



# IRVINE UNIFIED SCHOOL DISTRICT GUIDELINES REGARDING STUDENT FEES, DONATIONS AND FUNDRAISING

Recently the issue of fees, charges, deposits, donations and fundraising related to courses and activities has been at the forefront of public attention locally and nationally, including a statewide lawsuit and settlement initiated by the ACLU. This Guideline document is designed to reinforce the twin goals of school-community cooperation to support programs and legal compliance while providing that support. Taken as a whole, the intent of this document is to emphasize that the question is not *whether* schools and their communities can raise money to support programs – they can – but *how* funds can be raised through lawful means.

This document contains five sections. The first briefly summarizes the general rule precluding mandatory fees, charges and deposits for educational activities. The second section provides a chronological summary of the development of the law – i.e. the development of the general rule described in the first section. Following that, in Section III, is a point-by-point summary of the twenty recognized exceptions to the general rule, which specifically allow fees and charges for certain activities. The two final sections address topics that are often associated with discussions and debate on the issue of fees, and are key elements in the lawful support of valued educational programs – the topics of donations and fundraising activities for programs, classes, schools, etc.

## **I. Summary of Rule**

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.

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.

The right of free access also prohibits mandated purchases of materials, supplies, equipment or uniforms associated with the activity, as well as the payment of security deposits for access, participation, materials or equipment.

Finally, a process that allows for a waiver process for an otherwise mandatory fee, charge or deposit does not render it constitutionally permissible.

## **II. Chronological Summary of the Development of the Rule**

- 1879 – The California Constitution provision known as the “free school guarantee” was adopted in its current form – “The Legislature shall provide for a system of common schools by which a free school shall be kept up and supported in each district at least six months in every year, after the first year in which a school has been established.” (Ca. Constitution, Article IX, Section 5).

- 1940 – The State Board of Education adopted a regulation designed to implement the “free school guarantee,” which states, in full: “A pupil enrolled in a school shall not be required to pay any fee, deposit, or other charge not specifically authorized by law.” (Title 5, California Code of Regulations (CCR), § 350).
- 1942 – The California Attorney General issued an opinion stating, among other things, that school districts may not require security deposits for locks, lockers, books, class apparatus, musical instruments, uniforms, or other equipment, and that students may not be required to pay a membership fee in any student body organization as a condition of participation in curricular or extracurricular activities. The Attorney General also concluded that all “necessary school supplies” for a course or course of study must be provided by the school district. The Attorney General distinguished necessary supplies from those that are needed regardless of whether or not the person is a student – e.g. glasses, clothes, etc. (Ops.Ca.Atty.Gen. No. NS-4114).
- 1979 – The California Legislative Counsel issued an opinion interpreting the 1940 State Board regulation (Title 5, CCR § 350), concluding that fees for musical instruments used in extracurricular band, special uniforms used in extracurricular activities, club dues, and extracurricular athletic teams violate Section 350 and the “free school guarantee.” (Ops.Cal.Leg.Counsel No. 17036 [November 16, 1979]).
- 1979 – The California Department of Education (CDE) issued a position paper stating that requiring membership fees as a condition of participation in athletics or other educational activities violates the “free school” guarantee as applied by Title 5, CCR section 350. (CDE Guidance on Fees, Deposits and Charges in the Public Schools).
- 1982 – The California Legislative Counsel issued another opinion interpreting Title 5, CCR section 350, concluding that fees for school-sponsored extracurricular activities are unconstitutional. The opinion stated that even though such programs are not required by law, “once the programs are provided, the governing board has no authority to impose a fee, charge or deposit for the program.” (Ops.Cal.Leg.Counsel No. 18293 [October 13, 1982]).
- 1984 – The California Supreme Court decided *Hartzell v. Connell*, a challenge to the imposition of fees for extra-curricular activities by a public school district, imposed by a district to address a funding shortage due to declining enrollment and the passage of Proposition 13. (35 Cal.3d 899). The Court concluded that the “free school guarantee” extends to all programs that are “educational in character,” and that extracurricular activities such as sports, drama, vocal and instrumental music programs are “educational in character.” The Court stated that “the free school guarantee reflects the people’s judgment that a child’s public education is too important to be left to the budgetary circumstances and decisions of individual families.” The Court also concluded that:
  - An activity need not result in course credit to be “educational in character.”
  - A waiver process based on financial need or inability to pay does not make an otherwise impermissible fee permissible.
  - Title 5, CCR section 350 is a reasonable interpretation of the “free school guarantee,” and a valid exercise of authority of the State Board of Education.
  - The Legislative Counsel and CDE opinions addressed above were accurate summaries of the law.
- 1992 – The California Supreme Court concluded, in *Arcadia Unified SD v. State Department of Education*, that a state law authorizing the charging of transportation fees does not violate the “free school guarantee,” because transportation is not an educational activity and the law contains a waiver provision for indigent students. (2 Cal.4<sup>th</sup> 251).

- 1992 – A California appellate court concluded, in *Driving School Assn. of Ca. v. San Mateo Union High SD*, that a high school district does not have the authority to charge high school students under 18 a fee for driver training courses offered through the district’s adult education program, despite the existence of a statutory authorization to charge fees for adult school classes. (11 Cal.App.4<sup>th</sup> 1513).
- 1994 – A California appellate court concluded, in *Ca. Assn. for Safety Education v. Brown*, that fees charged to students for driver training violate the “free school guarantee.” (30 Cal.App.4<sup>th</sup> 1264).
- 1997 – The California Attorney General issued an opinion concluding that a school district may not require the parents of students with unexcused absences to reimburse the district for its reduction in state funding caused by the unexcused absences. (80 Ops.Cal.Atty.Gen. 107).
- 1997 – The CDE issued a further position paper regarding fees, updating it in the wake of *Hartzell* and *Arcadia*, and reinforcing the 1942 Attorney General opinion. (CDE Guidance on Fees, Deposits and Charges in the Public Schools, Advisory 97-02).
- 1998 – The California Attorney General issued an opinion concluding that a school district may refuse to use school funds to pay for the annual cleaning and repair of football equipment if the funds to purchase the equipment were raised through private, voluntary donations. (81 Ops.Cal.Atty.Gen. 153).
- 2004 – The California Attorney General issued an opinion concluding that a school district may not charge a \$20 application fee to cover the costs of processing an interdistrict attendance request submitted by a student from another school district, because the fee is not authorized by a statute and therefore violates Title 5, CCR section 350. (87 Ops.Cal.Atty.Gen 132).
- 2010 – The ACLU filed a lawsuit against the State of California, identifying alleged unlawful fee practices in a number of school districts throughout the state, and alleging that the State had failed in its constitutional duty to ensure that students have a right to free access to public education. The lawsuit settled after three months, in a settlement agreement contingent on the enactment of legislation, regulations, and audit guidelines which will add the general rules on fees to the Education Code and create enforcement mechanisms and penalties for violations.

### **III. Exceptions: Permissible Mandatory Fees/Charges/Deposits**

The following are specific exceptions to the prohibition on fees, charges and deposits at the kindergarten through 12<sup>th</sup> grade level (some legal provisions related to child care programs and adult education are not listed here). These fees, charges and deposits are legally permissible because they are specifically permitted by law. (Note: This list is based on legal authorizations, but the inclusion of a permissible fee, charge or deposit on this list does not necessarily mean that District schools currently assess the fee, charge or deposit). The following fees, charges, and deposits are permissible:

- 1) Charges for optional attendance as a spectator at a school or District sponsored activity. (*Hartzell*, 35 Cal.3d 899, 911, fn. 14).
- 2) Charges for food served to students, subject to free and reduced price meal program eligibility and other restrictions specified in law. (Education Code §§ 38082 and 38084).
- 3) Paying the replacement cost for District books or supplies loaned to a student that the student fails to return or that is willfully cut, defaced or otherwise injured, up to an amount not to exceed \$10,000. (Education Code §§ 19910-19911 and 48904).

- 4) Fees for field trips and excursions in connection with courses of instruction or school related social, educational, cultural, athletic, or school band activities, as long as no student is prevented from making the field trip or excursion because of lack of sufficient funds. (Education Code § 35330(b)).
- 5) Medical or hospital insurance for field trips that is made available by the school district. (Education Code § 35331).
- 6) Charges for required medical and accident insurance for athletic team members, so long as there is a waiver for financial hardship. (Education Code § 32221).
- 7) 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).
- 8) Charging for the parking of vehicles on school grounds. (Vehicle Code § 21113).
- 9) Charges for the rental or lease of personal property needed for District purposes, such as caps and gowns for graduation ceremonies (Education Code § 38119).
- 10) Fees for school camp programs, so long as no student is denied the opportunity to participate because of nonpayment of the fee. (Education Code § 35335).
- 11) Reimbursement for the direct cost of materials provided to a student for property the student has fabricated from such materials for his/her own possession and use, such as wood shop, art, or sewing projects kept by the student. (Education Code § 17551).
- 12) Reimbursement for the actual cost of duplicating public records, student records, or a prospectus of the school curriculum. (Government Code § 6253; Education Code § 49091.14).
- 13) Fees for transportation to and from school, and transportation between school and regional occupational centers, programs or classes, as long as the fee does not exceed the statewide average nonsubsidized cost per student and provided there is a waiver provision based on financial need. (Education Code § 39807.5).
- 14) Fees for transportation of pupils to places of summer employment. (Education Code § 39837).
- 15) Tuition fees charged to pupils whose parents are actual and legal residents of an adjacent foreign country or an adjacent state. (Education Code §§ 48050-52).
- 16) Tuition fees 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 § 1184(m)(1)).
- 17) Fees for an optional fingerprinting program for kindergarten or other newly enrolled students, if the fee does not exceed the actual costs associated with the program. (Education Code § 32390).
- 18) 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. (Education Code §§ 51810 and 51815).
- 19) Deposits for band instruments, music, uniforms and other regalia which school band members take on excursions to foreign countries. (Education Code § 38120).
- 20) Charges for eye safety devices, at a price not to exceed the district's actual costs, in specified courses or activities in which students are engaged in, or are observing, an activity or the use of hazardous substances likely to cause injury to the eyes. (Education Code § 32033).

#### **IV. Donations**

As is referenced above, 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.” As is also noted above, 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 voluntarily.

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

## V. Fundraising

As with donations, school districts, schools, programs and classes can and do engage in fundraising activities and programs, and this practice is also permissible as long as the raising of funds is voluntary. 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 requiring 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, expecting the 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 a Back to School Night or Open House – just as a coach can expect players to attend practices and games, he/she 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.