

PROPOSED AMENDMENTS TO RULES: HIGHER EDUCATION DISTANCE LEARNING AND INTERSTATE RECIPROCITY

Submitted for: Action.

Summary: This item seeks Board approval of the proposed amendments to the rules to administer the Higher Education Distance Learning Act (P.A. 98-792). The Higher Education Distance Learning Act makes provision for Illinois participation in the State Authorization Reciprocity Agreement (SARA), a national compact of states that, together, provide regulation and consumer protection for students enrolled in online higher education programs. The system of interstate reciprocity established by the National Council for State Authorization Reciprocity Agreement (NC-SARA) allows willing postsecondary institutions in member states to participate on a voluntary basis. Under the system, institutions participate through their "home state" and agree to be regulated by the home state. The Board serves as the lead agency in coordinating interstate reciprocity for distance learning among participating institutions in Illinois. The administrative rules for implementing SARA in Illinois, (23 Ill. Adm. Code 1033) were approved by the Board at the August 11, 2015, meeting. The objectives of the proposed amendment to the administrative rules are to better align with changes to the NC-SARA Policy Manual and to strengthen the State's oversight functions in SARA review process to enhance consumer protection. The Illinois Administrative Procedures Act specifies a three-step process for the proposal and adoption of administrative rules: (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.

Action Requested: That the Board approve the proposed amendments to the rules for administration of the Higher Education Distance Learning and Interstate Reciprocity (23 Ill. Adm. Code 1033) attached as Exhibit A, for publication in the Illinois Register for first notice and subsequent submission to JCAR for second notice.



STATE OF ILLINOIS
BOARD OF HIGHER EDUCATION

PROPOSED AMENDMENTS TO RULES: HIGHER EDUCATION DISTANCE LEARNING AND INTERSTATE RECIPROCITY

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

The system of interstate reciprocity established by the National Council for State Authorization Reciprocity Agreement (NC-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 NC-SARA and the statute establish minimum requirements and provide a coordinated method of regulating distance learning programs. The system applies only to online/distance learning programs.

The objectives of the proposed amendment to the administrative rules are to better align with updates to the NC-SARA Policy Manual and to strengthen the State's oversight functions in the SARA review process to enhance consumer protection. The NC-SARA board approved the implementation of an institutional appeal process under policy 2.2 and required all SARA member states to develop and implement a process to internally resolve appeals from institutions for which they deny initial participation or renewal of participation in SARA. With this proposed amendment to the rules, IBHE will be in alignment with this NC-SARA institutional appeals requirement. In addition, this proposed amendment to rules includes some requirements to strengthen consumer protection, including criteria for allowing institutions to participate under provisional approval and eligibility requirements for institutions not participating in Title IV of the Higher Education Act of 1965 (PL 89-329).

Major proposed amendments to 23 Ill. Adm. Code 1033 include:

- Inclusion of a process for institutional appeal to allow institutions that Board staff removes from SARA participation or denies initial participation to appeal the decision.
- Addition of criterion for institutions applying for initial or renewal participation in SARA to participate on a provisional approval status.
- Specification of criteria for eligibility to participate in SARA for institutions that do not participate in Title IV of the Higher Education Act of 1965 (PL 89-329).
- Provision of guidance for calculating estimated unearned tuition revenue from distance education students for institutions submitting an irrevocable letter of credit from a bank or other similar financial institution.

IBHE staff has drafted the proposed amendments to rules, attached here as Exhibit A. Once approved by the Illinois Board of Higher Education, the proposed rules will be filed for publication in the Illinois Register. Following publication and a public notice period including a period for review by the staff and members of the legislative Joint Committee on Administrative Rules, the amended rules will be presented for adoption by the Board. The final presentation is tentatively scheduled for the August 2023 Board meeting.

Staff Recommendation

Staff recommends the adoption of the following resolution:

The Illinois Board of Higher Education hereby approves the proposed amendments to 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 review by the Joint Committee on Administrative Rules.

EXHIBIT A

ATTACHMENT: ADOPTED AMENDMENTS

TITLE 23: EDUCATION AND CULTURAL RESOURCES

SUBTITLE A: EDUCATION

CHAPTER II: BOARD OF HIGHER EDUCATION

PART 1033

HIGHER EDUCATION DISTANCE LEARNING AND INTERSTATE RECIPROCITY

Section

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

SOURCE: Adopted by emergency rulemaking at 39 Ill. Reg. 6042, effective April 16, 2015, for a maximum of 150 days; adopted at 39 Ill. Reg. 12293, effective August 19, 2015; amended at 45 Ill. Reg. _____, effective _____, 2023.

Section 1033.10 Purpose

- a) The purpose of this Part is to address the powers and duties delegated to the Board of Higher Education ("BHE" or the "Board") by the Higher Education Distance Learning Act (the "Act"), including, but not limited to, minimum standards for institutions of higher education participating in the interstate reciprocity agreements for distance learning. The Board will collaborate with the Illinois Community College Board (ICCB) to establish and ensure eligibility for Illinois public community colleges that desire to participate.
- b) 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 that agreement on a voluntary basis. Under the system, institutions participate through, and agree to be regulated by, their 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 the 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 ICCB to establish and ensure eligibility for Illinois public community colleges that desire to participate in the program.

Section 1033.20 Definitions

The definitions included in this Section apply to terms used in this Part in conjunction with the Higher Education Distance Learning Act and the National Council for State Authorization Reciprocity Agreement (SARA) Policy Manual issued and approved by the and any subsequent revisions as long as those revisions are consistent with the Higher Education Distance Learning Act.

"Accredited" means holding institutional accreditation by name as a U.S.-based institution from an accreditor recognized by the U.S. Department of Education and whose scope of recognition, as specified by the U.S. Department of Education, includes distance education.

"Academic Term" means a portion of an academic year, the time during which an institution holds classes.

"Academic Year" means the period of time generally extending from August in one calendar year through July of the following calendar year, usually broken into Academic Terms such as semesters, trimesters, or quarters.

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

"Approve", "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.

"Board" or "BHE" means the Illinois Board of Higher Education.

"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" 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) (see SARA Policy Manual).

"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.

"Executive Director" means the Executive Director of the Illinois Board of Higher Education.

"Home State" means a SARA-member state where an institution holds its legal domicile, authorization, and is accredited. To operate under SARA an institution must have a single Home State .

"Host State" or "Reciprocal State" means a SARA-member state in which an institution operates under the terms of the agreement, other than the home state .

"ICCB" means the Illinois Community College Board.

"Institution" means a degree-granting postsecondary entity.

"Member State" means any state, district or territory that has joined SARA.).

"NC-SARA" or "National Council for SARA" means the National Council for State Authorization Reciprocity Agreements .

"Participation Agreement" means the agreement that each participating institution is required to sign and abide by in order to participate in SARA . For the purposes of the Act and this Part, the participation agreement constitutes the applications created by NC-SARA and the Board that contain the eligibility criteria and is to be completed and signed by the institution. The institution will submit the applications to the Board and, after the institution has been approved by the Board staff and 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.

"Provisional Admission" or "Provisional Renewal" means conditional approval by the Board staff of an institution's participation in SARA that carries additional monitoring conditions of that institution by its Home State.

"Provisional Status" means the SARA status of an institution provided provisional admission or provisional renewal by its Home State.

"Physical Presence" means on-going occupation of a physical location for instructional purposes or maintenance of an administrative office to facilitate instruction.

"Public Institution of Higher Education" as defined in the Board of Higher Education Act (110 ILCS 205/1)

"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).

"SARA" means the state authorization reciprocity agreement or the voluntary program that implements reciprocity agreements amongst states, institutions and the National Council for SARA.

"SARA Policy Manual" refers to the document adopted by the National Council for SARA, as may be amended from time to time, 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 the state authorization reciprocity agreement.

"State Authorization Reciprocity Agreement", "SARA", "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. The development of these agreements among and between the state portal agencies and/or the regional compacts will be facilitated through NC-SARA.

(Source: Amended at 45 Ill. Reg._____, effective _____)

Section 1033.30 Institution Approval Requirements

a) Authorization to Participate

- 1) Any degree-granting postsecondary institution, including public, private nonprofit 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, as defined in Section 1032.20, for postsecondary education offerings.
 - C) Be financially stable, evidenced by:
 - i) being a public institution of higher education in Illinois; or
 - ii) being a private, for-profit or private, nonprofit institution participating in federal student aid programs under Title IV of the Higher Education Act of 1965 (PL 89-329), by meeting the following criteria: having a most recent Federal Financial Responsibility Composite score of 1.5 or above; or having a financial responsibility score between 1 and 1.4 and providing additional financial evidence described in subsection (a)(2) to the Board to determine the financial status of the institution; or

- iii) being a private, for-profit or private, nonprofit institution not participating in federal student aid programs and without a Federal Financial Responsibility Composite Score, providing a comparable score that is calculated by an independent accountant using the U.S. Department of Education's calculation methodology that matches the institution's sector and is certified by the same independent accountant and additional financial evidence described in subsection (a)(2) to the Board to determine financial status of the institution.
- D) No private for-profit and private nonprofit 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.

2) The following shall be used by the Board staff to determine the financial status of institutions required to provide additional financial evidence:

- A) 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.
- B) An irrevocable letter of credit from a bank or other similar financial institution in an amount equivalent to the estimated unearned tuition revenue from distance education students in one academic year. The formula to calculate unearned tuition is the maximum number of students that could be enrolled in any one academic year multiplied by the amount of the tuition for each academic level charged by the institution. The sum of the subtotals by academic level is the estimated unearned tuition revenue.

b) Institutional participation shall be voluntary and, as such, institutions that choose not to participate will be governed by current Illinois statutes and regulations for distance education programs (the Board of Higher Education Act [110 ILCS 205], the Private College Act [110 ILCS 1005], the Academic Degree Act [110 ILCS 1010], and the Public Community College Act [110 ILCS 805], and 23 Ill. Adm. Code 1030, 1050 and 1051).

c) Physical Presence

- 1) Any institution that meets the requirements of subsection (a) that has Illinois as the home state, is located in Illinois and holds its principal institutional accreditation in Illinois must receive Board approval for operating and degree granting authority under the Private College Act, the Academic

Degree Act, or the Board of Higher Education Act, or be exempt 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 ICCB. 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 under this subsection (c)(3) 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:
 - A) The institution has a physical location in this State 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 in one six-month period;
 - D) The institution establishes a physical location 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 noninstructional staff;
 - F) The institution maintains a mailing address or phone exchange in Illinois.
- 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 Illinois requirements to operate under SARA if it does the following:
 - A) Offers distance learning courses that do not require students to gather in groups, except for the provisions in subsection (c)(3)(B);
 - B) Holds recruitment activities or advertises to students, whether through print, billboard, direct mail, internet, radio, television or other media;
 - C) Offers distance education courses on a military base if enrollment in those 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 Illinois);
- E) Has faculty, adjunct faculty, mentors, tutors or other academic personnel residing in Illinois (the presence of instructional faculty in Illinois, 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);
- F) Holds proctored exams on behalf of the institution in Illinois;
- 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 of Illinois;
- 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, 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 those activities involve placing not more than 10 students from any academic program, who are physically present simultaneously, at a single clinical facility or site in Illinois. 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 that site.

5) Any institution approved to participate in SARA that offers courses or programs designed to lead to professional licensure or certification or advertised as leading to licensure must satisfy all federal requirements for disclosures regarding such professional licensure programs under 34 §C.F.R. 668.43. These requirements will also apply to non-Title IV institutions. To comply with this requirement, participating institutions must do the following:

- A) Provide a list of all states for which the institution has determined that its curriculum *meets* the state educational requirements for licensure or certification; or
- B) Provide a list of all states for which the institution has determined that its curriculum *does not meet* the state educational requirements for licensure or certification; or
- (C) Provide a list of all states for which the institution has *not made a determination* that its curriculum meets the state educational requirements for licensure or certification; and
- (D) Provide notification in writing to enrolled students that the institution has determined that the course or program does not meet or if it is not determined if it meets the requirements for professional licensure or certification in the state in which the student is located; and
- (E) Provide notification in writing to prospective students before financial obligation is made that the institution has determined that the course or program does not meet or if it is not determined if it meets the requirements for professional licensure or certification in the state in which the student is located; and
- (F) Institutions that are unable, after all reasonable efforts, to determine whether a program will meet state professional licensure requirements shall provide the student or applicant with current contact information for any applicable licensing boards and advise the student or applicant to determine whether the program meets requirements for licensure in the state where the student is located.

6) Out-of-state institutions that choose to participate outside the reciprocity agreement or are from nonmember states will be bound by other Illinois laws identified in subsection (b) for distance education programs.

(Source: Amended at 45 Ill. Reg. _____, effective _____)

Section 1033.40 Application Process and Participation

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 Illinois, including public, private nonprofit 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 any time by the Board. The following are the criteria to determine eligibility:

A) The Interregional Guidelines for the Evaluation of Distance Education (C-RAC Guidelines) adopted by the National Council for SARA (July 10, 2015; no later amendments or editions are included) for the interstate distance learning reciprocity program must be maintained by the institution at all times during the participation period. Participating institutions must comply with the following C-RAC Guidelines:

- i) Online learning is appropriate to the institution's mission and purposes;
- ii) The 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; and
- 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 ICCB.

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 fee requirements.

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 333
Springfield IL 62701-1377

- 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 will 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 ICCB approval process. 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 NC-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 Section. 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 NC-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 NC-SARA as set forth in the Data Reporting Handbook provided by NC-SARA.
- 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 by the Executive Director of a verified written complaint of an incident occurring within two years prior to the date the complaint was submitted. Complaints subject to investigation may include those arising from students, other SARA participating institutions, other SARA member states, the U.S. 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 adopted by NC-SARA for the interstate distance learning reciprocity program.
- iii) Any violation of the provisions of the Private College Act, the Academic Degree Act, and 23 Ill. Adm. Code 1030 (Program Review (Private Colleges and Universities)).
- 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 Section 1033.30(a)(1)(C).
- vii) Failure to continue to meet any requirement in this Section.

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 BHE 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 or be placed on provisional status. If 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's 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 institution's complaint portal as well as 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 ICCB processes.

e) Revocation of Eligibility

- 1) Grounds for revocation of eligibility to participate in SARA include the following:
 - A) Failure to renew the SARA 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 of this Section.

- 2) Neither NC-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.
- 3) 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.
 - B) The Executive Director shall send to the institution an official letter of revocation.
- f) State Withdrawal
If Illinois withdraws from SARA, institutions approved and operating under SARA through Illinois may continue to do so for the remainder of the academic term or 90 days after the receipt of the Illinois 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, NC-SARA publishes a list of participating states and institutions on its web site (www.nc-sara.org).

(Source: Amended at 45 Ill. Reg. _____, effective _____)

Section 1033.50 Provisional Admission or Renewal

- a) The Board staff may approve an institution applying for initial or renewal participation in SARA to participate on provisional status in any of the following circumstances:
 - 1) The institution is on notice, show cause, provisional, or probationary status or the equivalent with its institutional accrediting agency;
 - 2) The institution is currently required by the U.S. Department of Education to post a letter of credit or is under a cash management agreement or under reimbursement payment method or Heightened Cash Monitoring (HCM 1 or HCM 2) with the U.S. Department of Education (such institutions must still have a Federal Financial Responsibility Composite Score of 1.0 or above);
 - 3) The institution has a Federal Financial Responsibility Composite Score between 1.0 and 1.5;
 - 4) The institution is the subject of a publicly announced investigation by a government agency, and the investigation is related to the institution's

academic quality, financial stability or student consumer protection;

- 5) The institution is the subject of a current investigation by its Home State related to the institution's academic quality, financial stability or student consumer protection;
- 6) A third-party action such as a private lawsuit or news story does not by itself establish a government investigation. If such a third-party event results in an investigation by a government agency as set forth in subsections (a)(4) and (5), above, those subsections become applicable. Lawsuits by government entities are considered to have resulted from a governmental investigation and can be the basis of a determination of provisional status.
- 7) Lack of compliance with SARA policies related to data reporting.
- 8) The institution has a change of ownership as determined by the Home State.
- 9) The participating institution is in violation of, or noncompliance with SARA policies.

b) The Board staff shall notify the Midwestern Higher Education Compact [Regional Compact] and NC-SARA of the admission or renewal of an institution on provisional status. NC-SARA will provide indication of the institution's provisional status on the NC-SARA website.

c) An institution admitted to or renewed for SARA participation on provisional status is subject to additional oversight measures as the Board staff considers necessary for purposes of ensuring SARA requirements are met regarding program quality, financial stability and consumer protection, including limits on its distance learning enrollments if deemed necessary and appropriate by the Home State. The Home State shall report to its regional SARA steering committee and NC-SARA at least once a year on the status of any Institution(s) admitted or renewed on Provisional Status.

d) An institution admitted to or renewed for SARA participation on provisional status shall remain in that status for a period not to exceed one year unless all of the following are true:

- 1) The Board staff or an external entity whose action has resulted in the institution's provisional status (see 3.2(a)) has not within the one-year period taken action to resolve the Institution's status with that entity;
- 2) The Board staff recommends extension;
- 3) The President of the Midwestern Higher Education Compact [relevant Regional Compact] approves extension; and
- 4) To support comparable application of this policy across regions, the

President of NC-SARA approves such action.

- e) In no event shall such an extension of provisional status exceed one additional year.
- f) In the event that the Board staff determines that an institution on SARA provisional status is no longer subject to any of the circumstances set forth in subsection 1033.50(a), above, the Board staff shall remove the institution's designation of provisional status and shall notify the Midwestern Higher Education Compact [Regional Compact] and NC-SARA. NC-SARA shall then remove that designation on NC-SARA's online listing of SARA-participating Institutions.
- g) If an institution on SARA provisional status is found by the Board staff to not meet the requirements of SARA, the Board staff shall disallow any further enrollments under SARA, shall notify the Midwestern Higher Education Compact[its Regional Compact] and NC-SARA, and:
 - 1) Remove the institution from SARA participation, or
 - 2) Allow the institution a period not to exceed 12 months in which to come into compliance with SARA policies under state supervision. Only one such time period is allowed in any three-year period.
- h) If an institution on SARA provisional status is found by the Board staff not to meet the requirements of SARA, the Board staff shall allow any students enrolled in the institution under SARA policies at the time of the finding of noncompliance a period of six months in which to conclude their work at the institution under SARA provisions, irrespective of the institution's SARA status.
- i) Provisional status between renewal periods. The Board staff, at its discretion, may place an institution on provisional status at any time if the institution is subject to any conditions set forth in subsection 1033.50(a), above, or if the institution's Federal Financial Composite Score falls between 1.0 and 1.5. An institution placed on provisional status by the Board staff shall remain in that status until its next renewal date, at which time the Board staff will determine if the institution will be removed from SARA participation, renewed for provisional SARA participation for no longer than one year, unless conditions of subsection 1033.50(d), above, are met, or renewed without such provisional designation.
- j) SARA eligibility following change of ownership. A change of ownership will be determined by the Board staff in accordance with applicable Board rules, and if there is a change of ownership, a new application for authorization must be submitted by the new ownership and approved by the Board.
 - 1) A SARA participating institution will remain under SARA until the required approvals are completed by all agencies, including the institution's accreditor. The institution may become provisionally approved by the Board staff as of the effective date of change of ownership until a new Federal Financial Responsibility Composite Score is established. A new application for institutional approval may be required.

- A) Institutions participating in federal student aid programs under Title IV of the Higher Education Act of 1965 (PL 89-329) shall submit to the Board staff a copy of the same day balance sheet showing the institution's financial position on the day the ownership changed, prepared in accordance with Generally Accepted Accounting Principles (GAAP) and audited in accordance with Generally Accepted Government Auditing Standards (GAGAS) as required by the U.S. Department of Education to extend the Temporary Program Participation Agreement (PPA).
- B) Institutions not participating in federal student aid programs shall submit to the Board staff a same day balance sheet showing the institution's financial position on the day the ownership changed prepared in accordance with GAAP by an independent accountant

2) Newly acquired institutions seeking SARA participation. If the newly acquired institution has not participated in SARA, the institution shall follow the requirements as described in Section 1033.30.

(Source: Added at 45 Ill. Reg. _____, effective _____)

Section 1033.60 Institutional Appeals

In the event that an institution is notified by the Board staff of its intent to remove the institution from participating in SARA, or if the institution is denied initial participation in SARA, the institution may appeal the denial of participation to the Executive Director of the Board.

- a) Institutions who choose to appeal must do so on the following grounds:
 - 1) The Board staff did not follow procedures as outlined in the SARA Manual and this Part. The institution must submit supporting documentation.
 - 2) The Board staff made a mistake in determining that the institution does not meet the eligibility criteria to participate in SARA, as outlined in the SARA Manual and this Part. The institution must submit supporting documentation to prove that the institution meets the eligibility criteria.
 - 3) The Board staff made a mistake in determining that the institution was in violation of, or is non-compliant with, SARA policies outlined in the SARA Manual and this Part. The institution must submit supporting documentation to prove that the institution's actions or failure to act was not in violation and complies with the written policies.
- b) Appeals Process
 - 1) Institutions wishing to appeal their removal or denial of participation from SARA must notify the Board in writing of the intent to appeal within seven

days of receiving an official letter of revocation or denial from the Board staff.

- A) For institutions who are currently participating in SARA, if no notice to appeal is received within the seven-day timeframe, the Board staff will take the necessary steps to officially remove the institution from SARA by notifying the NC-SARA office.
- B) For institutions that have submitted a notice to appeal, and the notice has been received by the Board staff, the status of the institution shall remain unchanged during the appeal process.

2) The notice of intent to appeal must include the name of the institution, what action was denied, when the denial was received, and contact information for the appeal.

The notice must be delivered to the Board via e-mail to: SARA@ibhe.org.

Hard copies of the notice of intent to appeal may be sent to:

Illinois Board of Higher Education
SARA Appeal
1 N. Old Capitol Plaza, Suite 333
Springfield IL 62701-1377

Upon receipt of the notice of intent to appeal, the Board will contact the institution to verify receipt and may request additional information to clarify the intent to appeal.

3) Institutions who notify the Board of their intent to appeal must submit their official appeal, consisting of a letter stating their reason for appealing, along with the required supporting documentation, within seven days after submitting a notice of their intent to appeal.

The official appeal must be delivered to the Board via e-mail to: SARA@ibhe.org.

Hard copies of the official appeal may be sent to:

Illinois Board of Higher Education
Attn: SARA Appeal
1 N. Old Capitol Plaza, Suite 333
Springfield IL 62701-1377

4) Upon receiving the official appeal and supporting documentation, the Executive Director will make a determination on the appeal within fourteen days of the receipt of the official appeal.

- A) Institutions whose appeals are accepted will remain as a SARA participating institution or will be granted initial participation in SARA if not already a participating institution.
- B) The institution must pay all fees associated with SARA participation before participation will be granted or before institutional participation can be renewed.
- C) Institutions whose appeals are denied will be notified of the decision of the Executive Director. For institutions currently participating in SARA, the Board will take immediate action to have them removed as a SARA participating institution following the notification of the decision of the Executive Director.

5) If an institution's SARA participation expires during the appeals process, they will remain a participating institution until such time as the appeals process can be resolved.

(Source: Added at 45 Ill. Reg. _____, effective _____)