



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

March 15, 2022

Sent via E-mail

National Council for State Authorization Reciprocity Agreements
Board of Directors
c/o Dr. Lori Williams
3005 Center Green Drive; Suite 130
Boulder, Colorado 80301

Re: State Attorney General Recommendations Regarding NC-SARA Policy Modification Process

Dear Dr. Williams and Members of the NC-SARA Board of Directors:

We, the Attorneys General of Illinois, Colorado, Connecticut, Delaware, the District of Columbia, Iowa, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nebraska, Nevada, New Jersey, New Mexico, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, Tennessee, Vermont, and Washington, as well as the Hawaii Office of Consumer Protection, write to submit recommendations and insight regarding NC-SARA's recent, proposed Policy Modification Process (the "Modification Process").¹ We appreciate NC-SARA's recognition of the importance of transparency and "collaborating with the full spectrum of stakeholders in the higher education community."² We strongly encourage NC-SARA to make the Modification Process as fair and transparent as possible and, therefore, write with some additional measures for your consideration.

As you know, on August 2, 2021, twenty-five attorney general offices submitted policy recommendations directly to NC-SARA after three meetings between NC-SARA staff and consumer protection attorneys from state attorneys general offices. See **Exhibit A**. These were significant policy modifications meant to better protect students and serve the interests of member states. Attorneys General are not alone in raising such consumer protection concerns: as The Institute for College Access & Success has noted, "NC-SARA has few substantive or proactive consumer protection requirements beyond those already required by federal regulations, and none of the requirements found in many state consumer protection laws."³ Our suggestions were

¹ *Draft Policy Modification Process*, NC-SARA, available at https://nc-sara.org/sites/default/files/files/2022-02/Draft_PolicyModificationProcess_Public%20Comment.pdf.

² *Mission and History*, NC-SARA, available at <https://nc-sara.org/mission-history>.

³ *Know the Facts: The Inaccuracies Surrounding NC-SARA*, The Institute for College Access & Success, Nov. 10 2021, available at: <https://ticas.org/wp-content/uploads/2021/11/Know-the-Facts.pdf>.

informed by years of investigation and enforcement actions against schools engaged in deceptive or unlawful practices, including schools participating in NC-SARA like Career Education Corporation (now called Perdoceo Education Corporation). We hope that NC-SARA has seriously considered these important changes that we believe help align its practices with its stated mission.⁴ However, to date, we have not received a formal response from NC-SARA to those suggestions. In the Meeting Summary of the Fall 2021 Board Meeting, NC-SARA indicates that the states' proposal was "tabled" and would be revisited after its policy modification proposal was planned and deliberated.⁵

As public agencies, we know well the importance of transparency. It is a fundamental principal of government that citizens have a right to be informed of public business. Many of our states require meetings of state agencies to be open and transparent.⁶ In Illinois, for instance, the Open Meetings Act declares "[i]t is the public policy of this State that public bodies exist to aid in the conduct of the people's business and that the people have a right to be informed as to the conduct of their business."⁷ At the federal level, under the Administrative Procedures Act, the Department of Education similarly undergoes a public-facing notice and comment period when making education policy changes.⁸ NC-SARA, while a private, nonprofit organization,⁹ nevertheless makes policies that have a profound impact on the higher education field in each of our respective states and that impact the states' enforcement of their own laws. This outsized impact has only increased in recent years – the number of students nationwide enrolled exclusively in distance education nearly doubled from the fall of 2019 to the fall of 2020.¹⁰ In order to allow NC-SARA to better serve and inform the citizens of our states, we recommend NC-SARA take several steps to ensure fairness and transparency in its policy modification process.

I. NC-SARA Should Publish All Policy Proposals and Receive Public Comment Regarding Such Proposals

The Modification Process states that its guiding principles are "transparency; collaboration; consistency; and clear and open communication among regional compacts, states, institutions, NC-SARA, and other stakeholders." Modification Process, section b. The Modification Process also states that NC-SARA shall "maintain clarity and transparency regarding the status of such proposals throughout the entirety of the policy review cycle." *Id.* at section f(1)(ii). Under the proposed Modification Process, however, NC-SARA staff maintain an effective veto power over all proposals and the inherent ability to conceal any proposals not recommended for approval.

⁴ See *Mission and History*, supra note 2.

⁵ *Fall 2021 Board Meeting, Summary of Major Actions and Discussion*, NC-SARA, Oct. 29, 2021, available at https://nc-sara.org/sites/default/files/files/2021-11/Fall_2021_NC-SARA_Board_Meeting_Summary_Public%20Summary.11.30.21.FINAL_.pdf.

⁶ See, for example: Section 1-225, Conn. Gen. Stat.; District of Columbia Open Meetings Act, DC Code §§ 2-571, et seq.; Neb. Rev. Stat. § 84-1407 *et seq.*; N.J. Stat. Ann. § 10:4-6 to -21; Illinois Open Meetings Act, 5 ILCS 120/1; Maryland Open Meetings Act, Md. Code Ann., Gen'l Prov. §§ 3-101 to 3-501.

⁷ Illinois Open Meetings Act, 5 ILCS 120/1.

⁸ The APA requires agencies to provide "interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments with or without opportunity for oral presentation." 5 U.S.C. § 553(c).

⁹ *About NC-SARA*, NC-SARA, available at <https://nc-sara.org/about-nc-sara>.

¹⁰ *Data Report Executive Summary*, NC-SARA, available at <https://nc-sara.org/2021-data-report-executive-summary>.

Upon receiving a proposed policy modification, NC-SARA, or the applicable regional compact, will review the proposal and either recommend it for approval or not recommend it for approval.¹¹ NC-SARA reviews the proposals on an inherently vague basis: “based on whether they are consistent with the purposes and governing principles of SARA.” Modification Process, section f(2)(iv). Only those proposals that NC-SARA staff approve will make their way to the NC-SARA Board for consideration. Further, only those proposals recommended for approval appear to be subject to the public comment period set forth in Section f(3)(ii) of the Modification Process. As such, policy proposals that NC-SARA staff do not recommend for approval appear to never again see the light of day – both the lack of recommendation and the reasons for that determination are left completely hidden.

Given that obscurity, we strongly recommend that NC-SARA provide a method for the publication of all proposals it receives – both those that NC-SARA staff recommend for approval and those that NC-SARA staff do not recommend for approval – including not just the proposals themselves but also the reasons for either recommending or not recommending those proposals. Further, we recommend NC-SARA adopt a method for receiving public comment on all such proposals, whether or not they are recommended for approval.

Such a system comports with NC-SARA’s mission and the guiding principles of the Modification Process. Further, this public comment system would benefit both NC-SARA and the public at large. First, by publishing NC-SARA’s recommendations and bases for those recommendations, stakeholders are better informed regarding NC-SARA’s concerns and policy objectives and, therefore, better able to provide better proposals to NC-SARA going forward. Further, such publication holds staff accountable for their recommendations and will help foster open and honest dialogue on all proposals.

Second, by accepting public comment regarding all policy recommendations received, NC-SARA will be able to better grapple with issues it may not have otherwise identified. For instance, a policy may be proposed that NC-SARA would have rejected, but if it receives numerous public comments supporting such a proposal, NC-SARA would undoubtedly be more likely to consider the proposal and potentially take it to the NC-SARA Board. By receiving a broad diversity of opinions, NC-SARA will be able to better adapt to the quickly-changing landscape of distance education and will be more accountable to the public. Stakeholders would also be able to provide additional input on any given proposal that could improve upon the proposed change, effectively saving NC-SARA staff time and effort.

II. NC-SARA Should Clarify the Information Provided to Stakeholders Under Section G

The Modification Process states that NC-SARA shall provide direct notices to those who submit policy proposals “that summarize any action taken in response to the proposed modification.” However, it is unclear what NC-SARA means by “action taken,” and whether such notices only are provided if a policy change is approved by the NC-SARA Board. We believe clarity on this point would help assure that NC-SARA provides such notices regarding a *lack* of action (i.e. proposals not approved by the Board or not recommended for approval by NC-SARA staff).

¹¹ See *Draft Policy Modification Process, Section f(2)*, *supra* note 1.

Moreover, we believe NC-SARA should clarify what information is included in such notices, including whether any justification for the actions taken will be included.

It is imperative that NC-SARA notify stakeholders regarding a lack of action. If NC-SARA adopts proposals, those modifications will be publicly available in the updated NC-SARA Policy Manual. However, if a proposal is not acted upon, stakeholders may sit in limbo as to whether their proposal is still under consideration or why NC-SARA took any steps that it did. NC-SARA should clarify what information will be provided in such notices and when, and we urge NC-SARA to provide detailed information regarding the bases for any action or inaction by staff and the Board.

III. NC-SARA Should Adopt Important Changes to its Board:

While the Modification Process does not touch specifically on the makeup or procedures of the NC-SARA Board, we believe important changes to the NC-SARA Board can impact the transparency and effectiveness of NC-SARA as well as impact the proposed Modification Process overall.

a. States Should Control the NC-SARA Board

As NC-SARA itself acknowledges, the *State Authorization and Reciprocity Agreement* is an “agreement among member states, districts and territories.”¹² The policies adopted by NC-SARA can often have greater impact on states than many of the policies adopted by our own state agencies. These policies can replace state laws, including those instituted to protect consumers. The NC-SARA Board, however, holds the ultimate power to adopt policies setting such basic consumer protection standards for NC-SARA schools. As the sole members of SARA, states are woefully underrepresented on NC-SARA’s Board.

We therefore resubmit the recommendation of our August 2, 2021 letter: member states should control NC-SARA’s Board. States have the clearest view of the consumer protection implications of NC-SARA policies and, therefore, are in the best position to control the impacts of those policies on important state laws. States’ enduring commitments to openness and transparency will also help address further policy concerns regarding NC-SARA proceedings and set a high standard for NC-SARA to conduct itself by.

b. NC-SARA Board Meetings Should Be Truly Public

Finally, we encourage NC-SARA to ensure its board meetings are completely public in practice instead of just in name only. In the higher education field, open meetings are the norm, and many states have open meeting requirements. Illinois law, for example, provides that “the actions of public bodies be taken openly and that their deliberations be conducted openly.”¹³ The Department of Education’s negotiated rulemakings are likewise open to the public.¹⁴ NC-SARA touts that its

¹² NC-SARA Homepage, NC-SARA, available at <https://nc-sara.org/>.

¹³ 5 ILCS 120/1.

¹⁴ See *The Negotiated Rulemaking Process for Title IV Regulations – Frequently Asked Questions*, Department of Education, available at <https://www2.ed.gov/policy/highered/reg/hearulemaking/hea08/neg-reg-faq.html> (“Members of the public may observe meetings of the negotiating committee”).

meetings are public.¹⁵ However, despite this assertion, in reality these meetings are only partially in the public eye. As noted in the agenda to the Oct. 29, 2021 NC-SARA Board meeting, the Board meeting lasted 6 hours but only a single, 15-minute session was set aside as the “Public Portion of the Meeting.”¹⁶ Such deliberations are far from transparent.

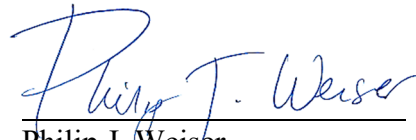
We believe that NC-SARA should conduct its own deliberations under the same principles of transparency as the Department of Education and our respective states, given the outsized impact its policies have on each of our states. Allowing full public view of such deliberations will allow stakeholders to better understand the actions taken – or not taken – by the NC-SARA Board and provide meaningful accountability for the Board members and NC-SARA staff.

Thank you for the opportunity to comment on NC-SARA’s policies and continue this important dialogue. We truly appreciate NC-SARA’s effort to provide additional transparency in its processes. We hope you will strongly consider the proposals contained here and raised in the states’ August 2, 2021 letter, and we look forward to hearing from you in detail regarding both.

Sincerely,



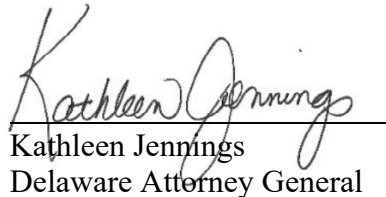
Kwame Raoul
Illinois Attorney General



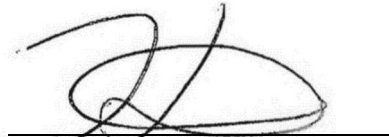
Philip J. Weiser
Colorado Attorney General




William Tong
Connecticut Attorney General



Kathleen Jennings
Delaware Attorney General



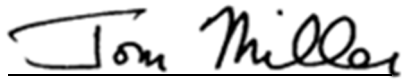
Karl A. Racine
District of Columbia Attorney General



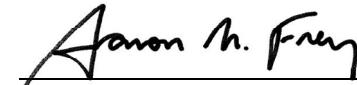
Stephen H. Levins
Executive Director, Hawaii Office of
Consumer Protection

¹⁵ See *Meetings*, NC-SARA, available at <https://www.nc-sara.org/news-events/meetings> (providing “upcoming and past public meeting notices.”).

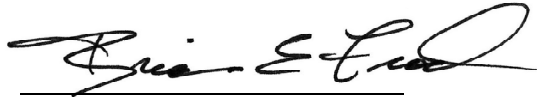
¹⁶ National Council for State Authorization Reciprocity Agreements Board Meeting: Fall 2021 Agenda, NC-SARA, Oct. 29, 2021, available at https://nc-sara.org/sites/default/files/files/2021-10/NC-SARA_Board_Meeting_Agenda_Fall_2021_Public_9.28.21.pdf.



Tom Miller
Iowa Attorney General



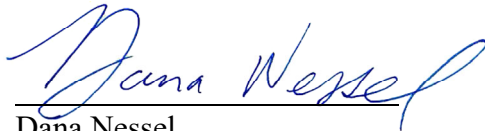
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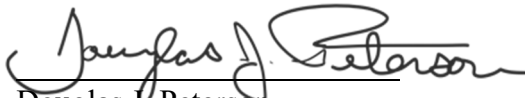
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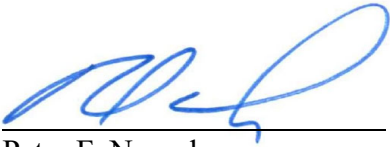
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North Carolina Attorney General



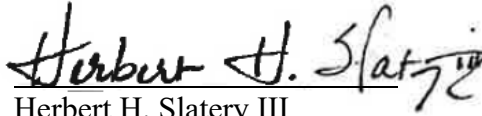
Ellen F. Rosenblum
Oregon Attorney General



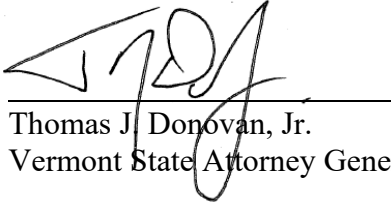
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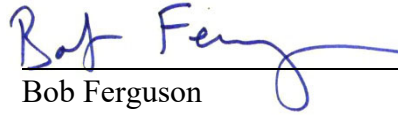
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Bob Ferguson
Washington State Attorney General