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OFFICE OF THE GOVERNOR

December 16, 2010

[REDACTED]
Superintendent

[REDACTED] High School District

[REDACTED]
California [REDACTED]

Dear [REDACTED]

As you may know, a group of students recently filed a lawsuit in Los Angeles Superior Court, alleging that many California public schools are illegally charging students mandatory fees to participate in educational activities. The State of California and I were the only defendants named in the suit, *Doe, et al. v. State of California et al.*, Case No. BC445151 (Los Angeles Superior Court).

I am concerned about these allegations, and therefore I ask you to immediately review your district's policies and the practices of its schools to ensure that students are not charged any illegal fees.

Article IX, Section 5 of the California Constitution states: "The Legislature shall provide for a system of common schools by which a free school shall be kept up and supported in each district." In *Hartzell v. Connell*, 35 Cal.3d 899, 913 (1984), the Supreme Court of California unambiguously held that this provision prohibits public schools from charging mandatory fees for educational activities.

In guaranteeing "free" public schools, article IX, section 5 fixes the precise extent of the financial burden which may be imposed on the right to an education – none. A school which conditions a student's participation in educational activities upon the payment of a fee clearly is *not* a "free school."

Id. at 911. The Court concluded that educational activities include both curricular and extracurricular activities. *See id.* The Court also flatly rejected the argument that a fee-waiver policy allows schools to charge fees for educational activities: "Educational opportunities must be provided to all students without regard to their families' ability or willingness to pay fees or request special waivers." *Id.* at 913. Thus, whenever a public school offers a curricular or extracurricular program to students, the California Constitution requires that the school provide all materials, supplies, and equipment whether they are necessary or supplementary to the program – to students free of charge.

The constitutional prohibition against requiring public school students to pay fees or purchase materials for educational activities is codified in Education Code § 60070, which prohibits school officials from requiring students to purchase instructional materials, and reinforced by Title 5, Section

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350 of the California Code of Regulations, which prohibits schools from requiring students to pay any fee, deposit or other charge not specifically authorized by law.¹ Public schools may solicit and accept donations from parents or the broader community, so long as the fundraising program is voluntary and contributing is not a requirement for participating in an educational activity.

My administration is evaluating options to establish a state-level process that will help identify impermissible fees to help ensure that districts and schools honor the free schools guarantee. I hope that the process we establish will also provide guidance to school districts on how they can raise additional money to support educational programming without resorting to illegal school fees.

In the meantime, I ask you to review your district's policies, to evaluate your schools' practices, and to ensure that no students in your district are being required to pay fees or to purchase materials or equipment for curricular and extracurricular activities.² Please feel free to contact Nicolas Schweizer, executive director of the State Board of Education, at (916) 319-0827 if you have any questions.

Sincerely,



Arnold Schwarzenegger

¹Although there are a few statutory exceptions authorizing public schools to charge students fees for certain services or materials, these are narrow and quite limited. For example, schools can charge all students for transportation to and from school and from summer employment (Education Code §§ 39807.5 & 39837), for food served to students (Education Code §§ 38082 & 38204), for lost or damaged school property (Education Code § 48904), for school-provided insurance for field trips (Education Code § 35331), and for medical and accident insurance for students participating in sports (Education Code § 32221). Schools also may charge students for field trips and science camps, but they cannot prevent a student from participating for non-payment (Education Code §§ 35330 & 35335). Additionally, if students create items in class and are allowed to take those items home with them as personal property, schools may charge students for the direct cost of materials (Education Code § 17551). Finally, schools can charge various fees for adult education (Education Code §§ 52612, 52615, & 60410) and community education courses (Education Code §§ 51810 & 51815).

None of these exceptions appears to justify the fees alleged in *Doe v. State*, which include requiring students to purchase required text and workbooks for academic courses; charging lab fees for science classes; charging material fees as a condition for enrolling in fine art classes; and requiring students to purchase school-issued P.E. uniforms. Additionally, they do not justify charging fees or requiring students to purchase equipment to participate in extracurricular activities.

²As you review internal policies and practices with your legal counsel, you may find the enclosed advisory produced by the Fiscal Crisis and Management Assistance Team (FCMAT) and the list of other potential resources useful starting points. My office is providing these materials for informational purposes only. The California Department of Education is in the process of updating its Fiscal Management Advisory 97-02 (dated October 30, 1997) regarding "Fees, Deposits, and Other Charges."