

Gregory Martin
U.S. Department of Education
400 Maryland Ave. SW
Washington, DC 20202

May 1, 2020

Dear Mr. Martin:

The University Professional and Continuing Education Association (UPCEA) is composed of the nation's leaders in delivering quality online and professional education to adult and nontraditional learners who now represent the majority of today's students. Once on the periphery of institutions of higher education, today our members are front and center as all postsecondary learning has rapidly shifted to a remote format.

On behalf of UPCEA, we wish to thank you for the opportunity to comment on the Department's Notice of Proposed Rulemaking (NPRM) posted in the Federal Register on April 2, 2020, which would amend key definitions and title IV eligibility requirements for distance and correspondence education providers. UPCEA recognizes the importance of regulating distance education to protect students and the general public. We appreciate the efforts the Department has taken to protect these interests while still encouraging innovation in higher education and student access to affordable, high-quality educational opportunities.

We generally support the proposed changes contained in this NPRM and believe they advance each of these goals. However, we do seek clarification on several new and amended definitions from the Department as outlined below. The following suggestions and requests for clarification have been submitted both by UPCEA member institutions and by UPCEA's Policy Committee, and include concerns raised by online program administrators, instructional faculty, and instructional designers.

I. Clarifying whether asynchronous learning and extended reality experiences are considered [Academic Engagement](#) under Section 600.2

UPCEA appreciates that the Department has added a new definition for academic engagement and is in favor of the examples already listed. We have several suggestions for additional examples to include or to be addressed in the preamble to these rules:

1. Paragraph 2(i) lists "attending a synchronous class" as a qualifying activity but provides no similar mention of "asynchronous" instruction. Asynchronous instruction is referenced

elsewhere, both in the “distance education” definition in section 600.2 and in section 668.3, paragraph 2(ii), as part of the new “week of instruction” definition. However, we request that the Department clarify its position with regard to the potential for asynchronous academic engagement either in the rules themselves or in the preamble to these rules to preempt confusion that may otherwise result as institutions work to interpret and implement this new definition.

2. As many institutions have begun offering educational opportunities through virtual and augmented reality, creating innovative and engaging new experiences for students, we request that the Department consider including “extended reality,” which is commonly used as an umbrella term for virtual and augmented reality and related experiences, as an additional delivery modality as part of its list of examples of academic engagement.

II. Including asynchronous academic engagement in the updated Clock Hour definition proposed under 600.2 [[Attendance in a “Synchronous” Class](#)]

With the proposed clock-hour eligibility criteria provided for distance education courses and correspondence courses, both synchronous and asynchronous components, such as “preparation,” can be counted for correspondence courses but it appears as though only synchronous learning experiences may be counted with regard to distance education.

We believe that limiting distance education clock-hour eligibility to synchronous activities could have a chilling effect on innovation and discourage institutions from creating more flexible and accessible learning experiences that better meet the needs of today’s students. In particular, asynchronous opportunities can be far more accommodating to students with disabilities and those splitting time with work and family obligations. When institutions are able to accurately track asynchronous academic engagement to otherwise satisfy the requirements under this clock hour definition, higher quality educational opportunities can be created for students that go beyond merely “attending” a class session as the Department permits in the case of correspondence education clock hour eligibility.

Therefore, we respectfully request that “participation through asynchronous academic engagement” or similar language be added to the distance education eligibility criteria in paragraph 1(iv) of the “clock hours” definition. Alternatively, we ask for clarification from the Department as to whether asynchronous engagement can be counted as part of distance education clock hour calculations in the preamble to the final rules.

III. Further clarifying what constitutes “regular and substantive interaction” under the Section 600.2 definition for Distance Education [[Distance Education \(iv\)\(4\)](#)]

UPCEA greatly appreciates the efforts taken by the Department as well as the Distance Learning and Innovation Subcommittee to clarify the “regular and substantive interaction rule.”

We offer two suggestions that we believe will further clarify this rule, which has been the source of considerable confusion for UPCEA member institutions for decades:

1. Paragraph 4 states that “substantive interaction is engaging students in teaching, learning, and assessment, consistent with the content under discussion, and also includes at least two of the following” (emphasis added). The Department explains that “The committee . . . agreed to define ‘substantive interaction’ as including at least two instructional activities in order to prevent a course from qualifying as ‘distance education’ if the institution provides only a single limited form of interaction as part of that course.” However, as this interaction must also be “regular,” a question emerges over how regular and often an instructor must provide two or more of the opportunities listed. Would it be acceptable to provide one of the listed opportunities one time in a term and rely solely on another for the remainder of the term? Do at least two forms of substantive interaction need to be alternated between on a regular basis or perhaps in the same class session? Ultimately, we believe this “at least two” requirement will generate further implementation challenges for a rule with an already complex history. While recognizing the difficulty involved in further defining the regular and substantive interaction rule, we would prefer to see the “at least two” language omitted in the final rules or clarified by the Department.
2. We also note that the Department has defined “regular” interaction as interaction that takes place on a “regular and predictable basis.” While we find the word “predictable” to be a helpful addition, we anticipate that questions will still frequently emerge over what constitutes “regular” and understand that the Department, in order to encourage flexibility and some discretion on the part of accrediting agencies and institutions, does not want to prescribe specific time intervals for which substantive interaction must occur. Other groups affiliated with UPCEA have suggested that the Department replace “regular and predictable basis” with “scheduled and predictable basis” and UPCEA supports this suggestion as well.

IV. *Using the Distance Learning and Innovation Subcommittee’s previous language in paragraph v(5) of the Distance Education definition in Section 600.2 [Distance Education (v)(5), Regular Interaction “And” Versus “Or”]*

After careful deliberation, the Distance Learning and Innovation Subcommittee recommended that institutions evidence regular interaction either by (i) providing opportunities for substantive interaction on a predictable and regular basis, “or” (ii) by monitoring academic engagement and promptly intervening where appropriate. However, the full committee subsequently revised the wording by changing the word “or” to “and” between these two paragraph v(5) clauses.

UPCEA believes that requiring institutions to satisfy either clause on its own would already offer a tremendous benefit to students by setting an expectation for quality learning opportunities beyond what is expected for on-campus instruction through any comparable regulation.

Moreover, this change from “or” to “and” may push institutions to adopt learning analytics tools to track student progress to ensure they can evidence compliance with the second clause, which in turn may increase the cost of educating students as well as introduce privacy and other ethical concerns for students when data collected through these technologies are not properly managed. We therefore ask the Department to consider codifying the language initially submitted by the Distance Learning and Innovation Subcommittee rather than adopt the revisions made by the full committee in this specific case.

Thank you in advance for your consideration of the suggestions and requests for clarification provided in this comment. Please send any future correspondence pertaining to this comment to Jordan DiMaggio, Director of Policy and Digital Strategy at UPCEA.

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Sincerely,

Jordan DiMaggio
Director, Policy and Digital Strategy
UPCEA