



HK SCHOOL LAW CLIENT NEWSLETTER

AUGUST 2013

SERVING INLAND EMPIRE CHARTER SCHOOLS

AB 1575 AND SCHOOL FEES

Although in October 2011, Gov. Brown vetoed similar legislation, he has now signed AB 1575 into law as part of a settlement of a lawsuit brought by the ACLU. AB 1575 sets out in the Ed. Code those governing principles and prohibitions regarding the imposition of fees, charges or deposits in California K-12 public schools, including charter schools.

WHAT YOU NEED TO DO

Charter Schools must take steps as soon as possible to ensure their policies and practices are consistent with these laws.

In particular, your school should take three actions:

1. Identify and evaluate all fees that the school charges parents. EVERY fee should be identified and evaluated to determine if it violates the prohibitions set forth in the Ed. Code by AB 1575.
2. Adopt a Uniform Complaint Procedure and Form that conforms to the requirements of AB 1575. We have included a Form and Complaint Process with this newsletter that complies with the law.

3. Establish fundraising entities/procedures to assist with school activities and opportunities available to students and their families.

Contact our offices immediately if you need assistance with any of these actions as the penalties for violating AB 1575 can be severe, as explained below.

OVERVIEW

Effective January 1, 2013, AB 1575 adds to Ed. Code sections 49010, 49011, 49012 and 49013, as well as amends Government Code section 905. Section 49010 establishes a statutory framework governing the scope and nature of the free school guarantee in California's K-12 public schools, principles largely derived from the California Supreme Court's decision in *Hartzell v. Connell* (1984) 35 Cal.3d 899.

Section 49010 defines "educational activity," for which no pupil fees may be charged. This section defines a "pupil fee" as **any fee, deposit or other charge** that a pupil or a pupil's parent or guardian are required to pay in violation of new Ed. Code section 49011 and article IX, section 5 of the California Constitution.

Those laws require K-12 public schools to offer educational activities to students and their families **free of charge**, and under such laws a "fee waiver" is NOT an acceptable means to avoid the restrictions of the new law.

IN THIS ISSUE



AB 1575 AND SCHOOL FEES

One of the most important legislative developments this past year is Assembly Bill 1575. This legislation effectively prevents all public schools – charters included – from asking parents to pay fees of any kind.

Section 49010, subdivision (b)(1)-(3), specifies that a "pupil fee" includes:

- 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;
- 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; and
- A purchase that a pupil is required to make to obtain materials, supplies, equipment, or uniforms associated with an educational activity.

New Education Code section 49011, subdivision (a), (b)(1)-(4) sets forth the express prohibition on pupil fees imposed in relation to participation in an educational activity, as follows:

- All supplies, materials, and equipment needed to participate in educational activities shall be provided to pupils free of charge;
- A fee waiver policy shall not make a pupil fee permissible;
- 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; and
- 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.

RETROACTIVITY

Currently, it is unclear, as the law is written, whether the drafters intended the law to be retroactive, and if so, to what date. Because AB 1575 is silent with regard to retroactivity,



and unless the SBE's regulations take a different position, the presumption is that UCP complaints regarding pupil fees can only challenge fees imposed after the effective date of the law, January 1, 2013.

PERMISSIBLE FEES

Ed. Code Section 49011 expressly states that the new laws are not intended to prohibit the imposition of any fee, deposit or other charge otherwise permitted under the law. Such permissible fees would include those specifically authorized by statute, and therefore lawful under the California Code of Regulations, title 5, section 350. Examples of such fees include but are not limited to those related to field trips under Education Code section 35330, for the direct costs of projects that students fabricate and take home as their own property in certain classes under Education Code section 17551, fees for transporting students to and from school under Education Code section 39807.5, or fees for lost or damaged school property under Education Code section 48904.

FUNDRAISING

Significantly, section 49011, subdivision (c), reaffirms existing law under which schools' solicitation of voluntary donations and voluntarily participation in fundraising activities by pupils or their parents or guardians is not prohibited. This provision also specifies that offering prizes to pupils for recognition of their fundraising efforts is not unlawful.

SCHOOL UNIFORMS

As you may have already discerned, school uniforms fall within the prohibited fees that AB 1575 now disallows.

This means you may NOT require a parent to pay for a school uniform as a requirement for attending school. If the school wants to pay for school uniforms, it may do so.

In addition, it is our position at this time that a DRESS CODE POLICY requiring certain attire and disallowing other attire is NOT prohibited.

If you have questions or concerns about how AB 1575 will impact school uniforms – or any other fees that parents/guardians currently pay – please contact our office immediately to discuss the situation.

UNIFORM COMPLAINT FORM REQUIRED

Starting March 1, 2013, **anyone** may file an AB 1575 complaint at your school if they have been charged an illegal fee.

As of March 1, 2013, pursuant to AB1575 all schools/school districts are required to ensure their Uniform Complaint Procedure (UCP) policies, regulations and procedures are modified to address complaints regarding allegedly improper student fees, charges, and deposits. Related to this point, the SBE has proposed regulations to address certain aspects of student fee complaints and remedies under the UCP. The proposed regulations provide that pupil fee complaints

be filed not later than one year from the date the alleged violation occurred.

New section 49013 makes compliance with the new law subject to the Uniform Complaint Process (UCP) under the California Code of Regulations, title 5, section 4600 et seq. As of March 1, 2013, school districts, county offices of education and **charter schools** must update their UCP policies and procedures to implement a complaint process regarding pupil fees, and for purposes of the 2013-2014 school year, the inclusion of pupil fees under the UCP **must be added to annual parental notices.** Complaints, including anonymous complaints, regarding noncompliance with the new law may be submitted under the UCP. If a complainant is dissatisfied with a school or school districts' decision on the complaint, they can file an appeal to the CDE, requiring the CDE to act within sixty days. In terms of a remedy, if a school district, county office of education or charter school finds the complaint has merit, or if the CDE makes such a finding on 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."



Finally, AB 1575 amends Government Code section 905 to provide that a complainant seeking money or damages based upon a "[c]laim made pursuant to Section 49013 of the Education Code for reimbursement of pupil fees for participation in educational activities" is not necessarily required to first file a Government Claim. Thus, if a complainant files under the UCP to challenge pupil fees, the complainant is not required to first submit a Government Claim before filing subsequent litigation in court against a school district for money or damages. On the other hand, if a complainant has not filed under the UCP, the complainant would first need to submit a Government Claim before filing litigation in court.

UNIFORM COMPLAINT PROCESS

If a complaint is deemed valid, the fee should be eliminated and complainant and all other affected students and parents should receive full reimbursement. Information regarding this complaint process and the "free school guarantee" must be provided to students and parents **at least once a year** in all public schools in California, including charter and alternative schools.

FILING A COMPLAINT

Those believing they have been charged an illegal fee or have been required to purchase materials that should have been provided by a school may file a complaint with the principal of the school. Such complaint may be filed anonymously, but if done so, the school will not be able to contact the complainant to ask follow-up questions or to request additional information, so complainants must be certain complaints contain all of the information necessary to prove that the school charged an illegal fee.

INVESTIGATION AND RESPONSE TIMELINE

Within 60 days from the date the director/principal receives the complaint, the school and/or district must investigate and send complainant a written response. The response should include the facts (based on evidence gathered during the investigation), the legal conclusion reached by the school or

district, the reasoning for the decision, corrective actions taken, if any, and information about how to appeal. Please note that complainant will not receive a written report if complainant filed complaint anonymously.

APPEALS

If complainant disagrees with the school or school district's decision, complainant may appeal.

Within 15 days of receiving the decision, complainant may send a written appeal to the California Department of Education (CDE). Appeals must explain reason for appeal by either describing why the facts included in the decision are incorrect and/or why the law was applied incorrectly. CDE decisions regarding appeals are issued within 60 days of the Department receiving the appeal. For more information on the Uniform Complaint Procedures and the appeals process, visit <http://www.cde.ca.gov/re/cp/uc/>.

REMEDIES

If the school, district or CDE determines an illegal fee was charged or was required to purchase materials that should have been provided by the school, the remedy provided by the school and/or district must be provided to all affected students and parents, and where applicable, must include reasonable efforts to ensure full reimbursement to everyone affected.

UNIFORM COMPLAINT FORM

We have included a sample complaint form with this newsletter. This form complies with the requirements of the law and may be used by your school. The form should be made available to any parent or guardian upon request and acted upon in a timely fashion once submitted to the school, pursuant to the requirements of law.

QUESTIONS?

As always, if you have questions about the implementation of this law, please call us at any time for guidance.