

IN THE CIRCUIT COURT OF COOK COUNTY  
COUNTY DEPARTMENT, CHANCERY DIVISION

**DAWN S. SHERMAN**, a minor through  
**ROBERT I. SHERMAN**, her father and  
next friend,

**Plaintiff,**

v.

**TOWNSHIP HIGH SCHOOL  
DISTRICT 214; DAVID R. SCHULER**,  
Superintendent of Township High School  
District 214; **LENORE G. BRAGAW**,  
President of the Board of Education for  
Township High School District 214;  
**MIRIAM COOPER**, Vice President of the  
Board of Education for Township High School  
District 214; **WILLIAM DUSSLING**,  
**ALVA KREUTZER, JAMES PERKINS,**  
**LESLIE PINNEY, and**  
**ROBERT ZIMMANCK**, Members of the  
Board of Education for Township High School  
District 214; **JOHN C. HILLARY**, Special  
Program Administrator of Township High School  
District 214; **CAROL BURLINSKI**, Principal  
of Buffalo Grove High School;  
**SUSAN C. CARLEY**, Associate Principal of  
Buffalo Grove High School;  
**COURTNEY WHITE, NANCY MOORE,**  
**KATHARINE KLACZEK and**  
**DANIEL URBAN**, Teachers at  
Buffalo Grove High School;  
**ILLINOIS STATE BOARD OF  
EDUCATION; JESSE H. RUIZ**, Board Chair  
of Illinois State Board of Education;  
**CHRISTOPHER J. WARD**, Vice Chair of  
Illinois State Board of Education;  
**VINNI M. HALL**, Board Secretary of  
Illinois State Board of Education;  
**ANDREA S. BROWN, DEAN E. CLARK,**  
**DAVID L. FIELDS, BRENDA J. HOLMES,**  
**JOYCE E. KARON, and LANITA KOSTER**,  
Members of the Illinois State Board of Education;  
**CHRISTOPHER KOCH**, State Superintendent  
of the Illinois State Board of Education, and  
**PAT QUINN**, Governor of the State of Illinois,

**Defendants.**

No. 09 CH \_\_\_\_\_

**Judge:** \_\_\_\_\_

**COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF**

Now Comes Plaintiff, Robert I. Sherman, pro se, as father and next friend of Dawn S. Sherman, and complaining of Defendants TOWNSHIP HIGH SCHOOL DISTRICT 214; DAVID R. SCHULER, Superintendent of Township High School District 214; LENORE G. BRAGAW, President of the Board of Education for Township High School District 214; MIRIAM COOPER, Vice President of the Board of Education for Township High School District 214; WILLIAM DUSSLING, ALVA KREUTZER, JAMES PERKINS, LESLIE PINNEY, and ROBERT ZIMMANCK, Members of the Board of Education for Township High School District 214; JOHN C. HILLARY, Special Program Administrator of Township High School District 214; CAROL BURLINSKI, Principal of Buffalo Grove High School; SUSAN C. CARLEY, Associate Principal of Buffalo Grove High School; COURTNEY WHITE, NANCY MOORE, KATHARINE KLACZEK and DANIEL URBAN, Teachers at Buffalo Grove High School; ILLINOIS STATE BOARD OF EDUCATION; JESSE H. RUIZ, Board Chair of Illinois State Board of Education; CHRISTOPHER J. WARD, Vice Chair of Illinois State Board of Education; VINNI M. HALL, Board Secretary of Illinois State Board of Education; ANDREA S. BROWN, DEAN E. CLARK, DAVID L. FIELDS, BRENDA J. HOLMES, JOYCE E. KARON, and LANITA KOSTER, Members of the Illinois State Board of Education; CHRISTOPHER KOCH, State Superintendent of the Illinois State Board of Education, and PAT QUINN, Governor of the State of Illinois; states as follows:

**Nature of the Case**

1. This case is brought pursuant to Article I, Section 12, of the Illinois Constitution, alleging a violation of Plaintiff's civil rights by the Defendants. Plaintiff alleges that Defendant High

School District's Driver's Education (hereinafter "Driver's Ed") fee, which Plaintiff has been ordered by Defendant High School District to pay in order to enroll Plaintiff Dawn Sherman in the Behind-the-Wheel (hereinafter "BTW") portion of Driver's Ed, is in violation of the Free Education clause of Article X, Section 1, of the Illinois Constitution.

### **Plaintiff**

2. Plaintiff Dawn S. Sherman (hereinafter "Dawn") is 15 years old. Dawn is a sophomore at Buffalo Grove High School, where she is a straight A student in her academic classes and ranks Number 1 in the Class of 2011 (see Exhibit A). Dawn lives with her parents in a house on the Cook County side of Buffalo Grove, which is also within the jurisdiction of High School District 214.

3. Plaintiff Robert I. Sherman is an individual taxpaying citizen who lives in Buffalo Grove and within the jurisdiction of High School District 214. Dawn appears as Plaintiff through Robert I. Sherman, her father and next friend.

### **Defendants**

4. Defendant Township High School District 214 (hereinafter "District 214") is the administrative unit for a 68 square mile school district located in Wheeling, Elk Grove and Palatine Townships in northwest Cook County. District 214 has eight campuses, including Buffalo Grove High School.

5. Defendant David R. Schuler is the Superintendent of District 214. As Superintendent, Defendant Schuler is in charge of the administration of the schools of District 214. In addition, Defendant Schuler is responsible for making recommendations to the Board of

Education concerning the budget, among other duties. 105 ILCS 5/10-21.4.

6. Defendant Lenore G. Bragaw is the President of the District 214 School Board. The School Board has the power to establish policies that are requisite or proper for the maintenance, operation and development of any school or schools under the jurisdiction of the Board, amongst other powers. 105 ILCS 5/10-20. As Board President, Defendant Bragaw presides at all meetings of the School Board, amongst other duties. 105 ILCS 5/10-13.

7. Defendant Miriam Cooper is the Vice President of the District 214 School Board. As Board Vice President, Defendant Cooper performs all duties of the Board President in the President's absence or inability to act, amongst other duties. 105 ILCS 5/10-13.1.

8. Defendant William Dussling is a member of the District 214 School Board. As a member of the School Board, Defendant Dussling votes on what policies will be adopted by the School Board for the maintenance, operation and development of any school or schools under the jurisdiction of the Board, amongst other powers. 105 ILCS 5/10-20.

9. Defendant Alva Kreutzer is a member of the District 214 School Board. As a member of the School Board, Defendant Kreutzer votes on what policies will be adopted by the School Board for the maintenance, operation and development of any school or schools under the jurisdiction of the Board, amongst other powers. 105 ILCS 5/10-20.

10. Defendant James Perkins is a member of the District 214 School Board. As a member of the School Board, Defendant Perkins votes on what policies will be adopted by the School Board for the maintenance, operation and development of any school or schools under the jurisdiction of the Board, amongst other powers. 105 ILCS 5/10-20.

11. Defendant Leslie Pinney is a member of the District 214 School Board. As a member of the School Board, Defendant Pinney votes on what policies will be adopted by the

School Board for the maintenance, operation and development of any school or schools under the jurisdiction of the Board, amongst other powers. 105 ILCS 5/10-20.

12. Defendant Robert Zimmanck is a member of the District 214 School Board. As a member of the School Board, Defendant Zimmanck votes on what policies will be adopted by the School Board for the maintenance, operation and development of any school or schools under the jurisdiction of the Board, amongst other powers. 105 ILCS 5/10-20.

13. Defendant John C. Hillary is the Special Program Administrator for District 214. As the Special Program Administrator, Defendant Hillary prepared the Waiver requests, 105 ILCS 5/2-3.25g, that District 214 submitted to the Illinois State Board of Education and to the Illinois General Assembly, which raised the Driver's Ed fee from a statutory maximum of \$50, 105 ILCS 5/27-23, to \$350.

14. Defendant Carol Burlinski is the Principal of Buffalo Grove High School. As principal, Defendant Burlinski supervises the operation of Buffalo Grove High School. 105 ILCS 5/10-21.4a.

15. Defendant Susan C. Carley is an Associate Principal at Buffalo Grove High School. Defendant Carley is the administrator who was designated by Defendant Superintendent Schuler to receive, and then reject, at a pre-arranged meeting, Plaintiff Robert I. Sherman's payment of an amount of less than \$350 as Plaintiff Dawn Sherman's Driver's Ed fee.

16. Defendant Courtney D. White is a teacher at Buffalo Grove High School. As Division Head of Driver's Ed, Plaintiff Mr. White is responsible for the operations of both the Classroom portion of Driver's Ed and BTW. In addition, Plaintiff White is responsible for ensuring that the Driver's Ed fee specified by the Board of Education is paid before a student is enrolled in BTW. There is no fee for the Classroom portion of Driver's Ed.

17. Defendant Nancy Moore is a teacher at Buffalo Grove High School. Defendant Moore is Plaintiff Dawn Sherman's Driver's Ed Classroom teacher.

18. Defendant Katharine Klaczek is a teacher at Buffalo Grove High School. Defendant Klaczek is one of Dawn's two Driver's Ed BTW teachers.

19. Defendant Daniel Urban is a teacher at Buffalo Grove High School. Defendant Urban is Dawn's other Driver's Ed BTW teacher.

20. Defendant Illinois State Board of Education (hereinafter the "State Board") is an agency of state government. It is responsible for supervising all of the public schools of Illinois. 105 ILCS 5/2-3.3. One of the duties of the State Board is to decide whether or not to approve requests by public school districts to waive mandates within the Illinois School Code and requests by public school districts to waive administrative rules and regulations. 105 ILCS 5/2-3.25g.

21. Defendant Jesse H. Ruiz is the Board Chair of the State Board.

22. Defendant Christopher J. Ward is the Vice Chair of the State Board.

23. Defendant Vinni M. Hall is the Board Secretary of the State Board.

24. Defendant Andrea S. Brown is a Board Member of the State Board.

25. Defendant Dean E. Clark is a Board Member of the State Board.

26. Defendant David L. Fields is a Board Member of the State Board.

27. Defendant Brenda J. Holmes is a Board Member of the State Board.

28. Defendant Joyce E. Karon is a Board Member of the State Board.

29. Defendant Lanita J. Koster is a Board Member of the State Board.

30. Defendant Christopher Koch is the State Superintendent of Education. Defendant Koch is appointed by the State Board of Education. Illinois Constitution, Article X, Section 2.

31. Defendant Pat Quinn is the Governor of Illinois. As such, Defendant Quinn has

supreme executive power and is responsible for the faithful execution of the laws. Illinois Constitution, Article V, Section 8. In addition, Defendant Quinn has the power to appoint the eight members and chairperson of the State Board of Education. 105 ILCS 5/1A-1(b).

### **Cause of Action**

32. Plaintiff Dawn Sherman (hereinafter “Dawn”) wishes to take Driver’s Ed at Buffalo Grove High School during the Second Semester of the 2008-2009 school year. The Second Semester commenced on January 27, 2009. (See Exhibit B, “District 214 2008-2009 School Calendar.”)

33. Driver’s Ed consists of two courses. One is Course 09650, Driver’s Education Classroom. The other is Course 09660, Driver’s Education Lab, commonly known as “Behind the Wheel” (“BTW”). (See Exhibit C, from the District 214 web site at the following web address: <http://www.d214.org/staff/depts/edserv/acahb/0809hb/driversed.htm> )

34. The two Driver’s Ed courses are taught concurrently, with students receiving Classroom instruction several days per week and doing BTW on the other days.

35. When Dawn attempted, in December of 2008, to enroll in Driver’s Ed , she was informed by school administrators that she would have to pay a fee of \$350 to get in to BTW. Dawn informed her father, Plaintiff Robert I. Sherman (“Rob Sherman”) of this fact.

36. Rob Sherman contacted the office of Defendant Schuler in December of 2008 to inquire as to what the fee money was used for.

37. Defendant John C. Hillary was designated by District 214 as the person to respond to Rob Sherman.

38. Mr. Hillary informed Rob Sherman, during December, 2008, that approximately

\$150 of the fee was to cover expenses such as the cost of cars, car maintenance, gas, oil and insurance. The other \$200 of the fee was to offset staffing costs, such as teacher salaries and benefits.

39. Rob Sherman responded to Mr. Hillary that Sherman had no problem paying the “Lab fee” (Rob Sherman’s term for it) of \$150, but the policy of charging public school students a fee for staffing costs seemed to be inconsistent with Article X, Section 1, of the Illinois Constitution, which states, in pertinent part, “Education in public schools through the secondary level shall be free.” Sherman asked Hillary how District 214 justified charging such a fee was , in light of Article X, Section 1, of the Illinois Constitution, which seems to prohibit such a fee.

40. Hillary responded that the Illinois School Code allows a Driver’s Ed fee of \$50 (see 105 ILCS 5/27-23), and that the School Code further allows School Boards to seek a Waiver of mandates (see 105 ILCS 5/2-3.25g).

41. Hillary stated further that District 214 had applied to the State Board and the General Assembly for three Waivers, over the past twelve years, to raise the Driver’s Ed fee first to \$250, then to increase it to \$350, and then to renew the \$350 Waiver request. Mr. Hillary stated that it was he, in fact, who had prepared the Waiver request documents (See Exhibit D, “Application for Waiver or Modification of State Board Rules and/or School Code Mandates”), so he was very familiar with the Waivers, and that each of the three Waiver requests had been granted by the State Board and the General Assembly.

42. Rob Sherman informed Mr. Hillary that Sherman was skeptical of the constitutionality of charging public students a fee to cover staffing costs, and that Sherman would do some research to see if there were any court precedents addressing the issue.

43. Sherman discovered that, in fact, there were several Illinois court precedents that

established a clear, bright line, unambiguous standard prohibiting such a student fee.

44. In E. L. Segar et al. Plaintiffs In Error, vs. The Board of Education of the School District of the City of Rockford, 317 Ill. 418, 148 N.E. 289, decided on June 18, 1925, the Supreme Court of Illinois stated, in the last sentence of the second paragraph, “A system of schools which permits all persons of school age residing in the district to attend classes and receive instruction in the subjects taught, without a tuition charge, provides free schools, and the fact that the parents of pupils financially able to do so are required to provide their children with text-books, writing materials and other supplies required for the personal use of such pupils does not change the character of the school.”

45. It should be noted, at this point, that public high schools are required by the School Code to teach both Driver’s Ed Classroom and Driver’s Ed BTW. 105 ILCS 5/27-23. See also, Exhibit E, “Driver Education Students – Buffalo Grove and Wheeling High Schools,” which Dawn received as a handout from Defendant Nancy Moore in her Driver’s Ed Classroom class on January 27, 2009. The first sentence of the last paragraph begins, “Driver Education is a state mandated course...” See also, Exhibit F, “Illinois State Board of Education – Driver Education Frequently Asked Questions,” available on the State Board’s web site at [http://www.isbe.state.il.us/funding/pdf/driver\\_ed\\_faq.pdf](http://www.isbe.state.il.us/funding/pdf/driver_ed_faq.pdf)

The first FAQ is “Are school districts in Illinois required to provide Driver Education?”

Answer: “Yes. Any school district which maintains grades 9 through 12 ...”

46. The Supreme Court of Illinois re-stated the Segar standard in Paul E. Hamer, Appellant, v. Board of Education of School District 109, Appellee, No. 43028, 47 Ill.2d 480, 265 N.E.2d 616, dated December 4, 1970, on pages 486 and 619, respectively.

47. The Supreme Court of Illinois again re-stated the Segar standard in William C. Beck,

Appellant, v. The Board of Education of Harlem Consolidated School District No. 122, Appellee, No. 47567, 63 Ill. 2d 10, 344 N.E.2d 440, filed March 18, 1976, on pages 15 and 442, respectively.

48. In Beck, on pages 16 and 442, respectively, the Supreme Court of Illinois goes on to say, “Tuition is defined as ‘the price of or payment for instruction’ (Webster’s Third New International Dictionary (1961)), and, clearly, [\*\*443] the fee charged plaintiff’s children” [for school supplies and materials furnished to the children of the parent] “ was not part of the price of, or payment for, instruction.”

49. In the instant case, the \$200 charged for staffing costs can only be described as the price of, or payment for, instruction.

50. In a different case involving Mr. Hamer, Paul E. Hamer et al., Plaintiffs-Appellants, v. Board of Education of School District 109, Defendant-Appellee, No. 71-293, 9 Ill. App. 3d 663, 292 N.E.2d 569, filed on January 31, 1973, the Appellate Court of Illinois, Second District, quoted the Educational Committee of the Sixth Illinois Constitutional Convention, on page 765, as stating in pertinent part, “[W]e recognize that schools are not totally free; through tradition and practice, this has been interpreted to mean tuition free and not totally free education.”

51. During December of 2008 and January of 2009, Rob Sherman presented the product of this research to Defendants Hillary and Schuler by telephone, asking that the Driver’s Ed fee be reduced to \$150 for all Driver’s Ed students. Schuler declined Rob Sherman’s proposal.

52. On December 18, 2008, in a meeting pre-arranged by Schuler and Rob Sherman, Sherman presented Check Number 1603 for \$150 to Defendant Carley to establish that Sherman had at least tried to pay the lab fee portion of the Driver’s Ed fee. Carley politely rejected the payment, marking the check, “Refused,” and returning the check to Sherman. (See Exhibit G.)

53. Next, Rob Sherman went to the District 214 web site and examined the District 214

2008-2009 Budget. On page 7, under the heading “Estimated Receipts/Reserves,” Line 101, entitled, “Driver’s Education Fees,” shows that District 214 expected Driver’s Ed Fees to equal \$367,000. At \$350 per student, that divides out to approximately 1,049 students paying fees. (See Exhibit H, page 2.)

54. Defendant Hillary had previously indicated to Rob Sherman that approximately ten percent of students receive fee waivers for Driver’s Ed fees. See also, Exhibit D, page 3, Column 8A. Dividing 1,049 by 0.9 yields an estimated 1,165 students taking Driver’s Ed during the current school year.

55. On Page 11 of the District 214 budget for 2008-2009, under the heading “Estimated Disbursements/Expenditures,” Line 16, entitled, “Driver’s Education Programs,” shows five figures. Salaries is \$964,138. Employee Benefits is \$132,408. Purchased Services is \$23,500. Supplies and Materials is \$2,500. Total is \$1,122,546. (See Exhibit H, Page 3).

56. On Page 16 of the budget, still under the heading, “Estimated Disbursements/Expenditures,” Line 206 is Driver’s Education Programs Municipal Retirement and/or Social Security Fund, in the amount of \$11,806.

57. These were the only line items for Driver’s Ed in the 2008-2009 budget.

58. Clearly, under the Segar test, the cost of employee salaries and benefits, including contributions to retirement programs, cannot be passed on to public school students in the form of fees.

59. The only line item that surely can be passed on is the \$2,500 for Supplies and Materials. Divide that figure by the 1,165 students taking Driver’s Ed, and you get a Constitutionally permissible fee of \$2.15 (two dollars and fifteen cents) per student, not \$350 (three hundred fifty dollars) per student.

60. District 214 may also pass on any Constitutionally eligible “Purchased Services” costs. Constitutionally eligible costs would be any additional materials and supplies. If all of the Purchased Services are eligible, then the total eligible costs would be \$26,000 (\$2,500 for Supplies and Materials plus \$23,500 for Purchased Services). Divide \$26,000 by the estimated 1,165 students and you get a maximum, Constitutionally permissible District 214 Driver’s Ed fee for 2008-2009 of \$22.32, and not one penny more, rather than \$350.

61. According to the State Board’s “Summary of Approved Waivers and Modifications – Cumulative Report – 1995 - 2007” (See Exhibit I), the State Board and the General Assembly, combined, have issued 125 Driver’s Ed fee waivers between October 1995 and October 2007. (See page 13 of Exhibit I.)

62. Also according to the same report, “[M]any school districts believe the \$50 fee is insufficient to fund driver’s education programs, and they are seeking ways to cover the shortfall in revenues by charging students more to take the course.” (See page 7 of Exhibit I.)

63. The Segar test makes it explicitly clear that school boards, the State Board and the General Assembly can’t do that. They can’t charge students for taking the course. They can only charge students for the cost of supplies or materials.

64. The State Board demonstrates that they know that students can’t be charged for taking the Driver’s Ed course. In the previously mentioned State Board Driver’s Ed FAQ’s (Exhibit F), under the question “Are districts bound by the \$50 fee...?”, the last sentence of the answer states, “When determining the amount of the fee charged during the regular term, which cannot exceed \$50,” [unless a waiver is granted], “a school district must not include the cost of salary or benefits.” (See the last sentence of page 8 of Exhibit F).

65. Yet, despite the State Board making it absolutely clear that they know students can’t

be charged for staffing costs, the State Board has approved over a hundred fee limit waivers of as much as \$500 per student. (See Exhibit I, page 7.)

66. It's not as if the State Board doesn't know that school boards are asking for approval of Driver's Ed fees that includes staffing costs. For example, in District 214's fee limit waiver requests (See Exhibit D), District 214 states in paragraph 5 of their first Waiver application that the purpose of raising the fee from \$50 to \$250 is to address the cost of the program, not the cost of supplies provided to the students.

67. Then, in Appendix A (see Exhibit D, page 3), the amount listed on Line 8, "Student Fees," Column F, "Fee = \$250," is \$373,500, yet the amount listed on Line 5, "Operating Costs," Column F, "Fee = \$250," is only \$124,433.71.

68. Even worse, Appendix D (see Exhibit D, page 6), shows that the \$124,433.71 in operating costs includes three line items (Lines 2, 3 and 12) for salaries and one line item (Line 7) for "Travel, Meetings, Dues," totaling \$13,671.27, leaving only \$110,762.44 in reimbursable costs, versus \$373,500 in fees.

69. Next, in its renewal request, District 214 states, in the second sentence of the second paragraph of the second page of their application (see Exhibit D, page 8), with regards to their purpose for raising the Driver's Ed fee above \$50, "This was done to bring the net cost of driver education to the district" [the cost of the program] "down to the net cost of other course offerings." It wasn't done to offset higher materials costs. It was done to offset staffing costs.

70. On the following page, District 214 says that, in FY 01, they had \$300,902 in Student Fees at \$200 per student, Program Operation expenditures of only \$118,261.

71. On the second page of their third Waiver request (see Exhibit D, page 11), at Section 4. b., District 214 states that a \$350 student Driver's Ed fee would allow the school board to "shift

\$216,000 from the driver education program to other academic areas.” That’s not what students are supposed to be paying fees for.

72. In the most incriminating statement of all, on that same page, in Section 4. a., paragraph 2, the second sentence, District 214 states, “Our consistent goal in doing so”[raising Driver’s Ed fees from \$50 to \$350] “was and is to keep the district cost of driver education approximately equal to the average cost of other courses.”

WHEREFORE, Plaintiff urges that this Court:

1. Declare the rights and liabilities of the parties.
2. Specifically, declare that school districts cannot use Waivers to increase Driver’s Ed fees above \$50 for the purpose of covering staffing costs.
3. Enter a preliminary injunction and/or restraining order enjoining District 214 from requiring Plaintiff to pay \$350 in order for Plaintiff to enroll in Behind the Wheel.
4. Enter an order requiring District 214 to immediately enroll Plaintiff in Behind the Wheel, without the payment of a Driver’s Ed fee, until such time as this Honorable Court can determine the lawful maximum amount of such fee.
5. Enter an order enjoining the State Board from approving any Driver’s Ed fee Waiver application that seeks to increase the fee above \$50 for the purpose of covering staffing costs.
6. Enter an order requiring the State Board to review each and every one of the Waiver applications for increased Driver’s Ed fees that the State Board has approved since October, 1995, to determine which of the Waivers were for the purpose of increasing the fee to offset staffing costs; to revoke, rescind and/or modify any such

Waiver so as to limit the Driver's Ed fee to cover only the Constitutionally permissible costs of materials and supplies; to contact each school district that had received a constitutionally impermissible waiver to inform such school district that their waiver had been revoked, rescinded or modified; and to notify each school district that they must refund, with all deliberate speed, to each and every current or former Driver's Ed student, whatever portion of the Driver's Ed fee that was charged for the purpose of covering staffing costs.

Respectfully submitted,

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Robert I. Sherman

Robert I. Sherman, pro se

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It is requested that all postal mail be sent only to the PO Box. Thank you.

(847) 870-0700