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August 25, 2004

To: Robert Turnage, Vice Chancellor for Fiscal Policy

From: Steve Bruckman, Interim General Counsel

Subject: Community College Admission Of Persons Who Are  
18 Years Of Age Or Older And Enrolled In High School  
**Legal Opinion O 04-13**

ISSUE

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 colleges classes as "concurrent enrollment" or "special admit" students?

CONCLUSION

Persons who are 18 years of age or older and still enrolled in high school must be admitted pursuant to the concurrent enrollment provisions if their attendance in community college courses is to be claimed for apportionment purposes.

ANALYSIS

Two statutory structures potentially address the admission to a community college of persons who are 18 years old or older and are still enrolled in high school. General admission standards carry fewer conditions than do the concurrent enrollment standards.

General Admission Provisions

Education Code section 76000 is the basic statement of eligibility for admission to community college districts.<sup>1</sup> It addresses high school status and the age of students. If a person is a California resident with a high school diploma or its equivalent, that person is guaranteed community college admission.

The possession of a high school diploma "trumps" the person's age; a 16-year-old Californian with a high school diploma gains admission. If an individual has no high school diploma, but is "over 18 years of age" and can profit from instruction, a community college district may admit

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<sup>1</sup> All references are to the Education Code unless otherwise indicated.

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that person, but is not required to do so. Neither the mandatory admission of persons with high school diplomas nor the permissive admission of persons without diplomas requires recommendations of principals, parental consent, or express limitations on the types or numbers of classes that may be taken.

### Concurrent Enrollment Provisions

For purposes of this analysis, "concurrent enrollment" is defined as part-time enrollment in community college classes while still enrolled in a school district. "Special part-time" pupils are those pupils who are concurrently enrolled.

Section 48800 authorizes school districts to assess their students who wish to attend community colleges while they are still enrolled in high school to determine whether they could benefit from such advanced scholastic or vocational work.<sup>2</sup> If so, the attendance must be recommended by the school's principal and authorized by parental consent.

The community college level counterpart to section 48800 is section 76001. It authorizes community college districts to admit pupils who are eligible to attend under section 48800. Special part-time pupils are limited to 11 or fewer units of college course work. If a community college district wishes to claim apportionment for the attendance of pupils admitted under sections 48800 and 76001, additional conditions must be met. For example, the class at issue must be open to the general public and advertised as such, and significant restrictions to the enrollment of high school pupils in PE classes attach.<sup>3</sup>

If the community college attendance is during a summer session, the high school pupil must demonstrate adequate preparation in the discipline and have no opportunities to enroll in equivalent courses at his/her school of attendance. In addition, the principal cannot recommend for summer session attendance more than 5% of the total number of pupils who completed the grade in which the pupil was enrolled. That is, a principal could recommend no more than 5 pupils from a grade that had 100 students.

Community college classes that are held on high school campuses are subject to further conditions, and if the class is a PE class, additional requirements must be met before apportionment can be collected. The text and history of these provisions verify the Legislature's

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<sup>2</sup> We recognize that sections 48800.5 and 76001 provide for the admission and enrollment of K-12 students as special full-time students at a community college. Likewise, we recognize that there may be the occasional student who is 18 years of age or older while still enrolled in middle school. However, we do not consider these less common situations in this opinion.

<sup>3</sup> Despite the statement in section 76002 that courses must be open to the general public, community college classes are only open to students who have been admitted to a college. If valid prerequisites are set for any classes, only those students who meet the prerequisites may enroll.

SB 338 (Stats. 2003, ch. 786) emphasized the open class requirement because it responded to concerns that some college classes were targeted to, and largely confined to, the enrollment of K-12 students, and were therefore not truly open classes.

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intent to establish specific admission and apportionment limitations for concurrent enrollment, particularly for enrollment in PE classes offered at high schools.<sup>4</sup>

Do the General or the Concurrent Enrollment Provisions Govern the Admission of Pupils 18 Years of Age or Older Who Are Still Enrolled in High School?

Arguably, individuals who are 18 years of age or older but still enrolled in high school may be permissively admitted under section 76000. As noted above, colleges are authorized to admit individuals who do not have a high school diploma if they are capable of profiting from instruction. Because they are still in high school, this population of pupils does not yet have high school diplomas.

On the other hand, sections 48800 and 76001 specifically discuss the college attendance of persons who are still in high school. While section 76000 permits admission based on age, sections 48800 and 76001 establish admission standards which must be met if the student is still in high school. The admission of pupils under sections 48800 and 76001 carries numerous obligations that admission under section 76000 does not.

Our goal is to assess what the Legislature intended for persons 18 years of age and older who are still enrolled in high school. Because considerably different results occur if a high school student over 18 is admitted under section 76000 rather than sections 48800 and 76001, we must determine which provisions control. Several principles of statutory construction inform our review.

The intent of the Legislature is most likely reflected in the language of the statutes it drafted. (*People v. Canty* (2004) 32 Cal.4th 1266, 1276.) Statutes on the same topic should be harmonized, if possible. (*Medical Board v. Superior Court* (2001) 88 Cal.App.4th 1001, 1013.) Both statutes address admission, so they should be harmonized, if possible. Section 76000 merely authorizes the admission of persons who are over 18 years-of-age with no diploma. The concurrent enrollment provisions mandate certain conditions for persons who are still in high school, without regard to age. These two provisions intersect only for persons who are 18 years of age and older but who are still in high school.

One possible interpretation of these statutes is that sections 76001 and the related concurrent enrollment statutes override and negate the authority apparently accorded by section 76000 to admit students over the age of 18 where those students are still enrolled in high school. However, this requires us to partially invalidate section 76000.

On the other hand, an interpretation that allows students who are still in high school to be admitted and served pursuant to section 76000 without regard to the concurrent enrollment provisions would render the concurrent enrollment provisions meaningless for numerous high school students even though the concurrent enrollment provisions purport to apply to all high

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<sup>4</sup> For example, the staff analysis for SB 338 for the July 9, 2003, Assembly Committee on Education hearing includes a section entitled "origin of SB 338." It refers to December 2002 Orange County Register articles as being "highly critical articles regarding concurrent enrollment practices in the community colleges. The articles specifically focused on high school PE classes and various suspected abuses. . . ."

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school students. Since admission pursuant to section 76001 is substantially more restricted, an interpretation which allowed students over 18 to be admitted and claimed for apportionment under section 76000 would mean that there would be no reason to comply with the strictures of section 76001 and the related concurrent enrollment statutes for such students. This would effectively rewrite the concurrent enrollment statutes so that they apply only to students under age 18.<sup>5</sup>

Interpretations that render a provision meaningless should be avoided. (*People v. Allen* (1999) 21 Cal.4th 846, 860.) This is particularly true where, as here, there is a third and equally plausible construction which will permit us to harmonize the statutes in question.

The alternative interpretation we favor is based on the observation that section 76000 provides permissive authority to admit persons over age 18 who do not have high school diplomas while sections 48800 and 76001 can be read as mandatory if the college wishes to claim apportionment for the attendance of high school students. That is, section 76001 must be considered an exception which applies if the student is still in high school and the college intends to claim apportionment for the courses he or she attends at the college. The most basic and compelling evidence for this interpretation is that section 76000 does not mention claiming apportionment. Moreover, as indicated below, this interpretation is supported by the rules of statutory construction.

A particular means for harmonizing statutes applies where both general and specific provisions address the same subject. Where a later statute is also the more specific statute, it should be considered an exception to a prior, more general rule. (*Medical Board v. Superior Court, supra*, 88 Cal.App.4th at p. 1016.)

Sections 48800, 76000, and 76001 all have extremely long legislative histories; in fact, all of them predated the 1976 reorganization of the Education Code. However, apart from technical amendments, section 76000 has remained unchanged since that time. By contrast, sections 48000 and 76001 were changed more than once -- most recently in 2003 to specifically address problems related to high school pupil attendance.

Sections 48800 and 76001 specifically address concurrent enrollment, regardless of the age of the individual seeking that enrollment, and describe the circumstances under which such students may be claimed for apportionment. Section 76000 is the more general admissions provision and, as noted above, does not address the requirements which must be met to claim apportionment. Thus, the later and more specific concurrent enrollment provisions are properly considered an exception to the earlier, more general authority of section 76000 to admit persons who do not have high school diplomas, or the equivalent.

Statutory interpretations should also consider "the object to be achieved and the evil to be prevented by the legislation." (*Harris v. Capital Growth Investors XIV* (1991) 52 Cal.3d 1142,

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<sup>5</sup> There is other precedent for high school pupil status to weigh more heavily than the student's age. Child support is usually terminated once an individual reaches 18, which is the age of majority in California. However, child support continues for unmarried, financially dependent full-time high school students. Support ends once the individual either completes the 12th grade or reaches the age of 19, whichever occurs first. (Fam. Code, § 3901.)

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1159.) A statute's purpose should not be lost by applying a literal meaning to statutory language; it is appropriate to apply "the interpretation that leads to a more reasonable result." (*People v. Canty, supra*, 32 Cal.4th at pp. 1276-1277.) The legislative history of SB 338 verifies the legislative intent to limit situations where both a college and a school district may claim apportionment for the same student and to reduce concurrent enrollment in community college PE courses. Thus, under section 76002(a)(4), no more than 10% of PE classes may be comprised of special part-time pupils. PE classes can still be offered on high school sites, but the limitation on concurrent enrollment addressed perceived abuses in allowing high school pupils to enroll in community college PE classes.

If high school students over 18 years of age could be admitted pursuant to section 76000 and claimed for apportionment, a PE course could be conducted at a high school, be composed only of high school pupils attending that school and still be claimed for apportionment so long as at least 90% of the students were 18 years of age or older. This may be a somewhat unlikely situation, but it shows how the intended statutory cure would be distorted by a contrary interpretation. (As noted below, during the Fall, 2003 term, approximately 17.5% of all concurrent enrollment was attributable to persons who were 18 or 19 and still in high school. It is unknown what percentage might result if the calculation covered only PE classes.)<sup>6</sup>

The Legislature's intent may also be apparent from committee reports and the Legislative Counsel's Digest of the bill. (*People v. Valencia* (2000) 82 Cal.App.4th 139, 145.) Staff reports that analyzed the bill as it developed in the Legislature described the concurrent enrollment sections in terms of persons who were in high school, without regard to their ages. The first analysis, for the Senate Committee on Education, addressed SB 338 as amended April 21, 2003. Staff defined "concurrent enrollment" as follows:

"Concurrent enrollment includes all community college coursework, both credit and non-credit, undertaken by students who are concurrently enrolled in high

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<sup>6</sup> If a district is willing to admit high school students who are over 18 pursuant to section 76000 with the understanding that their attendance will not count for apportionment purposes, some of the restrictions imposed by SB 338 may be eased, but administration of concurrent enrollment would be complicated because both school and community college districts would have to keep track of which admission option was applicable to each student. For example, students admitted pursuant to section 76000 would not count against the district for purposes of calculating the percentage limitations on concurrent enrollment PE classes. However, it is important to note that this would not apply to a student first admitted pursuant to section 76001 while under age 18, unless the student reapplies and is readmitted under section 76000 after turning 18.

In other words, districts that choose to admit high school students who are over 18 under section 76000 cannot apply conditions of the concurrent enrollment provisions to such students, such as the ability to require completion of a specified grade level described in section 76002. Additionally, because admission under section 76000 is established by governing board rule, we must assume that the rule would be applied uniformly and that all high school students who are 18 or over will be treated the same for admissions purposes.

Similarly, if high school pupils who are 18 years of age and older are admitted pursuant to section 76000 and are not claimed for apportionment purposes, then they need not be included in the 5% limitation of persons recommended for summer school sessions. This could alleviate some of the problems the 5% limit creates for smaller high schools but it would complicate the calculation of the percentage because the college would have to advise the school district of how many students over age 18 it has admitted with the understanding that it will not be able to claim apportionment for their attendance.

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school, including summer terms prior to high school graduation. These students are also known as 'special admits' because they are granted admission to the community college under the special rules noted in the background of this analysis." (Emphasis added.)

The analysis defines concurrent enrollment in terms of all coursework by pupils who are still in high school, without any reference to their ages. The same definition appears in staff analyses throughout the development of SB 338 for hearings before the Senate Committee on Education, the Senate Rules Committee, the Assembly Committee on Higher Education, and the Assembly Committee on Education. The first appearance of this definition reflects the bill as amended April 21, 2003, and the last appearance of the definition reflects the bill as amended to its final version on August 26, 2003. Thus, the definition appeared in virtually every bill analysis commencing with the first amendment through to the chaptered language.

Moreover, the definition verifies that such students are "granted admission. . . under the special rules noted in the background of this analysis." (Emphasis added.) Thus, we believe that the Legislature intended that, if such pupils are to be claimed for apportionment purposes, they must be admitted and attend classes under the special standards described in the bill.

The Legislative Counsel's Digest speaks only of criteria and restrictions placed on existing law that "authorizes the governing board of a school district to authorize pupils, with parental permission, who would benefit from advanced scholastic or vocational work to attend community college as special part-time students to undertake one or more courses of instruction at the community college level." No age conditions appear either in the explanation of existing law or how SB 338 affected existing law.

Staff reports and the Legislative Counsel's Digest apply the new provisions to high school pupils without regard to age. Accordingly, all indications are that, at the time the legislators were developing the statutes, they intended the language to apply as described in these contemporaneous analyses, i.e., to all high school pupils.

Although there is considerable evidence that age should not be a factor in concurrent enrollment, we did locate some documents which set forth a contrary view. On February 17, 2004, the Assembly Education Committee and Assembly Higher Education Committee held a joint informational hearing on the topic "Concurrent Enrollment: Do Current Practices Reflect State Priorities?" A Report was issued in May 2004 by Carol Liu, Chair of the Assembly Committee on Higher Education. The Summary of the Report states that, "The Education Code authorizes a pupil under the age of 18 who does not yet have a high school diploma or its equivalent to be concurrently enrolled in high school and community college, if the pupil's school district determines the pupil would benefit from 'advanced scholastic or vocational work.'" The Report includes a "Background" document for the hearing that recites the "under the age of 18" language, and a February 2004 "Fact Sheet on Special-Admit Students in the Community Colleges," that includes the following statement: "'Concurrent Enrollment' is an informal name that has been given to community college educational enrichment opportunities provided to pupils under the age of 18 who do not yet have a high school diploma or its equivalent." (Emphasis added.) We believe that the Fact Sheet was prepared by the System Office.

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The Report also includes the February 27, 2004 memorandum to the Legislature and Department of Finance from Chancellor Drummond that refers to special-admit students as "those who are not yet 18 years of age. . . ." The Report is accompanied by a July 2004 letter from Chairwoman Liu that announces a workgroup to address concurrent enrollment problems. This letter similarly defines concurrent enrollment in terms of pupils under the age of 18. Thus, at least two System documents suggest that concurrent enrollment provisions apply only to persons who are under 18.<sup>7</sup>

Apart from the references related to the February 2004 hearing, we find no support in the legislative history for that interpretation. As noted above, the legislative staff definition that accompanied SB 338 throughout its development did not include any reference to student age, but focused solely on a student's status as a high school enrollee; the references to 18 year old pupils in communications with the Legislature occurred after the passage of the bill, so they do not reflect an interpretation that was officially considered during the Legislature's discussion of the measure.

Furthermore, the Report acknowledges the systemwide investigation of concurrent enrollment that resulted in the June 2003 report on related apportionment claims. MIS staff reported that age was not considered in the investigation; the investigation considered concurrent enrollment to embrace pupils who were enrolled simultaneously in school districts and community college districts, regardless of their age. During the Fall 2003 term, high school pupils who were 18 or 19 years old accounted for approximately 17.5% of the concurrent enrollment figures, so the impact of this interpretation is not inconsequential.

The statutory development and the canons of statutory construction support the conclusion that pupils who are 18 years of age or older and still enrolled in high school are subject to the concurrent enrollment provisions if the college district wishes to claim their attendance for apportionment purposes or apply any other concurrent enrollment provision. Some language used by the System Office and a legislator suggests a different conclusion, but these comments largely occurred after the statutes became law, and they appear to be informal summaries rather than formal statements of the scope of the law. Accordingly, we conclude that persons who are 18 years of age or older and still enrolled in high school must be admitted pursuant to the concurrent enrollment provisions if the community college district intends to claim their attendance for apportionment purposes.

SB:RB:VAR:sj

cc: Fred Harris  
Elias Regalado

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<sup>7</sup> In legal opinion M 98-17, we considered the admission and attendance of K-12 pupils to community colleges. That opinion verified that minors (persons under 18) who had received high school diplomas were guaranteed admission under section 76000 and that minors who lacked high school diplomas or the equivalent could be admitted under sections 48800 and 76001 (as they appeared at the time). However, the opinion did not specifically address persons who were 18 and over, but who were still enrolled in high school.