



LAW UPDATE SCHOOL BUSINESS

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UBEREATS IN SCHOOL

We are hearing of more and more districts with issues arising out of students ordering online and having meals delivered to school. UberEats is one of the most commonly found vendors of such services. Meals may be ordered by parents, to replace the school lunch or brown-bag options, or students with their own cell phones may place orders for deliveries. The issues become more significant if the school is a closed-campus school, where the students do not leave campus at lunchtime.

We have done our own research and have accessed contacts with other school lawyers, both around the state and across the nation. This issue with UberEats is of growing concern and significance nationwide. A quick online search for articles relating to both schools and UberEats reveals a number of listings on expansion of services into new territories, as well as articles about school districts denying deliveries to students at several schools. Our own Kern High School District experienced this issue in the recent past.

Both San Diego Unified and Kern High School District report site Principals took care of the situations themselves, rejecting such deliveries. For the present, we are unaware of any district-wide action having been taken, although there is concern about proving equal access and equal treatment of all district students. Several grounds are cited for the delivery denials, and it appears clear that such delivery denials, if adopted/allowed by the district, should be specifically mentioned in the Annual Notice to Parents. Some districts report some parental or community backlash, but of limited scope and duration thus far.

We have reviewed several standard CSBA-GAMUT policies and administrative regulations, and there appears to be ample authority for a district to control this situation, without the need for adoption of a new policy. Protocols and/or procedures may need to be adopted, and the District should consider whether they should be consistently applied district-wide or be discretionary on a site-by-site basis. In this Update, we will discuss the basis for the perceived authority, and some of the options available to districts.

Applicable Law.

We note it is a crime for “outsiders” to fail to register when coming onto school grounds.¹ These Penal Code provisions on access to school sites contain the following rules which apply to the UberEats situation:

1. “School grounds” includes all the buildings and grounds of the school. [Penal Code § 627.1(b)]
2. “School hours” extend from one hour before classes begin until one hour after classes end. [Penal Code § 627.1(c)]
3. No outsider shall enter or remain on school grounds during school hours without having registered with the principal or designee, except to proceed expeditiously to the office of the principal or designee for the purpose of registering. [Penal Code § 627.2]
4. If signs posted in accordance with Section 627.6 restrict the entrance or route that outsiders may use to reach the office of the principal or designee, an outsider shall comply with such signs. [Penal Code § 627.2]
5. In order to register, an outsider shall, upon request, provide the following information: name, address, occupation, age if under 21, purpose for entering the school, proof of identity, and other information as required. [Penal Code § 627.3]
6. The Principal may refuse to register an outsider if the Principal has a reasonable basis for concluding that the outsider’s presence or acts would disrupt the school, its students, or its teachers. [Penal Code § 627.4]
7. You are required to post signs at each entrance to the school grounds for these provisions to be in force. [Penal Code § 627.6]

Under these provisions, UberEats drivers could be required to register. If there is a reasonable basis for believing the deliveries would be disruptive, it is certainly within District authority to preclude registration and deliveries during classroom time, lunch time, or at all times. Disrupting classroom time would qualify as an appropriate basis for denying registration of UberEats drivers, at least during classroom time.

¹ Penal Code Section 627.1 lists categories of individuals who are not considered to be an outsider. An UberEats driver does not fit into any of the listed categories.

Education Code § 32212 is a declaration by the Legislature that interruption of class time seriously impairs the educational process, and districts are directed to formally address the problem of classroom interruptions by adopting a policy to control the interruptions. CSBA-GAMUT BP 6116 is such a policy.

Standard BP/AR Provisions.

We are looking at the model BP/ARs from CSBA-GAMUT. Your policies may differ.

BP 6116, in addressing classroom disruption, provides:

“In order to allow students to take full advantage of learning opportunities while in the classroom, *school staff shall ensure that interruptions are kept to a minimum.* Strategies to reduce classroom interruptions include, but are not limited to, the following:

1. Keep announcements made through intercom or public address systems to a minimum, limit announcements to specific times during the day, and only use the intercom or public address systems for announcements that apply to all students or groups of students. *Announcements that apply to individual students or staff members should be distributed in writing.*
2. *Establish a fixed time for the delivery of written messages to students and staff, except in cases of emergencies...*
4. *Inform school visitors that, whenever possible, they should make appointments in advance, in accordance with district policy.”*

GAMUT AR 3515 indicates:

“The Superintendent or designee shall ensure that the district's campus security plan includes strategies to:
...2. *Secure buildings from outsiders and discourage trespassing...*

These strategies may include requiring visitor registration, staff and student identification tags, and patrolling of places used for congregating and loitering.”

GAMUT BP 1250 indicates, in part:

“*To ensure the safety of students and staff and minimize interruption of the instructional program, the Superintendent or designee shall establish procedures which facilitate visits during regular school days. Visits during school hours should be arranged with the principal or designee...*”

BP 1250 also notes:

“Pursuant to Education Code 35160, the Board is responsible for maintaining order in schools under its jurisdiction. Therefore, in accordance with law, *the district may authorize school administrators to direct disruptive individuals to leave school grounds*; see AR 3515.2 - Disruptions. Penal Code § 626.7 provides that a person who is directed to leave the campus and fails to leave, or later reenters without following the school's posted registration requirements, may be guilty of a misdemeanor.”

We agree with this assessment of the law and duties of the district.

Finally, BP 1250 applies the Penal Code rules by providing districts the following options as to campus visitors:

“OPTION 1: *Any person who is not a student or staff member shall register immediately upon entering any school building or grounds when school is in session.*

OPTION 2: *All outsiders, as defined in law and administrative regulation, shall register immediately upon entering any school building or grounds when school is in session. (Penal Code § 627.2)”*

BP/AR 3515.2 provide:

“The Superintendent or designee shall *remove any individual who, by his/her presence or action, disrupts or threatens to disrupt normal operations at a school campus or any other district facility...*”

This appears to give the District the ability to control deliveries to the District Office as well as any school grounds, and certainly during classroom time.

BP 1250 also addresses the potential that an UberEats driver may be a registered sex offender, by providing:

“Any person who is required to register as a sex offender pursuant to Penal Code § 290, including a parent/guardian of a district student, *shall request written permission from the principal before entering the school campus or grounds...*”

If considering the possibility that an UberEats driver may be a registered sex offender, there is a way for the District to confirm the driver has authority to lawfully be on campus. While such persons may properly be on school grounds to conduct lawful business [Penal Code § 626.81], this is true only if they have obtained written permission specifying the permitted entrance dates. Since the driver would be required to register, as discussed above, and to give their name in the course of registering, the school could check the Megan’s Law website for a listing of the name.

Discussion.

To start, the concept of school safety is one of the foremost concerns on the minds of most parents and educators. Due to the unsettling frequency these days of incidents involving online or physical stalking, school shootings and substance abuse, sensitivities are raised to any potential issues of student safety. Additionally, disruptions to class time and other district operations should be kept to a minimum, especially classroom interruptions.

In our opinion, the concept of student safety is raised whenever outsiders have access to students. By “outsider” we mean even those with parental authorization or some legal right of access, as noted in the foregoing provisions of the Penal Code. In this instance, UberEats drivers are outsiders. The driver is, as we understand, required to deliver the food to the student, after verifying the identification of the student. We are uncertain whether an UberEats will deliver food to a schoolsite and leave it with someone other than the student. Our information so far is that the UberEats system does not permit such action.

The driver having contact with students is troublesome, even if supervised, as parents have not, in most cases, notified the District and given authority for any UberEats driver, let alone a specific UberEats driver, to have contact with their student. Even if the parental authorization for an unspecified UberEats driver were relayed to the district, the status of the driver as a potential outsider is not resolved, and registration of the driver is required. Registration may certainly be denied if permitting a delivery would interrupt class time.

It appears you may control the delivery food by UberEats or counterparts by either limiting deliveries to a specified time and place deemed not to be disruptive, or by rejecting all deliveries where based on reasonable belief that any such delivery would be disruptive. Whether you restrict deliveries to students only or also restrict deliveries to staff is your choice.

In looking at the potential for disruption arising from UberEats deliveries, we believe it would be appropriate to look at the following circumstances, asking the posed questions. A combination of factors could supply the required reasonable basis for believing disruption would result:

1. There appears to be no reasonable reason to interrupt class time, and deliveries can be restricted, especially on a closed campus, to the school office and prohibited at all other school ground locations. Delivery during classroom time could and perhaps should be barred.
2. Is there a likelihood of an excessive number of deliveries to the school office during a restricted time frame causing confusion, congestion, or requiring additional staff time during a lunch break?
3. Is there an increased cost to the District if lunch time staff must be increased in the school office?
4. Would permitting UberEats deliveries disrupt the normal and expected operations of the school food program, or otherwise adversely impact a school nutrition program? (The CDE food reference card indicates the rules apply to all food sold on campus by any entity, and the food is sold

on campus if any portion of the transaction takes place on school grounds. There may be arguments that any delivered food would have to meet the CDE nutrition requirements, and staff would have to inspect each delivery to confirm, rejecting those that do not meet any applicable standards. This raises a potential fiscal issue, as any food rejected by the district may become the subject of an argument over who pays for it.)

5. Would permitting UberEats deliveries disrupt in any way an operating federal food program? (Materials we have reviewed indicate CDE's position is that there should not be competing foods sold to students outside the school lunch program during school hours. Some deeper research and conversations with Food Service experts and CDE personnel are recommended before any approval of the UberEats deliveries during lunch.)

6. Is the District's Acceptable Use Policy (AUP) as to technology, or a policy as to the use of cell phones by students and/or staff impacted by student/staff use of cell phones during/between classes? (The policy could be easily amended to include a prohibition against students making, during school hours, commercial transactions that are not pre-approved by staff. Personal electronic devices are typically subject to the District's AUP while physically on campus.)

7. Should the District ignore the likely violation of UberEats Terms of Service as to the prohibition against use of UberEats services by minors?

8. Are there circumstances within the District that would indicate allowing UberEats deliveries would increase a social divide between racial, ethnic or socio-economic populations among the student population, or otherwise adversely impact student body relations or create an image of unequal treatment?

We believe the presence of any combination of the foregoing factors would provide a "reasonable basis for concluding that the outsider's presence or acts would disrupt the school, its students, or its teachers" as referenced in Penal Code § 627.4, and thereby authorize rejection of all or limited UberEats deliveries, at your discretion.

As to item 7 on the above list, we interpret the Uber website Terms of Service (TOS) to be violated if any minor initiates a delivery request. Uber's TOS, which apply to the UberEats services, provide:

UBER Terms of Service²

"4. Access and Use of the Services User Accounts.

² U.S. Terms of Use, Effective: December 13, 2017 - <https://www.uber.com/legal/terms/us/>

In order to use most aspects of the Services, you must register for and maintain an active personal user Services account ("Account"). You must be at least 18 years of age, or the age of legal majority in your jurisdiction (if different than 18), to obtain an Account...

User Requirements and Conduct.

The Service is not available for use by persons under the age of 18. You may not authorize third parties to use your Account, and you may not allow persons under the age of 18 to receive transportation or logistics services from Third Party Providers unless they are accompanied by you. You may not assign or otherwise transfer your Account to any other person or entity..."

Except for students who are at least 18 years of age, it appears that use of the service by a student would violate the Uber TOS, in that the minor student should not have their own account, nor should a parent or older sibling permit a minor student to use their account. We do not recommend a district become party to these violations of the TOS, or any applicable provisions of the district's AUP.

Some links to online stories about UberEats and schools follow.

http://www.bakersfield.com/news/education/hey-bud-what-s-your-problem-liberty-high-bans-uber/article_5b05fb78-f1a0-11e7-a3c8-fb059bf18fb1.html

<https://patch.com/california/baldwinpark/ubereats-expands-baldwin-park-san-gabriel-valley>

<https://primeroedge.com/trending-food-delivery-school-classrooms/>

<https://www.10news.com/news/san-diego-schools-ask-students-to-not-order-food-through-ubereats-other-delivery-services>

<http://www.winknews.com/2017/12/19/students-ordering-lunch-ubereats-school-district-says-not-fast/>

<http://www.foxnews.com/food-drink/2017/02/17/principal-bans-food-delivery-apps-at-sacramento-high-school.html>

<http://vhs-vcusd-ca.schoolloop.com/>

One school district sent out the following notice to students and parents. You can modify it to use as your own, using your own language and fitting your own circumstances. We will help with this if you so wish.

Dear XXXXX Middle School Parents,

Over the last few days, we have had UberEats deliver food to students who have ordered food from various restaurants.

Please know that we will confiscate any food items that are delivered to campus and will only allow students to have the food after school. Please do not order lunch for your child via UberEats or allow your child to order food for delivery.

Students are allowed to bring lunch or buy a student lunch from our cafeteria.

Thank you for your understanding and support.

If you adopt a prohibition, we suggest you add language to the “Annual Notice to Parents” sent out at the start of each year. Please let us know whether you desire additional input, or support in crafting policy changes, press releases or notices to parents.

Please feel free to contact our office if you have questions concerning these or related issues.

— William A. Hornback

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