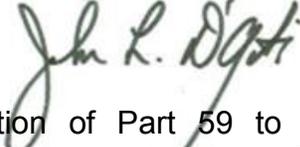




TO: Higher Education Committee

FROM: John L. D'Agati 

SUBJECT: Proposed Addition of Part 59 to the Commissioner's Regulations Relating to the Authorization of New York Higher Education Institutions to Participate in the State Authorization Reciprocity Agreement (SARA) and the Approval of Out-of-State Institutions to Provide Distance Education to New York Residents

DATE: April 11, 2016

AUTHORIZATION(S):  

SUMMARY

Issue for Discussion

Should the Board of Regents add a new Part 59 to the Commissioner's Regulations to authorize New York higher education institutions to participate in State Authorization Reciprocity Agreement (SARA) and the approval of out-of-state institutions to provide distance education to New York State residents?

Reason(s) for Consideration

Review of policy.

Proposed Handling

The proposed regulation will be presented to the Higher Education Committee for discussion at the April 2016 Regents Meeting. A copy of the proposed amendment is attached. Supporting materials are available upon request from the Secretary to the Board of Regents. A Notice of Proposed Rule Making will be published in the State Register on May 4, 2016.

Procedural History

At the January 12, 2015 Board of Regents meeting, the Higher Education Committee discussed the implications of New York State's possible participation in SARA, and heard from a panel of representatives from each of 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. As a result of this discussion, 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 to cover the costs of administering SARA, and the authority to collect a fee for out-of-state institutions who do not participate in SARA but who offer distance education in New York State.

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 unilateral 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. Since that time, and in anticipation of the necessary appropriation language being included in the 2016-2017 State Budget, the Department has been regularly engaging stakeholders from the four NYS higher education sectors, the regional compacts, and the national SARA organization about implementation of SARA.

Background

The 2016-2017 State Budget (S.6400-D/A.9000-D) provided an appropriation to the Department to administer this program. With the enactment of this State Budget, and all of the preliminary requirements in place, the Department is moving forward with its implementation plan, seeking the waivers to hire SARA staff necessary to begin accepting applications for review.

The purpose of the addition of Part 59 to the Commissioner's Regulations is to establish the procedures and fees for New York State institutions who may wish to voluntarily participate in SARA, as well as the procedures and fees for postsecondary institutions whose legal domicile is outside of New York State, that are not SARA participants and which want to offer distance education to New York State residents.

Over the past several years, the widespread availability of digital and Internet-connected technologies has created greater opportunities for institutions of higher education (IHEs) to provide programs of study to students through distance education. The opportunity to offer programs of study through distance education has opened up a new marketplace for IHEs and provided for greater access to higher education for students who physically reside in places other than where an IHE is located. It has also created challenges for individual State oversight over out-of-state distance education.

Providing State oversight for interstate postsecondary distance education has proved challenging, due to the patchwork of different regulations across individual states, and limited individual State capacity to monitor these activities. For example, many states require detailed approval and review processes and annual fees amounting to tens of thousands of dollars or more for New York State IHEs seeking to offer distance education to their residents. New York State, on the other hand, has not previously required out-of-state institutions of higher education to be approved to offer distance education to New York State residents. Thus, while it is currently costly and cumbersome for New York State's IHEs to offer distance education in other states, it is disproportionately easy for out-of-state IHEs to offer distance education to New York State residents without any initial screening or quality assurance approvals required.

Through participation in SARA, New York State is advancing a multi-layered approach to quality assurance and consumer protection in New York State. SARA sets minimum quality standards for the provision of postsecondary distance education where there were previously no requirements. In addition, under SARA, the Department will have new staff capacity specifically dedicated to the quality review and complaint management processes for interstate postsecondary distance education. In collaboration with the four higher education sectors, and to complement the Department's efforts, New York State will benefit from a national network of support from other SARA state portal agencies responsible for the same.

Additionally, it is important to note that under SARA, state Attorneys General retain their ability to take action against IHEs that violate consumer protection laws. For example, the New York State Attorney General currently has the authority to investigate and take action regarding complaints from New York State residents who are enrolled in out-of-state postsecondary distance education based upon New York State consumer protection and fraud prevention statutes. That does not change if New York State joins SARA.

A brief summary of the major provisions in the draft regulations are set forth below:

New York State IHEs and SARA – Proposed Subpart §59-1

By joining SARA, the Department will be setting minimum initial quality and accountability standards, as agreed to through the SARA polices and standards, for New York State IHEs to offer credit-bearing postsecondary distance education in other SARA states. Under the terms of SARA, out-of-state IHEs participating in SARA will be held to the same initial quality and accountability standards in order to receive approval to offer distance education to New York State residents.

When the Department, on behalf of the State, joins SARA, it will begin accepting applications from New York State IHEs for voluntary participation in SARA. Subpart 59-1 of the proposed regulations provides for procedures and fees for New York State IHEs to participate in SARA and set forth the eligibility requirements for institutions seeking to participate in SARA, consistent with §210-c of the Education Law and the national policies and standards of SARA.

Once New York State institutions apply and are approved by the Department for participation in SARA, they will be authorized to offer their registered distance education programs in all other states that are participating in SARA without any additional costs in any of the other states in which they wish to operate. There are currently 36 states participating in SARA and several others are considering joining and/or pursuing the necessary state legislation to do so.

Once the Department joins SARA, it will be responsible for managing a complaint process for complaints received against New York State IHEs offering distance education under the SARA agreement. Other states that participate in SARA have established comparable State processes for managing complaints for IHEs from other states that participate in SARA which will provide the Department with a national network of support for quality assurance and complaint management across SARA states.

The fee structure presented in the draft regulations reflects the costs required by the Department to carry out the administrative and oversight work of SARA on behalf of New York State IHEs and the costs to maintain State-level membership which is required for the State to participate in SARA. This fee structure is reasonable in relation to the type and nature of the work required of the Department to carry out required SARA activities, including a robust complaint management process. Since there are currently 36 states participating in SARA, this annual Department fee will be significantly lower than the costs for New York State IHEs to seek individual state approval to offer their distance education program outside of New York State.

Approval of Distance Education for Non-SARA IHEs – Proposed Subpart §59-2

While SARA sets minimum initial quality and accountability standards for offering interstate credit-bearing postsecondary distance education, there remain a few states that are not in SARA. In addition, there may be a number of IHEs in SARA states that have elected not to join SARA. For those IHEs that are not in SARA and that seek approval to offer distance education to New York State residents, the Department would be responsible for initial screening and ensuring that these non-SARA IHEs meet the same or comparable initial quality and accountability standards as IHEs approved to operate under SARA.

Subpart 59-2 of the proposed regulations provides for procedures and fees to enable out-of-state IHEs that are not in SARA to obtain approval to offer credit-bearing distance education instruction, courses, or programs to New York State residents. The minimum eligibility and quality standards set forth in this Subpart are comparable to those expected for IHEs that participate in SARA. So, in other words, an out-of-state institution that does not meet the standards to participate in SARA would not meet the standards established in this section and would not be approved to offer distance education to New York residents.

The fee structure presented in this Subpart of the proposed regulations reflects the costs required by the Department to carry out the initial and quality review of out-of-state applicants, the costs to maintain a basic level of oversight and data collection, and the costs associated with renewal reviews. This fee structure is reasonable in relation to the type and nature of the work required of the Department, and is comparable to those currently charged by other states for New York State IHEs to receive approval (for example, Michigan charges annual fees of \$10,000; Oregon charges biennial fees of \$7,000 and requires a separate surety bond).

There are many out-of-state IHEs that currently enroll New York State residents in credit-bearing postsecondary distance education programs. In order not to disadvantage New York State residents who are currently enrolled in these programs, the proposed regulation includes the following:

Grace Period

The proposed regulation includes a six-month grace period from the effective date of the regulation for an out-of-state IHE to actively work toward obtaining Department approval. During the grace period, an IHE may continue to operate its distance education programs to students that are currently enrolled in its programs. However, if the IHE does not obtain approval during this grace period, the institution will be prohibited from enrolling additional New York State residents until such time as approval is granted.

Phase-out Period

Should an out-of-state IHE currently enrolling New York State residents choose not to apply for approval, or be disapproved by the Department for offering credit-bearing postsecondary distance education to New York residents, the IHEs will be prohibited from enrolling new students from New York State and the IHE will only be allowed to offer its distance education programs to New York State residents who are currently enrolled in its programs for the purposes of course or degree completion and phasing out of its operation in New York State.

Timetable for Implementation

It is anticipated that the proposed amendment will be presented for adoption at the July 2016 Regents meeting after publication of a Notice of Proposed Rule Making in the State Register and expiration of the 45-day public comment period prescribed in the State Administrative Procedure Act.

If adopted at the July 2016 meeting, the proposed amendment will take effect on July 27, 2016.

AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to Education Law sections 101, 207, 210, 210-c, 212 and State Finance Law section 97-III and Chapter 220 of the Laws of 2015.

1. A new Part 59 is added to the Regulations of the Commissioner of Education, effective July 27, 2016, to read as follows:

Part 59

Post-Secondary Distance Education

Subpart 59-1

Approval of New York State Degree-Granting Institutions to Operate Under a State Authorization Reciprocity Agreement (SARA).

§ 59-1.1. Definitions.

For purposes of this Subpart:

(a) *Accredited* shall mean holding institutional accreditation from an accreditor recognized by the U.S. Department of Education.

(b) *Approved* or *Approval* means the Department has granted approval for an institution to operate distance education programs under the terms of the state authorization reciprocity agreement (SARA), pursuant to section 210-c of the Education Law.

(c) *Complaint* means a formal complaint received by the Department in writing that asserts that an institution has violated the terms and policies of SARA and/or the provisions of this Subpart, are being violated by a person, institution, state, agency or other organization or entity operating under SARA.

(d) Distance education means instruction offered by any means where the student and faculty member are in separate physical locations. It includes, but is not limited to, online, interactive video or correspondence courses or programs. It does not include intrastate distance education activity.

(e) Institution means a postsecondary higher education institution that is authorized by the Regents to confer degrees in New York State.

(f) Legal domicile means the state in which the institution's principal campus holds its institutional accreditation and, if applicable, it's federal Office of Postsecondary Education Identifier (OPEID) number.

(g) State authorization reciprocity agreements or SARA means an agreement among member states, districts and U.S. territories that establishes comparable national standards for interstate offering of post-secondary distance-education courses and programs.

(h) SARA policies and standards means the SARA Policies and Standards February 17, 2016 as adopted by National Council of State Authorization Reciprocity Agreements, 3005 Center Green Drive, Suite 130 Boulder, Colorado 8030 - Available at the Office of Counsel, New York State Education Department, State Education Building, Room 148, 89 Washington Avenue, Albany, New York, 12234.

§ 59-1.2. Institutional Eligibility Requirements. To be eligible for approval to operate under SARA an institution shall:

(a) be legally domiciled in New York State and be authorized by the Board of Regents to confer post-secondary degrees in New York State and offer registered degree programs in New York State;

(b) possess and maintain institutional accreditation, by an accrediting body recognized by the U.S. Secretary of Education, including distance education within the scope of its recognition;

(c) for non-public institutions only, possess a financial responsibility index score from the U.S. Department of Education that is 1.5 or above;

(d) agree to be bound by the SARA policies and standards and to be responsible for the actions of any third-party providers used by the institution to engage in operations under SARA;

(e) agree to remain responsible for compliance with the requirements of SARA and applicable laws and regulations, regardless of whether the institution engages in operations under the agreement itself, or through a third-party provider;

(f) agree to notify the department of any adverse actions by its accreditor or any negative changes to its accreditation status;

(g) agree to notify in writing all students in a course or program that customarily leads to professional licensure or certification, or which a student could reasonably believe leads to such licensure or certification, whether or not the course or program meets requirements for licensure or certification in the state where the student resides.

If an institution does not know whether the course or program meets licensure requirements in the student's state of residence, the institution may meet this requirement by informing the student in writing and providing the student the contact information for the appropriate state licensing board(s);

(h) agree, in cases where the institution cannot fully deliver the instruction for which a student has contracted, to provide a reasonable alternative for delivering the instruction or reasonable financial compensation for the education they did not receive;

(i) agree to provide any data requested by the department, to the extent permitted by applicable law, to assist the department in resolving any complaints arising from its students and to abide by decisions of the department, in order for the department to effectively monitor any activities under the agreement;

(j) upon application submission, pay to the department any state fees for application review and SARA participation as prescribed in section 59-1.7 of this

Subpart;

(l) pay an annual SARA participation fee to the National Council for SARA (NC-SARA), as required by the SARA policies and standards; and

(m) report any other information required by SARA and/or this section.

§ 59-1.3. Initial Application for Approval to Operate Under SARA.

(a) An institution may apply to the department for approval to operate under SARA on a form and in a timeframe prescribed by the Commissioner, with the required fees as prescribed in section 59-1.7 of this Subpart.

(b) All complete applications will be reviewed by the department to determine whether the institution meets the eligibility requirements set forth in this section.

Following the department's review on an institution's application for approval, the department shall take one of the following actions:

(1) Approval. The department shall approve all institutions that meet the requirements set forth in this section. The term of approval shall be one year from the date of notification of approval, and may be renewed annually thereafter based on a renewal application. An extension of such term may be granted at the discretion of the Commissioner.

(2) Disapproval. The department shall disapprove all institutions that do not meet the requirements set forth in this section. If an institution's application for participation in SARA is disapproved, the department will provide the institution with a written reason for such disapproval. The institution may appeal any disapproval to the Commissioner or his/her designee in a timeframe and manner prescribed by the Commissioner, and submit additional information in support of its position. . An institution that has been disapproved, may reapply to the Department no earlier than 180 days from the date of disapproval.

(3) Provisional approval. The department may, at its discretion, provisionally approve institutions for participation in SARA, subject to the specific terms for provisional approval identified in the SARA policies and standards.

§59-1.4. Application for Renewal of Approval to Operate Under SARA.

(a) An institution may apply to the department for renewal of its approval to operate under SARA on a form and in a timeframe prescribed by the Commissioner, with the required fees as prescribed in section 59-1.7 of this section no later than 60 days prior to the expiration of its existing term of approval. An extension of the submission period for renewal of approval may be granted at the discretion of the Commissioner.

(b) The department shall review all properly submitted renewal applications, and any other relevant data in the department's possession related to the institution's compliance with the SARA policies and standards. Following such review, the department will make a determination consistent with the options and procedures identified in section 59-1.3(b) of this Subpart. The institution may appeal such

disapproval to the Commissioner or his/her designee in a timeframe and manner prescribed by the Department, and submit additional information in support of its position.

(c) Institutions that do not apply for renewal before expiration of its approval are no longer approved to operate under SARA.

(d) Institutions no longer approved to operate under SARA may reapply to the Department no earlier than 180 days from the date of disapproval or non-renewal.

§ 59-1.5. Loss of Eligibility and Removal.

(a) The department may remove an institution from approval to operate under SARA, based on a finding that the institution is no longer eligible or is out of compliance with SARA policies and standards. The institution may appeal a disapproval to the Commissioner or his/her designee in a timeframe and manner prescribed by the Commissioner, and submit additional information in support of its position. An institution that is removed from eligibility during an approval period shall receive no fee refund, except as otherwise provided in section 59-1.7 of this Subpart.

§ 59-1.6. Complaints. Complaints against New York State institutions operating under SARA shall follow the following procedures:

(a) Complaints against a New York State institution shall first be subject to an institution's own procedures for resolving complaints.

(b) If a person bringing a complaint to an institution is not satisfied with the outcome of the institutional process for handling complaints, a complaint (except for complaints about grades or student conduct violations) may be made to the department, on a form prescribed by the Commissioner.

(c) The department shall review and resolve complaints in accordance with the SARA policies and standards.

(d) The department may impose as a penalty, refunds or other corrective action, to resolve complaints.

(e) Nothing in this section precludes the state from simultaneously using its laws of general application, including laws of consumer protection and fraud prevention, to pursue action against an institution that violates those laws.

§ 59-1.7. Fee Schedule.

(a) New York State institutions seeking approval to operate under SARA shall be subject to the following annual fees to obtain and/or maintain state participation in

SARA:

Institution's total full-time equivalent (FTE) enrollment as shown in the Federal Integrated Postsecondary Education Data System (IPEDS)	Total Annual Fee
Under 2,500 FTE enrollment	\$5,000
2,500 – 9,999 FTE enrollment	\$7,000
10,000 or more FTE enrollment	\$9,000

(b) The annual fees for approval to operate under SARA shall be due upon the submission of an application for initial approval or renewal as prescribed in sections 59-1.3 and 59-1.4 of this Subpart.

(b) If the department determines that an institution's application is disapproved; the institution will be refunded its annual fee, less \$2000, which represents the costs to the Department for application review.

(c) In addition to the fees prescribed in (a) of this section, institutions that have been approved by the Department to participate in SARA shall be subject to the annual

fees required by the SARA policies and standards, which shall be made payable to the National Council for SARA.

(d) The department shall periodically review, and if necessary revise this fee schedule to ensure that it is sufficient to meet the state administrative costs of State participation in SARA.

Subpart 59-2

Approval of Out-of-State Post-Secondary Institutions to Offer Distance Education to New York State Residents

§59-2.1 Approval of the Department.

(a) Any institution legally domiciled in a State other than New York State that seeks to offer any educational credit-bearing post-secondary instruction, courses, or degree programs through distance education to New York State residents shall obtain approval to operate in this State from the Department. This includes institutions that are operating in New York State under section 3.56 of the Rules of the Board of Regents (permission to operate) that seek to offer distance education programs in this State.

(1) Post-secondary institutions that enrolled New York State residents in its distance education programs on or before of the effective date of this Subpart, shall have six months from the effective date of this Subpart to seek and obtain department approval to continue to operate such programs to New York State residents. An extension of the six-month time period may be granted in limited circumstances, at the discretion of the Commissioner.

(2) All institutions with New York State residents enrolled in its distance education programs on or before the effective date of this Subpart, that have not received department approval by the expiration of the time period in paragraph (1) of this subdivision, must cease enrolling new students, and shall phase-out instruction for students who are currently enrolled in such programs until such students have completed the distance education program they are enrolled on the effective date of this section.

(b) Exemption. Any institution that is identified by a member state as participating in SARA is exempt from the application procedures and fees identified in this Part, and are instead subject to the SARA policies and standards.

§ 59-2.2. Definitions.

For purposes of this Subpart only:

(a) Accredited shall mean holding institutional accreditation from an accreditor recognized by the U.S. Department of Education.

(b) Approved or Approval means approval of an institution to offer its distance education programs to New York State residents.

(c) Complaint means a formal assertion in writing that the terms of approval are being violated by a person, institution, state, agency or other organization or entity operating under the terms of this agreement.

(d) Distance education means credit-bearing postsecondary instruction offered by any means where the student and faculty member are in separate physical locations. It includes, but is not limited to, online, interactive video or correspondence courses or programs. It does not include intrastate distance education activity.

(e) Institution means a degree-granting postsecondary entity legally domiciled in a state other than New York State.

(f) Interregional Guidelines for the Evaluation of Distance Education means the guidelines developed by the Council of Regional Accrediting Commissions (C-RAC) in February 2011, published by the Middle States Commission on Higher Education, 3624 Market Street, Philadelphia, PA 19104 - Available at the Office of Counsel, New York

State Education Department, State Education Building, Room 148, 89 Washington Avenue, Albany, New York 12234.

(g) Legal domicile or legally domiciled means the state in which the institution's principal campus holds its institutional accreditation and, if applicable, its federal Office of Postsecondary Education Identifier (OPEID) number.

§ 59-2.3. Institutional Eligibility. An institution applying to the Department for approval to offer credit-bearing post-secondary courses or degree programs to New York State residents through distance education pursuant to this Subpart must:

(a) be legally domiciled in a state other than New York or a United States territory and hold proper authorization from such state/territory to offer degree-granting programs and confer degrees in such state/territory;

(b) be a U.S. degree-granting institution that holds institutional accreditation from an accrediting association recognized by the U.S. Secretary of Education with distance education within its scope of recognition;

(c) possess a financial responsibility index score from the U.S. Department of Education that is 1.5 or above;

(d) agree to abide by the Interregional Guidelines for the Evaluation of Distance Education as defined in §59-2.2(f) of this Subpart;

(e) agree to be responsible for the actions of any third-party providers used by the institution to offer distance education to New York State residents;

(f) agree to notify the department of any adverse actions by its accreditor or any negative changes to its accreditation status;

(g) agree to provide any data requested by the department, to the extent permitted by applicable law for the purposes of monitoring activities or responding to or resolving complaints;

(h) agree to work with the Department, other state agencies, and accreditors to resolve any complaints, and to abide by decisions of the Department or other state agencies regarding complaint resolution, including by not limited to paying any fines or other corrective actions imposed;

(i) agree to notify in writing all students in a course or program that customarily leads to professional licensure or certification, or which a student could reasonably believe leads to such licensure or certification, that the institution outside of New York State, it is not able to recommend graduates for licensure or certification in New York State, does not know whether the course or program meets licensure requirements in New York State, and providing the student the contact information for the appropriate state licensing or certification board(s);

(j) agree, in cases where the institution cannot fully deliver the instruction for which a student has contracted, to provide a reasonable alternative for delivering the instruction or reasonable financial compensation for the education they did not receive;

(k) agree to pay a non-refundable fee as prescribed by the department, for the review and processing of an institution's application;

(l) If deemed approved by the Commissioner, agree to pay a non-refundable fee as prescribed by the department, for the maintenance of ongoing administrative costs;
and

(m) agree to cease and desist all operations, including offering any distance education programs to New York State residents, upon notification from the department that the institution has lost its eligibility to offer such programs under this Subpart.

(n) Waiver. The Commissioner, at her/his sole discretion, may waive one or more eligibility requirements identified in this section, provided that the institution can establish, in the determination of the Commissioner, that it has met the substantial equivalent of a requirement under this Subpart.

§ 59-2.4. Initial Application for Approval to Offer Distance Education.

(a) An institution shall apply to the department for approval to offer distance education on a form and in a timeframe prescribed by the Commissioner, with the required fees as prescribed in section 59-2.8 of this Subpart.

(b) All properly submitted applications will be reviewed by the department to determine whether an institution meets the eligibility requirements set forth in this section. Following the department's review on an institution's application for approval, the department shall take one of the following actions:

(1) Approval. The department shall approve all institutions that meet the requirements set forth in this section. The term of approval shall be one year from the date of notification of approval, and may be renewed annually thereafter based on a renewal application. An extension of such term may be granted at the discretion of the Commissioner.

(2) Disapproval. The department shall disapprove all institutions that do not meet all of the requirements set forth in this section. If an institution's application to offer distance education in this State is disapproved, the department will provide the institution with a written reason for disapproval. Within 10 days of the date of the written

notification of disapproval. The institution may appeal a disapproval to the Commissioner or his/her designee in a timeframe and manner prescribed by the Commissioner, and submit additional information in support of its position.

An institution that has been disapproved, may reapply to the Department no earlier than 180 days from the date of disapproval.

§ 59-2.5. Renewal Application.

(a) An approved institution that seeks to renew its approval authority shall apply to the department on a form and in a timeframe prescribed by the Commissioner, with the required fees as prescribed in of section 59-2.8, no later than 60 days prior to the expiration of its existing term of approval. An extension of the submission period for renewal may be granted at the discretion of the Commissioner.

(b) The department shall review all properly submitted renewal applications, and any other relevant data in the department's possession related to the institution's compliance with eligibility requirements and other indicators of good standing. Following such review, the department will make a determination on the renewal application consistent with the options in section 59-2.3(b) of this Subpart. The institution may appeal a disapproval to the Commissioner or his/her designee in a timeframe and manner prescribed by the Commissioner, and submit additional information in support of its position.

(c) Institutions that do not apply for renewal before the expiration of its approval period are no longer approved to operate distance education programs in this State.

§ 59-2.6. Loss of Eligibility and Revocation.

(a) The department may revoke an institution's approval authority under this Subpart, based on a finding that the institution no longer meets the requirements of this Subpart and/or based on any one or number of complaints received, that raise a substantial question as to the institution's ability to offer distance education programs to New York State residents. The institution may appeal a disapproval to the Commissioner or his/her designee in a timeframe and manner prescribed by the Commissioner, and submit additional information in support of its position. An institution that has had its approval revoked during an approval period receives no fee refund, except as otherwise provided for in section 59-2.7.

§ 59-2.7.Complaints. Complaints relating to an institution that has been approved by the Department to offer distance education to New York residents shall follow the following procedures:

(a) Complaints against an approved institution shall first be subject to institution's own procedures for resolving complaints.

(b) If a person bringing a complaint against an institution is not satisfied with the outcome of the institutional process for handling complaints, a complaint (except for complaints about grades or student conduct violations) may be made to the department, in a form prescribed by the Commissioner.

(c) The Department shall review such complaints and may impose as a penalty, refunds or other corrective action, to resolve complaints.

(d) Nothing in this section precludes the state from simultaneously using its laws of general application, including laws of consumer protection and fraud, to pursue action against an institution that violates those laws.

§ 59-2.8. Fee Schedule.

(a) Institutions seeking approval from the Department to offer distance education to New York State residents under this Subpart shall be subject to the following state fees:

Application Review Fees	Annual Approval Fee	Total Annual Fee
\$7,000	\$10,000	\$17,000

(b) The total annual fee of \$17,000 shall be due upon the submission of an application for approval or renewal as required by this Subpart. The annual application review fee is non-refundable. Upon a department determination to disapprove an application; the department will refund the annual approval fee.

(b) The department shall periodically review, and if necessary revise this fee schedule to ensure that it is sufficient to meet the state administrative costs of approval and oversight of out-of-state distance education programs offered pursuant to this Subpart.