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## GUIDELINES FOR STUDENT FEES

by

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**I. Students may not be charged fees for participation in either curricular or extra-curricular activities.**

A. Free Public Education System The California Constitution provides for a free school system.<sup>1</sup> Since 1874, the California Supreme Court has interpreted this to mean that this entitles students to be educated at public expense.<sup>2</sup>

B. State Regulation Implements the Free School Provisions

*“A pupil enrolled in a school shall not be required to pay any fee, deposit, or other charge not specifically authorized by law.”*<sup>3</sup>

School districts may thus not levy fees as a condition for participation in any class, whether elective or compulsory.<sup>4</sup>

C. Statutory Provisions Prohibiting Fees

1. Necessary School Supplies. 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.”*<sup>5</sup> (Emphasis added.)

a. Based on this section, the Attorney General has concluded that materials for art classes, cloth for dressmaking classes, wood for carpentry classes, gym suits and shoes for physical education classes, and bluebooks necessary for examinations must be furnished by school districts without charge as “necessary supplies.”<sup>6</sup> 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.<sup>7</sup>

b. Corollary: If the school district is required to furnish necessary supplies, it is 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 is too broad. However, a pupil 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.<sup>8</sup> 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. For example, a student may be held liable where damage results from mishandling of the equipment due to failure to follow proper operating or storage procedures, but not simply because parts wear out, an annual

cleaning is needed, or because the property is destroyed in a catastrophic accident (such as a house fire or automobile accident).

2. Prohibition Against Requiring Purchase of Instructional Materials.

“No school official shall require any pupil, except pupils in classes for adults to purchase any instructional material for the pupils’ use in the school.”<sup>9</sup> “Instructional materials” include “all materials that are designed for use by pupils and their teachers as a learning resource and help pupils to acquire facts, skills, or opinions or to develop cognitive processes. Instructional materials may be printed or nonprinted, and may include textbooks, technology-based materials, other educational materials, and tests.”<sup>10</sup> If an instrumental music program is offered, clearly musical instruments would be included as instructional materials which must be provided without charge.

3. Requirement to Purchase vs. Making Available. A school district has a basic duty to provide *supplies which are necessary* to fulfill the school’s educational program.<sup>11</sup> Moreover, “No school official shall require any pupil, except pupils in classes for adults to purchase any instructional material for the pupils’ use in the school.”<sup>12</sup> This applies to both “basic instructional materials” and “supplementary” instructional materials.<sup>13</sup>

Whenever a particular curriculum or extra-curricular program is adopted, then all “necessary supplies” or “supplementary” instructional materials used to achieve that program must be provided free of charge by the school district. The school district cannot establish a two-tier educational system, by defining some minimum educational standard as the requirement, then tell students, “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.”

This principle applies whether addressing athletic uniforms, attire for chorale classes, musical instruments, special binders, film for photography classes, calculators, or other study aid materials. If the equipment or supplies are used by the school in the educational process, then these materials would constitute “necessary supplies,” within the meaning of Education Code § 38118, which *must* be provided to students without cost. Furthermore, 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.<sup>14</sup>

This does not mean that school districts may not recommend or 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.<sup>15</sup> 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, so long as their purchase is *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.”

However, if such “enrichment” literature or material is used as “supplemental instructional material” for a class, or is an established part of an extra-curricular activity, then it becomes a “necessary supply” which must be provided or loaned free of charge. Whether a grade is assigned or not assigned for use of the supplemental material is not the crucial point. If the material is used as part of the instructional program or as an extra-curricular activity, it becomes a *necessary* school supply which must be provided to the students without a fee. It is the *participation* that counts, not whether a grade is assigned.

Thus, even if the district merely wishes to *encourage* the use of particular materials to improve classroom performance, and purports to state that such materials are not *required*, a student’s participation cannot be made to depend on the family’s willingness to pay a fee or to rent or purchase certain equipment or supplies.<sup>16</sup> As the Supreme Court has stated, “Once the community has decided that a particular educational program is important enough to be offered by its public schools, a student’s participation in that program cannot be made to depend upon his or her family’s decision whether to pay a fee or buy a toaster.”<sup>17</sup>

#### 4. Physical Education and Athletic Apparel

a. Although grades are normally determined by the teacher, “*No grade of a pupil participating in a physical education class, however, 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.*”<sup>18</sup> The latter circumstances may include a lack of funds, or merely an unwillingness by the family to pay for specialized apparel.

b. School districts “*shall provide for the annual cleaning, sterilizing, and necessary repair of football equipment.*”<sup>19</sup> School districts may, however, provide for the required annual cleaning and repair of athletic uniforms without using school funds when donations are voluntarily given to cover such expenses. The attorney general stresses that “The ‘voluntariness’ of the donation is the critical factor...otherwise the district would have the duty to pay for these expenses.”<sup>20</sup>

#### 5. No fees for vocational education programs.

##### a. No fees for vocational organizations.

“*No pupil shall be required to pay any fee or charge for enrollment or participation in activities of vocational student organizations which are a part of a vocational 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. This section shall apply to activities which occur during or outside of the regular schoolday.*”<sup>21</sup> These sections apply to FFA and similar agricultural vocational education programs.<sup>22</sup>

b. No fees for transportation associated with vocational education

*“No pupil shall be required to pay any fee or charge for transportation associated with activities of vocational student organizations which are part of a vocational 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.”*<sup>23</sup>

c. Exception: Board may charge fees for transport to vocational center.

The governing board of the district may require the parents and guardians of all or some of the pupils transported, to pay a portion of the cost of transportation *“between the regular full-time day schools they would attend and the regular full-time occupational training classes attended by them as provided by a regional occupational center or program.”*<sup>24</sup>

6. No fees for interdistrict transfer requests.

a. The Attorney General has issued an opinion stating that a school district may not charge an application fee to cover its costs of processing an interdistrict attendance request submitted by a pupil residing within another district.<sup>25</sup> The reasoning for this conclusion is that Calif. Code of Regs. Tit. 5, § 350 protects a pupil from any fees not specifically authorized by law, and extend to prohibit fees designed to cover a school district’s costs of performing a statutorily mandated administrative function, including the processing of interdistrict attendance applications.

D. Extracurricular Activities: In the landmark case of *Hartzell v. Connell*<sup>26</sup>, the California Supreme Court held that fees may not be charged for “educational activities,” even when such were considered “extra-curricular.” The court found that the imposition of fees for educational activities offered by public high school districts violates the free school guarantee of the California Constitution<sup>27</sup>, as well as the California Code of Regulations.<sup>28</sup> Both of these are “laws” within the meaning of the “permissive Education Code”<sup>29</sup> which allows school districts to carry on any activity or act in any manner “which is not in conflict with or inconsistent with, or preempted by, any law. . .”

1. The court decided that extracurricular activities were “an integral component of public education” and therefore fees could not be charged for extracurricular activities such as drama, cheerleading, singing, and athletics. Moreover, the court stated, *“The constitutional defect in such fees can neither be corrected by providing waivers to indigent students nor justified by pleading financial hardship.”*<sup>30</sup>

2. Exception: The court did state that fees may be charged for purely “recreational” activities, such as attending school dances. But note that even recreational activities may have an educational character in some circumstances.

## II. Fees Authorized by Law

A. Simple Test: “It should be determined whether a fee for a particular item is specifically authorized by statute. If not, it should be determined whether a particular item is required by law to be furnished free or whether it comes under the category of ‘necessary supplies.’ If it does, then the district must furnish the item without charge.”<sup>31</sup>

B. Statutes Authorizing Fees Upheld or Likely to Be Upheld. The Education Code specifically authorizes certain fees. These provisions will overcome the Code of Regulations Title 5 prohibition, but it is unclear whether *all* of them would pass constitutional muster under *Hartzell*. Where the program appears to be substantively *non-educational*, the fee should survive any constitutional challenge. In absence of an appellate decision to the contrary, school districts may rely on all of the following statutes authorizing fees. Note also Part IV below for the requirement for advertising and holding a public hearing before these fees may be imposed.

### 1. Transportation To and From School.<sup>32</sup>

Transportation to and from school has been held by California Supreme Court as “non-educational.” The court said, “*Although in Hartzell we adopted a broad understanding of what activities are protected as educational, we did not extend that expansive understanding of the free school clause beyond the realm of educational activities to noneducational supplemental services. Transportation is simply not an educational activity. It is not protected by the reasoning of Hartzell.*”<sup>33</sup> Thus, the Court held that Education Code § 38028 does not violate California’s free school guarantee.

#### a. No Fees For Transportation for Extra-Curricular Activities.

Notwithstanding *Arcadia*, it is the legal opinion of the California Department of Education that school districts may not charge students a fee for transportation to and from *extra-curricular activities*. The Department believes “*Transportation to and from after-school/extra-curricular activities is an integral part of some extra-curricular activities. If participation in an extra-curricular activity requires transportation and if the school district provides the transportation, it may not charge for such transportation.*”

However, the opinion also notes that if transportation to and from extracurricular activities is purely for *transportation* purposes, and is *not* truly a part of the extracurricular activity itself, then it is constitutionally possible to charge fees for that transportation. For example, if riding the school bus to an extra-curricular activity is voluntary and not mandatory, and students can use their own methods of transportation to attend the activity, it would appear that a fee for riding the school bus may be charged. However, due to the legal uncertainty of this conclusion, we advise districts choosing to charge such transportation to separately account for the funds and be prepared to refund the fees in case future clarification of the law indicates that such fees may not be legally charged after all.

Of course, if the bus transportation is involved as a *component* of the extracurricular activity itself, then plainly the transportation in such a case must be considered to be “educational” in character and a fee cannot be charged.

b. Indigents and handicapped children.

By law, school districts must exempt from these transportation charges pupils of parents and guardians who are indigent as set forth in rules and regulations adopted by the board.<sup>34</sup> Furthermore, no charge shall be made for the transportation of handicapped children.<sup>35</sup> There remain issues as to what steps school districts must carry out to ensure these exemptions are carried out - e.g. whether all students must be informed of the fee waiver provision, what procedure for applying for the waiver should be adopted, whether the indigent waiver can be based simply on a families' receipt of welfare aid.<sup>36</sup>

c. Limitations on amount charged.

The amount to be charged "shall be no greater than the statewide average nonsubsidized cost of providing such transportation to a pupil on a publicly owned or operated transit system as determined by the Superintendent of Public Instruction, in cooperation with the Department of Transportation."<sup>37</sup>

The sum of state aid received and the parent fees collected may not exceed actual operating cost of home-to-school transportation for each fiscal year. If excess fees are collected, fees must be reduced in succeeding years.<sup>38</sup>

2. Transportation of pupils to places of summer employment. The law authorizes use of school buses to transport pupils to and from their places of employment during the summer in connection with any summer employment program for youth, and authorizes the district to require payment of "a reasonable charge for transportation so furnished."<sup>39</sup>

3. Charges for food served to pupils. Cafeteria meals or other food may be sold to pupils, within specified price limits and other restrictions specified in law.<sup>40</sup>

4. Insurance for Field Trips. School districts must provide, or make available, medical or hospital insurance for pupils participating on field trips, 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.*"<sup>41</sup>

5. Lost or Damaged Books or other district supplies. If students fail to return school property loaned to the pupil, or wilfully cut, deface, or otherwise injure school property, the parent or guardian is liable for all damages not to exceed \$10,000. However, "*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.*"<sup>42</sup>

6. Fees/deposits for Adult School classes and related books/supplies.<sup>43</sup>

a. Exceptions: No fee 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 not holding a high school diploma.<sup>44</sup>

b. Therefore: Adults may be charged a fee but high school students may not, even though they may be enrolled in the same class. Example: A “health examination fee” for students enrolled in a student nursing program may be charged to adult students, but not to students receiving high school credit for the class.

7. Community Service Classes Schools are lawfully authorized to charge fees for community service classes.<sup>45</sup> However, note that under the pertinent case law, to lawfully charge a fee for driver’s training, schools must design their driver training programs to be truly for “community service” and not primarily for the benefit of high school students.<sup>46</sup> This principle would apply to any type of community service class.

8. Fees relating to foreign country travel or attendance by foreign country national. The law authorizes a deposit for loan of band instruments, music, uniforms and other regalia for foreign excursions whether or not the trip is sanctioned by the school district.<sup>47</sup> A school district may also charge tuition to students of adjoining states or foreign countries.<sup>48</sup>

9. Student-made Materials: Authorized school officials may sell materials to a student for property the student has fabricated from such materials for his or her own use, so long as the price does not exceed direct cost of the materials used, and provided the school district governing board has authorized such sales pursuant to an adopted policy and regulations.<sup>49</sup> This statute would apply to classes such as wood shop or sewing where an item is taken home by the students, but not where the items made remain at school. Nor would it apply to food in home economics classes which is eaten as part of the course work.

This section does *not* authorize a blanket general fee to cover multiple items. Authorization to sell does not mean an obligation to purchase. 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. Accordingly, whenever students fabricate products in a class such as woodshop or sewing, the wood or cloth for such products must be furnished free of charge to the students. If, and only if, a student wishes 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 wish to take an item home, then the district would keep the item and could in no case charge or otherwise penalize the student.

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

10. Fingerprinting Program for Newly Enrolled Students. An optional fingerprint program for children in kindergarten or other newly enrolled children authorizes the school district to assess a fee to be paid by the parent or guardian who chooses to participate. Such fee may not exceed the actual costs associated with the program.<sup>50</sup>

11. Child Care Programs. Several statutory child care programs exist which allow fees under certain conditions, while precluding charges to severely handicapped children.<sup>51</sup> A similar outside-of-school child supervision program authorizes charging fees to participants, so long as “*no needy child who desire to participate shall be denied the opportunity to participate because of inability to pay the fee.*”<sup>52</sup>

12. Actual Costs 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.<sup>53</sup> This “direct cost of duplication” standard also applies to reproductions of the prospectus of school curriculum.<sup>54</sup> The phrase, “direct costs of duplication,” allows a local agency to recover only the actual cost of copying documents, and does not include ancillary tasks necessarily associated with retrieval, inspection, and handling of the file from which the copy is extracted.<sup>55</sup> 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 Education Code § 48980.<sup>56</sup>

C. Fees that require special caution. Justice Kaus, in a concurring opinion in *Hartzell*, noted that “*although the lead opinion does not purport to pass on the matter, its proposed rule would apparently invalidate a number of statutory provisions which authorize the charging of fees in a variety of special settings,*”<sup>57</sup> and listed the following sections as well as some others. In absence of controlling case law authority to the contrary, we advise that districts may continue to levy fees as authorized in the following Code sections. But care must be taken to ensure that no students are deprived of a free public education through whatever funding system is adopted.

1. Charges for medical and accident insurance for athletic team members for those members who can afford to pay.

The law requires districts to provide medical and accident insurance for each member of an athletic team, and with the costs to be funded either by school district funds, student body funds, or “by any other persons on behalf of the individual team members or students covered by the insurance.”<sup>58</sup> Whenever the school board determines that a member of the team or the 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 funds of the student body.*”<sup>59</sup>

2. Fees for field trips and excursions. The field trip statute implies that school districts may charge for “*field trips and excursions in connection with courses of instruction or school-related social, educational, cultural, athletic, or school band activities,*”<sup>60</sup> provided that “*No pupil shall be prevented from making the field trip or excursion because of a lack of sufficient funds. To this end, the governing board shall coordinate efforts of community service groups to supply funds for pupils in need of them.*”<sup>61</sup>

Moreover, the statute specifies: “*No group shall be authorized to take a field trip or excursion authorized by this section if any pupil who is a member of such an identifiable group will be excluded from participation in the field trip or excursion because of lack of sufficient funds.*”<sup>62</sup>

To ensure these restrictions are followed, ordinarily a school district will fund any *required* field trips. The statute provides for the same ADA apportionment which would have accrued had the students not been engaged in the field trip or excursion. Questions typically arise when *optional* field trips are contemplated, especially out-of-state trips for which school district funds may not be used (except for instructors and chaperones). There are several ways such optional field trips may be funded. Perhaps the best approach is to figure the total cost of participation for all students who are members of the relevant group. This amount of money may then be collected through fund-raisers, parent donations, booster club contributions, school district funds, etc. If the total amount is collected, all students of the group may attend the field trip; if not, none may go. Alternatively, students may be told that there is a fee for the out-of-state field trip and that if they cannot pay it, the district will request donations from booster clubs or community organizations. In *either* case, 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.<sup>63</sup>

3. Fees for Outdoor Science Camp Programs. The law authorizes districts to charge a fee for school camp programs in outdoor science education and conservation such as SCICON (Clemmie Gill School of Science and Conservation), “*provided that payment of such fee is not mandatory. No pupil shall be denied the opportunity to participate in a school camp program because of nonpayment of the fee.*”<sup>64</sup> While there are several ways this requirement may be met, again the best approach is to figure the total cost for all students to attend. This money may be collected through fund-raisers, parent donations, PTA scholarships, etc. If the total amount is collected, all students may go to SCICON; if not, none may go. Or, students may be told that there is a fee to go to SCICON and that if they cannot pay it, the district will pay or request donations from community organizations. In any case, 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.

### III. Questionable Fees

A. Parking Fees. Vehicle Code § 21113 authorizes public and private educational institutions to establish rules and regulations governing parking on their property. Does this authorize school districts to charge a fee for parking on district property?

1. Arguments For: In United Stanford Employees v. Board of Trustees (1977) 67 Cal.App.3d 319, the court concluded that a *private university* could impose a parking fee pursuant to this section. Perhaps in reliance on this case, the CSBA sample policies suggest parking fees are authorized.

2. Arguments Against: Public schools, unlike private universities, are constrained by Calif. Code of Regulations § 350, which states that any lawful fee must be *specifically* authorized. It can be argued that Vehicle Code § 21113 is not sufficient authority because it never mentions the word “fee,” nor authorizes a fee in any specific way.<sup>65</sup> Moreover, parking fees remain suspect under the

constitutional free school guarantee. Although it might be argued that such a fee is “noneducational,” as are transportation fees, arguments can also be made to the contrary. High school students who drive and park on campus are typically involved in, or have just completed, driver’s training/education, which arguably creates a stronger nexus between parking on campus and the educational program than being the mere passive recipient of transportation services.

B. Fees for Caps and Gowns. CSBA sample policy AR 3260(a) for Fees and Charges indicates that Education Code § 38119 authorizes the rental or lease of personal property such as caps and gowns for seniors who participate in graduation ceremonies. However, based on the wording of the statute, and in context with other sections in this article, we do *not* read section 38119 as authorizing the school to rent caps and gowns to the students, but rather, as authorizing the school district to rent or lease *from a supplier* materials needed for district purposes, including caps and gowns.

#### **IV. Public Notice Requirements for Fees**

##### **A. Public Hearing Required.**

Teachers or other school personnel cannot unilaterally charge fees even when a particular fee may be authorized by one of the statutes discussed above. The law requires any public agency, including school districts, to hold a public hearing, at which oral or written presentations can be made, as part of a regularly scheduled public meeting, before adopting any new fee or approving an increase in an existing fee.<sup>66</sup> Such fees can only be adopted after advertising as noted below and after a public hearing before the school board.

##### **B. Publication Requirement.**

The law requires publication of notice of the public hearing “*for 10 days in a newspaper regularly published once a week or oftener. [sic] Two publications, with at least five days intervening between the dates of first and last publication not counting such publication dates, are sufficient.*”<sup>67</sup>

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## Endnotes

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2. *Wade v. Flood*, 48 Cal. 36 at 51 (1874).
3. California Code of Regulations, Title 5, Section 350.
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6. 39 Ops.Cal.Atty.Gen. 136 (1962).
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8. Education Code § 48904.
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10. Education Code § 60010 (h).
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18. Education Code § 49066 (c).
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34. Education Code § 38028.
35. Education Code § 38028.
36. *Salazar v. Eastin*, 9 Cal.4th 836 (1995) (upholding trial court's refusal to grant injunction addressing application of Section 39807.5 [now 38028] by local school districts).
37. Education Code § 38028.
38. Education Code § 38030 (formerly § 39809.5).
39. Education Code § 38054 (formerly § 39837).
40. Education Code §§ 38082 (formerly § 39872), 38084 (formerly § 39874).
41. Education Code § 35331 (2).
42. Education Code § 48904.
43. Education Code §§ 38022 (formerly § 39801.5), 52612, 52615, 60070; 60410.
44. Education Code § 52612.
45. Education Code § 51815.

46. *Driving School Association v. San Mateo School District*, 11 Cal App.4th 1513 (1992), and *California Association for Safety Education v. Brown*, 30 Cal. App. 4th 1264 (1994).
47. Education Code § 38120 (formerly § 40015).
48. Education Code §§ 48050 & 48052.
49. Education Code § 17551.
50. Education Code § 32390.
51. Education Code §§ 8263 (f); 8250 (d); 8265.
52. Education Code § 8488 (b) (See also § 8485-8488).
53. Government Code § 6253 (b).
54. Education Code § 49091.14.
55. *North County Parents Organization. et al. v. Department of Education*, 23 Cal.App.4th 144 (1994).
56. See Education Code § 49063 (h).
57. *Hartzell v. Connell*, 35 Cal.3d at 920 (1984) (Justice Kaus, concurring).
58. Education Code § 32220 - 32224.
59. Education Code § 32221 (c).
60. Education Code § 35330 (a).
61. Education Code § 35330 (d).
62. Education Code § 35330 (d).
63. For a detailed discussion of this issue, see our All-District memo dated June 14, 1996 on Field Trips.
64. Education Code § 35335.
65. Cf. Education Code § 89701, a law which *specifically* authorizes a parking fee for the California State University system.
66. Government Code § 66018.
67. Government Code § 6062a.

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