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: Deferred Action for Childhood Arrivals (“DACA”) Classification and Eligibility for Community College Tuition Exceptions

The General Assembly has enacted laws applicable only to community colleges that create exceptions to the general requirements for in-state tuition. See N.C.G.S § 115D-39. In response to questions regarding whether the community college tuition exceptions noted in N.C.G.S § 115D-39 apply to students with DACA classification, I provide the following information:

I. Business sponsor exception

Pursuant to N.C.G.S § 115D-39(a), “when an employer other than the Armed Forces . . . pays tuition for an employee to attend [a community college] and . . . the employee works at a North Carolina business location, the employer shall be charged the in-state tuition rate.” If a student with DACA classification is employed at a North Carolina business location and the employer of the DACA student working at the North Carolina business location wants to pay for the DACA student to attend a community college, the employer shall be charged the in-state tuition rate.

II. Public School Graduate and Non-Profit Entity exceptions

Pursuant to N.C.G.S § 115D-39(b), “any person lawfully admitted to the United States who satisfies the qualifications for assignment to a public school set out under G.S. 115C-366 and graduated from the public school to which the student was assigned shall also be eligible for the State resident community college tuition rate.” Additionally, pursuant to N.C.G.S § 115D-
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39(c), a person lawfully admitted to the United States who is sponsored by a North Carolina nonprofit entity is eligible for the in-state resident community college tuition rate. The student is considered to be “sponsored” by a North Carolina nonprofit entity if the student resides in North Carolina while attending the community college and the North Carolina nonprofit entity provides a signed affidavit to the community college verifying that the entity accepts financial responsibility for the student’s tuition and any other required educational fees. See N.C.G.S § 115D-39(c).

For both the public school graduate exception (N.C.G.S § 115D-39(b)) and the nonprofit entity exception (N.C.G.S § 115D-39(c)), an individual has to be “lawfully admitted to the United States.” In the absence of a State definition for “lawfully admitted,” the federal definition of “admitted” is instructive. “The terms ‘admission’ and ‘admitted’ mean, with respect to an alien, the lawful entry of the alien into the United States after inspection and authorization by an immigration officer.” 8 U.S.C. § 1101(a)(13)(A). Thus, only individuals who made lawful entry into the United States “after inspection and authorization by an immigration officer” would be eligible for the public school graduate and nonprofit entity exceptions. However, the question of whether individuals with DACA classification who made lawful entry into the United States “after inspection and authorization by an immigration officer” are eligible for the public school graduate and nonprofit entity exceptions requires further legal analysis due to a potential conflict between federal and state law. My office will seek advice from the Attorney General’s Office concerning whether individuals with DACA classification, who made lawful entry into the United States “after inspection and authorization by an immigration officer,” are eligible for the public school graduate and nonprofit entity exceptions. Community colleges should not give individuals with DACA classification the State resident tuition rate under the public school graduate exception or the nonprofit entity exception at this time. My office will follow up concerning these tuition exceptions at a later time.