



MEMBER ALERT

CURRICULAR AND EXTRA-CURRICULAR FEES AND DONATIONS

Along with the yearly student registration process, Members are presently engaged in efforts to obtain volunteer support and financial contributions for their curricular and extra-curricular programs. This Member Alert highlights recent litigation filed by the American Civil Liberties Union (“ACLU”) and parents who have successfully challenged school districts’ collection of mandatory and “voluntary” fees in support of such programs, as well as a June 2010 San Diego County Grand Jury report highly critical of the San Diego Unified School District’s policies and procedures.

The ACLU intends to further challenge school district policies and procedures on a statewide basis to ensure enforcement of California’s Constitutional guarantee of a “free education” (*Article IX, Section 5*, “FEA”). Given media attention focused on the ACLU’s activities, parents and other plaintiffs’ attorneys may challenge Members’ policies and procedures, particularly when lucrative attorneys’ fees may be available when a lawsuit or demand results in changed processes or procedures. Because a successful lawsuit can be brought even when a district’s administration was not earlier aware that a particular school site, coach, program supervisor, or other employee or representative was acting in violation of the FEA, we urge each Member to promptly share this Member Alert with all employees in an effort to ensure that important California constitutional requirements are not being violated that may result in litigation exposures and expenses solely payable by the district. Because this Member Alert cannot address specific policies, procedures or situations, or all potentially relevant fees or restrictions, Members should contact NBSIA or their legal counsel with any questions or concerns they may have arising from this Member Alert.

I. THE LAW

California’s Administrative Code states: “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, CAC Section 350*. In keeping with the interpretation of the FEA and Section 350, the decisions in *Hartzell v. Connell*, 35 Cal.3d 899 (1984) and *California Assn. for Safety Education v. Brown*, 30 Cal.App.4th 1264 (1994), and the opinion of the California Attorney General in 81 Ops.Cal.Atty.Gen. 153 (1998), all hold that school districts must not require the payment of any fee, or the purchase of any book, equipment, or other item needed to fully participate in curricular and extra-curricular activities, unless such a fee or requirement is expressly authorized by statute.¹

While school districts may request “voluntary donations” for such items, the Attorney General (and the ACLU) has cautioned that such requests must not be issued in a manner suggesting any negative result or outcome if the donation is not made. Unfortunately, we have no direct guidance as to what a court might consider to be an “inappropriate” or “illegal” request that negates the “voluntary” aspect of a requested donation. The absence of such guidance, and the attention on this issue by the ACLU and others, suggests the need for caution when making donation requests, with Members encouraged to avoid indicating that a program will need to be terminated, or a child’s participation affected, if a donation (particularly a donation in a stated amount) is not received.

Given these limitations, the following issues should be carefully evaluated.

A. Transportation To and From District-Sponsored Activities

In response to the ACLU’s challenge and media publicity, school districts in Los Angeles and San Diego recently withdrew efforts to charge mandatory or “recommended” fees or donations for students to travel by way of school bus

¹ Adult education books, course materials, or activity fees are not subject to such limitations.

to district-sponsored sporting and other team events. As the ACLU and districts both seem to agree, required or “involuntary” transportation charges are permissible only for travel to and from school (*Ed. Code § 39807.5*), not to and from district-sponsored curricular or extra-curricular activities. Important additional limitations and requirements associated with school district’s obligations to ensure that students are safely transported to and from such events was addressed in NBSIA’s 2009 *Student Safety Considerations Member Alert*. A copy of that Alert is available on request.

B. Field Trips

While a participation fee can be charged for field trips (i.e., to pay for entry fees to off-site locations), no child can be prohibited from participation in an in-state field trip due to a lack of sufficient funds to pay the participation fee. *Ed Code § 35330(b) (1)* Out-of-state field trips are to be paid for by the student. *Id. (b) (3)*

C. Equipment and Supplies

Books, equipment, and supplies (including training materials for ROP/apprentice programs) must be provided by the school district. If a student damages (beyond ordinary wear and tear, where the district must ensure the general maintenance of such items) or loses such items, the district can seek reimbursement from the parent. *Ed. Code § 48904* The only additional exception is for materials needed by a student to participate in sewing, woodshop, or other classes where (1) a tangible item is created that is to be brought home for personal use by the student (i.e., this exception is inapplicable to baking or similar classes where the item is eaten at school or otherwise remains on campus), (2) the cost of the materials does not exceed the direct cost of the materials purchased by the district, and (3) the district has adopted a board policy authorizing such a sale of materials to students. *Ed. Code § 17551*

D. Recreational Programs

General recreation or “outdoor education” programs (including summer camps), which are not a required part of the curriculum, may charge a fee (no greater than the actual cost of the program, less any state/federal subsidies), although no student may be denied participation due to a lack of funds. *Ed. Code § 35335*.

E. Before and After School Care

A program offering before and after school child supervision program may 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.” *Ed. Code §§ 8250(d), 8263(f), 8265, 8487, and 8488(b)*.

F. Clothing/Gym Wear

No child in a physical education class may be denied participation, or have his/her grade affected, due to the fact the student does not wear standardized apparel where the failure to do so arises from circumstances beyond the control of the pupil. *Ed. Code § 49066*. According to CDE, a district may require students to purchase suitable attire of a type generally sold for wear outside of school, as opposed to branded or distinct types of clothing. Recent lawsuits, and reactions by involved school districts to complaints regarding this issue, suggest that the CDE’s suggested approach might be subject to challenge if parents are required to buy clothes/clothing that they would not otherwise purchase for their son or daughter and their alternate “street clothes” would still allow them to participate fully in the class.

II. CONCLUSION

Members should ensure that they are providing proper training and oversight of employees and volunteers with respect to registration activities (volunteers who may “require” or “insist” upon payments for course fees or materials not authorized by law), team meetings, and other situations where finances and financial contributions may arise. Even strong supporters of the public school system may have adverse reactions to “pressure” tactics, or “requirements” to pay “illegal” fees, leading to adverse claims or litigation. Government watchdogs and grand juries may also become involved, leading to unwanted publicity or public sanctions. Sensitivity and understanding of the governing limitations and exposures with respect to permissible fees and “donations” should, therefore, be emphasized.