

Admin.

October 9, 2020

## First Supplement to Memorandum 2020-52

**New Topics and Priorities: Suggestion Submitted by the Association  
of Independent California Colleges and Universities**

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Just as the staff was finalizing this year's memorandum on new topics and priorities (Memorandum 2020-52),<sup>1</sup> we received a letter from Kristen Soares, the president of the Association of Independent California Colleges and Universities ("AICCU"). Her letter is attached as an Exhibit and discussed below.

## AICCU'S SUGGESTION

AICCU is "the organizational voice for over 80 nonprofit higher education institutions in California."<sup>2</sup> Its colleges and universities "largely serve California residents," but "thousands of students from across the country" also enroll in AICCU institutions.<sup>3</sup>

On behalf of AICCU, Ms. Soares encourages the Commission to study "potential legislative solutions for distance education programs offered by California colleges and universities in other states."<sup>4</sup> She explains that "[e]very state except California participates in the National Council for State Authorization Reciprocity Agreement" (SARA), which is "a national framework established in 2013 that establishes common standards for online distance education for participating states, territories, and Washington, D.C."<sup>5</sup> California has thus far declined to participate in SARA due to concerns about "maintain[ing] the state's strong consumer protection laws for students."<sup>6</sup>

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1. Any California Law Revision Commission document referred to in this memorandum can be obtained from the Commission. Recent materials can be downloaded from the Commission's website ([www.clrc.ca.gov](http://www.clrc.ca.gov)). Other materials can be obtained by contacting the Commission's staff, through the website or otherwise.

The Commission welcomes written comments at any time during its study process. Any comments received will be a part of the public record and may be considered at a public meeting. However, comments that are received less than five business days prior to a Commission meeting may be presented without staff analysis.

2. Exhibit p. 1.

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.*

According to AICCU, California’s failure to participate in SARA leaves it “at a disadvantage in offering programs across state lines.”<sup>7</sup> Ms. Soares explains:

As it stands, California institutions must receive authorization from each state it wishes to offer distance education programs in, creating immense duplication of efforts and substantial financial costs to individual campuses, that costs tens of thousands of dollars per state, per institution. This is not an efficient use of tuition dollars or taxpayer dollars, as public colleges and universities are also subject to these state-by-state authorization requirements that take limited resources away from services and programs that would otherwise be available to support California students.<sup>8</sup>

AICCU recognizes that “[f]inding a legislative solution for California to enter into some sort of interstate reciprocity for distance education is a complex balancing act of, first, higher education interests in finding cost-savings and efficiency, and second, maintaining strong consumer protections for students.”<sup>9</sup> Ms. Soares describes some of the potential difficulties that would be involved in creating such a solution, as well as benefits that could flow from it.<sup>10</sup> On AICCU’s behalf, she encourages the Commission to “find a legislative solution to this challenge while also maintaining the state’s strong consumer protection laws for students.”<sup>11</sup>

#### STAFF ANALYSIS

The study that AICCU suggests does not fall within any of the existing grants of authority in the Commission’s Calendar of Topics. To undertake it, the Commission would first need to request and obtain such authority from the Legislature. That could be done by including the proposed study in the next biennial resolution on the Commission’s Calendar of Topics.

In some ways, the proposed study of SARA seems similar to the Commission’s study of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (“UAGPPJA”), which culminated in the 2014

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7. *Id.*

8. Exhibit pp. 1-2.

9. Exhibit p. 2.

10. Exhibit pp. 2-3.

11. Exhibit p. 3.

enactment of the California Conservatorship Jurisdiction Act.<sup>12</sup> Like the proposed study of SARA, the UAGGPJA study required careful balancing of (1) a national interest in establishing a uniform legal framework and (2) unusually strong California policies designed to protect vulnerable individuals. The Commission's careful study process was well-suited to that task.

However, it is not clear that the same kind of careful compromise could be struck in authorizing participation in SARA. From a quick review of materials on the NC-SARA website, it appears that participating states cannot impose any requirement on an out-of-state school, beyond what is required by SARA itself.

This suggests that SARA sets a regulatory ceiling, above which member states cannot go. In other words, member states appear to cede their regulatory control to an external policy-making body.

If so, SARA might not only override some of California's existing consumer protections in this area, but also prevent the addition of protections that California might like to add in the future. That might be an intractable political hurdle.

A bill was introduced in 2015 that would seem to authorize California's participation in SARA (SB 634 (Block)). That bill died without a single committee hearing.

AICCU is apparently hopeful that the Commission would have better success with this matter. It is not clear to the staff that this is likely to be the case. **It would be helpful to hear more from AICCU and other knowledgeable persons about why the Commission would, or would not, have a good chance of making headway on SARA in California.**

Respectfully submitted,

Barbara Gaal  
Chief Deputy Director

Brian Hebert  
Executive Director

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12. 2014 Cal. Stat. ch. 553 (SB 940 (Jackson)); *Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act*, 43 Cal. L. Revision Comm'n Reports 93 (2013).





Kristen F. Soares, President

October 7, 2020

Brian Hebert, Executive Director  
California Law Revision Commission  
c/o UC Davis School of Law  
400 Mrak Hall Drive  
Davis, California 95616

Subject: Request for Study of Interstate Distance Education and Potential State Legislative Solutions

Dear Executive Director Hebert:

On behalf of the Association of Independent California Colleges and Universities (AICCU), I respectfully submit this request to the California Law Revision Commission (CLRC) to consider potential legislative solutions for distance education programs offered by California colleges and universities in other states that also maintain the state's strong consumer protection laws for students. Every state except California participates in the National Council for State Authorization Reciprocity Agreement (NC-SARA), and concerns regarding consumer protections and requirements in state law regarding for-profit institutions have thus far presented challenges to a legislative solution that reflects California values. A legislative solution is needed to help preserve critical resources for the academic programs and student services that California institutions, public and private nonprofit, offer to students.

[AICCU](#) is the organizational voice for over 80 nonprofit higher education institutions in California. Collectively, our institutions educate nearly 200,000 undergraduates and 180,000 graduate students. Our students reflect the rich diversity of our state: 24% are Latino, 13% are Asian American, 6% are African American, and 6% are two or more races. Our colleges and universities largely serve California residents, with 71% of our undergraduate population being residents of the state. However, thousands of students from across the country also enroll in our colleges and universities.

#### What is SARA?

[SARA](#) is a national framework established in 2013 that establishes common standards for online distance education for participating states, territories, and Washington, D.C. This framework was developed with extensive input from state regulators, state higher education executive officers, accrediting organizations, and others to provide a regional approach to state oversight of postsecondary distance education. This allows nonprofit, public, and for-profit colleges and universities in those states to follow one set of rules to provide distance education to students in different states, as opposed to a myriad of different regulations. This lowers costs for institutions by reducing the amount of fees paid on a state-by-state basis and reducing the amount of time staff must devote to track changing state regulations and coordinating paperwork from multiple states. This approach also helps institutions expand their reach to serve students in other states with more efficiency and cost-savings.

#### Impacts of State-by-State Approach

In 2018, Massachusetts joined SARA, leaving California as the only state not part of SARA. California's colleges and universities are now at a disadvantage in offering programs across state lines. As it stands, California institutions must receive authorization from each state it wishes to offer distance education

programs in, creating immense duplication of efforts and substantial financial costs to individual campuses, that costs tens of thousands of dollars per state, per institution. This is not an efficient use of tuition dollars or taxpayer dollars, as public colleges and universities are also subject to these state-by-state authorization requirements that take limited resources away from services and programs that would otherwise be available to support California students.

This March, California colleges and universities—nonprofit and public—reacted swiftly to the COVID-19 pandemic, closing down campuses and shifting to an online modality for all students, including those whose permanent residence is outside of California. This situation forced campuses to enter into costly reciprocity agreements with those students’ home states, if one did not already exist. While waivers to federal regulations have been helpful, the waivers will expire soon with updates from the U.S. Department of Education regarding an extension, and state-by-state authorization is still needed.

State law creates a low barrier for entry into the state, but not being in SARA creates a high barrier for California institutions to offer their programs outside the state. Out-of-state institutions across all types of segments continue to operate in California and enroll the state’s students. However, for students enrolled at California institutions who either move out of state or choose to remain home during unexpected disruptions, the lack of a solution in California law creates structural barriers to student retention, time-to-degree, and success, to the detriment of both the student and the institution.

### Legislative Complications

Any legislative solution faces these two inherent conflicts:

- SARA requires that all segments of higher education—nonprofit, public, and for-profit—must be treated the same; no one segment can have higher regulatory or statutory requirements than others. Currently, California law ([Education Code §94801.5](#)) requires out-of-state for-profit college and universities to follow more stringent requirements, including registering with the Bureau for Private Postsecondary Education (BPPE), paying into the Student Tuition Recovery Fund, and others. WASC-accredited private colleges and universities (including nonprofit institutions) are exempt from BPPE oversight ([EC §94874\(i\)](#)).
- Students should be protected from “predatory” practices by unscrupulous actors in this area, mainly out-of-state for-profit institutions. There is concern that SARA rules regarding protections for students are weaker than California statute.

SARA rules also require the establishment of a “portal entity” that serves as the coordinating body with the [National Council for SARA](#) (NC-SARA) and other states, as well as serving as the entity that handles student complaints. Currently, each segment has their own processes to handle student complaints, and thus maintain independence over how situations are handled.

### Benefits of Interstate Reciprocity Solution

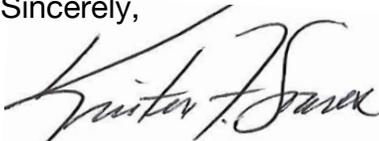
- Students whose living situation or place of residence changes—due to things such as the family moves or the student is active duty military—are less likely to encounter structural barriers to them continuing their studies with their California institution, thereby promoting greater likelihood of timely degree completion.
- California institutions will find significant cost-savings in this streamlined process, compared to the current situation, where each college or university must obtain authorization in each state they wish to offer distance education courses. These cost-savings can be directed to increase support services for California students.

- The state will find a cost-savings as well, and resources at public colleges and universities would be more efficiently utilized, both in terms of staff time and financial costs.

Finding a legislative solution for California to enter into some sort of interstate reciprocity for distance education is a complex balancing act of, first, higher education interests in finding cost-savings and efficiency, and second, maintaining strong consumer protections for students. While this has long been an interest of nonprofit colleges and universities—some that were pioneers in providing distance education programs—the COVID-19 pandemic has brought this situation to the forefront. It is my hope that the CLRC can find a legislative solution to this challenge while also maintaining the state’s strong consumer protection laws for students.

Thank you for the consideration. If you have questions or would like more information, please contact Alex Graves, AICCU Vice President for Government Relations, and Tom Vu, AICCU Vice President for Policy.

Sincerely,

A handwritten signature in black ink, appearing to read "Kristen F. Soares". The signature is fluid and cursive, with a large initial "K" and "S".

Kristen F. Soares