AN ANALYSIS OF LITIGATION PERTAINING TO ADMISSION AND ATTENDANCE OF PUPILS IN THE PUBLIC SCHOOLS

By

THOMAS J. SMITH, JR.

Bachelor of Science
East Central State College
Ada, Oklahoma
1950

Master of Science in Education
Oklahoma State University
Stillwater, Oklahoma
1955

Submitted to the faculty of the Graduate College of
the Oklahoma State University
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Thesis Approved:

H E Sorenson
Thesis Adviser

Robert C. Fite

Kenneth St. Clair

Dean of the Graduate College

PREFACE

The writer wishes to express his thanks to Dr. Helmer E. Sorenson, who served as Chairman of his Advisory Committee, for guidance and encouragement during all phases of this study. Indebtedness is acknowledged also to Dr. Kenneth St. Clair and Dr. Robert C. Fite for their personal interest, encouragement, and constructive suggestions as members of the Advisory Committee.

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TABLE OF CONTENTS

CHAPTER I

INTRODUCTION

Much has been written, especially during the past few years, in the area of law as it pertains to the American public schools. Although a great many investigations have been made in the area of school law, much information remains buried in the maze of legal literature. With the change which has taken place in American society as a whole, with the change in the concept of public schools, and with the changes in the attitudes of the courts toward public schools, it behooves each individual dealing with the administration of our public schools to increase his knowledge of school law.

Prior to the 1940's, many teachers and administrators appeared to be indifferent to the legal principles relating to public education. However, during the last twenty years the body of school law, both statutory and case, has increased severalfold. Many questions have arisen pertaining to the rights and responsibilities of the school authorities. Several studies have been conducted dealing with the rights, privileges, and liabilities of teachers, administrators, and other employees of the schools; however, few studies have been undertaken dealing with problems relating to the school pupil.

The pupil is the center of the American system of public education. All other aspects of our educational system revolve around the pupil. It is, therefore, appropriate that consideration be given to the legal

problems encountered in the administration of pupil personnel.

The legal relationships of pupils' "rights," privileges, and responsibilities in connection with public school admission and attendance are based on constitutional provisions, statutory law, school board rules and regulations, and principles developed from judicial interpretations. Efforts have been made by state governments through the legislatures to provide for and to safeguard the rights of children. The recognition of these rights and the adjustment of school practices to operate within the legal framework as established by the statutes and the interpretations of these statutes by the courts are of supreme importance to school personnel. While litigation on behalf of pupils is not new, in recent years there has been a proliferation of court decisions in this area which are having a profound effect on the American public schools.

This study is concerned with the following: What are some of the problems related to admission and attendance of public school pupils which have come before the courts for litigation?

Need for the Study

With the transferring of attendance in the public schools from the status of a privilege or an opportunity for those choosing to accept it to a requirement for all pupils, school administrators and boards of education are constantly being faced with problems dealing with litigations relating to pupil personnel. Hamilton and Mort emphasize that with the change in the nature of the school have come misunderstandings when they state:

> The transfer of the school from the status of an opportunity for those who chose to accept it to a required experience for all children brought with it a long train of litigation. Questions arose as to where the rights and responsibilities of the school authorities began and ended. Also, questions arose concerning the responsibilities and rights of parents and pupils themselves. The answering of these questions has been and still is fraught with that personal conflict that makes not only news but also much work for the courts.[1]

Nolte and Linn clearly indicate that litigation is quite prevalent in the area of pupil attendance when they state:

> ...one might expect that very few problems related to pupil attendance would arise. This area of the law, however, continues to be one of the fertile areas of litigation in spite of the controlling statutory framework. Questions which continually come before the courts are indicative of the unsettled conditions relating to this problem: Under what conditions may instruction of children in the home excuse attendance at the public or private school? May a child be admitted to the public school at an earlier age than that stipulated by the board of education? Is a board rule requiring vaccination as a prerequisite to admission a legal exercise of board power? May the board assign pupils to attend a school far from home in contravention of the wishes of parents? These and many other related questions continually arise to plague teachers and administrators, and many of these issues reach the courts of the land.[2]

During the calendar year 1964, the National Reporter System reported 114 cases which were directly concerned with public school pupils. Much of this litigation dealt specifically with problems in the area of pupil admission and attendance. Recognition of pupils' "rights" and the corresponding adjustments of school practices are of utmost importance to school administrators. It is of importance also that parents and other laymen understand the legal status of pupils. Along with an

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[1]Robert R. Hamilton and Paul R. Mort, The Law and Public Education (Brooklyn, 1959), p. 506.

[2]M. Chester Nolte and John Phillip Linn, School Law for Teachers (Danville, Ill., 1963), p. 211.

understanding of the "rights" and responsibilities of the pupils and of the parents, the public school officials should have an understanding of their rights and responsibilities. The fact that litigations continue in the field of pupil admission and attendance indicates that answers to these problems need to be provided. The resolution of many problems can be found in the laws and court interpretations of the laws. Because the "king can do no wrong" concept is rapidly being abandoned, it becomes even more important for the public school administrator to arm himself with information to enable him to make wise decisions of a legal nature.

Widespread information including interpretation and clarification of points of law, it is felt, will prevent many needless controversies. A survey of the literature failed to reveal a study relating to an analysis of the opinions handed down by the courts regarding pupil admission and attendance in the public schools.

Purpose of the Study

The purpose of the study is to ferret out, analyze, and present in summary form the principles of law as interpreted by the courts in litigations pertaining to admission and attendance of public school pupils. It is hoped that this study will better acquaint the public school authorities with the legal aspects relating to this area of school administration and will enable them to avoid embarrassing, time-consuming, expensive lawsuits. Furthermore, it is hoped that it will help public school officials to be better informed on the "rights" and responsibilities of the pupils, the parents, and the school authorities in the area of attendance and admission.

Scope of the Study

So numerous are litigations related to public school pupils that one study cannot cover all the legal aspects pertaining to them. This study does not attempt to delve into all matters, but is limited primarily to case reports relating to admission and attendance of public school pupils.

Inasmuch as court decisions determine the manner in which laws and regulations will be legally interpreted, this study is concerned with an analysis of the court cases rather than with an analysis of statutory laws; it is concerned with analyzing the cases listed in the National Reporter System which includes all decisions rendered by state and federal courts of record dealing with admission and attendance of pupils in the public elementary and secondary schools of the United States. Cases pertaining to litigation involving private or parochial schools and cases dealing with litigation involving institutions of higher learning are not a part of this investigation. Although many principles of law pertaining to public elementary and secondary school pupils might well apply to pupils of private and parochial schools or to pupils enrolled in institutions of higher learning, it is felt that each of these areas would be adequate for another study.

Because the laws under which public schools operate are subjected from time to time to different interpretations by the courts, the court decisions discussed in this study are of recent date. Generally, the cases studied and analyzed are those listed in Fourth, Fifth, and Sixth Decennial Digests of the American Digest System. Older cases are included only when they are of important historical value, or if they

established a principle which has not since arisen before the courts. More specifically, the study is concerned with problems related to: (1) requirements for admission and attendance in the public schools, (2) grounds for acceptance, rejection, or exclusion of applicants for admission, and (3) a board's right to classify, grade, or assign pupils to a particular class or school. There is no attempt to summarize the details of the many laws on the subjects, but rather to examine and present general principles which can be gathered from the judicial interpretations.

Procedure of the Study

The method used in conducting the study involved a search of legal textbooks and of the encyclopedical sources, namely, American Jurisprudence, Corpus Juris, and Corpus Juris Secundum to determine litigation which has transpired in the area studied. Use was made of the Fourth, Fifth, and Sixth Decennial Digests of the American Digest System to locate the cases investigated. An investigation of the original sources was conducted by referring to the court opinions and decisions listed in the National Reporter System.

The cases selected were reviewed and analyzed to determine their applicability to this study. The pertinent cases, approximately two hundred in number, were categorized according to the points of law involved in the litigation into the following broad areas: (1) pupils' "rights," privileges, and responsibilities for admission and attendance, (2) grounds for acceptance, rejection, or exclusion of applicants for admission and attendance, and (3) rights of school officials to assign or classify pupils. These broad areas were in turn further classified

to render them more manageable. A detailed analysis of the facts, decisions, and interpretations was made of all the cases pertinent to this investigation. The judicial decisions of the cases under investigation were examined to determine legal patterns which have developed. A summary of these findings and conclusions is presented in a language understandable by persons outside the field of law in Chapter V of this study.

Glossary of Terms

Undoubtedly, one of the biggest obstacles to a layman's complete understanding of the legal aspects of education is his unfamiliarity with the legal terms used by the courts and the legal profession. In order to help eliminate some of the difficulties, the following definitions are given for the legal terms used most frequently in this study. The definitions, other than Judicial Citations, are taken from Black's Law Dictionary, Fourth Edition.[3]

Appellant. The party who takes an appeal from one court or jurisdiction to another.

Appellate Court. A court having jurisdiction of appeal and review; a reviewing court, and, except in special cases where original jurisdiction is conferred, not a "trial court" or court of first instance.

Appellee. The party in a cause against whom an appeal is taken; that is, the party who has an interest adverse to setting aside or reversing the judgment. Sometimes also called the "respondent."

Case. A general term for an action, cause, suit, or controversy, at law or in equity; a question contested before a court of justice; an aggregate of facts which furnishes occasion for the exercise of the jurisdiction of a court of justice.

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[3]Henry Campbell Black, Black's Law Dictionary, Fourth Edition, (St. Paul, 1951).

Case Law. The aggregate of reported cases as forming a body of jurisprudence, or the law of a particular subject as evidenced or formed by the adjudged cases, in distinction to statutes and other sources of law.

Common Law. As distinguished from law created by the enactment of legislatures, the common law comprises the body of those principles and rules of action, relating to the government and security of persons and property, which derive their authority solely from usages and customs of immemorial antiquity, or from the judgments and decrees of the courts recognizing, affirming, and enforcing such usages and customs.

Domicile. That place where a man has his true, fixed, and permanent home and principal establishment, and to which whenever he is absent he has the intention of returning; not for a mere special or temporary purpose, but with the present intention of making a permanent home, for an unlimited or indefinite period.

Interpretation. The art or process of discovering and expounding the meaning of a statute, will, contract, or other written document.

Judicial Citations. References to court decisions. Citations in this study refer to official state reports and to the National Reporter System.

Jurisdiction. The word is a term of large and comprehensive import, and embraces every kind of judicial action. It is the authority by which courts and judicial officers take cognizance of and decide cases.

Lawsuit. A vernacular term for a suit, action, or cause instituted or pending between two private persons in the courts of law. An action or proceeding in a civil court.

Litigant. A party to a lawsuit; one engaged in litigation.

Litigate. To dispute or contend in form of law; to carry on a suit.

Litigation. Contest in a court of justice for the purpose of enforcing a right.

Mandamus. This is the name of a writ (formerly a high prerogative writ) which issues from a court of superior jurisdiction, and is directed to a private or municipal corporation, or any of its officers, or to an executive, administrative or judicial officer, or to an inferior court, commanding the performance of a particular act therein specified, and belonging to his or their public, official, or ministerial duty, or directing the restoration of the complainant to rights or privileges of which he has been illegally deprived.

Residence. A factual place of abode. Living in a particular locality--it requires only bodily presence as an inhabitant of a place.

"Residence means living in a particular locality, but domicile means living in that locality with intent to make it a fixed and permanent home. Residence simply requires bodily presence as an inhabitant in a given place, while domicile requires bodily presence in that place and also an intention to make it one's domicile."

Resident. One who has his residence in a place.

Statute. An act of the legislature declaring, commanding, or prohibiting something; a particular law enacted and established by the will of the legislative department of government; the written will of the legislature, solemnly expressed according to the forms necessary to constitute it the law of the state. This word is used to designate the written law in contradistinction to the unwritten law.

Ultra Vires. The modern technical designation, ...of acts beyond the scope of the powers....

In the writer's opinion, an understanding of the definitions above will enable a reader of this study to read with clarity and perception the material presented pertaining to the cases, opinions, and rulings. When possible, the writer will refrain from using legal terms, but will employ terminology generally used by persons not associated with the legal profession.

CHAPTER II

PUPIL ADMISSION AND ATTENDANCE

Education is a concern of all the people. The Federal Constitution, by implication, left the control of public schools to the states. Each state, by acts of its legislature, has enacted legislation establishing a system of education with the structural patterns and modes of its operation. Since education in the American form of government is essentially a function of the states, the courts of many states have been asked to clarify the function of the public school in organized society.

Right to Attend School. School attendance, according to Edwards, "...is a privilege which the state confers upon its youth; the only right a child has to school attendance is the right which the state confers upon all other children similarly situated."[1] Garber and Edwards write that, "School attendance is a privilege extended by the state and not an absolute right...."[2]

In emphasizing the nature of public education Marke states:

> Admission to the public schools...is not a privilege or immunity belonging as a matter of right to a person just because

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[1]Newton Edwards, The Courts and the Public Schools (Chicago, 1955), p. 540.

[2]Lee O. Garber and Newton Edwards, The Law Governing Pupils (Danville, Ill., 1962), p. 5.

> he is a citizen of the United States. It is not a federal constitutional right. Nor is it a natural right....The privilege of receiving an education at the state's expense may be granted or refused to any individual or class at the pleasure of the state.[3]

Corpus Juris Secundum, Vol. 79, Section 445, at page 349, clearly defines the nature of the "right" to attend public schools as:

> The right to attend a public school and receive instruction therein is not a private right held by an individual separately from the community at large, but is a civil right or political privilege held in common with all others of the same community.

To explain further this privilege, it continues, "The privilege, however, does not appertain to a citizen of the United States as such, and therefore cannot be demanded on the mere status of citizenship."

The courts have clearly ruled that the public school is a creature of the state, that attendance at school is a privilege, and the "right" to attend an educational institution at public expense is not a natural right. Perhaps the case which most clearly expresses the attitude of the courts is one that was decided in 1912 in which it was stated:

> The primary purpose of the maintenance of the common school system is promotion of the general intelligence of the people constituting the body politic and thereby to increase the usefulness and efficiency of the citizens, upon which the government of society depends. Free schooling furnished by the state is not so much a right granted to pupils as a duty imposed upon them for the public good. If they do not voluntarily attend the schools provided for them, they may be compelled to do so.
>
> While most people regard the public schools as the means of great personal advantage to the pupils, the fact is too often overlooked that they are governmental means of protecting the state from the consequences of an ignorant and incompetent citizenship. The controlling interest of the state is the development of a citizenry intelligent enough to maintain our democratic form of government.[4]

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[3]David Taylor Marke, Educational Law (New York, 1949), p. 11.

[4]Fogg v. Board of Education, 76 N.H. 296, 82 Atl. 173-174.

In a case brought before the courts in the State of Florida in 1945, the presiding judge stated that "The right to attend an educational institution provided by the state is not a natural right but a public benefaction...."[5]

From the preceding paragraphs it can be stated that: (1) the public school is a state institution; (2) the "right" to attend the public school is a political privilege; (3) the privilege to attend the public school is bestowed upon all children of all the people; (4) the privilege may be granted or refused to any individual or class at the pleasure of the state; and (5) the privilege is not available to a person by the mere fact that he is a citizen of the United States.

Residence As a Factor for Admission. It has been established that admission and attendance in the public schools is basically a political privilege extended by the state for the welfare of society. The democratic form of government depends on an educated public. Inasmuch as attendance in schools at public expense is not a private right guaranteed by the Federal Constitution, but is a privilege established by the state, regulations for school attendance are determined by the state legislatures. Those who desire to reap the benefits of the public school system must submit to the conditions imposed.

Remmlein emphasizes the point very well when she writes:

> Constitutional mandates requiring state legislatures to establish and maintain free public schools do not mean necessarily that all persons who wish may attend free of charge.

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[5]Satan Fraternity v. Board of Public Instruction, 156 Fla. 222, 22 So. (2d) 892.

> The legislature may set standards to be met as a qualification for free attendance.[6]

Edwards, in his discussion of pupil admission and attendance, writes, "...attendance at the state schools is essentially a privilege and not a right, the state may authorize its agents to exclude all children who do not meet the requirements established by the state."[7] Although the state is vested with the authority and power to establish and regulate its public school system, there are certain constitutional rights and privileges granted to the individual by the Fourteenth Amendment to the Federal Constitution. However, this amendment is not all inclusive.

A factor of major importance in determining the eligibility of a pupil for education at public expense is the residence requirement. Many cases have come before the courts to question the right of the legislature or the local boards of education in establishing particular residence requirements. As a general rule the free school privileges of a district, town, or city are available only to children, otherwise eligible, who are bona fide residents of the state, city, town, or school district. Litigation arises over the interpretation of what constitutes residence for free school privileges.

While the right of pupils to receive the benefit of free education in a particular district depends upon the wording of the statute, according to Hamilton and Mort:

> ...it is usually provided that they may attend the schools of the district in which they reside without the payment of

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[6]Madaline K. Remmlein, School Law (Danville, Ill., 1962), p. 195.

[7]Edwards, p. 540.

> tuition....pupils are restricted to attendance at schools in the district in which they reside unless provision is made by statute whereby they may attend elsewhere.[8]

However, what constitutes residence for school purposes in many cases is not easy to determine, and the problem has been brought before the courts frequently. It is often difficult to determine what constitutes residence within the meaning of the statutes. Much depends upon the wording of the statutes in each particular case. The courts, in their interpretation of statutes governing the right of pupils to attend a particular school, agree that the domicile of the child is the domicile of the parents. However, in construing statutes dealing with the right of children to attend school, the courts have generally held that the residence requirement entitling a pupil to free public school privileges is distinguished from domicile.

In Turner et al. v. City Board of Education of the City of Mayfield, Kentucky, it was ruled:

> Every child of school age has the privilege of attending the public school in the district in which he lives. This does not mean legal domicile in the technical and narrow sense of residence of a person for purpose of taxation or suffrage.[9]

However, it is defined as, "...the place where the child is an inhabitant or where he lives in fact...."[10]

The Supreme Court of Colorado in 1943 in a suit brought in behalf of an eight-year-old child who, since birth, resided with an uncle in

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[8]Hamilton and Mort, p. 508.

[9]Turner et al. v. City Board of Education of City of Mayfield, 313 Ky. 383, 231 S.W. (2d) 27.

[10]Ibid.

Denver, explained the interpretation of the residence requirements as follows:

> The terms domicile and residence...are not synonymous...in statute setting forth residence requirements entitling children to school privileges....residence entitling an infant to school privileges is distinguished from domicile or the technical and narrow use of the term "residence," for the purpose of suffrage or other like purposes....[11]

This court indicated that residence requirements for school purposes are,

> ...construed in the liberal sense as meaning to live in, or be an inhabitant of, a school district, the purpose being not to debar from school privileges any child of school age found within the school district under the care, custody or control of a resident thereof.[12]

In a ruling brought before the Supreme Court of Oregon in 1964, it was ruled that inasmuch as the statute concerning education had as an intent on the part of the State of Oregon to provide free education for all children within the borders of the state, the residence requirement was considered in a different sense than domicile for purposes of suffrage. This court stated that for school purposes,

> ...the term "residence" signifies the place where a child lives with some degree of permanency. There is no requirement of legal domicile; it is sufficient if the child lives with his parents or some person in loco parentis within the district.[13]

In a great majority of cases, the courts have ruled that in order to qualify for the privilege of school attendance without the payment of

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[11] Cline v. Knight et al., 111 Colo. 8, 137 P. (2d) 680, 146 A.L.R. 1281.

[12] Ibid.

[13] School District No. 16-R Umatilla County v. McCormmach, Sup. Ct. Oregon, 392 P. (2d) 1019.

tuition, it is not necessary that a child establish a legal domicile in the district. It has generally been held that "residence" as applied to school privileges is used in its broadest sense. The general rule is that the legal residence of a child is that of his father except in cases such as the death of the father, the separation of the parents with the mother receiving custody of the child, or where the child is placed in the legal custody of other persons.

Litigation quite frequently has arisen in circumstances in which a child moves into a district for the purpose of taking advantage of school privileges, with the father or legal guardian maintaining his legal residence outside the district. A case decided by the Supreme Court of Oklahoma in 1964 dealt with this particular point of law. In the case of Gray v. Board of Education of Pawhuska Independent School District, 389 P. (2d) 498, it was ruled that although the children sometimes spent the night in the home of their grandfather, and the grandfather spent several hundred dollars for clothing and had furnished lunch money for the children, the children were not entitled to school privileges in a district other than the district in which they had a legal residence. The opinion of the court states:

> ...the legislature intended that where the parents of minor children residing in the family home have their legal care and custody, and contribute to their support in a substantial or major degree, the school residence of the children is the same as the residence of the parents.

Another case pertaining to the point of law of a person moving into the district for the express purpose of sending his children to the school of that district was decided by the Supreme Court of Indiana in 1948. The case involved residents of a farm outside the town in which the parent operated a business concern for many years. The farm was

also located outside the school district serving the town. In an attempt to obtain school privileges for their children, the family rented a room in the town, ate their meals in the father's restaurant, and the parents signed a declaration that they considered themselves as legal residents of the town. The judges ruled:

> The declaration of intention to become a resident of Walkerton ...was somewhat self-serving. While there was some change in the living conditions of the family, it cannot be said ...that he...lost his domicile in Marshall County and acquired one in St. Joseph County.[14]

The court ruled that the children were not eligible to attend the school outside the district of the parents' legal residence without the payment of a tuition charge.

Generally, it is agreed that a parent going temporarily into a district to reside during the scholastic year for the purpose of free school privileges for his children is not a bona fide resident of the district, and his children are not entitled to the school privileges of the district without payment of tuition.

A still valid opinion handed down in 1897 presents in clear, concise terms the general rule held by the courts. The opinion in part reads:

> ...where a child of school age is sent or goes into a certain school district with the primary purpose of securing a home with a particular family, then he is entitled to the benefits of the public school of such district free of charge.

The opinion continues,

> ...but, if the primary purpose of the locating in such district is to participate in the advantages which the public

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[14]State ex rel. Flaugher v. Rogers, 226 Ind. 32, 77 N.E. (2d) 594.

> schools therein afford, then he must pay tuition, even though there be some other incidental purpose to be subserved while so attending school therein.[15]

It may be stated, then, that residence for school purposes is considered in a broader sense than domicile required for such purposes as voting. A dwelling, more or less permanent, establishes the right to attend the public schools of the district free of tuition. Even a residence which is temporary fulfills the requirements if the reason for the temporary residence is not primarily that the child may attend a particular school. The test depends on whether the residence is established primarily for school purposes, and whether removal is planned as soon as the benefits of the school facilities have been obtained.

Section 152.5 of Supplement to American Jurisprudence, Vol. 47, at page 50, lends support to the conclusions stated above in the following comment:

> It is not indispensable that school children should have a legal domicil in the district in which they claim school privileges if they actually reside in such district with no present purpose of removal and are under the control of one who fulfils the minimum requirements of being in loco parentis.

Residents of Charitable Institutions, Foster Homes, and Orphanages. A cause for frequent litigation on the issue of residence has occurred when children live in a foster home, a charitable institution, an orphanage, or other similar arrangement. The courts are not in complete agreement with respect to the rights of children who are inmates of a charitable institution or an institution whose primary purpose is to

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[15] State ex rel. Smith v. Board of Education of the City of Eau Claire, 96 Wis. 95, 71 N.W. 123.

provide for foster or neglected children. Conflict has arisen as to whether the children are to be considered for school purposes as residents of the district in which the institution is located.

According to Edwards:

> In some states, notably Michigan, Ohio, Pennsylvania, and Vermont, it has been held that inmates of such institutions are residents of the district in which they have their legal domicile, that is, the domicile of their parents, or last surviving parent.[16]

A case decided in 1944 by the Ohio Supreme Court[17] supports this opinion. The question brought before the courts in the case concerns the rights of children, formerly residents of the Cleveland, Ohio, district, who were committed to a child-placing agency by the juvenile court. The agency in turn placed the children in boarding homes in the City of Parma. Whether the children were residents, for school purposes, of the Cleveland or of the Parma School District was the specific question involved. The court ruled that where the children resided in Cleveland prior to their commitment and later were placed in homes in the City of Parma, the children remained residents, for school privileges, of Cleveland.

In states where the courts rule in this manner, the child living in a charitable institution, foster home, or an orphanage does not have the right to attend the public schools of the district free of charge. His tuition, if he attends the public school, must be paid by the district in which he has his domicile or by the institution or home. Some

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[16]Edwards, p. 530.

[17]State ex rel. Gibbs et al. v. Martin et al., 143 Ohio St. 491, 56 N.E. (2d) 148.

authorities contend that inasmuch as many of the charitable institutions do not pay a school tax that the mere fact of residence in such institution is not sufficient to entitle the child to free public school advantages.

In a great majority of cases brought before the courts, however, it has been contended that the child who is an inmate of the charitable institution or an orphanage has the privilege of attending the public schools of the district in which the institution or orphanage is located without the payment of tuition.

The inmates of a nonprofit, benevolent, charitable, and unincorporated children's home in the State of Kansas were entitled, according to a 1947 Kansas Supreme Court ruling, to attend school in the district in which the home was located without the payment of tuition. The court in its opinion stated:

> We feel confident...that the children in its (children's home) care are residents of the school district in which the home is situated and are entitled to attend school in that district without the payment of tuition.[18]

An opinion in 1939 by the Supreme Court of Minnesota explained in greater detail the reasoning for their interpretation of this point of law. This opinion stated in part that:

> ...the home is a place of their dwelling indefinitely.... they have no other place, at least for the present, where the care and support demanded by the law can be bestowed. The fact that someone may adopt a child or that his parents may be able again to undertake their duties does not render the children merely sojourners. It is at the home where they in fact live and receive what more fortunate minors are given at their parents' home. A residence within the district is sufficiently established, and the children of the

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[18] Mariadahl Children's Home v. Bellegarde School District No. 23, 163 Kans. 49, 180 P. (2d) 612.

> home must be admitted to the district school on the same basis as other children in the district.[19]

It has been ruled that orphan children committed to the care and custody of residents of a school district are entitled to free schooling privileges in that district. Such was the ruling in Wirth et al. v. Board of Education for Jefferson County et al., 262 Ky. 291, 90 S.W. (2d) 62, (1935). In this case Dewey Wirth, a minor, was placed in a foster home by a children's home, with the children's home maintaining its jurisdiction over the child. Mr. Heady, in whose home Dewey was assigned, filed suit against the board of education in the district in which his home was situated, requesting that the Wirth child be permitted to attend the local public schools without the paying of tuition charges. The case was decided in favor of Wirth when the judges concluded:

> We are convinced...for common school purposes so long as he remains at Heady's home, Wirth is a resident of the common school district in which Heady resides, and he is entitled to attend, free of tuition, the common schools taught therein.

Another suit involving the rights to attend school free of tuition by children placed in a foster home was decided by the New York Supreme Court in 1962. The facts of the New York case were somewhat similar to those in the case cited above; however, the foster parents in the New

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[19]State ex rel. Board of Christian Service of Lutheran Minnesota Conference v. School Board of Consolidated School District No. 3., 206 Minn. 63, 287 N.W. 625. Other cases investigated and analyzed holding similar opinions are: Salem Independent School District v. Kiel, 206 Iowa 967, 221 N.W. 519 (1928); State ex rel. Johnson v. Cotton, 67 S.D. 63, 289 N.W. 71, (1939); Dean et al. v. Board of Education of School District No. 89 et al., 386 Ill. 156, 53 N.E. (2d) 875, (1944); City of New Haven v. Town of Torrington, 132 Conn. 194, 43 A. (2d) 455, (1945); and Jefferson County Board of Education et al. v. Goheen, 306 Ky. 439, 207 S.W. (2d) 567, (1947).

York case moved to the City of New Rochelle from New York City after the foster children were assigned to their home by the Children's Court. The Supreme Court of New York ruled that where children adjudicated neglected and committed to the care of the City Welfare Commissioner and then placed in a foster home of a family residing in the city and subsequently moved to another city, the assigned children become residents of second city for educational purposes and are entitled to free matriculation in the public schools.[20]

From the cases coming before the courts of record in recent years, it has generally been held that an orphan or child who has no home other than the orphanage or institution to which he is committed, so long as the child remains in the home and the home or institution stands in loco parentis to the child, is a resident of the school district in which the home is located, and is entitled to the public school privileges. Unless state statutes hold otherwise, an orphan committed to the custody and care of an individual is entitled to public school privileges without the payment of tuition in the district where, after the commitment, he lives.

Rights of Pupils Residing on Federally Owned or Controlled Property. Another factor related to the issue of residence for school attendance purposes in which litigation has frequently arisen pertains to the rights and privileges of pupils living on federally owned or federally controlled property. It has been held that pupils residing in territory which is under the exclusive jurisdiction and supervision of

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[20]Dumpson v. Board of Education of City of New Rochelle, 17 A.D. (2d) 634, 230 N.Y.S. (2d) 515.

the United States Government do not have the right to attend the public schools of the community without the payment of tuition charges. The state, according to authorities, has no responsibility for public service including public education for areas under the exclusive jurisdiction of the Federal Government.

An opinion handed down by the Justices of the Supreme Court of Massachusetts in 1841 clearly states the relationship of the state to such areas as follows:

> ...persons who reside on lands purchased by or ceded to the United States for navy yards, forts and arsenals, and where there is no other reservation of jurisdiction to the state and that of a right to serve civil and criminal process on such lands, are not entitled to the benefits of the common schools for their children in the towns in which the lands are situated--nor are they liable to be assessed for their polls and estates to state, county, and town taxes, in such towns--nor do they gain a settlement in such towns, for themselves or their children, by residence for any length of time on such lands--nor do they acquire, by residing on such lands, any elective franchise as inhabitants of such towns.[21]

This opinion has not been overruled. It was, in fact, considered to be a good law by an "Advisory Committee on Education" which was appointed by the President of the United States in 1939.

The Court of Appeals of Ohio in 1944 referred to the Massachusetts opinion when it denied a writ of mandamus to compel the Board of Education of Euclid City School District to admit to its schools pupils living in housing projects which were owned by the Federal Government and which were within the school district. The Ohio Court stated in part:

> The jurisdiction exercised by the United States Government over this project (defense housing) is no different from

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[21]Opinion of the Justices, 42 Mass. 580.

> what its jurisdiction would be if the land had been acquired for a fort or an arsenal...the board of education is under no obligation to admit children living in these housing projects to the public schools without the payment of tuition....[22]

In expounding on the reasoning used in this Ohio case, the court explained that:

> If the children residing in these projects are entitled to schooling without the payment of any tuition or any payment by FPHA (Federal Projects Housing Administration), the burden that may be cast on the shoulders of the taxpayers of the City of Euclid may become so "undue and insupportable" as to seriously lower, if not destroy, the effectiveness of its public school system.[23]

A writ of mandamus to compel the O'Hara Township School District to admit pupils living on the grounds of the Veterans' Administration Hospital free of charge to the O'Hara Schools was refused in the lower courts, and the Supreme Court of Pennsylvania upheld the judgment. In their ruling the Justices stated, "To be a resident of a particular political subdivision of a state, a person must reside on land over which the state has jurisdiction. It has long been held," they continue, "that persons living on federal reservations are not residents of the state wherein such reservations are situated."[24]

In explaining the policy of the Federal Government in relation to the question of local school districts educating pupils who are living on federally controlled lands, the Pennsylvania Supreme Court concluded:

> No intent on the part of Congress to impose upon local school districts the cost of public education for the children of

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[22]State ex rel. Moore et al. v. Board of Education of Euclid City School District, Ct. App. Ohio, 57 N.E. (2d) 118.

[23]Ibid.

[24]Schwartz v. O'Hara Township School District et al., 375 Pa. 440, 100 A. (2d) 621.

> residents of federal areas, lying within such districts...to burden them (local community) with the duty of furnishing free educational facilities for the children resident on such federal areas would be as oppressive as it would be unfair.[25]

The point of law ruled on in the preceding case was upheld by the Supreme Court of South Dakota. In cases brought before the court in 1923 and again in 1925, the question of the rights of children whose parents were residents of federal Indian school lands to attend local public schools free of charge was litigated. "We are forced to the conclusion," wrote the Justices in the 1923 case,

> ...that the lands on which the parents of the children in question reside, while within the territorial boundaries of the appellant district, form no part of such district. Consequently, the parents are not residents of such district....[26]

Two years later the South Dakota Supreme Court again ruled that, "Residence upon this ceded Indian school land does not of itself constitute the parents residents of School District No. 20, nor of Pennington County, nor of the State of South Dakota." They continue, "...of course if the parents came to reside on this federal land from another state, they have not acquired residence and citizenship in this state."[27]

There seems to be general agreement that pupils living on property which is under exclusive jurisdiction of the United States Government are not entitled to attend free the schools of the community. To prevent development of an uneducated segment of the American population, to prevent the placing of the burden of tuition charges on the parents of

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[25]Ibid.

[26]School District No. 20 of Pennington County v. Steele et al., 46 S.D. 589, 195 N.W. 448.

[27]Rockwell v. Independent School District of Rapid City et al., 48 S.D. 137, 202 N.W. 478.

children living on federally controlled property, and to continue the principle that each child has a right to a free education, the Federal Government at an early date had an awareness of the responsibility for the education of these children. The "Advisory Committee on Education," referred to earlier in this chapter, in one of its reports stated:

> ...definite obligation rests upon the Federal Government for the education of children residing on those reservations which are under exclusive federal jurisdiction. By some means or other the Federal Government should recognize its responsibility for the free education of these children and make provisions for discharging it.

The Federal Government may acquire the use of land for some federal purposes without acquiring exclusive jurisdiction. Such purposes as low cost housing projects, farmstead projects, and slum clearance projects are examples of acquisition of land by the Federal Government without obtaining complete jurisdiction over the lands.

According to two decisions from the Supreme Court of Nebraska in 1937, where parents of school age children occupied lands in a federally sponsored farmstead project and were residents of the school district in which the lands were located, the children were entitled to free public school privileges. The following opinion, taken from Tagge et al. v. Gulzow et al., 132 Neb. 276, 271 N.W. 803, is representative of reasoning by the Justices, "For the purposes of civil and criminal jurisdiction and of political rights, the state has not lost its jurisdiction over the farmsteads and the occupants thereof." For school purposes they state, "The status...as residents is the same as that of others in the school district...their children of school age are entitled to common school privileges without payment of tuition."

In an Ohio case in 1945, the court refused to issue an injunction

restraining and enjoining the Cleveland Board of Education from permitting free educational service to be furnished to children residing on land owned by the United States. The land in question was utilized by the United States in conjunction with the State of Ohio for housing war workers and for carrying on slum clearance projects. In summary, the court expressed its opinion thusly:

> The Court finds nothing in the record which would raise any question that the persons domiciled upon these projects are not "residents" or "actual residents" thereof...under any definition of these words in any authority cited....their status now is exactly the same as that of all other children resident in the district, and they are entitled to the same privileges of a free education.[28]

From the opinions of cases cited and discussed on the question of rights for school attendance of persons residing on federal property, it is found that free admission to a district school may not be claimed by children residing on land purchased or ceded to the United States if the Federal Government obtains exclusive jurisdiction of said lands. However, in cases where the acquisition of lands by the United States does not result in an ouster of state jurisdiction and loss of control, the children residing on these lands are considered residents for school purposes and are entitled to the privilege of free public education just as any other resident children.

Rights to Admission of Nonresidents. Generally, in the absence of statutory provisions to the contrary, children of parents who are not residents of a school district are not eligible to receive the privileges of free school attendance in such district. Remmlein states,

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[28]McGwinn et al. v. Board of Education of Cleveland City School District et al., 147 Ohio St. 259, 69 N.E. (2d) 391, appeal dismissed 70 N.E. (2d) 776.

"Attendance is not free to nonresidents...."[29] In discussing the point further she continues, "...generally speaking, tuition is paid in order that children may attend a school outside their resident district."[30] The Supreme Court of Colorado in 1932 stated in its opinion that, "Generally, children whose parents are not residents of school district are not permitted to attend school therein."[31]

In a case appealed to the North Dakota Supreme Court in 1963, this same point of law was questioned and the court ruled as follows: "In the absence of a statute authorizing the admission of nonresident students, it is generally held that children have no right to be admitted to a school outside of their own district on any terms...."[32] The opinion of the judges in discussing the point also stated, "... a school district has no authority to open its schools on any terms for the instruction of children living outside of the district in which such schools are located."[33] The only right of a pupil to attend a school outside the district in which he resides then is purely statutory and must be found in the laws enacted by the state legislature. Likewise, the only right of a district to admit nonresident pupils must be found in legislative authority. It has been ruled by the courts that public schools of the state are under control of the legislature and "...that

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[29]Madaline K. Remmlein, School Law (Danville, Ill., 1962), p. 196.

[30]Ibid.

[31]Fangman et al. v. Moyers, 8 P. (2d) 762.

[32]Myhre et al. v. School Board of North Central Public School District No. 10, Richland County, Sup. Ct. N.D., 122 N.W. (2d) 816.

[33]Ibid.

a school board has no powers except those conferred by statute; that school boards may exercise only such powers as are expressly or impliedly granted by statute...."[34]

Circumstances frequently are such that one school district is liable for tuition charges of children sent to another district. An opinion from the Supreme Court of Minnesota in 1957 stated this clearly when it said, "It is well established that the legislature may require payment of a per pupil charge from the district in which a pupil resides to the district accepting such children for education."[35] Although the legislatures are responsible for the establishment and maintenance of a uniform system of free public schools, this requirement does not contemplate that facilities in any district supported by taxes imposed upon its taxpayers are to be available to students from other districts without tuition. In the Minnesota case cited earlier, the judges explained this reasoning most effectively when explaining why the school board of each district should be permitted to use its discretion in refusing admittance of nonresidents. Their explanation, in part, was as follows:

> ...a school district would have to accept children from any other school district in the state. In the efficient operation of schools, the actual day-to-day cost is only one of the factors with which the school board must contend. The Board must know also, within at least approximate limits, what its present and future school population will be. It must gear its present and future physical plant and personnel to such ascertainable school population. It must also know, within reasonable limits, what its tax base is going to be. There are many other similar factors which are of equal importance, none of which could be ascertained or even estimated

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[34]Ibid.

[35]Melby v. Hellie et al., 249 Minn. 17, 80 N.W. (2d) 849.

> if it were compelled to accept children from any and all other school districts desiring to send children there.[36]

Agreeing with this opinion was an opinion given by the Utah Supreme Court in 1938 which stated that:

> Since each district is charged with the duty of providing adequate school facilities for the children resident in that district, in order that such children may not be deprived of school privileges by overcrowding of rooms, or too large attendance for the book or laboratory facilities, or imposing too many students on a teacher for efficient work, the district must have the privilege of barring nonresident students whose home district provides for them proper educational advantages.[37]

The statutes in many states provide that, under some conditions, pupils residing in one school district may attend school in another district. Generally, such statutes apply to pupils residing in districts not maintaining all grades in their public schools or to pupils who can be accommodated more conveniently in another district. In a case before the Supreme Court of Wyoming, it was held that students before completing grades offered by their home school district were not eligible to attend school in a neighboring district at the expense of the home school district. The judges in this 1933 case said:

> As it appears as a fact from this record that Billy Magoon and Virginia Robinson had not completed the course of study offered by District No. 12 at the time they entered the high school of District No. 1, the former may not be held liable to the latter for their tuition under the statute upon which reliance is here placed....[38]

The right of a school district to admit nonresident pupils from

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[36]Ibid.

[37]Logan City School District v. Kowallis et al., 94 Utah 342, 77 P. (2d) 348.

[38]State ex rel. School District No. 1 Niobrara County v. School District No. 12 Niobrara County et al., 45 Wyo. 365, 18 P. (2d) 1010.

organized school districts within the State of North Dakota is limited to instances in which the school district of the pupils' residence consents or in which attendance is based on reasons of convenience. The reasons of convenience are subject to the approval of the County Judge, the State Attorney, and the County Superintendent of Schools.

In litigation before the court in 1963, the Supreme Court Justices ruled that:

> Our statutes now specifically provide that admission of nonresident pupils...is limited to those cases where such attendance is consented to by the school district of the pupils' residence, or where attendance of such nonresident pupils is based on reasons of convenience.[39]

According to the ruling of this court, the school district did not have discretion to admit the children and determine the amount of tuition to be charged parents of such nonresident children. They emphasized that,

> Before such nonresident students may be admitted...home district must give its approval or the three member committee must find...that the attendance of the...students...is necessitated by shorter distance or by other reasons of convenience.[40]

The Texas Court in 1956 had a case brought before it concerning the right of a school board to voluntarily admit and teach nonresident students who were not formally transferred without charging tuition to the nonresident children's parents or school district. The following statements taken from the opinion explain the reasoning used by the judges:

> ...the East Mountain School Board would have the discretionary authority to voluntarily admit and teach nonresident scholastics (...not formally transferred...) ...as long as the admission and teaching of such nonresident students would

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[39]Myhre et al. v. School Board of North Central Public School District No. 10, Richland County, Sup. Ct. N.D., 122 N.W. (2d) 816.

[40]Ibid.

not be prejudicial or detrimental to the free school pupils of the East Mountain District.[41]

Commenting further on their ruling that the East Mountain District Trustees had discretionary authority to voluntarily receive and teach the nonresident pupils free of charge, the judges stated that, "Ordinarily, of course, the trustees of a school district would probably charge tuition to nonresident scholastics not formally transferred and not entitled to free tuition at their school."[42] It was also expressed in the opinion that when the parents of the nonresident pupils made their own arrangements with the school trustees of another school district to admit their children that this would be no different from their making arrangements with a private school to teach them. Therefore, it was concluded that the parents could not be successfully prosecuted for any crime on their part.

From the cases cited and discussed in the preceding paragraphs, it is found that nonresident children are not entitled, generally, to the privileges of free public schools; tuition is paid in order for nonresident children to attend a school outside their resident district; resident district normally pays tuition for children to attend school outside their district, if home district does not have available proper facilities and grades; when a parent arranges for his children to attend school outside his resident district, especially if school privileges are furnished by the home district, the parent is liable for the tuition charges.

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[41] Palmer et al. v. District Trustees of District No. 21, Ct. of Civil App. Texas, 289 S.W. (2d) 344.

[42] Ibid.

Age As a Factor for Admission. It has been stated that the public school is a state institution and the privilege to attend the public school may be granted or refused to any individual or class at the pleasure of the state. The privilege for free attendance is not available to a person by the fact that he is a citizen of the United States. Regulations for school attendance are determined by the state legislatures, and persons desiring to reap the benefits of the free public schools must submit to these regulations. Residence requirements which must be satisfied in order for a person to be eligible for free public school privileges were discussed in the earlier sections of this chapter.

Another condition which is imposed on potential recipients of public school privileges is the age requirement. Generally, if a person has attained the age of six years, is below the age of twenty-one years and meets the other requirements, he is entitled to free public school attendance. The legislatures have usually established the specified age groups which may be allowed free attendance at the public schools. It is generally agreed that a state legislature may enact such legislation unless it is prohibited by the State or Federal Constitution. Litigation in the area of age requirements most often before the courts pertains to the question as to when a child may enter the first grade if he reaches the prescribed minimum age after the opening of the school year. Some states have statutes covering this point. It usually, however, falls within the discretion of the local boards of education. States with laws pertaining to age requirements usually establish a "cut-off" date for children entering school for the first time. The right of the state legislature to enact legislation of this type has gone practically unchallenged. In those states where such legislation exists, the local

boards of education must comply with these provisions; they have no discretion in the matter of entrance age or "cut-off" dates for admission.

In states which do not have legislation pertaining to entrance age requirements, it has been ruled that the local boards of education may establish "cut-off" dates for persons entering school for the first time. An example of such a ruling comes from litigation before the Supreme Court of Montana in 1960 in which the appellee had filed for a writ of mandamus to direct the appellant board of education to admit his child to the first grade in the appellant board's school, although the child reached age of six years after the "cut-off" date of November 15.

Under statutory provisions of Montana, each local district has discretionary power to establish a "cut-off" date governing entrance into the first grade. The following, taken from the opinion of the Justices, is indicative of the reasoning used in instances where statutory requirements have not covered the point:

> We feel that neither the framers of the Constitution nor the legislature could have intended that...(should) compel local school districts to admit children immediately upon attaining the age of six years at any time. A reasonable interpretation of these provisions, in connection with the other provisions requiring a thorough education, is that a child must be allowed to enter the first grade sometime during his seventh year after reaching his sixth birthday. This would be accomplished by admitting children who become six after a "cut-off" date at the commencement of the next school year. Thus the child whose birthday falls after a "cut-off" date would be admitted the following September in the ordinary course of schooling while he is still six years old.[43]

Another court in 1960 covering the same general point of law ruled as did the courts of Montana. In explaining their reasoning the West

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[43] State ex rel. Ronish v. School District No. 1 of Fergus County et al., 348 P. (2d) 797, 78 A.L.R. (2d) 1012.

Virginia Court ruled, "...the enrollment of youths who reach the age of six years sometime after the commencement and during a school term tends to disrupt the orderly and efficient operation of the first grades of the public schools."[44] The West Virginia Court expressed in its opinion that the establishment of a "cut-off" date for entrance was within the powers of the school officials. It was indicated that the determination of such questions is for those who are charged with the "general supervision of the free schools of the state" and not for the courts to determine. However, the courts may be called upon to determine if a particular rule is unreasonable or arbitrary.

In the case filed in relation to Donald Ronish, previously cited, the court was required to rule on the reasonableness of a school district rule which provided for an initial "cut-off" date of October 31, beyond which parents were discouraged from entering their children in the first grade. The rule in question further provided that those children who became six between October 31 and November 15 could be admitted at the parents' request with the understanding that a test was to be administered to those children whose birthdays fell between November 1 and November 15. The court interpreted the rule as a reasonable rule, and although arbitrary dates were established, it was held valid under statutory provisions. The Justices indicated that the rule, "...is not a model rule for any school district to adopt, ...it is a reasonable rule."[45] It was pointed out that by the board rule in question a child

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[44]Detch v. Board of Education of the County of Greenbrier, 145 W.Va. 722, 117 S.E. (2d) 138.

[45]State ex rel. Ronish v. School District No. 1 of Fergus County et al., 348 P. (2d) 797, 78 A.L.R. (2d) 1012.

could be admitted to the first grade up to two and one-half months after the start of the school year, and this seemed to be a reasonable length of time to hold the school open for enrollment of children entering the first grade. In a recent suit before the Supreme Court of Arizona, it was ruled that "The power to admit or exclude children under six years of age rests within the discretion of the board of trustees....[46]

Colorado statutes leave to the discretion of the local boards of education the establishing of "cut-off" enrollment dates for beginning students. The Colorado Supreme Court in 1953 emphasized that a "cut-off date" is necessary in the proper and efficient regulation of school affairs; that a child must start at the beginning of the school year to be well ordered and to maintain uniformity of program; that where children are permitted to enter school during all months of the school year it retards the earlier children and discourages the later children who develop a feeling that they are not as smart as the older pupils. The court in this case ruled that the local boards of education were within their statutory authority when they established "cut-off dates." However, they ruled that in the case where a child had been attending the first grade in another state, although he was not six years of age until December 31 of the school year, was eligible to receive first grade instruction in the Colorado school during the second semester. It was pointed out by the court that:

> The evidence which was admitted concerning the...establishment of a "cut-off date" for enrollment of beginners is not

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[46]Harkins et al. v. School District No. 4 of Maricopa County et al., 79 Ariz. 287, 288 P. (2d) 777, (1955).

> applicable to the case of the child who seeks admission to the first grade by transfer from another school.[47]

It may be drawn from the preceding paragraphs that eligibility with respect to age to attend free the public schools follows the statutes of the state. In some states statutory provisions bar from admittance into the public schools any child who has not reached a specified age by a certain calendar date. The "cut-off dates" tend to vary from September 1 to January 1. Many states leave to the discretion of local boards of education the right to establish "cut-off dates" for admittance in the first grade. The courts have upheld these "cut-off dates," so long as they are reasonable, apply to all alike, and do not deprive any person the rights guaranteed to him by the State or Federal Constitution.

Home or Private Instruction in Lieu of School Attendance. Discussion to this point in the study tends to assume that all people desire to obtain the privilege to attend free public schools. However, in order to create an enlightened citizenry in keeping with the principles and ideals of the American form of government, and in order to prevent children reared in America from remaining ignorant and illiterate, compulsory attendance laws have been passed. When the states assumed the responsibility for the education of all the children of all the people, compulsory attendance laws became necessary in order to prevent the growth of an uneducated segment of the population.

Compulsory attendance laws are now common to all the states. The power of states to require the education and training of their children

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[47] Simonson et al. v. School District No. 14, Sup. Ct. Colo., 258 P. (2d) 1128.

is well established. Courts have continued in their decisions to uphold this right of the states. As was ruled by the courts many years ago, free schooling furnished by the state is not so much a right granted to the pupils as it is a duty imposed upon them for the public good. This principle has continually been upheld by the courts as valid. The object of the compulsory school attendance law is, then, that all children shall be educated. Under compulsory school attendance law statutes, parents may be required to relinquish custody of their children during specified years in order that they may attain minimum educational standards. Although the compulsory school attendance laws have as their purpose to insure the education of all children of all the people, they do not specify that the children shall be educated in any particular manner or place.

The Supreme Court of the United States in an historical opinion ruled that no state has the authority to require children to attend the public schools exclusively. It was held that a requirement of this type is in violation of the Fourteenth Amendment to the Federal Constitution.[48]

Even though the case cited in the preceding paragraph held that the state could not require a child to attend the public schools exclusively, it has been held that instruction received outside the public schools must be equivalent to that provided in the public schools for children of similar grades and attainments. Litigation in this area of school law continues to flourish. Such questions as: Do the compulsory

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[48]Pierce v. Society of the Sisters of the Holy Names of Jesus and Mary, 268 U.S. 510, 39 A.L.R. 468.

attendance laws violate the religious principles of the parents? Do the parents have the right to employ private tutors or offer home instruction for their children rather than be compelled to send their children to the public school? Does instruction at home by the parent of the child satisfy the requirement that the child attend a public, private, or parochial school? What are the qualifications for an instructor in a private, parochial, or home instructional program? These and similar questions have continued to come before the courts. Answers to some of the questions pertaining to home instruction, as gleaned from the cases ruled upon by the courts of record, are presented in this section of the study.

As a rule, the courts have held that the compulsory school attendance laws are not in violation of parents' religious principles. In a case before the Supreme Court of Appeals of Virginia in 1948, the plaintiffs in error appealed a decision handed down by the Nottoway County, Virginia, Circuit Court in which the plaintiffs in error were found guilty of violating the compulsory attendance law. Their defense lay in the fact that they felt the enforcement of the compulsory attendance statute infringed upon their right to "raise, instruct, and educate" their children as they saw fit as long as the children were given proper education. They contended that according to the Bible the parent is charged with the responsibility of teaching and training his children in the ways of life. The opinion stated that:

> The religious beliefs of the defendants (plaintiffs in error) in the case at bar do not exempt them from complying with the reasonable requirements of Virginia laws. The Constitutional protection of religious freedom, while it insures religious equality, on the other hand does not provide immunity from compliance with reasonable civil requirements imposed by the state. The individual cannot be permitted, on religious

> grounds, to be the judge of his duty to obey the regulatory laws enacted by the state in the interest of the public welfare.[49]

Litigation involving parents who believed that compulsory attendance laws violated their religious principles was also ruled upon by the Supreme Court of Washington in 1959. The court in brief but concise terms stated that "We find no merit in the contention...that they are excused from the penalties of the compulsory school attendance law because school attendance is repugnant to their religion."[50] The religious belief of parents that it is their duty to train and teach their children, although undoubtedly sincere, has been ruled in the cases cited above, as well as in cases before the courts at earlier dates, as not sufficient in itself to exempt them from abiding by the compulsory education laws.

Home instruction has, however, been ruled as satisfying the provision that all children shall be educated. Instruction at home in order to exempt a parent from penalties imposed for violation of compulsory attendance requirements must meet certain qualifications. Basically, according to the Illinois Supreme Court, "No parent can be said to have a right to deprive his child of educational advantages at least commensurate with the standards prescribed for the public schools...."[51] It was also stated that, "Those who prefer this method (home instruction)...have the burden of showing that they have in good faith provided

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[49] Rice et al. v. Commonwealth, 188 Va. 224, 49 S.E. (2d) 342.

[50] State ex rel. Shoreline School District 412 v. Superior Court, Sup. Ct. Wash., 346 P. (2d) 999.

[51] People v. Levisen et al., 404 Ill. 574, 90 N.E. (2d) 213.

an adequate course of instruction in the prescribed branches of learning."[52]

Findings in an Oklahoma case heard in 1922 in explaining the requirements necessary for home instruction to satisfy the compulsory education law were, "So long as the child's education was not neglected,...these parents...had a right to manage and supervise the education of their child, if done in a fitting and proficient manner."[53]

In a recent Oklahoma case in which the parents testified they had established a room equipped with teaching desks, globes, books, and other teaching aids, had established a daily routine including the teaching of reading, writing, arithmetic, Bible study, general health and cleanliness, and further the mother was qualified to instruct her children, it was ruled that this type home instruction satisfied the statutory attendance laws of the state.[54]

The New York State Supreme Court in 1950 referred to the cases of Wright v. State, 21 Okla. Cr. 430, 209 P. 179, and People v. Levisen et al., 404 Ill. 574, 90 N.E. (2d) 213, as references when they concluded that, provided instruction given is adequate and the sole purpose of nonattendance at the public school is not to evade the compulsory education statute, instructions given to a child at home by a parent, who is competent to teach, satisfies the requirements of the compulsory education law.[55]

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[52]Ibid.

[53]Wright v. State, 21 Okla. Cr. 430, 209 P. 179.

[54]Sheppard v. State of Oklahoma, Cr. Ct. of App. Okla., 306 P. (2d) 346, (1957).

[55]People v. Turner, 277 App. Div. 317, 98 N.Y.S. (2d) 886.

Three cases brought before the courts of record since 1950 have ruled that home instruction cannot be considered as satisfying compulsory attendance law requirements. In two of the three cases state legislation deleted the home instruction proviso as a reason for not attending school. The Supreme Court of Kansas ruled in 1963 on an appeal from a conviction and fine for violation of the compulsory attendance law in which the parents contended they preferred to teach their children at home, that they were properly qualified, and that it was within their rights to teach their children at home. The court in its opinion stated that:

> Under the statutes applicable to the instant case, we are of the opinion that any school in order to be classed as a private school must at least meet the course of instruction requirements...(as established by statute), and the children must be taught by a competent instructor in the English language for the prescribed time as required by 72-4801 (statute). It is our further opinion that any parent who sends a child to a school that does not meet these sketchy requirements is subject to the penalty provisions of the truancy act. In the instant case the defendant's attempt to operate a private school resulted in mere scheduled home instruction, which is no longer an excuse for nonattendance in the schools of the types prescribed in the act.[56]

The Washington Court case previously cited also ruled that although the parents maintained the teaching of their child in the home was comparable to that of the public schools and they insisted that she was attending a private school as contemplated by law, the home instruction did not meet the qualifications of a private school and therefore could not satisfy the requirements of the compulsory attendance law.[57]

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[56] State of Kansas v. Lowry, 191 Kans. 701, 383 P. (2d) 962.

[57] State ex rel. Shoreline School District No. 412 v. Superior Court, Sup. Ct. Wash., 346 P. (2d) 999, (1960).

A New Jersey case is an example of a ruling in which the question of whether home instruction could be considered as an equivalent to instruction in the public schools. In the 1950 case, it was held that the instruction received was not on par with the program provided in the public schools for children of similar grades and attainments. The court, in explaining the reasoning used to reach the opinion, stated that the children receiving the home instruction,

> ...had no opportunity to associate with other children; that the only children they had an opportunity to associate with were their brothers and sisters; that this in itself was a disadvantage to the children and indicating that the philosophy of modern life is for people through social intercourse with one another to learn to better live in our modern world ....the entire lack of free association with other children being denied to these two students in question which is afforded them at public school leads to the conclusion that they are not receiving education equivalent to that provided in the public schools.[58]

It has been declared that instruction in a private school must also be equivalent to instruction received in the public school in order to be considered as a substitute for attendance in the public school to satisfy requirements of compulsory attendance laws. An appeal from a conviction and fine for failure to send their children to school was filed with the Fourth District Appellate Court of Illinois in 1962. The parents justified their action on the ground that they had organized a private school for them. Testimony disclosed that no attendance records were kept; there were no registration cards, and none of the teachers was certificated. In the opinion it was stated that:

> ...the jury could properly find from the evidence beyond a reasonable doubt,...that at the time of the trial the private

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[58] Knox v. O'Brien, 7 N.J. Super. 608, 72 A. (2d) 389.

> school was still disorganized, lacking in system, with mostly inexperienced teachers attempting to teach from textbooks without uniformity....[59]

It was concluded by the appellate court that evidence indicated the parents failed to provide an instructional program equivalent to that furnished in the public schools, and therefore they were guilty of violating the state compulsory attendance law.

From the facts presented pertaining to home and private instruction as a substitute for public school attendance it was found that: (1) The object of compulsory education laws is that all children shall be educated, not that they shall be educated in a particular manner or place; (2) Compulsory attendance laws are common to all the states; (3) No state has authority to require children to attend the public schools exclusively; (4) Generally, it is held that compulsory attendance laws are not in violation of parents' religious principles; (5) Home instruction, unless contradictory to statutes and meeting certain requirements, has been ruled as satisfying the provisions of compulsory education; (6) Instruction given in the home must generally be equivalent to education available in the public schools in order to meet the compulsory education law requirements; (7) Some states have legislation against accepting home instruction as a substitute for private or public school attendance; and (8) The State of New Jersey Courts have held that although home instruction may be given by a competent teacher, because of the lack of free association with other children the education is not equivalent to that provided in the public schools.

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[59] People of the State of Illinois v. John R. Harrell, 34 Ill. App. (2d) 205, 180 N.E. (2d) 889.

Chapter II of this study has been devoted to a presentation of material pertaining to residence and age factors for admission and attendance in the public schools as well as a summary of recent court interpretations of litigation dealing with home or private instruction as a substitute to satisfy the compulsory school attendance requirement. Specific topics which have been discussed are: (1) Right to Attend School, (2) Residence As a Factor for Admission, (3) Residents of Charitable Institutions, Foster Homes, and Orphanages, (4) Rights of Pupils Residing on Federally Owned or Controlled Property, (5) Rights to Admission of Nonresidents, (6) Age As a Factor for Admission, and (7) Home or Private Instruction in Lieu of School Attendance.

Reserved for the chapter to follow is an analysis of litigation pertaining to regulations and conditions which may legally be established by state legislatures or local school officials and which must be met by a student in order to be eligible to be admitted to the free public school.

CHAPTER III

GROUNDS FOR REJECTION OR EXCLUSION FROM SCHOOL ADMISSION AND ATTENDANCE

An analysis of litigation involving residence and age requirements as well as the rights of nonresidents and the right of parents or guardians to provide home or private instruction in lieu of school attendance was presented in Chapter II of this study. Another area in which much litigation has been brought before the higher courts will be presented in this chapter. These controversies may be classified under the heading of "Grounds for Rejection or Exclusion from School Admission and Attendance." More specifically, this section of the study is to be devoted to an investigation and an analysis of cases relating to the authority of state legislatures or local school officials to establish regulations or conditions which must be abided by in order for an applicant to be eligible to receive or continue to receive the benefits of the free public schools.

Presented in this chapter will be regulations pertaining to: secret societies, fraternities, and sororities; physical or mental defects as grounds for exclusion; vaccination requirements; right of school officials to charge tuition and incidental fees; and dress and personal appearance regulations which have been contested in the courts.

Authority to Prohibit Membership in Secret Societies, Fraternities, and Sororities. Courts, generally, have upheld statutes prohibiting the

organization of fraternities, sororities, and other secret societies in the public schools, thus making it illegal for a pupil to belong to a school fraternity, sorority, or other secret society.

The Michigan Supreme Court in 1931 ruled on the section of the Michigan General School Law making it unlawful for a pupil to join or belong to any school fraternity or student secret society, giving the school board power to suspend or expel a violator and declaring it illegal for school officials to graduate an offender. Testimony in the trial resulted in the court's finding that the pupil was a member of Phi Epsilon, that he knew the fraternity was being maintained contrary to the law and the rules and regulations of the local school authorities, and that he knew the penalties for affiliating with the fraternity. In upholding the lower court the Supreme Court Justices ruled that:

> Plaintiff joined the fraternity in defiance of the law, exhibits no contrition, and now wants his will, and not the law, to prevail. Loss of right to school credits and a graduate's diploma, based upon a willful violation of the statute, does not, by any stretch of imagination, constitute cruel and unusual punishment.[1]

Counsel for the pupil contended that the statute in question applied to secret societies and his client was not a member of a secret society. The Michigan Court answered by quoting the following from the statute:

> A public school fraternity, sorority, or secret society, as contemplated by this Act, is hereby defined to be any organization whose active membership is composed totally or chiefly of pupils of the public schools of this state and perpetuating itself by taking in additional members from the pupils enrolled in the public schools on the basis of the decision of its membership rather than upon the right of any pupil

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[1] Steele v. Sexton City Superintendent of Public Schools et al., 253 Mich. 32, 234 N.W. 436.

> who is qualified by the rules of the school to be a member of and take part in any class or group exercise.[2]

The Florida Legislature of 1943 enacted statutes banning the organization of fraternities, sororities, and other secret organizations in the public schools of Florida and prohibiting pupils enrolled therein from becoming members of such organizations. As a result of this legislation, Satan Fraternity, an unincorporated association, and others, brought suit against the Board of Public Instruction for the County of Dade seeking a declaratory decree and challenging the validity of the act. Plaintiffs challenged the validity of the act on the ground, among others, that it deprived them of their inalienable right to life, liberty, the pursuit of happiness, due process of law, and liberty of speech as guaranteed by the Constitution of the United States and the Constitution of the State of Florida.

An adverse decree was handed down by the Chancellor in the Circuit Court, and an appeal was made to the Florida Supreme Court which was heard in 1945. Most courts are in agreement with the opinion of the Supreme Court Judges in upholding this appeal when they said that:

> ...the right to attend an educational institution provided by the state is not a natural right but a public benefaction and those who seek to become beneficiaries of them must submit to such regulations and conditions as the law imposes as a prerequisite to participate. The public schools of Florida are supported by and controlled by the legislature and it may impose such disciplinary measures as it sees fit on those who attend them.[3]

The antifraternity law of Florida was found by this court to be legal

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[2]Ibid.

[3]Satan Fraternity et al. v. Board of Public Instruction for Dade County et al., 156 Fla. 222, 22 So. (2d) 892.

and that "...nothing in the act...trenches on due process, the right to assembly, equal protection of the law, or any other liberty guaranteed...." The court concluded that:

> It is pertinent to state that none of our liberties are absolute; all of them may be limited when the common good or common decency requires....Freedom after all is not something turned footloose to run as it will like a thoroughbred in a blue grass meadow.[4]

In 1944 the Legislature of Louisiana enacted legislation granting to the various parish school boards the power and authority to abolish high school fraternities and sororities. During the same year the act was attacked as unconstitutional and denial of students' constitutional rights. The Act, according to the United States District Court Judges, is not unconstitutional in denying students "due process of law" or "privileges or immunities" as citizens of the United States. They stated that:

> Because of the disciplinary measures which the state legislature and the Caddo Parish School Board are seeking to establish in the schools under their respective police authority, this student may be legally compelled to comply with these measures.[5]

Eight years later, in litigation before the Supreme Court of Oregon, the opinion of the court agreed with the opinions of the cases discussed in the preceding paragraphs. This court held that there need not be any high degree of ritual mystery to bring organizations within the category of "secret." According to these judges a pledge or oath not to reveal secrets of the society, a secret password or grip or

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[4]Ibid.

[5]Hughes et al. v. Caddo Parish School Board et al., 65 S. Ct. 562, 323 U.S. 685.

rituals including initiation ceremonies which members are obligated not to disclose, are sufficient for the organization to be classed as secret. They further ruled that when children avail themselves of the opportunity to receive education at public expense that they must "...submit to discipline of the schools and the regulations reasonably calculated to promote the discipline and high purposes for which the schools are established."[6] The Oregon Court in its ruling on the statute and the local school board regulation prohibiting secret societies ruled that no rights guaranteed by the Federal Constitution are infringed upon by the statute and stated that:

> Rules adopted by the constituted authorities for the governance of pupils of public schools must be presumed to be based upon mature deliberation for the welfare of the community....No personal right stands superior to the public welfare in this particular.[7]

Statutes prohibiting the organization of fraternities, sororities, and other secret societies in the public schools and forbidding membership of public school pupils in such organizations are held by the courts to be valid. Legislation restricting or prohibiting membership in secret societies has been upheld as constitutional and not in violation of rights guaranteed under provisions of State and Federal Constitutions. The right of the local board of education to adopt a rule or regulation controlling or prohibiting fraternities, sororities, and secret societies within the school in the absence of state legislation giving them that authority is not so clearly defined. In most cases a

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[6] Burkitt et al. v. School District No. 1 Multnomah County et al., 195 Ore. 471, 246 P. (2d) 566.

[7] Ibid.

local rule providing for nonadmission or expulsion of pupils holding membership in secret societies has been considered valid and within the authority of the local board.

Controversy between a student and the Board of Education of the City of Durham, North Carolina, over the right of the Board to adopt a resolution relating to membership of pupils in secret societies and fraternities was appealed to the Supreme Court of North Carolina in 1944. The opinion of the court in this case represents the majority of the rulings on the prerogative of the local school officials to adopt policies regulating or prohibiting secret societies in the absence of statutes empowering them with that authority. The judges ruled that membership in secret societies in the public schools is subject to regulations of the local board; the regulating of these organizations is within the authority vested in the board by law; such regulations do not constitute unlawful discrimination against the pupils, and they are considered reasonable. The following statements from the opinion are indicative of the reasoning used in their ruling:

> The state provides free educational facilities for the children of the state, and each child has a right to attend the schools of his district. But this is not an absolute right. Schools to be effective and fulfill the purposes for which they are intended must be operated in an orderly manner. Machinery to that end must be provided. Reasonable rules and regulations must be adopted. The right to attend school and claim the benefits afforded by the public school system is the right to attend subject to all lawful rules and regulations prescribed for the government thereof.[8]

In further explaining the relationship of the legislature to the public schools and reasoning that the City of Durham Board of Education was

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[8]Coggins et al. v. Board of Education of City of Durham, 223 N.C. 763, 28 S.E. (2d) 527.

within its legal authority to establish restrictions on membership in secret societies, the opinion states:

> The establishment and operation of the public school system is under the control of the legislative branch of the government, subject only to pertinent constitutional provisions as to uniformity. It may delegate to local administrative units the power to make such rules and regulations as may be deemed necessary and expedient, and when so delegated it is peculiarly within the province of the administrative officers of the local unit to determine what things are detrimental to the successful management, good order, and discipline of the schools in their charge and the rules required to produce those conditions....Only thus may they fully exercise the "general control and supervision over all matters pertaining to" the schools committed to their care.[9]

Among the conditions of the resolution being questioned in the North Carolina case was that membership in fraternities and secret societies would prevent the child from taking part in school activities such as intramural and interscholastic activities both athletic and literary and all other extracurricular privileges and advantages of the public school. The court in upholding the board regulation indicated that the child was not denied the right to participate in extracurricular activities but that the regulation,

> ...merely made optional with him to determine whether...he prefers to continue membership in a secret society and thereby forfeit participation in the privileges afforded by the extracurricular activities of the schools....[10]

In the case of Isgrig et al. v. Srygley et al., 210 Ark. 580, 197 S.W. (2d) 39 (1946), heard by the Supreme Court of Arkansas, it was concluded that rules of a school board declaring high school students who participate in fraternities or sororities ineligible for specific

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[9]Ibid.

[10]Ibid.

extracurricular activities and honors were authorized by statutes charging local school boards with duty of doing all things necessary and lawful for conducting efficient free public schools.

The Court of Appeals of Ohio in 1962 held that the local board of education had inherent authority under the statutes concerning the powers of boards of education to enforce the policy prohibiting pupils from participating in certain high school extracurricular activities if they maintained membership in fraternities, sororities, or other organizations of similar nature. The conclusions reached by the court were:

> ...that the Board of Education of the City of Columbus acted within the scope of its authority in adopting the regulation; ...that such authority is...inherent in the Board; that the provisions of this regulation are not unreasonable or arbitrary; that the enforcement of this regulation in a reasonable manner...will not deprive the plaintiffs of any Constitutional rights or natural privileges as citizens or pupils of the public schools; that this court has no authority to interfere with the exercise of the discretion vested in the Board of Education of the City of Columbus....[11]

In 1945 the Court of Civil Appeals of Texas also ruled that a school board under its authority to adopt regulations for the well-being of the school,

> ...may deny to pupils belonging to a secret fraternity...the right of participating in athletic, military, literary, and similar school organizations, although the meetings of the fraternity are held outside of the school house, after school hours, and with parental consent, where it is shown that such societies have a tendency to destroy good order, discipline, scholarship, and such a tendency is sufficiently shown by fraternity publications containing articles written in a spirit of insubordination to the school authorities....[12]

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[11] Holroyd et al. v. Eibling et al., Ct. of Comm. Pl. Ohio, 188 N.E. (2d) 797.

[12] Wilson et al. v. Abilene Independent School District et al., Civ. Ct. App. Texas, 190 S.W. (2d) 406.

Although the Texas Court ruled that the local school board had the power to prohibit membership in fraternities if it felt that membership in such organizations was detrimental to the efficiency of the schools, the Court concluded that attempting to extend the regulation to the vacation period was an abuse of the board's discretion. It was concluded:

> ...that the attempt on the part of the board to extend such regulations to cover the period during which the school was in summer vacation, would be an undue invasion of parental authority....to extend the rule of loco parentis to such length...would be shocking to every concept of parental authority. Furthermore, during said vacation period the teachers and pupils are scattered and it would be practically unenforceable.[13]

Cases upholding the reasonableness of the rule forbidding or regulating membership in fraternities and other secret societies point out that such organizations have a marked influence on the school by the fact that they tend to destroy discipline, good order, and scholarship. In one case, however, a Missouri Court was of the opinion that fraternity membership is not detrimental to the schools and it was held that a law forbidding or regulating such membership was unreasonable and unenforceable. Action was brought, in the Missouri case mentioned, to enjoin the St. Louis Board of Education from enforcing a rule adopted by it declaring that pupils who become and remain members of a high school fraternity are rendered ineligible to represent the school in any manner or participate in any of its graduation exercises. The court in its opinion ruled that, generally, reasons for denying public school advantages to the pupil may be left to the discretion of the board of education. They concluded however that:

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[13]Ibid.

> There is nothing shown as to the conduct of the pupils alleged to be within the purview of the rule to support the conclusion that their membership in the societies designated has proved detrimental to the operation and control of the school. We therefore...enter a decree herein perpetually enjoining the respondent from in any manner enforcing the rule in question.[14]

The view taken by the Missouri Court discussed in the preceding paragraph stands alone in the cases before the courts in recent years. Even in this case, two judges sitting on this hearing dissented to the opinion submitted by the majority.

From the cases examined and cited, it is found that the courts have held invariably that the state legislature may enact legislation prohibiting fraternities, sororities, and other similar organizations in the public schools of the state and may authorize boards of education to exclude from the public schools pupils maintaining such membership. In the absence of statutes relating to membership in secret societies, the weight of authority is to the effect that rules and regulations by a board of education forbidding membership of pupils in such organizations and recommending punishment for violation by expulsion of the pupils or declaring them ineligible to participate in certain school activities, are valid.

Physical or Mental Defects As Grounds for Rejection or Exclusion of Applicants for Admission. This section of the study is devoted to an examination of litigation brought before the courts pertaining to the right of school officials to require certain health requirements be met in order for a pupil to be eligible to receive public school privileges.

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[14]Wright et al. v. Board of Education of St. Louis, 295 Mo. 466, 246 S.W. 43.

Inasmuch as a great number of cases have been before the courts of record relating to vaccination and immunization regulations, an analysis of these cases will be reserved to a later section and will not be presented under this section of the study.

As has been pointed out, the right of a child to attend the public schools is not absolute. This right is subordinate to the general welfare. A pupil, it has been ruled, may be excluded from school if he fails to undergo a physical examination or present a doctor's certificate attesting to the satisfactory condition of his health if the local board requires either as a condition of admission. This principle is aptly illustrated by a case which arose in South Dakota. For several years the Board of Education of the City of Aberdeen School District had a resolution in force in its schools requiring pupils to obtain and furnish a "Physical Record Card" at the beginning of each school year. One side of the card was to be filled out by a regular licensed physician, with the pupil and parent having the option to use a physician of their own selection at their own expense, or the examination could be made and the card filled out by a physician furnished by the board of education at the expense of the school district. The appellant in the case had two children of school age who sought admission into the schools of respondent school district, however, appellant refused to furnish the completed "Physical Record Card" and his children were denied admission into the schools. The appellant contended that the examination called for "...may result in such mental suggestion of diseases as may result in mental disease germs,...." and the board of education was adding to the qualifications for admission prescribed by law. The South Dakota Supreme Court in its ruling in favor of the respondent school district

stated that:

> Under the regulation complained of, no person is excluded from the school, except upon his own volition. Respondents merely seek to learn those things, concerning the mental and physical condition of the pupil, which they think useful and needful in the proper discharge of the functions of the school, and especially in the proper handling of the individual pupil. The report asked for would lead to the exclusion of the pupil only...when it showed that the child was then suffering from some disease rendering it a menace to its associates.[15]

The Supreme Judicial Court of Massachusetts in 1941 in its opinion stated that:

> ...the power of a school committee to exclude children from school is very broad and is to be exercised for the "best interests of the pupils and of the people." ...protection of the health of other pupils may furnish a ground for exclusion of a child....[16]

In a case appealed from a District Court order, the Supreme Court of North Dakota ruled that school officials could deny admission to the public schools to children who were affected or were suspected of being affected by a communicable disease, and who were not under treatment at the time. The opinion stated that:

> The order of exclusion...cannot be said to be unreasonable. It only excludes those whose cases are positive and suspected, who are not at the time under treatment. The seriousness of the disease and its communicable character afford ample foundation for such an order; and, even conceding that it may be doubted in the instant case whether the children in question are affected, the doubt is one that must be resolved in favor of the authorities charged with the serious responsibility of preventing the spread of the disease.[17]

The Supreme Judicial Court of Massachusetts in an unprecedented

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[15]Streich v. Board of Education of Independent School District of City of Aberdeen et al., 34 S.D. 169, 147 N.W. 779.

[16]Commonwealth v. Johnson et al., 309 Mass. 476, 35 N.E. (2d) 801.

[17]Martin v. Craig et al., 42 N.D. 213, 173 N.W. 787.

case ruled that:

> In the exercise of their broad powers...giving the school committee general superintendency of all public schools, the decision of the committee involving the exercise of judgment and discretion, as to excluding from school a child because afflicted with head lice, is not reviewable by the courts when they act in good faith....[18]

Not only have the courts upheld the right of local boards of education in excluding pupils from attendance in the public schools for failing to meet certain physical health requirements, but they have also ruled that the local school officials may exclude children of limited intelligence who are unable to benefit from a common school educational program and who interfere with the progress of others. Such a ruling was made in a 1937 Massachusetts case when the Justices stated that "Pupils of such intellectual capacity and weakness of mind as to interfere with the progress of others may be excluded."[19]

A ruling in 1958 by the Supreme Court of Illinois agreed with the Massachusetts Court when it was concluded that:

> ...legislation does not require the state to provide a free educational program, as a part of the common school system, for the feeble minded or mentally deficient children who, because of limited intelligence, are unable to receive a good common school education.[20]

Another ruling in 1958, this by the Supreme Court of New York, also agreed with the opinions submitted by the judges in the two preceding cases. Parents of a seventeen-year-old retarded child brought a

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[18]Carr v. Inhabitants of Town of Dighton, 229 Mass. 304, 118 N.E. 525.

[19]Nicholls v. Mayor and School Committee of Lynn, 297 Mass. 65, 7 N.E. (2d) 577.

[20]Dept. of Public Welfare v. Haas, 15 Ill. (2d) 204, 154 N.E. (2d) 265.

proceeding against the Board of Education of the City of New York and others compelling the board to provide classes for their retarded child as well as other children similarly situated until they reached the age of twenty-one years. The board of education policy called for a determination of capability of the student's benefiting from further common school education when a mentally retarded child reached age seventeen. It had been determined by the school system that the child in question could no longer benefit from instruction, and he was refused acceptance into any of the classes in the school system. In the opinion handed down by this court, it was ruled that the Board of Education of the City of New York was justified in refusing to continue providing classes for seventeen-year-old mentally retarded children, "...where there was a determination that they were not capable of benefiting by further education....The Board is not required," according to the ruling, "...to stultify itself by setting up so called classes where in fact the only result can be custodial care."[21]

The case which is referred to quite often in the later opinions is one which arose in Wisconsin in 1919. In a mandamus suit to compel the Board of Education of the City of Antigo to reinstate and admit to the Public Schools of Antigo the petitioner's son who, among other defects, had a peculiar high, rasping, disturbing tone of voice, accompanied with uncontrollable facial contortions, making it difficult for him to make himself understood, and an uncontrollable flow of saliva which drooled from his mouth upon his clothing and books, causing him to present an

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[21]Elgin et al. v. Silver et al., 15 Misc. (2d) 864, 182 N.Y.S. (2d) 669.

unclean appearance. The Wisconsin Supreme Court concluded that "The right of a child of school age to attend public schools of this state cannot be insisted upon when its presence therein is harmful to the best interests of the school."[22]

From the cases cited and discussed it is found that: (1) a local board of education may establish as a condition of admission a regulation requiring pupils who desire to attend its schools to submit to a physical examination or present a doctor's statement certifying to the satisfactory condition of the pupil's general health, (2) a local board of education has power to make reasonable regulations to guard the health of the pupils in its schools, (3) a local board of education may exclude from its schools pupils who, because of their limited mental ability, can no longer benefit from common school education, and (4) a local board of education may exclude from its schools pupils whose presence is harmful to the best interests of the school.

Vaccination Requirement for Acceptance, Rejection, or Exclusion. Another frequent requirement for a pupil to be eligible for attendance in the public schools is vaccination against smallpox. In many states, children must submit to smallpox vaccination before they will be permitted to enter the schools. As pointed out in an earlier section of this study, all states have compulsory attendance laws requiring parents of pupils within certain age limits to keep the pupils in school or to provide other approved educational arrangements for them. Many cases have been before the courts in which parents have refused to abide by

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[22]State ex rel. Beattie v. Board of Education of City of Antigo, 169 Wis. 231, 172 N.W. 153.

vaccination requirements for their children. As a result, the children were excluded from the public schools, and the parents have been charged with violating the compulsory attendance laws. During the period of time under investigation in the study, i.e., the past forty years, an average of almost one case per year involving litigation relative to vaccination requirements for admission into the public schools has been before the courts of record in the United States. The writer, after investigating the cases, prepared briefs on twenty-eight of these cases.

In order to obtain the reasoning of the courts in recent years, cases cited and discussed are limited primarily to those brought before the courts during the past two decades. Although the Supreme Court of the United States has decided that the state legislature may require the vaccination of children as a requirement precedent to their right to attend the public schools, much litigation has transpired on this point of law. Two cases decided by the United States Supreme Court during the Twentieth Century clearly indicated that it is within the power of the state to enact compulsory vaccination laws as a legal means by which the public health may be safeguarded. In the case decided in 1905 the court stated that:

> In its unquestioned power to preserve and protect the public health, it is for the legislature of each state to determine whether vaccination is effective in preventing the spread of smallpox or not, and, deciding in the affirmative, to require doubting individuals to yield for the welfare of the community.[23]

In Zucht v. King, 260 U.S. 174, 43 Sup. Ct. 24, 67 L. Ed. 194,

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[23]Jacobson v. Commonwealth of Massachusetts, 197 U.S. 11, 35 Sup. Ct. 358, 49 L. Ed. 643.

(1922), the court also held that compulsory vaccination statutes are a valid exercise of the police power of the state and that "...the welfare of the many was far superior to that of the few who might resist...."

The statute in the State of New York requiring children to be vaccinated in order that they may attend the public schools was contested in 1944. It was ruled that the statute was not in violation of constitutional guarantees and was enforceable even though it might be distasteful to an individual. The court in its opinion stated that:

> The law as enacted by the State Legislature is founded on sound principle....The experience of the race has taught that to protect the health of communities...precautions must be taken against the spreading of disease; and vaccination is necessary to prevent not only sickness of the person not vaccinated, but consequences to those with whom such person might come in contact after being attacked and ravaged by the disease which vaccination prevents.
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> In a democracy laws are not made to meet the predilections of individuals....Laws are made for the protection of all, and such laws are enforced even if the law is distasteful to some individual--yes, even if the law is hateful to some individual.[24]

The Arkansas Supreme Court ruled on the validity of the compulsory vaccination requirement for school attendance in 1964, and in its ruling upholding the requirement stated "...authorities of the State of Arkansas have adopted a regulation requiring vaccination....There is no question about the validity of this regulation."[25] Just one year later, the same court concluded in its ruling on the same point of law that, "We reaffirm that the health regulation in question is a reasonable exercise of police power on a subject of paramount and compelling state interest

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[24] In re Whitmore, 47 N.Y.S. (2d) 143.

[25] Cude v. State of Arkansas et al., Sup. Ct. Ark., 377 S.W. (2d) 816.

and, therefore, is valid."[26]

A rule which requires that all pupils must be vaccinated as a condition of entry into the public schools, provided statutory authority exists, may be enforced by school officials according to the opinions handed down by state supreme courts and the United States Supreme Court. Much litigation has been in the courts in instances where permissive statutory provisions exist relating to vaccination requirements. In all the recent cases examined, the courts have ruled that the school officials may establish vaccination requirements if the legislature had delegated this authority to the local boards of education. A Kentucky case was heard in 1948 in which the parents of children excluded from the Glasgow City Schools for failure to comply with the vaccination requirements of the local board of education illustrates the reasoning used by the courts on this matter. In its ruling, the Kentucky Court stated that, "...we are convinced that the school board had the right to promulgate and enforce its own rules requiring compulsory vaccination of the children...."[27]

In a 1963 case heard by the Court of Appeals of Ohio it was concluded in the opinion that,

> ...the board still retains full authority to compel immunization to prevent the spread of communicable diseases. This

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[26]Wright et al. v. DeWitt School District No. 1 of Arkansas Co., Sup. Ct. Ark., 385 S.W. (2d) 644.

[27]Mosier v. Barren County Board of Health, 308 Ky. 829, 215 S.W. (2d) 967. State ex rel. Dunham v. Board of Education of City School District of Cincinnati, 96 N.E. (2d) 413, (1951) and Board of Education of Mountain Lakes v. Maas, 152 A. (2d) 394, (1959) are other recent cases in which the opinions uphold the right of the local board of education to establish compulsory vaccination requirements.

> they do by making and enforcing such rules and regulations to secure the vaccination and immunization of pupils. It is not required, for example, to permit an unimmunized pupil to continue in school.[28]

From the rulings on this point of law, it is held then that, when a board under permissive legislation adopts a policy requiring vaccination for admission to the schools, the effect is the same as if it were required by statute in that the threat of an epidemic does not have to exist in order for the requirement to be valid.

Of the several cases before the courts of record in recent years, the one which most adequately illustrates the majority opinion on the question of the validity of vaccination regulations in the absence of an epidemic is one brought before the Superior Court of New Jersey in 1959. The defendant had argued among other points that compulsory vaccination in Mountain Lakes was not necessary because there had been no case of smallpox for almost a decade. The court in its opinion stated that:

> The absence of an existing emergency does not warrant a denial to the regulative agency of the exercise of preventive means. A local board of education need not await an epidemic, or even a single sickness or death, before it decides upon action to protect the public. To hold otherwise would be to destroy prevention as a means of combatting the spread of disease.[29]

All other analyzed cases ruling on this point of law were in agreement with the opinion expressed by the New Jersey Court.

In many of the cases brought before the courts in connection with

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[28]State ex rel. Mack v. Board of Education of Covington, 1 Ohio App. (2d) 143, 204 N.E. (2d) 86.

[29]Board of Education of Mountain Lakes v. Maas, 56 N.J. Super. 245, 152 A. (2d) 394.

vaccination requirements, those opposing the regulation have contended the requirement is in violation to their religious beliefs and therefore violates their religious freedom as guaranteed by the Constitution. The parents in a Georgia case in 1951 objected to the immunization on the ground it was against their religious belief and the court ruled that the refusal on the part of the parents to have their children vaccinated amounted to a transgression of the rights of others when they held that, "A person's right to exercise religious freedom...ceases where it overlaps and transgresses the rights of others. Everyone's rights must be exercised with due regard to the rights of others...."[30]

In a similar case the Arkansas Supreme Court in 1965 also upheld the school officials when it ruled that the parents,

> ...are at liberty to enjoy unrestrained their religious opinions and beliefs. However, their freedom to act according to their religious beliefs is subject to a reasonable regulation for the benefit of society as a whole.[31]

It may be stated from the opinions of the cases cited and discussed that: (1) statutes requiring vaccination of children as a prerequisite to admission to public schools have been held to be a valid exercise of the police power of the state, (2) compulsory vaccination regulations adopted by local boards of education in states where permissive legislation exists have been held by the courts to be valid, (3) a threat of an epidemic does not have to be present for vaccination requirements to be valid, and (4) compulsory vaccination requirements do not violate religious beliefs of the individual.

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[30] Anderson et al. v. State, 84 Ga. Supp. 259, 65 S.E. (2d) 848.

[31] Wright et al. v. DeWitt School District No. 1 Arkansas County, Sup. Ct. Ark., 385 S.W. (2d) 644.

Rights of Boards of Education to Charge Tuition, Matriculation, or Incidental Fees. Instruction in the public schools of a district generally is free to all children of all the people who meet the residence and age requirements established by the state legislature. Most state constitutions provide for public education in which children meeting certain requirements may be educated free of charge. Likewise, those children not satisfying the established requirements are not entitled to receive free public schooling. It is well established that pupils not meeting these requirements may be excluded from attendance in the public schools unless tuition fees are paid. It was held by the Supreme Court of North Dakota in 1958 in the case of Kessler v. Board of Education of City of Fessenden, 87 N.W. (2d) 743, that a minor child not a resident of the Fessenden district, could be admitted to the Fessenden School if her admission would not injure or overcrowd the school and if her father agreed to pay tuition for her attendance.

The Supreme Court of Wisconsin in 1962 ruled that a school district may "...accept a high school pupil from some other district...provided the necessary parental agreement to pay nonresident tuition is made."[32] Not a single case was found in court records covering this period investigated which determined that a school district must admit nonresident pupils without payment of tuition by the pupil's resident district, his parents, or some other agency. On the other hand, however, the courts have ruled that, under statutes providing for the maintenance of a free common school system, a school board cannot impose a tuition

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[32]Union Free High School District No. 1 Town of Iron River v. Joint School District No. 1 of the Towns of Maple et al., 17 Wis. (2d) 409, 117 N.W. (2d) 273.

charge on a resident pupil of school age. The Supreme Court of Wisconsin ruled that the City of Oshkosh Schools could legally charge a tuition fee to two classes of pupils, those being nonresidents and those over school age. It was ruled that the school was not authorized to charge tuition of any kind to pupils meeting residence and age requirements. This was made quite clear when it stated in its opinion that:

> The pupil in a district school is just as much entitled to have manual training taught him without the exaction of a charge, if it be taught at all, as he is to have mathematics taught without being obliged to pay therefore.[33]

The Missouri Court in 1927 also ruled that it was unconstitutional for boards of education "...to require payment of a tuition fee by a minor residing in the district and entitled to gratuitous instruction in the public schools."[34] In an appeal to the Supreme Court of North Dakota the Supreme Court upheld the District Court which ruled that Williston, North Dakota Schools could not charge a fee for students who attended school over four years. The school officials had passed a resolution indicating that a fee would be charged for those students who attended school beyond four years in high school. It was their contention that the particular boy involved in this case failed to complete the requirements for graduation due to idleness, indifference, indolence, and laziness. The Supreme Court ruled in its opinion that "Payment for school privileges cannot be exacted from a bad or indolent pupil anymore than it can from a good and industrious one." In further commenting on its ruling it stated that "No statute can be found which

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[33]Maxcy v. City of Oshkosh et al., 144 Wis. 238, 128 N.W. 899.

[34]State ex rel. Roberts v. Wilson et al., 221 Mo. App. 9, 297 S.W. 419.

attempts to authorize the imposition of a tuition charge on resident children of school age."[35]

There is conflict in the opinions of the courts as to the right of a public school to exact an incidental or matriculation fee from students. In approximately one-half of the cases analyzed, the courts held that such a fee cannot be charged to resident children. A case before the Supreme Court of Georgia ruled against the charging of a matriculation fee by the board of education which indicated that the charge was necessary in order to conduct a full school term. In its ruling the Supreme Court concluded that:

> A charge for matriculation cannot be imposed as a condition precedent to the admission of children to a public school forming a part of the general school system of children living in the territory of the school and otherwise qualified....the public schools shall be free to all children of the state.[36]

Another case in which the courts ruled against the charging of an incidental fee was one brought before the Supreme Court of Arkansas in 1952. In affirming the lower courts' decision, the Justices stated that:

> ...as long as a public school is operated as such, then there must be "gratuitous instruction," as stated in the Constitution;...district cannot by indirection--such as a registration fee--violate the clear spirit and plain wording of the Constitution.[37]

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[35] Batty v. Board of Education of City of Williston et al., 67 N.D. 6, 269 N.W. 49.

[36] Moore et al. v. Brinson et al., 170 Ga. 680, 154 S.E. 141.

[37] Dowell et al. v. School District No. 1 Boone County et al., 220 Ark. 828, 250 S.W. (2d) 127. Claxton et al. v. Stanford et al., 160 Ga. 573, 128 S.E. 887, and Morris et al. v. Vandiver et al., 164 Miss. 476, 145 So. 228, are other cases in which it was ruled that a local public school cannot charge matriculation or incidental fees to its resident pupils who are of legal school age.

School authorities may, under the terms of some state statutes, charge incidental and matriculation fees for school purposes of pupils in the public schools. The Alabama Statute indicates that the schools have the right to make a matriculation charge. The local board of education with the approval of the county board of education can determine the amount of the charge. This statute was declared valid and constitutional by the Supreme Court of Alabama in 1931.[38] Again in 1957 this same court was ruling on the validity of the charging of matriculation and incidental fees to public school pupils. Again the court ruled that a board of education is within its authority to charge such fees and that such fees "...were held not to be tuition and not in conflict with a statutory requirement that a public school system be free to minors over seven years of age."[39]

From the discussion of the cases cited relating to the rights of boards of education to charge tuition, incidental, and matriculation fees, it may be stated that (1) a board of education may legally charge tuition fees to nonresident pupils, (2) a board of education cannot legally impose a tuition charge on a resident pupil of school age, (3) in some cases the courts have held that incidental and matriculation fees cannot be charged resident pupils, and (4) a local board of education may under statutory provisions charge incidental and matriculation fees

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[38] Vincent v. County Board of Education of Talladega County, 222 Ala. 216, 131 So. 893.

[39] Shirey et al. v. City Board of Education of Fort Payne, 94 So. (2d) 758. Other rulings in agreement with the opinions expressed by the Alabama Supreme Court ruling that a board of education may charge incidental fees are found in Felder v. Johnston et al., 127 S.C. 215, 121 S.E. 54, and Roberts v. Bright et al., 222 Ala. 677, 133 So. 907.

to resident pupils in the public schools.

Dress and Personal Appearance Requirements. Many court decisions have ruled that school boards have the authority to establish and enforce rules and regulations relating to pupil conduct and may exercise such power of control over pupils as may be reasonably necessary to enable school officials to effect the general purpose of education. Generally, the courts will not interfere with such matters unless a clear abuse of discretion is evident or unless the requirement or regulation is clearly unreasonable.

In agreement with the general principle that school officials may make rules and regulations governing the conduct of pupils under their control, it has been held in the few cases which have been adjudicated on the subject that school officials may prescribe the kind of dress worn by students or may make reasonable regulations as to the personal appearance of the pupils. A unique case relating to a board of education regulation pertaining to control of personal appearance of pupils in school was decided by the Supreme Court of Arkansas in 1923. The appellant, a school age child residing in School District No. 11 of Clay County, Arkansas, was contesting a local school board policy which read as follows: "The wearing of transparent hosiery, low necked dresses or any style of clothing tending toward immodesty in dress, or the use of face paint or cosmetics, is prohibited." The appellant violated this rule by the use of talcum powder on her face and was denied admission to the school as long as she continued the use of the powder. The court upheld the policy and declared it reasonable. In explaining its conclusion that the rule was reasonable, it stated that it would be proper for

the court to consider whether the rule involved any "...element of oppression or humiliation to the pupil, and what consumption of time or expenditure of money is required to comply with it."[40] The court concluded that the rule did not appear unreasonable in any of these respects, but was calculated to strengthen discipline in the school.

The Supreme Court of Mississippi passed upon the legality of a rule adopted by the trustees of a county agricultural high school requiring pupils to wear a prescribed uniform, not only while in attendance at school, but also when visiting public places within five miles of the school and on Saturdays and Sundays. This court stated that:

> This rule is not ultra vires, unreasonable and void, and applies to all students boarding in the dormitory of the school and until their return to the custody of their parents. It applies to those students who live with their parents when they are in the custody of the school authorities; that is to say, after they leave the home of their parents to attend school and until they return to the home after school is over.[41]

According to the decision however, the school did not have authority to regulate the uniform of the pupils while they were under parental control, prior to starting them to school during the day and after the pupils had returned to the home from school.

The Supreme Court of North Dakota in 1931, upheld a rule adopted by the Board of Education of the City of Langdon which prohibited the wearing of metal heelplates on shoes. The rule questioned also refused admittance to school of the offenders until the heelplates were removed. The plaintiff of the appeal, father of the child disobeying the regulation, contended that he as the parent had the right to determine the

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[40] Pugsley v. Sellmeyer et al., 158 Ark. 247, 250 S.W. 538.

[41] Jones et al. v. Day et al., 127 Miss. 136, 89 So. 906.

kind of apparel his son could wear and that the rule denied him this right. It was ruled that there was no abuse of authority and the rule was reasonable and "...there was no hardship or indignity imposed upon the plaintiff or his son by it. It is aimed at the remedying of a condition which the school authorities considered detrimental to the best conduct of the school."[42]

The reasonableness of a rule which required pupils participating in graduation exercises to wear caps and gowns was ruled on by the Supreme Court of Iowa in Valentine v. Independent School District of Casey, 183 N.W. 434. Several students refused to abide by the rule contending the garments possessed an obnoxious odor. The court ruled that it was within the authority of the board of education to establish such a rule; however, it also ruled that the pupils defying the rule could only be denied the privilege of participating in the ceremony, and the school authorities were obligated to deliver diplomas to the students if they had met all other requirements for graduation.

A case recently heard by the Supreme Court of Alabama also dealt with the right of school officials to prescribe a particular uniform. The appellant's daughter was suspended from the public school for refusing to participate in the physical education program prescribed for the school. Refusal was based on the ground that the costume prescribed for the students while participating in the course was "immodest and sinful" according to the religious beliefs of the appellant. The Alabama Supreme Court held that the student on the basis of religious principles "...was not required to participate in exercises which would be

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[42]Stromberg v. French et al., 60 N.D. 750, 236 N.W. 477.

immodest in ordinary apparel, nor was she required to wear a prescribed outfit...."[43] It was declared, however, that the pupil was obligated to attend the physical education course, and such requirement could not be considered as violating her constitutional rights.

From the relatively few cases before the courts of record contesting the right of school boards to establish regulations on dress and personal appearance of pupils it may be stated that: (1) a board of education may establish reasonable regulations pertaining to personal appearance of its pupils, (2) a board of education may generally establish regulations pertaining to the dress of its pupils, (3) the courts will uphold regulations pertaining to dress and personal appearance of pupils unless the rule is clearly unreasonable.

The writer has presented in Chapter III an analysis of litigation relating to certain requirements and regulations which must be met by a pupil in order to qualify for admittance and attendance in the public schools. Topics which have been discussed in this chapter are: (1) Authority to Prohibit Membership in Secret Societies, Fraternities, and Sororities, (2) Physical or Mental Defects As Grounds for Rejection or Exclusion of Applicants for Admission, (3) Vaccination Requirement for Acceptance, Rejection, or Exclusion, (4) Rights of Boards of Education to Charge Tuition, Matriculation, or Incidental Fees, and (5) Dress and Personal Appearance Requirements.

The following chapter will include a presentation of an analysis of controversies brought before the courts dealing with the right of boards

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[43] Mitchell v. McCall et al., 143 So. (2d) 629, (1962).

of education to assign pupils to particular schools or classes as well as the right of the school officials to classify pupils on the basis of certain factors.

CHAPTER IV

BOARD'S RIGHT TO ASSIGN AND CLASSIFY PUPILS

To this point in the study, attention has been devoted to an analysis of litigation pertaining to requirements for admission and attendance in the public schools as well as the rights of boards of education to reject or exclude pupils from attendance for failing to abide by certain regulations. It has been held generally by the courts that children must, in order to be eligible for free public school privileges, meet certain resident and age requirements. The majority of the courts have also held that students, although meeting age and resident requirements, may be excluded from the schools for failure to submit to certain other rules and regulations.

Another area related to pupil attendance in which there has been considerable litigation may be designated as the "board's right to assign and classify pupils." This section of the study is devoted to the analysis of court decisions pertaining to this area of law. Specifically, the topics discussed may be classified as (1) the right of boards of education to assign pupils to particular schools or to a particular attendance area, (2) the right of boards of education to assign pupils to a particular class or program, and (3) the right of boards of education to classify pupils on the basis of age, scholarship, or other such factors.

Board's Right to Assign Pupils to Particular School. One of the most fertile fields for litigation in law related to the public schools in recent years involves the question of the rights of boards of education to designate the particular school which a child may attend. The National Reporter lists forty-four cases which have been before the courts of record since 1940. Seven of these forty-four cases have been decided since 1963. After examining the forty-four cases recorded, the writer of this study prepared briefs on twenty-six of the cases which appeared to be most pertinent to the investigation.

Pupils, as a rule, attend the school nearest their residences which offers the desired level of instruction. However, the fact that a certain school is near and convenient to his residence does not give him the right to attend that school. This is not an inherent right. The pupil has no legal right to attend a particular school merely because he resides in the district or because of his parents' desire for him to attend a specific school. The authority to assign pupils to a specific school has generally been considered as coming within the broad discretionary power of the boards of education. A ruling by the Supreme Court of New York upheld this point in 1964 when it held that "...the choice of schools must be left to the sound discretion of the board; otherwise, there would be chaos in the administration of the school system."[1]

Another case contesting the right of boards of education to assign pupils to a school not as conveniently located as another school in the same district was Galston v. School District of City of Omaha, 177 Neb.

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[1]Katalinic et al. v. City of Syracuse and the Board of Education of the City of Syracuse, 44 Misc. (2d) 734, 254 N.Y.S. (2d) 960.

319, 128 N.W. (2d) 790, which came before the Supreme Court of Nebraska in 1964. The Omaha City School District had adjusted the attendance area of two new elementary schools "...to more evenly use their capacities and facilities." As a result of the change, several students were transferred from one school to another. One child was forced to walk over two miles to and from school. His parents brought action, asking the court to declare the board's action void and directing the board to admit the child to the school in the former attendance area. It was held by the court that the evidence did not sustain the findings that the board's action in changing the boundaries was unreasonable or arbitrary, but was valid.

It was ruled by the Supreme Court of Idaho in Cameron et al. v. Lakeland Class A School District No. 272, Kootenai County, 353 P. (2d) 652, (1960) that the "...assigning of students to certain buildings within the district...." was a matter within the discretionary powers of the board of trustees of the school district. The Alabama Supreme Court also issued an opinion in 1964 on the board's right to assign pupils. Its judgment on the point was clearly made when it ruled:

> We point out that in regard to the placement, assignment, and transfer of pupils from one public school to another public school within a city or county school system, the Legislature of Alabama has conferred such authority on the city and county boards of education, referred to as the "local boards of education."[2]

In still another 1964 ruling, this one by the United States Court of Appeals, Tenth Circuit, it was ruled that the board of education is empowered with the right to assign pupils to its schools. The

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[2]Opinion of the Justices, 160 So. (2d) 648.

appellants contested the right of the Kansas City, Kansas, Board of Education to change the attendance area boundary lines "...for the purpose of balancing the enrollment of the two schools involved." According to the decision of the United States Court of Appeals, "The drawing of school zone lines is a discretionary function of a school board and will be reviewed only to determine whether the school board acted arbitrarily."[3] It was ruled in the Kansas City case that there was no indication the board acted arbitrarily. The Sixth Circuit, United States Court of Appeals agreed with the opinion expressed by the Tenth Circuit Court when it ruled, "We cannot draw school zone lines. That is a discretionary function of the school board."[4] This court also indicated that there must be evidence indicating the board abused its discretion or acted arbitrarily in its functioning before the courts would rule against them.

In an Oklahoma case the Board of Education of the City of Vinita decided to close an elementary school and transfer the pupils in this school to other schools within the system. This decision was reached after it was shown that the four-room building to be closed was in need of repairs and did not have a cafeteria. As a matter of economy, the board of education elected to close the school and transfer the pupils in this school to other buildings. Residents opposed to closing the school claimed the board of education acted arbitrarily in deciding to close the school without notice to the residents, that property values

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[3] Downs et al. v. The Board of Education of Kansas City, U.S. Ct. App. Tenth Circuit, 336 F. (2d) 988.

[4] Northcross et al. v. Board of Education of the City of Memphis et al., U.S. Ct. App. Sixth Circuit, 333 F. (2d) 661.

in the neighborhood would be lowered because of the closing of the school, and the children would be forced to cross railroad tracks in order to reach other schools. The Supreme Court of Oklahoma in its 1962 opinion concluded that closing the school and transferring the pupils to other schools was within the discretionary powers of the local board of education and that it had not abused its discretion in this matter.[5]

A North Carolina case is one of the very few cases in which the courts have ruled against a board of education in the matter of assigning pupils to a particular school. In this case, In re Reassignment of Hays, 261 N.C. 616, 135 S.E. (2d) 645, the student who wished to continue in the school which she attended the previous year was denied this request and assigned to another school within the Fremont School District. Her request to continue in the same school was based on the fact that it offered foreign language courses which were not available in the school to which she was assigned. The lower court had appointed a referee who concluded that in the best interest of the girl the board should permit her to reenter her former school. The referee's decision was accepted by the lower court and it ordered the Fremont School officials to reassign the student to her former school. From this ruling the board of education appealed the case to the Supreme Court of North Carolina. The Supreme Court ruling upheld the lower court's decision that the board of education was unreasonable in its failure to reassign the pupil to her former school in order that she could take advantage of the foreign language offerings.

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[5]Board of Education of City of Vinita v. City of Vinita ex rel. Denney, Sup. Ct. Okla., 376 P. (2d) 256.

A Utah Supreme Court opinion gave in detail a thorough and clear explanation of its reasoning when it stated:

> In the orderly administration of the school system, to prevent overcrowding at some schools, to insure an adequate teaching faculty, rooms, seats, equipment, grounds for recreation, to protect health, and secure to all children the greatest possible amount of contact with, and personal attention from, the teachers, that their individual needs may be met (as well as convenience in attending school), districts are maintained, and even assignment of pupils within a district to particular schools is authorized and necessary.
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> ...to secure to every child in the state the maximum benefit of the school system, the assignment of children to particular schools is often essential. Economy and efficiency in school operation and administration, as well as effectuating and making possible harmonious development and growth of all school children, would be seriously impaired were students permitted to shift or change, at their own volition, from one school to another.[6]

This opinion delivered in 1938 has generally been upheld by the courts during the past quarter century, except in those cases in which evidence indicated the board of education acted arbitrarily or was unreasonable in its ruling.

It may be stated that: (1) pupils ordinarily attend the school nearest their residence, (2) the board of education, not the pupil or parent, has the right to determine which school the pupil is to attend, (3) the board of education has power, in the exercise of reasonable discretion, to designate school zone lines within the district, to determine the area that a particular school is to serve, and to require the students in that area to attend that particular school, and (4) the board of education must not act arbitrarily or unreasonably in forming policies regarding the assignment of pupils.

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[6] Logan City School District v. Kowallis et al., 94 Utah 342, 77 P. (2d) 348.

Board's Right to Assign Pupils to Particular Class. In the preceding section of this chapter it was stated that the assignment of pupils to particular schools within the district rests upon the local school officials, and the courts will not interfere with this discretionary power of the boards of education unless it is shown that the board's action is arbitrary or unreasonable. Not only do school authorities generally have the discretionary authority to assign pupils to particular schools, but it has also been ruled that the boards of education are charged with the responsibility of assigning pupils to various classes as they in good faith believe will best promote the interests of education.

Parents legally cannot insist that their child be admitted to any particular class or group. A parent in New York sought through the courts an order compelling the board of education to admit his son, 10.7 years of age, who had completed the sixth grade, into a two year special progress junior high school class. One of the requirements of the accelerated program was that the students must, among other conditions, have reached at least 11.3 years of age at the time school begins. The petitioner contended that the age factor was arbitrary and without legal foundation. The respondent board of education insisted that the norms adopted are not arbitrary and the additional year aids in the child's overall development. This 1962 New York Supreme Court ruled that:

> Requirement of Board of Education that pupil must be at least 11.3 years of age for admission to the two year special progress class, which is accelerated to cover a regular three year junior high school course in two years, was proper....[7]

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[7]Ackerman v. Rubin et al., 35 Misc. (2d) 707, 231 N.Y.S. (2d) 112.

Another New York case agreed with this ruling when the court declared that although a particular child was entitled to attend the school, "...his parents did not have the right to insist that the child be admitted to a particular grade or class in the public school."[8] The Supreme Court of New York further ruled in this case that "...the board of education has the power to provide rules and regulations for promoting from grade to grade...."[9]

School authorities may, according to some rulings, utilize reasonable methods to test pupils' fitness for admission to a certain grade or class. Such a ruling was given by the Kansas Supreme Court when it stated:

> That children of suitable age are entitled to attend the public schools at the place of their residence is not doubted, but the department to which they are to be assigned is a matter to be determined under appropriate regulations adopted by the governing board. The Board of Education is charged with the duty of making rules for the government of the City Schools. It is proper, if not absolutely necessary, that some provision should be made for determining whether an applicant who presents himself for admission to a particular department has had the preliminary training to justify his assignment thereto. Two obvious methods for accomplishing this result present themselves. One is to test the prospective pupil's actual qualifications by an examination....[10]

Thus prospective pupils may be tested by examination to determine their qualifications for a particular class. The determination of the matter, according to the Kansas Court, "...is a function of school authorities, and its correctness, if arrived at by the exercise of their fair and

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[8]Isquith v. Levitt et al., 285 App. Div. 833, 137 N.Y.S. (2d) 497.

[9]Ibid.

[10]Creyhon et al. v. Board of Education of City of Parsons, 99 Kans. 824, 163 Pac. 145.

candid judgment, is not open to judicial review."[11]

Another problem in regard to assignment of pupils to a particular class arises when special classes are organized for pupils who, because of some physical or mental illness, are unable to participate normally with the group of which they would ordinarily be a member. Parents of a child with a speech difficulty brought an action of mandamus to compel the Board of Education of the City of Antigo, Wisconsin, to reinstate their son to the public schools of Antigo. In its opinion the Wisconsin Supreme Court stated that:

> It cannot be said that the school board...acted unreasonably in removing a child from a public school and placing him in a day school maintained...for the instruction of deaf persons or persons with defective speech....[12]

A ruling by the Supreme Court of New York in 1962 also held that a board of education has authority to assign special pupils to a school organized specifically to care for them when it stated, "Determination of public school officials...that student be sent to a special service school rather than continue in junior arts program necessarily involved administrative determination."[13]

The courts of record hold, then, that a board of education may assign pupils to schools or special classes organized for handicapped children, and where such assignments are reasonable and will best afford all eligible children in their district an opportunity to receive the benefits of an education, such assignments will be sustained by the

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[11]Ibid.

[12]State ex rel. Beattie v. Board of Education of City of Antigo, 169 Wis. 231, 172 N.W. 153.

[13]Realy v. Caine, 16 A.D. (2d) 976, 230 N.Y.S. (2d) 453.

courts except in a case where there is an abuse. The Ohio Supreme Court clearly stated this principle when it declared that:

> ...broad power and discretion are conferred upon boards of education to so assign pupils...of their district as they in good faith believe will best promote the interests of education. The court cannot control that discretion or substitute its own discretion for that of the board of education.[14]

From the cases cited and discussed it may generally be stated that: (1) a board of education has broad discretionary power to assign pupils to a particular class, (2) a parent has no legal right to insist that his child be assigned to a particular class or grade, (3) a board of education may employ reasonable methods to test pupils' fitness for admission to a certain class or grade, and (4) the courts will not interfere with this discretionary power of the board of education unless the board has acted unreasonably.

Board's Right to Classify Pupils on Basis of Scholarship, Sex, or Other Factors. Not only is it within the discretionary or implied powers of the board of education to assign pupils to particular schools within the school district and to assign pupils to particular classes or programs within the schools, it has also been adjudicated that the classification of pupils is purely an administrative function inherent in the local school authorities. The same school officials, having overall control and supervision of the admission of pupils to the public schools, generally are held to have discretionary power to adopt rules and regulations classifying pupils.

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[14]State ex rel. Lewis et al. v. Board of Education of Willmington School Dist. et al., 137 Ohio St. 145, 28 N.E. (2d) 496.

The Supreme Judicial Court of Massachusetts declared in its opinion that "The right given to every child...to attend the public schools, is not unqualified, but is subject to such reasonable regulations as to... qualifications of pupils to be admitted...as a school committee shall from time to time prescribe."[15] Determination of the work for which a child is prepared is a matter over which the board has jurisdiction.

It was held by the Supreme Court of Kansas that a board of education rule which required all persons coming from nonpublic elementary schools to pass an entrance examination in order to determine the grade of work for which they were qualified was a reasonable rule. "Where such a rule exists," the court ruled, "graduates of a parochial school cannot obtain a right to be admitted to the high school without an examination...."[16] According to this Kansas Court the establishing of such a rule was a function of the school authorities.

In Williams et al. v. Zimmerman et al., 172 Md. 563, 192 A. 353, the court declared that the rule of the board of education requiring the administering of an entrance examination to all prospective high school students to determine their qualification was held to be reasonable so long as all children were given equal treatment and partiality was not shown to any group.

The United States Court of Appeals, Fifth Circuit, in 1963 upheld an Atlanta, Georgia, Board of Education policy requiring that students desiring to transfer to certain schools submit to special intelligence

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[15]Alvord v. Inhabitants of Town of Chester, 180 Mass. 20, 61 N.E. 263.

[16]Creyhon et al. v. Board of Education of City of Parsons, 99 Kans. 824, 163 Pac. 145.

tests, and that their score must equal the average score for the students in that school. Results of a scholastic ability and an achievement test routinely administered to every child in the grades in question were used in considering the applications. Such a requirement was within the realm of authority of the school officials if administered to all alike according to the court opinion. In commenting further on its ruling the court declared that:

> The courts are ill equipped to run the schools. Litigants must not ignore school officials, and school officials must not abdicate their function to the courts. They, like the courts, are bound by the constitution as interpreted by the Supreme Court.[17]

Again in 1964, this same court ruled on the right of a board of education to use tests in determining the placement of students. The Fifth Circuit United States Court of Appeals Justices ruled that "...it goes without saying that there is no Constitutional prohibition against an assignment of individual students...on a basis of intelligence, achievement or other aptitudes upon a uniformly administered program...."[18] A similar decision was handed down by the United States District Court in Youngblood et al. v. Board of Public Instruction of Bay County, Florida et al., 230 F. Supp. 74, a case in which the same point of law was questioned. This court sitting in 1964 again stated that the board of education may assign or classify individual students "...on a basis of intelligence, rate of achievement, or aptitude upon a uniformly administered program." It not only has been universally ruled

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[17]Calhoun et al. v. Latimer et al., U.S. Ct. App. Fifth Circuit, 321 F. (2d) 302.

[18]Stell et al. v. Savannah-Chatham County Board of Education et al., U.S. Ct. App. Fifth Circuit, 333 F. (2d) 55.

by the courts that a board of education may use tests as a basis for determining a pupil's qualifications for placement in grades or classes, but the courts have also ruled that a child may be excluded from school for not performing at a certain standard. The Supreme Judicial Court of Massachusetts in 1941 ruled on this point. In its opinion it stated that:

> ...the power of a school committee to exclude children from school is very broad and is to be exercised for the "best interests of the pupils and of the people...." For example, the failure of a child to maintain a given standard of scholarship may justify exclusion of such child from school by school committee....[19]

Not only has it been held that school boards have authority to classify pupils on the basis of scholarship, but classification on the basis of sex has also been approved. Without a doubt a classic case, which has been referred to many times, is one that was heard in 1872. The opinion handed down clearly reflected the feeling of the court when it stated that:

> This general position is, however, to be taken subject to the very great powers of the trustees to arrange and classify the schools as they deem for the best interests of the scholars. While, on one hand they may not deny to any resident person of proper age an equal participation in the benefits of the common schools....yet, on the other hand, it is perfectly within their power...to make such a classification, whether based on age, sex, race, or any other existent condition, as may seem to them best.[20]

It is quite evident from the opinions of the courts that a board of education is vested with the authority to classify pupils on the basis of scholarship and other factors as well as having the authority to

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[19]Commonwealth v. Johnson et al., 309 Mass. 476, 35 N.E. (2d) 801.

[20]State ex rel. Stoutmeyer v. Duffy, 7 Nev. 342, 8 Am. Rep. 713.

exclude pupils from its schools if the student fails to maintain a certain standard of scholarship. It has been ruled by one court that the power or authority for the placement of children may be vested in some other body. The Legislature of the State of Virginia has officially established a "Pupil Placement Board" and has given this board the power of enrollment or placement of pupils of the schools. The petitioners, in a suit to compel the Fairfax County School Board to admit their children to the County Schools, contended that the authority of enrollment and placement of pupils in the public schools rests with local school boards and not in the "Pupil Placement Board." In its opinion the Supreme Court of Appeals of Virginia stated that:

> If the legislature deems it advisable to vest the power of enrollment or placement of pupils in an authority other than the local school boards, it may do so without depriving such local school boards of any express or implied Constitutional power of supervision.[21]

This case was appealed to the Supreme Court of the United States on the grounds that the state statute violated the Fourteenth Amendment of the Federal Constitution; however, the United States Supreme Court declined to review the case.

From the cases cited and discussed it is held generally that: (1) local boards of education are vested with discretionary power to establish regulations for classification of pupils, (2) a board of education has the authority to classify pupils on basis of scholarship, (3) a board of education, it has been ruled, may classify pupils on the basis of sex and, (4) under statutory provisions, placement or assignment of

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[21] DeFebio et al. v. The County School Board of Fairfax County et al., 199 Va. 511, 100 S.E. (2d) 760.

pupils in schools may be vested in an authority other than the local board of education.

Chapter IV has been devoted to an analysis of court decisions pertaining to: (1) Board's Right to Assign Pupils to Particular Schools, (2) Board's Right to Assign Pupils to a Particular Class and, (3) Board's Right to Classify Pupils on Basis of Scholarship, Sex, or Other Factors. The final chapter of this study will include a general summary of the principles of law which may be drawn from the judicial interpretations of the cases investigated.

CHAPTER V

GENERAL SUMMARY AND CONCLUSIONS

This study has been concerned with the presentation of an analysis of litigation which has been brought before the courts of record in recent years on selected aspects of public school pupil admission and attendance; namely, requirements for admission and attendance, grounds for rejection or exclusion from school attendance, and a board's right to assign and classify pupils.

The writer made use of legal textbooks, American Jurisprudence, Corpus Juris, and Corpus Juris Secundum to determine litigation which has transpired in the area under investigation. The Fourth, Fifth, and Sixth Decennial Digests of the American Digest System were used to locate the selected cases. An investigation of the original sources was conducted by the writer with the pertinent cases being categorized according to the particular points of law under study. A detailed listing of the facts and opinions was made of all cases determined to be pertinent to this study. In Chapter II, III, and IV an analysis was presented of the court decisions on litigation which has arisen between school officials, pupils, parents, and taxpayers of the public schools dealing with admission and attendance of public elementary and secondary school pupils. Chapter V will be devoted to the presentation of the findings with a summary in statement form of the principles of law gleaned from court interpretations of the cases investigated.

It was discovered that much litigation has transpired in the areas reviewed. Approximately two hundred cases relating to the specific topics under investigation were found which had been before appeals or appellate courts during recent years. Each year, almost without exception, there has been an increase over the preceding year in the number of cases litigated which pertain to controversies dealing with public school pupils.

During the approximately fifty years covered in this inquiry there appears to be little change in the attitudes of the courts toward the public school officials. The courts still maintain, basically, that the local boards of education are the governing bodies of the public schools and their powers are relatively unlimited. As long as their policies, rules, and regulations are reasonable, as long as they do not conflict with individual rights guaranteed by the State and Federal Constitutions, and as long as they are not established and enforced in an arbitrary manner, the courts will not enjoin their enforcement.

Summary of Principles of Law Derived From the Judicial Interpretations

The principles of law related to pupil admission and attendance gathered from the analysis of judicial interpretations of litigation before the courts of record in recent years give a general picture of the legal status of pupils, parents, and school officials. These principles of law are not intended to be all-inclusive, but are points of law as interpreted from opinions by particular courts ruling on specific cases. No attempt has been made to apply the principles of law drawn from the court opinions to any particular state or area. The writer has

merely drawn from the opinions principles of law as determined by the majority of the courts.

The findings of the principles of law in statement form may be summarized as follows:

1. Public education is a function of the states.

2. Attendance in the public schools is not a natural right available to a pupil merely because he is a citizen of the United States or of a particular state, but is a political privilege for the benefit of society.

3. The privilege to attend the public schools may be extended or refused to any individual at the pleasure of the state.

4. Persons desiring to take advantage of the benefits of public school attendance must submit to or abide by the conditions imposed.

5. Free public education is available to children, otherwise eligible, whose parents are residents of the school district.

6. Residence for school purposes is considered in a broader sense than domicile required for voting purposes.

7. Generally, the courts rule that a temporary residence in a district, if for some purpose other than to take advantage of school privileges, is sufficient to satisfy residence requirement for school purposes.

8. Generally, it is held that a resident of an orphanage or other charitable institution, who has no other home, is a resident for school purposes of the school district in which the institution is located.

9. A child committed to the care and custody of an individual on a more or less permanent basis is a resident for school purposes in the district where he resides after commitment.

10. Children residing on property which is under the control and complete jurisdiction of the United States Government are not entitled to free public education in the district schools.

11. Children residing on federal lands over which the Federal Government does not possess complete jurisdiction are entitled to free public education in the district schools.

12. Generally, nonresident pupils are not entitled to free public school privileges.

13. Nonresident pupils desiring to attend the public schools may be required to pay tuition fees. These fees, in some cases, may be paid by the pupils' resident district.

14. Generally, age requirements which must be met for free public school privileges are established by state legislatures.

15. State statutes may establish requirements relative to "cut-off" dates for admittance into the schools.

16. Many local boards of education have discretionary power to establish "cut-off" dates for enrollment for the first time in its schools.

17. Compulsory attendance laws are common to all states.

18. States do not have authority to require all children to attend public schools. Pupils may attend approved private or parochial schools in lieu of attending public schools.

19. Home instruction by a competent and qualified person, if the instruction is equivalent to public school education, has been ruled to meet compulsory attendance laws.

20. Some states have legislation prohibiting the acceptance of home instruction in lieu of public school instruction. These states hold that, although the home instruction may be given by a qualified and competent teacher, this will not meet requirements for education of a child. Lack of free association with other children deemed necessary to develop the "whole child," is cited as the reason.

21. Statutes have been enacted by some states forbidding membership, of pupils in fraternities, sororities, and other secret societies. The courts have held that such legislation is valid.

22. Other states have granted permissive legislation allowing local boards of education to forbid or regulate secret societies in the public schools. This legislation has also been held to be valid.

23. Generally, it is ruled that although there is no specific legislative enactment, local boards of education possess the broad discretionary powers to forbid or regulate membership in fraternities, sororities, or other secret societies.

24. As a general rule, boards of education may establish regulations limiting participation privileges in literary, athletic, and other activities of students who are members of secret societies.

25. Pupils with physical and mental defects such that their presence in school disrupts or is harmful to other pupils may be excluded from public school attendance.

26. In general, courts hold that a board of education may require a physical examination or doctor's statement certifying to satisfactory condition of the pupil's general health as a condition of admission to public school.

27. A board of education may exclude from its schools pupils who, because of limited mental ability, can no longer benefit from common school education.

28. Almost without exception, courts have ruled that boards of education may require, as a prerequisite to public school admission, vaccination against communicable diseases.

29. Statutes requiring or authorizing vaccination against communicable diseases as a prerequisite to attendance in public schools have been held to be constitutional and not in violation of religious beliefs. There need not be a presence of, or a danger of, an epidemic in order for the requirement to be considered valid.

30. A board of education may legally charge tuition fees to non-resident pupils.

31. Courts hold that public school officials may not charge tuition fees to resident pupils.

32. Generally, school officials may not legally require resident pupils to pay fees to be used in paying teachers' salaries or extending school terms.

33. Under the terms of some state statutes, a board of education may impose on its pupils a reasonable incidental fee.

34. Rules regulating dress of pupils have been held by the courts to be reasonable and valid.

35. The courts have ruled that a board of education may regulate personal appearance of pupils.

36. A pupil has no legal right to attend a particular school within a district merely because he lives in the district.

37. Although laws provide that all children of the state have the privilege to attend the public schools, it is not intended that this right should be unrestricted.

38. It is a general rule that the local board of education possesses discretionary power to adopt regulations relating to the assignment of pupils to particular schools.

39. The board of education, not the pupil or parent, has the right to determine the particular school to which the pupil shall be assigned.

40. A board of education has the power to establish attendance area lines, designate the area to be served by a particular school, and require pupils residing within that area to attend the particular school.

41. A board of education also has discretionary power to assign pupils to particular classes or sections.

42. A parent has no legal right to insist that his child be assigned to a particular grade or class.

43. School authorities, it has been held, may utilize any reasonable method to test a pupil's fitness for admission to a particular class, grade, or section.

44. A board of education may legally assign pupils to special schools or classes established for physically or mentally defective children.

45. School authorities, according to the opinions of the courts, have the legal power to classify pupils on the basis of scholarship.

46. The classification of pupils, by school officials, on the basis of sex and other factors, has also been upheld by the courts.

47. The board of education has the right to require an examination of all prospective students to determine grade of work for which the students are qualified.

48. It has been ruled that a pupil may be excluded from school if he fails to maintain certain standards of achievement.

49. It has been well established by many courts that boards of education have general authority to make rules and regulations for the effective operation of the school. The rules must be reasonable and their reasonableness is determined by the circumstances of each particular case.

50. Enforcement of a board rule will not be enjoined by the courts unless the rule is clearly unreasonable or the officials acted arbitrarily in establishing or enforcing such rule.

51. In determining the reasonableness of a rule, a court will not substitute its own discretion for that of the board of education.

As indicated in an earlier section of this chapter, the principles of law presented above in statement form were gleaned from court opinions in specific cases. These interpretations from individual controversies should be considered with extreme care before attempting to apply them to any particular state or any particular situation. Statutory laws, case laws, and other factors relating to the particular state should be carefully analyzed prior to accepting any generalization above as applicable to a specific point of law in any state.

Recommendations for Further Study

It is quite evident that one study could not possibly analyze all judicial interpretations of the court cases, all statutes, and all constitutional laws relating to public school pupils. This study was, by necessity, limited to the investigation of the judicial interpretations from relatively recent litigation brought before the appellate courts or courts of record in connection with admission and attendance of public elementary and secondary school pupils. With the increase in the number of controversies between pupils, parents, taxpayers, and school officials reaching the courts, and with the ever increasing changes in our modern society, it will become necessary to conduct perpetual investigations of this type. Not only should investigations of the judicial opinions continue, but studies should be conducted of constitutional and statutory laws on the specific topics covered in this research and in related areas. Areas worthy of consideration for further study are:

An analysis of litigation pertaining to admission and attendance of pupils in institutions of higher learning.

An analysis of constitutional laws, statutory laws, and court interpretations of the laws relating to pupil admission and attendance of individual states.

An analysis of litigation pertaining to the legality of rules and regulations established by school officials related to controlling conduct of pupils.

An analysis of litigation pertaining to compulsory attendance laws.

An analysis of litigation pertaining to assignment of pupils to bring about forced integration.

An analysis of legal aspects involved in suspending or expelling pupils from the public schools.

An analysis of admission and attendance requirements of private and parochial schools.

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APPENDIX

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Tuition, Matriculation, or Incidental Fees

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Dress and Personal Appearance

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Assignment of Pupils to Particular Area or School

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Co. Board of Educ. of Alcorn County v. Parents and Custodians of Students at Rienzi School Attendance Center, Sup. Ct. Miss., 168 So. (2d) 814.

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Dodson v. School Board of City of Charlottesville, Va., U.S. Court of Appeals, Fourth Circuit, 289 F. (2d) 439.

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In re Reassignment of Hays, 261 N.C. 616, 135 S.E. (2d) 645.

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McEwan v. Brad, Sup. Ct., 91 N.Y.S. (2d) 565.

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State ex rel. Beattie v. Board of Educ. of City of Antigo, 169 Wis. 231, 172 N.W. 153.

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Assignment of Pupils to Particular Class

Ackerman v. Rubin, 35 Misc. (2d) 707, 231 N.Y.S. (2d) 112.

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Classification of Pupils on Basis of Scholarship,

Sex, and Other Factors

Alvord v. Inhabitants of Town of Chester, 180 Mass. 20, 61 N.E. 263.

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VITA

Thomas Jefferson Smith, Jr.

Candidate for the Degree of

Doctor of Education

Thesis: AN ANALYSIS OF LITIGATION PERTAINING TO ADMISSION AND ATTENDANCE OF PUPILS IN THE PUBLIC SCHOOLS

Major Field: Educational Administration

Biographical:

Personal Data: Born in Okemah, Oklahoma, January 16, 1927, the son of Thomas J. Sr. and Ruby Mae Smith.

Education: Graduated from Butner High School, Seminole County, Oklahoma in 1944; received the Bachelor of Science in Education degree from East Central State College, Ada, Oklahoma, with a major in Business Education, in January, 1950; received the Master of Science degree from the Oklahoma State University, with a major in Educational Administration, in May, 1955; completed requirements for the Doctor of Education degree in July, 1966.

Professional experience: Teacher in Excelsior Jr.-Sr. High School, Seminole County, Oklahoma, 1950-51; Teacher-Principal, Sams Elementary School, Seminole County, Oklahoma, 1951-54; Graduate Assistant, Oklahoma State University, 1954-55; Part-time Assistant Professor, Oklahoma State University, 1955-56; Assistant Principal, U. S. Grant Jr.-Sr. High School, Oklahoma City, Oklahoma, 1956-60; Director of Purchasing, Oklahoma City Public Schools, 1960-62; Assistant Business Manager, Oklahoma City Public Schools, 1962-66.

Professional Organizations: American Association of School Administrators; Association of School Business Officials of United States and Canada; Kappa Delta Pi; Oklahoma Association of School Business Officials; Oklahoma City Council of Administrators; Oklahoma Education Association; Phi Delta Kappa.