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September 19, 2008

TO: Chief Executive Officers
Community College Attorneys
Public Relations Officers
Chief Student Services Officers
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FROM: Steven Bruckman
Executive Vice Chancellor and General Counsel

SUBJECT: AB 540 Litigation

This memorandum provides information regarding the recent court ruling in an active lawsuit challenging the California law known as AB 540. Education Code section 68130.5 was created by AB 540 and took effect January 1, 2002. It created an exemption from the payment of nonresident tuition for any student who attended high school in California for three or more years and who graduated from a California high school or attained the equivalent of high school graduation. An estimated 20,000 California Community College students are benefitting each year from the exemption. This group includes students whose immigration status is undocumented or out-of-status, as well as U.S. citizens who grew up in California but left the state at some point prior to seeking enrollment.

In 2005, a lawsuit was filed in state court seeking to invalidate this law. The law was originally upheld, but on September 15, 2008, the California Court of Appeal reversed that ruling. Most significantly, the Court of Appeal ruled that AB 540 conflicts with a federal law that prohibits a person illegally present in the United States from receiving a postsecondary educational benefit based on residence if that benefit is not available to all U.S. citizens. Although the state law is explicitly based on factors other than California's definition of state residency, the court concluded that these factors are "surrogates" for residence.

This week's appellate court action represents a preliminary ruling in the case and has no effect on the validity of AB 540. This means there is no change in the implementation of AB 540 on your campus. It is likely the litigation will continue for at least one year. We are working together with the University of California and the California State University system offices to develop a unified litigation strategy.

While the case is pending, districts must continue to implement Education Code section 68130.5. The AB 540 exemption from nonresident tuition is mandatory. If a district finds that a student meets the requirements of the law, nonresident tuition may not be charged.

We will continue to advise on the status of the case. If you have questions concerning the case, you may contact me at (916) 322-4005 or sbruckman@cccco.edu.

cc: Diane Woodruff, Chancellor
Chancellor's Cabinet
Ron Owens, Public Information Officer