



October 1, 2019

Legal Opinion 19-03: Volunteer Participation in Community College Performing Arts Courses

The California Community Colleges Curriculum Committee (5C) has asked the following question:

Is it permissible to coordinate community service classes with specialty for-credit classes such as band, orchestra, or theater arts?

Answer:

While the coordination of community service and for-credit classes may be theoretically possible, it would be fraught with practical difficulties, including a substantial risk of violating the Education Code's prohibition against the general fund subsidizing community service classes.<sup>1</sup>

However, the needs identified by 5C may be met by allowing community members to participate in certain for-credit classes as volunteers.

#### **A. BACKGROUND**

5C has identified a need to allow community member involvement in for-credit performing arts classes to ensure a meaningful student educational experience. 5C provides two examples—a band class that lacks a tuba player unless a community member participates and a theater class that requires additional community performers to deliver a meaningful performance—that illustrate this need. In these instances, the purpose of community member involvement is to enhance the educational experience of students enrolled in the for-credit courses. These members would participate in rehearsals and performances, and may also fulfill mentorship role in some instances.

We understand that some community colleges may have sought to address this need by coordinating community service classes with for-credit classes, which would involve scheduling community service classes at the same time, and in the same location, as a for-credit class. In this situation, the community members pay the full cost of participating in the community services classes because these classes may not be subsidized by the general fund under the Education Code.

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<sup>1</sup> We also considered whether auditing the special credit class would be a viable alternative. For various practical and local considerations that are beyond the scope of this advisory, we concluded that it is not a viable option.

## **B. ANALYSIS**

### **1. Coordination of Community Service and For-Credit Classes**

A community college district may offer certain community service classes to the public, and charge participants a fee that does not exceed the cost of maintaining the specific class. (Ed. Code, § 78300.) A “Community Services Offering” is defined as “a fee-supported community services class . . . for which state apportionment [general fund money] is not claimed and credit is not awarded.” (Cal. Code Regs., tit. 5, § 55000, subd. (e).) Community service classes are designed for community members in accordance with a predetermined strategy or plan, and are open to all members of the public willing to pay fees to cover the cost of the offering. (Cal. Code Regs., tit. 5, § 55002, subd. (d).)

For-credit classes are not generally available to the public. They are designed and offered to students who are admitted to a specific community college, and enrollment maybe conditioned on certain prerequisites. They are not fee-based and classes are supported by the general fund. (Ed. Code, § 70901; Cal. Code Regs., tit. 5, § 55002, subd. (a).)

While there is no direct prohibition preventing a district from coordinating a for-credit class and a community service class, it would be extremely difficult based on the separate and unique requirements of the respective classes. For example, if the classes are coordinated in time and in place and share a common instructor, there is the risk that general fund money is supporting, at least in part, the community service class. This is prohibited under the Education Code. Conversely, under the same example, it would be difficult to proportion the fee for the community service class to ensure that the community member is only paying the cost of the community service class, and not subsidizing the for-credit class. Thus, properly coordinating these classes may not be feasible given their respective statutory and regulatory frameworks.

### **2. Community Volunteer Aide Option**

The Education Code allows community college districts to solicit and utilize nonteaching volunteer aides with specific knowledge and expertise in the discipline to assist in a manner that would be useful in improving the quality of educational opportunities for the enrolled students. The description provided by 5C of the need to have community members participate in these performing arts programs is well suited to the volunteerism envisioned by the Education Code.

The Education Code provides that “a community college district may utilize volunteers in the *supervision and instruction of students*” by the district. (Ed. Code, § 88249, emphasis added.) The Education Code envisions a volunteer’s

role as to “serve as a nonteaching volunteer aide under the immediate supervision and direction of the academic personnel of the district to perform noninstructional work that serves to assist the academic personnel in the performance of teaching and administrative responsibilities.” (Ed. Code, § 72401, subd. (a).) Volunteers would not only enhance the educational experience for the enrolled students by filling missing needs, but also would provide faculty with more time to instruct and to use their professional knowledge and skills more effectively in educational programs.

Note that the volunteer must be a true volunteer in that the volunteer may not be an employee of the district or receive any type of compensation or any other benefits given to employees of the district. (Ed. Code, § 72401, subd. (a).) The volunteer may not displace any classified faculty member or abolish existing faculty positions. Nor may a district lay off a faculty member, or refuse to employ a person in a vacant classified position to accommodate a volunteer. (Ed. Code, § 72401, subd. (b).) A volunteer must serve to enhance a district's educational program and cannot circumvent “normal employee requirements.” (Ed. Code, § 72401, subd. (c).) Provided these conditions are met, use of community volunteer aides is a permissible approach to address the need for additional performers in community college performing arts courses.

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