

# Managing COVID-19 Disruption

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In response to the threat posed by the coronavirus (COVID-19), schools and colleges across the country and around the world have made headlines by canceling classes, shutting down campus operations and rapidly shifting to offer their programs online for the still-undetermined duration of the health emergency. On March 5, the US Department of Education issued an [electronic announcement](#) for interruptions of study related to COVID-19, which has helped embolden colleges to move toward online contingency plans.

Although the ED announcement grants important flexibilities, it is important for education providers to understand that there remain regulatory requirements that must be considered in moving offerings online.

## Regular and Substantive Interaction

ED's announcement does not indicate that it has waived the requirement that institutions offering distance education must ensure that the delivery of instruction supports "regular and substantive interaction" (RSI) between students and their instructors. Any course or program that does not include adequate RSI is considered a correspondence course rather than qualified as a distance education program, which has important implications for student, program and institutional eligibility for federal student aid. Although it would be surprising if ED were to take a hard-line approach to enforcing this requirement under the current circumstances, it seems unlikely that ED would choose to entirely ignore the RSI requirement as well, particularly if schools are forced to offer online programs for extended periods. As a precaution, and in the interest of students, institutions should ensure their new online courses include adequate RSI, which also may help insulate institutions from student complaints alleging that their online program was not sufficiently comparable to the in-person program in which they had enrolled.

In its fall 2019 rulemaking, ED reached consensus on an [updated regulatory definition](#) of "substantive interaction" which, although not yet in effect, provides insight into the types of student-instructor activities that ED believes meet the RSI requirement.

Practically, in order to comply with the RSI requirement, institutions transitioning courses to distance education delivery methodologies should identify how to confirm that there is instructor-initiated interaction at periodic and defined intervals, and identify and implement a mechanism to capture and document these interactions through such means as recordings, transcripts or screen shots. Recognized interactions include direct instruction itself, substantive feedback on assessments or instructor-initiated contacts with students that create the opportunity for relevant discussion of academic subject matter. As institutions consider RSI requirements, they should also be implementing mechanisms to verify initial attendance and document ongoing attendance, as applicable, to ensure they have a record that students continued and participated in their programs.

## Accreditor Engagement

Even with the flexibility outlined in the ED announcement, institutions need to engage with their accrediting agency in advance of switching to a distance education format in response to COVID-19. Under usual ED and accreditor rules, approval to offer distance education programs is a substantive change that requires advance accreditor approval and adherence to the accreditor's review standards. ED's announcement provides accreditors with the ability to waive these requirements temporarily. However, and this is important, that flexibility is at the discretion of the accreditor and is not automatic. Institutions need to engage with their accreditor to determine what and how approval can be obtained on an emergency and temporary basis and what standards their distance ed programs need to satisfy.

We will be posting on the specific responses of the regional and national accreditors as that information becomes available. Middle States, the first to respond, has [informed](#) its constituent institutions that it will allow temporary approval of new distance education programs on an emergency basis. However, institutions still need to provide written notice by April 1 describing the nature of the intended temporary measures and keep the Commission continuously updated of any changes in their plans. The Higher Learning Commission has taken a similar approach, requiring schools to [notify HLC](#) of any adjustment to normal operations, including the anticipated length of the adjustment and steps to ensure quality and

continuity in its instructional activity.

## State Regulatory Agencies

With limited exceptions, state regulators have been silent on COVID-19, including where state authorization is required for an institution to offer courses via distance learning. Under prevailing law, offering distance education outside an institution's home state, such as to students who were previously resident on campus but have returned home to take their classes online, may require approval to operate by the students' home state, or participation in a reciprocity agreement, such as SARA. Note that some states also require separate approval to offer programs in a distance education format, even if the institution is authorized to offer a program at a physical campus.

New York is the first state to have [confirmed](#) that it will waive its distance education approval requirements for degree-granting institutions for the spring 2020 term. However, the majority of states have not yet indicated any flexibility in their requirements in response to COVID-19. As an increasing number of schools have asked students not to return to campus following spring break, this is particularly relevant for schools in California, which does not participate in SARA.

Note also that, as a matter of institutional eligibility for federal student aid, ED requires that institutions obtain state approval or participate in a reciprocity agreement to offer distance education programs in any state in which enrolled students either reside or are located. ED's electronic COVID-19 announcement does not expressly state that ED is providing flexibility on this requirement. We encourage providers to document students who returned to their home states out of concern over the spread of COVID-19 so that there is a clear record that the institution made an exception in response to the current exigent circumstances.

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If your institution is considering moving all or part of its instruction online and you have questions about regulatory prerequisites or strategizing through contingency plans, please do not hesitate to contact us. Even if your institution has already shifted significant portions of its offering online, we recommend taking the time to be sure you are satisfying your reporting requirements and documenting your institutions actions in response to COVID-19.

In coming days we will be addressing other issues for schools and education providers that may be considering temporary closure and may be limited in their ability to move their programs online.

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