

MEMORANDUM

The SARA working group (“working group”) on consortia agreements was asked to look at two related questions:

1. How SARA should treat institutions operating within consortia (referred to as “pure” consortia);
2. How should third party providers of courses or services fit into the SARA matrix, whether as part of a consortium or serving only one SARA institution (referred to as involvement of third-party providers).

In the discussion, there was agreement on the need for two definitions due to the wide range of interpretations for the following terms. They are proposed here for inclusion in the SARA definitions list in the Policies and Standards:

“Consortium” or multi-institutional agreement means an agreement among degree-granting institutions under which multiple institutions make courses or programs available in which students may take course work from more than one institution through a unified or transparent enrollment system in which the student usually enrolls through a single institution.

“Third-party Provider” is an entity (not a degree-granting institution) which contributes part of the curriculum or services used in a course or program offered by a SARA participant institution.

Working group’s opinion on issues

1. “Pure” consortia

The working group is unanimous in its opinion that membership in a consortium should convey no special status on an institution with regard to its operations under SARA. In our view, this is mainly an issue of interpretation and clarification which does not require any new SARA policy or review by the regional steering committees. We suggest that the following language be added to an appropriate section of SARA policy:

Consortia and multi-institutional agreements

A SARA participant institution operating as part of a multi-institutional agreement may participate in SARA in the same way as any other institution. Any such institution that transcribes credit earned by a student located in a state decides separately whether to operate in that state under SARA or through the use of standard state approval requirements.

2. Involvement of third-party providers

Third party providers, in the context of SARA, are entities that conduct teaching, training or the provision of related educational services to a SARA participant institution, and which are not themselves degree-granting institutions. Examples mentioned in the working group’s discussions include FAA-certified flight schools, museums, teaching hospitals, ships and military training providers. There are undoubtedly many more.

Report of the SARA Working Group on Consortium Issues

The working group is divided in both its analysis and its opinion regarding certain aspects of the use of third-party providers (“TPP”). The main issue involves the proper interpretation of an existing SARA policy, set forth below.

SARA Policies and Standards, Section 3, subsection 11. Third-party providers

[Section 5.5 in the SARA Manual TBA, same text]

Contacts between a third-party provider of educational services and any SARA office or state must be made via the degree-granting institution that operates under SARA. A third-party provider may not represent an institution regarding any subject under SARA operating policies to any SARA office or any state operating under SARA. The institution that transmits a course is considered the degree-granting institution for purposes of this section.

NOTE: A SARA-approved institution may hire third-party providers to offer or support instruction contained within a program that is otherwise SARA-eligible, assuming that the instruction otherwise meets SARA standards, institutional requirements and requirements of accrediting bodies. However, the degree-granting institution cannot delegate any SARA-related problem-solving functions to a third-party provider, nor may it use the third-party provider as its vehicle for contacting or working with a state.

The working group sees at least two possible, reasonable and conflicting ways of interpreting this language.

1. The language enfolds the work of such third-party providers within the protections and oversight of SARA. In this interpretation the choice of which TPPs to hire, what proportion of the work they may offer and how they are “connected” to the SARA participant institution is essentially up to the institution. The TPP is “invisible” to SARA and, most importantly, to both the home state and the state where the TPP is located. The states may therefore not regulate the work done by the TPP for the institution, assuming both states are SARA members, because that work **does not constitute a physical presence** by an institution because it is covered by SARA.
2. The language is intended only to permit the provision of content or services to a SARA institution, not to govern the way TPPs are handled procedurally or to affect jurisdictional questions. In this interpretation the institution may use TPPs to provide content, services etc. but the methods through which the TPP performs its tasks and what tasks may be performed fall outside the protective shell of SARA and are governed by state law. Therefore, certain activities conducted by a TPP for the institution could, depending on their structure and linkages, **constitute a physical presence** by an institution.

Lacking any obvious “legislative history” underlying the existing language, the working group thinks that it cannot reasonably choose and recommend one of these interpretations on behalf of the larger SARA community because both interpretations are plausible, have certain policy merits and would work in practice. In addition, the working group is undecided on which policy outcome is best.

Report of the SARA Working Group on Consortium Issues

We therefore recommend to SARA leadership that the question of interpretation and determination of appropriate SARA policy should be referred to the SARA regional steering committees so that the states that benefit from SARA can select the best policy. We further recommend that the section now numbered 3(11) and scheduled to be numbered 5.5 in the new SARA Manual be revised for clarity subsequent to that advice from the regional steering committees.

Technical issues with TPPs

The language below has been developed by the working group as a starting point for certain technical issues related to TPPs. The final form of this section will depend on the chosen interpretation by the steering committees.

Third-party providers

1. Course or program offerings that use a third-party provider to deliver all or part of a course or program for which the SARA institution grants credit or an academic award shall be treated by SARA as though they were offered directly by the SARA institution that transcribes any credit or issues any award.¹

2. A SARA institution using a third-party provider of educational services must ensure that such a provider offers the same student complaint resolution notice as the SARA participant institution granting credit or an award.

A. A student at a third-party provider is eligible to use the institutional complaint procedure at the SARA participant institution for the purpose of exhausting remedies as required by SARA policy.

B. The home state of the SARA participant institution is deemed the home state for all students at a third-party provider whose educational activities are incorporated in courses or programs offered by the SARA participant institution, no matter where the third-party provider is located.²

C. Arbitration requirements imposed by a third-party provider related to student complaints are void for purposes of any educational course or program offered under an agreement with a SARA participant institution. All students at a third-party provider shall be provided with the SARA institution's standard complaint resolution process in writing.

The working group appreciates the consideration of NC-SARA and the regional steering committees and is willing to make itself available for any questions that may arise.

¹ What if half a dozen colleges use the same third-party provider?

² What happens with multiple colleges using one TPP?

Report of the SARA Working Group on Consortium Issues

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