

# Regular and Substantive Interaction:

Background, Concerns, and Guiding Principles

## **Regular and Substantive Interaction: Background, Concerns, and Guiding Principles**

**ISSUE** Regular and substantive interaction (RSI) between instructors and students is a core component distinguishing distance education from correspondence education. In contrast to correspondence education where students are not in regular and substantive interaction with instructors, distance education is eligible for Title IV financial aid because of the presence of RSI. Although the statutory and regulatory definitions of distance education state, in part, that it must “support regular and substantive interaction between the students and the instructor, synchronously or asynchronously” (Higher Education Opportunity Act, Pub.L. 110-315, 122 Stat. 3078, codified as amended at 34 C.F.R. §600.2), the meaning of the term **regular and substantive interaction** (RSI) has never been clearly defined in either statute or by the Department of Education. As such, institutions offering distance education are held to a standard that impacts financial aid eligibility that remains ill-defined by the Department of Education and Congress. Although much of the recent discussion around RSI has focused on its application to online direct assessment and competency-based education (CBE), it remains a critical issue for all institutions offering distance education and must be clearly defined in such a way that takes into consideration the needs of all distance education modalities and educational innovations.<sup>1</sup>

### **BACKGROUND**

#### *Statutory and Regulatory Reference*

The federal definitions of correspondence and distance education have evolved through a number of amendments to the Higher Education Act (HEA). The most notable of these evolutions have been the Higher Education Amendments of 1992 (Pub.L. 102-325), the Higher Education Amendments of 1998 (Pub.L. 105-244), the Higher Education Reconciliation Act of 2005 (Pub.L. 109-171), and the Higher Education Opportunity Act (Pub.L. 110-315). The subsequent revisions to federal regulations found in 34 C.F.R. §600.2 include the term regular and substantive interaction in both the definition of correspondence course and distance education:

*“Correspondence course: (1) A course provided by an institution under which the institution provides instructional materials, by mail or electronic transmission, including examinations on the materials, to students who are separated from the instructor. Interaction between the instructor and student is limited, is not regular and substantive, and is primarily initiated by the student. Correspondence courses are typically self-paced.”*

*“Distance education means education that uses one or more of the technologies listed in paragraphs (1) through (4) of this definition to deliver instruction to students who are*

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<sup>1</sup> The impact of this language specifically on direct assessment and competency-based education is discussed in a separate issue brief and beyond the scope of this document.

separated from the instructor and to support regular and substantive interaction between the students and the instructor, either synchronously or asynchronously. The technologies may include –

- (1) The internet;
- (2) One-way and two-way transmissions through open broadcast, closed circuit, cable, microwave, broadband lines, fiber optics, satellite, or wireless communications devices;
- (3) Audio conferencing; or
- (4) Video cassettes, DVDs, and CD-ROMs, if the cassettes, DVDs, or CD-ROMs are used in a course in conjunction with any of the technologies listed in paragraphs (1) through (3) of this definition.”

### *History*

Congress and the Department of Education have long been concerned about quality assurance and consumer protection, especially as more students have begun to access education in settings other than the traditional face-to-face classroom. In 1992, because of concerns over the fraudulent use of Title IV for vocational education correspondence courses, online education courses were originally classified as correspondence education and ineligible for Title IV financial aid. 1992 amendments to the Higher Education Act of 1965 created the 50 percent rule—a regulation that disallowed students from receiving Title IV financial aid if more than half of their institution’s students were enrolled in correspondence and/or online courses. Because the internet or other technologies were nascent at the time, there was no clarity or distinction between distance education and correspondence education, and as such, distance education courses were also subject to these restrictions.

In 1998, amendments to the Higher Education Act permitted exploration of the emerging field of distance education. In recognition of its growth, the amendments authorized the creation of the Distance Education Demonstration Program. Chiefly, this allowed the Department of Education to waive the fifty percent rule, and a few other restrictions, for any institution participating in the Program, and therefore, students became eligible to receive Title IV student financial aid.

A further amendment in 2002 led to the elimination of the 12-hour rule. Instead of requiring 12 hours of instruction per week, the rule was amended to require one day of instruction. This rule change allowed for the possibility that students might not be engaging with instructors and material several days a week but might be participating in their education for large chunks of time one or two days a week. In 2005, the Higher Education Reconciliation Act rescinded the fifty percent rule’s applicability to distance education and, as a result, distinguished between distance education and correspondence education... The new definition of distance education found in 34 C.F.R. §600.2 included the requirement that there be regular and substantive interaction between instructors and students. This key phrase, “regular and substantive interaction,” was never defined, thus creating numerous conversations and arguments about the role of and types of interaction pedagogically appropriate in online education. To further complicate this issue, the Act also opened the way for students to use federal financial aid for Department of Education approved direct assessment programs, which 34 C.F.R. §668.10 defines as “an instructional program that, in lieu of credit hours or clock hours as a measure of student learning, utilizes direct assessment of student learning... [This] means a measure by the institution of what a student knows and can do... Examples of direct

measures include projects, papers, examinations, presentations, performances, and portfolios” (34 C.F.R. §668.10(a)(1) and (2)).

### *Departmental Guidance*

In 2006, the Department of Education underwent negotiated rulemaking to create regulations around the award of financial aid to direct assessment programs. As a result, the Department issued an interim final rule September 8, 2006, that not only outlined the approval process relating to direct assessment programs, but also required that those programs meet the same regular and substantive interaction standards as distance education courses.

In 2012 the Department of Education’s Office of Inspector General released an audit of Saint Mary-of-the-Woods College which found that the institution’s online education programs did not include regular and substantive interaction. According to the audit, instructors teaching distance education courses at St. Mary-of-the-Woods rarely used technologies such as a learning management system or online discussion forums. As a result, the OIG ruled that:

[I]nstructors did not deliver lectures or initiate discussions with students. Tutoring and other instruction resources were provided at the student’s discretion. Eighty percent of assignments were due 2 weeks before the term ended, and the remaining 20 percent of assignments were due at the end of the term (OIG, 2012).

As a result, the Inspector General determined that Saint-Mary-of-the-Woods was in violation of the 50% rule and should return to the federal government over \$42 million in misawarded student financial aid (OIG, 2012). In their response to the OIG, Saint-Mary-of-the-Woods responded that the Inspector General had retroactively defined RSI standards to the institution.

Simply put, the regulations relied upon in the Draft Report cannot be applied to the conduct of SMWC’s distance education programs during the Audit Period, as the relied-upon regulations were not in effect during the period under review (OIG, 2012).

By December 2014, there was enough confusion about the interpretation of regular and substantive interaction that Acting Assistant Secretary for Postsecondary Education Lynn Mahaffie issued a letter meant to provide clarification. Although that letter was focused on competency-based education (CBE), the section on regular and substantive interaction was also applicable to the larger field of distance education. In response to the question, “What are the required conditions for regular and substantive interaction between students and instructors for CBE programs, including direct assessment?” the Department responded with what regular and substantive interaction was **not**.

We do not consider interaction that is wholly optional or initiated primarily by the student to be regular and substantive interaction between students and instructors. Interaction that occurs only upon the request of the student (either electronically or otherwise) would not be considered regular and substantive interaction (Department of Education, 2014).

However, that still begged the question—what constitutes regular and substantive interaction? The same “Dear Colleague” letter went on to list several different types of educational activities, that at least within the context of competency-based education *might* constitute “engagement” including:

- Participating in regularly scheduled learning sessions (where there is an opportunity for direct interaction between the student and the instructor).
- Submitting an academic assignment.
- Taking an exam, an interactive tutorial, or computer-assisted instruction.
- Attending a study group that is assigned by the institution.
- Participating in an online discussion about academic matters.
- Consultation with a faculty mentor to discuss academic course content.
- Participation in an instructor-guided independent study (Department of Education, 2014).

The letter quickly goes on to state, “Note that not all of the educational activities described above fulfill the requirements for regular and substantive interaction between students and instructors.” Nowhere does the letter go on to elaborate or clarify this last statement.

Two subsequent audits by the Department’s Office of Inspector General, one in 2015 and another in 2016, also raised the issue of regular and substantive interaction without explanation of the term’s meaning. On September 30, 2015, the Office of Inspector General issued an audit of the Higher Learning Commission (HLC). The Inspector General charged HLC with approving the substantive change applications of six institutions wishing to offer competency-based education “even though the applications described the proposed programs as self-paced programs and did not clearly indicate that the programs would include regular and substantive interaction between students and school employees who met the Higher Learning Commission’s definition of faculty members” (OIG, 2015).

The next year, the Inspector General issued similar findings in an August 2, 2016, audit of the Western Association of Schools and Colleges (WASC). In this case, the Inspector General specifically called out WASC’s handling of regular and substantive interaction in accreditation reviews, finding that “the commission did not sufficiently evaluate whether proposed competency-based education programs included faculty-initiated, regular and substantive interaction” (OIG, 2016). It is of note that although both audits fault the accreditors for not correctly evaluating the presence of regular and substantive faculty-initiated interaction, neither audit attempts to define regular and substantive interaction.

The most recent discussion of what constitutes regular and substantive interaction can be found in the Office of Inspector General’s September 2017 audit of Western Governors University (WGU), the largest competency-based education provider in the country. After admitting that there is not a statutory definition of regular and substantive interaction, the OIG laid out what it believed to be the “ordinary meaning” of “regular and substantive” interaction between students and instructors. Substantive interaction is defined as “relevant to the subject matter” and involves a “student interaction with a course mentor or required an individual submission of a performance task for which an evaluator provided the student feedback” (OIG, 2017). Most importantly, the OIG went on to define what is NOT substantive interaction. Substantive interaction does NOT include:

- Computer-generated feedback on objective assessments.

- Recorded webinars, videos, and reading materials if the course design materials did not require the students to watch the webinars and then interact with an instructor.
- Contact with mentoring staff who are not directly providing instruction on the course's subject matter (OIG, 2017).

Finally, the OIG tackled regular interaction, defining it as “occurring with some reasonable frequency considering the school-suggested length of the course” (OIG, 2017). Although the report does not explicitly define “reasonable frequency,” the OIG did recommend that WGU should (emphasis added): “Ensure that the school-defined academic year will include at least 30 weeks of instructional time and *each of the weeks will include at least 1 day of regularly scheduled instruction or an examination*” (OIG, 2017). This definition of regular interaction can be traced back to a March 2011 “Dear Colleague” letter on program integrity and the rescinding of the 12-hour rule which stated:

In the case of distance education and correspondence education, academic engagement would include, but not be limited to, submitting an academic assignment; taking an exam, an interactive tutorial, or computer-assisted instruction; attending a study group that was assigned by the institution; contributing to an academic online discussion; and initiating contact with a faculty member to ask a question about the academic subject studied in the course (Ochoa, 2011).

## **CONCERNS**

Many members of the online education community have expressed concern with the lack of clarity with the current definition and/or application of regular and substantive interaction to both online and competency-based education programs. Although some of these concerns can be addressed with regulatory changes, others may require Congressional action.

### *Regulatory Concerns*

- (1) Consumer protection
  - The Department of Education plays a critical role in protecting educational consumers as well as the public's tax investment in higher education financial aid.
  - An important part of this consumer protection role is a concern over the quality of higher education.
  - Competency-based models of education have been criticized, especially through the Department's Office of Inspector General, for not being held to the standard of RSI based on the idea of academic activity and definitions they have created, which stifles innovative learning through distance education and CBE.
- (2) Application of RSI to distance education and not face-to-face education
  - The exclusive application of RSI to distance education results in inequitable treatment between face-to-face and distance education programs, even at the same institution.

- By applying RSI only to distance education, the Department is holding it to a higher standard than face-to-face courses, particularly large lectures sections where little substantive interaction may take place.
  - This double standard implies that distance education and CBE are inferior to face-to-face education, a belief that a decreasing number of faculty, administrators, students, and employers have.
- (3) Definition of substantive interaction
- As institutions begin to deploy new technologies, especially adaptive learning technologies, the issue of whether or not students can receive substantive interaction that is not instructor-initiated must be discussed.
    - If the Department does decide to address this issue, it will need to determine if the definition of substantive interaction should be changed to allow for technologies such as adaptive learning that might provide interactions that are not necessarily instructor initiated but built into the program delivery model and have instructor-validated learning technologies.
- (4) Disaggregated instructional roles
- Institutions which have experimented with instructional models where instructor roles are disaggregated argue that it is possible for substantive academic interaction to take place between students and non-faculty instructional staff.
  - Often referred to as “academic coaches,” these staff combine subject-level knowledge with counseling and advising training. These roles should be distinguished from the important role a faculty-qualified instructor provides. Accreditors should be charged with oversight and providing qualifications for who can fulfill these roles.

### *Statutory Concerns*

- (1) Regular interaction and the credit hour
- The Department, or at least the OIG, is linking regular interactions with the credit hour definition and the traditional thirty-week academic year—both of which are rooted in a traditional face-to-face instructional calendar.
  - Students enrolled in distance education, and especially in direct assessment programs – many of which are CBE programs, interact with faculty and instructional materials very differently and, often, on a less structured timetable. The current interpretation of regular interaction can limit more flexible online education programs, especially those programs designed for working adults.
- (2) Quality assurance
- RSI is currently used as a stand-in for quality assurance. It is not.
  - Regular and substantive interaction standards focus on a set of inputs. Arguably, quality assurance measures should focus on outcomes
  - If the federal government is interested in assuring that federal financial aid is used at institutions that offer quality educational offerings, standards that focus on outcomes should be developed.

## GUIDING PRINCIPLES

- (1) **Fairness to all students and institutions** regardless of the educational modality.
    - Students should have the same access to federal financial aid regardless of instructional modality.
    - Treat all modalities with the same expectations to achieve high quality learning. Do not hold non-face-to-face modalities to a different set of standards.
  - (2) **Incentivize, don't punish, institutions for being innovative** and creating programs that expand educational opportunity.
    - Create clear regulations around RSI and apply those regulations in a uniform way.
  - (3) **Develop new measures of quality assurance and transparency** that rely less on "input" measures and more on "outputs."
    - The Department of Education plays a critical role in student consumer protection as well as protecting the multi-billion-dollar investment of taxpayer money. The Department must continue this critical role while also finding ways to balance protection with expanding educational access for an increasingly post-traditional student population.
    - Although the Department plays a critical role in quality assurance, it is only one part of the triad—there are equally important roles for accreditors and state government. All three parts of the triad should be equally engaged in quality assurance discussions and responsibilities.
    - The Department currently relies on "input" measures like credit hours and regular and substantive interaction as proxies for quality assurance. However, input measures are not always dependable indicators of educational quality, something that is essentially an "outcome." The Department should work with higher education stakeholders to recommend alternative measures of quality assurance that focus on demonstrations of quality.
  - (4) **Simplify regulations** around financial aid program eligibility requirements, especially around RSI.
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