Welcome to Today's WCET & SAN Webcast

MARCH 20, 2024

The webcast will begin shortly.

There is no audio being broadcast at this time.

An archive of this webcast will be available on the WCET & SAN websites next week.

Seismic Shifts in Distance Ed Regulations: Gauging Department of Education Rulemaking

March 20, 2024

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Community   Equity   Policy   Practice

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Hosted in partnership with:

wcetsan.wiche.edu

Welcome!

- Slides can be downloaded via the link in chat.
- Please use the Question box for questions and Chat for other information exchange.
- Slides, recording, and shared resources will be emailed to attendees.

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Introduction

What is Negotiated Rulemaking?

Negotiated rulemaking, or NegReg, is the Department of Education's process to develop new or updated federal regulations.

- Constituency group representatives are nominated and selected.
- These "negotiators" meet to discuss proposed regulations.
- If the group reaches a consensus, the Department releases the agreed-upon language for public comment.
- If the group does not reach a consensus, the Department writes the rules and releases its proposed language for public comment.
- After the public comment period ends, the Department makes any desired changes to the proposed regulations and releases the final version of the regulations.

State Authorization

State Authorization: Reciprocity

Proposed Language

- Enforcement of State Laws
  - Applicable general purpose State laws (as would be applicable to any business).
  - Applicable state laws related to closure including record retention, teach-out plans or agreements and tuition recovery funds or surety bonds.
  - Permit any state to condition or revoke authorization for violation of general purpose laws and regulations.

Implications

- Institution to comply with types of state laws where the student is located.
  - General purpose laws is not new: Fraud, Misrepresentation etc.
  - Closure laws consistent with the new Certification Procedures regulation but extends regardless of reciprocity.
  - SARA process includes the ability for the any state to condition or revoke authorization if an institution violated general purpose laws or regulations– no new impact.

State Authorization: Reciprocity

Proposed Language

- Complaint processes requirements
  - Compliant information to be communicated to the state where the student is located.
  - Report publicly and annually institutional complaints by type and number of complaints.
  - Allow for the state's discretion to address complaints without first going through the institution's complaint process.

Implications

- Many are similar to SARA policy
  - Currently SPEs share information between the home and host states in order to resolve the complaint.
  - Current SARA Policy provides for reporting but can add type and number.
  - The proposed language is not completely clear about what state can have the final authority over the resolution of the complaint.

State Authorization: Reciprocity

Other Reciprocity Related Proposals

- Reciprocity boards limited to state employees in regulatory jobs.

- More than 500 enrolled students in a state in the two most recently completed award years, the institution must seek individual state authorization in those states.

Implications

- Regional compacts and other expertise removed from board.

- Threshold language is not clear.
    - Process: what activities, whose data, who oversees, & what is the time to obtain state approval.
    - Protections: what about the institution serving more than 500 students in a state with no oversight? Would those students lose protections?

Distance Education

Return to Title IV: Attendance Taking

Proposed Language

- Require taking "attendance" for all distance education courses - meaning finding last academic activity.

- Document student's withdrawal within 14 days of "last date of attendance."

Implications

- Currently, institutions only need to determine the last day of attendance for those students who cease attending a distance class.

- Must determine when the student last engaged in an academic activity.

Distance Education: Virtual Location

Proposed Language

- Create new "virtual location."
- Defined as:
  "offers 100 percent of an educational program through distance education or correspondence courses, not withstanding requirements for students to complete on-campus or residential periods of 90 days or less."

Implications

- Student can access closure benefits if institution closes all of its distance programs.

- Allows Department to collect more data on distance education programs.

Distance Education: Asynchronous Clock Hours

Proposed Language

- For institutions using clock hour financial aid - Disallow synchronous distance education courses.
NOTE: Does not apply to credit hour instruction.

Implications

- Asynchronous distance education clock hour courses would no longer be eligible for Title IV financial aid.

- Regulate against courses purely on modality reasons?

Distance Education: Accreditation
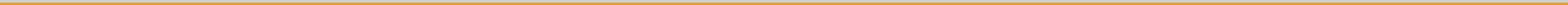
Proposed Language

Thresholds for "substantive change" reviews:

- **First course** offered 50% at a distance. OR

- Institution exceeds **50% of students enrolled** in at least one distance course in a term. OR

- Institution offers at least **50% of its courses** at a distance.

Implications

- Replaces 2021 threshold of program being offered "in whole or in part" at a distance.

- While better, an increasing number of institutions will hit the 50% enrollment threshold.

Books and Resources in Tuition and Fees

Cash Management: Books & Resources in Tuition & Fees (Inclusive/Equitable Access)

Proposed Language

- Institutions could only include instructional materials and supplies in tuition and fees if:
  - The institution "individually discloses the cost," AND
  - The student opts-in, AND
  - The cost of the materials is "at or below competitive market rates."

Implications

- Inclusive access programs as they currently operate at most institutions would be significantly hampered.

Questions from the Audience

Additional Information and Resources

US Department of Education Rulemaking site:
bit.ly/EDRulemaking2024

WCET *Frontiers* Updates:
bit.ly/NegRegWeek1Update
bit.ly/NegRegWeek2Update
wcet.wiche.edu/frontiers

The webcast recording and additional resources will be available in the next week: wcet.wiche.edu/events/webcasts.

Resources for SAN Members

SAN Website:

Federal Regulations Landing Page

https://wcetsan.wiche.edu/resources/federal-regulations

Getting Started with Compliance Management Gateway

https://wcetsan.wiche.edu/resources/getting-started

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Learn more and stay connected:

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WCET is the leader in the practice, policy & advocacy of digital learning in higher education.

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Upcoming WCET Webcast

Learn more and register: wcet.wiche.edu/events

- AI Ethics, Governance, Policy, and Practice in Higher Education: A Strategic Webcast for Leaders and Practitioners – April 4, Noon MT

Upcoming SAN Events

Learn more and register for SAN Events:

wcetsan.wiche.edu/events/upcoming

- NASASPS 2024 Conference (in collaboration with SAN) April 7-10, 2024 (in person); Charleston, SC.
- SAN-U Member Integration Course (8-week Online Fundamentals Course); Cohort #2 begins April 16, 2024.

Join us for a WCET and SAN special event:

Distance Ed at a Crossroads: The Changing Landscape of New Regulations

July 30-31, 2024 | St. Louis, Missouri

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Submit Your Session Idea for the WCET Annual Meeting

Deadline: Tuesday, April 2

bit.ly/WCET2024proposals

Join us October 8-10 in Long Beach, CA!

Thank you

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Thank you for attending!

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