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March 18, 2004

To: Mark Drummond, Chancellor  
California Community Colleges

From: Steve Bruckman, Interim General Counsel

Subject: Instructional Service Agreements  
**Legal Advisory 04-01.5**

It has been brought to our attention that there may be districts failing to comply with state law and regulations regarding instructional contracts. You have asked me to advise you of the potential problems and recommend methods to avoid them.

A number of community college districts have arrangements with public agencies and private organizations known as "instructional service agreements" (ISA). In ISA's, an outside organization establishes a partnership with a community college to obtain college-level training for its employees or members. Many of these programs are in the public safety area, but there are other areas as well, generally where the cost of instruction is high or it is difficult to obtain qualified instructors. Student attendance in classes offered under these agreements is eligible for apportionment provided all Education Code and Title 5 requirements are satisfied. ISA's are different from contract education, in which a contractor pays the full cost of instruction in a closed class setting and the district does not receive apportionment. ISA's are often mutually beneficial because the instructional costs are shared and students can receive college credit.

However, because ISA requirements are somewhat complicated, apportionment may be claimed inappropriately. Furthermore, because ISA's often operate outside of the district's usual processes, abuse can occur. There are two general types of abuse that may be alleged. First, there may be charges of "double dipping" when the organization is a public agency because apportionment and agency training funds are applied to the same instruction. Second, apportionment funds received by the district may be redirected not to the training partner as an appropriate offset to instructional costs, but to a third party that wrongfully profits from the program. It has come to our attention that the Orange County Register may have uncovered some instances of abuse and is planning to print a story that may increase the scrutiny applied to all ISA programs.

In 1996, the Legislature and the Board of Governors adopted statutes and regulations designed to provide additional safeguards against abuse of ISA's. At that time, the Chancellor's office developed a "Contract Guide for Instructional Service Agreements between College Districts and

Public Agencies”, a copy of which is attached. The Contract Guide consists of sixteen items that must be checked off to ensure compliance with laws and regulations. Although the Contract Guide is focused on public agencies, most of the requirements apply equally to private training partners. Meeting these requirements is a labor-intensive activity, and districts may find that the work involved is not justified by the amount of apportionment received.

A few of the requirements merit particular attention. It is essential that there be a formal written agreement between the district and the outside organization. The checklist provides very specific elements that must be included in the ISA. For example, the instruction must be under the immediate supervision and control of an instructor who meets minimum qualifications, the courses must be of a similar quality to courses taught on campus, and the classes must be open to the public. If the instructor is not a paid district employee, the district must have a separate agreement with the instructor.

The ISA must also state that neither the district nor the outside organization receives full funding for the instruction from the State or other sources. The intent of the ISA is that the District and the outside organization combine their resources to provide the instruction that would not have been possible but for the combination of resources. The state law does not say how much of the funding must come from either party, but it is reasonable to take the position that it must be more than a trivial amount. One district has adopted a policy that neither party can contribute more than 80% of the cost of instruction. It is not unusual for ISA's to provide that a portion of the apportionment funding be directed to the outside organization in recognition of direct instructional costs incurred by that organization. This is a legitimate practice if all of the sixteen requirements are met. It also makes sense because the outside organization may have contributed significantly to the total program cost.

For these programs to be successful, districts must devote considerable staff time to administration and oversight. The outside organization likely is very unfamiliar with community college district procedures, and care must be taken to maintain compliance with the terms of the ISA. In addition to program oversight, the district's business office should participate. Ideally, districts will develop a standard ISA document to reduce the oversight burden and discourage constant negotiation over terms and conditions.

The current situation involving ISA's is not unlike the problems associated with advanced education for high school students last year. In both cases, serious abuses by a few districts cast a shadow over every district in the state. Districts that complied with the spirit of the law for advanced education may have failed to comply with some of the specific requirements of the program. This led to significant embarrassment for the system, return of apportionment funding for many districts and a lawsuit that has not yet been resolved.

It is important that administrators carefully evaluate current and potential ISA's to ensure that all of the legal requirements have been met. If you need any additional information or guidance, please let me know.

SB:sj