
TEXAS

FINAL GRADING ANALYSIS

OVERALL SCORE: **420.45/700 POINTS (60.1%)**
LETTER GRADE: **D**

I. OVERSIGHT BODY: **72.5/100 POINTS**

A. IS THERE A STATUTORILY CREATED OVERSIGHT BODY
THAT IS PUBLICLY ACCOUNTABLE?
50/60 POINTS

Element	Total Points Available	Type 1	Type 2	Points Awarded (Average)
1. Oversight body is a multi-member board, commission, or panel created by statute	10	10	10	10
2. Oversight body was statutorily created specifically to oversee private postsecondary institutions	10	0	0	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	10	10	10
4. Oversight body can engage in rulemaking	10	10	10	10
5. Oversight body's meetings must be open to the public	5	5	5	5
6. Oversight body's meetings must allow public comment	5	5	5	5
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	50	50	50

Explanation:

Texas divides its regulation between two types of private postsecondary educational institutions: degree-granting private postsecondary educational institutions (Type 1) and career schools or colleges (Type 2).

Type 1: Degree-granting private postsecondary educational institutions. The Texas Higher Education Coordinating Board was created with broad authority to provide leadership and coordination for the Texas higher education system, institutions, and governing boards. (Tex. Educ. Code § 61.001 *et seq.*) Thus, the Board was not created specifically to oversee private postsecondary institutions. The Board has authority to promulgate rules, initiate investigations and impose penalties necessary to carry out the functions enumerated in the statute. (Tex. Educ. Code § 61.304; Tex. Educ. Code § 61.021.)

The Board is subject to the Texas Open Meetings Act and every regular, special, or called meeting must be open to the public. (Tex. Gov't Code § 551.002.) The Board's 2017 Operating Policies and Procedures Manual mandates the opportunity for public comment at every meeting.

Type 2: Career schools or colleges. The Texas Workforce Commission exercises jurisdiction and control of the system of career schools and colleges in Texas. The Commission was not created solely to oversee career schools or colleges, rather, it was established to operate an integrated workforce development system in Texas, in particular through the consolidation of job training, employment, and employment-related educational programs available in the state, and to administer the unemployment compensation insurance program in the state. (Tex. Lab. Code § 301.001.)

The Commission carries out supervision of the provisions of applicable statutes, and enforces minimum standards for approval of career schools and colleges under the operating regulations and policies governing career schools and colleges in Texas. (Tex. Educ. Code § 132.021.) The Commission has authority to adopt necessary policies and rules, impose penalties (including revocation of certificates of approval and assessment of administrative penalties). (Tex. Educ. Code § 132.058; Tex. Educ. Code § 132.152.) The Commission has authority to initiate investigations in response to student complaints (40 TAC § 807.302) and enforce minimum standards set out to govern career schools or colleges (Tex. Educ. Code § 132.021), which implies that the Commission has authority to initiate investigations as necessary to carry out its duties under the law and enforce minimum standards.

The Commission is subject to the Texas Open Meetings Act and every regular, special, or called meeting must be open to the public. (Tex. Gov't Code § 551.002.) There is opportunity for public comment at meetings.

B. STATUTE-SPECIFIED MEMBERSHIP:

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

17.5/ 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 private postsecondary educational institutions. Texas law prohibits Board members from being employed professionally for remuneration in the field of education during the member's term of office. (Tex. Educ. Code § 61.022.) Further, Texas law prohibits membership if the person or the person's spouse is employed by or participates in the management of a business entity or other organization regulated by the Board or receiving funds from the Board; owns or controls, directly or indirectly, more than a 10% interest in a business entity or other organization regulated by the Board or receiving funds from the Board; or uses or receives a substantial amount of tangible goods, services, or funds from the Board, other than compensation or reimbursement authorized by law for Board

membership, attendance, or expenses. (Tex. Educ. Code § 61.0222(a).) These provisions have the effect of prohibiting a for-profit majority and for-profit interests from constituting a majority of the quorum.

Type 2: Career schools or colleges. Texas law prohibits a person or a person’s spouse who is employed by or participates in the management of a career school or college or a business entity or other organization receiving money from the Commission, or who owns or controls, directly or indirectly, more than a 10% interest in a career school or college or a business entity or other organization receiving money from the Commission from serving on the Commission. The state receives 15 points for this prohibition because there is no explicit prohibition on a for-profit majority, and a person associated with a career school not receiving money from the Commission could possibly be appointed. However, given the make-up of the Commission and the language in the statute, interests affiliated with for-profit educational institutions are not likely to dominate the Commission. (Tex. Lab. Code §§ 301.002, 301.003.)

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 private postsecondary educational institutions. Texas law does not require Board membership to include an individual with expertise and experience in the area of consumer advocacy. (Tex. Educ. Code § 61.022.)

Comment from Texas: The Texas governor appoints a student representative to the Board to provide the student perspective on all Board decisions, including those that involve private for-profit oversight.

Response to comment from Texas: While it is a good practice and commendable for states to appoint students to their oversight boards, a consumer advocate is an individual with expertise and experience advocating for consumer rights. Points for this element are awarded only to states that require the oversight body to include at least one consumer advocate.

Type 2: Career schools or colleges. Texas law does not require Commission membership to include an individual with expertise and experience in the area of consumer advocacy. (Tex. Lab. Code § 301.002.)

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

5/5 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 private postsecondary educational institutions. The nine Board members are appointed by the governor with the advice and consent of the senate. (Tex. Educ. Code § 61.022.)

Type 2: Career schools or colleges. The governor appoints all members to the Commission. (Tex. Lab. Code § 301.002.)

II. STATE OVERSIGHT—EFFICACY: 53.5/100 POINTS

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

3/10 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 Points	5 Points	3 Points	0 Points

Explanation:

Type 1: Degree-granting private postsecondary educational institutions. Depending upon its accreditation status, an institution may apply for a certificate of authorization or a certificate of authority to grant degrees in Texas or an alternate certificate of authority. (Tex. Educ. Code § 61.304.) A certificate of authorization requires an annual compliance review and a certificate of authority requires review every two years.

A certificate of authorization: Institutions that are accredited by an accrediting agency recognized by the state of Texas must apply for a certificate of authority to operate. (19 TAC § 7.7(1)(A).) There is no site visit required by the Board for these institutions. The Board requires that the accrediting agency must have requirements in place for onsite reviews as part of the initial and continuing accreditation of educational institutions. (19 TAC § 7.6(a)(1)(D).) Texas law specifies with regard to the annual review that prior to making a recommendation to the Board, staff has discretion to conduct a site visit at the institution if warranted by facts disclosed in the annual review documentation. (19 TAC § 7.7(C)(III).)

A certificate of authority: An institution that is not accredited by an accrediting agency recognized by the state of Texas must either obtain a Certificate of Authority or an Alternate Certificate of Authority. If an institution applies for a certificate of authority, the Commissioner of Higher Education determines whether a site review team is necessary. If a site review team is required, the Commissioner identifies a site review team of at least three individuals, all of whom have experience and knowledge in postsecondary education. (19 TAC § 7.8(4)(A), (B).) The renewal process follows the same procedure as the initial process. (19 TAC § 7.8(7)(B).) A Certificate of Authority must be renewed every two years. An institution may be granted consecutive Certificates of Authority for no longer than eight years. (19 TAC § 7.8(7)(C).) Absent sufficient cause, at the end of the eight years, the institution must be accredited by a Board-recognized accrediting agency. (19 TAC § 7.8(7)(C).) If the institution fails, after a good faith effort, to obtain accreditation it may appeal to the Board for an extension of the Certificate of Authority. (Tex Educ. Code §61.308(c).)

Type 2: Career schools or colleges. Texas law requires the Commission to conduct an onsite visit to reexamine the school or college for compliance with the eligibility criteria not later than three months after the date the school or college begins operation or after a change in ownership of the school or college. (Tex. Educ. Code § 132.056(f).) The Commission has discretion to conduct onsite visits as often as it needs to. Specifically, the statute specifies that the Commission shall reexamine the premises of the school or college as frequently as the Commission considers necessary and renew, revoke, or deny renewal of the school’s or college’s certificate of approval. (Tex. Educ. Code § 132.056(d).)

**B. DOES THE STATE REQUIRE UNANNOUNCED INSPECTIONS FOR ONSITE REVIEWS?
3/5 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 private postsecondary educational institutions. Texas law does not require unannounced onsite review for degree-granting private postsecondary institutions. However, onsite visits may be announced or unannounced. (Tex. Educ. Code 61.035(j)(2).) The Texas Oversight Coordinating Board has discretion to conduct a site visit at the institution if warranted by the facts disclosed in the annual review documentation. (19 TAC § 7.7(C)(III).)

Type 2: Career schools or colleges. Texas law does not require unannounced onsite review for career schools or colleges. However, onsite visits may be unannounced. The Commission’s website cautions schools to be prepared for survey site visits which may be unannounced or planned, such as annual visits (see <http://www.twc.state.tx.us/partners/ongoing-requirements-licensed-career-schools>).

**C. DOES THE STATE REQUIRE REGULAR REVIEWS OF PRIVATE POSTSECONDARY APPROVAL TO OPERATE?
19.5/20 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 19 Points	15 Points	10 Points	5 Points	0 Points

Explanation:

Type 1: Degree-granting private postsecondary educational institutions. Institutions accredited by an accreditor recognized by the Board are subject to annual review of their authorization. (19 TAC § 7.7(1)(C).) Institutions that are not accredited by an accreditor recognized by the Board and have obtained a Certificate of Authority to Operate must renew their Certificate of Authority every two years

up to a maximum of eight years, at which time they must have obtained accreditation from a Board recognized accreditor unless an exception applies. (19 TAC § 7.8(5)(A), (7)(C).)

Type 2: Career schools or colleges. Texas law requires career schools or colleges to renew their certificates of approval every year. (Tex. Educ. Code § 132.056(b).) Renewal of a certificate of approval requires Commission review. (Tex. Educ. Code § 132.056(a).) Because there is an exception for “small schools,” which must be renewed every three years, the state loses 1 point. (40 TAC § 807.12(a); Tex. Educ. Code § 132.054.)

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

14.25/20 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 1a	20 Points	17.5 Points	15 Points	12.5 Points	10 Points	7.5 Points	5 Points	2.5 Points	0 Points
Type 1b	20 Points	17.5 Points	15 Points	12.5 13.5 Points	10 Points	7.5 Points	5 Points	2.5 Points	0 Points
Type 2	20 Points	17.5 Points	15 Points	12.5 13.5 Points	10 Points	7.5 Points	5 Points	2.5 Points	0 Points

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

M=Mandatory; D=Discretionary

Explanation:

Type 1a: Degree-granting private postsecondary educational institutions accredited by a Board-recognized accreditor. The standards of operation that the Board enumerates in 19 TAC § 7.4(20)(A) includes a review of advertising practices, accreditation, completion/graduation rate, placement rate, graduation requirements, and admissions requirements. The law also states that all institutions that operate within Texas are required to meet certain standards that will be enforced through the Certificate of Authority process. Standards addressing the same principles will be enforced by Board-recognized accrediting agencies under the Certificate of Authorization process. The state receives full credit for review of accreditation status and review of advertising practices because the Board verifies information related to accreditation status and advertising practices on an annual basis. (19 TAC § 7.7(1)(B), (C).) The Board may revoke a certificate of authority to grant degrees at any time if it finds that advertising utilized on behalf of the institution is deceptive or misleading. (Tex. Educ. Code § 61.309.)

Type 1b: Degree-granting private postsecondary educational institutions not accredited by a Board-recognized accreditor. The standards of operation that the Board enumerates in 19 TAC § 7.4 include a review of advertising practices, accreditation, completion/graduation rate, graduation requirements, and admissions requirements. Disclosure of placement rates is discretionary. (19 TAC § 7.4(20)(B).)

Type 2: Career schools or colleges. Texas law requires the Commission to review admission requirements, graduation requirements placement rates, completion rates, and advertising practices of career schools and colleges. (Tex. Educ. Code § 132.055.)



Notable Provision: Texas law also requires the Commission to enter into a memorandum of understanding with the Texas Guaranteed Student Loan Corporation and each state agency regulating schools to reduce default rates at the regulated schools and to improve the overall quality of the programs. (Tex. Educ. Code § 132.023; 40 TAC § 807.3.) The Commission may require career schools or colleges to provide information to the Commission that is necessary for the purposes of the memorandum of understanding. (Tex. Educ. Code § 132.023(d).) Because the Commission is given discretion to collect this information from career schools or colleges, not mandated to do so, the state receives partial credit.

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

2.5/15 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

Explanation:

Type 1: Degree-granting private postsecondary educational institutions. Texas law does not distinguish between for-profit and nonprofit degree-granting private postsecondary educational institutions.

Type 2: Career schools or colleges. Texas law provides some very narrowly tailored exemptions, such as those for certain religious nonprofits; very specific nonprofit arts organizations which primarily provide instruction in the dramatic arts; and specific nonprofit course or training program conducted by a nonprofit association of air conditioning and refrigeration contractors approved by the Air Conditioning and Refrigeration Contractors Advisory Board to provide instruction for technical, business, or license examination preparation programs. (Tex. Educ. Code § 132.002.)

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

6.25/10 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 private postsecondary educational institutions. The Board bases its authorization processes on accreditation, and does not specify any increased oversight measures based on poor performance as defined by low graduation rates, high default rates, or low exam passage rates, for example. However, if issues of concern are raised during annual compliance reviews, institutions must keep the Board apprised of any negative actions by the accrediting body or the U.S. Department of Education. (19 Tex. Admin. Code § 7.7; Kelly Carpenter Polden, External Relations, Texas Higher Education Coordinating Board. July 2017.) Issues of concern may include factors related to performance issues such as low graduation rates, high default rates, or low exam passage rates, but there is no specific requirement that these performance standards be monitored. Thus, the state receives partial credit here.

Type 2: Career schools or colleges. The Commission does not specifically mandate increased oversight or scrutiny based on poor performance. However, to maintain program approval, the Commission requires career schools and colleges to maintain a reasonable student completion rate for each program, and a minimum employment rate, as established by the Commission, for program graduates in jobs related to the stated occupation. (40 TAC § 807.131.) Additionally, as discussed above, Texas law requires the Commission to enter into a memorandum of understanding with the Texas Guaranteed Student Loan Corporation and each state agency regulating schools to reduce default rates at the regulated schools and to improve the overall quality of the programs. The Commission may require each career school or college to provide information to the Commission that is necessary for the purposes of the memorandum of understanding. (Tex. Educ. Code § 132.023; 40 TAC § 807.3.) These provisions make clear that, while there is no mandate for increased oversight or scrutiny based on poor performance, the Commission has discretion to do so.

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

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 private postsecondary educational institutions. Texas has not enacted any special protections specifically for veterans who attend degree-granting private postsecondary educational institutions in the state. The Hazelwood Act has some provisions specific to veterans, but its benefits are available only for use at public colleges or universities. (See <http://www.tvc.texas.gov/Hazlewood-Act.aspx?CFID=58655681&CFTOKEN=27230720>.)

Type 2: Career schools or colleges. Texas law requires career schools and colleges to maintain, and include in the school or college’s catalogue and enrollment contract, a policy under which a student of the school or college who withdraws from the school or college as a result of the student being called to active duty in a military service of the U.S. or the Texas National Guard may elect one of three options for each program in which the student is enrolled. (Tex. Educ. Code § 132.0611.) Veterans may re-enroll after their tours are completed without having to pay additional tuition or fees. This is not necessarily a program specifically designed for consumer protection, but the state receives partial credit for providing some measure of special assistance for military personnel.

III. STATE OVERSIGHT—SCOPE AND INCLUSION:

37.5/100 POINTS

A. ARE EXEMPTIONS TO STATE OVERSIGHT COVERAGE LIMITED?

37.5/100 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 private postsecondary educational institutions. Texas exempts all institutions which are fully accredited by a recognized accrediting agency. (Tex. Educ. Code § 61.303.)

Pursuant to SB 1781 (West), which passed in 2017, the Board will have more authority over exempt institutions. This authority will be discretionary, but it is an improvement upon the current state of the law. The provisions in SB 1781 that amend Tex. Educ. Code § 61.303 are not effective as of this writing, and will become effective upon a contingency being met. SB 1781 represents an improvement in this area, and if the provisions in SB 1781 relating to Tex. Educ. Code § 61.303 were in effect at this writing, the state would receive 50 points for this element for degree-granting schools.

Type 2: Career schools or colleges. Texas exempts career schools or colleges that are physically located in another state; are legally authorized by the state to offer postsecondary education and award degrees; are accredited by a regional or national accrediting organization recognized by the U.S. Secretary of Education under the Higher Education Act of 1965 (20 U.S.C. Section 1001 *et seq.*); and offer in Texas only postsecondary distance or correspondence programs of instruction. (Tex. Educ. Code § 132.001(1)(B)(i)-(iv).) The state also has several common exemptions, including a school or educational institution supported by taxation from either a local or state source; nonprofit religious postsecondary educational institutions that meet specified requirements; avocational programs; specified tuition-free employer-provided training; course or courses of study or instruction sponsored by a recognized trade, business, or professional organization for the instruction of the members of the organization with a closed membership; a school or course that is otherwise regulated and approved under and pursuant to any other law or rulemaking process of this state or approved for continuing education credit by an organization that accredits courses for the maintenance of a license (with some exceptions); aviation schools approved by the FAA; schools that offer certain intensive review of a student’s acquired education, training, or experience to prepare the student for an examination, other than a high school equivalency examination; a nonprofit arts organization that has as its primary purpose the provision of instruction in the dramatic arts and the communications media to persons younger than 19 years of age. (Tex. Educ. Code § 132.002.) Finally, the Commission has discretion to exempt “small career schools” from certain requirements that may lead to hardship for the school. (Tex. Educ. Code § 132.054.)

IV. DISCLOSURE REQUIREMENTS: **61.7/100 POINTS**

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

16.7/20 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 1a	20 Points	10 Points	0 Points
Type 1b	20 Points	10 Points	0 Points
Type 2	20 Points	10 Points	0 Points

Explanation:

Type 1a: Degree-granting private postsecondary educational institutions accredited by a Board-recognized accreditor. The Board requires institutions to provide to each prospective student, newly-enrolled student, and returning student, complete and clearly presented information indicating the institution’s current graduation rate by program and, if required by the Board, job placement rate by program for applied associate degree programs. (19 TAC § 7.4(20)(D).) However, because the Board allows the accrediting agency to enforce the standards specified in regulations under the Certificate of Authorization process, and the Board is not directly responsible for ensuring compliance, the state receives partial credit for this element. (19 TAC § 7.4(a); *see e.g.* 19 TAC § 7.7.)

Type 1b: Degree-granting private postsecondary educational institutions not accredited by a Board-recognized accreditor. The Board requires institutions to provide to each prospective student, newly-enrolled student, and returning student, complete and clearly presented information indicating the institution’s current graduation rate by program and, if required by the Board, job placement rate by program for applied associate degree programs. (19 TAC § 7.4(20)(D).)

Type 2: Career schools or colleges. The Commission requires career schools or colleges to provide each student a copy of the current rates of job placement and employment of students issued a certificate of completion. (Tex. Educ. Code § 132.055(5).) Career schools must use a form provided by the Commission to verify student receipt of required information prior to enrollment and students must acknowledge receiving such information and documentation by initialing each page and signing the end of the receipt of the enrollment policy form of which a copy is provided to the student. (40 TAC § 807.193(a), (e)–(f).)

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

25/60 POINTS*

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

Type 1: Degree-granting private postsecondary educational institutions

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:

Texas law requires degree-granting private postsecondary educational institutions to provide to each prospective student, newly-enrolled student, and returning student, complete and clearly presented information indicating the institution's current graduation rate by program and, if required by the Board, job placement rate by program for applied associate degree programs. (19 TAC § 7.4(20)(D).)

Type 2: Career schools or colleges

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:

Texas law require schools to disclose the current rates of job placement and employment of students issued a certificate of completion. (Tex. Educ. Code § 132.055(5).) If available, the career school must provide the average starting salary and wage information for the prospective student's stated occupation, and it must provide exam passage rates. (40 TAC § 807.193(6), (10).) Texas law requires the Commission to enter into a memorandum of understanding with the Texas Guaranteed Student Loan Corporation and each state agency regulating schools to reduce default rates at the regulated schools and to improve the overall quality of the programs. (Tex. Educ. Code § 132.023.) As such, default rate information may be available, but career schools are not currently mandated to disclose it. The state receives partial credit.

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

20/20 POINTS*

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

Type 1: Degree-granting private postsecondary educational institutions.

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:

The Board requires institutions to provide a catalog to each prospective student, prior to enrollment. The catalog must include information about the total cost of the program, refund information, transferability of credits, and the length of programs. (19 TAC § 7.4(20)(B).)

Type 2: Career schools or colleges

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:

Texas law requires career schools or colleges to disclose information regarding the total cost of a program, refund information, and the length of programs to students prior to enrollment. (Tex. Educ. Code § 132.055; 40 TAC § 807.193(b).) The Commission requires any school that refers to the awarding of credit hours to explain to each student during the enrollment process that transferability of such hours may be limited, and each student must sign a statement indicating such an explanation has been provided. (40 TAC § 807.193(c).)

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

PROHIBITED ACTS

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

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

Explanation:

Type 1: Degree-granting private postsecondary educational institutions. Neither the institution nor its agents or other representatives shall engage in advertising, recruiting, sales, collection, financial credit, or other practices of any type which are false, deceptive, misleading, or unfair. Likewise, all publications, by any medium, shall accurately and fairly represent the institution, its programs, available resources, tuition and fees, and requirements. (19 TAC § 7.4(20)(A).)

Type 2: Career schools or colleges. Texas prohibits career schools or colleges from engaging in advertising designed to mislead or deceive students. (Tex. Educ. Code § 132.151(4).) Career schools are further prohibited from advertising under any help wanted, employment, or similar classification. Career schools cannot use terms to describe the significance of the approval that specify or connote greater approval. (40 TAC § 807.172(a)-(c).) Further, career schools are prohibited from using a photograph, cut, engraving, illustration or graphic in advertising in such a manner as to convey a false impression of size, importance, or location of the school, equipment, or facilities associated with the school. (40 TAC § 807.173.) Additionally, statements or omissions implying that prospective employees are being sought are prohibited. Because the Commission has developed regulations specifically to prohibit schools from misleading advertising related to financial incentives, the state receives partial credit for prohibiting compensation for enrollment. (40 TAC § 807.174.)

VI. COMPLAINT PROCESS AND RELIEF FOR STUDENTS:

60.25/100 POINTS

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

7.5/20 POINTS*

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

	Yes	No
Type 1	20 10 Points	0 Points
Type 2	20 Points	0 5 Points

Explanation:

Type 1: Degree-granting private postsecondary educational institutions. The Board requires degree-granting private postsecondary educational institutions to have “sufficient reserves, line of credit, or surety instrument.” (19 TAC § 7.4(5).) The Board only explicitly requires proof of an adequate surety bond, assignment of account, certificate of deposit, irrevocable letter of credit, or a properly executed participation contract from degree-granting private postsecondary educational institutions that have not been accredited by a Board-recognized accrediting agency. (19 TAC § 7.8(1)(B).) The state loses ten points because it does not explicitly require surety instrument from all degree-granting private postsecondary educational institutions, and it leaves verification of financial stability to the Board-recognized accrediting agency for some degree-granting private postsecondary educational institutions.

SB 1781 (West), signed into law in July 2017, amends Tex. Educ. Code § 61.303 and several other provisions related to state oversight of private for-profit institutions. As of this writing Tex. Educ. Code § 61.303 is “effective upon contingency being met.” When this law becomes effective, Texas will receive more point for this element for degree-granting private postsecondary institutions.

Type 2: Career schools or colleges. Texas does not require schools and colleges to have a surety bond or other fund in place as a condition of authority to operate (bond requirements were repealed in 2003). However, schools are required to pay into a tuition trust account annually, as determined by the Commission. The money in the fund is meant to provide refunds for students and provide for other expenses (teach-out expenses) to the extent possible. (40 TAC § 807.342.) Because this fund serves to provide some protection for students, the state receives partial credit.

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 1a	20 Points	10 Points	0 Points
Type 1b	20 Points	10 Points	0 Points
Type 2	20 Points	10 Points	0 Points

Explanation:

Type 1: Degree-granting private postsecondary educational institutions accredited by a Board-recognized accreditor. Texas law does not explicitly require degree-granting private postsecondary educational institutions that are accredited by a Board-recognized accreditor to refund tuition if a student enrolls as the result of misrepresentation.

Type 1b: Degree-granting private postsecondary educational institutions not accredited by a Board-recognized accreditor. Texas law requires these schools to have a surety bond, and one requirement of the surety bond is that indemnification to any student or enrollee of the school or his/her parent or guardian determined by the Board to have suffered loss of prepaid tuition or any fees as a result of violation of any minimum standard or as a result of an institution ceasing operation. (19 TAC § 7.8(1)(B).) Because all institutions are required to be fair and accurate in advertising (19 TAC § 7.4(20)), a student may receive a refund in circumstances in which the student enrolled as a result of misrepresentation. The state receives partial credit for this element.

Type 2: Career schools or colleges. Texas law requires career schools or colleges to maintain a policy of providing a full refund to a student if the enrollment of the student was procured as the result of any misrepresentation in advertising, promotional materials of the school or college, or representations by the owner or representatives of the school or college. (40 Tex. Educ. Code § 132.061.)

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

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 1a:	20 Points	15 Points	10 Points	0 Points
Type 1b:	20 Points	15 Points	10 Points	0 Points
Type 2:	20 Points	15 Points	10 Points	0 Points

Explanation:

Type 1a: Degree-granting private postsecondary educational institutions accredited by a Board-recognized accreditor. The Board does not explicitly require these institutions to refund tuition in the event that the institution closes. If an institution closes or intends to close before all currently enrolled students have completed all requirements for graduation, it shall assure the continuity of students' education by entering into a teach-out agreement with another institution authorized by the Board to hold a Certificate of Authority, with an institution operating under a Certificate of Authorization, or with a public or private institution of higher education. (19 TAC § 7.7(4)(C).)

Type 1b: Degree-granting private postsecondary educational institutions not accredited by a Board-recognized accreditor. Texas law requires these institutions to have a surety bond, and one requirement of the surety bond is that indemnification to any student or enrollee of the school or his/her parent or guardian determined by the Board to have suffered loss of prepaid tuition or any fees as a result of violation of any minimum standard or as a result of an institution ceasing operation. (19 TAC § 7.8(1)(B).) Thus, while the students may not be entitled to a full refund, the Board has regulations in place to protect students and provide at least a partial refund should their school close before they complete the courses for which they paid tuition.

Type 2: Career schools or colleges. If a program of instruction is discontinued by the career school or college and this prevents the student from completing the program, all tuition and fees paid are then due and refundable. (Tex. Educ. Code § 132.061(d).) If a school closes, it is discontinuing programs of instruction and preventing students from completing the programs they were pursuing when the school closed. In addition, there are policies and procedures in place to provide students with a refund from the tuition trust account when a school closes, though these refunds may be limited by the amount of money in the account. (Tex. Educ. Code § 132.241; 40 TAC § 807.342.) The refund is limited by the availability of funding in the tuition trust account should the school close without sufficient resources to refund tuition to every student entitled to a refund.

D. DOES THE STATE ALLOW STUDENTS AMPLE TIME TO MAKE A COMPLAINT?

7/10 POINTS*

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

	2 years or more (or no deadline)	Under 2 years	Under 1 year	Not applicable
Type 1	10 Points	5 4 Points	1 Point	0 Points
Type 2	10 Points	5 Points	1 Point	0 Points

Explanation:

Type 1: Degree-granting private postsecondary educational institutions. The Board does not handle, investigate, or attempt to resolve complaints concerning actions that occurred more than two years prior to filing a student complaint form with it, unless the cause of the delay in filing the student complaint form with the Board was the complainant's exhaustion of the institution's grievance procedures. (19 TAC § 1.114(d).) Former students shall file a student complaint form with the Board no later than one year after the student's last date of attendance at the institution, or within 6 months of discovering the grounds for complaint, unless the cause of the delay in filing the student complaint form with the Board was the complainant's exhaustion of the institution's grievance procedures. (19 TAC § 1.114(e).) The state loses one point because it only allows former students 6 months to file a complaint after discovering grounds for the complaint.

Type 2: Career schools or colleges. The Commission allows up to two years for a student to file a complaint. “Unless good cause is shown, a complaint is timely only if it is filed with the Agency while the student who files the complaint is enrolled or within two years of the date the student withdraws, terminates, or graduates from the program that is the subject of the complaint. Good cause includes, but is not limited to, fraud. (40 TAC § 807.302(d).)

E. DOES THE STATE REQUIRE INSTITUTIONS TO DISCLOSE INFORMATION ABOUT FILING A COMPLAINT WITH THE STATE OVERSIGHT BODY?

17.5/20 POINTS*

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

Type 1: Degree-granting private postsecondary educational institutions

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:

Texas law requires these institutions to provide all students with written information regarding the complaint procedure at the beginning of each academic year, such as in the school’s catalog. It also requires institutions to post information regarding the complaint procedure on the institutional website along with contact information needed to file a complaint with the Board. (19 TAC § 1.112.) Further, the Board requires these institutions to outline the established grievance process of the institution, which must indicate that students should follow this process and may contact the Board and/or Attorney General to file a complaint about the institution if all other avenues have been exhausted, and publish these policies in a handbook, which must include other rights and responsibilities of the students. This handbook must be supplied in print or electronically to each student upon enrollment in the institution. (19 TAC § 7.4(22).) The school receives full credit for requiring this information in the student handbook because, like the catalog, institutions are required to distribute the student handbook to all students. The state also receives partial credit because the handbook is required upon enrollment, though there is no requirement that the student sign an acknowledgement of receipt in the enrollment contract or elsewhere.



Notable Provision: Texas’s requirements for degree-granting private postsecondary educational institutions’ posting complaint information online are notable. State law requires each institution to post information regarding the complaint procedure on its website that must, at a minimum, provide contact information for filing student complaints with the Board, a description of the complaint procedure, and a link to the Texas Secretary of State’s website; be accessible from the institution’s website home page by use of not more than three links; be searchable by keywords and phrases; be accessible to the public without requiring registration or use of a user name, a password, or a user identification; and be updated as soon as practicable if the information changes. (19 TAC § 1.112.)

Type 2: Career schools or colleges

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:

Texas law requires schools to provide information to students regarding how to file a complaint with the Commission on their websites and in their catalog. (Tex. Educ. Code § 132.202; 40 TAC § 807.175.) Texas law also requires schools to provide the information prior to enrollment (Tex. Educ. Code § 132.055), and the Commission requires the student to receive a catalog (which contains complaint policy) and sign acknowledgement of receipt. (40 TAC § 807.193(e).) Thus, the state receives partial credit for the including the information in the enrollment contract because, while it is not in the contract, provision of the information is a mandated part of the enrollment process.

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

8.25/10 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 1.5 Points	0 Points

Explanation:

Type 1: Degree-granting private postsecondary educational institutions. The Board maintains a webpage which contains an email address, mailing address, and a link to an electronic complaint form, which contains information about complaint procedures and an address to which students can send the completed form.

NOTE: The Board utilizes the Customer Relationship and Feedback Tracking (CRAFT) System to track customer service and student complaints. The CRAFT System is a web-based application that organizes, tracks, and automates all customer-related contacts with the agency, including contacts via email, telephone, and the Internet. This tool allows the agency to track customer inquiries and provide an efficient and effective way of responding to customers in a timely manner, as well as to monitor the quality of staff responses. Texas is working to improve data tracking related to consumer/student complaints and thereby improve the response to those complaints. (Taken from the Texas Higher Education Coordinating Board Customer Service Report, June 2016 and from comments by Kelly Carpenter Polden, External Relations, Texas Higher Education Coordinating Board, July 2017.)

Type 2: Career schools or colleges. The Commission maintains a website from which students and the general public can obtain information about filing a complaint and can download complaint forms. The complaint form contains a mailing address, email address, and phone number. Because the form cannot be submitted from the website (it must be completed and emailed or mailed to the Commission), points have been deducted above.

VII. ENFORCEMENT: 72.5/100 POINTS

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

30/30 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 private postsecondary educational institutions. Texas does not provide state aid to private for-profit postsecondary institutions, therefore, the state cannot withhold aid it does not provide. (Kelly Carpenter Polden, External Relations, Texas Higher Education Coordinating Board. July 2017.)

Type 2: Career schools or colleges. Texas does not provide state aid to private for-profit postsecondary institutions, therefore, the state cannot withhold aid it does not provide. (Kelly Carpenter Polden, External Relations, Texas Higher Education Coordinating Board. July 2017.)

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 private postsecondary educational institutions. Texas has not created a private right of action for students to use against institutions that have violated the laws and regulations in place to govern them.

Type 2: Career schools or colleges. Texas allows any person who is injured by any act taken or permitted in violation of Chapter 132 (regarding career schools or colleges) may, on behalf of the person and others similarly situated, maintain an action in a district court in Travis County, regardless of the amount in controversy, for temporary or permanent injunctive relief, declaratory relief, or other relief, including damages. (Tex. Educ. Code § 132.121(a).)

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 private postsecondary educational institutions. Texas law does not explicitly allow attorney fee awards for students who prevail in litigation against institutions that have violated the laws and regulations in place to govern them.

Type 2: Career schools or colleges. A plaintiff who prevails in a class action shall be awarded court costs and reasonable attorney’s fees in the judgment. A legal aid society or legal services program that represents the plaintiff or plaintiffs in such an action shall be awarded a service fee in lieu of attorney’s fees. (Tex. Educ. Code § 132.123.)

D. DOES STATE LAW EXPLICITLY AUTHORIZE
ATTORNEY GENERAL INVOLVEMENT?

20/20 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 private postsecondary educational institutions. Texas provides for Attorney General involvement in enforcing the laws governing degree-granting private postsecondary educational institutions. (Tex. Educ. Code § 61.318.)

Type 2: Career schools or colleges. Texas provides for Attorney General involvement in enforcing the laws governing career schools or colleges. (Tex. Educ. Code § 132.304.)

BONUS POINTS:

Texas does not receive any bonus points.



ILLUMINATING INFORMATION



RECENT AND PENDING LEGISLATION

SB 1781 (West) was passed and signed into law in 2017. The law will strengthen Board oversight of degree-granting private post-secondary institutions, and put in place provisions for a program to benefit veterans (College Credit for Heroes Program). Provisions of this law will improve Texas’s grade once enacted. At this writing several provisions (Sections 61.303; 61.315; and 61.316 of the Texas Education Code) are effective upon a contingency being met, and others (Sections 61.3025, 61.3075, and 61.835 of the Texas Education Code) are contingently enacted.

RECIPROCITY AGREEMENTS

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

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

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>.

State watching nine 'high-risk' for-profit colleges (Oct. 12, 2016); see article at <http://www.chron.com/local/education/campus-chronicles/article/State-starts-monitoring-high-risk-for-profits-9966545.php>