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Date: June 5, 2013

To: Steve Bruckman, Executive Vice Chancellor and General Counsel

From: Jonathan Lee, Staff Counsel

Re: Credit Course Sections Funded by Donations
Legal Opinion 13-02 *RL*

Questions

A community college district (district) has solicited and received donations to fund particular credit course sections. Given this situation, the district has asked the following questions:

- 1) Will the district be able to legally claim state general apportionment for these course sections?
- 2) Are students enrolled in these course sections required to pay the \$46/unit enrollment fee?
- 3) Can students enrolled in these course sections be charged other fees such as health, capital outlay, transportation, etc.?

Conclusion

- 1) The answer depends on whether the district receives full compensation for the cost of these course sections. If the district receives full compensation, then the district cannot legally claim apportionment and report the Full-Time Equivalent Student (FTES) generated for that section to the state. If a district receives significant but not full compensation, the district may claim state general apportionment and report FTES if the deficiency is not a trivial amount.
- 2) Yes, students are required to pay the enrollment fee.
- 3) Yes, students who take these course sections are treated no differently than other students in regard to how other fees apply to them.
- 4) Although this analysis focuses on credit course sections funded by donations, the conclusions outlined in this opinion, other than those related to enrollment fees or other fees, also have applicability to noncredit course sections funded by donations.

Analysis

- 1) Will the district be able to legally claim apportionment for these course sections? Will the district be able to report FTES generated from these course sections to the state for apportionment purposes?**

The legal claiming of apportionment for these course sections and the ability to report FTES generation to the state for apportionment purposes depends on the amount of outside funding the district receives for these course sections through these donations. Education Code section 84752 provides:

(a) 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.

(b) The State Auditor shall report to the Legislature by January 1, 2000, on the status of community college district compliance with this section. In preparing this report, the State Auditor shall use the audit methodology used in the Bureau of State Audits Report No. 96103.

California Code of Regulations, title 5, section 58050, provides additional details for the conditions for the attendance of students enrolled in a course to qualify for state apportionment. These conditions cover a wide range of requirements, including being approved by the Board of Governors, abiding by course standard requirements and being open to the general public. For purposes of this question, the critical issue is whether the district receives full compensation for the direct education costs for the course from any public or private agency, individual, or group of individuals. (Cal. Code Regs., tit. 5, § 58050(a)(4).)

The district must determine whether the donations fully compensated the district for the cost of the course or courses. If fully compensated, there can be no claim for apportionment. Furthermore, the district may not include FTES generated by these courses on the Apportionment Attendance Report (CCFS-320).

In situations where a district is not fully compensated for the direct costs of instruction, and all other applicable apportionment eligibility conditions are met, the district may legally claim apportionment for those courses and report the related FTES to the state for state apportionment purposes. This begs the question of what happens if the amount of compensation is substantial but not full compensation. Neither the statute nor title 5 address this. Legal Advisory 04-01.5 offered guidance for districts engaged in instructional services agreements. While that context differs from the circumstance here, the principle offered is useful.

Legal Advisory 04-01.5 concluded that the amount contributed by either party should not be a "trivial amount." This discourages abusive situations where a district may try to claim apportionment for a class that is funded just short of 100 percent by another source. Legal Advisory 04-01.5, suggested that compensation covering 80 percent or more of the cost could be considered full-compensation. Applying this concept to donations, a district could not claim apportionment if 80 percent or more of the class is paid for by donation. If 79 percent or less of the class is paid by donation, apportionment could be allowed. As an additional consideration, amounts donated by outside entities for the establishment of additional course sections must not be allocated in such a way as to only partially fund individual course sections up to this 80 percent threshold amount. The expectation would be that donation funds received by the college would be used to fully fund individual course sections to the extent possible. The apportionment eligibility guidelines outlined here apply to both credit and noncredit course sections that are funded by donations.

2) Are these students required to be charged \$46/unit?

Education Code section 76300 sets forth the requirements for the charging of the \$46/unit enrollment fee. Unless a specific exemption or waiver outlined in this section is applicable, a district must charge the enrollment fee.

Section 76300(e)(3), concerning contract education, is the only exemption that might be applicable. Section 76300(e)(3) provides that the fee requirement does not apply to :

Students enrolled in credit contract education courses pursuant to Section 78021, if the entire cost of the course, including administrative costs, is paid by the public or private agency, corporation, or association with which the district is contracting and if these students are not included in the calculation of the full-time equivalent students (FTES) of that district.

Section 76300 tracks the language discussed above regarding the cost of education being paid by an entity other than the district. However, to qualify for the exemption under section 76300(e)(3), in addition to the cost of education being paid, it must be established that the student is enrolled in a credit contract education course pursuant to Education Code section 78021.

According to this section, contract education courses are programs within or outside the state that are created by agreement with the district and any public or private agency, corporation, association, or any other person or body, to provide specific educational programs or training.

This definition of contract education does not describe the nature of the courses being funded by donations. There is no intent by the donor to enter into a contract. According to California Civil Code section 1146, a donation, by its nature, is a gift and cannot constitute the legal consideration needed to form a contract. Because the donations do not create a contractual

relationship, classes funded by donations do not fall under the contract education exception in Education Code section 76300(e)(3).

Thus, the students in a section funded by donations must be charged \$46/unit fee as required by Education Code section 76300.

3) Can these students be charged other fees such as health, capital outlay, transportation, etc.?

Students enrolled in course sections funded in whole or in part by donations are not treated any differently than any other student regarding fees. While there may be a statutory basis to exempt a particular student from one or more of these fees, the fact that the course section is funded by donations will not be determinative. Fee applicability will depend on other unrelated factors.

JL/II