

**Resource Guide for Law and Policy Issues  
Associated with Electronic Education**  
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**Introduction and Program Description**

That electronic education is expanding cannot be disputed. Indeed, a recent report from the National Center on Education Statistics titled *Distance Education at Degree-Granting Postsecondary Institutions: 2006-07*, attempted to provide national estimates on distance education at 2-year and 4-year Title IV eligible, degree-granting institutions. The report summary stated:

The 2006-07 study on distance education collected information on the prevalence, types, delivery, policies, and acquisition or development of distance education courses and programs. Findings indicate that during the 2006-07 academic year, two-thirds (66 percent) of 2-year and 4-year Title IV degree-granting postsecondary institutions reported offering online, hybrid/blended online, or other distance education courses for any level or audience. Sixty-five percent of the institutions reported college-level credit-granting distance education courses, and 23 percent of the institutions reported noncredit distance education courses. Sixty-one percent of 2-year and 4-year institutions reported offering online courses, 35 percent reported hybrid/blended courses, and 26 percent reported other types of college-level credit-granting distance education courses. Together, distance education courses accounted for an estimated 12.2 million enrollments (or registrations). Asynchronous (not simultaneous or real-time) Internet-based technologies were cited as the most widely used technology for the instructional delivery of distance education courses; they were used to a large extent in 75 percent and to a moderate extent in 17 percent of the institutions that offered college-level credit-granting distance education courses. The most common factors cited as affecting distance education decisions to a major extent were meeting student demand for flexible schedules, providing access to college for students who would otherwise not have access, making more courses available, and seeking to increase student enrollment.<sup>2</sup>

The growth of electronic education in recent years has been extraordinary, but that growth has brought the need to assess and change traditional policies and practices to conform to the reality of a student population that may never physically set foot on campus. As colleges and universities entered the business of online education, fundamental issues of quality and

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<sup>2</sup> See <http://nces.ed.gov/pubSearch/pubsinfo.asp?pubid=2009044> (last accessed 1/24/10). The full survey can be accessed at <http://nces.ed.gov/pubSearch/pubsinfo.asp?pubid=2009044> (last accessed 1/24/10).

effectiveness have become the focus of national attention. The use of new technology has also caused a variety of legal and practical questions for colleges and universities. In many respects, existing laws, regulations, and policies have not kept pace with the realities of online educational programs and activities. State regulatory and accreditation issues continue to surface. Copyright and intellectual property issues likely will remain a dominant theme. These materials are intended as a starting point for those involved in electronic education to understand these critical issues, and to take what they have learned and apply it at their own institutions.

Using a chronological approach starting at the decision to offer electronic education through the final assessment of learning outcomes, the presenters will lead attendees through a discussion of the policy aspects of electronic education, as well as the legal framework affecting decision-making. Resources related to several of the more significant legal issues arising from the program as well as additional issues of importance that may go beyond the scope of the physical conference presentation are listed below.

### **Resources Related to the Design and Delivery of Electronic Education**

Design and delivery of electronic education courses can affect a myriad of issues. In general, one of the most critical feature in design is that of quality. Quality can be thought of both in terms of institutional quality and also in terms of student outcomes (that is, how effectively did the student learn the material being taught). Much literature has developed on quality issues. Indeed, the University of Wisconsin-Madison maintains an entire web page devoted to quality issues in distance education.<sup>3</sup> In April 1998, the Institute for Higher Education Policy prepared a report for the Council on Higher Education Accreditation titled *Assuring Quality in Distance Learning — A Preliminary Review*.<sup>4</sup> Its stated purpose was to “investigate the emerging topic of quality assurance in technology-mediated distance learning programs in higher education.”<sup>5</sup> In addition, one recent report by the U.S. Department of Education Office of Postsecondary Education in March 2006 examined quality issues in distance education through a series of discussions with accrediting organization staff and other experts to identify best practices in the

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<sup>3</sup> Available at <http://depd.wisc.edu/html/quality3.htm> (last accessed 1/22/10).

<sup>4</sup> Available at [http://www.chea.org/pdf/HED\\_Apr1998.pdf](http://www.chea.org/pdf/HED_Apr1998.pdf) (last accessed 1/22/10).

<sup>5</sup> *Id.* at p. v.

accreditation of distance education.<sup>6</sup> The report, titled *Evidence of Quality in Distance Education Programs Drawn from Interviews with the Accreditation Community*, details a myriad of factors for institutions to consider in the development of electronic education. When read in conjunction with *Best Practices for Electronically Offered Degree and Certificate Programs*<sup>7</sup>, these two documents serve as a useful place to become acquainted with the basic framework of institutional quality issues in electronic education.

Some additional resources in this regard that readers may find helpful include:

- *Benchmarking Quality in Online Degree Programs Status and Prospects*, by Michael A. Mariasingam and Donald E. Hanna<sup>8</sup>
- *Quality on the Line— Benchmarks for Success in Internet-Based Education*, published by the Institute for Higher Education Policy (April 2000)<sup>9</sup>
- *Quality Issues in Distance Learning* (AACSB International) (July 1999, revised 2007)<sup>10</sup>
- *Evaluating Online Learning: Challenges and Strategies for Success*, published by the U.S. Department of Education (July 2008)<sup>11</sup>
- *Evidence-Based Practices in Online Learning: A Meta-Analysis and Review of Online Learning Studies* (2009), prepared by the Center for Technology and Learning, SRI International under contract to the U.S. Department of Education's Office of Policy and Program Studies Service<sup>12</sup>

### **Technology Issues Generally**

Another key issue in electronic education is the choice regarding technology and associated

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<sup>6</sup> See *Evidence of Quality in Distance Education Programs Drawn from Interviews with the Accreditation Community*, available at [http://www.ncahlc.org/index.php?option=com\\_docman&task=cat\\_view&gid=80&Itemid=229](http://www.ncahlc.org/index.php?option=com_docman&task=cat_view&gid=80&Itemid=229) (last accessed 1/22/10).

<sup>7</sup> Available at [http://www.ncahlc.org/index.php?option=com\\_docman&task=cat\\_view&gid=80&Itemid=229](http://www.ncahlc.org/index.php?option=com_docman&task=cat_view&gid=80&Itemid=229) (last accessed 1/22/10).

<sup>8</sup> Published in the Online Journal of Distance Learning Administration, Volume IX, Number III (Fall 2006) and available at <http://www.westga.edu/~distance/ojdla/fall93/mariasingam93.htm> (last accessed 1/22/10).

<sup>9</sup> Available at <http://www.abanet.org/legaled/distanceeducation/QualityOnTheLine.pdf> (Last accessed 1/24/10).

<sup>10</sup> Available at [http://www.aacsb.edu/Resource\\_Centers/DeansResources/quality-issues-final.pdf](http://www.aacsb.edu/Resource_Centers/DeansResources/quality-issues-final.pdf) (last accessed 1/22/10).

<sup>11</sup> Available at <http://www.ed.gov/admins/lead/academic/evalonline/index.html> (last accessed 1/22/10).

<sup>12</sup> Available at <http://www2.ed.gov/rschstat/eval/tech/evidence-based-practices/finalreport.pdf> (last accessed 1/25/10).

technology-based issues. Apart from issues like the actual platform for delivery<sup>13</sup>, electronic licenses<sup>14</sup> and disability accommodation<sup>15</sup>, general technology issues in course design and delivery are significant. Some helpful resources in this regard include:

- *Choosing Technologies for Your Distance Learning Course*, University of Washington<sup>16</sup>
- *Roadmap to Effective Distance Education Instructional Design*, University of Missouri - St. Louis<sup>17</sup>
- *A Teacher's Guide to Learning*, Florida Center for Instructional Technology, College of Education, University of South Florida<sup>18</sup>
- *Assessing Faculty's Technology Needs*, by Tena B. Crews, Jessica L. Miller, and Christine M. Brown<sup>19</sup>

## Disability Accommodation

Inevitably, an issue that cannot (or should not) be overlooked in the design phase is course accessibility and disability accommodation.<sup>20</sup> OCR's position on how this relates to colleges and universities as they use technology to deliver education seems clear also, with colleges and universities having reasonable accommodation obligations under the ADA and the Rehabilitation

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<sup>13</sup> WCET (Western Cooperative for Educational Telecommunications) maintains a website called EduTools, designed to allow product comparisons of various technologies, available at <http://edutools.info/index.jsp?pi=1> (last accessed 1/22/10). See, also, e.g., *Distance Learning Platform at Silesian University of Technology*, by Piotr Kłosowski (presented at the International Conference on Engineering Education (ICEE) in 2007 and available at <http://www.ineer.org/Events/ICEE2007/papers/577.pdf> for an interesting technical article on Poland's Silesian University of Technology experience in developing its Distance Learning Platform.

<sup>14</sup> See, e.g., Alford, Duncan E., *Negotiating and Analyzing Electronic License Agreements*, 94 Law Libr. J. (2002), available at [http://www.aallnet.org/products/pub\\_llj\\_v94n04/2002-38.pdf](http://www.aallnet.org/products/pub_llj_v94n04/2002-38.pdf), see also, *Licensing Electronic Resources: Strategic & Practical Considerations* (Association of Research Libraries, Jan. '97), by Patricia Brennan, Karen Hersey, and Georgia Harper, available at <http://www.arl.org/sc/marketplace/license/licbooklet.shtml> (last accessed 1/22/10).

<sup>15</sup> Discussed in more detail below.

<sup>16</sup> Available at [http://www.washington.edu/lst/help/teaching\\_guides/dltech\\_choices/](http://www.washington.edu/lst/help/teaching_guides/dltech_choices/) (last accessed 1/22/10).

<sup>17</sup> Specifically Destination 6 focuses on *Distance Education Technologies*. It is available at <http://www.umsl.edu/technology/frc/DEID/destination6technology/6aindex.html> (last accessed 1/22/10).

<sup>18</sup> Beginning at Chapter 5 with *Overview of Distance Learning Technologies*, and available at <http://fcit.coedu.usf.edu/distance/default.htm> (last accessed 1/22/10).

<sup>19</sup> Published in *Educause Quarterly*, Volume 32No. 4 (2009), and available at <http://www.educause.edu/EDUCAUSE+Quarterly/EDUCAUSEQuarterlyMagazineVolum/AssessingFacultyTechnologyNee/192969> (last accessed 1/22/10).

<sup>20</sup> See, e.g., Edmonds, Curtis D., *Providing Access to Students with Disabilities in Online Distance Education: Legal and Technical Concerns for Higher Education*, Vol. 18 AJDE No. 1 (2004) and Goldgeier, Eileen S., *ADA and Section 504: Technology, Distance Learning and Accommodation of Student Disabilities*, NACUA Conference Presentation (March 2003). A full discussion of disability law, including the recent amendments to the Americans with Disabilities Act, is beyond the scope of this presentation. It is sufficient for today's discussion simply to reiterate that students (and applicants) at postsecondary institutions are protected against discrimination on the basis of disability by Titles II (public institutions) and III (private institutions) of the Americans with Disabilities Act, 42 U.S.C. § 12101, et seq. (ADA) and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 (institutions receiving Federal financial assistance).

Act in electronic education.<sup>21</sup> The issue is not new. At least as far back in the mid to late 90s, the issue surfaced when a state-wide review of Title II (ADA) compliance began with respect to the California community colleges. The sequence of events, beginning with an exchange of correspondence and culminating in the development of comprehensive guidelines, are detailed in a document titled *Distance Education: Access Guidelines for Students with Disabilities*.<sup>22</sup> Often mentioned<sup>23</sup>, these guidelines provide an example of the many facets of accessibility. Disability accommodation is an issue often easier to consider on the front end in the design phase than scrambling after the fact. The good news is that many resources are available to assist in this process. Some examples include:

- Georgia Tech Research on Accessible Distance Education (GRADE)<sup>24</sup>
- The National Center on Accessible Information Technology in Education (AccessIT)<sup>25</sup>
- Accessibility in Distance Education: A Resource for Faculty and On-line Teaching, University of Maryland University College<sup>26</sup>
- Accessible IT @ NC State<sup>27</sup>
- Equal Access to Software and Information (EASI)<sup>28</sup>, including the *Information Technology and Disabilities E-Journal*<sup>29</sup>

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<sup>21</sup> See, e.g., Goldgeier, Eileen S., *ADA and Section 504: Technology, Distance Learning and Accommodation of Student Disabilities*, by Eileen S. Goldgeier (NACUA Conference Presentation, March 2003). Also of interest, *Court Adjudications, Formal Settlements, and Letters of Agreement: Disability, Accessibility, and Universities*, <http://kpope.com/adjudic/index.php> (last accessed 1/22/10).

<sup>22</sup> Available at [http://www.htctu.net/publications/guidelines/distance\\_ed/disted.htm](http://www.htctu.net/publications/guidelines/distance_ed/disted.htm) (last accessed 1/21/10). While not repeating the detail already encompassed in the 1999 Guidelines, the system has carried forward the issue of access in broader distance education guidelines updated in March 2004 and 2008. See <http://www.cccco.edu/Portals/4/AA/Distance%20Education/DEGuidelinesMar2004.pdf> and <http://www.cccco.edu/ChancellorsOffice/Divisions/AcademicAffairs/DistanceEducation/RegulationsandGuidelines/tabid/767/Default.aspx> (last accessed 1/21/10)

<sup>23</sup> See, e.g., *California Community Colleges: A Promising Practice in Alternate Media Accessibility Guidelines*, available at <http://www.washington.edu/accessit/articles?186> (last accessed 1/21/10) and *Articles on Accessibility in Higher Education or Professional Licensing*, available at <http://kpope.com/highedu/index.php> (last accessed 1/21/10). Other colleges and universities have followed suit in developing such guidelines. See, e.g., Interwork Institute Collaborative for Distance Learning at San Diego State University, available at [http://interwork.sdsu.edu/web\\_research/res\\_access.html](http://interwork.sdsu.edu/web_research/res_access.html) (last accessed 1/22/10).

<sup>24</sup> Available at <http://www.catea.gatech.edu/grade/> (last accessed 1/21/10). This is described as a research project at the Georgia Tech Center for Assistive Technology and Environmental Access (CATEA), devoted to improving the accessibility of distance education for students with disabilities.

<sup>25</sup> Available at <http://www.washington.edu/accessit/> (last accessed 1/21/10). According to its website, AccessIT was funded by a 5-year grant from the National Institute on Disability and Rehabilitation Research (NIDRR) of the U.S. Department of Education through September, 2006. Various aspects of its site continue to be available online and managed and updated by AccessComputing, a project funded by the National Science Foundation (grant #CNS-0540615) and led by the Department of Computer Science and Engineering and DO-IT at the University of Washington.

<sup>26</sup> Available at <http://www.umuc.edu/ade/> (last accessed 1/21/10).

<sup>27</sup> Available at <http://ncsu.edu/it/access/> (last accessed 1/21/10).

- Okloahoma AbleTech Accessible Distance Education Resources<sup>30</sup>
- Web Accessibility Initiative (WAI)<sup>31</sup>
- *Accessibility Issues* web page, by the The American Distance Education Consortium<sup>32</sup>
- *Distance Education and Accessibility Resource Guide Outline*, by the National Assistive Technology Technical Assistance Partnership (NATTAP)<sup>33</sup>
- *Accessibility of State and Local Government Websites to People with Disabilities*, U.S. Department of Justice, Civil Rights Division (June 2003)<sup>34</sup>
- 508 Tools and Resources<sup>35</sup>

## Accreditation and Regulatory Issues

Accreditation and state and federal regulation, including accreditation best practices and examples of standards or accreditation considerations, are important issues in any electronic education program. Regarding accreditation, various approaches have been taken to addressing accreditation of distance learning. In 2002, the Council for Higher Education Accreditation (CHEA) Institute for Research and Study of Accreditation and Quality Assurance published *Accreditation and Assuring Quality in Distance Learning*.<sup>36</sup> This monograph detailed some of the issues facing accrediting bodies as distance education was taking hold. Another useful starting point is the *Evidence of Quality in Distance Education Programs Drawn from Interviews with the Accreditation Community* published by U.S. Department of Education Office of Postsecondary Education in March 2006.<sup>37</sup>

The various accrediting bodies have also taken to addressing distance education over the years. In 2001, a number of the regional accrediting bodies approved the *Statement of Commitment by the Regional Accrediting Commissions for the Evaluation of Electronically Offered Degree and Certificate Programs*<sup>38</sup>, stating:

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<sup>28</sup> Available at <http://easi.cc/> (last accessed 1/21/10).

<sup>29</sup> Available at <http://people.rit.edu/easi/itd.htm> (last accessed 1/25/10).

<sup>30</sup> Available at [http://www.ok.gov/abletech/IT\\_Accessibility/Accessible\\_Distance\\_Education\\_Resources.html](http://www.ok.gov/abletech/IT_Accessibility/Accessible_Distance_Education_Resources.html) (last accessed 1/22/10).

<sup>31</sup> Available at <http://www.w3.org/WAI/> (last accessed 1/22/10).

<sup>32</sup> Available at <http://www.adec.edu/access-issues.html> (last accessed 1/22/10).

<sup>33</sup> Available at <http://www.resnaprojects.org/nattap/library/pubs/DistEdResGuide.htm> (last accessed 1/22/10).

<sup>34</sup> Available at <http://www.ada.gov/websites2.htm> (last accessed 1/21/10).

<sup>35</sup> Available at <http://www.section508.gov/index.cfm?FuseAction=Content&ID=8> (last accessed 1/22/10).

<sup>36</sup> Available at <http://www.chea.org/Research/Accred-Distance-5-9-02.pdf> (last accessed 1/22/10).

<sup>37</sup> Available at [http://www.ncahlc.org/index.php?option=com\\_docman&task=cat\\_view&gid=80&Itemid=229](http://www.ncahlc.org/index.php?option=com_docman&task=cat_view&gid=80&Itemid=229) (last accessed 1/22/10).

<sup>38</sup> Available at [http://www.ncahlc.org/download/CRAC\\_Statement\\_DEd.pdf](http://www.ncahlc.org/download/CRAC_Statement_DEd.pdf) (last accessed 1/24/10).

The approach of the regional commissions to these emergent forms of learning is expressed in a set of commitments aimed at ensuring high quality in distance education. These include commitment to those traditions, principles, and values which have guided the regionals' approach to educational innovation; commitment to cooperation among the eight regional commissions directed toward a consistent approach to the evaluation of distance education informed through collaboration with others; and commitment to supporting good practice among institutions.

*Statement of Commitment* at p.1.

Some of these regional accrediting bodies had already issued various documents and policy statements on these issues, which continue to evolve. For example, the Commission on Colleges, Southern Association of Colleges and Schools maintains a Policy Statement on *Distance and Correspondence Education*, first adopted in June 1997, then updated in accord with its revised Principles of Accreditation in December 2006, and endorsed by the Executive Council, SACS Commission on Colleges in June 2009.<sup>39</sup> The Accrediting Commission for Community and Junior Colleges (part of the Western Association of Schools and Colleges) publishes a *Distance Learning Manual*<sup>40</sup> that spells out requirements for member institutions. Included within that document is its *Policy on Distance Education and on Correspondence Education*, first adopted in June 2001, and revised several times since, most recently in January 2010.<sup>41</sup>

Discipline-specific accrediting bodies have also weighed in on the issue. For example, in December 2006, the Liaison Committee on Medical Education published *Accreditation Issues Related to Distance Learning: The Perspective of the Liaison Committee on Medical Education*.<sup>42</sup> With its fairly restrictive stance on electronic education and the J.D. degree, the American Bar Association maintains a web page notice about the limits of electronic legal education in addition to its restrictions embodied in Standard 306.<sup>43</sup> The July 2009 AACSB

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<sup>39</sup> Available at <http://www.sacscoc.org/documents/distanceeducation.pdf> (last accessed 1/24/10).

<sup>40</sup> Available at <http://www.accjc.org/pdf/Distance%20Education%20and%20Correspondence%20Education%20Manual%20August%202009.pdf> (last accessed 1/24/10).

<sup>41</sup> *Id.*

<sup>42</sup> Available at <http://www.lcme.org/distancelearning.pdf> (last accessed 1/24/10).

<sup>43</sup> See <http://www.abanet.org/legaled/distanceeducation/distance.html> (last accessed 1/24/10).

*International Eligibility Procedures and Accreditation Standards for Business Accreditation*<sup>44</sup> reference distance education as part of the scope of review<sup>45</sup>, and the in various individual standards such as Standard 5 on infrastructure and technology support<sup>46</sup>, Standard 9 on faculty sufficiency in connection with the nature of student-faculty interaction<sup>47</sup>, and Standards 17 and 20 on the level of educational attainment.<sup>48</sup>

State-based regulatory issues are also of concern. Recent articles in both the *Chronicle of Higher Education's Wired Campus* and *Inside Higher Ed* have detailed some of the challenges online education providers face in multi-state program delivery.<sup>49</sup> Below are listed some resources related to these issues. It is critical for those involved in the design and implementation of distance education to be aware that these issues exist, and to take them into consideration.

- *Aligning State Approval and Regional Accreditation for Online Postsecondary Institutions: A National Strategy*<sup>TM</sup> Report of the PRESIDENTS' FORUM Task Force<sup>50</sup>
- *The State of State Regulation of Cross-Border Postsecondary Education — A Survey and Report on the Bases for The Assertion of State Authority to Regulate Distance Learning*, by Michael B. Goldstein, Aaron D. Lacey, and Nicholas S. Janiga (2006)<sup>51</sup>

### **Academic Advising, Policy Development, and Student Services**

How does one insure that virtual students become a true part of campus? Are policies aligned with the reality of students who are not physically present, and thus often cannot comply with simply requirements in policies that call for “face-to-face” meetings, or direct individuals to go to a particular office for support? Not always an easy task considering the broad array of student support available on many campuses. This too is an evolving area, and has been the subject of

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<sup>44</sup> Available at <http://www.aacsb.edu/accreditation/BUSINESS-STANDARDS-2009-Final.pdf> (last accessed 1/24/10).

<sup>45</sup> See Standards at p. 10.

<sup>46</sup> See Standards at p. 29-30.

<sup>47</sup> See Standards at p. 40.

<sup>48</sup> See Standards at p. 71.

<sup>49</sup> See Parry, Marc, *As Online Education Grows, National Providers Struggle with State Regulation*, *Wired Campus*, *Chronicle of Higher Education* (10/13/09), available at <http://chronicle.com/blogPost/As-Online-Education-Grows/8439/> (last accessed 1/14/10) and Kolowich, Steve, *Regulation Woes*, *Inside Higher Ed* (10/14/09), available at <http://www.insidehighered.com/news/2009/10/14/forum> (last accessed 1/14/10).

<sup>50</sup> Available at <http://inpathways.net/state%20accreditation.pdf> (last accessed 1/14/10).

<sup>51</sup> Available at <http://www.dowlohnes.com/files/Publication/41537f7b-0ba3-49c5-85e4-026b17ad3e9a/Presentation/PublicationAttachment/bab9d02e-0a22-4367-90ce-1651fd4c3899/Presence%20Report.pdf> (last accessed 1/14/09).



ongoing discussion. The National Academic Advising Association (NACADA) maintains a set of standards for advising distance learners.<sup>52</sup>

Many of the reports previously mentioned also include discussion of these issues. For example, *Evidence of Quality in Distance Education Programs Drawn from Interviews with the Accreditation Community*<sup>53</sup> discussed attributes of students in distance education, recommending that institutions provide “prospective distance education students with a self-assessment of their skills and aptitude for distance learning”, which was viewed as “good evidence that the institution is attempting to enroll students with the appropriate characteristics in their distance education programs.” A distance education program and website serving distance learners and providing an appropriate level of detail was also discussed. Moreover, the Report described that “[r]eviewers look for policies and practices that indicate a commitment to providing distance learning students with timely and accessible services and information.” This included technology support, information from faculty, and detail on how to access and advisor. Library resources were also discussed.<sup>54</sup>

The Report goes on to list some red flags in this area, suggesting the following items could be problematic:

- *An institution that offers full programs by distance education, with no onsite components, requires students to come to campus for some student services.*
- *The distance education office is responsible for providing all services to students, rather than having services provided by specialized staff. This could indicate a lack of institutional commitment to distance education students.*
- *The student grievance process requires face-to-face meetings.*
- *Students don't know whom to contact if they have questions or problems.*

See Report at p. 11.

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<sup>52</sup> See NACADA (1999) *Standards for Advising Distance Learners*, retrieved 1/24/10 from the NACADA Clearinghouse of Academic Advising Resources Web site available at [http://www.nacada.ksu.edu/Clearinghouse/Research\\_Related/distance.htm](http://www.nacada.ksu.edu/Clearinghouse/Research_Related/distance.htm).

<sup>53</sup> Available at [http://www.ncahlc.org/index.php?option=com\\_docman&task=cat\\_view&gid=80&Itemid=229](http://www.ncahlc.org/index.php?option=com_docman&task=cat_view&gid=80&Itemid=229) (last accessed 1/22/10).

<sup>54</sup> *Id.* at p. 10-11.

Others have commented as well<sup>55</sup>, and an entire website devoted to creating web-based services for online students was created as part of a Learning Anytime Anywhere Partnerships (LAAP) project, funded by the U.S. Department of Education's Fund for the Improvement of Postsecondary Education.<sup>56</sup> Specifically, the Western Cooperative for Educational Telecommunications (WCET) ran a three year program titled *Beyond the Administrative Core: Creating Web-based Student Services for Online Learners* project.<sup>57</sup> The project ran from January 2000 to March 2003, and resulted in a web page with a wide variety of detail, including guidelines<sup>58</sup> intended to assist institutions interested in putting their student services online. Policy development and regulating online conduct are also the subjects of discussion in the field, but have not necessarily received the same focused level of attention as the specific issue of cheating (discussed below).<sup>59</sup>

### **Delivery and Assessment**

One needs to look no further than recent news reports to understand why regulators are worried about identity verification. The *Chronicle on Higher Education* recently reported on a plea agreement by an Arizona woman charged with committing conspiracy, mail fraud, and financial-aid fraud in connection with phony students purportedly attending online education classes.<sup>60</sup> An ongoing blog by Mike Jortberg also follows developments in this area.<sup>61</sup>

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<sup>55</sup> See, e.g., Kretovics, Mark, *The Role of Student Affairs in Distance Education: Cyber-Services or Virtual Communities*, Online Journal of Distance Learning Administration, Volume VI, Number III (Fall 2003), available at <http://www.westga.edu/~distance/ojdla/fall63/kretovics63.html> (last accessed 1/24/10) and Wagner, Linda A., *Virtual Advising: Delivering Student Services*, Online Journal of Distance Learning Administration, Volume IV, Number III, Fall 200), available at <http://www.westga.edu/~distance/ojdla/fall43/wagner43.html> (last accessed 1/24/10).

<sup>56</sup> See <http://www.wcet.info/services/student-services/beyond/index.asp> (last accessed 1/24/10).

<sup>57</sup> Available at <http://www.wcet.info/services/student-services/beyond/index.asp>

<sup>58</sup> Available at <http://www.wcet.info/services/student-services/beyond/guidelines/index.asp>

<sup>59</sup> See, e.g., Summerville, Jennifer, *Developing an On-Line "Code of Conduct"* 14 AACE Journal No. 2 (2005) and Traina, Michael, Doctor, Denise, Bean, Erik, and Wooldridge, Vernon, *Student Code of Conduct in the On-Line Classroom: A Consideration of Zero Tolerance Policies*, Proceedings of World Conference on E-Learning in Corporate, Government, Healthcare, and Higher Education (2005), available at <http://www.edutlib.org/noaccess/21468> (subscription required).

<sup>60</sup> See *Online Scheme Highlights Fears About Distance-Education Fraud*, by Marc Parry, Chronicle of Higher Education (1/13/10), available at [http://chronicle.com/article/Online-Scheme-Highlights-Fears/63517/?sid=at&utm\\_source=at&utm\\_medium=en](http://chronicle.com/article/Online-Scheme-Highlights-Fears/63517/?sid=at&utm_source=at&utm_medium=en) (last accessed 1/14/10; may be member restricted).

<sup>61</sup> See <http://mikejortberg.blogspot.com/>.

Specifically, and among other obligations, the HEOA of 2008 redefined “distance education”<sup>62</sup>, added a section defining “diploma mills”<sup>63</sup> and obligations of the Secretary in that regard<sup>64</sup>, and placed certain requirements on accreditors relating to distance education quality and identify verification.<sup>65</sup> Regulations were issued on October 27, 2009.<sup>66</sup> Also in 2009, several individuals compiled data on this issue from administrators and faculty to determine their levels of concern and actions currently undertaken to confirm correct identity for distance learning students.<sup>67</sup> Colleges and universities grappling with these issues are taking varied approaches, some of which have been detailed in Jim Castagnera’s recent article *Student identify verification moves to center stage*.<sup>68</sup>

Academic dishonesty in general is a difficult issue, fraught with the potential for challenges.<sup>69</sup> While academic dishonesty can become intertwined with identity, it has broader implications in an online environment. A number of authors have offered suggestions in this area.<sup>70</sup> Some resources include the recently released Version 2.0 of *Best Practice Strategies to Promote*

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<sup>62</sup> See Section 103(7) of the HEOA of 2008, PL Public Law 110-315, available at <http://www.ed.gov/policy/highered/leg/hea08/index.html> (last accessed 1/14/10).

<sup>63</sup> See Section 103(5) of the HEOA of 2008, PL Public Law 110-315, available at <http://www.ed.gov/policy/highered/leg/hea08/index.html> (last accessed 1/14/10).

<sup>64</sup> See Section 123 of the HEOA of 2008, PL Public Law 110-315, available at <http://www.ed.gov/policy/highered/leg/hea08/index.html> (last accessed 1/14/10).

<sup>65</sup> See Sections 496(a)(4)(B) and (q) of the HEOA of 2008, PL Public Law 110-315, available at <http://www.ed.gov/policy/highered/leg/hea08/index.html> (last accessed 1/14/10).

<sup>66</sup> See Vol. 74 Federal Register No. 206, starting at p. 55414 (10/27/09), available at <http://edocket.access.gpo.gov/2009/pdf/E9-25186.pdf> (last accessed 1/14/10).

<sup>67</sup> See Schaefer, Thomas, Barta, Marguerite, and Pavone, Theresa, *Student Identity Verification and the Higher Education Opportunity Act: A Faculty Perspective*, available at [http://itdl.org/Journal/Aug\\_09/article05.htm](http://itdl.org/Journal/Aug_09/article05.htm) (last accessed 1/14/10).

<sup>68</sup> Published in Today’s Campus Online, <http://www.todayscampus.com/>, and available at <http://www.todayscampus.com/articles/load.aspx?art=1921> last accessed 1/19/10).

<sup>69</sup> See, e.g., Mawdsley, Ralph D., *The Tangled Web Of Plagiarism Litigation: Sorting Out The Legal Issues*, 2009 B.Y.U. Educ. & L.J. 245 (2009).

<sup>70</sup> See, e.g., Howell, Scott L., Sorenson, Don, and Tippetts, Holly Rose, *The New (and Old) News about Cheating for Distance Educators*, Online Journal of Distance Learning Administration, Volume XII, Number III (Fall 2009), available at <http://www.westga.edu/~distance/ojdla/fall123/howell123.html> (last accessed 1/25/10); Stuber-McEwen, Donna, Wiseley, Phillip and Hoggatt, Susan, *Point, Click, and Cheat: Frequency and Type of Academic Dishonesty in the Virtual Classroom*, Online Journal of Distance Learning Administration, Volume XII, Number III (Fall 2009), available at <http://www.westga.edu/~distance/ojdla/fall123/stuber123.html> (last accessed 1/25/10); Olt, Melissa R., *Ethics and Distance Education: Strategies for Minimizing Academic Dishonesty in Online Assessment*, Online Journal of Distance Learning Administration, Volume V, Number III (Fall 2002), available at <http://www.westga.edu/~distance/ojdla/fall53/olt53.html> (last accessed 1/25/10); Rowe, Neil C., *Cheating in Online Student Assessment: Beyond Plagiarism*, Online Journal of Distance Learning Administration, Volume VII, Number II (Summer 2004), available at <http://www.westga.edu/~distance/ojdla/summer72/rowe72.html> last accessed 1/25/10).

*Academic Integrity in Online Education*, released by WCET and published in cooperation with the Instructional Technology Council (ITC) and the UT TeleCampus of the University of Texas System.<sup>71</sup>

### **Copyright and Ownership Issues**

No discussion of electronic education would be complete without some mention of the ownership issues and copyright issues that permeate the topic. On the issue of ownership, it is fair to say that a continuum of views exist, all related to striking the right balance between faculty ownership in a fashion similar to traditional course design and a desire for a university ownership element due to the technological investment. The American Association of University Professors has published quite a bit about its views on this issue, and maintains a web page of resources with policy statements and links to various materials.<sup>72</sup> The American Council on Education also described the issues associated with faculty ownership concerns in its March 2000 paper titled *Developing a Distance Education Policy for 21st Century Learning*.<sup>73</sup>

Apart from faculty ownership, copyright issues relating to the use of materials in electronic education also permeate the discussion. As far back as 1999, when the U.S. Copyright Office published its *Report on Copyright and Digital Distance Education*<sup>74</sup>, academics have examined the various issues associated with electronic education. The passage of the Technology, Education and Copyright Harmonization Act" (the TEACH Act)<sup>75</sup> in 2002 broadened that

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<sup>71</sup> See [http://wiche.edu/attachment\\_library/Student\\_Authentication/BestPractices.pdf](http://wiche.edu/attachment_library/Student_Authentication/BestPractices.pdf), (last accessed 1/25/10); see also. Kitahara, Robert T. and Westfall, Frederick, *Promoting Academic Integrity in Online Distance Learning Courses*, MERLOT Journal of Online Learning and Teaching, Vol. 3, No. 3 (September 2007), available at <http://jolt.merlot.org/vol3no3/kitahara.htm> (last accessed 1/24/10).

<sup>72</sup> See <http://www.aaup.org/AAUP/issues/DE/DE-IP-resources.htm> (last accessed 1/25/10).

<sup>73</sup> Available at <http://www.acenet.edu/AM/Template.cfm?Section=Search&template=/CM/HTMLDisplay.cfm&ContentID=7819> (last accessed 1/25/10).

<sup>74</sup> Available at [http://www.copyright.gov/reports/de\\_rprt.pdf](http://www.copyright.gov/reports/de_rprt.pdf) (last accessed 1/24/10).

<sup>75</sup> TEACH Act, Pub. Law 107-273 (Nov. 2, 2002), codified at 17 U.S.C. § 110(2).

discussion as the impact of the new legislation was studied.<sup>76</sup> Indeed the American Library Association maintains a resource page devoted to the TEACH Act.<sup>77</sup>

## **Conclusion**

The growth of electronic education is not expected to slow. As institutions grow and expand, the focus on quality and the national movement to solve the state-level barriers will continue. Those in the field must be attuned to the issues raised by this format of education delivery in order to meet the challenges.

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*The views expressed herein are those of the author only. The information contained in these materials is intended as an informational report on legal issues and developments of general interest. It is not intended to provide a complete analysis or discussion of each subject covered. Applicability to a particular situation depends upon an investigation of the specific facts and more exhaustive study of applicable law than can be provided in this format.*

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<sup>76</sup> See, e.g., Nelson, Erik, *Copyright and Distance Education: The Impact of the Technology, Education, and Copyright Harmonization Act*, Vol. 17 *AACEJ* No. 2 (2009); Colbert, Stephana I., *The TEACH Act: Recognizing its Challenges and Overcoming its Limitations*, 33 *J.C.&U.L.* 499 (2007); Latourette, Audrey Wolfson, *Copyright Implications For Online Distance Education*, Vol. 32 *J.C.&U.L.* 613 (2006);

<sup>77</sup> Available at

[http://www.ala.org/Template.cfm?Section=Distance Education and the TEACH Act&Template=/ContentManagement/ContentDisplay.cfm&ContentID=25939#rel](http://www.ala.org/Template.cfm?Section=Distance_Education_and_the_TEACH_Act&Template=/ContentManagement/ContentDisplay.cfm&ContentID=25939#rel) (last accessed 1/25/10). See also, Faculty Teaching FAQs: Online (TEACH Act), maintained by NC State University, available at <http://www.provost.ncsu.edu/copyright/faqs/faculty.php> (last accessed 1/25/10).