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To: U.S. Department of Education

From: Jo Blondin and Michael Cioce, Community Colleges

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Re: Issue Paper 3—Distance Education

The Department of Education has proposed modifications to 34 C.F.R. § 600.2, Definitions, that looks to remove asynchronous learning as an option in clock hour programs. The Department notes that the proposed changes will strengthen the Department’s ability to monitor clock hour programs offered via distance education, including the Department’s ability to protect students from, and keep taxpayer funds from going to programs failing to provide the required training. Further the Department has become aware of instances in which clock-hour programs offered through distance education have not complied with this requirement and students have not received the required training”

In the summary of issues, the Department expresses concerns about the ability of institutions to monitor academic engagement in asynchronous delivery, “because it requires technical expertise and the Department has limited information on which clock-hour programs are offered via distance education, including whether a program is offered through synchronous or asynchronous instruction.”

#### Context

Following the January sessions, negotiators representing private, nonprofit institutions of higher education, Erika Linden (primary) and Scott Dolan (secondary) submitted a data request to the Department which sought more detailed information and clarification in the following areas: 1) the total number and diversity of programs utilizing clock hours; 2) the extent to which those clock hour programs were using asynchronous components; 3) examples and evidence of the Department’s challenges in regulating academic engagement in clock hour programs; 4) the extent to which the Department has communicated its compliance expectations; and 5) the overall impact of non-compliance on the public.

In seeking this information, negotiators were trying to get a better understanding of the Department’s concerns, the extent to which they are applicable to clock hour programs, and the general rates and impact of noncompliance.

#### Structure of Clock Hour Programs and Delivery

In considering the Department’s proposal, it is important to keep in mind the structure of clock hour programs. Contrary to some sentiments expressed during negotiations, clock hour programs offer more than just practical, hands-on learning. They also contain substantial amounts of didactic instruction, which has traditionally been delivered in a lecture-style environment, but measured in clock hours.

Institutions design clock hour programs with three components: theory, lab, and clinical instruction. The theory phase typically relies on didactic instruction. It delivers the foundational knowledge necessary to prepare students to confidently and safely enter the lab environment. Subjects covered vary depending on the specific program of study. Students attend classroom lecture akin to those in credit hour programs.

In the laboratory phase, students apply the knowledge obtained in theory in the controlled environment. Students are supervised by instructors who provide active feedback and guide students in learning the skills necessary to move into the clinical environment.

Clinical instruction requires students to apply their knowledge and skills in real world environments under the supervision of instructors. This affords students the opportunity to practice and perfect their skills in the learning environment prior to course completion.

### Required Training

For licensed and other regulated occupations, states prescribe the required curriculum for institutions. Each program must contain content that meets the state requirements, and there are results-based measures available to accreditors of these programs that can be used to assess the overall quality of the program.

For programs such as nursing, welding, electrical technician, HVAC, cosmetology, barbering, automotive technician, aviation-related fields, and others leading to licensed occupations, states frequently require instruction in clock hours. In some instances, e.g. aviation, federal agencies regulate the nature and amount of clock hour instruction.

During and following the COVID-19 pandemic, states permitted institutions to provide clock hour instruction remotely and in an asynchronous environment. In either instance, clock hours continue to be measured using the standard of 50-60 instructional minutes in a 60 min period of attendance per clock hour of credit awarded.

We also understand the importance of balancing the need for practical training delivered in a live environment. The hands-on nature of the skills necessary for some occupations and learned in laboratory and clinical instruction means that they require components of learning that are provided in a synchronous, brick-and-mortar environment. Given this, we suggest limiting the amount of clock hours that can be delivered asynchronously, which will address any concerns the Department has raised about students having the opportunity to obtain the required training.

### Lack of Technical Expertise

The Department has expressed concern that institutions may lack the expertise or technology necessary to track student interaction in sufficient detail to allow for adequate supervision and monitoring of students. It is evident that this is not the case.

The Department addressed this concern in the comment section of the 2020 Final Rule on this issue. As the Department noted,

We also believe that commenters have made a strong case that, given current technology, clock hours completed asynchronously can be adequately supervised and monitored, provided the institution maintains the appropriate technological resources and internal controls. We disagree with commenters who indicated that learning technology is not yet capable of monitoring student engagement in this manner, especially since the Department has already reviewed and approved clock hour programs that used online learning platforms that are capable of the required monitoring.

85 Fed. Reg. 54742, 54792 (Sept. 2, 2020)(emphasis added). It is notable that in 2020, the Department not only acknowledged the existence of adequate technology to allow institutions to meet its requirements, but also that the Department had approved programs with this capability. Given that the technology existed in 2020 sufficient to address the Department's concerns, it seems unlikely that in 2024 such technology is no longer available or adequate.

During the January 9<sup>th</sup> session afternoon session, the Department also provided an example of a cosmetology program that was reviewed and found to have sufficient technology and the technical expertise to track clock hours appropriately. Dave Musser from the Department noted:

"I'll give the example of the very sophisticated one, the system would first do start a video and then identify the individual. And then the student would work their way through the learning modules, and they were structured in the same way that they would have been structured, had the student been sitting in a classroom listening to their instructor, and the system monitored this- essentially every place the student went, it monitored whether the student was answering questions in a timely way, that when they were quizzed, and then the student had to take a quiz at the end of each module in order to get credit for that particular skill that- or that piece of knowledge that they were expected to obtain through the program. So at the end of it, the system had a report that showed, you know, X logged in on this at this time, engaged in this module at this time. Here's their keystrokes. Here's their quiz. They finished the quiz with this score, etc. And the system would then take the amount of time that the student was actually engaged in that particular module, as opposed to just hunting around the site, and it would add those minutes toward the students as clock hours- completed clock hours for Title IV purposes, and if the student failed the quiz, then this- then the program would omit that hour. It would not count it toward completion. And if the student was not engaged, if they were in a module that didn't require, you know, regular quizzes, then the program would

notify the student, try to get them back engaged, try to get them to actually do more of the interacting with the system, etc.”

It is more likely that this technology has instead advanced in the past four years. Our research indicates that a number of options exist for different programs that can support institutions in the delivery of asynchronous clock hour education.

For example, two larger providers of curriculum for cosmetology and barbering programs offer solutions that address the Department’s concerns. These providers offer on-line, asynchronous instruction of theory portions of cosmetology and barbering educational programs. The technology offers comprehensive resources and functionality to support meaningful academic engagement and regular substantive interaction while tracking such student engagement and attendance in increments of 1-second. If students do not remain engaged, then the systems will time them out. This results in the student not receiving clock hour credit until they reengage with the learning environment.

#### Noncompliance with requirements

The Department has commented during negotiations that it is aware of instances of non-compliance with regulation in this area. The Department has been asked to provide evidence or data to support this position. However, the Department has thus far declined to provide any. We reiterate our request that the Department provide data to support its position on this issue.

In addition, when the Department was asked about the guidance that they have provided auditors to monitor compliance, during the February sessions, they noted that they have not provided any guidance to auditors, and therefore have not been reviewing institutions for noncompliance with the regulation.

#### Advantages for Students

Allowing students to participate in asynchronous learning for clock hour programs comes with several advantages.

First, students enjoy the flexibility. They can choose to attend class on-line when it is convenient for their schedule. It allows them to balance college with family care and work obligations. This is particularly important to Eastern Florida State College working, adult students who are able to continue their learning in the HVAC programs while maintaining their full-time jobs. In fact, Eastern Florida State College’s employer partners have requested these asynchronous components for this very reason.

Second, with this flexibility, students can stay enrolled in a full-time program. For example, a student can attend a 40-hour a week cosmetology program, attend 30 hours per week in person, then 10 hours via asynchronous learning. This would allow her the flexibility to stay in the full-time program, but also have time to care for her family. Full-time students complete faster than part-time students. This leads to better completion, licensure, and placement rates.

Third, students stay engaged. Students enjoy the interaction that on-line platforms offer. For clock-hour programs in particular, asynchronous students are actively involved in learning that

is tracked by the minute. Active learning and frequent formative feedback leads to better knowledge attainment and retention.

Finally, students can have more options selecting classes. Institutions with limited space resources can dedicate valuable physical spaces to additional lab and clinical facilities instead of lecture-style classrooms. This allows institutions to accommodate more students in high-demand fields, cutting wait lists and increasing class options for students.

In fact, we have discussed this issue with a providers in Oklahoma, who are looking to develop A/B schedules for their computer programming (cyber defense, programming, graphic design) as well as their automotive, welding, electrical technician programs. Hybrid offerings would allow them to use their physical space more efficiently and train nearly twice the number of students using virtual platforms for the more theoretical, conceptual, and didactic components of the curriculum.

## Proposal

We suggest modifying the Department's proposed elimination of asynchronous clock hour education in an effort to provide a balance between the learning required through the theory, lab, and clinical components of clock hour programs. The proposal aims to address the Department's concerns, while maintaining flexibility for students and institutions. Given the general desire of students for more flexibility in learning modalities, not less, and the lack of data to support the Department's approach, we believe this is a viable solution.

The proposed revisions would limit the amount of asynchronous clock hours delivered by distance education in any given program to no more than 50% of the total number of clock hours required to complete the program.

In proposing this solution, we are mindful that current regulation requires institutions to use technology that, "can monitor and document the amount of time that the student participates in the activity" and "institution must be capable of monitoring a student's attendance in 50 out of 60 minutes for each clock hour under this definition." We feel this language already addresses the Department's stated concerns but would be open to other suggestions about how this language can be improved.

We are also mindful that existing regulation permits distance, asynchronous clock hours only if the institution can demonstrate that such hours meet both state regulatory and accreditor requirements. We see this as an important component of an outcomes-based review of any program—clock hour or otherwise.

Key:

**Green**- Restored language from current regulation

**Blue**- Proposed additional language

## Part 600.2 Definitions

Clock hour:

(1) A period of time consisting of—

(i) A 50- to 60-minute class, lecture, or recitation in a 60-minute period;

(ii) A 50- to 60-minute faculty-supervised laboratory, shop training, or internship in a 60-minute period;

(iii) Sixty minutes of preparation in a correspondence course; or

(iv) In distance education, 50 to 60 minutes in a 60-minute period of attendance in—

(A) A synchronous or asynchronous class, lecture, or recitation where there is opportunity for direct interaction between the instructor and students; or

(B) An asynchronous learning activity involving academic engagement in which the student interacts with technology that can monitor and document the amount of time that the student participates in the activity.

(2) A clock hour in a distance education program does not meet the requirements of this definition if:

(i) it does not meet all accrediting agency and State requirements, or

(ii) if it exceeds an agency's or State's restrictions on the number of clock hours in a program that may be offered through distance education, or

(iii) if it exceeds more than 50% of the total clock hours required to graduate under section (1)(iv)(B) of this definition.

(3) An institution must be capable of monitoring a student's attendance in 50 out of 60 minutes for each clock hour under this definition.