



ALAN WILSON
ATTORNEY GENERAL

August 7, 2026

The Honorable Shane Martin, Member
South Carolina Senate
211 Gressette Building
Columbia, SC 29202

Dear Senator Martin:

Attorney General Alan Wilson referred your letter to the Opinions section for a response. You seek an opinion regarding whether Union County Schools (the "District") may charge fees to students required to make up class time. In addition, your request notes that the District provides free lunch to all students and asks whether the District may charge make-up time fees even if every student in the District is eligible for free lunch.

In short, yes, a school district may charge a fee for make-up time under South Carolina Code Section 59-19-90(8); however, it does not appear that Union County Schools may do so because the District provides free lunches to all its students and Section 59-19-90(8) states "fees may not be charged to students eligible for free lunches" We believe a court would likely find that a student receiving a free lunch has implicitly been determined to be eligible.

You also ask:

- If Union County High School is authorized to charge a fee, and in light of fact [sic] that fees must be means-tested, does the high school have to make a determination about whether each student making up time would qualify for free or reduced lunch if all students were not provided a free lunch in order to set the amount of the fee for that student?
- If Union County High School is authorized to charge a fee but is not means-testing the fee pursuant to S.C. Code § 59-19-90(8) [sic] in violation of the statute because it has no documented waiver, reduction, or income review process, may the high school withhold attendance recovery, course credit, or graduation clearance based on non-payment of the fee levied if the student attended the requisite number of make-up classes?

Law/Analysis

Your letter states that the District is charging students a fee for participating in make-up time hours. We understand that students are required to attend make-up hours when the student falls short of State mandated attendance hours for a particular class. You also state that the District provides free lunch to all students.

Section 59-19-90(8) gives school districts the authority to:

(8) Charge matriculation and incidental fees. Charge and collect matriculation and incidental fees from students; however, regulations or policies adopted by the board regarding charges and collections must take into account the students' ability to pay and must hold the fee to a minimum reasonable amount. Fees may not be charged to students eligible for free lunches and must be reduced pro rata for students eligible for reduced price lunches;

S.C. Code Ann. § 59-19-90(8) (2020).

Regarding your first question, yes, a school district may charge a fee for participating in make-up time. We could not locate any South Carolina jurisprudence addressing make-up time specifically, but we believe a court would likely consider such a fee an "incidental fee," as permitted by Section 59-19-90(8).

Regarding your second question, Section 59-19-90(8) prohibits districts from charging matriculation or incidental fees to "students eligible for free lunches." We understand from your letter and the District website that all District students receive free lunches. *See* <https://www.union.k12.sc.us/o/ucs/page/food-service>. Because the District offers free lunches to all students, we believe that Section 59-19-90(8) prohibits the District from charging students a matriculation or incidental fee. Admittedly the District has not individually determined whether each student is eligible for free lunch, but we believe a court would likely find that a student receiving a free lunch has implicitly been determined to be eligible.

It is unlikely that this result was anticipated by the District when implementing universal free lunch or that this was the intention of the General Assembly when tying all matriculation and incidental fees to free lunch eligibility. There are numerous similarly situated school districts and schools across South Carolina which provide universal free lunch and breakfasts under the Community Eligibility Provision of the National School Lunch Act. *See* <https://ed.sc.gov/districts-schools/health-and-nutrition/meal-programs/community-eligibility-provision-cep/>. Given the potential effect of offering universal free lunches on a school district's ability to charge matriculation or incidental fees under our interpretation of the statute and the widespread practice of providing universal students free lunch, this problem likely needs to be addressed by the General Assembly.

We note that our analysis here is not a commentary on the policy of providing free lunches. There are many proponents of expanding free meal access at schools and appear to be numerous benefits to doing so. Studies have shown that providing students with free meals improves educational outcomes. *See e.g., Free Lunch for All! The Effect of the Community Eligibility Provision on Academic Outcomes, Economics of Education Review* (2020), https://sc.edu/study/colleges_schools/moore/research_and_centers/centers/sc_epic/documents/education/the_effect_of_free_lunch_on_academic_outcomes.pdf. At least two bills during the 126th Session of the General Assembly sought to expand access to free meals. *See* Act No. 23, 2026 Acts 125 and S. 147, Session 126, S.C. General Assembly. Similarly, universal free breakfast was included in Governor McMaster's Executive Budget for Fiscal Year 2026-2027. *See* Proviso 1.103 (<https://governor.sc.gov/sites/governor/files/Documents/Executive-Budget/FY27%20Executive%20Budget%20Book%20-%20FINAL%200112026.pdf>). As of this opinion's writing, a budget for fiscal year 2026-2027 has not been enacted into law, but Proviso 1.103 is included in the Conference Committee's Report as "Conform to Funding." Our opinion here does not consider these policy debates or the potential effect of our interpretation on school district funding. Instead, we are limited to considering the text of the statute as it presently exists.

Your third question asks, in essence, whether a district which provides universal free lunch could charge fees if it individually means tests students before charging the fees. This is possible, but not certain. Under this theory, the school district would assert, as you do, that Section 59-19-90(8) requires individual means testing prior to charging a fee and then conduct that analysis prior to charging the fee, instead of when considering eligibility for free lunch. The school district, according to this argument, is still means testing students prior to charging fees, just at a different point than the statute contemplates. We could not find any South Carolina case law considering such a situation. It is conceivable that a court would agree with this position, but the lack of an explicit means testing requirement, or other textual support, in the statute makes such an outcome unlikely, in our opinion. We think the more accurate interpretation, as adopted herein, is that offering universal free lunch precludes a school district from charging matriculation or incidental fees.

We turn then to your final question. Implied within your question is the premise that a school district must provide a waiver, reduction, or income review process, in order to comply with the statutorily required means testing. As is discussed above, the statute does not explicitly create a duty to means test students, and we think it is unlikely that a court would read one into the statute. Moreover, the statute does not require that means testing includes a waiver, reduction, or income review process. Again, we believe a court is unlikely to insert such a provision, especially in the absence of an explicit statutory duty to means test students. Because the statute does not require the processes in your question's premise, we doubt that not having a waiver, reduction, or income review process when means testing students impacts the district's authority to issue or withhold diplomas. Schools may withhold diplomas from students who have not met the graduation requirements, including mandatory attendance hours.

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Sincerely,



David Leggett
Assistant Attorney General

REVIEWED AND APPROVED BY:



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Solicitor General Emeritus