

Misrepresentation

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MISREPRESENTATION

Misrepresentation is defined as a false, incorrect, or misleading statement made directly or indirectly to a student, prospective student, any member of the public, an accrediting agency, a state agency, or the Department.

A *misleading statement* includes any statement that has the likelihood or tendency to mislead. Misrepresentation includes any statement that omits information in such a way as to make the statement false, erroneous, or misleading. A statement may still be misleading, even if it is true on its face.

A statement is any communication made in writing, visually, orally, or through other means. This definition applies to statements made by an eligible school, the school's representatives, or any ineligible institution, organization, or person with whom the eligible institution has an agreement to provide educational programs or those that provide marketing, advertising, recruiting, or admissions services.

Misrepresentation includes the dissemination of a student endorsement or testimonial that a student gives either under duress or because the school required the student to make such an endorsement or testimonial to participate in a program.

A school, one of its representatives, or a related party engages in *substantial misrepresentation* when it misrepresents the nature of its educational program, its financial charges, or the employability of its graduates. Substantial misrepresentation is defined as any misrepresentation on which the person to whom it was made could reasonably be expected to rely, or has reasonably relied, to that person's detriment. Substantial misrepresentations are prohibited in all forms, including those made in any advertising or promotional materials or in the marketing or sale of courses or programs of instruction offered by the institution. A school is responsible for the harm caused by its misrepresentations, even if such misrepresentations cannot be attributed to institutional intent or knowledge and are the result of inadvertent or innocent mistakes.

Sanctions

If the Department determines that an eligible institution has engaged in substantial misrepresentation, it may

- revoke the eligible institution's program participation agreement if the institution is provisionally certified under 34 CFR 668.13(c);
- impose limitations on the institution's participation in the FSA programs if the institution is provisionally certified under 34 CFR 668.13(c);
- deny participation applications made on behalf of the institution; or
- initiate a proceeding against the eligible institution under subpart G of 34 CFR 668.

Misrepresentation Regulations

34 CFR 668.72 Nature of educational program

Misrepresentation concerning the nature of an eligible institution's educational program includes but is not limited to false, erroneous, or misleading statements concerning—

- (a) The particular type(s), specific source(s), nature and extent of its institutional, programmatic, or specialized accreditation;
- (b)(1) Whether a student may transfer course credits earned at the institution to any other institution;
- (2) Conditions under which the institution will accept transfer credits earned at another institution;
- (c) Whether successful completion of a course of instruction qualifies a student—
 - (1) For acceptance to a labor union or similar organization; or
 - (2) To receive, to apply to take, or to take the examination required to receive, a local, state, or federal license, or a nongovernmental certification required as a precondition for employment, or to perform certain functions in the states in which the educational program is offered, or to meet additional conditions that the institution knows or reasonably should know are generally needed to secure employment in a recognized occupation for which the program is represented to prepare students;
- (d) The requirements for successfully completing the course of study or program and the circumstances that would constitute grounds for terminating the student's enrollment;
- (e) Whether its courses are recommended or have been the subject of unsolicited testimonials or endorsements by—
 - (1) Vocational counselors, high schools, colleges, educational organizations, employment agencies, members of a particular industry, students, former students, or others; or
 - (2) Governmental officials for governmental employment;
- (f) Its size, location, facilities, or equipment;
- (g) The availability, frequency, and appropriateness of its courses and programs to the employment objectives that it states its programs are designed to meet;
- (h) The nature, age, and availability of its training devices or equipment and their appropriateness to the employment objectives that it states its programs and courses are designed to meet;
- (i) The number, availability, and qualifications, including the training and experience, of its faculty and other personnel;
- (j) The availability of part-time employment or other forms of financial assistance;
- (k) The nature and availability of any tutorial or specialized instruction, guidance and counseling, or other supplementary assistance it will provide its students before, during or after the completion of a course;
- (l) The nature or extent of any prerequisites established for enrollment in any course;
- (m) The subject matter, content of the course of study, or any other fact related to the degree, diploma, certificate of completion, or any similar document that the student is to be, or is, awarded upon completion of the course of study;
- (n) Whether the academic, professional, or occupational degree that the institution will confer upon completion of the course of study has been authorized by the appropriate state educational agency. This type of misrepresentation includes, in the case of a degree that has not been authorized by the appropriate state educational agency or that requires specialized accreditation, any failure by an eligible institution to disclose these facts in any advertising or promotional materials that reference such degree; or
- (o) Any matters required to be disclosed to prospective students under §§ 668.42 and 668.43 of this part.

(Authority: 20 U.S.C. 1094)

34 CFR 668.73 Nature of financial charges

Misrepresentation concerning the nature of an eligible institution's financial charges includes but is not limited to false, erroneous, or misleading statements concerning—

- (a) Offers of scholarships to pay all or part of a course charge;
- (b) Whether a particular charge is the customary charge at the institution for a course;
- (c) The cost of the program and the institution's refund policy if the student does not complete the program;
- (d) The availability or nature of any financial assistance offered to students, including a student's responsibility to repay any loans, regardless of whether the student is successful in completing the program and obtaining employment; or
- (e) The student's right to reject any particular type of financial aid or other assistance, or whether the student must apply for a particular type of financial aid, such as financing offered by the institution.

(Authority: 20 U.S.C. 1094)

34 CFR 668.74 Employability of graduates

Misrepresentation regarding the employability of an eligible institution's graduates includes but is not limited to false, erroneous, or misleading statements concerning—

- (a) The institution's relationship with any organization, employment agency, or other agency providing authorized training leading directly to employment;
- (b) The institution's plans to maintain a placement service for graduates or otherwise assist its graduates to obtain employment;
- (c) The institution's knowledge about the current or likely future conditions, compensation, or employment opportunities in the industry or occupation for which the students are being prepared;
- (d) Whether employment is being offered by the institution or that a talent hunt or contest is being conducted, including but not limited to the use of phrases such as "Men/women wanted to train for * * *," "Help Wanted," "Employment," or "Business Opportunities";
- (e) Government job market statistics in relation to the potential placement of its graduates; or
- (f) Other requirements that are generally needed to be employed in the fields for which the training is provided, such as requirements related to commercial driving licenses or permits to carry firearms, and failing to disclose factors that would prevent an applicant from qualifying for such requirements, such as prior criminal records or preexisting medical conditions.

(Authority: 20 U.S.C. 1094)