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by
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For many of us, change is the hardest test we face, both in our professional and personal lives. Some of us never learn to accept or appreciate change very well, or come to understand the consequence of staying securely and steadfastly in our own comfort zones. There have been thousands of books written on the subject, and hundreds of lesson-plans, "classroom" exercises, and other teaching tools used to instruct on the topic. Indeed, *Who Moved My Cheese?*,[1] a very readable and important book on the social, psychological, and professional implications of having to change, has been a blockbuster bestseller and is routinely sold-out in bookstores.

The birth and growth of the Internet forced many of us to become quick studies and to accept change in new and challenging ways. Others of us failed to acknowledge its new place in the world and, thereby, lost out on the rewards of embracing the growth of technology. Still others remain fixed in their inability to see the future.

But the truth is, there is no going back—the Internet is here to stay. Because of the Internet we shop differently and have more choices than we did ten years ago. We get our news from sources that did not exist in the early 1990s. Indeed, the ability to deliver news as broadly and quickly as we do now has influenced everything from political elections to strategic decisions in war. We get everything faster, do everything bigger, and face changes more frequently and unexpectedly.

Nothing demonstrated the growth and breadth of technology's reach more than the successful luring of talented young freshman and sophomores to the new "space." Harvard, Yale, Stanford and tens of other colleges and universities lost some of their best and brightest to Internet companies in the late 1990s. There were incredible fortunes to be made, exciting challenges to face, and new frontiers to conquer. The young and the restless wanted all of it. And while many of the dot-com successes of the 1990s became the technology-sector failures of 2000, colleges and universities continue to face tough competition from the allure of this fast-moving, forward-thinking new age.

This dynamic has been exacerbated by the formidable and ingrained history of higher education. Institutions of higher education represent some of the oldest and most well-respected traditions of our time. We are a culture that reveres the attainment of higher learning in the traditional settings we have come to know. Our social and business communities have long attached societal, cultural, and economic importance to a college or university degree. We have viewed post-secondary education, delivered from traditional four-year colleges and universities, as the height of intellectual achievement.

Perhaps then, it is not so surprising that traditional institutions of higher education have been relatively slower than businesses, for example, to embrace the potential of the new technologies, and have lost students to those institutions and businesses which have been more willing to change. But technology is playing an enormous role in the shape, size, and direction of education,[2] and it's not waiting for the leaders of traditional institutions—or anyone else, for that matter—to join the club.[3]

This Article examines the scope and impact of that role, specifically as it has developed through a new trend toward online "distance education" or "distance learning." It begins with a look at the changing face of higher education in the United States, which has simultaneously become more important to have and more difficult to obtain—and in demand by a whole new range of students. Next, it shifts to a discussion of how distance education, in seeking to resolve these tensions, has itself become embroiled in the clash between the inevitable change of technology and the enduring traditions of higher education. It then introduces another key side in the conflict by addressing some of the ways in which government has addressed (and misaddressed) the issues presented by distance education. Finally, the Article concludes that while present forms of distance education can themselves benefit from change, the new influence they represent is a valuable addition to education in this country—an addition that's here to stay.

The New Education Landscape

In today's global, information-based, and technology-driven society, post-secondary education is no longer a luxury of the well-to-do, but a necessity for anyone who hopes to earn enough money to enjoy a decent lifestyle, raise a family, or even buy a home.[4] More than eighty-five percent of all domestic jobs now require education beyond high school—up from about sixty-five percent in 1991.[5] Fifty percent of all employees' skills become outdated within three to five years.[6] Moreover, the adult-age "cohort" is the fastest growing segment of students in post-secondary education; estimates reveal nearly

seventy-seven million adults enrolled in post-secondary courses.[7] And despite rising *full*-time enrollment, less than twenty percent of college students fit the traditional 18-22 year-old profile, attend full-time, and live on a college campus.[8]

The costs of higher education have also been rising. Over the past decade, the average tuition and fees at public colleges have risen by forty-four percent, the average at private colleges by forty percent.[9] This increase in costs is making post-secondary education in traditional college campus settings more difficult to attain at the same time the need for such education is becoming more important to acquire. While higher education leaders argue that increased college costs merely reflect cost-of living increases in other aspects of society, the question remains the same: how does a fast-growing population of adult learners get what they need from schools today?

One potential answer lies in the online delivery of educational services, an advanced form of what's known as "distance education" or "distance learning." In fact, United States corporations have already begun to embrace e-learning/training. A recent *Wall Street Journal* article estimates that corporate spending on e-learning will reach $4 billion this year—up from $550 million just two years ago.[10] By 2004, U.S. companies will likely spend $14.5 billion training their employees. While online-based training only constitutes a small part of the annual $58 billion that corporations spend in total, it nevertheless reflects one-third of the money companies spend on out-sourced training.[11]

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As important, employers appear to have accepted the validity of online learning programs and degrees. Anecdotal evidence suggests that employers do not discriminate between online and traditional campus-based learners. Specifically, John Bear, an author and online-learning consultant who handles U.S. marketing and other matters for Heriot-Watt University,[12] believes that online courses have already gained almost total acceptance within the American business community.[13] Bear routinely meets on behalf of the University with business leaders and attempts to "sell" them on the concept of distance learning, thereby smoothing the way for Heriot-Watt graduates.[14] According to him, "We have been through more than 1,200 'acceptance' processes in the U.S., and 98 percent" of companies have been sympathetic to the idea of distance learning.[15] The lessons of Bear's experiences seem to hold true in the U.S. as well. As one authority put it: "The general consensus on the [Internet discussion groups] is that the question of if the degree is traditional or nontraditional is rarely addressed [by companies]. Performance is the key to keeping a job, and the degree is just the door opener."[16]

Even the U.S. military recognizes the potential of distance learning. On December 14, 2000, former Secretary of the Army Louis Caldera announced the award of a $453 million contract to initiate the Army University Access Online (AUAO) program.[17] The program will provide enlisted soldiers of all ranks the opportunity to earn post-secondary degrees and technical skill certifications online, at no cost, while they serve on active duty.[18] Every participating soldier will receive a "technology package" consisting of a laptop, printer, and Internet account.[19] The AUAO is expected to provide distance education to 80,000 soldiers over the next five years, making the U.S. Army the largest distance education portal in the world.[20] According to Caldera, "This cutting edge, cyberspace program will provide unprecedented educational opportunities for our soldiers. It reinforces the Army's long-term commitment to investing in its people."[21] What's more, the AUAO may be indicative of similar programs potentially forthcoming from other federal governmental agencies.[22]

In education itself, however, the possibility of establishing "virtual universities" specializing in the delivery of education online or through distance learning has produced both positive initial results and decidedly mixed feelings. While the trend of taking courses online has been roundly criticized pedagogically and

even socially—particularly by traditional, elite universities, which argue the quality of education will diminish with online offerings—the reality is that distance education is expanding exponentially. In a *New York Times* article, John Chambers, CEO of Cisco Systems, predicted that "[e]ducation over the Internet is going to be so big it is going to make e-mail usage look like a rounding error."[23] What will drive it, he said, will be the demands on companies in an intensely competitive global economy to keep improving productivity.[24] More recently, in a *60 Minutes* segment, Chambers said no university can afford *not* to be on the Internet—"[e]ven Harvard, Yale [and] Stanford."[25]

Of course, some argue that Chambers has a vested interest in promoting Internet-based learning—after all, he runs one of the biggest Internet powers in the world. But whatever one thinks of his motivation, facts are facts, and he seems to have several on his side. For instance, at Arizona State University, classes offered on the Internet went from two percent of the University's distance-learning enrollment to twenty-five percent in just two years. The online arm of the University of Phoenix—the country's largest private university with over 100,000 students on more than 100 campuses and learning centers—teaches more than 20,000 full-time students.[26] Six years ago, the first, and currently only, completely online university, Jones International University (JIU), opened its "doors," so to speak—and in 1999 it was the first "fully online university" to ear accreditation by a regional accrediting commission.[27] JIU won't be alone for long; recently, Harcourt Higher Education, a subsidiary of the Harcourt publishing company, announced the establishment of another new virtual university.[28] And in spite of their protestations about educational quality, even some traditional four-year institutions, including Stanford and Duke, have begun to offer online degree courses.[29]

Philosophical and Structural Skepticism

Still, some educators have been slow to join the party.[30] Some academics argue that distance education is no more than "prepackaged content for sale over the Internet"[31] that threatens to undermine the free-thinking upon which traditional institutions were founded. Others argue that online content reduces the academic freedom of professors and compromises intellectual property rights.[32]

Whatever the reasons, the regulatory framework within which distance educators find themselves doesn't help the cause. The U.S. Department of Education (DOEd), which regulates the delivery of federal student financial aid, has long looked with skepticism upon almost any non-traditional delivery of education services and has often created regulations to support its wariness. To be fair, the Department's position has been driven by a history of fraud and abuse perpetrated mainly by "fly-by-night" entities using federal student financial aid for the profit of the entity and not the educational gain of the students. In addition, many regulations were promulgated at a time when distance education as we *now* know it did not exist. But now that the times have changed, the success or failure of distance education rests, in part, on the Department's ability to see its way through a maze of out-dated and admittedly ill-applied rules.

While the trend of taking courses online has been roundly criticized pedagogically and even socially—particularly by traditional, elite universities, which argue the quality of education will diminish with online offerings—the reality is that distance education is expanding exponentially.

For instance, in 1992, at the time of the Higher Education Act (HEA) reauthorization, the post-secondary education landscape was significantly different than it is today.[33] At that time, distance education occurred mostly on paper and not always on the level. Many of the old correspondence schools featured in late-night television ads, for example, were ultimately found guilty of fraud and a variety of other federal violations.[34] It was in the context of these sorts of abuses, therefore, that Congress created the "50 percent rules" as set forth in § 102(a)(3)(A) and (B) of the HEA.[35] These rules remove an otherwise-eligible "institution of higher learning" from participating in Title IV financial aid programs if: (1) more than fifty percent of its courses are offered via correspondence, or (2) the institution enrolls fifty percent or more of its regular students in correspondence courses.[36] In a related provision,

Section 484(l)(1) of the HEA provides that a "correspondence" student does not include any student whose institution offers: (1) less than fifty percent of its courses by correspondence or telecommunications, and (2) at least fifty percent of its total number of courses in the form of courses leading to a recognized associate, baccalaureate, or graduate degree.[37] These regulations were used to distinguish between traditional brick-and-mortar schools that utilized some form of distance education and the old correspondence schools, permitting traditional institutions to receive financial aid and denying any assistance to the correspondence-school entities.[38]

The so-called "12-hour rule" represents another outgrowth of regulations intended to deny the use of federal student financial aid to correspondence schools. The 12-hour rule modeled itself on the "Carnegie Unit," which is used throughout academia as a rough measure of the amount of time a student and faculty member might spend in a classroom.[39] The Carnegie Unit presumes that, generally speaking, a three-credit course provides three hours of instruction per week, as well as six hours of out-of-class work.[40] Therefore, twelve credits would entail twelve hours of instruction per week and, at least in theory, twenty-four hours of out-of-class work.[41] Using this methodology, twelve hours is the minimum amount of instruction a school must provide to receive the maximum amount of federal student financial aid available.[42] If a program provides less than twelve hours of instruction per week, either the aid is adjusted downward and/or the length of time between disbursements is increased until the student has received an amount of instruction equivalent to twelve hours per week.[43]

But the 12-hour rule simply doesn't fit in the context of online learning. Interestingly, even the DOEd admits as much. In a recent report to Congress, the Department summarized its emerging position as follows:

> It is difficult if not impossible for distance education programs offered in non-standard terms and non-terms to comply with the 12-hour rule. The regulations would seem to require that full-time distance education students spend twelve hours per week 'receiving' instruction. There is no meaningful way to measure twelve hours of instruction in a distance education class. Distance education courses are typically structured in modules that combine both what in an on-site course might be considered instruction and out-of-class work, so there is no distinction between instructional time and 'home work.' In addition, when [students] are given the flexibility to move at their own pace, some students will take a shorter time to master the material, while others might take longer.[44]

Even institutions without a direct interest in the availability of federal student financial aid understand the challenges the rules create in today's educational environment. For example, the Consumer Bankers Association (CBA), argues:

> As we enter this new century, the Department of Education is using regulations with their roots in the beginning of the last century. At a time when colleges are seeking and developing new ways and methods of delivering educational services to enable learning to occur 'anytime, anywhere,' the so-called '12-hour rule' in these regulations severely restricts the ability of these institutions to provide education outside of the traditional semester or quarter system. By requiring an inflexible standard to offer at least twelve hours of scheduled instruction or examinations each week for programs that are not based on standard academic terms, these regulations are impeding new methods of learning, which emphasize student collaboration, independent research, and faculty-supervised educational activities.[45]

Large traditional institutions agree. For example, in his testimony before the Web-Based Education Commission, University of Maryland, University College President Gerald Heeger argued:

> We have to make the Higher Education Act web-friendly right now. We cannot deny students access to federal aid because they are sitting in front of a computer instead of in a classroom. We cannot make cooperative relationships between institutions and facilitators of web-based services uneconomic because we fear the ghosts of salesmen who dragooned students off welfare lines. And we cannot apply standards for what is or is not an 'eligible program' or for that matter an

> "eligible institution" for federal aid purposes on definitions that assumed fixed times and places for learning . . . [H]ow in the world are we to apply [the 12-hour] rule to courses that are offered over the Web, when there is usually no *regularly scheduled* instruction at all. Indeed, one of the incredible virtues of web-based learning is the *absence* of a 'regular schedule' of instruction. Here is a rule that might have made sense for classroom-based learning but which is simply absurd in the context of the Internet.[46]

Nevertheless, while even the Department agrees the 12-hour rule isn't working,[47] it and groups like the American Federation of Teachers (AFT) fear that repealing or modifying the 12-hour rule will result in increased fraud and a lack of accountability. Sandra Feldman, President of the AFT, explained:

> While we might favor some changes in the class-time requirement, we strongly oppose its wholesale elimination. [The 12-hour and 50 percent rules are] on the books for a reason, besides the obvious education argument that education takes time, and time in class is beneficial. We, as a nation, experienced terrible scandals with trade and technical schools and correspondence courses before this law was enacted. An Internet-based degree program, like a correspondence school, is much harder to audit than a traditional program, and the chances for abuse are greater.[48]

Others disagree. As a matter of fact, many online-learning proponents argue that there is actually less of a chance of fraud in a web-based education environment than in a traditional classroom setting. For example, Stephen Spangehl, associate Director of the North Central Association (an academic accreditation group), has said, "Actually, you can check more of it [at an online program] than you can at a traditional college."[49] For example, in online courses, interchanges between students and instructors are recorded in computer files and made available to accreditors for review. Conversely, in traditional brick-and-mortar classrooms, inspectors are often forced to rely on second- or third-hand accounts of teaching methods.[50]

> The debate over the quality and validity of online learning is unlikely to end soon. But then, neither is online learning itself. As one authority in the field put it: "It is absolutely clear to me that these degrees are taking off like wildfire. It is clear they are going to become more common and much more accepted."

But in the end, it may be an actual student who said it best. When responding to a question regarding accountability in online courses, Erica Olsen, a Michigan State University online student said:

> I've certainly spent my fair share of time doing the crossword puzzle in huge lecture halls. But it's fairly difficult to slack off in an online chat, or get behind when your projects are on display for everyone to see.[51]

Nevertheless, the debate about the quality of distance education also propels some supporters of the 12-hour and 50 percent rules. They argue that web-based education may not provide students with a sufficient opportunity to participate in academic discourse, which, they say, comprises a critical part of the learning process.[52] Specifically, the thinking goes:

> It is critical that we hold online programs to a high standard of academic rigor and ensure that the necessary interaction occurs between students and other students and students and faculty. These degrees won't be worth the paper they're printed on, credits won't be accepted for transfer, and the people who earned these diplomas will have a hard time having them accepted in the workplace and elsewhere if the standards are weak.[53]

At the same time, proponents of online education argue that online students deserve equal access to federal student financial aid since their programs are at least as good as their traditional brick-and-mortar counterparts when it comes to quality. Statistics seem to support this point of view. For example, according to AFT's own recent survey, an "overwhelming majority" (eighty-four percent) of instructors polled enjoyed teaching via distance learning and would readily do so again.[54] Along with their teachers, students also seem to enjoy, and in some cases prefer, online distance education. One student commented: "You get more out of the class. It's more self-paced. I'm picking projects I

want to do and when I want to work on them."[55]

Moreover, online learning proponents say issues of communication represent strengths rather than weakness in the quality of web-based education systems. In the words of a Michigan State professor:

> If you sit in the classroom for four hours, you might be daydreaming or not working. You must be actively learning [in online courses] and there's the same amount of work in an online course. Students can learn from each other because there's more student-to-student discussion. In online seminars, there are more words exchanged in chat rooms and such.[56]

NEW RULES FOR A NEW METHOD OF EDUCATION

The debate over the quality and validity of online learning is unlikely to end soon. But then, so is online learning itself. As one authority in the field put it: "It is absolutely clear to me that these degrees are taking off like wildfire. It is clear they are going to become more common and much more accepted."[57]

Statistics support such a conclusion. Aside from the examples mentioned above, the Market Data Retrieval Service reports that, of the 1,028 accredited two- and four-year institutions it surveyed, seventy-two percent offered online courses[58]—a figure up dramatically from forty-eight percent in the previous year.[59] In his recent interview by *60 Minutes*, Arthur Levin, President of Teachers College at Columbia University, predicted that online learning will soon develop into a major part of the U.S. economy. He commented:

> Higher education is now being looked at as the next health care. There's a sense that here's an industry worth maybe $300 billion which people believe is low in productivity, high in cost, bad in management, [and] doesn't use technologies. One entrepreneur recently told me, 'You know, we're going to eat your lunch.'[60]

The old, traditional notion of a college student, whose age is between 18-22 and attends full-time, Levin argues, is gone.[61] Instead, people like Vicki Esposito, a working mother of three attending University of Phoenix Online, represents the new face of higher education.[62]

In other words, post-secondary education's new population has different needs that are perhaps better satisfied by new technologies. The time is upon policymakers to alter the rules to accommodate them. The question no longer is *if* the regulations governing web-based education should be amended, but *how* and *to what extent*?

While the DOEd's first internal "white papers" discussing the future of distance education literally ended with a question mark,[63] more recent efforts have shown promise. On July 1, 1999, the Department initiated a Distance Education Demonstration Program, which waived the very rules the Department traditionally used to curb the expansion of distance learning.[64] Next, the fall of 2000 saw a series of DOEd-led focus-group meetings on the realities of administering federal student financial aid to non-traditional educational programs. In time, a number of ideas have emerged.

One such idea, as described in the Secretary of Education's Report to Congress (which was mandated by the congressionally approved Distance Education Demonstration Program) would create a student-based model for administering Title IV aid. The Department would tailor financial assistance to each student's individual needs and pace, beginning with an "academic program" established by the student.[65] The academic program would describe the student's goals, the courses and other relevant work required to achieve the desired degree, the amount of time the student needs, and the programs/schools that the student intends to utilize.[66] Funds would then be disbursed as a student successfully progresses through their program, with aid being released only on an as-needed basis.[67]

Proponents of a student-based system say this approach would accommodate schools that offer multiple start dates, and allow students to take courses from two institutions without sacrificing Title IV financial support.[68] Some believe any student-based financial aid model would work better than the current system. Rather than tying aid to "seat-time" regulations, students could learn at their own pace through individualized programs.[69] Moreover, moving the focus from the school to the student could significantly increase academic freedom and opportunities without exposing the federal government to increased risks.[70] According to the DOEd's Report:

> Administering student aid on a student-by-student basis has the potential ultimately to simplify the delivery of student aid to students enrolled in non-standard terms and

> non-term programs, and to those who combine semester courses with non-standard and non-term courses. This model may also have the potential to reduce some of the risk to Federal funds that may be associated with some non-standard term and non-term programs. Because this model would provide Federal funds only at the time the student actually requires the funds and measure[s] student progress prior to the school drawing down funds for additional disbursements it would appear to limit the amount of Federal dollars at risk.[71]

Other models are being also discussed. An alternative to developing an entirely new model for the delivery of federal student financial aid would be to eliminate the 12-hour and 50 percent rules altogether. Proponents of this view believe that the task of judging academic programs is best left to accrediting bodies rather than the Department of Education. At least at the Department's focus-group meetings, representatives from accrediting bodies did not object to taking on this role.[72] However, those opposed to eliminating the "seat-time" rules argue that leaving the decision in the hands of the accreditors would create a lowest common denominator problem. That is, no matter how poor an academic program actually is, someone will give it accreditation—and therefore access to Title IV financial aid. Moreover, DOEd policy-makers have expressed concerns that eliminating the 12-hour and 50 percent rules without detailed, specific research on, and an understanding of, the impact will create more problems than it will solve.[73] Frankly, they should know—they have a history of failed and often congressionally imposed mandates to prove it.[74]

A Call to Congressional and Executive Branch Action

While there remain many questions and disagreements about how federal regulations governing distance education might effectively be changed, at this point, it is essentially a matter of degree. After all, even the AFT, which has been critical of most proposed reforms, remains "flexible" in regard to adjusting the 50 percent rules.[75] At a minimum, therefore, until real changes occur, the DOEd should be permitted to conduct broad, comprehensive demonstration programs to evaluate and determine the best possible new structure for administering federal student financial aid in today's educational climate. The waivers authorized by the current demonstration program may not provide the flexibility required to develop fully the "student-based" financial aid strategy that the Department wants to explore.[76]

But the best answer is for government officials simply to step up to the plate and make the necessary regulatory and statutory changes.[77] For instance, the "seat time" rules are not the only regulations adversely affecting the growth and delivery of distance education. In 1992, Congress prohibited colleges and universities that participate in Title IV financial aid programs from paying any "commission, bonus, or other incentive payment" to third-party entities based directly or indirectly on their success in helping to secure student enrollments.[78] The original intent of this prohibition "was to protect students from abusive recruiting tactics."[79] However, as with the "seat time" regulations, the prohibition is being applied in a completely unanticipated fashion. The ban on incentive compensation is now being interpreted to apply to the enrollment of students via third-party web portals.[80] Third-party web portals, described as online "Yellow Pages" by the Web-Based Education Commission, often receive financing through the use of referral fees and tuition-sharing agreements.[81]

Thus, although not intentionally, the language of the regulation effectively bars colleges and universities that receive Title IV funding from using third-party web portal systems.[82] Prospective students often use these portals to access information about institutions or even file applications online.[83] But because of the incentive compensation ban, these portals are off limits to any school that doesn't want to jeopardize its Title IV status.[84] In other words, schools cannot use third parties to operate the same passive, asynchronous web services that they provide on their own homepages.[85] This is true even though, at the time of the prohibition's passage, few people even knew what a "third-party web-portal" was.

Higher education groups already have asked the Department to consider changing the prohibition's language to allow for the use of third-party web portals and other Internet related services. DOEd officials, however, say that the enforcement of the prohibition can only be amended through new legislation.[86] As a result, despite the inherent contradictions that the current enforcement of the ban on incentive compensation rep-

resents, the prohibition cannot be taken lightly.[87] Schools are rightfully wary of the prohibition and do not utilize third-party web portals or other Internet services that, while extremely beneficial, might violate the ban—even though the rule was never intended to prevent online schools from utilizing passive web portals.

WHERE WE GO FROM HERE

Among other things, some groups seem to fear that distance education or online learning will create an educational apartheid where wealthy students enjoy the networking and social benefits of a campus education, while the less affluent are relegated to "inferior" distance learning programs.[88] Proponents of online learning, however—and particularly students—see a different kind of inequity. For example, 49-year-old Norma Manuel, who trains county employees in Atlanta, decided to pursue her own bachelor's degree when her two daughters went off to college.[89] Both of Manuel's daughters attend traditional universities and receive student financial aid.[90] In contrast, Mrs. Manuel herself may be forced to drop out of her program because she cannot afford the $600 per course fee charged by Jones University without some kind of assistance.[91] "I see an inequity," says Mrs. Manuel.[92] "If you look at the three people in our household going to school, the only difference is they're going to a brick-and-mortar school and I'm not."[93]

Moreover, as technology improves, so does the quality of distance education. Arguments that give-and-take communication is lacking in distance education will give way to upgrades in video-conferencing and streaming. As technology advances, costs will decline and even more courses and degree-granting programs will be offered. Industry standards will be developed, privacy, copyright, and intellectual property rights issues will be addressed, and whole new constituencies will be educated longer, faster, and more efficiently.

In the end, whatever side of the debate one comes down upon, two things are clear. One, the educational and economic advantages of distance education continue to mount as we progress further along in the Internet Age. And two, whether we're all quite ready for it or not, distance education is here.[94]

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[1] Spencer Johnson, Who Moved My Cheese?: An Amazing Way to Deal with a Change in Your Work and in Your Life (1998).

[2] Higher levels of skills and knowledge are required for an economy based on information. Eighty-five percent of current jobs require education beyond high school, up from 65 percent in 1991. The Power of the Internet for Learning: Moving from Promise to Practice, Report of the Web-Based Education Commission to the President and the Congress of the United States (hereinafter, "Web-Based Education Commission Report"), December 2000, at 4, available at http://interact.hpcnet.org/webcommission/index.htm#adob.

[3] Jeffrey R. Young, Harvard Considers Limits on Teaching Online Courses for other Institutions, Chron. Higher Educ., May 12, 2000, at A47, 2000 WL 8881744 (2000).

[4] The average college graduate earns about $45,000 more per year than those with only a high school education. John S. Irons, Education and Income Distribution (Aug. 26, 1997), available at http://economics.about.com/mone/economics/library/weekly/aa082697.htm.

[5] Web-Based Education Commission Report, *supra* note 2, at 4.

[6] Id. at 8.

[7] Id. at 4.

[8] Id.

[9] Id. at 5.

[10] Rob Eure, On the Job Corporate E-learning Makes Training Available Anytime, Anywhere, Wall St. J., Mar. 12, 2001, at R33.

[11] Id.

[12] Heriot-Watt is an Edinburgh, Scotland school that offers a popular online MBA program. See <http://www.hwmba.edu>

[13] Paul Cox, Cyberdegrees: Who Needs a College Campus? Just Log In and Start Studying, Wall St. J., Nov. 17, 1997.

[14] Id.

[15] Id.

[16] Id.

[17] See Press Release, U.S. Army, Army Awards Distance Education Contract to PriceWaterhouse Coopers to Form Army University Access Online (Dec. 14, 2000) (on file with author).

[18] See id.

[19] See id.

[20] See id.

[21] Id.

[22] See eArmyU Press Conference, Washington, D.C., Dec. 14, 2000.

[23] Thomas L. Friedman, Next, It's E-ducation, N.Y. Times, Nov. 17, 1999.

[24] Id.

[25] 60 Minutes (CBS television broadcast, Feb. 18, 2001).

[26] Telephone Interview with the University of Phoenix (Mar. 19, 2001).

[27] Jones International University, Ltd., Fact Sheet, at http://jiu-web-a.jonesinternational.edu/eprise/main/JIU/PressReleases/fact-sheet.html (visited Apr. 4, 2001).

[28] See Mark Johnson, A Real Degree From A Virtual University, Dayton Daily News, Apr. 24, 2000, at 3E.

[29] Stanford launched a web-based masters' degree, while Duke University is marketing an $85,800 19-month Internet-based executive MBA program. See Benny Evangelista, More Universities to Offer Classes, Degree Programs Via the Internet, The San Francisco Chronicle, Aug. 14, 2000.

[30] According to the preface of the Web-Based Education Commission's report, "[T]he Internet is perhaps the most transformative technology in history, reshaping business, media, entertainment, and society in astonishing ways. But for all its power, it is just now being tapped to transform education." Web-Based Education Commission Report, *supra* note 2, at 1.

[31] Sharon Cleary, The Downside Why Some Critics Give Web-based Education Less-than-Stellar Grades, Wall St. J., Mar. 12, 2001.

[32] Id.

[33] U.S. Department of Education, Report to Congress on the Distance Education Demonstration Programs, at 16, available at http//www.ed.gov/offices/OPE/PPI/DistEd/index.html (hereinafter, "Dept. of Education Demonstration Report") (visited Apr. 3, 2001).

[34] Id. at 19. Specifically, several trade schools defrauded the Department of Education in the 1980s by accepting federal student aid and not providing the teaching they promised. Katherine Hutt Scott, Attendance Rule for U. of Phoenix has Others Worrying Whether They're Next, Gannett News Service, Aug. 15, 2000.

[35] Dept. of Education Demonstration Report, *supra* note 33, at 19.

[36] Id.

[37] Id.

[38] Id.

[39] Id. at 23.

[40] Id.

[41] Dept. of Education Demonstration Report. *supra* note 33, at 23.

[42] Id. at 24.

[43] Id.

[44] Id.

[45] Id.

[46] Hearing of the Web-Based Education Commission, 106th Cong. (2000) (statement of Gerald Heeger, President, University of Maryland, University College).

[47] Dept. of Education Demonstration Report, *supra* 33, at 24.

[48] AFT Press Release, Is Online Education Off-course?, (Jan. 17, 2001) (on file with author).

[49] Cox, *supra* note 13.

[50] Id.

[51] Vincent Estes, Michigan State U.: Michigan State U. Department May Rework Online Aid, U-Wire, Sept. 5, 2000.

[52] Id.

[53] AFT Press Release, *supra* note 48.

[54] Id.

[55] Estes, *supra* note 51.

[56] Id.

[57] Cox, *supra* note 13.

[58] Ann Grimes, A Matter of Degree: After a Slow Start, Universities are Going on the Offensive Against Virtual U's; They Get High Marks for Effort, Wall St. J., July 17, 2000, at R29.

[59] Id.

[60] 60 Minutes. *supra* note 25.

[61] Id.

[62] Id.

[63] Interview with anonymous former Department of Education official, in Washington, DC (Mar. 2001).

[64] Many federal agencies use 'demonstration programs' to test on a small scale changes it foresees implementing on a large scale. Additionally, The DOEd has taken every opportunity to expand the program.

[65] Dept. of Education Demonstration Report, *supra* note 33, at 26-28.

[66] Id.

[67] Id.

[68] Id.

[69] At a recent hearing before the House education subcommittee on 21st century competitiveness, Susan Collins, a member of the Web-Based Education Commission, emphasized how utilizing Internet-based schooling will generally increase the focus on the student and his/her particular strengths, weaknesses and interests. Collins, the Senior Vice-President and General Manager of Bigchalk.com, initiated a teaming arrangement with National Public Radio to provide combined news programming with grade-appropriate lesson plans matched to state and national standards. According to Collins, this program illustrates how technology can lead to flexible, fresh and dynamic courses that truly engage the student. For example, when the presidential election was contested, the flexibility of the Internet-based technology allowed teachers to expand and continue the lesson. "That would have been a very different experience if we had been using textbooks", noted Collins. Neal Learner, Experts: Technology Adds Flexibility to Learning, Educ. Daily, Mar. 19, 2001, at 1 and 10.

[70] See Dept. of Education Demonstration Report, *supra* note 33, at 26-28.

[71] Id. at 28.

[72] Department of Education Focus Group Meeting, Washington, DC, Nov. 28, 2000.

[73] Interview with anonymous Department of Education official, in Washington, DC (Feb. 2001).

[74] Interview with anonymous former Department of Education official, in Washington, DC (Mar. 2001).

[75] See, e.g., Daniel Golden, U.S. May Amend Law Blocking Online Students from Federal Aid, Is Inclined To Lift Aid Ban For Web Studies, Wall St. J., Jan. 31, 2001, at B1.

[76] Dept. of Education Demonstration Report, *supra* note 33, at 28.

[77] The Department of Education had wanted the current demonstration program to have a much broader scope. Interview with anonymous Department of Education official, in Washington, DC (Feb. 2001). Because their initial request was subsequently limited, another demonstration is now required. This time, Congress must give the Department the flexibility necessary to fully explore an alternative financial aid structure.

[78] Web-Based Education Commission Report, *supra* note 2, at 110.

[79] Id.

[80] Id.

[81] Id.

[82] Id.

[83] Web-Based Education Commission Report, *supra* note 2, at 110.

[84] Id.

[85] Id.

[86] Id.

[87] Computer Learning Centers (CLC), a technical school, declared bankruptcy and went out of business due to incentive compensation violations. The Department of Education found that CLC had violated the incentive prohibition law by basing their admission officers' compensation on their success in securing student enrollments. The closing of CLC affected 10,000 students at twenty-five locations nationwide. Martha Woodall, Computer Learning Centers Files for Bankruptcy, KRTBN Knight-Ridder Trib. Bus. News, Jan. 23, 2001. CLC claimed that "both the legislative history of the Higher Education Act and ED's [The Department of Education's] own guidance" allowed them to consider the ability of admissions officers to recruit qualified students. Computer Learning Centers, Inc. Makes Announcement, Bus. Wire, Dec. 15, 2000. Additionally, CLC argued "that the Department failed to provide useful regulatory guidance, 'instead issued a stream of inconsistent private letters.'" Computer Learning Centers Files for Chapter 7 Bankruptcy Protection, Dow Jones Business News, Jan. 26, 2001. The Department ultimately rejected CLC's claims and determined that the company should return $187 million in federal funds. Woodall, *supra*.

[88] Golden, *supra* note 75.

[89] Id.

[90] Id.

[91] Id.

[92] Id.

[93] Id.

[94] Representatives of the six U.S. regional accrediting bodies finalized and released in March a set of recommendations for building and evaluating online-education programs. While the recommendations won't become actual accreditation standards, distance education is punching through regional boundaries and these recommendations seek to help the usually fairly autonomous regional accreditation agencies stay within the same framework for their policies. The report on the recommendations describes in detail the steps an institution should take to run an online-education program successfully. The recommendations cover five general categories: institutional context and commitment, curriculum, and instruction, faculty support, student support, and evaluation and assessment. The report includes such specific recommendations as having ongoing technical support, preferably offered during evenings and weekends as well as normal institutional hours. Most importantly, however, the fact of the report—as much as anything else—further demonstrates the anticipated breadth and scope of distance education.