

**CALIFORNIA COMMUNITY COLLEGES
CHANCELLOR'S OFFICE**

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TO: Chief Executive Officers
Chief Instructional Officers
Chief Student Services Officers
Admissions and Records Officers
Transfer Center Directors
Matriculation Coordinators
Financial Aid Directors

FROM: Steven Bruckman *SB*
Interim General Counsel

SUBJECT: Questions and Answers Re. Concurrent enrollment
Legal Advisory 05-01

In December 2003, the Chancellor's Office issued an advisory to address questions regarding the interpretation and implementation of the law on concurrent enrollment as amended by SB 338, which was passed by the Legislature and signed by the Governor in 2003. The Chancellor's Office has had the opportunity to address additional aspects of the law in the past year, and is sharing that additional information through this revised advisory. The primary additional areas concern the means for ensuring that pupils who do not attend public schools are prepared for college level coursework, and the admissions standards for pupils who are 18 years of age or older and enrolled in high school.¹

Answers to major questions concerning the law appear below. The answers represent the considered judgment of the Chancellor's Office and reflect our experience in recent audits and minimum condition reviews on the subject of concurrent enrollment. The policies and procedures discussed here are not binding on districts. However, districts that follow the advice given here will generally be deemed to comply with the law in the event of a review by the Chancellor's Office.

BASIC ELIGIBILITY REQUIREMENTS

Question 1. Which community college courses are considered advanced scholastic or vocational work?

Answer. The Chancellor's Office has advised on several occasions that the terms "advanced scholastic or vocational work," "community college level," or simply "college level" refer to

¹ See questions 4 and 5.

college credit courses acceptable toward the associate degree which have been properly approved pursuant to California Code of Regulations, title 5, section 55002(a). (See Legal Opinions 98-17 and 02-16, available at <http://www.cccco.edu/divisions/legal/opinions/opinions.htm>.) Thus, under Education Code section 48800(a), the K-12 school district is responsible for determining whether a pupil is prepared to undertake degree-applicable credit coursework as a precondition to recommending the pupil for admission to a college. Colleges are encouraged to work with local K-12 districts to ensure that they are familiar with the degree-applicable credit course offerings at the college so that this determination can be accurately made.

Question 2. Does the reference to advanced scholastic and vocational work in Education Code section 48800 mean that pupils cannot take noncredit courses at a community college?

Answer. No. A different statute, Education Code section 78401, permits colleges to admit minors to their noncredit programs. Under that provision, the community college district makes the determination of which pupils can benefit from its noncredit courses without any requirement for involvement by the K-12 school district or any need to find the pupil eligible for advanced scholastic or vocational work.

Question 3. What happens if the K-12 school board determines that a pupil may benefit from advanced scholastic or vocational work but the community college district disagrees based on criteria contained in Education Code section 76002(b)?

Answer. First, in order for a K-12 pupil to attend a community college district, the school district must determine that the pupil is capable of benefiting from advanced scholastic or vocational (college level) work. However, even if the K-12 district does make this determination, it does not guarantee the pupil's admission to the college. This is because a community college may admit such pupils, but is not required to do so. So long as it does not reject pupils on a discriminatory basis and has a rational basis for differentiating among K-12 pupils, a college could accept some pupils recommended by the K-12 school district and decline to accept others. For example, a college could determine that it will admit K-12 pupils who are district residents, but not other K-12 pupils. District residency is not a protected group under nondiscrimination laws, and a college may have a legitimate basis for needing to limit the number of K-12 pupils it will admit.

Second, if a K-12 district does certify that a pupil would benefit from college level work, section 76002 now permits a college to ultimately decide otherwise based on age, grade level, or assessment standards established by the college district. See the answers to Questions 9 through 14 for a full discussion of these new provisions.

Question 4. How does a community college evaluate the readiness of private school pupils and home-schooled minors seeking admission? What are the criteria?

Answer. The parent or guardian of a private school pupil may petition the president of the college. The criteria for admission are the same as if the pupil were enrolled in a public school:

the pupil must be able to benefit from degree-applicable college coursework. Colleges have options for determining the readiness of private school pupils seeking admission.

Colleges may require the assessment of a private school representative (like the principal) to verify the readiness of the private school pupil for college level coursework. In this regard, a college could probably use the same certification of readiness that it uses for public school pupils.

Alternatively, the college could make its own determination of whether the pupil is prepared for college level work through assessment methods and procedures (which could include evaluation of the pupil's prior coursework) under Education Code section 76002(b)(3). Colleges making their own assessments must employ multiple measures and comply with other aspects of the matriculation regulations adopted by the Board of Governors. (Cal Code Regs., tit. 5, §§ 55500 et seq.) Thus, the college might review records of coursework the pupil has completed and combine this review with results from one or more appropriate assessment instruments approved by the Chancellor's Office.

Home schooling is instruction by a tutor or other person (including the pupil's parent) who does not have a valid California teaching credential. The determination that the home schooled pupil is able to benefit from "advanced scholastic or vocational work" can be satisfied in several ways.

A college is free to accept home schooling as if it were schooling in a private full-time day school if the college determines that a proper affidavit has been filed with the Superintendent of Public Instruction. Private full-time day schools must file an annual affidavit setting out various information about the private school instruction. The Superintendent of Public Instruction publishes a list of private schools that includes the name and address of the school and the name of the school owner or administrator. (Ed. Code, § 33190.) If a home school has filed a proper affidavit, a college may accept the assessment of a home school representative to verify the readiness of the pupil for college level coursework.

Local high schools are charged with determining whether to accept home schooling as valid attendance. Therefore, community college districts that are asked to consider admitting a minor who has been home schooled may confer with the public high school the pupil would have attended if not home schooled. If that public school accepts or would accept home schooling as valid school attendance, the public school may also be willing to determine whether the pupil has completed coursework sufficient to prepare him or her to undertake college level coursework.

However, the Education Code still provides that the parent or guardian of a pupil not enrolled in public school may directly petition the president of any community college for admission. Thus, the position of a K-12 school district regarding home schooling is not binding on the college. As with pupils who attend a private school, the college could make its own determination as to whether a pupil is prepared for college level work. As noted above, the college would make an assessment using multiple measures and comply with other aspects of the matriculation regulations adopted by the Board of Governors. (Cal. Code Regs., tit. 5, §§ 55500 et seq.) The college can review records of coursework the pupil has completed and combine this review with

results from one or more appropriate assessment instruments approved by the Chancellor's Office.

Finally, the college may accept the opinion of the pupil's parents as to whether the pupil is prepared for college level coursework.

In selecting methods for assessing pupil preparation for college level coursework, colleges should consider that they may be challenged for rejecting some pupils and accepting others. Uniformity of approach may help insulate colleges from claims that the decisions are inconsistent or unfair. Because the use of college-administered assessments is most likely to result in uniformity, this method of assessing preparation for advanced study may be the most defensible.

Question 5. May persons who are 18 years of age or older and still enrolled in high school be admitted to community colleges under the general admissions provisions or must they be admitted under the provisions applicable to students who are attending community college classes as "concurrent enrollment" or "special admit" students?

Answer. Persons who are 18 years of age or older and still enrolled in high school may be admitted under either set of admissions provisions. However, if a district intends to claim their attendance for apportionment purposes, such persons must be admitted under the concurrent enrollment provisions.

Two statutory structures address the admission to community colleges of persons who are 18 years old or older and still enrolled in high school. General admission standards appear at Education Code section 76000. The general admission standards carry fewer conditions than do the concurrent enrollment standards set out in sections 76001, 76002, and 48800.

Under the general admission standards of section 76000, individuals who are over 18 years of age but do not have high school diplomas may be admitted if they can "profit from instruction." The general admission standards do not require recommendations from principals, parental consent, or express limitations on the types or numbers of classes that may be taken.

However, the general admission standards do not address apportionment for the attendance of persons who are 18 years or older and still enrolled in high school. The concurrent enrollment provisions specifically address when apportionment can be claimed for attendance of such pupils, so the concurrent enrollment provisions control if a district wishes to claim apportionment.

Accordingly, districts may choose which admission standards to apply when persons who are 18 years of age or older and still in high school seek admission. The general admission standards are clearly less complicated to implement. However, the more detailed requirements of the concurrent enrollment provisions must be followed if the

district claims the attendance for apportionment purposes. (See Legal Opinion O 04-13 available at <http://www.cccco.edu/divisions/legal/opinions/opinions.htm>.)

OPEN COURSE REQUIREMENTS

Question 6. What steps should a college take to ensure that courses are properly advertised and open to the general public?

Answer. All sections of all community college courses should be open to the general public, regardless of whether some of the students may be special part-time or special full-time pupils or whether the course is held at a high school campus. In order for a course to be truly open to the general public, it must be advertised in a manner such that anyone who might be interested in enrolling in a particular course section will know it is available and understand that enrollment is open to anyone who meets properly established prerequisites or enrollment limitations. Each course should be published in the official college catalog or addenda thereto and each section of the course should be listed in the regular schedule of classes or an addendum thereto. If the exact time or location of a course section is not known when the schedule or addenda is printed, or an instructor has not yet been assigned, the notation TBA (to be assigned) should be used.

Question 7. How should a college advertise a course if the decision to offer the course was made after the last addendum to the catalog or schedule of classes is published?

Answer. As discussed in the answer to Question 6, the general rule is that each course should be described in the official catalog or an addendum thereto and that each section of each course should be listed in the schedule of classes or an addendum thereto. However, it may sometimes happen that a course is newly approved after the most recent addendum to the catalog has been printed. Should this occur, the college should update any online catalog it may maintain and, of course, list each section of the course to be offered in the schedule of classes or an addendum thereto.

In those rare instances where the decision to offer a new course is made so late that it cannot even be listed in the last addendum to the schedule of classes, California Code of Regulations, title 5, section 58104 still requires that the course be "reasonably well publicized" to the general public.

The Chancellor's Office advises that districts should not rely exclusively on posting course offerings on the Internet to satisfy the requirement that the course is "reasonably well publicized." Some students still do not have ready access to the Internet and, in the event of an audit, it may be difficult for the District to demonstrate that a particular course offering was actually posted on its website at a given point in time. If districts do choose to rely on posting on the Internet, they should observe the following:

1. The class must be advertised for a minimum of 30 continuous days prior to the first meeting of the class.
2. The district's website must comply with standards for accessibility to persons with disabilities required by section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794d) and Government Code section 11135. If course descriptions are posted in Portable Document Format (PDF) they should also be available in a more easily accessible format such as HTML, Microsoft Word, or ASCII.
3. The district should maintain dated hardcopy printouts of the web postings on file for audit purposes for a period of at least three years.
4. The district should maintain a list of individuals who wish to receive printed course announcements and send such announcements to those on the list, even if it does not publish and widely distribute another addendum to the schedule of courses.
5. The District should still use readily available traditional methods of ensuring that students have information about classes, such as ensuring that academic counselors and the Admissions and Records Office are aware of the courses, and that information is still available through print distributions such as handouts, bulletin board postings, or campus newspaper announcements.

Question 8. Does SB 338 prohibit holding a college course on a high school campus during the hours the high school operates classes?

Answer. No. The law has long provided that a course which is claimed for state apportionment by the community college district must be open to the general public. SB 338 merely emphasized this point by amending Education Code section 76002 so that it now provides that if a course is held on a high school campus, "the class may not be held during the time the campus is closed to the general public, as defined by the governing board of the school district." Thus, the issue is when the high school campus is specifically closed to the general public, rather than whether or not high school classes are offered during the same time period. However, it must be emphasized that this restriction only applies if state apportionment is to be claimed for the class. If the class is conducted as contract education and paid for by the K-12 school district, then it may be housed at the high school campus and be held at any time of day, regardless of whether or not the campus is open to the general public.

GENERAL LIMITATIONS ON ADMISSION OR ENROLLMENT

Question 9. Once a student is admitted to the college, is he or she limited to taking only degree-applicable courses?

Answer. No. If a college decides to admit a special full-time or part-time pupil pursuant to Education Code sections 76001 and 76002, he or she may, like any other student, enroll in any course subject to properly established prerequisites or enrollment limitations. In addition, as discussed below, section 76002 now authorizes colleges to explicitly limit enrollment in any course or program based on age or grade level.

Question 10. Does SB 338 authorize community college districts to limit admission or enrollment of minors based on age or grade level?

Answer. Yes. Prior to passage of SB 338, community college districts were precluded from imposing restrictions on admission of minors based on age because of the federal Age Discrimination Act of 1975 (42 U.S.C. § 6101 et seq.) which prohibits discrimination on the basis of age in programs or activities receiving federal financial assistance. However, the Act does not apply to age distinctions described by state statutes to establish criteria for participation in age-related terms. (34 C.F.R. § 110.2(b)(1)(ii).) SB 338 revised Education Code section 76002 to provide the express statutory authority needed to qualify for this exception to the federal law. Thus, a college may now establish admissions and/or enrollment limitations that prevent special admit pupils below a certain age or grade level from being admitted or from enrolling in certain courses or programs.

Question 11. Can a community college district restrict the admission of a highly gifted pupil based on the criteria of subsection (b) of Education Code section 76002?

Answer. Yes. The Legislature has authorized imposition of these restrictions on admission of all special part-time and special full-time pupils, regardless of whether or not they are considered highly gifted. However, under section 76001(b), the district would be required to provide a written statement of the reasons for the denial.

Question 12. Can a college impose age or grade level restrictions on pupils who are not enrolled in a public school and who directly petition the college for admission pursuant to Education Code section 48800.5?

Answer. Yes. Section 48800.5 says a parent or guardian of a pupil who is not in a public school can petition the community college president for admission of the pupil to the community college regardless of that pupil's age or grade level. However, section 76002(b) now explicitly allows a district to restrict admission or enrollment based on a pupil's age or grade level. This is not a contradiction. The fact that a parent or guardian may file a petition on behalf of their child does not guarantee that the college will admit the pupil.

Question 13. May a community college district restrict admission based on the criteria of subsection (b) of Education Code section 76002 in some classes, but not all?

Answer. Yes. Section 76002(b) clearly authorizes districts to restrict either "admission" or "enrollment" based on age, grade level, or results of an assessment. Since enrollment occurs on a course-by-course basis, a district could admit pupils and then impose such limitations in one course but not in another.

Question 14. Can a district restrict admission or enrollment based on high school GPA?

Answer. No. Section 76002(b) authorizes restricting admission or enrollment on three grounds. One of the bases is the use of assessment instruments, methods or procedures used in accordance with the regulations implementing the Matriculation Act of 1986. California Code of Regulations, title 5, section 55521 prohibits placement based only on a single measure. Thus, a college could evaluate a pupil's high school GPA as part of its assessment, but some other assessment instrument, method or procedure would also have to be used. This might include an appropriate assessment test, which is on the list of instruments approved by the Chancellor's Office.

It is also important to note that once a K-12 pupil has been admitted, the ability to limit enrollment in particular courses or programs based on use of assessment procedures must be carried out consistent with the regulations adopted by the Board of Governors concerning the establishment of prerequisites. In other words, after admission, an assessment involving the use of multiple measures can only be used to restrict enrollment in a particular course or program if the assessment is tied to a properly established prerequisite.

Question 15. Can a college give adult students priority in the registration process?

Answer. Yes. Under California Code of Regulations, title 5, section 58108, a district may establish a priority registration system which would accord adult students higher registration priority in order to ensure that they are not being displaced by special admit pupils.

RULES RELATED TO SUMMER SESSIONS

Question 16. Are there additional requirements that apply to admission of K-12 students to summer session?

Answer. Yes. SB 338 moved the requirements for summer session from the community college portion of the code to the K-12 portion of the code with slight modifications. For summer session the following specific criteria are in effect, in addition to other rules related to all concurrent enrollment. The principal may only recommend a student if that pupil meets all of the following criteria, which are specific to summer session only

1. The pupil demonstrates adequate preparation in the discipline to be studied.
2. The pupil exhausts all opportunities to enroll in an equivalent course, if any, at his or her school of attendance.
3. The recommendation of this pupil will not result in recommendations for more than 5% of the total number of pupils who completed that grade immediately prior to the time of recommendation.²

Question 17. Who enforces the 5 percent limitation on summer session enrollments in Education Code section 48800(d)?

Answer. It is the responsibility of the K-12 district to ensure that the 5 percent limitation on summer school enrollments is honored.

Question 18. Should basic skills or remedial course work at the community colleges be open to K-12 summer students?

Answer. As discussed in the answer to Question 1, the K-12 school district must determine that a pupil is prepared to undertake college level work, meaning degree-applicable credit courses at the community college. A pupil who is truly prepared to take college level work should generally not be in need of nondegree-applicable coursework. However, as noted in the answer to Question 9, once a student is admitted to the college, he or she may take any course subject to properly established prerequisites or enrollment limitations. These principles apply to pupils enrolled in summer session courses as well as to those enrolled in courses during the regular academic year.

RESTRICTIONS ON PHYSICAL EDUCATION COURSES

Question 19. Does the 10 percent limit on enrollment of special admit pupils in physical education classes apply to each class section or to the class enrollment as a whole?

Answer. Although the statutory language is not altogether consistent throughout SB 338, it is clear that the Legislature and the Administration intended that the 10 percent limitation of Education Code section 76002(a)(4) applies to each class or course section. The structure of the section largely requires this conclusion. Section 76002(a) describes those classes that are eligible for apportionment: each class must be open to the public, each class must be advertised as open, each class at a high school campus must be held during certain times, and if the class is a physical education class, its enrollment may not include more than 10 percent special part-time or full-time students. Each condition appears to apply to the individual class sections, so the 10

² SB 905 would have deleted the 5% limit on pupils recommended by a principal to attend community colleges during summer sessions. The Governor vetoed the bill in September 2004. He stated that the bill would eliminate important reforms to concurrent enrollment practices. He also stated that the California Performance Review raised important issues regarding concurrent enrollment and therefore this bill was premature until these issues are addressed.

percent limit also applies to each class section, as opposed to the total number of students enrolled in all sections of the same course.

It should also be noted that, in the view of the Chancellor's Office, this provision was intended to serve as a limit on how many students may be claimed for apportionment, not how many may actually be enrolled in a class section. Thus, if a district wished, it could allow the enrollment of special full-time or part-time students to exceed 10 percent in a particular section of a physical education course, but it would have to ensure that the 10 percent limitation is observed when preparing the apportionment claim for that class.

Question 20. Is the 10 percent limitation on enrollment in a particular physical education course determined at a given point in time?

Answer. As discussed in the answer to Question 19, the 10 percent limit should be viewed as a restriction on how many students may be claimed for apportionment purposes. Thus, if a district wishes, it could allow special full-time or part-time students to enroll in a physical education course without regard for the 10 percent limit and simply apply the limit when preparing its apportionment claim.

Of course, some districts may not want to permit enrollment for which they will not be able to claim apportionment. This will require some mechanism for monitoring enrollment. In practice, it would be difficult to ensure that this limitation is satisfied each time a student enrolls because many students may be registering simultaneously. The Chancellor's Office recommends that districts limit the number of special admit pupils in each physical education class section to 10 percent of the maximum enrollment specified for that section of the course.

Question 21. Do the restrictions in Education Code section 76002 on enrollment of special K-12 students in physical education courses apply where a college has a certificate program in physical education?

Answer. Yes. The statute does not distinguish between physical education courses that are part of a certificate program and those which are not. Thus, even where a college has an established certificate program in physical education, each course and course section in that program is subject to the limitations. However, as discussed below, certain vocational courses in closely related fields should not be considered to be "physical education."

Question 22. Which courses or programs should be considered "physical education" for purposes of the restrictions imposed by SB 338?

Answer. For purposes of implementing SB 338, "physical education" is considered by the Chancellor's Office generally to mean any course bearing Taxonomy of Programs code 0835.00, or any of its subcodes (0835.10, 0835.30, 0835.50), and any other course whose content, as expressed in the course outline, would reasonably be considered within the discipline of physical education. The bill applies to both activity and theory courses in physical education. However, for this purpose "physical education" is not considered to include vocational courses that are part

of a Chancellor's Office-approved program for athletic trainer, sports medicine, fitness specialist, personal trainer, or similar program with a specific occupational outcome.

DOCUMENTATION

Question 23. Are community colleges required to maintain records for auditing purposes of a school board's determination that the pupil would benefit from advanced scholastic or vocational work?

Answer. Yes. A community college district is only authorized to admit K-12 pupils to the extent that the K-12 school district has made a determination that the student is prepared for college level coursework. Therefore, the college should require the K-12 school district to complete a document certifying that this determination has been made for that student and the record should be kept on file for audit purposes as prescribed by California Code of Regulations, title 5, section 59026(b).

Question 24. Can a college accept a certification document signed by someone other than the school principal?

Answer. Yes. If a K-12 school district wishes, it may allow its principals to delegate the responsibility for determining if a pupil should be recommended for college admission to a designee.

In general, it is up to the K-12 school district to determine who can be designated to act in place of the principal. However, in some cases, colleges employ high school faculty to teach college courses. If a high school instructor is employed by a college to teach a college class and that instructor will receive additional compensation to teach the college course, the instructor will have a direct financial interest in the outcome of the eligibility determination. Based on this direct financial interest, the high school instructor has a conflict of interest in making eligibility determinations. Under such circumstances, colleges should decline to accept recommendations signed only by such an instructor.

Question 25. Should the principal of the school provide community colleges with a list of his/her designated signatories so the community college can check K-12 pupil admissions and enrollment documents?

Answer. Yes. Otherwise, a college has no way of knowing whether the person signing the document is authorized to do so. This documentation will be especially important in the event of an audit.

Question 26. For audit purposes, what mechanisms should a community college have in place to monitor a K-12 district's compliance with the 5 percent limit on summer session enrollment?

Answer. As noted in the answer to Question 17, ensuring compliance with the 5 percent limitation for summer session admissions of special full-time or part-time pupils is the

responsibility of the K-12 school district. Nevertheless, in Legal Opinion M 02-20 (available at <http://www.cccco.edu/divisions/legal/opinions/opinions.htm>), the Chancellor's Office advised colleges admitting minors as special students in summer school credit courses to obtain certification from school principals that the number of students recommended to attend college courses does not exceed the five percent statutory limit. Administrative records containing the principal's five percent certification in addition to parental consent and the principal's recommendation as specified in the statute would constitute thorough documentation of efforts to ensure that the law has been followed in the event of an attendance accounting review.

OTHER ISSUES

Question 27. Can pupils receive credit at both the K-12 and the college level?

Answer. Yes. The Chancellor's Office has issued several legal opinions holding that this is permissible (e.g., Legal Opinion M 98-17, available at <http://www.cccco.edu/divisions/legal/opinions/opinions.htm>). However, an outdated regulation adopted many years ago by the state Board of Education has never been changed to conform to current law. This may lead some K-12 districts to conclude that they cannot grant high school credit for coursework completed at a community college.

Question 28. May full-time students be exempted from paying the enrollment fee?

Answer. Education Code section 76300 provides that special part-time students may be exempted, as a group, from paying the \$26 per unit enrollment fee. There is no such authority for the special-admit full-time student and thus a college or district may not exempt all such students as a group. Each special-admit full-time student may be individually considered for a BOG Fee Waiver however. Colleges may use the existing short-form application for BOG Fee Waiver for Part A and Part B fee waivers. If the family does not qualify using the short form, the college may also provide the family with a FAFSA and make a local calculation of potential financial need (using a commuter budget and a hand-calculated EFC). If the student shows need in this manner the student may receive a Part C waiver. Please note: these are not "new" rules. These rules have been in effect for many years.

cc: Cabinet