

4000-01-U

DEPARTMENT OF EDUCATION

34 CFR Parts 600 and 668

RIN 1840-AD39

[Docket ID ED-2018-OPE-0041]

Institutional Eligibility and Student Assistance General  
Provisions

AGENCY: Office of Postsecondary Education, Department of  
Education.

ACTION: Final rule; announcement of effective date.

SUMMARY: Consistent with the decisions of the U.S. District  
Court for the Northern District of California, this document  
memorializes that selected provisions of these final regulations  
took effect on May 26, 2019.

DATES: As of May 26, 2019, the amendments to 34 CFR 600.2,  
600.9(c), 668.2, and the addition of 34 CFR 668.50, published  
December 19, 2016 at 81 FR 92236, and delayed June 29, 2018 (83  
FR 31296), are effective.

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SUPPLEMENTARY INFORMATION:

Background:

On December 19, 2016 (81 FR 92236), the U.S. Department of Education (Department) published regulations related to distance education and correspondence courses as well as regulations providing students and the public with disclosures about the educational institutions that offered these programs (Distance Education Rules). The regulations originally were to go into effect July 1, 2018. But on July 3, 2018 (83 FR 31296) with an effective date of June 29, 2018, the Department published a notice delaying the effective date of the amendments to 34 CFR 600.2, 600.9(c), 668.2, and the addition of 34 CFR 668.50, published December 19, 2016 (81 FR 92236) until July 1, 2020 (Delay Rule).

The National Education Association (NEA), the California Teachers Association (CTA), and individual plaintiffs Shane Heiman, Kwynn Uyehara, and Stephanie Portilla, who are NEA and CTA members who were enrolled or considering enrolling in online education programs, filed a challenge to the Delay Rule, arguing

that, because the Department did not submit these regulations to negotiated rulemaking, the Department violated the Higher Education Act of 1965, as amended, and the Administrative Procedure Act. They asked for the Delay Rule to be vacated and that the December 2016 Distance Education Rules be allowed to go into effect. Complaint for Declaratory and Injunctive Relief, *National Education Association v. DeVos*, No. 18-cv-05173-LB (N.D. CA August 23, 2018).

On April 26, 2019, the Court issued its Memorandum Opinion and Order, granting the Plaintiffs' motion for summary judgment and denying the Department's cross-motion for summary judgment, stating that the Department did not have good cause to forgo negotiated rulemaking with respect to the Delay Rule. The Court vacated the Delay Rule, but stayed the vacatur for 30 days from the date of the order (April 26, 2019). *National Education Association v. DeVos*, No. 18-cv-05173-LB (N.D. CA April 26, 2019).

Regulations:

With this action by the Court, the final regulations, published December 19, 2016 (81 FR 92236), listed below took effect.

- Section 600.2 Definitions "State authorization reciprocity agreement."
- Section 600.9(c) State authorization.

- Section 668.2 Definitions "Distance Education."
- Section 668.50 Institutional disclosures for distance or correspondence programs.

Accessible Format: Individuals with disabilities may obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the contact person listed under FOR FURTHER INFORMATION CONTACT.

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Dated:

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Betsy DeVos,  
*Secretary of Education.*