

State Authorization, the State Authorization Network (SAN), and the State Authorization Reciprocity Agreement (SARA):

Academic Compliance Requirements and Valuable Management Tools

Introduction

Institutions of higher education (IHE) that engage in certain interstate educational activities such as serving students, establishing a campus, offering online degrees (including those leading to professional licensure) or advertising must follow the statutes and regulations of the state in which the activity occurs. A state regulatory process for an IHE can involve multiple approvals depending upon the level of activity by the IHE.

The IHE must first determine if the state higher education authorizing entity (“state regulatory agency”) where such educational activity(ies) are occurring has a required state approval process. The legal basis for this authorization is the protection of students as consumers. This activity, which will be discussed in detail below, is referred to as “state authorization.”

For IHEs offering degrees that lead to professional licensure, there may be additional requirements by state professional licensure boards (“professional boards”) that provide oversight for the profession. These requirements are based upon public safety protections. There may be multiple levels of research within this area as well, including ascertaining the licensure requirements for a graduate, so that the IHE is preparing its students to be eligible to sit for licensure exams and seeking approval of an academic program (including the placement of a student at a clinical site) in that state. The term to describe the activities associated with obtaining approvals from professional boards is “professional licensure.”

Each state’s approval process is independently created and has unique requirements, thus the processes of state authorization of an IHE vary widely. An IHE may be required to follow the different and frequently challenging processes in many states*, depending upon the footprint of its educational activities out-of-state. To assist IHE’s to better manage state authorization compliance with the various state regulatory agency requirements and provide access and safeguards for student consumers, the concept of reciprocity among states evolved into an important state authorization compliance tool across the nation, known as the State Authorization Reciprocity Agreement (SARA).

*States and other legal jurisdictions such as territories, commonwealths, and the District of Columbia, referred to as “states”

SARA provides a consistent way for IHEs to achieve state authorization compliance in the member states that have agreed to abide by the terms of the reciprocity agreement. SARA provides a standardized approach for its member states to assess the academic and financial integrity of institutions wanting to serve students in that state. SARA

also allows participating IHEs to engage in an approved set of educational activities across state lines without having to seek additional or alternative approval from the higher education regulatory agency in the states in which the activities take place.

State Authorization

State Regulations

State Authorization is the approval provided by a state regulatory agency to permit an IHE to engage in educational activities within the state. Individual states may use different terms for this state regulatory agency approval such as registration, certification, or license, but for the purposes of this discussion we will use the term “state authorization” to mean the state regulatory agency approval of the IHE to engage in interstate educational activities.

The U.S. Constitution under the Reserved Powers Clause provides that activities not enumerated as being federal powers remain with the state or the people (including education). Thus, states may regulate educational activities which occur within their state. These activities could include, but are not limited to, the following examples: offering online courses to students in the state, owning or leasing a physical location to provide face-to-face classes, supervised fieldwork or clinical placements, targeted marketing, and recruiting. If the home campus of the IHE is in one state and the activity occurs in another state, the IHE will need to determine if the activity is regulated by the state where the activity occurs. If the activity is regulated, the IHE must follow the processes for “state authorization” for approval to offer the activity in that state. It is a legal requirement that state authorization be obtained by the IHE to engage in any regulated educational activity in that state.

Location of activity is different than residence. It is important to note that the key determinant for state authorization compliance is the physical location of the activity. The residence of the student is irrelevant. Consider the following: a Virginia resident is enrolled at a Virginia IHE and pursues a face-to-face program on the Virginia campus. However, the student travels over the bridge into Washington, D.C. to participate in a supervised fieldwork. The Virginia IHE must determine if Washington, D.C. regulates supervised fieldwork. If so, the Virginia IHE must follow the state authorization process in Washington, D.C. as the activity (supervised fieldwork) takes place in Washington, D.C.

Similar to the unique institutional footprint of every IHE, state requirements for authorization (including fees) and processes vary widely regarding regulated activities. IHEs will find that some states regulate only activities related to in-person interaction with students such as face-to-face, group, and classroom experiences, while other states regulate all interactions in the state including students participating in online courses and internships. Some states regulate targeted marketing, servers located in the state, and recruiting, while other states do not. Once the IHE determines whether the activity they want to offer in the state is regulated, the IHE must research the process and any fees required (which vary greatly by state from zero to several thousand dollars annually). The processes in some states are as simple as a one-page form or as complicated as program evaluations and site visits. After authorization is granted, each state also manages that process differently.

Acquiring authorization by a state regulatory agency is different than a determination that an IHE is exempt, requires no further action, or activity is not regulated. IHEs sometimes will announce they are “authorized” to provide online courses to students in all 50 states. That is an inaccurate statement. The IHE may be in compliance with the requirements of all 50 states, but there are several states that provide a formal exemption to provide online courses. Some states do not regulate online courses offered to students in their state at all. Indicating “authorization” suggests that there is oversight by the state, which in many states there is not. Institutions should be careful not to misrepresent whether the state regulatory agency is providing oversight of the activity in the state.

Failure to follow state regulations to obtain state authorization from the state regulatory agency for activities conducted in the state could result in a variety of consequences. Typical consequences to the IHE include: cease and desist letters or orders, sanctions or fines, lawsuits, accreditation conflict, and possible bad press and damage to reputation. It should be pointed out, that for the sake of supporting students, state regulatory agency wish to work with IHEs to achieve compliance. Few consequences of state action have been reported because IHEs have typically worked through compliance problems with the state regulatory agency to achieve authorization or have ceased to provide the activity in the state.

Professional Licensure

In addition to state regulatory agency approval, there may be a required approval process by a state professional board if the activity is part of a program leading to professional licensure. An IHE may be required to obtain state authorization from the state regulatory agency for the activity for which the IHE engages in a state AND additional approval may be required by a state professional board if the activity is part of a program that leads to professional licensure. NOTE: These are two distinct approvals that may be required. For example, an IHE may be authorized by the state regulatory agency to offer online programs, but the IHE must inquire with the state professional board for approval for the online program to satisfy the educational requirements to sit for a licensing or certification examination in that state. Common programs requiring additional professional board approval include teaching, social work, nursing, and other health science related fields. Each state has its own list of regulated professions that must be researched before offering a degree in that state. Failure to obtain approval by the professional board could result in a student being ineligible for a license or certification in the state even though the student completed the degree program from the IHE. Some states require approval of the IHE's academic program and have other requirements regarding placement of a student at a clinical or professional site for degrees leading to professional licensure.

Federal Regulations

History of 34 CFR 600.9 (c)

An ongoing effort on the federal level to directly connect an IHE's eligibility for federal funding under Title IV to state authorization compliance (regarding distance education) has had an interesting history and questionable success.

In 2010, the U.S. Department of Education ("USDOE") released 34 CFR 600.9 (c) requiring that IHEs' eligibility to participate in Title IV, programs covered by the Higher Education Act ("HEA") must document that they have proper approval in the state where they serve students. By 2012, the federal regulation for state authorization of distance education was eliminated. The regulation was vacated by the U.S. District Court on procedural grounds for failure to meet notification requirements. The decision was upheld by the U.S. Court of Appeals. Because the regulation was vacated on procedural grounds, the USDOE was free to release new regulations following designated federal procedures. A 2014 Negotiated Rule Making was unable to reach consensus on a new regulation resulting in no enforceable federal regulation for state authorization of distance education under 34 CFR 600.9(c) at that time.

New State Authorization of Postsecondary Distance Education, Foreign Locations (2016)

In July 2016, the USDOE released proposed federal regulations for the state authorization of distance education. The regulation offered opportunity for comment. The USDOE released the regulations for State Authorization of Postsecondary Distance Education, Foreign Locations on December 19, 2017 with an effective date of July 1, 2018. The enforcement of those regulations would begin as early as July 1, 2018 unless the USDOE postpones the

enforcement date. As of this date, the regulation still stands.

Highlights of the 2016 new federal regulations include:

- Authorization by each State in which the IHE enrolls students if authorization is required.
- Reciprocity is sufficient authorization.
- Public and direct notifications and disclosures are required for specific information.
- Additional locations or branch campuses in a foreign location must be authorized.

Although the 2016 new federal regulations for state authorization of distance education are not effective until July 1, 2018 or may be eliminated through some other process, the states expect that IHEs will continue to follow the laws and regulations of the states where the IHE engages in activities that are regulated by that state.

Other Enforceable Federal Regulations

Two other federal regulations that relate to state authorization and affect eligibility to participate in Title IV, HEA programs include Institutional Information (34 CFR 668.43 (b)) and Misrepresentation (34 CFR 668.71). IHEs must have processes in place to be compliant with these federal regulations. The Institutional Information federal regulation requires that IHEs provide prospective and current students the IHE's accreditation information and the contact information for filing complaints in each state that the IHE offers activities. The Misrepresentation federal regulation is a bit more complicated, but in essence, requires that IHEs must not provide misleading statements or omissions of information which could mislead an enrolled or prospective student. If the student could reasonably be expected to rely on the misleading statement or omission, the IHE may be liable for failing to meet the requirements of this regulation.

State Authorization Network (SAN)

SAN has been assisting IHEs as they navigate regulatory compliance for out-of-state activities since 2011, when the concept of a member organization as an extension of the regulatory focus area of the WICHE Cooperative for Educational Technologies (WCET) was suggested. SAN explores more deeply the intricacies of academic regulatory issues such as state authorization and professional licensure and provides its members with training and support for the management of state and federal regulatory compliance regarding the IHEs' out-of-state activities. Opportunities for collaboration create an environment to more efficiently use resources and to understand and implement/maintain compliant processes at IHEs.

Members may participate in:

- Training workshops (including mentorship) and webcasts.
- Discussions with regulators and experts.
- Monthly calls, email discussions, and face to face meetings.
- Research reports and state-by-state analysis.
- Reciprocity advice.

Annual membership to SAN may be by individual institution, partnership, consortium or system. At least one institution within the membership must include a member of WCET. Currently, the annual cost of membership may be split among a partnership, consortium, or system. (<http://wcet.wiche.edu/initiatives/state-authorization-network>)

The State Authorization Reciprocity Agreement (SARA)

As discussed above, one of the most exciting state authorization developments has been the State Authorization Reciprocity Agreement (SARA). Starting as a set of conversations in 2012 among higher education leaders across the nation, the SARA agreement became a reality in November 2013. SARA allows participating IHEs in SARA member states to engage in a wide range of educational activities that cross state lines without a need for the IHE to pursue traditional state authorization. The principles of SARA can be found in its Unified Agreement (<http://nc-sara.org/content/sara-unified-agreement>) and the procedures, rules, and practices of SARA can be found in the SARA Manual (<http://nc-sara.org/content/sara-manual>).

SARA is coordinated by a National Council which ensures consistency among the four regional higher education compacts (MHEC, NEBHE, SREB, and WICHE) where SARA is administered. Each regional compact serves its member SARA states which have voluntarily joined the reciprocity agreement and set up a State Portal Entity to administer SARA at the state level. State level SARA activity includes the approval of institutional applications for participation in SARA, receiving and resolving complaints from out-of-state SARA students, and monitoring the work of SARA IHEs in the state. Currently 47 states and the District of Columbia have joined SARA, and over 1400 IHEs in those states are participating in SARA. This means that each of those SARA IHEs can engage in an approved set of educational activities in all the other SARA states and territories without seeking additional approvals and authorizations from the state regulatory agency in the states in which the educational activities take place.

Becoming a SARA Institution

The process to become a participating SARA institution is simple and straightforward. To be eligible an IHE must:

1. Be properly authorized to operate in its home state.
2. Be degree-granting.
3. Be accredited by an accreditor recognized by the USDOE.
4. For private institutions only, have a federal Financial Responsibility Composite Score that is above 1.5 (or between 1.0 and 1.4 with additional supporting documentation).

The application for institutional participation can be found on the NC-SARA website (<http://nc-sara.org/>). Once completed, the application is submitted to the Portal Entity of the state in which the IHE is located. In some states, there are fees for institutional participation that must accompany the application. After receiving the completed application and applicable fees, the State Portal Entity will review and verify the information before approving the IHE to participate in SARA. At that time, the IHE and NC-SARA are notified of the approval. A code is then sent to the IHE so it can sign up with NC-SARA to be invoiced for its SARA participation fees and so the IHE's information and weblink can be added to the list of participating SARA institutions.

The annual fees for institutional participation in SARA are:

- \$2,000/year for institutions with fewer than 2,500 FTE students
- \$4,000/year for institutions between 2,500-9,999 FTE students
- \$6,000/year for institutions with 10,000 or more FTE students

Participating as a SARA Institution

When timely payment is received by NC-SARA, the IHE is named on the official list of SARA institutions and can begin engaging in interstate educational activities that are covered by the SARA agreement. Those activities can be found in the SARA Manual in Sections 5.12b and 5.13 and include the following:

- On-line education
- Advertising
- Recruiting
- Proctored exams
- Contractual agreements
- Servers on the ground in other SARA states
- On-line instructors and faculty who live in other SARA states
- Supervised field experiences
- Field trips

Sometimes people who work with state authorization and compliance at SARA IHEs are under the impression that SARA covers all interstate educational activities or that there is little for them to do once a school joins SARA. This is a misunderstanding that can cause many problems for an IHE. SARA is only one of the tools in an IHE's state authorization and compliance toolkit. There are additional requirements for an IHE to remain in good standing with SARA and with state authorization and federal requirements.

Remaining in Good Standing with SARA

Once an IHE participates in SARA, there are still requirements it must meet to remain in good standing with SARA. For example, if an IHE's federal Financial Responsibility Composite Score falls below 1.5, the IHE will need to provide additional paperwork to its State Portal Entity to renew its SARA participation the following year. Under such circumstances, the IHE might receive a Provisional Renewal. Similarly, if an IHE's accreditor places it on any sort of probation or negative status, the IHE would need to let its State Portal Entity know of the change in status and renew under a Provisional status. Note: If an IHE's financial score falls below 1.0 and/or if the IHE loses its accreditation, it will be withdrawn from the list of participating SARA institutions by its State Portal Entity.

SARA IHEs must also make sure they are abiding by the terms of the institutional application they submitted when they joined SARA. For example, the IHE must have a complaint process that meets federal, state, accreditor, and SARA requirements. Participating SARA IHEs must also make sure they are adhering to the C-RAC guidelines to which they agreed in their institutional applications. Other terms in the institutional application that must be met and monitored by SARA IHEs include:

- Taking responsibility for the actions of third-party providers.
- Working with the IHE's home state to resolve student complaints.
- Providing appropriate disclosures for students in programs and courses that lead to professional licensure.
- Providing timely and accurate data reports to NC-SARA.

To remain in good standing with SARA, an IHE must engage in the same best practices it uses to achieve and remain in compliance with state authorization, accreditation, and the USDOE. Among the most important of these practices are those pertaining to professional licensure program disclosures and to student data. SARA does not cover

educational activities in other SARA states that are regulated and otherwise overseen by professional licensure boards. Please see the earlier section of this paper for an explanation of the difference between authorization to operate in a state which is granted by the state regulatory agency versus approval by specific professional boards to engage in educational activities in a state and to serve its students in a way that qualifies them to apply for licensure in that state.

The careful management of student data is as important to a SARA IHE as it is to any IHE. All institutional activities that take place in another state should be carefully tracked and monitored, as they have the potential to trigger the need for authorization in another state. SARA IHEs need to know what they are doing in other states and where their students are located so that they can answer the following questions and take appropriate actions:

- Where are each of our out-of-state students located?
- In which types of activities does the school engage in other states?
- Are any of our out-of-state students located in non-SARA states?
- Are any of our out-of-state students engaged in supervised field experiences in professional licensure programs in states where the relevant professional boards regulate or oversee such placements?

SARA IHEs with students located in non-SARA states must follow traditional procedures for pursuing state authorization. Sometimes the activities of an IHE school might occur in another SARA state but fall outside the activities covered by SARA. In such cases, academic compliance personnel at the IHE will need to check with their State Portal Entity about the best way to proceed. If students are engaged in supervised field experiences in states where the professional boards regulate such placements, the IHE will need to seek approvals from those professional boards for the students' supervised field experiences. Finally, all SARA IHEs are required annually to report to NC-SARA how many students they serve via distance education in other SARA states. As of 2019, all SARA IHEs will also be required to report on the physical location of its student engaged in supervised fieldwork.

The Value of SARA to Institutions

Though there is still a great deal of information to monitor once an IHE participates in SARA, the number of concerns and the possibility of inadvertent noncompliance with state authorization are both greatly reduced. IHEs that participate in SARA report that they save money on the application fees associated with traditional state authorization as well as on the cost of personnel to monitor and pursue state authorization compliance. Such IHEs can plan new on-line programs and expand current programs into new states with less expense and greater ease because of the broad coverage of out-of-state educational activities SARA provides. Finally, state authorization personnel at SARA IHEs report the value added to their work by SARA newsletters, webinars, blogs, and professional support. By bringing together once disparate actors in the higher education community, SARA has facilitated connections between state regulators, professional licensure boards, accreditors, and institutional leaders allowing stakeholders to converse with each other and find ways to address the inconsistencies and complexities of the state authorization process.

Conclusion

As a practice and concern that only gained wide attention in 2010, academic compliance including state authorization and professional licensure has not yet become a line of work that has a natural home at institutions. The task lands on various desks and often moves around before settling in one place. As a result, many of the individuals charged with such compliance are new to it and must seek and maintain compliance even as they are learning about it. Individuals are thrust into conversations about state authorization and professional licensure that take much for granted, including distinctions between the types of authorization/approval and the types of tools

used to accomplish compliance.

For those who are new to academic compliance including state authorization and professional licensure or for those who need to explain aspects of the practice to your colleagues or leadership, we have written this piece. Understanding the reasons for compliance (including authorization and approval, the types of authorization and approval, and the related tools) will help you frame your work. Comprehending the value and utility of SARA as the most valuable tool in your academic compliance and state authorization toolkit will help you streamline and expedite your work. Finally, realizing you have organizations like SAN to support you and your work will make the process much more pleasant and rewarding!



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Jenny Parks is the director of the Midwestern Regional State Authorization Reciprocity Agreement (M-SARA). Jenny leads the development, implementation, management, and oversight of M-SARA, which enables states in the MHEC region to enter into a voluntary reciprocity agreement for the purpose of authorizing colleges and universities to provide online and other distance-based courses and programs to students living in other states.

Jenny comes to the Compact from the University of Wisconsin-La Crosse (UW-L) where she was the university compliance officer. She has also worked as a research specialist at federal education labs, state and private universities, and K-12 school districts. Jenny earned her bachelor’s degree from Dana College and her master’s degree in Educational Policy from the University of Wisconsin-Madison. Currently she is pursuing her doctorate in Higher Education from Northeastern University. Jenny joined the Compact in September 2013.

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