



UNITED STATES DEPARTMENT OF EDUCATION

THE UNDER SECRETARY

January 18, 2017

Dear Mr. Hill and Mr. Poulin,

The Secretary received your letter dated January 10, 2017 concerning the Department of Education's (the Department) recently published state authorization distance education regulations and it was referred to the Office of the Under Secretary for a response. I am pleased to respond to the concerns in your letter.

Under the final regulations regarding State authorization for distance education, published on December 19, 2016, for the purposes of establishing eligibility for the federal student aid programs, an institution operating via distance education is required to obtain authorization from the State(s) in which it operates if those States establish conditions for lawful operation within their jurisdiction. The regulations also establish that state reciprocity agreements are a satisfactory means to obtain authorization.

State authorization reciprocity agreements, like traditional forms of authorization, are vehicles for States to ensure that institutions comply with the laws and regulations that those States deem appropriate. For this reason, the definition of state authorization reciprocity agreement establishes several minimum requirements for reciprocity agreements. However, the regulation does not impose any requirement that the member States of reciprocity agreements accept any State that applies to enter into the reciprocity agreement. It also does not require the member States of reciprocity agreements to accept States into the agreement that have laws that are in conflict with the terms and conditions of the agreement. In other words, a distance education reciprocity agreement may require a State to meet the requirements and terms of that agreement in order for the State to participate in the agreement.

On the other hand, the regulation does not allow State reciprocity agreements to supersede other State laws if there are conflicts within State law that have not been resolved by the States themselves by making amendments to statutes or regulations. The Department is in no position to adjudicate disputes between State entities. Moreover, the rule does not preempt state law and we cannot do so in guidance. The Department will rely on the State to resolve the inconsistencies in the States' body of law. Thus, if the Department becomes aware of an unresolved conflict between the terms of a reciprocity agreement and existing State statutes and regulations, affected institutions seeking authorization via a reciprocity agreement would not be considered authorized under the Department's regulation. Once a State has resolved the conflict within its own body of law, or the reciprocity agreement amends its conditions so as not to preempt state law, affected institutions will be found in

compliance. The Department will coordinate with States, institutions and state reciprocity agreements to ensure the inconsistencies are resolved.

I appreciate your organizations' efforts in ensuring access to high quality distance education across the country. If you have any questions regarding the Department regulations in the future, please contact Lynn Mahaffie in the Office of Postsecondary Education.

Sincerely,

A handwritten signature in black ink, appearing to be 'Ted Mitchell', with a stylized initial 'T' and 'M'.

Ted Mitchell