

## Governor Brown Signs Student Fees Legislation into Law

After vetoing student fees legislation in October 2011, Governor Brown has signed AB 1575 into law. This new law specifically sets out in the Education Code governing principles and prohibitions regarding the imposition of fees, charges or deposits in California K-12 public schools, *including* charter schools. AB 1575 becomes law following increased statewide scrutiny in the past several years over the charging of student fees in light of the “free school guarantee” in the California Constitution. (Cal. Const., art. IX, § 5.) The passage and signing of AB 1575 will also end student fees litigation against the State, California Department of Education (CDE), State Superintendent of Public Instruction, and State Board of Education (SBE), which has been pending in the Los Angeles County Superior Court since the fall of 2010. (See [CNB082012](#), [CNB542011](#), [CNB062010](#).)

Effective January 1, 2013, AB 1575 will add *Education Code sections 49010, 49011, 49012 and 49013, as well as amend 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 also 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 Education 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” or “scholarship” program cannot cure unlawful pupil fees. Within this broader definition, 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), sets forth the express prohibition on pupil fees imposed in relation to participation in an educational activity. Section 49011, subdivision (b)(1)-(4), specifies that under this prohibition, all of the following parameters apply:

- All supplies, materials, and equipment needed to participate in educational activities shall be provided to pupils free of charge;

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- 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.

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 specified that offering prizes to pupils for recognition of their fundraising efforts is *not* unlawful.

New section 49012 requires the CDE, starting in the 2014-2015 fiscal year and then every three years thereafter, to issue non-regulatory guidance to school districts, county offices of education and charter schools regarding student fees. Currently, and independent of this new statutory requirement, CDE Fiscal Management Advisory 11-01 (Nov. 9, 2011) is available on the [CDE's website](#), which contains the CDE's latest guidance on pupil fees.

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 on 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, which the CDE must act on within sixty days. In terms of a remedy, if a school district, county office of education or charter school find that 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."* There is no word at this time on what the identified SBE regulations will contain or when the SBE is expected to publish such regulations. 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.

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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.

We note that while AB 1575 is not effective until January 1, 2013, the legal principles included here are intended to express the current state of the law under California's constitutional free school guarantee. Therefore, school districts should take steps as soon as possible to ensure their policies and practices are consistent with these laws. 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.

If you have any questions regarding these new laws on student fees or would like assistance in conducting training for staff, or an audit of your district's fee/donation policies and practices, please do not hesitate to contact one of our [eight offices](#) located statewide. You can also visit our [website](#) or download our [Client News Brief App](#).

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