



ORANGE COUNTY BRANCH OFFICE

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November 4, 2005

Via Facsimile and U.S. Mail

Dr. Cameron McCune, District Superintendent
 Ellen Ballard, Board President
 Minard Duncan, Board Vice-President
 Kevin Bass, Member
 Lynn Thornley, Member
 Hilda Sugarman, Member
 Fullerton School District Administrative Offices
 1401 W. Valencia Dr.
 Fullerton, CA 92833

RE: Laptops for Learning

Dear Superintendent McCune, President Ballard, Vice-President Duncan, and Board Members Bass, Thornley, and Sugarman:

The ACLU of Southern California has learned that the Fullerton School District (District) Laptops for Learning Program (Program), which has been implemented at various grade levels in four District schools, requires the payment of fees in order for students to participate. We write to you because the Program plainly violates the free school guarantee under the California Constitution, which forbids the imposition of fees for educational activities offered by public school districts.

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 . . ." (emphasis added). The Supreme Court of California has unambiguously held that "[t]his provision entitles 'the youth of the State . . . to be educated at the public expense.'" *Hartzell v. Connell*, 35 Cal.3d 899, 905 (1984) (quoting *Ward v. Flood*, 48 Cal. 36, 51 (1874)). "In guaranteeing 'free' public school," therefore, "article IX, section 5 fixes the precise extent of the financial burden which may be imposed on the right to an education - none. A school which conditions a student's participation in educational activities upon the payment of a fee clearly is *not* a 'free school.'" *Id.* at 911.

The Program plainly conditions student's participation in educational activities upon the payment of a fee. Parents must pay a substantial sum in order to purchase a laptop computer and have their children participate in the Program – a laptop computer, warranty, insurance, and computer case costs nearly \$1,500.00. There can be no doubt, moreover, about the Program's educational character and the increased or improved educational opportunities the District intends to provide through it. According to the District's Frequently Asked Questions (FAQ),

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Program laptops are to “be used throughout the [school] day” to “provide timely and rich supplemental resources.” Indeed, the FAQ states that the “online learning resources” students access through the Program will provide them “with a more robust curriculum than that available through textbooks alone.” Accordingly, the District having decided that the Program “is important enough to be offered by its public schools, a student’s participation in that program cannot be made to depend on his or her family’s decision to pay a fee . . .” *Id.* at 912.

The Program, it should be noted, could not be saved even if it were to provide waivers to indigent students.¹ The Supreme Court of California has flatly rejected this argument, holding that the imposition of fees for educational activities by public school districts violate the free school guarantee, and that “[t]he constitutional defect in such fees cannot be corrected by providing waivers to indigent students.” *Hartzell*, 35 Cal.3d at 913. As the Court unambiguously stated, “[e]ducational opportunities must be provided to all students *without regard to their families’ ability or willingness to pay fees or request special waivers.*” *Id.* (emphasis added).

We understand the importance of providing technology access to students, but this cannot justify violation of the state constitutional mandate to provide free schools by conditioning student’s participation in the Program on their families’ ability or willingness to pay fees or request a waiver. Please provide a response by November 11, 2005 to the constitutional infirmities we have outlined. If you feel that we have misunderstood the Program’s policies, please provide copies of all relevant documentation to our office so that we may fully analyze the constitutionality of the Program.

Thank you for your attention to this matter. We look forward to your prompt response.

Sincerely,



Hector Villagra
Director, ACLU Orange County Branch Office

¹ It is not clear to us that the Program does in fact provide all indigent students with a waiver. The FAQ merely states that “[i]f parents cannot afford the program, they can contact their school’s principal, and various arrangements can be made.” This seems to fall short of guaranteeing that every indigent student at a participating school *will* be able to participate in the Program.