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Vocational Schools and Their Inherent Drawbacks.

For-profit vocational schools have a well-earned reputation for fraud and misrepresentations when it comes to their students, or consumers. The profit incentive in many instances eclipses the incentive to educate, and in some cases, such as CRI, Crown College and BCTI, there appeared to be no incentive to educate, only profit. Profiting and educating are not always compatible. An admissions counselor at a for-profit career school, in many instances, can be more concerned about the school's profit, and therefore his or her job, than about the student's welfare. Thus, many students are fraudulently induced to enter programs which they not suited for or are not compatible with their goals because the admissions counselor and administration is focused on the financial aid that student brings.

The students who attend such a school tend to be less sophisticated and affluent, sometimes being first generation college attendees and are more trusting of "admission counselors" and thus more susceptible to fraud. Public universities are less dependent on student's money and therefore are more candid with prospective students. At many for-profit vocational schools, unfortunately, the only criteria that admission counselors focus on are whether a student qualifies for student aid and then how much aid they might receive.

Many students view admission counselors as neutral persons who have the student's best interests at heart and expect them to act as a doctor or lawyer or other professional who owes them a fiduciary duty. They do not view them as agents of a profit-driven business whose interests might be incompatible with their own. Thus, agencies that govern for-profit school should make a concerted and special effort to protect the rights of these students.

The school closures that apparently prompted this new law were caused by two schools shutting down because of, ostensibly, financial distress. I speak of BCTI and CRI. However, these schools were initially quite profitable and the reason that they fell into financial distress and eventually closed were because their business model was based on misrepresenting their facilities, services, curriculum, faculty, costs and programs to prospective students. The fact that these schools closed was actually a fortunate thing for the remaining students. The fraud being perpetuated on them was terminated and some were eligible to receive tuitions refunds from the state and the federal government. This was the case with Crown College, another school that followed this scenario, though it was not under the jurisdiction of the Workforce Board.

The Workforce Board appears to place an inordinate focus on finances and keeping schools open. In the case of CRI, a review of the Preference Complaint, Motion for

Summary Judgment and the deposition of Alen Janisch filed by the U.S. Trustee shows that CRI manipulated its finances to pass the muster of the U.S. Department of Education and possibly the Workforce Board as well. Those documents can be viewed on www.criasaga.info. Thus, CRI would not have shown up on the Workforce's Board's radar if the focus had just been on financial disclosure. In fact, there are schools that suffer financial problems yet still provide a good education and truthfully represent their programs to prospective students.

What brought CRI and BCTI down were misrepresentations, their programs, and overpriced and substandard education and facilities, which resulted in complaints being filed. These complaints, as they became more voluminous, led to adverse media scrutiny. This, in turn, led to desertion of students which THEN led to financial distress. In other words, if the WorkForce Board wants to be ahead of the curve and more importantly, not behind it, in dealing with "at-risk" or problem schools, they need to focus on complaints by the students about the school in addition to reviewing financial disclosures. Thus, the precursor to financial problems in BCTI and CRI were the student bona fide complaints.

After reviewing documentation regarding the Workforce Board's interaction with Alen Janisch, it appears that the Workforce Board did not have the resources to sufficiently police CRI and discover fraud on their own. It was student complaints, many of them, which took place over a span of 7 years, which alerted the Workforce Board to the fraud. I would like to see the Workforce Board's rulemaking focus on removing impediments to students filing complaints.

Importance of State Enforcement

All schools, but particularly for-profit vocational schools which as I have indicated before are more prone to fraud and misrepresentations in dealing with their students, are governed by the triad of agencies which consist of:

(a) The Department of Education, which administers financial aid to the students and imposes certain financial requirements on the schools which as concerns their student's receiving financial aid. Unfortunately, they leave the responsibility for deciding what schools are eligible for financial aid up to the accrediting agencies. Moreover, Washington D.C. is far removed from this state and it administers policies and financial aid for millions of students.

(b) The accrediting agencies are the gatekeepers for financial aid; however, they are not very diligent in enforcing their policies. They did nothing to close down BCTI or CRI despite, as the record now show, those schools were in violation of many regulatory policies. From what I have seen in the case of Crown College, when a complaint was filed, they merely asked the school to respond to it, accepted the response regardless of its reasonableness, and did not do an independent investigation. Again, these agencies are headquartered on the east coast like the Department of Education

(c) Washington does have a Consumer Protection Act, and it empowers attorneys to pursue these claims and receive attorney's fees for their efforts. However, this remedy is expensive and not easily obtainable. Many attorneys are reluctant to take such cases on a contingency basis which is the only basis on which most students can get legal representation because they do not have the means. In the case of Crown College and

CRI, students made desperate attempts to retain attorneys, but were unsuccessful. When a case was finally brought and won, hundreds of students had already been defrauded. One thing Crown College students did not have which CRI and BCTI students had was the benefit of state oversight and, more importantly, access to the tuition reimbursement fund.

(d) The state agencies in Washington, the Higher Education Coordinating Board or the WorkForce Board, are the closest to the schools and students who are victimized by them. They have a lot less schools to govern than the Department of Education or the accrediting agency. They read the local newspapers and listen to local politicians. Thus, they are in the best position to assist students who are cheated.

Criticism of WAC Code Proposals

No Definition for "Frequent"

In the criteria for what constitutes an at-risk school, "frequent sustained complaints" is listed as a criteria. (WAC 490-105-030 new section (5)(d) It is unclear what constitutes "frequent." This term should not be left completely up to the discretion of the Workforce Board nor, to vocational schools challenging findings that they are "at-risk". Obviously some discretion is desirable and necessary. However, there should be some guideline, some formula tied to the volume and frequency of complaints which would define frequent. For example, three complaints a year may not be many complaints to a school with 1000 students; however, what if there were only 30 students? Perhaps the formula could be expressed as a percentage. Also, is a complaint which is being appealed by the school going to be considered sustained? Again the definition does not have to absolute, merely a guideline. Please note that the other criteria, (c) a decrease in enrollment and (e) staff turnover are defined as percentages, thus not defining what constitutes "frequent" is puzzling.

The new law specifically denotes that one of the criteria for at-risk schools is a "pattern or history" of substantiated complaints; however, this is not in the proposed WAC code. At a minimum, these words should be added to the definition of frequency and be more properly defined.

Also, the rules should specify that just because a complaint is being appealed does not mean it has not been sustained.

No Definition of "Misrepresentation"

Again, as set forth in the paragraph above, misrepresentation is listed as criteria for the determination that a school is at-risk. However, it is completely undefined just as frequency is. I feel it should be defined and that the definition should include any misrepresentation made to the Workforce Board, including material misrepresentations on any document required by any regulatory agency and misrepresentations made to students, including, but not limited to faculty credentials, curriculum, job placement statistics and facilities.

The Fifty Percent Turnover of Staff or Decrease in Enrollment to Trigger the At-

Risk Designation Appears Too High

Having a turnover of faculty of 50% appears to be somewhat of a remote possibility in any at-risk or potential at-risk school. I would be curious to know if CRI or BCTI ever had either a 50% turnover of staff or decrease in enrollment in any one year, and if that is the criteria that Board used to establish the percentage. I would think that a 25%-33% would be more appropriate. Again, there is an "escape clause" which allows the Board to overlook or forgive criteria that would normally designate a school as at-risk if there are extenuating circumstances or events. Therefore, the criteria for evaluating a school should be less stringent so that more schools could be scrutinized and I believe that a 25-33% staff turnover or decrease in employment would be good indicia of problems which would provoke the Workforce Board's scrutiny.

WorkForce Board's Proposed Changes to WAC 490-105-180

The WorkForce board suggests changes to (7)(ii) and (iii) which I disagree with. I am concerned about the insertion of the words "if necessary" as it might make informal hearings less likely to happen. I believe that the criteria for not having an informal hearing should be set forth.

As concerns the deletion of the 15 working days following the hearing, this leaves no time requirement for a determination to be made. I feel that there should be some requirement for a response. Under this revision the Workforce Board could theoretically wait until infinity to respond, a rather long wait. If 15 working days is too short a time, then another more appropriate or attainable time limit should be set forth and reasons, if any, why it might be waived, within reason.

Additional Proposed Changes In the WAC

In light of my comments earlier that student complaints are the best indicator of whether or not a school is fulfilling its obligations to students and consequently, whether or not it will end up in financial distress, I would like to point out conditions that existed, at least at CRI, that made it more difficult for students to either complain or know they had the right to complain. These problems were:

(a) Many students did not know that they could complain to the Workforce Board regarding the numerous misrepresentations that were made to them by CRI management, concerning the time it would take to complete the program, the shoddy equipment and instructors. This appeared to be because the information was "tucked" into the enrollment agreement and catalogs and was not prominent so the information was missed. Now, obviously students bear a responsibility to protect their interest and perhaps they should have noticed it;

(b) Many students were not aware that there were sustained complaints against the school concerning the very same conditions they were facing as there was no way to review this information;

(c) Some students were concerned about policies written into the enrollment agreement -- which I have seen in other schools, including Crown College -- that stated if a student is "disloyal" to the school or acts in such a way to discredit the school, they can be expelled. This created a chilling effect on potential complaints.

There are remedies that I would like to propose that would address these issues, keeping in mind the fact that student complaints will alert the WorkForce Board to problems with a school long before any financial symptoms appear. It is in the best interest of the Board to make sure that students are aware of their rights and problems with a school can be addressed before they fulminate, the schools closes and the Workforce board and the Department of Education has to use taxpayer money to refund loans and tuitions paid by stranded students.

Students' Rights Under the RCW and WAC Should be Posted.

WAC 490-105-040 (5) (q) and (6) (b) should be amended to require that

(a) Information regarding the fact that Washington State law gives a student the right to make a complaint against the school and the fact that you might get your tuition refunded or in the alternative, the entire statute (RCW 28C.10.12) should be included in the enrolment agreements and catalog pursuant to WAC 490-105-040. The statute is short and easy to understand. If the entire statute is not cited, then the pertinent parts concerning complaints should be. There should be a place for the student to acknowledge their rights with a signature or at the very least, initials.

(b) In addition to being in the catalog and enrollment agreements, the entire statute (RCW 28C.10.12) should be posted in a conspicuous place in each classroom, much like a Worker's Rights under OSHA are; alternatively, it should be posted in a conspicuous place in the school, like a bulletin board on the premises.

(c) Alternatively or additionally, it could be placed on a separate piece of paper with the requirement that it be signed by the student and that the school retain a copy of such a disclosure in its records, as well as give one to the student.

(d) If these schools have websites, a link should be provided to the Washington State Law (RCW 28C.10.12) and it should be promoted on a link stating "Student's Rights under Washington State Law."

Why: Unfortunately, enrollment agreements and specifically catalogs, are akin to rental car contracts. Many students simply do not read them and then are unaware of their rights. Educating students about their rights under the law and the fact that these schools will be aware that these students are knowledgeable will provide a powerful disincentive to deceive students.

Why: Merely citing a entire chapter of law is not useful to many students who will not be inclined to or lack the recourses to research the law. By citing the pertinent parts of the law the student will be alerted to their rights without having to do independent research.

Why: Unfortunately, many of the persons who choose to attend private vocational schools are first generation college attendees and are not among the more sophisticated. They are most likely not going to take the time to look up a coded statute to actually see how it might be implemented and therefore might discount or not be aware of what the advantages of filing a complaint are, thus not alerting the Workforce board to problems

with the school.

Cons: It is certainly not the intention to promote the filing of frivolous complaints. However, the law and options and recourse under the law should be made available to consumers. The assumption which some schools might make, that apprising a student of their rights would make them more inclined to file frivolous claims is not persuasive. Surely, the schools would not advocate the Board not making a concerted effort to make students aware of their rights for fear that they might exercise them! As far as expense to the schools, it would appear to be minimal. Enrollment agreements and catalogs are on digital medium and are constantly updated. Placing a piece of paper on a board is obviously not going to be expensive. The fact that many students are not aware of their rights could be construed as indicating that the Board is not doing a good job of informing them of same, and that it should take more aggressive measures to do so.

Sustained Complaints Should Be Posted.

A list of sustained complaints against the school should be posted on the Workforce Board's website, or at the very least, if not on the website of the actual school. The enrollment contract, catalog or if the Workforce board were to adopt it, the posting of the law governing complaints in a conspicuous place in the classroom or a public place at the school, should include the fact that sustained complaints are available online at the Workforce Board website. These complaints should be public knowledge the same way that lawsuits are public knowledge. Presently, people can look up any federal lawsuit, in Pierce County. Linx software allows subscribers to review lawsuits filed in that venue. We have the technology to make this happen and we should do it. The WorkForce Board already publishes the list of schools who have been closed.

Why: This would be a powerful incentive for schools to not "misbehave" and would alert students to prior complaints and issues with the school.

There Should be Language or Rules Promulgated That Make it Clear that a Student Cannot be Expelled for Making a Complaint to the Workforce Board

As I indicated before, many enrollment contracts and catalogs contain provisions which indicate that students can be expelled or placed on probation for "activities" which are detrimental to the school. CRI management have allegedly used the threat of being expelled to curb the desire of some students to complain about unfavorable conditions at the school or misrepresentations the school made. There should be language added to WAC, that would dictate that a school makes clear to a student that they cannot be retaliated against for lodging a complaint with the Workforce Board.

More Proactive Financial and Complaint Investigation

At the hearing two former students from CRI testified how that school deceived the Department of Education and the Workforce Board about its financial condition. It also allegedly did not send the Workforce Board documentation it was required to do by law. In one of these instances, that documentation was the teaching credentials for staff and also documents that would have indicated high staff turnover which is being proposed as a criteria for designating a school at risk. Thus, to some extent, the Workforce Board and the students it protects can be victimized by deceit on the part of a school.

There is obviously not much remedy to catch school owners and administrators who make misrepresentations to the Board in required documentation. The Board has very limited resources. It just should be aware that in the long run, if it is able to expend a little more effort investigating complaints and scrutinizing reports from the school, they may be able to prevent a huge loss such as the half a million dollars the state is out because of CRI.

Student complaints are the proverbial canary in the mine; they are the horn and flashing lights of an oncoming car. Financial distress is the shriek of brakes before the collision when it's already too late.