



SANTA MONICA - MALIBU UNIFIED SCHOOL DISTRICT

August 19, 2019

## **Superintendent's Message: Pupil Fees Settlement Update**

Dear staff, parents, guardians, and our local communities,

The district sent parents a [letter](#) on January 31, 2019 regarding a pending class action lawsuit against the Santa Monica-Malibu Unified School District, *de Baca, et al. v. Santa Monica-Malibu USD*, LA Superior Court Case No. BC674932. The lawsuit alleges the district has charged unlawful "pupil fees" to parents and students in violation of the California Education Code and the California Constitution. Schools are prohibited from requiring a pupil to pay a fee, deposit or other charge not specifically authorized by law, for participation in an educational activity. We take pride in our commitment to equity and we seek to ensure that all students have access and opportunity to all aspects of our educational and extracurricular programs. We believe in the underlying values reflected in the law governing pupil fees.

From the onset, we contested the allegations against the district, and continue to contest them. We have a board policy and procedure for a parent to file a complaint if they believe they have been charged a fee, deposit or other charge inappropriately. Our policy and procedures are in accordance with state law. The policies and procedures posted in our annual parent handbook and online include: [Uniform Complaint Policy](#) and [Uniform Complaint Administrative Regulation](#).

Our [Uniform Complaint Procedure](#) outlines this policy and provides instructions regarding how to submit a complaint. A complaint may be filed anonymously. This is described in our [annual notice to parents](#) on page 12, under Pupil Fees. We disagree with the recent statement of lead counsel for the plaintiffs, reported in the Santa Monica Daily Press, that "the district has really disregarded [this] constitutional right." To the contrary, we believe in this policy. We believe in this law. We strive for 100% compliance. This is one reason we have a procedure to correct any situation in which a fee might be charged in error.

Unfortunately, the court failed to uphold what we continue to believe is the correct interpretation of the procedural requirements in this area. The district then faced a situation in which it would have had to make a significant financial outlay to defend state law in the context of class action litigation, along with the accompanying risk that always exists in litigation -- that we might not prevail. Given an assessment of these circumstances and upon my recommendation, and after careful deliberation, the SMMUSD Board of Education voted to accept settlement terms to be submitted to the court for approval. This was the best case scenario in terms of financial and operational cost to the district. Contrary to counsel's statement in the Santa Monica Daily Press, the settlement stipulation he signed states "[n]othing herein shall constitute an admission by [the district] of wrongdoing or liability or of the truth of any factual allegations" in the lawsuit.

The settlement terms approved by the school board are now in the court for preliminary and final approval. Until final court approval, the lawsuit is not finalized. Preliminary approval by the court is expected in September.



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The district will work with other agencies such as the Association of California School Administrators (ACSA) and the California School Board Association (CSBA) to strengthen the language of state law related to the requirement to fully and completely exhaust the local complaint process, in good faith, prior to initiating expensive and unnecessary litigation. We are disappointed that plaintiffs' counsel chose to reject and essentially scoff at these procedures, choosing instead to file an expensive lawsuit against SMMUSD. The district stands ready to address any concerns parents have.

Please note that there will not be a significant or material change in the way we conduct activities or solicit donations. The proposed settlement regarding prospective and retrospective relief largely replicates the procedures we already follow as a district in terms of soliciting donations and providing access to an administrative remedy through the formal complaint process.

However, what will be more clearly visible is our intentional and diligent communication regarding what is a permissible charge and a voluntary donation for an activity. If a student/parent believes they have been charged a fee unlawfully, upon notification of the district, the district will investigate and the student/parent and all other affected students/parents will be reimbursed if illegal fees have been charged, as is our current and continuing practice.

We are pleased this case is now awaiting court approval of the settlement agreement. The action to settle out of court potentially saves the district and local taxpayers from an additional financial burden.

Sincerely,

Dr. Ben Drati, Superintendent