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The Legality of School Board Rules Governing Pupil Conduct and Discipline

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THE LEGALITY OF SCHOOL BOARD RULES GOVERNING PUPIL CONDUCT AND DISCIPLINE

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CHAPTER 1

INTRODUCTION

Scope of the Study. This study is concerned first with the rules now in force in typical American public school systems. Secondly, it is concerned with the court decisions which have resulted from cases involving rules similar to those found to be in force at the present time in American public schools. This resulted in an investigation of the most important cases in the field of pupil conduct and discipline. No attempt has been made to examine every case involving pupil administration which has come before the courts from colonial times to the present. The trends of judicial opinions and reasoning have been followed in ruling cases. This has been done to establish a basis upon which to compare the rules now in force for regulating pupil conduct and discipline, with the ruling judicial opinion concerning these rules.

In determining the nature and types of rules now governing pupil conduct and discipline, over fifty sets of rules from schools of thirty-five different states were studied. This furnished the most common rules from almost two thirds of the states in the union, representing all sections of the country.

In a study of this type, the only rules obtainable are school board rules which are a matter of record, and which have been put into printed or some other available form. Many boards have their rules recorded in their minutes, but do not have them classified and printed in rule books. In addition, there are the many rules of superintendents, principals, and teachers, which are not available in most cases.

Superintendents, principals and teachers are considered agents of the board, and any rules which they prescribe for the government of the school must have the approval of the board which delegates to them the power to make such rules. The rules of the agents of the board would, in a sense, be considered rules of the board.

This study deals only with school board rules governing pupil conduct and discipline and no consideration is given to rules pertaining to health, transportation, tuition, or admission of pupils, except insofar as any of these types of rules may be incidental to the suspension or expulsion of a pupil for a breach of conduct. No attempt has been made to study the statutes of the various states, except in cases where they have been referred to by the courts in rendering their decisions. Although no detailed study of the general subject of punishment of pupils is undertaken in this study, the punishment or penalty provided for violation of the various conduct rules is considered in connection with those rules. In certain cases the rules in themselves may be reasonable, but the punishment provided for violation of certain reasonable rules may make their enforcement illegal.

Need of the Study. A certain number of rules for the government of pupil conduct will relieve the administrative authorities of school systems of acting upon numerous minor administrative details. The absence of such rules calls for a frequent exercising of the discretion of administrative officers. As school systems grow larger it becomes necessary, in the interests of economy of time and effort, to prescribe rules to take care of the more general situations which are certain to arise in those systems. On the other hand, too many rules

are not desirable. One can hardly question the truth of the statement that "useless laws diminish the authority of necessary ones." The desirable situation would be to have enough rules to govern the usual situations, but not attempting to forsee and regulate all of the multitudinous angles of pupil conduct.

In making the necessary rules, administrative officers and school boards must know the extent of their authority as well as the rights of parents and pupils. Administrative authorities of school systems should be well enough informed about their rights and duties to avoid litigation which is likely to result from their rules and acts beyond the scope of their delegated powers.

It is probably true that the rules collected in this study are not of the type which most often come before the courts. Rules of the board which are a matter of record have been more carefully planned and may be better advised than those governing some unusual or special situation. However, following the reasoning and decisions of the courts in this study should be of assistance to administrators, enabling them to become familiar with some of the tests which courts apply to rules to determine their validity and reasonableness.

Method Employed in Making the Study. About two hundred fifty inquiries were sent out to school systems of various sizes in every state, asking if the school board had a set of rules applying directly to pupil conduct and discipline. The respondent was asked to check whether or not his school board had such rules, whether or not they were available, and what amount of postage would be required for mailing a copy of the rules and regulations. In this manner all available rules

from the schools contacted were obtained. The rules were tabulated and then classified. The subject-matter of the various rules and the penalties for violation thereof were studied.

The American Digest System, consisting of the Century Digest, the First, Second, and Third Decennial Digests, and the Current Digest were used to locate the cases in the field of pupil conduct and discipline. The cases which involved rules similar to those now in force were found in the National Reporter System and in the Reports of the various states. References were also obtained from volume 56 of Corpus Juris. The cases thus located were studied and the courts' reasoning followed. The cases covering similar rules were grouped and any evidence of well established trends in judicial reasoning, as well as agreements and conflicts in decisions, was noted. In this manner the courts' attitude toward various types of rules was determined. By comparing the rules which have come before the courts with those now in force it is possible to classify most of the rules in our study as either legal, illegal, or doubtful. Through the study of the courts' decisions it is also possible to determine the criteria by which the courts judge the legality and validity of school board rules.

Purpose of the Study. This study attempts to determine which rules are found in force in American public schools, the courts' attitude toward these rules as determined by the cases involving these rules which have come before the courts, and to point out the fundamental qualities which the courts have decreed legal rules must possess.

Source of School Board's Power to Make Rules Governing Pupil Conduct. Authority for establishing and maintaining an educational system has been vested in the state legislatures. The legislature, in most cases, passes certain statutes which establish the more general principles to be followed in carrying out the educational program. School boards are created by the legislature to carry out the administrative work involved in managing the school system. Whatever powers a school board possesses must be delegated to the board by the legislature.

> "The courts are agreed that a school district may exercise the following powers and no others: (1) those expressly granted by statute, (2) those fairly and necessarily implied in the powers expressly granted, and (3) those essential to the accomplishment of the objects of the corporation."[1]

The powers expressly granted by statute, whether general in nature or specific, are valid unless declared unconstitutional by the courts. The implied powers, and those essential to the accomplishment of the objects of the corporation, are more abstract, and differences in opinion may frequently occur concerning the legality of powers so exercised.

Extent of the School Board's Power to Make Rules Governing Pupil Conduct. In this study we are concerned only with the extent of this power as it applies to the making of rules and regulations governing pupil conduct and discipline. It is apparent that a school board can not legally make any rule which conflicts with higher authority, such as the State Department of Education, statutes, or the Constitution.

[1]Edwards, N., The Courts and the Public Schools, p. 116.

According to Corpus Juris the extent of a board's power in making rules is expressed as follows:

> "As a general rule the school board which by statute has the general charge and superintendence of the public schools has power to adopt appropriate and reasonable rules and regulations for the discipline and management of such schools.....and the decision of such board, if exercised in good faith, on matters affecting the good order and discipline of the school is final insofar as it relates to the rights of pupils to enjoy school privileges, and the courts will not interfere with the exercise of such authority unless it has been illegally or unreasonably exercised."[2]

Validity and Reasonableness of School Board Rules Regulating Pupil Conduct. When controversies arise concerning rules and regulations of school authorities, the question must be decided by higher authority, usually the courts. When called upon to judge such rules, the courts apply the test of reasonableness. According to Corpus Juris:

> "A rule or regulation in regard to the discipline and management of a public school, whether adopted by the teacher or by the school board, must be reasonable in itself. A presumption exists in favor of the reasonableness and propriety of a rule adopted by school authorities under statutory authority.....Whether a rule or regulation is reasonable and valid is a question of law for the court."[3]

Where statutes are found, the courts will be governed by them. The rules must not only be reasonable in themselves, but their enforcement must likewise be reasonable. The courts

> "will never substitute their own discretion for that of the school authorities; the enforcement of a rule will never be enjoined because, in the opinion of the court, the rule is unwise or inexpedient; a rule will not be set aside unless it clearly appears to be unreasonable."[4]

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[2] 56 Corpus Juris 853 (1932).
[3] Ibid.
[4] Edwards, N., The Courts and the Public Schools, p. 526.

CHAPTER 2

RULES GOVERNING ATTENDANCE AND EXCUSES

Attendance Rules. Most of the sets of rules examined contained a rule or rules stating that attendance must be regular and punctual. Requiring satisfactory excuses from parents or guardians for pupil absence and tardiness is likewise common. The penalty for these offenses is left to the discretion of the school authorities in most cases, although a few sets of rules provide specific punishment.

Persistent non-attendance may result in suspension or expulsion, or suspension followed by transfer to an ungraded school. Unexcused absences may result in suspension or in loss of points in recitation and six weeks grades. Persistent or habitual tardiness is punishable by suspension or by loss of ten per cent of the daily grade in the class to which the pupil is tardy. Being tardy three times in any one six weeks period is cause for suspension in some schools. One school considers habitual tardiness as truancy.

Court Decisions Concerning Attendance Rules. A school committee in Massachusetts made a rule that if a scholar were twice tardy, the teacher should send the scholar to a certain member of the committee. A pupil who was tardy for the second time was sent by the teacher to this member of the committee, but she went home instead. She was suspended until she would conform to the rules of the school. The court refused to allow damages for unlawful exclusion, contending that the making and enforcing of such a rule was a reasonable exercise of power necessary to promote the discipline of the school.[1]

[1] Russell v. Lynnfield (1874) 116 Mass. 365

The compulsory attendance laws now furnish the authority for the rules found on the subject of regular and punctual attendance. Before the enactment of such laws in the state of Iowa, a rule requiring regular attendance was upheld by the court.[2] Suspension or expulsion has been held justifiable for unexcused absences in at least three decisions.[3] A pupil was expelled for not complying with a rule requiring pupils absent more than six half-days to bring an excuse from the parents explaining the cause of the absence. The parents had been informed that the excuse was due. The court held that rule to be reasonable in that it did not violate any rights of parent or child, and that no malice was shown in its enforcement.[4]

In upholding a school board's rule which provides for suspension of any pupil who is absent without a satisfactory excuse six half-days in any month, the Supreme Court of Missouri reasoned as follows:

> ".....the continued or repeated absences of one of a class not only is injurious to the absentee, but if allowed beyond a certain point is calculated to demoralize those who attend, and derange the orderly instructions of the teacher....."[5]

In an early Vermont case, the court upheld the school committee's exclusion of a girl from school for absence contrary to the rules of the committee, although the absence resulted from the command of her Roman Catholic parents for the purpose of attending religious services on Corpus Christi day.[6]

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[2] Burdick v. Babcock (1875) 31 Iowa 562.

[3] King v. Jefferson City School Board (1880) 71 Mo. 628, 36 Am. R. 499.
Churchill v. Fewkes (1883) 13 Ill. App. 520.
Ferritier v. Tyler (1876) 48 Vt. 444, 21 Am. R. 133.

[4] Churchill v. Fewkes (1883) 13 Ill. App. 520

[5] King v. Jefferson City School Board (1880) 71 Mo. 628, 36 Am. R. 499.

[6] Ferritier v. Tyler (1876) 48 Vt. 444, 21 Am. R. 133

School authorities are likewise the judges as to the validity of such excuses. "A general statement to the effect that the parent or guardian kept the pupil home can not be accepted" is found in one set of rules. Another school includes this statement, "No mere statement that the child was detained at home with the parents' consent shall be accepted." The courts have not been called upon to rule on these provisions.

Rules and Court Decisions Relating to Tardiness. In an Indiana case[7] involving pupil tardiness, the court declared,

> "a rule requiring tardy pupils to remain either in the hall or in the principal's office until after opening exercises is a reasonable rule; but in the enforcement of such a rule, due regard must be had to the health, comfort, age, and mental and physical condition of the pupils, and the circumstances attending each particular emergency."[7]

The unreasonable enforcement of rules is brought out in an Illinois case.

> "What are reasonable rules is a question of law, and we do not hesitate to declare that a rule that would bar the doors of the schoolhouse against little children, who had come from so great a distance in the cold winter, for no other reason than that they are a few minutes tardy is unreasonable, and therefore unlawful."[8]

An Iowa case recognizes tardiness as an offense against the good order and proper management of schools, by declaring the following rules to be reasonable and lawful:

> "Any pupil who is absent six half-days in any consecutive four weeks, and two times tardy shall be counted as one absent, unless detained by sickness or other unavoidable cause, and shall be suspended from the schools until the end of the term, or until reinstated by the superintendent or board.

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[7] Fertich v. Michener (1887) 111 Ind. 472, 11 N.E. 605, 14 N.E. 68, 60 Am. R. 709.

[8] Thompson v. Beaver (1872) 63 Ill. 353.

"Teachers may require absence and tardiness to be certified by parent or guardian, in writing or personally, or by special messenger. All lessons lost on account of absence may be made up at the discretion of the teacher."[9]

The courts evidently consider tardiness an offense against the good order and proper functioning of the schools. School authorities will be upheld by the courts in making reasonable rules against tardiness. The enforcement of such rules must, however, be reasonable.

Rules and Court Decisions Pertaining to Truancy. Truancy, "skipping school," and leaving school before dismissal are specifically prohibited in most of the sets of rules considered in this study. Truancy is punishable by suspension or expulsion, or the case may be turned over to the Juvenile Court, or the parent may be required to visit the principal. Pupils who leave the school premises before the time of dismissal are considered withdrawn in one school, considered truant in another, and suspended in several others.

In the case of Flory v. Smith, the court recognized in general the school's authority to make rules requiring pupils to remain on the school premises from 9:00 A. M. until 3:35 P. M., and although upholding the board in this particular case, the court felt that expelling pupils for having lunch with their father in a nearby hotel was not a wise application of the rule.[10] In a Nebraska case the court held that a board of education may reasonably restrain pupils from leaving the school premises during the day.[11] Cases involving truancy and "skipping school" rarely get to the courts. It is evident that the power of school boards

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[9]Burdick v. Babcock (1875) 31 Iowa 562.
[10]Flory v. Smith (1926) 145 Va. 164, 134 S.E. 360, 48 A.L.R. 654.
[11]Richardson v. Braham (1933) 125 Neb. 142, 249 N.W. 557.

to make and enforce rules governing truancy and "skipping school" is generally recognized. Such rules are considered necessary for the proper functioning of the school.

Rules and Court Decisions Involving Outside Instruction During School Hours. Several schools have rules which prohibit pupils from being absent from school during school hours for instruction elsewhere without permission of the school authorities. The various schools have slightly different views in the matter as can be discovered by considering some of the rules governing such situations:

> "Pupils shall be allowed to leave school on the written request of parents to attend religious services on church holidays without being marked absent or required to make up the time."
>
> "No pupil shall be allowed to be absent from school during the regular session to take music, drawing, dancing, or other lessons."

Approximately twenty per cent of the schools from which rules were obtained have rules permitting pupils to be excused on their religious holidays. About ten per cent of the schools do not permit their pupils to be excused for private lessons in music, dancing, art, or drawing. Other rules governing pupil absences during the regular session are:

> "A pupil may be excused one and one-half hours per week for music lessons."
>
> "Pupils may be excused by the principal not to exceed two hours each week to take music outside of school, provided such absence from the school does not conflict with the regular work of the pupil in the school."
>
> "Pupils may be excused from school to take private music lessons, in case their parents so desire on the following conditions:
> (a) pupils will be excused only the last period of the day;
> (b) and then only in case this last period is a study period;
> (c) and then only when the work of the pupil in that subject continues to be satisfactory."

"All principals are authorized to excuse from school attendance, for a period of not longer than a day at a time, caddies, newsboys to carry extras, and to do any other worthwhile work that will enable a boy to earn some money. Boys may be excused for these purposes whose scholastic record shows that they can afford to lose the school time and who also have a satisfactory record on every point on the citizenship card, provided their school attitude and effort are satisfactory to the principal."

"No pupil or student under sixteen years of age will be excused from any class period to take part in any commercial theatrical performance."

The rules listed above indicate slightly different attitudes toward the matter of absences from the regular school session for other instruction or for other purposes. These rules, however, cover minor points, and hence they are rarely the single cause for court action.

In the case of Burdick v. Babcock, the court held the following to be a reasonable rule:

"Pupils may be excused from the public schools for the purpose of receiving instruction elsewhere, not to exceed two hours in any week, at such times as shall not interfere with their regular recitations in school."[12]

In a New York case, excusing pupils from the public schools for religious instruction one-half hour weekly was held to be a lawful exercise of the board's discretion.[13] The Supreme Court of Alabama held that a school board did not abuse its discretion in making a rule against pupils leaving the grounds during school hours to receive instruction elsewhere, and would not reinstate a pupil who was expelled for leaving school during school hours in accordance with her parents' wishes to take music lessons.[14]

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[12]Burdick v. Babcock (1875) 31 Iowa 562.

[13]People ex rel Lewis v. Graves (1926) 215 N.Y.S. 632, 127 Misc. Rep. 135.

[14]Christian v. Jones (1924) 211 Ala. 161, 100 So. 99, 32 A.L.R. 1340.

Court Decisions Concerning the Parent's Right to Select a Child's Studies. This question of whether or not pupils may be excused part of the day for instruction elsewhere is very closely related to the question of how far a parent may go in the selection of the courses which his child studies in school. Occasionally parents request either with or without a valid reason, that their child be excused from pursuing some school subject. In some instances they wish to have the child excused from some regular study of the curriculum and be permitted to take music or other lessons elsewhere during the same period. The courts have not always been in agreement on these questions.

In 1886 the Supreme Court of Indiana held that

> "school trustees have authority to require that a reasonable time shall be given to the study and practice of music in the public schools, and a textbook provided by each pupil; and where a pupil is expelled for refusal to comply with such requirement, mandamus will not lie, in the absence of a showing of some good excuse for his refusal, although made under his father's directions, to compel his reinstatement."[15]

The court reasoned that the father's arbitrary wishes must be subordinated to the reasonable rules of the school board. The school board's authority to require pupils to pursue particular subjects has been upheld by the courts in several other cases.[16] In these cases the courts upheld the school board in expelling a pupil for refusing to write an English composition, in expelling a pupil for refusing to prepare some declamation work, in requiring all pupils to prepare compositions and take part in debates, and in suspending a pupil for refusing to study rhetoric.

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[15] State v. Webber (1886) 108 Ind. 31, 8 N.E. 708, 58 Am. R. 30.
[16] Guernsey v. Pitkin (1859) 32 Vt. 224, 76 Am. D. 171.

In conflict with the cases cited in the preceding paragraph is another group of cases which recognizes the parent's right to select the studies which a child pursues. In the case of State v. School District No. 1 (Nebraska)[17] a school board was forced to reinstate a pupil whom it had expelled because, in compliance with her father's wishes, she refused to study grammar. The court held the teacher had no authority to administer corporal punishment for the purpose of compelling a pupil to pursue a study which her father forbade her to study.[18] In an Illinois case the court held that the directors had no authority to prescribe a rule which should cause a pupil to be ejected from the school for refusing to study bookkeeping, when her parents did not wish her to study it.[19] In the case of Trustees v. People, a boy satisfactorily passed all subjects required for admission to high school, except grammar, which study the father did not wish the boy to pursue. The court issued a writ of mandamus ordering admission, conceding the parent's right to request that the pupil be excused from studying grammar.[20] The Supreme Court of Nebraska ordered the reinstatement of a girl who had been suspended for refusing to pursue the study of Home Economics, after the girl's father had requested that she be excused from studying this subject. Under the circumstances, the court considered the father's selection to be reasonable.[21]

[17]State v. School District No. 1, 31 Neb. 552, 48 N.W. 393.
[18]Ibid.
[19]Rulison v. Post (1875) 79 Ill. 567.
[20]Trustees v. People (1877) 87 Ill. 303, 29 Am. R. 155.
[21]State v. Ferguson (1914) 95 Neb. 63, 144 N.W. 1039, 50 L.R.A.N.S. 266.

Considering the cases for and against the parent's right to select studies which a pupil shall pursue, we can draw one or two conclusions. The state, which can compel a child to go to school, seems to be able to prescribe what the child shall study. In the absence of statutory authority it seems that parents may make a reasonable selection of studies for a pupil, provided that such selection does not interfere with the discipline and good order of the school. Furthermore, the selection must not interfere with the rights of the other pupils in the school. When making rules or handling individual situations in which the question of granting or refusing requests for excuses for part of the school day is involved, the school authorities should consider these same points. The courts will uphold them in refusing to grant such requests if the school authorities can show that granting the request will interfere with the good order of the school or with the rights of other pupils. On the other hand, a parent's reasonable request has great chances of success in court against an arbitrary hastily applied rule. The courts are reluctant to interfere with the school board's discretion in such matters, but to be on the safe side, school authorities should consider individual cases carefully, rather than trying to arbitrarily dispose of all such cases with one general rule.

Rules Regulating Assembling on and Leaving School Grounds.

A large number of schools specify that pupils may not assemble on the school grounds an unreasonable time before the opening of the school session. In some schools this means no assembling on the grounds before eight o'clock in the morning; in others a reasonable time means

twenty or thirty minutes before the beginning of classes. In some schools, pupils are not to assemble on the school premises at any time unless supervised by a teacher. In regions where weather is severe at times, the rules occasionally specify that pupils may be admitted into the building as soon as they arrive, during inclement weather. Another very common rule provides that pupils must leave the premises promptly and quietly after dismissal at the end of the afternoon session. In the case of Jones v. Cody, the court held "a rule that the pupils shall go directly home when dismissed from school....."[22] to be reasonable, but the case is not exactly in point here. It may have a slight application here, but it will be considered in a later chapter in connection with another type of board rule.

Rules governing the time of assembling on and leaving the school premises rarely come before the courts. Rules of this type pertain to administrative details, with which the courts will not interfere unless malice, arbitrary action, or a deprival of constitutional rights of pupil or parent are shown.

Rules and Court Decisions Concerning the Detaining of Pupils. Rules concerning the detaining of pupils either after the regular session or during intermissions are found in most sets of pupil rules. The most common rule forbids teachers from detaining pupils more than a reasonable time after school. A reasonable time is considered to be twenty, thirty, or forty, or sixty minutes, in different schools. In a few schools the length of time pupils may be detained is left to the

[22]Jones v. Cody (1902) 132 Mich. 13, 92 N.W. 495, 62 L.R.A. 160.

discretion of the teacher. Most of the rules on this subject either limited or prohibited the detention of pupils during periods of recreation, recess, or during the lunch hour, for correction purposes. If the conduct of a pupil during the recess period is detrimental to the best interests of the group as a whole, the rules are reluctant to recommend depriving the offending pupil of his recreation period but suggest the pupil be given his recess alone.

Trusler, referring to the case of Fertich v. Michener, says:

> "The Supreme Court of Indiana has held that the detention of a pupil for a short time after school hours as a penalty for some misconduct or omission, however mistaken the teacher may be as to the justice or propriety of imposing such a penalty at any particular time, does not constitute false imprisonment, unless imposed from wanton, wilful, or malicious motives."[23]

The decision of the court in this case indicates that teachers may legally detain pupils after school for a reasonable time.

In the case of Bozeman v. Morrow, it was held that the board did not abuse its discretion in forbidding pupils from leaving school grounds during recess and the noon hour.[24]

In 1933, in a Nebraska case,[25] the court held that

> "A board of education.....may reasonably restrain pupils from leaving school property. During the school day the control of the pupils and their school programs is vested in the board of education and its lawful agents. In conformity with this control the board may have one or more sessions, as it deems advisable."[26]

A rule prohibiting pupils from taking lunch during the noon recess, except from the school cafeteria or that which was brought

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[23] Trusler, H. R., Essentials of School Law, p. 29.
[24] Bozeman v. Morrow (1931) (Texas), 34 S.W. (2nd) 654.
[25] Richardson v. Braham (1933) 125 Neb. 142, 249 N.W. 557.
[26] Coffey, W. L., Rights and Obligations of Pupils, The Second Yearbook of School Law, 1934, p. 9.

from home was held to be a reasonable rule. It was prescribed for the purpose of protecting the health of the pupils, and was within the authority of the board, in the opinion of the court.[27]

In a Nebraska case[28] the court declared:

> "The owner of a cafeteria located near the school property does not have such a vested right or interest as to give him a right to require the board of education to change its rules so that pupils may leave the school property to patronize his cafeteria."[29]

From the cases just cited, it is apparent that school boards can make and enforce rules requiring pupils to remain on the school premises during recess periods and intermissions. This is also true in the case of the noon recess. One school specifies that pupils living within six blocks of the school must go home for their noon lunch. Other rules provide that pupils must bring their lunch from home, buy it at the school cafeteria if they do not bring lunch from home, or get a permit to go home for their lunch. The decisions of the courts in several cases[30] already cited indicate that these rules would be upheld in court as reasonable and within the authority of the board to make.

Summary. Board rules requiring regular and punctual attendance and rules requiring satisfactory excuses from parents or guardians for pupil absence and tardiness are found in most sets of rules. Compulsory attendance laws furnish the authority for the rules on regular and

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[27] Bishop v. Houston Independent School District (1930) 119 Tex. 403, 29 S.W. (2nd) 312.

[28] Raffner v. Braham (1933) (Nebraska) 249 N.W. 560.

[29] Coffey, W. L., Rights and Obligations of Pupils, The Second Yearbook of School Law, 1934, p. 9.

[30] Bozeman v. Morrow (1931) (Texas) 34 S.W. (2nd) 654; Richardson v. Braham (1933) 125 Neb. 142, 249 N.W. 557; Bishop v. Houston Independent School District (1930) 119 Tex. 403, 29 S.W. (2nd) 312.

punctual attendance. Courts have upheld rules providing for suspension and expulsion for unexcused absence and tardiness. If tardy pupils are locked out of opening exercises or out of the building, due regard must be had for the health and comfort of the pupils, and the circumstances attending each emergency. Truancy is prohibited in the rules of most schools. The courts have upheld rules requiring pupils to remain on the grounds throughout the entire day's session. Rules regulating pupil absence during a part of the school day for instruction elsewhere, for religious purposes or for other causes, differ widely. In a large number of schools, pupils are permitted to be absent a limited and reasonable time, if such is the wish of the parents and if, in the opinion of the school authorities, the progress of the pupil in school is not jeopardized thereby. Rules concerning the excusing of pupils from certain classes by parental request and the extent to which a parent may select a child's studies, will be judged by the courts on whether or not the good order of the school and the rights of the other pupils have been interfered with. Rules governing the time of assembling on the school premises and the time of admission into school buildings should recognize climatic conditions to avoid unreasonable enforcement of such rules. Detaining pupils after school can not be construed to constitute false imprisonment in the absence of malicious intent. School boards may restrain pupils from leaving school premises during school hours, which likewise includes all recess periods and intermissions.

CHAPTER 3

RULES GOVERNING DAMAGE TO SCHOOL PROPERTY

Judging from the number of rules pertaining to property damage, most school boards deem it advisable to have some rule which has for its purpose the protection and preservation of school property. It seems reasonable enough that the board which has charge of the school property should have the right to prescribe rules which will preserve such property. About ninety per cent of the schools whose rules are being considered in this study, have rules of this type.

Current Rules Concerning Property Damage. The most common rule specifies that pupils must pay for defacing or damaging school property. A few schools charge fines for undue wear on books used by pupils, or have rules compelling satisfactory settlement of all issued school property. One school also includes a rule making pupils responsible for damage done to the property of other pupils.

The punishment or the penalties prescribed for violation of the rules concerning property damage or defacement must be considered. This type of rule furnishes an excellent example of a rule which may be reasonable in itself, but which may become unreasonable in its enforcement. Whereas ninety per cent of the schools have rules pertaining to property damage, only one-half of this number state the penalties carried by the rule. Almost all of the schools providing punishment for their property damage rules list suspension as the penalty for failing to pay for damage or defacement of school property. A few penalties provide for either suspension or expulsion, and one school

will withhold the credits earned by the pupil until property damage claims are settled. Three schools make the parents directly responsible for property damage by pupils.

Court Decisions Concerning Property Damage Rules. Three cases[1] involving property damage have come before the courts in which the decisions are similar. The facts that the three cases all appeared between 1880 and 1890, and that no later cases of this type have come before the courts, seem to indicate that the three cases just referred to have more or less settled the issue.

An Iowa school had a rule requiring any pupil who injured or defaced school property to pay for the damage done. The rule further provided that pupils were not to be permitted to attend school until payment for damages was made or the case otherwise adjusted. Under this rule, a pupil was expelled for not paying for a window which he accidently broke while playing ball. The Supreme Court of Iowa reasoned as follows:

> "The state does not deprive citizens of their property or their liberty or of any rights except as punishment for a crime. It would be very harsh and obviously unjust to deprive a child of education for the reason that through accident and without intention of wrong he destroyed property of the school district. Doubtless a child can be expelled from school as a punishment for breach of discipline or for offenses against good morals, but not for innocent acts. In this case the plaintiff was expelled, not because he broke the glass, but because he did not pay the damage sustained by the breaking. The rule requiring him to make payment is not intended to secure good order, but to enforce an obligation to pay a sum of money. We are clearly of the opinion that the directors have no authority to promulgate or enforce such a rule."[2]

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[1]Perkins v. Independent School District of West Des Moines (1880) 56 Iowa 476, 9 N.W. 356; State v. Vanderbilt (1888) 116 Ind. 11, 18 N.E. 266; Holman v. Trustees of School District No. 5 (1889) 77 Mich. 605, 43 N.W. 996, 6 L.R.A. 534.

[2]Perkins v. Independent School District of West Des Moines (1880) 56 Iowa 476, 9 N.W. 356.

In a case involving a similar rule the Supreme Court of Indiana says:

> ".....no rule is reasonable which requires of pupils what they can not do. The vast majority of pupils, whether small or large, have no money at their command with which to pay for school property which they injure or destroy by carelessness or otherwise. If required to pay for such property, they would have to look to their parents or guardians for the money. If the parent or guardian should not have the money, or if they should refuse to give it to the child, the child would be left subject to punishment for not having done what it had no power to do."[3]

A school district in Michigan adopted the following regulation:

> "Pupils who shall, in any way, deface or injure the school building, outhouses, furniture, maps, or anything else belonging to the school, shall be suspended from school until full satisfaction is made."

A boy was suspended from school because he carelessly broke a pane of glass and his father refused to pay for the damage done. The court refused to sanction the rule when applied to careless or negligent acts of children. It also reasoned that such a rule, if declared reasonable ".....might deprive poor children who are careless, as all children are careless, of the right to a common school education, which the laws and policies of our state have guaranteed to them....."[4]

Evidently the courts will not grant judicial sanction to rules which suspend or expel pupils for carelessly or negligently damaging or defacing school property. The question then arises as to what attitude the courts would take toward the enforcement of the same rules if the damage were shown to be wilfully or maliciously done. The

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[3] State v. Vanderbilt (1888) 116 Ind. 11, 18 N.E. 266.

[4] Holman v. Trustees of School District No. 5 (1889) 77 Mich. 605, 43 N.W. 996, 6 L.R.A. 534.

Michigan court hinted that such rules, if confined to malicious or wilful injury to school property, may be unobjectionable.[5] It might be reasoned that wilful injury to school property would undermine the discipline or threaten the good order of the school. If such is the case, the courts may possibly uphold the expelling of pupils for malicious and wilful injury to school property.

In the light of the cases cited, what type of rule should schools make to protect school property? A rule which requires the pupil to pay for damage done to school property and which subjects him to suspension or expulsion for failure to pay for such damage is not likely to be upheld by the courts. Such a rule has the obvious weakness of depriving a pupil of an education for failure to pay a certain sum of money. As will be shown in a later chapter, suspension or expulsion from school can result only from some wilful act which is detrimental to the morals, discipline, or good order of the school. While it may be true that most parents would rather pay for a window glass or some other damage done by the child than to go to court, the fact still remains that a school board can not afford to have rules which are apt to involve the school in needless lawsuits. Since the courts do not sanction the suspension of pupils for careless acts, it would not be wise to deprive pupils of school privileges for damaging school property unless such acts could be shown to be malicious and wilful.

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[5] Holman v. Trustees of School District No. 5 (1889) 77 Mich. 605, 43 N.W. 996, 6 L.R.A. 534.

Similar reasoning might be applied to rules which assess fines for undue or excess wear on school books. Undue wear could be considered another case of a child's carelessness, which the courts do not consider an act against the morals or good order of the school. A court has, however, held that pupils who are financially able may be required to pay a deposit to insure the proper treatment of free textbooks.[6] If the book has been improperly handled, in the judgment of the school authorities, and the deposit were to be withheld from the pupil, the result would be practically the same as charging a fine for undue wear on school books. The issue is by no means settled in this situation. The case of Segar v. Rockport School District Board of Education seems to be inconsistent with the cases previously cited, relating to property damage.[7] Because of the apparent inconsistency between the judicial reasoning in the property damage cases and that in the case of Segar v. Rockport School District Board of Education, it might be concluded that rules imposing fines for wear on free textbooks are not assured of judicial sanction.

A rule which provides for withholding a pupil's school credits because of his failure to pay for property damage is likewise based upon a rather uncertain foundation. The courts have held that a pupil who has completed the requirements for a diploma may not be deprived

[6]Segar v. Rockport School District (1925) 317 Ill. 418, 148 N.E. 289.

[7]Perkins v. Independent School District of West Des Moines (1880) 56 Iowa 476, 9 N.W. 356; State v. Vanderbilt (1888) 116 Ind. 11, 18 N.E. 266; Holman v. Trustees of School District No. 5 (1889) 77 Mich. 605, 43 N.W. 996, 6 L.R.A. 534.

of it for failing to meet requirements of some other rule not directly affecting the pupil's right to the diploma.[8] The same could possibly apply to school credits. On the other hand, a Michigan court held that school credits "involve deportment and obedience to the rules established by the Legislature for the best interests of the public schools."[9] In this case a pupil violated a rule of the legislature by joining a fraternity, and the court upheld the school board in refusing to award a diploma to the pupil. In this same case it was also pointed out by the court that withholding a pupil's credits and diploma is not unconstitutional as providing for cruel and unusual punishment.

Summary. Most school boards have adopted rules designed to preserve school property. Many schools require pupils to pay for damaged or defaced school property. The courts are agreed that a rule depriving a pupil of the privileges of the school because of a failure to pay for school property damaged through negligence or carelessness, is not a reasonable and valid rule. If the damage is done wilfully or maliciously, thereby having a detrimental effect on school discipline, the expulsion of the guilty pupil will probably be upheld by the courts. Assessing fines for undue wear of free textbooks does not seem to be consistent with judicial reasoning in the property damage cases, and hence is a questionable procedure. Requiring pupils, who

[8]Roberts v. Wilson (1927) 221 Mo. 9, 297 S.W. 419; Valentine v. Independent School District of Casey (1921) 191 Iowa 1100, 183 N.W. 434.

[9]Steele v. Sexton (1931) 253 Mich. 32, 234 N.W. 436.

are financially able to pay, to make a deposit to insure proper treatment of free textbooks has been upheld, but is apparently inconsistent with the rather well established reasoning of the property damage cases. Withholding a pupil's school credits for failure to pay for property damage is likewise not definitely supported judicially.

CHAPTER 4

RULES GOVERNING PUPIL CONDUCT OUTSIDE OF SCHOOL AND SCHOOL HOURS

The general situation regarding the power of the school to control the child is summarized by Corpus Juris as follows:

> "Although a school teacher or a school board ordinarily has no right of control over a child after he has returned to his home or parents' control and can not punish him for ordinary acts of misbehavior thereafter, (Lander v. Seaver 32 Vt. 114, 76 Am. D. 156), the supervision and control of a teacher over a pupil, and of a school board, to make needful rules for the conduct of the pupils is not confined to the schoolroom and school premises, but extends over the pupil from the time he leaves home to go to school until he returns home from school. (Jones v. Cody 132 Mich. 13, 92 N.W. 495, 62 L.R.A. 160; State v. Randall 79 Mo. App. 226; Hutton v. State 23 Tex. App. 386, 5 S.W. 122, 59 Am. R. 776; Lander v. Seaver 32 Vt. 114, 76 Am. D. 156)."[1]

Rules Governing Fraternities and Secret Societies. Schools from seven of the thirty-five states represented in this study have rules relating to high school fraternities or secret societies. An Oklahoma school has a rule which is patterned very closely after the following extract from the Laws of Oklahoma:

> "It shall be unlawful for any pupil registered in any elementary or high school of the state supported wholly or in part by public funds, to join, to become a member of, or to solicit any other person to become a member of any fraternity, sorority, or other secret society formed wholly or in part from the membership of pupils attending such school."

An Iowa school has the following rule:

> "Pupils are prohibited from joining or maintaining any secret society, fraternity, or sorority. Presumptive evidence of such membership constitutes grounds for dismissal. (Code 4282-4287)."

This rule is found among the board rules of a Michigan school:

> "No pupil who shall become or be pledged to join, or who shall join or become a member, active or otherwise, of any secret

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[1] 56 Corpus Juris 854 (1932).

> society, sorority, secret club, or other secret organization existing among the pupils of the public schools of Grand Rapids, with a membership wholly or chiefly made up of school children, shall be a member or officer of any literary, athletic, or other society, or organization existing among the pupils of the public schools of Grand Rapids, or which shall bear said school name; nor shall any such pupil be permitted to participate in any of the sports, contests or exercises of any society or organization, or be a member or officer of his class organization or meet with or take part in class meetings or exercises, or be in any manner connected with any school publication; nor shall the name of any such pupil appear in any such publication."

A Pennsylvania school rule covering this topic is similar:

> "The principals and teachers shall deny to all secret societies which may exist among pupils of the schools all public recognition and no member of such society shall take part in any school contest or school program or be a member of any team or club representing the school."

A Kansas school has the following rule, prescribed under provisions of chapter 320 of the 1907 Session Laws of Kansas:

> "All pupils attending the public high schools of the city of Wichita, and all persons desiring to attend said high schools, who are members or active pledges of secret societies known as or of the nature of fraternities or sororities, which have their existence in whole or in part in the high schools of said city, or where such activities of such societies work back and have an effect upon said high schools, shall be excluded from attendance in said high schools."

A Minnesota school rule is similar to the ones just cited, providing for suspension or dismissal from the public schools for any connection with societies which are not sanctioned by the board of education. A California school lists as one of the causes of suspension from the public schools, the "membership in a fraternity or sorority which is forbidden by law."

On the basis of the rules herein considered it is apparent that school boards regard secret societies as detrimental to the best interests of the school, and prescribe rules to prevent them from

operating among public school pupils. The rules against such organizations are much alike in text, but the penalties provided are of two distinct types. In the majority of schools the penalty for secret society or fraternity membership is suspension or expulsion from school. Another method of control is that of depriving pupils with fraternity affiliations from certain privileges of the school, such as membership in literary, athletic, or class organizations and by not permitting such pupils from representing the school in any public capacity. The pupils are permitted to attend classes, but are required to choose between the various activities of the school and their activities in the prohibited fraternities, sororities, or secret societies.

Court Decisions Concerning Pupil Membership in Secret Societies. Several cases involving this question of secret societies among public school pupils have come before the courts in a number of states, resulting in a rather well established line of judicial reasoning.

The Supreme Court of Washington declared that the school authorities

> "had authority to deny to those pupils belonging to a secret fraternity, contrary to the rules of the school participation in athletic, literary, military, and similar school organizations, constituting no part of the school work, though the meetings of the fraternity were held at the homes of the members after school hours and with parental consent."[2]

Because of the importance of this case it might be well to briefly consider the reasoning of the court, which follows in part:

> "The board has not excluded the appellant from the Seattle High School, neither has it threatened to expel or suspend him. He can and does attend school, and under our construction of the

[2] Wayland v. Board of School Directors (1906) 43 Wash. 441, 86 Pac. 642, 7 L.R.A. (N.S.) 352.

rules adopted, he is at the same time permitted to continue his membership in the Gamma Eta Kappa fraternity, although in doing so he opposes the authority of the board and thereby forfeits certain privileges which are no necessary part of the curriculum or class work from which he is not excluded.....The board has not invaded the homes of any pupils, nor have they sought to interfere with parental custody and control. They have not said these fraternities shall not meet at the various homes, nor have they attempted to control students out of school hours. The evidence shows beyond a doubt that these secret organizations when effected foster a clannish spirit of insubordination, which results in much evil to the good order, harmony, discipline, and general welfare of the school."[3]

Two years later (1908), the Supreme Court of Illinois held that a rule requiring teachers to refuse public recognition to secret fraternities and sororities, to refuse to permit their meetings in the school buildings, and to refuse to allow any member of such societies to represent the school in any literary or athletic contest, or in any public capacity, but not withdrawing from pupils who were members thereof any public school privileges, was neither unlawful nor unreasonable.[4] The court cited the case of Wayland v. Board of Education and followed the same line of reasoning.

In 1922, the Supreme Court of Missouri departed from the two cases just considered, refusing to sanction a regulation of the St. Louis Board of Education, "forbidding membership of high school pupils in secret organizations, and not allowing pupils violating the regulations to represent the school in any capacity or to participate in graduation exercises."[5] The court reasoned that no rule should be

[3]Wayland v. Board of School Directors (1906) 43 Wash. 441, 86 Pac. 642, 7 L.R.A. (N.S.) 352.

[4]Wilson v. Board of Education (1908) 233 Ill. 464, 84 N.E. 697, 15 L.R.A. (N.S.) 1136, 13 Ann. Cas. 330.

[5]Wright v. Board of Education (1922) 295 Mo. 466, 246 S.W. 43.

adopted which attempts to control the conduct of pupils in their homes and out of school hours, unless such actions, if permitted, will interfere with the management and discipline of the school. This court refused to follow the reasoning of the Washington Court in Wayland v. Board of Education and the Illinois Court in Wilson v. Board of Education,

> "which this court believes is based on faulty reasoning resulting in an unfounded conclusion. Such reasoning does not prevent the pupil from attending the school but he forfeits certain privileges because of his membership in the prohibited fraternity. Those who are members of the prohibited fraternities, unless same are shown to possess the detrimental features stated, are as much entitled to all of the advantages afforded by the school as other pupils. To deny them this right constitutes an unjust discrimination unsupported by right or reason which should not receive judicial sanction."[6]

A dissenting opinion contended that this court should follow the cases of Wayland v. Board of Education and Wilson v. Board of Education because the rules involved and the cases are similar in their essential facts. It also stated that

> "it is impossible to read the record of this case impartially and not come to the conclusion that the effect of fraternities and sororities in the high school upon their members and upon the general student body is seriously demoralizing."[7]

The chief reason for the difference in opinion between the Wayland v. Board of Education and Wilson v. Board of Education cases and the case of Wright v. Board of Education seems to lie in the fact that in the former cases, the court was convinced that fraternities have a decided detrimental effect upon the school, whereas in the latter case, the harmful effects of secret societies were not demonstrated to the satisfaction of the court.

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[6] Wright v. Board of Education (1922) 295 Mo. 266, 246 S.W. 43.
[7] Ibid.

A more recent case was decided in Massachusetts in 1934.[8] The courts refused to grant a writ of mandamus to reinstate pupils who had been excluded from school by the school committee in violation of a rule forbidding high school students to join secret societies without the approval of the school authorities, and requiring existing unapproved organizations to submit lists of their student members with dates and places of all of their meetings or parties. The court held that the school committee was authorized by a statute empowering the committee to supervise all organizations composed of public school pupils, bearing the school name, or organized in connection with the school.

Of the states which have provided statutory powers for the control of secret societies by school boards, California, Iowa, Illinois, and Michigan have had their statutes attacked on the grounds of unconstitutionality. In each case, however, the courts upheld the constitutionality of such statutes. The Iowa statutes prohibit pupils from joining fraternities or societies without the sanction of the board of directors. The Supreme Court of Iowa upheld the constitutionality of the statute.[9] A California statute prohibiting membership of elementary and secondary school pupils in secret fraternities, sororities, or clubs, was held to be valid and constitutional.[10] A Michigan law prohibiting high school fraternities was held not unconstitutional as a denial of due process and equal protection of the laws, and not unconstitutional as providing for cruel and unusual punishment in withholding

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[8] Antell v. Stokes (1934) (Mass.) 191 N.E. 407.

[9] Lee v. Hoffman (1918) 182 Iowa 216, 166 N.W. 565, L.R.A. 1918 C 933.

[10] Bradford v. Board of Education (1912) 18 Cal. App. 19, 121 Pac. 929.

school credits and diploma.[11] The Illinois statute (Laws of 1919, p. 914) prohibiting fraternities, sororities, or secret societies in the public schools of the state was held to be a valid exercise of legislative powers for the promotion of the best interests, discipline, and good order of the schools.[12]

The courts have definitely supported the legislatures and school boards in their efforts to control or prohibit fraternities, sororities, and secret societies or clubs among elementary and secondary school pupils in the public schools. Only one case[13] seems to have departed from the usual trend of decisions. Except in the state of Missouri, it seems safe to assume that school boards may legally prescribe and enforce rules regulating secret societies. In all states, with one exception, where such rules have come before the courts, the rules have been regarded as reasonable and necessary to control or prohibit organizations which are generally believed to have a detrimental effect upon the discipline, good order, and the best interests of the school.

Other Rules Governing Pupil Conduct Off School Grounds. About one-half of the schools from which rules were obtained, have a rule making pupils responsible for their conduct on the way to and from school. Two schools have a rule making pupils responsible for conduct anywhere if such conduct is detrimental to the best interests of the school. In addition to these general rules, some schools reported rules of this nature but relating to specific acts or offenses. Although

[11] Steele v. Sexton (1931) 253 Mich. 32, 234 N.W. 436.
[12] Sutton v. Board of Education (1923) 306 Ill. 507, 138 N.E. 131.
[13] Wright v. Board of Education (1922) 295 Mo. 266, 246 S.W. 43.

most of the schools have rules prohibiting smoking or the use of tobacco in any form on school premises, a few added that the same restrictions applied while the pupil was going to or from school. Four schools prohibit gambling on school premises or in the nearby stores. Five schools forbid loitering in the streets, public places, or in the nearby or downtown stores. Two schools provide that pupils must not be on the streets after 9:00 P. M. unless accompanied by a parent or guardian, or unless carrying a permit from the local school authorities. One school specifies that pupils may not attend dances on school nights. Another rule, found in one school, provides that pupils rooming in town may not entertain pupils of the opposite sex in their rooms. One school requires pupils who wish to drive cars to school to obtain permission for so doing from the school authorities. Penalties are often not mentioned, but when specified they usually consist of suspension or expulsion.

Court Decisions Concerning Pupil Conduct Off School Grounds. Several cases have come before the courts involving the question as to how far the school authorities may go in regulating pupil conduct off school grounds and out of school hours. Consideration will first be given to rules regulating pupil conduct on the way to and from school, and to conduct anywhere, if such conduct affects the interest of the school.

In 1859 the court, in a Vermont case, upheld a schoolmaster in chastising a boy for disrespectful language tending to bring the master's authority into contempt, although the act was committed after school on the preceding evening, while the boy was passing the master's

house.[14] A Missouri court held that a pupil was properly punished in violation of a rule prohibiting the use of profane language or quarreling or fighting among pupils, although the violation occurred after school hours while the pupils were on their way home.[15] A Texas case likewise upheld a similar rule.[16] In a Wisconsin case the court refused to reinstate pupils who had been suspended for publishing a poem tending to ridicule the rules of the school, thereby affecting the discipline of the school and impairing the pupils' respect for their teachers.[17] A pupil was considered properly excluded from school for being intoxicated on Christmas Day; it was held that such conduct was demoralizing to the other pupils and had the effect of impairing discipline.[18] The court held in a Connecticut case that a teacher had authority to punish a pupil who annoyed smaller children on their way home from school, although such acts were committed after he had reached his home.[19] In an early Iowa case, however, under a statute authorizing the school authorities to expel pupils for gross immorality or for persistent violation of board rules, a pupil was dismissed for publishing a poem in a newspaper, which ridiculed the board. The court held the board had no authority to exclude the pupil from school, reasoning that under the statutes a pupil can be dismissed only for

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[14] Lander v. Seaver (1859) 32 Vt. 114, 76 Am. D. 156.

[15] Deskins v. Gose (1885) 85 Mo. 485, 55 Am. R. 387.

[16] Hutton v. State (1887) 23 Tex. App. 386, 5 S.W. 122, 59 Am. R. 776.

[17] State v. District Board of School District No. 1 (1908) 135 Wis. 619, 116 N.W. 232, 16 L.R.A. (N.S.) 730.

[18] Douglas v. Campbell (1909) 89 Ark. 254, 116 S.W. 211, 20 L.R.A. (N.S.) 205.

[19] O'Rourke v. Walker (1925) 102 Conn. 130, 128 Atl. 25, 41 A.L.R. 1308.

immoral conduct or a violation of some regulation of the board.[20] The reasoning in this case is not exactly in line with that in most similar cases. Since 1878, when the Supreme Court of Wisconsin called attention to the "common law of the school" in the case of State v. Burton, the courts have generally considered certain obligations inherent on the part of all pupils whether or not the school board has reenacted such obligations in the form of written rules and regulations.[21]

A school board rule requiring pupils to go directly home when dismissed from school, was considered to be a reasonable rule by the court, and a merchant can not recover damages arising from a loss of trade due to the enforcement of this rule.[22] The courts have considered it the legal right and moral duty of the school to require children to go directly home as soon as dismissed.[23]

The often quoted opinion of Justice Norton in the case of Dritt v. Snodgrass defines what the courts consider the dividing line between the authority of the school and the authority of the parent over the child. The court considered a rule prohibiting pupils from attending social parties during the school year as an attempt on the part of the school to invade parental rights and even to supersede parental control.[24] A Mississippi case furnishes another example of the same line of reasoning. A rule ratified by the board of trustees required all pupils of the school to remain in their homes and study

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[20]Murphy v. Independent District of Marengo (1870) 30 Iowa 429.
[21]State v. Burton (1878) 45 Wis. 150, 30 Am. R. 706.
[22]Jones v. Cody. (1902) 132 Mich. 13, 92 N.W. 495, 62 L.R.A. 160.
[23]Deskins v. Gose (1885) 85 Mo. 485, 55 Am. R. 387.
[24]Dritt v. Snodgrass (1877) 66 Mo. 286, 27 Am. R. 343.

from 7:00 P. M. to 9:00 P. M. each evening. A pupil was suspended as a result of attending religious services with his father between these hours on a school day. The Supreme Court of Mississippi upheld reinstatement of the pupil, declaring the rule inconsistent with the law.[25] The court quoted from Justice Norton's opinion in the case of Dritt v. Snodgrass.[26] Because of its importance in defining the boundary between parental and the school's control over the child, the opinion of Justice Norton is included here.

> "The directors of a school district are invested with the power and authority to make and execute all needful rules and regulations for the government, management, and control of such school as they may think proper, not inconsistent with the laws of the land. Under the power thus conferred, the directors are not authorized to prescribe a rule which undertakes to regulate the conduct of the children within the district, who have a right to attend the school, after they are dismissed from it and remitted to the custody and care of the parent or guardian. They have the unquestioned right to make needful rules for the control of the pupils while at school, and under the charge of the person or persons who teach it, and it would be the duty of the teacher to enforce such rules when made. While in the teacher's charge, the parent would have no right to invade the schoolroom and interfere with him in its management. On the other hand, when the pupil is released and sent back to his home, neither the teacher nor the directors have the authority to follow him thither, and govern his conduct while under the parental eye.
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> "It certainly could not have been the design of the legislature to take from the parent the control of the child while not at school and invest it in a board of directors or teacher of a school. If they can prescribe a rule which denies the parent the right to allow his child to attend a social gathering, except upon pain of expulsion from a school which the law gives him the right to attend, may they not prescribe a rule which would forbid the parent from allowing the child to attend a particular church, or any church at all, and thus step in loco parentis and supersede entirely parental authority? For offenses committed by the scholar while at school, he is amenable to the laws of the school; when not at school, but under the charge of the parent or guardian, he is answerable alone to him.

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[25]Hobbs v. Germany (1909) 94 Miss. 469, 49 So. 515, 22 L.R.A. (N.S.) 983.

[26]Dritt v. Snodgrass (1877) 66 Mo. 286, 27 Am. R. 343.

"A person teaching a private school may say upon what terms he or she will accept scholars, and may demand before receiving a scholar to be taught, that the parents will surrender so much of his or her parental authority as not to allow the scholar, during the term, to attend social parties, balls, theaters, etc. except on pain of expulsion. This would be a matter of contract, and no one has a right to send a scholar to such a school except on the terms of those who teach it.

"This is not so in regard to public schools, which every child within school age has a right, under the law to attend, subject while so attending to be governed by such needful rules as may be prescribed. When the schoolroom is entered by the pupil, the authority of the parent ceases, and that of the teacher begins; when sent to his home, the authority of the teacher ends, and that of the parent is resumed. For his conduct while at school he may be punished or even expelled, under proper circumstances; for his conduct when at home, he is subject to domestic control. The directors in prescribing the rule that scholars who attended a social party should be expelled from school, went beyond their power, and invaded the right of the parent to govern the conduct of his child, when solely under his charge."[27]

In the case of Balding v. State the court recognized the right of a teacher to require a reasonable amount of home study by pupils.[28] The Supreme Court of Georgia sustained a rule prohibiting pupils from attending any show or social function on school nights.[29] This case concerned the expulsion of pupils for attending picture shows, although the decision does not follow the usual trend of judicial reasoning. This appears to be another case of what Justice Norton would consider an attempt on the part of the school to supersede parental authority.

Current Rules Considered on the Basis of Court Decisions. After this consideration of court decisions in cases involving school board rules which govern pupil conduct out of school hours and off school grounds, the current rules may be considered in relation to these decisions.

[27]Dritt v. Snodgrass (1877) 66 Mo. 286, 27 Am. R. 343.
[28]Balding v. State (1887) 23 Tex. App. 172, 4 S.W. 579.
[29]Mangum v. Keith (1918) 147 Ga. 603, 95 S.E. 1.

Rules making pupils responsible for conduct on the way to or from school, or for conduct anywhere if such conduct is detrimental to the best interests of the school, have been upheld by the courts. Likewise, rules prohibiting loitering in streets and public places, rules prohibiting smoking on the way to or from school, and rules forbidding pupils to gamble in public places, can be justified on the same grounds. It is not likely that the board's authority would be questioned in prohibiting pupils rooming in town from entertaining pupils of the opposite sex in their rooms. The rule would prevent demoralizing the pupils of the school. Although no cases have covered this point, a rule requiring that pupils have permission of the school authorities if they wish to drive cars to school would probably be upheld by the courts if the board could show that this situation involves the welfare, safety, and interests of other pupils, both in school and on the way to or from school.

The reasoning which authorizes these rules is expressed by the Supreme Court of Iowa as follows:

> "If the effects of acts done out of school hours reach within the schoolroom during school hours and are detrimental to good order and the best interests of the pupils, it is evident that such acts may be forbidden. Truancy is a fault committed away from school. Can it be pretended that it can not be reached for correction by the school board and teachers? A pupil may engage in sports beyond school that will render him unfit to study during school hours. Can not these sports be forbidden? The view that acts to be within the authority of the school board and and teachers for discipline and correction must be done within school hours is narrow and without regard to the spirit of the law and the best interests of our common schools. It is in conflict, too, with authority."[30]

[30] Burdick v. Babcock (1875) 31 Iowa 562.

The rule forbidding pupils to be on the streets after 9:00 P. M. unless accompanied by a parent or guardian, or carrying a permit from the school authorities, seems to be crowding a bit close to the field of parental control. Likewise, the rule of forbidding pupils to attend dances on school nights appears to be another borderline situation. Although the rule forbidding pupils to attend picture shows on school nights was upheld in the case of Mangum v. Keith,[31] it has already been pointed out that this case is not in agreement with the often cited cases of Dritt v. Snodgrass[32] and Hobbs v. Germany.[33] When making rules of this type, school boards should consider carefully such questions as these. Can it actually be shown that the situation which this rule attempts to correct interferes with the good order, discipline and best interests of the school? Does this rule encroach upon the rights of a parent to control his child? Does this rule attempt to regulate the social life of the child? It is such questions as these that the courts will ask if the rule is ever referred to them.

Summary. In general, the control of school authorities over a pupil, extends from the time the pupil leaves home to go to school until he returns home from school.

The courts have usually recognized the authority of the school board to regulate or prohibit fraternities, sororities, or secret organizations among pupils of the elementary and secondary schools. School boards have used different methods in their attempt to control secret

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[31] Mangum v. Keith (1918) 147 Ga. 603, 95 S.E. 1.
[32] Dritt v. Snodgrass (1877) 66 Mo. 286, 27 Am. R. 343.
[33] Hobbs v. Germany (1909) 94 Miss. 469, 49 So. 515, 22 L.R.A. (N.S.) 983.

organizations, such as suspension or expulsion of offending pupils, denying certain privileges of the school to those who persist in maintaining their affiliation with such organizations, and refusing to issue credits or diploma to a pupil who has violated the fraternity rule. Several states have statutes prohibiting or controlling secret societies among elementary and secondary school pupils. The courts have upheld such statutes whenever their constitutionality has been attacked.

Other rules have been promulgated by school authorities to control pupil conduct out of school hours and off school premises. Rules making pupils responsible for conduct on the way to or from school, or for conduct anywhere if such conduct interferes with the good order and best interests of the school, have been considered valid, reasonable rules. Rules prohibiting loitering or gambling in public places, rules forbidding pupils to smoke on the way to or from school, rules governing the conduct in rooming houses of out of town pupils, and a rule requiring that a pupil have permission to drive a car to school, would probably be given judicial sanction. Although the courts have not been called upon to rule on all of these rules, it is reasonable to suppose that they would uphold such rules as being necessary for the best interests of the school, unless malice or arbitrary action on the part of the school authorities is shown.

Rules forbidding pupils to be on the street after 9:00 P. M. unless accompanied by a parent or guardian, or carrying a permit from school authorities, and a rule forbidding pupils to attend dances on school nights are so close to the borderline between parental and

school control that the courts' ruling would probably be determined by the particular circumstances in each individual situation. Similar cases have been decided in favor of both the parent and the school authorities, with the weight of judicial opinion in favor of the right of the parent to control the social and home life of the child.

CHAPTER 5

OTHER RULES GOVERNING PUPIL CONDUCT AND DISCIPLINE

Rules Governing School Attitudes and General Behavior. Almost every school which contributed rules for this study had one or more rules that can be classified under the description of proper school attitudes and general behavior. The following will indicate their nature and content:

> "Pupils will show proper deportment and attitudes; pupils must obey the rules of the school board, superintendent, principals, and teachers; pupils are expected to be industrious, attentive to duties, and diligent in study; pupils shall be quiet and respectful on the school premises, showing gentlemanly and orderly conduct; pupils are expected to be polite, courteous, respectful, and kind to each other and their teachers; pupils will be responsible for proper conduct during recess; pupils are expected to be truthful."

Many schools state similar rules negatively, such as those which follow:

> "Pupils must not be guilty of any conduct detrimental or subversive of discipline; pupils must not be guilty of wilful violation or disobedience of rules, defiant opposition to authority, or interference with the work of the school; pupils must refrain from telling falsehoods and from cheating; pupils must not be obstinate nor incorrigible; a pupil must not make a nuisance of himself about the school; pupils must not be guilty of gross insult or other serious offense; pupils must not have injurious, vicious, or immoral habits, nor be guilty of such conduct; no obscene, indecent, or improper language, writing or pictures will be permitted on or about the school premises."

Many rules of this type are merely suggestions for the desired types of conduct; others are intended as regular rules carrying specified penalties and punishment for their violation. Where penalties are provided, they are usually suspension or expulsion.

Court Decisions Concerning School Attitudes and General Behavior. The rules listed above were taken as representative of a large number of similar rules found among those considered in this study. A number

of cases will now be cited to show the attitude of the courts toward the power of school boards to make rules of this type.

In an early Massachusetts case the court refused to interfere with the school committee's action in excluding a pupil from school although the

> "misconduct was not mutinous or gross, and did not consist of a refusal to obey commands of the teachers of said school or of any outrageous proceeding, but of such acts of neglect, carelessness of posture in his seat and in recitation, tricks of playfulness, and inattention to study and the regulations of the school in minor matters."[1]

In a later case, the same court cited the case of Hodgkins v. Inhabitants of Rockport in declaring that a pupil was legally excluded from school because his presence "was a serious disturbance to the good order and discipline of the school."[2] In this case it appeared from the evidence introduced that the pupil was so weak minded that he was unable to derive any marked benefit from the instruction, and in addition, he was troublesome in making unusual noises and frequently pinching other pupils.

In rules of this type which concern the general welfare of the school, the courts have recognized the impossibility of school boards forseeing every event and prescribing rules to provide for any situation that might arise. The courts have, therefore, agreed that school authorities may dismiss pupils for any offense which interferes with good order and efficiency of the school. In 1878 the Supreme Court of Wisconsin called attention to the so-called "common law of the school"

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[1] Hodgkins v. Inhabitants of Rockport (1870) 105 Mass. 475.
[2] Watson v. City of Cambridge (1893) 157 Mass. 561, 32 N.E. 864.

in the case of State v. Burton, in which the court declared:

> "In the school, as in the family, there exists on the part of the pupil the obedience to lawful commands, subordination, civil deportment, respect for the rights of other pupils, and fidelity to duty. These obligations are inherent in any proper school system, and constitute, so to speak, the common law of the school. Every pupil is presumed to know this law, and is subject to it, whether it has or has not been reenacted by the district board in the form of written rules and regulations. It would indeed seem impossible to frame rules which would cover all cases of insubordination and all acts of vicious tendency which the teacher is liable to encounter daily and hourly."[3]

The common law of the school was cited in a later Wisconsin case in which two high school pupils published a satirical poem ridiculing the rules of the school board. In denying the request for a writ of mandamus to compel their reinstatement, the court held that although the board had no rules prohibiting the writing of such a poem, it could punish the offenders under the common law of the school.[4] A California case likewise illustrates the application of the common law of the school. A pupil was expelled for denouncing the policies of the board of education at a meeting of the student body. The effect of such action was to create a spirit of insubordination among the pupils in the school. The court cited the case of State v. Burton[5] and the common law of the school in upholding the board in its action of expelling the offending pupil.[6]

Another case in point is that of State v. Hamilton. A pupil was expelled for persistent disobedience and general misbehavior, although the board of education had adopted no rules regulating the

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[3]State v. Burton (1878) 45 Wis. 150, 30 Am. R. 706.

[4]State v. District Board of School District No. 1 (1908) 135 Wis. 619, 116 N.W. 232, 16 L.R.A. (N.S.) 730.

[5]State v. Burton (1878) 45 Wis. 150, 30 Am. R. 706.

[6]Wooster v. Sunderland (1915) 27 Col. App. 51, 148 Pac. 959.

conduct of the school. The court held that whenever the school officers feel that the presence of a pupil is detrimental to the interests of the school, and when a pupil persistently disobeys rules of conduct prescribed by a common sense of decency and propriety, then the power of expulsion is conferred.[7]

In an Illinois case a pupil was expelled for refusing to divulge the name of the person who had written obscene language on the school building. In sanctioning the board's action in expelling the pupil, the court said:

> "Every pupil when called upon by the superintendent or board, should as a matter of duty and loyalty to what is essential for the common welfare, freely state anything within his knowledge not self-incriminating, that will assist in bringing the offender to justice and thereby tend to the repression of all such offenses. If he refuses to do this, he is guilty of disobedience for which reasonable punishment may be inflicted....."[8]

An Iowa case differs somewhat from the other similar cases herein cited. A pupil was expelled for publishing an article which ridiculed the board of education. The board based its action on a statute authorizing dismissal of pupils for gross immorality or for persistent violation of the regulations of the board. The court held that the board has no power to punish for acts outside of school, if they are not immoral or prohibited by any rule or regulation.[9] This decision does not seem to be in harmony with the general trend of judicial reasoning in similar cases.

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[7]State v. Hamilton (1890) 42 Mo. App. 24.
[8]Board of Education v. Helston (1889) 32 Ill. App. 300.
[9]Murphy v. Independent District of Marengo (1870) 30 Iowa 429.

Rules which require moral conduct on the part of pupils, and which provide for exclusion of pupils guilty of immoral conduct have been upheld by the courts. In Massachusetts a girl was found guilty of immoral conduct off the school grounds, for which she was excluded from school. The court held that in order to maintain the purity and discipline of the public schools, a child of licentious and immoral character may be excluded from school although the immoral acts were not committed within the school. Chief Justice Shaw reasoned that pupils with contagious diseases are excluded from school because their attendance would be dangerous to the other pupils and that incorrigible truants are expelled, not only as a punishment, but as a protection to the other pupils from injurious example and influence. Therefore, he said:

> "The power of all teachers is a parental authority to be exercised for the best good of the whole. We think it was the intention of the legislature to make the public schools a system of moral training. If so, then, it is as necessary to preserve the pure-minded, ingenuous children of both sexes from the contaminating influence of those of depraved sentiments and vicious propensities and habits as from those infected with contagious disease."[10]

The school authorities seem to have the backing of the courts in making and enforcing rules relating to proper school attitudes and behavior because such rules are deemed necessary for the welfare and best interests of the student body, as a whole. Cases have been cited which have upheld the board's action in excluding pupils for acts of neglect and carelessness, for persistent violation of minor rules, for acts tending to create a spirit of insubordination among the pupils,

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[10]Sherman v. Charlestown (1851) 8 Cush. (Mass.) 160.

and for immorality. The common law of the school has been referred to by the courts in justifying actions of the board in the interests of the general welfare of the school, where no specific rules have been prescribed to cover all of the various problems which arise in connection with pupil conduct and discipline. Pupils may be excluded for immoral conduct, even though such conduct does not take place within the school. Where immorality has been shown, the courts have sanctioned the exclusion of the offending pupils for the best interests and protection of the other pupils in the school.

Rules Concerning Married Pupils. Two schools reported rules regarding the rights of married pupils to attend the public schools. One school reports the following rule:

> "Pupils in any of the schools marrying during the school year shall be automatically excluded from the schools thereby. This rule shall not be construed to prevent married pupils from attending night-school or part-time vocational schools."

The following rule was reported by another school:

> "No one who is married may be enrolled as a student in any day school, and a student in any day school, who marries after being enrolled in the school, shall be immediately dropped from the roll. As night schools offer opportunities to adults in practically every curriculum pursued in the day school, such persons as are referred to in the above rule may continue their education in the night schools."

These rules come from school systems in cities large enough to have night schools and vocational schools for adults. It is evident, from the above rules, that they are not depriving married pupils of an opportunity to receive an education; the board is merely stating which schools married pupils will attend. This is an administrative detail and is not a question of denying school privileges to married pupils,

otherwise eligible to attend the public schools. Although no cases have come before the courts involving such rules under the conditions herein implied, it is reasonable to assume that the courts would probably not interfere with the discretion of the board in a purely administrative matter. However, if it can be shown that a pupil's right to an education is being denied for no other reason than that of marriage, the courts have regarded such action by the board as arbitrary and unreasonable. Two cases will be cited to show the courts' reasoning on this point.

Court Decisions Concerning the Right of Married Pupils to Attend the Public Schools. A girl pupil quit school in February, 1928, and was then married. In August of the same year a child was born to this girl, and in the meantime her husband had abandoned her. In the fall of 1928 she enrolled in the public schools but was soon excluded by the school authorities because she was a married woman. The girl's father originated proceedings in mandamus to compel the board of education to admit his daughter as a pupil. The school principal's testimony showed her to be an average student of regular attendance whose deportment, discipline, reputation and character were good. In allowing the writ, the Supreme Court of Kansas declared:

> "On the record submitted here, we are of the opinion the evidence was insufficient to warrant the board in excluding plaintiff's daughter from the schools of Goodland. It is the policy of the state to encourage the student to equip himself with a good education. The fact that the plaintiff's daughter desired to attend school was of itself an indication of character warranting favorable consideration. Other than the fact that she had a child conceived out of wedlock, no sufficient reason is advanced for preventing her from attending school. Her child was born in wedlock, and the fact that her husband may have abandoned her should not prevent her from gaining an education which would better fit her to meet the problems of life."[11]

[11] Nutt v. Board of Education (1929) 128 Kan. 507, 278 Pac. 1065.

A case involving the right of married pupils to attend the public schools was decided by the Supreme Court of Mississippi in 1929. The school trustees of the Moss Point public schools adopted a rule, barring from the school married persons, although in all other respects eligible to attend the schools. A girl was married, but otherwise eligible, enrolled in the public schools but was denied admittance under the rule adopted by the trustees. The question of the validity of the rule was placed before the court. The court considered the rule arbitrary and unreasonable, and therefore void, reasoning as follows:

> "The ordinance is based alone upon the ground that the admission of married children as pupils in the public schools of Moss Point would be detrimental to the good government and usefulness of the schools. It is argued that marriage emancipates a child from all parental control of its conduct as well as such control by the school authorities; and that the marriage relation brings about views of life which should not be known to unmarried children; that a married child in the public schools will make known to its associates in schools such views which will therefore be detrimental to the welfare of the school. We fail to appreciate the force of the argument. Marriage is a domestic relation highly favored by the law. When the relation is entered into with correct motives, the effect on the husband and wife is refining and elevating, rather than demoralizing. Pupils associating in school with a child occupying such a relation it seems would be benefited instead of harmed. Furthermore, it is commendable in married persons of school age to desire to further pursue their education and thereby become better fitted for the duties of life; they are as much subject to the rules of the school as unmarried pupils, and punishable to the same extent for a breach of such rules."[12]

Thus it seems that the courts do not sanction the exclusion of married pupils, otherwise eligible, from the public schools. When such rules do not deprive the excluded pupil of an education, but merely specify that he shall attend a night school or a part-time vocational

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[12]McLeod v. State (1929) 154 Miss. 468, 122 So. 737, 63 A.L.R. 1161.

school instead of a day school, there is the possibility that such action would be considered an administrative detail to be handled at the discretion of the board and would, therefore, not be a matter for the court to decide. No cases are on record involving this situation, however.

Rules Concerning Bible Reading in the Public Schools. The following rules have been taken directly from the boards' regulations in schools from three eastern states.

> "The morning sessions shall be opened by the reading of some portion of the Bible by the Teacher."
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> "The morning exercise of all the schools shall commence with the reading of the Scriptures followed by the Lord's Prayer, during which service all the teachers and pupils connected with the school shall be present, except where necessary excuses may be granted by the Principal" (1931 rule).
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> "The Principal shall open the school each morning by reading at least five verses from the Old Testament, without comment. In case no assembly exercises are held, each teacher shall read at least five verses of the Old Testament in the classroom" (1936 rule).

Regarding the legality of rules concerning Bible reading in the public schools, the decisions are numerous and in irreconcilable conflict. Much time and space would be required to consider the many decisions on both sides of this question, after which the reader would be thoroughly convinced of the presence of this hopeless conflict in decisions, but perhaps in no better position to guess what the courts would do next. Although no attempt will be made to list all of the cases in point in this study, some idea of the conflicting decisions may be obtained by considering what Trusler says on the subject:

"The constitutional difficulties in the way of allowing the reading of the Bible in the public schools are apparent from the following questions often involved therein, upon which the courts have been called upon to pass.

"Is the Bible a sectarian book, so that the use of it in the public schools constitutes sectarian instruction? This question has been answered in the affirmative and in the negative.

"Is the reading of the Bible in the public schools in conflict with the right to worship God according to the dictates of one's own conscience? This question has been answered in the affirmative and in the negative.

"Do the reading of the Bible and the offering of prayer amount to religious worship, constituting the schoolhouse a place of worship, which citizens of the state are compelled to attend? This question has been answered in the affirmative and in the negative.

"Do the reading of the Bible and the offering of prayer amount to religious worship, constituting the schoolhouse a place of worship, which the taxpayers of the state are compelled to support? This question has been answered in the affirmative and in the negative.

"Do the reading of the Bible and the offering of prayer in the public schools conflict with the provision that no public money shall be appropriated for the use of sectarian schools? This question has been answered in the affirmative and in the negative.

"Do the reading of the Bible and the offering of prayer discriminate against any church, sect, or creed, or any form of religious faith and worship? This question has been answered in the affirmative and in the negative.

"Are the reading of the Bible and the offering of prayer any less unconstitutional because all students who object thereto are excused from such exercises? This question has been answered in the affirmative and in the negative."[13]

Trusler cites cases supporting both the affirmative and the negative sides of each of the questions in the preceding quotation. Because of the great number, they will not be listed here. There are numerous variations of this whole problem which can not be fully discussed

[13]Trusler, H. R., Essentials of School Law, p. 122-123.

here. It is possible to consider here only a few typical and representative cases which bear directly upon the rules obtained in this study.

A Kentucky case will serve to give the views of those courts which permit Bible reading and the saying of prayers in the public schools. It was the practice in this school to have the teacher open school by reading from the King James version of the Bible, and following her reading by a non-sectarian prayer. The court held that because pupils were not compelled to attend the place where worship was held, the school could not be called a place of worship. The court further reasoned that the Bible was not a sectarian book because it teaches no dogmas of any sect although some version of it may have been adopted or edited by some particular sect. The court summarizes its findings in a short paragraph by saying,

> "We believe the reason and weight of authorities support the view that the Bible is not of itself a sectarian book, and when used merely for reading in common schools, without note or comment by teachers, is not sectarian instruction; nor does such use of the Bible make the schoolhouse a house of religious worship."[14]

The Supreme Court of Illinois expresses the point of view of those courts which hold that Bible reading is sectarian instruction.

> "The reading of the Bible in school is instruction. Religious instruction is the object of such reading, but whether it is or not, religious instruction is accomplished by it.....They (pupils) can not hear the Scriptures read without being instructed as to the divinity of Jesus Christ, the Trinity, the resurrection, baptism, predestination, a future state of punishments and rewards, the authority of the priesthood, the obligation and effect of the sacraments, and many other doctrines about which the various sects do not agree. Granting that instruction on these subjects is desirable, yet the sects do not agree on what instruction shall

[14]Hackett v. Brooksville Graded School District (1905) 120 Ky. 608, 87 S.W. 792, 117 Am. St. Rep. 599, 69 L.R.A. 952.

be given. Any instruction on any one of the subjects is necessarily sectarian because, while it may be consistent with the doctrines of one or many of the sects, it will be inconsistent with the doctrine of one or more of them."[15]

Excusing pupils who object to taking part in the religious exercises of the school is sometimes done to abide by the constitutional demands of religious freedom. The disadvantage of such procedure is expressed in a Louisiana decision.

"Excusing such children on religious grounds, although the number excused might be very small, would be a distinct preference in favor of the religious beliefs of the majority, and would work a discrimination against those who were excused. The exclusion of a pupil under such circumstances puts him in a class by himself; it subjects him to a religious stigma; and all because of his religious belief. Equality in public education would be destroyed by such act, under a constitution which seeks to establish equality and freedom in religious matters."[16]

On the whole question of Bible reading and prayers in school, the courts hold widely diverging views. Since rules of this type are by no means assured of judicial sanction, it seems that they might well be omitted by all boards of education. The desirable results of religious instruction are not being questioned, but whether religious instruction should be carried on in a secular organization, such as the constitutions declare the schools to be, might be questioned. Certainly, rules requiring Bible reading in the public schools are not assured of judicial support, and any such attempt to combine church and state creates a very delicate and dangerous situation.

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[15]People v. Board of Education (1910) 245 Ill. 334, 92 N.E. 251, 29 L.R.A. (N.S.) 442, 19 Ann. Cas. 220.

[16]Herold v. Parish Board (1915) 136 La. 1034, 68 So. 116, L.R.A. 1915 D 941, Ann. Cas. 1916 A 806.

Rules and Court Decisions Concerning Patriotic Exercises in the Public Schools. Another type of rule which has recently come before the courts is one requiring pupils to salute the flag of the United States and join in the Oath of Allegiance to the flag. Only one school of those whose rules were studied, reported such a rule. "The Principal shall require the pupils of the school to salute the United States flag and repeat the oath of allegiance on every school day." Two recent cases will be cited to bring out the reasoning of the courts on this question.

A pupil in Georgia refused to salute the flag, in violation of a rule of the board of education, on the grounds that the salute to the flag constituted a religious rite. The court held that saluting the flag is not a religious rite, but a gesture of patriotism, and that the pupil was properly expelled from school. The court reasoned that a regulation requiring all pupils to participate in patriotic exercises, including the individual salute to the United States flag, was lawful and reasonable and in keeping with the policy of instructing youth in devotion to the American Constitution, institutions, and ideals.[17]

A Massachusetts case is very similar to the Georgia case just considered. Under authority of a statute, the school committee of Lynn, Massachusetts, adopted a rule requiring the giving of a salute and a pledge of allegiance to the flag in every school at least once each week. In an action attacking the constitutionality to the statute and the rule, the court held them to be not unconstitutional.[18]

[17]Leoles v. Landers (1937) (Georgia) 192 S.E. 218.
[18]Nicholls v. Lynn (1937) (Massachusetts) 7 N.E. (2nd) 577, 110 A.L.R. 377.

The courts have upheld rules requiring pupils to participate in patriotic exercises, and have reasoned that the salute to the flag is not a religious rite and, therefore, can not be objected to on that ground. The purpose of such rules is considered to be in keeping with the policy of instructing youth in the devotion of American ideals and institutions. The need or wisdom of such rules is not a point of consideration in this study.

Rules and Court Decisions Concerning Dress and Personal Appearance. A majority of the schools from which rules were obtained have a general rule providing that pupils must be neat and clean in dress and person. One rule, for example, states that

> "Students are forbidden to enter halls, assembly room, classrooms, or attend games, when attired in a manner that causes merriment or creates a disturbance. Girls are especially forbidden to masquerade in boys' attire. The Principal is to be the sole judge of what constitutes proper wearing apparel for high school students. Exceptions will be made to students who are to participate in plays or high school programs. The Board of Education by resolution requires that students' costumes for Baccalaureate Sunday, Class Night, and Commencement Night conform to the specifications laid down by the Board."

The school authorities are the judges as to when a pupil's attire or appearance is detrimental to the best interests of the school. The only penalty provided in any set of rules states that pupils whose appearance is unsatisfactory may be sent home to be properly prepared. However, if this amounted to expulsion, the school authorities would have to be able to show that the pupil's appearance was a direct detriment to the carrying out of the educational program.

The only case in which a pupil was denied the privilege of the school for improper personal appearance was the Pugsley v. Sellmeyer case. A school board rule provided "The wearing of transparent hoisery, low-necked dresses, or any style of clothing tending towards immodesty of dress, or the use of face paint or cosmetics, is prohibited." An eighteen year old girl was suspended from school because she used talcum powder. She sued for writ of mandamus requiring the board to re-admit her, which the court refused. Three of the five judges of the Arkansas Supreme Court felt that a local condition may exist requiring such a rule to assist in maintaining discipline. Judge Hart's dissenting opinion, in part, follows:

> "Miss Pearl Pugsley was eighteen years old on the 15th of August, 1922. I think that a rule forbidding a girl of her age from putting talcum powder on her face is so far unreasonable and beyond the exercise of discretion that the court should say that the board of directors acted without authority in making and enforcing it. 'Useless laws diminish the authority of necessary ones.' The tone of the majority opinion exemplifies the wisdom of this old proverb."[19]

In another case the court decided that dormitory students in a Mississippi county agricultural school must comply with a rule requiring them to wear the prescribed khaki uniforms, not only while in attendance at school, but when visiting public places within five miles of the school on days when there was no school.[20]

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[19]Pugsley v. Sellmeyer (1923) 158 Ark. 247, 250 S.W. 538, 30 A.L.R. 1212.

[20]Jones v. Day (1921) 127 Miss. 136, 89 So. 906, 18 A.L.R. 645.

In a North Dakota case the court held that pupils may be forbidden to wear metal heel-plates when it is shown that the use of such plates results in injury to the floor, noise, and confusion.[21]

A few cases involving the wearing of caps and gowns at graduation have come before the courts. The Supreme Court of Iowa declared that the board may deny the right of a pupil to participate in the public ceremony of graduation unless a cap and gown is worn, but that the board can not withhold a pupil's diploma for refusal to wear the cap and gown. "The wearing of a cap and gown on commencement night has no relation to educational values, the discipline of the school, scholastic grades, or intellectual advancement."[22]

School authorities have the authority to require proper dress and appearance on the part of pupils. The courts will uphold all such reasonable and necessary rules as being consistent with the best educational policy.

Rules and Court Decisions Concerning Specific Acts and Offenses. There are several rules which pertain to specific offenses. Such rules are intended to regulate some particular act which is the object of the rule. Many of the rules considered earlier in this chapter are more general in nature and can be applied to a number of more specific offenses. In attempting to find authority for making some of these rules governing specific offenses, in the absence of court decisions on the subject, it may be possible to justify them under some more general rule which the courts have upheld.

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[21] Stromberg v. French (1932) 60 N.D. 750, 236 N.W. 477.

[22] Valentine v. Independent School District of Casey (1921) 191 Iowa 1100, 183 N.W. 434.

Only one school had a board rule regarding report cards. "Report cards must be returned within a reasonable length of time. Failure to do so may result in the pupil being sent home for the card, the same as for overdue excuses, and making up the time missed thereby." The only case found which has a bearing on this rule, is an early Nebraska case. The school board had adopted a rule requiring the teacher to send a report card, showing the standing of the pupil, to the parent each month. The rule also provided that the card must be returned with the parent's signature or the pupil would be sent home to get it signed. A father refused to sign the pupil's card because the pupil's standing had dropped from what it had been prior reports. The court held that the board could lawfully suspend the pupil for the father's refusal to sign the card. The court believed that a parent's refusal to sign a report card is directly injurious to the welfare and interests of the school.[23]

A few schools have rules forbidding hazing and hazardous, dangerous or "poor taste" initiations. One rule of this type follows:

> "Hazing in any manner or form will not be permitted or tolerated in the public schools, in or out of school hours, either upon the school premises or elsewhere. Any violation of this rule, either directly or indirectly, shall be deemed just cause for suspension or expulsion."

No cases have been found in which the courts have considered this rule. It seems, however, that a rule of this type would receive judicial support unless malice, arbitrary action, or unreasonable enforcement on the part of the board could be proven. Hazing could be carried to such a point that it would not only interfere with the good order and

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[23]Bourne v. State (1892) 35 Neb. 1, 52 N.W. 710.

progress of the school, but it could even be dangerous and jeopardize the rights of pupils to an education.

A very common rule is the one which prohibits smoking or the use of tobacco in any form on school premises. No cases directly bearing upon this point have been decided by the courts. An early Tennessee case involves the use of tobacco on the school grounds, although the main point in the case is of no concern to this study. A teacher made a rule, contrary to the wishes of the school directors, forbidding the use of tobacco on the school premises. The court maintained that the teacher could not enforce this rule against the wishes of the directors. The court declared:

> "While much may be said against the use of tobacco, especially by young boys, yet it can not be said that the directors should have sustained the teacher in denying to all who were unfortunately addicted to its use the privileges of the public school which the law accorded to them or perforce, compel them to reform and abandon its use even while on the school grounds outside of the school room."[24]

Aside from the fact that the directors of this school seemed determined not to let the health and education of their sons interfere with their smoking, there is a point which is of some importance in our consideration of "no smoking" rules. According to this court the use of tobacco by pupils is a matter intrusted to the discretion of the school directors. If such is the proper interpretation it indicates that boards of education do have the authority to prescribe rules of this type. Trusler makes the following statement: "Undoubtedly it is a reasonable rule that prohibits the use of tobacco upon the school

[24]Parker v. Jefferson County School District (1881) 5 Lea (Tenn.) 525.

grounds."[25] Rules forbidding the use of tobacco by pupils could probably also be justified as a measure for protecting the health of the pupils.

Two schools have rules stating that pupils must not bring unfit reading matter to school, nor distribute any unauthorized literature. Although no cases are on record concerning this point, it seems likely that a rule of this nature can be justified. Prohibiting unfit literature would be an action toward maintaining higher moral standards among the pupils, and toward developing tastes for better literature. In addition, prohibiting distribution of unauthorized literature would prevent some unscrupulous businessmen or agents from using the tax-supported free public schools as an advertising center for their products.

Perhaps very little comment is necessary regarding the authority of school boards to formulate rules forbidding the use of intoxicating liquor by public school pupils. The degrading effect upon the whole student body, when members of that group use intoxicating liquor, is generally recognized. In an Arkansas case a pupil was suspended for being drunk and disorderly on a holiday, in violation of the ordinances of the city. The court considered this act sufficient cause for suspension.[26] A single instance of intoxication on Christmas day, in the absence of other evidence, would not seem to be a very direct injury to the morals and welfare of the school. The court did, however,

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[25] Trusler, H. R. Essentials of School Law, p. 100.

[26] Douglas v. Campbell (1909) 89 Ark. 254, 116 S.W. 211, 20 L.R.A. (N.S.) 205.

express itself strongly against the use of intoxicating liquor by school pupils. One school has a rule which provides for expulsion and turning of the pupil over to the civil authorities for the offense of selling intoxicating liquor.

Three or four rules will now be be listed which the school authorities often make and which undoubtedly would have judicial sanction in the absence of malice or arbitrary action in the particular situation on the part of the board. In fact, these rules might very well have been included under an earlier section of this chapter with rules governing school attitudes and behavior. However, because they are very specific in nature and refer to some definite object, they have been placed here with other rules covering definite and specific offenses. Several schools have rules forbidding pupils to engage in quarreling and fighting. In a case in an earlier chapter[27] the court recognized the right of the school authorities to prescribe a rule prohibiting loitering, quarreling, and fighting on the way home from school. If the school can govern such conduct off the school ground, they certainly should be permitted to regulate it on the school premises where the effect of such conduct is more direct. Two other rules are found quite often--one prohibiting gambling on the school grounds, and another prohibiting stealing. A rule of a similar nature, though found in but a few schools, forbids the forging of excuses. Such rules tend to fit the pupil for participation in society because he will find similar restrictions placed upon him in civil life. Such rules are not

[27]Deskins v. Gose (1885) 85 Mo. 485, 55 Am. R. 387.

likely to be considered unreasonable because one of the generally recognized functions of the school is to inculcate proper social attitudes and habits of conduct which are in harmony with the best interests of society.

Most schools seem to have a rule prohibiting the use of profane language by pupils. The reasonableness of such a rule is rarely, if ever, questioned. In a Connecticut case, the court upheld the exclusion of a pupil for using profane and insulting language to one of the school trustees. The offense was committed before the opening of school in the morning, in the presence of other pupils.[28] An Illinois case, which has been cited earlier in this chapter, also brings out the attitude of the courts toward the use of profanity by pupils. In this case a pupil had been suspended for refusing to give the name of another pupil who was guilty of obscene writing on the school building. At a hearing before the board to consider his reinstatement, the pupil used profane language to the board. The court declared: "Where a suspended pupil uses gross profanity and vulgarity to the school board on being called before it he forfeits his right to reinstatement."[29] It is evident that the courts will not tolerate profanity by pupils and they support the school authorities in making rules to discourage and eliminate it.

Rules prohibiting loitering in the halls or about the school building would probably be considered as regulations governing administrative details, in which case the making of them is a matter of

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[28] Peck v. Smith (1874) 41 Conn. 442.
[29] Board of Education v. Helston (1889) 32 Ill. App. 300.

discretion on the part of school authorities. One school reported a rule requiring pupils to stay out of cars during school hours. There are no cases on record in which this question has been considered by the courts. A few schools reported rules forbidding pupils to throw missiles on or about the school grounds. The courts have not passed upon these rules either, but they can undoubtedly be justified in the interests of safety and protection of the student body.

A few schools reported rules providing that pupils must not bring concealed weapons, firearms, deadly or dangerous playthings upon the school premises. This is another rule which is obviously reasonable in itself and necessary for the best interests and safety of the entire group of pupils. In an early Texas case[30] the court ruled that a teacher may use whatever force is necessary to take from a pupil a pistol, which the pupil brings to school.

General and Miscellaneous Rules. There are a few rules which seem to differ enough from those already considered to warrant placing them in this section under a general and miscellaneous classification. This rules deal either with school policies or with the conduct of parents in relation to the school.

Three schools reported rules providing that pupils may not enter a school while under suspension from another school, without the superintendent's consent. The exact rule reported by one school is as follows:

> "No pupil shall be admitted to one school who has been expelled from another, or while he is under suspension."

[30] Metcalf v. State (1886) 21 Tex. App. 174, 17 S.W. 142.

In an Arkansas case a father transferred his son to another district to avoid punishment for an offense against the good order of the school. The school authorities of the district to which the boy was transferred refused to admit him until he had received punishment for the offense committed in the other district. The court granted a writ of mandamus requiring the district to which the pupil was transferred to admit him. The court held that school authorities have no legal authority to prevent any qualified pupil from entering the schools under their jurisdiction, nor to punish pupils for offenses committed before they entered such schools.[31]

The courts have not been called upon to decide a case similar to the one above, in which a pupil might try to transfer from one school to another school within the same district for the purpose of escaping punishment for some offense committed in the first school. Here the pupil would have violated a rule of the school board in the first school, and would be seeking admission in the second school which is governed by the same board. It seems that in a case such as the one herein assumed, the board could punish the pupil or refuse to admit him in the second school because the offense for which they would be punishing him would have been committed within the jurisdiction of the board. If this assumption is correct, rules providing that pupils may not enter a school while under suspension from another school would probably be enforceable providing the two schools involved were in the same district. If the schools are in different districts the Arkansas court[32] has held that such a rule can not be enforced.

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[31] Stephens v. Humphrey (1920) 145 Ark. 172, 224 S.W. 442.
[32] Ibid.

A rule to the effect that pupils not doing satisfactory work in school may be demoted is found in several sets of school board rules. A rule similar to one of this type has received judicial sanction. A Massachusetts school committee adopted a rule providing that pupils in high schools with a standing below sixty per cent in two or more subjects should be demoted one grade. A pupil who was demoted under this rule contended that he had been excluded from the school without a hearing. The court held that demotion did not constitute exclusion, inasmuch as an opportunity was offered the pupil to attend the school in the lower grade.[33]

A few schools have rules providing that pupils' relatives must not disturb the school or abuse the teacher. For example,

> "Pupils shall be liable to suspension if their parents create a disturbance in school, or censure, abuse, or insult any teacher before his class or on the school premises."

A Georgia case illustrates the attitude of the courts toward parental misconduct affecting the school. A mother entered a school during school hours and criticized the teacher's conduct and methods in the presence of her pupils. The mother's three daughters were suspended from school on the ground that the mother's conduct had seriously interfered with the good order and discipline of the school. The Supreme Court of Georgia refused to grant a mandamus to compel reinstatement of the children as pupils in the school. The court reasoned

[33]Barnard v. Inhabitants of Shelbourne (1913) 216 Mass. 19, 102 N.E. 1095.

as follows:

> "Both (parent and child) must submit to the reasonable rules and regulations of the school, and the parent must so conduct himself as not to destroy the influence and authority of the school management over the children. Any act of disorder in the schoolroom calculated to bring into contempt the authority of the school and teacher should be met with punishment calculated to impress the pupils with the importance of obedience and respect to constituted authority....."[34]

The courts evidently believe that parental misconduct may affect the good order and discipline of the school to as great an extent as pupil misconduct. Although a pupil is not guilty of any misconduct, he may be suspended for misconduct of his parents if such misconduct unfavorably affects the discipline of the school.

Summary. The courts have recognized the right of school authorities to make rules governing the attitudes and general behavior of pupils in the public schools. It is generally presumed that pupils know the common law of the school and they are expected to obey the same. Pupils may be excluded from the public schools for immoral conduct, even though such conduct takes place off the school grounds and out of school hours. Rules denying the privileges of an education to married pupils, otherwise eligible to attend school, have not received judicial support. The courts are in hopeless conflict over the legality of rules permitting or requiring Bible reading and the offering of prayers in the public schools. Because of their uncertain legal status such rules might well be avoided by school authorities or be based on state laws. Rules requiring a salute and pledge of allegiance to the flag of the United States

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[34]Cartersville v. Purse (1897) 101 Ga. 422, 28 S.E. 896, 65 Am. St. Rep. 312, 41 L.R.A. 593.

have been upheld by judicial authority. Pupils must conform to the rule which requires that they be neat and clean in dress and person. Pupils may be required to wear a cap and gown to participate in graduation exercises, although the failure to take part in such exercises does not deprive the pupil of his right to a diploma if the other requirements have been satisfied. Schools may require pupils to take home report cards and to bring them back with the parent's signature thereon. School boards may legally make and enforce rules prohibiting the use of tobacco, intoxicating liquors, profane language, and the bringing of concealed weapons or dangerous playthings to school. A number of rules now in force in many school systems have not come before the courts although they will probably receive judicial sanction if and when they do. Included in this type of rules are the following: Rules prohibiting hazing, bringing unfit or unauthorized literature to school, quarreling or fighting, gambling, stealing, loitering about the school building, and the throwing of missiles. Pupils can not be refused admission to the public schools nor punished by the school authorities in any school district for offenses committed in other school districts. Pupils who are not making satisfactory progress in school may be demoted. Pupils may be suspended from school if their parents disturb the good order of the school or abuse a teacher of the school.

CHAPTER 6

CONCLUSIONS

This study has been concerned with what the courts take into consideration when determining the legality of school board rules which apply to pupil conduct and discipline.

The courts recognize the authority of the constitutions, both state and federal, in determining the general policy to be followed. Where statutes are found, they are to be followed by the local school boards, in which case the courts will not interfere unless the rule can be shown to be unconstitutional. The courts do not interfere with the discretionary powers granted to the school boards by the various legislatures. The test of reasonableness is applied whenever a question arises regarding the validity and legality of a school board rule or regulation, but the courts do not question the wisdom of such rules. In several cases the courts have held rules to be reasonable, although hinting that the particular application of the rule under consideration is not too much in keeping with good judgment. Such hints are frequently brought out in dissenting opinions.

On the other hand, the courts will not sanction unreasonable rules, nor those which do not apply equally to all pupils. Rules which appear to be the result of arbitrary action or a spirit of malice on the part of the board have not been supported by the courts. To be given judicial sanction, the rules made by a school board must be directly related to promoting the good order, discipline, and best interests of the school without interfering with the rights of parents or pupils.

In this study court opinions have been quoted freely. This has been done to enable the reader to become familiar with the reasoning followed by the courts in arriving at their decisions. It is not only the decision itself, but the reasoning which led up to it, that should be considered by those who are charged with the responsibility of making rules for the government of schools. Merely knowing a decision without following the reasoning involved may be very misleading at times. In following the courts' reasoning, one learns that the courts consider not only the general principles involved, but the special situation and the particular circumstances of the case as well. School administrators should be aware of this fact and formulate their rules accordingly. Failure to recognize this important principle may result in reasonable rules being invalidated because of unreasonable enforcement. Rules should never be considered as so rigid and so final as to be capable of handling all situations which arise. Peculiar circumstances may call for modifications in the enforcement of rules. This is particularly true in the case of rules governing pupil conduct and discipline. Here the question of the rights of pupils and parents, as well as the good order and best interests of the school, must be carefully weighed.

To avoid the danger of unreasonable enforcement of rules, it would perhaps be good practice not to state the penalty for violation of each rule. To follow a rule by the penalty may make it sound more authoritative, but imposing the penalty for violation of the rule, without regard to particular circumstances, is not a safe practice. Penalties which require the payment of money for the violation of rules

must be very carefully avoided, because here is a chance of depriving a child of an education because of his inability to pay. Rules providing for suspension or expulsion of pupils demand very careful consideration. Depriving a child of the opportunity of an education is a serious matter and school officials must be able to show good cause for so doing. Unless the offense is detrimental to the welfare, good order, discipline, or progress of the school, the courts will not approve exclusion from school as punishment. School authorities should understand that suspension and expulsion are resorted to only after all other means of correction have failed to bring about proper conduct. In addition, excluding a child from school is not intended merely as a punishment, but as a means of preserving order in the school or of protecting the pupils from undesirable influences.

Rules requiring regular and punctual attendance and those requiring satisfactory excuses from parents for pupil absence and tardiness are found in most sets of rules. Compulsory attendance laws furnish the authority for making rules of this type. Truancy is prohibited in most of the schools from which rules were obtained, and the courts have sanctioned such rules by upholding regulations requiring pupils to remain on the school premises throughout the entire day's session. Some schools permit pupils to be excused for a part of the day for instruction elsewhere, although this privilege is denied in other schools. The courts ordinarily leave this matter to the discretion of the school board, although if the board denies this privilege to a pupil it should be able to show that the good order of the school

would be jeopardized by granting the request. The extent to which a parent may select a child's studies depends upon whether or not such selection interferes with the right of the other pupils in the school. Rules governing the time of admission into school buildings should consider the condition of the weather to protect the health of pupils. School authorities may detain pupils after the regular session for corrective or other purposes; the courts do not consider such detention as false imprisonment. Detaining pupils during intermissions and recreation periods is discouraged by most school authorities.

Rules requiring pupils to pay for damaging or defacing school property have not been supported by the courts. The objection has not been to the rule protecting the property, but rather to the penalty which requires the payment of money for the damage done. It would seem, therefore, that rules protecting school property should not carry a penalty involving monetary considerations. Rules which may force a pupil to pay any amount of money should be carefully considered. If the damage is done wilfully or maliciously, having a detrimental effect upon school discipline, one court has hinted that exclusion of the pupil might possibly be justified. Assessing fines for undue wear of free textbooks, or making a deposit to insure proper treatment of them, brings up the money question again, which should be avoided in school board rules. Withholding a pupil's school credits for failure to pay for property damage has not been definitely supported by the courts.

It has been generally recognized that the school authorities may control the conduct of pupils from the time they leave home to go to school until they return home from school. School boards may regulate

or prohibit fraternities, sororities, or secret organizations among pupils of the elementary and secondary schools. School boards have controlled such organizations by suspension or expulsion of offending pupils by denying certain school privileges to fraternity members, and by refusing to issue credits or diplomas to pupils who have violated the fraternity rule. State statutes prohibiting or providing for control of fraternities in elementary and secondary schools have been upheld by the courts whenever their constitutionality has been questioned. Pupils may be held responsible for their conduct on the way to or from school, or for conduct anywhere if such conduct interferes with the good order and discipline of the school. Rules prohibiting loitering or gambling in public places, rules forbidding pupils to smoke on the way to or from school, rules governing the conduct in rooming places of out of town pupils, and rules requiring that a pupil have permission to drive a car to school, would probably be upheld by the courts as being necessary for the best interests of the school. Rules forbidding pupils to be on the streets after 9:00 P. M. unless accompanied by a parent or guardian, and rules forbidding pupils to attend dances on school nights are very close to the borderline between parental and school control. The weight of judicial opinion favors parental control of the home and social life of the pupil.

School authorities may legally make and enforce reasonable rules governing the attitudes and general behavior of pupils in the public schools. Rules excluding pupils guilty of immoral conduct have been upheld by the courts as necessary for the protection of the other pupils in the school. The courts have not supported rules denying the

privileges of an education to married pupils who are otherwise eligible to attend school. Although the courts have not been called upon to decide the question, it is possible that married pupils may be reasonably excluded from the day schools if they are given an opportunity to attend night schools. Rules involving Bible reading in the public schools have caused so many conflicting decisions that school authorities should perhaps leave them out of the rule books. This would be in line with the well-established American principle of separation of church and state. In several recent decisions the courts have upheld rules requiring pupils to salute and pledge allegiance to the flag of the United States. Pupils must conform to rules requiring that they be clean and neat in dress and person. Schools may require pupils to take home report cards and to bring them back with the parent's signature thereon. Rules prohibiting the use of tobacco, intoxicating liquors, profane language, and the bringing of concealed weapons to school, have been given judicial sanction. There are a number of rules now in force in public school systems which have not been before the courts but which would probably receive judicial approval. Included in this type of rules are the following: Rules prohibiting hazing, bringing unfit or unauthorized literature to school, quarreling or fighting, gambling, stealing, loitering about the school building, and the throwing of missiles. Pupils can not be refused admission to the public schools nor punished by the school authorities in any school district for offenses committed in other school districts. The courts have upheld the school authorities in demoting pupils who are unable to do the work in any particular grade. Pupils may be excluded from school if their parents disturb the good order of the school or abuse the teacher.

Very little has been said in this study about statutes which empower school boards to make certain rules. Wherever statutes permit certain rules to be made, the board's right to prescribe such rules is not to be questioned unless the constitutionality of the statute can be challenged. An interesting study could be made of statutes relating to rules governing pupil conduct and discipline.

After consideration of the rules obtained in this study, one or two general suggestions concerning the formulating of school board rules will be given. To make rules covering every specific offense which is likely to occur is unquestionably a task of great magnitude, if not an impossibility. A wiser and a more practical policy would be to make a few general rules requiring proper conduct and not attempt to provide for every specific offense which might possibly occur. Specific offenses could be taken care of under these general rules. This policy would also eliminate the many penalties provided for specific offenses, which in some cases may make the enforcement of a reasonable rule illegal. As a final suggestion, the manner of stating the rule will be considered. From a psychological point of view and from the standpoint of positive teaching, as many rules as possible should be stated positively. In this manner the proper conduct and the desirable habits would be emphasized.

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APPENDIX A

Schools From Which Rules Were Obtained

Fifty three school systems furnished either school board rules or pupil handbooks for use in this study. In most of the schools these materials were obtained through the Superintendent's office or through the office of the Director of Research. The following named school systems furnished the rules and regulations used in this study:

Mobile, Alabama; Flagstaff, Arizona; Fort Smith, Arkansas; Alameda and Los Angeles, California; Wilmington, Deleware; Macon, Georgia; Chicago, Oak Park, and Peoria, Illinois; Evansville and Terre Haute, Indiana; Davenport and Dubuque, Iowa; Wichita, Kansas; Paducah, Kentucky; Baton Rouge, Louisiana; Bangor, Maine; Baltimore, Maryland; Springfield, Massachusetts; Grand Rapids, Michigan; Minneapolis and Rochester, Minnesota; Meridian, Mississippi; Joplin, Missouri; Great Falls and Missoula, Montana; Nashua, New Hampshire; Jersey City, New Jersey; Albany, New York; Charlotte, North Carolina; Bismarck, Buxton, and New England, North Dakota; Muskogee and Oklahoma City, Oklahoma; Hood River, Oregon; Erie, Pennsylvania; Providence, Rhode Island; Charleston, South Carolina; Aberdeen, South Dakota; Amarilla and Houston, Texas; Rutland, Vermont; Norfolk and Petersburg, Virginia; Aberdeen, Everett, Olympia, Spokane, and Yakima, Washington; Racine and Superior, Wisconsin.

APPENDIX B

Summary of School Board Rules

The following list of rules obtained from the various schools is not quoted directly from the rule books, but is a summary of those rules. The number following each rule indicates the number of schools reporting that rule.

Attendance and Excuses.

Pupils must be regular and punctual in attendance. (31)

Absence and tardiness must be excused. (37)

Pupils may not be absent for other instruction without the consent of the school authorities. (6)

Pupils must not leave school before the end of the session without permission. (35)

Truancy will not be permitted. (22)

Pupils may be excused on their religious holidays and "sacred days" upon parental request. (9)

No excuses will be granted for music, dancing, or drawing lessons. (4)

No pupil under sixteen years of age will be excused to take part in a theatrical performance. (1)

Pupils may be excused from one and one-half hours to two hours per week for music lessons. (2)

Pupils may be excused only the last period for music lessons, if the last period is a study period and the pupil's school work is not jeopardized.

Caddies, newsboys, etc., may be excused a day at a time for outside work if they can afford to lose the time. (1)

Pupils may be excused for part of the day for educational or health purposes if this does not interfere with their school work. (1)

Assembling on and Leaving School Grounds.

Pupils may not assemble on the school grounds an unreasonable time (more than twenty, thirty, or forty minutes) before the opening of school. (11)

Pupils may not enter the school building before 8:15 A. M. except in inclement weather. (1)

Pupils may not assemble on school premises unless supervised by a teacher or janitor. (3)

Pupils must remain on the school grounds during intermissions. (2)

Pupils within six blocks of the school must go home for lunch. (1)

Pupils may not leave the school grounds during lunch hour without permission. (2)

Pupils should not be detained after school more than a reasonable time (from twenty minutes to an hour is considered reasonable). (15)

Pupils may be detained after school at the teacher's discretion. (1)

Pupils must leave the school premises promptly and quietly upon dismissal. (17)

Property Damage.

Pupils must pay for defacing or damaging school property, books, etc. (39)

Pupils will be held responsible for damage done to other pupils' property. (1)

Pupils must pay fines for undue wear on books. (2)

Pupils must make satisfactory settlement of all issued school property. (1)

Off School Grounds and Out of School Hours.

Membership of pupils in secret societies or fraternities is prohibited. (6)

Pupils may not join any society not sanctioned by the board of education. (1)

Pupils are responsible to the school for their conduct in the streets, about the school, and for conduct on the way to and from school. (18)

Pupils must not be on the streets after 9:00 P. M. unless accompanied by a parent or guardian, or having a permit from the school authorities. (2)

Pupils may not attend dances on school nights. (1)

Pupils are responsible for their conduct anywhere if such conduct is detrimental to the best interests of the school. (2)

School Attitudes and General Behavior.

Pupils must obey rules of the school board, superintendent, principal, and teachers. (24)

Pupils must show proper deportment and attitudes about the school. (26)

Pupils are expected to be industrious, attentive to duties, and diligent in study. (18)

Pupils must not be guilty of wilful violation or disobedience of rules, defiant opposition to authority, or interference with the work of the school. (15)

A pupil must not make a nuisance of himself about the school premises. (1)

Pupils must not be guilty of gross insult or other serious offense against the school. (1)

Pupils are responsible for their proper conduct during recess.

Pupils must not be obstinate nor incorrigible. (4)

Pupils are expected to be polite, courteous, respectful, and kind to each other and to their teachers. (19)

Pupils must not be guilty of any conduct detrimental to or subversive of discipline. (19)

Pupils are expected to be truthful, refraining from telling falsehoods and cheating. (5)

Pupils must show gentlemanly and orderly conduct. (20)

Pupils must not have injurious, vicious, or immoral habits, nor be guilty of such conduct. (21)

No profane, obscene, offensive, indecent, or improper language, writing or pictures will be permitted about the school building. (23)

Married Pupils.

Pupils marrying during the school year shall be automatically excluded from the day schools. (2)

Bible Reading.

The morning session shall be opened by the reading of some portion of the Bible. (2)

The Principal shall open the school each morning by reading at least five verses from the Old Testament, without comment. (1)

Patriotic Exercises.

The Principal shall require the pupils of the school to salute the United States flag and repeat the oath of allegiance on every school day. (1)

Dress and Personal Appearance.

Pupils must be neat and clean in dress and person. (20)

Pupils must wear proper apparel, girls must not dress as boys, and costumes for Baccalaureate, Class Night, and Commencement Night must conform to board requirements. (1)

Specific Offenses.

Report cards must be signed and returned to the school. (1)

Smoking is prohibited on the school premises. (31)

Hazing and all hazardous or "poor taste" initiations are prohibited. (6)

Pupils are forbiddeh to engage in quarreling or fighting. (5)

Pupils must not bring unfit reading matter to school nor distribute any unauthorized literature. (2)

Drinking or selling intoxicating liquor is prohibited. (5)

Gambling is not permitted on the school premises. (4)

Stealing will not be tolerated. (5)

Pupils may not throw missiles on or about the school premises. (4)

Forging excuses will not be tolerated. (2)

Loitering in the halls and about the school building is prohibited. (6)

Pupils must stay out of cars during school hours. (1)

Pupils must not bring concealed weapons, firearms, deadly or dangerous playthings upon the school grounds. (7)

Pupils may not enter a school while under suspension from another school without the superintendent's consent. (4)

Pupils not doing satisfactory work may be demoted. (7)

Pupils' relatives must not disturb the school nor abuse the teacher. (2)

Pupils must have permission from the school authorities if they wish to drive cars to school. (1)

APPENDIX C

Table of Cases

Antell v. Stokes (1934) (Mass.) 191 N.E. 407.

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