

Student  
Fees

**LeBlanc, Kathleen A (DOE)**

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**From:** Valcourt, Kristin (DOE)  
**Sent:** Friday, May 10, 2013 1:10 PM  
**To:** drigby@colonial.net  
**Subject:** Students Fees - Technology

Thank you for talking with me, Superintendent Rigby. Below is the substance of the email response that we discussed. Please feel free to contact me should you require any additional information.

Kristin Valcourt  
Deputy General Counsel  
Department of Elementary and Secondary Education

Email response:

Thank you for your inquiry regarding the provision of instructional materials and supplies, including computers, in Massachusetts.

As a general rule, Massachusetts public schools may not charge a fee for students to enroll or to participate in required or elective courses given for academic credit. Under Chapter 71, section 48, of the Massachusetts General Laws, textbooks and other instructional materials and supplies that are intended to be used and reused over a period of years must be purchased at public expense and "loaned" free of charge to students, who must return them at the end of the year.

The exception to this general rule is for consumable supplies, supplies that are typically used up by the individual students during the course of the school year. Public schools may ask students to come to school prepared with certain individual school supplies such as notebooks or binders, paper, pencils and pens, and tissues. On this issue, "loan" is the operative word in G.L. c. 71, § 48, and these kinds of consumable school supplies are not typically "loaned" to students because nothing remains at the end of the school year to return to the school. Moreover, they are widely available and relatively inexpensive. We generally advise schools to keep paper, pencils, pens, and other such supplies on hand so that students who do not have those supplies available will not miss out on instruction.

In contrast, costly tools such as a tablet or other computer or a graphing calculator fall in the category of instructional materials and supplies that, like textbooks, are intended to be purchased by the school and used and re-used over a period of years. If such technology is required, the school may encourage each student to purchase these devices. Students are likely to do so, because they may need it for future classes and other use outside of school. We advise schools also to be prepared to provide such devices free of charge to students whose families do not choose to buy them or cannot afford to do so.

I trust that this provides you with the information you requested. If you need additional information on this topic, feel free to contact me.

STUDENT  
FEES

LeBlanc, Kathleen A (DOE)

**From:** Valcourt, Kristin (DOE)  
**Sent:** Thursday, June 06, 2013 12:58 PM  
**To:** [REDACTED]  
**Cc:** Lynch, Darlene A (DOE)  
**Subject:** RE: Additional Issue - Is it legal for a MA public school to require a student to purchase a computer for in-school instructional use?

June 6, 2013

Ms. [REDACTED]:

Thank you for your follow-up. The Legal Office at the Department of Elementary and Secondary Education ("Department") provides general guidance on what the law requires.

It appears that you are now seeking a determination regarding the legality of a specific policy and practice in Concord Public Schools. You may file a complaint through the Department's Problem Resolution System and receive such a determination. The Problem Resolution System is administered through Program Quality Assurance Services ("PQA") at the Department, and they can be reached at 781-338-3700 or 781-338-3705. Link to additional information regarding filing a complaint: <http://www.doe.mass.edu/pqa/prs/>. PQA handles complaints related to student fees, among other areas.

Very truly yours,

Kristin E. Valcourt  
Deputy General Counsel

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**From:** [REDACTED]  
**Sent:** Thursday, June 06, 2013 11:24 AM  
**To:** Valcourt, Kristin (DOE)  
**Subject:** RE: Additional Issue - Is it legal for a MA public school to require a student to purchase a computer for in-school instructional use?

Hi Ms. Valcourt,

I neglected to include in my previous question the issue of software. If the files produced at school require a software (including version) that we do not happen to already own or have access to via the web, then my child is effectively prevented from using at home those files created at school. During that meeting this past Monday, the school staff discussed their frustration with flash drives including the problem of files being corrupted because the computer used at school is different from the one at home (format, software version). The staff clearly wanted each student to be able to use the same laptop at home that the student uses at school.

Also, I described 3 file transfers but my child would actually be required to transfer files four times:

- download at school for home
- upload at home to use
- download at home to bring back to school
- upload at school to use

Thank you again for your assistance.

I look forward to your response.

--- On Tue, 6/4/13, [REDACTED] wrote:

From: [REDACTED]  
Subject: RE: Is it legal for a MA public school to require a student to purchase a computer for in-school instructional use?  
To: "Kristin (DOE)Valcourt" <kvalcourt@doe.mass.edu>  
Date: Tuesday, June 4, 2013, 9:26 PM

Dear Ms. Valcourt,

I do hope you had a good week away and thank you again for your time and assistance.

I am writing you again due to further information I obtained when I attended a meeting last night at our middle school. During the meeting, the principal explained that the design of the "1 to 1 Computing" program as follows;

A parent can "opt in" which means the parent must do one of the following three:

1. Purchase the computer
2. Lease the computer
3. Ask for 100% financial aid (no information was provided as to whether "need" would have to be justified for 100% assistance; all that was mentioned was that you do not have to be on the free lunch program)

which would then enable the student to use the computer at school and to take the computer home each day.

If a parent doesn't "opt in" as described above, a computer will be supplied to the student at school but the student will not be allowed to bring that computer home. By being prevented from bringing the computer home, it seems that an a student no longer as equal access to the curriculum and a barrier is created with the burden is placed on the student to transfer the student's work three times each day: from the computer to a device (e.g., flash drive) to be brought home for any work to be completed at home or to be studied, from the home computer back to the device to bring back to school and then the next morning from the device back to the computer for the day's work at school.

My question to you is whether this approach meets the state statute, i.e., can the schools supply the computer only at school and disallow the computer from being taken home?

Again, I am sorry to take your time but this issue is of great importance to our family and many here in Concord.

Most sincerely,

--- On Fri, 5/10/13, Valcourt, Kristin (DOE) <kvalcourt@doe.mass.edu> wrote:

From: Valcourt, Kristin (DOE) <kvalcourt@doe.mass.edu>  
Subject: RE: Is it legal for a MA public school to require a student to purchase a computer for in-school instructional use?  
To: [REDACTED]  
Date: Friday, May 10, 2013, 1:06 PM

May 10, 2013

Ms. [REDACTED]:

Thank you for your inquiry regarding the provision of instructional materials and supplies, including computers, in Massachusetts.

As a general rule, Massachusetts public schools may not charge a fee for students to enroll or to participate in required or elective courses given for academic credit. Under Chapter 71, section 48, of the Massachusetts General Laws, textbooks and other instructional materials and supplies that are intended to be used and reused over a period of years must be purchased at public expense and "loaned" free of charge to students, who must return them at the end of the year.

The exception to this general rule is for consumable supplies, supplies that are typically used up by the individual students during the course of the school year. Public schools may ask students to come to school prepared with certain individual school supplies such as notebooks or binders, paper, pencils and pens, and tissues. On this issue, "loan" is the operative word in G.L. c. 71, § 48, and these kinds of consumable school supplies are not typically "loaned" to students because nothing remains at the end of the school year to return to the school. Moreover, they are widely available and relatively inexpensive. We generally advise schools to keep paper, pencils, pens, and other such supplies on hand so that students who do not have those supplies available will not miss out on instruction.

In contrast, costly tools such as a tablet or other computer or a graphing calculator fall in the category of instructional materials and supplies that, like textbooks, are intended to be purchased by the school and used and re-used over a period of years. If such technology is required, the school may encourage each student to purchase these devices. Students are likely to do so, because they may need it for future classes and other use outside of school. We advise schools also to be prepared to provide such devices free of charge to students whose families do not choose to buy them or cannot afford to do so.

I trust that this provides you with the information you requested. If you need additional information on this topic, feel free to contact me.

Very truly yours,

Kristin E. Valcourt

Deputy General Counsel

Massachusetts Department of Elementary and Secondary Education

From: [REDACTED]

Sent: Thursday, May 02, 2013 4:10 PM

To: Legal

Subject: Is it legal for a MA public school to require a student to purchase a computer for in-school instructional use?

HI,

I hope you can help me understand whether my public school system can legally require our family to either "lease to own" or purchase a computer that meets the district's technical specifications for daily use in the classroom because the school has decided to go to a "1 to 1 computing" instructional model.

I have attached the documentation the school has sent to us. It appears that the school held a pilot project for the current 6th graders who were given MacBook Airs to use (no charge involved). These computers will go to these same students as they enter 7th grade in the Fall of 2013 at no fee it appears. However, the students who are entering 6th grade must either lease-to-own or outright purchase a computer. The technical specifications do not include anything about the software that will be needed nor any indication as to who will bear the financial responsibility for that software.

I do not lease to own or have to outright purchase any of the following for my child's public education (this list is not comprehensive):

The books that are part of the curriculum

The paper and pens

The desks and chairs

The active board and activision system (I believe all classrooms are equipped)

The science laboratory materials

It seems to me that if the school has decided to move the curriculum from paper to digital, then the school needs to provide the appropriate resources just as they have in the past. The computers will be used during the different classes (English, Math, Science, Social Studies etc.). The "1 to 1 computing program" is a curriculum change not an extracurricular activity.

My concern, I'm sure, is obvious: will we now have a "privatized" public education where, to attend public

school, you must pay out-of-pocket for core curriculum needs.

I appreciate any assistance you can provide me. You can reach me by telephone at [REDACTED]. I live on [REDACTED] in Concord MA.

Thank you so much for your time.

[REDACTED]



#89-205  
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# The Commonwealth of Massachusetts

## Department of Education

1385 Hancock Street, Quincy, Massachusetts 02169-5183

April 19, 1989

Arthur Bettencourt  
Superintendent of Schools  
Bolton and Stow Public Schools  
403 Great Road  
Stow, MA 01775

Re: Student Fees

Dear Superintendent Bettencourt:

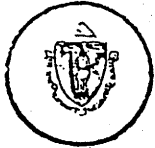
I have enclosed a copy of an Advisory Opinion on Student Fees issued by the Department of Education Legal Office on January 19, 1981. The opinion continues to be an accurate statement of the law and principles governing student fee issues with one exception. At page eight, paragraph one, the Opinion references the statutory obligation to return unexpended fees to the city, town or district treasury. Please be aware the 1982 amendment to G.L. c.71, §47 allows school committees to create a "revolving account" for participation fees received in connection with various activities rather than turning them over to the municipality's General Fund.

I hope this information is useful.

Very truly yours,

Dianne Curran, Esq.  
Legal Office

DC/ks  
Enclosure



Office of the Commissioner

# The Commonwealth of Massachusetts

## Department of Education

31 St. James Avenue, Boston, Massachusetts 02116

### ADVISORY OPINION ON STUDENT FEES

The purpose of this advisory opinion is to offer some guidance to school committees and superintendents of schools on the legality of charging student fees for various school activities. Because there is little case law on the subject in Massachusetts, much of this advisory is based on statutory interpretation and court decisions from other states.

In general, school committees may not charge student fees for participation in required or elective courses that are given for academic credit. School committees must supply textbooks and other instructional materials and school supplies for these courses free of charge. However, certain provisions of the General Laws do authorize school committees to charge fees for participation in particular programs. Moreover, reasonable fees may be charged to those students who can afford to pay for their participation in extracurricular activities, although we do not recommend them. Finally, school committees are required to provide specific transportation services free to students, as outlined in more detail below.

#### I.. Required or Elective Courses Given for Credit

The Massachusetts Constitution consistently has been construed to provide for the support and maintenance of free public schools in the Commonwealth. See, MASS. CONST. Pt. 2, c.5, s.2; Amend. Arts. 18 and 46. The operative provision states that



...it shall be the duty of legislatures and magistrates, in all future periods of this commonwealth, to cherish the interests of literature and the sciences...especially the...public schools and grammar schools in the towns...  
MASS. CONST. Pt.2, c.5, s.2.

In Jenkins v. Andover, 103 Mass. 94, 96-97 (1896), the Supreme Judicial Court said:

The founders of the colony appreciated the importance and necessity of providing for the universal education of the people... Accordingly...they laid the foundation of a system of common schools, which...has always retained its fundamental character and purposes.

See also, Lynch v. Commissioner of Education, 317 Mass. 73, 56 N.E. 2d 896 (1944); Merrick v. Inhabitants of Amherst, 94 Mass. 500 (1866); 1964 Op. Atty. Gen. 184; 1967 Op. Atty. Gen. 200-202. The public policy favoring a free public education is also found in several sections of the General Laws. See, G.L. c.71, ss. 1, 34, 68; c.76, s.5; St. 1972, c.766, s.1.


A. Textbooks and Other School Supplies

G.L. c.71, s.48 requires school committees to purchase textbooks and other school supplies for students, as follows:

The [school] committee shall, at the expense of the town, purchase textbooks and other school supplies, and, under such regulations as to their care and custody as it may prescribe, shall loan them to the pupils free of charge. If instruction is given in the manual and domestic arts, it may so purchase and loan the necessary tools, implements and materials. It shall also, at like expense, procure such apparatus, reference books and other means of illustration, as may be needed.  
(Emphasis added.)

Section 48 clearly requires school committees to purchase textbooks and loan them to students free of charge. See, Parkhurst v. City of Revere, 263 Mass. 364, 161 N.E. 599 (1928). "Other school supplies" has been interpreted to include instructional materials both for courses the school committee is required by law to offer and for courses taught at the discretion of the school committee. See, Brine v. City of Cambridge, 265 Mass. 452, 164 N.E. 619, 620 (1929); Ring v. City of Woburn, 311 Mass. 679, 43 N.E. 2d 8, 12-15 (1942).

Courts in other states with similar constitutional provisions for free public schools have invalidated student fees when charged as a condition of school attendance, or when the fees are charged for courses credited toward graduation. See, e.g., Paulson v. Minidoka County School District No. 331, 93 Idaho 469, 463 P.2d 935, 938 (Sup. Ct. 1970); Bond v. Public Schools of Ann Arbor District, 383 Mich. 643, 178 N.W. 2d 484, 488 (Sup. Ct. 1970); Granger v. Cascade County School District No. 1, 159 Mont. 516, 499 P.2d 780, 786 (Sup. Ct. 1972); Concerned Parents v. Caruthersville School District 18, \_\_\_\_ Mo. \_\_\_\_, 548 S.W. 2d 554, 562 (Sup. Ct. 1977). These cases suggest that school committees are required to furnish students with free supplies both for courses they are required to take and for elective courses given for credit. Under this standard, in our opinion, a reasonable amount of consumable materials must be provided to students free of charge. Similarly, school functions such as field trips which are required as part of the regular curriculum must be provided free to students. See, Selfridge v. Board of Education, Order of the New Jersey Commissioner of Education, May 2, 1977.



B. Practical Arts

G.L. c.71, s.48's provision on materials for use in the manual and domestic arts has not been interpreted by the courts in Massachusetts. However, G.L. c.71, s.17 requires every town of 20,000 inhabitants to offer courses in both manual training and household arts as part of its elementary and high school program. In our opinion, supplies for these courses, whether required to be offered under Section 17 or offered in the discretion of the school committee, must be provided free to students, under the reasoning of the cases cited above.

C. Vocational Education Programs

Section 4.08.1 of the Chapter 74 Regulations, 603 CMR s.4.01 et seq., provides that schools offering a vocational education program shall not charge tuition or require fees "[e]xcept where specifically authorized to do so by state law". School supplies required for vocational courses, such as building materials, tools and other supplies, must be provided free to students.

D. Compulsory Physical Education

G.L. c.71, s.3 provides that physical education shall be taught as a required subject in all grades for all students; a 1979 amendment eliminated its "daily" requirement. St. 1979, c.81. Section 4.03 of the Board of Education's Regulations Pertaining to Physical Education, 603 CMR s.9.01 et seq., requires school committees to purchase and maintain "supplies, equipment and facilities for physical education programs..." Under this provision, school committees must provide supplies for the compulsory physical education program to students free of charge. If the school committee requires certain equipment, such as uniforms, then it must

provide them to students free; however, standard clothes permitted for use in physical education, such as sneakers or shorts, need not be provided.

E. Driver Education

G.L. c.71, s.13D permits a school committee to incorporate a driver education course into its high school program. As a part of the regular school curriculum, such a course must be offered to students free of charge under the cases cited above. Section 13D also permits a school committee to offer driver education as an evening course for the training of persons under 25 years of age; the school committee is authorized to fix reasonable fees for such an evening course or to charge no fee.

Under G.L. c.71, s.13, any course not included in the regular curriculum of a high school of not less than 150 pupils must be taught if the parents or guardians of not less than 30 pupils (or of 5% of the pupils enrolled, whichever is less) request in writing that the course be taught. Under G.L. c.71, s.13D, a driver education course required by Section 13 shall consist of both classroom instruction and behind-the-wheel training. If a school committee is required to offer a driver education course under the provisions of Section 13, the entire course must be offered to students free of charge. See, G.L. c.71, ss. 13, 13D; Johnson v. School Committee of Brockton, 371 Mass. 896, 358 N.E. 2d 820, 821 (1977). A 1978 amendment to Section 13D provides that the behind-the-wheel training component of a driver education course required by Section 13 need not be included during the regular school day. St. 1978, c.456, s.1. In our opinion, this amendment does not affect the holding in Johnson that no fee may be charged when the course is offered as part of the regular curriculum.

Under G.L. c.71, s.13D, a school committee may schedule part or all of an evening driver education course in the afternoon after school and charge a reasonable fee. In addition, if a school committee offers a driver education course not for credit, e.g., as an extracurricular activity, then it may charge a reasonable fee for the course. Only when a driver education course is offered as part of the regular school curriculum or compelled to be taught under G.L. c.71, s.13 are student fees prohibited.

## II. Extracurricular Activities

There is no clear judicial interpretation as to whether supplies for extracurricular activities must be provided to students free of charge under G.L. c.71, s.48. In 1929, the Supreme Judicial Court held that school committees were not required to supply students with athletic equipment; the Court found that the provision of athletic equipment was not "for a school purpose" and excluded athletic supplies from "other school supplies" in Section 48. See, Brine v. City of Cambridge, 265 Mass. 452, 164 N.E. 619 (1929). However, between 1950 and 1954, the Legislature amended the provisions of G.L. c.71, s.47, governing a school committee's authority to provide for student participation in certain extracurricular activities, to establish that expenditures for athletics and other included activities were deemed to be "for a school purpose":

Expenditures by the committee for the organization and conduct of physical education, athletics, sports, games and play, for providing proper apparatus, equipment, supplies, athletic wearing apparel, including appropriate souvenir garments and trophies, and facilities for the same...[and] for making

*changed  
to  
include*

special awards to pupils who have performed meritoriously in the fields of art, debating, distributive education, music, science, social studies or languages shall...be deemed to be for a school purpose...Cities and towns may appropriate for...the purchase of band and cheerleaders' uniforms and musical instruments for the members of bands... (Emphasis added.)

Although Section 47 permits certain expenditures for included activities, it does not require school committee appropriations for them. On the other hand, neither Section 47 nor the Physical Education Regulations specifically authorize school committees to collect fees from students who participate in extracurricular activities.

Several state supreme courts have distinguished between fees for non-credit extracurricular activities and fees for academic courses for credit, permitting the former and disallowing the latter. See, e.g., Paulson v. Minidoka County School District No. 331, 93 Idaho 469, 463 P.2d 935 (Sup. Ct. 1970); Granger v. Cascade County School District No. 1, 159 Mont. 516, 499 P.2d 780 (Sup. Ct. 1972); see also, Opinion of the Attorney General of Wyoming, June 11, 1971. These opinions suggest that fees for extracurricular supplies or activities are permissible when the amount of the fee is reasonable, only participating students are charged, there is no sanction for nonpayment, and students financially unable to pay are exempted. Id. However, charging a uniform activity fee to all students, including those who do not participate in extracurricular activities, or punishing students for nonpayment of a fee by withholding diplomas, transcripts, grades or enrollment in specific courses, or other such actions, has been found to be impermissible in these cases. More recent cases require that a fair waiver procedure for fees be instituted

with adequate and timely notice to students and parents of the availability of the waiver, and procedures to insure confidentiality. Cf., Sneed v. Greensboro City Board of Education, \_\_\_\_ N.C. \_\_\_\_, 264 S.W. 2d 106, 113-114 (1980).

Further, student fees charged for participation in extracurricular activities must be returned to the city, town or district treasury. G.L. c.44, s.53. With the exception of regional school districts, the school department may not use these fees without specific appropriation. See, G.L. c.44, s.53; c.71, ss. 16(f), 16A, 16D.

~~CPS~~  
is not  
regional

In view of the problems inherent in the charging of student fees, we recommend that you consider other options for the funding of extracurricular programs. G.L. c.71, s.47 authorizes school committees to receive and expend funds in connection with the conduct of interscholastic athletics, to be deposited with the town or regional school district and held as a separate account. This statute would permit admission fees to be charged at athletic events to benefit the school's total interscholastic athletic program. In addition, G.L. c.44, s.53A permits an officer or department of any city, town or regional school district to accept and deposit in a separate account grants or gifts of funds from the federal government, a charitable foundation, a private corporation or an individual, and expend such funds with the approval of the school committee under certain conditions. Organizations such as the Parent-Teacher-Student Association, the Kiwanis Club or the Rotary Club, as well as local businesses, can donate funds under this statute to be used to support extracurricular programs. Unlike fees charged to students for participation in extracurricular activities, funds received under these statutes may be

expended without specific appropriation.

### III. Statutes Authorizing Student Fees

There are certain statutes which explicitly authorize school committees to receive and expend certain fees for specific activities according to various statutory procedures. See, e.g., G.L. c.71, s.13D (evening driver education courses), ss. 18-20 (evening schools), s.21 (continuation schools), ss. 26B-26C (extended school services for children of working parents), s.28 (summer schools), s.71B (adult fitness programs), s.71C (community school programs), s.71E (adult education and continuing education programs), s.72 and St. 1948, c.548 (school lunch program); c.74, s.14 (evening practical arts classes). With the exception of evening schools, these statutes provide for separate accounts and the expenditure of receipts without further appropriation, under certain conditions. Under G.L. c.71, s.20, fees received from evening schools may at the discretion of the school committee be paid into the town treasury to be credited to the school appropriation, or be returned in whole or in part at such time and under such conditions as the school committee determines.

### IV. Transportation

School committees are required to provide specific transportation services to students free of charge. G.L. c.71B, s.5 and the federal special education law require the school committee to provide transportation included in special education students' individualized educational plans. G.L. c.74, s.8A requires the school committee to provide necessary transportation for students attending a vocational day school in another town under G.L. c.74, s.7, provided that the student has not completed



the twelfth grade. G.L. c.71, s.6 requires local transportation for students attending an out-of-town high school when the town of residence has less than 500 families and does not maintain a high school. See, Murphy v. School Committee of Brimfield, 1979 Mass. Adv. Sh. 1196, 389 N.E. 2d 399, n.6 at 402 (1979); 1927 Op. Atty. Gen. 136.

G.L. c.71, s.68 requires school committee transportation for students residing over 2 miles from the school they are entitled to attend. See, Wilson v. Brouder, 291 Mass. 389, 197 N.E. 26 (1935); Murphy v. School Committee of Brimfield, *supra*, 389 N.E. 2d, n.6 at 402; 1966 Op. Atty. Gen. 232-233; 1967 Op. Atty. Gen. 200-202. Under this statute, school committees are not required to provide transportation for students residing less than 2 miles from school. In practice, many school committees provide transportation for students residing over 1½ miles from school because they are reimbursed for it.

G.L. c.71, s.7A provides that the Commonwealth shall reimburse towns for transportation "expenses approved by the commissioner of education, incurred" by the towns, in excess of \$5 per year per pupil (based on the net average membership of a town), for students residing over 1½ miles from school. State reimbursement of expenses under Section 7A is for transportation of pupils once daily to and from school. Under this section, the Commonwealth cannot reimburse a town unless it has actually incurred the appropriate expense for a pupil; and it cannot reimburse a town for any expenses paid for by the collection of student fees. See, 1966 Op. Atty. Gen. 120. The amount the school committee pays for transportation of students over 1½ miles from school after deducting student fees would be reimbursable, as long as it exceeds \$5 per year per pupil.

In general, the determination of whether transportation is required for a particular school activity will depend on whether or not the activity itself must be provided to students free of charge. Transportation for school functions such as field trips which are part of the regular curriculum, in our opinion, must be provided to students free of charge. G.L. c.71, s.47 authorizes but does not require school committee transportation for certain extracurricular activities (e.g., transportation for athletic teams, coaches, cheerleaders, bands, musical festivals, competition or other events). In such instances, a fee may be charged. In determining the need for free transportation for a particular school activity, we suggest that you consult with local counsel.

/kal

Office of the Commissioner



# The Commonwealth of Massachusetts

## Department of Education

31 St. James Avenue, Boston, Massachusetts 02116

### M E M O R A N D U M

January 19, 1981

TO: School Committee Chairpersons and  
Superintendents of Schools

FROM: Rhoda E. Schneider *RES*  
General Counsel

RE: Advisory Opinion on Student Fees

The passage of "Proposition 2½" (Chapter 580 of the Acts of 1980) has prompted school officials to raise questions about the legality of charging fees to public school students for participation in certain school activities. The attached advisory opinion, prepared by Helen P. Brown, Esq. of the Department of Education Legal Office, is intended to provide some guidance on this issue. If you have further questions about the legality of student fees, please consult your local counsel.

RES/kal  
Enclosure:



# The Commonwealth of Massachusetts

## Department of Education

#198-309

1385 Hancock Street, Quincy, Massachusetts 02169-5183

June 11, 1990

[REDACTED]  
[REDACTED]  
[REDACTED]

Re: Student Fees for Field Trips

Dear Mr. [REDACTED]:

Rhoda Schneider, General Counsel of the Department of Education, has referred your June 1, 1990 letter to me for response. In your letter, you ask whether it is permissible under state law for a school district to charge for field trips, provided that funding is made available to disadvantaged students.

The subject of fees for field trips and for field trip transportation is addressed in the Department of Education's Advisory Opinion on Student Fees, dated January 19, 1981 at pp. 3 and 11. I have attached a copy of the Advisory for your information. In general, school functions such as field trips which are required as part of the regular curriculum must be provided free to students. If a field trip is an integral part of a required or elective course given for credit, then no fee may be charged to the student.

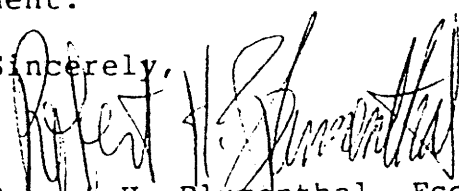
If a field trip is part of a non-credit extracurricular activity, then a reasonable fee may be charged to the student, consistent with the prohibitions outlined at the bottom of p. 7 of the Advisory. Note that if fees are charged, the Department recommends that a fair waiver procedure be instituted, with adequate and timely notice to students and parents of the availability of the waiver, and procedures to insure confidentiality so that students are not stigmatized by a waiver.

As stated on p. 11 of the attached Advisory, the determination of whether free transportation is required for a particular school activity will depend on whether or not the activity itself must be provided to students free of charge. Transportation for school functions such as field trips which are part of the regular curriculum, in my opinion, must be provided

to students free of charge; a reasonable fee may be charged for transportation for a field trip which is a non-credit extracurricular activity.

As is the policy of this office, a copy of this letter is being sent to the local superintendent.

Sincerely,



Robert H. Blumenthal, Esq.  
Legal Office

RHB/ks

Enclosure

cc: Superintendent Frank Cummings  
Marlene Godfrey  
George Perry



# The Commonwealth of Massachusetts

## Department of Education

1385 Hancock Street, Quincy, Massachusetts 02169-5183

May 24, 1988

Paul F. Lengieza  
Superintendent of Schools  
Manchester Public Schools  
Lincoln Street  
Manchester, MA 01944

Re: Student Fees ✓

Dear Superintendent Lengieza:

Rhoda E. Schneider, General Counsel, has asked me to respond to a letter which she recently received from a Manchester parent. The parent asks whether the school committee may lawfully assess a fee against each child who participates in a school-organized and sponsored week-long program for fifth graders at Camp Chewonki in Wiscasset, Maine. Appended to the parent's inquiry is a four page letter (with two-page attachment) dated April 8, 1988 from the Manchester Memorial School's fifth grade teachers, Paul Kolterjahn, Richard C. Potter and Pat Fleming, addressed to "Parents." I have enclosed a copy of the April 8, 1988 letter with attachments, for your reference.

On May 11, 1988, I spoke with you and Laurence N. Aiello, principal of the Manchester Memorial School, about the Camp Chewonki program. My understanding of the Camp Chewonki program is as follows.

For approximately fifteen years, the Manchester Memorial School has organized a week-long trip for fifth graders to Camp Chewonki. Camp Chewonki was founded as a non-profit, educational organization wherein wildlife and nature may be studied and appreciated. In the past, Camp studies have included saltmarsh systems, topographic maps and map reading, insects, outdoor art, group challenge, ornithology, and journal writing. This year's visit is scheduled to begin June 11 and end June 18. Approximately one month before the trip, fifth grade students will begin in the classroom to explore the studies that they will undertake at Camp Chewonki. After two to three weeks of this classroom study, students will spend approximately one week in local "outdoor classroom" experiences. When the students return from Camp Chewonki, they will spend additional classroom time

reviewing what they learned at camp and tying those experiences into their classroom studies.

Funding for the program derives from three sources: fund raising efforts, including special events and contributions; the school committee (which pays the cost of transportation, some supplies and school personnel time); and fees which are assessed against each child who attends. While the exact amount cannot be determined until all community contributions are received, it is anticipated that each child will be assessed between \$100.00 and \$143.00.

Although the Camp Chewonki trip is not mandatory, in past years all, or virtually all, fifth graders have participated in the program. If a youngster does not participate, he or she is provided an alternative program at the school. The nature of the child's program will depend on the child's needs. It is Manchester's policy to make the trip available to all children, regardless of their ability to pay.

It is my understanding that you have a copy of the Advisory Opinion on Student Fees issued by the Department of Education on January 19, 1981. The opinion continues to be an accurate statement of the law and principles governing student fee issues with one exception. At page 8, paragraph one, the Opinion references the statutory obligation to return unexpended fees to the city, town or district treasury. Please be aware that the 1982 amendment to G.L. c.71, s.47 allows school committees to create a "revolving account" for participation fees received in connection with various activities rather than turning them over to the municipality's General Fund.

As the Opinion indicates, pursuant to the constitutional and statutory provisions governing the support and maintenance of public schools and concomitantly, the right to receive a free public education, school committees may not charge student fees for participation in required or elective courses that are given for academic credit. Authority also exists for the proposition that a student may not be charged for field trips that are required as part of the regular curriculum. See, Selfridge v. Board of Education, Order of the New Jersey Commissioner of Education, May 2, 1977.

In our opinion, the Camp Chewonki program is, and has been for years, an integral and valuable part of the fifth grade curriculum. Viewed another way, it may be considered an "extended field trip" which is curriculum-related. It is impossible to conclude otherwise, i.e., to view the week as extra-curricular or merely recreational, given the educational nature of the program and the fact that the Camp Chewonki experience is the focal point of classroom activity for several weeks before the trip and for several days after it. As such,

May 24, 1988

with the possible exceptions set out below, we believe the program should be provided free of charge.

You have argued that the school committee should be allowed to assess a fee for Camp Chewonki because participation is not mandatory. Although no Massachusetts court has ruled on this issue, in our opinion it is likely that a court would find more compelling the fact that the activity is a significant part of the curriculum which is required. I refer you to the teachers' letter of April 8, 1988 which, in describing the areas to be studied at the Camp, underscores how interwoven the Camp studies are with the Manchester curriculum:

. . . there is no way that we can separate the topics that I have listed from the discipline required in the average daily classroom; they will also be studied in the main disciplines including: Social Studies, Science, Language Arts, Math and Reading. There is no possible way that the students can learn about these areas without delving into them by use of their interdisciplinary activities.

In view of the above, to the extent that the fee you seek to impose includes the cost of transportation, tuition, books, supplies, personnel or equipment necessary for study or instruction as part of the regular fifth grade curriculum, in our opinion the charge would not withstand a legal challenge. See, Opinion at p. 1-3, 9-11.

It appears from our discussion and the April 8, 1988 letter to parents that the proposed fee also includes a meals charge and possibly a "room" charge. The school committee's authority or lack of authority to charge for room and board or meals in an extended overnight program is not at all clear. No Massachusetts cases have dealt with the issue and I am aware of no decisions in other jurisdictions which have considered the issue. As a result, we are unable to say with any degree of certainty how a court would address this issue. A reasonable argument could be made that room and board is the sine qua non of a curriculum-related overnight field trip and, accordingly, must be made available free of charge. On the other hand, a persuasive argument could also be made that Manchester should not be required to provide free of charge that which it has no obligation to provide while the children at school. While a school committee is required to provide free or low cost school lunch and in some instances breakfast, to low income children, under state and federal law, it could be argued that there is no legal impediment to imposing a reasonable fee for meals or an



Paul F. Lengieza  
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extended field trip and, following the same reasoning, for any "room" expenses. It is difficult to predict which argument would prevail.


If the school committee elects to charge a fee for room and board expenses, it should ensure that it has a clear and fair fee waiver policy so that students financially unable to pay are not prevented from attending Camp Chewonki. Otherwise, in our opinion, a successful legal challenge could be brought based on the school committee's failure to provide the student an equal educational opportunity. The waiver policy should be communicated to all families and should be implemented in such a way as to ensure confidentiality and to avoid stigmatization by other students or parents.

While we refrain from deciding whether the fee for Camp Chewonki is illegal in its entirety, the Department of Education recommends that Manchester consider other options for funding future trips in view of the problems inherent in charging student fees.

Finally, on a related matter, while reviewing the April 8, 1988 letter to parents, I noted a reference at the top of page 3 to "an ecumenical or interdenominational service" which you and/or your staff apparently played a role in organizing after consultation with area churches. In our opinion, this kind of activity on the part of school personnel would not withstand a legal challenge based on a claimed violation of a student's First Amendment rights, and the constitutional requirement that public schools endorse religious activity. The fact that the service is ecumenical or interdenominational would not be sufficient to defend against such a claim. We urge that the school committee avoid potential liability and refrain from sponsoring a service of this type at Camp Chewonki.

I hope this information is helpful to you. If you have any questions or would like to discuss any aspect of this letter, please feel free to call me.

Very truly yours,

  
Dianne Curran, Esq.  
Legal Office

cc: Benjamin H. Gannett, Chairman, Manchester School Committee  
Joseph McKeigue, Northeast Regional Education Center



## MANCHESTER MEMORIAL SCHOOL

Office of the Principal

Manchester, Mass. 01944

April 8, 1988

Dear Parents,

Spring is here, at least occasionally. Students of the fifth grade at the Memorial School are eagerly anticipating the June 11, through June 18, camping trip to Camp Chewonki in Wiscasset, Maine.

Let me tell you a little about Camp Chewonki. Camp Chewonki is a very wonderful boy's camp located in Wiscasset, Maine. It is a salt water camp operated mainly in the summer. It is located on a peninsula which extends into Monsweag Bay, a protected arm of the sea. Chewonki is on Monsweag Brook and provides a tremendous variety of natural conditions for outdoor studies. The camp has access to approximately 1,200 acres. Terrain includes: (1) miles of Monsweag Brook frontage, (2) acres of forest and tidal flats. Oak Island is connected to the mainland at low tide. This terrain lends itself to a multitude of possible studies. It is ideally suited to demonstrate man's relationship to his environment.

In the past, studies at Camp Chewonki have included the following areas:

1. Saltmarsh Systems
2. Topographic Maps and Map Reading
3. Insects
4. Outdoor Art
5. Group Challenge
6. Ornithology-
7. Journal Writing

Studies will begin in class in early May and will prepare the students for a week of activities in the outdoor classroom. There is no way that we can separate the topics that I have listed from the discipline required in the average daily classroom; they will also be studied in the main disciplines including: Social Studies, Science, Language Arts, Math, and Reading. There is no possible way that the students can learn about these areas without delviing into them by use of their interdisciplinary activities.

Beginning the week of May 9, general classroom emphasis will be placed on the areas of study I have listed. These areas will be gone into in depth. This will be done basically for two weeks in the classroom and then, using a week or more, outdoors in the outdoor classroom; visiting the marshes for example, in Ipswich, Essex, Manchester, etc. for a dry-run field study kind of situation. This will also allow the teachers, parents and volunteers who will be going with us to Camp Chewonki to work with small groups of students and understand them a little more.

Camp Chewonki is owned and operated by the Chewonki Foundation. It was established by Clarence Allen as a non-profit, education organization in 1915, and dedicated to the study and preservation of American heritage of wild life and natural beauty. Many of the nation's leading naturalists have attended Chewonki. Roger Tory Peterson, Rachel Carson, and Richard Pough are several of these. Through real appreciation and understanding of the wilderness, students develop a genuine commitment to the problems of conservation and preservation.

We are, indeed, fortunate to have contracted for the use of such a fine camp for this in June.

The director of the camp is Mr. Harwood Ellis, Jr. who lives in Bath, Maine and who administers this camp for the Chewonki Foundation.

Camp Chewonki is equipped to accomodate approximately 150 boys and girls of the fifth and sixth grade age group. There is also a large, adequate infirmary which will be open and at our disposal during this period of time. One concern that is very important and has not been overlooked, is the proper nursing and doctoring facilities. We have several full-time and part-time people who will be coming with us and who serve as nurses and/or doctors. To help with any cases of poison ivy and sunburn, Camp Chewonki has placed at our disposal, the camp doctor who is Doctor Charles E. Burton, 1 North Street, Bath, Maine. For Hospital use, which we hope will not be necessary, is the Miles Memorial Hospital in Damariscotta, which is about ten miles away from the camp. During our camping trip to Chewonki, there will always be at least two full-time medical people on duty.

Since it is much easier and educationally to the advantage of the students to work in small groups, we hope and plan to have approximately one adult for every 8 to 10 students. This will enable each adult to work with a very small group. The adults who have previously participated in our camping trip include: Connie Brown, Mickey Demchak, Nick Filias, Paul Brown, Janet Filias, Mike Nichols, Dr. John Dainton, Chukki Mains, Lil and Bill Coburn, William Coburn, Rosalie Doucette, Ruth MacDonald, Ben Gannett, Betsy MacDonald, Paul O'Leary, David Mineo, Mark Marshall etc. etc.

Since we will be leaving on a Saturday morning at 8:00 A.M. and will be gone for a Sunday, churches in Manchester have been consulted. We are under the impression that an ecumenical or interdenominational church service would be a fine experience for all the campers and this will be conducted on Sunday morning, June 12, in the outdoor classroom or so to speak, in the "outdoor church."

Because Chewonki has several miles of river and ocean frontage, every precaution will be taken to assure the safety of all the safety of all the children and adults involved. Previous to our camping trip, every student in the fifth grade and many adults, will be tested to find out their swimming capabilities. This is a very stringent precaution and we feel that it is very important to know just how well each child swims and how well each child will be capable of working with an adult.

Each child will be tested by a qualified water safety instructor and these records will be accurately compiled. I have a feeling, though, that the waters of Monsweag Bay are going to be extremely cold, and I guess, I hope that they are cold. This will take a great deal of burden off a great many shoulders. Those parents of weak or non-swimmers will be notified prior to the trip.

Thus far this year, the fifth grade of Memorial School has raised over \$1,500.00 which will be used to defray the expense of supplies which are required for us at Chewonki and also used to reduce the per pupil cost of tuition. Our contractual agreement with the Chewonki Foundation is that each child will be assessed \$143.00 for the entire week. This includes fantastic meals (see enclosed sample Menu.) This year there are many more supplies required in our study of the outdoors. Many, many books are being used and purchased as well as a lot of science equipment. We hope to reduce the tuition of \$143.00 to below \$100.00. No student will be denied this trip because of lack of funds. This fee all depends on final expenses that must be set in preparation for our camping trip. The tuition fee also includes accident insurance. Let's hope we don't need to use it.

In closing, you will find several attachments to this letter:

1. The parent's permission slip
2. A tentative camping supply list. These are things the student should have
3. A sample menu
4. Reminder: Please return medical and permission slips
5. **IMPORTANT!!** No medication of any kind is to be on child's person or in their equipment.....YOU are to give these to the nurse .

If you have any questions concerning what we are doing, please address them to us at the Memorial School so that we can perhaps put your mind at ease.

Thank you and good camping,

Paul Kolterjahn  
Richard C. Potter  
Pat Fleming

P.S. There will be a brief meeting to answer questions concerning this trip on May 9, 1988, at 7 o'clock in room 26 at Memorial School.

## SUGGESTED EQUIPMENT LIST

Each student should bring the following, including what is worn:

- 1 pair of socks for each day
- 1 pair of underwear for each day
- 1 long-sleeved sweatshirt
- "T"shirts )
- shorts ) enough of each of these for 1 week
- long workpants )
- 1 bathing suit and beach towel
- 2 pairs sneakers (1 pair should be old for use in marsh, etc.)
- RAINGEAR (If everyone brings good rain gear, it will NOT RAIN.)
- PONCHO
- mosquito repellent - no spray
- warm jacket
- 1 hat
- 4 towels
- toilet articles (soap, toothpaste, toothbrush, deodorant, shampoo)
- warm sleeping bag and blanket
- flashlight
- 1 warm sweater and/or jacket
- 1 pair rubber boots
- stamped envelopes
- plastic bags for soiled laundry
- 1 extra pair of sneakers or shoes (if you have them) for hiking

Suggested items: IF YOUR CHILD DOES NOT HAVE THESE ITEMS YOU ARE NOT  
EXPECTED TO RUN OUT AND BUY THEM

- camera
- field glasses
- compass
- canteen
- tennis racquet
- knapsack
- baseball glove

Pack in one duffel bag or regular pack. Parents should expect the students to return home with VERY dirty clothes.... a sign of success!!

PLEASE NOTE: NO sweets or gum should be brought to camp!!

## SAMPLE MENU

### Breakfast:

#### Saturday

#### Sunday

Orange & Grape Juice  
Hot & Cold Cereals  
Coffee Cake  
Bacon  
Milk & Cocoa

#### Monday

Orange Juice  
Hot & Cold Cereals  
Biscuits & Butter  
Boiled Eggs  
Honey-Milk-Cocoa

#### Tuesday

Apple Juice  
Hot & Cold Cereal  
Pancakes  
Butter & Maple Syrup  
Milk & Cocoa

#### Wednesday

Apple Juice  
Hot & Cold Cereals  
Donuts  
Scrambled Eggs  
Milk & Cocoa

### Lunch:

#### Sandwiches:

Bologna & Cheese  
Peanut Butter & Jelly  
Celery & Carrot Sticks  
Ice Cream Cones  
Milk

#### Sandwiches:

Chopped Ham  
Peanut Butter & Jelly  
Cookies  
Oranges  
Fruit Punch

#### Sandwiches:

Tuna Fish  
Peanut Butter & Jelly  
Carrot Sticks  
Cookies  
Plums/Lemonade

#### Sandwiches:

Egg Salad  
Peanut Butter & Jelly  
Cookies  
Oranges  
Lemon-Lime Drink

#### Sandwiches:

Chopped Ham  
Peanut Butter & Jelly  
Celery Sticks & Olives  
Cookies/Peaches  
Fruit Punch

### Dinner:

Creamed Chicken  
Rice  
Tossed Salad  
Cranberry Sauce  
Biscuits & Butter  
Chocolate Pudding -  
Topping  
Milk

Apple Juice  
Oven Fried Chicken  
Parsleyed Potatoes  
Green Beans  
Cranberry Sauce  
Bread & Butter  
Apple Pie - Milk

Spaghetti  
Tossed Salad  
Garlic Bread  
Canned Apricots  
Milk

Beef Stew  
Noodles  
Peas  
Bread & Butter  
Applesauce  
Oatmeal Cookies/Milk

Turkey - Stuffing  
Sweet Potatoes  
Spinich  
Cranberry Sauce  
Bread & Butter  
Jello/Milk

McIntosh, Kristin

**From:** McIntosh, Kristin  
**Sent:** Thursday, April 06, 2006 9:29 AM  
**To:** [REDACTED]  
**Cc:** LeBlanc, Kathleen A  
**Subject:** RE: fundraising

April 6, 2006

Dear Ms. [REDACTED]

Thank you for your email. The issue of fundraising is indeed complex. We suggest that you contact the Division of Public Charities of the Office of the Attorney General in Boston for guidance regarding these issues. I am told by the Chief of the Division of Public Charities that you can contact Dan Ferullo directly at 617-727-2200, ext. 2115. You can also find a wealth of information on their Web site at <http://www.ago.state.ma.us/sp.cfm?pageid=972>.

If you conduct fundraising activities as a school employee or these activities give the appearance that you are conducting them as a school employee, arguably the school committee must approve the activities and the funds must be deposited with the municipal treasurer and expended through the typical municipal process. Because of these restrictions, fundraising for the arts is often conducted by parents or private non-profit organizations.

Should you wish to participate in fundraising directly, we also would suggest that you seek advice from the State Ethics Commission. Their Web site is <http://www.mass.gov/ethics/> (FAQ at <http://www.mass.gov/ethics/Q&A.html>), and you can reach the Commission's Legal Division at (617) 371-9500 or (888) 485-4766.

You also ask whether it is legal to have children purchase their own musical instruments. As a general rule, Massachusetts public schools may not charge a fee for students to enroll or to participate in required or elective courses given for academic credit. Under Chapter 71, section 48, of Mass. Gen. Laws, textbooks and other instructional materials and supplies that are intended to be used and reused over a period of years must be purchased at public expense and "loaned" to students, who must return them at the end of the year. A school may ask students or parents to contribute voluntarily toward supplies in an elective course. In that event, schools must be prepared to provide those supplies for all students, including those whose families can not afford or do not choose to contribute.

If instrumental lessons are given during the school day and for credit, they are presumably a required or elective course or an integral part of a required or elective course given for credit. In this type of situation, the school would be expected to provide instruments.

The school would not necessarily, however, be expected to provide the instrument of the student's choosing. In this type of situation, it is also permissible for the school to ask parents to participate in a voluntary rental program for instruments or to provide students their own instruments. If so, the school must be prepared to provide some instrument for students who want to take lessons but can not afford or choose not to participate in the instrumental rental program or purchase their own instrument. Many schools, therefore, offer recorder lessons and provide a recorder for those students.

If the instrumental lessons are non-credit, extracurricular, given outside the school day, and not an integral part of a required or elective course, a reasonable fee may be charged for such instruction and students can be required to rent or otherwise provide their own instrument. We also would urge the school district to consider some mechanism to subsidize low-income students should they wish to participate.

I believe this provides you the information that you requested.

Very truly yours,