

# Fees, Charges, Donations and Fundraising Guidance

## Introduction

The Madera Unified School District's *Fees, Charges, Donations and Fundraising Guidance Manual* sets forth information, general guidelines and procedures regarding permissible and impermissible fees and charges, donation practices, and fundraising. This guidance is provided by the District under Board Policy and Administrative Regulation 3260 for purposes of ensuring compliance with California law regarding the imposition of fees and charges, solicitation of donations, and fundraising by California public schools.

The District's intent is to ensure our families and the Madera community understands how they can best support the programs in which their children participate. Clear communication from all District sources as they pertain to fees, donations and fundraising is essential. Any written communication on this subject must be approved by your school site principal prior to distribution.

If you have any questions regarding student fees, charges, deposits, donations, or fundraising, or any other issues related to that covered in this manual, please contact your school site principal or the District's Assistant Superintendent of Educational Services.

## Legal Overview

### A. The Constitutional Free School Guarantee and *Hartzell v. Connell*.

The California Supreme Court has held that the free school guarantee under the California Constitution prohibits charging students any fee, charge or deposit for curricular, extracurricular, credit, or non-credit activities that are part of the District's or a school site's educational program. (Cal. Const., art. IX, § 5; *Hartzell v. Connell* (1984) 35 Cal.3d 899, 905, 911.)

In *Hartzell*, the California Supreme Court considered for the first time the issue of the free school guarantee in the context of whether a school district could charge students fees for participating in educational activities that the district considered extracurricular. Therefore, the district adopted a plan to maintain its athletic and band programs by charging a fee for each student who wanted to participate in those extracurricular activities. The district also had a policy for financial hardship waivers for those students who could not afford the fees. The Court invalidated the district's student fee structure, concluding that, "the free school guarantee extends to all activities which constitute an 'integral fundamental part of the elementary and secondary education' or which amount to 'necessary elements of any school's activity.'" The Court reasoned that extracurricular offerings, such as sports and band fall within the Constitutional free school guarantee as part of a school district's educational program and offerings, and that a hardship waiver process does save the illegality of fees and charges for such educational offerings.

### B. Title 5, section 350, of the California Code of Regulations.

In addition to the Constitutional bar to the charging of fees to students, the California Code of Regulations, title 5, section 350 ("title 5, section 350"), entitled "Fees Not Permitted," directs: "A pupil enrolled in a school shall not be required to pay any fee, deposit, or other charge not specifically authorized by law." This provision is read to allow for the imposition of a fee or charge to a student *only when* it is statutorily authorized. There are a number of such statutory authorizations in the Education Code addressed in this manual.

### C. Voluntary Donations and Fundraising.

In terms of *voluntary donations* to support District programs, by their very definition such contributions are not mandatory fees, charges or deposits, and therefore do not offend the Constitutional free school guarantee or title 5, section 350. Further, the Education Code clearly envisions that voluntary donations to support the District and its programs are lawful:

- **Education Code section 41032, subdivision (a):** "The governing board of any school district may accept on behalf of, and in the name of, the district, gifts, donations, bequests, and devises that are made to the district or to or for the benefit of any school or college administered by the district."
- **Education Code section 41037:** "The governing board shall adopt rules and regulations to effectuate the purposes of this article, not inconsistent with law."
- **Education Code section 51520:** Covering solicitation of contributions and donations from students; and
- **Education Code 51521:** Covering solicitation of contributions and donations in support of District.

The ability to accept and the statutory authority for accepting voluntary donations from students and their families have been reaffirmed by the California Attorney General. (See 81 Ops. Cal. Atty. Gen. 153 (1998).) Consistent with this authority, the District's Board Policies 1321 and 3290 account for the propriety and viability of solicitation and receipt of voluntary donations.

As, and fundraising by students and their families to support District and school site programs, so long as monetary donations, contributions, and fundraising activities *are not made mandatory* for students and their families and there are no conditions placed upon the donation.

### D. Charges for Recreational, Non-educational Activities.

Charges by private businesses to students for services that are not integral parts of the District or a school site's educational program are permissible, even if facilitated by the District or school site (e.g., school pictures or sports pictures). Additionally, the District and its programs may impose a charge for offerings that are not integral to the District's educational program (e.g., for spectators travel to athletic events, entry fees for school dances, or recreational trips unrelated to the school curriculum such as to amusement parks).