



CLIENT NEWS BRIEF

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GOVERNOR VETOES PROPOSED EDUCATION BILLS REGARDING CHANGES TO THE OPEN ENROLLMENT ACT AND THE LAW ON STUDENT FEES

Over the weekend, Governor Brown vetoed two bills relating to K-12 students. Assembly Bill (AB) 47 would have modified the law under the Open Enrollment Act, which controls the right to student transfers under specific conditions. AB 165 would have provided some clarity regarding permissible student fees, charges, donations and fundraising as well as established a number of procedures and standards in this area.

Veto of AB 47

AB 47 sought to cure a number of complaints regarding the Open Enrollment Act (Education Code sections 48350 et seq.), which became effective April 12, 2010. First, AB 47 would have excluded from the list of 1,000 "open enrollment" or "Romero Bill" schools those schoolsites with an Academic Performance Index (API) of 700 or above, as well as schools with prior year API growth of 50 points or more. These changes were aimed at relieving the frustration of school districts with very high performing schools that have been identified as "low performing schools" under the Open Enrollment Act. Second, AB 47 would have made charter schools eligible for inclusion on the open enrollment list of 1,000 schools. Current law excludes charter schools from the list, regardless of the schools' API scores. AB 47 also would have excluded special education programs operated by county offices of education and state special schools. Finally, the bill would have expressly prohibited a school district of enrollment from rejecting the transfer of special education or English learner applicants selected through the district's random lottery process.

As a result of the Governor's veto, none of the above proposed changes will go into effect. The Governor's veto message stated the proposed changes "go too far and would undermine the intent of the original law." The Governor highlighted the State Board of Education's waiver process under which high performing schools may be exempted from inclusion on the Open Enrollment Act list of 1,000 schools, and encouraged use of this process as a means to exempt schools with strong records of student performance from the list. (Please see [2010 Lozano Smith Alert No. 14](#) for more on the waiver process.)

Veto of AB 165

AB 165 was at least in part, if not primarily, the result of pending student fees litigation initiated in Los Angeles County Superior Court by the American Civil Liberties Union (ACLU) and a proposed settlement agreed upon between the parties. (Please see [Client News Brief No. 60, December 2010](#) for more on the proposed settlement.) The bill was purportedly drafted to affirm existing law,

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including California's constitutional free school guarantee, regarding permissible and impermissible student fees, charges, donations and fundraising. The bill also would have instituted three new procedural mechanisms and requirements regarding student fees, including: (1) extending Uniform Complaint Process (UCP) procedures to include complaints regarding student fees; (2) requiring school districts and charter schools to determine annually whether unlawful student fees are or were being charged, announce in an open board meeting any unlawful fees identified, and reimburse all improper fees; and (3) adding student fees as a subject in the annual audit process for each school district, with potential penalties calling for county offices of education to withhold funds from school districts based upon audit exceptions relating to improper student fees.

The Governor's veto message stated that AB 165 went too far, as it imposed new complaint, hearing and audit procedures for all 1,042 California school districts and over 1,200 charter schools, even where there might be no evidence of improper fees. With the veto of AB 165, the three proposed procedural and corrective schemes will not apply to student fees. However, also as a result of the Governor's veto, the ACLU's pending student fees litigation will likely proceed and may result in significant legal ramifications in this area. Parties to that litigation include the State Superintendent of Public Instruction, the California Department of Education, and the State Board of Education. Without the structure and procedures proposed in AB 165, and absent a clear result in the ACLU student fees litigation, the growing trend of lawsuits against K-12 educational institutions regarding student fees is likely to continue.

LOZANO SMITH can assist with all issues related to the Open Enrollment Act, including the waiver process, as well as school fees and charges, including conducting trainings for staff and performing a legal audit to determine whether district practices regarding the charging of fees, solicitation of donations, and fundraising comply with existing law.

If you have any questions regarding the veto of these bills or would like assistance with reviewing your district's student transfer policies or in conducting an audit of your district's student fees policies and practices, please contact one of our [eight offices](#) located statewide or consult our [website](#).

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As the information contained herein is necessarily general, its application to a particular set of facts and circumstances may vary. For this reason, this News Brief does not constitute legal advice. We recommend that you consult with your counsel prior to acting on the information contained herein.