

## State and Federal Regulations on 'State Authorization' of Distance Education

### What is the history of the state regulations?

States have long had the authority to regulate institutions offering education within the state's boundaries, regardless of the modality (face-to-face, distance) being used. The approval process is part of consumer protection for learners in the state. States' regulations vary from having no regulation to having very strict requirements. Even if an institution teaches only at a distance in a state, many still expect the state process to be followed.

### The State Regulations

States expect that your institution obtain the necessary approvals (if any) before advertising or serving students in their state. The state regulations predate the federal regulation and remain in effect. Federal regulations emphasize that states expect institutions to follow their laws.

### What is the history of the federal regulation?

**October 2010** – The U.S. Department of Education (USED) released its regulation requiring institutions to document that they have the proper state approvals to serve students in other states.

**June 2012** – The U.S. Court of Appeals upholds the U.S. District Court's 2011 ruling to "vacate" the regulation on procedural grounds.

**May 2014** – A USED Negotiated Rulemaking Committee did not come to consensus for a Federal regulation for State Authorization of Distance Education.

**December 2016** – USED released the new federal regulations for State Authorization of Postsecondary Distance Education, Foreign Locations. Effective date: July 1, 2018.

<https://www.gpo.gov/fdsys/pkg/FR-2016-12-19/pdf/2016-29444.pdf>

**July 3, 2018** – USED announces two-year delay of the effective date for the final regulations released in December 2016. <https://www.federalregister.gov/documents/2018/07/03/2018-14373/program-integrity-and-improvement>

**July 31, 2018** -- USED announces intent to establish a negotiated rulemaking to cover many important areas of higher education regulation, including state authorization.

<https://www.federalregister.gov/documents/2018/07/31/2018-15929/negotiated-rulemaking-committee-public-hearings>

**August 2018** -- NEA sues USED regarding delay of December 2016 regulations. <http://www.nea.org/assets/docs/1-main.pdf>

**April 3, 2019** - USED Negotiated Rulemaking ends in Consensus for comprehensive list of issues around accreditation and innovation. <https://wcetsan.wiche.edu/resources/ed-negotiated-rulemaking-innovation-subcommittee-completes-its-work-and-makes-several>

**April 26, 2019** - The U.S. District Court Judge in the *NEA et al., v. DeVos et.al* rules for the plaintiff ordering in 30 days after the ruling, a vacatur of the delay of the 2016 Federal Regulations for State Authorization. <https://wcet.wiche.edu/sites/default/files/NEA-vs-DeVos-Ruling-04-26-19.pdf>



**November 2019** - Federal Register publishes the USED announcement of Final regulations on State Authorization and Accreditation (2019 Federal Regulations) to be effective July 1, 2020. However, certain regulations pertaining to State Authorization are subject to early implementation (starting 11/1/19) at the discretion of the institution. (600.2; 600.9(c); 668.43; 668.50) <https://bit.ly/2qXRI8g>

## State Authorization FAQ

### What does “operating,” “physically located,” or “physical presence” in a state mean?

If the institution is conducting any one of a list of activities (e.g., online courses, advertising in local media, using direct advertising, requiring local proctors, employing faculty, marketing, or conducting experiential learning in the state), you could be required to comply with the state laws and regulations where the activity occurs. The definition of "presence" and the list of activities is at the discretion of each state and varies greatly from state-to-state.

### What about reciprocal agreements between states?

Participation in reciprocity offers an institution approved by its home state under State Authorization Reciprocity Agreements (SARA) policy to be considered authorized in all other SARA states for specific out-of-state activities as directed by the SARA Manual <https://nc-sara.org/resources/guides>. As of January 2020, 49 states, Puerto Rico, U.S. Virgin Islands, and the District of Columbia are members of SARA. National Council for State Authorization Reciprocity Agreements: <http://nc-sara.org/>

### What are the professional licensure disclosure requirements according to the 2019 Federal Regs?

Institutions offering programs, regardless of modality, that lead to professional licensure or certification must determine whether the program’s curriculum meets the educational requirements for licensure or certification in all 50 states. Institutions must make a general disclosure indicating states in which the program curriculum meets, does not meet, or has made no determination regarding the state educational requirements.

For states in which the curriculum either does not meet the state educational requirements or the institution has made no determination, the institution must make a written disclosure directly to any prospective student located in those states prior to their enrollment in the program. For an enrolled student, if the institution determines that the curriculum does not meet state educational requirements, the institution must provide a direct written disclosure within 14 days of making that determination.

<p style="text-align: center;"><b>WCET Updates on State Authorization</b></p> <p><b>WCET State Authorization Network:</b> <a href="https://wcetSAN.wiche.edu">https://wcetSAN.wiche.edu</a> <b>WCET Frontiers blog:</b> <a href="https://wcetfrontiers.org/">https://wcetfrontiers.org/</a> <b>WCET Issue Pages:</b> <a href="https://wcet.wiche.edu/focus-areas/policy-and-regulation/state-authorization">https://wcet.wiche.edu/focus-areas/policy-and-regulation/state-authorization</a></p>	<p style="text-align: center;"><b>Join SAN!</b></p> <p style="text-align: center;"><b>State Authorization Network Team</b></p> <p>Cheryl Dowd: <a href="mailto:cdowd@wiche.edu">cdowd@wiche.edu</a> Dan Silverman: <a href="mailto:dsilverman@wiche.edu">dsilverman@wiche.edu</a></p>
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