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September 8, 2004

TO: Linda Michalowski
Vice Chancellor for Student Services

FROM: Steve Bruckman
Interim General Counsel

SUBJECT: Dropping a Student for Nonpayment of Enrollment Fees
Legal Opinion O 04-14

ISSUE

You have asked whether a district may drop a student from a course after instruction has begun where the student fails to pay the enrollment fees for the course.

CONCLUSION

A community college district that permits students to defer payment of enrollment fees may not drop a student from a course once instruction has begun because the student fails to make the deferred payments. A student who registers in advance may be dropped from a course if he or she does not pay the required enrollment fees prior to the beginning of instruction.

ANALYSIS

Section 58502 of title 5 of the California Code of Regulations requires the enrollment fee to be charged at the time of enrollment. However, in Legal Opinion 93-03, we noted that section 58502 also permits deferral of the collection of the fee under conditions established by the governing board. Therefore, assuming the governing board has authorized such a process, students may pay their enrollment fees at some point after enrollment. In Opinion 93-03, we went on to point out that:

"Under the authority of Section 59410 of Title 5, a district is authorized to withhold grades, transcripts, diplomas, and registration privileges from any student who fails to pay a proper financial obligation to the district. Under this provision a district could prohibit a student from registering in a subsequent semester, quarter, or academic year if he or she failed to make the necessary installment payments of the enrollment fee."

Thus, section 59410 lists the remedies available to a district in the event that a student fails to pay a debt he or she owes to the district. It is a fundamental rule of statutory construction that, where a finite list is set forth, items not on the list are excluded. (*Sierra Club v. State Bd. of Forestry* (1994) 7 Cal.4th 1215, 1230, 32 Cal.Rptr.2d 19, 876 P.2d 505.) Accordingly, if the Board of Governors had intended that students could be dropped from a course for failing to pay fees, such a remedy would logically be set forth in section 59410 and its absence indicates an intentional omission.¹

This conclusion is reinforced by title 5, section 55202 which, among other things, authorizes dropping a student from a course if it is discovered after the course begins that he or she fails to meet a prerequisite for the course. Subsection (g) of section 55202 specifically states:

"(g) The determination of whether a student meets a prerequisite shall be made prior to his or her enrollment in the course requiring the prerequisite, provided, however, that enrollment may be permitted pending verification that the student has met the prerequisite or corequisite. If the verification shows that the student has failed to meet the prerequisite, the student may be involuntarily dropped from the course if the applicable enrollment fees are promptly refunded. Otherwise a student may only be involuntarily removed from a course due to excessive absences or as a result of disciplinary action taken pursuant to law or to the student code of conduct."

For the above reasons, we conclude that a district may defer payment of enrollment fees, but if it does so, it may not involuntarily drop a student from a course once instruction has begun for failure to make the deferred payments. However, if a student registers in advance for a course, we believe a college could drop the student from the course if the enrollment fees are not paid by the time instruction begins. The commencement of instruction is the critical moment in time because at that point the student accepts a benefit from the college and has incurred a debt in the form of the unpaid enrollment fees. The college must then look to section 59410 for methods by which it may encourage the student to pay this obligation.

SB:RB:VAR:sj

cc: Robert Turnage

O 04-14

¹ The fact that a district may also utilize the Chancellor's Office Tax Offset Program, authorized under Government Code sections 12419.5 and 12419.7, to collect debts owed to the district does not alter this conclusion. That the Legislature has seen fit to give districts one additional method for collection of debts does not imply that districts may use any means, including involuntarily dropping students from a course, to accomplish this end.