

To: Distance Learning and Educational Innovation Subcommittee
From: Jessica Ranucci, New York Legal Assistance Group
Amanda Martinez, Student
Date: February 13, 2019
Re: Proposed Language on Incarcerated Students

Background:

The Education Department has proposed revisions to the definition of incarcerated students in 34 CFR 600.2. The proposed definition adds students in a “youth correctional facility” to the definition of “incarcerated student.” When addressed at the first subcommittee meeting, the Department suggested that this was a technical change to reflect existing policy.

However, Department guidance (DCL GEN-14-21¹) explains that “juvenile justice facilities . . . are not considered to be Federal or State penal institutions under the Higher Education Act. . . . Therefore, students who are confined or incarcerated in juvenile justice facilities and who otherwise meet applicability criteria, are eligible for Federal Pell Grants.

Proposal:

We propose language to clarify that the principle expressed in the Dear Colleague Letter still applies. The text that appears in red is proposed by the Department. The additional text we propose is in green.”

34 CFR 600.2

Incarcerated student: A student who is serving a criminal sentence in a Federal, State, or local penitentiary, prison, jail, reformatory, work farm, **youth correctional facility**, or other similar correctional institution. A student is not considered incarcerated if that student is in a half-way house or home detention or is sentenced to serve only weekends. For the purposes of Pell eligibility per 34 CFR 668.32(b)(2)(ii), youth correctional facilities are not considered Federal or State penal institutions regardless of the incarcerated student’s age and whether it was a Federal, State, or juvenile court that convicted and sentenced them or adjudicated and committed the incarcerated student.

Penal Institution: A facility as defined under 28 CFR 115.5. For the purposes of 34 CFR 668.32(b)(2)(ii), youth correctional facilities are not considered Federal or State penal institutions regardless of the incarcerated student’s age and whether it was a Federal, State, or juvenile court that convicted and sentenced them or adjudicated and committed the incarcerated student.

Youth Correctional Facility: A juvenile facility as defined in 28 CFR 115.5. For the purposes of 34 CFR 668.32(b)(2)(ii), youth correctional facilities are not considered Federal or State penal institutions regardless

¹ U.S. Department of Education. DCL GEN-14-21. “Federal Pell Grant Eligibility for Students Confined or Incarcerated in Locations That Are Not Federal or State Penal Institutions.” December 8, 2014.
<https://www2.ed.gov/policy/gen/guid/correctional-education/pell-letter.pdf>.

of the incarcerated student's age and whether it was a Federal, State, or juvenile court that convicted and sentenced them or adjudicated and committed the incarcerated student.