



August 23, 2024

The Honorable Miguel Cardona
Secretary
U.S. Department of Education
400 Maryland Ave. SW
Washington, DC 20202

Re: Docket ID ED-2024-OPE-0050

Dear Secretary Cardona:

I write on behalf of the American Association of Community Colleges (AACC). AACC represents the nation's 1,026 community colleges and their students. We are pleased to submit comments on the Notice of Proposed Rulemaking (NPRM) published on July 24 in the Federal Register, broadly covering program integrity and institutional quality. AACC also represented the views of the community college sector at the negotiated rulemaking sessions that preceded the publication of these regulations.

Community colleges have long been leaders in distance education among public and non-profit institutions, reflecting the demands and needs of their students, many of whom are juggling work and family responsibilities with their pursuit of higher education. According to IPEDS, approximately 70 percent of public two-year college students took at least one distance education course in the 2021-2022 academic year, and 39 percent enrolled exclusively in distance education courses.

When the COVID-19 pandemic hit, community colleges were already providing high-quality distance learning opportunities, offering opportunities for students who otherwise could not access higher education. Along with other sectors of higher education, the pandemic initiated further investments and refinements in online learning. Over time, and as technology and online teaching methods have become more sophisticated, the quality of distance education has continued to improve.

The regulations as proposed have major implications for institutional processes, affecting the responsibilities of faculty and other academic personnel, registrars, IT personnel, and student aid offices. The proposals also have interlocking elements and could have a much broader and more costly impact than the Department of Education (ED) has suggested in its proposed rule. Also, whatever regulations ED ultimately adopts in this area will have to be integrated with the extensive and time-tested practices campuses already have in place to ensure academic integrity and quality of their distance education programs.

In developing these comments, we have consulted closely with campus officials and ask the Department to consider them in the constructive spirit in which they are offered. It is our shared hope that the new regulations strengthen effective Title IV oversight while supporting the effective delivery of needed educational programs.

Section 668.2 –Treatment of Title IV Funds When a Student Withdraws (Required attendance-taking for online courses)

AACC opposes the Department’s proposal to require attendance-taking in all distance education courses, regardless of whether the institution is designated as “attendance-taking,” and urges the agency to overhaul its proposals in this area. The overwhelming majority of community colleges are “non-attendance-taking” institutions, meaning that they use the last date of academic activity for determining an unofficial withdrawal date for the purpose of calculating R2T4. These institutions use established measures of regular and substantive interaction to assess when a student has last engaged in an online course academically.

The NPRM asserts without providing explicit evidence that the documentation of withdrawals is a greater problem in distance education courses than for in-person classes. On this shaky policy foundation, ED is proposing to impose a sweeping compliance burden on institutions that outweighs the possible benefit of modifications in student withdrawal dates.

In addition, the attendance-taking requirement for distance education reflects an unjustified bias against distance education. No similar attendance-taking requirement has been proposed for on-campus programs at non-attendance-taking institutions. Presumably this is because ED is aware of the confusion and inefficiencies that it would create due widespread inapplicability to common academic practices.

The Department asserts that the attendance-taking requirement will not create substantial compliance costs on institutions because current regulations already require them to monitor their distance education students for academic engagement. As stated in the NPRM’s preamble,

the Department has determined that institutions can often easily determine when students stop attending a distance education course, because institutional systems are already monitoring when students submit assignments or interact with instructors and students during lectures and course discussions. In fact, this monitoring is necessary for an institution to establish that it is meeting the distance education requirement of regular and substantive interaction.

However, this assertion is inconsistent with the fact that the monitoring required by the regular and substantive interaction regulations is different from attendance-taking, as outlined below. Of note, the NPRM does not adequately define what attendance-taking

means in the digital environment for non-attendance-taking institutions. In the preamble to the 2021 distance education regulations that detail the “regular and substantive interaction” required by statute, the Department stated that:

The requirements for regular interaction include monitoring a student’s “academic engagement and success” with respect to a course or competency. This requirement is not intended to mandate that instructors personally monitor each student’s engagement throughout each class session while also instructing, facilitating discussion, or responding to questions from students. Instead, the requirement is intended to ensure that instructors are generally monitoring whether a student is engaged and successful throughout a given course or competency and takes appropriate action as needed. Such monitoring could include evaluating a student’s level of participation in synchronous class sessions, but it could also involve monitoring the student’s activity on course websites or materials; considering the quality of the student’s assignments or responses to questions about course materials; evaluating the level of the student’s understanding of course materials during conversations with instructors or performance on exams; or other forms of monitoring the student’s engagement and success in the course or competency.

Again, the NPRM does not delineate the specific actions that would satisfy the new attendance-taking requirement for online courses. However, it seems highly likely that that it would be more akin to a requirement that “instructors personally monitor each student’s engagement” in each class session, rather than undertaking the monitoring described above, which the Department has used to justify the attendance-taking requirement. It is also unclear how attendance-taking, which is based on practices that occur in in-person classes, can even be integrated with distance education in a way that recognizes the varied ways that faculty and institutions academically engage students in online courses, including interactions that may not be captured in learning management systems (LMS).

Therefore, and contrary to the Department’s position, a new attendance-taking policy would almost certainly require the alteration of most distance education courses at non-attendance-taking institutions. It would also require additional faculty training and activity, alterations to course design, and changes in platforms to comply with a new attendance-taking requirement. A further, significant administrative complication is that it might also necessitate the modification of faculty contracts.

Given the weighty implications of such a change, which would greatly impact all higher education, we again urge ED to reconsider the attendance-taking requirement as proposed. However, if the Department is intent on requiring attendance-taking in distance education courses despite the perspectives outlined above, we strongly encourage that ED make the following modifications to the NPRM.

First, the requirement should be limited to academic programs that are entirely online and students who are enrolled 100 percent in distance education courses. The preamble suggests that this is ED's intent, but it is not reflected in the actual regulatory language. The final rule should state this unequivocally. Even if ED definitively states that attendance-taking should be applied only to students enrolled in 100 percent online programs, in practice this may require campuses to take attendance for students who are enrolled in both DE and on-campus courses. This is because individual faculty will not necessarily know which program a student is enrolled in, as their focus is on courses, not Title IV-eligible programs; also, it may be unduly complex to "take attendance" in only the required cases, but for not for other students in a class. Nevertheless, formally limiting the attendance-taking requirement stands the potential of somewhat reducing the cost of complying with the rule and better refining the regulation to meet ED's stated intent in the preamble.

Second, the final rule should specify in the preamble, if not the final rule itself, what constitutes satisfactory attendance-taking for distance education programs. As discussed above, regular attendance-taking seems distinct from the academic monitoring currently required for Title IV distance education programs at non-attendance-taking institutions. If ED in fact intends this academic monitoring to equate to "taking attendance," it needs to say so. This is critical because in this rulemaking, ED asserts that it is merely applying a requirement that already exists in sub-regulatory guidance. However, that guidance originally applied predominately to in-person classes, where "academic attendance" can easily be determined by taking a roll call or for attendance-taking institutions that have built all internal systems, faculty policies, and course designs to satisfy formal requirements for attendance-taking. This is not at all the case for distance education classes at non-attendance-taking institutions.

Third, the preamble if not the final rule itself should clarify the steps that that institutions should take once officials become aware that 100 percent distance education students in online programs at non-attendance-taking institutions may no longer be enrolled, based on "attendance" or a measure of academic activity as it is ultimately defined and implemented. As noted above, online programs at non-attendance-taking institutions have not been designed to comply to attendance-taking procedures; furthermore, academic activity and faculty interaction that meets regular and substantive interaction requirements may not be captured in a way that can easily be interpreted for calculating a last day of attendance. In recognition of this complexity, we suggest that otherwise non-attendance-taking institutions have 24 days to confirm with these students who "no longer are in attendance" that they do in fact intend to withdraw (or have effectively done so, without formally indicating so), and, if that is the case, to document the formal last date of attendance, so that they can make an accurate R2T4 calculation. In some of these cases, students will in fact still be intending to continue their studies, and simply been interrupted in doing their academic work. In other cases, the student may have missed assignments,

but can be interacting substantively with faculty, participating in discussion and seminars offered online, or engaging academically in some way that is not captured in an LMS and requires more time for financial aid offices to investigate. The proposed regulatory language does not provide the necessary guidance to ensure that students are not inappropriately administratively withdrawn.

The collective adoption of these proposed changes would make the Department's attendance-taking requirement as minimally burdensome as can be configured, while accurately determining the amount of funds that a student has "earned."

Section 668.3 – Elimination of Title IV eligibility for asynchronous clock-hour programs.

AACC opposes the elimination of Title IV eligibility for asynchronous clock-hour programs offered through distance education. With some notable exceptions, community colleges offer a limited number of these programs. However, all certificate and degree programs, including those offered in career and technical fields, are thoroughly vetted, by college officials, businesses, accreditors, and other stakeholders. The NPRM applies a blanket, blind ban on all these programs, irrespective of their quality, which conflicts with Congressional intent in establishing this eligibility. While only a small share of the community college student population participates in asynchronous clock-hour programs, this proposal will ultimately limit access to programs and fields of study for thousands of non-traditional learners.

Again, we urge the Department to withdraw this proposal. If the Department is intent on moving forward with a limitation in this area, it should consider limiting the extent to which an institution may offer them. One approach might be to cap FTE enrollments in asynchronous clock hour programs to a given percentage of an institution's total FTE. This cap will ensure against any systematic abuse of Title IV eligibility or broad development of low-quality programs. In cases where an institution might otherwise approach the cap, it would incentivize officials to prioritize offering and securing enrollment in programs that deliver the highest value for students.

In addition, if ED moves forward with adopting a limitation or outright ban on Title IV funding for asynchronous clock-hour programs offered through distance education, a waiver option must be provided. In selected cases, there are institutions that offer extremely high percentages of such programs. In these instances, the proposed policy, or even the modified one advanced above, would be catastrophic. Institutions have developed programming based on the 2020 regulation in this area, and to reverse it unilaterally without any appeal or waiver process stands the potential to deny high-quality programming to thousands of students who would benefit from it.

Section 600.2 – Additional “Location” for Distance Education Programs

The Department is proposing to require each institution to establish an additional “location” at which all its programs offered entirely through DE would be consolidated, at least for reporting purposes. This is being proposed to allow ED to more effectively monitor programs that are 100 percent online. Part of ED’s rationale for requiring the additional location is to effectively monitor those instances in which an institution entirely ceases to offer either all distance education programs or all in-person programs but not the other, though these are likely to be outlier cases.

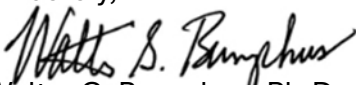
The proposed rules will require a student identifier to be submitted to NSLDS through regular enrollment reporting to indicate that the student is attending at this “location” and therefore is a 100 percent online student. The structure would allow ED to readily determine which students are subject to the proposed attendance-taking requirement, assuming that the final rule limits attendance-taking to students enrolled in 100 percent online programs. From an institutional perspective, we agree that this additional location is necessary to limit an attendance-taking policy to 100 percent online students enrolled in 100 percent online programs.

Cost Estimates

The Department’s estimates for the cost of implementing these regulations do not reflect institutional realities. In its estimates, ED often assumes that the costs of implementing a regulation are largely completed when it has been analyzed by one or two campus officials. For institutions, however, this initial regulatory analysis and related planning is only the starting point when as far as the costs of implementing the new policy are concerned. The real costs occur subsequently, in the form of modifying information systems and a raft of administrative procedures and policies. This also excludes other ongoing costs such as taking attendance. For example, the NPRM states that the ongoing burden of implementing attendance-taking would be ten minutes a day, for only half of all institutions. The actual cost of implementing the proposed attendance-taking regulation would dwarf that, even among institutions that are already considered attendance-taking, though there will be significant variations depending on the development and integration of automated and manual systems at the campus-level. ED has done itself and stakeholders a disservice by developing such inaccurate estimates. We urge a more realistic assessment.

Thank you for your attention to these comments. Please contact me or David Baime, Senior Vice President for Government Relations, if you have any questions concerning them.

Sincerely,


Walter G. Bumphus, Ph.D.
President and CEO