

Instructional Service Agreement Guidelines for Community College Districts and Public Agencies (2012)



Community college districts may claim full-time equivalent students (FTES) and State apportionment for courses given through instructional service agreements/contracts provided California Education Code and Title 5 requirements are met. The regulations are contained in Title 5 of the California Code of Regulations Sections 51006, 53410, 55002, 55003, 55005, 55300, 58050, 58051(c) – (g), 58051.5, 58055, 58056, 58058(b), 58102-58106, 58108 and California Education Code Sections 78015, 84752. Other regulations and/or statutes may apply.

These guidelines paraphrase applicable sections of Title 5 and Education Code and apply only to programs and/or courses conducted in a cooperative instructional service arrangement with public agencies (as indicated in Legal Advisory 04-01.5, although these guidelines are focused on agreements with public agencies, most of the requirements apply equally to private training partners). The following list of required elements should be used as a guide in the preparation of agreements/contracts.

1. The governing board of a community college district, prior to establishing a vocational or occupational training program, shall conduct a job market study of the labor market area, and determine whether or not the results justify the proposed vocational education program (California Education Code, Section 78015).
2. The college or district must have a written agreement/contract with the contractor stating:
 - a. the responsibilities of each party, including a notation that although operated on-site by the contractor, the college or district is responsible for the educational program and/or course(s),
 - b. the procedures, terms and conditions relating to:
 - 1) enrollment period,
 - 2) student enrollment fees,
 - 3) the number of class hours sufficient to meet the stated performance objectives,
 - 4) supervision and evaluation of students,
 - 5) withdrawal of students prior to completion of a course or program, and
 - c. the terms and conditions relating to cancellation and termination of the arrangement.

3. The college or district has documentation that instruction claimed for apportionment under the agreement/contract is under the immediate supervision and control of an employee of the district (Title 5, Section 58058) who has met the minimum qualifications for instruction in the discipline of the course in a California community college. Instructors need to provide the supervision and control necessary for the protection of the health and safety of student and may not have any other assigned duty during the instructional activity. As a general rule, faculty must be physically present in the classroom or lab or within line-of-sight of the students.
 - a. Where the instructor is not a paid employee of the district, the college or district has an additional written agreement/contract with each instructor requiring FTES to be reported by the instructor and stating that the college or district has the primary right to control and direct the instructional activities of the instructor.
 - b. The college or district must demonstrate control and direction through such actions as providing the instructor an orientation, instructor's manual, course outlines, curriculum materials, testing and grading procedures, and any other materials and services it would provide to its hourly on-campus instructors.
4. The college or district lists minimum qualifications for instructors teaching agreement/contract courses and instructor qualifications are consistent with requirements in other similar courses given by the college or district (Title 5, Section 53410).
5. The course(s) included in the agreement must be held at facilities which are clearly identified as being open to the general public, noting that students may be required to meet course or program prerequisites (Title 5, Section 58051.5).
 - a. Enrollment in the course must be open to any person who has been admitted to the college and has met any applicable prerequisites (Title 5, Sections 51006 and 58106).
 - b. The district policy on open enrollment (Title 5, Section 55005) along with a description of the course and information about whether the course is offered for credit and is transferable must be published in the college catalogue, schedule of classes, and any addenda to the schedule of classes (Title 5, Section 51006).
6. Degree and certificate programs must have been approved by the State Chancellor's Office and courses that make up the programs must be part of the approved programs, or the college must have received delegated authority to separately approve those courses locally.
7. The agreement/contract or addendum must specify all courses conducted in the cooperative arrangement and provide corresponding outlines of record with documentation that each has been approved by the college's curriculum committee, is consistent with Title 5 course standards and has been approved by the district board of trustees.

8. Procedures are in place by the college to ensure that faculty teaching different sections of the same course teach in a manner consistent with the approved outline of record for that course. Faculty covered under the agreement and students are held to a comparable level of rigor to all courses offered at the college.
9. Permanent records of student attendance, grades and achievement will be maintained by the public agency or college (as determined appropriate by the community college district). Records will be open for review at all times by college officials and submitted on a schedule developed by the community college district.
10. It is agreed that both contractor and community college district will insure that ancillary and support services are provided for students (e.g. Counseling and Guidance, Placement Assistance, Assessment Tutoring).
11. The community college district must certify that it does not receive full compensation for the direct education costs of the course(s) from any public or private agency, individual or group.
12. The community college district is responsible for obtaining certification from the public agency verifying that the instructional activity to be conducted will not be fully funded by other sources.*
13. If the course(s) will be located outside the boundaries of the district, the district must comply with the requirements of Title 5 (Sections 55300 et seq.) concerning approval by adjoining high school or community college districts and use of non-district facilities.

**In accordance with AB 444 (Statutes of 1996, Chapter 637) effective 9/16/96, Title 5, Section 58051.5 was amended to include appropriate language to implement California Education Code Section 84752. See Legal Opinion O 11-01.*

California Code - Section 84752

- (a) No community college district shall receive full-time equivalent student (FTES) funding for activities that are fully funded through another source. The Board of Governors of the California Community Colleges shall adopt regulations to implement this subdivision.
- (b) The State Auditor shall report to the Legislature by January 1, 2000, on the status of community college district compliance with this section. In preparing this report, the State Auditor shall use the audit methodology used in the Bureau of State Audits Report No. 96103.

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Date: January 28, 2011

To: Fred Harris
Assistant Vice Chancellor, College Finance and Facilities Planning

From: Jonathan Lee
Staff Counsel

Re: Instructional Services Agreements and Receiving Apportionment
Legal Opinion O 11-01

Question

A community college district is engaged in an Instructional Services Agreement (“ISA”) with a private entity to provide specialized workforce training to its students. Current statutes and regulations prevent a community college district from receiving apportionment from an ISA if the private entity receives full funding for the cost of instruction from another source. Does this restriction prevent the private entity from receiving its full funding from the community college district itself?

Conclusion

The community college district can receive apportionment and fully fund a private entity for the cost of instruction. The restrictions placed on a community college district claiming apportionment relate to whether direct education costs for any class conducted under contract between the district and the private entity is fully funded from another source, not whether the actual cost of instruction is fully funded or not.

Background

Education Code section 84752 was enacted in 1996 as way to prevent community college districts from receiving double funding from the state for the cost of instruction. Education Code section 84752(a) states:

“No community college district shall receive full-time equivalent student (FTES) funding for activities that are fully funded through another source. The Board of Governors of the California Community Colleges shall adopt regulations to implement this subdivision.”

The adopted regulations that were promulgated as a result of this code section can be found in title 5, section 58051.5 of the California Code of Regulations.

Section 58051.5 spells out three specific situations where a community college district may not claim classes for state apportionment. Section 58051.5(a) states:

- “(1) if the district receives full compensation for direct education costs for the class from any public or private agency, individual or group of individuals; or
- (2) if the public or private agency, individual or group of individuals, with whom the district has a contract and/or instructional agreement, has received from other sources full compensation for the direct education costs for the conduct of the class; or
- (3) if such classes are not located in facilities clearly identified in such a manner, and established by appropriate procedures, to ensure that attendance in such classes is open to the general public, except that students may be required to meet prerequisites which have been established pursuant to sections 55002 and 55003.”

Section 58051.5(a)(2) clearly states that a community college district may not claim apportionment for classes provided by a private agency that are fully funded from another source. However, does this regulation also mean that if the community college district itself fully funds the private entity for the cost of instruction, that district is prevented from collecting apportionment?

Analysis

Education Code section 84752 and title 5, section 58051.5 were both enacted based on a concern that a community college district was receiving apportionment for a class that was already paid for by the state or another source. Apportionment is based on the principle of reimbursing a community college for the cost of instruction through a calculation of the FTES generated by each class. If the class already is fully funded by other sources, then the community college would have no cause for reimbursement from the state and thus would not be able to generate apportionment for those classes.

ISAs present a unique situation where a community college district makes a contract with a private entity to provide instruction to students in its place. This usually involves specialized workforce instruction that can best be provided by the private sector. In the case of an ISA, Education Code section 84752 and title 5, section 58051.5 apply to whether the direct education costs for any class conducted under contract itself between the community college district and the private entity is fully funded from another source or not. If the direct education costs are fully funded from another source, then the community college district is not entitled to claim apportionment for the classes. However, if that contract is not fully funded by other sources and the community college district is paying for the contract itself, then the district may still claim apportionment for these classes provided that all other rules and regulations related to claiming apportionment are followed.

It should be noted, that in this case, the actual cost of instruction incurred by the private entity is irrelevant. The contract agreed to by both parties in an ISA may meet, exceed, or fall below the actual cost of instruction of the classes. The actual terms of the contract are to be determined by the parties involved and should not be influenced by the apportionment restrictions of Education Code section 84752 and title 5, section 58051.5.

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JL/ce