



UPDATE ON THE ACLU'S STUDENT FEES LITIGATION

As previously discussed in [Lozano Smith Alert No. 9 \(2010\)](#), in the fall of 2010 the American Civil Liberties Union (ACLU) filed a class action lawsuit against the State of California regarding, among other issues, the state's alleged abrogation of its responsibility to ensure that California school districts do not charge student fees in violation of the free school guarantee under the California Constitution and related laws.

The parties reached a proposed settlement in December 2010 (see [Lozano Smith Client News Brief No. 60 \(2010\)](#)), which ultimately resulted in Assembly Bill (AB) 165, which would have established a statutory structure and parameters regarding improper student fees, as well as complaint procedures and penalties for school districts that violated the law. (See [Lozano Smith Client News Brief No. 54 \(2011\)](#).) However, Governor Brown vetoed AB 165 in October 2011. Because AB 165 was vetoed, the student fees litigation did not settle and is now proceeding in the Los Angeles County Superior Court. Having added more state defendants as parties to the case last year, the defendants in the litigation currently include the State of California, the State Board of Education, the California Department of Education, and the State Superintendent of Public Instruction.

In late January 2012, the superior court ruled on the defendants' attempts to dismiss all of the claims raised in the ACLU's complaint. The state defendants' essentially argued that they were improper parties to the litigation, and that the proper parties were school districts charging allegedly improper fees. The court did dismiss the ACLU's claims under Education Code section 60070, which prohibits students in kindergarten through twelfth grades from being required to purchase any materials for use in class, and the California Code of Regulations, title 5, section 350, which prohibits requiring students to pay any fee not specifically authorized by law, ruling that those claims were improper against the state defendant because the state defendants themselves had not required any students to pay improper fees. However, the court did not dismiss and left intact four of the ACLU's claims against the state defendants: (1) violation of the California Constitution's free school guarantee; (2) violation of right to equal educational opportunity; (3) violation of the prohibition of discrimination against students based upon wealth; and (4) violation of the right to education without regard to economic status under Education Code section 51004.

CLIENT NEWS BRIEF

February 2012

Number 08

Lozano Smith will continue to provide pertinent updates on this litigation, which may have significant impacts around the state. If you have any questions or concerns regarding the ACLU's student fees litigation, or would like assistance with conducting an audit of your district's student fees and fundraising practices, please contact one of our [eight offices](#) located statewide, visit our [website](#), or follow Lozano Smith on [Facebook](#).

Written by:

[Sloan Simmons](#)

Shareholder & Co-Chair Student Practice Group
Sacramento Office

ssimmons@lozanosmith.com

[Tom Manniello](#)

Shareholder & Co-Chair Student Practice Group
Monterey Office

tmanniello@lozanosmith.com



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