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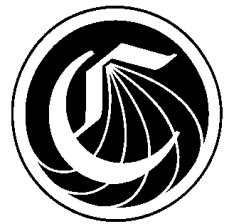
Executive Vice Chancellor for Operations and General Counsel

Student Fee Handbook

: In 2010

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Express statutory authority is required to charge any mandatory student fee; optional student fees or charges may, under certain circumstances, be charged under the authority of the “permissive code” as set forth in section 70902(a) of the Education Code.

Under current law it is well settled that a student may only be required to pay a fee if a fee is imposed (such as the enrollment fee), or if a fee is imposed (such as the health fee). In either instance, a student cannot be required to pay a fee in the absence of express legislative authority (see the following opinions of the California Attorney General: 60 Ops.Cal.Atty.Gen. 353 (1977), and 61 Ops.Cal.Atty.Gen. 75 (1978)). The Board of Governors has underscored this policy through the adoption of a minimum condition regulation (Cal. Code Regs., tit. 5, § 51012) that provides that a district may only establish such mandatory student fees as it is expressly authorized by law to establish.

The statutes establishing many of the mandatory fees provide for exemptions which must be granted to qualifying students. Districts lack the authority to charge mandatory fees to those students who are entitled to an exemption.

If a fee must be paid as a condition of admission to a college; or as a condition of registration, enrollment, or entry into classes; or as a condition to completing the required classroom objectives of a course, or of access to critical functions of the college

¹ This Handbook represents the analysis of the State Chancellor's Office regarding the proper application of fees for community college students. This Handbook is in the nature of advice and includes no mandates. It does, however, interpret existing mandates affecting the imposition of student fees. Any district applying this advice may reasonably assume that the Chancellor's Office will not take legal enforcement action against it in the area of student fees.

Questions regarding financial aid procedures should be directed to Ronda Mohr rmohr@cccco.edu, or Tim Bonnel, Student Financial Assistance Programs Coordinator, tbonnel@cccco.edu. Questions regarding nonresident tuition and treatment of fee revenue should be directed to Michael Yarber at myarber@cccco.edu. Other questions should be directed to Jonathan Lee at legalaffairs@cccco.edu.

Because this material is lengthy and complex, we used underlining to indicate changes in the law, our interpretation of the law, or items that our reviews suggest should be emphasized. Material in boldface is pre-existing information, which we believe deserves particular emphasis.

(such as financial aid), the fee is mandatory (required) in nature. As noted above, mandatory fees must either be required or authorized by law.

On the other hand, if the fee is for materials, services, or privileges that will assist a student, but is not otherwise required for registration, enrollment, entry into class, or completion of the required classroom objectives of a course, the fee can be classified as optional in nature. Under the authority of the permissive code, a district may charge a fee that is optional in nature, provided that the fee is not in conflict or inconsistent with existing law, and is not inconsistent with the purposes for which community college districts are established. Examples of optional fees are parking fees (which are also authorized in section 76360 of the Education Code), fees for a student body card, or a student activities fee.

The optional nature of a fee should be made clear to students. Only if students understand that the fee is truly optional can they make an informed decision about paying it. In addition, the processes by which students may claim exemptions from paying a mandatory fee or may decline to pay an optional fee should not be unduly burdensome to students.

If a fee is required for registration, enrollment, entry into class, or completion of the required classroom objectives of a course, it can be classified as a "course fee." If a fee is for materials, services, or privileges which will assist a student, but is not otherwise required for completion of the required classroom objectives of a course, it can be classified as a "service fee." Under this classification structure, specific legislative authority is always required to charge any course fee. A variety of service fees are specifically authorized by statute. In addition, service fees meeting the test of the

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Washington, DC, or the crash of United Airlines Flight 93 in southwestern



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include materials used or designed primarily for administrative purposes, class management, course management, or supervision. Some on-line or electronic instructional materials offer no assistance or benefits to the instructor or the district. Such assistance or benefits would not disqualify the product from being available instructional materials provided the primary purpose of the instructional materials is for instructional purposes. Second, the regulations ensure that materials provided through distance or access fee shall be available to students for up to two years, satisfying the requirement that instructional materials must have continuing value outside the classroom setting. Students have the option of paying a lower price for a shorter access period. These title 5 sections specifically apply to both credit and noncredit courses, and the requirements would apply to credit and noncredit courses offered through a contract education mechanism. (See Legal Opinion E 0325.)

"Required instructional materials" are materials which the student must procure or possess as a condition of registration, enrollment, or entry into a class; or any materials which is necessary to achieve the required objectives of a course.

Finally, the regulations specify that the materials must not be solely or exclusively available from the district. A material will not be considered to be solely or exclusively available from the district if it is provided to the student at the district's cost, or there are health and safety reasons for the district being the provider, or if the district is providing the material cheaper than it is available elsewhere.

It is important to remember that these regulations only apply to materials that are required as a condition of registration, enrollment, etc. Materials that are helpful to students, but is not required, then it may be sold to students under the authority of the permissive code materials that is optional need not be personal property; it need not be of continuing value outside the classroom setting; and it can be available exclusively from the district so long as it is not needed by the student to achieve the required objectives of the course or as a condition of enrollment. Questions have arisen about the propriety of charging an instructional materials fee to students who audit courses. As a practical matter, an auditing student might not participate in a course in the same way as a regular student, but may be more of an observer. In that case, the instructional materials would not be necessary to achieve the objectives of the course. Auditing students should be advised that they must provide the required instructional materials if they wish to participate in that portion of a course for which the materials are required. Districts should not permit auditing students to use instructional materials paid for by students who are not auditing the class such that auditing students are effectively subsidized by regular students.

to be sold to the student at the cost to the district, and the article becomes the property of the student.

Please note that districts may not charge a gross -the-board or per unit instructional 0034(i) in.001 Tw8 -

distance education courses are subject to the same residency determination requirements and exemptions as traditional students. A student enrolling in a distance education course is deemed to be a nonresident, that student is subject to nonresident tuition. This conclusion is discussed in detail in Legal Opinion 0119. Another important conclusion in Legal Opinion-09 is that the Legislature did not include an express exemption from nonresident tuition for nonresident students enrolled in

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~~graduate students would be entitled to resident classification for the purpose of determining the amount of tuition and fees~~ Effective with terms or sessions starting on or after January 1, 2013, please be aware of revisions to section 68075.5 concernin5dp96o s

10. Students who audit a credit course nonresident tuition is charged based on the number of units of credit to be awarded for courses in which the student enrolls

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University of California, under certain limited circumstances, to enroll in one state supported course per term at an institution from one of the other systems on a space available basis at the discretion of the appropriate campus authorities on both campuses. Such students do not need to go through the formal admissions process and are exempt from required fees, except that, effective July 1, 2004, the host campus may charge participating students an administrative fee, not to exceed an amount sufficient for the campus to recover the full amount of the administrative costs it incurs under the chapter (Ed. Code, § 66753.)

A student is qualified to participate in the cross-enrollment program if he or she is enrolled in any campus of the California Community Colleges, the California State University, or the University of California and meets the following requirements specified in section 66752:

- a. The student has completed at least one term at the home campus as a matriculated student and is taking at least six units at the home campus during the current term;
- b. The student has attained a grade point average of 2.0 for work completed;
- c. The student has paid appropriate tuition or fees, or both, required by the home campus for the academic term in which the student seeks to cross-enroll; and
- d. The student has the appropriate academic preparation, as determined by the host campus, consistent with the standard applied to currently enrolled students, to enroll in the course in which the student seeks to enroll.

Students who are cross-enrolled from another segment are not required to participate in the community college matriculation program, but such students can be required to meet any course prerequisites or corequisites which have been properly established for the course.

The Chancellor's Office worked with representatives from the California State University and the University of California to establish guidelines for this program. The guidelines were issued in June of 1995 by the Intersegmental Coordinating Council and 9fw 0 -2.45(P3t(fdy <<

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when physical education courses are required to use nondistrict facilities such as bowling alleys and golf courses. Districts are not authorized to make a profit on this fee, and they should ensure that the fee charged to participating students does not exceed the charge to the district.

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of parking service expenses (Ed. Code, § 76360(e).) As such, districts may use their discretion when allocating parking fees for various parking services such as parking security, repair, and maintenance.

The Chancellor's Office has also determined that alternative authority to charge a fee for the use of a parking facility exists under limited circumstances. Where a parking facility was constructed with the proceeds from revenue bonds under Education Code section 81901, fees may be charged for the use of that facility without regard to section 76360. Section 81901 independently authorizes a charge for the use of such a facility.

3.3. Transportation Fee Districts may require students and employees to pay a fee for the purpose of reducing fares for services provided to these students and employees by common carriers or municipally owned transit systems, or to partially or fully recover transportation costs incurred by the district. Only those students and employees who use the transportation services may be required to pay the fees.

If the foregoing option is the basis for a transportation fee, students who take only online classes and do not use the services may not be charged a use fee.

However, in two situations, a district may charge transportation fees regardless of actual usage:

1. All students and employees at a campus may be required to pay a transportation fee if a majority of the students and a majority of the employees at that campus vote for such a proposition; or
2. All students at a campus may be required to pay a transportation fee if a majority of the students at that campus vote that all students will pay. In this instance, the employees are not entitled to use the services.

Elections may be held on a campus-by-campus basis. Fees authorized by election remain valid for "a period of time to be determined by the governing board of the district." (Ed. Code, §§ 76361(b)(1) and 76361(b)(2).)

A review of the legislative history of section 76361 suggests that the phrase "a majority of all students/employees on a campus" means a majority of those students/employees voting in the election held for the purpose of authorizing the fee. If the transportation fee results from an election described above, students who take only online classes may be charged the fee, because the assessment does not depend on actual use of the services.

The maximum amount of transportation fees may not exceed the amount needed to reimburse the district for transportation services. The combined amount of

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transportation fees under section 76361 and trip fees levied by a district under section 76360 may not exceed \$5 per semester or \$5 per intersession, or a proportionate equivalent for parttime students. The governing board of each community college district may increase the fee limits imposed by this subdivision * * *

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subscribe to legislative publications, and/or to pay for any other expense reasonably necessary to effectuate student representation activities. (See Legal Opinion O-24.) However, it is our view that revenues from the student representation fee may not, consistent with Education Code section 76060.5, be used to support or oppose ballot measures or candidates.

Section 76060.5 describes a fee for students enrolled in a college where a student body association has been established. If a district has multiple colleges and the same student attends more than one college in the district, that student may be responsible for a student representation fee at each college where a fee under section 76060.5 has been properly established.

3.5. Student Center Fee Education Code section 76375 auth(g)6(e)3(h)10(0Bv6)2(0)2(.)7(5)12(de)

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Section 76375 describes fees for students attending the college where the student body center is to be located

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3.10. Foreign Citizen/Resident Application Processing Fee Education Code section

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A reasonable fee for credit by examination is the per unit enrollment fee established by Education Code section 76300.

Districts that incur additional verifiable expenses in connection with offering credit by examination may be able to demonstrate reasonable fees beyond the fee established by Education Code section 76300.

3.13. Refund Processing Fee Section 58508 of title 5 of the California Code of Regulations permits districts to retain a maximum \$10 from enrollment fees as a refund processing fee. Section 58508 is not general authority to retain portions of other mandatory fees or to charge a processing fee to refund other mandatory fees.

However, we believe that districts may charge a refund processing fee for optional fees that students voluntarily pay, if certain conditions are met. (See 4.10(e) Dis 2 Td J4(t0(pr)4(a18(pa

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3.16. Instructional Video Leases/Deposits Video tapes or DVDs provide instructional content for many programs. Td Bte 3

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required enrollment fees prior to the beginning of instruction. However, a district which permits deferral may not allow a student to enroll and then involuntarily drop him or her from classes after instruction has begun for failure to pay the enrollment fees (See Legal Opinion O-14.)

There is no authority for charging a fee to students who wish to participate in a process for deferring the payment of their enrollment fees. Such a fee would be a prohibited late payment fee (See 4.16, below). For a further discussion of deferring enrollment fees, see 2 above.

It has also been suggested that students may be charged a fee each time they make a payment to the district except when they pay by cash. That is, all credit card, check, money order, or other transactions would carry a fee. In order to justify this approach, a district would need to demonstrate that cash payments are truly a reasonable and viable free option. Districts might be able to do so by demonstrating that most students recently paid their fees with cash. Districts should also be able to demonstrate the ability to accommodate larger numbers of students paying fees in person because they are using cash. Absent such proof, it appears that cash payments do not provide a reasonable free option. Absent a reasonable free option, the proposed cash fees would be improper. Districts might also consider any potential consequences, such as greater security issues, that might be associated with the increased use of cash.

3.18. International Student Medical Insurance Fees. To the extent that federal requirements mandate that international students have medical insurance, districts may offer students the option to demonstrate that they have their own appropriate insurance or may offer the student the option of paying for a medical plan provided through the district.

3.19. Fees for Criminal Background Checks. There is no statute or regulation authorizing a district to charge a fee to conduct a criminal background check on a student. Thus, as a general matter, a district may not impose a mandatory fee for this function. However, where a district has properly established a criminal background clearance as a prerequisite or enrollment limitation for enrollment in a clinical course, it may offer to process the request on the student's behalf in exchange for a fee to cover the costs it incurs. It is important to note that this approach is only permissible provided that the district allows a student to obtain his or her own criminal background clearance from other appropriate sources.¹¹ (See Advisory 062 for a detailed Q&A regarding criminal background clearances.)

¹¹ Individuals are authorized to obtain their own criminal history information from the Department of Justice pursuant to Penal Code section 11105(b)(11) and Penal Code sections 11120 et seq.

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3.20. Fees for Providing Special Certificates Students sometimes ask for special documentation to verify that they completed coursework. For example, students may request certificates to document to the California Board of Registered Nursing that they completed continuing education contact hours.

If a district offers special certificates or other verifications that contain specialized information that would not normally be included in standard district records (e.g., a registered nurse number or a printed statement that the certificate must be retained by the licensee for a period of years after the course ends), the district may charge an optional fee to cover the cost of producing the certificate.

Districts should ensure that all of their materials describing optional student ID card fees clearly describe the optional nature of the fees.

instruction is offered as a community service class without credit, a district could charge students for the cost of Internet access necessary to participate in the class. Such a fee could also be charged for a credit course if the fee is truly optional (the student can participate effectively without paying the additional fee), but, there is no statutory authority for charging such a fee for a credit course if the fee is mandatory.

There is no express authority for requiring students, as a condition of enrollment, to pay a fee to cover the costs of mailing grade reports,

supplemental instruction required under the apprenticeship agreement described in Labor Code section 3074.

The Chancellor's Office has also considered the viability of a fee that gave students access to computer labs and computers, the Internet, and e-mail. About 98 percent of available computers were covered by the fee; the remaining 2 percent of the computers (approximately 30 out of 1500) were available without charge to any student.

It was concluded that the fee would be a permissible optional fee with respect to students who were not in courses where such technology was required. However, as noted in 4.9 above, even an optional fee would be prohibited if the district received state funds for this purpose. Costs associated with the purchase of the computers, maintenance of such computers or other related costs, may be recovered through an optional fee only to the extent that such state funds were not used to support those expenses. That is, a district may not use funds that are required or expressly authorized for a specific purpose and also charge students a fee to cover the same costs, even if the fee is optional.

. It is not permissible to charge a late payment fee to students who are allowed to start attending classes before they have paid their enrollment fees.

Title 5, section 58502 requires the enrollment fee to be charged at the time of enrollment. However, the section also permits deferral of the collection of the fee under conditions established by the governing board. Therefore, assuming a governing board has authorized a deferral process, students may pay their enrollment fees at some point after enrollment. Section 59410 of title 5 permits districts to withhold grades, transcripts, diplomas, and registration privileges from those students who fail to pay outstanding financial obligations, such as outstanding fees. Section 59410 establishes the mechanism for addressing unpaid fee obligations, and an additional late payment charge is not authorized. For those students who ultimately fail to pay their enrollment fees, districts may also pursue recovery through the Chancellor's Office Tax Offset Program (COTOP) system.

. Section 55304 of title 5 of the California Code of Regulations provides in pertinent part that districts that offer nursing programs, or related programs in the healing arts, may maintain classes at hospitals.

process the request on the student's behalf in exchange for a fee to cover the costs it incurs. It is important to note that this approach is only permissible provided that the district allows a student to obtain his or her own Student Liability/Malpractice Insurance from other appropriate sources.

. In Legal Opinion L 02-13, we analyzed a flat fee that was charged to students who failed to clean out their chemistry class lockers at the end of the term. The district required students to use the lockers and it provided the locks. The fee was charged if the lock had to be cut off and the contents of the locker removed, cleaned, and inventoried.

There is no statutory authority that mandates or permits a fee to remove the lock and to clean and inventory the contents of a locker. The flat fee had no direct relationship to the work required because the fee was the same whether there was little or no cleanup or a lot of cleanup work. The fee cannot be justified as an instructional materials fee because no tangible personal property is involved. The fee cannot be justified as a service to students because the student receives no service. Instead, the fee merely permits a district to offset some of the cost of cleaning its own equipment or supplies. Even if there were a discernible service to the students, the fee would have to be optional, not mandatory. Based on the foregoing, we concluded that such a fee is not allowed.

. In Legal Opinion L 02-13, we assessed a breakage fee charged to chemistry students. The fee covered breakage that occurred during student laboratory work. We noted that breakage fees are neither mandated nor authorized by statute, nor are they "instructional materials" fees. Instead, the fee appeared to be designed to reimburse the district for the cost of replacing district equipment or materials that students break. A certain amount of breakage must be absorbed by districts in their normal operations, and insurance may be secured against breakage in appropriate cases.

If students intentionally destroy district property, districts may wish to pursue disciplinary action under their rules of student conduct.

In September 2005, Governor Schwarzenegger vetoed AB 1070 that would have allowed community college districts to charge students for the cost of replacing or repairing instructional equipment that was lost or damaged. The veto reflected the Governor's concern that it could deter students of limited means from pursuing courses of study that require the use of costly equipment, particularly in areas such as science, medicine, or nursing.

There is no authority that permits a district to charge students a fee to cover the costs of having someone present while students are taking

Chapter 2, item 2.5, sets forth a series of questions which are designed to help districts determine whether they have the authority to require students to provide materials or to charge students a fee

- See _____ above, and _____, below.

- Required tests are instructional materials, and have continuing value to the student, if they are returned. However, in instances where districts are the sole or exclusive provider of tests and neither of the exceptions in title 5, section 59402(c) apply, tests should be provided free.

Under the authority of the “permissive code” (Ed. Code, § 70902(a)) a district may charge for optional tests not required for entry or enrollment into a class.

Please note that this item describes tests that are used to evaluate classroom performance, as opposed to placement tests or assessments. See 4.9 of the Handbook for a discussion of fees for placement tests.

- Education Code section 76365 specifically mentions textbooks as materials which have continuing value outside of the classroom. As such, the general rule is that districts may require students to provide their own textbooks. However, these textbooks can't be solely or exclusively available from the district unless the exception of title 5, section 59402(c) applies. If a district is the sole publisher of a textbook, placing copies of the text in local bookstores will not automatically make it generally available.

Until recently, it was not permissible to charge for online access to an electronic version of a textbook. However, title 5, section 59402 was amended in January 2006 to permit this, provided that the student can store and print the textbook for use after the course is over. Of course, as with any other type of instructional material, the district cannot charge for access to an online textbook if this access is solely or exclusively available from the district, unless one of the exceptions to the “solely and exclusively available” rule are applicable.

- Education Code section 76365 specifically itemizes clothing as a material which is of continuing value to a student outside of the classroom setting. Students can be required to provide their own uniforms and clothing.

- see _____, above.

- Welding rods are an example of a “transformed” material which, under most circumstances, have no continuing value outside of the classroom setting after being used. A welding rod is rendered valueless in the process of being used for practice welds. Hence, a district must provide those rods necessary to complete those required objectives of a course which are to be accomplished under the supervision of an instructor during class hours. Extra welding rods for practice or in addition to those needed to complete required objectives may be sold to the student as optional material.

Welding rods and other transformed materials can have continuing value under limited circumstances, however. If welding rods are used to make a project or material that a student will take from the class, the student can be required to provide the rods that will be used for the project. For instance, if the welding rods are used to make an art object and the art object becomes the property of the student, welding rods may be required.

Other examples of transformed materials that are usually rendered valueless after use include chemicals, gasoline, diesel fuel, and medical supplies such as Band-Aids, sterile syringes, and catheters.

- See _____, above