



Hawaii Post-Secondary Education Authorization Legislative Report

In Accordance with Act 180 (SLH 2013)

Prepared by the
HAWAII POST-SECONDARY EDUCATION AUTHORIZATION PROGRAM
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
STATE OF HAWAII
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HAWAI'I POST-SECONDARY EDUCATION AUTHORIZATION LEGISLATIVE REPORT

Introduction

Act 180 (SLH 2013) required the Director of Commerce and Consumer Affairs to report to the legislature on the status of the newly-established Hawai'i Post-Secondary Education Authorization Program (HPEAP) no later than twenty days prior to the convening of the regular sessions of 2014 and 2015. The report should include:

- 1) The status of any rulemaking, including interim rules;
- 2) The number of private colleges or universities, seminaries, and religious training institutions that have applied for authorization under this Act;
- 3) A summary of all complaints received, if any, against any private college or university, seminary, and religious training institution authorized pursuant to this Act;
- 4) A summary of all investigations, if any, conducted pursuant to this Act;
- 5) The number of private colleges or universities, seminaries, and religious training institutions, if any, that have closed during the reporting period;
- 6) An update on the efforts to implement the provisions of this Act;
- 7) An update of the budget as it relates to the implementation of this Act;
- 8) Any proposed amendments to the authorization fee structure;
- 9) A summary of the efforts to enter into a reciprocity agreement with any other state, including the status of any reciprocity agreement; and
- 10) Any proposed legislation.

Background.

The state legislature in 2013 passed Senate Bill 46, S.D.2, H.D.3, C.D.1, and on June 25, 2013, Act 180 (2013) was signed into law, effective July 1, 2013. Act 180 among other things established a Post-Secondary Education Authorization Program (HPEAP), administered by the Director of Commerce and Consumer Affairs. Act 180 was subsequently codified as Hawaii Revised Statutes (HRS) Chapter 305J. The deadline for all accredited, degree-granting post-

secondary educational institutions physically operating in Hawaii to become authorized under HPEAP was July 1, 2014.

Title IV of the Higher Education Act of 1965, as amended, 20 U.S.C. §1070 *et seq.* establishes several types of federal student aid through programs administered by the U.S. Department of Education (“USDOE”). To participate in Title IV programs, a school must be an educational institution in any State that is legally authorized within the State to provide a program of education beyond secondary education. 20 U.S.C. §1001(a)(2), §1002. In October 2010, the USDOE adopted regulations that among other things provide that a school is legally authorized by a State only if the State has a process to review and appropriately act on complaints concerning the institution including enforcing applicable State laws. 34 C.F.R. §600.9(a)(1). Also, the school must be established by name as an educational institution by a State through a charter, statute, constitutional provision, or other action issued by an appropriate State agency or State entity. 34 C.F.R. §600.9(a)(1)(i)(A).

Implementation of the Act and Establishment of HPEAP

HPEAP has been working with stakeholders including the USDOE to ensure that Hawaii schools and Hawaii students will continue to fully participate in and benefit from Title IV programs. HPEAP also has been keeping abreast of the USDOE’s plan to reissue new state authorization for distance education regulations. Implementation of complaints processing procedures has begun, and authorization inquiries continue to come in. HPEAP continues to operate with one staff member (and two volunteer reviewers) in temporary office space because the program is unable to be self-sufficient at this time. It is hoped that adequate funding will be determined so that another staff member can be hired to address complaints and enforcement activities and so that appropriate office space can be coordinated.

Status of any rulemaking, including interim rules.

Interim rules have been drafted and will be circulated to authorized institutions. The rules primarily address three areas: 1) the “non-triggers” for physical presence. This is the area that out-of-state institutions frequently inquire about; 2) the responsibility of the authorized institution to provide information to students regarding its authorization in Hawaii and HPEAP’s complaints process once the institution’s administrative remedies are exhausted; and 3) the form of the records to be transmitted to HPEAP upon closure of an authorized institution. It is hoped that HPEAP will be able to hold a public hearing on the interim rules after publication of the notice in the next few months.

The number of private colleges or universities, seminaries, and religious training institutions that have applied for authorization under the Act.

At present, 22 institutions have applied for and been authorized. The roster of institutions can be found on the HPEAP website at <http://cca.hawaii.gov/hpeap/authorized-schools/>.

Complaints, Investigations and School Closures.

Information on the complaints process was placed on the HPEAP website at <http://cca.hawaii.gov/hpeap/student-complaint-process/>. The forms to be utilized can also be found on the website. HPEAP received one complaint. There were no closures of authorized institutions. However, HPEAP monitored the development of a teach-out agreement between an institution that closed instead of applying for authorization and an authorized institution. HPEAP also monitored the possible sale or closure of an authorized institution. The situation with that institution is still pending.

Budget Update and Proposed Amendments to Fee Structure.

Act 180 provided for a \$400,000 general fund appropriation for FY2013-2014. No general funds were provided for FY2014-2015, but a special funds ceiling of \$263,796 was authorized to allow the program to utilize the cash balance from the initial \$400,000 general fund start-up monies. The law provides for a \$10,000 fee for the initial authorization and for each biennial reauthorization. The department has attempted to minimize costs to the extent feasible, but notes that the program at the present time is not self-sufficient and will likely require an infusion of general funds in the near future. Adequate funding will be critical as the program begins to receive and investigate more student complaints or engages in enforcement as required under Title IV and under any proposed reciprocity agreement. The workload of the HPEAP Administrator continues to increase.

HPEAP is also proposing a complaints administration fee schedule so that the program can be fully implemented as provided for in HRS section 305J-6(d). The primary goal of the fee schedule is to address public post-secondary institutions in Hawaii. These institutions are not required to be authorized by HPEAP but student complaints would need to be investigated by the program. Under the current funding structure, the cost of investigation and enforcement of those complaints would be borne by other schools authorized by HPEAP. A notice of public hearing will be published, and the hearing will be held shortly.

Reciprocity Agreement

HPEAP has devoted its efforts to getting the program up and running, rulemaking, fee structure, and potential school closures. The priority at this point in time is to monitor the state-by-state adoption of SARA, evaluate concerns about SARA from a consumer protection perspective, and monitor the level of interest from the Hawaii-based schools. We will need to ensure adequate funding and staffing so that the complaints processing part of the law can be successfully implemented. We are cognizant of the efforts being made to establish reciprocity agreements among the states. The HPEAP Administrator participates as much as possible in all informational briefings.

Proposed Legislation

The Department is proposing legislation to clarify that institutions may request an administrative hearing for review pursuant to HRS chapter 91 for all proceedings concerning denials, suspensions, or terminations. Currently, the law only provides that an institution may request a hearing if the institution was placed on probation under certain conditions.

Conclusion

The Department was tasked by Act 180 with establishing a program to comply with 34 C.F.R. §600.9. Since the law was enacted on June 25, 2013, the department has worked expeditiously to implement the new law. HPEAP is operational but the program is currently not self-sufficient. HPEAP will continue to work with stakeholders including the USDOE to ensure that Hawaii schools and Hawaii students will continue to fully participate in and benefit from Title IV programs.