

APPROVED
April 7, 2015

Item #V-16
April 7, 2015

**PROPOSED RULES: HIGHER EDUCATION DISTANCE LEARNING AND
INTERSTATE RECIPROCITY**

Submitted for: Action.

Summary: This item seeks Board approval of the proposed rules to administer the new Higher Education Distance Learning Act (P.A. 98-792). The Board will serve as the lead agency in coordinating interstate reciprocity for distance learning among participating institutions in Illinois.

Two sets of proposed rules will be filed concurrently. A set of emergency rules, which contain the same language as the set of proposed rules, will be filed with the Secretary of State to become effective immediately. To ensure a contiguous process, the second set of proposed rules will become effective before the emergency rules expire. Both sets require Board approval of the proposed rules before filing as specified in the Illinois Administrative Procedure Act.

Action Requested: That the Board approve the proposed rules for administration of the Higher Education Distance Learning and Interstate Reciprocity (23 Ill. Adm. Code 1033) to be filed with the Secretary of State for publication in the *Illinois Register*.

STATE OF ILLINOIS
BOARD OF HIGHER EDUCATION

**PROPOSED RULES: HIGHER EDUCATION DISTANCE LEARNING AND
INTERSTATE RECIPROCITY**

This item requests approval of the proposed rules to administer the Higher Education Distance Learning Act (P.A. 98-792). The new Act authorizes the Illinois Board of Higher Education (IBHE or the Board) to participate in a system of interstate reciprocity to simplify regulation in the expanding field of distance learning.

The system of interstate reciprocity established by the National Council for State Authorization Reciprocity Agreement (SARA) allows willing postsecondary institutions in member states to participate in such agreement on a voluntary basis. Under the system, institutions participate through their “home state” and agree to be regulated by the home state. The National Council for SARA and the statute establish minimum requirements and provide a simplified method of regulating distance learning programs. The system applies only to distance learning programs.

This new process does not affect other approvals of institutions or programs required by Illinois laws, nor does it affect any exemptions granted by law.

IBHE is designated by this Act to be the lead agency in coordinating interstate reciprocity for distance learning for all participating postsecondary institutions in Illinois. The Board will collaborate with the Illinois Community College Board to establish and ensure eligibility for Illinois public community colleges that desire to participate in SARA.

Once approved by the Illinois Board of Higher Education, the proposed rules will be filed for publication in the Illinois Register. The set of emergency rules will become effective immediately upon filing but expire 150 days later, so a second set of proposed rules, which contain the same language as the emergency amendments, will be filed concurrently. The process for the second set is a three-step process: (1) initial Board approval; (2) a publication and public notice period including a period for review by the staff and members of the legislative Joint Committee on Administrative Rules; and (3) final adoption by the Board. Final presentation is tentatively scheduled for the August 2015 Board meeting.

Staff Recommendation

Staff recommends the adoption of the following resolution:

The Illinois Board of Higher Education hereby approves the proposed rules for the Higher Education Distance Learning and Interstate Reciprocity (23 Ill. Adm. Code 1033) as detailed in the attached document for publication in the Illinois Register, pending authorization to file emergency rules by the Joint Committee on Administrative Rules.

TITLE 23: EDUCATION AND CULTURAL RESOURCES
SUBTITLE A: EDUCATION
CHAPTER II: BOARD OF HIGHER EDUCATION

PART 1033
HIGHER EDUCATION DISTANCE LEARNING AND INTERSTATE RECIPROCITY

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AUTHORITY: Implementing and authorized by the Higher Education Distance Learning Act [110 ILCS 145].

SOURCE: Emergency text at 39 Ill. Reg._____, effective _____, for a maximum of 150 days.

Section 1033.10 Purpose

EMERGENCY

The purpose of this Part is to address the powers and duties delegated to the Board of Higher Education by the Higher Education Distance Learning Act, including, but not limited to, minimum standards for institutions of higher education participating in the interstate reciprocity agreements for distance learning. [110 ILCS 145] The Board will collaborate with the Community College Board to establish and ensure eligibility for Illinois public community colleges that desire to participate.

The Higher Education Distance Learning Act authorizes the State of Illinois to participate in a system of interstate reciprocity to simplify regulation in the expanding field of distance learning. The system of interstate reciprocity established by the National Council for State Authorization Reciprocity Agreement allows willing post-secondary institutions in member states to participate in such agreement on a voluntary basis. Under the system, institutions participate through their “home state” and agree to be regulated by the home state. The Council and statute establish minimum requirements and provide a simplified method of regulating distance learning programs. The system applies only to distance education. The Illinois Board of Higher Education is designated by this Act to be the lead agency coordinating all Illinois-based participating institutions in the distance learning interstate reciprocity program. The Board of Higher Education will collaborate with the Community College Board to establish and ensure eligibility for Illinois public community colleges that desire to participate in the program.

Section 1033.20 Definitions

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The definitions apply to terms used in this rule in conjunction with the Higher Education Distance Learning Act and the “SARA Policies and Standards” issued and approved by the National Council for State Authorization Reciprocity Agreements on January 7, 2015 and any subsequent revisions as long as those revisions are consistent with the Higher Education Distance Learning Act [110 ILCS 145].

“Accredited” means holding institutional accreditation by name as a U.S.-based institution from an accreditor recognized by the U.S. Department of Education (Section 1 of the SARA Policies and Standards).

“Act” means the Higher Education Distance Learning Act [110 ILCS 145].

“Approve” or “Approval” [or “Authorization to Participate”] in the context of an institutional application to operate under SARA, means a written statement issued by the Board that an institution meets the standards required by SARA and is eligible to operate under SARA (Section 1 of the SARA Policies and Standards).

“Board” means the Illinois Board of Higher Education (Section 5 of the Act).

“Complaint” means a formal assertion in writing that the terms and conditions of the state authorization reciprocity agreement between the Board and the National Council for State Authorization Reciprocity Agreements, or of laws, standards or regulations incorporated by that agreement, are being violated by a person, institution, state, agency or other organization or entity operating under the terms of that agreement, including student complaints.

“C-RAC Guidelines” and other uses of “C-RAC” refers to the Interregional Guidelines for the Evaluation of Distance Education Programs (Online Learning) for best practices in postsecondary distance education developed by leading practitioners of distance education and adopted by the Council of Regional Accrediting Commissions (C-RAC) (Section 1 of the SARA Policies and Standards).

“Distance Learning” or “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 (Section 5 of the Act).

“Home state” means the single member state recognized by the NC-SARA to regulate institutions that desire to participate in SARA.

“Host State” or “Reciprocal State” means a member state in which an institution operates under the terms of this agreement, other than the home state (Section 1 of the SARA Policies and Standards).

“Institution” means a degree-granting postsecondary entity (Section 1 of the SARA Policies and Standards).

“Member State” means any state, commonwealth, district, or territory of the United States that is a participant in good standing in a state authorization reciprocity agreement (Section 1 of the SARA Policies and Standards).

“NC-SARA” or “National Council for SARA” means the National Council for State Authorization Reciprocity Agreements (Section 1 of the SARA Policies and Standards).

“Participation agreement” means the agreement that each participating institution is required to sign and abide by in order to take advantage of the reciprocity agreement (Section 5 of the Act). For the purposes of this Act, the participation agreement is the application created by NC-SARA which contains the eligibility criteria and is to be completed and signed by the institution. The institution will submit the application to the Board and, after the institution has been approved by the Board staff and the NC-SARA, the application becomes the participation agreement subject to annual renewal.

“Participating institution” means any institution of higher learning that offers an associate’s degree or higher, in whole or in part, through distance learning and has voluntarily or willingly entered into a participation agreement to be regulated by a participating home state with respect to institutional and program approval, complaints, and institutional and program reviews (Section 5 of the Act). For the purposes of this Act, the Board is the agency designated to serve as the point of contact for Illinois.

“Physical presence” means on-going occupation of a physical location for instructional purposes or maintenance of an administrative office to facilitate instruction (Section 5 of the Act).

“Regional Compact” means the New England Board of Higher Education, Midwestern Higher Education Compact (to which Illinois belongs), Southern Regional Education Board, or Western Interstate Commission for Higher Education (Section 1 of the SARA Policies and Standards).

“SARA” is the short title for describing the state authorization reciprocity agreement or the voluntary program which implements reciprocity agreements amongst states, institutions, and the National Council for SARA.

“SARA Policies and Standards” refers to the document adopted by the National Council for SARA to administer the voluntary, regional approach to state oversight of distance education.

“State” means any state, commonwealth, district, or territory of the United States that is a participant in good standing in a state authorization reciprocity agreement (Section 5 of the Act).

“State authorization reciprocity agreement” or “reciprocity agreement” or “interstate reciprocity agreement” means a voluntary agreement that establishes reciprocity between willing states for approval of postsecondary educational services delivered by distance learning beyond state boundaries (Section 5 of the Act). The development of these agreements among and between the state portal agencies and/or the regional compacts will be facilitated through the NC-SARA.

Section 1033.30 Institution Approval Requirements

EMERGENCY

- a) Authorization to Participate

- 1) Any degree-granting postsecondary institution, including public, private non-profit and private for-profit institution, that desires to participate in SARA to offer distance education under the authority of the State of Illinois must:
 - A) Be accredited as defined in Section 1032.20.
 - B) Have Illinois as the designated home state for postsecondary education offerings as defined in Section 1032.20.
 - C) Be financially stable, evidenced by being State supported, or for private for-profit and private non-profit institutions participating in Federal student aid programs under Title IV of the Higher Education Act of 1965 (Pub. L. No. 89-329), by meeting the following criteria: having a Federal Financial Responsibility Composite score of 1.5 or above; having a financial responsibility score between 1 and 1.4 and providing additional financial evidence described in this section to the Board to determine financial status of the institution; or for private for-profit and private non-profit institutions not participating in Federal student aid programs and without a Federal Financial Responsibility Composite score, providing additional financial evidence described in this section to the Board to determine financial status of the institution. No institution with a Federal Financial Responsibility Score below 1.0 will be determined eligible by the Board to participate in SARA through this State, even if any such institution is cleared by the U.S Department of Education to participate in Title IV student aid programs. The following shall be used by Board staff to determine the financial status of institutions required to provide additional financial evidence:
 - i) A written statement in the most recent fiscal year audited financial statement confirming that the institution is financially stable. The audited financial statement must show that the institution has adequate revenue to meet its financial obligations, including payment of unearned tuition.
 - ii) An irrevocable letter of credit from a bank or other similar financial institutions in an amount equivalent to the estimated unearned tuition revenue from distance education students.
- b) Institutional participation shall be voluntary and as such institutions that choose not to participate will be governed by current Illinois laws and administrative regulations for distance education programs.
- c) Physical Presence
 - 1) Any institution that meets the requirements of Section 1032.30 (a)(1) that has Illinois as the home state and is located in the State and holds its principal institutional accreditation in the State must receive Board approval for operating and degree granting authority under the Private College Act [110 ILCS 1005], the Academic Degree Act [110 ILCS 1010], the Board of Higher Education Act

[110 ILCS 205], or have exemption from approval requirements as specified in 23 Ill. Adm. Code 1030.

- 2) Any Illinois public community college desiring to participate in SARA shall be reviewed and approved by the Community College Board. This will not abrogate the Board of Higher Education's authority to request reviews of community colleges participating in the agreement.
- 3) Any out-of-state institution from any SARA member state with physical presence as determined below must apply and obtain operating and degree granting authority from the Board. In determining whether such out-of-state participating institution has a physical presence, the following shall apply (Section 5 of the SARA Policies and Standards):
 - A) The institution has a physical facility in this State, whether owned, operated or rented, for synchronous or asynchronous instruction;
 - B) The institution requires students to physically meet in a location for instructional purposes more than twice per full-term (quarter or semester) course for a total of more than six hours;
 - C) The institution offers a "short course" or seminars that require more than 20 contact hours;
 - D) The institution establishes a physical facility whether owned, rented, operated by, or on behalf of the institution to provide information for the purpose of enrolling students, or providing student support services;
 - E) The institution establishes an administrative office, including but not limited to office space for instructional or non-instructional staff;
 - F) The institution maintains a mailing address or phone exchange in the State;
- 4) Any out-of-state institution from a SARA member state that does not have physical presence in Illinois shall not be required by the Board to fulfill any additional State requirements to operate under SARA if it does the following activities (Section 5 of the SARA Policies and Standards):
 - A) Offers distance learning courses that do not require students to gather in groups, except for the provisions in subsection (c) (3) (B) of this Section.
 - B) Holds recruitment activities or advertises to students whether through print, billboard, direct mail, internet, radio, television, or other medium;
 - C) Offers distance education courses on a military base if enrollment in such courses is limited to federal employees and family members;

- D) Maintains a server, router, or similar electronic service device housed in a facility that otherwise would not constitute physical presence (the presence of a server or similar pass-through switching device does not by itself constitute the offering of a course or program in the State);
 - E) Has faculty, adjunct faculty, mentors, tutors, or other academic personnel residing in the State (the presence of instructional faculty in the State, when those faculty teach entirely via distance-education and never meet their students in person, does not establish physical presence for purposes of the SARA agreement);
 - F) Holds proctored exams on behalf of the institution in the State;
 - G) Has contractual arrangements with third-party providers to offer or support SARA eligible programs. Any contact between a third party provider of educational services and the State or SARA office must be made through the participating degree-granting institution. A third-party provider may not represent a participating institution regarding any subject under SARA's operating policies to any SARA office or the State.
 - H) Offers educational field experiences for students, including an educational field trip arranged for a group of students that are normally in residence at an institution in another state with the exception of full-scale residency programs such as a summer session at a field station;
 - I) Operates limited supervised field experiences. For the purposes of the SARA agreement, interstate supervised field experiences originating from any member state's distance learning or campus-based program will be considered distance education not triggering physical presence if such activities involve placing not more than ten students from any academic program, who are physically present simultaneously at a single clinical facility or site in the State. Any out-of-state SARA member institution intending to have a larger pool of student placement must get approval from the Board to do so. Any out-of-state SARA member institution that owns a supervised field experience, clinical, or practicum site shall be exempted from the limitations on placement of its own students at such a site.
- 5) Any participating institution offering distance learning courses leading to professional licensure must keep students, applicants, and prospective students aware of state licensing requirements. To comply with this requirement, participating institutions must do one of the following:
- A) Provide notification in writing that the institution has determined that the course or program meets the requirements for professional licensure in the state in which the student resides; or

- B) Provide notification in writing that the institution cannot confirm whether the course or program meets requirements for professional licensure in the state in which the student resides. The institution must provide the student with current contact information for any applicable licensing boards, and advise the student to determine whether the program meets requirements for licensure.
- 6) Out-of-state institutions that choose to participate outside the reciprocity agreement or are from non-member states will be bound by other State laws for distance education programs.

Section 1033.40 Application Process and Participation
EMERGENCY

The following are the processes for institutional participation in SARA:

- a) Eligibility
 - 1) Any degree-granting institution whose main campus is located in Illinois and holds its principal institutional accreditation in the State including public, private non-profit and private for-profit institutions, can voluntarily apply to the Board to participate in SARA. The Board shall approve Illinois institutions meeting the eligibility requirements as described in this Section.
 - 2) Institutions are eligible to participate in SARA if they are in compliance with the standards, procedures, and requirements established by the NC-SARA and the Board. Approved institutions are required to maintain the conditions of approval throughout the participation period. Any institution that fails to maintain conditions of approval may lose eligibility to participate in SARA and be removed at anytime by the Board. The following are the criteria to determine eligibility:
 - A) The Interregional Guidelines for the Evaluation of Distance Education, also known as *C-RAC Guidelines*, or any other future guidelines adopted by the National Council for SARA for the interstate distance learning reciprocity program must be maintained by the institution at all times during participation period. Participating institutions must comply with the following *C-RAC Guidelines* (Section 4 of SARA Policies and Standards):
 - i) Online learning is appropriate to the institution’s mission and purposes;
 - ii) Institution’s plans for developing, sustaining, and, if appropriate, expanding online learning offerings are integrated into its regular planning and evaluation processes;
 - iii) Online learning is incorporated into the institution’s systems of governance and academic oversight.

- iv) Curricula for the institution's online learning offerings are coherent, cohesive, and comparable in academic rigor to programs offered in traditional instructional formats.
 - v) The institution evaluates the effectiveness of its online learning offerings, including the extent to which the online learning goals are achieved, and uses the results of its evaluations to enhance the attainment of the goals.
 - vi) Faculty responsible for delivering the online learning curricula and evaluating the students' success in achieving the online learning goals are appropriately qualified and effectively supported.
 - vii) The institution provides effective student and academic services to support students enrolled in online learning offerings.
 - viii) The institution provides sufficient resources to support and, if appropriate, expand its online learning offerings.
 - ix) The institution assures the integrity of its online offerings.
- B) Authorization to operate under SARA shall last for 12 months. Every year following the initial approval, the Board shall determine if participating institutions still meet SARA requirements. Any institution that does not seek to renew and pay applicable participation fees will no longer be eligible to participate in SARA.
 - C) Community colleges may be deemed eligible by participating in a comparable approval process required by the Community College Board.
- b) Participation Fees
- 1) Institutions are assessed fees by the Board and by the National Council for SARA to participate in SARA.
 - A) The Board assesses an annual fee of \$1,750 to institutions participating in SARA and whose applications are managed by the Board. Full payment of these fees is required prior to Board staff review of the SARA application.
 - B) The National Council for SARA assesses initial and recurring fees to participating institutions. In order to be considered eligible to be a SARA institution by the Board, the institution must be in good standing with the National Council for SARA including compliance with all Council fees.
 - 2) Remittance

- A) Board fees shall be submitted as check, certified check, cashier's check, or money order payable to the Illinois Board of Higher Education.
- B) The Board shall return fees, minus a fee of \$250 for processing, if, after further investigation, the Board determines that the institution is not eligible to participate in SARA. No refund shall be awarded for any application that has been reviewed by Board staff. Applications withdrawn by the institution shall receive no refund.
- C) Board fees shall be submitted to:

 Illinois Board of Higher Education
 Academic Affairs Fee Remittance
 1 N. Old Capitol Plaza, Suite 300
 Springfield, Illinois 62701-1394
- D) Applications submitted with insufficient or incorrect fees shall be considered incomplete. The Board will notify the institution of the correct amount due. No further action shall be taken by the Board until the full or correct amount due is submitted.

c) Application and Approval Process

- 1) Any institution seeking to participate is required to complete an application and pay the participation fees.
- 2) The Board will provide SARA application forms to institutions and Board staff will review the application to determine the institution's eligibility to participate in SARA.
- 3) Board participation fees shall be paid in full before an application is reviewed by staff.
- 4) Community colleges may be deemed SARA eligible by participating in a comparable approval process required by the Community College Board. No fee will be assessed by the Board of Higher Education.
- 5) Upon approval by the Board to participate in SARA, the institution will be sent an electronic link to make payment to the National Council for SARA. The Board shall notify the Council when an institution has completed the application process.

d) Maintenance of Approval

Institutions are approved to participate in SARA if they are in compliance with the standards, procedures, and requirements of this Part. Approved institutions are required to maintain the conditions of approval throughout the participation period. Any

institution that fails to maintain conditions of approval may lose eligibility to participate in SARA and be removed at any time by the Board.

1) Renewal

Approval to participate in SARA is for 12 months. Any institution participating in SARA is required to renew annually and pay required renewal fees to the Board and to the National Council for SARA. Any institution that does not renew the participation agreement with the Board or pay required fees will no longer be eligible to participate in SARA. The Board will not process any institution's application for renewal until the full amount due is paid.

2) Data Reporting

Participating institutions must comply with the annual data reporting mandated by the National Council for SARA. SARA participating institutions shall annually submit the following data, and other data that the Council may direct participating institutions to submit in the future, to the National Council for State Authorization Reciprocity Agreement (Section 6 of the SARA Policies and Standards):

- A) The number of students enrolled in the institution via distance education delivered outside the home State of the institution. The data should be reported by state, territory, or district in which the students reside.
- B) A list of programs that a student may complete without on-campus attendance (using the U.S. Department of Education definition of a distance education program).

3) Reviews

The staff of the Board may request reviews and visitations of SARA participating institutions as necessary for the implementation of the Act and this Part.

4) Investigations of Institutions

A) The Board staff shall initiate an investigation upon receipt of a verified written complaint of an incident occurring within two years of report date to the Executive Director. Complaints subject to investigation may include those arising from students, other SARA participating institutions, other SARA member states, the Department of Education, employers, and licensing boards. Investigations may be initiated concerning any of the following:

- i) Any violation of SARA consumer protection provisions concerning dishonest or fraudulent claims, including but not limited to recruitment and marketing materials; job placement data; tuition, fees, and financial aid; admission requirements for courses and programs; accreditation status of institutions;

professional licensing requirements or the requirements of specialized accrediting bodies; and any coursework transfer to other institutions that causes harm or financial loss to students.

- ii) Any violation of the C-RAC Guidelines or any other future guidelines adopted by the National Council for SARA for the interstate distance learning reciprocity program.
 - iii) Any violation of the provisions of the Private College Act [110 ILCS 1005] the Academic Degree Act [110 ILCS 1010] and the administrative rules [23 Ill. Admin. Code 1030] for programs offered through distance education.
 - iv) Loss, suspension, probation or similar adverse action taken by an accrediting body with which the institution is or was affiliated.
 - v) Actions of federal or state regulatory agencies or Offices of Attorneys General, Offices of Inspectors General, or similar bodies that may affect an institution's status with those bodies and/or affect the delivery of SARA programs.
 - vi) Failure to maintain financial stability as described in this Part.
 - vii) Failure to continue to meet any requirement in this Part.
- B) The institution involved in an investigation will be informed of the alleged violations and the processes of investigation. SARA-participating institutions must work directly with the students to resolve certain SARA-related complaints (e.g., complaints about grades or student conduct violations). The following are complaint procedures:
- i) Any complaints not resolved within the institution shall be reported to the Executive Director for investigation and final resolution.
 - ii) After the Executive Director receives an unresolved complaint, he or she will initiate an investigation. The institution involved will be notified by the Board staff prior to initiating an investigation.
 - iii) Upon completion of an investigation, the Board staff will inform the institution of the status of the investigation. In the event that the alleged violations are substantiated, the institution may be removed from participating in SARA. The institution will be required to stop recruiting students for distance education under SARA until it gets a written clearance from the Board reauthorizing participation.

- C) The institution shall provide in its catalog and print promotional materials and on its website the institution complaint policies and procedures for reporting complaints, as well as the Board's website link for reporting complaints. The website information must include an electronic link to the Board's website on the first page (as registered with standard web/internet search engines).
 - D) Community colleges may be deemed compliant by abiding by comparable processes required by the Community College Board.
- e) Revocation of Eligibility
- 1) Grounds for revocation of eligibility to participate in SARA include the following:
 - A) Failure to renew participating agreement and/or pay required fees;
 - B) Violation of any applicable Illinois State laws or any provisions in the SARA Policies and Standards;
 - C) Failure by an approved institution to maintain institutional accreditation or to report negative changes to its accreditation to the Board;
 - D) Failure to maintain financial stability;
 - E) Failure to continue to meet any requirement in this Part;
 - F) Neither the National Council for SARA nor the Board will issue a refund if an institution's eligibility is revoked due to violations of applicable Illinois State laws or SARA standards. Neither will any institution that voluntarily withdraws at any time during the participation year receive any refund.
 - 2) Procedures for Revocation
 - A) Following the Board staff investigation of institutional practices, the staff may recommend to the Executive Director revocation of eligibility to participate in the SARA agreement.
 - B) The Executive Director shall send to the institution an official letter of revocation. The institution shall have 15 business days to communicate with the Board in writing of actions that will be taken and the timeline to address the violations identified in the revocation letter.
 - C) The institution will be considered a SARA participant for the duration of a mandatory Board approved teach-out plan.
 - D) The Board may reinstate the institution at any time upon satisfactory correction of the violations that led to the revocation of eligibility.

f) State Withdrawal

In the case where this State withdraws from SARA, institutions approved and operating under SARA through the State may continue to do so for the remainder of the academic term or 90 days after the receipt of State withdrawal notice, whichever is later, but not to exceed six months from the date of notice.

g) Registers

The Board shall maintain a register on the Board web site with the names of the institutions that have been approved by the Board and NC-SARA to participate in the SARA program (www.ibhe.org). In addition, the National Council for SARA publishes a list of participating states and institutions on their web site (www.nc-sara.org).