



LAW UPDATE EDUCATION

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Student Debt Collection Do's and Don'ts

As graduation day nears, it's timely to remind districts of some "graduation-related" practices that would likely be considered controversial or worse, illegal.

From time to time students and/or their parents allow debt to the district to remain unpaid. Some debt can result in districts withholding grades, diplomas, and transcripts until the debt is paid. Other debt, especially delinquent meal charges, have no such remedy.

Under Education Code Section 48904, the parent or guardian of any minor shall be liable for all damages (\$10,000 maximum, adjusted for inflation¹) caused by the minor related to:

1. Willful misconduct resulting in injury or death to any pupil or any person employed by, or performing volunteer services for, a school district; or
2. Willful cutting, defacing, or otherwise injuring in any way any real or personal property belonging to a school district, or personal property of any school employee; or
3. Reward offered by the district (\$10,000 maximum, adjusted for inflation); or
4. All property belonging to the school district loaned to the minor and not returned upon demand of an authorized district employee. [EC 48904(a)(1)]

¹ Effective January 1, 2018, the inflation adjusted liability limit increased from \$19,200 to \$19,600.

After affording the pupil due process rights, a school district can withhold grades, diplomas, or transcripts until payment of a debt for:

1. Willful cutting, defacing, or otherwise injuring in any way any real or personal property belonging to the district; or
2. All property belonging to the school district loaned to the minor and not returned upon demand of an authorized district employee. [EC 48904(b)(1)]

Due process rights include the district's written notification to the parent/guardian before withholding grades, diplomas, or transcripts. When the minor and parent are unable to pay, or to return the property, the district must provide a program of voluntary work for the minor in lieu of the payment, with the grades, diplomas, and transcripts being released upon completion of the voluntary work.

Districts must adopt rules and regulations governing implementation of these procedures. Many districts have adopted GAMUT AR 5125.2, which provides that due process rights afforded to students in relation to the withholding of grades, diplomas, and transcripts are the same as the rights afforded in connection with suspension and expulsion, as found in BP/AR 5144.1.

Pursuant to GAMUT models, due process includes at least the following:

1. Informal conference with the student conducted by the superintendent, principal, or designee, informing the student of the reason for the action and the evidence against him/her and providing an opportunity for the student to present his/her version and evidence in support of his/her defense.
2. Administrative actions are to be processed by the principal or designee and the action, name of the student, and cause for the action reported to the superintendent or designee.
3. Before taking the action, a school employee must make a reasonable effort to contact the parent/guardian by telephone or in person, with the parent/guardian also notified in writing of the proposed action, including the specific offense committed by the student.
4. A parent/guardian conference may be requested to discuss the cause(s) of the proposed action, the school policy involved, and any other pertinent matter. If a meeting is requested, the notice may state that the law requires the parent/guardian to respond to the meeting request without delay, however, no penalties may be imposed on the student for the parent/guardian's failure to attend the conference.

5. Right to appeal to the board the decision to withhold grades, diplomas, or transcripts.²

Once due process has been afforded, the grades, diplomas, and transcripts can be withheld from the student.

When the withholding district receives notice that the student has transferred to any school district in the state, it shall give the parent/guardian written notice that the grades, diplomas, and transcripts will be withheld by the new district. On receipt of notice that grades, diplomas, or transcripts have been withheld by another district, the new district will also withhold the grades, diplomas, and transcripts. [EC 48904.3]

Under certain circumstances, a district employee whose person or property is injured or damaged by the willful misconduct of a pupil may request that the district pursue legal action against the pupil. [EC 48905]

SPECIAL RULES REGARDING DELINQUENT MEAL CHARGE DEBT

Federal law requires written and clearly communicated meal charge policies, including a policy on the collection of delinquent meal charge debt.³ Education Code Section 49557.5 requires this policy to be made public. The Education Code defines a “local educational agency” subject to the meal rules as including a school, school district, county office of education, or charter school. The CSBA-GAMUT models BP/AR 3551 have been adopted by many school agencies. They indicate “The district shall not direct any action toward a student to collect unpaid school meal fees.” [EC 49557.5; CDE Nutrition Services Division Management Bulletin SNP-03-2017] Students receiving free/reduced-price meals cannot be overtly identified by the use of special tokens, tickets, or any other means. [EC 49557]

While the Education Code rules only apply to agencies that participate in either the national lunch or breakfast programs, how many agencies do not participate? Does your policy apply these rules anyway? Most school districts participate and are subject to the rules. We recommend that even those who do not participate should consider following these same rules.

Interpretation of these rules seems pretty clear: there can be no collection efforts taken against a student, nor can the student be shamed or treated differently in any way. Even if your agency does not participate in those programs, if your agency uses the standard GAMUT BP/ARs, the agency must

² GAMUT AR 5125.2 indicates the student shall be afforded due process consistent with procedures established for the expulsion of students, citing EC 48904. We do not agree, and believe the listed steps afford adequate due process.

³ USDA Memorandum SP 46-2016.

follow its own policy and not target students with unpaid meal debt. This would clearly include withholding grades, diplomas, or transcripts.

In our opinion, putting a meal bill into the diploma holder or refusing to permit the student to participate in graduation ceremonies would appear that the student is being “shamed, treated differently” and that action is being “directed at a pupil to collect unpaid school meal fees” in violation of the Education Code sections and agency policy. Either of those actions could be seen by advocates as a violation of law, especially if the student is related to any special interest group. Even if for some reason the rules do not apply to you, the actions seem highly politically charged.

Collection efforts in connection with unpaid meal fees may be properly taken, but not against a student, and agencies cannot use a debt collector. Agencies should take all actions specified in Section 49557.5(e), which include exhausting means to qualify the student for a free/reduced meal, before giving parents written notice of the debt, and otherwise encourage parents to submit an application.

Please feel free to contact our office if you have questions concerning these or related issues.

– William A. Hornback

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