

July 25, 2019

Secretary Betsy DeVos  
U.S. Department of Education  
400 Maryland Avenue SW  
Washington, DC, 20202

Dear Secretary DeVos,

The Department of Education's (Department) July 22 announcement that California residents who are pursuing online education offered by out-of-state public and non-profit institutions are ineligible for Title IV student aid will have a severe negative impact on an estimated 80,000 students and hundreds of institutions—through no fault of those students or institutions.

The Department's notice comes roughly one month before the start of the traditional academic year. At this point, students have already enrolled and selected programs of study, and institutions have informed students of their financial aid eligibility. The sudden loss of access to Pell Grants, supplemental grants, and federal student loans not only puts those plans at risk, but the short window of time between the announcement and the start of courses effectively precludes most students from being able to pursue other options. In short, the likely outcome will be that thousands of students are either forced to drop out of, or never begin, postsecondary education. We have already heard from several institutions that will do whatever they can to address any gaps in student funding that occur as a result, but this is at best a temporary solution.

We understand that the Department is compelled to take this action as a result of a federal district court judge's April 26, 2019, order in *National Education Association v. Betsy DeVos* that caused the 2016 state authorization rules to take effect on May 26 and that the court's ruling limits the available options to address the concerns with respect to California residents. Given these circumstances, we urge the Department to immediately pursue two courses of action.

The first of these would be to separate the state authorization provisions of the pending final rule on accreditation and other issues (described in the NPRM at 84 Fed. Reg. 27404), and issue a final rule related to the state authorization provisions on an expedited basis. Specifically, we encourage the Department to exercise the Secretary's authority under the Higher Education Act to designate the regulations for early implementation effective immediately upon issuance of the final rule, which would give institutions the option to put the rule in place immediately. As those rules reached consensus in negotiated rulemaking and the NPRM received a small number of comments (not all of which addressed the changes to state authorization), our belief is that this could be done

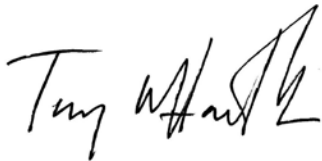
Letter to Secretary DeVos Regarding California Students  
July 25, 2019

rapidly with appropriate coordination with the White House and the Office of Management and Budget.

The second course of action would be for the Department, working with the Department of Justice, to immediately file a motion with Magistrate Judge Laurel Beeler of the U.S. District Court for the Northern District of California requesting a further stay of her April 26 order while the decision is on appeal at the 9<sup>th</sup> Circuit. The Department could request that the stay be granted on a temporary basis and could be limited specifically to the part of the rule related to the complaint process—allowing other parts of the 2016 rule to remain in effect. We note that in her April 26 order, Judge Beeler acknowledged that a 30-day stay before the rules took effect May 26 was appropriate to “minimize the risk of any supposed ‘confusion’ or ‘disruption’”—so we believe it would not be unreasonable for the Department to suggest a limited stay under the circumstances. Given the imminent and harmful, if unintended, consequences of the decision on students, we strongly believe that immediate action to remedy the situation must be pursued in the court. Such an approach would likely be the quickest way to resolve the concerns of impacted students and avert any damaging consequences.

We appreciate that the Department is in a difficult and unprecedented position not of your choosing, and that the Department has made prior efforts to address this set of circumstances. Our members are eager to work with you and the Department to prevent any harm to students, and we urge you to pursue the remedies identified above as soon as possible.

Sincerely,

A handwritten signature in black ink, appearing to read "Terry W. Hartle". The signature is written in a cursive, slightly slanted style.

Terry W. Hartle  
Senior Vice President

On behalf of:

American Association of Community Colleges  
American Association of State Colleges and Universities  
American Council on Education  
Association of American Universities  
Association of Public and Land-grant Universities  
National Association of Independent Colleges and Universities