STATE OF NEW YORK

7699

IN SENATE

January 7, 2022

Introduced by Sen. STAVISKY -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the education law, in relation to preventing institutions from implementing contingencies on the receipt of state funding

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision 1 of section 665-a of the education law, as amended by a chapter of the laws of 2021 amending the education law relating to preventing institutions from implementing contingencies on the receipt of state funding, as proposed in legislative bills numbers S. 4237-A and A. 3136-A, is amended and a new subdivision 3 is added to read 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 relating to any award or loan 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; and~~

~~(4) be prohibited from disclosing, discussing, describing or commenting upon the terms of the agreement or any violation thereof.~~

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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~~(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 their 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.

3. Contingencies on the receipt of state funding. (a) An institution shall not, as a condition of any award or loan pursuant to this article, require any student to:

(i) submit to mandatory arbitration to resolve any matter relating to such award or loan prior to the commencement of any legal action to enforce an entitlement thereto;

(ii) resolve a complaint relating to any award or loan through an internal dispute process;

(iii) 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

(iv) be prohibited from disclosing, discussing, describing or commenting upon the terms of the agreement or any violation thereof.

(b) 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.

(c) For purposes of this subdivision, 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 that violates paragraph (a) of this subdivision.

(d) In addition to injunctive relief and any other remedies available, a court may award a prevailing plaintiff enforcing their rights under this subdivision reasonable attorneys' fees.

(e) Nothing in this subdivision is intended to invalidate a written arbitration agreement that is otherwise enforceable under the Federal Arbitration Act.

§ 2. This act shall take effect on the same date and in the same manner as a chapter of the laws of 2021 amending the education law relating to preventing institutions from implementing contingencies on the receipt of state funding, as proposed in legislative bills numbers S. 4237-A and A. 3136-A, takes effect.