

Background: “Free Public Schools”

Article XI, Section 12 of the Tennessee Constitution provides that:

-“The General Assembly shall provide for the maintenance (and) support...of a system of free public schools.”

TCA 49-2-110(c) provides that:

-“...no fees or tuition shall be required of any student as a condition to attending the public school, or using its equipment while receiving educational training.”

Fee Waivers

The school must give “clear and prominent written notice of the fee waiver process”

-Must do so at the beginning of the school year at the time of enrollment, and/or at the time of requesting a fee.

-Fee waiver process?

Doesn't that shift the burden back onto the students to seek a waiver?

Doesn't that re-open the door to confusion?

Do schools even need to have a fee waiver process?

-Only rationale would be to challenge whether a charge was a fee or a debt

What If You Fail To Notify That Fees Are Optional?

The Rule *requires* boards to adopt policies providing for the waiver of fees for *any* student.

Suppose a parent pays fees, unaware that the fees were optional?

-Because the LEA didn't comply with state rules?

-At a minimum, it becomes a political nightmare

But could it become a class action lawsuit?

-Thousands of plaintiffs suing for \$65 apiece?

-Alleging negligent misrepresentation of fact?

Economic Realities of Operating a School

The General Assembly does not fully fund education, leaving counties to fund the shortfall.

Tennessee is a fee-driven state

-Philosophy that those who use a service should be the ones to pay for that service.

-Pressure by the county commissions and boards of education to shift variable costs of education down to the schools themselves.

Problem: the way we do business runs counter to the Constitutional and statutory mandate to have *free* public schools for the citizens of Tennessee.

Guidance from the State BOE

No school may require any student to pay a fee as a condition of attending school or participating in any educational activity.

- That includes any fee for any activity that occurs during the regular school day;
- Any fee for supplies or activities offered for academic credit;
- Any fee for Summer School;
- Any fee for Graduation;
- Any security deposit for use of school equipment for academic credit; and
- Any fee for a copy of the student's records

The school may not request any fee that hasn't been approved in advance by the local board.

- Field trips?

Specific Issues: Field Trips

School charges fees to attend an out-of-town trip

Has the Board approved them?

During any part of the regular school day?

- Then the fees are *optional*

But what if they are really expensive, and the kids have so much fun?

But what about extracurricular trips? What if they occur during the regular school day?

So Where Are We Now?

Boards will need to amend policies ASAP and provide notice to parents that payment of fees is voluntary.

- And very much appreciated
- But, more likely than not, the collection of voluntary fees will become an administrative headache with diminishing returns.

Boards (and schools) will be forced to budget the costs that they have passed along to parents

Boards will need to define very clearly in policy what are fees and what are debts



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MEMORANDUM

Date: September 9, 2009
To: Directors of Tennessee Schools
From: Christy Ballard, General Counsel, Department of Education
Rich Haglund, General Counsel, State Board of Education
Subject: School Fees

Based on questions received from several school districts regarding compliance with the law on school fees, the following guidance, including frequently asked questions was developed to clarify any misunderstandings.

School fees are governed by state law, State Board of Education Rule, and local board of education policy. Only those fees authorized by the local board of education may be requested, and payment of "school fees" may not be a condition to attending the public school or using its equipment." (Tenn. Code Ann. §49-2-110(c)). In other words, no student may be required to pay fees for workbooks, lab fees, field trips during the school day, etc.

Statutes (Tenn. Code Ann. §49-2-114) and State Board of Education Rules define school fees. State Board Rule 0520-1-3-.03(14), available online at: <http://state.tn.us/sos/rules/0520/0520-01/0520-01.htm>. This rule notes, for example, that schools may request, but no students may be required to pay a fee "for activities and supplies required to participate in all courses offered for credit or grade, including interscholastic athletics and marching band if taken for credit in accordance with local board policies."

Confusion has arisen, however, because Tenn. Code Ann. §49-2-114 required the Board to promulgate rules for waiving school fees for students eligible for free and reduced price lunch. In some instances, this statute and the accompanying rules appear to have been interpreted to mean that school fees may *only* be waived for students based on familial income. This interpretation, although understandable for those only reading the State Board Rule, has always been in conflict with state law and the Tennessee Constitution.

The rules were revised by the State Board of Education to dispel any misunderstandings and misinterpretations by clarifying that even though schools may request school fees, no one may be required to pay those fees, regardless of income. This is in line with the State constitution, and with attorney general opinions previously sent to Directors of Schools. The two Attorney General Opinions from 2003 that are most often cited are attached for your convenience.

1. What did the 2009 revisions to State Board rules change?
The State constitution and State statutes—as interpreted by the Tennessee Attorney General—prohibit schools from requiring any student, regardless of income, from being charged a fee "as a condition to attending the public school, or using its equipment while receiving educational training." Tenn. Code Ann. §49-2-110(c). See also, Tenn. Code Ann. §49-6-3001 (a) ("The public schools shall be free to all persons above the age of five."), and Tenn. Const. Art. XI § 12 which states, in part, "The General Assembly shall provide for the maintenance, support and eligibility standards of free public schools." The State Board removed several paragraphs from its rules dealing with the waiver process for students on free and reduced price lunches. Those paragraphs appear to have led people to believe that only those students could have "school fees" waived. The revisions clarify that before any fees may be requested, they must be approved by the local board of education; and, though approved "school fees" may be requested, they may not be required of any student, regardless of income,

2. Must we notify all parents that the requested school fees are not required?
Yes. Tenn. Code Ann. §49-2-114 says that "LEAs shall establish, pursuant to rules promulgated by the state board of education, a process by which to waive all school fees for students who receive free or reduced price lunches." Because the State constitution and other statutes prohibit requiring any student to pay any fee "as a condition to attending school or using its equipment while receiving educational training," Tenn. Code Ann. §49-2-110(c)), the rules require the board to "adopt a policy consistent with this rule by which to waive such fees for any student, including students eligible for free or reduced price school lunches."
The rule also notes:
"At the beginning of the school year, at the time of enrollment, and/or at the time of requesting school fees, all students and their parents or legal guardians shall be given clear and prominent written notice of the fee waiver process."

3. Who determines what fees may be requested?
The local board of education must authorize all fees before they may be requested of students. Tenn. Code Ann. §49-2-110(c).

4. May a school hold pizza parties or other special events during regular school hours, and limit attendance or participation to those students who participated in, and/or raised a certain amount of money in a fundraiser? •
No, if this is a situation where the school is providing an activity "that occur[s] during regular school hours," (Tenn. Code Ann. §49-6-114(b)(1)), where the key to participation is, essentially, the payment of a fee. A school could, however, offer a special lunch to those students during the lunch hour or after school.

5. What about fees associated with dual-credit or dual-enrollment courses?
Dual-credit courses are high school courses, taught by high school faculty. Students may be able to get college credit, and may need to pass a specific exam (sometimes an industry certification exam) to get post-secondary credit. Students may not be charged a fee by the school to enroll in such a course or to receive high school credit. The student may be charged a fee to take the exam to receive post-secondary credit. If, for example, the school requires that exam in order to receive the high school credit, the school may request, but not require the fee.

Dual-enrollment courses are optional post-secondary courses taken by students who have enrolled in the post-secondary institution. The LEA may, by local board policy, award concurrent credit. As long as the student has other, non-dual-enrollment means to earn the required credits for high school graduation, the student may be required to pay a fee for dual-enrollment courses.

6. What about band instruments? Are they "supplies"? If a student wants to take a band class for credit, may the school require payment of a fee to use a school-owned instrument?

No. Tenn. Code Ann. §49-2-114 defines school fees as, among other things, "fees for activities and supplies required to participate in all courses offered for credit or grade." So, if a student needs an instrument to participate in band class, then the school board may approve the request for fees for use of school-owned instruments, but may not require that fee of any student.

7. What about marching band?

This is different than the class. The law prohibits requiring a fee "for activities and supplies required to participate in all courses offered for credit or grade." Tenn. Code Ann. §49-2-

8. State Board rules allow students to substitute marching band and extracurricular sports for part of the required physical education credit. Does this mean that students intending to do this must be allowed to participate in band or the sport without paying a fee other students are paying?

No. The students can still earn the required physical education credit without participating in the extracurricular activity. Thus, the fees for marching band or the sports team are not fees required "as a condition to attending the public school, or using its equipment while receiving educational training." Tenn. Code Ann. §49-2-1 10(c).

9. Are fees for parking permits "school fees"?

No. Fees to park are not required "as a condition of attending school or using its equipment while receiving educational training." As long as students can travel to or from school using school-provided transportation, charging for parking would not constitute a fee.

10. Are dues for extracurricular clubs, including clubs like the FFA, "school fees"?

No, These are "costs for extracurricular activities" that are not included in the definition of "school fees".

11. May a school require members of an extracurricular club (such as FFA) to pay fees for travel to and registration fees for competitions, conventions, etc., when those events occur or require travel during regular school hours?

Yes. The rules currently (and as revised) note that school fees do not include "costs for extracurricular activities occurring outside the regular school day including sports, optional trips, clubs or social events." Even though the travel or the competition may occur during regular school hours, the students qualified to attend these events not by merely paying a fee. Instead, they joined an optional club or team and qualified for the competition. Thus, they may be charged a fee for travel or registration fees to such events.

12. May a school charge a fee for a school-sponsored trip to Europe that occurs mostly over spring break, but involves students being absent from two regular school days?
The school may not charge a fee for the two days of the trip that occur on regular school days. Unlike the example above, the only qualification for this trip sponsored by the school is payment of a fee. This would qualify as a "field trip ... [a] portion of which falls within the school day." This example highlights what may be a helpful guide in determining which fees a school may request, but not require. Is the only criteria for the student to attend or participate in an event during regular school hours the payment of a fee? If so, then requiring such a fee probably violates the rules, statutes and the State constitution.
13. May students be prohibited from participating in graduation ceremonies if they do not pay requested cap and gown rental fees?
No. "Fees required for graduation ceremonies" are included among the list of fees which may be requested but not required.
14. May a student be required to pay a fee for voluntary summer school programs?
Yes. 49-6-3003(b)(1) says "Tuition and fees may also be charged by any county to all pupils for voluntary programs which occur outside the required one hundred eighty (180) instructional days, unless the state funds the entire cost of such instruction."

If you have further questions regarding this issue, please feel free to contact Christy Ballard at christv.ballard@tn.gov or Rich Haglund at rich.haglund@tn.gov.