

# **The Practice of Charging User Fees in Public Schools: Does It Violate a Student’s Right to a Free Public Education?**

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## ABSTRACT

Charging “user fees” for select services and materials in public schools has raised objections that charging fees violates a student’s right to a free public education under state law. Given the fiscal constraints faced by school districts across the nation, an increasing number of school boards are likely to charge user fees for transportation, textbooks, instructional materials, and extracurricular activities. Whether or not fees may be charged depends partly on the wording in state statutes and partly on judicial interpretations as to which school activities should be considered part of a free public education. In this article, I examine a number of pertinent cases pertaining to this issue.

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There is a growing practice of charging “user fees” for select services and materials in public schools such as transportation, textbooks, course materials, and extracurricular activities. This practice has raised objections that charging fees violates a student’s right to a free public education under state law. Whether or not fees may be charged depends partly on the wording in state statutes and partly on judicial interpretations as to which school activities should be considered part of a free public education.

## **Transportation**

The law is clear that public schools cannot charge tuition to resident students who attend regular school year classes but may charge parents or legal guardians of nonresident students tuition for such attendance. Some courts have distinguished between tuition charges and transportation charges, reasoning that transportation is not an essential part of students’ property right to a free public education, see *Kadrmias v. Dickinson Public Schools* (1988); *Salazar v. Eastin* (1995). School Board policies that

have distinguished between resident and nonresident students pertaining to transportation fees have been upheld by the courts, see *Fenster v. Schneider* (1980), and courts have upheld policies, which allow school districts to charge fees for summer school transportation, see *Crim v. McWharter* (1979).

The United States Supreme Court in *Kadrmas v. Dickinson Public Schools* (1988) held that a North Dakota statute allowing selected school districts to charge a transportation fee, not to exceed the school district's estimated cost of providing the service, does not violate a student's right to a free public education. The Court stated that unless mandated by state law, local school districts may refuse to provide school transportation services; thus, such services need not be free.

Whether or not reasonable school transportation fees can be imposed varies from state to state, depending on each state's classification of contested charges falling within or beyond the scope of that state's "free" public education. However, states do not have discretion regarding transportation for children with disabilities. Under federal and state laws, transportation is a related service that must be provided free if necessary for a child with disabilities to participate in the educational program, see Education for All Handicapped Children Act of 1975.

### **Textbooks, Courses, and Supplies**

Some courts have upheld fees for textbooks, school supplies, and courses. Others have not. The United States Supreme Court has not invalidated textbook or other fees under federal equal protection guarantees; therefore, the legality of such fees depends on interpretations of state statutes and constitutions.

The Montana Supreme Court, in *Granger v. Cascade County School District No. 1*, (1972), applied a principle or test to determine whether or not a school district can or should charge fees for textbooks, courses, or supplies. The Montana Supreme Court interpreted "tuition-free" in their constitution to mean "free" as far as required courses were concerned and did not prohibit fees and charges for optional extracurricular or elective courses or activities. The Montana Supreme Court offered the following principle or test:

We believe that the controlling principle or test should be stated in this manner: Is a given course or activity reasonably related to a recognized academic and educational goal or a 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. (p. 780)

The courts have consistently construed the language "without payment of tuition" or "tuition-free" or such language to mean that a school district is prohibited from charging a fee for a pupil attending school. This language has also been construed as not prohibiting the charging of fees for textbooks or other educational materials. However,

when state constitutions contain language such as “free public schools” or “free common schools” or similar language, the courts have generally held, with few exceptions, that this language contemplates furnishing textbooks and other educational materials free of charge, at least to the elementary schools.

An issue receiving increasing attention in the public schools is charging fees for participation in extracurricular activities. The following court decisions will shed some light on this issue. School administrators and other school officials should consult their state statutes.

### **Extracurricular Activities**

Several courts have ruled that public schools can charge students fees for participation in extracurricular activities. In *Paulson v. Minidoka County School District No. 331* (1970), the Supreme Court of Idaho upheld a school district’s policy that required students to pay for participation in extracurricular activities. The court reasoned that such activities are not necessary elements of a high school career. In *Board of Education v. Sinclair* (1974) and in *Granger v. Cascade County School District* (1972), the Wisconsin and Montana Supreme Courts reached similar conclusions as did Idaho. The courts ruled that school districts can charge fees for activities that are optional or elective. In *Attorney General v. E. Jackson Public Schools* (1985), a Michigan appeals court upheld fees for playing on interscholastic teams. The court reasoned that interscholastic athletics are not considered an integral, fundamental part of the educational program, which would require providing them free to resident students. The Michigan court also noted the confidential waiver process available for students who could not afford to pay the fees. The court recognized that no students had been denied participation because of inability to pay the fees.

Earlier, an Indiana federal district court, in *Carder v. Michigan City School Corporation* (1982), ruled that the state student disciplinary code and federal equal protection guarantees precluded school boards from suspending students for parents’ failure to pay fees assessed for educational materials. The Ninth Circuit Court, in *Canton v. Spokane School District No. 81* (1974), held that students have a constitutional right not to be subjected to embarrassment, humiliation, or other penalties for failure to pay fees for instructional materials. The Supreme Court of West Virginia, in *Vandevender v. Cassell* (1974), upheld waivers for students who could not afford to pay the assessed fees. And later, the U.S. Supreme Court in *Kadrmas v. Dickinson Public Schools* (1988), held that under the law, school districts have the discretion to waive any fee for families financially unable to pay fees assessed, and benefits such as diplomas and grades are not to be affected by nonpayment of fees. However, one year later, in *Association for Def. v. Kiger* (1989), the Supreme Court of Ohio upheld state law that authorized school districts to withhold grades or credit if students failed to pay fees for educational materials.

Individual state laws may prohibit assessing students for participation in extracurricular activities. The Supreme Court of California, in *Hartzell v. Connell* (1984), held that its state constitution prohibited charging students fees for participation in any extracurricular activities. The court stated that extracurricular activities are an integral part of the educational program and thus encompassed a guarantee of a free

public education. The court further held that the fee violated the state administrative code, which stipulated that students shall not be required to pay any fees. Nevertheless, eight years later the same court, in *Arcadia Unified School District v. State Department of Education* (1992), held that school transportation fees were permissible under California law.

### **Conclusion**

Charging “user fees” for select services and materials in public schools has raised objections that charging fees violates a student’s right to a free public education under state law. Given the fiscal constraints faced by school districts across the nation, an increasing number of school boards are likely to charge user fees for transportation, textbooks, other instructional materials, and extracurricular activities. Whether or not fees may be charged depends partly on the wording in state statutes and partly on judicial interpretations as to which school activities should be considered part of a free public education.

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