

Distance Education: Laws and Regulations

For distance education, there are three major compliance areas to consider: (1) federal distance education regulations, (2) accessibility laws, and (3) copyright laws. The U.S. Department of Education (“ED”) has provided some flexibility with regard to distance education regulations and accessibility laws to accommodate remote instruction during the Covid-19 crisis. This flexibility is limited in nature and applies only through Fall Semester. Also, the flexibility does not extend to copyright laws. The following is a summary of the three compliance areas and the extent to which ED has provided flexibility during the Covid-19 crisis.

1. Distance Education Regulations

In order to be eligible for federal student aid, a course offered online by BYU through distance education (i.e., online or remote instruction) must ensure “regular and substantive” interaction between the instructor and student through some technological means (e.g., the internet). ED has not provided any specific flexibility for this requirement during the Covid-19 crisis. However, ED recently published new regulations clarifying what it means by “regular and substantive interaction.” While these new regulations are not yet in effect, they serve as a useful guide.

For interactions to be “substantive,” two of the following must be present:

1. Direct instruction;
2. Assessing or providing feedback on a student’s coursework;
3. Providing information or responding to questions about the content of a course or competency;
4. Facilitating a group discussion regarding the content of a course or competency; or
5. Other instructional activities approved by the institution’s or program’s accrediting agency.

For interactions to be “regular,” instructors must

1. Provid[e] the opportunity for substantive interactions with the student on a predictable and regular basis commensurate with the length of time and the amount of content in the course or competency; and
2. Monitor[] the student’s academic engagement and success and . . . promptly and proactively engag[e] in substantive interaction with the student when needed, on the basis of such monitoring, or upon request by the student.

The federal distance education regulations also require that an institution offering a distance education program (an academic program where at least 50% of the course instruction is delivered through distance education) be accredited for distance education by its accrediting agency. ED has waived this requirement for terms or semesters beginning before **December 31, 2020** (see [ED’s guidance posted May 15, 2020](#)). This flexibility allows BYU to offer a large number of online and remote courses in our academic programs for Fall Semester 2020; however, it should be remembered that distance education accreditation requirements will return after the Covid-19 crisis.

2. Accessibility Laws

Under Section 504 of the Rehabilitation Act of 1973 (“Section 504”), BYU must ensure that its courses offered in any distance education format are equally accessible to students with disabilities. As a result, BYU has instituted a [Web Accessibility Policy](#) and accompanying [Web Accessibility Guidelines](#), which apply to courses delivered by online means.

ED’s Office for Civil Rights (“OCR”) is responsible for enforcing Section 504, and has acknowledged the need for some flexibility for institutions using remote instruction due to Covid-19. [Guidance issued by ED on April 3](#) states:

The Department recognizes that in this unique and ever-changing environment, these exceptional circumstances may affect how education, including needed accommodations for students with disabilities, is provided. Institutions should not decline to provide distance instruction, at the expense of

most students, to address matters pertaining to accommodations for students with disabilities. Rather, institutions must make decisions that take into consideration the health, safety, and well-being of all their students and staff. Additionally, the Department understands that, during this national emergency, postsecondary institutions may not be able to provide services in the same manner as they typically would for the rest of the academic year.

Postsecondary students with disabilities must receive academic adjustments, auxiliary aids and services, and reasonable modifications to policies, practices, and procedures, where doing so would not impose an undue burden nor cause a fundamental alteration. Some academic adjustments, auxiliary aids and services, and reasonable modifications in the postsecondary context, can be provided online, while some cannot.

... Where possible, instructors should work to accommodate students with disabilities, such as by using audio technology to read documents to students who are visually impaired. It may be appropriate to make other academic adjustments and reasonable accommodations through virtual means, such as online or telephonically.

3. Copyright Laws

There is no way for ED to provide any flexibility to copyright laws. As a result, copyright compliance is a very important aspect of distance education during the Covid-19 crisis. Most faculty are accustomed to teaching in an in-person environment where robust fair use exceptions to copyright laws apply. Unfortunately, fair use does not apply in the same way to online instruction. If an instructor desires to post or display copyrighted material online, he or she should follow the guidance provided by the Copyright Licensing Office (the "CLO"). The CLO's [Copyright Decision Trail](#) and [Fair Use Evaluation Log](#) are very user-friendly and helpful tools.