
NEW YORK

FINAL GRADING ANALYSIS

OVERALL SCORE: **394.75/700 POINTS (56.4%)**
LETTER GRADE: **F**

I. OVERSIGHT BODY: **53.75/100 POINTS**

A. IS THERE A STATUTORILY CREATED OVERSIGHT THAT IS PUBLICLY ACCOUNTABLE?
37.5/60 POINTS

Element	Points	Type 1	Type 2	Average
1. Oversight body is a multi-member board, commission, or panel created by statute	10	10	0	5
2. Oversight body was statutorily created specifically to oversee private postsecondary institutions	10	0	5	2.5
3. Multi-member board, commission, or panel is the ultimate decision maker (as opposed to a single person, like the head of a department or director)	10	10	0	5
4. Oversight body can engage in rulemaking	10	10	10	10
5. Oversight body's meetings must be open to the public	5	5	2.5	3.75
6. Oversight body's meetings must allow public comment	5	0	2.5	1.25
7. Oversight body can initiate investigations	5	5	5	5
8. Oversight body can impose penalties for violations	5	5	5	5
Total Points	60	45	30	37.5

Explanation:

New York divides private for-profit postsecondary educational institutions into two categories for purposes of oversight and regulation: degree-granting proprietary schools (Type 1) and licensed private career schools (Type 2).

Type 1: Degree-granting proprietary schools. The Board of Regents has overall responsibility for education in New York and can grant for-profit career schools the power to grant degrees. (NY CLS Educ §§ 224, 207.) In addition to obtaining permission to grant degrees from the Board Regents, proprietary colleges (and other degree-granting institutions) must register their curriculum with the Commissioner of Education (8 NYCRR § 52.1 et seq.), who carries out regulations for the conferring of degrees and makes recommendations to the Board of Regents. (N.Y. Comp. Codes R. & Regs. tit. 8, §§ 3.46, 3.47.) The

Board of Regents was not created specifically to oversee private postsecondary schools; it was created to oversee all universities included in the University of the State of New York (NY CLS Educ § 214), which includes, among other things, more than 7,000 public and private elementary and secondary schools; 248 public and private colleges and universities; and 251 proprietary (for-profit) schools.

The Regents may take testimony or hear proofs relating to their official duties, or in any matter which they may lawfully investigate; any decision or determination in such proceedings shall be made by the Regents. (NY CLS Educ § 206.) The Regents establish rules for carrying into effect the laws and policies of New York, relating to education, and the functions, powers, duties and trusts conferred or charged upon the university and the education department. (NY CLS Educ § 207.)

The Regents are subject to New York’s Open Meetings Law, which gives the public the right to "observe the performance of public officials and attend and listen to the deliberations and decisions that go into the making of public policy." (NY CLS Pub O § 100.) The law requires that every meeting of a public body is open to the general public and provides very narrow exceptions to the rule in cases of specified executive sessions to transact business. (NY CLS Pub O § 103.) New York receives no credit for allowing public comment because the law is silent as to whether meetings must allow time for public comment. According to the Committee on Open Government, allowance of public comment is left to the discretion of the public body, here the Regents. If the public body does allow public participation in a meeting, it must do so based on reasonable rules that treat members of the public equally. (See, e.g., State of New York, Dep’t of State, Committee on Open Government. OML-AO-5296. June 12, 2012.)

Type 2: Licensed private career schools. The Bureau of Proprietary School Supervision (BPSS) oversees licensed private schools and registered business schools. (NY Educ. Code §§ 5001 to 5010.) BPSS is part of the Department of Education; thus, the ultimate oversight body and decision maker is the Commissioner of Education, not a multi-member body. The Commissioner may initiate investigations with or without a complaint (NY Educ. Code §§ 5003), engage in rulemaking, and impose penalties for violations. (NY Educ. Code §§ 5003.) It is not clear whether BPSS is required to have public meetings and/or allow public comment at any such meetings.

However, New York has created a multi-member Advisory Council for Licensed Private Career Schools, for the purpose of advising the Board of Regents and the Commissioner of Education on matters relating to licensed private career schools. Because of the Council’s existence, and even though its role is advisory only, partial credit is awarded for #2 above. Because the Council’s meetings are open to the public, and provide an opportunity for public comment, partial credit is awarded for #5 and #6 above.

B. STATUTE-SPECIFIED MEMBERSHIP:

1. TO WHAT EXTENT ARE LIMITATIONS PLACED ON FOR-PROFIT MEMBERSHIP ON THE OVERSIGHT BODY?

12.5/25 POINTS*

**points for Type 1 and Type 2 schools have been averaged to calculate the above score*

	Explicit prohibition on for-profit majority, plus no possibility of a majority of the quorum	Explicit prohibition on for-profit majority	Discouraged	No prohibition specified, but not discouraged	For-profit majority mandated
Type 1	25 Points	20 Points	10 Points	0 Points	-5 points
Type 2	25 Points	20 Points	10 Points	0 Points	-5 Points

Explanation:

Type 1: Degree-granting proprietary schools. The Board of Regents is an unpaid lay multi-member body elected by New York’s Legislature to serve five-year terms. Currently, there are 17 members, although the Board’s makeup is determined to be four more than total judicial districts in the state, and not lower than 15. (NY CLS Educ § 202.) New York law prohibits Regents from being a trustee, president, principal or any other officer of an institution governed by the Board of Regents. (NY CLS Educ § 202(4).) New York monitors this by requiring each of the regents to disclose annually any financial interests of the regent, the regent’s spouse, and the regent’s unemancipated children; every office and directorship held by the regent; and any other interest or relationship which the regent determines in his or her discretion might reasonably be expected to be in the public interest and should be disclosed. (NY CLS Educ § 202(5).)

Type 2: Licensed private career schools. There are no explicit provisions in place with regard to for-profit interests at BPSS. Membership on the Advisory Council is specified in statute but there is no explicit limitation on for-profit membership. (NY CLS Educ. § 5010.)

2. IS THE OVERSIGHT BODY MANDATED TO INCLUDE AT LEAST ONE CONSUMER ADVOCATE?

0/10 POINTS*

**points for Type 1 and Type 2 schools have been averaged to calculate the above score*

	Yes	No
Type 1	10 Points	0 Points
Type 2	10 Points	0 Points

Explanation:

Type 1: Degree-granting proprietary schools. New York law does not require a member of the Board of Regents to be a consumer advocate. (NY CLS Educ § 202.)

Type 2: Licensed private career schools. New York law does not require anybody within BPSS or on the Advisory Council to be a consumer advocate. (NY CLS Educ. § 5010.)

3. ARE THE MEMBERS APPOINTED BY A PUBLICLY ACCOUNTABLE OFFICIAL OR ELECTED IN A GENERAL ELECTION?

3.75/5 POINTS*

**points for Type 1 and Type 2 schools have been averaged to calculate the above score*

	All	Majority	Half	Minority	None
Type 1	5 Points	3 Points	2.5 Points	1 Point	0 Points
Type 2	5 Points	3 Points	2.5 Points	1 Point	0 Points

Explanation:

Type 1: Degree-granting proprietary schools. The New York legislature elects each member of the Board of Regents. (NY CLS Educ § 202.)

Type 2: Licensed private career schools. There is no indication that any personnel within BPSS are appointed by publicly accountable officials. Members of the Advisory Council are appointed by the governor; therefore, New York receives partial credit here.

II. STATE OVERSIGHT—EFFICACY: **47.75/100 POINTS**

A. DOES THE STATE REQUIRE ONSITE REVIEW OF PRIVATE POSTSECONDARY INSTITUTIONS?

5/10 POINTS*

**points for Type 1 and Type 2 schools have been averaged to calculate the above score*

	Mandatory onsite reviews			Discretionary	None
	Every 2 years or less	Every 3-5 years	Over 5 years	Discretion to conduct onsite reviews	No review specified
Type 1	10 Points	8 Points	5 Points	3 Points	0 Points
Type 2	10 Points	8 9 Points	5 Points	3 Points	0 Points

Explanation:

Type 1: Degree-granting proprietary schools. New York’s Rules of the Regents include provisions that provide discretion to the Department of Education to require for-profit institutions to undergo site visits in support of their applications for provisional degree-conferring authority. (8 NYCRR § 3.58.) There is no indication that these inspections must occur with any regularity. However, New York receives partial credit here because the law would allow, at the discretion of the Department, for these inspection to occur regularly, at least once every five years, until a for-profit institution is granted permanent authority to grant degrees. Inspections for re-registration are required only following a written statement specifying failures to comply with governing law and regulations. There is no specific timeframe for re-registration, as the Commissioner determines the length of the term of registration. (8 NYCRR § 52.1.)

Type 2: Licensed private career schools. New York requires the Commissioner to conduct periodic unscheduled inspections of licensed private career schools to monitor compliance. The state requires these inspections at least once every licensure period. (NY CLS Educ § 5001(2).) The initial licensure period is 2 years, with relicensure required 4 years thereafter. Therefore, New York receives 8 points for this element (mandatory onsite reviews every 3-5 years) and an additional point for the initial review, which must be done within two years.

B. DOES THE STATE REQUIRE UNANNOUNCED INSPECTIONS FOR ONSITE REVIEWS?

2.5/5 POINTS*

**points for Type 1 and Type 2 schools have been averaged to calculate the above score*

	Required unannounced visits	Discretion to do unannounced visits	No indication
Type 1	5 Points	3 Points	0 Points
Type 2	5 Points	3 Points	0 Points

Explanation:

Type 1: Degree-granting proprietary schools. New York’s Rules of the Regents provide discretion to the Department of Education to require for-profit institutions to undergo site visits in support of its application for provisional degree-conferring authority. (8 NYCRR § 3.58.) However, there is no indication that these visits are unannounced.

Type 2: Licensed private career schools. New York law requires the Commissioner to conduct “periodic unscheduled inspections” of licensed private career schools to monitor compliance. (NY CLS Educ § 5002(2)(c).) Such inspections are to be conducted at least once every licensure period.

C. DOES THE STATE REQUIRE REGULAR REVIEWS OF PRIVATE POSTSECONDARY APPROVAL TO OPERATE?

18/20 POINTS*

**points for Type 1 and Type 2 schools have been averaged to calculate the above score*

	Mandatory			Discretionary	None
	Every 2 years or less	Every 3-5 years	Over 5 years	Discretion to conduct reviews	No review specified
Type 1	20 Points	15 Points	10 Points	5 Points	0 Points
Type 2	20 Points	15 16 Points	10 Points	5 Points	0 Points

Explanation:

Type 1: Degree-granting proprietary schools. New York requires degree-granting institutions to submit an annual report to the Board of Regents. (8 NYCRR § 3.51.)

The Board of Regents grants for-profit institutions degree-granting authority. The Regents initially give institutions provisional authority to grant degrees for a period of up to five years, and then may provide the institution permanent authority to grant degrees. (8 NYCRR § 3.58(c).) Before the Board of Regents will grant a for-profit college provisional or permanent authority, the Department of Education must conduct in-depth and comprehensive academic, fiscal, and planning reviews. The reviews determine whether the institution and its proposed programs meet the standards of quality for colleges set forth in Education Law, the Rules of the Board of Regents, and Commissioner’s regulations. The Regents also consider whether adequate demand and need exists for the proposed college and programs.

At least 12 months prior to the end of the provisional authority period, a for-profit institution must apply to the Department for permanent authority to confer degrees. The Board of Regents then determines whether to grant permanent authority, or extend the provisional authority to confer degrees for an additional period of up to five years, or deny continuing degree-conferring authority past the term of the previously granted provisional authority. (8 NYCRR § 3.58(c).)

The Regents give institutions authority to grant degrees after the Department reviews the institutions. The Department also registers programs. After an institution receives permanent authority to grant degrees, the Regents or the Commissioner, or their representatives may visit, examine, and inspect any school.

Type 2: Licensed private career schools. New York law requires private career schools to be licensed. An initial license is valid for a period of two years. A renewal of license is valid for a period of four years. Thus, New York receives 15 points for this element because review is mandated every four years, plus one point because the first review is mandated after two years. (NY CLS Educ § 5001(4)(b).)

D. DO THE CRITERIA FOR RENEWAL OF AUTHORIZATION MANDATE A REVIEW OF FACTORS ESSENTIAL TO ACADEMIC AND ETHICAL INTEGRITY?

6/20 POINTS*

**points for Type 1 and Type 2 schools have been averaged to calculate the above score*

	8 of 8	7 of 8	6 of 8	5 of 8	4 of 8	3 of 8	2 of 8	1 of 8	0 of 8
Type 1	20 Points	17.5 Points	15 Points	12.5 Points	10 Points	7.5 Points	5.7 Points	2.5 Points	0 Points
Type 2	20 Points	17.5 Points	15 Points	12.5 Points	10 Points	7.5 Points	5 Points	2.5 Points	0 Points

Element	Type 1	Type 2
Admission requirements	M	
Graduation requirements	M	
Placement rate		M
Completion rate (or graduation rate)		M
Advertising practices	D	
Cohort default rate		
Accreditation status	D	
Financial aid policies		

M=Mandatory; D=Discretionary

Explanation:

Type 1: Degree-granting proprietary schools. New York law requires for-profit degree-granting institutions to have authorization to grant degrees from the Regents. In addition, New York law requires these institutions to register their curricula with the Regents and to reregister the curricula. (8 NYCRR § 3.51.) It is unclear if the annual report that New York requires the institutions to file includes each of the elements that are required when an institution reregisters its curricula. The Commissioner of Education determines reregistration timelines, thus, these timelines may exceed the annual reports. Therefore, the state receives partial credit for each element specified, even though the elements are mandatory. (8 NYCRR § 52.2.)

Type 2: Licensed private career schools. New York law requires licensed private career schools to provide statistical reports for review. These statistical reports must include, at a minimum, enrollment, completion and placement data. (NY CLS Educ § 5001(4)(e).)

E. DOES THE STATE'S OVERSIGHT DISTINGUISH BETWEEN FOR-PROFIT AND NONPROFIT POSTSECONDARY INSTITUTIONS?

12.5/15 POINTS*

**points for Type 1 and Type 2 schools have been averaged to calculate the above score*

	Yes, strongly distinguished	Yes, moderately distinguished	Yes, slightly distinguished	Not distinguished
Type 1	15 Points	10 Points	5 Points	0 Points

Type 2	15 Points	10 Points	5 Points	0 Points
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Explanation:

Type 1: Degree-granting proprietary schools. The Rules of the Regents distinguish for-profit degree-granting colleges (proprietary colleges) from nonprofit and public colleges by requiring for-profit degree-granting colleges to undergo a different process to obtain degree-conferring authority. Proprietary colleges must first obtain provisional authority to confer degrees for a specified time period before the college is able to obtain permanent degree-conferring authority. (8 NYCRR § 3.58.) For-profit degree-granting colleges fall under the authority of the Regents, as do nonprofit and public colleges.

Type 2: Licensed private career schools. New York law distinguishes private for-profit schools, or licensed private career schools, from nonprofit non-degree-granting proprietary schools and public schools by imposing additional requirements on licensed private career schools with regard to licensing and registration. Additionally, there is a separate body tasked with licensed private career school oversight. (8 NYCRR § 126.1, NY CLS Educ § 5001.)

F. DOES THE STATE REQUIRE INCREASED OVERSIGHT/SCRUTINY OF PRIVATE POSTSECONDARY INSTITUTIONS BASED ON POOR PERFORMANCE?

3.75/10 POINTS*

**points for Type 1 and Type 2 schools have been averaged to calculate the above score*

	Yes, mandatory	Yes, mandatory but limited	Yes, discretionary	Yes, discretionary but limited	No
Type 1	10 Points	7.5 Points	5 Points	2.5 Points	0 Points
Type 2	10 Points	7.5 Points	5 Points	2.5 Points	0 Points

Explanation:

Type 1: Degree-granting proprietary schools. While New York law does not expressly require increased oversight based on poor performance, the Rules of the Regents require additional scrutiny and oversight with regard to proprietary colleges prior to initially conferring degree-granting authority. Proprietary colleges must obtain a provisional authority to confer degrees, and then they may obtain permanent authority to confer degrees. Proprietary colleges must obtain provisional authority to grant degrees for a period of up to five years. At least 12 months prior to the end of the provisional authority period, such institution must apply to the Department for permanent authority to confer degrees. The Board of Regents shall determine whether to grant such permanent authority, or extend the provisional authority to confer degrees for an additional period of up to five years, or deny continuing degree-conferring authority past the term of the previously granted provisional authority. (8 NYCRR § 3.58(b).)

Type 2: Licensed private career schools. New York law does not appear to require licensed private career schools that perform poorly to comply with additional measures or undergo additional review as a result.



A note about candidacy status: A school that has applied for a private career school license may request candidacy status for one time only. Candidacy status allows eligible schools to operate unlicensed for an initial period of twelve months during the licensure application process, which may be extended to a maximum, non-renewable period of eighteen months. Candidacy

status, however, is at the option of the school, not the Regents or the Commission. It is not imposed by the oversight body for the purpose of ensuring that the school is performing adequately. No points are awarded for candidacy status.

G. DOES STATE LAW INCLUDE ANY SPECIAL PROTECTIONS FOR VETERANS WHO ATTEND PRIVATE POSTSECONDARY INSTITUTIONS?

0/20 POINTS*

**points for Type 1 and Type 2 schools have been averaged to calculate the above score*

	Yes	No
Type 1	20 Points	0 Points
Type 2	20 Points	0 Points

Explanation:

Type 1: Degree-granting proprietary schools. New York law does not have any special protections in place for veterans who attend licensed proprietary colleges.

Type 2: Licensed private career schools. New York law does not have any special protections in place for veterans who attend licensed private career schools.

III. STATE OVERSIGHT—SCOPE AND INCLUSION:

87.5/100 POINTS

A. ARE EXEMPTIONS TO STATE OVERSIGHT COVERAGE LIMITED?

87.5/100 POINTS*

**points for Type 1 and Type 2 schools have been averaged to calculate the above score*

	No exemptions	Few exemptions	Moderate exemptions	Broad exemptions
Type 1	100 Points	75 Points	50 Points	0 Points
Type 2	100 Points	75 Points	50 Points	0 Points

Explanation:

Type 1: Degree-granting proprietary schools. There are no significant exemptions to oversight by the Regents. The only for-profit postsecondary institutions exempt from the provisions governing proprietary colleges are licensed private career schools, which are governed by NY CLS Educ § 5001 *et seq.* (discussed below).

Type 2: Licensed private career schools. Several schools are exempted from the provisions governing licensed private career schools, but all of the exemptions are common sense exemptions, such as exemptions for entities that provide employer trainings for employees, courses for professional continuing education, and courses which are licensed, registered or approved under any other section of the law. (NY CLS Educ § 5001.) Aside from degree-granting proprietary schools, which are governed by the Regents

and covered in this report, there are no significant exemptions from licensed private career school oversight.

IV. DISCLOSURE REQUIREMENTS: **55/100 POINTS**

A. ARE INSTITUTIONS REQUIRED TO DISCLOSE INSTITUTIONAL PERFORMANCE MEASURES TO POTENTIAL STUDENTS?

15/20 POINTS*

**points for Type 1 and Type 2 schools have been averaged to calculate the above score*

	Yes, mandatory	Yes, discretionary	None
	Fact sheet or equivalent required to be given to students	Fact sheet or equivalent given to students upon request	No fact sheet required
Type 1	20 Points	10 Points	0 Points
Type 2	20 Points	10 Points	0 Points

Explanation:

Type 1: Degree-granting proprietary schools. New York law requires private degree-granting postsecondary institutions to include institutional performance information their catalogs or bulletins. The information must be clearly and precisely described, and statistical data must be easy to read and understand. (8 NYCRR § 53.4.) New York law requires these schools to provide or make this information available to students enrolled at the institution and prospective students. Prospective students are defined as persons who have contacted an institution requesting information for the purpose of enrolling at that institution. (8 NYCRR § 53.2.) New York receives partial credit for this element because state law does not require every student to receive this information and acknowledge receipt of the information prior to enrolling in the institution. The information is available to prospective students “upon request.”

Type 2: Licensed private career schools. New York law requires licensed private career schools to disseminate to all prospective and enrolled students through an enrollment contract or agreement or other appropriate publications or documents specified institutional performance standards and other specified information. (NY CLS Educ § 5005.) New York requires the licensed private career schools to include with the enrollment agreement a separately signed acknowledgment by the student that he or she has received the disclosure material, as required in NY CLS Educ §5005. (8 NYCRR § 126.7(b).)

B. WHICH INSTITUTIONAL PERFORMANCE DISCLOSURES ARE REQUIRED TO BE GIVEN TO STUDENTS PRIOR TO ENROLLMENT?

30/60 POINTS*

**points for Type 1 and Type 2 schools have been averaged to calculate the above score*

Type 1: Degree-granting proprietary schools

Disclosures	Mandatory	Discretionary	Not specified
Cohort default rate (CDR)	10 Points	5 Points	0 Points
Graduation / completion rates	10 Points	5 Points	0 Points

Placement rates	10 Points	5 Points	0 Points
Wage information	10 Points	5 Points	0 Points
License exam passage rates	10 Points	5 Points	0 Points
Methods & sources used to calculate	10 Points	5 Points	0 Points

Explanation:

New York requires degree-granting proprietary colleges to disclose graduation rates and placement rates to students, in addition to other required disclosures. While New York does not require proprietary colleges to disclose methods and sources, the state receives credit here because the law explicitly lays out the methods and sources from which colleges must draw this data. (8 NYCRR § 53.3.)

Type 2: Licensed private career schools

Disclosures	Mandatory	Discretionary	Not specified
Cohort default rate (CDR)	10 Points	5 Points	0 Points
Graduation / completion rates	10 Points	5 Points	0 Points
Placement rates	10 Points	5 Points	0 Points
Wage information	10 Points	5 Points	0 Points
License exam passage rates	10 Points	5 Points	0 Points
Methods & sources used to calculate	10 Points	5 Points	0 Points

Explanation:

New York requires licensed private career schools to disseminate to all prospective and enrolled students through an enrollment contract or agreement or other appropriate publications or documents, and in appropriate languages as required by the commissioner in regulation information including the most recent available data on employment and graduation statistics for students who have attended the school, if the school advertises job placement rates as means of attracting students to enroll in the school. The state also requires licensed private career schools to disclose the pass rate of graduates of the program for the most recent calendar year on any licensure or certification examination required by the state for employment in the particular vocational, trade, or career field. (NY CLS Educ § 5005.) Finally, New York law prohibits schools from enrolling students by including in advertising or promotional material representations with respect to potential earnings in entry level employment or employment with experience, unless such representations can be documented for the graduates of the school. (8 NYCRR § 126.2(c).) Thus, the state receives credit for providing discretion here; disclosure is required only where a school includes potential earnings in advertising.

C. DOES THE STATE REQUIRE SCHOOLS TO DISCLOSE ELEMENTS ESSENTIAL TO STUDENT PROTECTION PRIOR TO ENROLLMENT OR IN THE ENROLLMENT CONTRACT?

10/20 POINTS*

**points for Type 1 and Type 2 schools have been averaged to calculate the above score*

Type 1: Degree-granting proprietary schools

Element description	Mandatory	Discretionary	Not specified
Total cost of program	5 Points	2.5 Points	0 Points

Refund information	5 Points	2.5 Points	0 Points
Transferability of credits	5 Points	2.5 Points	0 Points
Length of program	5 Points	2.5 Points	0 Points

Explanation:

New York requires proprietary colleges and other degree-granting postsecondary institutions to provide to students extensive information on the total cost of the program in which the student is enrolling and refund information. (8 NYCRR § 53.3.) The institutions must provide this information to students currently enrolled in the institution and to any prospective students, defined as persons who have contacted an institution requesting information for the purpose of enrolling at that institution. (8 NYCRR § 53.2.) New York receives partial credit for this element because New York law does not specify how this information is to be provided to students and prospective students; however, the information is available and may be included as part of the enrollment contract at the discretion of the institution.

Type 2: Licensed private career schools

Element description	Mandatory	Discretionary	Not specified
Total cost of program	5 Points	2.5 Points	0 Points
Refund information	5 Points	2.5 Points	0 Points
Transferability of credits	5 Points	2.5 Points	0 Points
Length of program	5 Points	2.5 Points	0 Points

Explanation:

New York law requires licensed private career schools to disseminate to all prospective and enrolled students through an enrollment contract or agreement or other appropriate publications or documents, and in appropriate languages as required by the Commissioner in regulation information including the process for obtaining a tuition refund from the tuition reimbursement fund and the availability of loan forgiveness in the event the school closes while the student is in attendance; program objectives and the length of the program; a schedule of tuition payments, fees and all other charges and expenses necessary for completion of the course or program; the tuition refund and contract cancellation policies; and a sample enrollment contract, a sample cancellation form developed by the Department in consultation with the Advisory Council and a tuition reimbursement fund claim form. (NY CLS Educ § 5005; 8 NYCRR § 126.7.)

V. REGULATION OF RECRUITING PRACTICES:

62.5/100 POINTS

A. HAS THE STATE PUT INTO LAW A LIST OF PROHIBITED ACTS REGARDING ADVERTISING AND RECRUITING?

62.5/100 POINTS*

**points for Type 1 and Type 2 schools have been averaged to calculate the above score*

	Yes, strong regulation	Yes, moderate regulation	Yes, weak regulation	No list of prohibited acts
Type 1	100 Points	75 Points	50 Points	0 Points

Type 2	100 Points	75 Points	50 Points	0 Points
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PROHIBITED ACTS

Included in list of prohibited acts	Type 1	Type 2
Misleading representations using the word “college” or “university”	X	X
Misleading institution affiliation (e.g., military, public institution, businesses)		X
Promise of employment		X
Compensation for enrollment		
Compensation or “bounty” to recruiters		
Deception (broad prohibition)		X
Misrepresentation (broad Prohibition)		X
Misleading representations re: accreditation		

1-3=Weak; 3.5-6=Moderate; 6.5-8=Strong

Explanation:

Type 1: Degree-granting proprietary schools. No individual, association, partnership or corporation not holding university, college or other degree conferring powers by special charter from the legislature of this state or from the regents, shall confer any degree or use, advertise or transact business under the name university or college, or any name, title or descriptive material indicating or tending to imply that said individual, association, partnership or corporation conducts, carries on, or is a school of law, medicine, dentistry, pharmacy, veterinary medicine, nursing, optometry, podiatry, architecture or engineering, unless the right to do so shall have been granted by the regents in writing under their seal. (NY CLS Educ §224(1)(a).)

Type 2: Licensed private career schools. New York law prohibits licensed career schools from recruiting students by means of misrepresenting the cost of instruction or of the education, experience or abilities required for successful completion of the course and the utilization thereof; or by use of such phrases as "university," "college," or "professional school," or other terminology which connotes an institution which confers the associate or higher degrees, except where the school has been authorized by the Regents to confer such degrees and has been authorized to use the word “college” in its corporate name. (8 NYCRR § 126.2(c).) The state further prohibits schools from false, misleading, deceptive or fraudulent advertising and requires that statements and representations in all forms of advertising and promotion are fairly and clearly presented, accurate, and restricted to facts which can be substantiated. (8 NYCRR § 126.3(a), (b).) New York law requires endorsements, commendations or recommendations from any person or persons, firm, corporation or other organization shall be used only with the identification and qualifications of such person, persons, firm, corporation or other organizations (e.g., graduate, employer) and with their written consent. Such consent shall be on file with the school and shall be available for examination. (8 NYCRR § 126.3(c).) This requirement can reasonably be expected to have the effect of prohibiting “misleading institution affiliation.” Therefore, New York receives credit for prohibiting “misleading institution affiliation.”

VI. COMPLAINT PROCESS AND RELIEF FOR STUDENTS:

50.75/100 POINTS

A. DOES THE STATE REQUIRE A BOND OR FUND AS A
CONDITION OF AUTHORIZATION?

5/20 POINTS*

**points for Type 1 and Type 2 schools have been averaged to calculate the above score*

	Yes	No
Type 1	20 Points	0 Points
Type 2	20 10 Points	0 Points

Explanation:

Type 1: Degree-granting proprietary schools. New York law prohibits postsecondary institutions from conferring degrees unless the institution possesses financial resources which, in the judgment of the regents, are adequate to insure satisfactory conduct of its degree programs and achievement of its stated educational goals. However, the state does not require that the institution post a bond. (NY CLS Educ § 218.)

Type 2: Licensed private career schools. New York law does not require licensed private career schools to post a bond as a condition of authorization, but the state receives partial credit because it requires schools to contribute annually to a statewide tuition reimbursement account. (NY CLS Educ § 5007.) Additionally, if the Commissioner determines that a school has demonstrated a pattern or practice of failing to make tuition refunds in a timely manner and/or the school's financial condition may result in the interruption or cessation of instruction or jeopardize student tuition funds, New York mandates that the commissioner require a school to establish a trust account in a form or manner which the Commissioner determines to be appropriate. The assets or funds contained in the trust account are maintained for the sole and exclusive benefit of the students. (NY CLS Educ § 5008.)

B. DOES THE STATE REQUIRE A REFUND OF TUITION IF A STUDENT
ENROLLS AS THE RESULT OF MISREPRESENTATION?

10/20 POINTS*

**points for Type 1 and Type 2 schools have been averaged to calculate the above score*

	Yes, full refund	Yes, partial refund	No refund required
Type 1	20	10	0
Type 2	20	10	0

Explanation:

Type 1: Degree-granting proprietary colleges. There is no indication in New York law that students who enroll in proprietary colleges as the result of misrepresentation are entitled to a refund.

Type 2: Licensed private career schools. New York law provides that a student who enrolls as the result of fraudulent or improper claims by a licensed agent or school representative is entitled to a full refund. (8 NYCRR § 126.17.)

C. DOES THE STATE REQUIRE INSTITUTIONS TO REFUND
TUITION IN THE EVENT OF INSOLVENCY?

10/20 POINTS*

**points for Type 1 and Type 2 schools have been averaged to calculate the above score*

	Yes, full refund	Yes, partial refund	Yes, refund in limited circumstances	No refund required
Type 1	20 Points	15 Points	10 Points	0 Points
Type 2	20 Points	15 Points	10 Points	0 Points

Explanation:

Type 1: Degree-granting proprietary schools. New York law does not clearly state that a student at a proprietary college is entitled to a full refund in the event of insolvency/school closure.

Type 2: Licensed private career schools. New York law allows a student who is offered a teachout plan for the curriculum in which the student was enrolled at the time a school closed or ceased operation to elect to continue instruction pursuant to the teachout plan or decline to continue instruction and may instead apply for a full refund. (NY CLS Educ § 5007(4).)

**D. DOES THE STATE ALLOW STUDENTS AMPLE TIME TO MAKE A COMPLAINT?
9.5/10 POINTS***

**points for Type 1 and Type 2 schools have been averaged to calculate the above score*

	2 years or more (or no deadline)	1-2 years	Under 1 year	Not applicable
Type 1	10 Points	5 Points	1 Point	0 Points
Type 2	10 Points	5 Points	1 Point	0 Points

Explanation:

Type 1: Degree-granting proprietary schools. The New York State Education Department maintains a website which contains information on filing a complaint regarding the various different types of postsecondary institutions in New York (<http://www.highered.nysed.gov/ocue/spr/COMPLAINTFORMINFO.html>). The only time limit noted on the website is five years (“[t]he Office does not handle complaints concerning actions that occurred more than five years ago”).

Type 2: Licensed private career schools. New York law specifies that any person who believes he or she has been aggrieved by a violation of the law governing licensed career schools, except a person aggrieved by the actions or omissions of a candidate school, has the right to file a written complaint within two years of the alleged violation; or one year of receiving notification from the higher education services corporation or any other guarantee agency that the student has defaulted on a student loan payment; provided, however, that no complaint may be filed after three years from the date of the alleged violation. (NY CLS Educ § 5003(c)(1).) New York loses one point here because students have only one year after receiving notification that the student has defaulted on a student loan payment, otherwise, students have two years, and never more than three years to file a complaint.

**E. DOES THE STATE REQUIRE INSTITUTIONS TO DISCLOSE INFORMATION ABOUT FILING A COMPLAINT WITH THE STATE OVERSIGHT BODY?
6.25/20 POINTS***

**points for Type 1 and Type 2 schools have been averaged to calculate the above score*

Type 1: Degree-granting proprietary schools

Medium	Mandatory	Discretionary	Not specified
Catalog	10 Points	5 Points	0 Points
Website	5 Points	2.5 Points	0 Points
Enrollment contract	5 Points	2.5 Points	0 Points

Explanation:

New York law does not explicitly require proprietary colleges to disclose information about filing a complaint with the state oversight body.

Note: If there is no explicit requirement for these policies to be on an institution’s website, credit for discretionary allowance given for “website” if disclosures are required in the catalog because quite often catalogs are on an institution’s website.

Type 2: Licensed private career schools

Medium	Mandatory	Discretionary	Not specified
Catalog	10 Points	5 Points	0 Points
Website	5 Points	2.5 Points	0 Points
Enrollment contract	5 Points	2.5 Points	0 Points

Explanation:

New York requires schools to “disseminate to all prospective and enrolled students through an enrollment contract or agreement or other appropriate publications or documents” a description of the complaint process. (NY CLS Educ § 5005; 8 NYCRR § 126.9.) New York receives full credit for requiring this information in enrollment contracts and partial credit for catalog and website inclusion because these two media reasonably could be considered “other appropriate publications or documents.”

F. IS THE COMPLAINT PROCESS READILY ACCESSIBLE AND AVAILABLE ON THE STATE OVERSIGHT BODY’S WEBSITE?

10/10 POINTS*

**points for Type 1 and Type 2 schools have been averaged to calculate the above score*

	Yes, with address	Yes, with phone #	Yes, with email address	Yes, with electronic form	No
Type 1	2 Points	2 Points	3 Points	3 Points	0 Points
Type 2	2 Points	2 Points	3 Points	3 Points	0 Points

Explanation:

Type 1: Degree-granting proprietary schools. The New York Department of Education maintains a website which includes information detailing how a student can file different types of complaint with the appropriate authority. The information includes addresses, phone numbers, fax numbers, email addresses, and electronic forms (<http://www.highered.nysed.gov/ocue/spr/COMPLAINTFORMINFO.html>).

Type 2: Licensed private career schools. The New York Department of Education maintains a website which includes information detailing how a student can file different types of complaint with the

appropriate authority. The information includes addresses, phone numbers, fax numbers, email addresses, and electronic forms (<http://www.highered.nysed.gov/ocue/spr/COMPLAINTFORMINFO.html>).

VII. ENFORCEMENT: **37.5/100 POINTS**

A. IS THERE LOSS OF STATE AID FOR SCHOOLS THAT REPEATEDLY PRODUCE SUBSTANDARD GRADUATION RATES, JOB PLACEMENT RATES, AND/OR COHORT DEFAULT RATES?

0/30 POINTS*

**points for Type 1 and Type 2 schools have been averaged to calculate the above score*

	Yes, required	Yes, required but limited	Yes, discretionary	Yes, discretionary but limited	No
Type 1	30 Points	20 Points	15 Points	5 Points	0 Points
Type 2	30 Points	20 Points	15 Points	5 Points	0 Points

Explanation:

Type 1: Degree-granting proprietary schools. There is no indication that proprietary colleges will lose state aid for repeatedly producing substandard graduation, placement, and cohort default rates. There are procedures in place for school districts that consistently perform poorly, but not for proprietary colleges. (NY CLS Educ § 211-b.)

Type 2: Licensed private career schools. There is no indication that licensed private career schools will lose state aid for repeatedly producing substandard graduation, placement, and cohort default rates.

B. DOES STATE LAW EXPLICITLY AUTHORIZE A PRIVATE RIGHT OF ACTION FOR STUDENTS AGAINST INSTITUTIONS THAT HAVE VIOLATED THE LAWS AND REGULATIONS IN PLACE TO GOVERN THEM?

15/30 POINTS*

**points for Type 1 and Type 2 schools have been averaged to calculate the above score*

	Yes	Limited circumstances	No
Type 1	30 Points	15 Points	0 Points
Type 2	30 Points	15 Points	0 Points

Explanation:

Type 1: Degree-granting proprietary schools. New York law does not explicitly allow a private right of action against proprietary colleges that have violated the laws and regulations in place to govern them.

NOTABLE PROVISION:



Type 2: Licensed private career schools. “Private right of action. A student injured by a violation of this article may bring an action against the owner or operator of a licensed private career school for actual damages or one hundred dollars, whichever is greater. A

court may, in its discretion, award reasonable attorney’s fees to a prevailing plaintiff.” (NY CLS Educ § 5003.)

C. DOES STATE LAW EXPLICITLY ALLOW ATTORNEY FEE AWARDS FOR STUDENTS WHO PREVAIL IN LITIGATION AGAINST PRIVATE FOR-PROFIT POSTSECONDARY INSTITUTIONS?

7.5/20 POINTS*

**points for Type 1 and Type 2 schools have been averaged to calculate the above score*

	Yes	Limited	No
Type 1	20 Points	15 Points	0 Points
Type 2	20 Points	15 Points	0 Points

Explanation:

Type 1: Degree-granting proprietary schools. New York law does not contain any provisions which allow for attorney fee awards for students who prevail in litigation against institutions who have violated the laws and regulations in place to govern them.

Type 2: Licensed private career schools. “Private right of action. A student injured by a violation of this article may bring an action against the owner or operator of a licensed private career school for actual damages or one hundred dollars, whichever is greater. A court may, in its discretion, award reasonable attorney’s fees to a prevailing plaintiff.” (NY CLS Educ § 5003.) New York receives partial credit here because attorney fee awards are discretionary.

D. DOES STATE LAW EXPLICITLY AUTHORIZE ATTORNEY GENERAL INVOLVEMENT?

15/20 POINTS*

**points for Type 1 and Type 2 schools have been averaged to calculate the above score*

	Yes	Limited circumstances	No
Type 1	20 Points	10 Points	0 Points
Type 2	20 Points	10 Points	0 Points

Explanation:

Type 1: Degree-granting proprietary schools. New York law does not explicitly authorize Attorney General involvement related to proprietary colleges. However, complaints of consumer fraud on the part of the institution are directed to the Office of the New York State Attorney General. New York receives partial credit for this element.

Type 2: Licensed private career schools. The Attorney General is authorized to bring any action in his capacity to enforce the code or collect fines from a career school. (N.Y. Educ. Law § 5003.)

BONUS POINTS

New York does not receive any bonus points.



ILLUMINATING INFORMATION



RECIPROCITY AGREEMENTS

New York is a member of the State Authorization Reciprocity Agreements (SARA).

LITIGATION, INVESTIGATIONS, AND ACTIONS INVOLVING PRIVATE FOR-PROFIT EDUCATIONAL INSTITUTIONS IN NEW YORK

For information about pending and recent federal and state government investigations and actions regarding for-profit colleges see David Halperin's compilation at <http://www.republicreport.org/2014/law-enforcement-for-profit-colleges/#sthash.1vc4HmPw.dpuf>.