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**LEGAL ASPECTS OF SCHOOL FEES IN PUBLIC ELEMENTARY AND
SECONDARY SCHOOLS**

The University of North Carolina at Greensboro

Ed.D. 1982

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LEGAL ASPECTS OF SCHOOL FEES IN PUBLIC
ELEMENTARY AND SECONDARY SCHOOLS

by

Duane H. Kirkman

A Dissertation submitted to
the Faculty of the Graduate School at
The University of North Carolina at Greensboro
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of the Requirements for the Degree
Doctor of Education

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1982

Approved by


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APPROVAL PAGE

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KIRKMAN, DUANE H. The Legal Aspects of School Fees in Public Elementary and Secondary Schools, (1982)
Directed by: Dr. Joseph E. Bryson, Pp. 236

This study reviews state constitutions, state statutes, and court cases where school fees have been the major issue to determine the extent to which school fees can be charged despite requirements for free public schools.

The following questions were proposed:

1. What states maintain constitutional provisions for free public education?
2. What are the statutory provisions for each of the fifty states and the District of Columbia which specifically permit or prohibit school fees?
3. What types of fees are specifically permitted or prohibited?
4. What have been the decisions of courts where fees for tuition, matriculation, incidentals, and textbooks or other instructional materials have been the issue?
5. Can any specific trends be determined from the review of the court cases?

Based on this study, the following conclusions were reached:

1. School fees are required to some extent in each of the fifty states and the District of Columbia despite many states' provisions for free public education.

2. Unless there is a specific statute or judicial decision to the contrary, school fees can be justified even in states which provide for free public education.

3. The courts in various states agree that school fees can be charged for items or activities which are not a part of the school program as required by law. However,

the courts disagree as to what items or activities are included in a required school program.

4. The most significant disagreement among state courts with regard to school fees concerns fees for textbooks and instructional materials. Some courts use the plain meaning of free, and contend that fees cannot be charged for items such as books and instructional supplies which are a necessary part of the required, free public school program. Other courts define free in its historical context, and conclude that "free" was not intended to apply to textbooks and instructional supplies. These courts have upheld fees for textbooks and instructional supplies despite state constitutional provisions for free public schools.

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CHAPTER I
INTRODUCTION

The Constitution of the United States is the foundation for the nation's laws. Although the Constitution speaks to a wide area of power, duties, and limitations, it at no point refers expressly to education. Thus education becomes a state function under the Tenth Amendment.¹ Every state, with the exception of one, has a state constitutional clause calling for the establishment and maintenance of public schools by act of its legislature. Many of these clauses provide for "free" or "tuition-free" schools.²

Although many state constitutions require the establishment and maintenance of free public schools, school children and their parents are often required by schools to pay for materials or services which are incidental to school attendance.³ These charges are made in the form of fees used to defray the costs of particular classes, activities, specialized equipment or clothing, books, workbooks, and supplies.

¹Edmond E. Reutter and Robert R. Hamilton, The Law of Public Education (Mineola, New York: The Foundation Press, Inc. 1976), p. 2.

²"School Law -- The Constitutional Mandate for Free Schools," Wisconsin Law Review 1971:939.

³Joe Allen Lang, "Student Fees in Public Schools: New Statutory Authority," Washburn Law Journal 16 (1976-1977):439.

As a result, an expense is imposed by schools on families sending their children to public schools. Thus, when the practice of charging fees is considered with regard to certain state constitutional provisions for education, the question arises as to whether, or under what circumstances, children attending or seeking to attend elementary or secondary public schools may be lawfully required to pay fees.

Statement of the Problem

School fees were the subject of court cases during the late nineteenth and early twentieth centuries; however, since 1970 fees have increasingly become the subject of litigation, legislation, and national attention. Beyond the general prohibition of a basic charge for instruction, i.e., tuition, legal judgment is in equipoise on the matter of fees. Although many state constitutions require free public schools, fees are charged for a variety of materials and activities. There is a split among jurisdictions over whether fees are properly charged in public schools, and if they are, to what extent they can be charged.

There is a need, therefore, to review state constitutions, state statutes, and court cases where school fees have been the major issue to determine the extent to which fees charged by schools can be justified in conjunction with requirements for free public schools.

Questions to be Answered

The purpose of this study is to review state constitutions, state statutes, and court cases where school fees have been the major issue to determine the extent to which fees charged by schools can be justified in conjunction with requirements for free public schools. Below are listed several key questions to be answered through this study:

1. What states maintain constitutional provisions for free public education?
2. What are the statutory provisions for each of the fifty states and the District of Columbia which specifically permit or prohibit the charging of school fees?
3. What states operate under regulations governing school fees as defined by state courts, state offices of the attorney general, state boards of education, or state departments of education?
4. How many states provide by constitution for free public education, and also maintain regulations which specifically permit or prohibit school fees?
5. How many states do not provide by constitution for free public education, but maintain regulations which specifically permit or prohibit school fees?
6. In states which maintain statutes or regulations governing school fees, what types of fees are permitted?
7. In states which maintain statutes or regulations governing school fees, what types of fees are prohibited?
8. In states which do not maintain statutes or regulations specifically governing school fees, are there statutory requirements for free textbooks, supplies, materials or equipment?

9. What have been the decisions of courts where tuition fees, matriculation fees, fees for incidentals, and fees for textbooks or other instructional materials have been the issue?
10. Can any specific trends be determined from the review of the court cases where tuition fees, matriculation fees, fees for incidentals or fees for textbooks or other instructional materials have been the issue?

Scope of the Study

This is a descriptive study of the legal status of school fees in elementary and secondary public schools in the United States. This study describes each state's provisions for school fees and litigations that have evolved as a result. State constitutional provisions for the establishment and maintenance of public schools and state statutes which permit or prohibit the charging of school fees are described and categorized.

Following the review of state constitutional provisions and statutory requirements, those court cases are reviewed in which tuition fees, matriculation fees, incidental fees, and fees for textbooks or other instructional materials have been the major issue.

Methods, Procedures, and Sources of Information

The basic research technique of this descriptive study was to examine the available references concerning the legal aspects of school fees.

In order to determine if a need existed for such research, a search was made of Dissertation Abstracts. A general summary of school fees in the Encyclopedia of Educational Research, various books on school law, histories of education, and a review of related literature obtained through a computer search from the Educational Resources Information Center (ERIC) provided little information on the legal aspects of school fees.

Journal articles related to the topic were located through use of such sources as Reader's Guide to Periodical Literature, Education Index, and the Index of Legal Periodicals. Information was requested from the state superintendent of education of each of the fifty states and the District of Columbia to identify regulations on school fees as established by state boards of education or state departments of education.

The review of secondary materials provided little information on the legal aspects of school fees. Consequently this study focuses on a review of primary materials such as state constitutions, state statutes, and court cases where school fees have been the major issue, and on information received from state departments of education. However, the review of secondary sources did indicate that the legal aspects of school fees were related to the extent to which students and their parents have been required to pay money to schools

in the form of school fees. Thus, the second chapter of this study provides a review of literature relating to the practice of charging school fees.

State court cases related to the topic were located through use of the Corpus Juris Secundum, American Jurisprudence, the National Reporter System, the American Digest System and the NOLPE School Law Reporter. All the cases were read and categorized according to the types of school fees being litigated.

In order to determine regulations concerning school fees as established by state boards of education and state departments of education, information was received from the state superintendents of education in all fifty states and the District of Columbia.

Definition of Terms

For purposes of this study, the following selected terms are defined:

School Fee: A charge for particular school supplies or activities, including charges in the form of required purchases, rentals, and deposits.

Tuition: The amount of money charged by an educational institution for instruction, not including materials, books, laboratory fees, rent, lights, or fuel.

Tuition, Non-Resident: A charge paid for the privilege of school attendance in a district by residents outside the district.

Significance of the Study

In recent years the question of how public schools are financed has received much attention. The importance of the question is heightened by the fact that school districts across the country face increasing costs and decreasing revenues.

School districts generally receive funds from federal, state, and local sources. During the 1980's the federal government's role in providing monies for education will decline, and revenues from state funds and local property taxes will be reduced or frozen.⁴ Educational expenditures in the 1980's will not equal the progress of the 1970's when the percentage increase in educational spending outpaced the rate of inflation.⁵ To expect real increases in educational spending in the next decade is unrealistic; keeping pace with inflation will be difficult to achieve. As the pressure becomes greater to find additional sources of revenue, school districts are looking to fees.⁶

In Massachusetts, as a result of Proposition 2½, one school district had to develop a budget based on 2.1 million

⁴Allen Odden and John Augenblick, School Finance Reform in the States (Denver, Colorado: Educational Finance Center, Education Commission of the States, 1980), p. 36.

⁵Ibid.

⁶"Extracurricular Activities Get Extra Expensive," New York Times, 10 January 1982, sec. 13, p. 49.

dollars less than had been budgeted the previous year.⁷ One of the questions raised during the budget hearings was whether or not fees could be charged to support some activities.⁸ In California recent budget reductions have caused schools to charge fees to students who participate in school athletic programs.⁹ Such a trend has also begun in Utah, Michigan, Pennsylvania, and Connecticut.¹⁰

A 1974 study on the nature and extent of fees charged in Missouri revealed that 95 percent of 356 superintendents responding had in past years charged some type of student fee. The fees ranged from a low of five cents per student for a school newspaper to as much as fifty-five dollars for a semester course in driver education.¹¹

During the 1978-79 school year, fees charged to North Carolina public school students ranged from a low of fifty cents per elementary student in several school

⁷Richard Bumstead, "One Massachusetts School System Adapts to Proposition 2½," Phi Delta Kappan, June 1981, p. 722.

⁸Ibid., p. 723.

⁹"Squeezed by Property Tax Reforms, School Systems in Massachusetts and California Tighten Belts," Phi Delta Kappan, 63 (September 1981): 72.

¹⁰"Extracurricular Activities Get Extra Expensive," New York Times, p. 50.

¹¹Victor D. Gragg, "Student Fees: Legal or Not," School and Community, March 1976, p. 31.

systems to a high of sixteen dollars per high school student in one school system. The sixteen-dollar fee was charged to every student enrolled in the school regardless of the courses taken or the activities pursued. Students in the same high school were charged additional fees for elective courses: five dollars for each vocational course and eighteen dollars for a business course.¹²

The cumulative impact of incidental fees is significant. During the 1978-79 school year, school districts in Wisconsin collected over 2.7 million dollars in student fees.¹³ Estimates based on hearings conducted in Kansas in 1975 indicate that 3 to 5 million dollars were collected by school districts in that state.¹⁴

A study of fees is significant not only because it concerns a practice which has been increasingly important in recent years, but because such a study also relates to the larger question of how public schools should be financed. During the development of public education in the nineteenth century, there was a continuing debate concerning the manner in which education would be funded.¹⁵ One view was that

¹²North Carolina Department of Public Instruction, 1978-79 Fee Reporting Form Results (Raleigh: State Department of Public Instruction, 1979), p. 1.

¹³Wisconsin Department of Public Instruction, Comparison and Ranking of School Systems (Madison: Wisconsin Department of Public Instruction, 1980), p. 1.

¹⁴Lang, "Student Fees in Public Schools," p. 449.

¹⁵Ellwood P. Cubberly, Public Education in the United States (Boston: Houghton Mifflin, 1934), pp. 164-166.

individuals should pay their own educational costs. Such a policy was based on the idea that educational costs should be paid by those who directly benefit. Free education would only be extended to children of the poor, and only for the rudiments of learning.¹⁶ An opposing view held that educational benefits were not private but public, because schools prepare young people to maintain society and contribute to the public wealth. Thus the cost of education should be paid by the general public through taxes. By the end of the nineteenth century, the view of public benefits became dominant as states passed legislation providing for the establishment of compulsory, tax-supported public education.¹⁷

Finally, the study of school fees is significant because there are differing opinions as to whether fees can be properly charged in public schools and to what extent or under what circumstances they can be charged. School administrators and school board members face a dilemma caused by budgetary cuts and increasing costs. Because these officials are looking to fees as a means to bridge the gap between revenues and expenses, there is a need to analyze state constitutions, state statutes, and court cases where school fees have been

¹⁶Ellwood P. Cubberly, Changing Conceptions of Education (Boston: Houghton Mifflin, 1907), p. 28.

¹⁷Gerald Lee Gutek, An Historical Introduction to American Education (New York: Thomas Y. Crowell, 1970), p. 53.

the major issue to determine the extent to which school fees can be justified in conjunction with requirements for free public schools.

Design of the Study

The remainder of the study is divided into four major parts. Chapter II contains a descriptive review of the practice of charging school fees.

Chapter III will focus on the constitutions and governing statutes of the fifty states and the District of Columbia, and various state rules and regulations concerning school fees.

Chapter IV presents a narrative discussion of the major legal questions related to school fees. The discussion will include references to specific court cases, statutory provisions of individual states, and school finance issues as identified in the second chapter.

Chapter V contains an analysis and review of court cases where fees for tuition, matriculation, incidentals, and textbooks or other instructional materials have been the major issue.

The concluding chapter of the study contains a review and summary of the information provided in the preceding chapter and answers the questions asked in the introduction.

CHAPTER II

REVIEW OF THE LITERATURE

Overview

In order to examine the legal status of school fees, it is necessary to provide a perspective on the practice of charging school fees. Accordingly, this chapter focuses on a review of literature limited to the practice of charging school fees as this has occurred in the history of education.

One of the cornerstones of American public education is that the public school system is supported by the common effort of the whole community through public funds. This principle is based on the idea that education is a public function and that education benefits not only the individual, but society as a whole. Therefore, society as a whole has a compelling interest in the education of its young.

However, throughout American history there has been also a strong belief in the idea that education is a family responsibility, and that all or part of the costs of a child's education should be borne by the parents. Consequently, American education has been supported by both private and public funds. In the seventeenth and eighteenth centuries education was primarily a family responsibility,

while in the nineteenth century it became more of a public responsibility. But while the public school movement in the mid-nineteenth century ordinarily brought taxation and other forms of public support, the movement did not immediately and invariably make schools free or even cheap. In many states charges for attendance, books, supplies, and materials were levied upon parents to supplement the school's revenues.¹ This condition has extended into the twentieth century. Parents in many parts of the country are still responsible for paying certain school fees to supplement the public funds provided by their local school system.

Support for Education in Colonial America

Approximately two hundred years passed between England's initial colonization of North America at Jamestown and the conclusion of the War of 1812. During these two centuries, while moving from a collection of colonies to an independent nation, the United States experienced the beginnings of a system for public education. These beginnings, while clearly reflective of the educational heritage brought by the first colonists, had begun to exhibit by the early nineteenth century features which were unique to the new nation. With regard to the history of school fees, it is important to review the manner in which colonists provided financial

¹Lawrence A. Cremin, American Education: The National Experience: 1783-1876 (New York: Harper and Row, 1980) p. 178.

support for education and to identify attitudes towards education which underlay the use of school fees.

The dominant attitude concerning education which the colonists brought from England was that education was primarily for those who could afford it. Concurrent with this perspective was the belief that it was the right and duty of individual families to provide through private means for the education of their children.² Thus, the early colonist would expect to pay, either by tuition or fee, for education. However, in accordance with a theme that was sounded in the English Poor Law of 1601, many colonists accepted the idea that the community was responsible for the training of the poor and indigent.³ Consequently, education was considered a private function, becoming public only in the case of persons who could not afford to provide it for themselves.⁴

However, there were areas in the colonies where such attitudes did not prevail. In the Massachusetts Bay Colony, it was thought that education, at least in terms of the ability to read Scripture, was necessary for everyone

²Lawrence A. Cremin, The American Common School: An Historic Conception (New York: Columbia University, 1951), p. 84.

³Paul Monroe, Founding of the American Public School System, vol. 1 (New York: MacMillan Co., 1940) 1:13.

⁴Ellwood P. Cubberly, Public Education in the United States (New York: Houghton Mifflin Co., 1934), p. 25.

because reading Scripture was necessary for salvation. This attitude toward education found its earliest expression in the legislation of the Massachusetts Bay Colony.⁵ This colony's Old Deluder Satan Act of 1647 placed on various towns, as agencies of the civil government, the responsibility for educating the young in the rudiments of knowledge. Although a parent was still at liberty to educate his or her own children, the law provided for the maintenance of a public teacher who would teach all who might come to him. The town, standing in place of collective parents, assumed the responsibility for making education available.⁶

This practice of public support, while not widespread through the colonies, was not limited to Massachusetts. In the New Netherlands, the Dutch established eleven schools prior to 1664 which did receive some funds from the civil purse in addition to monies provided by the West India Company.⁷ Connecticut, in 1650, adopted the Massachusetts Law of 1647, word for word, with an amplifying preamble making the demand for the teaching of children still more definite.⁸ New Hampshire adopted the Massachusetts Law of 1680.⁹

⁵Ibid., p. 18.

⁶Cremin, American Common School, p. 85.

⁷Monroe, Founding, pp. 73-78.

⁸Cubberly, Public Education, p. 19.

⁹Ibid., p. 20.

Despite the move toward public, tax-supported education in the New England colonies, there were still many varieties of financial support for education in the seventeenth century. Throughout the colonies schools were supported by property managed in perpetuity by boards of trustees, mission funds, tuition, private companies, subscriptions, rents, taxation, and fees.¹⁰ Even in Massachusetts and Connecticut, parents were charged fees to supplement school revenues.¹¹ Although in seventeenth century Massachusetts the term "free education" was used as towns settled on tax rates to finance their schools, the term was used differently¹²; for example, in Roxbury the term meant free to children of subscribers; in Salem it meant free to all poor children; in Dedham, it meant free to all children.¹³

The middle colonies were populated by a mixture of religious faiths, and each faith assumed responsibility for educating its own denomination. In 1685, Thomas Budd attempted to change this practice as he set forth proposals calling for seven years of schooling for all children in reading, writing, arithmetic, and bookkeeping, and a trade such as joinery, weaving, knitting, or sewing. Schools would

¹⁰Lawrence A. Cremin, American Education: The Colonial Experience, 1607-1783 (New York: Harper and Row, 1970), pp. 183-84.

¹¹Cubberly, Public Education, p. 198.

¹²Cremin, Colonial Experience, p. 193.

¹³Ibid.

be provided in all towns to be supported, first, by the rents from lands set aside as endowment, and second, by the work of the students. Such "public schools," so called by Budd, would cater to rich and poor, Indians as well as colonists, and children of all religious persuasions. However, none of Budd's plan was adopted.¹⁴ The result was that at the end of the seventeenth century a policy of depending upon churches and private efforts for education remained intact. As a consequence, the provision of education, aside from religious instruction for religious purposes, and aside from the apprenticing of orphans and the children of the very poor, was left largely for those who could afford to pay for the privilege.¹⁵

The southern colonies more than the New England or middle colonies reflected the English attitude toward education. The tutor in the home, education in small private and select pay-schools, or education in the mother country for the sons of well-to-do planters were the methods prevailing among the wealthier people, while the poorer classes were left with only such advantages as apprenticeship training and the few "pauper" schools available at the time.¹⁶

¹⁴Ibid., pp. 306-307.

¹⁵Cubberly, Public Education, p. 21.

¹⁶Ibid., p. 23.

During the eighteenth century the latitude and diversity of support for education continued. Schools were supported by various funds obtained from employers, patrons, subscriptions, lotteries, endowments, tuition rates, and taxes.¹⁷ The combinations and permutations were enormous, and the larger and more heterogeneous the community, the greater the latitude and diversity of the arrangement.¹⁸

However, by the end of the eighteenth century, the practice of publicly supported education facilities, open to all, was firmly established in New England.¹⁹ In 1789 Massachusetts enacted the first general state school law in the nation, and thus raised to the level of state-wide requirements practices which had developed since the legislation of 1647.²⁰ Every town was required to maintain an elementary school for six months during the year, and towns having one hundred families or more were required to maintain one throughout the year.²¹ The laws of Vermont, New Hampshire, and Connecticut in the 1790's closely followed the Massachusetts pattern.²²

¹⁷Ibid., p. 499.

¹⁸Ibid., p. 500.

¹⁹Cremin, American Common School, p. 86.

²⁰Ibid., p. 87.

²¹Ibid.

²²Ibid.

In the middle and southern colonies, the idea of public support for education did not take root as it had in the New England colonies. In the middle colonies educational efforts continued to be controlled by the various religious groups which dominated the area: Moravians, Mennonites, Lutherans, Quakers, Presbyterians, Baptists, and Catholics.²³ By the end of the century only Delaware and New York had enacted school laws, but Delaware's school fund was not implemented for many years and New York's school fund law was abandoned five years after its enactment.²⁴ In the southern colonies public education, aside from collegiate education, was still considered necessary only for the poor or orphaned; all children of the upper and middle class in society attended private or church schools, or were taught by tuition-paid tutors in the home.²⁵

Thus, even though by the end of the eighteenth century efforts had been made to establish publicly supported education, most Americans continued to practice, in accordance with their English heritage, the belief that education was a family responsibility and therefore was to be obtained through private means.

²³Cubberly, Public Education, p. 25.

²⁴Adolphe E. Meyer, An Educational History of the American People (New York: McGraw-Hill, 1957), p. 107.

²⁵Cubberly, Public Education, p. 25.

Support for Education in Nineteenth
Century America

At the beginning of the nineteenth century, American education was quite differentiated in terms of its support. American schools were sometimes public, but more often they were private or semiprivate.²⁶ But great strides toward public education were made in the second quarter of the century. Horace Mann, as secretary to the Massachusetts Board of Education, stated in 1843:

Our schools are perfectly free. A child would be as much astonished at being asked to pay any sum, however small, for attending our common schools, as he would be if payment were demanded of him for walking in the public streets, for breathing the common air, or enjoying the warmth of the unappropriable sun.²⁷

This condition was not the case in all states in the nineteenth century. In New York, efforts for public support were combined with the tradition that the expense of a child's schooling would be borne by the parent. Prior to the Revolution, education in New York was conducted primarily by church charity schools. In 1795 a law, valid for five years, was enacted which distributed \$100,000 a year to the counties for schools.²⁸ By 1798 there were

²⁶Meyer, Educational History, p. 116.

²⁷Cremin, American Common School, p. 94.

²⁸Meyer, Educational History, p. 107.

1352 schools in 16 of the 23 counties, and 59,660 children were enrolled.²⁹ On the expiration of the law in 1800, it could not be re-enacted. By 1812, the first permanent school law was enacted.³⁰ Under the 1812 legislation a pattern for distributing the interest of a permanent school fund was established.³¹ In addition, local taxation was required.³²

Cubberly writes that by 1820 New York schools were probably the best of any state in the country.³³ But New York schools were not free. In spite of the funding from the state and local districts, a deficit often appeared at the end of a school term. The difference between the cost of school operation and the funds available was met by a tax on parents -- determined by the number of children attending and the number of days in attendance.³⁴ This assessment was authorized in 1814 as the rate-bill system.³⁵ Children of the poor and indigent, in keeping with the philanthropic attitude of the English Poor Laws, were exempt.³⁶

²⁹Cubberly, Public Education, p. 98.

³⁰Ibid., p. 99.

³¹Cremin, American Common School, p. 99.

³²Cubberly, Public Education, p. 99.

³³Ibid.

³⁴Cremin, American Common School, p. 98.

³⁵Ibid.

³⁶Ibid.

The rate-bill system was not unique to New York. It was a system that had been brought over from England and used in colonial Massachusetts and Connecticut as early as 1643.³⁷ The thirteen original colonies generally required parents to pay fees.³⁸ However, some states introduced the rate-bill as a transition plan in changing from private pay schools to state-aided, rate-supported schools, while others, such as New York, added it as the cost of education increased and it was seen that the income from permanent school funds and authorized taxation was not sufficient to maintain the school the desired length of time.³⁹

The charge of the rate-bill was small, but many parents could not afford even the small assessment, and chose to keep their children out of school to save money or to declare themselves indigent.⁴⁰ Cubberly illustrates this condition clearly in the case of the New York City Public School Society:

³⁷Arvid J. Burke, Financing Public Schools in the United States, 2d. ed. (New York: Harper and Row, 1957), p. 239.

³⁸Ibid.

³⁹Cubberly, Public Education, p. 198.

⁴⁰Cremin, American Common School, p. 98.

The following charges were instituted in 1826:

	<u>Per quarter</u>
For the Alphabet, Spelling, and Writing on Slates, as far as the 3rd class, inclusive	\$0.25
Continuance of above, with Reading and Arithmetical Tables, or the 4th, 5th, and 6th classes	0.50
Continuance of last, with Writing on paper, Arithmetic, and Definition, or the 7th, 8th, and 9th classes	1.00
The preceding, with Grammar, Geography, with use of Maps and Globes, Bookkeeping, History, Composition, Mensuration, Astronomy, etc.	2.00

Two days before the system went into effect there were 3457 pupils in the schools of the Society; six months later there were but 2999, while the number taking the \$2 per quarter studies dropped from 137 to 13.⁴¹

Despite the moderate charges, the impact on attendance was significant. The cumulative effect of rate-bill collections was also important for the total support of education. From 1828 to 1868, the rate bill on parents in New York produced an average annual sum of \$410,685.66, or about one-half of the sum paid all the teachers in the state for salary.⁴²

The rate-bill system thus was a major obstacle to the establishment of free, tax-supported schools during the nineteenth century. Proponents of a free school system

⁴¹Cubberly, Public Education, p. 199.

⁴²Ibid., p. 200.

fought vigorously against the rate-bill system because it discouraged the poor from sending their children to school. Samual Lewis, a New York superintendent from 1837 to 1840, singled out the rate bill as one of the items contributing most to the ineffectiveness of the common school system.⁴³ The persistence of the rate bill was evidence of the strong belief that education was a private, not a public responsibility. Even public education advocates such as Henry Barnard expressed the idea that part of the expense of the child's schooling should be borne by the parent.⁴⁴ But slowly the rate-bill system was abolished. Between 1827 and 1871, Massachusetts, Delaware, Pennsylvania, Florida, Vermont, Indiana, Ohio, Iowa, Illinois, New York, Connecticut, Rhode Island, Michigan, Arkansas, New Jersey, and Utah abolished rate bills.⁴⁵ Rates or subscriptions were collected in most of the southern states for many years after the Civil War, but in time all the states abandoned the practice.⁴⁶

The rate bill was not the only per-capita charge levied on parents in the early days of public education. Another charge was the fuel or wood tax which required each parent

⁴³Cremin, American Common School, p. 124.

⁴⁴Edgar W. Knight, Education in the United States (Boston: Ginn and Co., 1929), p. 156.

⁴⁵Burke, Financing, p. 239.

⁴⁶Knight, Education, p. 265.

to supply the school during the summer with the proper quota of wood.⁴⁷ Like the rate bill, this charge was eventually dropped.

The elimination of the rate bill and other charges was the final step in establishing a school system supported by the common effort of the whole community as embodied in public funds. Prior to 1825, public schools derived much of their income from nontax sources with a relatively small amount of taxation.⁴⁸ As late as 1850, though over ninety percent of the school and college enrollment was in institutions defined by the United States Census as public (the definition included schools "receiving their support in whole or in part from taxation or public funds"), less than half of the 16.1 million dollars expended for schools and colleges that year were derived from taxation or interest from state permanent school funds.⁴⁹ By the late 1860's and the early 1870's, the rate-bill system had ended in a number of southern and western states, and public school systems had been established in the South. It was not until this time that significantly more than half the total outlay for schools and colleges was derived from public funds, primarily taxes.⁵⁰

⁴⁷Cubberly, Public Education, p. 205.

⁴⁸Burke, Financing, p. 238.

⁴⁹Cremin, The National Experience, p. 179.

⁵⁰Ibid.

By 1880, the percentage of nontax revenues was only 13.7.⁵¹ The decline indicates the development of a public, tax-supported system. However, at the end of the nineteenth century, despite the progress made by supporters of public education, the practice of charging patrons to supplement school revenues had not been eliminated. Free education as described by Horace Mann in 1843 had not been achieved throughout the United States. Although it was not evident to the degree it had been at the close of the seventeenth and eighteenth centuries, the notion that the expense of a child's schooling should be borne by the parents still existed.

Educational Support and School Fees
in the Twentieth Century

During the first half of the twentieth century, public education in the United States experienced tremendous growth in terms of enrollment and expenditures. While the population doubled during the first half of the century, public school expenditures rose by 2,615 percent.⁵² Concurrent with this growth, particularly after World War I, was a growth in legislative appropriations and taxes earmarked

⁵¹Burke, Financing, p. 240.

⁵²United States, Department of Commerce, Bureau of Census, Historical Statistics of the United States, vol. 1, pt. 8 (1975), pp. 373-374.

for educational purposes.⁵³ States initiated new forms of taxes such as taxes on corporations, savings banks, and inheritance.⁵⁴ Although this indicated a tendency to depend less than formerly on the general property tax, property taxes remained the most widely used of all the taxes.⁵⁵ The school finance issues of the early twentieth century were not whether to provide public support through taxes for schools, but rather what should be taxed and to what extent.⁵⁶

It should be noted that the increase in taxes did not supply all the needed resources. Although public education was tuition-free and the rate bills had been abolished, parents were still being required to pay money to schools to supplement school revenues. These charges are known as school fees. References to these charges are found in judicial records which describe arguments for and against the use of fees.

⁵³Edgar W. Knight, Fifty Years of American Education (New York: The Ronald Press Company, 1952), p. 319.

⁵⁴Ibid.

⁵⁵Fletcher Harper Swift, "Public School Finances," Twenty-Five Years of American Education, ed. I. L. Kandel (New York: MacMillan, 1924), p. 211.

⁵⁶Ibid.

From 1891 to 1936 there were twenty-three court cases concerning a variety of fees: tuition fees, fees for particular courses, matriculation or registration fees, incidental fees, and fees for particular activities, materials, or privileges. In most of the cases the fees were held not valid;⁵⁷ but in seven of the cases the fees were considered valid because there was state statutory provision for the exaction of the fee,⁵⁸ the purpose for charging the fee was reasonable,⁵⁹ the fee was necessary to meet the expenses of the school,⁶⁰ the state constitution provided only for a "liberal," as distinguished from a "free," public school system,⁶¹ the fee was charged by a teacher who was not paid out of the common school fund for teaching the course in question,⁶² or the charge was merely a refundable deposit which was required only of persons financially able to pay.⁶³ These cases demonstrate that

⁵⁷Jeffrey Ghent, "Validity of Public School Fees," American Law Reporter, 3rd ed. (1972):755.

⁵⁸Hollar v. Rock Hill School District, 60 S. C. 41, 38 S. E. 220 (1901); Ryan v. Sawyer, 195 Ala. 69, 70 So. 652 (1916); Segar v. Board of Education, 317 Ill. 418, 148 N. E. 289 (1925).

⁵⁹Bryant v. Whisenant, 167 Ala. 325, 52 So. 525 (1910).

⁶⁰Hollar v. Rock Hill School District, 60 S. C. 41, 38 S. E. 220 (1901).

⁶¹Vincent v. County Board of Education, 222 Ala. 216, 131 So. 893 (1931).

⁶²Major v. Cayce, 98 Ky. 357, 33 S. W. 93 (1895).

⁶³Segar v. Board of Education, 317 Ill. 418, 148 N. E. 289 (1925).

in conjunction with state provisions for public education the practice of parents helping to bear the cost of their children's education continued into the twentieth century.

The years 1954 to 1980 mark an unusually tumultuous time in education and in school finance in particular.⁶⁴ During the 1950's and 1960's public education continued to grow rapidly in the United States.⁶⁵ But in the 1970's public education growth ended due to two factors: declining enrollment and increasing voter resistance to school budget increases.⁶⁶

Total public school enrollment, kindergarten through twelfth grade, peaked in 1971 at 51.3 million, but then declined over ten percent by 1980.⁶⁷ This decrease of six million students in the classroom by 1980 reduced the percentage of the population enrolled in public school to almost the lowest point in the twentieth century.⁶⁸

⁶⁴James W. Guthrie, "United States School Finance Policy 1955-1980," School Finance Policies and Practices, ed. James W. Guthrie (Cambridge, Massachusetts: Ballinger, 1980), p. 3.

⁶⁵Ibid., p. 55.

⁶⁶Walter I. Garms, James W. Guthrie, and Lawrence C. Pierce, School Finance, The Economics and Politics of Public Education (Englewood Cliffs, New Jersey: Prentice-Hall, Inc., 1978), p. 339.

⁶⁷Guthrie, School Finance, p. 56.

⁶⁸Robert D. Reischauer, "The End of the Rainbow: The Future Prospects for Federal Aid to Elementary and Secondary Education," Futures in School Finance: Working Toward a Common Goal, ed. K. Forbis Jordan and Kern Alexander, (Bloomington, Indiana: Phi Delta Kappa, 1975), p. 12.

Some areas of the country experienced severe reduction in enrollment, such as Seattle, Washington where enrollments declined more than thirty percent between 1970 and 1976.⁶⁹

During the period 1950 to 1970 school expenditures rose by 597 percent.⁷⁰ Concurrent with the increase in expenditures was the increased burden of local property taxes.⁷¹ During these years inflationary pressures on the housing market increased property values, and assessed valuations and property taxes escalated with them. Increasing numbers of homeowners became vocal regarding their distress over increased property taxes.⁷²

The threat of a crisis was great enough for the President in his 1972 State of the Union message to promise a "revolutionary" new program "for relieving the burden of the property tax and providing a fair and adequate financing for our children's education." It was serious enough to generate the introduction of over 100 separate bills on school finance in the Congress, and it was an important enough issue to receive a separate plank in each major party's presidential platform.⁷³ Nationwide, about one-half

⁶⁹Garms, Guthrie, and Pierce, School Finance, p. 232.

⁷⁰Bureau of Census, Historical Statistics, pp. 373-374.

⁷¹Garms, Guthrie, and Pierce, School Finance, p. 352.

⁷²Guthrie, School Finance, p. 27.

⁷³Reischauer, "The End of the Rainbow," p. 13.

of all property tax and bond proposals were defeated during the mid-1970's.⁷⁴ The most dramatic example of taxpayer resistance to increased property taxes occurred in California where property owners found a hero in Howard Jarvis. Jarvis sponsored Proposition 13, a publicly enacted constitutional amendment in 1978 which limited California's property taxes to one percent of market values. As a result, property taxes were reduced by sixty percent and the state treasury lost \$7 billion annually.⁷⁵ Such reduction in property taxes, a principal support of the public schools in forty-nine of the fifty states, severely affected education.⁷⁶

The curtailment of growth in educational expenditures in the 1970's also highlighted inequities in existing methods of financing schools.⁷⁷ The great variations in taxing and spending powers among the many states were summarized in 1972 by the President's Commission on School Finance:

The financial problems of education derive largely from the evolving inabilities of the States to create and maintain systems that provide equal educational opportunities and quality education to all their children. Having made that observation,

⁷⁴John Ottina, "Education: Who Should Pay the Bills?" Vital Speeches, August 15, 1974, p. 653.

⁷⁵Guthrie, School Finance, p. 27.

⁷⁶Garms, Guthrie, and Pierce, School Finance, p. 132.

⁷⁷Ibid., p. 340.

we hasten to state that we are not assigning blame, but are rather attempting to locate the points where reforms must be achieved. Efforts by the States over the years to eliminate or at least reduce disparities in the delivery of educational resources have simply not kept pace with needs that have grown beyond the abilities of the State to fulfill them.⁷⁸

The extreme variations in expenditure per pupil among school districts appear in the commission's findings that the ratio between the high spending district and the low spending district was 2 to 1 or less in eleven states, from 2.1 to 10 to 1 in thirty-two states and more than 10 to 1 in seven states.⁷⁹ Yet a 1970 study of school finance indicated that in nine of twelve states studied, the poor family in the poor school district paid more state and local tax to support the public schools than its counterpart in a rich school district.⁸⁰ These conditions led to a series of legal challenges to the constitutionality of prevailing methods of financing education.⁸¹

⁷⁸Maurice Criz, "Priorities in the Allocation of State Funds," Futures in School Finance: Working Toward a Common Goal, ed. K Forbis Jordan and Kern Alexander (Bloomington, Indiana: Phi Delta Kappa, 1975), p. 36.

⁷⁹Ibid., p. 37.

⁸⁰Kern Alexander and Thomas Melcher, "Income Redistribution and the Public Schools," Futures in School Finance: Working Toward a Common Goal, ed. K. Forbis Jordan and Kern Alexander (Bloomington, Indiana: Phi Delta Kappa, 1975), p. 67.

⁸¹Garms, Guthrie, and Pierce, School Finance, p. 340.

Certain groups of American citizens felt that their state governments, through state systems of public finance, were depriving them of a basic, substantive constitutional right -- equal access to educational opportunity for their children.⁸² These groups turned to the courts to remedy the situation and enforce their rights. By doing so, these citizens brought the inequities inherent in state educational finance systems to the attention of the public at large.⁸³ In California, Minnesota, Texas, New Jersey, Wyoming, Kansas, Connecticut, and Idaho, judges held that existing finance arrangements violated education or equal protection clauses in state constitutions.⁸⁴

Thus the 1970's were marked by declining enrollments, resistance to school budget increases, reduced expenditures for education and litigation concerning the use of local property taxes to fund education. It was during this period that there was also an increase in litigation concerning the use of school fees. Rising school costs, increased mandatory programs, and the increased resistance

⁸²Richard S. Vacca, "The Courts and School Finance: A Reexamination," Futures in School Finance: Working Toward a Common Goal, ed. K. Forbis Jordan and Kern Alexander (Bloomington, Indiana: Phi Delta Kappa, 1975), p. 120.

⁸³Ibid.

⁸⁴Garms, Guthrie, and Pierce, School Finance, p. 340.

to property taxes forced schools to seek additional revenues.⁸⁵ Legislatures and schools turned to the use of school fees, a source of funds that had received little attention and had no organized opposition.⁸⁶ But the increase in the use of school fees renewed interest in legislation and litigation concerning school fees.⁸⁷ Since 1970 there have been fifteen court cases where school fees have been the major issue. In each of these cases the court examined the state's constitutional provision for "free" education and then reviewed the state's statutory provisions for school fees.

⁸⁵Joe Allen Lang, "Student Fees in Public Schools: New Statutory Authority," Washburn Law Journal 16 (1976-1977): 439.

⁸⁶Ibid.

⁸⁷Ibid., p. 440.

CHAPTER III
CONSTITUTIONAL AND STATUTORY PROVISIONS
CONCERNING SCHOOL FEES

Overview

In education, as in all other matters of government, federal and state constitutions are the fundamental law, and state policy derives from constitutional provisions and statutory enactments.¹ The principle that the state legislature, subject to constitutional restrictions, has the authority to pass any act, which may, in its opinion, seem appropriate is well established.² Therefore, each state's educational policy is a function of its legislature.

Every state, with the exception of one, has a state constitutional clause calling for the establishment and maintenance of public schools by act of the legislature. Many of these clauses provide for "free" schools.³ Several states operate under regulations, defined by governing statutes, court decisions, attorney general opinions, or state agencies, which permit or prohibit the charging

¹Newton Edwards, The Courts and the Public Schools: The Legal Basis of School Organization and Administration (Chicago: University of Chicago Press, 1955), p. 27.

²Ibid.

³Joe Allen Lang, "Student Fees in Public Schools: New Statutory Authority," Washburn Law Journal 16 (1976-1977): 439.

of school fees. Other states, in the absence of statutes or regulations which refer specifically to school fees, are governed by statutes which provide for free textbooks, supplies, and other instructional materials.

This chapter reviews typical state constitutional provisions for public education and identifies those states which maintain constitutional provisions for free public education. States which operate under regulations governing school fees as defined by state statutes, state courts, state offices of the attorney general, state boards of education or state departments of education are identified and sample regulations are summarized. The types of fees which are permitted or prohibited by these regulations are also identified. Finally, states which do not maintain statutes which specifically govern school fees, but maintain statutory requirements for free textbooks, supplies, materials or equipment are identified.

State Constitutional Provisions for Public Education

All of the states, with the exception of South Carolina, and the District of Columbia operate under constitutions which require the establishment and maintenance of public schools by act of the legislature. The Alabama constitution provides an example of this type of provision:

Article XIV - Section 256. Public School System.
The legislature shall establish, organize and maintain a liberal system of public schools

throughout the state for the benefit of the children thereof between the ages of seven and twenty-one years.⁴

The South Carolina Constitution of 1895 provided for a "liberal system of free public schools for all children between the ages of six and twenty-one years...."⁵ However, this provision was repealed in 1954.⁶

Of the states which provide for public education, twenty-nine states and the District of Columbia have constitutions which provide to some degree for free public education. The Montana constitution provides an example of the most typical provision:

Article XI, Section 1. Free Public Schools. It shall be the duty of the legislative assembly of Montana to establish and maintain a general, uniform and thorough system of public schools.⁷

The California Constitution provides for a system of common schools by which a free school will be maintained in each district.⁸ The State Board of Education implemented this constitutional provision by adopting the requirement that no pupil in a school shall be required to pay any fee, deposit or other charge not specifically authorized by law.⁹

⁴Alabama, Constitution, art. XIV, sec. 256.

⁵South Carolina, Constitution (1895), art. II, sec. 5.

⁶South Carolina, Code of Laws, No. 902 (1952) 2223 and No. 653 (1954) 1695.

⁷Montana, Constitution, art, XI, sec. 1.

⁸California, Constitution, art. 9, sec. 5.

⁹California, Administrative Code, Title 5, Section 350.

The Georgia, Indiana, and South Dakota constitutions provide for tuition-free public schools.¹⁰ In Georgia, instructional fees have been declared unconstitutional because an instructional fee constitutes a condition of admission, or tuition charge.¹¹

Table 1 shows which states provide for public education and indicates which constitutions provide to some degree for free public education. (All state constitutional provisions for public education are presented in Appendix A.)

State Regulations Governing School Fees

State regulations on school fees are derived from legislative action. Regulations are either directly stated in the legislative statutes, or are based on an interpretation of legislative statutes or constitutional provisions concerning the establishment and maintenance of public education. Such interpretations are made by the state judiciary in court cases concerning school fees; by the state attorney general who may issue an opinion on constitutional provisions or statutes related to school fees; or by a state agency such as the state's department of education which may issue guidelines concerning school fees. Often a state's regulations may be based on a combination of these sources. Table 2

¹⁰Georgia, Constitution, art. 8, sec. 1; Indiana, Constitution, art. 8, sec. 1; South Dakota, Constitution, art. 8, sec. 1.

¹¹Brewer v. Ray, 149 Ga. 596, 101 S. E. 667 (1919).

TABLE 1
STATE CONSTITUTIONAL PROVISIONS
FOR PUBLIC EDUCATION

State	Provide for Public Education	Provide for Free Public Education
Alabama	X	
Alaska	X	
Arizona	X	x ¹²
Arkansas	X	X
California	X	X
Colorado	X	X
Connecticut	X	X
Delaware	X	X
District of Columbia	X	X
Florida	X	X
Georgia	X	x ¹³
Hawaii	X	
Idaho	X	X
Illinois	X	X
Indiana	X	x ¹⁴
Iowa	X	
Kansas	X	
Kentucky	X	
Louisiana	X	
Maine	X	



TABLE 1 (Continued)

State	Provide for Public Education	Provide for Free Public Education
Maryland	X	X
Massachusetts	X	
Michigan	X	X
Minnesota	X	
Mississippi	X	X ¹⁵
Missouri	X	X
Montana	X	X
Nebraska	X	X
Nevada	X	
New Hampshire	X	
New Jersey	X	X
New Mexico	X	X
New York	X	X
North Carolina	X	X
North Dakota	X	X
Ohio	X	
Oklahoma	X	X
Oregon	X	
Pennsylvania	X	
Rhode Island	X	
South Carolina		
South Dakota	X ¹⁶	

TABLE 1 (Continued)

State	Provide for Public Education	Provide for Free Public Education
Tennessee	X	
Texas	X	X
Utah	X	X ¹⁷
Vermont	x	
Virginia	X	X
Washington	X	
West Virginia	X	X
Wisconsin	X	X
Wyoming	X	X

¹²The Arizona constitution does state that the laws of the state should enable cities and towns to maintain free high schools.

¹³The Georgia constitution provides for free tuition.

¹⁴The Indiana constitution provides for free tuition.

¹⁵The Mississippi constitution states that the legislature may, in its discretion, provide for free public schools.

¹⁶The South Dakota constitution provides for tuition-free public schools.

¹⁷The Utah constitution provides for free common schools, which consist of grades one through eight.

TABLE 2
SOURCES FOR SCHOOL FEE REGULATIONS

State	Legislature	Courts	Attorney General	State Agency
Alabama	X	X		
Arkansas	X	X	X	
California	X		X	X
Colorado	X		X	X
Georgia		X	X	
Hawaii	X			X
Idaho	X	X		X
Illinois	X	X		
Indiana	X			
Kansas	X			
Kentucky	X			
Michigan		X		X
Minnesota	X			X
Missouri			X	
Montana		X		
New Jersey	X			X
New York	X	X		
North Carolina	X	X		
North Dakota	X			

TABLE 2 (Continued)

State	Legislature	Courts	Attorney General	State Agency
Oregon	X			
South Carolina	X			
Tennessee	X			
Texas	X			
Virginia	X			
Washington	X		X	

shows the sources of regulations for each of the twenty-five states which maintain regulations which specifically govern school fees. Appendix B presents the statutory provisions for each of the fifty states and the District of Columbia which specifically permit or prohibit the charging of school fees, and which contain requirements for free textbooks, supplies, materials or equipment.

The most common source for school fee regulations is the state legislature which enacts statutes concerning school fees. The Minnesota legislature adopted in 1976 a very detailed statute which identified thirteen areas for which fees may be charged and nine items or activities for which fees may not be charged; it also provided a waiver

policy for indigent parents and students.¹⁸ A year later the Texas legislature identified thirteen areas for which fees are permissible and nine areas for which fees are impermissible.¹⁹ The Texas and Minnesota legislatures agreed on several areas for which fees were prohibited and permitted. For example, both states agreed that fees were permissible for products produced by students which they chose to make and which became the student's personal property, for security deposits for returnable materials, supplies, or equipment, and for student publications. Fees cannot be charged in either state for textbooks, instructional materials necessary for a course, required field trips, and dress such as cap and gown necessary for a required educational program.

The North Dakota statutes do not identify prohibited fees, but they do specify fees which are authorized.²⁰ The statutes permit deposits for textbooks, and fees for extracurricular activities where attendance is optional, physical education apparel and equipment, student-made items which become the student's property, and driver education.

¹⁸Minnesota, Statutes Annotated, Chapter 120, Section 120.72 through 120.75.

¹⁹Texas, Education Code, Section 20, Subsection 20.53.

²⁰North Dakota, Century Code Annotated, Title 15, Chapter 15-43, Sections 15-43-11.1 through 15-43-11.3.

However, many state statutes are not as specific. The only reference to fees in the Montana statutes concerns fees for damages.²¹ The North Carolina statutes refer to fees only in terms of granting local boards of education the authority to establish and regulate fees.²² The Washington statutes refer only to summer school tuition and extracurricular events.²³ The Missouri statutes contain no provisions which specifically govern school fees.²⁴ The Hawaii statutes prohibit the assessing of fees against elementary students, but do not provide regulations pertaining to fees for secondary students.²⁵

In several of the states where school fees statutes are not specific or simply do not exist, state courts, offices of the state attorney general, and state agencies have issued regulations which govern school fees.

In Montana, the governing statutes contain only one reference to fees.²⁶ However, after interpreting the state's

²¹Montana, Revised Codes (1978), Title 20, Chapter 9, Section 20-9-214.

²²North Carolina, General Statutes, Chapter 115, Section 115-35(f).

²³Washington, Revised Code Annotated (1974), Title 28A, Sections 28A.58.080 and 28A.58.113.

²⁴Missouri, Annotated Statutes, Title XI, Chapter 170, Section 170.051 (2).

²⁵Hawaii, Revised Statutes (1976 Replacement), Title 18, Section 298-5.

²⁶Montana, Revised Codes (1978), Title 20, Chapter 2, Section 20-9-214.

constitution, the State Supreme Court provided regulations that prohibited fees for any course or activity reasonably related to a recognized academic and educational goal of a particular system. Fees are permitted for courses or activities that are optional or extracurricular.²⁷

In North Carolina, the governing statutes do not identify specifically permitted fees. However, the statutes do grant to local school boards the authority to regulate fees.²⁸ Under this authority, local school boards throughout the state have established a variety of fees which differ greatly both in kind and amount. The North Carolina Appeals Court has determined that reasonable, incidental fees are permissible in North Carolina.²⁹

In Washington, there are only two statutes concerning fees -- one regarding summer school tuition and the other pertaining to fees for operational, noncredit, extracurricular events.³⁰ The state attorney general has supplemented these statutes by issuing an opinion which identifies nine areas for which fees are permissible and five areas in

²⁷Granger v. Cascade County School District No. 1, 159 Mont. 516, 499 P. 2d 780 (1972).

²⁸North Carolina, General Statutes, Chapter 115, Section 115-35(f).

²⁹Sneed v. Greensboro Board of Education, 264 S. E. 2d 106 (N.C., 1980).

³⁰Washington, Revised Code Annotated, Title 28A, Sections 28A.58.080 and 28A.58.113.

which fees are impermissible. For example, fees for traffic safety education, extracurricular transportation, class pictures and yearbooks, and caps and gowns for optional graduation ceremonies are permissible. Impermissible fees would include charges for required field trips, towels, lockers, textbooks and instructional materials.³¹

The Attorney General of Missouri has written the school fee regulations for that state. Missouri's constitution provides for free public education, but there are no governing statutes which deal with school fees. In an opinion dated March 7, 1973, the Missouri Attorney General stated that instruction for academic credit must be gratuitous, but that a school district may charge students for non-required activities such as yearbooks, assemblies, or athletic events where participation in the activity or purchase of the product is not a school requirement.³²

State agencies, particularly the state departments of education, have also issued regulations concerning fees which are not included in the scope of a state's legislative enactments. The Colorado statutes speak to the charging

³¹Washington Office of the Attorney General, Attorney General Slade Gorton "Memorandum regarding Fees -- Attorney General's Opinion 1973 No. 11," 4 June 1973.

³²Personal correspondence from Jack Roy, Director of School Laws, Department of Elementary and Secondary Education, Jefferson City, Missouri, 31 July 1980.

of miscellaneous fees.³³ However, the Colorado Department of Education has issued guidelines for school fees for required elementary and secondary courses, materials and supplies, provisions for indigent students, and extracurricular programs.³⁴

The Hawaii State Department of Education has also issued regulations which not only identify specific programs and activities for which fees may be charged, but also provide a schedule of charges which sets the specific cost for each item requiring a fee.³⁵

There is no consistent pattern for regulations governing school fees and the states' constitutional provisions, or lack of provisions, for free public education. Table 3 shows that among the twenty-nine states and the District of Columbia which provide to some degree for free public education, only sixteen states operate under legislative statutes or other regulations which specifically refer to school fees.

Table 4 shows that even among states which do not provide constitutionally for free public education, there are nine states which do provide regulations concerning fees.

³³Colorado, Revised Statutes (1973), Title 22, Chapter 32, Sections 22-32-117 and 22-32-118(1).

³⁴Colorado Department of Education, Donald D. Woodington, "Guidelines for School Fees," 30 June 1972.

³⁵Personal correspondence from George Herman, Staff Specialist, Public Relations, Department of Education, Honolulu, Hawaii, 3 August 1980.

TABLE 3
 STATES WHICH PROVIDE BY CONSTITUTION
 FOR FREE PUBLIC SCHOOLS: REGULATIONS
 REGARDING SCHOOL FEES

State	Provides Regulations	No Regulations
Arizona		X
Arkansas	X	
California	X	
Colorado	X	
Connecticut		X
Delaware		X
District of Columbia		X
Florida		X
Georgia	X	
Idaho	X	
Illinois	X	
Indiana	X	
Maryland		X
Michigan	X	
Mississippi		X
Missouri	X	
Montana	X	
Nebraska		X
New Jersey	X	
New Mexico		X

TABLE 3 (Continued)

State	Provides Regulations	No Regulations
New York	X	
North Carolina	X	
North Dakota	X	
Oklahoma		X
Texas	X	
Utah		X
Virginia	X	
West Virginia		X
Wisconsin		X
Wyoming		X

Minnesota, for example, does not provide for free public education, but identifies in its statutes nine areas for which fees may not be charged.³⁶ Washington does not provide for free public education, but the state's attorney general has identified areas of permissible and impermissible fees.³⁷

Kentucky requires that no public school shall charge a fee,

³⁶Minnesota, Statutes Annotated, Chapter 120, Section 120.72 through 120-75.

³⁷Washington Office of the Attorney General, Attorney General Slade Gorton "Memorandum regarding Fees -- Attorney General's Opinion 1973 No. 11," 4 June 1973.

TABLE 4
 STATES WHICH DO NOT PROVIDE BY CONSTITUTION
 FOR FREE PUBLIC SCHOOLS: REGULATIONS
 REGARDING SCHOOL FEES

State	Provides Regulations	No Regulations
Alabama	X	
Alaska		X
Hawaii	X	
Iowa		X
Kansas	X	
Kentucky	X	
Louisiana		X
Maine		X
Massachusetts		X
Minnesota	X	
Nevada		X
New Hampshire		X
Ohio		X
Oregon	X	
Pennsylvania		X
Rhode Island		X
South Carolina	X	
South Dakota		X
Tennessee	X	
Vermont		X
Washington	X	

or rental, or require a student to purchase instructional materials in grades kindergarten through twelve. However, prohibition of fees does not apply to items of personal attire, the rental of musical instruments, or materials which become the student's property.³⁸

Thus, there is no positive correlation between states which maintain regulations governing fees and states which provide for free public education. There is also little agreement among those states which maintain regulations governing school fees as to the areas for which fees can be charged and areas for which fees are prohibited. Table 5 lists the states with school fee regulations and lists those areas for which fees are permitted. Table 6 lists the same states and indicates the areas for which fees are prohibited in the states.

There is some agreement among several states that fees may not be charged for items or activities which are a part of the basic instructional program, but fees may be charged for items or activities considered extracurricular such as activity tickets, student council fees, newspapers, year-books, or sports programs. In Montana, for example, school fees are prohibited for any course or activities reasonably related to a recognized academic and educational goal of the school system, but are permitted for courses or activities

³⁸Kentucky, Revised Statutes Annotated (1980), Title XII, Chapter 158, Section 158.107.

TABLE 5

PERMISSIBLE FEES IN STATES WITH SCHOOL FEE REGULATIONS

Permissible Fees	Alabama	Arkansas	California	Colorado	Georgia	Hawaii	Idaho	Illinois	Indiana	Kansas	Kentucky	Michigan	Minnesota	Missouri	Montana	New Jersey	New York	North Carolina	North Dakota	Oregon	South Carolina	Tennessee	Texas	Virginia	Washington
Textbooks								X	X													X		X	
Textbook Deposit												X													
Instructional Supplies	X	X						X	X	X															
Ordinary Classroom Supplies	X	X						X	X								X								
Audiovisual Materials		X																							
Property Produced by Student			X				X			X	X		X						X	X			X		
Matriculation	X																					X			
Towels						X				X															
Breakage/Damage			X				X					X	X												
Field Trips			X									X ^a	X ^a							X ^a					
Transportation			X																						
Materials Deposit				X															X	X			X		X
Summer School				X								X	X												X
Writing Materials				X																					

TABLE 5 (Continued)

Permissible Fees	Alabama	Arkansas	California	Colorado	Georgia	Hawaii	Idaho	Illinois	Indiana	Kansas	Kentucky	Michigan	Minnesota	Missouri	Montana	New Jersey	New York	North Carolina	North Dakota	Oregon	South Carolina	Tennessee	Texas	Virginia	Washington
Extracurricular Activities				X	X		X		X	X	X	X	X	X	X			X	X					X	
Parking Fees																						X			
Driver Education													X					X				X		X	
Transcripts, after first copy						X																			
Class Dues						X																			
Student Associations						X																			
Activity Tickets						X						X	X												
Yearbook						X						X	X	X								X		X	
Newspaper						X							X									X			
Cap and Gown						X																		X	
ROTC Uniform Deposit						X																			
Club Dues						X																			
Band/Orchestra Instruments										X	X	X ^a	X					X			X		X		

TABLE 5 (Continued)

Permissible Fees	Alabama	Arkansas	California	Colorado	Georgia	Hawaii	Idaho	Illinois	Indiana	Kansas	Kentucky	Michigan	Minnesota	Missouri	Montana	New Jersey	New York	North Carolina	North Dakota	Oregon	South Carolina	Tennessee	Texas	Virginia	Washington
Special Clothing, such as gym clothing										X	X	X	X										X		
Sports												X													
Board Approved Fees																		X							

aIf not required or is extracurricular.

TABLE 6

IMPERMISSIBLE FEES IN STATES WITH SCHOOL FEE REGULATIONS

Impermissible Fees	Alabama	Arkansas	California	Colorado	Georgia	Hawaii	Idaho	Illinois	Indiana	Kansas	Kentucky	Michigan	Minnesota	Missouri	Montana	New Jersey	New York	North Carolina	North Dakota	Oregon	South Carolina	Tennessee	Texas	Virginia	Washington
Textbooks	X	X	X	X		X						X	X	X	X	X	X	X	X	X	X	X	X	X	X
Instructional Supplies		X	X	X	X	X					X	X	X	X	X								X		X
Ordinary Classroom Supplies				X	X							X													
Elementary Fees	X					X																			
Kindergarten Fees		X																							
Towels			X	X								X													
Materials Deposit																									X
Admission Charges			X																						
Tuition/Condition of Enrollment			X	X							X	X								X					X
Membership Fees			X																						
Field Trips				X									X ^b										X ^b		X ^b
Lockers				X									X										X		X

TABLE 6 (Continued)

Impermissible Fees	Alabama	Arkansas	California	Colorado	Georgia	Hawaii	Idaho	Illinois	Indiana	Kansas	Kentucky	Michigan	Minnesota	Missouri	Montana	New Jersey	New York	North Carolina	North Dakota	Oregon	South Carolina	Tennessee	Texas	Virginia	Washington
Driver Education					X									X											
Matriculation					X																				
Fee for Required Course							X					X													
Band												X ^b													
Cap and Gown													X										X		
Waiver Policy									X	X			X	X						X			X		
Course or Activity Related to School Goals																X	X								

^bUnless the activity is optional.

that are optional or extracurricular.³⁹ Georgia, Idaho, Michigan, Missouri, Montana, New Jersey, North Dakota, and Texas, states which provide for free public education, do not permit fees for instructional supplies and textbooks, but do permit fees for extracurricular items and activities.⁴⁰ However, Minnesota and Oregon, states which do not provide for free public education, have the same provisions.⁴¹ Similarly, Michigan, Minnesota, and Texas do not charge fees for field trips if the field trip is a required activity in the regular instructional program. Fees are charged in these states for extracurricular trips.⁴² Again, Oregon

³⁹Granger v. Cascade County School District No. 1, 159 Mont. 516, 499 P. 2d 780 (1972).

⁴⁰Personal correspondence from Gene Aiken, Division Director, Regional Education Services, Department of Education, Atlanta, Georgia, 1 August 1980; Paulson v. Minidoka County, 93 Idaho 469, 463 P. 2d 935 (1970); Michigan, Compiled Laws Annotated, Chapter 380, Section 380.1432; personal correspondence from Jack Roy, Director of School Laws, Department of Elementary and Secondary Education, Jefferson City, Missouri, 31 July 1980; Granger v. Cascade County School District No. 1, 159 Mont. 516, 499 P. 2d 780 (1972); New Jersey, Statutes Annotated, Title 18A, Chapter 34, Section 18A:34-1; North Dakota, Century Code Annotated, Title 15, Chapter 15-43, Sections 15-43-11.1 through 15-43-11.3; Texas, Education Code, Section 20, Subsection 20.53

⁴¹Minnesota, Statutes Annotated, Chapter 120, Sections 120.72 through 120.75; Oregon, Revised Statutes, Title 30, Chapter 399, Sections 399.115 and 399.155.

⁴²Michigan, State Board of Education, "Free Textbooks, Materials, and the Charging of Fees," March 1972; Minnesota, Statutes Annotated, Chapter 120, Sections 120.72 through 120.75; Texas, Education Code, Section 20, Subsection 20.53.

and Washington, which do not provide for free public education, maintain the same field trip fee policy.⁴³

However, there is not always agreement as to what is extracurricular and what is not. Hawaii and Washington, two states which do not provide for free public education, specifically permit cap and gown fees.⁴⁴ However, Minnesota and Texas, states which do provide for free public education, prohibit such fees because the cap and gown are necessary for a required educational activity.⁴⁵

Several states do agree that fees may be charged for items which a student chooses to make in excess of course requirements and which become the student's property. Colorado, Idaho, Minnesota, North Dakota, and Texas, states which provide for free public education, charge for such

⁴³Oregon, Revised Statutes, Title 30, Chapter 339, Sections 339.115 and 339.155; Washington, Office of the Attorney General, Attorney General Slade Gorton "Memorandum regarding Fees -- Attorney General's Opinion 1973 No. 11," 4 June 1973.

⁴⁴Personal correspondence from George Herman, Staff Specialist, Public Relations, Department of Education, Honolulu, Hawaii, 3 August 1980; Washington, Office of the Attorney General, Attorney General Slade Gorton, "Memorandum regarding Fees -- Attorney General's Opinion 1973 No. 11," 4 June 1973.

⁴⁵Minnesota, Statutes Annotated, Chapter 120, Sections 120.72 through 120.75; Texas, Education Code, Section 20, Subsection 20.53.

student-produced items, as do Kansas, Kentucky, and Oregon, states which do not provide for free public education.⁴⁶

Generally, fees for textbooks are not permitted in states which maintain school fee regulations. However, five states which provide for free public education allow charges, either as rent or a deposit, for textbooks:

Illinois, Indiana, Virginia, West Virginia, and Wisconsin.⁴⁷ Tennessee, which does not provide for free public education, also allows charges for textbooks.⁴⁸

North Carolina, which provides for free public education, and South Carolina and Tennessee, which do not, allow local boards of education to establish and regulate incidental

⁴⁶Colorado Department of Education, Donald D. Woodington, "Guidelines for School Fees," 30 June 1972; Idaho Department of Education, "Guidelines for Charges of Student Fees," 6 February 1970; Minnesota, Statutes Annotated, Chapter 120, Sections 120.72 through 120.75; North Dakota, Century Code Annotated, Title 15, Chapter 15-43, Sections 15-43-11.1 through 15-43-11.3; Texas, Education Code, Section 20, Subsection 20.53; Kansas, Statutes Annotated, Chapter 72, Section 72-5389; Kentucky, Revised Statutes Annotated (1980), Title XII, Chapter 158, Section 158.107; Oregon, Revised Statutes, Title 30, Chapter 339, Section 339.155.

⁴⁷Illinois school districts do not have to provide free textbooks unless required to do so by the voters in a free textbook referendum; see also Indiana, Statutes Annotated (Burns), Title 20, Section 20.8-1.9.3; Virginia school districts are encouraged, but not required, to provide free textbooks, Virginia, Code Annotated (1950), Title 22, Chapter 14, Section 22.1-251 and 252; West Virginia, Code Annotated (1977), Chapter 18, Article 5, Section 18-5-21; Wisconsin, Statutes Annotated (1973), Chapter 118, Section 118.03.

⁴⁸Tennessee, Code Annotated (1977), Title 49, Chapter 17, Section 49-1701.

fees.⁴⁹ This authority allows the local board to charge fees for a number of items. In North Carolina incidental fees include the following:

1. Elementary, junior high, and senior high non-instructional fees which could be assessed against all students in a school. Non-instructional fees include charges for lockers, library fees, and identification cards.
2. Elementary, junior high, and senior high instructional supply fees which could be charged against all students in a school. In 1978-79, instructional supply fees ranged from a low of fifty cents per student in an elementary school to sixteen dollars per senior high student.
3. Special and subject fees which include charges for courses in vocational education, business education, science, art, and music; and fees for activities and clubs.
4. Miscellaneous fees which include charges for parking permits, towels, or assemblies.⁵⁰

Although all states with school fee regulations permit some type of school fee, several of the states require by statute that fees be waived for indigent students. Indiana, Minnesota, Texas, Virginia, West Virginia, and Wisconsin, states which provide for free public education, provide

⁴⁹North Carolina, General Statutes, Chapter 115, Article 25A, Section 115-206.12; South Carolina, Code of Laws (1976), Title 59, Chapter 31, Section 59-31-360; Tennessee, Code Annotated (1977), Title 49, Chapter 17, Section 49-1701.

⁵⁰North Carolina, "1978-1979 Fee Reporting Form Results," North Carolina Department of Public Instruction (1979).

such a policy.⁵¹ Kansas and Oregon, which do not provide for free public education, maintain similar provisions.⁵²

State Regulations Related to School Fees

Of those states which do not have regulations which specifically govern school fees, almost all operate under statutes which provide for free textbooks and free instructional materials. Nebraska statutes require that textbooks will be loaned free of charge to pupils.⁵³ Connecticut not only provides free textbooks, but requires that all books, equipment, supplies, and materials necessary to meet the needs of instruction will be provided free of charge.⁵⁴

Table 7 lists those states which do not operate under statutes or regulations which specifically govern school fees, but do have statutes related to the provision of free instructional materials and free textbooks.

⁵¹Indiana, Statutes Annotated (Burns), Title 20, Section 20.8-1.9.3; Minnesota, Statutes Annotated, Chapter 120, Section 120.72; Texas, Education Code, Section 20, Subsection 20.53; Virginia, Code Annotated (1950), Title 22, Chapter 14, Section 22.1-252; West Virginia, Code Annotated (1977), Chapter 18, Article 5, Section 18-5-21; Wisconsin, Statutes Annotated (1973), Chapter 118, Section 118.03.

⁵²Kansas, Statutes Annotated, Chapter 12, Section 72-5391; Oregon, Revised Statutes, Title 30, Chapter 399, Section 336.168.

⁵³Nebraska, Revised Statutes (1943), Reissue of 1976, Chapter 49, Article 4 (k), Section 79-4, 121.

⁵⁴Connecticut, General Statutes Annotated, Title 10, Section 10-228.

TABLE 7

REGULATIONS RELATED TO SCHOOL FEES IN STATES
WITHOUT SPECIFIC SCHOOL FEE STATUTES
OR REGULATIONS

State	Free Textbooks	Free Supplies	Free Materials	Free Equipment	No Provision
Alaska					X
Arizona	X ⁵⁵				
Connecticut	X	X	X	X	
Delaware	X				
District of Columbia	X	X			
Florida					X
Iowa	X ⁵⁶				
Louisiana	X		X		
Maine	X			X	
Maryland	X	X	X	X	
Massachusetts	X	X	X	X	
Mississippi	X				
Nebraska	X				
Nevada ⁵⁷	X	X	X	X	

TABLE 7 (Continued)

State	Free Textbooks	Free Supplies	Free Materials	Free Equipment	No Provision
New Hampshire	X	X			
New Mexico	X		X		
Ohio	X				
Oklahoma	X				
Pennsylvania	X	X		X	
Rhode Island	X				
South Dakota	X				
Utah	X		X		
Vermont	X				
West Virginia					X ⁵⁸
Wisconsin					X ⁵⁹
Wyoming	X				

⁵⁵Arizona only provides free textbooks for students in common schools, grades one through eight.

TABLE 7 (Continued)

56 Voters in Iowa school districts may vote to provide free textbooks.

57 The boards of trustees for individual school districts have the power to provide free textbooks, supplies, materials and equipment.

58 Free textbooks are only provided for children whose parents cannot afford them.

59 Free textbooks are only provided for children whose parents cannot afford them.

These provisions are significant in that they define, for states which do not have specific statutes or regulations governing school fees, areas for which fees cannot be charged. These provisions are also consistent with the pattern among states with specific fee policies wherein fees are generally not charged for textbooks and instructional materials.

CHAPTER IV
LEGAL ASPECTS OF SCHOOL FEES

Overview

The majority of court cases concerning school fees are the result of claims by plaintiffs that the charging of fees violates constitutional or statutory provisions requiring the establishment of free public schools. In some cases, the plaintiffs have alleged that the practice of school fees conflicts with Section I of the Fourteenth Amendment which prohibits any governmental body from depriving any person of life, liberty, or property without due process of the law.¹ These two issues constitute the major challenges against school fees.

It is important to note that each decision of a court relates only to the specific issues of that particular case, although some decisions establish legal precedents more than others. Often in judicial rulings, judges will depend heavily upon decisions rendered in similar situations. The decisions reached by the United States Supreme Court establish the greatest precedent since the rulings are binding throughout

¹U. S. Constitution, amend. XIV, sec. 1.

the country.² However, there have been no United States Supreme Court decisions concerning school fees.³ Consequently, the legal principles enumerated and discussed in this chapter derive from rulings by State Supreme Courts and State Courts of Appeals which have been binding for their states.

Although a legal precedent may have been established concerning a particular issue, an individual may still pursue his grievance in court.⁴ The particular facts concerning a specific grievance may produce different results, even though the legal issues may be similar to questions already decided by other courts.⁵ These differences in results are illustrated by the various decisions reached by different State Supreme Courts in cases where tuition fees, matriculation fees, incidental fees, and fees for textbooks, instructional materials, supplies, and activities have been the issues. However, as a result of these decisions, certain legal principles have been established. These will be identified and discussed in this chapter in accordance with the major issues concerning school fees.

²Alan Aberson, "Litigation," Public Policy and the Education of Exceptional Children, ed. Frederick J. Weintraub (Reston, Virginia: The Council for Exceptional Children, 1976), p. 254.

³Only once has a case focusing on the constitutionality of a school reached the United States Supreme Court. The court vacated and remanded the case. See *Johnson v. New York State Education Department*, 449 F. 2d 871 (2d Cir. 1971), cert. granted 405 U. S. 916, 92 S. Ct. 986 (1972), vacated and remanded, 409 U. S. 75, 93 S. Ct. 259 (1972).

⁴Aberson, Public Policy, p. 254.

⁵*Ibid.*, p. 255.

State Constitutional and Statutory
Issues and School Fees

Legal principles concerning tuition fees, matriculation fees, and incidental fees were generally established by courts during the early twentieth century. However, since 1970, fees for textbooks, materials, supplies, and activities have been examined by several courts in terms of constitutional and statutory provisions concerning public education.

Tuition Fees

When courts consider claims that school fees violate constitutional or statutory provisions regarding free public schools, they must first determine whether the charges are tuition or fees. In general, tuition has been defined as a payment charged by the school district for the instruction of students. Tuition is required as a condition of attendance. Fees are charges made by the school district for matters incidental to instructional activities.⁶

Courts in those states which provide for free public schools have established the principle that tuition charges cannot be justified in the face of constitutional or statutory provisions requiring the establishment of free schools.⁷

⁶E. Gordon Gee and David J. Sperry, Education and the Law: A Compendium (Boston: Allyn and Bacon, Inc., 1978), p. T-62.

⁷See Board of Education v. Dick, 70 Kan. 434, 78 P. 812 (1904); Special School District No. 65 v. Bangr, 144 Ark. 34, 221 S. W. 1060 (1920); State ex rel. Roberts v. Wilson, 221 Mo. App. 9, 297 S. W. 419 (1927); Batty v. Board of Educ. of Williston, 67 N. D. 6, 269 N. W. 49 (1936); Dowell v. School Dist. No. 1, 220 Ark, 828, 250 S. W. 2d 127 (1952).

In Alabama, where there is no constitutional provision for free public schools, the court reviewed charges which the plaintiff alleged were required as a condition of attendance and found that the charges were illegal in the face of a state code stating that tuition would be free.⁸

A related question concerns the charging of tuition for instruction which goes beyond the minimum school programs required by state statute. Many school districts charge tuition for summer school. Only the Montana Supreme Court, which developed a formula to determine whether a course or activity falls within the constitutional purview of a free school, has dealt with tuition fees for summer school. The court declared that school districts may charge tuition for summer school or like activity if the activity is supplemental to the regular academic program required by constitution or statute.⁹

Thus, in court cases where tuition fees have been the issue, fees have not been upheld because of constitutional and statutory requirements for free public schools. In one instance a court has justified tuition fees for summer school, despite state provisions for free public schools, because summer school instruction was supplemental to the free instructional program required by the state.

⁸See *Roberson v. Oliver*, 189 Ala. 82, 66 So. 645 (1914).

⁹*Granger v. Cascade County School District*, 159 Mont. 516, 499 P. 2d 780 (1972).

Matriculation Fees

In states where the constitution provides for the establishment of free schools, the courts have established the principle that school districts cannot require indirect tuition charges by means of matriculation fees. Such fees constitute a condition of admission to the school and thus become an exclusionary device against those who are unwilling or unable to pay. Courts in these states have reasoned that such fees do by indirection what a tuition charge does directly. Thus the matriculation fee contravenes the spirit, if not the plain meaning, of constitutions and statutes establishing free schools.¹⁰

In Alabama, the Constitution does not require free public schools and the legality of matriculation fees has been upheld. The court has determined that matriculation fees violate neither the Constitutional provision for liberal schools, a state statutory requirement for a free school system, nor a legislative act intending that no fees should be collected. Instead such fees have been justified because another state statute specifically permits school districts to charge matriculation fees.¹¹ Again, as with tuition

¹⁰See *Brewer v. Ray*, 149 Ga. 596, 101 S. E. 667 (1919); *Brinson v. Jackson*, 168 Ga. 353, 148 S. E. 96 (1929); *Dowell v. School District No. 1*, 220 Ark. 828, 250 S. W. 2d 127 (1952).

¹¹See *Vincent v. County Board of Education*, 222 Ala. 216, 131 So. 893 (1931); *Shirey v. City Board of Education of Fort Payne*, 266 Ala. 185, 94 So. 2d 758 (1957).

charges, the courts in two states have declared matriculation fees unconstitutional because of state constitutional requirements for free public schools. In one state matriculation fees have been justified, despite a statutory requirement for a free school system, because another statute did permit the charging of matriculation fees.

Incidental Fees

In three different states the courts have determined the legal status of incidental fees. In Georgia and South Carolina, the term "incidental fee" referred to general fees which were assessed by school districts against each child attending school.¹² The school districts used the term incidental because the charges were considered minimal. In Alabama, incidental fees referred to fees used to maintain school facilities.¹³ Again, the fees were considered minimal.

In Georgia and South Carolina, the courts declared incidental fees unlawful. In Georgia, the State Supreme Court established the principle that incidental fees violated

¹²See *Irvin v. Gregory*, 86 Ga. 605, 13 S. E. 120 (1891); *Young v. Trustees of Fountain Inn Graded School*, 64 S. C. 131, 41 S. E. 824 (1902).

¹³See *Bryant v. Whisenant*, 167 Ala. 325, 52 So. 525 (1910); *Ryan v. Sawyer*, 195 Ala. 69, 70 So. 652 (1916); *Kennedy v. County Board of Education*, 214 Ala. 347, 107 So. 907 (1926); *Vincent v. County Board of Education*, 222 Ala. 216, 131 So. 893 (1931); *Shirey v. City Board of Fort Payne*, 266 Ala. 185, 94 So. 2d 758 (1957).

the state's constitutional requirement that the schools shall be free to all children of the state.¹⁴ In South Carolina, the Supreme Court also declared incidental fees invalid, but not on constitutional grounds. The court determined that local boards of education lacked statutory authority to collect money.¹⁵

Five court cases decided in Alabama established and reaffirmed the legal precedent in that state that incidental fees could be lawfully required of public school students.¹⁶ The first of these cases established a distinction between tuition and a reasonable incidental fee,¹⁷ a distinction that was maintained in later decisions. The Alabama court differentiated between a charge for instruction and charges for non-instructional materials such as wood and water. Because the charge for wood and water was minimal, the court justified the fee and stated that such a minimal charge was not equivalent to a tuition charge, which was prohibited by state statute.¹⁸

¹⁴Irvin v. Gregory, 86 Ga. 605, 13 S. E. 120 (1891).

¹⁵Young v. Trustees of Fountain Inn Graded School, 64 S. C. 131, 41 S. E. 824 (1902).

¹⁶See Bryant v. Whisenant, 167 Ala. 325, 52 So. 525 (1910); Ryan v. Sawyer, 195 Ala. 69, 70 So. 652 (1916); Kennedy v. County Board of Education, 214 Ala. 347, 107 So. 907 (1926); Vincent v. County Board of Education, 222 Ala. 216, 131 So. 893 (1931); Shirey v. City Board of Fort Payne, 266 Ala. 185, 94 So. 2d 758 (1957).

¹⁷Bryant v. Whisenant, 167 Ala. 325, 52 So. 525 (1910).

¹⁸Ibid.

Although charges for wood or water have not been a concern of the courts in recent years, "reasonable fees"¹⁹ and "reasonable, incidental fees"²⁰ have been reviewed by the courts on four occasions since 1970. However, in each of these cases, the terms "reasonable fee" or "reasonable, incidental fee" referred to charges for instructional supplies and materials.

Fees for Textbooks, Instructional Materials, Supplies, and Activities

The most troublesome area facing courts which must determine the legality of a fee has been the area of fees for textbooks, instructional materials, supplies, and activities. Although the particular facts in each case have been similar, different legal principles have been established for different states. Tuition fees, matriculation fees and incidental fees have been considered valid or invalid based on a particular state's constitutional or statutory provisions for free public schools. In states which provided for free public schools, fees for tuition, matriculation, and incidentals have been declared unconstitutional. In Alabama, which does not

¹⁹See *Granger v. Cascade County School District No. 1*, 159 Mont. 516, 499 P. 2d 780 (1972); *Norton v. Board of Education of School District No. 16*, 89 N. M. 470, 553 P. 2d 1277 (1976).

²⁰See *Board of Education v. Sinclair*, 65 Wis. 2d 179, 222 N. W. 2d 143 (1974); *Sneed v. Board of Education*, 264 S. E. 2d 106 (N. C., 1980).

provide for free public education, tuition has been declared unconstitutional; but matriculation and incidental fees have been justified despite a statutory requirement for free public schools. However, courts have determined that a state's constitutional requirement for free public schools does not necessarily invalidate a school fee for textbooks, supplies or materials. Courts in various states have justified fees for textbooks, instructional materials, supplies and activities despite state constitutional provisions for free public schools.

Prior to 1970, there were two court cases concerning fees for textbooks, both of which were heard in states which maintain constitutional requirements for free public schools. In Georgia, the court determined that a school district could not refuse admission to students who had not paid textbook rental fees. However, the court did not address the constitutionality of textbook rental charges.²¹ In Illinois, the court did consider the constitutionality of textbook deposits in Segar v. Board of Education, and determined that such deposits did not violate the state's constitutional requirement for free schools.²² The court

²¹Mathis v. Gordy, 119 Ga. 817, 47 S. E. 171 (1904).

²²Segar v. Board of Education, 317 Ill. 418, 148 N. E. 289 (1925).

concluded that the school district's requirement that parents furnish textbooks and other items for their children's personal use did not violate provisions for free schools. The Segar case established the precedent that a state's constitutional provision for free public schools should be considered in its historical context. Therefore, provisions for free public schools would apply only to what was considered "free" at the time the constitution was drafted.²³

Since 1970, fees for textbooks and instructional materials have been considered by several state courts. Two distinct legal principles have been established in these cases. On one hand fees for textbooks and instructional materials have been invalidated on the basis of a state's constitutional requirement for "free school." On the other hand, courts in the states have justified fees for textbooks, instructional materials, supplies, and activities despite constitutional provisions for "free public schools."

In cases where fees have been invalidated, the courts established the legal precedent that because the items for which the schools charged fees were necessary for an education, and the states were required to maintain free schools,

²³Ibid.

then fees for these items could not be charged.²⁴ The courts did not delve into the history or construction of the word "free," but used its plain meaning.

Three tests established in three different cases were used to establish the principle that fees could not be charged for items considered necessary for education. The first was the test of "necessary elements."²⁵ In Paulson v. Minidoka, the Idaho court declared:

Textbooks are necessary elements of any school's activity. They represent a fixed expense peculiar to education, the benefits from which insure to every student in equal proportion (ignoring differences in ability and motivation) solely as a function of his being a student. Unlike pencils and paper, the student has no choice in the quality or quantity of textbooks he will use if he is to earn his education. He will use exactly the books, prescribed by the school authorities, that his classmates use; and no voluntary act of his can obviate the need for books nor lessen their expense. School books are, thus, indistinguishable from other fixed educational expense items such as school building maintenance and teachers' salaries. The applicants may not charge students for such items because the common schools are to be "free" as our constitution requires.²⁶

The court also applied the test of "necessity" to a school activity fee which was assessed against all students.

²⁴See Bond v. Public Schools of Ann Arbor School District, 383 Mich. 693, 178 N. W. 2d 484 (1970); Paulson v. Minidoka County School District No. 331, 93 Idaho 469, 463 P. 2d 935 (1970); Granger v. Cascade County School District No. 1, 159 Mont. 516, 499 P. 2d 780 (1972); Concerned Parents v. Caruthersville School District 18, 548 S. W. 2d 554 (1977); Union Free School District of Tarrytown v. Jackson, 403 N. Y. S. 2d 62 (1978).

²⁵Paulson v. Minidoka County School District No. 331, 93 Idaho 469, 463 P. 2d 935 (1970).

²⁶Ibid.

The court noted that social and extracurricular activities were not necessary elements of a high school program. Therefore, fees for extracurricular activities charged only to students who chose to participate could be justified despite constitutional provisions for free public schools.

The second test also concerned textbooks. In Bond v. Public Schools of Ann Arbor School District²⁷, textbook fees were declared unconstitutional on the basis that textbooks were an "integral fundamental part" of a free public elementary and secondary school system. The court also used the test of "integral fundamental" to invalidate all fees for materials needed to provide a fundamental educational program as required by the state. However, the court agreed with the Paulson decision that fees for voluntary, extracurricular activities could be justified despite state constitutional requirements for free public education.

The third test was stated by the Montana Supreme Court in Granger v. Cascade County School District No. 1:

Is a given course or activity reasonably related to a recognized academic and educational goal of the particular school system? If it is, it constitutes part of the free, public school system commanded by Art. XI, Sec. 1 of the Montana Constitution and additional fees or charges cannot be levied, directly or indirectly, against the student or his parent. If it is not, reasonable fees or charges may be imposed.²⁸

²⁷Bond v. Public Schools of Ann Arbor School District, 383 Mich. 693, 178 N. W. 2d 484 (1970).

²⁸Granger v. Cascade County School District No. 1, 159 Mont. 516, 499 P. 2d 780 (1972).

Courts in other states have justified fees for textbooks, instructional materials, supplies, and activities despite constitutional provisions for free public schools. The legal principles in these states have been based on different interpretations of the word "free" as used in each state's constitution: that items for which fees were charged were not considered free at the time the constitution was written²⁹; that state provisions for free schools only applied to needy students³⁰; that a constitutionally required system of free public schools did not require the state to furnish free textbooks to non-indigent students³¹; that a constitutionally required system of free public schools did not prohibit fees for elective courses³²; that the history of the development of public schools established by the state's provision for free schools had never been understood to require the absence of modest, supplementary fees³³; or that the word "free" at the time the state's constitution was written did not require

²⁹Board of Education v. Sinclair, 65 Wis. 2d 179, 222 N. W. 2d 143 (1974).

³⁰Vandevender v. Cassell, 208 S. E. 2d 436 (W. Va., 1974).

³¹Marshall v. School District No. 3 Morgan City, 553 P. 2d 784 (Colo., 1976).

³²Norton v. Hobbs Municipal School District No. 16, 89 N. M. 470, 553 P. 2d 1277 (1976).

³³Sneed v. Greensboro City Board of Education, 264 S. E. 2d 106 (N. C., 1980).

that textbooks,³⁴ workbooks, duplicating paper, and masters, magazines, dictionaries, paperback books, maps, and atlases³⁵ be furnished free to pupils. Courts which have analyzed the word "free" in its historical context and have determined that "free" did not apply to textbooks and other instructional materials have, therefore, justified fees for textbooks, instructional materials, supplies and activities despite constitutional provisions for free schools.

In states without constitutional requirements for free schools, the court in one state has stated that rental fees may be charged for textbooks.³⁶

The Fourteenth Amendment and School Fees

There have only been four attempts to invalidate fees for textbooks, instructional materials, supplies, and activities on the basis that such fees deny educational opportunity

³⁴Hamer v. Board of Education of School District No. 109, 47 Ill. 2d 480, 265 N. E. 2d 616 (1970).

³⁵Beck v. Board of Education, 63 Ill. 2d 10, 344 N. E. 2d 440 (1976).

³⁶The Indiana Constitution provides only that the legislature shall establish a uniform system of common schools wherein tuition would be without charge; Chandler v. South Bend Community School Corp., 160 Ind. App. 592, 312 N. E. 2d 915 (1974).

and create classifications of students which are discriminatory.³⁷ However, two of these cases have been unsuccessful in establishing clear legal principles with regard to school fees as being in violation of the constitutional protections of equal protection and due process found in the Fourteenth Amendment. One case was dismissed for lack of jurisdiction,³⁸ and another was vacated and remanded.³⁹

In one state the supreme court did contend that textbook fees may be charged to all students, including indigent students, without necessarily violating the constitutional provisions of the Fourteenth Amendment.⁴⁰ However, the school district must make textbooks available to indigent students on a check-out basis. Another state supreme court in the same year declared that refusal to provide textbooks without charge for students whose parents were unable to provide them would be denial of the equal protection clause of the Fourteenth Amendment.⁴¹ There have been no other

³⁷See *Baxley v. Rutland*, 409 F. Supp. 1249 (1976); *Johnson v. New York State Education Department*, 449 F. 2d 871 (2d Cir. 1971), vacated and remanded 409 U. S. 75 (1972) (for a determination of mootness); *Carpio v. Tucson High School District No. 1*, 111 Ariz. 127, 524 P. 2d 948 (1974); *Vandevendor v. Cassell*, 208 S. E. 2d 436 (1974).

³⁸*Baxley v. Rutland*, 409 F. Supp. 1249 (1976).

³⁹*Johnson v. New York State Education Department*, 449 F. 2d 871 (2d Cir. 1971), vacated and remanded, 409 U. S. 75 (1972) (for a determination of mootness).

⁴⁰*Carpio v. Tucson High School District No. 1*, 111 Ariz. 127, 524 P. 2d 948 (1974).

⁴¹*Vandevendor v. Cassell*, 208 S. E. 2d 436 (1974).

challenges to school fees based on the Fourteenth Amendment.

In summary, the legal principles governing certain school fees are well established. Fees for tuition, matriculation, and incidentals have been declared unconstitutional by state supreme courts in states which provide for free public education. Only in Alabama, which does not provide by constitution for free public education, have matriculation fees and incidental fees been permitted.

The courts have established two distinct legal principles with regard to fees for textbooks and instructional materials. On one hand fees for textbooks and instructional materials have been invalidated on the basis of a state's constitutional provision for "free schools." In these cases, the courts stated that because the items for which the schools charged fees were necessary for an education, and the states were required to maintain free schools, then fees for these items could not be charged. On the other hand, other state courts have justified such fees despite state constitutional provisions for "free schools." These courts analyzed the word "free" in its historical context, as used in their respective state constitutions. They sought to determine what was considered free, with respect to schools, at the time the constitution was written. The courts determined that "free" applied to tuition, building maintenance, and teacher salaries, but not textbooks and

supplies. Consequently, charges for such items did not violate their states' provisions for free schools.

Finally, only two state courts have considered school fees in light of the Fourteenth Amendment. One State Supreme Court held that the charging of textbook fees, even to indigent students, did not necessarily violate the Fourteenth Amendment's provision for equal protection. However, another State Supreme Court declared that charging textbook fees to indigent students would violate the Fourteenth Amendment.

CHAPTER V
REVIEW OF COURT DECISIONS

During the twentieth century, there have been several court cases where tuition fees, matriculation fees, fees for incidentals and fees for textbooks and/or other instructional materials have been the issue. The review of cases will indicate that fees may not be charged as a condition of attendance, but may be charged for a variety of other reasons as determined by the courts in different states.

Tuition Fees

During the first third of the twentieth century, courts in four states considered the legality of school fees for tuition. These courts established the legal principle that school districts cannot collect tuition fees from students who reside in their districts because such fees violate constitutional or statutory requirements for free schools.

This principle was established in Kansas in 1904 by the Kansas Supreme Court. In Board of Education v. Dick¹, the Kansas Supreme Court determined that a state statute

¹Board of Education v. Dick, 70 Kan. 434, 78 P. 812, (1904).

which authorized cities of a certain size to maintain high schools in whole or in part by collecting a tuition fee from each pupil violated the Kansas Constitution which stated that the legislature would establish a uniform system of common schools.

The Board of Education in Lawrence, Kansas adopted a resolution pursuant to the state statute authorizing the school superintendent to expel from the high school all resident pupils who refused to pay a tuition fee of \$2.50 per term.²

Affirming a judgment in favor of the plaintiff pupils, the court decided, first, that the high school was a department of the common school system of the city, in which the higher grades of the common school were taught. Next, the court pointed out that the phrase "common schools" was synonymous with "public schools," and that both terms had been defined by lexicographers and by judicial interpretation to mean "free schools."³

Reasoning that it had to be assumed that the framers of the state's constitution had used the term "common schools" in its technical sense of "free schools," the court concluded that the act of the legislature attempting to authorize city boards of education to collect tuition

²Ibid.

³Ibid.

fees for the admission of resident high school pupils violated the state constitution.⁴

In Roberson v. Oliver⁵, the Alabama Supreme Court established the principle that tuition fees violated statutory provisions that tuition should be absolutely free to all minors over the age of seven.

In the Coal City School District, the school board increased an incidental fee of 25 cents per month for all pupils to 50 cents per month for pupils in the first, second, and third grades; 75 cents per month for pupils in the fourth, fifth, and sixth grades; and one dollar per month for students in all grades higher than the sixth. The board charged these fees to provide coal, heat, water, and other necessary supplies for the school. After paying for these supplies, the board intended to use any balance to pay teachers in order to prolong the school term.⁶

The court recognized that by state statute a board could fix a reasonable incidental fee for heating and lighting classrooms. However, the statutes also stated that tuition would be free.⁷

⁴Ibid.

⁵Roberson v. Oliver, 189 Ala. 82, 66 So. 645, (1914).

⁶Ibid.

⁷Ibid.

The court concluded that the board's discretion to charge incidental fees must be reasonably exercised, and that a school board may not exact tuition from a student under the guise of a mere incidental fee. The fees were invalidated on the grounds that experience had shown that 25 cents per month was a sufficient incidental fee.⁸

In Arkansas, a legislative statute empowering a school board to charge tuition was held unconstitutional in Special School District v. Bangs.⁹ The court declared that the school board did not have the discretion to charge tuition for students in the high school. Such a charge was in violation of the state constitution which requires the state to maintain a system of free schools whereby all persons in the state between the ages of 6 and 21 years could receive gratuitous instruction.

The North Dakota Supreme Court also declared tuition charges illegal on the basis that such charges are contrary to constitutional and statutory provisions for free public schools.¹⁰

The Williston Board of Education charged tuition at the rate of \$7.50 for each half unit of credit after four

⁸Ibid.

⁹Special School District v. Bangs, 144 Ark. 34, 221 S. W. 1060 (1920).

¹⁰Batty v. Board of Education of Williston, 67 N. D. 6, 269 N. W. 49 (1936).

years of attendance at high school. The Board declared that this regulation was enacted to promote discipline in the high school.¹¹

The father of an eighteen-year-old who was entering his fifth year of high school brought an action challenging the district's policy. The court struck down the tuition charge in light of the North Dakota Constitution's provision for free public schools. The court declared that although local boards of education held wide discretion with regard to "the organization, reception, government, and instruction of pupils, their suspension, expulsion, or transfer," local boards had no authority to impose tuition charges.¹²

In one instance a state court has permitted tuition fees for instruction which exceeds the minimum school programs required by the state. The Montana Supreme Court determined that school districts in that state may charge tuition for summer school or similar activity if the instruction is supplemental to the regular academic program required by constitution or statute.¹³

¹¹Ibid.

¹²Ibid.

¹³Granger v. Cascade County School District, 159 Mont. 516, 499 P. 2d 780 (1972).

Matriculation Fees

Georgia and Arkansas require in their constitutions that the state will provide free public education. The courts in these states have declared matriculation fees invalid because such fees constitute a condition of admission, or tuition fee.

The principle was established in Georgia in the early twentieth century. In 1919, in Brewer v. Ray, the Georgia Supreme Court declared matriculation fees unconstitutional.¹⁴ The authorities in charge of a local public school had required a matriculation fee of one dollar from all children desiring to attend the city's public school. Rejecting the argument that the increased cost of operating the school had made it necessary to require the matriculation fee, the court reasoned that if an exception to the constitutional requirement for free public schools were recognized on the ground of necessity, the necessity would always be found to exist.¹⁵

A similar case in Georgia concerning matriculation fees occurred ten years later. In Brinson v. Jackson¹⁶, the court determined that a matriculation fee was invalid because the state constitution stipulated that the state's

¹⁴Brewer v. Ray, 149 Ga. 596, 101 S. E. 667 (1919).

¹⁵Ibid.

¹⁶Brinson v. Jackson, 168 Ga. 353, 148 S. E. 96 (1929).

common schools, whether founded wholly or in part by taxation, should be free to all the children of the state.

The trustees of the high school received only enough tax dollars to operate the school for six months per year. The trustees decided that the school should be operated for nine months per year and that the expenses of operation for the extra three months would be met by funds derived from matriculation fees. The trustees required a matriculation fee of six dollars.¹⁷

The court reasoned that since the state system of education provided for in the constitution embraced all high schools, admission to such a school should be free for all residents who live in that district.¹⁸

Matriculation fees have also been declared unconstitutional in Arkansas. Under a state constitutional provision which required the state to maintain a general, suitable, and efficient system of free schools whereby all persons in the state between the ages of six and twenty-one years could receive gratuitous instruction, it was held in Dowell v. School District No. 1¹⁹ that no registration fee could be required in the state's public schools. The court reasoned

¹⁷Ibid.

¹⁸Ibid.

¹⁹Dowell v. School District No. 1, 220 Ark. 828, 250 S. W. 2d 127 (1952).

that there must be "gratuitous instruction," as stated in the constitution, and a school district cannot by indirection, such as a registration fee, violate the clear spirit and plain wording of the constitution.²⁰

Alabama, which does not provide for free public education, maintains a state statute which authorizes the collection of a matriculation fee for each semester for all students in accredited high schools, the amount and expenditure of such fee to be determined by the county or city board of education.²¹

In Vincent v. County Board of Education²², plaintiffs charged that a matriculation fee was in violation of a state constitutional provision that the Alabama legislature should establish, organize, and maintain a liberal system of public schools. The plaintiffs reasoned that a liberal system of education should mean free public education for Alabama children.

The court pointed out that the words "free" and "liberal" are not synonymous and that if the framers of the Alabama constitution had intended to establish a system of free public education, they would have written

²⁰Ibid.

²¹Alabama, Code (1975), Title 16, Section 16-26-4.

²²Vincent v. County Board of Education, 222 Ala. 216, 131 So. 893 (1931).

the constitution in just those terms. The court went on to state that the word "liberal" meant a system as generous and bountiful as the power of taxation and the varied needs of the state would justify.²³ The Alabama court reaffirmed this position in Shirey v. City Board of Education of Fort Payne.²⁴

Incidental Fees

Incidental fees constitute a specific category of fees which has been the subject of court decisions in the late nineteenth and early twentieth centuries.

In Georgia and South Carolina, incidental fees have been declared invalid. In 1891, in Irvin v. Gregory, the Georgia Supreme Court declared unconstitutional a local law which allowed the city board of education to require each student to pay before entering school an incidental fee of no less than five dollars nor more than ten dollars per scholastic year.²⁵ The court stated that such a requirement clearly conflicted with the state's constitutional requirement that the schools shall be free to children of the state.²⁶

²³Ibid.

²⁴Shirey v. City Board of Education of Fort Payne, 266 Ala. 185, 94 So. 2d 758 (1957).

²⁵Irvin v. Gregory, 86 Ga. 605, 13 S. E. 120 (1891).

²⁶Ibid.

The South Carolina Supreme Court also declared incidental fees invalid, but not on constitutional grounds. In Young v. Trustees of Fountain Inn Graded School, the court pointed out that the local board of education had no statutory authority to handle money.²⁷

The school board had resolved to impose an incidental fee of two dollars per year on each pupil whose parents were able to pay it, and such payment would be a condition of attendance for pupils whose parents could pay. The board claimed that it had the authority to charge the fee because the board had the statutory power to control the school property in such manner as to serve best the interests of free public schools and the cause of education.²⁸

The court determined that the word control had not been intended to authorize the imposition of an incidental fee. The court also noted two other points. First, the board had contended that unless the fee were charged, the school could not operate for nine months per year. However, the court replied that the schools were not required to operate for nine months. Second, the court added that if the board had the right to charge a two-dollar fee, it would

²⁷Young v. Trustees of Fountain Inn Graded School, 64 S. C. 131, 41 S. E. 824 (1902).

²⁸Ibid.

have the right to increase it to ten dollars, and there would be no limit on the board's power in that regard.²⁹

In Alabama, which does not provide for free public schools, the courts have consistently upheld incidental fees for items which contribute to maintenance of the school facility. In three cases between 1910 and 1926, the Alabama Supreme Court upheld incidental fees for heating and maintaining the school building.

In Bryant v. Whisenant³⁰, the court found that an incidental fee of thirty-five cents per student for the purpose of providing fuel and water for the school was not in violation of a state statute requiring that tuition would be free to all minors over the age of seven. Additionally, the court stated that the fee was valid as a condition precedent to attendance.³¹ The authority of local school district trustees to require payment of an incidental fee as a condition precedent to their receiving instruction, was again upheld in Ryan v. Sawyer.³² In 1926, the court again upheld incidental fees of twenty-five cents per month per child for fuel, brooms, and water buckets.³³

²⁹Ibid.

³⁰Bryant v. Whisenant, 167 Ala. 325, 52 So. 525 (1910).

³¹Ibid.

³²Ryan v. Sawyer, 195 Ala. 69, 70 So. 652 (1916).

³³Kennedy v. County Board of Education, 214 Ala. 349, 107 So. 907 (1926).

The purposes for which incidental fees could be collected broadened in Vincent v. County Board of Education.³⁴ In this instance the court permitted incidental fees of four dollars per student to use for repairs, improvement of grounds, insurance, and other incidental expenses.³⁵ Such fees were again upheld in Shirey v. City Board of Education of Fort Payne.³⁶ The fee was again four dollars per year for junior high students and six dollars per year for senior high students. The court stated that the legislature, in adopting the state statutory requirement authorizing matriculation and incidental fees, did not intend to permit local boards of education to remove their schools from the standard of free public schools by charging a small matriculation or incidental fee.³⁷

Fees for Textbooks, Instructional Materials,
Supplies, and Activities

In cases where the issue has been fees for tuition, matriculation, or incidentals, state courts have declared these fees unconstitutional in states which provide for free public schools. However, a review of cases where

³⁴Vincent v. County Board of Education, 222 Ala. 216, 131 So. 893 (1931).

³⁵Ibid.

³⁶Shirey v. City Board of Education of Fort Payne, 266 Ala. 185, 94 So. 2d 758 (1957).

³⁷Ibid.

fees for textbooks, instructional materials, supplies, and activities have been the issue shows that a state's constitutional provision for free public schools does not necessarily invalidate these fees.

Early Cases

Prior to 1970, there were only two cases concerning fees for textbooks and instructional supplies, both of which concerned textbook rental. In the first, Mathis v. Gordy, the Georgia Supreme Court affirmed a writ of mandamus against public school authorities who had refused admission to children who had not paid textbook rental fees.³⁸ The court held that although a state statute conferred upon school authorities the power to rent textbooks, it did not require textbooks to be rented.

In the second case, Segar v. Board of Education³⁹, the Illinois Supreme Court denied a writ of mandamus which directed a school board to issue textbooks without a deposit.

The court rejected the plaintiff's contention that the deposit violated the state's constitutional provision for free schools. The court noted that no authority could be cited in support of such a contention, and a board of education had no power to furnish textbooks to pupils at public expense without specific authority to do so. The court

³⁸Mathis v. Gordy, 119 Ga. 817, 47 S. E. 171 (1904).

³⁹Segar v. Board of Education, 317 Ill. 418, 148 N. E. 289 (1925).

concluded that a system of public schools which permits all persons of school age residing in the district to attend classes and receive instruction in the subjects taught, without a tuition charge, provides free schools. The fact that the parents of pupils financially able to do so were required to provide their children with textbooks, writing materials, and other supplies required for the personal use of their children did not change the free school character of the school.⁴⁰

The reasoning of the court in Segar is significant in that its reliance on historical authority to determine the meaning of "free" as applied to free schools formed the basis of several decisions by courts which upheld the charging of textbook fees in the 1970's.

Textbook and Instructional Materials Fees as Unconstitutional

In the early 1970's, three cases focused attention on fees for instructional items such as textbooks and instructional supplies. The supreme courts in each of these states struck down fees for books and supplies on the grounds that they violated the free-school provisions of their respective state constitutions.

The first of these cases concerning fees for textbooks and instructional supplies was Paulson v. Minidoka

⁴⁰Ibid.

County School District⁴¹ in 1970. In this case, the school system would not provide transcripts to two students who had graduated, but who had refused to pay fees charged by the school.

The school had adopted in July, 1968 a fee schedule which required each student to pay \$25.00. The fees were itemized only as "Text Book Fees: \$12.50" and "School Activity Fees: \$12.50" -- totalling \$25.00. The school would not accept partial payment allocated to any one item, but insisted that the fees be paid in their entirety.⁴²

The Idaho Supreme Court declared that the \$25.00 fee violated the state's constitutional provision for free common schools. The court rejected the school district's argument that the high school was free despite the \$25.00 fee. With regard to the school activity portion of the fee, the court stated that a levy for extracurricular purposes, imposed generally on all students whether they participate in extracurricular activities or not, becomes a charge on attendance at the school. Such a charge contravenes the constitutional mandate for free schools. The court added that the constitution does not prohibit

⁴¹Paulson v. Minidoka County School District No. 331, 93 Idaho 469, 463 P. 2d 935 (1970).

⁴²Ibid.

fees to cover costs for extracurricular activities if such fees are charged only to students who wish to participate.⁴³ Charges for damages to school property or for items which become the property of the student were permitted.

With regard to the textbook portion of the fee, the court stated that:

Textbooks are necessary elements of any school's activity. They represent a fixed expense peculiar to education, the benefits from which insure to every student in equal proportion (ignoring differences in ability and motivation) solely as a function of his being a student. Unlike pencils and paper, the student has no choice in the quality or quantity of textbooks he will use if he is to earn his education. He will use exactly the books, prescribed by the school authorities, that his classmates use; and no voluntary act of his can obviate the need for books nor lessen their expense. School books are, thus, indistinguishable from other fixed educational expense items such as school building maintenance or teachers' salaries. The appellants may not charge students for such items because the common schools are to be "free" as our constitution requires.⁴⁴

The decisions of one state supreme court are not binding on courts in other states. However, the principles set out in the Paulson case have become the standard for later state court decisions regarding fees for textbooks and instructional materials. The test of "necessary elements" as defined in Paulson has affected nearly every instructional fee case since 1970.

⁴³Ibid.

⁴⁴Ibid.

The test of "necessary elements" was used later in the same year by the Michigan Supreme Court in Bond v. Ann Arbor School District.⁴⁵ In this case, the court declared invalid a school district requirement that pupils purchase textbooks and school supplies.

Since at least 1965, the Michigan State Board of Education had favored the provision of free textbooks and other consumable materials to the children attending public schools. However, because state funds were not sufficient for this purpose, local school districts historically required students to provide at their own expense such materials as books, writing materials, athletic equipment of certain types, and a host of other items used in the educational process.⁴⁶

The court stated that this practice violated the state's constitutional provision that the legislature should maintain and support a system of free public elementary and secondary schools.

Plaintiffs filed a class action suit and sought a judgment requiring the school district to permit all qualified children to enroll and attend school without payment of any

⁴⁵Bond v. Public Schools of Ann Arbor School District, 383 Mich. 693, 178 N. W. 2d 484 (1970).

⁴⁶Michigan, State Board of Education, "Free Textbooks, Materials, and the Charging of Fees," March 1972.

fees or the purchase of any books, supplies, or equipment incident to any portion of the curriculum or any other recognized school activity.⁴⁷

The school district argued that since there had been no specific discussion at the 1961 constitutional convention of the reasons for the use of the word "free" in Article 8, Section 2, Michigan Constitution of 1963, the word did not include textbooks and supplies. The district stated that the adoption of the concept of complete and total subsidizing of pupils would have required persuasion and extended discussion at the convention. Since there was almost no discussion of the provision, the district contended that the word "free" did not include textbooks and school supplies.⁴⁸

However, the court reasoned that since the word "free", as used in the constitution, clearly meant "without cost or charge" and must have been so commonly understood by the people, it was not necessary to resort to extrinsic evidence to determine the meaning of the word. The court resolved the questions of fees for books and supplies by applying the test of "necessary elements" as defined in Paulson. The court also relied on trial testimony that

⁴⁷Bond v. Public Schools of Ann Arbor School District, 383 Mich. 693, 178 N. W. 2d 484 (1970).

⁴⁸Ibid.

textbooks were an integral fundamental part of elementary and secondary education. The court concluded that, in applying either the "necessary elements" or "integral fundamental" test, it was clear that books and supplies are an essential part of a system of free public elementary and secondary schools.⁴⁹ However, the tests of "necessary elements" or "integral fundamental" did not apply to extra-curricular activities or materials such as optional field trips, dances, or yearbooks. Fees for these items were not prohibited by the Michigan court.

The court's decision dramatically affected the financing of public schools in Michigan. A 1970 State Department of Education survey designed to determine the impact of the Bond decision concluded that the state would need to appropriate nearly \$36 million in additional funds over the next five years to replace the funds that would have been supplied by school fees.⁵⁰

The test of "necessary elements" was used again by the Montana Supreme Court in Granger v. Cascade County School District 1.⁵¹ This case represents a class action in which

⁴⁹Ibid.

⁵⁰Michigan, State Board of Education, "Free Textbooks, Materials, and the Charging of Fees," March 1972.

⁵¹Granger v. Cascade County School District No. 1, 159 Mont. 516, 499 P. 2d 780 (1972).

an injunction was sought against fees and charges for a variety of items and against the requirement that students furnish certain supplies and equipment of their own. The court expanded the test of "necessary elements" and determined that fees could not be levied against students or their parents for courses or activities reasonably related to a recognized academic or educational goal of a particular school system.⁵²

The various fees and charges involved in the case were divided into the following categories by the court: 1) personal school supplies such as pencils, pens, erasers, crayons, glue, and similar supplies required to be furnished by the student and his parents; 2) charges for workbooks and materials used in specific courses; 3) charges for athletic equipment and towel usage in mandatory physical education courses; 4) athletic equipment, towel usage, and insurance charges for interscholastic athletes; 5) musical instrument rental fees for band and orchestra classes; 6) tuition fees for summer school and summer music; 7) driver's education charges; and 8) miscellaneous charges for extracurricular activities such as yearbooks and pictures. Included in these categories were over fifty different fees in grades K-12 which ranged from twenty-five cents per pupil to ten dollars per pupil.⁵³

⁵²Ibid.

⁵³Ibid.

Plaintiffs charged that the legislature had not granted school boards the power to impose such fees and charges, and such fees and charges violated the state's constitutional provision requiring the legislature to establish and maintain a general, uniform, and thorough system of public, free, common schools.⁵⁴

The defendant school district's contention, on the other hand, was that school boards are granted broad statutory authority which includes the power to impose fees. The constitutional provision for free schools means tuition-free as far as required courses are concerned, and does not prohibit fees for optional, extracurricular, or elective courses or activities. The district also stated that no pupil was denied attendance or participation by reason of not paying the fees, and that waivers of payment were granted for economic hardship. Finally, the system contended that the fees charged enabled the system to provide a higher quality of education than would otherwise be possible.⁵⁵

The state supreme court agreed in general with a lower-court determination that mandatory school courses and activities must be furnished free of charge, while fees may be charged for courses or activities which are optional or extracurricular. However, the supreme court reasoned that

⁵⁴Ibid.

⁵⁵Ibid.

it is not a simple task to distinguish a required course or activity from one which is optional or extracurricular.⁵⁶

For example, at the high school level, certain specific courses are required for graduation and there is no difficulty in identifying these as required. But there are a large number of courses, no one of which is specifically required for graduation, but from which the student must accumulate a certain number of credits in order to satisfy the total educational requirement for graduation. Courses falling into this category are required in the sense that a given number must be taken in order to satisfy the total educational requirements for graduation, but they are optional in the sense that the student may elect which specific courses to take in order to satisfy graduation requirements.⁵⁷

In order to resolve this difficulty, the court adopted the following test:

Is a course reasonably related to a recognized academic and educational goal of the particular school system? If it is, it constitutes part of the free, public school system commanded by Art. XI, Sec. 1 of the Montana Constitution and additional fees or charges cannot be levied, directly or indirectly, against the student or his parents. If it is not, reasonable fees or charges may be imposed.⁵⁸

⁵⁶Ibid.

⁵⁷Ibid.

⁵⁸Ibid.

Consequently, the court allowed the school district to define its own academic and educational goals and the courses and activities that will carry credit toward graduation within the limits provided by law. Thus, the court did not rule specifically on the categories of fees cited in the case, with the exception that the court did state that summer school was historically and logically not included in the free public school system, and that reasonable fees may be charged for such instruction.⁵⁹

These three cases are the major cases regarding the prohibition of fees for textbooks and instructional supplies and materials. Their invalidation of fees is strongly premised upon the constitutional wording "free schools," and the necessity of the charge for items. Each court declined to delve into the history or construction of the word "free," but used its plain meaning. Instead, each court provided a test for instructional fees which could be applied by other courts. The Idaho court provided the test of "necessary elements;" the Michigan court added the use of "integral fundamental;" and the Montana court developed the concept of "reasonably related to academic and educational goals" as defined by the school system. None of the courts declared that schools were required to be absolutely free. Each

⁵⁹Ibid.

court recognized that charges for items such as yearbooks, extracurricular activities, or materials which became the student's property were appropriate, and that consequently there would be costs associated with schooling. However, these courts struck down those charges required for books, materials, and activities which are necessary for the free instructional program required by the state. After these three cases, the instructional fee issue was raised in varying contexts in a number of other states, some of which invalidated fees on the basis of one or more of the above tests, and most of which did not.

In only four out of twelve school fee cases during the remainder of the 1970's and early 1980's did courts agree, at least in part, with the tests established by Paulson, Bond, and Cascade. In 1976, in Norton v. Board of Education of School District No. 16⁶⁰, the New Mexico Supreme Court determined that the New Mexico constitutional requirement of a uniform system of free public schools sufficient for education of and open to all children of age does not mean that all courses should be free, but only those courses "sufficient for the education" should be free.

Plaintiffs argued that the state's constitutional provision for free schools should prohibit the defendant school district from collecting any fees from the plaintiffs for

⁶⁰Norton v. Board of Education of School District No. 16, 89 N. M. 470, 553 P. 2d (1976).

courses or activities reasonably related to the educational goals of the school district. The New Mexico court agreed in part. The court held that courses required of every student shall be without charge to the student, but reasonable fees may be charged for elective courses. Just as the Montana court in Cascade challenged the school district to define its own academic and educational goals in order to determine areas for which fees were valid or invalid, the New Mexico court assigned the New Mexico Board of Education the task of determining which courses are required and which are elective in the state's educational system. Thus, the court did not decide whether a fee for driver education was valid or invalid, but instead said that the Board of Education would decide whether or not driver education would be a required course.⁶¹

One year later, in Concerned Parents v. Caruthersville School District 18⁶², the Missouri Supreme Court determined that the state constitutional provision requiring the General Assembly to establish and maintain free public schools for gratuitous instruction prohibited public school districts from charging registration fees or course fees in connection with courses for which academic credit is given.

⁶¹Ibid.

⁶²Concerned Parents v. Caruthersville School District 18, 548 S. W. 2d 554 (Mo., 1977).

An unincorporated association of parents and children brought action against the school district alleging that the system's policy of charging registration and course fees violated the state constitutional provision for free schools. The school system claimed that the fees collected were minimal.⁶³

The court declared that the fees were unconstitutional for courses for which academic credit was given, and that the fees were not de minimus. The court noted that the district had collected over \$35,000 in fees over a three-year period.⁶⁴

Instructional fees were again prohibited in two New York State cases decided in 1978. In the first, Sodus Central School v. Rhine⁶⁵, the school district instituted collection proceedings against parents who failed to pay student supply fees for which they had been assessed.

Twice in 1974-75 the voters defeated the budget proposed by the Board of Education for the 1974-75 school year. The voters also defeated on two occasions separate propositions for the appropriation of funds for students' supplies. In August of 1974 the Board of Education adopted a state provision for contingency budget, a fee schedule

⁶³Ibid.

⁶⁴Ibid.

⁶⁵Sodus, Central School v. Rhine, 406 N. Y. S. 2d 1975, (1978).

which charged twenty dollars for each primary student, fifteen dollars for each intermediate school student, and ten dollars for each senior high student. Extra fees were charged for specific courses such as art, home economics, music, science, and industrial arts. On October 13, 1974, approximately 1,200 invoices were sent to students' parents; and in May, 1975, the school system began collection proceedings against approximately 500 families which had failed to pay the fees for which they had been billed.⁶⁶

The court determined that the fee schedule was contrary to the state's prohibition, as stated in education law, against charging a parent who is unwilling to purchase school supplies through the school district. The Supreme Court noted that the fee schedule was based neither upon quantities of school supplies actually used nor upon voluntary purchase by the parent, but upon what grade children happened to attend, and regardless of the fact that parents had never indicated their willingness to purchase supplies from the district.⁶⁷

In the second, Union Free School District of Tarrytowne v. Jackson⁶⁸, the school district sued parents of its students to recover costs of instructional supplies.

⁶⁶Ibid.

⁶⁷Ibid.

⁶⁸Union Free School District of Tarrytowne v. Jackson, 403 N. Y. S. 2d 621, (1978).

Residents of the plaintiff school district twice voted down in 1976 the district's school budget which included \$86,419 for student instructional supplies. A subsequent proposition authorizing a tax levy to fund the purchase of these supplies was also rejected. The district then adopted a contingency budget, and thereafter purchased the supplies and billed the parents of each student for a pro-rated share of the cost, which amounted to nineteen dollars per pupil.⁶⁹

The court, after reviewing the state's statutory requirements concerning contingency budgets, determined as it had in Sodus that such fees could not be forcibly levied on parents for instructional supplies essential to the maintenance of a basic educational curriculum.⁷⁰

Textbook and Instructional Materials Fees as Constitutional

Following the Paulson and Bond cases, courts in other states reviewed similar instructional fee cases and rejected the findings of the Paulson and Bond cases that instructional fees violated state constitutional provisions for free public schools.

⁶⁹Ibid.

⁷⁰Ibid.

In Hamer v. Board of Education in 1970, the plaintiff charged that several sections of the Illinois School Code were unconstitutional.⁷¹ The court stated that the constitutional attacks on these statutes were numerous and complicated. However, the real question, noted the court, was whether charging pupils for the use of textbooks violates section 1 of article VIII of the Illinois constitution which provides that the general assembly shall provide a thorough and efficient system of free school, whereby all children of the state receive a good, common school education.⁷²

The court examined records from the constitutional convention of 1818, 1848, and 1870, along with other writings, and concluded that the term "free schools" at the time the constitution was adopted by the constitutional convention and ratified by the voters did not include furnishing textbooks to students at public expense. The court added that the purpose of section 1 of article VIII was to compel the General Assembly to retain and perpetuate, as a minimum, the system of free schools that had already been developed. The court affirmed its position as stated in Segar v. Board of Education of School District of City of Rockford⁷³ that a board of education has no power to

⁷¹Hamer v. Board of Education of School District No. 109, 47 Ill. 2d 480, 265 N. E. 2d 616 (1970).

⁷²Ibid.

⁷³Segar v. Board of Education, 317 Ill. 418, 148 N. E. 289 (1925).

furnish textbooks to pupils at public expense without specific authority to do so. A system of schools which permits all persons of school age residing in the district to attend classes and receive instruction in the subjects taught, without a tuition charge, provides free schools. The fact that the parents of pupils financially able to do so are required to provide their children with textbooks, writing materials, and other supplies required for the personal use of such pupils does not change the character of the school.⁷⁴ The Illinois court rejected the Paulson decision because it lacked citation of authority, and rejected the Bond decision because it cited only Paulson as authority.⁷⁵

Five years later the Illinois court considered a similar textbook case in Beck v. Board of Education of Harlem Consolidated School District No. 122.⁷⁶ In Hamer, the question was whether free textbooks should be provided. In Beck, the defendant school district had supplied free textbooks since 1938 pursuant to a referendum in accordance with Illinois statutes which provided that voters of a district could elect to provide free textbooks.

⁷⁴Ibid.

⁷⁵Hamer v. Board of Education of School District No. 109, 47 Ill. 2d 480, 265 N. E. 2d 616 (1970).

⁷⁶Beck v. Board of Education, 63 Ill. 2d 10, 344, N. E. 2d 440 (1976).

The plaintiff in Beck charged that the free textbook provision as adopted by the defendant district prohibited fees for school supplies and materials such as workbooks, duplicating paper and masters, magazines, dictionaries, paperback books, maps, and atlases.⁷⁷

The court concluded that the state statute spoke specifically to books, and the materials in question could not be considered books:

A map, we believe is not ordinarily considered to be a textbook, nor is a collection of maps in an atlas, nor is a dictionary, nor is a "Weekly Reader" magazine, nor is a sheet of paper or a collection of loose sheets of paper. The workbooks containing problems and exercises and the pamphlet on selected subjects are also ordinarily considered, we believe, to be not textbooks but just supplementary materials, or teaching aids; it was stipulated that they were used to supplement books which were the standard work or basis for instruction in the particular area. We cannot find that any of the disputed items are "textbooks," the cost of which could not be included in the fee charged to the plaintiff's children.⁷⁸

The court reaffirmed the position it has taken in Hamer and reasoned that the school district was authorized by statute to require parents financially able to do so to provide their children with educational supplies and materials; or the district could purchase the necessary supplies and

⁷⁷Ibid.

⁷⁸Ibid.

materials; or it could purchase the necessary supplies and materials, apportion the cost among the pupils, and charge the parents who were financially able to pay.⁷⁹

In West Virginia, in 1974, the state supreme court considered fees for textbooks and instructional materials in Vandevender v. Cassell.⁸⁰ The case was an original proceeding in mandamus instituted by residents of the Pendleton County School District to compel the respondents, the county superintendent, the board of education, and the state superintendent to allow all qualified children to attend school without payment of any fees for books, supplies, or equipment, and to provide all public school students with such educational materials free of charge. The petitioners argued that failure to provide free textbooks, workbooks, and other instructional supplies constituted a violation of the state's constitutional provision for free schools.⁸¹

The court noted that the state's governing statutes provided that the board of education of every county may purchase the necessary textbooks to be used in the free schools, but must provide textbooks to be used in the free

⁷⁹Ibid.

⁸⁰Vandevender v. Cassell, 208 S. E. 2d 436 (1974).

⁸¹Ibid.

schools for the pupils whose parents, in the judgment of the board, are unable to provide such books.⁸²

Consequently, the court determined that the respondents had complied with the requirements of the law because textbooks, workbooks, and materials necessary for use in the required curriculum were provided for needy students. The court declared, as in Paulson, that under a "free" school system, fees cannot be charged as a requirement for students to be admitted to school nor can fees be charged for any required course under the curriculum set up by the state board of education. However, free textbooks, workbooks, and other instructional materials need only be supplied for indigent students.⁸³

A concurring opinion filed by Justices Sprouse and Haden noted that although they concurred with the majority decision, they differed with the part of the decision which limited the distribution of free textbooks, workbooks, and other necessary materials to needy students. They interpreted "free" in terms of its plain meaning, and thus wrote that the state's constitutional provision for free schools means free schools for students of all economic classes. However, this was not the opinion of the majority.⁸⁴

⁸²Ibid.

⁸³Ibid.

⁸⁴Ibid.

The question of free textbooks was raised in Indiana in the same year in Chandler v. South Bend Community School Corporation.⁸⁵ Plaintiffs brought a class action attacking the constitutionality of textbook rental fees levied under statutory authority. Indiana, unlike other states where instructional fee cases have been considered, does not provide by constitutional authority for free schools. Instead, the Indiana Constitution provides for a "system of common schools, wherein tuition shall be without charge and equally open to all."⁸⁶ The Indiana Court of Appeals did not interpret the term "common schools" to mean "free" schools, as had the Kansas Supreme Court in Lawrence v. Dick. The court also rejected Paulson, Bond, and Granger as inapplicable to the question at hand because the constitutions of Idaho, Michigan, and Montana contain the word "free." Failing to find any evidence that "tuition without charge" included free textbooks, the court upheld the constitutionality of the state's textbook statutes and the required fees.⁸⁷

⁸⁵Chandler v. South Bend Community School Corp., 160 Ind. App. 592, 312 N. E. 2d 915 (1974).

⁸⁶Indiana, Constitution, art. 8, sec. 1.

⁸⁷Chandler v. South Bend Community School Corp., 160 Ind. App. 592, 312 N. E. 2d 915 (1974).

In Board of Education v. Sinclair⁸⁸, the Wisconsin Supreme Court analyzed the history of the state's constitution to determine the validity of fees charged for textbooks and "incidental educational supplies."

The defendant had refused to pay fees, which amounted to over forty dollars, for his six children. The defendant argued that such fees violated the state constitution which required the legislature to provide district schools which are free and without tuition.⁸⁹

The court determined that the framers of the state constitution used the phrase "free" to mean without cost for physical facilities and equipment, and "without charge for tuition" to mean there should be no fee charged for instruction. The court found that textbooks were not provided at the time of the 1848 Constitution. The court agreed with the Illinois court's reasoning in Hamer and concluded that statutory provisions for textbook rental are not unconstitutional. The court added that items similar to textbooks, such as workbooks, may be sold or rented by schools, or pupils may be required to provide them. Finally, the court determined that fees could be charged for other items which were not considered free in 1848: pens, paper,

⁸⁸Board of Education v. Sinclair, 65 Wis. 2d 179, 222 N. W. 2d 143 (1974).

⁸⁹Ibid.

notebooks, gym suits, towels, and band instruments. However, the court did agree that charges, other than for books or similar items, could not be made for courses, including optional ones, which were credited toward graduation.⁹⁰

In reaching the decision, the Wisconsin court rejected the precedential value of Paulson, Bond, and Granger because those courts failed to determine what "free" meant at the time of their states' respective constitutions. The Wisconsin court did agree with Paulson that fees paid to cover the costs of social and extracurricular activities by students who wish to participate are valid.⁹¹

In 1976, the Colorado Supreme Court considered the question of textbook rental fees in the case of Marshall v. School District No. 3 Morgan County.⁹² The petitioners charged that textbook fees were prohibited by the Colorado constitution which required the "general assembly to provide for the establishment and maintenance of a thorough and uniform system of free public schools throughout the state, wherein all residents of the state, between the ages of six and twenty-one years, may be educated gratuitously."⁹³

⁹⁰Ibid.

⁹¹Ibid.

⁹²Marshall v. School District No. 3 Morgan City, 553 P. 2d 784 (Colo., 1976).

⁹³Colorado, Constitution, art. IX, sec. 2.

The court noted that both parties cited opinions from the highest appellate courts of several jurisdictions. Of these, Idaho, Michigan, and Montana supported the proposition that such a constitutional provision mandates free use of books used in public schools.⁹⁴

However, the court adopted the reasoning of the Illinois and Wisconsin courts which stated that free public schooling as contemplated by the framers of their constitutions envisioned free facilities, faculty, and other personnel, but not free textbooks. The court concluded free textbooks were not the intent of the framers of the constitution; and there had not been any social changes which had occurred since the adoption of the constitution which would cause the court to interpret the constitution differently.⁹⁵

In 1980, the North Carolina Supreme Court considered the validity of instructional fees in Sneed v. Greensboro City Board of Education.⁹⁶ Although fees for textbooks were not the issue, the case follows the Hamer line in that the court rejected the plain meaning of "free" and instead interpreted the word as it had been understood by

⁹⁴Marshall v. School District No. 3 Morgan City, 553 P. 2d 784 (Colo., 1976).

⁹⁵Ibid.

⁹⁶Sneed v. Greensboro City Board of Education, 264 S. E. 2d 106 (N. C., 1980).

the framers of the state's constitution.

Plaintiffs instituted a class action charging that the North Carolina state constitutional guarantee of a "general and uniform system of free public schools" precludes the charging of public school students with incidental course and instructional fees.⁹⁷

In discussing the fees in question, the court noted that the student fee schedule established by the defendant district was not substantially different from similar schedules established by many other boards of education throughout the state. In 1977-78, nearly eighty percent of the state's 145 school units required fees of one sort or another. Eighty-nine of the units imposed flat "instructional fees" upon every student within a given grade level.⁹⁸

The court divided the fees in question into three groups. Instructional fees were charges imposed school-wide on each pupil at the beginning of each school semester. These charges varied from \$2.50 per semester for elementary students to \$7.00 per semester for junior high students. The fee proceeds were placed in an instructional-materials fund in each school and used to purchase supplementary educational materials and supplies. Course fees were special fees imposed to defray the cost of supplies and

⁹⁷Ibid.

⁹⁸Ibid.

materials consumed in certain individual courses such as art, typing, vocational education, and laboratory science courses. All of these courses were offered for academic credit. Some were required for graduation, while others were elective but could be credited toward the minimum hours of instruction required for promotion or graduation. Rental and use fees were fees demanded for locker rentals, musical instrument rentals, and the rental or required purchase of gym uniforms.⁹⁹

In order to determine the validity of these fees, the court explored the history of the state's free school provision. The court determined that a 1970 constitutional amendment to Article IX, Section 2 (1) which deleted the phrase "wherein tuition shall be free of charge" and substituted the words "free public schools" did not substantially change the intent of the constitutional provision.¹⁰⁰

Second, the court observed that a review of the general history of the development of North Carolina public schools demonstrated that the state's provision of "free" schools had never required the absence of modest, supplementary support given by parents who were able to pay.¹⁰¹

⁹⁹Ibid.

¹⁰⁰Ibid.

¹⁰¹Ibid.

The court concluded that the 1970 reference to free public schools required no change in the state's long-standing policy of providing its citizens with a basic tuition-free education. The court stated that if public funds are used to provide the physical plant and personnel salaries necessary for the maintenance of a "general and uniform" system of basic public education, the North Carolina public school system is "free," without tuition, within the meaning of the state constitution. The court saw no constitutional impediment to the charging of modest, reasonable fees by individual school boards to support the purchase of supplementary supplies and materials. The court did open the possibility of further judicial review of instructional fees when it noted that what is a "modest, reasonable" fee depends upon the facts and circumstances of the individual case.¹⁰²

The court also noted its decision applied only to the constitutionality of school fees:

Our opinion today expresses no judgment upon the social merits of the fee policies of our public schools. We hold only that Article IX of the North Carolina Constitution does not preclude the imposition of supplementary school fees such as are involved in the instant case. Whether the levy of such fees is entirely consistent with certain ideals of universal education is a question of legislative policy, not constitutional prohibition.¹⁰³

¹⁰²Ibid.

¹⁰³Ibid.

In the years since the Sneed decision, the North Carolina General Assembly has not considered the subject of supplementary school fees.

Fourteenth Amendment Challenges
to Instructional Fees

With the exception of the Chandler case¹⁰⁴, courts which considered instructional fee cases in the 1970's analyzed the meaning of the word "free" as used in their respective state constitutions. In Idaho, Michigan, and Montana, courts accepted the plain meaning of "free" and consequently struck down textbook and instructional fees. In Illinois, Wisconsin, West Virginia, and North Carolina, courts defined "free" after examining the intent of those who framed their respective state constitutions. Because they determined that the framers used free to mean tuition-free, they concluded that fees for textbooks and instructional supplies were not unconstitutional.

However, in four other cases plaintiffs sought to invalidate fees for textbooks and instructional supplies on the basis of the Fourteenth Amendment. They contended that such fees deny educational opportunity and create classifications of students and thus were discriminatory.

¹⁰⁴The Indiana constitution does not provide for free public schools.

The earliest equal protection case concerning the payment of textbook fees is Johnson v. New York State Education Department.¹⁰⁵ In this 1971 case children in grades one through six were required to pay a textbook rental fee of \$7.50 per child unless the local school district adopted a tax by special election to pay for the textbooks. The state provided financial aid to school districts for the purchase of textbooks to be loaned free to children in grades seven through twelve.¹⁰⁶

The trial court dismissed as insubstantial the plaintiff's contention that the classification of pupils in grades one through six on the one hand and in grades seven through twelve on the other was "arbitrary, irrational, and discriminatory." The court held that this was a reasonable legislative classification which did not violate the equal protection clause. On appeal, the court of appeals rejected an argument raised by an amicus curiae brief that wherever the state undertakes to provide education, there is a duty to provide free textbooks. The Supreme Court granted certiorari, but while the case was pending, the school district voted to purchase all the textbooks for grades one through six. Thereafter, the Supreme Court vacated the

¹⁰⁵Johnson v. New York State Education Department, 449 F. 2d 871 (2d Cir. 1971), vacated and remanded 409 U. S. 75 (1972).

¹⁰⁶Ibid.

judgment by a per curium opinion, and the case was remanded to determine whether it had become moot.¹⁰⁷

Although Justice Thurgood Marshall in the concurring opinion stated that the Johnson case raised "questions of large constitutional and practical importance,"¹⁰⁸ the case has had limited authority because it was remanded for mootness.¹⁰⁹

The facts of Carpio v. Tucson High School District No. 1 of Pima¹¹⁰ are similar to those of Johnson. In this case the defendant school system required textbook fees for high school textbooks.

The plaintiffs, a class of indigent parents who were unable to pay for high school textbooks, charged that the denial of free textbooks constituted a denial of due process and equal protection.

The court pointed out that the state's constitutional provision for free schools applied only to common schools, which include grades one through eight. The constitution only states that the laws of the state should enable cities

¹⁰⁷Ibid.

¹⁰⁸Ibid.

¹⁰⁹Ibid.

¹¹⁰Carpio v. Tucson High School District No. 1, 111 Ariz. 127, 524 P. 2d 948 (1974).

and towns to maintain free high schools. Consequently, the constitution is silent with regard to high school textbooks. For this reason, the court concurred with Hamer that the constitution permits cities and towns, if they so desire, to maintain free high schools but there is no requirement that the state or counties do so.¹¹¹

With regard to equal protection, the appeals court determined that the plaintiff-appellants were precluded from proving that the textbook fees were discriminatory in operation because the lower court ruled as a matter of law that denial of free textbooks would not constitute a denial of equal protection. The appeals court reasoned that the lower court erred in its judgment, and consequently remanded the case for further proceedings on the issue. The court stated that if the district did not furnish indigent high school students a sufficient number of free textbooks, available for use at home or at school, and that as a result indigent students were denied admission to school or class, denied diploma or transcript, or otherwise penalized, directly or indirectly, for failure to purchase textbooks, the Fourteenth Amendment would be violated.¹¹²

¹¹¹Ibid.

¹¹²Ibid.

Moreover, the West Virginia Supreme Court of Appeals in Vandevender stated that the refusal to provide required textbooks free of charge to students whose parents were unable to provide them would be, as a matter of law, denial of the equal protection clause of the Fourteenth Amendment.¹¹³ The equal protection clause was not a central issue in the Vandevender case, however, because a state statute required that state textbooks be furnished free where parents are unable to provide them.

In the last case which attempted to invalidate fees on the basis of equal protection, the Alabama Attorney General brought action alleging that a state statute authorizing the collection of a matriculation fee violated the Fourteenth Amendment.¹¹⁴ The case was dismissed for lack of jurisdiction, so that again the question of fees and equal protection was not directly addressed.

¹¹³Vandevender v. Cassell, 208 S. E. 2d 436 (1974).

¹¹⁴Baxley v. Rutland, 409 F. Supp. 1249 (1976).

CHAPTER VI
SUMMARY, CONCLUSIONS AND RECOMMENDATIONS

Summary

This study has reviewed state constitutions, state statutes, and court cases where school fees have been the major issue to determine the extent to which fees charged by schools can be justified in conjunction with requirements for free public schools. In the introductory material in Chapter One, several key questions pertaining to the topic of this dissertation were proposed. These questions are addressed in this summary.

1. What states maintain constitutional provisions for free public education?

Each of the fifty states, with the exception of South Carolina, and the District of Columbia have a state constitutional clause calling for the establishment and maintenance of public schools by act of the legislature. Of these, twenty-nine states and the District of Columbia operate under constitutional requirements for free or tuition-free public schools. These states include Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Maryland, Michigan, Mississippi, Missouri, Montana, Nebraska, New

Jersey, New Mexico, New York, North Carolina, North Dakota, Oklahoma, Texas, Utah, Virginia, West Virginia, Wisconsin, and Wyoming.

2. What are the statutory provisions for each of the fifty states and the District of Columbia which specifically permit or prohibit the charging of school fees?

The statutory provisions for each of the fifty states and the District of Columbia which specifically permit or prohibit the charging of school fees are presented in Appendix B. Twenty-one states maintain legislative statutes which specifically regulate school fees. In some states such as Texas and Minnesota, these statutes are written in detail and specify several items or activities for which fees are permitted and those for which fees are prohibited. However, most state statutes refer only to a few items or activities for which fees are permitted or prohibited. The other twenty-nine states and the District of Columbia do not maintain statutes which specifically regulate fees, but they do maintain statutes which provide for free tuition, free textbooks, or free instructional supplies.

3. What states operate under regulations governing school fees as defined by state courts, state offices of the attorney general, state boards of education, or state departments of education?

Sixteen states operate under regulations governing school fees as defined by state courts, state offices of the attorney general, state boards of education, or state departments of education. These regulations on school fees are based on an interpretation of legislative statutes or constitutional provisions concerning the establishment and maintenance of public education. The states are Alabama, Arkansas, California, Colorado, Georgia, Hawaii, Idaho, Illinois, Michigan, Minnesota, Missouri, Montana, New Jersey, New York, North Carolina, and Washington.

4. How many states provide by constitution for free public education, and also maintain regulations which specifically permit or prohibit school fees?

Among the twenty-nine states and the District of Columbia which provide for free or tuition-free public education, only sixteen states operate under legislative statutes or other regulations which specifically govern school fees. These states are Arkansas, California, Colorado, Georgia, Idaho, Illinois, Indiana, Michigan, Missouri, Montana, New Jersey, New York, North Carolina, North Dakota, Texas, and Virginia.

5. How many states do not provide by constitution for free public education, but maintain regulations which specifically permit or prohibit school fees?

Among the twenty-one states which do not provide for free public education, there are nine states which do provide

regulations governing school fees. These states are Alabama, Hawaii, Kansas, Kentucky, Minnesota, Oregon, South Carolina, Tennessee, and Washington.

6. In states which maintain statutes or regulations governing fees, what types of fees are permitted?

This study has identified, based on statutes and regulations in twenty-five states, thirty types of permitted fees. Of those fees which are specifically permitted, fees are most commonly allowed for extracurricular activities such as clubs or school dances, items produced by a student which the student chooses to make and which become the student's property, clothing required for participation in physical education classes, rents or deposits for band and orchestra instruments, and school yearbooks.

There are fees which are specifically permitted in some states, but prohibited in others. For example, fees for driver's education are specifically permitted by statute in Minnesota, North Dakota, Texas, and Washington, but prohibited in Georgia, Missouri, Montana, and New Jersey; fees for graduation cap and gown are permitted in Hawaii, North Carolina, and Washington, but are prohibited in Minnesota and Texas; and fees for required dress for physical education are specifically permitted in Kansas, Kentucky, Michigan, Minnesota, North Carolina, North Dakota, Oregon, and Texas, but are prohibited in Idaho, Montana, and New Jersey.

7. In states which maintain statutes or regulations governing school fees, what types of fees are prohibited?

This study has identified, based on statutes and regulations in twenty-five states, nineteen types of prohibited fees. Of those, fees are most commonly prohibited for textbooks, instructional supplies, and tuition. However, there are several areas for which fees are prohibited in some states, but permitted in others. For example, although textbook and instructional fees are the most commonly prohibited fees, such fees are permitted in Alabama, Arkansas, Illinois, Indiana, Kansas, Tennessee, and Virginia.

8. In states which do not maintain statutes or regulations governing school fees, are there statutory requirements for free textbooks, supplies, materials, or equipment?

Of the twenty-five states and the District of Columbia which do not maintain statutes or regulations governing school fees, twenty-one of these states and the District of Columbia do require free textbooks for all students in public schools. Six of these states and the District of Columbia provide for free supplies, seven states for free materials, and six states provide for free equipment. These provisions are significant in that they define areas for which fees cannot be charged.

9. What have been the decisions of courts where tuition fees, matriculation fees, fees for incidentals, and fees for textbooks or other instructional materials have been the issue?

During the first third of the twentieth century, courts in Kansas, Alabama, Arkansas, and North Dakota considered the legality of school fees for tuition. Each of these state courts declared that school districts cannot collect tuition fees from students who reside in their districts because such fees were in violation of constitutional or statutory requirements for free schools. Years later, the Montana Supreme Court considered tuition fees for summer school. That court determined that school districts in that state could charge tuition for summer school or a similar activity if the instruction were supplemental to the regular academic program required by the state's constitution and accompanying statutes.

Matriculation fees have been declared unconstitutional in Georgia and Arkansas. Courts in both states determined that matriculation fees constituted a condition of admission to school, and therefore violated state constitutional provisions for free public schools. In Alabama, where the constitution does not require free public schools, matriculation fees have been upheld by the court on the basis of a state statute which permits matriculation fees.

Incidental fees have been declared unconstitutional in two states. The Georgia Supreme Court prohibited such fees because they violated the state's constitutional requirement for free schools. In South Carolina, the state court invalidated incidental fees because at the time the case was heard, local boards of education lacked the statutory authority to collect money. In Alabama, where the constitution does not provide for free schools, incidental fees have been upheld in five different cases.

Since 1970, there have been several cases in which the constitutionality of fees for textbooks, instructional supplies, materials, and activities have been questioned. Except for one case, each of these cases was filed in a state which maintained a constitutional provision for free public schools. The courts in these states have analyzed the meaning of the word "free" in their respective state constitutions to determine the validity of school fees.

In Idaho, Michigan, and Montana, the courts accepted the plain meaning of "free" and consequently struck down fees for textbooks and instructional fees as contrary to state constitutional requirements for free public schools. However, none of the courts declared that schools should be absolutely free. Each court recognized that fees could continue to be legally charged for items which a student chose to purchase or activities in which a student chose

to participate. However, these courts did strike down fees for materials and activities which were necessary to and required for the free instructional program mandated by the state.

State courts in Missouri and New Mexico agreed with the reasoning established by the school fee decision in Idaho, Michigan, and Montana. The Missouri Supreme Court struck down course fees and registration fees for any course for which academic credit was awarded. The New Mexico Supreme Court struck down fees associated with any required course as defined by the New Mexico Board of Education. However, the court stated that fees were permissible for any elective courses as defined by the state board of education.

Not all courts in states which maintained constitutional provisions for free public schools agreed with the courts in Idaho, Michigan, Montana, Missouri, and New Mexico. In Illinois, Wisconsin, West Virginia, Colorado, New Mexico, and North Carolina, state supreme courts determined that not only could fees be justified for extracurricular activities, but also for textbooks and other instructional supplies. The courts analyzed the word "free," in its historical context, as used in their respective state constitutions. These courts sought to determine what was considered free, with respect to schools, at the time

the constitution was written. Therefore, provisions for free public schools applied only to what was considered "free" at the time the constitution was drafted. The courts determined that "free" applied to areas such as tuition costs, building maintenance, and teacher salaries. These courts agreed with the 1925 Segar decision that charging fees for textbooks or instructional supplies did not violate the state's free-school provision.

Finally, there have been four attempts to invalidate fees for textbooks, instructional materials, supplies, and activities on the basis that such fees deny educational opportunity and create discriminatory classifications of students. Two of the cases were inconclusive. The Arizona Supreme Court held that the charging of textbook fees, even to indigent students, did not necessarily violate the Fourteenth Amendment's provision for equal protection. However, the court stated that the school district must provide textbooks, at least on a check-out basis, to indigent students. The West Virginia Supreme Court declared that charging textbook fees to indigent students would violate the equal protection clause of the Fourteenth Amendment.

10. Can any specific trends be determined from the review of the court cases where tuition fees, matriculation fees, fees for incidentals or fees for textbooks and instructional materials have been the issue?

Fees for tuition, matriculation, and incidentals have been declared unconstitutional by state supreme courts in each state which provides for free public schools and where such fees have been challenged. Consequently, such fees are not justified in states which provide for free public schools.

Fees for textbooks, instructional materials, supplies, and activities have not been justified in some states which provide for free public schools, but have been justified in others. The practice of charging fees is most restricted in those states where the state supreme court has interpreted "free," in terms of its plain meaning. In those states, no fees are allowed for items or activities which are necessary to the educational programs required by the state or local school district. However, fees are permitted in those states for items or activities which are considered extracurricular, or beyond the program required by the state or local school district.

In other states, the courts have interpreted the word "free," in the state's free school provision, in its historical context. The courts have determined that free, as used by the framers of their respective state constitutions, did not apply to textbooks and other instructional materials. Consequently, courts in these states have upheld fees for textbooks and other instructional materials.

Although such fees have been justified in some states and not in others, the trend in the more recent cases has been that courts have interpreted "free," as used in free-school provisions, in its historical context. Consequently, where fees for textbooks and instructional materials have been challenged on the basis of a state's constitutional provision for free schools, such fees have been upheld in the most recent cases.

Conclusions

The purpose of this study was to review state constitutions, state statutes, and court cases where school fees have been the major issue to determine the extent to which fees charged by schools can be justified in conjunction with requirements for free public schools. Based on this study, these conclusions are drawn:

1. There is no state constitutional provision or state statute which specifically bans all school fees. Consequently, state constitutions and state statutes do not require that schools be absolutely free.

2. Although twenty-nine states and the District of Columbia provide by constitution for free or tuition-free public schools, no state provides for public schools which are absolutely free. School fees are required to some extent in each of the fifty states and the District of Columbia. However, there are great differences from state to state with regard to the types of fees which are permitted or prohibited.

3. Unless there is a specific statute or judicial decision to the contrary, school fees can be justifiably charged even in states which provide for free public education.

4. Regulations governing school fees and a state's constitutional provisions, or lack of provisions, for free public education have no consistent pattern.

5. Tuition fees for resident students, matriculation fees, and fees for incidentals are not justified unless there is a specific state statute to the contrary. Only in Alabama is there a statute which permits matriculation fees.

6. The courts in various states agree that school fees can be charged for items or activities which are not a part of the required school program as required by law. However, the courts disagree as to what items or activities are included in a required school program.

7. The most significant area of disagreement among state courts with regard to school fees concerns fees for textbooks and instructional materials. The disagreement stems from their differences in defining the word "free" as used in state constitutional provisions for free public schools. Some courts use the plain meaning of free, and therefore contend that fees cannot be charged for items

such as books and instructional supplies which are a necessary part of the required, free, public-school program. Other courts define free in its historical context, and conclude that the original framers did not intend "free" to apply to textbooks and instructional supplies. Therefore, these courts have upheld fees for textbooks and instructional supplies despite state constitutional provisions for free public schools.

8. Attempts to invalidate school fees on the basis of the Fourteenth Amendment to the United States Constitution have been unsuccessful.

Recommendations

This study has focused on the extent to which school fees can be justified in conjunction with state constitutional and statutory provisions for free schools, and thus has led to the examination of state constitutional and statutory provisions governing school fees, and court cases where school fees have been the major issue.

Based on this study, these recommendations are made:

1. Because the practice of charging fees varies so much from state to state, further study should be conducted in each state concerning the practice of charging school fees. Even within individual states, the amount and types of fees vary from school district to school district.

2. Studies should be conducted to determine the effect of school fees on the school's instructional program. Such a study could determine if the practice of charging for textbooks and/or other instructional materials causes students not to pursue courses of study which they might otherwise take if no fees were charged.
3. Studies should be conducted to determine the effect of school fees on the school's extra-curricular program. Such a study could determine if the practice of charging fees for such activities limits student participation.
4. School systems across the United States are looking for ways to increase their revenues. Studies should be conducted to determine the extent to which school fees are being used as a means to supplement school revenues.

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APPENDIX A
STATE CONSTITUTIONAL PROVISIONS
RELATED TO THE ESTABLISHMENT
OF PUBLIC SCHOOLS

Alabama

Article XIV

Section 256. Public school system. The legislature shall establish, organize, and maintain a liberal system of public schools throughout the state for the benefit of the children thereof between the ages of seven and twenty-one years.

Alaska

Article VII

Section 1. Public education. The legislature shall by general law establish and maintain a system of public schools open to all children of the state, and may provide for other public educational institutions.

Arizona

Article XI

Section 1. Public school system; establishment and maintenance. The legislature shall enact such laws as shall provide for the establishment and maintenance of a general and uniform public school system, which system shall include kindergarten schools, common schools, high schools,

normal schools, industrial schools, and a university (which shall include an agricultural college, a school of mines, and such other technical schools as may be essential, until such time as it may be deemed advisable to establish a separate State Institution of such character). . . .

Section 9. The laws of the State shall enable cities and towns to maintain free high schools, industrial schools, and commercial schools.

Arkansas

Article XIV

Section 1. Free school system. Intelligence and virtue being the safeguards of liberty and bulwork of a free and good government, the State shall ever maintain a general, suitable and efficient system of free schools, whereby all persons in the State between the ages of six and twenty-one may receive gratuitous instruction.

California

Article IX

Section 5. Common school system. The legislature shall provide for a system of common schools by which a free school shall be kept up and supported in each district at least six months in every year, after the first year in which a school has been established.

Colorado

Article IX

Section 2. Establishment and maintenance of public schools. The general assembly shall, as soon as practical, provide for the establishment and maintenance of a thorough and uniform system of free public schools throughout the state, wherein all residents of the state, between the ages of six and twenty-one years, may be educated gratuitously.

Connecticut

Article VIII

Section 1. Free public elementary and secondary schools to be maintained. There shall always be free public elementary and secondary schools in the state.

Delaware

Article X

Section 1. Establishment and maintenance of free public schools. The General Assembly shall provide for the establishment and maintenance of a general and efficient system of free public schools.

District of Columbia

Act of 1871

Section 23. And be it further enacted, That it shall be the duty of said legislative assembly to maintain a system of free schools for the education of the youth of said

District, and all moneys raised by general taxation or arising from donations by Congress, or from other sources, except by request or devise, for school purposes, shall be appropriated for the equal benefit of all youths of said District between certain ages, to be defined by law. App. Feb. 21, 1871
16 Stat. 419 ch. 62.

Florida

Article IX

Section 1. System of public education. Adequate provision shall be made by law for a uniform system of free public schools and for the establishment, maintenance and operation of institutions of higher learning and other public education programs that the needs of the people may require.

Georgia

Article VIII

Section 1. System of common schools; free tuition.
The provision of an adequate education for the citizens shall be a primary obligation of the State of Georgia, the expense of which shall be provided for by taxation. . . .

Hawaii

Article IX

Section 1. The State shall provide for the establishment, support and control of a statewide system of public schools.

Idaho

Article IX

Section 1. Legislature to establish system of free schools. The stability of a republican form of government depending mainly upon the intelligence of the people, it shall be the duty of the legislature of Idaho, to establish and maintain a general, uniform and thorough system of public, free common schools.

Illinois

Article X

Section 1. Goal -- Free Schools. A fundamental goal of the People of the State is the educational development of all persons to the limits of their capacities.

The State shall provide for an efficient system of high quality public educational institutions and services. Education in the public schools through the secondary level shall be free. There may be such other free education as the General Assembly provides by law.

The State has the primary responsibility for financing the system of public education.

Indiana

Article VIII

Section 1. Common School System. Knowledge and learning, generally diffused throughout a community, being essential to the preservation of a free government; it shall be

the duty of the General Assembly to encourage, by a suitable means, moral, intellectual, scientific, and agricultural improvement; and to provide, by law, for a general and uniform system of Common Schools, wherein tuition shall be without charge, and equally open to all.

Iowa

Article IX

Section 12. Common Schools. The Board of Education shall provide for the education of all the youths of the State, through a system of common schools, and such school shall be organized and kept in each school district at least three months each year.

Kansas

Article VI

Section 2. Schools. The legislature shall encourage the promotion of intellectual, moral, scientific, and agricultural improvement, by establishing a uniform system of common schools. . . .

Kentucky

Section 184. General Assembly to provide for school system. The General Assembly shall, by appropriate legislation, provide for an efficient system of common schools throughout the State.

Louisiana

Article XII

Section 1. Public educational system. The legislature shall have full authority to make provisions for the education of the school children of their State and/or for an educational system which shall include all public schools and all institutions of higher learning operated by State agencies.

Maine

Article VIII

Legislature shall require towns to support public schools. A general diffusion of the advantages of education being essential to the preservation of the rights and liberties of the people; to promote this important subject, the legislature is authorized, and it shall be their duty to require, the several towns to make suitable provision, at their own expense, for the support and maintenance of public schools.

Maryland

Article VIII

Section 1. General Assembly to establish system of free public schools. The General Assembly, at its First Session after the adoption of this Constitution, shall by law establish throughout the State a thorough and efficient System of Free Public Schools; and shall provide by taxation, or otherwise for their maintenance.

Massachusetts

Chapter V

Section II. The Encouragement of Literature &c.

Wisdom, and knowledge, as well as virtue, diffused generally among the body of the people, being necessary for the preservation of their rights and liberties; and as these depend on spreading the opportunities and advantages of education in the various parts of the country, and among the different orders of the people, it shall be the duty of Legislatures and Magistrates, in all future periods of this Commonwealth, to cherish the interests of literature and the sciences, and all seminaries of them; especially the university at Cambridge, public schools and grammar schools in the towns; to encourage private societies and public institutions, rewards and immunities, for the promotion of agriculture, arts, sciences, commerce, trades, manufactures, and a natural history of the country; to countenance and inculcate the principles of humanity and general benevolence, public and private charity, industry and frugality, honesty and punctuality in their dealings; sincerity, good humour, and all social affections, and generous sentiments among the people.

Michigan

Article VIII

Section 2. Elementary and secondary schools. The legislature shall maintain and support a system of free

public elementary and secondary schools as defined by law. Every school district shall provide for the education of its pupils without discrimination as to religion, creed, race, color, or national origin.

Minnesota

Article VIII

Section 1. Uniform system of public schools. The stability of a republican form of government depending mainly upon the intelligence of the people, it shall be the duty of the legislature to establish a general and uniform system of public schools.

Mississippi

Article VIII

Section 201. Free public schools. The legislature may, in its discretion, provide for the maintenance and establishment of free public schools for all children between the ages of six (6) and twenty-one (21) years, by taxation or otherwise, and with such grades as the legislature may prescribe.

Missouri

Article IX

Section 1 (a). Free public schools. A general diffusion of knowledge and intelligence being essential to the preservation of the rights and liberties of the people, the general assembly shall establish and maintain free public

schools for the gratuitous instruction of all persons in the state within ages not in excess of twenty-one years as prescribed by law. . . .

Montana

Article XI

Section 1. Free Public Schools. It shall be the duty of the legislative assembly of Montana to establish and maintain a general, uniform and thorough system of public, free, common schools.

Nebraska

Article VII

Section 6. Free instruction in common schools. The legislature shall provide for the free instruction in the common schools of this state of all persons between the ages of five and twenty-one years.

Nevada

Article XI

Section 2. Uniform system of common schools. The legislature shall provide for a uniform system of common schools. . . .

New Hampshire

Article 83

Encouragement of literature; control of corporations, monopolies and trusts. Knowledge and learning, generally

diffused through a community, being essential to the preservation of a free government; and spreading the opportunities and advantages of education through the various parts of the country, being highly conducive to promote this end; it shall be the duty of the legislators and magistrates, in all future periods of this government, to cherish the interest of literature and the sciences, and all seminaries and public schools, to encourage private and public institutions, rewards, and immunities for the promotion of agriculture, arts, sciences, commerce, trades, manufactures, and natural history of the country; to countenance and inculcate the principles of humanity and general benevolence, public and private charity, industry and economy, honesty and punctuality, sincerity, sobriety, and all social affections, and generous sentiments, among the people. . . .

New Jersey

Article VIII

Section IV, Paragraph 1. Maintenance and support of schools. The Legislature shall provide for the maintenance and support of a thorough and efficient system of free public schools for the instruction of all children in the State between the ages of five and eighteen years.

New Mexico

Article XII

Section 1. Free Public Schools. A uniform system of free public schools sufficient for the education of, and open to, all the children of school age in the state shall be established and maintained.

New York

Article XI

Section 1. Common Schools. The legislature shall provide for the maintenance and support of free common schools, wherein all the children of this state may be educated.

North Carolina

Article IX

Section 2 (1). General and uniform system; term. The General Assembly shall provide by taxation and otherwise for a general and uniform system of free public schools, which shall be maintained at least nine months in every year, and wherein equal opportunities shall be provided for all students.

North Dakota

Article VIII

Section 148. Legislation for free public schools. The legislative assembly shall provide at their first session after the adoption of this constitution, for a uniform system of free public schools. . . .

Ohio

Article VI

Section 3. Public school system. Provision shall be made by law for the organization, administration and control of the public school system of the state supported by public funds.

Oklahoma

Article XIII

Section 1. Establishment and maintenance of public schools. The Legislature shall establish and maintain a system of free public schools wherein all the children of the State may be educated.

Oregon

Article VIII

Section 3. System of common schools. The Legislative Assembly shall provide by law for the establishment of a uniform, and general system of common schools.

Pennsylvania

Article III

B, Section 14. The General Assembly shall provide for the maintenance and support of a thorough and efficient system of public education to serve the needs of the Commonwealth.

Rhode Island

Article XII

Section 1. Duty of general assembly to promote schools, etc. The diffusion of knowledge, as well as of viture, among the people, being essential to the preservation of their rights and liberties, it shall be the duty of the general assembly to promote public schools, and to adopt all means which they may deem necessary and proper to secure to the people the advantages and opportunities of education.

South Dakota

Article VIII

Section 1. Free public schools. The stability of a republican form of government depending on the morality and intelligence of its people, it shall be the duty of the legislature to establish and maintain a general and uniform system of public schools wherein tuition shall be without charge, and equally open to all; and to adopt all suitable means to secure to the people the advantages and opportunities of education.

Tennessee

Article XI

Section 12. Education to be cherished; common school fund; poll tax; whites and negroes; colleges, etc., rights of. Knowledge, learning, and virtue, being essential to the preservation of republican institutions, and the diffusion

of the opportunities and advantages of education throughout the different portions of the State, being highly conducive to the promotion of this end, it shall be the duty of the General Assembly in all future periods of this Government, to cherish literature and science. And the fund called common school fund, and all the lands and proceeds thereof, dividends, stocks, and other property of every description whatever, heretofore by law appropriated by the General Assembly of this State for the use of common schools, and all such as shall hereafter be appropriated, shall remain a perpetual fund, the principal of which shall never be diminished by Legislative appropriations; and the interest thereof shall be inviolably appropriated to the support and encouragement of common schools throughout the State, and for the equal benefit of all the people there;. . . .

Texas

Article VII

Section 1. Public schools to be established. A general diffusion of knowledge being essential to the preservation of the liberties and rights of the people, it shall be the duty of the Legislature of the State to establish and make suitable provision for the support and maintenance of an efficient system of public free schools.

Utah

Article X

Section 1. Free nonsectarian schools. The Legislature shall provide for the establishment and maintenance of a uniform system of public schools, which shall be open to all children of the State, and be free from sectarian control.

Section 2. Defining what shall constitute the public school system. The public school system shall include kindergarten schools; common schools, consisting of primary and grammar grades; high schools, an agricultural college; a university; and such other schools as the Legislature may establish. The common schools shall be free. The other departments of the system shall be supported as provided by law.

Vermont

Chapter II

Section 64. Laws to encourage virtue and prevent vice; schools; religious societies. Laws for the encouragement of virtue and prevention of vice and immorality, ought to be constantly kept in force, and duly executed; and a competent number of schools ought to be maintained in each town, or by towns jointly with the consent of the General Assembly, for the convenient instruction of youth. All religious societies, or bodies of men that may be united or incorporated for the advancement of religion and learning, or for other

pious and charitable purposes, shall be encouraged and protected in the enjoyment of the privileges, immunities, and estates, which they in justice ought to enjoy, under such regulations as the General Assembly of this State shall direct.

Virginia

Article VIII

Section 1. Public schools of high quality to be maintained. The General Assembly shall provide for a system of free public elementary and secondary schools for all children of school age throughout the Commonwealth. . . .

Washington

Article IX

Section 2. Public school system. The legislature shall provide for a general and uniform system of public schools. . . .

West Virginia

Article XII

Section 1. Free school system. The Legislature shall provide, by general law, for a thorough and efficient system of free schools.

Wisconsin

Article X

Section 3. The legislature shall provide by law for the establishment of district schools, which shall be as nearly uniform as practical; and such schools shall be free and without charge for tuition to all children between the ages of four and twenty years. . . .

Wyoming

Article VII

Section 1. Public schools. The legislature shall provide for the establishment and maintenance of a complete and uniform system of public instruction, embracing free elementary schools of every needed kind and grade, a university with such technical and professional departments as the public good may require and the means of the state allow, and such other institutions as may be necessary.

APPENDIX B

STATE ACTS RELATED TO SCHOOL FEES
AND CHARGES FOR INSTRUCTIONAL
MATERIALS, INCLUDING TEXTBOOKSAlabama

§ 16-10-6. Incidental fees in elementary schools.

No fees of any kind shall be collected from children attending any of the first six grades during the school term supported by public taxation; provided, that any county or city board of education shall be authorized to permit any school subject to its supervision to solicit and receive from such children or their parents or guardians voluntary contributions to be used for school purposes by the school where such children are attending; provided further, that the provisions of this section shall in no way affect or restrict the right or power of a school board to fix and collect tuition fees or charges from pupils attending schools under the jurisdiction of such board but who live outside the territory over which such board has jurisdiction. (School Code 1927, § 182; Acts 1935, No. 507, p. 1090; Code 1940, T. 52, § 142; Acts 1969, No. 745, p. 1323.)

§ 16-26-4. Matriculation fee may be charged.

A matriculation fee may be collected for each semester from all pupils in accredited high schools, the amount of

such fee to be determined by the county board of education or the city board of education as the case may be, and the proceeds of such fees shall be expended under the direction of the county board of education or the city board of education as the case may be. A reasonable fee for library, laboratory and shop work may be required, the amount of such fee to be determined by the county board of education or the city board of education, as the case may be. (School Code 1927, § 467; Code 1940, T. 52, § 437.)

§ 16-36-32. Free textbooks to remain property of state or local school system; period of use by pupils; receipt required upon issuance; loss, abuse, etc., of textbooks.

All textbooks furnished free of charge to pupils shall remain the property of the state or local school system, as the case may be, and when distributed to pupils shall be retained for normal use only during the period they are engaged in a course of study or otherwise at the instructions of the principal or teacher in charge, such textbooks shall be returned as directed. A receipt shall be required from each pupil, parent or guardian upon issuance of any textbook, which receipt shall be retained until the return of such textbook. The parent, guardian, or other person having custody of a child to whom such textbooks are issued shall be held liable for any loss, abuse or damage in use of such textbooks. In computing the loss or damage of a textbook which has been in use for a year or more, the basis

of computation shall be a variable of 50 to 75 percent of the original cost of the book to the state. If such parent, guardian or person having custody of such child to whom the textbook was issued fails to pay such assessed damages within 30 days after notification, such student shall not be entitled to further use of such textbooks until remittance of the amount of loss or damage shall be made. All remittances for damages shall be deposited to the credit of the city or county textbook fund and may be used for the repair, maintenance and replacement of textbooks. The respective county and city boards of education may waive the payment as provided herein if in their judgment the respective parent or guardian is not financially able to make such payment. . . .

Alaska

Section 14.03.080. Free education. (a) A child of school age is entitled to attend public school without payment of tuition during the school term in the school district in which he is a resident subject to the provisions of AS 14.14.110 and AS 14.14.120.

Arizona

§ 15-1101. Furnishing of free textbooks.

A. Free textbooks shall be furnished in the common schools and all state welfare institutions maintaining educational facilities.

Arkansas

80-1649. Charging of fees or tuition for kindergarten prohibited. -- The Board and/or local school boards are hereby prohibited from inaugurating new or additional programs, studies, research or demonstrations with revenue derived from fees, tuition or other contributions charged or received from students participating in Early Childhood Education or Kindergarten Programs. The specific intention of this section is to prohibit the charging of fees or tuition in order to pay for the operation of Early Childhood Education or Kindergarten Programs and no other interpretation shall be given to it. (Acts 1969, No. 63, § 6, p. 181.)

80-1702. Free instructional material provided. -- The State of Arkansas shall provide textbooks and other instructional materials for all pupils attending the public schools of this State in grades one (1) through twelve (12) (,) inclusive, in all subjects taught in said grades, without cost to said pupils. Free textbooks and other instructional materials shall be provided as hereinafter provided. The term "instructional materials" shall include hardcover textbooks, paperback books, workbooks, and dictionaries. It shall also include films, filmstrips, and other audiovisual materials when used as an integral part of an adopted program. The term "instructional materials" shall not include the following:

(a) Materials which are normally considered library resources, such as encyclopedias;

(b) Laboratory and shop supplies such as chemicals, lumber, sheet metal, weilding rods, and paint;

(c) Ordinary classroom supplies such as pencils, writing pens, notebook paper, and typing paper; or

(d) Audiovisual equipment such as projectors, tape recorders, record players, and other such items of educational hardware. (Acts 1975, No. 302, § 2, p. 763.)

California

§ 48053. Apprentices not required to pay tuition: Collection from school district in which apprentice resides. Notwithstanding any other provisions of this code, and except as provided in Section 3074.7 of the Labor Code, no charges or fees of any kind shall be required to be paid by any apprentice, or by his parents or guardian, for admission or attendance in any class in any school district which provides instruction under Section 3074 of the Labor Code in accord with the requirements of subdivision (d) of Section 3078 of that code. Nothing contained in this section, however, shall be construed as prohibiting the governing board of a school district providing nonresident apprentices of that district with such instruction under Section 3074 of the Labor Code from charging to, or collecting from, the school district in which such nonresident apprentices reside, tuition and other

charges or fees in accordance with the definitions and provisions contained elsewhere in this code. Enacted Stats 1976 ch 1010 § 2, operative April 30, 1977.

§ 600700. Requiring pupils to purchase materials: Prohibition and exceptions. No school official shall require any pupil, except pupils in classes for adults to purchase any instructional material for the pupils' use in the school. Enacted Stats 1976 ch 1010 § 2, operative April 30, 1977.

§ 35330 (d). No pupil shall be prevented from making the field trip or excursion because of lack of sufficient funds. To this end, the governing board shall coordinate efforts of community service groups to supply funds for pupils in need of them.

No group shall be authorized to take a field trip or excursion authorized by this section if any pupil who is a member of such an identifiable group will be excluded from participation in the field trip or excursion because of lack of sufficient funds.

§ 39526. Property fabricated by pupils. The governing board of a school district may authorize any officer or employee of the district to sell to any pupil personal property of the district which has been fabricated by such pupil, at the cost to the district of the materials furnished by the district and used therein. Enacted Stats 1976 ch 1010 § 2, operative April 30, 1977.

§ 39804. Circumstances requiring parents or guardians to pay a portion of transportation cost. When the governing board provides for the transportation of pupils to and from school by contract with a common carrier, municipally owned transit system, or responsible private party, the governing board may require the parents or guardians of all or some of the pupils transported to pay a portion of the cost of such transportation in an amount determined by the board. The amount determined by the board shall be no greater than that paid for transportation on a common carrier or municipally owned transit system by other pupils in the district who do not use the transportation provided by the contract of the district. No charge under this section shall be made for the transportation of handicapped children. Enacted Stats 1976 ch 1010 § 2, operative April 30, 1977.

§ 40011. Supplies furnished by district governing board. Writing and drawing paper, pens, inks, blackboards, blackboard erasers, crayons, lead pencils, and other necessary supplies for the use of the schools, shall be furnished under direction of the governing boards of the school districts. Enacted Stats 1976 ch 1010 § 2, operative April 30, 1977.

§ 48909. Wilful damage of school property: Liability of parent. The parent or guardian of any minor whose wilful misconduct results in injury or death to any student or

any person employed by or performing volunteer services for a school district or who willfully cuts, defaces, or otherwise injures in any way any property, real or personal, belonging to a school district shall be liable for all such damages so caused by the minor. The liability of the parent or guardian shall not exceed two thousand dollars (\$2,000). The parent or guardian shall also be liable for the amount of any reward not exceeding two thousand dollars (\$2,000) paid pursuant to Section 53069.5 of the Government Code. The parent or guardian of a minor shall be liable to a school district for all property belonging to the school district loaned to the minor and not returned upon demand of an employee of the district authorized to make the demand. Enacted Stats 1976 ch 1010 § 2, operative April 30, 1977; Amended Stats 1977 ch 965 § 20.

Colorado

22-32-117. Miscellaneous Fees. (1) When the free use of textbooks is provided pursuant to section 22-32-110(1)(o), a board of education of a school district may require each nonindigent pupil to make a reasonable loss or damage deposit to cover such textbooks. A board may also require each non-indigent pupil to make a reasonable loss or damage deposit to cover nonacademic equipment. All such deposits shall be refunded to the pupil when he has returned the textbooks or equipment in good condition except for ordinary wear.

(2) A board may not require a pupil who has not completed the twelfth grade to pay any fees as a condition of enrollment in school, or as a condition of attendance in any course of study, instruction, or class, except tuition as authorized by law, charges and fees authorized by this section and section 22-32-118, and those fees reasonably necessary for textbooks or expendable supplies if such are not provided free of charge; except that miscellaneous fees may be collected on a voluntary basis as a condition of participation or attendance at a school-sponsored activity or program not within the academic portion of the educational program.

22-32-118. Summer schools - continuation and evening programs.

(1) During that period of the calendar year not embraced within the regular school term, a board of education may provide and conduct courses in subject matters normally included in the regular school program or in demand by the pupils of the district, may fix and collect a charge for attendance at such courses in an amount not to exceed the per capita cost of the operation.

Connecticut

§ 10-228. Free textbooks, supplies, material and equipment.

The board of education of each school district shall purchase such books, either as regular texts, as supplementary books or as library books, and such supplies,

material and equipment, as it deems necessary to meet the needs of instruction in the schools of the district. In day and evening schools of elementary and secondary grades, all books and equipment shall be loaned and materials and supplies furnished to all pupils free of charge, subject to such rules and regulations as to their care and use as the board of education prescribes. (1949 Rev., § 1486; 1971, P.A. 186).

Delaware

§ 201. System of free public schools.

The system of free public schools throughout this State shall be general and efficient. (14 Del. C. 1953, § 201; 56 Del. Laws, c. 292, § 4.)

§ 202. Free schools; ages; attendance within school district; nonresidents of Delaware.

(a) The public schools of this State shall be free to persons who are residents of this State and who are between the ages of 6 and 21 years when they are attending grades 1 through 12.

(b) The public schools of any school district which maintains schools established under § 203 or 204 of this title for persons below the age of 6 years shall be free to persons who are residents of such school district and who have attained the specified age below the age of 6 years for which such schools are established.

(c) Persons attending the public schools of this State shall attend the public schools in the school district within which they reside, except as otherwise provided in Chapter 6 of this title and in Chapter 92, Volume 23, Laws of Delaware, as amended by Chapter 172, Volume 55, Laws of Delaware.

(d) Persons who are nonresidents of this State may attend the public schools of this State under such terms and conditions as may be otherwise provided by law.

(e) For purposes of this section, a person shall be considered a resident of the school district in which his parents or the legal guardian of his person resides.

(14 Del. C. 1953, § 202; 56 Del. Laws, c. 292, § 4.)

District of Columbia

§ 31-401. Textbooks and supplies furnished without charge.

The Board of Education of the District of Columbia shall provide pupils of the public elementary schools, public junior high schools, and public senior high schools of the District of Columbia free of charge with the use of all textbooks and other necessary educational books and supplies. (Jan. 31, 1930, 46 Stat. 62, ch. 32, § 1.)

Florida

§ 233.47. Responsibility of pupils, parents, or guardians for instructional materials.

(1) All instructional materials heretofore or hereafter purchased under the provisions of this chapter shall be the property of the district. When distributed to the

pupils, such materials shall be merely loaned to the pupils of the school while pursuing the courses of study therein and are to be returned at the direction of the principal or teacher in charge. Each parent, guardian, or other person having charge of a pupil to whom or for whom materials have been issued, as provided herein, shall be held liable for any loss or destruction of, or unnecessary damage to, such materials or for failure of such pupil to return such materials when directed by the principal or teacher in charge, and shall be required to pay for such loss, destruction, or unnecessary damage as provided by law.

(2) Nothing in this chapter shall be construed to prohibit parents, guardians, or other persons from purchasing from the district school board instructional materials adopted by the state under the provisions of the School Code.

Georgia

32-937. Admission to all common school shall be gratuitous to all children between the ages of six and 18 years residing in the districts in which the schools are located. . . .

Hawaii

§ 298-5. Public schools; special fees.

No equipment, material or other fees shall be assessed against any pupil in elementary school except that the Department of Education may assess and collect special fees for students who negligently break, damage, lose or destroy equipment and supplies.

Idaho

33-512. Government of schools. -- The board of trustees of each school district shall have the following powers and duties:

1. To determine the length of the school term which in no case shall be less than nine (9) months;
2. To adopt and carry on, and provide for the financing of, a total educational program for the district. Such programs in other than elementary school districts may include education programs for out-of-school youth and adults; and such districts may provide classes in kindergarten;
3. To provide, or require pupils to be provided with, suitable textbooks, and supplies;. . . .

Illinois

§ 28-14. Free textbooks -- Referendum -- Ballot

Any school district may, and whenever petitioned so to do by 5% or more of the voters of such district shall, cause to be submitted to the voters thereof at the next regular or special election the question of furnishing free school textbooks for the use of pupils attending the public schools of the district. In a district where no elections are held for school purposes the governing body thereof shall certify the question to the election commissioners or other officers charged with the holding and conducting of elections in the district or in the major portion thereof. Such commissioners

or officers shall thereupon submit such proposition at the next regular or special election held in the district, or major portion thereof, in substantially the manner herein provided, canvass the vote cast, and certify the result thereof to such governing body. If any portion of the district wherein the election is to be held is not under the jurisdiction of election commissioners or other officers charged with the holding and conducting of elections, such commissioners or officers shall be vested with such jurisdiction at such election. . . .

Supplementary Index to Notes

Schools can require parents to provide supplies for their children. . . .

Word "textbook" within this section means a book which expounds principles of a field of knowledge and which is used as basis of course of study rather than something which is of lesser substantiality or permanence, which merely presents exercises or questions or which is a general reference work or reference work on a subsidiary topic. Id.

Workbooks, duplicating paper and masters, magazines, dictionaries, paperback books, maps and atlases were not textbooks and, therefore, free textbook provisions of School Code did not preclude school board's charging students' parent a fee for supplying students with such materials.

Indiana

20-8.1-9-1

(a) As used in this chapter, the term "food stamp program financial eligibility standard" means the nonfarm income poverty guidelines prescribed by the federal Office of Management and Budget under 42 U.S.C. 2971(d) for use in determining a family's monthly maximum allowable income for eligibility to participate in the food stamp program under 7 U.S.C. 2014, except that the deductions in 7 U.S.C. 2014(e) may not be used in determining a family's monthly maximum allowable income.

(b) In determining the eligibility of a seasonal worker for assistance under this chapter, an average shall be made of the family's income for the twelve (12) calendar months preceding the first day of the month in which the application is made.

20-8.1-9-2

(a) Except as provided in subsection (c), not later than July 1 of each year, each township trustee shall adopt and send by certified mail to all school corporations within the township, a notice of the financial eligibility standards and procedures which must be followed by applicants in order for them to qualify for assistance for the forthcoming school year. The township trustee may adopt a standard which does not exceed by more than ten percent (10%) the food stamp

program financial eligibility standards. The trustee may not adopt a standard below the food stamp program financial eligibility standard. If a township trustee fails to adopt a financial eligibility standard by July 1 for the forthcoming school year, the standard for that year shall be the food stamp program financial eligibility standards in effect in Indiana on July 1.

(b) If a school corporation includes more than one (1) township, a majority of the trustees of all townships within the school corporation shall by July 1, agree on and adopt a uniform standard which does not exceed by more than ten percent (10%) from the food stamp program financial eligibility standard. The trustee may not adopt a standard below the food stamp program financial eligibility standard. If a majority of the trustees fail to adopt a financial eligibility standard by July 1, the standard for the forthcoming school year shall be the food stamp program eligibility standards in effect in Indiana on July 1.

(c) In school corporation that is located in whole or in part in a county that contains a consolidated city of the first class or in a city of the second class, the eligibility standard shall be one hundred ten percent (110%) of the food stamp program financial eligibility standard.

20-8.1-9-3

If a parent of a child or an emancipated minor who is enrolled in a public school, in grades K-12, meets the

financial eligibility standard under sections 1 or 2 of this chapter, he may not be required to pay the fees for school books, supplies, or other required class fees. Such fees shall be paid by the school corporation in which the child resides. Subject to section 7 of this chapter, the trustee of the township in which the child resides shall reimburse the school corporation for fees provided under this chapter.

20-8.1-9-4

The state department of public instruction shall provide each school corporation with sufficient application forms for assistance under this chapter. The state board of accounts shall prescribe the forms to be used.

20-8.1-9-5

All school corporations must give notice in nontechnical language and in a manner that can be reasonably expected to reach parents of school children before the collection of any fees for school books and supplies. This notice shall inform the parents of the availability of assistance, the eligibility standards, the procedure for obtaining assistance, including the right and method of appeal and the availability of application forms at a designated school office.

20-8.1-9-6

(a) All school corporations must give appropriate application forms to parents who wish to apply for assistance under this chapter. The school shall provide assistance to those applicants who are unable to write or otherwise make a written application. After the parent submits the completed application, the school corporation shall make a preliminary determination of financial eligibility based on the information in the application. If the school corporation makes a preliminary determination that the parent is eligible for assistance, the parent may not be billed unless the school corporation receives notice from the trustee that he has determined, after investigation, that the applicant is ineligible. For purposes of determining eligibility, a trustee shall use the same application form submitted by the applicant to the school corporation without requiring any additional form.

(b) If the school corporation makes a preliminary determination that the parent is ineligible based on the information in the application, it shall give the parent written reasons for the preliminary denial and inform him of his right to request that the trustee make the final determination. If a parent wishes to have the trustee make the final determination, he must so notify the school corporation in writing within fifteen (15) days of the date of the school's denial. After the preliminary determination,

the school corporation may bill the parent for the child's fees, but the school corporation may not take any legal action against the parent until the parent has had the opportunity to request that the trustee make the final determination or until the trustee has determined that the parent is ineligible. If the parent pays the fees based on a school corporation's preliminary determination, and the trustee subsequently determines that the parent qualified for assistance, the school corporation shall reimburse the parent. All preliminary determinations shall be forwarded by the school corporation to the appropriate township for review.

20-8.1-9-7

(a) The trustee of the township in which the affected child resides shall reimburse the school corporation for the amount of aid authorized by this chapter unless the trustee determines that the parent's income exceeds the financial eligibility standards.

(b) The trustee shall notify the school corporation of his action within twenty-one (21) days of his receipt of the application. If the trustee does not notify the school corporation of his action within that time, the applicant is considered eligible.

(c) The trustee shall reimburse the school corporation according to a timetable which is mutually acceptable

to him and to the school corporation, but reimbursement shall be made no later than July 31 following the school year in which the assistance was furnished, or within thirty (30) days of the trustee's receipt of the itemized statement from the school corporation, whichever is later.

20-8.1-9-8

(a) A trustee may provide financial assistance to an applicant or a member of his household without conducting an investigation if:

(1) the information which would be obtained by his investigation has been obtained by another social welfare agency through similar investigations;

(2) the information will be made available to him in writing; and

(3) the information was obtained by the other agency no longer than sixty (60) days prior to the time the application for financial assistance was made.

(b) If the trustee relies on the investigation of another social welfare agency in making a determination on an application for financial assistance, he shall note that fact on the notice of action.

(c) Notwithstanding subsection (a) an applicant for financial assistance may require the trustee to conduct his own investigation.

20-8.1-9-9

If the trustee denies the parent's application for assistance, the trustee shall provide the parent with written reasons for denial and a notice that the applicant has the right to appeal under IC 12-2-1-18.

If a determination is made that the applicant is eligible for assistance, the trustee shall reimburse the school corporation for the cost of the student's fees, after the trustee has received a statement of the aid furnished. This statement must be made on a form approved by the state board of accounts.

Parents receiving other governmental assistance, or aid which considers educational needs in computing the entire amount of assistance granted, may not be denied assistance if the applicant's total family income does not exceed the standards established by this chapter.

20-8.1-9-10

A school corporation may not withhold school books and supplies, require any special services from a child, or deny the child any benefit or privilege because the parent fails to pay required fees. A school corporation may, however, take any action authorized by law to collect unpaid fees from parents who are determined by the trustee to be ineligible for assistance.

20-8.1-9-11

Under extraordinary circumstances, the township trustee may pay for the fees enumerated in section 2 of this chapter for individuals who do not otherwise qualify under the financial eligibility standard established in this chapter. Assistance in such cases may be provided by the township trustee under IC 12-2.

20-8.1-9-12

(a) Financial assistance for shoes and clothing shall be provided directly by the township trustee, under IC 12-2, to parents who do not have sufficient means to furnish the shoes and clothing needed by the children to attend school.

(b) A school corporation may establish a clothing bank to provide for children's clothing needs on an emergency basis.

Iowa

§ 301.24 Petition -- election

Whenever a petition signed by ten percent of the qualified voters, to be determined by the school board of any school district, shall be filed with the secretary thirty days or more before the regular election, asking that the question of providing free textbooks for the use of pupils in the public schools thereof be submitted to the voters at the next regular election, he shall cause notice of such proposition to be given in the notice of such election.

§ 301.25 Loaning books

If, at such election, a majority of the legal voters present and voting by ballot thereon shall authorize the board of directors of said school corporation to loan textbooks to the pupils free of charge, then the board shall procure such books as shall be needed, in the manner provided by law for the purchase of textbooks, and loan them to the pupils.

Kansas

72-5389. Boards of education; authorization to purchase certain items for use of pupils. The board of education of any school district may purchase, for the use of the pupils of the district, any of the following:

(a) Workbooks and materials which are supplemental to textbooks used in specific courses;

(b) specialized clothing and towels for use in physical education, shop, and science courses;

(c) musical instruments for use in band or orchestra;
and

(d) materials or supplies which are consumed in specific courses or projects or in which the pupil may retain ownership upon completion of such courses or projects.

72-5390. Fees; supplemental charges authorized to be prescribed and collected; disposition of moneys; revolving fund. (a) The board of education may prescribe, assess and

collect fees and supplemental charges for the use, rental or purchase by pupils of any of the items designated in K.S.A. 72-5389 to offset, in part or in total, the expense of purchasing such items.

(b) In addition to the foregoing, the board of education may prescribe, assess and collect fees and supplemental charges for activities, facilities, materials and equipment, the participation in or use of which is not mandatory, but which is optional to pupils, whether incidental to curricular, extracurricular or other school-related activities.

72-5391. Same; waiver required, when. Whenever the parents or guardian of any pupil of the school district are unable to provide the fees and supplemental charges assessed and collected under authority of subsection (a) of K.S.A. 72-5390, the board of education shall, if written application is made and said board finds the application meritorious, waive said fees and supplemental charges if the items for which said fees and supplemental charges are assessed and collected are necessary for the completion of the basic requirements of courses of study offered in the school district.

Kentucky

158.107. Fee, rental or purchase of instructional materials prohibited -- Exceptions -- Annual report on funds expended by public school district. -- (1) No public common school shall charge a fee, or rental, or require a student to purchase instructional materials for enrollment, full participation

or participation in any regular school program, grades kindergarten through twelve (12). Fees do not include items of personal attire, purchase or rental of musical instruments, or materials, other than instructional materials, which become the property of the pupil.

(2) Each public school district shall make an annual report to the department of education no later than August 1 for the preceding school year on a form provided by the department which specifies the amount of funds expended for consumable classroom supplemental instructional materials. The total of such expenditures shall be an amount at least equal to five dollars (\$5.00) per child in average daily attendance. A copy of this report shall be maintained in the local superintendent's office for public inspection. (Enact. Acts 1978, ch. 132, § 1, effective June 17, 1978.)

Louisiana

§ 351. Free school books and other materials of instruction.

A. The State Board of Elementary and Secondary Education shall prescribe and adopt school books and other materials of instruction, which it shall supply without charge to the children of this state at the elementary and secondary levels out of funds appropriated therefor by the legislature in accordance with the requirements of Article VIII, Section 13 (A) of the Constitution.

B. The board also shall prescribe and supply schoolbooks and other materials of instruction for use by students attending

vocational-technical schools and programs under the jurisdiction of the board.

Maine

§ 856. Facilities provided; schoolbooks

Administrative units shall provide school books, apparatus and appliances for the use of pupils in the public schools, including free high schools, at the expense of said administrative unit. Any parent or guardian of any pupil in the public schools may at his own expense procure for the separate and exclusive use of such pupil the textbooks required to be used in such schools.

Maryland

§ 7-106. Textbooks, materials of instruction, and supplies.

(a) Selection and purchase of school materials. -- On the recommendation of the county superintendent and subject to the provisions of this article, each county board shall adopt procedures for the selection and purchase of the following necessary items, at the lowest price consistent with good quality for use in the public schools:

- (1) Textbooks;
- (2) Supplementary readers;
- (3) Materials of instruction;
- (4) Visual and auditory aids;
- (5) Stationery; and
- (6) School supplies.

(b) Materials to be furnished free of charge and in sufficient quantities. -- Each county board shall furnish the materials and supplies listed in subsection (a) of this section:

(1) Free of cost for use in the public schools; and

(2) In sufficient quantities for the different grades in the public schools.

(An. Code 1957, art. 77, § 79; 1978, ch. 22, § 2.)

Massachusetts

§ 48. Textbooks and Other Supplies to Be Provided; Lending Textbooks to Private School Pupils

The committee shall, at the expense of the town, purchase textbooks and other school supplies, and, under such regulations as to their care and custody as it may prescribe, shall loan them to the pupils free of charge. If instruction is given in the manual and domestic arts, it may so purchase and loan the necessary tools, implements and materials. It shall also, at like expense, procure such apparatus, reference books and other means of illustration, as may be needed.

Michigan

§ 15.41421 Textbook defined.) Sec. 1421. As used in this part, "textbook" means a book which is selected and approved by the board of a school district and which contains a presentation of principles of a subject, or which is a literary work relevant to the study of a subject required

for the use of classroom pupils. (MCL §380.1421.)

Former act. Former §15.1919(505), as amended in 1974, defined "textbook" as a book which pupils were required to use as a text in a particular class in the schools in each local school district.

§15.41422 Selection, approval, purchase of textbooks.)
Sec. 1422. (1) The board of each school district shall select, approve, and purchase the textbooks to be used by the pupils of the schools on the subjects taught in the district.

Textbooks as district property; loans; deposits.) (2)
The textbooks shall be the property of the school district purchasing them and shall be loaned to pupils without charge. A board may require a reasonable and refundable deposit on textbooks. (MCL §380.1422.)

Minnesota

120.72 GENERAL POLICY. It is the policy of the state of Minnesota that public school education shall be free and no pupil shall be denied an education because of economic inability to furnish educational books and supplies necessary to complete educational requirements necessary for graduation. Any practice leading to suspension, coercion, exclusion, withholding of grades or diplomas, or discriminatory action based upon nonpayment of fees denies pupils their right to equal protection and entitled privileges. It is recognized that school boards to have the right to accept voluntary

contributions and to make certain charges and to establish fees in areas considered extra curricular, noncurricular or supplementary to the requirements for the successful completion of a class or educational program. No public school board may require, except as authorized by sections 120.73 and 120.75, the payment of fees.

120.73 AUTHORIZED FEES. Subdivision 1. A school board is authorized to require payment of fees in the following areas:

- (a) In any program where the resultant product, in excess of minimum requirements and at the pupils' option, becomes the personal property of the pupil;
- (b) Admission fees or charges for extra curricular activities, where attendance is optional;
- (c) A security deposit for the return of materials, supplies, or equipment;
- (d) Personal physical education and athletic equipment and apparel, although any pupil may provide his own if it meets reasonable requirements and standards relating to health and safety established by the school board;
- (e) Items of personal use or products which a student may purchase at his own option such as student publications, class rings, annuals, and graduation announcements;
- (f) Fees specifically permitted by any other statute, including but not limited to *section 171.04, clause (1);
- (g) Field trips considered supplementary to a district educational program;

(h) Any authorized voluntary student health and accident benefit plan;

(i) For the use of musical instruments owned or rented by the district, a reasonable rental fee not to exceed either the rental cost to the district or the annual depreciation plus the actual annual maintenance cost for each instrument;

(j) Transportation of pupils to and from extra curricular activities conducted at locations other than school, where attendance is optional;

(k) Motorcycle classroom education courses conducted outside of regular school hours; provided the charge shall not exceed the actual cost of these courses to the school district;

Subd. 2. Students may be required to furnish personal or consumable items including pencils, paper, pens, erasers and notebooks.

Subd. 3. Sections 120.71 to 120.76 shall not preclude the operation of a school store wherein pupils may purchase school supplies and materials.

Subd. 4. A school board may waive any such deposit or fee if any pupil or his parent or guardian is unable to pay it.

120.74 PROHIBITED FEES. Subdivision 1. A school board is not authorized to charge fees in the following areas:

(a) Textbooks, workbooks, art materials, laboratory supplies, towels;

(b) Supplies necessary for participation in any instructional course except as authorized in sections 120.73 and 120.75;

(c) Field trips which are required as a part of a basic education program or course;

(d) Graduation caps, gowns, any specific form of dress necessary for any educational program, and diplomas;

(e) Instructional costs for necessary school personnel employed in any course or educational program required for graduation;

(f) Library books required to be utilized for any educational course or program;

(g) Admission fees, dues, or fees for any activity the pupil is required to attend;

(h) Any admission or examination cost for any required educational course or program;

(i) Locker rentals;

(j) Transportation of pupils (1) to and from school as authorized pursuant to section 123.39 or (2) for which state transportation aid is authorized pursuant to section 124.223.

Subd. 2. No pupil's rights or privileges, including the receipt of grades or diplomas may be denied or abridged for nonpayment of fees; but this provision shall not prohibit a school district from maintaining any action provided by law for the collection of such fees authorized by sections 120.73 and 120.75.

120.75 HEARING. Subdivision 1. Prior to the initiation of any fee not authorized or prohibited by sections 120.73 and 120.74, the local school board shall hold a public hearing within the district upon three weeks published notice in the district's official newspaper. The local school board shall notify the state board of any fee it proposes to initiate under this section. If within 45 days of this notification, the state board does not disapprove the proposed fee, the local school board may initiate the proposed fee.

Subd. 2. The state board pursuant to the administrative procedures act, sections 15.04 and 15.0426, and consistent with the general policy of section 120.72 shall have the power to specify further authorized and prohibited fees and to adopt rules and regulations for the purposes of sections 120.71 to 120.76.

*171.04, (1) ...Any public school offering behind-the-wheel driver education courses may charge an enrollment fee for the behind-the-wheel driver education course which shall not exceed the actual cost thereof to the public school and the school district....

Mississippi

§ 37-43-1. Declaration of intent.

This chapter is intended to furnish a plan for the adoption, purchase, distribution, care and use of free

textbooks to be loaned to the pupils in all elementary and high schools of Mississippi.

The books herein provided by the state textbook purchasing board shall be distributed and loaned free of cost to the children of the free public schools of the state and of all other schools located in the state, which maintain educational standards equivalent to the standards established by the state department of education for the state schools.

Missouri

170.051. Free textbooks and supplies -- free textbook fund
-- contracts for purchase of books -- penalty

1. Each school board shall purchase from the free textbook fund and from the incidental fund of the district if the free textbook fund is insufficient and furnish free all the textbooks for all the pupils in the elementary grades of the public schools of the district. The board may provide texts, supplementary texts, library and reference books, and additional instructional supplies, for all the pupils of the district, but funds shall not be expended for these materials for high school pupils until the needs of the elementary grade pupils have been adequately supplied. The books are the property of the district but shall be furnished to the pupils under rules and regulations prescribed by the school board.

Montana

20-7-601. Free textbook provisions. (1) The trustees of each district shall provide free textbooks to the public school pupils of the district. The trustees shall purchase such textbooks at the expense of the district and loan them to such pupils free of charge, subject to the textbook damage policy of the trustees.

(2) For the purpose of this section only, textbooks shall not include those books or manuals which are rendered unusable as a result of having pages designed to be written upon or removed during the course of the study they serve. When the parents of a pupil attending a school of the district so request, such textbooks shall be sold to them at cost.

Nebraska

79-4,121. School books; ownership; care; liability of pupils for damage. All books purchased by school boards or boards of education shall be the property of the district and loaned free of charge to pupils of the school while they are pursuing a course of study therein; but the boards shall hold such pupils responsible for any damage to, loss of, or failure to return such books at the time and to the person that may be designated by the board.

Nevada

393.160 Supplies and equipment: Powers of trustees. The board of trustees of a school district shall have the power:

1. To purchase, rent or otherwise acquire supplies and equipment necessary for the operation of the public schools and other school facilities of the school district.

2. To furnish writing and drawing paper, pens, ink, blackboards, erasers, crayons, lead pencils and other necessary supplies for the use of the schools.

3. To repair any equipment.

(424:32:1956)

393.170 Library books, textbooks and school supplies.

1. The board of trustees of a school district shall purchase all new library books and supplies, all new textbooks and supplementary schoolbooks which are necessary and which have been approved by the state textbook commission, and school supplies necessary to carry out the mandates of the school curriculum to be used by the pupils of the school district. The cost of the same shall be a legal charge against the school district fund.

2. All books purchased by the board of trustees shall be held as property of the school district, and shall be loaned to the pupils of the school in the school district while pursuing a course of study therein.

3. The parents and guardians of pupils shall be responsible for all books and any and all other material or equipment loaned to the children in their charge, and shall pay to the clerk of the board of trustees, or to any other person authorized by the board to receive the same, the full purchase price of all such books, material or equipment destroyed, lost or so damaged as to make them unfit for use by other pupils succeeding to their classes. The board of trustees shall establish reasonable rules and regulations governing the care and custody of such school property, and for the payment of fines for damage thereto.

4. Equipment and materials for use in manual training, industrial training and teaching domestic science may be supplied to the pupils in the same manner, out of the same fund, and on the same terms and conditions as books. No private ownership can be acquired in such equipment or material, unless sold in the manner prescribed by law when such equipment or material shall be no longer used or required for the schools of the school district.

New Hampshire

189:16 Text Books; Supplies. They shall purchase, at the expense of the city or town in which the district is situated, textbooks and other supplies required for use in the public schools; and shall loan the same to the pupils of such schools free of charge, subject to such regulations

for their care and custody as the board may prescribe; and shall sell such books at cost to pupils of the school wishing to purchase them for their own use.

New Jersey

18A:34-1. Textbooks; selection; furnished free with supplies; appropriations

Textbooks shall be selected by the recorded roll call majority vote of the full membership of the board of education of the district and they and other school supplies shall be furnished free of cost for use by all pupils in the public schools and money therefor shall be appropriated and raised annually in each school district in the same manner as other school moneys are appropriated and raised in the district.

New Mexico

22-15-7. Students eligible; distribution.

A. Any qualified student or person eligible to become a qualified student attending a public school, a state institution or a private school approved by the state board in any grade from first through the twelfth grade of instruction is entitled to the free use of instructional material. Any student enrolled in an early childhood education program as defined by Section 22-13-3 NMSA 1978 or person eligible to become an early childhood education student as defined by Section 22-13-3 NMSA 1978 attending a private early

childhood education program approved by the state board is entitled to the free use of instructional material. Any student in an adult basic education program approved by the state board is entitled to the free use of instructional material.

B. Instructional material shall be distributed to school districts, state institutions, private schools and adult basic education centers as agents for the benefit of students entitled to the free use of the instructional material.

C. Any school district, state institution, private school or adult basic education center as agent receiving instructional material pursuant to the Instructional Material Law (22-15-1 to 22-15-15 NMSA 1978) is responsible for distribution of the instructional material for use of eligible students and for the safekeeping of the instructional material.

New York

§ 701.3 In the several cities and school districts of the state, boards of education, trustees or such body or officers as perform the function of such boards shall have the power and duty to purchase and to loan upon individual request, to all children residing in such district who are enrolled in grades kindergarten to twelve of a public or private school which complies with the compulsory education law, textbooks.

Textbooks loaned to children enrolled in grades kindergarten to twelve of said private schools shall be textbooks which are designated for use in any public, elementary or secondary schools of the state or are approved by the board of education, trustees or other school authorities. Such textbooks are to be loaned free to such children. . . .

§701.5 In the several cities and school districts of the state, boards of education, trustees or other school authorities may purchase supplies and either rent, sell or loan the same to the pupils attending the public schools in such cities and school districts upon such terms and under such rules and regulations as may be prescribed by such boards of education, trustees or other school authorities.

North Carolina

§ 115-35.f. Power to Regulate Fees, Charges and Solicitations. -- County and city boards of education shall adopt rules and regulations governing solicitations of, sales to, and fund-raising activities conducted by, the students and faculty members in schools under their jurisdiction, and no fees, charges, or costs shall be collected from students and school personnel without approval of the board of education as recorded in the minutes of said board; provided, this section shall not apply to such textbook fees as are determined and established by the State Board of Education. All schedules of fees, charges and solicitations approved

by county and city boards of education shall be reported to the State Superintendent of Public Instruction.

§ 115-206.12. Powers and duties of the State Board of Education in regard to textbooks. -- The children of the public elementary and secondary schools of the State shall be provided with free basic textbooks within the appropriation of the General Assembly for that purpose. The State Board of Education is directed to request sufficient appropriations from the General Assembly to implement this directive.

The State Board of Education shall administer a fund and establish rules and regulations necessary to:

- (1) Acquire by contract such basic textbooks as are or may be on the adopted list of the State of North Carolina which the Board finds necessary to meet the needs of the State's public school system and to carry out the provisions of this Article.
- (2) Provide a system of distribution of these textbooks and distribute the books that are provided without using any depository or warehouse facilities other than that operated by the State Board of Education.
- (3) Provide for the free use, with proper care and return, of elementary and secondary basic textbooks. The title of said books shall be vested in the State. (1955, c. 1372, art. 25, s. 1; 1965, c. 584, s. 19; 1969, c. 519, s. 1.)

North Dakota

15-43-11.1. Public policy -- Definition.

1. It is the policy of this state that public education shall be free. No pupil shall be denied an education because of economic inability to furnish textbooks necessary for advancement in or graduation from the public school system. No school board shall sell textbooks nor otherwise charge fees to pupils except as provided by law.
2. For the purposes of sections 15-43-11.1 through 15-43-11.4, "textbooks" shall include textbooks and workbooks necessary for participation in any instructional course. It shall not include personal or consumable items, such as pencils, paper, pens, erasers, notebooks, or other items of personal use or products which a student may purchase at his option, such as student publications, class rings, annuals, and similar items.

15-43-11.2. Authorized fees. A school board is authorized to require payment of the following fees:

1. A security deposit for the return of textbooks, materials, supplies, or equipment, and may require pupils to furnish personal or consumable items. A use charge may be made when the "textbook" returned has had an undue amount of wear.

2. Admission fees or charges for extracurricular or noncurricular activities where attendance is optional.
3. Fees or premiums for any authorized student health and accident benefit plan.
4. Fees for personal physical education and athletic equipment and apparel. Any pupil may provide his own equipment or apparel if it meets reasonable health and safety standards established by the board.
5. Fees in any program where the resultant product becomes the personal property of the pupil.
6. Fees for behind-the-wheel drivers education instruction.
7. Other fees and charges permitted by statute.

Sections 15-43-11.1 through 15-43-11.4 shall not preclude the operation of a school store where pupils may purchase school supplies and materials. A board may waive any fee if any pupil or his parent or guardian shall be unable to pay such fees. No pupil's rights or privileges, including the receipt of grades or diplomas, may be denied or abridged for non-payment of fees. This shall not preclude the school district's right to withhold diplomas for a student's failure to pay for those costs incurred by his own negligence or choice, such as fines for damaged texts and school equipment, library fines, and materials purchased from the school at the option of the student.

Source: S.L. 1979, ch. 247, § 2.

15-43-11.3. Adoption of additional fees -- Penalty.

A school board may adopt additional fees not inconsistent with the provisions of sections 15-43-11.1 through 15-43-11.4. Any school district which requires the payment of fees prohibited by sections 15-43-11.1 through 15-43-11.4 and refuses to discontinue such action following notification by the superintendent of public instruction shall forfeit foundation payments for those students so charged.

Source: S.L. 1979, ch. 247, § 3.

Ohio

§ 3329.06 Free schoolbooks for pupils.

The board of education of each city, exempted village, and local school district shall furnish, free of charge, the necessary textbooks to the pupils attending the public schools. Pupils wholly or in part supplied with necessary textbooks shall be supplied only as other or new books are needed. A board may limit its purchase and ownership of books needed for its schools to six subjects per year, the cost of which shall not exceed twenty-five per cent of the entire cost of adoption. All textbooks furnished as provided in this section shall be the property of the district, and loaned to the pupils on such terms as each such board prescribes. In order to carry out sections 3329.01 to 3329.10, inclusive, of the Revised Code, each board, in the preparation of its annual budget, shall include as a

separate item the amount which the board finds necessary to administer such sections and such amount shall not be subject to transfer to any other fund.

Oklahoma

§ 16-121. Free textbooks -- Ownership

All textbooks adopted, purchased and distributed to school districts shall be furnished free of cost to the school children of such districts and shall be owned by such districts and each district shall mark each textbook with an appropriate number or other identification as deemed necessary to maintain proper records thereof. Every child shall be issued a complete set of textbooks for his grade, for his personal use, and the State Board of Education shall maintain a replacement program so that each child shall have, at all times, textbooks that are in satisfactory condition, and so that worn-out textbooks or textbooks that are in an unsanitary condition will be used.

Oregon

339.115 Admission of pupils; waiver.

(1) Except as provided in ORS 336.165 authorizing tuition for courses not part of the regular school program, the district school board shall admit free of charge to the schools of the district all persons between the ages of 6 and 21 residing therein. However, a district school board may admit other nonresident persons, determine who

is not a resident of the district and may fix rates of tuition for nonresidents.

(2) A child entering school for the first time during the fall term shall be considered to be six years of age if his sixth birthday occurs on or before November 15. A child entering school for the first time in a midwinter term, if the school has a beginning first-year class in midwinter, shall be considered to be six years of age if his sixth birthday occurs on or before March 15. However, nothing in this section prevents a district school board from admitting free of charge a child who is an educationally able and gifted child, as defined in ORS 343.395, entering school for the first time who has not attained the sixth birthday but who is a resident of the district.

(3) District school boards may provide, by rule, that a resident child eligible to enter a beginning first-year class at the opening of the fall term or midwinter term, but who does not enter within the first four weeks of such term shall be ineligible to enter school for the remainder of the school year or until another beginning first-year class is organized during that school year. A district school board may waive the requirements of this subsection for disadvantaged children as defined by ORS 343.650.

(1965 c. 100 § 285; 1979 c. 410 § 1; 1977 c. 463 § 1)

339.155 Prohibitions of certain fees as condition of admission; allowable fees. (1) No district school board shall require payment of fees as a condition of admission to those pupils entitled under the law to free admission. However, the following are not considered as conditions of admission:

(a) Pursuant to ORS 336.165, but subject to ORS 336.168, tuition may be charged for courses not part of the regular school program.

(b) No charge shall be made for a standard, prescribed textbook but a security deposit may be required which may be refunded if the textbook is returned in usable condition. Supplemental texts shall be made available on loan.

(c) A deposit may be charged for a lock for a locker.

(2) A district school board may require pupils who do not furnish their own attire for physical education classes to pay an appropriate fee for uniforms provided by the district.

(3) A district school board may require pupils who do not provide appropriate towels for physical education classes to pay a fee for use of towels provided by the district.

(4) A district school board may require payment of fees for the use of musical instruments owned or rented by the district, the fee not to exceed the rental cost to the district or the annual depreciation plus actual maintenance cost of each instrument; except that children exempt from

tuition under ORS 336.168 shall be loaned musical instruments by the school district without charge.

(5) Subject to ORS 336.168, a district school board may require payments of fees in any of the following:

(a) In any program where the resultant product, in excess of minimum course requirements and at the pupil's option, becomes the personal property of the pupil.

(b) Admission fees or charges for extracurricular activities where pupil attendance is optional.

(c) A security deposit conditioned on the return of materials, supplies or equipment including athletic equipment.

(d) Items of personal use or products which a pupil may purchase such as student publications, class rings, annuals and graduation announcements.

(e) Field trips considered optional to a district's regular school program.

(f) Any authorized voluntary pupil health and accident benefit plan.

(g) As used in this subsection, "minimum course requirements" means any product required to be produced to meet the goals of the course. (1975 c. 508 § 1; 1977 c. 99 § 1; 1977 c. 815 § 3.)

336.168 When tuition not allowed under ORS 336.165; hardship waiver. (1) (a) Notwithstanding ORS 336.165, no

district school board shall require tuition for courses not part of the regular school program, except for driver instruction, from a pupil who is a member of a low-income family in an amount in excess of what the low-income family may receive as money specifically to be used for payment of such tuition.

(b) As used in this subsection, "low-income family" means a family whose children qualify for free or reduced price school meals under the federal lunch program, including but not limited to the National School Lunch Act and the Child Nutrition Act of 1966, and all their subsequent amendments.

(2) A family that does not qualify under subsection (1) of this section but believes the payment of school tuition is a severe hardship may request the district school board to waive in whole or in part the payment of such tuition.

(3) Any parent or guardian who believes that payment of any fee authorized under ORS 339.155 is a severe hardship may request the district school board to waive payment of the fee and the board shall waive in whole or in part the fee upon a finding of hardship. Consideration shall be given to any funds specifically available to the parent, guardian or child for the payment of fees or other school expenses.

(4) No district school board shall impose or collect fees authorized under ORS 339.155 from any student who is a ward of a juvenile court or of the Children's Services

Division unless funds are available therefor in the court's or the division's budget.

(5) No district school board is required to waive any fee imposed under paragraph (a) or (d) of subsection (5) of ORS 339.155. (1975 c. 508 § 2; 1977 c. 815 § 2)

Pennsylvania

§ 8-801. Purchases; use in schools; rules and regulations

The board of school directors of each school district shall purchase all necessary furniture, equipment, textbooks, school supplies, and other appliances for the use of the public schools, or any department thereof, in their respective districts, and furnish the same free of cost for use in the schools of the district, subject to such rules and regulations regarding the use and safe-keeping thereof as the board of school directors may adopt. All furniture, equipment, books, school supplies, and other appliances purchased by the board of school directors of any school district, for the use of the public schools therein, shall be purchased in the manner provided in this act. 1949, March 10, P.L. 30, art. VIII, § 801.

Rhode Island

16-23-2. Loan of textbooks. -- The school committee of every community as the same is defined in § 16-7-16 shall furnish upon request at the expense of such community, textbooks in the fields of mathematics, science and modern

foreign languages appearing on the published list of textbooks recommended by the commissioner of education as provided in § 16-1-9 of the general laws, as herein amended, to all pupils of elementary and secondary school grades resident in such community, said textbooks to be loaned to such pupils free of charge, subject to such rules and regulations as to care and custody as the school committee may prescribe.

Every such school committee shall also furnish at the expense of such community all other textbooks and school supplies used in the public schools of said community, said other textbooks and supplies to be loaned to the pupils of said public schools free of charge, subject to such rules and regulations as to care and custody as the school committee may prescribe. School books removed from school use may be distributed to pupils, and any textbook may become the property of a pupil who has completed the use of it in school, subject to rules and regulations prescribed by the school committee.

South Carolina

§ 59-19-90. General powers and duties of school trustees.

The board of trustees shall also:

(8) Charge matriculation and incidental fees. Charge and collect matriculation and incidental fees from the pupils when allowed by any special act of the General Assembly;

§ 59-31-360.

The State Board of Education shall waive textbook rental charges for grades one through twelve of the public schools, to the end that basal textbooks adopted and approved by the board for use in the public schools shall be supplied to the school children of the State without charge. Title to books so provided shall remain in the State Board of Education. Each school district shall fully utilize all books owned by it to effect the purposes of this section.

South Dakota

13-34-16.2. State policy on education -- Free book loans to all persons aged five through nineteen -- Neutrality. It is declared to be the policy of this state that the common good and general welfare of the state are promoted by an educated and enlightened citizenry and, to assist in achieving those goals and in accord with the child benefit doctrine, there shall be loaned without charge to all persons ages five through nineteen such nonsectarian textbooks and text-related workbooks designed for individual use as are normally furnished by the school boards of the several public school districts of this state to the students enrolled in the public schools of such respective districts. It is further declared to be the policy of this state that, in the loaning of such materials to such persons, the state shall be neutral to and between all such persons.

Tennessee

49-1701. Public schools free -- Transfer of pupils. -- The public schools shall be free to all persons above the age of six (6) years, or who will become six (6) years of age during a school year and on or before December 31, 1965; November 30, 1966; October 31, 1967; September 30, 1968; and who is six (6) years of age on or before September 30th of each year thereafter, residing within the state. Local boards of education shall be authorized in their discretion to admit pupils from outside their respective local school districts, and to arrange for the transfer of students residing within said school districts to schools located elsewhere; and to enter into agreements and arrangements with other local boards of education for the admission or transfer of pupils from one school system to another. Where a pupil meets the requirements of the state board of education for transfer and/or admission purposes, as determined by the state commissioner of education, such pupil may be admitted by a local board of education, notwithstanding any other provision or act to the contrary. Such admissions and transfers from one school system to another may be made with or without transfer of school funds but only upon such terms and conditions as may be agreed upon by the cognizant boards of education, and approved by the state commissioner of education. No tuition or fee shall be charged by any city or special school district except to pupils residing

outside the city or special school district. Tuition or fees which may be charged to pupils residing outside the city or special school district but within the county shall not exceed per pupil, per annum, an amount equal to the amount of funds actually raised and used for school purposes from the city, or special school district sources during the preceding school year, including tuition and fees, divided by the number of pupils in average daily attendance in the public schools of the city or special school district during the preceding school year. (Acts 1925, ch. 115, § 19; Shan. Supp., § 1487a141; Code 1932, § 2472; Acts 1957, ch. 9, § 1; 1965, ch. 239, § 1; 1965, ch. 303, § 1; 1968 (Adj. S.), ch. 417, § 1; 1972 (Adj. S.), ch. 693, § 13; 1974 (Adj. S.), ch. 654, §§ 79, 80.)

49-1719. Books furnished children unable to procure them. -- If satisfactory proof is presented that any child is unable to attend school as hereinbefore required because he is not able to procure books, the local board of education having charge of the school to which said child belongs shall purchase said books out of the public school fund of the local district and lend said books to said child under regulations prescribed by said board during the term such books are needed. (Acts 1947, ch. 87, § 7; C. Supp. 1950, § 2442.7; Acts 1974 (Adj. S.), ch. 654, § 98.)

49-232. Student activity fund -- Regulations -- Handling and management -- Accounting -- Bond. -- The several schools may, if authorized by the particular board of education having jurisdiction over said school or schools, receive funds for student activities as hereinafter provided, and for events held at or in connection with the school, including contracts with other schools for inter-school events and funds derived from such sources shall be the property of the respective schools; however, the board of education granting said authorization, shall provide for its school system by July 1, 1960, reasonable regulations, standards, procedures, and an accounting manual covering the various phases of student body activity funds and other internal school funds accounting, including, but not limited to: the bonding of those who are responsible for handling the funds; the proper handling of cash receipts, the making of deposits, the management of funds, the expenditures of funds and the accounting for funds; the auditing of funds; the making of financial reports; the carrying of necessary insurance; the use of proper business and accounting forms; the collection of state and federal taxes; the purchase of supplies and equipment; the powers and responsibilities of the principal of the school in connection with the handling of student body activity funds and other internal school funds; the preparation of a student body activity fund budget and the budgetary control of expenditures; and ways and means of evaluating and improving all phases of student body financial

activities and the handling of other internal school funds in accordance with accounting practices and procedures as are generally recognized in public school systems; provided that the school shall not require any student to pay a fee to the school for any purpose, except as authorized by the board of education, and provided further that no fees or tuitions shall be required of any student as a condition to attending the public school, or using its equipment while receiving educational training. The principal of each school shall have the duty of instituting and following the reasonable regulations, standards, procedures, and the accounting manual adopted by the board of education having jurisdiction over the school, and the principal shall be liable to account for the safekeeping and handling of all funds of every character raised by student activities, school services, and school events, irrespective of the sources of such funds, or the purpose for which they were raised.

Texas

§ 20.53. Authority to Charge Fees

(a) A school board is authorized to require payment of fees in the following areas:

(1) in any program where the resultant product in excess of minimum requirements and at the pupil's option becomes the personal property of the pupil, not to exceed cost of materials;

(2) membership dues in student organizations or clubs and admission fees or charges for attending extra-curricular activities when membership or attendance is voluntary;

(3) a security deposit for the return of materials, supplies, or equipment;

(4) personal physical education and athletic equipment and apparel, although any pupil may provide his or her own if it meets reasonable requirements and standards relating to health and safety established by the school board;

(5) items of personal use or products which a student may purchase at his or her own option such as student publications, class rings, annuals, and graduation announcements;

(6) fees specifically permitted by any other statute;

(7) any authorized voluntary student health and accident benefit plan;

(8) a reasonable fee not to exceed the actual annual maintenance cost for the use of musical instruments and uniforms owned or rented by the district;

(9) items of personal apparel which become the property of the student and which are used in extra-curricular activities;

(10) parking fees and fees for identification cards;

(11) driver training courses, provided that such fees shall not exceed the difference between the average statewide cost per student in the programs for the prior school year or the actual district cost per student in such programs for the current school year, whichever is less, and the payment per student from state funds for such programs; or

(12) courses offered for credit where the activity necessitates the use of facilities not available on the school premises, and participation in the course is optional on the part of the student.

(b) A school board is not authorized to charge fees in the following areas:

(1) textbooks, workbooks, laboratory supplies, or other supplies necessary for participation in any instructional course except as authorized under this code;

(2) field trips which are required as a part of a basic education program or course;

(3) any specific form of dress necessary for any required educational program or diplomas;

(4) instructional costs for necessary school personnel employed in any course or educational program for graduation;

(5) library books required to be utilized for any educational course or program, except that fines may be assessed for lost, damaged, or overdue books;

(6) admission fees, dues, or fees for any activity the pupil is required to attend as a prerequisite to graduation;

(7) any admission or examination cost for any required educational course or program; or

(8) lockers.

(c) The State Board of Education pursuant to administrative procedures and consistent with the general policy of this state shall have the power to specify further authorized and prohibited fees and to adopt rules and regulations for the purposes of such policies.

(d) Students may be required to furnish personal or consumable items including pencils, paper, pens, erasers, and notebooks.

(e) This section does not preclude the operation of a school store wherein pupils may purchase school supplies and materials.

(f) A school district shall adopt reasonable procedures for waiving a deposit or fee if a pupil and his or her parent or guardian is unable to pay it. This policy shall be posted in a central location in each school facility, in the school policy manual, and in the student handbook.

(g) This section shall not be construed to prohibit a school board from charging reasonable fees for goods and services provided in connection with any postsecondary instructional program, including but not limited to vocational-technical, adult, veterans, continuing education, community services, evening school, and general educational development programs.

(Acts 1977, 65th Leg., 1st C.S., p. 34, ch. 1, § 17, eff. Sept. 1, 1977.)

Utah

53-7-21 (8, e) Funds expended for textbooks and laboratory fees shall be used to supply to pupils in the several grades and departments free of charge textbooks and laboratory materials used by the pupils. Boards of education may sell to pupils in grades 9 through 12 at cost all supplies used by the pupils.

Vermont

§ 3743. Textbooks, appliances and supplies

The board shall select and provide all textbooks, appliances and supplies required for use in the elementary schools and the textbooks required for use in the secondary schools in the town district which shall be paid for by the district. The selection of textbooks, appliances and supplies shall be subject to the approval of the superintendent of the

schools of the district. The board shall provide nonresident pupils attending the schools with the necessary textbooks, appliances and supplies under the regulations the board of education shall prescribe. The board of school directors with the superintendent shall make the rules and regulations it deems proper for the care and custody of all textbooks, appliances and supplies.

Virginia

§ 22.1-251. Free textbooks, etc., for eligible children.
-- Each school board shall provide, free of charge, such textbooks and workbooks required for courses of instruction for each child attending public schools whose parent or guardian is financially unable to furnish them. Children who are receiving public assistance in the form of aid to dependent children, general relief, supplemental security income or foster care shall be deemed eligible for the purposes of this section. In systems providing free textbooks, the cost of furnishing such textbooks and workbooks may be paid from school operating funds or the textbook fund or such other funds as are available. In systems operating textbook rental systems, school boards shall waive rental fees or, in their discretion, may reimburse the textbook rental fund from school operating funds. (Code 1950, §§ 22-72, 22-97; 1954, cc. 289, 291; 1956, Ex. Sess., c. 60; 1959, Ex. Sess., c. 79, § 1; 1966, c. 691; 1968, c. 501; 1970,

c. 71; 1971, Ex. Sess., c. 161; 1972, c. 511; 1975, cc. 308, 328; 1989, c. 559.)

§ 22.1-6. Permitted fees and charges. -- Except as provided in this title or as permitted by regulation of the Board of Education, no fees or charges may be levied on any pupil by any school board. No pupil's scholastic report card or diploma shall be withheld because of nonpayment of any such fee or charge. (Code 1950, §§ 22-197, 22-198, 22-199; 1977, c. 204; 1980, c. 559.)

Washington

28A.58.080 Summer and/or other student vacation period programs -- Authorized -- Tuition and fees

Every school district board of directors is authorized to establish and operate summer and/or other student vacation period programs and to assess such tuition and special fees as it deems necessary to offset the maintenance and operation costs of such programs in whole or part. A summer and/or other student vacation period program may consist of such courses and activities as the school board shall determine to be appropriate: Provided, that such courses and activities shall not conflict with the provisions of RCW 28A.04.120, as now or hereafter amended. Attendance shall be voluntary. (Added by Laws 1st Ex Sess 1974 ch 161 § 1, effective April 29, 1974.)

28A.58.113 Fees for optional noncredit extracurricular events -- Disposition

The board of directors of any common school district may establish and collect a fee from students and non-students as a condition to their attendance at any optional noncredit extracurricular event of the district which is of a cultural, social, recreational, or athletic nature: Provided, That in so establishing such fee or fees, the district shall adopt regulations for waiving and reducing such fees in the cases of those students whose families, by reason of their low income, would have difficulty in paying the entire amount of such fees and may likewise waive or reduce such fees for nonstudents of the age of sixty-five or over who, by reason of their low income, would have difficulty in paying the entire amount of such fees. An optional comprehensive fee may be established and collected for any combination or all of such events or, in the alternative, a fee may be established and collected as a condition to attendance at any single event. Fees collected pursuant to this section shall be deposited in the associated student body program fund of the school district, and may be expended to defray the costs of optional non-credit extracurricular events of such a cultural, social, recreational, or athletic nature, or to otherwise support the activities and programs of associated student bodies. (Added by Laws 1st Ex Sess 1975 ch 284 § 1; Amended by Laws 1st Ex Sess 1977 ch 170 § 1.)

West Virginia

18-5-21(a) The board of education of every county shall provide the textbooks to be used in the free schools for the pupils whose parents, in the judgment of the board, are unable to provide the same; such textbooks shall be those adopted by the state board of education.

Wisconsin

§ 118.03 Textbooks

(1) (a) The school board shall adopt all the textbooks necessary for use in the schools under its charge. The list of the adopted books shall be filed with the school district clerk.

(b) The school board may purchase textbooks and sell them to the pupils at cost or it may designate agents of the school district to sell the textbooks to the pupils. The agents, at stated times, shall make settlement with the school district for books sold. The agents may add a selling commission which shall not exceed 10% of the net price.

§ 120.12

(11) Indigent children. Provide books and school supplies for indigent children residing in the school district.

Wyoming

§ 21.1-181. Board of trustees to purchase and lend to pupils; responsibilities of pupils; sale of surplus. -- (a) The board of trustees of each school district within the state shall purchase all textbooks necessary to the operation of the schools under its jurisdiction. Each school board may in addition purchase such supplies as it deems necessary. Such textbooks and supplies shall be held as the property of the district and shall be loaned to pupils free of any charge; provided, the pupils shall be held responsible for damage to, loss of, or failure to return such books and supplies except those that by their nature are expended during the course of study.

(b) The board may sell to any pupil or parent, at its cost, any surplus books or supplies it has purchased and which such pupil or parent desires to purchase for his own use.