

Seismic Shifts in Distance Ed Regulations: Gauging Department of Education Rulemaking March 20, 2024

Federal Rulemaking Process & Timeline

1. What is the effective date of new regulations developed from the issues addressed during the Winter 2024 negotiated rulemaking committee meetings?

Issues addressed in the rulemaking committee meetings that concluded in March 2024 will not become effective regulations until July 1, 2025, at the earliest.

2. What are the next steps in the rulemaking process?

- The U.S. Department of Education must prepare the proposed regulations.
- Proposed regulations will be released for public comment for typically 30 days.
- The Department must review the public comment, prepare responses, and prepare final regulations.
- Final regulations must be released by November 1, 2024, to be effective July 1, 2025.
- Final regulations released November 2 or later will not become effective until July 1, 2026.
- The Department may use its discretion to delay enforcement on selected sections.

State Authorization – Reciprocity Agreements

3. I am still confused about the complaint regulation. We have no physical presence outside of Wyoming, why would a student complain to their state education board when they have no authority over our state education regulations?

Enrolling a student located in another state makes the institution subject to the authorization rules, if any, of that state. Outside of reciprocity, states vary as to the definition of physical presence and approval necessary that will provide the state the ability to exercise authority over institutions serving students in their state. The proposed language voted upon by the negotiators, but did not reach consensus, included a subsection indicating that a reciprocity agreement must permit a member state to accept, investigate, and resolve complaints. The Department's reasoning is the ease for the student and protection by the state where the student is located. Currently in practice, SARA states have accepted complaints where the student is located and communicated then with the home state of the institution to process and resolve the complaint in collaboration with the state where the student is located.

4. I'm confused about the complaint part b/c we're already required to have a published complaint process. The Feds already require this and so does SARA so where is the disconnect??

You may wish to note that the Department is proposing to regulate all state authorization reciprocity agreements now and in the future, not just the reciprocity agreement we know as SARA. Many of the aspects proposed in a complaint process for reciprocity are already part of SARA Policy. However, the Department proposes to put in regulation what should be in a complaint process for reciprocity and adds more aspects to the process. There are Federal regulations that require a state to have a process to accept and resolve complaints. However, states vary in their clarity as to their processes' applicability to in-state institutions and institutions for which they have direct authority and a complaint process pertaining to reciprocity.

5. Are the 500 students in a given state only distance education students, or does this apply to all students?

The proposed language pointed to a condition for the institution to be authorized through reciprocity that there was a threshold of 500 students. Whether this includes distance education and learning placements is unclear. There will have to be clarification in the proposed regulation.

Distance Education

6. Is this Distance Education ruling only for classes that are eligible for Federal financial Aid?

Yes. The Department of Education regulates the terms for institutional eligibility for disbursing Federal financial aid funds.

7. Does the proposed language take into consideration courses that are not semester-long? Instead of 15/16 weeks, 7/8 weeks or even 4 weeks?

Assume this question is about the 14-day requirement for documenting withdrawals in a distance education course. The Department’s proposed language referenced only 14 days with no difference for length of term for the course. This is a good issue for us to raise with the Department.

8. Regarding attendance, some classes have only a final exam and no other submissions for the entire semester. is there a list of what activities are acceptable?

The academic activities that are acceptable are defined in [the “academic engagement” definition in Section 34 § 600.2 Definitions](#) section of the Code of Federal Regulations...as copied below:

Academic engagement: Active participation by a student in an instructional activity related to the student's course of study that—

- 1) Is defined by the institution in accordance with any applicable requirements of its State or accrediting agency;
- 2) Includes, but is not limited to—
 - i. Attending a synchronous class, lecture, recitation, or field or laboratory activity, physically or online, where there is an opportunity for interaction between the instructor and students;
 - ii. Submitting an academic assignment;
 - iii. Taking an assessment or an exam;
 - iv. Participating in an interactive tutorial, webinar, or other interactive computer-assisted instruction;
 - v. Participating in a study group, group project, or an online discussion that is assigned by the institution; or
 - vi. Interacting with an instructor about academic matters; and
- 3) Does not include, for example—
 - i. Living in institutional housing;
 - ii. Participating in the institution's meal plan;
 - iii. Logging into an online class or tutorial without any further participation; or
 - iv. Participating in academic counseling or advisement.

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9. Do we know if attendance tracking can be automated on a report of activity from the LMS?

The Department thought that attendance tracking would be simple since you are supposed to be tracking it in your LMS anyway. Remember that it is not just attendance (logins don't count), but evidence of academic engagement. If you can do the tracking in the LMS, so much the better.

10. "Academic Activity" = graded assignment or ungraded assignment?

See the definition of "academic engagement" above (question #8). It is not specific on this point, but as part of Regular and Substantive Interaction, there is the requirement to perform assessment during each distance education class or evidence of "last date of attendance", the Department might accept some ungraded assignments if they are used to further student learning and engagement.

11. Could you explain again what is meant by a virtual location for distance education?

Currently, all programs (whether in-person or at a distance) are associated to one of three types of physical locations: a main campus (the primary physical facility as certified by the Department and the institution's accrediting agency), a branch campus (is physically separate from the main campus, offers degrees, and has some autonomy), or an additional location (is physically separate from the main campus, offers at least 50% of a program, but has no autonomy). See the full definitions for main campus, branch campus, and additional location in [Section 34 § 600.2 Definitions](#).

The Department seeks to create a subset of an additional location for all programs that meet the following definition: "offers 100% percent of an educational program through distance education or correspondence courses, notwithstanding requirements for students to complete on-campus or residential periods of 90 days or less." The student records for all students enrolled in such programs would be categorized as being in the institution's new "virtual location."

12. Is the virtual location per each program as a virtual location? Cause that's crazy to me, we don't consider our programs individual locations on campus why would we consider each distance a separate location from the main organization.

The "virtual location" category is not by program. The "virtual location" includes all programs that meet the following definition: "offers 100 percent of an educational program through distance education or correspondence courses, notwithstanding requirements for students to complete on-campus or residential periods of 90 days or less." Previously, those distance education programs were reported from the main or branch campus from which they originated. They now will all be reported through this new "virtual location" classification.

13. I'm all for a "virtual location" in terms of assuring that we're providing students with equitable access to services and accessibility, but this proposal from the Department looks like a trap, especially if you look at it alongside FVT/GE. What evidence did the Dept. provide for needing virtual locations?

The only "equitable access" mentioned by the Department related to this proposal was in regard to federal financial aid closure protections if the institution ceases to offer all of its distance education programs. The other main reason that they gave was that this would allow them to gather more data to determine if and how distance education should be regulated in the future. Their "evidence" cited was the lack of data.

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14. Another virtual location question: Is this aimed at schools that are primarily distance ed schools? What are the consequences of being deemed to have a virtual location?

The virtual location is not aimed at primarily distance education institutions. It is aimed at ALL institutions that have at least one program that meets the following definition: “offers 100% percent of an educational program through distance education or correspondence courses, notwithstanding requirements for students to complete on-campus or residential periods of 90 days or less.”

All students are associated as being in one location, so they are currently tied to a main campus or branch campus. The institution will need to create the virtual location designator in its SIS and or financial aid systems. It will need to identify all students in the programs meeting the definition. The institution will then need to associate those students with the virtual location and remove them from their original location. Before these actions, the Department will need to indicate what data is to be reported for students in a virtual location.

15. I am wondering, do you think with a Virtual Location definition at the federal level that some states may adopt that definition into their state authorization related laws?

It is possible. Some states that have definitions reflect the old (now revisited) 50% of a course/program definition for categorizing distance education activity. Other states used their own definitions and many states have no oversight of distance education from institutions in other states.

16. How might this interact with hyflex courses? (campus course but some students synchronous online?)

The definition of “hyflex” varies greatly by institution. If you are using the typical definition that gives a student the option to attend each session either in-person or online, then a student could choose to take the entire course at a distance. In response to a similar [question we asked regarding Regular and Substantive interaction](#), if a student has the option to take the whole course at a distance, then it is a distance course. That would make such “hyflex” courses subject to the distance education proposed regulations.

17. I was unclear on the implications of the class hours and how that would be viewed for synch and asynch programs

The proposed rule regarding asynchronous programs is aimed only at institutions that disburse federal financial aid through the clock hour method. There are three main methods for financial aid disbursement: credit hour, clock hour, and direct assessment. Direct assessment is a more competency-based option. Clock hour financial aid disbursement is typically for practical or professional-preparation types of programs, such as cosmetology, automotive repair, welding, and the like. The Department is proposing to disallow the ability to grant aid for asynchronous courses in clock hour programs. This appears to be true whether the course is either fully or partially asynchronous. NOTE: Institutions and programs that use credit hours for federal financial aid are not affected.

18. rhetorical perhaps, but is there a concern w USED regulating both outcomes (GE) and inputs (clock hours, etc.). It should be one or the other, agree?

It is their prerogative to oversee the proper use of federal financial aid funds as they see fit.

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19. In terms of the 14 days, what happens if you the student returns to "engagement" after the 14 days and the process to return funds has been initiated? 14 days seems arbitrary and too short of a period.

This is a question that we have for the Department. We heard two explanations: 1) the 14 days could be used see if the student wishes to re-engage in the course, and 2) the 14 days would be the date when the institution is to determine when the student ceased to attend. Presumably, the student would be officially withdrawn from the course.

There are undoubtedly points in the withdrawal and return of funds process where the steps cannot be reversed.

As noted in a previous question, 14 days does not fit well with short courses, but there is no variation on the timeline as currently proposed by the Department. On the other hand, the Department wishes to make sure that the student is continually progressing, and that the institution is not keeping the student as enrolled so that it can retain more financial aid funds.

20. Should we assume that "at least 50% of its courses at a distance" means 50% of sections offered, or 50% of enrollment in distance sections? A course can be offered in multiple modalities.

There is a separate criterion for 50% of enrollments, so that is not tied to counting courses. How they will count courses will need to be clarified. Presumably, (don't take this to the bank) having a course offered in-person and online would add to both in-person and distance education counts. It's unclear if they would count each section.

Books & Resources in Tuition and Fees

21. How does the fees discussion align/connect with existing HEA language about students knowing how much materials will cost prior to registration -- which I have not see easy to execute, particularly Spring reg for Fall courses, when faculty assignments shift and so do materials required.

The Department did not address this concern. Currently, institutions are tasked with estimating the cost for instructional materials so they can be included in the institution's cost of attendance calculation regardless of whether or not an institution is using an inclusive access program.

22. So what's to stop schools from offering materials for "free" and raising tuition by the inclusive access price?

The Department was unclear on this scenario. In response to a relatively similar question from a negotiator, it seemed to indicate in the discussion of the proposed language that raising tuition by the inclusive access price and providing materials for "free" would not be allowable, but the proposed language does not address this scenario.

23. Can we determine the amount of added expense that the added requirements will drive? This looks to be more bureaucracy, higher costs, and slower response time in general.

Unfortunately, there is no current way to determine the economic impact of this proposed language (or the impact of any of the other proposals), but it is fair to assume that there would be an economic impact to institutions.

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24. Would the proposed changes to the rules for tuition and fees affect general supply fees...for example, welding students who pay a fee to support the costs of bulk metal used by the entire class.

The Department did not address this scenario. The proposed language specifies “books, supplies, and other educationally related goods and services” but does not define what constitutes “other educationally related goods and services.” The discussion during rulemaking included examples related to scuba and cosmetology, but this term was not clarified in the proposed language.

General Questions

25. Is there data that defines the problems that the proposed changes proprot to solve?

The Department was asked by several negotiators to provide evidence of the issues being addressed by the proposed language. In most cases, the Department was unable to provide evidence beyond stating that it had heard of problems, was aware of problems, or had witnessed some non-compliance in aid reviews of institutions.

26. Is compliance monitored by ED or triggered by reporting or student complaints. Etc.?

Both. The U.S. Department of Education holds regular, periodic reviews of institutional financial aid processes. Typically, they review a subset of the institution’s practices and will seek evidence from the institution that it is compliant with the related regulations. Complaints against an institution can also trigger an additional compliance review.

27. Will students currently enrolled (before 7/1/24) be allowed to continue to graduation if their program is not approved in their home states? Or will Fall 2024 be their last semester to enroll?

This question refers to the new professional licensure regulations that were released as final October 31, 2024, and will be effective July 1, 2024. The new regulation directs that for each **student who enrolls in a program on or after July 1, 2024**, the institution must satisfy state educational requirements in the state where the students enrolled by the institution in distance education, or correspondence courses are located as determined at the time of initial enrollment. The Department does not want to place barriers to completion for students currently enrolled in programs leading to a license. More on this topic can be found on the [SAN website HERE](#).

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