



Charging Students for Instructional Technology

Published online in [TASB School Law eSource](#)

To prepare students for a technology-driven workforce, schools today are implementing more instructional technology than ever before. Unfortunately, purchasing, maintaining, and supporting safe and secure instructional technology for all students can come with a high price tag. Thus, many school districts wonder whether they may shift the cost burden to students and parents by charging them for either the technological equipment itself or for the use of or access to various technologies. This article reviews Texas law on the limited fees district are authorized to charge students for instructional materials and technological equipment and explores challenges faced by districts.

Q: Must a district provide instructional materials and technological equipment free of cost to students?

A: Yes. Texas law requires the district to furnish instructional materials selected for use in public schools without cost to the students attending those schools. Unless authorized by Texas Education Code section 31.104(d), a school district may not charge a student for instructional materials or technological equipment purchased by the district with the district's technology and instructional materials allotment (sometimes referred to as the "IMA allotment" or "IMA funds"). Tex. Educ. Code § 31.001.

Texas Education Code section 31.104(d) provides that a student forfeits his or her right to free instructional materials and technological equipment by failing to return instructional materials and technological equipment in an acceptable condition and failing to pay for the items returned in an unacceptable condition if payment is required by board policy. A student, nonetheless, has a right at all times to free instructional materials and technological equipment during the school day. Tex. Educ. Code § 31.104(d).

Q: What are examples of ways that districts may be using instructional material or technological equipment?

A: Schools today have limitless options when it comes to innovative technologies that support teaching and learning inside the classroom and online, ranging from advanced projectors and enhanced hardware, such as virtual reality and devices operated by artificial intelligence, to interactive audio and video software applications or websites. When it comes to instructional technology for use by students, districts often distribute portable laptops, tablets, or electronic readers, along with accessories necessary for operation such

as batteries, charge cords, external drives, and related software that enables the equipment to function properly and securely. Some districts have implemented bring-your-own-device (BYOD) plans that allow students to use personal devices but provide supported access to open resource instructional material or other learning software that students can download. Still other districts have created learning and enrichment labs that are fully equipped with hardware and software to support both curricular activities and supplemental learning after regular school hours.

Q: What are examples of charges or fees that districts may want to require from students and parents for using or receiving district-owned instructional technology?

A: To manage the ballooning costs of technology, districts are exploring various types of fees to charge students and parents. For example, districts have inquired whether they may charge students and parents for fees as a security deposit prior to issuing equipment, fees for the actual cost of technological equipment, fees for purchasing insurance to cover a device, computer lab fees to use or access district-owned technology, fees for subscriptions to service providers, or fees to pay for damage or loss to equipment after it is distributed.

Not all of these fees are clearly authorized by Texas law, as described further below.

Q: What is considered instructional material?

A: *Instructional material* means content that conveys the essential knowledge and skills of a subject in the public school curriculum through a medium or a combination of media for conveying information to a student. Although *instructional material* is defined primarily to include books, supplementary materials, a combination of a book, workbook, and supplementary materials, computer software, magnetic media, DVD, CD-ROM, computer courseware, online services, or an electronic medium, it also includes any other means of conveying information to the student or otherwise contributing to the learning process through electronic means, including open education resource instructional material. Tex. Educ. Code § 31.002(1). Instructional material clearly includes electronic textbooks and learning websites, but may also include technological equipment such as projectors, televisions, laptops, tablets, or electronic readers.

Open education resource instructional material generally means teaching, learning, and research resources that reside on the internet and in the public domain. Tex. Educ. Code § 31.002(1-a). Material that belongs to the public domain is commonly accepted to be any creative work that is made available to the general public without intellectual property protection, such as copyright, trademark, or patent law.

Q: *What is considered technological equipment?*

A: *Technological equipment* is specifically defined by law as hardware, a device, or equipment necessary for instructional use in the classroom, including to gain access to or enhance the use of electronic instructional materials, or for professional use by a classroom teacher. Tex. Educ. Code § 31.002(4). Devices or equipment clearly include projectors, televisions, laptops, tablets, or electronic readers, as well as supporting accessories like charge cords, external drives, pointers, mice, and batteries.

Q: *May a district require students to pay for free instructional materials and technological equipment that are not returned in an acceptable condition?*

A: Yes. Education Code section 31.104(d) allows a school board to require a student, parent, or guardian to pay for a student's failure to return in an acceptable condition all instructional materials and technological equipment issued to the student. Tex. Educ. Code § 31.104(d); *see also* 19 Tex. Admin. Code § 66.1310 (defining *acceptable condition*). Specifically, the law provides that each student or parent or guardian is responsible for all instructional materials and technological equipment previously issued but not returned in an acceptable condition by the student. Tex. Educ. Code §§ 31.001, .104(d). *See also* TASB Model Policy CMD (instructional materials care and accounting).

For more discussion on authorized charges for intentional damage to district-owned property or student-owned personal technology, see TASB Legal Services' [Theft, Loss, or Damage to Technology Devices at School](#), available on TASB School Law eSource.

Q: *Must a district require students to pay for free instructional materials and technological equipment not returned in an acceptable condition?*

A: No. A district is not required to charge students who fail to return instructional materials or technological equipment in an acceptable condition. A board may adopt a policy to allow waiver or reduction of a required payment if the student is from a low-income family. Tex. Educ. Code § 31.104(d), (h); *see also* 19 Tex. Admin. Code § 66.1310 (defining *acceptable condition*).

Other than this exception under Texas Education Code section 31.104(d), a school district may not charge a student for instructional material or technological equipment purchased by the district with the district's IMA funds. Tex. Educ. Code § 31.001.

Q: *May a district charge students and parents for instructional materials or technological equipment purchased by the district with non-IMA funds?*

A: It depends. Texas Education Code section 31.001 specifically prohibits a district from charging for instructional materials and technological equipment purchased with IMA funds

unless permitted by Texas Education Code section 31.104(d) but does not expressly address purchases made with non-IMA funds. A district may argue that this means it can charge students and parents for materials and equipment purchased by the district with non-IMA funds, such as local funds or private donations.

However, districts should be aware that under Texas Education Code section 11.158 enumerating allowable fees, a board is only authorized to charge a security deposit fee for the return of *materials, supplies, or equipment* that do not include instructional materials, workbooks, laboratory supplies, and other supplies necessary for participation in any instructional course. Tex. Educ. Code § 11.158(a)-(b). Even in such a limited circumstance, the authorized security deposit must still be waived for any student who is unable to pay. Tex. Educ. Code § 11.158(f).

In other words, even if a district's instructional materials or technological equipment is purchased with non-IMA funds, Texas Education Code section 11.158 will not permit the district to charge for any materials or other supplies used for instruction and considered *necessary* for participation in a course.

Q: *Are there other fees for materials, supplies, or equipment that a district may charge?*

A: Yes, a district is allowed under Education Code section 11.158 to charge for 16 categories of fees, some of which may include technology:

- A fee for materials used in any program in which the resultant product in excess of minimum requirements becomes, at the student's option, the personal property of the student, if the fee does not exceed the cost of materials. For example, a student in computer class may choose to purchase a "Build-Your-Own-Computer" supply kit and keep the finished product or choose not to pay for or keep the finished product. Tex. Educ. Code § 11.158(a)(1).
- A fee for items of personal use or products that a student may purchase at the student's option, such as student publications, class rings, annuals, and graduation announcements. For example, a district may charge students who want to purchase optional technology items directly through the district or a district's vendor, including through a school store. Tex. Educ. Code § 11.158(a)(5), (e).
- Section 11.158 of the Education Code does not prohibit a board of trustees from charging reasonable fees for goods and services provided in connection with any postsecondary instructional program, including career and technology, adult, veterans', or continuing education, community service, evening school, and high school equivalency programs. Tex. Educ. Code § 11.158(g).

Q: What fees may a district not charge?

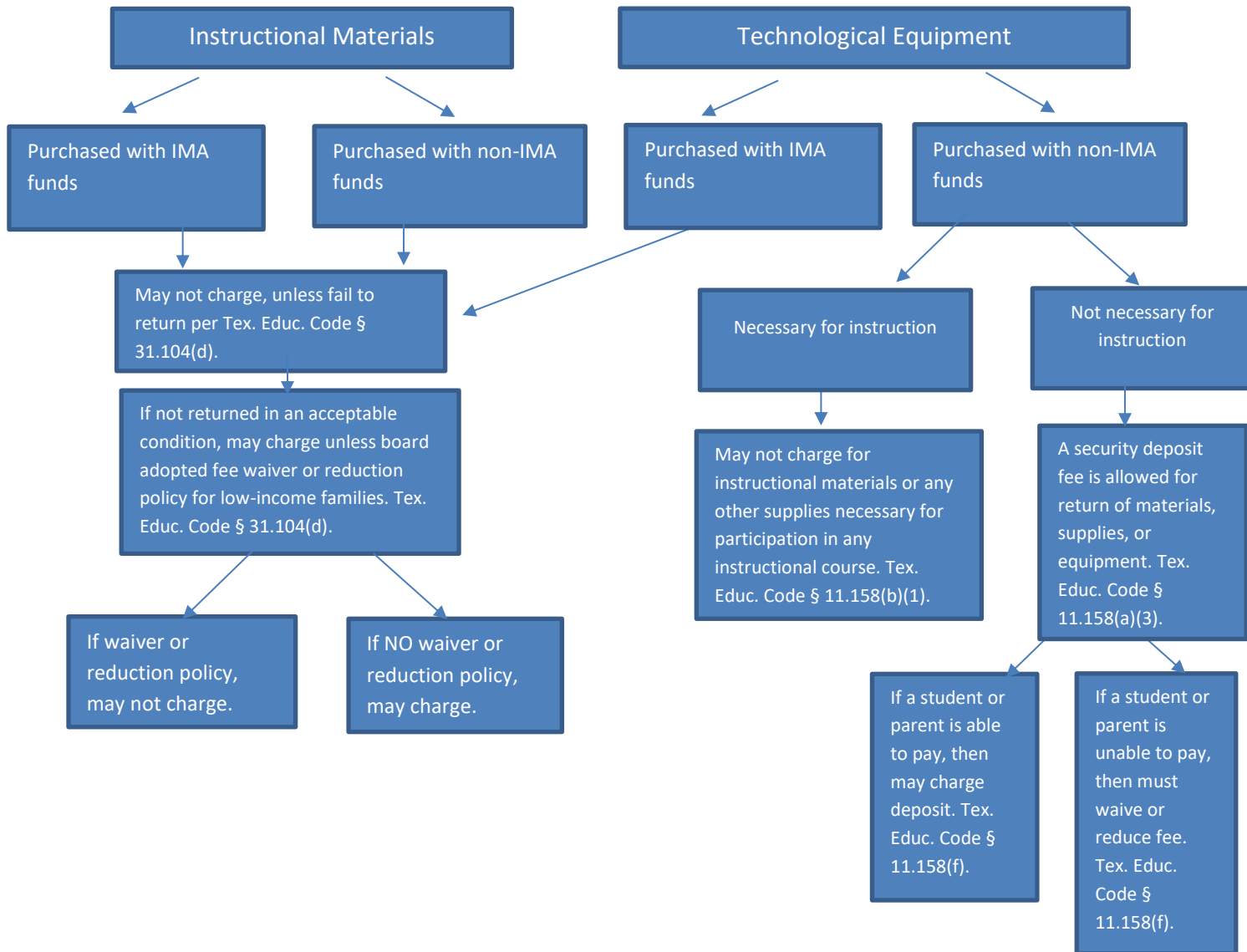
A: A district is explicitly prohibited by Education Code section 11.158 from charging the following:

- instructional materials, workbooks, laboratory supplies, or other supplies necessary for participation in any instructional course, except as authorized by the Education Code;
- field trips required as a part of a basic education program or course;
- any specific form of dress necessary for any required educational program or diplomas;
- the payment of instructional costs for necessary school personnel employed in any course or educational program required for graduation;
- library materials required to be used for any educational course or program, other than fines for lost, damaged, or overdue materials;
- admission to any activity the student is required to attend as a prerequisite to graduation;
- admission to or examination in any required educational course or program; or
- lockers.

Tex. Educ. Code § 11.158(b).

Below is a flow chart showing the limited circumstances, as previously described, when a district may charge a student or parent for district-issued instructional materials or technological equipment:

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As shown above and as previously described, a district may only charge limited types of fees from students for instructional materials or technological equipment under limited circumstances.

Q: Does the fact that district-owned technology may be used by students both in and outside of the school day (because the students may be able to take the technology home) change the nature of the district's authority to charge?

A: Probably not. Although statutory language hints at a possible separation between instructional materials and technological equipment used inside a classroom or during the school day and their use after school hours or at home, the reality is that today's technological advances and modernized use of instructional technology has long outpaced statutory language.

For example, Texas Education Code section 31.002 provides separate definitions for the terms *instructional material* and *technological equipment*. The definition of *technological equipment* contemplates the use of equipment only as necessary for instructional use in the classroom, implying that there might be different rules for technological equipment unnecessary for instruction or for use outside of the classroom. Further, Texas Education Code section 31.104(d) only requires a district to allow a student to use free instructional materials and technological equipment at school during the school day if the student fails to pay for instructional materials and equipment not returned in an acceptable condition.

However, technological equipment is so integrated into modern day instruction that the line between *technological equipment* and *instructional material* is often blurred.

Moreover, electronic textbooks and open education resource instructional materials (online materials) have transformed technological equipment into a critical element of a student's ability to gain access to or enhance the use of electronic instructional materials. For example, how does a student access an interactive vocabulary quiz website or a teaching video on the classroom website without access to a computer or laptop? Remember that a technology fee is permissible only to the extent the technology is not *necessary*. Students who do not or cannot pay a technology fee should have meaningful other options for accessing any required instruction.

Q: Why would a district choose not to charge students?

A: Even though a district may charge students a fine for failing to return instructional technology in an acceptable condition or a security deposit fee for distribution of take-home technology, many districts choose not to charge at all for either circumstance. In addition to the practical use of technological equipment for instructional purposes, as described above, many districts have determined that the administrative burden and potential legal risks exceed quantifiable return benefits in enforcing and collecting fees and fines. For example, some districts have waived charges and fees for students in consideration of value found in reducing administrative challenges and in avoiding adverse impacts on student instruction due to unequal or inequitable access to resources.

a. Administrative Burdens

A district considering charging students for instructional materials and/or technological equipment should evaluate the added demands of implementing supporting regulations and procedures, including but not limited to:

- tracking what materials or equipment are purchased with IMA funds;
- distinguishing which students may be low-income and, thus, eligible for fee waiver or reduction (and when that status may change for a student at any given time);
- coordinating and tracking accommodations under an individualized education plan (IEP) or a temporary disability;
- evaluating equipment condition in a consistent manner;
- managing records in compliance with records retention laws;
- responding to public information requests for records maintained;
- complying with accounting and security requirements for fees or fines collected;
- enforcing payment of required fees or fines;
- conducting staff training;
- managing supporting computer software, if any, and recurring costs; and
- resolving parent grievances concerning impact to his or her child's education caused by reduced access to technology.

b. Equitable Access to and Allocation of Technology

A student's lack of access to technology may be considered by the U.S. Department of Education's Office of Civil Rights (OCR) as a factor when evaluating discrimination complaints under Title VI of the Civil Rights Act (Title VI), the Americans with Disabilities Act (ADA), and Section 504 of the Rehabilitation Act of 1973 (Section 504).¹ When investigating and analyzing potential disparate impact discrimination, the OCR may assess a district's allocation of educational resources and may evaluate whether the accessibility of technology resources, such as digital and other instructional materials that enhance instruction are equally available to students without regard to race, color, or national origin. The OCR may look at comparability of instructional materials; how those tools are supported and implemented; the number, type, and age of educational

¹ Title VI prohibits discrimination on the basis of race, color, or national origin, in programs and activities receiving federal financial assistance. The ADA requires public entities to provide people with disabilities equal access to programs, services, and activities unless doing so would impose an undue financial burden or fundamentally alter the program, service, or activity. Section 504 protects people with disabilities from discrimination in programs and activities that receive federal funding. School districts and programs are subject to these nondiscrimination laws.

technology devices available in a school; availability and speed of internet access; whether the technology is located within the classroom and how many hours a week students have access to the technology during and after school; and making access available outside of school hours.²

For students who require instruction and learning outside of a normal school day or schedule to accommodate special circumstances, or who require technological devices to meet their learning needs, the use of technological equipment outside of the classroom may be nonnegotiable.

c. Instructional Impact

Where a district does not choose the option to adopt a policy waiving or reducing fees for low-income students who fail to return instructional materials and technological equipment in an acceptable condition, the ability to pay required fines may disproportionately affect students and families who are poor, who belong to a racial or ethnic minority, who face additional financial demands of a disabled child, or whose students are considered at-risk of dropping out of school. Without a waiver, certain students lose the right to free instructional materials and technological equipment until all charges are paid. A district or school may even withhold a student's records, further affecting a student's opportunities that may rely on access to records. Tex. Educ. Code § 31.104(d).

Additionally, regardless of a student's protected status or family situation, the impact of enforcing a requirement to pay for instructional technology is that *any* student failing to make all required payments will be restricted to free use of instructional materials only at school during the school day. This conclusion confines technology-dependent teaching and learning to the school day and requires districts to provide non-technology-based alternatives.

Q: How might a district offset the cost of not charging students for technological equipment?

A: Districts that provide optional technology that is not necessary for instruction have a broader range of options to charge or recover costs. However, districts that intend to distribute technological equipment to students as a required part of the learning process should consider alternative measures to offset costs due to loss, damage, or theft, such as purchasing adequate insurance coverage, accepting private donations, or providing storage options on campus for any student wishing to secure technology on campus. Granted, these alternatives themselves are not necessarily low cost. Whether accepting one trade-off for another makes sense to a district and community will differ across the state.

² U.S. Dep't of Educ., Office for Civil Rights, [Dear Colleague Letter: Resource Comparability](#) (Oct. 1, 2014) (addressing legal obligations of schools to provide educational equity to comply with Title VI).

In light of these complex challenges, a district considering charging students for instructional materials or technological equipment is strongly urged to weigh its options in consultation with its school attorney.

This document is continually updated, and references to online resources are hyperlinked, at tasb.org/services/legal-services/tasb-school-law-esource/business/documents/charging-students-for-instructional-technology.pdf. For more information on this and other school law topics, visit TASB School Law eSource at schoollawesource.tasb.org.

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