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Student Fees: Legal and operational considerations



Constitutional & Statutory Limits

Constitutional Requirements

The Arizona Constitution mandates equal access to a general and uniform public school system that is as nearly free as possible.

“[T]he constitution does establish education as a fundamental right of pupils between the ages of six and twenty-one years.”

Shofstall v. Hollins, 110 Ariz. 88, 90, 515 P.2d 590, 592 (1973)

“general and uniform”

The legislature shall enact such laws as shall provide for the establishment and maintenance of a **general and uniform public school system**, which system shall include:

1. Kindergarten schools.
2. Common schools.
3. High schools.
4. Normal schools.
5. Industrial schools.
6. Universities, which shall include an agricultural college, a school of mines, and such other technical schools as may be essential, until such time as it may be deemed advisable to establish separate state institutions of such character.

“as nearly free as possible”

The university and all other state educational institutions shall be open to students of both sexes, and the instruction furnished shall be *as nearly free as possible*. The legislature shall provide for a system of common schools by which a free school shall be established and maintained in every school district for at least six months in each year, which school shall be open to all pupils between the ages of six and twenty-one years.

Ariz. Const. art. XI, § 6

Equal Protection

No law shall be enacted granting to any citizen, class of citizens, or corporation other than municipal, privileges or immunities which, upon the same terms, shall not equally belong to all citizens or corporations.

Ariz. Const. art. II, § 13

Fundamental Right

“[T]he constitution does establish education as a fundamental right of pupils between the ages of six and twenty-one years.”

Shofstall v. Hollins, 110 Ariz. 88, 90, 515 P.2d 590, 592 (1973).

Statutory Limitations

“School boards have only the authority granted by statute, and such authority must be exercised in a manner permitted by statute.”

Batty v. Glendale Union High Sch. Dist. No. 205, 221 Ariz. 592, 596, § 14, 212 P.3d 930, 934 (App. 2009) (quoting *Campbell v. Harris*, 131 Ariz. 109, 112, 638 P.2d 1355, 1358 (App. 1981))

So what?

Any fees assessed of students must be explicitly or implicitly authorized by statute.

Statutorily Authorized Fee Examples

- Parking fees (ARS § 15-342(A)(19));
- Extracurricular activity fees if approved (ARS § 15-342(A)(24));
- Damage to or loss of textbooks, subject matter materials, supplementary books and instructional computer software (ARS § 15-727);
- Reasonable rental fee for nonrequired textbooks, non related subject materials, and supplementary books for high school students (ARS § 15-724);
- Adult education if approved by the DOE and properly posted (ARS § 15-234);
- Community school programs (before/after school care, enrichment programs, camps, etc.) (ARS § 15-1142);
- Non-resident tuition pursuant to ARS § § 15-764(C), -797(C), -823(A), -824(A), or -825.

What about....?

- Transportation fee for open enrollment students? 1980 Ariz. Op. Atty. Gen 136 (1980)
- Fee for locks on lockers? 1994 Ariz. Op. Atty. Gen. 006
- General fees under ability to manage and control District property or acquire furniture, equipment or supplies?
- Fees for electives?
 - Is it required or for nonrequired materials, courses or activities? 1990 Ariz. Op. Atty. Gen. 54.
 - “Required textbooks” means “textbooks required for any course approved for credit and available as part of a student's “course of study,” **whether or not the course is necessary to complete a pupil's minimum requirements for graduation**”. 1990 Ariz. Op. Atty. Gen. 94.
- Accommodations need for attendance at before/after-school program?

What if Student Cannot Pay?

Economic hardship or plain refusal to pay?

A.R.S. § 15-116

A. A school district governing board or charter school governing body that authorizes the assessment of fees pursuant to this title shall ensure that all fees contain a provision that allows the fees to be waived in the event of economic hardship to the pupil.

B. The nonpayment of fees charged by a public school may not prevent a pupil from enrolling in, applying to or remaining enrolled in a public school.

Penalties for non-payment

- Denial of participation in commencement ceremony;
- Denial of right to obtain a yearbook;
- Denial of participation in extracurricular activities;
- Denial of registration in elective courses; and
- Suit against the student through his legally appointed guardian, next friend or guardian ad litem.

1987 Ariz. Op. Atty. Gen 182 (1987)

Expenditure of Student Fees

- Parking fees must be used for parking lot and related expenses.
- Extracurricular activity fees (if charged) must be used for those activities.
- Community education fees must be used for community education programs/fund.



Extracurricular Activity Tax Credits

ARS § 43-1089.01

A credit is allowed against taxes, in the amount of \$200 (individual return) and \$400 (joint return), for fees or cash contributions to a public school to support

ARS § 43-1089.01

- Standardized testing fees for college credit or readiness;
- Standardized testing preparation courses and materials,
- Career and technical education industry certification assessments;
- Cardiopulmonary resuscitation training;
- Character education programs; and
- Extracurricular activities.

NEW

June 30, 2019 through June 30, 2022

(a) Acquiring capital items, as defined in the uniform system of financial records, including those items listed in section 15–903, subsection C, paragraphs 2 through 8.

(b) Community school meal programs.

(c) Student consumable health care supplies.

(d) Playground equipment and shade structures for playground equipment.

ARS § 15-903(C)

1. Land, buildings and improvements to land and buildings, including labor and related employee benefits costs and material costs if work is performed by school district employees.

2. Furniture, furnishings, athletic equipment and other equipment, including computer software.

3. Pupil and nonpupil transportation vehicles and equipment, including all capital expenditures within a contract if the school district contracts for pupil transportation.

4. Textbooks and related printed subject matter materials adopted by the governing board.

5. Instructional aids.

6. Library books.

7. Payment of principal and interest on bonds.

8. School district administration emergency needs that are directly related to pupils.

New definitions

“Community school meal program” means a school meal program that takes place before or after the regular school day on school property.

“Student consumable health care supplies” includes tissues, hand wipes, bandages and other health care consumables that are generally used by children.

Economic Hardship Waiver

School's principal must be authorized to waive the fee if it creates an economic hardship for a student.

See A.R.S. § 15-342(24)

Testing

Testing

- Standardized testing fees for college credit or readiness offered by a widely recognized and accepted educational testing organization (includes the SAT, PSAT, ACT, AP and IB diploma tests);
- Preparation courses and materials for standardized testing; and
- Career and technical education industry certification assessment

Testing Eligibility

For testing/prep/certification fees to be tax credit eligible, the fees must be paid *to the public school* – not to the testing/prep/certification company

Is it eligible?

- To enroll in the SAT or ACT Course, send enrollment form and a check for \$400 for SAT/PSAT or \$275 for ACT which covers tuition and books, payable to Linda Eager at the above address.
- Kaplan has partnered with District B to offer free online test prep for ACT, SAT, and PSAT
- Sign up for your AP exam at collegeboard.org. Provide us with a copy of your registration to receive your tax credit receipt

Character Education

Character Education

A.R.S. § 15-719, Character Education Programs must include instruction in at least six of the following character traits:

Truthfulness

Sincerity

Responsibility

Trustworthiness

Compassion

Respect

Diligence

Attentiveness

Obedience

Orderliness

Forgiveness

Virtue

Fairness

Caring

Citizenship

Integrity

Character Education

- A character education program may include the use of activities, discussions and presentations to illustrate and reinforce the application of the character traits; or presentations by teachers or mentors who demonstrate the character traits.
- A school may accept donations or charge fees for the program if the program is not offered during regular school hours. *See A.R.S. § 15-719(E).*
- The Department of Education provides matching grants to schools to implement character education curriculum selected from a pre-approved list of program providers.

Is it eligible?

- Using a matching funds grant from the Department of Ed., District A uses the CHARACTER COUNTS! Approach to character education, focusing on the Six Pillars of Character: trustworthiness, respect, responsibility, fairness, caring, and citizenship
- District B uses tax credit monies for a Bullying Prevention Program, designed to improve peer relations and make schools safe, more positive places for students to learn and develop
- District C uses tax credit monies to pay a stipend to its P.E. teacher – because physical fitness takes character!

Extracurricular Activities

Extracurricular Activities

“optional, noncredit, educational or recreational activity that supplements the education program of the school, whether offered before, during or after regular school hours”

School-sponsored activities that *may* require enrolled students to pay a fee in order to participate, including fees for

(a) band uniforms,

(b) equipment or uniforms for varsity athletic activities,

(c) scientific laboratory materials, and

(d) in-state or out-of-state trips that are solely for competitive events

Extracurricular Activities Are NOT

senior trips or events that are recreational,
amusement or tourist activities

Optional Fees

- Fees must be assessed by and payable to the school (not a third party).
- Fees assessed must be adopted at a public meeting after notice has been given to all parents of pupils enrolled at schools in the district.
- Fees must not exceed the actual costs of the activities, programs, services, equipment or materials.
- No fees for pupils' access to or use of computers or related materials.
- Principals must be authorized to waive all or part for economic hardship.

Before you spend...

The only activities which qualify as extracurricular activities for which a school may collect and spend tax credit monies are:

- Optional
- Non-credit
- School-sponsored
- Educational or recreational activities that supplement the school's educational program
- For enrolled students

Do not use ECA Monies for

- Competition/Field trip expenses for adult education students;
- Internet and telephone bills;
- Classroom supplies;
- PayPal and credit card processing fees;
- iPads (for use during school day);
- Artificial turf;
- Web development fees;
- others?

Is it eligible?

- There is a \$100 per family non-refundable annual extracurricular fee due at the time of enrollment. This fee is used to help off-set transportation and driver costs for field trips, and counts toward your State Tax Credit
- \$175.00 School Fees (Mandatory Extracurricular Activity Fee *for* Community Connections).
- “[Our school] institutes fieldwork and community connections as part of its innovative curriculum. All students are thus required to pay an annual activities fee.”

Eligible for Tax Credit?

- *Advanced Building with LEGO* – \$260 – Advanced exploration of complex machine using LEGO Educational building systems. . . . Payments made to EduRoboTech.
- *Amazing Athletes* – \$135 – Amazing Athletes curriculum teaches children the basic fundamentals and mechanics of nine different sports. . . . Payments made to Amazing Athletes.
- *Cheer, Dance, Tumble* – \$99 – Learn sideline cheers, a dance choreography, small stunts, and tumbling up to back handsprings. . . . Checks payable to TNT Divas.

Donation Solicitation Pitfalls

“[We] use these tax credit donation funds for extracurricular activities such as field trips, music, art, physical education, middle school electives and more!”

“[Our] Charter School Tax Credits support specialist programs including Fine Arts, Theater Arts, Latin, Spanish, Computer Technology, and Physical Education

Your contribution goes directly to: gardening, playground equipment, extra-classroom assistants, music program, P.E., field trips, and more

Undesignated ECA Donations

- Some tax credit donation forms encourage undesignated donations with options such as: ___ general fees ___ at school's discretion ___ greatest need
- For undesignated donations, the school's site council (or the charter school's director) is responsible for determining where to spend the undesignated donations. But in all cases these undesignated donations must still be spent only on tax credit eligible activities (i.e., testing, character education, or extracurricular activities)
- NOW: the site council may transfer these undesignated contributions to any school within the same school district

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Ms. Mackin received her Bachelor of Art degree from Tufts University before attending Arizona State University School of Law. For more than ten years, she has been advising school districts and municipalities, including in state and federal court and before regulatory bodies such as the Arizona Attorney General's Office, Office of Civil Rights, and Equal Opportunity Commission. Ms. Mackin advises clients on a wide range of issues, including:

procurement • FERPA and privacy issues • elections • special education • contracts • IGAs • facility use agreements • real estate transactions • public record and open meeting laws • governing policies and procedures • employment issues • family law issues • real estate transactions • gift clause and finance • community education programs • and more

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Please note, the information provided in this document is for informative purposes only and should not be used in place of legal advice.

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Dale Ponder

Dale has been serving the students and residents of Crane Schools in a variety of capacities since 2006. In 2015, Dale became the Chief of Finance & Operations with responsibilities over all the non-educational functions of the district.

Dale also currently serves as the Treasurer for the Arizona Association of School Business Officials (AASBO), a board member for The Arizona School Alliance for Workers' Compensation, Inc., and a member of the School Finance Advisory Council to the Office of the Auditor General.

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