



## WISCONSIN LEGISLATIVE COUNCIL INFORMATION MEMORANDUM

### Segregated Fees and the University of Wisconsin System

Students of University of Wisconsin (UW) System institutions are charged segregated fees in addition to tuition. These segregated fees, set by each campus independently, are used to finance a variety of student activities, services, programs and facilities. There are two general categories of segregated fees: allocable and nonallocable. Board of Regents policies define allocable fees as fees that generally support various student activities, like student organizations, concerts, lectures, and bus passes. Nonallocable fees are fees that generally support fixed obligations and programs that require stable funding, like debt service, base operating funds for student unions, and minimum student health services. Use of allocable and nonallocable fees is determined by chancellors in consultation with the student body of the institution. Allocable fees must be used to fund campus student activities and be administered in a manner that is viewpoint neutral as required by the U.S. Constitution.

In addition to tuition charges, all UW institutions assess students segregated fees that finance student activities, services, and programs. Unlike tuition rates, segregated fees are determined on an institution-by-institution basis.

There is no statute specifically authorizing the UW institutions to assess segregated fees. Rather, this function falls within the Board of Regents statutory authority to govern the UW System and the administrative authority granted by statute to the UW System president and chancellors. Section 36.09 (5), Stats., gives students responsibility for the disposition of “those student fees which constitute substantial support for campus student activities.” UW System and Board of Regents policies define how this statutory student role is implemented. These policies also define the services and activities for which segregated fees can be used.

#### **ALLOCABLE AND NONALLOCABLE FEES**

The total segregated fee amount students must pay consists of allocable fees and nonallocable fees. According to Board of Regents policies, allocable fees are those fees that provide substantial support for campus student activities and services and that are allocated by students, in consultation with the chancellor and subject to the final confirmation of the Board of Regents, in accordance with s. 36.09 (5), Stats. Acceptable uses of allocable fees include expenditures for student organizations, concerts, lectures, and bus passes.

As the statutes specifically give students responsibility for disposition of “those student fees which constitute substantial support for campus student activities,” it is understood that s. 36.09 (5), Stats., refers to allocable segregated fees and generally precludes the UW institutions from using these fees for anything other than campus student activities.

Board of Regents policies define nonallocable fees as those fees that are used to support long-term commitments for fixed financial obligations, ongoing operating costs of university owned or

controlled buildings, and similar commitments for student unions, health centers, child care centers and recreational sports centers.

The student group organized at each UW institution for the purpose of engaging in the allocation process, is referred to as the Student University Fee Allocation Committee. These students are generally representatives selected from the institution's student government association. Chancellors consult with their institution's Student University Fee Allocation Committee when defining the allocable and nonallocable portions of the segregated fee.<sup>1</sup>

### **VIEWPOINT NEUTRALITY**

In March 1996, a student lawsuit against the UW System alleged that the collection of a mandatory fee (at least that portion that was allocable) violated students' rights of free speech, free association, and free exercise under the First Amendment to the U.S. Constitution. The students argued that requiring them to pay the fee, part of which was distributed to student organizations espousing a myriad of opinions, amounted to forcing them to fund political and ideological expression offensive to their beliefs.

The students won summary judgment, the Seventh Circuit affirmed, and the U.S. Supreme Court took up the case. [*Board of Regents v. Southworth*, 529 U.S. 217 (2000).] The resulting ruling permitted collection of the fees, but emphasized the constitutional requirement for viewpoint neutrality in the allocation of funding support to student organizations. Several rounds of litigation ensued, regarding the creation of an allocation process for funding student organizations that is sufficiently "viewpoint neutral and protects the *First Amendment* rights of objecting students." [*Fry v. Bd. of Regents of the Univ. of Wis. Sys.*, 2001 U.S. Dist. LEXIS 3346, slip op. at 4 (W.D. Wis. 2001).]

The *Southworth* series of court decisions clarified that to maintain the viewpoint neutrality required by the First Amendment, the UW must restrict the use of mandatory fees to pay for travel expenses of student groups that engage in political, religious, or ideological activities of speech and avoid using the length of time a student group has existed or the amount of funds a group has received in the past as criteria for distributing funds. [*Southworth v. Bd. of Regents of the Univ. of Wis. Sys.*, 307 F.3d 566, 593-94 (7th Cir. 2002).] The ultimate result of this decision was the current set of segregated fee policies as expressed in Board of Regents Policy 30-5 and are viewpoint neutral and protect students' First Amendment rights, as required by *Fry*.<sup>2</sup>

This memorandum is not a policy statement of the Joint Legislative Council or its staff. This memorandum was prepared by Dan Schmidt, Principal Analyst, on October 13, 2014.

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<sup>1</sup> For detailed information on the permissible uses of segregated fees in the UW System, see UW System Financial Administration Policies and Procedures Document F50, which may be accessed at: <http://www.uwsa.edu/fadmin/fppp/fppp50.htm>.

<sup>2</sup> The full text of the current Board of Regents Policy regarding segregated fees is available at: <http://www.uwsa.edu/bor/policies/rpd/rpd30-5.htm>.