

FCMAT

What fees, if any, can be charged to students?

Question: The high school and the middle schools are currently charging the student fees listed below.

\$10 Science Lab Fees

\$40 Cooking class fees

\$20 Ceramics, Jewelry, Arts, and Wood shop fees

\$45 Choir class

\$25 Band class

AP exam fees (unknown at this time)

These lab fees provide funding for disposable, consumable materials used in each class. Students are allowed (and encouraged) to take home whatever they make/test/produce in their classes. Science teachers feel that the science lab fees should be treated as a shop fee so that lab fees can be charged just like home economic, jewelry, and wood shop class in accordance with Ed Code section 17551.

But some teachers think the students should not take any bio-hazardous waste home because of the safety reason.

In 1992, the board approved the science fees. It is not included in the board policy but an approval was noted in board minutes. The teachers now understand the free school guarantee because I have shared the Fiscal Management Advisory 97-02 but they still feel that they have an approval to charge certain fees from the board. I don't see any additional funding to offset the current student lab fees but I also don't want any lawsuit from parents.

Please advise.

Response: The California Constitution provides for a free school system. Since 1874, the California Supreme Court has interpreted this to mean that this entitles students to be educated at the public's expense. 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."

The State Board of Education has reiterated that no fees are to be charged except where specifically authorized by law. This understanding is based on the authority in Article IX, Section 5 of the California Constitution. The Attorney General has also made it clear in many of their opinions that school districts cannot levy fees as a condition for participation in any class, whether elective or compulsory. Such unallowable fees include security deposits for locks, lockers, books, class apparatus, musical instruments, uniforms or other equipment. Clearly, students may not be charged fees for participation in either curricular or extracurricular activities. And, whenever a particular curriculum or extra curricular program is adopted, all supplies, both necessary and supplemental, must be provided free of charge by the district.

The district cannot establish a two tier educational system by defining some minimum educational standard as the requirement and then tell students that "there is also a second, higher standard which you can strive for, if you pay for rent, or provide some specified additional supplies which the school does not provide."

The Education Code specifically authorizes certain fees which are not forbidden by the Code of Regulations Title 5 prohibition. The following fees can be levied as authorized in the following Education Code Sections:

- Transportation to and from school as it is a non-educational activity. Education Code section 39807.5
 - o Fees for transportation for extra curricular activities are not legal as it is an integral part of some of these activities. If participation in an extra curricular activity requires transportation and if the school district provides it, it may not collect fees for it.
 - o By law, school districts must exempt from transportation charges pupils of parents and guardians who are indigent as set forth in rules and regulations adopted by the board. Furthermore, no charge shall be made for the transportation of disabled students.
 - o The sum of state aid received for home to school transportation and the parent fees collected may not exceed actual operating cost of home to school transportation for each fiscal year. Education Code section 39809.5
- Transportation of pupils to places of summer employment. Education Code section 39837
- Charges for food served to pupils. Education Code sections 38082 (formally 39872), and 38084 (formally 39874)
- 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
- Insurance for field trips. School districts must provide, or make available, medical or hospital insurance 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
- Lost or damaged books or other district supplies. If students fail to return school property loaned to the pupil, or willfully cut, deface or otherwise injure school property, the parent or guardian is liable for all damages not to exceed \$10,000. Education Code section 48904
 - o When the minor and parent are unable to pay for the damages or to return the property, the school district or private school shall provide a program of voluntary work for the minor in lieu of payment of monetary damages.
- Fees for adult school classes. Education Code section 52612.
 - o No fees are allowed for English and citizenship for foreigners, classes in elementary subjects, and classes for which high school credit is granted when taken by a person holding a high school diploma.
 - o Adults may be charged a fee but high school students may not, even though they may be enrolled in the same class.
 - o Adults may be charged for all or part of the costs of transportation. Education Code section 39801.5.
- 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 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 their 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.

- o This section does not authorize a blanket general fee to cover multiple items nor does it mean an obligation to purchase the item. This section must be read together with the constitutional free school guarantee and the statutes requiring schools to provide necessary school supplies and instructional materials. Whenever students fabricate products in a class such as wood shop or sewing, the wood or cloth for such products must be furnished free of charge. If the student decides to take a particular item home, then the law authorizes the district to sell that item to the student for the cost of the materials. If the student does not want to take an item home, then the district would keep the item and cannot charge or otherwise penalize the student.

- o The school district is recommended to have board adopted policies and guidelines which specify the conditions for implementing this section, keeping in mind the free school guarantee.

- 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 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

- o These community classes may be held at any time during the school year as determined by the governing board. Education Code section 51812

- o Community courses are not intended to teach required courses that K-12 students must complete as part of their instructional programs. They usually include classes in music, drama, art, handicraft, science, literature, nature study, nature contacting, aquatic sports, athletic and other such classes of general interest to the community. These classes are primarily intended for adults and are only open to minors who the governing board believes would profit from such classes.

- o Community service classes cannot be used as K-12 summer school, except for the incidental attendance of students with special interest in the subjects being taught.

- o Schools are lawfully authorized to charge fees for community service classes. But, in order to charge a fee for driver's training, schools must design their driver training programs to be community service and not for the benefit of high school students. (This principal would apply to any type of community service class.) Education Code sections 51815 and *Driving School Association vs. San Mateo School Districts*, 11 Cal App 4th (1992), and *California Association for Safety Education vs. Brown* 30 Cal. App 4th (1994)

- 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 direct costs of duplication for its records. The direct cost of duplication standard also applies to reproductions of the prospectus of school curriculum. Education Code section 49091.14
 - o Direct costs of duplication phrase allows a local agency to recover only the actual cost of copying documents and does not include ancillary tasks associated with the retrieval, inspection and handling of the file from which the copy is extracted. North County Parents Organization et al vs. Department of Education 23 Cal App4th (1994)
 - o School districts must specify the cost, if any, which will be charged to the parent for reproducing copies of records in a parental notice upon enrollment and in the annual notification of parents of their rights required by the Education Code 48980. Education Code 49063(h)
- Charges for medical and accident insurance for athletic team members who can afford to pay. All members of the athletic team must have such insurance. Education Code section 32221.
 - o Whenever the school board determines that a team member or parent or guardian are financially unable to pay the costs of insurance protection, then the governing board shall require the costs of the protection to be paid either out of funds of the district or the student body.
- 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.
 - o The governing board shall coordinate efforts of the community service groups to supply funds for pupils in need of them.
 - o No student may be left behind due to insufficient funds, nor may a student be left behind for failing or refusing to participate in fund-raisers.
- 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
 - o No student may be left behind due to insufficient funds, nor may a student be left behind for failing or refusing to participate in fund-raisers.

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 districts"(Education Code section 38118). Based on this section, the Attorney General has concluded that 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 required assignment must be furnished by school district without charge as necessary supplies. Such supplies appear to be supplies that must be available to students in order to participate in regular classroom work in the particular subjects involved. The State Department of Education supports this view. The general rule as stated by the Attorney General is 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". So rather than state what materials a school district is not obligated to furnish, the Attorney General limits the discussion to the question above.

The Attorney General's use of 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.

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 extracurricular activity as it then becomes a necessary supply which must be provided or loaned free of charge. It is 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 extracurricular activity becomes a necessary school supply.

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).
- 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
 - o The exception to this is when the transportation is between the regular full time day schools that they would attend and the regular full time occupational training classes attended by them as provided by a regional occupational center or program. Education Code section 39807.5.

On April 20, 1984, the Hartzell vs. Connell California Supreme Court decision raised serious questions about the imposition of non-statutory fees for extracurricular activities. The lead opinion on this matter is that fees may be charged for activities that are recreational, but not for those that are educational. Since extracurricular activities are described in the opinion as an integral component of public education, they are a part of the educational program, and thus must be free. The court further stated that the "...imposition of fees as a precondition for participation in non-statutory educational programs offered by public high school districts on a non-credit basis violates the free school guarantee. The constitutional defect in such fees can neither be corrected by providing waivers to indigent students nor justified by pleading financial hardship." It is also the opinion of CDE and the Hartzell opinion that a school district may not charge a fee or require students to purchase necessary materials even if the district maintains a

special fund to assist students with financial need or waives such fee or charge for students with financial need as the fee or charge still remains a condition for all other students not being assisted financially. **A fee waiver policy for needy students does not make the fee allowable.**

For the subject of gym or physical education clothes, Education Code section 49066 states that "No grade of a pupil participating in a physical education class may be adversely affected due to the fact that the pupil does not wear standardized physical education apparel where the failure to wear such apparel arises from circumstances beyond the control of the pupil", such as lack of sufficient funds. The California Department of Education has stated the position that a school district may require students to purchase their own gym clothes of a district specified design and color so long as the design and color are of a type sold for general wear outside of school. Once the required gym uniforms become specialized in terms of logos, school name or other similar characteristics not found on clothing for general use outside of school, they are considered school supplies and the district must provide the uniforms free of charge.

In specific answer to your question, FCMAT is not able to provide legal advice, but since you are worried about the current charges, review the information we have provided above and see how the current charges that are occurring line up with the above information. And, if you have concerns about what is truly legal or not legal after reviewing the above, you should check with your legal counsel. Although staff is mentioning Education Code section 17551, this section does not allow for fees to be charged up front...basically this code section means that all students can make the items regardless of paying fees or material charges, but at the end of the year if they want to bring the items home the district can charge for the actual cost of materials in making the item. This code does not authorize the class fees up front as all students are entitled to make the same items, whether or not they have money to do so.

Also, remember that board policy can be stricter than the law, but the law takes precedence over board policy if they are in disagreement. Again, this is why you should get your legal counsel involved.

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