

# Fourth District Legislative Advocacy Communicator



FOURTH DISTRICT ADVOCACY TEAM

FEBRUARY 2011

## ACLU lawsuit prompts schools and state to examine student fee policies

In September 2010, the American Civil Liberties Union (ACLU) filed a class action lawsuit claiming that many fees charged to students for school activities and supplies violated the California Constitution and various provisions of the Education Code (*Doe v. California*, Number BC 445151). Governor Schwarzenegger and the ACLU announced a tentative settlement in December that required trial court approval as well as legislation and regulations to implement the agreement, and the governor's office issued compliance guidelines for schools to follow. Although the court did not approve the settlement at a recent hearing (another court date is set for February 24, 2011), schools, districts, and departments of education across the state are examining and making adjustments to their current policies on student fees in anticipation of the expected final settlement.

### Background

The complaint states that Plaintiff Jane Doe's Orange County public high school requires students to purchase textbooks, workbooks, and novels assigned for credit courses. The school charges additional fees, including Advance Placement exam fees when the examination is a course requirement and affects students' grades, and an enrollment fee. Plaintiff Jason Doe is a student at an OC public high school that requires students to purchase workbooks, lab manuals, and physical education uniforms, as well as locks and student agendas as a requirement of

## Calendar of Events

### Advocacy Roundtables:

- Tuesday, February 16, 11:30 a.m.; Joe Mathews on Reforming California's Political System, cohosted with League of Women Voters; Red Lion Inn, Anaheim (\$ for lunch; RSVP)

- Friday, April 15, 9:30-11:00 a.m. at FVUSD Board Room

### 2011 Sacramento Safari:

- Monday, March 21 – Tuesday, March 22

*Be sure to vote to approve your representative!*

**Orientation:** Friday, February 25, 9:30-11:00 a.m.  
at Fountain Valley School District Board Room

school enrollment. Thirty-two districts are identified in the complaint as charging fees for courses and educational activities, including academic, career technical, music, and art courses. Plaintiffs assert that the State failed to meet its constitutional duty to ensure students' basic educational equality irrespective of economic status.

The complaint alleges that charging fees violates the "free school" guarantee and the equal protection clause of the California Constitution; Education Code sections stating that educational opportunities are a right to be enjoyed without regard to economic status, and that no school official shall require any pupil to purchase any instructional material for the pupils' use in school; and state regulations which maintain that a pupil enrolled in school shall not be required to pay any fee, deposit, or other charge not specifically authorized by law.

### Settlement in the works

The proposed settlement builds on the California Supreme Court decision in *Hartzell v. Connell* (1984) which held that the constitution prohibits public schools from charging fees for educational activities that are an integral part of public education, including extracurricular activities such as music and sports. The *Hartzell* decision also made clear that a policy of permitting waiver of fees does not make it permissible to impose fees on those willing and able to pay, and that budget hardship is not relevant to the guarantee of free schools. Settlement legislation would prohibit the granting of credit or privileges in exchange for donations, or the punishment or denial of credit or privileges for failure to make such contributions. It also expressly prohibits establishing a "two tier" education system based on fees. Annual district audits would assure compliance with the free school guarantee, to be reviewed by the County Superintendents, and with enforcement authority permitting the State Controller to withhold funds from a district. Complaints related to fees would be resolved through the district Uniform Complaint Procedures, with appeal procedures that would permit the Superintendent of Public Instruction to order refunds of illegal charges, with interest. Classroom notices would be posted stating that pupils may



## **Sacramento Safari**

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- Rick Simpson, Deputy Chief of Staff to Assembly Speaker Perez
- Mac Taylor, Legislative Analyst
- Sherry Skelly Griffith, ACSA Legislative Advocate
- Brad Strong, Children Now, Senior Director Education Policy
- Jo A.S. Loss, President California State PTA
- Debbie Look, Director of Legislation California State PTA
- Paul Richman, Executive Director California State PTA...and more!

not be charged fees (including security deposits) for curricular or extracurricular activities. According to the tentative settlement, these provisions take effect this school year (2010-11), which is why the scramble to comply is already underway.

### What will schools have to do to comply?

California's constitution entitles children to a free and equal education. The ACLU suit challenges the wide range of required student fees and charges, contending that the problem is systemic. In their August report, "Pay to Learn," they found fees being charged for such items as locks for lockers; required uniforms; musical instrument rentals; extra credit for purchases; workbooks/lab manuals; materials for class provisions, art, music, auto, fashion classes; AP exam fees to enroll in AP classes; student identification cards; graphing calculators; flash drives; and supplemental books. There have been instances reported where students' names were posted until fees were paid.

Districts are now reviewing their policies and practices related to student fees, focusing on any mandatory fees, charges, deposits for educational materials, equipment, or activities – including extracurricular activities. Fees and charges expressly authorized by statute are permitted. For example, the Education Code allows fees for transportation to and from school (except for buses required for extracurricular activities, indigence, and for special education); food (except for free/reduced program eligibility); deposits for school music instruments; insurance for field trips; lost or willfully damaged books; purchase of materials fabricated by students; duplication of student/public records; insurance for athletic team members (must pay for those who cannot afford it); fees for field trips (but no pupil can be denied trip because of lack of funds).

Fundraising programs or donations remain permissible, so long as they are voluntary and contributing is not required for participation in an educational activity. Some parent fundraising groups are adding disclaimers, such as "Not related in any way to student placement or evaluation of student performance" and/or "Not a school district activity."

Districts are also reviewing letters and information sent home from teachers, coaches, booster groups, and in back-to-school packets. Special attention may be paid to when and how donations are requested, particularly when related to student-required classroom contributions for supplies, and costs for required off-site or extra credit projects for mandatory course work (such as concert, museum, or theater visits). Many districts are adopting this rule-of-thumb: If something is necessary to complete a required school assignment, schools may not charge for it.

### New legislation pending

In January, AB165 (Lara) was introduced regarding pupil fees. The act amends Education Code sections related to school fees, effective immediately upon passage. The bill would prohibit a school district, school, or related entity from imposing a pupil fee for participation in educational activities. Essentially, the bill fulfills the required legislation portion of the proposed settlement agreement, so that school districts that violate the state's guarantee to a free education by illegally charging fees for classroom and extracurricular activities would have a portion of their annual budget withheld (1% of their total funding for

### Ask the Advocacy Team

If you have any questions concerning advocacy issues, please contact us at: [advocacy@fourthdistrictpta.org](mailto:advocacy@fourthdistrictpta.org).

### Key PTA Links

[www.fourthdistrictpta.org](http://www.fourthdistrictpta.org) – Click on **Advocacy**

[www.capta.org](http://www.capta.org) – Select from menu: **Programs and Services: Advocacy** and **Children's Issues: Legislation**

[www.pta.org](http://www.pta.org) – Click on **Take Action**

administrative costs), not to be released until fees collected are reimbursed, with interest. It also defines the complaint process for parents, requires classroom postings on fee prohibitions, and requires annual audits of school districts to ensure compliance.

### OC Department of Education offers their legal opinion

On January 4, Orange County Department of Education's Schools Legal Service offered an opinion on how schools and districts may handle student fees. If equipment or supplies are used by schools in the educational process, or are needed by students to participate in regular classroom work to fulfill the school's educational program, then these materials constitute *necessary supplies* which must be provided to students without cost. Districts must provide writing and drawing paper, pens, inks, blackboards, blackboard erasers, crayons, pencils, materials for art classes, cloth for dress-making classes, wood for carpentry classes, gym suits and shoes for physical education classes, blue books necessary for examinations, athletic uniforms, attire for music classes, musical instruments, special binders, film for photography classes, calculators, or other study aid materials – all without charge. Teachers are prohibited from adversely affecting a student's physical education grade if the student does not wear standardized physical education apparel due to lack of funds or the family's unwillingness to pay. Districts must provide for annual cleaning and repair of football equipment, but may accept funds when donations are voluntarily given to cover such expenses. Students may not be charged for vocational educational programs or fees for transportation associated with vocational education, except for transportation to vocational centers from a regular full-time day school. In addition, districts may not charge a fee or require students to purchase necessary materials even if the district maintains a special fund to assist or waive such fees/charges for students in financial need.

Optional materials for the student's personal benefit may be recommended, and parents may directly purchase instructional materials from the state-adopted list. Teachers may encourage students to use appropriate study aids, so long as their purchase is strictly optional and in no way part of the regular instructional program. If such things are not part of the adopted curriculum or part of an established extracurricular program, and there is no penalty for failure to use or purchase these materials, such materials are not necessary supplies. However, if such enrichment literature or material is used as supplemental instructional material for a class, or as an established part of an extracurricular activity, then it becomes a necessary supply which must be provided or loaned free of charge.