



COMMUNITY COLLEGE LEAGUE OF CALIFORNIA

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June 28, 2019

The Honorable Hannah-Beth Jackson
Chair, Senate Judiciary Committee
California State Capitol Room 2187
Sacramento, CA 95814

**RE: AB 302 (Berman) Parking: Homeless Students
Position: Oppose**

Dear Senator Jackson,

On behalf of the Community College League of California (League), I write to respectfully inform you of our **oppose position on AB 302 (Berman)**, well-intentioned legislation that will mandate California's community colleges to open campus parking lots for homeless student sleeping quarters, and only under unaffordable conditions enables community colleges to opt-out of the bill's mandated provisions. **We, more importantly, believe our students deserve more and that California can do better than to simply offer our homeless community college students a parking lot.**

Our letter outlines policy concerns, potential unintended consequences, and liability issues should AB 302 become law. Additionally, attached to this letter you will find a legal analysis of liabilities districts may confront.

Our students comprise 74% of the state's public higher education system. Yet, our institutions receive the lowest per-student funding in California. Sadly, less than 10% of our 2.2 million students receive Cal Grants. AB 302 does not solve the longstanding oppression and neglect to adequately fund community college student education and financial aid. Stark racial disparities remain in California's higher education structure and policies, in part from the fact that underfunded colleges disproportionately enroll underrepresented students of color. More than half of California's underrepresented students of color enroll at community colleges, which receive less than \$9,000 in state and tuition revenue per student. Less than a quarter of underrepresented students of color enroll at public research institutions, which receive over \$22,000 per student in state and tuition revenue. Further, by only including community colleges and not UC and CSU, AB 302 sends the message that parking lots are good enough for community college students. We urge you to eliminate bias from education and explore safer and more humane options.

While we agree with the author that, like many Californians, homelessness is affecting many of our students, we are concerned that this approach masks the deeper issue of lack of resources, such as financial aid for California's community college students, and instead potentially subjects students to sanitation and safety issues. AB 302 also does not address the real affordability challenges that our homeless students face. Due to tight eligibility rules, low levels of financial aid grants for items such as food, transportation and housing, and an incredibly competitive Cal Grant award process, our low-income students are not receiving the support they need to be academically successful or meet their basic needs.

As the lowest funded system of education in California, community colleges do not have the resources available to cover the expenses of converting campus parking lots into quasi living quarters with adequate safety, surveillance, and sanitation. The mandate to use parking lots as living establishments for homeless students does not take into account local responsibility to adequately address the sanitation and public safety needs of our homeless students, the general student population, and college faculty and staff. College parking lots vary widely in size, scope, and type. While some parking lots at a college may have the appropriate facilities to accommodate sanitation and safety needs, other parking lots can be located far away from bathroom facilities or access to public safety officers or in areas of the state with harsh summer or winter weather. Geographic differences in weather is an area of concern for colleges, especially as students may use their heating or AC units while sleeping in their cars. Our concerns stems from increased health official warnings of death by suffocation while sleeping in cars due to exhaust in a vehicle's cabin which lowers oxygen level and increases carbon monoxide (CO) accumulation. An increase in CO levels in a car compromises the amount of O2 reaching the blood which can lead to a shock or in severe cases sudden death. As such, AB 302 leaves many liability questions unanswered, including incidents such as death, theft, fire safety, and rape on campus parking lots.

AB 302 creates an extraneous liability for California Community Colleges, and creates a new and costly mandate while districts are already facing tightening budgets and increased costs, through a "one-size fits all" approach. California Community Colleges have strict obligations under Clery Act and Title IX, which stated that "Any sexual assault or physical abuse, including, but not limited to, rape, domestic violence, dating violence, sexual assault, or stalking, as defined by California law, whether committed by an employee, student, or member of the public, occurring on District property, in connection with all the academic, educational, extracurricular, athletic, and other programs of the District, whether those programs take place in the District's facilities or at another location, or on an off-campus site or facility maintained by the District, or on grounds or facilities maintained by a student organization, is a violation of District policies and regulations" (20 U.S. Code Sections 1681 et seq.; Education Code Sections 212.5, 231.5, 66281.5, and 67386; Government Code Section 12950.1; Title 5 Sections 59320, 59324, 59326, 59328, and 59300 et seq.; Title 2 Sections 11023 and 11024; 34 Code of Federal Regulations Section 106.8). **In order to meet the requirements currently proposed in AB 302, which include appropriate safety monitoring precautions so that college can still meet Clery, Title IX requirements, sanitation, restrooms, liability, student verification, and compliance with state and federal laws, among other expenses, the annual ongoing statewide costs for the bills are estimated at \$68,879,328.**

Additionally, AB 302 (Berman) does not take into account the needs of the communities where our colleges are located. AB 302 risks collaboration with local government entities and community members, both of which colleges depend on for workforce collaboration, facilities, and public safety partnerships. Our colleges strive to be good neighbors. We also emphasize that many cities, counties, and non-profit organizations are already doing safe parking programs, so keeping this a permissive legislation is key. Referrals to counties and social services providers are far more appropriate given their scope, expertise, and designated funding. For our colleges, the resources expended to provide ongoing security monitoring and sanitation facilities are resources that could be utilized to support our educational and workforce mission or other supports that provide more substantive basic needs relief and enable individuals to enter the workforce to make a living-wage.

Finally, AB 302 (Berman) does not fix the real housing and affordability challenges our students face. The League strongly supports any measures that increases financial support for homeless students through the state's system of financial aid. **We respectfully urge our state leaders to focus on long-term solutions that address the true challenges students face, not temporary fixes. More importantly, we**

urge you to eliminate bias from higher education and explore options the equitably support community college students' success.

For the above reasons and the issues outlined in the attached legal analysis of liabilities, we respectfully urge you to oppose AB 302 and instead reconvene stakeholder groups to identify funding for adequate and safe housing options for community college students. If you have any questions regarding our position on AB 302, please do not hesitate to contact me at (916) 444-8641.

Sincerely,

A handwritten signature in blue ink, reading "Lizette Navarrete". The signature is written in a cursive, flowing style with a large initial "L".

Lizette Navarrete
Vice President
Community College League of California

June 28, 2019

CONFIDENTIAL AND ATTORNEY-CLIENT PRIVILEGED

VIA EMAIL ONLY:
Galizio@ccleague.org

Dr. Larry Galizio
President and CEO
Community College League of California

Re: *Assembly Bill 302*
Client-Matter: CO050/002

Dear Dr. Galizio:

You asked us to provide the League with an overview of some of the legal liabilities that Districts may confront if Assembly Bill 302 becomes law. Currently, AB 302 would require Districts that have parking facilities on campus to grant overnight access to any homeless student for the purpose of sleeping in the student's vehicle overnight, provided that the student is enrolled in coursework, has paid enrollment fees (if not waived), and is in good standing with the District. A proposed amendment to the Bill would allow a District to opt out of the requirements of the Bill by specifying that the Bill's provisions do not apply if the District is addressing the issues for students who are experiencing homelessness. The "opt out," specifies what the District must show in order to demonstrate that it is addressing the homeless student issues.

The following are potential legal concerns that may arise if AB 302 becomes law and a District cannot opt out (i.e., sufficiently demonstrate that it is addressing the homeless student issues as required under the proposed amendment) or chooses not to opt out. We understand that we raise many questions in this letter and answer very few. We are happy to provide additional guidance on the issues we highlight if you like.

I. Federal, State and Municipal Statutory and Regulatory Issues

- **Title IX:** Title IX of the Educational Amendments of 1972¹ is a comprehensive federal law that prohibits discrimination based on sex in any federally funded education program or activity. Because Districts receive federal funding for their educational programs, Title IX applies to the Districts.

¹ 20 U.S.C. §1681 *et seq.*

- If a student is the victim of harassment or sexual assault, what Title IX refers to as “sexual misconduct,” while in the parking lot, the District will have an obligation to investigate complaints, provide interim measures to lessen the effects of the assault or misconduct, and provide timely Title IX outcome determinations. It is difficult to imagine what effective “interim measures” in this situation might be.
- If the U.S. Department of Education finds that a District did not adequately comply with the requirements of Title IX, the DOE could affect the District’s ability to disburse federal financial aid to the District’s students. Depending on the District, that could easily affect the vast majority of its students.
- **Clery Act Reporting:** The Jeanne Clery Act requires colleges and universities that receive federal funding to maintain and disclose campus crime statistics and security information.²
 - The Clery Act includes a timely warning requirement triggered when there is a threat that a serious crime is ongoing. The parking lots where the program operates are “Clery covered areas,” which means that the Districts must maintain and disclose campus crime statistics and security information that relates to the parking lots.
 - In addition, in the event that there is a threat of a serious crime that is ongoing or repeated in the parking lot areas, the Districts must issue a timely warning.
- **Persons with Disabilities:** The Districts will likely have to provide access to disabled individuals in the parking area and related facilities associated with sleeping areas, including the restroom facilities.
- **Emotional Support Animals:** Emotional support animals that do not qualify as service animals under the Title II of the Americans with Disabilities Act may nevertheless qualify as a reasonable accommodation for persons with disabilities under the Federal Fair Housing Act.³ Public entities that operate housing facilities must ensure that they apply the reasonable accommodation requirements in determining whether to allow a particular animal needed by a person with a disability into housing and may not use the ADA definition as a justification for prohibiting emotional support animals. Therefore, parking lot participants with pets that do not now qualify as service animals under non-housing circumstances may be able to claim the animals are emotional support animals needed as an accommodation while they live on campus.

² 20 U.S.C. § 1092.

³ See, e.g., *Overlook Mutual Homes, Inc. v. Spencer* (S.D. Ohio 2009) 666 F.Supp.2d 850.

- **Undocumented Students:** Undocumented students may be concerned about the ability of Immigration and Customs Enforcement officers to enter the parking lot during the hours of operation. Districts would have to determine whether the parking area constitutes nonpublic property that requires a judicial warrant for immigration officials to enter under Education Code section 66093.3 subdivision (d). Districts would have to develop policies and procedures to comply with the Access to Higher Education for Every Student Act.⁴
- **Various Municipal Codes:** Some cities may have municipal codes that would be inconsistent with what AB 302 requires. For example, Los Angeles Municipal Code section 80.52 (“Ordinance 85.02”) provides, in relevant part, that “No person shall use a Vehicle for Dwelling . . . [a]t any time within a one Block radius of any edge of a lot containing a park or licensed school, pre-school or daycare facility.” Each District would need to determine whether the City or County they are located in has some type of similar ordinance.
- **Facility Issues:**
 - o **Earthquake and Fire safety:** The Districts will need to comply with state earthquake, fire, and other emergency safety codes for whatever parking lot they designate as the overnight use area. Agencies such as the Division of the State Architect did not approve parking facility for overnight occupancy. There are important life and safety features that are missing from parking facilities that would ordinarily be included in living facilities.
 - o **Facility numbers:** Title 24 of the California Code of Regulations requires a certain number of toilet facilities must be available to occupants of a building and is dependent on the type of building at issue. It is difficult to conceive that any District planned sufficient restroom facilities in its parking facilities to meet the requirements for sustained overnight use.
- **Health & Safety Code:** Will students be preparing meals on the Districts’ premises? If so, this may raise issues regarding open flames or implicate rules regarding food preparation or storage. This also raises issues of overnight users attracting wildlife and pests.
- **Medical Marijuana:** While current law prohibits the use of medical marijuana on campus, the same is not true of “housing.” The District will need to consider whether, by program policy or contract, it will regulate such usage.

⁴ Cal. Education Code, section 66093 *et seq.*

II. Security Issues

- **Public Safety Officers and Peace Officers:** Depending on the District, either campus security or campus police officers may be responsible for patrolling the overnight parking area. If AB 302 becomes law, Districts may anticipate the need for additional security guards or police officers for graveyard shifts. The security guards and police officers may also need training in dealing with homeless populations.
- **Visitors:** The Districts will have to address how to regulate visitors (i.e., people who come to visit the overnight participants) in the overnight parking area.
- **Family and Others Living with the Student:** There may be homeless students using the parking lot with living with friends or family. Will the non-student individuals living with the student also be able to stay overnight in the parking lot? What if the homeless student using the parking lot has small children? May the small children live with the student in the parking lot? These living situations raise numerous complicated questions we simply cannot answer.
- **Night Classes and Library Hours:** The Districts will also need to consider other students who will access the parking structure between the hours of 9:00 p.m. and 6:00 a.m. If students, faculty, or staff members park in the structure and return to their cars after 9:00 p.m. or before 6:00 a.m., they may will encounter homeless students living in cars. These interactions can give rise to a number of potential legal concerns (theft, negative interactions between students, privacy concerns, safety, cleanliness of the area, etc.)
- **Weapons:** Homeless students may carry weapons such as guns, knives, or mace for protection. This will conflict with state law regarding weapons on campus.

III. Bargaining, Budgeting and Contract Issues

- **Security Guards or Police Officers:** Assuming that the Districts decide to increase the patrol of the parking areas at night, will the Districts use their current security or police staff to do this or will they contract this out (with police agencies or a private company)? This will create budgetary issues, reassignment issues, and potential problems with the classified union in the event the Districts determine to contract out work that classified employees have performed.
- **Sleeping Conditions and Extra Security:** Must participants actually sleep in their cars, or will the Districts permit them to pitch tents next to their cars? If the latter, the Districts may need increased security presence since tents are not as secure.
- **Custodial Staff:** Will the use of the parking lots as areas to sleep necessitate additional custodial staff? If so, is this within the Districts' current budget? Will custodial staff members be performing duties within the scope of their job

description? These raise additional concerns for staff safety with issues such as exposure to used needles, human waste, blood-borne pathogens, and the like.

- **Hours of Operations:** If the sleeping areas will operate seven days per week, then there are particular issues that the Districts will need to address over the weekend, particularly Friday, Saturday, and Sunday nights. For example, will they need extra custodial staff on campus? What about extra security? How will this affect staffing, overtime hours, or other terms and conditions of employment?

IV. Privacy

- **Privacy:** What are participants' rights to privacy? If the Districts are providing participants with spaces to park their cars, is a certain amount of space between vehicles required to ensure the participant privacy? Under what circumstances may District staff enter students' cars? Under what circumstances may staff look into students' cars? What about security staff? What about District police officers?
- **Surveillance:** Many Districts use security cameras for surveillance in parking lots. Those likely already comply with required postings to the extent they monitor the parking lot, to diminish an expectation of privacy. Similarly, if a District uses cameras, it will need to inform people if the District does not monitor cameras in real time.

V. Eligibility Requirements and Waivers

- **Registration Eligibility:** How does someone become eligible to use the parking facility for overnight sleeping? Is there a minimum number of units or a minimum standard of scholarship? Will Districts check eligibility requirements to use the parking facility for overnight stays? Who at the District will make this check? How often? What if a person staying overnight is not an eligible student? Will Districts implement some kind of registration process for students to stay overnight? What staff will be responsible for that process? Will that be security or police staff?
- **Waivers and releases:** Will Districts be required to develop liability waivers? If so, what happens if a participant refuses to sign the waiver?

VI. General Liability Issues

Many of the issues, above, may give rise to some liability. For example, the Title IX concerns may result in a civil claim or a student filing a complaint with the Office for Civil Rights, within the U.S. Department of Education. Students or employees may file OSHA claims regarding health and safety issues. Employees may file grievances in connection with scheduling and assignment changes, or failure to provide proper access may result in a civil suit under the Americans with Disabilities Act. In addition to these potential concerns, other general

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liability issues may arise. Among other things, depending on the circumstances, it is imaginable that a District may face civil exposure for a serious crime (rape, assault, murder, etc.) that occurs in the parking lot under a theory of negligence. There could also be claims for lost property on campus, such as personal property left unattended during the day.

We also wonder if Districts would face liability claims if they decide not to increase their security presence overnight. Some Districts do not normally have security or police staff on campus overnight. They do not have staff or budget to have officers on campus from 11:00 p.m. to 6:00 a.m. If those Districts make the decision not to increase staff, will they face increased claims? Some Districts are somewhat remote, and would not have local law enforcement on campus for 10-15 or even 20 minutes in some cases after a call for service. How would that affect District liability for any criminal activity or medical emergency on campus during the overnight hours if there is no security or police presence?

Similarly, there is a reasonable likelihood that Districts will have increased exposure to premises liability and dangerous condition of property claims if there are people living in the parking areas. It is also imaginable that Districts may see a rise in civil rights claims that staff or law enforcement have mistreated or denied services to homeless students. Given this, Districts may need to take extra steps to mitigate exposure (increased security, expedited repair of dangerous conditions, train law enforcement and staff on how to effectively work with homeless populations, etc.), which can also be costly.

As you can see, there are quite a few potential legal concerns that may arise if AB 302 becomes law. We hope this is helpful. I am happy to discuss any of these in more detail with you.

Very truly yours,

LIEBERT CASSIDY WHITMORE



Eileen O'Hare-Anderson

RLC:EOA:lt:cgd

cc: Lizette Navarro
Sarah Kiesling

**AB 302 – Community College Homeless Student Parking
Cost Analysis**

District/College: Statewide Estimate by Districts and College (Centers not included)

COST TYPE	ESTIMATED COST	NOTES
1. Scope of Population - A recent survey by the Chancellor's Office and The Hope Lab found that almost 19% of our students are homeless.		19% estimated students across the state x 15% take rate = 54,000 students. Reference Datamart 2017-2018/ Real College Survey
2. Security - Describe increased workload to protect students and facilities after classes have concluded.	\$39,217,800	To provide security and to comply with Cleary requirements 3-4 security officers will be needed seven nights a week, including graveyard shift pay, at each of the colleges, at a yearly rate of \$82,925 each. Each college campus would need to dedicated officer on swing and graveyard shifts everyday. Costs possible for some districts include: \$684,000 = Uniforms/Radio/Equipment \$2,000 per person \$720,000 = Infrastructure: gates/crossing arm to parking lot, guard kiosk, cameras
3. Verification – For safety, colleges would need to verify students from non-students.	\$2,430,000	Issuance of an AB 302 associated overnight parking permit. Administrative and production costs estimated at \$15 per student per semester. (Assuming a take rate of 15% of the estimated homeless population utilizes)
4. Sanitation & Custodial – This bill will mandate clean and safe parking lots.	\$13,833,528	Districts would hire additional entry level custodians to pick up trash in the parking lots. Additional trash pickup by the waste hauling company would not be required. The overnight student parking would be contained to one lot per college. The students would be able to park in the lot 7 days per week. During the normal college operation hours existing staff would maintain and service the parking areas. Custodial would empty the trash containers in parking lot two times daily and pick up trash in parking lot once daily. Groundskeeper Coverage: Groundskeeper 4 hours daily for parking lot maintenance. 1,460 Groundskeeper hours x \$ per campus total. It costs approximately \$40,000 dollars a year to maintain a parking area. This assumes 1 lot per campus.
5. Restrooms - The bill requires accessible restrooms.	\$3,420,000	The District would need to hire additional entry level custodians to service the bathrooms. Existing custodial equipment would be used to maintain the restrooms. One male, one female, and one gender neutral bathroom would be available on each college campus. (This assumes the restrooms will remain open for student use 24 hours per day and 7 days per week). During the normal college operation hours the existing staff would maintain and service the restrooms. Custodial would clean three restrooms twice per day during the work week and three times per day during the weekends. Hallways associated with the restrooms would be cleaned once per day. If needed, to rent facilities to meet AB 302 requirements, cost are approximately \$2,500 a month x 12 months, 114 campuses. <u>This cost assumes colleges rent facilities due to it's lower cost.</u>
6. Liability – AB 302 does not clarify who is responsible for crimes, assault, theft, injury to homeless students, and medical emergencies. Additionally, AB 302 is silent on the entity that is liable for Clery Act violations. With a signed waiver, districts/colleges may still face the threat of lawsuits for incidents on campus parking lots during the evening hours.	\$8,550,000	The estimated increase of our Excess Liability would be ~\$50,000 - \$75,000 based on the points noted above. If the factors above vary, it could be +/- \$95,000. Furthermore, the use of parking structures on campus as temporary housing for students could trigger additional environmental and/or Division of State Architect review to determine whether the structure is safe for habitation by students. Adding to the risk analysis of students sleeping overnight in their cars would be based on: • Statewide homeless students enrolled in coursework • Who would be responsible for safety? District employees (Security) vs. City and/or County • Districts would need to have policies and procedures in place addressing safety, security, and which employees will be doing what • Consideration the # of homeless student population that will be staying at District • No children • No alcohol, drugs, etc. • No cooking • Subject to current SIR of \$150,000

7. Mandate Cost Claims - Mandates are reimbursed only after costs are incurred. Costs incurred to claim mandates.	\$1,140,000	<p>Currently Community College Districts have two choices when applying for mandate fund reimbursements:</p> <ol style="list-style-type: none"> 1. Agree to accept \$28 per FTES as full reimbursement for all expenses that fall within mandate qualifying items/programs within the given fiscal year. 2. Request reimbursement on an item by item basis. <p>If AB 302 is not included in the list of program for item 1, it would take approximately a week of a financial analyst staff time to prepare the claim and 1 week to defend the claim in an audit.</p> <p>Placeholder number of administrator performing these tasks = 10% FTE</p>
8. Reporting Costs - Cost to report on the status of the mandated homeless student parking program.	\$288,000	1 analyst level staff per college, 2-4 hours. \$4,000/district
9. Planning Costs – Please list any local ordinances that AB 302 does not conform to.		<p>Samples from Colleges:</p> <p>LA: While the nine LACCD campuses are within multiple jurisdictions, those located within the City of Los Angeles are subject to Municipal Code (LAMC) 85.02. LAMC 85.02 includes “No vehicle dwelling anytime” designations potentially affecting certain campuses. Additionally, LAMC prohibits living in a vehicle (vehicle dwelling) at all times within one block (500 feet) of licensed schools, pre-schools, daycare facilities or parks. The Planning assessment it is too speculative to identify costs until LACCD has actual proposals for each campus. It is also too early to provide any CEQA related costs until LACCD has a better sense of actual AB302 related proposals.</p> <p>San Mateo: Canada College: San Mateo County Ordinance Code 7.96.30 of Title 7 CSM: City of San Mateo Charter nd Municipal Code 10.04.014 Skyline College: City of San Bruno Municipal Code 4.52.110</p>
TOTAL	\$68,879,328	