

Seismic Shifts in Distance Ed: Gauging Department of Education Rulemaking

Kim Nawrocki:

Good afternoon everyone. Thanks for joining us for today's webcast. Seismic Shifts in Distance ED Regulations Gauging, the Department of ED Rulemaking. Based on the number of people registered today, we think that these issues coming out of the department may be concerning for you. So I'm going to quickly move through some housekeeping notes and our panelists can provide you with the latest updates. Next slide please. We're hosting this webcast with our friends at the State Authorization Network. My name is Kim Nawrocki, I'm the Assistant Director for events and programs at WCET. We will put a link to the slides in chat so you can download those if you like, there are some links in there that you might find helpful. As we go through the webinar today, please use the Q&A section for your questions. You can find that button at the bottom of your screen.

The Q&A has an of vote function that we'd ask you to use, that'll help us understand which questions are most important to you today. And if you'd like to expand on the question that's already been asked, you can use the reply feature to help me better group questions when we are ready to get to those. We are recording and we'll share that with you by next week. Okay, let's dive in. Next slide, Cheryl. I'm joined today by our policy gurus at WCET and SAN, who many of you know but we'll do some quick introductions. Let's start with you Van.

Van Davis:

Good afternoon. My name is Van Davis and I am the Chief Strategy Officer here at WCET. Russ.

Russ Poulin:

Hello. And I'm Russ Poulin, I'm the Executive Director of WCET. And I've actually served on Rulemaking panel in the past. Cheryl.

Cheryl Dowd:

Hi, I am Cheryl Dowd, I'm the Senior Director for the State Authorization Network and WCET Policy Innovations. So let's get right into it. So just to let you know, we are going to be covering issues that came from the Rulemaking that just concluded on March seven. That was the Rulemaking committee meetings that concluded on March seven, and so there's a lot to talk about in regard to the Rulemaking and we're going to do our best to address the issues as they affect distance education. So we're not going to be covering all of the nuances of the Rulemaking that the committee meetings just concluded, but we certainly are going to address things that address distance education. And I should point out that this isn't legal advice, we're doing our best to understand what the language was that was discussed, and to give you our best understanding of what the meanings of the language are.

So moving right ahead, what is rulemaking? So Negotiated, Rulemaking or Neg Reg, is the Department of ED's process to develop new or updated federal regulations. It's actually something that the executive agencies do to help implement federal law. So they create regulations that are a matter of administrative law to address the federal look at implementation of federal law. So what happens with the rulemaking, and it's very close to looking at what is important for the public to be able to add their input. So at various times during the Rulemaking process, the public is asked for their inputs starting with the intent to hold a Rulemaking, so they ask for public comment. And then in development of the constituency group representatives who will be on the rulemaking committee, they seek nominations and the Department of ED reviews the nominations and chooses the rulemaking committee. These

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negotiators, the rulemaking committee, then meets to discuss the proposed regulations based upon the issues that were presented to the negotiators from the department.

The goal is for this group to negotiate on language, to reach consensus. Consensus meaning, there is no dissension on the language of the issue. When the department releases the agreed upon language that comes from consensus, that will go on to public comment. However, we do see that there are many times that the group does not reach consensus. And as we will discuss today, five out of six of the issues did not reach consensus. And when that occurs, the department writes the rules and then releases it as proposed language that will be available for public comment. So when it is released as proposed language, there will be a public comment period. Lately we've been seeing 30 days, and we do encourage folks to participate in the public comment time period. After the public comment period closes, the department reviews all of the public comments.

The department will review and answer by theme the various public comments that have been offered. And then they will make changes to the regulation and releases final regulations in a later time after reviewing all of the regulations. And so it's important to note that in addition to a rulemaking structure that is provided by federal law under the Administrative Procedures Act or the APA, because we're talking about we regulations as they relate to Title IV regulations for federal financial aid, there's a master calendar structure that adds another element. Meaning that, it has to align with the federal financial aid year. So what we see is, rules that are released by November one can then be effective by July one of the following year. If they miss that date, then it will be an additional year until the regulations can be released or actually effective so that it aligns with federal aid year.

So what we're talking about right now is we are in a position where we just saw the committees meet, the department will now write language on five of the six issues. One issue will move forward as is provided in consensus, and we will see those proposed regulations next. So we are going to move into the first section. Oh, that's me again. So we're going to cover some areas in regard to state authorization. So state authorization was one of the issues of this time, and so we're going to talk about what the sub issues were within the main issue of state authorization. Primarily was focused upon reciprocity and certain aspects of reciprocity. So proposed language in this first subsection was in regard to enforcement of state laws, even though an institution is participating in reciprocity. What was proposed was that the institutions would have to also be complying with applicable general purpose state laws, there was some discussion about that.

And that is currently what is in the reciprocity agreement that we all are aware of, the State Authorization Reciprocity Agreements or SARA. And these are the types of laws that would be applicable to any business. There was also a proposed language that the state laws in regard to closure, including record retention, teach-out plans or agreements, tuition recovery funds or surety bonds would be something that an institution would also have to comply with. Even though they are participating in reciprocity, this would be new. And then finally there would be the proposed language that it would permit any state to condition or revoke authorization for a violation of those general purpose laws that we just discussed. The implications on this are the general purpose laws as I mentioned, they are not new. So we're talking about fraud, misrepresentation, criminal, etc. And the closure laws would be consistent with what we have seen in the certification procedures, regulations that will be effective July one. But this would mean that these would extend to institutions even though they are participating in reciprocity.

And then finally as far as the implications, what we see is that in SARA process there already includes the ability for any state to condition or revoke authorization. If an institution violated the general purpose laws or regulations, it's not really a new impact, that's something that is reviewed when it

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occurs and when the institution is up for its annual renewal. Moving on to the next. We see that another subsection, they were addressing complaint process requirements. First, they were talking about the complaint information must communicated to the state where the student is located. As far as an implication of this, what we see is currently SPEs do share information between the home and host states in order to resolve the complaint. This is not really a new implication for what is currently in SARA policy.

So the second item was to report publicly and annually the institution complaints by type and number of complaints. Currently, SARA policy provides for reporting but can add type and number. And what we do see is the SARA policy modification process is addressing this as well. And then finally, allow for the state's discretion to address complaints without first going through the institution's complaint process. We know in SARA policy that that is something that is part of the direction that the student is to first seek the institution's process. But this proposed language would provide that authority for the state at their discretion to be able to resolve the complaint without having first gone through the institution.

Also in reciprocity, there was a limitation to who could serve on the reciprocity boards. So what we see there is that it would be limited to those that are state employees in regulatory jobs, the state regulators, AGs, et cetera, enforcement entities. And it would remove our regional compacts and other expertise from the board. The other item under reciprocity was there was a threshold structure where if the institution had more than five enrolled students in a state, in the two most recently completed award years, the institution would have to seek individual state authorization in those states. So the threshold language is not completely clear at this point, it's the beginning of an idea. We still want to know what the process structure would be, what activities, whose data, who would oversee and what is the time to obtain state approval? Those are questions still remaining.

And then finally, we have a very large question in regard to protection. So if an institution is not to be able to rely upon reciprocity for institutional approval in a state for which they have more than 500 students, what if that state does not have oversight of out-of-state institutions without physical presence? Would those students lose protections? So there's a lot to still be discovered about the structure. And now moving on to distance education.

Kim Nawrocki:

Yeah, I just wanted to jump in really quick, Cheryl, there was a clarifying question from the audience. So will rules published on November 1st be effective the following July, but anything published say November 2nd or later would not be until the following year, is that correct? Or in October 31st, sorry?

Cheryl Dowd:

It can be November 1st. Rules have been released on November 1st before, so November 1st would permit the department to have the regulations then be effective the following July one. So what we're talking about here is regulations that would not be effective until at the earliest, July 1st, 2025. And so if the final regulations are released after November one, so November 2nd, et cetera, it would be 2026. We've seen an example of this when the department released regulations in December of 2016, it wasn't until 2018 that those regulations were to become effective because they missed the November one date.

Kim Nawrocki:

Great, thank you so much.

Cheryl Dowd:

Sure.

Russ Poulin:

Hi. Again, Russ Poulin here. And just an addendum to that last one is that, while published by November 1st, they could go into effect the following July. That there are times where the department could say, but we won't implement this section of it until later. And there's some of these things where, like with that 500 rule or some of the others where they may decide that, oh, institutions and states will need more time for that, so that is possible as well. So we'd have to see what to decide on that. The other thing to remember for all of this is that, again, letting you know these are proposed rules for all this. So it's all proposals at this point, we'll have to see what the department comes out with in terms of what they want to put into a final proposal and then what they finally put out.

So we're telling you just what we heard and what the department was pushing during the sessions. And so distance education, Cheryl, let's go on to the first slide in that. And that there's several things here that were under that, they had the distance education topic and then they also had this return to title IV, which had a number of issues under it. But there was one great note to folks in distance ED and a lot that you would have to do in terms of moving forward on all this. And so this return to title IV thing, and then if you want to talk to your friendly financial aid folks that they talked to, R2T4, Return To Title IV. But let's talk about how that works now, and then let's say a student stops attending or withdraws from the institution but does so without notice, he just stops showing up.

Well, the department has some complex calculations to determine how much, if any financial aid funds should be returned to the department. So you have to determine when that student went away. And for distance education courses, we've long had something extra called, determining the last date of attendance. And the last date of attendance is a higher bar for distance ED that is based on the last academic engagement or academic activity that the student undertakes. And so you need to have evidence of this, things such as that the student took a test or the student submitted a paper, or participated in an online discussion about the content of the course and those sorts of things. They couldn't be talking about basketball, it'd have to be about the content of the course. And simply logging in is not sufficient for that, and so that's how it works now.

And then when the department came that they had this proposal, and the reason, the things that they were saying is that they cited that there are instances when they felt that institutions were not adequately calculating the last date of attendance. Or that some institutions purposely were fixing the date so that would have to return fewer funds to the department, that they would be able to retain more money. They did not give us scope on that about how many institutions, even though they were asked more than once about that. But that was something that they were quite concerned about it. And so they came up with this proposal and that they said that the reasons behind it were that they wanted to make it so that there'd be more accurate reporting of that last date of attendance. And also to simplify the process. So the department proposed that attendance taking be required for all distance ED courses.

Let me say that again, that you would have to take attendance for all distance education courses. Again, it goes back to this, just logging in doesn't count, that you would have to actively track all the activities for all students. So make sure that you're doing that. Right now what we tend to do is quite often we go back and find that evidence of the last academic activity, now you'd have to be tracking it. Additionally, if the student had no academic activity in the last 14 days, not counting things like spring break, then the

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institution is supposed to document the student's withdrawal date. Now we have questions about that wording and what their intent is there because they originally said that that's an opportunity for the institution to go back and find the student. And other times they kind of said that, well, we cut them off at the 14 days. So that would need to be clarified, there's a lot of questions that come up we're not able to get clarified during the sessions.

And so that would be a big issue, and we've heard from institutions that students will stop out for 14 days and come back and stuff. So that also indicates that you would need to document any excused absences, a student is going to be out sick for surgery or that they're going to go on temporary duty for military, that you'd have to start documenting those to show that there was a reason, excused absence as to why they're out. Remember, for all of you that this was all to simplify processes for you, so sort of blew my mind when I saw them, keep coming back to that. With that, and I know you're going to have a lot of questions about that, but let's go to the next one, Cheryl, this was actually in the distance education one. And there's this notion of creating a virtual location, virtual location that there's a great oxymoron for you.

Institutions are expected right now to report students as being associated with one of three types of physical locations, even if they're distance is that either the main campus, that's the official headquarters of the campus. A branch campus, which is a location that has some bit of autonomy to it, but it's still governed by the main campus or an additional location. So your main campus, branch campus or an additional location, which is a more temporary place where you might offer 50% or more of a program out there. What the department wants to do is create a new subset of the additional location called a virtual location. So a virtual location for select distance education programs. And on the slide there you can see what would fit under that. So a hundred percent of a program. So the programs that where a hundred percent of it is offered at a distance, with the exception of some campus or residential periods of 90 days. Or I hope they used the word fewer, let's not get into the English.

But 90 days or fewer on that, so the virtual location. The purposes they said were twofold, one, let's say that your institution were to close all of your distance education programs. This would allow the students in those programs to get the benefits of financial aid benefits if the college were totally to close, that there are things that happen where there's forgiveness for financial aid benefits. But this would be for if you closed down just your distance ED, but the rest of your campus, the on-campus stuff remained open. So there's some protections there, that's one reason. The other is that they wanted to be able to collect more data on distance education programs. So we like to close your protection, but I'm still having a hard time envisioning how often that would happen or if it would happen soon as a lot of institutions are going into distance ED. But it'd be a good protection to have if that happens.

And also for the data, we've long advocated for more data on distance ED, but we still have a fear that they will develop research findings that do not always account for the different populations often served by distance ED. So as that moves forward, we'll have to be very vocal in helping them out in terms of what they do with that data and what data's collected. So with that, let's move to the next one, for something completely different that we have here. So clock hours. So again, requires a little context setting. That institutions typically use one of three types of methods for dispersing federal financial aid. Quite often, most of you're probably using the credit hour, we don't know what a credit hour is but we know it when we see it I guess. So they use a credit hour for dispersing aid. The second one is something called direct assessment, and this is used at some competency-based institutions or programs, that it's something based upon testing.

And the third is clock hour in which progress, it's literally measured by the minutes and hours that the student spends in instructional activities. And clock hour programs are focused and really used on

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technical and practical programs like cosmetology or welding or those sorts of things. And there are cases where some institutions might use some combination of those types of aid, but typically an institution uses just one of those. So this is focused on those that use the clock hour aid. If you use credit hour or the direct assessment, this doesn't fit you. And so you can see if you're measuring minute by minute, you can see how doing something asynchronously kind of flies in the face of accounting for every minute of what the student is doing. And the department staff said that they expected that clock hour programs would have sophisticated and elaborate software that would track every activity closely and that the student is actually engaged the whole time.

For example, they wouldn't want a student to start a video and then walk away and they're not really engaged, they're not doing anything but the video's playing and something might count that the video's playing. So they reported seeing some loose practices around this, around the accounting for student time on task. And there were some proposals from negotiators on ways to mitigate that problem, but the department found those ideas insufficient. As a result, the department is proposing that for financial aid purposes, that they can no longer allow asynchronous courses in clock hour programs. Again, that does not affect those of you with credit hour programs, I know people get all round around that. If you're doing asynchronous credit hour programs, nothing has changed. So with that, we agree with the intent that clock hour programs is not for students to be left on their own. We do worry that some programs were found to be in compliance and had spent a lot on that software that they wanted. But now those programs will be denied due to poor practices of others and worry about that.

And we also worry about that given that most of these practical programs serve students at the lowest income levels that have family and work obligation. That this may be something that hurts as many students as helps them so I'd like to see more about that. Because they did say there was like 8,000 or some programs that had this. All right, the fourth and final one, and this one will be a little bit quicker, and you may have run into this before. And this has to do... If we moved to the next slide, Cheryl, with accreditation. During the previous presidential administration, you probably know that guy. A commission was created to ferret out bureaucracy in government in many regulations of federal agencies such as the Department of ED. And as the staff in that administration was packing their boxes in 2021, they issued a guidance at the last minute and said that accreditors had to review any program that was offered in whole or in part.

They went back and found some archaic language that said that, this is through the accrediting agencies for a loop as they realized that it's hard to find a program that does not include at least one distance education course even as an option, something. So the workload would've been huge, the creditors have kind of finessed it and we'll go into all of that. But this one was trying to fix what happened there. So the proposal goes back to a version of what was expected prior to 2021, for substantive change reviews of institutions. So what they're proposing is that reviews will happen and you see what we have there is that, for an institution, the first program that it has where 50% or more of it's at a distance. Or, the next thing and its OR's are important. If the institution exceeds half of its students enrolled at a distance, and they said enrolled was at least one distance ED course. So if a student has one distance ED course and four on campus courses, that's a distance ED student for this purpose.

And let's see, the other one was that institution offers at least 50% of its courses at a distance. I do want to make a correction, I noted on this slide that in that first bullet it says, first course offered at a distance and I found this morning that should be first program offered at a distance. And I apologize for the error on that, so it's first program at a distance that you have there. Finally wrapping this up, on the one hand, these are all good thresholds because you want to determine can the institution offer quality distance ed, give the student support services? And if they ramped up, if they're doing all these courses at a

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distance now? On the other hand, in a post-COVID world, I feel that many institutions that already have passed or soon will pass either the 50% measures for students or for courses, especially if they're giving a face-to-face and a distance offering for this. And so how will accrediting agencies handle that? And it'll be a lot harder for them to finesse these higher levels of standards with that. So with that, let's go ahead and go to the next slide and we'll turn it to Van Davis, in the last section that we have.

Van Davis:

So books and resources, intuition and fees. One of the areas that the department took a look at was Cash Management, and there were a number of issues that were associated with the Cash Management for post-regulation. The one though that we think is going to be of most interest and most impactful for folks in distance education has to do with the inclusion of textbooks and instructional materials, and tuition and fees. Oftentimes these are known as inclusive or equitable access programs. And what happens right now is that for many of these programs, unless a student specifically opts out, the cost of their textbook and instructional materials are taken out, are included in their tuition and fees and taken out of their financial aid. The department, on a number of occasions said that they believe very strongly that a student who receives their financial aid should have the authority to be able to decide what to spend that aid on. That is the student's choice.

And as a result, the department proposed some significant changes to inclusive access programs. The proposed language that the department ended up with, and again, this was proposed language, there was no consensus on this language. But the proposed language that the department ended up in said that an institution could only include instructional materials and supplies in tuition and fees if an institution did three things. That it first of all has to individually disclose what those costs are. So be clear, this is what you're paying. The student has to opt in, so changing from an opt out program to an opt in program, and this would happen every term. And then finally, the institution would have to show that the cost of those materials is, and we'll quote here, at or below competitive market rates. So we think that for a number of institutions that are using inclusive access programs, those are usually opt out programs, so a student is automatically opted into the program.

Institutions are negotiating prices with publishers based on that, that that would change, if these proposed regulations go into effect. And so this would be, institutions would have to transfer those programs from opt out to opt in. And institutions would have to disclose what those costs are, which shouldn't be too difficult. But what might be difficult for institutions would be figuring out if those materials are being offered at or below a competitive market rate. Now, it wasn't clear from the department how often an institution would have to figure out what those competitive market rates are. It was clear that the student would have to opt in every term or every payment cycle, so that would be a continuous process. And again, the department's rationale for this was that they believe that a student should be able to have choice over how they spend their financial aid dollars. And that if a student is able to find the materials cheaper or find another way of accessing instructional materials, then that student should be free to do that and should not have those costs included in tuition and fees.

So that's Cash Management, and what would happen with inclusive equitable access programs. We had initially had some concern that institutions, there's a handful of institutions that charge a student fee for a small nominal student fee for OER development. We had originally had concerns that this might impact those institutions. The department made it clear that they did not believe that it would impact institutions that charge a nominal OER fee. Also, initially, the department had said that they would have a health and safety exemption. They remove that exemption in the final proposed language during that last week of negotiations, so that the only exemption to opt-in programs would be programs for

incarcerated individuals. And with that, Cheryl, if you want to move to the next slide, we've got I think some resources to share after we take your questions.

Kim Nawrocki:

Great. So I will kick us off with that, thanks for these summaries. We do have several questions. First, I think this will be for Cheryl. I'm confused about the complaint part because we're already required to have a published complaint process. The FEDs already require this, and so does SARA, unsure where the disconnect is. And someone else also referred the complaint process through their accreditor, HLC. So could you opine about why they think that's an issue? Thanks.

Cheryl Dowd:

Sure. So the department included this. Keep in mind that they are not regulating what we know as SARA, so they're regulating more broadly about any reciprocity agreement having to have certain elements. And so the element that they are saying that a reciprocity agreement must also have, is this complaint structure and those elements of the complaint structure must be there. And so they were indicating that there must be a way that there is communication from the two agencies to be able to resolve the complaint, that was one of the aspects. So you may see many of these complaint aspects already in what we use as SARA, but it is something that is going to be more broad to include all reciprocity agreements, could they ever be developed. And also fine tune a little bit on the type of complaint and the number of complaints.

Kim Nawrocki:

Good, thank you. Next, I think this is also for Cheryl. Are the 500 students in a given state only distance ED students or does this apply to all students? So I think maybe if they're in a border state, I'm not sure.

Cheryl Dowd:

So we're talking about where the activity is taking place, so 500 students enrolled in the state. What we don't know is are these just distance education students enrolled in that state just taking online courses? We don't know if that also means students who are located in that state who are participating in experiential learning. Right now, the language was very short and just indicated 500 students enrolled in the state. So we have more to learn about what they may be referring to specifically, but it's having to do with the activity in the state.

Kim Nawrocki:

Great. And is this distance education really only for classes that are eligible for federal financial aid? Yeah, I think that came up around R2T4, is that for Russ maybe?

Cheryl Dowd:

Sure. I mean more broadly, we're talking about programs being approved for participation in Title IV. All of these, the compliance for all of this is tied to the ability to provide federal financial aid. But maybe Russ would like to provide more.

Russ Poulin:

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Yeah, I think that's right is that they're looking at all these four things that are tied to federal financial aid. There may be some exceptions in there that we don't recall, but that is the aim of the rulemaking. And that's where they have purview because the only place where they have power is where they're giving you money for financial aid.

Kim Nawrocki:

Thanks. Does the proposed language take into consideration courses that are not semester long? So instead of 15 or 16 weeks, seven to eight weeks, or even four weeks?

Russ Poulin:

Yeah, I was kind of looking at that one and I think that was for the distance education one where I think they were talking about the 14 days, you get that. And they left it just at 14 days and they didn't really... Sometimes they get in the DC bubble and don't think that things are different than how it was when they were at Harvard or Princeton or wherever. So they have just the 14 days in there, but you're right, if you have a four week course or five week course, and some people have six week courses in there, the 14 days doesn't make a whole lot of sense. And they didn't come up with any sort of a way to make that any shorter or longer.

Kim Nawrocki:

If somebody had a question about academic activity, would that be a graded assignment? Could an ungraded assignment also count? And somebody had a follow-up question, does asking a question of an instructor or having participation in discussion, does that count as?

Russ Poulin:

Okay, let's do the first one, and I'll probably have you remind me of the second one. But so the academic activity comes in under this definition of academic engagement, and I just put that in the webinar chat to everyone and so I hope everybody is seeing that. It's the very first thing in those definitions about what sort of things take academic engagement. And so they don't really mention anything about grading or anything it says, taking an assessment or exam or submitting an academic assignment.

And so since it's not specific about grading, let's say you could put an assignment that you don't grade, I would imagine either one, that would be a clarification sort of thing that we may want to check on. But this gives you the list of what they're seeing as activities because I saw that that was a question is about what are they seeing as academic engagement? And actually in a previous rulemaking that they'd had versions of this throughout the regulations, I said, wouldn't it be nice if you had one definition for it? I'm so glad that they put it in there and that we actually have one thing that we can point to that they use the same way all the way along. Second question was?

Cheryl Dowd:

Kim, can we ask Russ about how the LMS could be used?

Kim Nawrocki:

Oh, sure.

Cheryl Dowd:

So it comes into this Russ, there was a question that came over in the Q&A rather than in the chat that was asking about an LMS being able to be used for this attendance tracking. And so it kind of gets into that academic activity, could you expand upon that?

Russ Poulin:

Yeah, and it was interesting hearing the staff for the department that they assumed that you had an LMS that was already tracking all of this. A single that was tracking all this. Now we know that there are institutions, especially universities who might have across different colleges within the universities might have two or three LMSs. And we know that there are certain courses where you have faculty either for the program or for whatever reasons that they're sort of outside of the LMS. And so the question was, can you use the LMS? They really would like to see the LMS as a place that would be a place where you're doing the same thing for all of them. If you have something that falls outside of that, you'll need to come up with processes that track these academic track. And bring along that evidence of academic engagement so that you have them. So if it's not in the LMS, you're thinking you're going to use the LMS, but if you're not using the LMS you'll have to come up with processes for that that will sort of mimic what happens within the LMS.

Kim Nawrocki:

Great. And there was a clarifying... I think this goes back to the class hours in the chat. They were unclear on the implications of the class hours and how that would be viewed for synchronous and asynchronous programs. Can you offer some clarification there?

Russ Poulin:

On the clock hours or on?

Kim Nawrocki:

The class hours and how that would be viewed for synchronous and asynchronous programs? And maybe that's a separate question. Sorry, if I.

Russ Poulin:

Yeah, well, I don't know. People type past too, I know, and that happens. So okay, let me go back, let's see. So if your institution is receiving aid through clock hour programs so it's these practical programs where they're measuring how many minutes that you're spending and fixing the engine in the car or stuff like that, as part of your auto mechanics thing? If it's one of those clock hour programs, these are the only ones that are affected by this. So let's say that you are and that there's a lot of institutions that are in that area. What the proposal is, remember these are all proposed. But the proposal is, is that you can no longer have asynchronous courses for eligible for aid.

You could have synchronous courses like we're doing here, that you could have a zoom where you're talking about the engine or whatever it is, or cosmetology. You're talking about different products for hair color or those sorts of things that you could have those sorts of synchronous program. For clock hours you can no longer use asynchronous, if you're credit hour, again, to repeat that because I know sometimes people don't hear that. If you're credit hour, nothing has changed in these proposals that you could use synchronous or asynchronous.

Kim Nawrocki:

Great, thank you. This one is virtual location. In terms of assuring that we're providing students with equitable access to services and accessibility. The proposal from the department looks like a trap, especially if you look at it alongside FVT/GE. Erica Swain is using lingo I do not understand, but hopefully you do. What evidence did the department provide for needing virtual locations?

Russ Poulin:

So that's the gainful employments, those letters you're talking about, that there's a lot more requirements for institutions of all types to show that their programs have outcomes where students are earning more money than if they would've not gone to college and those sorts of things. Very complex thing., We try to stay clear of it, we're glad that Erica and others stay with it, stay with that.

And so yeah, I think it's quite clear. And then Van, you may call on Van too that he's said this before that is this a fishing expedition to try to get data so that they can go out, and that they know those distance ED programs are bad and so they're going to find evidence to regulate against them. And the thing that we see is that, well, a lot of distance ED programs that you're working, they're not taking in the context all the time that you have working adults. You have populations who are not the people that all they do all day other than go to basketball games at night is supposedly study for their tests and their only job is going to school. That's a whole different population, and so those are things. What would you like to add to that Van?

Van Davis:

No, I think Russ is right, one of our concerns is that this might be a fishing expedition. One of the things that we heard from some of the negotiators was a cynicism around the value of distance education. And a implication that distance education is not of as high of quality as face-to-face education. And so I do think that there is a fear that if the department begins to collect more information specifically about distance education, that given the attitudes of some of the members of the Department of Education and some of the pressures from folks outside of the department, that they might use this as an opportunity to make some judgments about the value of distance education, and the effectiveness of distance education.

And certainly one of the things that we have seen is that most of the time those studies that say, oh, my word distance education is not as effective, are not taking into account a really nuanced view of what's going on and of the students, and it's comparing apples to oranges rather than apples to apples. So that is one of our fears, or at least it's one of my fears, is that this could be a fishing expedition.

Russ Poulin:

And to finish up on that one quickly, is that we've long asked for more data about distance ED and what's going on. And so we are not changing from that, we're just saying there needs to be some caution. And the questioner says that there needs to be caution as to how that would be properly used.

Kim Nawrocki:

One more question about virtual location is that per each program as a virtual location? They made a statement about, they don't consider programs having individual locations on campus so why would we consider each distance course a separate location from the main organization?

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Russ Poulin:

Yeah, and sorry if I was unclear on that and that's a good question to clarify on that. And so no, it's not per program what they're doing. Virtual location would be all of the programs that you offer that meet that criterion that we had there where it's pretty much all at a distance with the exception of some residential things of 90 days or fewer. So it'd be just like if you think of it at physical locations. So you would say, what are all the programs you have at this branch campus? Well, this is another type of location where all of the programs that you have at a distance where they're primarily at a distance except for that 90 day thing. That's a good clarification, it is not program by program.

Kim Nawrocki:

Thank you. And how might this interact with HyFlex courses, a campus course that some students may be synchronously online? I'm not sure what section that was under.

Russ Poulin:

I'm not sure either but let me do this. That one thing we didn't say is that, I'm big on definitions, and so I'll put something in the chat about, one of the proposals is for what is a distance education course? And that they're trying to make sure that they refer back, so they want to put this definition in. This is one that is based 90% on the distance education course definition that you already have for IPEDS. They added the very bit at the end about or residency experiences. And so that's a little bit different so I hope that they make those two harmonize between IPEDS and here. So the question about if they use this definition, and the question was about hybrid courses.

So you'll notice in this definition it says a course in which instruction takes place exclusively as described in the definition of distance ED. So at a distance using technologies, regular and substantive interaction. That with the exception, with a few minor exceptions like orientation or testing, get it. So if you have a true what we'd call hybrid course where you may be doing half of it face-to-face and half of it, or 60/40, whatever. 60% face-to-face and 40% of distance, that would not meet this criteria, if they apply that in all the places where they said they would apply it.

Kim Nawrocki:

Great.

Russ Poulin:

Good question, yeah.

Kim Nawrocki:

How does the fees discussion align or connect with existing ATA language about students knowing how much materials will cost prior to registration? Which I have not seen. It's easy to execute, particularly for spring registration, for fall courses when faculty assignments shift and so do materials required\.

Van Davis:

That's a really good question, and the department didn't address that at all. So there were a number of things that the department didn't address. I saw as well that somebody asked, would this impact fees that are charged for materials? We don't think so but we're not certain because again, that was an issue that the department didn't address. They never provided a definition of what instructional materials

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were. We pointed out on more than one occasion what happens for courses where students need certain types of equipment for health and safety reasons, and that wasn't addressed either. So the department didn't address those ATA requirements, nor did they address what would happen if institutions were charging fees associated with materials that are being used in a class. Such as metal being used in a welding class.

Kim Nawrocki:

Great. And I don't know if you feel comfortable answering this one, but somebody asked what's to stop schools from offering materials for "free" and raising tuition by the inclusive access price?

Van Davis:

Nothing.

Kim Nawrocki:

Yeah. Okay.

Russ Poulin:

Well, there was a very convoluted discussion about that, remember with one of the negotiators. And it sounded like they only wanted to allow such behavior if it didn't cost any more to the student, but I don't know how they would [inaudible 00:50:19]

Van Davis:

How they would track that.

Russ Poulin:

Yeah, how would they do that? And so it was quite a confused conversation that went in weird ways about, oh, well, institutions of course can give things away for free. But nothing is produced for free so how do you work behind that? Anyway, so it's a good question without a great answer from us at the moment.

Kim Nawrocki:

Great. We have time for a couple more. Should we assume that at least, this is quoted, at least 50% of its courses at a distance means 50% of sections offered or 50% of enrollment in distant sections, a course can be offered in multiple modalities?

Russ Poulin:

Well, enrollments is separate one of those, it was the second of the three. And so all enrollment things would be within that. I'm trying to remember how they count the courses versus sections, but I'd have to look that up to be sure. But I think that if you have both a version that's face-to-face and a version that is distance, my guess, this is a guess right now, is that having the ability to take that course at a distance would count as one has at a distance. I'm not sure that they would count every individual section, but I would have to look that up to be sure.

Kim Nawrocki:

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Great. And this comes back to the question of the problems, I think related to access and equity. Is there data to that that defines the problems that these proposed changes or purported to solve? Have they offered anything along those lines? From your faces, guessing no.

Russ Poulin:

No. Do you think that was to a particular question or issue?

Kim Nawrocki:

I think that was going back to the conversation around the access question.

Russ Poulin:

For inclusive access?

Kim Nawrocki:

Yes, inclusive access, thank you.

Van Davis:

No, the department for this issue as well as for a number of issues oftentimes said we have heard or we are aware of, and would use those words exactly without providing further evidence. And there were negotiators who on several occasions throughout all of the negotiations, not just around cash, management asked for evidence that there was a problem that the department needed to solve. And oftentimes was not provided with that evidence.

Kim Nawrocki:

Thank you. Here's a question about compliance, is compliance monitored by ED or is it triggered by reporting student complaints, etc?

Russ Poulin:

Yes.

Kim Nawrocki:

All of the above.

Cheryl Dowd:

All of the above.

Russ Poulin:

Yeah. That compliance, there are federal financial aid reviews or audits that are held every so often that you're probably not a part of unless they're asking about your particular thing. And so that is something where, let's say that they won't look at everything but they'll pick out certain things. And let's say that they're interested in how you're handling inclusive access or how you're handling state authorization, that they'll go and that they'll want evidence of how you are complying with that. And they'll look at that, and so you may be asked about that one time and not be asked about it for seven years again, or

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three years or something like that. And the other complaints, yeah, that if they start getting complaints that, hey, this institution's doing a lot of bad things, that could trigger a review on that particular topic if they feel it's severe enough. And sometimes some things have come through accreditation reviews as well, where I'm thinking about regular and substantive interaction, that they've done some reviews and that has ended up with some thoughts and actions on that.

Kim Nawrocki:

Cheryl, did you want to add anything?

Cheryl Dowd:

You hit all of it.

Kim Nawrocki:

Great. I just saw you were off mute, thank you. So I think we have time for one more question, so I'll end with this. 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.

Russ Poulin:

Chris, you didn't hear me say that this simplifies things. I get that. No, of course, for a lot of these things that there will be additional costs. And institutional burden is not something that they care about, I wouldn't say care about, but it's not something that factors into what they're looking at. What they're looking at is consumer protection, number one, they want to make sure that the consumers are doing well. And also that the institution is doing things to spend federal financial aid dollars in a good and thoughtful way. And those are their number one things, and it's up to the institution to try to figure out how to comply with that. Would you guys add anything to that?

Cheryl Dowd:

No, that's certainly the priority. And of course, they want to maintain the integrity of the structure for the federal financial aid program. So those two factors are very important, as they oversee what the institutions are doing.

Kim Nawrocki:

Van did you want to add anything or you? Okay, thank you. So with that, I think we're at time for questions. Russ, did you want to go through the slide that we have up currently?

Russ Poulin:

Yeah, just very quickly that here's some things that we have. If you want to go to the role making site and find some of these things that you can go to that. Now the thing about that, that a lot of the things that were proposed on the fly within the last week are not listed on there. And so some of these things we had to bring to you because they came in during negotiations the last week. But a lot of it is there if you go to that site. And then we have our Frontiers updates that you have there, and watch again for another Frontiers update on what's going on here where we'll have a call to action and talk about what you can do in the coming weeks. Let's go to the next one, and Cheryl.

Cheryl Dowd:

And I just want to point out again that what we've been discussing today, I can't say it enough, this is just proposed language, they're not even proposed regulations yet. It's proposed language that will be developed into proposed regulations. So we're looking at the very earliest July 1st, 2025 for these regulations to be final at the earliest. Meanwhile, there were regulations released last fall in October, gainful employment, ability to benefit certification procedures, et cetera, were released as final last fall, meeting the November one deadline. And those regulations will become effective July 1st, 2024, so making sure you're keeping them in the separate buckets. And you can find all of that on the SAN website and the WCET Frontiers that we've been writing about over the last year. There is a federal regulations landing page on the SAN website that goes through a lot of what's tied specifically to state authorization. And then also are getting started with compliance management gateway or topical, one and two pagers and some charts to get an understanding of the various issues related to interstate compliance.

Kim Nawrocki:

Great. Thank you so much to our amazing policy team, Cheryl, Russ, and Van for sharing your insights on these upcoming regulations and helping our community navigate the interesting time. You can reach out to any of them directly and they'll do their best to answer your questions. But again, please keep in mind, we are not providing legal advice. You can learn more about our organization, WCET, our work and upcoming events on our website. I'm going to skip that, you can stop advancing Cheryl because we're at time. But we'll share this deck and you can learn about all of our upcoming events from WCET and SAN. We hope you'll consider joining us for our in-person special event this summer in St. Louis, which will be on the same topic. So I just want to thank you for joining us. Thank our sponsors and our supporting members who make our work at WCET possible. And we hope that you've learned something that will help you in your work moving forward. Have a wonderful day.