



COMMONWEALTH of VIRGINIA

STATE COUNCIL OF HIGHER EDUCATION FOR VIRGINIA
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MEMORANDUM

March 2, 2011

TO: Out-of-State Distance Education Programs

FROM: Linda H. Woodley, Director, Private and Out-of-State Postsecondary Education

SUBJECT: U.S. Department of Education Program Integrity Rules

On October 28, 2010, the U.S. Department of Education issued the final "Program Integrity" rules, which take effect on July 1, 2011. The following regulation concerning distance education was included in the rule package.

If an institution is offering postsecondary education through distance or correspondence education in a State in which it is not physically located or in which it is otherwise subject to State jurisdiction as determined by the State, the institution must meet any State requirements for it to be legally offering distance or correspondence education in that State. An institution must be able to document upon request from the Department that it has such State approval. §600.9 HEA

The purpose of this communication is to inform out-of-state postsecondary institutions offering programs solely via distance learning of Virginia's regulations concerning certification and physical presence.

Pursuant to 8 VAC 40-31-120 (B) of the Virginia Administrative Code, a postsecondary school must become certified to operate in Virginia by the State Council of Higher Education for Virginia (SCHEV) prior to engaging in postsecondary educational activities via telecommunications, mail correspondence courses, or at a site within the Commonwealth. The certification of telecommunication activities or mail correspondence courses is based on physical presence within the Commonwealth.

If an out-of-state institution does not plan to operate a facility in Virginia and/or the mechanism by which instruction is initiated (server) is not located within Virginia, the school does not meet Virginia's criterion of physical presence. Any school not meeting this criterion is ineligible for certification to operate in Virginia.

This ineligibility would not prevent or prohibit an out-of-state institution from offering postsecondary instruction via distance learning to residents of the Commonwealth of Virginia. Those students, however, would not benefit from protections available to students attending institutions that are certified by SCHEV. These protections are listed on the SCHEV website: <http://www.schev.edu/highered/pope/Students.asp>.

SCHEV is unable to speculate as to what effect, if any, its physical presence requirement may have on the Title IV eligibility of Virginia residents enrolled in distance learning programs offered by out-of-state institutions that are ineligible for certification. The U.S. Department has indicated that it plans to publish a *Dear Colleague Letter* that will address this issue, among others.

If you have additional questions concerning SCHEV's physical presence or certification requirements, please visit SCHEV's website (<http://www.schev.edu/highered/pope/NewSchool.asp>) or contact Linda H. Woodley, Director, Private and Out-of-State Postsecondary Education at 804-371-2938 or via e-mail at lindawoodley@schev.edu.