

Understanding State Authorization, Reciprocity, and NC-SARA to Protect Distance Education Students

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WHAT IS A RECIPROCITY AGREEMENT?

Under the Higher Education Act, all colleges must be legally authorized by a state to be eligible to participate in federal financial aid programs in that state. The Department of Education's regulation implementing this requirement—often referred to as the "state authorization" rule—clarifies that the requirement equally applies to both in-person and distance education programs. The rule also has a significant qualification regarding interstate distance education or correspondence programs. Institutions operating across state lines can satisfy the state authorization requirement without gaining specific approval from each state in which they operate if those states participate in a "state authorization reciprocity agreement."¹

The Department has defined such a reciprocity arrangement as an agreement between two or more states to recognize the other's authorization processes, as long as no state prohibits any other state from enforcing its own general-purpose state laws and regulations. Under such an agreement, an institution located and authorized in one participating state can provide distance education programs in other participating states without having to go through the traditional state authorization process in those other states. If an institution has an on-the-ground presence, however, traditional authorization is still required.

WHAT IS NC-SARA?

The National Council for State Authorization Reciprocity Agreements (NC-SARA) is currently the sole reciprocity agreement available to institutions. NC-SARA allows institutions to apply for membership in the state where the school is based, and upon approval by that state, the institution becomes authorized to offer online educational programs in any other NC-SARA member state.

NC-SARA also places all regulatory authority over a member institution in the hands of the institution's headquartered or "home" state regulator. Under NC-SARA, states are not permitted to enforce higher education protections against institutions headquartered outside their state, even if those institutions are harming students from within their borders.

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HOW DOES NC-SARA UNDERMINE CONSUMER PROTECTIONS?

Although participating in NC-SARA can streamline regulatory requirements for institutions offering online education in multiple states, the terms of the NC-SARA agreement significantly undermine states' authority to protect millions² of students. NC-SARA requires states to give up their authority to enforce higher-education specific state laws against out-of-state NC-SARA institutions. This creates a two-tiered system that leaves distance education students without the same state-level protections granted to their in-state peers in brick-and-mortar programs. Making matters worse, NC-SARA has few substantive or proactive consumer protection requirements beyond those already required by federal regulations, and none of the requirements found in many state consumer protection laws.³

Because NC-SARA explicitly supersedes states' higher education laws, it usurps their authority to enforce consumer protections for students enrolled in out-of-state institutions.

Although NC-SARA requires home states to investigate and resolve allegations of "dishonest or fraudulent activity" by NC-SARA participating institutions, NC-SARA's lengthy student complaints process impedes states' ability to respond efficiently to institutional misconduct.⁴ NC-SARA's student complaint process requires students to exhaust their institution's internal complaints process, and only then allows them to appeal their complaints to the home state through the agency or board designated to carry out SARA responsibilities (also called the "State Portal Entity" or "SPE"). Not surprisingly, this policy slows the flow of potentially critical information to the home state. **Take Arizona, for example, where there are over 300,000 out-of-state online students enrolled in 36 SARA schools, including the University of Phoenix. Although University of Phoenix generated over 6,000 consumer complaints to the Federal Trade Commission from 2017 to 2022, SARA's website reports that there were no SARA consumer complaints reported in Arizona for all of 2021.**⁵ Likewise, Texas is home to 138 SARA schools, but seemingly no complaints were reported to the Texas State Portal Entity in 2021.⁶ NC-SARA does not require institutions to report information about the complaints they receive and resolve internally.

Moreover, NC-SARA's policies require states to accept an institution's self-certification that it meets SARA standards and prohibits further investigation when authorizing applicant institutions.⁷ Once an institution is authorized, and in the absence of a complaint, states are not required to perform any proactive institutional investigations.

The millions of students who attend out-of-state SARA institutions are also at a heightened financial risk if their school suddenly closes and the home state does not have strong safeguards in place, such as student protection funds (SPF). NC-SARA currently mandates states have a policy in place for addressing catastrophic events such as closures but does not require member states to maintain SPFs. According to a 2021 report, only 20 states have some type of SPF in place, but they vary widely in terms of their scope of relief.⁸ Because NC-SARA member states forfeit the ability to enforce protections against out-of-state institutions, a student who experiences a sudden closure will not have access to a SPF if the institution's home state does not have one, even when the state where the student lives has a SPF.

Additionally, NC-SARA has no mechanism to assure member states have adequate resources to properly oversee participating institutions and enforce NC-SARA standards in their states.⁹ The lack of clarity and prohibition on investigation in NC-SARA's policies enables institutions to operate with little to no oversight or limitations, creating a patchwork of protection and enforcement within NC-SARA that puts students at risk. Because NC-SARA explicitly supersedes states' higher education laws, it usurps their authority to enforce consumer protections for students enrolled in out-of-state institutions.

ENDNOTES

1. 34 CFR § 600.9.

2. In fall 2020, almost six million students were exclusively enrolled in distance education programs at SARA-participating institutions. As of October 2021, more than 2,300 institutions in 49 member states (all except California) participate in NC-SARA.

3. In terms of general consumer protection policy, NC-SARA has adopted the "Guidelines for the Evaluation of Distance Education" drafted by the Council of Regional Accrediting Commissions (C-RAC), which are purely aspirational guidelines primarily related to program quality.

4. NC-SARA. June 27, 2022. "SARA Policy Manual 22.1," p. 41-45. <https://bit.ly/3Dzds7l>.

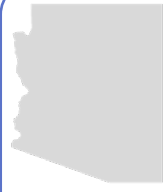
5. FOIA-2023-00560, January 31, 2023. See Data Dashboards, <http://bit.ly/3Y8cZkU>; see also Complaint Reports by State, <http://bit.ly/3wOT1jc>.

6. Id.

7. NC-SARA, "SARA Policy Manual 22.1," p. 20.

8. Robyn Smith and Joanna K. Darcus. January 2021. "How States Can Help Students Harmed by Higher Education Fraud." National Consumer Law Center. <https://bit.ly/3XTVDIt>.

9. David A. Tandberg, Ellie M. Bruecker, and Dustin D. Weeden. July 2019. "Improving State Authorization: The State Role in Ensuring Quality and Consumer Protection in Higher Education." State Higher Education Executive Officers Association. <https://bit.ly/3wNFWqy>. The report notes the limited staff capacity of state authorizing offices as a major hinderance to oversight of NC-SARA and recommends authorizers have one FTE staff for every 25 institutions (assuming annual institutional review).



ARIZONA AND SARA

Over 300,000 out-of-state online students enrolled at 36 SARA schools.

Consumer Complaints

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| 6,000+ |
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Between 2017-2022, University of Phoenix generated over 6,000 Consumer Complaints to the Federal Trade Commission.

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|---|
| 0 |
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SARA's web reports indicate zero complaints on University of Phoenix in all of 2021.