



The Association of Theological Schools The Commission on Accrediting

Guidelines Regarding State Authorization for Distance Education

“State authorization” refers to a requirement that schools must have written authorization from any state in which they operate, including Canadian schools that operate in the US. Permission to operate in a state or province has long been a requirement for ATS member schools in both the US and Canada, as stated in Commission Standard 2, section 2.2, “With regard to state, provincial, and federal authorities, schools shall conduct their operations in compliance with all applicable laws and regulations.” For years that requirement was interpreted to mean that member schools needed authorization only if they operated a physical campus or extension site in that state or province. In 2010, however, the US Department of Education ([USDE](#)) issued regulations interpreting that long-standing requirement to apply not only to onsite students but also to online students (distance education). That means any school enrolling online students from another state must have written authorization from that state to do so, if that state requires such authorization, including any Canadian schools with online students in the US. In 2012 the US courts vacated the online portion of the USDE regulations for procedural reasons, but the USDE issued new regulations in late 2016, which were to become effective July 2018. However, in May 2018 the USDE [announced](#) that it intended to delay implementation of those regulations until July 2020 while it renegotiated them. Regardless, the reality remains that many states still require this kind of authorization for out-of-state online students.

Many states also have some kind of “physical presence” requirement that must be met to trigger such authorization (e.g., local site, local advertising, local faculty, etc.), and some states also exempt religious institutions. In addition, almost all states are now members of [SARA](#) (State Authorization Reciprocity Agreement), which simplifies considerably the process of securing state authorization in those member states, though [institutional fees](#) still apply. Schools that fail to secure appropriate state authorizations could be subject to anything ranging from “cease and desist” orders to fines and even possible criminal charges from those states, as well as potential legal action from any students negatively affected. As a result, many member schools have decided not to enroll students from certain states for which state authorization would be too costly or too time consuming.

Regarding the role of the ATS Commission on Accrediting, each member school that offers distance education to students will need to verify that the school is “in compliance with all applicable laws and regulations” for each state in which it operates—as defined by that state (including any Canadian school offering distance education to US residents). For example, a school [petitioning for comprehensive distance education](#) must verify in its application how it abides by “all applicable laws and regulations.” Schools with comprehensive evaluation visits will also be asked as part of the visit to verify any applicable state authorizations for any extension or distance education offerings. For more information on this changing and challenging issue, please also consult [NC-SARA](#).

DISCLAIMER: These statements are intended as general guidance regarding ATS Commission expectations. They are not meant to be legal advice, for which each member school should consult its own legal counsel. While these statements are intended to be helpful, they cannot be considered the final word on an issue that changes regularly and state by state.