Date: January 28, 2011

To: Fred Harris  
   Assistant Vice Chancellor, College Finance and Facilities Planning

From: Jonathan Lee  
   Staff Counsel

Re: Instructional Services Agreements and Receiving Apportionment  
   Legal Opinion O 11-01

Question

A community college district is engaged in an Instructional Services Agreement ("ISA") with a private entity to provide specialized workforce training to its students. Current statutes and regulations prevent a community college district from receiving apportionment from an ISA if the private entity receives full funding for the cost of instruction from another source. Does this restriction prevent the private entity from receiving its full funding from the community college district itself?

Conclusion

The community college district can receive apportionment and fully fund a private entity for the cost of instruction. The restrictions placed on a community college district claiming apportionment relate to whether direct education costs for any class conducted under contract between the district and the private entity is fully funded from another source, not whether the actual cost of instruction is fully funded or not.

Background

Education Code section 84752 was enacted in 1996 as way to prevent community college districts from receiving double funding from the state for the cost of instruction. Education Code section 84752(a) states:

"No community college district shall receive full-time equivalent student (FTES) funding for activities that are fully funded through another source. The Board of Governors of the California Community Colleges shall adopt regulations to implement this subdivision."
The adopted regulations that were promulgated as a result of this code section can be found in title 5, section 58051.5 of the California Code of Regulations.

Section 58051.5 spells out three specific situations where a community college district may not claim classes for state apportionment. Section 58051.5(a) states:

“(1) if the district receives full compensation for direct education costs for the class from any public or private agency, individual or group of individuals; or

(2) if the public or private agency, individual or group of individuals, with whom the district has a contract and/or instructional agreement, has received from other sources full compensation for the direct education costs for the conduct of the class; or

(3) if such classes are not located in facilities clearly identified in such a manner, and established by appropriate procedures, to ensure that attendance in such classes is open to the general public, except that students may be required to meet prerequisites which have been established pursuant to sections 55002 and 55003.”

Section 58051.5(a)(2) clearly states that a community college district may not claim apportionment for classes provided by a private agency that are fully funded from another source. However, does this regulation also mean that if the community college district itself fully funds the private entity for the cost of instruction, that district is prevented from collecting apportionment?

Analysis

Education Code section 84752 and title 5, section 58051.5 were both enacted based on a concern that a community college district was receiving apportionment for a class that was already paid for by the state or another source. Apportionment is based on the principle of reimbursing a community college for the cost of instruction through a calculation of the FTES generated by each class. If the class already is fully funded by other sources, then the community college would have no cause for reimbursement from the state and thus would not be able to generate apportionment for those classes.

ISAs present a unique situation where a community college district makes a contract with a private entity to provide instruction to students in its place. This usually involves specialized workforce instruction that can best be provided by the private sector. In the case of an ISA, Education Code section 84752 and title 5, section 58051.5 apply to whether the direct education costs for any class conducted under contract itself between the community college district and the private entity is fully funded from another source or not. If the direct education costs are fully funded from another source, then the community college district is not entitled to claim apportionment for the classes. However, if that contract is not fully funded by other sources and the community college district is paying for the contract itself, then the district may still claim apportionment for these classes provided that all other rules and regulations related to claiming apportionment are followed.
It should be noted, that in this case, the actual cost of instruction incurred by the private entity is irrelevant. The contract agreed to by both parties in an ISA may meet, exceed, or fall below the actual cost of instruction of the classes. The actual terms of the contract are to be determined by the parties involved and should not be influenced by the apportionment restrictions of Education Code section 84752 and title 5, section 58051.5.

cc: Steve Bruckman, Executive Vice Chancellor and General Counsel
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JL/ce