

**SOUTH DAKOTA BOARD OF REGENTS**

**Academic and Student Affairs**

**AGENDA ITEM: 6 – G**

**DATE: March 30 – April 1, 2016**

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**SUBJECT: BOR Policy 1:29 – South Dakota State Authorization Reciprocity Agreement (SARA) (Second Reading)**

South Dakota has recently completed its first year of SARA membership, and as the system has reached the anniversary dates for the first institutions to join, it has become evident that Board Policy 1:29 South Dakota State Authorization Reciprocity Agreement (SARA) is in slight conflict with NC-SARA's practices regarding institutional annual renewal. Under current Board Policy, an institution, regardless of when they joined SARA, must complete an Annual Report Renewal Form in May. Institutions are then invoiced for their SD-SARA fee in June, which is \$4,000 per year or a prorated amount if a new institution has not been a SARA institution for a full year. Institutions must pay the SD-SARA fee by July 1. A provision in the policy calls for institutions to pay their NC-SARA fee on the date required by NC-SARA. NC-SARA calls for institutions to complete the required renewal form and pay their fee on the anniversary date the institution was approved for SARA membership. In current practice under both the state and national policies, institutions are being asked to apply for annual renewal twice a year.

The proposed change to the Board of Regents policy will remove the state annual report due in May, and in its place, institutions will complete the form created by NC-SARA on its anniversary date of membership. The payments for the SD-SARA state fee will still be due by July 1, as that must remain in line with our fiscal calendar. Taking this approach should eliminate unnecessary paperwork for both campus personnel in charge of SARA, and for BOR staff administering the program. This strategy has been discussed with personnel from NC-SARA, and they support this course of action.

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**RECOMMENDED ACTION OF THE EXECUTIVE DIRECTOR**

I move to approve the second and final reading of Board Policy No. 1:29.

# SOUTH DAKOTA BOARD OF REGENTS

## Policy Manual

**SUBJECT:** South Dakota State Authorization Reciprocity Agreement (SARA)

**NUMBER:** 1:29

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### 1. Background

Pursuant to Executive Order 2014-09 (Appendix I) and section 1, chapter 96 of the 2014 Session Laws, codified as SDCL §13-48-42, the Board has been empowered to enter into an agreement, on behalf of the State of South Dakota, with the Western Interstate Commission for Higher Education to join the Western Interstate Commission for Higher Education State Authorization Reciprocity Agreement (SARA).

Executive Order 2014-09 and SDCL §13-48-42 charge the Board with the responsibility to serve as point of contact for purposes related to SARA and to assume responsibility for the administrative, oversight, and investigatory or reporting functions to be undertaken on behalf of South Dakota pursuant to the SARA documents. Point of contact functions extend Board oversight of postsecondary educational institutions, hereafter “institutions,” located in South Dakota only to those South Dakota domiciled institutions that voluntarily request approval to participate in SARA.

In furtherance of Executive Order 2014-09 and SDCL §13-48-42, the Board authorized submission of an application to the Western Interstate Commission for Higher Education State Authorization Reciprocity Agreement Steering Committee, and it adopted the present policy, to be effective upon such date as the Steering Committee should approve South Dakota’s participation in the State Authorization Reciprocity Agreement program.

### 2. Policy Requirements of the State Authorization Reciprocity Agreement

Pursuant to Executive Order 2014-09 and SDCL §13-48-42, the Board hereby adopts, and incorporates herein, the participation requirements set forth in the Western Interstate Commission for Higher Education State Authorization Reciprocity Agreement published on November 1, 2013, as supplemented by the Western Interstate Commission for Higher Education Application Procedures for State Membership in State Authorization Reciprocity Agreement program, document published on November 22, 2013, and as incorporated in the Policies and Standards of the National Council for State Authorization Reciprocity Agreements, published November 18, 2013.

- A. The Board understands the authority placed upon it through Executive Order 2014-09 and delegated to it through SDCL §13-48-42 to empower it to exercise all point-of-contact powers expressly contemplated in the above referenced SARA documents or necessary to performing the functions more specifically described therein.

**3. Consistent and Equal Administration of the State Authorization Reciprocity Agreement**

- A. The Executive Director shall provide for adequate staffing, policies and procedures to assure that South Dakota administers the requirements of SARA consistently and equally, without differentiation based upon the governance, mission or corporate domicile of institutions, and without differentiation based upon the residency of distance education students.
  - 1. For purposes of this policy, the SARA administrator shall be the person delegated responsibility for administering SARA by the Executive Director.

**4. Institutional Application to Participate in the State Authorization Reciprocity Agreement program**

- A. Institutions that operate from a principal campus or central administrative unit domiciled in South Dakota may apply to the SARA administrator for approval to deliver distance education programming to students residing in other SARA member states, provided such institutions have:
  - 1. institutional accreditation by name as South Dakota-based institutions from an accreditor recognized by the U.S. Department of Education and
  - 2. authorization by name to provide educational programs at physical locations in South Dakota
    - a. from the Secretary of State,
    - b. pursuant to SDCL § 13-48-36,
    - c. pursuant to SDCL § 13-48-41(1), exempting institutions authorized by the government of the United States, or
    - d. pursuant SDCL § 13-48-41(2), exempting institutions authorized by the government of an Indian tribe whose tribal lands are located, in whole or in part, in this state.

- B. Institutions that seek participation in SARA may do so by submitting an application in the form required under SARA.
1. Submission of an application form operates as an agreement by the institution to accept oversight by the Board insofar as is necessary to comply with requirements placed uniformly on all institutions that participate in SARA. Acceptance of that oversight is a precondition and as an ongoing condition of the institution's eligibility to participate in SARA.
    - a. This agreement includes institutional undertakings:
      - i. to provide annual reports required under SARA, together with such additional reports as may be needed to assist the SARA administrator in responding to requests received from other states' points of contact, or from regional or national SARA agreement authorities;
      - ii. to notify the SARA administrator promptly of changes in institutional accreditation, corporate governance or ability to continue delivering the programs identified in the institution's application materials or annual reports;
      - iii. to inform the SARA administrator whenever circumstances require it to seek accrediting agency approval for a teach-out program or to initiate other program termination measures;
      - iv. to offer teach-out plans or reimbursement of tuition or fees to students, if any, who may be unable to complete courses or programs, because of the institution's loss of eligibility to participate in SARA;
      - iv. to cooperate with the SARA administrator in resolving complaints;
      - v. to accept the final resolution of complaints by the SARA administrator, pursuant to the procedures outlined in this policy, which resolutions may require repayment of tuition and fees as liquidated damages; and
      - vi. to submit to enforcement proceedings and to comply with the final resolution, which may entail loss of eligibility for participation in SARA.

- b. The institution shall have the right to appeal SARA administrator final resolutions of complaints or enforcement actions to the Board for resolution under SDCL ch 1-26, as provided in § 9 of this policy.
2. In order to comply with the requirements of the Western Interstate Commission for Higher Education State Authorization Reciprocity Agreement published on November 1, 2013, pp. 15-16, each application must:
    - a. identify the academic offerings that the institution proposes to offer through SARA and demonstrate that the institution's accrediting body has accredited it to deliver such programs via distance education;
    - b. document that the institution provides written notification to all students in a course or program that customarily leads to professional licensure whether or not the course or program meets requirements for licensure in the state where the student resides;
      - i. this requirement applies to any course or programs that a student could reasonably believe leads to such licensure;
      - ii. if an institution does not know whether a course or program meets licensure requirements in the student's state of residence, the institution may meet this requirement by documenting how it informs students in writing that it cannot assure the student that the course or program meets licensure requirements, and provides the student the contact information for the appropriate state licensing authorities;
      - iii. failure to provide proper notice in one of the two ways permitted under this subparagraph (b) invalidates SARA eligibility of any course or program offered without the proper notice;
    - c. disclose institutional complaint procedures, approved by the institutional accrediting agency, and document how the institution notifies distance education students of the availability of these procedures;
    - d. submit procedures required under the institutional accreditation in the event of the unanticipated closure of an institution, including:

- i. a description of provisions to preserve student records;
    - ii. accrediting body contact information to enable the SARA administrator to request assistance from the institution's accreditor as the accreditor applies its standards under 34 C.F.R. §602.24(c); and
    - iii. a statement whether institutional surety bonds would be available to provide reasonable financial compensation for its distance education students;
  - e. present a commercially reasonable continuity of operation plan supporting distance education students and their continued access to student records;
  - f. for private institutions, confirmation of current institutional federal financial responsibility rating.
3. To establish SARA eligibility, private institutions must possess a current federal composite financial responsibility score equaling or exceeding 1.5.
  - a. Private institutions with a federal composite financial responsibility score of 1.0 to 1.5 may request conditional admission to SARA for a period not to exceed two years.
    - i. A private institution requesting conditional admission to SARA shall submit a business plan and supporting financial information which, considered as a whole, suggest that it is commercially reasonable to expect that, within twenty-four months of admission to SARA, the institution will achieve an institutional federal financial responsibility rating of 1.5 or greater.
      1. Simultaneously, the institution shall document accrediting body requirements for teach-out plans or alternative plans to assure that distance education students will be offered options to continue their education or to be reimbursed for tuition and fees.
  - b. If, after being admitted to SARA, a private institution's federal composite financial responsibility score falls below 1.5, the institution's authorization to participate in SARA terminates automatically, but the institution shall be offered an opportunity to

operate for an additional three months pending a formal request for conditional admission to SARA, together with all required submissions.

- i. The institution may operate for an additional three months following its formal request for conditional admission to SARA.
  - ii. If the institution elects not to request conditional admission to SARA, it shall implement a teach-out or alternative plan to assure that distance education students will be offered alternatives to continue their education or to be reimbursed for tuition and fees.
- c. No private institution with a federal composite financial responsibility score less than 1.0 will be considered eligible for SARA.
- i. If, after being admitted to SARA, a private institution's federal composite financial responsibility score falls below 1.0, the institution's authorization to participate in SARA terminates automatically.
  - ii. The institution shall implement a teach-out or alternative plan to assure that distance education students will be offered alternatives to continue their education or to be reimbursed for tuition and fees.

## 5. State Authorization Reciprocity Agreement Reports

### A. Annual Reports

1. Annual Reports will be due each year on the anniversary of the date that the institution receives approval from the National Council for State Authorization Reciprocity Agreements. On May 15, following approval to participate in SARA, and each subsequent year, Institutions shall file with the SARA administrator updates for all information provided in the initial application.

### B. Immediate Reports

1. Institutions shall immediately inform the SARA administrator of developments:

- a. affecting institutional accreditation, corporate governance or ability to continue delivering the programs identified in the institution's application materials or annual reports, and
- b. whenever circumstances require it to seek accrediting agency approval for a teach-out program or to initiate other program termination measures.

C. Quarterly Reports

1. Institutions shall file quarterly reports detailing the status of complaints referred to the institution by the SARA administrator, together with details involving complaint resolutions.
2. Private institutions with an institutional federal financial responsibility rating of 1.0 with justification shall submit quarterly reports to document sufficient progress under the institutional business plan to remain eligible to participate in SARA.

D. Other Reports upon Request

1. Institutions shall submit such other reports as the SARA administrator may request from time to time to enable it to respond to inquiries from SARA authorities in other participating states or from the Western Interstate Commission for Higher Education or the National Council for State Authorization Reciprocity Agreements.

**6. Fees**

- A. National Council for State Authorization Reciprocity Agreements fees will become payable to the National Council for State Authorization Reciprocity Agreements upon admission to SARA and renewal fees will be due at such times and in such amounts as the National Council for State Authorization Reciprocity Agreements may specify.
- B. The Board shall establish an annual SARA fee at a level required to cover the Board's cost of administering SARA. The Board's annual SARA fee will be based upon the State of South Dakota fiscal year, which runs from July 1 through June 30.
  1. At the time of submitting an application to participate in SARA, an institution must tender payment sufficient to cover the Board's annual SARA fee.



- a. The first renewal fee will be prorated based on the date that the institution receives approval from the National Council for State Authorization Reciprocity Agreements. The Board will determine the prorated amount by calculating 1/12 of the Board's annual SARA fee for each full or partial month that the institution participates in SARA. The institutional SARA contact will be notified by the Board Office of the prorated amount when the application is approved.
      - i. No Board annual SARA fee proration will be made if an institution elects to withdraw from SARA or if its right to participate is terminated.
    - b. If an institution fails to pay the Board's annual SARA fee at the time of application, or if the instrument of payment is not honored when presented by the Board, the application will be deemed withdrawn and the SARA administrator will take no further action with respect to it.
- C. Renewal payments of the Board's annual SARA fee will be due on July 1. Any changes to the fee structure will be adopted by the Board at its first official meeting following the close of the Legislative Session.
- D. Institutions will forfeit their right to participate in SARA if they fail to pay fees required by National Council for State Authorization Reciprocity Agreements or by the Board.
  - 1. Termination for failure to pay National Council for State Authorization Reciprocity Agreements fees will be effective upon receipt of notice by the Board from the National Council for State Authorization Reciprocity Agreements.
  - 2. Termination for failure to pay the Board's annual SARA fee will become effective on August 1.

## **7. State Authorization Reciprocity Agreement Complaint Resolution**

- A. A complaint is a written, signed allegation that a postsecondary institution does not meet the state authorization requirements of SDCL ch 13-48; an allegation that a postsecondary institution violated deceptive trade practices and consumer protections guaranteed by SDCL ch 37-24; or an allegation raised by a distance education student that a SARA institution does not meet standards established by the institution's accrediting agency or SARA.

1. Disputes involving student grades or student conduct violations are governed entirely by institutional policy and the laws of the SARA institution's home state and do not constitute complaints for purposes of this policy.
- B. Certain complaints received by the SARA administrator will be forwarded to others for resolution.
1. Complaints alleging violations of SDCL ch 13-48 will be forwarded to the South Dakota Secretary of State for review and disposition.
  2. Complaints alleging violations of SDCL ch 37-24 will be forwarded to the Consumer Affairs Division of the Office of the South Dakota Attorney General for review and disposition.
  3. Complaints raised by distance education students residing in South Dakota about SARA institutions domiciled outside South Dakota will be referred to the home state authorities of SARA institutions.
  4. Complaints raised by distance education students residing in South Dakota about South Dakota institutions that do not participate in SARA will be referred to the South Dakota Secretary of State.
- C. The SARA administrator will be responsible for reviewing and administering complaints submitted by distance education students, hereafter, "complainants," that a South Dakota institution that participates in SARA does not meet standards established by the institution's accrediting agency or SARA.
1. Complaints reviewable under this policy include allegations by a distance education student of harm caused because a SARA institution operated a course or program contrary to practices set forth in the Council of Regional Accrediting Commissions Interregional Guidelines for the Evaluation of Distance Education, as summarized in the institutional SARA application (Appendix II).
  2. Complaints shall first be reviewed to determine whether they have been processed through the institution's own procedures for resolution of complaints.
    - a. Complaints that have not been reviewed by the SARA institution will be referred to it for review and resolution within the time frames established under institutional policy.

- i. The SARA administrator will notify complainants at the time a complaint is forwarded to the SARA institution and will advise complainants of their right to request further review of the institutional determination if they process their complaints through the institutional procedure but find the institutional response unsatisfactory.
- b. Complainants who processed their complaints through institutional complaint resolution procedures but remain dissatisfied with the outcome of the institutional process may request that the SARA administrator review the institutional resolution of the complaint.
  - i. If a complainant declines to participate in the SARA institution's complaint procedures, the complaint will be deemed to have been withdrawn, and no further action will be taken on the complaint.
  - ii. The request for review a SARA institution's decision must be filed with the SARA administrator within two years of the incident about which the complaint is made.
  - iii. The request for review must be accompanied by copies of all correspondence, filings and documents exchanged between the complainant and the institution.
  - iv. The request shall specify
    1. the basis for believing that the institutional action is inconsistent with accreditation or SARA requirements,
    2. the harm caused to the complainant by virtue of the inconsistency, and
    3. the corrective action that the complainant seeks.
    4. If the complainant alleges that institutional documents were misleading, the request should contain the portions of the catalog, letters or e-mail exchanged between the complainant and the institution and should identify with specificity statements that the complainant found to be

misleading and what the complainant understood the statements to mean.

- v. The SARA administrator will have no obligation to begin a review until all required documents and statements have been filed.
2. Once all necessary documentation has been received from a complainant, the SARA administrator shall forward the materials to the institution for written response, which response shall be filed within sixty days thereafter.
  3. Upon receipt of the institutional response, or after sixty days if the institution fails to respond to the allegations, the SARA administrator may attempt to arrange an informal resolution to the complaint.
    - a. In this connection, the SARA administrator may seek the assistance of the SARA institution's accrediting body.
  4. If the an informal resolution cannot be reached within thirty calendar days, the SARA administrator shall issue a final resolution to the parties no later than fifteen days after the time allowed for informal resolution has lapsed.
    - a. The final resolution shall be binding on both parties, unless it is appealed to the Board pursuant to article 9 of this policy.

## **8. State Authorization Reciprocity Agreement Enforcement Proceedings**

The SARA administrator may initiate enforcement proceedings where necessary to assure institutional compliance with its agreement with the Board, including the requirements established under the institutional application and the related SARA agreements, policies and standards that the Board administers.

- B. Before taking formal action, the SARA administrator shall provide the participating institution with a written notice:
  1. identifying institutional activity that the SARA administrator believes breach specific commitments that the institution gave in order to be allowed to participate in SARA;
  2. citing the specific provisions of the institution's application, this policy or the related SARA agreements, policies and standards that have been breached; and

3. stating the actions that the SARA administrator proposes to take in response to the identified breaches, either to remedy the breaches or to terminate the institution's participation in SARA and to require implementation of a teach-out plan, a plan to reimburse tuition and fees to affected students or other measures to enable students to pursue duly accredited courses or programs.
- C. The institution shall have forty-five calendar days from the date that the notice is deposited in the United States mails to respond.
1. The response shall identify any alleged errors of fact or alleged error in the SARA administrator's interpretation, application or adherence to the specific provisions of the participation agreement as set forth in the institution's application, this policy or the related SARA agreements, policies and standards.
  2. The response shall present any proposals that the institution may wish to advance as alternative measures to resolve concerns raised by the SARA administrator.
- D. The SARA administrator shall have forty-five calendar days from the date that the institution's response is deposited in the United States mails to pursue any informal resolution or, at the SARA administrator's discretion, to issue a final resolution.
- E. If the institution fails to respond within the time provided in subparagraph 7(C), above, the SARA administrator shall issue a final resolution, which shall be binding on the institution.
1. In such circumstances, if the institution fails to comply with the requirements set forth in the final resolution, the SARA administrator shall notify the institution that its participation in SARA will terminate and shall require it to implement a teach-out plan, a plan to reimburse tuition and fees to affected students or other measures to enable students to pursue duly accredited courses or programs..

## **9. State Authorization Reciprocity Agreement Appeals**

- A. If a final resolution of a complaint or enforcement proceeding adversely affects a legal right, duty, or privilege required by law to be determined after an opportunity for hearing, the institution may appeal the SARA administrator's final resolution to the Board.
- B. An appeal must be brought within 30 calendar days from the date on which the SARA administrator deposited the final resolution notice in the United States mail.

- C. Such an appeal shall state with specificity the legal right, duty, or privilege allegedly affected by the final resolution and shall identify the basis in law for concluding that this legal right, duty or privilege may only be reached by governmental action following a hearing.
  - 1. To the extent that the asserted right to a hearing arises from this policy, the institutional application form, or related SARA agreements, policies or standards, the appellant shall have the burden of showing that the SARA administrator misinterpreted, misapplied or violated a specific term or provision of this policy, the institutional application form, or related SARA agreements, policies or standards.
- D. Such an appeal shall set forth allegations asserting a specific factual basis for the appeal that, if proven, would establish that an action attributable to the SARA administrator deprived the institution of a right, duty or privileged arising under the law, policy, application form, or related SARA agreements, policies or standards that the institution cited as authority for its appeal.
- E. The Board shall refer the matter to the South Dakota Bureau of Administration Office of Hearing Examiners for review, findings and recommended disposition pursuant to SDCL ch 1-26.

**SOURCE: BOR, October 2014; BOR, April 2015.**