



2010 Federal Regulations on State Approval of Out-of-State Private Institutions Offering Online Postsecondary Education

On October 29, 2010, the U.S. Department of Education (USDOE) released new “program integrity” regulations concerning private for-profit and non-profit postsecondary institutions that participate in federal financial student aid (Title IV) and other federal funding programs. The basis of these new regulations is contained in the Higher Education Opportunity Act (HEOA) of 2008.

An important aspect of these regulations focuses on the need for institutions that offer distance or correspondence education (online-delivery) in states which they are not physically located to acquire authorization from states in which enrolled distance or correspondence students reside. This notice will clarify Colorado’s requirements for online institutions not physically located in the state that offer distance or correspondence education to Colorado residents.

The Colorado Department of Higher Education (DHE) has two divisions that oversee private postsecondary education: the **Division of Private Occupational Schools (DPOS)** and the **Degree Authorization Act (DAA)**, which is in the Academic Affairs unit of the DHE. These two divisions are governed by different statutes and rules.

DPOS authority is contained in The Private Occupational Education Act, Title 12, Article 59 of the Colorado Revised Statutes (C.R.S.). DPOS regulates private, for-profit schools that offer diploma programs, certificate programs, and associate level degree programs. In addition, DPOS policies can permit unaccredited institutions for operation in Colorado.

The Degree Authorization Act, found in Title 23, Article 2 sets forth policies that govern institutions offering programs at the baccalaureate level and higher. The DAA requires all private or public institutions to hold accreditation by an accrediting agency or organization recognized by the USDOE as a requirement for consideration for approval by the Colorado Commission of Higher Education.

The Division of Private Occupational Schools (Diploma, certificate, and associates programs)

The Division of Private Occupational Schools (“DPOS”) oversees private for profit postsecondary institutions that offer occupational education and training programs at the associate degree level and below (diploma and certificate). The Private Occupational Education Act, CRS 12-59-103, defines “Operate” or “Operating” when used with respect to a school, “*to establish, keep, or maintain any facility or location in this state where from, or through, educational services are offered or educational credentials are granted.*” Thus, according to DPOS statutes, physical presence is a requirement for state approval.

However, out of state schools that are actively solicitingⁱ and recruiting prospective students in the state of Colorado to enroll in occupational programs/courses offered at the out-of-state school, regardless of the method of delivery of its educational programs/course must apply for an out of state certificate of approval and an agent permit with DPOS for authorization. Further, section 12-59-111(2), C.R.S., defines “Out-of-state schools” as, *“any person desiring to engage in the performance of the duties as an agent within this state, for a school located outside this state, shall make application through the school to the board upon forms provided by the division.”* Colorado statutes, with respect to private occupational schools, defines “Agent” as *any person owning any interest in, employed by, or representing a school located within or without this state who enrolls or who, offers or attempts to secure the enrollment of any person in this state for education in a school within Colorado or for a school located outside this state.* Finally, out of state schools shall secure and maintain a minimum \$50,000 surety bond and to renew a certificate of approval from the Division on an annual basis.

Please refer to the Division’s website ([click here](#)) for an Application for an Out-of-State School; Out-of-State Agent’s Permit Application; and Guidelines for completing the application process.

To review and download a copy of the Laws and Rules & Regulations concerning The Private Occupational Education Act, please visit the DPOS website, <http://highered.colorado.gov/dpos/>.

For additional information, please contact:

Jim Parker
Director, Division of Private Occupational Schools
jim.parker@dhe.state.co.us
(303) 866-2723

The Degree Authorization Act (Baccalaureate and graduate programs)

The Colorado Commission on Higher Education (CCHE) has statutory responsibility for administration of Title 23, Article 2 of the Colorado Revised Statutes (amended 2008), which authorizes the following types of institutions to offer academic degrees or degree credits: (1) Colorado publicly-supported colleges and universities; (2) accredited private colleges and universities; (3) postsecondary seminaries and bible colleges; and, (4) private occupational schools authorized by the Private Occupational School Division to offer associate degrees. Under the Degree Authorization Act (C.R.S. Title 23, Article 2), eligible institutions must maintain a physical presence in Colorado.

Current CCHE policy (Section I, Part J) defines physical presence as:

2.03 Presence in Colorado; “In-House” Programs; Marketing in Colorado

- 2.03.01 An institution seeking state authorization shall have a physical presence in Colorado, in the form of its main campus or headquarters, or a branch campus, or a place of businessⁱⁱ, as determined by the Department.
- 2.03.02 An institution offering “in-house” courses, programs, and training exclusively and specifically for a private company or group is not required to seek authorization, but to avoid any regulatory misunderstanding, should notify the Department of its activity.

- 2.03.03 An institution not yet authorized to do business in Colorado shall not market or advertise prospective Colorado-based programs unless it has Department approval for such marketing efforts. Approvals shall be made at the Department's discretion.

Please visit: <http://higherred.colorado.gov/Publications/Policies/Current/i-partj.pdf> for more information and guidelines to the authorization process.

For additional information, please contact:

Heather DeLange
Degree Authorization Act Officer
heather.delange@dhe.state.co.us
(303) 866-2723

ⁱ Active solicitation of Colorado students may include (but is not necessarily limited to) attempting to attract students to enroll in an out-of-state school by placing ads in Colorado newspapers or running ads on Colorado based TV or radios stations; direct-mailing Colorado residents written promotional materials; sending sales agents/representatives to Colorado to attempt student recruitment; Internet advertising or publicizing availability of educational courses/programs *specific to Colorado* residents (i.e. continuing education requirements and specific state occupational licensure and renewal); or engaging in other means of solicitation *that specifically contacts or targets Colorado residents* in order to encourage them to enroll in a private occupational school that is offering a certificate, diploma or degree.

ⁱⁱ **Note: Clinical rotations, externships, internships, etc. could trigger physical presence; please contact the Department of Higher Education for additional information if a program contains one of these requirements for completion.*