

TO BE PUBLISHED IN THE OFFICIAL REPORTS

OFFICE OF THE ATTORNEY GENERAL
State of California

GEORGE DEUKMEJIAN
Attorney General

OPINION	:	No. 80-704
	:	
of	:	<u>December 23, 1980</u>
	:	
GEORGE DEUKMEJIAN	:	
Attorney General	:	
	:	
Victor D. Sonenberg	:	
Deputy Attorney General	:	
	:	

SUBJECT: DRIVER TRAINING FEE—The State Department of Education may not authorize a school district to charge its students a fee for driver training.

The Honorable Joseph B. Montoya, Senator for the Twenty-Sixth District, has requested an opinion on the following question:

May the State Department of Education authorize a school district to charge its students a fee for driver training?

CONCLUSION

The State Department of Education may not authorize a school district to charge its students a fee for driver training.

ANALYSIS

The Legislature has mandated that the public schools provide courses in “automobile driver education.” (Ed. Code § 51220(j);¹ *California Teachers Assn. v. Board of Trustees* (1978) 82 Cal. App. 3d 249, 253; 43 Ops. Cal. Atty. Gen. 322, 323–324 (1964).) “Automobile driver training” is deemed to be the “laboratory phase of driver education.” (§ 51853; tit. 5 Cal. Admin. Code § 10040; *California Teachers Assn. v. Board of Trustees*, *supra*, at p. 253, fn. 2; 62 Ops. Cal. Atty. Gen. 43 (1979); 61 Ops. Cal. Atty. Gen. 93, 94 (1978).) Standards and specifications governing the presentation of driver training are set forth in sections 41914, 41918, 5185 2.² Driver training must be made available to all students who are qualified and elect to take such training. (§ 49102; 62 Ops. Cal. Atty. Gen. 43, *supra*.)

State funding of driver training is provided for through a system of allowances set forth in sections 41304–41306 and in article 12 (§§ 41900–41919), chapter 5, part 24, division 3, title 2 of the Education Code. Among these provisions is section 41902 which states:

“Allowances by the Superintendent of Public Instruction shall be made only for driver training classes maintained in accordance with the rules and regulations as set forth by the State Board of Education. *Driver training shall be available without tuition* to all eligible students commencing on July 1, 1969. The governing board of a district maintaining a high school or high schools, the county superintendent of schools, the California Youth Authority, and the State Department of Education may make driver training available during school hours, or at other times, or any combination thereof.” (Emphasis added.)

Thus by its express terms section 41902 requires that no tuition be charged to students taking driver training (62 Ops. Cal. Atty. Gen. 43, *supra*, at p. 46). However, it has been proposed that the Department of Education may waive the requirement that the schools make driver training available without tuition by virtue of the provisions of section 41910. Section 41910 provides:

¹ Hereafter all section references are to the Education Code unless otherwise specified.

² Regulations establishing additional driver training specifications have been promulgated under the authority of section 41905 by the State Board of Education. (Tit. 5 Cal. Admin. Code §§ 10040–10049; see also §§ 41900, 41902, 51850, requiring school districts to comply with such regulations as a condition for state funding.)

“The Department of Education may grant waivers of automobile driver training education provisions of the Education Code for the purpose of establishing experimental driver education programs directed toward improving cost effectiveness in the reduction of traffic crashes. Waivers under this section shall not increase program reimbursements authorized pursuant to Sections 41304 and 41306.”

The question we consider in this opinion is whether the waiver authority conferred upon the Department of Education by section 41910 extends to a waiver of the prohibition of tuition *charges specified in section 41902. An examination of the language of section 41910 indicates that it does not extend to a waiver of such prohibition.

In this respect we first note that the purpose of the waiver is expressly specified to be “for the purpose of establishing experimental driver education programs. ‘Designating the establishment of “experimental” programs as the purpose of the waiver is significant in that characterizing an educational program as “experimental” denotes a program in which the elements of its educational content or processes differ from those of the already established program.’³ Thus the clear import of this language, which relates waivers of driver training provisions to experimental” programs, is that the waiver is intended to permit a departure from the various provisions in the Education Code relating to the educational content or processes of the driver training program. Such provisions are found mainly in section 51852 and in title 5, California Administrative Code Section 10040 (which is incorporated into the Education Code by sections 41900, 41902, and 51850). Section 51582 formulates one 12-hour and three 24-hour course plans, the hours of which are allocated in various specified amounts to on-street driving, observation of on-street driving, off-street driving, and practice in a driving simulator. Title 5 California Administrative Code section 10040 refers to specific skills to be emphasized in the course of such driving activities such as avoidance of crashes, handling of driving emergencies, and protecting the driver and passengers in crashes.

An experimental program might eliminate instruction in one of the specified topics and place greater emphasis on another, or it might introduce additional topics, or it might make other variations in the topics or in the time devoted to their presentation. On the other hand, the mere addition of a tuition charge would not be the type of departure from the existing specifications that would render an educational program “experimental” in the ordinary sense of the word. (Statutes are to be given ““effect ‘according to the usual, ordinary import of the language employed in framing them.’ . . .”” *People v. Belleci*

³ See the definition of “experimental design” in Webster’s Third New International Dictionary (1961) p. 800: “A method of research in the social sciences . . . in which a controlled experimental factor is subjected to special treatment for purposes of comparison with a factor kept constant.”

(1979) 24 Cal. 3d 879, 884.) Therefore, on the basis of this terminology in section 41910 we would conclude that in authorizing the Department of Education to grant waivers the Legislature did not contemplate a waiver of the restriction on tuition charging.

This conclusion is further supported by an additional qualification of the waiver authority in section 41910 which restricts such authority to those experimental programs which are “directed toward improving cost effectiveness in the reduction of traffic crashes.” (Emphasis added.) The term “cost effectiveness” connotes the idea of modifying a course of action or selecting an alternative course of action to achieve the same objective (accident reduction) at less cost.⁴ Thus the implication in this context is that waivers under sections 41910 should result in program objectives being achieved with less cost as opposed to merely shifting the cost burden from one financing source to another. A waiver of the prohibition of tuition charging would merely shift and not diminish the cost of a program. It would not improve a program’s “cost effectiveness.” It is therefore not the type of waiver that is within the authority provided by section 41910.

Thus, in view of the express mandate in section 41902 that driver training be “available without tuition,” and in view of the fact that the purposes of the waiver provisions of section 41910 do not extend to matters concerning tuition charges, we conclude that the Department of Education does not have the authority to waive the prohibition against charging tuition fees for driver training.

⁴ See Wortmann, *A Deskbook of Business Management Terms* (1979) at page 127 which defines “cost effectiveness” as the term which applies to the “analysis to determine whether the same expenditure could be used more effectively in another direction, or to ascertain whether the expenditure can be reduced without negatively affecting the expected benefit.