

EXECUTIVE OFFICE

1625 North Market Blvd., Sacramento, CA 95834
Phone (916) 574-8200 Fax (916) 574-8613 www.dca.ca.gov



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VIA EMAIL

Sophia McArdle
United States Department of Education
400 Maryland Ave. SW, Mail Stop 290-44
Washington, DC 20202
sophia.mcardle@ed.gov

Erik Fosker
Compliance Manager
San Francisco/Seattle School Participation Division
United States Department of Education
50 United Nations Plaza, Ste. 1273, Mail Box 1200
San Francisco, CA 94102
Erik.Fosker@ed.gov

Dear Ms. McArdle and Mr. Fosker:

This letter memorializes the State of California, Department of Consumer Affairs' (Department) process for handling student complaints concerning out-of-state public and non-profit institutions providing distance education to students in California.

As you know, institutions of higher education must satisfy federal regulatory requirements to participate in Title IV Student Financial Assistance programs. On July 22, 2019, the United States Department of Education (USDOE) published additional information and guidance regarding certain regulatory requirements. USDOE noted that the regulations were published on December 19, 2016 and were originally scheduled to take effect on July 1, 2018. Prior to the effective date, however, USDOE delayed the regulations' effective date until July 1, 2020. By order of the United States District Court for the Northern District of California in the case *NEA v. DeVos*, Case No. 18-cv-05173-LB, the court vacated USDOE's delay of the effective date, and made the regulations effective May 26, 2019.

The newly effective regulations require institutions that offer postsecondary education through distance education or correspondence courses to students

residing in a state in which the institution is not physically located to document that there is a state process to review and appropriately act on complaints from any enrolled students concerning the institution in each state in which the institution's enrolled students reside or through a state authorization reciprocity agreement. (34 C.F.R. § 600.9(c)(2).)

USDOE also noted that California "does not have a process to manage complaints for out-of-state public or non-profit institutions serving students at a distance in the State. . . . [U]ntil California establishes such a process for out-of-state public and non-profit institutions . . . , those institutions will be unable to comply with the now-effective 2016 regulation if they provide distance education or correspondence courses to students residing in California. Thus, under the 2016 regulation now in effect, students residing in California receiving distance education or correspondence courses from out-of-state public or non-profit institutions are ineligible for title IV programs until such time as the State of California provides those institutions with an appropriate complaint process"

The Department receives complaints from consumers concerning unfair methods of competition, unfair or deceptive acts or practices undertaken by persons in the conduct of trade and commerce, and other consumer-related complaints. (Bus. & Prof. Code, § 325.) The Department also refers complaints to other regulatory entities that provide the most effective means to secure relief for the complainants. (*Id.* at § 326.) Under these authorities and pursuant to the Department's mission to protect California consumers, the Department intends to process student complaints for out-of-state public and non-profit institutions to achieve compliance with the newly effective regulations, in accordance with section 600.9 of title 34 of the Code of Federal Regulations.

Specifically, the Department will serve as the state agency of record for complaint processing, under the following terms. The Department will receive complaints about out-of-state public and non-profit private postsecondary institutions and refer them to another state agency, an institution's accrediting agency, or the appropriate regulatory or law enforcement agency in the state in which the institution is physically located, to review, investigate and resolve. The Department would subsequently inquire with the agency to which the complaint was referred to determine the resolution and, in consultation with the Bureau for Private Postsecondary Education (Bureau), determine whether additional referrals would be warranted to potentially resolve the complaint, or initiate action to respond to the complaint, to the extent permitted under state law.

The Bureau for Private Postsecondary Education, within the Department of Consumer Affairs, is the primary state entity authorized in the Education Code to review and act on consumer complaints for violations of state laws related to

private postsecondary educational institutions. (Ed. Code, § 94941.) The Bureau may also contract with in-state “independent institution[s] of higher education” for complaint processing. (*Id.* at § 94874.9.) Accordingly, the Bureau has significant expertise in the area of complaints related to postsecondary education. A partnership between the Department and the Bureau will permit California to quickly leverage existing resources while satisfying the requirements and goals of the newly effective rule.

The complaint system will be available for students’ use beginning July 29, 2019, and California intends to make students aware of the availability of the complaint process in order to avoid any negative consequences for students, including ineligibility for Title IV programs. At your earliest convenience, please confirm that the complaint process outlined above satisfies USDOE’s regulatory requirements.

Thank you for your consideration.

Sincerely,

A handwritten signature in blue ink, appearing to read "C Shultz". The signature is stylized with a large, looped "C" and a cursive "Shultz".

Christopher S. Shultz
Chief Deputy Director