



April 25, 2016

The Honorable John B. King, Jr.
Secretary
U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202

Dear Secretary King,

On behalf of The Leadership Conference on Civil and Human Rights, and the 20 undersigned organizations, we write to urge the Department of Education, within the borrower defense to repayment rulemaking, to use its authority to deny Title IV funds to for-profit institutions that use forced arbitration clauses.

We write in strong support of strengthening protections and restoring accountability among for-profit colleges that engage in illegal and deceptive practices against their students. We applaud the Department of Education (“the Department”) for proposing ways to ensure students’ rights are preserved when they seek accountability for deceptive practices, civil rights violations, and other harms caused by for-profit institutions. **In its rule, the Department must deny Title IV education funding to institutions that force students’ claims into arbitration and that bar them from joining together in class action litigation.**

Students of color and low-income students make up a significant share of for-profit college enrollment, and are disproportionately on the receiving end of fraud and misrepresentation as a result. From a civil rights perspective, students from vulnerable populations should be able to choose how they want to pursue remedies in the face of wrongdoing by institutions rather than being taken advantage of and stripped of their legal rights. Forced arbitration clauses are typically found in the “fine print” of enrollment agreements and are often combined with fraudulent recruitment practices employed by many for-profit schools, making students of color, low-income students, and first-generation college students especially susceptible to predatory practices. Far too often, these students have enrolled after being sold on the promise of receiving an excellent education and gainful employment, only to end up saddled with enormous student loan debt and limited job prospects. With forced arbitration clauses, these students are left without the ability to pursue litigation, and for-profits are able to avoid civil liability.

Not only are students unable to bring claims for fraud and misrepresentation under forced arbitration clauses, but even civil rights claims are barred by this abusive practice. Discrimination claims, including those brought under Title IX of the Education Act of 1972 and Section 504 of the Rehabilitation Act of 1974, could be forced into arbitration without these protections. A 2014 report on Sexual Violence on Campus commissioned by the U.S. Senate Subcommittee on Financial & Contracting Oversight’s Majority Staff found that more than 81% of private for-profit schools failed to conduct any investigations of sexual

Officers

Chair

Judith L. Lichtman
National Partnership for
Women & Families

Vice Chairs

Jacqueline Pata
National Congress of American Indians
Thomas A. Saenz
Mexican American Legal
Defense and Educational Fund
Hilary Shelton
NAACP

Secretary

Jo Ann Jenkins
AARP

Treasurer

Lee A. Saunders
American Federation of State,
County & Municipal Employees

Board of Directors

Helena Berger
American Association of
People with Disabilities
Cornell William Brooks
NAACP
Kristin Clarke
Lawyers’ Committee for
Civil Rights Under Law
Lily Eskelsen Garcia
National Education Association
Marcia D. Greenberger
National Women’s Law Center
Chad Griffin
Human Rights Campaign
Linda D. Hallman
AAUW
Mary Kay Henry
Service Employees International Union
Sherrilyn Ifill
NAACP Legal Defense and
Educational Fund, Inc.
Michael B. Keegan
People for the American Way
Samer E. Khalaf
American-Arab
Anti-Discrimination Committee
Elisabeth MacNamara
League of Women Voters of the
United States
Marc Morial
National Urban League
Mee Moua
Asian Americans Advancing Justice |
AAJC
Janet Murguía
National Council of La Raza
Debra Ness
National Partnership for
Women & Families
Terry O’Neill
National Organization for Women
Priscilla Ouchida
Japanese American Citizens League
Rabbi Jonah Pesner
Religious Action Center
Of Reform Judaism
Anthony Romero
American Civil Liberties Union
Shanna Smith
National Fair Housing Alliance
Richard L. Trumka
AFL-CIO
Randi Weingarten
American Federation of Teachers
Dennis Williams
International Union, UAW

Policy and Enforcement

Committee Chair

Michael Lieberman
Anti-Defamation League

President & CEO

Wade J. Henderson

Executive Vice President & COO

Karen McGill Lawson

assault in the past 5 years.¹ A student at one of these schools would be unable to pursue his or her case in court, or join together with other students in a class action, merely because the enrollment form happened to include a forced arbitration clause. All of these types of claims cry out for public scrutiny and judicial protections.

Given the widespread problems of fraud, misrepresentation, and discrimination, the massive issue of sexual assault on campuses, and the serious need for transparency as a means to ensure accountability and spur improvement, it should be against public policy for the Department to allow recipients of Title IV funds to escape accountability through the use of forced arbitration. Too many students have already suffered at the hands of for-profit institutions that failed to deliver on their promises or adequately address safety issues on campus. We cannot require these same students to leave crucial legal rights and protections at the school house door.

The practice of mandatory arbitration is widespread and damaging, particularly when forced on students attending for-profit colleges. We have long been concerned with the predatory practices of some for-profit colleges which induce students into paying for low-quality, high-priced programs, all while receiving a large quantity of federal dollars. Too often, these schools target racial and ethnic minorities with false promises of a meaningful education and strong job prospects upon graduation. When schools are allowed to sneak forced arbitration clauses into their enrollment forms, students are stripped of their legal rights and virtually any chance of holding schools accountable for misrepresentation or civil rights violations.

In forced arbitration, a private firm handpicked by the for-profit institution gets to decide who wins and who loses. Arbitrators have a financial incentive to favor the school that gives them repeat business, not the student they will likely never see again. For-profit institutions determine which legal protections apply, where the hearing will take place, how much it will cost the student, and whether the proceedings will be kept secret – allowing these schools to hide their fraud and misconduct from prospective students, government officials, and the general public. Even worse, arbitrators' decisions do not have to follow the law and are nearly impossible to appeal, leaving students without recourse for serious abuses. Forced arbitration gives these corporations an effective license to steal from students who are trying to better their lives through education.

The Department is considering two options to deal with forced arbitration. We strongly support "Option B," which would prohibit all forced arbitration clauses for individual students and would prohibit class action bans. Unfortunately, "Option A" would instead allow for-profit schools to continue to force students into individual arbitration, while adding certain disclosure requirements. This option fails to address the heart of the problem that forced arbitration clauses present for individual students seeking to hold a for-profit institution accountable. Without addressing such key issues as how an arbitrator is chosen, whether the student can ever appeal an arbitrator's decision, and the significant cost of arbitration, students do not have a chance of getting a fair resolution. Option A does not fully preserve students' rights to seek remedies for fraud or other wrongdoing and does not give regulators tools needed to oversee schools' efficient use of federal funds.

Protecting vulnerable populations from fraud and other violations of rights in higher education is of fundamental importance to the civil rights community. Students must be allowed to use all legal means

¹Sexual Assault on Campus, July 9, 2014,
<http://www.mccaskill.senate.gov/imo/media/doc/SurveyReportwithAppendix.pdf>



necessary to receive redress in the case of wrongdoing. To that end, we urge the Department to adopt the strongest rule possible to address forced arbitration.

Thank you for your consideration of our views. If you have any questions, please contact Lisa Bornstein, Legal Director, at bornstein@civilrights.org or Nancy Zirkin, Executive Vice President, at zirkin@civilrights.org.

Sincerely,

The Leadership Conference on Civil and Human Rights
9 to 5, National Association of Working Women
American Arab Anti-Discrimination Committee (ADC)
American Association of University Women (AAUW)
American Federation of State, County, and Municipal Employees
American Federation of Teachers
Association of University Centers on Disabilities
Disability Rights Education & Defense Fund
League of United Latin American Citizens
NAACP
NAACP Legal Defense & Educational Fund, Inc.
National Alliance for Partnerships in Equity
National Association of Human Rights Workers
National Black Justice Coalition
National Consumer Law Center (on behalf of its low income clients)
National Council of La Raza
National Education Association
National Fair Housing Alliance
National Partnership for Women & Families
National Women's Law Center
Southern Poverty Law Center