

School Fee Guidance

VISTA UNIFIED SCHOOL DISTRICT

Date: April 2013

AB 1575 was passed by the Legislature in 2012 prohibiting all public schools, including but not limited to a charter school or alternative school, from requiring a pupil to pay a fee, deposit, or other charge not specifically authorized by law, in order to participate in an educational activity. District Board Policy 3260 and Administrative Regulations 3260 have been updated to provide clarity regarding school fees, charges and deposits. All information is based on Fiscal Management Advisory 12-01 issued on March 20, 2013 from the California Department of Education.

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.
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. 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. The California Education Code (EC) was amended by Assembly Bill (AB) 1576 in 2012, providing that a pupil enrolled in a public school shall not be required to pay a pupil fee for participation in an educational activity. (EC 49011(a))
3. Educational Activity is defined as an activity offered by a school, school district, charter school or county office of education that constitutes an integral fundamental part of elementary and secondary education including, but not limited to, curricular and extracurricular activities. (EC 49010(a))
4. Pupil Fee is defined as a fee, deposit or charge imposed on pupils or a pupil's parents or guardians, including but not limited to:
 - a. A fee charged to a pupil as a condition for registering for school or classes, or as a condition for participation in a class or an extracurricular activity, regardless of whether the class or activity is elective or compulsory, or is for credit.

School Fee Guidance

- b. A security deposit, or other payment, that a pupil is required to make to obtain a lock, locker, book, class apparatus, musical instrument, uniform, or other materials or equipment.
 - c. A purchase that is a pupil is required to make to obtain materials, supplies, equipment, or uniforms associated with an educational activity. (EC 49010(b))
5. All supplies, materials and equipment needed to participate in educational activities shall be provided to pupils free of charge.
6. A fee waiver policy shall not make a pupil fee permissible (Hartzell v. Connell, 1984).
7. School districts and schools shall not create a two-tier system by requiring a minimal educational standard and also offering a second, higher educational standard that pupils may only obtain through payment of a fee or purchase of additional supplies that the school district or school does not provide. (EC Section 49011 (b))
8. A school district or school shall not offer course credit or privileges related to educational activities in exchange for money or donations of goods or services from a pupil or a pupil's parents or guardians, and a school district or school shall not remove course credit or privileges related to educational activities, or otherwise discriminate against a pupil, because the pupil's parents or guardians did not or will not provide money or donations of goods or services to the school district or school.
9. Schools can solicit for voluntary donations of funds or property, and voluntary participation in fundraising activities (EC 49011 (c)).

II. Fees/Charges/Deposits authorized by law:

The Education Code specifically authorizes certain fees which are not forbidden by the Code of Regulations Title 5 prohibition. The following **fees, charges, and deposits can be levied** as authorized in the following Education Code sections:

- **Reimbursement for the direct cost** of materials provided to a pupil for property the pupil has fabricated from such materials to take home for his/her own possession and use, such as wood shop, art, ceramics, or sewing projects kept by the pupil. (EC 17551) A flat lab fee will not be allowed; nor may the pupils' projects be used in fund-raising activities.
- **Charges for safety** glasses, for a pupil to keep, so long as the school provides them free of charge for use in specified courses or activities involving the use of hazardous substances likely to cause injury to the eyes. (EC 32030-32033)
- **Fees for the sale or lease** of internet appliances or personal computers to parents for the purpose of providing access to the school district's educational computer network, at no more than cost, so long as the district provides network access for families who cannot afford it. An internet appliance is a technological product that allows a person to connect to, or access, an online educational network. The internet appliances and personal computers referred to in this section are deemed supplemental and not an essential part of the school district's education program (EC 17453.1)
- **Transportation** to and from school, and transportation between school and regional occupational centers, programs or classes, as long as (1) the fee does not exceed the statewide average nonsubsidized cost per pupil; (2) there is a waiver provision based on financial need; and (3) fees are not charged to pupils with disabilities whose individualized educational program (IEP) includes transportation as a related service necessary for them to receive a free appropriate public education (EC 39807.5(b),(d), and (f)).

School Fee Guidance

- **Fees for transportation of pupils** to and from their places of summer employment in connection with any summer employment program for youth. Education Code Section 39837
- **Fees for transportation** all or part of the cost of transportation for adult students (EC 39801.5)
- **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; so long as no pupil is prevented from making the field trip or excursion because of lack of sufficient funds. (EC 35330 (b).)
- **Fees for outdoor science camp programs.** The fee cannot be mandatory -- 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. (EC 38082 and 38084)
- **Fees (at not less than cost)** for adult class materials, including those necessary for the making of articles that shall become the property of the student who made it. (EC 52612, 52615, & 17552)
- **Fees for adults for any class except classes in elementary** subjects and classes for which high school credit is granted when taken by a person not holding a high school diploma (EC 52612(a)). Fees for adult classes in English and citizenship may be charged through July 1, 2015. (EC 52612(b))
- **Fees for materials and textbooks** used in adult classes or a refundable deposit on loaned books, in classes for adults. (EC52165, 60410)
- **Fees for community classes in civic, vocational, literacy,** health, homemaking, and technical and general education, not to exceed the cost of maintaining the community class (EC 51810, 51815) These include classes such as dance, music, theatre, visual arts, handicraft, science, literature, nature study, nature contacting, aquatic sports, and athletics. (EC 51810) These classes are primarily intended for adults and are open only to those minors whom the Board of Trustees believes will profit from such classes (EC 51811).
- **Fees 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).
- **Deposits for school band** instruments, music, uniforms and other regalia for use on an excursion to a foreign country. (EC 38120)
- **Medical or hospital insurance for field trips** that is made available by the school District. (EC 35331 (b)(2))
- **Charges for required medical and accident insurance** for athletic team members that are not paid by school district or student body funds, so long as there is a waiver for financial hardship. (EC 32220-3224)
- **Payment for the replacement cost for district books, supplies,** or other property loaned to a pupil that the pupil fails to return, or that are willfully cut, defaced or otherwise damaged, up to an amount not to exceed \$10,000 or the amount allowable by law (EC 19911, 48904).
- **Tuition fees charged to pupils** whose parents are actual and legal residents of an adjacent foreign country or an adjacent state. (EC 48050, 48502)
- **Tuition fees may be collected** from foreign students attending a district school pursuant to an F-1 visa, equal to the full unsubsidized per capita cost of providing education during the period of attendance. (8 USC section 1184(m)(1))
- **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. The fee

School Fee Guidance

- cannot exceed the actual costs associated with the program. (EC 32390)
- **Fees for child care and development services**, except that no fees shall be assessed to families whose children are enrolled in the state preschool program or for such services provided to severely disabled children (EC 8263(h)(1), 8250(d)(3), 8265) Fees for supervision of children before and after school, except that no child who desires to participate shall be denied the opportunity to participate because of an inability to pay the fee. (EC 8487, 8488)
- **Fees for After School Education & Safety Program (ASES)**, so long as no eligible student is denied the ability to participate because of an inability to pay the fee. (EC 8482.6)
- **Fees for Advanced Placement and International Baccalaureate Diploma examinations** for college credit, so long as (1) taking the exam is not a course requirement; (2) the exam results have no impact on a pupil's grade or credit in a course; and (3) eligible economically disadvantaged high school pupils who receive school district funding towards the exam fee shall pay \$5.00 of the fee. (EC 52440-52244; 52920-52922)
- **Actual cost of duplicating public records, pupil records**, or a prospectus of the school curriculum. (GC 6253, EC 49063(h), 49091.14)
There are two exceptions: First, no charge shall be made for furnishing up to two transcripts of former pupils' records or up to two verifications of various records of former pupils. (EC 49065) Second, if the cost would effectively prevent the parent of a special education pupil from exercising the right to receive copies of pupil records, the copies shall be reproduced at no cost (EC 56504)

California law 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" (EC 38118).

Based on this section, the Attorney General has opined that all of the following are "necessary supplies"; and therefore, if the school district requires that pupils use such items, the school district must provide them to pupils for free in order to participate in regular classroom work in the particular subjects involved:

- Art materials for art classes and mechanical drawing sets;
- Cloth for dressmaking classes and wood for carpentry classes;
- Gym suits physical education classes,
- Bluebooks necessary for examinations, and
- Paper on which to write a theme or report when such a theme or report

The Attorney General's use of the term school supplies does exclude those items or materials that 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 these items are needed whether or not the person is a student.

Also, since school districts are required to furnish necessary supplies, they are also responsible for regular upkeep and maintenance of those supplies. Attempts to impose an unconditional obligation on pupils to maintain and repair school district equipment are too broad. However, 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. This law allows the district to impose requirements for proper care and usage and consequent liability for mishandling, but not liability where damage may result from normal wear and tear, or from an intervening cause or a third party.

School Fee Guidance

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 sell inexpensive quality paperback literature for leisure reading. Teachers may 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 things 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 these materials, such materials are not necessary supplies. The opposite arises, though, when such enrichment literature or materials are used as supplemental instructional material for a class or is an established part of an extra-curricular activity as it then becomes a necessary supply which must be provided or loaned free of charge. It's not whether or not a grade is assigned that is the crucial point. It is the participation that counts and whether or not the material used in the instructional or extra-curricular activity becomes a necessary school supply.

III. Fees not allowed

Basically, 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 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).
- **Charges to an apprentice**, or his or her parents or guardian, for admission or attendance in any class pursuant to Section 3074 of the Labor Code (EC 48053).
- **Charges for textbooks** and workbooks (except for classes for adults). EC 60070, 60410)
- **Fees to** process an inter-district transfer request by a pupil residing in another District.
- **Reimbursement** for lost Average Daily Attendance (ADA) revenue for absences from school.

School Fee Guidance

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. Schools can solicit voluntary donations of funds or property, and voluntary participation in fundraising activities (EC 49011(c)).

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 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. Any organization wishing to fundraise on behalf of a school or the school district must be approved by the Board of Trustees as a **school-connected** organization (Board Policy 1230)

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.

School Fee Guidance

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. (EC Section 49011(c).

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 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.

School Fee Guidance

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: Depends—only those specific fees, charges and deposits that are legally permissible may be charged. 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; however, students can only pay the direct cost of the materials which will only be known after the student makes the creation. 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 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. School Connected organizations are organizations approved by the Board to participate in

School Fee Guidance

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. Sport Camp fees may be assessed if the athletic activity is not in its official "CIF" season, and if the coach completes all paperwork necessary for facilities use including the payment of fees as outlined in Board Policy 1330—Use of Facilities.

Suggestion: Fundraisers and donations should be used to reduce the cost to all members/participants.

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. Booster Clubs/Foundation which use spirit packs as fundraising opportunities—cannot compel student athletes to purchase to participate in a sport. Items in a spirit pack should be supplemental and not an integral part of a uniform or athletic activity, such as tennis balls for tennis.

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.

Uniforms

A school must provide a free uniform to any student who is a member of the school team. Further 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.

School Fee Guidance

COMPLAINTS:

If a parent/guardian feels that the school district or school is noncompliant regarding pupil fees, a complaint may be filed with the school principal pursuant to the Districts Uniform Complaint Procedure (UCP). The UCP is addressed in Board Policy 1312.3 and Administrative Regulation 1312.3. Parent/guardians may file the complaint not later than one year from the date of the alleged violation. The complaint may be filed anonymously if the complaint provides evidence or information leading to evidence to support an allegation of non-compliance with EC 49010-49011. The complaint form, Exhibit 2 is posted on the District's web page.