State Authorization Basics

What is state authorization?

All states expect out-of-state institutions to follow their regulations. Institutions must receive a state's written permission before engaging in a regulated activity. Regulated activities are also called "physical presence." Regulated activities or physical presence includes offering online education, placing students in experiential learning opportunities (e.g., clinical experiences, internships), advertising and marketing, recruiting (including at college fairs), hiring faculty, and employing preceptors, student aids, or mentors.

What gives states the right to regulate online education?

The Tenth Amendment of the U.S. Constitution gives states the right to regulate education.[1]


Why are states regulating online education?

Many reasons drive and shape a state’s regulations, all of which differ by state. State regulations on out-of-state online education focuses on protecting student consumers rather than limiting out-of-state competition. States are concerned with an institution's academic integrity to protect those living within its borders.

What's the difference between authorized, exempted, and not authorized?

Authorized, exempted (from authorization), and not authorized refer to the status of an out-of-state institution in that state.

Authorized and exempted statuses allow an out-of-state institution to offer online education and engage in regulated activities. Not authorized status restricts an institution's ability to offer any online education or engage in any regulated activity.

Out-of-state institutions can be authorized two ways. First, institutions may become licensed, registered, or approved in a state, typically through an application process. Second, institutions participating in the State Authorization Reciprocity Agreement (SARA) can engage in certain activities in SARA-member states only.

Some states offer exempted from authorization status. Maintaining exempted status requires
institutions to avoid or stop engaging in regulated activities as defined by the state.

What is the State Authorization Reciprocity Agreement (SARA)?

The State Authorization Reciprocity Agreement (SARA) creates a state-level reciprocity process for online and distance education. Institutions participating in SARA are authorized through SARA to deliver online education to students living in other SARA-member states. Additionally, institutions can engage in a limited number of activities related to online and distance education.

Four regional education compacts, including WICHE, manage SARA. The regional compacts approve their states to join SARA. Institutions apply through their portal agency, usually the state's higher education agency, to participate in SARA.

More information, including a list of current SARA-member states, is available at [http://nc-sara.org](http://nc-sara.org) [2].

What the consequences of non-compliance with state regulations?

Below are examples of consequences of non-compliance. This list is not exhaustive.

**Title IV Eligibility**
State authorization is a condition to Title IV eligibility. Federal financial aid may be revoked if violations are found. Despite 34 CFR 600.9(c) being vacated on procedural grounds, the Dep’t of Ed believes that state authorization for distance education is still required under the HEA: "[I]nstitutions continue to be responsible for complying with all State laws as they relate to distance education." DCL GEN-12-13 (Ju. 27, 2012). [1]

**Higher Learning Commission Accreditation (regional accreditation)**
State authorization/compliance may be a condition to receiving regional accreditation.

**Student Tuition**
An institution lacks authority to charge students in unauthorized states. Stated differently, students living in unauthorized states are not required to pay their tuition. Additionally, students have the right to be refunded the previously collected tuition. [2]

**Lawsuits**
Both students and a state’s Attorney General can file lawsuits against an institution. Although there is no record of lawsuits leading to court adjudication, Jeannie Yockey-Fine (Senior Advisor of State Regulatory Services at Cooley, LLP) stated that lawsuits have been filed and settlements have been granted between students and institutions.[2] She stated that students are usually not satisfied with a tuition refund.[3] Furthermore, public state institutions have received cease-and-desist letters and have paid fines to state agencies.

**Monetary Fines**
Regulating education falls within a state’s “police powers.” States are capable of fining non-compliant universities. Public, non-profit universities have been fined and have paid those fines.

Technical Topics

Physical Presence

What does 'physical presence' and 'physical presence trigger' mean?

Physical presence is a regulated activity occurring within a state's borders. Out-of-state institutions engaging in a regulated activity "trigger" the need for state authorization; hence, the term "physical presence triggers."

What are the physical presence triggers in the different states?

Physical presence triggers vary by state. States that are members of the State Authorization Reciprocity Agreement (SARA) have the same set of physical presence triggers.

In non-SARA states, physical presence triggers can include, but are not limited to, the following: experiential learning opportunities (e.g., clinical experiences, internships), advertising and marketing, recruiting (including at college fairs), hiring faculty, and employing preceptors, student aids, or mentors.

In SARA states, physical presence triggers are available at http://nc-sara.org/about/physical-presence-standard [4].

What happens to an institution's exempted from authorization status if it triggers physical presence?

Out-of-state institutions with an exempted status and triggering physical presence in that state will lose their exempted status. Instead, institutions must apply for and receive state authorization. During the application process, institutions must stop engaging in all regulated activities until they receive state permission.

Programs Leading to Professional Licensure

What's the meaning of 'programs leading to professional licensure?' Which programs lead to licensure?

Professional licensure programs are programs that require a person to be licensed to practice within the chosen field.

Programs must know whether their educational and/or experiential learning components meet a state board's requirements. A professional licensure program must disclose to a prospective
or current student whether the program will lead to licensure in the state where the student lives. "Leading to licensure" means that upon completing the program, the student will be eligible to sit for the exam in a particular state.

A list of professions commonly requiring licensure include, but is not limited to, accounting, addiction counseling, architecture, athletic training, dental hygiene/dentistry, dietetics-nutrition, engineering, geology, interior design, landscape architecture, law, marriage and family therapy, medical laboratory sciences, medicine, nursing, occupational therapy, social work, speech-language pathology, teaching, and veterinary medicine. A list of additional occupations requiring licensure is available at: http://www.careeronestop.org/toolkit/training/find-licenses.aspx [5].

What about professions that do not require licensure in Colorado but require licensure in other states?

Programs are still responsible for disclosing to a prospective or current student that although the profession does not require licensure in Colorado, it requires licensure in other states. Programs should disclose whether students will be able to eligible to sit for the exam in a particular state.

How does state authorization affect programs leading to professional licensure (e.g., teaching, nursing)?

Any programs leading to professional licensure require both state authorization and state licensure board approval. Professional licensure requirements vary by profession and by state.

In SARA states, programs have already received state authorization and will only need state licensure board approval.

In non-SARA states, programs lack both state authorization and state licensure board approval. Programs will need to seek both before offering online education and enrolling students.

Disclosure and Notification Requirements

What is required in a state authorization disclosure?

An institution must clearly state whether it may legally offer online education and enroll students living in a particular state. Disclosure indicate the institution's status: authorized, exempted, or not authorized.

What is required in a professional licensure disclosure?
An institution or program must clearly state whether a course or program that customarily leads to licensure will lead to professional licensure in every state. Alternatively, the institution or program may state that it has yet determine this and provide prospective and current students with the contact information of the appropriate state licensure boards in state where the student lives or intends to live. *This is the responsibility of the institution and program and not the student to know where the program leads and does not lead to licensure.*

**What other related disclosures are institutions required to post?**

An institution must provide information on its internal student complaint procedure, contact information of its state agency handling student complaints, and contact information of the state enforcement agencies where the students live. Additionally, it must provide contact information of its regional accrediting body.

**What are best practices for disclosures and notifications?**

The purpose of disclosure and notifications is for student consumer protection. Transparency provides students the maximum consumer protection. Transparency has three crucial components: location, timing, and accuracy.

**Location**

Disclosures must be accessible within three clicks of the front page. They must be visible and not buried on a page. Many institutions post a state authorization link on their front page either at the foot of the webpage or as a header or side tab.

**Timing**

Disclosures must be made *before* a prospective or current student enrolls in a course or program.

**Accuracy**

Disclosures must clearly and accurately state in which states an institution and/or its programs are authorized and not authorized. Institutions and programs must regularly update this information. Professional licensure programs must also disclose whether the program leads to licensure in a specific state. Specifically regarding professional licensure programs, anything less may be a deceiving statement under the Federal Misrepresentation Rule. Additionally, some state regulations require this level of transparency (e.g., Florida).

**What happens if a student moves during her academic career? Who is responsible?**
An institution is responsible for flagging, tracking, and advising students even after they are admitted. The institution's obligations continue throughout their students' academic career.

Regulations

Colorado Specific Regulations

Which Colorado state agency authorizes out-of-state institutions to provide online programs and courses to Colorado residents?

The Colorado Department of Higher Education authorizes out-of-state institutions.

Are institutions that are non-SARA participants allowed to advertise in Colorado?

Yes, institutions that are non-SARA participants are allowed to advertise in Colorado because “[a]dvertising to students whether through print, billboard, direct mail, internet, radio, television or other medium” does not trigger physical presence in Colorado.[1]


Resources

I have more questions. Whom should I ask?

Please contact
Erika G. Swain
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E-mail: erika.swain@cu.edu
Direct phone line: (303) 735-8184
Additional resources can be found here.

Groups audience:
State Authorization

Source URL: https://www.cu.edu/state-authorization/faqs-0

Links
[1] https://www.cu.edu/state-authorization/faqs-0
[3] https://wcetblog.wordpress.com/2015/03/24/what-can-happen/
[7] mailto:erika.swain@cu.edu