



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF POSTSECONDARY EDUCATION

March 10, 2022

Ms. Kathryn Kerensky
Director, Digital Learning, Policy & Compliance
WCET State Authorization Network
Boulder, CO 80301

Dear Ms. Kerensky,

Thank you for your letter to Acting Assistant Secretary Michelle Cooper regarding the regulatory requirements in the Distance Education and Innovation regulations published September 2, 2020. Your letter was referred to my office for follow up. I apologize for the delay in responding but hope that the following information will be helpful to you.

Evaluation and Approval of Distance Education by Accrediting Agencies

We want to clarify several aspects of the Department's guidance regarding accrediting agency approval of an institution's offering of distance education. In a [January 19, 2021 Electronic Announcement](#) (EA), we explained that the Department of Education (Department) had rescinded Dear Colleague Letter-06-17, which had been interpreted to establish a 50 percent threshold for institutions related to distance education and an institution's ability to participate in the Title IV, HEA programs. The EA further explained that we had determined that this interpretation conflicted with institutional eligibility requirements under [34 CFR § 668.8\(m\)](#), which requires 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. Therefore, subject to the flexibilities provided by the Secretary in response to the national pandemic, before an institution offers any distance education programs that can be eligible for Title IV, the institution must be evaluated and accredited for its effective delivery of distance education programs by a recognized agency that has distance education within its scope of recognition.

In your letter, you posed several questions about whether the Department now requires accrediting agencies to evaluate and approve any academic program that is offered through distance education for the first time. [34 CFR § 668.8\(m\)](#) provides that "[a]n otherwise eligible program that is 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 has been evaluated and is accredited for its effective delivery of distance education programs by an accrediting agency or association" that is recognized by the Secretary to accredit distance education programs. However, once an institution has been evaluated and approved by such an agency, it may offer other distance education programs without undergoing a separate substantive change evaluation by its accrediting agency. For Title IV

400 MARYLAND AVENUE, S.W., WASHINGTON, DC 20202
www.ed.gov

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

eligibility purposes, an accrediting agency is not required to perform a substantive change evaluation for an institution that has already been approved to offer distance education if the institution begins offering a new or different program using distance education after its distance education offerings have been evaluated and approved by the agency for the first time. Note that an accrediting agency may require a review of additional distance education programs in accordance with its policies and procedures even though such additional review is not required by the Department for Title IV eligibility purposes.

Below, we provide responses to your specific questions regarding this guidance and its impact on accrediting agencies and postsecondary institutions.

Question: 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.

Answer: The Department leaves this determination up to the institution’s accrediting agency. We think it’s important for accrediting agencies to have discretion in this area, especially since a reasonable treatment of a course as “distance education” in one type of program that accrediting agencies oversee (e.g., cosmetology) might differ substantially from reasonable treatment in another (e.g., information technology).

Question: 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?

Answer: No. If one course in a program is offered using distance education, it is subject to the requirements in [34 CFR 668.8\(m\)](#), which state that the institution must be evaluated and approved by an accrediting agency, recognized for the accreditation of distance education, to offer distance education in order for such a program to be eligible. Neither the statute nor the regulations require an accrediting agency to evaluate and approve each program offered using distance education for Title IV eligibility purposes, though an agency could choose to do so.

Question: If an institution decides to change the modality of one course within a program, does it need accreditor approval before making this change?

Answer: Not necessarily. The Department’s regulations require an accrediting agency to evaluate and approve an institution’s offering of distance education if the institution has not been approved to offer distance education in the past. The Department’s rules for Title IV eligibility purposes do not require accrediting agencies to evaluate and approve every program offered using distance education. If an institution has already been approved in general to offer distance education, it would only be required to seek its accrediting agency’s approval to offer an additional program through distance education if the accrediting agency itself required such approval beyond what the Department requires.

Regular and Substantive Interaction Between Students and Instructors

In your letter, you also requested that the Department clarify several aspects of the definition of “regular and substantive interaction” that was updated as part of the definition of “distance education” in [34 CFR § 600.2](#) in the [final regulations published September 2, 2020](#). However, the Department’s position is that the definition of “regular and substantive interaction” must be applied on a case-by-case basis to each institution and its academic program, and careful analysis would be necessary to determine whether an individual institution was complying with the definition. Therefore, in general, the Department cannot provide new guidance in response to these questions, and decisions about compliance with these provisions must be made using the facts of each specific situation.

That said, we provide below responses to your specific questions about the regulatory requirements for distance education in accordance with this general perspective.

Question: 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.

Answer: The Department does not plan to provide further guidance regarding the requirements for instructors. The requirements for qualified instructors are established by accrediting agencies in accordance with their policies and procedures and the Department defers to accrediting agencies regarding such requirements as they pertain to the definition of “distance education.”

Question: 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”?

Answer: Institutions must ensure that they can document the length of a course in weeks of instruction and the number of credit hours or the equivalent associated with the course or competency. Determinations about whether the amount of interaction is “commensurate with the length of time and the amount of content in the course or competency” must be determined on a case-by-case basis depending on the specific circumstances of the situation.

Question: 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.

Answer: The webinar was correct that “office hours” could fulfill part of the requirement for regular interaction between instructors and students. In the preamble to the [September 2, 2020 final regulations](#), the Department stated that “An institution meets the requirement for regular interaction between students and instructors by, in part, providing the opportunity for substantive interactions with the student on a scheduled and predictable basis commensurate with the length of time and the amount of content in the course or competency. This requirement could be met if instructors made themselves available at a specific scheduled time and through a specific modality (e.g., an online chat or videoconference) for students to interact about the course material, regardless of whether the students chose to make use of this opportunity or interact with the instructor at the scheduled time” [85 FR 54760]. Office hours clearly fall into the category described above in the preamble to the final rules. The Department does not currently plan to publish further guidance on this topic.

Question: 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?

Answer: Determinations about whether an instructor is promptly and proactively engaging in substantive interaction with the student on the basis of monitoring the student’s engagement and success must be made on a case-by-case basis depending on the specific circumstances of the situation. The Department has not established specific criteria for measuring this, and specifically indicated in the preamble to the [September 2, 2020 final regulations](#) [85 FR 54760] that in determining an institution’s compliance with these requirements, the Department would evaluate whether an institution has “create[d] expectations for instructors to monitor each student’s engagement and substantively engage with students on the basis of that monitoring...” This could be done through a combination of the establishment of policies and procedures and regular evaluation to ensure that instructors are complying with the institution’s requirements for monitoring and outreach.

Question: The Department lists “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.

Answer: When the Department uses the term “direct instruction,” it means live, synchronous instruction where both the instructor and the student are online and in communication at the same time.

Question: 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.

Answer: We confirm the information in the preamble, but decline to provide further information about the specific methods that institutions could use to implement and enforce these policies. We leave that to the discretion of institutions.

Question: [We have] 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.

Answer: The Department does not consider a grade on an assignment to be “substantive interaction” unless the instructor evaluates the student’s work and provides specific feedback to the student about that work. An automated grading system that provides feedback based on a programmed response to input does not count as “substantive” because it is interaction with a computer, not an instructor.

Question: 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.

Answer: Determinations about the degree of activity in group discussions must be made on a case-by-case basis in accordance with the specific circumstances of the situation.

Question: 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?

Answer: A letter from an accrediting agency that approves one or more activities for purposes of the definition of “substantive interaction” would be sufficient to demonstrate that the accrediting agency had approved those practices. If an accrediting agency is unwilling to provide specific documentation of its approval of institutional practices, then the “approved practices” would only be those that the accrediting agency had included in its general published policies.

Conclusion

Thank you again for your questions and comments regarding the Department’s regulations on distance education. If you have further questions, please contact Greg Martin at gregory.martin@ed.gov.

Sincerely,

Annmarie Weisman
Deputy Assistant Secretary
for Policy, Planning, and Innovation