



R431, State Authorization Reciprocity Agreement¹

R431-1 The following policy has been codified as Utah Administrative Code R765-431.²

R431-2 References

2.1 Utah Code §53B-16-109, Interstate Reciprocity Agreement for Postsecondary Distance Education

R765. Higher Education (Utah Board of), Administration.

R765-431. State Authorization Reciprocity Agreement Rule.

R765-431-1. Purpose and Authority.

The purpose of this rule is to administer a state authorization reciprocity agreement as authorized by Section 53B-16-109.

R765-431-2. Definitions.

In addition to the definitions set forth in Subsection 53B-16-109(1), the following definitions shall apply to this rule:

(1) "OCHE" means the Office of the Commissioner of Higher Education.

(2) "NC-SARA" means the National Council for State Authorization Reciprocity Agreements.

¹ *Adopted July 15, 2016; amended XXX.*

² This administrative rule must also be approved by the Utah Office of Administrative Rules and minor, non-substantive edits to conform with the Utah Administrative Code style guide may be made.

(3) "SARA" means the State Authorization Reciprocity Agreement overseen by NC-SARA and administered by four regional higher education compacts, including WICHE.

(4) "SARA portal agency" means the single agency designated by each SARA member state to serve as the interstate point of contact for SARA questions, complaints, and other communications.

(5) "WICHE" means the Western Interstate Commission for Higher Education.

R765-431-3. Applications for Institutional Participation in SARA.

(1) An institution desiring to participate in SARA shall submit to OCHE the following:

(a) a completed Application and Approval Form for Institutional Participation in SARA that is approved by NC-SARA;

(b) payment of the fee established by OCHE for administering SARA; and

(c) the following documents verifying the statements made in the application:

(i) evidence supporting the institution's statement that its principal campus or central administrative unit is located in Utah and that it is authorized to operate in Utah;

(ii) evidence supporting the institution's statement that it is a degree-granting institution that is accredited by an accrediting body recognized by the U.S. Secretary of Education;

(iii) evidence that the institution has disaster recovery protocols for protection of student records;

(iv) evidence showing:

(A) each student is informed, before completing the enrollment process for an online course or program, of the student consumer complaint processes available to the student; and

(B) the student complaint processes are clearly defined and can be used electronically;

(v) evidence showing that each student, before completing the enrollment process for an educational program that is designed to meet educational requirements for a specific professional licensure or certification, or is advertised as meeting such requirements, is located in a state/U.S. territory where the educational program meets professional licensure or certification educational requirements or the student attests that they intend to seek employment in a state/territory where the educational program meets the professional licensure or certification educational requirements;

(vi) if an educational program is designed to meet educational requirements for a specific professional license or certification that is required for employment in an occupation, or is advertised as meeting such requirements, a list of all states and U.S. territories where the institution has determined that the program does and does not meet such requirements;

(vii) evidence of tuition assurance funds, surety bonds, teach-out provisions, or other assurances that OCHE deems sufficient to protect students that shows that the institution is capable of fulfilling its obligation with OCHE to provide a reasonable alternative for delivering the instruction or reimbursement of reasonable compensation in the event the institution cannot fully deliver the instruction for which the students have contracted; and

(viii) for a non-public institution, evidence of the institution's financial responsibility index score from the Department of Education that is 1.5 or above, or if its score is between 1.0 and 1.5, evidence that the institution has obtained the surety

required in Section R765-431-4. A non-public institution with a score below 1.0 will not be eligible to participate in SARA.

(2) Institutions desiring to continue participating in SARA after one year of the initial application shall submit to OCHE annually thereafter the following:

(a) a completed UT SARA renewal application that includes a Renewal Application for Institutional Participation in SARA that is approved by NC-SARA within 30 days of receipt of notice from NC-SARA for opportunity to renew;

(b) payment of the fee established by OCHE for administering SARA; and

(c) the following documents verifying the statements made in the application:

(i) evidence that the institution's principal campus or central administrative unit remains located in Utah and that the institution continues to be authorized to operate in Utah;

(ii) evidence that the institution retains its accreditation by an accrediting body recognized by the U.S. Secretary of Education; and

(iii) for a non-public institution, evidence of the institution's financial responsibility index score from the Department of Education.

(3) OCHE shall return the UT SARA application to the institution no later than 30 days after receipt of the initial or renewal application if further information is required from the institution. OCHE shall notify the institution no later than 30 days prior to an institution's NC-SARA annual renewal date of its decision to approve, place on provisional status, or deny the UT SARA application.

(4) If an institution's initial or renewal application is denied, OCHE shall provide to the applicant a written reason for the denial.

(5) If any information contained in the initial or renewal application becomes incorrect or incomplete while it is in effect, the institution shall, within 30 days after the information becomes incorrect or incomplete, correct the application or file the complete information as required by OCHE.

R765-431-4. Surety Requirements for An Institution with a Low Financial Responsibility Composite Score.

(1) An institution with a financial responsibility composite score (FRCS) from the Department of Education between 1.0 and 1.5 shall satisfy the requirement that it is sufficiently financially stable to participate in SARA by submitting with its application a surety in the form of a bond, certificate of deposit, or irrevocable letter of credit.

(2) The surety bond, certificate of deposit, or irrevocable letter of credit shall be for an amount based on the institution’s gross tuition revenue, according to the following table:

TABLE	
Amount of Surety Bond, Certificate of Deposit, or Irrevocable Letter of Credit	
Gross Tuition Revenue	Maximum Amount
\$0.00 - \$50,000	\$12,500
\$50,000.01 - \$100,000	\$25,000
\$100,000.01 - \$200,000	\$50,000
\$200,000.01 - \$300,000	\$75,000
\$300,000.01 - \$400,000	\$100,000
\$400,000.01 - \$500,000	\$125,000
\$500,000.01 - \$1,000,000	\$250,000
\$1,000,000.01 - \$2,000,000	\$500,000
\$2,000,000.01 - \$5,000,000	\$1,250,000
\$5,000,000.01 - \$10,000,000 or greater	\$2,500,000

(3) The obligation of the surety shall be that the institution, its officers, agents, and employees will:

(a) faithfully perform the terms and conditions of its application to participate in SARA; and

(b) conform to the standards and requirements required for participation in SARA.

(4) The bond, certificate of deposit, or letter of credit shall be in a form approved by OCHE and issued by a company authorized to do such business in Utah.

(5) The bond, certificate of deposit, or letter of credit shall be payable to OCHE to be used to satisfy any costs, losses, or damages resulting from the institution's failure to meet any of its obligations as a participant in SARA.

(6) The surety company may not be relieved of liability on the surety unless it gives the institution and OCHE 90 calendar days' notice by certified mail of the company's intent to cancel the surety.

(7) If at any time the company that issued the surety cancels or discontinues the coverage, the institution's eligibility to participate in SARA is automatically revoked as a matter of law on the effective date of the cancellation or discontinuance of surety coverage unless a replacement surety is obtained on or before the cancellation date of the original coverage and provided to OCHE.

R765-431-5. Revocation of Eligibility to Participate in SARA.

(1) An institution's eligibility to participate in SARA may be revoked by OCHE upon its finding that:

(a) the institution's application contains material representations which are incomplete, improper, or incorrect;

(b) the institution failed to perform as represented in its applications;

(c) the institution violated any of the policies and procedures of OCHE as they relate to SARA;

(d) the institution violated any of the policies and procedures of NC-SARA;

(e) the institution failed to maintain an adequate financial responsibility composite score from the Department of Education;

(f) the institution has engaged in any dishonest or fraudulent activity; or

(g) the institution failed to comply with any laws in this state or another state that affect its ability to continue doing business in Utah.

(2) The revocation of the eligibility of an institution shall be made in accordance with the procedures set forth in Section R765-134. A hearing is not required.

R765-431-6. Request for Review.

(1) An institution shall have the right to submit to OCHE a request for review regarding a decision to deny the institution's application or to revoke the institution's eligibility to participate in SARA.

(2) The request for review shall be postmarked within 10 days of the date of notification of the adverse decision.

(3) The requests for review shall be reviewed and decided by a review committee appointed by the Commissioner of Higher Education.

(4) At the time the request for review is made, the institution shall provide evidence to the review committee that the adverse decision was made in error.

(5) The decision of the review committee shall be made in accordance with the procedures set forth in Rule R765-134. A hearing is not required.

(6) The decision of the review committee shall be the final institutional action. An institution may request judicial review of the review committee's decision in accordance with Rule R765-134.

R765-431-7. Consumer Complaints.

(1) Before filing a complaint with OCHE against an institution, an individual must first work through the institution's complaint process. To file a complaint against an institution, an individual shall submit to OCHE:

- (a) a completed complaint form as provided by OCHE; or
- (b) a letter signed by the complainant, and include the following:
 - (i) any documentary evidence relating to the facts of the complaint;
 - (ii) evidence of the institution's resolution of the complaint; and
 - (iii) contact information for the complainant.

(2) OCHE may refer the complaints it receives to one or more of the following entities for resolution as it deems appropriate:

- (a) the institution complained against;
- (b) the SARA portal agency in the home state of a non-Utah institution complained against;
- (c) the Utah Division of Consumer Protection or other law enforcement agency;
and
- (d) the institution's accreditor.

(3) OCHE may take action, in accordance with Section R765-431-5, to revoke an institution's eligibility to participate in SARA based on a consumer complaint that is received within two years of the incident complained of.