



# HHS Public Access

Author manuscript

*J Public Health Manag Pract.* Author manuscript; available in PMC 2020 May 01.

Published in final edited form as:

*J Public Health Manag Pract.* 2019 ; 25(3): E27–E35. doi:10.1097/PHH.0000000000000813.

## Pay to Play? State laws related to high school sports participation fees

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### Abstract

**Context:** Participation in high school sports can impact the physical and mental health of students and influence other positive social and economic outcomes. In order to maintain sports programs amidst school budget deficits, many districts are implementing sports participation fee policies. Although locally implemented, these district policies can be guided by state law.

**Objective:** The main objective of this study was to assess state laws and regulations related to high school sports participation fees.

**Design:** Codified statutes and administrative regulations were compiled for all 50 states and the District of Columbia using subscription-based services from LexisNexis and WestlawNext. A content assessment tool was developed to identify key components of school sports participation fee laws, and used for summarization. Key components identified included: legislation summarization, years in effect, whether it allows fees, if there is any fee waiver, qualifications needed for fee waiver, if there is a tax credit, and if there is disclosure of implementation. State information was aggregated and doubled-coded to ensure reliability.

**Results:** As of December 31, 2016, 18 states had laws governing sports participation fees; 17 of these states' laws allowed for such fees while one state prohibited them. Most laws give authority to local school boards to set and collect fees. The laws in nine states have provisions for a waiver program for students who cannot pay the fees, although they do not all mandate the existence of these waivers. Other content within laws included tax-credits and disclosure.

**Conclusion:** This analysis shows that states with laws related to school sports participation fees varied in scope and content. Little is known about the implementation or impact of these laws at the local level and the effect of fees on different student population groups. This warrants future investigation.

### Keywords

sports participation fees; pay to play policies; high school sports; physical activity

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## Introduction

High school is an important place for shaping the lives of adolescents. The high school experience is based on academic training, but opportunities also exist for extracurricular activities, community involvement, and skill development to enable career success.<sup>1</sup> Sports are an example of an extracurricular activity with numerous benefits that include increased physical activity and fitness, mental health benefits, positive youth development, and reduced risk behavior.<sup>1,2</sup> While there is no argument about the role of academics in public education, states vary in their interpretation of extracurricular activities (e.g. sports) as part of this education.<sup>3-5</sup> Because of this varied understanding of what is included within the definition of free public education, some states have implemented laws that specifically allow for the collection of fees from students in order to participate in extracurricular activities at school, sometimes referred to as “pay-to-play” policies.

Schools are typically funded through federal, state, and local sources. Federal funds make up the smallest percentage of these resources, with local property taxes contributing the most funding.<sup>4</sup> In times of budgetary constraint, schools prioritize academics over budget items perceived as extraneous. Since sports participation is voluntary and does not result in course credit required for graduation, it is often defined as complementary, but not necessary to public education.<sup>3-5</sup> School districts often implement pay-to-play policies as an alternative to eliminating sports programs altogether.<sup>3-6</sup>

Running a high school sports programs can be costly. Intramural or club sports tend to be less formal and less competitive than interscholastic sports<sup>7</sup> and typically have lower administrative cost and may not fall under pay to play policies. Interscholastic sports require uniforms, protective equipment, facility fees, transportation, salaries, and employee benefits; and while these costs are increasing over time, the financial burden is being shifted from school budgets to students and their parents.<sup>4,5</sup> The potential effect of implementation of pay-to-play policies is widespread. According to the 2016 report by the National Federation of State High School Athletics, 7.8 million of the 50.4 million high school students in the United States participated in sports in the 2015-16 academic year.<sup>8</sup> The 2015 Youth Risk Behavior Surveillance (YRBS) reported that 57.6% of high school students surveyed participated in at least one school or community sponsored sport within 12 months prior to the survey.<sup>9</sup> Participation costs of school sports may have a detrimental impact on these participation rates. A study of 588 school districts in Michigan found that \$100 fees resulted in 10% reduction in sports participation, and that this decrease doubled when fees were \$200.<sup>6</sup>

Participation fees for interscholastic sports vary by district and sport, but according to a 2014 national survey, the average fee is \$126 per athlete.<sup>10</sup> Policies that allow these fees have potential to increase disparities as students who can afford the fees will pay and those most in need of engagement afterschool may be denied the right to participate.<sup>1,11,12</sup> The National Poll on Children’s Health data shows that 12% of parents report that the cost of school sports has caused a decrease in participation for at least one of their children, and the prevalence of this trend was higher for low-income parents.<sup>10</sup> This is evident, as 30% of low income families reported middle/high school sports participation, compared to 51% for

higher income families.<sup>9</sup> Many districts offer fee waiver programs based on family income,<sup>3,4</sup> but these programs are not consistently implemented and may increase social stigma of students in need.<sup>4,13</sup> Also, there is wide variance in the nature and extent of the fees, the waiver programs, and how they are communicated or tracked within school districts.<sup>3,4,14</sup> Only 12% of lower income families participating in high school sports received a fee waiver.<sup>9</sup>

The U.S. Constitution does not protect public education as a fundamental right and thus there can be no federal protection of the right to participate in a school activity.<sup>14</sup> However, by state legislative enactment, school boards may be delegated power and authority to develop policies, rules, and regulations to control many aspects related to school function, including extracurricular activities.<sup>15</sup> Authority for imposing school fees, prohibitions against certain fees, and the manner by which fees are applied in public schools is located in state statutes, regulations and case law, interpreting the state's constitutional provision for education.<sup>14</sup> The purpose of this study was to assess state laws related to high school sports participation fees policies in all fifty states and the District of Columbia. These findings can identify trends in state laws and inform future studies of district-level policy implementation.

## Methods

### Legislative Search

Codified statutes and administrative regulations were compiled for all 50 states and the District of Columbia (hereafter referred to collectively as “states”) using subscription-based services from LexisNexis and WestlawNext. Boolean keyword searches and reviews of tables of contents of the codified laws of each state were used to collect laws in effect as of December 31, 2016 that addressed the cost or prohibition of fees for school sports, extracurricular programs, or intramurals. Search terms included probes for costs, fees, money, charge, price, finances, or free related to sports, athletics, activities, extracurricular, intramural, or group activities at school. All compiled laws were evaluated to identify the original effective date.

### Content Assessment Tool

Guided by the literature and preliminary bill searching, a content assessment tool was developed to identify key components of sports participation laws. After several iterations, a tool was developed to summarize the full body of codified law in each state rather than coding each individual measure. Three reviewers piloted the tool on one state to ensure that all interpretations would be consistent and reliable. After this step, reviewers recorded their assessment of each assigned state and the results were compiled into a table. Once compiled, one member of the research team reviewed every state summary and the accompanying laws for consistency and reliability. This article was a legal analysis and was exempt from human subjects review.

## Results

As of December 31, 2016, 18 states had laws related to school sports participation fees, and most of them have been in place for over 15 years (See Table1). Seventeen states allow fees

to be collected for sports, extra-curricular activities, or non-curriculum-based programs. Only one state (CA) has a law that prohibits participation fees for public school students<sup>16</sup> (See Figure 1).

Most laws give authority to local school boards to set and collect fees, but a law in Virginia indicates that the State Board of Education or General Assembly must authorize the fees. In Alaska, the Department of Education is allowed to set fees for extracurricular programs and services. On the other hand, in Arizona and Utah, fees must be adopted locally at a public meeting. Some states, such as Arkansas, Louisiana, and Oklahoma, do not address fees directly but do have laws that specify oversight of activity funds.

The laws in nine states have provisions for a waiver program for students who cannot pay the fees, although they do not all mandate the existence of these waivers. Seven states' laws list specific ways students could qualify for a waiver, while 2 states (AZ, MT) simply refer to financial or economic hardship. The level of detail for these waiver criteria varied. Most state laws indicate that eligibility for sports participation fee waivers coincides with federal assistance programs such as qualifying for Free and Reduced-Price Lunch or Temporary Assistance for Needy families (TANF). Others mention parental military service, economic burden, foster care, homelessness, or anyone who is not "reasonably" capable of paying. Illinois law includes families who suffer from significant income loss due to illness, injury, or unusual expenses due to emergencies. Iowa has a law that explicitly outlines who qualifies for both full and partial waivers. Three of the states, (IL, KY, and VA) indicate that the fees and waiver process itself must be communicated to parents at the beginning of each school year.

Laws outlining tax credits for school sports participation fees were present in two states. Arizona has a provision for a tax credit to be applied to state income tax for activity fees paid to a public school. Additionally, Iowa law states that taxpayers may receive Iowa income tax credit of 25% of up to \$1000 of qualifying tuition and textbook expenses, which includes amounts paid for dependents to participate in extracurricular activities.

Disclosure within the law on policy implementation varied throughout the states. Implementation mandates were often related to the waiver program, where the schools were required to report on the waiver process. Other states such as Colorado mandate that the amount of fees, how the amount was derived, and the purpose for the fees be made available upon request and Virginia law states that the fee schedule must be made public via school websites. Similarly, in Arizona and Utah, fees must be adopted at a public meeting after being communicated to parents of all public school students. Kentucky law includes a broad provision stating that schools need to maintain a process for collecting fees and a tracking system that must be made available to the State Department of Education upon their request.

## Discussion

There is substantive evidence that sports participation in adolescence is associated with improved physical, psychological, and social health.<sup>2</sup> Public high schools have a long history of providing opportunities for students to participate in a wide variety of individual

and team sports. However, many school sports programs are being impacted by fiscal deficits. Increased accountability for academic performance coupled with budgetary shortfalls impact funding priorities, and programs not connected to academics or credits for graduation (such as sports) are at risk for low prioritization. As such, there has been an increase in the number of district-level policies that require fees for sports participation to offset budget deficits.<sup>10</sup> In some states, these district policies are guided by state laws, but the scope and content of the state laws vary significantly.

Our assessment shows that only 18 states had laws related to sports participation fees, and only one state (CA) prohibited these fees as of December 31, 2016. This California law went into effect in 2013 and was enacted as a result of continued litigation relying on the 1984 decision in *Hartzell vs. Connell*,<sup>16</sup> where the court found that the school fees for extracurricular high school activities were in violation of the “free school” guarantee of the California Constitution. Surprisingly, most states’ laws that authorize participation fees are over 15 years old, with more current updates outlining fee allowances, waiver of fees, oversight of fees, and processes of setting, collecting, or communicating fees to varying degrees.

Most of the state laws provide for local control over the sport participation fee system and process. Of the 17 states with laws allowing fees, very few explicitly include requirements for communicating how the fees are established or how they are communicated to students and parents. This local authority is not unique to sports participation fees. Similar fees and/or pricing structures are often established to create joint or shared use opportunities so that the community has access to school facilities while school is not in session. State laws often authorize districts to enter such agreements and establish details, but best practices for policies are those that are transparent in the amount of fees charged and the implementation process, including any price reductions for specified groups or individuals.

Nine of the 17 states allowing fees have fee waiver provisions within their laws. Of these nine, only 5 states’ laws (IA, IL, NE, UT, VA) mandate that waivers are included as part of the fee structure. Arizona, Kentucky, Minnesota, and Montana allow for districts to waive adopted participation fees, but do not require it. This variance in strength of language is common in state laws and is related to the degree of implementation. Research on related topics has shown that state policies (and the strength of language therein) influence practices at the district and school level. For example, schools were found to be more likely to have recess, physical activity, and physical education for students when there was a state law or district policy regulating them respectively.<sup>17,18</sup> The inclusion of mandated waiver provisions within the text of the law related to sports participation fees is an important component to ensure equitable local implementation.

Among the nine states that have included waiver provisions, two allowed for waivers if the fee creates an economic hardship to the student or the student’s family. However, such vague language leaves open to interpretation what constitutes a hardship and what information is necessary to prove that a hardship exists. Other state waiver provisions relied on standards established to qualify for other existing federal programs, such as Free and Reduced-Price Lunch, Temporary Assistance for Needy Families, Supplemental Security Income, and/or

unemployment benefits to seemingly ease the burden of proof and eliminate such ambiguity. While these provisions are aimed at equity for sports participation, some studies show student reluctance to apply for the waivers for fear of social stigma.<sup>5</sup> Clearly outlined processes and confidentiality of waiver application may decrease these barriers.

Although two states allowed tax credits for extracurricular expenses to the person claiming the student athlete as a dependent, results of a similar tax credit in Canada indicate that this may not be the best solution to reduce the economic burden of high school athletics on families. In the Canada study, parents were allowed a tax credit of up to \$500 to register a child in an eligible physical activity program, but parents in the lowest income quartile were significantly less aware of the tax credit and less likely to claim it than other income groups.<sup>19</sup>

Our legislative assessment shows that thirty-two states have no statutory guidance on this topic, thus not prohibiting or permitting local development and implementation of sports participation fee policies. The lack of a state law can be beneficial or detrimental to district control over pay-to-play policies. The absence of a state policy provides districts with flexibility in making their own determination as to whether to limit, or prohibit fees, but lack of state law can also have a negative effect. No state-level guidance can permit districts to set and charge fees without oversight, and also without consideration of impact of the fees on family financial burden or equity in participation. For example, in one state without a pay-to-play related law (MI), 60% of school districts charge fees for sports participation.<sup>6</sup> Two states without laws (MI and NJ) introduced bills to limit or prohibit sports participation fees, but these bills were not enacted as of the end of the 2017 legislative session. In fact, neither of the bills progressed beyond their first committee. (See H 5404, 98<sup>th</sup> Leg 1<sup>st</sup> Session MI 2015 and AB 1771, 217<sup>th</sup> Leg 1<sup>st</sup> Session NJ 2016) Furthermore, it should be noted that many of states with legislation to allow fees also have significant disparities in health behaviors and outcomes.<sup>20</sup> Creating physical activity opportunities such a sports programs may translate into a lifelong health-promoting behavior and can play an important role in improving health outcomes.

## Limitations

Although this is a unique and comprehensive analysis of state laws relating to sports participation fees, several limitations warrant mention. This analysis only evaluated codified statutes and administrative regulations. Informal and other non-codified policies were not included. As is indicated by many of the laws found, many states require local boards of education to adopt district and school-level policies related to participation fees for athletics. Further research is needed to examine the content of those policies as well as implementation at the local level.

## Conclusions

There has been an increase in sports participation fees for high school athletics due to budget prioritization and deficits. While fee structures and processes are implemented at the local level, they can be guided by state law. As of 2017, 18 states had state laws relating to sports



participation fees with varying scope and content. This assessment of state laws can inform studies on local implementation and on the impact of sports participation fee-related laws on athletic participation and subsequent health, social, and economic outcomes.

## Acknowledgements:

This study was funded by the Robert Wood Johnson Foundation's Policies for Action Children's Healthy Weight Hub, located at the University of Illinois at Chicago Institute for Health Research and Policy and the Washington University in St. Louis Brown School Prevention Center, Grant # 73758.

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### Implications for Policy & Practice

- The benefits of participating in high school sports have been well established. Although there is debate on the effectiveness of sports participation fees, more states allow for these fees than prohibit them.
- However, there is wide variation in how these sports participation fees are being implemented. More policy guidance is needed in how to best set up these fees as to not disproportionately effect certain student populations (e.g., racial/ethnic minority, low income).
- Eliminating barriers toward participating in sports, such as enforced guidelines mandating that fee waivers be implemented may help ensure equity.
- Future analysis should also look at the interaction between sports participation fee policies, liability policies, and other potential confounding implementation issues.
- Future work should examine sports participation fee policies and their effect on sports participation over time



**Table 1.**

Summary of States with Sports Participation Fee Laws, as of December 31, 2016

State	Policy Summary	Citations	Years in effect	Allow Fees?	Waiver?	Waiver Qualifications	Tax credit	Disclosure of Implementation
AK	Dept. of Education may set student fees for extracurricular programs and services.	Alaska Stat. § 14.07.030	15+	Y	N	NA	N	N
AZ	School boards may assess reasonable fees for optional extracurricular activities, must communicate fees and have a waiver system.	Ariz. Rev. Stat. § 15-342; Ariz. Rev. Stat. § 43-1089.01	15+	Y	Y: allowed	Y: economic hardship for a pupil	Y	Y
CA	Public school students shall not be required to pay participation fee.	Cal. Educ. Code § 49010; Cal. Educ. Code § 49011	4	N	NA	NA	NA	NA
CO	Schools may charge activity fee as a prerequisite to participation and the fees must fund activity for which it was charged.	Colo. Rev. Stat. § 22-32-116.5; Colo. Rev. Stat. § 22-32-117	15+	Y	N	NA	N	Y
GA	A school system may charge fees.	Ga Comp. R. & Regs. § 160-5-1-.12	15+	Y	N	NA	N	N
HI	The department may assess and collect special fees. Maximum amount set by Board of Education.	Haw. Rev. Stat. § 302A-1130; Haw. Code R. § 8-32-2; Haw. Code R. § 8-32-3	15+	Y	N	NA	N	N
IA	School board shall adopt a policy on fees and must have waiver provision.	Iowa Admin. Code 281-18.2(256); Iowa Admin. Code 281-18.3(256); Iowa Admin. Code 701-42.4(422)	Fees and waiver: 15+ Tax credit: 6	Y	Y: required	Y: Full waiver: student or family meets financial eligibility for free meals offered under CNP, or the Family Investment Program, or transportation assistance under open enrollment, or if student is in foster care. Partial waiver: student or family meets financial eligibility criteria for Reduced price meals offered under CNP. Based on sliding scale related to ability to pay. Temporary waiver: at discretion of school district, in the event of temporary financial difficulty in the student's immediate family.	Y	Y
IL	Allows for fees, but must be written policy of waiver that is communicated	Ill. Admin. Code tit. 23, § 1.245	15+	Y	Y: required	Y: Those students eligible for free or reduced lunch or whose family suffers from significant loss of income due to illness/injury or unusual expenses or emergencies.	N	Y
KS	Board of Education may prescribe, assess, and collect participation fees.	Kan. Stat. Ann. § 72-5390	15+	Y	N	NA	N	N

State	Policy Summary	Citations	Years in effect	Allow Fees?	Waiver?	Waiver Qualifications	Tax credit	Disclosure of Implementation
	Board of Education may establish school activity funds.							
KY	Guidance for fee waiver	702 Ky. Admin. Regs. 3:220	15+	Y	Y: allowed	Y Those students eligible for free or reduced lunch.	N	Y
MN	Allows for school boards to administer fees and creates waiver and scholarship program.	Minn. Stat. § 123B.35; Minn. Stat. § 123B.36	15+	Y	Y: allowed	Y Any pupil whose parents are serving/have served within the past year in active military service or any pupil/pupil's parent/guardian are unable to pay the fee.	N	N
MS	Allows for activity fees and describes how they can be used	Miss. Code Ann. § 37-7-301; Miss. Code Ann. § 37-7-335	15+	Y	N	NA	N	N
MT	Establishes the rights of trustees to administer a student fee and waiver.	Mont. Code Ann. § 20-9-214	15+	Y	Y: allowed	Y Students with financial hardship	N	N
NE	May require and collect fees for extracurricular activities and establishes a fee waiver process.	Neb. Rev. Stat. § 79-2,126; Neb. Rev. Stat. § 79-2,127; Neb. Rev. Stat. § 79-2,128; Neb. Rev. Stat. § 79-2,133	14	Y	Y: required	Y Students who qualify for free or reduced-price lunch and other circumstances as determined by each governing body.	N	N
OR	School board can offer before and after school activities and collect fees for participation.	Or. Rev. Stat. § 336.014	15+	Y	N	NA	N	N
TN	Fees must be authorized by local school boards. Fees for athletics taken for credit can be requested, but not required.	Tenn. Comp. R. & Regs. 0520-01-03-.03	15+	Y	N	NA	N	N
UT	Student participation fees need to be authorized by local school board and not exceed limits established by LEAS. Must provide waivers.	Utah Code Ann. § 53A-12-102; Utah Code Ann. § 53A-3-420; Utah Admin. Code R277-407	15+	Y	Y: required	Y A student is eligible for a fee waiver based on income verification, if STUDENT receives SSI, family receives TANF, student is in foster care, or student is in state custody. In addition, case by case determinations may be made for those who do not qualify but who are not reasonably capable of paying the fee.	N	Y
VA	Fees for voluntary activities may be charged but must be authorized by Board of Education. Report cards cannot be withheld for non-payment.	8 Va. Admin. Code § 20-720-80	Fees allowed: 15+ Waiver and disclosure: 4	Y	Y: required	Y Economically disadvantaged students and families who are undergoing economic hardships and are financially unable to pay, including but not limited to: families on unemployment or public assistance (TANF, SNAP, SSI, Medicaid), foster families, or families that are homeless.	N	Y