

# Student Fees

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The subject of student fees, charges, deposits, donations and fundraising related to courses and activities has been at the forefront of public attention locally and nationally. This document is intended to provide guidance and clarity surrounding the subject of student fees, charges, deposits, donations and fundraising to ensure compliance with applicable laws and regulations.

## Summary

The California Constitution mandates that public education be provided to students free of charge, unless a charge is specifically authorized by law for a particular program or activity. Since 1874, the California Supreme Court has interpreted this to mean that this entitles students to be educated at the public's expense. This constitutional right of free access encompasses all educational activities, whether curricular or extracurricular, and regardless of whether credit is awarded for the educational activity. The right of free access also prohibits mandated purchases of materials, supplies, equipment or uniforms associated with the activity, as well as the payment of security deposits for access, participation, materials or equipment. Finally, a process that allows for a waiver process for an otherwise mandatory fee, charge or deposit does not render it constitutionally permissible.

Article IX, Section 5 of the California Constitution states: "The Legislature shall provide for a system of common schools by which a free school shall be kept up and supported in each district." In *Hartzell v. Connell*, 35 Cal.3d 899, 913 (1984), the Supreme Court of California unambiguously held that this provision prohibits public schools from charging mandatory fees for educational activities. The constitutional prohibition against requiring public school students to pay fees or purchase materials for educational activities is codified in Education Code section 60070, and reinforced by Title 5, Section 350 of the California Code of Regulations. Title 5, California Code of Regulations, section 350, specifically states: "A pupil enrolled in a school shall not be required to pay any fee, deposit, or other charge not specifically authorized by law." The State Board of Education has reiterated that no fees are to be charged except where specifically authorized by law. The Attorney General has also made it clear in many of their opinions that school districts cannot levy fees as a condition for participation in any class, whether elective or compulsory.

## Fees Authorized by Law

The education code specifically authorizes certain fees, which means that they are not forbidden by the code of regulations Title 5 prohibition discussed above. These fees, charges and deposits are legally permissible because they are specifically permitted by law. (Note: This list is based on legal authorizations, but the inclusion of a permissible fee, charge or deposit on this list does not necessarily mean that schools within the District currently assess the fee, charge or deposit). As a reminder, although the following fees are allowed, this does not mean that they should be deposited into ASB accounts. Very few fees should be deposited into ASB accounts; rather, they are usually district

revenues. The following fees, charges, and deposits are permissible as authorized in education code sections cited:

- Fees for transportation to and from school if provided to children by the district. This fee is allowable because it is a service, not an essential part of school activity or an educational activity (Education Code section 39807.5).
  - If pupils are required to ride a bus for extracurricular activities, then fees cannot be charged. But if riding the school bus to an event is optional and pupils are also allowed to use other means of transportation, then a fee can be imposed.
  - By law, school districts must exempt from transportation charges pupils of parents and guardians who are indigent as set forth in rules and regulations adopted by the board.
  - Fees may not be charged for children whose special education individualized education program (IEP) requires special education transportation.
  - The sum of state aid received for home to school transportation and the parent fees collected may not exceed actual operating cost of home to school transportation for each fiscal year (Education Code section 39809.5).
- Transportation of pupils to and from their places of summer employment in connection with any summer employment program for youth (Education Code section 39837).
- Charges for food served to pupils, limited by free and reduced program eligibility (Education Code section 38084).
- Sale of materials purchased from the incidental expense account by pupils in classes for adults if provided in the governing board regulations, for use in such adult classes. The proceeds of all such sales shall be deposited in that account (Education Code section 52615).
- Tuition fees for an adult enrolled in any class for adults may be required by the governing board of the district maintaining the class, except classes in English and citizenship for foreigners, classes in elementary subjects and classes for which high school credit is granted when taken by a person not holding a high school diploma (Education Code sections 52612 and 52613).
  - The total of the fees required and revenues derived from average daily attendance shall not exceed the estimated cost of all such classes maintained, including the reserves authorized by section 52501.5.
  - All textbooks and classroom materials furnished without charge under this section may also be offered for sale at the school bookstore.
  - Adults may be charged for all or part of the costs of transportation (Education Code section 39801.5)
- Class materials necessary for the making of articles by persons enrolled in adult classes. The materials shall be sold at no less than the cost to the district. Any article made is then the property of the person who made it (Education Code section 17552).
- Charges can be imposed by a high school district for textbooks used in adult classes, or a refundable deposit can be imposed on loaned books (Education Code section 60410).
  - The charge for the books cannot exceed the cost of the books to the high school district.

- In lieu of charging for the books, the board may lend books to adult class students and require a deposit; the deposit will be refunded upon the return of the books in good condition, reasonable wear and tear excepted.
- Deposits from a borrower of school band instruments, music, uniforms and other items or use on an excursion to a foreign country (Education Code section 38120).
- Insurance for field trips. School districts must provide, or make available, medical, hospital or accident insurance for pupils participating on any excursion or field trip, and the cost incurred by the school district “may be paid from the funds of the district, or by the insured pupil or his or her parent or guardian” (Education Code section 35331).
- Lost or damaged books or other district supplies. If a student fails to return school property loaned to the pupil, or willfully cuts, defaces or otherwise injures school property, the parent or guardian is liable for all damages not to exceed \$16,650 (For 2008-09, this amount was raised 6.1%, to \$16,650) (Education Code section 48904).
  - When the minor and parent are unable to pay for the damages or to return the property, the school district or private school shall provide a program of voluntary work for the minor in lieu of payment of monetary damages.
    - The State Superintendent of Public Instruction (SPI) is required to annually adjust the original \$10,000 liability limit specified in EC Section 48904(a)(1) to reflect the percentage change in the Implicit Price Deflator for State and Local Government Purchases of Goods and Services for the United States, as published by the United States Department of Commerce for the 12-month period ending in the third quarter of the prior fiscal year.
- Tuition fees charged to pupils whose parents are actual and legal residents of an adjacent foreign country or an adjacent state (Education Code sections 48050 and 48502).
- Materials can be sold to a student for property the student has fabricated from such materials for their own use, provided that the price does not exceed the direct cost of the materials used and provided that the school district’s governing board has authorized such sales pursuant to an adopted board policy. This applies to classes such as woodshop or sewing where an item is taken home by the students, but not when the items remain at school. It also does not apply to food in home economic classes, which is eaten as part of the course work (Education Code section 17551).
  - This section does not authorize a blanket general fee to cover multiple items, nor does it mean there is an obligation to purchase the item. This section must be read together with the constitutional free school guarantee and the statutes requiring schools to provide necessary school supplies and instructional materials. Whenever students fabricate products in a class such as woodshop or sewing, the wood or cloth for such products must be furnished free of charge. If the student decides to take a particular item home, the law authorizes the district to sell that item to the student for the cost of the materials, if a board policy exists allowing this. If there is such a policy and the student does not want to take an item home, the district keeps the item and cannot charge or otherwise penalize the student.
  - The school district’s board-adopted policies and guidelines should specify the conditions for implementing this section, keeping in mind the free school guarantee.

- Fees for an optional fingerprinting program for kindergarten or other newly enrolled students, if offered by the school district. Parents or guardians can be assessed the fee if they choose to participate. The fee cannot exceed the actual costs associated with the program (Education Code section 32390).
- Fees for community classes in civic, vocational, literacy, health, homemaking, and technical and general education, not to exceed the cost of maintaining the community classes. Governing boards may expend from the district's general fund any money that is budgeted for community services to establish and maintain community service classes (Education Code sections 51810 and 51815).
  - These community classes may be held at any time during the school year as determined by the governing board (Education Code section 51812).
  - Community courses are not intended to teach required courses that K-12 students must complete as part of their instructional programs. They usually include classes in music, drama, art, handicraft, science, literature, nature study, aquatic sports, athletic and other such classes of general interest to the community. These classes are primarily intended for adults and are only open to minors who the governing board believes would profit from such classes.
  - Community service classes cannot be used as K-12 summer school, except for the incidental attendance of students with special interest in the subjects being taught.
  - Schools are lawfully authorized to charge fees for community service classes. However, to charge a fee for driver's training, schools must design their driver training programs to be community service and not for the benefit of high school students. This principle would apply to any type of community service class. [Education Code section 51815 and *Driving School Association vs. San Mateo School Districts* 11 Cal. App 4th (1992), and *California Association for Safety Education vs. Brown* 30 Cal. App 4th (1994)]
- Fees for several statutory child care and development services under certain conditions, but no fees can be assessed to families whose children are enrolled in the state preschool program or for services to severely handicapped children. A similar before- and after-school child supervision program is authorized to charge fees to participants as long as "no needy child who desires to participate shall be denied the opportunity to participate because of inability to pay the fee." [Education Code sections 8263(e and f), 8250(d), 8265, 8487, 8488(b)]
- Actual cost of duplication of public records or student records. The California Public Records Act authorizes public agencies to charge direct costs of duplication for its records. The direct cost of duplication standard also applies to reproductions of the prospectus of school curriculum (Education Code section 49091.14).
  - The phrase, "direct costs of the duplication" means that a local agency may recover only the actual cost of copying documents; it does not include ancillary tasks associated with the retrieval, inspection and handling of the file from which the copy is extracted. [North County Parents Organization et. al. vs. Department of Education 23 Cal App 4th (1994)]
  - School districts must specify the cost, if any, which will be charged to the parent for reproducing copies of records in a parental notice upon enrollment and in the annual

notification of parents of their rights required by the Education Code 48980. [Education Code 49063(h)]

- Charges for accidental death, injury and medical insurance for each member of athletic teams. The district must provide such insurance to those members who cannot afford to pay. All members of each athletic team must have such insurance (Education Code sections 32220-32224).
- Fees for field trips and excursions, principally for transportation, may be charged in connection with courses of instruction or school-related social, educational, cultural, athletic, or school band activities. However, no pupil shall be prevented from making the field trip or excursion because of a lack of sufficient funds (Education Code section 35330).
  - Fees should be collected on a voluntary basis only.
  - The governing board shall coordinate efforts of the community service groups to supply funds for pupils in need of them.
  - No student may be left behind due to insufficient funds, nor may a student be left behind for failing or refusing to participate in fund-raisers.
- Fees for school camp programs, such as outdoor science camp. The fee cannot be mandatory and no pupil shall be denied the opportunity to participate in a school camp program because of nonpayment of the fee (Education Code section 35335).
- State Summer School for Mathematics and Science (Education Code section 8660 and following).
  - It is the intent of the Legislature that the University of California award full or partial scholarships on the basis of need and that pupils who are unable to pay all or part of the fee may petition the University of California for a fee reduction or waiver to ensure that a qualified applicant is not denied admission solely because of his or her inability to pay part or all of the fee. Any public announcement regarding the summer school program should include notification that need-based scholarships are available and information regarding the procedure for applying for a scholarship award.

## Prohibited Fees

California Education Code section 38118 states, "Writing and drawing paper, pens, inks, blackboards, blackboard erasers, crayons, lead pencils and other necessary supplies for the use of the schools shall be furnished under direction of the governing boards of the school districts." Based on this section, the attorney general has concluded that materials and mechanical drawing sets for art classes, cloth for dressmaking classes, wood for carpentry classes, gym suits and shoes for physical education classes, bluebooks necessary for examinations, and paper on which to write a theme or report when such a theme or report is a required assignment, must be furnished by school district without charge as necessary supplies. Such supplies must be available to enable students to participate in regular classroom work. The California Department of Education supports this view. The general rule as stated by the attorney general is that, "supplies . . . must be furnished free of cost to students when the supplies are what might be termed school supplies and are necessary in order for the students to pursue a course of study."

The attorney general's use of the term "school supplies" excludes those items or materials that are essential regardless of whether the person is a student. For example, a district is not obligated to furnish corrective lenses and clothes because these items are needed whether or not the person is a student.

Also, because school districts are required to furnish necessary supplies, they are also responsible for regular upkeep and maintenance of those supplies. Attempts to impose an unconditional obligation on pupils to maintain and repair school district equipment are too broad. However, a student may be charged for damage of personal property loaned to a pupil where he or she willfully cuts, defaces, or otherwise injures the property as a result of pupil misconduct. This law allows the district to impose requirements for proper care and use and consequent liability for mishandling, but not liability where damage may result from normal wear and tear, or from an intervening cause or a third party.

Public schools can recommend, and even make available, strictly optional materials for the students' personal benefit. The law allows parents, other individuals and school districts to purchase instructional materials from the state-adopted lists (Education Code section 60310). Also, teachers may make available a list of suppliers for tutorials, books, supplemental educational materials, or may sell inexpensive quality paperback literature for leisure reading. Teachers may encourage students to use appropriate study aids as long as these purchases are strictly optional and in no way part of the regular instructional program. Materials are not considered necessary supplies if they are not part of the adopted curriculum or part of an established extracurricular program, and there is no penalty for failure to use or purchase the materials. On the other hand, when such enrichment literature or materials are used as supplemental instructional material for a class or are an established part of an extracurricular activity, it then becomes a necessary supply which must be provided or loaned free of charge. Whether a grade is assigned or not is not the crucial point; it is the participation that counts and whether the material used in the instructional or extracurricular activity becomes a necessary school supply.

The opinions of the Attorney General indicate that charges may not be levied for the following:

- A deposit for potential lost or damaged school property. The law allows the district to charge students for lost or damaged school property after the fact, but not before the issuance and loss.
- An admission charge to an exhibit, fair, theater or similar activity for instruction or extracurricular purposes when a visit to such places is part of the district's educational program.
- A tuition fee or charge as a condition of enrollment in any class or course of instruction, including a fee for attendance in a summer or vacation school, a registration fee, a fee for a catalog of courses, a fee for an examination in a subject, a late registration or program change fee, a fee for the issuance of a diploma or certificate, or a charge for lodging.
- Membership fees in a student body or any student organization as a condition for enrollment or participation in athletic or other curricular or extra-curricular activities sponsored by the school (ASB cards may be sold to allow discounts or free entrance to games and social events, but not in order to join athletics or other curricular activities).
- Instructional materials (textbooks and workbooks). Adults may be assessed a charge for books not to exceed their true cost to the district (Education Code sections 60070 and 60410).
- Charging fees to an apprentice for admission or attendance in any class.

- Charging for school supplies that are necessary and mandated for participation in any class.
- Charging for mandated standardized gym suits for physical education classes. A student's grade cannot be affected by not wearing the standardized clothes.
- Fees to enroll and/or participate in activities of career technical student organizations which are part of a career technical class or course of instruction offered for credit. This section shall apply to activities which occur both during and outside of the regular school day (Education Code section 52375).
- Transportation associated with activities of career technical student organizations which are part of a career technical class or course of instruction offered for credit when those activities are integral to assisting the pupil to achieve the career objectives of the class or course (Education Code section 52373).
  - The exception to this is when the transportation is between the regular full time day schools the pupil would attend and the regular full-time occupational training classes that they attend provided by a regional occupational center or program (Education Code section 39807.5).

On April 20, 1984, the Hartzell vs. Connell California Supreme Court decision raised serious questions about the imposition of nonstatutory fees for extracurricular activities. The lead opinion on this matter is that fees may be charged for activities that are recreational, but not for those that are educational. Because extracurricular activities are described in the opinion as an integral component of public education, they are a part of the educational program and thus must be free. The court further stated, [The] imposition of fees as a precondition for participation in nonstatutory educational programs offered by public high school districts on a noncredit basis violates the free school guarantee. The constitutional defect in such fees can neither be corrected by providing waivers to indigent students nor justified by pleading financial hardship.

It is also the opinion of CDE and the Hartzell opinion that a school district may not charge a fee or require students to purchase necessary materials even if the district maintains a special fund to assist students with financial need or waives such a fee or charge for students with financial need, because the fee or charge still remains a condition for all other students not being assisted financially. **A fee waiver policy for needy students does not make the fee allowable.** Requiring low-income students and their families to apply for a waiver is considered discriminatory. The requirement to fill out a waiver discourages many students from attempting to enroll in a class because they are embarrassed to ask for a waiver, but also do not want to put their family in financial distress.

On the subject of gym or physical education clothes, Education Code section 49066 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," such as lack of sufficient funds. The California Department of Education has stated the position that a school district may require students to purchase their own gym clothes of a district-specified design and color so long as the design and color are of a type sold for general wear outside of school. Once the required gym uniforms become

specialized in terms of logos, school name or other similar characteristics not found on clothing for general use outside of school, they are considered school supplies and the district must provide them free of charge.

The subject of fees, deposits and other charges is complicated and is attracting increased attention, especially as state funding declines year after year and school agencies try to generate additional revenues. School agencies that are considering any type of fee or that are not sure whether current fees should be charged will find it worthwhile to obtain a legal opinion on the matter as this is likely much less costly than a lawsuit against the district as a result of illegal fees.

## **Donations**

As is referenced above, the Supreme Court in *Hartzell v. Connell* stated that “educational opportunities must be provided to all students without regard to their families’ ability or willingness to pay fees or request special waivers.” As is also noted above, in 1998 the California Attorney General addressed the issue of donations, and emphasized that the constitutional concerns are alleviated when the raising of private funds is truly voluntarily.

School districts, schools, programs and classes can and do seek and accept donations of funds and property, and this practice is permissible as long as it is truly voluntary and in no way a prerequisite to participation in the program or activity. Therefore, any statement or explanation related to a donation that could lead a reasonable person to believe the donation may not be truly voluntary is to be avoided. Examples include but are not limited to a specified minimum amount of a donation, a date by which a donation is due, a lesser donation amount if funds are received prior to a certain date. Additionally, any statements or actions that exert explicit or implicit pressure on students or parents to make a donation are to be avoided, and the reason a student or family does not make a donation is not a subject for inquiry – as the *Hartzell* court said, access to educational programs must not be tied to the willingness to pay a fee or request a waiver, not only the ability to pay a fee or request a waiver.

## **Fundraising**

As with donations, school districts, schools, programs and classes can and do engage in fundraising activities and programs, and this practice is also permissible as long as the raising of funds is voluntary. A student who is asked to but does not raise funds may not be denied participation in an educational activity. A requirement to raise funds in order to participate, even if there is no mandated amount to be raised, is the same as requiring a fee.

The prohibition on the requirement for an individual student to raise money is to be distinguished from a requirement to attend a fundraising event as an element of participation in an activity, in the same way attendance at practices, games, rehearsals or performances are an expected aspect of participation. For example, expecting the members of a vocal ensemble to attend a fundraising concert that is on its calendar of events does not violate the “free school” guarantee, so long as attendance is the only

requirement. Another example is when members of an athletic team are expected to help out with a fundraising sale at a Back to School Night or Open House – just as a coach can expect players to attend practices and games, he/she can expect players to attend a fundraising event as long as the requirement is to attend rather than to raise money as a condition of participation in the activity or program.

## Frequently Asked Questions (FAQs)

**Question:** May a school still receive donations from parents and guardians?

**Answer:** Yes. School districts, schools, programs, and classes can and do seek and accept donations of funds and property, and this practice is permissible as long as the donation is truly voluntary and in no way a prerequisite to participation in the program or activity. Therefore, any statement or explanation related to a donation that could lead a reasonable person to believe the donation may not be truly voluntary is to be avoided. Access to educational programs must not be tied to either the willingness or the ability to pay a fee or request a fee waiver.

**Question:** May a school still fundraise?

**Answer:** Yes. As with donations, school districts, schools, programs and classes can and do engage in fundraising activities and programs, and this practice is also permissible as long as the raising of funds is voluntary. You may require students to attend a fundraising event; however, if they are unable to raise funds for the event, you cannot prevent them from participating in an educational activity. It is important to distinguish required fundraising from required attendance at fundraising event as attendance at a fundraising event is the same as attendance at practices, games, rehearsals, or performances which are all an expected aspect of participation. For example, expecting the members of a vocal ensemble to attend a fundraising concert that is on its calendar of events does not violate the “free school” guarantee, so long as attendance is the only requirement. Another example is when members of an athletic team are expected to help out with a fundraising sale at a Back to School Night or Open House – just as a coach can expect players to attend practices and games, the coach can expect players to attend a fundraising event as long as the requirement is to attend rather than to raise money as a condition of participation in the activity or program.

**Question:** May a school charge fees for uniforms for teams sports?

**Answer:** No. A school must provide a free uniform to any student who is a member of the school team in question. Further, the free uniform must be substantially the same uniform as those which are made available for purchase. You can allow students to purchase their own uniforms if they want to purchase uniforms; however, buying a uniform cannot be a requirement to participate in a sport.

**Question:** May a school require the purchase of Spirit Packs or Support Packs?

**Answer:** No. Spirit or support packs may be sold; however, you cannot require the purchase as a prerequisite for participation. If there are uniforms, etc., which are required, they must be provided free of charge to any student who is a member of the school team, squad, etc. in question.

**Question:** What if a school only charges fees to those students who can afford them; and has a waiver process for those who cannot?

**Answer:** A waiver process based on financial need or inability to pay does not make an otherwise impermissible fee permissible.

**Question:** May a school charge fees for things?

**Answer:** Yes. There are specific fees, charges and deposits that are legally permissible because they are specifically permitted by law. These specific fees, charges and deposits are legally permissible:

- Charges for optional attendance as a spectator at a school or District sponsored activity.
- Charges for food served to students, subject to free and reduced price meal program eligibility and other restrictions specified in law.
- Paying the replacement cost for District books or supplies loaned to a student that the student fails to return, or that is willfully cut, defaced or otherwise injured, up to an amount not to exceed \$10,000.
- Fees for field trips and excursions in connection with courses of instruction or school related social, educational, cultural, athletic, or school band activities, as long as no student is prevented from making the field trip or excursion because of lack of sufficient funds.
- Medical or hospital insurance for field trips that is made available by the school district.
- Charges for required medical and accident insurance for athletic team members, so long as there is a waiver for financial hardship.
- Charges for standardized physical education attire of a particular color and design, but the school may not mandate that the attire be purchased from the school and no physical education grade of a student may be impacted based on the failure to wear standardized apparel "arising from circumstances beyond the control" of the student.
- Charging for the parking of vehicles on school grounds.
- Charges for the rental or lease of personal property needed for District purposes, such as caps and gowns for graduation ceremonies.
- Fees for school camp programs, so long as no student is denied the opportunity to participate because of nonpayment of the fee.
- Reimbursement for the direct cost of materials provided to a student for property the student has fabricated from such materials for his/her own possession and use, such as wood shop, art, or sewing projects kept by the student.
- Reimbursement for the actual cost of duplicating public records, student records, or a prospectus of the school curriculum.
- Fees for transportation to and from school, and transportation between school and regional occupational centers, programs or classes, as long as the fee does not exceed the statewide average unsubsidized cost per student and provided there is a waiver provision based on financial need.
- Fees for transportation of pupils to places of summer employment.
- Tuition fees charged to pupils whose parents are actual and legal residents of an adjacent foreign country or an adjacent state.

- Tuition fees collected from foreign students attending a District school pursuant to an F-1 visa, equal to the full unsubsidized per capita cost of providing education during the period of attendance.
- Fees for an optional fingerprinting program for kindergarten or other newly enrolled students, if the fee does not exceed the actual costs associated with the program.
- Fees for community classes in civic, vocational, literacy, health, homemaking, and technical and general education, not to exceed the cost of maintaining the community classes.
- Deposits for band instruments, music, uniforms and other regalia which school band members take on excursions to foreign countries.
- Charges for eye safety devices, at a price not to exceed the district's actual costs, in specified courses or activities in which students are engaged in, or are observing, an activity or the use of hazardous substances likely to cause injury to the eyes.

**Question:** Students run for and serve on the ASB Board have been required in the past to purchase ASB stickers/cards, is this still ok to do?

**Answer:** No. ASB stickers/cards are optional item for all students. Students cannot be required to buy ASB stickers/cards in order to run for an office or as a condition to participate in a club/organization or try out for a team or sport.

**Question:** Key Club and CSF Club both have collected dues from students in the past because they pay annual registrations to organizations on the national level. Is it still ok to collect these dues from students?

**Answer:** Students cannot be required to pay the dues as a condition for membership in the club at the school level. If the national level club/organization collects dues, the students should be directed to pay them directly to the organization, but membership in the national level club/organization cannot be a requirement for membership in the school level club.

**Question:** In the past some classes like Art or Ceramics have charged each student \$10 to \$20 for extra materials for creations that students take home and keep. Is it still ok to charge students for extra materials?

**Answer:** Students can be charged for materials if they will take home what they make. However, students should be able to make things they do not take home if they do not want to pay for extra materials. Understandably, this means that students (1) make things that that they do not take home and we throw it away; or (2) in the case of a ceramics course, they cannot fire their clay items in the kiln, so that the clay remains reusable.