

DEPARTMENT OF EDUCATION  
OFFICE OF POSTSECONDARY EDUCATION  
NEGOTIATED RULEMAKING PROGRAM INTEGRITY  
AND INSTITUTIONAL QUALITY  
SESSION 3, DAY 1, MORNING  
MARCH 4, 2024

On the 4th day of March, 2024, the following meeting was held virtually, from 10:00 a.m. to 12:00 p.m.

P R O C E E D I N G S

MS. JEFFRIES: Good morning. Welcome back to session three of the Department negotiated rulemaking for program integrity and institutional quality. I'm Cindy Jeffries from FMCS, and I'll be your facilitator for this morning's session. We do have a very robust agenda again these four days. We would like to remind everyone to utilize their time to provide new clarification, concerns, or suggested changes. Please do not utilize the time to restate or voice support of points that have already been made. Those types of suggestions and proposed changes to language or support can certainly be placed in the chat and the chat will be transcribed and posted on the Department's website at the conclusion of the sessions. As the committee addresses each issue's proposed regulatory text after discussion and thorough time to be able to address concerns and questions, consensus will be taken issue by issue on the entire document. Does the Department have any opening comments, Greg?

MR. MARTIN: Excuse me, I was on mute. I'm sorry. No, I just want to say I'm happy to be back with everybody, and hopefully, we'll have a productive week. Thank you.

MS. JEFFRIES: Okay, great. Thanks,

Greg. So now we'll go on to the official roll call for the record. For business officers from institutions of higher education, Joe Weglarz.

MR. WEGLARZ: Good morning.

MS. JEFFRIES: Good morning. Don Chase?

MR. CHASE: Present.

MS. JEFFRIES: Good morning. Civil rights organizations and consumer advocates, Carolyn Fast.

MS. FAST: Good morning.

MS. JEFFRIES: Good morning. And Magin Sanchez.

MR. SANCHEZ: Good morning.

MS. JEFFRIES: Good morning. Financial aid administrators, JoEllen Price.

MS. PRICE: Good morning.

MS. JEFFRIES: And Zack Goodwin as the alternate.

MR. GOODWIN: Hi, everyone.

MS. JEFFRIES: Good morning.

Historically black colleges and universities, tribal colleges and universities and minority-serving institutions, institutions of higher education eligible to receive Federal assistance under Title III, parts A

and F, and Title V of the HEA, Dr. Charles Prince, primary. Doesn't look like he has joined this yet. D'Angelo Sands as alternate. Okay. Looks like D'Angelo hasn't joined us at this point either. Institutional accrediting agencies recognized by the Secretary, Jamie Studley.

MS. STUDLEY: Morning.

MS. JEFFRIES: Morning. And Michale McComis.

MR. MCCOMIS: Good morning.

MS. JEFFRIES: Good morning, Michale. Legal assistant organizations, Robyn Smith.

MS. R. SMITH: Good morning, everyone.

MS. JEFFRIES: Morning. Sophie Laing as alternate.

MS. LAING: Good morning.

MS. JEFFRIES: Good morning. Private nonprofit institutions of higher education, Erika Linden, primary.

MS. LINDEN: I'm present.

MS. JEFFRIES: Scott Dolan, alternate.

MR. DOLAN: Good morning.

MS. JEFFRIES: Good morning, both of you. Bear with me one second. Alright. Next, we have programmatic accrediting agencies recognized by the

Secretary to include state agencies recognized for approval of nurse education. We have primary, Dr. Laura Rasar King.

DR. KING: Good morning.

MS. JEFFRIES: Good morning. And alternate, Amy Ackerson.

MS. ACKERSON: Good morning.

MS. JEFFRIES: Good morning.

Proprietary institutions of higher education, primary, Jillian Klein.

MS. KLEIN: Good morning.

MS. JEFFRIES: Good morning, Jillian.

Alternate David Cohen.

MR. COHEN: Good morning.

MS. JEFFRIES: Good morning. Public four-year institutions of higher education, primary, Jason Lorgan.

MR. LORGAN: Good morning.

MS. JEFFRIES: Good morning.

Alternate, Alyssa Dobson.

MS. DOBSON: Good morning, everyone.

MS. JEFFRIES: Good morning. Public two-year institutions of higher education, primary is, Jo Alice Blondin.

MS. BLONDIN: Hi there.

MS. JEFFRIES: Hi. Alternate is Michael Cioce.

MR. CIOCE: Good morning. Good morning.

MS. JEFFRIES: Morning. State attorneys general, primary is Diana Hooley.

MS. HOOLEY: Good morning.

MS. JEFFRIES: Good morning, Diana. And alternate is vacant. State officials, including state higher education, executive officers, state authorizing agencies and state regulators of institutions of higher education, primary, John Ware.

MR. WARE: Good morning.

MS. JEFFRIES: Morning. Alternate, Robert Anderson.

MR. ANDERSON: Good morning, everyone.

MS. JEFFRIES: Hello. Student borrowers, including currently enrolled borrowers and groups representing them, primary is Jessica Morales.

MS. MORALES: Good morning.

MS. JEFFRIES: And the alternate is Emmett Blaney.

MS. MORALES: He will be joining after lunch.

MS. JEFFRIES: Okay. Thanks, Jesse,

and welcome. U.S. Military service members, veterans and groups representing them, primary Barmak Nassirian. Good morning. Alternate, Ashlynn Haycock-Lohmann.

MS. HAYCOCK-LOHMANN: Good morning.

MS. JEFFRIES: Good morning. And next we have the Department, lead negotiator, Greg Martin.

MR. MARTIN: Good morning, everyone.

MS. JEFFRIES: Good morning. We also have several non-voting participants from the Department and from the Office of General Counsel, Ms. Denise Morelli for issues other than- good morning, Denise. And you're for issues other than accreditation.

MS. MORELLI: Correct.

MS. JEFFRIES: Okay. Ms. Donna Mangold will be for accreditation.

MS. MANGOLD: Good morning.

MS. JEFFRIES: Good morning. Mr. David Musser.

MR. MUSSER: Good morning.

MS. JEFFRIES: David? Good morning. And Mr. Herman Bounds. Herman's not with us yet.

MR. BOUNDS: Good morning. Good morning, everybody. Good morning, I'm here.

MS. JEFFRIES: Okay. Have I missed anyone? Okay. From FMCS, your facilitation consists of

myself, Cindy Jeffries, Brady Roberts, Krystil Smith and Kevin Wagner. So now that we've made all the introductions we can move on to our agenda. Magin?

MR. SANCHEZ: Yes. Before we continue, I know we have a lot on this agenda today, so I don't want to take up too much time. But I do hope everyone doesn't mind waiting a couple of minutes because I want to call a caucus with the Department. The Department only.

MS. JEFFRIES: Okay. And is that just yourself, Magin?

MR. SANCHEZ: Correct.

MS. JEFFRIES: Along with the Department. Okay. Greg, who would be attending from the Department?

MR. MARTIN: Just to clarify, Magin, the topic is TRIO?

MR. SANCHEZ: Right.

MR. MARTIN: Yeah, from the Department would be our attorney for TRIO, which would be Hannah Hodel, the chair of that committee, which is Aaron Washington and myself.

MS. JEFFRIES: Okay, so Greg, Hanna, Aaron, and Magin. Magin, do you have any idea about how long you would like?



MR. SANCHEZ: Yeah, it should be quick. Ten minutes.

MS. JEFFRIES: Okay.

MR. SANCHEZ: Hopefully before.

MS. JEFFRIES: Okay. Jillian, you have your hand up?

MS. KLEIN: Yeah, I can wait till we get back.

MS. JEFFRIES: Oh, okay. Alright. Brady, do you have those rooms set up or Krystil?

MR. ROBERTS: Yep. They're all set up.

MS. JEFFRIES: Ready to move them. Okay, so we will take a ten-minute break while the party's caucus and it is 10:08. So approximately 10:18, we will get back together. Okay. Welcome back. The caucus has returned. Is there any report out, Magin?

MR. SANCHEZ: Oh, no. I look forward to tomorrow's discussion.

MS. JEFFRIES: Okay, great. So with that Jillian, you had your hand up, so the floor is yours.

MS. KLEIN: Yeah. Thanks. I was hoping just as we kick off this week. I think for me, it would be helpful to hear from the Department or the facilitators about how maybe structurally, this week will

look different than the last two weeks that we've had together. Just since we're running out of time a bit. And I think, you know, we've seen and I think Laura mentioned this in February too, a ton of proposals that have come through from negotiators, I think, in the hopes that we could move towards compromise or consensus positions. And I think in many cases there hasn't been sort of a feedback loop on why the Department hasn't elected to use some of that language. And in some cases, I think the Department's subsequent red lines have been sort of further afield from where we've started, based on what the Department indicated the issues were to solve in January. So I'm just I'm nervous about time, you guys and I'm wondering if there's a different approach that we'll be using this week in the spirit of getting us all towards compromise. Especially since I think there's a lot of things that we saw in some of these issue papers that don't look much like where we started in January. In 2019, when many of us did negotiated rulemaking, the Department, I think it was like Aaron Washington sat around the table with us and was sort of updating and typing new red lines as we were going through the last week of neg reg. And I'm curious if that's the approach we'll be using this week, or how exactly is this week going to look different in a way that's sort of an

efficient use of time for negotiators to move towards consensus.

MS. JEFFRIES: Okay. Thank you, Jillian. We will- there may be times, Jillian, to answer your question, that the Department and the negotiators will elect to do some real-time edits. Those are generally- tend to be on the less complicated side to more efficiently use our time since this is the last week. One of the reasons I gave the reminder about rehashing things that have already been said, is not an attempt to stifle people's thought processes or their thinking but to better efficiently use our time. Okay? In the areas where the Department may not be able to make any changes. I know that past rulemakings as well as this when the Department has indicated where they can't. Greg, do you want to add to that or?

MR. MARTIN: Well, yeah, I mean, I would point out that the red lines we have now, you know, represent the Department's position as well as and represent some of the proposals we have received. Obviously, they don't represent every single proposal we've received. We are not- in some cases, we don't concur with that and others just- and as far as going back to the table, I try to address those proposals that we have received. If I were to address every single line

item that we get, there would just be no time to do it. However, if so the red lines we have back in this final session do reflect where the Department is. It is an open negotiation, and anybody is welcome to inquire about why a particular regulation is worded the way it is or why the Department didn't go a certain way. So if I neglect to cover any of those proposals or someone feels I haven't done it adequately they can feel free to ask for more clarification. As far as the time constraints go, yes, the third week is always difficult because it's the week we're going to vote on consensus. And I think that no matter how long discussions occur, there has to be a point at which, you know, everything that can be said, has been said, and people have to make up their minds which way they're going to go, hopefully with consensus. So we'll make every effort to do that. I do acknowledge the time constraints here that are involved but again people are- any of the negotiators are welcome to bring up at any point any of the proposals or why the Department didn't go in a certain direction. And just to reiterate what Cindy said about the real-time updates, if we can do that, if there is a request for a change in the language that the Department is amenable to that we feel would move towards consensus, we do have the capability to have our- I know Aaron did that before. We have

Vanessa and Joe doing that now. We do have the capability of making those changes. Maybe not exactly in real-time, but certainly within a few moments. Thank you.

MS. KLEIN: Yeah. Just one follow-up question I guess, so is the idea- will we, for example, this morning we'll do R2T4 and then are we doing, like, the consensus check this morning or are we doing that on Thursday?

MR. MARTIN: Yes, we'll take consensus. We will take a vote on consensus after each topic has been discussed. So the first one will be R2T4. That's David. And after he's done with that, we will vote on consensus when we're through with that. We believe that's a better way to go than just to go through all of them and then go back on Thursday and, you know, have to revisit areas of what we've already discussed. So we will be taking the consensus checks after we are done with the discussion on each individual topic.

MS. KLEIN: Okay. So really we're just- you all are explaining the red lines that we got in advance of this week and then there's actually not compromise that's happening throughout this week. I'm just trying to understand.

MR. MARTIN: We'll go over the red lines that we have, so the Department's rationale, we'll-

just as we did in the previous weeks, we'll open the floor for discussion. And of course, we, you know, we have our facilitators to- one of the jobs of the facilitator, and FCMS always has done a good job of this, is to determine [inaudible] find the point at which there- it seems logical to call for a consensus check. Of course, it's to the Department's decision, you know, whether to do that and at what point. But there does have to be- it's- let's be honest, there's a bit of an art involved in knowing the point at which to do that, you know, and so it will be after each one. The consensus is by topic.

MS. JEFFRIES: I'd just add Jillian, that on the topics that span two days, like accreditation, those will be taken at the end of the conclusion of all the scheduled time for each of the topics. So R2T4 will be today and then we'll move on from there. Okay? And distance ed is scheduled for this afternoon. And that also would have consensus taken this afternoon. Does that answer your questions, Jillian?

MS. KLEIN: Sure.

MS. JEFFRIES: Okay, thanks.

MR. MARTIN: Can I just add. That, you know, obviously, I want to reiterate, this is- we're still in negotiations. So the language you see here is

what the Department proposed.

MS. KLEIN: I guess- but the struggle is if we're just, for example, on R2T4, like talking about this morning, then we're doing a consensus vote. I guess it doesn't feel to me like we're still negotiating because I think I would expect to see the Department come back one more time. I don't know, I we're out of time and I think we're so far apart now, even based on where the Department started and where negotiators have sort of made proposals and the Department in many cases has moved sort of further afield. And so if we had like eight more months to negotiate, maybe we could get there. But I just don't know how to feel. Like, why don't we just take a vote right now on all of the issue papers and have four days back? I just don't understand how this week is going to be an active negotiation based on how.

MR. MARTIN: Well, as I pointed out, there obviously is not enough time because we don't have a subsequent session to do what we've done in the past is come back with, you know, additional papers, additional changes, rather the next time, because there won't be a next time. But we are still in negotiation. And as much as what have here, this text can be edited, and modified for changes that, you know, are suggested if the Department is amenable to those changes. So there is

still an opportunity. I respectfully don't agree with the assertion that there's no negotiation because we have the week to do that. So we will discuss these topics if there's room for compromise that involves additional language or changes, we're certainly willing to do that. I do take your point that there is a time constraint. Yes. This is the last week. So there's more pressure than there would have been in the previous weeks. But that's not to say that we're still not negotiating or that we cannot make changes or are unwilling to make changes.

MS. JEFFRIES: So I think that we've heard from the Department that, you know, they are willing to consider changes and those that they are amenable to, you know, we do have the capability to deal with those. So negotiations is very much taking place. And, you know, I just want to say that regardless of how many sessions are scheduled for any given rulemaking, there's always that last week and there's always that pressure. Okay? So we're doing our best to address your concerns, Jillian. And certainly want to stress and reiterate the fact that this week is very much about negotiations. Before I move to JoEllen, I want to announce that Dr. Charles Prince and D'Angelo Sands have joined the session this morning. JoEllen?

MS. BLONDIN: Jo Alice. I don't want



to put JoEllen on the spot.

MS. JEFFRIES: Oh, I'm sorry.

MS. BLONDIN: Yeah. It's okay. And I prefer just Jo. Anyway, the question I have is, are we going to vote on each subcomponent, or are we voting on the issue paper as a whole?

MS. JEFFRIES: The issue paper as a whole. Correct, Greg?

MR. MARTIN: That's correct. Each issue paper as a whole will be voted on after the discussion on that issue paper is concluded.

MS. BLONDIN: It does feel like we're running out the clock a little bit here. So. Okay. Thank you.

MS. JEFFRIES: Thank you. Barmak. Oh, I thought you had your hand up. Sorry. Okay. Jamie, you had your hand up, are you?

MS. STUDLEY: I was putting my questions in the chat. I think I've gotten answers. There'll be temperature checks during the discussion but before the vote on the paper as a whole. One quick question I had was if any- I know people are thinking things may go long, but if any of them took less time than anticipated, will we just roll into the next available one depending on what the facilitators and the

group think at the time?

MR. MARTIN: Yes. If we conclude if, for instance, the discussions on R2T4 were to go more quickly than is scheduled we would move on to the next topic. And even though we're not scheduled to do state authorization today, if we were to conclude with David's topics of R2T4 and distance, we would move into the discussion on state authorization today. So, yes, we will roll forward with everything.

MS. STUDLEY: Okay. So one of the things I think I hear people saying that to me at least it would feel like- express negotiation is if there are ideas within any of these items that the Department thinks may be possible to bridge the gap or to come up, you know, or they hear something that they might be open to discussion. And not just the Department, anyone hears things, whether there's the ability to use the brakes or even overnight, say this looks like something that we could improve. That's actually not a question. It's a suggestion. You guys know whether that's within your plans. But if there were a bridge suggestion that the Department or someone else needed to think about whether we could pause and return to that arena if there was some progress that we thought we could make.

MR. MARTIN: Yeah. The Department is

in a position where we can call caucuses ourselves if we need to. So if something were to come up where we need to discuss whether or not we would be able to accept changes and come back with something, we're certainly in a position to do that. I could call for that at any time.

MS. JEFFRIES: Okay, thank you. A couple of other questions real quick that were in the chat. It was a question about whether the chats are visible to the public viewers. They are not during the live session, but they are visible to everyone, including the public. The transcript is once it's posted and uploaded to the Department's website. I think that is all the questions that were in there. So with that, I want to turn it over to David for R2T4.

MR. MUSSER: Alright. Thank you, Cindy. I think we can go ahead and pull up the redline of the R2T4 paper. So in the last session, we heard that the committee had given temperature checks that were either supportive or accepting of the various proposals in the R2T4 issue paper, except for one. Which related to requirements for attendance taking in distance education. So I'm going to ask first if anyone wants to talk about the other issues, that we hold that until we talk through the issue of attendance taking for online programs. But of course, if others have other things that they want to

talk through elsewhere in the paper, we're glad to do that. So if we could scroll down then to the area under discussion. Okay. So we heard a number of proposals related to this requirement that the Department is proposing to have institutions take attendance and use those attendance records in their return of Title IV calculations for programs- for courses offered through distance education. And as you guys know, this language has gone through an evolution throughout our negotiations in the past few sessions, one of the last things that we heard in the prior session was that it would be helpful to reword this somewhat and potentially separate it from the romanette (i) provisions that were sort of the original provisions around attendance taking requirements. In order to make it clearer, the Department's intent here was to have attendance taking requirements apply to courses offered through distance education. So this change here is an attempt to do that. We broke out what used to be paragraph (d) into a separate romanette, romanette (ii), where we say an institution is required to take attendance for each course offered entirely through distance education as defined in 34 CFR 600.2, except for dissertation research courses. Now, one thing I want to note here is that there is a relationship between this provision and the

provision that we are adding separately in the distance education issue paper where we're referring to distance education courses. This is intended to refer to the definition of distance education courses that appears in that section. So certainly open to suggestions from the committee if you think wording changes are needed here to get to that point. So if we scroll down just a little bit, I want to make sure everyone sees kind of how these changes played out through the remainder of the session, the remainder of the language. So we just made a few additional changes to move things down and move them around in various different ways to accommodate that. But there were no other changes here. Now, if you go back up, the other important point here is that we also were persuaded by negotiators who recommended that dissertation research courses be excluded from this requirement. And the reason for that we decided on that is the dissertation research courses by their nature are primarily oriented around a student's sort of self-study and work focused on their research which, if it's distance education, still needs to involve regular substantive interaction with their instructor. But we do acknowledge that those kinds of courses don't take place in the same kind of framework that most other distance education courses do. Where there may be a system, an

LMS, where students are submitting assignments on a more frequent basis, where there tend to be interactions directly with the student and the system. And that many institutions don't have that kind of framework set up for dissertation research courses, which means that the Department's primary logic for the requirement for attendance taking in online programs, which is that the data is readily available, isn't necessarily the case for these courses. So for that reason, we added that exception here. We did hear other proposals from negotiators to exempt other kinds of courses, including distance direct assessment courses, courses that use a subscription-based academic calendar, and courses that are part of a non-term program. And some of the reasoning behind those proposals is that those kinds of programs are structured very differently from traditional programs. Direct assessment programs are also more oriented towards self-study than traditional coursework. Even traditional quote-unquote online coursework whereas in subscription-based and non-term programs, the actual percentage that an institution is required to return is based both on the student's completion of a period, but also on their progress in that period, and that there was a sense that there was a level of unfairness treating those programs in the same way and requiring institutions

to use their attendance records. So we did not include those because in the Department's view, although those are somewhat different in how they are treated for R2T4 purposes. The fundamental logic that we're using here about why we're requiring this still applies to them. Those kinds of programs often do and in fact, in some cases collect more data on student's academic engagement. And they're already subject to the R2T4 requirements and, for example, need to use in this student's official withdrawal date as the date of their withdrawal. And this requirement would, in our view, simply make the calculations more accurate by having this institution rely on its attendance records. So for all those reasons, we did not add the additional exemptions that were requested by negotiators. So I will pause there and open it up for other comments from the committee.

MS. JEFFRIES: Thank you, David.

Jillian?

MS. KLEIN: David's so glad to hear from me on this. So a couple of things. One, thank you for fixing the STEM issue and making it clearer about how the Department intends for this provision to work with respect to institution versus course. And to your sort of easy question at the jump, I do think it makes sense if the Department's moving ahead with the definition of a

distance education course, that that language be reflected in this proposal. So instead of talking about, a course offered entirely through distance education as defined, it feels like that's a place where you could just sort of sub in distance education course, that'd be my suggestion. You made all of the compelling arguments on my behalf for why direct assessment should be excluded. And I know we've talked about this twice already. So just one more time say, since we met in February, the Department released a really helpful Dear Colleague letter on Valentine's Day that talked about direct assessment. So I will read a portion of that, which gets exactly to why I believe that direct assessment programs should be excluded from this requirement. Part of that DCL says direct assessment programs are a type of CBE program that do not use credit or clock hours. Progress in a direct assessment program is measured solely by assessing whether students can demonstrate what they have a command of- demonstrate that they have a command of a specific subject, content, area, or skill, or can demonstrate a specific quality associated with the subject matter of the program. Therefore, unlike a CBE program measured in credit hours, a direct assessment program does not specify the level of educational activity a student is expected to engage in



to complete the program. So that feels really at odds with the rationale that the Department that you just gave on behalf of the Department for why these programs are not excluded from this requirement. I think the proposal I sent in, I won't read through it because I'm sure everybody read it with interest. But there were two other examples that I provided in that proposal as well, where the Department has clearly indicated that these programs operate in a different way, where much of the work can happen outside of the traditional course room setting. And that sort of coupled with the really rigorous application process that institutions go through with the Department to launch these programs anyway. I think make a really compelling case for why these should be excluded.

MR. MUSSER: Thanks, Jillian. Just a quick response to part of what you were arguing and on those points. So one of the things that we thought a lot about when we looked at your proposal was the extent to which attendance as we use the word colloquially, might be confused somewhat with the concept of academic engagement, which is the actual criterion that the Department uses for establishing a last date of attendance, either for attendance taking schools, or for in a nonattendance taking setting, the school is allowed

to use the concept of academic engagement to establish a last date of attendance. And your comments seem to suggest that schools would create artificial interactions or artificial check-in points or other kinds of requirements that would be intended to meet these conditions for attendance taking. And I just want to be clear that the definition of academic engagement is pretty broad and gives institutions a lot of discretion as to what they consider to be academic engagement and therefore qualifying for attendance. And that we're obviously if this were to go into regulation, the Department could respond to questions that schools have about what could and couldn't constitute that. But in our view, the kinds of things that go back and forth between institutions and their students and all of the kinds of programs that we just talked about are certainly things the school could use for its attendance-taking requirements to fulfill that requirement to keep up with what students are doing and when they're doing it. And it's our feeling that if a school is keeping up with their students and ensuring that they're making progress, they also know that the student is, for example, completing assignments, participating in group discussions about particular topics, completing indirect assessments, in the indirect assessment world, completing

assessments, either pre-assessments or post assessments. A variety of different things could be used in order to fulfill that requirement. So in our view, this is still actually making the R2T4 calculation more accurate as opposed to simply allowing schools to use a midpoint to demonstrate how far a student has gotten in a particular period. The last date of attendance does matter for the R2T4 calculation for these programs. So that's part of why we decided not to incorporate those other exceptions.

MS. KLEIN: Yeah. I mean, I think I'll just respond to that. My example of institutions then sort of creating whatever to be able to comply with this. I think it speaks to how this is not necessarily in the best interest of students because I think in these types of programs where students are enrolling in them, in large part because of the flexibility. I think students are going to be surprised that there is a punitive expectation that on a particular cadence, they're in the course room doing something that maybe doesn't have much or anything to do with the assessment that they might be working on, and then that student will end up getting withdrawn and having aid returned through, I mean, I'll just say it, like through no fault of their own, because we've had to sort of compromise this system to keep up with these regulations that just don't make sense for direct

assessment programs. So I think it's not a student-friendly approach and you know, I would love to continue to have conversation if we have time for it. But I think it certainly is at odds with the guidance that the Department timely put out right after our last session. Thanks.

MS. K. SMITH: Cindy, you're on mute.

MS. JEFFRIES: JoEllen Price.

MS. PRICE: Thank you. So I was discussing this proposal with some other colleagues, and the question came up, what happens to students at a school that does not take attendance and is not required to take attendance if they're in a combination of in-person and distance education classes and then they withdraw, officially withdraw. So if they officially withdraw at some date in October and part of the courses are in-person and part of the courses are distance education, how is the school going to treat that student for R2T4 purposes in terms of last day of attendance?

MR. MUSSER: That's a great question. We talked a little bit about this in one of, I think it was our first session, but I want to make sure that this is well understood because it's an important part of how this process would work. If a student is taking a combination of courses where they're required to take

attendance and courses where they are not required to take attendance, the Department views that student as being enrolled in a program where the school is not required to take attendance. So if you're taking four distance education courses and one on-campus course, the student would not be required to take attendance for that student for that particular period. Which means that you could use their student's official withdrawal date or any other method that you were using to determine a withdrawal date that's allowed under the nonattendance-taking provisions. It's only when the student is enrolled completely in distance education courses that this requirement applies.

MS. PRICE: Excellent. Thank you so much.

MS. JEFFRIES: Okay, thank you. Any other questions or discussion? And David, I'm not seeing any.

MR. MUSSER: Okay.

MS. JEFFRIES: Do you desire to move?

MR. MUSSER: Well, so I want to now open it up to the committee. Is there anything else about the R2T4 issue paper that you guys would like to discuss?

MS. JEFFRIES: Not seeing any hands, Dave.

MR. MUSSER: Okay. Well, seeing no hands I think I will turn it over then to Greg. And I think we could move forward with a consensus check on this topic.

MR. MARTIN: Thanks, Dave. I just want to make certain that there are no other comments or anything else anybody wants to say on this topic before we have the facilitator move to a consensus vote. And just to reiterate when we take this vote, this will be on consensus, not a temperature check.

MS. JEFFRIES: Okay. Erika.

MS. LINDEN: I just wish to clarify. I've had questions from members of the constituency of other nonprofit private schools and just asking for clarification that some of this is not a simplification, which is what I think the Department originally purported they were trying to do for R2T4. Will the Department issue some additional clarifying documents for that attendance-taking issue?

MR. MUSSER: Yes, I can commit to that already. We know that there will be questions that come up on that topic, and we know that the community will need additional information about how to comply with it if the Department moves ahead and does publish it as regulations. So we will be publishing guidance about how

to implement that requirement.

MS. JEFFRIES: Thank you. Jillian?

MS. KLEIN: Yeah. So I mean the same a little bit of general comment. I think the funny part of this is, I think a few of us were in conversations with some of our constituent groups last week where the recommendation was made that the Department add, actually add in the academic engagement definition to this section. Because the way I read it, and I think what folks thought this was suggesting was that attendance sort of equal to academic engagement. So I'm after working in this industry for 25 years. I'm like, absolutely blown away, Dave, by what you just said, because it feels like what you're saying is those two things are not the same necessarily. So I just would echo I don't know if there's a way to make that clear in this language. I know we don't have time or how the Department intends to sort of communicate that broadly to the field, especially as institutions, and will be in a position of having to, you know, sort of defend the approach to program reviewers and other external auditors. It feels overwhelmingly messy.

MR. MUSSER: So that's a good question. I mean, we absolutely are willing to provide guidance on that part of the work. I guess what I would

say is that the academic engagement concept was developed as part of the last rulemaking that we did on this topic. And it was part of the consensus with the committee that was intended to show that the school is the one, along with its accrediting agency, to some degree, to establish what is meant by academic engagement. And from the Department's perspective, academic engagement doesn't have to constitute only one thing, and we recognize that it includes a variety of different activities that are essentially the student working with the school on a particular academic issue that's related to the subject matter under discussion. So we decided to define it because we wanted to ensure that there were things that should not be included. And there are things in that definition that we clearly have outside the scope of that. But aside from those things and in the context that I just described, the school has the discretion to decide what constitutes academic engagement. And as part of that same rulemaking, we took that concept and we connected it directly with R2T4 to ensure that when we're talking about how you determine a student's last day of attendance if you're going to rely on your attendance records, you're relying on your records of whether the student was academically engaged with the institution. So we certainly, like I said, have no problem making that



clear in guidance to the community that that is the basic concept that the school should be aware of. And that's how they can design their programs around that notion of academic engagement. And it sounds like, you know, there may be a need for us to provide answers to questions to colleges about different kinds of academic engagement, which we certainly could do as well if colleges decide that this rises to the level of a need for additional information.

MS. JEFFRIES: Okay, thank you. Scott Dolan.

MR. DOLAN: And I guess as a follow-up, would that guidance be specific to the types of programs that were excluded from this particular provision, including subscription-based non-term and direct assessment programs? Where we know, as you've even said here at the table, that those are a bit unique in terms of their delivery. And, you know, they're not necessarily pervasive. So there's going to be really a great need to be specific to anybody who will be doing a program review about what this means and the stipulations that are outlined here. So I think not only, you know, broad guidance around academic engagement, independence, but how that might apply across different modalities that we're agreeing to here.

MR. MUSSER: Yeah, I appreciate that comment, Scott. I guess I would say absolutely. Yes, first of all, we will respond to the request from the community about what needs to be clarified. I want to be a little careful because the Department doesn't want to come out and provide more guidance on academic engagement that actually constrains schools in ways that we don't intend. So we probably wouldn't provide sort of broad guidance on that topic. But I do think we owe it to the community to provide answers to their questions about specific kinds of things that the school is doing with students or is designing as part of their programs. Which is not intended to be a gotcha exercise. The Department wants to ensure that schools know exactly what they're subject to. So we certainly can commit to putting out guidance about those kinds of things as we implement this rule.

MR. DOLAN: And I appreciate the intent, and I understand coming from your perspective, however, sometimes what is intent and what is practiced are at odds with one another especially when in practice, in operationalization, which I think, you know, is a comment that can be made across a number of issues as we move forward here. Right? Sometimes a stroke of a pen can lead to a whole number of unintended consequences here.

So I think a commitment around that guidance is going to be really, really important as we move forward, especially if we're looking for consensus here.

MS. JEFFRIES: Okay. Thank you. David Cohen has come to the table in place of Jillian Klein. David?

MR. COHEN: Yeah. Dave, I'm just looking for some clarification. Are you suggesting that a school doesn't- an attendance-taking school, in order for that to qualify, it doesn't have to be a set meeting time or place that merely submitting something could qualify for attendance? Like they don't have to come to the Monday morning session at 9:00 for the lecture and be recorded in their just merely submitting something is attendance according to the Department now?

MR. MUSSER: To the extent that it is an engagement between the student and the instructor about the course material. And that could be a variety of different things. It could be submission of an assignment. It could be asking and getting a response to a question even. As long as it's about the course material that the student is taking during that period. We gave some examples. I would point you guys to the 2020 regulations, where we did, I think, talk through a number of different examples of what academic engagement means

in this context. Obviously, the simplest and most straightforward way is to yeah, to have a student actually be at a session and have attendance taken that way. But it is definitely not the only way that a school can take attendance. And that was never the Department's intent with these requirements.

MR. COHEN: Great. Thank you.

MS. JEFFRIES: David? David Cohen, you had a question in the chat about has the Department considered how imposing an attendance requirement might impact active duty military studying from a distance.

MR. COHEN: Right. So my concern was if they have to be at a place or time, you know, a set place or time in order to qualify for the attendance, how that could affect active military personnel. But if what David is saying, it merely requires the submission of something and a recording by the institution of that event, perhaps that resolves that. But I'm concerned that, you know, active military people who can't be at a place and time that's set up by a school in advance, you know, that they would then, you know, be subject to, you know, problems.

MR. MUSSER: And I think that the Department definitely did have that in mind. And that group of students, along with a lot of other kinds of

students who are really enrolled in distance education programs because of the flexibility that they offer. We know that many of these programs and direct assessment programs as a good example, they don't involve sessions, necessarily, where a student is sitting with all of the other students in the class, like a Zoom call, like we're experiencing right now. They're submitting assignments, they're interacting with their instructor and there are generally scheduled periods when they have to do that. But those are not the only kinds of activities that can be defined as attendance. So we think that that plus the ability in certain programs for schools to put students on leaves of absence if there is an extended period of time where they're not going to be able to engage and then come back, provide ways for schools to accommodate their students and their unique circumstances and avoid withdrawing them unless it really is clear that they have to withdraw for some reason.

MS. JEFFRIES: Okay. Thank you. A couple of other questions, Dave, that were in the chat. Erika Linden, you asked a question. Who's now back at the table, by the way, as primary. Are there ever excusable absences that will allow for a student to miss 14 days or longer without automatically withdrawn?

MS. LINDEN: And I think I heard,

Dave, you just say that there would be if.

MR. MUSSER: Well, there's a difference.

MS. LINDEN: Okay.

MR. MUSSER: R2T4 is a very complicated topic, so I don't mean to laugh. So a leave of absence is a specific and unique kind of status that a student can enter. There's a number of requirements around it in the R2T4 regulations. And generally speaking, it has to be- what's required for a leave of absence is established in your regulations. The student has to come back. If they come back in a term-based program other than a subscription-based program, they have to come back at exactly the same point that they left in the coursework. I think the question about the 14 days was about absent a leave of absence. Are there exceptions to the 14-day requirement? And I think the answer to that is yes, on a very limited basis, where and this has been the Department's guidance for a long time. I don't think we intended to change it. If, for example, there was a school closure and the school had no means of actually getting attendance, taking attendance, the students had no way of being in attendance. That kind of thing is an extremely limited exception to the 14-day requirement. I would say that by and large, however,

there are very, very few exceptions to that requirement. It would only be in cases where essentially the school had no way of keeping track of the attendance due to some kind of an unanticipated closure or a loss of, for example, their distance education capabilities for a limited period of time.

MS. JEFFRIES: Okay. Thank you.

Alright, Greg, I'm coming back to you. As I don't see any additional hands.

MR. MARTIN: Yeah. The Department would like to request a ten-minute internal caucus, please.

MS. JEFFRIES: Okay. Brady, can you make sure the Department is all assigned to the large room?

MR. ROBERTS: Yep, you all should be there.

MS. JEFFRIES: So the Department will caucus. It is 11:00 till 11:10, and then we'll get back together. Greg, let me know if you end up needing more time.

MR. MARTIN: Thank you. We appreciate it.

MS. JEFFRIES: It. Okay. Thank you. We can go ahead and pause the live stream. Okay. We are back

on live session. The caucus is ended. Let me turn it back over to Greg to see if there's any additional comments and or Dave want to make and when they're ready to move to consensus.

MR. MARTIN: Thanks, Cindy. David has a couple of clarifications he wants to make with respect to academic engagement and a minor red line edit. So I'll turn it over to Dave for that discussion. Thank you.

MR. MUSSER: So, yeah, there is certainly understandable confusion about what is a very complicated topic. And I'll say that every time I talk about R2T4. So we did some very quick diving into the regulatory language around academic engagement. And we wanted to sort of show you guys the regulatory chain of reasoning that helps get us to the place that I've been describing this morning. So first, let's talk about the provisions in the Return of Title IV regulations where we talk about what constitutes academic attendance and attendance at an academically related activity. So you see on the screen here 668.22 (1)(7) romanette (i), this is referring to what we consider to be academic attendance and attendance at an academically related activity for the purposes of serving as the foundation for a withdrawal date in the return of Title IV calculation. And as you can see, it says, must include



academic engagement. So I can see where there might be some confusion that there was some requirement in addition to academic engagement that the Department intended with the word attendance. But ultimately, what we mean here is that academic engagement constitutes academic attendance as long as there's documentation of it. So if you have documented that engagement, you have met the requirement to use that engagement as academic attendance for R2T4 purposes. So with that, let me go down to the 600.2 definition of academic engagement that we created in the most recent regulatory process on this topic. So number one, it's defined by an institution in accordance with any applicable requirements of its state or accrediting agency. And then down to two, we have a bunch of things that it includes which are synchronous classes, academic assignments, submissions, assessments or exams, tutorials, webinars, study groups, group projects, online discussions, interacting with an instructor about academic matters, etc. And then we have some exclusions that are things that we specifically identified that are not academic engagement or and therefore not attendance for R2T4 purposes. Living in institutional housing, participating in a meal plan, logging into an online class or tutorial, but not doing anything else. And that's where the crucial concept of

engaging with respect to the subject matter comes into play. Just logging in is not enough. You have to actually engage in a particular academic activity in order for this to count. And then finally participating in academic counseling or advisement. So we hope that that makes this a little clearer. And I would also say as well, this was the Department's general approach for many years, this has not changed actually probably for more than a decade. Although schools indicated that it was not incredibly clear until we put it into regulation. And now that it's in regulation, we think that there is a pretty clear chain that allows schools to use that concept of academic engagement to determine whether attendance can be used in the R2T4 process. I want to pause there and open it up if others have questions, comments, etc..

MS. JEFFRIES: Okay. Thanks, Dave. Any questions or comments or clarifications needed on what Dave just explained? Doesn't look like it, Dave.

MR. MUSSER: So hearing none, we recall that in the earlier part of this conversation, Jillian suggested that we make a change, a wording change to the language regarding distance education courses, since there is going to be, again, if we make the change in the distance education rules. Oh, go ahead, Vanessa, you can bring that up. So we wanted to make the change

here. We treat this as a relatively minor change. We think it's appropriate to make it here in an effort to reach consensus. And so this is each distance education course as defined in 34 CFR 600.2, except for dissertation research courses. This is what we had in mind in our earlier discussion. But let me pause and see what folks think about this change before we finalize. Is this what everyone- what you had in mind, Jillian? And does this make sense to the rest of the committee?

MS. JEFFRIES: I see Jillian is shaking her head and I don't see any other hands, Dave.

MR. MUSSER: Okay. If there's no other comments on this I will turn it back over to Greg and I think we can move forward with a consensus check.

MR. MARTIN: Thanks, Dave. Yes, Cindy, at this point I think we can move forward with the consensus check.

MS. JEFFRIES: Okay. Sounds good. For the purposes of consensus, we will utilize a roll call consensus. So we'll go according to my screen, and I will call out your name and where the position of your thumb is. Remember a thumbs up is your 100% in support. A sideways thumb means you can live with it, and a downward thumb is indicating dissent. In dissent, you will be asked to clarify what your dissent is and offer any

potential remedy that might transpire. Dissent should be used if you have a serious concern over what's being proposed. Greg?

MR. MARTIN: I just want to clarify one more time to everybody, I think we've done that but just want to be very clear. This is the consensus check and not a temperature check. That's all I wanted to say.

MS. JEFFRIES: And the consensus is on the entire document. So with that let's go ahead and get started. Jillian?

MS. KLEIN: No down. What do you need me to say?

MS. JEFFRIES: We'll come back to you. Robyn. Thumbs up. Okay. Barmak. Thumbs up. Jesse Morales. Thumbs up. Bill Wexler. Thumbs up. JoEllen price. Thumbs up. Laura Rasar King. Sideways thumb. Thanks, Laura. Jo Blondin. Sideways. Jason Lorgan. Sideways. John Ware. Thumbs up. Erika Linden. Sideways. Diana Hooley. Thumbs up. Jamie Studley. Sideways. DC. Thumbs up. Carolyn Fast. Thumbs up. Did I get all the non-Federal negotiators? Okay. Greg Martin. Thumbs up. So we'll circle back to Jillian and Jillian please indicate what your serious concerns are with the document and what would get you to at least a sideways thumb.

MS. KLEIN: Yeah, I don't have

anything to add besides what I've already said, which is the direct assessment language that we've provided twice to the Department.

MS. JEFFRIES: Okay. So R2T4 did not reach consensus and we will move on. So Greg and Dave next on the agenda for this afternoon was distance ed. We have about 40 minutes. Do you want to start into that?

MR. MARTIN: Yes. I think we can start with distance education as long as David's ready. Dave, do you need any time before starting that?

MR. MUSSER: No, no. I think we can move into it.

MR. MARTIN: Okay, then we'll move into the discussion of distance education.

MS. JEFFRIES: Okay, great. Dave?

MR. MUSSER: Alright. Thanks, everyone. So let's turn now to the distance education issue paper. So I won't talk through everything that's currently in the paper, but as last time, I want to talk through all of the areas where the Department made changes.

MR. MUSSER: We want to talk through all of the areas where the Department made changes and areas where we received proposals and potentially, and in some cases, did not make changes.

MR. MUSSER: So if we could scroll down just a moment. Alright. So the first item we actually already alluded to in the prior discussion. We are proposing to add a new, fully new definition of a distance education course that would track with the IPEDS definition of a distance education course. And this was originally a negotiator proposal, which we think makes sense. To ensure that schools have a clear understanding of what constitutes a distance education course and what does not, and we've defined it as a course in which instruction takes place exclusively as described in the definition of distance education, which as you guys all recall, is the sort of fundamental definition of distance education involving regular and substantive interaction, etc. In this section notwithstanding in-person non-instructional requirements, including orientation, testing, academic support services, or residency experiences. So I'm going to pause there and open it up for comment from the committee.

MS. JEFFRIES: Okay. Thanks, Dave.

Jillian?

MS. KLEIN: Thanks. So appreciate the Department being open to the suggestion that I made on the comments about or the language about the residency experience. I guess my one comment is because that

residency experience falls after I think it's non-instructional. I'm not sure that's accurate. And I guess I hesitated asking this question because I wasn't sure what to suggest in terms of a solution. I don't know if you can just sort of swap the construction of the sentence. But I don't think residency experiences really are not instructional. So curious. I don't know, maybe the Department can provide some thoughts on that and then I'm happy to sort of work to finesse the language if that would be helpful.

MR. MUSSER: Yeah. It's a good point. We use the concept in part because it was derived from the IPEDS guidance on this definition. And, you know, I think we're open to swapping it around if you wanted to say excluding residency requirements and then saying or other non-instructional in-person requirements.

MS. KLEIN: That was going to be my suggestion. So yes, I agree.

MR. MUSSER: Okay. Well, I want to look to my Department colleagues, including Denise, and see if they have any concerns with that. But I think if they don't, I think we could go in and make that change.

MS. MORELLI: I don't think there is.

MR. MUSSER: Okay. So, Vanessa, I don't know if you have this one up and available to do

live redlining here. But if you do. There we go. I think, Jillian, I think what you had in mind is it would say a course in which instruction takes place exclusively as described in the definition of distance education in this section notwithstanding residency experiences, comma. Actually no comma. Residency experiences and in-person non-instructional requirements, including orientation testing or academic support services.

MS. KLEIN: Yep, I agree. Thanks.

MR. MUSSER: Oh, wait. No, no, just you can just yeah. There you go. And then or before academic support services. Okay. Other comments on this definition then.

MS. JEFFRIES: Not seeing any. Oh, DC?

DR. PRINCE: Yeah, just for the layman people out here who, you know, enjoy the conversations on semantics and sentence structures. What does this change do? Or is this just to make it clearer for people to understand it? Because what I notice in one example, I want to make sure I understand if we're going to constantly keep repeating it, is the constant structural changes of sentences and wording that might be getting too pedantic in how we're negotiating what we're trying to achieve. And so, help me understand Jillian or the Department, why was it moved from the end to the middle?



And is this going to be a constant kind of requirement for us to move consensus forward as we think about other language as we get through the rest of the week? It's a two-part question. The first one is why, you know, why that simple change? And then is this going to be a constant throughout the week that's going to preclude us from getting to other consensus on other issues?

MR. MUSSER: If it's okay, let me answer the second one first, and then I'll ask Jillian to explain.

DR. PRINCE: Sure.

MR. MUSSER: So I think this rewording is a very typical part of negotiated rulemaking, especially in this final week. We recognize that wording does matter. And in some cases, it can have a substantive effect on the regulations or and in this case, I think and Jillian can correct me, a substantive effect on the school's understanding of the requirements that they have to follow. And we want to be sure that that wording is clear for that reason and that we don't have unintended consequences. Again, either substantively, where something is enforced that we didn't intend, or cases where schools really don't know what we meant. So the Department is generally willing to make these on-the-fly changes. And of course, negotiators have to kind of think

about these changes as well. We typically won't make major, major changes in this way, DC. We typically will, as we talked about earlier come back in a later session after negotiators have had a chance to view bigger changes to ensure that you've had time to think through them. But for these more minor changes, we find it to be more efficient, to just make the change on-the-fly and finalize the language so that we can move on.

MS. KLEIN: Yeah, thanks. And I'm happy to- I agree with everything Dave said. I'm happy to speak to your first question DC. So many programs, I think typically programs that lead to like licensure outcomes have a requirement that there is an in-person-like a weekend component sometimes where students who maybe are otherwise are in an online program are required to come together and get sort of didactic training in person. And they're typically- it doesn't run the length of the time, right. So a lot of times it's a weekend or it's like 3 or 4 days couched within an otherwise 100% online course. And so my argument is that those actually are instructional institutions, have designed them to be instructional. Accreditors require them to be instructional. And so I just didn't want that modifier to be attached to residency experiences, because I don't think it was accurate. I think for an institution that's

required to offer these for a program, there could be confusion about, well, but what if my residency experience is instructional? Would it still be considered a distance education program or a distance education course? Should I be reporting it or not, etc. So there would be like downstream impacts from sort of the structure in which that proposal was created. Does that make sense?

DR. PRINCE: Yes, it makes complete sense. I just what I start to notice is if we're going to be constantly having to change that in that way, we might be spending more time in things that I think the intent was still there, whether you put it at the beginning or the end. And I think I just want to make sure that as long as if that is the purpose of us voting, that the intent is still there, regardless of it. Then it makes- it didn't require us to do that. Right. And so I'm just trying to understand if that's going to be a constant thing that we're going to be doing, then that's a different interpretation of what I thought we were going to be doing today. But it makes sense. What you're trying to achieve is just whether or not you could have achieved in the same way.

MS. JEFFRIES: Okay, thank you. Any other questions surrounding the change that was made in

that particular section? Dave. I don't see any more. Do you want to move on?

MR. MUSSER: I think so. So, Vanessa, if you want to pull that back up again. Okay. So now we're moving to the second change that the Department made per negotiator requests. We had talked in previous sessions about how to incorporate a requirement that would be in addition to the requirement for institutions to establish what we are calling provisionally virtual locations where they would report their students who are in fully online programs. But negotiators also requested that we collect data at a student level about each student's distance education enrollment. And so the Department has agreed here to do that. And we thought that the best place to put this- Vanessa, could you scroll up just a little bit?- to put this was actually the disclosure section, the student rights no [inaudible], which will because in part this section of disclosure and reporting requirements deals with other similar reporting requirements. And because we expect that this information will be provided to students and their families as consumer information, if not through the Department's website, then potentially also by institutions themselves. And we have added at the end of that section. Now scroll back down, Vanessa. A new

paragraph (h) indicating for each recipient of Title IV HEA assistance at the institution, the institution must submit to the Secretary in accordance with the procedures established by the Secretary, a report regarding the recipient's enrollment in distance education or correspondence courses. We didn't want to get much more specific than that. We do agree, by and large, with the overall concept that we've discussed previously of obtaining information about a student being not enrolled in distance education, partially enrolled in distance education, or fully enrolled in distance education. But there's a lot of things that the Department and specifically the Office of Federal Student Aid is going to have to work out about this new requirement. And I would also mention that at least as of right now we do not believe we could implement this in July of 2025. This would be something that we would have to delay somewhat. But of course, we'll continue to evaluate that and make decisions on that before the publication of the final rule. So with that, I want to stop and then turn it over to the committee for discussion on this new provision.

MS. JEFFRIES: Okay, thank you. I want to note that Scott Dolan is coming to the table in place of Erika Linden. Jillian?

MS. KLEIN: Sorry. Just one comment.

I'm not even sure I have a language suggestion, but I think the language that many of us sort of co-signed on, I think the idea was around- and not trying to "solutionize" for the Department, right, but like attaching this to sort of NSLDS or COD records as the institution is sending across that information already, just in the interest of efficiency and because that happens really at a like term enrollment level, not an individual course level, I just would want to make sure- and I understand what you're saying about the Department needs to figure out how to do this, and I'm sympathetic to that. But I don't think any of us were suggesting making a more arduous process. If there is a way to attach, for example, term enrollment information to files that are already being sent by the Department, which. So that would sort of track back to what the suggestion was around fully in-person, partially in-person, fully on ground, or that's not the language, but you know what I mean. As opposed to this, which sort of suggests it would happen at a course level and my operational people will kill me if they think I suggested that to you. So I just provide that feedback. I'm comfortable I think if this is how you think you need to sort of paper it, but just a strong suggestion to leverage the reporting functionality that already exists.

MR. MUSSER: Thank you, Jillian. And that is exactly what we have in mind and I'm sure I didn't say it with exactly the specificity that I needed to. But the idea here would be that we'd use the existing process for reporting enrollment and essentially add this as a requirement, as another layer of reporting when a school reports on their student. So, for example, most schools do this reporting once per payment period for their students. They indicate whether they're enrolled full-time, three-quarters-time, half-time, less than half-time. And as part of that, they would also indicate for the student for that period, not for each course, but for the full period, are they enrolled in some distance education courses? And we would use the concept of distance education course as the basis for this concept. Are they enrolled in none? Are they enrolled in some? Are they enrolled in all? That's the general way that we anticipate that we would do this. Of course, like I said this does still require some evaluation on our part as to how we would- exactly what the mechanism would be, how frequently etc.. But right now, yeah, we anticipate adding it to existing enrollment reporting.

MS. KLEIN: Perfect. Thanks.

MS. JEFFRIES: Thank you. Scott Dolan?

MR. DOLAN: Yeah. At the risk of

breaking protocol here, and I understand what you're saying, Dave, but it's really hard to understand how we might want to vote on this without kind of having some more specificity around cadence, frequency, and the like. So- and I guess I'm understanding you want some latitude there from a Department perspective, but from an institutional perspective, it seems like some clarity around what it is- what direction we're moving might be beneficial. And maybe not as much of an issue for my institution, but certainly for the other, you know, the thousand or so private nonprofits who are going to be wrangling with some of these new definitions as we move forward. So and I'm guessing I'm hearing, you know, trying to make this both efficient for institutions and enable the Department to get the information that you need, which I, which I understand completely and actually would be beneficial to all of us, right, to have a better understanding of students and where they're enrolled. And so we can start to look at outcomes in a more reasonable way. But I guess it's more of a comment than it is a question. I get a little bit concerned without some of the specificity being in here about what it is exactly what we're doing and where we're going with it.

MS. JEFFRIES: Thank you. Robyn Smith?

MS. R. SMITH: One suggestion I have



is maybe rewording it to say the institution must report to the Secretary in accordance with the procedures established by the Secretary, the recipient's enrollment in distance education or correspondence courses. Just to be clear, that's all the Department is asking for here? Instead of- I don't know what exactly institutions are concerned about, but that would be sort of a little clearer than that's all the Department's asking for.

MR. MUSSER: I think we'd be open to that. And in fact, Vanessa, do you want to pull up the language here? I mean, it sounds like from what I'm hearing, there are not objections to the approach. There are not objections to what we're proposing here, but there's a need for greater clarity. And I think we're open to that. So would you say that again as to, Robyn, what you had in mind for wording here?

MS. R. SMITH: I would say the institution must report to the Secretary in accordance with the procedures established by the Secretary, the recipient's enrollment in distance education or correspondence courses.

MR. MUSSER: So, Vanessa, after the- do you see the second instance of the word Secretary after the word Secretary, after the comma, add, go ahead, Robyn.

MS. R. SMITH: Sorry. And then take out a report regarding.

MR. MUSSER: And I think you said you would start the sentence with the institution must report to the Secretary?

MS. R. SMITH: I didn't- that was all I was talking about.

MR. MUSSER: So these were the changes that you recommended?

MS. R. SMITH: Yeah. Yeah.

MR. MUSSER: Okay. Okay. Other comments? Does this help? And do we need some- it sounds like from Jillian's comment in the chat that this helps. Does this help on for others as well? Okay, hearing no other comments. So I think the Department is willing to make these changes and use this as our final red line. I think we can move on from there.

MS. JEFFRIES: Okay.

MR. MUSSER: I should also mention, go ahead and you can pull it up, Vanessa, but we'll also include a discussion about this in the preamble to ensure that what our intent is and how we propose to collect this is would be part of the existing enrollment reporting process. Just to make it clear for the community. Go ahead, Vanessa.

MS. GOMEZ: What do you want me to share?

MR. MUSSER: Go back to- you just go back to the red line text. So I think, is this at the end of it? Yeah. So if you scroll back up. We did not make any further changes to the concept of asynchronous coursework, and then you can keep going, Vanessa. We did receive a proposal from negotiators in an effort, I think, to achieve consensus that would have limited the use of asynchronous clock hours to no more than 50% of a Title IV eligible program. In the Department's view that although it would stem potentially some abuses at programs that have almost fully distance education, fully asynchronous programs that are offered in clock hours. Our concern is actually primarily about the partial portions of programs that are offered using asynchronous coursework which we believe is the most typical way that this is offered in clock-hour programs. So simply limiting it to 50% of a program doesn't alleviate the Department's concerns about both abuse and the potential expansion of how the Department is paying for instruction and clock-hour programs. I want to pause here, because I do want to mention we received some requests for data on this topic. And unfortunately, the Department does not have data on the distance education status of clock-hour

programs. However, we were able to confirm that there are approximately 8,000 programs that are offered using clock hours. These programs are primarily non-degree, leading to credentials below the associate's degree level. If the Department in the future would like to collect additional information on clock-hour status the distance education status of clock our programs. But that data does not currently exist, so unfortunately we can't provide more on that topic. We also were asked for information and guidance of the Department has given on this topic and we did provide that between sessions to negotiators. And we also wanted to talk through some specific information about the noncompliance that we've identified and the kinds of questions that we're being asked by institutions about this topic. But before I get there, I will turn- I see that there's a couple of hands. So let me open it up for just a moment to our non-Federal negotiators.

MS. JEFFRIES: Okay. Scott Dolan?

MR. DOLAN: Yeah. Can you just clarify? I'm going back to January, right? Where the rationale for this change was provided for the Department, right? Here's a reason why we think we need to remove asynchronous altogether for clock-hour programs. The reason given was that institutions lack the technical expertise to really monitor clock hours in the

way that was required by the Department. With a hint towards some of the abuses. There has been no evidence marshaled by the Department regarding the abuse that you've seen and at what scale you've seen it. We've heard anecdotally from a few of you that we should be assured that this has existed. However, when you talk to her creditors in this space, they find it hard to find instances that you're talking about. When you talk to legal counsel that represents a lot of institutions in this space you find very little evidence of the abuse that you're referring to. So I just want to hear more clearly what the rationale is for the change. Is it really about abuse? Is it about that these institutions aren't meeting their outcomes? Which, you know, given the proposal that was submitted by a number of us it was pretty clear that a lot of these programs lead to licensure. So there's clear measures that already exist around outcomes that accreditors and the Department should be monitoring as part of this work. Or is it about the technical expertise component of this? Though I will say, if it's that, even the Department has highlighted very specific examples of programs that are doing this appropriately and well in accordance with the guidelines that have been provided to institutions. Just one quick thing, sort of to remind the Department here, too, is

that the guidance was given to institutions but has not yet been given to folks who are doing program reviews and audits. And so, you know, it's not even been monitored by the Department as part of this program reviews just yet because that guidance hasn't been provided, as was mentioned in February. So bottom line question just for this first part would be what is the concern, what's the problem that we're trying to solve here? And can we be clear on what that is? Is it abuse? Is it that these institutions aren't meeting outcomes or is it that they lack the technical expertise to really carry out this monitoring?

MR. MUSSER: A couple of things and then I want to turn it over to Denise. The first is that it's not accurate to say that our program reviewers don't have procedures on those. Program reviewers do have procedures about how to evaluate asynchronous clock hours. And in fact, that is the way that we would identify problems in this space ahead of all others. Non-Federal auditors do not have specific procedures on this. And to be frank, Non-Federal auditors are rarely able to dig into requirements around such things as asynchronous clock hours to the degree that would be needed in order to identify real noncompliance. Although the Department will still consider asking auditors to do more in this

space over time if we ultimately decided not to change this regulation. But we don't think that they are the ones that would be able to find this. Program reviewers do understand these changes. However, during the pandemic, the Department was unable to perform as many program reviews as we had in the past for a variety of reasons. One of the things that comes up a lot when we talk about this is that we don't have many you know, a whole host of data on this and that's partly because it's our belief that this is not a widespread activity yet. I think what's partially driving our concern, and I'm going back to our original reasoning for this, is the abuse that we've identified in the cases that we've identified which in some cases have been extreme, as well as the kinds of questions that we're getting from the community about the requirement which, by the way, is a Department specific requirement. This is not a requirement that accreditors are required to monitor. So most accrediting agencies would not even be aware that schools have to comply with this particular requirement of the Department. The accrediting agency knows how the program is being offered and has its own requirements, but it's not going to be thinking about how to measure a clock hour for purposes of the Title IV programs, and nor would we expect them to. So let me turn it over to Denise now

to talk through some of the specific cases that we've encountered about this that sort of raised these concerns.

MR. DOLAN: Can I just- so this is not part of a verification of compliance procedure that would be a component of an accreditor's responsibility upon review?

MR. MUSSER: No. This is not something an accreditor looks at. The accreditor looks at, are they offering distance education in accordance with the accreditor's requirements for distance education. Which do sometimes include things like verifying identity. That is an important piece of this that might relate to this. But in terms of measuring a clock hour and ensuring that a student attended 50 out of 60 minutes in a clock-hour, no, accrediting agencies are not required to perform that activity.

MR. DOLAN: So, you know, I'm certain it's something.

MS. K. SMITH: You have 30 seconds.

MR. DOLAN: Great, thank you. It's certainly something we report on from a credit hour perspective to our institutional creditor as a component of a review, right? In addition to reviewing our standards. Accreditors are being asked to take a look at



as a gatekeeper to the work that the Department is doing in compliance with Title IV regulations. So I might be wrong on this relative to clock-hour programs. I would think there would be some parallel expectations and I'll hop back in as necessary.

MS. MORELLI: I'll go ahead and go and then I'll leave, I guess, Jamie to come in on accreditation. But I haven't seen this issue raised in any kind of accreditation reports that I have seen. Not saying it hasn't. One thing, a couple of things to first point out is we don't have a lot of data in terms of specific- we can't give you examples, but this is going to be found primarily in program reviews, which is the area that I do a lot. I work with the teams on the program reviews and what they find there and taking actions against the schools. So one of the things that we've noticed, I'll give you some examples, we've already talked about it, and I also did want to point out that the Department did talk about the mechanism for monitoring this, but a big part of it, and we did lay that out in the first session, was the abuses that we've seen. I brought some examples out before. We've seen situations that are as bad as, you know, having somebody curl their hair, send a video in, watch a YouTube video, and then they get hours for it, assigning what they think

how long it should take somebody to do something like a project or whatever, and assigning clock hours. And when you get back to the definition of a clock-hour, it says instruction. We're talking about instruction and becomes more paramount in hands-on training programs, which are most of the ones we're seeing in these issues. We have other cases where we've gone in and we were able to get from the platform to go in behind and actually check. And where they were getting- student was getting 300 hours. We were able to find out they were actually really only online in these programs, 30 minutes, 45 minutes and be given 300 hours for it. So we are seeing a lot of abuses, and some of these other typicals go out and read a topic and then write something up on it or answer some questions. These are typical things that you would have seen before the explosion of distance education as homework items in a clock-hour, traditional clock-hour hands-on program, and now they're being turned into clock hours of instruction and they don't really meet that definition. And one of the other things, when you're saying there might be a small amount of abuse, and I think I said this before, sometimes the Department's obligation to the integrity of the programs, to help the students, to make sure they're getting the training because in these cases that I'm bringing up, the students

were also harmed in them. It wasn't just simply a taxpayer issue or something against the program. The students were not getting the training they needed and they couldn't go out and get jobs in the field. So we want to make sure that we're protecting everybody. But sometimes we do have to regulate to the bad actors and this is one of those situations. We've also seen because maybe because of the pandemic and seeing how much, you know, how easy it is to just say we're going to be distance ed an explosion. So even if we might not have a bulk of institutions right now where we've seen the problem, we're seeing an increase. And I've been doing this for 30 years, and I'm seeing a big increase in the amount of situations we're seeing where schools are claiming clock hours asynchronously and the students aren't getting the training. And when you're talking about outcomes, one of my more recent cases, it was very bad in this situation. We did check the licensure passage rates in this case and they were abysmal. 5, 10 students out of classes of 100, 200 students that actually passed the licensure exam. And I don't know what the states ultimately do and when they might cut it off. But from our perspective, that's not okay. And so in order to stem this abuse that we think this is the best way to do it. And putting like just a 50% cap isn't really going to get

us where we need to go. So that's the Department's reasoning. And we do have a large example of abuses. It may not be as widespread but we see an increase in it growing.

MS. JEFFRIES: Thanks, Denise. Jo Blondin, you're next.

MS. BLONDIN: Yes. I do want to clarify something that Scott brought up. Yes, I can speak for the Higher Learning Commission, and we do have a Federal compliance component to all peer review. So there's that. The other question that I had is rather than impacting 8,000 institutions and, you know, is there a way to put any kind of guardrails? I know that Denise just spoke to that a little bit, but I think that this is going to impact programs with unintended consequences. Nursing programs, particularly practical nursing programs, and state-tested nursing assistant programs that are doing this right. So I also wonder, too, if there are ways that we could think about some type of guardrails or even another reporting mechanism because I think that taking out asynchronous totally is going to have major impacts on students that we don't even realize in fields that are much needed to close skills gaps. Thank you.

MR. MUSSER: Real quick before Jamie

goes, I just want to make one clarification, which is the number that we gave was 8,000 clock-hour programs, not 8,000 institutions that are offering clock-hour programs.

MS. BLONDIN: Right, right. Sorry.

MR. MUSSER: Yeah. No worries. There are many institutions that offer a number of different programs. And it's the number of programs not institutions. Go ahead, Jamie.

MS. JEFFRIES: Jamie, can you hang on one second? We have two hands up, Jamie and David Cohen. We have approximately four minutes before lunch, so we'll take those two, and then we're going to break for lunch. Okay, so, Jamie.

MS. STUDLEY: Or breakfast, as the case may be.

MS. JEFFRIES: Sorry.

MS. STUDLEY: That's okay. My point is similar to Jo's and what Scott was saying. Listening to the public comment over the last few weeks, I realize there's another set of anecdotes, but there were students who were describing the value to them of asynchronous learning in ways that I did hear as providing examples of access for people who could pursue postsecondary education with these kinds of options and might not be able to otherwise or might not be able to move forward.

Denise really put her finger on it. This is a case of regulating to the bad actors, and sometimes we need to do that. But maybe there's a more subtle way to allow the opportunity for it and to regulate or to tighten something else. She's right that there are outcomes that can be used to determine whether a program is achieving what it's meant to achieve. David, maybe up to make the point he made in the chat about military people whose schedules require it. Just hate to see us in a moment of flux for technology and offerings to close something that can be positive completely, rather than trying to find a way to manage it when it could have real value for exactly a set of students that we'd like to have opportunities for. I do not have the perfect solution, but I don't think we're there yet.

MS. JEFFRIES: Thanks, Jamie.

Appreciate it. David Cohen?

MR. COHEN: Just briefly, because I don't want to kind of repeat what people have said, but I was just going to say to Denise, you know, has the Department considered those quality assurance issues to define what good quality online asynchronous clock-hour learning would be rather than imposing a ban? And then the only other point that I will add is that I was approached at a conference in Washington by an active

military person who indicated that this type of ban would force them to give up the programs of study that they were in. And I was wondering whether the Department has considered the ban and the effect it would have on the active-duty military who are serving our nation who cannot then participate in clock-hour education asynchronously.

MS. JEFFRIES: Okay. Thanks, David. There are a couple comments in the chat. Jo Blondin added, when students need maximum flexibility and technology-provided solutions, why disallow the entire practice? So these are things that you can ponder over your lunch. I do want to remind the public to utilize the correct link for this afternoon's session, as it is a different link than what you were able to access this morning's session with. So make sure you make that adjustment. With that, I think that we can go ahead and pause our live stream and we will take our lunch break and reconvene shortly before 1:00 so we're ready to start at 1:00.

**Zoom Chat Transcript**

**Program Integrity and Institutional Quality- Session 3, Day 1, Morning, March 4, 2024**

**\*Chat was copied as presented, as a result minor typos or grammatical errors may be present.**

From Hannah.Hodel to Everyone:

I am not hearing any audio and will try calling back in

From Charles Prince, Dillard University to Everyone:

Charles Prince is here

From P, DC, HBCUs, TCUs, MSIs to Everyone:

p, DC, HBCUs, TCUs, MSIs is present

From A, Scott Dolan, Private/Nonprofit IHEs to Everyone:

i'll be back

From P-Jamie Studley, Institutional Accreditors to Everyone:

will we keep rolling through and accelerate when we start the next topic if some take less time than the schedule provides?

From A-David Cohen, Proprietary Institutions to Everyone:

If you take a consensus check prior to the public comment period, how can the negotiators consider the public comments?

From P - Erika Linden - Private Nonprofit Institutions to Everyone:

I concur with Jillian - this doesn't feel like negotiations.

From A- Alyssa Dobson: 4 Yr. Public Institutions to Everyone:

Reacted to "I concur with Jillia..." with 👍

From A, Scott Dolan, Private/Nonprofit IHEs to Everyone:

Reacted to "I concur with Jillia..." with 👍

From P, Jason Lorgan, Public 4-year to Everyone:

Reacted to "I concur with Jillia..." with 👍



From A-David Cohen, Proprietary Institutions to Everyone:

Has the Department considered that it has put so many topics on the agenda in such a condensed period of time, that they cannot be fairly negotiated in the timeframe allotted?

From P - Erika Linden - Private Nonprofit Institutions to Everyone:

Facilitators - can you remind us whether the chats are visible to the public viewers?

From P-Jamie Studley, Institutional Accreditors to Everyone:

but with temp checks during the discussion, before the vote on the paper as a whole?

From A, Scott Dolan, Private/Nonprofit IHEs to Everyone:

agreed that the Dear Colleague Letter does seem at odds with the current redline language.

From P. Jo Blondin, Community Colleges to Everyone:

Reacted to "agreed that the De..." with 👍

From P - Erika Linden - Private Nonprofit Institutions to Everyone:

Reacted to "agreed that the Dear..." with 👍

From P. Jo Blondin, Community Colleges to Everyone:

<https://fsapartners.ed.gov/knowledge-center/library/dear-colleague-letters/2024-02-14/applying-title-iv-eligibility-direct-assessment-competency-based-programs>

From P, Jillian Klein, Proprietary Institutions to Everyone:

Reacted to "https://fsapartners..." with 👍

From P, Jillian Klein, Proprietary Institutions to Everyone:

Reacted to "agreed that the Dear..." with 👍

From P - Barmak Nassirian, Veterans & Military Students to Everyone:

I support the Department's rationale on direct assessment.

From A-David Cohen, Proprietary Institutions to Everyone:

Has the Department considered how imposing an attendance requirement might impact active duty military studying from a distance?

From P - Erika Linden - Private Nonprofit Institutions to Everyone:

Alternate Scott Dolan is coming to the table.

From P - Erika Linden - Private Nonprofit Institutions to Everyone:

Are there ever excusable absences that will allow for a student to miss 14 days or longer without automatically withdrawn?

From P, Jillian Klein, Proprietary Institutions to Everyone:

David Cohen is coming to the table

From A, Scott Dolan, Private/Nonprofit IHEs to Everyone:

Erika will come back to the table

From A, Scott Dolan, Private/Nonprofit IHEs to Everyone:

i thought i heard that there was a minor redline edit?

From Krystil Smith | FMCS Facilitator to Everyone:

Please don't forget to use the naming conventions. A or P, your name, your constituency group

From P - Erika Linden - Private Nonprofit Institutions to Everyone:

Jillian's explanation is helpful as to what might constitute a "residency experience" - perhaps the note that in the preamble.

From P, DC, HBCUs, TCUs, MSIs to Everyone:

Reacted to "Jillian's explanatio..." with 👍

From P - Erika Linden - Private Nonprofit Institutions to Everyone:

Scott Dolan will return to the table.

From A- Alyssa Dobson: 4 Yr. Public Institutions to Everyone:

100% agree with Jillian's comments here.

From P, Jillian Klein, Proprietary Institutions to Everyone:

I like Robyn's edit

From P - Carolyn Fast, Civil Rights/Consumer Organizations to Everyone:

Reacted to "I like Robyn's edit" with 👍

From A - Zack Goodwin (he/him), Financial Aid Administrators to Everyone:

Reacted to "I like Robyn's edit" with 👍

From A-David Cohen, Proprietary Institutions to Everyone:

Has the Department considered how the removal of asynchronous learning in clock hour programs will impact active duty military?

From A, Scott Dolan, Private/Nonprofit IHEs to Everyone:

so why isn't this an institutional level issue with compliance? Of the 8,000 institutions, how many are doing it appropriately?

From P. Jo Blondin, Community Colleges to Everyone:

Reacted to "so why isn't this ..." with 👍

From P, Jillian Klein, Proprietary Institutions to Everyone:

David Cohen will come to the table.

From A, Scott Dolan, Private/Nonprofit IHEs to Everyone:

the demand for students from low-income and disadvantaged backgrounds for flexible programs is increasing. from an equity perspective, not surprising to see a growth in models to meet that needed demand

From P - Carolyn Fast, Civil Rights/Consumer Organizations to Everyone:

I strongly support the Department's proposal here to address abuses in these programs.

From P - Barmak Nassirian, Veterans & Military Students to Everyone:

+1 in support of the Department's position on exclusion of asynchronous hours in clock hour programs

From P. Jo Blondin, Community Colleges to Everyone:

8000 programs, excuse me.

From P - Robyn Smith, Legal Aid Orgs. to Everyone:

I also strongly support this proposal.

From P - Erika Linden - Private Nonprofit Institutions to Everyone:

I agree with Jo Blondin's comments and asking if we can imagine some guardrails

From A - Zack Goodwin (he/him), Financial Aid Administrators to Everyone:

Reacted to "I agree with Jo Blon..." with 🍌

From P. Jo Blondin, Community Colleges to Everyone:

When students need maximum flexibility and technology provides solutions, why disallow the entire practice?

From P - Barmak Nassirian, Veterans & Military Students to Everyone:

Parking students in front of a recording or counting amorphous "learning activities" as instruction is another open invitation to abuse.

From P, Laura Rasar King, Specialized Accreditors to Everyone:

I agree with Jo and Jamie. I think removing asynchronous instruction from clock hour programs will have unintended consequences for students.

From P-Jamie Studley, Institutional Accreditors to Everyone:

and people with family responsibilities, or jobs with unpredictable shift schedules

From A, Scott Dolan, Private/Nonprofit IHEs to Everyone:

Reacted to "I agree with Jo and ..." with 👍

From P - Barmak Nassirian, Veterans & Military Students to Everyone:

We get a lot of complaints from military students about being parked in front of YouTube

From P - Carolyn Fast, Civil Rights/Consumer Organizations to Everyone:

Reacted to "I agree with Jo and ..." with 👍

From P - Carolyn Fast, Civil Rights/Consumer Organizations to Everyone:

Removed a 👍 reaction from "I agree with Jo and ..."

From P - Carolyn Fast, Civil Rights/Consumer Organizations to Everyone:

Reacted to "Parking students in ..." with 👍

From P - Erika Linden - Private Nonprofit Institutions to Everyone:

Reacted to "I agree with Jo and ..." with 👍

From P-Jamie Studley, Institutional Accreditors to Everyone:

so let's get at those, Barmak!

From A, Scott Dolan, Private/Nonprofit IHEs to Everyone:

agreed, Jamie! let's focus efforts there. seems like an institutional quality perspective.

From P - Erika Linden - Private Nonprofit Institutions to Everyone:

Well said, Jamie.

From P-Jamie Studley, Institutional Accreditors to Everyone:

Are there any good options proposed but not pursued? is there any chance we could generate a better proposal on this issue tonight if we had time?

From P, Jillian Klein, Proprietary Institutions to Everyone:

Carolyn and I are taking our consensus as a real consensus, Barmak! :)

From A, Scott Dolan, Private/Nonprofit IHEs to Everyone:

Reacted to "Carolyn and I are ta..." with 😊

From P - Carolyn Fast, Civil Rights/Consumer Organizations to Everyone:

Reacted to "Carolyn and I are ta..." with 😊

From A, Scott Dolan, Private/Nonprofit IHEs to Everyone:

compromise.

From P-Jamie Studley, Institutional Accreditors to Everyone:

if not consensus ED has the pen so they shd be able to take any suggestion they like to put in NPRM

From A, Scott Dolan, Private/Nonprofit IHEs to Everyone:

Reacted to "if not consensus ED ..." with 👍

From P-Jamie Studley, Institutional Accreditors to Everyone:

Multiple options: 1) hold DE open and see if we find a better idea tonight 2) create a way to do what Barmak is suggesting. 3) finish reg neg and anyone can offer a brainstorm to ED for consideration in the NPRM

From A, Scott Dolan, Private/Nonprofit IHEs to Everyone:

there will be an assessment on what you watch, and a discussion of its importance within the larger context of the field