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May 8, 2013

The Honorable Martin O'Malley
Governor of Maryland
State House
100 State Circle
Annapolis, Maryland 21401-1991

Re: Senate Bill 740, "College and Career Readiness and College Completion Act of 2013"

Dear Governor O'Malley:

We have reviewed and hereby approve for constitutionality and legal sufficiency Senate Bill 740, "College and Career Readiness and College Completion Act of 2013." We write to address two interpretive issues that can be clarified in future legislation or regulations and two technical issues that can be corrected in next year's corrective bill.

Background

Senate Bill 740 makes numerous changes to Maryland law with the aim of increasing college and career readiness and improving college completion rates. New Education Article ("ED") § 18-14A-04 would add several provisions of law to assist public high school students who wish to dually enroll in college courses. Under the bill, a public institution of higher education would be prohibited from charging tuition to a dually enrolled student. ED § 18-14A-04(a). The bill then establishes a reimbursement mechanism under which the county board of education would pay to the public senior institution of higher education or community college, as the case may be, a specified percentage of the target per pupil foundation amount under the State public education funding formula. ED § 18-14A-04(b). If there is an agreement before July 1, 2013 between a public school and a public institution of higher education under which the higher education institution charges a dually enrolled student less than 75% of the cost of tuition, the county board would be required to pay the cost of tuition under the agreement. ED § 18-14A-04(b)(3). The county board of education is authorized to charge a dually enrolled student a certain percentage of the amount the county board pays to the higher education institution as a fee. The county board would be required to consider the financial ability of students when setting fees and to waive the fee for

students who are eligible for free and reduced priced meals. ED § 18-14A-04(c). Two issues have arisen regarding the interpretation of these provisions.

Dually Enrolled Private Secondary School Students

The first issue is whether SB 740 has any application to private secondary school students who dually enroll in a public institution of higher education. As noted above, under ED § 18-14A-04(a), "[a] public institution of higher education may not charge tuition to a dually enrolled student." A "dually enrolled student" means a student who is dually enrolled in a "secondary school in the State" and an institution of higher education in the State. ED § 18-14A-01(a)(2). The definition makes no distinction between a secondary school student in a public school and a private school.

Statutory construction begins with the plain language of the statute. *Deville v. State*, 383 Md. 217, 223 (2004), and if the statutory language is unambiguous when construed according to its ordinary and everyday meaning, then the statute should be given effect as written. *Collins v. State*, 383 Md. 684, 689 (2004). Applying these rules of interpretation, one could argue that a private secondary school student could dually enroll in a public institution of higher education that would be prohibited from charging the student any tuition. The cardinal rule of statutory construction, however, is to ascertain and effectuate the intention of the legislature. *Bowie v. Park and Planning*, 384 Md. 413, 426 (2004). In determining the legislative intent, it is necessary to read the language of the statute in context and in relation to all of its provisions. *Selig v. State Highway Administration*, 383 Md. 655 (2004). Moreover, statutes are to be interpreted in accord with logic and common sense, *Johnson v. Baltimore*, 387 Md. 1, 11 (2005), and "results that are unreasonable, illogical or inconsistent with common sense should be avoided." *Kaczorowski v. City of Baltimore,* 309 Md. 505, 516 (1987).

All of the provisions relating to dually enrolled students, with the exception of the definition of dually enrolled student under existing law and new ED § 18-14A-04(a), expressly apply to students dually enrolled in a public school and a public institution of higher education. In addition to ED § 18-14A-04, the bill would require each county board to make all high school students who meet enrollment requirements aware of the opportunity to dually enroll under the subtitle. ED § 18-14A-05. Additionally, the bill would require the Maryland Longitudinal Date System Center report annually, disaggregated by local school system, on the number of students who are dually enrolled. As there is no reimbursement mechanism under the bill for a public institution of higher education that dually enrolls a private school student, the prohibition against charging the dually enrolled student tuition would mean that a private school student could take college courses at a public institution of higher education free of charge while a public school student would be required to pay the local school board, a literal reading of the bill that, in our view, does not make sense. Thus,

based on a reading of the provisions relating to dually enrolled students, in their entirety and context, we believe that SB 740 has no application to private school students who are dually enrolled in a public institution of higher education. To remove any doubt, the General Assembly may wish to clarify this in future legislation.

Application of SB 740 to Summer College Classes

The second interpretive issue presented by SB 740 is whether the prohibition against charging a dually enrolled student tuition and the reimbursement provisions discussed above apply to a student who enrolls in college classes during the summer. The bill is silent with regard to summer classes. In our view, it is unlikely that the term "enrolled" here is intended to mean simply "on the rolls" of the high school, but that the better interpretation is that the student is enrolled in courses at the high school and at the college at the same time. Given that the bill will take effect July 1, 2013, after summer sessions this year begin, it appears that the General Assembly did not intend for the bill to apply to summer classes or simply did not contemplate the question. This may be clarified by future regulation.

Technical Issues

Finally, in ED §18-4A-01(a), found on page 12 of the bill, there are two drafting errors that do not affect the legal sufficiency of the bill. First, the defined terms are said to have the meanings indicated "[i]n this section," but in fact, the terms are used throughout Subtitle 4A. Second, the defined term "full-time equivalent enrollment" remains, despite the fact that the substantive provisions containing the term were amended out of the subtitle. Both of these may be corrected in the 2014 Corrective Bill.

Very truly yours,

Douglas F. Gansler
Attorney General

DFG/BAK/kk

cc: The Honorable Paul G. Pinsky
The Honorable John P. McDonough
Stacy Mayer
Karl Aro