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To: Steve Bruckman
        Executive Vice Chancellor of Operations and General Counsel
        Fred Harris
        Assistant Vice Chancellor of College Finance and Facilities Planning

From: Jonathan Lee
        Staff Counsel

Re: Apportionment Claims for Classes Located on CSU or UC Campuses
        Legal Opinion O 10-06

Question

A community college is offering an open, remedial class on a California State University (CSU) campus. The class enrolls both CSU students and community college students not enrolled at CSU. Are CSU students enrolled in the class required to pay the enrollment fee? If the answer is no, can the community college district charge the enrollment fee to the students not enrolled at CSU? Can the community college claim apportionment for the FTES generated in that class?

Conclusion

The community college may not charge an enrollment fee for the CSU students that are enrolled in the class. The determination of whether any other students enrolled in the class may be charged an enrollment fee is a separate question, and should be considered on a case by case basis. However, there is no specific limitation on charging the other students enrolled in the class an enrollment fee, while not charging the CSU students. A community college can claim apportionment for an open, remedial class located on a CSU campus.

Analysis

1. Are CSU students enrolled in the class required to pay the enrollment fee?

No, a community college may not charge an enrollment fee for CSU students enrolled in a remedial class located on its campus. This is not a waiver; however, it is an exemption from the law. While an enrollment fee may not be charged, districts can claim state apportionment for CSU/UC students enrolled in these classes.

Education Code section 76300 contains the overall guidelines for student fees, computation of apportionments, and the various exemptions and waivers associated with those subject areas. That section requires that the governing board of each community college district charge a student fee for students who take classes in its district. Even though the class in question is offered off campus, it is still administered under the supervision and control of the community college, and receives its primary funding through the community college's general apportionment. Thus, the location of the class is not the controlling factor.

On the other hand, regarding the CSU students enrolled in this course, Education Code section 76300(e) provides an exemption. Education Code section 76300(e)(2) states that the fee requirement does not apply to:

> "(e)(2) California State University or University of California students enrolled in remedial classes provided by a community college district on a campus of the University of California or a campus of the California State University, for whom the district claims an attendance apportionment pursuant to an agreement between the district and the California State University or the University of California."

Thus, no fee can be charged to CSU or University of California (UC) students who enroll in remedial classes provided by a community college district on its campus. This is not a waiver, however, but a fee that is not allowed as a matter of law.

2. Can a community college charge the enrollment fee for other students in the class if it does not charge the fee to the CSU students?

Yes, a community college district is required to charge the enrollment fee for other students in the class even if it cannot charge a fee to the CSU students. As stated above, the CSU students enrolled in this remedial class on its campus cannot be charged a fee as a matter of law per Education Code section 76300(e)(2). This exemption does not have any impact on the other students enrolled in the class, but these students could be covered by the standard fee waivers guidelines set forth in Education Code section 76300. The students should be treated just like all other community college students regarding the fees.

3. Can a community college claim apportionment for students enrolled in a remedial class that is located on a CSU campus?

Yes, a community college can claim apportionment for this class. Section 58050 of title 5 of the California Code of Regulations establishes what conditions are necessary for a college to claim attendance for apportionment. As with the fee requirement, the physical location of the class offered is not relevant. Assuming that the remedial course offered on the CSUS or UC campus meets all of these requirements, the community college district may claim apportionment for this course.

The question from the campus originally inquired as to the impact of the cross-enrollment provisions in Education Code section 66750 et seq. It should be noted that the remedial classes described above are to be distinguished from cross-enrollment programs between California

public higher education systems described in Education Code section 66750 et seq. Cross-enrollment programs are intended to provide students limited access to classes in other public higher education segments allowing a student to cross-enroll in a maximum of one course per academic term at a host campus of another segment. In order to participate in a cross-enrollment program, a student must meet certain minimum academic standards, pay the appropriate tuition, and demonstrate an appropriate amount of academic preparation.

As a practical matter, due to the open nature of community college courses, UC and CSU students do not need to seek the limited circumvention of the enrollment process provided by Education Code section 66750 et seq. in order to attend a community college. The remedial program, in this case, is one that is open to the public without academic restrictions or barriers to admission. All students are eligible to take the course, without meeting academic requirements that would apply to a community college student seeking enrollment in a UC or CSU class.

Cc: Chris Yatooma, Director of Fiscal Policy

JL/fr/ce

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