

September 10, 2012

The Hon. Jerry Brown
Governor, State of California
State Capitol Building
Sacramento, CA 95814

Re: AB 2296 (Block) – Request for Signature

Dear Governor Brown:

As advocates for civil rights, students, and consumers, we respectfully request that you sign AB 2296 (Block). AB 2296 makes sure students have the accurate, meaningful information about school performance that they need to make informed decisions when choosing a postsecondary education program. The bill does this by fixing loopholes in the current law and requiring schools to disclose key benchmarks of school performance that are well-established as useful measures by which to assess school success.

I. Background

Current California law requires for-profit colleges and vocational schools covered by the Bureau for Private Postsecondary Education to provide students with a School Performance Fact Sheet before enrollment.¹ The disclosures currently required on the School Performance Fact Sheet are intended to allow students to make informed decisions about whether to enroll in a private postsecondary school and, if so, which one offers the best chance of future success.

Recent studies have underscored the importance of accurate disclosures about school performance, particularly in the for-profit school market. As extensively documented in an investigative report recently released by Senator Tom Harkin, as well in reports by the Government Accountability Office (GAO) and others, attending a high-tuition for-profit college is a big risk for students.² At these schools, loan burdens are significantly higher than at public or non-profit schools. And because so many students — or in the case of some schools, *most* students — either do not graduate or do not find gainful employment after graduation, the loan default rates of for-profit college students are staggering.³ For example, in California, only about 20 percent of degrees and certificates are awarded by for-profit schools, but a massively

¹ Educ. Code § 94910.

² See U.S. SENATE HEALTH, EDUCATION, LABOR, AND PENSIONS (HELP) COMMITTEE, FOR PROFIT HIGHER EDUCATION: THE FAILURE TO SAFEGUARD THE FEDERAL INVESTMENT AND ENSURE STUDENT SUCCESS (July 30, 2012), *available at* http://www.help.senate.gov/imo/media/for_profit_report/Contents.pdf; *see also* GOVERNMENT ACCOUNTABILITY OFFICE, FOR-PROFIT COLLEGES: UNDERCOVER TESTING FINDS COLLEGES ENCOURAGED FRAUD AND ENGAGED IN DECEPTIVE AND QUESTIONABLE MARKETING PRACTICES (2010), *available at* <http://www.gao.gov/assets/130/125197.pdf>.

³ FOR PROFIT HIGHER EDUCATION: THE FAILURE TO SAFEGUARD THE FEDERAL INVESTMENT AND ENSURE STUDENT SUCCESS, *supra* note 2, at 8, 38, 72-81, 112-120.

disproportionate 67 percent of the state's student loan defaulters attended a for-profit school.⁴ This student loan debt will follow students throughout their lives and, without an option to discharge the debt in bankruptcy, may be impossible to escape.

Many schools try to mask these poor outcomes through aggressive and manipulative marketing. Schools devote a disproportionate amount of resources to recruiting: according to the Harkin report, "In 2010, the for-profit colleges examined employed 35,202 recruiters compared with 3,512 career services staff and 12,452 support services staff, more than two and a half recruiters for each support services employee."⁵ Further, employees of some schools have reported that company policy was to count graduates as successfully placed in the field even if they worked for only one day or in completely unrelated jobs.⁶

Worse, the aggressive recruiting practices at many of these schools target the most disadvantaged students due to their access to federal and state financial aid.⁷ Reports have found that "the rapid rise of the for-profit industry has largely been driven by the aggressive recruitment of low-income students and students of color."⁸ Indeed, in California, African-American and Latino students make up 37 percent of all undergraduates, but they represent 57 percent of undergraduates attending California for-profit colleges.⁹ Further, because of the lucrative draw of GI benefits, veterans are a primary target, with schools frequently hiring veterans themselves to do the recruiting.

With such high stakes for low-income students, students of color, and veterans, school performance disclosures should provide a much-needed, fact-based counterweight to the aggressive marketing and recruiting practices of for-profit schools. However, due to inadvertent loopholes in current law, the state-required fact sheets are instead providing students with potentially inaccurate and misleading information. In addition,

⁴ Calculations by The Institute for College Access and Success on data from U.S. Department of Education, FY 2008 Cohort Default Rates (April 2011) and Integrated Postsecondary Education Data System (IPEDS), National Center for Education Statistics (NCES), U.S. Department of Education.

⁵ *Id.* at 2.

⁶ For example, a former high level employee at a large for-profit school testified before the U.S. Senate that her institution counted working as waiters, payroll clerks, retail sales, and gas station attendants as placements for graduates of graphic design and residential planning programs." Testimony of Kathleen A. Bittel, U.S. Senate Committee on Health, Education, Labor, and Pensions, Sep. 30, 2010.

⁷ The GAO documented astonishingly hard sell tactics used by some schools:

GAO's four fictitious prospective students received numerous, repetitive calls from for-profit colleges attempting to recruit the students when they registered with Web sites designed to link for-profit colleges with prospective students. Once registered, GAO's prospective students began receiving calls within 5 minutes. One fictitious prospective student received more than 180 phone calls in a month. Calls were received at all hours of the day, as late as 11 p.m.

UNDERCOVER TESTING FINDS COLLEGES ENCOURAGED FRAUD AND ENGAGED IN DECEPTIVE AND QUESTIONABLE MARKETING PRACTICES, *supra* note 2, at 1.

⁸ THE EDUCATION TRUST, SUBPRIME OPPORTUNITY: THE UNFULFILLED PROMISE OF FOR-PROFIT COLLEGES AND UNIVERSITIES 2 (Nov. 2010), available at http://www.edtrust.org/sites/edtrust.org/files/publications/files/Subprime_report_1.pdf.

⁹ Calculations by The Institute for College Access and Success on data from the U.S. Department of Education, National Postsecondary Student Aid Study (NPSAS), 2007-08.

current law fails to require the disclosure of several key performance benchmarks that are widely used and accepted as useful indicators of school performance.

II. Loopholes in current law

Schools regulated by the Bureau are allowed to lawfully provide grossly misleading salary and job placement disclosures to prospective students because of loopholes in current law.

A. Misleading Salary Disclosures

Due to loopholes in the current salary disclosure requirements, schools report the average salaries in the field on the state-required School Performance Fact Sheet but are *not required to disclose the salaries of the schools' actual graduates*. This is akin to going shopping for a fuel efficient SUV and while each car has a sticker in the window showing a gas mileage amount, the figure is actually the average figure for all makes and models of SUVs and reflects nothing about the performance of the car with the sticker on it.

Such deceptive disclosures are permitted because of two loopholes in current law. First, Education Code section 94910(d)(2) provides:

[E]ach institution that offers an educational program designed to lead to a particular career, occupation, vocation, trade, job, or job title *shall disclose the wage and salary data for the particular career, occupation, trade, job, or job title*, as provided by the Employment Development Department's Occupational Employment Statistics, if that data is available.¹⁰

When schools disclose general salaries in accordance with this provision students are potentially misled into thinking that the school's graduates earn the salary listed. But, in fact, that salary figure on the fact sheet represents salaries earned by students of other institutions across the state and it may be that not one student from the school providing the form has ever earned the salary disclosed.

Second, current law only requires schools to disclose the average salary of their *actual* graduates if they have made a claim about a specific salary their graduates will earn. Education Code section 94910(d)(1) provides that salary information must be disclosed "if the institution or a representative of the institution makes any express or implied *claim about the salary* that may be earned after completing the educational program."¹¹

This is problematic because many schools use marketing strategies to imply that their programs lead to lucrative career prospects without ever making a claim about a specific salary. As a result, schools can easily skirt providing salary disclosures of their actual graduates despite

¹⁰ Educ. Code § 94910(d)(2) (emphasis added).

¹¹ Educ. Code § 94910(d)(1) (emphasis added).

strongly suggesting to prospective students that their programs will pay off in a good future salary. Accordingly, to make sure students are not misled by the salary disclosures on the state-required fact sheet both of these loopholes must be closed.

B. Inaccurate Job Placement Disclosures

Another critical measure of a school's performance included on the fact sheet — and one students understandably consider to determine whether a school is worth their investment — is the rate at which the school's graduates get the type of job for which the school prepares students. But when prospective students look at the job placement disclosure on the fact sheet they are not getting an accurate measure of that. Instead, the job placement disclosure can easily, and lawfully, include in the calculation of “graduates employed in the field” graduates who are employed in completely unrelated fields, some of whom may be working in fast food restaurants or at gas stations, for example. Further, the current requirement allows schools to count job placements for students who work as little as one day or an hour a week.

This loophole is contained in Education Code section 94928(e), which currently provides:

Graduates employed in the field” means graduates who are gainfully employed within six months of graduation in a position for which the skills obtained through the education and training provided by the institution are required or provided a significant advantage to the graduate in obtaining the position.¹²

This language is so open ended that nearly any job can be counted. For example, a homeless 18-year-old who had just aged out of foster care and sought help from the Children's Advocacy Institute (CAI) at the University of San Diego School of Law does not have a high school diploma or GED but completed a medical assistant program at a California vocational college, undertaking substantial student loan debt to do so. The counselors at this youth's school who were supposed to assist him in finding a job repeatedly sent him to employment opportunities at fast food restaurants and not to openings for medical assistant jobs.

Since that foster care youth didn't have a diploma or GED, *any* education would arguably provide him with a “significant advantage” in getting any job, including one at a fast food restaurant. As a result, his school could easily and lawfully count a fast food service job as “in the [medical assistant] field” under current law. This absurd result — a state-mandated disclosure intended to reveal graduates employed in a field including graduates employed in an entirely unrelated field — harms students and well-performing school.

¹² Educ. Code § 94928(e) (emphasis added).

III. How AB 2296 Fixes These Problems

To fix the misleading salary disclosures, AB 2296:

- removes the misleading requirement that schools disclose general salaries in a field, which include the salaries earned by the graduates of other schools.
- requires schools to disclose the salaries of their actual graduates.

To fix the job placement loopholes, AB 2296:

- removes the misleading requirement that allows schools to count as “graduates in the field” those who do not in fact work “in the field.”
- delegates to the Bureau the authority to define through regulation accurate and appropriate job placement disclosure standards to replace the currently misleading one, offering the Bureau, schools, and student advocates an opportunity to achieve consensus on methodology. The timeline set for such regulations was requested by the Bureau’s leadership.

To make sure students have the information they need to choose a school where they can succeed, AB 2296 additionally:

- requires schools to disclose the rate at which it’s graduates default on their loans. This indicator of quality, formally called the Cohort Default Rate, is used by the State and Federal governments to assess whether investment in a school will provide a good return on tax dollars and should be available to students as well.
- requires disclosure of whether a school is accredited and the limitations of going to an unaccredited school, such as that some employment positions (with the State, for example) will not accept degrees from unaccredited institutions.

The modest and straightforward fixes and key additional disclosures offered in this bill will significantly improve the information students have when deciding how to invest in their future and will better align the profit motives of the covered schools with student success.

Further, after the author and sponsor worked in collaboration with the California Association of Private Postsecondary Schools and The California Coalition of Accredited Career Schools on clarifying amendments, both groups — representing the vast majority of schools covered by the bill — dropped their opposition and are now neutral.

Finally, the impressive list of supporters of this bill, which includes labor, veterans, students, civil rights and consumers groups, speaks volumes about the urgent need for these reforms and the sensible solutions the bill provides.

We respectfully request that you sign this important bill. If we can provide any additional information or answer questions, please contact Elisabeth Voigt, Senior Staff Attorney at Public Advocates Inc., at (415) 431-7430, x321 or evoigt@publicadvocates.org.

Sincerely,

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