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FORMAL)	
OPINION)	No. 07 - 07
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OF)	AG Alpha No. HE HE AGBCJ
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JOHN W. SUTHERS)	November 30, 2007
Attorney General)	

David Skaggs, Executive Director of the Colorado Department of Higher Education, requested an opinion from this office concerning the question of whether Colorado public high school students who enrolled at institutions of higher education pursuant to §§ 22-35-105(2), (3)(C) and (4), C.R.S. (2007) of the Postsecondary Enrollment Options Act are subject to verification of lawful presence under House Bill 06S-1023, or whether they are exempt from it under of the provisions of § 22-35-105(3)(IV), C.R.S. (2007).

QUESTION PRESENTED AND CONCLUSION

Question: Are Colorado public high school students who enrolled at institutions of higher education pursuant to §§ 22-35-105(2), (3)(C) and (4), C.R.S. (2007) of the Postsecondary Enrollment Options Act (“PSEO”) subject to verification of lawful presence under House Bill 06S-1023, or are they are exempt under of the provisions of § 22-35-105(3)(IV), C.R.S. (2007)?

Answer: Students in the PSEO program, and who are earning high school credits from their classes at an institution of higher education, can receive reimbursement from their school district, or payment in advance to the institution of higher education from their school district, for their postsecondary tuition without having to provide proof of lawful presence in the United States.

DISCUSSION

1. § 24-76.5-103, C.R.S. (2007)

House Bill 06S-1023, codified as § 24-76.5-103, C.R.S. (2006) (House Bill 1023), establishes that the public policy of the State of Colorado is that all persons 18 years of age or older must first provide proof they are lawfully present in the United States prior to receiving certain “public benefits.” The public benefits that are exempt from this policy are enumerated in subsection (3) of § 24-76.5-103, C.R.S. (2007).¹ Postsecondary education is not among those exempt public benefits and therefore students over the age of 18 years must normally provide proof of lawful presence in order to receive payment for or reimbursement of postsecondary tuition or associated expenses.

House Bill 1023 specifies that “state or local public benefits” have the same definition as the one contained in 8 U.S.C. § 1621(c)(1) (2007), which specifically includes “any ... postsecondary education ... or any other similar benefit for which payments are provided to an individual, household, or family eligibility unit by any agency of a State or local government or by appropriated funds of a State or local government.” Accordingly, under House Bill 1023, payment for postsecondary education expenses is a public benefit for which students 18 years of age or older must normally provide proof of lawful presence in the United States.

2. The Postsecondary Enrollment Options Act, § 22-35-101 et seq. C.R.S. (2007)

The PSEO is a program by which qualifying Colorado 11th and 12th grade students attending public high school, up to age 21, may enroll in spring and fall courses at an institution of higher education and receive either high school or college credits, as determined by their school district in a cooperative agreement with the institution of higher education. The students must pay in advance for their tuition for one or two postsecondary classes and are reimbursed by their school district upon successful completion of their credits. The school district may waive the student’s payment or reimbursement of tuition if the student qualifies for free or reduced lunch. Students may take more than two courses for which tuition may be paid or reimbursed, as determined by the school district on an individual basis. All PSEO students, notwithstanding any other law to the contrary, are afforded in-state tuition at a public institution of higher education. Private colleges are included if they are not pervasively sectarian or theological institutions. Tuition at private colleges shall not exceed the average in-state tuition charged by a representative group of comparable state institutions. School districts are not required to provide transportation to students in the PSEO program.

Initially, I note that House Bill 1023 excludes from its provisions anyone 18 years of age or younger. Thus, any student participating in the PSEO who is under 18 years of age is exempt from providing proof of lawful presence. Furthermore, under § 22-35-105(2), C.R.S. (2007), students over 19 years of age who are entitled to enroll in courses at an institution of higher

¹ Generally the exempted public benefits are immunizations, treatment of communicable diseases, emergency medical treatment, emergency disaster relief, soup kitchen, crisis counseling and intervention, short-term shelter, prenatal care and those provisions for the protection of life or safety.

education do so for the primary purpose of receiving high school credits, not postsecondary credits. In such a situation, the “benefit” received is not one of payment for postsecondary education; it is a benefit for K-12 education credits. Therefore, high school students up to 21 years of age, attending courses at an institution of higher education under subsection (2) of § 22-35-105, C.R.S. (2007) are exempt from providing proof of lawful presence under House Bill 1023, because they are merely attaining a high school education, which is not a “public benefit” under 8 USC 1621(c)(1) (2007). Further, students under the provisions of subsection (2) of § 22-35-105 are included in the count of pupil enrollment of their school district, not in the enrollment count at institution of higher education.

Furthermore, the “state public benefit” at issue is tuition at an in-state rate. § 22-35-105(3)(IV), C.R.S. (2007) mandates that all students enrolled in the PSEO will be classified as “in-state” students for the purposes of determining the tuition rate at the institution of higher education, “notwithstanding any law to the contrary”. Thus, students participating in the PSEO Program will be eligible for an in-state tuition rate without having to prove lawful presence pursuant to House Bill 1023.

CONCLUSION

Therefore, I conclude that students in the PSEO program and who are earning high school credits from their classes at an institution of higher education can receive reimbursement from their school district, or payment in advance to the institution of higher education from their school district, for their postsecondary tuition without having to provide proof of lawful presence in the United States.

Issued this 30th day of November, 2007.

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Colorado Attorney General