

STATE OF TENNESSEE

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March 14, 2003

Opinion No. 03-027

School Fees; "Debt" for the Purposes of Tenn. Code Ann. § 49-1-302 (a)(14)

QUESTIONS

1. Do school fees authorized by a local school board in accordance with Tenn. Code Ann. § 49-2-110 create a "debt" for the students to whom they are charged under Tenn. Code Ann. § 49-1-302(a)(14) and Tenn. Admin. Rules, *State Board of Education*, 0520-1-3-.03(13), so that a local school may withhold various enumerated documents, including report cards, when the fees are not paid?

2. If the answer to the first question is no, what constitutes a "debt" under Tenn. Code Ann. § 49-1-302(a)(14)?

OPINIONS

1. School systems may request but not require payment of "school fees." Thus failure to pay the requested fee cannot be a debt because it is not owed.

2. A debt under Tenn. Code Ann. § 49-1-302(a)(14) and Tenn. Admin. Rules, *State Board of Education*, 0520-1-3-.03(13), could include non-"school fee" charges, such as a fee for an extracurricular student activity occurring outside the regular school day, library fines for late-returned books, parking or traffic fines, and reasonable charges for lost or destroyed textbooks.

ANALYSIS

The request indicates that certain school systems assess fees to students, ranging from \$10 to \$70 per child, to provide instructional materials and other classroom supplies. The question is whether the assessment creates a "debt" within the meaning of Tenn. Code Ann. § 49-1-302(a)(14) and Tenn. Admin. Rules, *State Board of Education*, 0520-1-3-.03(13), which authorizes school officials to withhold documents such as report cards and diplomas from students who fail to pay debts owed to the school.

Tenn. Code Ann. § 49-1-302(a)(14) required the State Board of Education (State Board) to promulgate rules to establish a program under which a local school may withhold grade cards, diplomas, certificates of progress or transcripts (collectively, "documents") of a student who has incurred a debt to the school. The statute states as follows:

[It is the duty of the board, and it has the power to:] Prescribe rules and regulations to establish a program whereby a local school may withhold all grade cards, diplomas, certificates of progress or transcripts of a student who has incurred a debt to the school or a student who has taken property which belongs to a local school or any agency thereof until such student makes restitution to the school for such debt. Such rules and regulations shall not permit the imposition of sanctions against a student who is without fault;

The State Board promulgated the rules. In Tenn. Admin. Rules, *State Board of Education*, 0520-1-3-.03(14)(c), the State Board of Education defines the term “school fees.”¹ The Board’s rule also lists charges that are not “school fees,”² including items such as a library charge for late books. Rule 0520-1-3-.03(14)(d). The rule also addresses local schools’ authority to withhold student documents. Tenn. Admin. Rules, *State Board of Education*, 0520-1-3-.03(13) reads, in pertinent part, as follows:

¹ Rule 0520-1-3-.03(14)(c): School fees are defined as:

1. Fees for activities that occur during regular school hours, including field trips, any portion of which fall within the school day;
2. Fees for activities and supplies required to participate in all courses offered for credit or grade, including interscholastic athletics and marching band if taken for credit in accordance with local board policies;
3. Fees or tuition applicable to courses taken for credit or grade during the summer by a student; except that non-resident students regularly enrolled in another school system may be required to pay fees or tuition for such summer courses;
4. Fees required for graduation ceremonies;
5. Fees for a copy of the student’s record; and
6. Refundable security deposits collected by a school for use of school property for courses offered for credit or grade, including interscholastic athletics and marching band if taken for credit in accordance with local board policies.

² See Rule 0520-1-3-.03(14)(d): School fees do not include:

1. Fines imposed on all students for late-returned library books; parking or other traffic fines imposed for abuse of parking privileges on school property; or reasonable charges for lost or destroyed textbooks, library books, workbooks or any other property of the school;
2. Debts incurred pursuant to Rule 0520-1-3-.03(13), Withholding of Student Grades for Debts Owed to the School;
3. Refundable security deposits collected by a school for use of school property for participation in extracurricular activities;
4. Costs for extracurricular activities occurring outside the regular school day including sports, optional trips, clubs or social events; and
5. Non-resident tuition charged of all students attending a school system other than the one serving their place of residence.

(13) Withholding of Student Grades for Debts Owed to the School.

(a) Local education agencies are authorized to withhold all grade cards, diplomas, certificates of progress or transcripts of a student who has taken [school] property . . . , or has incurred a debt to a school, until such student makes restitution in full.³

Thus, to be subject to this sanction, a student must have taken school property or incurred a debt to the school. A “debt” is something owed, such as money, goods, or services; an obligation to pay or render something to someone else. *The American Heritage Dictionary of the English Language* (4th ed. 2000).

In addition to the State Board’s rule, the Department of Education (Department) has issued an interpretative memorandum⁴ to all school systems on school fees. Citing Tenn. Code Ann. § 49-2-110(c)⁵ and Tenn. Code Ann. § 49-2-3001(a)⁶ as authority, the Department states that school systems may not force a student to pay a student fee or to be restricted educationally in the event that the student refuses to pay a fee charged by the school system. *See* Memorandum, Student Activity Funds — Fees (copy attached). The Department goes on to say that students must pay any money owing for items, events or the like that are not “school fees.” Thus failure to pay a charge, fee or fine

³ The Rule continues with these additional sections:

(b) No student shall be sanctioned under . . . this rule when the student is deemed to be without fault for the debt

(c) Local education agencies shall afford the student and/or the student’s parent the opportunity to appear and be heard if such student and/or the parent disputes the debt, the amount of the debt, or the application of sanctions.

⁴ While not controlling on the courts, an agency’s interpretation of a law it administers receives deference from the courts. *See, e.g., Nashville Mobilephones v. Atkins*, 536 S.W.2d 335, 340 (Tenn. 1976) (It is a rule of statutory construction that “weight and importance are given by the Tennessee courts to the interpretation of the agency charged with the enforcement or administration of a particular act.”).

⁵ Tenn. Code Ann. § 49-2-110(c) prohibits the imposition of certain student fees and reads as follows:

The school shall not require any student to pay a fee to the school for any purpose, except as authorized by the board of education, and no fees or tuitions shall be required of any student as a condition to attending the public school, or using its equipment while receiving educational training.

⁶ Tenn. Code Ann. § 49-2-3001(a) reads, in part: “The public schools shall be **free** to all persons above the age of five” *See also* Tenn. Const. Art. XI § 12 which states, in part, “The General Assembly shall provide for the maintenance, support and eligibility standards of **free** public schools.” (Emphases added.)

falling in the latter category could be a debt for which the school is authorized to withhold student grades, transcripts and the like.⁷

Summarizing, we have (1) a Board of Education rule that defines what are and are not “school fees” and specifies when a local school may withhold student documents because of an unpaid debt; (2) a Department interpretative memorandum that states that school boards may request but may not enforce school fees, and (3) a statute prohibiting schools from imposing unauthorized student fees and any fee that is a condition to attending public school or for using school equipment as a part of educational training.

In this instance, the fees assessed for instructional materials and other classroom supplies fall under the State Board’s list of “school fees”⁸ and thus may be requested but not required. The assessment of such fees would not create a “debt” or legal obligation to pay them, and, accordingly, failure to pay could not be used as a basis for withholding student documents.

In summary, a school may request payment of the “school fees” listed in Rule 0520-1-3-.03(14)(c). It may require payment of items that are not school fees. *See* Rule 0520-1-3-.03(14)(d). Failure to pay a requested school fee would not constitute grounds for withholding student documents. Failure to pay a required non- “school fee” charge would provide such grounds, however, because such charges do create a “debt” owed by the student to whom they are charged. Finally, under no circumstances may a school require any fee, fine or other monetary charge as a condition to attending public school or for using school equipment while receiving educational training.

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⁷ Even a non- “school fee” could come under scrutiny. A court could question whether the fee is for something so integral to receiving a free public school education that it is the equivalent of “a condition to attending the public school.” Tenn. Code Ann. § 49-2-110(c). Courts in several states have considered the “school fee” issue, and the results have not been consistent. The cases often turn, however, on whether the school is charging a fee for a fundamental educational activity. *See, e.g., Michigan Attorney General v. East Jackson Public Schools*, 372 N.W.2d 638, 639 (Mich. App. 1985) (fee for interscholastic athletics held permissible because it was neither a fundamental part of the educational process nor a necessary element of school activities.); *Granger v. Cascade County School District*, 499 P.2d 780, 785 (Mont. 1972) (Tuition fees for music course and for summer school and driver education charge were not valid if the courses reasonably related to a recognized academic and educational goal of the school system.).

⁸ *See* Rule 0520-1-3-.03(14)(c)(2.): Fees for activities and supplies required to participate in all courses offered for credit or grade,

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