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TO: Sally Montemayor-Lenz
Matriculation and Middle College High School Coordinator

FROM: Steven Bruckman
Executive Vice Chancellor and General Counsel

SUBJECT: Certificate of Achievement as Evidence of Graduation
from a California High School for Purposes of AB 540
Legal Opinion O 05-09

ISSUE

You have asked whether a certificate of achievement issued by a high school to a student with exceptional needs should be considered evidence of "graduation from a California high school or attainment of the equivalent thereof" for purposes of Education Code section 68130.5 that was enacted through AB 540.

CONCLUSION

Districts should accept a certificate of achievement issued by a high school as evidence of graduation from high school just as they would accept a regular high school diploma as evidence of high school graduation.

ANALYSIS

Education Code section 68130.5 imposes several conditions on the exemption from the payment of nonresident tuition described in that section. One of the requirements is "Graduation from a California high school or attainment of the equivalent thereof."

The section does not specifically require that an individual possess a high school diploma, although the high school diploma is acceptable as documentation that the student graduated from a California high school.

Part 30 of the Education Code addresses the education of individuals with exceptional needs. If an individual with exceptional needs "graduates from high school with a regular high school diploma, "that person is no longer eligible for special education and related services" through the K-12 system. (§ 56026.1(a).)

Section 56026.1(b) defines "regular high school diploma" as "a diploma conferred on a pupil who has completed a prescribed course of study and has met the standards of proficiency in basic skills prescribed by the governing board of the school district." Thus, the "regular high school diploma" provides evidence that the student completed the relevant course work and attained the proficiencies established by the school district for that student.

Section 56390 addresses the certificate of achievement that may be awarded to individuals with exceptional needs:

"Notwithstanding Section 51412 or any other provision of law, a local educational agency may award an individual with exceptional needs a certificate or document of educational achievement or completion if the requirements of subdivision (a), (b), or (c) are met.

(a) The individual has satisfactorily completed a prescribed alternative course of study approved by the governing board of the school district in which the individual attended school or the school district with jurisdiction over the individual and identified in his or her individualized education program.

(b) The individual has satisfactorily met his or her individualized education program goals and objectives during high school as determined by the individualized education program team.

(c) The individual has satisfactorily attended high school, participated in the instruction as prescribed in his or her individualized education program, and has met the objectives of the statement of transition services."

Section 56391 provides that students who meet the requirements of section 56390 are eligible to participate in graduation ceremonies.

"An individual with exceptional needs who meets the criteria for a certificate or document described in Section 56390 shall be eligible to participate in any graduation ceremony and any school activity related to graduation in which a pupil of similar age without disabilities would be eligible to participate."

Although the certificate of achievement is not a "regular high school diploma," it is the functional equivalent for high school students with exceptional needs. The certificate of achievement verifies that the student completed the relevant educational program established by the high school for that student. Eligibility for the certificate authorizes the student to participate in the same graduation ceremonies and activities that are available to a student who is eligible to receive a regular high school diploma.

Both a regular high school diploma and a certificate of educational achievement issued to a student with exceptional needs evidence completion of the relevant high school educational program for the student, and students who are receiving either document are

equally eligible to participate in high school graduation ceremonies and activities. This leads us to believe a certificate of educational achievement should be considered evidence of high school graduation for a student with exceptional needs.

We also note that this result is consistent with the stated intent of the Legislature in enacting AB 540. AB 540 contained an uncodified provision which set forth the findings and declarations of the Legislature concerning the bill. Section 1(a)(1) of AB 540 provides that, "There are high school pupils who have attended elementary and secondary schools in this state for most of their lives and who are likely to remain. . . ." (Emphasis added.) Section 1(a)(3) includes two references tying the exemption to presence in the state. It first refers to a "fair tuition policy for all high school pupils in California." (Emphasis added.) Second, it declares that a "fair tuition policy . . . increases the state's collective productivity and economic growth." Thus, it appears that the Legislature imposed eligibility requirements related to high school attendance and graduation not because they reflect academic achievement but because they tend to indicate that a person is likely to remain in California and contribute to the state. This line of reasoning would seem to apply to students who receive a certificate of educational achievement as well as to those who receive a traditional high school diploma.

Accordingly, we conclude that the certification of educational achievement from a high school is appropriate evidence of graduation from a California high school for purposes of section 68130.5. Assuming the other conditions of the exemption are met, a student who received a certificate of educational achievement from a high school would be eligible for the exemption from nonresident tuition.

SB:RB:sj

cc: Linda Michalowski
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