

## Federal Regulations: What happened in negotiated rulemaking?

NASASPS  
Jacksonville, Florida  
April 17, 2019

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### Presenting

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### Agenda

- Negotiated Rulemaking Overview
- A Few Issues
  - State Authorization
  - Professional Licensure Notifications
  - Regular & Substantive Interaction
- Next Steps
- Other Issues & Questions



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## Negotiated Rulemaking Accreditation and Innovation

Define or revise regulations.  
50+ issues identified.  
If don't reach "consensus,"  
Department writes the rules.  
Three subcommittees named.



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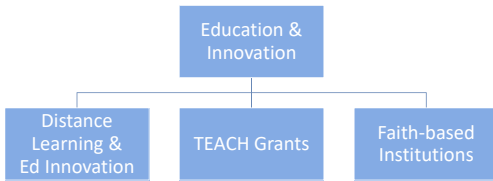
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## Negotiated Rulemaking Committee Structure



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## Distance Learning and Education Innovation The subcommittee in *ACTION*



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**Distance Learning and Education Innovation  
QUESTIONS? You can raise your hand!!**



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**State Authorization for  
Distance Education**

Tied aid to state approval.

Defined/recognized reciprocity.

Confirmed primacy of "location."

How institution determines location.

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**34 CFR §600.2 State Authorization Reciprocity  
The definition reverts to 2016 language**

*State authorization reciprocity agreement:* An agreement between two or more States that authorizes an institution located and legally authorized in a State covered by the agreement to provide postsecondary education through distance education or correspondence courses to students residing in other States covered by the agreement and **does not prohibit any State in the agreement from enforcing its own statutes and regulations, whether general or specifically directed at all or a subgroup of educational institutions.**

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**34 CFR §600.9 State Authorization**  
**Ties to aid. Approval by state or reciprocity.**

(c)(1)(i) If an institution that meets the requirements under paragraph (a)(1) or (b) of this section offers postsecondary education through distance education or correspondence courses to students located in a State in which the institution is not physically located or in which the institution is otherwise subject to that State's jurisdiction as determined by that State, except as provided in paragraph (c)(1)(ii) of this section, **the institution must meet any of that State's requirements for it to be legally offering postsecondary distance education or correspondence courses in that State.** The institution must, upon request, document the State's approval to the Secretary; or

(ii) If an institution that meets the requirements under paragraph (a)(1) or (b) of this section offers postsecondary education through distance education or correspondence courses **in a State that participates in a State authorization reciprocity agreement, and the institution is covered by such agreement,** the institution is considered to meet State requirements for it to be legally offering postsecondary distance education or correspondence courses in that State, subject to any limitations in that agreement and to any additional requirements of that State. The institution must, upon request, document its coverage under such an agreement to the Secretary



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**34 CFR §600.9 State Authorization**  
**Location! And how to determine it.**

(A) For purposes of this subsection, an institution must make a **determination, in accordance with the institution's policies or procedures, regarding the State in which a student is located**, which must be applied consistently to all students.

(B) The institution must, upon request, provide the Secretary with written documentation of its determination of a student's location, including the basis for such determination; and

(C) An institution must make a determination regarding the State in which a student is **located** at the time of the student's **initial enrollment** in an educational program and, if applicable, **upon formal receipt of information from the student**, in accordance with the institution's procedures, that the student's location has changed to another State.



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**34 CFR §600.9 State Authorization**  
**Comparisons**

<b>Comparison of Main Provisions</b>	<b>Delayed Regulation</b>	<b>Negotiated Rulemaking</b>
Effective Date	Delayed to July 1, 2020	Probably July 1, 2020
Provide proof of approval in states with distance students	Yes	Yes
Recognize reciprocity	Yes*	Yes*
Document complaint process	Yes	No**
Tied to student...	Residence	Location

\*The Ted Mitchell letter interpretation will be disputed.  
 \*\*Solves the "California problem."



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### 34 CFR §600.9 State Authorization Comparisons

<i>Comparison of Notifications to Students</i>	Delayed Regulation	Negotiated Rulemaking*
Authorization status in student's state	Yes	668.41(a)-(d) 668.43
Complaint process for students	Yes	668.43
Tuition refund requirements	Yes	668.41(a)-(d) 668.43
Adverse actions for an institution	Yes	???

\*Relies on current notification process for all students; not a separate process for distance education students.




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### Professional Licensure

Required for current and prospective students.

Both general and direct notification requirements.

Expanded to ALL programs.




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### 34 CFR §668.43 Professional Licensure

An institution must provide:

Notifications to all students in programs leading to professional licensure, **regardless of modality**, whether completion of the program will meet educational licensure requirements in a State for that occupation.




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**34 CFR §668.43 Professional Licensure  
Institutional Information – General Disclosure**

(a) Institutional information that the institution must **make readily available to enrolled and prospective students** under this subpart includes, but is not limited to—  
(5) The academic program of the institution, including—

**Additional language (professional licensure disclosures):**  
(v) If an educational program is designed to meet **educational requirements** for a specific professional license or certification that is required for employment in an occupation, or is advertised as meeting such requirements, information regarding whether completion of that program would be sufficient to meet licensure requirements in a State for that occupation, including—



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**34 CFR §668.43 Professional Licensure  
Institutional Information – General Disclosure**

(A) A list of all States for which the institution has determined that its curriculum **meets the State educational requirements** for licensure or certification;  
(B) 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  
(C) 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



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**34 CFR §668.43 Professional Licensure  
Institutional Information – Direct Disclosure**

(c) **Direct disclosures to students.**

(1) If the institution has made a determination under paragraph (a)(5)(v) that the program's curriculum **does not meet** the State educational requirements for licensure or certification in the State in which a **prospective student** is located, or if the institution **has not made a determination** regarding whether the program's curriculum meets the State educational requirements for licensure or certification, the institution must provide notice to that effect to the student prior to the student's enrollment in the program.



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**34 CFR §668.43 Professional Licensure  
Institutional Information – Direct Disclosure**

(2) If the institution makes a determination under paragraph (a)(5)(v)(B) that a program's curriculum **does not meet the State educational requirements** for licensure or certification in a State in which a student who is **currently enrolled** in such program is located, the institution must provide notice to that effect to the student within 14 calendar days of making such determination.

(3)(i) Disclosures under paragraphs (c)(1) and (c)(2) must be made directly to the student in writing, which may include through e-mail or other electronic communication



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**Definitions of  
Distance Education and  
Regular & Substantive  
Interaction**

Never before formally defined.

From audits:

- Initiated by the instructor.
- Instructor limitations.
- Substantive – dealt with content or subject matter.
- Regular – weekly or scheduled in syllabus.



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**Definitions of  
Distance Education and  
Regular & Substantive  
Interaction**

More reliance on accreditors.

Definitions of:

- Instructor
- Regular
- Substantive



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### 34 CFR §600.9 Definitions Distance Education and Technologies

*Distance education:* Education that **uses one or more of the technologies** listed in paragraphs (1)(i) through (1)(iv) of this definition to deliver instruction to students who are separated from the instructor or instructors, and to support regular and substantive interaction between the students and the instructor or instructors, either synchronously or asynchronously.

(1) The technologies that may be used to offer distance education include—

- (i) The internet;
- (ii) One-way and two-way transmissions through open broadcast, closed circuit, cable, microwave, broadband lines, fiber optics, satellite, or wireless communications devices;
- (iii) Audio conferencing; or
- (iv) **Other media** used in a course in conjunction with any of the technologies listed in paragraphs (1)(i) through (1)(iii) of this definition.



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### 34 CFR §600.9 Definitions RSI – An Instructor

(2) 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**.



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### 34 CFR §600.9 Definitions RSI – Substantive Interaction

3) For purposes of this definition, **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—

- (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.



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### 34 CFR §600.9 Definitions RSI - Regular Interaction

- (4) 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—
- (i) Providing the opportunity for substantive interactions with the student on a **predictable and regular 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.



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### Negotiated Rulemaking Timeline

- Ed Department review of language.
- Release proposed language for comment.
- Final language released by Nov 1 becomes effective July 1, 2020.



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### Negotiated Rulemaking Other Changes to Watch...

- Accreditation.
  - Changes to operations.
  - More reliance on accreditation
  - Innovation exemptions.
  - Teach-outs.
- Faith-based institutions.
- Written arrangements.
- Direct assessment.
- ...and many, many more.



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## Higher Education Act Reauthorization

A long time ago in an age called the 1960's:



[https://en.wikipedia.org/wiki/Higher\\_Education\\_Act\\_of\\_1965](https://en.wikipedia.org/wiki/Higher_Education_Act_of_1965)



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## Higher Education Act Reauthorization

Don't forget your [School House Rock](#):



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## QUESTIONS???

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