
VIRGINIA

FINAL GRADING ANALYSIS

OVERALL SCORE: **356.5/700 POINTS (50.9%)**
LETTER GRADE: **F**

I. OVERSIGHT BODY: **80.5/100 POINTS**

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

52.5/60 POINTS

Element	Points Available	Points Awarded
1. Oversight body is a multi-member board, commission, or panel created by statute	10	10
2. Oversight body was statutorily created specifically to oversee private postsecondary institutions	10	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
4. Oversight body can engage in rulemaking	10	10
5. Oversight body's meetings must be open to the public	5	5
6. Oversight body's meetings must allow public comment	5	2.5
7. Oversight body can initiate investigations	5	5
8. Oversight body can impose penalties for violations	5	5
Total Points	60	52.5

Explanation:

The State Council of Higher Education for Virginia (Council) is charged with regulation and oversight of private postsecondary institutions in Virginia. (VA ST § 23.1–200(A).) The Council was not statutorily created specifically to oversee private postsecondary institutions; rather, it is tasked with overseeing postsecondary institutions more broadly. (VA ST § 23.1–200(A).) The state receives partial credit for this element because Virginia has created the Career College Advisory Board specifically to assist and advise the Council on matters related to the private proprietary sector of institutions of higher education and academic-vocational noncollege degree schools. (VA ST § 23.1–216.) The Council is responsible for rulemaking (VA ST § 23.1–203(1) and has authority to initiate investigations (8 VAC 40-31-100(A)(6)) and impose penalties for violations. (8 VAC 40-31-195(A).)

The Virginia Freedom of Information Act requires Council meetings to be open to the public. (Va. Code Ann. §2.2-3707.) However, Virginia law leaves to the discretion of the Council the allowance of opportunity for public comment at meetings. (Va. Code Ann. §2.2-3707(C).)

B. STATUTE-SPECIFIED MEMBERSHIP:

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

25/25 POINTS

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
25 Points	20 Points	10 Points	0 Points	-5 points

Explanation:

Virginia law explicitly excludes officers, employees, trustees, and members of the governing board of any institution of higher education from eligibility for membership in the Council. (Va. Code Ann. §23-9.3.) The only exceptions are that at least one appointee shall have served as president or chief executive of a public institution of higher education.



One caveat here: Virginia has created a Career College Advisory Board to advise the Council on matters related to private proprietary institutions. The membership of the Advisory Board is “composed of college and university representatives and such other members as the Council may select and shall be broadly representative of the private proprietary sector of institutions of higher education and academic-vocational noncollege degree schools.” Thus, the Council has an Advisory Board that consists, at least in part, of private proprietary interests.

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

0/10 POINTS

Yes	No
10 Points	0 Points

Explanation:

Virginia law does not require the Council to include at least one consumer advocate in its membership.

In addition to the Career College Advisory Board discussed above, the state has created a Student Advisory Committee to advise the Council. This advisory body consists of students enrolled in public institutions of higher education in the Commonwealth and students enrolled in private and accredited institutions of higher education in the Commonwealth. (VA ST § 23.1–201.) While this is a step in the right direction, it would also be to students’ benefit for the Council to include at least one voting member who is an experienced consumer advocate, not affiliated with any of the institutions over which the Council has authority. Given that the Career College Advisory Board is comprised of private proprietary interests, the presence of at least one consumer advocate on the Council is of even greater import.

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

3/5 POINTS

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

Explanation:

The Council consists of 13 members, 12 of whom are appointed by the Governor and subject to confirmation by the General Assembly and one ex officio member. The ex officio member is the President of the Virginia Economic Development Partnership. (VA ST § 23.1-200(C).)

II. STATE OVERSIGHT—EFFICACY: 49/100 POINTS

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

6/10 POINTS

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
10 Points	8 Points	5 6 Points	3 Points	0 Points

Explanation:

Virginia requires the Council to conduct an onsite review as a part of the certification, and additionally requires the Council to perform random and periodic school visits to review, inspect and investigate school compliance. (8 VAC 40-31-100(A)(3).) Because the frequency of these onsite inspection is not specified, Virginia receives partial credit for the mandatory visits, the state receives an additional point for requiring a site visit as part of the initial certification process. (8 VAC 40-31-180(F).)

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

3/5 POINTS

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

Explanation:

Virginia law requires the Council to perform “random” and periodic school visits to review, inspect and investigate school compliance. (8 VAC 40-31-100(A)(3).) While state law does not explicitly require visits to be unannounced, the fact that they must be random indicates that they may be unannounced. At a minimum, the practice of random visits makes it more likely that the Council will be able to ascertain the uncensored day-to-day operations of the institution.

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

20/20 POINTS

Mandatory			Discretionary	None
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	0 Points

Explanation:

Virginia law requires schools to renew their certificate to operate annually. (8 VAC 40-31-170(H).)

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

10/20 POINTS

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
20 Points	17.5 Points	15 Points	12.5 Points	10 Points	7.5 Points	5 Points	2.5 Points	0 Points

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

M=Mandatory; D=Discretionary

Explanation:

Virginia law requires schools to submit a complete certification package. This must include, among other requirements, a statement regarding the school’s accreditation status, and a list of all certificate, diploma, and degree offerings, including the number of hours required for completion of each program, the Classification of Instructional Programs Code where applicable, and the type of program and degree. Virginia also requires the package to include a completed checklist, signed and dated, acknowledging full compliance with certification criteria, along with a notarized attestation statement signed by the chief executive officer or equivalent. (8 VAC 40-31-180.) These criteria include, among other requirements, disclosure of admission requirements and completion/graduation rates. (8 VAC 40-31-160.)

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

5/15 POINTS

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

Explanation:

Virginia law distinguishes between for-profits and nonprofits for purposes of certification renewal (VA ST § 23.1-210(A)) and exempts a few programs associated with nonprofit trade and religious associations. (8 VAC 40-31-160.)

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

5/10 POINTS

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

Explanation:

Virginia law has created a special status, conditional certification, which subjects schools to increased oversight and penalties at the discretion of the Council. The Council may grant the status of conditional certification to a school certified to operate in Virginia to allow time for the correction of major deficiencies or weaknesses identified in the school's administration that are of such magnitude that, if not corrected, may result in the suspension or revocation of the school's certificate to operate. During a period of conditional certification, a school may not enroll new students or confer any degrees, diplomas, or certificates. (8 VAC 40-31-10.)

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

0/20 POINTS

Yes	No
20 Points	0 Points

Explanation:

Virginia law has no special protections in place for veterans who attend private postsecondary institutions.

III. STATE OVERSIGHT—SCOPE AND INCLUSION:

50/100 POINTS

A. ARE EXEMPTIONS TO STATE OVERSIGHT COVERAGE LIMITED?

50/100 POINTS

No exemptions	Few exemptions	Moderate exemptions	Broad exemptions
100 Points	75 Points	50 Points	0 Points

Explanation:

Virginia law exempts several institutions from many provisions governing private postsecondary schools. Many of the exemptions are common, such as public schools, religious or theological schools conferring degrees related to religion and theology, and honorary degrees. However, Virginia law exempts programs offered through approved multistate compacts (VA ST § 23.1–226(3)) and the Council has discretion to apply a presumption of compliance with criteria with regard to certification of postsecondary schools if the school is accredited by an accrediting agency recognized by the U.S. Department of Education and has complied with an accreditation standard directed to the same subject matter as the criteria.

IV. DISCLOSURE REQUIREMENTS: **42.5/100 POINTS**

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

10/20 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	0 Points

Explanation:

Virginia law requires schools to have a clear, accurate, and comprehensive written statement, which shall be available to the public upon request. Among other requirements, the statement must disclose total number of students that completed/graduated from the school as of the end of the last academic year and the total number and percentage of students who completed/graduated from each program offered by the school as of the end of the last academic year; and for unaccredited institutions of higher education and career-technical schools only, the total number of students who report employment in their field of study within six months of graduation/completion and within one year of graduation/completion. (8 VAC 40-31-160(B).)

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

12.5/60 POINTS

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 2.5 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:

Virginia law requires schools to make available to the public, upon request, a document detailing the last academic year’s graduation/completion rates from each program. (8 VAC 40-31-160(B).) It further requires unaccredited institutions of higher education and career-technical schools to disclose the total number of students who report employment in their field of study within six months of graduation/completion and within one year of graduation/completion. Because employment disclosures are required only for some schools, the state receives partial credit for this element. Additionally, 8 VAC 40-31-160(F) requires that schools to provide or make available to students, prospective students, and other interested persons a catalog, bulletin, brochure, or electronic media containing specified information, including the total number of students that completed/graduated from the school as of the end of the last academic year and the total number and percentage of students who completed/graduated from each program offered by the school as of the end of the last academic year.

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

20/20 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:

Virginia law requires schools to provide or make available to students, prospective students, and other interested persons a catalog, bulletin, brochure, or electronic media containing, among other requirements, the total cost of the program, refund information, information about the transferability of courses, and the number of hours of instruction in each subject and total number of hours required for course completion, course descriptions, and a statement of the type of credential awarded. (8 VAC 40-31-160(F).)

V. REGULATION OF RECRUITING PRACTICES:

75/100 POINTS

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

75/100 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”	X
Misleading institution name (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	X

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

Explanation:

Virginia law clearly defines “college” and “university” and repeatedly prohibits schools from using either of those terms in the school name unless the school has been approved to do so. (VA ST § 23.1–225(A).) The Council may refuse to certify school names and terms that have the potential to mislead the general public about the school’s affiliation or association with any state-supported institution of higher education in Virginia. (8 VAC 40-31-20(E).) Further, state law specifies that the Council may suspend or revoke a school’s certification if the school presents to prospective students, either at the time of solicitation or enrollment, or through advertising, mail circulars, or telephone solicitation, misleading, deceptive, false, or fraudulent information relating to any program, employment opportunity, or opportunities for enrollment after entering or completing programs offered by the school. (8 VAC 40-31-195(A)(4).) Finally Virginia law prohibits any entity that is not an institution of higher education accredited by an accrediting agency recognized by the U.S. Department of Education, or having the foreign equivalent of such accreditation, from representing that the entity is so accredited. (VA ST § 23.1–225(4).) Virginia law does not explicitly prohibit “misrepresentation,” however, taken together, the prohibitions on false, misleading or fraudulent information achieve the same purposes.

VI. COMPLAINT PROCESS AND RELIEF FOR STUDENTS:
59.5/100 POINTS

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

20/20 POINTS

Yes	No
20 Points	0 Points

Explanation:

As a condition of certification, Virginia law requires schools to have and maintain a surety instrument issued by a surety company or banking institution authorized to transact business in Virginia that is adequate to provide refunds to students for the unearned non-Title IV portion of tuition and fees for any given semester, quarter or term and to cover the administrative cost associated with the instrument claim. (VA ST § 23.1–215(B); 8 VAC 40-31-160(I).)

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	0 Points

Explanation:

Virginia law does not specifically require a refund of tuition if a student enrolls as the result of misrepresentation.

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

15/20 POINTS

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

Explanation:

Virginia law requires students to receive a refund of unearned tuition upon the cessation of operations of a school. However, the director will attempt to secure a teach-out agreement prior to issuing a refund of the unearned tuition to a student unable to complete a program of study due to a school closure. (8 VAC 40-31-310.)

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
10 Points	5 Points	1 Point	0 Points

Explanation:

Virginia law does not specify a timeline for student complaints.

E. DOES THE STATE REQUIRE INSTITUTIONS TO DISCLOSE INFORMATION ABOUT FILING A COMPLAINT WITH THE STATE OVERSIGHT BODY?
7.5/20 POINTS

Medium	Yes	Discretionary	No
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:

Each school shall provide or make available to students, prospective students, and other interested persons a catalog, bulletin, brochure, or electronic media containing the school’s procedures for handling complaints, including procedures to ensure that a student will not be subject to unfair actions as a result of his initiation of a complaint proceeding. (8 VAC 40-31-160(F)(7).) There are two reasons that Virginia receives only partial credit for disclosing this information on their website and catalog: (1) the statute leaves to the discretion of the school whether to provide the required disclosures on the website or in the catalog, bulletin, brochure or a combination of those medium, and (2) the wording “provide or make available” gives a certain amount of discretion to the school. There is a significant difference between handing a student information and telling the student where it is available.

F. IS THE COMPLAINT PROCESS READILY ACCESSIBLE AND AVAILABLE ON THE STATE OVERSIGHT BODY’S WEBSITE?
7/10 POINTS

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

Explanation:

Virginia provides several webpages which contain a detailed description of the state’s student complaint policy. The information provided stresses that students should file a complaint with the Council only as a last resort. The student can navigate through two pages of explanation to get to a third, which contains an electronic complaint form, the pages also provide a phone number to call with questions and an address.

VII. ENFORCEMENT: 0/100 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	0 Points

Explanation:

Virginia law does not explicitly specify that schools that repeatedly produce substandard graduation rates, job placement rates, and/or cohort default rates will lose state aid.

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	0 Points

Explanation:

Virginia law does not explicitly authorize a private right of action for students against institutions that have violated the laws and regulations in place to govern them. The complaint webpage does, however, instruct students that they can consult with a private attorney with regard to complaints.

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	0 Points

Explanation:

While the Council may be awarded reasonable attorney's fees in certain circumstances (Va Code Ann. §23-276.12), no such provision exists for students who suffer damages and prevail in litigation against institutions that have violated the laws and regulations in place to govern them.

D. DOES STATE LAW EXPLICITLY AUTHORIZE
ATTORNEY GENERAL INVOLVEMENT?

0/20 POINTS

Yes	Limited circumstances	No
20 Points	10 Points	0 Points

Explanation:

Virginia law does not explicitly authorize attorney general involvement in issues related to private postsecondary schools in the state.

BONUS POINTS:

Virginia does not receive any bonus points.



ILLUMINATING INFORMATION



RECIPROCITY AGREEMENTS

Virginia is a party to the Southern Regional Education Board's Electronic Campus (<http://www.electronic-campus.org/virginia>) and the State Authorization Reciprocity Agreements (SARA).

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

For up-to-date 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>.