

BACKGROUND: When a student receiving Title IV grants and loans withdraws from a program, the student's institution must determine the amount of Title IV assistance the student earned to calculate the amount of unearned funds that must be returned to the Department of Education ("ED") or the lender (known as the Return to Title IV, or "R2T4," calculation). If a student withdraws without providing notice and the institution is required by its state authorizing agency or accreditor to take attendance, setting the Last Day of Attendance ("LDA") is straightforward. However, if the institution is not required to take attendance, as is the case with many collegiate institutions, the institution may either use the mid-point of the financial aid payment period as the effective withdrawal date or it may choose to document the student's LDA in an "academically related activity."

- **Onground Programs:** ED policy has been that conventional, face-to-face programs can document LDA in a variety of ways, customarily including any "presence" (although not necessarily participation) in class. Other examples of presence for the purposes of documenting LDA are participation in a study group, contact with an academic advisor, or work on a computer-assisted tutorial.
- **Online Programs:** Institutions have also relied on a variety of indicators of student presence in online programs, including the "entry" of a student into his or her electronic classroom. The last day a student's records demonstrated such activity would be considered the LDA. In effect, the standard for determining LDA has been comparable for onground and online programs.
- **Common Practice:** ED has typically afforded great deference to institutions to determine the method by which they choose to document LDA. Accordingly, determination of LDA has varied dramatically among institutions of all types and sizes. WCET, a membership cooperative of the Western Interstate Commission for Higher Education, and the Instructional Technology Council ("ITC"), an affiliated council of the American Association of Community Colleges, both surveyed their members on how they document LDA. The responses demonstrated the considerable variety of ways institutions offering online programs document student attendance, and therefore, the assortment of methods those institutions use to document LDA. In both polls, approximately 60% of the respondents use either logging into the learning management system or the electronic classroom as a method for documenting LDA. Other methods used by members of WCET and ITC are the last day the student interacted with the instructor or the last day the student submitted an assignment.

THE PROBLEM: ED appears to be retroactively departing from the customary deference reflected in its existing regulations and guidance respecting an "academically related activity" by substituting the "regular and substantive interaction between the students and faculty" component of the definition of distance education program in the Higher Education Opportunity Act of 2008. ED has recently taken the position during the course of Title IV program reviews that documenting the student's LDA in an "academically related activity" requires more than attendance in the student's electronic classroom. Unfortunately for institutions, ED has taken this position without providing institutions notice and guidance as to the intended standard. **The effect of ED's action is to put many institutions offering online programs at risk for exceedingly large program liabilities for failure to document LDA in accordance with a standard that has never been articulated either in regulation or formal guidance.**

THE SOLUTION: ED should publicly define what constitutes evidence of LDA in online programs for the purpose of calculating R2T4 in a manner that is substantially comparable for onground and online programs. **ED could eliminate the existing ambiguity by prospectively defining what constitutes evidence of attendance for online programs either in its pending proposed regulations following the Program Integrity Negotiated Rulemaking, a portion of which focused on LDA as it relates to the R2T4 calculation, or in other formal guidance.** Given the importance of this matter for a great many institutions, a standard for documenting LDA must be clearly articulated, widely disseminated, and incorporate informed input from institutions so as to provide fair notice and time to conform procedures to ED's requirements. Until such rules are promulgated, ED should not seek to enforce its previously undisclosed interpretations of unclear regulatory requirements.