

State Authorization and Crossing State Borders, Part 1: Institutional Approvals for Out-of-State Activities



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Jul 15 · 6 min read

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The right of each state to oversee the educational activities occurring within its boundaries dates back to the ratification of the U.S. Constitution. Advances in transportation and communication technologies have enabled a mobile society and increased distance learning opportunities. These advances have also complicated regulatory oversight. Regulations often lag innovations. The issue of what to do about approving institutions that are domiciled and incorporated in another state but cross borders to serve students added new complications to the role of authorizers.

This is the first of two posts highlighting the need for institutions to obtain approvals in states where they are conducting educational activities. This post will address the need for a state's approval for an institution to provide educational activities to students in a state other than where the institution is located. In the following post, we will discuss a few other requirements that colleges and universities will face beyond authorizing the institution. The second post will include the challenges for institutions as they navigate the myriad rules for serving students in programs that lead to professional licensure or certification.

Institutional Approval for Serving Students in Other States

There are many students enrolled in colleges and universities in other states. In its most recent survey of its more than 2,000 participating institutions, the National Council for State Authorization Reciprocity Agreements (NC-SARA) reported: "In 2019 the total reported SARA out-of-state distance education enrollment was 1,288,852, an increase of 5.2% from the 1,225,022 reported in 2018." But some are still unclear on the requirements of serving students in other states. As we were writing this post, we received an email from an administrator at a community college that does not

participate in SARA, that seemed to just be discovering that they need a state's approval to serve students in another state.

With the increase in distance education in the last few decades, this issue has come to the forefront and has caused several states to reexamine their regulations. As states became SARA members, some revised their state regulations to add additional oversight of out-of-state institutions that offer online education and added new authorization fees for out-of-state institutions not participating in reciprocity (e.g., Michigan, New York, Oregon, Pennsylvania).

The bottom line is that the state has jurisdiction over educational activities that occur in the state. Some higher education administrators are still surprised to learn that this extends to beyond just offering distance education. The most common "triggers" for state oversight are maintaining a building or a mailing address in the state. Depending on the state, activities in a state that might require an institution to seek approval include marketing, placements for practical experiences (e.g., internships, externships, student teaching), holding short courses in an in-person setting, employing faculty in a state, or conducting field trips. Each state has its own criteria and standards for oversight, which results in a bewildering array of requirements for approvals.

Leadership from Excelsior College with funding from Lumina Foundation sought to address this array of complex and often outdated oversight regulations. Since many states lacked any regulations regarding out-of-state institutions, there was keen interest in increasing the protection of students as consumers. After a few years of work seeking extensive input from state leaders, accrediting agencies, and higher education leaders, the State Authorization Reciprocity Agreements (SARA) was created in 2014.

Institutions participating in SARA must have approval in their own state according to a set of criteria that was mutually agreed upon by member states and updated by a board that oversees NC-SARA. The approval by an institution's state agency is recognized in the other member states, and those institutions are considered authorized in all other SARA member states. This authorization is limited to a finite set of activities as outlined in the agreement, such as serving distance education students, marketing, very short courses, and field trips.

Prior to SARA, existing state regulations in many states did nothing to protect students taking distance courses from out-of-state institutions. Even today, the states with the

strictest regulations are often silent on the oversight of public and nonprofit institutions. Besides extending this protection, SARA openly reports on complaints, and created a specific process for member states to address complaints. State sharing of information makes it easier to identify “problem” institutions and overcome situations where only a few complaints in a state would get the attention of over-taxed attorneys general offices.

More than 2,000 institutions participate in SARA, which leaves many that do not. In 2011, SHEEO started a compilation of surveys of regulations in each state that is now maintained by NC-SARA in “The State Authorization Guide.”

Institutional Approval in the Era of COVID-19

As the pandemic took hold in 2020, institutions closed their physical spaces and went into emergency mode to provide “remote learning” to students in their homes. Unfortunately for regulatory purposes, this activity falls under the rules for distance education courses and programs. When students moved back home, many of them crossed state lines and, as a result, required that the institution verify that it had the proper institutional approvals in those states.

For the spring 2020 term, SARA-participating institutions already had institutional approval in participating states as long as they held their activities to those within the reciprocity agreement. But many institutions who offer little or no distance education are now in a technical bind because they are out of compliance in several states. In conversations with state regulators, several of them waived their regulations for the term, but not all of them had the authority to do so. Recognizing the emergency and the good intentions of most institutions, many of those who could not waive the regulations unofficially decided not to aggressively pursue institutions that were technically out of compliance.

For how long can this go on? With federal financial aid eligibility for distance students now being tied to institutional authorization where the student is located, requiring the proper approvals or authorization results in higher stakes. This was the concern of the community college representative who emailed us. Accrediting agencies and the Department of Education are already signaling that waivers cannot last forever. Most institutions that are SARA participants will not have a problem. For those that are not, if they are forced into “remote learning” mode again, a balance between forgiveness and oversight will be needed. Institutions will need proof that they have each state’s

authorization to secure eligibility to disburse federal financial aid to students in that state. As a result, for institutions offering emergency “remote learning,” every state will need to be clear on whether it issues waivers, chooses not to do so, or requires an approval process.

Resources and a Coming Attraction

For more information on state authorization for distance education and for institutions that cross state lines to conduct other activities, please refer to resources on the WCET State Authorization Network website. The WCET *Frontiers* blog has frequent updates on changes to policies and updates on good practices.

This post focused on the overall institutional approval required to serve students in other states. In the second part of our two-part series, the focus will be on additional types of requirements that a state might place on an institution. For example, some states require institutions to register as a business with the secretary of state while others do not. A large part of the discussion in the second post will be on the requirements of professional licensure boards and a new federal requirement for institutions to notify students about whether their programs meet the educational requirements of the appropriate board in other states.

Since you probably cannot travel across state lines, please join us on our virtual trip across borders.

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