

For-Profit Schools in Nebraska: Recommendations to Improve Student Protection

JANUARY 2017

KEN SMITH, STAFF ATTORNEY

ECONOMIC JUSTICE PROGRAM

NEBRASKA APPLESEED



NEAPPLESEED.ORG

Nebraska Appleseed

Nebraska Appleseed is a nonprofit organization that fights for justice and opportunity for all Nebraskans. We take a systemic approach to complex issues - such as child welfare, immigration policy, affordable health care, and poverty - and we take our work wherever we believe we can do the most good, whether that's at the courthouse, in the statehouse, or in the community.

Nebraska Appleseed
941 'O' Street, Suite 920
Lincoln, Nebraska 68508

p: 402.438.8853
f: 402.438.0263
info@neappleseed.org

www.neappleseed.org

Introduction

Several national for-profit schools have closed their doors in the last few years, including Corinthian Colleges and ITT Tech. Both of these institutions faced allegations of bad practices and were cut off from federal financial aid by the U.S. Department of Education. These school closures affected thousands of students nationwide.

In response to these troubling national trends, Nebraska Appleseed (Appleseed) issued a report in December of 2015 calling for formal study of the for-profit college landscape in Nebraska.¹ The report investigated school performance in areas such as graduation rates and earnings and analyzed Nebraska's regulation and oversight of for-profit schools, among others things. The report ultimately called for a legislative interim study to dig deeper into school performance, regulation and oversight, as well as the student experience with for-profit schools. In response, Legislative Resolution (LR) 564 was introduced by Senator Patty Pansing Brooks.²

**In the last few years,
for-profit school
closures have affected
thousands of students
nationwide.**

Protecting access to quality postsecondary education should be a high priority in Nebraska. By the year 2020, an estimated 71% of jobs in Nebraska will require postsecondary education.³ However, there are over 106,000 people of working age in the state without a high school diploma or equivalent degree.⁴ Further, 44.5% of Nebraska families under 200% of the federal poverty level have no parent with a postsecondary education.⁵ Having accessible, quality postsecondary education is critical in closing that gap.

This report builds upon the research over the last 18 months and through the interim study to provide recommendations on how to make improvements to for-profit operation and regulation in Nebraska. The first section will lay out the gap in student protections that currently exists in state law. The second section will briefly explain the federal gainful employment rules, particularly those requiring annual disclosure of key performance measures. The third section will describe generally the regulatory scheme in which the Nebraska Department of Education (NDE) operates to highlight various ways in which NDE's authority could be updated and strengthened. The final section will lay out recommendations based on the ongoing research efforts in this area and the developments discussed below.

Student Protection at For-Profit Colleges in Nebraska: Significant Gaps Exist

One of the findings in the 2015 report was that students at for-profit schools in Nebraska are not afforded protections given to students of similar schools in other states. Nebraska law gives two agencies the duty to regulate postsecondary education in the state. NDE is responsible for administering the Private Postsecondary Career School Act (PPCSA), which applies to schools offering credentials up to an associate's degree.⁶ According to the latest figures available, there were seven non-degree-granting for-profit career schools in Nebraska with an estimated enrollment of 812 students.⁷ On the other hand, the Coordinating Commission on Postsecondary Education (CCPE) is responsible for administering the

Students who attend schools offering bachelor's degrees and above do not have the ability to access tuition recovery in the event of school closure.

Postsecondary Institutions Act (PIA), which applies to schools offering courses or programming above an associate's degree (for example, a bachelor's or master's degree).⁸ As of 2015, there were four degree-granting for-profit schools in Nebraska with an estimated enrollment of 1,673 students.⁹ However, ITT Technical Institute subsequently closed, bringing estimated statewide enrollment to about 1,361.

The PPCSA includes two student protection measures. First, it creates the Tuition Recovery Cash Fund.¹⁰ If a student at a private career school suffers financial harm from the school terminating its operations, the student can submit a claim against the fund for a refund of tuition and fees.¹¹ Second, the PPCSA establishes bond requirements.¹² Until the tuition recovery fund reaches the minimum fund level prescribed by statute, NDE may require a career school applying for authorization to operate in the state to file a \$20,000 surety bond.¹³ The bond functions to indemnify any student or enrollee, or parent or guardian of a student or enrollee, who has suffered damage as a result of any act or practice violating the PPCSA.¹⁴ Schools are also required to file a surety bond when they apply for an agent's permit (a permit that allows an employee or representative of a school to solicit or enroll students).¹⁵ The agent's bond protects against violations of the PPCSA as well.¹⁶ Between the bond requirements and the tuition recovery fund, students have remedies to pursue if needed.

However, these protections are only afforded to students at the institutions to which the PPCSA applies. This means that for-profit colleges that offer programs of study beyond an associate's degree do not have to pay into a tuition recovery fund, nor must they file a bond with the state. Thus, students who attend these schools do not have the ability to access

tuition recovery in the case that their school closes. This sudden closure of a school has happened more often of late; including Corinthian Colleges and ITT Tech, both of which offered degrees beyond the associate's level. The closures affected approximately 130,000 students nationwide and only a small fraction of them have been able to get relief at the federal level.¹⁷

In addition, in 2016, Wright Career College, a career school based in Overland Park, Kansas and with a campus in Omaha, suddenly closed its doors and filed for bankruptcy.¹⁸ Before the school closed, the U.S. Department of Education had launched a review of how the company used its money.¹⁹ The school shut down before negotiating ways for students to make other plans for continuing their education or managing their financial aid. Because Nebraska law lacks sufficient student protections, the students were left with limited options and an uphill battle to obtaining a degree or certificate. While Wright Career College is a nonprofit institution, their example points to the need to have greater protections for students in Nebraska, which many other states have. Indeed, in many states, this gap in student protections does not exist.

For example, in Maryland, the Maryland Higher Education Commission has the authority to create "guaranty funds" to reimburse students entitled to a refund of tuition and fees due to a school's failure to comply with an agreement or contract or with state law.²⁰ The

Student Perspective: Kaplan University Program

Brittany Hillis was looking forward to a career in the legal system. She loved the idea of business law and legal ethics and wanted a degree to improve her earnings and set her on the path to the legal world. Brittany is a single mother who wants the best for her daughter and saw education as a path off of government assistance including childcare subsidies and SNAP benefits.

Looking for an online program, Kaplan showed up in Brittany's searches and she went to meet with a recruiter. The recruiter told her that she could complete her degree online and wouldn't have to pay until she finished. She began her degree and was surprised that throughout her degree, she had only one professor who was an actual lawyer but she was still hopeful. After completing her associate's degree, she was shocked when the \$400 a month bills started coming in the mail. This was much more than she had discussed with the recruiter.

Brittany believes that she would earn between \$50-70k as a paralegal in Lincoln after talking with the recruiter. After applying for jobs with dozens of law firms without luck, she was told by several lawyers "they weren't even going to look at me or my application/resume because of the college that I went to. Because they did not see Kaplan as a credible college." She is now an administrative assistant at an engineering firm in Hallam, NE.

schools required to pay into the fund must do so on an annual basis, and in the amount determined by the Commission.²¹ The Commission also is subrogated to and has the power to enforce, through the Attorney General, the claim of any student to the extent of any actual or authorized reimbursement from the funds.²² Further, the Commission has the authority to require schools seeking a certificate of approval or registration to furnish a bond conditioned that the school will perform on agreements and contracts and comply with applicable law.²³

Maryland has a good student protection model because it affords the commission the discretion to structure student protections as it sees fit, but includes separate funds for the separate categories of postsecondary institutions required to maintain guaranty funds and surety bonds. Further, compensation from the fund is available for students who are dealing with an unanticipated school closure.

In sum, with the sudden closure of schools occurring more regularly in Nebraska and across the United States, and with the gap in student protections in Nebraska, now is a good time to identify better state models and move forward with changes to student protection in Nebraska.

For-Profit School Performance Measures: New disclosures will help assess the effectiveness of schools

The 2015 report concluded that a lack of accessible data on key performance measures made it difficult to assess the effectiveness of the for-profit college system in Nebraska.²⁴ For instance, there is little information available regarding postgraduate employment or earnings of students.²⁵ But, the lack of data to assess for-profit schools effectiveness is not limited to Nebraska. In order to address growing concerns that for-profit institutions were leaving students with low employment potential and unaffordable levels of loan debt, the Federal Department of Education released the “gainful employment” rules in 2014, and they went into effect on July 1, 2015.²⁶

The rules enforce the federal Higher Education Act’s (HEA) requirement that all “gainful employment institutions” eligible for Title IV funding provide programs that “prepare students for gainful employment in a recognized occupation.”²⁷ If gainful employment programs fail to meet certain standards, under the new rules, they may face potential loss of federal funding. The rule sets two separate gainful employment metrics. The first is a debt-to-earnings (DTE) measure. Students who complete a gainful employment program would need to spend, on average, no more than 12 percent of their annual income, or 20 percent of their discretionary

income, on student loan payments.²⁸ The second metric is a program cohort default rate measurement (PCDR). No more than 30 percent of the students who have completed or are enrolled in a particular gainful employment program can default on their student loans.²⁹

Another component of the gainful employment rules requires schools to make specific disclosures to the US. Department of Education on an annual basis. These disclosures would include information on the programs offered, number of students, program cost, and job placement rates.³⁰ The disclosures related to these requirements will be produced on or around January 1, 2017.

The DTE and PCDR metrics, along with the additional disclosure requirements, represent a concerted effort by federal regulators to get a clearer idea of how postsecondary institutions, including many for-profit colleges, are educating their students and preparing them for productive careers. If a school is not reaching the required standards, it could face losing eligibility for Title IV funding. However, during the first five to seven years of implementation of the rules, programs will be held to an easier “transition period” standard.³¹ At the state level, schools that fall within the purview of the CCPE and are required to apply for recurrent authorization to operate in Nebraska make a variety of disclosures during the application process, including information on the institution’s financial soundness, the quality of its educational programs, and tuition refund policies.³²

The new gainful employment rules will provide important information regarding the effectiveness of for-profit education in Nebraska; information which may answer questions about how students are performing. If additional information is needed, it could be requested or required at the state level. The CCPE and the Board of Education currently have the authority to adopt and promulgate rules and regulations to establish minimum standards for postsecondary institutions in Nebraska.³³ The statutes for each list prescribe minimum standards followed by an explicit allowance for the promulgation of additional standards as necessary.³⁴ If the CCPE or the Board of Education determines it is necessary to gather additional information to ensure schools are complying with minimum requirements, they have the ability to do so. Thus, with the disclosure requirements within the gainful employment rules going into effect soon and the authority for the CCPE and the Board of Education to establish minimum standards for schools in Nebraska, regulators at both the federal and state level should be in a better position to understand the effectiveness of for-profit schools. As the recommendations below further indicate, the CCPE and Board of Education should consider whether gathering additional information is necessary and use its statutory authority to do so as needed.

Nebraska’s Decentralized Regulatory Scheme: Exemptions allow fragmentation

The authority to regulate schools that fall under the PPCSA in Nebraska, instead of resting solely with the Nebraska Department of Education (NDE). NDE is charged with administering the PPCSA, which applies to all private postsecondary schools offering courses of study up to and including associate degrees.³⁵ However, schools that would otherwise fall into that category, but are “licensed and regulated by agencies of this state other than the department,” are exempt from the requirements of the PPCSA.³⁶ The Department of Health and Human Services (DHHS), for instance, is charged with licensing and regulating dozens of separate programs of study, ranging from emergency medical services and nursing to acupuncture and massage therapy.³⁷ Other agencies that oversee programs of study include the Department of Motor Vehicles (DMV) and the Department of Insurance. Therefore, not only is the regulation of postsecondary schools in Nebraska divided between the CCPE and NDE based on the level of degree or credential they offer, the regulation of schools or programs that would otherwise fall within the purview of the NDE is further divided amongst multiple other government agencies. This can lead to fragmentation and lack of uniformity in regulation of schools in Nebraska. This decentralization of authority to regulate postsecondary institutions may hinder the ability of the state government to effectively oversee postsecondary education.

Indeed, while entities like DHHS and the DMV may have the subject matter expertise needed to assess and license educational programs, they may not be as effective as a single department could be in enforcing other regulatory measures, such as consumer protections and record retention rules. Because record retention standards are not uniform across agencies, some program graduates are unable to subsequently obtain records.³⁸

Division in regulatory authority can lead to fragmentation and lack of uniformity in regulation of schools in Nebraska.

Moving to a more centralized system of regulating postsecondary career schools would require the participation and cooperation of numerous entities. However, streamlining the regulatory scheme may have significant benefits in the long term for postsecondary career schools, students, and NDE. Nebraska should take steps to better centralize regulatory authority, as stated below.

Recommendations

Given the recent closures of high profile for-profit schools, now is the time to ensure Nebraskans pursuing higher education are protected in the event it happens again. Here are some steps that could be taken to that end.

Institute new bond and tuition recovery requirements to address the gap in student protections that currently exists. Students at for-profit colleges in Nebraska should be afforded financial protections in case the institution they are attending suddenly closes its doors, as has happened in multiple instances across the nation and in Nebraska recently. Nebraska should institute a tuition recovery fund and a bond requirement, similar to the student protections already offered to students at career schools through the PPCSA, and utilizing best practices from around the country. Nebraska should also consider requiring for-profit colleges to notify the commission when and if the institutions are placed under higher scrutiny at the federal level. Instituting these basic protections would go a long way in protecting otherwise vulnerable students from another unanticipated school closure.

Monitor new disclosures under the gainful employment rule and require gainful employment programs to submit the same disclosures to the state. The federal gainful employment rules could help display whether for-profit schools are adequately educating students and preparing them for employment. However, the federal rules are limited in their applicability and scope. Therefore, the disclosures made under the federal rules should be monitored to learn more about the schools operating in Nebraska, and to determine whether the information gathered through federal reporting is sufficient. To that end, schools that submit information to the federal government under the gainful employment rules should also release that information to the state. If additional disclosures are needed to get a clear picture of school performance, the CCPE could consider utilizing its authority to create additional minimum standards for the disclosure of information.

Better centralize statutory and regulatory authority over schools. There are three main aspects of the NDE's current regulatory role that should be explored to determine where changes are necessary and would be beneficial to decrease regulatory fragmentation. Nebraska should analyze the division of regulatory authority with respect to private postsecondary career schools between the NDE and multiple other government agencies to determine how Nebraska students, schools, and state agencies would benefit from a more centralized regulatory authority. However, in order to successfully centralize authority with NDE, the state must provide additional resources to the department and roll back existing

laws and regulations around third party agencies' current authority. Centralizing authority in this way could reduce administrative burdens across agencies and allow for more consistent administration of the PPCSA.

Conclusion

For-profit schools across the country are facing increased scrutiny over alleged bad practices and low-quality programming that leads to lots of student loan debt and little employment potential. As the federal government strengthens its oversight of for-profit schools, Nebraska should also look to improve the way it regulates postsecondary schools. As a part of this effort, and in the wake of multiple large for-profit schools closing suddenly, Nebraska should expand student protections to fill the gap into which current students of for-profit colleges fall.

This report is supported by the Working Poor Families Project. The project was launched in 2002 and is currently supported by the Annie E. Casey, Ford, Joyce and W.K. Kellogg foundations. The project partners with state nonprofit organizations and supports their state policy efforts to better prepare America's working families for a more secure economic future. For more information: www.workingpoorfamilies.org

Endnotes

- 1 Eric Savaiano, Ken Smith, and James Goddard, *The High Cost of Higher Education: The For-Profit College Industry in Nebraska*, Nebraska Appleseed, December 2015. Report available at: <https://neappleseed.org/library#publications>
- 2 LR 564 intends to “study education in Nebraska, with an emphasis on adults and postsecondary education.” The study shall examine student retention, graduation, employment, and earnings, access to postsecondary education for minority students, access to and use of awards under the Nebraska Opportunity Grant Act, and the regulation of educational institutions in Nebraska.
- 3 Working Poor Families Project, generated by the Population Reference Bureau, American Community Survey (or US Census depending on indicator), 2013.
- 4 Population Reference Bureau, analysis of 2014 American Community Survey. Data provided by the Working Poor Families Project.
- 5 American Community Survey Microdata, 2014. Data provided by the Working Poor Families Project.
- 6 The PPCSA is found at Nebraska Revised Statute §85-1601 to §85-1658.
- 7 CCPE Enrollment Dashboard found at <https://ccpe.nebraska.gov/enrollment-dashboard>.
- 8 The PIA is found at Neb. Rev. Stat. §85-2401 to §85-2421.
- 9 CCPE Enrollment Dashboard found at <https://ccpe.nebraska.gov/enrollment-dashboard>.
- 10 Neb. Rev. Stat. §85-1654.
- 11 Neb. Rev. Stat. §85-1657.
- 12 Neb. Rev. Stat. §85-1639 (giving NDE authority to impose surety bond requirement); and Neb. Rev. Stat. §85-1640 (requiring agent’s bond).
- 13 Neb. Rev. Stat. §85-1639.
- 14 *Id.*
- 15 Neb. Rev. Stat. §85-1603(1) and (2).
- 16 Neb. Rev. Stat. §85-1640.
- 17 Danielle Douglas-Gabrielle, *Fraud at Corinthian Colleges. Why are Students Still Paying the Price?*, Washington Post, September 29, 2016; Smith, Ashley, A. (September 7, 2016). “The End of ITT Tech” Insider

Higher Ed.

18 Voorhis, Dennis, Wright Career College Files Bankruptcy, Leaves Employees Unpaid, The Wichita Eagle, April 15, 2016.

19 Rose Williams, Mara, The Feds Were Watching Wright Career College Well Before it Closed, The Kansas City Star, April 26, 2016. Wright Career College had been placed on the Department of Education's "Heightened Cash Monitoring" list. A school can land on the HCM list for late financial statements, outstanding liabilities, accreditation issues, or concerns about financial responsibility.

20 Ann. Code of Maryland § 11-203(d)(2).

21 Ann. Code of Maryland § 11-203(d)(3)(i) and (ii).

22 Ann. Code of Maryland § 11-203(d)(2)(v) and (d)(5).

23 Ann. Code of Maryland § 11-203(a)(1) and (2).

24 The High Cost of Higher Education, *supra*.

25 *Id.*

26 Gainful Employment Rule Executive Summary, 79 FR 64890.

27 See 20 U.S.C. §§1001(b)(1), 1002(b)(1)(A)(i), and 1002(c)(1)(A). Further, Section 481(b) of the HEA defines "eligible program" to include a program that "provides a program of training to prepare students for gainful employment in a recognized profession."

28 This is a simplified explanation of the DTE metric. For more information, see 34 CFR §668.404.

29 This is a simplified explanation of the PCDR metric. For more information, see 34 CFR §668.502. The PCDR is determined based on the number of borrowers in a cohort who are considered to be in default by the end of the second fiscal year following the fiscal year those borrowers entered repayment. 34 CFR §668.502(a)(2).

30 See 34 CFR §668.412(a)(1) – (16) for a complete list of required disclosures (although the listing in the CFR is on a "may include but not be limited to" basis).

31 "Gainful Employment Rules Questions and Answers" Department of Education, June 30, 2015.

32 The information that institutions applying for a recurrent authorization to operate must provide includes data on the institution's financial soundness, the quality and adequacy of teaching faculty, library services, and support services, the quality of programs offered, locations where the programs will be offered, assurances regarding transfer of credits from other institutions and to other institutions, information on accreditation, the institution's policies and procedures related to students including recruiting and admissions practices, and the tuition refund policy for an institution that does not participate in federal financial aid programs. (See: copy of application form at <https://ccpe.nebraska.gov/sites/ccpe.nebraska.gov/files/doc/RecurrentAuthorization.pdf>).

33 For the CCPE's authority, see Neb. Rev. Stat. §85-2406. For the Board of Education's authority, see Neb. Rev. Stat. §85-1608.

34 *Id.*

35 Neb. Rev. Stat. §85-1603(17) and Neb. Rev. Stat. §85-1604.

36 Neb. Rev. Stat. §85-1604(7). Schools licensed and regulated by other agencies are still required to comply with the PPCSA's requirements regarding the tuition recovery fund and filing of agents' permits.

37 See a complete list of professions and occupations licensed, certified or registered by DHHS at http://dhhs.ne.gov/publichealth/Pages/crl_profindex1.aspx.

38 Brad Dirksen, Program Director, Private Postsecondary Career Schools and Veterans Education, Nebraska Department of Education, personal interview (November 2016).

NEBRASKA APPLESEED
941 O STREET, SUITE 920
LINCOLN, NE 68508

P 402.438.8853
F 402.438.0263
INFO@NEAPPLESEED.ORG



NEAPPLESEED.ORG