

Federal update – Compliance for Digital Learning and Distance Education

**Cheryl Dowd, Senior Director, State Authorization Network
(SAN) & WCET Policy Innovations**

Russ Poulin, Executive Director, WCET

Who is WCET?



WICHE Cooperative for Educational Technologies

Advancing learner access and success through
postsecondary digital learning for a more equitable world.

WCET Website: <https://wcet.wiche.edu>

WCET Frontiers: <https://wcetfrontiers.org>

Who is SAN?



Empowering members to successfully resolve regulatory challenges to improve student protections in digital learning across state lines.

All California Community Colleges are members of SAN.

Coordinators:

(the following person manages the SAN membership for the California Community Colleges)

- Erin Larson: elarson@cccco.edu

SAN Website: <https://wcetSAN.wiche.edu>

Learning Objectives

Federal Regulations tying compliance to participation in Title IV Federal Financial Aid:

- State Authorization related regulations, current and proposed.
- The regulation defining Distance Education.
 - Regular & Substantive Interaction
 - Proposed language amending the definition.
- Regulations when providing programs leading to a professional license or certification.
 - Notifications
 - Proposed language to ensure the curriculum satisfies state education pre-requisites where the student is located at time of enrollment.

Federal Regulations tie institutional compliance to participation in Title IV HEA programs. (Federal Financial Aid)



Federal Rulemaking Timeline

2022 Calendar

Calendar

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Your source for calendars

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Federal Holidays 2022

Jan 1	New Year's Day	Jun 20	Juneteenth (obs.)	Nov 24	Thanksgiving Day
Jan 17	Martin Luther King Day	Jul 4	Independence Day	Dec 25	Christmas Day
Feb 21	Presidents' Day	Sep 5	Labor Day	Dec 26	Christmas Day (obs.)
May 30	Memorial Day	Oct 10	Columbus Day		
Jun 19	Juneteenth	Nov 11	Veterans Day		

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March 2022 : Winter 2022 Negotiated Rulemaking Committee did not reach consensus on 5 of 7 issues.

Spring/Summer 2022:

- The Department must write rules that did not get to consensus.
- Rules must go to Office of Management & Budget for review.
- After OMB review the proposed regulations can be released and subject to public comment. (likely 30-day comment period)

By November 1, 2022: Final Regulations released.

July 1, 2023: Final regulations released by November 1, 2022, go into effect.

July 1, 2024: Final regulations released after November 1, 2022.



June 29 - July 1, 2022



California
Community
Colleges

TechConnect

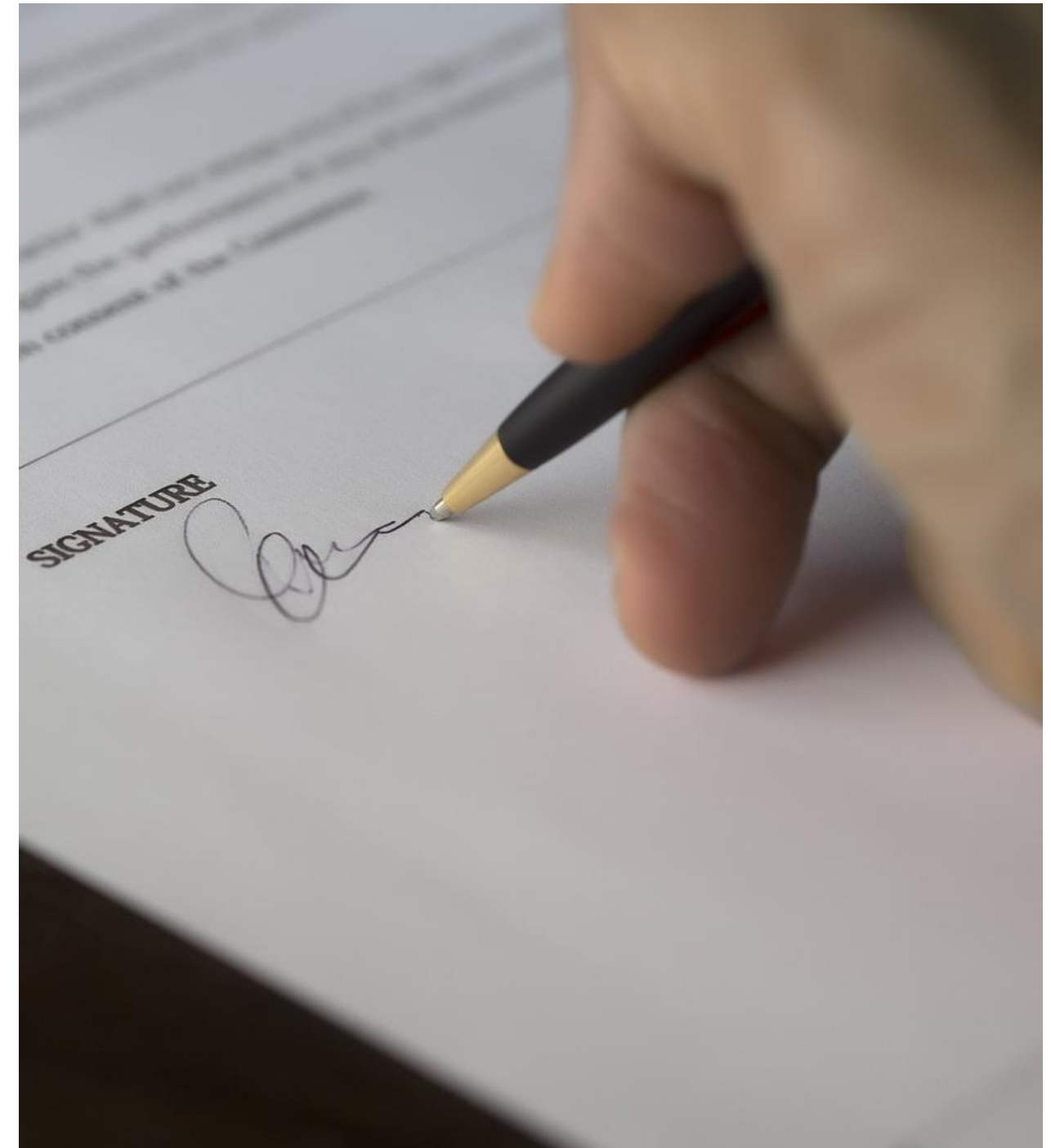
34 CFR 600.9 (c): State Authorization of Distance Education



- Tied to Aid– Eligibility to disburse aid tied to the institution having approvals demonstrated by:
 - Direct approval by the state.
 - Through a state authorization reciprocity agreement.
- Student Location
 - Defensible Process
 - At enrollment or formal receipt of information from the student that the location has changed.

34 CFR 600.2: Reciprocity Definition

- Agreement between 2 or more states that allows institutions to provide educational activities in other states as directed by the agreement.
- States that volunteered to participate are to follow reciprocity agreement processes for distance education authorization.
- State may enforce its own general-purpose laws that would apply to any business.



Possible Changes to Reciprocity



**We are watching for the next steps
in the Federal rulemaking process**



Recent Federal rulemaking proposes that the institutions participating in reciprocity must comply with all State consumer protection laws including generally applicable and those specific to educational institutions.

Regular and Substantive Interaction

U.S. Dept. of Education (Title IV) Term:
“Regular and Substantive Interaction”

California (Title 5) Term:
“Regular Effective Contact”



WCET Regular and Substantive Interaction Overview:

<https://wcet.wiche.edu/frontiers/2021/08/26/rsi-refresh-sharing-our-best-interpretation-guidance-requirements/>

MiraCosta REC Resource:

<https://miracosta.instructure.com/courses/19220/pages/3-dot-4-california-title-5-de-requirements-regular-effective-contact-and-more>

Regular and Substantive Interaction

34 CFR 600.2 Definitions (bold added)

*3. For purposes of this definition, an **instructor** is an individual responsible for delivering course content and who meets the qualifications for instruction established by the institution's accrediting agency.*

Regular and Substantive Interaction

34 CFR 600.2 Definitions (bold added)

4. For purposes of this definition, **substantive** interaction is engaging students in teaching, learning, and assessment, consistent with the content under discussion, and also **include at least two** of the following—

Regular and Substantive Interaction

34 CFR 600.2 Definitions

- i. Providing direct instruction;*
- ii. Assessing or providing feedback on a student's coursework;*
- iii. Providing information or responding to questions about the content of a course or competency;*
- iv. Facilitating a group discussion regarding the content of a course or competency; or*
- v. Other instructional activities approved by the institution's or program's accrediting agency.*

Regular and Substantive Interaction

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Regular and Substantive Interaction

34 CFR 600.2 Definitions (bold added)

5. An institution ensures **regular** interaction between a student and an instructor or instructors by, prior to the student's completion of a course or competency--

Regular and Substantive Interaction

34 CFR 600.2 Definitions (bold added)

- (i) Providing the opportunity for substantive interactions with the student on a **predictable and scheduled basis** commensurate with the length of time and the amount of content in the course or competency; **and***
- (ii) **Monitoring the student's academic engagement** and success and ensuring that an instructor is responsible for promptly and proactively engaging in substantive interaction with the student when needed on the basis of such monitoring, or upon request by the student.*

Regular and Substantive Interaction

	CURRENT	AS OF JULY 1, 2021
INTERACTION	Only initiated by the instructor	Mostly instructor initiated, some leeway
INSTRUCTOR	Meets accreditation standards**	Explicit reliance on accreditor approval
SUBSTANTIVE	Of an academic nature	Activities: instruction, assessment, tutoring
REGULAR	Regular and somewhat substantive	Predictable/scheduled & tracking/intervention

Four Key Elements for Federal Compliance for Professional Licensure Notifications

PROFESSIONAL
LICENSURE
NOTIFICATIONS
34 CFR §
668.43(a)(5)(v)
and 34 CFR §
668.43(c)

1

Notifications for educational programs delivered in all modalities.

2

Type of educational program is defined in the regulation.

3

Public Notifications – meeting educational requirements in all states.

4

Direct Notifications – Individualized to student and their location.

Which Programs Require Notifications?

Educational Programs:

1. Designed to meet educational requirements
 - For a specific professional license or certification that is
 - Required for employment in an occupation, or
2. Advertised as meeting such requirement.
3. Information regarding whether completion of that program would be sufficient to meet licensure requirements in a state for that occupation.





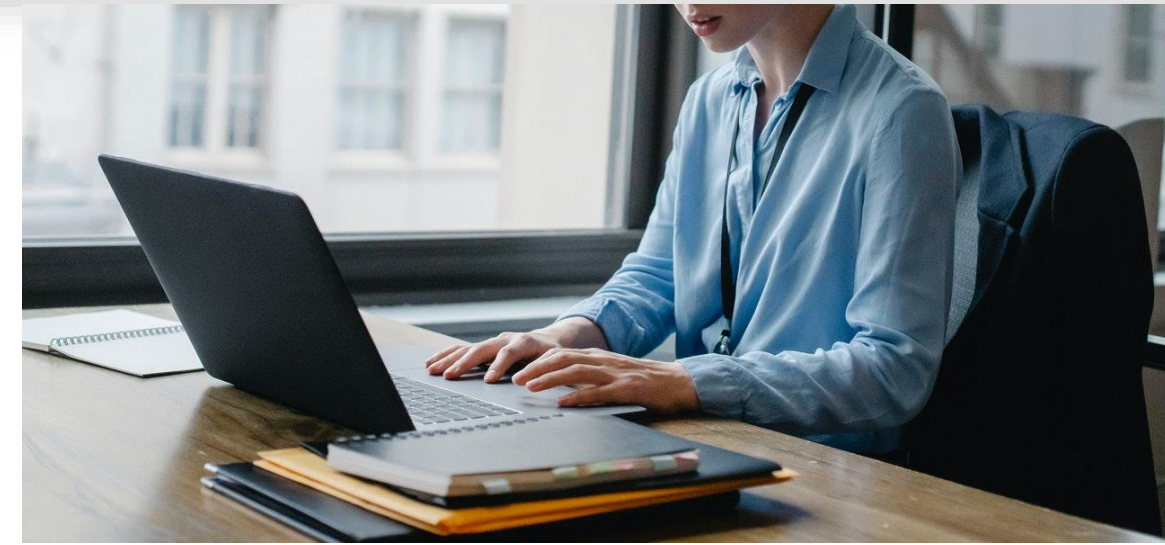
What exactly is required?

- A list of all States for which the institution has determined that its curriculum meets the State educational requirements for licensure or certification;
- A list of all States for which the institution has determined that its curriculum does not meet the State educational requirements for licensure or certification; and
- A list of all States for which the institution has not made a determination that its curriculum meets the State educational requirements for licensure or certification;

Direct Notifications

Prospective Students:

If the institution indicates that it **does not meet** **or** **has not made a determination** where the **prospective student** is located; notice to that student to that effect must take place prior to the student's enrollment in the program. Prior to enrollment = prior to financial commitment.



Enrolled Students:

If the institution makes the determination that the program does not meet requirements in a state where an **enrolled student** is **currently located**, the institution must provide notice to that effect within 14 days of making that determination.

Possible Changes To “Ensure” State Requirements Are Met



**We are watching for the next steps
in the Federal rulemaking process**



Recent Federal rulemaking proposes that the institution must ensure that each program eligible for Title IV aid satisfies educational prerequisites for a professional license or certification in the state where the student is located at initial enrollment.

Maximum Clock Hours for Programs Leading to Licensure

For programs that are subject to the Department's "Gainful Employment" regulations, it was **proposed** that:

Overall student aid eligibility be limited to the lesser of:

- Minimum hours set by the state for that occupation.
OR
- If at least half the states license the occupation, the median of hours as determined by the Department.





**We are watching for the next steps
in the Federal rulemaking process**



The negotiators expressed great concern.

A student entering a program might not be eligible for the aid necessary to complete the program.

Questions



Presenter Contact Information



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