

CALIFORNIA COMMUNITY COLLEGES CHANCELLOR'S OFFICE

**REVISED GUIDELINES AND INFORMATION ON AB 540
EXEMPTION FROM NONRESIDENT TUITION**

DECEMBER 2007

THESE GUIDELINES SUPERSEDE GUIDELINES ISSUED IN OCTOBER 2003

LEGAL ADVISORY 07-01

The Law

On October 12, 2001, Governor Davis signed into law Assembly Bill 540 (Stats. 2001, ch. 814) that added a new section 68130.5 to the California Education Code. Section 68130.5 created a new exemption from the payment of nonresident tuition for certain nonresident students who have attended high school in California and received a high school diploma or its equivalent. Education Code section 68130.5 is contained in *Attachment One*.

The Regulations

This law does not affect current title 5 regulations concerning residency. Residency regulations remain in effect; changes are not anticipated. The law does not grant or amend current residency rules, but rather provides for an exemption from nonresident tuition for certain nonresident students. Section 68130.5 required the Board of Governors to adopt regulations detailing the requirements for the new exemption. The regulations appear in title 5 of the California Code of Regulations as sections 54045.5 and 58003.6. The text of these regulations is contained in *Attachment Two*. These regulations became legally effective on June 2, 2002.

Follow-up Legislation

After Education Code section 68130.5 took effect, section 68130.7 was added to the Education Code to limit remedies under the law. Section 68130.7 is contained in *Attachment Three*.

Mandated and Optional Forms

The regulations adopted by the Board of Governors require the community college districts to use a "questionnaire form prescribed by the Chancellor." The Chancellor's Office, in cooperation with UC and CSU has developed such a form. See *Attachment Four*. Additional information is provided in the guidelines below.

In addition to the mandated form, the Chancellor's Office has adopted, in consultation with UC and CSU, a one-page "informational" flyer to assist students in understanding the law and the process for applying for the exemption. The use of this informational piece is optional. See *Attachment Five*.

Implementation Notes and Clarification of Provisions

General Eligibility and Residency

1. The law does not grant residency; it requires that certain nonresident students be exempted from paying nonresident tuition.
2. Students exempted from paying nonresident tuition pursuant to section 68130.5 do not become residents for eligibility purposes for any state-funded program (e.g., EOPS, BOG Fee Waiver, Cal Grant and/or the Governor's Merit Scholar Program).
3. This benefit is available to all U.S. citizens, permanent residents of the U.S., and aliens who are not nonimmigrants (including those who are undocumented), who meet all other eligibility criteria.
4. Students must meet all requirements to be eligible for the exemption.
5. Students are eligible for this exemption even if they enrolled in higher education prior to the 2001-2002 academic years. References in the legislation to prior academic years prohibit retroactive application of the exemption but do not preclude previous attendance.
6. Students do not have to demonstrate an intent to become a California resident in order to qualify for this exemption. For example, those who live in neighboring states and who cross the border to attend classes are entitled to this exemption (assuming they are otherwise eligible) despite the fact that they may have no intention of returning to live in California. However, we have determined that the exemption is not available for persons who are absent from California, but who are taking distance education classes from California community colleges.

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7. The exemption from nonresident tuition is mandatory. If a district finds that a student meets all requirements of the law, nonresident tuition may not be charged.
8. If a student is determined to be eligible for this exemption subsequent to the payment of nonresident tuition, the tuition paid must be refunded to the student.
9. Districts may claim apportionment for credit courses taken by the nonresident students who are exempted from the payment of nonresident tuition pursuant to section 68130.5.
10. A community college district may not charge the capital outlay fee authorized by Education Code section 76141 to a student who is eligible for the

exemption from nonresident tuition provided by Education Code section 68130.5. (See Legal Opinion O 04-15.)

11. Some districts conduct pre-registration for high school seniors prior to their graduation. Such students cannot sign a valid exemption request (because they have not yet graduated from high school). If district policies permit, a student's payment of nonresident tuition can be deferred until the district can legally consider the student for an exemption. A similar problem arises with respect to nonresident students who are concurrently enrolled in high school and college. Some districts have adopted policies permitted by Education Code section 76140(a)(1) that exempt all students taking six or fewer units from paying nonresident tuition. This may provide an exemption for many concurrently enrolled students who cannot qualify for an AB 540 exemption until they graduate from high school. It is important to note that a district that implements the exemption described in section 76140(a)(1) must provide it to all students taking six or fewer units; a district cannot provide the exemption only to concurrently enrolled students.

Forms and Verification

12. The regulations require the community college districts to use a "questionnaire form prescribed by the Chancellor." An intersegmental form has been developed for this purpose.
13. Districts should ensure that the prescribed form is contained in any publications printed after June 1, 2002. The common form as prescribed by the Chancellor must be used for all exemptions granted for terms subsequent to Fall 2002.
14. In addition to the mandated form, the Chancellor's Office has adopted, in consultation with UC and CSU, a one-page "informational" flyer to assist students in understanding the law and the process for applying for the exemption. Districts are encouraged to print this one-page document on the reverse of the mandated form and to include it in a convenient manner in other media. The use of this informational piece is optional.
15. The law does not specify the manner or type of verification required except by reference to an affidavit from those without lawful immigration status. Therefore it is the view of the Chancellor's Office that a district may rely on the student's self-certification of status.
16. If the district is in possession of conflicting information regarding any aspect of student eligibility, the district should pursue additional verification (e.g., high school transcript, diploma, etc.) to resolve discrepancies prior to granting this exemption.
17. Districts are free, at their discretion, to develop and implement additional documentation requirements relating to high school graduation or high school attendance in California, as long as such requirements are uniformly applied to all applicants. However, districts may not require additional documentation related to immigration status (see #31) unless the district has conflicting information which must be resolved (see #16).

18. The Chancellor's Office does not believe the law requires districts to obtain a new affidavit for terms subsequent to the original exemption. While such a practice is not prohibited, it may not make sense unless the college has information suggesting that something has changed in the student's immigration status which would now render him or her ineligible.
19. The original certified affidavit and other materials utilized to meet the certification requirements, are considered Class 1 - Permanent Records, under the provisions of title 5, section 59023. Class 1 records must be retained indefinitely, unless copied or reproduced by photograph, microphotograph or reproduced on film or electronically. It is suggested, for audit purposes, that the original documents be maintained for at least five years.

Eligibility Issues Related to High School Attendance and Graduation

20. The student must have attended a California high school for three or more years. There are no provisions for partial attendance (e.g., two years and 7 months).
21. Attendance in the 9th grade in a California school is acceptable for one of the three years, even if that school was designated as a "middle" school.
22. The law does not require consecutive attendance, nor that the student attended the *last* three years in California (in the case of four-year high schools).
23. Attendance at multiple California high schools is acceptable.
24. Attendance at continuation high schools, charter high schools, independent study at the 9th-12th grade level while enrolled in a California public school, including a charter school, and private tutoring provided by a person holding a valid California teaching credential (and meeting other state requirements) are recognized under state law as acceptable manners in which to attend high school.
25. Home schooling is instruction by a tutor or other person (including the student's parent) who does not have a valid California teaching credential. Local high schools are charged with determining whether to accept home schooling as valid attendance. Therefore, community college districts that are asked to consider home schooling as high school attendance for purposes of granting the exemption should confer with the public high school the student would have attended if not home schooled. If that high school accepts or would accept home schooling as valid high school attendance, the community college should also accept it for purposes of assessing whether the student can demonstrate three years of high school attendance.
26. AB 540 includes some uncertainties as to whether student attendance in adult education classes may be used to satisfy the high school attendance requirements of Education Code section 68130.5. Our cautious reading of the statute is that such attendance is probably not allowed in most instances. We believe it is clear that attendance in adult education classes offered through a

secondary adult school as an "evening high school" satisfies the requirement of high school attendance for purposes of section 68130.5. School districts should be able to confirm whether their adult schools were established and designated as "evening high schools." Districts will need to make their own assessments as to whether other types of adult education attendance are allowable.

27. The law does not distinguish between public and private high schools.
28. There is no time limit on how far in the past the student attended a California high school.
29. The student must have graduated from a California high school or attained the equivalent thereof (e.g., a GED or a high school proficiency exam). The GED or high school proficiency exam must be from California. There is no time limit on how far in the past the student attained this status.
30. It is the opinion of the Chancellor's Office that under some limited circumstances students may be eligible for the exemption from nonresident tuition provided by AB 540 even though they have not passed the high school exit exam and received a high school diploma. In particular, a student with a disability (other than a nonimmigrant) who has received a certificate of achievement issued by a high school pursuant to Education Code section 56390 should be considered to have satisfied the high school graduation requirement of AB 540 and would be entitled to the exemption from nonresident tuition if he or she meets all other requirements of the statute. (See Legal Opinion O 05-09.) More generally, we believe that a student (other than a nonimmigrant) who attends high school for three years in California and receives a certificate of completion from a California high school is eligible for the exemption from nonresident tuition, provided that the document from the high school either states that it is issued pursuant to Education Code section 51412 or explicitly certifies that the student has completed the course of study and met the proficiency standards prescribed by the governing board of the high school district. (See Legal Opinion O 06-02.)

Eligibility Issues Related to Immigration

31. All districts must use the affidavit contained on the form prescribed by the Chancellor that affirms that those students without lawful immigration status have applied for legalization or will do so as soon as they are eligible to do so. A student who files the affidavit must not be asked to provide additional evidence of immigration status unless the district is in possession of evidence that casts doubt on the validity of the affidavit. The law does not require the district to monitor future changes in such eligibility.
32. If the student has filed an application with the United States Citizenship and Immigration Service (USCIS) to change his or her status to a classification that permits establishing residency, the student may already be eligible for resident fee status if the student has resided in California for more than one year since the time of the application to USCIS. (See Cal. Code Regs., tit. 5, § 54045.)

33. Students who hold visas as nonimmigrant aliens (the most common being the F series student visas and B series visitor visas), are not eligible for this exemption. (A full description of nonimmigrant alien classifications may be found in paragraph 15 of subsection (a) of section 1101 of title 8 of the United States Code.)
34. Please note that federal immigration law provides that: "An alien who is admitted as, or changes status to, a B-1 or B-2 nonimmigrant on or after April 12, 2002, or who files a request to extend the period of authorized stay in B-1 or B-2 nonimmigrant status on or after such date, violates the conditions of his or her B-1 or B-2 status if the alien enrolls in a course of study." (8 C.F.R. § 214.2(b)(7).) This does not affect the student's eligibility for the exemption provided by AB 540, but colleges should consult their legal counsel about the ramifications of the federal restrictions.
35. Students who previously held valid nonimmigrant visas but who are out of status at the time of execution of the affidavit are eligible for the exemption.

Financial Aid, Outreach and Transfer

36. The laws and regulations regarding federal and state financial aid are not affected by this exemption from nonresident tuition. Nonresidents are ineligible for EOPS, BOG Fee Waiver, and Cal Grant. Nonresidents who are U.S. citizens or permanent residents are eligible for federal student aid. Nonresidents who are undocumented aliens are ineligible for all federal and state financial aid. However, districts are free to seek private scholarship funds to help undocumented students reach their educational goals.
37. Some students may be reluctant to come forward in order to obtain this exemption. If districts become aware of students who graduated from California high schools but who pay nonresident tuition, they may wish to make special efforts through discreet and confidential means to ensure that such students have information about the potential availability of the exemption. (See #40 regarding confidentiality requirements.)
38. Both UC and CSU are implementing this exemption from nonresident tuition. CSU uses the form prescribed by the Chancellor's Office at all of its campuses, and UC will accept the form. Students should submit the form to all UC or CSU campuses under consideration – there is no centralized UC or CSU office that makes assessments for all the campuses. Transfer students will be required to execute a new form with the UC or CSU campus (even if a current form is on file with the community college) and will be required to submit proof of high school attendance and high school graduation. Although UC accepts the intersegmental form, it has prepared its own version of the form, and may, at some point require its use. Students who are planning to apply to any UC campus may wish to contact that campus to ensure that the intersegmental form is still accepted.

Student Liability

39. If a student certifies that all requirements have been met and this certification is subsequently determined to be false, the student will be liable for the repayment of the nonresident tuition that would have been applicable for all relevant terms of attendance. The student may also be subject to disciplinary proceedings under district policy. The student self-certification contains a student acknowledgement of this potential liability and discipline.

Confidentiality

40. The law requires that all information obtained in the implementation of this program be confidential. Districts should be vigilant in protecting this confidentiality. Districts must ensure that all information relating to this tuition exemption remains strictly confidential and is shared only on an absolute "need to know" basis unless disclosure is required by law. Districts are urged to be cautious in outreach, exemption notifications, business transactions, scholarship announcements, and other activities to ensure confidentiality and to prevent inadvertent revelation of a student's immigration status.

Research

41. No MIS data element will be specifically developed to identify students receiving an exemption from nonresident tuition under these rules. There will be surveys regarding these policies from time to time and districts are asked to participate in such research when requested.

Questions regarding these guidelines should be directed to the following staff at the California Community College Chancellor's Office:

Student Services: *Chuen Chan, Specialist, Student Access and Retention*
cchan@cccco.edu 916.322.7988

Fiscal: *Elias Regalado, Specialist, Fiscal Services Unit*
eregalad@cccco.edu 916.445.1165

Legal: *Ralph Black, Assistant General Counsel*
rblack@cccco.edu 916.327.5692

ATTACHMENT ONE
Education Code section 68130.5

68130.5. Notwithstanding any other provision of law:

(a) A student, other than a nonimmigrant alien within the meaning of paragraph (15) of subsection (a) of Section 1101 of Title 8 of the United States Code, who meets all of the following requirements shall be exempt from paying nonresident tuition at the California State University and the California Community Colleges:

(1) High school attendance in California for three or more years.

(2) Graduation from a California high school or attainment of the equivalent thereof.

(3) Registration as an entering student at, or current enrollment at, an accredited institution of higher education in California not earlier than the fall semester or quarter of the 2001-02 academic year.

(4) In the case of a person without lawful immigration status, the filing of an affidavit with the institution of higher education stating that the student has filed an application to legalize his or her immigration status, or will file an application as soon as he or she is eligible to do so.

(b) A student exempt from nonresident tuition under this section may be reported by a community college district as a full-time equivalent student for apportionment purposes.

(c) The Board of Governors of the California Community Colleges and the Trustees of the California State University shall prescribe rules and regulations for the implementation of this section.

(d) Student information obtained in the implementation of this section is confidential.

ATTACHMENT TWO

Regulations Implementing Education Code section 68130.5

California Code of Regulations, division 6, title 5

54045.5. Nonresident Tuition Exemption.

(a) In accordance with Education Code section 68130.5, any student, other than a student who is a nonimmigrant alien under 8 U.S.C. 1101(a)(15), shall be exempt from paying nonresident tuition at any community college district if he or she:

- (1) Attended high school in California for three or more years;
- (2) Graduated from a California high school or attained the equivalent of such graduation; and
- (3) Registers for or is enrolled in a course offered by any college in the district for any term commencing on or after January 1, 2002.

(b) Any student seeking an exemption under subdivision (a) shall complete a questionnaire form prescribed by the Chancellor and furnished by the district of enrollment, verifying eligibility for this nonresident tuition exemption, and may be required to provide documentation in addition to the information required by the questionnaire as necessary to verify eligibility for an exemption. All nonpublic student information so provided shall be confidential and shall not be disclosed unless required by law.

(c) Any student without lawful immigration status who is seeking an exemption under subdivision (a), shall, in the questionnaire described in (b), affirm that he or she has filed an application to legalize his or her immigration status, or will file such an application as soon as he or she is eligible to do so.

(d) A student seeking this tuition exemption has the burden of providing evidence of compliance with the requirements of this section.

(e) Nothing herein modifies eligibility standards for any form of student financial aid, including but not limited to, those contained in Subchapter 7 of Chapter 9 of this Division.

(f) Nothing herein authorizes a refund of nonresident tuition that was paid for any term commencing prior to January 1, 2002.

NOTE: Authority cited: Section 66700, 68130.5 and 70901, Education Code.
Reference: Section 68130.5, Education Code.

58003.6. Apportionment for Certain Nonresidents Attending High School in California.

In accordance with section 68130.5 of the Education Code, students who are exempt from nonresident tuition pursuant to section 54045.5 may be included in calculating credit full-time equivalent student (FTES) for apportionment purposes.

NOTE: Authority cited: Section 66700, 68130.5 and 70901, Education Code.
Reference: Section 68130.5, Education Code.

ATTACHMENT THREE
Education Code section 68130.7

68130.7. If a state court finds that Section 68130.5, or any similar provision adopted by the Regents of the University of California, is unlawful, the court may order, as equitable relief, that the administering entity that is the subject of the lawsuit terminate any waiver awarded under that statute or provision, but no money damages, tuition refund or waiver, or other retroactive relief, may be awarded. In any action in which the court finds that Section 68130.5, or any similar provision adopted by the Regents of the University of California, is unlawful, the California Community Colleges, the California State University, and the University of California are immune from the imposition of any award of money damages, tuition refund or waiver, or other retroactive relief.

ATTACHMENT FOUR
Questionnaire Form Prescribed by the Chancellor

See next page for the questionnaire form.

Those viewing this document electronically can locate the current version of the questionnaire on the web page of the Student Services and Special Programs Division for the Revised Guidelines for Implementation of AB 540:

<http://www.cccco.edu/OurAgency/StudentServices/ImplementationGuidelinesforAB540Firebaugh/tabid/799/Default.aspx>

ATTACHMENT FIVE

Optional Informational Flyer

See next page for the optional information flyer.

Those viewing this document electronically can locate the current version of the flyer on the web page of the Student Services and Special Programs Division for the Revised Guidelines for Implementation of AB 540:

<http://www.cccco.edu/OurAgency/StudentServices/ImplementationGuidelinesforAB540Firebaugh/tabid/799/Default.aspx>