

# POLITICO

## Senate Democrats, advocates push Education Department to go further on arbitration

By Allie Grasgreen Ciaramella and Kimberly Hefling

04/13/2016 07:10 PM EDT

Consumer advocates and Senate Democrats say they may have celebrated too quickly when the Education Department [said](#) last month it wanted to end forced arbitration clauses in for-profit student enrollment agreements.

The same groups now are calling for a full-ban on the agreements after a department official surprised them by expressing support for a proposal just a few days later that would ban clauses that restrict groups of students from filing suit together - but wouldn't apply to individuals who want to sue.

Lawmakers' and advocates' concerns played out Wednesday, with Sen. [Dick Durbin](#) saying from the Senate floor that he hopes department officials "have the resolve and the political will to get this done," and veterans' groups [writing](#) to Education Secretary John B. King Jr., labeling the department's handling of the issue "puzzling."

Bob Shireman, senior fellow at The Century Foundation and a former high-ranking department official who has been critical of the for-profit sector, said he simply doesn't know what happened.

"It was confusing and seemed inconsistent," he said.

Durbin and Sens. [Sherrod Brown](#), [Al Franken](#) and [Richard Blumenthal](#) are also among those who want more aggressive action from the department on the issue.

A department spokeswoman declined to comment Wednesday on the agency's [proposal](#), but a department lawyer explained his agency's reasoning last month during a negotiated rulemaking session. He said officials support a Durbin [bill](#) that would have Congress issue a full ban, but they don't believe the agency can do so on its own.

"We're operating with what we think is the best argument that we can make under the existing authority we have," Deputy Assistant General Counsel Fred Marinucci said at the time.

But Brown said Congress is too much in the pocket of the for-profit education sector and Wall Street to take action, and the department should act to help these students.

"They are simply abdicating their responsibility if they say let Congress do it. Of course Congress should do it, but the reality is that Secretary King knows that Congress isn't going to do it," Brown said in an interview. "He needs to take responsibility to do it. They need to do everything possible they can within the law, and we think they can do this within the law."

The for-profit college industry has said that using a third-party arbitrator to settle complaints is quicker and less costly for both parties. But consumer advocates argue that the collapse of the now-defunct, once-massive Corinthian Colleges chain shows the pitfalls of the practice, since the school was able for years to hide wrongdoing by largely avoiding public court proceedings and carrying out arbitration in secret.

Last month, the department issued a statement [saying](#) it wanted to end the "outrageous practices" that stem from the agreements, such as "secret tribunals" to resolve disputes. Education Undersecretary Ted Mitchell

said "legal aid, veteran, consumer, and student advocacy groups have all shared with us how mandatory arbitration has harmed students across the country. We heard them and agree."

Department officials saw an opening in the negotiated rulemaking process, where a committee was nearing the finish line on rules governing loan forgiveness for defrauded students. While the panel showed strong support for banning mandatory arbitration under any circumstance, department officials backed another proposal to forbid the practice only when groups of students filed a complaint.

Julie Murray, an attorney with the consumer group Public Citizen, showed up to announce a 21,000-signature [petition](#) urging the department to revoke federal funding from colleges that use forced arbitration. (Nine Senate Democrats, including Durbin and Brown, delivered a similar [letter](#) in February.)

"The department has solid legal authority to take either option, and can do so without action by Congress," she told POLITICO.

The department doles out \$130 billion in financial aid each year, and for-profit colleges can obtain up to 90 percent of their revenues from federal funds.

"Since the Department of Education is financing these schools - many of them, they're almost financing the entire school - it certainly is appropriate for the integrity of the program for the secretary to object to the use of forced arbitration," Shireman said. "The department has both the responsibility and the authority to address an emerging problem like this."

Since the committee didn't come to a consensus, any limits on arbitration are now in the department's hands.

Noah Black, a spokesman for the Association of Private Sector Colleges and Universities, said it doesn't support either proposal.

"I don't think either of those proposals dramatically change our concerns, which is the attempt to make arbitration look nefarious or anti-student," Black said.

Arbitration agreements have come into vogue in the last few decades across consumer businesses like credit card companies, as APSCU pointed out after the negotiated rulemaking panel [failed](#) to reach consensus.

But the clauses are virtually unheard of among nonprofit colleges, and critics including Sen. [Elizabeth Warren](#) - who appeared at the normally sleepy regulatory discussions to urge the department to ban forced arbitration - question whether they're appropriate in any sectors of higher education.

"This should be a pretty simple calculation for schools," Warren told the committee last month. "If you don't cheat, you won't get sued. And if you don't like that, find another business."

Public Citizen is drafting additional comments detailing what it describes as the proposal's flaws. Among them, Murray says, are that the language only covers federal student loan borrowers - excluding veterans who attend school using GI Bill benefits and don't need loans. It's unclear whether the scope of covered claims includes marketing misdeeds, she said, as well as unlawful conduct that occurred before a complaining student enrolled.

"The approach the department supported at negotiated rulemaking - it's not going to solve the problem for students," Murray said. "It doesn't go far enough to protect students and the federal investment."

The department is aiming to publish final regulations by Nov. 1 so they can take effect next July.