South Carolina Commission on Higher Education

Nonpublic Postsecondary Institution Licensing
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CLARIFICATION OF OPERATING OR SOLITICING DEFINITION
(Updated 8/23/2011; 11/7/2012; 8/15/2013)

The SC Commission on Higher Education is the administering agency of the Nonpublic Postsecondary Institution License Act. The Commission does not have jurisdiction where institutions enroll SC residents into online courses or programs where the institution does not conduct activities defined as operating or soliciting in South Carolina.

Please refer to the Nonpublic Postsecondary Institution License Act; Chapter 62, SC Commission on Higher Education (CHE) Regulations; and forms, policies, and procedures of the Commission. Contact CHE licensing staff to obtain forms and ask any questions.

SECTION 59-58-20. Definitions, includes the following:

(17) "Operating or soliciting" refers to having actual presence[1] within the State of South Carolina and includes for the purposes of application of this Chapter:

- (a) an instructional or administrative site within South Carolina whether owned, leased, rented, or provided without charge;
- (b) instruction whether theory or clinical[2] [~~within or~~ (strikethrough)] originating from South Carolina utilizing teachers[3], trainers, counselors, advisors, sponsors, or mentors[4];
- (c) an agent, recruiter, in-state liaison personnel, institution, or business that solicits for enrollment or credits or for the award of an educational or occupational credential; and
- (d) advertising, promotional material, or public solicitation in any form that targets South Carolina residents through distribution or advertising in the state.[5]

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1 [The Commission does not require licensing of institutions that enroll residents of South Carolina into online or distance programs unless the institution operates or solicits in South Carolina.]
2 [The Commission does not require licensing of institutions where a practicum or clinical experience is in South Carolina or where the institution pays the hosting preceptor/mentor; however, the SC Board of Nursing requires approval of programs that lead to initial licensure. www.llr.sc.gov.]
3 [The Commission does not require licensing of institutions that offer programs online or at a distance where the sole activity is employment of or payment to faculty members who are residents of South Carolina.]
4 [The Commission does not require licensing of institutions where an in-state proctor administers exams for courses delivered by distance learning or where the institution pays the proctor.]
5 [The Commission does not require licensing of institutions that use search engine marketing (Yahoo, Bing, Google) or web site advertisements that originate outside the borders of South Carolina.]

Refer to SECTION 59-58-30., for exclusions to the licensing authority. Briefly, they include in-state institutions chartered before 1953; institutions that offer kindergarten through high school; religious or theological training; recreational programs; South Carolina publicly supported institutions; courses or programs regulated and licensed or approved under an occupational licensing law of the State (such as cosmetology, barbering, nursing www.llr.sc.gov); employer-sponsored training; test review courses; programs or courses on federal military installations; and accredited institutions conducting seasonal recruiting through high school recruiting fairs.

The Commission reserves the right to examine the status of any exempt institution based on information available in the future to the Commission or based on changes in authority the General Assembly grants to the Commission.

Institutions that offer on-line programs that are for teacher/administrator certification.
The South Carolina Department of Education prescribes the parameters for credentials for teacher/administrator certification. The awarding institution must hold regional accreditation and completion of the program must lead to educator certification in the state of origin. Institutions that offer education programs must closely monitor SC residents who apply to enroll in education programs to ensure that students enroll only into programs that comply with the SC DOE requirements. For more information, contact the South Carolina State Department of Education, Division of School Effectiveness, Office of Educator Services (803.734.0325) or e-mail certification@ed.sc.gov.

The following information is from the March 17, 2011, US Department of Education, Office of Postsecondary Education, GEN-11-05 "Dear Colleague" letter subject: Implementation of Program Integrity Regulations.

Question 16:

> If a State does not regulate such activities by out-of-State institutions, the institution is considered to be legally operating in that State.

Question 22:

> If…the State does not require the institution to obtain State approval under the circumstances to offer distance education to its residents, would the institution be required for the purposes of section 600.9(c) to have a document from the State stating that no approval by that State is required?
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> No. However, an institution would be expected to demonstrate upon request from the Department that no State approval was required.

SC does not require that an exempt institution apply for an exemption. This explanation will demonstrate to the Department that no approval is required in SC where the institution is exempt.

Regarding student complaints, Regulation 62-27 gives the Commission the authority to intervene on the behalf of a person filing a complaint against an institution that is exempt from the oversight of the Commission. Under requirements of Federal Regulation 668.43(b), institutions must provide students with contact information for filing complaints with the institution's State approval or licensing entity and any other relevant State official or agency that would appropriately handle a student's complaint. Out-of-state institutions must publish the information even though South Carolina does not otherwise regulate the out-of-state institution's provision of distance education.

The following is the suggested language for South Carolina.

> Residents of South Carolina may access a complaint form through the web site of the Commission http://www.che.sc.gov/CHE_Docs/AcademicAffairs/License/Complaint_procedures_and_form.pdf

The form must be completed, signed, and notarized. It may be submitted with the required documentation to reshleman@che.sc.gov or sent to Nonpublic Institution Licensing, South Carolina Commission on Higher Education, 1122 Lady Street, Suite 300, Columbia, SC 29201.