMR 31.00 is designed to supplement existing regulations.

940 CMR 31.00 applies to all Schools (as defined in 940 CMR 31.03) advertising or doing business within Massachusetts, including schools that provide programs, services, courses, and/or instruction, in whole or in part, through electronic means or on the Internet to students residing in Massachusetts, regardless of whether such schools maintain a campus, facility, or physical presence in Massachusetts; are licensed to operate, either by the Department of Professional Licensure or the equivalent regulatory or licensing body in another jurisdiction; or are authorized by the Board of Higher Education, or the equivalent regulatory or licensing body in another jurisdiction, to grant degrees.

31.03: Definitions

Clearly and Conspicuously. Presented as to be readily noticed and understood by a reasonable person, as defined in 940 CMR 6.01: *Definitions*. Further, without limiting the requirements of the preceding section, to be clear and conspicuous, the disclosures in 940 CMR 31.05 must be:

- (a) contained on a school's website in a manner that is easy to locate and access; and
- (b) provided to and signed and dated by the consumer or prospective student, with copies to be provided both to the consumer or prospective student (and if the prospective student is younger than 18 years old, to the prospective student's parent or guardian) and retained by the school.

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Employment in the Field of Study. Employment in the job specified in the name of the program or in the certificate, diploma, or degree conferred by a school upon graduation from the program, or the reasonable equivalent thereof, such as those set forth in the "Sample of reported job titles" and "Related Occupations" listed in the Summary Report for each Standard Occupational Classification (SOC) code obtained by entering the program's Classification of Instructional Program (CIP) code on O\*NET crosswalk, <http://www.onetonline.org/crosswalk/CIP>. The "reasonable equivalent" does not include a job for which:

- (a) training in the program is not required; and
- (b) the entry level salary is less than 80% of the entry level salary of the job specified in the name of the program.

Enrollment Agreement. A contract or agreement under which a consumer agrees to pay tuition or fees to a school or to obtain a loan or grant to pay tuition or fees to a school.

For-profit School. A private post-secondary institution established, operated, or incorporated for profit-making purposes, including any for-profit institution of higher education that offers courses for credit or programs leading to a certificate, diploma, or degree.

Graduate Placement Rate. The number of students obtaining full time (at least 32 hours per week) and non-temporary employment in the field of study during the latest two calendar years for which the school has obtained verification, divided by the number of all students graduating from the program during the latest two calendar years. The graduate placement rate shall be determined within 180 days from the end of each calendar year.

Graduation Rate. The number of students who received certificates, diplomas, or degrees in the program during the latest two calendar years, divided by the number of students who enrolled in the program during the latest two calendar years. The graduation rate shall be determined within 180 days from the end of each calendar year.

Institutional Loan. A loan provided directly from a school to a student, or from a school to a student through an affiliated lending institution or whose payments to the lender are guaranteed or insured, in whole or in part, by the school.

Lending Institution.

- (a) Any private entity that itself, or through an affiliate, engages in the business of making loans to students, parents, or others, for the purposes of financing higher education expenses or that securitizes such loans;
- (b) any private entity, or association of entities, that guarantees educational loans; or
- (c) any industry, trade, or professional association that receives money from any entity described above 940 CMR 31.03: Lending Institution(a) and (b).

Loan Amount. The total principal amount borrowed by a student in connection with enrollment in a program from all public and institutional lending sources.

Loan Nonpayment Percentage. The sum of:

- (a) the most recent federal cohort default rate (as calculated pursuant to 34 CFR Part 668, Subparts M and N); and
- (b) the percentage of student borrowers in said cohort, other than those borrowers in 940 CMR 31.03: Loan Nonpayment Percentage(a), whose Stafford loans, at the time the most recent cohort default rate was calculated, were in deferment or forbearance; and
- (c) the percentage of student borrowers in said cohort, other than those borrowers in categories 940 CMR 31.03: Loan Nonpayment Percentage(a) and (b), who defaulted under the terms of institutional loans during the cohort default period.

Median Completion Time. The median duration of attendance in months, rounded to the nearest month, of all students who obtained a certificate, diploma, or degree from a program during the latest two calendar years.

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Occupational Program. Any program whose principal purpose is to train or prepare individuals for a business, trade, technical, or industrial occupation, or any other vocational purpose, including but not limited to occupational certificate, or diploma programs offered by correspondence schools, private business schools, private trade schools and similar entities, and by for-profit schools.

Placement. A student's employment, career, or occupation after leaving a school, or the employment, career, or occupation a school program qualifies or prepares students to enter or obtain.

Placement Services. Services or assistance provided by a school in connection with the securing or attempting to secure employment for students.

Preferred Lender and Preferred Lender List. Any Lending Institution or selection of Lending Institutions that a school endorses, promotes, chooses, or assigns preferential status to, by, without limitation, posting a Lending Institution's name or loan product's name on the school's website or including a Lending Institution's name or loan product's name in informational mailings or brochures or any other document provided to students, prospective students, or their parents, or arranging or otherwise facilitating the origination of loans from the Lending Institution.

Program. A course of study for which a school confers a certificate, diploma, or degree.

Program Cost. The tuition and fees charged for completing a program, including the typical costs for books and supplies (unless those costs are included as part of tuition and fees) the cost of room and board (whether on or off campus), and transportation.

School. Any institution:

- (a) that is a for-profit school; or
- (b) that offers an occupational program, except:
  1. a school charging no fee or tuition to any students;
  2. a school offering exclusively recreational programs for the purpose of relaxation and enjoyment in non-occupational pastimes, exercise or other such diversions;
  3. a program owned and operated by established religious institutions for the exclusive purpose of providing religious instruction;
  4. a course of instruction for the primary education of students in grades pre-kindergarten through 12;
  5. a public community college, public college, public university, or charitable non-profit college or university; and
  6. incidental training associated with the purchase of a product from a vendor, provided, however, that the training is to familiarize the purchaser with its use and the purchaser is not awarded any form of a certificate or diploma for having received the training.

Total Placement Rate. The product of the graduate placement rate and the graduation rate. The total placement rate shall be determined within 180 days from the end of each calendar year.

31.04: False or Misleading Statements or Representations

(1) False Advertising. It is an unfair or deceptive act or practice for a school to make or publish, or cause or permit to be made or published, any false, untrue, or deceptive statement or representation or any statement or representation which has the tendency or capacity to mislead or deceive students, prospective students or any other person, by way of advertising or otherwise, concerning the school, its activities in attempting to enroll students, the character, nature, quality, value, or scope of any course or program offered, the school's influence in obtaining employment for its students, graduation rates, graduation time, program cost, loan amount, repayment amount, transferability of credits, or in any other material respect.

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(2) Deceptive Language in General. It is an unfair or deceptive act or practice for a school to use language or make a claim or representation in any form, including but not limited to spoken, electronic, or printed form, which has the tendency or capacity to mislead or deceive students, prospective students, or any other person.

(3) False Representation as to Probable Earnings. It is an unfair or deceptive act or practice for a school to make any false, untrue, unsubstantiated, or deceptive statement or representation or any statement or representation which has the tendency or capacity to mislead or deceive students, prospective students, or any other person regarding actual or probable earnings in any job or occupation of the school's graduates.

(4) False Advertising as to Expected Salaries. It is an unfair or deceptive act or practice for a school to represent or imply in advertising or otherwise that persons employed in a particular position will earn a stated salary or income or that persons completing the training course will earn the stated salary or income or "up to" the stated salary or income unless:

- (a) the salary or income is equal to or less than the entry level salary of persons employed in the occupation in the Commonwealth; and
- (b) the advertisement or representation states clearly and conspicuously any limitations, conditions, or other requirements such as union membership or service of an apprenticeship, which must be met before the stated salary or income can be earned; and
- (c) the advertisement or representation states clearly and conspicuously that no guarantee is made that a person who purchases the advertised services will obtain a job or will earn the stated salary or income, unless the guarantee is actually offered by the school.

The words "EARN \$..." or "EARN UP TO \$..." or words of similar import or meaning constitute a representation that a person who attends the program will earn the stated salary or income within the meaning of 940 CMR 31.00.

(5) False Representation as to Placement Rates or Services. It is an unfair or deceptive act or practice for a school to make any false, untrue, unsubstantiated, or deceptive statement or representation or any statement or representation which has the tendency or capacity to mislead or deceive students, prospective students, or any other person as to placement, graduate placement rates, total placement rates, or placement services.

(6) Failure to Provide Placement Statistics. It is an unfair or deceptive act or practice for a school to fail to provide, upon request by a student or prospective student, accurate employment data substantiating its graduate and total placement rates. Such data may be deidentified only as necessary for compliance with state or federal law.

(7) False or Misleading Statements Regarding Employment Opportunity. It is an unfair or deceptive act or practice for a school to make any false, untrue, or deceptive statement or representation or any statement or representation which has the tendency or capacity to mislead or deceive students, prospective students, or any other person regarding:

- (a) any opportunity in any job or occupation, or the likelihood of employment in any job or occupation;
- (b) the necessity, requirement, or usefulness of any program in obtaining professional licensure, employment in the field of study, admission to a labor union or similar organization;
- (c) the necessity of or qualification(s) for certification or licensure in any job or occupation, including but not limited to:
  1. any cost to obtain or maintain such certification or licensure, if such cost is not included in the school's tuition or fees; and
  2. any continuing education requirement to obtain or maintain such certification or licensure; and
- d. any opportunity to qualify for membership in a society or association or union, or to obtain a license, or any opportunity to enroll in a future program or field of study, as a result of the completion of any program, without further education, study, externship, internship, or clinical experience.

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(8) Government Approval and Accreditation. It is an unfair or deceptive act or practice for a school to advertise or represent that the school or a program has been:

- (a) approved by any government agency without clearly and conspicuously indicating the scope, nature, and terms of that approval, and unless true; or
- (b) accredited by an accrediting body, unless true.

(9) Time to Complete Program. It is an unfair or deceptive act or practice for school to misrepresent the amount of time it takes to finish a program, including a representation that a program can be completed "in weeks" or similar language suggesting that the length of time to complete the program is shorter than the actual median completion time to obtain a certificate, diploma, or degree.

(10) Limited Time Offers. It is an unfair or deceptive act or practice for a school to represent an offer to be limited as to time or otherwise when such is not the fact, or to represent to students, prospective students, or any other person that enrollment in a particular program is only open or available for a particular period of time or until a date certain when enrollment in the program occurs on a rolling, ongoing, or regular basis (including monthly and seasonally).

(11) Money-back Guarantee. It is an unfair or deceptive act or practice for a school to use directly or indirectly any so-called "money back" guarantee, refund agreement, or other similar guarantee, agreement, or contract between school and student which involves deception, misrepresentation, bad faith, or the deceptive concealment of pertinent facts.

(12) Misuse of the Word "Free". It is an unfair or deceptive act or practice for a school to represent any component or service related to a program as "free" when in fact such component or service is regularly included as part of the program.

(13) Faculty Qualifications. It is an unfair or deceptive act or practice for a school to make a statement or representation through advertising or otherwise that a certain individual or individuals have particular teaching or instructional or professional qualifications, certifications, or degrees, when they do not.

(14) Classroom Instruction. It is an unfair or deceptive act or practice for a school to make a statement or representation through advertising or otherwise concerning the nature or character of classroom instruction provided by the school that is false, untrue, deceptive, or which has the tendency or capacity to mislead students or prospective students. Without limiting the generality of the preceding sentence, it is an unfair or deceptive act or practice to represent that classroom instruction is in-person if instruction is in fact provided by non in-person methods, including instruction via video or computer terminals, and/or through self-guided study.

(15) Unapproved or Unlicensed Programs. It is an unfair or deceptive act or practice for a school to:

- (a) represent that the school offers an occupational program the school is not approved or licensed to offer (unless the program is exempted from licensure or approval by the appropriate Massachusetts authorizing agency);
- (b) represent that a program is approved or licensed when it is not; or
- (c) represent that a program teaches a subject, skill, or materials that are not part of the curriculum of a program.

31.05: Required Disclosures

(1) It is an unfair or deceptive act or practice for a school to conceal or fail to disclose to a prospective student any fact relating to the school or program, disclosure of which is likely to influence the prospective student not to enter into the transaction with the school.

(2) It is an unfair or deceptive act or practice to fail to make the following disclosure to consumers and prospective students, clearly and conspicuously, at least 72 hours prior to entering into an enrollment agreement with a consumer or prospective student:

- (a) Cost of Program. The total cost of the program is [program cost].

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- (b) Graduation. [Graduation rate] of students graduated from the program during [the last two calendar years for which data are available].
- (c) Graduation Time. The average student graduates in [median completion time].

(3) For any school that accepts federal Title IV funds, or that provides institutional loans, it is an unfair or deceptive act or practice for a school to fail to make the following disclosure to consumers and prospective students, clearly and conspicuously, at least 72 hours prior to entering into an enrollment agreement with such consumer or prospective student:

(a) Your Loan Debt. You must repay money that you borrow as student loans to pay for this program, including interest. You must repay any portion of the money you borrow to pay for this program, even if you fail to complete or drop out of the program. Failure to repay student loans is likely to have a serious negative effect on your credit, future earnings, and your ability to obtain future student loans.

(b) Loan Nonpayment Statistics. [loan nonpayment percentage] of [school name] students defaulted on, or failed to repay, their loans during the period [years covered in corresponding federal cohort default rate used to calculate loan nonpayment rate].

(4) For any occupational program that:

(a) accepts state or federal financing of student enrollment, either directly or indirectly, in the form of student loans, grants, or funding, and is required to maintain employment statistics as a condition of receiving or continuing to receive said state or federal financing; or

(b) refers in advertising, recruiting, or promotional materials or statements to employment prospects or job placement, it is an unfair or deceptive act or practice for a school to fail to make the following disclosure to consumers and prospective students, clearly and conspicuously, at least 72 hours prior to entering into an enrollment agreement with such consumer or prospective student:

1. Placement Rates. [Graduate placement rate] of graduates during [latest two calendar years] obtained full-time, non-temporary jobs in their field of study. [Total placement rate] of students that enrolled in the program during [latest two calendar years] obtained full-time, non-temporary jobs in their field of study.

2. Employment Statistics. Employment statistics substantiating these placement rates are available for inspection on request.

(5) It is an unfair or deceptive act or practice for a school to obtain personal consumer information, including names, home or electronic addresses, telephone numbers, or other contact information from lead generators or website operators that do not clearly and conspicuously disclose to consumers that their personal information will be provided to schools.

(6) If a school offers or requires students to take an examination, certification examination, or similar test of the students' competence to enter, continue with, or graduate from a program, or to be certified in a particular occupational field, and the examination or test is available directly from an outside vendor, it is an unfair or deceptive act or practice for a school to fail to disclose the actual cost of such examination or test prior to the time of enrollment.

(7) It is an unfair or deceptive act or practice for a school to represent to a student or prospective student or to any other person that its credits are or may be transferable to another educational institution without:

(a) identifying the school(s) with which it has written agreements or other documentation verifying that credits can be transferred to said school(s); and

(b) indicating it is aware of no other schools that accept the transfer of its credits.

31.06: Prohibited Practices

(1) Anonymous Advertising. It is an unfair or deceptive act or practice for a school to use anonymous advertisements, including advertisements that conceal or fail to disclose the name of the school, to solicit prospective students, or to use "help wanted" or other employment columns in a newspaper, or Internet job boards or employment websites, or other publications, whether printed or electronic, in such a manner as to mislead or deceive consumers, prospective students, or any other person or to cause such a person to believe that a job is offered.

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- (2) Facilitating Improper Conduct. It is an unfair or deceptive act or practice for a school to encourage, enable, or reasonably fail to prevent students from cheating on examinations or classwork.
- (3) Falsifying Records. It is an unfair or deceptive act or practice for a school to misrepresent or falsify a student's attendance or academic progress or record in order to permit a student to continue to receive financial aid or to graduate from a program or for any other reason.
- (4) Misrepresenting Program Content. It is an unfair or deceptive act or practice for a school to award a certificate or diploma or confer a degree which misrepresents the program or course of study or instruction covered or completed or the accomplishments or standing of the student receiving such certificate, diploma, or degree.
- (5) Failing to Offer Appropriate Internships. It is an unfair or deceptive act or practice for a school to promise an internship or externship (collectively "internship"), or include an internship as a required element of a program unless the school ensures that all such internships offer training in the field of study, and offers school-based personnel to assist in locating and arranging student internships.
- (6) Enrolling Unqualified Students. It is an unfair or deceptive act or practice for a school to enroll or induce retention of a student in any program when the school knows, or should know, that due to the student's educational level, training, experience, physical condition, lack of language proficiency, or other material disqualification, the student will not or is unlikely to:
  - (a) graduate from the program; or
  - (b) meet the requirements for employment in the occupation to which the program is represented to lead. If a student has a disability, the determination shall be made based on the student's ability to graduate from the program or meet the requirements for employment with the provision of a reasonable accommodation for that disability. In addition, in no event shall 940 CMR 31.00 contravene the requirements of, or obligations of a school to accommodate students in accordance with the Americans with Disabilities Act, the Rehabilitation Act, or any other applicable law concerning students with disabilities.
- (7) Enrolling Ineligible Students. It is an unfair or deceptive act or practice for a school to enroll a student in a program for a licensed occupation whom the school knows, or by the exercise of reasonable diligence should know, would be ineligible to obtain licensure in Massachusetts in the occupation for which the student is being trained due to a prior criminal record or other disqualifying reason.
- (8) Failing to Provide Language Appropriate Communications. It is an unfair and deceptive act or practice for a school to enroll a student without taking reasonable steps to communicate the material facts concerning the school or program in a language that is understood by the prospective student. Reasonable steps complying with this regulation include but are not limited to:
  - (a) using adult interpreters; and
  - (b) providing the student with a translated copy of the enrollment materials and disclosures required by these regulations or by any other applicable state or federal law, regulation, or directive in a language understood by the student.
- (9) Engaging in High-pressure Sales Tactics. It is an unfair or deceptive act or practice for a school to initiate communication with a prospective student, prior to enrollment, via telephone (either voice or data technology), in person, via text messaging, or by recorded audio message, in excess of two such communications in each seven-day period to either the prospective student's residence, business or work telephone, cellular telephone, or other telephone number provided by the student.
- (10) Misrepresenting Role of Recruitment Personnel. It is an unfair or deceptive act or practice for a school to refer to salespersons or recruiters as "counselors" or "advisors" or to imply that a salesperson or recruiter is an academic advisor or counselor, when:
  - (a) the primary role of such person is to sell the school's programs or enroll students in the school; or

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(b) such person is evaluated or compensated in any part based on student recruitment.

(11) Misrepresenting Right to Cancel. It is an unfair or deceptive act or practice for a school to misrepresent in any manner the student's right to cancel.

31.07: Unfair or Deceptive Practices Involving Student Loans and Financial Aid

(1) It is an unfair or deceptive act or practice for a school to make any statement or representation to students, prospective students, or any other person as to student loans or financial aid that is misleading or has the capacity to deceive students or prospective students.

(2) It is an unfair or deceptive act or practice for a school to make any statement or representation to students, prospective students, or any other person that:

(a) a federal or state grant, or federal, state, or private loan or financial aid is exclusively available at or through the school;

(b) a program is free or costless to the student as a result of financial aid, when the financial aid consists in whole or in part of loans;

(c) financial aid need not be repaid, when the financial aid consists in whole or in part of loans; or

(d) financial aid need not be repaid while the student is in school when the financial aid consists in whole or in part of public or private loans, any of which have no grace period or deferral term.

(3) It is an unfair or deceptive act or practice for any school that recommends specific Lending Institutions to prospective or current students to fail to disclose:

(a) that the Lending Institution is affiliated with the school or its corporate parent or subsidiaries, if that is the case; or

(b) that the Lending Institution is providing something of value in the form of a payment or in-kind service to the school in exchange for any advantage or consideration provided to the Lending Institution relating to educational loan activities, if that is the case.

(4) It is an unfair or deceptive act or practice for a school to:

(a) deny any consumer's right to choose any Lending Institution; or

(b) discourage any consumer from choosing a lender solely because that Lending Institution is not on the school's Preferred Lender List.

(5) It is an unfair or deceptive act or practice for any school to permit or authorize a Lending Institution, in conjunction with discussing loan options with consumers, to identify the Lending Institution's employees or agents as employees or agents of the school. This includes the identification of any employee or agent of a Lending Institution in a call center that represents the school.

31.08: Severability

If any provision of 940 CMR 31.00 or the application of any provision of a regulation to any person or circumstance is held to be invalid, the validity of the remainder of 940 CMR 31.00 and the applicability of such provision to other persons or circumstances shall not be affected.

REGULATORY AUTHORITY

940 CMR 31.00: M.G.L. c. 93A, § 2.