

ACAHM Accreditation Commission for Acupuncture and Herbal Medicine

Position Paper Title: Compliance with Out-of-State Educational Activities

Approved By: ACAHM Executive Committee

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Related Commission Policies: [Glossary](#); [Distance Education Policy](#)

References: The 2019 state authorization federal regulations (effective July 1, 2020) require institutions to meet requirements for state authorization [34 CFR 600.9(c)], state reciprocity agreements [34-CFR 600.2], and professional licensure notifications [34 CFR 668.43(a)(5)(v) and 34 CFR 668.43(c)] in order to grant federal aid to a student participating in postsecondary education in a state for which the institution is not located.

[SARA Policy Manual](#) (Note: for SARA purposes, 34 CFR 668.43 requirements also apply to non-Title IV institutions.)

Responsible Official: ACAHM Director of Regulatory Affairs

SUMMARY

This *Position Paper* focuses on education-related activities that may implicate the need for an institution to obtain state authorization(s), state reciprocity agreements and/or provide professional licensure notifications.¹

BACKGROUND

When an institution, initially established in a single state of incorporation, begins to expand its reach and conducts education-related activities in additional states, it encounters new layers of legalities. With today's increasing mobile and virtual world, defining what constitutes "doing [educational] business" in another state is complex and multifaceted. There are no uniform standards with regards to how individual states approach what constitutes "doing business." Institutions that have a physical presence in a state are generally regarded as doing business in a state. For many states, doing business can be "triggered" by a program that includes educational activities (i.e., clinicals, internships, externships, practicums, field experiences, away programs, etc.) that are arranged by that program and take place in another (host) state.

Other examples of "out-of-state" educational support activities that may be regarded as "doing business" include:

- Delivering distance or correspondence education
- Marketing
- Recruiting
- Tutoring
- Other student support services

¹ This Position Paper does not offer legal advice. Such advice should be obtained from a qualified attorney.

SOME COMPLIANCE OPTIONS FOR DOING “EDUCATION BUSINESS” OUT-OF-STATE

1. State-by-State Authorization Approach

To achieve compliance with varying state education laws, each postsecondary institution in the United States, regardless of sector (public, independent nonprofit, and independent for-profit institutions), that (A) enrolls out-of-state students who complete their educational activities via distance or correspondence, and/or (B) permits in-state enrolled students to complete educational activities out-of-state must: (1) identify the governmental agencies charged to oversee postsecondary educational delivery within the borders of the country’s 54 states, territories, and districts in which these educational activities occur, (2) contact those agencies, and (3) determine and comply with their highly varying requirements. Institutions with limited out-of-state educational activities may find a state-by-state approach cost-effective and less burdensome than other approaches.

2. Reciprocity Agreement Approach

An alternative approach for securing state authorizations involves participation in state reciprocity agreements. For example, the [State Authorization Reciprocity Agreement \(SARA\)](#)² is a national initiative that increases student access to distance education courses and programs while maintaining compliance with state regulations. Participation in SARA is voluntary for both states and institutions. Institutions participating in SARA can offer educational opportunities in [49 SARA member states, the District of Columbia, the U.S. Virgin Islands, and Puerto Rico](#) without seeking individual approval in each state. **California is the only state that is not a member of SARA.**³

SARA participation applies only to distance education activities conducted across state lines. SARA does not affect the applicability of general-purpose state laws⁴ such as business registries, general purpose consumer protection laws, worker’s compensation laws and the like.

GENERAL OVERVIEW OF SARA

Physical Presence

Generally, an institution has *physical presence* when it operates a campus, branch instructional facility whether leased or owned, or administrative office within the boundaries of a state. However, because the specific definitions of physical presence vary from state to state, especially regarding out-of-state institutions that seek to conduct any activity within another state, SARA has established its own uniform standard for physical presence⁵ vs. distance education. For purposes of participation in SARA, this standard applies, but it does not affect the application of existing state laws to institutions that choose to operate outside of SARA, or which are based in states that are not SARA members.

For purposes of SARA, an institution has *physical presence* and therefore must meet the state’s current non-SARA requirements if it does any of these things in a state:

- a. Establishes a physical location for students to receive synchronous or asynchronous instruction
- b. Requires students to physically meet in a location for instructional purposes more than twice per full-term (quarter or semester) course for a total of more than six hours
- c. Establishes an administrative office
- d. Provides information to students for the purpose of enrolling students, or provides student support services, from a physical site operated by or on behalf of the institution in the state

² “A More Uniform Way of Recognizing Online Degree Programs Across State Lines, with SARA as a Focus,” Marshall A. Hill, Executive Director, National Council for State Authorization Reciprocity Agreements.

³ Currently, if a California institution wants to offer online courses to students living out of state, they must enter into agreements with each state where they wish to operate. **Source:** Kristen Soares, president of the Association of Independent California Colleges and Universities.

⁴ A “general-purpose law” is one that is not limited to entities delivering postsecondary education in the state but applies to a larger category of entities is one that applies to all entities doing business of any type in the state, not just institutions of higher education. [SARA Policy Manual, p.24](#)

⁵ SARA Physical Presence Standards [5.12]

- e. Offers a “short course” that requires more than 20 contact hours
- f. Provides office space to instructional or non-instructional staff
- g. Maintains a mailing address or phone exchange in a state

An institution does not have physical presence, and is therefore covered by SARA in SARA member states, if it is only:

- a. Offering courses to individuals via distance education in ways that do not require students to gather physically in groups
- b. Advertising to students whether through print, billboard, direct mail, internet, radio, television or other medium
- c. Offering distance education courses on a military base if enrollment in such courses is limited to active and reserve military personnel, their dependents, and civilian employees of the installation
- d. Maintaining a server, router or similar electronic service device housed in a facility that otherwise would not constitute physical presence (the presence of a server or similar pass-through switching device does not by itself constitute the offering of a course or program in that state)
- e. Having faculty, adjunct faculty, mentors, tutors, or other academic personnel residing in a member state and working from their homes or another private, non-instructional site, provided that such staff is not engaged in activities that would otherwise constitute physical presence
- f. Holding proctored exams on behalf of the institution in the host state
- g. Having contractual arrangements in the home or host state.
- h. Offering limited supervised field experiences
- i. Using recruiters in a SARA member state
- j. Engaging in field trips to visit existing sites or facilities for academic purposes not involving the establishment of residential or instructional facilities

Supervised Field Experiences

Provisions of SARA also address courses and programs incorporating a “supervised field experience.” Under SARA a “supervised field experience” means a student learning experience under the oversight of a supervisor, mentor, faculty member or other qualified professional, located in the host state, who has a direct or indirect reporting responsibility to the institution where the student is enrolled, whether or not credit is granted. Examples of out-of-state experiential learning activities may include practica, clinicals, internships, externships, supervised field experiences, co-curricular courses, fellowships, seminars, etc.

Professional Licensure

Participation in SARA does not satisfy state requirements pertaining to professional licensure.⁶ Distance education programs in nursing, education, social work, counseling, allied health professions, veterinary medicine, etc., may require additional approval from separate licensing boards, depending on the state. Any institution operating under SARA that offers courses or programs potentially leading to professional licensure or certification must keep all students, applicants, and potential students who have contacted the institution about the course or program informed as to whether such offerings meet state licensing or certification requirements. (See, for example, 34 CFR 668.43(a)(5)(v) and 34 CFR 668.43(c)).

⁶ <https://www.nc-sara.org/resources/professional-licensure>

FREQUENTLY ASKED SARA-SPECIFIC QUESTIONS

N1 - If a program is purely online except for field placements such as clinicals, student teaching, practica, etc., do those placements fall under SARA or are they considered a “physical presence” that activates state law?

Almost all such field placements (with certain limitations, see [SARA Policy Manual](#), Subsection 5.12 and 5.13) fall under SARA, but many may also fall under the jurisdiction of state professional licensing boards. They generally do not constitute a physical presence for SARA purposes.

N2 - Does it matter whether the “parent” program for an interstate supervised field experience or out-of-state learning placements is traditional on-ground or offered by distance education?

No. SARA covers all such interstate supervised field experiences and out-of-state learning placements except as noted in SARA policies.

N3 - Can an institution that does not offer distance education (online courses, interactive video, etc.) participate in SARA in order to obtain the benefits of SARA for purposes of placing students in supervised field experiences or out-of-state learning placements

Yes. Supervised field experiences and out-of-state learning placements are considered distance education for purposes of SARA. Because SARA treats supervised field experiences and out-of-state learning placements as distance education, an institution that meets SARA eligibility requirements and has any programs using such placements may participate in SARA even if it does not offer other kinds of distance education.

N4 - If the state entity responsible for degree program authorization is also the state entity that determines, or helps determine, whether a program meets requirements for professional licensure, is there a conflict?

No. Although SARA policies replace the degree authorization functions of such an entity for some purposes, it does not preclude that entity from performing other duties under state law, including determinations of whether a program meets requirements for state licensure in professional fields or whether there are state licensure requirements for faculty.

Revision History

Date Revised	Summary of Revisions	Approved By
230921	Initial publication	ACAHM Exec Dir
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