PROPOSED

‘Best Interest of Students’ METRICS for Prison Higher Education

GUIDANCE FROM PUBLIC COMMENTS

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THE UNIVERSITY OF UTAH
Prison Education Project
Proposed ‘Best Interest of Students’ Metrics for Prison Higher Education: Guidance from Public Comments

On July 26, 2022, the Department of Education (ED) released its long-awaited Notice of Proposed Rulemaking (NPRM) regarding Pell expansion for incarcerated students. The result of negotiated rulemaking that occurred in the fall and winter of 2021, the NPRM contains significant additions to the FAFSA Simplification Act amendments through which Congress eliminated the ban on Pell Grants for incarcerated students in December of 2020. After ED released the NPRM, interested parties had until August 26, 2022 to submit public comments expressing support, requesting clarification, articulating critiques, and offering recommendations about the proposed regulations.

One of the topics commenters most frequently addressed was the “best interest” determination. The December 2020 legislation expanding Pell access listed metrics the oversight entity “may” use to determine whether a prison education program (PEP) is operating in the “best interest of students.”¹

In the NPRM, ED changed “may” to “must,” making all metrics but recidivism and rates of completion mandatory rather than optional.² Many public commenters objected to requiring these metrics, leading ED to state that only the “input” metrics (e.g. instructor credentials and advising access) are mandatory; “output” indicators like job placement rates and earnings are optional. Corrections officials have broad discretion to add other metrics in their role as the oversight entity. The current standing of best interest metrics are as follows:

<table>
<thead>
<tr>
<th>MANDATORY</th>
<th>OPTIONAL</th>
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<tbody>
<tr>
<td>1. Experience, credentials, and turnover rate of instructors</td>
<td>5. The percentage of students continuing their education upon release</td>
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<tr>
<td>2. Transferability of credits earned in a PEP</td>
<td>6. Post-release job placement rate</td>
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<td>3. Incarcerated students’ access to academic and career advising</td>
<td>7. Student earnings post-release</td>
</tr>
<tr>
<td>4. Students’ ability to transfer to any campus in same modality³</td>
<td>8. Recidivism rates among PEP students post-release</td>
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<tr>
<td></td>
<td>9. Incarcerated students’ rates of degree completion</td>
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<td></td>
<td>10. Other indicators pertinent to success as determined by the oversight entity (OE)</td>
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RCHEP drafted the present brief to advise departments of corrections in their capacity as the oversight entity (OE) approving PEPs. Specifically, public comments suggest possible metrics that the oversight entity may use to determine whether a PEP is operating in the “best interest of students.” Importantly, even when ED declined to adopt particular recommendations, oversight entities can (and have) adopted them. Critical to understand is that ED’s final regulations grant oversight entities considerable latitude as they decide how to provide initial approval to PEPs.
Several corrections officials noted in public comments that they did not feel equipped to make decisions about higher education programming. Therefore, there is a significant opportunity to offer guidance and propose metrics for oversight entities to consider as they formulate the initial approval process for PEPs. This brief is intended as a resource for recommending or advising against adopting particular metrics during these early stages of Pell expansion by offering the rationale public commenters presented in support of opposition to specific metrics.

WHO WERE PUBLIC COMMENTERS?

Over fifty individuals and organizations submitted public comments on ED’s Notice of Proposed Rulemaking. Our research team compiled a breakdown of public commenters that you can find here, with groupings below:

- Colleges and universities (16)
- Advocacy organizations (15)
- The U.S. House and U.S. Senate
- State correctional agencies (3) commented
- The Correctional Leadership Association
- Statewide prison higher education consortia/coalitions (5)
- One reentry organization and third party nonprofit facilitator

WHAT DID PUBLIC COMMENTERS SAY?

Many commenters focused on whether corrections agencies should be the OE determining whether PEPs are in the best interest of students and whether the metrics ED proposed for doing so were appropriate and feasible. Some commenters also noted that because ED gave PEPs two years to report on metrics, it was unclear what criteria OEs would use to admit PEPs initially.

ED responded by stating that corrections agencies must serve as the OE but that only the input indicators outlined in the NPRM will be mandatory; output indicators like job placement rates and earnings will be optional. Moreover, during the two years PEPs are collecting data, “there are no specific requirements for the initial approval, and the oversight entity can use whatever information it has available.”

Below are topics public commenters addressed that may be helpful when making such decisions, including:

- Why proposed metrics are inappropriate
- Why accreditation standards are more appropriate
- Additional metrics suggested in public comments

Given their broad discretion to offer initial approval to PEPs, corrections agencies should rely on existing higher education to ensure quality, such as regional accreditation, and carefully consider what other metrics truly reflect the best interest of students.
WHY DID COMMENTERS SAY WHAT THEY SAID?

Public commenters articulated specific qualifications and criticisms regarding each proposed metric:

<table>
<thead>
<tr>
<th>ED Proposed Metric</th>
<th>Criticism of Proposed Metric</th>
<th>Public Commenters Criticizing Proposed Metric</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Continued Education</strong>&lt;br&gt;<strong>Post-Incarceration</strong></td>
<td>✗ Corrections agencies aren't equipped to collect such data&lt;br&gt;✗ Standards for measuring whether students continue education post-enrollment do not exist&lt;br&gt;✗ No causal link between post-enrollment continued education &amp; current education</td>
<td>New York Department of Corrections and Community Services&lt;sup&gt;5&lt;/sup&gt;&lt;br&gt;American Association of Community Colleges&lt;sup&gt;6&lt;/sup&gt;&lt;br&gt;Bard Prison Initiative&lt;sup&gt;7&lt;/sup&gt;</td>
</tr>
<tr>
<td><strong>Job Placement Rates</strong></td>
<td>✗ PEPs are often prohibited from contacting students upon release, making these data difficult to collect.&lt;br&gt;✗ These rates must factor-in unique barriers formerly incarcerated people face in gaining employment.&lt;br&gt;✗ There is no framework to determine when a person should find employment related to their education, and educational benefits like critical thinking skills are more important than a specific career path.</td>
<td>Kansas Department of Corrections&lt;sup&gt;8&lt;/sup&gt;&lt;br&gt;American Association for Community Colleges&lt;sup&gt;9&lt;/sup&gt;&lt;br&gt;New America&lt;sup&gt;10&lt;/sup&gt;&lt;br&gt;New York Department of Corrections and Community Services&lt;sup&gt;11&lt;/sup&gt;</td>
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<tr>
<td><strong>Earnings</strong></td>
<td>✗ Students pursue a variety of educational pathways with different earning opportunities.&lt;br&gt;✗ Parole requirements may force students to take a job regardless of wages.&lt;br&gt;✗ Student earnings should be measured in comparison to other formerly incarcerated people rather than the general public to account for hiring discrimination.&lt;br&gt;✗ Neither institutions of higher education nor corrections agencies have the infrastructure to track earnings.&lt;br&gt;✗ ED has a poor track record of tracking earnings and has no clear plan for either collecting earnings data or comparing said data for incarcerated and non-incarcerated students.</td>
<td>New Jersey-Scholarship and Transformative Education in Prison&lt;sup&gt;12&lt;/sup&gt;&lt;br&gt;State University of New York System&lt;sup&gt;13&lt;/sup&gt;&lt;br&gt;American Association of Community Colleges&lt;sup&gt;14&lt;/sup&gt;&lt;br&gt;Education Trust&lt;sup&gt;15&lt;/sup&gt;&lt;br&gt;Hope Western Prison Education Program&lt;sup&gt;16&lt;/sup&gt;&lt;br&gt;Minnesota Office of Higher Education&lt;sup&gt;17&lt;/sup&gt;&lt;br&gt;New York Department of Corrections and Community Services&lt;sup&gt;18&lt;/sup&gt;</td>
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| Instructor Turnover | ✗ This is an irrelevant metric in the context of higher education, both because students should experience coursework with a variety of instructors and because it is difficult to measure in a consortium model where instructors from multiple institutions participate. | Ashland University¹⁹  
Illinois Coalition for Higher Education in Prison²⁰  
New York Consortium for Higher Education in Prison²¹  
State University of New York System²²  
Bard Prison Initiative²³  
American Association of Community Colleges²⁴  
Hudson Link for Higher Education in Prison²⁵ |
| Recidivism | ✗ Recidivism is a criminal justice measure and not a valid higher education metric.  
✗ Fostering social capital and community building are equally important. | American Association of Community Colleges²⁶  
Goodwill Industries International, Inc.²⁷  
Maricopa Community College²⁸  
U.S. House²⁹  
U.S. Senate³⁰  
Villanova University Program at State Correctional Institution Phoenix³¹  
Bard Prison Initiative, Education Trust³²  
Iowa Consortium for Higher Education in Prison³³  
Illinois Coalition for Higher Education in Prison³⁴  
New America³⁵  
New Jersey Scholarship and Transformative Education in Prison³⁶ |
Which Additional Best Interest of Students Metrics Have an Evidence Base?

Public commenters suggested additional metrics that better reflect the best interest of students. Indeed, our own research team submitted a public comment urging the ED to elevate the wealth of research and scholarship on High Impact Practices and student engagement in higher education such as faculty and student ratios, contact hours with faculty, meaningful engagement with peers, and ability to engage in undergraduate research. Below, we highlight those metrics suggested by public commenters supported by empirical evidence, including our own recent *Pell Is Not Enough* series.

**Equity**

The Goucher Prison Education Project (GPEP) commented that student demographics within prison education programs should reflect the broader demographics of the penal facility population. We agree and wish to further clarify that corrections officials and college personnel should work together to ensure that:

- The student body in prison education programs reflects the overall population of the prison based on at least the following demographic variables: race, ethnicity, sex, gender, Veteran status, ability, citizenship, and related salient identity markers.
- There are meaningful opportunities for all interested people to pursue postsecondary education, including those deemed not “college ready” by standardized test scores.
- There are opportunities to take entrance exams and placement tests in students’ first or preferred language.
- There are adequate accommodations provided for applicants with diagnosed or undiagnosed disabilities. There should be clear guidelines and instructions for accessing accommodations for applicants, delineated responsibilities for who is to provide what and when, and a plan for when applicants need accommodations.

**High Impact Practices**

The Goucher Prison Education Project (GPEP), Hudson Link for Higher Education in Prison, and the State University of New York (SUNY) system all commented that prison education programs should be evaluated based on their ability to offer students in-person interaction with peers and instructors. SUNY and the Coalition for Carceral Access in Literacy and Learning recommended that student access to educational spaces, technology, and research materials should be best interest metrics. Our recent research findings support these metrics. Furthermore, our research suggests that staff-to-student ratios should be a major consideration in determining the best interest of students, given the general understaffing of the Second Chance Pell Experiment.

**Transfer and Articulation**

The State University of New York System commented that programs should be evaluated based on their ability to provide courses necessary for degree completion, while the City University of New York System recommended transferability of credits among institutions as a best interest metric. We agree and further suggest that transferability of credits among regionally accredited institutions is important. Additionally, demonstrated willingness to partner and create pathways for student degree or credential progress and completion should be a factor in deciding whether a program is in the best interest of students.

**Outcomes Measures**

The City University of New York System commented that programs should be evaluated based on their provision of financial aid counseling and literacy to students. We agree, given the fact that our research demonstrates that students often do not understand what a Pell Grant is and the long-term impacts of accessing this form of financial aid (e.g. limited lifetime eligibility).
Conclusion

There is already preliminary evidence that oversight entities are adopting best interest metrics beyond the four that ED's final regulations require, based on four sample applications our research team has analyzed. In some instances, corrections agencies are requiring output metrics that ED made optional (especially job placement and earnings). However, two of the four applications inquire as to how prison education programs will ensure racial equity in admissions. Half of the sample applications ask about staff capacity and plans to support students who are not eligible for Pell. Two of the four also require descriptions of program orientation plans, with one including questions about how program leaders will educate students about Pell. There are early signs, then, that at least some oversight entities are developing applications with some of the evidence-based metrics public commenters proposed.


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ENDNOTES

4. ED removed this phrase in the final regulations. Office of Postsecondary Education, Department of Education. Pell Grants for Prison Education Programs; Determining the Amount of Federal Education Assistance Funds Received by Institutions of Higher Education (90/10); Change in Ownership and Change in Control, 87 Fed. Reg. 65,459 (Oct.28, 2022) (to be codified at CFR Parts 600, 668, 690).
5. All of the metrics were optional in the original legislation; it seems to be ED’s choice to make any of them mandatory.


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