

State Authorization and Military Students

Ever since the U.S. Department of Education issued a federal state authorization regulation for distance education programs in 2010 (which was vacated by a federal court in 2011; upheld in an appeals court in 2012; and reissued in 2016) many institutions have taken a closer look at the relevant laws in states where they operate to determine if they are in compliance with those laws.

Sorting through all of the variables that impact whether an institution needs to be authorized in a state is daunting. After figuring out what activities your institution is doing in each state (facilities, externships, faculty location, recruiting, advertising, etc.), the next step is to figure out what that means in each state in terms of the authorization requirements.

One of the generalizations that have become “common knowledge” in the field is that if the institution confines its activities to military bases in a state, it is not subject to the jurisdiction of that state. Unfortunately, like most generalizations about state regulation of distance education, this “fact” is a myth.

Myth: *My institution does not need to get authorized in states where we only enroll or recruit students on military bases.*

Fact: *Most states do not distinguish between enrolling or recruiting students on military bases versus enrolling or recruiting others residing in a state.*

The truth is that whether an institution must be authorized in a state to enroll military students or recruit on a military base is a question of state law and will vary from state to state. Currently only 16 states (Arkansas, Colorado, Georgia, Kansas, Kentucky, Louisiana, Maryland, Nebraska, New Hampshire, New York, North Carolina, Ohio, Oklahoma, South Carolina, South Dakota, and West Virginia) expressly exempt institutions operating even exclusively on military bases (1).

No other state (nor the District of Columbia) has an exemption for activities confined to a military base. Thus, the question of whether an institution must be authorized in those states does not depend on whether its activities are confined to a military base. Instead, the analysis will be the same as if enrollment is open to all state residents – it will depend on the activities the institution conducts in the state.

Military Students Move Around the Country – What Does That Mean for State Authorization?

What should an institution do if its military students are transferred to another state? This is a common occurrence for military students. Does that mean the institution needs to be authorized in the student’s new state every time he or she is transferred? The answer, as it usually is for state authorization questions, is “it depends.” Most states will not make an exception for military students who move into their state on military orders – just as they would



not make an exception for a civilian student who moved for other reasons. You will need to apply the new state's standards. You will also need to track the movement of military students to the extent possible. It is generally considered best practice to determine where the student plans to reside every term for all students – including military students.

What About State of Residence?

Military students are subject to the state laws and regulations of the state in which they are residing. Their state of official residence makes no difference. This issue was specifically addressed in a 2012 “Dear Colleague” letter from the Department of Education. The only exception to this rule is if they are residing on a base or post that is a federal reservation, then they are exempt (2). If they move to another state, the state expects you to be in compliance with their laws prior to serving that student.

There has been confusion over the definition of “resident of a state” in terms of military students because of the agreement between states that allows military personnel to maintain their official residency (voting, paying taxes, car registration, driver’s license, etc.). However, for the purposes of state authorization, where the student actually lives (not their state of residence) is the important factor.

What about SARA?

The National Council for State Authorization Reciprocity Agreements (NC-SARA) is a voluntary, regional approach to state oversight of postsecondary distance education. All distance education course offerings provided interstate by a SARA participant institution to active and reserve military personnel, their dependents, and civilian employees of the installation located on a U.S. military facility or vessel in a SARA member state are covered by SARA. If such offerings are open to the general public for enrollment, SARA does not apply and state law where the facility or vessel is located applies.

Tuition Assistance Program?

On May 15, 2014, the U.S. Department of Defense (DoD) released a final version of its revised Memorandum of Understanding (MOU) that institutions must sign to participate in the Tuition Assistance Program (TA Program) for active duty military students. The final MOU requires participating institutions to comply with all state authorization requirements for providing distance education (even though at that time there was no federal rule regulating distance education).

In the Department of Defense Memorandum of Understanding for institutions offering TA funds to military students, the DoD included the need to comply with Department of Education state authorization regulations.

In the MOU, the DoD discusses new policy, responsibilities, and procedures for the operation of voluntary education programs within DoD. The new policies discussed in the rule include the following: All educational institutions providing education programs through the DoD TA Program will provide meaningful information to students about the financial cost and attendance at an institution so military students can make informed decisions on where to attend school; not use unfair, deceptive, and abusive recruiting practices; and provide academic and student support services to Service members and their families. New criteria are created to strengthen existing procedures for access to military installations by educational institutions. One of the criteria is to be in compliance with all Department of Education “program integrity issues, including State authorization.” For more information, please see: <https://federalregister.gov/a/2014-11044>

Summary

State authorization creates a number of issues for institutions enrolling military students into distance education programs. A few summary points:

- Most states do not differentiate between military and non-military students.
- Know what your institution is doing and where! The determination on whether an institution needs to be authorized remains on the institution's activities, not the type of students they recruit or enroll.
- The Department of Defense expects institutions receiving TA funding to be in compliance with all state laws including state authorization as specified through signing the MOU.
- All distance education offerings by a SARA institution to military personnel, their families, and civilian personnel on the installation, not offered to the general public, are covered by SARA.

Additional State Information:

AR: Training offered on military bases where a majority of the students enrolled are active duty personnel or their adult family members is exempt.

GA: Private entities conducting postsecondary activity on military installations solely for military personnel stationed on active duty, their dependents, or Department of Defense employees or other civilian employees of the installation are exempt.

KS: If both the student and the school are on base (or outside the boundaries of Kansas) for all of the educational activities = no jurisdiction. (From agency guidance)

KY: Licensure by CPE is not required for an institution authorized by a military installation to operate on-post. CPE requests the institution to provide them with the authorization they have received from the military installation. (From agency guidance). Licensure by CPE is required for an institution to operate off-post in Kentucky.

LA: Exemption for activity on federal property

MD: Only if the institution is willing to waive the right to claim veterans' benefits for its enrollees.

NE: Physical presence does not include course offerings on a military installation offered to military personnel or civilians employed on the installation.

NH: Schools that offer programs and courses exclusively on federal military installations.

NY: Guidance has been that they will not regulate activity on federal property

NC: To the extent that an institution undertakes post-secondary degree activity on the premises of military posts or reservations located in this State for military personnel stationed on active duty there, or their dependents, or employees of the military, the institution shall be exempt from licensure requirements. Institutions seeking a military exemption shall send written correspondence to General Administration identifying the military base and the degrees that will be offered. Institutions shall also present annual reports to General Administration describing degree activity and enrollments

OH: Does not regulate institutions on federal property.

OK: Sometimes—seek agency guidance

SC: Providers that offer programs and courses on federal military installations may be exempt.

SD: courses delivered on military installations by an accredited institution limited to active and reserve military personnel, dependents of military personnel, and civilian employees of the military installation.

WV: Out-of-state institutions offering courses or programs on a military installation solely for military personnel or civilians employed on such installation are exempt

Notes:

1 Even in these states, the specific contours of the exemptions vary and may not cover all activities on military bases or involving military personnel. Also, these laws change frequently; therefore, even if your institution qualifies for an exemption, you should monitor the status of that exemption on a regular basis.

2 Most federal property, including military bases are wholly subject to state law; only “federal enclaves” may be partially exempt. Less than three percent of all federal property has been classified as a federal enclave. These enclaves are generally widely dispersed and thus do not allow institutions to make state-level determinations. Even if operating solely in a federal enclave, it is not clear that state education laws would be inapplicable as many state laws still apply. This is a complex issue and it generally does not provide a practical solution to most institutions.



Marianne Boeke, Senior Associate, NCHEMS

Marianne Boeke is a Senior Associate at the National Center for Higher Education Management Systems (NCHEMS). She joined NCHEMS as a Research Associate in March 2004. Marianne works on a variety of long-term projects including those associated with the Lumina Foundation for Education, Bill and Melinda Gates Foundation, the Aspen Institute, and the Western Interstate Commission for Higher Education (WICHE/WCET). Marianne holds a Ph.D. in higher education from the University of Denver, a master’s degree from The American University, and a bachelor’s degree from San Jose State University. Her areas of specialization and interest include technology and costing issues in higher education, academic management, qualitative research, policy analysis, and state regulations and compliance issues (state authorization).



Jeannie Yockey-Fine, Senior Manager, State Regulatory Services, Cooley LLP

Jeannie joined Cooley’s Higher Education Practice in 2011. Before joining the Higher Education Practice, Jeannie served as Licensure Manager and Educational Policy Analyst at the Florida Department of Education’s Commission for Independent Education. Jeannie helps manage the Cooley State Service for State Authorization of Out-of-State Institutions and the Professional License Service for Advanced Practice Nursing programs and Teacher Licensure.

State Authorization Network

WCET - WICHE Cooperative for Educational Technologies

<http://wcet.wiche.edu/initiatives/state-authorization-network> | 303.541.0231



Except when otherwise noted, this work is licensed under <http://creativecommons.org/licenses/by-nc-sa/4.0>