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TO: Elias Regalado, Specialist
Fiscal Planning and Administration

FROM: Steven Bruckman
Executive Vice Chancellor and General Counsel

Subject: Exemption from Nonresident Tuition Under AB 540 for Students
Receiving Certificates of Completion
Legal Opinion O 06-02

ISSUE:

You have asked whether a student who receives a certificate of completion instead of a regular high school diploma is eligible for the exemption from nonresident tuition provided by Education Code section 68130.5.

CONCLUSION:

A student (other than a nonimmigrant) who attends high school for three years in California and receives a certificate of completion from a California high school is eligible for the exemption from nonresident tuition provided by Education Code section 68130.5.

ANALYSIS:

Education Code section 68130.5 was added by Assembly Bill 540 (Stats. 2001, ch. 814). The section provides an exemption from nonresident tuition for individuals (except for nonimmigrants) who meet several requirements. One requirement is high school attendance in California for three years. The other key requirement is "Graduation from a California high school or attainment of the equivalent thereof."

As we recently noted in Legal Opinion O 05-09, "The section does not specifically require that an individual possess a high school diploma." Nor does the law absolutely require that a student have graduated from high school. However, if a student has not graduated from high school, he or she must have attained "the equivalent thereof." (Legal Op. 05-09, at p. 1.)

Determining whether a student has attained the equivalent of high school graduation is becoming increasingly important as California proceeds with full implementation of the California High School Exit Exam. Education Code section 60851 provides that, as a general rule, each pupil completing grade 12 must "successfully pass the [high school] exit examination as a condition of receiving a diploma of graduation or a condition of graduation from high school." Consequently, over time there will be an increasing number of students who have attended high school in California for three years and have completed all of their high school coursework, but have not received a high school diploma or graduated from high school because they have not succeeded in passing the exit exam.

You have indicated that some high schools may choose to award "certificates of completion" or similar documents to such students to evidence the fact that they have completed their high school coursework even though they cannot graduate from high school or receive a high school diploma. Your question is whether a community college district may accept such a certificate of completion as evidence that a student has attained the "equivalent" of high school graduation for purposes of Education Code section 68130.5.

The law only specifically mentions the award of "certificates of completion" in certain narrowly defined circumstances. For example, Education Code section 33033 provides that the State Board of Education may establish a course of instruction for institutional inmates and award them high school diplomas. That section then goes on to indicate that:

"Certificates of completion previously awarded by the State Board of Education to students who, at the time of the award of a certificate of completion, met the requirements for high school graduation, shall be deemed for all purposes to be the equivalent of diplomas of high school graduation."

Of greater interest is Education Code section 51412 which provides more generally that:

"No diploma, certificate or other document, except transcripts and letters of recommendation, shall be conferred on a pupil as evidence of completion of a prescribed course of study or training, or of satisfactory attendance, unless the pupil has met the standards of proficiency in basic skills prescribed by the governing board of the high school district, or equivalent thereof."

Although this section is worded in the negative, we think it confirms that a high school district may award a certificate of completion or other similar document to a student who has completed the course of study and met the standards of proficiency prescribed by the district governing board.

It is clear that the authority of high school districts to award certificates of completion under section 51412 continues despite the enactment of section 60851 prohibiting the award of a high school diploma to students who fail to pass the exit exam. Prior to 2000, section 51412 provided:

"No diploma, certificate or other document, except transcripts and letters of recommendation, shall be conferred on a pupil as evidence of completion of a prescribed course of study or training, or of satisfactory attendance, unless the pupil has met the standards of proficiency in basic skills prescribed by the governing board of the high school district, or equivalent thereof, pursuant to Article 2.5 (commencing with Section 51215) of Chapter 2." (Emphasis added.)

Article 2.5 of Chapter 2 was a comprehensive scheme requiring local high school districts to adopt basic skills proficiency standards and prohibiting the award of high school diplomas to students who failed to meet those standards. The reference to article 2.5 was deleted from Education Code section 51412 by Assembly Bill 2907 (Stats. 2000, ch. 1058). AB 2907 was a large technical clean-up bill which amended a number of provisions of the Education Code. It amended section 51412 to remove the reference to article 2.5 because that article had previously been repealed by Senate Bill 2x (Stats. 1999-2000, 1st Ex. Sess., ch. 1), which was the same bill which mandated the use of the exit exam and enacted section 60851.

The reason for repeal of this earlier approach to setting proficiency standards at the local level was explained in section 1 of SB 2x, which was an uncodified provision stating that:

"SECTION 1. The Legislature finds and declares both of the following:
(a) Local proficiency standards established pursuant to Section 51215 of the Education Code are generally set below a high school level and are not consistent with state adopted academic content standards.
(b) In order to significantly improve pupil achievement in high school and to ensure that pupils who graduate from high school can demonstrate grade level competency in reading, writing, and mathematics, the state must set higher standards for high school graduation."

Thus, it is clear that the Legislature decided that it was necessary to establish statewide basic skills proficiency standards as a condition of high school graduation. At the same time, the Legislature repealed the requirement that high school districts establish their own basic skills proficiency standards, but it did not prohibit them from doing so. The fact that section 51412 was subsequently amended, but not repealed, indicates that a high school district which retains local proficiency standards can continue to award certificates of completion to students who complete all of their required high school coursework and satisfy those local proficiency standards.

Now we turn to AB 540 and consider the status of a student who holds a certificate of completion. Section 33033 explicitly states that certificates of completion issued pursuant to that section are to be "deemed for all purposes to be the equivalent of diplomas of high school graduation." On the other hand, it is clear that a certificate of completion issued pursuant to section 51412 is not the same thing as a high school diploma and is not even evidence that the student has graduated from high school.

However, as we have noted, Education Code section 68130.5 does not require either a high school diploma or high school graduation. There remains the possibility that a certificate of completion issued pursuant to section 51412 may serve as evidence that a student has attained "the equivalent" of high school graduation for purposes of section 68130.5.

In Legal Opinion O 05-09 we concluded that a student with a disability who has participated in special education in high school and received a "certificate of achievement" has attained the equivalent of high school graduation for purposes of section 68130.5. We reached that conclusion, in part, because "The certificate of achievement verifies that the student completed the relevant educational program established by the high school for that student." (Legal Op. 05-09, at p. 2.) We also concluded that a certificate of achievement should be accepted as documenting that a student has attained the equivalent of high school graduation because doing so would be consistent with the 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.)" (*Id.*, at p. 3.)

"Section 1(a)(3) of AB 540 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."

The same rationale is equally applicable to certificates of completion issued pursuant to section 51412. Section 51412 ensures that a high school may not award a certificate of completion or any similar document to a student unless he or she has completed the course of study and met the proficiency standards prescribed by the governing board of the high school district. Furthermore, there is no reason to believe that students receiving

such certificates of completion are less likely to remain in California and contribute to the state than are students with disabilities who receive certificates of achievement or other students who receive regular high school diplomas.

Accordingly we conclude that a certificate of completion or similar document issued by a high school is acceptable as evidence that a student has attained the equivalent of graduation from a California high school for purposes of section 68130.5.

We cannot anticipate every type of certificate or document that may be issued by a high school district. However, for purposes of AB 540, the critical factor is that the document either state that it is issued pursuant to section 51412 or explicitly certify that the student has completed the course of study and met the proficiency standards prescribed by the governing board of the high school district.¹ A student who holds such a certificate and meets the other eligibility requirements of section 68130.5 would be entitled to the exemption from nonresident tuition provided by that section.

RB:sj

cc: Linda Michalowski, Interim Vice Chancellor,
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O 06-02

¹ Of course, since a certificate of completion issued pursuant to section 33033 is deemed to be the equivalent of a high school diploma, such a certificate would also satisfy the requirements of section 68130.5.