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LEGAL UPDATE (REVISED)

January 12, 2010

To: Presidents/Superintendents, Member Community College Districts

From: Virginia A. Riegel, Senior Associate General Counsel

Subject: New State Laws That Affect California Community College Students
Memo No. 02-2010 (CC)

January 1, 2010 brought a number of changes to laws affecting California community college students.

Student Fees. Two Education Code sections that affect student fees were amended.

Capital Outlay Fee. Education Code section 76141 previously allowed community college districts to charge nonresident students *who are both citizens and residents of a foreign country* a “capital outlay fee.” The concept of the fee was that such students had not contributed to state taxes that support capital outlay projects, so an additional capital outlay fee was allowed.

Section 76141 has been amended to authorize charging a properly-established capital outlay fee to all nonresident students – not only to those nonresident students who remain citizens/residents of foreign countries.

In an opinion issued on December 30, 2009, the State Chancellor’s Office concluded that students who are exempt from payment of nonresident tuition under Education Code, section 68130.5 (AB 540) are also exempt from the revised capital outlay fee.
(<http://www.cccco.edu/Portals/4/Legal/opinions/09-05.pdf>)

The limitations on the amount of the fee remain the same. The fee cannot “exceed the amount that was expended by the district for capital outlay in the preceding fiscal year divided by the total full-time equivalent students of the district in the preceding fiscal year,” and the fee cannot “exceed 50 percent of the nonresident tuition fee” established by the district.

Fees for Transportation Services. Education Code section 76361.1 previously applied to only three community college districts (Los Rios, Peralta, and Rio Hondo). It now applies to all districts. It authorizes districts to establish fees for students or employees using transportation services or to have elections regarding who must pay fees. The section also limits paying for transportation services contracts with the fee unless that use is authorized by a student vote.

Instructional Materials. Education Code section 67302.5 is a new section regarding the captioning of instructional materials for deaf and hearing impaired students. Upon request of a district, publishers or copyright holders must provide a captioned version of the materials or an electronic version and a license to make a captioned version. Districts are permitted to caption instructional materials themselves if the publisher or copyright holder cannot provide a captioned version within a reasonable period of time. The State Chancellor's Office is asked to adopt guidelines to implement section 67302.5 and is authorized to establish a center to help process requests from the districts.

Foster Youth. Two new Education Code sections address students who are or were in the foster care system.

Residency. Education Code section 68085 allows districts to classify certain students as California residents until they can establish their own residency. The students must reside in California; be 19 years old or younger when they enroll; and be a dependent or ward of California's child welfare system, or aged out of the system, or emancipated after being in the system.

The State Chancellor's Office explains that prior to this change in the law, "a recently emancipated foster youth would have had to establish residency based on their biological parents' residency, which often poses a major obstacle." (CCCCO Government Relations Legislative Update, October 15, 2009.)

Housing. Education Code section 76010 requests, but does not require, districts to give priority for student housing to current and former foster youth. It also requests, but does not require, that such students be given priority for housing that is available on a year-round basis or open for occupancy the most days of the calendar year. The stated intent of these requests is to provide stable housing options for such individuals.

Students and the Military. Education Code, section 66025.8 previously required those districts that grant registration priorities to include in the priority registration system students who were members or former members of the Armed Forces of the United States. The amendment adds a definition of Armed Forces of the United States: "the Air Force, Army, Coast Guard, Marine Corps, National Guard, Naval Militia, Navy, and the reserve components of each of those forces, including the California National Guard."

Amended section 66025.8 also adds members or former members of the State Military Reserve to persons included in the priority system. The priority required by the section is not permanent. It applies to former members of the Armed Forces of the United States and State Military Reserve only for a period of two years after they leave state or federal active duty.

The amendments preclude those who received dishonorable discharges or bad conduct discharges from participating in priority registration described in section 66025.8.

Honorary Degrees. New Education Code section 66020 requires the Board of Governors to work with the community college system to “confer an honorary degree upon each person, living or deceased, who was forced to leave his or her studies. . .as a result of the issuance of federal Executive Order 9066 on February 19, 1942, which caused the evacuation, relocation, and incarceration of individuals of Japanese ancestry during World War II.”

Section 66020 also provides that the conferral of honorary degrees should be done in a cost-effective way, by holding any ceremony to confer such degrees “with a previously scheduled commencement or graduation activity.”

The January 11-12, 2010 agenda of the State Board of Governors includes an item related to efforts to confer honorary degrees on affected individuals or their surviving kin. (See item 4.1.) An attachment to that item lists the junior and community colleges that enrolled second generation Japanese Americans in 1941. The item also indicates that the Chancellor’s Office will facilitate district “efforts to identify, conduct outreach, and honor their Nisei former students.”