

School Fee Guidance

VISTA UNIFIED SCHOOL DISTRICT

Date: August 2011

The District has continued to receive questions regarding the authorization to charge student fees. This document is provided as a guide for District staff and parents with the intent to emphasize which student fees can be charged and how funds can be raised through lawful means. District Board Policy 3260 and Administrative Regulations 3260 and 3260.1 have been updated to provide clarity regarding school fees, charges and deposits.

This Guidance contains six (6) sections:

1. The first section briefly summarizes the general rule precluding mandatory fees, charges, and deposits for educational activities including co-curricular and extra-curricular activities.
2. The second section provides a point by point summary of the exceptions to the general rule that specifically allow fees, charges, and deposits for certain activities. These summaries are also included in Board Policy 3260 and Administrative Regulations 3260 and 3260.1.
3. The third section provides examples of when a fee(s) should not be charged.
4. The fourth section deals with donations and fundraising.
5. The fifth section is frequently asked questions.
6. The sixth section deals with guidance/suggestions on specific topics

I. General Rule According to California Constitution

1. Article IX, Section 5 of the California Constitution mandates that public education be provided to students free of charge, unless a charge is **specifically authorized by law** for a particular program or activity. Title 5, California Code of Regulations, Section 350, specifically states:

“A pupil enrolled in a school shall not be required to pay any fee, deposit, or other charge not specifically authorized by law.”

2. This constitutional right of free access encompasses all educational activities, whether curricular or extracurricular, and regardless of whether credit is awarded for the educational activity.
3. The right of free access also prohibits mandated purchases of materials, supplies, equipment, or uniforms associated with the activity, as well as payment of security deposits for access, participation, materials, or equipment.
4. A process that allows for a waiver for an otherwise mandatory fee, charge, or deposit does not render it constitutionally permissible.

II. Permissible Mandatory Fees/Charges/Deposits:

Consistent with the constitutional guarantee of a free school system, the State Board of Education has reiterated that no fees are to be charged except where specifically authorized by law. Accordingly, a district may charge fees only as specifically authorized by the Education Code .

School Fee Guidance

The following **fees, charges, and deposits can be levied** as authorized in the following Education Code sections:

- **Transportation** to and from school, and transportation between school occupational centers, programs or classes, as long as the fee does not exceed the statewide average non-subsidized cost per student and provided there is a waiver provision based on financial need. Education Code Section 39807.5
- **Transportation of pupils** to places of summer employment. Education Code Section 39837(b).
- **Fees for field trips** and excursions may be charged in connection with courses of instruction or school related social, educational, cultural, athletic, or school band activities. But, no pupil shall be prevented from making the field trip or excursion because of lack of sufficient funds. Education Code Section 35330.
- **Fees for school camp programs.** However, the fee cannot be mandatory, and no pupil shall be denied the opportunity to participate in a school camp program because of nonpayment of the fee. Education Code Section 35335
- **Charges for food served to pupils,** subject to free and reduced price meal program eligibility and other restrictions specified in law. Education Code Sections 38082 and 38084.
- **Sale of materials** purchased from the incidental expense account to pupils in classes for adults if provided in the governing board regulations. The proceeds of all such sales shall be deposited in that account. Education Code Section 52615
- **Class materials** can be sold to persons enrolled in adult classes. This may include materials necessary for making of articles by students enrolled in adult education. The materials shall be sold at no less than the cost to the district. Any article made is then the property of the person who made it. Education Code Sections 52612, 52615 and 17552
- **Charges can be imposed for textbooks** used in adult classes or a refundable deposit can be imposed on loaned books. Education Code Section 60410
- **Charges for standardized** physical education attire of a particular color and design, but the school may not mandate that the attire be purchased from the school and no physical education grade of a student may be impacted based on the failure to wear standardized apparel " arising from circumstances beyond the control" of the student. (Education Code 49066).
- **Insurance for field trips.** School districts must provide, or make available, medical or hospital insurance, or both, for pupils participating on any excursion or field trip, and the cost incurred by the school district "may be paid from the funds of the district, or by the insured pupil or his or her parent or guardian." Education Code Section 35331
- **Charges for medical and accident insurance** for athletic team members, so long as there is a waiver for financial hardship. All members of the athletic team must have such insurance. Education Code Section 32221.
- **Lost or damaged books or other district supplies.** If students fail to return school books or other district supplies loaned to the pupil, or if such books or other district supplies are willfully cut, defaced or otherwise injured, the parent or guardian is liable for all damages not to exceed \$10,000. Education Code Section 48904
- **Fees for adult school classes.** A governing board may charge a tuition fee to adults for any class except classes in English and citizenship for foreigners, classes in elementary subjects, and classes for which high school credit is granted when taken by a person not holding a high school diploma. Education Code Section 52612.
- **Tuition fees charged to pupils** whose parents are actual and legal residents of an adjacent foreign country or an adjacent state. Education Code Sections 48050, 48051 and 48502
- **Apprentices shall not be charged fees** of any kind in any district providing instruction

School Fee Guidance

- under Section 3074 of the Labor Code. Education Code Section 48053.
- **Materials can be sold** to a student for property the student has fabricated from such materials for his or her own use as long as the price does not exceed direct cost of the materials used and provided that the school district governing board has authorized such sales pursuant to an adopted board policy. This applies to classes such as wood shop or sewing where an item is taken home by the students, but not when the items remain at school. It also does not apply to food in home economic classes which is eaten as part of the course work. Education Code Section 17551. If a student wishes to purchase an item that they have made, the District will charge the direct cost of the materials used. A flat lab fee will not be allowed.
- **Fees for an optional** fingerprinting program for kindergarten or other newly enrolled students can be assessed to the parent or guardian who chooses to participate, provided that the fee cannot exceed the actual costs associated with the program. Education Code Section 32390.
- **Students may be charged fees** for community classes in civic, vocational, literacy, health, homemaking, and technical and general education, not to exceed the cost of maintaining the community classes. Governing boards may expend from the district's general fund any money that is budgeted for community services to establish and maintain community service classes. Education Code Sections 51810 and 51815
- **Fees for several statutory child care programs** under certain conditions, while precluding charges to children's families whose children are enrolled in the state preschool program or for services to severely handicapped children. A similar before and after school child supervision program is authorized to charge fees to participants as long as "no needy child who desires to participate shall be denied the opportunity to participate because of inability to pay the fee". Education Code Sections 8263(f), 8250(d), 8265, 8487, 8488(b)
- **Actual cost of duplication of public records or student records.** The California Public Records Act authorizes public agencies to charge the actual costs of duplication for its records. The direct cost of duplication standard also applies to reproductions of the prosperous of school curriculum. Education Code Section 49091.14; Government Code section 6253.
- **Charges for optional attendance** as a spectator at a school or District sponsored activity. (See *Hartzell v. Connell* (1984) 35 Cal.3d 899.)
- **Charging for the parking** of vehicles on school grounds (Vehicle Code 21113)
- **Charges for the rental or lease of personal property** needed for District purposes such as caps and gowns for graduation ceremonies (Education Code 38119).

III. Prohibited Fees

The opinions of the Attorney General indicate that charges may not be levied for the following:

- **A deposit in the nature of a guarantee** that the district would be reimbursed for loss to the district on account of breakage, damage to, or loss of school property .
- **An admission charge to an exhibit**, fair, theater or similar activity for instruction or extracurricular purposes when a visit to such places is part of the district's educational program.
- **A tuition fee or charge as a condition** to enrollment in any class or course of instruction, including a fee for attendance in a summer or vacation school, a registration fee, a fee for a catalog of courses, a fee for an examination in a subject, a late registration or program change fee, a fee for the issuance of a diploma or certificate, or a charge for lodging.
- **Membership fees in a student body** or any student organization as a condition for

School Fee Guidance

enrollment or participation in athletic or other curricular or extracurricular activities sponsored by the school (ASB cards may be sold to allow discounts or free entrance to games and social events).

- **Instructional materials must be furnished** without charge to elementary and high school students. Adults may be assessed a charge for books not to exceed their true cost to the district. Education Code sections 60070 and 60410.
- **Fees to enroll and/or participate** in activities of career technical student organizations which are part of a career technical class or course or instruction offered for credit. Education Code Section 52375.
- **Pupils shall not be charged for transportation** associated with activities of career technical student organizations which are part of a career technical class or course of instruction offered for credit when those activities are integral to assisting the pupil to achieve the career objectives of the class or course. Education Code Section 52373
- **An apprentice**, or his or her parents or guardian, shall not be charged for admission or attendance in any class. Education Code section 48053.

Obligation to Provide “Necessary Supplies” without Charge

The Attorney General has also opined that school districts cannot levy fees as a condition for participation in any class, whether elective or compulsory. For example, such unallowable fees include security deposits for locks, lockers, books, class apparatus, musical instruments, uniforms or other equipment.

The Attorney General also explained that “supplies...must be furnished free of cost to students when the supplies are what might be termed school supplies and are necessary in order for the students to pursue a course of study.”¹ For example, the Attorney General has concluded the following “necessary supplies” must be furnished by a school district without charge:

- Materials and mechanical drawing sets for art classes
- Cloth for dressmaking classes,
- Wood for carpentry classes,
- Gym suits and shoes for physical education classes,
- Bluebooks necessary for examinations, and
- Paper on which to write a theme or report when such a theme or report is a requirement for the class.

(See Ops. Cal.Atty.Gen. No. NS-4114, 1942.) The Attorney General reasoned that the first five categories appeared to be supplies that must be available to students in order to participate in regular classroom work in the particular subjects, and that the last category of supplies must be furnished when required as part of the classroom activity. The State Department of Education supports this view.

It should be noted, however, that the Attorney General’s use of the term “school supplies” is meant to exclude from a district’s obligation those items or materials which, although necessary for class participation, are essential regardless of whether or not the person is a student. For example, a district is not obligated to furnish corrective lenses and clothes as

¹ California law expressly provides “Writing and drawing paper, pens inks, blackboards, blackboard erasers, crayons, lead pencils and other necessary supplies for the use of the schools shall be furnished under direction of the governing boards of the school district” (Education Code Section 38118).

School Fee Guidance

these items are needed whether or not the person is a student.

Also, because school districts are required to furnish necessary supplies, they are also responsible for regular upkeep and maintenance of those supplies. This law allows a district to impose requirements for proper care and usage and consequent liability for mishandling such supplies, but it may not impose liability where damage results from normal wear and tear, or from an intervening cause or a third party. However, attempts to impose an unconditional obligation on pupils to maintain and repair school district equipment are too broad. Also, a student may be charged for damage of personal property loaned to a pupil where he or she willfully cuts, defaces, or otherwise injures the property as a result of pupil misconduct.

Finally, Districts can recommend, and even make available, strictly optional materials for the students' personal benefit. The law allows parents or other individuals, as well as school districts, to directly purchase instructional materials from the state adopted lists. (Education Code section 60310). Also, teachers may make available a list of suppliers for tutorials, books, supplemental educational materials, or inexpensive quality paperback literature for leisure reading. Teachers may also encourage students to use appropriate study aids as long as these purchases are strictly optional and in no way part of the regular instructional program.

If such materials are not part of the adopted curriculum or part of an established extracurricular program, and there is no penalty for failure to use or purchase them, they are not "necessary supplies." The opposite arises, however, when such enrichment literature or materials are used as supplemental instructional material for a class or are an established part of an extra-curricular activity. Then, the material becomes a "necessary supply" which must be provided or loaned free of charge. The crucial point here is not whether or not a grade is assigned. Rather, what counts is the participation and whether the material used in the instructional or extra-curricular activity becomes a necessary school supply.

IV. Donations/Fundraising

Donations

The Supreme Court in *Hartzell v Connell* stated that "educational opportunities must be provided to all students without regard to their families' ability or willingness to pay fees or request special waivers." In 1998 the California Attorney General addressed the issue of donations, and emphasized that the constitutional concerns are alleviated when the raising of private funds is truly voluntary.

School districts, schools, programs, and classes can and do seek and accept donations of funds and property, and this practice is permissible as long as it is truly voluntary and in no way a prerequisite to participation in the program or activity.

Therefore, any statement or explanation related to a donation that could lead a reasonable person to believe the donation may not be truly voluntary is to be avoided. Examples include but are not limited to a specified minimum amount of a donation, a date by which a donation is due; a lesser donation amount if funds are received prior to a certain date. Additionally, any statements or actions that exert explicit or implicit pressure on students or parents to make a donation are to be avoided, and the reason a student or family does not make a donation is not a subject for inquiry—as the *Hartzell* court said, access to educational programs must not be

School Fee Guidance

tied to the *willingness* to pay a fee or request a waiver, not only the *ability* to pay a fee or request a waiver.

Fundraising

As with donations, school districts, schools, programs and classes can and do engage in fundraising activities and programs, and this practice is permissible as long as the raising of funds is voluntary. All fundraisers occurring at sites must be approved in writing by the site administrator.

A student who is asked to but does not raise funds may not be denied participation in an educational activity. A requirement to raise funds in order to participate even if there is no mandated amount to be raised is the same as requesting a fee.

The prohibition on the requirement for an individual student to raise money is to be distinguished from a requirement to attend a fundraising event as an element of participation in an activity, in the same way attendance at practices, games, rehearsals, or performances are an expected aspect of participation. For example, members of an athletic team can be expected to help out with a fundraising sale at Back to School Night as long as there is no requirement for the student to raise money as a condition of participation in the activity or program.

V. Frequently Asked Questions

Question: May a school still receive donations from parents and guardians?

Answer: Yes. School Districts, schools, programs, and classes can and do seek and accept donations of funds and property, and this practice is permissible as long as the donation is truly voluntary and in no way a prerequisite to participation in the program or activity. Therefore, any statement or explanation related to a donation that could lead a reasonable person to believe the donation may not be truly voluntary is to be avoided. Access to educational programs must not be tied to either the willingness or the ability to pay a fee or request a fee waiver.

Question: May a school still fundraise?

Answer: Yes. As with donations, school districts, schools, programs, and classes can and do engage in fundraising activities and programs and this practice is permissible as long as the raising of funds is voluntary. You may require students to attend a fundraising event; however, if they are unable to raise funds for the event, you cannot prevent them from participating in an educational activity. It is important to distinguish required fundraising from required attendance at fundraising event as attendance at a fundraising event is the same as attendance at practices, games, rehearsals, performances which are an expected aspect of participation.

For example, expecting members of a vocal ensemble to attend a fundraising concert that is on its calendar of events does not violate the "free school" guarantee so long as attendance is the only requirement. Another example is when members of an athletic team are expected to help out with a fundraising sale at Open House. Just as a coach can expect players to attend

School Fee Guidance

practices and games, the coach can expect players to attend a fundraising event as long as the requirement is to attend rather than to raise money as a condition of participation in the activity or program.

Question: May a school charge fees for uniforms for team sports?

Answer: No. A school must provide a free uniform to any student who is a member of the school team in question. Further, the free uniform must be substantially the same uniform as those which are made available for purchase. You can allow students to purchase their own uniforms if they want to purchase uniforms; however buying a uniform cannot be a requirement to participate in a sport.

Question: May a school require team members to purchase Spirit Packs?

Answer: No. Spirit packs may be sold; however, you cannot require a student to purchase a spirit pack as a prerequisite to participate in a sport. If there are practice uniforms, etc., which are required, they must be provided free of charge to any student who is a member of the school team in question.

Question: What if a school only charges fees to those students who can afford them; and has a waiver process for those who cannot?

Answer: A waiver process based on financial need or inability to pay does not make an otherwise impermissible fee permissible.

Question: May a school charge fees for things?

Answer: Yes there are specific fees, charges and deposits that are legally permissible because they are specifically permitted by law. The list of legally permissible fees is in Section II of the guidelines.

Question: Do students have to pay for ASB cards?

Answer: No. ASB stickers/cards are optional items for students. Students cannot be required to buy ASB stickers/cards in order to run for an office or as a condition to participate in a club/organization or try out for a team or sport.

Question: In the past some classes like Art or Ceramics have charged each student \$10 to \$20 for extra materials for creations that the students take home and keep. Is it okay to charge students for extra materials?

Answer: Students can be charged for materials if they take home what they make. Students should be able to make things that they don't take home if they do not want to pay for extra materials. Understandably this means that students 1) make things that they do not take home and the District then throws away; or 2) in the case of a ceramics course, they cannot fire their clay items in the kiln so that the clay remains reusable. A flat fee is not an acceptable way to

School Fee Guidance

charge for items that they make which are taken home. Students must be charged the actual cost without overhead for the materials used in making an arts or ceramics project.

Question: Does the student fee policy apply to club sports such as Women's Lacrosse? Our high school does not fund the sport. Coaches are recruited, finger-printed and hired by the District; and paid by donations from the parents. Equipment, tournament fees and other team expenses have always been covered by 100% of parents.

Answer: School-associated club sports are extra-curricular activities; therefore, subject to the same fee limitations as any other extra-curricular activity. Funding must be from donations, not mandatory fees. Students who wish to participate and choose not to donate must be allowed to participate.

Question: Can an extra-curricular club be organized as a 501 3 c?

Answer: Yes. However if they are organized as a 501 3 c, they are separate from the District and apart from the school. They cannot be associated with the school, in name or in activities. See Administrative Regulation 3260.1, Co-curricular and Extra-curricular Trips. School Connected organizations are organizations approved by the Board to participate in fundraising for the District or site. Board Policy 1230 outlines the procedures for becoming a school connected organization.

VI: Special Guidance

Camp

Camp fees are authorized **but** financial waivers must be granted. The definition of camp fees are those authorized by the District such as 5th grade camp. Camp does not include the sports camp fees which are not required school activities and involve voluntary participation by the students.

Suggestion: Fundraisers and donations should be used to reduce the cost to all members/participants. Select camps that are local, cost efficient, use staff personnel as much as possible.

Athletic Teams

Spirit Packs may be sold; however, you cannot require a student to purchase a spirit pack as a prerequisite to participate in a sport.

Suggestion: Do not allow personalization on team uniforms. Select a standard uniform which can be used in future years. Assure that items in the Spirit Pack are of appropriate value. For example a Spirit Pack which costs \$200 should have \$200 worth of items in it. Be careful with the various athletic shoes/cleats to not standardize in brand or color scheme because if required, the District may have to purchase.

School Fee Guidance

Uniforms

A school must provide a free uniform to any student who is a member of the school team. Also, the free uniform must be substantially the same uniform as those which are made available for purchase.

Suggestion: Select modest uniforms. Select a standard basic uniform that can be used in future years. Fundraise as a group in order to provide extras. All fundraising efforts must be donated to an account that does not identify specific students and how much money each generated. The account should be identified as the group name only with the total amount of money deposited. Parents must know in advance that administrative oversight will be standard practice when evaluating uniforms.