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DATE: April 10, 2018

SUBJECT: Legal Opinion 2018-01: Diplomas from Unaccredited Entities

QUESTION

Are California Community Colleges required to accept diplomas issued by private, unaccredited schools, for purposes of making admission decisions under Education Code section 76000?

ANSWER

No. California Community Colleges may, but are not required to, accept diplomas issued by private, unaccredited schools. The right of a parent to educate a child at a private, unaccredited entity does not establish a concomitant obligation on a community college district to accept a diploma from such a school, for purposes of making admission decisions under Education Code section 76000.

BACKGROUND

The California Education Code states that “the governing board of a community college district *shall admit* to the community college any California resident . . . possessing a high school diploma or the equivalent thereof.” (Ed. Code, § 76000, emphasis added.) The possession of a high school diploma has particular significance in the admission of students under the age of eighteen. The Vice-President for Enrollment Services and the Dean of Enrollment Services for Santa Monica College requested a legal opinion regarding whether section 76000 requires community colleges to accept diplomas issued by private, unaccredited schools. (SMC Letter, Nov. 6, 2017.) Santa Monica College describes its admissions criteria as follows:

Admission Requirements for New Students

- 18 years of age or older; or
- Graduated from a regionally accredited high school

(Santa Monica College Admissions Page, [linked here](#), last accessed Mar. 5, 2018.)

Santa Monica College explains in its opinion request letter that it has a generalized concern about “‘diploma mills’ that issue high school diplomas without the same requirements as California public schools and accredited private schools.” (SMC Letter, Nov. 6, 2017.) This concern is shared by the federal government. The federal Higher Education Opportunity Act defines a diploma mill as an entity that offers diplomas for a fee, requires little or no education or coursework to obtain the diploma, and is unaccredited by a recognized accreditation agency. (20 U.S.C. § 1003(5).) The United States Department of Education maintains information on its website intended to warn consumers of the pitfalls of diploma mills and “to combat the problem of diploma mills.” (Department of Education, Diploma Mills and Accreditation, [linked here](#), last visited March 5, 2018.)

Notwithstanding diploma mill concerns, California law leaves academic standards at private, unaccredited schools unregulated. The Education Code requires private elementary and high schools to file with the Superintendent of Public Instruction an affidavit under penalty of perjury that reports limited information about the school, its location, its officials, and other similar subjects. (Ed. Code, § 33190.) This affidavit does not relate to the school’s educational programs. Its purpose is to allow school districts to identify students attending such schools and to avoid truancy proceedings under the state’s mandatory attendance laws. (Ed. Code §§ 48200, 48415.)¹ The Education Code otherwise disclaims any public responsibility for evaluating, recognizing, approving, or endorsing private schools or their academic programs. (Ed. Code, § 33190, subd. (g).)

The California Department of Education also expressly disclaims authority over private high schools on its website, which contains the following FAQs:

10. Can I earn a valid high school diploma by taking a test or a few hours of classes for a fee?

In California, the California High School Proficiency Exam or the General Education Development (GED) test will, if passed, earn an equivalent diploma. Most colleges, licensing or certificate programs, employers, and military branches require diplomas earned through full-time study of the subject areas taught at traditional California public

¹ See California Department of Education FAQ, Private Schools and Private School Affidavit, Question 6, [linked here](#), last visited Mar. 5, 2018.

high schools. *CDE does not evaluate any private school diploma. The validity of any diploma is determined by the receiving entity.*

(California Department of Education FAQ, Private School Records; Starting a School; and Complaints, Question 10, [linked here](#), last visited Mar. 5, 2018, emphasis added.)

19. Does the CDE validate private school diplomas?

No. The CDE does not have any authority to monitor or regulate private schools and consequently has no role in determining the validity or acceptability of private school diplomas. *Colleges, employers, and military branches have complete discretion as to whether private school credits or diplomas are acceptable.* Private high schools that are accredited by the Western Association of Schools and Colleges grant diplomas that generally are universally accepted.

(California Department of Education FAQ, Private School: Alternatives; Regulations; Selecting a School, Question 19, [linked here](#), last visited Mar. 5, 2018.)²

Ka-Lo Academy, an unaccredited high school located in Santa Monica, California, submitted its own analysis of the question presented here, and submitted separate analyses from the Homeschool Association of California, and Linda J. Conrad, an attorney from Davis, California. They contend that community colleges must accept diplomas from unaccredited schools for reasons addressed below.

ANALYSIS

A. Introduction

Under California's "permissive" Education Code, community college districts have authority to act in any way that is consistent with law, and which serves an educational purpose. An admission criterion for underage children requiring graduation from a regionally accredited high school is permissible under this general authority, and does not violate the constitutional rights of parents to direct the education of their children.

² Recent press accounts underscore the State's lack of oversight. The "Sandcastle Day School," which filed an annual affidavit with the California Department of Education, is a private, unaccredited home school. David Turpin, the school's operator, apparently imprisoned his thirteen children in his home, and used the private school designation to evade detection. (For Perris couple arrested after kids found chained, home-schooling kept spotlight away, Anna M. Phillips, L.A. Times, Jan. 16, 2018.) Under Ka-Lo Academy's reading of section 76000, community college districts would be compelled to accept a diploma from such a school.

B. Community College District Authority to Establish Admission Criteria is not Inconsistent with the Education Code

The Education Code requires a community college district to admit any California resident possessing a “high school diploma or the equivalent thereof.” (Ed. Code, § 76000.) Santa Monica College’s admission criteria requires graduation from a “regionally accredited high school” if a prospective student is under 18 years of age. The question boils down to whether this admission criterion is a reasonable interpretation of “high school” within the meaning of Education Code section 76000. We believe it is within Santa Monica College’s authority to construe “high school” to mean a regionally accredited high school.

The Education Code is “permissive.” It provides that a community college’s governing board may act “in any manner that is not in conflict with or inconsistent with, or preempted by, any law” and that does not conflict with “the purposes for which community college districts are established.” (Ed. Code, § 70902, subd. (a)(1); see Cal. Const., art. IX, § 14.) College districts may act under their general authority without “express authority in a particular statute for each and every action a school district might wish to take,” provided that the action furthers educational purposes, and there is no conflict with law. (93 Ops. Cal. Atty. Gen. 63, (2010); see also *S.E.I.U. v. Board of Trustees* (1998) 47 Cal.App.4th 1661, 1666 [describing the historical development of the “permissive” Education Code].)

Santa Monica College’s requirement that underage applicants have graduated from a regionally accredited high school is not in conflict with section 76000, or other provisions of law. We have found only two definitions of “high school” in the Education Code. Neither of them would include a private, unaccredited entity. (See Ed. Code, § 94430, subd. (h) [“High school” means a school operated and maintained by a school district or county office of education maintaining any of grades 9 to 12, inclusive.]; and Ed. Code, § 60010, subd. (g) [“High school” means all public schools other than elementary schools in which instruction is given through grade 12, or in any one or more of those grades.].)³ There appears to be no statutory impediment to Santa Monica College’s treatment of the term “high school” in section 76000, and none of the analyses submitted by Ka-Lo Academy undermines Santa Monica College’s interpretation.

The California Student Aid Commission has taken the same approach to defining the meaning of “high school” in regulations, as has Santa Monica College in its admissions criteria. Education Code sections 69430, et seq., establish the Cal Grant Program, but do not contain an express definition of “high school.” The California Student Aid Commission has defined “high school” in its implementing regulations to mean “a secondary school accredited by Western Association of Schools and Colleges

³ Ka-Lo contends that “[n]owhere in any statute . . . is a distinction made between public and private schools or accredited and non-accredited school [sic].” (Ka-Lo Academy memorandum, p. 8.) This contention is not accurate.

(WASC), or another regional accrediting association if the secondary school is not in the WASC region” (Cal. Code Regs., tit. 5, § 30008.)

Defining “high school” to mean a regionally-accredited institution also furthers educational purposes. It helps ensure that underage applicants have received adequate preparation for the rigor of a community college. In the absence of state or district authority to inquire into the quality of academic programs offered by private schools, and the widespread public concern regarding diploma mills, requiring graduation from a regionally-accredited high school is a reasonable approach to ensuring student preparedness. (See Accrediting Commission for Schools, Western Association of Schools and Colleges, Mission Statement, [linked here](#), last accessed March 7, 2018.)

Ka-Lo Academy argues that the effect of Santa Monica College’s policy is to reject all underage applicants from all unaccredited schools, regardless of an applicant’s individual merit. This may be true. And there likely are instances of applicants from unaccredited schools being denied admission despite having the capacity to succeed in Santa Monica College. Nevertheless, the law does not require Santa Monica College to adopt different admissions criteria.

C. The Parental Right to Direct a Child’s Education Is Unrelated to College District Authority to Establish Admission Requirements

Ka-Lo Academy contends that parents have “an absolute constitutional right to home school their children,” and because the state has no authority to investigate the educational adequacy of a home school, “a minor who graduates from a California high school has the absolute right to admission to a community college regardless of whether that school is accredited or not.” (Ka-Lo Academy memorandum, p. 5.) This argument is unpersuasive for two reasons. First, it overstates the limited case law cited by Ka-Lo Academy. Second, the constitutional right of parents to direct their children’s education does not affect the authority of a community college district to adopt admissions criteria that are consistent with law and further educational purposes.

Ka-Lo Academy hinges its argument on the court of appeal’s decision in *Jonathan L. v. Superior Court* (2008) 165 Cal.App.4th 1074. The *Jonathan L.* case involved a dependency petition brought by the Department of Children and Family Services to protect children in an abusive home. (*Id.* at p. 1084.) The court of appeal ruled that a dependency court order requiring a dependent child to attend school outside the home “is not an unconstitutional violation of the parents’ right to direct the education of their children. (*Ibid.*) Accordingly, Ka-Lo Academy’s contention that “parents have an *absolute* constitutional right to home school their children” (Ka-Lo Academy memorandum, at p. 5, emphasis added) is incorrect. The *Jonathan L.* decision demonstrates that whatever the parental right, it is subject to balancing against other state interests.

However, even assuming the right of a parent to direct their child's education is truly "absolute," this right would not affect the authority of a school district to establish admission criteria that are consistent with law and further educational purposes. The right to send a child to an unaccredited high school does not establish a concomitant obligation on a community college district to accept a diploma from such a school. Notwithstanding Santa Monica College's admission criteria, parents remain free to have their children educated by private, unaccredited entities.

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