

Law Trends

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Student Fees in Public Schools

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Rising costs and increased mandatory programs coupled with cutbacks in state and federal aid have forced schools to seek additional revenue sources. The lack of available funds to meet the rising costs of education has spurred interest in collecting fees from children attending elementary and secondary public schools. Disgruntled parents responded to mounting fees during the 1970s with an outburst of litigation. Parents challenged fee charges, contending that the fees violated the state's constitutional provisions for free public schools and exceeded the school board's statutory authority. Today, as resources continue to dwindle, schools are likely to impose additional fees and courts are likely to renew the debate over the meaning of free public education.

In Ohio, the Constitution requires the legislature to establish and maintain a free public school system. However, the obligation to provide free public education to all qualified children does not prohibit the imposition of charges for some aspects of instruction. For example schools may charge a fee for any materials used in a course of instruction other than the necessary text books or electronic text books. Schools may also charge a fee for courses in driver education, for summer school, for a day or evening school for adults or for a technical school or institute for instruction beyond high school. Courses of instruction in basic literacy may be offered with or without tuition, as the school determines.

Schools may adopt rules and regulations prescribing a schedule of fees for those materials furnished for a fee, and a schedule of charges which may be imposed upon pupils for loss, damage or destruction of school property. Payment of the fees and charges prescribed may be enforced by withholding the grades and credits of the pupils concerned. Grades and credits may not, however, be withheld for failure to return items being sold by students in connection with fund raising activities. Student files may not be withheld for failure to pay fees. Students who are determined by the school to be in serious financial need may be provided course materials without charge.

In adopting any schedule of fees, schools should take care to see that all fees charged are clearly authorized by statute. The Ohio Supreme Court has declared that in the State of Ohio free education is the rule and fees the exception. Thus, it has been held that a board of education may not charge a per pupil fee for consumable materials such as copier paper, student tests and record keeping supplies, since such materials are not "used in a course of instruction" within the meaning of the statute. Consumable materials may, however, be charged for if their use is clearly restricted to classroom instruction.

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Fees may be charged for participation in extra-curricular activities, since such activities are not mandated by law, and are thus not a part of the free public education to which students are entitled.

Where free transportation is already being offered to students, parking fees may be charged to students who park their cars on school property. When eye protective devices are required, they may be rented to students and teachers at a modest fee or purchased by the school and sold at cost. Because financial restraints are prompting an increasing number of schools to charge fees for courses, text books and activities, these fees must be justified under Ohio law.

For more information, please contact Ms. Borman or Ms. Markakis at 419-241-6000. Ms. Borman is a member of the Firm's Public Law Practice Group and has significant experience in advising clients on compliance with emerging legislative and statutory issues, including strategic planning to accomplish legislative and governmental support on a wide range of business, tax and policy issues. Ms. Markakis is an associate of the Firm who is also part of the Public Law Practice Group.