



FISCAL MANAGEMENT ADVISORY 12-01

DATE: March 20, 2013

TO: County and District Superintendents
Charter School Administrators

FROM: Jeannie Oropeza, Deputy Superintendent
Services for Administration, Finance, Technology, and Infrastructure
Branch

SUBJECT: Pupil Fees, Deposits, and Other Charges

This Advisory updates Fiscal Management Advisory 11-01, and reflects the most recent legislation and California Supreme Court interpretations.

Pupil Fees, Deposits and Charges in California Public Schools

I. A Free Public School System

"A pupil enrolled in a school shall not be required to pay any fee, deposit, or other charge not specifically authorized by law."¹

With this regulatory language the State Board of Education made clear that fees are not to be imposed except where specifically authorized by law. This administrative regulation was promulgated based on the authority of Article IX, Section 5 of the California Constitution which provides for a free school system:

The Legislature shall provide for a system of common schools by which a free school shall be kept up and supported in each district at least six months in every year, after the first year in which a school has been established.

In 1874, the State Supreme Court held that this provision entitled students to be educated at public expense.²

The California *Education Code (EC)*, as amended by Assembly Bill (AB) 1575 in 2012, provides that a pupil enrolled in a public school shall not be required to pay a pupil fee for participation in an educational activity.³ "Educational activity" is defined as an activity

¹ *California Code of Regulations*, Title 5, Section 350.

² *Ward v. Flood*, 48 Cal. 36, 51 (1874).

³ EC Section 49011(a).

offered by a school, school district, charter school or county office of education that constitutes an integral fundamental part of elementary and secondary education, including, but not limited to, curricular and extracurricular activities.⁴ “Pupil fee” is defined as a fee, deposit or charge imposed on pupils, or a pupil’s parents or guardians, including but not limited to:

1. A fee charged to a pupil as a condition for registering for school or classes, or as a condition for participation in a class or an extracurricular activity, regardless of whether the class or activity is elective or compulsory, or is for credit.
2. A security deposit, or other payment, that a pupil is required to make to obtain a lock, locker, book, class apparatus, musical instrument, uniform, or other materials or equipment.
3. A purchase that a pupil is required to make to obtain materials, supplies, equipment, or uniforms associated with an educational activity.⁵

All of the following apply to the prohibition on pupil fees described above:

1. All supplies, materials and equipment needed to participate in educational activities shall be provided to pupils free of charge.
2. A fee waiver policy shall not make a pupil fee permissible.⁶
3. School districts and schools shall not establish a two-tier educational system by requiring a minimal educational standard and also offering a second, higher educational standard that pupils may only obtain through payment of a fee or purchase of additional supplies that the school district or school does not provide.
4. A school district or school shall not offer course credit or privileges related to educational activities in exchange for money or donations of goods or services from a pupil or a pupil’s parents or guardians, and a school district or school shall not remove course credit or privileges related to educational activities, or otherwise discriminate against a pupil, because the pupil’s parents or guardians did not or will not provide money or donations of goods or services to the school district or school.⁷

Schools can solicit voluntary donations of funds or property, and voluntary participation in fundraising activities.⁸

⁴ EC Section 49010(a); see *Hartzell v. Connell*, 35 Cal. 3d 899, 910-911 (9184). The *Hartzell* court suggested that fees for optional attendance at school or District sponsored activities that are purely recreational (rather than educational) in nature, such as a weekend dance or an athletic event, may be legal. *Id.* at 911, n. 14.

⁵ EC Section 49010(b); see Ops. Cal. Atty. Gen. No. NS 2469 (1940).

⁶ See *Hartzell v. Connell*, 35 Cal. 3d 899, 912-913 (1984).

⁷ EC Section 49011(b).

⁸ EC Section 49011(c).

The following analysis may be helpful when determining whether a fee can be charged: Is the fee specifically authorized by statute? If so, the fee can be charged. If the fee is not specifically authorized by statute, does it relate to an activity that is an integral component of public education? If so, the fee cannot be charged. Local educational agencies (LEAs) may also wish to consult their own attorneys.

II. Fees Authorized by Law

The prohibition on “pupil fees” as defined above does not prohibit imposition of a fee, deposit or other charge otherwise allowed by law. (EC Section 49011(e)). The legislature has passed a number of laws authorizing specific fees. Schools may, but are not required to, charge the following fees:

Materials and equipment:

A. Reimbursement for the direct cost of materials provided to a pupil for property the pupil has fabricated from such materials to take home for his/her own possession and use, such as wood shop, art, or sewing projects kept by the pupil. (EC Section 17551.)

B. Charges for safety glasses, for a pupil to keep, so long as the school provides them free of charge for use in specified courses or activities involving the use of hazardous substances likely to cause injury to the eyes. (EC sections 32030-32033.)

C. Fees for sale or lease of Internet appliances or personal computers to parents for the purpose of providing access to the school district’s educational computer network, at no more than cost, so long as the district provides network access for families who cannot afford it. An Internet appliance is a technological product that allows a person to connect to, or access, an online educational network. The internet appliances and personal computers referred to in this section are deemed supplemental and not an essential part of the school district’s educational program. (EC Section 17453.1.)

Transportation:

D. Fees for transportation to and from school, and transportation between school and regional occupational centers, programs or classes, as long as (1) the fee does not exceed the statewide average nonsubsidized cost per pupil; (2) there is a waiver provision based on financial need; and (3) fees are not charged to pupils with disabilities whose Individualized Education Program (IEP) includes

transportation as a related service necessary for them to receive a free appropriate public education. (EC Section 39807.5(b), (d), and (f).)⁹

E. Fees for transportation of pupils to and from their places of summer employment in connection with any summer employment program for youth. (EC Section 39837.)

F. Fees for all or part of the cost of transportation for adult students. (EC Section 39801.5.)

Food:

G. Charges for food served to pupils, subject to free and reduced price meal program eligibility and other restrictions specified in law. (EC sections 38082 and 38084.)

Lost or Damaged Property:

H. Payment for the replacement cost for district books, supplies or property loaned to a pupil that the pupil fails to return, or that are willfully cut, defaced or otherwise damaged, up to an amount not to exceed \$10,000. (EC sections 19911 and 48904.)

Field Trips:

I. Fees for field trips and excursions in connection with courses of instruction or school-related social, educational, cultural, athletic, or school band activities so long as no pupil is prevented from making the field trip or excursion because of lack of sufficient funds. (EC Section 35330(b).)¹⁰

J. Medical or hospital insurance for field trips that is made available by the school district. (EC Section 35331(b)(2).)

K. Deposits for school band instruments, music, uniforms, and other regalia for use on an excursion to a foreign country. (EC Section 38120.)

⁹ The California Supreme Court has ruled that this statutorily-authorized fee does not violate the constitutional free school guarantee because home-to-school transportation is neither an educational activity nor an essential part of school activity. *Arcadia School District v. State Department of Education*, 2 Cal. 4th 251, 263-264 (1992).

¹⁰ A school must not require that a student pay an admission charge to an exhibit, fair, theater or similar activity for instruction or extracurricular purposes when a visit to such places is part of the district's educational program. Ops. Cal. Atty. Gen. No. NS 2469 (1940).

Community Service Classes:

L. Fees for community classes in civic, vocational, literacy, health, homemaking, and technical and general education, not to exceed the cost of maintaining the community classes. (EC sections 51810 and 51815.) These include classes such as dance, music, theatre, visual arts, handicraft, science, literature, nature study, nature contacting, aquatic sports and athletics. (EC Section 51810.) These classes are primarily intended for adults and are open only to those minors whom the governing board believes will profit from such classes. (EC Section 51811.)

M. Fees for adults for any classes except classes in elementary subjects and classes for which high school credit is granted when taken by a person not holding a high school diploma. (EC Section 52612(a).)¹¹ Fees for adult classes in English and citizenship may be charged through July 1, 2015. (EC Section 52612(b).)¹²

N. Fees for materials and textbooks or a refundable deposit on loaned books, in classes for adults. (EC sections 52165 and 60410.)

O. Fees (at not less than cost) for adult class materials, including those necessary for the making of articles that shall become the property of the student who made it. (EC sections 52612, 52615, and 17552.)

Athletic Team Insurance:

P. Charges for required medical and accident insurance for athletic team members that are not paid by school district or student body funds, so long as there is a waiver for financial hardship. (EC sections 32220-32224.)

Tuition:

Q. Tuition fees charged to pupils whose parents are actual and legal residents of an adjacent foreign country or an adjacent state. The pupils may be admitted to a school but shall be required to reimburse the district for the cost of educating the pupil. (EC sections 48050 and 48052.)

¹¹ The EC authorizes flexibility in the use of funds appropriated for Adult Education programs and deems LEAs who spend those funds flexibly to be in compliance with applicable funding and program requirements. EC Section 42605(a)(1), and (d). The fees provision in EC Section 52612 is not altered by EC Section 42605.

¹² Cal. Stats. 2011, c. 206 (A.B. 189), Section 2.

R. Tuition fees may be collected from foreign students attending a district school pursuant to an F-1 visa, equal to the full unsubsidized per capita cost of providing education during the period of attendance. (8 U.S.C. section 1184(m)(1).)

School Camp Programs:

S. Fees for outdoor science school camp programs, so long as no pupil is denied the opportunity to participate because of non-payment of the fee. (EC Section 35335.)

Child Care and Development:

T. Fees for child care and development services, except that no fees shall be assessed to families whose children are enrolled in the state preschool program or for such services provided to severely disabled children. (EC sections 8250(d)(3), 8263(h)(1), and 8265.) Fees for supervision of children before and after school, except that no child who desires to participate shall be denied the opportunity to participate because of inability to pay the fee. (EC sections 8487 and 8488.)

Fingerprinting:

U. Fees for an optional fingerprint program for children in kindergarten or other newly enrolled children if the fee does not exceed the actual costs associated with the program. (EC Section 32390.)

Duplication of Records:

V. Fees for the actual cost of duplicating public records, pupil records, or a prospectus of the school curriculum. (Government Code Section 6253; EC sections 49063(h) and 49091.14.) There are two exceptions: First, no charge shall be made for furnishing up to two transcripts of former pupils' records or up to two verifications of various records of former pupils. (EC Section 49065.) Second, if the cost would effectively prevent the parent of a special education pupil from exercising the right to receive copies of pupil records, the copies shall be reproduced at no cost. (EC Section 56504.)

Specialized Examinations:

W. Fees for Advanced Placement and International Baccalaureate Diploma examinations for college credit, so long as (1) taking the exam is not a course requirement; (2) the exam results have no impact on a pupil's grade or credit in a

course; and (3) eligible economically disadvantaged high school pupils who receive school district funding towards the exam fee shall pay \$5.00 of the fee. (EC sections 52240-52244; 52920-52922.)

After School Programs:

X. Fees for After School Education and Safety Programs, so long as no eligible student is denied the ability to participate because of an inability to pay the fee. (EC Section 8482.6)

III. Fees Not Allowed

The Opinions of the Attorney General¹³ indicate that charges may not be levied for the following:

A. A deposit in the nature of a guarantee that the district would be reimbursed for loss to the district on account of breakage, damage to, or loss of school property;

B. An admission charge to an exhibit, fair, theater or similar activity for instruction or extracurricular purposes when a visit to such places is part of the district's educational program;

C. A tuition fee or charge as a condition of enrollment in any class or course of instruction, including a fee for attendance in a summer or vacation school, a registration fee, a fee for a catalog of courses, a fee for an examination in a subject, a late registration or program change fee, a fee for the issuance of a diploma or certificate, or a charge for lodging.

D. Membership fees in a student body or any student organization as a condition for enrollment or participation in athletic or other curricular or extracurricular activities sponsored by the school;¹⁴

¹³ See, e.g., Ops. Cal. Atty. Gen. No. NS 2469 (1940).

¹⁴ A school district may not charge fees to enroll and/or participate in activities of career technical student organizations which are part of a career technical class or course of instruction offered for credit. (EC Section 52375.) Nor may a school district charge fees for transportation associated with activities of career technical student organizations which are part of a career technical class or course of instruction offered for credit when those activities are integral to assisting the pupil to achieve the career objectives of the class or course. (EC Section 52373.) The exception is when fees are charged to provide transportation between the regular full-time day schools the pupil would attend and the regular full-time occupational training classes they attend provided by a regional occupational center or program. (EC Section 39807.5.)

E. Charges to an apprentice, or his or her parents or guardian, for admission or attendance in any class pursuant to Section 3074 of the Labor Code. (EC Section 48053.)

F. Charges for textbooks and workbooks (except for classes for adults). (EC sections 60070 and 60410.)

G. Fees to process an interdistrict transfer request by a pupil residing in another district.¹⁵

H. Reimbursement for lost Average Daily Attendance revenue for absences from school.¹⁶

As for school supplies, EC Section 38118 provides:

Writing and drawing paper, pens, inks, blackboard erasers, crayons, lead pencils, and other necessary supplies for the use of the schools shall be furnished under direction of the governing board of the school district.

The Attorney General has issued an opinion that all of the following are "necessary supplies" and therefore, if the school district requires that pupils use such items, the school district must provide them to pupils for free in order to participate in regular classroom work in the particular subjects involved.¹⁷

A. Art material for art classes and mechanical drawing sets;

B. Cloth to be used in dressmaking classes and wood for carpentry classes;

C. Gym suits for physical education classes;¹⁸

D. Bluebooks in which to write a final examination; and

¹⁵ Ops. Cal. Atty. Gen. No. 04-501 (2004).

¹⁶ Ops. Cal. Atty. Gen. No. 96-1004 (1997). The original Opinion referred to ADA lost for unexcused absences only. Since then, the law has changed such that ADA cannot be earned for unexcused or excused absences. (EC Section 48205(d), amended by Cal. Stats. 1999, c. 312 (S.B. 1208), Section 1.) Presumably the previous Opinion likewise applies to ADA lost because of excused absences.

¹⁷ Ops. Cal. Atty. Gen. No. NS-4114 (1942).

¹⁸ Specifically with respect to gym clothes, EC Section 49066(c) states that: "[n]o grade of a pupil participating in a physical education class may be adversely affected due to the fact that the pupil does not wear standardized physical education apparel where the failure to wear such apparel arises from circumstances beyond the control of the pupil."

- E. Paper on which to write a theme or report when such theme or report is a required assignment.

No statute specifically authorizes tuition for summer school. Therefore, tuition or any such fee or charge relating to summer school is prohibited under *California Code of Regulations*, Title 5 (5 CCR), Section 350, which precludes charging fees for educational activities not specifically authorized by law.

IV. Fee Issues Specific to Charter Schools

EC Section 47605(d) specifically prohibits a charter school from charging tuition, but does not mention fees or other charges. Charter schools are exempt from most laws governing school districts (EC Section 47610). However, the California Constitution, which is the highest law of the state, cannot be rendered inapplicable by the Legislature. Therefore, the free school guarantee of the California Constitution, Article IX, Section 5, applies to charter schools. The EC, as amended by AB 1575 in 2012, makes clear that the prohibition on pupil fees applies to charter schools.¹⁹

Only some EC sections specifically authorizing fees have explicitly been made applicable to charter schools. Charter schools may only charge fees authorized by those EC sections that have been made explicitly applicable to charter schools. For example, charter schools can charge fees for food and field trips -- subject to the restrictions on those fees as described in Section II, G and I, above -- because the EC applies those provisions to charter schools.²⁰ Conversely, charter schools cannot charge other "fees authorized by law" in Section II above, except to the extent that any such fees do not relate to an activity that is an integral component of public education.

¹⁹ EC sections 49010(a), 49011(d).

²⁰ EC Section 35330(d) (field trips); EC Section 49430.7(a)(2) (food).