



June 21, 2019

Legal Opinion 19-01: Student athlete meals

President Keith Curry, Compton Community College, has requested an opinion on the following question:

Does Education Code sections 67360 and 67361 prohibit California community college student-athletes from receiving meals from their college?

Conclusion:

The Education Code permits California community college athletes to receive meals, and other forms of nutritional support, provided they are not intended to induce, encourage, or reward an athlete's application, enrollment, or attendance at the college, or the athlete's participation in intercollegiate sporting events, contests, exhibitions, or programs.

This opinion provides an analysis of the Education Code provisions and explains how to avoid violating their terms. In addition, we note that this question arises at a time when widespread food and housing insecurity affects California's community college students. This underscores both the importance of nutrition to allow healthful athletic participation, and the need to ensure that nutritional support for athletes does not undermine efforts to support all students. The issue of widespread food insecurity, combined with the law's mandate not to induce participation, suggests that food support for student-athletes should be closely tailored to the nutritional needs associated with their participation.

In recent years, the National Collegiate Athletic Association's Division I and Division II bylaws have been amended in recent years to provide colleges with significant flexibility to provide nutritional support to student-athletes. These bylaws provide important context for what is permissible under the Education Code, for reasons that are explained below. The California Community College Athletic Association bylaws are more restrictive than the Education Code requires due to competing policy considerations beyond the scope of this opinion.

A. BACKGROUND ON THE NUTRITIONAL NEEDS OF STUDENT-ATHLETES

According to Dietary Guidelines for Americans, sedentary women generally need 1,600 to 2,400 calories per day to maintain a healthy body weight, while sedentary men

usually need 2,000 to 3,000 calories per day.¹ Too frequently college students, and in particular California community college students, are not able to meet these nutritional needs.²

Student-athlete³ nutritional concerns may be even more acute because their caloric needs will typically exceed those of sedentary individuals.⁴ Male athletes need 22.7 calories per pound of body weight on a daily basis. Under this calculation, a 170-pound male athlete would require 3,800 calories per day. Female athletes need 20 to 23 calories per body weight per day. A female athlete weighing 140 pounds would need 2,800 to 3,220 calories per day. In addition to caloric intake, student athletes frequently lack adequate daily intake of protein and carbohydrates.⁵

Current research indicates that the majority of student-athletes have a difficult time meeting nutritional recommendations, and their daily caloric intake is typically

¹ U.S. Dept. Ag., Dietary Guidelines for Americans 2015-2020 (“Dietary Guidelines”), Appendix 2, [Link to Guidelines](https://health.gov/dietaryguidelines/2015/resources/2015-2020_Dietary_Guidelines.pdf) [https://health.gov/dietaryguidelines/2015/resources/2015-2020_Dietary_Guidelines.pdf], visited May 29, 2019. Unless indicated otherwise, subsequent references to nutritional needs are from the Dietary Guidelines.

² S. Goldrick-Rab, et al., College and University Basic Needs Insecurity: A National #RealCollege Survey Report, Apr. 30, 2019, [Link to Report](https://hope4college.com/wp-content/uploads/2019/04/HOPE_realcollege_National_report_digital.pdf) [https://hope4college.com/wp-content/uploads/2019/04/HOPE_realcollege_National_report_digital.pdf], visited May 29, 2019.

³ “Student athlete” is defined by the Education Code to mean “a student at a public or private institution of postsecondary education who engages in, is eligible to engage, or may be eligible to engage, in, any intercollegiate sporting event, contest, exhibition, or program, or an individual who has applied, is eligible to apply, or may be eligible to apply in the future to a public or private institution of postsecondary education.” (Ed. Code, § 67360, subd. (c).) While often associated with a “noble ideal,” the term has a troublesome history from its development as a shield against liability. (See The Shame of College Sports, The Atlantic Magazine, Taylor Branch (Oct. 2011), [Link to Article](https://www.theatlantic.com/magazine/archive/2011/10/the-shame-of-college-sports/308643/) [https://www.theatlantic.com/magazine/archive/2011/10/the-shame-of-college-sports/308643/], accessed on May 21, 2019.

⁴ See NCAA Nutrition Guidelines, [Link to NCAA Guidelines](http://www.ncaa.org/sport-science-institute/nutrition) [http://www.ncaa.org/sport-science-institute/nutrition], visited May 29, 2019.

⁵ See generally, American Academy of Sports Medicine, Nutrition and Athletic Performance, [Link to Article](https://journals.lww.com/acsm-msse/Fulltext/2009/03000/Nutrition_and_Athletic_Performance.27.aspx) [https://journals.lww.com/acsm-msse/Fulltext/2009/03000/Nutrition_and_Athletic_Performance.27.aspx], visited May 29, 2019.

significantly below that recommended for highly active individuals.⁶ Inadequate food consumption causes student athletes to fail to meet nutrition standards, which negatively affects performance on the field and, more importantly, in the classroom. In response to recent research in this area, many colleges and universities are incorporating nutrition education into their strength and conditioning programs.

State legislatures and athletic associations throughout the country are also paying attention to student food insecurity.⁷ In 2014 and 2015, in response to increased press coverage of student-athlete hunger, the NCAA amended its rules for Division I and II athletes to allow colleges to provide virtually unlimited meals and snacks to support athletic participation. (NCAA, Div. I Bylaws § 16.5; NCAA Div. II Bylaws, § 16.5.) However, the CCCAA bylaws revised in 2014 are more restrictive, and do not appear closely aligned either to the inducement prohibitions of the Education Code, or to athletic nutritional needs associated with athletic participation, as are the NCAA Division I and II rules.

B. The Legislature’s Prohibition on Inducements to Student-Athletes Covers Meals Only In Narrow Circumstances

The California Legislature enacted Education Code sections 67360 and 67361 in Assembly Bill 2753 (“AB 2753”) in 1986 to prohibit efforts to “induce, encourage, or reward” student participation in collegiate athletics. However, as applied to the provision of meals, AB 2753 is a very narrow prohibition, and even this narrow prohibition is subject to a significant safe harbor provision that would protect colleges from violations.

The Education Code prohibits inducements in two ways: it states that “no person shall give, offer, promise, or attempt to give any money or other thing of value to any particular student athlete or member of the immediate family of the student athlete” to induce, encourage, or reward (1) the student athlete's application, enrollment, or attendance at the college; or (2) the student athlete’s participation in an intercollegiate sporting event, contest, exhibition, or program.” (Ed. Code, §§ 67360, subd. (a), 67360, subd. (a) [prohibiting student athletes from soliciting or accepting things of value as an inducement, encouragement or reward].)⁸ Accordingly, to be

⁶ Collegiate and Professional Sports Dieticians Association, State of the Science: Student-Athlete Feeding, [Link to Article](http://www.sportsrd.org/wp-content/uploads/2014/09/State_of_the_Science_on_feeding.pdf) [http://www.sportsrd.org/wp-content/uploads/2014/09/State_of_the_Science_on_feeding.pdf], accessed May 29, 2019.

⁷ Recent efforts in the California Legislature to address student hunger generally include Assembly Bill 1747 (2016) [increasing student access to Restaurant Meals Program] and Assembly Bill 1894 (2018) [authorizing MOU between CSU and CDSS to decrease student hunger].

⁸ Violations of the statute may result in civil penalties, enforceable by the district attorney with jurisdiction over the county in which the violation occurred.

prohibited, a meal must meet both of the following requirements: it must be a “thing of value” provided to a particular student athlete, and it must be provided to “induce, encourage, or reward” either college attendance or athletic participation. If either of these criteria is not met, a meal would not be prohibited.

AB 2753’s safe harbor provision allows community colleges to adopt an official written policy that complies with the bylaws of the National Collegiate Athletic Association. Any actions taken by school officials in compliance with such a policy would be protected. (Ed. Code, § 67369, subd. (b).) Accordingly, the content of NCAA rules is relevant to understanding AB 2753.

1. A Meal is a Thing of Value

Although AB 2753 does not define the meaning of “a thing of value,” a review of the bill’s legislative history tends to support the conclusion that “a thing of value” would include meals. The Department of Finance appeared to view AB 2753 as prohibiting the giving or attempting to give “any money or *valuables* to any student athlete.” (Dept. Finance, AB 2753 Enrolled Bill Report, Sept. 4, 1986, emphasis added.)⁹ And former Assembly Speaker Willie Brown, who authored AB 2753, described its purpose as prohibiting “the offering of money and gifts to student and incentives for participation in intercollegiate sports.” (Brown Letter to Governor Deukmejian, Aug. 29, 1986 [“Brown Letter”].)¹⁰ Speaker Brown indicated the legislation was prompted by an “epidemic” of illegal recruiting practices bringing destruction to the careers of young athletes and “the disgrace of honorable institutions.” (Brown Letter.) These statements tend to indicate that AB 2753 was intended to regulate more egregious conduct than the provision of meals to athletes.

However, the Legislature recognized that AB 2753’s text was broad enough to prohibit trivial conduct such as a neighbor giving an athlete a college sweatshirt as a “friendly inducement,” or “a pizza parlor owner who sends a free pizza to a winning team’s table.” (Assm. Rules Committee Analysis, May 7, 1986, p. 3.) The breadth of the legislation, combined with the potentially severe civil penalties it imposed prompted the Criminal Law Section of the California Bar Association to oppose the bill on the grounds that the conduct it regulates should not be criminalized. (Judith A. Harper letter to Willie Brown, J., May 29, 1986.) These critiques cause the Legislature to consider, but ultimately not adopt, a \$50 floor on the value of regulated gifts. The Assembly Committee on Public Safety recognized that the failure to provide a floor would result in student-athletes being treated

⁹ All legislative history materials referenced in this Opinion are available from the Office of General Counsel.

¹⁰ See also AB 2753 Assembly Rules Committee Analysis re Concurrence in Senate Amendments, p. 2 Aug. 19, 1986.

with more severity than politicians. (*Id.*; Assm. Public Safety Analysis, Apr. 14, 1986, p. 3.)

The language of AB 2753, together with the legislative history described above, leads us to conclude that a meal falls within the intended meaning of “a thing of value” regulated by the Education Code.

2. AB 2753 Only Prohibits Meals Given as an Inducement to Participation

A violation of AB 2753 would also require an intention to induce, encourage or reward participation or enrollment. In other words, a college may provide a meal to an athlete, and there would be no violation unless the meal was intended to “induce, encourage, or reward.” This language indicates that it would not be a violation to provide student-athletes meals for other reasons. For example, a meal provided to an athlete to provide nutrition, or to celebrate a birthday or other special event, would be permissible under AB 2753.

3. NCAA Division I and II Bylaws Provide a Safe Harbor

AB 2753 provides a significant safe harbor provision for colleges that act in accordance with “official written policies” that are in compliance with the bylaws of the National Collegiate Athletic Association.¹¹ For community colleges, this means that conduct consistent with such policies would not be subject to the penalties imposed by AB 2753. However, these policies would not insulate the college from sanctions imposed by the CCCAA for violation of its own bylaws—which are more restrictive than the NCAA Division I and II bylaws.

In 2014, the NCAA significantly liberalized its rules allowing Division I student-athletes to receive meals and snacks in conjunction with their athletic participation, including provisions governing preseason practice expenses, training table meals, meals incidental to participation, unlimited snacks, and nutritional supplements to provide additional calories and electrolytes. (NCAA, Div. I Bylaws § 16.5.2.) The NCAA followed this with similar action covering Division II athletes in 2015. (NCAA, Div. II Bylaws § 16.5.)¹²

¹¹ It is not clear why the Legislature did not also allow the safe harbor based upon the CCCCA bylaws.

¹² See NCAA, Council approves meals, other student-athlete well-being rules, Apr. 15, 2014, available at [Link to Article](http://www.ncaa.org/about/resources/media-center/news/council-approves-meals-other-student-athlete-well-being-rules) [http://www.ncaa.org/about/resources/media-center/news/council-approves-meals-other-student-athlete-well-being-rules] accessed May 29, 2019; NCAA Division II adopts meals legislation, three membership-sponsored proposals, Jan. 18, 2015, available at [Link to Article](http://www.ncaa.org/about/resources/media-center/news/division-ii-adopts-meals-legislation-three-membership-sponsored-proposals) [http://www.ncaa.org/about/resources/media-center/news/division-ii-adopts-meals-legislation-three-membership-sponsored-proposals], accessed May 29, 2019.

The NCAA bylaws for Division III athletes have not been revised since 2011, and while meals are permitted in connection with athletic participation at home games, they have

Under the safe harbor provisions of AB 2753, formal college policies consistent with the NCAA Division I or II bylaws are authorized by the Legislature. The test of these bylaws are appended as Appendices to this Opinion.

C. The CCAA’s Bylaws Are More Restrictive Than Required By AB 2753

This Opinion is focused upon whether meals for student-athletes are permitted by the Education Code. However, the California Community College Athletic Association¹³ is permitted to, and has, adopted Bylaws that are more restrictive than required by AB 2753. Bylaw 2.11.4 states that “giving of special privileges or special consideration to student-athletes is forbidden” except for “infrequent” special events, including banquets and awards. The bylaws also allow additional limited exceptions for meals and lodging “in conjunction with travel to away contests” and for “meals provided prior to home contests.”¹⁴ Post-game meals are permitted by the CCCAA only for infrequent “special occasions,” and may not be provided by an individual(s) or agency after every home game as a form of subsidization. (CCCAA Bylaws 2.11.4.B.) There appears to be no allowance for nutrition associated with training activities.

The CCCAA’s bylaws reflect the CCCAA’s own policy choices beyond what the Education Code requires. They do reflect the Education Code’s concern for inducements, but the Education Code does not refer to subsidization, frequency, or the timing of meals before or after competition as elements of prohibited conduct. And in contrast to the NCAA Division I and II bylaws adopted in 2014 and 2015, the CCCAA’s bylaws governing the provision of meals do not appear aligned to student-athletes’ nutritional needs, which are present throughout their participation, not only at the time of contests.

D. CONCLUSION

The Education Code prohibits the provision of meals to student-athletes only if the purpose of the meals is to induce athletic participation or academic enrollment. Otherwise, the provision of meals to student-athletes is not prohibited by the Education Code, but may violate the CCCAA’s Bylaws. In addition, to the extent there

not been liberalized to the same extent as the Division I and Division II rules. (NCAA, Div. III Bylaws § 16.5.) These rules appear to be similarly restrictive to the bylaws of the CCCAA discussed below.

¹³ The CCCAA draws its authority from Education Code, which describes an “athletic association” as “any organization that is responsible for governing intercollegiate athletic programs.” (Ed. Code, § 67451, subd. (a).) The CCCAA was founded in 1929 as the California Junior College Federation, and acts under a delegation of authority from the Community College League of California. (See About the CCCAA, available at [Link to CCCAA Internet Site](https://www.cccaasports.org/about/about) [https://www.cccaasports.org/about/about], accessed May 29, 2019).)

¹⁴ Post-game meals are only permitted by the CCCAA if they are infrequent “special occasions.” (CCCAA Bylaws 2.11.4.B.)

is any ambiguity in what the Education Code permits, formal college policies that conform to NCAA bylaws provide a safe harbor for any violation of AB 2753.

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