

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION
SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2169

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Deanna Bell
Operator's Signature

01/17/03
Date

2003 SENATE EDUCATION

SB 2169

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10/17/03
Date

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2169

Senate Education Committee

Conference Committee

Hearing Date 01-20-03

Tape Number	Side A	Side B	Meter #
1	x		12.8 - end
1		x	0 - 1.8
Committee Clerk Signature <i>Danda Johnson</i>			

Minutes: Chairman Freborg called the committee to order. Roll Call was taken with all (6) members present.

Chairman Freborg opened the hearing on SB 2169 relating to student fees for the use of musical instruments.

Testimony in support of SB 2169:

SENATOR COOK, Dist. 34, explained that this bill will allow present day practice to be legal.

He believes there are four questions to be asked:

- Is this present practice
- Is present day practice legal without this language
- Is this bill constitutional
- If this bill is needed to continue present day practice, what would the unintended consequences be if the committee does not pass this

SENATOR FREBORG asked if schools have to have instruments available. SENATOR COOK stated no, they do not have to.

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01/17/03
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Page 2
Senate Education Committee
Bill/Resolution Number SB 2169
Hearing Date 01-20-03

SENATOR FLAKOLL asked how to deal with individuals with a financial hardship to make sure we are not disenfranchising them when they can not be in the band or play the instrument they choose. SENATOR COOK would like to defer this question to the Mandan band instructor who will be testifying.

SENATOR FREBORG asked if it would be legal to charge only for less expensive instruments and not for those that are not affordable.

REPRESENTATIVE MONSON, Dist. 10, Supt. for his school district, stated he thought his school did collect fees for the expensive instruments, ones that people don't buy. But, upon further investigation, he found out they don't. His instructor thinks it is a good idea. He feels that in the smaller schools, some organization steps in to help with the cost. (example: Band Mothers). However, the instruments are getting more and more expensive to buy and it is getting harder and harder to get the ones they have fixed. He feels this bill makes sense.

JOHN WARREN, Mandan Bands, stated the students in 5th - 6th grades are encouraged to rent instruments, which goes toward the purchase price, before investing in them. However, the students need to start on some instruments that can't be rented or are very expensive in order for the band to have a balance. This is done for a nominal fee (\$50.00 for a high school instrument which goes toward the maintenance agreement the school has with the store). The cost to the schools is enormous. In Bismarck/Mandan, the musicians union has helped. Individuals have donated instruments which the union has paid to have fixed and the union has also paid for the maintenance agreement. If no rental is charged, the school would become responsible and that would be prohibitive.

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Senate Education Committee
Bill/Resolution Number SB 2169
Hearing Date 01-20-03

SENATOR G. LEE asked if there is a limit on what can be charged. He was told it is in the bill and is very specific.

SENATOR FLAKOLL, asked what the life expectancy of a large instrument is. He was told 15 - 20 years. He asked if Mandan has a policy as to who gets some of the lesser cost instruments.

Mr. Warren stated that usually the grade school teacher has some knowledge as to who is interested in which instrument.

SENATOR COOK asked when do children start playing. Mr. Warren answered that in Mandan, the program starts in 6th grade. Some other schools start in 4th or 5th and others start in 7th.

SENATOR TAYLOR asked what is the most common practice; the rental by a student or the ownership of the instrument by the school. Mr. Warren stated both practices are done.

SENATOR FLAKOLL asked about several students sharing a school owned instrument. Is there a flat rate charged to each student or what. Mr. Warren answered there is a flat rate charged to each student.

SENATOR G. LEE asked if students buy their own snare drums. Answered YES. However, the drums are not brought to school except in the 6th grade. The set is left at home for the student to practice on. In school, after the 6th grade, the students are playing on better equipment. Then there is a \$35.00 per student charge.

SENATOR CHRISTENSON asked if it would be fair to say that most districts have something in place to help students with playing or purchasing instruments. Mr. Warren stated yes, but it probably is an informal policy.

SENATOR COOK asked if income is generated with these fees. Mr. Warren replied NO. The fees don't even cover half the maintenance agreement cost.

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Page 4
Senate Education Committee
Bill/Resolution Number SB 2169
Hearing Date 01-20-03

BEV NIELSON, NDSBA, stated the group's support for this bill. They would like to have this in statute and clarified. They feel the bill does this. She further stated that we don't want to discourage students from the music program and if there is going to be a requirement in music, it needs to be addressed and clarified.

Testimony in opposition to SB 2169:

ANITA DECKER, Director of School Approval and Accreditation for DPI, testified against the bill. (see attached)

SENATOR FREBORG asked how a music requirement could be filled if a student doesn't play in the band. MS. DECKER stated that would be through performance courses such as choir. If the music requirement was filled with choir, then band could be an elective. She believes that if the legislature requires a school to offer a course, then it is "essential".

SENATOR COOK asked when does a subject become "essential" for an education. His feeling is if a subject is required for graduation from a school, then it is "essential".

DOUG BAHR, AG staff, addressed the constitutionality of the bill. Is it "essential" if it is "required to graduate" or "required to offer". He feels the word "essential" applies to what is needed to graduate. This could be unconstitutional if only band were offered and then became required.

SENATOR COOK wondered if this bill should be amended. MR. BAHR stated that if a course becomes required, no fee can be charged for it.

The hearing was closed on SB 2169.

Senator Cook is to look into amending the bill.

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01/17/03
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2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2169

Senate Education Committee

Conference Committee

Hearing Date 01-22-03

Tape Number	Side A	Side B	Meter #
1		x	15.0 - 23.3

Committee Clerk Signature *Andrew Johnson*

Minutes: CHAIRMAN FREBORG called the committee to order. Roll Call was taken with all (6) members present.

Discussion on SB 2169:

SENATOR COOK presented an amendment to the committee (see attached). He stated that Doug Bahr, DPI, believes this will give guidance as to which fees can not be charged.

Legislative Council will prepare the amendment in proper form with the intent of the committee.

Senator Cook moved the amendment. Seconded by Senator Taylor. Roll Call Vote: 6

YES. 0 NO. 0 Absent. Amendment adopted.

Senator Cook moved a Do Pass. Seconded by Senator G. Lee.

Roll Call Vote: 6 YES. 0 NO. 0 Absent. Motion Carried.

Carrier: Senator Cook

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01/17/03
Date

FISCAL NOTE
 Requested by Legislative Council
 01/08/2003

Bill/Resolution No.: SB 2169

1A. **State fiscal effect:** Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.

	2001-2003 Biennium		2003-2005 Biennium		2005-2007 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$0	\$0	\$0	\$0
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

1B. **County, city, and school district fiscal effect:** Identify the fiscal effect on the appropriate political subdivision.

2001-2003 Biennium			2003-2005 Biennium			2005-2007 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

2. **Narrative:** Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.

Any fiscal impact would be small and is difficult to determine. Districts may be encouraged to buy/lease musical instruments thereby increasing revenue slightly from student-paid fees. Cost of purchase/lease would be nil over the life of the instrument. If fee is waived for economically disadvantaged student, district would not receive revenue for the period that student uses instrument.

3. **State fiscal effect detail:** For information shown under state fiscal effect in 1A, please:

A. **Revenues:** Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.

N/A

B. **Expenditures:** Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.

C. **Appropriations:** Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.

Name:	Anita Decker	Agency:	Public Instruction
Phone Number:	328-1718	Date Prepared:	01/13/2003

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01/17/03
 Date

Cook

Proposed Amendments to Senate Bill No. 2169

Page 1, line 2, after "to" insert "fees that may not be charged by a school board and"

Page 1, line 7, after "1." insert "A school board may not charge a fee for textbooks or other items necessary for completion of a course required for grade advancement or graduation."

specific

Renumber accordingly.

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10/17/03
Date

REPORT OF STANDING COMMITTEE (410)
January 23, 2003 7:49 a.m.

Module No: SR-13-0941
Carrier: Cook
Insert LC: 30136.0101 Title: .0200

REPORT OF STANDING COMMITTEE

SB 2169: Education Committee (Sen. Freborg, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2169 was placed on the Sixth order on the calendar.

Page 1, line 2, after "to" insert "prohibiting a school board from charging fees for textbooks and to"

Page 1, line 7, after "1." insert "A school board may not charge a fee for textbooks or other items necessary for completion of a specific course required for grade advancement or graduation.

2."

Page 2, line 13, overstrike "2." and insert immediately thereafter "3."

Page 2, line 15, overstrike "3." and insert immediately thereafter "4."

Page 2, line 21, overstrike "4." and insert immediately thereafter "5."

Page 2, line 23, overstrike "5." and insert immediately thereafter "6."

Renumber accordingly

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1/17/03
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2003 HOUSE EDUCATION

SB 2169

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10/17/03
Date

2003 HOUSE STANDING COMMITTEE MINUTES
BILL/RESOLUTION NO. SB 2169
House Education Committee

Conference Committee

Hearing Date March 10, 2003

Tape Number	Side A	Side B	Meter #
1	x		5938-end
1		x	00-2639
Committee Clerk Signature <i>Linda Fuchsen</i>			

Chairman Kelsch opened the hearing on SB 2169

Sen. Dwight Cook, Dist. 34, Mandan

Simply allows schools to charge a fee for the rental of band units. As I went around and got sponsors for this bill the comments from everyone was isn't that what we are doing right now! flip tape.

Bev Nielson, School Boards Association,

Whenever money gets tight, arts tend to go first, we don't want to see that. If this will help keep the program then we support the bill.

Mr. John Warren, Music teacher, Mandan Public Schools

This bill is designed to allow school districts to charge a fee for the rental for the musical instruments that are normally not purchased by parents or are too large and stay in the school building. That would include the percussion section, the large horns, marching equipment. Our policy is that we charge a fee which does cover the maintenance and upkeep of the instruments and the instruments that we need to rent in order to have concert band, marching band, etc.

Rep Mueller The fiscal note, the waiving of this fee if the family can not afford the fee?

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Date

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House Education Committee
Bill/Resolution Number SB 2169
Hearing Date March 10, 2003

Warren: That of the reduced fee structure for the increasing number of kids in music from the same family. **Rep. Mueller** Can you /will you **Warren:** the school board has a policy on it.

Rep. Norland Does your band have a active group of band mothers or booster club.

Warren: Yes we do

Rep. Norland So what happens in this scenario, where they buy the instruments by raising money, who owns the instruments and is rent charged for those instruments.

Warren: In my school district they purchase the instruments through the school district itself.

The band uniforms for instance, we needed 40-50K, the booster, 501C, to raised the money.

Those things that are given to the school district are part of the school district.

Rep. Hunskor Does that differ across the state and from school to school.

Warren: I think it is the practice across the state for the most part. Some districts get used equipment from alumni and refurbish it for use through the rent program. Second Sound Around.

Rep. Norland What is the price of instruments now days?

Warren, extremely expensive. a trumpet in the 70's was 352 now it is between 850-1200.

Rep. Norland So the fee is for upkeep and maintenance. **Warren:** Yes

Chairman Kelsch how many rental units do you have for the Concert band.

Warren 30 kids in grades 9-12

Rep. Meier How long have you been teaching **Warren:** 24 years in Mandan, 32 years in all.

Rep. Hawken: Thank you for coming and talking about this with us I think it is extremely important for all schools. It is a joy to be part of the band.

Joe Westby, NDEA

We are in support of this bill, The prices have gone up since my childhood and it is extremely

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10/17/03
Date

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House Education Committee
Bill/Resolution Number SB 2169
Hearing Date March 10, 2003

hard for parents to afford this opportunity for their children. I do have a concern that there is some mechanism in place, and perhaps it is, so that a child that is unable to afford the fee still has the opportunity to participate.

Anita Decker, Director, School Approval and Accreditation, Department of Public

Instruction (1250-1719) See Attached Testimony

Rep. Jon Nelson Are you aware of any school district that doesn't have a booster club to help their music department. **Decker;** I don't know that

Rep. Jon Nelson I don't know of a school in my district that doesn't have a supporting group to assist in fees for an instrument. Most of them goes as far as to raise money to send them to music camp. In your testimony you admit that band is an extra curricular activity and you can be part of it without receiving credit.

Decker; band is not an extra curricular activity they receive credit, but it is not required course.

Rep. Hawken: Your testimony bothers me. What you said we shouldn't have band because of costs. If that is the key in education is to make sure no child can't be there then there are a lot of things we should take out, or we pay more at the state level. Children who wish to participate can from the help of local efforts. Music teachers get so much, they are very congas of the lower income children. You make it sound like we should not have it.

Decker: This is about fees in general. This is also about leveling the playing field for all children.

Chairman Kelsch I really don't believe that there isn't a club to cover cost for a family that can not afford it. But I see a lot of them owning their own equipment because they feel it is important for their child. \$50 is cheap, band is not a required course and it is not that expensive to get into the program. However the rewards are for a lifetime and if you truly can't afford the money the

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10/17/03
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House Education Committee
Bill/Resolution Number SB 2169
Hearing Date March 10, 2003

school district can waive the fee, and know body would no that the child didn't pay the fees.

Rep. Hunsakor Where we have children that can't afford, the music teachers then go to the parents, to the school board or to the booster club to get an instrument. I don't know of any child that has stayed out for that reason.

close hearing on 2169.

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2003 HOUSE STANDING COMMITTEE MINUTES
 BILL/RESOLUTION NO. SB 2169
 House Education Committee

Conference Committee

Hearing Date March 11, 2003

Tape Number	Side A	Side B	Meter #
2		x	2120-2767
Committee Clerk Signature <i>Linda Fiechter</i>			

Chairman Kelsch opened the committee work on SB 2169.

Chairman Kelsch the question is this, I would like you to read the title. On line 2 relating to : relating to prohibiting a school board from charging fees for text books and to student fees for the use of musical instruments. Should it not be: and to charge student fees or to allow student fees. I didn't want to make it so that it was a mandatory that you had to.

Rep. Haas the way that I read it: the wording relating in understood after the word and.

Chairman Kelsch So then it is relating to student fees.

Rep. Haas It is understood.

Chairman Kelsch What are the wishes of the committee?

Rep. Hawken: moves a DO PASS, **Rep. Herbel** second the motion

Discussion:

Rep. Sitte We really never did discuss lines 8 and 9 and I was wondering why we didn't.

Chairman Kelsch the reason that it was put in there to make sure that it was understood that you can not charge for text books that are mandatory for a class or class work and graduation completion.

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 Operator's Signature 10/17/03
Date

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House Education Committee
Bill/Resolution Number SB 2169
Hearing Date March 11, 2003

Rep. Haas That is also in another section of the law. And it was inserted here to make it clear.

Rep. Hanson I think it is spelled out that if the band mothers bought a drum, the school district can't charge a fee on it now.

Chairman Kelsch The school districts that were charging the fee thought they could charge it and found out that through an opinion they could not charge, This spells it out.

I thought it was interesting that there were no parents in here to oppose this, and I told you about the family, and I talked with them last night and they said we have utilized this because it is much more less expensive for us to go this route then to purchase the instrument.

Roll Vote: 12-1-1, passed. Rep. Williams will carry the bill to the floor.

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10/17/03
Date

Date: 3/11/03
Roll Call Vote #: 1

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2169

House HOUSE EDUCATION Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Hawken Seconded By Herbel

Representatives	Yes	No	Representatives	Yes	No
Chairman Kelsch	✓				
Rep. Johnson	✓				
Rep. Nelson	✓				
Rep. Haas	✓				
Rep. Hawken	✓				
Rep. Herbel	✓				
Rep. Meier	✓				
Rep. Norland	✓				
Rep. Sitte	✓				
Rep. Hanson	✓				
Rep. Hunsakor	✓				
Rep. Mueller		✓			
Rep. Solberg	AB				
Rep. Williams	✓				

Total (Yes) 12 No 1

Absent 1

Floor Assignment Williams

If the vote is on an amendment, briefly indicate intent:

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Deanna Hall Operator's Signature 10/17/03 Date

REPORT OF STANDING COMMITTEE (410)
March 12, 2003 1:48 p.m.

Module No: HR-44-4589
Carrier: Williams
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE
SB 2169, as engrossed: Education Committee (Rep. R. Kelsch, Chairman) recommends
DO PASS (12 YEAS, 1 NAY, 1 ABSENT AND NOT VOTING). Engrossed SB 2169
was placed on the Fourteenth order on the calendar.

(2) DESK, (3) COMM

Page No. 1

HR-44-4589C

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2003 TESTIMONY

SB 2169

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TESTIMONY ON SB 2169
SENATE EDUCATION COMMITTEE
January 20, 2003
by Anita K. Decker, Director
School Approval and Accreditation
328-1718
Department of Public Instruction

Mr. Chairman and members of the committee:

My name is Anita Decker and I am the director of School Approval and Accreditation for the Department of Public Instruction. I am here to speak in opposition to SB2169 regarding allowing schools to charge fees for use of musical instruments.

In his latest opinion on school fees, the Attorney General, quoting Article VIII of the state's constitution, said "that a school district board may establish 'a system of free public schools for all children of legal school age residing within the district.'" The ND Supreme Court has interpreted "free public schools" to mean as follows: The term "free public schools" without any other modification must necessarily mean and include those items which are essential to education." NDCC 15.1-21-02 requires that schools offer music as part of their curriculum. They receive foundation aid for those courses and grant credit toward graduation for them.

Based on these interpretations and curriculum requirements, the Department has advised schools that fees are not allowed for courses for which credit is given.

While we understand the costs schools face to sustain many of their courses and programs, the adoption of fees for musical instruments may actually reduce the number of students who play in a school's band to those who can afford the fees or those who are willing to admit they can't afford to pay the fee. Most of the musical instruments provided by a school district are instruments that the school or its band or orchestra director have determined they want in the band. These frequently include the larger instruments such as larger brass instruments (tuba) or percussion (timpani or bass drums) or larger stringed instruments (harp), etc. Many of the students who play these

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Anita K. Decker
Operator's Signature

10/17/03
Date

instruments are in fact asked by the director to play the instrument. The student's parent or parents has likely already purchased a different instrument, which the student has played to that point.

Even if a school were willing to purchase or rent smaller band instruments for low-income students, it has been my experience in schools that high school students particularly are loath to be identified as low income.

It is a fact that there are often additional costs for being involved in band programs: it is not uncommon for special clothing to be required (tux shirts, spats, shoes, etc.) nor is it uncommon for high school bands to decide to participate in events which require costly out-of-state travel. Generally, students must raise the money or ask their parents for it. Low-income students are again at a disadvantage because their parents cannot afford it and students themselves may have jobs which they need to be able to afford essentials.

The traditional role of some organizations within a school, such as School Foundations or Band Parents, has been to assist with purchasing instruments needed for the band. Perhaps that role could be expanded to assist students with purchase of smaller, personally owned instruments.

I often receive calls from students and parents questioning the fees their district is charging for children to attend schools. We have tried diligently to interpret NDCC 15.1-09-36 consistently and fairly. The addition of yet another exception to "free public schools" will encourage schools to continue to challenge this statute by seeking an increasing number of such exceptions. The statute is already difficult to administer.

A modern physical education program would use exercise equipment such as treadmills, stair-steppers, computer monitors, software programs to analyze fitness, etc. Would it not be logical if schools were to ask for fees in physical education for use and maintenance of such equipment?

Numerous fees and incidental charges in many districts discriminate against children of low-income families and relegate them to second-class citizenship. Current statute already allows for a security deposit and for use charges in the case of undue wear on equipment.

We urge a do not pass on SB 2169.

Mr. Chairman, this concludes my testimony. I would be happy to answer any questions.

Deanna Hall
Operator's Signature

10/17/03
Date

TESTIMONY ON SB 2169
HOUSE EDUCATION COMMITTEE
March 10, 2003
by Anita K. Decker, Director
School Approval and Accreditation
Department of Public Instruction
328-1718

Madame. Chair and members of the committee:

My name is Anita Decker. I am the director of School Approval and Accreditation for the Department of Public Instruction. I am here to speak in opposition to SB2169 regarding allowing schools to charge fees for use of musical instruments.

The Department feels that any bill that introduces a new fee is a move in the wrong direction. Several districts in the state have done away with fees altogether. In the overall school district budget, income from fees is an extremely small percent, perhaps even a fraction of a percent.

In his latest opinion on school fees, the Attorney General, quoting Article VIII of the state's constitution, said "that a school district board may establish 'a system of free public schools for all children of legal school age residing within the district.'" The ND Supreme Court has interpreted "free public schools" to mean as follows: The term "free public schools" without any other modification must necessarily mean and include those items which are essential to education." NDCC 15.1-21-02 requires that schools offer music as part of their curriculum. They receive foundation aid for those courses and grant credit toward graduation for them.

Based on these interpretations and curriculum requirements, the Department has advised schools that fees are not allowed for courses for which credit is given.

While music is a required offering for a district, band itself is not required. On its face, it may seem reasonable that students using district-owned instruments would pay a fee, since other students have had to purchase an instrument. However, institution of a fee for band will separate students according to their parents or their own economic means. Dr. Chuck DeRemer of Fargo Public Schools says that their statistics show that as early as seventh

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grade students are separating according to economic status. According to statistics in one Fargo school, 17% of all students qualify for free or reduced meals. However, students who qualify for free or reduced meals represent only 7% of students in band or orchestra. Arguably the very students who could benefit most because they've had the least musical opportunity are effectively eliminated from participation by fees.

Even if a school were willing to purchase or rent smaller band instruments for low-income students, it has been my experience in schools that high school students particularly are loath to be identified as low income.

While we understand the costs schools face to sustain many of their courses and programs, the adoption of fees for musical instruments may actually reduce the number of students who play in a school's band to those who can afford the fees or those who are willing to admit they can't afford to pay the fee.

It is a fact that there are often additional costs for being involved in band programs: it is not uncommon for special clothing to be required (tux shirts, spats, shoes, etc.) nor is it uncommon for high school bands to decide to participate in events which require costly out-of-state travel. An article in the February 21 Bismarck Tribune talks about the extra costs of music programs which must be borne by students and their parents. Generally, students must raise the money or ask their parents for it. Low-income students are again at a disadvantage because their parents cannot afford it and students themselves may have jobs which they need to be able to afford essentials.

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