



Question: California does not have a definition of physical presence and needs one. I've been scouring the listserv archives and other states' laws and regs to compile sample definitions.

What I also need to understand is the level of oversight or approval that is triggered by having physical presence. Is any institution with physical presence (which could mean local advertising, or having a faculty member reside in the state, or having a mailing address) required to have their programs reviewed and approved, be subject to compliance inspections, etc? Do they pay fees at the same level as brick-and-mortar institutions in the state, have bonding requirements or pay into a tuition recovery fund, etc? Or is there a separate scheme for institutions for those that only advertise, say, or are otherwise sort of on the fringes of having physical presence?

Responses:

Colorado:

For the degree-granting institutions, Colorado uses the SARA definition of physical presence:

3.17 "Physical presence" a. For the purpose of state authorization, an institution has physical presence and therefore must seek authorization to operate in Colorado if the institution engages in any of the following activities in Colorado:

1. Establishes a physical location for students to receive synchronous or asynchronous instruction;
2. Requires students to physically meet in a location for instructional purposes more than twice per full-term (quarter or semester) course for a total of more than six hours;
3. Establishes an administrative office in the state;
4. Provides information to students for the purpose of enrolling students, or provides student support services, from a physical site operated by or on behalf of the institution in the state, or partners or contracts with a third-party provider or other entity located in the state to provide information to students for the purpose of enrolling students or provide student support services (or any other services to prospective or current students);
5. Offers a "short course" that requires more than 20 contact hours in one six month period;
6. Provides office space to instructional or non-instructional staff;
7. Maintains a mailing address or phone exchange in the state;
8. Carries out field study or field research located at a field station, research station or other physical site at which a faculty member or other institutional employee or contractor supervises or otherwise directs two or more students in an activity exceeding the allowable short course length and which either bears academic credit or is a requirement for the course or program.

Iowa:

Iowa's definition of physical presence:

4. *“Presence”* means a location in Iowa at which a student participates in any structured activity related to a school’s distance education course of instruction, with the exception of proctored examinations. *“Presence”* also means an address, location, telephone number, or internet protocol address in Iowa from which a school conducts any aspect of its operations. For the purpose of a residential course of instruction offered on a school’s campus that is not located in Iowa, *“presence”* does not include:

a. Occasional, short-term activities conducted at a location in Iowa for the purpose of recruiting students for the school’s residential course of instruction.

b. A residency, practicum, internship, clinical, or similar experience that the school permits the student to participate in at a location in Iowa, provided that a person who provides instruction or supervision at the Iowa location is not compensated by the school.

Kansas:

Below is the physical presence definition in Kansas. We recently amended the definition and removed the advertising language. The application and minimum requirements are the same for all institutions that trigger physical presence, with the exception that we do not do site visits for out-of-state institutions. The fee amounts for in-state are different (slightly less) than the fees for out-of-state.

"Physical presence" means:

- (1) Operating an instructional site in Kansas, including, but not limited to:
 - (A) Establishing a physical location in Kansas where students receive instruction; or
 - (B) delivering a course or program that requires students participating in that course or program to physically meet at the same time and place in Kansas to receive instruction;
- (2) delivering any distance education course to any student who remains in Kansas while participating in such course;
- (3) maintaining a mailing address or phone exchange in Kansas;
- (4) providing office space in Kansas to instructional or non-instructional staff;
- (5) maintaining an administrative office in Kansas for the purpose of fulfilling the administrative functions of delivering instruction, whether face-to-face or via distance education; or
- (6) providing student support services, from a physical site operated by or on behalf of the institution in Kansas.

Kentucky:

“Operating or soliciting” is defined in the licensing regulation 13 KAR 1:020 Section 1 (9):

- (9) "Operating or soliciting" means having a physical presence within Kentucky and includes:
 - (a) An instructional or administrative site within Kentucky whether owned, leased, rented, or

provided without charge;

(b) Instruction whether theory or clinical, originating from or delivered within Kentucky utilizing teachers, trainers, counselors, advisors, sponsors, or mentors;

(c) An agent, recruiter, in-state liaison personnel, institution, or business located in Kentucky that advises, promotes, or solicits for enrollment, credit, or award of an educational or occupational credential;

(d) An articulation agreement with a Kentucky licensed college or state-supported institution; or

(e) Advertising, promotional material, or public solicitation in any form that targets Kentucky residents through distribution or advertising in the state.

In addition:

1) Students completing an internship, practicum, clinical, or field experience in Kentucky for which the institution is awarding college credit is a trigger for licensure per 13 KAR 1:020 Section 1 (9)(b). This is true whether the rest of the program is taught online, or whether the rest of the program is taught face to face on the ground outside KY.

2) Faculty residing in Kentucky and teaching in the institution's online course(s) / program(s) available to Kentucky students would trigger the requirement for licensure with our agency per 13 KAR 1:020 Section 1(9)(b), except that licensure is not required if less than 1% of the institution's total faculty resides in KY per 13 KAR 1:020 Section 2(2)(c).

For additional reference, here is link to the full

regulation: <https://apps.legislature.ky.gov/law/kar/titles/013/001/020/>

In response to your other questions:

- Our fee schedule is the same whether the institution has instruction on the ground at a campus in KY, or the institution is an out-of-state online provider. <http://www.cpe.ky.gov/policies/licensure/feeschedule.pdf>
- Institutions are required to have coverage of unearned tuition whether the institution has instruction on the ground at a campus in KY, or the institution is an out-of-state online provider. 13 KAR 1:020 Section 8(3).

Ohio:

Ohio doesn't have a specific definition of physical presence in our law/rules either but we have a general statement in our law that says:

(A)(1) No program shall be established, offered, or given for a charge, fee, or other contribution; no certificate, diploma, degree, or other written evidence of proficiency or achievement shall be offered whether in a specified place, by correspondence, or any other means of communication, or awarded; and no student enrollment in such program shall be solicited through advertising, agents, mail circulars, or other means, until the person planning to offer or offering such program, certificate, diploma, or degree has obtained a certificate of registration and appropriate program authorization in accordance with section [3332.05](#) of the Revised Code. No school shall offer a baccalaureate, master's, or doctoral degree program unless it has received a

certificate of authorization from the Ohio board of regents and program authorization from the state board of career colleges and schools.

Other than having an actual location (classroom or some type of administrative office) we only require schools to register if they are actively recruiting within the state (attending college fairs or other in-person recruiting activities). We have in the past said that advertising that specifically targets Ohio residents would require registration but not sure how enforceable that really is unless the school had some other minimum contacts with the state that would allow us to exercise jurisdiction.

As a legal matter, physical presence and minimum contacts are jurisdictional issues and I don't think some state's definitions of physical presence for educational institutions are legally enforceable since a state would not be able to exercise jurisdiction over a school that did not meet the federal constitutional definition of physical presence/minimum contacts that is used to determine if a state can exercise legal jurisdiction over a non-resident person or business. In other words, if a school in Ohio was recruiting/enrolling students from California but did not have any actual physical presence/minimum contacts in California (as defined under the federal constitutional definition of physical presence) it's highly unlikely that any California court could exercise jurisdiction over the school, regards of how California defined physical presence for its own purposes since the federal jurisdictional/constitutional issues would supercede any state definition of physical presence.

Probably not explaining this issue very well but here is a link to a federal court of appeals case that addresses advertising/marketing and what constitutes physical presence:
<https://www.theenergylawblog.com/2020/01/articles/litigation/fifth-circuit-rules-approximate-physical-presence-is-required-for-general-personal-jurisdiction/>

In answer to your question about how we review/approve out-of-state schools that actively recruit within Ohio, we approve the school and its programs but generally defer to the approval of the home state where the school is domiciled for all issues except for recruiting/soliciting since that is the activity that is taking place in Ohio and we regulate recruiting/solicitation per Ohio rules and regulations. (e.g., we don't apply Ohio's academic standards to a non-Ohio school). As for licensing fees and student tuition recovery fund payments we charge the out-of-state schools the same as the Ohio schools. Several years ago I suggested that we charge the out-of-state schools a lower flat fee just for solicitation purposes and the Ohio schools didn't like that idea (not surprising I guess) so we stuck with the same fee structure for all schools.

Oregon:

Oregon's definition of physical presence is located here: [OAR 583-030-0005](#)

Pennsylvania:

Pennsylvania's definition of physical presence is as follows:

Physical presence—The operation of an entity that offers courses, programs, or degrees or maintains a campus, or an administrative, corporate or other address, including a post office box, telephone number, recruiters, instructors, advertising in local media and publications at a location in this Commonwealth.

Rhode Island:

Per Regulation ([Degree-granting](#) and [Proprietary](#)):

Operate or Operating: includes three main activities:

- 1) establishing or maintaining within the borders of state of Rhode Island a facility or location where instruction, student services or educational program administration are provided or postsecondary educational credentials are granted to persons in the state or to persons outside of the state;
- 2) contracting with any person, group, or entity to operate such an institution; or
- 3) the activities of persons owning an interest in, employed by, or representing for remuneration a postsecondary educational institution in or outside the state who, by solicitation made in the state:
 - a) give counsel to, enroll or seek to enroll students for education offered by the institution;
 - b) offer to award educational credentials for remuneration on behalf of the institution; or
 - c) hold themselves out to persons in the state as representing a postsecondary educational institution for any purpose.

Per [Distance Learning Policy](#):

Physical presence.

- a. A provider has a “physical presence” if:
 1. It is physically located within the borders of Rhode Island; or
 2. It maintains or sends within the borders of Rhode Island employees or paid representatives whose purpose is to conduct any activities, including, but not limited to the following: advising of students, offering courses or programs, regular administration of examinations.
 - b. A provider with a legal domicile outside Rhode Island may be exempted from §a.2 under “physical presence,” if it meets both of the following criteria:
 1. The provider has been authorized by its home state to participate in NC-SARA or has been authorized by CPE as a non-SARA institution; and
 2. The provider does not engage in any activities in Rhode Island that constitute a physical presence as defined in the NC-SARA Physical Presence Standard.

Operating. For the purposes of distance learning, a provider is understood to be “operating” in Rhode Island if it meets either of the following criteria:

- a. The provider has a physical presence in Rhode Island and offers distance learning to non-Rhode Island residents; or
- b. The provider does not have a physical presence in Rhode Island and offers distance learning to Rhode Island residents.

Establishing a physical presence in Rhode Island will require review and approval initially and annually, pursuant to the above regulations, or through RI-SARA or Non-SARA approval processes.

Washington:

Perfect timing; I have a follow-up question for everyone also. Does anyone have a specific description of local advertising? It seems social media ads may have changed the concept. However, with so many schools transitioning to remote only modality and requesting an exemption, we are concerned that they might still be advertising even if they consider it national, not targeted local advertising.

Workforce Board's definition is: "Physical presence" includes, but is not limited to, maintaining a mailing address within the state of Washington, the presence of a facility or equipment; the presence of electronic, paper, and other types of records; the presence of a speaking agent, manager, resident director, or similar administrator; the presence of direct advertising and marketing to Washington residents or field placements, including externships, clinicals, or practica as part of an educational program and taking place within the state of Washington.

Physical presence triggers licensure as a private career school; all requirements, including licensing and TRTF fees, are the same. Out-of-State schools pay \$120 per year for each sales agent, whereas an in-state school would not.