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DISTANCE EDUCATION AUTHORIZATION REQUIREMENTS IN TENNESSEE

On October 29, 2010, the U.S. Department of Education released its final program integrity regulations regarding postsecondary educational institutions, including state authorization requirements in 34 C.F.R. § 600.9. The Tennessee Higher Education Commission (THEC or Commission) offers the following information regarding Tennessee's authorization requirements for out-of-state providers of distance education in order to assist institutions in their efforts to comply with the requirements of Tennessee and federal law. Questions concerning this information should be directed in writing to Julie M. Woodruff, Assistant Executive Director & Lead Attorney, at julie.woodruff@tn.gov. **Please note this document is solely intended for use by the institution. Do not submit the completed form to THEC.**

If after reviewing this form, you believe that your institution does not engage in any activity requiring authorization, no further action by your institution is required. However, if you believe that your institution should obtain authorization, you must submit an Initial Authorization Application or Optional Expedited Authorization Application (OEA). The application process is described in the "Obtaining Authorization" section of this document.

Statutes and Rules: The links to the Tennessee's statutes and rules governing postsecondary educational institutions may be obtained at <https://www.tn.gov/thec/bureaus/student-aid-and-compliance/postsecondary-state-authorization.html>.

PHYSICAL PRESENCE

Rule 1540-01-02-.04(1) prohibits non-exempt postsecondary educational institutions from creating a physical presence in Tennessee without authorization from THEC. The exemptions are listed in Tenn. Code Ann. § 49-7-2004 and Rule 1540-01-02-.05; however, Tennessee does not specifically exempt distance education providers.

The definition of physical presence as found in Rule 1540-01-02-.03(42) provides:

"Physical presence" means presence within the state of Tennessee for the purpose of conducting activity related to a postsecondary educational institution as given in T.C.A. § 49-7-2007. Physical presence as further outlined for purposes of authorization shall include:

- (a) Operating an instructional site within the state; YES NO
- (b) Offering instruction within or originating from Tennessee designed to impart knowledge with response utilizing teachers, trainers, counselors or computer resources, computer linking, or any form of electronic means; YES NO
- (c) Granting an educational credential from a location within the state; YES NO
- (d) Using an agent, recruiter, institution, or business that solicits for enrollment or credits or for the award of an educational credential; YES NO or
- (e) Advertising, disseminating promotional material or conducting public solicitation in any form that targets Tennessee residents or uses local advertising markets in the state for institutions seeking, holding, or required to be authorized by the Commission.
 YES NO

COMMONLY ASKED PHYSICAL PRESENCE QUESTIONS

Q. A student at my institution wants to complete a clinical or externship in Tennessee. Does my institution need to be authorized?

A. If the identification and selection of a clinical or externship site is student driven, then such does not create a physical presence in Tennessee that would require state authorization. THEC understands that your institution may need to evaluate the appropriateness of the site selected by a student, but evaluation does not trigger the necessity for state authorization. Your institution may even enter into an agreement with the clinical or externship site as long as the agreement is student specific and not intended to create an on-going relationship between the institution and the clinical or externship site.

Q. My institution maintains a list of approved clinical and externship sites in Tennessee. The students must complete a clinical or externship at one of the approved sites. Does my institution need to be authorized?

A. Yes, if your institution initiates an arrangement with any individual, business, organization, or entity located in Tennessee for the purpose of providing an internship, externship, practicum, clinical, student teaching, or similar opportunity including requiring students to select a training site from a list maintained by the institution, your institution is creating a physical presence. Unless an exemption applies, your institution will need to be authorized.

Q. A Tennessee student contacted my institution about enrolling. We do not advertise or recruit in Tennessee. Will enrolling the student require authorization?

A. You may enroll the student as long as it does not involve any of the prohibited activities. THEC understands that students are aware of institutions either through name recognition or through their own research. Like the clinical or externship scenario discussed above, if a student initiates contact with your institution, enrolling the student does not create a physical presence as long as it does not involve any of the prohibited activities.

Q. My institution would like to employ an instructor who resides in Tennessee. If the instructor leads a distance education class from Tennessee, will my institution need to be authorized?

A. If the instructor leads a distance education course from his or her residence in Tennessee, then authorization is not required. However, instruction that occurs outside of the instructor's residence may create a physical presence in the state.

EXEMPTIONS

If you have determined that your institution is creating a physical presence in Tennessee, you need to obtain authorization unless your institution is exempt from state authorization. Exemptions can be found at Tenn. Code Ann. § 49-7-2004 and Rule 1540-01-02-.05. Institutions that are exempt from state authorization requirements include institutions that meet the requirements of Tenn. Code Ann. § 49-7-2004(a)(6). The requirements of Tenn. Code Ann. § 49-7-2004(a)(6) are follows:

- (6) Any postsecondary educational institution that:
 - (A) Has had its primary campus domiciled in the same state for at least twenty (20) consecutive years and continues to have its primary campus domiciled in that state; **YES** **NO**
 - (B) Is accredited by an accrediting agency recognized by the United States department of education and has been accredited by a recognized accreditor for at least twenty (20) consecutive years; **YES** **NO**
 - (C) Is chartered where its primary campus is domiciled as a not-for-profit entity and has continuously been so chartered for at least twenty (20) consecutive years;
 - (D) Meets and maintains financial standards deemed acceptable by the accreditor for the purpose of maintaining accreditation and the United States department of education for the purpose of being a Title IV eligible institution; **YES** **NO** and
 - (E) Completes an information request form under subdivision (b)(3).

The Information Request Form is available <https://www.tn.gov/thec/bureaus/student-aid-and-compliance/postsecondary-state-authorization/dpsa-links-and-forms.html>. For all other exemption requests, you may complete an Application for Exemption Determination. The application is also available at <https://www.tn.gov/thec/bureaus/student-aid-and-compliance/postsecondary-state-authorization/dpsa-links-and-forms.html>.

STATE AUTHORIZATION RECIPROCITY AGREEMENT (SARA)

If you have determined that your institution is creating a physical presence in Tennessee and is not exempt from state authorization, you need to obtain authorization unless your institution's activities are covered by SARA.

SARA is an agreement among member states, districts and territories that establishes comparable national standards for interstate offering of postsecondary distance education courses and programs. Tennessee is a SARA state. Therefore a SARA participating institution

may engage in activities that create a physical presence in Tennessee as long as those activities do not extend beyond those permitted by SARA. Information about SARA is available at <http://nc-sara.org>.

If you have determined that your institution is creating a physical presence in Tennessee and is not exempt from state authorization, but your institution is a member of SARA and the activity is permitted by SARA, no further action by your institution is required.

COMMONLY ASKED SARA QUESTIONS

Q. My institution has been approved as a SARA institution in its home state. What do I need to submit to Tennessee in order to begin offering distance education to Tennessee students?

A. Nothing, there are no filing requirements in Tennessee for an out-of-state SARA authorized institution.

Q. My institution is an approved SARA institution in its home state. The institution has an arrangement with a business located in Tennessee for the purpose of providing externships for its students. Is this arrangement permitted by SARA?

A. Per the State Authorization Reciprocity Agreements Policies and Standards, published on May 11, 2018,

A contract for supervised field experiences to be covered by SARA is limited as follows. Such a contract:

A. Cannot provide for the placement of more than ten students from an individual academic program placed simultaneously at one clinical or practicum site, unless approval for a larger number is provided by the host state SARA portal agency.

However, the host state portal agency does have grounds to object to the supervised field experiences. Please refer visit <http://nc-sara.org> to review the standards in their entirety.

OBTAINING AUTHORIZATION

The first step to obtaining authorization in Tennessee is to file an Initial Authorization Application or an OEA Application. If you determine that your institution is required to be authorized, the applications can be found <https://www.tn.gov/thec/bureaus/student-aid-and-compliance/postsecondary-state-authorization/dpsa-links-and-forms.html>. Follow this link to DPSA Applications/Forms and select the applicable application.

Once your application and fee are received, the application will be reviewed by a staff member of the Division of Postsecondary State Authorization (DPSA). If the application is incomplete, DPSA will defer it with instructions that corrections be filed by the next due date.

If the application is complete, DPSA will make a favorable recommendation to the Committee on Postsecondary Educational Institutions. The Committee will review the application and determine whether to make a recommendation to the Commission that your institution be

approved. If the Committee makes a favorable recommendation, the application is placed on the agenda for the next Commission meeting for approval. If the Commission vote is favorable, your institution will receive initial authorization or OEA.

Due dates are listed in the applications.

OBTAINING “AUTHORIZATION NOT NEEDED” LETTER

On March 17, 2011, the U.S. Department of Education (USDOE) released a Dear Colleague Letter, GEN-11-05, regarding implementation of the program integrity regulations. Pursuant to GEN-11-05, the USDOE does not require an institution to obtain a document from the appropriate state agency stating that authorization is not required.

An institution is only required to demonstrate upon request from the USDOE that state authorization is not required. As a result, THEC will not issue “Authorization Not Needed” letters at this time. Instead, THEC will consider whether issuance of such a letter is appropriate at such time that the USDOE requests that an institution demonstrate that state authorization is not required. If your institution receives a request from the USDOE, you may request that THEC issue an “Authorization Not Needed” letter by submitting a written request, along with the request from the USDOE, to:

Tennessee Higher Education Commission
Attn: Julie M. Woodruff
404 James Robertson Parkway, Suite 1900
Nashville, TN 37243-0830