

**OPINION NO. 84-027****Syllabus:**

A board of education may not withhold the grades or credits of pupils who fail to account for items for which they voluntarily assumed responsibility in connection with school sponsored or approved fundraising activities.

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**To: Gregory A. White, Lorain County Prosecuting Attorney, Elyria, Ohio**

**By: Anthony J. Celebrezze, Jr., Attorney General, May 11, 1984**

I have before me your request for an opinion regarding the applicability of R.C. 3313.642 to school sponsored fundraising projects for extracurricular activities. It is my understanding that the issue with which you are concerned is as follows:

Does R.C. 3313.642 or other statutory provisions authorize a board of education to withhold grades and credits where a student has not paid for debts or returned equipment, materials or goods for which the student voluntarily assumed responsibility in connection with fundraising activities?

Supplementary conversations with your office have indicated that the issue arises out of the following facts and circumstances. Certain items, such as fire extinguishers, fire hydrants, candy, etc., were consigned to a school as part of a fundraising plan. The items were entrusted to various students who failed to either return the items or offer any other remittance to cover the costs of the items.

A basic principle incorporated throughout this state's public school law is that of free public education. R.C. 3313.48 (board of education to provide for free education of youth of the district); R.C. 3313.64 (free schooling for residents); R.C. 3329.06 (free textbooks for pupils). Based upon the principle established by these statutes one of my predecessors concluded: "In view of the provisions of Sections 3313.48 and 3313.64, Revised Code, a public school may not withhold the transfer of credits of, or refuse a diploma to, a student on the grounds that said student has refused to pay school fees assessed against him." 1960 Op. Att'y Gen. No. 1860, p. 712. My predecessor also took note of R.C. 3313.61, which provides in part: "A diploma must be granted by the board of education to any one successfully completing the curriculum in any high school. . . ." My predecessor opined: "Under this section, therefore, a diploma must be granted to any student who has successfully completed the prescribed course, and the fact that such student has refused to pay school fees assessed against him does not authorize the board of education to withhold the diploma." *Id.* at p. 714. The reasoning underlying these conclusions is summarized in 1960 Op. No. 1860 at 714:

There is no specific authority for a board of education to withhold the credits of a student for refusal to pay fees, nor for any other reason for that matter; and I cannot say that such authority may be reasonably implied from the existing statutes. Moreover, since under the state law public schools are to be free, requiring a student to pay fees before receiving credit for work done would be in violation of the intent and spirit of the law.

I concur in my predecessor's reasoning and find it even more compelling in this instance, since your inquiry relates to the authority to withhold grades and credits for conduct only incidental to public education and instruction. Accordingly, my response to your inquiry will be limited to determining whether a board of education is expressly authorized to withhold grades and credits in this instance. In so limiting my analysis, I am mindful of the fact that boards of education have wide discretion to adopt such rules and regulations as they deem necessary for the conduct of their schools. See R.C. 3313.47 (A board of education "shall have the management and control of all of the public schools. . .in its respective district."); R.C. 3313.20 (A board of education may "make such rules and regulations as are necessary for. . .the government of. . .pupils of its schools."); Greco v. Roper, 145 Ohio St. 243, 61 N.E.2d 307 (1945); Brannon v. Board of Education, 99 Ohio St. 369, 124 N.E. 235 (1919); 1983 Op. Att'y Gen. No. 83-012. Reliance on a board of education's general powers to manage its schools and govern its pupils would be inappropriate in this instance, however, since the regulation at issue herein would constitute an exception to the principle of free education declared in R.C. 3313.48 and R.C. 3313.64. See State ex rel. Stanton v. Andrews, 105 Ohio St. 489, 138 N.E. 873 (1922), overruled on other grounds, 41 Ohio St. 2d 157, 324 N.E.2d 285 (1975) (Exception to general laws limiting the power of administrative boards "must be couched in language so clear and unambiguous as to be free from doubt as to the intent of the legislature in declaring it to be an exception."). In other words, in this instance a board of education's general powers to manage its schools and govern its pupils is circumscribed by the statutory mandate ensuring a right to free public education. Cf. 1981 Op. Att'y Gen. No. 81-052 (A board of education's general authority to grant fringe benefits to its employees is circumscribed where the particular fringe benefit is the subject of legislation that constricts such general authority).

The only statute of which I am aware that expressly authorizes a board of education to withhold a pupil's grades or credits is that mentioned in your request. R.C. 3313.642, the pertinent portions of which were originally enacted the year following the issuance of 1960 Op. No. 1860, see 1961 Ohio Laws 470 (Am. S.B. 456, eff. Sept. 28, 1961), states:

Notwithstanding the provisions of sections 3313.48 and 3313.64 of the Revised Code, the board of education of a city, exempted village, or local school district shall not be required to furnish, free of charge, to the pupils attending the public schools any materials used in a course of instruction with the exception of the necessary textbooks required to be furnished without charge pursuant to section 3329.06 of the Revised Code. The board may, however, make provision by appropriations transferred from the general fund of the district or otherwise for furnishing free of charge any materials used in a course of instruction of such pupils as it determines are in serious financial need of such materials. Boards of education may adopt rules and regulations prescribing a schedule of fees for such materials and prescribing a schedule of charges which may be imposed upon pupils for the loss, damage, or destruction of school apparatus, equipment, musical instruments, library material, textbooks required to be furnished without charge, and for damage to school buildings, and may enforce the payment of such fees and charges by withholding the grades and credits of the pupils concerned. (Emphasis added.)

This provision allows for the withholding of grades and credits in a specific set of circumstances, those circumstances being, first, to enforce the payment of fees for material used in the course of instruction, and second, to enforce the payment of

charges for the loss, damage, or destruction of a class of items limited to school apparatus, equipment, musical instruments, library material, textbooks required to be furnished without charge, and school buildings. In this limited context the words "material," "apparatus" and "equipment" take on restricted meanings. See generally 1962 Op. Att'y Gen. No. 3438, p. 941. The meaning of "materials" is limited by its use in the phrase "materials used in a course of instruction." "Apparatus" and "equipment" are qualified by the word, "school," and are further limited by the fact that they are positioned alongside words such as musical instruments, library material, and textbooks, all of which are items that relate to an educational purpose. Under this restrictive use of the terms "materials," "apparatus" and "equipment," I am unable to conclude that the items about which you have inquired fall within the purview of R.C. 3313.642. First, such items clearly are not materials used in a course of instruction, such as musical instruments, library material or textbooks. Second, such items are not intended for use as school apparatus or equipment. It is my understanding that the goods are delivered to the particular school primarily for resale and the consignor agrees to accept the goods upon return in lieu of payment. There is no intent to have the items become the property of the school.

The conclusion that items entrusted to a student for fundraising activities do not fall within the purview of R.C. 3313.642 is, in my opinion, dispositive of your inquiry. I am not aware of any other express statutory authorization for the withholding of grades or credits. Moreover, for the reasons discussed previously, such authorization cannot be implied from the general statutes empowering boards of education to manage the schools in their respective districts, R.C. 3313.47, or to make rules for the governance of its pupils, R.C. 3313.20.

It is, therefore, my opinion, and you are advised, that a board of education may not withhold the grades or credits of pupils who fail to account for items for which they voluntarily assumed responsibility in connection with school sponsored or approved fundraising activities.