

MANDATORY PRE-DISPUTE ARBITRATION AND CLASS ACTION WAIVERS

As a condition for enrollment, some colleges [include a requirement](#) in enrollment contracts that students waive their rights to pursue litigation to recoup losses sustained as a result of misconduct by the colleges. Defrauded students are instead forced into arbitration, a private resolution process through which colleges enjoy insulation from public legal action and public scrutiny. Students are also often prevented from joining together in class action cases, which keeps similar claims of misconduct hidden from public view.

Not generally found in traditional higher education, enrollment contracts—formal, legalistic agreements forced on incoming students—are designed to protect the financial interests of schools by limiting students' legal rights should something go wrong. Mandatory pre-dispute arbitration clauses in college enrollment contracts have been commonplace at for-profit institutions.

Mandatory arbitration creates an environment of secrecy about potential problems at colleges, as it prohibits students from seeking redress in court until they have first gone through the arbitration process. During that time, students are usually subject to gag clauses that prevent them from sharing information about their complaint and the results of the arbitration with outside parties. This secrecy prevents the government from determining if a school routinely defrauds consumers.

Students going through arbitration are less likely to receive a favorable decision, and researchers from the [Economic Policy Institute](#) found that **only 9 percent of disputes that go to arbitration end with relief for consumers.**

In 2016, mandatory arbitration clauses were effectively [banned](#) in higher education through a regulatory requirement that prohibited schools participating in the Direct Loan program from enforcing such provisions. However, in 2019, the previous administration issued a reversal—effectively allowing them back into contracts beginning in [July 2020](#).

In 2020, [a court also upheld](#) the 2016 arbitration and class action waiver bans as not in conflict with the Federal Arbitration Act. That same court also held that the Department of Education did not exceed its authority under the Higher Education Act in promulgating the rule. The Department can, consistent with the requirements set by the Administrative Procedure Act, reinstate, through rulemaking, the prohibition on mandatory arbitration and class action waivers.

To support regulations that better ensure the Department can effectively protect students and oversee institutions, the Department should restore the ban on forced arbitration agreements and class action waivers, as well as prohibit non-disclosure requirements.