



Miguel Cardona
Secretary of Education

August 26, 2024

James Kvaal
Under Secretary of Education

U.S. Department of Education
400 Maryland Ave. SW
Washington, DC 20202

Re: NPRM - Docket ED-2024-OPE-0050

Dear Secretary Cardona and Under Secretary Kvaal:

On behalf of the Software & Information Industry Association (SIIA), I write regarding the Notice of Proposed Rulemaking (NPRM) issued by the Department of Education (the Department) on July 23, 2024, "Program Integrity and Institutional Quality: Distance Education, Return of Title IV, Higher Education Act Funds, and Federal TRIO Programs."

SIIA is the principal trade association for the software and digital content industry.

Our over 350 members include the nation's leading publishers and innovative developers of digital products and services for K-20 education, including digital instructional materials, education software and applications, online educational programs, professional development, and related technologies and services for use in education. In addition, all of our members depend on the nation's schools to provide a skilled workforce with both academic proficiency in core subject areas and 21st-century skills.

SIIA understands the importance of the Department's Title IV oversight role and appreciates the opportunity to respond to the NPRM. We understand and support the Department's intent to protect vulnerable consumers, classroom students, and how Title IV funding is spent. We have concerns that the proposed redefinition of "Distance Education" will limit opportunities to provide education for nontraditional students. As described in this submission, we encourage the Department not to distinguish between distance and virtual learning and ensure that federal funding remains available for asynchronous learning.

Ed Tech and Distance Education in Higher Education

Educational technology (ed tech) has been utilized by institutions of higher education (IHEs) for decades. Ed tech software, services and tools are used to supplement the educational experience at the institution. Some tools deal directly with the administration and disbursement of Title IV dollars. Others are used to support distance education to facilitate classroom

collaboration and learning. Further, the increased measures of “flexible” learning opportunities provide avenues and tools that allow a student to move through a course at their own pace, and provide unlimited access to high-quality learning materials at any time of the day. These opportunities are particularly important for students who are working parents, cannot afford to live on campus, have specific needs based on a disability, or are in active military.

SIIA recognizes the importance of improving student outcomes in distance education, while ensuring that IHEs are transparent with the spending of Title IV dollars through online programs. However, based on the suggested amendments in the NPRM, the Department’s definition of distance education goes far beyond the commonly understood scope of the term, as it creates an unfair dichotomy of what types of higher education experiences should be supported through federal funding.

The Department Should Not Treat “Virtual Location” Distinct from Distance Education

The Department’s proposal to amend the definition of “distance education” to separate out “virtual location” disregards the importance of alternative designs and instructional methods to meet different student needs and presupposes that virtual learning is somehow inferior. The rationale behind this proposal appears to tackle the accountability of online service providers in terms of monitoring program oversight, audits, outcome metrics, and more. The Department assumes that making this distinction will allow for more effective monitoring and oversight of the spending of federal funds on distance education.

We are concerned that making this change mischaracterizes how learning is designed and offered to students at IHEs and would have a detrimental effect on students who, for many reasons, need to rely on virtual learning options. Distinguishing virtual locations from distance education creates a divided approach to learning, inadequately emphasizing a specific “type” of education and its correlation to student success.

In addition, we are concerned that the additional evaluation requirements for virtual locations singles out virtual learning as somehow inferior to other educational modalities. We believe it is important to ensure that all manners of delivering education are effective and have concerns that requiring additional data only for virtual locations will have an unreasonable burden on all stakeholders, including IHEs and ed tech providers.

The Department Should Not Ban Asynchronous Learning from Access to Federal Funding

The Department also recommends “removing...asynchronous [learning] options using distance education under the definition of a clock-hour” meaning, in short, that asynchronous learning would not be entitled to Title IV funding. We are concerned that this approach, which privileges “real-time/face-to-face” learning over “flexible-style” learning will have a disproportionate impact on students who, due to other obligations or resource constraints, are not able to enroll and participate in face-to-face learning programs.

Given the breadth of asynchronous learning courses and classrooms across U.S. campuses, this type of funding “ban” will defer resources away from activities that better serve non-traditional students. Furthermore, if asynchronous learning is not allowed to receive Title IV



funding, then non-traditional students will be disparately impacted by the rule, as they would be forced to participate in courses that are considered “clock-hour,” thus, not allowing for any flexibility or financial aid in their educational pursuits.

The field of higher education prides itself on experiences that encourage and allow individuals with diverse backgrounds (including ability, race, socioeconomic status, and age). If the NPRM were to take effect, the restrictions on asynchronous learning would limit the availability of diverse learning opportunities for IHEs and their students, without improving the quality of the underlying issues that the Department is trying to address. For all of these reasons, SIIA recommends the Department revert back to the definition in the original regulations.

Conclusion

Many of SIIA’s member companies provide products and services that assist IHEs in providing distance learning, including through virtual locations. Technology has enabled IHEs to provide greater and more flexible opportunities for continuing education for any type of learner. We believe this is a positive development and one that the Department should encourage. Flexible platforms that allow communication between students and professors, digital textbooks to access class materials, and video conferencing/integration services may all be impacted by the proposed rule. The effect would be to restrict the availability of higher educational opportunities with a disproportionate impact on non-traditional students.

As the Department continues its work on the NPRM, we recommend that the Department maintain the current definition of “distance education,” without distinguishing “virtual location” and without removing asynchronous options under the definition of clock-hour.

SIIA would like to thank the Department for the opportunity to share our views on this NPRM. We look forward to continued engagement with the Department on these important issues.

Respectfully submitted,



Danny Bounds

Counsel, Education Technology Policy

