

Banning Mandatory Arbitration Clauses in College Enrollment Agreements

The State Higher Education Law is amended as follows:

1. Participation agreement.

A. No institution may participate in the general, academic, or other award programs described in this article unless it shall have entered into a written agreement with the corporation under which it shall be bound to comply with all laws and rules applicable to such programs. Each participation agreement shall include the following terms and conditions:

i. An institution shall not, as a condition of any award or loan pursuant to this article, require any student:

- (1) Submit to mandatory arbitration to resolve any matter thereafter arising under such agreement prior to the commencement of any legal action to enforce the provisions of such agreement;
- (2) Resolve a complaint through an internal dispute process;
- (3) Waive any right, forum, or procedure for a violation of any provision of this chapter, including the right to file and pursue a civil action, class action or a complaint with, or otherwise notify, any state agency, other public prosecutor, law enforcement agency, or any court or other governmental entity of any alleged violation; or
- (4) Be prohibited from disclosing, discussing, describing or commenting upon the terms of the agreement or any violation thereof.

ii. An institution shall not threaten, retaliate, or discriminate against any student eligible for such award or loan because of the refusal by such student to consent to mandatory arbitration, to resolve a complaint through an internal dispute process, to waive any right, forum, or procedure for a violation of this chapter, including the right to file and pursue a civil action, class action, or a complaint with, or



otherwise notify, any state agency, other public prosecutor, law enforcement agency, or any court or other governmental entity of any alleged violation, or not to disclose, discuss, describe, or comment upon the terms of the agreement or any violation thereof.

- iii. For purposes of this paragraph, an agreement that requires a student to opt out of a waiver or take any affirmative action in order to preserve their rights is deemed a condition of any award or loan pursuant to this article.
- iv. In addition to injunctive relief and any other remedies available, a court may award a prevailing plaintiff enforcing the plaintiff's rights under this paragraph reasonable attorneys' fees.
- v. Nothing in this paragraph is intended to invalidate a written arbitration agreement that is otherwise enforceable under the Federal Arbitration Act.

B. The participation agreement may contain such other terms and conditions, consistent with such applicable laws, rules, and procedures, as the president may require in accordance with rules adopted for this purpose by the board and shall be developed in consultation with the commissioner of education.

C. In accordance with rules adopted by the board for this purpose, the president may suspend, limit, or terminate an institution's participation in these programs in the event it shall be determined after a hearing conducted in accordance with the state administrative procedure act that the institution has violated any applicable laws, rules, or procedures provided for under the agreement in accordance with law and the rules of the board.

- 2. This act shall take effect on January 1, 20XX. Effective immediately, the addition, amendment, and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made and completed on or before such effective date.