

Date of Hearing: July 15, 2015

ASSEMBLY COMMITTEE ON EDUCATION

Patrick O'Donnell, Chair

SB 320 (Lara) – As Amended March 26, 2015

SENATE VOTE: 39-0

SUBJECT: Pupil fees: complaint of noncompliance: regulations

SUMMARY: Authorizes the Superintendent of Public Instruction (SPI) to ensure appeals regarding the assessment of pupil fees are resolved in a timely manner and prohibits a school from establishing a local policy that authorizes resolution of a complaint by providing a remedy only to the complainant without also providing a remedy to all affected students, parents, and guardians. Specifically, **this bill:**

- 1) Prohibits a public school from establishing a local policy or procedure to resolve a complaint filed regarding the assessment of pupil fees, whether formally or informally, by providing a remedy to the complainant without also providing a remedy to all affected pupils, parents, and guardians.
- 2) Provides that the SPI shall have all power and authority necessary to ensure that, when the California Department of Education (CDE) finds merit in an appeal, the complaint is resolved in a timely manner.
- 3) Requires the SPI, on or before June 30, 2016, to adopt regulations to govern the use of this authority.
- 4) Requires the regulations to include, but not necessarily be limited to, all of the following:
 - a) A specification that, if the CDE finds merit in an appeal, the CDE's written decision shall identify with specificity the corrective action that the public school must take to confirm that it has provided a remedy to all affected pupils, including, if applicable, specific direction regarding the reasonable efforts the public school shall take to ensure full reimbursement to all affected pupils;
 - b) A specification that, if the public school failed to address an issue raised in the complaint in the public school's decision about that complaint, the CDE shall require the public school to respond to the issue within 10 business days and, after providing this opportunity to respond, the CDE shall make findings on the merit of the appeal without remanding the complaint to the public school for further consideration, regardless of whether the public school provided the required response.
 - c) A specification that, if the complainant submits evidence in conjunction with the appeal that is related to an issue raised in the underlying complaint and that is presented for the first time on appeal, the CDE shall notify the public school of the new evidence and provide the public school with 10 business days to respond to the new evidence, and, after providing this opportunity to respond, the CDE shall make findings on the merit of the appeal without remanding the complaint to the public school for further consideration, regardless of whether the public school provided the required response.

- d) A specification that, if the complainant raises one or more issues on appeal that were not presented in the underlying complaint, the CDE shall remand any new issue to the public school to treat as a newly filed complaint, but shall resolve the remainder of the appeal.
- e) A requirement that the public school provide to the CDE, within 60 days of the CDE's written decision, evidence documenting that it has complied with any corrective action specified in the written decision; and
- f) A specification that, if the public school has not satisfied the requirement to take corrective action within 60 days, the superintendent of the school district or the county office of education or the principal of the charter school, as appropriate based on the public school involved in the underlying complaint, shall be required to appear at the next regularly scheduled meeting of the State Board of Education (SBE) to explain the public school's failure to satisfy that requirement.

EXISTING LAW:

- 1) Prohibits the assessment of pupil fees for participation in an educational activity in public K-12 schools.
- 2) Permits complaints of noncompliance with the prohibition against pupils fees to be filed anonymously with a school principal if the complaint provides evidence or information leading to evidence of noncompliance.
- 3) Provides that, if a complainant is not satisfied with the decision of the school, he or she may appeal the decision to the CDE and shall receive a written appeal decision with 60 days of the CDE's receipt of the appeal.
- 4) Requires that, if the public school finds merit in a complaint, or the CDE finds merit in an appeal, the school shall provide a remedy to all affected pupils, parents, and guardians including, where applicable, reasonable by the school to ensure full reimbursement to all affected parties.

FISCAL EFFECT: According to the Senate Appropriations Committee:

- 1) This bill results in unknown, but potentially significant, costs for schools to comply with the additional requirements related to student fee complaints.
- 2) The California Department of Education (CDE) indicates the need for 1.5 additional positions and \$192,000 General Fund to implement the requirements of this bill. However, it appears that the majority of the workload imposed by this bill may be temporary in nature.

COMMENTS:

Background. The California Supreme Court ruled in *Hartzell v. Connell* (1984; 35 Cal.3d 899, 201) that pupil fees violate the constitutional right to a free education. Moreover, the court ruled that extracurricular activities also must be free, because they are an integral component of public education and a part of the educational program. The issue of pupil fees has been litigated many

times since *Hartzell*, and in nearly all cases the outcome has been a settlement or court decision favorable to the plaintiffs.

In September 2010 the American Civil Liberties Union (ACLU) filed a class action lawsuit alleging the unconstitutional assessment of pupil fees by school districts [*Jane Doe, et al. v. State of California, et al.*, (Super. Ct. Los Angeles County, 2010, BC445151)]. The lawsuit followed an August 2010 report from the ACLU that documented more than 50 public school districts that required pupils to pay fees for textbooks, workbooks, science labs, physical education uniforms, classroom materials, and extracurricular activities.

In December 2010 Governor Schwarzenegger and the ACLU announced a tentative settlement that would have established a monitoring and enforcement system, but the court did not finalize the settlement. The following April the ACLU filed an amended complaint that dropped the Governor as a defendant and added the SPI, the California Department of Education, and the State Board of Education (the "State Education Defendants"). In May 2011 the State Education Defendants and the ACLU agreed to a stay of court proceedings to allow for a legislative solution. The State of California did not agree to the stay and instead suggested that the case be dismissed pending the outcome of the legislative process.

The legislative solution, which was supported by the ACLU, was AB 165 (Lara). After AB 165 was vetoed by the Governor, the court case was reactivated. On January 26, 2012 the court overruled demurrers filed by the State of California and the State Education Defendants, allowing the legal case to move forward. Subsequently, however, the Governor signed AB 1575 (Lara, Chapter 799, Statutes of 2012), which codified the prohibition against pupil fees and provided for the resolution of noncompliance through the UCP.

Reason for this bill. According to the author's office, some districts continue to charge fees that are prohibited. Attempts to resolve the complaints through the UCP have not always been successful for a variety of reasons. For example, some districts have reimbursed the family filing the complaint, but not all of the families that were charged prohibited fees. Some districts have simply refused to comply with the CDE's ruling or refund the fees. This bill addresses these problems by (1) prohibiting a public school from establishing a policy of resolving a complaint by providing a remedy to the complainant without also providing a remedy to all other affected parties; (2) granting the SPI the power and authority to resolve the complaint in a timely manner, as specified; (3) requiring the school to provide documentation to the CDE of the corrective action taken; and (4) requiring a school administrator to appear before the SBE to explain the reasons for noncompliance with a CDE decision if compliance does not occur within a specified time period.

REGISTERED SUPPORT / OPPOSITION:

Support

American Civil Liberties Union of California
California Association of School Business Officials
California Association of Suburban Schools
California School Boards Association
California State PTA
California Teachers Association

Lawyers' Committee for Civil Rights of the San Francisco Bay Area
Orange County Department of Education
Public Advocates
Riverside County Superintendent of Schools

Opposition

None received

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