

OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION

NOTICE OF FINAL RULEMAKING

The Higher Education Licensure Commission (HELC or Commission), pursuant to the authority set forth in the Education Licensure Commission Act of 1976 (the Act), effective April 6, 1977 (D.C. Law 1-104; D.C. Official Code § 38-1306(b)(3), 38-1309, and 38-1311 (2012 Repl. & 2016 Supp.)), and Mayor’s Order 89-120, dated May 31, 1989; and the State Superintendent of Education, pursuant to Section (3)(b)(6) of the State Education Office Establishment Act of 2000, effective October 21, 2000 (D.C. Law 13-176; D.C. Official Code § 38-2602(b)(6) (2012 Repl. & 2016 Supp.)), hereby gives notice of the adoption of a new Chapter 83 (Delivery of Online Instruction by a Postsecondary Educational Institution) of Title 5 (Education), Subtitle A (Office of the State Superintendent of Education), of the District of Columbia Municipal Regulations (DCMR).

The Office of the State Superintendent of Education is responsible for overseeing the functions and activities of the Commission. In this regard the Superintendent has reviewed this proposal.

The purpose of the rulemaking is to revise licensing requirements for postsecondary degree-granting and non-degree-granting educational institutions by adding procedures and standards for distance-learning institutions.

A Notice of Emergency and Proposed Rulemaking was published in the *D.C. Register* for a thirty (30) day public comment period on May 20, 2016, at 63 DCR 7726. The comment period officially closed on June 20, 2016. OSSE did not receive any comments and has not made any changes in the Final Rulemaking.

These rules have been “deemed approved” by the Council of the District of Columbia, pursuant to Section 6(b)(3) of the Act (D.C. Official Code § 38-1306(b)(3) (2012 Repl. & 2015 Supp.)). The rules were adopted as final on July 25, 2016 and will become effective upon publication of this notice in the *D.C. Register*.

Title 5-A DCMR, OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION, is amended to add a new Chapter 83 to read as follows:

**CHAPTER 83 DELIVERY OF ONLINE INSTRUCTION BY A
POSTSECONDARY EDUCATIONAL INSTITUTION**

- 8300 Purpose
- 8301 Applicability
- 8302 Standards for Licensing Of Postsecondary Educational Institution Offering Online Instruction
- 8303 Participation in the State Authorization Reciprocity Agreement
- 8399 Definitions

8300 PURPOSE

8300.1 The purpose of this chapter is to establish standards and procedures governing the provision of online instruction to District of Columbia residents by postsecondary educational institutions and schools.

8301 APPLICABILITY

8301.1 Any postsecondary educational institution seeking to provide online instruction to a District resident through an online presence shall be deemed to be operating in the District, as defined in this chapter, whether or not the institution has a physical presence in the District.

8301.2 Prior to providing online instruction to a District resident, advertising online instruction to a District resident, or enrolling a District resident as a student for online instruction, an institution shall either be:

- (a) Licensed by the Commission in accordance with this chapter; or
- (b) Authorized to operate in the District in accordance with this chapter.

8301.3 This chapter is not limited to institutions that solely provide online instruction.

8301.4 A new applicant for licensure that has a physical presence and is seeking to provide online instruction shall submit to the Commission, either:

- (a) An Application for Provisional Licensure that meets the requirements of Chapter 80 of Subtitle A of Title 5 of the D.C. Municipal Regulations and the Standards for Online Instruction in Section 8302 of this chapter; or
- (b) An Application for Initial Licensure that meets the requirements of Chapter 81 of Subtitle A of Title 5 of the D.C. Municipal Regulations and the Standards for Online Instruction in Section 8302 of this chapter.

8301.5 A new applicant for licensure that does not have a physical presence and is seeking to provide online instruction shall submit to the Commission, either:

- (a) An Application for Provisional Licensure that meets the requirements of Chapter 80 of Subtitle A of Title 5 of the D.C. Municipal Regulations and the Standards for Online Instruction in Section 8302 of this chapter; or
- (b) An Application for Initial Licensure that meets the requirements of Chapter 81 of Subtitle A of Title 5 of the D.C. Municipal Regulations and the Standards for Online Instruction in Section 8302 of this chapter.

8301.6 A current licensee seeking to expand its existing program of instruction to include online instruction shall submit to the Commission, either:

- (a) An Application for License Amendment that meets the requirements of Section 8010 of Chapter 80 of Subtitle A of Title 5 of the D.C. Municipal Regulations and the Standards for Online Instruction in Section 8302 of this chapter; or
- (b) An Application for License Amendment that meets the requirements of Section 8123 of Chapter 81 of Subtitle A of Title 5 of the D.C. Municipal Regulations and the Standards for Online Instruction in Section 8302 of this chapter, as applicable.

8301.7 A congressionally chartered postsecondary educational institution whose home state is the District of Columbia and that is seeking to expand its existing program of instruction to include online instruction shall execute a memorandum of understanding with the Commission to facilitate institutional participation in State Authorization Reciprocity Agreement.

8302 STANDARDS FOR LICENSING OF POSTSECONDARY EDUCATIONAL INSTITUTION OFFERING ONLINE INSTRUCTION

8302.1 In order to qualify for a license, a postsecondary degree granting institution seeking to provide online instruction to a District resident shall demonstrate that it meets each standard for licensure in 5-A DCMR § 8004 and shall also demonstrate that the institution meets the following requirements related to online instruction in a form specified by the HELC:

- (a) Online learning is appropriate to the institution’s mission and purposes;
- (b) The institution’s plans for developing, sustaining, and, if appropriate, expanding online learning offerings are integrated into its regular planning and evaluation processes;
- (c) Online learning is incorporated into the institution’s systems of governance and academic oversight;
- (d) Curricula for the institution’s online learning offerings are coherent, cohesive, and comparable in academic rigor to programs offered in traditional instructional formats;
- (e) The institution evaluates the effectiveness of its online learning offerings, including the extent to which the online learning goals are achieved, and uses the results of its evaluations to enhance the attainment of the goals;
- (f) Faculty responsible for delivering the online learning curricula and evaluating the students’ success in achieving the online learning goals are appropriately qualified and effectively supported;

- (g) The institution provides effective student and academic services to support students enrolled in online learning offerings; and
- (h) The institution provides sufficient resources to support and, if appropriate, expand its online learning offerings.

8302.2

In order to qualify for a license, a postsecondary non-degree granting institution seeking to provide online instruction to a District resident shall demonstrate that it meets each standard for licensure in Chapter 81 of 5-A DMCR and shall also meet the following requirements related to online instruction:

- (a) Online learning is appropriate to the institution's mission and purposes;
- (b) The institution's plans for developing, sustaining, and, if appropriate, expanding online learning offerings are integrated into its regular planning and evaluation processes;
- (c) Online learning is incorporated into the institution's systems of governance and academic oversight;
- (d) Curricula for the institution's online learning offerings are coherent, cohesive, and comparable in academic rigor to programs offered in traditional instructional formats;
- (e) The institution evaluates the effectiveness of its online learning offerings, including the extent to which the online learning goals are achieved, and uses the results of its evaluations to enhance the attainment of the goals;
- (f) Faculty responsible for delivering the online learning curricula and evaluating the students' success in achieving the online learning goals are appropriately qualified and effectively supported;
- (g) The institution provides effective student and academic services to support students enrolled in online learning offerings; and
- (h) The institution provides sufficient resources to support and, if appropriate, expand its online learning offerings.

8303

PARTICIPATION IN THE STATE AUTHORIZATION RECIPROCITY AGREEMENT

8303.1

This section shall be effective upon the approval of District of Columbia as a member state of the State Authorization Reciprocity Agreement (SARA).

- 8303.2 The following institutions are eligible to become an approved SARA institution, subject to the policies and standards of SARA and approval pursuant to this chapter:
- (a) Postsecondary degree granting institution whose home state is the District of Columbia; or
 - (b) A conditionally exempt and congressionally chartered educational institution whose home state is the District of Columbia and who has executed a memorandum of understanding with the Commission to facilitate institutional participation in SARA.
- 8303.4 An application to become an approved SARA institution shall be submitted to and approved by the Commission to confirm the institution's compliance with SARA policies and standards and affirm the institution's willingness and ability for future compliance.
- 8303.4 An educational institution shall be assessed fees by the Commission and SARA to participate as an approved SARA institution. The fee to the Commission shall be determined annually.
- 8303.5 A postsecondary educational institution that has been authorized to provide online instruction by the duly authorized licensing body of a State that is a member of SARA, to which the District of Columbia is also a member, shall be authorized to operate in the District and provide online instruction to a District resident in accordance with SARA policies and standards.

8399 DEFINITIONS

“Home State” – a member state where the institution holds its legal domicile, in which the institution's principal campus holds its institutional accreditation.

“Higher Education Licensure Commission” or “Commission” – the body established by the Education Licensure Commission Act of 1976, effective April 6, 1977 (D.C. Law 1-104; D.C. Official Code §§ 38-1301 *et seq.*).

“License” or “to license” – the granting of approval to operate by the Commission to any educational institution covered under this chapter. Such approval shall be contingent upon said educational institution's compliance with all rules, regulations and criteria promulgated by the Commission, as well as compliance with all other applicable D.C. laws and regulations.

“Online Instruction” – education, whether known as “Virtual Class,” “Correspondence Course,” “Distance Learning” or a like term, where the

learner and instructor are not physically in the same place at the same time, in whatever electronic medium such as, but not limited to, the Internet, Web-based, real time or recorded video or digital form, offered or provided by an educational institution to District residents who are physically present in the District.

“Online Presence” – a connection to the District of Columbia created by the provision of online instruction by a postsecondary institution that is physically located outside of the District of Columbia, which gives rise to the requirement to obtain licensure from the Higher Education Licensure Commission or authorization to operate in the District pursuant to this chapter.

“Physical Presence” – an institution has established one of the following in the District of Columbia:

- (a) A physical location for students to receive instruction;
- (b) An administrative office;
- (c) A physical site operated by or on behalf of the institution that provides information to students for the purpose of enrolling students or provides student support services; or
- (d) Office space for instructional and non-instructional staff.

“To operate” or “operating” – when applied to an educational institution means to establish, keep, or maintain any facility or location in the District, or to establish, keep, or maintain any facility or location organized or chartered in the District where from or through which education is offered or given, or educational credentials are offered or granted, and includes contracting with any person, group, or entity to perform any such act.