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April 11, 2007

Chui Tsang, Superintendent/President
Santa Monica Community College District
1900 Pico Boulevard
Santa Monica, CA 90405-1628

RE: Offering Courses Outside of District Boundaries
Legal Opinion L 07-02

Dear Superintendent Tsang:

You have asked whether the Santa Monica Community College District (SMCCD) may offer courses in the territory of another community college district pursuant to California Code of Regulations, title 5, section 55231, even if the other district does not consent to the arrangement. As explained below, we conclude that SMCCD may do so if a high school district requests the instruction and the other community college district declines to provide it.

Title 5, section 55231 applies where a district seeks to provide instruction outside of its boundaries primarily for persons who reside outside those boundaries. It provides that this is permissible when any of the following circumstances exist:

- “(a) The governing board of a high school district in territory that is not included in any community college district requests that community college courses be offered in the high school district.
- (b) The governing board of a high school district requests that community college courses be offered in the high school district in accordance with other applicable provisions of law and either:
 - (1) the community college district where the high school district is located chooses not to offer such courses; or
 - (2) the courses will be offered only to pupils of the high school and will not be claimed for apportionment by the community college district.
- (c) Another community college district requests that community college courses be offered in its territory.”

Thus, section 55231 contemplates three circumstances where a district may provide instruction outside its boundaries for those who live outside such boundaries. One situation arises when the area where the course is to be offered is not part of another community college district. Another is where the other community college district

requests that the instruction be provided in its territory. Neither of these circumstances are relevant to our present discussion.

The remaining situation is addressed in subdivision (b) of section 55231. It arises where a high school district within the territory of another community college district requests that community college instruction be offered within its boundaries.

In this case, the community college district where the high school district is located must decide whether it wishes to provide the instruction requested by the high school district. If it declines to do so, then another community college district is free to step in and offer the instruction. On the other hand, if the community college district which includes the high school district elects to provide the instruction itself, no other community college district can offer instruction in that area unless "the courses will be offered only to pupils of the high school and will not be claimed for apportionment by the community college district." (Cal. Code Regs, tit. 5, § 55231(b)(2).)

Thus, the community college district in which the high school district is located has what may be characterized as "the right of first refusal." If it chooses to provide the instruction itself, it can block any other community college district from offering courses which are open to the general public and claimed for state apportionment. However, if it declines to offer the instruction itself, another district may do so.

If you have further questions, you may contact Assistant General Counsel Ralph Black at (916) 327-5692.

Sincerely,

Steven Bruckman
Executive Vice Chancellor and General Counsel

SB:RB:sj

cc: Marshall Drummond, Chancellor

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