

1988

## Gwen Lorenc v. John Reed Call : Brief of Appellant

Utah Court of Appeals

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UTAH COURT OF APPEALS  
BRIEF

UTAH  
DOCUMENT  
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DOCKET NO.

IN THE SUPREME COURT OF THE STATE OF UTAH

**890286**

GWEN LORENC,

Plaintiff/Appellant,

vs.

JOHN REED CALL, in his official  
capacity as Superintendent of  
Schools of the Granite School  
District and THE BOARD OF  
EDUCATION OF GRANITE SCHOOL  
DISTRICT,

Defendants/Respondents.

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BRIEF OF APPELLANT

Case No. 870281

Category No. 14 b

BRIEF OF APPELLANT

Appeal from a final judgment by the Honorable Homer F.  
Wilkinson, Third Judicial District Court Judge, entered July 2,  
1987.

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12th Floor  
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Attorneys for Appellant

**FILE**  
MAR 10 1988

Clery, Supreme Court, Utah

IN THE SUPREME COURT OF THE STATE OF UTAH

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|                                 |   |                    |
|---------------------------------|---|--------------------|
| GWEN LORENC,                    | : |                    |
| Plaintiff/Appellant,            | : |                    |
| vs.                             | : |                    |
| JOHN REED CALL, in his official | : | BRIEF OF APPELLANT |
| capacity as Superintendent of   | : |                    |
| Schools of the Granite School   | : | Case No. 870281    |
| District and THE BOARD OF       | : | Category No. 14 b  |
| EDUCATION OF GRANITE SCHOOL     | : |                    |
| DISTRICT,                       | : |                    |
| Defendants/Respondents.         | : |                    |

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IN THE SUPREME COURT OF THE STATE OF UTAH

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| DISTRICT,                       | : |                    |
| Defendants/Respondents.         | : |                    |

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BRIEF OF APPELLANT

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**JURISDICTIONAL STATEMENT**

This Court has jurisdiction over this appeal pursuant to Utah Code Ann. §78-2-2(i).

**STATEMENT OF THE ISSUES**

Whether Defendants' school fee and waiver policy on its face or as applied to Plaintiff violated Utah Code Ann. §53-7a-1 and 2, School Fees Policy of the Utah State Board of Education, or the due process and equal protection clauses of the Utah and U. S. Constitutions?

**RELEVANT CONSTITUTIONAL PROVISIONS, STATUTES AND REGULATIONS**

Utah Constitution, former Article X, Section 8, Article X, Sections 2 and 3; Utah Code Ann. §53-7a-1 and 2; Utah State Board of Education, School Fees Policy (June 3, 1986); Granite School District Administrative Memorandum Number Twenty-Four (July 29, 1986). See Addendum for full text.

### STATEMENT OF THE CASE

Plaintiff filed this action seeking declaratory and injunctive relief against Defendants' school fee and fee waiver policy. After a bench trial, the Honorable Homer F. Wilkinson dismissed Plaintiff's complaint no cause of action (R.104).

Plaintiff is the mother of six children. Two of these children, Brandi and Michael, attended West Lake Junior High School (R. 215, 221) and Catherine attended Granger High School during the 1986-87 school year (R. I-89). These schools are operated by Defendants. Plaintiff was advised that fees would be assessed her children for participation in certain classes and in school activities (R. 246, Ex. P-7). In September, 1986, Plaintiff sought waiver of these fees (R. 229, Ex. P-8) and was denied a waiver at Granger High because she was not receiving public assistance (R. 229). Plaintiff appealed of this denial to the district level and had an informal meeting on November 5, 1986, with McKell Withers, Staff Associate for Pupil Services, Granite School District (R. 332). He again denied her request for a fee waiver and after repeated requests and the commencement of this litigation, scheduled a formal hearing on March 9, 1987 (R. 338). Defendants again denied Plaintiff's request for a fee waiver by written decision on March 30, 1987 (R. 339, Ex. D-14). Plaintiff's children have been unable to attend school events (R. 222-24), to fully participate in classes (R. 216-7), or to receive class credit without paying a book fee that should have

been waived (R. 199-205) because of their inability to pay the required fees.

### **SUMMARY OF ARGUMENTS**

Plaintiff contends that she is eligible for a waiver of school fees for her junior high and senior high school children who are students in Defendants' schools. The policy adopted by Defendants violates regulations of the Utah State Board of Education, Utah law, the Utah Constitution and the U. S. Constitution on its face and as applied by restricting those eligible for waivers to persons receiving public assistance, by maintaining a secret second policy of waivers and by delaying appeal procedures.

### **ARGUMENT**

#### **POINT I**

#### **DEFENDANTS' FEE WAIVER POLICY VIOLATES UTAH STATE LAW.**

In 1986 the Utah Legislature adopted Utah Code Ann. §53-7a-1 and 2 which established the policy of this state that no fees or other charges may be assessed for elementary or secondary school students unless authorized by a local Board of Education under rules adopted by the State Board of Education and that each local Board shall ensure that waivers of fees charged are available so that no student is denied the opportunity to participate in activities, classes, or programs sponsored by schools within that district.

Defendants' fee waiver policy is articulated in Exhibit 12, Administrative Memorandum Number Twenty-Four - Charging of



Fees in Granite School District, issued July 29, 1986 (reprinted at Addendum p. 4-1), and in Exhibit 7, a letter sent to Plaintiff and other Granite District parents by Defendant Call on July 16, 1986.

Plaintiff's children have been denied the opportunity to fully participate in classes (R. 218), and in activities (R. 222-23) at their schools based on their inability to pay fees and Defendants' delay in finally resolving Plaintiff's application for a fee waiver. In this most fundamental aspect, Defendants have violated the letter and the spirit of state law.

## **POINT II**

### **DEFENDANTS' FEE WAIVER POLICY VIOLATES REGULATIONS PROMULGATED BY THE UTAH STATE BOARD OF EDUCATION.**

The statute here, Utah Code Ann. §53-7a-1, establishes a two level system of regulation of school fees and their waiver. First, the State Board of Education must adopt rules on fees and waiver pursuant to its constitutional grant of authority in Article X, Section 8 (now Article X, Section 3) of the Utah Constitution and its statutory grant of authority in Utah Code Ann. §53-2-12(2) and 53-2-12.1(1)(b). Local boards can charge fees only if they are "authorized" by the local board "under rules adopted by the State Board of Education."

On June 2, 1986, the Utah State Board of Education promulgated regulations to implement Utah Code Ann. §53-7a-1 and 2. Exhibit 6 (reprinted in Addendum at p. 2-1) now codified at Utah Admin. Code, R. 300-407-1 (with slight modifications in

numbering) provided that fees for students in junior high and high school may be charged in connection with school sponsored activities and class work provided that the fees had been set and approved by the local Board of Education in accordance with state board policies, that parents receive written notice of fee schedules and fee waiver policies and that local boards provide for adequate waivers of school fees. The State Board established certain requirements for fee waiver policies including the following

C.5. ... (b) The process for obtaining waivers or pursuing alternatives is administered fairly, objectively, and without delay...;

(c) Students who have been granted waivers or provisions in lieu of fee waivers are not treated differently from other students...

(d) Fee waivers or other provisions in lieu of fee waivers are available to all students who are in state custody or receiving public assistance in the form of aid to dependent children, general relief, supplemental security income, or foster care, and others whose parents or guardians are financially unable to pay...

(g) An appeal process is available, including the opportunity to appeal to the board or its designee... (Emphasis added)

(now codified as R. 300-407-6 A(2), (3), (4) and (7))

Defendants' fee waiver policy is inconsistent with the state regulations in several respects. First and most importantly, Defendants' policy restricts fee waivers to recipients of certain welfare programs rather than including other families who are unable to pay deposits and fees, such as Plaintiff's family. Other violations include a lack of time tables to prevent delay in obtaining waivers (here, seven months until a decision was

made on Plaintiff's request), a lack of provision for parents to review proposed alternatives to fee waivers, and a lack of any guidelines for an appeal when fee waivers are denied. The waiver policy of Defendants allows fees to be waived for

students whose parents or legal guardians are the recipients of Public Assistance in the form of Aid to Dependent Children, General Relief, Supplemental Security Income, Foster Care, or other benefits provided through the Department of Social Services due to a limited financial ability within the family. (The receipt of Unemployment Compensation and/or free or reduced price school lunches does not constitute public assistance as above defined.)

(Ex. 12, p. 3)

This first difference is critical. At the beginning of the 1986-87 school year, Plaintiff, a mother of six (R. 225), had a net income of \$1,006.00 per month (Ex. P-9). She was not receiving any of the specified forms of public assistance (R. 252-53). Her income placed her below the federal poverty guidelines for a family of her size (R. 254). She considered herself unable to pay the fees of \$30.00 per junior high student (Ex. P-7) and \$40.00 per senior high student (Ex. D-16) plus fees for individual classes such as Industrial Woods (Ex. D-22), or Personal Finance (R. 199). She orally applied for a waiver on September 3, 1986 (R. 228) and applied again in writing on September 5, 1986 (Ex. P-8). She requested a waiver and a hearing even though on its face, the Granite District policy made her ineligible for a fee waiver since she was not receiving welfare. After meeting with the high school principal and being

denied a waiver, she was referred to the Pupil Services office where McKell Withers again denied her request for a waiver based on her non-receipt of welfare (Ex. D-13, R. 242, R. 334) and advised her that she could have another hearing with him. That hearing took place on March 9, 1987, and resulted in yet another denial of the fee waiver (Ex. D-14, R. 340-41).

A waiver is clearly defined in the State Board regulations as "release from the requirement of payment of a fee and from any provision in lieu of fee payment" (Ex. P-6, p. 2). Throughout this procedure Defendants continually reiterated their policy that only persons receiving "specified public assistance" qualified for a waiver. They have attempted to circumvent these regulations by creating something called a "partial waiver" which is merely another name for a waiver denial. However, their basic policy remains unchanged: only recipients of public assistance qualify for waivers. All others are denied waivers. This violates the State Board regulations.

Somehow the trial court found that Defendants' regulations conformed with the State Board regulations (R. 389, Conclusions of Law #3 and 4, R.101) in the determination of eligibility for waivers. This is the crux of this appeal. Plaintiff never had the opportunity to demonstrate her inability to pay fees (R. 252) and receive a fee waiver because, by operation of Defendants' policy, she was excluded unless she received public assistance. She did not and was therefore automatically denied.

### POINT III

#### **PLAINTIFF'S RIGHTS TO SUBSTANTIVE AND PROCEDURAL DUE PROCESS AND TO EQUAL PROTECTION OF LAW HAVE BEEN VIOLATED AND CONTINUE TO BE VIOLATED BY DEFENDANTS' PUBLISHED AND SECRET FEE WAIVER POLICIES.**

As mentioned above, Defendants finally conducted an administrative hearing to consider Plaintiff's fee waiver request on March 9, 1987. This hearing was conducted without any written notice, without any written rules of procedure, and without any real opportunity to receive a fee waiver, since the only question was whether Plaintiff was eligible for public assistance. The hearing officer, McKell Withers, stated that in addition to the written policy of Defendants, articulated in Administrative Memorandum Number Twenty-four, (Ex. D-12) the District also has an unpublished policy of granting waivers to persons who qualify for public assistance but have chosen not to accept it and fee reductions to parents who receive food stamps or free school lunches for their children. Plaintiff was offered such a fee reduction based on her children's eligibility for free school lunches. Defendants' use of such an unwritten policy violates Plaintiff's constitutional rights since there is no way that she or any other parent is aware of this policy, how to apply for it, or how this unpublished policy fits with Defendants' written policy. Furthermore, this hidden policy, like Defendants' written policy, violates state statute and State Board of Education regulations in its exclusion of needy families not receiving or eligible for welfare.

Defendants' secret policy is revealed in Exhibits P-24 and P-14 and in testimony of McKell Withers. The secret policy, which was never published or distributed to parents (R. 351) actually creates two new categories of possible waiver recipients, those eligible for the specified public assistance who have chosen not to accept it, and those suffering a "short term catastrophic situation" (Ex. D-14), however Plaintiff was not told of these other categories she might fit within. The secret policy is also the only written version of the eligibility criteria for reduced fees, namely the receipt of food stamps or free school lunches, which ironically prevent a waiver according to the published regulations.

Agencies, including school districts, must articulate the basis for their decisions and must act in accordance with published standards. Morton v. Ruiz, 415 U.S. 199 (1974). Likewise the agency cannot violate previously stated rules without running afoul of due process. "For due process reasons, these standards should be publicly promulgated and written precisely enough to give fair warning as to what the standards for decision will be." Harnett v. Bd. of Zoning, Subdivision and Building Appeals, 350 F.Supp. 1159, 1161 (D.V.I. 1972). Even in situations like this, where the hidden standards seem broader than the published standards, due process and equal protection require that legally valid standards be properly adopted, affected parties made aware of those standards, and hearings conducted in compliance with the published standards.

Plaintiff's due process rights have also been violated by the excessive delay between her initial application for fee waivers on September 3, 1986, and the decision on her appeal, March 30, 1987. During this time, seven months had passed, more than two-thirds of the school year. In U. S. v. \$23,407.69 in U. S. Currency, 715 F.2d 162 (5th Cir. 1983), the court found that a long delay in initiating forfeiture proceedings violated due process and required dismissal. And in a case analogous to this case, Plitt v. Madden, 413 A.2d 867,873 (Del. 1980), the Delaware Supreme Court found a denial of due process because of delay. There, the student's parents requested an evaluation to determine the correct educational placement of their child.

In June, 1974 plaintiff had requested a professional evaluation of her daughter's education status for the coming year. Yet the local Learning Disability Committee was not convened to consider the child's qualification for learning disability assistance for the 1974-75 school year until September 12, and then did so at a meeting as to which plaintiff had no notice or opportunity to be heard; and such rights were not accorded plaintiff until November, 1974 with the result that plaintiff's child was not ultimately determined to be learning disabled until January, 1975 by which time the school year was half over... the local District failed to accord plaintiffs due process in both the procedures employed and the lateness of invoking such procedures so as to effectively deprive plaintiff's child of her right as to educational opportunities as a learning disabled child for the school year 1974-75.

Likewise here, justice delayed is justice denied.

Plaintiff has also been denied her right, guaranteed by Article X, Section 2 of the Utah Constitution to have her

children attend free public schools except as to certain fees authorized by the legislature.

Plaintiff's due process rights were also violated by Defendants' use of an improper legal standard in their determinations of eligibility for waivers, namely receipt of public assistance. The trial court should have applied a correction-of-error standard in reviewing the District's actions and this Court should use the same standard. "Examples of this correction-of-errors type of review include whether the Commission has complied with the fairness requirements of due process..." Utah Department of Admin. Services v. Public Service Commission, 658 P.2d 601, 608 (Utah 1983). Relying on this standard, Defendants' decision is in error and the trial court decision should be reversed.

To comply with due process of law as articulated by this Court in analyzing the Utah Constitution, Article I, Section 7 and the Fifth and Fourteenth Amendments to the U. S. Constitution, Defendants should have notified Plaintiff and other parents that each family would be evaluated on a case by case basis to determine inability to pay if they did not fall into one of the specified categories of welfare recipients. The notice to parents should explain this process and set short timelines for decision making and appeals. The notices for hearing should be in writing and articulate the hearing procedure. The hearing officer should be clearly designated. Appeals should be heard by an impartial decisionmaker. The policy of the local district



should be conformed to the State Board policy. The policy should clearly state that pending the outcome of an appeal, students should be allowed to fully participate in all school activities as if they had paid fees. In this way Plaintiff and other parents' constitutional and statutory rights would be protected.

Plaintiff's equal protection rights have been violated because other parents in other school districts with similar income and resources will be granted waivers based on local rules which comply with the State Board regulations. Under any level of scrutiny, this distinction is unsupportable.

#### **POINT IV**

#### **THE TRIAL COURT'S FINDINGS OF FACT AND CONCLUSIONS OF LAW MISSTATE THE LAW AND THE EVIDENCE.**

A number of the trial court's findings and conclusions are clearly erroneous. Finding No. 12c incorrectly states the law as interpreted by the State Board regulations and witness Bates (R. 178). Findings No. 13, 22, 23 and 24 conflict with testimony of witness Moss (R. 131) and witness Bates (R. 176). The trial court should have deferred to these witnesses in interpreting their own regulations. Similarly, Conclusions No. 3, 4, 5 and 10 are not supported by testimony or other evidence. This also provides a basis for reversal of the trial court's decision.

#### **CONCLUSION**

Defendants denied Plaintiff her substantive right to waiver of school fees. The procedures utilized in this denial

violated due process. The trial court misconstrued the statute providing for fee waivers, misapplied the law and affirmed the denial of Plaintiff's rights by focusing on irrelevant aspects of the state regulations and ignoring the core of the statute. The trial court decision should be reversed, Defendants' policy declared invalid and attorneys fees awarded to Plaintiff.

DATED this 10<sup>B</sup> day of March, 1988.

UTAH LEGAL SERVICES, INC.  
Attorneys for Appellant

  
\_\_\_\_\_  
BRUCE PLENK

CERTIFICATE OF MAILING

I hereby certify that on this 10<sup>B</sup> day of March, 1988,  
I mailed four true and correct copies of the foregoing Brief of  
Appellant to M. Byron Fisher, 215 South State Street, 12th Floor,  
Salt Lake City, Utah 84111, Attorney for Respondent.

  
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ADDENDUM

UTAH CONSTITUTION ARTICLE X, SECTIONS 2 and 3  
SECTION 8 (replaced)

NOW REPLACED

CONSTITUTION OF UTAH

ART. X, § 8

**Sec. 8. [State board of education.]**

The general control and supervision of the Public School System shall be vested in a State Board of Education the members of which shall be elected as provided by law.

The Board shall appoint the State Superintendent of Public Instruction who shall be the executive officer of the Board. (As amended November 7, 1950, effective November 7, 1950.)

**ARTICLE X. EDUCATION**

Section 1. [State's education systems.]

Section 2. [Defining the public education system and the higher education system - Fees in secondary schools allowed.]

Section 3. [Control of public education system by State Board of Education.]

Section 4. [Control of higher education system by statute - Rights and immunities confirmed.]

Section 2. [Defining the public education system and the higher education system - Fees in secondary schools allowed.]

The public education system shall include all public elementary and secondary schools and such other schools and programs as the Legislature may designate. The higher education system shall include all public universities and colleges and such other institutions and programs as the Legislature may designate. Public elementary and secondary schools shall be free, except the Legislature may authorize the imposition of fees in the secondary schools. 1987

Section 3. [Control of public education system by State Board of Education.]

The general control and supervision of the public education system shall be vested in a State Board of Education. The membership of the board shall be established and elected as provided by statute. The State Board of Education shall appoint a State Superintendent of Public Instruction who shall be the executive officer of the board. 1987

SCHOOL LUNCH PROGRAM

53-8-2

**53-7a-1. Policy of state regarding student fees, deposits, or other charges.**

(1) No fee, deposit, or other charge may be made, nor any expenditure required of a student or the student's parent or guardian, as a condition for student participation in an activity, class, or program provided, sponsored, or supported by or through a public school or school district, unless authorized by the local board of education under rules adopted by the State Board of Education.

(2) No fee, deposit, charge, nor expenditure shall be required for elementary school activities which are part of the regular school day or for materials used during the regular school day.

History: L. 1986, ch. 100, § 2.

**53-7a-2. Fee waiver policies.**

A local board of education shall require, as part of an authorization granted under § 53-7a-1, that adequate waivers or other provisions are available to ensure that no student is denied the opportunity to participate because of an inability to pay the required fee, deposit, or charge.

History: L. 1986, ch. 100, § 3.

Adopted By the Utah State Board of Education on June 3, 1986

## SCHOOL FEES POLICY

### PHILOSOPHY STATEMENT

Utah has a strong tradition of supporting free public education for all of its children. A commitment to free elementary and secondary schools was included in the state's first constitution, and has continued to be recognized in the constitution and statutes to this day.

Despite the commitment to free education, funding shortfalls have, over the years, led to the emergence of a confusing system of official and unofficial fees, charges, and deposits in Utah's schools, some of which appear to have been excessive or arbitrarily set and administered.

Utah law requires parents to enroll and ensure the attendance of their children in school, and sets criminal penalties for those who fail to do so. It seems inconsistent to establish such laws and penalties if the ability of parents and children to comply is compromised by a system of fees that may exclude some of the needy from school-sponsored programs and activities. Since fees rarely pay the full cost of school-sponsored programs, the result of a system of mandatory fees is that those most able to pay are enrolled and subsidized, while those least able to pay may be excluded.

The purpose of this policy is to permit the orderly establishment of a reasonable system of fees, while prohibiting practices that would exclude those unable to pay from participation in school-supported activities.

### APPLICABLE LAW

Enabling Act: §3(4); Utah Constitution: Art III §4, Art X §1, Art X §2; Utah Code: §§53-4-7, 53-4-7.5, 53-7a-1, 53-7a-2, and 53-13a-1; Utah Supreme Court cases: Logan District v. Kowallis, 77 P2d 350 (1938), Starkey v. Board of Education, 381 P2d 718 (1963).

### DEFINITIONS

Fee: Any charge, deposit, rental, or other mandatory payment, however designated, whether in the form of money or goods. For purposes of this policy, charges related to the National School Lunch Program are not fees.

Provision in Lieu of Fee Waiver: An alternative to fee payment and waiver of fee payment.

Student Supplies: Items which are the personal property of a student which, although used in the instructional process, are also commonly purchased and used by persons not enrolled in the class or activity in question and have a high probability of regular use in other than school-sponsored activities. The term includes pencils, papers, notebooks, crayons, scissors, basic clothing for healthy lifestyle classes, and similar personal or consumable items over which a student retains ownership.

Optional Project: A project chosen and retained by a student in a vocational or other class where projects are part of the curriculum, in lieu of a meaningful and productive project otherwise available to the student which would require only school-supplied materials.

Textbook: Book, workbook, and materials similar in function which are required for participation in any instructional course.

Waiver: Release from the requirement of payment of a fee and from any provision in lieu of fee payment.

## STANDARDS

### A. Classes and Activities During the Regular School Day.

1. No fee may be charged for any class or activity in Kindergarten through eighth grade, including assemblies and field trips.
2. Textbook, lab, and other course-related fees may only be charged in grades nine through twelve.
3. Students must be able to enroll and participate in any class, and have the opportunity to acquire all skills and knowledge required for full credit and highest grades, without paying a fee.
4. Students of all grade levels may be required to provide materials for their optional projects.
5. Student supplies must be provided for elementary students. A student may, however, be required to replace supplies provided by the school which are lost, wasted, or damaged by the student due to careless or irresponsible behavior.
6. Secondary students may be required to provide their own student supplies, subject to the provisions of Subsection C5.

### B. School Activities Outside of the Regular School Day

1. Fees may be charged, subject to the provisions of Subsection C5, in connection with any school-sponsored activity, regardless of the age or grade level of the student, if participation is voluntary and does not affect a student's grade or ability to participate fully in any course taught during the regular school day.
2. Fees related to extracurricular activities sponsored by the Utah High School Activities Association may not exceed limits established by the Association.

### C. General Provisions

1. No fee may be charged or assessed in connection with any class or school-sponsored or supported activity, including extracurricular

activities, unless the fee has been set and approved by the local board of education in accordance with this policy.

2. Fee schedules and policies for the entire district shall be adopted at least once each year by the local board of education in a regularly scheduled public meeting of the board. Provision shall be made for broad public notice and participation in the development of fee schedules and waiver policies.
3. Each district shall adopt procedures to reasonably ensure that the parent or guardian of each child who attends school within the district receives written notice of final fee schedules and fee waiver policies, including easily understandable procedures for obtaining waivers, as soon as possible prior to the time when fees become due. Copies of the schedules and waiver policies shall be included with all registration materials provided to potential or continuing students.
4. No present or former student may be denied receipt of transcripts or a diploma for failure to pay school fees other than a reasonable charge made to cover the cost of duplicating or mailing. No charge may be made for duplicating or mailing copies of school records to an elementary or secondary school in which the student is enrolled or intends to enroll.
5. A board of education shall provide, as part of any fee policy or schedule, for adequate waivers or other provisions to ensure that no student is denied the opportunity to participate in a class or school-sponsored or supported activity because of an inability to pay a fee.

The waiver policy shall include procedures to ensure that:

- (a) A person is designated in each school to administer the policy and grant waivers;
- (b) The process for obtaining waivers or pursuing alternatives is administered fairly, objectively, and without delay, and avoids stigma and unreasonable burdens on students and parents;
- (c) Students who have been granted waivers or provisions in lieu of fee waivers are not treated differently from other students or identified to persons who do not need to know;
- (d) Fee waivers or other provisions in lieu of fee waivers are available to all students who are in state custody or receiving public assistance in the form of aid to dependent children, general relief, supplemental security income, or foster care, and others whose parents or guardians are financially unable to pay.
- (e) Textbook fees are waived for all eligible students in accordance with Section 53-13a-4 of the Utah Code;

- (f) Parents are given the opportunity to review proposed alternatives to fee waivers;
  - (g) An appeal process is available, including the opportunity to appeal to the board or its designee; and
  - (h) The board provides for balancing of financial inequities among district schools if the granting of waivers and alternatives to waivers produces significant inequities through unequal impact on individual schools.
- 6. To preserve equal opportunity for all students and to limit diversion of money and school and staff resources from the basic school program, each district's fee policies shall be designed to limit student expenditures for school sponsored activities, including expenditures for activities, uniforms, clubs, clinics, travel, and subject area and vocational leadership organizations whether local, state, or national.
  - 7. Expenditures for uniforms, costumes, clothing, and accessories, if other than typical student dress, which are required for participants in choirs, pep clubs, drill teams, athletic teams, bands, orchestras, and other student groups, are fees requiring approval of the local board of education, and are subject to the provisions of Subsection C5.
  - 8. The requirements of fee waiver and availability of other provisions in lieu of fee waiver do not apply to charges assessed pursuant to a student's damaging or losing school property. Schools may pursue reasonable methods for obtaining payment for such charges, but may not exclude students from school or withhold transcripts or diplomas to obtain payment of those charges.
  - 9. Charges for class rings, letter jackets, and similar articles not required for participation in a class or activity are not fees and are not subject to the waiver requirements of this policy.



# GRANITE SCHOOL DISTRICT

340 EAST 3545 SOUTH • SALT LAKE CITY, UTAH 84115

Telephone (801)



July 29, 1986

## ADMINISTRATIVE MEMORANDUM NUMBER TWENTY-FOUR

### CHARGING OF FEES IN GRANITE SCHOOL DISTRICT

In accord with guidelines and standards adopted by the State Board of Education, the Granite Board of Education on July 15, 1986 formally implemented a new set of school fees and a school fee waiver policy. In accord with state board standards, **no fees may be assessed that have not been approved by the Granite Board of Education.** It is, therefore, imperative that principals and faculty are conversant with approved fees and waiver policy.

By way of summary, the new state standards specify the following:

1. Each district shall adopt procedures to reasonably ensure that the parent or guardian of each child who attends school within the district receives written notice of final fee schedules and fee waiver policies, including easily understandable procedures for obtaining waivers, as soon as possible prior to the time when fees become due.
2. Students must be able to enroll and participate in any class, and have the opportunity to acquire all skills and knowledge required for full credit and highest grades, without paying a fee.
3. No fee may be charged for any class or class activity in kindergarten through eighth grade, including assemblies and field trips.
4. Student supplies must be provided for elementary students. A student may, however, be required to replace supplies provided by the school which are lost, wasted, or damaged by the student due to careless or irresponsible behavior.
5. Fees, as approved by the local board of education, may be charged for school activities outside of the regular school day.
6. Textbook, lab, and other course-related fees may only be charged in grades nine through twelve.
7. Students of all grade levels may be required to provide materials for their optional projects.

8. The local board of education shall provide, as part of any fee policy or schedule, for adequate waivers or other provisions to ensure that no student is denied the opportunity to participate in a class or school-sponsored or supported activity because of a demonstrated inability to pay a fee.
9. The requirements of fee waiver and availability of other provisions in lieu of fee waiver do not apply to charges assessed pursuant to a student's damaging or losing school property. Schools may pursue reasonable methods for obtaining payment for such charges, but may not exclude students from school or withhold transcripts or diplomas to obtain payment of those charges.

GRANITE SCHOOL DISTRICT

SCHOOL FEE SCHEDULE

1986-87

Junior High

|                                       |                           |
|---------------------------------------|---------------------------|
| Book Rental (9th)                     | \$25.00 (\$10 Refundable) |
| Memory Book (optional)                | \$ 5.00                   |
| After School Activity Fee (optional)* | \$ 5.00                   |

Senior High

|                                       |                           |
|---------------------------------------|---------------------------|
| Book Rental                           | \$25.00 (\$10 Refundable) |
| Driver Education                      | \$10.00                   |
| Yearbook (optional)                   | \$20.00                   |
| After School Activity Fee (optional)* | \$15.00                   |

- \* The following examples of after-school activities may be funded from student activity fees:

|               |                             |
|---------------|-----------------------------|
| Banquets      | Equipment & Uniforms        |
| Dances        | Concerts, Musicals and      |
| Student Clubs | Performances                |
| Awards        | Promotions & Graduation     |
|               | U.H.S.A.A. Sponsored Events |

### FEE WAIVER

Fees, as identified by the Granite School District Board of Education, will be waived in accord with Utah State Board of Education standards for students whose parents or legal guardians are the recipients of public assistance in the form of Aid to Dependent Children, General Relief, Supplemental Security Income, Foster Care, or other benefits provided through the Department of Social Services due to a limited financial ability within the family. (The receipt of unemployment compensation and/or free or reduced price school lunches does not constitute public assistance as above defined.)

A student desiring fee waivers will present to the principal of the school a written communication provided by the Utah Department of Social Services or the Social Security Office in the case of "Supplemental Security Income" verifying the need for the waiver. Upon receipt of such verification, the principal will waive requested fees for the student. In the event that the student bringing forward the verification desires an accommodation other than fee waiver, the principal, with the permission of the parent or legal guardian, may provide an alternative to the payment of the fee or the waiver. Such may include a deferred payment schedule, a reduced payment schedule, or a provision for a work/service program. The principal and staff will maintain confidentiality with reference to students who have received waivers or alternatives to waivers.

In order to share equally the financial implications which come at the school level from fee waivers, PARTICIPATION FEES paid at each junior high school and each high school will be remitted to the office of the Business Administrator/Treasurer for equitable distribution among the junior high schools and among the senior high schools.

Parents whose students have been denied a fee waiver may appeal to the Granite School District office of Pupil Services for review. In the event that Pupil Services feels a waiver is warranted, the principal and a Pupil Services designee will meet with the Area Assistant Superintendent who will make a determination in the matter.

### PARTICIPATION FEE SCHEDULE AND REMITTANCE DATE TO DISTRICT

The junior and senior high schools have had extreme difficulty securing enough funds to operate the activity programs. Most of the secondary schools have had to use supplemental funding for activities. The smaller schools and schools with large numbers of students on public assistance are severely impacted. A participation fee provides money to offset the cost of uniforms, equipment, supplies, officials, supervision and waivers as newly required.

Tryouts for activities requiring participation fees must be conducted and the participants must be selected before participation fees are assessed.

Following are the approved participation fees and schedule for remitting same to Granite School District for 1986-87:

Junior High

| <u>Activities</u>  | <u>Fee</u> | <u>Remittance Date</u> |
|--------------------|------------|------------------------|
| Volleyball         | \$5.00     | September 19, 1986     |
| Basketball         | 5.00       | November 21, 1986      |
| Gymnastics         | 5.00       | November 21, 1986      |
| Wrestling          | 5.00       | November 21, 1986      |
| Track              | 5.00       | April 17, 1987         |
| Individual Maximum | 10.00      |                        |

Senior High

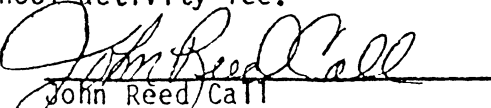
| <u>Activities</u>  | <u>Fee</u> | <u>Remittance Date</u> |
|--------------------|------------|------------------------|
| Cheerleaders       | \$10.00    | September 19, 1986     |
| Cross Country      | 10.00      | September 19, 1986     |
| Debate             | 10.00      | September 19, 1986     |
| Drill Team         | 10.00      | September 19, 1986     |
| Football           | 25.00      | September 19, 1986     |
| Golf (Men)         | 10.00      | September 19, 1986     |
| Pep Club           | 10.00      | September 19, 1986     |
| Tennis (Women)     | 10.00      | September 19, 1986     |
| Volleyball         | 15.00      | September 19, 1986     |
| Basketball         | 25.00      | November 21, 1986      |
| Swimming           | 15.00      | November 21, 1986      |
| Wrestling          | 20.00      | November 21, 1986      |
| Golf (Women)       | 10.00      | April 17, 1987         |
| Soccer             | 20.00      | April 17, 1987         |
| Tennis (Men)       | 10.00      | April 17, 1987         |
| Track              | 15.00      | April 17, 1987         |
| Individual Maximum | 50.00      |                        |

There will be no refunds of participation activity fees once funds are remitted to district office for disbursement to schools.

REFUNDS OF REQUIRED FEES

|                  |                      |
|------------------|----------------------|
| First Four Weeks | Full Refund          |
| First Term       | Three-fourths Refund |
| Second Term      | One-half Refund      |
| Third Term       | One-fourth Refund    |
| Last Nine Weeks  | No Refund            |

The refund schedule above pertains to the following fees assessed to students in grades 9 -12 : book rental (\$10 refunded regardless of time period if all books turned back in), driver education, and after school activity fee.

  
John Reed Call  
Superintendent

**FILMED**

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Salt Lake County Utah

JUL 2 1987

H. Dixon Hindsby, Clerk 3rd Dist. Court  
By *B.A. Shields*  
Deputy Clerk

M. Byron Fisher, A1082  
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IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT  
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

|                                 |   |                       |
|---------------------------------|---|-----------------------|
| GWEN LORENC,                    | : |                       |
| Plaintiff,                      | : | FINDINGS OF FACT AND  |
| v.                              | : | CONCLUSIONS OF LAW    |
| JOHN REED CALL, in his          | : | Civil No. C-87-01032  |
| official capacity as            | : | Judge Homer Wilkinson |
| Superintendent of Schools       | : |                       |
| of the Granite School District, | : |                       |
| and THE BOARD OF EDUCATION      | : |                       |
| OF GRANITE SCHOOL DISTRICT,     | : |                       |
| Defendants.                     | : |                       |

This matter came for trial before the Honorable Homer Wilkiinson on May 18, 1987. The parties were present. Bruce A. Plenk represented plaintiff. M. Byron Fisher represented defendants. The Court received evidence and testimony, the matter was argued to the Court on May 19, 1987 and submitted for decision. The Court being fully advised, and the parties having filed Memoranda to the Court, now makes the following:

FINDINGS OF FACT

1. Plaintiff is a resident of Salt Lake County and of the Granite School District.

000095E

2. Plaintiff is a single parent having been divorced. Plaintiff was awarded custody of her six minor children. Pertinent to these proceedings, Catherine is 17 years of age and a senior at Granger High School, Michael Lorenc is 15 years of age and in the 9th grade at West Lake Junior High School, and Brandi is 13 years of age and in the 7th grade at West Lake Junior High School.

3. During the 1986-87 school year, <sup>Granger</sup>~~Kearns~~ High School assessed fees for students of book rental \$25 (\$10 refundable), after-school activity fee \$15 (optional), yearbook \$20 (optional) and for Catherine to take a personal finance class \$6 for a consumable workbook, \$32 graduation cap and gown rental (optional).

4. During the 1986-87 school year, West Lake Junior High School assessed its students book rental \$25 (\$10 refundable), after-school activity fee \$5 (optional), memory book and for Michael \$13 woodwork shop expenses for class project materials.

5. In 1986, the State legislature enacted legislation as to a state policy regarding student fees, deposits or other charges, (53-7a-1, U.C., 86-87) and a fee waiver provision (53-7a-2, U.C., 86-87).

6. In response to the legislative mandate, in <sup>June</sup>~~July~~, 1986, the State School Board of Education adopted Rules and Regulations to implement a fee, deposit and charges policy and a fee waiver policy.

7. In July, 1986, Granite School District adopted rules and regulations for a school district fee schedule and fee waiver policy by adopting the State regulations and implementing the school district policy.

8. In the fee waiver section of the legislation (53-7a-2, U.C., 86-87), the legislature did not define the criteria necessary to determine a fee waiver as to when a student would be allowed to "participate because of an inability to pay the required fee."

9. The State Board of Education failed to provide any criteria in its Rules and Regulations as to the determination of "inability to pay" except as to those students who were participants in State aid programs.

10. The State Board of Education failed to provide any regulations as to partial fee waivers.

11. Granite School District Board of Education properly assumed the responsibility to establish its own regulations to determine a reasonable basis for fee waivers and to determine whether a student was unable to pay the fees as assessed.

12. Granite School District fee policy conforms to the statutory requirements and the State Regulations in that

a. Book rental fees are appropriate fees to be assessed.

b. After school activity fees may be charged as long as these charges are optional to the student.

c. Fees for classes may be charged for consumable materials or materials to be taken by the student from the school such as class workbooks and materials used in a student project such as wood shop or art class.

d. Fees for yearbooks and memory books are appropriate charges since these items are optional to the student.

e. Fees for caps and gowns are not school charges and should not be handled as a school charge.

13. The Granite School District fee waiver policy conforms to the statutory requirements.

14. Plaintiff was not a recipient of state or public assistance at the time these charges were assessed.

15. Plaintiff made application for consideration of a fee waiver for her children.

16. At the time of this action, plaintiff was employed making approximately \$1,300 per month income.

17. Plaintiff has not sought to enforce the child support payments from the children's father which were awarded in Decree of Divorce but did request assistance to pay night class fees.

18. Catherine has taken night school classes and has paid \$125 tuition for those classes, \$50 of which came from the child's natural father when plaintiff requested his assistance.

19. Plaintiff requested a fee waiver for Catherine at the time of registration in the fall of 1986 to Granger High School.



20. The request for fee waiver pursuant to the School District fee waiver policy was heard by the Superintendent's designee in November, 1986, and at plaintiff's request was reheard in February, 1987.

21. The hearing officer recommended a partial fee waiver for plaintiff's children based upon plaintiff's income and the fact that plaintiff did not qualify for and had not obtained assistance from State or Federal aid programs or from private aid programs.

22. The School District fee waiver policy as implemented meets with the statutory requirement of determining a student's inability to pay the assessed appropriate fees.

23. Partial fee waivers are appropriate in this situation based upon the School District regulations which were implemented for matters which the State School Board failed to regulate and for which guidelines were not provided.

24. Notice of the School District fee waiver policy to plaintiff was adequate and met the State guidelines.

25. Fee waiver policies should apply to fees charged for school sponsored activities such as after school activity fees.

#### CONCLUSIONS OF LAW

1. This Court has jurisdiction over the claims herein and the parties hereto.

2. The charging of fees to students as outlined herein were appropriate fees and are not an abrogation of the

constitutional right to a free education as provided in the Constitution of the State of Utah.

3. The fee policy as implemented by the Granite School District met the requirements of the law and the regulatory requirements of the State Board of Education.

4. The fee waiver policy as implemented by Granite School District meets the requirements of the law and of the statutory authority for determination of a student's inability to pay the fees appropriately assessed.

5. The State Board of Education Rules and Regulations are deficient in providing the school district with guidelines in the fee waiver regulations to 1) give notice to students of waiver policies, 2) determine a student's inability to pay, 3) establishing a hearing procedure to review requests for fee waiver, 4) in providing for partial fee waivers.

6. The Granite School District acted properly and within the statutory authorization to establish regulations and procedures to meet the requirements of the law which the State Board of Education failed to establish.

7. The Granite School District hearing procedure meets the legal requirements of notice, presentation of evidence, representation by legal counsel and a final written decision.

8. The Granite School District did not act arbitrarily or capriciously in determining plaintiff's ability to pay a portion of the student fees assessed.

9. Plaintiff should pay the fees as assessed under the partial fee waiver as authorized by the hearing officer.

10. Fee waivers should not apply to optional charges and charges for consumable materials such as consumable work books and wood shop projects which are taken by the student.

11. Judgment should be entered for defendants, no cause of action, each party should assume their own costs.

DATED this 2 day of July, 1987.

APPROVAL AS TO FORM:

B. A. Plenk  
Bruce A. Plenk  
Attorney for Plaintiff

H. F. Melchior  
District Judge

ATTEST  
H. DIXON HINDLEY

By

S. A. Shields  
Deputy Clerk

CERTIFICATE OF MAILING

I hereby certify that I caused to be mailed, postage prepaid, a true and correct copy of the foregoing Findings of Fact and Conclusions of Law to Bruce A. Plenk, Attorney for Plaintiff, Utah Legal Services, Inc., 124 South Fourth East, 4th Floor, Salt Lake City, Utah 84111, this 8th day of June, 1987.

Mary Ann Fowler  
MBF:060887A

FILED IN CLERK'S OFFICE  
Salt Lake County Utah

JUL 2 1987

H. Dixon Hindsby, Clerk 3rd Dist. Court  
By B.A. Plenk Deputy Clerk

M. Byron Fisher, A1082  
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IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT  
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

---

|                                 |   |                       |
|---------------------------------|---|-----------------------|
| GWEN LORENC,                    | : |                       |
|                                 | : |                       |
| Plaintiff,                      | : | JUDGMENT              |
|                                 | : |                       |
| v.                              | : |                       |
|                                 | : |                       |
| JOHN REED CALL, in his          | : | Civil No. C-87-01032  |
| official capacity as            | : | Judge Homer Wilkinson |
| Superintendent of Schools       | : |                       |
| of the Granite School District, | : |                       |
| and THE BOARD OF EDUCATION      | : |                       |
| OF GRANITE SCHOOL DISTRICT,     | : |                       |
|                                 | : |                       |
| Defendants.                     | : |                       |

---

Trial of this matter having been completed before this Court, the Honorable Homer F. Wilkinson, Judge presiding, on May 18, 1987, and closing arguments having been completed May 19, 1987 and legal counsel for plaintiff, Bruce A. Plenk, and legal counsel for defendants, M. Byron Fisher, having presented memoranda, submitted the matter for decision. The Court being fully advised and having entered its Findings of Fact and Conclusions of Law, now enters the following:

JUDGMENT

Judgment is hereby awarded to defendant, no cause of action, plaintiff's Complaint is dismissed with prejudice, each party to bear their own costs herein.

DATED this 2 day of June, 1987.

APPROVAL AS TO FORM:

Bruce A. Plenk  
Attorney for Plaintiff

J. H. F. [Signature]  
District Judge

ATTEST  
H. DIXON HINDLEY  
Clerk

By

G. A. Shields  
Deputy Clerk

CERTIFICATE OF MAILING

I hereby certify that I caused to be mailed, postage prepaid, a true and correct copy of the foregoing Judgment to Bruce A. Plenk, Attorney for Plaintiff, Utah Legal Services, Inc., 124 South Fourth East, 4th Floor, Salt Lake City, Utah 84111, this 2 day of June, 1987.

MBF:060887B

Mary Ann Fowler