

**CALIFORNIA COMMUNITY COLLEGES
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Date: September 23, 2010

To: Steve Bruckman
Executive Vice Chancellor of Operations and General Counsel

Chris Yatooma
Director of Fiscal Policy

Logan Wizner, CPA
Manager, Nystrom & Company LLP

From: Jonathan Lee
Staff Counsel

A handwritten signature in blue ink, appearing to be 'JL', next to the name Jonathan Lee.

Re: Limitations on Enrollment for Cohorts of Students
Legal Opinion O 10-07

Question

California Code of Regulations, title 5, section 58106 deals with situations where a course that is claimed for state apportionment may limit its enrollment. In particular, section 58106(b)(4) provides for the situation where certain courses may limit enrollment to a cohort of students enrolled in one or more other courses as long as a reasonable percentage of all sections of the course do not have such restrictions. What constitutes a “reasonable percentage?”

Conclusion

If a community college decides to limit enrollment to a cohort of students, a majority of the course sections offered need to be left for open enrollment.

Analysis

Ensuring access to quality higher education opportunities is among the primary goals of the California community colleges. In addition to being affordable and geographically accessible, community colleges ensure access to students by providing courses that are open in enrollment. These open classes are available for anyone to enroll in, and are among the most important features of community college courses. Title 5 further emphasizes the importance of open courses by listing open enrollment as a requirement for community colleges to meet minimum

conditions. Section 51006 requires the governing board of each community college district to adopt by resolution or comparable statement the following:

“The policy of this district is that, unless specifically exempted by statute or regulation, every course, course section, or class, reported for state aid, wherever offered and maintained by the district, shall be fully open to enrollment and participation by any person who has been admitted to the college(s) and who meets such prerequisites as may be established pursuant to section 55003 of of [*sic*] division 6 of title 5 of the California Code of Regulations.” (Cal. Code Regs., tit. 5, § 51006(a).)

While most courses that are offered by community colleges remain open, there are circumstances where enrollment may be limited. Courses claimed for state apportionment can place limitations on enrollment in only a few specific situations. These limitations are outlined in title 5, section 58106.

Section 58106(b)(4) allows for limiting the enrollment of a course to a cohort of students enrolled in one or more other courses together. According to section 58106(b)(4), this restriction can only be placed provided that “a reasonable percentage of all sections of the course do not have such restrictions.”

A review of title 5 and the Education Code provides no clear guidance on what is “reasonable” or what a “reasonable percentage” would be. Absent anything specific, terms are defined through their plain meaning. For “reasonable,” the plain meaning is “Just; proper. Ordinary or usual. Fit and the appropriate to the end view. (See Black’s Law Dict. (5th ed. 1979) p. 1138, col. 1.) Legally the term is often used to refer to levels of care, cause, compensation or doubt.

In this case, what is “just, rational and appropriate,” must be based on the community college’s primary goal of ensuring access to students through open coursework. Additionally any limitations should balance the fact that the makeup and purpose of cohorts vary across the state. Thus, maintaining some flexibility in determining what is a “reasonable percentage” is crucial in order to maximize the educational opportunities for all.

Based on the above factors, a “reasonable percentage” is deemed to be a majority. If a college chooses to restrict sections of a course to a cohort, there must be a greater number of sections of that course to be left for open enrollment. For example, in a case where a single section is limiting its enrollment to a cohort, two other sections need to be offered for open enrollment.

Allowing for a majority of courses to remain open is consistent with the community college system’s goal of ensuring access. Not setting a fixed percentage beyond this point also allows community colleges the greatest amount of flexibility in planning course sections that may be restricted by cohort enrollment.

JL/fr/ce