INDEX TO THE PERMANENT INJUNCTION

SUBJECT	PAGE
I. INTRODUCTION	1
A. COMMENT ON THIS OPINION	1
B. PARTIES	2
C. DEFINITIONS:	2
1. "Activity, class, or program provided, sponsored, or supported by a public school or school district"	2
2. "Fee"	3
3. "Textbook"	3
4. "Waiver"	3
D. PREVIOUS ACTIONS BY THIS COURT	4
1. Class Action Certification	4
2. Preliminary Injunction	4
3. Nunc Pro Tunc Orders	4
4. Order:	4
5. Order	5
6. Order	5
II. FINDINGS OF FACT	5
A. HISTORICAL SETTING FOR PUBLIC EDUCATION	5
1. Free, universal public education	5
2. Funding for Textbooks and Supplies	11
3. Extracurricular activities	13
4. Authorization of School Fees	15
B. VIOLATIONS OF SCHOOL FEE REQUIREMENTS	16
1. Unauthorized fees	17
2. Denial of due process	18
3. Failure to maintain confidentiality	19
4. Harassment by school personnel	19
5. Refusal to waive fees	20
C. COMPLIANCE AFTER ISSUANCE OF THE PRELIMINARY INJUNCTION	22
1. Good Faith Efforts at Compliance	22
2. Effect of Continuing Instances of Non-compliance	23
3. Equalization of Fee Waiver Burdens Among Schools in Individual Districts	27
4. Requests to Restrict the Scope of the Fee Waiver Requirement	27

III. CONCLUSIONS OF LAW 28
A. ALL CHILDREN OF THE STATE MUST HAVE EQUAL ACCESS TO PUBLIC EDUCATION 28
1. Equal protection and the requirement for a "system" of public schools 29
2. Standards for qualifying for fee waivers 30
3. Standards for community service and fund-raising activities 32
B. THE "SYSTEM OF PUBLIC SCHOOLS, WHICH SHALL BE OPEN TO ALL THE CHILDREN OF [THE] STATE" IS AN EVOLVING, NOT A STATIC, CONCEPT 33
C. EXCLUDING CHILDREN FROM FULL PARTICIPATION BECAUSE OF INABILITY TO PAY A FEE IS CONTRARY TO PUBLIC POLICY 38
D. AUTHORITY OF THE STATE BOARD OF EDUCATION TO ADOPT REGULATIONS IN ACCORDANCE WITH THIS ORDER 39

IV. ORDER 40
A. WHEN FEES MAY BE CHARGED 40
B. ELIGIBILITY FOR WAIVERS 40
C. WHAT MUST BE WAIVED 41
1. General rule 41
2. Some charges or expenditures need not be waived 43
D. COMMUNITY SERVICE REQUIREMENTS 44
1. When community service may be required 44
2. Additional regulatory requirements 44
3. Transferring community service credits between school districts 45
E. FUNDRAISING REQUIREMENTS 45
1. When fundraising may be required 45
2. Additional regulatory requirements for fundraising 46
F. INSTALLMENT PLANS AND DONATIONS 46
1. Installment plans 46
2. Donations 46
G. PARENTAL NOTICE REQUIREMENTS 47
1. Forms 47
2. Provisions for persons with limited English proficiency 47
H. REPORTING REQUIREMENTS 48
I. PROCEDURAL REQUIREMENTS 48

J. MONITORING AND SANCTIONS FOR NON-COMPLIANCE 49
1. Monitoring 49
2. Sanctions for noncompliance 49
K. CONTINUING JURISDICTION 50
1. Plaintiffs' access to compliance records 50
2. Continuing jurisdiction of the Court 50
L. AMENDMENT OF STATE REGULATIONS 50
M. EFFECT OF PREVIOUS ORDERS 52
SIGNATURE PAGE 52
APPENDIX i
APPENDIX A: Fees in four of Utah's Public Schools ii
APPENDIX B: Forms and Notices vi
APPENDIX C: Certificates of Compliance xx

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FILED DISTRICT COURT
Third Judicial District

OCT 28 1994

SALT LAKE COUNTY
By _____
Deputy Clerk

IN THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH
240 East 400 South, Salt Lake City, Utah 84111

PAT DOE, and P-1, by next friend and mother, Ms. Pat Doe, et al., individually and on behalf of all others similarly situated,	FINDINGS OF FACT, CONCLUSIONS OF LAW, AND PERMANENT INJUNCTION
Plaintiffs,	Civil No. 920903376
vs.	
UTAH STATE BOARD OF EDUCATION, et al.,	
Defendants.	Judge John A. Rokich

I. INTRODUCTION

A. COMMENTS ON THIS OPINION: This case was originally filed in 1992. During the intervening period it has attracted a great deal of attention from the media and the general public throughout the State and, according to the Defendants, has been the occasion for school officials to carefully reexamine much of that which the schools have been doing. Defendants have also stated that State and local school officials have asked to receive copies of this Permanent Injunction as soon as it is issued so that they can use it in reviewing and, as necessary, revising policies and procedures. Since the opinion will not be limited in its readership or use to lawyers and others who traditionally read and apply legal opinions, the Court has included material relating to the historical and philosophical underpinnings of the public schools in the United States and Utah, and additional materials relating to the specific issue of school fees, that

would not usually be included as extensively, if at all, in a traditional opinion. It is the hope of the Court that these additions will assist the broader readership in its understanding and use of the Court's findings and conclusions.

B. PARTIES: The above-entitled matter came before the Court for hearing on a Proposed Settlement the 6th day of July, 1994, the Honorable Judge John A. Rokich presiding. Plaintiffs were represented by David G. Challed; Defendants were represented by John S. McAllister, Douglas F. Bates, and Carol B. Lear.

There were initially seventeen named Plaintiffs who were children attending school in the Provo, Tooele, Ogden, Alpine, and Davis School Districts, and seven named Plaintiffs who were parents of those children. The Plaintiffs, acting individually and on behalf of all others similarly situated, filed this action against the State Defendants, Utah State Board of Education, et. al., alleging that the State Defendants had failed to enforce state law, state regulations, the Utah State Constitution, federal law and regulations including the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. §1232g (1993), and the United States Constitution, relative to school fees and the ability of schoolchildren to participate in programs and activities sponsored by or through Utah's public schools, regardless of the wealth of their families.

C. DEFINITIONS:

1. "Activity, class, or program provided, sponsored, or supported by a public school or school district" means an activity, class, or program meeting any of the following criteria, whether offered during the regular school day, before or after school, during summer vacation, or on days when school is not in session, if:
   a. it is primarily intended to serve school-age children and is taught, administered, or supervised by a school employee as part of that employee's work assignment or under circumstances that could lead a reasonable person to conclude that it is part of the employee's work assignment;
   b. student participation is explicitly or implicitly required as a condition of a higher grade, or for full participation in, or successful completion of, a school class or activity, e.g. a summer camp for students who wish to fully participate as cheerleaders, football players, etc.; or a concert which students are required to attend as part of the requirements for a music class;

c. student participation in a school-related activity outside regular school hours is actively encouraged by a school employee (e.g. coach, advisor, or similar person) during school hours or when the person could reasonably be viewed by students or parents as acting in his or her official capacity, e.g., travel to another country with a student's foreign language teacher; special activities such as studies of State and national governments involving expensive travel; debate camps and competitions; or music camps or competitions;[1, 2] or

d. if an applied technology center (ATC), concurrent enrollment, or higher education class is part of a student's regular class load.

2. "Fee" means any charge, deposit, rental, or other mandatory payment, however designated, whether in the form of money or goods; classroom charges for field trips, supplies, materials, or other purposes; admission fees, transportation charges, and similar payments to third parties if the charges are made in connection with an activity or function sponsored by or through a school. Costs described under Section IV.C.2. are not fees and need not be waived.

3. "Textbook" means a book, workbook, or item similar in function which is necessary for participation in a course of instruction.

4. "Waiver" means a release from the responsibility to pay a fee; except in the case of waiver of textbook fees, for which no service or other performance may be required, the term includes alternatives to unconditional waivers, such as premising

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[1] But see § IV.C.2., *infra;* the Court is aware that the role of the schools is expanding into the community, and that an increasing range of services is now provided for the general public. If a student is present only as a spectator at a program or activity not directly controlled by that student's school, and which is intended for the general public, e.g. an "away" game held outside of regular school hours; or enrolls in a community school program which is open to the general public and is not part of the student's approved class load or used for school credit; or attends a concert or play in the community which may have been mentioned in passing by a teacher but is not required or used for class credit; then the student's involvement would be that of a member of the general public and fee waiver requirements would not be applicable.

[2] Special care should be taken in cases where an educator may receive a personal benefit from a student's participation in an activity; not only could the activity be regarded as "school related"; it may also repesent a criminal violation under the Utah Public Officers' and Employees' Ethics Act, UTAH CODE ANN. §§ 67-16-1 *et seq.* (1994).

the fee release upon a requirement that the waiver recipient perform community service or participate in a fundraising activity.

D. PREVIOUS ACTIONS BY THIS COURT: On July 6, 1994, this Court reviewed the Motion for a Permanent Injunction; the Stipulation for Proposed Settlement, pleadings, and affidavits; the comments and objections filed by interested members of the class; and other records, papers, and files. The Court having heard the legal arguments by the Plaintiffs' and Defendants' legal counsel, having accepted additional supportive material submitted by Plaintffs, and being fully advised in the premises now makes and issues its Permanent Injunction Order. In order to better understand the scope of this Permanent Injunction, a review of the previous orders is appropriate.

1. Class Action Certification: On July 22, 1992, the Court found that the Plaintiffs met the requirements of Rule 23, Utah Rules of Civil Procedure, and certified this case as a Rule 23(b)(2) class action composed of the following members:

   > all students and persons whose children attend or will attend Utah's public elementary and secondary schools and are charged compulsory fees as an incident to attendance at school or as an incident to full access to educational benefits and activities made available by Utah's public elementary and secondary schools including, but not limited to, classes and activities during the regular school day and school activities outside of the regular school day, and who would be eligible for school fee waivers during the school year 1992-93 or thereafter.

2. Preliminary Injunction: In the Preliminary Injunction issued on July 22, 1992, the Court ordered the State Defendants to require public school districts to comply with existing laws and regulations governing school fees and fee waivers, including the provision of adequate notice to students and their parents about school fees and fee waivers and the procedures for eligible children to obtain waivers, and including the use of standard forms throughout the Utah public education system.

3. Nunc Pro Tunc Orders were entered making technical corrections or clarifications on July 31, 1992, August 5, 1992, and September 23, 1992.

4. Order: On December 11, 1992, the Court accepted affidavits from Plaintiffs' Counsel, entered a finding that the Utah Enabling Act's and Utah State Constitution's requirement that the State "provide a system of public schools open to all children of the State" and the equal protection clauses of the United States and Utah Constitutions imply that there must be reasonable uniformity and equality of

educational opportunity for all children throughout the State, and ordered the State Defendants to continue compliance with the Preliminary Injunction.

5. Order: On May 17, 1993, the Court accepted additional affidavits from Plaintiffs' Counsel, ordered the State Defendants to continue compliance with the previous Orders, and entered findings that "optional" and "extracurricular" activities are an integral part of the total educational experience and that failure to provide opportunity for all children to participate in school programs and activities regardless of their ability to pay school fees violates the Utah Enabling Act and the equal protection clauses of the United States and Utah Constitutions.
6. Order: On April 6, 1994, the Court issued an Order directing the Defendants to continue to require Utah school districts to provide notice about school fee waivers to students and families and to use essentially the same forms and procedures established under previous Orders, and directed the Parties to develop additional standard forms relating to the use of community service as an alternative to waiver of school fees.

II. FINDINGS OF FACT

A. HISTORICAL SETTING FOR PUBLIC EDUCATION: Since Plaintiffs have claimed that Defendants' practices have violated not only current statutory law but also the Constitution of Utah and the Utah Enabling Act, the Court finds it necessary to establish an historical setting for public education.

1. Free, universal public education: Free, universal public education has deep roots in the United States. Its earliest beginnings include the "Old Deluder, Satan" Act adopted by the General Court of Massachusetts in 1647, which required the appointment of teachers to be "paid either by the parents or masters of such children, or by the inhabitants in general." S. RIPPA, EDUCATION IN A FREE SOCIETY, AN AMERICAN HISTORY 45 (1984). The education to be provided to the children of the poor was viewed as constituting only a minimum basic education, however, with greater opportunity being given to the children of the wealthier classes. The class prejudice existing in our early history among the wealthier segments of society is evident even in the words of Thomas Jefferson, who proposed a "Bill for the More General Diffusion of Knowledge" to the Virginia legislature in 1779, suggesting that the first three years of school should be free to

all, with a subsequent selection process among low-income children (but not among those who could pay) to pick the twenty best students to continue in school. "By this means," he wrote, "twenty of the best geniuses will be raked from the rubbish annually, and be instructed at the public expense, so far as the grammar schools go." T. JEFFERSON, NOTES ON THE STATE OF VIRGINIA, WITH AN APPENDIX query 14, at 216-17 (8th American ed. 1801) in RIPPA, *supra,* at 69. While Jefferson's plan was not adopted, the concept of at least a basic level of free, universal public education was soon established as a national goal with the adoption of the Northwest Ordinance of 1787, under which Congress initiated the practice of granting land to each new state for the purpose of supporting the public schools. RIPPA, *supra,* at 72.

Despite the increased support available to public education through land grants and powers of taxation, an unwillingness to raise taxes sufficiently to provide free public education to those who appeared able to pay for their own education resulted in the establishment of "pauper schools," principally in the central and southern states. Children who were classified as paupers attended the publicly-supported pauper schools; other children attended parochial and private schools which were supported in part by private funding and, not uncommonly, by public funds, but also required students' families to contribute through the payment of tuition and other charges. The system was severely criticized as undemocratic and counter-productive, since it excluded all but "paupers," as shown in the following excerpt from a Virginia educational convention report issued around 1856:

> Is it right to take the property of the many and bestow it exclusively on the few? . . . They are the privileged class, the aristocracy of poverty. Now is it right to exclude from the benefits of the literary fund all the children of this glorious old commonwealth, except those who put in the plea of rags and dirt? . . . Can this injustice and partiality benefit the poor children? Is it a law of humanity, that to lift up, you must first degrade; that to elevate the soul and spirit of a child, you must first make him a public pauper? . . . Has the pauper system of education diminished the number of your intellectual paupers? Or is it, like every other system of legally supported pauperism, a fire that feeds itself.
> E. CUBBERLEY, PUBLIC EDUCATION IN THE UNITED STATES 198 (1934).

As a result of increasing public opposition, the "pauper school" system disappeared after the close of the Civil War. CUBBERLEY, *supra,* at 197.

Many of the northern states adopted a different approach to supplementing public school revenues by implementing the "rate-bill." New York City, for example, upon finding in 1826 that public funding was inadequate to pay the full costs of free public education, adopted a system of school fees, or "rates," which were levied against those who were assumed to be able to pay, and used to pay additional costs relating to schoolbooks, supplies, and enriched courses. The result was dramatic: enrollment dropped within six months from 3457 students to 2999, and participation in the enriched curriculum dropped from 137 to 13. That in turn resulted in efforts to obtain additional public funding, and schools were again made completely free in 1832. *Id.* at 199.

As with pauper schools, rate bills fell into disfavor and were abolished in all states by 1871. *Id.* at 205. With the demise of pauper schools and rate bills, the ideal of universal, free public education was generally accepted as the norm. "During the middle half of the 1800's, American education underwent a transformation which brought the schools of 1875 to essentially the system we now know . . . After trying out and casting off a series of various experiments in education . . . our people gradually adopted a tax-supported, free, graded elementary school, and a four-year, tax-supported, free high school." H. DOUGLASS & C. GRIEDER, AMERICAN PUBLIC EDUCATION 37 (1948).

Utah was not immune to the free school movement, or to efforts to provide full equality in educational opportunities. Nevertheless, the concept of free public education presented unique problems in Utah due to conflict between the Mormon Church and the United States Congress. That conflict severely interfered with the emergence of a strong public school system for many years, as Congress attempted to limit the power of the Church through disenfranchisement of Church members and outside control of the public schools.

Initially, there was strong Church support for the public school system, as seen in then-Governor, and Mormon Church President, Brigham Young's Message to the Legislature in 1853. At that time he urged the Territorial Legislature to "make provision for the further encouragement of education, for the support of common schools." J. MOFFITT, THE HISTORY OF PUBLIC EDUCATION IN UTAH 119 (1946). As was the case in the "rate bill" states, however, those who could pay were expected to do so. The Territorial Superintendent of Schools reported in an annual report to the Legislature, for example, that "[t]uition fees range from four to ten dollars per quarter per pupil for teaching the common English branches." He went on to note that it was appropriate for public sources to pay costs for low-income children, so that "the children of the poor may be educated gratuitously, and, when necessary, furnished with school books." "Territorial School Report, 1865-66," *Id.*, at 122. School laws adopted between 1866 and 1880 included the following language: "The trustees shall provide suitable school houses and keep the same in repair, employ teachers, and furnish fuel, maps, charts, and other suitable articles for school purposes, and may at their option collect tuition fees." (See, e.g., "An Act providing for the establishment and support of district schools, and for other purposes." 1876 UTAH LAWS title XII ch. II § 3.

Following federal moves against the Church which included the substitution of federal control for local control of the public schools, Brigham Young responded by encouraging the development of an independent parochial school system, noting in a Church General Conference address in 1873 that "those who are our enemies would rather spend ten, yea, a hundred dollars to deprive us of the least privilege in the world, than give us one cent towards schooling our children." 16 JOURNAL OF DISCOURSES 18. Church Apostle George Teasdale underscored the depth of the separation while speaking to a meeting in Logan in 1883; while urging members of the Church to educate their own children rather than sending them to schools which were not controlled by members of the Church, he stated, "I would sooner my children should go without any scholastic education than that they should be educated by an enemy." 24 JOURNAL OF DISCOURSES 324.

Despite Mormon Church misgivings, civil authorities, many of whom were federal appointees not subject to local voters, continued to support the concept of universal free public education and urged the Territorial Legislature to make greater efforts in that direction, as seen in the following excerpts from messages of various governors of the territory:

> I have witnessed with pleasure the evidences of increasing interest in the subject of education. . . . But as yet you have no free or common schools; and I would again impress upon you the vital importance of appropriating a portion of the Territorial revenue to the establishment and maintenance of such schools. . . . The children of the rich and the poor are equally in need of it. Some system should therefore be adopted, which will enable every child to obtain these inestimable benefits. Gov. A. Cumming, "Governor's Message 1861," in MOFFITT, *supra*, at 120.

> To give to every child . . . a suitable education, is the foremost duty of the State. . . . It is my settled conviction, that the property of a State or Territory should be taxed to defray all expenses of the education of its children. The common schools should be entirely free to all. Gov. C. Durkee, "Governor's Message 1866," in MOFFITT, *supra*, at 120.

> I can present no subject for your consideration of greater importance than the condition of the public schools throughout the Territory. It is the bounden duty of the Territory to give to every child the opportunity of receiving a free public education. This is denied by the existing laws. I earnestly recommend that you enact such legislation as will lay the foundation of a system of education that will progress until the highest standard is reached. You will serve your territory well by so doing. (Gov. A. Thomas, "Governor's Message 1890," in MOFFITT, *supra*, at 121.

Governor Thomas' plea was well received. Efforts on both sides of the question to heal the split had been sufficiently successful that Mormon Church opposition to public school attendance and public school taxes was largely withdrawn and the Utah Territorial Legislature adopted "An Act to provide for a uniform system of Free Schools throughout Utah Territory." 1890 UTAH LAWS ch. LXXII. The act provided that "[e]very district school shall be open for the admission, free of charge, of all children over six and under eighteen years of age, living in the district." *Id.* at art. XIII § 88.)

Negotiations among representatives of the Mormon Church, non-Mormons, Congress, and other interested parties continued, and in July of 1894 Congress passed the Utah Enabling Act, permitting Utah to "form a constitution and State government, and to be admitted into the Union on an equal footing with the original States." Act of July 16, 1894, ch. 138, 28 Statutes at Large 107, long title. Concerns about the schools resulted in several specific provisions relating to the establishment of public schools. The Act stated that "provision shall be made for the establishment and maintenance of a system of public schools, which shall be open to all children of said State and free from sectarian control." *Id.*, § 3, Fourth. In addition, in contrast to the grant of two sections of land per township (two square miles per 36 square mile township) which had previously been given to the Territory of Utah for the support of public education, concern about the adequacy of available funding in the new State led Congress to double the grant to four sections per township "for the support of the common schools." *Id.*, § 6.

In response to the requirements of the Enabling Act, when Utah became a State in 1896, the Legislature adopted "[a]n Act creating a State Board of Education, defining its duties and providing for a uniform system of Free Schools throughout the State of Utah," which included the same "free school" language for students between the ages of six and eighteen as the 1890 provision. 1896 UTAH LAWS ch. CXXX art. XIII § 102. Except for changing the lower end of the age range from six to five (1973 UTAH LAWS ch. 108), and adding a provision providing free adult high school completion coursework to age 21 (1963 UTAH LAWS ch. 85) which was subsequently extended to adults of any age (1975 UTAH LAWS ch. 154), the statutory free school provision has remained essentially unchanged as part of Utah law since 1890.

In addition to the statutory guarantees of free public education which pre-dated statehood, the following provisions took effect in 1896 as part of the new Constitution of Utah:

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

> (2) The public school system shall include kindergarten schools; common schools, consisting of primary and grammar grades; high schools; an agricultural college; a university, and such other schools as the Legislature may establish. The common schools shall be free. The other departments of the system shall be supported as provided by law; *Provided*, That high schools may be maintained free in all the cities of the first and second class now constituting school districts, and in such other cities and districts as may be designated by the Legislature. But where the proportion of school moneys apportioned or accruing to any city or district shall not be sufficient to maintain all the free schools in such city or district, the high schools shall be supported by local taxation. UT. CONST. art. X §§ 1 and 2.

The above-quoted sections of the Utah Constitution remained unchanged until 1986, with the exception of that portion of Section 2 which begins with the word, "*Provided*," which was repealed in 1909. The 1986 amendments eliminated references to kindergarten, common, and high schools, and to primary and grammar grades, and instead extended the free school guarantee to "public elementary and secondary schools." In addition, the Legislature was given permission to authorize fees in the secondary schools. 1986 UTAH LEGISLATIVE REPORT S.J.R. 1, Second Special Session, amending UT. CONST. art. X § 2.

2. Funding for Textbooks and Supplies: The move to free, universal public schools supported by general taxes did not necessarily equate to a totally free education. Mandates relating to free textbooks and supplies applied only to low-income children: "Necessary text books and supplies shall be furnished by the school board, free of charge to indigent pupils. Such books and supplies shall be used under the direction of the teacher." 1896 UTAH LAWS ch. CXXX art. VIII § 81, later codified as R.S. (1898) § 1849. School boards were permitted to decide for themselves whether to provide free textbooks and supplies to other children: "The board of education . . . shall have power and authority to . . . supply and loan to pupils in the several grades and departments of said schools, free of charge, all text books and supplies used by the pupils of said schools; sell to pupils in the several grades and departments of said schools, at cost, all text books and supplies used by the pupils of said schools . . ." (This section was adopted at different times for city school boards and county school boards. The city board provision was first enacted as 1896 UTAH LAWS ch. CXXX art. XV § 128, later codified with minor wording changes as R.S. (1898) § 1913; the county board provisions were

adopted in 1897 UTAH LAWS ch. XLIX, art. 6, § 4, becoming R.S. (1898) § 1818.

Beginning in 1903 the Legislature required school districts to provide free textbooks and supplies in all grades and departments other than high schools: ". . . It [the school board] shall supply and loan to pupils in the several grades and departments of said schools, free of charge, except high schools, all school text books and supplies used by the pupils of said schools. it shall have the power to sell to pupils in the several grades and departments of said schools, at cost, all text books and supplies used by the pupils of said schools . . ." 1903 UTAH LAWS ch. 60 § 1, amending R.S. (1898) § 1818, relating to county boards of education. An essentially identical provision was adopted for city boards, 1903 UTAH LAWS ch. 121, § 1, amending R.S. (1898) § 1913, and when county districts of the first class were created in 1905, for those districts, 1905 UTAH LAWS ch. 107, § 21, enacting R.S. (1905) § 1891x20.) The language remained essentially unchanged for 83 years until it was repealed as surplus in 1986, having been superseded by a comprehensive new law governing textbooks which was enacted in 1981.

The 1981 law, which has continued to the present with minor changes, retained the basic elements of the earlier law, prohibited other fees, and provided much more detailed guidance for districts:

> §53-13a-1(1) It is the public policy of this state that public education shall be free. No pupil shall be denied an education because of economic inability to purchase textbooks necessary for advancement in or graduation from the public school system. No school board shall sell textbooks nor otherwise charge fees except as provided in this chapter. 1981 UTAH LAWS ch. 207 § 1.
>
> §53-13a-4(1) A school board . . . may sell [textbooks] to pupils in grades nine through twelve at a cost not to exceed the actual cost of the book plus costs of transportation and handling. Each school board, however, shall provide, free of charge, such textbooks and workbooks required for courses of instruction for each child attending public schools whose parent or guardian is financially unable to purchase them. Children who are receiving public assistance in the form of aid to dependent children, general relief, supplemental security income or foster care shall be deemed eligible for the purposes of this section. . . .

> (2) In school districts which require pupils to rent books instead of purchasing them or providing them free of charge, the school board shall waive rental fees for a child whose parent or guardian is financially unable to pay the rental fee. 1981 UTAH LAWS ch. 207 § 4.

In 1986, as part of the school fee legislation adopted in that year, UTAH CODE ANN. § 53-13a-1 (1986) was amended to restrict its scope to textbook fees (additions are underlined; deletions are overstricken and bracketed): "It is the public policy of this state that public education shall be free. No pupil shall be denied an education because of economic inability to purchase textbooks necessary for advancement in or graduation from the public school system. No school board shall sell textbooks nor otherwise charge textbook fees except as provided [~~in this chapter~~] by law." 1986 UTAH LAWS ch. 100, § 4. Later changes made when the section was renumbered as UTAH CODE ANN. § 53A-12-201 (1988) were basically related only to format. 1988 UTAH LAWS ch. 2 §1.

3. Extracurricular activities: While schools in the early 1800's were restricted to the proverbial three "R's," new programs were soon added reflecting the broadened interests of society as a whole. "Prior to this century, little or no attention was given to student activities; but when the secondary school began to diversify, the cocurriculum took on more importance. Today parents and students expect the school to provide a broad extracurricular program. J. Grady, *Student Activities . . . an Extension of the Curriculum*, 8:1 The Practitioner 1 (National Association of Secondary School Principals, October 1981).

Although denominated "extracurricular," activities outside of the regular classroom soon took on great importance. In 1932 the Utah Supreme Court, in a unanimous decision, addressed the importance of extracurricular activities in the public schools:

> Dr. C. N. Jensen, state superintendent of public instruction, and other prominent school men were called as witnesses. Each testified that the student body organization and the activities conducted by and associated with such an organization are an essential part of a modern system of education. Dr. Jensen testified in substance that he would not approve of schools that did not engage in student activities called extracurricular; that such activities are a vital part of the educational system of the state for the purpose of attaining the objectives outlined in the curriculum . . . Ernest A. Jacobsen, superintendent of the North Summit School District, testified that the student body organizations give pupils actual experience

> in self-government, and create an interest in government, and if the drama, the opera, basket ball [*sic*], and student dances and athletics were cut out, the effect upon the educational system would be to move back more than a century . . .
>
> The only conclusion we can reach from the evidence in the record is that, while the student body activities are not part of the curriculum or course of study of the schools, and are regarded as extracurricular activities, yet they are essentially a part of any efficient educational system, and cannot be regarded as private in nature or independent of or disassociated from the school and its necessary educational program. *Beard v. Board of Education of North Summit School District*, 16 P.2d 900, 907-908 (Utah 1932).

The transition to an expanded view of education was not without its detractors. The California Supreme Court addressed a plan wherein school officials had attempted to sever the "credit" portion of the school program from the "non-credit", after-school, "extracurricular" portion. School officials sought to restrict the free school guarantee to that which was "essential to the prescribed curriculum," [see *Smith v. Crim*, 240 S.E.2d 884 (Ga. 1977)] thereby eliminating full participation in activities which were "outside of or in addition to the regular academic courses or curriculum of a school." [See *Paulson v. Minidoka County School District No. 331*, 463 P.2d 935 (Idaho 1970).] The California Court responded,

> [The first] approach determines whether a given program falls within the guarantee not by assessing its actual educational value, but by deferring to a school board's decision on whether or not to offer it for formal, academic credit. [Footnote omitted] Under this test, a for-credit program would fall within the guarantee, while a non-credit program with identical content--and equal value in fulfilling the constitutionally recognized purposes of education--could be offered for a fee. (FN 11: Under this standard, the Constitution would not prevent a school board from evading the constitutional guarantee by the simple expedient of labeling courses "extracurricular" and offering them for no credit. In addition to the performances involved in the present case [school drama productions], metal working courses, computer instruction, language laboratories, or even advanced algebra could be offered for a fee.)
>
> The second approach, on the other hand, does not sever the concept of education from its purposes. It focuses not upon the formalities of credit, but upon the educational character of the activities in question.
>
> It can no longer be denied that extracurricular activities constitute an integral component of public education. Such activities are "generally recognized as a fundamental ingredient of the educational process."

> (*Moran v. School District #7, Yellowstone County,* 350 F.Supp. 1180, 1184 (D.Mont. 1972); *Kelley v. Metropolitan County Bd. of Ed. of Nashville, etc.*, 293 F.Supp. 485, 493 (M.D.Tenn. 1968).) They are "[no] less fitted for the ultimate purpose of our public schools, to wit, the making of good citizens physically, mentally, and morally, than the study of algebra and Latin . . . ." (*Alexander v. Phillips*, 31 Ariz. 503, 254 P. 1056, 1059.) *Hartzell v. Connell*, 679 P.2d 35, 41-42 (Cal. 1984).

Despite the acknowledged educational importance of expanded and enriched school programs, and the fact that the original purpose for establishing the public school system was to enable those of limited means to receive an education, thereby benefiting both those children and society as a whole, as *Hartzell* makes clear, there has often been an unfortunate tendency to limit participation in those programs to those with higher social status, greater wealth or, in short, more of some feature considered to be important to the program. As a result, those most in need of the special experiences or expanded offerings available through the public schools are often discouraged from participation or excluded:

> The very success of the public school tended to remove it further from the very class of children for whose benefit it was originally established. Theoretically, the public school is for all; practically, it is conducted with less regard to the very lowest stratum of society than is desirable. Our public schools are now the best schools to be found, but they are surrounded by a set of rigid rules, customs, and traditions which have a tendency to keep out the very children that these schools were established to educate. M. Newell (principal of the State Normal School in Baltimore, Maryland) in JOURNALS AND PROCEEDINGS OF THE NATIONAL EDUCATION ASSOCIATION (1883) at 79, in M. Katz, THE IRONY OF EARLY SCHOOL REFORM 18 (1968).

Based upon evidence that will be more fully explored below, it appears to the Court that the tendency to limit the best that the public schools can offer to those who have the least financial need is as much a reality in 1994 as it was in 1883.

4. Authorization of School Fees: Despite the lack of any Constitutional or statutory authorization for any type of school fee other than textbook fees in grades nine through twelve, and even in the face of specific prohibitions (as noted above, the Utah Constitution prior to 1986 stated that "the common schools shall be free," UT. CONST. art. X § 2; and 1981 UTAH LAWS, enacting UTAH CODE ANN. § 53-13a-1(1), stated, "It is the public policy of this state that public education shall be free. . . . No school board shall sell textbooks nor otherwise charge fees except as

provided in this chapter"), Utah's public schools became enmeshed in charging fees in both the elementary and secondary schools for a broad range of purposes. Evidence relating to allegedly abusive school fees was presented to an interim committee of the Legislature in 1985. Some of the testimony was so compelling that the committee asked the Utah State Board of Education to "convene a task force to review all existing laws and policies, make necessary revisions, and adopt a policy that would truly protect low-income children from exclusion from school programs and classes. S. Weathers & B. Crim, SCHOOL FEES IN UTAH: THE LAW AND THE PRACTICE (Utah Issues Information Program, Inc., 1992). The Board established a task force including representatives from parents, teachers, school and district administrators, advocacy groups for low-income families, and the Utah State Office of Education, and appointed former State Superintendent of Public Instruction Walter D. Talbot as Chair. *Id.*

The task force, after receiving testimony about low income children and their families being subjected to unrealistic demands for money, exclusion, embarrassment, and severely limited educational opportunity, prepared draft legislation and a draft amendment to the Utah Constitution. The new provisions authorized the charging of fees in the secondary schools, subject to waivers or provisions in lieu of waivers that would ensure that no child would be prevented from participating in school programs or activities due to an inability to pay fees. After minor revisions by the Legislature, the proposals were adopted and are currently found in ch. 12 of title 53A, UTAH CODE ANN. 1953, and in UT. CONST. art. X § 2. In addition, the task force prepared a draft school fee rule for the Utah State Board of Education which was subsequently adopted by the Board and has continued as UTAH ADMIN. CODE § R277-407, with minor changes to the present time. S. Weathers, *supra*. In short, the current Constitutional, statutory, and regulatory provisions governing school fees in Utah's public schools, and which are substantially more permissive relative to school fees than earlier provisions of the law, have remained essentially unchanged since 1986.

B. VIOLATIONS OF SCHOOL FEE REQUIREMENTS: Despite the new provisions which legitimized the charging of fees, subject to adequate provisions for those unable

to pay, and subject also to certain procedural requirements relating to notice, numerous violations by school districts and schools throughout the state were reported to the Utah State Office of Education and Utah Issues. S. Weathers, *supra*, at 15. One such violation resulted in a suit, *Lorenc v. Call*, 789 P.2d 46 (Utah Ct. App. 1990), which held that Granite School District's attempt to establish an overly restrictive waiver policy was invalid, since it "conflict[ed] with the statutory objective of ensuring student participation by all those unable to pay. . .".

Allegations of continuing incidents of non-compliance by Utah public schools eventually resulted in the filing of this suit. Ms. Shirley Weathers and Mr. Bill Crim compiled the above-cited report, SCHOOL FEES IN UTAH: THE LAW AND THE PRACTICE, using information gathered in interviews with members of the Plaintiff class. Defendants acknowledged those complaints and the resulting report as reflecting their own findings in working with the public schools and school patrons. Numerous incidents were reported to the Court during hearings preceding this Permanent Injunction. Additional evidence of ongoing violations came from reports prepared and submitted to the Defendants by school districts, affidavits submitted by the named Plaintiffs, and other evidence herein cited. The following summary statements and examples illustrate the problems which the Court finds were experienced by members of the Plaintiff class in several districts, schools, or classrooms after adoption of the statutory and Constitutional changes which first gave permission for the assessment of fees other than textbook fees in grades 9-12 in 1986:

1. Unauthorized fees.
   a. Local school board failed to adopt a fee schedule that included all school fees, including class fees, activity fees, and supply fees on fee schedules;
   b. Local school board failed to approve all fees assessed by the district, its schools, or school personnel;
   c. School teachers, activity coordinators, coaches, and other school personnel failed to notify, or receive permission from, their school principal, superintendent, or board of education concerning the fees which they intended to charge; e.g., fees were assessed in both regular and extracurricular programs for travel, uniforms, camps, essential materials in shop, home economics, and even academic classes, and other purposes (sometimes with the explicit or implicit threat of lowered grades or exclusion from participation if the fees were not paid), when no prior authorization had been given by the local board of education;

d. Fees were assessed that were not listed on the district fee schedule or were at variance with the schedules approved by the local school board, e.g., one school team advisor required team members to pay more than four times the amount listed on the fee schedule approved by the school board;
e. Unauthorized and unlisted fees, such as class, activity, and project fees, were collected without any prior notice to parents, official authorization or oversight whatsoever;
f. Fees were charged for elementary school day programs, e.g. an elementary school girl "was made to sit in the corner because [she] didn't pay for the Weekly Reader [a national newsletter widely used in the elementary schools]." As time went on and the parent still couldn't pay, the girl was "sent to the principal's office to sit;"
g. Elementary school charged fees for snacks and field trips, using labels other than "fee" to give the appearance of propriety: one district called a kindergarten snack fee a "food experience assessment " in an attempt to avoid restrictions on fees;
h. Elementary school children who had not made "donations" were not allowed to participate in field trips with their classmates during the regular school day;
i. Elementary school officials apparently believed that a charge relating to the regular school day would be permissible if designated as an "optional fee," "charge for materials," "food experience assessment," "field trip fund," "activity fee," or some other term;
j. Elementary students housed in school which also served secondary students were charged fees as if they were secondary students;
k. Fees were charged by teachers or other school officials for elementary school activities held outside of the regular school day without prior authorization of fees by the local school board; and
l. Intermediate and junior high schools serving upper elementary grades assessed fees to elementary grade students on the same basis as secondary students, justifying that action by noting that the classes were located in the intermediate or junior high facilities.

2. Denial of due process.
   a. Failure to provide meaningful written notice to families prior to registration;
   b. Some schools which claimed to have provided notice actually provided parents only with a short, general comment included within bulky registration materials that failed to adequately explain fee waivers;
   c. Failure to provide students and their families with application forms for fee waivers (or community service in lieu of a fee waiver), or provided such a form only when it was specifically requested;
   d. Failure to provide students and their families with an adequate written decision, including reasons for denial, if a request for a fee waiver was denied;
   e. Failure to provide students and their families with the right to appeal decisions denying requests for fee waivers, or to provide appeal forms;
   f. Schools within an individual district applied different standards of financial eligibility for fee waivers, creating inconsistent results for eligible students seeking access to academic classes and school activities; and

g. Failure to guarantee a student's participation in classes or activities pending determination of eligibility or during an appeal of a denial of eligibility.

3. Failure to maintain confidentiality.
   a. Local board failed to provide a guarantee of confidentiality in district fee waiver policies;
   b. School personnel failed to maintain the confidentiality of students and families who applied for fee waivers, or failed to maintain confidentiality after a student was granted a fee waiver;
   c. Students or their parents were required to stand in a special line at school registration that had a large sign reading, "fee waivers," allowing everyone in the registration room to know which persons were seeking fee waivers;
   d. Teacher posted list in classroom regarding which students had not brought "donations" or paid school fees;
   e. In the case of school programs, school classes, team sports, and other school activities which were subject to fees and required "tryouts," the ability of low-income students to participate was adversely affected by improper practices such as the following:
      (1). persons involved in the selection process were informed about the fee waiver eligibility of students prior to completion of the selection process;
      (2). during the selection process, students were asked about their ability to pay fees; and
      (3). attempts were made by coaches or advisers to collect fees from students prior to completion of the selection process;
   f. During registration, school personnel would discuss or determine a person's eligibility for school fee waivers in the presence of other parents or children; and
   g. School personnel permitted students to assist in collecting school fees from other students and processing fee waiver applications.

4. Harassment by school personnel.
   a. School personnel harassed and ridiculed persons seeking information about, or an application for, fee waivers, e.g. a mother was asked for $20 for a kindergarten fee; upon asking about fee waivers she was told in a belittling way, "You're kidding." The mother then "called the district, which called the principal, who called [me] and said she would loan me the money [but] to keep it confidential;"
   b. School personnel aggressively confronted applicants for fee waivers and asked why the applicants could not pay the school fees or why they couldn't pay the fees in installments, even though school personnel knew that the applicants were presumed eligible for fee waivers in accordance with eligibility criteria, e.g. a mother knew about the availability of waivers and asked the school secretary about them; the mother was told that "no fees were waived." She responded by informing the secretary about the law, to which the secretary replied, "We don't do that here . . . a lot of parents [are] on assistance and they don't have a problem;"
   c. School personnel were uncooperative and insensitive, e.g., in an attempt to avoid embarrassment in applying for fee waivers, one mother who reported that the child in question is manic depressive, called the principal prior to

registration. "[He] made [me] feel guilty, lectured [me] about being poor [and said I was] putting the school in a difficult situation." The principal eventually said it would be taken care of, "but when my son went to pick up his activity card the secretary refused and embarrassed him in front of others;"

d. School officials who were authorized to approve fee waivers were not available to approve fee waiver applications, resulting in substantial inconvenience and delays; some parents and students had to return to school several times to get fee waiver approval from an authorized school official;

e. Some school personnel refused to enroll eligible children for any classes, or refused to allow eligible children to register for certain classes, unless the fees were paid or formally waived, e.g. "[My daughter] was unable to pay for a $120 [choir] dress," reported one mother. The teacher said, "Get out if you can't pay." The family came up with the money but there were more costs. "[My daughter] paid up at the end of the semester. My son's sewing grade was docked because the teacher delayed ordering materials, so he was one week late getting the project completed. The pressure is unbearable;"

f. In the case of classes with limited numbers of openings, delay in permitting enrollment of eligible children meant that those children were not approved for registration until all positions were filled;

g. School personnel discouraged fee-waiver eligible students from participating in school programs, telling the students that if they tried to get fees waived for the programs in question, then the activity would be discontinued by the school, e.g. one parent said that teachers asked for money to pay for art supplies. "You don't get them if you don't pay. The grade suffers because kids don't get the project done. The principal suggested that my son change classes to one without a fee. I felt very intimidated by the principal." Another parent attending an orientation program for cheerleading reported that the adviser stated that the program could not function if anyone asked for fee waivers, so if a person could not pay the required fee to not bother trying out;

h. Schools allowed teachers to deny "fee waiver" students the opportunity to take their individual classroom projects home while permitting "non-fee waiver" students to do so, even though the projects were not "optional projects" requiring special purchases by individual students or their families; and

i. School officials told those who requested a copy of the school district's fee waiver policy that there was no such policy or, if there was, that a copy was not available.

5. <u>Refusal to waive fees.</u>

a. When students or parents went to school for registration and requested information for fee waivers, no school personnel were familiar with the fee waiver program, e.g. a parent seeking fee waiver information said, "They had no idea what I was talking about. . . . I got waiver information from the [Utah] Department of Social Services and took it to the school, but the principal said that he doesn't give waivers because it's not fair to the other students;"

b. Even when asked, school officials refused to allow fee waivers or alternatives in lieu of fee waivers, such as community service; e.g. a parent stated, "My son's friend was made to sign an IOU. His mom is in prison and he couldn't afford to make the payments so he dropped out of school;"

c. Instead of being granted fee waivers (or community service in lieu of a waiver), students or their families were required to pay their school fees through installments;
d. School personnel reduced or withheld academic grades or credits earned by students who failed to pay their school fees, even though they were eligible for fee waivers, e.g. a mother reported that her son was flunking a class because the class fees had not been paid; when she asked about waivers, she was told, "We don't waive class fees;"
e. Secondary schools refused to waive fees for advanced academic classes such as the following:
   1) community school classes, even though the class was a part of the student's regular class load;
   2) ATC classes, even though the class was a part of the student's regular class load;
   3) Advanced placement (AP) courses (general AP fees, not just fees for examinations relating to college credit which need not be waived unless the student must take the test for high school credit or for the class grade); and
   4) The high school component of a concurrent enrollment college course taken for high school credit;
f. School districts and schools also refused to waive many other types of school fees, including the following:
   (1) registration fees;
   (2) textbook fees;
   (3) student activity card fees;
   (4) extracurricular activity participation fees;
   (5) class or classroom fees;
   (6) activity uniform and accessory fees;
   (7) gym and towel fees;
   (8) locker fees;
   (9) wood shop class fees;
   (10) workbooks used in academic classes;
   (11) classroom field trips;
   (12) calculators required for math classes;
   (13) team sports;
   (14) drill teams;
   (15) cheerleading;
   (16) traveling costs for school clubs and team sports;
   (17) insurance required to participate in a class or school activity;
   (18) debate; and
   (19) fees for school activities such as summer camps.
g. Female students were barred from participation in a school drill team unless they paid fees exceeding $600.00 per student, or from participation in a school choir unless they obtained the three expensive outfits required by the director;
h. Students were denied the opportunity to participate in school choirs or school plays unless the students paid fees or made "donations;"
i. School fees were not waived if the academic class or extracurricular activity was "optional," e.g. a secondary student had recently moved to Utah and wanted to

play football, but the school refused to waive the football fee. His mother reported, "When we went to register they just gave us the runaround. He was embarrassed at having to ask for fee waivers anyway, but then they told him to go out to the football field and talk to the coach. The coach asked him if he had paid the money for his equipment and my son had to say no. The whole team was there and they just left to go practice. They just left him standing there, crying. We paid the football fee and not our rent. I didn't know what else to do. It was the worst day of my life;"

j. School officials refused to waive school fees for students eligible for the free school lunch program; and

k. School officials refused to waive fees for summer school , inter-session classes, make-up or remediation classes.

C. COMPLIANCE AFTER ISSUANCE OF THE PRELIMINARY INJUNCTION

1. Good Faith Efforts at Compliance: As noted in § I.D., this Court has had several opportunities to review matters relating to this case since the initial filing and issuance of the Preliminary Injunction in July, 1992. Compliance reports submitted by public schools and school districts as required in previous orders of this Court have been reviewed on those occasions, and extended discussions have been held with counsel for the Parties concerning compliance. The Court has previously found, and still finds, that the Defendants have attempted in good faith to comply with this Court's Preliminary Injunction and subsequent Orders with regard to ensuring that Utah's public schools do not discriminate against students on the basis of relative wealth, that no student is prevented from participating in any aspect of public education because of poverty, and that all public schools waive school fees for eligible students. The Court also finds that there has typically been a good faith effort by most school districts to comply.

Despite the foregoing, the Court found evidence of at least questionable judgment in those instances where school officials attempted to circumvent the clear Constitutional prohibition against fees in elementary schools by using terms other than "fee" to describe required payments. The term used by school personnel in requiring payments relating to an event occurring during the regular elementary school day is irrelevant. It is equally irrelevant whether an elementary grade (any of grades Kindergarten through sixth grades) is located in an elementary school, middle school, or other facility. The purpose of the Constitutional prohibition regarding elementary school fees would be totally frustrated if it could be

circumvented simply by changing the terminology relating to a fee or the location of an elementary school grade.

2. Effect of Continuing Instances of Non-compliance: Despite those findings, there continues to be ample evidence that problems have not ceased. The violations noted under § II.B. are evidently still occurring, albeit at a much lower frequency than was the case prior to the initiation of this suit. Defendants assert that the errors still being made are usually not intentional or malicious, but predominantly due to ignorance resulting from staff turnover, failure of already overburdened staffers to read and fully understand informational materials and previous Orders of this Court, and failure of some local boards of education and administrators to provide adequate training. The Court does not dispute that assertion, but notes that whether the violations are inadvertent or intentional does not change the burden imposed upon a class of children already heavily burdened by the often difficult circumstances of their lives. As has been frequently stated, education is the door to the American dream. Where European traditions of economic and class distinctions bound children for good or bad to the social environments, standards of living, work opportunities, and places of residence of their parents, American ideals of free public education and democracy have been commonly viewed as giving each person the opportunity to reach beyond his or her parent's grasp:

> In addition to the pivotal role of education in sustaining our political and cultural heritage, denial of education to some isolated group of children poses an affront to one of the goals of the Equal Protection Clause: the abolition of governmental barriers presenting unreasonable obstacles to advancement on the basis of individual merit. Paradoxically, by depriving the children of any disfavored group of an education, we foreclose the means by which that group might raise the level of esteem in which it is held by the majority. *Plyler v. Doe*, 457 U.S. 202, 221-222, 102 S.Ct. 2382, 2397, 72 L.Ed.2d 786, 802 (1982).

Whether a student is excluded from full participation and from gaining the full benefits available in his school because of undocumented status, as in *Plyler*, or because of inability to pay school fees, as has been alleged in the present case, the effect is the same; the exclusion "imposes a lifetime hardship on a discrete class of children not accountable for their disabling status." *Id.*, 457 U.S., at 230, 102 S.Ct., at 2398, 72 L.Ed.2d, at 801.

While Defendants have noted that many of the fees involved in this case relate only to "optional" or extracurricular activities, exclusion from participation in such activities poses significant hardships for students both during and after their public school careers. Students who wish to obtain post-secondary education may encounter difficulty obtaining scholarships or other financial aid or even obtaining entry to a desired institution, because participation in special classes, student government, special programs, and extracurricular activities are being used increasingly as major factors in selection decisions. The Utah State Board of Regents, for example, recently issued a document urging students who "plan to attend one of Utah's nine public colleges or universities" to "get involved in extra-curricular activities" beginning in the sixth grade. ATTENDING UTAH'S COLLEGES AND UNIVERSITIES (Utah State Board of Regents, 1994). The University of Utah's booklet, FINANCIAL AID AND SCHOLARSHIP INFORMATION AND APPLICATION MATERIALS, 1994-1995 (University of Utah, 1994) includes several scholarship applications. Applications include requests for information about participation in extracurricular activities; in the case of leadership and minority scholarships, those portions comprise two out of three pages in the application forms. The Robert C. Byrd Honors Scholarship, a "federally-funded program whose purpose is to promote student excellence and achievement and to recognize exceptionally able students who show promise of continued excellence," (quoted from an announcement issued by the Utah State Office of Education) and the Utah Career Teaching Scholarship, which is funded by the Utah State Legislature to assist those who show exceptional promise as potential public school teachers, both of which scholarships are administered by Defendant Utah State Office of Education, also give significant weighting to participation in extracurricular activities and special school activities, as does the prestigious Sterling Scholar Award which is offered through a Salt Lake City newspaper, the Deseret News. Similar questions regarding participation in extracurricular activities form a significant part of applications forms for entry into post-secondary institutions, indicating that such participation is a factor in admissions decisions as schools search for "well-rounded" students whose interests extend beyond the classroom.

While still in the public schools, students encountering exclusion due to their inability to pay for special programs or extracurricular activities may become disillusioned, gradually disassociate from the school, and eventually drop out entirely:

> [At risk] students typically are in need of stimulating experiences that will provide a setting for aspirations and opportunities for achievement. Wehlage, Rutter, Smith, Lesko, & Fernandez, REDUCING THE RISK: SCHOOLS AS COMMUNITIES OF SUPPORT 23 (1989).
>
> Students who feel a sense of social bonding to school or teachers are less likely to reject school and more likely to conform to certain otherwise unappealing rules and procedures associated with schooling. Students who exhibit a high degree of social bonding tend to identify with the institution, actors or norms and see themselves as having a role, a value and a stake in the outcome of the institution's or individual's efforts. *Id.*, at 156.
>
> Prior to this century, little or no attention was given to student activities; but when the secondary school began to diversify, the cocurriculum took on more importance. Today parents and students expect the school to provide a broad extracurricular program. Even in this era of back-to-basics, declining enrollment, and budget constraints, surveys reflect enthusiastic support for student activities.
>
> According to the American College Testing Survey of 1977, "the single most common characteristic among successful people is that they were involved in student activities at school." Organized student activities are a vital component of the student's training and preparation for participation in a democratic form of government. J. Grady, *supra*.

Participation in extracurricular activities has also been found to correlate significantly with academic performance and subsequent success in employment:

> Few would deny that there are significant health benefits to high school sports and physical-education programs and that this is reason enough for communities to underwrite them. And there are also numerous studies that show a correlation between academic performance and participation in high school athletics and other extracurricular activities.
>
> ◦ A Women's Sports Foundation survey of 13,481 students, male and female, from 1980 to '86 found that high school athletes had higher grades and lower dropout rates and went on to college more often than nonathletes.
>
> ◦ A 1984 study of 56,140 randomly selected students by the Texas Education Agency revealed that only 23% of those who were involved

> in a sport or other extracurricular activity failed one or more courses in the fall semester, compared with 46% of those who were not involved.
>
> . . .
>
> • A 1980-81 Iowa High School Athletic Association study found that students who played two or more sports had a better grade point average (2.82) than those who played one sport (2.61), who in turn did better than nonparticipants (2.39).
>
> • A Kansas State High School Activities Association study conducted in 1982-83 found that only 6% of students who dropped out of high school that year had been involved in an extracurricular activity. That is to say, 94% of dropouts had been nonparticipants. Swift, *Why Johnny Can't Play*, SPORTS ILLUSTRATED, Sept. 23, 1991 at 64.
>
> . . .
>
> A 1987 survey revealed that 95% of Fortune 500 managers at or above the level of executive vice-president had participated in high school athletics. (Only 43% were members of the National Honor Society.) *Id.*, at 68.

Although Defendants questioned the relevance of Plaintiffs' presentation of the preceding statistical information, none of which cited Utah studies, Plaintiffs' counsel, however, pointed to the increasing efforts being made on the part of the Legislature, schools, and local governments to control gang activities and to assist "at-risk" students and encourage them to stay in school and complete their education. Counsel also stated that several anti-gang proposals supported by the Legislature and local governments include the establishment of after-school activities and sports programs. *See*, e.g., UTAH CODE ANN. § 53A-15-601 (1994). It is ironic that those efforts are being made at the very time that some needy students are being denied fee waivers, thereby excluding those same "at-risk" students from participation in many school programs and activities. The Court believes that increasing reliance upon fee-based criteria for participation in our schools, without adequate allowance for waivers, will inexorably lead to reduced opportunities to attend post-secondary institutions or receive scholarships or other financial aid, as well as to increased school failure and the growth of gangs and the "underclass" in our communities, as these children are denied the benefits of positive associations, structure, sense of belonging, and healthy participation found in well-designed school-based activity programs.

While some may view school fees as an innovative approach to education funding, the Court is more inclined to view school fees as just the latest incarnation of the discredited "rate bill" system which was discussed in § II.A.1., *supra*. That system resulted in decreased school enrollment and decreased participation in advanced curriculum offerings, and was subsequently abolished. From the evidence presented, it appears to the Court that the deleterious effects of such systems have not changed significantly in the intervening years.

3. Equalization of Fee Waiver Burdens Among Schools in Individual Districts: Evidence was presented that inequities have continued among schools within individual school districts due to the failure of those districts to distribute the burden of fee waivers in a reasonably equitable manner among the schools of the district as required by UTAH ADMIN. CODE § R277-407-6A(10). As a result, schools serving low-income neighborhoods have been forced to eliminate programs which are important in helping deprived youngsters gain a sense of belonging and participation in schools and the world beyond their immediate surroundings, while children in affluent neighborhoods continue to receive a smorgasbord of programs, subsidized in whole or in part by tax-derived public education funds. The Court finds that this practice continues to deprive low-income students of equal educational opportunities, leading to inferior performance, discouragement, disaffection, and ultimately to separation from school. This result "imposes a lifetime hardship on a discrete class of children not accountable for their disabling status," *Plyler*, 457 U.S., at 230, 102 S.Ct., at 2398, 72 L.Ed.2d, at 807, and Defendants must therefore continue their efforts to ensure that district resources are equally distributed so that these children are not further harmed by continued failure to provide equal access to public education.

4. Requests to Restrict the Scope of the Fee Waiver Requirement: Defendants' counsel noted that they have been urged by educators, legislators, and members of the general public to ask the Court to narrow the scope of fee waiver requirements due to concerns that strict enforcement of fee waiver compliance for all school programs could result in elimination of certain programs and a loss of opportunity for students who have traditionally participated in those programs, and that fee waiver compliance is increasing burdens upon a school system which is already burdened

by the largest class sizes in the United States, the lowest per pupil funding, and a serious lack of sufficient school buildings, textbooks, school materials, and equipment.

The Court finds, for a number of reasons, that these concerns are wholly inadequate as a justification for proposals to allow schools to eliminate fee waiver compliance requirements for <u>any</u> kindergarten through grade twelve program supported in whole or in part by public school funds:

a. If the programs which are at risk from fee waiver compliance requirements are of value, they are of value for all, not simply for those whose families have higher incomes.

b. Any school program which excludes participation by those unable to pay is now, and probably has been since 1890 (see *supra*, § II.A.), contrary to Utah law. One of the most elemental purposes of public education is to teach good citizenship, including respect for, and compliance with, the law. *Wisconsin v. Yoder*, 406 U.S. 205, 92 S.Ct. 1526, 32 L.Ed.2d 15 (1972). The Court finds it difficult to understand how any knowledgeable and honorable person could urge the continuation of policies and practices in the public schools which ignore the law, however beneficial they may be for the privileged students who are able to purchase a right to participate.

c. As was clearly shown by Plaintiffs' evidence of ongoing exclusionary practices, low-income and an increasing number of middle-income children are already unable to participate in school programs which exclude those who are unable to pay. Termination of an activity which does not grant fee waivers required under the law would therefore affect only those who are, in comparative terms, economically advantaged and therefore better able to obtain benefits without public sponsorship and support through already overburdened public schools.

III. <u>CONCLUSIONS OF LAW</u>

A. <u>ALL CHILDREN OF THE STATE MUST HAVE EQUAL ACCESS TO PUBLIC EDUCATION</u>

1. Equal protection and the requirement for a "system" of public schools: The Utah Enabling Act, § 3, Fourth, which is reflected in UT. CONST. art. X § 1(a), requires that the State provide a *system* of public schools *open to all the children of the State*. The statement that the State must "provide a system of public schools," instead of "provide systems" or simply "provide public schools," implies that there must be reasonable uniformity and equality of opportunity for all children throughout the State. Governance of the public education system is vested in an elected Utah State Board of Education, which is charged with the "general control and supervision" of the system (UT. CONST. art. X § 3), and in elected local boards of education which are granted broad statutory powers for administering and operating school districts and schools (see, e.g., UTAH CODE ANN. title 53A, ch. 3, part 4; and *Beard*, at 903).

The concept of a reasonably uniform system of public education is also a natural outgrowth of the Equal Protection clauses of the Constitutions of Utah (Art. I § 2) and the United States (Amendment XIV § 1). While it is true that, in contrast to the Utah Constitution's requirement relating to public education, education is not a "right" under the United States Constitution. *San Antonio School District v. Rodriguez*, 411 U.S. 1, 35; 93 S.Ct. 1278, 1298; 36 L.Ed.2d 16 (1973), a State which undertakes to provide education will find its efforts subject to Constitutional standards of equal protection:

> Today education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms. *Brown v. Board of Education*, 347 U.S. 483, 493, 74 S.Ct. 686, 691, 98 L.Ed. 873 (1954). [Emphasis added.]

The Supreme Court expanded its recognition of a student's protected interests in a later case:

> The authority possessed by the State to prescribe and enforce standards of conduct in its schools, although concededly very broad, must be exercised consistently with constitutional safeguards. Among other things, the State is constrained to recognize a student's legitimate entitlement to a public education as a property interest which is protected by the Due Process Clause. *Goss v. Lopez*, 419 U.S. 565, 574, 95 S.Ct. 729, 738, 42 L.Ed.2d 725, 734 (1975).

The Court finds that when access to school programs and the quality of a child's education in the public schools are in effect conditioned upon parental ability to pay school fees, the result is the creation of *multiple systems* of public education and the effective closure of significant aspects of the public schools to some children in violation of the clear requirement of the Enabling Act and the Utah Constitution that there be a *system* of public schools open to *all* children of the State, and in violation of the Equal Protection and Due Process clauses of the United States and Utah State Constitutions. *See* Williams, *Equality Guarantees in State Constitutional Law*, 63 TEX.L.REV. 1195, 1220 (1985).

2. Standards for qualifying for fee waivers: While applicable law, as set forth in § III.A.1., *supra*, prohibits the exclusion of children on the basis of wealth, it does not prohibit all fees. In contrast to cases involving a constitutional guarantee of free schools, e.g. *Hartzell*, where the California Supreme Court found that the imposition of school fees violated California's constitutional guarantee of free schools, UT. CONST. art. X § 2, as amended in 1986, specifically permits the imposition of school fees in the secondary schools. Case law cited by Defendants which addresses the question of whether school fees may be assessed is therefore not particularly relevant.[3]

Several cases do, however, address the issue of waivers, specifically whether equal opportunity is still provided for those who lack the financial ability to pay fees. The

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[3] *Cardiff v. Bismarck Public School*, 263 N.W.2d 105 (N.D. 1978) gives a good analysis of decisions among several States regarding whether a particular State's constitution permits or prohibits school fees. *Hartzell*, at 39, also provides a helpful analysis of various approaches to the problem of school fees and waivers.

Michigan Court of Appeals addressed the issue of athletic participation fees in *Attorney General v. East Jackson Public Schools*, 372 N.W.2d 639 (Mich. App. 1985). Although the Court allowed those fees, it did so under the premise that:

> In the instant case, no student has been barred for lack of funds. There is a confidential process under which students who do not have the means to pay will have the fees waived. . . . Plaintiff has not alleged that the fees were excessive or that funds collected were improperly used. *Id.*, at 639-640.

Similar results were reached in *Crim v. McWhorter*, 252 S.E.2d 421, 422 (Ga. 1979), *Chandler v. South Bend Community School Corporation*, 312 N.E.2d 915, 917 (Ind. App. 1974), and *Sneed v. Greensboro City Board of Education*, 264 S.E.2d 106 (N.C. 1980). *Sneed*, however, addressed an additional element at some length; the need for a reasonably uniform standard:

> At the initiation of the present suit, these fees were charged without ascertaining the financial ability of individual students or their parents to pay them. Some exceptions, or waivers of fee, were made on a case by case basis, but there was no uniform waiver policy or procedure. Students who did not pay the required fees were subject to a variety of sanctions. The schools would, for example, withhold diplomas and grade reports, refuse to grant enrollment in the next semester, or deny registration in individual courses. *Id.*, at 110.

The Court finds the eligibility standard established by Defendant Utah State Board of Education to be reasonable, *provided* that the fees actually approved and permitted by local boards are also reasonable. Ample testimony was presented of excessive and exorbitant fees, often assessed by individual teachers or team advisors without the knowledge of school administrators or board members. Defendants stated that cheerleader fees across the State commonly reach or exceed $1,000 per student per year, that drill team costs have been substantially higher, and that even school choirs commonly charge students several hundred dollars for formal dresses and tuxedos, to say nothing of travel and clinic costs for student debate and athletic teams and performing groups which are taken to other States or countries.

The Court does not accept those costs as reasonable, and finds that the standard to be used for eligibility for waivers must be increased if local boards of education are

to permit such costs to continue. An examination of fee schedules and summaries submitted by the Plaintiffs for four of the five school districts attended by the named Plaintiffs (see Appendix A) indicates that even approved fees may seriously burden many waiver-ineligible families. The point at which participation in school becomes infeasible includes many who would be considered "middle class" when fees are permitted to increase to excessive levels.

The Court's finding that the Utah State Board of Education's existing standards are reasonable is therefore based upon assurances by Defendants that local boards of education are continuing their efforts to eliminate nonessential expenditures that have unreasonably driven up costs for many programs which have great value for students, such as choir, debate, vocational courses, and team activities, and that additional efforts will be made to ensure that those *above* the current waiver eligibility standard are not "denied the opportunity to participate because of an inability to pay the required fee, deposit, or charge." UTAH CODE ANN. § 53A-12-103(1) (1994).

3. Standards for community service and fund-raising activities: Plaintiffs expressed concerns about mandatory community service and fund-raising activities in conjunction with fee waivers, stating that such requirements could result in stigma or undue hardships. They cited the following language from *Hartzell* in support of that position:

> The stigma that results from recording some students as needy was recognized early in the struggle for free schools. Thaddeus Stevens once declared, in response to an 1835 proposal that teachers keep a list of "poor scholars": "Sir, hereditary distinctions of rank are sufficiently odious; but that which is founded on poverty is infinitely more so. Such a law should be entitled 'an act for branding and marking the poor, so that they may be known from the rich and proud.' " (Stevens, *A Plea for Free Schools,* in Educational Ideas in America: A Documentary History, supra, at p. 188.) Defendants' extracurricular programs are not truly "free" even to those students who are eligible for waivers. "[T]o a child or his parents financially unable to pay the additional fees and charges imposed by a *free, public school system* any waiver procedure is a degrading experience." (*Granger et al. v. Cascade Co. Sch. Dist., supra,* 159 Mont. at p. 529, 499 P.2d 780 [holding that a waiver plan cannot render a school fee constitutional].)

Utah, of course, does not have a "free school" guarantee for secondary students in its constitution; to the contrary, fees are expressly permitted in the secondary schools. That does not, however, relieve concerns about the fundamentally unfair "branding" of children because of their poverty, a condition over which they have little, if any, control. Defendants have assured the Court, however, that its own rules are designed to protect student privacy and prevent inappropriate student identification, abuse, and undue hardship. UTAH ADMIN. CODE § R277-407-6.

Although the Court is concerned about potential abuses of a child's right to privacy, and the possibility of the imposition of undue hardships upon students or their families, the Court finds that the protections and reports required under this Permanent Injunction, along with the State Defendants' own rules, should provide adequate protection for the rights of eligible students. The Court sees value in community service not only for low-income children, but for all. *See Steirer by Steirer v. Bethlehem Area School District*, 987 F.2d 989 (3rd Cir. 1993). There is nothing inherently "wrong" or "stigmatizing" in a properly administered program of community service or fund-raising in the schools.

B. THE "SYSTEM OF PUBLIC SCHOOLS, WHICH SHALL BE OPEN TO ALL THE CHILDREN OF [THE] STATE" IS AN EVOLVING, NOT A STATIC, CONCEPT.

In invalidating a Texas statute excluding children of illegal immigrants from the public schools, the United States Supreme Court stated,

> It is difficult to understand precisely what the state hopes to achieve by promoting the creation and perpetuation of a subclass of illiterates within our boundaries, surely adding to the problems and costs of unemployment, welfare, and crime. It is thus clear that whatever savings might be achieved by denying these children an education, they are wholly insubstantial in light of the costs involved to these children, the State, and the Nation. *Plyler*, 457 U.S., at 230, 102 S.Ct., at 2398, 72 L.Ed.2d, at 807

Since Defendants have always agreed that all children should have access to at least a bare and basic education consisting of certain core classes required for graduation, the question now before the Court is whether that concession is too narrow; in other words, is equality of educational opportunity not present if there is a system of fees which means that only children in a position of relative wealth have the right to fully access programs and activities provided through those schools?

As noted in Section II.A.3., *supra*, extracurricular activities were integrated into the public schools at an increasing rate after the turn of the century. By 1932 that integration had become sufficiently complete that the Utah Supreme Court stated

> The only conclusion we can reach from the evidence in the record is that, while the student body activities are not part of the curriculum or course of study of the schools, and are regarded as extracurricular activities, yet they are essentially a part of any efficient educational system, and cannot be regarded as private in nature or independent of or disassociated from the school and its necessary educational program. *Beard*, at 908.

Nevertheless, there is some evidence that the Court in 1963 did not view this integration to have proceeded to the point that membership on athletic teams was viewed as being a necessary part of the "system of public schools." In the case of *Starkey v. Board of Education of Davis County School District*, 381 P.2d 719 (Utah, 1963), the Court stated

> [extracurricular activities] are supplementary to the regular classes of the academic curriculum and are carried on under the discretionary powers granted to the Board of Education, but are not part of the school program required by Sec. 1 of Art. X of the Utah Constitution. That requirement is satisfied where the regular curriculum of the school is open to all eligible children. *Id.*, at 720.

The *Starkey* Court was faced with the question of whether a student could be both married and a participant in extracurricular activities. It conceded that Starkey had "a constitutional right both to attend school and to get married," but then added, "he has no 'right' to compel the Board of Education to exercise its discretion to his personal advantage so he can participate in the named activities." *Id.*, at 721. The Court noted that the reasons cited by the Davis County School Board's rule prohibiting participation in extracurricular activities by married students were

> . . . certainly not entirely without merit. It is asserted that one of its main concerns is the problem of "drop out" of large numbers of high school students before completing that phase of their education; that the increased number of teen-age marriages between high school students is considered to be one of the contributing factors to this problem; and that such marriages should be discouraged; and that further when they do occur it is desirable that the parties devote more time and attention to the serious responsibilities involved rather than spending the extra time needed for extracurricular school activities. *Id.*, at 720, 721.

The Court then proceeded to explain that the decision to exclude James Starkey from participation in extracurricular activities was a valid disciplinary decision:

> We have no disagreement with the proposition advocated that all students attending school should be accorded equal privileges and advantages. But the participation in extracurricular activities must necessarily be subject to regulations as to eligibility. Engaging in them is a privilege which may be claimed only in accordance with the standards set up for participation. *Id.*, at 721.

In support of its position, the Court cited *Board of Trustees of University of Mississippi v. Waugh*, 62 So. 827 (Miss.), affirmed 237 U.S. 589, 35 S.Ct. 720, 59 L.Ed. 1131:

> The Fourteenth Amendment to the Constitution of the United States was never intended to act as an accomplice to any young man who wanted to take advantage of the gratuitous advantages offered the youths to obtain an education, and yet refuse to obey and submit to the disciplinary regulations enacted by the Legislature for the welfare of the institutions of learning. *Starkey*, at 721, n. 6.

There is a great deal of difference between the protection that the Fourteenth Amendment would provide to a young man who refused to comply with disciplinary rules with which it was within his power to comply, and a rule which is "directed against children, and imposes a discriminatory burden on the basis of a legal characteristic over which children can have little control." *Plyler*, 457 U.S., at 221-222, 102 S.Ct., at 2397, 72 L.Ed.2d, at 802. It is doubtful whether any of the children in the present case who were subjected to discrimination and prohibited from engaging in not only extracurricular activities but even regular school classes because of an inability to pay fees chose to be poor. There is no basis in the *Starkey* decision for discrimination based upon wealth. The Court held that "all students should be accorded equal privileges and advantages . . . subject to regulations as to eligibility," *Starkey*, at 721, but those regulations are not without limits:

> [A school board's] authority extends to making reasonable rules and regulations calculated to serve the purpose of education. . . . So long as the resolution is deemed by the Board of Education to serve the purpose of best promoting the objectives of the school and the standards for eligibility are based upon uniformly applied classifications which bear some reasonable relationship to the objectives, it cannot be said to be capricious, arbitrary or unjustly discriminatory. *Id.*, at 720.

The Court in *Beard* held that "[extracurricular activities] are essentially a part of any efficient educational system, and cannot be regarded as private in nature or independent of or disassociated from the school and its necessary educational program." *Beard*, at 908. That finding is certainly more true today than it was when first stated in 1932. As noted above, the Court in *Starkey* held that "all students should be accorded equal privileges and advantages . . . subject to regulations as to eligibility," and that the rules must be "calculated to serve the purpose of education." *Starkey*, at 720-21. This Court finds it difficult to believe that the "purpose of education" is met by establishing policies that exclude the most economically deprived children of this State from tax-supported activities which "are essentially a part of any efficient educational system," and cannot be disassociated from a school's "necessary educational program." In the alternative, this Court is unable to find, and Defendants have not identified, anything that lower income children have and higher income students lack that can best be corrected by restricting access to certain tax-supported public school programs and activities to those who have a greater measure of this world's wealth.

To the contrary, there is substantial evidence that involvement in enrichment programs, extracurricular activities, and other programs and activities for which the public schools have charged fees are of great importance in promoting better education, particularly among low-income children whose opportunities to obtain similar experiences outside the public schools are limited or absent. The *Starkey* Court's requirement that an exclusion "[promote] the objectives of the school and the standards for eligibility are based upon uniformly applied classifications which bear some reasonable relationship to the objectives" cannot be met in the case of financial classifications which result in exclusion of low-income children. While classification by ability to pay fees may be capable of "uniform application," it cannot be said that it promotes the objectives of the school or bears some reasonable relationship to the objectives of public education. Therefore, even under the *Starkey* standard, this Court finds that exclusionary practices based upon ability to pay fees violate statutory law, the requirements of the Enabling Act and the Utah Constitution that the system of public schools be open to all children of the State, and the equal protection clauses of the Utah and United States Constitutions.

In addition to the foregoing, just as "the words of the [Eighth] Amendment are not precise and . . . their scope is not static. The Amendment must draw its meaning from the evolving standards of decency that mark the progress of a maturing society," *Trop v. Dulles*, 356 U.S. 86, 78 S.Ct. 590, 2 L.Ed.2d 630 (1958), this Court finds compelling that the meaning of the phrase, "a public education system, which shall be open to all children of the state," UT. CONST. art. X § 1(a), and the meaning of equal protection as applied to public education are also not static and must draw their meaning from the evolving standards which mark the progress and changing educational requirements of our maturing society.

As noted in § II.A.1., *supra*, the scope of public education has gradually expanded over the years. Instruction in reading was first required in Massachusetts Colony in 1642, and the first reading textbook, the NEW ENGLAND PRIMER, appeared in 1691. Writing instruction was first required in 1647. The first textbook for writing, *The* YOUNG SECRETARY'S GUIDE, appeared in 1730. Arithmetic was first taught as an "optional" subject, becoming mandatory in Massachusetts, along with orthography, good behavior, the English language and grammar in 1789. The first American geography textbook was published in 1783, but geography, history, science, art, music, and physical education did not become standard fare until after 1850. (See DOUGLASS, *supra,* at 16-19, CUBBERLEY, *supra,* at 300.) A similar progression is evident in Utah, where kindergarten schools, common schools, and high schools were viewed in UT. CONST. art. X § I (1896) as separate entities within the system of public schools, a circumstance that was not changed until article X was revised in 1986 in connection with the school fee revisions discussed above. School districts were not required to provide kindergarten programs until July 1, 1994. UTAH CODE ANN. § 53A-3-402.7 (1994).

What is evident from the record of the evolution of the public school system in Utah and elsewhere in the United States is that education is not static. As with other Constitutionally protected interests, its definition changes as the demands and

expectations of our increasingly complex society change. The California Supreme Court recognized many of the factors in that change:

> Without high quality education, the populace will lack the knowledge, self-confidence, and critical skills to evaluate independently the pronouncements of pundits and political leaders. Moreover, education provides more than intellectual skills; it also supplies the practical training and experience--from communicative skills to experience in group activities--necessary for full participation in the "uninhibited, robust, and wide-open" debate that is central to our democracy (*New York Times Co. v. Sullivan* (1964) 376 U.S. 254, 270, 84 S.Ct. 710, 721, 11 L.Ed.2d 686). *Hartzell*, at 41.

The Court doubts that anyone would seriously argue that the "system of public schools, which shall be open to all children of the State," or the requirements of equal protection as applied to educational opportunity should be limited to the minimal level of reading instruction required in Massachusetts in 1642, the reading and writing programs required in 1647, or the grades one through eight common schools required as a minimum in Utah in 1896. The Utah Supreme Court appears to agree; when that Court issued its *Starkey* ruling in 1963, the list of components of a school's regular curriculum which must be open to all had been expanded beyond the 1896 offerings, in the Court's view, to include band, speech, drama, and choir. *Starkey*, at 720.

The question here to be answered is not, therefore, what was included within the "open to all children" requirement in 1896, or even in 1963, but what should be included in 1994. Accordingly, this Court holds that requirement to now include both programs, classes, and activities which take place during the school day for credit, but also all other programs, classes, and activities supported in whole or in part by the public schools and primarily intended to serve students in any of grades kindergarten through twelve, regardless of whether the program, class, or activity is designated as "mandatory," "optional," "extracurricular," or by some other name.

C. EXCLUDING CHILDREN FROM FULL PARTICIPATION BECAUSE OF INABILITY TO PAY A FEE IS CONTRARY TO PUBLIC POLICY.

The Utah Compulsory Education Act, UTAH CODE ANN. § 53A-11-101 *et seq.*, requires that *all* children, regardless of family income, attend school between the ages of six and 18. Education is therefore not simply a privilege bestowed upon the State's children; it is an obligation imposed, under penalty of law. School policies must

therefore be supportive of regular attendance, *Starkey*, at 720. Findings set forth under § II.C.2., *supra*, established that the current expanded school curriculum, including particularly aspects designated as "extracurricular," plays an important and, particularly for "at-risk" students, perhaps a critical role in encouraging regular school attendance and improved student performance. It was doubtless that realization that led Utah's Legislature in 1986 to direct that restrictions on school fee authorizations extend to each "activity, class, or program provided, sponsored, or supported by or through a public school or school district," UTAH CODE ANN. § 53A-12-102(1), and that any fee authorization include appropriate waivers "to ensure that no student is denied the opportunity to participate because of an inability to pay the required fee, deposit, or charge." UTAH CODE ANN. § 53A-12-103(1). See also *Lorenc v Call*, 789 P.2d 46, 49 (Utah App. 1990). It was noted in § II.C.2., *supra*, that exclusion from the expanded school curriculum is often tantamount to excluding the affected students from school, the savings from which action "are wholly insubstantial in light of the costs involved to these children, the State, and the Nation." *Plyler*, 457 U.S., at 230, 102 S.Ct., at 2398, 72 L.Ed.2d, at 807. The Court therefore finds that it is contrary to public policy and the intent of the Utah Compulsory Education Act for access to school programs which are supportive of regular school attendance and improved student performance to be based upon ability to pay.

D. AUTHORITY OF THE STATE BOARD OF EDUCATION TO ADOPT REGULATIONS IN ACCORDANCE WITH THIS ORDER.

A local school board is authorized to approve fees under UTAH CODE ANN. § 53A-12-102, but only in accordance with rules adopted by the Utah State Board of Education. State Board authority also extends to the regulation of fee waivers, *Lorenc*, at 49. In addition to any authority extended by the Legislature under UTAH CODE ANN. § 53A-12-102 or other provisions of statutory law, the State Board also possesses authority under the Utah Constitution for the "general control and supervision of the public education system." UT. CONST. art. X § 3; *see also State Board of Education v State Board of Higher Education*, 505 P.2d 1193 (Utah 1973). The Court finds that the Utah State Board of Education has the Constitutional responsibility to ensure that the State's interests in the education of its children are being met in the schools of the "public education system," and that the Board has ample authority under both the

Constitution and laws of the State of Utah to enact rules necessary to implement the provisions of this Permanent Injunction.

IV. ORDER

A. WHEN FEES MAY BE CHARGED

1. Fees may be charged in connection with any secondary school activity or program, or for any grade kindergarten through six school activity or program which takes place outside the regular school day, if the charges are expressly approved by the local school board, parents are given notice as required in this Permanent Injunction, and appropriate opportunities for waiver and appeal of denial of waiver are provided.
2. No school may charge a school fee of any kind which relates to something that will take place during a kindergarten through sixth grade student's regular school day, regardless of how the charge is designated, and regardless of whether the school is classified as an elementary school, middle school, or other designation.
3. Revenue loss due to fee waivers shall be distributed equally across the schools within each district so that no district school is required to carry a disproportionate share of the district's total fee waiver burden.

B. ELIGIBILITY FOR WAIVERS

1. Defendants shall continue to enforce the minimum standards of eligibility for fee waivers set forth in UTAH CODE ANN. §§ 53A-12-204(3) and 62A-4-206(3), and in UTAH ADMIN. CODE § R277-407-6(5), under which any child meeting any of the following criteria is presumed eligible for fee waivers:
   a. eligible for the free school lunch program; (it is not necessary in this regard that the student actually apply for free school lunch, but the student's family must qualify based upon the income guidelines;)
   b. in foster care or in the custody of a Utah State agency;
   c. receiving SSI payments; or
   d. whose family is receiving public assistance in the form of AFDC payments.
2. In addition, other children may also be eligible if there are extenuating circumstances which have created exceptional financial burdens beyond the family's control, such as loss or substantial reduction of income or extraordinary medical expenses, which are so severe that the family is not reasonably capable of paying the fee.

3. School officials may require applicants for fee waivers to provide reasonable evidence supporting their eligibility claims pursuant to rules adopted by the State Board of Education consistent with this Permanent Injunction. If a family is presumed to qualify for fee waivers under income standards but possesses non-exempt assets which reasonably could be used to meet the costs of school fees without creating an unreasonable burden, then the request for waiver may be denied, subject to review and appeal on a case-by-case basis at the request of the parents. If a school district chooses to give consideration to other assets or to student income, the examination must protect family privacy, not be unreasonably intrusive or time consuming, and must not create unreasonable burdens upon local school officials[4]. In addition, the methods shall not be confrontational, burdensome, or unnecessarily embarrassing to the persons involved, and a case-by-case determination must still be available even though a family may exceed the level of income or non-exempt assets that would otherwise disqualify a child from receiving fee waivers[5].
4. If family circumstances change significantly during the year so that fee waiver eligibility no longer exists, then a proportional share of the fees may be charged for the remainder of the school year. Families shall not be subjected to unreasonable demands for requalification.

C. WHAT MUST BE WAIVED

1. General rule.

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[4] Although the Court agrees with Defendants' request for approval of both a limited non-exempt asset test and student income test as part of the fee waiver eligibility review process, the Court also recognizes the concerns expressed by Plaintiffs regarding widespread violations of the law prior to the issuance of the Preliminary Injunction and the subsequent lack of consistency and occasional harassment of fee waiver applicants that was discussed in §§ II.B. and C., *supra*. Accordingly, the State Board shall work with local school officials to develop uniform standards and procedures for this process which shall then be adopted as rules in accordance with § IV.L., *infra*.

[5] Among the assets which may be considered, subject to State Board rules defining categories of exempt and non-exempt income and assets, are nonessential vehicles and income to the student which is not essential for other purposes, as established by parental affidavit. *See* § IV.L.1., *infra*.

a. All fees must be waived for student participation in any class, program, or activity--including extracurricular activities--provided, sponsored, or supported for the benefit of students in any of grades kindergarten through twelve by or through a local school or its school district. Neither community service nor other requirement in lieu of a waiver may be imposed for textbook fees.

b. With the exception of charges relating to school lunch programs governed by Federal law and regulations, no fee may be charged in any of grades kindergarten through six regardless of where located (i.e. elementary school, middle school, etc.) for materials, textbooks, supplies, snacks, drinks, or for any class or activity that takes place during the regular school day, including assemblies and field trips; nor may students be required to bring items from home. Fees may, however, be charged for school-sponsored activities (e.g., summer school, inter-sessional classes, music or foreign language classes taught before or after school) in elementary school if the activity does not take place during the regular school day and if participation is voluntary and does not affect a student's grade or ability to participate in any course or activity during the regular school day. Fees for elementary school activities outside of the regular school day must be approved, listed and subject to waiver in the same manner as secondary school fees.

c. Project-related courses: All project-related courses must be based upon projects and experiences that are free to all students.

   (1). If the general practice in a given class is for the school to retain a substantial number of projects regardless of whether a student is fee waiver eligible or not, then projects constructed by eligible students may be retained by the school. If retention of projects is essentially limited to eligible students and results in identification or "singling out" of such students, then eligible students shall also be allowed to take their projects home.

   (2). Eligible students may be required to choose to make a less expensive project instead of a more expensive one if either can be completed for full credit in the class and both teach all required skills, unless that leads to impermissible identification or stigmatization of eligible students.

(3). Any student may choose to construct an optional project that requires payment of associated costs, and those costs need not be waived for eligible students; nevertheless, no student may be required to select an optional project as a condition for enrolling in or completing a course.

(4). In project-related courses, the "norm" or standard for the class must be a project that is free to all students. Costly optional projects should be avoided, particularly if authorization of optional projects results in pressure by teachers or peers to construct such projects.

2. Some charges or expenditures need not be waived. Certain charges and expenditures relating to the school are not considered to be fees, and need not be waived; exceptions to the "not a fee" designation are indicated in italics:

   a. School Supplies: a secondary student, but not an elementary student, may be asked to bring school supplies such as pencils and paper, which are commonly found in students' homes regardless of wealth. The costs for those items are not fees and need not be waived. *However, costs for items requiring special purchase because a school or teacher has set specific requirements such as brand, style, color or special imprint, are fees and must be approved by the school board, listed, and waived for eligible students* (*see* UTAH ADMIN. CODE § R277-407-1c);

   b. Uniforms for physical education and Other School Activities: an elementary or secondary student may be asked to bring shoes or other items of clothing that are commonly found in students' homes regardless of wealth. *If special requirements are set for color, style, fabric, imprints, etc., which make it less likely that the specific item will be found in students' homes, however, then the costs for those items are fees;*

   c. Insurance policies: insurance offered through the school is not a fee *unless it is required for a student to participate in a class or activity, in which case the insurance charge is a fee and must be approved, listed and subject to waiver* (*see* UTAH ADMIN. CODE § R277-407-4a);

   d. Community school classes: enrollment of a public school student in a community school class designed for and open to the general public that also

enrolls adult students *unless the class is part of the student's regular class load or waiver is required by federal law*;

e. Charges for college or university credit, *but if a student is enrolled in a concurrent enrollment or higher education course as part of the student's high school course load or to receive high school credit, only that portion of the costs attributable to the college or university credit itself is waivable;*

f. Advanced placement, SAT, ACT, GED, and other examination fees *unless the examination is required for high school credit or grading purposes;*

g. Other examples: school lunch, letter jackets or sweaters (*unless required for participation in a school program or activity*), jewelry, replacement of damaged or lost school equipment or supplies, school pictures, or orders for optional books or materials that are not used in a class, whether in elementary or secondary schools (*see* UTAH ADMIN. CODE § R277-407-1C).

D. COMMUNITY SERVICE REQUIREMENTS

1. When community service may be required. Community service requirements may be instituted in connection with any fee waiver *other than a waiver of a textbook fee*, in grades 7 through 12. Community service may not be required of students in grades kindergarten through six.

2. Additional regulatory requirements. When community service options are utilized a school district shall adopt, in addition to any other rules governing fee waivers, rules to ensure that:

   a. community service assignments are appropriate to the age, physical condition, and maturity of the student, and consistent with UTAH CODE ANN. § 53A-12-103, the Federal Fair Labor Standards Act, 29 U.S.C. § 201, and other applicable state and federal law;

   b. a variety of alternatives is available to students, including alternatives in the community which are not connected with the school;

   c. community service alternatives do not include community service for a student's own employer, or for commercial establishments other than establishments such as nursing homes or hospitals where volunteer services are commonly provided;

d. a reasonable period of time is permitted for students to complete community service assignments;

e. students who have been given community service alternatives are not treated differently from other students or identified to persons who do not need to know;

f. the requirement does not create unreasonable burdens for students and parents; (the determination of "unreasonable burden" must be made on a case-by case basis and could include considerations such as a determination that the student rides the school bus to and from home and has no other readily available transportation; provides child care for siblings at home after school while parents work; or must work after school to contribute income to the family household;)

g. the community service assignment is not of such a nature (e.g., limited to "dirty jobs") that it demeans or stigmatizes the student;

h. if a student fails to accept or complete a reasonable community service assignment that does not appear to create an unreasonable burden or stigma, and as a result does not receive a fee waiver, the parents are given notice by means of the Standard Written Decision and Appeal Form stating why the student's application for waiver was denied;

i. students who perform community service receive credit at least equal to the minimum wage for each hour of service given, and adequate records are maintained by the school to ensure that each student receives proper credit for services;

j. if a student who has performed a community service requirement transfers to another school within the district, and any portion of the student's fees would have been refunded if the student had paid the school fees in question, then an equivalent number of community service credits is transferred to and credited by the new school; and

k. students under the age of 14 who are required to perform community service are not permitted to perform tasks which would not be permissible for those students under the Federal Fair Labor Standards Act, such as manual labor or tasks involving the use of machinery, dangerous tools, or equipment.

3. Transferring community service credits between school districts. Defendant Utah State Board of Education shall work with representatives of local school boards to determine the feasibility of adopting a procedure permitting the transfer of unused community service credits when a student moves from one district to another if a portion of the student's fees would have been refunded if the student had paid the school fees in question.

E. FUNDRAISING REQUIREMENTS

1. When fundraising may be required. Fundraising requirements may be instituted in grades seven through twelve in connection with any fee waiver, *other than a waiver of a textbook fee*. Students in grades kindergarten through six may not be required to participate in fundraisers.
2. Additional regulatory requirements for fundraising. When fundraising options are utilized in connection with a fee waiver, a school district shall adopt, in addition to any other rules governing fee waivers, rules to ensure that:
   a. fundraising activities are appropriate to the age, physical condition, and maturity of the student, and consistent with the Federal Fair Labor Standards Act, *supra*;
   b. all students involved in a program for which funds are being raised through a fundraiser are invited to participate in the fundraiser, not just those who are eligible for fee waivers, and that all participants in the fundraiser share in the earned benefits;
   c. a fee-waiver eligible student who has performed a community service requirement in conjunction with a fee waiver is not required to participate in a fundraiser relating to the same fees unless all students, including those who have paid their fees, are required to participate;
   d. since people in low-income areas usually have less discretionary income and so may be less able to donate or spend money on fundraisers than those in higher-income areas, sales quotas are not used; instead, the criterion is whether a particular student made a good-faith effort (e.g., by contributing a designated number of hours to the project), not whether the student met a sales quota; and
   e. if a student makes the requested effort to participate in a fundraiser but sufficient money is not raised to cover all charges for the school activity and the activity

goes forward anyway, then the difference between the fee-waiver eligible student's share of the proceeds and the actual amount of the fee is waived.

F. INSTALLMENT PLANS AND DONATIONS

1. Installment plans. Discussions of installment plan arrangements with parents of eligible students may only be undertaken if the parent, after being informed about waiver eligibility, voluntarily asks to pay in installments instead of accepting a waiver; installment plans may be discussed at any time with persons whose children are not eligible for fee waivers.

2. Donations. Donations are permissible in both elementary and secondary schools unless barred by district policy, but in no case may an individual student's participation in an activity or program be determined by whether a donation has been made for that particular student or not. A district may choose not to accept a donation if acceptance would create significant inequities within the district and the donor is unwilling to allow the benefits of the donation to be shared with other needy district schools.

G. PARENTAL NOTICE REQUIREMENTS

1. Forms. Defendants Utah State Board of Education and Utah State Office of Education shall continue to require school districts and schools to provide and distribute certain standard forms to students and their families, as applicable, and as described elsewhere in this Permanent Injunction. Copies of these standard forms are attached at the end of this Permanent Injunction. (*See* Appendix B.) The Defendants shall establish timelines for school districts and schools to ensure that the forms listed below are distributed at least once each school year, prior to registration, and take other steps reasonably necessary to provide timely notice and forms to parents regarding school fees and fee waivers. Posters describing fee waivers shall be prominently posted in schools during registration.

   a. For schools serving any of grades Kindergarten through sixth grade:
      (1) School Fees Notice for Families of Children in Kindergarten through Sixth Grades;
      (2) Fee Waiver Application (Grades K-6);
      (3) Fee Waiver Decision and Appeal Form; and
      (4) Grades K-6 Poster.

   b. For schools serving any of grades seven through twelve:

(1) School Fees Notice for Families of Students in Grades Seven through Twelve;
(2) Fee Waiver Application (Grades 7-12);
(3) Fee Waiver Decision and Appeal Form;
(4) Application for Fee Waivers with Community Service (Grades 7-12);
(5) Community Service Obligations (Grades 7-12);
(6) Community Service Assignment and Notice of Appeal Rights;
(7) Appeal of Community Service Assignment; and
(8) Grades 7-12 Poster.

2. Provisions for persons with limited English proficiency. The Court acknowledges and commends the voluntary efforts by Defendants to produce Spanish translations of the forms, and the voluntary efforts of school districts to publish and distribute those forms. If translated forms are not available, schools should take other reasonable steps to ensure that no person fails to receive reasonable notice because of limited English proficiency.

H. REPORTING REQUIREMENTS

1. In order that compliance with this Permanent Injunction may be appropriately monitored, Defendants shall continue to require completion and submission of the following certification of compliance forms (*see* Appendix C) by each public school principal, district superintendent, and local school board president, as applicable:
   a. for each school serving any of grades K through 6: Elementary School Certification of Compliance;
   b. for each school serving any of grades 7 through 12: Secondary School Certification of Compliance; and
   c. for each school district: School District Certification of Compliance.
2. Defendants shall also maintain copies of the following reports for review:
   a. correspondence between the State Defendants and any public school or school district that relates in any way to the terms of this Order;
   b. "S-3" reports and any other written documents submitted by school districts to the State Defendants which relate to school fees or fee waivers; and
   c. any other data, documents, communications, or records maintained by the State Defendants regarding compliance with school fee or fee waiver requirements by the State Defendants, public schools, or school districts.

I. PROCEDURAL REQUIREMENTS

Defendants shall adopt rules to ensure that, in every school where fees are charged:

1. the process for obtaining waivers or pursuing alternatives to waivers is administered fairly, objectively, and without delay, and avoids stigma and unreasonable burdens on students and families;
2. no separate lines, tables, colors of papers, or other visible indicators are used that could lead to identification of fee waiver applicants by unauthorized persons;
3. the privacy requirements of the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. §1232g (1993) [FERPA] are complied with by preventing disclosure of confidential information to unauthorized persons;
4. students are not permitted to collect fees or assist in the fee waiver approval process;
5. financial inequities among a district's schools are balanced so that the granting of fee waivers and provisions in lieu of fee waivers does not produce significant inequities through unequal impact on individual schools;
6. the Standard Written Decision and Appeal Form is provided to every student's parent or guardian who requests school fee waivers; and
7. that any requirement that fees be paid is suspended during any period during which the student's eligibility is being determined or during which an appeal is in process.

J. MONITORING AND SANCTIONS FOR NON-COMPLIANCE

1. Monitoring. The Defendant Utah State Board of Education shall continue to monitor compliance by local school officials through the compliance reports referred to in § IV. F., *supra,* and other reasonable means. Defendants shall also permit Plaintiffs' counsel to monitor compliance with the terms of the Permanent Injunction for a period of three years following issuance of this Permanent Injunction. During that period, Defendants shall permit Plaintiffs' counsel to review compliance forms submitted by public school officials, and shall give Plaintiffs' counsel reasonable access to Defendants' staff and school fee records.
2. Sanctions for noncompliance.
   a. Withholding of funds. If a school fails to comply with the terms of the Permanent Injunction or related rules of the Utah State Board of Education, the State Defendants shall withhold monthly disbursements of that school's proportionate share of Minimum School Program funds based upon the school's share of total student membership within the affected school district. If noncompliance is district-wide or district-sanctioned, Defendants shall

withhold monthly disbursements of all Minimum School Program funds from the offending school district.

b. Notice and hearing. Defendants shall give a school district thirty days' notice of any proposed withholding of funds. The district may, within fifteen days after receipt of such notice, request an informal hearing with the State Superintendent to respond to allegations of noncompliance which could result in implementation of a withholding order. If the State Superintendent finds that the allegations are true and that the offenders have not taken adequate steps to correct the violations, including the return of funds improperly collected from eligible students and their families, or if the offending district fails to request an informal hearing, then the State Superintendent shall order the withholding of monthly disbursements of Minimum School Program funds until such time as the district has come into full compliance and returned improperly collected funds to eligible students and their families.

K. CONTINUING JURISDICTION

1. Plaintiffs' access to compliance records. In view of Defendant's past failure to ensure compliance with applicable law and its own rules, Defendants shall permit Plaintiffs' counsel to continue to monitor compliance with the terms of the Permanent Injunction for a period of three years following issuance of this Permanent Injunction. During that period, Defendants shall permit Plaintiffs' counsel to review compliance forms and other relevant records submitted by public school officials, and shall give Plaintiffs' counsel reasonable access to Defendants' staff and school fee records.

2. Continuing jurisdiction of the Court. The Court shall retain jurisdiction of this case for three years following issuance of the Permanent Injunction, to ensure compliance by Defendants.

L. AMENDMENT OF STATE REGULATIONS

1. To ensure reasonable uniformity among the schools and school districts in the State, the State Board of Education shall amend its existing administrative rules in implementation of this Permanent Injunction:

a. The Board shall strengthen the equalization requirement under UTAH ADMIN. CODE § R277-407-6(10), as noted *supra* at § IV.A.3., to ensure that each

school district equalizes the burden of fee waivers across all schools serving the same grades within the district. The Board shall also include an assurance in the School District Certification of Compliance required under § H.1.c., *supra*, that each district has equalized the burden.

b. The State Board shall, in consultation with local school officials and counsel for the Plaintiffs, adopt rules governing both limited asset and student income evaluations described in § IV.B.3. *supra*, including definitions of exempt and non-exempt assets The rule shall provide that if a school district chooses to give consideration to assets, that the examination protects family privacy, is not unreasonably intrusive or time consuming, and that methods approved by the State Board for use in determining eligibility do not create unreasonable burdens upon local school officials. In addition, the rules shall provide that those methods not be confrontational, burdensome, or unnecessarily embarrassing to the persons involved, that a case-by-case determination is still available even though a family may exceed the level of income or non-exempt assets that would otherwise disqualify a child from receiving fee waivers, and that due process is available to both students and parents in connection with any asset or student income evaluation or case-by-case determination to ensure compliance with this Permanent Injunction.

   If student income is considered by a school district in determination of fee waiver eligibility, the rules shall provide for retention by the student of a reasonable amount of discretionary income, and shall provide for submission of a parental affidavit if student income is needed for other family purposes.

c. The Board shall adopt rules, in consultation with local school officials, establishing limitations on the maximum amount that a student or family can be charged for school fees. See § III.A.2., *supra*.

d. Rules required under this section shall be forwarded to the Court for its review prior to adoption, along with any related amendments to forms, notices, and certificates of compliance required under §§ IV.G. and IV.H.; the final rules shall be adopted before the commencement of spring registration in 1995 and

used in making eligibility determinations affecting the 1995-96 and subsequent school years.

e. Rules adopted under this Section shall not affect eligibility determinations applicable to students during the 1994-95 school year.

2. If the need arises, the Utah State Board of Education may adopt additional amendments or supplement its existing rules governing school fees, and amend or supplement the forms and procedures required under this settlement, but any such action must comply with the following:

   a. The amendment or supplement must be consistent with this Permanent Injunction;

   b. Any such amendment or supplement must be adopted in compliance with the requirements of the Utah Administrative Rulemaking Act, including legal public notice, and special notice of rulemaking must be given to Plaintiffs' counsel informing counsel of the purpose and nature of the proposed modification, the period for public comment, and the date, time, and location of relevant hearings or meetings of the Utah State Board of Education.

M.: EFFECT OF PREVIOUS ORDERS.

Provisions of previous orders issued in this case which are not inconsistent with this order shall remain in effect and are hereby incorporated by reference.

DATED this 28 day of October, 1994.

BY THE COURT:

JOHN A. ROKICH
THIRD DISTRICT COURT JUDGE

APPROVED AS TO FORM
AND CONTENT:

JOHN S. McALLISTER
ASSISTANT ATTORNEY GENERAL
ATTORNEY FOR THE DEFENDANTS

APPENDIX

A. FEES IN FOUR OF UTAH'S PUBLIC SCHOOLS

B. FORMS AND NOTICES

C. CERTIFICATES OF COMPLIANCE

APPENDIX A--FEES IN FOUR OF UTAH'S PUBLIC SCHOOLS

FEES IN FOUR OF UTAH'S PUBLIC HIGH SCHOOLS

(The fees listed below are not inconclusive. This is only an example of some of the fees that are charged at these public senior high schools).

High School	Provo High	Davis County Senior High	Ogden High	Tooele County Senior High
Description of Fee	**Amount of Fee**	**Amount of Fee**	**Amount of Fee**	**Amount of Fee**
Textbooks	50.00 Refundable 10.00	32.00	30.00	25.00
School Lockers	4.00	2.00	Optional	2.00
Activity Card	20.00	32.00	20.00	15.00
Computer Lab	4.00	N/A	2.00	N/A
Class Schedule Change	N/A	10.00	5.00	2.00
Locker Combination Change	N/A	5.00	N/A	N/A
Student Folder	N/A	2.00	N/A	N/A
Accounting	10.00	N/A	N/A	N/A
Advanced Placement	(See Specific AP Courses Below)	N/A	N/A	15.00
AP Chemistry Lab	Study Guide 13.00	N/A	N/A	N/A
AP Art Studio	42.00	N/A	N/A	N/A
AP Europe Workbook	5.00	N/A	N/A	N/A
AP US History Workbook	14.00	N/A	N/A	N/A
Art	12.00 Per Semester	N/A	2.00 or 5.00	N/A
Auto	Tool Deposit 7.50	N/A	5.00	N/A
Band and Orchestra Instrumental Rental	75.00	40.00	25.00	?
Band Class	N/A	N/A	10.00	N/A
P.E. Class Bowling Fees	18.00	N/A	N/A	N/A
Driver Education	40.00	20.00	35.00	20.00
Electronics	N/A	2.00 or 3.00	2.00 or 5.00	N/A
English	N/A	Workbook 3.60 11th Grade	2.00	
Foods	10.00	N/A	10.00	N/A
Geometry	4.00	N/A	N/A	N/A

FEES IN FOUR OF UTAH'S PUBLIC HIGH SCHOOLS

(The fees listed below are not inconclusive. This is only an example of some of the fees that are charged at these public senior high schools).

High School	Provo High	Davis County Senior High	Ogden High	Tooele County Senior High
Description of Fee	**Amount of Fee**	**Amount of Fee**	**Amount of Fee**	**Amount of Fee**
German, Russian, Spanish Workbooks	8.00	N/A	N/A	N/A
Industrial Arts	N/A	N/A	2.00 or 5.00	4.00 to 12.00
Machine Shop	N/A	N/A	2.00 or 5.00	5.00
Math	70.00 Advanced Calculator	N/A	N/A	N/A
P.E. Locker	Per Semester 3.00	N/A	N/A	N/A
Photography	20.00 Deposit to Pay for Personal Projects	N/A	N/A	12.00
Physiology Syllabus	15.00	N/A	N/A	N/A
Cap and Gown Rental	N/A	15.00	20.00 to 25.00	15.00
Football	110.00	40.00	24.00	25.00
Basketball	70.00	40.00	22.00	25.00
Wrestling	70.00	35.00	17.00	20.00
Track and Field Cross Country	40.00 40.00	30.00	17.00 11.00	10.00 to 15.00
Softball	70.00	35.00	17.00	20.00
Baseball	70.00	35.00	17.00	20.00
Volleyball	70.00	35.00	17.00	15.00
Soccer	45.00	35.00	17.00	15.00
Tennis	40.00	30.00	11.00	10.00
Golf	50.00	30.00	11.00	10.00
Swimming	30.00	35.00	17.00	15.00
Maximum Fee to be Paid for All Sports Listed Above			Per Student 41.00 Per Family 81.00	
Band/Orchestra	25.00	N/A	10.00	5.00
Debate	25.00	20.00	5.00 to 20.00	N/A

FEES IN FOUR OF UTAH'S PUBLIC HIGH SCHOOLS

(The fees listed below are not inconclusive. This is only an example of some of the fees that are charged at these public senior high schools).

High School	Provo High		Davis County Senior High	Ogden High	Tooele County Senior High
Description of Fee	**Amount of Fee**		**Amount of Fee**	**Amount of Fee**	**Amount of Fee**
Choral Groups	20.00		N/A	10.00 to 35.00	N/A
Choral and Drama	20.00		N/A	N/A	10.00
Drama	20.00		N/A	5.00	10.00
Choir Costumes	girls 90.00 boys 150.00		N/A	N/A	N/A
Dance Company	125.00		N/A	N/A	N/A
Drill Team	N/A		450.00	350.00	N/A
Drill Team Clinic	N/A		200.00	N/A	N/A
Cheerleaders	300.00		450.00	350.00	15.00
Cheerleader Camp/Clinic	100.00 to 200.00		N/A	N/A	N/A
Pep Club	N/A		150.00 Includes Uniform	N/A	N/A
Baseball Spirit Packs	25.00		N/A	N/A	N/A
Soccer Spirit Packs	22.00		N/A	N/A	N/A
Football Spirit Packs	40.00		N/A	N/A	N/A
School Insurance (Parents may provide their own)	Regular	Extended	N/A	N/A	N/A
Football	84.00	180.00			
Full-Time	51.00	118.00			
School-Time	11.00	27.50			
FFA Dues	10.00		8.00	N/A	10.00

The N/A appears to mean there are no fees assessed for this course, activity, etc.

APPENDIX B--FORMS AND NOTICES

SCHOOL FEES NOTICE
FOR FAMILIES OF CHILDREN IN KINDERGARTEN THROUGH SIXTH GRADES

[IF YOU NEED HELP IN UNDERSTANDING THIS LETTER, CALL_____]

The Utah Constitution prohibits the charging of fees in elementary schools. That means that if your child is in kindergarten through grade six (even though the grade may be part of a middle school), you cannot be charged for textbooks, classroom equipment or supplies, musical instruments, field trips, assemblies, snacks (other than food provided through the School Lunch Program), or for anything else that takes place or is used during the regular school day.

If you wish to purchase school pictures, yearbooks, or similar items through the school, those costs are not fees and will not be waived. Also, if your student loses or damages school property, the costs of replacement or repair are not fees and need not be waived.

Federal law permits schools to charge for food or milk provided as part of the School Lunch Program. If you cannot afford to pay, you may be eligible for free or reduced price meals or milk. Your school will give you information about applying for free or reduced price meals and milk. **All information which you provide in your application will be kept confidential.**

State law and State Board of Education rules allow local school boards to permit elementary schools to charge some fees, **but not for anything that takes place during the regular school day!** Fees may only be charged for programs offered before or after school, or during school vacations. *But if your child is eligible for free school lunch or receives SSI payments, or if you are receiving AFDC or if the child was placed in your home by the government as a foster child, the school must waive the fees.* If you are having a financial emergency caused by job loss, major illness, or other substantial loss of income beyond your control, you **might** be eligible for a waiver even though your child does not qualify for free school lunch. **If your local school board allows your school to charge fees, a Fee Waiver Application (Grades K-6) is enclosed.** Your school will give you additional information about fee waivers if you ask.

School funds are limited, and your school may need help. As a result, **the school may ask you for tax-deductible donations of school supplies, equipment, or money,** but the school **cannot require donations** or tell anyone else the names of those who have or have not made donations (except that the school may honor those who make major donations). **No child may be penalized for not making a donation.** For example, if donations are used to pay for a field trip, every child must be allowed to go on the trip even though some may not have made a donation.

If you have questions, first talk to your school or school district representative listed below. If you still need help, contact one of the other agencies listed:

School telephone no.: _____
Ask for:_____

District telephone no.: _____
Ask for:_____

Utah Issues Information Program, Inc.
1385 West Indiana Avenue
Salt Lake City, Utah 84104
521-2035 (Salt Lake area)
or 1-800-331-5627 (other areas)

Utah Legal Services, Inc.
254 West 400 South, 2nd Floor
Salt Lake City, Utah 84101
328-8891 (Salt Lake Area)
or 1-800-662-4245 (other areas)

Utah State Office of Education
250 East 500 South
Salt Lake City, Utah 84111
538-7830

USOE 5/5/94

SCHOOL FEES NOTICE
FOR FAMILIES OF STUDENTS IN GRADES SEVEN THROUGH TWELVE

[IF YOU NEED HELP IN UNDERSTANDING THIS NOTICE, CALL_____]

Utah law permits the charging of fees in grades seven through twelve. This means that your student may be charged fees for school materials, supplies, activities and programs. **Except for common household articles and common articles of clothing, your student cannot be required by a teacher or other person to pay fees or provide any materials, money, or any other thing of value unless that requirement has been approved by the local Board of Education and included in the school or district fee schedule.** In addition, no teacher, coach, or other person acting as a representative of the school may invite or require your student to participate in any summer camp or other activity unless the costs have been approved by the local Board of Education and placed on the fee schedule.

If your student is eligible for free school lunch or receives SSI payments, or if you are receiving AFDC or the student was placed in your home by the government as a foster child, the school must waive the fees (meaning that you will not be required to pay the fees). If you are having a financial emergency caused by job loss, major illness, or other substantial loss of income beyond your control, you **might** be eligible for a waiver even though your student does not qualify for free school lunch.

You may apply for fee waivers by submitting the ***Fee Waiver Application (Grades 7-12).*** A copy of the application is included with this notice. Additional copies may be obtained from the school office. As soon as you have sent in the completed application, the fee requirement will be **suspended until a final decision has been reached about your student's eligibility for fee waivers.** If the application is denied, the school will send you a ***Decision and Appeal Form.*** The Form will tell you why the application was denied, and explain how to appeal the decision. The form for starting an appeal is on the same page as the form for the decision. Remember to always keep a copy for yourself. **If you appeal a denial of fee waivers, you will not need to pay the fees until the appeal is decided.**

If your student is eligible for fee waivers, <u>all fees must be waived</u>, including--but not limited to--the following:

> Fees for registration, textbooks, textbook and equipment deposits, school supplies, activity cards, extracurricular activities, and school lockers; lab and shop fees; gym and towel fees; costs for uniforms and accessories; field trips and assembly fees; costs for class or team trips; and costs of musical instruments used in school classes or activities.

There is no such thing as a "non-waivable" or "optional" fee, but alternatives to fee waivers may be arranged in some cases, but not for textbook fees. Alternatives to waivers are not permitted for textbook fees. Alternatives to simply waiving school fees may include such things as a reasonable requirement for community service or an assignment to help on a fundraiser, **but may not include installment payments, IOU's, or other delayed payment plans.** Community service requirements and fundraisers must be appropriate to the age, physical condition, and maturity of the student, and must be conducted in such a way that students are not subjected to embarrassment, ridicule, or humiliation. In addition, community service requirements and fundraisers must avoid excessive burdens on students and families and give proper consideration to a student's educational and transportation needs and other responsibilities.

Your school will inform you if it will be requiring community service as an alternative to fee waivers.

All students involved in a program for which funds are being raised must be invited to participate in the fundraiser, not just those who are eligible for fee waivers. All participants in the fundraiser should share in the earned benefits. Participation in the fundraiser may be required for those who have requested fee waivers. If a fee-waiver eligible student has already performed a community service requirement covering all of the fees in question, then additional fundraising shall not be required of that student unless all students are subject to the same requirement.

Since people in low-income areas usually have less discretionary income and so may be less able to donate or spend money on fundraisers than those in higher-income areas, quotas should not be used. The question should be whether a student made a good-faith effort, not whether a particular student met a sales quota. If a student makes the requested effort, but sufficient money is not raised in the fundraiser to cover all charges for the school activity and the activity goes forward anyway, then the difference between the fee-waiver eligible student's share of the proceeds and the actual amount of the fee must be waived.

School funds are limited, and your school may need help other than fees. As a result, **the school may ask you for tax-deductible donations of school supplies, equipment, or money,** but the school **cannot require donations. No student may be penalized for not making a donation.** For example, if donations are used to pay for a field trip, every student must be allowed to go on the trip even though some may not have made a donation.

Regardless of whether you have paid fees, donations, and contributions or not, or have applied for, received, or been denied waivers, your name is confidential and cannot be disclosed to **anyone** lacking both a right and a need to know the information. The school may, however, with the consent of the donor, give appropriate recognition to any person or organization making a major donation or contribution to the school.

Charges for class rings, yearbooks, school pictures, letter jackets, and similar items are not fees and need not be waived. Also, if your student loses or damages school property, the costs of replacement or repair are not fees and need not be waived. In addition, only those students who have paid a textbook or equipment deposit are eligible to receive a deposit refund at the end of the year.

The school and school staff **cannot** withhold, reduce, or enhance grades or credit, or withhold grades, credit, report cards, transcripts, or diplomas to enforce the payment of fees. However, the school may withhold **official** copies of report cards, transcripts, or diplomas if fines or other charges for lost or damaged school property have not been resolved.

If you have questions, first talk to your school or school district representative listed below. If you still need help, contact one of the other agencies listed:

School telephone no.: _____
Ask for: _____

District telephone no.: _____
Ask for: _____

Utah Issues Information Program, Inc.
1385 West Indiana Avenue
Salt Lake City, Utah 84104
521-2035 (Salt Lake area)
or 1-800-331-5627 (other areas)

Utah Legal Services, Inc.
254 West 400 South, 2nd Floor
Salt Lake City, Utah 84101
328-8891 (Salt Lake Area)
or 1-800-662-4245 (other areas)

Utah State Office of Education
250 East 500 South
Salt Lake City, Utah 84111
538-7830

Enclosure: Fee Waiver Application (Grades 7-12)
USOE 5/5/94

(Text for elementary school poster)

SPECIAL NOTICE FOR PARENTS OF CHILDREN IN GRADES K-6

PARENTS,

SCHOOL FEES ARE NOT PERMITTED DURING THE REGULAR SCHOOL DAY IN GRADES K-6. You **may not** be charged for classroom snacks, newspapers, textbooks, field trips, art supplies, assemblies, musical instruments, or anything else that is part of the regular school day.

YOUR CHILD MAY BE ASKED to bring common household articles to school, but your child cannot be penalized for failure to bring the articles.

SCHOOL FEES MAY ONLY BE CHARGED FOR ACTIVITIES WHICH TAKE PLACE BEFORE OR AFTER SCHOOL OR DURING SCHOOL VACATIONS. If you receive AFDC (Aid to Families with Dependent Children), or if your child is eligible for free school lunch, receives SSI (Supplemental Security Income), or is in the custody of a Utah State or local governmental agency or foster care, your child is eligible for **fee waivers** (meaning that you will not be required to pay the fee). Your child may also be eligible for fee waivers if your family is having serious financial difficulties. **If your child is eligible for fee waivers, ALL** fees must be waived.

DONATIONS ARE PERMITTED, but no child or family may be required to make a donation, and the names of those who do or do not make a donation must be kept confidential (except that special recognition may be given to those who make major donations).

No school may raise, lower, or withhold grades, report cards, or school records to enforce payment of school fees. However, if fines or other charges for damaged or lost school property have not been resolved, official copies of report cards and transcripts may be withheld.

To find out more, contact:

Your school at:_____
Your district at:_____

or one of the following:

Utah Issues Information Program, Inc.
1385 West Indiana Avenue
Salt Lake City, Utah 84111
521-2035 or 1-800-331-5627

Utah State Office of Education
250 East 500 South
Salt Lake City, Utah 84111
538-7830

Utah Legal Services, Inc.
254 West 400 South, 2nd Floor
Salt Lake City, Utah 84101
328-8891 or 1-800-662-4245

FEE WAIVER DECISION AND APPEAL FORM

To the parent or legal guardian of _____

_____Your application for fee waivers has been approved.

You application for fee waivers has been denied because:

_____Based upon the information which you have given us, your child does not qualify for fee waivers for the reasons stated below.

_____We don't have enough information to decide if your child qualifies for fee waivers. Please provide us with the information requested below or call (name) _____ at (number)_____ as soon as possible so that we can complete work on your application.

_____Other reasons for denial(see below).

_____

_____

_____

_____

By: _____ Date: _____
(Signature of school employee)

****

PARENTAL APPEAL RIGHTS

IF YOU DISAGREE WITH THIS DECISION, YOU HAVE THE RIGHT TO APPEAL. To appeal, send a letter (or the Notice of Appeal form printed at the bottom of this page) to the school principal, explaining why you disagree with this decision. Include your name, your child's name, and the date. **YOU MUST MAIL OR HAND-DELIVER YOUR APPEAL WITHIN TEN SCHOOL DAYS OF RECEIVING THIS NOTICE.** *Keep a copy of the appeal for your records.* A school representative will contact you within two weeks after receiving your appeal and schedule a meeting to discuss your concerns. You will also be given a copy of the school district's School Fees Appeals Policy containing a complete statement of policies and procedures for appeals. **ALL REQUIREMENTS FOR PAYMENT OF FEES WILL BE SUSPENDED UNTIL THE FINAL DECISION IS MADE REGARDING YOUR APPEAL.**

==========

NOTICE OF APPEAL

I, (give your name)_____, wish to appeal the decision regarding my application for school fee waivers for the following reasons:

_____

_____

_____

_____

My child's name is _____

Please schedule a meeting to discuss this appeal. I understand that all fees will be suspended until a final decision has been reached, and that my child will be able to participate fully in all school activities during that time on the same basis as if the fees had been paid.

_____ Date: _____
(Signature of the person submitting the appeal)

USOE 5/5/94

(Text for secondary school poster)

STUDENTS,

HELP is available if you cannot afford to pay school fees.. If you are eligible for free school lunch, receive AFDC (Aid to Families with Dependent Children) or SSI (Supplemental Security Income), or if you are in the custody of a Utah State or local governmental agency or foster care, you qualify for fee waivers (meaning that you will not be required to pay the fees). You may also be eligible for fee waivers if your family is having serious financial difficulties. **You may be required to perform community service in return for the waiver of fees other than textbook fees.** Your principal or counselor can give you more information about community service requirements.

If you qualify, ALL fees must be waived, including fees for registration, books, classes, sports, clubs, drill teams, trips, uniforms, activity cards, lockers, extracurricular activities, team summer camps, etc.

No school may raise, lower, or withhold grades, report cards, or school records to enforce payment of school fees. But if fines or other charges for damaged or lost school property have not been resolved, official copies of report cards and transcripts may be withheld.

To find out more, contact your principal or counselor. If you still have questions or problems, contact:

Your school at:_____
Your district at:_____

or one of the following:

Utah Issues Information Program, Inc.
1385 West Indiana Avenue
Salt Lake City, Utah 84111
521-2035 or 1-800-331-5627

Utah State Office of Education
250 East 500 South
Salt Lake City, Utah 84111
538-7830

Utah Legal Services, Inc.
254 West 400 South, 2nd Floor
Salt Lake City, Utah 84101
328-8891 or 1-800-662-4245

COMMUNITY SERVICE OBLIGATIONS

This school has adopted a requirement that students receiving fee waivers (other than textbook fees) perform community service if reasonably possible. Your student will have several options from which to choose in completing the community service requirement. Those options include:

- Community service at the school, such as tutorial assistance to other students, or service outside of regular school hours as a student aide to school staff;
- Community service in the community; or
- When special needs require, community service in the home.

Students may not provide community service to their own employers, nor may they fulfill a community service requirement by working for a commercial establishment other than a facility such as a nursing home or hospital where volunteer services are commonly provided.

Community service requirements must be appropriate to the age, physical condition, and maturity of the student; must be conducted in such a way that students are not subjected to embarrassment, ridicule, or humiliation; and must not provide direct private benefit to school employees or their families. In addition, community service requirements must avoid excessive burdens on students and families and give proper consideration to a student's educational and transportation needs and other responsibilities. If circumstances arise which make it too difficult for a student to complete a community service assignment, notify the school principal immediately to determine what adjustments should be made. Failure to complete a community service assignment may result in denial of fee waivers.

Community service hour requirements will be computed using a formula based upon not less than the minimum hourly wage. For example, if a fee-waiver eligible student is assessed $100 for school fees and the school policy is based upon a $5 per hour community service credit, then the student may be required to perform up to 20 hours of community service. **Community service students will not be considered to be employees of those for whom they provide the service, and no money will be paid to the students or to the school in return for community service.**

Regular employees who work in places where students perform community services may not be replaced, nor may their hours be reduced, as a result of the students' community service activities. Community service is intended to supplement existing services, not replace that which is already being done by others.

If you have questions, first talk to your school or school district representative listed below. If you still need help, contact one of the other agencies listed:

School telephone no.: _____
Ask for: _____

District telephone no.: _____
Ask for: _____

Utah Issues Information Program, Inc.
1385 West Indiana Avenue
Salt Lake City, Utah 84104
521-2035 (Salt Lake area)
or 1-800-331-5627 (other areas)

Utah Legal Services, Inc.
254 West 400 South, 2nd Floor
Salt Lake City, Utah 84101
328-8891 (Salt Lake Area)
or 1-800-662-4245 (other areas)

Utah State Office of Education
250 East 500 South
Salt Lake City, Utah 84111
538-7830

USOE 5/6/94

APPLICATION FOR FEE WAIVERS WITH COMMUNITY SERVICE (GRADES 7-12)

Please read the School Fees Notice before completing the application!

All information on this application will be kept confidential

Name of student:_____

School:_____Grade level:_____

Name of parent or guardian:_____

Please check if applicable:

_____ Student is eligible for Free School Lunch
_____ Student receives Supplemental Security Income (SSI)
_____ Family receives Aid to Families with Dependent Children (AFDC)
_____ Student is in Foster Care (under Utah or local governmental supervision)
_____ Student is in State Custody

If none of the above apply, but you wish to apply for fee waivers or other help with school fees because of serious financial problems, please state the reason(s) for the request:

_____

_____

_____

(If you need more space, please continue on the back of this page)

Please check the school fee schedule and list all fees that you wish to have waived. If your student is eligible for fee waivers, all of those fees will be waived and your student will be required to fulfill a community service obligation. **Please note that costs lost or damaged school property or for yearbooks, class rings, letter jackets, school pictures, and similar items are not fees and will not be waived.** If you wish to have all applicable fees waived, please write "all" in the "Fee Description" column.

Fee Description	Amount	Fee Description	Amount

Please give this application to the Principal, Assistant Principal, or the School Fee Counselor when you have finished filling it out. All fee payments will be suspended until the school has determined if your student is eligible for fee waivers. You will then be given a written notice of that decision. **The school may require you to present proof of eligibility.** If your student is eligible for a waiver, the school cannot require you to agree to an installment payment plan or sign an IOU in place of a waiver.

I HEREBY CERTIFY THAT THE INFORMATION I HAVE GIVEN IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF. I ALSO GIVE SCHOOL OFFICIALS PERMISSION TO USE THIS FORM AS A RELEASE TO OBTAIN INFORMATION NECESSARY FOR VERIFICATION OF ELIGIBILITY.

DATE:_____

_____
Parent's or Guardian's Signature

USOE 5/5/94

COMMUNITY SERVICE ASSIGNMENT
AND
NOTICE OF APPEAL RIGHTS

To the parent or legal guardian of _____

If the following community service requirement is completed, your student's school fees will be waived.

The total amount of fees which will be waived in return for completion of the community service obligation is $ _____.

Your student will be required to perform _____ hours of community service as follows:

Location: _____
Supervisor: _____ Hours: _____
Starting date: _____ Ending date: _____

Location: _____
Supervisor: _____ Hours: _____
Starting date: _____ Ending date: _____

Location: _____
Supervisor: _____ Hours: _____
Starting date: _____ Ending date: _____

Location: _____
Supervisor: _____ Hours: _____
Starting date: _____ Ending date: _____

School fees credit is given for performance of community service at the rate of $ _____ per hour.

By: _____ Date: _____
(Signature of school employee)

****

PARENTAL APPEAL RIGHTS

Please be sure to read the School Fees Notice and the back of this form before deciding to appeal the community service decision!

IF YOU THEN STILL DISAGREE WITH THIS DECISION, YOU HAVE THE RIGHT TO APPEAL. To appeal, send a letter to the school principal explaining why you disagree with the decision. Include your name, your child's name, and the date. If you prefer, the school will provide you with an appeal form which you can fill out and send instead of a letter.

YOU MUST MAIL OR HAND-DELIVER YOUR APPEAL WITHIN TEN SCHOOL DAYS OF RECEIVING THIS NOTICE. *Keep a copy of the appeal for your records.* A school representative will contact you within two weeks after receiving your appeal and schedule a meeting to discuss your concerns. You will also be given a copy of the school district's School Fees Appeals Policy containing a complete statement of policies and procedures for appeals. **ALL REQUIREMENTS FOR PAYMENT OF FEES WILL BE SUSPENDED UNTIL THE FINAL DECISION IS MADE REGARDING YOUR APPEAL.**

USOE 5/5/94

COMMUNITY SERVICE OBLIGATIONS

This school has adopted a requirement that students receiving fee waivers (other than textbook fees) perform community service if reasonably possible. Your student will have several options from which to choose in completing the community service requirement. Those options include:

- Community service at the school, such as tutorial assistance to other students, or service outside of regular school hours as a student aide to school staff;
- Community service in the community; or
- When special needs require, community service in the home.

Students may not provide community service to their own employers, nor may they fulfill a community service requirement by working for a commercial establishment other than a facility such as a nursing home or hospital where volunteer services are commonly provided.

Community service requirements must be appropriate to the age, physical condition, and maturity of the student; must be conducted in such a way that students are not subjected to embarrassment, ridicule, or humiliation; and must not provide direct private benefit to school employees or their families. In addition, community service requirements must avoid excessive burdens on students and families and give proper consideration to a student's educational and transportation needs and other responsibilities. If circumstances arise which make it too difficult for a student to complete a community service assignment, notify the school principal immediately to determine what adjustments should be made. Failure to complete a community service assignment may result in denial of fee waivers.

Community service hour requirements will be computed using a formula based upon not less than the minimum hourly wage. For example, if a fee-waiver eligible student is assessed $100 for school fees and the school policy is based upon a $5 per hour community service credit, then the student may be required to perform up to 20 hours of community service. **Community service students will not be considered to be employees of those for whom they provide the service, and no money will be paid to the students or to the school in return for community service.**

Regular employees who work in places where students perform community services may not be replaced, nor may their hours be reduced, as a result of the students' community service activities. Community service is intended to supplement existing services, not replace that which is already being done by others.

If you have questions, first talk to your school or school district representative listed below. If you still need help, contact one of the other agencies listed:

School telephone no.: _____
Ask for: _____

District telephone no.: _____
Ask for: _____

Utah Issues Information Program, Inc.
1385 West Indiana Avenue
Salt Lake City, Utah 84104
521-2035 (Salt Lake area)
or 1-800-331-5627 (other areas)

Utah Legal Services, Inc.
254 West 400 South, 2nd Floor
Salt Lake City, Utah 84101
328-8891 (Salt Lake Area)
or 1-800-662-4245 (other areas)

Utah State Office of Education
250 East 500 South
Salt Lake City, Utah 84111
538-7830

USOE 5/6/94

APPEAL OF COMMUNITY SERVICE ASSIGNMENT

Student's name: _____

School:_____ **Grade:**_____

I, (give your name)_____, wish to appeal the decision regarding the community service assignment given to my child for the following reasons:

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

Please schedule a meeting to discuss this appeal. I understand that all fees will be suspended until a final decision has been reached, and that my child will be able to participate fully in all school activities during that time on the same basis as if the fees had been paid.

_____ Date: _____

(Signature of the person submitting the appeal)

USOE 5/4/94

APPENDIX C--CERTIFICATES OF COMPLIANCE

SCHOOL DISTRICT CERTIFICATION OF COMPLIANCE

Note: as used in this form, "fee waiver," "waiver," "waiver application," and similar terms include both outright waivers and alternatives to fee waivers such as community service, unless otherwise noted.

We, _____ and _____
(Superintendent) (School Board President)
of the _____ School District, hereby certify that:

A. DOCUMENTS ATTACHED TO THIS CERTIFICATION FORM

We have attached copies of the following documents:

1. the district's Fee Schedule;

2. the district's Fee Policy;

3. the district's Fee Waiver Policy; and.

4. the district's Community Service Policy, if any.

B. ASSURANCES

1. A copy of the *School Fees Notice for Families of Students in Grades Seven through Twelve*; and the *Fee Waiver Application (Grades 7-12)* or if community service was required as an alternative to fee waivers in any school in your district, the *Community Service and Fee Waiver Application Form (Grades 9-12)*, and the *Community Service Obligations* document were provided to each prospective, new, or current secondary student's parent or guardian prior to the time when fees became due, but not the same day fees were due.

2. A copy of the *School Fees Notice for Families of Children in Kindergarten through Sixth Grades* was provided to each prospective, new, or current elementary student's parent or guardian prior to registration.

3. For any elementary school for which fees were authorized for programs offered outside of the regular school day, a copy of the *Fee Waiver Application (Grades K-6)* was provided to each prospective, new or current elementary student's parent or guardian prior to the time when fees became due, but not the same day fees were due.

4. Copies of the school district's Fee Policy, Fee Waiver Policy, Fee Schedule, and Community Service Policy (if any) are maintained in each school and were made available to parents and guardians during registration, and at all other times upon request.

5. The school district's fee waiver policy is in full compliance with applicable law and with rules of the State Board of Education.

6. School fee rules governing elementary grades are applied to all students in any of grades kindergarten through sixth grade, regardless of whether the grade is taught in an elementary school.

7. Fees are only permitted in grades kindergarten through sixth grade for programs and activities which are held before or after school or on days other than those which are part of the regular school year.

8. No fee is permitted in any school in the district unless prior authorization has been granted by the local Board of Education, and the school is in full compliance with all rules of the local and State Boards of Education and with all State laws governing school fees and school waivers.

9. Principals of all schools in which fees are permitted have been instructed that they are responsible for ensuring that:

a. Students who apply for or receive fee waivers are allowed to register at the same time and in the same manner as would have been the case if waivers were not involved.

b. School personnel are prohibited from asking those eligible for fee waivers to consent to delayed or time payment plans or IOU's as alternatives to fee waivers.

c. Community service assignments and fundraisers offered to students as alternatives to fee waivers provide a reasonable time for completion of the assignment; are appropriate to the age, physical condition, and maturity of the student; and are conducted in such a way that students are not subjected to stigma, unnecessary identification as fee-waiver students, or to ridicule or humiliation.

d. Community service and fundraiser assignments avoid excessive burdens on students and families and give proper consideration to a student's educational and transportation needs and other responsibilities. If it is not reasonably feasible to arrange an assignment meeting those requirements, the fees in question are waived.

e. Students who perform community service in lieu of fee waivers receive at least a minimum wage credit for each hour performed. If a student transfers to another school within the district, and any portion of the student's fees would have been refunded had the student paid the fees in question, the new school gives the student credit for an equivalent number of "unused" community service hours.

f. Alternatives to fee waivers are never applied to textbook fees; textbook fees are simply waived outright for eligible students upon request.

g. In the case of programs, classes, and activities which are subject to fees and require "tryouts":

1). persons involved in the selection process are not informed about the fee waiver eligibility of any student until selections have been announced;

2). questions and discussions relating to ability to pay are prohibited during the selection process;

3). ability to pay is not a factor in the selection process; and

4). no fees relating to the program, class, or activity in question are collected from any student until the selection process has been completed.

h. The *Fee Waiver Decision and Appeal Form* is used to notify an applicant about the outcome of a request.

i. If community service is used as an alternative to the outright waiver of a fee, we use the *Community Service Assignment and Appeal Form* when notifying anyone who will be asked to perform such service.

j. Staff are prohibited from collecting fees, including class, activity, and project fees, or requiring students to purchase materials or supplies, unless the fees or other requirements

have been approved by the local Board of Education and listed on the school's approved fee schedule.

k. Fees are waived for eligible children if a class is established or approved which requires payment of fees or purchase of materials, special clothing, tickets to events, etc., in order for students to participate fully and have the opportunity to acquire all skills and knowledge required for full credit and highest grades.

l. Confidential application and notice procedures regarding school fees and school fee waivers are used to avoid stigmatizing or embarrassing children or families applying for or receiving fee waivers. The procedures for confidentiality include, but are not limited to, the following:

1). a separate line is not used during registration for families or individuals seeking to obtain a school fee waiver;

2). school personnel do not discuss or determine a person's eligibility for school fee waivers in the presence of other parents or children; and

3). public school students do not collect fees or assist in the fee waiver application process.

m. No student, parent, or guardian is asked why school fees cannot be paid, or why the fees cannot be paid in installments, when information about school fee waivers is sought or an application is submitted for a school fee waiver, if the affected student is eligible for a school fee waiver under any of the following categories:

1). the student is eligible for free school lunch;

2). the student receives Supplementary Security Income (SSI);

3). the student's family is receiving public assistance in the form of Aid to Families with Dependent Children (AFDC); or

4). the student is in the custody of a Utah State or local government agency or foster care.

n. Persons not included under Section B.9.m. who request waivers because of exceptional financial hardships are given the opportunity to meet privately with a school administrator to discuss their ability to pay and their eligibility for fee waivers.

o. If donations or contributions are solicited, the solicitation clearly states that donations and contributions are voluntary, and that no donation is required in order for a given student to participate in an activity.

p. Information submitted in connection with fee waiver applications, the names of persons who have or have not paid fees or made donations or contributions, and the names of persons who have applied for, received, or been denied waivers, are confidential. No school employee may make any statement to any person lacking both a right and a need to know, or post any list, regarding the payment or non-payment of any fee, contribution, or donation by any student, parent, or guardian (other than appropriate recognition given to a person or organization making a major contribution or donation).

q. Neither the school nor any teacher enhances, reduces, or withholds grades or credits, or withholds report cards or diplomas, or other official school records to enforce the payment of fees or donations. Our district may permit the withholding of official copies

of report cards, transcripts, or diplomas under Utah Code Section 53A-11-806 if fines or other charges for lost or damaged school property have not been resolved.

10. In the elementary schools, and in other schools serving any of grades kindergarten through sixth grade:

a. If a program or activity was offered after school or during vacation periods for which fees were to be charged, those programs and activities were governed by the same rules of school board approval, notice, waiver application, and appeal as govern similar charges in the secondary schools;

b. No fees were charged for textbooks, equipment or supplies, field trips, assemblies, snacks (other than food or drinks supplied through the School Lunch Program in accordance with state and federal rules including those governing free and reduced price meals), or anything else that took place during the regular school day;

c. Teachers were prohibited from requiring students to participate in fundraisers, make donations, or bring items other than common household articles from home; and

d. Children and families that failed to participate in fundraisers, make donations, or bring common household articles from home were not excluded, publicly identified, or otherwise humiliated in any way.

11. Each principal of a school serving any of grades kindergarten through six has submitted a signed Elementary School Certification of Compliance to the district superintendent.

12. Each principal of a school serving any of grades seven through twelve has submitted a signed Secondary School Certification of Compliance to the district superintendent.

13. Financial inequities which exist among the various schools in the district are balanced as required under Section R277-407-6A(10), Utah Administrative Code, so that the granting of fee waivers and provisions in lieu of fee waivers does not produce significant inequities through unequal impacts on individual schools within the district.

14. Persons who lack sufficient mastery of the English language to understand the provisions of the school fee schedules, disclosures, and waiver forms are given reasonable assistance by each school or by the district.

WE HEREBY CERTIFY THAT THE FOREGOING IS TRUE AND CORRECT TO THE BEST OF OUR KNOWLEDGE AND BELIEF.

DATED this _____ day of _____, 199__ _____
Signed, District Superintendent

DATED this _____day of _____, 199__ _____
Signed, School Board President

USOE 5/5/94

SECONDARY SCHOOL CERTIFICATION OF COMPLIANCE

(FOR USE IN SCHOOLS SERVING ANY GRADE, 7-12)

Note: the following definitions apply to terms used in this form:

1. "Fee waiver," "waiver," "waiver application," and similar terms include both outright waivers and alternatives to fee waivers such as community service unless otherwise noted.

2. "We" means staff members and other persons who assist staff in fee-related activities.

I, _____, Principal of the _____ School in the _____ School District, hereby certify that:

A. DOCUMENTS ATTACHED TO THIS CERTIFICATION FORM

I have attached copies of the following documents which we provided to parents and guardians:

1. The fee schedule approved for this school by the local Board of Education;

2. The *School Fees Notice for Families of Students in Grades Seven through Twelve*; and

3. The *Fee Waiver Application (Grades 7-12)*, or, if you require community service as an alternative to fee waivers, the *Community Service and Fee Waiver Application Form (Grades 9-12)*, and the *Community Service Obligations* document.

B. ASSURANCES

1. I have read this *Secondary School Certification of Compliance*, the *School Fees Notice for Families of Students in Grades Seven through Twelve*, the permanent injunction issued by the Third District Court, the school fees policy for my school district, and this school's fee schedule as approved by the Board of Education.

2. Copies of all of the documents listed in item B.1. have been kept in the faculty lounge.

3. I gave a copy of the *School Fees Notice for Families of Students in Grades Seven through Twelve* to each member of the staff.

4. I discussed school fees and fee waivers, the definitions and limitations governing school fees set forth in the Permanent Injunction, this school's fee schedule as approved by the Board of Education, and the terms of this Certification of Compliance Form with my staff and advised them that they must fully comply with all laws and policies governing school fees and waivers.

5. Prior to the day when fees became due, we sent:

   a. the schedule of approved fees;

   b. the *School Fees Notice for Families of Students in Grades Seven through Twelve*; and

   c. the *Fee Waiver Application (Grades 7-12)* or *Community Service and Fee Waiver Application Form (Grades 9-12)* and the *Community Service Obligations* document

to the parent or guardian of each student who was attending, had applied to attend, or was scheduled to attend this school.

6. We undertook a general distribution of the forms listed in B.5 on _____, 199__. The forms were sent in the following manner: _____.

7. Our fee schedule and fee waiver policy are in full compliance with applicable State and federal law and with the rules of the local and State Boards of Education.

8. Students who apply for or receive fee waivers are allowed to register at the same time and in the same manner as would have been the case if waivers were not involved.

9. School personnel are prohibited from asking those eligible for fee waivers to consent to delayed or time payment plans or IOU's as alternatives to fee waivers.

10. We have adopted a community service options policy consistent with Section 53A-12-103, Utah Code, the Federal Fair Labor Standards Act, and other applicable state and federal law.

11. Community service assignments and fundraisers offered as alternatives to fee waivers are appropriate to the age, physical condition, and maturity of the student; are conducted in such a way that students are not subjected to stigma, unnecessary identification as fee-waiver students, ridicule, or humiliation; and provide sufficient time for the student to complete the assignment.

12. A variety of alternatives is available to students, including alternatives in the community which are not connected with the school;

13. Community service alternatives do not include work for a student's own employer, or for commercial establishments other than establishments such as nursing homes or hospitals where volunteer services are commonly provided;

14. Students under the age of 14 who are required to perform community service are not permitted to perform tasks which would not be permissible for them under the Federal Fair Labor Standards Act, such as manual labor, or work with machinery, dangerous tools, or equipment.

15. Community service assignments and fundraisers avoid excessive burdens on students and families and give proper consideration to a student's educational and transportation needs and other responsibilities. If it is not reasonably feasible to arrange an assignment meeting those requirements, the fees in question are waived.

16. Students who perform community service in lieu of fee waivers receive at least a minimum wage credit for each hour performed. We maintain adequate records to ensure that each student receives proper credit for services performed.

17. If a student transfers to another school, that school receives verification of hours performed, if requested by the student. If any portion of the student's fees would have been refunded if the student had paid the fees in question, then an equivalent number of community service credits is reported to the new school as "unused community service credits."

18. Alternatives to fee waivers are never applied to textbooks; textbook fees are simply waived outright for eligible students upon request.

19. In the case of programs, classes, and activities which are subject to fees and "tryouts":

a. persons involved in the selection process are not informed about the fee waiver eligibility of any student until selections have been announced;

b. questions and discussions relating to ability to pay are prohibited during the selection process;

c. ability to pay is not a factor in the selection process; and

d. no fees relating to the program, class, or activity in question are collected from any student until the selection process has been completed.

20. We include a copy of the school district's School Fee Waiver Policy with all school registration materials provided to prospective, new, or continuing students.

21. We provide the *Fee Waiver Application (Grades 7-12)* or *Community Service and Fee Waiver Application Form (Grades 9-12)* to each prospective, new, or current student's parent or guardian who requests information about school fees or seeks to apply for a fee waiver.

22. We use the *Fee Waiver Decision and Appeal Form* to notify an applicant about the outcome of a request.

23. If community service is used as an alternative to the outright waiver of a fee, we use the *Community Service Assignment and Appeal Form* when notifying those who will be asked to perform such service.

24. We do not collect school fees, whether class, project, or activity fees, or require students to

purchase materials or supplies, unless the fees or other requirements have been approved by the district's Board of Education and are listed on the school's approved fee schedule.

25. We waive fees for eligible students if a class or program is established or approved which requires payment of fees or purchase of materials, special clothing, tickets to events, etc., in order for students to participate fully and to have the opportunity to acquire all skills and knowledge required for full credit and highest grades.

26. We use confidential application and notice procedures regarding school fees and school fee waivers to avoid stigmatizing or embarrassing students or families applying for or receiving fee waivers. The procedures for confidentiality include, but are not limited to, the following:

a. we do not use a separate line during registration for families or individuals seeking to obtain a school fee waiver.

b. we do not discuss or determine a student's eligibility for school fee waivers in the presence of other parents or children.

c. we do not use students to collect fees or assist in the fee waiver application process.

27. We do not ask any student, parent, or guardian why school fees cannot be paid or why fees cannot be paid later or in installments when information about school fee waivers is sought or an application is submitted for a school fee waiver, if the affected student is eligible for a school fee waiver under any of the following categories:

a. the student is eligible for free school lunch;

a. the student receives Supplemental Security Income (SSI);

b. the student's family is receiving public assistance in the form of Aid to Families with Dependent Children (AFDC); or

c. the student is in the custody of a Utah State or local government agency or foster care.

28. Persons not included under Section B.21. who request waivers because of exceptional financial hardships are given the opportunity to meet privately with a school administrator to discuss their ability to pay and their eligibility for fee waivers.

29. Although we may permit the solicitation of donations or contributions, any solicitation clearly states that donations and contributions are voluntary, and that we do not require a donation in order for a given student to participate in an activity.

30. Information submitted in connection with fee waiver applications, the names of persons who have or have not paid fees, donations, or contributions, and the names of persons who have applied for, received, or been denied waivers, are confidential. We do not make any statement, without permission, about those matters to any person lacking both the right and the need to know, and do not post any list accessible to unauthorized persons regarding the payment or non-payment of any fee, contribution, or donation by any student, parent, or guardian. However, appropriate recognition may be given to any person or organization which makes a major donation or contribution.

31. We do not permit the withholding, enhancement, or reduction of grades, or the withholding of report cards, transcripts, diplomas, or other official school records to enforce the payment of fees or donations. We may withhold **official** copies of report cards, transcripts, or diplomas under Utah Code Section 53A-11-806 if fines or other charges for lost or damaged school property have not been resolved.

32. We provide reasonable assistance to persons who lack sufficient mastery of the English language to understand the provisions of the school fee schedules, disclosures, and waiver forms.

I HEREBY CERTIFY THAT THE FOREGOING INFORMATION IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

DATED this _____ day of _____, 199__ _____

USOE 5/5/94 (Signed) School Principal

ELEMENTARY SCHOOL CERTIFICATION OF COMPLIANCE
(FOR USE IN SCHOOLS SERVING ANY GRADE, K-6)

Note: as used in this form, "we" means staff members and other persons who assist staff members in school-sponsored activities.

I, _____, Principal of the _____
School in the _____ School District, hereby certify that:

A. DOCUMENTS ATTACHED TO THIS CERTIFICATION FORM

I have attached copies of the following documents, which we provided to parents and guardians:

1. The *School Fees Notice for Families of Students in Kindergarten through Sixth Grades;*

2. If fees were permitted for programs operating outside of the regular school day:

   a. the fee schedule approved by the Board of Education for this school; and

   b. the *Fee Waiver Application (Grades K-6)*.

B. ASSURANCES (GENERAL)

1. I have read this *Elementary School Certification of Compliance*, the *School Fees Notice for Families of Students in Kindergarten through Sixth Grades*, the permanent injunction issued by the Third District Court, the school fees policy for my school district, and the school fee schedule approved by the board of education.

2. Copies of all of the documents listed in item B.1. have been kept in the faculty lounge.

3. I gave a copy of the *School Fees Notice for Families of Students in Kindergarten through Sixth Grades* to each member of the faculty.

4. I discussed school fees and fee waivers, the definitions and limitations governing school fees set forth in the Permanent Injunction, this school's fee schedule, if any, as approved by the Board of Education, and the terms of this Certification of Compliance Form with my staff and advised them that they must fully comply with all laws and policies governing school fees and fee waivers, and that no fee may be charged which is not listed on the board-approved fee schedule.

5. I advised the staff that **no fees may be charged** in connection with any class, program, or activity that occurs during the regular school day in grades K-6.

6. Information submitted in connection with fee waiver applications, the names of persons who have or have not paid fees, donations, or contributions, and the names of persons who have applied for, received, or been denied waivers, are confidential. We do not make any disclosure, without permission, of any of those names to any person lacking both the right and the need to know, and from posting any list accessible to unauthorized persons regarding the payment or non-payment of any fee, contribution, or donation by any student, parent, or guardian. However, appropriate recognition may be given to any person or organization which makes a major donation or contribution.

7. We do not permit the withholding, enhancement, or reduction of grades, or the withholding of report cards or other school records, to enforce the payment of fees or donations. We may withhold **official** copies of report cards or transcripts under Utah Code Section 53A-11-806 if fines or other charges for lost or damaged school property have not been resolved.

C. ASSURANCES (RELATING TO THE REGULAR SCHOOL DAY)

1. No fees are charged for textbooks, equipment or supplies, field trips, assemblies, enrichment programs such as gifted and talented programs, snacks (other than food or drinks supplied through the School Lunch Program in accordance with state and federal rules, including those governing free and reduced price meals), or anything else that takes place during the regular school day.

2. Staff are prohibited from requiring students to bring items other than common household articles from home. If donations of school materials are requested, children and families that fail to bring such articles are not excluded, named, or otherwise humiliated in any way.

3. Although we may permit the solicitation of donations or contributions, any solicitations clearly state that donations and contributions are voluntary, and that we do not require a donation in order for a given student to participate in an activity.

D. ASSURANCES (OUTSIDE THE REGULAR SCHOOL DAY)

1. Our fee schedule and fee waiver policy are in full compliance with applicable State and federal law and with the rules of the District and State Boards of Education.

2. If after-school or school vacation programs or activities are held for which fees are charged, we comply with school fee rules requiring Board of Education approval, notice, waiver application, and appeal.

3. Copies of the school district's Fee Policy, Fee Waiver Policy, and the Fee Schedule approved by the Board of Education for this school are maintained in the school and are made available to parents and guardians during registration and at other times upon request.

4. Prior to the time when fees became due, we sent:

   a. the *School Fees Notice for Families of Students in Kindergarten through Sixth Grades*; and

   b. the *Fee Waiver Application (Grades K-6)*

to the parent or guardian of each student who was attending, had applied to attend, or was scheduled to attend this school.

5. We undertook a general distribution of the forms listed in Section D.4. on _____, 199___. The forms were sent in the following manner: _____.

6. Students who apply for or receive fee waivers are allowed to register at the same time and in the same manner as would have been the case if waivers were not involved.

7. School personnel are prohibited from asking those eligible for fee waivers to consent to delayed or time payment plans or IOU's as alternatives to fee waivers.

8. Fundraisers offered to students as alternatives to fee waivers are appropriate to the age, physical condition, and maturity of the student, and are conducted in such a way that students are not subjected to stigma, unnecessary identification as fee-waiver students, or to ridicule or humiliation.

9. Fundraising activities avoid excessive burdens on students and families and give proper consideration to a student's transportation needs and other responsibilities. If it is not reasonably feasible to arrange an assignment meeting those requirements, the fees in question are waived.

10. In the case of programs, classes, and activities which are subject to fees and require "tryouts":

a. persons involved in the selection process are not informed about the fee waiver eligibility of any student until selections have been announced;

b. questions and discussions relating to ability to pay are prohibited during the selection process;

c. ability to pay is not a factor in the selection process; and

d. no fees relating to the program, class, or activity in question are collected from any student until the selection process has been completed.

11. We provide the *Fee Waiver Application (Grades K-6)* to each prospective, new, or current student's parent or guardian who requests information about school fees or seeks to apply for a fee waiver.

12. We use the *Fee Waiver Decision and Appeal Form* to notify applicants about decisions relating to their applications for waivers.

13. We do not collect school fees, whether class, project, or activity fees, or require students to purchase materials or supplies, unless the fees or other requirements have been approved by the district's School Board and are listed on this school's approved fee schedule.

14. We waive fees for eligible students if a class or program outside of regular school hours is established or approved which requires payment of fees or purchase of materials, special clothing, tickets to events, etc., in order for students to participate fully.

15. We use confidential application and notice procedures regarding school fees and school fee waivers to avoid stigmatizing or embarrassing students or families applying for or receiving fee waivers. The procedures for confidentiality include, but are not limited to, the following:

a. we do not use a separate line during registration for families or individuals seeking to obtain a school fee waiver;

b. we do not discuss or determine a student's eligibility for school fee waivers in the presence of other parents or children;

c. we do not use students to collect fees or assist in the fee waiver application process.

16. We do not ask any student, parent, or guardian why school fees cannot be paid or why fees cannot be paid later or in installments when information about school fee waivers is sought or an application is submitted for a school fee waiver, if the affected student is eligible for a school fee waiver under any of the following categories:

a. the student is eligible for free school lunch;

b. the student receives Supplemental Security Income (SSI);

c. the student's family is receiving public assistance in the form of Aid to Families with Dependent Children (AFDC); or

d. the student is in the custody of a Utah State or local government agency or foster care.

17. Persons not included under Section D.16. who request waivers because of exceptional financial hardships are given the opportunity to meet privately with a school administrator to discuss their ability to pay and their eligibility for fee waivers.

18. We provide reasonable assistance to persons who lack sufficient mastery of the English language to understand the provisions of the fee schedules, disclosures, and waiver application forms.

I HEREBY CERTIFY THAT THE FOREGOING INFORMATION IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

DATED this _____ day of _____, 199__ _____

(Signed) School Principal

USOE 5/6/94