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FROM: Thuy Thi Nguyen   
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SUBJECT: **Dual Enrollment and Assembly Bill 288 (CCAP)  
Legal Opinion 16-02**

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Assembly Bill 288 (Holden) was enacted January 1, 2016 and added to the California Education Code section 76004. Assembly Bill 288 enables the governing board of a community college district to enter into a College and Career Access Pathways (CCAP) partnership with the governing board of a school district. For the first time in California's Education Code, the term "dual enrollment" is identified to define "special part-time" or "special full-time" students – that is, high school or other eligible special admit students enrolling in community college credit courses.<sup>1</sup>

The purpose of this Legal Opinion is two-fold: to opine on the key legal issues regarding:

- CCAP partnerships under AB 288; and
- Districts' ability to operate outside of the CCAP framework (that is, either develop or continue existing non-CCAP partnership agreements and other dual enrollment, non-cohort programs in general).

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<sup>1</sup> The term "concurrent enrollment" is not found in California Education Code.

This Legal Opinion represents the judgment of the Chancellor's Office and reflects experience in audits and minimum condition reviews on the subject of dual enrollment. It also provides legal analysis and opines on areas that require statutory interpretation. The policies and procedures discussed here are not binding on districts. However, districts that follow the advice given here will generally be deemed to comply with the law in the event of a review by the Chancellor's Office or as it relates to the authority granted to the Chancellor to void any CCAP Partnership Agreement it determines has not complied with the intent of the requirements of Education Code section 76004.

In April 2005, the Chancellor's Office issued a Legal Advisory to address questions regarding the interpretation and implementation of the law on dual enrollment as amended by SB 338, which was passed by the Legislature and signed by the governor in 2003. Then in April 2015, the Chancellor's Office issued an update on some of the issues addressed in the 2005 Legal Advisory.

This Legal Opinion incorporates both the 2005 Legal Advisory and its 2015 update, and addresses the subsequent enactment of AB 288.<sup>2</sup> This Legal Opinion is organized in the following manner:

- I. Introduction of Two Tracks: CCAP and Non-CCAP (page 3)**
  - II. CCAP Track (page 5)**
  - III. Non-CCAP Track: by Partnership Agreement or Individual Special Admit Enrollment (page 14)**
  - IV. Major Attributes of Each Track (page 28)**
- Addendum: Assembly Bill 288 (full text)**

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<sup>2</sup> All statutory references are to the California Education Code unless otherwise noted. All regulatory references are to California Code of Regulations, Title 5 unless otherwise noted.

## I. Introduction of Two Tracks: CCAP and Non-CCAP

Prior to the enactment of AB 288, colleges were authorized to provide college courses to high school students and other special admit students through a variety of mechanisms: qualified students on their own accord would enroll in college courses on college campuses, colleges would provide open-access courses at the high schools, and districts would enter into formal agreements with local high schools to provide defined cohort programs such as early college, middle college<sup>3</sup>, or Gateway-to-College.

With the enactment of AB 288 (CCAP), colleges are still authorized to continue providing existing dual enrollment programs (or even enter into new formal agreements) outside the statutory framework of AB 288 – that is, the non-CCAP track. AB 288 adds a new Education Code section 76004(x) which states in relevant part:

“Nothing in this section is intended to affect a dual enrollment partnership agreement existing on the effective date of this section under which an early college high school, a middle college high school, or California Career Pathways Trust existing on the effective date of this section is operated. An early college high school, middle college high school, or California Career Pathways Trust partnership agreement existing on the effective date of this section shall not operate as a CCAP partnership unless it complies with the provisions of this section.”

In summary, AB 288 offers new dual enrollment options to colleges by eliminating certain fiscal and policy barriers, such as authorizing specified special part-time students to enroll in up to 15 units per term, waiver of certain college fees for those special part-time students, and allowance of closed courses that occur on high school campuses during the regular school day; while requiring that the program be for a specified purpose (e.g., cohort program for underrepresented students) and adherence to delineated state reporting requirements.

AB 288 specifically states “notwithstanding Section 76001 or any other law” and therefore, establishes a second track for dual enrollment of high school students. As a result, starting January 1, 2016, college districts have two options:

1. **CCAP track** (under AB 288, which is as prescribed by Education Code section 76004); and/or
2. **Non-CCAP track** (continue to provide dual enrollment opportunities to students individually, or continue or enter into an optional formal partnership agreement

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<sup>3</sup> Middle college and early college high schools are defined in sections 11300-11301.

with local high school districts, as prescribed by Education Code sections 76001 and 76002).

## II. CCAP Track

The Legislature, through AB 288, states that in order to “facilitate the establishment of dual enrollment partnerships, the state should remove fiscal penalties and policy barriers that discourage dual enrollment opportunities. By reducing some of these restrictions, it will be possible to expand dual enrollment opportunities, thereby saving both students and the state valuable time, money, and scarce educational resources.”

Assembly Bill 288 adds Section 76004 to the Education Code and establishes a second and distinct track for permitting dual enrollment by high school students through a properly established CCAP Partnership Agreement with a public school district. Assembly Bill 288 provides flexibility to community college districts and additional accountability requirements as described below.

To the extent they do not conflict with specific provisions of Education Code section 76004 as enacted by Assembly Bill 288, other statutes such as Sections 76001 and 76002 (including the analysis related to non-CCAP track programs below) also place certain requirements on CCAP programs. Districts, operating under the CCAP track, may also benefit from other statutes, as long as those provisions do not conflict with requirements under AB 288.

However, **once a college district wishes to benefit from any element of AB 288 that is not allowable or required under existing non-CCAP law, then the college district must adopt all the legal requirements set forth in AB 288**, including but not limited to a requirement of filing with the State Chancellor’s Office its CCAP Partnership Agreement and exemption of specified fees for qualified special part-time students.

This Legal Opinion addresses several legal issues identified by the Chancellor’s Office and the colleges. It does not summarize every element of AB 288, and therefore, colleges are advised to review AB 288 in its entirety when executing a partnership agreement. The full text of AB 288 is provided in the addendum.

### A. CCAP can be established for certain purposes only.

Assembly Bill 288 states that CCAP programs must have a specific purpose of serving students who may not already be college bound or who are underrepresented in higher education. The definition of “college bound” and “underrepresented in higher education” may be locally defined by the district’s governing board.

Education Code section 76004 states (*with emphasis*):

“(a) The governing board of a community college district may enter into a College and Career Access Pathways (CCAP) partnership with the governing

board of a school district *for the purpose of offering or expanding dual enrollment opportunities for students who may not already be college bound or who are underrepresented in higher education*, with the goal of developing seamless pathways from high school to community college for career technical education or preparation for transfer, improving high school graduation rates, or helping high school pupils achieve college and career readiness.

Although AB 288 does not explicitly state that students in CCAP programs must be in a cohort program (versus individually enrolled), the stated purpose and academic programmatic framework in AB 288 suggest a more structured program for an identified group of students.

**B. College may offer closed courses on high school campus.**

An example of the flexibility provided by AB 288 is the ability to offer closed courses on high school campuses during the regular school day as prescribed by Education Code section 76004(o). (Note: Education Code section 76002 requires that non-CCAP dual enrollment comply with open course requirements to be eligible for state apportionment). Education Code section 76004 (o) states:

“(1) A community college district may limit enrollment in a community college course solely to eligible high school students if the course is offered at a high school campus during the regular school day and the community college course is offered pursuant to a CCAP partnership agreement.

(2) For purposes of allowances and apportionments from Section B of the State School Fund, a community college district conducting a closed course on a high school campus pursuant to paragraph (1) of subdivision (p) shall be credited with those units of full-time equivalent students attributable to the attendance of eligible high school pupils.”

**C. College must waive specified fees under certain circumstances.**

A community college district may allow a special part-time student participating in CCAP to enroll in up to a maximum of 15 units per term if all of the following circumstances are satisfied (Education Code section 76004(p)):

- i. The units constitute no more than four community college courses per term.
- ii. The units are part of an academic program that is part of a CCAP partnership agreement.
- iii. The units are part of an academic program that is designed to award students both a high school diploma and an associate degree or a certificate or credential.

If the special admit student meets all three of the aforementioned requirements, the college district must exempt the following community college fees pursuant to Education Code section 76004(q):

- i. Student representation fee. (Section 76060.5)
- ii. Nonresident tuition fee and corresponding permissible “capital outlay” fee and/or “processing fee”. (Sections 76140; 76141, and 76142)
- iii. Transcript fees. (Section 76223)
- iv. Course enrollment fees. (Section 76300)
- v. Apprenticeship course fees. (Section 76350)
- vi. Child development center fees. (Section 79121)

Furthermore, high school students (special part-time or full-time) enrolled in courses offered through CCAP shall not be assessed or charged a fee prohibited by Education Code section 49011, including a fee charged to a student, or a student’s parent or guardian, as a condition for course registration or for textbooks, supplies, materials, and equipment needed to participate in the course. (Education Code sections 49010 et seq. and 76004(f))

**D. Dual enrollments cannot exceed 10% FTES cap statewide.**

Districts that choose to implement both tracks need to be aware of the 10% Full-Time Equivalent Student (FTES) cap *statewide* as the term “special admits” as referred in Education Code section 76004(w) include both CCAP and non-CCAP special admit students:

“The statewide number of full-time equivalent students claimed as special admits shall not exceed 10 percent of the total number of full-time equivalent students claimed statewide.”

It should be noted that additional enrollment restrictions apply to both the CCAP and non-CCAP tracks: Education Code section 76002(a)(4) places a 5% FTES cap on physical education courses; and Education Code section 48800(d)(2)-(3) provides that for any particular grade level, a principal shall not recommend summer session attendance for more than 5% of the total number of pupils who completed that grade immediately prior to the time of recommendation.

**E. CCAP partnership agreements apply only to public schools.**

AB 288 allows the governing board of a community college district to enter into a CCAP partnership with the “governing board of a school district.” AB 288 does not allow a community college district to enter into a CCAP partnership with private schools outside the jurisdiction of the California Department of Education (CDE) and otherwise not subject to the provisions of Education Code sections 48800 and 48800.5.

Education Code section 76004(a) states:

“The governing board of a community college district may enter into a College and Career Access Pathways (CCAP) partnership with the governing board of a school district for the purpose of offering or expanding dual enrollment opportunities.”

The principles of statutory construction require that all words in a statute have some meaning. (*People v. Gilbert* (1969) 1 Cal.3d 475, 480.) Moreover, it is presumed that every word, phrase, and provision of a statute was intended to have some meaning and to perform some useful office. (*Van Nuis v. Los Angeles Soap Co.* (1973) 36 Cal.App.3d 222, 228-229.)

The vast majority of sections in the Education Code only apply to public schools unless the section explicitly specifies that it applies to private education<sup>4</sup>. For comparison purposes, Sections 33190 (Affidavit by persons conducting private school instruction) and 48222 (Attendance in private school) both contain language explicitly pertaining to students in private education. As such, the exclusion of any language concerning private education in AB 288 reveals that the bill was not intended to include private school districts.

In construing a statute, the “fundamental task is to ascertain the Legislature’s intent so as to effectuate the purpose of the statute.” (*Smith v. Superior Court* (2006) 39 Cal.4<sup>th</sup> 77, 83.) When the language of the statute is unclear or “is susceptible of more than one reasonable interpretation, however, we look to a variety of extrinsic aids, including... the legislative history” to ascertain its meaning. (*People v. Woodhead* (1987) 43 Cal.3d 1002, 1008.) An examination of the legislative history behind AB 288 reveals that the Assembly Committee discussed the benefits of current partnerships between pupils in *public schools* and community colleges. Existing law prohibits a pupil in *public school* from being required to pay a pupil fee for participation in an educational activity. In addition, the bill analysis reveals the rationale in enacting AB 288. The Assembly cited a February 2014 report by Education Commission of the States (ECS), which revealed a growing number of U.S. *public high schools* offering dual enrollment programs.

Charter schools, to the extent they are part of the local school district’s jurisdiction, are qualified to participate in CCAP programs. The charter school must be chartered by a school district within the service area of the college district.

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<sup>4</sup> A complete list of California Education Code sections that apply to private education can be found on the California Department of Education website (<http://www.cde.ca.gov/sp/ps/rq/psaffedcode.asp>)

**F. College district should clearly state “College and Career Access Pathways (CCAP) Partnership Agreement” to trigger AB 288 provisions.**

Since community college districts are authorized to continue providing non-CCAP dual enrollment opportunities (including non-CCAP partnership agreements), in order to trigger the benefits specifically authorized under AB 288, college districts are advised to specify clearly in its agreement the title “College and Career Access Pathways (CCAP) Partnership Agreement”.

The CCAP partnership agreement must outline the terms of the CCAP partnership and shall include, but not necessarily be limited to, the total number of high school students to be served and the total number of full-time equivalent students projected to be claimed by the community college district for those students; the scope, nature, time, location, and listing of community college courses to be offered; and criteria to assess the ability of pupils to benefit from those courses. The CCAP partnership agreement must also certify compliance with local collective bargaining agreements and all state and federal requirements related to teacher qualifications for CCAP courses offered for high school credit. [For a more thorough list of items required for the partnership agreement, see “*AB 288 (Dual Enrollment) College and Career Access Pathways (CCAP) Partnership Agreement Guidelines for Apportionment Eligibility*” <http://extranet.cccco.edu/Portals/1/Legal/Guidelines/Guidelines-AB 288 College and Career Access Pathways Apportionment Eligibility Guidelines 3-11-16.pdf>]

A copy of the CCAP partnership agreement must be filed with the California Community Colleges Chancellor’s Office and the California Department of Education before the start of the CCAP partnership. The Chancellor may void any CCAP partnership agreement if he or she determines that the agreement has not complied with the requirements of AB 288.

**G. Districts may voluntarily agree to share Average Daily Attendance (ADA) and/or FTES funding once received.**

The community college district and school district may voluntarily agree to share resources such as ADA and/or FTES funding or facilities. Nothing in AB 288 or other statutes related to dual enrollment precludes a school district from providing some of its ADA funding (once received from the state) to the partner college for purposes such as tutoring and other student services, transportation, books, and general administrative costs incurred by the colleges. Similarly, nothing in AB 288 or other statutes related to dual enrollment precludes a college district from providing some of its FTES funding (once received from the state) to the partner school district for purposes such as reimbursing for administrative costs incurred by the partner school district.

Districts must not “double-dip” for the same instructional activity – that is, both community college district and school district may not receive state apportionment for the same instructional activity. Education Code section 76004(r) states:

“A district shall not receive a state allowance or apportionment for an instructional activity for which the partnering district has been, or shall be, paid an allowance or apportionment.”

The college district may explore with its partner school district the option of minimizing the school day for high school special admit students under state law. School districts are advised to seek guidance on ADA apportionment and waiver to decrease instructional attendance time in a school day with the California Department of Education.

#### **H. Students may receive credit at both the K-12 and the college level.**

As is the case for non-CCAP, students in CCAP programs may also receive dual credit at both the K-12 and the college level.

The Chancellor's Office has issued several legal opinions holding that this is permissible (e.g., Legal Opinion M 98-17, <http://extranet.cccco.edu/Divisions/Legal/Opinions.aspx>).

#### **I. Students in CCAP may enroll in physical education courses as long as the courses meet the delineated goals set by AB 288.**

Education Code section 76004 (d) states:

“A community college district participating in a CCAP partnership shall not provide physical education course opportunities to high school pupils pursuant to this section or any other course opportunities that do not assist in the attainment of at least one of the goals listed in subdivision (a).”

High school students who are enrolled in community college courses as part of a CCAP agreement may not enroll in community college physical education courses unless they assist in meeting one of the following goals as delineated in section 76004 (a):

- Developing seamless pathways from high school to community college for career technical education or preparation for transfer,
- Improving high school graduation rates, or
- Helping high school pupils achieve college and career readiness.

High school students who are *not* participating in a CCAP program may enroll in community college physical education courses subject to pre-existing PE enrollment/FTES limits

pursuant to Education Code section 76002(a)(4) and applicable community college district policies related to enrollment into those type of courses:

“A community college district shall not receive state apportionments for special part-time and full-time students enrolled in physical education course in excess of 5 percent of the district’s total reported full-time equivalent enrollment of special part-time and full-time students.”

The question is whether FTES generated from PE courses under a CCAP partnership agreement is required to be included when determining adherence with the 5% cap that is placed on non-CCAP calculation. Under the non-CCAP track, students are allowed to take PE courses *even if* those courses do not assist in the attainment of any stated goal, as long as those course enrollments do not exceed the applicable enrollment/FTES limits. Assembly Bill 288 provides more restrictive language: it further limits enrollment to only situations when the PE courses directly assist in the attainment of certain delineated goals. Thus, PE courses under CCAP are also subject to the 5% FTES cap under Education Code section 76002(a)(4) if the district wishes to receive state apportionment for special admit students.

Additionally, note that standard credit course repetition rules also continue to apply to all CCAP and non-CCAP course enrollments. (See Credit Course Repetition Guidelines and related Title 5 regulations.)

**J. College district must enter into partnership with school district within its service area.**

Education Code section 76004(e) states:

“A community college district shall not enter into a CCAP partnership with a school district within the service area of another community college district, except where an agreement exists, or is established, between those community college districts authorizing that CCAP partnership.”

This language is consistent with existing Education Code provisions and therefore, is applicable to the non-CCAP track also. (Title 5 sections 55300 et seq.)

**K. District is required to exempt nonresident special part-time students from nonresident tuition fee, but may not claim apportionment for those students.**

For non-CCAP, districts are permitted (but not required) by Education Code section 76140(a)(4) to exempt nonresident special part-time students from all or parts of the nonresident fee. In those cases, apportionment cannot be claimed for the attendance (FTES) of those students.

Under CCAP, nonresident special part-time students are required to be exempted from the nonresident tuition fees , among other delineated community college fees, pursuant to AB 288 (Education Code section 76004 (p) and (q)):

“(p) A community college district may allow a special part-time student participating in a CCAP partnership agreement established pursuant to this article to enroll in up to a maximum of 15 units per term if all of the following circumstances are satisfied:

- (1) The units constitute no more than four community college courses per term.
- (2) The units are part of an academic program that is part of a CCAP partnership agreement established pursuant to this article.
- (3) The units are part of an academic program that is designed to award students both a high school diploma and an associate degree or a certificate or credential . . .

(q) The governing board of a community college district participating in a CCAP partnership agreement established pursuant to this article shall exempt special part-time students described in subdivision (p) from the fee requirements in Sections 76060.5, 76140, 76223, 76300, 76350, and 79121.”

However, currently, there is no legal basis that would permit a district to claim the attendance (FTES) of nonresident special part-time students.<sup>5</sup> Education Code section 76140(c) prohibits districts from reporting FTES generated by nonresident students for apportionment purposes except as provided under subdivision (j) of the same section or another statute.

**L. High school courses must not displace or reduce access for adults at the college.**

Assembly Bill 288 (Education Code section 76004(k)) states (*with emphasis*):

“The CCAP partnership agreement shall include a certification by the participating community college district of all of the following:

- (1) A community college course offered for college credit at the partnering high school campus *does not reduce access* to the same course offered at the partnering community college campus.
- (2) A community college course that is oversubscribed or has a waiting list *shall not be offered* in the CCAP partnership.
- (3) Participation in a CCAP partnership is consistent with the core mission of the community colleges pursuant to Section 66010.4, and that

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<sup>5</sup> A bill may be introduced to address apportionment eligibility for nonresident special admit students.

pupils participating in a CCAP partnership will *not lead to enrollment displacement* of otherwise eligible adults in the community college.”

CCAP courses must not reduce access to course offerings at the community college or lead to enrollment displacement of otherwise eligible adults at the community college. The partnering community college district must certify in the CCAP partnership agreement that “a community college course that is oversubscribed or has a waiting list shall not be *offered* in the CCAP partnership” (emphasis added). Compliance with this requirement may lead to logistical enrollment management issues for the partnering community college and high school campuses. Courses are generally *offered* prior to registration, and it may not be evident that a community college course is oversubscribed until after registration for a course is closed. By the time it is determined that a community college course is oversubscribed, the corresponding high school course offered through the CCAP partnership may have already started for a school term.

Consistent with AB 288, a high school campus-based college course may not be *offered* through a CCAP partnership if the course is oversubscribed at the partnering community college. This determination shall be made at the time registration closes for the specific CCAP course in question (and before instruction in the CCAP course begins). A CCAP course need not be cancelled if a corresponding community college course becomes oversubscribed after registration is closed and instruction has begun for the CCAP course. In the event that a community college course becomes oversubscribed or has a waiting list during the life of a CCAP partnership agreement, a corresponding high school CCAP course may not be *offered* in any subsequent educational term unless or until the community college alleviates the course wait list or oversubscription issue at the community college level.

Community college districts and school districts should consider issues related to course oversubscription prior to executing a CCAP partnership agreement. We advise districts to include a mechanism in each CCAP partnership agreement for determining when a course is oversubscribed, a notification procedure, and a process for the efficient resolution of community college course oversubscription issues. Advance consideration of these issues may help maintain the continuity of CCAP course offerings.

### **III. Non-CCAP Track: by Partnership Agreement or Individual Special Admit Enrollment**

In April 2005, the Chancellor's Office issued an advisory to address questions regarding the interpretation and implementation of the law on dual enrollment/concurrent enrollment (hereinafter referred to as "dual enrollment") as amended by SB 338, which was passed by the Legislature and signed by the governor in 2003. Over the past years, there have been several questions concerning the offering of college courses on public high school campuses, specifically during the hours the high school operates classes (i.e., the regular school day). In April 2015 (prior to the passage of AB 288), the Chancellor's Office reviewed those questions and provided additional information through a published update. As set forth below, this Legal Opinion incorporates the latest update in April 2015, and also serves to address current law for non-CCAP dual enrollment (that is, non-CCAP) track.<sup>6</sup>

Assembly Bill 288 does not nullify any other Education Code provisions that enables districts to continue with dual enrollment opportunities under track one – the non-CCAP track. A community college district that chooses not to avail itself of the new legal framework created by AB 288 is still able to operate under pre-existing dual enrollment law.

#### **A. Basic Eligibility Requirements**

##### **1. Advanced scholastic or vocational work is defined as courses acceptable toward associate degree.**

The Chancellor's Office has advised on several occasions that the terms "advanced scholastic or vocational work," "community college level," or simply "college level" refer to college credit courses acceptable toward the associate degree which have been properly approved pursuant to Title 5 section 55002(a). (See Legal Opinions 98-17 and 02-16 at <http://extranet.cccco.edu/Divisions/Legal/Opinions.aspx>.)

Thus, under Education Code Section 48800(a), the K-12 school district is responsible for determining whether a pupil is prepared to undertake degree-applicable credit coursework as a precondition to recommending the pupil for admission to a college. Colleges are encouraged to work with local K-12 districts to ensure that they are familiar with the degree-applicable credit course offerings at the college so that this determination can be accurately made.

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<sup>6</sup> Unless specifically addressed by AB 288, elements of the analysis below are also applicable for CCAP programs.

**2. Pupils can take noncredit courses at a community college, despite Education Code section 48800's reference to "advanced scholastic and vocational work".**

A different statute, Education Code section 78401(c) permits colleges to admit minors to their noncredit programs. Under that provision, the community college district makes the determination of which pupils can benefit from its noncredit courses without any requirement for involvement by the K-12 school district or any need to find the pupil eligible for advanced scholastic or vocational work.

**3. The community college district may disagree with a K-12 school board's determination that a pupil may benefit from advanced scholastic or vocational work.**

First, in order for a K-12 pupil to attend a community college district, the school district must determine that the pupil is capable of benefiting from advanced scholastic or vocational (college level) work. However, even if the K-12 district does make this determination, it does not guarantee the pupil's admission to the college. This is because a community college may admit such pupils, but is not required to do so. So long as it does not reject pupils on a discriminatory basis and has a rational basis for differentiating among K-12 pupils, a college could accept some pupils recommended by the K-12 school district and decline to accept others. For example, a college could determine that it will admit K-12 pupils who are district residents, but not other K-12 pupils. District residency is not a protected group under nondiscrimination laws, and a college may have a legitimate basis for needing to limit the number of K-12 pupils it will admit.

Second, if a K-12 district does certify that a pupil would benefit from college level work, Section 76002 permits a college to ultimately decide otherwise based on age, grade level, or assessment standards established by the college district.

**4. A community college may evaluate the readiness of private school pupils and home-schooled minors seeking admission.**

The parent or guardian of a private school pupil may petition the president of the college. The criteria for admission are the same as if the pupil were enrolled in a public school: the pupil must be able to benefit from degree-applicable college coursework. Colleges have options for determining the readiness of private school pupils seeking admission.

Colleges may require the assessment of a private school representative (like the principal) to verify the readiness of the private school pupil for college level coursework. In this regard, a college could probably use the same certification of readiness that it uses for public school pupils.

Alternatively, the college could make its own determination of whether the pupil is prepared for college level work through assessment methods and procedures (which could include evaluation of the pupil's prior coursework) under Education Code section 76002(b)(3). Colleges making their own assessments must employ multiple measures and comply with other aspects of the matriculation regulations adopted by the Board of Governors. (Title 5 sections 55500 et seq.) Thus, the college might review records of coursework the pupil has completed and combine this review with results from one or more appropriate assessment instruments approved by the Chancellor's Office.

Home schooling is instruction by a tutor or other person (including the pupil's parent) who does not have a valid California teaching credential. The determination that the home schooled pupil is able to benefit from "advanced scholastic or vocational work" can be satisfied in several ways.

A college is free to accept home schooling as if it were schooling in a private full-time day school if the college determines that a proper affidavit has been filed with the Superintendent of Public Instruction. Private full-time day schools must file an annual affidavit setting out information about the private school instruction. The Superintendent of Public Instruction publishes a list of private schools that includes the name and address of the school and the name of the school owner or administrator. (Education Code section 33190.) If a home school has filed a proper affidavit, a college may accept the assessment of a home school representative to verify the readiness of the pupil for college level coursework.

Local high schools are charged with determining whether to accept home schooling as valid attendance. Therefore, community college districts that are asked to consider admitting a minor who has been home schooled may confer with the public high school the pupil would have attended if not home schooled. If that public school accepts or would accept home schooling as valid school attendance, the public school may also be willing to determine whether the pupil has completed coursework sufficient to prepare him or her to undertake college level coursework.

However, the Education Code still provides that the parent or guardian of a pupil not enrolled in public school may directly petition the president of any community college for admission. Thus, the position of a K-12 school district regarding home schooling is not binding on the college. As with pupils who attend a private school, the college could make its own determination as to whether a pupil is prepared for college level work. As noted above, the college would make an assessment using multiple measures and comply with other aspects of the matriculation regulations adopted by the Board of Governors. (Title 5 sections 55500 et seq.) The college can review records of coursework the pupil has completed and combine this review with results from one or more appropriate assessment instruments approved by the Chancellor's Office.

Finally, the college may accept the opinion of the pupil's parents as to whether the pupil is prepared for college level coursework.

In selecting methods for assessing pupil preparation for college level coursework, colleges should consider that they may be challenged for rejecting some pupils and accepting others. Uniformity of approach may help insulate colleges from claims that the decisions are inconsistent or unfair. Because the use of college-administered assessments is most likely to result in uniformity, this method of assessing preparation for advanced study may be the most defensible.

**5. Persons who are 18 years of age or older and still enrolled in high school can be admitted to community colleges under the general admissions provisions or the dual enrollment / "special admit" provisions.**

Persons who are 18 years of age or older and still enrolled in high school may be admitted under either set of admissions provisions. However, if a district intends to claim their attendance for apportionment purposes, such persons must be admitted under the dual enrollment provisions.

Two statutory structures address the admission to community colleges of persons who are 18 years old or older and still enrolled in high school. General admission standards appear at Education Code section 76000. The general admission standards carry fewer conditions than do the dual enrollment standards set out in Sections 76001, 76002, and 48800.

Under the general admission standards of Section 76000, individuals who are over 18 years of age but do not have high school diplomas may be admitted if they can "profit from instruction." The general admission standards do not require recommendations from principals, parental consent, or express limitations on the types or numbers of classes that may be taken.

However, the general admission standards do not address apportionment for the attendance of persons who are 18 years or older and still enrolled in high school. The dual enrollment provisions specifically address when apportionment can be claimed for attendance of such pupils, so the dual enrollment provisions control if a district wishes to claim apportionment.

Accordingly, districts may choose which admission standards to apply when persons who are 18 years of age or older and still in high school seek admission. The general admission standards are clearly less complicated to implement. However, the more detailed requirements of the dual enrollment provisions must be followed if the district claims the attendance for apportionment purposes. (See Legal Opinion O 04-13 available at <http://extranet.cccco.edu/Divisions/Legal/Opinions.aspx>.)

## **B. Open Course Requirements**

### **1. Districts should ensure that courses are properly advertised and open to the general public.**

Unless a course is explicitly authorized to be closed (e.g., AB 288 CCAP courses offered at a high school campus during the regular school day), all sections of all community college courses should be open to the general public, regardless of whether the course is held at a high school campus. In order for a course to be truly open to the general public, it must be advertised in a manner such that anyone who might be interested in enrolling in a particular course section will know it is available and understand that enrollment is open to anyone who meets properly established prerequisites or enrollment limitations. Each course should be published in the official college catalog or addenda thereto and each section of the course should be listed in the regular schedule of classes or an addendum thereto. If the exact time or location of a course section is not known when the schedule or addenda is printed, or an instructor has not yet been assigned, the notation TBA (to be assigned) should be used.

### **2. A college must still reasonably well publicize, advertise a course if the decision to offer the course was made after the last addendum to the catalog or schedule of classes is published.**

The general rule is that each course should be described in the official catalog or an addendum thereto and that each section of each course should be listed in the schedule of classes or an addendum thereto. However, it may sometimes happen that a course is newly approved after the most recent addendum to the catalog has been printed. Should this occur, the college should update any online catalog it may maintain and, of course, list each section of the course to be offered in the schedule of classes or an addendum thereto.

In those rare instances where the decision to offer a new course is made so late that it cannot even be listed in the last addendum to the schedule of classes, Title 5 section 58104 still requires that the course be "reasonably well publicized" to the general public.

The Chancellor's Office advises that districts should not rely exclusively on posting course offerings on the Internet to satisfy the requirement that the course is "reasonably well publicized." Some students still do not have ready access to the Internet and, in the event of an audit, it may be difficult for the district to demonstrate that a particular course offering was actually posted on its website at a given point in time. If districts do choose to rely on posting on the Internet, they should observe the following:

- a. The class must be advertised for a minimum of 30 continuous days prior to the first meeting of the class.
- b. The district's website must comply with standards for accessibility to persons with disabilities required by Section 508 of the Rehabilitation Act of 1973, as

amended (29 U.S.C. § 794d) and Government Code section 11135. If course descriptions are posted in Portable Document Format (PDF) they should also be available in a more easily accessible format such as HTML, Microsoft Word, or ASCII.

- c. The district should maintain dated hardcopy printouts of the web postings on file for audit purposes for a period of at least three years.
- d. The district should maintain a list of individuals who wish to receive printed course announcements and send such announcements to those on the list, even if it does not publish and widely distribute another addendum to the schedule of courses.
- e. The District should still use readily available traditional methods of ensuring that students have information about classes, such as ensuring that academic counselors and the Admissions and Records Office are aware of the courses, and that information is still available through print distributions such as handouts, bulletin board postings, or campus newspaper announcements.

**3. SB 338 does not prohibit holding a college course on a high school campus during the hours the high school operates classes (i.e., the regular school day).**

The law has long provided that a course which is claimed for state apportionment by the community college district must be open to the general public. SB 338 emphasized this point by amending Education Code section 76002 to provide that if a course is held on a high school campus, "the class may not be held during the time the campus is closed to the general public, as defined by the governing board of the school district." Thus, the issue is when the high school campus is specifically closed to the general public, rather than whether or not high school classes are offered during the same time period.

However, it must be emphasized that this restriction only applies if state apportionment is to be claimed for the class. If the class is conducted as contract education and paid for by the K-12 school district, then it may be housed at the high school campus and be held at any time of day, regardless of whether or not the campus is open to the general public.

If a course is to be held on high school campus during the regular school day and if apportionment is to be claimed, the district will need to confirm that it has fulfilled all applicable basic conditions for claiming state apportionment (Title 5 section 58000 et seq.), as well as the specific eligibility criteria for claiming FTES generated by special admit students. (Education Code section 76002.) As noted above, this specific eligibility criterion includes a requirement that the course not be conducted when the high school campus is specifically closed to the general public, which must be defined by the school governing board of the school district during a regularly scheduled board meeting. (Education Code section 76002(a)(3).) To meet the requirement that the governing board of the school district addresses this issue, the local school board must take action on the issue in the form of an action item. This requirement is present in order to ensure that the general public is notified

that its public high school may be open to the general public, as well as of the circumstances under which it may be open.

To further ensure that open access to the general public is maintained for high school campus based courses that occur during the regular school day, and which are claimed for state apportionment, the district must also confirm compliance with the following regulatory requirements:

1. Except as otherwise provided in law, such as where special admit students must be recommended by the high school principal of the pupil's school of attendance and parental consent obtained as discussed elsewhere in this advisory, no student shall be required to confer or consult with or be required to receive permission to enroll in any class from any person other than those employed by the college in the district (Title 5 section 58108(k));
2. Students will not be required to participate in any preregistration activity not uniformly required, nor shall the college or district allow anyone to place or enforce nonacademic requisites that are not expressly authorized in state law as barriers to enrollment in or the successful completion of a course. (Title 5 section 58108(l));
3. No student shall be required to make any special effort not required of all students to register or enroll in any class or course section. Once enrolled in the course, all students must have equal access to the site. (Title 5 section 58108(m));
4. The location of the course must be clearly identified in such a manner, and established by appropriate procedures, to ensure that attendance in such courses is open to the general public, except that students may be required to meet appropriately established prerequisites (Title 5 section 58051.5(b); 55002-03);
5. Announcements of course offerings shall not be limited to a specialized clientele, nor shall any group or individuals receive notice prior to the general public for the purposes of preferential enrollment, limiting accessibility, or excluding qualified students. (Title 5 section 58104);
6. Enrollment in a course may only be limited in accordance with Title 5 section 58106 ["Limitations on Enrollment" provisions]. (Note: limiting enrollment exclusively to a "cohort" of high school students is not permitted as it would conflict with the statutory requirement that special admit FTES may only be claimed for purposes of state apportionment when the course in question is open to the general public).
7. Please see previous discussion for course advertising guidance and requirements.

Where the district has a contract for instruction to be provided by a public or private agency (i.e., an Instructional Services Agreement), such contracts shall comply with the requirements of Title 5 section 58058(b) (“Employee of the District” provisions) and all of the other requirements indicated in the “Contract Guide for Instructional Services Agreements between College Districts and Public Agencies (2012 update)” and Legal Advisory 04-01.5 (State Law and Regulations Regarding Instructional Services Agreements.) The district should also ensure compliance and alignment with local collective bargaining agreements (K-12 and Community College District) for all teaching assignments occurring under any arrangement to offer courses on a high school campus during the regular school day, including under an Instructional Services Agreement. It’s also important to note that state apportionment may not be claimed when the district receives full compensation for direct education costs for the course from any public or private agency, individual or group of individuals or where the public or private agency, individual or group of individuals, with whom the district has a contract and/or instructional services agreement, has received from other sources full compensation for the direct education costs for the conduct of the course. (Education Code section 84752; Title 5 section 58151.5)

### **C. General Limitations on Admission or Enrollment**

#### **1. Once a student is admitted to the college, he or she is not limited to taking only degree-applicable courses.**

If a college decides to admit a special full-time or part-time pupil pursuant to Education Code sections 76001 and 76002, he or she may, like any other student, enroll in any course subject to properly established prerequisites or enrollment limitations. In addition, as discussed below, Section 76002 now authorizes colleges to explicitly limit enrollment in any course or program based on age or grade level.

#### **2. SB 338 authorizes community college districts to limit admission or enrollment of minors based on age or grade level.**

Prior to passage of SB 338, community college districts were precluded from imposing restrictions on admission of minors based on age because of the federal Age Discrimination Act of 1975 (42 U.S.C. § 6101 et seq.) which prohibits discrimination on the basis of age in programs or activities receiving federal financial assistance. However, the Act does not apply to age distinctions described by state statutes to establish criteria for participation in age-related terms. (34 C.F.R. § 110.2(b)(1)(ii).) SB 338 revised Education Code section 76002 to provide the express statutory authority needed to qualify for this exception to the federal law. Thus, a college may now establish admissions and/or enrollment limitations that prevent special admit pupils below a certain age or grade level from being admitted or from enrolling in certain courses or programs.

**3. A community college district can restrict the admission of a highly gifted pupil based on the criteria of Education Code section 76002(b).**

The Legislature has authorized imposition of these restrictions on admission of all special part-time and special full-time pupils, regardless of whether or not they are considered highly gifted. However, under Section 76001(b), the district would be required to provide a written statement of the reasons for the denial.

**4. A college can impose age or grade level restrictions on pupils who are not enrolled in a public school and who directly petition the college for admission.**

Section 48800.5 says a parent or guardian of a pupil who is not in a public school can petition the community college president for admission of the pupil to the community college regardless of that pupil's age or grade level. However, Section 76002(b) now explicitly allows a district to restrict admission or enrollment based on a pupil's age or grade level. This is not a contradiction. The fact that a parent or guardian may file a petition on behalf of their child does not guarantee that the college will admit the pupil.

**5. A community college district may restrict admission based on criteria set forth in Education Code for some classes, but not all.**

Education Code section 76002(b) clearly authorizes districts to restrict either "admission" or "enrollment" based on age, grade level, or results of an assessment. Since enrollment occurs on a course-by-course basis, a district could admit pupils and then impose such limitations in one course but not in another.

**6. Districts cannot restrict admission or enrollment based on high school GPA.**

Education Code section 76002(b) authorizes restricting admission or enrollment on three grounds. One of the bases is the use of assessment instruments, methods or procedures used in accordance with the regulations implementing the Matriculation Act of 1986. Title 5 section 55521 prohibits placement based only on a single measure. Thus, a college could evaluate a pupil's high school GPA as part of its assessment, but some other assessment instrument, method or procedure would also have to be used. This might include an appropriate assessment test, which is on the list of instruments approved by the Chancellor's Office.

It is also important to note that once a K-12 pupil has been admitted, the ability to limit enrollment in particular courses or programs based on use of assessment procedures must be carried out consistent with the regulations adopted by the Board of Governors concerning the establishment of prerequisites. In other words, after admission, an assessment involving the use of multiple measures can only be used to restrict enrollment in a particular course or program if the assessment is tied to a properly established prerequisite.

**7. A district can give adult students priority in the registration process.**

Under Title 5 section 58108, a district may establish a priority registration system which would accord adult students higher registration priority in order to ensure that they are not being displaced by special admit pupils. Furthermore, Education Code section 76001 requires district to assign a low enrollment priority to special part-time or full-time students, except if the student is attending a middle college high school as described in Education Code section 11300 and part of a partnership with the California Community Colleges Chancellor's Office and the California Department of Education.

**D. Rules Related to Summer Sessions**

**1. There are additional requirements that apply to admission of K-12 students to summer session.**

SB 338 moved the requirements for summer session from the community college portion of the code to the K-12 portion of the code with slight modifications. For summer session the following specific criteria are in effect, in addition to other rules related to all dual enrollments. The principal may only recommend a student if that pupil meets all of the following criteria, which are specific to summer session only:

- a. The pupil demonstrates adequate preparation in the discipline to be studied.
- b. The pupil exhausts all opportunities to enroll in an equivalent course, if any, at his or her school of attendance.
- c. The recommendation of this pupil will not result in recommendations for more than 5% of the total number of pupils who completed that grade immediately prior to the time of recommendation.

**2. The K-12 district is responsible for enforcing the 5 percent limitation on summer session enrollments**

Education Code section 48800(d) places the responsibility on the K-12 district to ensure that the 5 percent limitation on summer school enrollments is honored.

**3. Basic skills or remedial course work at the community colleges can be open to K-12 summer students.**

The K-12 school district must determine that a pupil is prepared to undertake college level work, meaning degree-applicable credit courses at the community college. A pupil who is truly prepared to take college level work should generally not be in need of nondegree-applicable coursework. However, as previously noted, once a student is admitted to the college, he or she may take any course subject to properly established prerequisites or

enrollment limitations. These principles apply to pupils enrolled in summer session courses as well as to those enrolled in courses during the regular academic year.

## **E. Restrictions on Physical Education Courses**

### **1. The 10 percent limit in physical education classes apply to each class section (versus the class enrollment as a whole).**

Although the statutory language is not altogether consistent throughout SB 338, it is clear that the Legislature and the Administration intended that the 10 percent limitation of Education Code section 76002(a)(4) applies to each class or course section. The structure of the section largely requires this conclusion. Section 76002(a) describes those classes that are eligible for apportionment: each class must be open to the public, each class must be advertised as open, each class at a high school campus must be held during certain times, and if the class is a physical education class, its enrollment may not include more than 10 percent special part-time or full-time students. Each condition appears to apply to the individual class sections, so the 10 percent limit also applies to each class section, as opposed to the total number of students enrolled in all sections of the same course.

It should also be noted that, in the view of the Chancellor's Office, this provision was intended to serve as a limit on how many students may be claimed for apportionment, not how many may actually be enrolled in a class section. Thus, if a district wished, it could allow the enrollment of special full-time or part-time students to exceed 10 percent in a particular section of a physical education course, but it would have to ensure that the 10 percent limitation is observed when preparing the apportionment claim for that class.

### **2. The 10 percent limitation in a particular physical education course will be determined based on the maximum enrollment specified for that section of the course.**

The 10 percent limit should be viewed as a restriction on how many students may be claimed for apportionment purposes. Thus, if a district wishes, it could allow special full-time or part-time students to enroll in a physical education course without regard for the 10 percent limit and simply apply the limit when preparing its apportionment claim.

Of course, some districts may not want to permit enrollment for which they will not be able to claim apportionment. This will require some mechanism for monitoring enrollment. In practice, it would be difficult to ensure that this limitation is satisfied each time a student enrolls because many students may be registering simultaneously. The Chancellor's Office recommends that districts limit the number of special admit pupils in each physical education class section to 10 percent of the maximum enrollment specified for that section of the course.

**3. The restrictions on enrollment of special K-12 students in physical education courses also apply where a college has a certificate program in physical education.**

Education Code section 76002 does not distinguish between physical education courses that are part of a certificate program and those which are not. Thus, even where a college has an established certificate program in physical education, each course and course section in that program is subject to the limitations. However, as discussed below, certain vocational courses in closely related fields should not be considered to be "physical education."

**4. Courses or programs that bear certain TOP codes are considered "physical education" for purposes of the restrictions imposed by SB 338.**

For purposes of implementing SB 338, "physical education" is considered by the Chancellor's Office generally to mean any course bearing Taxonomy of Programs (TOP) code 0835.00, or any of its subcodes (0835.10, 0835.30, 0835.50), and any other course whose content, as expressed in the course outline, would reasonably be considered within the discipline of physical education or Kinesiology TOP Code 1270. The bill applies to both activity and theory courses in physical education. However, for this purpose "physical education" is not considered to include vocational courses that are part of a Chancellor's Office-approved program for athletic trainer, sports medicine, fitness specialist, personal trainer, or similar program with a specific occupational outcome.

**F. Documentation**

**1. Districts are required to maintain records for auditing purposes of a school board's determination that the pupil would benefit from advanced scholastic or vocational work.**

A community college district is only authorized to admit K-12 pupils to the extent that the K-12 school district has made a determination that the student is prepared for college level coursework. Therefore, the college should require the K-12 school district to complete a document certifying that this determination has been made for that student and the record should be kept on file for audit purposes as prescribed by Title 5 section 59026(b).

**2. A college can accept a certification document signed by someone other than the school principal.**

If a K-12 school district wishes, it may allow its principals to delegate the responsibility for determining if a pupil should be recommended for college admission to a designee.

In general, it is up to the K-12 school district to determine who can be designated to act in place of the principal. However, in some cases, colleges employ high school faculty to teach college courses. If a high school instructor is employed by a college to teach a college class and that instructor will receive additional compensation to teach the college course, the instructor

will have a direct financial interest in the outcome of the eligibility determination. Based on this direct financial interest, the high school instructor has a conflict of interest in making eligibility determinations. Under such circumstances, colleges should decline to accept recommendations signed only by such an instructor.

**3. The principal of the school should provide community colleges with a list of his/her designated signatories.**

The principal of the school should provide community colleges with a list of his/her designated signatories so the community college can check K-12 pupil admissions and enrollment documents. Otherwise, a college has no way of knowing whether the person signing the document is authorized to do so. This documentation will be especially important in the event of an audit.

**4. For audit purposes, what mechanisms should a community college have in place to monitor a K-12 district's compliance with the 5 percent limit on summer session enrollment?**

Ensuring compliance with the 5 percent limitation for summer session admissions of special full-time or part-time pupils is the responsibility of the K-12 school district. Nevertheless, in Legal Opinion M 02-20 (<http://extranet.cccco.edu/Divisions/Legal/Opinions.aspx>), the Chancellor's Office advised colleges admitting minors as special students in summer school credit courses to obtain certification from school principals that the number of students recommended to attend college courses does not exceed the 5 percent statutory limit. Administrative records containing the principal's 5 percent certification in addition to parental consent and the principal's recommendation as specified in the statute would constitute thorough documentation of efforts to ensure that the law has been followed in the event of an attendance accounting review.

**G. Other Issues**

**1. Pupils can receive (dual) credit at both the K-12 and the college level.**

The Chancellor's Office has issued several legal opinions holding that this is permissible (e.g., Legal Opinion M 98-17, <http://extranet.cccco.edu/Divisions/Legal/Opinions.aspx>).

**2. Full-time students cannot be exempted from paying the enrollment fee.**

Education Code section 76300 provides that special part-time students may be exempted, as a group, from paying the \$46 per unit enrollment fee. There is no such authority for the special-admit full-time student and thus a college or district may not exempt all such students as a group.

However, each special-admit full-time student may be individually considered for a Board of Governors (BOG) Fee Waiver. Colleges may use the existing short-form application for BOG Fee Waiver for Part A and Part B fee waivers. If the family does not qualify using the short form, the college may also provide the family with a FAFSA and make a local calculation of potential financial need (using a commuter budget and a hand-calculated EFC). If the student shows need in this manner the student may receive a Part C waiver. Please note: these are not "new" rules. These rules have been in effect for many years.

#### **IV. Major Attributes of Each Track**

**CCAP track:** College districts may enter into a formal partnership agreement with local school districts to provide a CCAP program, as long as the requirements set forth in AB 288 are met. Benefits of this track include allowing qualified special part-time students to enroll in up to 15 units (and waiver of specified student fees, including nonresident tuition fees), and apportionment eligibility for closed college courses on high school campuses that occur during the regular school day.

Note: to the extent they do not conflict with specific provisions of Education Code section 76004 as enacted by AB 288, other statutes such as Sections 76001 and 76002 (including this Legal Opinion's analysis on non-CCAP programs) also apply under CCAP.

**Non-CCAP track:** College districts are authorized to continue providing (or establishing new) dual enrollment opportunities in the same manner that they were providing prior to the enactment of AB 288 (through individual student enrollment or under an optional formal agreement with local school districts). Benefits of such track include no 10% cap on special admit FTES statewide and no requirement to submit agreement to State Chancellor's Office.

**Both CCAP and non-CCAP tracks:** A college district may have a combination of non-CCAP and CCAP enrollment opportunities, as long as it adheres to the overall 10% FTES cap for all special admit students as required by AB 288 and other applicable requirements.

## Addendum

### Assembly Bill 288 (full text)

*The people of the State of California do enact as follows:*

#### SECTION 1.

The Legislature finds and declares all of the following:

(a) Research has shown that dual enrollment can be an effective means of improving the educational outcomes for a broad range of students.

(b) Dual enrollment has historically targeted high-achieving students; however, increasingly, educators and policymakers are looking toward dual enrollment as a strategy to help students who struggle academically or who are at risk of dropping out.

(c) Allowing a greater and more varied segment of high school pupils to take community college courses could provide numerous benefits to both the pupils and the state, such as reducing the number of high school dropouts, increasing the number of community college students who transfer and complete a degree, shortening the time to completion of educational goals, and improving the level of preparation of students to successfully complete for-credit, college-level courses.

(d) California should rethink its policies governing dual enrollment, and establish a policy framework under which school districts and community college districts could create dual enrollment partnerships as one strategy to provide critical support for underachieving students, those from groups underrepresented in postsecondary education, those who are seeking advanced studies while in high school, and those seeking a career technical education credential or certificate.

(e) Through dual enrollment partnerships, school districts and community college districts could create clear pathways of aligned, sequenced coursework that would allow students to more easily and successfully transition to for-credit, college-level coursework leading to an associate degree, transfer to the University of California or the California State University, or to a program leading to a career technical education credential or certificate.

(f) To facilitate the establishment of dual enrollment partnerships, the state should remove fiscal penalties and policy barriers that discourage dual enrollment opportunities. By reducing some of these restrictions, it will be possible to expand dual enrollment opportunities, thereby saving both students and the state valuable time, money, and scarce educational resources.

#### SEC. 2.

Section 76004 is added to the *Education Code*, to read:

76004.

Notwithstanding Section 76001 or any other law:

(a) The governing board of a community college district may enter into a College and Career Access Pathways (CCAP) partnership with the governing board of a school district for the purpose of offering or expanding dual enrollment opportunities for students who may not already be college bound or who are underrepresented in higher education, with the goal of developing seamless pathways from high school to community college for career technical education or preparation for transfer, improving high school graduation rates, or helping high school pupils achieve college and career readiness.

(b) A participating community college district may enter into a CCAP partnership with a school district partner that is governed by a CCAP partnership agreement approved by the governing boards of both districts. As a condition of, and before adopting, a CCAP partnership agreement, the governing board of each district, at an open public meeting of that board, shall present the dual enrollment partnership agreement as an informational item. The governing board of each district, at a subsequent open public meeting of that board, shall take comments from the public and approve or disapprove the proposed agreement.

(c) (1) The CCAP partnership agreement shall outline the terms of the CCAP partnership and shall include, but not necessarily be limited to, the total number of high school students to be served and the total number of full-time equivalent students projected to be claimed by the community college district for those students; the scope, nature, time, location, and listing of community college courses to be offered; and criteria to assess the ability of pupils to benefit from those courses. The CCAP partnership agreement shall also establish protocols for information sharing, in compliance with all applicable state and federal privacy laws, joint facilities use, and parental consent for high school pupils to enroll in community college courses.

(2) The CCAP partnership agreement shall identify a point of contact for the participating community college district and school district partner.

(3) A copy of the CCAP partnership agreement shall be filed with the office of the Chancellor of the California Community Colleges and with the department before the start of the CCAP partnership. The chancellor may void any CCAP partnership agreement it determines has not complied with the intent of the requirements of this section.

(d) A community college district participating in a CCAP partnership shall not provide physical education course opportunities to high school pupils pursuant to this section or any other course opportunities that do not assist in the attainment of at least one of the goals listed in subdivision (a).

(e) A community college district shall not enter into a CCAP partnership with a school district within the service area of another community college district, except where an agreement exists, or is established, between those community college districts authorizing that CCAP partnership.

(f) A high school pupil enrolled in a course offered through a CCAP partnership shall not be assessed any fee that is prohibited by Section 49011.

(g) A community college district participating in a CCAP partnership may assign priority for enrollment and course registration to a pupil seeking to enroll in a community college course that is required for the pupil's CCAP partnership program that is equivalent to the priority assigned to a pupil attending a middle college high school as described in Section 11300 and consistent with middle college high school provisions in Section 76001.

(h) The CCAP partnership agreement shall certify that any community college instructor teaching a course on a high school campus has not been convicted of any sex offense as defined in Section 87010, or any controlled substance offense as defined in Section 87011.

(i) The CCAP partnership agreement shall certify that any community college instructor teaching a course at the partnering high school campus has not displaced or resulted in the termination of an existing high school teacher teaching the same course on that high school campus.

(j) The CCAP partnership agreement shall certify that a qualified high school teacher teaching a course offered for college credit at a high school campus has not displaced or resulted in the termination of an existing community college faculty member teaching the same course at the partnering community college campus.

(k) The CCAP partnership agreement shall include a certification by the participating community college district of all of the following:

(1) A community college course offered for college credit at the partnering high school campus does not reduce access to the same course offered at the partnering community college campus.

(2) A community college course that is oversubscribed or has a waiting list shall not be offered in the CCAP partnership.

(3) Participation in a CCAP partnership is consistent with the core mission of the community colleges pursuant to Section 66010.4, and that pupils participating in a CCAP partnership will not lead to enrollment displacement of otherwise eligible adults in the community college.

(l) The CCAP partnership agreement shall certify that both the school district and community college district partners comply with local collective bargaining agreements and all state and federal reporting requirements regarding the qualifications of the teacher or faculty member teaching a CCAP partnership course offered for high school credit.

(m) The CCAP partnership agreement shall specify both of the following:

(1) Which participating district will be the employer of record for purposes of assignment monitoring and reporting to the county office of education.

(2) Which participating district will assume reporting responsibilities pursuant to applicable federal teacher quality mandates.

(n) The CCAP partnership agreement shall certify that any remedial course taught by community college faculty at a partnering high school campus shall be offered only to high school students who do not meet their grade level standard in math, English, or both on an interim assessment in grade 10 or 11, as determined by the partnering school district, and shall involve a collaborative effort between high school and community college faculty to deliver an innovative remediation course as an intervention in the student's junior or senior year to ensure the student is prepared for college-level work upon graduation.

(o) (1) A community college district may limit enrollment in a community college course solely to eligible high school students if the course is offered at a high school campus during the regular school day and the community college course is offered pursuant to a CCAP partnership agreement.

(2) For purposes of allowances and apportionments from Section B of the State School Fund, a community college district conducting a closed course on a high school campus pursuant to paragraph (1) of subdivision (p) shall be credited with those units of full-time equivalent students attributable to the attendance of eligible high school pupils.

(p) A community college district may allow a special part-time student participating in a CCAP partnership agreement established pursuant to this article to enroll in up to a maximum of 15 units per term if all of the following circumstances are satisfied:

(1) The units constitute no more than four community college courses per term.

(2) The units are part of an academic program that is part of a CCAP partnership agreement established pursuant to this article.

(3) The units are part of an academic program that is designed to award students both a high school diploma and an associate degree or a certificate or credential.

(q) The governing board of a community college district participating in a CCAP partnership agreement established pursuant to this article shall exempt special part-time students described in subdivision (p) from the fee requirements in Sections 76060.5, 76140, 76223, 76300, 76350, and 79121.

(r) A district shall not receive a state allowance or apportionment for an instructional activity for which the partnering district has been, or shall be, paid an allowance or apportionment.

(s) The attendance of a high school pupil at a community college as a special part-time or full-time student pursuant to this section is authorized attendance for which the community college shall be credited or reimbursed pursuant to Section 48802 or 76002, provided that no school district has received reimbursement for the same instructional activity.

(t) (1) For each CCAP partnership agreement entered into pursuant to this section, the affected community college district and school district shall report annually to the office of the Chancellor of the California Community Colleges all of the following information:

(A) The total number of high school pupils by schoolsite enrolled in each CCAP partnership, aggregated by gender and ethnicity, and reported in compliance with all applicable state and federal privacy laws.

(B) The total number of community college courses by course category and type and by schoolsite enrolled in by CCAP partnership participants.

(C) The total number and percentage of successful course completions, by course category and type and by schoolsite, of CCAP partnership participants.

(D) The total number of full-time equivalent students generated by CCAP partnership community college district participants.

(2) On or before January 1, 2021, the chancellor shall prepare a summary report that includes an evaluation of the CCAP partnerships, an assessment of trends in the growth of special admits systemwide and by campus, and, based upon the data collected pursuant to this section, recommendations for program improvements, including, but not necessarily limited to, both of the following:

(A) Any recommended changes to the statewide cap on special admit full-time equivalent students to ensure that adults are not being displaced.

(B) Any recommendation concerning the need for additional student assistance or academic resources to ensure the overall success of the CCAP partnerships.

(3) The chancellor shall ensure that the number of full-time equivalent students generated by CCAP partnerships is reported pursuant to the reporting requirements in Section 76002.

(u) The annual report required by subdivision (t) shall also be transmitted to all of the following:

(1) The Legislature, in compliance with Section 9795 of the Government Code.

(2) The Director of Finance.

(3) The Superintendent.

(v) A community college district that violates this article, including, but not necessarily limited to, any restriction imposed by the board of governors pursuant to this article, shall be subject to the same penalty as may be imposed pursuant to subdivision (d) of Section 78032.

(w) The statewide number of full-time equivalent students claimed as special admits shall not exceed 10 percent of the total number of full-time equivalent students claimed statewide.

(x) Nothing in this section is intended to affect a dual enrollment partnership agreement existing on the effective date of this section under which an early college high school, a middle college high school, or California Career Pathways Trust existing on the effective date of this section is operated. An early college high school, middle college high school, or California Career Pathways Trust partnership agreement existing on the effective date of this section shall not operate as a CCAP partnership unless it complies with the provisions of this section.

(y) This section shall remain in effect only until January 1, 2022, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2022, deletes or extends that date.