



TO: Higher Education Committee

FROM: John L. D'Agati 

SUBJECT: Update on New York State's Participation in the State Authorization Reciprocity Agreement (SARA)

DATE: January 11, 2018

AUTHORIZATION(S): 

SUMMARY

Issue for Discussion

Update on New York State's participation in the State Authorization Reciprocity Agreement (SARA) and the regulation of interstate distance education.

Reason(s) for Consideration

Review of Policy.

Proposed Handling

This topic will be presented to the Higher Education Committee for discussion at the January 2018 Regents meeting.

Procedural History

At the January 12, 2015 Board of Regents meeting, the Higher Education Committee discussed the possible implementation and implications of New York's participation in SARA, and heard from a panel of representatives from the four higher education sectors in New York State about the challenges of offering distance education in other states and how New York State joining SARA would be beneficial to NYS colleges and universities. The Board of Regents directed the Department to draft legislation which would provide the Commissioner with the authority to join SARA on behalf of New York State, provide the Department the authority to collect fees from New York State institutions that want to participate in SARA and from out-of-state institutions that do not participate in SARA but who want to offer distance education in New York State. The

money raised by these fees would cover the costs of administering SARA, including the costs for Department staff assigned to these responsibilities, so that the services and responsibilities the Department performs on behalf of New York State institutions of higher education, including the program review and registration responsibilities, would not be negatively impacted by the new SARA work.

At the February 10, 2015 Board of Regents meeting, the Higher Education Committee discussed the Department's draft legislation and directed the Department to move forward with legislation to be included in the package of Departmental legislative proposals being submitted for consideration by the Legislature. The Department's bill received unanimous support from the four NYS higher education sectors.

At the April 14, 2015 Board of Regents meeting, the Higher Education Committee discussed the estimated resources that would be required by the Department to administer the SARA work.

On August 13, 2015, the Governor signed into law Chapter 220 of the Laws of 2015 which enacted a new Education Law §210-c to give the Commissioner the authority to enter into SARA, subject to an appropriation, and provided the Department with the authority to collect fees from NYS and out-of-state IHEs to cover the administrative costs of this work.

At the April 2016 Board of Regents meeting, the proposed SARA regulations were discussed in the Higher Education Committee. A Notice of Proposed Rule Making was published in the State Register on May 4, 2016.

At the September 13, 2016 Board of Regents meeting, the Higher Education Committee discussed the proposed regulations and the overall assessment of public comment, and voted to adopt regulations to authorize New York State institutions to participate in SARA for postsecondary distance education, and for the approval of out-of-state institutions to provide distance education to New York State residents. The Higher Education Committee directed the Department to evaluate the implementation of SARA and report back to the committee in one year.

Background Information

After the September 13, 2016 adoption of the regulations, the Department began the preliminary work of hiring staff to support initial implementation and finalizing New York State's affiliation with the regional higher education compact for the purposes of administering SARA. Based on agreements made prior to joining SARA, the Board of Regents and Department were expecting to hire four staff members to fully support this new area of work. The Department was authorized to bring on only three staff members to provide direction and oversight over this work, one of which is a temporary position, scheduled to end in February 2019. To date, the Department has not been permitted to hire the fourth staff member, despite the availability of funds to support the position, raised by the fees paid to the Department. The implications of this staffing deficit are discussed in this item.

Initial Institutional Review

New York State joined SARA on December 9, 2016, and the Department began accepting applications from New York State institutions seeking to participate in SARA on December 19, 2016. Since December of 2016, the Department has reviewed and approved 78 applications from New York State institutions (see Table 1). Of the 78 New York State institutions currently participating in SARA, the breakdown by higher education sector is: 61 percent independent/non-profit; 28 percent SUNY; 8 percent proprietary; and 3 percent CUNY. New York State institutions approved to participate in SARA are listed in Appendix 1.

In July of 2017, New York State began accepting applications from out-of-state institutions that do not participate in SARA, and seek to offer distance education programs to students in New York State. Since July of 2017, the Department has received 31 applications from out-of-state institutions seeking distance education approval (see Table 1). The Department has approved 16 institutions thus far and 15 applications are still under review. Of the 31 applications received by the Department, the breakdown by sector is: 47 percent independent/non-profit; 50 percent for-profit; and 3 percent public. Out-of-State institutions that have been approved to offer distance education outside of SARA to students located in New York are listed in Appendix 2.

Table 1

	NYS Institutions	Out-of-State Institutions
New Applications Received	81	31
New Applications Approved	78	16
New Applications Pending	3	15

The number of New York State institutions initially submitting applications to participate in SARA are on track with what the Department predicted, based on preliminary input from institutions. All 12 of the New York State institutions that were approved under SARA for a one-year term in December of 2016 have renewed their participation for another year.

The number of applications submitted by out-of-state institutions operating outside of SARA has been larger than anticipated. Prior to the adoption of the new regulations, the Department did not track distance education offered to students in New York State by out-of-state institutions, therefore had no baseline projection of how many institutions, that were not SARA participants, would be seeking approval. The Department has also found that the review of out-of-state institutions seeking distance education approval is more complicated and time consuming than the review of applications from New York State institutions. This is due in part to the fact that the Department already has a working

knowledge of New York State institutions prior to their application for SARA, and does not have that same knowledge about out-of-state institutions. These reviews are also complicated by the fact that several institutions that have applied do not meet the initial eligibility requirement of a financial composite score of 1.5 or higher, but are requesting a waiver, as permitted by the regulations, which the Department must review and evaluate. Based upon ongoing reviews, which are not yet completed, the Department does not believe that all out-of-state institutions that have sought waivers will meet the standards for approval because they will not be able to establish substantially equivalent evidence of financial responsibility, as required by the regulations.

Based on the staggered start dates of application intake, the existing SARA staff members have been able to successfully meet the operational needs of initial application review and evaluation. However, initial review and evaluation are only the beginning of this work, and as the Department moves from initial review to ongoing monitoring and oversight of those approved, there is concern that without the additional SARA staff member that was anticipated and budgeted for, ongoing implementation will be hindered. A part of the Board of Regents original vision for the regulation of distance education under the new regulations, was the Department's creation of more robust web-based guidance for consumers regarding the selection of out-of-state distance education programs. Unfortunately, one of the implications of not being able to hire the fourth staff member is that the development of this web-based consumer guidance has been delayed.

Consumer Protections and Consumer Guidance

While New York State's participation in SARA was widely supported by institutions of all sizes and across all higher education sectors in New York State, some stakeholder groups expressed concerns that participation in SARA would weaken consumer protections in New York State, particularly protections from predatory for-profit institutions. From April through September of 2016, the Board of Regents heard these concerns and discussed them at length prior to joining SARA and adopting the regulations. Despite these concerns, the Board of Regents moved forward with the implementation of SARA, with the caveat that the Department would report on its work and its responsibility to protect New York State students pursuing a college education.

To date, there has been no evidence that consumer protections in New York State have been weakened as a result of the adoption of the new regulations, and the Department will continue to follow consumer protection issues closely as this work unfolds over time. To date, there have been no complaints regarding distance education received by the Department concerning New York State institutions participating in SARA, and none received concerning out-of-state institutions regarding distance education programs offered in New York State. As many of these institutions have not been participating in SARA for even a full year, the Department did not anticipate a large volume of complaints at this point.

Federal Regulations for State Authorization

On July 25, 2016, the United States Department of Education (USDE) disseminated proposed amendments to federal regulations related to state authorization requirements for postsecondary distance education. At the time of the September 2016 Board of Regents discussion and adoption of the regulations, the Board noted the importance of ensuring that the regulations comported with any impending federal regulations regarding state authorization.

On December 16, 2016, USDE adopted final rules for state authorization, which are due to take effect on July 1, 2018. The new federal regulations require:

- institutions offering distance education to be authorized by each state in which the institution enrolls students, if such authorization is required by the state. The regulation recognizes authorization through participation in a state authorization reciprocity agreement, as long as the agreement does not prevent a state from enforcing its own laws;
- institutions to document the state process for resolving student complaints regarding distance education programs;
- public and individualized disclosures to enrolled and prospective students in distance education programs, including adverse actions taken against the school, the school's refund policies, and whether each program meets applicable state licensure or certification requirements. The regulation will also require schools to explain to students the consequences of moving to a state where the school is not authorized, which could include loss of eligibility for federal student aid.

New York State's regulations comport with the new federal regulations, because the federal regulations recognize participation in a state authorization reciprocity agreement, and because SARA does not prevent New York State from enforcing its own laws. Proposed federal legislation to reauthorize the Higher Education Act (the Promoting Real Opportunity, Success, and Prosperity through Education Reform Act or the PROSPER Act) includes the repeal of the federal regulations concerning state authorization scheduled to take effect in July 2018. Should the federal regulations be repealed, it will have no effect on the New York State regulations.

Overall Assessment and Next Steps

One of the early benefits of the enactment of the new regulations is the availability of data on distance education enrollments, which will help to inform policy, strategic planning, and provide information which can aid in the protection of consumers. Prior to the regulations, the Department had no mechanism for obtaining data on out-of-state institutions that were enrolling students in New York State, nor did it have data on New York State institutions' enrollments of out-of-state students in distance education programs.

The September 2017 SARA Enrollment Report shows that in 2016, 39,111 students from New York State enrolled in distance education offered by institutions located in other states. In the same reporting year, New York State institutions enrolled 42,060 students from states other than New York in distance education.

Given the large numbers of New York State students enrolled in distance education programs in out-of-state institutions, and the large numbers of students located out-of-state who are enrolled in distance education programs offered by New York State institutions, the regulations adopted by the Board of Regents in September 2016 provide an important regulatory framework and oversight process. The first year of implementation was characterized by a steady stream of work related to the initial review and approval of applications. When the Board of Regents approved the regulations in September 2016, it recognized that, as enrollment in distance education continues to increase, the development of more robust consumer information and guidance for navigating distance education options will be an essential next step. The ability to hire the fourth SARA staff member will be critical in meeting the Regents expectations in this area.

In the upcoming year, existing Department staff will move toward renewal reviews and ongoing monitoring of the interstate distance education landscape. In addition, Department staff will engage with the four higher education sectors and NYS institutions that are participating in SARA for more detailed information about their participation in SARA, including its benefits, challenges, and possible areas for improvement. If changes are suggested to the regulations to improve implementation and consumer protection, the Department will bring proposed amendments to the Regents for discussion and approval.

Related Regent's Items

- [September 2016 Regents Item](http://www.regents.nysed.gov/common/regents/files/916hea1.pdf)
<http://www.regents.nysed.gov/common/regents/files/916hea1.pdf>
- [April 2016 Regents Item](http://www.regents.nysed.gov/common/regents/files/416hed2.pdf)
<http://www.regents.nysed.gov/common/regents/files/416hed2.pdf>
- [April 2015 Regents Item](http://www.regents.nysed.gov/common/regents/files/meetings/Apr%202015/415hed1.pdf)
<http://www.regents.nysed.gov/common/regents/files/meetings/Apr%202015/415hed1.pdf>
- [April 2015 Regents Item](http://www.regents.nysed.gov/common/regents/files/meetings/Apr%202015/415hed1.pdf)
<http://www.regents.nysed.gov/common/regents/files/meetings/Apr%202015/415hed1.pdf>
- [January 2015 Regents Item](http://www.regents.nysed.gov/common/regents/files/meetings/Jan%202015/115hed3.pdf)
<http://www.regents.nysed.gov/common/regents/files/meetings/Jan%202015/115hed3.pdf>

Appendix 1
New York State Institutions Approved to Participate in SARA as of 12/31/2017

Institution Name	Member Type	Approval Date
SUNY College of Technology at Delhi	SUNY	1/6/2017
Bryant & Stratton College	Proprietary	1/20/2017
Canisius College	Independent	1/20/2017
Finger Lakes Community College	SUNY	1/27/2017
The New School	Independent	1/27/2017
SUNY Oneonta	SUNY	1/27/2017
Syracuse University	Independent	1/27/2017
Manhattan College	Independent	1/27/2017
Monroe College	Proprietary	1/31/2017
Hartwick College	Independent	2/6/2017
Cornell University	Independent	2/6/2017
Cayuga Community College	SUNY	2/10/2017
Sarah Lawrence College	Independent	2/10/2017
SUNY College at Plattsburgh	SUNY	2/10/2017
The Sage Colleges	Independent	2/17/2017
Berkeley College	Proprietary	2/17/2017
Concordia College	Independent	2/17/2017
SUNY Empire State College	SUNY	2/17/2017
Nazareth College of Rochester	Independent	2/24/2017
Roberts Wesleyan College	Independent	3/3/2017
SUNY at Buffalo	SUNY	3/3/2017
School of Visual Arts	Proprietary	3/3/2017
SUNY College of Technology at Canton	SUNY	3/3/2017
Columbia University in the City of New York	Independent	3/3/2017
Long Island University	Independent	3/3/2017
Trocaire College	Independent	3/10/2017
SUNY at Albany	SUNY	3/10/2017
New York Institute of Technology	Independent	3/17/2017
Hudson Valley Community College	SUNY	3/17/2017
Touro College	Independent	3/31/2017

Institution Name	Member Type	Approval Date
SUNY at Stony Brook	SUNY	3/31/2017
New York Medical College	Independent	3/31/2017
Herkimer County Community College	SUNY	3/31/2017
SUNY College of Technology at Alfred	SUNY	3/31/2017
New York University	Independent	4/7/2017
Rochester Institute of Technology	Independent	4/7/2017
Pace University	Independent	4/7/2017
Daemen College	Independent	4/14/2017
John Jay College of Criminal Justice	CUNY	4/27/2017
Yeshiva University	Independent	4/27/2017
Jamestown Community College	SUNY	5/5/2017
St. John's University	Independent	5/5/2017
Molloy College	Independent	5/12/2017
The Bank Street College of Education, Inc.	Independent	5/23/2017
SUNY College at Oswego	SUNY	6/19/2017
LIM College	Proprietary	6/22/2017
Hofstra University	Independent	7/21/2017
SUNY College at Brockport	SUNY	7/28/2017
D'Youville College	Independent	7/28/2017
Marist College	Independent	8/4/2017
Metropolitan College of New York	Independent	8/4/2017
SUNY Adirondack Community College	SUNY	8/18/2017
Alfred University	Independent	8/25/2017
Unification Theological Seminary	Independent	8/31/2017
Mercy College	Independent	8/31/2017
Sullivan County Community College	SUNY	9/18/2017
SUNY College of Environmental Science & Forestry	SUNY	9/29/2017
The King's College	Independent	9/29/2017
Dominican College	Independent	10/20/2017
SUNY at New Paltz	SUNY	10/27/2017
Utica College	Independent	11/16/2017
The College of Saint Rose	Independent	11/17/2017

Institution Name	Member Type	Approval Date
Fordham University	Independent	11/17/2017
Houghton College	Independent	11/17/2017
New York Chiropractic College	Independent	11/17/2017
Excelsior College	Independent	11/17/2017
Clarkson University	Independent	11/17/2017
St. Bonaventure University	Independent	11/17/2017
Ithaca College	Independent	11/22/2017
SUNY Buffalo State College	SUNY	11/28/2017
The Culinary Institute of America	Independent	12/8/2017
The College of Westchester	Proprietary	12/8/2017
The University of Rochester	Independent	12/8/2017
The CUNY School of Professional Studies	CUNY	12/13/2017
Northeastern Seminary	Independent	12/18/2017
Tompkins Cortland Community College	SUNY	12/26/2017
Medaille College	Independent	12/26/2017
Teacher's College at Columbia University	Independent	12/26/2017

Appendix 2
Out-of-State Institutions Approved by NYSED under Part 49-2 as of 12/31/2017

Institution Name	State	Member Type	Approval Date
Lesley University	MA	Independent	9/6/2017
Northeastern University	MA	Independent	9/6/2017
Trustees of Boston University	MA	Independent	9/6/2017
Boston Graduate School of Psychoanalysis	MA	Independent	9/29/2017
Simmons College	MA	Independent	11/22/2017
Embry-Riddle Aeronautical University	FL	Independent	9/6/2017
Full Sail University	FL	Proprietary	9/6/2017
University of Miami	FL	Independent	9/6/2017
University of San Francisco	CA	Independent	9/6/2017
University of Southern California	CA	Independent	9/29/2017
Academy of Art University	CA	Proprietary	10/12/2017
International Sports Sciences Association (ISSA)	CA	Proprietary	10/12/2017
Fresno Pacific University	CA	Independent	11/22/2017
Pepperdine University	CA	Independent	12/4/2017
The Los Angeles Film School	CA	Proprietary	12/4/2017
California State University (Northridge)	CA	Public	12/26/2017