

**Presented:**  
30<sup>th</sup> Annual School Law Conference

February 19-20, 2015  
Austin, Texas

**Home School or Sham School?**  
*An Overview of Legal Issues*  
*Pertaining to High School Diploma Mills*

**Lisa A. Brown**

# **Home School or Sham School?**

## *An Overview of Legal Issues Pertaining to High School Diploma Mills*



Presented to the University of Texas School Law Conference  
February 2015

Lisa A. Brown  
Thompson & Horton LLP  
3200 Southwest Freeway, Suite 2000  
Houston, Texas 77027  
(713) 554-6741

[lbrown@thompsonhorton.com](mailto:lbrown@thompsonhorton.com)  
[www.thompsonhorton.com](http://www.thompsonhorton.com)

© 2015 Thompson & Horton LLP

## I. Defining the Problem

In recent years, due to the increased popularity of the Internet, the number of high school diploma mills has grown exponentially.<sup>1</sup> For a small flat fee, often as low as \$199, diploma mills will print diplomas and transcripts for students who complete a simple on-line exam or workbook.<sup>2</sup> The students will then attempt to use this “credential” to enroll in college, join the armed forces, or obtain student financial aid. The proliferation of fraudulent diplomas has had a significant impact on the student financial aid program administered by the U.S. Department of Education. Students with fake diplomas often lack the academic background to succeed in higher education; therefore, many quickly flunk out of school or withdraw after spending their federal aid.<sup>3</sup> In one federal investigation of 13 questionable on-line high schools, investigators found that approximately 8,000 students with fake diplomas received more than \$42.8 million in federal student aid.<sup>4</sup>

Although the diploma mill problem is a national one, Texas appears to a breeding ground for such operations, due in large part to the lack of comprehensive regulation of private schools. In 2012, a news station in Houston famously helped a dog obtain a high school diploma from an on-line school.<sup>5</sup> Some public school personnel inadvertently have contributed to the diploma mill problem by steering potential drop-outs to questionable schools, which enables the school district to record the student’s departure as a transfer rather than as a drop-out.<sup>6</sup>

The Texas Attorney General has been active in pursuing diploma mills via the Texas Deceptive Trade Practices Act. In April 2014, the Attorney General sued and successfully obtained an injunction against an on-line school called Lincoln Academy that had issued diplomas to students who paid a fee and passed an easy on-line exam.<sup>7</sup> In December 2014, the Attorney General filed suit against Marque Learning Center, a self-proclaimed “home school” provider that granted diplomas to students who passed an unproctored test.<sup>8</sup> The lawsuit alleges

---

<sup>1</sup> U.S. Dep’t of Educ., Office of Inspector General, FINAL MANAGEMENT INFORMATION REPORT (Jan. 25, 2010) [hereinafter OIG Report]; “Are Current Safeguards Protecting Taxpayers Against Diploma Mills?”: Hearing Before the Subcommittee On 21<sup>st</sup> Century Competitiveness of the House Comm. on Education and the Workforce, 109<sup>th</sup> Cong. (Sept. 23, 2004).

<sup>2</sup> Federal Trade Commission, “FTC Action Halts Online High School Diploma Mill That Made \$11 Million Selling Worthless Diplomas to Students,” 9/19/14 ([www.ftc.gov/news-events/press-releases/2014/09/](http://www.ftc.gov/news-events/press-releases/2014/09/)); N.Y. TIMES, “Poor Grades Aside, Top Athletes Get to College on \$399 Diploma,” 11/27/05, p. A1.

<sup>3</sup> See FEDERAL REGISTER, Vol. 75, No. 209, p. 66889, 10/29/10 (students with a diploma mill credential do not have a “sufficient foundation for success” in higher education).

<sup>4</sup> OIG Report, p. 4.

<sup>5</sup> See “Dog gets high school diploma as so-called ‘degree mills’ flourish under Texas law,” KHOU, Channel 11/Houston, Feb. 8, 2012 ([www.khou.com/story/news/2014/07/18/11666374/](http://www.khou.com/story/news/2014/07/18/11666374/)).

<sup>6</sup> “How ‘Private Schools’ Help Lower Texas’ Dropout Numbers,” PBS Frontline Program, Sept. 25, 2012 ([www.pbs.org/wgbh/pages/frontline/education/dropout-nation/how-private-schools-help-lower-texas-dropout-numbers/](http://www.pbs.org/wgbh/pages/frontline/education/dropout-nation/how-private-schools-help-lower-texas-dropout-numbers/)).

<sup>7</sup> *State of Texas v. Lincoln Academy et al*, Cause No. 2014-14329, in the 295th Judicial District Court of Texas. In August 2014, Lincoln Academy closed down and was ordered to pay \$1.4 million in restitution to students who had purchased Lincoln “diplomas.” See [www.texasattorneygeneral.gov/oagNews/release.php?id=4820](http://www.texasattorneygeneral.gov/oagNews/release.php?id=4820).

<sup>8</sup> *State of Texas v. Marque Learning Center et al*, Cause No. 2014-70768, in the 80<sup>th</sup> Judicial District Court of Texas. According to the lawsuit, Marque employs no teachers. Customers simply pay fees between \$99 and \$1000

that the school encouraged students to falsely indicate “home school” status on their federal financial aid forms. In January 2015, the Attorney General filed suit against an entity called Southwest Academy that awards diplomas to students who complete a simple take-home exam that is not secure or validated.<sup>9</sup>

Despite the efforts of the Texas Attorney General, the diploma mill industry has been difficult to contain due to the lack of comprehensive regulations and due to the diploma mills’ ability to quickly revise their web sites, change their names, or move to new jurisdictions.<sup>10</sup> This paper will provide an overview of legal issues pertaining to high school diploma mills in Texas. In particular, it will address the diploma mills’ argument that they are a type of “home school” that should be immune from regulation.

## II. Diploma Mills Indicators

Although there is no standard legal definition for a diploma mill, a review of available definitions suggests that the most common element is a diploma that can be obtained for a fee without performing any rigorous academic work. In the federal student aid context, the Department of Education has stated a diploma is “dubious” if the college knows that the student was required to perform “little or no work to receive the diploma.”<sup>11</sup> Similarly, in Texas regulations applicable to law enforcement departments, a diploma mill is an “entity that offers for a fee with little or no coursework, degrees, diplomas, or certificates that may be used to represent to the general public that the individual has successfully completed a program of secondary education or training.”<sup>12</sup>

In addition to the absence of academic rigor, diploma mills often are characterized by the lack of an actual campus; they employ no faculty, deans, or other educators; they promise a diploma in a short amount of time; and they often have a slick web site that is vague when it comes to describing curriculum or courses; they often use names that are similar to legitimate schools, or they name themselves after famous people (*e.g.*, “Lincoln Academy”). Other noteworthy indicators include the following:

**Flat-fee pricing.** Unlike traditional private schools that charge by the course or by the semester, diploma mills tend to charge a flat fee (*e.g.*, \$250 for a diploma). Flat-fee pricing is a “red flag” for diploma mills.<sup>13</sup> To avoid detection on this basis, some on-line providers no longer include the price of their products on their websites.

---

or more and then take a simple and “nonsensical” exam. See “Attorney General Abbott Charges Houston-based ‘Diploma Mill’ Defendants with Fraud,” 12/5/14 ([www.texasattorneygeneral.gov/oagnews/release.php?id=4906](http://www.texasattorneygeneral.gov/oagnews/release.php?id=4906)).

<sup>9</sup> See *State of Texas v. Southwest Academy et al*, Cause No. 2015-00874, In the 234<sup>th</sup> Judicial District Court of Texas.

<sup>10</sup> See Gollin *et al*, “Complexities in Legislative Suppression of Diploma Mills,” STANFORD LAW & POLICY REVIEW (2010) (discussing legislative hurdles in the context of college diploma mills).

<sup>11</sup> FEDERAL STUDENT AID HANDBOOK 2014-2015, pp. 1-6, 1-7.

<sup>12</sup> 37 TEX. ADMIN. CODE § 211.1(19).

<sup>13</sup> See U.S. Dep’t of Educ., “Diploma Mills and Accreditation,” [www2.ed.gov/print/students/prep/college/diplomamills/diploma-mills.html](http://www2.ed.gov/print/students/prep/college/diplomamills/diploma-mills.html); Federal Trade Commission, “Diploma Mills,” [www.consumer.ftc.gov/articles/0206-diploma-mills](http://www.consumer.ftc.gov/articles/0206-diploma-mills); Texas Higher Education Coordinating Board, “Fraudulent or Substandard Degrees,” [www.thecb.state.tx.us/index.cfm?objectid](http://www.thecb.state.tx.us/index.cfm?objectid); see, *e.g.*, *In the Matter of Galiano Career*