

## COLLEGE BOUND SCHOLARSHIP PROGRAM WORK GROUP

June 9, 2014

### LEGAL CONSIDERATIONS

The College Bound Scholarship Program (Program) chapter (RCW 28B.118) is brief and provides limited statutory direction for establishing the Program. The Washington Student Achievement Council (WSAC) has used its authority to draft rules to provide the necessary additional guidance to students and institutions of higher education. There are instances where statute could be interpreted differently than it has been in rule. Possible ambiguities are outlined below and do not necessarily reflect an exhaustive list.

#### Questions About a Possible Contractual Obligation

Legislation establishing the Program both "intends to inspire and encourage all Washington students to dream big by creating a guaranteed four-year tuition scholarship program for students from low-income families,"<sup>1</sup> and directs deposits to the Program to be "subject to appropriation."<sup>2</sup> However, the pledge/application form signed by students states that students "will receive" a scholarship if the student meets the pledge requirements, remains income eligible, and is a legal resident.<sup>3</sup>

On the one hand, statutory language that makes a program "subject to appropriation" tends to negate a claim of entitlement or contractual right to a program or service. On the other hand, the pledge form could be interpreted to establish a contractual promise between the state and eligible recipients and, as a result, the state may be financially obligated to provide participants with a scholarship award. Additionally, if there were a contractual or other obligation, this could limit the Legislature's ability to make changes to the program that negatively affect the current benefits to students. To make these types of changes, the Legislature might have to separate the Program into two programs, with any changes going forward effective only for enrollees in the "new" Program.

#### Value of Awards

Statute directs WSAC to implement this Program in alignment with the State Need Grant Program, unless otherwise provided in statute.<sup>4</sup> Statute also defines awards for students attending public institutions of higher education as the difference between the student's tuition and required fees after accounting for all state financial aid, scholarships, or waiver assistance plus \$500 for books and materials.<sup>5</sup> If a student received no other aid, the value of their CBS award would be a student's tuition and required fees plus \$500 for books. Tuition and required fees is not defined in the College Bound statute. WSAC has defined this in rule to mean operating, building, and services and activities fees which are used to determine the State Need Grant award.<sup>6</sup> As a result, awards to students in the Program are limited by administrative rule.<sup>7</sup> Because of the maximum limit to the full College Bound Scholarship award granted to a student, there could be occasions where the award does not equal what remains of tuition and required fees after accounting for other types of aid the student receives. For example, tuition and fees and the stipend for books and materials totals \$12,183 at the University of Washington, but the maximum award for a student attending a public research institution is \$11,904. If these situations were to occur, the state may be at risk of not fulfilling its statutory obligations.

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<sup>1</sup> RCW 28B.118.005

<sup>2</sup> RCW 28B.118.040(5)

<sup>3</sup> Application and Pledge 2013-2014; Washington Student Achievement Council, [http://readyssetgrad.org/sites/default/files/2013.12.12\\_cbs\\_english\\_app.pdf](http://readyssetgrad.org/sites/default/files/2013.12.12_cbs_english_app.pdf)

<sup>4</sup> RCW 28B.118.010

<sup>5</sup> RCW 28B.118.010(6)(a)

<sup>6</sup> WAC 250-84-020

<sup>7</sup> WAC 250-84-070(2)(b) & WAC 250-20-041(3)(a)

For students attending private two- and four-year institutions of higher education, statute states that the award amount shall be the representative average of awards granted to students attending private vocational schools or students attending public research universities.<sup>8</sup> Statute does not define what constitutes a representative average. Because WSAC is directed to align the Program with the State Need Grant Program unless otherwise provided in statute,<sup>9</sup> students attending private institutions are currently receiving an award that is based on the maximum award<sup>10</sup> granted to students attending public research institutions.<sup>11</sup> It is possible that under a plain language interpretation of the "representative average of awards granted to students," students attending private institutions of higher education would only receive an average of what their public sector counterparts are actually receiving. If this were to be the case, and the average of what public sector students are receiving is less than the amount actually being awarded to private sector students, the state may be at risk of giving an award to students attending private institutions of higher education that is higher than what statute allows.

#### Limitations on Use of Awards

In statute, all scholarship recipients are limited to no more than four full-time years' worth of scholarship awards<sup>12</sup> and the scholarship award must be used within five years of receipt.<sup>13</sup> Administrative rule requires that students be accepted into a state institution of higher education participating in the State Need Grant Program;<sup>14</sup> to enroll no later than the fall term one academic year following high school graduation; and, among other things,<sup>15</sup> to be an undergraduate student.<sup>16</sup> It is possible the statute could be interpreted to allow an eligible student to enroll at any time and at any institutions of higher education in Washington. Additionally, awards may not necessarily be limited to undergraduate students only under this broader interpretation. If that is the case, the state may be at risk of not fulfilling its statutory obligations to those students who attend institutions of higher education that do not participate in the State Need Grant Program and to those students who choose to enroll more than one academic year after their high school graduation.

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<sup>8</sup> RCW 28B.118.010(6)(b) and(c)

<sup>9</sup> RCW 28B.118.010

<sup>10</sup> WAC 250-84-070(2)(b)

<sup>11</sup> WAC 250-20-041(3)(a)

<sup>12</sup> RCW 28B.118.010(7)

<sup>13</sup> RCW 28B.118.010(11)

<sup>14</sup> WAC 250-84-060(3)

<sup>15</sup> WAC 250-84-060(4)

<sup>16</sup> WAC 250-84-060(7)