

DECISION ITEM: Preliminary Approval of Amendments to the Administrative Procedures for 300-2-1-.02: Review And Approval Or Disapproval Of Proposed Postsecondary Course Offerings In Alabama By Non-Alabama Institutions Seeking State Authorization.

Staff Presenter: Tim Vick
Director of Operations and Fiscal Services

Staff Recommendation: That the Commission give preliminary approval to the proposed amendments related to the Chapter 300-2-1-.02 of the administrative procedures related to the programmatic review of Non-Alabama institutions seeking state authorization.

Background: The Code of Alabama, 1975, Section 16-5-10(10) authorizes the Alabama Commission on Higher Education to make rules and regulations for its meetings, procedures and execution of the powers and duties delegated to it.

Also, the Code of Alabama, 1975, Section 16-5-10(14) states, "The commission under its rule-making authority shall establish criteria for the approval of such institutions and programs."

Staff believes that these two citations allow the Commission to determine the nature and scope of the programmatic reviews.

The reasons for the proposed amendments to these administrative procedures are as follows:

1. The advent of the National Council for State Authorization Reciprocity Agreements (NC-SARA) has drastically reduced the number of institutions that must seek state authorization.
2. The staff questions the need to review the programs of institutions that are exempt from the licensure process by the Alabama Private School Licensure Law, found in the Code of Ala. 1975, §§16-46-1, et seq. Since those institutions do not have to be granted a license by the state and are free to operate without state regulation, why is a programmatic review necessary.
3. Although the Commission is charged to review and approve postsecondary course offerings of Non-Alabama institutions seeking state authorization, it does not have enforcement authority to deny a license should programs be found to be of inadequate quality.

During the 2018 legislative session, HB 374 was introduced. This bill would have consolidated the licensure and program review functions at the Commission. This bill generated significant opposition from the proprietary sector and quickly failed. There is little reason to believe that this opposition will diminish in the near future. This event along with other recently occurring circumstances left the Commission staff with little choice but to reevaluate how these programmatic reviews were being conducted.

4. The staff believes that accreditation by a United States Department of Education recognized regional or national accreditation agency is a sufficient indicator of the quality of programs being offered by an institution; thus, an additional review is not necessary.
5. The staff questions the need to do any sort of review of non-degree programs and/or non-credit courses, which do not lead to a postsecondary degree.
6. Recently the Commission has been told in a court opinion that if an institution originated as an Alabama institution, it is still considered an Alabama institution if it is owned by a company whose headquarters is in another state. As a result, the institution/campus is no longer subject to Commission regulation.

The following process changes also are recommended.

1. Presently once the Commission approves an off-campus program for a public institution; it does not have to be reviewed again as long as it does not change facilities. Staff proposes that this same practice be put in place for Non-Alabama institutions.
2. Due to the fact that typically once a program is put in place only minor curricula changes are made, staff believes that it is not necessary to review an institution every two years and recommends that institutional programmatic review be placed on a four-year cycle.

In the attachment, old language is struck-through
and new language is underlined.

Supporting Documentation:

1. Proposed amendments to Chapters 300-2-1-.02
of the Alabama Administrative Code (attached).

Attachment 1

300-2-1-.02 Review and Approval or Disapproval of Proposed Postsecondary Course Offerings in Alabama by Non-Alabama Institutions Seeking State Authorization.

(1) Purpose. Per the Code of Alabama, 1975, Sections 16-5-10 (14). It is the responsibility of the Alabama Commission on Higher Education to establish policies and procedures for the review and approval or disapproval of all proposed postsecondary credit courses or program of instruction offered in the State of Alabama by non-Alabama institutions of higher education. The Code of Alabama, 1975, Section 16-5-10(10) authorizes the Commission to make rules and regulations for its meetings, procedures and execution of the powers and duties delegated to it by this article. These institutions must also be licensed to do business in Alabama by the Alabama Community College System.

(2) Definitions. For purposes of this rule, the following definitions apply:

(a) Programs of Instruction (Courses): Any course or sequence of courses for which credit toward any postsecondary degree, certificate, or diploma is to be awarded.

(b) System: The Alabama Community College System.

(c) Exempt Institutions: Those postsecondary institutions that are granted a certificate of exemption from licensure by the Alabama Community College System and for which the System has waived formal licensure application and review.

(d) Faculty: A faculty member who has a contract for formal teaching responsibilities with the proposing institution.

(e) Main Campus: The physical boundaries of the location of an institution's principal administrative offices. In the case of an institution eligible for Title IV funds, the campus designated by the U.S. Department of Education's Office of Postsecondary Education identification number (OPEID).

(f) Non-Alabama Institutions: A postsecondary educational institution, public or private, profit or nonprofit, whose main campus or headquarters is located outside the State of Alabama.

(g) Unaccredited Institution: An institution not accredited by an agency recognized by the United States Department of Education or Council on Higher Education Accreditation.

(3) Procedures for Program Approval of an Unaccredited Institution. As a prerequisite to program approval, an unaccredited institution requesting to offer degree programs in Alabama must undergo an external review of its

programs of study, which may include an onsite Commission staff review and will include a review by an outside consultant(s) chosen by the Commission. The unaccredited institution will underwrite all costs related to the external review. The review process for unaccredited institutions shall not exceed six months following receipt of the required data and information forms from the applying institution. These forms/applications can be found on the Commission's website at www.ache.edu.

(4) Exemptions from programmatic review. The following are exempt from programmatic review by the Commission, but are not exempt from the licensure process conducted by the Alabama Community College System under the provisions stated in Alabama Private School Licensure Law, found in the Code of Ala. 1975, §§16-46-1, et seq. If an institution wishes to claim an exemption from Commission program review, proper documentation must be provided to the Commission. The Commission will then determine based on the following Commission guidelines if programs/institutions are exempt from review. The Commission will then inform the Alabama Community College System concerning the disposition of these applications.

(4)(a) Institutions exempt under the Alabama Private School License Law. Those non-Alabama institutions that are granted a certificate of exemption from licensure by the System and for which the System has waived formal licensure application and review shall nonetheless are not required to apply for Commission review and approval of courses or programs of instruction. Every application for approval of a course or program of instruction shall be accompanied by a certificate of exemption from formal licensure issued by the Alabama Community College System. This includes programs proposed by institutions that are members of the National Council of State Authorization and Reciprocity Agreements (NC-SARA) or any approved successor organization wishing to establish a physical presence in Alabama (includes internships and clinical rotations).

(b) Programs submitted by institutions that are accredited by a regional, national or specialized/programmatic accrediting body recognized by the United States Department of Education, a list of which can be found on the United States Department of Education's website under the Database of Accreditation of Postsecondary Institutions and Programs. Documentation concerning accreditation is required.

(c) Non-degree programs or non-credit courses.

(d) Programs offered by institutions that were originally incorporated as an Alabama institution that are now owned by institutions and corporations headquartered in other states. These institutions must have been in continuous operation in Alabama since their inception, with no more than a one-year interruption of operations due to a change in ownership. Legal documentation of Alabama origin must be submitted to the Commission.

(e) Once a program has been approved by the Commission to be offered at an Alabama location, it does not have to be reviewed again as long

as the location of the program (facility, not city) does not change. Should a program change physical location, it must be approved again.

(5) Commission Review Criteria. The Commission shall establish review criteria designed to evaluate the academic quality of proposed courses or programs of instruction. ~~The review includes, but is not restricted to: The qualifications of faculty and supporting staff, the quality of academic support resources (library, laboratories, etc.), and the academic validity of the proposed courses.~~ In general, program proposals must meet standards used by the Commission proposals for new off-campus offerings by in-state public institutions and in doing so be in full compliance with the Southern Association of Colleges and Schools Commission on Colleges (SACS COS) guidelines or those of other regional, national or specialized/programmatic accrediting bodies recognized by the United States Department of Education. Since the use of state appropriated funds is not involved, the question of unnecessary duplication is not an issue when proposals of non-Alabama institutions are reviewed.

(6) Site visits. The Commission reserves the right to conduct a site visit to the proposed location for an evaluation of a course or program of instruction before or subsequent to concluding its review of a pending application. There is no charge to the institution for mileage or per diem payments to staff employees of the Commission for such visits. However, in the event that the Commission appoints other education or external specialists as on-site visit consultants, the institution will pay the consultants a consulting fee determined by the Commission, as well as expenses.

(7) Timeline for Review for non-exempt programs.

(a) New programs or previously approved programs being relocated to new facilities will be reviewed in a four-year cycle to coincide with the license renewal cycle established by the System for the institution.

1. If new programs are to be implemented at an existing site or previously approved programs are to be moved to a new facility in the midst of a licensure review cycle, the institution will notify the Commission of those changes by letter and the review will take place at the time of the next licensure renewal with the System.

(b) In the absence of unavoidable delays, the Commission will report its approval or disapproval of proposed courses or program(s) of instruction to the System and to the applying institution within sixty (60) working days following receipt of the required data and information forms from the applying institution. These forms/applications can be found on the Commission's website at www.ache.edu.

(8) Fees. ~~Application materials for initial program approval or for renewal shall be accompanied by a programmatic review fee in accord with the programmatic review fee schedule published within the Commission's application(s) for programmatic approval and posted to the Commission's~~

website. The programmatic review fee schedule may be revised from time to time upon reasonable notice at the discretion of the commission. By statute, the Commission is authorized to promulgate a schedule of programmatic fees, commensurate with the cost of Commission activities related to the programmatic review, not to exceed fifteen thousand dollars (\$15,000). At this time, the Commission will not assess a fee for its programmatic reviews, but retains the right to do so in the future, upon six months' notice, should circumstances warrant.

(9) Appeals. Any person or institution aggrieved by the action of the Commission in its administration of this rule may, by written petition filed with the Commission within thirty (30) days after notice of the aggrieving action, request a rehearing by the Commission. The Commission shall schedule the requested rehearing to be held no less than twenty (20) nor more than thirty (30) days after receipt of the petition. The aggrieved party may present written and oral evidence supporting its petition and may be represented by counsel, if desired. The decision of the Commission following the rehearing shall be final.

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Statutory Authority: Code of Ala. 1975, §§16-5-1, et seq.

History: Filed December 10, 1985. Rule 300-2-1-.02 was formerly referenced as Chapter 300-2-1; it has been repealed and reinserted as a rule within this chapter. The rule title remains unchanged from its previous chapter title. The contents are also unchanged except for slight format changes and the addition and deletion of certain definitions: Filed April 10, 1989. Amended: Filed August 21, 1996; effective September 25, 1996. Amended: Filed January 6, 2003; effective February 10, 2003. Amended: Filed May 6, 2004; effective June 10, 2004. Amended: Filed February 8, 2010; effective March 15, 2010. Amended: Filed November 5, 2013; effective December 10, 2013. Amended: Filed May 9, 2016; effective June 23, 2016. Amended: Filed