



# *National Association of State Administrators and Supervisors of Private Schools*

---

---

## **BOARD OF DIRECTORS**

### **President**

John Ware  
Ohio State Board of Career  
Colleges and Schools

### **Vice President**

Jacqueline Johnson  
Kansas Board of Regents

### **Treasurer**

Robin Jenkins  
District of Columbia Higher Education  
Licensure Commission

### **Director**

Brenda Germann  
Arkansas State Board of Private  
Career Education

### **Director**

Julie Woodruff  
Tennessee Higher Education Commission

### **Director**

George Roedler  
Minnesota Office of Higher Education

### **Director**

William Crews  
Georgia Nonpublic Postsecondary  
Education Commission

May 24, 2013

Dr. Paul Lingenfelter, President  
State Higher Education Executive Officers  
3035 Center Green Drive, Suite 100  
Boulder, CO 80301-2205

Dear Dr. Lingenfelter,

The National Association of State Administrators and Supervisors of Private Schools (NASASPS) writes to express its concerns regarding the State Authorization Reciprocity Agreement (SARA) supported by the Commission on Regulation of Postsecondary Distance Education (CRPDE) and outlined in its April 2013 report – *Advancing Access through Regulatory Reform: Findings, Principles, and Recommendations for the State Authorization Reciprocity Agreement*.

NASASPS has been involved in discussions about interstate regulation of education and distance education programs for over forty years and several NASASPS members were involved with the original reciprocity efforts that were initiated by the Presidents' Forum. These initial reciprocity efforts produced an agreement that required specific consumer protection mechanisms would be in place for all states seeking to participate in reciprocity. Now, however, the current iteration of SARA developed by the regional compacts is significantly different from what was originally agreed upon because it does not emphasize consumer protection.

At the recent meeting in Indianapolis, Indiana, key players supporting the current iteration of SARA stated there would be quick movement toward developing the regional compact's reciprocity documents and putting together a national coordinating board whose purpose is to have states sign the SARA agreement by early 2014. Given this pace, NASASPS feels compelled to provide a list of specific questions and concerns for the regional compacts' consideration. These questions have been developed based upon conversations with regulators in different states. Your response and guidance in answering these questions is appreciated.

### Concerns with the Current Iteration of SARA

#### *Consumer Protection*

State regulators are responsible for the integrity of postsecondary education within their states, including education provided online. This work is accomplished in concert with accrediting agencies that depend on state approval of programs, as well as the federal government that depends on state approval of schools for Title IV student financial aid. States, accreditors, and the federal government function together as an “accountability triad” for higher education.

States attach critical importance to their consumer protection role in the “accountability triad.” Perhaps the most troubling aspect of SARA is its secondary emphasis on the States’ consumer protection efforts in favor of a system of interstate reciprocity that is designed to lessen the “regulatory costs and burdens” on institutions. As a result, a state’s ability to protect its residents is restricted in an effort to make it cheaper and easier for institutions to offer distance learning programs to all students nationwide. This system of reciprocity will likely result in a substantial increase of interstate online programs and a corresponding increase in consumer complaints that states will now have a limited ability to resolve.

The first consumer protection item of concern with SARA is the proposed process for resolving consumer complaints. Under SARA, each participating distance learning institution must be admitted into SARA and annually reauthorized by its home state. The home state would become the default forum for consumer complaints but SARA seems to suggest that non-home states may receive and resolve complaints as well. However, while SARA seems to give some authority to the non-home state, the reality is that a non-home state is powerless to resolve the complaints of its residents because that state’s postsecondary education laws would not be applicable to the out-of-state online institution. While the non-home state may call on the home state for support, there is no requirement that the home state take any action other than determining whether there has been a violation of its own home state laws. This could potentially create disputes between states about whether a student complaint has been successfully resolved and what, if any, recourse a state has if another state does not timely and adequately resolve complaints from non-resident students.

Also of critical importance is the fact that the SARA concept of complaint resolution by the home state raises questions about whether or not that home state has the capacity and funding to investigate and resolve all student complaints against its home state institutions. This is particularly true of states that are home to institutions with very large populations of distance education students. For example, the state of Arizona will be the default state for all student complaints against the University of Phoenix online offerings, no matter the student’s state of residence. In addition to the costs imposed by the large number of students that will now rely on Arizona to resolve consumer complaints, it may be very

difficult as a practical matter for Arizona to investigate a recruiting or advertising violation that took place in Vermont.

In addition to concerns about whether states have the capacity or practical ability to investigate complaints that may occur in fifty different states, another concern about SARA is the lack of any mechanism that would allow states to review information about schools that may be providing instruction to students within the state and, in particular, information about student outcomes. As an institutional accountability measure and consumer information tool, some states currently collect program-level student outcome data for every approved institution. Under SARA, this data would no longer be collected for home state institutions. Instead, a state must confirm that its home state institutions are providing federally required reporting to the Integrated Postsecondary Education Data System (IPEDS). Currently, IPEDS graduation data includes only first-time/full-time students. This limitation contrasts sharply with the reality that the majority of students attending distance learning institutions are not first time/full time students. Thus, an entire student population will be left out of data collection. SARA should develop a mechanism where information can be collected about approved schools, including information about program offerings and student outcomes (for all students not just first-time/full-time) and that information should be shared with all states participating in the reciprocity agreement.

Finally, the consumer protection envisioned under SARA would be largely limited to federal issues of fraud and misrepresentation. The current SARA outline addresses student consumer protection only in the context of student consumer information required by the United States Department of Education for schools that participate in federal student aid programs; however, state-based processes are in many cases much more detailed and also critical to the accountability triad. For example, the SARA outline omits typical state-based consumer protection mechanisms such as those related to relief owed to students attending institutions that fail to fulfill their contractual agreement, tuition refund policies, closure remedies, and verification that completion of a program satisfies related licensure education requirements. SARA's omission of common state consumer protection mechanisms put students taking online programs at risk as they will not be able to avail themselves of consumer protection mechanisms available to students attending traditional on-ground institutions.

#### *State Authorization and Professional Licensure*

A state authorization issue (as well as consumer protection issue) of particular importance to NASASPS is professional licensure, such as nursing, social work, teaching, etc. The numbers of professions that are subject to separate state licensure requirements vary in each state and are subject to periodic legislative change and revision. SARA does not address this vital issue in a workable manner. Accreditors do not monitor whether an institution has met the quality measures of a state licensure entity such that a graduate will meet the educational requirements to receive licensure in his resident state. Minimally, interstate reciprocity must ensure that an institution's licensure programs satisfy the requirements of the state's licensure entity. SARA cannot rely on accreditors to perform this function and must clearly

define the body responsible for ensuring that an institution has received the necessary state licensure approvals.

### *Fiscal Impact*

NASASPS recognizes various state agencies are funded in a variety of ways – fee based, general appropriations, or a combination of the two. Nevertheless, it is certain that as SARA develops, states will either have a need or see an opportunity to reevaluate their current funding mechanisms. Fee based states in many instances will see a reduction in fee revenues as institutions that currently pay fees to the regulatory state entity will cease all payments and instead, pay a fee only to the home state and the National Coordinating Board. At the same time, states will be asked to take on a new and untested role as a participant in SARA.

A state's new role will require it to oversee the operations of both public and, in many cases, previously exempt non-profit institutions that have been outside this type of oversight and have not paid fees in the past. The cost of the new role should not be borne exclusively by those institutions that have traditionally been regulated in a state. While the SARA outline mentions funding in general terms, SARA must explicitly recognize that all entities wishing to avail themselves of the benefits of reciprocity must be prepared, at the election of the state, to share in the cost of the regulatory function and traditionally regulated schools should not be expected to subsidize the regulatory function.

Although SARA identifies fees that institutions from participating states would pay in order to take advantage of reciprocity, there is no indication of how these fees were established. Rather than being developed based on what it will cost to operate the National Coordinating Board and for the compacts to administer and carryout the responsibilities set forth under SARA, it has been explained that the fees were developed based on what seems reasonable. It would be extremely useful if a comprehensive fiscal analysis of SARA were undertaken to understand the funding of the National Coordinating Board and regional compacts as well as the impact on states.

### *Advocating for State Legislative Changes*

Adoption of SARA will likely require legislative changes in most states, including possible substantial modifications to state laws concerning all postsecondary educational institutions and could affect many state laws that go beyond reciprocity. For example, in many states no state agency oversees certain non-profit institutions, yet these entities will be required to have home state admittance and annual reauthorization to receive the benefits of SARA. These legislative issues should not be taken lightly and higher education policy makers and legislatures should be afforded a complete picture of all issues involved before pushing through substantial education revisions.

An initial consideration for many states will be explaining the need for reciprocity to legislators and other policy makers. The SARA outline cites "costs and inefficiencies faced by postsecondary institutions," yet nowhere are these costs and inefficiencies quantified or documented. The SARA

outline highlights a State Higher Education Executive Officers Association (SHEEO) survey that shows only a handful of state agencies expressly require all online providers obtain state authorization. A number of other states require a simple registration or exemption process for out-of-state institutions offering distance learning programs to their state's residents. The same survey found the majority of states do not regulate distance learning and simply have no oversight for such institutions offering purely online programs to their residents. Identifying the specific costs and registration requirements of each particular state would help legislators better understand how their own state currently deals with online institutions and where specific "costs and inefficiencies" exist in the current system.

It would also be helpful to legislators if further guidance and explanation could be provided about the governance of SARA. As it currently stands, SARA proposes creating a new oversight mechanism for governing and managing postsecondary education comprised of the four regional compacts, which would approve and monitor states, and a National Coordinating Board, which would monitor effective implementation of the reciprocity agreement structure and have the authority to hear appeals from states. This current iteration of SARA greatly expands the role of regional compacts and shifts the responsibility for oversight of postsecondary education from individual states to the regional compacts and the National Coordinating Board. This substantial change in the role of the regional compacts from coordinating state activities to effectively regulating and overseeing member states and institutions raises a number of legal questions and issues about how disputes amongst states and/or states and institutions will be resolved and what recourse a state may have if another state fails to adequately protect its resident students. In this regard, it may be necessary to involve State Attorney Generals in the review of SARA and its proposed governance.

#### Questions and Concerns for the Regional Compacts

NASASPS lists the following items submitted by member states for the consideration of each of the compacts.

##### *Consumer Protection*

- How will SARA ensure that a state has the capacity and funding to investigate and resolve all student complaints against its home state institutions?
- If a non-home state wanted to investigate and attempt to resolve a complaint, what laws (specific to postsecondary education) would apply – those of the home state or non-home state?
- Would SARA in any way limit an Attorney General in a non-home state from taking action against an out-of-state institution that has enrolled residents in an online program given that under reciprocity the institution would only be subject to the laws and regulations specific to the home state?
- One comment made during the Southern Regional Education Board breakout session in Indianapolis was that the regional compacts would set minimum advertising and recruiting standards. During an open session it was stated that states may enact regulations that are more

stringent than the standards adopted as part of SARA. Given this, could a home state institution be subject to different advertising/recruiting restrictions than an out-of-state institution approved by its home state?

- There seems to be a lot of reliance on IPEDS data. How will the regional compacts account for IPEDS graduation data being limited to first time/full time students?
- The states seem to be tasked with ensuring that federal disclosure requirements are met. What role will the United States Department of Education play or will the regional compacts adopt the federal disclosure requirements as their own?
- A major issue that state regulators have to deal with is the closure of private institutions. How would these institutional closures be addressed? Would the home state be responsible for assisting all students affected by the closure? How would the fact that states have different student protection and reimbursement mechanisms (e.g. tuition guarantee funds, surety bonds, letters of credit, etc.) be addressed? Who would take possession of student records from closed schools? Would the regional compacts create tuition guarantee funds or require surety bonds?

#### *Physical Presence and Operation of SARA*

- It is our understanding that an institution will not create a physical presence if it has experiential learning opportunities in a state as long as the institution has obtained necessary licensure approvals and no more than ten students are present at one time at a single field site. Assuming this understanding is correct, will the home state or non-home state, be responsible for verifying that the institution is not creating a physical presence in the various states?
- There has been some discussion that institutions may be able to offer up to 25% of a program onsite in a non-home state without triggering state licensing requirements. This is an excessively high percentage and would mean that institutions offering four year baccalaureate programs could offer up to a year of onsite training without establishing a physical presence in a state. It is difficult to support a definition of physical presence that would exempt such a substantial amount of in-state activity.
- Which programs or institutions will be subject to reciprocity? It seems clear for institutions that are 100 percent online, but what about institutions that offers programs through a blended delivery mode? Would an institution that offers both online and onsite programs be required to meet state requirements for recruiting activities?
- Many private schools with multi-state onsite locations and central online operations can attach the online operation to a school in a variety of states. As such, SARA will create an incentive for forum shopping by encouraging schools to attach their online operation to the school located in the state with the fewest regulatory requirements. To avoid this potential problem, the regional compacts must define home state, e.g., state of incorporation, state where an institution has its OPE ID number, state where the main brick & mortar central office exists, etc. How will SARA address a situation where some programs may be appropriate for reciprocity but others are not? For example, an online institution is approved for reciprocity but its teacher licensure program is

not approved for licensure in a particular state. Will the entire institution be prevented from participating in SARA or just from enrolling specific residents in the teacher licensure program?

#### *Governance*

- Could a governing board, such as a board of regents, serve as the approving agency and the agency to address complaints, assuming a different agency, such as the SHEEO, serves as the lead agency?
- The regional compacts will monitor states' compliance with the reciprocity agreements, including a biennial review. How will the review be conducted and who will conduct the review?

#### *Fiscal Impact*

- The regional compacts must include language that will explicitly recognize that states can adopt a fee structure that ensures that non-reciprocity institutions will not subsidize the reciprocity activities. Similarly, the language must recognize that all entities wishing to avail themselves of the benefits of reciprocity must be prepared, at the election of the state, to share in the cost of the regulatory function.

#### Summary

The stated purpose of interstate reciprocity is to create a process that is easy and less expensive for institutions. However, the solution proposed through SARA raises a number of important questions about states' ability to protect consumers, perform quality program reviews, collect student outcomes data, and hold institutions accountable for malfeasance. It is our hope that the questions in this letter, and others that are raised by States individually, will be thoughtfully considered as the development and SARA moves forward.

I will be happy to answer any questions you might have. I can be reached at 614-466-7802 or [john.ware@scr.state.oh.us](mailto:john.ware@scr.state.oh.us).

Sincerely,

John Ware  
President,  
National Association of State Administrators and Supervisors of Private Schools (NASASPS)