

OFFICE OF THE ATTORNEY GENERAL
CONFIDENTIAL MEMORANDUM

To: TOWN HALL

FROM: RAMONA L. TAYLOR
Senior Assistant Attorney General
Education Section

DATE: OCTOBER 27, 2021

RE: Certification Required for Out-of-State Postsecondary Schools Offering
Distance Learning in Virginia

Background

§ 23.1-217 of the *Code of Virginia* (Virginia Code) requires that any entity offering postsecondary education in Virginia be properly certified by the State Council of Higher Education for Virginia (SHCEV or Council) and hold a valid business license. Currently, Virginia Code § 23.1-211 grants the Council discretion to enter into reciprocity agreements with those postsecondary institutions which offer distance education services within the Commonwealth.

Effective July 1, 2022, the law will require those out of state post- secondary degree granting institutions offering distance education to Virginia citizens to be certified by SCHEV or be participants in a reciprocity agreement to which the Commonwealth belong. The law change operates to mandate reciprocity agreements with the

Legal Review

The Council's actions require review under APA and the Virginia Register Act and do not fall within any known exemption. Article 3 of Chapter 2 of Title 23.1 of the *Code of Virginia*, more specifically Virginia Code 23.1-224, grants the SCHEV authority to regulate Certain Private and Out-of-State Institutions of Higher Education. Additionally, Virginia Code § 23.1-215 authorizes the State Council of Higher Education for Virginia to adopt, pursuant to the Administrative Process Act, such regulations as may be necessary to implement the provisions of this chapter.

Those institutions that are members of the NC-SARA reciprocity agreement are not subject to the regulation as—according to NC-SARA, Virginia reciprocally honors their home states' authorization.

Conclusion

The proposed regulatory changes are necessary to align existing regulations with the new legal requirements for out of state educational entities which will provide distance learning courses within the borders of the Commonwealth.

I concur with this request and approve the request for the amendment to the regulation relative to out of state online institutions for higher education and post-secondary schools. The request is consistent with and not in conflict with any other statutes or regulations of the Commonwealth.