

Rowland Unified School District

GUIDELINES FOR DISTRICT STAFF AND PARENTS REGARDING STUDENT FEES, DONATIONS AND FUNDRAISING

The Rowland Unified School District appreciates school-community cooperation to support our various programs. This document is provided as a guide for district staff, parents, community members, and auxiliary organizations, who financially support programs, to ensure legal compliance while providing that support. The intent of these guidelines 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 guidance contains five sections. The first briefly summarizes the general rule precluding mandatory fees, charges and deposits for educational and extra-curricular activities. The second section provides key points as they are related to the Constitution and the law. Section III is a point-by-point summary of the exceptions to the general rule that specifies allowable fees and charges for certain activities. The two final sections address related 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.

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. Key Points

The California Constitution guarantees pupils a free public education. Per Article IX, Section 5 of the California Constitution: “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 is established.” The State Board of Education made it clear that fees are not to be imposed without clear legal allowance: “A pupil enrolled in a school shall not be required to pay any fee, deposit, or other charge not specifically authorized by law” (*California Code of Regulations*, Title 5, Section 350).

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Hartzell v. Connell

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, and a waiver process based on financial need or inability to pay does not make an otherwise impermissible fee permissible.

AB 1575 & ACLU

With the enactment of AB 1575, effective January 1, 2013, the Legislature codified the prohibition against charging students, or their parents, fees for any educational expense which is part of the District's base educational program. AB 1575 declared that the statute reflects existing law, which has held that California law prohibits the charging of fees for any activity that is "educational in character," an integral component of the educational program, or a necessary element of the educational program. (*Hartzell v. Connell* (1984) AB 1575 also enacts a new Education Code Article on pupil fees. (Ed. Code, §§ 49010-49013.) Generally, the Code will now dictate that "a pupil enrolled in a public school shall not be required to pay a pupil fee for participation in an educational activity." (Ed. Code, § 49011(a).)

Education Code section 49010 defines a "pupil fee" as:

A fee, deposit, or other charge imposed on pupils, or a pupil's parents or guardians, in violation of Section 49011 and Section 5 of Article IX of the California Constitution, which require educational activities to be provided free of charge to all pupils without regard to their families' ability or willingness to pay fees or request special waivers, as provided for in *Hartzell v. Connell* (1984) 35 Cal.3d 899. (Education Code section 49010(b))

It further states that a "pupil fee" includes, but is not limited to:

- 1) 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;
- 2) 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; and
- 3) A purchase that a pupil is required to make to obtain materials, supplies, equipment, or uniforms associated with an educational activity. (Ed. Code, § 49010(b).)

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The Education Code has defined an “educational activity” 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.” (Ed. Code, § 49010(a).) The phrase “offered by a school,” is included in AB 1575, to reinforce that support entities such as booster clubs, foundations and parent-teacher associations cannot lawfully collect mandatory fees to support school-sponsored educational programs including extra-curricular activities.

III. Exceptions: Permissible Mandatory Fees/Charges/Deposits

The following are specific exceptions to the prohibition on fees, charges and deposits at the kindergarten through 12th 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. 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).

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10. 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).
11. 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).
12. 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).
13. Fees for transportation of pupils to places of summer employment. (Education Code § 39837).
14. 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).
15. 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)).
16. 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).
17. 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).
18. Deposits for band instruments, music, uniforms and other regalia which school band members take on excursions to foreign countries. (Education Code § 38120).
19. 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.” 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

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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 v Connell* 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.

California law does not allow school districts to charge fees to students for curricular and extracurricular activities. However, schools can no longer afford to fund many of the programs and activities. Therefore, schools may request voluntary donations from parents to offset the costs of these programs. Parents are not required to make donations and all students may participate in extracurricular activities regardless of whether their parents make a donation. (following language suggested by Fiscal Crisis & Management Team or FCMAT)

1. You are not required to purchase any of these items.
2. Donations are voluntary and all students will be allowed to participate regardless of whether a donation is made.
3. A voluntary donation of \$___ is appreciated.
4. A _____ (\$20) donation to the art department is appreciated to help offset costs for this program and to maintain the quality of the art program that we have at _____ School.
5. Students who participate in the after-school athletic program are encouraged to support a one-time sports program donation of _____ (\$40), and a donation of _____ (\$25) per season for bus transportation. The program donation will help to cover the cost of uniforms, equipment, coaches, and officials for the year. The bus transportation donation will help to cover the cost of transportation to the away games during the season of sport.
6. We appreciate any donations made to this program.

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 or extracurricular 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.