

**HIGHER EDUCATION**

**SECRETARY OF HIGHER EDUCATION**

**Licensure Rules**

**Proposed Amendments: N.J.A.C. 9A:1-1.2, 1.3, 2.1, 5.1, 5.2, and 7.5**

Authorized By: Rochelle Hendricks, Secretary of Higher Education.

Authority: N.J.S.A. 18A:3B-14, 18A:3B-15, and 18A:68-3.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2016-067.

Submit comments by July 1, 2016, to:

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The agency proposal follows:

**Summary**

Pursuant to Executive Reorganization Plan No. 005-2011, issued by Governor Chris Christie on June 29, 2011, all functions, powers, duties, and personnel of the Commission on Higher Education were transferred to the Secretary of Higher Education, pursuant to the State Agency Transfer Act, P.L. 1971, c. 375 (N.J.S.A. 52:14D-1 et seq.). Therefore, under State law, the Secretary on Higher Education is responsible for licensing institutions of higher education to

offer college-credit-bearing coursework and programs in New Jersey. The Secretary's licensure rules, N.J.A.C. 9A:1, set forth the standards that any institution or other entity seeking to offer academic credit-bearing courses or programs must meet to qualify for a license. The rules proposed for amendment are described as follows:

Subchapter 1 contains definitions and presents general licensure standards in such areas as organization and administration, finance, faculty, libraries, student services, physical facilities, and official publications.

At N.J.A.C. 9A:1-1.2, Definitions, it is proposed that the terms “blended (or hybrid) learning,” “distance learning,” and “traditional face-to-face learning,” the definitions for which are presently embedded in the definition for “educational delivery mode,” be included as stand-alone definitions. A new definition for “college credit-bearing distance learning” is proposed. The definition of “educational delivery mode” is proposed to be amended to remove the embedded definitions of “blended (or hybrid) learning,” “distance learning,” and “traditional face-to-face learning.” The definition of “out-of-State institution” is proposed to be amended to remove the reference to an institution with a principal campus located outside New Jersey and to replace that reference with a new reference to an institution located within the United States or its possessions and not incorporated in New Jersey. The term “physical presence” is proposed to be amended to create an exception for when the definition applies in an instance when an interstate agreement that New Jersey is a party to defines a particular activity as not constituting a physical presence and the offering entity is both licensed in a signatory state to the interstate agreement and authorized by the signatory state to operate pursuant to that interstate agreement. Additionally, the phrase “credit-bearing courses” in the definition of “physical presence” is proposed to be amended to “college credit-bearing courses” and the term “location” in the

definition of “physical presence” is proposed to be amended to “physical location”. N.J.A.C. 9A:1-1.3(a) is proposed to be amended to clarify that an institution is required to petition the Secretary for licensure to offer academic degree programs and/or college credit-bearing courses with “a physical presence” in New Jersey. The subsection is also proposed for amendment to clarify that an institution may not offer or advertise for academic degree programs and/or college credit-bearing courses with “a physical presence” in New Jersey until formal approval of its petition has been received from the Secretary.

N.J.A.C. 9A:1-1.3(b)3 is proposed to be amended to state that the requirement to submit information in a licensure petition that is the equivalent to the annual summary sheet required by the institution's accrediting association applies to both regional and national institutional accrediting associations, as well as to state that this requirement need be met only when applicable. N.J.A.C. 9A:1-1.3(b)4 is proposed to be amended to state that the requirement to submit in a licensure petition the institution's financial statements and management letters for each of the last three years need be met “only when applicable.”

N.J.A.C. 9A:1-1.3(h) is proposed to be amended to clarify that out-of-State institutions that are seeking licensure to offer academic degree programs and/or college credit-bearing courses “with a physical presence” in New Jersey must follow the process detailed in N.J.A.C. 9A:1-5.

At N.J.A.C. 9A:1-2.1(e), it is proposed that the parenthetical reference to "distance learning," "blended (or hybrid) learning," or "traditional face-to-face learning" after the term “educational delivery mode” be removed. It is also proposed that the term “credit-bearing courses” be amended to “college credit-bearing courses.”

N.J.A.C. 9A:1-5.1(a) is proposed to be amended to clarify that an out-of-State institution is required to petition the Secretary for licensure to offer college credit-bearing courses, academic degree completion programs, or complete academic degree programs “with a physical presence” in New Jersey, as well as amended to clarify that an institution may not offer or advertise for academic degree programs and/or college credit-bearing courses “with a physical presence” in New Jersey until formal approval of its petition has been received from the Secretary.

N.J.A.C. 9A:1-5.2(b)3 is proposed to be amended to state that the requirement to submit information in a licensure petition that is the equivalent to the annual summary sheet required by the institution's accrediting association applies to both regional and national institutional accrediting associations.

At N.J.A.C. 9A:1-7.5(b), it is proposed that the term “distance education programs” be replaced with the term “college credit-bearing distance learning.”

As the Secretary has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirements, pursuant to N.J.A.C. 1:30-3.3(a)5.

### **Social Impact**

The proposed amendments establish criteria and processes to ensure that any institution (public, private nonprofit, or proprietary), whether incorporated in the State or not, offering college-level coursework in New Jersey meets standards of quality. Application of the standards protect the citizens of New Jersey, individuals attending college or university in New Jersey, and employers. The proposed amendments clarify standards to make compliance more effective and reduce administrative burdens.

### **Economic Impact**

The proposed amendments have no direct economic impact on New Jersey or the State's higher education institutions. An indirect impact flows from the fact that to meet the requirements set forth in the rules, institutions must allocate resources (employees, materials, equipment, etc.) to ensure compliance with the standards. The cost of such compliance varies from institution to institution and within a particular institution, depending on the area involved, but may not always represent additional cost. The licensure rules set minimum standards, which are exceeded by many institutions.

#### **Federal Standards Statement**

The proposed amendments do not require a Federal standards analysis under Executive Order No. 27 (1994) and N.J.S.A. 52:14B-22 et seq., because the licensure function of the Secretary of Higher Education is not subject to any Federal requirements or standards.

#### **Jobs Impact**

The proposed amendments will not result in the generation or loss of any jobs.

#### **Agriculture Industry Impact**

The proposed amendments will have no impact on the agriculture industry.

#### **Regulatory Flexibility Statement**

The proposed amendments do not impose any requirements on small business as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendments to the licensure rules serve to change the definition of physical presence as it relates to an interstate agreement to which New Jersey is a party, as well as to make a number of changes that will clarify the licensure rules through the use of consistent terminology, as well as a more appropriate organization for certain definitions, and other amendments that will resolve ambiguities.

### **Housing Affordability Impact Analysis**

The proposed amendments are not likely to have an impact on housing affordability because the proposed amendments to the licensure serve to change the definition of physical presence as it relates to an interstate agreement to which New Jersey is a party, as well as to make a number of changes that will clarify the licensure rules through the use of consistent terminology, as well as a more appropriate organization for certain definitions, and other amendments that will resolve ambiguities; and there is an extreme unlikelihood that these proposed amendments will evoke a change in the costs associated with housing.

### **Smart Growth Development Impact Analysis**

The proposed amendments are not likely to have any impact on housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan because the proposed amendments to the licensure rules serve to change the definition of physical presence as it relates to an interstate agreement to which New Jersey is a party, as well as to make a number of changes that will clarify the licensure rules through the use of consistent terminology, as well as more appropriate organization for certain definitions and other amendments that will resolve ambiguities; and there is an extreme unlikelihood that these proposed amendments will lead to a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan.

**Full text** of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

#### SUBCHAPTER 1. GENERAL STANDARDS

##### 9A:1-1.2 Definitions

The following words and terms, as used in this chapter, shall have the following meanings unless the context clearly indicates otherwise:

...

**"Blended (or hybrid) learning" means a formal educational process in which a part of the instruction occurs when the learner and the instructor are physically located in the same place at the same time, but a part of the instruction occurs by distance learning.**

...

**"College credit-bearing distance learning" means a distance learning activity upon a student's successful completion of which an institution of higher education awards recognition applicable to meeting the requirements for a degree or other formal academic award.**

...

**"Distance learning" means a formal educational process in which instruction occurs when the learner and the instructor are not physically located in the same place at the same time.**

"Educational delivery mode" means a formal educational process involving [one of the following options:

1. "Distance learning," in which instruction occurs when the learner and the instructor are not physically located in the same place at the same time;

2. "Blended (or hybrid) learning," in which a part of the instruction occurs when the learner and the instructor are physically located in the same place at the same time, but a part of the instruction occurs by distance learning; and

3. "Traditional face-to-face learning," in which all of the instruction takes place in the classroom or in out-of-class instruction under the direct supervision of the instructor.] **either blended (or hybrid) learning, distance learning, or traditional face-to-face learning.**

...

"Out-of-State institution" means an institution [whose principal campus] **that** is located within the United States or its possessions [but] **and is not** [within] **incorporated in** the State of New Jersey and whose accreditation status in New Jersey is based upon [that enjoyed by the principal campus located] **a location** outside the State, as well as an institution located outside of the U.S. or its possessions that is recognized by the appropriate body in the particular country if the institution's requirements for awarding degrees are generally equivalent to those accepted in the U.S. by an accrediting body recognized by the U.S. Secretary of Education.

...

"Physical presence" means that an entity offers **college** credit-bearing courses from, or conducts some portion of the learning experience at, a **physical** location established in New Jersey by the entity, whether established directly or under the auspices of another entity or an institution, **except in an instance where an interstate agreement that New Jersey is a party to, delineates any particular activity as not constituting a physical presence in the State and the offering entity is both licensed in a signatory state to that delineating agreement and authorized by the signatory state to operate pursuant to that delineating agreement.**

...

"Traditional face-to-face learning" means a formal educational process in which all of the instruction takes place in the classroom or in out-of-class instruction under the direct supervision of the instructor.

...

### 9A:1-1.3 Licensure

(a) An institution seeking to offer academic degree programs and/or college credit-bearing courses **with a physical presence** in New Jersey shall first provide evidence of incorporation and petition the Secretary for licensure. No institution shall offer or advertise the availability of [its] college credit-bearing course(s) or academic degree program(s) **with a physical presence in New Jersey** before receiving formal approval of its petition. Licensure shall require the institution to meet all the standards set forth in this chapter.

(b) A New Jersey institution seeking licensure shall submit a licensure petition in an electronic format to OSHE preferably at least one year before the requested date of implementation. The petition shall contain:

1. -2. (No change.)

3. Information equivalent to the annual summary sheet required by the [institution's] regional **and/or national institutional** accrediting association **for the institution, if applicable;**

4. The institution's financial statements and management letter(s) (if issued) (prepared by independent auditors) for each of the last three years, **if applicable;**

5 -8. (No change.)

(c)-(g) (No change.)

(h) The process for out-of-State institutions to seek licensure to offer academic degree programs and/or college credit-bearing courses **with a physical presence** in New Jersey is detailed at N.J.A.C. 9A:1-5.

(i)-(n) (No change.)

## SUBCHAPTER 2. DEGREE STANDARDS AND PROGRAMMATIC MISSION

### 9A:1-2.1 General program standards

(a)-(d) (No change.)

(e) The rigor of all **college** credit-bearing courses shall be substantially the same, regardless of the type of educational delivery mode [("distance learning," "blended (or hybrid) learning," or "traditional face-to-face learning")], as demonstrated by the institution through various forms of evidence. Such evidence shall include, but not be limited to, at least two of the following: syllabi, documented faculty interaction with students, learning outcomes, documented units of curricular material, and other documentation [which] **that** objectively demonstrates the amount of time and/or the level of rigor necessary to complete the coursework.

## SUBCHAPTER 5. OUT-OF-STATE INSTITUTIONS

### 9A:1-5.1 Licensure required

(a) Out-of-State institutions wishing to offer college credit-bearing courses, academic degree completion programs, or complete academic degree programs **with a physical presence** in New Jersey shall petition the Secretary for licensure. No out-of-State institution shall offer or advertise the availability of [its] college credit-bearing course(s) or academic degree program(s) **with a physical presence in New Jersey** before receiving formal approval of its petition.

Licensure shall require the institution to meet all the standards set forth in this chapter.

(b)-(f) (No change.)

### 9A:1-5.2 Petitions from institutions

(a) (No change.)

(b) The petition shall contain:

1.-2. (No change.)

3. Information equivalent to the annual summary sheet required by the [institution's] regional **and/or national institutional** accrediting association **for the institution;**

4. -8. (No change.)

## SUBCHAPTER 7. DISTANCE LEARNING

### 9A:1-7.5 Approval for out-of-State institutions

(a) (No change.)

(b) Out-of-State institutions that wish to offer New Jersey residents no other programs, except for **college credit-bearing** distance [education programs] **learning** with no physical presence in New Jersey, are not required to seek licensure from the Secretary.

(c) (No change.)