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August 31, 2005

Anna Young
Chair, ASCR Transportation Committee
Redwoods CCD
7351 Tompkins Hill Road
Eureka, CA 95501-9301

RE.: Interpretation of Education Code section 76361
Legal Opinion L 05-10

Dear Ms. Young:

I am writing in response to your letter of July 6, 2005, in which you asked whether Education Code section 76361 requires a community college district to completely exempt students receiving Board of Governor's (BOG) fee waivers from the mandatory transportation fee authorized by section 76361. We conclude that it does not.

As you know, subdivision (c) of Education Code section 76361 provides that:

"If, pursuant to this section, a fee is required of students for transportation services, any fee required of a part-time student shall be a pro rata lesser amount than the fee charged to full-time students, depending on the number of units for which the part-time student is enrolled. In addition, a governing board maintaining transportation services shall adopt rules and regulations governing the exemption of low-income students from required fees, and may adopt rules and regulations that provide for the exemption of others."

First, we observe that section 76361 does not refer to students who receive or are eligible for BOG fee waivers. In the community college system we normally associate the phrase "low-income students" with those receiving fee waivers and we have previously advised districts that this is how section 76361 should be interpreted. However, our review of the legislative history indicates that the above-quoted language was first added to the Code as part of former Education Code section 25425.4 by Assembly Bill 1163, chapter 1346, Statutes of 1974. (Ed. Code 1959, § 25425.4.) This long pre-dates the enactment of the enrollment fee in 1984 and the subsequent creation of the BOG fee waiver program. Thus, we are now convinced that the term "low-income" as used in section 76361 does not necessarily refer to students who are eligible for the BOG fee waiver.

Education Code section 70902(a) provides that a community college district may "initiate and carry on any program, activity, or may otherwise act in any manner that is not in

conflict with or inconsistent with, or preempted by, any law and that is not in conflict with the purposes for which community college districts are established." Since the Legislature did not provide a definition of the term "low-income," we conclude that local districts have the flexibility to define this term, within reason, as they see fit. In particular, we think a district like the Redwoods CCD, which apparently has a substantial low-income population, could define that term in such a way that it includes only those students who have incomes so low that they are significantly below the average income for the local area.

Second, we would point out that section 76361 appears to exempt low-income students only when a district is, itself, providing transportation services. Subdivision (a) of section 76361 provides that "The governing board of a community college district may require students in attendance and employees at a campus of the district to pay a fee for purposes of partially or fully recovering transportation costs incurred by the district or of reducing fares for services provided by common carriers or municipally owned transit systems to these students and employees." However, subdivision (c) only requires "a governing board **maintaining transportation services**" to exempt low-income students from the fee. Thus, there is no requirement for exempting low-income students where a district establishes a fee pursuant to section 76361 for the purpose of "reducing fares for services provided by common carriers or municipally owned transit systems."

Of course, a district could attempt to structure an arrangement with a common carrier or municipally owned transit system which would provide an exemption to low-income students. Moreover, if such an exemption were provided it could be either complete or partial. For example, the agreement between a district and a municipally owned transit system might provide that low-income students are only required to pay half the amount charged to other students. Such an approach would be consistent with the general policy of attempting to prevent student fees from becoming a barrier to enrollment for low-income students. However, there is no requirement for an exemption where the district is not directly providing transportation services, and any decision to offer a full or partial exemption is entirely at the discretion of the district and the common carrier or municipally owned transit system which actually provides the service.

Finally, we want to bring to your attention another relevant provision of law—Education code section 82305.6. One reason for mentioning section 82305.6 is that it provides alternative authority, entirely separate from section 76361, for charging a transportation fee under certain circumstances. Section 82305.6 states:

"When the governing board of a community college district provides for the transportation of students to and from community colleges, the governing board of the district may require the parents and guardians of all or some of the students transported, to pay a portion of the cost of such transportation in an amount determined by the governing board. The amount determined by the board shall be no greater than that paid for transportation on a common carrier or municipally owned transit system by other students in the district who do not use the transportation provided by the district. The governing board shall exempt from the charges

students of parents and guardians who are indigent as set forth in rules and regulations adopted by the board. No charge under this section shall be made for the transportation of handicapped students. Nothing in this section shall be construed to sanction, perpetuate, or promote the racial or ethnic segregation of students in the community colleges."

You will note that section 82305.6 is more narrow in scope than section 76361. It applies only to charging fees to parents or guardians of minors and only when the transportation service is provided directly by the district. On the other hand, section 82305.6 does not require an election as is the case under section 76361.

The other reason we mention section 82305.6 is that the exemption policy it embodies reinforces our interpretation of section 76361. Section 82305.6 says that a district which directly provides transportation services can charge parents or guardians of minor students for that service, but it must exempt those parents or guardians who are "indigent." This section does not authorize charging a fee where the transportation service will be provided by a common carrier or municipally owned transit system, so we do not know whether the Legislature would have seen fit to exempt "indigent" parents and guardians in that case. However, both section 76361 and section 82305.6 stand for the proposition that when a district directly provides transportation services it must exempt those who are "low-income" or "indigent."¹

I hope this information is helpful. If you have any questions, you may call Assistant General Counsel, Ralph Black, at (916) 327-5692.

Sincerely,

Steven Bruckman
Executive Vice Chancellor and General Counsel

SB:RB:sj

cc: Kathleen Crabil, President, College of the Redwoods

¹ The Legislature was no more specific about the terms it used in section 82305.6 than it was in the case of section 76361. In particular, since section 82305.6 does not provide or reference a definition of the term "indigent," we believe a district would be free to borrow a definition of that term from other bodies of law or to devise a reasonable definition of its own. A district could define the term "indigent" as used in section 82305.6 to mean the same thing as the term "low-income" under section 76361, but it might also give these terms different meanings.