

Provider Report No. 3

ANALYSIS OF COMPLAINTS TO THE OVERSEAS STUDENTS
OMBUDSMAN 2011 TO 2016

January 2017

INTRODUCTION

The Overseas Students Ombudsman (OSO) was established in April 2011 to:

- investigate individual complaints about the actions or decisions of private registered education providers in connection with intending, current or former overseas students
- work with private registered education providers to promote best practice handling of overseas students' complaints
- report on trends and broader issues that arise from complaint investigations.

Generally, we will only consider a complaint or appeal if the student has first been through the provider's internal complaints and appeals process. When we finalise an investigation, we reach an outcome that supports either the student, the provider or in some cases, neither when, for example:

- we refer the student back to the provider's internal complaints and appeals process
- where we identify that the student has provided additional evidence to our office that the provider has not had the benefit of seeing first
- where the student withdraws the complaint before our investigation is finalised or the matter lapses¹.

In November 2015 we published a report on our first four years of operations² focussing on compliant issues, trends and outcomes. The outcomes from the top four complaint issues over that period showed that providers had improved in some areas i.e. course progress and provider transfer appeals, but less so in other areas i.e. attendance appeals, fee and refund complaints.

The differing results in complaint outcomes raised three questions:

- Why do providers appear to have improved in some areas and not others?
- Do these trends apply across the board or only for some providers?
- Have providers implemented our recommendations and maintained those improvements?

To answer these questions, we analysed the complaint data relating to the education providers that we received the most complaints and external appeals about in 2011 to 2016³ and report individual results⁴.

This report concerns the complaints and appeals received in 2011 to 2016 about the provider we received the third-most complaints about. At the request of the provider, we have de-identified this report.

¹ Where a complainant does not respond to telephone calls or written correspondence from the OSO in relation to the investigation

² http://www.ombudsman.gov.au/_data/assets/pdf_file/0024/37329/Overseas-Students-Ombudsman-report-on-first-four-years-of-operation,-November-2015.pdf

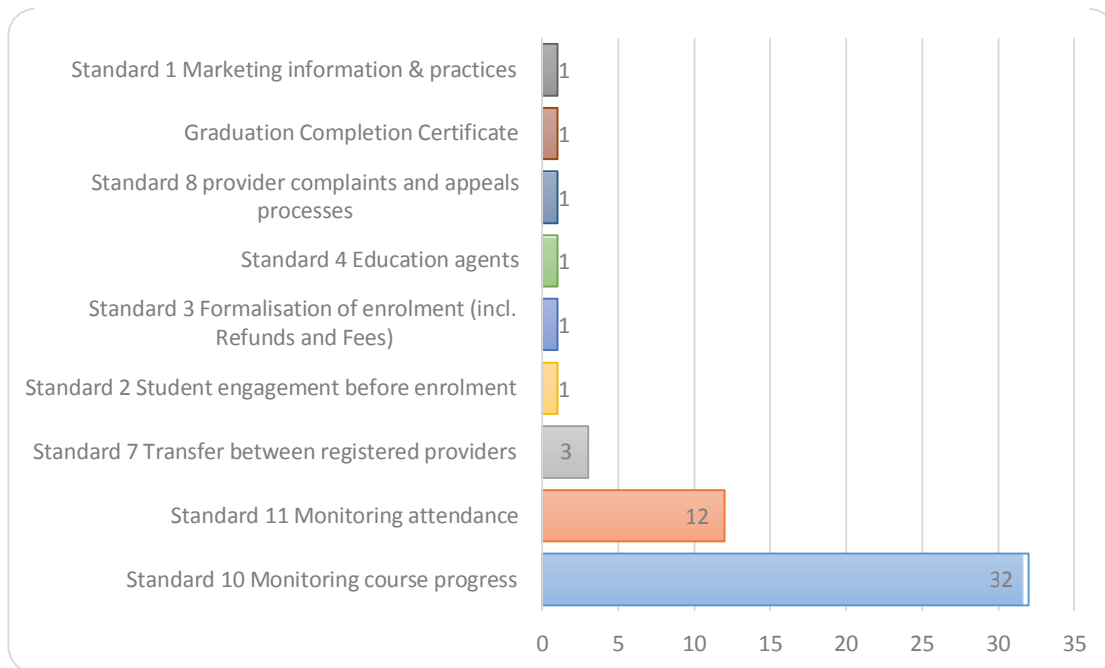
³ 11 April 2011 to 10 April 2016

⁴ The first report concerning UTS: Insearch, was published August 2016. The second report was published in December 2016 <http://www.ombudsman.gov.au/about/overseas-students/oso-publications/reports/education-provider-reports>

COMPLAINT ISSUES

In our first five years of operation the OSO finalised 52 complaints/appeals about the provider, which raised 53 issues⁵. The chart below shows the main complaint/appeal issues for the provider.

Figure 1. Complaint/appeal issues during the OSO’s first five years of operation for the provider we received the third most complaints about⁶



Monitoring attendance and course progress

Education providers registered to deliver education services to international students are required under both s19 (2) of the *Education Services for Overseas Students Act 2000* (ESOS Act) and Standards 10 and 11 of the National Code of Practice for Providers of Education and Training to Overseas Students 2007 (the National Code)⁷, to report students who fail to maintain satisfactory attendance or course progress, to the Department of Immigration and Border Protection (DIBP).

Education providers must have and implement appropriate attendance and course progress policies, which must be provided to students (Standard 10 and 11).

Before a student is reported, the student has the opportunity to firstly appeal the ‘intention to report’ through the provider’s internal complaints and appeals process and, if their appeal is unsuccessful, to then contact the OSO.

Almost 85% of complaints/appeals received by the OSO from students of this provider related to the provider’s intention to report them to the DIBP for failing to maintain satisfactory attendance or course progress.

⁵ A complaint may contain more than one issue.

⁶ For complaints/appeals finalised between 11 April 2011 and 10 April 2016.

⁷ <https://www.legislation.gov.au/Series/F2007L00646>

This is comparable with the other providers we received the most complaints about where the top three issues are also monitoring attendance, monitoring course progress and transfers between providers. We consider this to be more a reflection of the higher number of students at these larger institutions accessing their appeal rights to challenge their provider's intention to report them to DIBP, rather than a systemic issue relating to these providers.

COMPLAINT OUTCOMES

An analysis of complaints data for this provider shows the OSO has found in support of the provider in the majority of cases.

Course Progress

In 2012, the OSO wrote to the provider setting out issues we had identified during the investigation of three complaints/appeals from its students about course progress. We recommended that the provider update its course progress policy to clarify the point at which it determines that a student is 'at risk' of failing to meet course progress requirements and when an intervention strategy is activated.

In response to our recommendations, the provider updated its policy in 2013.⁸ The revised policy clarified when the student is determined to have failed satisfactory course progress and a notice of intention to report the student to the DIBP is sent to the student. We found in favour of the provider in all subsequent appeals about course progress under the revised 2013 policy.⁹

Course attendance

In 2013 our investigations of complaints/appeals about course attendance supported the student on two occasions because the provider had not sent the warning letter to the student before their attendance fell below 80%, as required by Standard 11. Under the provider's attendance policy, it conducted formal attendance checks in week five and seven of the trimester¹⁰. This meant that students whose attendance fell more rapidly than allowed for by the policy, were at risk of failing to meet satisfactory attendance by the beginning of week four.

We recommended that the provider monitor students' attendance and contact them when they are *at risk* of falling below 80% projected attendance, not waiting until a specified week of the trimester to identify any students who are at risk or who have already failed to meet satisfactory attendance.

Following the investigation of these external appeals by the OSO, the provider advised the OSO that it had revised its attendance policy to ensure that students are identified as being *at risk* of falling below 80% projected attendance and before their *actual* attendance falls

⁸ Version 8.1, 29 August 2013

⁹ With the exception of one case which was in support of neither because new information was provided by the student. This information was referred to the provider which agreed to reconsider the appeal in light of the new information.

¹⁰ A defined and formal study period of 13 weeks. Students' attendance is recorded from the start of the second week for each trimester. Week 13 is examinations week for which students are granted full attendance.

below 80%. We welcome this changes and note that this improvement has been maintained in the provider’s current attendance policy.¹¹

The provider’s revision to its course progress and attendance policy and procedures has had a positive impact on its students and its management of complaints. Subsequent OSO complaint investigation outcomes indicate that the provider has maintained these improvements over time. A detailed analysis of the provider’s complaints data regarding complaints/appeals made to the OSO in 2011 to 2016 is set out in the appendix.

Figure 2: Outcomes of complaints about the provider received, investigated and closed by year¹²

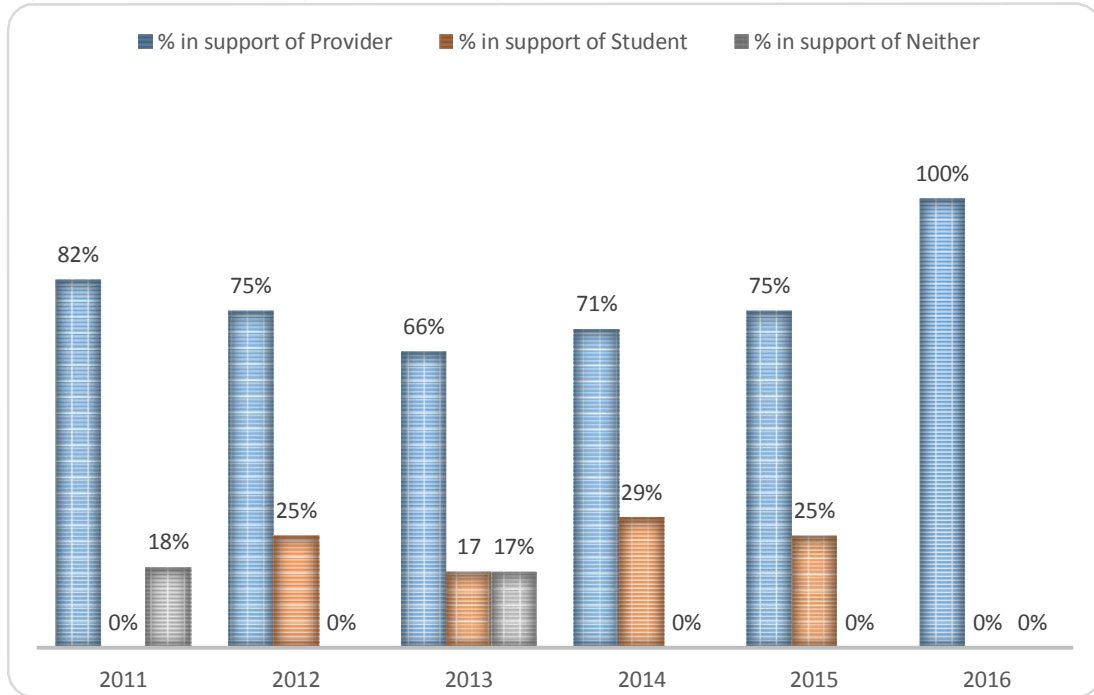


Figure 3a: Average outcomes for investigated complaints for the provider for the period 2011-16¹³

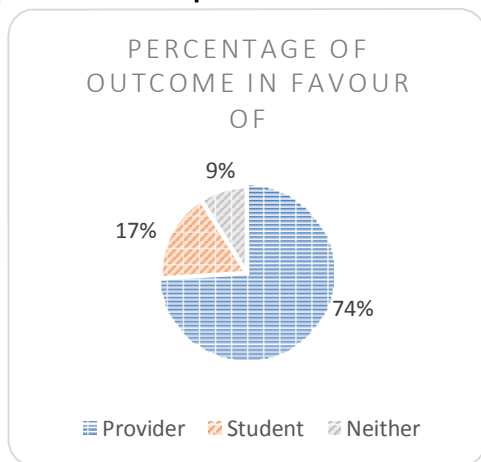
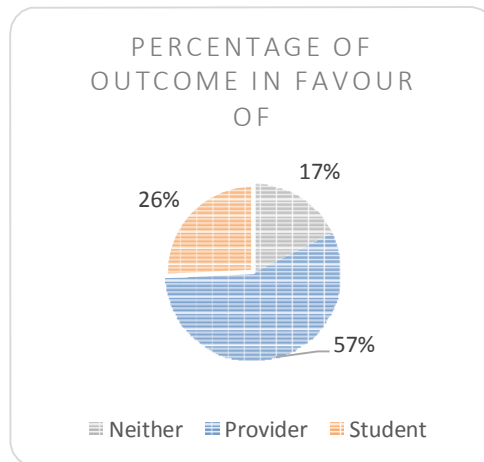


Figure 3b: Outcomes for investigated complaints/appeals about all providers in 2015-16¹⁴



¹¹ Version 4.8, 7 September 2015

¹² This chart includes data from 10 April 2011 to 24 November 2016 which includes complaints received earlier but not finalised with an outcome until after 11 April 2016.

¹³ For complaints/appeals finalised between 9 April 2011 and 31 March 2016.

¹⁴ http://www.ombudsman.gov.au/_data/assets/pdf_file/0024/42378/Overseas-Students-Ombudsman-Annual-Report-2015-16.pdf

CONCLUSION

Most of the complaints the OSO considers about the provider are external appeals by students seeking not to be reported to DIBP for unsatisfactory attendance or course progress. This appears to indicate that the provider is actively advising its students of their right to appeal to the OSO before being reported, as required by Standards 8, 10 and 11 of the National Code 2007.

As previously mentioned, the provider responded positively to our recommendations about course progress policy and procedures for improvements and implemented changes that have benefited not only the students who initially complained/appealed, but also its broader international student population.

In subsequent investigations about course progress issues, we have increasingly found in favour of the provider, which is an indication that the provider has maintained these improvements.

While the OSO receives a high number of complaints about refunds, fee disputes and provider transfers overall, we receive a comparatively lower number of complaints about the provider relating to these issues.

The nature of the complaints that we receive about this provider indicates that it is vigilant about monitoring course progress and attendance as required by the National Code.

Whilst this provider is the third most complained about provider, the number of complaints received is a positive indication that it proactively advises its international students of their right to complain or appeal a decision to the OSO, if the student is not satisfied with the outcome.

APPENDIX: OVERVIEW OF ISSUES AND OUTCOMES

Monitoring course progress (Standard 10) and monitoring attendance (Standard 11)

To maintain the integrity of the Australian Government’s student visa program, education providers are required to monitor the progress and attendance of overseas students and report students who fail to achieve satisfactory course progress and/or attendance to the Department of Education and Training (DET) and the Department of Immigration and Border Protection (DIBP)¹⁵.

The National Code requires education providers to be proactive in warning and assisting students who are at risk of failing to meet course progress and/or attendance requirements.

Course Progress (Standard 10)

Standard 10 requires providers to have and implement appropriate course progress policies and procedures for each course, including an intervention strategy for students who are identified as ‘at risk’ of failing to achieve satisfactory course progress. The provider’s policy must specify the point at which a student is ‘at risk’ of failing to achieve satisfactory course progress requirements, requiring the intervention strategy to be activated. The policy must also identify when the student will be assessed as not achieving satisfactory course progress and sent a Notice of Intention to Report (NOIR).

International student appeals against the intention to report them to DIBP for unsatisfactory course progress were the largest complaint type the OSO received about the provider, in our first five years of operation.

We investigated 32 appeals from students who had received a NOIR from the provider due to unsatisfactory course progress. In the majority of these cases we found in support of the provider. In two cases we found in support of neither: in one case this was because new information was provided by the student and the provider agreed to reconsider the appeal in light of the new information and, in another, the student withdrew the appeal after we had commenced investigating but before we had made a decision.

Table A: Course Progress Appeals (Standard 10) outcomes

Total Received 32	NOT INVESTIGATED	N/A	0	0
	INVESTIGATED	Outcome Supports Provider	27	32
		Outcome Supports Student	3	
		Outcome Supports Neither	2	

As discussed above, the provider made improvements to its course progress policy in 2013 in response to our recommendations.

¹⁵ The authority for this is contained in s19 of the *Education for Overseas Students Act 2000* (ESOS Act)

In 2014 we discussed with the provider our observations that education providers usually send the NOIR at the end of the second study period whereas this provider’s policy provides students with a third trimester to improve their course progress before it issues the NOIR. We accepted that this process was substantially compliant with Standard 10 and, given this does not generally disadvantage students, applied this view to our subsequent investigations of Standard 10 appeals.

Since 11 April 2016, the OSO has received three appeals/complaints and finalised two investigations about this provider in relation to course progress issues. In both of the cases we investigated we found in support of the provider; we did not investigate the third case as the student withdrew the appeal.¹⁶

To assist other providers improve their monitoring and reporting on course progress, the OSO published an issues paper in May 2015 on course progress and attendance, reporting on the systemic issues we'd seen up to that point across many providers.¹⁷ The aim was to share the learnings from the providers we had investigated, to help all providers avoid common errors and implement improvements highlighted in our investigations.

We note that DET is currently reviewing the National Code and that providers’ obligations in relation to course progress may change as a result.

Course Attendance (Standard 11)

Under standard 11 of the National Code, providers are required to have and implement appropriate documented attendance policies and procedures for each course. The intent of Standard 11.4 is for providers to contact and counsel students before their projected attendance drops below 80% so that these students have a reasonable chance of maintaining their attendance at a level that will not require the provider to report them for breaching their visa conditions.

During the five year period from 2011 to 2016, we investigated 11 appeals from students who had been notified of this provider’s intention to report the student for unsatisfactory attendance. In the majority of these cases we found in support of the provider.

Table B: Course Attendance (Standard 11) Outcomes

Total Received 12	NOT INVESTIGATED	Withdrawn	1	1
	INVESTIGATED	Outcome Supports Provider		7
		Outcome Supports Student		2
		Outcome Supports Neither		2
			11	

We did not investigate one because the student withdrew the appeal.

¹⁶ Version 8.10, 7 September 2015

¹⁷ <http://www.oso.gov.au/publications-and-media/reports/issues-papers/>

In the two cases where the OSO outcome supported neither the provider nor the student, one complaint was considered by the then Migration Review Tribunal (MRT)¹⁸ and for the other, the OSO decided to refer the case back to the provider to reconsider in light of new evidence that the student had presented to the OSO. We welcomed the provider's decision to reopen and reassess the appeal in light of the new evidence that the provider had not yet had the opportunity to consider during the internal appeal stage. We invited the student to contact our office to lodge a fresh external appeal if the student remained dissatisfied with the outcome of the provider's internal appeal.

As discussed under 'Conclusions' above, the provider revised its attendance policy following recommendations by the OSO in 2013 that it ensure that it monitors students' attendance and contact them when they are *at risk* of falling below 80% projected attendance. At that time we also recommended that the provider consider changes to ensure that it actively monitors students attendance for the duration of their course, not only at specified times during the trimester. We will consider this issue and continue to work with the provider where it is relevant as part of our investigation of future external complaints/appeals, to identify any further opportunities for improvement.

Completion within the expected duration of study (Standard 9)

Standard 9 requires providers to extend a student's Certificate of Enrolment (CoE) only where there are compelling or compassionate circumstances or as a result of the implementation of an intervention strategy where the student is at risk of not meeting satisfactory course progress.

The OSO has not recorded any external appeals about Standard 9 for this provider, however we have made some observations about this standard, following our investigation of related issues.

In 2012 the OSO commenced three investigations which related to issues with the provider's application of Standard 9. In each of these cases the provider had identified the student as not meeting satisfactory course progress requirements, implemented an intervention strategy (which included a reduction of the student's workload and a student progress assistance program) in accordance with Standard 10 and extended the students' CoE in accordance with Standard 9.2 (b) to enable the student to finish the course.

However, the National Code Explanatory Guide for Standard 9 provides that, where a provider's intervention strategy for a student at risk of not making satisfactory course progress leads to the student being unable to complete the course within the expected duration, the provider may only extend the student's CoE 'as long as the student is making satisfactory course progress'. In each of these cases the provider extended the student's CoE where the student had not participated in the student progress assistance program and was not making satisfactory course progress at that stage.

While this policy may be beneficial to the student (as it gives the student more time to successfully complete the course), in our view it is not consistent with Standard 9, which requires that the provider report the student to DIBP when the student is identified as not making satisfactory course progress. It also means that it may be enabling a student to continue with a course which they are significantly unlikely to successfully

¹⁸ Under s19ZL of the *Commonwealth Ombudsman Act 1976* the OSO has discretion not to investigate certain complaints, including where a matter is being considered by a court or tribunal.

complete. We made recommendations to the provider to consider whether this aspect of its use of CoE extensions is compliant with the requirements of Standard 9.

The provider explained that it considers that it was precluded by Standard 10 from reporting the student under s19 of the ESOS Act for breach of course progress requirements because the student had not yet undertaken an intervention program. However, the provider had intervened by reducing the student's enrolment load. The provider referred to the National Code Explanatory Guide for Standard 9.2 which provides that 'the intervention strategy may include reducing the enrolment load of a student who is having difficulty in making satisfactory course progress...this may lead to an extension to the duration of a student's course and the granting of a new CoE to reflect the extended period'.

While our decision in this, and other similar cases, supported the provider, we will continue to consider this issue where it is relevant as part of our investigation of future external complaints/appeals, which will be an opportunity to further discuss and clarify the requirements of Standard 9.

Student engagement before enrolment (Standard 2)

The OSO received one complaint about the provider in relation to student engagement before enrolment.

In 2014 we investigated a complaint from a student about a decision by the provider not to accept the student's application for enrolment. The student had previously been enrolled in a course with the provider but did not re-enrol in the third trimester due to an inability to pay the fees on time. The student informed the provider that he/she intended to stay in Australia, despite not being able to enrol in time. The provider advised the student that he/she could re-apply for the first trimester the following year but failed to inform the student that if the student stayed in Australia while not enrolled, he/she may risk breaching student visa conditions and to direct the student to DIBP for advice.

The student applied to enrol in the first trimester the following year, however the provider rejected the student's application on the basis that he/she did not meet the provider's Admissions Policy, namely that the student had not demonstrated an intention to comply with student visa conditions. The OSO wrote to the provider with its view that the provider's failure to give the student advice to speak to DIBP at the time it told him to re-enrol in the following year contributed to the student failing to meet the Admissions Policy. The OSO recommended that the provider re-enrol the student.

The provider noted that the OSO's assessment and recommendation was fair and agreed to re-enrol the student. The provider advised that, when the provider becomes aware that a student will not be studying in a trimester, its usual practice is to advise that student to seek advice from DIBP on how to comply with their visa conditions.

Formalisation of Enrolment (Standard 3)

We declined to investigate one complaint/appeal about a matter concerning Standard 3 as the student had not yet followed the provider's formal complaint and appeal procedure. We invited the student to contact our office again if he/she remains dissatisfied after following the internal complaints process.

Graduation completion Certificates

The OSO received one complaint/appeal about graduation/completion certificates in our first five years of operation. We did not investigate this complaint as the student withdrew the appeal.

Education Agents (Standard 4)

The OSO recorded one issue about education agents used by the provider. We ceased to investigate this matter because the issue was being considered by the then MRT.

Marketing Information and Practices (Standard 1)

The OSO received one complaint about the provider about the difference between the advertised cost and the actual cost of a course. We didn't investigate this complaint as the student did not provide supporting documents, as requested.

Transfer between Registered providers (Standard 7)

The OSO received three complaints/appeals about a decision by the provider to refuse a student's application for a release letter to transfer to another education provider. We declined to investigate in two of these cases as the student had not yet exhausted their internal appeal rights with the provider.

We investigated one appeal about the provider's failure to consider the student's request for a release letter to transfer to another provider. In this case, the provider advised that it has an arrangement with the university at which the student intends to complete their principal course, whereby students on a package with both providers are encouraged to apply directly to the university for a release letter. The provider advised that this arrangement minimises administrative work and inconvenience to students.

Following consideration of the provider's comments in relation to our proposed decision, the OSO decided that the provider did not appear to have complied with Standard 7 of the National Code in this case because it:

- should have had a committee approved, visible and readily accessible transfer policy for overseas students to reference and follow
- needed to assess requests to transfer from any courses it is registered to deliver, even if the principal course is with another university.
- should have facilitated the process for the student by administering its own transfer policy and process, and not deferring to a related university and any decision it may make in relation to the principal course.

We recommended that the provider invite the student to apply for a release letter, assess it against the provisions of Standard 7 of the National Code, and if there was no detriment to the student in transferring to another registered provider, decide and grant the letter of release. We recorded the outcome in support of the student.

We also noted that the National Code Explanatory Guide states that 'Good practice would be to make the transfer policy and procedure available of the website as well as through

Overseas Students Ombudsman—Provider report No. 3: Analysis of complaints

other avenues'. We are pleased that, in response to our investigation, the provider informed the OSO that it will make its transfer policy available on its website.¹⁹

Since April 2016, the OSO has received two complaints/appeals about the provider's decision to refuse a student's request for a release letter to transfer to another education provider. We declined to investigate one complaint because the student had not yet accessed the provider's internal appeal process. In the other, our decision supported the provider because we found that the provider had substantially followed the requirements of Standard 7 and its student transfer policy and procedures correctly.

¹⁹https://b5f9a5f0d85963ca56fe-a294a4700793b89a3a5dff58be7eb057.ssl.cf6.rackcdn.com/1_TransferbyInternationalStudentsBetweenRegisteredProviders.pdf