



THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY 12234

TO: The Honorable the Members of the Board of Regents

FROM: John L. D'Agati 

SUBJECT: Proposed Amendment of Section 3.56 of the Rules of the Board of Regents to Establish Fees and Procedures for Out-of-State Institutions Seeking to Operate with a Physical Presence in New York State

DATE: March 2, 2017

AUTHORIZATION(S):  

SUMMARY

Issue for Decision (Consent Agenda)

Should the Board of Regents amend Section 3.56 of the Rules of the Board of Regents to establish fees and procedures for out-of-state institutions seeking to operate with a physical presence in New York State?

Proposed Handling

The proposed amendment is being presented to the full Board for adoption as a permanent rule at the March 2017 Regents meeting (Attachment A is a copy of the proposed amendment).

Procedural History

A Notice of Proposed Rule Making was published in the State Register on December 28, 2016. Following the 45-day public comment period required under the State Administrative Procedure Act, no comments were received related to this amendment. Supporting materials are available upon request from the Secretary to the Board of Regents.

Background

Section 3.56 of the Rules of the Board of Regents provides a process for out-of-state institutions of higher education to seek permission to establish a physical presence in New York in order to offer credit-bearing courses or programs of study.

When the Department receives an application from an out-of-state institution to establish a physical location in New York State, it must conduct an in-depth review of the scope and nature of the proposal, including a review of the need for the program in New York State, the quality of the program, and whether the applicant has the fiscal resources to meet its proposed program's goals. In addition, the Department evaluates the impact of the out-of-state institution's presence on existing New York State degree-granting institutions. This includes a canvass of New York based higher education institutions at which time they can raise objections regarding the approval of the proposed program. If objections are received, the applicant must work with those institutions to remove the objection before the Department will recommend approval of this permission to operate. Applicants that meet the expectations and standards of need, quality, and resources are advanced to the Board of Regents, which is the final grantor of permission to operate. All permission to operate recommendations are time limited – not to exceed five years.

Once an out-of-state institution is granted permission to operate and establishes a physical presence in New York State, the Department continues to provide administrative oversight of the operation, which may include collecting and reviewing annual data reported about the institution's operation in New York State.

Currently, the Department does not charge a fee for out-of-state institutions seeking permission to operate in New York. Over the past several years, there has been an increased interest from out-of-state institutions seeking to establish a physical presence in New York State, straining the Department's already limited resources to administer this process. The proposed amendment to Section 3.56 of the Rules of the Board of Regents establishes a fee structure for out-of-state institutions seeking to operate with a physical presence in New York State. The proposed amendment also makes explicit the procedures for application review and terms of approval and renewal.

The proposed fees will provide resources to support evaluation and administration of out-of-state institutions seeking to operate in New York State in a manner that does not diminish resources otherwise available to support New York State's degree-granting institutions. The proposed fee structure is as follows:

- Initial application fee to operate one program in NYS: \$10,000
- Fee for application for additional programs (if a waiver is granted by the Commissioner): \$2,500 per additional program
- Renewal application fee: \$2,500
- Renewal fee for any additional programs: \$2,500 per additional program

- Annual administrative fee: \$5,000 per year of operation in NYS pursuant to permission to operate

This fee structure is reasonable in relation to the type and nature of the work required of the Department to review these proposed programs and is comparable to fees currently charged by other states. Currently, 44 other states charge fees for out-of-state institutions seeking to establish a physical presence. The fee structures in other states vary greatly. Some states charge flat fees, others charge per program proposed, and several states require additional costs such as securing surety bonds, and other report review fees. The chart below provides select examples of fees other states charge to establish a physical presence:

Select Examples of State Approval Fees for IHEs to Establish a Physical Presence	
Hawaii	Initial application fee is \$10,000. Renewal applications are \$10,000 every two years.
Kansas	Initial application fee is \$4,000 base fee plus \$1,500-\$5,000 per program for initial review. Additional costs include \$20,000 surety bond for records retention upon closure. Renewal is 3% of gross tuition received or derived from Kansas students, but not less than \$1,800 and not more than \$10,000.
Maryland	Initial application fee is \$7,500 for up to two academic programs and \$850 for each additional program. There is also a \$7,500 fee per site for each at which an institution is delivering face-to-face instruction.
Massachusetts	Initial application fee is \$10,000 plus \$2,000 for each degree requested at the same time if more than one. Annual fee each year for the first five years following for institutions new to Massachusetts: \$4,000. Periodic inspection or review (if a separate review from Board's participation in New England Association of Schools and Colleges review is required): \$4,000.
Ohio	Initial application fee is \$5,000 per program, plus \$1,000 per additional program submitted at the time of application. Progress report fee is \$1,000 and renewal costs may range from \$1,000-\$7,500 based on a changing scope.
Oregon	Initial application fee is \$7,000, due biennially, plus a surety bond in Oregon.
Tennessee	Initial application fee is \$3,000, plus \$500 for each proposed

	program. Institutions wishing to offer degrees must pay between \$1,000 and \$4,000 for the highest degree program level being offered (associates to doctorate). The annual reauthorization fee of .75% of the annual gross tuition collected for Tennessee students (Minimum \$500, Maximum \$25,000).
Virginia	Initial application fee is \$6,000. New institutions must provide a surety instrument or letter of credit with their application. The amount of the surety is determined based on funds that would be needed to refund unearned tuition for non-title IV students in the event of closure. The annual re-certification fee is based on gross tuition and ranges from \$250 to \$5,000 per branch operating in Virginia.

Source: State Higher Education Executive Officers Association (SHEEO), State Authorization Surveys. Accessed on November 30, 2016, at http://sheeo.org/sheeo_surveys

Related Regents Items

<http://www.regents.nysed.gov/common/regents/files/1216hed2.pdf>

Recommendation

VOTED: That Section 3.56 of the Rules of the Board of Regents be amended, effective March 29, 2017.

Timetable for Implementation

If adopted at the March 2017 meeting, the proposed amendment will become effective on March 29, 2017.

AMENDMENT TO THE RULES OF THE BOARD OF REGENTS

Pursuant to sections 101, 207, 212 of the Education Law, and section 97-III of the State Finance Law.

1. Section 3.56 of the Rules of the Board of Regents is amended, effective March 29, 2017 to read as follows:

§3.56. Consent of the Board of Regents to operation in New York by institutions of higher education operating outside New York.

[An individual, association, copartnership or corporation authorized to confer degrees or offer courses of study at the higher education level] An institution authorized to confer degrees in a state other than New York, which seeks the permission of the Regents to offer educational programs in New York, shall comply with the following procedures and requirements:

(a) Application. An application for initial approval and applications for renewal of such approval shall be submitted to the Regents [for their approval] on forms prescribed by the [department] Department, setting forth evidence of educational quality and resources equivalent to those set forth in Part 52 of this Title for the programs the institution is seeking permission to operate in New York [of New York institutions of higher education offering similar programs], as determined by the [commissioner] Commissioner. Such application shall include the fees set forth in subdivision (f) of this section, and evidence, satisfactory to the [commissioner] Commissioner, of the need for the proposed program [or programs], and that the long-range plan for the program is in accordance with the [Regents statewide plan for the development of post-secondary education, 1980] Regents 2012-2020 Statewide Plan for Higher Education (University of

the State of New York, State Education Department, Albany, NY [12230: October 1980] 12234, available at [Bureau of Postsecondary Planning] Office of Higher Education, [Room 5B44, Cultural Education Center] State Education Building, Albany, NY [12230] 12234).

(b) [A proposed program must be registered with the department. Registration of a proposed program shall be accomplished in accordance with the provisions of Part 52 of this Title.] Terms of Initial Approval and Renewal. The term for initial approval for permission to operate in New York shall be five years, unless otherwise modified by the Board of Regents. The institution shall apply for renewal of its permission to operate every five years.

(c) Scope of Permission to Operate.

(1) Out-of-state institutions applying for initial approval or renewal of such approval under this section on or after March 29, 2017 may only hold permission to operate one program at one location in New York State unless otherwise authorized by this subdivision. For the purposes of this part, *program* shall mean courses or instructional or other field experiences (e.g., clinical placements) that are offered by the institution in New York for purposes of earning credit, a degree, certificate, credential, or other academic award.

(i) In rare circumstances and upon receipt of evidence satisfactory to the Commissioner that the educational needs in New York will be addressed by allowing an institution to offer more than one program or offer a program at more than one location in New York, the institution may apply to the Commissioner for a waiver of the limitation in this paragraph.

(ii) Institutions that were granted permission to operate more than one program and/or a program at multiple locations prior to March 29, 2017, shall be grandfathered in, and may continue to operate those programs; provided, however, that the institution shall apply for renewal of such permission to operate in accordance with the provisions of this section.

(2) If the program for which an out-of-state institution is seeking permission to operate also includes a distance education component and the institution is required to obtain approval by the Department to offer distance education in New York pursuant to Subpart 49-2 of this Title, and the only distance education the institution is seeking permission to operate in New York relates to the program for which the institution is seeking permission to operate, the institution may apply for both permission to operate and approval to offer distance education through a single application under this section, and shall only be subject to the fees required by this section. When submitting a combined application for permission to offer distance education in a program in which the institution seeks permission to operate in New York pursuant this paragraph, the institution shall meet the requirements of both this section and Subpart 49-2 of this Title.

(d) Review of Applications. Applications for initial approval and renewal of such approval shall be reviewed by the Department to determine whether the application meets the requirements set forth in subdivision (a) of this Part.

(1) For those applications that meet the requirements for permission to operate under this section, the Department shall make a recommendation for approval to the Board of Regents. At a regularly scheduled public meeting, the Board of Regents shall

consider the Department's recommendation and make the final determination on permission to operate.

(2) Applications that do not meet the requirements set forth in subdivision (a) of this section will not be recommended for approval to the Board of Regents and the Department shall provide the applicant with the reasons for its decision in writing. The institution may appeal the Department's decision not to recommend an application for approval, to the Commissioner or her/his designee, in a timeframe and manner prescribed by the Commissioner, and may submit additional information in support of its position.

(e) If an institution holding permission to operate fails to pay the required fees set forth in this section, or has not maintained compliance with the requirements set forth in this section, the Department may revoke permission to operate and/or limit the institution from enrolling new students in New York State at any time. The institution shall have the right to appeal the determination of the Department to the Commissioner or his/her designee, in a timeframe and manner prescribed by the Commissioner, and may submit additional information in support of its position, prior to such revocation, or any limitation on enrollment.

(f) Fee Schedule.

(1) Initial Application Fee. Institutions seeking initial permission to operate under this section, on or after March 29, 2017 shall be subject to a non-refundable application fee of \$10,000, to be submitted with its application for initial approval. If a waiver is granted by the Commissioner to allow an institution to seek permission to operate more than one program pursuant to subparagraph (i) of paragraph (1) of subdivision (c) of this

section, an additional fee of \$2,500 for each additional program for which permission to operate in New York is sought shall be submitted with the initial application.

(2) Renewal Fee. An institution seeking renewal of its permission to operate on or after March 29, 2017 shall be subject to a non-refundable application fee of \$2,500, to be submitted with the renewal application. If a waiver is granted by the Commissioner to allow an institution to seek permission to operate more than one program pursuant to subparagraph (i) of paragraph (1) of subdivision (c) of this section, an additional fee of \$2,500 for each additional program for which permission is sought shall be submitted with the renewal application.

(3) Annual Administrative Fee. In addition to the fees prescribed in paragraphs (1) and (2) of this subdivision, an institution granted permission to operate either through an initial approval or through renewal of existing approval on or after March 29, 2017, shall be subject to an annual non-refundable fee of \$5,000 commencing in the year that the institution obtains initial approval or renewal of its existing approval on or after March 29, 2017 and for each subsequent year throughout the term of its approval to operate in New York State. The fee for each annual period shall be due no later than 60 days prior to the start of each annual period for such institution.