



April 2, 2014

Via U.S. Mail and Electronic Mail

Connecticut Students for a Dream
c/o The Jerome N. Frank Legal Services Organization
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Re: Petition for Rulemaking: Connecticut Students for a Dream

Dear Members of Connecticut Students for a Dream,

On March 7, 2014, the Board of Regents for Higher Education, the Office of Higher Education for the State of Connecticut and the University of Connecticut received your petition, pursuant to section 4-174 of the General Statutes, requesting promulgation of regulations that would allow undocumented Connecticut students to access financial aid from state institutions of higher education. While we have very seriously considered the position expressed in your petition, we are unable to take action on your request.

Neither the Board of Regents, nor the Office of Higher Education, nor the University of Connecticut has the power to promulgate regulations concerning general financial aid. Even if we did have the power to promulgate the rulemaking you request, we would by necessity deny your petition because federal law prohibits us from granting the benefit you request absent legislative action by the General Assembly.

Your petition for promulgation of regulation is filed under section 4-174 of the Uniform Administrative Procedures Act, Chapter 54 of the Connecticut General Statutes. The Board of Regents for Higher Education is explicitly exempt from certain provisions of the Uniform Administrative Procedures Act, including section 4-174, by section 4-186(e) limiting the application of the Uniform Administrative Procedures Act to the Board of Regents in the manner described in section 10a-7 of the General Statutes. Section 10a-7(b) states that policies established by the Board in the preceding section 10a-6 "shall not be deemed to be regulations as defined [in the Uniform Administrative Procedures Act]," provided that any such policies must still be promulgated after a

reasonable opportunity for interested persons to present their views. Gen. Stat. §10a-7(b). Because the Board of Regents' policies are not regulations, the Board cannot be petitioned to promulgate, amend, or repeal any such policy. Furthermore, Public Act 13-247 revised the statutorily defined duties of the Board of Regents within section 10a-6 so that they no longer include establishment of state-wide student financial aid policies.

For the Office of Higher Education, the power to promulgate regulations only exists for procedures governing the award of financial assistance for Scholarships for Vietnam era veterans, Gen. Stat. §10a-167, and the Governor's Scholarship grant program, Gen. Stat. § 10a-173. Gen. Stat. § 10a-161. Other policies established by the Office of Higher Education are for internal management only and do not constitute regulations of general applicability established in accordance with the Uniform Administrative Procedures Act. Likewise, policies established by the Board of Trustees of the University of Connecticut are for internal management of the University only and do not constitute regulations of general applicability under the Uniform Administrative Procedures Act.

While we are not obligated to respond to a request for policy promulgation under General Statutes section 10a-7(b), please consider this letter to be your answer to any such policy request by the Board of Regents for Higher Education, the Office of Higher Education and the University of Connecticut.

Even if we had the power to promulgate regulations concerning financial aid policies, we would deny your request because federal law prohibits a state agency from granting financial aid to undocumented immigrant students. Title 8 of the United States Code, section 1621, provides that individuals present in the United States in undocumented status are not eligible for any State or local public benefit, which is defined to include both postsecondary education payments or assistance and grants. 8 U.S.C. § 1621(c)(1)(A) and (B). Public institutional aid falls within this definition of "benefit" under 8 U.S.C. § 1621. The statutory tuition revenue set-aside discussed in your petition identifies institutional aid as "financial assistance." Gen. Stat. §§ 10a-77(f); 10a-99(f); and 10a-105(g). The Governor's Scholarship program administered by the Office of Higher Education defines financial aid administered through its program as a "grant." Gen. Stat. § 10a-173.

Federal law has provided a clear pathway to access the benefit you seek. Pursuant to 8 U.S.C. § 1621(d), the State of Connecticut has the authority to provide undocumented immigrants with eligibility for public benefits, such as financial assistance for postsecondary education at public institutions, upon the enactment of a state law affirmatively providing such eligibility to the undocumented immigrant population. As discussed in your petition, other states have taken advantage of this opportunity to provide public institutional aid to the undocumented student populations at their state colleges and universities. We would require the enactment of similar legislation to grant public institutional aid to Connecticut undocumented students.

The Board of Regents, the Office of Higher Education and the University of Connecticut seek to ensure that a quality, affordable education remains accessible to all students. We are open to future legislative action that would address the benefit you seek. We cannot, however, provide financial assistance in the form of institutional aid to undocumented students through agency regulation that we do not have the power to promulgate absent action by the General Assembly.

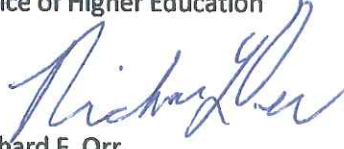
Sincerely,



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