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To: Morgan Lynn
Executive Vice Chancellor of Programs

From: Steve Bruckman
Executive Vice Chancellor of Operations and General Counsel

Subject: Application of Catalog Rights to New Degree Requirements
Legal Opinion 09-04

QUESTION

Are colleges obligated to recognize catalog rights held by students at other colleges?

CONCLUSION

Catalog rights are based in contract law and students can enforce the catalog rights only against the original college. However, colleges are authorized to grant additional rights to students on a permissive basis.

ANALYSIS

In 2007, the Board of Governors adopted changes to title 5 increasing the minimum requirements for an Associate Degree. California Code of Regulations title 5, section 55063 now requires that a student entering a college in Fall 2009 or thereafter must satisfactorily complete Intermediate Algebra and Freshman Composition (or equivalent courses). Students who enrolled prior to Fall 2009 are subject to the old requirements of Elementary Algebra and an English course one level below Freshman Composition.

As a result of the new Math and English graduation requirements, a question has arisen regarding students who transfer units from a sister college. Colleges routinely accept units from sister colleges, but it's less clear how to deal with students who completed the lower level requirements at another institution prior to Fall 2009. Are colleges required to accept "catalog rights" from other colleges and grant degrees based on the old requirements, and if not required, are they permitted to do so?

In Legal Opinion 91-02, the California Community Colleges Chancellor's Office provided "ample authority for the proposition that a college catalog constitutes a written contract between the institution and the student where the student enters the school under the terms of the catalog." Catalog rights, therefore, are governed by the basic principles of contract law. However, because

the specific application of contract law can be complex, the Chancellor's Office has indicated that Opinion 91-02 is "problematic." As there is no specific reference in Education Code or title 5 that refers to "catalog rights" for community college students, questions regarding catalog rights are best answered by legal counsel at the colleges with experience in contract law.

Title 5, section 55005 requires that colleges publish certain information about courses in "college publications" which usually include a college catalog and class schedules for every term, but neither type of document is specified. Title 5, section 55063 defines the minimum requirements for the associate degree at the California community colleges. In the fifth paragraph (not numbered), the section states, "The required 60 semester or 90 quarter units of course work must be fulfilled in a curriculum accepted toward the degree by a college within the district (as shown in its catalog)." The second and third paragraphs (not numbered) begin, "Effective for all students admitted to a community college for the Fall 2009 term or any term thereafter. . . ." and each states the standards for competence in composition and mathematics. It is implied that students who were admitted to a community college prior to the Fall 2009 term may be allowed to meet lower standards as they were described in a previous college catalog.

From these regulations and standards, it is clear that the college must maintain a catalog but there is no mention of "catalog rights" that determine which students must complete the requirements published in the catalog. Historically, districts and colleges have determined their own policy in regard to student enrollment and academic requirements. However, as stated above, catalog rights exist between a student and college and generally support the view that students should not be subjected to changes after entering the institution.

Title 5, section 55063 is very clear that the new competencies in English and mathematics are "Effective for all students admitted to a community college for the Fall 2009 term or any term thereafter. . . ." Thus, they are required for students who are admitted and enroll in courses for the first time in Fall 2009 or any later term. In addition, section 55063(a)(2) also requires that these students must complete each course counted toward the major or area of emphasis "with a grade of C or better or a 'P' if the course is taken on a 'pass-no pass' basis." Students enrolled prior to Fall 2009 have "catalog rights" and are not subject to the new degree requirements.

Many of our students attend multiple institutions and there is interest in allowing students who have pre-Fall 2009 catalog rights at one college to exercise those rights at a subsequent college. The legal answer to this question is clearly no because, under contract law principles, the new college does not have an obligation to recognize catalog rights gained at another institution. The student has catalog rights at the new college based on the written catalog in effect when the student enters the new college. Thus, the second or subsequent college is not required to recognize catalog rights from another college.

On the other hand, there is nothing to prevent a college from voluntarily recognizing the old catalog rights. This is most likely to occur within a community college district, but it is not limited to that circumstance. Some multi-college districts have established a policy whereby students may be allowed "catalog rights" to any college within the district in order to allow students to complete courses at more than one college in the district. This represents a permissive expansion of the student's contractual catalog rights.

The same principle would apply to colleges outside the district; a college or district could adopt a policy that provides recognition for catalog rights gained elsewhere. However, colleges should be careful about doing this because once this door is opened it will be difficult to control and colleges could be asked to accept very old and outdated catalog rights. This concern could be addressed by careful drafting of such a policy, but because of the complexities of contract law, it is recommended that legal counsel at the colleges be consulted before allowing for an expansion of catalog rights.

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