



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF POSTSECONDARY EDUCATION

AUG 23 2010

Mr. Russell Poulin
Associate Director
WCET
3035 Center Green Drive, Suite 200
Boulder, CO 80301

Dear Mr. Poulin:

I would like to thank you and the three other representatives of higher education associations for writing to Secretary Arne Duncan concerning the documentation of a student's last date of attendance for students who withdraw from an online program at a postsecondary institution. I am pleased to respond on his behalf and am sending identical letters to the other individuals who signed your letter.

In particular, you are concerned that the Department may be developing and retroactively applying requirements for documenting a withdrawn student's last date of attendance in an online program that are at odds with long-standing practice at institutions.

As you noted, when a recipient of Federal student financial aid ceases attendance at an institution before completing a term or similar period of enrollment, regulations require the institution to use the student's withdrawal date to determine the percentage of the originally awarded Federal student financial aid the student has earned. The regulatory requirements for determining the student's withdrawal date differ for institutions that are required to take attendance and those that are not required to take attendance (34 CFR 668.22(b) and (c)).¹ The last date of academic attendance as determined by the institution from attendance records must always be used as the withdrawal date at an institution that is required to take attendance. At an institution that is not required to take attendance, the use of the date of a student's last date of attendance at an academically related activity is never required; rather, an institution may choose to use it as the student's withdrawal date instead of—

- The earlier of the date, as determined by the institution, that the student began the institution's withdrawal process, or the date, as determined by the institution, that the student otherwise provided official notification to the institution, in writing or orally, of his or her intent to withdraw; or
- For a student who did not provide notification of his or her withdrawal, the midpoint of the term or similar period of enrollment, except that, for a student who does not provide

¹ Currently, institutions that voluntarily take attendance, but are not required to do so by an outside entity, are not considered to be institutions that are required to take attendance. On June 18, 2010, the Department published proposed regulations that would change this (75 FR 34806).

notification due to circumstances outside of his or her control, the institution may use the date that it determines is related to those circumstances.

Although the regulations do not specifically address the determination of a last date of attendance for withdrawals from online programs, they do require that attendance be “academic” or “academically-related.” If an institution that is not required to take attendance chooses to use the date of a student's last date of attendance at an academically related activity as the student’s withdrawal date, the regulations require the institution to document not only that the student attended the activity, but also that the activity is academically related. The regulations define an “academically-related activity” to include, but not be limited to, an exam, a tutorial, computer-assisted instruction, academic counseling, academic advisement, turning in a class assignment, or attending a study group that is assigned by the institution.

The *Federal Student Financial Aid Handbook* provides additional guidance to institutions in this area (beginning on page 5-77 of the 2009-2010 edition). For example, the *Handbook* lists living in institutional housing and participating in the school’s meal plan as examples of activities that are not academically related. It also notes that the determination of a student’s withdrawal date is the responsibility of the institution. Therefore, if an institution is using a last date of attendance at an academically-related activity as the withdrawal date, the institution, not the student, must document the student’s attendance.

In general, the Department does not believe that documentation that a student has logged into an online class is sufficient by itself to demonstrate academic attendance. This position is consistent with the guidance the Department has provided to individual institutions regarding the applicability of the regulations to online programs.

Examples of acceptable academic activities that the Department has provided include participation in an online discussion and initiating contact with a faculty member to ask a course-related question.²

When assessing an institution’s compliance with any program requirement, the Department takes into account whether and when any written guidance has been provided by the Department, including guidance provided directly to the specific institution. The Department also looks at information provided by the institution in support of the compliance of its policies and procedures. Thus, to the extent that an institution believes that its individual policies and procedures support the use of documentation of a student logging into an online class as evidence of academic attendance, it will be afforded an opportunity to demonstrate that that is the case.

² We note that these same issues arise in the determination of whether a student has begun attendance--if a student has not, all Federal student financial aid must be returned in accordance with 34 CFR 668.21--and the same guidance applies.

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A Notice of Proposed Rulemaking, published June 18, 2010 (75 FR 34806), contains proposed regulations related to taking attendance for the determination of the Federal student financial aid earned by withdrawn students. The proposed regulations do not specifically address distance education programs, but if we receive comments on this issue, they may provide the Department with an opportunity to address distance education in final regulations.

I hope this information is helpful. If I may assist you further, please let me know.

Sincerely,

A handwritten signature in black ink, appearing to read 'E. M. Ochoa', written in a cursive style.

Eduardo M. Ochoa
Assistant Secretary for
Postsecondary Education