

Q & A on the Prohibition of Charging Fees to Students Eligible for Free Lunch

New language in HB 1 (Ohio Revised Code §3313.642) states that “no board of education of a school district shall charge a fee to a pupil who is eligible for a free lunch...for any materials needed...to participate fully in a course of instruction.” Following are questions that we have received regarding this provision and answers to each:

Q1: Does this prohibition apply to joint vocational school districts or districts providing career-technical education comprehensively or through a compact/contract arrangement?

A1: Yes. Prior to the amendment, the fee prohibition only applied to districts that received poverty-based assistance. The amendment to ORC §3313.642(B) removed that qualifying language. As amended, ORC §3313.642(B) applies to “the board of education of a school district.” Pursuant to ORC §3311.19(D), a JVSD board is subject to all the provisions of law that apply to a city school district. The only exceptions are those expressly set forth in Chapters 124, 3311, 3317, 3323, and 3331 of the ORC.

Q2: Does this provision apply to all career-technical classes?

A2: The provision applies to all career-technical classes that are “courses of instruction.” The term “course of instruction” may reasonably be interpreted to mean a course for which academic credit may be earned, in accordance with local district policy. Further, ORC §3313.642(C) permits boards of education to adopt a schedule of fees for courses of instruction. If a career-technical class is listed on the schedule of fees for courses of instruction, it is likely that ORC §3313.642(B) would apply to that class.

Q3: Does this provision apply to elective classes?

A3: Yes, if the elective class is a “course of instruction.” If the elective class is listed on the schedule of fees adopted by the board, it is likely that ORC §3313.642(B) would apply to that class.

Q4: Do educational service centers have to comply with this provision?

A4: Yes. Pursuant to ORC §3311.055, whenever in Title 33 the term “school district” is used without express reference to city, local, exempted village or joint vocational school districts, the term is construed to include educational service centers.

Q5: Do community schools have to comply with this provision?

A5: No. ORC §3313.642 is not among the statutes referenced in ORC Chapter 3314 to which community schools must comply.

Q6: Do STEM schools have to comply with this provision?

A6: No. ORC §3313.642 is not among the statutes referenced in ORC Chapter 3326 to which STEM schools must comply.

Q7: Does this prohibition apply to fees for extracurricular activities and other fees such as class dues?

A7: HB 1 did not amend existing language in ORC §3313.642(B) that states the prohibition does not apply to any fee charged for any materials needed to enable full participation in extracurricular activities or in any pupil enrichment program that is not a course of instruction. The ability to charge fees for “class dues” to students eligible for free lunch would depend on the use of the dues. If the “class dues” are actually fees charged for materials needed to enable full participation in a course of instruction, they cannot be charged to a pupil that is eligible for free lunch.

Q8: Can the Department provide guidance to assist districts in determining the students eligible for free lunch and, therefore, prohibited from being charged instructional fees?

A8: Several sources of information are available to assist districts in determining if a student is eligible for free lunch:

1. *The Free and Reduced Price Student Meal Application*: This application is collected by districts in the beginning of a school year in order to determine if a student is eligible to receive free or reduced price meal benefits based on Federal application criteria.
2. *Direct Certification list*: ODE provides each school district with this listing, which contains the names of students meeting Food Stamp or Ohio Works First eligibility. Students listed are automatically certified to receive free meal benefits.
3. A district may consider other documentation provided by a parent that establishes eligibility.

Due to strict Federal confidentiality rules dictating the use of eligibility data collected for School Meals Programs, districts must follow the steps listed below in order to utilize the School Meal Program Eligibility Application and/or Direct Certification list for determining the students that are prohibited from being charged instructional fees:

1. Download a "Sharing Information with Other Programs" form, available in the 2009-2010 Free and Reduced Price School Meals Program Application Packet. This packet is available on the Ohio Department of Education website. Type in "Free and Reduced" in the search box, then select "ODE-School Meal Programs", and then select "The National School Lunch Programs Downloadable Documents."
2. Modify the form to include the district's letterhead and information about this prohibition on charging fees to students eligible for free lunch.
3. Send the form home to the parents/households to sign and send back to the district. This includes the parents/households of which the children were certified for free meals based on the Direct Certification list.
4. The district must receive a signed form from the parents/household in order to use the Free and Reduced Price School Meals Program Application and/or Direct Certification list as sources for determining students that should not be charged instructional fees.

Please note that, if a parent/household does not return the consent form or the parent/household declines consent to use the Free and Reduced Price School Meals Program Application/Direct Certification list, the district must respect the wishes of the household and not use the application or direct certification data for fee determinations.

Remember, ORC §3313.642 prohibits districts from charging only students that are eligible for free lunch. Students that are eligible for reduced lunch may be charged.

The Ohio Department of Education, Office for Safety, Health and Nutrition administers the School Meal Programs in the State of Ohio. If you have any questions regarding the process for obtaining parental consent or any other School Meal Programs related questions, please contact the office at 1-800-808-6325.

Q9. If a district has split-day kindergarten children who do not participate in a School Meal Program, do they have to send a Student Meal Application home for parents to sign in order that they are not charged for their children's fees?

A9. This would be a local decision. The district may employ various methods for obtaining the information needed to make the eligibility determination. For example, the district could develop a fee waiver determination form that contains queries similar to those in the Free and Reduced Price School Meals Program Application.

Q10. How would the fee exemption work if a student is not eligible for free lunch at the start of the school year, but becomes eligible later in the school year?

A10. The plain language of the provision indicates that the waiver applies to any student that is eligible for free lunch. The provision does not impose a time limitation on the period of such eligibility. Ultimately, the

district retains discretion in this area but, if the fee was already paid, it would be reasonable for the district to provide a refund on a pro-rated basis over the time period for which the fee covered. For example, if a class only runs for half the school year (18 weeks) and, after 4 weeks into the class, the student is deemed eligible for free lunch, the student should be refunded for 14/18 (77.8%) of the fee for the class.

Q11. Can Title I funds (regular or ARRA) be used to cover the fees for students who qualify for a free lunch?

A11. Title I funds may not be used to pay for services that an LEA is providing to non-Title I students through state or local funds. Therefore, if fees are charged to all students in a course, using Title I funds to pay the fee for students who qualify for a free lunch would not be allowable and raises a presumption of supplanting.