

Department of Education's New Distance Education Rules



(Federal Register/Vol. 85, No. 171)

Presented March 25, 2021 by:

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Distance Education Defined



1. Education that uses one or more of the technologies listed in Item 2 below to deliver instruction to students who are separated from their instructor(s) and to support “**regular and substantive interaction between the students and the instructor(s)**,” either synchronously or asynchronously.”
2. The technologies that may be used to offer distance education include:
 - The internet;
 - One-way and two-way transmissions through open broadcast, closed circuit, cable, microwave, broadband lines, fiber optics, satellite, or wireless communications devices;
 - Audio conference; or
 - Other media used in a course in conjunction with any of the technologies listed above.

34 CFR § 600.2 (July 1, 2021)

Regular Interaction

Providing the **opportunity** for **substantive interactions** with the student and instructors on a predictable and **scheduled basis** commensurate with the length of time and the amount of content in the course or competency; **and**

Monitoring the student's **academic engagement** and success and ensuring that the instructor is responsible for **promptly and proactively engaging** in substantive interaction with the student when needed on the basis of such monitoring, or upon student request.

34 CFR § 600.2 (July 1, 2021)

Substantive Interaction

Substantive interaction is engaging student in teaching, learning, and assessment, consistent with the content under discussion, and also includes at least TWO of the following:

Providing direct instruction

Assessing or providing feedback on a student's coursework

Providing information or responding to questions about the content of a course or competency

Facilitating a group discussion regarding the content of a course or competency

Other Instructional activities approved by the institution's or program's accrediting agency

34 CFR § 600.2 (July 1, 2021)

Substantive Interaction (Continued)

- Department of Education confirms in the commentary that substantive interactions take place at the course or competency level and not at the instructor level.
- Department of Education also confirms that substantive interaction must be initiated by instructors.
- Interactions with machines or other forms of technology that do not involve the instructor would not qualify as Substantive Interaction.

85 Fed. Reg. 54758, 54760, & 54762 (Sep. 2, 2020)

Academic Engagement Defined

- “Active participation by a student in an instructional activity related to the student's course of study” that --
 1. Is defined **by the institution** in accordance with any applicable requirements of its State or accrediting agency;
 2. **Includes** and **Excludes** specific activities set out in the new rule and on the next slide.

34 CFR § 600.2 (July 1, 2021)

Academic Engagement Definition (Continued)

Includes

- Attending a synchronous class, lecture, recitation, or field or laboratory activity, physically or online, where there is an opportunity for interaction between the instructor and students;
- Submitting an academic assignment or taking an exam;
- Participating in an interactive tutorial, webinar, or other interactive computer-assisted instruction;
- Participating in a study group, group project, or an online discussion that is assigned by the institution; or
- Interacting with an instructor about academic matters.

Excludes

- Living in institutional housing or participating in a meal plan;
- Logging into an online class or tutorial without further participation; or
- Participating in academic counseling or advisement.

Clock Hours in Distance Education



- The rule includes a new definition of “clock hour” for distance education
 - A 50- to 60-minute class, lecture, or recitation in a 60 minute period of attendance in:
 - A synchronous or asynchronous class, lecture, or recitation where there is opportunity for **direct interaction** between the instructor and students; **or**
 - An **asynchronous** learning activity involving academic engagement in which the student interacts with technology that can **monitor and document** the amount of time that the student participates in the activity.

34 CFR § 600.2 (July 1, 2021)

Clock Hours in Distance Education (Cont'd)



- The new rule specifically states that:
 - A clock hour in a distance education program does **not** meet the requirements of the new definition if it does not meet all accrediting agency and State requirements or if it exceeds an agency's or State's restrictions on the number of clock hours in a program that may be offered through distance education.
 - An institution **must be capable of monitoring** a student's attendance in 50 out of 60 minutes for each clock hour under this definition.

34 CFR § 600.2 (July 1, 2021)

Clock Hours in Distance Education (More)



“...institutions offering clock hour programs using distance education continue to be subject to the general requirements in the definition of 'distance education,'” which requires regular and substantive interaction between students and instructors. In such programs, some, but not all, clock hours would need to involve substantive interaction between students and instructors.”

85 FR 54752 (September 2, 2020)

Credit Hours in Distance Education



- Under the new rule, a credit hour is one hour of student work that:
 - “**Reasonably** approximates not less than... One hour of classroom or direct faculty instruction and a minimum of two hours of out-of-class student work each week...” **or** “at least an equivalent amount of work... for other academic activities as established by the institution, including laboratory work, internships, practica, studio work, and other academic work...” **and**
 - “Permits an institution, in determining the amount of work associated with a credit hour, to take into account a **variety of delivery methods**, measurements of student work, academic calendars, disciplines, and degree levels.”

34 CFR § 600.2 (July 1, 2021)

Academic Year & Instructional Time



- The definition of “academic year” has long required that clock and credit hour programs include a minimum number of weeks of instructional time.
- The new rule revises the definition of “instructional time” to include programs using asynchronous coursework.

34 CFR § 668.3 (July 1, 2021)

Academic Year & Instructional Time (Cont'd)



- Under the new rule, “in a program offered using asynchronous coursework through distance education,” a week of instructional time may now include any week in which:
 - “the institution makes available the instructional materials, other resources, and instructor support necessary for academic engagement and completion of course objectives;” and
 - “the institution expects enrolled students to perform educational activities demonstrating academic engagement during the week.”
- The new rule also specifies that “Instructional time does not include any scheduled breaks and activities not included in the definition of “academic engagement,” or periods of orientation or counseling.”

34 CFR § 668.3 (July 1, 2021)

Direct Assessment Programs



- Under current federal regulations, a “direct assessment program is a program that, in lieu of credit hours or clock hours as a measure of student learning, utilizes direct assessment of student learning, or recognizes the direct assessment of student learning by others.”
- For some time, commentators have been calling for the evolution of Department of Education’s regulations governing the review and approval of direct assessment programs.

34 CFR § 668.10 (July 1, 2021)

Direct Assessment Programs (Cont'd)



- With regard to direct assessment programs, the new rule:
 - Clarifies the eligibility requirements for a new direct assessment program.
 - “An institution that wishes to offer a direct assessment program must apply to the Secretary to have its direct assessment program or programs determined to be eligible programs for title IV, HEA program purposes.”
 - Limits the requirement for Department of Education’s approval to an institution’s first direct assessment program at each credential level. Institutions **must report** to Department of Education when they add a second or subsequent direct assessment program, but “additional direct assessment programs at an equivalent or lower academic level” generally do not require further approval.

34 CFR § 668.10 (July 1, 2021)

Direct Assessment Programs (More)



- Use of credit or clock hour for Direct Assessment Programs and the need for alternatives.
- “Without such an alternative, the Department will continue to use credit or clock hour equivalencies in order to ensure that an institution’s choice of a unit of measurement for a direct assessment program does not result in an unfair or inflated determination of a student’s eligibility for title IV, HEA funds. Such a “currency” is also important in enabling students to transfer credits between institutions.”

85 FR 54766 (September 2, 2020)

Distance Education Deference

- Under the new rule, Department of Education will defer to the requirements established by an institution's accrediting agency or state authorizing agency to evaluate an institution's appeal of a final audit or program review determination that includes a finding about the institution's classification of a course or program as distance education, or the institution's assignment of credit hours.

34 CFR § 668.113 (July 1, 2021)

Eligibility Determinations

- The new rule requires that “prompt action is taken” by Department of Education “on any materially complete application” for initial eligibility or on any reapplications for a determination that the institution is Title IV-eligible.
- The rule also clarifies that Department of Education may deny an institution’s “application for certification or recertification to participate in the title IV, HEA programs” if it is not financially responsible or does not timely submit its annual audits.

34 CFR § 600.20 and § 668.171 (July 1, 2021)

Clock-to-Credit Hour Conversion

- The new rule revises and simplifies the clock-to-credit hour conversion formula to simply state that for covered programs:
 - A semester or trimester hour must include at least 30 clock hours of instruction; and
 - A quarter hour must include at least 20 clock hours of instruction.
- Per the Department, this change eliminates “the need for institutions to consider the number of homework hours associated with each credit hour in programs that are subject to the conversion.”

34 CFR § 668.14(July 1, 2021); 85 Fed. Reg. 54797 (Sep. 2, 2020)

Resources

- [Federal Register. Vol. 85, No. 171. Rules and Regulations dated Wednesday, September 2, 2020.](#)
- [Thompson Coburn LLP Higher Education Webinar Series](#) – Insights, The Regulatory Outlook for Higher Education.

Questions? And....

