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Date: November 6, 2013

To: Kindred Murillo, President/Superintendent
Lake Tahoe Community College District

From: Steve Bruckman, Executive Vice Chancellor and General Counsel
Legal Affairs Division

Re: Authority of Lake Tahoe Community College District to Waive Nonresident Fees for
Nevada Residents
Legal Opinion 13-06

QUESTION

Does the Western Undergraduate Exchange meet the requirement of Education Code section 76140(i) that there must be a reciprocity agreement in order for Lake Tahoe Community College District (LTCCD) to exempt up to 100 Nevada FTES from the nonresident tuition fee?

ANSWER

No, the WUE does not meet the requirements of section 76140(i).

LAW AND ANALYSIS

LTCCD lies on the border of Nevada. Populations on both sides of the border are closely integrated in various ways, including education. Historically, LTCCD has enrolled Nevada residents and exempted them from nonresident tuition fees under an interstate agreement known as a "good neighbor policy." The good neighbor policy appears to have first been approved by the Board of Governors in 1999, and a successor agreement was approved in 2004. By its letter dated September 1, 2011, the state of Nevada terminated this long-standing interstate attendance agreement with the Board of Governors. Thus, since 2011, there has not been a statewide agreement between Nevada and California regarding community college attendance and tuition. In the absence of a good neighbor policy, LTCCD has asked whether language contained in Education Code section 76140 allows LTCCD to exempt Nevada residents from the nonresident tuition fee.

Education Code section 76140(i) provides that:

Any district that has more than 1,500, but less than 3,001, FTES and whose boundary is within 10 miles of another state that has a reciprocity agreement with California governing student attendance and fees may, in any one fiscal year, exempt up to 100 FTES from that state from the mandatory fee requirement described in subdivision (a) for nonresident students.

LTCCD is a district with more than 1,500 but less than 3,001 FTES and is less than 10 miles from the State of Nevada. However, in order to qualify for the exemption provided by Education Code section 76140(i), there must be a reciprocity agreement between California and Nevada governing student attendance and fees.

California and Nevada, along with a number of other states, participate in the Western Interstate Compact for Higher Education (WICHE). WICHE oversees three student reciprocal exchange programs allowing students to attend out of state universities at a reduced rate. However, California community colleges are not participants in the Western Undergraduate Exchange (WUE), the WICHE exchange program serving undergraduates. In California, the WUE participants are twelve CSU campuses and UC Merced.

LTCCD suggests that although California community colleges are not governed by the WUE and receive no benefit from it, the existence of the WUE is sufficient to meet the reciprocity agreement requirement in section 76140. However, another part of California law, Education Code section 66800 et seq., specifically addresses interstate agreements involving community colleges. Section 66800 provides the following legislative findings and intent:

The Legislature encourages California community college districts and the Board of Governors of the California Community Colleges to include the educational needs of, and facilities available in territory adjacent California in their planning and to make use of those needs and facilities to the extent possible in the conduct of community colleges.

Section 66801 describes the role of the Board of Governors as follows:

The Board of Governors . . . is authorized to enter into an interstate attendance agreement with any statewide public agency of another state . . . that is a party to the Western Interstate Compact for Higher Education

The reference to the Board of Governors in section 66800 suggests that the Legislature expected the Board of Governors to play a role in interstate attendance agreements, and

section 66801 specifically authorizes the Board of Governors to be the agency to establish such agreements. Section 66801(b) allows local districts to establish interstate attendance agreements without Board of Governors approval, but only with states lacking a statewide public agency. This subsection is intended to allow for interstate attendance agreements with colleges in Arizona, which lacks a statewide agency. Because Nevada has a statewide agency, according to section 66801, an agreement with a Nevada college affecting California community college students must be pursuant to authorization by the Board of Governors.

LTCCD's proposed reading of section 76140 appears to raise a conflict between section 66801, which would allow interstate attendance only if authorized by an agreement between the Board of Governors and another state, and section 76140(i) which could be read to mean that interstate attendance is permitted so long as there is any kind of reciprocal agreement between the two states governing fees and attendance.

When resolving conflicts between statutes, courts rely on rules of statutory construction. An important rule of statutory construction is that the law should not be read in a way that renders a statute without meaning. (*Wells v. Mariana City Properties, Inc. (1981) 29 Cal.3d 781, 788.*) A determination that the current WUE meets the requirements of section 76140(i) would effectively render section 66801 meaningless because such an interpretation would mean that the approval of the Board of Governors is not needed to establish a good neighbor policy, at least for districts meeting the other requirements of section 76140. An outcome that deprives a statute of meaning is disfavored by the courts, indicating that section 76140(i) cannot be read to mean any reciprocal agreement would suffice.

A similar conclusion is reached through more careful analysis of section 76140. Section 66800 et seq. is in the "General Provisions" part of the Education Code, the laws applicable to all three segments of public higher education in California. Section 76140, on the other hand, is in the part of the Education Code pertaining exclusively to the California community colleges. Given this location, it is reasonable to conclude that the reference in section 76140(i) to "a reciprocity agreement governing student attendance and fees" is intended to pertain to the attendance and fees of community college students, not higher education students generally.

Finally, it is noteworthy that the State of Nevada has stated unequivocally that it will not allow California residents to attend Nevada community colleges at the Nevada resident rate. This means that if LTCCD allows Nevada residents to attend LTCCD without paying the nonresident tuition fee, LTCCD would be engaging in a nonreciprocal program. Given the importance of reciprocal arrangements, it seems inappropriate to allow and encourage a nonreciprocal arrangement that provides no clear benefit to the State of California.

CONCLUSION

For these reasons, the existence of the WUE does not meet the requirement of section 76140(i) that there be a reciprocity agreement in effect, and LTCCD cannot exempt Nevada students from the nonresident tuition fee pursuant to section 76140(i). Education Code section 66801, requiring an interstate attendance agreement authorized by the Board of Governors, is the controlling statute, and in 2011 Nevada terminated the reciprocity (good neighbor) agreement authorized by the Board of Governors.

SB/II