



NORTH CAROLINA COMMUNITY COLLEGE SYSTEM

R. Scott Ralls, Ph.D.

President

August 1, 2013

IMPORTANT INFORMATION

MEMORANDUM

TO: Community College Presidents
Community College Chief Academic Officers
Community College Student Development Administrators
Community College Registrars
Community College Continuing Education Officers
Community College Public Information Officers

FROM: Q. Shanté Martin, *General Counsel*

**RE: Admission of Students with Deferred Action for Childhood Arrivals
("DACA") Classification**

The federal government's implementation of the DACA Program prompted a change in the treatment of individuals who were not lawfully present in the United States. Because of the federal government's change in the implementation of immigration laws, individuals who previously met the State Board's definition of an "undocumented immigrant" no longer meet the State Board's definition of an "undocumented immigrant" during the period of deferment. The purpose of this memo is not to communicate a change in the State Board's "Admission to Colleges" policy, but to give colleges clarification on how individuals with DACA classification should be treated under the State Board's current "Admission to Colleges" policy. Again, it is important to note that the State Board of Community Colleges has not amended its "Admission to Colleges" policy.

I. Background

In a memo dated June 15, 2012, the Secretary of Homeland Security, Janet Napolitano, provided direction to U.S. Customs and Border Protection, U.S. Citizenship and Immigration Services and U.S. Immigration and Customs Enforcement on how to exercise prosecutorial discretion in the enforcement of immigration laws against certain individuals brought to the United States as children. The Department of Homeland Security provided that individuals satisfying all of the following criteria are eligible to have removal from the United States deferred for two years:

- 1) individuals who came to the United States under the age of sixteen, were present in the United States on June 15, 2012, and are presently under the age of thirty;
- 2) individuals who have continuously resided in the United States for at least five years prior to June 15, 2012;
- 3) individuals who are currently in school, have graduated from high school, or is an honorably discharged veteran;
- 4) individuals who have not been convicted of any serious criminal offense;
- 5) individuals who do not pose a threat to national security or pose a threat to public safety

This deferral program is described as Deferred Action for Childhood Arrivals (“DACA”).

In a January 17, 2013 Attorney General’s opinion (“AG Opinion”) to the Acting Commissioner of the Division of Motor Vehicles (“DMV”), the AG’s Office determined that while individuals granted deferred status under the DACA program did not have a “lawful status” in the United States, the grant of deferral establishes “lawful presence” during the period of deferment. The AG Opinion to the DMV prompted questions about whether individuals with DACA classification were considered to be “lawfully present” for the purposes of the North Carolina Community Colleges’ “Admission to Colleges” rule. Therefore, to assess whether the determination in the AG Opinion to the Division of Motor Vehicles that individuals granted deferral under DACA had lawful presence in the United States was applicable to the North Carolina Community College System’s policy on undocumented immigrants, on February 18, 2013, I requested an AG Opinion.

II. DACA Applicability to the NCCCS “Admission to Colleges” Rule

The State Board of Community Colleges Code (“State Board Code”) provides the general admissions policy that “Each college shall maintain an open-door admission policy to all applicants who are legal residents of the United States and who are either high school graduates or are at least 18 years of age.” 1D SBCCC 400.2(a). There is an exception to the general open-door policy that is applicable to undocumented immigrants. The State Board Code provides that “‘undocumented immigrant’ means any immigrant who is not lawfully present in the United States.” 1D SBCCC 400.2(b). The State Board Code then goes on to provide certain limitations on the admission of undocumented immigrants. *See* 1D SBCCC 400.2(b).

On June 26, 2013, the AG’s Office responded to the February 18, 2013 NCCCS request and provided an advisory letter affirming the January 17, 2013 AG Opinion to the DMV and advising NCCCS that individuals receiving deferral under the DACA program are lawfully present for the purposes of 1D SBCCC 400.2(b).

Therefore, per the AG’s Office’s June 26, 2013 advisory letter, **during the period of deferment, individuals who have been granted deferral under the DACA program do not meet the definition of an undocumented immigrant as it’s defined in 1D SBCCC 400.2(b) because deferral recipients are lawfully present in the United States during the period of deferment.** Please note that it is not within the authority of community colleges to determine who is eligible to receive DACA classification. Student applicants are responsible for presenting documentation to establish that they have DACA classification.

III. Implementation of “Admission to Colleges” Rule to Students with DACA Classification

The intent of the State Board was to ensure that only those persons lawfully present in the United States would be eligible for general admission to community colleges. As such, the phrase “legal resident” in 1D SBCCC 400.2(a) means individuals who are “lawfully present” in the United States, solely for the purpose of 1D SBCCC 400.2(a). Since individuals with DACA classification are lawfully present during their period of deferral and do not fit the definition of an undocumented immigrant per 1D SBCCC 400.2(b), community colleges should treat an individual with DACA classification like any other student who is lawfully present in the United States **with two exceptions:**

1) Neither federal law, nor North Carolina law permits individuals with DACA classification to receive professional licenses. *See* 8 U.S.C. § 1621(a) and (c)(1)(A). Because individuals with DACA classification cannot receive professional licenses, while community colleges are open door institutions, local community colleges have the discretion to determine whether to admit an individual with DACA classification into a specific program of study leading to professional licensure. More specifically, a local community college would be authorized to deny access to an individual with DACA classification into a specific program of study that leads to professional licensure. Conversely, a local community college would be authorized to allow access to an individual with DACA classification into a specific program of study that leads to professional licensure.

2) Moreover, it is the current position of the State Residence Committee that individuals with DACA classification do not have the capacity to receive in-state tuition.

Enclosure

**CC13-019
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1D SBCCC 400.2 ADMISSION TO COLLEGES

(a) Each college shall maintain an open-door admission policy to all applicants who are legal residents of the United States and who are either high school graduates or are at least 18 years of age. Student admission processing and placement determination shall be performed by the officials of each college. Admission requirements for an emancipated minor shall be the same as for an applicant 18 years old or older. Provisions with respect to admission of minors are set forth in Rule .0305 of this Section.

(b) For the purposes of this Section, "undocumented immigrant" means any immigrant who is not lawfully present in the United States. Community colleges shall admit undocumented immigrants under the following conditions:

- (1) Community colleges shall admit an undocumented immigrant only if he or she attended and graduated from a United States public high school, private high school, or home school that operates in compliance with State or local law;
- (2) When determining who is an undocumented immigrant, community colleges shall use federal immigration classifications;
- (3) Undocumented immigrants admitted under Subparagraph (b)(1) of this Rule must comply with all federal and state laws concerning financial aid;
- (4) An undocumented immigrant admitted under Subparagraph (b)(1) of this Rule shall not be considered a North Carolina resident for tuition purposes. All undocumented immigrants admitted under Subparagraph (b)(1) of this Rule must be charged out of state tuition whether or not they reside in North Carolina;
- (5) When considering whether to admit an undocumented immigrant into a specific program of study, community colleges shall take into account that federal law prohibits states from granting professional licenses to undocumented immigrants; and
- (6) Students lawfully present in the United States shall have priority over any undocumented immigrant in any class or program of study when capacity limitations exist.

(c) Boards of trustees may adopt policies regulating admission and graduation of students enrolled in courses mandated under G.S. 17C, North Carolina Criminal Justice Education and Training Standards Commission, or G.S. 17E, North Carolina Sheriffs' Education and Training Standards Commission. These policies may limit enrollment to law enforcement officers or persons sponsored by law enforcement agencies and may require a student to maintain sponsorship by a law enforcement agency until completion of the program. Policies adopted pursuant to this Paragraph shall be published and made available to students and prospective students.

(d) Any college suspending or expelling a student for non-academic disciplinary purposes shall record the suspension or expulsion in the student's educational record. Upon receipt of a written request signed by the student and subject to all applicable privacy laws, each college shall, in accordance with the student's request, inform other colleges and universities of the term and circumstances of the student's non-academic disciplinary suspension or expulsion, if any. Boards of trustees may adopt policies refusing admission to any applicant during any period of time that the student is suspended or expelled from any other educational entity.

(e) Boards of trustees may adopt policies refusing admission to any applicant if it is necessary to protect the safety of the applicant or other individuals. When making a safety determination, colleges may refuse admission to an applicant when there is an articulable, imminent, and

significant threat to the applicant or other individuals. Colleges refusing admission on the basis of a safety threat shall document the following:

- (1) Detailed facts supporting the rationale for denying admission;
 - (2) The time period within which the refusal to admit shall be applicable and the supporting rationale for the designated time period; and
 - (3) The conditions upon which the applicant that is refused would be eligible to be admitted.
- (f) Boards of trustees shall implement an appeals process for applicants denied admission pursuant to Subsection (e) of this Section.

*History Note: Authority G.S. 115D-1; 115D-5; 115D-20;
SBCC Adoption January 21, 2011;
Revised June 1, 2012.*