



Guidelines Regarding State Authorization for Distance Education

In 2010, the US Department of Education issued a new “state authorization” regulation that, among other things, requires schools providing distance education to students living in other states to secure authorization from each of those states. While the US courts vacated part of that federal regulation on procedural grounds in 2011, the Department of Education will likely be issuing a revised regulation in the near future. Regardless of any federal regulation, the reality remains that most states still (or now) require out-of-state schools to be authorized to operate in their state, even if their only operation is online education. To be sure, most 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, an increasing number of states are joining [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 may also be subject to loss of federal funds for offering courses without appropriate state authorization. As a result, many 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, the ATS Board of Commissioners reminds each member school of its responsibilities under [General Institutional 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.” As part of normal ATS Commission accreditation processes, 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 initial or comprehensive 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 [WCET](#) and [SHEEO](#).

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.