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October 23, 2006

TO: LeBaron Woodyard
Dean, Instructional Programs and Services

FROM: Steven Bruckman
Executive Vice Chancellor and General Counsel

SUBJECT: Provision of Instruction in Languages Other Than English
Legal Opinion O 06-10

ISSUE:

You have asked whether a community college may provide instruction in Spanish, or another language other than English, in some sections of a course to those with limited English proficiency, if other sections of the course are conducted in English.

CONCLUSION:

A community college may offer certain sections of a course in English and other sections of the course in Spanish, or another language other than English, to students with limited proficiency in English if:

- (1) students in all sections of the course are required to enroll in a basic skills English corequisite course; or
- (2) those taking non-English sections of the course are designated as a cohort of students and are required to concurrently enroll in another course or courses designed to help them achieve proficiency in English.

ANALYSIS:

The basic state policy on the language of instruction in community colleges is Education Code section 30, which provides:

"English shall be the basic language of instruction in all schools. The governing board of any school district, or community college district, and any private school may determine when and under what circumstances instruction may be given bilingually.

It is the policy of the state to insure the mastery of English by all pupils in the schools; provided that bilingual instruction may be offered in those situations when such instruction is educationally advantageous to the pupils. Bilingual instruction is authorized to the extent that it does not interfere with the systematic, sequential, and regular instruction of all pupils in the English language.

Pupils who are proficient in English and who, by successful completion of advanced courses in a foreign language or by other means, have become fluent in that language may be instructed in classes conducted in that foreign language."

Section 30 clearly states that English is to be the primary language of instruction. One express exception to this rule is that students who are already proficient in both English and another language may be taught in that other language. This, of course, is intended to permit conduct of advanced foreign language courses exclusively in that language. However, this provision does not address your question because it does not apply to limited English proficient (LEP) students.

The only way students with limited English proficiency can be instructed in a language other than English is in the context of bilingual instruction. Thus, in order to answer your question, we must determine whether the concept of bilingual instruction is broad enough to encompass teaching some sections of a course in English and other sections in Spanish or another foreign language.

Section 30 does not define bilingual education, but section 30.5 provides that: "bilingual education shall be defined as a system of instruction which builds upon the language skills of a pupil whose primary language is neither English nor derived from English." It appears that this would permit conducting a course in a mixture of English and another language so that students learn the subject matter of the course while simultaneously improving their English proficiency.

However, we do not think teaching some sections of a course exclusively in English and other sections exclusively in another language would, by itself, qualify as "bilingual education" within the meaning of section 30.5. LEP students who attend a section of the course conducted in their primary language may learn the subject matter of that specific course, but they would have no opportunity to improve their English proficiency. Section 30 emphasizes the importance of having all students learn English when it states: "It is the policy of the state to insure the mastery of English by all pupils in the schools; provided that bilingual instruction may be offered in those situations when such instruction is educationally advantageous to the pupils. Bilingual instruction is authorized to the extent that it does not interfere with the systematic, sequential, and regular instruction of all pupils in the English language."

On the other hand, it appears that the statutory requirements would be satisfied if students taking a course exclusively in their primary language were simultaneously enrolled in English classes designed to help them achieve English proficiency. Indeed, until recently this was the form of bilingual education used in the K-12 school system. "Bilingual education programs are those in which LEP students, while they are learning English, receive instruction in academic subjects such as math, science and social studies in their 'primary' or 'home' language." (*Valeria G. v. Wilson* (N.D. Cal., 1998) 12 F. Supp. 2d 1007, 1012.)

Proposition 227, adopted by the voters at the June 1998 primary election, rejected this approach to bilingual education in the K-12 system and replaced it with an educational system known as "sheltered English immersion" or "structured English immersion" in which "nearly all classroom instruction is in English but with the curriculum and presentation designed for children who are learning the language." (Ed. Code, § 306(d).)

However, Proposition 227 did not amend section 30 and it clearly applies only to the K-12 schools. For example, Education Code section 300, which was added by Proposition 227, provides, in part, that "Young immigrant children can easily acquire full fluency in a new language, such as English, if they are heavily exposed to that language in the classroom at an early age. . . . Therefore, It is resolved that: all children in California public schools shall be taught English as rapidly and effectively as possible." Thus, Proposition 227 does not preclude community colleges from offering bilingual instruction by teaching courses in a student's primary language while the student is simultaneously enrolled in English classes.

This does not, however, end our inquiry. In order for a college to be free to offer this type of bilingual instruction, we must confirm that this practice would be consistent with applicable regulations adopted by the Board of Governors. While we find nothing in the Board's title 5 regulations which would preclude the form of bilingual instruction described above, there are certain provisions which may restrict the circumstances under which it may be offered.

First, we would point out that title 5, section 55002 sets forth the basic standards for approval of both credit and noncredit courses and requires, in all instances, that "Each section of the course is to be taught by a qualified instructor in accordance with a set of objectives and with other specifications defined in the course outline of record." Section 55002 also provides that, among other things, the course outline of record is to "specify types or provide examples of required reading and writing assignments, other outside-of-class assignments, instructional methodology, and methods of evaluation for determining whether the stated objectives have been met by students." So, if the course outline of record requires that students read a particular book, the college would need to ensure that the same text is available both in English and in the other language which will be used to instruct certain sections of the course. As a result, it will be necessary to carefully review the course outline of record for each course which the college contemplates offering in another language to ensure that all sections of the course can be taught in accordance with the course outline. If not, the curriculum committee would need to consider whether or not to modify the course outline so that its requirements can be applied consistently in all sections of the course.

Second, for degree-applicable credit courses, subdivision (a)(2)(E) of section 55002 requires that "If success in the course is dependent upon communication or computation skills, then the course shall require, consistent with the provisions of article 2.5 (commencing with § 55200) of this subchapter, as prerequisites or corequisites eligibility for enrollment in associate degree credit courses in English and/or mathematics, respectively." Even where the curriculum committee has determined that such a course

requires basic skill in English, it may still be possible to offer some sections of such a course in English and others in another language if the course outline indicates that an English corequisite would be sufficient. However, if the curriculum committee determines that an English course must be completed as a prerequisite to enrollment in the course, many students with limited English proficiency who seek instruction in their primary language may not be able to satisfy the prerequisite. Since prerequisites must be applied uniformly to all sections of a course, this may make it impractical to offer some sections of a course in a foreign language if the course requires an English prerequisite.

Finally, a college considering offering some sections of a course in a foreign language would be well advised to avoid expressly limiting enrollment in those sections to students with limited English proficiency. Doing so could preclude claiming apportionment for the course due to a provision in title 5, section 58108 prohibiting restricting enrollment to a "specialized clientele." Fortunately, we need not determine whether LEP students would constitute a specialized clientele and districts need not be overly concerned about this restriction since section 58106 provides an alternative approach. Subdivision (b)(4) of section 58106 allows "limiting enrollment in one or more sections of a course to a cohort of students enrolled in one or more other courses, provided however, that a reasonable percentage of all sections of the course do not have such restrictions." Thus, where a English corequisite is not deemed necessary for all students, a college could limit enrollment in non-English sections of a course to students who are concurrently enrolled in a basic skills English course. This would satisfy the requirements for bilingual instruction and avoid running afoul of the "specialized clientele" restriction of section 58108.

Based on the foregoing, we conclude that if a college carefully complies with applicable restrictions, it may conduct some sections of a course exclusively in Spanish or another foreign language and other sections of the course exclusively in English. In order for such an arrangement to be classified as bilingual instruction permitted pursuant to Education Code section 30, the students enrolled in the non-English sections of the course must be simultaneously enrolled in classes designed to teach them English. This requirement can be satisfied either by establishing a basic skills English course as a corequisite for students enrolled in all sections of the course or by invoking section 58106(b)(4) and requiring that students enrolled in the non-English sections of the course also be enrolled in such a basic skills course while the other sections of the course remain unrestricted.

SB:RB:sj:jkg

cc: Carole Bogue-Feinour, Vice Chancellor, Academic Affairs

Legal Opinion 06-10