

July 6, 2016

MEMORANDUM

TO: State Board of Regents

FROM: David L. Buhler

SUBJECT: Adoption of Regent Policy R431, *State Authorization Reciprocity Agreement*

Background

Collectively, the Utah System of Higher Education (USHE) institutions enroll students in distance delivered courses and programs in all 50 states. States expect institutions to secure authorization for regulated activities such as online learning, practicum experiences, and marketing. Securing authorization state-by-state is time consuming and costly. The State Authorization Reciprocity Agreement (SARA) is an agreement among member states, districts and territories that establishes comparable national standards for interstate offering of postsecondary distance education courses and programs. States join SARA; institutions may choose to operate under SARA. Institutions in a SARA state only need their "home state" authorization to offer distance education to any other SARA member state. As of July 2016, 40 states plus the District of Columbia have been approved to join the National Council of State Authorization Reciprocity Agreements (NC-SARA).

Issue

HB379, *Interstate Reciprocity Agreement for Postsecondary Education*, passed during the 2016 General Session, authorizes the State Board of Regents to execute an interstate reciprocity agreement regarding postsecondary distance education courses and programs. The Utah State Board of Regents will serve as the SARA *portal agency* for Utah and for USHE institutions as well as up to a dozen other institutions including Brigham Young University and Western Governors University that choose to become SARA institutions. Regent Policy R431 establishes the conditions for accredited institutions to secure and maintain status as Utah-based SARA institutions.

Staff Recommendation

The Commissioner recommends the Regents approve Regents' Policy R431.

David L. Buhler
Commissioner of Higher Education

DLB/CMG
Attachments

R431-1. Purpose: To administer a state authorization reciprocity agreement for distance education courses and programs.

R431-1. References

- 2.1. Utah Code §53B-16-109, Interstate Reciprocity Agreement for Postsecondary Distance Education

R431-3. Definitions

In addition to the definitions set forth in Section 53B-16-109(1), the following definitions shall apply to this Rule.

- 3.1. "OCHE": the Office of the Commissioner of Higher Education.
- 3.3. "NC-SARA": the National Council for State Authorization Reciprocity Agreements.
- 3.4. "SARA": the State Authorization Reciprocity Agreement overseen by NC-SARA and administered by four regional higher education compacts, including WICHE.
- 3.5. "SARA portal agency": the single agency designated by each SARA member state to serve as the interstate point of contact for SARA questions, complaints, and other communications.
- 3.6. "WICHE": the Western Interstate Commission for Higher Education.

R431-4. Applications for Institutional Participation in SARA

- 4.1. **SARA Institution Application Process.** Institutions desiring to participate in SARA shall submit to OCHE the following:
 - 4.1.1. A completed Application and Approval Form for Institutional Participation in SARA that is approved by NC-SARA;
 - 4.1.2. Payment of the fee established by OCHE for administering SARA; and
 - 4.1.3. Documentation supporting the statements made in the application sufficient to assure OCHE:
 - 4.1.3.1. the Institution's principal campus or central administrative unit is located in Utah and that it is authorized to operate in Utah;
 - 4.1.3.2. the Institution is a degree-granting institution that is accredited by an accrediting body recognized by the U.S. Secretary of Education;
 - 4.1.3.3. the Institution has disaster recovery protocols for protection of student records;
 - 4.1.3.4. (1) students are informed, before completing the enrollment process for an online course or program, of the student consumer complaint processes available to

them, and (2) the student complaint processes are clearly defined and can be used electronically;

- 4.1.3.5. students are informed, before completing the enrollment process for an online course or program that customarily leads to professional licensure, whether or not the course or program meets licensure requirements in the state where the student resides or, if unknown, students are provided the contact information for the appropriate state licensing board(s);
- 4.1.3.6. in the event the Institution cannot fully deliver the instruction for which the students have contracted, the Institution is capable of fulfilling its agreement with OCHE to provide a reasonable alternative for delivering the instruction or reasonable compensation for the education they did not receive. Such assurance may be established by providing evidence of tuition assurance funds, surety bonds, teach-out provisions, or other assurances OCHE deems sufficient to protect students; and
- 4.1.3.7. for non-public Institutions, evidence of Institution's financial responsibility index score from the Department of Education that is 1.5 or above, or if its score is between 1.0 and 1.5, evidence that Institution has obtained the surety required in R765-431-4. Non-public Institutions with a score below 1.0 will not be eligible to participate in SARA.

4.2. **SARA Institution Renewal Process.** Institutions desiring to continue participating in SARA after one year of the initial application shall submit to OCHE annually thereafter the following:

- 4.2.1. a completed Renewal Application for Institutional Participation in SARA that is approved by NC-SARA within 30 days of receipt of notice for opportunity to renew from NC-SARA;
- 4.2.2. payment of the fee established by OCHE for administering SARA; and
- 4.2.3. the following documents verifying the statements made in the application:
 - 4.2.3.1. evidence that Institution's principal campus or central administrative unit remains located in Utah and that Institution continues to be authorized to operate in Utah;
 - 4.2.3.2. evidence that Institution retains its accreditation by an accrediting body recognized by the U.S. Secretary of Education; and
 - 4.2.3.3. for non-public Institutions, evidence of Institution's financial responsibility index score from the Department of Education.

4.3. **SARA Notification Process.** OCHE shall notify the Institution no later than 30 days after receipt of the initial or renewal application of its decision to approve, deny, or return the application for further information.

- 4.3.1. if an Institution's initial or renewal application is denied, OCHE shall provide to the applicant a written reason for the denial.

- 4.3.2. if any information contained in the initial or renewal application becomes incorrect or incomplete while it is in effect, the Institution shall, within 30 days after the information becomes incorrect or incomplete, correct the application or file the complete information as required by OCHE.

R431-5. Surety Requirements for Institutions with a Low Financial Responsibility Index Score

- 5.1. **Financial Responsibility Index Score.** An Institution with a financial responsibility index score from the Department of Education between 1.0 and 1.5 shall satisfy the requirement that it is sufficiently financially stable to participate in SARA by submitting with its application a surety in the form of a bond, certificate of deposit, or irrevocable letter of credit.
- 5.2. **Surety Value/Initial Year of Distance Education Operation.** For institutions in their first year of offering distance education courses and programs, the amount of the surety shall be:
 - 5.2.1. \$187,500 for Institutions expecting to enroll more than 100 separate individual students (non-duplicated enrollments) during the year it is applying to participate in SARA;
 - 5.2.2. \$125,000 for Institutions expecting to enroll between 50 and 99 separate individual students during the it is applying to participate in SARA;
 - 5.2.3. \$62,500 for Institutions expecting to enroll less than 50 separate individual students during the year it is applying to participate in SARA; and
 - 5.2.4. \$12,500 for an Institution that is able to establish that its gross tuition income from any source during the year it is applying to participate in SARA will be less than \$25,000.
- 5.3. **Surety Value/Subsequent Years' Distance Education Operation.** The minimum amount of required surety to be submitted annually after the first year of offering distance education courses and programs will be based in 25% of the annual gross tuition income for distance education courses and programs, with a minimum surety amount of \$12,500 and a maximum surety amount of \$300,000.
 - 5.3.1. the institution shall provide a statement by a school official regarding the calculation of gross tuition income and written evidence confirming that the amount of the surety meets the requirements of this rule.
 - 5.3.2. OCHE may require that such statement be verified by an independent certified public accountant.
- 5.4. **Surety Obligation.** The obligation of the surety will be that the Institution, its officers, agents, and employees will faithfully perform the terms and conditions of its application to participate in SARA; and conform to the standards and requirements required for participation in SARA.
 - 5.4.1. the bond, certificate of deposit, or letter of credit shall be in a form approved by OCHE and issued by a company authorized to do such business in Utah.
 - 5.4.2. the bond, certificate of deposit, or letter of credit shall be payable to OCHE to be used to satisfy any costs, losses, or damages resulting from the Institution's failure to meet its obligation to be sufficiently financially stable to participate in SARA.

- 5.4.3. the surety company may not be relieved of liability on the surety unless it gives the Institution and OCHE 90 calendar days' notice by certified mail of the company's intent to cancel the surety.
- 5.4.4. if at any time the company that issued the surety cancels or discontinues the coverage, the Institution's eligibility to participate in SARA is automatically revoked as a matter of law on the effective date of the cancellation or discontinuance of surety coverage unless a replacement surety is obtained on or before the cancellation date of the original coverage and provided to OCHE.

R431-6. Revocation of Eligibility to Participate in SARA

- 6.1. **Revocation of a SARA Institution.** An Institution's eligibility to participate in SARA may be revoked by OCHE upon its finding that:
 - 6.1.1. the Institution's application contains material representations which are incomplete, improper, or incorrect;
 - 6.1.2. the Institution failed to perform as represented in its applications;
 - 6.1.3. the Institution violated any of the policies and procedures of OCHE as they relate to SARA;
 - 6.1.4. the Institution violated any of the policies and procedures of NC-SARA;
 - 6.1.5. the Institution failed to maintain an adequate financial responsibility index score from the Department of Education;
 - 6.1.6. the Institution has engaged in any dishonest or fraudulent activity; or
 - 6.1.7. the Institution failed to comply with any laws in this state or another state that affect its ability to continue doing business in Utah or any other state.
- 6.2. **No Hearing Requirement.** The revocation of the eligibility of an Institution shall be made in accordance with the procedures set forth in UT Admin. R765-134. A hearing is not required.

R431-7. Request for Review

- 7.1. **Request for Review.** Institutions shall have the right to submit to OCHE a Request for Review regarding a decision to deny the Institution's application or to revoke the Institution's eligibility to participate in SARA.
 - 7.1.1. Requests for Review shall be postmarked within 10 days of date of notification of the adverse decision.
 - 7.1.2. Requests for Review will be reviewed and decided by a review committee appointed by the Commissioner of Higher Education.

7.1.3. at the time the Request for Review is made, the Institution shall provide evidence to the review committee that the adverse decision was made in error.

7.2. **Review Committee Decision.** The decision of the review committee shall be made in accordance with the procedures set forth in UT Admin. R765-134. A hearing is not required.

7.2.1. the decision of the review committee shall be the final institutional action. An Institution may request judicial review of the review committee's decision in accordance with UT Admin. R765-134.

7.2.2. the Institution may also request that WICHE review an adverse decision to see whether the SARA policies and standards were upheld during the review process.

R431-8. Consumer Complaints.

8.1. **Filing Complaints.** Before filing a complaint against an Institution, an individual must first work through the Institution's complaint process. To file a complaint against an Institution, an individual shall submit to OCHE:

8.1.1. a completed complaint form as provided by OCHE; or

8.1.2. a letter signed by the complainant, and including:

8.1.2.1. all documentary evidence related to the facts of the complaint;

8.1.2.2. evidence of the Institution's resolution of the complaint; and

8.1.2.2. contact information for the complainant.

8.2. **Complaint Resolution.** OCHE may refer the complaints it receives to one or more of the following entities for resolution as it deems appropriate:

8.2.1. the Institution complained against;

8.2.2. the SARA portal agency in the home state of a non-Utah Institution complained against;

8.2.3. the Utah Division of Consumer Protection or other law enforcement agency; or

8.2.4. the institution's accreditor.

8.3. **Action to Revoke Based on Consumer Complaint.** OCHE may take action, in accordance with UT Admin. R765-431-5, to revoke an Institution's eligibility to participate in SARA based on a consumer complaint that is received within two years of the incident complained of.