



SWEETWATER UNION HIGH SCHOOL DISTRICT

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MEMORANDUM

**TO: Principals
Assistant Principals & ASB Deans
Physical Education Teachers**

**FROM: Jennifer Carbuccia, General Counsel
Ana Maria Alvarez, Assistant Superintendent, Teaching and Learning
Maria Esther Lizarraga, Executive Director, Curriculum and Instruction**

DATE: June 4, 2019

SUBJECT: Physical Education Attire

The California Constitution guarantees all K-12 students a publicly funded education. In 2010, the ACLU sued California claiming that school districts throughout the state were illegally charging students for a range of items (textbooks, workbooks, lab fees, etc.), which was discriminatory to lower-income students. As a result, a settlement was entered into where California agreed to ensure that school districts do not require students to pay any fee, deposit, or other charge not specifically authorized by law.

Pursuant to Education Code 49010, we are prohibited from requiring students to pay student fees as a condition for participation in an educational activity, including extracurricular activities. The District is required to provide supplies, materials, and equipment needed by students to participate in these educational activities. Prohibited fees include any fee charged to a pupil as a condition for participation, regardless of whether the class or activity is elective, compulsory, or for credit. Education Code section 38118 provides:

Writing and drawing paper, pens, inks, blackboard erasers, crayons, lead pencils, and other necessary supplies for the use of the schools shall be furnished under direction of the governing board of the school district.

The Attorney General has issued an opinion that pursuant to Education Code 38118 that "necessary supplies" any item the school district requires that pupils use for a class or activity. As such, the school district must provide "necessary supplies" to pupils for free in order to participate in regular classroom work in the particular subjects involved.

Based on this opinion, if a school requires a specific physical education uniform for students to wear in class, the school is required to provide that uniform to all students for free.

"Putting Students First"

Sweetwater Union High School District "programs and activities shall be free from discrimination, harassment, intimidation and bullying against an individual or a group based on age; gender, gender identity or expression, or genetic information; sex, actual or potential parental, family, or marital status that treats students differently on the basis of sex; race, color, religion, ancestry, national origin, ethnic group identification, physical or mental disability, sexual orientation, immigration status; the perception of one or more of such characteristics; or association with a person or group with one or more of these actual or perceived characteristics."

SUHS Board Policy 0410

It is acceptable for a school site to require students wear clothes appropriate for participation in physical education, such as athletic apparel or athletic shoes. However, too much specificity will call into question whether something is required. For example, asking students to wear common-colored apparel that they could own (white shirt, black/blue shorts or sweats) is acceptable; requiring more specific clothing or apparel which specifies a brand, insignia or logo would likely be seen as a uniform and thus a “necessary supply” required to be provided by the school. Similarly, if a student is required to permanently deface or alter their clothing, such as writing their name in permanent marker on the shirt or shorts, it is likely we have created a de facto uniform requirements and thus would constitute an illegal fee if we do not provide the clothing for free.

It is also acceptable for the school site to sell apparel which meets the basic guidance for participation in physical education classes (i.e. white shirt, black/blue shorts or sweats); however, the school may only sell the clothing at cost. Selling physical education apparel cannot be a fundraiser.

Cannot Require Students to Buy Clothes in Order to Not Receive a Non-Suit:

Further, students cannot be required to buy such clothing to be considered as properly “suited up” for class. Education Code 49066(c) states:

No grade of a pupil participating in a physical education class may be adversely affected due to the fact that the pupil does not wear standardized physical education apparel where the failure to wear such apparel arises from circumstances beyond the control of the pupil.

Courts have interpreted “grade” to mean either academic or citizenship grades under this statute; thus neither a citizenship or academic grade can be impacted by non-suit beyond students’ control. Requiring students or their families to pay for clothing, would give rise to a condition outside of the students’ control and thus cannot impact a student’s scholastic or citizenship grade. That said, if a student has clothes on that would allow them to safely participate in the activities and chooses not to suit up then such nonsuit may impact their grades because the failure to wear standardized PE apparel was in the student’s control.

Sites Can Sell Spirit Wear:

Separate and apart from requiring a uniform for physical education, a school may sell “spirit gear” which celebrates the school or its teams or programs. This gear can be athletic wear such as shirts, hoodies, shorts or sweats. Such gear should not say “Physical Education” or “PE Department” or “PE uniform.” If the site sells spirit gear, it can do so as a fundraiser. It is allowable for students to voluntarily wear spirit gear to their physical education classes, if that spirit gear meets the flexible requirements for athletic participation.

Implementation:

To ensure that the Education Code and our District policies are followed, the Curriculum and Instruction Department and Legal Services recommend the following actions:

- 1) Principals or designee meet with physical education faculty to ensure that syllabi are accurately worded regarding the requirements for athletic apparel, requirement not to permanently deface those clothing, and what is considered a “non-suit.”
 - a. A model syllabus is attached to this memo from the Curriculum and Instruction Department and will be provided to the PE Departments for use for 2019-2020 school year.

- 2) Ensure that the expectations of athletic apparel are consistent throughout the district and site's PE departments allow all students to participate. Further, the expectation of athletic apparel cannot negatively impact specific demographic groups of students based on a protected status. (For example, are male students allowed to wear a tank top or no shirt, but female students required to have sleeved shirts.)
- 3) Ensure that if the ASB store does have shirts or shorts that include any reference to "PE Uniform," "PE Department" or the like, that these items only be sold at cost. The school cannot profit from physical education uniform sales. (Note: If a school requires students to wear a specific "PE Uniform," that uniform must be provided to all students at no cost.)
- 4) Ensure that if physical education teachers and/or assistant principals are looking for solutions for non-suited children, they may not require that students buy physical education gear at the student store to participate in class.
- 5) If sites determine to offer free clothing for students who are non-suited, it is strongly advised that it is not spirit gear available for fundraisers at the student store, but clothing kept in the physical education department or administrative offices.

If you have any other questions, please do not hesitate to contact the Curriculum and Instruction Department – (619) 691-5586 or the Compliance Office – (619) 796-7720.