DATE: March 11, 2016

TO: Chief Executive Officers
Chief Instructional Officers
Chief Student Services Officers
Admissions and Records Officers
Transfer Center Directors
Matriculation Coordinators
Financial Aid Directors

FROM: Thuy Thi Nguyen
Interim General Counsel

SUBJECT: **Dual Enrollment and Assembly Bill 288 (CCAP)**
Legal Opinion 16-02

Assembly Bill 288 (Holden) was enacted January 1, 2016 and added to the California Education Code section 76004. Assembly Bill 288 enables the governing board of a community college district to enter into a College and Career Access Pathways (CCAP) partnership with the governing board of a school district. For the first time in California's Education Code, the term "dual enrollment" is identified to define "special part-time" or "special full-time" students – that is, high school or other eligible special admit students enrolling in community college credit courses.[1]

The purpose of this Legal Opinion is two-fold: to opine on the key legal issues regarding:

This Legal Opinion represents the judgment of the Chancellor's Office and reflects experience in audits and minimum condition reviews on the subject of dual enrollment. It also provides legal analysis and opines on areas that require statutory interpretation. The policies and procedures discussed here are not binding on districts. However, districts that follow the advice given here will generally be deemed to comply with the law in the event of a review by the Chancellor's Office or as it relates to the authority granted to the Chancellor to void any

I. Introduction of Two Tracks: CCAP and Non-CCAP

Prior to the enactment of AB 288, colleges were authorized to provide college courses to high school students and other special admit students through a variety of mechanisms: qualified students on their own accord would enroll in college courses on college campuses, colleges would provide open-access courses at the high schools, and districts would enter into formal agreements with local high schools to provide defined cohort programs such as early college, middle college[3], or Gateway-to-College.

With the enactment of AB 288 (CCAP), colleges are still authorized to continue providing existing dual enrollment programs (or even enter into new formal agreements) outside the statutory framework of AB 288 – that is, the non-CCAP track. AB 288 adds a new Education Code section 76004(x) which states in relevant part:

> "Nothing in this section is intended to affect a dual enrollment partnership agreement existing on the effective date of this section under which an early college high school, a middle college high school, or California Career Pathways Trust existing on the effective date of this section is operated. An early college high school, middle college high school, or California Career Pathways Trust partnership agreement existing on the effective date of this section shall not operate as a CCAP partnership unless it complies with the provisions of this section."

In summary, AB 288 offers new dual enrollment options to colleges by eliminating certain fiscal and policy barriers, such as authorizing specified special part-time students to [illegible]

with local high school districts, as prescribed by Education Code sections 76001 and 76002).

If the special admit student meets all three of the aforementioned requirements, the college district must exempt the following community college fees pursuant to Education Code section 76004(q):

i. Student representation fee. (Section 76060.5)
ii. Nonresident tuition fee and corresponding permissible "capital outlay" fee and/or "processing fee". (Sections 76140; 76141, and 76142)
iii. Transcript fees. (Section 76223)
iv. Course enrollment fees. (Section 76300)
v. Apprenticeship course fees. (Section 76350)
vi. Child development center fees. (Section 79121)

Furthermore, high school students (special part-time or full-time) enrolled in courses offered through CCAP shall not be assessed or charged a fee prohibited by Education Code section 49011, including a fee charged to a student, or a student's parent or guardian, as a condition for course registration or for textbooks, supplies, materials, and equipment needed to participate in the course. (Education Code sections 49010 et seq. and 76004(f))

D. Dual enrollments cannot exceed 10% FTES cap statewide.

Districts that choose to implement both tracks need to be aware of the 10% Full-Time Equivalent Student (FTES) cap statewideas the term "special admits" as referred in Education Code section 76004(w) include both CCAP and non-CCAP special admit students:

> "The statewide number of full-time equivalent students claimed as special admits shall not exceed 10 percent of the total number of full-time equivalent students claimed statewide."

It should be noted that additional enrollment restrictions apply to both the CCAP and non-CCAP tracks: Education Code section 76002(a)(4) places a 5% FTES cap on physical education courses; and Education Code section 48800(d)(2)-(3) provides that for any particular grade level, a principal shall not recommend summer session attendance for more than 5% of the total number of pupils who completed that grade immediately prior to the time of recommendation.

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Education Code section 76004(a) states:

> of 5 percent of the district's total reported full-time equivalent enrollment of special part-time and full-time students."

The question is whether FTES generated from PE courses under a CCAP partnership agreement is required to be included when determining adherence with the 5% cap that is placed on non-CCAP calculation. Under the non-CCAP track, students are allowed to take PE courses even ifthose courses do not assist in the attainment of any stated goal, as long as those course enrollments do not exceed the applicable enrollment/FTES limits. Assembly Bill 288 provides more restrictive language: it further limits enrollment to only situations when the PE courses directly assist in the attainment of certain delineated goals. Thus, PE courses under CCAP are also subject to the 5% FTES cap under Education Code section 76002(a)(4) if the district wishes to receive state apportionment for special admit students.

Additionally, note that standard credit course repetition rules also continue to apply to all CCAP and non-CCAP course enrollments. (See Credit Course Repetition Guidelines and related Title 5 regulations.)

J. College district must enter into partnership with school district within its service area.

Education Code section 76004(e) states:

> "A community college district shall not enter into a CCAP partnership with a school district within the service area of another community college district, except where an agreement exists, or is established, between those community college districts authorizing that CCAP partnership."

This language is consistent with existing Education Code provisions and therefore, is applicable to the non-CCAP track also. (Title 5 sections 55300 et seq.)

K. District is required to exempt nonresident special part-time students from nonresident tuition fee, but may not claim apportionment for those students.

For non-CCAP, districts are permitted (but not required) by Education Code section 76140(a)(4) to exempt nonresident special part-

article to enroll in up to a maximum of 15 units per term if all of the following circumstances are satisfied:

(1) The units constitute no more than four community college courses per term.

(2) The units are part of an academic program that is part of a CCAP partnership agreement established pursuant to this article.

(3) The units are part of an academic program that is designed to award students both a high school diploma and an associate degree or a certificate or credential . . .

(q) The governing board of a community college district participating in a CCAP partnership agreement established pursuant to this article shall exempt special part-time students described in subdivision (p) from the fee requirements in Sections 76060.5, 76140, 76223, 76300, 76350, and 79121."

However, currently, there is no legal basis that would permit a district to claim the attendance (FTES) of nonresident special part-time students.[5] Education Code section 76140(c) prohibits districts from reporting FTES generated by nonresident students for apportionment purposes except as provided under subdivision (j) of the same section or another statute.

L. High school courses must not displace or reduce access for adults at the college.

Assembly Bill 288 (Education Code section 76004(k)) states (with emphasis):

"The CCAP partnership agreement shall include a certification by the participating community college district of all of the following:

(1) A community college course offered for college credit at the partnering high school campus does not reduce access to the same course offered at the partnering community college campus.

(2) A community college course that is oversubscribed or has a waiting list shall not be offered in the CCAP partnership.

(3) Participation in a CCAP partnership is consistent with the core mission of the community colleges pursuant to Section 66010.4, and that pupils participating in a CCAP partnership will not lead to enrollment displacement of otherwise eligible adults in the community college."

CCAP courses must not reduce access to course offerings at the community college or lead to enrollment displacement of otherwise eligible adults at the community college. The partnering community college district must certify in the CCAP partnership agreement that "a community college course that is oversubscribed or has a waiting list shall not be offered in the

[5] A bill may be introduced to address apportionment eligibility for nonresident special admit students.

CCAP partnership" (emphasis added). Compliance with this requirement may lead to logistical enrollment management issues for the partnering community college and high school campuses. Courses are generally offered prior to registration, and it may not be evident that a community college course is oversubscribed until after registration for a course is closed. By the time it is determined that a community college course is oversubscribed, the corresponding high school course offered through the CCAP partnership may have already started for a school term.

Consistent with AB 288, a high school campus-based college course may not be offered through a CCAP partnership if the course is oversubscribed at the partnering community college. This determination shall be made at the time registration closes for the specific CCAP course in question (and before instruction in the CCAP course begins). A CCAP course need not be cancelled if a corresponding community college course becomes oversubscribed after registration is closed and instruction has begun for the CCAP course. In the event that a community college course becomes oversubscribed or has a waiting list during the life of a CCAP partnership agreement, a corresponding high school CCAP course may not be offered in any subsequent educational term unless or until the community college alleviates the course wait list or oversubscription issue at the community college level.

Community college districts and school districts should consider issues related to course oversubscription prior to executing a CCAP partnership agreement. We advise districts to include a mechanism in each CCAP partnership agreement for determining when a course is oversubscribed, a notification procedure, and a process for the efficient resolution of community college course oversubscription issues. Advance consideration of these issues may help maintain the continuity of CCAP course offerings.

III. Non-CCAP Track: by Partnership Agreement or Individual Special Admit Enrollment

In April 2005, the Chancellor's Office issued an advisory to address questions regarding the interpretation and implementation of the law on dual enrollment/concurrent enrollment (hereinafter referred to as "dual enrollment") as amended by SB 338, which was passed by the Legislature and signed by the governor in 2003. Over the past years, there have been several questions concerning the offering of college courses on public high school campuses, specifically during the hours the high school operates classes (i.e., the regular school day). In April 2015 (prior to the passage of AB 288), the Chancellor's Office reviewed those questions and provided additional information through a published update. As set forth below, this Legal Opinion incorporates the latest update in April 2015, and also serves to address current law for non-CCAP dual enrollment (that is, non-CCAP) track.[6]

Assembly Bill 288 does not nullify any other Education Code provisions that enables districts to continue with dual enrollment opportunities under track one – the non-CCAP track. A community college district that chooses not to avail itself of the new legal framework created by AB 288 is still able to operate under pre-existing dual enrollment law.

A. Basic Eligibility Requirements

1. Advanced scholastic or vocational work is defined as courses acceptable toward associate degree.

The Chancellor's Office has advised on several occasions that the terms "advanced scholastic or vocational work," "community college level," or simply "college level" refer to college credit courses acceptable toward the associate degree which have been properly approved pursuant to Title 5 section 55002(a). (See Legal Opinions 98-17 and 02-16 at http://extranet.cccco.edu/Divisions/Legal/Opinions.aspx.)

Thus, under Education Code Section 48800(a), the K-12 school district is responsible for determining whether a pupil is prepared to undertake degree-applicable credit coursework as a precondition to recommending the pupil for admission to a college. Colleges are encouraged to work with local K-12 districts to ensure that they are familiar with the degree-applicable credit course offerings at the college so that this determination can be accurately made.

B. Open Course Requirements

1. Districts should ensure that courses are properly advertised and open to the general public.

Unless a course is explicitly authorized to be closed (e.g., AB 288 CCAP courses offered at a high school campus during the regular school day), all sections of all community college courses should be open to the general public, regardless of whether the course is held at a high school campus. In order for a course to be truly open to the general public, it must be advertised in a manner such that anyone who might be interested in enrolespmB(e)3 oted isc nronta10(s)14( )4

amended (29 U.S.C. § 794d) and Government Code section 11135. If course descriptions are posted in Portable Document Format (PDF) they should also be available in a more easily accessible format such as HTML, Microsoft Word, or ASCII.

c. The district should maintain dated hardcopy printouts of the web postings on file for audit purposes for a period of at least three years.
d. The district should maintain a list of individuals who wish to receive printed course announcements and send such announcements to those on the list, even if it does not publish and widely distribute another addendum to the schedule of courses.
e. The District should still use readily available traditional methods of ensuring that students have information about classes, such as ensuring that academic counselors and the Admissions and Records Office are aware of the courses, and that 4(n)-4(s)2.0.00Brse 1f6g0(aw4(s)16m001 i)4((c)93.h)6(io)-24(sG)6(o)2(6(s)6(e)33.h)6(T[(tc)

that its public high school may be open to the general public, as well as of the circumstances under which it may be open.

To further ensure that open access to the general public is maintained for high school campus based courses that occur during the regular school day, and which are claimed for state apportionment, the district must also confirm compliance with the following regulatory requirements:

1. Except as otherwise provided in law, such as where special admit students must be recommended by the high school principal of the pupil's school of attendance and parental consent obtained as discussed elsewhere in this advisory, no student shall bl Tc 0 T16(pli)4(n)y[(pa)4(hi)4(g)16(h s)6(c)10(bl)3(d)10(l-0.007 a)4(pu)10

Where the district has a contract for instruction to be provided by a public or private agency (i.e., an Instructional Services Agreement), such contracts shall comply with the requirements of Title 5 section 58058(b) ("Employee of the District" provisions) and all of the other requirements indicated in the "Contract Guide for Instructional Services Agreements between College Districts and Public Agencies (2012 update)" and Legal Advisory 04-01.5 (State Law and Regulations Regarding Instructional Services Agreements.) The district should also ensure compliance and alignment with local collective bargaining agreements (K-12 and Community College District) for all teaching assignments occurring under any arrangement to offer courses on a high school campus during the regular school day, including under an Instructional Services Agreement. It's also important to note that state apportionment may not be claimed when the district receives full compensation for direct education costs for the course from any public or private agency, individual or group of individuals or where the public or private agency, individual or group of individuals, with whom the district has a contract and/or instructional services agreement, has received from other sources full compensation for

3. A community college district can

7. A district can give adult students priority in the registration process.

Under Title 5 section 58108, a district may establish a priority registration system which would accord adult students higher registration priority in order to ensure that they are not being displaced by special admit pupils. Furthermore, Education Code section 76001 requires district to assign a low enrollment priority to special part-time or full-time students, except if the student is attending a middle college high school as described in Education Code section 11300 and part of a partnership with the California Community Colleges Chancellor's Office and the California Department of Education.

D. Rules Related to Summer Sessions

1. There are additional requirements that apply to admission of K-12 students to summer session.

SB 338 moved the requirements for summer session from the community college portion of the code to the K-12 portion of the code with slight modifications. For summer session the following specific criteria are in effect, in addition to other rules related to all dual enrollments. The principal may only recommend a student if that pupil meets all of the following criteria, which are specific to summer session only:

a. The pupil demonstrates adequate preparation in the discipline to be studied.
b. The pupil exhausts all opportunities to enroll in an equivalent course, if any, at his or her school of attendance.
c. The recommendation of this pupil will not result in recommendations for more than 5% of the total number of pupils who completed that grade immediately prior to the time of recommendation.

2. The K-12 district is responsible for enforcing the 5 percent limitation on summer session enrollments

Education Code section 48800(d) places the responsibility on the K-12 district to ensure that the 5 percent limitation on summer school enrollments is honored.

3. Basic skills or remedial course work at the community colleges can be open to K-12 summer students.

The K-12 school district must determine that a pupil is prepared to undertake college level work, meaning degree-applicable credit courses at the community college. A pupil who is truly prepared to take college level work should generally not be in need of nondegree-applicable coursework. However, as previously noted, once a student is admitted to the college, he or she may take any course subject to properly established prerequisites or

enrollment limitations. These principles apply to pupils enrolled in summer session courses as well as to those enrolled in courses during the regular academic year.

E. Restrictions on Physical Education Courses

1. The 10 percent limit in physical education classes apply to each class section (versus the class enrollment as a whole).

Although the statutory language is not altogether consistent throughout SB 338, it is clear that the Legislature and the Administration intended that the 10 percent limitation of Education Code section 76002(a)(4) applies to each class or course section. The structure of the section largely requires this conclusion. Section 76002(a) describes those classes that are eligible for apportionment: each class must be open to the public, each class must be advertised as open, each class at a high school campus must be held during certain times, and if the class is a physical education class, its enrollment may not include more than 10 percent special part-time or full-time students. Each condition appears to apply to the individual class sections, so the 10 percent limit also applies to each class section, as opposed to the total number of students enrolled in all sections of the same course.

It should also be noted that, in the view of the Chancellor's Office, this provision was intended to serve as a limit on how many students may be claimed for apportionment, not how many may actually be enrolled in a class section. Thus, if a district wished, it could allow the enrollment of special full-time or part-time students to exceed 10 percent in a particular section of a physical education course, but it would have to ensure that the 10 percent limitation is observed when preparing the apportionment claim for that class.

2. The 10 percent limitation in a particular physical education course will be determined based on the maximum enrollment specified for that section of the course.

The 10 percent limit should be viewed as a restriction on how many students may be claimed for apportionment purposes. Thus, if a district wishes, it could allow special full-time or part-time students to enroll in a physical education course without regard for the 10 percent limit and simply apply the limit when preparing its apportionment claim.

Of course, some districts may not want to permit enrollment for which they will not be able to claim apportionment. This will require some mechanism for monitoring enrollment. In practice, it would be difficult to ensure that this limitation is satisfied each time a student enrolls because many students may be registering simultaneously. The Chancellor's Office recommends that districts limit the number of special admit pupils in each physical education class section to 10 percent of the maximum enrollment specified for that section of the course.

3. The restrictions on enrollment of special K-12 students in physical education courses also apply where a college has a certificate program in physical education.

Education Code section 76002 does not distinguish between physical education courses that are part of a certificate program and those which are not. Thus, even where a college has an established certificate program in physical education, each course and course section in that program is subject to the limitations. However, as discussed below, certain vocational courses in closely related fields should not be considered to be "physical education."

4. Courses or programs that bear certain TOP codes are considered "physical education" for purposes of the restrictions imposed by SB 338.

For purposes of implementing SB 338, "physical education" is considered by the Chancellor's Office generally to mean any course bearing Taxonomy of Programs (TOP) code 0835.00, or any of its subcodes (0835.10, 0835.30, 0835.50), and any other course whose content, as expressed in the course outline, would reasonably be considered within the discipline of physical education or Kinesiology TOP Code 1270. The bill applies to both activity

will have a direct financial interest in the outcome of the eligibility determination. Based on this direct financial interest, the high school instructor has a conflict of interest in making eligibility determinations. Under such circumstances, colleges should decline to accept recommendations signed only by such an instructor.

3. **The principal of the school should provide community colleges with a list of his/her designated signatories.**

The principal of the school should provide community colleges with a list of his/her designated signatories so the community college can check K-12 pupil admissions and enrollment documents.

However, each special-admit full-time student may be individually considered for a Board of Governors (BOG) Fee Waiver. Colleges may use the existing short-form application for BOG Fee Waiver for Part A and Part B fee waivers. If the family does not qualify using the short form, the college may also provide the family with a FAFSA and make a local calculation of potential financial need (using a commuter budget and a hand-calculated EFC). If the student shows need in this manner the student may receive a Part C waiver. Please note: these are not "new" rules. These rules have been in effect for many years.

IV. Major Attributes of Each Track

: College districts may enter into a formal partnership agreement with local school districts to provide a CCAP program, as long as the requirements set forth in AB 288 are met. Benefits of this track include allowing qualified special part-

(3) The units are part of an academic progr am that is designed to award students both a high school diploma and an associate degree or a certificate or credential.

(q) The governing board of a community college district participating in a CCAP partnership agreement established pursuant to this arti cle shall exempt special part - time students described in subdivision (p) from the fee requirements in Sections 76060.5, 76140, 76223, 76300, 76350, and 79121.

(r) A district shall not receive a state allowance or apportionment for an instructional activity for which the partnering district has been, or shall be, paid an allowance or apportionment.

(s) The attendance of a high school pupil at a community college as a special part - time or full -time student pursuant to this section is authorized attendance for which the community college shall be credited or reimbursed pursuant to Section 48802 or 76002, provided that no school district has received reimbursement for the same instructional activityc7o8 [(a)-2i 70oncov( )]Tco2(c)2(t)-2(i)3(o)7 ( )Tj <</M7spn2(e)7(n)10(dTj 12(sp531.205 TD [(a)-7(n)1)]TJ -0