

MOTION BY SUPERVISORS HILDA L. SOLIS AND  
SHEILA KUEHL

May 26, 2020

**Protecting Student Access to Emergency Aid Regardless of Immigration Status**

On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”) was signed into law in order to provide economic relief to individuals and institutions struggling with the economic impact of the COVID-19 pandemic. The CARES Act created a \$14 billion Higher Education Emergency Relief Fund (“HEERF”) and directed the U.S. Department of Education (“Department”) to allocate HEERF aid to educational institutions based in part on their full-time enrollment of students, regardless of those students’ immigration status. The CARES Act further instructed educational institutions to use at least half of their HEERF aid to provide emergency relief to students for expenses related to campus disruptions. The CARES Act neither imposed eligibility requirements for student recipients of HEERF aid, nor instructed the Department to adopt such eligibility requirements.

Although the Department initially acknowledged that HEERF aid would be available to all students, the Department unilaterally changed its position in published guidance documents for higher education institutions. The guidance stated that HEERF

MOTION

SOLIS \_\_\_\_\_

RIDLEY-THOMAS \_\_\_\_\_

KUEHL \_\_\_\_\_

HAHN \_\_\_\_\_

BARGER \_\_\_\_\_

aid for students would be subject to the eligibility restrictions in Title IV of the Higher Education Act. These additional restrictions exclude undocumented students, DACA recipients, students with Temporary Protected Status, and asylum seekers—as well as students without a high school diploma or GED, students who do not meet academic progress standards, or students in default on a federal loan, regardless of immigration status—from receiving HEERF emergency aid, even if they had suffered financial hardship related to campus disruptions.

Two lawsuits have been filed in federal district courts challenging the Department's eligibility restrictions: *Oakley, et al. v. DeVos, et al.* in the Northern District of California, brought on behalf of California community college districts including Los Angeles Community College District, and *Washington v. DeVos, et al.* in the Eastern District of Washington. Plaintiffs in both cases argue that the Department has violated the U.S. Constitution's separation-of-powers principles by imposing restrictions on CARES Act funds without congressional authorization. Plaintiffs also contend that that the eligibility restrictions violate the Constitution's Spending Clause because they are not sufficiently related to the purpose of the HEERF grant program, were not unambiguously provided by Congress, and were imposed by the Department after recipients had accepted HEERF grants. Plaintiffs also claim that the Department's eligibility restrictions constitute unlawful and arbitrary-and-capricious agency actions in violation of the Administrative Procedure Act.

Hundreds of thousands of students are pursuing higher education in Los Angeles County (County) and have been impacted by the closure of college campuses and others educational disruptions caused by the COVID-19 pandemic. Thousands of the County's

students are suffering financial hardship as a result. Congress provided for emergency aid to help all students, but the Department's eligibility restrictions prevent that aid from reaching some of the most vulnerable students. Already, the Los Angeles Community College District (LACCD) estimates that the Department's restrictions have excluded 16,000 of LACCD's previously eligible low-income community college students from accessing needed emergency aid. Educational institutions in Los Angeles County will have to divert staff to revise emergency aid plans, seek other sources of funding to support their students, and face increased disenrollment of ineligible students.

Students pursuing higher educational opportunities represent the future of Los Angeles County. These students make vital contributions to the County and lift its economic prosperity. As the County copes with the economic impacts of the COVID-19 pandemic, the County's priority is to support students so that they can continue to pursue their higher education and contribute to the County's economic recovery.

**WE, THEREFORE, MOVE** that the Board of Supervisors authorize County Counsel to join and/or file an amicus brief in support of the Plaintiffs in the Oakley, et al. v. DeVos, et al. and Washington v. DeVos, et al. lawsuits and to evaluate and make recommendations to the Board about the County's participation as amicus in other lawsuits concerning the U.S. Department of Education's restrictions on student eligibility for HEERF aid, as deemed appropriate by County Counsel.

# # #

HLS: jv