

FISCAL MANAGEMENT ADVISORY 22-01

DATE: September 1, 2022

TO: County and District Superintendents
Charter School Administrators

FROM: Abel Guillen, Deputy Superintendent,
Operations and Administration Branch

RE: Summer School, Third Parties, and Tuition Fees

I. Introduction

Recently questions have arisen regarding tuition fees for summer school programs that are charged by third parties other than public schools, school districts, charter schools or county offices of education (hereinafter local educational agencies or LEAs). This Advisory is a supplement to the California Department of Education's (CDE) most recent guidance on pupil fees, Fiscal Management Advisory 20-01, that is available at <https://www.cde.ca.gov/re/lr/fm/fma2001.asp>.

II. Pupil Fees

The California *Education Code (EC)* provides that a pupil enrolled in a public school shall not be required to pay a pupil fee for participation in an educational activity. (*EC* Section 49011(a)). "Educational activity" is defined as an activity offered by the LEA that constitutes an integral fundamental part of elementary and secondary education, including, but not limited to, curricular and extracurricular activities. (*EC* 49010(a)). "Pupil fee" is defined as a fee, deposit or charge imposed on pupils, or a pupil's parents or guardians. (*EC* 49010(b)). It includes a fee charged as a condition for participating in a class, regardless of whether it is elective or compulsory, or is for credit. (*EC* 49010(b)(1)). The law does not prohibit imposition of a fee that is otherwise allowed by law. (*EC* 49011(e)).

Any person can file a complaint relating to unauthorized pupil fees with the principal of a school pursuant to local Uniform Complaint Procedures (UCP), and can appeal the local decision to the CDE. (*EC* sections 33315(a)(1)(I) and 49013.) If the local educational agency finds merit in the complaint, or the CDE finds merit in an appeal, the LEA must provide a remedy to all affected pupils, parents and guardians that, where applicable, includes reasonable efforts by the public school to ensure full reimbursement. (*EC* sections 33315(a)(6) and 49013(d)).

LEAs must provide an annual notice to parents and guardians that includes information regarding the legal requirements on pupil fees as set forth in the *Education Code*. (*EC* 49013(e); *California Code of Regulations* Title 5 (5 CCR) Section 4622(b)(5)).

A sample notice may be found on the CDE website at:

<https://www.cde.ca.gov/re/cp/uc/ucpmonitoring.asp>.

III. Summer School

LEAs may offer summer school but it is not required. (*EC 35160*) If a LEA chooses to offer a summer school program, it cannot charge tuition or other pupil fees. (*EC 49011, 5 CCR Section 350*). A longstanding opinion of the Attorney General states that a school may not charge a fee for attendance in summer school. (Ops. Cal. Atty. Gen. Number NS 2469 (1940)).

IV. Third Parties

As noted above, the prohibition on pupil fees extends only to educational activities that are “*offered by [a LEA]*” and that constitute an integral fundamental part of education. (emphasis added) (*EC 49010(a)*). Questions have arisen as to whether a third party that is affiliated in some way with a LEA can lawfully charge tuition fees for a summer school program. Stated another way, is a summer school program that is provided by such a third party deemed to be “*offered*” by the LEA under the law?

Any such allegation that such summer school tuition fees are impermissible pupil fees is a proper subject for a UCP pupil fees complaint. When investigating such a complaint, the LEA should make an individualized inquiry as to the relationship between the LEA and the third party, and the students, based on a variety of factors to determine whether the educational activities are being offered by the LEA.

Factors that can be weighed in determining if the LEA is offering the educational activities may include, but are not limited to:

- (1) the organizational structure of the third party, such as whether it is a separate legal entity and the degree of independence from the LEA;
- (2) the relationship between the third party and the LEA, such as the composition of the third party’s governing body and leadership and its relationship to the LEA;
- (3) the content of any Memorandum of Understanding or other written agreement between the parties regarding the use of facilities, equipment and materials, including any payment of fees by the third party to the LEA for that use;
- (4) the entity responsible for communicating about the summer school program to students, parent and guardians and how that responsibility is communicated to parents;
- (5) what student population is eligible to participate, such as whether the program is open to students attending non-LEA schools;

- (6) responsibility for choosing courses to be taught;
- (7) responsibility for registration;
- (8) responsibility for scheduling;
- (9) responsibility for collecting fees from enrolled students;
- (8) responsibility for hiring, supervision and payment of summer school staff;
- (9) responsibility and procedure for awarding and/or transferring course credit; and
- (10) other factors.

V. Conclusion

As the 2022-2023 school year begins, and as we look forward to the summer of 2023, the CDE recommends that LEAs review the CDE's Fiscal Management Advisory 20-01 and this guidance to ensure compliance with the constitutional prohibition against charging impermissible pupil fees.