

GOVERNMENT OF NATIONAL CAPITAL TERRITORY OF DELHI
DIRECTORATE OF EDUCATION
(PRIVATE SCHOOL BRANCH)
OLD SECRETARIAT, DELHI-110054

No. F.DE.15(195)/PSB/2021 / 3376-80

Dated: 09/09/21

ORDER

WHEREAS, every school is required to file a full statement of fees every year before the ensuing academic session under section 17(3) of the Delhi School Education Act, 1973 (hereinafter read as '**the Act**') with the Director. Such statement will indicate estimated income of the school derived from fees, estimated current operational expenses towards salaries and allowances payable to employees etc in terms of Rule 177(1) of the Delhi School Education Rules, 1973 (hereinafter read as '**the Rules**').

AND WHEREAS, as per section 18(5) of the Act read with section 17(3), 24 (1) of the Act and Rule 180 (3) of the DSEA & R, 1973, responsibility has been conferred upon the Director (Education) to examine the audited financial, account and other records maintained by the school at least once in each financial year. The Section 18(5) and Section 24(1) of the Act and Rule 180 (3) have been reproduced as under:

Section 18(5): '*the managing committee of every recognised private school shall file every year with the Director such duly audited financial and other returns as may be prescribed, and every such return shall be audited by such authority as may be prescribed*'

Section 24(1): '*every recognised school shall be inspected at least once in each financial year in such manner as may be prescribed*'

Rule 180 (3): '*the account and other records maintained by an unaided private school shall be subject to examination by the auditors and inspecting officers authorised by the Director in this behalf and also by officers authorised by the Comptroller and Auditor-General of India.*'

AND WHEREAS, besides the above, the Hon'ble Supreme Court in the judgment dated 27.04.2004 passed in Civil Appeal No. 2699 of 2001 titled Modern School Vs. Union of India and others has conclusively decided that under section 17(3), 18(4) read along with rule 172, 173, 175 and 177 of the Rules, Directorate of Education has the authority to regulate the fee and other charges to prevent the profiteering and commercialization of education.

AND WHEREAS, it was also directed by the Hon'ble Supreme Court to the Director of Education in the aforesaid matter titled Modern School Vs. Union of India and others in Para 27 and 28 in case of Private unaided Schools situated on the land allotted by DDA at concessional rates that:



"27....

(c) It shall be the duty of the Director of Education to ascertain whether terms of allotment of land by the Government to the schools have been complied with...

28. We are directing the Director of Education to look into the letters of allotment issued by the Government and ascertain whether they (terms and conditions of land allotment) have been complied with by the schools.....

.....If in a given case, Director finds non-compliance of above terms, the Director shall take appropriate steps in this regard."

AND WHEREAS, the Hon'ble High Court of Delhi vide its judgement dated 19.01.2016 in writ petition No. 4109/2013 in the matter of Justice for All versus Govt. of NCT of Delhi and others has reiterated the aforesaid directions of the Hon'ble Supreme Court and has directed the Director of Education to ensure the compliance of term, if any, in the letter of allotment regarding the increase of the fee by all the recognized unaided schools which are allotted land by DDA/ land owing agencies.

AND WHEREAS, accordingly, this Directorate vide order No. F.DE.15 (40)/PSB/2019/2698-2707 dated 27.03.2019, directed that all the Private Unaided Recognized Schools running on the land allotted by DDA/other Govt. agencies on concessional rates or otherwise, with the condition to seek prior approval of Director of Education for increase in fee, are directed to submit the their proposals, if any, for prior sanction for increase in fee for the session 2018-19 and 2019-20.

AND WHEREAS, in pursuance to order dated 27.03.2019 of this Directorate, **Brain International School (School ID-1618180), Vikas Puri, Delhi-110018** had submitted the proposal for fee increase for the academic session 2019-20. Accordingly, this order is dispensed off the proposal for enhancement of fee submitted by the said school for the academic session **2019-20**.

AND WHEREAS, in order to ensure that the proposals submitted by the schools for fee increase are justified or not, this Directorate has deployed teams of Chartered Accountants at HQ level who has evaluated the fee increase proposals of the school very carefully in accordance with the provisions of the DSEA, 1973, the DSER, 1973 and other orders/ circulars issued from time to time by this Directorate for fee regulation.

AND WHEREAS, in the process of examination of fee hike proposal filed by the aforesaid School for the academic session 2019-20, necessary records and explanations were also called from the school through email. Further, the school was also provided an opportunity of being heard on 08.11.2019 to present its justifications/ clarifications on fee increase proposal including audited financial statements and based on the discussion, school was further asked to submit necessary documents and clarification on various issues noted. During the aforesaid hearing, compliances against order no. F.DE.15(96)/PSB/2019/1433-1437 dated 07.02.2019 issued for academic session 2017-18 were also discussed and school submissions were taken on record.

AND WHEREAS, the reply of the school, documents uploaded on the web portal for fee increase and subsequent documents submitted by the school were thoroughly evaluated by the team of Chartered Accountants. And after evaluation of fee proposal of the school, the key findings and status of compliance against order no. F.DE.15(96)/PSB/2019/1433-1437 dated 07.02.2019 issued for academic session 2017-18 are as under:

A. Financial Discrepancies

1. As per direction no. 2 included in the Public Notice dated 04.05.1997, "*it is the responsibility of the society who has established the school to raise such funds from their own sources or donations from the other associations because the immovable property of the school becomes the sole property of the society*". Additionally, Hon'ble High Court of Delhi in its judgement dated 30 Oct 1998 in the case of Delhi Abibhavak Mahasangh concluded that "*The tuition fee cannot be fixed to recover capital expenditure to be incurred on the properties of the society.*" Also, Clause (vii) (c) of Order No. F.DE/15/Act/2K/243/KKK/ 883-1982 dated 10.02.2005 issued by this Directorate states "*Capital expenditure cannot constitute a component of the financial fee structure.*"

Moreover, Rule 177 of DSER, 1973 states that "income derived by an unaided recognised school by way of fees shall be utilised in the first instance, for meeting the pay, allowances and other benefits admissible to the employees of the school. Provided that savings, if any, from the fees collected by such school may be utilised by its management committee for meeting capital or contingent expenditure of the school, or for one or more of the following educational purposes, namely award of scholarships to students, establishment of any other recognised school, or assisting any other school or educational institution, not being a college, under the management of the same society or trust by which the first mentioned school is run. And the aforesaid savings shall be arrived at after providing for the following, namely:

- a) Pension, gratuity and other specified retirement and other benefits admissible to the employees of the school;
- b) The needed expansion of the school or any expenditure of a developmental nature;
- c) The expansion of the school building or for the expansion or construction of any building or establishment of hostel or expansion of hostel accommodation;
- d) Co-curricular activities of the students;
- e) Reasonable reserve fund, not being less than ten percent, of such savings.

Accordingly, based on the aforementioned public notice and High Court judgement, the cost relating to land and construction of the school building has to be met by the society, being the property of the society and school funds i.e. fee collected from students is not to be utilised for the same.

On review of audited financial statements for FY 2017-18, it is noted that school has incurred expenditure on renovation & construction of building out of school funds totalling to Rs.



57,41,192 in FY-2017-18, which is not in accordance with the aforementioned provisions. The expenditure incurred on renovation and construction were in the nature of capital expenditure on the building. Further, these capital expenditures were incurred by the school without complying the requirements prescribed in Rule 177 of DSER, 1973. Similar observation was also noted in order no. F.DE.15(96)/PSB/2019/1433-1437 dated 07.02.2019 wherein it was noted that in FY 2014-15, 2015-16 and 2016-17 school has incurred expenditure on renovation and construction of building amounting Rs. 2,83,24,395 in contravention of aforesaid provisions and thus, required to recover the said amount from the society within 30 days from the date of order. However, school has not recovered any amount till date. Moreover, school has incurred additional expenditure for renovation and capital expenditure in FY 2017-18. Accordingly, the total amount of Rs. 3,40,65,587 incurred by the school towards renovation & construction of building is hereby added to the fund position of the school considering the same as funds available with the school and with the direction to the school to recover this amount from the Society within 30 days from the date of this order.

2. As per Rule 177 of DSER, 1973 income derived by an unaided recognised school by way of fees shall be utilised in the first instance, for meeting the pay, allowances and other benefits admissible to the employees of the school. Provided that savings, if any, from the fees collected by such school may be utilised by its management committee for meeting capital or contingent expenditure of the school, or for one or more of the following educational purposes, namely award of scholarships to students, establishment of any other recognised school, or assisting any other school or educational institution, not being a college, under the management of the same society or trust by which the first mentioned school is run. And the aforesaid savings shall be arrived at after providing for the following, namely:
 - a) Pension, gratuity and other specified retirement and other benefits admissible to the employees of the school;
 - b) The needed expansion of the school or any expenditure of a developmental nature;
 - c) The expansion of the school building or for the expansion or construction of any building or establishment of hostel or expansion of hostel accommodation;
 - d) Co-curricular activities of the students;
 - e) Reasonable reserve fund, not being less than ten percent, of such savings.

However, on review of audited financial statements for FY 2016-17 to 2018-19 it is noted that school funds have been used for purchase of cars and repayment of loan taken for purchase of cars and buses without compliance of Rule 177 of DSER, 1973. The salaries have not been paid in accordance with recommendations of 7th CPC to the staff of the school and also, necessary investments have not been made against gratuity and leave encashment with LIC. School has paid Rs. 56,02,379 as principal amount of loan and Rs. 14,63,813 as interest in FY 2016-17 to 2018-19 without complying provisions of Rule 177 of DSER, 1973 and therefore, the same has been added as funds available with school and



with the direction to the school to recover this amount from the Society within 30 days from the date of this order.

3. As per order no. F.DE.15(96)/PSB/2019/1433-1437 issued dated 07.02.2019 for FY 2017-18, it was noted that the school gave concessions in fees to 9 children of the member of management/society. These concessions in fees to the children of the member of management/society were considered as indirect way of remunerating members of the management/ society. And the school was directed to recover full fee from the members of management/ society from FY 2016-17 and onwards within 30 days from the date of that order. The school was strictly directed not to give any concessions to the children of the members of management/society in future also.

The school has provided number of children of members of management/ society to whom fee concessions were given but did not provide complete details of amount of concessions given to them from FY 2016-17 onwards. Further, the details of amount to be recovered and amount recovered from the members of management/society was not made available. Accordingly, compliance regarding recovery of the fee concessions from the members of management/ society could not be verified at the time of evaluation of proposal of the school. The School is thus ordered to charge full fee from children of members of management/society and recover the amount of concession given to them from FY 2016-17 onwards and submit compliance report within 30 days from the date of issue of this order.

4. Hon'ble High Court of Delhi in its judgement dated 30.10.1998 in the case of Delhi Abibhavak Mahasangh concluded that "*The tuition fee cannot be fixed to recover capital expenditure to be incurred on the properties of the society.*" Further, Clause (vii) (c) of Order No. F.DE/15/Act/2K/243/KKK/ 883-1982 dated 10.02.2005 issued by this Directorate states "*Capital expenditure cannot constitute a component of the financial fee structure.*"

Also, Directorate of Education, in its Order No. DE.15/Act/Duggal.Com/ 203/99/23033-23980 dated 15.12.1999, indicated the heads of fee/ fund that recognised private unaided school can collect from the students/ parents, which include:

- Registration Fee
- Admission Fee
- Caution Money
- Tuition Fee
- Annual Charges
- Earmarked Levies
- Development Fee

The aforementioned order was also upheld by the Hon'ble Supreme Court in the case of Modern School vs Union of India & Others.



Further, as per Section 13 of Right to Education Act, 2009, the school should not charge capitation fee from the students at the time of admission. Further, the Supreme Court in its Judgement dated 2 May, 2016 in the matter of Modern Dental College And Research Centre Vs. State of Madhya Pradesh [Medical Council of India] held that education is a noble profession. *"Every demand of capitation fee by educational institutions is unethical & illegal. It emphasised that the commercialization and exploitation is not permissible in the education sector and institutions must run on 'no-profit-no-loss' basis".*

Hon'ble Supreme Court categorically held that "Though education is now treated as an 'occupation' and, thus, has become a fundamental right guaranteed under Article 19(1) (g) of the Constitution, at the same time shackles are put in so far as this particular occupation is concerned, which is termed as noble. Therefore, profiteering and commercialization are not permitted, and no capitation fee can be charged. The admission of students has to be on merit and not at the whims and fancies of the educational institutions,"

However, it is noted that the school's fee structure includes 'Infrastructure and Facility creation, Events and celebration charges, education trips, Teacher Orientation & Training fees (IFC, ECC, ET, ETT Charges)', which is collected from students at the time of admission as one-time charge of Rs. 15,000 for incurring capital expenditure including that on the school building. The aforesaid collection of fee is tantamount to charging of capitation fee.

During hearing school has submitted that the aforesaid fee was collected by it till 15.02.2019 from 77 students amounting Rs. 11,55,000 and the same was stopped post receiving of order no. F.DE.15(96)/PSB/2019/1433-1437 issued dated 07.02.2019 for FY 2017-18. Further, as per audited financial statements of the school for FY 2017-18, school has collected Rs. 22,80,000 as IFC, ECC, ET, ETT Charges. In order dated 07.02.2019 it was noted that the school had collected Rs. 15,75,000 in FY 2016-2017 and was directed to stop collection of aforesaid capitation fee immediately.

In view of aforesaid, school is once again directed to not charge any capitation fee from students and to refund the aforesaid fee to the concerned students or adjust their future fee against this amount. The school is required to calculate the amount of fee charged from the students from FY 2016-17 to 2018-19 (collected upto 15.02.2019) and submit the compliance of refund or adjustment of fee within 30 days from the date of this order. Accordingly, the amount collected in FY 2016-17 to FY 2018-19 amounting Rs. 50,10,000 has been adjusted while deriving the fund position of the school.

B. Other Discrepancies

1. As per Clause 14 of Order No. F.DE./15 (56) /Act /2009 / 778 dated 11.02.2009, Development Fee, not exceeding 15% of the total annual tuition fee may be charged for supplementing the resources for purchase, upgradation and replacement of furniture fixtures and equipment's. Development fee, if required to be charged, shall be treated as capital receipt and shall be collected only if the school is maintaining a Depreciation Reserve



Fund, equivalent to the depreciation charged in the revenue accounts and the collection under this head along with and income generated from the investment made out of this fund will be kept in a separately maintained Development Fund Account.

Also, Directorate's order No. F. DE-15/ACT-I/WPC-4109/PART/13/889 dated 4.09.2017 directed the school not to charge development fees till the time the school comply with the instructions in this regard in entirety. While, the school has not ensured compliance with the requirements of Clause 14 of Order No. F.DE./15 (56)/ Act/2009/778 dated 11.02.2009, it has continued to charge development fee from students. The school is strictly directed not to charge development fee from students till the time it ensures compliance. Non-compliance of this will be dealt in accordance with section 24(4) of DSEA, 1973.

And as per para 99 of Guidance Note on Accounting by Schools (2005) issued by the Institute of Chartered Accountants of India states "Where the fund is meant for meeting capital expenditure upon incurrence of the expenditure the relevant asset account is debited which is depreciated as per the recommendations contained in this Guidance Note. Thereafter the concerned restricted fund account is treated as deferred income to the extent of the cost of the asset and is transferred to the credit of the income and expenditure account in proportion to the depreciation charged every year." Further, Para 102 of the abovementioned Guidance Note states "In respect of funds, schools should disclose the following in the schedules/notes to accounts:

- a) In respect of each major fund, opening balance, additions during the period, deductions/utilization during the period and balance at the end;)
- b) Assets, such as investments, and liabilities belonging to each fund separately
- c) Restrictions, if any, on the utilization of each fund balanced)
- d) Restrictions, if any, on the utilization of specific assets."

And as per para 67 of the Guidance Note on Accounting by Schools issued by the Institute of Chartered Accountants of India, "The financial statements should disclose, inter alia, the historical cost of fixed assets."

On review of financial statements for FY 2018-19 submitted by the School it has been noted that school has not being maintaining depreciation reserve fund as per para 99 of guidance note mentioned above as well as not following the accounting treatment for deferred income for the asset purchased/constructed during the year. Moreover, it is also noted that the school had not deposited funds collected as development fees in a separate bank account and no interest was credited to development fund. It is also noted that the development fund balance has been shown negative in the audited financial statements for FY 2016-17, 2017-18 and 2018-19 and it appears that due to past accounting practices of utilising development fund for upgradation and improvement of building of society has negative opening balance of development fund. School has not provided any details or clarification regarding this accounting treatment and presentation. Moreover, the amount shown in the schedule of development fund account as utilisation of funds does not match with the amount of fixed



assets purchased during the year as shown in the schedule of fixed assets. Thus, it is clear that the utilisation of development fund and its presentation in the financial statements is not in accordance with provisions of clause 14 of order 11.02.2009, accounting treatment suggested in GN-21 Accounting by school as issued by ICAI.

Therefore, the school is directed to follow abovementioned guidance note and orders of the Directorate for accounting practices and presentation laid down in it and the same shall be verified at the time of evaluation of fee proposal of the school for next financial year.

2. Rule 176 - 'Collections for specific purposes to be spent for that purpose' of the DSER, 1973 states "*Income derived from collections for specific purposes shall be spent only for such purpose.*"

Clause 22 of Order No. F.DE./15 (56) /Act /2009 / 778 dated 11.02.2009 states that *Earmarked levies shall be charged from the user student only. Earmarked levies for the services rendered shall be charged in respect of facilities involving expenditure beyond the expenditure on the earmarked levies already being charged for the purpose. They will be calculated and collected on 'no profit no loss' basis and spent only for the purpose for which they are being charged. All transactions relating to the earmarked levies shall be an integral part of the school accounts*

Sub-rule 3 of Rule 177 of DSER, 1973 states "*Funds collected for specific purposes, like sports, co-curricular activities, subscriptions for excursions or subscriptions for magazines, and annual charges, by whatever name called, shall be spent solely for the exclusive benefit of the students of the concerned school and shall not be included in the savings referred to in sub-rule (2).*" Further, Sub-rule 4 of the said rule states "*The collections referred to in sub-rule (3) shall be administered in the same manner as the monies standing to the credit of the Pupils Fund as administered.*"

Also, earmarked levies collected from students are a form of restricted funds, which, according to Guidance Note on Accounting by Schools issued by the Institute of Chartered Accountants of India, are required to be credited to a separate fund account when the amount is received and reflected separately in the Balance Sheet.

Further, the aforementioned Guidance Note lays down the concept of fund based accounting for restricted funds, whereby upon incurrance of expenditure, the same is charged to the Income and Expenditure Account ('Restricted Funds' column) and a corresponding amount is transferred from the concerned restricted fund account to the credit of the Income and Expenditure Account ('Restricted Funds' column).

From the information provided by the school and taken on record, it has been noted that the school charges earmarked levies in the form of Transport Fees, Smart Class fee and Lab charges from students. However, the school has not maintained separate fund accounts for these earmarked levies and the school has been generating surplus from earmarked levies,



which has been utilised for meeting other expenses of the school, or has been incurring losses (deficit), which has been met from other fees/income. Details of calculation of surplus/deficit, based on breakup of expenditure provided by the school for FY 2016-17, FY 2017-18 and FY 2018-2019 are given below:

(Figures in Rs.)

Particulars	Smart Class	Transport Charges [^]	Lab Charges
For the year 2016-17			
Fee Collected during the year (A)	21,84,887	73,00,565	2,46,888
Expenses during the year (B)	8,25,033	91,28,284	1,66,087
1) Difference for the year (A-B)	13,59,854	(18,27,719)	80,801
For the year 2017-18			
Fee Collected during the year (A)	23,91,367	76,48,216	1,66,827
Expenses during the year (B)	9,03,130	65,37,381	2,24,173
2) Difference for the year (A-B)	14,88,237	11,10,835	(57,346)
For the year 2018-19			
Fee Collected during the year (A)	26,86,318	82,36,450	2,50,245
Expenses during the year (B)	16,41,620	66,71,006	2,20,482
3) Difference for the year (A-B)	10,44,698	15,65,444	29,763
Total Surplus (1+2+3)	38,92,789	8,48,560	53,218

[^] The above include principal repayment of loan and interest on loan. The school did not provide details of salary of staff involved in transportation service, which has not been included as expense in figure above and also did not apportion depreciation on vehicles used for transportation of students in the expenses stated in table above for creating fund for replacement of vehicles, which should have been done to ensure that the cost of vehicles is apportioned to the students using the transport facility during the life of the vehicles.

During hearing, the school explained that annual charges collected from students are not sufficient to meet the revenue expenses of the school. Thus, the surplus generated from earmarked levies has been applied towards meeting other revenue expenses of the school on account of which fund balance of earmarked levies could not be separated from the total funds maintained by the school. Accordingly, total fees (including earmarked fee) have been included in the budgeted income and budgeted expenses (included those for earmarked purposes) have been considered while deriving the fund position of the school.

The school is hereby directed to maintain separate fund account depicting clearly the amount collected, amount utilised and balance amount for each earmarked levy collected from students. Unintentional surplus/deficit, if any, generated from earmarked levies has to be utilized or adjusted against earmarked fees collected from the users in the subsequent year. Further, the school should evaluate costs incurred against each earmarked levy and propose the revised fee structure for earmarked levies during subsequent proposal for enhancement of fee ensuring that the proposed levies are calculated on no-profit no-loss basis.

3. Accounting Standard 15 - 'Employee Benefits' issued by the Institute of Chartered Accountants of India states "Accounting for defined benefit plans is complex because actuarial assumptions are required to measure the obligation and the expense and there is a possibility of actuarial gains and losses." Further, the Accounting Standard defines Plan Assets (the form of investments to be made against liability towards retirement benefits) as:

- (a) Assets held by a long-term employee benefit fund; and
- (b) Qualifying insurance policies.

Clause 24 of Order No. F.DE./15 (56) /Act / 2009 / 778 dated 11.02.2009 states "Every recognized unaided school covered by the Act, shall maintain the accounts on the principles of account applicable to non-business organization/ not-for-profit organization as per Generally Accepted Accounting Principles(GAAP).Such schools shall prepare their Financial statement consisting of Balance Sheet, I&E Account and Receipt & Payment account every year".

Further, Para 60 of Guidance Note on Accounting by Schools (2005) issued by the Institute of Chartered Accountants of India states "A defined benefit scheme is a scheme under which amounts to be paid as retirement benefits are determined usually by reference to employee's earnings and/or years of service. Examples of defined benefit schemes are pension and gratuity. Defined benefit schemes should be accounted for as follows:

An appropriate charge to the income and expenditure account for a year should be made through a provision for the accruing liability. The accruing liability should be calculated according to actuarial valuation. However, if a school employs only a few persons, say less than twenty, it may calculate the accrued liability by reference to any other rational method, e.g., a method based on the assumption that such benefits are payable to all employees at the end of the accounting year.

It was noted that the school has not got its liability for retirement benefits valued by an actuary and was also not recording the provision for same in its books of account. At the time of personal hearing, school management mentioned that it was not paying retirement benefits to its staff, which is a contravention of provisions of section 10 of DSEA, 1973 and other orders issued thereunder and Payment of Gratuity Act, 1972. Accordingly, the school is directed to get its liability for retirement benefits valued by an actuary and record the same as provision in its books of account. Further, the school is directed to invest the amount against liability for retirement benefits in investments that qualifies as 'plan-assets' in accordance with Accounting Standard 15 within 30 days from the date of this order.

In absence of actuarial valuation of retirement benefits and provision for the same in the financial statements of the school, no amount has been considered while deriving the fund position of the school.

4. Direction no. 3 of the public notice dated 04.05.1997 published in the Times of India states "No security/ deposit/ caution money be taken from the students at the time of admission



and if at all it is considered necessary, it should be taken once and at the nominal rate of Rs. 500 per student in any case, and it should be returned to the students at the time of leaving the school along with the interest at the bank rate."

Further, Clause 18 of Order no F.DE/15(56)/Act/2009/778 dated 11.02.2009 states "No caution money/security deposit of more than five hundred rupees per student shall be charged. The caution money, thus collected shall be kept deposited in a scheduled bank in the name of the concerned school and shall be returned to the student at the time of his/her leaving the school along with the bank interest thereon irrespective of whether or not he/she requests for refund."

Directorate's order No. F. DE-15/ACT-I/WPC-4109/PART/13/889 dated 04.09.2017 issued post evaluation of the proposal for enhancement of fee for FY 2016-17 noted that school had not refunded interest on caution money along with refund of caution money to existing students and was instructed to include interest earned on caution money in the refund amount. school informed that it has stopped the practice of collecting caution money from students from FY 2017-18 onwards.

Since the school still has refundable caution money in his financial statements for FY 2018-19, the school is strictly directed to open separate bank account/create fixed deposit with bank for depositing caution money collected from students and interest earned on this account has to be refunded to the students along with refund of caution money at the time of leaving the school.

5. As per Directorate's order no. F.DE-15/PSB (PMU)/Fee Hike/2017-2018/14073-082 dated 07.04.2017 regarding fee increase proposals for FY 2017-2018 states "Schools are strictly directed not to increase any fee until the sanction is conveyed to their proposal by Director of Education." Further, Directorate's order no. F.DE-15/WPC-4109/Part/13/7914-7923 dated 16.04.2016 regarding fee increase proposals for FY 2016-2017 states "In case, the schools have already charged any increased fee prior to issue of this order, the same shall be liable to be adjusted by the schools in terms of the sanction of the Director of Education on the proposal."

However, on the basis of documents submitted by the School, it appears that school has increased tuition fee and annual charges by 10% without taking prior approval of the Directorate in FY 2018-19 in contravention of aforesaid provisions. Details of actual increase was not provided and school is required to determine the excess fee charged from the students in FY 2018-19. Moreover, school is directed to not charge excess tuition fee and annual charges for subsequent years from students and refund/adjust excess fee already charged for students in next academic session and submit compliance report to DOE within 30 days from the date of issue of this order.

After detailed examination of all the material on record and considering the clarification submitted by the school, it was finally evaluated/ concluded that:



- i. The total funds available for the year Academic session 2019-20 amounting to Rs. **13,36,89,329** out of which cash outflow is estimated to be Rs. **10,97,02,264**. This results in net surplus of Rs. **2,39,87,065**. The details are as follows:

Particulars	Amount in Rs.
Cash and Bank balances as on 31.03.19 as per Audited Financial Statement	32,59,529
Investments as on 31.03.19 as per Audited Financial Statements	14,76,913
Liquid funds as on 31.03.2019	47,36,442
Add: Renovation and construction of Building carried out in FY 2014-15, 2015-16, 2016-17 and 2017-18 in contravention of Clause 2 of Public notice dated May 4th, 1997 to be recovered from the society (refer observation no. 1 of financial discrepancies)	3,40,65,587
Add: Repayment of loan and interest thereon used for purchase of vehicles out of School Fund (refer observation no. 2 of financial discrepancies)	70,66,192
Add: Fees for FY 2018-19 as per Audited Financial Statements (we have assumed that the amount received in FY 2018-19 will at least accrue in FY 2019-20)	9,29,25,028
Add: Other income for FY 2018-19 as per audited Financial Statements (we have assumed that the amount received in FY 2018-19 will at least accrue in FY 2019-20)	3,52,580
Less: Amount of Capitation fee collected in the name of IFC, ECC, ET, ETT Charges (refer observation no. 4 of financial discrepancies)	50,10,000
Less: Caution money as on 31.03.2019 (as per audited financial statements for FY 2018-19)	4,46,500
Less: Retirement Benefits (Refer observation no. 3 of Other discrepancies)	-
Net Available funds for FY 2019-20	13,36,89,329
Less: Budgeted expenses for the Financial Year 2019-20 (Revenue Expenditure + Capital Expenditure - Depreciation) (Refer Note 1, 2 and 3)	10,97,02,264
Estimated Surplus	2,39,87,065

Note 1: School has budgeted for repayment of principal amount of loan and for payment of interest thereon. As discussed at observation 2 of financial discrepancies, Rule 177 of DSER, 1973 has not been complied by the school and school funds have been used for payment of loan and interest. Payments of salaries were not made in accordance with the provisions of DSEA & R, 1973 and no amount has been invested for gratuity and leave encashment to protect the interests of the school staff. Accordingly, amount budgeted for payment of principal amount of loan amounting Rs. 83,79,180 and for interest thereon amounting Rs. 2,00,000 have not been considered.

Note 2: School has budgeted for installation of lift for Rs. 13,20,000 and for renovation and construction of building Rs. 35,80,500. As per point no. 2 of public notice dated 04.05.1997

building is the responsibility of the society and school is not allowed to incur any amount for construction of building or any amount and accordingly, the aforesaid budgeted expenditure has not been considered while evaluating the fee proposal of the school.

Note 3: As per minutes of meeting held on 26.03.2019, it has been stated that arrears of Rs. 1.5 crores payable to the employees and teachers which accrue to them on account of recommendation of 7th CPC from 01.01.2016 to 31.03.2019. But school has decided to implement the recommendations of 7th CPC for regular staff from 01.04.2019 in view of shortage of funds. As per section 10 of DSEA, 1973 " *the scales of pay and allowances, medical facilities, mention, gratuity, provident fund and other prescribed benefits of the employees of recognized private school shall not be less than those of the employees of the corresponding status in school run by the appropriate authority*". Therefore, employees of all the private unaided recognized schools are entitled to get the revised pay commission. This legal position has been settled by the Hon'ble High Court long back at the in the matter of WPC 160/2017; titled as Lata Rana Versus DAV Public School vide order dated 06.09.2018 for implementation of sixth pay commission recommendations. Further, from the evaluation of school records, sufficient funds are available with school and school is not required to recover any amount from the students as arrears fee. Accordingly, the arrears of salaries amounting Rs. 1.5 crores has been considered while deriving the fund position of the school with the direction to school to pay salaries as well as arrears in accordance with recommendations of 7th CPC.

- ii. In view of the above examination, it is evident that the school have sufficient funds to meet its expenses from the existing fee structure for the Academic Session 2019-20. In this regard, Directorate of Education has already issued directions to the Schools vide order dated 16.04.2010 that,

"All Schools must, first of all, explore and exhaust the possibility of utilising the existing funds/ reserves to meet any shortfall in payment of salary and allowances, as a consequence of increase in the salary and allowance of the employees. A part of the reserve fund which has not been utilised for years together may also be used to meet the shortfall before proposing a fee increase."

AND WHEREAS, in the light of above evaluation which is based on the provisions of DSEA, 1973, DSER, 1973, guidelines, orders and circulars issued from time to time by this Directorate, it was recommended by the team of Chartered Accountants that along with certain financial and other irregularities, that the sufficient funds are available with the school to carry out its operations for the academic session 2019-20. Accordingly, the fee increase proposal of the school may be rejected.

AND WHEREAS, recommendation of the team of Chartered Accountants along with relevant materials were put before the Director of Education for consideration and who after considering all the material on the record, and after considering the provisions of section 17(3), 18(5), 24(1) of the DSEA, 1973 read with Rules 172, 173, 175 and 177 of the DSER, 1973 has found that the school has sufficient funds for meeting financial implication for the academic session



2019-20. Therefore, Director (Education) has rejected the proposal submitted by the school to increase the fee for the academic session 2019-20.

AND WHEREAS, as per point no. 2 of Public Notice dated 04.05.1997, it is the responsibility of the society who has established the school to raise funds from their own sources or donations from the other associations for construction of building because the immovable property of the school becomes the sole property of the society. Further, Hon'ble High Court of Delhi in its judgement dated 30.10.1998 in the case of Delhi Abibhavak Mahasangh concluded that tuition fee cannot be fixed to recover capital expenditure to be incurred on the properties of the society. Thus, renovation and construction expenses incurred on the building of Rs. 3,40,65,587 should not be met out of the fee collected from students and is required to be recovered from the society within 30 days from the date of this order. Also, school funds used for repayment of principal amount of loan taken for purchase of vehicle in contravention of Rule 177 of DSER, 1973 are to be recovered from the society. Accordingly, school is required to recover Rs. 70,66,192 from society within 30 days from the date of this order and shall submit the copy of receipt along bank statement showing receipt of the amount at the time of evaluation of next fee proposal of the school.

Accordingly, it is hereby conveyed that the proposal for enhancement of fee for session 2019-20 of **Brain International School (School ID-1618180), Vikas Puri, Delhi-110018** has been rejected by the Director of Education. Further, the management of said school is hereby directed under section 24(3) of DSEAR 1973 to comply with the following directions:

1. Not to increase any fee in pursuance to the proposal submitted by school on any account for the academic session 2019-20 and if the fee is already increased and charged for the academic session 2019-20, the same shall be refunded to the parents or adjusted in the fee of subsequent months.
2. To communicate the parents through its website, notice board and circular about rejection of fee increase proposal of the school by the Directorate of Education.
3. To rectify all the financial and other irregularities/violations as listed above and submit the compliance report within 30 days to the D.D.E (PSB).
4. To ensure that the salaries and allowances shall come out from the fees whereas capital expenditure will be a charge on the savings in accordance with the principles laid down by Hon'ble Supreme Court of Delhi in its Judgment of Modern School vs Union of India. Therefore, school not to include capital expenditure as a component of fee structure to be submitted by the school under section 17(3) of DSEA, 1973.
5. To utilise the fee collected from students in accordance with the provisions of Rule 177 of the DSER, 1973 and orders and directions issued by this Directorate from time to time.



6. In case of submission of any proposal for increase in fee for the next academic session, the compliance of the above listed financial and other irregularities/violations will also be attached.

Non-compliance of this order or any direction herein shall be viewed seriously and will be dealt with in accordance with the provisions of section 24(4) of Delhi School Education Act, 1973 and Delhi School Education Rules, 1973.

This is issued with the prior approval of the Competent Authority.



(Yogesh Pal Singh)
Deputy Director of Education
(Private School Branch)
Directorate of Education, GNCT of Delhi

To
The Manager/ HoS
Brain International School (School ID 1618180)
Vikas Puri, Delhi-110018

No. F.DE.15(195)/PSB/2021 / 3376-80

Dated: 09/09/21

Copy to:

1. P.S. to Principal Secretary (Education), Directorate of Education, GNCT of Delhi.
2. P.S. to Director (Education), Directorate of Education, GNCT of Delhi.
3. DDE concerned to ensure the compliance of the above order by the school management.
4. Guard file.



(Yogesh Pal Singh)
Deputy Director of Education
(Private School Branch)
Directorate of Education, GNCT of Delhi