

STUDENT FEES

*Presentation by William A. Hornback
August 2, 2013*

RECENT CHANGES

Student fees have been a topic of great interest within the state for several years. AB 1575 was enacted into law in 2012, adding Education Code Sections 49010-49013 inclusive, copies of which follow these materials. In March 2013 the California Department of Education provided additional guidance, publishing FMA 12-01 reflecting information on student fees under new AB 1575. On April 24, 2013, CDE updated the FMA to change three items, noting that AB 1575 expressly makes its rules "declarative of existing law." This language in AB 1575 was the Legislature's way of saying "these have always been the rules." The other two changes were a rewording of the authorization for some preschool fees and turning all the footnotes in FMA 12-01 into endnotes in FMA 12-02.

Our School Business Law Updates dated October 11, 2012, and April 22, 2013 (copies following these materials), describe the impact of the bill, the CDE FMA, and some of the areas in which there may still be some ambiguity.

SUMMARY OF BASIC RULES

Basic rule: "A pupil enrolled in a school shall not be required to pay any fee, deposit, or other charge not specifically authorized by law" (5 CCR 350). Restated, the rule seems to mean "If required in order to participate, it must be provided free of charge unless a specific statute says otherwise." The rule prohibits requiring pupils or their parents/ guardians to provide anything required to participate in the program unless a fee is expressly authorized by law.

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. Other statutes authorize other fees. Summaries of the authorizations are provided in the CDE FMA and in FCMAT's ASB Accounting Manual, reprinted with permission in these materials. Links to these publications follow:

The CDE FMA can be found at: www.cde.ca.gov/re/lr/fm/fma1202.asp

The FCMAT ASB Manual can be found at: [www.fcmat.org/stories/storyReader\\$911](http://www.fcmat.org/stories/storyReader$911)

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. Such support can be requested but not required even where, due to funding cuts, a program is being kept alive only by outside fundraising efforts. 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.

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.

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

CONSEQUENCES

By March 2013 districts were to have revised their Uniform Complaint Procedures, in part to permit complaints regarding allegations of improper student fees. We have drafted a template complaint form which is included in these materials. Additionally, districts must give parents notice of their right to complain under these procedures; suggested language reflecting this requirement is contained in the Annual Notice to Parents, a copy of which is also included.

Complaints can be filed anonymously in some circumstances. If a complaint claims that a fee is inappropriate, the district must investigate and seek to resolve the claim as it would with other, non-fee related complaints, using the Uniform Complaint Procedure. If the individual filing the complaint is not satisfied with the district’s decision, the decision can be appealed to the CDE.

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 provide “. . . full reimbursement to all affected pupils, parents, and guardians” The district must use reasonable efforts to fully reimburse all affected pupils, parents, and guardians.

While it is unclear how far back in time the district must go to ensure full reimbursement to all those affected by a fee, proposed regulations (copies also included in these materials) currently indicate a district’s “reasonable efforts” include good faith efforts in researching district records and contacting pupils who were enrolled in or participating in the educational activity during the time the pupil fee was charged.

Reasonable efforts to fully reimburse all pupils, parents, and guardians who paid a pupil fee include but are not limited to crediting the pupil’s school financial account and sending reimbursement by First Class Mail to the pupil’s last known primary address contained in school

or local educational agency records. If the school has knowledge that a pupil's last known address contained in those records is no longer valid, the school may attempt to track them down using information from the United States Postal Service.

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

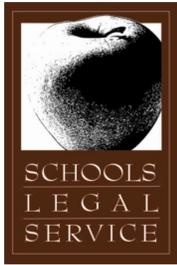
CHARTER SCHOOLS

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 prior advisory on student fees, issued in November 2011, indicated that charter schools are exempt from application of many of the fee authorization statutes; this exemption is the problem.

As noted above, the basic concept of student fees is that essential/required components of a public educational program should be free, and fees are only permitted if they apply to nonessential components of an educational program or are expressly authorized by statute. Most of the statutes expressly authorizing fees to be charged are found in the Education Code, in sections from which charter schools are exempt/free. We take this to mean that the permission granted to charge a fee does not apply to a charter school, unless the express language, or the context of the section, so indicates.

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 cannot provide computers or internet appliances to parents for a fee. Giving them for free raises questions about gifts of public funds. While the items are deemed to be nonessential components of a school district's programs, the same cannot be said about many charter schools, especially those that are online independent study or virtual schools where having a computer and internet connection appear to be components essential to participation in the program. The full impact of these problems has not been resolved.



School Business Law Update

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April 22, 2013

UPDATED CDE ADVISORY ON STUDENT FEES

The California Department of Education has provided updated guidance on student fees in light of questions following the passage last year of AB 1575. CDE's Advisory updates its prior guidance on the subject, from November 2011, and continues efforts to provide examples of what are and are not permissible fees, as well as providing clarification on what constitutes a "fee" in the first place.

The Advisory starts off by noting the California Constitution references a free school and Title 5 of the California Code of Regulations, Section 350, clearly indicates no fee, deposit, or other charge shall be required of any pupil unless specifically authorized by law.

AB 1575 added Sections 49010-49013, inclusive, to the Education Code. Section 49011(e) includes the statement that these sections are declaratory of existing law, meaning they are not intended to change the law, only to provide clarification. That being said, the law may only be partially clarified due to the language used in the new sections.

For example, Section 49011(a) clearly states that no pupil shall be charged a fee for any educational activity. Section 49010(b) defines "pupil fee" to include a charge, deposit, or required purchase; Section 49010(a) defines an "educational activity" to include an activity that "constitutes an integral fundamental part" of a program, including both curricular and extracurricular activities.

There is, however, no definition of what constitutes "an integral fundamental part" of an education 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." It would seem that "an integral fundamental part" of an education is something that is an essential component, of central importance to, or innate/ingrained. While it is fairly clear that team athletics are required to be free, "football" does not seem to meet the definition of an essential component in light of the vast majority of students who fail to take football yet are awarded diplomas. We also understand that this point of view regarding football is

subjective, and that there are portions of the state where football would be viewed as the primary component of the local educational program. This example is given to highlight the subjective nature of the phrase "integral fundamental part" as used in the Code. This subjectivity is what renders the sections vague and ambiguous and the subject still unclear. The CDE Advisory did not alleviate this problem.

The latest CDE Advisory continues to provide examples of what are and are not legal charges to pupils, and can at least be retained as a reference tool should any of the specific situations arise. We believe the following to be other examples, not included within the CDE Advisory but which we believe to be aligned with both the intent and letter of the law:

1. Calculators/Specialized Equipment for Particular Classes. We understand that for some classes, such as high level math classes, a calculator or other device may be required. In our opinion, if a device is required for a class, whether a required course or an elective, the device must be provided free to pupils. We also understand that some of these classes may have "class sets" of these types of equipment available for pupils, but that message may not be clearly communicated to pupils and/or parents.

2. Sports Uniforms. Team sports appear less complicated than individual sports, such as tennis or golf. All sports uniforms can be and are being required in order to participate. It would appear that any required uniform should be provided to the pupil, but often pupils want to own the uniform, to wear outside the sports event and after the sports season has been completed. These situations are often further complicated by the involvement of Booster Clubs and/or ASB groups in fundraising for clubs and sports programs. While the best way to approach such involvement may be to accept donations of funds from such groups, with the district purchasing the intended equipment or uniforms which are the target of the fundraising efforts, this is not always the approach used. Coordination of efforts with these groups is recommended, including awareness campaigns on the law of permissible and impermissible pupil fees and the need for clear communication with pupils and parents.

3. Common Materials/Supplies. Special materials (such as wood for a carpentry class or metal for a welding class and the like) appear to be routinely provided, but the same cannot be said for supplies common to all classes such as pens, pencils, and paper. The CDE Advisory cites Education Code Section 38118 as authority that all such items are required to be supplied free, although it does misquote the section, leaving out "blackboards" as an item required to be provided. The quote is followed with a citation to an old Attorney General Opinion which indicates that necessary supplies, if required, must be provided by the district. That AG's Opinion specifically mentions art materials, mechanical drawing sets, cloth for dressmaking classes, wood

for carpentry classes, gym suits, bluebooks for final exams, and paper on which to write any required theme or report. While we agree that pens, pencils, paper, and such items should be free to pupils, we are also aware that students sometimes bring their own without being required to do so. There is no prohibition against pupils voluntarily bringing their favorite pens, pencils, or paper for their personal use, so long as those items are also available, for free, and so long as the pupils are making an informed choice. Pupils and parents should know those required items will be provided by the district. The Annual Notice to Parents is the logical place to add such details and our Annual Notice format is being updated to reflect additional information on this subject.

4. Instruments/Sports Gear. Again, while it seems clear that a musical instrument should be provided to a student participating in band, and that headgear, pads, and uniforms should be required items for football, this does not answer all the questions. For example, if a band student wants to bring and play their own clarinet, is that permissible? Is it okay if a golfer/tennis player wants to use personal golf clubs/tennis rackets (so long as they comply with league equipment rules)? The ambiguities in the Code permit differing interpretations; over time, subsequent claims and future ACLU lawsuits may provide additional clarification. (As you know, Uniform Complaint Policies were to be updated by March 1, 2013, to include provisions for complaints related to student fees. We see this as a likely area in which fees issues may arise in the future.) We believe these items must be available and offered for student use, but their use is not mandatory if the student desires to use acceptable personal equipment.

As noted, the current state of the law permits fees to be charged when the activity is purely recreational rather than educational. The point was made in 1984 in *Hartzell v. Connell* (35 Cal.3d 899, 910-911) and the CDE Advisory does not indicate that any change has been or should be made to that rule. Application of this rule is, however, also subject to the ambiguity around what constitutes "an integral fundamental part" of an educational program. Do "graduation ceremonies" constitute integral fundamental parts of the educational program or are they purely recreational celebrations (while not required elements of the educational program, caps and gowns are required to attend)? Absent further clarification, this question may be subject to differing interpretations from location to location. Our opinion is that these items should be provided free to students, who may keep them if they want to pay a fee.

Until additional clarification comes in, we will suggest some basic rules for interpreting the current Code. Starting with the basic rule, "A pupil enrolled in a school shall not be required to pay any fee, deposit, or other charge not specifically authorized by law" (5 CCR 350), this really sets the tone for pupil fees questions. Restated, the rule seems to mean "if it is required in order to participate, it must be provided for free, unless a specific statute says otherwise." This prohibits requiring pupils/parents to provide any required materials, unless authorized by law. For example,

while books and equipment must be provided for free, the cost of any replacement books and equipment, or replacement materials such as wood, can be charged to a pupil when the originally issued free items are lost or destroyed. Those fees are authorized by statute. Nor can pupils/parents be compelled to perform fundraising activities to help defray the cost of the program; however, requesting voluntary fundraising support is permitted by statute. This would include circumstances where, due to funding cuts, a program is being kept alive only by outside fundraising efforts. The source of the funding is not the question. The fees rules apply to all district programs, even if the only funding being used in the program originates from outside fundraising activities.

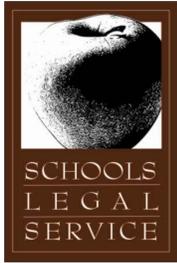
It seems a safe way to look at this whole question is to identify everything district pupils do, every activity in which they participate, and pay for it or provide it, unless there is a specific statute saying otherwise or the activity is purely recreational and not educational. This would apply to any district activity whether or not it is for credit, whether or not it is curricular or extracurricular, whether for a required subject or elective.

The CDE Advisory provides examples of fee statutes and impermissible fees (cde.ca.gov/re/lr/fm/fma1201.asp) and FCMAT's ASB Manual has a chapter on student fees ([fcmat.org/stories/storyReader\\$911](http://fcmat.org/stories/storyReader$911)). These provide the most detailed lists of what can and cannot be charged or required, but we are certain there are many more questions that remain unanswered.

Questions may arise about fees/charges in areas not covered by either the CDE Advisory or the FCMAT ASB Manual. We strongly suggest such questions be raised with district administration and/or legal counsel, especially in light of the potential for claims to be filed by parents who may question fees/charges.

— William A. Hornback

School Business Law Updates are intended to alert clients to developments in legislation, opinions of courts and administrative bodies and related matters. They are not intended as legal advice in any specific situation. Please consult legal counsel as to how the issue presented may affect your particular circumstances.



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October 11, 2012

AB 1575, STUDENT FEES BILL, BECOMES LAW

Governor Brown approved AB 1575 on September 29, 2012. This bill, which has the support of the California ACLU, is a legislative attempt to reach resolution in the 2010 ACLU lawsuit over pupil fees. A prior legislative attempt, AB 165, which also had the support of the ACLU, was vetoed by the Governor last year.

AB 1575, which applies to all public schools (including charter and alternative schools), is an attempt to legislate clarification of the California Supreme Court's 1984 decision in *Hartzell v. Connell* (35 Cal.3d 899 [1984]) the case holding that imposition of pupil fees violates the constitutional right to a free education and that extracurricular activities must also be free. The bill states that all educational activities should be free to pupils and their parents, and defines educational activity to mean any activity offered that constitutes an "integral fundamental part" of elementary and secondary education, including but not limited to curricular and extracurricular activities. The term "integral fundamental part" is not defined in the bill, but is found in the *Hartzell* opinion. This is, perhaps, not the end of the debate, as the concept of what does or does not constitute an "integral fundamental part" of an educational program has yet to be resolved, as does application of the rule to non-educational school activities.

The bill defines "pupil fee" to include any fee for registering or attending classes or participating in extracurricular activities, whether elective or compulsory and whether or not for credit, and indicates that the term may also include a security deposit or other payment to obtain a lock, locker, book, class apparatus, musical instrument, uniform, or other materials or equipment. Finally, a "pupil fee" also includes any purchase a pupil is required to make to obtain materials, supplies, equipment, or uniforms associated with an educational activity. The bill clearly indicates that all required ". . . supplies, materials, and equipment needed to participate in educational activities shall be provided to pupils free of charge . . ." and that a fee waiver policy does not make the fee legal.

Since the bill is intended to clarify the *Hartzell* decision, we must understand *Hartzell* to understand the bill. *Hartzell* decided that a free education in California included extracurricular programs as well as curricular, indicating the focus was not on ". . . the formalities of credit, but

upon the educational character of the activities in question." So if the educational character was what the Hartzell court found important, the "integral fundamental" portions of the free educational program can be said to include anything educational. Extracurricular activities were noted to be:

" . . . [no] less fitted for the ultimate purpose of our public schools, to wit, the making of good citizens physically, mentally, and morally, than the study of algebra and Latin If the fundamental task of the school is to prepare children for life, the curriculum must be as wide as life itself. It should be thought of as comprising all the activities and the experiences afforded by the community through the school, whereby the children may be prepared to participate in the life of the community

"Once the community has decided that a particular educational program is important enough to be offered by its public schools, a student's participation in that program cannot be made to depend upon his or her family's decision whether to pay a fee or buy a toaster."

Title 5, Section 350 of the California Code of Regulations, states: "A pupil enrolled in a school shall not be required to pay any fee, deposit, or other charge not specifically authorized by law." This section has been interpreted to preclude fees for musical instruments, special uniforms used in extracurricular activities, club dues, and extracurricular athletic teams. The *Hartzell* case also noted the fundamental nature of such items as a football program, band uniforms, athletic competition, "sports, drama and the like"

The *Hartzell* decision pointed out that not all school-related activities are required to be free, indicating the extracurricular activities in that case were agreed to be "educational." The court went on to say, in a footnote, that 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." The *Hartzell* court left open the question of whether noneducational activities could properly incur a fee, saying: "Since no noneducational programs are involved in this case . . . this court need not decide whether Title 5, Section 350's prohibition on fees extends beyond educational activities."

Accordingly, in the absence of a statute authorizing application of a fee, AB 1575 prohibits a fee or deposit of any kind involving an "educational activity" that is an "integral fundamental part" of elementary or secondary education. The bill also expressly approves voluntary participation in fundraising activities and donations of funds or property, and solicitation of the same by schools, and the bill indicates claimed violations of the anti-fee rules may properly be the subject of a claim

under the uniform claims procedures, permitting anonymous claims when appropriate and providing for appeals, reimbursements, and mandating annual notice of these requirements.

Please do not hesitate to contact us if you have questions about the propriety of any specific fee, deposit, or charge or would like to discuss these matters in greater detail.

– *William A. Hornback*

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[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.

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

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.

FCMAT
Associated Student Body Accounting Manual, Fraud Prevention Guide and Desk
Reference - 2012¹

Chapter 9 – Class Fees, Deposits and Other
Charges – Grades K-12

There is considerable confusion regarding fees, deposits and other charges, and how they relate to K-12 education. Because many fees are deposited into ASB accounts, a discussion is merited to provide clarity. Inclusion of this topic in the ASB manual, however, does not imply that the legally permitted fees, deposit and other charges belong to ASB. In fact, most of the allowable fees belong to the school district and should be deposited accordingly. This chapter is intended to educate readers about what is allowable in grades K-12, regardless of where the money should be deposited.

Public educational agencies have had to survive budget cuts year after year because of decreasing enrollment, decreases in state funding and various other factors; therefore, these agencies continue to find different ways to increase revenues. However, public educational agencies have limited options when charging student fees, and legal guidelines are in place regarding items for which fees can be charged. Before assessing or charging a fee or deposit of any kind, a public educational agency must ensure that it is legal. There have been lawsuits and challenges in this area in recent years because of the large number of reports from parents that schools were charging students illegal fees. The most publicized of these lawsuits resulted from a statewide investigation by the American Civil Liberties Union (ACLU), which found that more than 50 school districts listed illegal fees on their websites.

The California constitution provides for a free public school system. Since 1874, the California Supreme Court has interpreted this to mean that students are entitled to be educated at the public's expense. Any fees charged for educational activities would clearly be in violation of this free school system guarantee, including fees for textbooks, materials and/or supplies. 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 also stated that pupils enrolled in public schools shall not be required to pay any fee, deposit or other charge unless it is specifically authorized by law. This understanding is based on Article IX, Section 5 of the California constitution, which provides for a free public school system, stating the following:

The Legislature shall provide for a system of common schools by which a free school shall be kept up and supported in each district at least six months in every year, after the first year in which a school has been established.

The attorney general's office has also made it clear in many of their opinions that public educational agencies cannot levy fees as a condition of participation in any class, whether the class is elective or compulsory. Prohibited fees include security deposits for locks, lockers, books, class apparatus, musical instruments, uniforms, or other equipment. Because of the *Hartzell v. Connell* case, (35 Cal. 3d 899 (1984)), the California Supreme Court stated that students may not be charged fees for participation in either curricular or extra-curricular activities. Whenever a curriculum or extra-curricular program is adopted, all supplies, both necessary and supplemental, must be provided free of charge by the district because these activities are an

¹ Used With Permission

integral component of public education. Based on a footnote in the Hartzell case, fees can be charged for school- or district-sponsored activities that are purely recreational rather than educational and at which attendance is optional, such as an after-school dance or a weekend athletic event.

Fee waivers do not make unlawful fees permissible; a district cannot establish a two-tiered educational system by defining some minimum educational standard as the requirement and then telling students and parents that there is also a second, higher standard which they can strive for if they pay rent or fees or provide certain additional supplies not provided by the school. Thus it is not permissible for a class to have a project that students will be graded on, but then offer an additional project that can be done if fees are paid for the materials and/or supplies for the additional project. All students in the class must have the same opportunity to make all of the projects and receive all applicable materials for free. Money cannot determine who gets to do what projects.

Schools can always ask for donations if they are genuinely voluntary and if a student's ability to participate in a school activity, either curricular or extracurricular, is in no way determined based on whether a donation was made. When asking for donations or fees, schools and districts should consider working with their own attorneys to ensure compliance with these important laws. Many schools send out donation requests with wording that indicates the donation is required rather than voluntary; this is in essence the same as a fee.

Allowable Fees

The Education Code specifically includes certain fees that have been approved by the Legislature, which means that they are not forbidden by the code of regulations Title 5 prohibition discussed above. Thus schools are allowed, but not required, to charge the fees listed below. Although these allowable fees are discussed in this manual, it 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. In fact, when reviewing fees that have been deposited into ASB accounts, it is common to find that the fees collected were not legal, or that they were improperly deposited into an ASB account rather than a district account. The following fees can be levied 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(b), (d), and (f)].
 - These fees can also be charged for transportation between school and regional occupational centers, programs or classes.
 - 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. There must also be a waiver provision based on financial need.
 - Fees may not be charged for students with disabilities whose special education individualized education program (IEP) includes transportation as a related service necessary for them to receive a free appropriate public education.
 - The fee cannot exceed the statewide average nonsubsidized cost per pupil.
- Fees for 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, subject to free and reduced-price meal program eligibility and other restrictions specified in law (Education Code sections 38082 and 38084).
- Fees at not less than cost for materials for adult classes, including materials necessary to make items that will become the property of the student who made the item (Education Code sections 52612, 52615 and 17552).
- Fees for an adult enrolled in any class except classes in English and citizenship (may be charged through July 1, 2015), 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(a) and (b)].

- Adult students may be charged fees for materials and textbooks or a refundable deposit on loaned items (Education Code sections 52165 and 60410).
- Adults students 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).
- Deposits for school band instruments, music, uniforms and other items for use on an excursion to a foreign country (Education Code section 38120).
- Medical or hospital insurance for field trips that is made available by the school district. [Education Code section 35331(b)(2)].
- Payment for the replacement of books, supplies or property loaned to a pupil that the pupil fails to return or that are willfully cut, defaced or otherwise damaged, up to an amount not to exceed \$10,000 (Education Code sections 19911 and 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. The pupils may be admitted to a school but shall be required to reimburse the district for the cost of educating the pupil. (Education Code sections 48050 and 48502).
- Tuition fees may be 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 [8 USC section 1184(m)(1)].
- 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, art or sewing in which an item is kept by the pupil, 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.
- Charges for safety glasses, for a pupil to keep, so long as the school provides them free of charge for use in specified courses or activities involving the use of hazardous substances likely to cause injury to the eyes (Education Code sections 32030-32033).
- Fees for the sale or lease of Internet appliances or personal computers to parents to provide access to the school district's educational computer network, at no more than cost, so long as the district provides network access for families who cannot afford it. An Internet appliance is a technological product that allows a person to connect to or access an online educational network. The Internet appliances and personal computers referred to in this section are deemed supplemental and not an essential part of the school district's educational program (Education Code section 17453.1).

- Fees for an optional fingerprinting program for students in kindergarten or other newly enrolled students if the fee does not 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. These include classes such as dance, music, theatre, visual arts, handicraft, science, literature, nature study, nature contacting, aquatic sports and athletics. These classes are primarily intended for adults and are open only to minors whom the governing board believes will profit from such classes (Education Code sections 51810, 51811 and 51815).
- Fees for after-school education and safety programs, so long as no eligible student is denied the ability to participate because of an inability to pay the fee (Education Code section 8482.6).
- Fees for the actual cost of duplicating public records, pupil records, or a prospectus of the school curriculum. There are two exceptions: First, no charge shall be made for furnishing up to two transcripts of former pupils' records or up to two verifications of various records of former pupils. Second, if the cost would effectively prevent the parent of a special education pupil from exercising the right to receive copies of pupil records, the copies shall be reproduced at no cost (Education Code sections 49063(h), 49091.14, 49065 and 56504; Government Code section 6253).
 - 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 required medical and accident insurance for athletic team members that is not paid by school district or student body funds, so long as there is a waiver for financial hardship (Education Code sections 32220-32224).
- Fees for field trips and excursions in connection with courses of instruction or school-related social, educational, cultural, athletic or band activities, so long as no pupil is prevented from making the field trip or excursion because of a lack of sufficient funds [Education Code section 35330(b)].
 - Fees should be collected on a voluntary basis only. .
 - A school must not require that a student pay 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 [Ops. Cal. Atty. Gen. No. NS-2469 (1940)].
 - 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 outdoor science camp programs, so long as no pupil is denied the opportunity to participate because of nonpayment of the fee (Education Code section 35335).
- Fees for Advanced Placement and International Baccalaureate Diploma examinations for college credit, so long as (1) taking the exam is not a course requirement; (2) the exam results have no impact on a pupil's grade or credit in a course; (3) eligible economically disadvantaged high school pupils who receive school district funding towards the exam fee shall pay \$5.00 of the fee (Education Code sections 52240-52244 and 52920-52922).
- Fees for child care and development services, except that no fees shall be assessed to families whose children are enrolled in the state preschool program or for such services provided to severely disabled children. Fees for supervision of children before and after school, except that no child who desires to participate shall be denied the opportunity to participate because of the inability to pay the fee [Education Code sections 8250(d)(3), 8263(h)(1), 8265, 8487, and 8488].

Prohibited Fees

California Education Code section 38118 states, "Writing and drawing paper, pens, inks, blackboard erasers, crayons, lead pencils and other necessary supplies for the use of the schools shall be furnished under direction of the governing board of the school district." Based on this section, the attorney general has concluded that art material for art classes and mechanical drawing sets, cloth for use in dressmaking classes, wood for carpentry classes, gym suits for physical education classes, bluebooks necessary for final

examinations, and paper on which to write a theme or report when such a theme or report is a required assignment, are necessary supplies. Thus if a school district requires pupils to use them, they must be furnished by school district without charge so that the pupil can participate. It appears that such supplies must be available to enable students to participate in regular classroom work.

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.

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).
- Charges for textbooks and workbooks, except for classes for adults (Education Code sections 60070 and 60410).
- Charging an apprentice or their parents or guardian for admission or attendance in any class, pursuant to section 3074 of the Labor Code (Education Code section 48053).
- 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).
- Fees to process an interdistrict transfer request from a pupil residing in another district.
- Reimbursement for lost average daily attendance (ADA) revenue for absences from school.
- 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.

Charter Schools

Education Code section 47605(d) prohibits a charter school from charging tuition, but the code is silent on fees or other charges. Although charter schools are exempt from most laws governing school districts per Education Code section 47610, the California constitution cannot be rendered inapplicable by the Legislature. Therefore, the California constitution’s guarantee of a free public education also applies to charter schools.

Charter schools may only charge those fees authorized in Education Code sections that have been made applicable to charter schools. For example, charter schools can charge fees for food and field trips because those Education Code sections apply to charter schools. However, charter schools cannot charge the “other fees authorized by law” that districts can, except for fees related to activities that are not an integral component of public education.



CALIFORNIA
DEPARTMENT OF
EDUCATION

TOM TORLAKSON
STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

FISCAL MANAGEMENT ADVISORY 12-02

DATE: April 24, 2013

TO: County and District Superintendents
Charter School Administrators

FROM: Jeannie Oropeza, Deputy Superintendent
Services for Administration, Finance, Technology, and Infrastructure Branch

SUBJECT: Pupil Fees, Deposits, and Other Charges

This Advisory updates Fiscal Management Advisory 12-01. It reflects the most recent legislation, including AB 1575 (Stats. 2012, c. 776) which noted that it was "declarative of existing law." It also reflects the most recent California Supreme Court interpretations.

Pupil Fees, Deposits and Charges in California Public Schools

I. A Free Public School System

"A pupil enrolled in a school shall not be required to pay any fee, deposit, or other charge not specifically authorized by law."⁴

With this regulatory language the State Board of Education made clear that fees are not to be imposed except where specifically authorized by law. This administrative regulation was promulgated based on the authority of Article IX, Section 5 of the California Constitution which provides for a free school system:

The Legislature shall provide for a system of common schools by which a free school shall be kept up and supported in each district at least six months in every year, after the first year in which a school has been established.

In 1874, the State Supreme Court held that this provision entitled students to be educated at public expense.⁵

The California *Education Code (EC)*, as amended by Assembly Bill (AB) 1575 in 2012, provides that a pupil enrolled in a public school shall not be required to pay a pupil fee for participation in an educational activity.⁶ "Educational activity" is defined as 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.⁷ "Pupil fee" is defined as a fee, deposit or charge imposed on pupils, or a pupil's parents or guardians, including but not limited to:

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.⁸

All of the following apply to the prohibition on pupil fees described above:

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.⁹
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's parents or guardians did not or will not provide money or donations of goods or services to the school district or school.⁴²

Schools can solicit voluntary donations of funds or property, and voluntary participation in fundraising activities.⁴³

The following analysis may be helpful when determining whether a fee can be charged: Is the fee specifically authorized by statute? If so, the fee can be charged. If the fee is not specifically authorized by statute, does it relate to an activity that is an integral component of public education? If so, the fee cannot be charged. Local educational agencies (LEAs) may also wish to consult their own attorneys.

II. Fees Authorized by Law

The prohibition on "pupil fees" as defined above does not prohibit imposition of a fee, deposit or other charge otherwise allowed by law. (EC Section 49011(e)). The legislature has passed a number of laws authorizing specific fees. Schools may, but are not required to, charge the following fees:

Materials and equipment

- A. Reimbursement for the direct cost of materials provided to a pupil for property the pupil has fabricated from such materials to take home for his/her own possession and use, such as wood shop, art, or sewing projects kept by the pupil. (EC Section 17551.)
- B. Charges for safety glasses, for a pupil to keep, so long as the school provides them free of charge for use in specified courses or activities involving the use of hazardous substances likely to cause injury to the eyes. (EC Sections 32030-32033.)
- C. Fees for sale or lease of Internet appliances or personal computers to parents for the purpose of providing access to the school district's educational computer network, at no more than cost, so long as the district provides network access for families who cannot afford it. An Internet appliance is a technological product that allows a person to connect to, or access, an online educational network. The internet appliances and personal computers referred to in this section are deemed supplemental and not an essential part of the school district's educational program. (EC Section 17453.1.)

Transportation

- D. Fees for transportation to and from school, and transportation between school and regional occupational centers, programs or classes, as long as (1) the fee does not exceed the statewide average nonsubsidized cost per pupil; (2) there is a waiver provision based on financial need; and (3) fees are not charged to pupils with disabilities whose Individualized Education Program (IEP) includes transportation as a related service necessary for them to receive a free appropriate public education. (EC Section 39807.5(b), (d), and (f).)⁴⁴
- E. Fees for transportation of pupils to and from their places of summer employment in connection with any summer employment program for youth. (EC Section 39837.)
- F. Fees for all or part of the cost of transportation for adult students. (EC Section 39801.5.)

Food

- G. Charges for food served to pupils, subject to free and reduced price meal program eligibility and other restrictions specified in law. (EC Sections 38082 and 38084.)

Lost or Damaged Property

- H. Payment for the replacement cost for district books, supplies or property loaned to a pupil that the pupil fails to return, or that are willfully cut, defaced or otherwise damaged, up to an amount not to exceed \$10,000, adjusted annually for inflation. (EC Sections 19911 and 48904.)

Field Trips

- I. Fees for field trips and excursions in connection with courses of instruction or school-related social, educational, cultural, athletic, or school band activities so long as no pupil is prevented from making the field trip or excursion because of lack of sufficient funds. (EC Section 35330(b).)⁴³
- J. Medical or hospital insurance for field trips that is made available by the school district. (EC Section 35331(b)(2).)
- K. Deposits for school band instruments, music, uniforms, and other regalia for use on an excursion to a foreign country. (EC Section 38120.)

Community Service Classes

- L. 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. (EC Sections 51810 and 51815.) These include classes such as dance, music, theatre, visual arts, handicraft, science, literature, nature study, nature contacting, aquatic sports and athletics. (EC Section 51810.) These classes are primarily intended for adults and are open only to those minors whom the governing board believes will profit from such classes. (EC Section

51811.)

- M. Fees for adults for any classes **except** classes in elementary subjects and classes for which high school credit is granted when taken by a person not holding a high school diploma. (EC Section 52612(a).)⁴⁴ Fees for adult classes in English and citizenship may be charged through July 1, 2015. (EC Section 52612(c).)⁴⁵
- N. Fees for materials and textbooks or a refundable deposit on loaned books, in classes for adults. (EC Sections 52165 and 60410.)
- O. Fees (at not less than cost) for adult class materials, including those necessary for the making of articles that shall become the property of the student who made it. (EC Sections 52612, 52615, and 17552.)

Athletic Team Insurance

- P. Charges for required medical and accident insurance for athletic team members that are not paid by school district or student body funds, so long as there is a waiver for financial hardship. (EC Sections 32220-32224.)

Tuition

- Q. Tuition fees charged to pupils whose parents are actual and legal residents of an adjacent foreign country or an adjacent state. The pupils may be admitted to a school but shall be required to reimburse the district for the cost of educating the pupil. (EC Sections 48050 and 48052.)
- R. Tuition fees may be 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. (8 U.S.C. Section 1184(m) (1).)

School Camp Programs

- S. Fees for outdoor science school camp programs, so long as no pupil is denied the opportunity to participate because of non-payment of the fee. (EC Section 35335.)

Child Care and Development

- T. Fees for child care and development services, except that no fees shall be assessed to students enrolled in the program for severely disabled children as stated in EC Section 8250(d) or families receiving CalWORKS cash aid. Fees for state preschool, except that no family fees shall be assessed to students placed in state preschool by an IEP or families receiving CalWORKS cash aid. (EC Sections 8239, 8250(d)(3), 8263(g),(h), 8265, 8447(g), 56000.) Fees for supervision of children before and after school, except that no child who desires to participate shall be denied the opportunity to participate because of inability to pay the fee. (EC Sections 8487 and 8488.)

Fingerprinting

- U. Fees for an optional fingerprint program for children in kindergarten or other newly enrolled children if the fee does not exceed the actual costs associated with the program. (EC Section 32390.)

Duplication of Records

- V. Fees for the actual cost of duplicating public records, pupil records, or a prospectus of the school curriculum. (Government Code Section 6253; EC Sections 49063(h) and 49091.14.) There are two exceptions: First, no charge shall be made for furnishing up to two transcripts of former pupils' records or up to two verifications of various records of former pupils. (EC Section 49065.) Second, if the cost would effectively prevent the parent of a special education pupil from exercising the right to receive copies of pupil records, the copies shall be reproduced at no cost. (EC Section 56504.)

Specialized Examinations

- W. Fees for Advanced Placement and International Baccalaureate Diploma examinations for college credit, so long as (1) taking the exam is not a course requirement and (2) the exam results have no impact on a pupil's grade or credit in a course. An LEA may fund all or part of the cost of the AP test fee for an economically disadvantaged high school pupil or the IB test fee for a low- or middle-income pupil. (EC Sections 52240-52243; 52920-52922.)

After School Programs

- X. Fees for After School Education and Safety Programs, so long as no eligible student is denied the ability to participate because of an inability to pay the fee. (EC Section 8482.6)

III. Fees Not Allowed

The Opinions of the Attorney General⁴⁶ indicate that charges may not be levied for the following:

- A. A deposit in the nature of a guarantee that the district would be reimbursed for loss to the district on account of breakage, damage to, or loss of school property;
- B. 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;
- C. 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.
- D. Membership fees in a student body or any student organization as a condition for enrollment or participation in athletic or other curricular or extracurricular activities sponsored by the school;⁴⁷
 - E. Charges to an apprentice, or his or her parents or guardian, for admission or attendance in any class pursuant to Section 3074 of the Labor Code. (EC Section 48053.)
 - F. Charges for textbooks and workbooks (except for classes for adults). (EC Sections 60070 and 60410.)
 - G. Fees to process an interdistrict transfer request by a pupil residing in another district.⁴⁸
 - H. Reimbursement for lost Average Daily Attendance revenue for absences from school.⁴⁹

As for school supplies, EC Section 38118 provides:

Writing and drawing paper, pens, inks, blackboard erasers, crayons, lead pencils, and other necessary supplies for the use of the schools shall be furnished under direction of the governing board of the school district.

The Attorney General has issued an opinion that all of the following are "necessary supplies" and therefore, if the school district requires that pupils use such items, the school district must provide them to pupils for free in order to participate in regular classroom work in the particular subjects involved.⁴⁵

- A. Art material for art classes and mechanical drawing sets;
- B. Cloth to be used in dressmaking classes and wood for carpentry classes;
- C. Gym suits for physical education classes;⁴⁶
- D. Bluebooks in which to write a final examination; and
- E. Paper on which to write a theme or report when such theme or report is a required assignment.

No statute specifically authorizes tuition for summer school. Therefore, tuition or any such fee or charge relating to summer school is prohibited under California Code of Regulations, Title 5 (5 CCR), Section 350, which precludes charging fees for educational activities not specifically authorized by law.

IV. Fee Issues Specific to Charter Schools

EC Section 47605(d) specifically prohibits a charter school from charging tuition, but does not mention fees or other charges. Charter schools are exempt from most laws governing school districts (EC Section 47610). However, the California Constitution, which is the highest law of the state, cannot be rendered inapplicable by the Legislature. Therefore, the free school guarantee of the California Constitution, Article IX, Section 5, applies to charter schools. The EC, as amended by AB 1575 in 2012, makes clear that the prohibition on pupil fees applies to charter schools.⁴⁵

Only some EC sections specifically authorizing fees have explicitly been made applicable to charter schools. Charter schools may only charge fees authorized by those EC sections that have been made explicitly applicable to charter schools. For example, charter schools can charge fees for food and field trips -- subject to the restrictions on those fees as described in Section II, G and I, above -- because the EC applies those provisions to charter schools.⁵³ Conversely, charter schools cannot charge other "fees authorized by law" in Section II above, except to the extent that any such fees do not relate to an activity that is an integral component of public education.

⁴ California Code of Regulations, Title 5, Section 350.

⁵ Ward v. Flood, 48 Cal. 36, 51 (1874).

⁶ EC Section 49011(a).

⁷ EC Section 49010(a); see Hartzell v. Connell, 35 Cal. 3d 899, 910-911 (9184). The Hartzell court suggested that fees for optional attendance at school or District sponsored activities that are purely recreational (rather than educational) in nature, such as a weekend dance or an athletic event, may be legal. Id. at 911, n. 14.

⁸ EC Section 49010(b); see Ops. Cal. Atty. Gen. No. NS 2469 (1940).

⁹ See Hartzell v. Connell, 35 Cal. 3d 899, 912-913 (1984).

¹⁰ EC Section 49011(b).

¹¹ EC Section 49011(c).

¹² The California Supreme Court has ruled that this statutorily-authorized fee does not violate the constitutional free school

guarantee because home-to-school transportation is neither an educational activity nor an essential part of school activity. *Arcadia School District v. State Department of Education*, 2 Cal. 4th 251, 263-264 (1992).

⁴³ A school must not require that a student pay 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. *Ops. Cal. Atty. Gen. No. NS 2469* (1940).

⁴⁴ The EC authorizes flexibility in the use of funds appropriated for Adult Education programs and deems LEAs who spend those funds flexibly to be in compliance with applicable funding and program requirements. EC Section 42605(a)(1), and (d). The fees provision in EC Section 52612 is not altered by EC Section 42605.

⁴⁵ Cal. Stats. 2011, c. 606 (A.B. 189), Section 2.

⁴⁶ See, e.g., *Ops. Cal. Atty. Gen. No. NS 2469* (1940).

⁴⁷ A school district may not charge 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. (EC Section 52375.) Nor may a school district charge fees for 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. (EC Section 52373.) The exception is when fees are charged to provide transportation between the regular full-time day schools the pupil would attend and the regular full-time occupational training classes they attend provided by a regional occupational center or program. (EC Section 39807.5.)

⁴⁸ *Ops. Cal. Atty. Gen. No. 04-501* (2004).

⁴⁹ *Ops. Cal. Atty. Gen. No. 96-1004* (1997). The original Opinion referred to ADA lost for unexcused absences only. Since then, the law has changed such that ADA cannot be earned for unexcused or excused absences. (EC Section 48205(d), amended by Cal. Stats. 1999, c. 312 (S.B. 1208), Section 1.) Presumably the previous Opinion likewise applies to ADA lost because of excused absences.

⁴ *Ops. Cal. Atty. Gen. No. NS-4114* (1942).

⁴ Specifically with respect to gym clothes, EC Section 49066(c) states that: "[n]o 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."

⁴ EC Sections 49010(a), 49011(d).

⁵³ EC Section 35330(d) (field trips); EC Section 49430.7(a)(2) (food).

Last Reviewed: Thursday, April 25, 2013

1 The State Board of Education has illustrated changes to the original text in the
2 following manner: text originally proposed to be added is underlined; text proposed
3 to be deleted is displayed in ~~strikeout~~.
4

5 **Title 5. EDUCATION**

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

7 **Chapter 5.1. Uniform Complaint Procedures**

8 **Subchapter 1. Complaint Procedures**

9 **Article 1. Definitions**

10 **§ 4600. General Definitions.**

11 As used in this chapter, the term:

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

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

19 ~~(c)(h)~~ "CDE Department" means the California Department of Education.

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

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

31 ~~(f)(e)~~ "Complaint investigation" means an administrative process used by the
32 California Department of Education (CDE) or local educational agency (LEA) for the
33 purpose of gathering data regarding the complaint.

34 ~~(g)(f)~~ "Complaint procedure" means an internal process used by the CDE

1 Department or LEA local educational agency to process and resolve complaints.

2 ~~(h)(g)~~ “Days” means calendar days unless designated otherwise.

3 (i) “Direct state intervention” means the steps taken by the CDE Department to
4 initially investigate complaints or effect compliance.

5 (j) “Educational activity” shall have the same definition as found in Education Code
6 section 49010(a).

7 ~~(k)(j)~~ “Educational institution” means a public or private preschool, elementary, or
8 secondary school or institution, the governing board of a school district, or any
9 combination of school districts or counties recognized as the administrative agency for
10 public elementary or secondary schools.

11 ~~(l)(k)~~ “Facilities that pose an emergency or urgent threat to the health or safety of
12 pupils or staff” means a condition as defined in Education Code section 17592.72(c)(1)
13 ~~paragraph (1) of subdivision (c) of section 17592.72~~ and any other emergency
14 conditions the school district determines appropriate.

15 ~~(m)(l)~~ “Good repair” shall have the same definition as that found in Education Code
16 section 17002(d).

17 ~~(n)(m)~~ “Instructional materials” means all materials that are designed for use by
18 pupils and their teachers as a learning resource and help pupils to acquire facts, skills,
19 or opinions or to develop cognitive processes. Instructional materials may be printed or
20 nonprinted, and may include textbooks, technology-based materials, other educational
21 materials, and tests.

22 ~~(o)(n)~~ “Local agency” means a school district governing board or a local public or
23 private agency which receives direct or indirect funding or any other financial
24 assistance from the state to provide any school programs or activities or special
25 education or related services.

26 ~~(p)(o)~~ “Local educational agency” (LEA) includes any public school district and
27 county office of education or direct-funded charter school.

28 ~~(q)(p)~~ “Mediation” means a problem solving activity whereby a third party assists the
29 parties to the dispute in resolving the complaint.

30 ~~(r)(q)~~ “Misassignment” means the placement of a certificated employee in a
31 teaching or services position for which the employee does not hold a legally recognized
32 certificate or credential or the placement of a certificated employee in a teaching or
33 services position that the employee is not otherwise authorized by statute to hold.

1 ~~(s)(r)~~ “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.

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

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

17 ~~(v)(w)~~ “SSPI Superintendent” means the State Superintendent of Public Instruction
18 or his or her designee.

19 ~~(w)(s)~~ “State agency” means the State Departments of ~~Mental Health~~ State
20 Hospitals or Health Services or any other state administrative unit that is or may be
21 required to provide special education or related services to children with disabilities
22 pursuant to Government Code section 7570 et seq.

23 ~~(x)(t)~~ “State mediation agreement” means a written, voluntary agreement approved
24 by the CDE Department, which is developed by the parties to the dispute, which
25 resolves the allegations of the complaint.

26 ~~(y)(u)~~ “Subject matter competency” means the teacher meets the applicable
27 requirements of Chapter 6, article 1, subchapter 7 of these regulations, commencing
28 with section 6100, for the course being taught.

29 ~~(z)(v)~~ “Sufficient textbooks or instructional materials” means that each pupil,
30 including English learners, has a textbook or instructional materials, or both, to use in
31 class and to take home but does not require two sets of textbooks or instructional
32 materials for each pupil. Sufficient textbooks or instructional materials does not include

1 photocopied sheets from only a portion of a textbook or instructional materials copied to
2 address a shortage.

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

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

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