

FISCAL MANAGEMENT ADVISORY 20-01

DATE: July 23, 2020

TO: County and District Superintendents
Charter School Administrators

FROM: Lisa Constancio, Deputy Superintendent
Operations and Administration Branch

SUBJECT: Pupil Fees, Deposits, and Other Charges

This Advisory is provided pursuant to *Education Code (EC)* section 49012(a) and updates Fiscal Management Advisory (FMA) 17-01 (July 28, 2017), FMA 12-02 (April 24, 2013), as supplemented by the FMA 12-02 Addendum (October 24, 2013), FMA 15-01 (January 21, 2015), and FMA 16-01 (September 19, 2016). It 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 *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 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:

- A. 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.
- B. 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.
- C. 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:

- D. All supplies, materials, and equipment needed to participate in educational activities shall be provided to pupils free of charge.
- E. A fee waiver policy shall not make a pupil fee permissible. ⁶
- F. 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.
- G. 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

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. (*Ed. Code*, § 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. (*Ed. Code*, § 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. (*Ed. Code*, §§ 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. (*Ed. Code*, § 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. (*Ed. Code*, § 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. (*Ed. Code*, § 39837.)
- F. Fees for all or part of the cost of transportation for adult students. (*Ed. Code*, § 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. (*Ed. Code*, §§ 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 injured, up to an amount not to exceed \$10,000, adjusted annually for inflation. (*Ed. Code*, §§ 19911 and 48904.) Based on rules of construction, it appears that the word “willfully” modifies each of the phrases—“cuts, defaces, or otherwise injures”—that follows. Therefore, school districts

should analyze, on a case-by-case basis, whether property has been willfully damaged. A blanket policy that charges fees for any damage to property would appear to be inconsistent with the statute.

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. (*Ed. Code*, § 35330(b).) ¹⁰
- J. Medical or hospital insurance for field trips that is made available by the school district. (*Ed. Code*, § 35331(b)(2).)
- K. Deposits for school band instruments, music, uniforms, and other regalia for use on an excursion to a foreign country. (*Ed. Code*, § 38120.)

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. (*Ed. Code*, §§ 51810 and 51815.) These include classes such as dance, music, theatre, visual arts, handicraft, science, literature, nature study, nature contacting, aquatic sports, and athletics. (*Ed. Code*, § 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. (*Ed. Code*, § 51811.)
- M. Fees for adults for any classes except (1) classes in English and citizenship or elementary subjects and (2) classes for which high school credit is granted when taken by a person not holding a high school diploma. (*Ed. Code*, § 52612(a).) ¹¹ Nonimmigrant foreign nationals enrolled in a class in English and citizenship or an elementary subject shall be charged a fee not to exceed the actual cost of instruction. (*Ed. Code*, § 52613(a).)

- N. Fees for materials and textbooks offered for sale or a refundable deposit on loaned books, in classes for adults. (*Ed. Code*, §§ 52612(b), 52615, 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. (*Ed. Code*, §§ 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. (*Ed. Code*, §§ 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. (*Ed. Code*, §§ 48050 and 48052.)
- 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. § 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. (*Ed. Code*, § 35335.)

Child Care and Development

- T. Fees for child care and development services, except that no fees shall be assessed to students enrolled in the program for severely disabled children as stated in *EC* section 8250(d), or the part-day

California State Preschool Program as stated in *EC 8273.1(e)*, or families receiving CalWORKS cash aid as stated in *EC 8273.1(d)*. Fees for full-day state preschool, except that no family fees shall be assessed to students placed in state preschool by an IEP or families receiving CalWORKS cash aid. (*Ed. Code*, §§ 8239, 8250(d)(3), 8265, 8447(f), 56000.) 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. (*Ed. Code*, §§ 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. (*Ed. Code*, § 32390.)

Duplication of Records

V. Fees for the actual cost of duplicating public records, pupil records, or a prospectus of the school curriculum. (*Gov. Code*, § 6253(b); *Ed. Code* §§ 49063(h) and 49091.14.) However, 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. (*Ed. Code* § 49065.) Finally, 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. (*Ed. Code*, § 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 and (2) the exam results have no impact on a pupil's grade or credit in a course. An LEA may fund all or part of the cost of the AP test fee for an economically disadvantaged pupil or the IB test fee for a pupil in need of financial assistance. (*Ed. Code*, §§ 52242; 52922.)

After School Programs

- X. Fees for After School Education and Safety Programs, so long as any such fees are waived or reduced for pupils who are eligible for free or reduced-price meals, and no fee is charged for a child known by the program to be a homeless youth or in foster care. (*Ed. Code*, § 8482.6)

III. Fees Not Allowed

- A. Cap and gown for high school graduation ceremony

A school district cannot require students to purchase or pay for a cap and gown if wearing a cap and gown is a condition of participation in a graduation ceremony. In *Sands v. Morongo*, 53 Cal. 3d 863, 873-874 (1991), *cert. denied*, 505 U.S. 1218 (1992), the California Supreme Court found that the high school graduation ceremony is “an integral part of the educational process” because it recognizes cumulative academic achievement. Therefore, the graduation ceremony is an “educational activity,” pursuant to *EC* 49010(a), as to which a pupil fee cannot be charged. *EC* section 38119 only authorizes districts to rent caps and gowns from a supplier and provide them free of charge to students. Therefore, a cap and gown fee is not “otherwise allowed by law.” *EC* section 49011(e). The CDE recommends that a district that requires students to wear a cap and gown at the ceremony inform students that: (1) the district will provide caps and gowns for graduating seniors for use during the ceremony, and (2) students also have the option to purchase an appropriate cap and gown from a vendor. No student should be required to self-identify as indigent in order to receive a cap and gown from the district.

- B. Parent Service Hours

EC section 49011(b)(4) bars a school district or school, including a charter school, from requiring parents to perform “volunteer hours” as a condition of allowing their child admission, enrollment,

continued enrollment, sibling preference, attendance, participation in educational activities or receipt of credit or privileges related to educational activities. (See also *EC 47605(n)*.) *EC* section 49011(c) permits a school district or school, including a charter school, to request that parents volunteer a specific number of hours per school year, and to identify the benefits to the school district or school as a result of these truly volunteer services; however, such requests may not be coercive or imply a negative consequence to a student or parent. *EC 47605(n)* specifies a charter school may encourage parental involvement, but shall notify the parents and guardians of applicant pupils and currently enrolled pupils that parental involvement is not a requirement for acceptance to, or continued enrollment at, the charter school.

C. Miscellaneous Fees

The Opinions of the Attorney General [13](#) indicate that charges may not be levied for the following:

1. 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;
2. 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;
3. 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;
4. 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](#)

5. 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. (*Ed. Code*, § 48053.)
6. Charges for textbooks and workbooks (except for classes for adults). (*Ed. Code*, §§ 60070 and 60410.)
7. Fees to process an interdistrict transfer request by a pupil residing in another district. [15](#)
8. Reimbursement for lost Average Daily Attendance revenue for absences from school. [16](#)

As noted in 3 above, 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.

D. School Supplies

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](#)

1. Art material for art classes and mechanical drawing sets;
2. Cloth to be used in dressmaking classes and wood for carpentry classes;
3. Gym suits for physical education classes; [18](#)
4. Bluebooks in which to write a final examination; and
5. Paper on which to write a theme or report when such theme or report is a required assignment.

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 (*Ed. Code*, § 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.

¹ *California Code of Regulations*, title 5, section 350.

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

³ *EC* section 49011(a).

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).

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).

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. 606 (A.B. 189), Section 2.

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. (*Ed. Code*, § 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. (*Ed. Code*, § 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. (*Ed. Code*, § 39807.5.)

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. (*Ed. Code*, § 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.”

¹⁹ *EC* sections 49010(a), 49011(d).

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