

ED Reinstates Title IV Eligibility to California Students

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Putting an end to a crisis that jeopardized access to Title IV to 80,000 California students, on Friday, Acting Under Secretary of Education Diane Auer-Jones wrote to the head of the California Department of Consumer Affairs informing him that ED is withdrawing its directive to deny federal financial aid eligibility to California students enrolled in online courses offered by out-of-state public and nonprofit universities.

As we previously reported, this spring, a federal district court reinstated the 2016 version of ED's distance education rule promulgated in the final days of the Obama administration. Enforcement of that rule was then suspended by incoming Secretary DeVos pending a contemplated replacement rule, which was finalized in a department rulemaking earlier this year. The lawsuit successfully challenged ED's delay of the 2016 rule, and the court ordered the 2016 rule to become effective May 26, 2019.

At issue in the California crisis is a provision in the 2016 rule that requires, as a condition of eligibility to award Title IV assistance, the existence of a student complaint process in the states in which a school enrolls online students. At the time of the court's decision, California's complaint process only covered out-of-state for-profit institutions; the state did not have any complaint process applicable to out-of-state public and nonprofit institutions.

With the 2016 rule forced into effect, ED issued guidance on July 22 stating that California students enrolled in those institutions not covered by California's complaint process would not be eligible for federal financial aid.

Chaos ensued. In response to concern from much of the higher education community and numbers of states, California lawmakers and regulators rushed to find a way to comply with the 2016 rule that would satisfy ED. California set up a new consumer complaint process for impacted students administered by the California Department of Consumer Affairs. That process largely consists of referring complaints to other agencies, which raised concerns that the California solution might not satisfy the apparently more stringent requirements of the 2016 rule. Until Friday, no one at ED was prepared to comment on whether the process was sufficient, and as a result, there has been considerable uncertainty as to the risk of disbursing Title IV aid to California students.

In her letter Friday, Under Secretary Auer-Jones removed those doubts. She stated that although ED remains "concerned that certain aspects of the plan do not comply" with the Obama-era rule, it would nonetheless "assume" California will take steps to address those issues. Importantly, ED stated that in order to avoid disrupting students' educational programs, the department will not penalize schools for disbursing federal grants and loans to affected students. The letter also expressly stated that the department will consider California to have had an acceptable plan in place dating back to May 26, 2019, ensuring ED will not attempt to recoup funds already made available to students.

ED has also indicated its intention to seek "early implementation as soon as possible" of the new distance education rule adopted in the recent negotiated rulemaking, which offers considerably more flexibility with respect to student complaint process requirements. Remember that while the 2019 rule eliminates the complaint process requirement and several of the disclosure requirements contained in the 2016 rule, certain other requirements will remain, notably the requirement to obtain state authorization for distance education programs in every state where enrolled students are located and where authorization is required and specific disclosure requirements for programs leading to professional licensure, including on-ground and well as online programs. Our full summary of the 2019 rule is [here](#).

It is fair to conclude that the risk of students being left without access to Title IV loans and grants is now vanishingly small. However, there do remain questions over the transition from the 2016 to the new 2019 rule. While California regulators are almost certainly going to further modify their procedures in an effort to fall more in line with the federal requirements, and likewise ED is very likely to accept anything remotely demonstrating good faith, it is always possible the plaintiffs in the federal lawsuit that touched off this wildfire could seek to roll back the state's solution as inconsistent with the legal requirements.

We will continue to keep a close watch on developments in the Golden State.

Nancy Anderson focuses on regulatory issues affecting higher education institutions, including compliance with federal, state and accrediting agency requirements.

Mike Goldstein has been a pioneer in the development of new and more effective and efficient approaches to education in general and eLearning in particular through the creation of innovative approaches to combining the resources and interests of the various sectors of the education, technology, financial and governmental communities.

Paul Thompson counsels schools and technology companies that provide services to schools on regulatory challenges in the education sector.

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