



June 4, 2010

VIA MESSENGER AND ELECTRONIC MAIL

The Honorable Arne Duncan  
Secretary  
U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, DC 20202

RE: Documentation of Last Day of Attendance for Online Programs

Dear Secretary Duncan:

On behalf of the higher education associations listed below, we respectfully request that the Department issue formal, prospective guidance on documentation of last day of attendance (“LDA”) for online educational programs. We are concerned that the Department may be developing and retroactively applying an LDA standard for online programs during the course of Title IV program reviews that differs from longstanding practice. Given the importance of this matter for a great many institutions, we believe that a standard for documenting LDA must be clearly articulated, widely disseminated, and incorporate informed input from institutions so as to provide fair notice and time to conform procedures to the Department’s requirements.

As you are very well aware, over the course of the last quarter century online learning has transformed American higher education. Thousands of institutions of all types and sizes use online programs as key components of their overall educational missions. With this growth, regulatory issues small and large have arisen as Congress and the Department continuously adapt existing law, regulations, and guidance to the pedagogy of asynchronous online learning. One such issue is the documentation of LDA for online programs for the purpose of federal student financial aid program administration.

Determination of LDA is an important component of the administration of an institution’s federal student financial aid program. Institutions must calculate the amount of unearned financial aid funds to be returned to the Department when a student withdraws without providing formal notice, and the methods used by our member institutions to determine that date of withdrawal vary dramatically. Where an institution is required by its state authorizing agency or accreditor to document attendance, it must use its attendance record as the basis for establishing the withdrawal date. If an institution voluntarily takes attendance, it may use either the attendance record or the mid-point of the financial aid payment period. However, if an institution is not required and does not voluntarily take attendance, the institution may either use the mid-point of the financial aid payment period as

the effective withdrawal date or it may document the student's actual LDA as determined by his or her last known "academically related activity."

The Department has typically afforded great deference to institutions to determine the method by which they choose to document LDA. When issuing final regulations on LDA in 1999, the Department noted the following:

Just as there is a wide variety in the types of educational programs offered by institutions, there appears to be a lot of variation in ways that institutions have been able to identify a last date of attendance at an academically-related activity... This flexibility permits institutions to control the process used to verify the student's attendance in these activities. 64 Fed. Reg. 59026 (Nov. 1, 1999).

While the 2009-2010 Federal Student Aid Handbook provides examples of academically related activities that institutions may use to determine LDA, that list is nonexclusive; "the determination of a student's withdrawal date is the responsibility of the school." Accordingly, institutions have utilized the deference afforded them by the Department to document LDA in a variety of ways.

Among other methods, our member institutions document LDA for onground programs as any "presence" (although not necessarily participation) in class. Similarly, many of our institutions have also relied on the "entry" of a student into his or her electronic classroom as an indicator of student "presence" in online classes. This standard for determining LDA is substantially equivalent for onground and online programs.

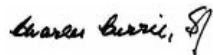
We are concerned that in reviewing online programs, the Department may be retroactively departing from the customary deference reflected in its existing regulations and guidance respecting an "academically related activity" by substituting the "regular and substantive interaction between the students and faculty" component of the definition of distance education program in the Higher Education Opportunity Act of 2008. Our particular concern is that in doing so the Department may, with retroactive effect, effectively prohibit online programs from documenting LDA as the last recorded date that a student entered his or her electronic classroom. If the Department is indeed intent on taking such action, it will have done so without providing institutions adequate notice and guidance as to the intended standard. The effect would be to put many of our institutions that offer online instruction at risk for exceedingly large program liabilities for failure to document LDA based on a standard that has never been articulated either in regulation or formal guidance.

The Department now has the opportunity to define prospectively what constitutes evidence of LDA in online programs for the purpose of calculating the return of Title IV funds in a manner that is substantially comparable for onground and online programs. A portion of the Department's recent Program Integrity Negotiated Rulemaking focused on LDA as it relates to the return to Title IV calculation. Though the documentation of LDA for online programs was not specifically addressed during the negotiated rulemaking, the Department has the opportunity to provide clarity on this matter during the notice-and-comment process that will soon begin upon release of its proposed regulations. Nonetheless, we defer to the Department regarding the specific form of guidance to be issued.

We request that the Department issue clear guidance setting forth the documentation that our institutions may use to evidence LDA for online programs that would be effective beginning with the 2011-2012 award year. This would provide sufficient time for institutions to make any modifications to their systems and procedures to comply with the Department's new guidance. We would welcome the opportunity to offer the perspectives of our member institutions not only on what is appropriate but also on what is practically and technologically feasible.

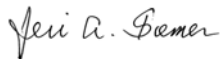
We appreciate your attention to this important matter.

Sincerely,



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cc: Martha J. Kanter, Under Secretary, U.S. Department of Education