

STATE OF CALIFORNIA

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TO: Patricia Laurent, Specialist, College Finance and Facilities Planning
FROM: Steven Bruckman, Executive Vice Chancellor and General Counsel
SUBJECT: Maintenance of Effort of Health Services Pursuant to
Education Code section 76355(e)
Legal Opinion O 06-06

ISSUE:

You have asked whether a district that currently provides health services and charges a health services fee under the authority of Education Code section 76355 may terminate its health services program if it also stops charging students a health services fee.

CONCLUSION:

A community college district that provided health services in the 1986-87 fiscal year is required to maintain its health services program at the 1986-87 fiscal year level even if that district chooses not to charge a health services fee. Districts which began providing health services after the 1986-87 fiscal year may discontinue their health service programs if they do not charge a health fee.

ANALYSIS:

Education Code section 76355 provides as follows:

"(a)(1) The governing board of a district maintaining a community college may require community college students to pay a fee in the total amount of not more than ten dollars (\$10) for each semester, seven dollars (\$7) for summer school, seven dollars (\$7) for each intersession of at least four weeks, or seven dollars (\$7) for each quarter for health supervision and services, including direct or indirect medical and hospitalization services, or the operation of a student health center or centers, or both.

(2) The governing board of each community college district may increase this fee by the same percentage increase as the Implicit Price Deflator for State and Local Government Purchase of Goods and Services. Whenever that calculation produces an increase of one dollar (\$1) above the existing fee, the fee may be increased by one dollar (\$1).

(b) If, pursuant to this section, a fee is required, the governing board of the district shall decide the amount of the fee, if any, that a part-time student is required to pay. The governing board may decide whether the fee shall be mandatory or optional

(c) The governing board of a district maintaining a community college shall adopt rules and regulations that exempt the following students from any fee required pursuant to subdivision (a):

(1) Students who depend exclusively upon prayer for healing in accordance with the teachings of a bona fide religious sect, denomination, or organization.

(2) Students who are attending a community college under an approved apprenticeship training program.

(d)(1) All fees collected pursuant to this section shall be deposited in the fund of the district designated by the California Community Colleges Budget and Accounting Manual. These fees shall be expended only to provide health services as specified in regulations adopted by the board of governors.

(2) Authorized expenditures shall not include, among other things, athletic trainers' salaries, athletic insurance, medical supplies for athletics, physical examinations for intercollegiate athletics, ambulance services, the salaries of health professionals for athletic events, any deductible portion of accident claims filed for athletic team members, or any other expense that is not available to all students. No student shall be denied a service supported by student health fees on account of participation in athletic programs.

(e) Any community college district that provided health services in the 1986-87 fiscal year shall maintain health services, at the level provided during the 1986-87 fiscal year, and each fiscal year thereafter. If the cost to maintain that level of service exceeds the limits specified in subdivision (a), the excess cost shall be borne by the district.

(f) A district that begins charging a health fee may use funds for startup costs from other district funds, and may recover all or part of those funds from health fees collected within the first five years following the commencement of charging the fee.

(g) The board of governors shall adopt regulations that generally describe the types of health services included in the health service program."

For purposes of this opinion, we are concerned primarily with subdivision (e). It is a fundamental rule of statutory construction that when analyzing a provision, we begin with the language of the statute itself, giving the words their plain and ordinary meaning. "If the language of the statute is not ambiguous, the plain meaning controls and resort to extrinsic sources to determine the Legislature's intent is unnecessary." (*Kavanaugh v. West Sonoma County Union High School Dist.* (2003) 29 Cal.4th 911, 919, citing *County of Santa Clara v. Perry* (1998) 18 Cal.4th 435, 442.) By its terms, subdivision (e) clearly requires any district that provided health services in fiscal year 1986-87 to continue providing services at that same level for every fiscal year after 1987. The statute is also clear that if the cost of maintaining the health services at the 1986-87 level exceeds the revenue generated by the health fee authorized in subdivision (a) that

the excess costs shall be paid by the district. A district is not required to charge the fee authorized by subdivision (a) of the statute or to charge the maximum allowable fee. If a district did decide to reduce or eliminate the health fee, the revenue it derives from that source would be reduced accordingly. However, subdivision (e) makes clear that a district which provided health services in the 1986-87 fiscal year remains responsible for providing health services at that same level regardless of whether or not the revenue generated from the fee is sufficient to cover those costs. Thus, a straightforward reading of section 76355 leads us to the conclusion that a district which provided health services in 1986-87 may eliminate the health fee but it will nevertheless remain obligated to provide the same level of services it provided in 1986-87.

Of course, the opposite is true with respect to those districts which began providing health services subsequent to the 1986-87 fiscal year. They are not bound by the maintenance of effort provisions of subdivision (e) and may discontinue charging a health fee and providing health services at any time.

While we need not look further than the plain meaning of the statute, in this instance we find that the legislative history also supports this conclusion. In 1984, the enactment of AB 1xx (Stats. 1984, 2d Ex.Sess., ch. 1) established a mandatory enrollment fee and at the same time prohibited a number of formerly permissive fees, including the health services fee. At that time, former section 72246.5 (the predecessor to subdivision (e) of section 76355) read as follows:

"Any community college district which provided health services for which it was authorized to charge a fee pursuant to former Section 72246 in the 1983-84 fiscal year shall maintain health services at the level provided during the 1983-84 fiscal year in the 1984-85 fiscal year and each fiscal year thereafter. This maintenance of effort requirement shall apply to all community college districts which levied a health services fee in the 1983-84 fiscal year, regardless of the extent to which the health services fees collected offset the actual costs of providing health services at the 1983-84 fiscal year level.

This section shall remain in effect only until January 1, 1988, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 1988, deletes or extends that date."

Section 72246.5 was repealed by operation of law on January 1, 1988. In 1987, section 72246 (which became operative January 1, 1988) was amended by Assembly Bill 2336 (Stats. 1987, ch. 1118, § 4) and provided, in pertinent part:

"(f) Any community college district that provided health services in 1986-87 shall maintain health services at the level provided during the 1986-87 fiscal year in 1987-88 and each fiscal year thereafter. If the cost to maintain that level of service exceeds the limits specified in subdivision (a), the excess cost shall be borne by the community college district."

Thus, AB 2336 reauthorized the charging of a health services fee, fixed the maintenance of effort at 1986-87 levels rather than 1983-84 levels, made the maintenance of effort provision applicable to any district that provided services in fiscal year 1986-87 and explicitly stated that any excess cost of providing health services would be borne by the district.

However, when AB 2336 was first introduced on March 6, 1987, the proposed text of section 72246 contained no maintenance of effort language similar to former section 72246.5. The first sentence of subdivision (f) regarding maintenance of effort was not added until the bill was amended on June 1, 1987, and the second sentence of subdivision (f) regarding excess cost being borne by the district was not added until August 31, 1987. It is clear that at some point in their deliberations legislators became aware that the maintenance of effort requirement in section 72246.5 was about to "sunset" and decided to incorporate a similar but not identical provision into section 72246. Therefore, we must regard the differences between the earlier maintenance of effort provision and the version enacted by AB 2336 as intentional and meaningful.

It is interesting to note that the maintenance of effort requirement of section 72246.5 was specifically limited to those districts that charged a health services fee in 1983-84 while the 1987 amendments to section 72246(f) do not condition the maintenance of effort on the charging of a fee. This might be direct evidence of a legislative intent to require maintenance of effort regardless of whether or not a fee is being charged. However, we cannot immediately jump to this conclusion because the enactment of AB 1xx in 1984 eliminated the authority which had previously existed to charge a health fee. As a result, districts which operated a health services program in fiscal year 1986-87 were precluded from charging a fee for that service, so the Legislature could not have conditioned the maintenance of effort requirement on the charging of a fee.

Nevertheless, we think the changes made by AB 2336 do reflect an intent to abandon the earlier approach of conditioning maintenance of effort on the charging of a fee. Had the Legislature wished to retain this feature, it could have continued the earlier maintenance of effort provision which applied only to districts which had charged the health services fee in 1983-84. Alternatively, it could have provided that districts offering health services in the 1986-87 fiscal year would be required to maintain those services if they elected to begin charging a fee after that again became permissible on January 1, 1988. Clearly the Legislature knew how to craft such conditional requirements, but it chose to adopt neither of these plausible approaches. Consequently, we conclude that the Legislature most probably intended for the maintenance of effort requirement to apply, just as the statute says, to any district that provided health services in the 1986-87 fiscal year.

SB; RB: DR; FR; jkg

cc: Robert Turnage, Vice Chancellor, Fiscal Policy and Linda Michalowski, Vice Chancellor, Student Services and Special Programs