September 20, 2017

Docket ID: ED-2017-OS-0074

The Honorable Betsy DeVos

Secretary of Education

Dear Madam Secretary -

Thank you for the opportunity to suggest areas of regulation that need revision, replacement, or modification (or other needed action) as requested in the Federal Register on June 22, 2017.

WCET (the WICHE Cooperative for Educational Technologies[[1]](#footnote-1)) is a unit of the Western Interstate Commission for Higher Education, a non-profit interstate compact headquartered in Boulder, Colorado. WCET is the leader in the practice, policy, & advocacy of technology-enhanced learning in higher education. Our members come from throughout the United States.

**Issue #1: Defining Distance Education and Blended/Hybrid Education**

The current definition of “distance education” (Chapter 34, §600.2[[2]](#footnote-2)) is:

*“Distance education* means education that uses one or more of the technologies listed in paragraphs (1) through (4) of this definition to deliver instruction to students who are separated from the instructor and to support regular and substantive interaction between the students and the instructor, either synchronously or asynchronously. The technologies may include—

(1) The internet;

(2) One-way and two-way transmissions through open broadcast, closed circuit, cable, microwave, broadband lines, fiber optics, satellite, or wireless communications devices;

(3) Audio conferencing; or

(4) Video cassettes, DVDs, and CD-ROMs, if the cassettes, DVDs, or CD-ROMs are used in a course in conjunction with any of the technologies listed in paragraphs (1) through (3) of this definition.”

This definition is dated and does not reflect current practice. Those in the distance education community have had to deal with multiple problematic definitions in trying to comply with regulations from multiple agencies. The problems faced by institutions were recently highlighted by the National Council for State Authorization Reciprocity Agreements’ (NC-SARA) recent data collection on enrollment patterns of its member institutions. Marshall Hill, Executive Director, told WCET staff of the many calls his staff received over confusion regarding IPEDS definitions, which reflect the Department of Education’s definition. In an NC-SARA report[[3]](#footnote-3) released in September 2017, the following “reporting challenges” are cited:

“In an attempt to standardize reporting requirement for institutions, NC-SARA relies on IPEDS definitions, schedules, etc. Unfortunately, it is clear from the comments submitted in 2017 that many institutions struggle to understand how they should report to IPEDS. And, since SARA’s basic instructions are to ‘report as you do for IPEDS, but disaggregate by state, territory, or district in which the students reside,’ those misunderstandings affect NC-SARA reporting. Over half (51.7%) of comments provided in the Comment field of 2017 survey specifically mentioned variations from IPEDS data, definitions, and concerns with how to report military students and those in the five U.S. territories.”

***Definitions of Distance Education Courses and Programs Used by Accrediting Agencies***

Accrediting agencies base their definitions on the federal definition, but they provide yet another example of oversight confusion for institutions. The following table is a shorthand review of their definitions. Some of the agencies do not define what comprises a distance education course or program. For those that do, there is not agreement in their definitions. All of them cite the federal definition of “distance education” as a concept.

|  |  |  |
| --- | --- | --- |
| **IPEDS & Accreditors** | | |
| **Organization** | **Course Definition** | **Program Definition** |
| IPEDS[[4]](#footnote-4) | 100% at a distance (except for tests, orientation, and student services) | 100% distance courses |
| Higher Learning Commission[[5]](#footnote-5) | 75% at a distance | 50% or more at a distance |
| Middle States Commission on Higher Education[[6]](#footnote-6) | Uses federal distance education definition, but does not define for courses. | Uses federal distance education definition, but does not define for programs. |
| New England Association of Schools and Colleges[[7]](#footnote-7) | Not defined | Programs “(1) …for which students may earn 50% or more of the credits through technologically mediated instruction and/or (2) degree completion programs offered on-line” |
| Northwest Commission on Colleges and Universities[[8]](#footnote-8) | A “majority” – Includes correspondence study, which is specifically excluded in federal definitions | A “majority” |
| Southern Association of Colleges and Schools[[9]](#footnote-9) | A “majority” – Separately defines correspondence education | A “majority” |
| WASC – Accrediting Commission for Community and Junior Colleges[[10]](#footnote-10) | Uses federal distance education definition, but does not define for courses. | Uses federal distance education definition, but does not define for programs. |
| WASC – Senior College and University Commission[[11]](#footnote-11) | Uses federal distance education definition, but does not define for courses. | Uses federal distance education definition, but does not define for programs. |
| Distance Education Accrediting Association[[12]](#footnote-12) | Acknowledges federal definition. For DEAC purposes includes “correspondence, online, or direct assessment.” No course definition. | Acknowledges federal definition. For DEAC purposes includes “correspondence, online, or direct assessment.” No program definition. |

***The Impact of Multiple Definitions on One University***

In 2012-13, Indiana University created a report[[13]](#footnote-13) that documented the different distance education definitions to which it was subject. The following table summarizes the many differences among the agencies with oversight on the University’s activities and highlights the problems in compliance:

|  |  |  |
| --- | --- | --- |
| **IPEDS & Accreditors** | | |
| **Organization** | **Course Definition** | **Program Definition** |
| IPEDS | 100% at a distance (except for tests, orientation, and student services) | 100% distance courses |
| Higher Learning Commission | 75% at a distance | 50% or more at a distance |
| Indiana Commission on Higher Education | “80% or more of the content” at a distance | “80% of requirements to meet the degree/credential” at a distance |
| U.S. Department of Veterans Affairs | If less than “two regularly schedule standard class sessions per term”[[14]](#footnote-14) | No definition provided. |
| U.S. Department of Homeland Security | No definition provided. | Less than “9 credits per semester for an undergraduate” are onsite |

The Department of Education should partner with accrediting agencies, state-focused agencies (e.g., NC-SARA, SHEEO), and distance education organizations to develop definitions that are more universally recognized. Bringing clarity to these definitions would bring policy in line with practice, increase institutional efficiency in complying with regulations, and assure that data requests result in receiving comparable data.

**Issue #2: Regular and Substantive Interaction**

The Department of Education’s Office of Inspector General (OIG) has issued letters that define “regular and substantive interaction” in courses eligible for financial aid reimbursement in such a way as to kill some higher education innovations. Competency-based education and some distance education programs could be declared ineligible for aid simply because the OIG does not like the process used for education. Surprisingly, they cannot demonstrate any actual harm to students. In a WCET *Frontiers* blog post[[15]](#footnote-15), Van Davis, Blackboard, and I outlined our understanding of how the OIG is interpreting this regulation.

The reason given for the regulation is as an outgrowth of fraud regarding aid given to correspondence study providers. WCET is four square against financial aid fraud, but this interpretation of the regulation caused more harm than protection. For some reason the OIG and others in the Department have been reticent to consider any alternatives to reach the same goals. WCET believes that alternative measures based upon outcomes and progress would actually provide more protection. For example, distance education providers are already asked to collect evidence of academic participation in a course when determining “last day of attendance” for the return of Title IV funds (R2T4). This work could be the basis for a new measure that allows for competency-based education, distance education, and future unforeseen innovations to proceed.

**Issue 3: Financial Aid Reporting and Disbursements for Nontraditional and Distance Education**

WCET agrees with the recommendations made in response to the call for comments by the National Association of Student Financial Aid Administrators. From page 5 of their response[[16]](#footnote-16):

“*Nontraditional program formats and distance education*

Perhaps the greatest areas for innovation in higher education are distance education and nontraditional program formats. Multiple attempts have been made over many years to refine regulations so they are more appropriate to nontraditional program formats. We believe it is time to try again. Likewise, distance education is constricted by rules designed to apply to traditional modes of learning at brick and mortar schools. Rules should instead help to facilitate what can be a significantly lower cost alternative and innovative approach to higher education. In 2015, a NASFAA task force on innovative learning models developed several recommendations to help eliminate barriers and encourage success for students in nontraditional learning formats.

ED should work with schools and associations with a stake in these areas to identify regulations that inhibit innovation and success.”

Echoing the NASFAA recommendation, WCET members stand ready to work with the Department of Education to determine solutions to these issues.

Thank you on behalf of the WCET Membership

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1. WCET: http://wcet.wiche.edu/ [↑](#footnote-ref-1)
2. Chapter 34, §600.2, Definitions: https://www.ecfr.gov/cgi-bin/text-idx?SID=45af1ca20d59e76ed61f284eeabeb448&mc=true&node=se34.3.600\_12&rgn=div8 [↑](#footnote-ref-2)
3. “NC-SARA Institutions Report Enrollments”: http://nc-sara.org/content/nc-sara-institutions-report-enrollments [↑](#footnote-ref-3)
4. Integrated Postsecondary Education Data System (IPEDS) Glossary: https://surveys.nces.ed.gov/ipeds/VisGlossaryAll.aspx [↑](#footnote-ref-4)
5. Higher Learning Commission: https://www.hlcommission.org/General/glossary.html#InstChange [↑](#footnote-ref-5)
6. Middle States Commission on Higher Education (pp. 57-60): http://www.msche.org/publications/CHX-2011-WEB.pdf [↑](#footnote-ref-6)
7. New England Association of Schools and Colleges: https://cihe.neasc.org/sites/cihe.neasc.org/files/downloads/POLICIES/Pp82\_Review\_of\_Electronically\_Offered\_Degree\_and\_Certificate\_Programs.pdf [↑](#footnote-ref-7)
8. Northwest Commission on Colleges and Universities: http://www.nwccu.org/Glossary%20and%20FAQs/Glossary/Glossary.htm#D [↑](#footnote-ref-8)
9. Southern Association of Colleges and Schools: http://www.sacscoc.org/pdf/DistanceCorrespondenceEducation.pdf [↑](#footnote-ref-9)
10. WASC – Accreting Commission for Community and Junior Colleges: http://accjc.org/wp-content/uploads/Guide-to-Evaluating-DE-and-CE.pdfi [↑](#footnote-ref-10)
11. WASC – Senior College and University Commission (page 45 of Glossary does not define. Searches of the Handbook and other web resources did not uncover specific definitions): https://www.wscuc.org/content/2013-handbook-accreditation [↑](#footnote-ref-11)
12. Distance Education Accrediting Commission (pp. 5-6): http://www.deac.org/UploadedDocuments/2017-Handbook/2017-DEAC-Accreditation-Handboook.pdf [↑](#footnote-ref-12)
13. Indiana University Office of Online Education and University Student Services and Systems: “Definitions of Distance Education [Courses, Programs and Students] and Reporting Credit Hour Allocations” [↑](#footnote-ref-13)
14. If a Veteran takes all their courses at a distance, there Basic Allowance for Housing is cut in half. [↑](#footnote-ref-14)
15. “Interpreting What is Required for ‘Regular and Substantive Interaction’”: https://wcetfrontiers.org/2016/09/30/interpreting-regular-and-substantive-interaction/ [↑](#footnote-ref-15)
16. NASFAA response: https://www.nasfaa.org/uploads/documents/ResponsetoEDSolicitationof6-22-17.pdf [↑](#footnote-ref-16)