



August 2, 2010

VIA ELECTRONIC SUBMISSION

The Honorable Arne Duncan
Secretary
U.S. Department of Education
400 Maryland Avenue, SW
Washington, DC 20202

RE: Documentation of Last Day of Attendance for Online Programs

Dear Secretary Duncan:

On June 4, 2010, several higher education associations sent a letter to you requesting that the Department issue formal, prospective guidance on documentation of last day of attendance ("LDA") for online educational programs. A portion of the Department's recent Program Integrity Negotiated Rulemaking and the subsequent Notice of Proposed Rulemaking ("NPRM") issued on June 18, 2010 focused on LDA as it relates to the return to Title IV calculation. However, the documentation of LDA for online programs was not specifically addressed during the negotiated rulemaking or in the NPRM. Kay Gilcher, Senior Policy Analyst in the Department's Office of Postsecondary Education, encouraged us to submit comments to the NPRM if we wished to request clarification on LDA for online programs. The Department now has the opportunity in crafting its new rules related to attendance to define prospectively what constitutes evidence of LDA in online programs for the purpose of calculating the return of Title IV funds in a manner that is substantially comparable for traditional, face-to-face and online programs.

Determination of LDA is an important component of the administration of an institution's federal student financial aid program. Institutions must calculate the amount of unearned financial aid funds to be returned to the Department when a student withdraws without providing formal notice, and the methods used by our member institutions to determine that date of withdrawal vary dramatically. The NPRM proposes changes to determine the withdrawal date for institutions required to or voluntarily taking attendance. Under both the current and proposed rules, if an institution is not required and does not voluntarily take attendance, the institution may either use the mid-point of the financial aid payment period as the effective withdrawal date or it may document the student's actual LDA as determined by his or her last known "academically related activity."

The Department has typically afforded great deference to institutions to determine the method by which they choose to document LDA. When issuing final regulations on LDA in 1999, the Department noted the following:

Just as there is a wide variety in the types of educational programs offered by institutions, there appears to be a lot of variation in ways that institutions have been able to identify a last date of attendance at an academically-related activity... This flexibility permits institutions to control the process used to verify the student's attendance in these activities. 64 Fed. Reg. 59026 (Nov. 1, 1999).

While the 2009-2010 Federal Student Aid Handbook provides examples of academically related activities that institutions may use to determine LDA, that list is nonexclusive; "the determination of a student's withdrawal date is the responsibility of the school." Accordingly, institutions have utilized the deference afforded them by the Department to document LDA in a variety of ways.

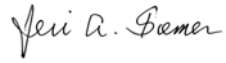
Among other methods, our member institutions document LDA for face-to-face programs as any "presence" (although not necessarily participation) in class. Similarly, many of our institutions have also relied on the "entry" of a student into his or her electronic classroom as an indicator of student "presence" in online classes. This standard for determining LDA is substantially equivalent for face-to-face and online programs.

We are concerned that in reviewing online programs during the course of Title IV program reviews, the Department may 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. Our particular concern is that in doing so the Department may effectively be retroactively prohibiting online programs from documenting LDA as the last recorded date that a student entered his or her electronic classroom without having previously advised all institutions offering online education of the Department's new approach. If the Department is indeed intent on taking such action, it will have done so without providing institutions adequate notice and guidance as to the intended standard. The effect would be to require many of our member institutions that offer online instruction to engage in expensive student-by-student analysis to comply with the new standard or face the risk of exceedingly large program liabilities for failure to document LDA based on a standard that has never been publicly articulated either in regulation or formal guidance.

Given the importance of this matter for a great many institutions, we request that the Department define prospectively the documentation that our institutions may use to evidence LDA for online programs that would be effective beginning with the 2011-2012 award year. This would provide sufficient time for institutions to make any modifications to their systems and procedures to comply with the Department's new definitions. We also request that the Department take no adverse action against any institution for its LDA calculation until the Department issues that definition.

We appreciate your attention to this important matter.

Sincerely,



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