STATE to STATE
Distance Education Compliance

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Making Sense of State Authorization
Now

Common Myths

The States: Basics and Trends

Reciprocity and SARA

Operationalizing Distance Ed. Compliance
Why Does State Authorization Matter?

• Every state has a regulatory body overseeing education & Distance Education

• Some States have several of these bodies

• State Statutes and administrative rules address different levels of activity, or “Physical Presence Triggers”
What has your institution done (or not done) on state authorization?

- We have applied and/or received approval from all of the states in which we plan to serve students. (5%)
- We have formally applied to one or more states. (28%)
- We have formally contacted some or all states, but have not applied to any state. (26%)
- We have undertaken some initial steps. (38%)
- We have yet to address any state authorization requirements. (3%)

In 2011:
- 69% applied to at least one state.
- 31% have NOT applied to any state.

In 2012:
- 69% applied to at least one state.
- 31% have NOT applied to any state.

In 2014:
- 69% applied to at least one state.
- 31% have NOT applied to any state.
COMMON MYTHS ABOUT STATE AUTHORIZATION
Common Myths Debunked

• MYTH:
  – “The federal rule was vacated, so I don’t have to worry about state authorization.”

• FACT:
  – The revocation of the federal rule had no impact on state law. And there are alternative means for Feds to trip up institutions that are not complying with state laws.
• MYTH:
  – “I do not need to be authorized in a state if the only students I have in that state are on military bases.”

• FACT:
  – Only a small number of states exempt institutions that only enroll students on military bases. Most will require institutions to be authorized if they meet the state’s physical presence test.
Common Myths Debunked

• MYTH:
  – “I do not need to be authorized in a state if I only have one or two students enrolled there.”

• FACT:
  – Only a couple of states have a *de minimis* test that exempts an institution with a small number of students. Usually, it does not matter if you have 1 or 100 students in the state (as a legal matter).
Common Myths Debunked

• MYTH:
  – “I don’t need to worry about state authorization, because reciprocity is right around the corner.”

• FACT:
  – Even if reciprocity stays on schedule, adoption by some states may be several years away and some of the more difficult states may choose not to join.
Common Myths Debunked

• MYTH:
  – “No one ever gets in trouble for failure to obtain authorization in a state.”

• FACT:
  – Penalties are becoming more common. Most often, these consist of cease-and-desist letters, forced teach-outs, enrollment freezes, and fines. Some states even provide for criminal penalties, although these are rarely applied.
What is happening at the State level?

- With or without a federal rule, underlying state authorization requirements apply.
- Federal actions and related publicity have energized many states.
- State AG’s have taken up enforcement.
- State law continues to evolve rapidly.
# State Authorization – The Present

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<th>States Where Purely Online Degree-Granting Institutions Must Be Authorized</th>
<th>States Where Purely Online Non-Degree Institutions Must Be Authorized</th>
<th>Exclusively online programs must obtain an exemption:</th>
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State Authorization – Triggers

- Most states (approximately ¾) still require some level of “physical presence” to trigger licensure
  - Local Address/Site
  - Local Advertising
  - Faculty
  - Externships
  - Recruiting Activities (usually on ground)
- This seems relatively straightforward, but can become significantly complex based on your institution’s operational, academic, and regulatory structure...

  - Multiple States + Rules & Law + Program Offerings + Operational Structure + Student Contact Methods
    - Regulatory Patchwork, OR “It Depends...”
Physical Presence Triggers - Degree-Granting Institutions

As of February 2014

- Local Address: 100.0%
- Local Advertising: 44.4%
- Faculty Trigger: 26.7%
- Externships: 57.8%
- Recruiting: 60.0%
What happens to institutions that do not comply?

– Cease and desist orders
– Possible institutional sanctions, fines, etc.
– Very unpleasant situations, including lawsuits, if a graduate can’t get licensed (common in fields requiring professional licensure - Nursing, Education, Medicine, Psychology)
– Domino effect with accreditors and Department of Education
– Damaged reputation
STATE AUTHORIZATION TRENDS
State Authorization Trends

More aggressive regulations:

**California Senate Bill 1247:**
- Removes exemptions for many institutions receiving veterans’ education benefits
- BPPE must strengthen its complaint process
- Beginning January 2016

**Montana:**
- Added financial responsibility standard
- Composite score of at least 1.0 or submit bond
State Authorization Trends

Massachusetts:

- New Consumer Protection Regulations issued by Attorney General: 940 CMR 31.0
- Very strict rules for disclosures re transfer of credit
- 72 hour disclosure notice before signing an enrollment agreement
- Must notify students where credits will transfer
- Must have a written agreement or other documentation that the other institution will accept transfer
- Without specific agreements, must state that “the institution is aware of no other schools that accept the transfer of its credits.”
- Confusing calculations for placement and completion rates
State Authorization Trends

Florida:

• Looking at rule changes to require bonds or additional contributors to the student protection fund
Happier State Authorization Trends

Maryland:
  • Now allows up to 5 students in an externship program without triggering full authorization.

Ohio Board of Regents:
  • Institutions offering externships may utilize an abbreviated application process

Washington Student Achievement Council:
  • Field placement authorization—quicker and less expensive
RECIROCITY AND SARA
The SARA solution

A nation-wide system of reciprocity administered by the four existing regional compacts
Essential principles of SARA

• Voluntary for states and institutions.

• Acknowledges the traditional roles within higher education’s “accountability triad”: federal government, states, and accrediting bodies recognized by the U.S. Department of Education.
Essential principles of SARA (2)

- Requires states to approve their in-state institutions for SARA participation (based upon institutional accreditation and financial stability) and resolve student complaints.

- SARA states agree to impose no additional (non-SARA) fees or requirements on institutions from other SARA states.
Essential principles of SARA (3)

- Open to degree-granting postsecondary institutions from all sectors: public colleges and universities; independent institutions, both non-profit and for-profit.
- Sets forth a reasonable, uniform set of triggers of “physical presence”.
- Preserves state approval and oversight of on-the-ground campuses.
Benefits to institutions

• Enables more efficient provision of distance education to a broader market.
• Reduces number of applications to other states.
• Reduces number of other-state regulations to monitor for changes.
• Reduces costs.
• Reduced costs = potentially lower fees for students.
Summary of State Actions

- As of January 26, 2015:
- SARA-enabling legislation has passed in an additional six states
- Four states have determined that no legislation is needed to enable participation in SARA.

http://nc-sara.org/content/sara-state-status
OPERATIONALIZING DISTANCE EDUCATION COMPLIANCE
Operationalize Your Distance Education Regulatory Plan

• Operational Strategy Overview

(simple steps)
1. Identify resources
2. Define your Operational activity
3. Identify needed action

(complex steps)
4. Address Research and Information Storage and Reporting
5. Develop Status Tracking and Reporting
6. Maintain reporting, renewal, and periodic outreach activity
Step 1: Identify State Regulatory Resources

**Free Resources**
- SHEEO
  - [http://www.sheeo.org/node/434](http://www.sheeo.org/node/434)

**Member Benefits**
- APSCU (Stateside and Associates)

**Contract Resources**
- Education Law Firms (Cooley)
  - [http://www.cooley.com/stateauthorization](http://www.cooley.com/stateauthorization)
- Independent Research Firms (Eduventures)
- Chmura
Step 2: Defining operational activity

- Distance Education
- Local Address
- Local Advertising
- Faculty
- Externships
- Recruiting

This seems relatively straightforward, but can become significantly complex based on your institutions operational, academic, and regulatory structure...

Multiple States + Rules & Law + Program Offerings + Operational Structure + Student Contact Methods

= Regulatory Patchwork, OR “It Depends...”
Step 3: Identify Needed Action

- Create an institutional plan to move forward with state authorization where required and/or advisable.
- Don’t wait for state reciprocity agreements or return of the federal rule!
- Be aware of costs and benefits of your efforts.
- Identify necessary campus and outside resources.
- Centralize efforts across campus.

Note: Multiple agency contacts and registration efforts will confuse regulators and increase risk of institutional liability; do at institutional level.
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Step 4 (continued)

Avoid static reference processes, and consider adding a “Change Management” style process.

Comparison:

**Static Reference** = Read every printed regulation every 6 months to assess your operation.

Vs.

**Change Management** = Receive alerts from legal and education resources (APSCU, FAPSC, SHEEO, Law Firm, etc.) on critically changing regulations and implement action based on change.
Step 5: Status Tracking & Reporting

• Items to track and report (by state):
  – Current Status
  – All types of correspondence
  – Fees and Bonds Sent
  – Critical dates
  – Agents and Faculty Changes
  – Catalog and Disclosure changes
Status Tracking & Reporting (continued)

• Correspondence is the Key
• Make your correspondence easy to track, reference, and search.

• DATE STAMP EVERYTHING!!!
  – (prefer YYYY-MM-DD instead of DD-MM-YYYY)

• Types
  – Letter
  – Application
  – Email
  – Phone/Voicemail
Step 6: Outreach, Maintenance, and Reporting

Initial Approval:

- Once you have made initial contact:
  - Consider the length of time required for your application and approval process in determining when and where to apply
  - Check back with states you haven’t heard from with a friendly follow-up email
  - Try a phone call as a follow-up
  - Single point of contact is best

- Most state regulators are reasonable people

- Email is the method preferred by most state regulators
Outreach, Maintenance, and Reporting (cont.)

So, you’ve built an operation that meets your accreditor’s standards...

• Start thinking in terms of “States” in addition to standard operation
  
  – Required Disclosures by state
  – Enrollment Logic to prevent accidental enrollment
  – Student finance and Multiple refund policy requirements
  – Course enrollment and Program versions by state
  – Externship implications and accreditation standards by program
  – Placement and certification requirements by state based on program.
  – Maintaining state outcome standards in addition to accreditor standards.

Examples:
  - Arkansas approved “Associate of Science” programs as “Applied Associate of Science”
  - Accréditor requires only 50% of AS Gen Ed faculty have a masters; Minnesota requires all faculty in Gen Ed have a Masters.
Outreach, Maintenance, and Reporting (cont.)

• Items required to maintain approval:
  – Annual renewal
  – Notification of any relevant* changes
  – Annual Reports
  – Annual Bonds
  – Changes to Faculty & Agents
Step 6: !!!Evaluate Process!!!

• More than any other item, your processes have the ability to determine failure or success.

CORE ISSUE: Compliance is Multifaceted

1) Legal/Regulatory
2) Information Management/IT

DO NOT UNDERESTIMATE the importance of technology in managing State Authorization.
Traditional Process

Records Server → User Computer → Administrative Ninja (Prone to data entry error) → FETPIP Website

Technology Process

Records Server → User Computer

1- Automation ensures what is in Records server gets submitted to site

2- Dramatically reduces time to complete (and runs even when you’re not in the room)
Why does a technology process matter?

• I have an admin update my EAs
• I have an admin update my Catalog
• It is the responsibility of my Program Directors to update PEPs
• I hired a Regulatory Manager to handle my accreditation and state authorization applications.

ISSUE: As areas of focus grow, information management issues compound. This problem amplifies once you start to stack State, after State, after state, after state...
Labor Focused Management Method

**Admissions**  
(Enrollment Agreements)

**Education**  
(Syllabi)

**LMS Team**  
(Online Course Data)

**Compliance**  
(Catalog/Disclosures/Policy)

**Marketing**  
(Online Disclosures)

**IT**  
(CVUE – Program Records)
Further Complicated by Adding States

- ABHES
- Alabama
- Arkansas
- Oklahoma
- Wisconsin
- Minnesota
- Maryland

It goes on... and on... and on... And on...
Regulatory Body _____ wants an updated _____ ASAP!
Leveraging Technology – or- Compliance as an IT Process

Admissions
(Enrollment Agreements)

Education
(Syllabi)

LMS
(Online Course Data)

Compliance
(Catalog/Disclosures/Policy)

Marketing
(Online Disclosures)

IT
(CVUE – Program Records)
EXAMPLE DEMO
Status Tracking & Reporting (continued)

• Create a database linked form to record and note details of all correspondence.
  – Get friendly with servers.
  – Avoid Excel at all costs for Data Storage Plan
  – Access more acceptable, but limited in reporting capacities (in my opinion)

• Make reports that are text searchable

• Maintain Physical copy, digital scans, and stored data version of your correspondence
  Reasons:
  – you may want to locate an exact copy of what you received one day;
  – the next, you need to easily identify every state that you sent a letter to where you state “we do not advertise locally in your state”
    • (you don’t really want to flip through a binder with 2000 documents and try to find and count on this last one)
Status Tracking & Reporting (continued)

• There is NO:
  – “Big Picture”
  – “Magic Bullet”
  – “One size fits all”
  – “3 bullet summary”

• This material is nuanced and complicated, and the details matter

• Just because a solution worked for one state, does not mean it will work for the next

• Try to create visual aids to help process
Questions?
Questions and Contact Information

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