

**CALIFORNIA COMMUNITY COLLEGES
CHANCELLOR'S OFFICE**

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July 12, 2007

Harold Wood
Deputy Tulare County Counsel
2900 W Burrel St
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Re: Charging Interest on Deferred Enrollment Fees
Legal Opinion L 07-06

Dear Mr. Wood:

I apologize for the delay in responding to your request for legal advice, but we have been busy dealing with several major projects which have made it difficult to respond to such inquiries in a timely manner. However, we are now finally in a position to address your question.

You have asked whether a college may charge interest on the unpaid balance of enrollment fees where it permits students to defer payment of such fees until sometime after enrollment. For the reasons discussed below, we conclude that it may not.

It is well established that a community college district may not charge a fee it is not authorized or required to charge by law. Section 70902(b)(9) of the California Education Code states:

(b) In furtherance of subdivision (a), the governing board of each community college shall do all of the following:

* * * *

(9) Establish student fees as it is required to establish by law, and, in its discretion, fees as it is authorized to establish by law.

Additionally, title 5, section 51012 of the California Code of Regulations states that the governing board of a community college district may only establish such mandatory student fees as it is expressly authorized to establish by law. (Cal. Code Regs., tit. 5, § 51012.)

Relevant here is Education Code section 76300(b)(1), which mandates that each community college district charge a fee of \$20 per semester unit at the time that a student enrolls in a course. Title 5, section 58502 of the California Code of Regulations permits the deferral of such fees by providing:

§ 58502. Fee Charged at Enrollment.

The enrollment fee shall be charged of a student at the time the student is enrolled in a class. The district governing board may establish a policy authorizing the collection of the fee to be deferred under conditions determined by the governing board. (Cal. Code Regs., tit. 5, § 58502.)

Although this office has opined that section 58502 provides governing boards clear authority to provide for collection of enrollment fees over the course of the semester, quarter, or even perhaps the academic year for which they are charged, (Legal Opinion M 93-03), section 58502 does not provide authorization for districts to charge interest on deferred student fees.

Your inquiry suggests that express authorization for charging interest on deferred enrollment fees may not be necessary because such charges could be viewed as a permissive optional fee the district charges for the "service" of allowing a student to defer payment of the fees. It is true that our Student Fee Handbook, Legal Opinion M 06-11, states that "[s]ome fees for services are explicitly authorized by statute. Other fees for services may be charged under the authority of the permissive code so long as they are not required as a condition of registration, enrollment, or completion of a course, or as a condition of access to functions of the college which are funded by the state." (Legal Opinion M 06-11, ch. 3, p. 16.) However, for the reasons discussed below, we conclude that charging interest on unpaid enrollment fees is more appropriately viewed as creating or increasing a debt owed to the district rather than as an optional fee.

First, we observe that charging interest on unpaid enrollment fees is distinctly different in one fundamental respect than the other types of optional service fees we have previously approved—it is not based on the cost of providing a service. As you noted in your opinion request, we have permitted a district to charge students an optional fee for using a credit card. Although allowing a student to use a credit card to pay enrollment fees bears some similarity to charging students interest on deferred fees, one important difference is that in the latter case the district itself would collect interest whereas, in the former case, the credit card company charges interest while the district charges the student a defined fee to cover its cost for processing the credit card transaction. Similarly, The Student Fee Handbook notes that "[d]istricts that incur additional verifiable expenses in connection with offering credit by examination may be able to demonstrate reasonable fees beyond the fee established by Education Code section 76300." (Legal Opinion M 06-11, § 3.12, p. 25) and that "[i]f a district offers special certificates or other verifications that contain specialized information that would not normally be included in standard district records (e.g., a registered nurse number or a printed statement that the certificate must be retained by the licensee for a period of years after the course ends), the district may charge an optional fee to cover the cost of producing the certificate." (Legal Opinion M 06-11, § 3.20, p. 28.)

Thus, we believe charging interest on deferred enrollment fees cannot be regarded as the charging of an optional service fee in the same sense that we have previously applied that concept. Inherent in the notion of charging a fee for a service is the principle that the student is charged a specific amount that is established based on the cost to the district of offering the service. By contrast, charging interest on deferred enrollment fees would be related only to the

amount of the fees owed and the length of time the student delays in paying the fees. It would seem difficult for a district to demonstrate that it costs any more to defer payment of \$100 of enrollment fees than to defer \$200, but charging interest on these differing amounts would result in differing charges to the student.

Second, we believe that the proposed charging of interest on unpaid enrollment fees must, instead, be viewed as adding to the debt a student incurs when the district permits the student to defer payment of his or her enrollment fees. When a district agrees to allow deferral it is, in effect, making a loan to the student or permitting the student to incur a debt or obligation to pay those fees in the future.¹ Indeed, charging interest on the deferred fees only serves to confirm that this is really a debt owed by the student. Title 5, section 59410, lists methods available to a district for attempting to collect on such a debt and it says nothing about charging interest on deferred student fees, or any student financial obligation for that matter.

Title 5, section 59410 provides:

§ 59410. Withholding Grades, Transcripts, etc. for Nonrepayment of Financial Obligations.

The governing board of a community college district may provide by appropriate rules and regulations that grades, transcripts, diplomas and registration privileges, or any combination thereof, shall be withheld from any student or former student who has been provided with written notice that he or she has failed to pay a proper financial obligation due to the district or college. Any item or items withheld shall be released when the student satisfactorily meets the financial obligation. (Cal. Code Regs., tit. 5, § 59410.)

A basic principle of statutory construction is that where a finite list is set forth, items not on the list are excluded. (*Sierra Club v. State Bd. of Forestry* (1994) 7 Cal.4th 1215, 1230; 32 Cal.Rptr.2d 19; 876 P.2d 505) Since section 59410 lists the remedies available to a district in the event that a student fails to pay a debt he or she owes to the district, we view it as an exclusive list of options the district may employ.² For example, we have already determined that a late fee may not be charged to a student who defers enrollment fees. "Therefore, assuming a governing board has authorized a deferral process, students may pay their enrollment fees at some point after enrollment. Section 59410 of title 5 permits districts to withhold grades, transcripts, diplomas, and registration privileges from those students who fail to pay outstanding financial obligations, such as outstanding fees. Section 59410 establishes the mechanism for addressing unpaid fee obligations, and an additional late payment charge is not authorized." (Legal Opinion M 06-11, § 4.16, p. 36.)

¹ To the extent a deferral process resembles a loan, there may be a question as to whether a community college district even has the legal authority to operate a money lending function which involves charging interest. Certainly, we are not aware of express authority for a district to do so. However, since we conclude that the charging of interest on deferred enrollment fees is impermissible, we need not reach this issue.

² We recognize that districts may also take advantage of the Chancellor's Office Tax Offset Program (COTOP) authorized by Government Code section 12419.7. This is not inconsistent with our interpretation of section 59410 because the existence of explicit statutory authority for COTOP overrides the presumption that the listing of remedies in section 59410 is exclusive.

In our view, charging interest to a student who defers enrollment fees amounts to the same thing as charging a late fee to that student and would permit a district to accomplish by indirection what we have already concluded it may not do directly.

Finally, allowing districts to charge interest on deferred student fees would effectively permit charging some students a higher enrollment fee than others and higher than that permitted by law. In a similar context, the Student Fee Handbook indicates that:

Districts may not charge a higher enrollment fee than is authorized by the Legislature, even if students do not object. In certain high demand fields, some students might be able and willing to pay for the full cost of instruction, but districts have no authority to charge or collect fees in excess of the statutorily authorized level.

It is a fundamental rule in the community college system that districts may not charge student fees without express statutory authority. Charging students who are willing and able to pay at a rate higher than the authorized enrollment fee would violate this fundamental rule. (Legal Opinion M 06-11, § 2.1, p. 5.)

For the foregoing reasons, we conclude that a district may not charge interest on deferred enrollment fees.

If you have any additional questions, you may contact Staff Counsel Terrie Robinson at (916) 445-1605.

Sincerely,

Steven Bruckman
Executive Vice Chancellor and General Counsel

L 07-06

TR/RB/VAR