



## Raising Student Fees

### Question:

Our Board is considering raising some of the student fees that are collected at registration. Typically these fees have been “classroom fees” (used for class events) and supply fees (for art, chemistry, piano, etc.). What kind of fees may the district/charter charge? May we charge fees for common use items (such as copy paper)? If we charge fees, can they go into the general fund or must they be placed in a separate fund?

### Answer:

There are only two sections in Idaho Code that have any implication regarding fees charged by a school. The first is Section 33-603, Idaho Code entitled “Payment of fees or returning of property”. That section grants the board of trustees of each school district/directors of a charter school the power and ability to require that any and all indebtedness incurred by a student be satisfied, and that all books, instructional materials etc. be returned as a condition for graduation, the issuance of a diploma or certificate, or for issuance of a transcript. Schools also need to allow for financial hardship exceptions in certain situations. The second is Section 63-1311A, Idaho Code which requires a taxing district to hold a hearing prior to fee increases. While charter schools are not taxing districts, we believe this section still applies to them.

The third and primary legal issue that has to be considered when addressing student fees is the Idaho Constitution which states “. . . it shall be the duty of the Legislature of Idaho to establish and maintain a general, uniform and thorough system of public, free common schools.” There has only been a single case decided in Idaho interpreting this language in relation to fees charged to students in public schools. This case was *Paulson v. Minidoka School District* and the case addressed student transcripts. In this case, there was a discussion about fixed educational items. It was decided that schools may not charge for such items because common schools are intended to be free.

The final legal issue is that several lawsuits have been filed in the last eight years. The first lawsuit was an Ada County Court decision, *Joki v. Meridian Joint School District No. 2*. The Court

held that fees cannot be charged for a for-credit class. Further litigation has shown that a rather obscure Idaho Statute, the *Constitutionally Based Education Act*, controls all State law issues. That law does not allow for money damages for past violations. It is prospective only.

The current wave of lawsuits is predicated on a Federal claim. These raise the question of whether an illegal fee charged by school districts/charters is tantamount to an unlawful taking. The 5<sup>th</sup> Amendment to the *United States Constitution* prohibits unlawful takings. It is applicable to State agencies and school districts/charters because of the 14<sup>th</sup> Amendment. Unfortunately, this issue is currently pending in both Federal lawsuits and a State lawsuit that has been brought against the West Ada School District. However, these lawsuits have the potential to affect all school districts/charters.

In the meantime, ISBA is providing the following general guidelines. We hope these reflect the intention of the Federal and Idaho Constitutions and keep the district/charter school from becoming involved in one of these lawsuits.

1. The district/charter cannot charge a student simply for enrolling in or attending school.
2. The district/charter cannot charge a student for basics - their books, desk, the building, teachers' salaries, transcript costs, etc. items that are necessities for the basic provision of an education to K-12 to reach graduation.
3. The district/charter can charge a student for the costs of participating in extra-curricular activities because statute describes extra-curricular activities as outside of, or in addition to, the regular academic courses and curriculum. They are not part of a property, liberty, or contractual right of a student.
4. Students can be charged for school lunches and related food they consume.

Unfortunately, anything beyond starts to get gray. There is no guarantee, one way or another, of what any court will do if these fees are challenged, but they are matters for which the district/charter can clearly craft a logical and articulable defense.

1. Don't charge a fee for any course that is a requirement for graduation. In other words, have at least one pathway to graduation where the student does not have to pay any fees. It would be better to have multiple fee-free ways to graduation.
2. To be absolutely consistent with prior Court rulings, no fee should be charged for any class which offers credit.

We suggest exercising great caution with "classroom fees." If they are charged, specifically delineate what they are for and hold them in a separate account. For example, if you want to charge a third grade class fee indicate a breakdown of what the fee is for. For instance:

- Fieldtrip cost (\$X);
- Art supplies that student will take home and keep (\$XX);
- Food/Snacks beyond what is provided in lunch/breakfast at the school (\$XXX), etc.

Clearly state that these are optional fees and that the student does not have to participate if they do not pay. Also, clearly describe the waiver/scholarship issues. The district/charter cannot charge a flat classroom fee and then put that into the general fund to pay for things such as teacher salaries, books, technology etc.

There are districts/charters that have reached out to individuals and community members to provide funds for “scholarships” to pay for student fees as well as reaching out to individuals or organizations to donate the costs of providing whatever course materials. There are many fantastic people out there in booster clubs paying student extracurricular fees the families cannot afford and/or have quietly and privately sponsored a class by buying all the needed sheet music, chemicals, or clay.

We do not recommend charging a fee or including on classroom supply lists required items for common use items such as paper, toner, paper towels, Kleenex, etc. Even though these items have been on various teachers’ classroom lists they are often raised as a subject in litigation. If there are any fees, stick with personal use items like students’ own paper, pens, tablets, calculators, etc.

And finally, segregate any fees collected into a separate fund. Do not put them into the general fund. This will ensure the district/charter can never be accused of using them to pay for teacher salaries, books, or other items that are clearly the focus of the constitutional requirement of a free education. Make sure that any costs associated with those fees are paid from that segregated fund and that this is tracked regularly so that the school can justify the amount that they are charging in fees and adjust accordingly in subsequent years. The district/charter does not want this separate fund to have a significant balance at the end of any school year as that may result in an accusation that the district/charter is collecting excessive funds.

Without clear Idaho Supreme Court authority, we are left at predicting what courses of action will be deemed legal. At this time, a bright line test appears to be fairly well established - if a credit is offered, there can be no fee charged. The last time the Idaho Supreme Court ruled directly on fees was in 1972. Thus, many items which are integral to current educational needs simply did not exist at that time. Future issues that require significant caution involve the use of internet-based assignments. Alternatives to personally charged internet costs must be considered, such as having a zone of free Wi-Fi for students. With the advancement of technology, issues regarding a free common education will also be advanced.