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# SOUTH DAKOTA

## FINAL GRADING ANALYSIS

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OVERALL SCORE: **63.5/700 POINTS (9.1%)**  
LETTER GRADE: **F**

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### I. OVERSIGHT BODY: **25/100 POINTS**

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A. IS THERE A STATUTORILY CREATED OVERSIGHT BODY  
THAT IS PUBLICLY ACCOUNTABLE?

**20/60 POINTS**

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Element	Points Available	Points Awarded
1. Oversight body is a multi-member board, commission, or panel created by statute	10	0
2. Oversight body was statutorily created specifically to oversee private postsecondary institutions	10	0
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	0
4. Oversight body can engage in rulemaking	10	10
5. Oversight body's meetings must be open to the public	5	0
6. Oversight body's meetings must allow public comment	5	0
7. Oversight body can initiate investigations	5	5
8. Oversight body can impose penalties for violations	5	5
<b>Total Points</b>	60	20

**Explanation:**

South Dakota's Secretary of State has the authority to issue certificates of authorization to provide postsecondary education. (S.D. Codified Laws § 13-48-37.)

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### B. STATUTE-SPECIFIED MEMBERSHIP:

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

**0/25 POINTS**

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

**Explanation:**

This is inapplicable in South Dakota; the Secretary of State is not a public board or commission, nor is there an advisory board.

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

**0/10 POINTS**

<b>Yes</b>	<b>No</b>
10 Points	<b>0 Points</b>

**Explanation:**

This is inapplicable to South Dakota where there is no public board or commission, and no advisory board.

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

**5/5 POINTS**

All	Majority	Half	Minority	None
<b>5 Points</b>	3 Points	2.5 Points	1 Point	0 Points

**Explanation:**

The Secretary of State is a publicly elected, thus publicly accountable, official in South Dakota.

**II. STATE OVERSIGHT—EFFICACY: 5/100 POINTS**

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

**0/10 POINTS**

<b>Mandatory onsite reviews</b>			<b>Discretionary</b>	<b>None</b>
Every 2 years or less	Every 3-5 years	Over 5 years	Discretion to conduct onsite reviews	No review specified
10 Points	8 Points	5 Points	3 Points	<b>0 Points</b>

**Explanation:**

South Dakota law does not require private postsecondary educational institutions to undergo onsite inspections at any point.

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

**0/5 POINTS**

<b>Required unannounced visits</b>	<b>Discretion to do unannounced visits</b>	<b>No indication</b>
5 Points	3 Points	<b>0 Points</b>

**Explanation:**

South Dakota law does not specify that private postsecondary educational institutions are required to undergo onsite inspections at any point, whether announced or unannounced.

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

**0/20 POINTS**

<b>Mandatory</b>			<b>Discretionary</b>	<b>None</b>
Every 2 years or less	Every 3-5 years	Over 5 years	Discretion to conduct reviews	No review specified
20 Points	15 Points	10 Points	5 Points	<b>0 Points</b>

**Explanation:**

Authorization to provide educational programs at physical locations in the state, once granted by the Secretary, is continuous so long as the postsecondary institution continues to meet the requirements set forth in South Dakota law. (S.D. Codified Laws § 13-48-38.) There is no specified requirement for the state to formally review a private postsecondary educational institution’s authorization to operate.

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

**0/20 POINTS**

<b>8 of 8</b>	<b>7 of 8</b>	<b>6 of 8</b>	<b>5 of 8</b>	<b>4 of 8</b>	<b>3 of 8</b>	<b>2 of 8</b>	<b>1 of 8</b>	<b>0 of 8</b>
20 Points	17.5 Points	15 Points	12.5 Points	10 Points	7.5 Points	5 Points	2.5 Points	<b>0 Points</b>

<b>Element</b>	
<b>Admission requirements</b>	
<b>Graduation requirements</b>	
<b>Placement rate</b>	
<b>Completion rate (or graduation rate)</b>	
<b>Advertising practices</b>	
<b>Cohort default rate</b>	
<b>Accreditation status</b>	
<b>Financial aid policies</b>	

**Explanation:**

The Secretary may issue a certificate of authorization to provide postsecondary education to any postsecondary institution to provide educational programs at physical locations in the state if the postsecondary institution (1) is established as an instrumentality of South Dakota or another state, or is legally established to operate as a private business entity or nonprofit corporation in accordance with applicable state law; and (2) is accredited or is operating under an affiliation agreement whose terms make an accredited postsecondary institution responsible for awarding academic credit and educational credentials to its students and maintaining transcripts for such students. (S.D. Codified Laws § 13-48-37.)

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

**5/15 POINTS**

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<b>Yes, strongly distinguished</b>	<b>Yes, moderately distinguished</b>	<b>Yes, slightly distinguished</b>	<b>Not distinguished</b>
15 Points	10 Points	<b>5 Points</b>	0 Points

**Explanation:**

South Dakota law exempts postsecondary institutions that are established by, owned, controlled, operated, and maintained by a religious organization lawfully operating as a nonprofit religious corporation and awarding only religious degrees or certificates for the purpose of conferring clerical status or authority within that religion. (S.D. Codified Laws § 13-48-41(3).)

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

**0/10 POINTS**

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<b>Yes, mandatory</b>	<b>Yes, mandatory but limited</b>	<b>Yes, discretionary</b>	<b>Yes, discretionary but limited</b>	<b>No</b>
10 Points	7.5 Points	5 Points	2.5 Points	<b>0 Points</b>

**Explanation:**

South Dakota law does not require any increased oversight or scrutiny of private postsecondary institutions based on poor performance (low graduation/completion rates, high default rates, etc.).

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

**0/20 POINTS**

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<b>Yes</b>	<b>No</b>
20 Points	<b>0 Points</b>

**Explanation:**

South Dakota law does not provide any special protections for veterans who attend private postsecondary educational institutions authorized to operate in the state.

### III. STATE OVERSIGHT—SCOPE AND INCLUSION:

**0/100 POINTS**

#### A. ARE EXEMPTIONS TO STATE OVERSIGHT COVERAGE LIMITED?

**0/100 POINTS**

No exemptions	Few exemptions	Moderate exemptions	Broad exemptions
100 Points	75 Points	50 Points	<b>0 Points</b>

**Explanation:**

South Dakota law authorizes institutions that are accredited if they are also established as an instrumentality of this state or another state, or is legally established to operate as a private business entity or nonprofit corporation in accordance with applicable state law. For the purposes of this analysis, providing authorization based solely or mostly on accreditation creates broad exemptions.

### IV. DISCLOSURE REQUIREMENTS: **0/100 POINTS**

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

**0/20 POINTS**

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
20 Points	10 Points	<b>0 Points</b>

**Explanation:**

South Dakota law does not require private postsecondary educational institutions to disclose institutional performance measure to potential students.

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

**0/60 POINTS**

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

**Explanation:**

South Dakota law does not require private postsecondary institutions to make any of the above disclosures to potential students prior to enrollment.

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

**0/20 POINTS**

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:**

South Dakota law does not require private postsecondary educational institutions to disclose any of the above information to potential students prior to enrollment or in the enrollment contract.

**V. REGULATION OF RECRUITING PRACTICES:**

**0/100 POINTS**

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

**0/100 POINTS**

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

**PROHIBITED ACTS**

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

*1-3=weak; 3.5-6=moderate; 6.5-8=strong*

**Explanation:**

South Dakota law does not have a list of prohibited acts specific to private postsecondary educational institutions.

**VI. COMPLAINT PROCESS AND RELIEF FOR STUDENTS:**

**13.5/100 POINTS**

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

**0/20 POINTS**

Yes	No
20 Points	<b>0 Points</b>

**Explanation:**

South Dakota law does not require a bond as a condition of authorization.

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

**0/20 POINTS**

Yes, full refund	Yes, partial refund	No refund required
20 Points	10 Points	<b>0 Points</b>

**Explanation:**

South Dakota law does not explicitly require private postsecondary educational institutions to refund tuition if a student enrolls as the result of misrepresentation.

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

**0/20 POINTS**

Yes, full refund	Yes, partial refund	Yes, refund in limited circumstances	No refund required
20 Points	15 Points	10 Points	<b>0 Points</b>

**Explanation:**

South Dakota law does not explicitly require private postsecondary educational institutions to refund tuition if the institution closes.

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

2 years or more (or no deadline)	1-2 years	Under 1 year	Not applicable
<b>10 Points</b>	5 Points	1 Point	0 Points

**Explanation:**

South Dakota law does not provide a deadline by which a student must file a complaint against a private postsecondary educational institution.

E. DOES THE STATE REQUIRE INSTITUTIONS TO DISCLOSE INFORMATION ABOUT FILING A COMPLAINT WITH THE STATE OVERSIGHT BODY?  
**0/20 POINTS**

Medium	Mandatory	Discretionary	Not specified
Catalog	10 Points	5 Points	<b>0 Points</b>
Website	5 Points	2.5 Points	<b>0 Points</b>
Enrollment contract	5 Points	2.5 Points	<b>0 Points</b>

**Explanation:**

South Dakota law does not explicitly require institutions to disclose information about filing a complaint with the Attorney General, Division of Consumer Protection (the state body that is charged with handling complaints. (S.D. Codified Laws § 13-48-40.)

F. IS THE COMPLAINT PROCESS READILY ACCESSIBLE AND AVAILABLE ON THE STATE OVERSIGHT BODY'S WEBSITE?  
**3.5/10 POINTS**

Yes, with address	Yes, with phone #	Yes, with email address	Yes, with electronic form	No
<b>2 1 Points</b>	<b>2 1 Points</b>	3 Points	<b>3 1.5 Points</b>	0 Points

**Explanation:**

South Dakota law requires students who have complaints related to a private postsecondary educational institution to file complaints with the Office of Attorney General, Division of Consumer Protection. (S.D. Codified Laws § 13-48-40.) The South Dakota Office of the Attorney General maintains a webpage with a generic complaint form consumers can use to file complaints. There is a contact link that students can use to find a phone number and an address. None of these contacts are specifically related to private postsecondary educational institutions, so the state receives only partial credit for the element.



**VII. ENFORCEMENT: 20/100 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**

Yes, required	Yes, required but limited	Yes, discretionary	Yes, discretionary but limited	No
30 Points	20 Points	15 Points	5 Points	<b>0 Points</b>

**Explanation:**

South Dakota law does not require any loss of state aid for schools that repeatedly produce substandard graduation rates, job placement rates and / or 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?

**0/30 POINTS**

Yes	Limited circumstances	No
30 Points	15 Points	<b>0 Points</b>

**Explanation:**

South Dakota law does not explicitly allow students a private right of action against institutions that have violated the laws and regulations in place to govern them.

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

**0/20 POINTS**

Yes	Limited	No
20 Points	15 Points	<b>0 Points</b>

**Explanation:**

South Dakota law does not explicitly allow attorney fee awards for students who prevail in litigation against who have violated the laws and regulations in place to govern them.

D. DOES STATE LAW EXPLICITLY AUTHORIZE ATTORNEY GENERAL INVOLVEMENT?

**20/20 POINTS**

Yes	Limited circumstances	No
<b>20 Points</b>	10 Points	0 Points

**Explanation:**

State law authorizes Attorney General involvement in the oversight and regulation of private postsecondary educational institutions authorized to operate in the state. The Attorney General investigates and acts on complaints, has all enforcement powers, and provides necessary information to the Board of Regents in order to carry out administrative, oversight, information sharing, and reporting responsibilities on behalf of South Dakota under reciprocity agreements with other states. (S.D. Codified Laws § 13-48-40; S.D. Codified Laws § 13-48-42.)

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**BONUS POINTS:**

South Dakota does not receive any bonus points.



**ILLUMINATING INFORMATION**



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**RECIPROCITY AGREEMENTS**

South Dakota is a member of the State Authorization Reciprocity Agreements (SARA).

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**LITIGATION, INVESTIGATIONS, AND ACTIONS INVOLVING PRIVATE  
FOR-PROFIT EDUCATIONAL INSTITUTIONS IN SOUTH DAKOTA**

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>.