

DISTANCE EDUCATION ACCREDITATION AND COVID-19 WAIVERS

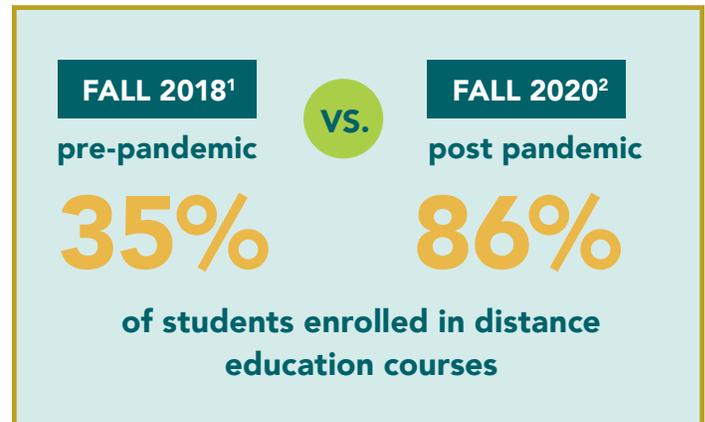


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When the COVID-19 pandemic began in the spring of 2020, thousands of institutions of higher education went from brick-and-mortar-based instruction to distance education in the span of only a few weeks. Students who were used to sitting in lecture halls and interacting face-to-face with their peers and faculty suddenly found themselves moving away from campus and studying wherever they could: dining room tables, childhood bedrooms, parking lots so they could access WiFi, and alongside their children who were also learning via Zoom.

Today's students—37 percent of whom are over the age of 25, a quarter of whom are parents, and 60 percent who work—have been increasingly juggling school with home and work responsibilities over the past decade. As such, students before the pandemic had been turning to online education at increasing rates for flexibility.

Now, due to the COVID-19 pandemic, colleges in the spring and fall of 2020 have shifted more courses to remote learning.



Typically, institutions that are providing programs through distance education must first be evaluated for such purpose by an accrediting agency that is recognized by the Department of Education (ED). ED deems this requirement applicable when an institution offers a program where at least 50 percent of a program is offered through distance education. Accreditors establish their own criteria as part of these evaluations, and this process can take an institution many months or even years to complete. However, in the face of a global health crisis, institutions swiftly shifted nearly all of their instruction online in a matter of weeks.

WHAT IS DISTANCE EDUCATION? Distance education is education that uses technology (such as the Internet) to deliver instruction to students who are physically separated from the instructor.



¹ "Fast Facts: Distance Learning." National Center for Education Statistics.

² Rachel Fishman and Tamara Hiler. "New Polling from New America & Third Way on COVID-19's Impact on Current and Future College Students." ThirdWay. September 2, 2020.



Questions & Answers

Question #1

There are rules, regulations, and processes in place—how did this online shift happen so quickly?

To facilitate this abrupt yet necessary transition in March 2020, the U.S. Department of Education (ED) issued waivers for thousands of institutions to operate distance education programs that did not meet the typically-applied requirements under the Higher Education Act and its regulations. The waiver from ED was intended to be an emergency measure for programs to switch to remote instruction to comply with public health guidance.

1 Which regulations did ED waive in the spring due to the pandemic and why?

ED waived the requirement that an institution of higher education (IHE) must be approved by its accreditor in order to offer distance learning. This allowed institutions to immediately implement online learning programs mid-semester without lengthy reviews from their accreditor and the Department of Education.

2 How did ED have the authority to do this?

The Higher Education Relief Opportunities for Students Act (HEROES

Act), which became law in 2003, gave ED the authority to issue such waiver. Among other provisions, the HEROES Act provides the authority for ED to issue relief under Federal Student Aid programs for institutions located in, or people who live or work in, a disaster area officially designated as such by the president. President Trump made a disaster declaration for the entire United States on March 13, 2020, and ED was able to issue the waiver in the form of relief in a disaster area.

3 Is the waiver still in place for fall 2020? Is anything likely to change?

Initially, ED issued the distance education waiver through the spring 2020 school term. ED subsequently extended the waiver through any payment periods that begin on or before December 31, 2020. While many institutions will have gained approval from their accreditor to offer programs through distance education not in the context of the waiver, it is likely that some institutions will request that the waiver be extended through at least the spring of the 2020-2021 academic year.

³Federal Register, 09/02/2020.

But, the Department of Education just revised its regulations on distance education. What is the status of that?

In August, while the pandemic continued to impact IHEs and the rest of our country, ED finalized regulations³ with respect to distance education and related matters that will impact how programs are offered through this medium for years to come. These regulations are the result of a negotiated rulemaking panel that was completed in 2019.

1 What are the most significant provisions included in ED's new distance education rule?

Regular and Substantive: The rule maintains the concept that students in distance education must have “regular and substantive interaction” with their instructors. The rule defines regular interaction as (1) providing for interaction on a predictable and scheduled basis commensurate with the length of the course and its content, or (2) ensuring an instructor promptly and proactively engages when needed on the basis of monitoring or upon student request. The rule defines substantive interaction as including at least two of the following (1) direct instruction, (2) assessing or providing feedback on student coursework, (3) responding to questions or providing information about the course or a competency, (4) facilitating a group discussion, or (5) other instructional activities approved by the accreditor of the program or IHE.

Direct Assessment: Under the rule, ED must only approve an IHE's first direct assessment program at each credential level (i.e. undergraduate). However, IHEs must report to ED when adding a second or subsequent program.

Prompt Action by ED on IHE Eligibility Applications: The rule requires ED to expedite the application process for institutions seeking determinations as eligible institutions.

2 Are these regulations in place now? How does this interact with the waiver?

While the regulations are officially effective on July 1, 2021, due to requirements for rules to be published by the end of October in a given year to be effective the next July (i.e. October 31, 2020 to be effective July 1, 2021), ED permitted institutions to implement many of the provisions once it was published in the federal register on September 2, 2020. With this option to implement provisions in the regulations during the waiver period, institutions that used the waiver flexibility likely will have to balance conflicts, if there are any, between the final regulations and their operation under the waivers. To date, significant issues between the interaction of the waivers and this new regulation have not yet surfaced.

Moving forward, what should we be watching for to ensure that high-quality education is still taking place despite these changes?

With the current and necessary rush to adopt distance education due to COVID-19, questions should be asked about the quality and effectiveness of what institutions of higher education are now offering their students. While many IHEs are working with their accreditors and have had some period of time during the summer to self-evaluate their distance education offerings, “weeks” is a relatively short time to improve and restructure how a program is offered. As institutions continue to offer distance education programs that were formerly provided through brick-and-mortar-based instruction, the following matters should be addressed:

Waivers should not be the new normal. While colleges and universities are seeking to return to in-person instruction and will likely do so at a faster pace once the pandemic has ended, many programs could continue to be provided through distance education. Institutions choosing to continue offering programs through distance education should work expeditiously to meet requirements to do so. ED officials and Congress should expect that institutions

will come into compliance prior to the end of this calendar year and only provide limited additional flexibility to gain approval to offer programs through distance education due to COVID-19 pandemic disruptions.

Public reporting on distance education programs. Under the waiver issued by ED, institutions should publicly report to their students and the public their plans to improve distance education programs and what future plans they will implement to maintain a high-quality program through distance education.

Accreditors need updated processes. Accreditors need to have processes in place to evaluate current operations and capabilities to assess institutions and conduct reviews in the pandemic and beyond. While many institutions are working with their accreditors regarding these changing circumstances, widespread and improved communication is needed.

For more information about **Higher Learning Advocates**, please contact **Emily Bouck West**, Deputy Executive Director, at ebouckwest@higherlearningadvocates.org