“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. More recently, however, the US Department of Education (USDE) issued new regulations interpreting that long-standing requirement to apply not only to onsite students but also to online students (distance education). That would mean any school enrolling online students from another state must have written authorization from that state to do so, including any Canadian schools with online students in the US. While the US courts have vacated the online portion of the USDE regulation for procedural reasons, the onsite portion of the regulation is still valid, as it always has been (see WCET). In addition, the USDE will likely be issuing new regulations that include online students.

Regardless, however, of what the USDE does, the reality remains that states still require out-of-state schools to be authorized to operate in their state, including an increasing number who require such authorization for online only students. To be sure, many states 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, most states are now members of SARA (State Authorization Reciprocity Agreement), which is intended to simplify considerably the process of securing state authorization in those member states, though institutional fees still apply. Still, since many states are revising their regulations and since the process in many states can take considerable time, schools should pay close attention to this changing regulatory landscape. 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. Schools participating in US Title IV programs (including Canadian schools who do so) may also be subject to loss of federal eligibility for offering courses without appropriate state authorization. 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 SHEEO and 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.