Seismic Shifts in Distance Ed Regulations: Gauging Department of Education Rulemaking

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Hosted in partnership with:

SAN
STATE AUTHORIZATION NETWORK
a division of WCET

wcetsan.wiche.edu
Welcome!

- Slides can be downloaded via the link in chat.
- Please use the Question box for questions and Chat for other information exchange.
- Slides, recording, and shared resources will be emailed to attendees.

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Introduction
What is Negotiated Rulemaking?

Negotiated rulemaking, or NegReg, is the Department of Education's process to develop new or updated federal regulations.

- Constituency group representatives are nominated and selected.
- These "negotiators" meet to discuss proposed regulations.
- If the group reaches a consensus, the Department releases the agreed-upon language for public comment.
- If the group does not reach a consensus, the Department writes the rules and releases its proposed language for public comment.
- After the public comment period ends, the Department makes any desired changes to the proposed regulations and releases the final version of the regulations.
State Authorization
State Authorization: Reciprocity

Proposed Language
• Enforcement of State Laws
  o Applicable general purpose State laws (as would be applicable to any business).
  o Applicable state laws related to closure including record retention, teach-out plans or agreements and tuition recovery funds or surety bonds.
  o Permit any state to condition or revoke authorization for violation of general purpose laws and regulations.

Implications
• Institution to comply with types of state laws where the student is located.
  o General purpose laws is not new: Fraud, Misrepresentation etc.
  o Closure laws consistent with the new Certification Procedures regulation but extends regardless of reciprocity.
  o SARA process includes the ability for the any state to condition or revoke authorization if an institution violated general purpose laws or regulations—no new impact.
State Authorization: Reciprocity

Proposed Language
• Complaint processes requirements
  o Compliant information to be communicated to the state where the student is located.
  o Report publicly and annually institutional complaints by type and number of complaints.
  o Allow for the state’s discretion to address complaints without first going through the institution’s complaint process.

Implications
• Many are similar to SARA policy
  o Currently SPEs share information between the home and host states in order to resolve the complaint.
  o Current SARA Policy provides for reporting but can add type and number.
  o The proposed language is not completely clear about what state can have the final authority over the resolution of the complaint.
State Authorization: Reciprocity

Other Reciprocity Related Proposals

- Reciprocity boards limited to state employees in regulatory jobs.
- More than 500 enrolled students in a state in the two most recently completed award years, the institution must seek individual state authorization in those states.

Implications

- Regional compacts and other expertise removed from board.
- Threshold language is not clear.
  - Process: what activities, whose data, who oversees, & what is the time to obtain state approval.
  - Protections: what about the institution serving more than 500 students in a state with no oversight? Would those students lose protections?
Distance Education
Return to Title IV: Attendance Taking

Proposed Language
• Require taking "attendance" for all distance education courses - meaning finding last academic activity.

• Document student's withdrawal within 14 days of "last date of attendance."

Implications
• Currently, institutions only need to determine the last day of attendance for those students who cease attending a distance class.

• Must determine when the student last engaged in an academic activity.
Distance Education: Virtual Location

Proposed Language
• Create new "virtual location."
• Defined as: "offers 100 percent of an educational program through distance education or correspondence courses, not withstanding requirements for students to complete on-campus or residential periods of 90 days or less."

Implications
• Student can access closure benefits if institution closes all of its distance programs.
• Allows Department to collect more data on distance education programs.
Distance Education: Asynchronous Clock Hours

Proposed Language
• For institutions using clock hour financial aid - Disallow synchronous distance education courses. 

NOTE: Does not apply to credit hour instruction.

Implications
• Asynchronous distance education clock hour courses would no longer be eligible for Title IV financial aid.
• Regulate against courses purely on modality reasons?
Distance Education: Accreditation

Proposed Language
Thresholds for “substantive change” reviews:
• First program offered 50% at a distance. OR
• Institution exceeds 50% of students enrolled in at least one distance course. OR
• Institution offers at least 50% of its courses at a distance.

Implications
• Replaces 2021 threshold of program being offered "in whole or in part" at a distance.
• While better, an increasing number of institutions will hit the 50% enrollment threshold.
Books and Resources in Tuition and Fees
Cash Management: Books & Resources in Tuition & Fees (Inclusive/Equitable Access)

Proposed Language

- Institutions could only include instructional materials and supplies in tuition and fees if:
  - The institution "individually discloses the cost," AND
  - The student opts-in, AND
  - The cost of the materials is "at or below competitive market rates."

Implications

- Inclusive access programs as they currently operate at most institutions would be significantly hampered.
Questions from the Audience
Additional Information and Resources

US Department of Education Rulemaking site:
bit.ly/EDRulemaking2024

WCET Frontiers Updates:
bit.ly/NegRegWeek1Update
bit.ly/NegRegWeek2Update
bit.ly/NegRegWeek3Update
wcet.wiche.edu/frontiers

The webcast recording and additional resources will be available in the next week: wcet.wiche.edu/events/webcasts.
Resources for SAN Members

SAN Website:
Federal Regulations Landing Page
https://wcetsan.wiche.edu/resources/federal-regulations

Getting Started with Compliance Management Gateway
https://wcetsan.wiche.edu/resources/getting-started
Learn more and stay connected:

Visit wcet.wiche.edu to explore our Policy and Practice work, Events, Membership, and Sponsorship.

Learn more about the benefits of joining our community: wcet.wiche.edu/join-us

WCET is the leader in the practice, policy & advocacy of digital learning in higher education.

Community  Equity  Policy  Practice
Upcoming WCET Webcast

Learn more and register: wcet.wiche.edu/events

- AI Ethics, Governance, Policy, and Practice in Higher Education: A Strategic Webcast for Leaders and Practitioners – April 4, Noon MT
Upcoming SAN Events

Learn more and register for SAN Events: wcetsan.wiche.edu/events/upcoming

- NASASPS 2024 Conference (in collaboration with SAN) April 7-10, 2024 (in person); Charleston, SC.
- SAN-U Member Integration Course (8-week Online Fundamentals Course); Cohort #2 begins April 16, 2024.
Join us for a WCET and SAN special event:

**Distance Ed at a Crossroads: The Changing Landscape of New Regulations**
July 30-31, 2024 | St. Louis, Missouri
Submit Your Session Idea for the WCET Annual Meeting

Deadline: Tuesday, April 2

bit.ly/WCET2024proposals

Join us October 8-10 in Long Beach, CA!
Thank you

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Supporting members make an additional investment and support WCET’s mission to advance the effective use of technology for teaching and learning.
Thank you for attending!

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