

March 14, 2016

MaryEllen Elia, New York State Commissioner of Education
New York State Education Building
89 Washington Avenue
Albany, NY 12234

Re: New York State Authorization for Distance Education

Dear Commissioner Elia,

We are writing to urge you to withhold your signature from the Unified State Authorization Reciprocity Agreement (SARA). As consumer, student, civil rights, and legal advocacy groups, we are concerned that this agreement, as currently written, would unnecessarily leave New York residents and other students exposed to harm by preventing the state from taking action against predatory online education companies based in other states. Online education is in need of oversight, but SARA goes too far in protecting colleges while failing to adequately protect consumers.

Abuses by institutions of higher education, especially for-profit schools, are well documented, and the potential for rapid escalation of predatory practices is high when companies operate online.¹ Online education expands access to education but also creates opportunities and strong incentives for some institutions to increase profits by targeting the most vulnerable New Yorkers. Misrepresentations about accreditation, job prospects and salary outcomes, combined with high pressure sales tactics, draw students to schools with low graduation rates, poor student loan repayment rates, and no proven ability to increase students' earning capacity. Historically, New York has been a national leader in protecting its citizens from unfair business practices, and out-of-state online colleges that enroll New York students are well aware that the state could bring them under its regulatory umbrella if SARA does not gain approval. If the state signs the SARA agreement, however, New York would formally agree to the weaker oversight of out-of-state online schools, effectively ceding the ability to guard its citizens against abusive practices. Under SARA, New York would rely on the goodwill of other states to provide adequate oversight, while neither New Yorkers nor the state would have real leverage to address inadequate oversight.

The SARA agreement would enshrine a two-tiered system in which New Yorkers attending in-state online schools would be subject to one set of marketing and operating standards, while students attending out-of-state online schools would be subject to another, likely lower set of standards. The ability of schools to earn regulatory approval in one state, but enroll students across the country—without even the possibility that New York will regulate them—will inspire schools to set up shop in the states with the lowest regulatory standards while broadcasting nationwide. Further, New York-based schools will likely use the competition from less-regulated out-of-state competitors as a reason that New York should weaken its own oversight, to the further detriment of consumers.

¹ See, for example, U.S. Government Accountability Office, "[For-Profit College: Undercover Testing Finds Colleges Encouraged Fraud and Engaged in Deceptive and Questionable Marketing Practices](#)," August 4, 2010.

Creating some type of interstate approach to the oversight of online schools could be a useful step. However, SARA is drafted in a way that makes serious problems inevitable. For example, if a school based in Idaho recruits students in New York who are not well served, NYSED is completely reliant on Idaho to take action on any complaints. If the complaints are not addressed to New York's satisfaction, the only way that New York could seek to rein in the school would be to wholly abandon SARA, a move that would face fierce opposition from New York-based colleges and universities that would lose the ability to operate in other member states. In other words, the SARA agreement induces every college to become an advocate for the worst, most predatory company.

The agreement would require New York and every other state to ignore the financial incentives that have caused so much predatory behavior at for-profit schools, by requiring that for-profit, nonprofit and public institutions be assessed as if they are the same. As numerous investigations have shown, deceptive practices are widespread in the for-profit education sector, while they are relatively rare among public and other nonprofit schools.² The SARA agreement would prevent states from addressing the root causes of the problems, mandating them to treat fundamentally different actors in the same way. New York must exercise its authority to oversee businesses profiting from its residents, rather than cede that power to others.

The current version of SARA was drafted by colleges, with little or no involvement of consumer groups, legal aid, or law enforcement. The bill that authorized NYSED to sign onto SARA was pushed through both the State Senate and the Assembly during the last week of the 2015 session with no opportunity for input from the public or education experts. Based on the astonishing speed with which the bill moved through both legislative houses, it is impossible that substantive debate and discussion occurred, even among representatives. In addition, the regional compact boards, the SARA steering committee, and the National Council for State Authorization Reciprocity Agreements all exclude student, consumer, and law enforcement representatives.

There are potential benefits to developing agreements with other states for oversight of distance education, but SARA is not the right approach. Our purpose in writing is to ask that NYSED refuse to sign the current version of SARA, and to launch a more inclusive process to discuss appropriate ways to ensure that New Yorkers are well-served by online colleges, wherever they are based. The Interstate Distance Education Reciprocity Agreement between Connecticut and Massachusetts provides a useful example of an agreement that allows schools to operate across state boundaries, while adequately protecting students. Online education can be a good option for some students, but it also has a history of major problems that can grow quickly.

Our goal is for New Yorkers of all backgrounds to have access to postsecondary learning opportunities that empower and inspire. All too often, however, many of us find ourselves working with clients who have fallen victim to the oftentimes predatory and deceitful practices of online schools, especially for-profit institutions. The SARA agreement, unfortunately, is too likely to perpetuate and further these problems, inviting out-of-state companies to aggressively recruit New Yorkers with promises they may never keep. We hope that New York will join states such as Wisconsin, Massachusetts, Connecticut, and California in suspending the SARA enrollment process

² See, for example, U.S. Senate, "[For Profit Education: the Failure to Safeguard the Federal Investment and Ensure Student Success](#)," July 30, 2012.

until concerns about the impact of the agreement are properly addressed. We look forward to working with NYSED on an approach to oversight that elevates the best higher education can offer.

Sincerely,

Alliance for a Just Society
Alliance for Quality Education of New York
Brooklyn Legal Services Corporation A
Center for Public Interest Law, University of San Diego
Center for Responsible Lending
Central New York Citizens in Action, Inc.
Children's Advocacy Institute
Citizen Action of New York
Congress of Connecticut Community Colleges (The 4Cs)
Consumers Union
DC 37 Municipal Employees Legal Services
Elderly Project, Volunteers of Legal Service
Empire Justice Center
Faculty Forward Network
Generation Progress
Higher Ed, Not Debt
IMPACCT Brooklyn
Legal Services Center of Harvard Law School
Legal Services NYC
Long Island Housing Services, Inc.
MFY Legal Services, Inc.
National Center for Law and Economic Justice
National Consumer Law Center, on behalf of its low-income clients
New York Legal Assistance Group
New York Public Interest Research Group
Public Advocates Inc.
Queens Volunteer Lawyers Project, Inc.
Service Employees International Union
Service Employees International union, Local 200United
The Institute for College Access and Success
United States Public Interest Research Group
Veterans Education Success
Veterans Legal Clinic, University of San Diego
Western New York Law Center

David Halperin, Attorney and Advocate
Julia Howard-Gibbon
Bob Shireman, The Century Foundation
Marcella Silverman, Lincoln Square Legal Services, Inc.