



YOUNG, MINNEY & CORR, LLP

SACRAMENTO ■ LOS ANGELES ■ SAN DIEGO

GUIDANCE FOR CHARTER SCHOOLS REGARDING LEGALLY PERMISSIBLE PUPIL FEES AND CHARGES

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[Please note the information contained here is current as to the date listed above. In addition, because the law is constantly changing, we do not recommend that you act on this information without consulting legal counsel.]

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FIRM OVERVIEW

Young, Minney & Corr, LLP (YM&C) has been the leader in charter school law for more than a decade, representing over 500 charter schools throughout the state. The Firm principals have been working with charter schools since the inception of the Charter Schools Act in 1993.

We offer superior legal expertise, as well as the technical know-how, to allow you to effectively resolve your problems and meet all of your charter school needs and goals.

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We emphasize a preventative approach to the law, helping our clients anticipate legal difficulties, minimize exposure to legal claims and fees, and prevent operational challenges.

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GUIDANCE FOR CHARTER SCHOOLS REGARDING LEGALLY PERMISSIBLE PUPIL FEES AND CHARGES

OVERVIEW

“TO CHARGE OR NOT TO CHARGE - THAT IS THE QUESTION.” The California Legislature recently addressed this question by enacting AB 1575 (effective January 1, 2013), which clarifies whether and when charter schools may lawfully charge pupil fees for school-related activities. This topic has historically generated difficult questions under the Free School Guarantee of the California Constitution.¹ For example, may California charter schools charge students for uniforms or replacing uniforms? How about charging students for attending school sporting events, attendance at plays or other shows? May a charter school enforce a requirement that a parent donate a minimum number of volunteer hours to a charter school? The list of possible fees is quite extensive, and charter schools often face tough decisions as they seek to provide quality educational programs/experiences while working with finite resources.

Accordingly, this guidance has been produced in partnership with Young, Minney & Corr, LLP, in order to provide an overview aimed at assisting charter schools in understanding the basic legal parameters which apply to California’s charter schools regarding pupil fees and related charges. This advisory will also provide recommendations for charter schools regarding how to implement AB 1575, codified in Chapter 776 of Statutes 2012. The last section of this guidance will also provide useful/common examples of certain pupil fees and charges, along with a brief summary of how such fees are treated under the law.

LAWS GOVERNING PUPIL FEES

Existing Law Before AB 1575

The California Constitution establishes a broad-sweeping guarantee of a system of “free schools,” and charter schools are part of this system.² Although at first glance this guarantee appears to be straightforward, its practical implementation at the school level is often complex. Additionally, this guarantee has been interpreted and clarified over time by many court cases, statutes, and regulations, which have resulted in these fundamental guiding principles:

- Public schools may not charge fees for curricular or extracurricular activities which are “an integral component of public education,” regardless of whether the activities are credit bearing or not.³

¹ California Constitution, Article IX, Section 5

² *Wilson v. State Board of Education* 75 Cal.App.4th 1125 (1999)

³ *Hartzell v. Connell*, 35 Cal. 3d 899 (1984).

- No school official shall require pupils to purchase any instructional material for their use in school.⁴
- Pupils enrolled in a public school may not be required to pay a fee, deposit, or other charge not specifically authorized by law.⁵

In harmonizing these authorities, the California Department of Education (“CDE”) recommended - even before the passage of AB 1575 - that public schools should approach pupil fees in the following manner:

Is the fee specifically authorized by statute? If so, the fee may be charged. If not, does the fee relate to an educational activity that is an integral component of public education? If so, the fee cannot be charged.⁶

The CDE has prepared guidance on pupil fee issues, accessible here: <http://www.cde.ca.gov/re/lr/fm/fma1202.asp>. Additionally, a complete chronology of the development of the legal landscape regarding pupil fees may be found on San Diego Unified School District’s website: <http://www.sandi.net/site/Default.aspx?PageID=2570>.

In 2010, the Constitutional Free Schools Guarantee was the subject of litigation when the American Civil Liberties Union challenged the common practice of school districts charging pupils for the costs of textbooks and other educational materials.⁷ Although this case did not result in precedent-setting case law, the settlement agreement which concluded the litigation laid the foundation for the Legislature to pass AB 1575 to clarify the limitations on public schools regarding student fees and charges.

KEY COMPONENTS OF AB 1575

Overview

Effective January 1, 2013, AB 1575 adds Education Code Sections 49010 through 49013 and provides even further specificity regarding which types of fees and charges are prohibited. For the first time, charter schools are specifically included in pupil fees legislation.⁸ Consistent with the CDE advice noted above, most legal experts in the field agree that the constitutional “free school” guarantee has always applied to both charter and other public schools. In fact, the Charter Schools Act specifically prohibits charter schools from charging tuition.⁹ Thus, AB 1575’s prohibitions are widely regarded as applicable to charter schools.

The essential operative requirements of AB 1575 are as follows:

- A pupil enrolled in a public school shall not be required to pay a “**pupil fee**” for participation in an “**educational activity.**”

⁴ Education Code Section 60070.

⁵ Title 5, California Code of Regulations, Section 350.

⁶ CDE Fiscal Management Advisory 12-01, issued March 20, 2013.
<http://www.cde.ca.gov/re/lr/fm/fma1201.asp>

⁷ *Doe v. California*, County of Los Angeles Superior Court Case Number BC445151 (2010).

⁸ Education Code Section 49010(a) defines “educational activity” as including charter schools.

⁹ Education Code Section 47605(d).

- 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.
- Schools shall not establish a **two-tier educational system** by requiring a minimal educational standard and only offering a second, higher educational standard that pupils may only obtain through payment of a fee or purchase of additional supplies that the school does not provide.
- A 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, nor shall the school remove such credit or privileges for failure to make a donation.
- **Voluntary donations** of funds or property or participation in fundraising activities are allowed, and prizes or other recognition may be given for participating in fundraising activities.
- AB 1575 shall not be interpreted to prohibit the imposition of a fee, deposit, or other **charge otherwise allowed by law**.
- Public schools shall establish **policies and procedures** to implement AB 1575 by March 1, 2013.
- **Complaints** regarding noncompliance with AB 1575 may be filed with the school's principal under the Uniform Complaint Procedures.¹⁰

In order to implement AB 1575, a school must examine the answers to several questions. We encourage you to review the definitions of AB 1575 discussed below along with your charter and your practices to determine the answers for your school.

What is an “educational activity?”

Education Code Section 49010(a) defines an “educational activity” as “an activity offered by a school, including a charter school, that constitutes an integral fundamental part of elementary and secondary education, including, but not limited to, curricular and extracurricular activities.”

Although AB 1575 does not provide specific examples of what activities constitute “educational activities,” the California Supreme Court in *Hartzell v. Connell* has stated that educational activities are to be distinguished from activities which are “purely recreational” in character.¹¹ Examples of purely recreational activities given by the Supreme Court “might include attending weekend dances or athletic events.”¹² The Court in *Hartzell* also found that typical extracurricular activities such as athletics, drama, vocal music groups, instrumental groups, and cheerleading constitute educational activities.

What is a “pupil fee?”

¹⁰ Title 5, California Code of Regulations, Section 4600 *et seq.*

¹¹ *Hartzell v. Connell*, 35 Cal. 3d 899 (1984).

¹² *Id.*

Education Code Section 49010(b) defines a “pupil fee” as a “fee, deposit, or other charge imposed on pupils or their parents or guardians that violates the California Constitution’s guarantee that educational activities be provided free of charge to all pupils, without regard to their families’ ability or willingness to pay fees or request special waivers.” More specifically, Education Code Section 49010(b) provides that a “pupil fee” includes, but is not limited to, the following:

- A **fee** charged as a condition for **registering** for school or classes or for **participating** in a class or extracurricular activity, regardless of whether the class or activity is elective or compulsory, or is for credit.
- A **security deposit** or other payment required in order to obtain a “lock, locker, book, class apparatus, musical instrument, uniform, or other materials or equipment.”
- A **required purchase** to obtain “materials, supplies, equipment, or uniforms associated with an educational activity.”

RECOMMENDATIONS FOR ACTION REGARDING CHARTER POLICIES AND PROCEDURES

General Considerations for Policies

As of March 1, 2013, all charter schools must have adopted policies and procedures implementing AB 1575. We strongly recommend that you involve your legal counsel as you develop your school’s policy and procedures. At a minimum, your school’s policy should include:

- A **restatement of AB 1575’s prohibition** against charging student fees for participating in an educational activity at the school;
- A recognition that the **policy is being adopted in compliance with AB 1575**;
- A recognition that participation in any fundraising activities or solicitations for donations for the benefit of the school is **completely voluntary**;
- Discussion of **what charges might be imposed** at the school, taking into account the school’s unique educational program requirements (e.g., replacement of lost or damaged musical instruments, electronic or science equipment, fees for optional attendance at shows, dances, etc.);
- Direction that **complaints** should be addressed through the school’s Uniform Complaint Procedure; and
- A statement that, if a complaint regarding a pupil fee is found to have merit, the charter school will **reimburse the fee** to all affected pupils, parents, or guardians.

Discussion Regarding Voluntary Fundraising

Your school’s policy should emphasize that all participation in fundraising is voluntary and that the school will not discriminate in any way based on whether the pupil, parents, or guardians contributed time or money to the school. If the policy, fundraising letters, written materials, or

other communications may lead a reasonable person to believe that a donation or other contribution is not truly voluntary, it may be problematic. Schools should avoid, for example, specifying a minimum amount of a donation, a “due date” for a donation, or recommending a lower donation amount if given earlier. If your school is also financially supported by one or more separate foundations or booster clubs, you should consult your attorney to ensure that the fundraising conducted by those separate organizations does not implicate the school’s compliance with AB 1575.

The school’s policy should also institute a disclaimer when conducting fundraising activities, such as the following: “This fundraising activity is not related in any way to your student’s participation in an educational activity or program.”

However, it is still permissible to provide students with prizes or other recognition for voluntarily participating in fund raising efforts.¹³

Uniform Complaint Procedure

Under AB 1575, charter schools are also required to utilize the “Uniform Complaint Procedure” (“UCP”)¹⁴ to address complaints regarding schools’ compliance with the pupil fees legislation. If your school does not already have a UCP, your school will need to adopt and follow this policy in order to comply with AB 1575. We recommend that you consult your legal counsel in drafting or revising the school’s UCP. Requirements under the UCP and AB 1575 include:

- Information about AB 1575 must be included in the school’s **annual notification** distributed to students, parents, guardians and employees pursuant to the Uniform Complaint Procedures.¹⁵
- Complaints regarding AB 1575 may be filed with the **school principal**, and may be anonymous.¹⁶
- A **complaint form** may be provided for complaints of unlawful fees.¹⁷
- Complaints must be resolved by the charter school within 60 days of receipt of the complaint. If the complaint is resolved pursuant to an investigation, the designated school official shall issue a written decision stating the findings of fact and the reasons for the disposition of the complaint.¹⁸
- If a complainant is not satisfied with the decision of the school, he or she may appeal to the State Superintendent of Public Instruction (“SPI”).¹⁹
- If the school finds merit in a complaint, or the SPI finds merit in the appeal of a complaint, the school **must provide a remedy, including reimbursement of any unlawful fees**, to all affected students, parents, and guardians.²⁰

¹³ Education Code Section 49011(c).

¹⁴ Title 5, California Code of Regulations, Section 4600 *et seq.*

¹⁵ Education Code Section 49013(e); Title 5, California Code of Regulations, Section 4622.

¹⁶ Education Code Section 49013(b).

¹⁷ Title 5, California Code of Regulations, Section 4621(c).

¹⁸ Title 5, California Code of Regulations, Section 4631(e).

¹⁹ Title 5, California Code of Regulations, Sections 4632-4633.

²⁰ Education Code Section 49013(d).

- There are **other specific requirements** associated with the Uniform Complaint Procedure's annual notice, complaint, investigation, appeal, and resolution processes. Please consult your attorney to ensure that your school complies with all such requirements.

For more information regarding the Uniform Complaint Procedure's requirements, click here: <http://www.cde.ca.gov/re/cp/uc/>.

PUPIL FEE EXAMPLES

This chart summarizes common examples of pupil fees and other school practices that charter schools have implemented or have considered implementing, and shows whether such fees are legally permissible under AB 1575 and other laws governing pupil fees.

Please be advised that some of the fees listed below are specifically “authorized by law” in the Education Code. While some might argue the “megawaiver”, under Education Code section 47610, renders most sections of the Education Code inapplicable to charter schools, and thus charter schools are not expressly included in the authorization to charge such fees, our view is that the megawaiver exempts charter schools from certain statutory obligations – not necessarily benefits conferred, as in this case. To this end, a charter school could make a strong argument that the legislative authorization of a particular pupil fee is part of the entire constitutional “free schools guarantee” framework which applies to charter schools. Because of this slightly gray legal area, we recommend that you consult with your legal counsel before implementing a specific practice of charging fees authorized by the Education Code, which are indicated below by an asterisk.

TYPE OF SCHOOL PRACTICE	IS IT LEGAL?	RATIONALE
Requiring Purchase of School Supplies, such as Textbooks and Musical Instruments	No.	<p>This practice is specifically prohibited under AB 1575, which provides that all supplies, materials, and equipment needed to participate in educational activities shall be provided to pupils free of charge.</p> <p>The California Legislative Counsel also has issued an opinion concluding that fees for musical instruments used in extracurricular band activities violates the “free school guarantee.” (Ops.Cal.Leg.Counsel No. 17036 [November 16, 1979]).</p> <p>Schools may request voluntary donations of supplies and materials, but it must be clear that such donations are voluntary and supplies will be provided regardless of ability to donate.</p>
Requiring Purchase of School-Specific Uniforms	Likely no.	<p>AB 1575 specifically prohibits requiring purchases of uniforms associated with “educational activities,” which also likely prohibits uniform purchases for extracurricular activities.</p> <p>However, school districts may adopt reasonable dress code policies (Education Code Section 35183), and we encourage you to consult your attorney in developing any such policy.</p> <p>AB 1575 likely prohibits schools from requiring families to make specific purchases of uniforms with school logos, for example. Schools might consider either offering one or more of such uniforms free of charge, or requiring a particular dress code (e.g., white polo shirts and khaki pants) and then providing school patches to affix to shirts, jackets, etc. Please consult your attorney in considering these or other options.</p> <p>Schools may require families to purchase replacement uniforms if lost or damaged. (See following example.)</p>
Charging for Replacement of Lost or Damaged School Supplies, such as Textbooks, Uniforms, Musical Instruments*	Likely yes.	<p>The Education Code allows public schools to charge parents and guardians for the replacement of items that are lost, unreturned, or damaged as a result of a student’s willful misconduct, up to a certain dollar amount. Diplomas, report cards, transcripts or other privileges may also be withheld upon prior written notice, until the financial obligations have been satisfied. (Education Code Section 48904.)</p> <p>However, if supplies are stolen or damaged by another, and the student has not been negligent in any way, the school should for replace them.</p>
Membership or Registration Fees for Activity Participation, such as Sports Teams, Bands, or Other Clubs	No, if the fee is to participate in an activity considered an “educational activity.”	AB 1575 specifically prohibits such charges. Schools may not charge a fee for participation in any curricular or extracurricular activity, including sports teams, bands, cheerleading or dance teams, or student clubs recognized by the school.

TYPE OF SCHOOL PRACTICE	IS IT LEGAL?	RATIONALE
Charging for In-state Field Trips*	Unclear after AB 1575; consult your attorney.	<p>The CDE has stated that fees for field trips and excursions in connection with courses of instruction or school-related activities are acceptable, so long as no one is prevented from making the field trip or excursion because of lack of sufficient funds.²¹ (Education Code Section 35330(b).) Charter schools are also included in this Code Section on field trips. (Education Code Section 35330(d).)</p> <p>However, it is unclear if this statutory permission of the fee supersedes AB 1575's clear prohibition against fee waivers, especially if the field trip is educational in nature and related to students' coursework. Please consult your attorney before imposing any charge for a field trip.</p> <p>Requesting voluntary donations for field trips remains acceptable.</p>
Charging for out-of-state or foreign trips	Yes, if the trip is to another state or District of Columbia or a foreign country.	Education Code section 35330(b)(3) expressly prohibits school districts from paying for such trips with public funds. Although this provision arguably does not apply to charter schools, it indicates that the free school guarantee does not include the cost of such trips.
Charging for Food	Yes, so long as the charge does not conflict with federal free and reduced-price meal ("FRL") program requirements, if charter school participates in such a program.	<p>Public schools often sell food, either as a fundraiser such as a bake sale or more regularly through a hot lunch or cafeteria program. So long as such sales do not affect the ability of FRL-eligible students to access the FRL program (if offered at the school), schools may charge for food sales. (Education Code Section 38084.)</p> <p>However, schools should avoid a practice of requiring the purchase of food, such as during required field trips.</p>
Charges for Optional Attendance As a Spectator at School-Sponsored Activities, such as a Dance or Athletic Game	Yes.	Such charges for optional activities are specifically contemplated under the landmark <i>Hartzell</i> case. (<i>Hartzell</i> , 35 Cal.3d 899, 911, fn. 14.)
Offering Extra Credit or Withdrawing Credit or Privileges Based on Fundraising Level	No.	<p>Offering or restricting extra credit or other privileges based on fundraising participation is prohibited under AB 1575.</p> <p>Examples of prohibited practices would include offering extra credit in a journalism class for selling school newspaper ads; providing homework passes or other exemptions for fundraising participation; instituting a lottery preference based on fundraising; or allowing more or less participation time or other preferences in a desired activity (recess; athletic activity; computer access) depending on fundraising participation.</p>
Magazine, Candy, Gift Wrap, or Other Drives	Yes.	Such fundraisers may be critical to schools' ability to purchase additional educational or sports equipment or to make campus improvements. Schools, though, must be careful to ensure the school policy clearly provides that such fundraising activities are completely voluntary, that the level of participation in school fundraisers is separate and apart from students' education, and that a student's fundraising will not affect their grades or other performance measures in educational activities.
Giving students prizes or other recognition for participating in fundraising drives	Yes	This practice is expressly permitted by AB 1575. (Education Code Section 49011(c).)
Parent "Fines" for Late Pick-up, Unfulfilled Service Hours, or Noncompliance with other School Policies	Likely no.	Although AB 1575 does not specifically address this practice, it would likely be prohibited, especially if these consequences impact the student's privileges or access to the educational program. A fine for unfulfilled service hours is especially problematic because it establishes an expectation of a donation of services and a penalty for not donating services.
Security Deposits for School Supplies or Uniforms	No.	This practice is specifically prohibited under AB 1575.

²¹ CDE Fiscal Management Advisory 11-01, issued November 9, 2011, p. 4;

TYPE OF SCHOOL PRACTICE	IS IT LEGAL?	RATIONALE
Transportation To/From School or Other Events*	Likely yes - if between home and school, with some exceptions Likely no - If between school and other "educational activities" like athletic events.	Education Code Section 39807.5 specifically allows school districts to charge parents to subsidize transportation costs between home and school. In <i>Arcadia Unified School District v. State Dept. of Ed.</i> (1992) 2 Cal.4th 251, the California Supreme Court held that the free schools guarantee applies only to "educational activities" and, as a result, transportation fees under Education Code Section 38907.5 were permissible. Be advised that some restrictions exist, such as for the transportation of students with special needs. However, FCMAT has advised that if the transportation is between the school and required events, such as mandatory extracurricular events, fees are not allowed. ²²
Charging for School Camps	It will depend on the camp's offerings	Education Code Section 35335 allows school districts to charge fees for "school camp programs," so long as the fees are not mandatory. However, the camp programs contemplated by this statute are limited to "outdoor science education and conservation education." In the case of such camps, the amount of the fee may not exceed the difference between any state, local, or federal funds generated by such a program and the cost of the services actually provided. Charter schools offering summer or other camps which offer "educational activities" under AB 1575 likely cannot charge for such camps. If a camp is purely recreational, charging for such camp is likely allowed under <i>Hartzell</i> .
Tuition or Fees for Supplemental Instruction (e.g., Summer School; Inter-sessions)	No.	No statute authorizes tuition for supplemental instruction, such as summer school, and regulations preclude charging fees for educational activities not specifically authorized by law. (5 Cal. Code Regs. Section 350.) It is difficult to conclude that a traditional summer school offering academic courses is anything other than an "educational activity." However, if the school provides a summer program that is purely recreational, or if a third party offers a summer school on the charter school's campus, then a fee can potentially be charged under <i>Hartzell</i> . This implicates other legal issues, however, so please consult with your legal counsel prior to establishing this kind of summer school.
Duplication of Student or Public Records	Yes, but certain exceptions exist for student records	Existing law allows public agencies to charge requesters for the costs of duplication of records. (Government Code Section 6253; Education Code Sections 49065; 49091.14.) However, be advised that in specific cases, schools may be limited in charging for duplication costs. (Education Code Sections 49065; 56504.)
School pictures, sports pictures, and other charges by private business for services that are not an integral part of educational program, even if facilitated at/by the school	Yes.	Such a charge is contemplated as an optional activity under <i>Hartzell</i> .
Before- and After-School Programs	Yes, under certain circumstances.	Fees for "After School Education and Safety Programs" may be charged, so long as no "eligible student" is denied the ability to participate because of an inability to pay the fee. (Education Code Section 8482.6.)
Requesting Donations for School Auctions or other Fundraisers	Yes, as long as clearly voluntary	See discussion provided in this guidance regarding parameters for voluntary fundraising.

ADDITIONAL INFORMATION ABOUT AB 1575

AB 1575 requires the CDE to develop non-regulatory guidance every three years regarding the implementation of the law, starting with the 2014-2015 fiscal year. Such guidance will be publicly available on the CDE's website. CCSA will monitor the development of this guidance, and will provide periodic updates regarding the guidance as developments occur. In the meantime, we encourage you to consult with legal counsel as issues regarding student fees

²² FCMAT Response to FAQ: [http://www.fcmat.org/stories/storyReader\\$1289](http://www.fcmat.org/stories/storyReader$1289)

arise at your school. Finally, we note that AB 1575 places a statutory obligation on charter schools which may result in mandated compliance costs, so your school may be eligible to receive mandated cost reimbursement from the Commission on State Mandates.²³ Please consult your legal counsel for advice concerning this program or your charter school's eligibility for reimbursement thereunder.

We understand that raising adequate revenues to provide programs at your charter school is never easy, and that charter operators are expected to meet their charter's pupil outcomes on very limited budgets. However, offering a truly free public education in compliance with AB 1575 is critical to ensuring that all of California's children can access charter schools, regardless of financial ability.

²³ Government Code Section 905(o).