

## May, Kathy

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**From:** Ellen Zunon <EZUNON@MAIL.NYSED.GOV>  
**Sent:** Friday, October 14, 2011 1:26 PM  
**To:** May, Kathy  
**Subject:** Re: Out of state distance education regulations - New York

Dear Ms. May,

This email is in response to your inquiry to the Office of College and University Evaluation regarding clarification about the need for the Technical College System of Georgia to apply for approval to offer its online programs to New York State residents.

If an institution has a "Physical Presence" in New York, then it must apply to the New York State Education Department for permission to operate in New York State. The Physical Presence policy can be found at the following link:  
<http://www.highered.nysed.gov/ocue/ded/policies.html>

In short, you DO NOT need to apply for approval from the NYS Education Department if your institution merely:

- Communicates electronically with students in New York State (e.g., by computer or broadcast) in ways that do NOT involve an instructional site or an organized group activity;
- Advertises in New York State media;
- Recruits students, e.g., at college fairs, job fairs, or trade shows;
- Conducts alumni activities within the State, such as alumni clubs.

You DO need to apply for approval if your institution does any of the following:

- Operates an instructional site (a physical location at which instruction is given by a faculty member to a group of students) in New York State.
- Sponsors organized activities within New York State that are related to the academic program (e.g., advising, mentoring, study groups, examination administration for groups of students).
- Has a representative, whether paid or not, acting on its behalf within New York State to arrange or conduct instructional or academic support activities.

In addition, please note the following:

- For information regarding clinical internships in areas that lead to professional licensure in New York State, please contact the Office of Professional Education and Program Review at:  
[OPPROGS@mail.nysed.gov](mailto:OPPROGS@mail.nysed.gov). You can find a list of the Professions at:  
<http://www.op.nysed.gov/prof>.

- For information regarding out-of-state college teacher preparation programs and student teaching placements in New York State, please see:  
<http://www.highered.nysed.gov/tcert/certificate/distance.html>.

- For any further clarification, or to inquire about applying for Permission to Operate in New York State, please contact the Office of College and University Evaluation at: ocueinfo@mail.nysed.gov .

Sincerely,  
Ellen Zunon  
Associate in Higher Education  
Office of College and University Evaluation New York State Education Department

>>> "May, Kathy" <KMay@tcsge.edu> 10/4/2011 4:17 PM >>>  
Dear Sir or Madam

I am sure you are aware that in October 2010, the U.S. Department of Education released regulations requiring out of state institutions offering distance education to students within another state to determine if authorization is needed by each state in which the institution is offering distance education.

In my role as Academic Affairs Coordinator (Georgia Virtual Technical Connection) for the Technical College System of Georgia, I am asking what the public 25 Technical Colleges within the State of Georgia need to do to obtain approval to teach distance education courses in the state of New York?

As background, the Technical College System of Georgia (TCSG) consists of 25 public technical colleges offering technical certificates of credit to two year degrees. Each technical college has a president and all technical college presidents' report to the TCSG Commissioner. The Commissioner reports to the Governor of Georgia and to the Technical College System of Georgia State Board. The State Board of the Technical College System of Georgia is responsible for establishing standards, regulations and policies for the operation of the Technical College System of Georgia. The 25 public technical colleges within the Technical College System of Georgia are supported by taxation from local and state funds from the state of Georgia.

All 25 technical colleges within the state of Georgia are accredited by accrediting agencies recognized by the United States Department of Education. The 25 public technical colleges in Georgia are accredited by either one or two or by both of the accrediting bodies listed below:

- 1) the regional accrediting body the Commission on Colleges of the Southern Association of Colleges and Schools
- 2) the national accrediting body the Council on Occupational Education.

Please provide me with direction as to the steps necessary to obtain the needed authorization from the state of New York or directions on the process to be exempt from authorization as courses/programs are distance education delivery. Please include all associated costs.

I am very interested in the possibility of TCSG obtaining permission/exemption from your state on behalf of all of our 25 technical colleges as opposed to each technical college seeking individual approval/exemption.

From my research for distance education, it looks like "physical presence" will determine whether or not out of state public institutions will be regulated/licensed by the state of New York. I have a question concerning physical presence:

"Has a representative, whether paid or not, acting on its behalf within the state to arrange or conduct instructional or academic support activities. This would include a commercial vendor acting on behalf of the institution, or a New York

higher education institution providing services to students of the out-of-state-institution." Does this include a student finding a proctor for an exam?

Your guidance and help is appreciated.

Please see the following links establishing our board and the Technical College System of Georgia:  
§ 20-4-10. State Board of the Technical College System of Georgia established; members;  
officers<javascript:void(pToc.tc2dc('TAAUAAHAADAAC','538G-RKX0-008Y-V3XG-00000-00',' ','1'));>

§ 20-4-14. Technical College System of Georgia established; powers and  
duties<javascript:void(pToc.tc2dc('TAAUAAHAADAAG','538G-RKX0-008Y-V3XM-00000-00',' ','1'));>

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