



June 17, 2020

To: California Community College Chief Executive Officers
California Community College Chief Business Officers
California Community College Student Services Officers

Re: **Legal Advisory 2020-07: Student Eligibility for CARES Act Emergency Aid**

This morning the United States District Court for the Northern District of California issued a preliminary injunction in the case entitled *Oakley v. DeVos*, Northern District of California Case No. 4:20-cv-03215. The injunction prohibits the United States Department of Education from imposing *any* student eligibility restrictions on Higher Education Emergency Relief Funds (“HEERF”) provided by Congress in the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”), Pub. L. No. 116-136, 134 Stat. 281 (2020).

The practical effect of this ruling is that California Community Colleges may immediately disburse emergency financial aid grants to students for expenses related to the disruption of campus operations due to coronavirus (including eligible expenses under a student’s cost of attendance, such as food, housing, course materials, technology, health care, and child care), without regard to a student’s eligibility under Title IV of the Higher Education Act or their immigration status.

Today’s ruling is attached for the convenience of your district legal counsel.

The U.S. Department of Education’s Enjoined Limitations on Student Eligibility

The district court’s ruling prevents the U.S. Department of Education from enforcing the limitations on HEERF student eligibility described in this section against the California Community Colleges or its students.

Beginning in April 2020, the U.S. Department of Education issued a series of statements, guidance documents, and an Interim Final Rule, which took a variety of positions on student HEERF eligibility, but ultimately settled on an attempt to prohibit students who are ineligible for student aid under Title IV of the Higher Education Act; and/or are ineligible under 8 U.S.C. §

1611, an earlier statute that denies “federal public benefits” to certain “non-qualified” individuals based on immigration status. The district court ruled that Congress did not intend these student eligibility restrictions to apply to HEERF Assistance.

Among the students who have been precluded from CARES Act eligibility by the U.S. Department of Education’s various guidances and the Interim Final Rule, are the following:

- dreamers with or without Deferred Action for Childhood Arrival status;
- other students with undocumented status;
- students with pending asylum applications;
- students with Temporary Protected Status or Deferred Enforced Departure status;
- students with U-visas;
- students who do not have a high school diploma or GED or equivalent;
- students enrolled only in non-credit courses;
- students who have not registered with Selective Service (males 18-25);
- students are also enrolled in high school;
- students who have not maintained a “C” average or above by the end of their second year; and
- students who are in default on a federal student loan or owe any refund amount on a federal student grant.

See 20 U.S.C. § 1091(a)(1)-(3), (c), (d); 34 C.F.R. § 668.32. Notably, the last six categories of students include citizens and non-citizens alike. The Chancellor’s Office calculated that these eligibility requirements precluded approximately 800,000 of the 1.5 million California community college students enrolled in the spring of 2020 from receiving HEERF student assistance. Of these students, we estimated that 275,000 would be eligible under Title IV, but were precluded from receiving HEERF Student Assistance because they had not previously applied for federal financial aid, and so would have no practical means to establish their eligibility.

California community colleges may now consider students who fall within any of the above categories to be eligible to receive HEERF Assistance.

What Community Colleges Should Do Now

Under the district court’s ruling, California community colleges may immediately disburse emergency financial aid grants to students for expenses related to the disruption of campus operations due to coronavirus. The Chancellor’s Office has previously issued guidance on the appropriate uses of HEERF Assistance. These are reiterated below:

The CARES Act allows institutions of higher education to use HEERF Assistance “to cover any costs associated with significant changes to the delivery of instruction due to the coronavirus,” subject to only two express conditions. First, the funds cannot be used for “payments to contractors for the provision of pre-enrollment recruitment activities; endowments; or capital outlays associated with facilities related to athletics, sectarian instruction, or religious worship.” Second, at least 50 percent of the funds must be used “to provide emergency financial aid grants to students for expenses related to the disruption of campus operations due to coronavirus (including eligible expenses under a student’s cost of attendance, such as food, housing, course materials, technology, health care, and child care).” The remaining 50 percent may be used for any costs related to changes to delivery of instruction due to the coronavirus which may include additional student assistance.

Implications of CARES Act Relief Under the Public Charge Rule

The district court’s ruling authorizes disbursement of funds to immigrants, regardless whether they are documented or undocumented, which may raise questions concerning the application of the Public Charge Rule under federal immigration law.

In August 2019, the Trump Administration issued a regulation that dramatically expanded immigration authorities’ consideration of the receipt of public benefits to applications for green cards or a change in immigration status. The new regulation defines a “public charge” as “an alien” who receives one or more defined public benefits for more than an aggregate of 12 months within any 36-month period, and includes among the benefits to be considered “cash assistance for income maintenance.” 8 Code Fed. Regs. § 212.21(a). Although the term is undefined, we are unaware of any instance of “cash assistance for income maintenance” being applied to temporary disaster relief.

HEERF grants provided through the CARES Act are “for expenses related to the disruption of campus operations due to coronavirus (including eligible expenses under a student’s cost of attendance, such as food, housing, course materials, technology, health care, and child care).” CARES Act § 18004(c). A limited-time cash payment to cover expenses—including living expenses—that were incurred as a result of the disruption of campus life is not “income maintenance,” and should not be relevant to whether a student is likely to become reliant on the public benefits listed in the public charge rule. In fact, use of emergency financial aid to address losses associated with the coronavirus’s disruption of campus operations will help eligible students avoid needing benefits that are relevant to a public charge determination.

It is important that community colleges conform to the intent of the CARES Act by distributing Student Assistance grants to address costs incurred as a result of campus disruption related to the coronavirus. In addition, colleges should:

- make clear that HEERF funds are not to be used to replace regular income;
- make awards based on costs incurred due to campus disruption related to the coronavirus, rather than based on student income or wealth; and
- make clear that HEERF is time-limited and only provided as a result of the public health emergency.

Colleges can provide the following information to students:

- Although HEERF provides cash assistance to students, it is intended to defray costs related to the current public health emergency and is not “income maintenance,” and therefore should not be considered a “public benefit” for public charge purposes;
- Students who have lost income due to campus jobs being suspended should seek relief for lost earnings through federal or state-funded COVID-19-related unemployment benefits rather than CARES Act emergency financial aid grants, because unemployment benefits are excluded from public charge determinations; and
- Non-citizen students concerned about potential public charge consequences should consult with an immigration attorney. Legal resources for undocumented students are identified on the Chancellor’s [Undocumented Students page](https://www.cccco.edu/Students/Support-Services/Special-population/Undocumented-Students) (<https://www.cccco.edu/Students/Support-Services/Special-population/Undocumented-Students>).

Attachment: Preliminary Injunction Ruling