



# State Authorization

COVID-19 caused higher education institutions to shift to remote learning formats for students dispersed throughout the country. This brief describes the state and federal regulatory responsibilities for the higher education institutions that offer distance education to students located in a different state than the institution.

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## Introduction

With the increase in distance education opportunities offered by institutions in the last decade, the issue of state authorization has often been linked to the oversight of postsecondary institutions to provide distance education to students located in another state. In fact, states have held the primary role in providing oversight of all educational activities which occur within their borders due to the powers reserved to the states under the 10th Amendment of the U.S. Constitution (U.S. Constitution, 1791). States direct state oversight requirements for postsecondary institutions. Federal Regulations for state authorization tie the ability to participate in Title IV HEA programs to compliance with state laws in the state where the institution's students are located.

The COVID-19 pandemic caused institutions to quickly close campuses and shift their face-to-face courses to emergency remote and online formats to students dispersed throughout the country. Many institutions will continue the remote and online formats for the foreseeable future. Institutional staff unfamiliar with state authorization compliance were surprised to learn that there could be state compliance requirements for the institution based on where the student is located. This paper will share the principles of state authorization for state institutional approval of distance education.

## State Institutional Approval for Out-of-State Activities

Postsecondary institutions located in one state that offer activities in another state are subject to the oversight requirements of the state where the activities occur. Examples of these activities include:

- online learning,
- marketing,
- recruiting,
- internships/practica,
- faculty teaching online,
- face-to-face instruction, and
- services provided at brick and mortar locations.

The institution may need to seek institutional approval from the state where the activities occur in order to be in legal compliance in that state. State approval requirements vary widely by state.

Not long ago, the only state authorization compliance option for institutions was to research and comply with state requirements in each state where the activity of the institution occurred. Most often, the institutions sought state approval in the states where the students were participating in online courses and internships.

# State Authorization Reciprocity Agreements (SARA)

The notion of a state authorization reciprocity option was initiated by The Presidents' Forum, which was administered by Excelsior College. They led an effort that ultimately brought together state leaders, accrediting agencies, and higher education leaders to address barriers to acceptance and accessibility of online distance learning as well as consumer protection for students (Hall & Shiffman, 2016). The plan was to develop a uniform set of standards and responsibilities for institutions for oversight of distance education that occurs across state lines. After several years of work, the result was the State Authorization Reciprocity Agreements (SARA) (NC-SARA, 2020).

The basic principle of SARA is that the state where the institution is located provides oversight for institutions to offer distance education to students located in other states that also participate in reciprocity. As previously discussed, the state is central to the oversight of the institutions that voluntarily choose to seek approval in their state in order to participate in reciprocity through SARA.

Institutions with approval to participate in reciprocity in the state where the institution is located do not need to seek state by state institutional approval for interstate distance education. States voluntarily began joining SARA in early 2014. As of July 2020, 49 states, District of Columbia, U.S. Virgin Islands, and Puerto Rico are members of SARA. California is not a member of SARA; therefore, the institutions in California cannot participate in reciprocity through SARA.

Institutions located in a non-SARA member state (California & the Pacific Territories) or an institution that chooses not to participate in SARA, must either be in compliance with legal requirements in the states where the students are located or prevent students from participating in activities in those states. Institutions that voluntarily participate in SARA through approval by the state where the institution is located are considered authorized by all SARA member states for distance education activities as directed by the SARA Manual (NC-SARA Manual & Handbooks, 2020). SARA participating institutions must determine if there are individual state compliance

requirements if the institution offers distance education to a student in non-SARA member states or if the institution has a brick and mortar location in another state.

## Federal Regulations for State Authorization

Federal regulations for state authorization of distance education have been subject to political and court battles over the past ten years. The original federal regulation for state authorization released in 2010 was ultimately vacated by the federal courts due to a procedural error (U.S. District Court Ruling, 2011). However, this first version is credited with awakening the states and institutions to consider state authorization for activities of the postsecondary institution that occur in a state other than the location of the institution.

A 2016 version released by the Department of Education was delayed on its effective date but was then ordered to become effective due to a Federal court ruling (U.S. District Court Ruling , 2019). Ultimately, a federal regulation for state authorization of distance education, provided by the 2019 Negotiated Rulemaking Committee that came to consensus, became effective July 1, 2020 (Final Regulations , 2019) and replaced the 2016 version of the regulation.

What remains constant throughout the federal process, and will continue into the future, is that States are at the center of state authorization and are the cornerstone of state oversight of educational activities.

## July 1, 2020 State Authorization Regulation

The new federal regulation for State Authorization for distance education, effective July 1, 2020, is found in 34 CFR 600.9(c). The regulation elements are detailed below.

## State authorization for institutional approval when:

- Institutions that offer distance education or correspondence courses;
  - To student located in a state in which the institution is not physically located;
  - Or in which otherwise subject to that state's jurisdiction as determined by the state.
- Must meet any of that State's requirements for it to be legally offering education in that state;
  - OR participate in a state authorization reciprocity agreement. (defined in 34 CFR 600.2) Subject to any limitations in that agreement.
  - And to any additional requirements of the state not relating to state authorization of distance education.
- Document the state's approval or coverage by reciprocity to share with the Secretary upon request.

## Location is determined by:

- The Institution makes a determination about the state where the student is located:
  - In accordance with institution policies or procedures; and
  - Must be applied consistently to all students.
- Determination process must be documented in writing and provided to the Secretary upon request.
- Determination occurs:
  - Time of the student's initial enrollment in an educational program.
  - When applicable, upon formal receipt of a change to another state.

## Suggested Resources and References

- Institutional eligibility under the Higher Education Act of 1965 as Amended: Definition of state authorization reciprocity agreement 34 C.F.R. § 600.2 (2020). ([link](#))
- Final regulations. (2019 November). ([link](#))
- Career College Association d/b/a Association of Private Sector Colleges and Universities v. Arne Duncan, et al., Civil Action No. 11-0138 (RMC) (U.S. District Court, District of Columbia 2011). ([link](#))
- Hall, J. W., & Shiffman, P. H. (2016). Sheparding Change. ([link](#))
- Institutional eligibility under the higher education act of 1965, as amended: State Authorization 34 CFR § 600.9(c). (2016). ([link](#))
- National Education Association, et al. v. Betsy DeVos, et al., 18-cv-05173-LB (U.S. District Court, Northern District of California 2019). ([link](#))
- NC-SARA. (n.d.) National council for state authorization reciprocity agreements (NC-SARA). ([link](#))
- NC-SARA. (2020). NC-SARA manual and handbooks. ([link](#))
- U.S. Constitution. (1791). United States Bill of Rights.