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Grant Herndon
General Counsel

Stacy L. Inman
Assistant General Counsel

William A. Hornback
Christopher P. Burger
Alan B. Harris
Kathleen R. LaMay
Tenielle E. Cooper
Melissa H. Brown
Timothy L. Salazar
Kelly A. Lazerson
Darren J. Bogié
Counsel

Daryl Valdez
Bargaining Specialist

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To: Schools Legal Service Clients
From: William A. Hornback
Re: **PUPIL FEES—JUST THE BASICS**

History: Student fees have been a topic of great interest within the state for many years. In 1984 the Supreme Court issued its opinion in *Hartzell v. Connell*,¹ on which most of the recent activity has been based. As pointed out in *Hartzell*, the California Constitution, Article IX, Section 5, guarantees a “free school” within the state system of schools. In the *Hartzell* case, fees being charged for participation in extracurricular activities, music, and sports programs, none for credit, were found to violate both the constitutional provision and also Title 5 of the California Code of Regulations, Section 350, which prohibited any fee, deposit, or other charges to students unless specifically authorized by statute. The *Hartzell* court also held that providing a fee waiver process for indigent pupils and their families did not cure the constitutional defect. In a footnote, the *Hartzell* court noted that fees could still properly be charged for activities that were purely recreational.²

After *Hartzell*, a number of courts have discussed transportation fees, ultimately holding the fees to be valid on the basis that transportation is not an integral fundamental part of the educational program.³ Other courts have determined that sports in the school environment are not “recreational” in the sense of voluntary unsupervised play, but are “part and parcel” of the school’s educational mission;⁴ that there is no right to a free college education;⁵ that there are no “property rights” in playing interscholastic sports—they are a privilege, not a right;⁶ that “away” games are part of the educational activities, such that injuries caused by a coach during travel are within the course and scope of employment;⁷ that injuries to a student after school and during off-season practices with their coach are incurred during school activities;⁸ that high school driver training is part of the free educational program;⁹ that football field lights can be exempted from local zoning ordinances as they are part of the school’s instructional facilities.¹⁰

In 2010, the American Civil Liberties Union filed a lawsuit against the state over allegations that illegal fees were being charged to public school students. The state settled the case, subject to enactment of legislation enforcing the settlement. When Governor Brown vetoed the legislation, the ACLU resumed the suit, but settled again, when new legislation was proposed. The major differences between the two bills was the auditing of compliance. The suit

highlighted objections to fees for such things as cheerleader uniforms, cameras and other equipment, and other extracurricular activities.

AB 1575, which settled the lawsuit, was enacted in 2012, adding Education Code Sections 49010-49013 inclusive (copies attached). AB 1575 expressly references the *Hartzell* case,¹¹ and indicates its rules are “declarative of existing law.”¹² This language in AB 1575 was the Legislature's way of saying “these have always been the rules, going back to at least 1984.”

In March 2013 the California Department of Education provided additional guidance, publishing FMA 12-01 reflecting information on student fees under the new AB 1575. On April 24, 2013, CDE updated the FMA, calling it FMA 12-02 and making primarily cosmetic changes. The FMA lists a number of fees deemed either acceptable, being authorized by statute, or prohibited. The FCMAT ASB Manual also contains a detailed listing of permitted and impermissible fees. The links to those documents are as follows:

CDE: www.cde.ca.gov/re/lr/fm/fma1202.asp

FCMAT: [www.fcmat.org/stories/storyReader\\$911](http://www.fcmat.org/stories/storyReader$911)

Since these are readily accessible documents, no space will be taken here for discussion or listing of permitted or prohibited fees except as they may impact other rules.

SUMMARY OF BASIC RULES

Basic Rules: “A pupil enrolled in a school shall not be required to pay any fee, deposit, or other charge not specifically authorized by law.”¹³ This is supported now by the AB 1575 prohibition on fees for educational activities¹⁴ unless specifically authorized in statute.¹⁵ Restated, these rules seems to mean: “If required in order to participate, it must be provided free of charge unless a specific statute says otherwise.” These rules prohibit requiring pupils to pay for or provide anything that is required in order to participate in the educational program unless a fee is expressly authorized by law.

The *Hartzell* case, dealing with extracurricular educational activities, expressly approved the approach taken in other jurisdictions where all educational activities were provided for free. The court quoted a federal court's language: “It can no longer be denied that extracurricular activities constitute an integral component of public education. Such activities are generally recognized as a fundamental ingredient of the educational process.”¹⁶ AB 1575 uses these same terms in describing components of the educational process that must remain free.

“‘Educational activity’ means an activity offered by a school, school district, charter school, or county office of education that constitutes an integral fundamental part of elementary and secondary education, including, but not limited to, curricular and extracurricular activities.”¹⁷

There is no definition of what constitutes “an integral fundamental part” of an educational program. The Miriam Webster Dictionary defines “integral” as “essential to completeness” and alternatively defines “fundamental” as being “of or relating to essential structure, function, or facts” or as something “of central importance” or “belonging to one's innate or ingrained characteristics.” Thus it would seem that “an integral fundamental part” of an education is something that is an essential component, of central importance, or innate/ingrained.

While it is pretty clear that participation in team athletics is required to be free, what sports are being offered can vary from location to location. For example, “football” may not, to some, seem to meet the definition of an “essential” component in light of the vast majority of students who do not participate in football yet are awarded diplomas. This “point of view” as to football is subjective and this may be, ultimately, how “integral fundamental” components of education are determined - on a case-by-case basis, from district to district, based on what the education community deems essential in their area. The main point here is not what sport is being played but that participation be free to students who participate.

What Is a Fee? The newly enacted statutes also discuss what constitutes a “fee” to students and include in the prohibition any “fees, deposits, or other charges” to a pupil’s parents/guardians.¹⁸ Included in the definition of an improper “pupil fee” are any fees charged as a condition to registering for or participating in a class or activity, whether elective or compulsory and whether or not for credit. This is directly aligned with the *Hartzell* case. If it is an integral fundamental part of an educational program, it doesn’t matter whether or not the activity is for credit.¹⁹

A security deposit or other payment to obtain a lock, locker, book, class apparatus, musical instrument, uniform, other materials or equipment, or any other purchase the pupil is *required* to make to obtain materials, supplies, equipment, or uniforms associated with an educational activity is an impermissible fee.²⁰ A “fee” is a “fee” regardless of the families’ ability or willingness to pay.²¹

A fee waiver policy does not make an illegal fee legal,²² but even some legal fees must include a fee waiver policy to be constitutional. For example, some student transportation fees may be charged because they are allowed by statute, but the statute contains a fee waiver provision for indigent students.

While the basic rule is that all supplies, materials, and equipment needed to participate in educational activities are to be provided free of charge,²³ there are exceptions to this rule. For example, while all required books and equipment must be provided without charge, the cost of any replacement books and equipment, or replacement materials (such as wood for a carpentry class), can be charged to a pupil when the originally issued free items are lost or destroyed. These are fees expressly authorized by statute. We recommend you check the CDE and/or FCMAT listings to ensure that any charge contemplated is identified as a permitted fee in those documents.

The new statutes also prohibit establishing a "two-tier educational system" which is described as one meeting a basic, minimal standard offered for free, while charging a fee if a student wants to participate in a higher standard program. At the same time, offering course credit or privileges in exchange for money or donations of goods or services is prohibited, as is removing credits or otherwise discriminating against a pupil for failing or refusing to provide the same money, goods, or services.²⁴ One example where this could occur is in wood shop, where a student completes the basic required project and wants to do an additional project. If time and circumstances permit, the additional materials required for the project must be provided for free. Of course, if the student likes the end result, the student is permitted to take the project home in exchange for payment of the cost of materials.²⁵

Fundraising: Pupils and parents cannot be compelled to perform fundraising activities to help defray the cost of a program, but voluntary fundraising support is permitted by statute. Fundraising may be requested but not required even where, due to funding cuts, a program is being kept alive only by outside fundraising efforts.²⁶ The source of the funding is not the question. The rules apply to all district programs, even if the only funding being used in the program originates from outside fundraising activities. Truly voluntary fundraising is permitted and funds may be donated to a district for a particular purpose.²⁷

Booster club activities may impact the pupil fees risks to districts, as where it is the booster club providing all the funding needed for operation of a specific program, such as golf or other athletic programs. The booster club, not a public agency, can conduct any legal form of fundraising efforts in order to fund the program, but participation in the program itself should not be conditioned on student or parent/guardian participation or results of booster club fundraising efforts. While the booster club is not part of the district, it is the district that offers the educational program, not the booster club, and if participation was conditioned on fundraising, a court would likely hold this connection to violate the rule against fees.

The rule prohibiting mandated fundraising is not intended to curb truly voluntary fundraising or prizes or other forms of recognition for voluntary participation in fundraising activities.²⁸ Accordingly, as an example, we believe prizes for selling the most fundraising candy bars would still be allowed but participation must be voluntary, without any adverse consequences for not participating. Parents are still allowed, and encouraged, to volunteer to help in their child's classroom as before, but cannot be required to volunteer.²⁹

Musical Instruments: There have been recent discussions on the subject of musical instruments, with some booster club involvement and also discussions of students' instrument rental in order to participate in the program. These discussions have indicated broad practices that may, in some instances, cross the boundaries of acceptable pupil fees.

For example, no matter how important music is to your district, or to a broad-based education as a whole, and no matter how eager your community is for a "take all comers" approach to music education, to be legal your program should result in no fees to pupils or parents. Recall

that the definition of "pupil fee" includes "a purchase that a pupil is required to make to obtain materials, supplies, equipment, or uniforms associated with an educational activity."³⁰

To show the complexity of resolving such issues, the circumstances or variables to be resolved include the number of instruments, the kinds of instruments, the interest of students in participating, and the support of booster clubs in program-related fundraising. In a perfect world, a district would have an inventory of instruments and related items sufficient to properly equip a specified music program, enough pupils interested in music education to fill the available instrument-related seats, and use all the available instruments for the described program. With such circumstances, each pupil would participate, use a district-owned instrument, and not incur any fees for participation in the program.

In the real world, however, there may be more pupils who want to get in than there are seats in the program, or more who want to play a designated instrument than there are instrument-related seats in the program. Some form of audition may be required, which could be on an instrument-by-instrument basis. This process could include preferential treatment for returning pupils who have displayed a certain level of proficiency with the instrument, but should not be granted on the basis of a pupil's possession of their own personal instrument. Pupils who do not earn a seat for their preferred instrument could apply for a seat using a different instrument, if a seat is available. If adopted, all of this should take place before anyone is authorized to bring and use their personal instrument.

When the seats are full, consideration could be given for chosen students to bring personally-owned instruments. If a pupil chooses to bring their own personal instrument, another seat may be deemed open to the next in line, based on the audition process. Another alternative would be to leave the district's instrument unused. If students are selected, or admitted to the program based on whether or not they have their own instrument, the process appears to be the "two-tier" education system prohibited by the new codes.³¹ Care should be taken that the process is not altered over time in any way that would encourage pupils to buy or rent instruments as a way to get into the program.

Summary of Rules:

The rules apply to everything pupils do that is an "integral fundamental" part of an educational program. Every integral fundamental component must be free to pupils unless there is a specific statute saying otherwise, whether or not the subject is for credit, whether curricular or extracurricular, or for a required subject or an elective. CDE and FCMAT both provide guidance regarding some identified permissible fees.

The rules still do not apply to activities that are purely recreational and not educational; however, we caution districts to consult with counsel when questions arise, including questions such as whether or not a traditionally "recreational" activity, over time, may have become an integral fundamental portion of the district's educational program.

ENFORCEMENT

Complaint Process and Regulations: Anyone impacted by a student fee may file a complaint, using Uniform Complaint Procedures (UCP).³² Final regulations have been adopted (copies attached) and become effective on January 1, 2014. These regulations encompass the UCP complaint process and provide some clarification on student fees issues, as noted in the remainder of this memorandum.

By March 2013 districts were to have revised their UCP, in part to permit these complaints regarding allegations of improper student fees.³³ We have drafted a template complaint form. Additionally, in their Annual Notice to Parents districts must include information about a parent's right to complain under these procedures and appeal to CDE if not satisfied with the district's decision.³⁴ Suggested language reflecting this requirement is contained in our revised Annual Notice to Parents. The suggested annual notice language and claim form template are both attached.

Complaints on pupil fees must be filed within one year of the alleged violation³⁵ and can be filed anonymously if they contain sufficient evidence to support an allegation of noncompliance.³⁶ Filing an anonymous complaint, without any means of following up, could create problems as discussed below.

Investigation: If a complaint claims a fee is inappropriate, the district must investigate and seek to resolve the claim using the UCP. This includes the complainant having an opportunity to present the claim and supporting evidence.³⁷

The district must complete its investigation and prepare a written decision within 60 days unless the time is extended by written agreement.³⁸ The district's written decision is to be based on the evidence, provided to the complainant within 60 days from receipt of the complaint, and contain:

1. Findings of fact based on the evidence;
2. Conclusion(s) of law;
3. Disposition of the complaint;
4. Rationale for the disposition;
5. Corrective actions, if warranted, including a remedy;
6. Notice of the complainant's right to appeal to CDE;
7. Appeal procedures.³⁹

There are also provisions in the regulations governing the CDE appeals process.⁴⁰

Remedy: If either the district or the CDE finds merit in the complaint, the district must provide a remedy to all affected pupils, parents, and guardians and the remedy must include, where

applicable, full reimbursement to all affected pupils, parents, and guardians. The district must use reasonable efforts to fully reimburse all affected pupils, parents, and guardians.⁴¹ "Reasonable efforts" are defined as good faith attempts to identify and fully reimburse "all pupils, parents and guardians who paid a pupil fee within one year prior to the filing of the complaint" and include researching existing school records, contacting pupils who were enrolled in or participating in the educational activity during the time the fee was charged, and considering submissions of proof of payment of the fee.⁴²

Reasonable efforts to fully reimburse students and parents/guardians include but are not limited to crediting a student's financial account and sending reimbursement by First Class Mail to the last known address. The district can attempt to obtain updated information from any notices returned by the United States Postal Service.⁴³

The effect of these two provisions is clear:⁴⁴ A claim must be made within one year of the violation and, if a timely claim is made the district must use reasonable efforts to fully reimburse all who paid the fee within the prior year.

For these reasons alone, a conservative approach to adoption of any student fees is strongly recommended.

CHARTER SCHOOLS

The impact of heightened awareness of student fees issues has created additional awareness of an existing problem for many charter schools. AB 1575 makes it clear that the student fees rules expressly apply to charter schools. Charter schools are exempt/free from many provisions of the Education Code, with that freedom being granted in exchange for the accountability for results to which charter schools are subject. The CDE's FMA 12-02 on student fees indicates that charter schools are exempt from application of many, but not all, of the fee authorization statutes; this exemption is the problem. If they are exempt from the statute, the authorization to charge a fee does not apply to them.

For example, Education Code Section 17453.1 permits a school district to sell parents a computer or internet appliance for cost, to permit remote access to the district's network. The statute deems this fee to be for a nonessential item. Thus, school districts can charge these fees because a statute says they can and because, by statute, these items are not essential parts of the district program.

On the other hand, a charter school does not get the benefit of this statute and is not authorized to provide computers or internet appliances to parents for a fee, unless someone makes a finding that the computer and connection are nonessential items. If this is an online, independent study or virtual charter school, can it be said that a computer and internet connection are not essential to be able to participate in the online program? The full impact of these problems has not been resolved.

1. *Hartzell v. Connell* (1984) 35 Cal.3d 899.
2. "Educational activities are to be distinguished from activities which are purely recreational in character. Examples of the latter might include attending weekend dances or athletic events." (*Hartzell v. Connell*, *supra*, 35 Cal.3d at p. 911, footnote 14).
3. *Arcadia USD v. CDE* (1992) 2 Cal.4th 251; *Salazar v. Eastin* (1995) 9 Cal.4th 836.
4. *Avila v. Citrus Community College Dist.* (2006) 38 Cal.4th 148, 159.
5. *Levi v. O'Connell* (2006) 144 Cal.App.4th 700.
6. *Ryan v. California Interscholastic Federation-San Diego* (2001) 94 Cal.App.4th 1048.
7. *Barnhart v. Cabrillo Comm. College* (1999), 76 Cal.App.4th 818.
8. *Acosta v. LAUSD* (1995) 31 Cal.App.4th 471.
9. *California Assn. for Safety Education v. Brown* (1994) 30 Cal.App.4th 1264.
10. *City of Santa Cruz v. Santa Cruz Sch. Bd. of Ed.* (1989) 210 Cal.App.3d 1.
11. Education Code Section 49010(b).
12. Education Code Section 49012(e).
13. 5 CCR 350.
14. Education Code Section 49011(a).
15. Education Code Section 49012(e).
16. (*Hartzell v. Connell*, *supra*, 35 Cal.3d at p. 608, citing *Moran v. School District #7, Yellowstone County* (D. Mont., 1972) 350 F.Supp. 1180, 1184).
17. Education Code Section 49010(a).
18. Education Code Section 49010(b)
19. In the "free speech" area, some courts have noted that graduation ceremonies are, in their opinion, the whole point of any educational program. This implies that no fees, deposits, or other charges should be required to participate in graduation ceremonies but there is no law directly on point as yet.
20. Education Code Section 49011(b)(2).
21. Education Code Section 49010(b).
22. Education Code Section 49011(b)(2).
23. Education Code Section 49011(b)(1).

24. Education Code Section 49011, subsections (b)(3) and (b)(4).
25. Education Code Section 17551.
26. As where a district says: "We'll provide the program if you raise enough money to support it."
27. Education Code Section 41032.
28. Education Code Section 49011(c).
29. This may be an issue in charter schools where parental participation (volunteer hours) is commonly found.
30. Education Code Section 49010(b)(3).
31. Education Code Section 49011(b)(3).
32. Education Code Section 49013(a).
33. Education Code Section 49013(f).
34. Education Code Section 49013(e).
- 35.5 CCR, Section 4630(c)(2).
36. Education Code Section 49013(b); 5 CCR, Section 4630(c)(3).
37. 5 CCR, Section 4631(b).
38. 5 CCR, Section 4631(a).
39. 5 CCR, Section 4630(e)(1-7).
40. 5 CCR, Section 4633.
41. Education Code Section 49013(d).
42. 5 CCR, Section 4600(u)(1).
43. 5 CCR, Section 4600(u)(2).
44. The proposed regulations were approved by the Office of Administrative Law on September 17, 2013, and will be effective on January 1, 2014.

**EDUCATION CODE
SECTIONS 49010-49013**

STUDENT FEES

49010. For purposes of this article, the following terms have the following meanings:

(a) "Educational activity" means an activity offered by a school, school district, charter school, or county office of education that constitutes an integral fundamental part of elementary and secondary education, including, but not limited to, curricular and extracurricular activities.

(b) "Pupil fee" means a fee, deposit, or other charge imposed on pupils, or a pupil's parents or guardians, in violation of Section 49011 and Section 5 of Article IX of the California Constitution, which require educational activities to be provided free of charge to all pupils without regard to their families' ability or willingness to pay fees or request special waivers, as provided for in *Hartzell v. Connell* (1984) 35 Cal.3d 899. A pupil fee includes, but is not limited to, all of the following:

(1) A fee charged to a pupil as a condition for registering for school or classes, or as a condition for participation in a class or an extracurricular activity, regardless of whether the class or activity is elective or compulsory, or is for credit.

(2) A security deposit, or other payment, that a pupil is required to make to obtain a lock, locker, book, class apparatus, musical instrument, uniform, or other materials or equipment.

(3) A purchase that a pupil is required to make to obtain materials, supplies, equipment, or uniforms associated with an educational activity.

49011.

(a) A pupil enrolled in a public school shall not be required to pay a pupil fee for participation in an educational activity.

(b) All of the following requirements apply to the prohibition identified in subdivision (a):

(1) All supplies, materials, and equipment needed to participate in educational activities shall be provided to pupils free of charge.

(2) A fee waiver policy shall not make a pupil fee permissible.

(3) School districts and schools shall not establish a two-tier educational system by requiring a minimal educational standard and also offering a second, higher educational standard that pupils may only obtain through payment of a fee or purchase of additional supplies that the school district or school does not provide.

(4) A school district or school shall not offer course

credit or privileges related to educational activities in exchange for money or donations of goods or services from a pupil or a pupil's parents or guardians, and a school district or school shall not remove course

credit or privileges related to educational activities, or otherwise discriminate against a pupil, because the pupil or the pupil's parents or guardians did not or will not provide money or donations of goods or services to the school district or school.

(c) This article shall not be interpreted to prohibit solicitation of voluntary donations of funds or property, voluntary participation in fundraising activities, or school districts, schools, and other entities from providing pupils prizes or other recognition for voluntarily participating in fundraising activities.

(d) This article applies to all public schools, including, but not limited to, charter schools and alternative schools.

(e) This article is declarative of existing law and shall not be interpreted to prohibit the imposition of a fee, deposit, or other charge otherwise allowed by law.

49012.

(a) Commencing with the 2014-15 fiscal year, and every three years thereafter, the department shall develop and distribute guidance for county superintendents of schools, district superintendents, and charter school administrators regarding the imposition of pupil fees for participation in educational activities in public schools. The department shall post the guidance on the department's Internet Web site.

(b) The guidance developed pursuant to subdivision (a) shall not constitute a regulation subject to the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

49013.

(a) A complaint of noncompliance with the requirements of this article may be filed with the principal of a school under the Uniform Complaint Procedures set forth in Chapter 5.1 (commencing with Section 4600) of Division 1 of Title 5 of the California Code of Regulations.

(b) A complaint may be filed anonymously if the complaint provides evidence or information leading to evidence to support an allegation of noncompliance with the requirements of this article.

(c) A complainant not satisfied with the decision of a public school may appeal the decision to the

department and shall receive a written appeal decision within 60 days of the department's receipt of the appeal.

(d) If a public school finds merit in a complaint, or the department finds merit in an appeal, the public school shall provide a remedy to all affected pupils, parents, and guardians that, where applicable, includes reasonable efforts by the public school to ensure full reimbursement to all affected pupils, parents, and guardians, subject to procedures established through regulations adopted by the state board.

(e) Information regarding the requirements of this article shall be included in the annual notification distributed to pupils, parents and guardians, employees, and other interested parties pursuant to Section 4622 of Title 5 of the California Code of Regulations.

(f) Public schools shall establish local policies and procedures to implement the provisions of this section on or before March 1, 2013.

1 **Title 5. EDUCATION**

2 **Division 1. California Department of Education**

3 **Chapter 5.1. Uniform Complaint Procedures**

4 **Subchapter 1. Complaint Procedures**

5 **Article 1. Definitions**

6 **§ 4600. General Definitions.**

7 As used in this chapter, the term:

8 (a) "Appeal" means a request made in writing to a level higher than the original
9 reviewing level by an aggrieved party requesting reconsideration or a reinvestigation of
10 the lower adjudicating body's decision.

11 (b) "Beginning of the year or semester" means the first day classes necessary to
12 serve all the students enrolled are established with a single designated certificated
13 employee assigned for the duration of the class, but not later than 20 working days after
14 the first day students attend classes for that semester.

15 (c) "CDE" means the California Department of Education.

16 (d) "Complainant" means any individual, including a person's duly authorized
17 representative or an interested third party, public agency, or organization who files a
18 written complaint alleging violation of federal or state laws or regulations, including
19 allegations of unlawful discrimination, harassment, intimidation or bullying in programs
20 and activities funded directly by the state or receiving any financial assistance from the
21 state.

22 (e) "Complaint" means a written and signed statement alleging a violation of federal
23 or state laws or regulations, which may include an allegation of unlawful discrimination,
24 harassment, intimidation or bullying. If the complainant is unable to put the complaint in
25 writing, due to conditions such as a disability or illiteracy, the public agency shall assist
26 the complainant in the filing of the complaint.

27 (f) "Complaint investigation" means an administrative process used by the California
28 Department of Education (CDE) or local educational agency (LEA) for the purpose of
29 gathering data regarding the complaint.

30 (g) "Complaint procedure" means an internal process used by the CDE or LEA to
31 process and resolve complaints.

- 1 (h) "Days" means calendar days unless designated otherwise.
- 2 (i) "Direct state intervention" means the steps taken by the CDE to initially
3 investigate complaints or effect compliance.
- 4 (j) "Educational activity" shall have the same definition as found in Education Code
5 section 49010(a).
- 6 (k) "Educational institution" means a public or private preschool, elementary, or
7 secondary school or institution, the governing board of a school district, or any
8 combination of school districts or counties recognized as the administrative agency for
9 public elementary or secondary schools.
- 10 (l) "Facilities that pose an emergency or urgent threat to the health or safety of pupils
11 or staff" means a condition as defined in Education Code section 17592.72(c)(1) and
12 any other emergency conditions the school district determines appropriate.
- 13 (m) "Good repair" shall have the same definition as that found in Education Code
14 section 17002(d).
- 15 (n) "Instructional materials" means all materials that are designed for use by pupils
16 and their teachers as a learning resource and help pupils to acquire facts, skills, or
17 opinions or to develop cognitive processes. Instructional materials may be printed or
18 nonprinted, and may include textbooks, technology-based materials, other educational
19 materials, and tests.
- 20 (o) "Local agency" means a school district governing board or a local public or
21 private agency which receives direct or indirect funding or any other financial assistance
22 from the state to provide any school programs or activities or special education or
23 related services.
- 24 (p) "Local educational agency" (LEA) includes any public school district and county
25 office of education or direct-funded charter school.
- 26 (q) "Mediation" means a problem solving activity whereby a third party assists the
27 parties to the dispute in resolving the complaint.
- 28 (r) "Misassignment" means the placement of a certificated employee in a teaching or
29 services position for which the employee does not hold a legally recognized certificate
30 or credential or the placement of a certificated employee in a teaching or services
31 position that the employee is not otherwise authorized by statute to hold.

1 (s) "Public agency" means any local agency or state agency.

2 (t) "Pupil fee" shall have the same definition as found in Education Code section
3 49010(b).

4 (u) "Reasonable efforts" means a public school's good faith attempts to identify and
5 fully reimburse all pupils, parents and guardians who paid a pupil fee within one year
6 prior to the filing of the complaint.

7 (1) Reasonable efforts to identify pupils who paid a pupil fee include but are not
8 limited to researching existing school records, contacting pupils who were enrolled in or
9 participating in the educational activity during the time the pupil fee was charged, and
10 considering submissions of proof of payment of the pupil fee.

11 (2) Reasonable efforts to fully reimburse all pupils, parents and guardians who paid
12 a pupil fee include but are not limited to crediting the pupil's school financial account
13 and sending reimbursement by first class mail to the pupil's last known primary address
14 as contained in school or local educational agency records. If the school has knowledge
15 that a pupil's last known address as contained in school or local educational agency
16 records is no longer valid, the school may attempt to obtain a more recent address from
17 any notices returned to the school or local educational agency by the United States
18 Postal Service.

19 (v) "SSPI" means the State Superintendent of Public Instruction or his or her
20 designee.

21 (w) "State agency" means the State Departments State Hospitals or Health Services
22 or any other state administrative unit that is or may be required to provide special
23 education or related services to children with disabilities pursuant to Government Code
24 section 7570 et seq.

25 (x) "State mediation agreement" means a written, voluntary agreement approved by
26 the CDE, which is developed by the parties to the dispute, which resolves the
27 allegations of the complaint.

28 (y) "Subject matter competency" means the teacher meets the applicable
29 requirements of Chapter 6, article 1, subchapter 7 of these regulations, commencing
30 with section 6100, for the course being taught.

31 (z) "Sufficient textbooks or instructional materials" means that each pupil, including

1 English learners, has a textbook or instructional materials, or both, to use in class and to
2 take home but does not require two sets of textbooks or instructional materials for each
3 pupil. Sufficient textbooks or instructional materials does not include photocopied sheets
4 from only a portion of a textbook or instructional materials copied to address a shortage.

5 (aa) "Teacher vacancy" means a position to which a single designated certificated
6 employee has not been assigned at the beginning of the year for an entire year or, if the
7 position is for a one-semester course, a position of which a single designated
8 certificated employee has not been assigned at the beginning of a semester for an
9 entire semester.

10 NOTE: Authority cited: Sections 221.1 and 33031, Education Code; and Section 11138,
11 Government Code. Reference: Sections 200, 201, 210.1, 220, 17002(d), 234.1,
12 17592.72, 33126(b)(5)(A) and (B), 49010, 49013 and 60010, Education Code; and
13 Sections 11135 and 11138, Government Code.

14 15 **Article 2. Purpose and Scope**

16 **§ 4610. Purpose and Scope.**

17 (a) This Chapter applies to the filing, investigation and resolution of a complaint
18 regarding an alleged violation by a local agency of federal or state law or regulations
19 governing educational programs, including allegations of unlawful discrimination,
20 harassment, intimidation or bullying. The purpose of this chapter is to establish a
21 uniform system of complaint processing for specified programs or activities that receive
22 state or federal funding.

23 (b) This chapter applies to the following programs administered by the CDE:

24 (1) Adult Education programs established pursuant to Education Code sections 8500
25 through 8538 and 52500 through 52616.4;

26 (2) Consolidated Categorical Aid Programs as listed in Education Code section
27 64000(a);

28 (3) Migrant Education established pursuant to Education Code sections 54440
29 through 54445;

30 (4) Career Technical and Technical Education and Career Technical and Technical
31 Training Programs established pursuant to Education Code sections 52300 through

1 52480;

2 (5) Child Care and Development Programs established pursuant to Education Code
3 sections 8200 through 8493;

4 (6) Child Nutrition Programs established pursuant to Education Code sections 49490
5 through 49570; and

6 (7) Special Education Programs established pursuant to Education Code sections
7 56000 through 56885 and 59000 through 59300.

8 (c) This chapter also applies to the filing of complaints which allege unlawful
9 discrimination, harassment, intimidation or bullying against any protected group as
10 identified under Education Code section 200 and 220 and Government Code section
11 11135, including any actual or perceived characteristic as set forth in Penal Code
12 section 422.55, or on the basis of a person's association with a person or group with
13 one or more of these actual or perceived characteristics, in any program or activity
14 conducted by a local agency, which is funded directly by, or that receives or benefits
15 from any state financial assistance.

16 (d) This chapter also applies to the filing of complaints which allege noncompliance
17 with the provisions of Education Code sections 49010 and 49011 regarding pupil fees.

18 (e) Nothing in these regulations shall prevent an LEA from using its local uniform
19 complaint procedure to address complaints not listed in this section.

20 (f) The CDE will develop a pamphlet for parents that will explain the Uniform
21 Complaint Procedures in a user friendly manner and post this pamphlet on the CDE's
22 Web site.

23 NOTE: Authority cited: Sections 221.1, 8261, 33031, 49531, 49551, 54445, 52355,
24 52451 and 56100(a) and (j), Education Code; and Section 11138, Government Code.
25 Reference: Sections 200, 220, 260, 234.1, 49013 and 49556, Education Code; Sections
26 11135 and 11138, Government Code; and 34 C.F.R. Sections 106.1-106.8 and 299.10-
27 299.11.

28

29 **§ 4611. Referring Complaint Issues to Other Appropriate State or Federal**
30 **Agencies.**

31 The following complaints shall be referred to the specified agencies for appropriate

1 resolution and are not subject to the local and CDE complaint procedures set forth in
2 this chapter unless these procedures are made applicable by separate interagency
3 agreements:

4 (a) Allegations of child abuse shall be referred to the applicable County Department
5 of Social Services (DSS), Protective Services Division or appropriate law enforcement
6 agency. However, nothing in this section relieves the CDE from investigating complaints
7 pursuant to section 4650(a)(8)(C) herein.

8 . . .

9 (d) Allegations of fraud shall be referred to the responsible CDE Division Director
10 who may consult with the CDE's Legal, Audits, and Compliance Branch.

11 NOTE: Authority cited: Sections 221.1 and 33031, Education Code; and Section 11138,
12 Government Code. Reference: Sections 200, 220 and 48987, Education Code; Sections
13 11135, 11136, 11138 and 12960, Government Code; Section 11166, Penal Code; and
14 34 C.F.R. Sections 106.1-106.8.

15

16 **Article 3. Local Educational Agency (LEA) Compliance**

17 **§ 4620. LEA Responsibilities.**

18 Each LEA shall have the primary responsibility to insure compliance with applicable
19 state and federal laws and regulations. Each LEA shall investigate complaints alleging
20 failure to comply with applicable state and federal laws and regulations and/or alleging
21 discrimination, harassment, intimidation or bullying and seek to resolve those
22 complaints in accordance with the procedures set out in this chapter and in accordance
23 with the policies and procedures of the governing board.

24 NOTE: Authority cited: Sections 221.1 and 33031, Education Code; and Section 11138,
25 Government Code. Reference: Section 200, 220, 234.1 and 260, Education Code;
26 Section 11135, Government Code; and 34 C.F.R. Section 106.8.

27

28 **§ 4621. District Policies and Procedures.**

29 (a) Each LEA shall adopt policies and procedures not inconsistent with sections
30 4600-4695 of this chapter for the investigation and resolution of complaints. Local
31 policies shall ensure that complainants are protected from retaliation and that the

1 identity of a complainant alleging discrimination, harassment, intimidation or bullying
2 remain confidential as appropriate. School Districts and County Offices of Education
3 shall submit their policies and procedures to the local governing board for adoption.

4 (b) Each LEA shall include in its policies and procedures the person(s), employee(s)
5 or agency position(s) or unit(s) responsible for receiving complaints, investigating
6 complaints and ensuring LEA compliance. The LEA's policies shall ensure that the
7 person(s), employee(s), position(s) or unit(s) responsible for compliance and/or
8 investigations shall be knowledgeable about the laws/programs that he/she is assigned
9 to investigate.

10 (c) Except for complaints under sections 4680-4687 regarding instructional
11 materials, emergency or urgent facilities conditions that pose a threat to the health or
12 safety of pupils or staff, and teacher vacancies or misassignments, the LEA may
13 provide a complaint form for persons wishing to file a complaint to fill out and file. A
14 complaint form shall be provided for complaints regarding instructional materials,
15 emergency or urgent facilities conditions that pose a threat to the health or safety of
16 pupils or staff, and teacher vacancies or misassignments. However, a person is not
17 required to use the complaint form furnished by the LEA in order to file a complaint.

18 NOTE: Authority cited: Sections 221.1 and 33031, Education Code; and Section 11138,
19 Government Code. Reference: Sections 200, 220, 234.1 and 260, Education Code;
20 Section 11135, Government Code; and 34 C.F.R. Sections 106.8 and 299.10-299.11.

21
22 **§ 4622. Notice.**

23 Each LEA shall annually notify in writing, as applicable, its students, employees,
24 parents or guardians of its students, the district advisory committee, school advisory
25 committees, appropriate private school officials or representatives, and other interested
26 parties of their LEA complaint procedures, including the opportunity to appeal to the
27 CDE and the provisions of this chapter. The notice shall include the identity (identities)
28 of the person(s) responsible for processing complaints. The notice shall also advise the
29 recipient of any civil law remedies that may be available under state or federal
30 discrimination, harassment, intimidation or bullying laws, if applicable, and of the appeal
31 pursuant to Education Code section 262.3. The notice shall also include information

1 regarding the requirements of Education Code sections 49010 through 49013 relating to
2 pupil fees. This notice shall be in English, and when necessary, in the primary
3 language, pursuant to Education Code section 48985, or mode of communication of the
4 recipient of the notice. Copies of LEA complaint procedures shall be available free of
5 charge.

6 NOTE: Authority cited: Sections 200, 220, 221.1, 262.3, 33031 and 49013, Education
7 Code; and Section 11138, Government Code. Reference: Sections 200, 220 and 234.1,
8 Education Code; Sections 11135 and 11138, Government Code; and 34 C.F.R.
9 Sections 106.8 and 299.11.

10

11

Article 4. Local Complaint Procedures

12

§ 4630. Filing a Local Complaint; Procedures, Time Lines.

13

14 (a) Except for complaints under sections 4680-4687 regarding instructional
15 materials, emergency or urgent facilities conditions that pose a threat to the health or
16 safety of pupils or staff, and teacher vacancies or misassignments, and complaints that
17 allege discrimination, harassment, intimidation or bullying and complaints regarding
18 pupil fees, any individual, public agency or organization may file a written complaint with
19 the district superintendent or his or her designee alleging a matter which, if true, would
20 constitute a violation by that LEA of federal or state law or regulation governing a
21 program listed in section 4610(b) of this chapter.

21

22 (b) An investigation of alleged unlawful discrimination, harassment, intimidation or
23 bullying shall be initiated by filing a complaint not later than six months from the date the
24 alleged discrimination, harassment, intimidation or bullying occurred, or the date the
25 complainant first obtained knowledge of the facts of the alleged discrimination,
26 harassment, intimidation or bullying unless the time for filing is extended by the district
27 superintendent or his or her designee, upon written request by the complainant setting
28 forth the reasons for the extension. Such extension by the district superintendent or his
29 or her designee shall be made in writing. The period for filing may be extended by the
30 district superintendent or his or her designee for good cause for a period not to exceed
31 90 days following the expiration of the six month time period. The district superintendent
shall respond immediately upon a receipt of a request for extension.

1 (1) The complaint shall be filed by one who alleges that he or she has personally
2 suffered unlawful discrimination, harassment, intimidation or bullying, or by one who
3 believes an individual or any specific class of individuals has been subjected to
4 discrimination, harassment, intimidation or bullying prohibited by this part.

5 (2) The complaint shall be filed with the LEA in accordance with the complaint
6 procedures of the LEA.

7 (3) An investigation of a discrimination, harassment, intimidation or bullying
8 complaint shall be conducted in a manner that protects confidentiality of the parties and
9 maintains the integrity of the process.

10 (c)(1) Pupil fee complaints may be filed with the principal of the school.

11 (2) Pupil fee complaints shall be filed not later than one year from the date the
12 alleged violation occurred.

13 (3) Pupil fee complaints may be filed anonymously if the complaint provides
14 evidence or information leading to evidence to support an allegation of noncompliance
15 with Education Code sections 49010 and 49011 regarding pupil fees.

16 NOTE: Authority cited: Sections 221.1 and 33031, Education Code; and Section 11138,
17 Government Code. Reference: Sections 200, 220, 234.1 and 49013, Education Code;
18 Sections 11135, 11136 and 11138, Government Code; and 34 C.F.R. Section 106.8.

19
20 **§ 4631. Responsibilities of the LEA.**

21 (a) Except for complaints regarding instructional materials, emergency or urgent
22 facilities conditions that pose a threat to the health or safety of pupils or staff, and
23 teacher vacancies or misassignments, which must be processed in accordance with
24 sections 4680-4687, within 60 days from the date of the receipt of the complaint, the
25 LEA person responsible for the investigation of the complaints or his or her designee
26 shall conduct and complete an investigation of the complaint in accordance with the
27 local procedures adopted pursuant to section 4621 and prepare a written LEA Decision.
28 This time period may be extended by written agreement of the complainant.

29 (b) The investigation shall include an opportunity for the complainant, or the
30 complainant's representative, or both, to present the complaint(s) and evidence or
31 information leading to evidence to support the allegations of non-compliance with state

1 and federal laws and/or regulations.

2 (c) Refusal by the complainant to provide the investigator with documents or other
3 evidence related to the allegations in the complaint, or to otherwise fail or refuse to
4 cooperate in the investigation or engage in any other obstruction of the investigation,
5 may result in the dismissal of the complaint because of a lack of evidence to support the
6 allegations.

7 (d) Refusal by the LEA to provide the investigator with access to records and/or
8 other information related to the allegation in the complaint, or to otherwise fail or refuse
9 to cooperate in the investigation or engage in any other obstruction of the investigation,
10 may result in a finding based on evidence collected that a violation has occurred and
11 may result in the imposition of a remedy in favor of the complainant.

12 (e) The LEA should issue a Decision (the Decision) based on the evidence. The
13 Decision shall be in writing and sent to the complainant within 60 days from receipt of
14 the complaint by the LEA. The Decision should contain:

15 (1) the findings of fact based on the evidence gathered,
16 (2) conclusion of law,
17 (3) disposition of the complaint,
18 (4) the rationale for such disposition,
19 (5) corrective actions, if they are warranted, including, with respect to a pupil fees
20 complaint, a remedy that comports with Education Code section 49013(d) and section
21 4600(u).

22 (6) notice of the complainant's right to appeal the LEA Decision to the CDE, and
23 (7) procedures to be followed for initiating an appeal to the CDE.

24 (f) Nothing in this chapter shall prohibit the parties from utilizing alternative methods
25 to resolve the allegations in the complaint, including, but not limited to, mediation.

26 (g) Nothing in this chapter shall prohibit an LEA from resolving complaints prior to
27 the formal filing of a written complaint.

28 NOTE: Authority cited: Sections 221.1 and 33031, Education Code; and Section 11138,
29 Government Code. Reference: Sections 200, 220 and 49013, Education Code; Sections
30 11135, 11136 and 11138, Government Code; and 34 C.F.R. Section 106.8.

31

1 **Article 4.5. Appeal of LEA Decision**

2 **§ 4632. Appeal of LEA Decision– Grounds.**

3 (a) Except for complaints under sections 4681 and 4682 regarding instructional
4 materials and teacher vacancies or misassignments, a complainant may appeal a
5 Decision to the CDE by filing a written appeal within 15 days of receiving the Decision.

6 (b) The complainant shall specify the basis for the appeal of the Decision and
7 whether the facts are incorrect and/or the law is misapplied.

8 (c) The appeal shall be accompanied by:

- 9 (1) a copy of the locally filed complaint; and
10 (2) a copy of the Decision.

11 (d) If the CDE determines the appeal raises issues not contained in the local
12 complaint, the CDE will refer those new issues back to the LEA for resolution as a new
13 complaint under section 4630 or 4631.

14 (e) If the CDE determines that the Decision failed to address an issue raised by the
15 complaint, the CDE shall refer the matter to the LEA to make the necessary findings
16 and conclusions on any issue not addressed. The LEA will address the issue within 20
17 days from the date of the referral.

18 NOTE: Authority cited: Sections 200, 221.1 and 33031, Education Code; and Section
19 11138, Government Code. Reference: Sections 11135, 11136 and 11138, Government
20 Code; 34 C.F.R. Sections 106.8 and 299.10(a)(2).

21
22 **§ 4633. Appeal of LEA Decision.**

23 (a) If the Decision is appealed, the CDE shall notify the LEA of the appeal. Upon
24 notification by the CDE that the Decision has been appealed, the LEA shall forward the
25 following to the CDE:

- 26 (1) A copy of the original complaint;
27 (2) A copy of the Decision;
28 (3) A summary of the nature and extent of the investigation conducted by the LEA, if
29 not covered in the Decision;
30 (4) A copy of the investigation file, including but not limited to, all notes, interviews
31 and documents submitted by the parties or gathered by the investigator;

- 1 (5) A report of any action taken to resolve the complaint;
- 2 (6) A copy of the LEA complaint procedures; and
- 3 (7) Such other relevant information as the CDE may request.
- 4 (b) The CDE shall not receive evidence from the parties that could have been
- 5 presented to the LEA investigator during the investigation, unless requested by the
- 6 CDE. Any confidential information or pupil information in the investigative file shall
- 7 remain confidential and shall not be disclosed by the CDE.
- 8 (c) The CDE may contact the parties for further information, if necessary.
- 9 (d) The CDE shall review the investigation file, the summary of the nature and extent
- 10 of the investigation conducted by the LEA, the complaint procedures, documents and
- 11 any other evidence received from the LEA and determine whether substantial evidence
- 12 exists:
- 13 (1) That the LEA followed its complaint procedures; and
- 14 (2) That the relevant findings of fact in the Decision which are the subject of the
- 15 appeal are supported by the evidence.
- 16 (e) The CDE shall review the conclusions of law which are the subject of the appeal
- 17 and determine whether they are correct.
- 18 (f) If the CDE determines that the Decision is deficient because it lacks findings of
- 19 fact and conclusions of law regarding the subject of the appeal, the CDE may return the
- 20 Decision to the LEA in order to correct the deficiencies within 20 days of the return.
- 21 (g) If the CDE finds that the Decision is supported by substantial evidence, and that
- 22 the legal conclusions are not contrary to law, the appeal shall be denied.
- 23 (h) If the CDE finds the grounds for the appeal have merit:
- 24 (1) The CDE may, if there is a lack of substantial evidence or a procedural defect in
- 25 the investigation, remand the investigation to the LEA for further investigation of the
- 26 allegations which are the subject of the appeal; or
- 27 (2) The CDE may issue a decision based on the evidence in the investigation file
- 28 received from the LEA; or
- 29 (3) If the CDE determines that it is in the best interest of the parties, conduct a
- 30 further investigation of the allegations which are the basis for the appeal and issue a
- 31 decision following further investigation.

1 (i) If the CDE finds merit in the appeal, the CDE's decision on appeal shall contain
2 the following:

3 (1) A finding that the LEA complied or did not comply with its complaint procedures;

4 (2) The CDE's findings of fact and conclusions of law regarding the issue on appeal;

5 and

6 (3) Where a determination is made that the LEA failed to comply with the applicable
7 state or federal law or regulation, remedial orders and/or required actions to address the
8 violation(s), including, with respect to a pupil fees complaint, a remedy that specifies the
9 LEA's obligation to comply with Education Code section 49013(d) and section 4600(u).

10 (j) The CDE must issue a written decision regarding an appeal of a pupil fees
11 complaint and provide a copy of the written decision to the appellant within 60 days of
12 the CDE's receipt of the appeal.

13 NOTE: Authority cited: Sections 221.1 and 33031, Education Code; and Section 11138,
14 Government Code. Reference: Sections 200, 220 and 49013, Education Code; Sections
15 11135, 11136 and 11138, Government Code; 34 C.F.R. Sections 106.8 and
16 299.10(a)(2).

17 18 **Article 5. State Complaint Procedures**

19 **§ 4640. Filing a State Complaint That Has Not First Been Filed at the Local** 20 **Educational Agency (LEA); Time Lines, Notice, Appeal Rights**

21 Referral to the LEA for Local Resolution.

22 (a) If a complaint is erroneously filed with the CDE without first being filed with and
23 investigated by the LEA, the CDE shall immediately forward the complaint to the LEA
24 for processing in accordance with article 4 of this chapter, unless extraordinary
25 circumstances exist necessitating direct state intervention as described at section 4650.

26 (b) A letter shall be sent by first class mail to the complainant(s) notifying him, her, or
27 them that:

28 (1) The CDE does not have jurisdiction, at this time, over the complaint and that the
29 complaint should have been filed with the LEA in the first instance;

30 (2) That the complaint has been transferred to the local educational agency
31 requesting the local educational agency to process and investigate the allegation in the

1 complaint; and

2 (3) That the complainant may file an appeal to the CDE following the issuance of
3 the Decision, if he or she believes as a matter of fact or law the Decision is incorrect.

4 NOTE: Authority cited: Sections 221.1 and 33031, Education Code; and Section 11138,
5 Government Code. Reference: Sections 200 and 220, Education Code; Sections 11135,
6 11136, and 11138, Government Code; 34 C.F.R. Sections 106.8 and 299.10(1)(2).

7

8

Article 6. Direct State Intervention

9

§ 4650. Basis of Direct State Intervention.

10

(a) Except for complaints under sections 4680, 4681, 4682 and 4683 regarding
11 instructional materials, teacher vacancies or misassignments, and condition of a facility,
12 the CDE shall directly intervene without waiting for LEA investigation if one or more of
13 the following situations exist:

14

(1) The complaint includes an allegation, and the CDE verifies, that an LEA failed to
15 comply with the complaint procedures required by this Chapter and its local rules and
16 regulations, including, but not limited to, the failure or refusal of the LEA to cooperate
17 with the investigation;

18

(2) The complaint relates to an agency that is not an LEA funded through the Child
19 Development or Child Nutrition Programs;

20

(3) The complainant requests anonymity because he or she would be in danger of
21 retaliation and would suffer immediate and irreparable harm if he or she filed a
22 complaint with the LEA (except for complaints regarding pupil fees, which may be filed
23 anonymously with the principal of a public school);

24

(4) The complainant alleges that the LEA failed or refused to implement the final
25 decision resulting from its local investigation or local mediation agreement;

26

(5) The complainant alleges and the CDE verifies that through no fault of the
27 complainant, no action has been taken by the LEA within 60 calendar days of the date
28 the complaint was filed. Prior to direct intervention, the CDE shall attempt to work with
29 the LEA to allow it to complete the investigation and issue a Decision.

30

(6) The complainant alleges and the CDE verifies that he or she would suffer
31 immediate and irreparable harm as a result of an application of a district-wide policy that

1 is in conflict with state or federal law covered by this Chapter, and that filing a complaint
2 with the LEA would be futile.

3 (7) For complaints relating to special education, any one of the following shall be a
4 condition for direct state intervention:

5 (A) The complainant alleges that a public agency, other than an LEA, as specified in
6 Government Code section 7570 et seq., fails or refuses to comply with an applicable
7 law or regulation relating to the provision of free appropriate public education to
8 individuals with disabilities;

9 (B) The complainant alleges that the LEA or public agency fails or refuses to comply
10 with the due process procedures established pursuant to federal and state law and
11 regulation; or has failed or refused to implement a due process hearing order;

12 (C) The complainant alleges facts that indicate that the child or group of children
13 may be in immediate physical danger or that the health, safety or welfare of a child or
14 group of children is threatened.

15 (D) The complainant alleges that an individual with a disability is not receiving the
16 special education or related services specified in his or her individualized educational
17 program (IEP).

18 (E) The complaint involves a violation of federal law governing special education, 20
19 U.S.C. section 1400 et seq., or its implementing regulations.

20 (b) The complaint shall identify the basis, as described in subdivision (a) above, for
21 filing the complaint directly to the CDE. The complainant must present the CDE with
22 clear and verifiable evidence that supports the basis for the direct filing, except as in
23 subdivision (a)(7).

24 NOTE: Authority cited: Sections 221.1 and 33031, Education Code; and Section 11138,
25 Government Code. Reference: Sections 200, 220 and 49013, Education Code; Sections
26 11135, 11136 and 11138, Government Code; 34 C.F.R. Sections 106.8 and
27 299.10(a)(2).

28

EXCERPT FROM ANNUAL NOTICE TO PARENTS

SLS Recommended Language on Uniform Complaint Procedures

Education Code Sections 32289 and 48980(g);
5 CCR 4610, 4620, and 4622

[The district is not required to include its entire complaint procedure, but it is often advisable. A condensed version will suffice as long as it includes the listed items below, which is offered as a sample. Review your procedure to be sure you include the information from your district's procedure and consult with your district's designated person who processes the complaints.]

The district has the primary responsibility to ensure compliance with applicable state and federal laws and regulations governing educational programs. The district shall investigate and seek to resolve any complaints alleging failure to comply with such laws and/or alleging unlawful discrimination, intimidation, or bullying in accordance with the district's uniform complaint procedures. The district has adopted a uniform complaint policy and procedures for use when addressing complaints alleging unlawful discrimination, harassment, intimidation, or bullying in district programs and activities based on actual or perceived characteristics of race or ethnicity, color, ancestry, nationality, national origin, ethnic group identification, age, religion, marital or parental status, physical or mental disability, sex, sexual orientation, gender, gender identity, gender expression, or genetic information, or any other characteristic identified in Education Code 200 or 220, Penal Code 422.55, or Government Code 11135, or based on association with a person or group with one or more of these actual or perceived characteristics.

Uniform complaint procedures shall also be used to address any complaint alleging the district's failure to comply with the prohibition against requiring students to pay fees, deposits, or other charges for participation in educational activities, the requirements for the development and adoption of a school safety plan, and state and/or federal laws in adult education programs, consolidated categorical aid programs, migrant education, career technical and technical education and training programs, child care and development programs, child nutrition programs, and special education programs.

The district has designated the following person as the compliance officer responsible for receiving complaints under the uniform complaint policy and procedures:

[Title or Position, Address, and Phone Number]

You can obtain a copy of the district Uniform Complaint Policy and Procedures free of charge from the compliance officer. Complaints alleging unlawful discrimination, harassment, intimidation, or bullying must be filed not later than six months from the date

it occurred, or six months from the date the complainant first obtained knowledge of the facts of the alleged discrimination, harassment, intimidation, or bullying. Complaints made under this procedure must be directed to the compliance officer. The complaint review shall be completed in 60 calendar days from the date of receipt of the complaint unless the complainant agrees in writing to an extension of the timeline. A complaint alleging noncompliance with the law regarding the prohibition against requiring students to pay student fees, deposits, and charges may be filed anonymously if the complaint provides evidence or information leading to evidence to support an allegation of noncompliance.

A complainant may appeal the district's decision to the California Department of Education ("CDE") by filing a written appeal within 15 calendar days of receiving the district's decision. The appeal must include a copy of the complaint filed with the district and a copy of the decision. The CDE may directly intervene in the complaint without waiting for action by the district when one of the conditions listed in 5 CCR 4650 exists, including cases in which the district has not taken action within 60 days of the date the complaint was filed with the district. A complainant may pursue available civil law remedies outside of the district's complaint procedures. Complainants may seek assistance from mediation centers or public/private interest attorneys. Civil law remedies that may be imposed by a court include, but are not limited to, injunctions and restraining orders. For complaints alleging discrimination, harassment, intimidation, and bullying based on state law, a complainant shall wait until 60 calendar days have elapsed from the filing of an appeal with the CDE before pursuing civil law remedies, provided the district has appropriately and in a timely manner apprised the complainant of his/her right to file a complaint in accordance with 5 CCR 4622. The moratorium does not apply to injunctive relief and to discrimination complaints based on federal law.

[TEMPLATE—TO BE FINALIZED ON DISTRICT LETTERHEAD AND ACCORDING TO DISTRICT'S UNIFORM COMPLAINT PROCEDURES]

UNIFORM COMPLAINT PROCEDURES COMPLAINT FORM

COMPLAINANT CONTACT INFORMATION

Name* _____

Student Name (if applicable) _____ Date of Birth _____

Address _____

City _____ Zip Code _____

Home Phone _____ Cell or Work Phone _____

I am filing this complaint on behalf of:

- myself my child or a student another child or student a group

BASIS OF COMPLAINT

Discrimination, harassment, intimidation, or bullying** in district programs or activities on the basis of the following actual or perceived protected class or characteristic (check all that apply):

- | | | |
|--|---|-----------------------------------|
| <input type="checkbox"/> Sex | <input type="checkbox"/> Sexual Orientation | <input type="checkbox"/> Gender |
| <input type="checkbox"/> Gender Identity | <input type="checkbox"/> Gender Expression | <input type="checkbox"/> Ancestry |
| <input type="checkbox"/> Ethnic Group Identification | <input type="checkbox"/> Race or Ethnicity | <input type="checkbox"/> Religion |
| <input type="checkbox"/> Nationality | <input type="checkbox"/> National Origin | <input type="checkbox"/> Age |
| <input type="checkbox"/> Marital or Parental Status | <input type="checkbox"/> Physical or Mental Disability | <input type="checkbox"/> Color |
| <input type="checkbox"/> Genetic Information | <input type="checkbox"/> Association with a person or group with one or more of the actual/perceived characteristics listed above | |

*For complaints alleging noncompliance with the law regarding the prohibition against requiring students to pay student fees, deposits, and charges, the complaint can be filed anonymously if the complaint provides enough evidence or information to support an allegation of noncompliance and to allow an appropriate investigation.

**For complaints of bullying that are not based on the above listed protected classes or characteristics, please contact your school site principal for further investigation and response.

2. Please describe what steps, if any, you have taken to resolve this issue before filing this complaint. Have you attempted to discuss this issue with the person about whom you are complaining or with other district personnel? If so, with whom and what was the result?

3. Please describe your desired outcome or remedy so as to assist the complaint investigator in attempting to satisfactorily resolve your complaint.

Signature _____ Date _____

This complaint form must be submitted to the district's UCP Compliance Officer at the address listed below. Complaints alleging unlawful discrimination, harassment, intimidation, or bullying must be initiated no later than six months from the date of the alleged discrimination, harassment, intimidation, or bullying, or six months from the date the complainant first obtained knowledge of the facts of the discrimination, harassment, intimidation, or bullying. Complaints will be investigated in a manner that protects the integrity of the process and the confidentiality of the parties to the extent that the investigation of the complaint is not obstructed. The district's governing board prohibits any form of retaliation against any person for filing a complaint or participating in the complaint process.

Once completed, please deliver your complaint and any attachments to:

[District's UCP Compliance Officer Name and Contact Information]

The district will investigate and report its decision to the complainant within 60 calendar days of the district's receipt of the complaint pursuant to the Uniform Complaint Procedures found at Board Policy and Administrative Regulation 1312.3. The complainant has the right to appeal the district's final decision to the California Department of Education within 15 calendar days of receiving the decision.