

STUDENT FEE HANDBOOK



**Legal Affairs
Chancellor's Office
California Community Colleges
Sacramento, California**

Chapter 2

2.5. Instructional Materials. Education Code section 76365 allows districts to require students to provide various types of instructional materials and enables districts to sell such materials to students who wish to purchase the required materials from the district. Generally speaking, there are strict limitations on charging a required “instructional materials fee.”

Section 76365 has been implemented by regulations of the Board of Governors found in sections 59400-59408 of title 5 of the California Code of Regulations. The law provides that students can only be required to provide materials which are of continuing value to the student outside of the classroom setting. The Chancellor's Office has determined that such materials include, but are not limited to, textbooks, tools, equipment, clothing, and those materials which are necessary for a student's vocational training and employment. The regulations were amended in 2012 to eliminate the requirement that instructional materials must be tangible. This allows districts greater flexibility to require students to provide electronic and on-line instructional materials through use of a license or access fee. However, the regulations establish protections to protect students from inappropriate materials and fees. First, required instructional materials shall not include materials used or designed primarily for administrative purposes, class management, course management, or supervision. Some on-line or electronic instructional materials offer marginal assistance or benefits to the instructor or the district. Such assistance or benefits would not disqualify the product from being a valid instructional material provided the primary purpose of the instructional material is for instructional purposes. Second, the regulations ensure that materials provided through a license 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 03-25.)

“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 material which is necessary to achieve the required objectives of a course.

Finally, the regulations specify that the material 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 actual 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.

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It is important to remember that these regulations only apply to materials that are required as a condition of registration, enrollment, etc. If a material is helpful to students, but is not required, then it may be sold to students under the authority of the permissive code. Material 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.

Education Code sections 81457 and 81458 authorize districts to sell to students those materials necessary for the making of articles by persons in the class. The materials are 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 an across-the-board or per unit instructional materials fee (see Legal Opinion O 93-12). Where specific course objectives for independent study have not been finalized at the point students register for the course, instructional materials fees generally cannot be assessed at registration because fees must be directly related to course objectives. Students may only be required to pay for instructional materials under the circumstances described above.

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The following questions should be answered any time a district wishes to require students to provide materials:

1. What personal property (material) does the student need? If a fee is charged, what does the student get for the fee?
2. How does this material relate to the required objectives of the course? The district should be able to identify a specific course objective that cannot be met but for the use of the materials at issue.
3. Does the material have continuing value outside the classroom?
4. Is the amount of materials the students must supply, or the amount that they receive in exchange for the fee that is charged, consistent with the amount of material necessary to meet the required objectives of the course?
5. If the district charges a fee rather than having students furnish the materials, why do the students have to pay a fee to the district rather than supply the materials themselves? Is the district the only source of the materials? If not, is there some health or safety reason for the district to supply the materials? If not, will the district supply the material more cheaply than the material can be obtained elsewhere AND at the district's actual cost?

Districts should periodically and systematically review the instructional materials they require students to provide, and the instructional materials fees they charge, to ensure that all the standards are met. A review of one college by the Chancellor's Office revealed fees collected from students in one small curricular area amounting to twice the college's actual costs. Such discrepancies may be attributable to fluctuating costs, but whatever the cause, they point to the need for on-going monitoring of required materials and materials fees. The 2012 amendment to the regulations specifically states that district policies and regulations concerning instructional materials “shall direct instructors to take reasonable steps to minimize the cost and ensure the necessity of instructional materials.”

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Districts should carefully review the fees described in their catalogs, class schedules, and their websites to ensure that optional fees are clearly described as optional and cannot be mistaken for required charges. Students should be clearly advised when they have the option of providing their own materials or of purchasing those materials at the listed price from the district. When optional fees are not properly described, the appearance is that the district may be charging an impermissible mandatory fee.

When students have the option of providing necessary materials, districts should provide readily available information about what materials are required so that students can make an informed choice as to whether to provide their own materials or to purchase them from the district. Districts should establish a workable mechanism to notify students of the materials they must provide to ensure that students have a real opportunity to provide the materials themselves and are not forced to pay a fee to the district merely because they did not know what materials were needed.

Districts should also review their refund policies related to instructional materials fees. Students may have already paid instructional materials fees when they find they must withdraw from a class. Unless a district refunds an amount corresponding to the personal property that was not provided prior to an early withdrawal, or provides the material to the student, the appearance is that the district is retaining the fee as well as the materials for which the fee was paid.

Appendix A contains a detailed analysis of the kinds of materials that may and may not be required under the instructional materials regulations.

APPENDIX A

APPLICATION OF INSTRUCTIONAL MATERIALS
REGULATIONS TO SPECIFIC SITUATIONS

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 for materials provided by the district. Those questions should assist districts in analyzing the application of Education Code section 76365 and title 5 regulations on instructional materials (§§ 59400-59408) in specific instances.

Over the years, a number of specific items have been considered under the instructional materials standards.

Ammunition - Ammunition that is used in connection with police science courses (shooting at the practice range) is a material that students can be required to provide. To the extent that shell casings can be reloaded, they can be taken from the course setting, and they are not wholly consumed, used up or rendered valueless as they are applied in achieving the required objectives of a course.

Bluebooks - Used bluebooks if returned to students, are materials of continuing value to the student outside of the classroom setting. If the district is the sole provider of bluebooks, they must be provided to students at the district's actual cost. If used bluebooks are not returned they are not of continuing value to the student and thus should be provided by the district.

Chemicals - see **Welding Rods (and other transformed materials)** below.

Clay - Clay is an example of a “transformed” material that, under most circumstances, can retain continuing value outside of the classroom setting. For instance, a district could require that a student provide 20 pounds of a given type of clay in order to take a course. The clay can be sold through the college bookstore if the student wishes to purchase it there. The clay, when converted into objects and fired in a kiln, can be taken from the classroom by the student. The clay is not wholly consumed, used up or rendered valueless in the process of becoming an object.

A critical distinction to apply with respect to transformed materials is whether the transformed material becomes part of something that a student will take from a class, or part of something that is just used for practice, and will not become the property of a student. Materials used in practice--objects that don't become the property of the student--should be provided by the district; whereas if the material is part of an object that becomes the property of the student, it can be required.

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Another method to handle transformed materials such as clay is to provide the material for free, but to charge the student for any transformed material that he or she wishes to take from the classroom. Under this method, the material doesn't become the permanent property of the student until he or she chooses to buy it. In any case, if students are required to provide clay, the transformed objects must become their property.

Other examples of transformed materials which can have value to the student outside of the classroom setting include wood, metal, film, photographic paper, oil paints, canvas, cloth, food and paper generally.

Clothing - see **Uniforms and Clothing**, below.

Computer Paper - Computer paper is a material which can be used by many students, but which can have continuing value to students based on the information preserved on the paper during the course. For instance, a district could require that each student provide a specified quantity and brand of computer paper in order to enroll in a course. A student wouldn't necessarily be using the box of computer paper he or she bought, but as long as he or she was entitled to keep all printouts, and as long as the student would generate roughly the quantity of paper he or she provided, a student could be required to provide computer paper.

CD-ROMS - see **Recording Tape, Video Tape, Floppy Discs, CD-ROMS**, below.

Diesel Fuel - see **Welding Rods (and other transformed materials)** below.

Equipment - Education Code section 76365 specifically mentions equipment as a material that has continuing value to the student outside of the classroom setting. Thus, students can be required to provide their own equipment for classes.

Equipment Use Charge - In lieu of requiring students to provide certain expensive equipment, one suggestion is that students be given the option to "rent" the equipment from the district for the duration of the course. The instructional materials regulations do not address rental of equipment that is required by a district. Rather, the regulations only address the authority of districts to require the equipment.

Generally speaking, rental of equipment should be classified as an "optional fee," and thus would be authorized within the parameters of the permissive code. Districts should not subsidize their equipment budgets by renting equipment which students should not be expected to own. For instance, it would be improper to require students to provide a certain \$5,000 television camera and then offer them the "option" of renting one for use during the class for \$20 per semester.

Floppy Discs - See **Recording Tape, Video Tape, Floppy Discs, CD-ROMS**, below.

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Flowers and Food - Flowers for a flower arrangement class are an example of a material which can be required, with the student having the option to purchase them from the district. The district can specify the required flowers which the student needs and then provide the student with an option to purchase all necessary flowers from the district for a specified price. The same is true of food for a cooking class. It is contemplated that students in culinary programs will be able to consume and/or to take food items purchased with their instructional materials fees. For example, students may consume or take away pastries they prepare in class. It would not be appropriate, however, for students to be required to supply all of the food for a culinary class unless those food materials have continuing value to the students outside the class. It would not be appropriate for students to pay for food that they prepare for non-students, such as through a dining room or food service program. Similarly, an instructional materials fee would be appropriate in a wine-making class if students are able to keep the wine that they bottle.

Gasoline - see **Welding Rods (and other transformed materials)** below.

Gym Towels - If having a towel is mandatory to the class, districts may require students to provide their own towels, or the district may provide them. However, the towels cannot be solely or exclusively available from the district based on the health and safety definition of section 59402(c)(1) because district-only towels do not fulfill a health and safety requirement.

Instructional Tapes/Videos - Instructional tapes or videos that must be returned to the district cannot be the basis for an instructional materials fee. Students retain no tangible personal property when the materials must be returned. (See section 3.16 above.)

Instructor-created Materials - Instructor-created textbooks, syllabi and other instructional materials are generally prepared for specific courses offered by a college or district, and are often solely or exclusively provided by a district. Such materials, in most instances, have continuing value outside of the classroom setting. The district is required to provide these materials unless the exception to title 5, section 59402(c) can be applied. Specifically, the instructor-prepared instructional materials must be provided at the district's actual cost, in lieu of other generally available but more expensive material which would otherwise be required.

By way of example, a textbook, syllabus, or instructor-prepared material costing a district \$15.00 to provide to a student could be required in lieu of requiring the students to secure a nationally published textbook on the same subject which retailed for \$30.00. A district's "actual cost" of producing materials which it solely or exclusively provides can include a small markup necessary for selling the item through the college bookstore. The overall premise is that neither a district nor its employees ought to be making a profit on materials which the district solely or exclusively provides.

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Instructor-prepared material can be classified as “optional” if it is not required by the district, or is not required to complete the required objectives of a course to be accomplished under the direction of an instructor during class hours. In this regard, a syllabus or other material could be “highly recommended” without being required. Also a material could be designated for “required reading” without it actually being a required material.

In Legal Opinion L 02-29 we addressed several issues concerning faculty authors, subsidy publishers, and the payment of royalties. We concluded that under current law a faculty author may require his or her students to purchase mandatory instructional materials the faculty member created and paid a subsidy publisher to produce even if the price of said materials includes a royalty payment provided the materials are not exclusively available from the district and provided that local employment agreements or local conflict of interest rules do not prohibit the practice.

In Legal Opinion L 04-11, we addressed whether a student could be required to present proof of “recently purchased lecture notes” as a condition of enrollment. We determined that requiring a proof of purchase was inappropriate, and also determined that payment of a royalty for the instructor's lecture notes was problematic. Requiring “recently purchased lecture notes” raises the question of why a “purchase” is necessary, as opposed to other means of securing materials, such as using a library copy or copies already purchased by other students. Regardless of how they are acquired, unless materials are reasonably related to the achievement of the course objectives, they cannot be established as “required instructional materials” and students cannot be required to provide (or purchase) them. If the lecture notes **do not qualify** as required instructional materials, they can still be offered to students on a purely optional basis and students could be charged a reasonable optional fee.

If a district determines that lecture notes **do qualify** as a required instructional material, and the lecture notes are solely available through the college bookstore, a fee in the form of the bookstore purchase price may be appropriate, but the price may not include a faculty royalty.

Lab Books, Workbooks, and Sheet Music - Lab books and workbooks are distinguished from texts and instructor-produced materials in that they are written in extensively or have various exercises which result in pages being torn out. Generally speaking, even though such materials are altered, they retain some value to the student outside of the classroom setting, and therefore can be required of students. Sheet music is another example of workbook-type material which can be required.

Laboratory Animals - Under most conditions, required laboratory animals must be provided by the district because they have no continuing value to the student outside of the classroom setting. This general rule, however, does not require a district to provide an unlimited supply of laboratory animals. Laboratory animals in addition to those reasonably needed for completion of course objectives can be sold as “optional” materials.

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Decomposable materials used in dissection are not instructional materials because students cannot reasonably retain the materials for future use outside of the classroom.

Medical Supplies (such as Band-Aids, sterile syringes, and catheters) - see Welding Rods (and other transformed materials) below.

Models for Art Classes - Models for art classes have no continuing value to the student outside of the classroom setting. They are not owned or primarily controlled by individual students. Therefore, students cannot be required to pay for models in art classes.

Performances - Requiring a student to see a play, film, concert, or other performance is not an instructional or other material, and is not covered by the regulations. A district may require a student to see a specified play, film, concert or performance, but in order to generate FTES for the student's attendance at the performance, the district must provide for attendance free of charge to the student. If seeing a performance is accomplished through a field trip, students may be asked to pay for incidental expenses, including entrance fees to the performance, but no student can be denied the right to participate in the field trip due to lack of funds. (See Cal. Code Regs., tit. 5, §§ 55220-55222.)

Photographic Chemicals - Photographic chemicals are a material which can be used by many students, but which usually will have no continuing value to students outside of the classroom setting. Unlike computer paper, photographic chemicals can be tainted through misuse and tend to become used up in the classroom setting. If photographic chemicals are kept separate for each student and are given to students upon completion of the class, students can be required to provide them.

Recording Tape, Video Tape, Floppy Discs, CD-ROMs - Recording tape, video tape, floppy discs and other such reusable recording materials generally have continuing value to students outside of the classroom setting. They are generally available, tangible personal property of continuing value that is owned or controlled by the student.

Scantrons – A scantron is a prepared form used for multiple-choice and true-or-false testing. A district may not charge a fee for scantrons as they do not have continuing value outside of the classroom.

Sheet Music - See **Lab Books, Workbooks, and Sheet Music**, above.

Student Catalogs and Course Schedules – Student catalogs and course schedules should be available in hard copy to students in order to meet open access requirements. However, a college is not required to provide unlimited numbers of paper versions of those course catalogs and schedules. A college may charge for additional versions of its catalog, so long as the critical information contained within it is sufficiently available for free through alternative means. Each individual college is responsible for demonstrating that it meets this burden.

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Syllabi - See **Instructor-created Materials**, above, and **Textbooks**, below.

Tests (Required) - 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.

Textbooks - 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.

Uniforms and Clothing - 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.

Video Tape - see **Recording Tape, Video Tape, Floppy Discs, CD-ROMS**, above.

Welding Rods (and other transformed materials) - 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.

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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.

Workbooks - See **Lab Book, Workbooks, and Sheet Music**, above