

INSIDE HIGHER ED

California Students Caught in the Middle

Years-long fight over federal rules governing state standards for online education could imperil standing of tens of thousands of students.

By [Doug Lederman](#)

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For years, the U.S. Education Department (over two administrations) has battled with states, college leaders and consumer advocates over rules requiring institutions operating online to secure approval from each state in which they intend to enroll students. The issue has often seemed arcane and the debate impersonal.

No longer.

Education Department officials [announced Monday](#) that Californians who are enrolled in online programs at public or private nonprofit colleges and universities in other states will be ineligible for federal financial aid under the 2016 state authorization rules that took effect in May because of [a judge's ruling](#).

The federal judge, acting in a lawsuit brought by two faculty unions, had ordered the department to put in place the long-delayed state authorization rules drafted in the waning days of the Obama administration rather than [a new version of the rules](#) negotiated last spring by a panel appointed by the Trump administration, which consumer advocates (and their allies in the faculty unions) said would loosen restrictions on for-profit online providers.

Ironically, though, the students who are put in harm's way by the impasse between the Education Department and the unions over the state authorization rules are enrolled at public and private nonprofit colleges, not for-profit institutions.

That's because the 2016 rules require states to have a process through which online students can submit complaints to a state agency about their institutions. While California has such a process for for-profit colleges operating in the state, through the [Bureau for Private and Post-Secondary Education](#), it does *not* have an equivalent process for nonprofit colleges because it [has not had a functioning statewide coordinating board](#) for nearly a decade.

California is also the sole state (the only other holdout is the Commonwealth of the Northern Mariana Islands) that is still not participating in the State

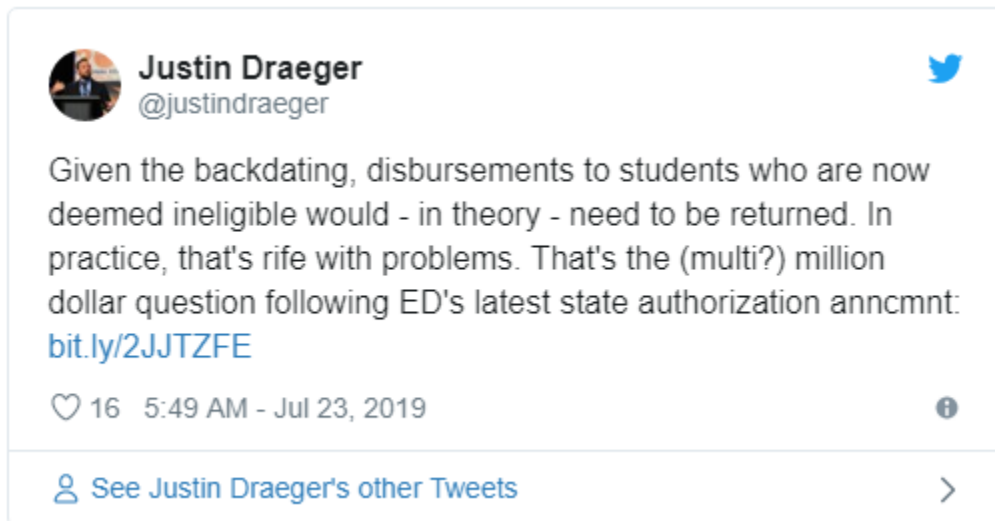
Authorization Reciprocity Agreement, which provides a workaround to the issue.

"Until California establishes such a process for out-of-state public and nonprofit institutions or enters into an appropriate reciprocity agreement, those institutions will be unable to comply with the now-effective 2016 regulation if they provide distance education or correspondence courses to students residing in California," the Education Department guidance said, noting that its own version of the state authorization rules would eliminate the complaint requirement. "Thus, under the 2016 regulation now in effect, students residing in California receiving distance education or correspondence courses from out-of-state public or nonprofit institutions are ineligible for Title IV programs until such time as the State of California provides those institutions with an appropriate complaint process or enters into a reciprocity agreement."

Exactly how many students could be affected is hard to say, but it is almost certainly multiple tens of thousands. In 2017-18, data from the National Council for State Authorization Reciprocity Agreements showed there were more than 141,000 students enrolled in online courses in states that were not part of the consortium. At that time, Massachusetts and Puerto Rico had joined California and the Marianas as nonparticipants. California over all has about 80 percent of the nearly 50 million in total population of those four states or territories, so if its residents enroll online in anywhere near a similar proportion, more than 100,000 students could be affected.

What might the impact be? Anything that would make multiple tens of thousands of students ineligible for federal financial aid is a big deal. And the situation could be even more complicated if some of the financial aid due to these students for the fall semester has already been distributed, the

president of the National Association of Student Financial Aid Administrators, Justin Draeger, said on Twitter Tuesday.



Draeger's point is that the department could require students who have already received their financial aid to repay it, and require their institutions to help collect it -- a daunting and unpleasant prospect.

Fair Warning

This situation was foreseeable -- and in fact it was foreseen. In early May, soon after Judge Laurel Beeler sided with the National Education Association and the California Federation of Teachers in forcing the release of the Obama-era rules, officials of the WICHE Cooperative for Education Technologies (WCET) [wrote](#) to Beeler and the Education Department warning about the potential implications of the judge's ruling.

Among the issues they cited: some states' lack of a complaint process for students. "The lack of a complaint process will cause these institutions to be out of compliance on the regulations' effective date. Thousands more students

will suddenly become ineligible for federal financial aid as of the effective date of this ruling."

Several experts on federal regulation and online learning interviewed for this article said they believed the Education Department is technically right in saying that the regulation as written means that the California students are ineligible for aid.

"The department is not intentionally forcing the issue," said Jon Fansmith, director of government relations at the American Council on Education, higher ed's main lobbying group. "They are bound by the fact they had put previous state authorization rules on delay, but the court compelled them to release it."

But Russ Poulin, executive director of WCET, said he believed the department "could have done more" to address the problem rather than just draw attention to it.

The administration did not raise the complaint issue in its appeal of the judge's ruling in the state authorization case, even though WCET's letter had made department officials aware of the situation. Raising the prospect then of "the harm the decision would cause to tens of thousands of students" might have influenced the judge in her appeal; raising it now seems less helpful, he said.

Poulin and Fansmith said they saw several possibilities to fixing the situation, with varying degrees of feasibility: the judge working with the department and the union to delay just this portion of the 2016 state authorization rules, or the department speeding up its release of the new version of the state rules and possibly declaring a sort of emergency (citing the potential loss of aid) to have them take effect sooner.

Officials at the faculty unions that originally sued to keep the Obama administration's state authorization plan on track portrayed the Education Department's announcement this week as a cynical tactic.

“Secretary DeVos is under a court order to reinstate protections for student loan borrowers who attend online schools -- protections that ensure that students have access to critical information about the online programs before being saddled with student debt,” Lily Eskelsen García, president of the National Education Association, in a statement. “Now DeVos claims she must withhold necessary grants and loans to students in California to implement the protections. The Department of Education’s determination to harm students, either through its incompetence or vindictiveness, is unacceptable. We remain willing to help the Department implement the protections in a way that does not jeopardize critical loans and Pell grants for students. But the Department, sadly, seems unwilling to do right by students.”

Read more by [Doug Lederman](#)

https://www.insidehighered.com/digital-learning/article/2019/07/24/dispute-over-federal-rules-state-authorization-imperils?utm_source=Inside+Higher+Ed&utm_campaign=b81adb744f-DNU_2019_COPY_01&utm_medium=email&utm_term=0_1fcbc04421-b81adb744f-200040001&mc_cid=b81adb744f&mc_eid=20a6b0e480