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Philosophical and legal bases for resolving student absenteeism

Campbell, Karen Harmon, Ed.D.

The University of North Carolina at Greensboro, 1987

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PHILOSOPHICAL AND LEGAL BASES FOR
RESOLVING STUDENT ABSENTEEISM

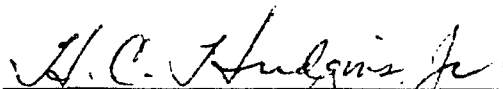
by

Karen Harmon Campbell

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Approved by


Dissertation Adviser

APPROVAL PAGE

This dissertation has been approved by the following committee of the Faculty of the Graduate School at The University of North Carolina at Greensboro.

Dissertation Adviser

H.C. Hudgins, Jr.

Committee Members

Harold E. Dwyer

Joseph E. Bryan

Walter L. Brubaker

March 26, 1987

Date of Acceptance by Committee

March 26, 1987

Date of Final Oral Examination

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Student absenteeism is one of the major concerns of school administrators today. The purpose of this study was an investigation of philosophical and legal rationales covering laws and local school board policies treating student absenteeism and its resolution.

This research included an examination of compulsory attendance laws in all fifty states, from the inception of these laws to present day statutes. The review of current statutes focused on states which have amended statutes to allow academic sanctions to be used for student nonattendance. In addition to examining state action to mandate attendance requirements, the researcher examined selected programs originating at the local level which were designed to improve attendance.

The researcher examined the legality of attendance policies which impose academic sanctions for student nonattendance. The cases reviewed were a result of a detailed examination of opinions of state and federal courts of record which have been reported in any of the fifty states between 1970 and 1986.

The researcher found that student absenteeism is affected by factors over which a school has some control and by factors over which it has little or no control. Some of these factors include grade level of the student, achievement level, intelligence quotient, gender, and number

of parents. Pupil attendance is better in school districts whose policies mandate specific attendance requirements for course credit. Pupil attendance is better in school districts which have provisions for encouraging and rewarding attendance, even though such provisions are not tied to academic standards.

Local school board policies providing for academic sanctions for pupil absences have a very good chance of being upheld by courts. If the following conditions are met, they are not likely to be declared invalid. The policy is not inconsistent with state statutes, has some relationship between attendance and learning, serves a valid educational purpose, is applied evenly and consistently, is made known in advance to students, provides for students charged with a violation of it to explain their circumstances, and allows teachers to be the final determinator of students' grades.

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CHAPTER I
INTRODUCTION

Truancy, listed as one of the greatest concerns of school administrators in recent years, has created a host of problems within a school. Class progress has been slowed, teachers' time has been used inefficiently, and individual student achievement has been adversely affected.¹ Across the nation there has emerged a growing trend for boards of education to adopt academic penalties like lowered grades or loss of credit for misconduct or nonattendance by students.²

Many discussions have been held both at the state and local levels regarding the philosophical and legal aspects of basing a student's grade on attendance as well as on academic performance. More and more educators and legislators have been recommending loss of credit or grades for excessive or unexcused absences.³

Efforts to use academic penalties for purposes other than the direct evaluation of academic performance have led

¹ Emily Bernheim, "Academic Penalties for Misconduct and Nonattendance," School Law Bulletin, XVI (Fall 1985), p. 18.

² Ibid.

³ Thomas J. Pepe, "Academic Penalties for Attendance Reasons," A Legal Memorandum, National Association of Secondary School Principals (March 1985), p. 1.

to an increase in court cases in recent years and also to a substantial increase in state legislative action on this subject. In addition, the topic has generated significant debate on the function of American schools and their role in our society.⁴

BACKGROUND OF THE STUDY

In 1979, for the first time in the eleven-year history of the Gallup Poll, "pupil lack of interest/truancy" was on the list of the greatest problems the general public perceived the public schools had to handle.⁵ Many hours were spent attempting to enforce attendance policies and dealing with problems associated with truancy or excessive absenteeism. For this reason much attention has been focused on the problem in an attempt to develop programs or policies which would stem the ever-increasing rise of absenteeism. These programs and policies have had varying rates of success, for the problem still persists.

Thomas Jefferson argued that in order to preserve freedom and independence, some degree of education is necessary to prepare citizens to participate effectively and

⁴ Ibid.

⁵ George H. Gallup, "The Eleventh Annual Gallup Poll of the Public's Attitude Toward the Public Schools," Phi Delta Kappan, 61 (September 1979), pp. 33-45.

intelligently in our open society.⁶ Even though it had long been accepted that the welfare of the child and that of society in general required an educational opportunity, in the early years of our educational development, the state did not compel children to attend schools. Early laws made schools available but attendance was not compulsory.⁷

Even though there was general acceptance of education as necessary and vital to the well-being of the child and to society in general, there was resistance to the notion that a state had the right to compel parents to send their children to school. As early as 1862:

The evils of absenteeism and irregular attendance were among the most serious problems facing school administrators. It was recognized by friends of universal education that a compulsory attendance law was necessary to compel all children to attend the free schools that were provided for them by the state.⁸

Between 1918 and 1954, all states adopted compulsory attendance laws.⁹ In 1985, all states were reported to have

⁶ E. Edmund Reutter, Jr., The Law of Public Education, 3rd ed. (Mineola: The Foundation Press, Inc., 1985), p. 706.

⁷ Edward C. Bolmeier, Legal Limits of Authority Over the Pupil (Charlottesville: The Michie Company, 1970), p. 7.

⁸ Edith Abbott and Sophonisha P. Breckinridge, Truancy and Nonattendance in the Chicago Schools (Chicago: University of Chicago Press, 1917), p. 39.

⁹ H. C. Hudgins, Jr. and Richard S. Vacca, Law and Education: Contemporary Issues and Court Decisions, Revised Edition (Charlottesville: The Michie Company, 1985), p. 243.

formal statutes or less formal policies which regulate student attendance.¹⁰

Over the years, courts of law had held that the enactment of compulsory attendance laws was a valid exercise of the power of the state. An early Illinois court decision upheld the state's authority to require school attendance. This court stated:

The welfare of the child and the best interests of society require that the state shall exert its sovereign authority to secure to the child the opportunity to acquire an education. Statutes making it compulsory upon the parent, guardian, or other person having the custody and control of children to send them to public or private schools for longer or shorter periods during certain years of the life of such children have not only been upheld as strictly within the constitutional power of the legislature, but have generally been regarded necessary to carry out the express purposes of the constitution itself.¹¹

Compulsory attendance laws generally set minimum attendance requirements which were designed to protect children from parental negligence or from their own lack of judgment. A typical state law required parents to send their children from age 7 through 16 to school or to face a fine and a jail sentence.¹² Seven states set the limits

¹⁰ Patricia Lines, "Compulsory Education Laws and Their Impact on Public and Private Education," (Washington, D. C.: National Institute of Education, 1985), pp. 7-11.

¹¹ State v. Bailey, 61 N.E. 730, 731-2 (Ill. 1901).

¹² William D. Valente, Law in the Schools, Second Edition (Columbus: Merrill Publishing Company, 1987), pp. 26-27.

from age 6 to 16.¹³ The upper age limit varied from 15 to 18, with the majority of the states citing age 16 or 17 as the maximum age for children to be subject to compulsory attendance laws.¹⁴

Most state laws addressed the importance of a free education and the need for attendance laws. As an example, North Carolina's statute requires that:

...every parent, guardian or other person in this State having charge or control of a student between the ages of seven and sixteen years shall cause such student to attend school continuously for a period equal to the time which the public school to which the student is assigned shall be in session. No person shall encourage, entice or counsel any such student to be unlawfully absent from school.¹⁵

Other state statutes and regulations provide similar requirements for attendance. However, these statutes and regulations were typically written in broad and general terms and provided little direction to local boards of education who developed more specific policies for attendance.

These broad and general compulsory attendance laws have not been sufficient to curb truancy and excessive

¹³ Ibid. These states are California, Delaware, Maryland, Michigan, New Hampshire, New Jersey, and New York.

¹⁴ Ibid. Iowa, Montana, and Washington set the upper age limit at 15; Hawaii, Ohio, Oklahoma, Oregon, and Utah at 18.

¹⁵ N. C. GEN. STAT. 115-C-378 (1985).

absenteeism.¹⁶ Many school administrators felt that stricter enforcement of attendance laws and policies was necessary to combat this problem.¹⁷

This increasing concern of administrators and the general public resulted in a growing trend to use attendance policies and state statutes to control absenteeism. Some states had enacted legislation which mandated specific attendance requirements for course credit.¹⁸ Other states reacted by forbidding local districts to use grade reduction for attendance reasons.¹⁹ Still other states required local districts to have written policies setting forth attendance requirements and encouraged the consideration of student attendance in determining a student's grade in a course.²⁰

The philosophical question of whether there was a need for compulsory attendance laws generated extensive debate. Johnson contended that it was not necessary for our immediate or long-range survival to enforce compulsory attendance beyond the age when most students can be expected

¹⁶ Jack L. Brimm, John Fogety, and Kenneth Sadler, "Student Absenteeism: A Survey Report," National Association of Secondary School Principals Bulletin, 62 (February 1978), p. 65.

¹⁷ Ibid., p. 66.

¹⁸ "Regulations for Compulsory Student Attendance," (South Carolina State Board of Education, 1985).

¹⁹ WISC. STAT. 118.16 (4) (1979).

²⁰ COLO. REV. STAT. ANN. 22-33-104 (4) (Supp. 1963).

to have attained basic skill levels in reading, writing, and arithmetic.²¹ He argued that people should seek to lessen the general societal expectation that all youngsters should receive formal schooling through age 16, 17, or 18 and find ways to encourage students who voluntarily choose to advance their skills beyond a basic level.²²

Concerning the issue of using academic penalties for truancy or excessive absenteeism, one leading authority on school law was opposed. Bolmeier referred to reduction of grades for punitive reasons as an unorthodox disciplinary practice.²³

There have been significant amounts of research directed toward the relationship of school attendance and achievement. Monk and Ibrahim found that the more absences a student had, the more adversely achievement was affected. They also found that the adverse effect could be generalized to the entire class. Teachers in classes with high absentee rates found it necessary to give remedial help to those

²¹ Howard M. Johnson, "Are Compulsory Attendance Laws Outdated?" Phi Delta Kappan, 55 (December 1973), pp. 226-228.

²² Ibid.

²³ Edward C. Bolmeier, Legality of Student Disciplinary Practices (Charlottesville: The Michie Company, 1976), pp. 146-147.

students who were absent and this affected the entire class.²⁴

Student absenteeism has been a prevalent problem across our nation. Educators agree on the need for a strategy to combat the problem. There has been, however, no consensus on whether the means should be punitive such as policies which advocate grade reduction or loss of credit for excessive absenteeism, or whether the schools should adopt programs which motivate students to attend. This study sought to examine the merits of both types of programs.

STATEMENT OF THE PROBLEM

Student absenteeism is one of the major concerns of high school administrators today. Considerable energy and effort have been expended attempting to enforce compulsory attendance laws. Class progress has been slowed and individual academic achievement adversely affected by poor attendance. Solutions to the problem of excessive absenteeism and truancy have been sought by administrators and legislators.

PURPOSE OF THE STUDY

The purpose of this study was an investigation of philosophical and legal rationales covering laws and local

²⁴ David H. Monk and Mohd Arrifin Ibrahim, "Patterns of Absence and Pupil Achievement," American Research Journal, 21 (Summer 1984), pp. 295-310.

school board policies treating student absenteeism and its resolution. By examining current practices of school boards and state legislatures in associating academic standards with attendance and by examining judicial decisions regarding such practices, this researcher sought to find legally defensible guidelines and a rationale which could be used by boards of education as they formulate attendance policies. Further, this study examined the philosophical aspects of associating student attendance with academic progress.

SIGNIFICANCE OF THE STUDY

The loss of a day's instruction affects individual students, the school, and society. For a student, excessive absenteeism and truancy interferes with successful learning and may result in failure to acquire the necessary skills and credentials for employment, higher education, and success in life.

For the school, it means a loss of administrative and staff time and energy. Within the classroom, educational opportunities are lost as a teacher uses regular class time to provide remediation to the student who has been absent from class. It causes concern for administrators and teachers who are committed to providing a quality education to all students enrolled in the school.

For society, excessive absenteeism and truancy raise concern for potential delinquency and crime. There is also concern for the high cost of providing educational opportunities to students who are not present to take advantage of these opportunities. The per pupil expenditure in the United States in 1979-80 was \$2,271.78.²⁵ The total expenditure for day schools per day per pupil in "Average Daily Attendance" was \$13.95.²⁶ The average absentee rate in the United States in 1979-80 was 9.9 percent.²⁷ The cost to the taxpayer for the 1979-80 school year for students who were not in attendance was \$47,095,200.

Even though the actual dollar costs to society are significant, in the final analysis, the greater cost is the burden of students who were ill-prepared to assume a productive role as citizens.

There are countless demands for education reform as the basis for our nation reclaiming its position as a technological leader in the world. As schools strive to become more effective in the preparation of students, the problem of excessive absenteeism has to be pursued.

As school administrators and boards of education search for solutions to excessive absenteeism, it is important to

²⁵ W. Vance Grant and Thomas D. Snyder, "Digest of Education Statistics, 1983-84," National Center for Education Statistics (Washington: 1985), p. 28.

²⁶ Ibid.

²⁷ Ibid., p. 27.

examine both legal and philosophical aspects of proposals. Research can assist in ascertaining the effectiveness of different programs in reducing absenteeism.

DEFINITION OF TERMS

For purposes of this study, the following selected terms were identified:

Absence - "the failure of a pupil to be present at school; generally understood as failure to be present at more than half the session."²⁸ For this study, it will mean failure to be in attendance for the day. Exceptions will be noted.

Absentee - "...one that is absent or absents himself..."²⁹ from school.

Absenteeism - "...continual interruption of attendance..."³⁰ at school.

Achievement - "accomplishment or proficiency of performance in a given skill or body of knowledge; (2) progress in school..."³¹

²⁸ Carter V. Good, Editor, Dictionary of Education, 3rd Edition (New York: McGraw-Hill Book Company, 1973), p. 2.

²⁹ Philip B. Gove, Editor in Chief, Webster's Third New International Dictionary of the English Language Unabridged (Springfield: B. and C. Merriam Company, 1961), p. 6.

³⁰ Ibid., p. 6.

³¹ Good, p. 7.

Alternative Program - programs developed by individual schools, school systems, or states which are designed to improve attendance by means other than reduction of grades or loss of course credit.

Attendance - "the act of being present, particularly at school."³²

Compulsory Attendance Laws (Compulsory Education) - "the practice, now common to all states, territories, and possessions of the United States, of requiring school attendance by law..."³³

Credit - "...official certification of the completion of a course of study..."³⁴

Excused Absence - "absence from school for any reason recognized as legitimate by the school."³⁵

High School - "the school division following the elementary school, comprising most often grades 9 to 12 or grades 7 to 12."³⁶

³² Ibid., p. 7.

³³ Ibid., p. 123.

³⁴ Ibid., p. 153.

³⁵ Ibid., p. 3.

³⁶ Ibid., p. 281.

Philosophy - "the most general beliefs, concepts, and attitudes of an individual or group..."^{37a} as expressed in given practices.

Pupil - "one who attends a kindergarten or a school of elementary level: one who attends a school of secondary level..."^{37b}

Student - "one who attends an educational institution..."³⁸

Tardiness - "the act or state of being late..."³⁹ to school.

Truancy - "deliberate absence from school on the part of the pupil without knowledge or consent of the parent; (2) absence of a pupil from school for which no reasonable or acceptable excuse is given..."⁴⁰

Truant - "a youth who is absent from school without the knowledge or consent of his parents...a youth who is absent from school without a valid excuse."⁴¹

Unexcused Absence - "absence from school for reasons that are not recognized by the school as legitimate..."⁴²

^{37a} William A. Llewellyn, Editor, Webster's Ninth New Collegiate Dictionary (New York: Merriam-Webster, Inc., 1983), p. 882.

^{37b} Ibid., p. 461.

³⁸ Ibid., p. 561.

³⁹ Ibid., p. 584.

⁴⁰ Ibid., p. 625.

⁴¹ Ibid.

⁴² Ibid., p. 3.

QUESTIONS TO BE ANSWERED

The study involved an investigation, which included two broad areas, philosophy and law. The study questions involving philosophy included the following research questions:

(1) What are the major educational issues involved in associating a student's grade with attendance as well as academic performance?

(2) Where attendance policies which mandate specific attendance requirements for course credit have been adopted, is there evidence that absenteeism has decreased?

(3) Where school boards have adopted provisions for programs which encourage attendance but which are not tied to academic standards, have students enrolled in such programs subsequently experienced a decrease in absenteeism?

The study involving law included the following research questions:

(1) Are attendance policies which penalize students for excessive absenteeism by grade reduction or loss of credit in violation of their constitutional rights?

(2) Have court decisions indicated what attendance policies or guidelines are legally acceptable?

(3) What criteria are legally defensible for school

boards in developing policies which relate pupil attendance with academic grades?

DELIMITATIONS OF THE STUDY

This was a study and analysis of court cases involving academic penalties for nonattendance which were litigated between 1970 and 1986. The trend for state legislatures and boards of education to mandate academic penalties for student nonattendance has a short history. This time span encompasses all pertinent litigation on academic penalties for student nonattendance. Selected cases litigated during this time frame were arbitrarily chosen for full, detailed reporting. Early cases which established relevant precedents were cited in less detail. State and federal court opinions which addressed academic penalties for student nonattendance were studied. Analyses of cases included reasons for litigation, results of court cases, and implications these cases have for boards of education. Controversies which erupted from academic penalties for nonattendance but which did not result in litigation were reported, where such information was available.

In addition, state compulsory attendance laws which included provisions for academic penalties were reviewed and reported. State statutes regarding absenteeism were examined. Philosophical issues which addressed the wisdom

of attendance policies tied to academic standards were considered.

Some studies referred to "absence" as meaning not being present in a scheduled class. These studies focused on "class cutting" and used "absence" to mean not being present in any single class period. In each of the studies reported in Chapter III and in the court opinions reported in Chapter IV, the term "absence" meant a full day unless otherwise noted.

ORGANIZATION OF THE STUDY

The remainder of the study is divided into four major chapters. Chapter II details information regarding methodology employed in the study. Relevant literature is reviewed in Chapter III. That chapter includes an historical perspective of compulsory attendance laws and also contains a review of recent statutory changes in these laws. Literature related to absenteeism is examined as well as alternative programs which have been designed to improve attendance. Philosophical issues relating to academic penalties for student nonattendance is reported in Chapter III.

Chapter IV is devoted to the legal aspects of attendance policies which penalize students by withholding course credit or by lowering grades for nonattendance. The researcher will examine cases which are based on three

challenges: (1) the policy exceeds the limit of the school board's authority; (2) the statute or policy deprives the student of substantive due process; or (3) the statute or policy violates the student's procedural due process rights.

Summary, findings, conclusions, and recommendations are reported in the final chapter.

CHAPTER II
RESEARCH DESIGN AND METHODOLOGY

Design -- The design of the study was essentially historical research. The research included reporting, analyzing, and interpreting data from a variety of sources. Statutory and case law relevant to the topic were reviewed and interpreted. Whenever possible, primary sources were located and studied. Secondary sources were utilized when primary sources were unavailable.

Historical data were carefully scrutinized to determine relevance and significance to the problem. Data were then organized and synthesized to formulate recommendations and conclusions.

Methodology -- The researcher used a two-pronged approach for identifying sources for these data. The first approach involved the identification of data in primary sources germane to the research topic. For data gathering in the education law section, the researcher used two major primary sources, one for statutes and the other for court opinions. Statutes were identified directly in the codes of the various states. Court opinions were identified through the American Digest System, specifically the Eighth and Ninth Decennial Digests and the Fifth General Digests, up to and

including opinions handed down in 1986. From these digests, a bibliography of case law citations was compiled. Using these citations, the researcher then found the cases in the appropriate volume of the National Reporter System.

In order to determine that a complete list of case law had been identified, this researcher cross-checked for accuracy through the Yearbook of School Law and each of its volumes corresponding to the time frame of this study plus the NOLPE School Law Reporter for citations of the most recent opinions on the subject.

Secondary sources were also studied. A complete search for related literature was obtained from the Educational Resources Information Center (ERIC). In addition, legal periodical articles were identified through the Index to Legal Periodicals. The School Law Bulletin and Institute of Government materials were beneficial in examining North Carolina's position on the topic.

Primary sources for data related to the philosophical aspects of the topic were located through ERIC and through a search of Dissertation Abstracts. Publications of the National Center for Education Statistics were reviewed for current statistical information.

The second approach involved the identification of secondary sources related to the philosophical questions raised in this study. Journal articles related to the topic were located through use of Reader's Guide to Periodical

Literature, the Index to Legal Periodicals, and the Education Index. Books and sections of books which were relevant to the subject were located through the card catalogue. Bibliographies of related studies were examined for pertinent sources. Information was also extracted from educational newsletters, documents, and pamphlets.

Procedures -- The historical development of compulsory attendance laws and the long-standing problem of student absenteeism were summarized and documented in the Review of Literature chapter. Compulsory attendance laws of each state were examined and divided into three major categories: (1) those states which had enacted statutory changes which mandated specific attendance requirements students must fulfill in order to receive credit; (2) those states which defer to local school boards' discretion in the development of attendance policies; and (3) those states which specifically prohibit the use of academic penalties for nonattendance. All alternative programs designed to combat excessive student absenteeism which have been developed and reported since 1970 and identified by the researcher were summarized. Published opinions regarding the merits or demerits of the practice of attendance policies which include academic penalties were summarized.

Compulsory attendance statutes of all the states were

reviewed.⁴³ Sections referring specifically to graduation and promotion requirements, penalties for absences, attendance requirements, enforcement of compulsory attendance, and any other section which would include provisions for academic penalties for nonattendance were extracted for analysis.

All court cases litigated since 1970 which involved academic penalties for nonattendance were read. Facts regarding the case were examined, background information was reviewed, and questions to be answered were noted. The court's holding and the rationale for such holding were analyzed. All cases were not reported in detail in Chapter IV. Cases reported in full detail in this chapter were chosen arbitrarily. These cases were either the first cases bearing on a particular point or were significant cases.

⁴³ Every state has compulsory attendance laws including the District of Columbia with the exception of Mississippi.

CHAPTER III
LITERATURE REVIEW
OVERVIEW

Student absenteeism has become a major concern of educators, parents, and communities. Students are absent for three major reasons: illness, weather and transportation problems, and personal choice.⁴⁴ Illness accounted for an average of 4 to 5 percent of absences annually. Transportation problems and weather kept another 2 percent of students out of school each year.⁴⁵ Thus it appeared that absentee rates of 6 to 7 percent would be reasonable. However, nationally the absentee rate was 9.9 percent.⁴⁶ Daily absentee rates of 30 percent were not uncommon in urban secondary schools.⁴⁷

In a 1978 survey to determine principals' attitudes about student absenteeism, 86 percent of the administrators reported that student absenteeism was a major problem.

⁴⁴ Lee C. Malbon and Ronald L. Nuttall, "A Promising Approach to Absenteeism in the Secondary School," Phi Delta Kappan, 64 (September 1982), p. 66.

⁴⁵ Ibid.

⁴⁶ Grant and Snyder, p. 27.

⁴⁷ Chrissie Bamber, Student and Teacher Absenteeism, (Bloomington: Phi Delta Kappa Educational Foundation, 1979), p. 9.

Principals overwhelmingly indicated absenteeism could be reduced by stricter enforcement of attendance laws and policies.⁴⁸

Other sources reported that many educators felt that compulsory attendance laws were outdated and contributed very little today to achievement of the basic goals of schooling.⁴⁹ Hoback reported that a traditional, authoritarian approach to attendance problems cannot work in today's school. He advocated an attendance program based on positive reinforcement--making each student feel needed, wanted, and involved in his own education.⁵⁰

This chapter will contain a broad survey of literature which deals with the issue of academic penalties for student nonattendance. Specifically, it will address those research questions which relate to the philosophical aspects of the study.

In the "Historical Perspective" section of this chapter, the researcher will trace the development of compulsory attendance laws in the states from the 1800's to our present day laws. Early litigation resulting from these laws will be presented. Current compulsory laws and statutes will be presented in a table. State statutes which

⁴⁸ Brimm, p. 66.

⁴⁹ Johnson, p. 226.

⁵⁰ John R. Hoback, "The Problem of Attendance," National Association of Secondary School Principals Bulletin, 60 (February 1976), p. 20.

refer to the use of academic penalties for attendance reasons will be reported in greater detail.

In addition to movements at the state level to legislate attendance programs, many individual schools or school systems have developed programs designed to stem the rise of student absenteeism. These programs are divided into four categories: (1) those which involved the use of positive incentives; (2) those which focused on punishment for nonattendance, such as grade reduction, loss of course credit, and nonpromotion; (3) those which involved enrollment in specialized programs; and (4) those which enlisted the assistance of parents. These programs and results reported will be presented in the section, "Programs to Reduce Absenteeism"

Several studies have been conducted which relate to the topic. These studies and journal articles relating to the topic will be summarized in the final section of this chapter.

HISTORICAL PERSPECTIVE

Since the very beginnings of our public education system there has been concern regarding student attendance. This section will examine the development of compulsory attendance laws and early litigation which resulted from the enactment of these laws.

Boston, in the 1820's, was one of the first cities to appoint a truant officer to oversee the "idle, vagrant, and

vicious children" on the streets of the city. The truant officer's job was to get the truants back into school, or get them a job, or commit them to the House of Reformation for Juvenile Offenders.⁵¹ The reasons for moving to compulsory education in the United States were complicated. There was a belief that the poor and the immigrant should be protected from exploitation by greedy manufacturers who capitalized on the cheap child labor available. Others felt that the schools should be available to all groups in society as a means of improving themselves, and as a means of achieving a sound and durable political community. When this could not be achieved by persuasion, the educational and social reformers turned to compulsory attendance laws.⁵²

Another early writer who called for compulsory education laws was Jane Addams. She stated that:

As democracy modifies our conception of life, it constantly raises the value and function of each member of the community, however humble he may be. We have come to believe that the most "brutish man" has a value in our common life, a function to perform which can be fulfilled by no one else. We are gradually requiring of the educator that he shall free the powers of each man and connect him with the rest of life. We ask this not because it is the man's right to be thus connected, but because we have become convinced that the social order cannot afford to get along without his special contribution...The best child-labor law is a compulsory education law covering forty weeks and requiring the consecutive attendance of all the children to the age of fourteen years. It is never

⁵¹ R. Freeman Butts, Public Education in the United States: From Revolution to Reform (New York: Holt, Rinehart, and Winston, 1978), p. 102.

⁵² *Ibid.*, pp. 102-3.

certain that children are not at work, if they are out of school. In order to keep the children, however, it is not enough to compel attendance--the schools must be modified and adapted to the needs of the recent immigrants in the North and of the poor whites in the South, affording instruction which appeals to the parents as worth having...⁵³

Another early writer calling for compulsory education was Leonard P. Ayres. He stated:

If children are to progress regularly through the grades they must be present in the schools. This means that we must have better compulsory attendance laws and better provision for their enforcement. If we are to enforce the attendance laws we must know where the children of school age are.⁵⁴

Massachusetts, in 1852, passed the first state-wide compulsory attendance law, with all other states following its lead. Mississippi, in 1918, was the last state to pass such a law.⁵⁵ Massachusetts' law stipulated that,

Every child between seven and fourteen shall attend some public school in the city or town in which he resides during the entire time the public day schools are in session.⁵⁶

The law further specified certain exemptions for illness, poverty, or other provisions for education outside the public school. The exemptions were so broad that the effect

⁵³ Jane Addams, "A Call for Social Education (1902), Democracy and Social Ethics (New York, 1902), pp. 178, 220.

⁵⁴ Leonard P. Ayres, Laggards in Our Schools: A Study of Retardation and Elimination in City School Systems (New York: 1909), pp. 3-7.

⁵⁵ Lawrence A. Cremin, The Transformation of the School (New York: Vintage Books, 1964), p. 127.

⁵⁶ Laws of Massachusetts, 1852, 240.1, 2, 4. Revised 1902, Vol. 1, p. 477.

of the law was negligible. This law of 1852 and those which followed in other states, marked the beginning of a trend to regulate and compel school attendance. The national climate at this time was conducive to the spread of universal, free, and compulsory education. There was a growing public feeling that education was essential to protect the democratic form of government and also to "prevent crime, provide for the general happiness, and secure the rights of persons and property..."⁵⁷

After the enactment of compulsory attendance laws, public debates soon began to arise. Many were opposed to the compulsory nature of the laws. They contended that such legislation deprived parents of their inalienable right to control their children, and was an unconstitutional infringement upon the individual liberty guaranteed by the Fourteenth Amendment.⁵⁸ Opponents challenged that compulsory education laws were "monarchical" and that already powerful state governments were usurping new powers. In 1890, Oscar H. Cooper, State Superintendent of Education in Texas, stated in an address to the National Education Association:

I hold that compulsory education is contrary to the dominant idea which has pervaded the development of

⁵⁷ R. Freeman Butts and Lawrence A. Cremin, A History of Education in American Culture (New York: Henry Holt and Company, 1953), pp. 356-57.

⁵⁸ Chris A. DeYoung, Introduction to American Public Education (New York: McGraw-Hill Book Company, 1950), p. 166.

American institutions. Education is the inherent right of the family and parent. The dangers to the welfare of society resulting from a great mass of illiterates are appalling but the evils of illiteracy are less perilous than those which result from the destruction of parental authority and the loosening of family ties.⁵⁹

Opponents also claimed that compulsory attendance laws were "un-American" and in conflict with the spirit of free democratic institutions. Advocates of the laws countered with claims that compulsory education is, in its essence, democratic in spirit and purpose, since it recognizes no class distinctions and gives every child an equal start in life.⁶⁰

Compulsory attendance laws through the years have gradually gained public acceptance. During the nineteenth century, people were generally ambivalent about laws requiring all children of a certain age to attend school. These laws were often passed without strong support or opposition. During the entire nineteenth century, there were only four cases which involved compulsory school attendance.⁶¹

In 1901, the Supreme Court of Indiana in State v. Bailey confirmed the right of the state to compel a child's

⁵⁹ Grace Abbott, The Child and the State (Chicago: University of Chicago Press, 1938), p. 310.

⁶⁰ DeYoung, p. 167.

⁶¹ David L. Kirp and Donald N. Jensen, School Days, Rule Days: The Legalization and Regulation of Education (Philadelphia: The Falmer Press, 1986), pp. 219, 226.

attendance despite ancient common law right of the parent. The court held that the parent is obligated to educate his child not only as a duty owed the child but also as a duty to the state.⁶²

Parental rights were addressed again in 1923 in Meyer v. State of Nebraska. The United States Supreme Court stated that

The education of youth is a matter of such vital importance to the democratic state and the public weal that the state may do much, may go very far indeed, by way of limiting the control of the parent over the education of the child.⁶³

But the Court went on to affirm that parental privileges recognized in common law were protected by the due process clause of the Fourteenth Amendment. In Meyer, Nebraska's statute that prohibited the teaching of a modern language other than English to students who had not completed the eighth grade in any private, parochial, or public school in that state was found to be unconstitutional. The Court held that the statute violated the defendant's right to teach, the student's right to learn, and the parents' right to choose, within bounds, what their children would be taught. The Court affirmed that these rights are liberties entitled to due process protection under the Fourteenth Amendment. The statute was found to be unreasonable and arbitrary.

⁶² State v. Bailey, 157 Ind. 324 (1901).

⁶³ Meyer v. Nebraska, 262 U.S. 390, 43 S.Ct. 625 (1923).

Litigation began when, in 1922, Oregon passed a compulsory school law that required attendance in public schools. The Society of Sisters, a Roman Catholic school, challenged the constitutionality of the law. The Court held that these private and parochial schools were not unfit or harmful to the public, and that enforcement of the challenged statute would unlawfully deprive them of patronage and thereby destroy their owners' business and property. The Court also found that

The child is not the mere creature of the State; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations.⁶⁴

The Court confirmed in this decision the right of individuals to establish and maintain both private non-sectarian and private religious schools, and the right of parents to send their children to such schools.

The issue of state power and parental control was not overtly raised again until 1972, when the Supreme Court addressed the problem in Wisconsin v. Yoder.⁶⁵ Until Yoder, the courts had consistently rejected the "free exercise" argument for home school. In this case, the Court asserted that a parental religious right could outweigh the state's interest in compulsory school attendance. The defendants in

⁶⁴ Pierce v. Society of Sisters, 268 U.S. 510, 535 (1925).

⁶⁵ Wisconsin v. Yoder, 406 U.S. 205, 92 S.Ct. 1526 (1972).

Yoder were members of the Old Order Amish religion and the Conservative Amish Mennonite Church. Wisconsin's compulsory attendance law required school attendance until the age of sixteen, and the Amish parents refused to send their children to a public or private school after they had graduated from the eighth grade. They were convicted and fined \$5 each. The parents claimed that the compulsory attendance law violated their rights under the First and Fourteenth Amendments of the United States Constitution. They claimed that exposing their children to high school would be contrary to the Amish religion and way of life. Attendance at high school would endanger the salvation of both the parents and their children, since the Old Order Amish believed that salvation required life in a church community that was in harmony with nature and the soil.

The United States Supreme Court held that the First and Fourteenth Amendments prevent a state from compelling Amish parents to cause their children, who have graduated from the eighth grade, to attend formal high school to age sixteen. Chief Justice Burger delivered the opinion which stated in conclusion that:

Aided by a history of three centuries as an identifiable religious sect and a long history as a successful and self-sufficient segment of American society, the Amish in this case have convincingly demonstrated the sincerity of their religious beliefs, the interrelationship of belief with their mode of life, the vital role that belief and daily conduct play in the continued survival of Old Order Amish communities and their religious organization, and the

hazards presented by the State's enforcement of a statute generally valid as to others.⁶⁶

The Court thus established a precedent for possible future exemptions from compulsory school attendance laws being granted for children when parents can establish religious objection to school attendance.

Compulsory attendance laws have been in place for approximately 100 years. Although the constitutionality of these laws has been challenged, no court in this country has ever held it beyond the competence of the state to require that children be exposed to a certain amount of instruction, nor has any court denied the power of the state to make reasonable provision as to the type, means, and supervision of such instruction. Thus the basic principles of compulsory education are firmly supported by legal precedents and also by public opinion.⁶⁷

STATE STATUTES

Early compulsory attendance statutes initially contained broad and general provisions, with specifications later added to clarify the requirements and to make them enforceable. This section will look at current compulsory attendance laws and specifically those statutes which contain provisions for academic penalties.

⁶⁶ Id. at 92 S.Ct. 1543.

⁶⁷ Charles K. Woltz, School Pupils and the Law: Law and Contemporary Problems (Durham: n.p., n.d.), p. 7.

Current compulsory laws and statutes are complex and broad. Among the areas covered by most state statutes are: (1) compulsory age span; (2) permissive admission age; (3) minimum required school term; (4) minimum attendance required; (5) exemptions from attendance; (6) provisions for children with special needs; (7) appointment and duties of attendance officers; (8) identification of truants; (9) adjudication procedures; (10) penalties; (11) age for work permits; (12) minimal education requirements for permits; (13) continuation or part-time attendance; and (14) school census procedures.⁶⁸

Aikman and Kotin published a definitive report of the legal structure underlying state compulsory school attendance requirements and the likely legal and policy consequences that might result from repeal or amendment of the statutes that form that structure.⁶⁹ Their study included a detailed analysis and comparison of the compulsory attendance statutes of every state.

The following paragraphs will present a broad and general comparison of the states' compulsory attendance statutes. The purpose of this section is to provide an

⁶⁸ Edgar Fuller and Jim B. Pearson, eds., Education in the States: Nationwide Development Since 1900 (Washington: National Education Association of the U.S. 1969), p. 30.

⁶⁹ William F. Aikman and Lawrence Kotin, "Legal Implications of Compulsory Education: Final Report," (Washington, D.C.: National Institute of Education, 1976), p. 7.

overview of what the compulsory attendance statutes legally require of parents, children, and the state.

The basic requirement found in compulsory attendance statutes is that the child attend public school or some permissible alternative facility or program. Attendance of a school-age child in some permissible program, as defined by the statutes, is required by every state except Mississippi. Many state statutes explicitly require that instruction or education be provided children "upon such attendance." Alaska, California, Colorado, Florida, Indiana, Oklahoma, and Vermont have specific statutory requirements of "education" for each child. Alaska and Colorado specify an "academic education" to be required. The presumption for those states not requiring "education" or "instruction" is that the legislature assumed that there could be no doubt that their intention in enacting compulsory attendance statutes was to require an "education."

The compulsory attendance statutes of all states indicate generally that a child of compulsory school age (most commonly, ages seven to sixteen) who is not exempted for an acceptable reason, must attend public school for the "entire time the school is in session" or at least "during each school term." Four states require attendance during the specific hours that the public school is in session.⁷⁰

⁷⁰ Connecticut, Louisiana, New Jersey, Virginia.

The responsibility for attendance varies from state to state. Twenty states specifically place the burden of attendance on the child.⁷¹ The parent of the child, or whoever is in loco parentis, shares this responsibility in fifteen states.⁷² All states except Alaska, Hawaii, Massachusetts, North Carolina, and Washington have a truancy provision and many of these provisions permit children to be institutionalized for truancy. In addition, several states have statutes which authorize suspension or expulsion for truancy. A few states' statutes require truants, or children who have been found to be "incorrigible, vicious, or immoral", to attend "truancy or parental school" programs.⁷³

Every state directly or implicitly requires the parent having control of a child, who is not included in any exceptionality, to send or cause such child to attend school or some acceptable alternative. However, if the parent is not aware of the child's absence or is not party to the violation, most state statutes excuse the parent from responsibility.⁷⁴

⁷¹ Alabama, Alaska, California, Colorado, Florida, Georgia, Hawaii, Indiana, Maine, Maryland, Massachusetts, Minnesota, New Hampshire, New Mexico, New York, Oklahoma, Oregon, Pennsylvania, Rhode Island, Texas.

⁷² The exceptions are Colorado, Minnesota, New Hampshire, New York, Texas.

⁷³ Kentucky, Nebraska, Tennessee.

⁷⁴ IND. CODE 20-8.1-3-33,34 (1973).

Even though few state compulsory attendance statutes actually require the state to fulfill the educational needs of children, court decisions have concluded that the state has certain responsibilities which are a logical expectation of the compulsory nature of the attendance statutes:

(We) need not belabor the fact that requiring parents to see that their children attend school under pain of criminal penalties presupposes that an educational opportunity will be made available to the children.⁷⁵

The growing trend to use attendance policies to curb truancy and excessive absenteeism was reported in a legal memorandum by Pepe.⁷⁶ Pepe summarized statutory changes in the compulsory attendance laws which had recently occurred in several states. These changes generally mandated specific attendance requirements for course credit. For example, the South Carolina legislature enacted in 1985, "Regulations for Compulsory Student Attendance" which specified:

High School Credit

In each class where high school credit may be awarded, a student must attend a minimum number of days each instructional period before receiving consideration for credit, unless the local school board grants approval for each excessive absence in accordance with local board policy. Below is an attendance schedule required for the various instructional periods:

<u>Instructional Period</u>	<u>Credit</u>	<u>Minimum Days</u>
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⁷⁵ Mills v. Bd. Of Education of District of Columbia, 348 F. Supp. 866, 874 (D.D.C. 1972).

⁷⁶ Pepe, pp. 1-8.

Semesterly (90 days)	1/2	85	
Yearly (180 days)	1	170	77

Other states which have enacted statutory changes which mandated specific attendance requirements were Texas, Florida, Tennessee, and Arizona. The Texas Legislature passed a statute which read, "A student may not be given credit for a class if the student has more than five days of unexcused absence during a semester."⁷⁸

The Florida statute states that:

No student shall be awarded a credit who has not been in attendance for instruction for a minimum of 135 hours unless the student has demonstrated mastery of the student performance standards in the course of study as provided by rules of the district school board.⁷⁹

Tennessee studied the issue of student attendance for a number of years. In 1981, the Tennessee legislature passed a bill which provided that the state establish minimum attendance requirements or standards as a condition for passing a course or grade. In 1984 legislators prescribed guidelines for local boards of education to use when establishing standards and policies governing student attendance.⁸⁰

⁷⁷ "Regulations for Compulsory Student Attendance," (South Carolina State Board of Education, 1985).

⁷⁸ TEX. CODE 21.041 (a) (1984).

⁷⁹ FLA. GEN. STAT. 232.01-24 (1984).

⁸⁰ TENN. Senate Bill No. 361 (1981).

The 1984 session of the Arizona legislature also addressed the issue of relating student attendance to grades. Local districts were required to include "Penalties for excessive pupil absenteeism including failure in a subject, failure to pass a grade, suspension or expulsion."⁸¹

Some states deferred totally to local districts to address the issue of excessive student absenteeism through the development of attendance policies. These states included Arkansas, California, Colorado, Connecticut, Delaware, Idaho, Indiana, Iowa, Kansas, Maryland, Mississippi, Montana, New Hampshire, Nebraska, Nevada, New Jersey, New Mexico, North Carolina, North Dakota, Oregon, Pennsylvania, Rhode Island, Utah, and Wyoming. These states' compulsory attendance laws did not specify academic penalties for course credit. However, some states included provisions which allowed local districts to adopt such policies.

Delaware's statute states that:

Districts should consider, in light of the many alternatives available, establishing a written set of procedures to follow in handling attendance.⁸²

Idaho's policy gives less leeway to local districts in determining promotion policies. Its statute states, "In

⁸¹ ARIZ. GEN. STAT. 15-843 (1984).

⁸² "Resource Materials for Developing Procedures of Administering School Attendance" (Dover: State Department of Public Instruction, May, 1985), p. 5.

extraordinary cases, as determined by local policy, credit will not be given in any subject when the student was not in attendance at least 90 percent."⁸³

Indiana's statute requires that local schools must have a written policy and can establish rules related to attendance.⁸⁴

Iowa's state statute addressed attendance of high school students but deferred to local districts to adopt specific policies. Iowa's statute requires that:

Students wishing to earn academic credit for courses taken at the high school should not exceed a total of (12) absences from regularly scheduled classes during a given semester.⁸⁵

An example of a local policy in Iowa was the one adopted by the Des Moines System which states:

Daily classwork missed because of truancy may not be made up and a zero or comparable grade shall be recorded...Adequate class attendance and participation is a requirement for course credit earned and applied toward graduation. Schools do not grant credit to students who have casual attendance records...students referred the fourth time for truancy are dropped from class and given a failing grade.⁸⁶

Arkansas directed local board of directors of each school district in the state to adopt student attendance policies as part of its six-year educational plan. The

⁸³ IDA. STAT. 08.02. A. 4, 9.

⁸⁴ IND. CODE 20-8. 1-3.

⁸⁵ IOWA CODE 299.1.

⁸⁶ "Attendance Policy," Des Moines Independent Community School District (November, 1983).

policies were to include strategies for promoting maximum student attendance which could include, but were not limited to, the use of alternative classrooms and in-school suspension. It further stated:

Excessive absences shall not be a mandatory basis for denial of promotion or graduation but shall be considered with other factors including, but not limited to, reasons for absences, performance on standardized tests, and grades earned during the school year.⁸⁷

Colorado statutes required each of the 180 local school districts in the state to develop written policies which stated guidelines for attendance requirements. The policy could include, "...appropriate penalties for nonattendance due to unexcused absence, including, but not limited to, the imposition of academic penalty for classes missed while unexcused."⁸⁸

Oklahoma considered attendance as it related to participation in extracurricular activities. The Oklahoma Secondary School Activities Association required that students be in attendance 80 percent of the semester in order to participate in activities approved by the Association. The State Board of Education considered the possibility of limiting the number of class periods a

⁸⁷ ARK. GEN. STAT. 80-1657, (4) (1984).

⁸⁸ COLO. REV. STAT. ANN. 22-33-104 (4).

student may miss and still be allowed to participate in activities.⁸⁹

Connecticut deferred entirely to local school districts to formulate attendance policies. The State Board of Education, however, published a handbook for the districts which included examples of local attendance policies. These policies included provisions for penalties of both grade reduction and loss of course credit.⁹⁰

Local school districts in Michigan have the authority to regulate student attendance and to consider such attendance in determining a student's grade in a course.⁹¹

South Dakota's State Board of Education requires that all districts in the state have a plan of school attendance.⁹² The State Superintendent, James Hansen, in 1984 gave further direction to this statute by stating, "There is no doubt in my mind that student attendance is crucial for achievement and that low attendance normally produces low achievement."⁹³

In three states, there were very limited powers given to local districts in developing attendance policies which

⁸⁹ Pepe, "Academic Penalties," p. 2.

⁹⁰ "Attendance, Homework, Promotion, and Retention" (State of Connecticut Department of Education, 1984), pp. 7-16.

⁹¹ MICH. GEN. STAT. 380.1561.

⁹² S. DAK. GEN. STAT. 13-27-1-8 (1984).

⁹³ Pepe, "Academic Penalties," p. 2.

would penalize students by loss of credit or grade reduction. These states are New Jersey, Wisconsin, and New York.

New Jersey statutes do not address this issue directly, but case law decisions in that state prohibit the lowering of grades as punishment for poor attendance.⁹⁴

Wisconsin requires that all school districts have written attendance policies which state acceptable reasons for absences from school, but specifically mandates that, "... no public school may deny a pupil credit in a course or subject solely because of the pupil's unexcused absences from school."⁹⁵

New York's policy was clarified in a ruling of the Commissioner of Education in Matter of Shamon:

Denial of academic credit may not be premised solely upon whether or not a student's absence is excused. Such a policy is logically inconsistent, in that students who have "excused" absences have equally missed "necessary" work which ought to have been made up in some other fashion to avoid loss of credit or reduction in a grade. If a board of education desires to establish a minimal attendance requirement before credit will be granted...it must do so without distinguishing between excused and unexcused absence.⁹⁶

In summary, the practice of lowering grades or denying course credit for student nonattendance has received much attention by legislators. The trend to use compulsory

⁹⁴ Ibid., p. 4.

⁹⁵ WISC. GEN. STAT. 118.16, (4) (1985).

⁹⁶ Matter of Shamon, 22 Ed. Dept. Rep., Decision No. 11022. Permanent cite unavailable; quoted from Pepe, p.4.

attendance laws as the vehicle to achieve this end, although not universal, has certainly been gaining popularity.

PROGRAMS TO REDUCE ABSENTEEISM

In addition to movements at the state level to legislate attendance programs, many programs to reduce high absenteeism originated at the local level. When schools attempted an absentee reduction program, they tried either to change the institution or the behavior of the students. Comprehensive programs attacked both ends of the problem at once. Programs directed at changing students' behavior generally involved one or more of four approaches: positive incentives, punishment, enrollment in specialized programs, or enlisting the assistance of parents. Positive incentives included special privileges, individual praise and recognition, exemption from exams, social or material reinforcement, or improved grades. Punishments included automatic grade reduction, loss of course credit, nonpromotion, suspension, or legal action against student or parents. Special programs included enrollment in schools separate from the regular school or in programs which took place within the regular school but which separated the student with attendance problems from regular students for either part or all of the school day. Programs involving parents as partners centered around communication strategies and conferencing. In addition to stressing that parents

should share the responsibility for student attendance, counseling was often part of these programs. Counseling was focused on the individual or groups and stressed the importance of good attendance for achievement and for later success in the job market.

Following are descriptions of programs and policies adopted by schools to improve attendance. Even though most of the programs utilized more than one approach, they are grouped according to their major focus, either positive incentives, punishments, specialized programs, or parents as partners. Studies which involved students with attendance problems and which also focused on either of the above approaches are included.

It will be noted that many of the studies and research reported were published by the National Association of Secondary School Principals (NASSP). The NASSP's annual poll of its members on school organization and curriculum in 1973 and again in 1974 rated poor attendance as the "most perplexing student problem" by a ratio of two to one over discipline.⁹⁷ As a result of this overwhelming concern of secondary school principals with the problem of student absenteeism, NASSP invited principals to share information regarding effective attendance programs in their bulletin. It also devoted two issues of their newsletter, "The

⁹⁷ Scott Thomson and David Stanard, "Student Attendance and Absenteeism," The Practitioner, 1:1 (March 1975), p. 1.

Practitioner" to the problem of student attendance and absenteeism.

Programs Emphasizing Positive Incentives -- The schools in Las Cruces, New Mexico experienced the problem of decreasing attendance. They were concerned about the number of hours and personnel that were being devoted to curb absences and the loss in terms of student learning.⁹⁸ Las Cruces and Mayfield high schools adopted a new attendance plan which placed the responsibility for attendance on the student and his parents. The school allowed 10 days of "sick leave" each semester which the student could use as he pleased. As an incentive, students who were absent from classes fewer than four times during the semester were excused from final examinations. An appeal procedure was part of the new policy. The policy significantly improved attendance and was favorably accepted by parents, students, and staffs.⁹⁹

In 1974, Community High School in West Chicago, Illinois, reported a daily student attendance rate of only 87 percent. This school found that incentives, when joined with parent involvement, can have positive results. Good student attendance was established as the number one priority for the 1974-75 school year and an attendance

⁹⁸ Edward Fernandez and Manuel Cardenas, "Absenteeism: Is There a Solution?" National Association of Secondary School Principals 60 (November 1976), p. 87.

⁹⁹ Ibid., p. 91.

policy developed to improve the situation. The following procedures were instituted: (1) daily calls to all parents of unexcused or unexplained student absences; (2) disciplinary action against students with unexplained or unexcused absences; (3) rewards and incentives for good attendance; (4) a chart graphing students' patterns of absence; (5) coordinated efforts of all individuals involved. As a result of the new program, attendance records were broken for 16 consecutive months. The rate of attendance reported in 1983 was 97 percent.¹⁰⁰

Incentive programs sometimes show mixed results. A program in Plymouth, Minnesota, offered attendance pins and gifts such as a television set for perfect attendance. The principal reported that while attendance increased for some students, failure to reach "chronic absentees" has caused his staff to assess the situation and return to a more traditional, structured approach.¹⁰¹

Blasi, Principal of Iowa's Glenwood Senior High School reported that his school's attendance procedure which involved a 10 percent grade bonus for students with perfect attendance for a 45-day grading period (nine percent for one absence, eight percent for two, etc., down to zero percent

¹⁰⁰ Richard DuFour, "Crackdown on Attendance--The Word is Out," National Association of Secondary School Principals Bulletin, 67 (September, 1983), pp. 133-35.

¹⁰¹ Nancy DeLeonibus, "Absenteeism: The Perpetual Problem," The Practitioner V:1 (October 1978), p. 4.

for 10 days) has worked effectively. The policy has improved attendance (now three percent absenteeism) and students with low academic ability who attend regularly can get extra credit for attendance.¹⁰²

Howe High School, Howe, Texas, uses a combination of attendance records and scholastic average as a basis for excusal from semester tests. If students have an average of 75 percent with zero absences, or 85 percent and one absence, or 95 with no more than two absences they are exempted from taking the test. No exemption is allowed for three or more excused absences or for any unexcused absences. Since implementation of the policy, attendance has increased from 94 percent to 96 percent. Harrison County High School, West Virginia, excuses students with three absences or less from semester tests.¹⁰³

North High School, Omaha, Nebraska, has improved absenteeism by 25 percent during a two-year period after adopting an attendance policy. A corresponding improvement in grades was also reported. The policy excuses students from exams if they have no more than two and one-half days absences a semester and have a passing grade average. Counselors concentrate on students with poor attendance records and involve parents in conferences. Counseling sessions with students stress the importance of regular

¹⁰² Ibid.

¹⁰³ Thomson and Stanard, p. 11.

attendance and the value of dependability to prospective employers.¹⁰⁴

Savannah, Georgia, High School uses a comprehensive approach. Even though credit is denied for more than 10 unexcused absences in any quarter, the major focus of the program is on incentives. Special field trips are planned for homerooms with the highest attendance average. To combat high Monday and Friday absenteeism, special activities are planned for these days. Certificates of recognition are presented by the board of education to schools with the highest attendance rate and the most improved attendance rate. Motivational announcements, posters, and certificates of recognition are all employed to encourage attendance. Parent involvement is also part of this program. Attendance improved from 86 percent to 92 percent during the first two years of implementation.¹⁰⁵

Philadelphia Public Schools have utilized special attendance teams to develop individual school programs. These programs have improved attendance as much as 33 percent. One elementary school encouraged interclass competition by awarding banners for display in classrooms with the best attendance. At an area high school, all classes with 100 percent attendance on a given day receive a

¹⁰⁴ Bamber, pp. 43-44.

¹⁰⁵ Bamber, pp. 38-39.

prize. Another school's program involves using crossing guard monitors to check on tardy students.¹⁰⁶

Incentives are also central to the attendance program at Cora Howe Elementary School, Nashville, Tennessee. Students call classmates who have been absent to remind them to be in class the next day. Classes compete for the best attendance record. Counseling and support services for parents and students are also included in this program.¹⁰⁷

In one study conducted by Copeland, Brown, Axelrod, and Hall, the effect of a school principal's using social attention to improve student attendance reported favorable results.¹⁰⁸ The principal praised parents for sending their students to school. One group of children was selected for principal calls and praise; another group was selected for calls urging parents to send students who were absent to school but no follow-up calls for praise were used. The research indicated that a principal can effect large increases in the rate of student attendance by calling and subsequently praising parents for their children's presence at school. The second group of students whose parents received calls only, with no follow-up praise, improved

¹⁰⁶ Bamber, p. 41.

¹⁰⁷ Ibid., pp. 41-42.

¹⁰⁸ Rodney E. Copeland, Ronald E. Brown, Saul Axelrod and R. Vance Hall, "Effects of a School Principal Praising Parents for Student Attendance," Educational Technology, 12 (July 1972), pp. 56-59.

their attendance but the gains were not maintained, indicating that the reinforcement was a critical factor. The researchers advised that when social attention such as praise is ineffective, educators should consider more tangible consequences such as classroom privileges, prizes, and/or field trips as reinforcers for desired behaviors.¹⁰⁹

A similar study was conducted with junior high school students.¹¹⁰ Students were selected at random and their attendance monitored over a two-year period. Parents of students in the experimental group received follow-up calls in cases of student absences on a more immediate basis than parents of other absentees. When students improved their attendance, parents received positive phone calls and letters. Two comparison groups received no positive feedback, but one was involved in a training program to improve social skills. Both the experimental group and the social skills group showed significant improvement in attendance when compared with the no-treatment group. The researchers noted that, "the special procedures of the attendance program were not adequate for students with high degrees of absence the previous year."¹¹¹ The attendance

¹⁰⁹ Ibid.

¹¹⁰ Richard Fiordaliso, Ann Lordeman, James Filipczak, and Robert M. Friedman, "Effects of Feedback on Absenteeism in the Junior High School," The Journal of Educational Research, 70, (March-April 1977), p. 188.

¹¹¹ Ibid., p. 190.

record of three students with the most absences got worse over the course of the study. However, the study indicated potential for improving attendance in students with moderate attendance problems.

Morgan conducted a study to examine the benefits of material and social reinforcement techniques to improve school attendance.¹¹² Ninety-two students were selected from two schools in the Tempe Elementary School District who had excessive unexcused absences during the first two months of school. The students were divided randomly into four groups. One group was designated to receive material reinforcements, such as toys and candy, for attending school regularly. A second group received material reinforcement and peer social reinforcement. Another group received social reinforcement from the classroom teacher. The fourth group received no reinforcement. All three groups which received reinforcement improved their attendance. The group receiving both material and peer social reinforcement showed the greatest gain in rate of attendance. The authors recommended that their procedures could be widely applied by classroom teachers, tutors, and aides. They stated that all that is needed is a suitable system of material and social reinforcers.¹¹³

¹¹² Ronald R. Morgan, "An Exploratory Study of Three Procedures to Encourage School Attendance," Psychology in the Schools, 2 (April 1975), p. 209.

¹¹³ Ibid., p. 214.

Another researcher, Brooks, of the Norwalk-LaMirade Unified School District, California, advocated contingency management as a means of reducing truancy.¹¹⁴ Sixty high school students who had nine or more days of truancy during the first eight weeks of school were identified. The study employed the use of a token economy, a contract, and group guidance meetings in an effort to reduce significantly truant behavior. The result was a reduction of truancy from 22.3 days during baseline to 7.1 days during intervention. The researcher concluded that school officials could save time and effort by dealing with the individual truant behavior and not attempting to alter environmental contingencies that may be beyond the control of the school, such as home problems and societal conditions.¹¹⁵

Grala and McCauley tried a variety of strategies to persuade thirty-two chronic male truants in an inner-city Philadelphia neighborhood to attend school. They stated, "There are three common approaches to persuading people to change their behavior: threat, promise, and instruction."¹¹⁶ The subjects were divided into four

¹¹⁴ David Brooks, "Contingency Management as a Means of Reducing School Truancy," Education, 95 (Spring 1975), pp. 206-211.

¹¹⁵ Ibid.

¹¹⁶ Christopher Grala and Clark McCauley, "Counseling Truants Back to School: Motivation Combined with a Program for Action," Journal of Counseling Psychology, 23:2 (March 1976), p. 166.

groups for the study. The first group received both "threat communication" in the form of a graphic portrayal of the type of life a dropout could expect (arrests, street gang violence, prison, drug use, poverty) as well as "supportive instruction" which included counseling, tutoring, and support within the school setting. The second group received only the threat communication. Students in the third group were given "optimistic appeal" which involved counseling on the benefits of attending school regularly as well as the same supportive instruction as group one. Group four received only the optimistic appeal talk. After four weeks of intervention, the group receiving both optimistic appeal and supportive instruction improved the most in attendance. Threat appeal with instruction also had a positive influence on attendance, though less than the more positive approach. Threat appeal alone had a small transient effect, whereas optimistic appeal alone had no apparent effect.¹¹⁷

A program which focused on teacher social reinforcement was developed by the counselor at Mason County High School in Northeast Kentucky. The program was entitled "Concern for a Kid" and was based on care, concern, and social reinforcement.¹¹⁸ Students who had in excess of ten

¹¹⁷ Ibid., pp. 168-69.

¹¹⁸ Dan Thomas, Bill Werkel, and Duane Farlls, "The Concern for a Kid Program," The School Counselor 29 (May 1982), p. 418.

absences for the previous year were identified as "casual truants" and each of these students was assigned to a teacher who had volunteered to work with the student. Teachers were instructed to develop the best possible relationship with the truant students and to exhibit an interest in them. The authors reported an improvement of 2 percent in attendance for the year. While no effort was made to determine the effect on the students' academic achievement, the program produced a significant increase in school attendance with a minimum of effort and expense.¹¹⁹

Another program which focused on social reinforcement was a "buddy system" developed by the Denver Public Schools to improve their attendance. Thirty students having chronic absentee problems were assigned to the program and asked to select a buddy--someone who lived close to them or someone who had a telephone to call them. If the buddy was agreeable to being included in the program, the students were encouraged to call each other every evening or meet at the bus each day. At the end of each six weeks, any pair of buddies who had an increase in attendance received an award. Awards consisted of record albums, picnics, and pizza parties. The author reported a marked improvement in attendance.¹²⁰

¹¹⁹ Ibid.

¹²⁰ Carol Reynolds, "Buddy System Improves Attendance," Elementary School Guidance and Counseling, 11 (April 1977), pp. 305-6.

Another study which linked a student with attendance problems to a peer for reinforcement was developed by Maher.¹²¹ This researcher used cross-age tutoring as a method of improving students' academic standing, interpersonal relationships, and sense of responsibility. Eighteen high school students having conduct problems, including truancy, were identified as tutors and assigned to younger students in special education classrooms. Cross-age tutors improved significantly on social science and language arts grades, and had significantly reduced rates of absenteeism and disciplinary referrals.¹²²

Programs Which Emphasized Punishment -- The Norwalk, Connecticut, Board of Education solicited suggestions from all of its administrators, teachers, and students, and after evaluating all of the alternatives, officially adopted a "Denial of Credit" plan.¹²³ Students were permitted no more than two unexcused absences each quarter in each class to receive course credit. A third unexcused absence resulted in a grade of "F-A", failure due to attendance, for the quarter and a loss of one-quarter of a credit. Students

¹²¹ Charles Maher, "Behavioral Effects of Using Conduct Problem Adolescents as Cross-Age Tutors," Psychology in the Schools, 19:3 (July 1982), pp. 360-64.

¹²² Ibid.

¹²³ Elio J. Garcia, "Instant Quarter-Credit Concept--An Answer to Class Cutting," National Association of Secondary Schools Principals Bulletin, 63 (February 1979), pp. 39-43.

receiving an "F-A" in required classes either had to take the course in summer school or repeat the full year's course the following year. One feature of Norwalk's plan was that a student capable of high achievement could still receive a favorable grade since teachers were urged to consider the academic success of the "F-A" quarter in calculating the final mark. The "Denial of Credit" plan experienced significant success. Absenteeism for the 1978-79 year was 19 percent below that of 1976-77. Tardiness was reduced by 31 percent.

The Cinnaminson (New Jersey) School District in 1977 reported an alarming pattern of student apathy and poor attendance at the high school level. A committee was appointed to analyze the situation and to formulate suggestions. The committee's analysis was that by "virtue of time, neglect, and mere lack of attention, the entire framework of responsibility for attendance had shifted unwittingly from the pupil and parents to the institution."¹²⁴ The committee advocated a system of firm limits regarding student absences for each class. A policy was developed which allowed a limit of 12 absences for each full-year course, six for a semester course, and three for a quarter course. When these limits were exceeded, students

¹²⁴ Robert Byrne, "Capturing the Elusive Student: Putting Accountability Theory into Attendance Practice," National Association of Secondary School Principals Bulletin, 65 (May 1981), p. 30.

were in "non-credit" status, a condition which could, if not rectified, result in a student's passing a course without receiving credit toward graduation. The new plan included a system of written appeals for credit for those who exceeded the prescribed number of absences for legitimate reasons. The policy improved attendance considerably. Average daily attendance was between 94 and 95 percent. However, public support for the policy was lacking. The administration made the decision to persevere with the policy the following year, with revisions and modifications. More stringent disciplinary and supervisory procedures were implemented, and paperwork for teachers was cut back. The no credit provision was modified to apply only in cases where absence was illegal or occurred with the parent's knowledge or consent.¹²⁵

Portinos reported on the increasing problem of student absenteeism and described an experimental school attendance policy that was implemented at Napa (California) High School in 1975.¹²⁶ The policy allowed a maximum of twelve absences per semester. Students exceeding this limit risked losing course credit and being dropped from class rolls. Parents were notified following the student's fourth, eighth, and twelfth absences from any class. During the first year of

¹²⁵ Ibid., p. 31.

¹²⁶ Tom Portinos, "Napa High School Attendance Policy: An Experiment to Reduce Unnecessary School Absences," ED 119 353 (September 1975), p. 3.

implementation at Napa, absenteeism decreased from an average of 8 to 10 percent for 1972-74 to 4.5 percent for 1975. Teachers reported that since students were in class more frequently, there was less need for repetition of instruction. At the end of the first year of implementation, parents and teachers were in favor of continuing the attendance program.¹²⁷

Ellison High School in Kileen, Texas, adopted an attendance policy based on the belief that the student who attends school regularly derives the maximum benefit from the instructional program. Credit toward graduation from Ellison High School was withheld for any course in which the student had been excessively absent. The policy forced students to accept responsibility for their own attendance.¹²⁸ The major points of Ellison's policy included a requirement for a note from home for freshman and sophomore students. A student was allowed six absences per class each quarter for reasons such as personal illness, medical or dental appointments, death in the immediate family, or serious personal or family problems. Parents were notified when students had accumulated four absences and opportunity was provided for a conference. After seven absences in a quarter the students lost credit for the

¹²⁷ Ibid., p. 12.

¹²⁸ Robert I. Carruthers, Jr., "An Attendance Policy That Works," National Association of Secondary School Principals Bulletin, 64 (December 1980), p. 117.

class. An appeals process was included in the policy. Ellison High reported that withholding credit for excessive absences worked well and the school anticipated continued success as students began to realize the policy's full effects.

Adrian (Michigan) High School experienced absentee rates of between 11 and 12 percent, at times reaching as high as 15 percent. The administration proposed a program to the board of education that would limit the number of absences a student could have per semester. The program would deny credit to any student who exceeded six absences in any one class. The policy included a process by which the student could appeal to a review board for unusual or extenuating circumstances. The policy was approved and the average daily absenteeism dropped to slightly more than 7.5 percent after the first semester and to 3.5 percent for the fall semester of 1982-83.¹²⁹

Lake Oswego High School implemented an attendance policy which improved attendance 70 percent over a three year period. Under this policy, attendance was taken every day and absences were excused only if they had been prearranged or if there was student illness, family illness, or an emergency. A zero was given for all classes missed due to truancy. Parents were notified after the first

¹²⁹ Gary D. McNitt, "Excused and Unexcused Absences--Setting the Limit," National Association of Secondary School Principals Bulletin 67 (December 1983), p. 125.

truancy. Parent conferences were required after the second truancy and the student was suspended for one day. The third truancy resulted in a three-day suspension and notification of the county attendance officer. The fourth truancy resulted in an informal hearing and the possibility of expulsion.¹³⁰

An attendance program at Cody High School, Cody, Wyoming, requires parents to call the school for each absence. Absences are excused for illness, medical appointments, school activities, and prearranged circumstances. If the school does not receive a call from the parent, the student is suspended for four periods for each class period missed. After the third suspension, the student is dropped from the roll for the semester. Unexcused absences decreased 50 percent as a result of this program. A similar approach is used by Hampton, New Hampshire, where course credit is denied to students absent for more than 25 percent of the class time.¹³¹

Bristol Eastern High School, Bristol, Connecticut, has used penalties to reduce absenteeism from 12 percent to six and a half percent over a three year period. Students are held accountable for attendance in an attempt to develop their awareness of the "importance of their role in building

¹³⁰ Bamber, p. 43.

¹³¹ Thomson and Stanard, p. 11.

academic integrity into their school program."¹³² Students are not allowed any class cuts, and are withdrawn from class if they miss class more than 20 times a year or 10 times during a semester. Students may appeal to a review board to substantiate legitimate absences.

The attendance policy at Maynard High School, Maynard, Massachusetts, also involves loss of credit for absenteeism. The attendance policy requires students to be in class at least 85 percent of the days school is in session or lose academic credit. Students missing fifteen days during a semester lose one-half credit and after the nineteenth absence lose full course credit. Absences due to prolonged illness are exempted from the policy. The student's grade for the course is not affected. Maynard reported a reduction of class absences from 22.9 percent in 1973-74 to 6.3 percent in 1976-77.¹³³

William J. Palmer High School, Colorado Springs, Colorado, also attempts to hold students responsible for their own attendance. The attendance policy at Palmer requires that students be in class at least 80 percent of the days in each grading period. Excessive absences and tardies can result in failure. Stewart, assistant principal, reported that "We have had far fewer early

¹³² DeLeonibus, p. 10.

¹³³ Ibid., p. 11.

dismissals, fewer chronic absentees, and less truancy. I feel that this policy has been very effective."¹³⁴

In an attempt to increase attendance, the Malden (Massachusetts) School Committee adopted a new plan for the 1977-78 school year which allowed six unexcused absences per quarter. A grade of "E" was given at the seventh absence which, at the teacher's discretion, was worth between 0 to 59 points out of a possible 100, and then averaged with the full-year course grade. The attendance rate increased from 87.4 to 91.1 the first year. Low-achieving students, showed the greatest gain, increasing 9.2 days additional attendance.¹³⁵

The truancy problem in New York City was sizable, with as many as 75,000 students missing school on a typical day. The "Truancy Patrol Task Force" was established in January, 1981 to combat this problem. With this program, police apprehended the truant on the street and brought him to a processing center. The truant was then identified by the police and the attendance teacher. The truant's name was referred to both the school and the attendance teacher, as well as to the youth officer in that precinct. Records were updated in the student truancy file and a copy forwarded to the student's home precinct. Parents were thus notified of their child's truancy on three separate occasions. A large

¹³⁴ Ibid., pp. 12-13.

¹³⁵ Malbon and Nuttall, pp. 66-67.

number of truants were processed through the centers, but the number of repeat offenders was relatively small. Tardiness decreased, as well as almost total elimination of drug traffic near the school.¹³⁶

The city school administration in Alexandria, Virginia, also developed a program in cooperation with the local police department. Police picked up school-age juveniles wherever they were seen, either at shopping centers, parking lots, or on residential streets, and returned them directly to school. Initially, the average return of truant students was three per day, most of whom were first-time offenders. After the third such incident, charges were filed against student and parent. Attendance rates were raised from 85 to 90 percent the first year of implementation. It was noted that not only did truancy decrease but juvenile arrests for burglary during the same period decreased significantly.¹³⁷

At Westfield High School (New Jersey) attendance became a problem. Students were only loosely accountable for their attendance and teachers had become discouraged at the length of the daily absentee list. A Student Attendance Review Committee (SARC) was formed to attempt to improve the attendance of those students who were inclined to miss class, and to separate those students who wished to improve

¹³⁶ William Dougherty, "Truancy Patrol Task Force--A Cooperative Approach," National Association of Secondary School Principals Bulletin, 67 (March 1983), pp. 119-20.

¹³⁷ Bamber, pp. 40-41.

their attendance from those who did not. When a student was absent for an unauthorized reason, he was "SARced." The student was expected to report to SARC for counseling on the importance of daily attendance. After the second offense, a period in detention was required. Double detention was required for the third offense and parents were called. Fourth-time offenders generally were suspended. Saturday suspension was used when necessary and a court appearance could be required if all other methods failed. Attendance at Westfield improved to over 90 percent on an average day. Konet noted the reason for the success of this program was the involvement of the staff, administrators, and parents.¹³⁸

Programs Which Included Placement in Special Programs -- The use of alternative schools as a means of helping the chronically truant student has proved to be an effective practice. Chaparral High School, Santee, California, serves 420 students most of whom left the comprehensive high school because of problems relating to poor attendance. Chaparral uses a number of motivational factors to improve attendance. Some of these include: (1) allowing students to choose their attendance hours; (2) calling parents of absent students on a daily basis; (3) adjusting the curriculum to fit

¹³⁸ Richard J. Konet, "An Attendance System that Works: The Student Attendance Review Committee," National Association of Secondary School Principals Bulletin, 67 (March 1983), pp. 103-6.

individual student needs; (4) expanding the extracurricular program; and (5) close contact with other support agencies within the county. Attendance has improved to an average of 91 percent.¹³⁹

The Elizabethton, Tennessee, School Board also set up an alternative program for chronic truants that was a separate program and in a location apart from the regular school. Membership in the special school ranges from ten to twenty with one teacher. Students take their assignments from the teachers in their regular high school program and work with the teacher assigned to the alternative program. The emphasis of the truancy program is not on punishment but on developing a more intimate understanding between student and teacher which will lead to personal instruction, study help, and counseling. As soon as students demonstrate that they can maintain a pattern of regular attendance they are returned to the regular school program. The author reported that sometimes even with the special attention and encouragement, a student drops out of school altogether. However, a number of students are now continuing in the regular high school program who, according to their own testimony, would have dropped out.¹⁴⁰

¹³⁹ Thomson and Stanard, p. 12.

¹⁴⁰ Sam P. Sentell, "A Helping Hand for the Chronic Truant," Educational Leadership, 37 (March 1980), pp.471-72.

The Hicksville, New York, High School developed an alternative program for students with attendance problems without increasing costs. Attendance had been a major problem at Hicksville, with a hard core of students who desperately needed an education but who were frequently absent from school for illegal reasons. The administration developed the "A-Program" for habitual absentees. These students, after discussions with their parents, were placed together in homeroom and the first three classes (English, social studies, and mathematics). The academic curricula remained the same for all students, but the teaching techniques required more group participation. As soon as a student was noted absent, calls were made to the parents. The students received mini-report cards each week assessing progress in all areas. During the first year, 1980-81, the absentee rate of the A-Program was 11 percent, compared to the school average of 9.5 percent. The program was reported to be of value in 80 percent of the cases.¹⁴¹

During the 1980-81 school year at Coronado High School in Scottsdale, Arizona, a project was started with 20 students who had a history of excessive class cutting. The project was designed to improve study skills and to keep these students in class. Of the 20 selected students, 13

¹⁴¹ William A. Rieck, "An Alternative Means for Improving Student Attendance," National Association of Secondary School Principals Bulletin 68 (January 1984), pp. 92-95.

completed the ten hours of study which included training in time management, note taking, listening, review techniques, reading comprehension and vocabulary development, rate-boost readings, following simple and complex written and oral instructions, preparation for tests, and the actual process of taking a test. At the conclusion of the course of study, 11 of the participants who were involved felt that their study skills had been sharpened. Nine of those 11 students reduced their attendance problems. The authors felt that the study skills project gave students the self-direction and self-motivation necessary to complete independent activities.¹⁴²

Sunnyside (Tucson, Arizona) Junior High School developed a model treatment program to work with truant students who lacked career goals, basic study habits, and could not initiate positive interaction with teachers. Simulation exercises were developed to enable students to acquire these skills. Targeted students were enrolled in a skills training program during which time absenteeism was closely monitored. Prior to the training, the absenteeism rate was over 34 percent. During the program, the rate declined to 14 percent and leveled to 17 percent during the follow-up period. School officials reported not only an

¹⁴² William L. Christen and Steven M. Brown, "High School Study Skills: Can They Affect Attendance?" National Association of Secondary School Principals Bulletin 66 (October 1982), pp. 123-24.

increase in attendance, but a decrease in problem behaviors, class skipping, and office referrals. Also noted was an improvement in grade point averages, assignment and classroom preparation, and an improved attitude toward the school and teachers.¹⁴³

Minkler noted that, "Irregular attendance and poor performance at school have too often been the mated precursors of the secondary drop-out syndrome."¹⁴⁴ The San Francisco Unified School District developed a program which would funnel all attendance efforts through one source and attempt follow-up through that source. A probationary program with forty-five hard core truants was initiated. In order to return to the regular program, these students were required to accept responsibility for regular attendance to special placement classes. Each identified student signed an education plan agreement and reported to the attendance supervisor each morning. Cards were issued to the students which were initialed daily by the teacher, with progress comments, and then signed by the parents. Upon completion of a successful month, students were allowed to rejoin the

¹⁴³ Karen V. Unger, Alex Douds, and Richard M. Pierce, "A Truancy Prevention Project," Phi Delta Kappan 60 (December 1978), p. 317.

¹⁴⁴ Roy Minkler, "Humanizing Attendance Procedures," The Clearing House, 53 (February 1980), p. 266.

regular school program. During the first year of the program, daily attendance rose from 80 to 97 percent.¹⁴⁵

An evening high school was developed for students at Evanston Township High School, Illinois, in an effort to improve school attendance. Students who are sixteen or older may be transferred into this school with five or more unexcused absences. Evening High School operates four nights a week. Students are referred to Evening High School only for reasons of truancy. Students are returned to regular school when attendance is good for one semester. Reports on attendance and behavior are mailed home at the fifth week of each quarter. Outreach workers visit the homes of all chronically truant students to meet with parents.¹⁴⁶

Project Orbit was developed by South High Community in Massachusetts to provide an alternative educational program for freshmen who had difficulty adhering to a full-day schedule. Feeder schools identified chronic absentees and these students were placed on the Orbit schedule. Orbit students were placed in small classes with much individualized attention and counseling available. The school reported improved attendance and improved transition

¹⁴⁵ Ibid., pp. 266-67.

¹⁴⁶ Thomson and Stanard, p. 10.

of students with attendance problems into the conventional school program.¹⁴⁷

Programs Which Enlisted Parents as Partners -- Hauppauge High School in New York focused on more parental involvement when it developed its alternative program, which was called, "Enriched Educational Experiences."¹⁴⁸ The purpose of the program was to encourage better class attendance. A survey of the student body indicated that the number one reason for cutting a class was the existence of a substitute teacher in lieu of the regularly assigned teacher. Students attended lectures, demonstrations, films, and other such activities whenever their teacher was absent for short (one or two-day) periods of time. The program evolved into a three-step class attendance policy. Step one involved a teacher/pupil conference following an illegal absence and notification by mail to the parent. The second illegal absence resulted in a request for a parent conference through guidance. Continued illegal absences resulted in the student's being permanently withdrawn from the class. Hauppauge High School was convinced that forced parent involvement in its

¹⁴⁷ DeLeonibus, p.11.

¹⁴⁸ Richard N. Suprina, "Cutting Down on Student Cutting," National Association of Secondary School Principals Bulletin, 63 (February 1979), pp. 27-31.

attendance policy was instrumental in effecting a decline of almost two-thirds in illegal class absenteeism.¹⁴⁹

The administration at North Harford Senior High (Maryland) expressed the belief that only through regular school attendance could students progress academically at a successful rate. Notification of parents when students were absent was seen as critical to the program. The school developed a simple method of managing school attendance. The basic philosophy of the system was the need to "teach attendance" and its importance to students. Through the use of color-coded cards, absences were recorded and processed. The addition of a full-time attendance clerk, who worked with students, parents, and teachers increased the effectiveness of the program. At the end of the first year of implementation, attendance improved and the attitude of parents, teachers, and students toward attendance were reported as favorable.¹⁵⁰

Parents were also enlisted as partners at a school in Illinois. As many as eighty students per day were truant or cutting class at Lisle Senior High School. A program was developed which would specifically fit the needs of their school. Through the assistance of a data process company

¹⁴⁹ Ibid.

¹⁵⁰ Daniel L. Jett and Melva Lee Platt, "Pupil Attendance: The Bottom Line," National Association of Secondary School Principals Bulletin 63 (February 1979), pp. 32-38.

owner, a system using computer cards for each student was developed. Programs were written which gave daily attendance reports, as well as monthly and quarterly reports. Students who had been absent the previous day were called to the dean of student's office for a conference and explanation. Parents were informed by phone or by conference. After three years, the program reported successful results. The daily average for unexcused absences had dropped from 68 for the 1973-74 school year to 21 for the 1975-76 year.¹⁵¹

Hoback reported that a major headache for high school principals was student attendance. Communication with parents was found to be an important factor in a program developed at Boulder (Colorado) High School. The program was also based on the premise that "an effective attendance policy must be in the practices of the classroom teacher."¹⁵² Teachers were required to develop course objectives, outlines, and classroom management procedures. Students were given in writing a complete course description including expectations of the student and the teacher's individual classroom policies as to make-up work, grading policies, and general conduct expectations. Parents were

¹⁵¹ Charles M. McCrone, Carl Doolen, and John Wilkinson, "An Attendance Program that Works," National Association of Secondary School Principals Bulletin 62 (March 1978), pp. 115-16.

¹⁵² Hoback, p. 24.

given three choices concerning attendance modification, ranging from non-contact by school officials to immediate contact when their child was absent. The school determined that communication was essential in reducing absenteeism, but found the vital component was whether or not the student had a feeling of being needed and wanted. Hoback reported that although this policy had not solved all attendance problems, less than 20 percent of the students had attendance problems and the drop-out rate was approximately 4 percent with the new program.¹⁵³

In 1973, Pennsylvania's Juvenile Act 333 went into effect. Children who had heretofore been identified as "truant" were redefined as "deprived" and could be referred to a social agency for assistance.¹⁵⁴ The Lancaster County Bureau of Children's Services responded by assigning two caseworkers to receive truancy referrals from the schools. The caseworkers focused on involving the parents of the child in conferences with the student and school personnel. The conference proved to be all that was needed for 30 percent of referrals. For other students, the caseworkers worked closely with school personnel to utilize all available resources to meet better the needs of students. Most of the reasons for non-attendance were found to be

¹⁵³ Ibid., pp. 25-29.

¹⁵⁴ Janis Tyler Johnson, "A Truancy Program: The Child Welfare Agency and the School," Child Welfare, LV:8 (September-October 1976), p. 573.

family related and involving parents in seeking a solution proved to effective.¹⁵⁵

Many times the key to enlisting parental support is as simple as a telephone call when the student is absent. However, a typical school staff is often inadequate to investigate absences and provide feedback to teachers and parents. Bolds, vice-principal of Bethune Junior High School, Maryland, solved this problem by enlisting student aides to assist in the attendance office.¹⁵⁶ The aides sorted attendance forms, typed up absentee bulletins, called and typed letters to parents, and contacted teachers regarding absent students. The program not only increased student attendance through improved communication with parents, it also provided valuable work experience for student aides.¹⁵⁷

Telephoning parents was the major focus of a program developed by the South Range Elementary School, Derry, New Hampshire, P.T.A. Teachers were given the responsibility of contacting parents of absent students to determine the cause of absences. An award program was also begun to reward students for attendance.¹⁵⁸ Presque Isle High School also

¹⁵⁵ Ibid., pp. 573-80.

¹⁵⁶ Gloria S. Bolds, "Reducing Truancy by Using Student Aides in the Attendance Office," ED 146 493 (March 1977), p. 14.

¹⁵⁷ Ibid., p. 29.

¹⁵⁸ Bamber, pp. 42-43.

reported success in improving attendance as a result of calling parents of tardy or absent students. Warning notes were sent home in severe cases. A decrease of 2 to 3 percent in absenteeism was reported.¹⁵⁹

Parents at Leavenworth (Kansas) High School are called on the fourth day of a student's absence from class. Registered letters are sent to parents after the eighth absence. The absence rate decreased from 10 to 5 percent.¹⁶⁰

Parents were asked to assume more responsibility for their child's attendance at Andover (Massachusetts) High School. Parents were asked to choose one of two options. If the parent felt his child should be present every day and agreed to provide a written note when the child returned to school, the parent was notified only when attendance became a problem. Parents were notified before a course failure due to absence. Parents who selected the second option notified the school the morning of a student's absence. If the parent did not call, the school called the parent. The policy increased attendance from 89 percent to almost 93 percent since its inception in 1974-75.¹⁶¹

Schwenk reported on a successful attendance program involving parent contacts at Pennridge South Junior High

¹⁵⁹ Thomson and Stanard, p. 10.

¹⁶⁰ Ibid., pp. 10-11.

¹⁶¹ DeLeonibus, p. 7.

School, Perkasio, Pennsylvania. A weekly attendance council, consisting of a guidance counselor, the school nurse, the assistant principal, and the principal, was formed. The chairman of the council is a teacher who works full-time in this capacity. After three days of unexcused absences, a warning letter requesting a doctor's note is sent to the parents of the absent student. If the parents fail to cooperate, a follow-up call is made. Pennsylvania's Code allows for a monetary fine for truancy and this option is exercised when the above strategies fail to work. Schwenk reported several days of 100 percent attendance and attributed the success of the program to "increased home/school concerns with attendance and a 'team' attack on unusual cases of absenteeism."¹⁶²

Some schools have used the juvenile courts as a liaison between school, parents, and the courts. Under the Missouri State Compulsory Attendance Law, a principal is required to investigate cases of truancy, extended absenteeism, irregular attendance, and dropping out. Following the investigation, referral may be made to the School Community Court Coordinator. Hannibal (Missouri) High School reported that the close personal contact established by the coordinator with the students and their parents was an essential ingredient in the success of their attendance program. The school reported that during the 1973-74 school

¹⁶² Ibid., p. 9.

year 60 percent of the dropouts returned to school and 50 percent of students with attendance problems showed significant improvement.¹⁶³

Sandusky (Ohio) High School also reported that a cooperative relationship between the school and courts can improve student attendance. The school makes every effort to establish a working relationship with the parents and to improve attendance through counseling and psychological assistance. After accumulations of twenty to thirty days of absences in a six or eight week period of school, students are referred to the juvenile courts. The court then notifies the parents of a hearing date. As a result of the hearing the child is either placed on probation and ordered to maintain a record of consistent attendance or if it is evident that probation will be ineffective, the child is ordered out of school for the balance of the school year and can only return the following year after another court hearing.¹⁶⁴

Other Research on Absenteeism -- Other researchers have studied the problem of student absenteeism. Pepe, in 1977, conducted one of the most extensive surveys recorded on the philosophical aspects of using a grading policy as a

¹⁶³ Thomson and Stanard, p. 11.

¹⁶⁴ DeLeonibus, pp. 8-9.

disciplinary penalty.¹⁶⁵ Pepe contacted all chief state school officers to determine their opinion of "lowering grades because of unexcused absence." The majority of these officers in personal opinions were opposed to the lowering of grades for disciplinary purposes from a philosophical viewpoint. A cross-section of these views is presented:

...From the beginning of my career as a teacher, principal and superintendent, I have neither practiced nor approved the use of lowering of marks as a form of disciplinary action. Unfortunately, it has been necessary to correct such procedures in nearly all of the five school districts in which I served as administrator.¹⁶⁶

...The policy of this department for many years has been that a student's grade should not be lowered solely because of absences. He should be graded upon achievement in terms of goals and objectives of the course and should be given the opportunity to make up work missed. If he fails to make up missed work, this could result in a lower grade but it would not be solely because of attendance.¹⁶⁷

...Personally it is my view that academic performance should be the benchmark of grading. Assuredly, class attendance is a prerequisite for educational progress, and there will be instances where grades are lowered to accommodate a poor pupil performance due in large part to absenteeism; however, a policy which systematically reduces a pupil's grade on a basis of five unexcused absences and an "F" for the course seems arbitrary and

¹⁶⁵ Thomas J. Pepe, "Student Grades and School Discipline--a Philosophical and Legal Question," NOLPE School Law Journal, 7:2 (1977), p. 127.

¹⁶⁶ Letter from Martin Essex, Superintendent of Instruction, State of Ohio, June 12, 1976; quoted in Pepe, "Student Grades and School Discipline," p. 128.

¹⁶⁷ Letter from Farley D. Bright, Deputy Commissioner, State of Minnesota, Department of Education, June 18, 1976; quoted in Pepe, "Student Grades and School Discipline," p. 128.

capricious. We have some schools where three tardy marks will equal one unexcused absence...¹⁶⁸

...My further opinion is that automatic lowering of grades for unexcused absence would not be a good policy. In a sense the lowering of grades would then become a sort of punishment for the absence, and this seems to me not to get at the heart of the problem. I would expect that if schools are performing the functions for which they operate, a child's absence would in fact result in his or her learning less and this would be reflected in lower grades.

In brief, I do not think that grades should be used as a reward or as a punishment for attendance or nonattendance. This would, in my opinion, warp the basic purpose of issuing grades...¹⁶⁹

...It is my observation that, historically, grades have been used to reflect the judgment of teachers in rating a student's classroom performance. To use grades otherwise appears to pervert, perhaps even further, their reliability and validity. Many schools in the State of Missouri within the last year or two adopted similar policies using grades to penalize students for unexcused absence. I am convinced that these policies are not educationally justifiable except that it is the view of many educators in the state that such policies have a positive effect on attendance...¹⁷⁰

...The practice is contrary to anything humane, since grades themselves are demoralizing to kids--alternatives such as conferencing, contracts, and specific skill charting, would be more in tune with

¹⁶⁸ Letter from Frank B. Brouillet, State Superintendent of Public Instruction, State of Washington, June 19, 1976; quoted in Pepe, "Student Grades and School Discipline," p. 128.

¹⁶⁹ Letter from David Ramarui, Director of Education, Territory of the Pacific Islands, Mariana Islands, June 17, 1976; quoted in Pepe, "Student Grades and School Discipline," p. 128.

¹⁷⁰ Letter from Arthur L. Mallory, Commissioner of Education, State Department of Education, State of Missouri, June 15, 1976; quoted in Pepe, "Student Grades and School Discipline," p. 129.

students who are unexcused in absence--at least a more meaningful approach...¹⁷¹

Pepe summarized the chief officers' opinions regarding the relationship between attendance and educational progress as follows:

If the function of a grade is to measure educational progress in a subject area, then it is possible that the practice of lowering grades because of unexcused absence might be successfully attacked. If, on the other hand, a grade is seen as a general rating of the student on a broad range of criteria in each subject area, then the attendance might be a criterion and the practice might be supported.¹⁷²

Research by Truax focused specifically on student absenteeism. Truax explored three aspects of the problem of student absenteeism: (1) explanations of student absenteeism; (2) problems faced by both the student and the community; and (3) possible solutions to these problems.¹⁷³ Truax drew several conclusions from her study. The research indicated that the typical habitually absent student is older and less popular than other students. A positive relationship was found between the number of friends a student thought he or she had and attendance. Students who were not involved in extracurricular activities had higher

¹⁷¹ Letter from D. Dillman, Superintendent, Kake City Schools, Kake, Alaska, June 24, 1976; quoted in Pepe, "Student Grades and School Discipline," p. 129.

¹⁷² Pepe, "Student Grades and School Discipline," p. 130.

¹⁷³ Cynthia T. Truax, "Student Absenteeism: Explanation, Problems and Possible Solutions," Exit Project, Indiana University at South Bend, 1985, p. 3.

absence rates than others. Students found to have higher attendance rates were typically living with both parents and enrolled in college-preparatory programs.¹⁷⁴ Factors influencing attendance were peer pressure, the classroom and school environment, the extent of parental involvement, and the economic status of the student's community.

Truax was not able to draw definitive conclusions regarding the relationship between achievement and attendance. However, the majority of the studies considered by Truax indicated that students who were habitually absent had lower achievement rates, IQ scores, and grades.¹⁷⁵

Truax found that it was difficult to assess community problems as they related to absenteeism in school. However, she did find literature that suggested that crime did increase in the community as absenteeism increased in the school.¹⁷⁶

In surveying literature which offered solutions to the problem of student absenteeism, Truax concluded that successful attendance programs required the involvement of all individuals directly affected by the program. She concluded further that the environment of the school, classroom, community, and the influence of peers, parents,

¹⁷⁴ Ibid., p. 41.

¹⁷⁵ Ibid., p. 42.

¹⁷⁶ Ibid.

educators, and administrators determined the success of the program.¹⁷⁷

Other researchers have studied the issue of attendance as it related to academic achievement. Easton and Englehard collected longitudinal elementary school attendance, enrollment, and reading achievement data from school records of a large sample of urban public school students.¹⁷⁸ Their study indicated that absence rates are significantly associated with reading achievement test scores in the fourth through eighth grades, and that the correlations are somewhat higher in the seventh and eighth grades. Moos and Moos found a similar correlation between grades and absenteeism at the high school level.¹⁷⁹ They studied nineteen high school classes and found that student absenteeism rates were related to the average final grades given by the teacher.

Lines explored some of the implications of compulsory education for public schools, private schools, and home instruction.¹⁸⁰ Her paper reviewed compulsory education

¹⁷⁷ Ibid.

¹⁷⁸ John Q. Easton and George Engelhard, Jr., "A Longitudinal Record of Elementary School Absence and Its Relationship to Reading Achievement," Journal of Educational Research, 75:5 (May/June 1982), p. 272.

¹⁷⁹ Rudolph H. Moos and Bernice S. Moos, "Classroom Social Climate and Student Absences and Grades," Journal of Education Psychology 70 (April 1978), p. 263.

¹⁸⁰ Lines, p.4.

policies throughout the nation. She recommended that compulsory education requirements be kept at a minimum and that reforms be achieved through a public education program that is so enticing that students will want to take advantage of it. Recommendations for redesigning compulsory attendance laws were extensive. Lines suggested that compulsory education laws should state the minimum needed to produce a self-sufficient adult, meaning as narrow as possible an age range, sanctions that are no more than necessary, and a wide variety of options outside the public school system.¹⁸¹ Lines further recommended that states place priority on locating and educating the child who has taken to the streets and not the child who is being educated at home or in a private school, even when the school fails to meet state standards.¹⁸² Lines also presented suggested legislation for a model compulsory education law with recommendations for specific language to be used.¹⁸³

A study by Karweit presented an analysis of factors related to student absenteeism.¹⁸⁴ Karweit reviewed attendance records and observed in a high school for a

¹⁸¹ Ibid., p. 56.

¹⁸² Ibid.

¹⁸³ Ibid., pp. 58-61.

¹⁸⁴ Nancy L. Karweit, "Rainy Days and Mondays: An Analysis of Factors Related to Absence from School," (Washington, D. C.: National Institute of Education, 1973), p.1.

period of 72 days. She found that the most significant factor relating to student absenteeism was the day of the week. Her research indicated that the average percentage absent for all Mondays and Fridays grouped together was 23.5 as compared with 17.8 percent absent for the mid week.¹⁸⁵ Karweit noted that this Monday-Friday peak follows a pattern typically cited in studies of absenteeism in industry. There was a negative relationship between high absentee rates and grades. Students with the highest grades had the best attendance records. Karweit found the more "visible" a student was, or how active, the more likely he was to have a good attendance record.¹⁸⁶

Braden reported on the relationship between compulsory attendance laws and the juvenile justice system in the United States.¹⁸⁷ Braden explored the historical development of compulsory school attendance and child labor legislation. She also reviewed the beginnings of the juvenile court and current problems related to compulsory schooling and the juvenile justice system. Braden reviewed court decisions and discussed trends related to children's rights in relation to the school, juvenile justice system,

¹⁸⁵ Ibid. p. 30.

¹⁸⁶ Ibid., p. 59.

¹⁸⁷ Braden, Carol L., "Compulsory School Attendance Laws and the Juvenile Justice System," Criminal Justice Monograph, VIII:3, (Sam Houston State University, Huntsville, Texas, Institute of Contemporary Corrections and the Behavioral Sciences, 1978), p.4.

and community. Braden emphasized that while the provisions for compulsory schooling and juvenile courts were created seemingly as protective and clearly coercive measures of intervention to serve "the best interests of the child and state," children should have the right to determine the matters that affect them most directly.¹⁸⁸ He suggested as an alternative to compulsory education, the creation of non-coercive learning experiences without juvenile court jurisdiction over truant children. She indicated further that the lack of compulsory school attendance laws and a limited juvenile court would probably make little or no difference, perhaps at best an eventual change in the "paternalistic, patronizing philosophy toward children and a movement toward granting children more control of their lives."¹⁸⁹

Levanto undertook a study of absenteeism at a large Connecticut high school. His research focused on the identification and analysis of factors related to absenteeism.¹⁹⁰ Levanto examined students' attendance data, grades, and personal information. His findings indicated that Wednesdays and Thursdays have the lowest absenteeism, as well as days of important tests and examinations. Boys

¹⁸⁸ Ibid., p. 25.

¹⁸⁹ Ibid.

¹⁹⁰ Joseph Levanto, "High School Absenteeism," National Association of Secondary School Principals Bulletin, 59 (October 1975), p. 101.

in the first three years of high school had generally lower rates of absenteeism than girls, but this reversed during the senior year. Levanto found that absenteeism increased with each succeeding year from the ninth through the twelfth grades. Students with the highest IQ scores and the highest class rank had the lowest absentee rates. Levanto noted black students had a higher absenteeism rate while students of the Jewish faith had the lowest rate. Students living with both parents were absent less frequently than those who lived with one parent or guardian.¹⁹¹

Levanto advocated that responsibility for student attendance should be shared by both parent and student. He advised that good attendance habits learned and developed in school have a good chance of being carried over into the world of work. Suggestions for effecting higher attendance included: (1) development of a firm, fair, and well-publicized attendance policy which spells out specifically what is required for earning a unit of credit; (2) development of effective reporting procedures which will keep the home advised of student absences; and (3) exploration of the implementation of an "alternative curriculum" for the chronic absentee. Levanto noted that too much costly administrative time is spent on attendance

¹⁹¹ Ibid., p. 102.

related matters, and this time could better serve to improve education for those who really want it.¹⁹²

Wright conducted a research study in Virginia to determine factors affecting school attendance.¹⁹³ Wright particularly addressed the relationships between the school curriculum, the school organization, and characteristics of the school staff. He found the strongest correlation between attendance and any school factor concerned the ages of the staff. Schools that had younger staffs had better attendance. Also, Wright discovered that schools offering more music classes had higher attendance. Another factor which related positively with attendance was the scope of elective offerings. The wider range of course offerings and the higher percentages of students enrolled in work programs for credit, the higher the attendance rates. Wright advised that close examination of factors relating to attendance would be worthwhile before adopting attendance policies.¹⁹⁴

Brokowski and Dempsey addressed the trend to utilize attendance policies as a means of controlling absenteeism. Specifically, they studied policies which typically restrict the number of student absences to specific limits and impose penalties affecting course grades or course credits on

¹⁹² Ibid., pp. 103-4.

¹⁹³ John S. Wright, "Student Attendance: What Relates Where?" National Association of Secondary School Principals Bulletin 62 (February 1978), pp. 115-17.

¹⁹⁴ Ibid.

violators.¹⁹⁵ The researchers studied the performance of 666 secondary school students in attendance, achievement, and behavior for a two-year period at New Milford, Connecticut, High School. During the first year of the study, there was not a restrictive, punitive attendance policy in operation. Such a policy was in operation during the second year of the study. Results of the study indicated that older students (juniors and seniors) with low IQ's exhibited the most improved performance under the policy. Students with high IQ's showed no significant difference for performance in attendance and achievement variables. They appeared to be the least affected by the policy. Students with low IQ's demonstrated a significant increase in the number of disciplinary suspensions when the policy was in operation. All other groupings of students showed no significant differences in the number of disciplinary suspensions. The findings of these researchers' study suggest that the implementation of a control policy for attendance may result in improved performance in attendance and achievement for certain students. The maturity and ability levels of students are factors in the influence of such a policy. Further, attendance policies which prescribe penalties involving reduction of course grade or loss of course credit do not

¹⁹⁵ William W. Brokowski and Richard A. Dempsey, "Attendance Policies and Student Performance," The Clearing House, 53 (November 1979), p. 129.

result in the imposition of such penalties upon the majority of students. Brokowski and Dempsey found that there was evidence to suggest that a restrictive and punitive attendance policy can be an effective tool in discouraging student absenteeism. They made the following suggestions: (1) the policy should be based on a philosophy that classroom experiences and teacher-student interaction are essential components of learning; (2) the provisions of the policy should be clear, precise, and effectively communicated to all involved; (3) the provisions of the policy should include reasonable reporting procedures; (4) the policy should be flexible enough to accommodate extenuating circumstances for absences; (5) such a policy should not be expected to resolve totally the problem of student absenteeism. The researchers advised that an attendance policy is at best "a stop-gap measure, a band-aid and not a cure."¹⁹⁶ Strategies which are more sensitive and responsive to the shortcomings of our schools must be enlisted if schools are to be successful in getting to the root of student absenteeism.

Chapter IV will address the legal questions presented by this study. The introduction to the chapter will contain a review of the constitutional issues as well as state-delegated limits to school authority on attendance matters. A number of cases have been selected for comprehensive

¹⁹⁶ Ibid., p. 130.

review. These cases are based on the following challenges:
(1) the policy exceeds the limit of the school board's authority; (2) the statute or policy deprives the student of substantive due process; or (3) the statute or policy violated the student's procedural due process rights.

CHAPTER IV
LEGAL CONSIDERATIONS
INTRODUCTION

In this chapter, the researcher will examine the legal aspects of attendance policies which impose academic sanctions for student nonattendance. The courts have been called on to rule on school board policies which invoke academic penalties for misconduct as well as for nonattendance. These penalties often result from a student's absence because of suspension or expulsion for misconduct. Although this study focused on academic penalties for nonattendance, cases reported in this chapter may relate to student misconduct as well as nonattendance.

As documented in preceding chapters, absenteeism and truancy are serious problems for school administrators today. However, board policies and procedures on student conduct and attendance must protect the constitutional rights of students. This chapter will examine those constitutional rights, as guaranteed by the Constitution and statutory and case law.

From the beginnings of the first schools and school systems, school authorities' rights and duties relative to pupil's conduct in public schools was measured by the doctrine of "in loco parentis." This doctrine maintained

that school authorities assumed the role of the parents while the child was in school. Society was expressing in this doctrine a belief that schools would establish rules for the creation of the "proper atmosphere" to enhance the educational process.¹⁹⁷ This doctrine meant that school authorities could institute disciplinary measures against students if they were determined to be disrupting the "proper atmosphere." The assumption was that school authorities would exercise proper judgment in the use of this authority.

In 1969, The Supreme Court handed down the Tinker v. Des Moines decision.¹⁹⁸ This was the first opinion in which the Supreme Court directly addressed the regulation of student conduct. The determination of this case effectively closed the door on unrestricted control by school officials over student conduct. Tinker involved a protest by students of hostilities in Vietnam. The students wore arm bands to school, which was in direct violation of school policy. Wearing of arm bands is a form of expression of speech and as such is protected by the First Amendment. Justice Fortas, writing for the Court, stated:

First Amendment rights, applied in light of the special characteristics of the school environment, are

¹⁹⁷ Lee B. Liggett, "Discipline by Grade Reduction and Grade Denial Based on Attendance," in School Law in Changing Times, ed. M. A. McGheyhey (Topeka: National Organization on Legal Problems of Education, 1982), p. 40.

¹⁹⁸ Tinker v. Des Moines, 393 U.S., 503 (1969).

available to teachers and students. It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.¹⁹⁹

Fortas further stated that the:

Court has repeatedly emphasized the need for affirming the comprehensive authority of the States and of school officials, consistent with fundamental constitutional safeguards, to prescribe and control conduct in the schools. Our problem lies in the area where students in the expression of First Amendment rights collide with the rules of school authorities.²⁰⁰

The Court found that the students' expression did not materially disrupt classwork, cause substantial disorder or invasion of the rights of others, and could not be punished. By this decision, school officials were put on notice that disciplinary rules must recognize and respect the constitutional rights of students.

Policies on student attendance must also protect a student's right to due process. Both the Fifth Amendment and Fourteenth Amendment of the United States Constitution refer to "due process." The Fifth Amendment is part of the Bill of Rights and protects individuals from actions by the federal government that would deprive a person of "life, liberty, or property, without due process of law..."²⁰¹ The Fourteenth Amendment protects individuals from similar deprivations by state governments, and reads in part:

¹⁹⁹ Id. at 506.

²⁰⁰ Id. at 507.

²⁰¹ U.S. CONST. amend. V.

No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law...²⁰²

There are two types of due process: substantive due process and procedural due process. Substantive due process is a constitutional guarantee against deprivation of life, liberty, or property for arbitrary reasons. Laws passed must bear a reasonable relationship to a proper legislative purpose, and must be neither arbitrary nor discriminatory.

The principle of due process of law had its origin in England as a protection to individuals from arbitrary action on the part of the Crown...It is a limitation upon arbitrary power and a guaranty against arbitrary legislation, demanding that the law shall not be unreasonable, arbitrary, or capricious, and that the means selected shall have a real and substantial relation to the object sought to be attained.²⁰³

In order to meet the test of reasonableness imposed by substantive due process, disciplinary rules or policies must be rationally related to a valid educational goal. In addition, the penalty must not be unduly harsh.

A school district must be able to show that there is a reasonable and rational relationship between rules and regulations it proposes and the furtherance of valid educational purpose. In Jacobs v. Benedict, the court held that a board of education has "only that power to make rules and regulations over student conduct and status which are

²⁰² U.S. CONST. amend XIV.

²⁰³ 16A American Jurisprudence 2d. Constitutional Law, Section 816, at 979-81 (1979).

directly related to its function of evaluating the pupils in its charge."²⁰⁴

In Jacobs, a student failed to comply with school regulations governing hair length and style. As a result, he was removed as President of the Student Council, as a member of the Honor Society, was not allowed to participate in extracurricular activities, and received reduction in grades. The court ruled in favor of the student on the ground that there was not a reasonable basis for the rule. The court stated that the Constitution:

establishes the principle that every American has the right to be let alone and to be regulated by the government only so far as such regulation is shown to be necessary to protect others or to advance legitimate governmental purposes. This Constitutional provision places a heavy responsibility on any governmental body to justify its interference with a citizen's freedom...The Fourteenth Amendment, as now applied to the States, protects the citizens against the State, itself, and all of its creatures--Boards of Education not excepted.²⁰⁵

Procedural due process relates to the right to notice and the right to be heard, under circumstances consistent with essential fairness:

The idea of procedural due process is reflected in the statement that it is a rule as old as the law that no one shall be personally bound until he has had his day in court, by which is meant until he has been duly cited to appear and he has been afforded an opportunity to be heard. Judgment without such citation and opportunity lacks all the attributes of a judicial determination; it is judicial usurpation and oppression

²⁰⁴ Jacobs v. Benedict, 301 N.E. 2d 723 (Ohio Ct. Comm. Pleas 1973).

²⁰⁵ Id., at 725-726.

and can never be upheld where justice is fairly administered.²⁰⁶

Generally, schools are free to make rules relating to academics. The courts will not reverse these decisions unless they are completely arbitrary or motivated by malice. However, disciplinary action invokes the right to procedural fairness as guaranteed by the Fourteenth Amendment. Whenever academic penalties involve a combination of discipline and academic evaluation, they must assure procedural fairness.

As early as 1913, courts justified differing procedural requirements for decisions to suspend or dismiss a student for academic reasons as opposed to disciplinary reasons. In Barnard v. Inhabitants of Shelburne, the court held that, "Misconduct is a very different matter from failure to attain a standard of excellence in studies."²⁰⁷

In Goss v. Lopez,²⁰⁸ the United States Supreme Court recognized that, unlike disciplinary proceedings, academic matters are outside the area of expertise of most judges. Generally, a court will defer to professional educators if the issue is one of academic policy. Goss was also instrumental in providing definitive guidelines to school officials to follow to guarantee that students' procedural

²⁰⁶ Ibid., Section 813 at 968.

²⁰⁷ Barnard v. Inhabitants of Shelburne, 102 N.E. 1095 (Mass. 1913).

²⁰⁸ Goss v. Lopez, 419 U.S. 565 (1975).

due process rights are respected. In Goss, the Court struck down an Ohio statute that permitted a school principal to suspend a student for up to ten days without a hearing either prior to or within a reasonable time thereafter. The Court held that students subject to suspension had both a property interest and a liberty interest which required the protection of procedural due process. The property interest at stake was a student's right to a public education. The liberty interest at stake was the student's reputation. The charges of misconduct and record of suspension "could seriously damage the student's standing with his fellow pupils and teachers as well as interfere with later opportunities for higher education and employment."²⁰⁹

The Court stated that exclusion from the educational process for more than a trivial period was a serious event in the life of the suspended student, and that a student was entitled to "some kind of notice" and "some kind of hearing." In determining the type of notice and hearing, the Court looked at the competing interests involved.

The student's interest is to avoid unfair or mistaken exclusion from the educational process, with all of its unfortunate consequences...The difficulty is that our schools are vast and complex. Some modicum of discipline and order is essential if the educational function is to be performed. Events calling for discipline are frequent occurrences and sometimes require immediate, effective action. Suspension is

²⁰⁹ Id. at 575.

considered not only to be a necessary tool to maintain order, but a valuable educational device.²¹⁰

The basic elements of procedural due process include:

- (1) informing students about what conduct is prohibited; and
- (2) giving students who are alleged to have violated school rules notice of the charges against them, a chance to explain their side of the allegation, and an impartial decision based on sufficient evidence.

For the remainder of this chapter, the researcher will examine cases which relate to school board policies which invoke academic penalties for misconduct or nonattendance. The charges have been brought by students based on one of the following challenges: (1) the policy exceeds the limit of the school board's authority; (2) the statute or policy deprives the student of substantive due process; or (3) the statute or policy violates the student's procedural due process rights. Many of the cases raise all three challenges and may be reported in more than one section. However, most are reported in the section which is most relevant or significant.

SCHOOL BOARD AUTHORITY

The school's authority over students rests on the constitutional and legislative provisions which created the schools and defined their powers. The states derive their

²¹⁰ Id. at 597-80.

power over education from the Tenth Amendment of the United States Constitution. This amendment reserves to the states or the people the powers not granted to the federal government. Thus, any action taken by a school board must stay within the legal limits imposed by the state.²¹¹

Even though no state's laws specifically prohibit academic penalties, a number of states limit or prevent the use of these penalties. Some state legislatures have defined the penalties for misconduct or truancy, and this action has effectively prevented local boards from using academic penalties for these offenses. In California, for example, the attorney general's opinion held that the existence of these statutory penalties for truancy made it impossible for school boards to deny credit for unexcused absences. Students' grades could be affected only if the absences reflected lowered scholastic achievement.²¹²

In Fisher v. Burkburnett Independent School District, a Texas federal district court considered whether a school board policy exceeded the authority granted by the state's statutes.²¹³ The student sought relief from suspension and subsequent loss of trimester's credits after she overdosed on drugs. The plaintiff argued that the school board's

²¹¹ Bernheim, p. 24.

²¹² Op. Cal. Attorney General No. CV74-145 (Aug. 13, 1975); quoted in Bernheim, p. 24.

²¹³ Fisher v. Burkburnett Independent School District, 419 F. Supp. 1200 (N.D. Tex. 1976).

action exceeded power granted by state statutes and that she had been deprived of both procedural due process and substantive due process.

The court held that the school board was operating within limits imposed by state statutes when it suspended the plaintiff. Texas Education Code provides "an independent grant of authority for school boards to promulgate disciplinary rules and by necessary implication, to punish students for infractions of these regulations."²¹⁴ The opinion of the court was that, although it did not find the loss of credit a "particularly therapeutic dose of justice," the school board had other considerations than just those of rehabilitating the plaintiff. The court stated further:

School administrators have a pressing interest in discouraging drug abuse at school. They may propagandize against such behavior, but the efficacy of strict punishment is surer. This concern with general deterrence explains the harshness of the Burkburnett I.S.D. policy on drugs. Stripping the plaintiff of academic credit does not serve any academic purpose, but it does effect school discipline. The school's policy of suspension for a trimester thus furthers a legitimate interest in a rational if severe manner.²¹⁵

In Knight v. Board of Education of Tri-Point Community Unit School District, the plaintiff contended that a school district in that state (Illinois) lacked the legal authority

²¹⁴ Id. at 1202.

²¹⁵ Id. at 1205.

to impose any sanction upon a pupil for truancy.²¹⁶ The significant issues in this case had to do with due process challenges and the case will be reported in greater detail in sections to follow. However, regarding statutory authority, the court found that the Illinois legislation, by giving the districts power to make disciplinary rules, also empowered them to punish pupils for unexcused absences.

A Kentucky court reached a conclusion contrary to the Illinois court when it heard Dorsey v. Bale in 1975.²¹⁷ A student's grades had been reduced for unexcused absence as an additional punishment for conduct which had led to suspension from classes. The board of education had included in the student handbook regulations pertaining to "unexcused absences:"

Absences for any other reason and failure to follow the outlined procedure will constitute an unexcused absence and work will not be allowed to be made up and furthermore five (5) points will be deducted from the total nine-weeks grade for each unexcused absence from each class during the grading period.²¹⁸

The handbook also provided that absence resulting from suspension would constitute an unexcused absence.

Bale was suspended from school on two separate occasions for possessing and consuming alcoholic beverages on the school campus. The unexcused absence was not invoked

²¹⁶ Knight v. Board of Education of Tri-Point Community Unit School District, 348 N.E. 2d 299 (Ill. App. 1976).

²¹⁷ Dorsey v. Bale, 521 S.W. 2d 76 (Ky. App. 1975).

²¹⁸ Id. at 77.

for the first offense, but it was for the second offense. Bale was suspended for four days and his grades were reduced by five percentage points for each of the four days. As a result, semester grades were lowered by one letter in three of the five courses in which he was enrolled.

Bale based his charge against the board of education on lack of legal authority to invoke the unexcused-absence rule. The trial court agreed and the board of education appealed.

The appellants argued that the unexcused-absence rule was a reasonable regulation and that it had aided in ridding the school of turmoil, disruption, and disorder. Other methods used (suspension, expulsion, detention, and corporal punishment) had been less effective. The board cited a state statute which empowered each board of education to "do all things necessary to accomplish the purpose for which it is created," and another statute which provides that each board of education may make and adopt rules and regulations for the conduct of pupils.²¹⁹

The court, in refusing to follow the arguments of the board, held that the statutes referred to by the appellants were directed to rules and regulations for the conduct of pupils, not to the disciplinary measures taken for the breach of such rules. The court stated that the statute under which Bale was suspended preempted the right of school

²¹⁹ Id. at 78.

officials to impose additional punishment for the conduct that resulted in suspension:

If the conduct of the student in the judgment of the school authorities warrants invoking the statutory authority to suspend, and school authorities do suspend, they have the right to determine the duration of suspension so that such action constitutes a complete punishment for the offense.²²⁰

Thus the Dorsey decision was contrary to those of Fisher and Knight. However, another case decided in 1978 also found that the school district's "attendance-tardies" policy was invalid, since it was inconsistent with state statutes. In Gutierrez v. School District R-1, two students and their parents brought an action against the board of education because they had been denied credit as a result of their failure to fulfill attendance requirements.²²¹ The district court found for the students and the board of education appealed.

The school district's "attendance-tardies" policy denied credit to students with more than seven absences even if such absences were due partially to suspensions and excused absences. The court of appeals decided the case based on whether the school district could lawfully adopt and enforce such a policy within the scope of authority granted to local boards by the state of Colorado. The applicable statute authorizes a school board:

²²⁰ Id. at 78.

²²¹ Gutierrez v. School District R-1, 585 P. 2d 935 (Colo. Ct. of App. 1978).

To adopt written policies, rules and regulations, not inconsistent with law, which may relate to the study, discipline, conduct, safety, and welfare of all pupils, or any classification of pupils, enrolled in the public schools of the school district and to adopt written procedures, not inconsistent with article 33 of this title, for the suspension and expulsion of, or denial of admission to, a pupil, which procedures shall afford due process of law to pupils, parents, and school personnel.²²²

The attendance-tardies policy of the school district stated that a student will be denied academic credit for all classes in which more than seven "absences" occur in a semester.

The seven (7) days of absence are to accommodate such things as:

- a. Personal illness.
- b. Professional appointments that could not be scheduled outside the regular school day.
- c. Serious personal or family problems.
- d. Or any other reason.²²³

The policy provided for an attendance review board, "to meet when requested by a student, teacher, parent, or counselor to examine the specific conditions relating to an individual case...Disciplinary suspension days will be included in the total days absent."²²⁴

The two students accumulated more than seven absences each during the fall semester of the 1977-78 school year. Reasons for absences included tardies, truancies, suspension days, and excused absences. Subsequently, credit was denied

²²² COLO. REV. STAT. 22-32-109(1)(w) (Supp. 1976).

²²³ Id. at 936.

²²⁴ Id.

to one student in all of his classes and the other student was denied credit in all but one of his classes for the semester.

The court held that the School Attendance Law does not preclude the school district from adopting an attendance policy, but that the policy must be consistent with that statute. The court referred to this statute:

...students are required to attend school for at least 172 days during the school year. Days on which a student is 'temporarily ill or injured,' or 'has been suspended or expelled,' are, however, counted as part of the 172 mandatory attendance days. The statute thus discloses a legislative policy that non-attendance sanctions not be imposed for these types of absences.²²⁵

The court held that denial of academic credit to the students based on the attendance-tardies policy was in excess of the school district's authority. As an apparent result of this decision, the Colorado legislature subsequently amended the governing statute to provide specifically for the use of academic penalties for unexcused absence. This revision is reported in Chapter III.

In 1980, a lower Michigan court decided a similar case based on whether the attendance policy in Harrison exceeded statutory authority.²²⁶ The policy had been adopted by

²²⁵ Id. at 937.

²²⁶ Sprague v. Harrison Community Schools, No. 80 005300 PZ (Sept. 10, 1980). Permanent citation unavailable; quoted from Perry A. Zirkel and Ivan B. Gluckman, "Academic Penalties for Absences," Principal 61:3 (January 1982), pp. 60-61.

school officials in Harrison in response to persistent problems with discipline and attendance with high school students. The policy denied credit for each subject in which the student missed more than seven days of class during the term. Students who missed eight days had three options: (1) the student could attend the remainder of the term but would receive no credit; (2) the student could request a "home-pass" and remain at home for the remainder of the term; or (3) the student could appeal to a review board to receive credit.

During the fall of 1979, thirty-eight students were denied credit and the number was even higher for the winter term. One girl who had been denied credit brought a class action suit against the school board. She challenged the attendance policy on both statutory and constitutional grounds. She based her statutory claims on the state's compulsory attendance and truancy laws. She based her constitutional claims on due process and equal protection grounds.

The court decided the case on statutory grounds. It found that by creating the attendance board, the school board, which had no express authority to issue penalties for attendance, displaced the attendance officer, who had this authority according to Michigan's truancy law. Further, the court ruled that because the policy did not distinguish between excused and unexcused absences, the attendance

policy violated the purposes of the state's compulsory attendance laws. The court found for the plaintiff and invalidated the attendance policy.

Two other cases decided in 1984 were based on challenges that policies of local school boards exceeded the authority conferred by state statutes. The decisions differed widely, and the central issue was whether the policy involved academic decisions or whether the penalties imposed were basically disciplinary. In Campbell v. Board of Education of New Milford, a Connecticut Appeals Court heard a case based on challenges to the system's attendance policy.²²⁷ Attendance, as presented by the board, was characterized as being a rational part of the system's academic requirements for credentials. In Katzman v. Cumberland Valley School District, the court considered a disciplinary policy which imposed the penalty of grade reduction for infractions not educationally related. Even though the court reached opposing decisions in these two cases, the distinction between policies which are academic and policies which is disciplinary are very clear.

In Campbell, the plaintiff argued that the policy conflicted with state statutes and also deprived him of procedural and substantive due process. The plaintiff had accumulated thirty-eight absences, thirty-one of which were

²²⁷ Campbell v. Board of Education of the Town of New Milford, 475 A. 2d 289 (Conn. App. 1984).

approved and seven of which were unapproved. As a result of these absences, grades in three of the courses in which he was enrolled were lowered from passing to failing. The remaining course grade was lowered, but was passing. However, no credit was given for the course because the absences exceeded twenty-four, the maximum allowed by the attendance policy.

The plaintiff argued that the policy was invalid because it exceeded the authority conferred upon local school boards by state law, and also that the policy was inconsistent with state statutes. The court refuted this argument and quoted the Connecticut statutes:

'The furnishing of education for the general public, required by article eighth, 1, of the Connecticut constitution, is by its very nature a state function and duty... This responsibility has been delegated to local boards which, as 'agencies of the state in charge of education in the town...possess only such powers as are granted to them by the General Statutes expressly or by necessary implication.'²²⁸

The court found that the General Statutes granted authority for the school board's attendance policy. These statutes require a local school board to "implement the educational interests of the state" and to "provide such other educational activities as in its judgment will best serve the interests of the school district." Further, the statutes instruct local boards of education to "prescribe rules for the management, studies, classification and

²²⁸ Campbell, 475 A. 2d at 291.

discipline of the public schools." Also, the General Statutes permit local school boards to investigate and to regulate the "irregular attendance of pupils at school."²²⁹

The plaintiff argued that the school board's attendance policy was preempted by state statutes governing school attendance. The court found that although there was state legislation dealing with truancy, the New Milford attendance policy "does not impinge or encroach upon that area of attendance covered by state statute." The plaintiff also argued that the General Statutes implied that students be given full academic credit for completion of academic work, and that this mandate prohibited local boards from imposing academic sanctions for nonattendance.

The board replied that the court must recognize the distinction between sanctions which are primarily disciplinary and sanctions which relate to academic requirements. The court examined the board's argument that its policy related to academic requirements. It found that the board's description, "academic credentials should reflect more than the product of quizzes, examinations, papers and classroom participation... constitutes an academic judgment about academic requirements" characterized the attendance policy.²³⁰

²²⁹ Id. at 292-293.

²³⁰ Id. at 294.

The court held that since the policy was not disciplinary in intent nor in effect, it was not in conflict with state statutes governing compulsory school attendance.

The court also found that there was no infringement of constitutional rights. Since the policy was neither disciplinary nor an infringement of equal educational opportunity, and since the grading system was "fair," there was no denial of liberty or property interests. Pepe reported that, as a result of this ruling, many of the 169 towns in Connecticut have adopted attendance policies which impose academic penalties for unexcused or excessive absenteeism.²³¹

Katzman v. Cumberland Valley School District was a 1984 case which was brought against the school board for grade reduction for suspension.²³² The Pennsylvania Court of Appeals found in favor of the student on the basis that the policy being challenged represented an illegal application of school board's discretion.

The appellee, Katzman, was an eleventh grade student in 1982 when the action resulting in suspension occurred. While on a field trip, the student had joined four other students in ordering and drinking a glass of wine in a restaurant. She was subsequently suspended for five days,

²³¹ Pepe, "Academic Penalties," p. 6.

²³² Katzman v. Cumberland Valley School District, 479 A. 2d 671 (Pa. Cmwlth. 1984).

excluded from classes, expelled from the cheerleading squad, prohibited from taking part in school activities during the five days' suspension, and later was permanently expelled from the National Honor Society. Under the district's disciplinary policy, the student's grades were also reduced. The policy states:

Suspension and Expulsions...

Reduce grades in all classes two percentage points for each day of suspension. The grades are to be reduced during the marking period when the in-school or out of school suspension occurred. In lieu of a two percentage point reduction the student may be assigned to a supervised Saturday work program provided the parent(s) and student accept the conditions of this option.²³³

As a result of this policy, the student's grades in each subject for the entire second marking period were reduced by ten points, two points for each day of the suspension. She was denied the option of Saturday work because of the terms set forth in the policy, "Saturday Work Program." This policy stated that, "The Saturday Work Program option will not be offered to students that violate the district policies on smoking and drug and alcohol abuse."²³⁴

Appellee raised no procedural issues, only the issue as to the propriety of the grade reductions as punishment for her disciplinary infraction. The common pleas court noted that Debbie Katzman was a high achieving student, ranking tenth in a class of approximately 600 pupils, and had no

²³³ Id. at 672.

²³⁴ Id. at 673.

previous record of disciplinary offenses. This court found the grade reductions to be "harsh" and "excessive," and stated, however, that the nature of the punishment had no effect on the decision. The court found that the board's policy was in conflict with the state statute, "Student Rights and Responsibilities Regulations," and ordered that the student's grades be reinstated.

The appeals court examined the board's argument that a local public school district has the "inherent right to determine the nature of discipline to be administered to students violating its codes of behavior," and that the statute, "Student Rights and Responsibilities Regulations," does not place a limitation on the board's discretionary authority to impose discipline. The board referred to state statutes which empowered local boards to

adopt and enforce such reasonable rules and regulations as it may deem necessary and proper, regarding the management of its school affairs and the department of all... pupils attending the public schools in the District.²³⁵

The issue, said the court, was the legality of a board policy, not specifically authorized by statute or regulation, which reduces educational standing for infractions not related to academics.

The court held that the intention of the legislature in authorizing the adoption and enforcement of "reasonable rules and regulations" did not intend to sanction a grade

²³⁵ Id. at 674.

reduction policy, without an optional make up program. The court stated that by downgrading the student's achievement for a full period of nine weeks, the student's achievement record was clearly misrepresented. The policy was found to be an illegal application of the board's discretion and the grade reduction was improper.

Cases reported to this point have related to challenges that the local board policy exceeded state statutory authority. A decision by the New Jersey Commissioner of Education in 1974 was based on the fact that the local policy did not require the minimum attendance as mandated by the state.²³⁶ The policy denied credit to any student absent from a given course for 30 or more days. Nine students who had not received diplomas under the policy brought action against the school board. The Commissioner upheld the action of the board of education, but then ordered the policy set aside. The Commissioner's comments on student attendance and compulsory schooling are relevant to both the legal and philosophical questions of this research:

Frequent absences of pupils from regular classroom learning experiences disrupt the continuity of the instructional process. The benefit of regular classroom instruction is lost and cannot be entirely regained, even by extra after-school instruction. Consequently, many pupils who miss school frequently

²³⁶ William J. Wheatley v. Board of Education of Burlington, N.J. Comm. of Ed. Dec. (Sept. 23, 1974). Permanent citation unavailable; quoted from Thomson and Stanard, pp. 2-3.

experience great difficulty in achieving the maximum benefits of schooling. Indeed, many pupils in these circumstances are able to achieve only mediocre success in their academic programs. The school cannot teach pupils who are not present. The entire process of education requires a regular continuity of instruction, classroom participation, learning experiences, and study in order to reach the goal of maximum educational benefits for each individual child. The regular contact of the pupils with one another in the classroom and their participation in well-planned instructional activity under the tutelage of a competent teacher are vital to this purpose. This is the well-established principle of education which underlies and gives purpose to the requirement of compulsory schooling in this and every other state in the nation.

In the judgment of the Commissioner, the Board's policy of permitting pupil absences for whatever reason, up to 30 instances, in each subject matter class, impedes and impairs the State policy for compulsory schooling. The length of the academic year for pupils in the public schools of this State averages approximately 182 days. Given such a limited number of school days for pupils, any local policy which condones, excuses, or encourages any absences by pupils, constitutes a derogation of the long-standing State policy for compulsory and maximum attendance at school...

The Commissioner is well aware that the Board's purpose in adopting the controverted policy was to shift the responsibility for classroom attendance to the pupils and their parents. The commissioner is also aware that this Board and every other local board of education experiences difficulty in enforcing compulsory attendance requirements, and that school administrators expend a great deal of time and effort in this task. Notwithstanding these kinds of reasons, the public schools have the consistent obligation to require that their pupils be present in school in order that they may be taught. This policy is for the benefit of the pupils, their parents, and the community at large. ²³⁷

In summary, courts have made it clear that one of the first considerations in cases involving academic penalties for either attendance or misconduct, is whether the policy

237 Id.

exceeds statutory authority granted by the state. Many state compulsory attendance laws are broad and general. General statements contained in many statutes such as, "The local Board of Education may adopt and enforce such reasonable rules and regulations as it may deem necessary and proper regarding the conduct and education of pupils..." may or may not be interpreted by the courts to mean that the local board of education may adopt attendance policies providing for academic penalties. The courts will consider the intent of the legislation as well as the literal wording of the statute. In states where the legislatures have reserved to themselves the power to define penalties for misconduct or truancy, local boards are powerless to create their own policies.

SUBSTANTIVE DUE PROCESS

The first requirement for a constitutionally acceptable academic penalty is that it furthers a valid educational purpose. If this test is met, the policy will meet the substantive due process requirement if it is not unduly severe or harsh. The severity of the punishment must be proportionate to the severity of the offense.

Educators may make a convincing case that the presence of a child in the classroom on a reasonably regular basis is necessary to ensure that the student derive maximum benefit from classroom instruction. There seems to be a clear

relationship between enforcing attendance and a school's educational goals. In Knight, the Appellate Court for the Fourth Judicial District of the State of Illinois in a divided opinion affirmed an earlier decision of the circuit court upholding the right of a school system to establish a policy which imposed academic sanctions for unexcused absence.

The attendance policy of the Tri-Point Community Unit School District stated:

Under an excused absence, makeup work shall be done without credit and grades shall be lowered one letter grade per class.²³⁸

Knight, a senior at the high school, did not attend class for two days, and the administration determined that these days were "unexcused." Knight claimed that his grades were subsequently lowered two letter grades per class for the final quarter of the year.

Knight claimed that the school administration's refusal to excuse his absence deprived him of substantive due process of law and equal protection of law. The circuit court found for the school board and the student appealed.

During the school quarter in question, Knight was enrolled in business English, photography, physical education, and food products management and science. The latter course was taught at a vocational center in a nearby city. The teacher in this course did not consider the

²³⁸ Knight, at 301.

school rule on unexcused absences in determining Knight's grade. Teachers in the other three courses stated that, because of the policy, they lowered Knight's grade by one, but not by two letter grades.

School administrators stated that they considered truancy to be a serious problem and that the grade reduction method was the best sanction to impose to combat truancy. They considered corporal punishment and suspension to be too drastic and unworkable. Since 80 percent of the students were transported by bus, after-school detention was not a reasonable alternative.

The co-ordinator of student affairs for the office of the state superintendent of public instruction stated that he considered the rule to be poor educational policy and that a more reasonable method of imposing sanctions for truancy would be to give the truant a failing grade for the day and to supplement the punishment with detention.

The court ruled for the defendant, and the trial judge stated that he did not personally agree with the wisdom of the rule but did not find it to be patently unreasonable or arbitrary.

Knight argued that the rule violated his substantive due process rights under both state and federal constitutions and that his grades were so affected by the rule as to deprive him of substantive due process. The

court, in deciding the Knight case, took the opportunity to review Goss and Wood v. Strickland,²³⁹ stating:

The rights incident to an education being protected in these cases were the same as those granted protection in Goss v. Lopez. We thus conclude that such rights are protected by substantive as well as procedural due process.

In the case under consideration the incident of the receipt of an education claimed to be impaired was not the opportunity to attend class but the receipt of grades, a measure which is considered by institutions of higher learning in determining who to admit and by employers in deciding who to hire.²⁴⁰

In holding for the school board, the court said:

Despite the analogy that can be drawn between the effects of pupil expulsion and the reduction of a pupil's grades, however, we are most reluctant to intervene in the grading process. Few courts have done so. Where a grade is dispersed by a teacher within a teacher's discretion, we can see no justification for court intervention.

We do not find the reduction in plaintiff's grades by one letter grade for a period of one quarter of the year in three subjects in consequence of truancy to be so harsh as to deprive him of substantive due process.²⁴¹

Knight had also charged that there was no rational relationship between grades and the misconduct of truancy and that the commingling of disciplinary sanctions within the system of grading is not sound educational policy. In response to this claim, the Court held:

The courts are not the forum for determining the best educational policy...Most high school grading systems

²³⁹ Wood v. Strickland, 420 U.S. 308 (1975).

²⁴⁰ Knight, at 302.

²⁴¹ Id.

have commingled factors of pupil conduct with scholastic attainment in rendering grades...Truancy is a lack of effort and plaintiff here exhibited a lack of effort. There was, therefore, a sufficiently rational connection between the grade reduction he was given and his truancy to satisfy the requirements of both equal protection and substantive due process.²⁴²

The Knight court relied heavily on two sister cases in examining whether or not Knight's rights had been so violated as to amount to a deprivation of due process. In the first case, Cook v. Edwards, the court considered whether an indefinite expulsion raised a question of substantive due process.²⁴³ The plaintiff in the case had been expelled indefinitely for intoxication. The court observed

...the punishment of indefinite expulsion raises a serious question as to substantive due process. The result of indefinite expulsion may be the end of the plaintiff's scholastic career...I perceive no valid reason for making the expulsion indefinite.²⁴⁴

The second case, Lee v. Macon County Board of Education, considered whether the permanent expulsion of three students complied with the due process requirement.²⁴⁵ The court held that when a serious penalty is at stake, a school board must provide a higher degree of due process than when the student is threatened only with a minor

²⁴² Id. at 303-304.

²⁴³ Cook v. Edwards, 341 F. Supp. 307 (D.N.H. 1972).

²⁴⁴ Id. at 311.

²⁴⁵ Lee v. Macon County Board of Education, 490 F. 2d 458 (5th Cir. 1974).

sanction. The court also commented that although school disciplinary matters were best resolved within the school system, courts will not hesitate to determine "whether there is such a disparity between the offenses and the penalty that the commands of the Fourteenth Amendment have not been met."²⁴⁶

An Illinois appellate court determined a case in 1978, based on whether the grade reduction penalties invoked by the school system had a reasonable relationship to the disciplinary objectives sought to be attained by the Board. In Hamer v. Board of Education of Township High School District #113, County Lake, the plaintiff challenged the right of school authorities to reduce her grades under a policy for unexcused absence.²⁴⁷

The case was dismissed by the lower trial court and Hamer appealed. The plaintiff asserted that the disciplinary policy of the board of education was illegal and unconstitutional and as such school authorities had no right to reduce her subject grades as punishment for an unauthorized absence from school.

The plaintiff was a student at one of the district high schools when the incident occurred. She left school during the lunch period on an emergency matter without advising any

²⁴⁶ Id. at 460.

²⁴⁷ Hamer v. Board of Education of Township High School District #113, 383 N.E. 2d 231 (Ill. App. Ct. 1978).

teacher or staff member. The following school day she presented a note from her mother excusing her absence. She was told that since she had left the school grounds without informing a teacher or staff member, her absence was unauthorized and, as punishment, her grades in the three subjects she had missed would be reduced by 3 percent. The plaintiff claimed that some of her teachers did reduce her grade average as a result of the rule, but that others refused to do so.

The court citing the Illinois School Code stated:

The School Code does not specify that a grade reduction shall or might be imposed upon a student as a disciplinary measure unrelated to the scholastic attainments of the student nor does it suggest what relationship, if any, might exist between an earned grade in a subject and sanctions which might be imposed by school administrators for conduct outside the classroom. It does not appear that the Board has given specific consideration to disciplinary matters as it has simply delegated general authority to its separate school administrators to carry out "lawful" rules and regulations in conformance with an unstated Board policy.²⁴⁸

The court found that the plaintiff's complaint was sufficient to require a hearing with the board to determine if due process had been violated by the application of "arbitrary grade reduction penalties having no reasonable relationship to the disciplinary objectives sought to be attained by the Board."²⁴⁹

²⁴⁸ Id. at 233.

²⁴⁹ Id. at 234.

Even though most courts have found a reasonable relationship between class attendance and achievement and have allowed academic penalties for truancy, one state has forbidden schools to consider truancy in their grading policies. In 1972, the New Jersey Commissioner of Education invalidated a school policy which imposed zeros for class periods missed during unexcused absences. In Minorics v. Board of Education, it was alleged that the grading system, in certain instances, was used as a measure of disciplinary penalty and was improper.²⁵⁰ The policy stated:

1. Use of the mark zero.

(a) Students in the Phillipsburg Schools receive zero in all subjects on those days when they are truant from school and in those instances when, because of their own actions they are in suspension from the privilege of school attendance.

(b) Students may make up tests that they may have missed on such days. These test results are then averaged in with all other marks received during that quarter--including the assigned zero...

In ruling against the board's policy, the commissioner held

...that the mark "zero," when awarded to students because of their truancy or absences occasioned by suspension from school, is so weighted in the grading process as to constitute a penalty contrary to previous decisions of the Commissioner.

...It is clear that, in the instant matter, the use of the mark zero tends to weight the term grade received and the weigh the record down, and since such weighting occurs only when students are truant or are on suspension from the privilege of school attendance, the practice must be viewed as one of the kind the Commissioner cautioned against in Wermuth: a practice

²⁵⁰ Minorics v. Board of Education of Town and Phillipsburg, Dec. of N.J. Comm'r. of Educ. (March 24, 1972). Permanent cite unavailable; quoted from Pepe, "Student Grades and School Discipline," pp. 142-46.

that serves "disciplinary purposes." As such the Commissioner holds that the practice is improper and should be terminated at the earliest practicable time.²⁵¹

In Wermuth the Commissioner had found:

...The use of marks and grades as deterrents or as punishment is likewise usually ineffective in producing the desired results and is educationally not defensible. Whatever system of marks and grades a school may devise will have serious inherent limitations at best, and it must not be further handicapped by attempting to serve disciplinary purposes also.²⁵²

Thus, in New Jersey, even though state statutes do not specifically prohibit the use of academic penalties for truancy, case law in that state has determined that the need to discipline can never be a valid basis for assigning grades.

Because grades and credits are measures of a student's scholastic performance, not his conduct, academic penalties may be a questionable form of discipline. Most courts have established one clear guideline: academic penalties may be imposed for misconduct only if the misconduct results in the student being absent from class.²⁵³ Only in Texas has a court allowed academic penalties for misconduct.²⁵⁴

²⁵¹ Id.

²⁵² Wermuth v. Bernstein, Dec. of N.J. Comm'r of Educ. (1965). Permanent cite unavailable; quoted from Pepe, pp. 142-43.

²⁵³ Knight, 348 N.E. 2d 299 (1976).

²⁵⁴ Fisher, 419 F. Supp. 1200.

In another case heard by the Texas Court of Appeals in 1982, two high school seniors charged that a school district policy which imposed zeros on all graded class work for each day of suspension was constitutionally unreasonable and deprived them of protected property rights and substantive due process.²⁵⁵ The two high school seniors had been suspended from New Braunfels High School for three days for consuming an alcoholic beverage on a school-sponsored trip. In addition to the suspension, the students were given zeros on all graded class work for each day of the suspension, as well as having three grade points deducted for each day of suspension from their six-week averages. The trial court held that because of the absence of a written regulation or policy, the imposition of scholastic penalties in connection with suspension was unauthorized. The appeals court reversed this decision.

The court found that provisions in the student handbook outlined the regulation in question. The court's legal conclusion was, "We are not prepared to say that a school district may not adopt attendance regulations which impose academic penalties for unexcused absences from school."²⁵⁶

Another common substantive due process challenge to a grade reduction policy for unexcused absences has been that

²⁵⁵ New Braunfels Independent School District v. Armke, 658 S.W. 2d 330 (Tex. App. 1983).

²⁵⁶ Id. at 332.

the disparity between the offense and the penalty is too great, or that the penalty is too harsh. The Fisher court found that although the sanction invoked by the school's policy was severe, it was not held to be excessive since the plaintiff had "flirted with death."²⁵⁷

In Knight, the court decided that reducing a student's quarter-term grades in three subjects for two days of unexcused absences was not an unduly harsh punishment.²⁵⁸ It was noted that truancy was a severe problem and other disciplinary efforts to deal with the problem had been ineffective.

An Illinois court determined that a three-day suspension of a student for fighting was not an abuse of the school's discretion, even though suspension occurred during early October examinations.²⁵⁹ Donaldson, a seventh grader in the Danville school system, was suspended for three days as a result of fighting with another student. Since his three-day absence was unexcused, he was not allowed to make up examinations and other work missed during that time. As a result, Donaldson's grades were lowered.

Donaldson did not argue against the suspension per se, but felt that suspension during "final examinations" was

²⁵⁷ Fisher v. Buckburnett, 419 F. Supp. at 1205.

²⁵⁸ Knight, 348 N. E. 2d at 299.

²⁵⁹ Donaldson v. Board of Education, 424 N. E. 2d 737 (Ill. App. 1981).

excessive. The court held that the unfortunate timing had to do with his misconduct, not with the disciplinary decision. The court also found that the tests were not "final examinations" in the sense of being at the end of a semester or the completion of a course, but rather were six-week tests, and would thus not be of a type that would have such a substantial effect upon Donaldson's grades as to make the decision arbitrary. The court also noted that Donaldson was a seventh grader, as opposed to being in high school, where in the latter grades are more important and can affect a student's educational and employment prospects after he leaves a public school. The thinking of this court was similar to that of the Katzman court which overturned a grade reduction.²⁶⁰ The court held in this case that the sanction would have misrepresented the student's academic abilities to future schools and employers and that "grades are not merely of fleeting interest: rather they become a permanent record upon which all future education opportunities are based."²⁶¹

When examinations missed due to suspension are more critical than those in Donaldson, a court may be less likely to find in favor of the school system. In Myre v. Board of Education, an Illinois appellate court ruled that a school could not deny a student the opportunity to make up

²⁶⁰ Katzman, 479 A. 2d at 671.

²⁶¹ Id. at 675.

examinations missed during a five day in-school suspension.²⁶² The court found that the rule under which the plaintiff had been disciplined was a valid one but that, as applied to the circumstances, it constituted a deprivation of her rights to substantive due process. The court ordered that she be permitted to make up all missed examinations.

In Raymon v. Alvord Independent School District, a United States Court of Appeals considered whether a student's grade reduction had been substantial enough to constitute deprivation of property and liberty interests.²⁶³ Raymon, a high school student, was penalized for an unexcused absence from class by the deduction of three points from her six weeks algebra grade. The court found that

Ms. Raymon's claim that the insignificant decrease in her overall grade point average, from 95.478 to 95.413, constituted a deprivation of a vested property or liberty interest without due process is patently insubstantial.²⁶⁴

This is a further indication that courts will not overturn academic penalties related to absence, unless the sanctions are grossly unfair.

²⁶² Myre v. Board of Education of Seneca Township High School District No. 160, 439 N. E. 2d 74 (Ill. App. 1982).

²⁶³ Raymon v. Alvord Independent School District, 639 F. 2d 257 (5th Cir. 1981).

²⁶⁴ Id. at 258.

Inherent in the "harshness" aspect of substantive due process is whether the appropriate form of academic penalty is invoked by attendance or disciplinary policies. Policies which impose denial of credit are more severe than those which lower grades. The most severe penalty is withholding a diploma. Courts have generally held that the punishment should fit the crime, and strong justification is required when a school prevents a student from graduating for reasons other than that academic requirements have not been met.²⁶⁵

As early as 1921, a court heard a case brought against a school district because a student was denied a diploma. In Valentine v. Independent School District, a student refused to wear a cap and gown to the graduation ceremony.²⁶⁶ The court found that had it not been for the gown incident, plaintiff's diploma would have been issued. Furthermore, plaintiff had violated no rule or regulation of the school board, and had completed the prescribed four-year high school course, with satisfactory grades in all her studies. In fact, she was an exceptionally strong student and was the valedictorian of her class. The court found that she had been passed for graduation after the performance on her part of all prescribed educational

²⁶⁵ Debra P. v. Turlington, 644 F.2d 397 (4th Cir. 1981); Anthony v. Syracuse Univ., 231 N.Y.S. 435 (1928); Ryan v. Board of Educ., 257 P. 945 (Kan. 1927).

²⁶⁶ Valentine v. Independent School District of Casey, 183 N.W. 434 (Iowa 1921).

requirements, and held that her diploma may not be denied by the board.

In 1980, the Missouri Court of Appeals heard Miller v. McLeod.²⁶⁷ The plaintiff, Miller, entered Houston High School in the fall of 1974 as a freshman. She quit school before the end of her second semester during her senior year. School authorities refused to issue a diploma on the ground that she had failed to meet the "high school graduation requirements" contained in the rules of the school district.

Bessie claimed that the rules

requiring attendance at high school for a period longer than is required to successfully complete the number of units of credit which constitute and satisfy the minimum measure of academic achievement required for graduation are unconstitutional and in derogation of the due process and equal protection of (Bessie) and serve no reasonable educational purpose.²⁶⁸

The requirements for graduation included the completion of twenty units of credit and eight semesters of attendance. Students who had earned twenty-two units and who had attended seven semesters were also eligible for a diploma. It was also possible to earn credit for on-the-job-training. When Miller withdrew from school she had completed all but twenty-seven days of that semester and had twenty-one and one-half credits. Miller's father had appealed to the board

²⁶⁷ State ex rel. Miller v. McLeod, 605 S.W. 2d 160 (Mo. Ct. App. 1980).

²⁶⁸ Id. at 162.

on two occasions that it give a waiver for his daughter so that she could both work and graduate. The court held that such a plea for help from Miller's farmer-father should have resulted in Miller being told that she could receive credit for the job she was holding at a shoe factory. However, the board offered no such assistance.

Because Miller's absences were found to be due to family problems and because she had already earned the minimum amount of credit required for graduation, the court held that she was entitled to a diploma. In reaching this decision, the court relied on a previous finding in Sageser v. Ledbetter.²⁶⁹

Sageser was a junior at Sarcoxie High School in the spring of 1974. He was suspended for misconduct, and did not return to school for the final eight weeks of the school year. He reentered in the fall as a senior and continued in school through the 1974-75 school year, earning the necessary twenty units for graduation. However, he was not granted a diploma because the superintendent maintained that he had not completed "eight semesters of attending" as prescribed "in the policy that is made by the Board of Education."²⁷⁰

²⁶⁹ State ex rel. Sageser v. Ledbetter, 559 S.W. 2d 230 (Mo. Ct. App. 1977).

²⁷⁰ Id. at 232.

When Sageser's parents appealed to the board and requested that the eight-semester requirement be waived so that he could receive his diploma, the board refused. However, it acknowledged that Sageser had met all other requirements for graduation and declared that, if Sageser would enroll for eight weeks to make up for the time he missed during his junior year, he would receive his diploma.

The court stated

Ronnie already had earned the twenty units of credit which constituted and satisfied the "measure of academic achievement" required for graduation, from which it followed that it would not be necessary for Ronnie to earn any additional units of credit, pass any courses in which he might be enrolled or for that matter even attend any classes. Thus, it becomes plain that the additional requirement of enrollment for eight weeks imposed by the school authorities would do no more than work an exercise in futility which would benefit neither the school district nor relator Ronnie and thus would fly in the teeth of the commonsense maxim that the law does not require the doing of a useless thing.²⁷¹

Even though the court considered withholding a student's diploma a serious penalty, school boards can define their standards for graduation. When a student's absences are excessive with no mitigating circumstances and when the student has not met academic requirements, the court will uphold the decision to deny a diploma.²⁷²

²⁷¹ Id. at 233.

²⁷² Board of Curators v. Horowitz, 435 U.S. 78 (1978); McIntosh v. Borough of Manhattan Commw. College, 433 N.Y.S. 2d 446 (N.Y. Sup. Ct. 1980).

In summary, for a school policy to meet the substantive due process requirement, it must have a reasonable relationship to a valid educational goal. Courts consider that regular attendance by students is a prerequisite for learning. In addition, the penalties invoked must not be unduly harsh. If grade reduction is involved, the amount of grade reduction must match the severity of the offense. The severity of an offense is determined by the length of absence, the general danger resulting from the misconduct, and the student's record.

PROCEDURAL DUE PROCESS

In Goss, the Supreme Court ruled that students have a right to procedural due process whenever school disciplinary actions might damage their reputation or adversely affect future opportunities.²⁷³ When academic penalties are based on truancy, schools are on a sound basis. Courts have held that academic evaluation requires specialized knowledge, experience, and broad exercise of discretion.²⁷⁴ Courts are reluctant to interfere with educational decisions. However, when academic penalties are the result of suspension or expulsion, the policy becomes a disciplinary policy as well as an academic policy and procedural due process requirements must be met.

²⁷³ Goss, 419 U.S. at 576.

²⁷⁴ Board of Curators, 435 U.S. at 86-88.

In a previously reported case, Armke, the appellees argued that a grade reduction policy denied them of both their property and liberty rights. In deciding the case, the court relied on Goss, and affirmed that a student has a constitutionally protected property right to a public education and a liberty interest in his or her good name. However, the Court's conclusion was

...reduction of Appellees' six-week grades by three points for each day of suspension has no adverse impact on Appellees' property rights to a public education. Furthermore, the evidence does not show that imposition of the scholastic penalties proposed will have any negative impact on the honor, reputation or name of either Appellee. The record shows that appellees, at the time of the hearing below, had already been admitted to the university of their choice and does not show that imposition of the scholastic penalties in this instance will adversely affect them in their educational, professional, or personal lives in the future.²⁷⁵

In Fisher, the charge was also made that procedural due rights were denied. The plaintiff argued that the school board determined in advance a decision for expulsion. The plaintiff based her claim on the fact that the policy was written in mandatory language. The court, however, held that the punishment was not merely "rubber stamped" but was imposed in a discretionary manner and that procedural due process had been afforded.²⁷⁶ The court contended that procedural due process required only that the board hear the student on the punishment. The plaintiff did receive a

²⁷⁵ Armke, 658 S.W. 2d at 332.

²⁷⁶ Fisher, 419 F. Supp. at 1203.

hearing with the board and thus the board provided the plaintiff due process before depriving her of her property interest in attending school for a tri-mester.

In Hamer, the court accepted the Goss conclusion that students have property rights incident to a public education and that these rights entitle a student to procedural due process.²⁷⁷ The Hamer court held that further educational and employment opportunities can be impaired by a poor school record, and that the plaintiff was entitled to be heard on the question of whether the grade reduction sanctioned for unauthorized absence was approved policy of the board. The court ruled that the plaintiff also was entitled to be heard on what, if any, procedural remedies are available to her before such a serious sanction may be applied, and whether its application arbitrarily and capriciously resulted in a grade reduction without a subjective determination of a classroom teacher.²⁷⁸

The right to procedural due process includes the right to notification as well as the right to be heard. The Armke case considered the issue of proper notice. The student handbook included the school board policy describing the academic sanctions for unexcused absences. However, the plaintiff argued that the handbook did not specifically

²⁷⁷ Hamer, 382 N.E. 2d 231 (Ill. App. Ct. 1978); Goss, 95 S. Ct. 729 (1975).

²⁷⁸ Id. at 234.

state that the days a student was suspended were to be treated as unexcused absences. Testimony was presented that students had been told repeatedly at school assemblies the exact academic and disciplinary penalties which would result from the use of alcohol. The court ruled that, "a policy may be informal and may even be oral so long as it fairly apprises the student of the conduct prohibited and the penalties attached to the prohibited conduct."²⁷⁹

R. J. J. by Johnson v. Shineman also dealt with the issue of proper notice.²⁸⁰ A high school student brought action to correct an allegedly erroneous grade assessed for one quarter in music studies. Johnson was a senior at Stanberry High School during the academic year 1980-81. During this year he was enrolled in two music courses, band and chorus. Included in the activities scheduled for these two courses for the year were performances at a local church for two evenings in December. Students were informed on the first day of the school term that no one would be excused from a performance unless by reason of a death in the immediate family or by means of a request made to the teachers before the performance.

Johnson and his family made arrangements in August to spend the Christmas holidays in Hawaii, and they

²⁷⁹ Armke, 658 S. W. 2d at 332.

²⁸⁰ R.J.J. Johnson v. Shineman, 658 S.W. 2d 910 (Mo. App. 1983).

subsequently departed prior to the scheduled performances. Because of Johnson's unexcused absence, he was given an F grade for the second half-semester in band and chorus.

The court concluded that, although Johnson knew in advance that he would not be in town for the performances, he made no effort to notify his teachers, and thus was without excuse for his absence. Johnson also claimed that the requirement to attend a religious ceremony violated provisions of the United States Constitution concerning the separation of church and state. The court agreed with the trial court that the program was secular. The court held that the mere fact a program of secular music education included religious music did not alone brand the activity as violative of the church and state directive.

The court concluded that the record indicated that notice was given all students at the beginning of the semester as to the requirement for attendance at performances. The notice included the warning that a failing grade would be imposed for absence without prior notification. The court found that Johnson was fully aware of the consequences of his unexcused absence and that requirements for procedural due process had been fulfilled.

Even though courts have generally been reluctant to substitute their judgment for that of educators when a student is dismissed for academic reasons, when a "liberty" or "property" interest is substantially affected they will

hold that the student is entitled to due process. In Greenhill v. Bailey, a medical student brought action for review of academic dismissal.²⁸¹ The district court found for the defendants and the case was appealed.

Greenhill was dismissed from the University of Iowa College of Medicine and the dismissal was accompanied by notification of the Liaison Committee of the Association of American Medical Colleges that Greenhill lacked "intellectual ability" or had insufficiently prepared his course work. Greenhill argued that with such information available to all accredited medical schools in the country, he would be unable to pursue his education in the medical field. The court held

...the action by the school in denigrating Greenhill's intellectual ability, as distinguished from his performance, deprived him of a significant interest in liberty, for it admittedly "imposed on him a stigma or other disability that foreclosed his freedom to take advantage of other opportunities."

We are well aware that there has long been a distinction between cases concerning disciplinary dismissals, on the one hand, and academic dismissals, on the other. Our holding today is not an effort to blur that distinction but rather an acknowledgment that the dictates of due process, long recognized as applicable to disciplinary expulsions may apply in other cases as well...²⁸²

The court ordered appellees to conduct an appropriate administrative hearing and either reinstate Greenhill or give him a chance to clear his name.

²⁸¹ Greenhill v. Bailey, 519 F. 2d 5 (8th Cir. 1975).

²⁸² Id. at 8 and 9.

In a somewhat different type of case which involved procedural due process, the court considered the constitutionality of a dragnet, sniff-dog search. In Jones v. Latexo Independent School District, six students were suspended after the search resulted in finding alleged drug paraphernalia on school grounds. Three of these students were in the same family and challenged the school's action on the basis that the searches violated their Fourth Amendment rights and that their suspension from school on the basis of evidence obtained through the search without constitutionally-mandated due process of law, violated the Fourteenth Amendment.

On April 11, 1980, a "sniffer dog" and the dog's handler were brought to the campus to search for drugs and other contraband. The students had been warned that the dog would be making surprise visits to the campus. On the date of the visit, the dog moved from classroom to classroom. The dog and his handler walked up and down aisles and sniffed each student. Two of the plaintiffs, Scott and Michael Jones, were singled out by the dog during the class-by-class search. The students were removed from class and told to empty their pockets. A cigarette lighter was taken from Scott. Michael had a hair clip, which appeared to be burnt, and a bottle of "Sinex" nasal spray in his pockets. The cars driven to school by Michael and Scott were then searched. Items identified by the dog's handler as

"roaches" (the tag ends of marijuana cigarettes) were found in both cars. A plastic case, identified by the handler as a case for carrying "joints" (marijuana cigarettes), was also found in Scott's car.

Following the vehicle search, Michelle Jones was removed from class and her purse was searched. A small piece of metal tubing and a hemostat, identified by the dog's handler as "drug paraphernalia" were found and taken from her.

The superintendent informed the three Jones children that they had been found in possession of drug paraphernalia and other contraband in violation of school rules. He gave them an opportunity to respond to the charges orally. All three students denied that the items seized had been used in connection with drugs. They were subsequently suspended for three days and sent home. The superintendent informed the children's mother by telephone of the reason for the suspension and met with her and her three children three days later to discuss the matter. No hearing as such was ever held, nor were the plaintiffs informed that they had a right to appeal the superintendent's decision to the school board.

As a result of the suspension, three points for each day missed were deducted from the course grades of each student for the final quarter of the school year. As a result of this nine-point penalty, it became impossible for

Scott Jones to pass American history. He declined to take his final examination in American history and in two other courses in which he was enrolled . As a result, Scott failed to graduate with his classmates in June. The other two Jones children were able to pass their courses even with the grade penalty resulting from their suspension.

The court held that school boards, no less than other state entities, are subject to the commands of the Fourteenth Amendment. It was noted that, while the doctrine of in loco parentis places the school teacher in the role of a parent for some purposes, that doctrine cannot transcend constitutional rights. The court found that school officials had exceeded the bounds of reasonableness in using the dog to inspect virtually the entire student body without any facts to raise a reasonable suspicion regarding specific individuals. The search of plaintiffs' vehicles was also found to exceed the bounds of reasonableness. The court stated

An illegal search is no less consequential under the fourth amendment because it is carried out by the Latexo School Board...the items seized as a result of the unconstitutional searches of plaintiffs and their property could not be used as grounds for subjecting these students to disciplinary measures. Since there was no evidence that plaintiffs had violated school rules other than the fruits of those searches, their suspension from school and accompanying loss of grade points were unconstitutional.

Students' loss of grade points, coupled with suspension, aggravates penalty and necessarily triggers

somewhat greater procedural safeguards under the Fourteenth Amendment.²⁸³

In 1981, a Texas court heard Church of God v. Amarillo Independent School District.²⁸⁴ This case was based on the right of students to participate in religious holidays without being penalized academically. The attendance policy adopted by the school set a limit of two per year for the number of excused absences for religious holidays. Students would receive zeros for additional days for religious observance.

The plaintiff claimed this policy violated its members' right to free exercise of religion and denied them due process because a fundamental tenet of their church was that members abstain from secular activity on seven annual holy days. Members must also attend a seven-day religious convocation on the Feast of Tabernacles.

The court found that restricting students to two religious days placed them in the position of "abandoning a tenet of their religion or suffering a penalty for the classwork missed," and held that

The loss of grades in this case not only imposes a substantial impact upon the Plaintiffs' academic record unrelated to their actual level of achievement, but also places a stigma on the students for abiding by their religious belief.²⁸⁵

²⁸³ Id. at 239 and 227.

²⁸⁴ Church of God v. Amarillo Independent School District, 511 F. Supp. 613 (N. D. Tex. 1981).

²⁸⁵ Id. at 617.

The court ruled that the attendance policy of the Amarillo Independent School District violated the free exercise of religion as guaranteed by the First and Fourteenth Amendments and that the district must accommodate the plaintiff's religious beliefs.

In summary, there are no specific due process requirements governing the procedures for imposing academic sanctions, except that students must be informed that absence from school will result in such penalties. When academic penalties are imposed for truancy, schools need not provide hearings and can use their normal procedures for assigning grades and credits. When academic penalties result from suspensions or expulsions, students must be given opportunity for a hearing and a chance to rebut the charges. A more detailed summary is given in the chapter that follows.

CHAPTER V

SUMMARY, CONCLUSIONS, AND RECOMMENDATIONS

INTRODUCTION

Student absenteeism is one of the major concerns of school administrators today. The loss of a day's instruction impacts individual students, the school, and society. Administrators and legislators, alike, have sought solutions to the problem. Many programs have been developed at the local level to combat the rising tide of excessive absenteeism. Legislatures have sought to attack the problem in one way by enacting statutes which provide academic sanctions for student nonattendance.

This research included an examination of compulsory attendance laws in all fifty states, from the inception of these laws to present day statutes. The review of current statutes focused on states which have amended statutes to allow academic sanctions to be used for student nonattendance. In addition to examining state action to mandate attendance requirements, the researcher examined selected programs originating at the local level which were designed to improve attendance. These programs were reported according to the approach used by the school: positive incentives, punishment (including academic sanctions), enrollment in specialized programs, or enlisting

the assistance of parents. Information regarding compulsory attendance laws and programs developed by schools to improve attendance was reported in Chapter III.

In Chapter IV, the researcher examined the legality of attendance policies which impose academic sanctions for student nonattendance. The cases reviewed were a result of a detailed examination of opinions of state and federal courts of record which have been reported in any of the fifty states between 1970 and 1986. The researcher located thirty-two applicable cases. All thirty-two cases were reviewed and analyzed. Thirty of these cases were arbitrarily selected for inclusion in the study.

Research included the two broad areas of philosophy and law. The research questions which raised philosophical issues were:

(1) What are the major educational issues involved in associating a student's grade with attendance as well as academic performance?

(2) Where attendance policies which mandate specific attendance requirements for course credit have been adopted, is there evidence that absenteeism has decreased?

(3) Where school boards have adopted provisions for programs which encourage attendance but which are not tied to academic standards, have students enrolled in such programs subsequently experienced a decrease in absenteeism?

Research questions which involved legal issues of academic sanctions for nonattendance were:

(1) Are attendance policies which penalize students for excessive absenteeism by grade reduction or loss of credit in violation of their constitutional rights?

(2) Have court decisions indicated what attendance policies or guidelines are legally acceptable?

(3) What criteria are legally defensible for school boards in developing policies which relate pupil attendance with academic grades?

SUMMARY

The study considered two broad areas in researching attendance policies which impose academic sanctions. These were the areas of philosophy and law. Findings for the research questions dealing with philosophical issues, were drawn from an examination and analysis of programs developed at local levels to combat truancy and absenteeism and from opinions reported by noted authorities. These programs and opinions were reported in Chapter III. Findings for the questions relating to legal issues were derived from an analysis of cases reported in Chapter IV. The findings summarized below are organized according to the specific research questions involved in the study. The first section deals with philosophical aspects. Prior to a report of the

findings by category, each of the research questions is stated.

What Are the Major Educational Issues Involved in Associating a Student's Grade with Attendance as Well as Academic Performance?

Research studies examined were consistent in their characterization of a typical student with high rates of absenteeism. The following statements summarize the distinguishable patterns regarding the habitual absentee:

(1) Boys generally had higher rates of absenteeism than girls, particularly during the senior year of high school.

(2) Absenteeism rates increased for all students with each succeeding grade from nine through twelve.

(3) Absenteeism rates were generally higher for students with lower I.Q. scores.

(4) Students with high rates of absenteeism generally did not participate in extracurricular activities.

(5) Students who lived with both parents generally had lower rates of absenteeism.

(6) Students who had lower achievement rates, lower grades, and lower I.Q.'s generally had higher absentee rates.

(7) Students who were older than their peers and who were less popular generally had higher absentee rates.

(8) The absentee rate was generally higher for black students than for white students.

Factors influencing attendance were peer pressure, the classroom and school environment, the extent of parental involvement, and the economic status of the student's community. One of the philosophical issues was whether truancy and excessive absenteeism are the problem, or simply an indication of a greater, social problem beyond the ability of the student to change. By penalizing the habitual truant, characterized as being a black boy who is older, has few friends, has only one parent in the home, and has less ability than other students, school personnel need to determine if they are insensitive to this student's needs. More humane methods suggested by data collected in this study included conferencing, contracts, and contingent management systems.

Another major issue raised by the practice of using academic penalties for nonattendance was whether the grade assigned can be a fair evaluation of a student's scholastic achievements if it reflects not only what the student has earned academically but also includes penalties resulting from enforcement of an attendance policy. One educator expressed this view by stating that academic performance should be the benchmark for grading. The reasoning was that, if schools are performing the function for which they

operate, a student's absence would result in his or her learning less and this would be reflected in lower grades.

Teachers have been recognized by courts as having the expertise and knowledge to make educational decisions. Blanket attendance policies could erode a teacher's discretion in assigning student's grades. If a student has successfully completed the academic requirements for a course, will it benefit either the student or the school for the student to repeat the course for attendance reasons?

In summary, according to some authorities policies which penalize by grade sanctions ignore the needs of an individual student, who may be more responsive to other strategies. According to some educators, these policies also pervert the very purpose for grades, which is to measure academic performance, and take away the discretion of a classroom teacher in assigning grades. Concerns have also been raised about the merits of such policies if they are so restrictive that teachers are placed in straitjackets and are prevented from helping students.

Where Attendance Policies Which Mandate Specific Attendance Requirements for Course Credit Have Been Adopted, Is There Evidence that Absenteeism Has Decreased?

Eleven attendance policies which included academic sanctions for nonattendance were examined and analyzed as to their effectiveness in reducing absenteeism. All eleven high schools using such policies reported improved

attendance. Penalties ranged from denial of course credit to zeros given for assignments missed and suspension from class for a period of time. Although schools used a variety of procedures in reporting results, a typical report included improvement of attendance. One of the largest decreases in absenteeism reported was at Maynard High School. Over a two-year period, absenteeism was reduced from 22.9 percent to 6.3 percent. Other schools reported an improvement of attendance up to a high of 95.5 percent.

The researcher recognizes that a key purpose of these published reports was to share results of successful programs with other school administrators. It is not likely that unsuccessful programs would be so reported in professional journals. As a result, quantitative results must be evaluated as representing only one side of the coin.

Brokowski and Dempsey conducted the only reported research which attempted to determine the effectiveness of a restrictive, punitive discipline policy. They found that a majority of the students, since they were able to meet the attendance requirements, were not affected by the policy, which provided for loss of credit and suspension as penalties for nonattendance. For the small number of students who were affected, the result was an improvement in both achievement and attendance. They found that such a policy can be an effective tool in discouraging student absenteeism. However, they cautioned against expecting this

type of policy to resolve totally the problem of student absenteeism.

Where School Boards Have Adopted Provisions for Programs Which Encourage Attendance but Which Are Not Tied to Academic Standards, Have Students Enrolled in Such Programs Subsequently Experienced a Decrease in Absenteeism?

Eleven of the school programs analyzed emphasized the use of positive incentives for improving attendance. These incentives included special privileges, individual praise and recognition, exemption from exams, social or material reinforcement, or increasing grades. Three programs specifically exempted students from exams if their attendance was within specified limits. Schools in Las Cruces, New Mexico, excused students from exams if they were absent fewer than four times during the semester. North High School, Nebraska, required that students have no more than two and one-half days of absences a semester and have a passing grade average before they could be exempt. Howe High School reported using a combination of attendance records and scholastic average as a basis for excusal from semester tests. All three programs reported significant improvements in attendance as a result of their approach.

A number of schools used material and social reinforcement for good attendance. Savannah High School offered field trips for homerooms with the highest attendance average. Certificates of recognition were

presented by the board of education to schools with the highest attendance rate and the most improved attendance rate. The emphasis of this program was on motivation and recognition. The Philadelphia Public Schools also encouraged attendance by awarding banners for good attendance. In contrast, in one school in Plymouth, Minnesota, an incentive program failed to reach "chronic absentees." The school had offered attendance pins and gifts such as a television set for perfect attendance. As a result of not reaching the students with the greatest attendance problems, this school returned to a more traditional, structured approach.

Social reinforcers were found to be effective in reducing absenteeism. In a study conducted by Copeland, Brown, Axelrod, and Hall, the effect of a school principal's using social attention to improve student attendance reported favorable results. The principal called parents and praised them for sending their children to school. The researchers advised that when social attention such as praise is ineffective, educators should consider material reinforcers, such as classroom privileges, prizes, and/or field trips. A similar recommendation was made by Morgan. He found that the combination of material and peer social reinforcement was effective in improving attendance and recommended this procedure for wide application in classrooms.

Parent calls were also part of the strategy in a study conducted by Fiordaliso and Lordeman. They found that positive phone calls and letters to parents were effective with students who had moderate attendance problems. However, these procedures were not adequate for students with severe attendance problems.

Grala and McCauley utilized three approaches in trying to persuade a group of chronic male truants to attend school. The approaches included threat communication, supportive instruction, and optimistic appeal. Students receiving the combination of optimistic appeal and supportive instruction improved the most in attendance.

Programs which included social reinforcement from peers showed very positive results. Denver Public Schools developed a "buddy system" to improve attendance. Students chose buddies to participate with them in the program. These students were encouraged to call each other every evening or meet at the bus each day. Material incentives were offered to the pair of buddies who increased attendance. The author reported a marked improvement in attendance. Maher found that peer reinforcement was also effective. He conducted a study which linked a student with attendance problems to a peer for reinforcement. Maher reported academic and behavioral improvements as well as improvements in attendance.

Schools which offered alternative programs for students with attendance problems reported significant improvements in attendance. Some of these programs were housed in schools apart from the regular school, while others operated within the school as optional programs. Assignment to these schools or programs varied from full time to a specific portion of the school day.

The researcher examined eight special programs instituted by local systems for students with attendance problems. Three of those programs were separate schools which were operated totally apart from regular high school. Chapparral High School serves 420 students who had a history of attendance problems. By offering a more flexible program which is individualized for the student and staying in close contact with parents and other support agencies, the school improved attendance to an average of 91 percent. Students enrolled in the alternative program in Elizabethton, Tennessee, receive personal instruction, study help, and counseling. As a result of this intensive effort, students were able to return to the regular high school program after a period of maintaining a pattern of regular attendance in the alternative school. Authors reported that a number of students are now continuing in the regular high school program who would have dropped out had they not received the benefits of the special program. Evanston Township High School reported that an evening high school had been

effective for students who were habitually truant. Parent contacts and outreach workers were part of the strategies employed by this successful program.

Programs within the schools focused on counseling, small classes with much individual attention, and instruction in study skills. Sunnyside Junior High School developed a model treatment program to work with truant students. These students were enrolled in a skills training program which included close monitoring of attendance. Students not only improved in attendance but there was also a decrease in problem behaviors and an improvement in grade point averages. Coronado High School developed a similar program. The program included ten hours of intensive training in study skills. The authors reported that the program gave students the self-direction and self-motivation necessary to complete independent activities.

Most of the programs developed to improve attendance included some form of parental involvement. This component was central to many programs. Hauppauge High School developed an attendance program which specified parent involvement. Parents were notified of illegal absences and required to attend conferences. The author reported that parent involvement was the key ingredient in the decline of almost two-thirds in illegal class absenteeism.

Many programs which enlisted parents as partners simply focused on the communication aspect. Parents received

telephone calls or letters whenever their children were not present at school. Hoback reported that communication with parents was essential in reducing absenteeism. Attendance at this school improved significantly as did the drop-out rate. The problem of having an inadequate number of staff for calling parents was solved at Bethune Junior High School by enlisting student aides to assist in the attendance office. In summary, not only did these alternative programs contribute to an improvement in attendance, they also yielded enhanced social and academic skills. Improvements were reported in grade point averages, attitudes toward school and teachers, and study skills. Parents were enlisted as partners and required to cooperate in finding solutions to their child's attendance problem. Many of these programs also required that students and parents become more accountable for attendance.

The following questions were researched through an examination of applicable legal cases. The reader is advised that a specific finding may be based on only one court's opinion, or may reflect the opinions from several cases. These findings reflect the holdings of courts from 1970 through 1985 on each specific research question.

Are Attendance Policies Which Penalize Students for Excessive Absenteeism by Grade Reduction or Loss of Credit in Violation of Their Constitutional Rights?

Through the doctrine of "in loco parentis," school authorities were granted almost unrestricted control of student behavior. Few courts, or indeed parents, ever questioned the right of schools to discipline students in order to maintain the proper atmosphere necessary for the educational process. The Tinker decision in 1969 served to establish that students did not shed their constitutional rights at "the schoolhouse gate." This decision ushered in an era of litigation in which students increasingly claimed protection from school policies and school personnel for what they believed to be their constitutional rights.

In Jacobs the court ruled in favor of the student in an issue concerning the length of his hair. The court pointed out that the Fourteenth Amendment protects citizens, including students, from interference by the state with the citizen's freedom. The court maintained that there must be a reasonable basis for rules promulgated by schools for the rules to meet constitutional requirements.

The Constitution does not guarantee that citizens will be provided an education. However, when a state chooses to extend an education to its citizens and then withdraws that education because of misconduct, a constitutional issue emerges. Goss tested the extent of the rights of students to an education. The Court found that students have a legitimate entitlement to an education as a property interest which cannot be taken away without providing notice

and a hearing. Goss further held that students also have liberty interests which cannot be deprived without invoking the protection guaranteed by the Fourteenth Amendment.

Students who had been penalized through attendance policies which involved academic sanctions charged that their Fourteenth Amendment rights had been denied. The specific claims were generally that substantive due process rights had been violated or that procedural due process rights had been withheld.

In deciding cases based on substantive due process claims, courts looked at two major issues. The first requirement is that the academic penalty furthers a valid educational purpose. If the rule seemed reasonable, the court then examined the rule for its severity. The rule must not be disproportionately severe when compared to the offense.

School authorities have generally made a case for reasonableness when penalizing students for truancy through the use of academic sanctions. They have established a relationship between academic achievement and class attendance. However, there is not that same link between conduct and achievement. Academic penalties for conduct, not resulting from suspension, may not meet the test for serving a valid educational purpose. Only in one case examined, Fisher, did a court allow academic penalties for a disciplinary purpose.

Substantive due process requires also that the penalty be in proportion to the offense. A court considered the impact of a penalty on a student's future opportunities when weighing the harshness of the policy. Another court weighed the importance of exams missed and the impact on the student's grades. A Pennsylvania court found in favor of the student in a case where the penalty was unduly harsh. A student was suspended for drinking a glass of wine on a school trip. In addition to other sanctions, semester grades were reduced by ten points. The court found that the infraction was relatively mild, considering the student's excellent academic record, and that the penalty was unduly harsh, thus depriving her of substantive due process rights.

Courts also looked at the form of academic penalty employed by school systems. Denying course credit is more severe than grade point penalties. The most severe form of penalty is withholding a diploma. School systems must have strong justification when withholding a diploma if the student has met all academic requirements for graduation. However, if a student's absences are excessive and if the student has not met other requirements for credit, a school was justified in denying a diploma.

In looking at procedural due process rights, courts view the action based on whether or not it is academic or purely disciplinary. Courts do not insist on procedural due process for academic decisions. However, many academic

penalties are a combination of discipline and academic evaluation and require procedural rights. Goss outlined the requirements for procedural due process. Students must be given notice as to what conduct is prohibited, and they must be given a chance to explain their side of the story. They must also receive a fair and impartial decision based on the evidence available.

In examining the notice issue, courts have held that notice can be either written or verbal as long as it apprises the student of the conduct prohibited and the penalties which would result from the conduct.

Attendance policies cannot deprive students of the right to free exercise of religion. A Texas court ruled that an attendance policy which provided for only two excused absences a year for religious holidays was in violation of a student's First Amendment rights and the district must accommodate the plaintiff's religious beliefs.

Have Court Decisions Indicated What Attendance Policies or Guidelines Are Legally Acceptable?

This researcher found that courts were consistent in their rulings treating legally acceptable attendance policies which included academic sanctions. Any action taken by local school boards could not exceed the authority granted to them by state statutes. The constitutionally-protected interests of students in acquiring an education guarantee that penalties imposed by attendance policies

serve reasonable educational goals and be imposed fairly. Students have both "property" and "liberty" rights which afford that both substantive and procedural due process requirements be met.

The following guidelines were derived from court decisions examined in this study:

(1) Attendance policies must be within the limits imposed by state statutes. State laws governing compulsory attendance and disciplinary procedures may limit or prevent the use of academic penalties. If state statutes specify penalties for misconduct or truancy, local board policy cannot conflict with them. Compulsory attendance laws as well as statutes governing student conduct were considered to determine the extent of power held by local school boards to invoke academic penalties. Case law varied from state to state, as courts differed somewhat on their interpretation of the intent of statutes as well as the literal content.

In Dorsey, the Kentucky court held that the statutes which defined disciplinary procedures allowed school authorities to prohibit certain conduct and to determine the length of suspension, but not to impose grade sanctions because of students' absences. The Katzman court found that the local policy was in opposition to the implied state policy against penalizing students academically after suspension from school.

(2) There is a clear link between class attendance and learning. Courts have ruled in favor of policies which penalized students for truancy. In Knight, an Illinois court upheld the reduction of a student's semester grade for two days of unexcused absence. Only one state, New Jersey, forbids the use of academic penalties for truancy.

However, there is not the same clear relationship between a student's grades and his conduct. Most courts ruled that academic penalties which result from suspension or expulsion are reasonable only if they reflect the influence the absence from class had on academic accomplishment. In Katzman, the court invalidated a policy which had invoked a ten-point reduction of a student's semester grade after she was suspended for drinking wine on a school trip. The court held that the penalty was impermissible because it incorporated factors unrelated to scholastic achievement into the girl's grade.

Only in Fisher have academic sanctions for a disciplinary infraction been upheld. The court held that penalizing the student academically did not serve an academic purpose but did affect school discipline and furthers a legitimate interest.

Schools may consider absence from class as a factor in scholastic achievement and may impose penalties for truancy, suspension, or expulsion. However, penalties may not be used for any misconduct not resulting in absence from class.

(3) Courts applied the severity test to policies which were not in violation of state statutes and which were found to serve a valid educational purpose. The extent of the grade reduction or loss of credit must be balanced against the seriousness of the student's offense. In Knight, the court found that reducing a student's quarter-term grade in three subjects was not an unduly harsh penalty for two days of unexcused absences. Denying credit is more serious than reducing a student's grade and should be used only for serious misconduct or for longer absences. Withholding a diploma is the most serious form of academic penalty. Attendance violations which deserve a milder form of sanctions, may not justify withholding a diploma. A Missouri court held for the student in a case where there were mitigating circumstances for attendance violations. The student missed twenty-seven days, but the court found that these absences were due to family problems and that she had earned the minimum amount of credit required for her diploma. A Missouri court in Sageser held that a student's eight-week absence during his junior year was not in itself enough to justify withholding his diploma. If a student has met academic requirements for graduation, schools cannot withhold a diploma.

(4) Attendance policies should treat all absences in the same way. Any absence affects a student's academic

performance and the penalty should be for the absence of the student and not for the reason for the absence.

(5) Students must be informed as to the requirements of the attendance policy and also as to sanctions imposed. This notification may be in the form of a written formal policy or may be verbal. However, there must be evidence that the student was present in cases of oral notice.

(6) Students must be granted a hearing which allows them to explain extenuating circumstances. The court, in the case of Latexo, reversed an academic penalty on other grounds but commented that the informal hearing held by the school before the students were suspended may not have been sufficient to provide procedural due process.

(7) The determination of the grade to be given must be left to the subjective analysis of the classroom teacher. In Knight, the court ruled that any grade-reduction policy must not be mandatory because it would not allow teachers to exercise the discretion required to assure academic fairness.

(8) Implementation of the policy must be consistently applied. The court held in Sageser for the student, because it found that the loss of a high school diploma under the circumstances presented was unreasonable. However, the court also found that since a neighboring school in the

district did not apply the policy, the policy was unfair because it did not apply equally to all students.

What Criteria Are Legally Defensible for School Boards in Developing Policies Which Relate Pupil Attendance with Academic Grades?

In preparing a local policy which will satisfy the legal demands of the courts, school boards must meet the following criteria:

(1) State statutes allow academic penalties for attendance reasons. The power to impose these penalties may be derived from compulsory attendance laws or from statutes on student conduct. An examination of case law within the state may aid in determining how the courts interpret the intent of these statutes.

(2) For the policy to be upheld, it should be based on a philosophy that classroom attendance is an essential component of learning.

(3) For the policy to be upheld, it must be flexible enough to accommodate extenuating circumstances such as chronic illness or hardships within a student's family.

(4) For the policy to be upheld, it must be clear and easily understood. It must establish as an academic requirement that a certain number of classes in each course must have been attended before the student will be given credit for the course.

(5) For the policy to be upheld, it must be widely publicized. Students must understand the requirements of the policy and also subsequent consequences if the requirements are not met.

(6) For the policy to be upheld, it should include a provision for the student to appeal the denial of credit by being allowed a hearing.

(7) If, in the course of the hearing, teachers acknowledge that the student has met the academic requirements for credit, there must be an opportunity for the school to reverse its policy and award credit.

If a school board's attendance policy meets the above criteria, it is unlikely that it will be invalidated by the courts.

CONCLUSIONS

Student absenteeism is one of the major concerns of high school administrators today. Considerable energy and effort have been expended attempting to enforce compulsory attendance laws. Class progress has been slowed and individual academic achievement adversely affected by poor pupil attendance. Solutions to the problem of excessive absenteeism and truancy have been sought by administrators and legislators.

There are many influences on a student's decision to be absent from or present in school. Peer pressure, the

classroom and school environment, the extent of parental involvement, and the economic status of the student's community will all influence the decision.

Local school programs designed to reduce absenteeism have been successful. The programs varied with suggestions of rewards or positive reinforcement, punishment or negative reinforcement, alternative learning settings, and the enlistment of parents to help with the problem. Many programs incorporated more than one of these strategies. The involvement of the parent has been critical to the success of programs to improve student attendance.

Increasingly legislators have proposed that grades should be lowered and credit withheld because of excessive or unexcused absences. A number of states have amended statutes to allow local boards to adopt such policies. In states where local boards have this power, courts will uphold policies as long as they show a reasonable relationship to a valid educational goal and are not unduly harsh. If the policies are disciplinary, due process rights must be accommodated.

There is evidence to suggest that attendance policies which impose academic sanctions can be an effective tool in discouraging student absenteeism.

Finally, the following conclusions reflect the current philosophical and legal thinking about the research problem posed at the outset of this study.

Student absenteeism is affected by factors over which a school has some control and by factors over which it has little or no control. In the former category are such matters as level of grade, achievement level, degree of involvement in extracurricular activities, and popularity with peers. In the latter category are such matters as gender, race, intelligence quotient, and number of parents.

Pupil attendance is better in school districts whose policies mandate specific attendance requirements for course credit. Further, pupil attendance is better whether the attendance policy provided for rewards or punishment.

Pupil attendance is better in school districts which have provisions for encouraging and rewarding attendance, even though such provisions are not tied to academic standards. Although this study was limited to a study of attendance as such, an examination of programs yielded findings not unrelated to it. Not only did students improve in attendance, but other effects included improvement also in social skills, study skills, and academic performance. Students least affected by such provisions are those with the largest number of absences.

When two conditions exist, students' constitutional rights are not violated when they are penalized for excessive absenteeism by grade reduction or loss of credit. First, a link is established between academic achievement and class attendance. Second, the severity of the

punishment is in proportion to the severity of the offense. Before a court upholds a school district, it must first be determined if a lowered grade or loss of credit is a reasonable penalty for the offense.

Local school board policies providing for academic sanctions for pupil absences have a very good chance of being upheld by courts. If the following conditions are met they are not likely to be declared invalid. The policy is not inconsistent with state statutes, has some relationship between attendance and learning, serves a valid educational purpose, is applied evenly and consistently, is made known in advance to students, provides for students charged with a violation of it to explain their circumstances, and allows teachers to be the final determinator of students' grades.

Boards of education policies which relate pupil attendance to academic grades reflect the school district's philosophy. They show a relationship between attendance, learning, and achievement. They provide for and protect certain rights of students, including notification of the policy, input to explain reasons for absences, and accommodation for special circumstances.

RECOMMENDATIONS

For School Boards--The following recommendations are presented for consideration by school boards who are

contemplating adopting attendance policies which would invoke academic penalties:

(1) Give student attendance high priority. When little or nothing is done about attendance, the problem gets worse. Be willing to expend considerable time and effort on solving the problem.

(2) Keep academic penalties in perspective as a method of encouraging better scholastic performance rather than as a new disciplinary technique.

(3) Understand that an attendance policy which invokes academic sanctions cannot be a cure-all for attendance problems. Strategies which attack the problem at its roots should not be ignored.

(4) Examine staff and curricular deficiencies in the district. Attention to these deficits will impact attendance.

(5) Assess the needs of the students and the needs of educators and administrators within the district. Programs which are successful in one area may not meet other needs.

(6) Focus on the habitual absentee if the majority of students are attending school.

(7) Develop a program which not only stresses accountability but which includes incentives as well.

(8) Provide for a broad base of participation in the formulation of attendance policy. Administrators, teachers, students, and parents should be included.

(9) Include in the implementation of the policy frequent communication with parents.

(10) Provide for consistent enforcement of the policy at each level--teacher, guidance counselor, assistant principal, principal.

(11) Review the policy or program frequently to evaluate effectiveness. Effectiveness should be measured not only in terms of attendance, but also in terms of improved attitudes and achievement.

For Further Study--Student absenteeism has created a host of problems for the school administrator. It is likely that the tendency to use academic sanctions for student nonattendance will continue and possibly increase. As a result, measures to effectively combat excessive absenteeism will continue to be an area of importance for educational research. The following recommendations are made for further study.

1. It is recommended that quantitative studies based on the merit of various attendance policies be conducted.

2. It is recommended that studies which involve parental participation be examined.

3. It is recommended that research be conducted on the effect of school climate on pupil attendance.

4. It is recommended that a study be made to determine the relationship of absenteeism to the school program. This study should examine the importance of the range of academic

courses offered as well as extracurricular programs available.

5. It is recommended that research be conducted to determine the importance of strong support services available within a school. A comparison between extensive guidance and counseling services and a limited amount of these services and pupil attendance is suggested.

6. It is recommended that a study be made of student involvement in school activities and its effect on attendance.

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