

DATE: January 28, 2021

SUBJECT: State Authorization Reciprocity Agreement Rulemaking – Final Rules

ACTION RECOMMENDED: Adopt the final rules as written in the materials for this Regular Calendar Agenda Item 1 for purposes of submitting the Rulemaking Hearing Rule(s) Filing Form to the Attorney General for review and direct the Executive Director to make any non-substantive changes to the rules required by the Attorney General before submitting the form to the Tennessee Secretary of State.

BACKGROUND INFORMATION:

In 2010, the United States Department of Education promulgated regulations related to the need for state authorization Title IV eligibility. As a result of the regulations, institutions nationwide began to focus on state laws requiring state authorization thereby heightening the call for a national reciprocity agreement. Eventually, the State Authorization Reciprocity Agreement (SARA) was created.

SARA is an agreement among member states, districts and territories that establishes comparable national standards for the interstate offering of postsecondary distance education courses and programs. SARA participation is voluntary and is available to institutions that offer degrees and are accredited by certain federally recognized institutional accreditors. SARA has three tiers: the National Council (NC-SARA); the four regional education compacts, including the Southern Regional Education Board (SREB), and the state portal entities.

In 2015, the Tennessee General Assembly passed the State Authorization Reciprocity Agreement Act (SARA Act) with the stated purpose to “authorize the state’s participation in a state authorization reciprocity agreement relative to postsecondary distance education.” Further, the SARA Act provides that the Tennessee Higher Education Commission (THEC) may enter into the interstate reciprocity agreement known as SARA and serve as the Tennessee portal entity.

On June 23, 2015, the SREB Steering Committee voted to approve Tennessee’s application to become a SARA member state. Tennessee was the twenty-seventh state to join SARA and the sixth SREB state. Since then, THEC has served as the SARA state portal entity. As of October 1, 2020, fifty-nine (59) Tennessee home state institutions have completed the state and NC-SARA approval process.

The governing document applicable to all SARA participating institutions and member states is the *SARA Manual*. Recently, NC-SARA revised the *SARA Manual* to require that participating states have two specific processes.

1. Section 2.5(d) of the *SARA Manual* reads: “States shall develop and implement a means to hear and internally resolve appeals from Institutions for which they deny initial participation or renewal of participation in SARA. During any such appeal the Institution’s status as a SARA participating (or non-participating) Institution remains unchanged. States must ensure that the agency designated with the responsibility for hearing appeals ensures consistent application of its process to all institutions.”
2. Section 2.5(q) of the *SARA Manual* reads: “States shall have a process for considering applications for Provisional Status. A State, at its discretion, may approve an Institution to participate in SARA on Provisional Status”

Neither of these processes are addressed in the SARA Act. However, Tenn. Code Ann. § 49-7-1504(6) authorizes the Commission to “[p]romulgate rules and policies as necessary or appropriate for the conduct of its work and the implementation of this part, which rules shall have the force of law” Based on the foregoing, Commission Staff determined that rules are needed for Tennessee to remain compliant with the requirements of SARA. When drafting the rules, Commission Staff sought to do nothing more than what is necessary to comply with Section 2.5(d) and (q) of the *SARA Manual*.

On November 6, 2020, the Commission voted to adopt proposed rules and to file a Notice of Rulemaking Hearing. Such notice was filed with the Tennessee Secretary of State on November 12, 2020.

RULEMAKING HEARING AND COMMENTS:

Julie Woodruff of the Division of Postsecondary State Authorization convened the rulemaking hearing on January 5, 2021. The rulemaking was held via WebEx as allowed for in the November 12, 2020, Notice of Rulemaking Hearing. At the start of the hearing, Mrs. Woodruff provided the rulemaking procedural history and an explanation of the proposed new rules.

Thereafter, the hearing was opened for comments. The only comment received was from Mr. Roy Bowery, Director for Distance Learning at the University of Memphis. Mr. Bowery expressed his appreciation for the investment Tennessee has made in NC-SARA. He explained that the University of Memphis has students from over forty (40) states enrolled in online courses, many of which are entirely online. He noted, “It would have been a nightmare to facilitate the state authorization for those students had it not been for NC-SARA and THEC's oversight of that service.”

Members of the public were provided an opportunity to file written comments until January 8, 2021. THEC did not receive any written comments.

RECOMMENDED FINAL RULES:

The recommended final rules written below are identical to those adopted by the Commission at its November 6, 2020 meeting.

1540-01-14-.01 DEFINITIONS

- (1) "Commission" means the Tennessee higher education commission, which has authority to serve as the portal agency;
- (2) "Institution" means an accredited postsecondary degree-granting school, college, university, or other organization;
- (3) "NC-SARA" means the National Council for State Authorization Reciprocity Agreements;
- (4) "Portal agency" means the single agency designated by Tennessee to serve as the interstate point of contact for SARA questions, complaints, and other communications;
- (5) "Provisional admission" or "provisional renewal" means conditional approval of an Institution's participation in SARA that carries additional monitoring conditions;
- (6) "State authorization reciprocity agreement" or "SARA" means the agreement overseen by NC-SARA;
- (7) "SARA governing documents" means the *SARA Manual* as updated periodically, including documents incorporated therein such as the Interregional Guidelines for the Evaluation of Distance Education and the Unified State Authorization Reciprocity Agreement; the *SREB-SARA Guidelines and Procedures* as updated periodically; and any document specifying SARA policies and practices that supersedes the *SARA Manual* or the *SREB-SARA Guidelines and Procedures*;
- (8) "SREB-SARA" means the Southern Regional Education Board SARA initiative, to include the SARA Director, staff, and Regional Steering Committee; and
- (9) "These rules" means all rules contained in Rule Chapter 1540-01-14.

Authority TCA § 49-7-1503; 49-7-1504

1540-01-14-.02 APPLICATIONS.

- (1) Applications for initial SARA admission and applications for renewal of SARA participation shall be processed, reviewed, and acted upon by Commission staff.
- (2) Once received, Commission staff shall review an application and notify the institution of any required explanations or additional information.
- (3) Once the application file is complete, Commission staff shall either approve or deny the application based on the required standards as stated in the SARA governing documents.
 - (a) Commission staff must approve an application if all requirements as listed in the SARA governing documents are met.

- (b) Unless discretion is permitted by the SARA governing documents, Commission staff must deny an application if the institution fails to meet the requirements as listed in the SARA governing documents.
 - (c) When discretion is permitted by the SARA governing documents, Commission staff may designate admission or renewal as provisional if it is determined that provisional designation is needed to protect the public interest or is likely to incent future compliance. The terms of provisional admission or renewal shall be consistent with the terms allowed for in the SARA governing documents.
- (4) Commission staff shall provide the institution with written notice of the decision, including the justification for the decision and notice of the review process in these rules.

Authority TCA § 49-7-1504; 49-7-1507

1540-01-14-.03 REVIEW OF ADMISSION AND RENEWAL DECISIONS.

- (1) An institution admitted or renewed provisionally or denied admission may request that the Executive Director of the Commission review the decision of Commission Staff.
 - (a) The institution may seek review of the decision by submitting, in writing, specific justification for reversal or modification of Commission staff's decision within ten (10) business days of the decision as provided for in the notice of decision.
 - (b) The Executive Director of the Commission shall review the application file and basis offered for review and render a written notice of determination either upholding, amending, or reversing the decision of Commission staff.
- (2) An institution may appeal the determination of the Executive Director.
 - (a) The institution may appeal the determination by submitting in writing specific justification for reversal or modification of the determination within ten (10) business days of the determination as provided for in the notice of determination.
 - (b) The Commission staff shall request that the Office of the Secretary of State appoint a hearing officer who shall conduct an administrative hearing sitting alone consistent with the provisions of the Uniform Administrative Procedures Act.
- (3) Commission staff may extend the ten (10) business days as provided for in paragraphs (1) and (2) for good cause shown.

Authority TCA § 49-7-1504; 49-7-1507

RECOMMENDATION:

Commission Staff recommends that the Commission vote to adopt the final rules as written in the materials for this Regular Calendar Agenda Item 1 for purposes of

submitting the Rulemaking Hearing Rule(s) Filing Form to the Attorney General for review and direct the Executive Director to make any non-substantive changes to the rules required by the Attorney General before submitting the form to the Tennessee Secretary of State.