

## State Authorization and Military Students

Ever since the U.S. Department of Education issued a federal state authorization regulation for distance education programs in 2010 many institutions have taken a closer look at the relevant laws in states where they operate to determine if they are in compliance with those laws. Even though the federal regulation was vacated by a federal court in 2011 (and its demise was upheld by an appeals court in 2012), institutions are still facing re-energized state agencies – and the prospect that a federal rule could be re-issued in the near future.

Sorting through all of the variables that impact whether an institution needs to be authorized in a state is daunting. After figuring out what activities your institution is doing in each state (facilities, externships, faculty location, recruiting, advertising, etc.), the next step is to figure out what that means in each state in terms of the authorization requirements.

One of the generalizations that have become “common knowledge” in the field is that if the institution confines its activities to military bases in a state, it is not subject to the jurisdiction of that state. Unfortunately, like most generalizations about state regulation of distance education, this “fact” is a myth.

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**Myth:** My institution does not need to get authorized in states where we only enroll or recruit students on military bases.

**Fact:** Most states do not distinguish between enrolling or recruiting students on military bases versus enrolling or recruiting others residing in a state.

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The truth is that whether an institution must be authorized in a state to enroll military students or recruit on a military base is a question of state law and will vary from state to state. Currently only a handful of states (including Arkansas,

Georgia, New Hampshire, South Carolina, and West Virginia) expressly exempt institutions operating on military bases, if that is the only presence in the state. Further, the claim that states generally lack jurisdiction over “federal property” is largely untrue.

The vast majority of states (and the District of Columbia) do not have an exemption for activities confined to military bases. Thus, in most states, the question of whether an institution must be authorized does not depend on whether its activities are confined to a military base. Instead, the analysis is the same as if enrollment is open to all state residents – it depends on the activities the institution conducts in the state.

### MILITARY STUDENT MOVE AROUND THE COUNTRY – WHAT DOES THAT MEAN FOR STATE AUTHORIZATION?

What should an institution do if its military students are transferred to another state? This is a common occurrence for military students. Does that mean the institution needs to be authorized in the student’s new state every time he or she is transferred? The answer, as it usually is for state authorization questions, is “it depends.” Most states will not make an exception for military students who move into their state on military orders – just as they would not make an exception for a civilian student who moved for other reasons. You will need to apply the new state’s standards. You will also need to track the movement of military students to the extent possible. It is generally considered best practice to determine state where the student plans to reside every term for all students – including military students.

### WHAT ABOUT STATE OF RESIDENCE?

Military students are subject to the state laws and regulations of the state in which they are residing. Their state of official residence makes no difference. This issue was specifically addressed in a “Dear Colleague” letter from the Department of Education last year. The only exception to this rule is if they are residing on a base or post that is a federal reservation, then they are exempt. If they move to another state, the state expects you to be in compliance with their laws prior to serving that student.



There has been confusion over the definition of “resident of a state” in terms of military students because of the agreement between states that allows military personnel to maintain their official residency (voting, paying taxes, car registration, driver’s license, etc.). However, for the purposes of state authorization – where the student actually lives (not their state of residence) is the important factor.

## WHAT ABOUT INSTITUTIONS THAT PARTICIPATE IN THE DEPARTMENT OF DEFENSE’S TUITION ASSISTANCE PROGRAM?

A related issue is the Department of Defense (DoD) Memorandum of Understanding (MOU) that institutions must sign to be eligible to accept DoD Tuition Assistance. The DoD released a revised interim MOU (known as MOU 2) in December 2012 and, as of March 2013 all institutions participating in the Tuition Assistance programs must have a signed, valid MOU.<sup>3</sup> However, DoD made clear that MOU 2 is simply an “interim” agreement and that additional changes will be forthcoming. DoD released a proposed “final” version of the revised MOU (known as MOU 3) in August 2013. DoD is making many changes in MOU 3 to comply with an April 2012 Executive Order directing DoD and the Department of Veterans Affairs to take actions to bring multiple policies in line with Department of Education (Title IV) standards.

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**In its proposed new Memorandum of Understanding for institutions offering Tuition Assistance to military students, the Department of Defense included the need to comply with Department of Education state authorization regulations.**

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In the proposed MOU, the DoD discusses new policy, responsibilities, and procedures for the operation of voluntary education programs within DoD. The new policies discussed in the rule include the following: All educational institutions providing education programs through the DoD Tuition Assistance (TA) Program will provide meaningful information to students about the financial cost and attendance at an institution so military students can make informed decisions on where to attend school; not use unfair, deceptive, and abusive recruiting practices; and provide academic and student support services to Service members and their families. New criteria are created to strengthen existing procedures for access to military installations by educational

institutions. One of the criteria is to be in compliance with all Department of Education “program integrity issues, including State authorization.” DoD is expected to release a final version of MOU3 in the upcoming months.

For more information, please see: Federal Register / Vol. 78, No. 157 / Wednesday, August 14, 2013 / Proposed Rules

## SUMMARY

State authorization creates a number of issues for institutions enrolling military students into distance education programs. A few summary points:

- Most states do not differentiate between military and non-military students.
- Know what your institution is doing and where! The determination on whether an institution needs to be authorized remains on the institution’s activities, not the type of students they recruit or enroll.
- If your institution participates in the DoD Tuition Assistance program, look for a final version of the new MOU (MOU 3) in the upcoming months. Given the Executive Order and the proposed MOU wording, it appears that state authorization is likely to be included in MOU 3.

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<sup>1</sup> Even in these states, the specific contours of the exemptions vary and may not cover all activities on military bases or involving military personnel. Also, these laws change frequently; therefore, even if your institution qualifies for an exemption, you should monitor the status of that exemption on a regular basis.

<sup>2</sup> Most federal property, including military bases are wholly subject to state law; only “federal enclaves” may be partially exempt. Less than three percent of all federal property has been classified as a federal enclave. These enclaves are generally widely dispersed and thus do not allow institutions to make state-level determinations. Even if operating solely in a federal enclave, it is not clear that state education laws would be inapplicable as many state laws still apply. This is a complex issue and it generally does not provide a practical solution to most institutions.

<sup>3</sup> Institutions are not required to sign MOU 2 if their existing MOU has not expired. MOUs are valid for five years after the execution date.

<sup>4</sup> <http://www.whitehouse.gov/blog/2012/04/27/president-obama-signs-executive-order-supporting-service-members-veterans-military-s>

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