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Via E-Mail Transmittal

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RE: Oakley v. DeVos Litigation Update & Student Eligibility for HEERF II and III

Dear Colleagues:

I write to update you regarding the status of pending litigation with the United States Department of Education (DoE), and to explain the eligibility of California community college students to relief under all three tranches of funding in the Higher Education Emergency Relief Fund (HEERF).

In May 2020, our office, along with five California community college districts, challenged the DoE's imposition of student eligibility requirements on the distribution of HEERF grant funds allocated under the CARES Act on the basis that Congress intended to provide relief to students without regard to their eligibility under Title IV of the Higher Education Act, or their documented status. The Court in the Northern District of California agreed with our reasoning and, on June 17, 2020, entered a preliminary injunction against the imposition of those eligibility requirements. As a result of the preliminary injunction, California's community colleges have distributed HEERF grant funds allocated under the CARES Act to their students without regard to any eligibility restrictions, pending final resolution of the case.

Since the issuance of the preliminary injunction, Congress has allocated additional HEERF grant funds through the CRRSAA and the American Rescue Plan. The terms of use contained in CRRSAA, which are incorporated into the American Rescue Plan, are substantially similar to those in the CARES Act. Thus the Court's interpretation of the statutory language in the

CARES Act, which formed the basis of its injunction, would appear to apply to the subsequent allocations of HEERF grant funds by Congress.

Today, we confirmed with the DoE that in light of the existing preliminary injunction, it will not enforce its student eligibility restrictions against the California community colleges with respect to HEERF II and III. In other words, California community college students are eligible for relief from HEERF I, II, and III, without regard to their eligibility under Title IV of the Higher Education Act, or their documented status, at least while the preliminary injunction remains in effect.

The pending litigation is stayed until mid-June while the Biden Administration considers its next steps. We continue to hope that discussions with the DoE will result in a full and final resolution of the case in the near future. We will update you when future developments occur.

Thank you for your attention.

Yours sincerely,

Marc LeForestier

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