

Preserve Regular and Substantive Interaction Requirements for Non-Competency-Based Online Programs

(34 CFR 600.2; 20 USC 1007(7)(A)(ii); DCL GEN-14-23)

There has been a robust conversation about the need to update the requirements for “regular and substantive interaction” for CBE programs. New America has been deeply engaged in these discussions, working to carefully and thoughtfully assess opportunities to reenvision the regular and substantive interaction requirement for high-quality CBE programs.

However, while it’s tempting to just say “throw it out,” we must remember the origins of and intent behind the original requirement. It came in response to rampant fraud and abuse stemming from the increase in correspondence programs in the 1980s and 1990s (which came a few decades after rampant abuse in correspondence programs aimed at veterans returning from war with GI Bill dollars to use). These programs promised flexible options for working adults, but the availability of federal dollars--with no strings attached to student outcomes--proved too tempting for unscrupulous providers to resist. Many students were taken for a ride, taxpayers were left on the hook, and Congress took action. To reduce the risk of abuse, Congress created a definition for correspondence education and established additional restrictions for those programs, such as limiting the amount of federal financial aid for which they were eligible. The 1992 HEA amendments defined correspondence education as follows:

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.

(2) If a course is part correspondence and part residential training, the Secretary considers the course to be a correspondence course.

[(3) A correspondence course is not distance education. *This provision was added during negotiated rulemaking in 2009-2010.*]

In 2005, Congress moved to make distance education programs eligible for federal financial aid. The statutory definition of distance education programs, revised again in the 2008 Higher Education Act reauthorization, established a requirement that distance education programs including “regular and substantive interaction with faculty,” effectively the sole distinction between distance education and correspondence programs, to prevent the recurrence of the kinds of abuses seen during the 1980s and 1990s.

The regulations governing regular and substantive interaction, promulgated first by the Bush Administration in 2006, sought to clarify the distinction between distance education and correspondence education. They have effectively helped to prevent many of the abuses spotted in correspondence education, in conjunction with the credit hour and other rules. Meanwhile, the regulations do not appear to have hindered growth in distance education; between 1998 and 2012, enrollment in distance education has quintupled. And isolated problems with individual institutions can be resolved on a case-by-case basis. Therefore, we feel strongly that flexibilities for regular and substantive education must *not* be applied to all distance education programs, writ large.

However, the rise of competency-based educational programs that make use of new models for faculty, and technological advancements that allow CBE programs to design personalized, supported learning programs with proactive support from faculty, have raised new questions about regular and substantive interaction in the context of CBE programs in particular. While being separated from the instructor in a self-paced program today can still mean students are largely left to learn on their own, it doesn't *have* to mean that.

Moreover, the CBE community--unlike the distance education community in general--has spent several years thinking about how to fix (and not throw out or gut) the regular and substantive interaction requirement in a way that enables high-quality, cutting-edge outcomes-driven programs that serve students well to thrive. Gutting or throwing out this requirement would be harmful to the field of CBE, as it could open the floodgates to unscrupulous actors that call themselves "CBE," take students money and provide shoddy education, and ruin the reputation of the good actors in the field--and ultimately destroy the credibility of CBE itself. This must be done thoughtfully, and in consultation with CBE leaders and consumer protection advocates.

Given these shifts, we believe this provision of the law should be carefully considered by Congress, but *for CBE programs only*. And, importantly, this isn't something the Department has the authority to do through guidance. Currently there is no statutory definition for CBE, which means that the Administration would have to change regular and substantive interaction for *all* of distance education (rather than just for CBE programs) if it decided to make changes.¹ This would be a huge threat to quality, program integrity, and to the CBE community, which has worked diligently over the past few years to hold itself up on its outcomes, not just on its delivery method. The CBE community has been willing to (and has wanted to) be held to a higher standard. The broader field of distance education has not yet done the same, meaning that any definition that would be acceptable to the broader field would need to appeal to the lowest denominator and would most likely provide even less quality assurance than we have now. We would not support changes to the current DCL that provides flexibility to regular and substantive interaction, redefines that interaction, or limits enforcement of that provision, because we do not believe such changes should apply to all distance education programs.

¹ The Advancing Competency-Based Education Act of 2017, H.R. 2859.

However, the Department can play a critical role in moving this conversation forward through its CBE experiment under the Experimental Sites Initiative, which is allowing CBE institutions to experiment with flexible definitions of regular and substantive interaction. Participating institutions should provide, and the Department should compile, additional information to help Congress better understand the educational support and resources students need to progress through their programs, the content, activities, support, and resources needed to help students attain and demonstrate competency; to understand and address the role of faculty and faculty involvement in CBE programs, including how they effectively provide functions traditionally assigned to faculty using other staff; and to identify additional resources that may be needed for adequate oversight of CBE programs. All of this, of course, should be within the broader context of looking at the student outcomes (not inputs) in these programs. This could be critical information that Congress could use as it considers changes in HEA reauthorization that enable innovation in the service of--rather than at the expense of--students.