



State Board of Education Position Statement

On

Free Textbooks, Materials and the Charging of Fees

The State Board of Education adopted this document in March 1972. Some requirements mentioned in this document have since been changed in state law and are noted in *italics*.

Michigan Department of Education

Lansing, Michigan

March 1972

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Introduction

At least since 1965, the State Board of Education has been firmly on record as favoring the provision of free textbooks and other consumable materials to the children attending public schools in the state of Michigan. State funds were never available for the purpose, so the historical practice of local school districts to require students to provide --- to varying degrees --- such materials as books, writing materials, athletic equipment of certain types, and a host of other items used in the educational process, continued.

On July 17, 1970, the Michigan Supreme Court ruled, in the case of Bond, et al vs. the Public Schools of Ann Arbor, that any requirement that a child duly enrolled in the public schools furnish materials needed for the provision of education was violative of the Michigan Constitution.

The Court's language in so ruling was general but sweeping, and was interpreted by the Michigan Attorney General to apply widely to both required and elective courses in the public schools.

Policies and Supplemental Policy Guidelines

The following pages represent State Board of Education interpretations, based on legal counsel, of the application of the "Bond" decision as regards the public schools of Michigan. The interpretations were developed in two parts: Policy Guidelines were originally issued on August 17, 1970, and Supplemental Policy Guidelines were issued originally on December 1, 1970. The two sets of guidelines are combined in this document.

Included as Appendix A is a memorandum opinion from the office of the Attorney General setting forth the legal reasoning which has been applied. This opinion, along with interpretive memoranda dated August 17 and December 1, 1970, was circulated to all public schools superintendents and widely to others in Michigan early in the 1970-1971 school year.

John W. Porter
Superintendent of Public Instruction

I. General Fees

- A. School districts may not make charges for any required or elective courses such as for:
 - (a) General or registration fees
 - (b) Course fees or materials ticket charges
 - (c) Textbooks and school supplies

- B. School districts may charge fees for extracurricular activities when students are not graded or evaluated and academic credit is not given, or for any activity in which participation is not required for obtaining a diploma. Provision should be made on a reasonable basis so that students without financial means are not excluded.

- C. Schools can make a reasonable student attendance charge for admittance to school assemblies or other extracurricular activities when students are not graded or evaluated and credit is not given. Attendance at these activities cannot be required if a charge is made for students to attend. If attendance is required of all students at an assembly, then no charge can be made to the students. The services of the professional organization putting on the assembly must then be paid for by the board of education.
- D. Voluntary extracurricular activities, such as attendance at sports, musical concerts, movies and plays, need not be provided free of charge. The cost of this admission or ticket must be borne by the person attending the activity. Consequently, fees (charge for tickets) for participation as a spectator may be charged.

II. Textbooks and Materials

- A. School districts may charge for damages or loss of school property when such property has been provided to students without charge.
- B. School districts may require students to place a deposit to cover damage to textbooks, non-consumable materials, and supplies provided free by the school district, for those economically able to pay as determined by school authorities, after consulting with the parent. These deposits must be reasonable and refundable.
- C. School officials may determine the quality and quantity of school supplies such as textbooks, paper and pencils that are reasonable for the use of pupils, and determine the length of time such materials shall be provided. Likewise, pupils may voluntarily bring their own school supplies for any curricular subject.
- D. Textbook deposits must be both reasonable and refundable. It is not considered reasonable by this office or the Office of the Attorney General, that deposits be as much as the cost or replacement value of the book. It is believed that "reasonable" means that boards could consider the usability of a textbook as being either four or five years. If the four-year figure were to be used, a deposit of one-fourth of the value would be reasonable. If the five-year term were used, then one-fifth of the value would be reasonable as a deposit. Care should be taken to keep a record of the condition and age of all books so that a reasonable approach can be made in making a determination as to whether more than the usual wear and tear from usage were made on a book. If no more than the usual wear and tear from usage were made on a book, the full refund must be made. Refunds must be made at the end of each school year or during the year if the student leaves the school system. Deposits cannot be kept by the school district until the student goes to another building within the system, graduates, or leaves the system in any other way.
- E. If the school district receives tuition students, the receiving district must provide textbooks on the same terms it would to a resident student. This is true if the sending board of education or the parents or guardian pay the tuition.

- F. Interest received by the school district as a result of book deposits received and banked belong to the school district and can be used for general operation of the school district. These are considered as "trust" funds.

III. Interscholastic Athletics Participation

- A. Fees for participation in interscholastic athletic activities are legally possible if they are extracurricular in nature, students are not required to take them, and no grade or credit is given.

IV. Band and Orchestra

- A. If band (or orchestra) is considered as an extracurricular subject, the time consumed while taking this music class cannot be counted toward the 900 or 990 hour requirement. If it is extracurricular, is given outside of the 900 or 990 hours and no credit or grade is given, the local school board is not obligated to provide instruments. *[Note: Beginning in the 2003-2004 school year, the State School Aid Act eliminated the instructional day requirement and established a minimum of 1,098 hours of pupil instruction.]* On such an arrangement fees may be charged. If band or orchestra is offered as part of the curriculum and a grade and credit is given, then the board is required to provide instruments free, on a reasonable basis, to qualified students. It is our belief that it is reasonable for boards to provide the large or more expensive instruments and a few of the less expensive instruments such as clarinets, trumpets, drums, etc. If a district owns 6 clarinets, as an example, and 12 students appear to be qualified and want to play clarinet, it would seem reasonable to assign 2 students to each clarinet, and for health reasons have each student provide his or her own mouthpiece and reed. It might also be reasonable to have some of these students start on another kind of available instrument.
- B. It is not felt that it is the intent of this decision that a board must consider owning enough instruments to provide each eligible student with an instrument of his or her choice, only that some kind of instrument be available on a reasonable basis to all qualified students. Qualified refers to reasonable student aptitude or ability, not availability of an instrument. No rental charge can be made if credit or grade is given. A reasonable deposit against damage or loss may be required by the school. Parents may purchase, rent, or lease instruments to be used by their children.
- C. In some schools, band program begins in the fifth or sixth grade and operates six periods a day. If the total number of clock hours per year clearly exceeds the requirement of the minimum school year, students may be released for ½ hour per day within the school day to participate in band. During this release time the other students will remain in class for instruction.

V. Trips and Travel

- A. Entrance Fees or ticket admissions that are a part of a required field trip must be paid by the school district. If the trip is "extracurricular" in nature and attendance is not required or credit given, and attendance does not enter into

the grade given, the student can be required to pay for the entrance fees or tickets. In neither case can any charge be made for transportation on a school bus to a play, etc. No transportation charge can be made to students on any spectator bus to games, etc.

- B. If a trip (such as a senior trip or one to a city for a play, ballgame, etc.) is extracurricular and no credit or grade is given, and a trip is on a chartered bus, train, plane, etc., the school need not pay the transportation.

VI. Special Courses and Projects

- A. School districts may require a person to pay for adult education courses offered by the public schools, provided that the adult is not earning credit toward a high school diploma and is not counted in membership for state aid purposes.
- B. If students take an extra course, such as, but not limited to cosmetology, advanced math or the sciences, from an approved private school, a college, university or community college, and high school credit is given, the school district must pay the tuition and textbook charges. If no high school credit is given, the local school board is not required to pay the tuition or book charges. Credit for the completed course may be given by the school where the work was completed in addition to the credit received by the school district. This dual credit does not release the school district from its responsibility to pay for the tuition and books.
- C. Students should be allowed the opportunity to take a class(es) at night school at a school outside of the residency of the student and given credit toward graduation for a class successfully completed. This is only referring to credit toward graduation and would not alter a local school district's credit and residency requirements for graduation.
- D. If a full-time day student wishes to take an additional class at night school that is offered during the school day but prefers to take course(s) at night in the same school district, the charging of tuition fee is permissible (not mandatory), providing that the school district offers at least 180 days of school to its students exclusive of the night school program, and the district offers during the regular school year the required 900 or 990 clock hours of student instruction, or less if approved by the State Board of Education. The board of the district of which the student is a resident may charge tuition for this (these) night school classes as long as attendance is on a voluntary basis regardless of the fact that a grade or credit is given toward grade advancement or graduation.
- E. Items (projects) made as a requirement for shop, art or home economics are made on school purchased materials. They are school property but may be sold to the student making the project (or any other person) at cost upon direction of the Board of Education stating by resolution that the items (projects) made in shop, art and home economics and not needed for school purposes may be sold by the superintendent or his representative. Funds so received will revert to the general fund of the district.

- F. Materials used to make special projects (not required for credit) such as special wood or cloth, for a bookcase, gun rack, or dress, etc., need not be supplied by the school district. Students making such special projects must pay for this material, and the finished project is their property. Schools may purchase this material and sell it to the students at cost.

VII. Summer School

- A. School districts may charge for summer school except where such activities are a part of the regularly scheduled year-round program. Charging of fees for summer school is permissible provided that the school district offers at least 180 days of school to its students exclusive of the summer school program and the district offers during regular school year the required 900 or 990 clock hours of student instruction, or less if approved by the State Board of Education. *[Note: Beginning in the 2003-2004 school year, the State School Aid Act eliminated the instructional day requirement and established a minimum of 1,098 hours of pupil instruction.]* A school board may charge tuition for summer school as long as attendance is on a voluntary basis regardless of the fact that a grade or credit is given toward grade advancement or towards graduation.
- B. School districts may charge for summer school if the school district is not in regular session. In other words, school is "out" about June 1 and is closed until after Labor Day. Summer school is then defined as a special session for remedial or additional work taken on a voluntary basis during the summer when the schools of the district are normally closed.
- C. No charge can be made for summer classes if the school district is operating a year-round school program that includes the summer months.
- D. If the school district requires the attendance of a student during the summer session in order for that student to obtain a diploma or grade advancement, no fee can be charged.

VIII. Clothing and Food

- A. School districts may require fees for clothing and food which are offered during the regular school program.
- B. Swimming suits, gym clothing, gym shoes, football shoes, baseball shoes, spats, leggings or special shoes to wear with a band uniform need not be supplied by the school district. School districts may make a reasonable charge for the use of any of these items that it supplies to its students. Parents, however, may purchase or supply their own above-mentioned items that are satisfactory for use.
- C. If a specific color, style and manufacturer is required by the school district, then the school district must supply the item free of charge.
- D. Special clothing (not robes or band uniforms) for extracurricular activities such as choir or band or orchestra need not be supplied or paid for by the

school district. Example: For choir, a white blouse or shirt, dark trousers or skirt, and black shoes and stockings.

- E. Towels, if provided by the school district, must be provided free of charge. No charge can be made for laundering the towels. Towels must be provided without charge if showers are required for a credit course.
- F. Schools are not authorized to charge for providing a place for students to eat a "carry-in" lunch. Some schools are charging a yearly fee so that working mothers can have their children stay at school at noon rather than come home for lunch. This charge is not legal.

IX. Camping Program

- A. If the school district has a camping program and attendance is not required and no grade or credit is given, a reasonable charge may be made for meals while at camp. Clothing must be provided by the parent or guardian.

X. Pre-Collected Fees

- A. Any locker fees, instrument or uniform rental fees collected in advance should be refunded to the students.

Example: Some school districts require a student when a freshman, to pay for all of his high school years. This collected fee must be returned.

XI. Some Specific Examples

In order to further help clarify some of the questions regarding fees charged to students which were raised by the Michigan Supreme Court decision in *Bond, et al v. the Public Schools of the Ann Arbor School District*, staff of the Michigan Department of Education solicited specific questions from local school administrators.

In accordance with the state policy guidelines of the State Board of Education, some of the allowable and unallowable charges are provided below.

School districts **must** provide the following items free of charge for any required or elective course:

1. Pencils, paper, crayons
2. Textbooks (regular or supplemental)
3. Band Instruments
4. Weekly Readers or other periodicals if required for classroom use

School districts **may not** make charges related to any required or elective course for:

1. Towels
2. Locks
3. Lockers
4. Shop materials
5. Drafting supplies

6. Home Economic materials
7. Workbooks
8. Materials in Science classes
9. Book rental
10. School education trips that are required to successfully achieve course credit
11. Vocational or special education

School districts **may charge** students for:

1. Class or organizational dues
2. Admission fees to athletic contests, dances and plays
3. Student activity cards on voluntary basis
4. Fees for external tests, such as National Merit and college entrance.
5. Deductions for damage or loss of school-owned books and non-consumable supplies through the collection of reasonable refundable deposits
6. Club dues (FFA, FHA, etc.)
7. Lunch
8. Yearbooks
9. Football shoes
10. Gym shoes
11. Swimming suits
12. Bus transportation for nonresident students
13. School sponsored educational trips, unless the trips are a requirement of the course, in which case they must be provided without charge
14. Shots (Vaccinations)
15. Summer school courses, when such courses (programs) are not part of a scheduled year-round program
16. Caps and gowns
17. Insurance fees for interscholastic athletics consistent with present statutes

Appendix A

Memorandum

To: State Board of Education August 12, 1970

From: Eugene Krasicky
Assistant Attorney General

Re: Scope and application of the Michigan Supreme Court decision in Bond, et al v. The Public Schools of the Ann Arbor School District, opinion issued July 17, 1970.

Introduction

In the Bond case, the Michigan Supreme Court unanimously held that the provisions of Article VIII, Section 2 of the 1963 Michigan Constitution, commanding the legislature to ".....maintain and support a system of free public elementary and secondary schools....." included free textbooks and school supplies. This decision has prompted many requests concerning its scope and application to a variety of charges currently imposed in one or more public school districts. This memorandum will provide clarification of the controlling law although it must be observed that it is virtually impossible to anticipate all the potential questions in the area of charges and fees.

I. Matters adjudicated in Bond.

A. General or Registration Fees.

In Bond, the Circuit Court held the general fees, which were referred to as registration fees, invalid under Article VIII, Section 2 of the 1963 Michigan Constitution. The Supreme Court granted the refund of general fees collected after commencement of the suit, thus confirming the holding of unconstitutionality. Thus, it is crystal clear that school districts may not impose any general fees or registration fees.

B. Materials, tickets charges or course fees.

In Bond, the Circuit Court held the materials, tickets charges referred to as course fees, invalid under Article VIII, Section 2 of the 1963 Michigan Constitution. These fees were paid by each child, prior to taking certain courses such as industrial arts, home economics and art, to pay for the cost of materials used in the course. The Circuit Court denied the requested refund of these fees, as did the Court of Appeals, although the Court of Appeals affirmed the basic holding of the trial judge as to the invalidity of charging the fee. This issue was not raised in any way in the Supreme Court. Thus, the conclusion is compelled that school districts may not impose any course fees, materials, or tickets charges.

In this regard, it should be noted that in OAG No. 4376, 1963-64, pages 484-86, it was held that, under Article VIII, Section 2 of the 1963 Michigan Constitution, school districts were barred from charging either registration

fees or course fees. Thus, the decision in Bond on these items is hardly a new development in the law affecting school districts.

C. Interscholastic Athletic Fee.

The Circuit Judge held the fees for participation in interscholastic athletic activities unlawful, under MSA 1968, Rev. Vol. 15.3788, for the reason that defendant's official policy did not take into account those students who could neither pay the fee nor earn it. No appeal was taken on this issue by either side.

D. Textbooks and School Supplies.

The trial judge and the Court of Appeals held that Article VIII, Section 2 of the 1963 Michigan Constitution, does not include free textbooks and school supplies. The Court of Appeals specifically ruled that the word "free" employed therein was not to be equated with the words "without cost or charge." See (1969) 18 Mich. App. 506, 512. The Supreme Court at p. 6, expressly reversed that ruling. However, the Supreme Court, at pp. 6-8, clearly indicated that the question still remains as to what is "free." Textbooks and school supplies are free only because:

"Applying either the "necessary elements of any school's activity" test or the "integral fundamental part of the elementary and secondary education" test, it is clear that books and school supplies are an essential part of a system of free public elementary and secondary schools." p. 8.

Thus, the holding on these questions compels the conclusion that school districts must provide free textbooks and school supplies. However, the rationale of the holding clearly indicates that not every aspect of public elementary and secondary education is free.

The opinion in Bond, supra, does not draw any distinction between required and elective courses. Further, the decision is not based upon whether the cost of the textbook or school supply is large or small. Rather, the decision is premised upon the idea that textbooks and school supplies are essential to elementary and secondary education. Thus, the decision is given meaning, in concrete circumstances, by reference to the required items in the curriculum of the various public school districts.

The unanimous holding in Bond precludes any rental fee for textbooks or any requirement that students purchase their textbooks from private sources. This holding also prohibits any charge for such required instructional materials as work books, weekly readers or other required magazine subscriptions. These items, to the extent they are required for use in the classroom curriculum, must be provided free of charge by the school district.

The decision in Bond also means that school districts must provide, without charge, such school supplies as paper, pencils and crayons together with whatever other supplies are required for use in classroom activities. This would also include the materials to make whatever projects are necessary to meet the course requirements in such classes as shop, industrial education, home economics, art and drafting. In addition, musical instruments must be provided free, on a reasonable basis, to the extent that they are required for use

by qualified students enrolled in curricular music courses who do not voluntarily provide their own instruments.

A towel fee may not be imposed in connection with physical education courses. Also, lock and locker fees for usage during the school day for the purpose of storing books, supplies and clothing are prohibited. In this context, these items are necessary elements of the school's curricular activity.

II. Other types of fees and charges in light of the decision in Bond.

A. Fees for Extracurricular Activities.

In Webster's Seventh New Collegiate Dictionary, p. 296, the word "extracurricular" is defined, in substance, as school activities outside the scope of the regular curriculum that carry no academic credit. The distinction between curricular and extracurricular activities has previously been recognized by the Michigan Supreme Court in the case of Cochrane v. Mesick Consolidated School District Board of Education (1960), 360 Mich. 390. In Cochrane, supra, Justice Kavanagh, writing for affirmance, in an opinion concurred in by two other justices, stated the following:

"...Football contests between schools are extracurricular in nature. The right to provide such activities is clearly recognized. Constitutional provisions and statutes giving the right to receive education and physical training cannot properly be said to include interscholastic sports as a necessary requirement of education..." (p. 418)

In Paulson, et al v. Minidoka County School District No. 331, et al (1970), 463 P 2nd 935, the Idaho Supreme Court ruled that optional social and other extracurricular activities were not necessary elements of a public school education. Thus, the Court concluded that such activities need not be provided free of charge under the Idaho Constitution.

Thus, based upon the language quoted above in Cochrane, supra, together with the ruling in Paulson, supra, and the rationale employed in the Bond case that only necessary or fundamental aspects of public education must be provided free, it is concluded that voluntary extracurricular activities need not be provide free of charge under Article VIII, Section 2 of the 1963 Michigan Constitution. Consequently, such items as fees for participation in interscholastic athletic activities, admission fees to school athletic contests, dances or plays, school club or class dues, and charges for school yearbooks or cap and gowns, are constitutionally permissible.

However, they are only permissible to the extent that participation in such activities is optional with the student outside the regular curriculum. Any activity in which students are graded or evaluated and academic credit is given, or any activity in which participation is required for obtaining a diploma, does not fall within the phrase "extracurricular activity" as employed herein.

Moreover, it should be observed that fees for extracurricular activities are subject to appropriate statutory regulations. For example, the legislature has

chosen to regulate the charging of insurance fees for participation in interscholastic athletics. (See MSA 1968, Rev. Vol. 15.3788). Further, fees for student activity cards designed to cover the cost of various extracurricular activities in a lump sum are only permissible on a voluntary basis. This type of fee may not be imposed generally upon all students regardless of whether they choose to participate in the extracurricular activities. Paulson, supra. Further, any sanctions for failure to pay required fees for extracurricular activities may only relate to participation the specific extracurricular activity for which the fee was not paid.

B. Charges for damage or loss of school property and refundable deposits.

The decision in Bond obviously did not create any right in students to abuse or lose the public property or a school district. Pursuant to MSA 1968 Rev. Vol. 15.3578, boards of education may make and enforce rules and regulations for the preservation of school district property. Further, pursuant to MSA 1968 Rev. Vol. 15.3886, boards of education may establish rules and regulations for the careful use and return of textbooks. Thus, it is clear that boards of education may charge students for damage to books and supplies, over and above ordinary wear and tear, and for the loss of books and supplies.

In this regard, there is also substantial support for the proposition that boards of education may impose **reasonable, refundable** deposits to cover damage to textbooks over and above ordinary wear and tear. Segar, et al. v. Board of Education of the School District of the City of Rockford (Ill. 1925), 148 NE 289, and Paulson, supra, at page 938, Footnote 8. Such deposits, if both reasonable and refundable, would also be permissible for school supplies of substantial value that are not consumable items. Any required deposit should not exceed several dollars in amount. Further, provision must be made for those children unable to pay the deposit in a manner that is reasonably calculated to protect them from embarrassment. This can best be done through contact with parents, rather than children, in determining inability to pay, whenever possible.

Finally, it should be observed that it is the school officials who determine the quality and quantity of school supplies, such as paper and pencils that are reasonably required for use by the pupil for a given length of time. Also, any pupil who voluntarily decides to bring his own school supplies may do so.

C. Miscellaneous items not covered under the Bond decision.

The express language of Article VIII, Section 2, relating to elementary and secondary education, obviously does not include adult education courses offered by public schools. Also, during the oral presentation of this cause before the Supreme Court, it was stated in response to questions from the bench, that no claim was being made that Article VIII, Section 2 included free food or clothing. Consequently, the opinion in Bond cannot be read as requiring either free school lunches or clothing under Article VIII, Section 2 of the 1963 Michigan Constitution.