TOPcast Episode 58: Fun with Regulations

Narrator: What will your future look like? The job you do today could be different than the jobs of tomorrow. Some see this as a challenge. At UCF, we see opportunity, a chance for you to grow your knowledge, and strengthen your skills from anywhere life might take you. With in-demand degree programs and resources for your success, UCF Online can help you prepare for the future and all the possibilities that come with it.

(musical transition)

Kelvin Thompson: From the University of Central Florida's Center for Distributed Learning, I'm Kelvin Thompson.

Tom Cavanagh: And I am Tom Cavanagh.

Kelvin: And you're listening to TOPcast: the Teaching Online Podcast. Hey Tom.

Tom: Hey Kelvin.

Kelvin: Hey Tom…What are we doing here in the middle of the month?

Tom: (laughing) That's an excellent question. I think we may have gotten lost on our normal podcast release schedule.

Kelvin: We did one of these this month already, I’m pretty sure.

Tom: I thought so. Yeah. You want to explain why we are here once again in our poor listeners’ feed?

Kelvin: Yes, that's right. So, we are trying this experiment for the year 2020, and we're going to try to do two episodes monthly: one releasing the first Monday of the month and a second releasing on the third Monday of the month. The first will be just you and me, and the second will be you and me bringing a guest in one of our interviews and see what happens. So it's going to be double the TOPcast for 2020. Double for 2020.

Tom: (laughing) I gotcha.

Kelvin: It’s almost like we planned that.

Tom: Double for 2020. Double the caffeine for Tom!

Kelvin: Well that’s true.

Tom: So, speaking of caffeine and speaking of the dulcet gurgles of coffee being poured into the mug you have so generously brought for my behalf…
Kelvin: Yes.

Tom: What is in the thermos, Dr. Thompson?

Kelvin: Well Tom, today’s coffee comes to us from TOPcast listener Dr. Jorge Silva Puras, entrepreneurship professor at Universidad del Sagrado Corazon—which, you know, I think maybe is Sacred Heart—in San Juan, Puerto Rico, and at Hostos Community College in the (New York accent) South Bronx, New York.

Tom: (New York accent) In the Bronx. Is that on purpose? You did that? I see what you’re doin’ there.

Kelvin: Let’s see what I can do there. He also heads up Global Learning at Sagrado Corazon. Dr. Silva Puras has also held several roles in the government of Puerto Rico and in the US Small Business Administration. So, Jorge sent us a coffee from Puerto Rico called Alto Grande.

Tom: Alto Grande.

Kelvin: Alto Grande. Since my—as you know—rudimentary translation skills are not really up to your standards, my basic understanding would indicate this is Spanish for “High Big.” So, I thought this might be very appropriate for today’s episode. So, how’s the coffee and how’s the connection to today’s episode?

Tom: The coffee’s good! Yeah, and I think I get the connection. “High Big.”

Kelvin: “High Big.”

Tom: It could also be, like, “great,” I think. “High Great.”

Kelvin: Yeah, I think the coffee, they say, is like super premium or super prestige or something. This is also their tagline. You might like this.

Tom: Yeah?

Kelvin: The coffee of kings and popes.

Tom: The coffee of kings and popes. (laughing) Okay.

Kelvin: Yeah, I saw this thing on their website that it goes back to royal court courts of Europe and the Vatican.

Tom: Interesting.

Kelvin: So, the coffee of popes and kings. kings and popes. Something like that.

Tom: Okay. Well, gracias.
Kelvin: Yes! De nada.

Tom: The café is excellente. Yeah, I enjoy it. I will be sipping it through the rest of this episode.

Kelvin: Yes, indeed. That’s right.

Tom: And I think I get the connection. So, high and big.

Kelvin: Yes.

Tom: Today we're going to be talking about the high and big world of federal regulations and policies.

Kelvin: Woo! That’s right. Popes and kings! (laughing)

Tom: Popes and kings! (laughing) Yeah, that is true. So, the world of federal policy is one that is big and does affect all of us.

Kelvin: Yeah.

Tom: And, you know, having an awareness of it, I think, is important whether you're a pope a king or just a poor little, you know, servants like us.

Kelvin: Peons. (laughing) Peasants. Yeah, so, we have spoken broadly about the relationship of policy to online education previously on TOPcast, for instance back in episode #28. It was longer ago than I thought it was. (laughing)

Tom: Vientocho.

Kelvin: That’s right. That’s better Spanish than I speak. Episode #28 was “Understanding Policy,” which was maybe a pretentious title. (laughing)

Tom: (laughing)

Kelvin: Today though, we are privileged to be joined by two guests who are legitimately knowledgeable and respected on this topic.

Tom: Unlike us.

Kelvin: Unlike us. Russ Poulin, Executive Director of WCET—the WICHE Cooperative for Educational Technologies—and Vice President for Technology-Enhanced Education at WICHE—which, if you don’t know, is the Western Interstate Commission on Higher Education, one of our four regional higher ed. compacts in the US—and we’re joined by his colleague Cheryl Dowd, WCET’s Director for the State Authorization Network. So, Tom, you spoke with Russ and Cheryl just not long ago—last month or two—during the 2019 OLC Accelerate
conference, and while there are some important broad framing comments about policy that you all discuss, your interview focuses on some timely topics that we wanted to get out into the world sooner rather than later. Right?

Tom: Right. Si.

Kelvin: Si. We should probably state that this conversation is particularly relevant to the US policy context, but it might still be of interest to our listeners from other countries, I would hope.

Tom: Yeah, I would imagine because they probably have their own policy issues. When I've traveled abroad, usually there's some sort of—at least in the countries I've been to—a national ministry of education, as opposed to here in the US where it's much more state-based and, you know, regional accreditation.

Kelvin: Federalist.

Tom: Yeah, but maybe the only comments I'll make is that the conversation that we had is, you know…I talk to Russ a little bit about some of the general federal regulations that are applicable to accreditation and then talk specifically to Cheryl about state authorization issues, and there are some really important changes coming up within the next couple of months. Actually they've kind of already come up and we're going to have to implement them within the next couple of months.

Kelvin: During the year 2020.

Tom: During the year 2020. Yes, thank you. If you’re listening to this at some point in the far distant future…

Kelvin: Centuries from now. *(laughing)*

Tom: That’s right. *(laughing)* When the archaeologists unearth this and say, “Is this what they were doing?”

Kelvin: That’s right.

Tom: So maybe, rather than me blabbering on about what we talked about, let's actually listen to what we talked about.

Kelvin: Can I make one plug here? Because I didn’t know this. You probably did, but in the interview, “the Federal Register” is mentioned several times. For those listeners who didn’t know—and like I said, I had to look this up for myself—“The Federal Register is the official journal of the federal government of the United States that contains government agency rules, proposed rules, and public notices. It is published every weekday, except on federal holidays.” We have a link to it in the show notes, but that gets mentioned several times.
Tom: It does. Good point, because if you don’t live in this world, you might say, “Is it a law?” Because like here at the university, we have laws that we are bound by because we’re a public university but then we also have regulations that are institutional, and we have regulations that are system and you know, so, this is similar but at a federal level.

Kelvin: Now we can cut.

Tom: Now, through the magic of podcast time travel, here’s the interview with Russ and Cheryl.

(musical transition)

Tom: Cheryl and Russ, thank you for being on TOPcast.

Russ Poulin: Oh, it’s so great to be here!

Cheryl Dowd: Yeah, thanks for having us.

Tom: Absolutely. So, we are in this scintillating world of government regulation and policy.

(long pause)

Russ: That’s great!

All: (laughing)

Cheryl: Very exciting.

Tom: That was a long pregnant pause there.

Russ: Fun with regulations! Yes!

Tom: I actually am personally very interested in it, and I find it fascinating, and it's one of the reasons why I go to WCET’s Annual Meeting because I learned so much, and as we were sort of chatting before we pressed record, the session, Cheryl, that you did this year on state authorization in particular, people were like lined up against the walls and sitting on the floor. There was a lot of interest in this.

Russ: Yeah, there really was. Yeah.

Tom: So, maybe that is a good place to start. Like, why is policy so important to the work that we do in online learning? It's not just about course design and faculty development. I mean this is a huge piece of it, that has a huge influence on so much of us.
Russ: Yeah, and it's important to realize that policy could come from several different places because we'll be talking mostly about the federal policies today, but states have their own policy because they have their interests. Accrediting agencies: that's another one we all dearly love and work with and then institutions have their own policies, and typically these all come from a couple of different places. Probably one of the most important one is in terms of while we often don't want to think of students as consumers or as the clients out there, that there is a consumer protection aspect. We want to make sure that if we say something about what we're offering that indeed that is what we're offering and so, we have those issues. Another one is I often like to say that, you know, some of the policies are somebody did something dumb and they want to make sure you don't do a dumb thing as well, and so…

Tom: You're in the state of Florida.

All: (laughing)

Tom: We're famous for that, and you talk about consumer protection. It took a while for us to get into SARA—the State Authorization Reciprocity Agreement—because so many bad actors just kind of filter their way down to the bottom of the country here and collect in this little peninsula. And we had so many little storefront, you know, diploma mills. The folks in Tallahassee took consumer protection really seriously.

Russ: Yeah. Well, and I've heard, you know, Florida is an interesting place for all sorts of things.

Tom: Yes, it definitely is. Florida Man is a nice account to follow on Twitter.

Russ: Oh yeah, I'll have to look at that, but a lot of it is, you know, just making sure that we're treating people correctly, and then the other part of it too has to come with protecting investments that the federal government has put a lot into federal financial aid, the states have put a lot into their institutions, and you have all these, so they want to make sure that the investments are going where they intend.

Tom: Yeah. Makes sense, and I think it sort of levels the playing field for everybody and makes sure that everybody is protected.

Russ: That's the theory!

Tom: When it's working right! Well, maybe we can kind of start with some of the new regulations that have accreditation implications. You've been talking about some of those recently and maybe you can hit a few highlights that would be germane to our listening audience.
Russ: Oh, yes! Yeah, so, out of the regulatory efforts that have happened this year, there are three packages that are coming out, and the first one was released in the Federal Register on November 1 of this year. And so these are rules that will be going into place no later than July 1 of next year, and there's a bunch of them. *(laughing)*

Tom: Let's say July 1, 2020.

Russ: 2020, yeah.

Tom: Because this may not make it in 2019.

Russ: Oh okay, so July 1, 2020. It'll be no later than that. There are some that could go into effect earlier—and Cheryl will talk about those and what happens there—but so, well, there's several of them. We'll highlight a few just to let you see what's going on. One has to do with student identity, so making sure that the student who takes an assessment is the same one who is the one who registered for the course. They used to have something around that that had to do with…They gave the example of an ID or face-to-face proctoring and then they had some weird language about or some “other electronic thing.” It wasn’t exact.

Tom: Yeah, I know SACS accreditation requirements, which we live by here in the south, and it really was…A unique username and login is the minimum standard.

Russ: Yeah, and how did that work for us?

Tom: Yeah, I mean, certainly that’s not the minimum that we do.

Russ: Right. So we do more, and so, I was part of the subcommittee on negotiations that actually at one point we had written in there that were we looking at this for all students? Not just the distance ed. students? Sorry, I lost. *(laughing)*

Tom: *(laughing)* Those big lecture halls.

Russ: Yes, yeah, and so, this regulation is for just the distance ed. students, and they took out those items…They took out the items that had to do with the logins and all that. And by doing that, what they're really doing is that they're saying there's a lot of interest in working with the accrediting agencies, and the idea is that the accrediting agency is supposed to work with the institution, so that the institution comes up with, “Here's what we do and here's the evidence of why it works,” and so it'll be interesting to see—the accreditors just got this, too—and so it'll be interesting to see what each of them do in terms of exactly what are they going to expect of institutions? So, we see the direction. We don't know exactly what the accreditors will do. I would expect probably a higher standard out of most places.

Tom: Yeah. Cool. Are there other regulations that you think would be of interest?
Russ: Yeah, there's another one that came out. There's been a lot of talk about regular and substantive interaction.

Tom: Oh yeah.

Russ: And that's one that actually did not come out in this. It will be coming out very soon and we'll see more about this, but I talk about it because it was very hard to write a regulation about regular and substantive interactions for things like competency-based education that by definition are not regular and I know. I tried, as well as the others on the team who tried that. But one of the things that came out of that is in these accreditation regulations is the idea of some sort of flexibility that accreditors can give for innovations that we can't even imagine yet. And so, as long as the institution is protecting the students and they're following most of the guidelines that the accreditors can allow some leeway, and it'll be interesting to see how that gets put in. So the things that we can't quite fit, like competency-based education, is there a way for that or other things that we can't imagine to have it? So, that's a great plus in my book.

Tom: Yeah, I think that's great. It's something that a lot of us have been advocating for for a long time. Hopefully some other areas of federal regulations around financial aid or other things that are limiters for us and some of that kind of innovation will also evolve.

Russ: Sure, sure. Yeah, and then, I'll do just a couple more. I could go on for quite a while and I know you only have so much time. So, one that looks like they're looking again at: if a distance ed. program grows by more than 50% that's an automatic review. That's something to look at, and they also looked at something completely different. They looked at the standards for faculty and dual credit. That they gave more leeway to the accrediting agencies to allow more leeway for different types of faculties for those dual credit that you don't have to have as high as standards as maybe you would for an R1 institution. Whether accreditors or institutions will do anything with that, we'll see, but at least they're trying to address some of the issues we've seen in the past on dual credit.

Tom: And are there some resources we can link to maybe at WCET for the show notes?

Russ: Yeah! So, on WCET, on our website, and also our blog is wcetfrontiers.org. We've been writing up on these and we'll do more.

Tom: Great. Well, let's turn Cheryl to the wonderful world of state authorization and the wonderful word of reciprocity. Right? (laughing)

Cheryl: That's true! That's true. That's a part of the packages that came out. So, when we talk about that, Russ was indicating that there are three packages likely the department's been talking about putting these consensus regulations together to put out. The first came out November 1 and was announced in the Federal Register, and four of the regulations had to do with state authorization, and what
the department decided is evidently the secretary has the authority to designate
certain regulations to be immediately implemented, subject to the discretion of
the institution. So, these four federal regulations in regard to state authorization
may be implemented by the institution now, or they may wait until July 1, 2020.
And so I bring this up only because it was very interesting listening to Diane
Auer Jones at the WCET Annual Meeting just recently where she indicated
that—and this is something that we advocate as well, of course—

Russ: Diane is a high ranking official in the Department of Education.

Cheryl: Thank you. Yes. So, we were fortunate to have her to be able to give us first hand
advice and suggestions for how an institution might look at this and what was
really important was that the institution should at a high level make this decision
about whether they want to early implement and make that a process at the
institution and they should document that process. And so, then we also indicate
that not only are they making this decision and documenting the process that
they've chosen and which way they choose to implement, but also show some
evidence that they are implementing it in the manner that they determined. So, in
that, there were four different regulations. The first one was one that they've been
trying to put in the books and ready to go since 2010 when it was released in its
first form: the 600.9(c). And what that did is it tied participation in HEA Title IV
programs to state compliance.

Tom: That’s the one that got everybody’s attention originally.

Cheryl: It did! And that has taken off, and although that didn't come into play because of
a lawsuit and other drama that you can add into that with other negotiated
rulemaking—2014, etc., etc.—we do have this in place right now, and that came
out of the 2016 regulations, which we could go on and on about but my point
here is that right now we know that institutions must be compliant either state to
state or they have the option of being compliant by reciprocity. And so the idea
of reciprocity was defined—and that you can find in the federal regulation—so
they're defining the ability for an institution to participate in reciprocity. It's
because reciprocity is an agreement between two or more states to have certain
processes in place, and if an institution meets the requirements of the state then
they can offer their programs under this reciprocity and all the states that are
members of reciprocity. So, there's that. So, that's two of them, and then there are
the disclosures, and that is something that really has gotten people's attention
about how to manage that.

Tom: Yeah. We’ve been having a lot of meetings on campus about this one.

Cheryl: Oh, we’re having meetings as well about what can we do to help support
institutions to create processes to do this work because it’s a challenge?

Tom: And it’s not just online.

Cheryl: The new regulations have now required that it be for all modalities.
Tom: Right.

Cheryl: So, that is another point. So, the 2016 regulations, which we said are currently in place and will be in place until July 1, 2020, or the institution can implement the new regulation because when July 1, 2020, starts, the rules will be substituted. So, it'll be that 2019 is adamant that that be in place by then.

Russ: Yeah, and these are for programs that lead for professional licensure.

Cheryl: Yes.

Tom: Right.

Russ: Yeah.

Cheryl: Now there are other disclosures that are part of that. If one was looking at the regulations from 2016 that had to do with distance education, the department chose to remove that section, but what they said is that most of those were already required in other parts of the Code of Federal Regulations, so they just pointed to these other regulations that cover that for complaints and other matters (refund policies, etc.) but in regard to professional licensure disclosures, that was added to the federal regulations for all modalities.

Tom: So, regarding the kind of professional licensure because I think that's a big one for a lot of schools to deal with. So, if you've got a teacher education program or a nursing program or, you know, a counseling program or something that has a licensure requirement, having that disclosure to students in another state, there are three different kinds of statements that the institution can make now. I wonder if you could kind of walk through what those are and what the implications are for those.

Cheryl: Sure. Well, from a federal standpoint, for purposes of federal compliance, there are general disclosures, and general disclosures require that the institution look at the program and determine if the curriculum meets the educational requirements in other states. So, you could make a list. You are to make a list of which states the curriculum does meet the educational prerequisites, a second is that it does not meet, and then a third that the institution has not made a determination of whether the curriculum meets the educational prerequisites for licensure or certification in that state, and that's for general disclosures.

Tom: Right. So, for that third category, the one which is kind of the “we're not sure. We haven't determined,” a question came up at the WCET Annual Meeting in the fall about that, and I thought it was an interesting question. One was does that mean that there's some time limit that you have until you can determine? But then I noticed that Diane Auer Jones, when she was asked a similar question around that, it was more in the context of it would require too much of an investment for the two students we have in that category that we don't want to put that burden on
the institution, and those seemed like kind of two different answers. Like one was, “we don't know if there's a time limit,” and the other is “it's up to you as an institution to determine if this is worth your time and effort.”

Cheryl: Well, and that's what I got out of hearing her speak as well, and after reading the section of the document before the regulations— it’s called preamble. So, in reading that, they really did want to put it on the institution to determine but they also thought that it could be a marketing benefit to the institution to actually make decisions, so that the students who are looking at the institution can make valued choices.

Tom: Yeah.

Cheryl: So, there are those options but I think one of the biggest things to point out is that this is for federal compliance because state compliance and reciprocity compliance may be different and have higher thresholds than the federal compliance. So, I think institutions need to be aware of that and separate state compliance from federal compliance because as Diane Auer Jones pointed out—and also you've read in the preamble—that the federal regulations do not absolve the institution from being compliant with what's required through state or reciprocity.

Tom: Do you think that some, like, organizations or consortia will start to kind of fill in some of those gaps, because I know for example, at our institution, at UCF, the College of Nursing is looking at the national nursing compact, and basically saying if you're in that, then we know, and if you’re outside that, we're actually not even going to admit you. Have you seen any trends like that with organizations like that?

Cheryl: Well, there is the nursing that we have heard and then there are certain teaching compacts but all of that is post-licensure.

Tom: Okay.

Cheryl: So, I do think that that's something once we get communication out about these concerns—and that's something that we're trying to take an active role in because we don't know if the professional boards are really as aware of what these requirements are. So, we want to let all of the communities know that are affected by this so that we can maybe have these conversations, you know, in the years to come. But currently, I think Russ may have some additional thoughts on that.

Russ: Yeah, and it is really hard within the professions because you have to go profession by profession—

Tom: Yeah.
Russ: discipline by discipline in order to make this happen, and there hasn't been much that's been compelling them to do it because we've been talking to them up to this point, and then now there's something, “hey, this is a little more compelling.” The other is that the one that is farthest along, as you brought up, nursing is that they actually have something in draft at the pre-licensure area that would help for this where that it would be an agreement among states that they could put out there. What happened was that they decided to hold off on doing that because they wanted to go back and promote the post-licensure. The post-licensure reciprocity agreement got stalled at 25 states. They've rewritten it. Now they're up to 30 some states. I think they're hoping to be 35 after next legislative session. And so now we're maybe to the point and we've started a discussion with them about “can we resurrect that the one at the pre-licensure?” Because I tell you it's a model. They've done a really great job at the National Council State Boards of Nursing, and if we can get that one going—and it will take a while, even if we could get it going today, to get that rolling—that it would be a model for others to go by, so there's some things there. But don't hold your breath and don't wait for it.

Cheryl: Right.

Tom: Yeah, understood. Well, thank you both. This has been a really great quick flyby.

Cheryl: Sure!

Russ: Lots of things!

Tom: Yeah, and there's certainly a lot more we could talk about, but this is kind of an ever evolving topic, right? So, if you are open to it, I hope you'd be willing to maybe talk about this again as things evolve and the TOPcast audience is dealing with all of these regulatory changes.

Russ: We'd love to do so! Thank you for inviting us here today.

Tom: Yeah. Absolutely. So, thank you very much.

Cheryl: Thank you!

(musical transition)

Kelvin: Well, that was your interview with Russ and Cheryl, Tom.

Tom: It was! Yeah. I really enjoyed the conversation with them. I always learn something talking to either one or both of them or attending their sessions at various conferences. As I said in the interview, the session that Cheryl had about state authorization at the WCET Annual Meeting was standing room only. Like, you couldn't even get in the room. There [were] no seats, because people were really interested in it. And you know, if you look at what these new
regulations…Well, the deadline related to these new regulations. I think that's one reason why there was so much interest. We're looking at a July 1, 2020, implementation deadline. Obviously you can implement prior to that, but you can't wait past that. So, there were a lot of people there wanting to know what does this mean for me and what do I have to do to make sure I'm in compliance?

Kelvin: And a little shout out: we are adding a link in the show notes on the website (topcast.online.ucf.edu) to a very substantive Frontiers blog posting on this specific topic.

Tom: Yeah, and I would encourage you to sign up to receive that publication—Frontiers blog that comes out regularly from WCET—because they've got really the most thorough and up to date information from pretty much any source.

Kelvin: Mhmm.

Tom: So, I don’t know. Did you learn anything, Kelvin?

Kelvin: *(laughing)* What a loaded question.

Tom: That you didn’t already know?

Kelvin: I don’t live this policy stuff as much. It’s like…Policy is an acquired taste. I have to work at, you know, getting my head around that kind of stuff. I don’t live in that world. I have difficulty navigating the Federal Register because I'm not there every day. Didn't know what it was. That kind of stuff. So yes, all kinds of things and nuances. I'm just glad that people like Russ and Cheryl are on the wall.

Tom: *(laughing)* That’s right! Patrolling that wall, keeping us safe at night. And no, it’s true. You get to an interesting point because I think a lot of what we talked about on this podcast and I think a lot of the folks that listen to this may be more involved in sort of the day to day course development, instructional design, you know, faculty practice, effective instructional practice, as well as maybe some leadership stuff that we talk about, and we don't talk about this kind of behind-the-scenes policy stuff as often. As you mentioned, we did on episode #28 previously, but in many ways it has as much influence as any of these other things on what we do when you think about the requirements for compliance that that will drive some of the decisions in practice.

Kelvin: It’s highly strategic.

Tom: Yeah.

Kelvin: And structural, and there’s a big sense in which that is leadership itself.

Tom: Yeah, absolutely. Yeah, and you cannot ignore it. So, if you are an online learning leader at your institution and you're listening to this—and I'm sure
you're doing stuff related to state authorization and compliance—but if you don't have somebody whose responsibility it is to track this stuff and at least just keep one eyeball on it at all times, then you may be putting yourself at risk.

Kelvin: Yeah, for sure. Well, that being said, you want to formally land this plane with a little summary?

Tom: Sure. Let's see what we got here. So, much of our daily online education work relates to the preparation for design and development of and teaching and supporting online courses. However, as I, you know, kind of was just alluding to behind the scenes with implications for all of us are policies and regulations that structure our daily work, and it would behoove us to all pay attention to those policies and regulations.

Kelvin: Yeah. Well said. Well, the only plug I'll make this month is a “Hey, we're going to do this twice a month for 2020.”

Tom: So stay tuned! (*laughing*)

Kelvin: That's right. And if you get tired of it, don't wait till December of 2020 to tell us. Shoot us a note at topcast@ucf.edu and just tell us to back off or something. We'll take it under advisement.

Tom: (*laughing*) But give it a month or two.

Kelvin: That's right.

Tom: Because we do have some excellent interviews coming.

Kelvin: We really do. That being said, until next time for TOPcast, I’m Kelvin.

Tom: And I’m Tom.

Kelvin: See ya.