

AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 101, 207, 210, 210-c, 212 of the Education Law and section 97-III of the State Finance Law.

1. Part 49 of the Regulations of the Commissioner of Education is amended to read as follows:

Subpart 49-1

Approval of New York State Degree-Granting Institutions to Operate Under a State Authorization Reciprocity Agreement (SARA).

Section 49-1.1. Definitions.

For purposes of this Subpart:

(a) ...

(b) ...

(c) ...

(d) ...

(e) ...

(f) ...

(g)

(h) SARA policies and standards means the SARA [Policies and Standards February 17, 2016] Manual as adopted by National Council of State Authorization Reciprocity Agreements, 3005 Center Green Drive, Suite 130 Boulder, Colorado 80301 – Available at the Office of Counsel, New York State Education Department, State Education Building, Room 148, 89 Washington Avenue, Albany, New York, 12234.

Section 49-1.2. Institutional Eligibility Requirements. To be eligible for approval to operate under SARA an institution shall:

(a) ...;

(b) ...

(c) ...

(d) ...

(e) ...

(f) ...

(g) agree to [notify in writing all students in a course or program that customarily leads to professional licensure or certification, or which a student could reasonably believe leads to such licensure or certification, whether or not the course or program meets requirements for licensure or certification in the state where the student resides. If an institution does not know whether the course or program meets licensure requirements in the student's state of residence, the institution may meet this requirement by informing the student in writing and providing the student the contact information for the appropriate state licensing board(s)] satisfy all federal requirements for disclosures regarding professional licensure programs under 34 CFR § 668.43, regardless of whether the institution participates in Title IV programs;

(h) agree, in cases where the institution is unable, after all reasonable efforts, to determine whether a program will meet state professional licensure requirements, to provide the student or applicant with current contact information for any applicable licensing boards, and advise the student or applicant to determine whether the program meets requirements for licensure in the state where the student is located;

[(h)](i) agree, in cases where the institution cannot fully deliver the instruction for which a student has contracted, to provide a reasonable alternative for delivering the instruction or reasonable financial compensation for the education they did not receive;

[(i)](j) agree to provide any data requested by the department, to the extent permitted by applicable law, to assist the department in resolving any complaints arising from its students and to abide by decisions of the department, in order for the department to effectively monitor any activities under the agreement;

[(j)](k) upon application submission, pay to the department any state fees for application review and SARA participation as prescribed in section 49-1.7 of this Subpart;

[(k)](l) pay an annual SARA participation fee to the National Council for SARA (NC-SARA), as required by the SARA policies and standards; [and]

[(l)](m) report any other information required by SARA and/or this [section.] Subpart; and

[(n)] agree to provide the institution's and SARA's complaint resolution policies and procedures to all students taking courses under SARA policies.

Section 49-1.3. Initial Application for Approval to Operate Under SARA.

(a) ...

(b) All complete applications will be reviewed by the department to determine whether the institution meets the eligibility requirements set forth in this [section] Subpart. Following the department's review of an institution's application for approval, the department shall take one of the following actions:

(1) Approval. The department shall approve all institutions that meet the requirements set forth in this [section] Subpart. The term of approval shall be one year from the date of notification of approval and may be renewed annually thereafter based on a renewal application. An extension of such term may be granted at the discretion of the Commissioner.

(2) Disapproval. The department shall disapprove all institutions that do not meet the requirements set forth in this [section] Subpart. If an institution's application for participation in SARA is disapproved, the department will provide the institution with a written reason for such disapproval. [The] Within 10 days of the date of the written notification of disapproval, the institution may appeal [any] such disapproval to the Commissioner or his/her designee in a [timeframe and] manner prescribed by the Commissioner[, and submit additional information in support of its position]. An institution that has been disapproved[,] may reapply to the [Department] department no earlier than 180 days from the date of disapproval.

(3) ...

Section 49-1.4. Application for Renewal of Approval to Operate Under SARA.

(a) An institution may apply to the department for renewal of its approval to operate under SARA on a form and in a timeframe prescribed by the Commissioner, with the required fees as prescribed in section 49-1.7 of this [section] Subpart no later than 60 days prior to the expiration of its existing term of approval. An extension of the submission period for renewal of approval may be granted at the discretion of the Commissioner.

(b) The department shall review all properly submitted renewal applications, and any other relevant data in the department's possession related to the institution's compliance with the SARA policies and standards. Following such review, the department will make a determination consistent with the options and procedures identified in section 49-1.3(b) of this Subpart. [The] Within 10 days of the date of the written notification of disapproval, the institution may appeal such disapproval to the Commissioner or his/her designee in a [timeframe and] manner prescribed by the Commissioner [Department, and submit additional information in support of its position].

(c) [Institutions that do] An institution that does not apply for renewal before expiration of its approval [are] is no longer approved to operate under SARA.

(d) [Institutions] An institution no longer approved to operate under SARA may reapply to the [Department] department no earlier than 180 days from the date of disapproval or non-renewal.

Section 49-1.5. Loss of Eligibility and Removal.

The department may remove an institution from approval to operate under SARA, based on a finding that the institution is no longer eligible or is out of compliance with SARA policies and standards. [The] Within 10 days of the date of the written notification of disapproval, the institution may appeal [a] such disapproval to the Commissioner or his/her designee in a [timeframe and] manner prescribed by the Commissioner[, and submit additional information in support of its position]. An institution that is removed from eligibility during an approval period shall receive no fee refund, except as otherwise provided in section 49-1.7 of this Subpart.

Section 49-1.6. Complaints. Complaints against New York State institutions operating under SARA shall follow the following procedures:

- (a) ...
- (b)...
- (c) ...
- (d) ...
- (e) ...

Section 49-1.7. Fee Schedule.

(a) New York State institutions seeking approval to operate under SARA shall be subject to the following annual fees to obtain and/or maintain state participation in SARA:

Institution's total full-time equivalent (FTE) enrollment as shown in the Federal Integrated Postsecondary Education Data System (IPEDS)	Total Annual Fee
Under 2,500 FTE enrollment	\$5,000
2,500 – 9,999 FTE enrollment	\$7,000
10,000 or more FTE enrollment	\$9,000

- (b) ...

(c) If the department determines that an institution's application is disapproved; the institution will be refunded its annual fee, less \$2,000, which represents the costs to the [Department] department for application review.

(d) In addition to the fees prescribed in (a) of this section, institutions that have been approved by the [Department] department to participate in SARA shall be subject to the annual fees required by the SARA policies and standards, which shall be made payable to the National Council for SARA.

(e) ...

Subpart 49-2

Approval of Out-of-State Post-Secondary Institutions to Offer Distance Education to Individuals Located in New York State [Residents]

Section 49-2.1 Approval of the Department.

(a) Any institution legally domiciled in a State other than New York State or a United States Territory that seeks to offer any educational credit-bearing post-secondary instruction, courses, or degree programs through distance education to individuals located in New York State [residents] shall obtain approval to operate in this State from the [Department] department. This includes institutions that are operating in New York State under section 3.56 of the Rules of the Board of Regents (permission to operate) that seek to offer distance education programs in this State.

(1) Post-secondary institutions that enrolled individuals located in New York State [residents] in its distance education programs on or before of the effective date of this

Subpart, shall have six months from the effective date of this Subpart to seek and obtain department approval to continue to operate such programs to individuals located in New York State [residents]. An extension of the six-month time period may be granted in limited circumstances, at the discretion of the Commissioner.

(2) All institutions with individuals located in New York State [residents] enrolled in its distance education programs on or before the effective date of this Subpart, that have not received department approval by the expiration of the time period in paragraph (1) of this subdivision, must cease enrolling new students, and shall phase-out instruction for students who are currently enrolled in such programs until such students have completed the distance education program in which they are enrolled on the effective date of this section.

(b) Exemption. Any institution that is identified by a member state as participating in SARA is exempt from the application procedures and fees identified in this Part[,] and are instead subject to the SARA policies and standards.

Section 49-2.2. Definitions.

For purposes of this Subpart only:

(a) ...

(b) *Approved* or *Approval* means approval of an institution to offer its distance education programs to individuals located in New York State [residents].

(c) Complaint means a formal assertion in writing that the terms of approval are being violated by a person, institution, state, agency or other organization or entity operating under [the terms of this agreement] this Subpart.

(d) *Distance education means credit-bearing post-secondary instruction offered by any means where the student and faculty member are in separate physical locations and the student is not required to report to a specific location for synchronous instruction.* It includes, but is not limited to, online, interactive video or correspondence courses or programs. It does not include intrastate distance education activity.

(e) *Institution means a degree-granting postsecondary entity legally domiciled in a state other than New York State or a United State Territory.*

(f) *Interregional Guidelines for the Evaluation of Distance Education means the guidelines developed by the Council of Regional Accrediting Commissions (C-RAC) in February 2011, and any amendments thereto, published by the Middle States Commission on Higher Education, 3624 Market Street, Philadelphia, PA 19104 - Available at the Office of Counsel, New York State Education Department, State Education Building, Room 148, 89 Washington Avenue, Albany, New York 12234.*

(g) *Legal domicile or legally domiciled means the state or United States territory in which the institution's principal campus holds its institutional accreditation and, if applicable, its primary federal Office of Postsecondary Education Identifier (OPEID) number.*

(h) *Financial responsibility index score means a numeric score calculated by the department for nonpublic institutions of higher education using United States Department of Education methodology as described in federal regulation 34 CFR § 668.172. The financial responsibility index score is calculated at the highest level of ownership.*

Section 49-2.3. Institutional Eligibility. An institution applying to the Department for approval to offer credit-bearing post-secondary courses or degree programs to individuals located in New York State [residents] through distance education pursuant to this Subpart must:

(a) ...

(b) ...

(c) possess a financial responsibility index score as defined in section 49-2.2(h) of this Subpart [from the U.S. Department of Education] that is 1.5 or above;

(d) agree to abide by the Interregional Guidelines for the Evaluation of Distance Education as defined in section 49-2.2(f) of this Subpart;

(e) agree to be responsible for the actions of any third-party providers used by the institution to offer distance education to individuals located in New York State [residents];

(f) ...

(g) ...

(h) ...

(i) agree to notify in writing all applicants and students in a course or program that customarily leads to professional licensure or certification, or which a student could reasonably believe leads to such licensure or certification, that the institution [outside of New York State] is not able to recommend graduates for licensure or certification in New York State[,] and does not know whether the course or program meets licensure requirements in New York State, and also agree to provide the student the contact information for the appropriate state licensing or certification board(s);

(j) ...

(k) ...

(l) ...

(m) agree to cease and desist all operations, including offering any distance education programs to individuals located in New York State [residents], upon notification from the department that the institution has lost its eligibility to offer such programs under this Subpart.

[(n) Waiver. The Commissioner, at her/his sole discretion, may waive one or more eligibility requirements identified in this section, provided that the institution can establish, in the determination of the Commissioner, that it has met the substantial equivalent of a requirement under this Subpart.]

Section 49-2.4. Initial Application for Approval to Offer Distance Education.

(a) ...

(b) All properly submitted applications will be reviewed by the department to determine whether an institution meets the eligibility requirements set forth in this section. Following the department's review of an institution's application for approval, the department shall take one of the following actions:

(1) Approval. The department shall approve all institutions that meet the requirements set forth in this section. The term of approval shall be one year from the date of notification of approval[,] and may be renewed annually thereafter based on a renewal application. An extension of such term may be granted at the discretion of the Commissioner.

(2) Disapproval. The department shall disapprove all institutions that do not meet all of the requirements set forth in this section. If an institution's application to offer distance education in this State is disapproved, the department will provide the institution with a written reason for disapproval. Within 10 days of the date of the written notification of disapproval, the institution may appeal a disapproval to the Commissioner or his/her designee in a [timeframe and] manner prescribed by the Commissioner[, and submit additional information in support of its position].

An institution that has been disapproved, may reapply to the [Department] department no earlier than 180 days from the date of disapproval.

Section 49-2.5. Renewal Application.

(a) ...

(b) The department shall review all properly submitted renewal applications, and any other relevant data in the department's possession related to the institution's compliance with eligibility requirements and other indicators of good standing. Following such review, the department will make a determination on the renewal application consistent with the options in section 49-2.3(b) of this Subpart. [The] Within 10 days of the date of a written notification of disapproval, the institution may appeal a disapproval to the Commissioner or his/her designee in a [timeframe and] manner prescribed by the Commissioner[, and submit additional information in support of its position].

(c) [Institutions] An institution that [do] does not apply for renewal before the expiration of its approval period [are] is no longer approved to operate distance education programs in this State.

Section 49-2.6. Loss of Eligibility and Revocation.

(a) The department may revoke an institution's approval authority under this Subpart, based on a finding that the institution no longer meets the requirements of this Subpart and/or based on any one or number of complaints received, including but not limited to complaints related to consumer protection, that raise a substantial question as to the institution's ability to offer distance education programs to individuals located in New York State [residents]. [The] Within 10 days of the date of the written notification of disapproval, the institution may appeal [a] such disapproval to the Commissioner or his/her designee in a [timeframe and] manner prescribed by the Commissioner[, and submit additional information in support of its position]. An institution that has had its approval revoked during an approval period receives no fee refund, except as otherwise provided for in section 49-2.7 of this Subpart.

Section 49-2.7. Complaints. Complaints relating to an institution that has been approved by the [Department] department to offer distance education to individuals located in New York [residents] shall follow the following procedures:

- (a) ...
- (b) ...
- (c) ...
- (d) ...

Section 49-2.8. Fee Schedule.

(a) Institutions seeking approval from the [Department] department to offer distance education to individuals located in New York State [residents] under this Subpart shall be subject to the following state fees:

Application Review Fees	Annual Approval Fee	Total Annual Fee
\$7,000	\$10,000	\$17,000

(b) ...

(c) ...