



State of Tennessee
Tennessee Higher Education Commission
9th Floor, 312 Rosa L. Parks Avenue
Nashville, TN 37243
(615) 741-3605

DISTANCE EDUCATION AUTHORIZATION REQUIREMENTS IN TENNESSEE

The Tennessee Higher Education Commission (THEC or Commission) offers the following information regarding Tennessee's authorization requirements for out-of-state providers of distance education to assist institutions in their efforts to comply with the requirements of Tennessee and federal law. Questions concerning this information should be directed in writing to Julie M. Woodruff, Senior Compliance Counsel, at julie.woodruff@tn.gov.

If after reviewing this form, you determine that your institution does not engage in any activity creating a physical presence thereby requiring authorization, then no further action by your institution is required. However, if you determine otherwise the next question is whether your institution meet an exemption. If no exemption applies and your institution is creating a physical presence then, you must submit either an [Initial Authorization Application](#) or [Optional Expedited Authorization Application \(OEA\)](#). The application process is described in the "Obtaining Authorization" section of this document.

STATUTES AND RULES

Hyperlinks to Tennessee's statutes and rules governing postsecondary educational institutions are at the top of the webpage located [here](#).

PHYSICAL PRESENCE

[Tenn. Code Ann. § 49-7-2008](#) prohibit non-exempt postsecondary educational institutions from creating a physical presence in Tennessee unless the location is authorized by an affirmative vote of the Commission during a public meeting, is awarded provisional initial authorization, or is exempt. The exemptions are listed in Tenn. Code Ann. [§ 49-7-2004](#) and [Rule 1540-01-02-.05](#); however, **Tennessee does not specifically exempt distance education providers.**

The definition of physical presence as found in Rule 1540-01-02-.03(40) provides:

“Physical presence” means presence within the state of Tennessee for the purpose of conducting activity related to a postsecondary educational institution as given in T.C.A. § 49-7-2007. Physical presence as further outlined for purposes of authorization **shall include but not be limited to:**

- (a) Operating an instructional site within the state;
- (b) Offering instruction within or originating from Tennessee designed to impart knowledge with response utilizing teachers, trainers, counselors or computer resources, computer linking, or any form of electronic means;
- (c) Granting an educational credential from a location within the state;
- (d) Using an agent, recruiter, institution, or business that solicits for enrollment or credits or for the award of an educational credential;

or

- (e) Advertising, disseminating promotional material or conducting public solicitation in any form that targets Tennessee residents or uses local advertising markets in the state for institutions seeking, holding, or required to be authorized by the Commission.

Physical presence **does not** include field trips, sanctioned sports recruiting activities, or college fairs or other assemblies of institutions in Tennessee. As to college fairs or assemblies, an institution may not enroll an individual, allow an individual to sign any agreement obligating the person to the institution, accept any moneys from the individual, or follow-up with an individual by means of an in-person meeting in Tennessee.

Field Trip is defined at Rule 1540-01-02-.03(29) as a congregation of students and instructors at a location in Tennessee for instruction in the subject of enrollment for **not more** than three (3) calendar days. Such field trips **may not** occur more than three (3) times a year in the same program

COMMONLY ASKED PHYSICAL PRESENCE QUESTIONS

- Q.** A student at my institution wants to engage in a supervised field experience in Tennessee. Does my institution need to be authorized? Per Rule 1540-01-02-.03(54): “Supervised field experiences” means a student learning experience comprised primarily of the practical application of previously studied theories and skills, under the oversight of a supervisor, mentor, faculty member or other qualified professional who has a direct or indirect reporting responsibility to the institution where the student is enrolled, whether or not credit is granted. The supervised field experience is part of a program of study offered by the enrolling institution.

Examples include, but are not limited to, practica, student teaching, clinical placements, or internships.

- A.** If the identification and selection of the supervised field experience site is student driven, then such does not create a physical presence in Tennessee that would require state authorization. THEC understands that your institution may need to evaluate the appropriateness of the supervised field experience site selected by a student, but evaluation does not trigger the necessity for state authorization. Your institution may even enter into an agreement with the supervised field experience site if the agreement is student specific and not intended to create an on-going relationship between the institution and the site.
- Q.** My institution maintains a list of approved supervised field experience sites in Tennessee. The students must complete a supervised field experience at one of the approved sites. Does my institution need to be authorized?
- A.** Yes, if your institution initiates an arrangement with any individual, business, organization, or entity located in Tennessee for the purpose of providing a supervised field experience opportunity and requires students to select a training site from a list maintained by the institution, your institution is creating a physical presence. Unless an exemption applies, your institution will need to be authorized.
- Q.** A Tennessee student contacted my institution about enrolling. We do not advertise or recruit in Tennessee. Will enrolling the student require authorization?
- A.** You may enroll the student if the institution is not conducting any prohibited activities. THEC understands that students become aware of out-of-state institutions either through name recognition or through their own research. Like the supervised field experience scenario discussed above, if a student initiates contact with your institution, enrolling the student does not create a physical presence if it does not involve any of the prohibited activities.
- Q.** My institution would like to employ an instructor who resides in Tennessee. If the instructor leads a distance education class from Tennessee, will my institution need to be authorized?
- A.** If the instructor leads a distance education course from his or her residence in Tennessee, then authorization is not required. However, instruction that occurs outside of the instructor's residence may create a physical presence in the state.

EXEMPTIONS

If you have determined that your institution **is** creating a physical presence in Tennessee, you need to obtain authorization **unless** your institution is exempt from state authorization. Exemptions can be found at [Tenn. Code Ann. § 49-7-2004](#) and [Rule 1540-01-02-.05](#). If you **are not** creating a physical presence, then authorization is **not** required, and the exemption analysis is unnecessary.

As previously noted, **Tennessee does not specifically exempt distance education providers**. Therefore, you should review all exemption provisions for applicability. That being said, many non-public distance education providers meet the exemption requirements of Tenn. Code Ann. § 49-7-2004(a)(6). The requirements of Tenn. Code Ann. § 49-7-2004(a)(6) are follows:

- (6) Any postsecondary educational institution that:
 - (A) Has had its primary campus domiciled in the same state for at least twenty (20) consecutive years, continues to have its primary campus domiciled in that state, **and** is:
 - (iii) The primary campus;
 - (ii) Another location of the institution in the same state where the primary campus is domiciled; **or**
 - (iii) An alternate location, including a branch or satellite campus, located in a state other than the state where the primary campus is domiciled, but has been located in the state where the alternate location is presently located for at least twenty (20) consecutive years;
 - (B) Is accredited by an accrediting agency recognized by the United States department of education and its primary campus has been accredited by a recognized accreditor for at least twenty (20) consecutive years;
 - (C) Is chartered where its primary campus is domiciled as a not-for-profit entity and has continuously been so chartered for at least twenty (20) consecutive years;
 - (D) Meets and maintains financial standards acceptable to the accreditor for the purpose of maintaining accreditation or to the United States department of education for the purpose of being a Title IV eligible institution; **and**
 - (E) Does not engage in supervised field experiences in Tennessee without a physical location in Tennessee.

If you want to request a formal exemption determination you must complete the [Exemption Determination Request](#) and pay the \$100 fee. THEC will then approve or deny the request. [Rule 1540-01-02-.07\(10\)](#) describes the process for reviewing requests.

STATE AUTHORIZATION RECIPROCITY AGREEMENTS (SARA)

If you have determined that your institution is creating a physical presence in Tennessee and is not exempt from state authorization, you need to obtain authorization unless your institution is a SARA participant and the activities are covered by SARA.

SARA is an agreement among member states, districts and territories that establishes comparable national standards for interstate offering of postsecondary distance education courses and programs. Tennessee is a SARA state. Therefore, a SARA participating institution may engage in activities that create a physical presence in Tennessee if those activities do not extend beyond those permitted by SARA. Information about SARA is available at <https://nc-sara.org>.

If you have determined that your institution is creating a physical presence in Tennessee and is not exempt from state authorization, but your institution is a member of SARA and the activity is permitted by SARA, no further action by your institution is required.

COMMONLY ASKED SARA QUESTIONS

- Q.** My institution has been approved as a SARA institution in its home state. What do I need to submit to Tennessee to begin offering distance education to Tennessee students?
- A.** Nothing, there are no filing requirements in Tennessee for an out-of-state SARA authorized institution.
- Q.** My institution is an approved SARA institution in its home state. The institution has an arrangement with a business located in Tennessee for the purpose of providing externships for its students. Is this arrangement permitted by SARA?
- A.** Per the [SARA Policy Manual, version 22.1 \(June 27, 2022\)](#):
- d. A contract for supervised field experiences to be covered by SARA is limited as follows. Such a contract:
 - 1. Cannot provide for the placement of more than 10 students from an individual academic program placed simultaneously at one clinical or practicum site, unless approval for a larger number is provided by the host state SARA State Portal Entity.

However, the host State Portal Entity may object to the supervised field experiences in certain circumstances. Please refer to the above cited manual at pages 54-55 for more information.

OBTAINING AUTHORIZATION

The first step to obtaining authorization in Tennessee is to file an Initial Authorization Application or an OEA Application. If you determine that your institution is required to be authorized, the applications can be found [DPSA Links and Forms \(tn.gov\)](#).

Once your application and fee are received, the application will be reviewed by a staff member of the Division of Postsecondary State Authorization (DPSA). Application review is conducted pursuant to [Rule 1540-01-02-.07\(1\) and \(2\)](#) for Initial Authorization Applications and [Rule 1540-01-10-.03\(d\) and \(e\)](#) for OEA Applications.

“AUTHORIZATION NOT NEEDED” LETTER

THEC does not generally issue “Authorization Not Needed” letters. Instead, THEC will consider whether issuance of such a letter is appropriate at such time that the USDOE requests that an institution demonstrate that state authorization is not required. If your institution receives a request from the USDOE, you may request that THEC issue an “Authorization Not Needed” letter by submitting a written request, along with the request from the USDOE, to Julie M. Woodruff, Senior Compliance Counsel, at julie.woodruff@tn.gov.