

August 3, 2021

Michelle Asha Cooper  
Acting Assistant Secretary of Postsecondary Education  
U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, D.C. 20202

Dear Dr. Cooper,

We write as representatives of our membership organizations, the WICHE Cooperative for Educational Technologies (WCET) and the WCET State Authorization Network (SAN), to request guidance on questions concerning the regulatory requirements in the Distance Education and Innovation regulations (referred hereafter as “regulations”) with specific emphasis on the definition of “distance education” and its application to other regulatory requirements. Our membership organizations represent more than 800 postsecondary institutions, non-profit associations, government agencies, and corporations nationwide that wish to understand fully what is required to correctly implement processes to meet regulations in order to participate in Title IV funding.

#### **Definition of “Distance Education” in the Guidance for Program Approval by Accrediting Agencies**

In constructing the regulations on distance education and innovation, the Department indicated its goal to “strike the appropriate balance between assuring interaction with qualified instructors and allowing institutions the flexibility to offer programs using innovative, student-oriented pedagogical techniques.”

Though the goal is admirable and appreciated, it does raise questions on whether variations of distance education may fall under this definition and must meet not only “regular and substantive interaction” requirements, but other requirements applicable to distance education. In particular, the Department of Education Guidance on Accreditation and Eligibility Requirements for Distance Education (OPE-Accreditation-01192021-02), states that a “program offered in whole or in part through telecommunications is eligible for Title IV, HEA program purposes if the program is offered by an institution that is accredited by an agency that has accreditation of distance education within the scope of its recognition.”

We request that the Department issue guidance to address how to interpret under what circumstances variations of distance education would be considered “offered in whole or in part through telecommunications”. In so doing, we ask that the Department consider the following questions:

- Does the language “offered in whole or in part through telecommunications” mean that courses using any distance education variation are now considered distance education and creates the need for approval of that program? Examples include but are not limited to: blended learning, hybrid learning, hyflex learning, flipped classroom, adaptive learning, and anything that allows that student / instructor separation.
- Does this mean that every program, even those with a minimum of one course which utilizes distance education, must seek programmatic approval from their accrediting agency?

- If an institution decides to change the modality of one course within a program, does it need accreditor approval before making this change?
- The guidance is aimed at defining which **programs** require approval for distance education from an accrediting agency, but is the “in whole or in part through telecommunications” the current standard for determining whether a **course** is considered to be offered via distance education? Given the proliferation of blended, hybrid, and hybrid instructional models due to the pandemic, there is great interest in this question as it has a deeper impact across most institutions.

### **Definition of “Distance Education” as Applied to Courses in §600.2**

As of July 1, 2021, the definition of “distance education” in Chapter 34, §600.2 was updated as result of negotiated rulemaking process that began in 2019. In talking with personnel from institutions with distance education courses and programs, there is much appreciation for the improvements in the definition. The following questions were commonly raised, and guidance would help institutional personnel understand what actions to take to best serve students and assure compliance.

#### ***Instructor***

We have received many questions from our members on whether the definition of instructor would encompass instructional models that involve team instruction, Teaching Assistants, Graduate Assistants, and unbundled instruction. In the preamble to the regulation, the Department, in declining to revise the definition of instructor to specifically mention the use of instructional teams, stated its belief that the current regulatory language accommodates the use of instructional teams and that no change in language was necessary in order to further encourage their use.

We ask that Department issue guidance to confirm this interpretation of the definition of instructor and additional guidance as necessary into the types of qualifications needed for Teaching Assistants, Graduate Assistants, and other instructional team members to meet the definition of instructor.

#### ***Regular Interaction***

The definition of regular interaction requires that a distance education course meet two criteria. We have the following questions on the two criteria:

For section (i):

- What evidence is needed for institutions to demonstrate that they have successfully addressed the requirement that interaction be “commensurate with the length of time and the amount of content in the course or competency”?
- During the Department’s April 2021 webcast on the regulations, the Department affirmed that, for competency-based education and adaptive learning, scheduled “office hours” may be used to fulfill the regular interaction requirement. However, we have heard that there are those in the financial aid community who disagree that this is allowable under the definition of academic engagement. Furthermore, this is in contradiction to guidance from the Department in 2014, where the department stated that it does not consider interaction that is “wholly optional or initiated primarily by the student” to be regular and substantive interaction. We request that the Department issue guidance to confirm its current interpretation and expectations surrounding this issue.

For section (ii):

- What is meant by “promptly and proactively”? In the preamble to the regulations, the Department indicated that institutions could demonstrate compliance with the requirements at the program design level without documenting “each and every” interaction. We request that the Department address how institutions can use program design to show that interactions between students and instructors were prompt and proactive. Does that Department have criteria by which institutions could determine whether an interaction was both prompt and proactive in order to meet the regulatory requirement? Are policies and faculty development sufficient? Are metrics needed and, if yes, what types of metrics?

### ***Substantive Interaction***

The definition of substantive interaction requires that the interaction in a distance education course meet at least two of five characteristics. On behalf our memberships, we ask for additional guidance on how the Department will interpret this regulation, what is meant by direct instruction, and what type of evidence or approval is needed:

- In (i) of the definition, the Department listed direct instruction as a means of achieving substantive interaction. We ask that the Department clarify what constitutes direct instruction and whether direct instruction may be synchronous or asynchronous, as the information we have sourced conflicts:
  - In the Department’s April 2021 webcast on the regulations the Department indicated that direct instruction is intended to be a situation in a synchronous environment where both the instructor and student are present at the same time and are both engaged. However, in the same webinar, the Department stated that would be a “version” of direct instruction, implying there may be other acceptable practices that would constitute direct instruction.
  - In addition, the definition of distance education states that “Education that uses one or more of the technologies .... To support regular and substantive interaction between the students and the instructor or instructors, either synchronously or asynchronously”. The inclusion of asynchronously implies that regular and substantive interaction may be achieved through solely asynchronous means.
  - Furthermore, we have heard that some accrediting agencies may be advising institutions that either synchronous or asynchronous interaction may count as direct instruction.
- In sections ii-iv of the definition, what type of evidence is needed to document compliance with these sections? We understand that the Department partially addressed in the preamble to the regulations by stating that an institution is expected to maintain policies or procedures that create expectations for faculty to substantively interact with students. The Department also stated that it does not expect institutions to document the exact amount of time spent on any particular type of substantive interaction. We ask that the Department issue guidance to confirm these expectations and to further clarify the minimum expectations for compliance with these policies, and what sort of evidence of implementation and enforcement of policies that institutions should have documented.

- In section ii of the definition, there were questions about the applicability of “auto-graded” assessments. These types of assessments vary greatly from those provided by third-party providers to those requiring significant development and attention from faculty as to the questions included and how they are assessed.
- In section iv of the definition, we have been asked about the term “facilitating” and how active faculty had to be in the group discussion. An institution reported having a few faculty who begin the discussion and do not return to it until it is time to grade students in the discussion.
- In section v of the definition, the regulation states that “other instructional activities approved by the institution’s or program’s accrediting agency” may be used to show substantive interaction in a course or competency. What type of proof of approval is needed? What if an institutional accreditor states that it does not intend to address or provide letters of approval for instructional practices that may be subject to this section?

## Conclusion

We thank the Department for its attention to these questions and for appreciating how institutions want to comply with the regulatory environment, but many questions remain. If there is any way we can provide assistance or further details, we would be pleased to do so.

Sincerely,

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