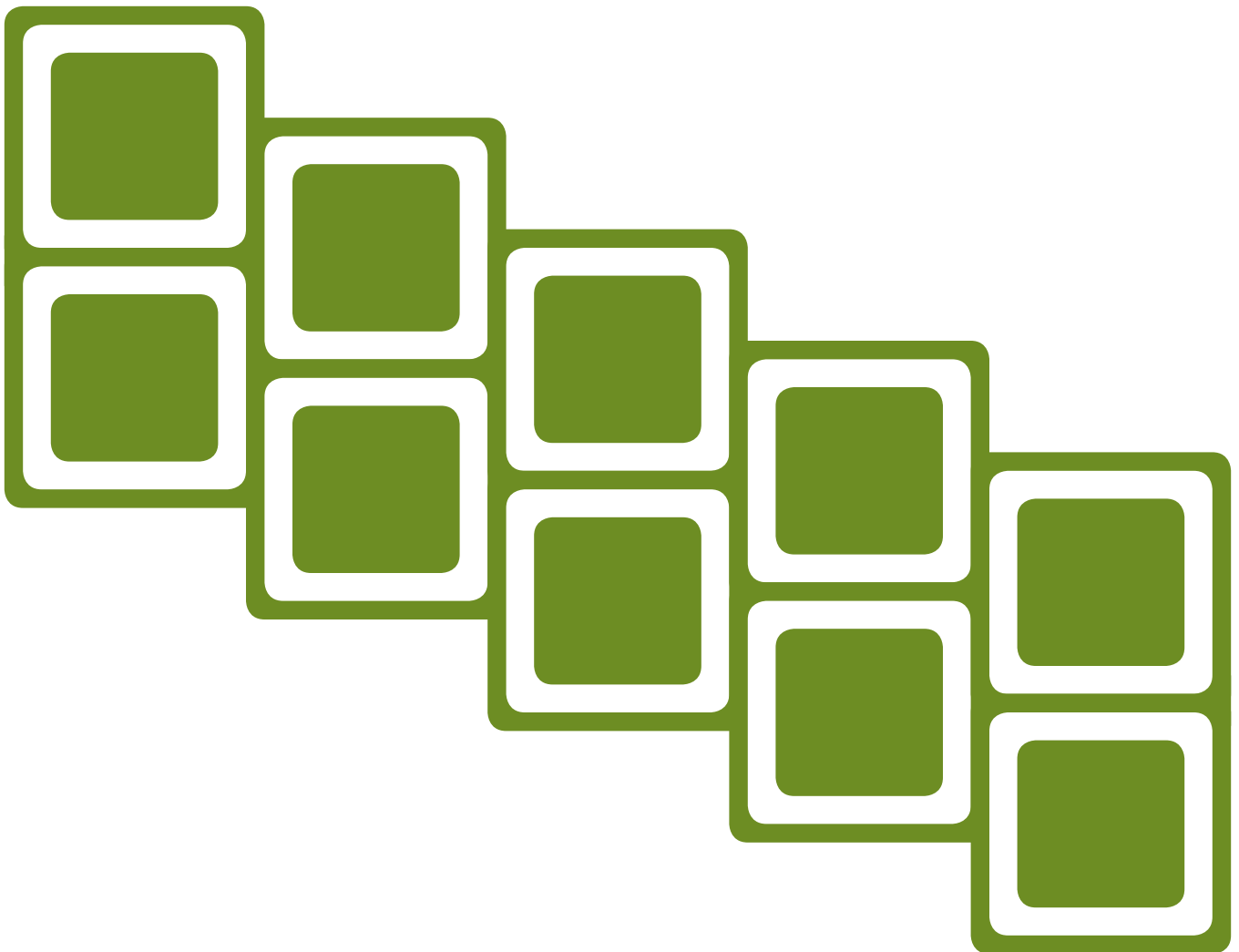


Summer Academe, Volume 7, 2013

Forum



State Authorization and Summer Programming

Sue Day-Perroots
West Virginia University

Summer enrollments at many institutions have witnessed an increase due to the introduction of online courses into summer programming. The “virtual” nature of online courses defies borders, leading to expansive marketing and enrollments from across the country. The November 2010 Sloan Survey of Online Learning states that the United States has over 5 million enrollments in online courses, with nearly one in three college students enrolled in online courses (Allen & Seaman, p. 2). While distance education enrollments are approximately 11% of the total enrollment in higher education in the United States, the student default rate of that 11% accounts for over 50% of the student debt. The rapid enrollment growth combined with massive student debt triggered the scrutiny of the federal government.

In October 2010, the U.S. Department of Education (USDE) issued Program Integrity Rules under the Higher Education Act (Reciprocity and Distance Education, 2010). In essence, these regulations required each institution to comply with the regulations of the states in which their distance education students resided. This initiated a frenzy among institutions and regional compacts to discern the regulations of each state for distance education. The Program Integrity Rules stimulated efforts among state legislators to examine their regulation of distance education providers. It also initiated legal action from the Association of Private Colleges and Universities (APCU), which argued that the USDE failed to provide sufficient notice and opportunity to comment on the state authorization component (*Association of Private Colleges and Universities v. Duncan*, 2012). Both the decision and the appeal were rendered in favor of APCU. While the ruling denied the USDE’s authority to enforce state authorization, it did not release institutions from abiding by the regulations of each state. In effect, the release of the Program Integrity Rules awakened states to the authority and responsibility to regulate distance education within their borders.

In many states, laws governing higher educational institutions addressed issues regarding colleges located within their physical borders, and their rules for operating were designed to protect citizens from fraud. The explosion of online providers from other institutions in the public, private, and for-profit sectors showed these laws to be inadequate. The efforts by the federal government spurred many states to action. The range of state requirements for physical presence falls into four categories:

- All online providers must acquire state authorization regardless of presence.
- Online providers must acquire state authorization when physical presence is triggered.
- Online providers must seek an express exemption from state authorization even if the provider has no physical presence in the state.
- No particular requirement exists for out-of-state online providers, provided that they are accredited.

At the writing of this article, many institutions have already initiated actions to seek state approvals for authorization to enroll students or hire faculty for online delivery. Those institutions that began the process early soon realized that the regulations varied widely for each state, with many states requiring payment for each program or surety bonds for initial approval. In recent months, states have begun requesting reports of students enrolled or faculty hired who reside in their state. The expense and massive amount of paperwork combined with staff time have elevated the pleas of institutions to the presidents, national organizations, and accrediting agencies. There has been an effort to determine if there are easier ways to reduce the regulatory burden through interstate reciprocity.

One recommendation was to create a governing board for interstate reciprocity using existing regional compacts: the Midwestern Higher Education Compact (MHEC), the New England Board of Higher Education (NEBHE), the Southern Regional Education Board (SREB), and the Western Interstate Commission of Higher Education (WICHE). Led by WICHE, representatives from other regional compacts and institutions organized to develop an approach identified as the State Authorization Reciprocity Agreement (SARA) (President's Forum, 2012). While SARA is an option in discussion, many institutional representatives have cited the increased level of bureaucracy with a new layer of middle management and the pervasive challenge of changing state legislation as concerns.

Another effort to simplify the process and ensure quality programs that protect students was led by Richard Riley, former secretary of education, and the Commission on Regulation of Postsecondary Distance Education. This was initiated by the Association of Public and Land-grant Universities and the American Association of State Colleges and Universities. The goal of the commission was to develop recommendations to address educational issues in multiple state jurisdictions in a way that did not create undue burdens.

An advisory committee to the commission of member institutions was created. A private blog was established for representatives to provide comment and insights on the challenges around regulation of distance education. The definition of what constitutes "physical presence" was incorporated from the SARA document for its broad and less restrictive nature. The final draft of the commission report is expected to be available early in 2013. There should be recommendations to address the patchwork of conflicting and constantly changing state laws and an easier mechanism for postsecondary institutions to determine what they need to do to serve their distance students regardless of their physical location.

As the conversation on regulations unfurls, institutional representatives are encouraged to

- contact professional organizations and regional compacts for updates on the regulation of distance education in the United States,
- assess institutional data on enrollment by state to assist in identifying priorities for authorization,
- confirm that institutional distance education web pages contain the complaint process for distance students, and
- review any programs with internships, practicums, field experiences, testing, or other requirements that may constitute a “physical presence” in another state.

Possibly at no other time has it been as important for summer session administrators to be included in institutional dialogue about policies and planning. Both the recommendations for Program Integrity Rules and the Higher Education Reauthorization Act impact how U.S. institutions conduct their business, increasing the challenges of program delivery. Ironically, it may be easier to provide online and face-to-face programming internationally than within the states. And, my friends, international summer programming is yet another discussion.

References

Allen, I. E., & Seaman, J. (2010). *Class differences: Online education in the United States, 2010*. Retrieved from Sloan Consortium website: http://sloanconsortium.org/sites/default/files/class_differences.pdf

Association of Private Colleges and Universities v. Duncan, No. 11-5174, slip op. at 5 (D.C. Cir. June 5, 2012).

Presidents' Forum. (2012, April). *State authorization reciprocity agreement*. Working draft. Retrieved from http://presidentsforum.excelsior.edu/projects/State_Authorization_Reciprocity_Agreement_April_2012_Working_Draft.pdf

Reciprocity and Distance Education, 75 Fed. Reg. 66,866-67 (Oct. 29, 2010) (to be codified at 34 C.F.R. § 600.9).

Biography

Sue Day-Perroots, dean of extended learning at West Virginia University, provides leadership for academic outreach including an iDesign team, online and on-site courses, and noncredit programming. She initiated two entrepreneurial models for online learning and summer session. Day-Perroots received the Irving Award from the American Distance Education Consortium for outstanding leadership in distance learning. She also served as president of the North American Association of Summer Sessions in 2010.