

# South Carolina Commission on Higher Education

Brig Gen John L. Finan, USAF (Ret.), Chair  
Dr. Bettie Rose Horne, Vice Chair  
Ms. Natasha M. Hanna  
Ms. Elizabeth Jackson  
Ms. Dianne C. Kuhl  
Ms. Leah B. Moody  
Vice Admiral Charles Munns, USN (ret.)  
Mr. Kim F. Phillips  
Ms. Terrye C. Seckinger  
Dr. Jennifer B. Settlemeyer  
Mr. Hood Temple

Dr. Richard C. Sutton  
Executive Director

CHE  
6/5/2014  
Agenda Item 5.02.F

June 5, 2014

## **MEMORANDUM**

**TO:** Chairman John L. Finan and Members, S.C. Commission on Higher Education  
**FROM:** Dr. Bettie Rose Horne, Chair, and Members of the Committee on Academic Affairs & Licensing

### **Consideration of Preliminary Request to Seek Legislative Change to Participate in State Authorization Reciprocity Agreement**

## **BACKGROUND**

At its March 6, 2014 meeting, Commissioners heard a presentation on the State Authorization Reciprocity Agreement (SARA), given jointly by Dr. MaryAnn Janosik, CHE's Director of Academic Affairs, and Dr. Debra Jackson, Vice-Provost for Academic Affairs and Assistant to the President at Clemson University. The presentation was given on behalf of the Advisory Committee on Academic Programs (ACAP), whose members voted to support South Carolina's application for membership into SARA at its February 20, 2014 meeting.

SARA is a voluntary consortium of states that establishes national standards for institutions offering postsecondary distance education courses and programs to make it easier for students to take online courses offered by postsecondary institutions based in another state.

To join the currently proposed State Authorization Reciprocity Agreement, a state must demonstrate to its regional compact—in this case, the Southern Regional Education Board (SREB) - that the state meets the standards established for participation in the interstate reciprocity agreement. Key actions for a state are to determine that a state agency has the legal authority to sign an interstate agreement governing distance education laws for both public and private colleges. The agency must also have authority to investigate and resolve complaints against all degree-granting institutions in the state. Federal law requires that such processes exist, and a state must provide documentation of such processes to join SARA.

In order for South Carolina to submit a successful application to SARA, CHE staff requests that the Commission authorize it to move forward with the application process by preparing the documents necessary to seek change in its statutory authority that would be necessary to join SARA, if the Commission subsequently elects to do so.

## **RECOMMENDATION**

The Committee on Academic Affairs and Licensing recommends that the Commission authorize the staff to move forward with preparations to seek the legislative change necessary to allow South Carolina to join SARA, so that CHE is eligible to submit its application to SARA in spring 2015, if it chooses at that time to do so.



# South Carolina Commission on Higher Education

Brig Gen John L. Finan, USAF (Ret.), Chair  
Dr. Bettie Rose Horne, Vice Chair  
Ms. Natasha M. Hanna  
Ms. Elizabeth Jackson  
Ms. Dianne C. Kuhl  
Ms. Leah B. Moody  
Vice Admiral Charles Munns, USN (ret.)  
Mr. Kim F. Phillips  
Ms. Terrye C. Seckinger  
Dr. Jennifer B. Settlemeyer  
Mr. Hood Temple  
  
Dr. Richard C. Sutton  
Executive Director

July 31, 2014

## **MEMORANDUM**

**To:** Chairman John Finan, and Members, S.C. Commission on Higher Education  
**From:** MaryAnn Janosik, Ph.D., Director, Academic Affairs

In preparation for discussion of Agenda Item 7.02B, attached are the following documents:

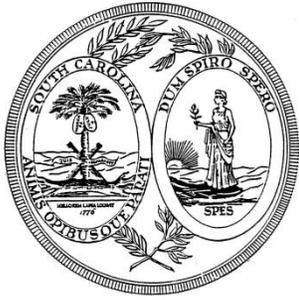
- Letter from Dr. Richard Sutton to Dr. Marshall Hill, Executive Director, National Council-State Authorization Reciprocity Agreement (SARA), listing questions of inquiry regarding SARA
- Responses from Dr. Hill

Per the Commissioners' request for more information about the State Authorization Reciprocity Act (SARA), the following links that provide general information about SARA were previously sent as PDFs and, like the documents listed above, are once again included for ease of reference.

- SARA-General Policies:  
<http://nc-sara.org/files/docs/FINAL%20SARA%20General%20Policies%20released.pdf>
- SARA FAQ's: <http://nc-sara.org/files/docs/SARA-FAQs.pdf>
- SARA-State Status Matrix: <http://www.nc-sara.org/content/sara-state-status>
- NC-SARA Implementation Guide:  
<http://nc-sara.org/files/docs/NC-SARA%20State%20Implementation%20Guide%20final.pdf>

In addition, this link to NC-SARA contains a wide range of information and issues:

<http://nc-sara.org/>



# South Carolina Commission on Higher Education

Brig Gen John L. Finan, USAF (Ret.), Chair  
Dr. Bettie Rose Horne, Vice Chair  
Ms. Natasha M. Hanna  
Ms. Elizabeth Jackson  
Ms. Dianne C. Kuhl  
Ms. Leah B. Moody  
Vice Admiral Charles Munns, USN (ret.)  
Mr. Kim F. Phillips  
Ms. Terrye C. Seckinger  
Dr. Jennifer B. Settlemeyer  
Mr. Hood Temple

Dr. Richard C. Sutton  
Executive Director

17 July 2014

Dr. Marshall A. Hill, Executive Director  
National Council for State Authorization Reciprocity Agreements (NC-SARA)  
3005 Center Green Drive, Suite 130  
Boulder, CO 80301

Dear Marshall:

It was good to see you at last week's SHEEO meeting. Thanks for taking time over several days to review with me some of the concerns that have been raised in South Carolina about our state's possible participation in SARA. I very much appreciated your willingness to attend our Commission's August 7 meeting where these issues will be discussed. Given the scheduling conflict that this date posed for you, however, I am submitting several key questions that our Commissioners would like to resolve prior to further action on the SARA initiative. As they have been framed to me, the primary questions include the following:

- Similar to the development and adoption of the Common Core standards a few years ago, SARA is a voluntary state-by-state process. However, it relies upon regional compacts for implementation and seeks to establish national standards for the delivery of distance education. What assurances can SARA provide that it will not eventually become a federal mandate that overrides state authority? If we voluntarily joined SARA, could we subsequently withdraw without facing federal consequences (e.g., loss of eligibility for Title IV aid, competition for future grants, etc.)?
- Our Commission would require new legislation authorizing it to approve and monitor academic programs offered through distance education by non-public post-secondary institutions. In order to join SARA, South Carolina would need to pass such authorizing legislation. Some legislators may not be favorably inclined to expand CHE's powers in this realm, even though the vast majority of independent institutions have expressed their support for SARA membership. How does SARA justify expansion of public regulatory authority over private enterprises, whether for-profit or not-for-profit institutions?
- SARA would also require us to monitor and resolve complaints about academic programs of our public colleges and universities at a deeper, more intrusive level than we currently do. Again, even though an overwhelming majority of our public institutions have advocated for SARA membership, could you clarify the responsibilities and obligations of the Commission if it were to join SARA and then have to deal with complaint resolution at the student, instructor, and course levels?
- However these previous two concerns might be resolved, they would undoubtedly impose additional costs on the Commission. New staff, overhead, and operating expenses would be required to fulfill our obligations as the state's "portal agency" for distance education. Our only likely revenue source for these costs would be new and increased licensing fees, which would again require legislative

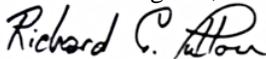
approval. Has SARA or its participating states developed financial models that would guide us in setting such fees?

- Participating SARA states will likely incur new responsibilities for data reporting of courses offered, students enrolled, financial aid disbursed, etc. How does SARA protect state data from being subject to unauthorized mining by other state or federal agencies?
- If SARA were to be fully enacted by all U.S. states and territories, it would still apply only to those domestic participating entities. Distance education is a global enterprise, and many of the largest providers are located in other countries. How does SARA contribute to quality assurance and consumer protection in this international environment?
- If South Carolina should choose not to join SARA, would there still be opportunities for individual institutions in our state to participate in interstate distance education reciprocity agreements?
- South Carolina does not currently impose any regulatory restrictions on the offering of distance education programs by institutions that do not have a physical presence in our state. We rely upon the marketplace to govern their quality and sustainability. How would SARA improve quality control more effectively than existing market mechanisms?

As you respond to these questions, I will be particularly interested in how such concerns are being resolved in other states. I believe seven states have already joined the consortium, and I'm sure similar reservations have surfaced in those arenas. As a confederated initiative, the experiences of other states will be instructive as South Carolina pursues consideration of this consortial agreement.

Again, thanks for your time and engagement. I look forward to our continued conversations on these issues.

With best regards,



Richard C. Sutton, Ph.D.  
Executive Director

cc: MaryAnn Janosik, Ph.D., Director of Academic Affairs, SC Commission on Higher Education  
Michael LeFever, Executive Director, SC Independent Colleges and Universities  
Mary Larson, Director of Student Access Programs and Services and Electronic Campus, Southern  
Regional Education Board (SREB)



# National Council for State Authorization Reciprocity Agreements

*A voluntary, regional approach to state oversight of distance education*

July 23, 2014

**Marshall A. Hill**  
Executive Director

**\*Paul Lingenfelter**  
Chair, NC-SARA Board

#### National Council Board

**Barbara Ballard**  
Kansas Legislature

**Chris Bustamante**  
Rio Salado College

**Crady deGolian**  
Council of State Governments

**Kathryn G. Dodge**  
Dodge Advisory Group, LLC

**Dianne Harrison**  
California State University,  
Northridge

**Terry Hartle**  
American Council on Education

**\*Larry Isaak** (Treasurer)  
Midwestern Higher Education  
Compact

**Arthur K. Kirk, Jr.**  
Saint Leo University

**David A. Longanecker**  
Western Interstate Commission  
for Higher Education

**Teresa Lubbers**  
Indiana Commission for  
Higher Education

**\*M. Peter McPherson** (Vice Chair)  
Association of Public and  
Land-grant Universities

**Patricia O'Brien**  
New England Association of  
Schools and Colleges

**Pam Quinn**  
Dallas County Community  
College District

**George E. Ross**  
Central Michigan University

**\*Paul Shiffman**  
Presidents' Forum

**David S. Spence**  
Southern Regional Education Board

**Helena Stangle**  
DeVry Education Group

**\*Michael Thomas**  
New England Board of  
Higher Education

**\*Leroy Wade**  
Missouri Department of  
Higher Education

**\*Belle Wheelan**  
Commission on Colleges, Southern  
Association of Colleges and Schools

\*Member of NC-SARA Executive Committee

Richard C. Sutton, Ph.D.

Executive Director

South Carolina Commission on Higher Education

1122 Lady Street, Suite 300

Columbia, SC 29201

Dear Richard:

I am writing in response to your letter of July 17, in which you posed questions about the State Authorization Reciprocity Agreements (SARA), prompted by South Carolina's possible participation in the initiative. I appreciate your setting them forth so clearly and giving me the opportunity to respond. To avoid the need to refer to prior documents, I've included your questions here, followed by my answers.

#### The "federal mandate" issue

*Question 1: Similar to the development and adoption of the Common Core standards a few years ago, SARA is a voluntary state-by-state process. However, it relies upon regional compacts for implementation and seeks to establish national standards for the delivery of distance education. What assurances can SARA provide that it will not eventually become a federal mandate that overrides state authority? If we voluntarily joined SARA, could we subsequently withdraw without facing federal consequences (e.g., loss of eligibility for Title IV aid, competition for future grants, etc.)?*

SARA did not originate with the federal government, did not depend on the federal government for its development, and has no formal relationship with the federal government. Rather, it originated with a group of colleges that do a great deal of distance education and wanted to rationalize the state regulation of such activity. They were soon joined by state agency representatives, regulators, and others interested in increasing the efficiency and quality assurance of distance education as a tool to increase educational attainment. Some of those involved saw SARA as a means to lessen the likelihood of greater federal regulation in these areas.

Any state that joins SARA and later decides that the initiative does not work well for that state can easily leave SARA, with only some minimal notice requirements designed to protect students<sup>1</sup>. If a state leaves SARA, each of its institutions reverts to the status quo, which involves contacting each state (other than its own) in which it enrolls students via distance education and doing whatever those other states require them to do to gain approval to enroll that state's students.

In regard to dealing with institutions from other SARA states, any state withdrawing from SARA would revert to applying its existing postsecondary screening laws to *all* non-domestic colleges, whether they are SARA institutions or not. (Those laws would not be repealed if a state joins SARA, because some institutions will choose not to participate in SARA and the state would still screen them as needed.) Finally, a state's withdrawal from SARA would in no way limit the eligibility of its institutions to participate in federal Title IV financial aid programs, apply for future grant programs, etc.

It is, of course, impossible to predict what the federal government might do in the future, but there is no current regulatory connection between SARA and the Department of Education or any other federal agency. Throughout the development of the initiative we have kept senior Department officials informed of our work, and they have been generally supportive.

The regional compacts have well-earned and long-standing records of service to the states, institutions and students of their regions. (The Southern Regional Education Board, SREB, was established in 1948.) The compacts, like SARA, are voluntary associations. They are implementing the SARA initiative because they believe it to be important to meeting the educational needs of the regions they serve.

### **Authority over private colleges**

*Question 2: Our Commission would require new legislation authorizing it to approve and monitor academic programs offered through distance education by non-public post-secondary institutions. In order to join SARA, South Carolina would need to pass such authorizing legislation. Some legislators may not be favorably inclined to expand CHE's powers in this realm, even though the vast majority of independent institutions have expressed their support for SARA membership. How does SARA justify expansion of public regulatory authority over private enterprises, whether for-profit or not-for-profit institutions?*

One key factor is that SARA only covers activity outside the state where the college is located. There is no SARA-related state oversight of programs or activities inside the home state.

Institutional participation in SARA – like state participation – is voluntary. Therefore even if South Carolina joins SARA, each private college (and each public college) gets to choose whether to participate. States that have historically not regulated private postsecondary providers (such as SARA members Washington and Indiana) have established a straightforward agreement (memorandum of understanding) for use by its private providers. What this agreement says is that if the private college participates in SARA, it agrees to abide by SARA policies for its operations outside its home state, that its

---

<sup>1</sup> A member state may withdraw from SARA by providing 90 days written notice from the appropriate state authority to its regional compact. Any institution operating under SARA from that state may continue to do so to the conclusion of its current academic term or 90 days after the date of receipt of notice of withdrawal, whichever is later, but not to exceed six months from the date the notice was received by the regional compact. NC-SARA Policies and Standards 2(2).

home state has authority to make sure it does, and that the private institution's decision to participate in SARA and come under the state's oversight for that limited purpose does not in any other way increase the state's oversight or control of the institution. (As you know, I was for many years the executive director of Nebraska's counterpart to South Carolina's Commission on Higher Education. Nebraska's private institutions, over which we had no oversight other than in regard to the state's financial aid programs, were willing to move forward under this approach.)

This approach replaces the authority that 49 other states have over an institution's out-of-state offerings with an institution's voluntary acceptance of some additional, limited oversight by its home state. Most private colleges strongly prefer this. We are confident that colleges such as Bob Jones, Furman, Clemson and other South Carolina providers, public or private, would rather sit in your office talking about how to resolve a problem than deal with the college regulatory authorities in New York, or Arizona, or Hawaii, which is the way the process works today for non-SARA states.

Right now, if a South Carolina institution such as Furman wants to offer online courses to even one student in a state like Minnesota or Arkansas, it has to get licensed by those states and pay any required fees. If it wants to place students in clinicals or other experiential learning opportunities in other states, it usually has to get authorization from those states. A private institution's exemption from state oversight under South Carolina law stops at the state line. The same is true for the University of South Carolina or Clemson: they can't just place students in clinicals or practica in any state they want to; they have to make sure they get the licenses, pay the fees, etc.

Therefore SARA is a net gain in efficiency, cost savings, and service to students for all colleges that participate, unless they simply don't offer courses or clinical placements across state lines, in which case they need not participate in SARA anyway.

### **Complaint resolution**

*Question 3: SARA would also require us to monitor and resolve complaints about academic programs of our public colleges and universities at a deeper, more intrusive level than we currently do. Again, even though an overwhelming majority of our public institutions have advocated for SARA membership, could you clarify the responsibilities and obligations of the Commission if it were to join SARA and then have to deal with complaint resolution at the student, instructor, and course levels?*

SARA does require the home state to resolve complaints about the actions of any of its SARA providers stemming from the institution's activities in SARA states outside the home state. It does not change the state's authority for courses offered inside South Carolina. SARA simply substitutes the home state's investigative and complaint resolution processes for those of 49 other states (most of which have the authority today to investigate any activity by South Carolina institutions in their state), and impose penalties if required.

Does this constitute an expansion of South Carolina's authority over its colleges? Yes, but only for institutions that choose to accept that expansion and only for those activities conducted outside South Carolina. In effect, the State of South Carolina is standing in for all of the other SARA states that would otherwise have that authority. Frankly, if a student has a serious issue about how an institution has offered a particular online course, the student needs to have an avenue of redress. These complaints are rare, but they are sometimes valid.

We expect that, as is currently the case, most complaints (of all types) will be resolved at the institutional level. Indeed, by SARA policy, complaints about grades or student conduct policies are to be resolved at the campus level in accordance with the institution's normal complaint resolution process. (All institutions participating in federal Title IV programs are required to have and prominently post complaint resolution policies. And since October of 2010, states have been expected to have statewide complaint resolution policies that cover all students at Title IV eligible schools.) If a student remains dissatisfied with a SARA institution's resolution of their complaint, they can appeal to the SARA agency responsible for SARA in the institution's home state. SARA states will periodically report on the number and resolution of such appeals.

### **Fees and agency workload**

*Question 4: However these previous two concerns might be resolved, they would undoubtedly impose additional costs on the Commission. New staff, overhead, and operating expenses would be required to fulfill our obligations as the state's "portal agency" for distance education. Our only likely revenue source for these costs would be new and increased licensing fees, which would again require legislative approval. Has SARA or its participating states developed financial models that would guide us in setting such fees?*

States that have a significant number of in-state providers that offer out-of-state distance education are considering adding institutional fees to help ensure that agency staff can do what it needs to do under SARA. The tradeoff to institutions is that they will not be paying fees to, or engaging in lengthy, burdensome regulatory correspondence with, regulatory agencies in states that join SARA.

An institution that is operating distance education legally in 49 states today can be spending hundreds of thousands of dollars a year to do so. An institution that is not in compliance in those other states risks being fined or even, in theory, incurring criminal charges. Offering college courses for a fee without a license is a misdemeanor in many states.

The work that SARA states must do to approve eligible institutions is designed to be straightforward and require, in most cases, modest staff effort. The amount of work needed to resolve complaints appealed to the agency by students in other states is difficult to project, of course. Prior experience with complaint resolution indicates that when issues of misunderstanding and miscommunication are resolved, most all complaints can be satisfactorily resolved at the institutional level.

SARA will soon have available information about proposed fee levels as more states join the agreement.

### **Data reporting**

*Question 5: Participating SARA states will likely incur new responsibilities for data reporting of courses offered, students enrolled, financial aid disbursed, etc. How does SARA protect state data from being subject to unauthorized mining by other state or federal agencies?*

SARA intends to rely on existing data sources such as IPEDS where possible, but we need to gather some basic data about how much distance education is being offered to which locations by which providers in order to evaluate the effectiveness of SARA in increasing student access to higher education. That seems

a reasonable goal. We won't establish a large-scale data collection operation. We plan to ask SARA institutions to report the number of students enrolled in the institution via distance education delivered outside the home state of the institution, reported by state, territory or district in which the students reside. SARA institutions will also provide a list of programs that can be completed fully at a distance. In the future, SARA institutions will disaggregate by academic discipline when reporting their enrollments.

SARA *states* will be asked to report the number of complaints from out-of-state students accessing courses through SARA provisions, by institution, appealed to the state's SARA portal agency. The state will also report in aggregate the resolution of those complaints. Along with enrollment data, this information will be reported on the NC-SARA website.

SARA will not collect any individual student data; there will be no individual student records. We have obtained an affirmative opinion letter from our legal counsel on the compliance of NC-SARA's plans for data collection with the federal Family Educational Rights and Privacy Act (FERPA).

See: <http://nc-sara.org/files/docs/NC-SARA%20Chicago%20board%20booklet.pdf> pages 49-56.

### **International quality assurance**

*Question 6: If SARA were to be fully enacted by all U.S. states and territories, it would still apply only to those domestic participating entities. Distance education is a global enterprise, and many of the largest providers are located in other countries. How does SARA contribute to quality assurance and consumer protection in this international environment?*

Oversight of international distance education and any qualitative assurances related to that activity are beyond the scope of SARA. SARA is an agreement available to states, territories and districts of the United States. Should they choose to exercise such authority, states (SARA and non-SARA) would retain full authority to regulate the provision of distance education to their residents by colleges based in other countries.

### **Other Interstate agreements**

*Question 7: If South Carolina should choose not to join SARA, would there still be opportunities for individual institutions in our state to participate in interstate distance education reciprocity agreements?*

Because SARA is an agreement between states, an institution cannot participate in SARA unless its state becomes a member.

To my knowledge, the only interstate distance education reciprocity agreements are SARA, SREB's regional SECRRA program, and a limited agreement reached between Kansas and Missouri. Although SREB is fully supportive of SARA, and plans to have it replace its existing SECRRA program, southern states and institutions that do not join SARA will, for a limited time, continue to have access to SECRRA.

Occasionally we are asked similar questions about inter-institutional agreements. Nothing in SARA would prevent inter-institutional agreements. However, no inter-institutional agreement can supersede a state law, so an inter-institutional agreement between, for example, the University of South Carolina and the University of Maryland would have no effect on state laws governing distance education applicable to either institution.

### **Regulation vs. the marketplace**

*Question 8: South Carolina does not currently impose any regulatory restrictions on the offering of distance education programs by institutions that do not have a physical presence in our state. We rely upon the marketplace to govern their quality and sustainability. How would SARA improve quality control more effectively than existing market mechanisms?*

SARA does not require South Carolina to establish any new laws regarding the provision of distance education into the state, except that if the state joins SARA, any existing laws applicable to such “incoming” educational offerings from institutions in SARA member states would be waived to the extent that they conflict with SARA provisions.

In a “low-regulation” state like South Carolina (or SARA member Idaho), the principal benefit of SARA is that it provides much easier operational parameters for South Carolina institutions offering distance education to students in other SARA states. This is especially important for public and smaller non-profit providers, which typically don’t have the large interstate government relations operations that the major for-profits and some large public institutions do.

That said, SARA would provide a better baseline for the general quality of distance education offerings across the United States because SARA has adopted the same “best practices” standards used by the regional accrediting commissions, including SACS. This would not be an issue for any SACS-accredited provider, but it will require other institutions, accredited by non-regional accreditors, to meet these standards.

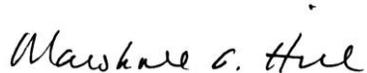
The market is an excellent mechanism for allocating many resources, but it does presume access to a certain level of information about what is being provided. Higher education is an expensive “product.” The stakes are high for a student who invests time and money in purchasing higher education. Some students with limited experience and knowledge have been seriously harmed by diploma mills that have misled them about the quality and value of their educational program. These are some of the reasons accreditation was invented and state laws concerning consumer protection in higher education have been enacted. The challenge for accreditors and states is to provide adequate quality assurance and consumer protection without burdensome, or costly regulations. SARA was created to help achieve that purpose.

**Finally . . .**

I am grateful for your questions; they address the fundamental issues every state engaged in its own due diligence must consider. If you have any further questions, or if you found any of these answers unclear, please do not hesitate to contact me. I encourage you to visit our website: [www.nc-sara.org](http://www.nc-sara.org). It contains a great deal of useful information, including policies and standards, status of state actions regarding SARA, FAQs, and so forth.

As of July, seven states have joined SARA (Indiana, North Dakota, Alaska, Colorado, Idaho, Nevada and Washington); necessary enabling legislation has passed in 14 additional states, legislation is pending in three more, and four other states have determined that no legislation is needed to enable participation in SARA. See [www.nc-sara.org](http://www.nc-sara.org) for details.

Cordially,



Marshall A. Hill  
Executive Director

cc: MaryAnn Janosik, Ph.D., Director of Academic Affairs, SC Commission on Higher Education  
Michael Lefever, Executive Director, SC Independent Colleges and Universities  
Mary Larson, Director of Student Access Programs and Services and Electronic Campus,  
Southern Regional Education Board (SREB)  
David Spence, President, Southern Regional Education Board  
Paul Lingenfelter, Chair, National Council for State Authorization Reciprocity Agreements (NC-SARA)