

April 13, 2016

Dr. John B. King
Secretary of Education
U.S. Department of Education
400 Maryland Avenue, S.W.
Washington, DC 20202

Dear Secretary King:

The undersigned Veteran Service Organizations strongly encourage the Department of Education (ED) to fully protect the legal rights of students by allowing claims to be arbitrated only with students' consent after the disputes or claims are asserted. We also urge the Department to adopt a rule regarding arbitration that applies to all students at a covered school, regardless whether the student is a federal borrower.

We were pleased that ED proposed two options to address the problem of mandatory arbitration clauses in school enrollment agreements during the final 3-day session of the Negotiated Rulemaking on Defense to Repayment. While both options prohibited schools from limiting students' rights to file class action lawsuits, Option A allowed schools to require mandatory arbitration for individual and group claims. In contrast, Option B provided stronger protections by requiring schools to seek a student's consent to arbitration *after* the claim arises.¹

Although it was reported that there was a clear consensus in favor of Option B, ED's final arbitration proposal supported the right of schools to require mandatory arbitration for individual and group claims (option A). This decision was puzzling and never fully clarified despite requests for an explanation at the final negotiating session.

We believe that students who are the victims of fraud or misrepresentations should have the ability to file a lawsuit, both individually and as part of a class or group of students. If both the student and the school agree that arbitration is a beneficial way to resolve the dispute, they can mutually agree to arbitration after the student asserts a claim or dispute, as an amended Option B would have allowed.

The Department has broad authority to regulate institutional participation in Title IV programs. Schools must enter into a written program participation agreement with the Secretary. ED may add conditions to those agreements within the Direct Loan Program where the condition is in the United States' interest and furthers the purposes of the program.² In addition, all Title IV schools must meet "administrative capability"

¹With respect to the timing of when an agreement to arbitrate could be validly entered into by a school and student under Option B, we support the language submitted by negotiators on March 17, 2016: "The claim may only be arbitrated with the student's consent after the student has asserted the claim or dispute. For purposes of this section, a claim or dispute is asserted upon the student's filing a demand for arbitration or a complaint in court."

²20 U.S.C. §1087d(a)(6).

standards, which ED has wide latitude in setting, as the D.C. Circuit confirmed in *Career College Association v. Riley*.

We also believe that any rule adopted by the Department must apply to all students at covered schools, not just federal borrowers, who are the only students covered by Option A's protections and disclosure requirements. Option A as proposed by the Department would not protect veterans and service members who rely on GI Bill benefits instead of federal loans to pay for their education. These students could still be forced to arbitrate all claims, including class claims.

Yet veterans and service members are often targeted with aggressive and deceptive recruiting by some predatory schools, which recruit them by providing misleading information about accreditation, tuition, educational quality, transferability of credits, and job placement rates. Too often, veterans learn that schools have originated federal student loans, even when they explicitly requested no loans because the G.I. Bill fully covered their tuition and expenses. No student, including veterans, should be forced to arbitrate claims, which are likely widespread, in lieu of seeking redress in a court of law.

We would also like to acknowledge and commend the Department's willingness to address a concern we raised in a March 21, 2016, letter. We pointed out that schools were attempting to block students from even filing complaints with government agencies by pointing to their internal complaint/arbitration clauses. For example, ITT's student handbook requires students to first go through an internal complaint process followed by mandatory arbitration.³ ITT has even admonished veterans who file complaints with VA, suggesting that they have done something wrong. Complaints lodged with VA and other federal agencies by veterans serve as an early warning sign about potentially fraudulent and misleading behavior on the part of schools. ED's forthcoming rule should make it clear that no school should be able to discourage or prohibit students from complaining about a school's conduct with agencies like the Department of Veterans Affairs, the Department of Defense, the Consumer Financial Protection Bureau, or the Department of Education, itself.

In summary, while Option A continues to allow, and even condones, the practice of forcing students to sign away their rights to seek redress in court as a condition of enrollment, Option B would only recognize an agreement to arbitrate that is formed after a student asserts a claim or dispute. Option B thus ensures that arbitration will only occur when it is truly consensual, and eliminates the mischief of the status quo—including the wrongful use by schools of pre-dispute arbitration agreements to pressure students from reporting wrongdoing to enforcement agencies, a practice we drew to your attention in our March 21, 2016, letter.

We encourage you to hold schools accountable by proposing strong protections against mandatory arbitration requirements, which protect schools and disadvantage the students who enroll.

³ITT Technical Institute Student Handbook - Albuquerque, pg. 62 available at <https://www.itt-tech.edu/campus/download/060.pdf>.

Sincerely,

Air Force Women Officers Associated

Blue Star Families

Student Veterans of America

Tragedy Assistance Program for Survivors

U.S. Coast Guard Chief Petty Officers Association

Veterans Education Success

Veterans for Common Sense

VetJobs