SOUTH DAKOTA BOARD OF REGENTS

Academic and Student Affairs

AGENDA ITEM: 5 – A (1)
DATE: October 2-3, 2019

SUBJECT
BOR Policy 1:29 – State Authorization Reciprocity Agreement (SARA) Revisions (First Reading)

CONTROLLING STATUTE, RULE, OR POLICY
BOR Policy 1:29 – State Authorization Reciprocity Agreement (SARA)

BACKGROUND / DISCUSSION
NC-SARA is a national initiative making distance education courses more accessible to students across state lines, as well as making it easier for states to regulate and institutions to participate in interstate distance education. At the October 2014 Board meeting, the Board approved the original version of Board Policy 1:29 – State Authorization Reciprocity Agreement (SARA). This policy emerged as the State of South Dakota joined NC-SARA; in addition, an executive order of the Governor designated the Board of Regents as SARA State Portal Entity for South Dakota.

Since that time, the policies and procedures governing NC-SARA have changed considerably, as the founding documents of NC-SARA transitioned from four regional agreements to one unified agreement in 2015. Also, some of the early policy guidance from NC-SARA has been incorporated into an NC-SARA Manual, clarifying many topics for NC-SARA participants. As such, the current Board Policy regarding SARA is outdated.

IMPACT AND RECOMMENDATION
The revisions to Board Policy 1:29 will simplify the policy and make frequent reference to the NC-SARA manual, which governs many aspects of the BOR Policy. When revisions are made to the NC-SARA manual, the BOR will not need to update our policies.

In addition, the sections of the policy regarding the state SARA fee and the student complaint process have undergone minor revision. The section regarding institutional appeals for institutions has been updated to more accurately reflect NC-SARA policy.

(Continued)

DRAFT MOTION 20191002_5-A(1):
I move to approve the first reading of the proposed revisions to BOR Policy 1:29 – State Authorization Reciprocity Agreement SARA), as presented in Attachment I.
Due to extensive revisions and the relocation or removal of certain sections of the policy, two attachments are included within this item. The first attachment includes the proposed new policy. The second attachment contains the current version of Board Policy 1:29 for comparison.

ATTACHMENTS
SOUTH DAKOTA BOARD OF REGENTS

Policy Manual

SUBJECT: South Dakota State Authorization Reciprocity Agreement (SARA)

NUMBER: 1:29

A. PURPOSE

To regulate the operation of the State Authorization Reciprocity Agreements (SARA) within the state of South Dakota, as the Board of Regents serve as the State Portal Entity for the state, pursuant to Executive Order 2018-05 & SDCL §13-48-42.

B. DEFINITIONS

1. **SARA Institution**: An institution currently participating in SARA.

2. **SARA Manual**: A governing document of NC-SARA, which includes the required procedures for and practices for member states and their State Portal Entities, as well as for participating institutions. SARA Manual refers to the latest version of the document as published on the NC-SARA website.

3. **SD-SARA**: South Dakota SARA. This term is used to describe SARA policies or procedures (such as fees or applications) that only pertain to South Dakota institutions.

4. **State Authorization Reciprocity Agreements (SARA or NC-SARA)**: A voluntary agreement among its member states and U.S. territories that establishes comparable national standards for interstate offering of postsecondary distance education courses and programs, therefore guaranteeing that participating institutions are authorized to provide distance education in all member states.

4.5 **State Portal Entity (SPE)**: An entity designated by the State to coordinate SARA matters for the State. The SPE serves as the principal point of contact for participating institutions within the state and other state agencies, determines eligibility for institutions within the state, serves as the initial point of contact for complaints, and manages the state fee process, among other duties prescribed by the SARA Manual and Unified Agreement. The designated SPE for South Dakota is the South Dakota Board of Regents (also “Board of Regents” or “Board”).

5. **State Portal Entity Contact**: The official SARA contact for the State of South Dakota, as recognized by NC-SARA. The State Portal Entity Contact is a member of the Board of Regents Staff, and may also be referred to as the SD-SARA Administrator.

5. **Unified Agreement**: Refers to the Unified State Authorization Reciprocity Agreement, which is signed by the four regional compacts to participate in NC-SARA: the Midwestern Higher Education Compact (MHEC), the New England Board of Higher Education (NEBHE), the Southern Regional Education Board (SREB), and the Western Interstate Commission for Higher Education (WICHE).
C. **POLICY**

1. **Institutional Participation in SARA**

   1.1. **Eligibility**

      1.1.1. Institutions that operate from a principal campus or central administrative unit domiciled in South Dakota may apply to the South Dakota State Portal Entity to **participate in SARA**, therefore authorizing the institution to provide distance education programming to students residing in other SARA member states. **Institutions must meet the eligibility criteria as described in the SARA Manual.**

   1.2. **Application & Renewal Process**

      1.2.1. Institutions that seek participation in SARA may do so by submitting an SD-SARA application, which is available from the State Portal Entity. **Institutions applying to SARA must meet all application and eligibility requirements as described in the SARA Manual.**

         1.2.1.1. The State Portal Entity shall determine whether the institution meets the criteria for participation in SARA, and shall take one of the following actions:

            1.2.1.1.1. **Approve the institution for full participation in SARA;**

            1.2.1.1.2. **At the State’s discretion, approve the institution for provisional participation in SARA, if the institution falls within the criteria for provisional admission;**

            1.2.1.1.3. **Deny the application for participation in SARA if an institution does not meet the requirements for participation.**

      1.2.2. Participating institutions in SARA must file an annual renewal application in order to maintain membership in SARA. The NC-SARA fee is also due at the time of institutional renewal.

         1.2.2.1. The State Portal Entity shall determine whether the institution continues to meet the criteria for participation in SARA, and shall take one of the following actions:

            1.2.2.1.1. **Approve the institution for the renewal of their full participation in SARA;**

            1.2.2.1.2. **At the State’s discretion, approve the institution for provisional participation in SARA, if the institution falls within the criteria for provisional admission;**

            1.2.2.1.3. **Deny the application for renewal due to the institution no longer meeting the criteria for membership in SARA, therefore ending the institution’s participation in SARA.**
1.2.2.1.3.1. **In the event an institution is found to no longer meet the requirements of SARA prior to their renewal date, they may be removed from SARA at that time, per the SARA Manual.**

1.2.2.1.3.2. **Institutions that are removed from participation in SARA must follow the requirements of the SARA Manual for future and current enrollment of distance education students, as the institution is no longer allowed to operate under the authorization of SARA.**

2. **Fees**

2.1. **NC-SARA Fees**

2.1.1. 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.

2.2. **SD-SARA Fees**

2.2.1. The Board-State Portal Entity shall establish an annual SD-SARA fee at a level required to cover the Board’s cost of administering SARA. The Board’s annual SD-SARA fee will be based upon the State of South Dakota fiscal year, which runs from July 1 through June 30.

2.2.1.1. Any changes to the fee structure will be adopted by the Board of Regents at its first official meeting following the close of the Legislative Session.

2.2.2. **Initial Application Fee**

2.2.2.1. At the time of submitting an application to participate in SARA, an institution must tender payment sufficient to cover the Board’s annual SD-SARA fee. **The application will not be approved by the State Portal Agency until the initial application fee has been received.**

2.2.3. **Renewal Fees**

2.2.3.1. Renewal payments of the Board’s annual SD-SARA fee will be due on July 1.

2.2.3.2. **The institution’s first SD-SARA 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-State Portal Entity will determine the prorated amount by calculating 1/12 of the Board’s annual SD-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.**
2.2.4. No refunds or proration of the SD-SARABoard annual SARA fee proration will be made if an institution elects to withdraw from SARA or if its right to participate is terminated by the State Portal Entity.

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.

2.2.5. Failure to Pay Fees

2.2.5.1. 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 State Portal Entity.

2.2.5.1.1. Termination for failure to pay National Council for State Authorization Reciprocity Agreements fees will be effective upon receipt of notice by the Board State Portal Entity from the National Council for State Authorization Reciprocity Agreements.

2.2.5.1.2. Termination for failure to pay the Board’s annual SD-SARA fee will become effective on August 1.

3. Student Complaint Process & Reporting

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.

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.

3.1. Student Complaint Process

The State Portal Entity Contact 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. 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 the requirements of NC-SARA, per the SARA Manual.

3.1.1. Complaints shall first be reviewed to determine whether they have been processed through the institution’s own procedures for resolution of complaints.

3.1.1.1. 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.
3.1.1.1. The State Portal Entity Contact 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.

3.1.1.2. 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.

3.1.2. Complainants who processed their complaints through institutional complaint resolution procedures but remain dissatisfied with the outcome of the institutional process may request that the State Portal Entity Contact SARA administrator review the institutional resolution of the complaint.

3.1.2.1. The request for review a SARA institution’s decision must be filed with the State Portal Entity Contact SARA administrator within two years of the incident about which the complaint is made.

3.1.2.2. The request for review must be accompanied by copies of all correspondence, filings and documents exchanged between the complainant and the institution.

3.1.2.3. The request shall specify:

- the basis for believing that the institutional action is inconsistent with accreditation or SARA requirements;
- the harm caused to the complainant by virtue of the inconsistency; and
- the corrective action that the complainant seeks.

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.

3.1.2.4. The State Portal Entity Contact SARA administrator will have no obligation to begin a review until all required documents and statements have been filed.

3.1.3. Once all necessary documentation has been received from a complainant, the State Portal Entity Contact SARA administrator shall forward the materials to the institution for written response, which must be submitted to the State Portal Entity within sixty (60) calendar days. Response shall be filed within sixty days thereafter.

3.1.4. Upon receipt of the institutional response, or after sixty (60) calendar days if the institution fails to respond to the allegations, the State Portal Entity
ContactSARA administrator may attempt to arrange an informal resolution to the complaint.

3.1.4.1. In this connection, the State Portal Entity ContactSARA administrator may seek the assistance of the SARA institution’s accrediting body.

3.1.5. If an informal resolution cannot be reached within thirty calendar days, the State Portal Entity ContactSARA administrator shall issue a final resolution to the parties no later than fifteen (15) business days after the time allowed for informal resolution has lapsed.

3.1.5.1. The final resolution shall be binding on both parties, unless it is appealed to the Board pursuant to article 9 of this policy.

3.2. Appeal of the State Portal Entity Final Resolution

3.2.1. If a final resolution of a complaint adversely affects a legal right, duty, or privilege required by law to be determined after an opportunity for hearing, the institution may appeal the State Portal Entity ContactSARA administrator’s final resolution to the Board of Regents.

3.2.1.1. An appeal must be brought within thirty (30) calendar days from the date on which the State Portal Entity ContactSARA administrator deposited the final resolution notice in the United States mail.

3.2.1.2. 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.

3.2.1.2.1. 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 State Portal Entity ContactSARA administrator misinterpreted, misapplied or violated a specific term or provision of this policy, the institutional application form, or related SARA agreements, policies or standards.

3.2.2. 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 State Portal Entity ContactSARA 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.

3.2.3. The Board of Regents 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.

3.3. Referral of Complaints Not Handled by the State Portal Entity Under SARA

3.3.1. Certain complaints received by the State Portal Entity ContactSARA administrator will be forwarded to others for resolution.
3.3.1.1. Complaints alleging violations of SDCL ch 13-48 will be forwarded to the South Dakota Secretary of State for review and disposition.

3.3.1.2. 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.

3.3.1.3. 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.

3.3.1.4. 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.

4. Institutional Appeals Process

4.1. Institutional Appeals

4.1.1. In the event that an institution is notified by the State Portal Entity Contact of its intent to remove the institution from participation in SARA, or if the institution is denied initial participation in SARA, the institution may appeal the denial of participation to the State Portal Entity for further review by the Executive Director of the South Dakota Board of Regents.

4.1.2. Institutions who choose to appeal must do so on the following grounds:

4.1.2.1. The State Portal Entity Contact did not follow procedures as outlined in the SARA Manual. The institution must submit supporting documentation.

4.1.2.2. The State Portal Entity Contact made a mistake in determining that the institution does not meet the eligibility criteria to participate in SARA, as outlined in the SARA Manual. The institution must submit supporting documentation to prove that the institution meets the eligibility criteria for SARA.

4.2. Appeals Process

4.1.2.1. Institutions wishing to appeal their removal or denial of participation from SARA must notify the State Portal Entity Contact in writing of their intent to appeal within five (5) days after receiving notice of their removal from SARA. For institutions who are currently participating in SARA, if no notice to appeal is received within the five (5) day timeframe, the State Portal Entity Contact will take the necessary steps to officially remove the institution from SARA by notifying the NC-SARA office.

4.1.2.2. Institutions who notify the State Portal Entity Contact 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 (7) days after submitting their notice of their intent to appeal.
4.2.3. Upon receiving the official appeal and supporting documentation, the Executive Director of the Board of Regents will make a determination on the appeal within fourteen (14) days of the receipt of the official appeal.

4.2.3.1. 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.

4.2.3.1.1. The institution must pay all fees associated with SARA participation before participation will be granted or before institutional participation can be renewed.

4.2.3.2. Institutions whose appeals are denied will be notified of the decision of the Executive Director. For institutions currently participating in SARA, the State Portal Entity Contact will take immediate action to have them removed as a SARA participating institution following the notification of the decision of the Executive Director.

4.2.4. 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.

5. Other Topics

4.2.5.1. For other topics which are not directly addressed in this policy, the State Portal Entity will defer to the SARA Manual.
FORMS / APPENDICES:

None

SOURCE:

BOR October 2014; BOR April 2015; BOR March-April 2016
SOUTH DAKOTA BOARD OF REGENTS

Policy Manual

SUBJECT: South Dakota State Authorization Reciprocity Agreement (SARA)

NUMBER: 1:29

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

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. 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.
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 administer 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.