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Viewpoint

Redefine Your School Business Official's Role

It serves little useful purpose to argue the legitimacy or the validity of the most recent criticisms leveled at the nation's schools. The insistent demand that schools be more productive is of sufficient potency to warrant the profession's attention. It is time to stop reacting in defense of our present programs. Our energies need to be redirected proactively as we seek to search out and implement viable alternatives. It is not the purpose of this statement to be specific as to the alternatives or specific remedies. Rather, I make the singular point that it is timely and appropriate to be sure that all the total talents, personal insights and creativity within each school district are brought to bear on the issue of significant educational improvement. Specifically, the role structure and role expectations of the school business official warrant consideration.

Generalizations are flimsy, often discredited in light of careful analysis. Accepting that risk, let me offer the observation that many districts' school business officials need to move beyond the stereotyped role of provider, facilitator and coordinator to become an activist and a co-participant in the instructional decision-making process. The first blush response to this revised role expectation might well be that "I'm not either trained or certified for that role." I contend that this concern matters little, if any at all. We need to nurture within districts both the need and the opportunity for the business official to come to understand the rationale and considerations that are part of instructional priority-setting and subsequent decision-making. A person of demonstrated competence and commitment is more than capable of developing general understandings of instruction and the related support considerations. It is in this environment that the school business official can acquire a "hands on" sensitivity that will enable him or her to interpret with greater meaning the myriad of requests, shifting demands and re-focused priorities which demand response.

In this revitalized role a business official is privy to and part of the dialogue leading to key educational decisions. No district can afford to allow a key management official to either observe or participate impassively. Resources of each district are too thin to perpetuate this type of position. Too often we could probably point to school business decisions based on nothing more legitimate than random judgment.

It is not uncommon for business officials frequently to leave staff meetings when talk shifts to instructional matters with the disclaimer that the discussions really do not pertain to them. Schools cannot move to levels of greater productivity with only part of the administrative and instructional team involved. While the business officials are not necessarily disinterested they are, for all practical purposes, functionally uninvolved when they eschew instructional issues. School business officials who have maintained a credo of "Just tell me what you need and let me handle it" are now out of step with their districts' needs. The business official in every district should be expected to become a knowledgeable co-partner in educational policy-making and implementation decisions.

John Goodlad in the Phi Delta Kappa publication, **The School We Need**, made the general point that schools cannot improve by trying harder within their current framework and restrictions. It does not stretch the point too much to suggest that the traditional role of the school business official be reconsidered and restructured. New roles, new outreaches and new directions are called for if we are to gear up for greater productivity in the public schools. While this suggests but a small step, its intention can be powerful. Examine your district and the roles your central office staff plays. Be sure your business official has every opportunity to be a full contributor to the district's educational mission. It is an important stride forward in your commitment to making your school more effective.

Dr. John Champlin
Associate Professor
Texas Tech University

educational considerations



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Current Issues in School Finance and School Law

Special Editor
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School finance will continue to be an important policy issue in the future.

State School Finance Issues for the 1980s

by John Augenblick

The purpose of this article is to discuss some of the issues that states will face as they deal with school finance in the middle of this decade. School finance will remain an important issue for at least three reasons. First, state courts continue to scrutinize school finance systems. Second, school finance systems have become extremely complicated. Third, education is receiving much attention through the national reform reports. These and other issues indicate that school finance is changing. As a result, education policymakers and leaders will need to modify the way they look at state school aid formulas. The remainder of this article provides further background information about the three issues delineated above. Hopefully, by knowing more about where school finance is and has been, it will be easier to deal with where it is going in the future.

Recent Court Involvement in School Finance

Despite all the concern policymakers express about the influence of the courts in school finance, only seven states have actually been required to modify their school finance systems in response to court decisions between 1971 and 1983. Those states include California, New Jersey, Connecticut, Washington, Wyoming, West Virginia, and Arkansas. While school finance systems in three states have been declared unconstitutional in the 1980s, systems in four states have been upheld including Georgia, Colorado, New York, and Maryland.

This is not to say that the courts have not been, and will not be, a potent catalyst of change in the structure of school finance systems. Numerous states initiated their examinations of school finance because of a perception that the courts might otherwise require that changes be made. However, legal strategy confused the improvement of state aid systems for many years. Before 1970, cases claimed that the allocation of state support was not related to the needs of school districts. Courts found this approach impossible to resolve and ultimately con-

demned such cases to failure. A new approach, based on equal protection guarantees, was used successfully in the early 1970s to declare school aid systems unconstitutional in many states. The problem with that approach was that it did not give policymakers much guidance about how to improve school finance. Rather, it created a negative standard, fiscal neutrality, that required that there be no relationship between spending and the wealth of school districts. This approach did not consider the needs of districts; it also did not consider the issue of local control, particularly in regard to school district tax rates. In 1973, with the *Rodriguez* case, this approach was abandoned.

In its place new approaches were developed based on the education clauses of state constitutions. Since the language of the education clauses differs among the states, each state school finance system was reviewed on a somewhat different basis. Systems were declared unconstitutional because they did not provide "thorough," "efficient," "basic" or "ample" education opportunities. However, no universal definition of these terms has emerged. The courts have debated the language, as have state legislatures, without achieving consensus. Essentially, what the courts have required is that the legislatures demonstrate a rational relationship between the allocation of support and the needs of school districts. Where legitimate differences exist among districts, variations in support are justifiable. The difficult policy issue focuses on the distillation of legitimate differences from among all differences. Are differences due to characteristics of pupils legitimate? What about those related to school district characteristics? Are voter preferences legitimate or not? Ten years after *Robinson*, the 1973 case in New Jersey that revived school finance litigation after *Rodriguez*, answers to these questions vary among the states. Lower courts in many states have tended to be more sympathetic than appeals courts to plaintiffs' suggestions that state aid systems are not rational. When state supreme courts have found state aid systems to be sufficiently rational not to overthrow them, the decisions tend not to be unanimous ones; even the majority opinions tend to point out deficiencies in those school finance systems that are legally acceptable.

Two recent cases raised a new issue for the states. In California and Washington, litigation sought to clarify the role of the state in light of earlier decisions that school finance systems were unconstitutional. Both states faced difficult fiscal situations that made it increasingly difficult to provide adequate levels of state aid. In California, the court found that progress in reducing per pupil expenditure variations had been sufficient and that further state support, which increased dramatically with the passage of Proposition 13 in 1978, was not needed. In Washington the court found that the state had not provided sufficient funds to meet the new requirements it had established in response to the *Seattle* case. In a sense, this was similar to the situation in New Jersey where, in 1976, the court closed the schools until the state provided the support necessary to fully fund its new school formula.

What does all this mean for state policymakers? First, policymakers should periodically review the structure of their school finance systems and determine whether such structures are rational. This requires that policymakers specify the goals and objectives of their state aid systems, choose an appropriate definition of equity among the variety that exists, assure that state and local re-

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sources are adequate, and explicitly balance local control against equity and adequacy concerns. The major deficiency of most school finance systems is that they do not achieve the purpose for which they were designed. In many cases the systems are several decades old; they were designed in a different time for different circumstances. Alternatively, annual incremental changes made to a perfectly rational system reduced, over time, its rationality.

Second, policymakers should strive to stay out of court. Among the school districts of every state there are usually several that cannot spend at levels they deem appropriate, that are relatively poor or that perceive themselves to be "losers" in the annual distribution of state aid. These districts have in the past and will in the future bring legal action against a state. The worst situation under which policymakers can evaluate and modify state aid systems is when a court has mandated change and, while retaining legal jurisdiction, is monitoring the progress of the policymakers.

Third, policymakers should learn to live with complex state aid formulas when complexity is justified by increased rationality. Simplicity is a virtue to strive for in the design of a school finance system; but simplicity should not be sought at the expense of sensitivity to the widely varying circumstances facing school districts.

The Increasing Complexity of State Aid Formulas

Between 1965 and 1980 many states modified their school aid formulas to increase their sensitivity to the wide variation that exists in the property wealth of school districts. Using approaches that had been used before, such as the foundation program, and using newer approaches, including guaranteed tax base, guaranteed yield, two-tiered systems and recapture, the states have been fairly successful at alleviating the impact of property wealth on school district spending decisions. While some of these new approaches have exotic names, they are essentially equivalent to the older approaches in terms of their computation. They differ in regard to those factors that the state controls: tax rate, expenditure level, or level of state match for local funds.

These wealth-related formulas have become complicated by mandated minimums and maximums, "kinked" matching relationships under which state aid changes as local effort changes, variable partial recapture under which the state recaptures only a portion of excess local revenues and the portion depends upon the level of local revenues, and proportional reductions of state support when districts do not make specified tax effort or when state appropriations are less than the level required to fully fund a formula. Over the past few years a number of states also have implemented new approaches to measure the wealth of school districts. Most states continue to rely on property wealth per pupil as the indicator of relative fiscal strength. Many states have either improved their property assessment systems or used property assessment equalization procedures to assure that the distribution of state aid is based on comparable measures of the property wealth of districts. Some states have moved beyond property wealth and included income in their determination of fiscal capacity. Recently, Vermont included an income factor in its formula, joining Rhode Island, Virginia, Kansas, Connecticut, Maryland, Missouri, Pennsylvania and New York, which use such a factor in distributing at least a portion of state support.

In the late 1970s the states focused much of their attention on improving the sensitivity of school finance systems to the varying needs of school districts. These needs were primarily associated with characteristics of the pupils being served or characteristics of the districts that affect the cost of providing services to all pupils. The states began this process by creating separate, categorical programs designed to allocate supplementary state support for such activities as special education, bilingual education or compensatory education. These programs were stimulated by the expansion of federal aid for similar activities and many of them were designed in the same manner as federal programs. Some states started to move away from the strict financial accounting approach inherent in federal programs by using the pupil-weighted approach, under which pupils participating in relatively costly educational programs were weighted to reflect the relative cost of providing services to them. Because most state aid systems are enrollment driven, these districts would receive more state support. In some states this system operates as a rational method of allocating state support with no requirement that districts spend funds for the same purposes for which they are received, similar to a block grant approach. Over time, the states have increased the number of weighting categories consistent with the precision of their accounting systems to specify program cost differences. It is becoming somewhat more popular now to link funding to the type of service provided by the district rather than the classification of pupils, since it is the way the services are provided, and not the disability of the pupil, that directly determines cost. For example, while there may be a dozen or more categories of pupils receiving special education services, such services are only provided in four or five different ways.

While the states have made a great deal of progress in linking the allocation of state support to the needs of pupils, they have also started to recognize the cost implications of district characteristics. A number of states have studied price-of-education factors that adjust state support based on the varying purchasing power of similar amounts of money around a state. Florida uses a cost-of-living index; Alaska uses an adjustment based primarily on accessibility. Ohio has incorporated a regional cost-of-living adjustment into its state aid formula and Missouri implemented a district cost index based on factors beyond the control of districts that affect their ability to attract similarly qualified personnel. States also are incorporating factors related to school or school district enrollment levels in their formulas in recognition of the relatively higher per pupil cost of providing educational services in small school districts. Oklahoma's new system contains a formula to increase the weighting given to pupils in districts with less than 500 pupils. Using a geometric equation, the formula gives more weight to pupils in very small districts. Wyoming's formula, based on classroom units, provides more aid to schools that are small.

Some states also have included simple approaches to recognizing the fiscal impacts of declining enrollments by allowing districts to use prior year enrollments or to average enrollments over a number of years. These approaches do not directly confront the issue of marginal costs, the recognition that the actual cost of adding or subtracting a pupil is less than the average cost, but they do cushion what could otherwise be a precipitous loss of funds for districts rapidly losing enrollment. In a few states, extra support is given to urban school districts. A

few years ago there was a great deal of interest in municipal overburden, a fiscal condition thought to be faced by large, urban areas. Court cases in New York, Maryland and Wisconsin included this issue although research is mixed about its existence. Nonetheless, some states have sparsity and density factors that attempt to provide increased state support to very small or very large districts.

One problem that affects school districts, particularly as enrollments stabilize or decline, is the increasing cost of personnel. In some districts there is little turnover of teachers, which results in increasing per pupil costs as teachers' salaries increase. Some states recognize this problem by including teacher training and experience factors in their formulas. Using these factors, districts with relatively better trained or more experienced teachers receive relatively higher levels of state aid. Oklahoma explicitly included such a factor in its new formula and other states, such as Texas and Delaware, implicitly recognize this problem in their foundation programs.

The increasing complexity of state aid formulas not only leads to increased confusion for policymakers, taxpayers and administrators, but also increases the likelihood that the formula provides inappropriate incentives and disincentives for school districts. Every state aid system provides incentives and disincentives to school districts. These are complicated because districts with different characteristics respond to them differently. Also, given the multiple goals of the education system, it is possible that a policy designed to promote one goal serves as a disincentive to achieving another goal. School finance systems can be designed to accomplish a variety of objectives, which might include:

- Assuring that adequate revenues are provided by school districts
- Encouraging the provision of appropriate education programs
- Promoting the efficient use of resources
- Increasing the productivity of teachers
- Promoting appropriate levels of local control
- Increasing parental involvement in school decision-making
- Improving pupil achievement

It is now recognized that a particular structure of a state aid system can stimulate or discourage districts from providing local support for schools. Some approaches to providing support for pupils in special programs may discourage their placement in appropriate programs. States can encourage districts to improve the quantity and quality of services they provide by providing more support for high-quality teachers or lower pupil-teacher ratios or by increasing support to districts that comply with procedures perceived to be related to improving schools.

It is not easy to understand all the incentives and disincentives provided by a state aid system, but increasing knowledge in this area is crucial to improving school finance systems, particularly as they become more complex. Policymakers who do not understand how their state aid systems work; how their structures are related to the educational goals and objectives of the state; the impacts of state aid allocation procedures on district administrators and taxpayers; and the relationship between equity, adequacy and efficiency, will be overwhelmed by the complexity of their school finance systems. In the future, it will be important to assure that the complexity of state aid systems can be justified by recognizing the widely rang-

ing needs of school districts and assuring that state support is distributed with incentives to improve the quality of the system.

Short-term and Long-term School Finance Issues

During 1983 several national commissions and study groups have issued reports calling attention to problems with the education system in this country and proposing solutions that would affect states, localities, teachers, and, hopefully, pupils. In addition, several states are examining the structure, financing and governance of education through broad-based commissions supported by governors, legislatures, state and local education policymakers, and the private sector. Education is emerging as a major topic of debate and it is likely to be among the central issues of the 1984 presidential election. Over the next year, and possibly longer, education will be highly visible, presenting policymakers with what could be either the best or the worst time to debate the controversial issues surrounding education and to implement changes, depending on the extent to which the long-awaited economic recovery improves the fiscal situation in state and local school districts.

The recommendations of those study groups that have released reports range from exhortative rhetoric to incremental changes, from those that cost almost nothing to implement to those that would require billions of dollars of new spending, and from those that might best be implemented at the federal level to those that can only be dealt with by local school districts. Strengthening the curriculum, improving teacher preparation and inservice training, raising teachers' salaries through a general pay boost or merit pay, lengthening the school day or the school year, increasing the availability of technological innovations, increasing admission standards of colleges, solving the remediation problem, and a myriad of other proposed actions to improve the quality of the education system all have implications for school finance. They all have an impact on the provision of adequate resources for education, the equitable distribution of resources, and the efficient use of resources.

State policy makers face two types of school finance policy issues as they consider these recommendations in light of the historical development of school finance: short-term problems that should be resolved as quickly as possible and long-term issues that should be confronted over the next few years. Short-term problems include:

- Providing adequate revenues to schools
- Assuring appropriate teacher salary levels
- Promoting local control
- Paying for deferred maintenance
- Creating incentives for school improvement
- Improving the equity of school finance systems

The most important issue facing the schools today is the provision of adequate revenues. While inflation has decreased, the federal role has deteriorated and both states and school districts have undergone fiscal stress caused by increasing responsibilities and poorly performing revenue systems. In the future, in most states, assuring that adequate resources are provided will be a state responsibility. This is not to say that local sources of revenue should not be tapped; in fact, to assure the viability of the system, revenues should be diversified by the use of such mechanisms as local option sales or income taxes, foundations and, perhaps, increased reliance on property

taxes, provided that property tax administration can be improved. State support will, however, become more important and alternatives to enrollment-driven formulas may be needed.

Over time, the share of all resources consumed by personnel has remained fairly constant. In the future, demands for teacher salary increases will change this pattern; either total expenditures will increase or less funds will be available for nonpersonnel costs. While states do not, in most cases, play a direct role in setting teacher salaries, they must recognize that in order to attract and retain highly qualified staffs, adequate funds, targeted to salaries, will need to be provided.

Local control has always been an important component of education governance in this country and reliance on local control appears to be increasing. School finance systems must respond by finding ways to increase local control over how much money is spent and how available funds are spent by schools. Block grants, school site budgeting, and other mechanisms can be used to do this.

Many states provide no support for capital outlay or debt service. During the past few years many districts have neglected building maintenance as budgets have been squeezed. While it is relatively easy to defer building maintenance in the short term, such a policy can be costly in the long term. States will have to become more involved in supporting building maintenance in order to avoid serious problems in the future.

Policymakers need to examine the incentives in their state aid systems and assure that they are designed to improve schools. School districts that demonstrate improvement can be rewarded. School districts can be encouraged to adopt policies that appear to be related to school improvement. Demonstrating improvement in pupil performance and operational efficiency will be increasingly important in maintaining public support of schools.

Equity remains an important goal of school finance systems. States must continue to improve the rationality of aid allocation procedures by increasing their sensitivity to the needs of pupils and districts and by improving their procedures for measuring school district wealth. The increasing complexity of state aid formulas should be justified by improvements in the recognition of factors that affect the cost of providing education services.

In the long run a set of broader issues faces state policymakers concerned with school finance. This set includes:

- Compensating teachers
- Supporting private schools
- Improving the efficiency of schools
- Expanding the services provided by schools
- Assuring the availability of local support
- Paying for remediation

While teachers' salary levels will be of concern to policymakers in the short run, compensation for teachers, including salaries, benefits, tenure, career ladders, and length of work year will be issues over the next several years. States will be in a position, through their school finance systems, to influence school district behavior by creating statewide minimum salary schedules, allocating sufficient funds to increase total compensation and providing incentives to districts to modify their current compensation systems.

The recent decision of the U.S. Supreme Court in the *Mueller* case raises the issue of state support for private

schools to a new level. It is anticipated that several states will examine the use of income tax deductions, if not tax credit or other mechanisms, to provide tax relief to parents paying tuition or other specified costs associated with private schools. Public schools will be seeking ways to charge students for some education costs, which would be eligible for tax deductions, in light of the importance attributed to the structure of Minnesota's plan, which provides benefits to families of pupils attending public and private schools. This issue is likely to receive more attention in a few states than at the federal level, where opposition to tuition tax credits is better organized and large budget deficits are likely to continue.

As the business community becomes involved in improving the education system, it is almost inevitable that the efficiency of the system will receive more attention. Declining enrollments continue to have serious fiscal impacts which are not understood by the public. Several states are considering studies of school district reorganization, a very successful policy pursued by the states up until about 15 years ago. As more states become interested in the competency of pupils and teachers and statewide testing increases, renewed interest in the relationship between resources and attainments is likely to develop. All of these factors suggest that school finance systems may be used to provide incentives to reduce costs, to consolidate school districts, and to reward districts with appropriate relationships between inputs and outputs.

School districts around the country are experimenting with the provision of child care services that supplements the normal education program. Such services represent a new source of income at only marginal expense to school districts. Not only does care provided before and after school provide a benefit to parents, it offers opportunities to provide more educational services to pupils in terms of hours per day and days per year; it even legitimizes the provision of very early childhood education. Because the provision of such services also might affect teacher salaries and could offset some of the negative impacts of declining enrollment, it will be an important issue, and one with broad fiscal implications in the future.

The availability, and perhaps the expansion, of local support for schools is crucial to their fiscal future. One threat to local support is the changing demography. A smaller proportion of the population has children in the schools, making it increasingly difficult to obtain voter approval of increasing local taxes. It may be important in the future to change both the types of revenues that can be used locally, permitting the use of local sales or income taxes, and the mechanisms by which approval for such revenues is achieved, by giving greater power to school boards to impose taxes.

A number of issues affecting the future of school finance are related to the interaction between the elementary/secondary and higher education systems. Increased competition between the education sectors for scarce resources will make it even more important to resolve these territorial issues. One of these issues is remedial education, services provided to pupils who do not meet whatever standards are specified to continue their education. It may be costly to retain pupils in elementary schools rather than simply allowing them to continue into high schools. Which sector should provide remedial education beyond high school, and who should pay for such services (the pupil, the state, the school district, or some

combination) must be addressed.

In conclusion, school finance will continue to be an important policy issue in the future. States will play a central role in funding schools. In designing state aid systems, policymakers will need to balance the amount of revenue they provide against the equity they achieve and the level of local control they promote. States will increasingly use school aid formulas as policy tools that provide incentives for school improvement and efficiency. State

policymakers will not be able to confine their concerns about school finance to formula structures; they will need to pay special attention to compensating teachers, the provision of local support, aiding private schools, and the relationship between elementary/secondary and postsecondary education. As the states recover their economic vitality, they will be besieged by increased demands for support; school finance, an old concern surrounded by new issues, will be at the top of the list.

Contemporary efforts to adjust state finance plans for differences in teacher salaries are, at best, premature.

Teachers' Salaries and Finance Equity

by C. Thomas Holmes and Kenneth M. Matthews

Finding appropriate ways of adjusting state finance plans to compensate for differences in the costs of educational resources has been a persistent problem. Because differences in the salaries of teachers are considered to be the dominant source of differences among districts in the costs of resources, contemporary research focuses on ways of determining the cost of teachers. This article will briefly examine prominent efforts to arrive at teacher cost indices to illustrate the complexity of the problem and identify major areas of disagreement among researchers. Salary determination practices will be examined and implications for finance equity will be discussed.

The Cost of Teachers

Local costs of living, supply of and demand for teachers, and wages in local industries have been advocated as bases for deriving teacher cost indices. Although each of these approaches appears to be logical, none has proven adequate.

Costs of Living

The initial cost adjustments in Florida were based on differences among districts in the local costs of living. Fox charged that this method was inadequate because "... it focuses on the cost of living within districts rather than the cost of living of teachers.... It focuses on point of employment, not point of expenditure, and these two points do not coincide.... this technique seems to be a device to channel funds into districts which contain wealthy residents."² Matthews and Brown examined changes in Consumer Price Indices and changes in beginning teachers' salaries in eighteen standard metropolitan statistical areas and found relative change in Consumer Price Indices to be "... an unreliable indicator of concurrent changes in beginning teacher salaries and an ineffi-

cient predictor of future salaries."³ Thus, even though adjustments based on local costs of living have strong emotional appeal, the empirical base supporting them has not been established.

Supply and Demand

Supply and demand approaches are based on the assumption that teachers' salaries reflect the strength of the desire of local officials to employ quality teachers and affect the supply of teachers. The arguments against the use of the economic concept of supply and demand are numerous.

A major argument against the use of supply and demand approaches is that the supply of teachers is not highly elastic. Matthews and Holmes asserted that the supply of teachers that may be assumed to be mobile is dominated by those entering the profession.⁴ If this assertion is correct, then supply and demand approaches would logically be limited to beginning teachers. If not, the error may be substantial. According to Stiefel and Berne, the use of beginning teachers' salaries results in teacher cost indices that are one-third to one-half as large as when average teachers' salaries are used.⁵

A second argument against supply and demand approaches is the disagreement among researchers as to what data are appropriate proxies for supply and demand factors. For example, Matthews and Brown challenged Chambers' use of average daily pupil attendance, the cost of land and housing, the degree of urbanization, population density, the population of the county, and the distance of the county from the nearest central city as proxies for supply and demand factors.⁶ Wentzler argued that district family income level could be classified as a district amenity or a district disamenity.⁷ As an amenity, higher income areas would presumably attract applicants. As a disamenity, higher income areas are assumed to reduce the number of teaching applicants. (The same logic holds for the cost of land and housing.) Wentzler also questioned the use of pupil counts in computing teacher cost indices.⁸

Local Industry Wages

Gensemer reasoned that high wages in local industries have a negative effect on the supply of teachers.⁹ The direct application of his logic to the computation of teacher cost indices is questionable because of his finding that the differential in classified personnel salaries between high wage areas and low wage areas was more than twice as great as for the salaries of certificated personnel.¹⁰ Although he used per capita personal income instead of local industrial wages, Matthews found a negative relationship between changes in local income levels and changes in beginning teachers' salaries in metropolitan areas.¹¹ An alternate to Gensemer's logic is that high local industrial wages may increase the supply of teacher applicants because of the opportunities for employment for family members who are not trained as teachers.

As pointed out in the brief discussion above, contemporary efforts to compute teacher cost indices have not been universally accepted.¹² Part of the reason for the level of disagreement that exists can be linked to the absence of credible teacher salary determination theory. An examination of recent data supports our contention that adjustments to state finance plans based on differences in teachers' salaries are, at best, premature.

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Salary Determination Practices

The importance attached by superintendents and school board members to the salaries paid teachers in other districts is often clearly demonstrated when local officials choose to study their compensatory systems. A recent request for proposals from a large Louisiana school system included the following requirement:

"A review of salary data pertinent to the development of a salary compensation program must be conducted as a basis for understanding the relationships between employee salaries within the district and ... similar salaries paid in the Standard Metropolitan Statistical Area (SMSA) within which the district is located, and other similar school districts' salaries."¹³

A Georgia school system was even more specific naming the districts with which it wanted to be compared, *d.h.*:

"The consultant will survey the 13 school districts in the Metro ... area to obtain comparative data on salaries and supplements. (These systems are ...)"¹⁴

Because school systems are apparently interested in the salaries being paid in neighboring districts, a metropolitan area was selected for a case study.

Salary schedules were obtained from thirteen school districts within one Standard Metropolitan Statistical Area (SMSA). These data were subsequently plotted to show relationships among the salaries of teachers in the selected districts. Figure 1 represents the annual salaries paid by the selected districts to teachers holding master's degree certification.

As can readily be seen from the figure, the thirteen districts have divided themselves into three distinct groups with respect to the salaries paid to teachers. We have chosen to label the higher paying group, composed of districts 1, 2, and 3, the "competitive elite." The middle group or "normalizers" consists of districts 4 through 9 and the bottom group or "laggards" is composed of districts 10 through 13.

The Competitive Elite

If the curves representing salaries paid in districts 1, 2, and 3 are studied closely, evidence of policy decisions in the districts become evident. The three districts have salary schedules, based on different philosophies, that allow each superintendent to claim the highest salaries in the area.¹⁵

Central office personnel in District 3 have designed a schedule in which all step raises are given in the first ten years of service. From the time a teacher is tenured through thirteen years of experience, the superintendent in this district can claim to be paying the highest salaries. Obviously an attempt is being made to attract the best young teachers in the market. Local officials apparently believe the relatively high salaries being paid to younger teachers will discourage them from relocating, and that after fourteen years of service within the district, the teachers are not likely to leave the system before retirement.

Officials in District 2 have chosen to give somewhat smaller increases per year of experience than District 3 but to give credit for more years of experience. It appears that the leaders in this district have decided to attempt to keep their more experienced teachers and to vie for the services of other experienced teachers. The result of this decision is that the superintendent of District 2 can claim the highest salaries in the metropolitan area for teachers with fourteen through twenty-six years of experience.

Officials in District 1 have made a policy decision to reward extended service within the system. This decision is reflected in the salary curve in Figure 1, as well as in official policies. (e.g., District 1 will only award one-half credit for any teaching or administrative experience prior to being employed in District 1.) After twenty-four years of experience, the salaries in District 1 catch up to the salaries being paid in District 2. After twenty-seven years of experience the teachers' salaries in District 2 are higher than in any other district within the SMSA.

The Normalizers

The largest group of districts is that where salaries are close to, or at, the mean salaries in the area. For various reasons (they don't believe they need to, they don't believe they can afford to, and so forth) officials in these districts have made policy decisions not to compete with the competitive elite in terms of teachers' salaries. In fact, in one of these districts the school board has adopted a policy that it will pay salaries at the average for the area. On close inspection, the six salary curves representing these districts reveal the same kind of status maneuvering within this group as was observed within the competitive elite.

The Laggards

This group of four districts is composed of those where salaries for the more experienced teachers fall substantially below those of the competitive elite and normalizers. It is interesting to note, however, that even these districts offer salaries that are reasonably competitive for beginning teachers with master's degrees. Thus it appears that competition for beginning teachers is stronger than competition for the services of highly experienced teachers.

Revenue Potential

In an earlier study of the salaries of beginning teachers with bachelor's degrees in Florida's sixty-seven school districts, Matthews and Holmes found that the revenue-generating potential per pupil of local districts had a significant effect on local salaries. Those with salaries above that predicted from the mean beginning salaries in contiguous districts were significantly more likely to have greater revenue potential than those whose salaries were lower than predicted.¹⁶

In an attempt to replicate the results of the Florida study, Spearman Rho correlation coefficients were calculated with the data for the thirteen districts. The districts were ranked in order from the highest nonexempt assessed property valuation per pupil in average daily attendance to the lowest.¹⁷ In addition, the districts were ranked on the salaries they were paying teachers at each of four certification levels, first with no years of experience and again at the maximum number of years of experience. The results of the correlations between rank in property wealth per pupil and salaries are reported in Table 1.

At the maximum experience end of the salary schedules, there is a high positive relationship between teachers' salaries and revenue potential. In fact, approximately sixty-five percent of the variation in the teachers' salaries is associated with the variation in assessed valuation per pupil in average daily attendance. Salaries paid beginning teachers with a certificate based on a bachelor's degree, however, correlate only moderately high with assessed valuation.

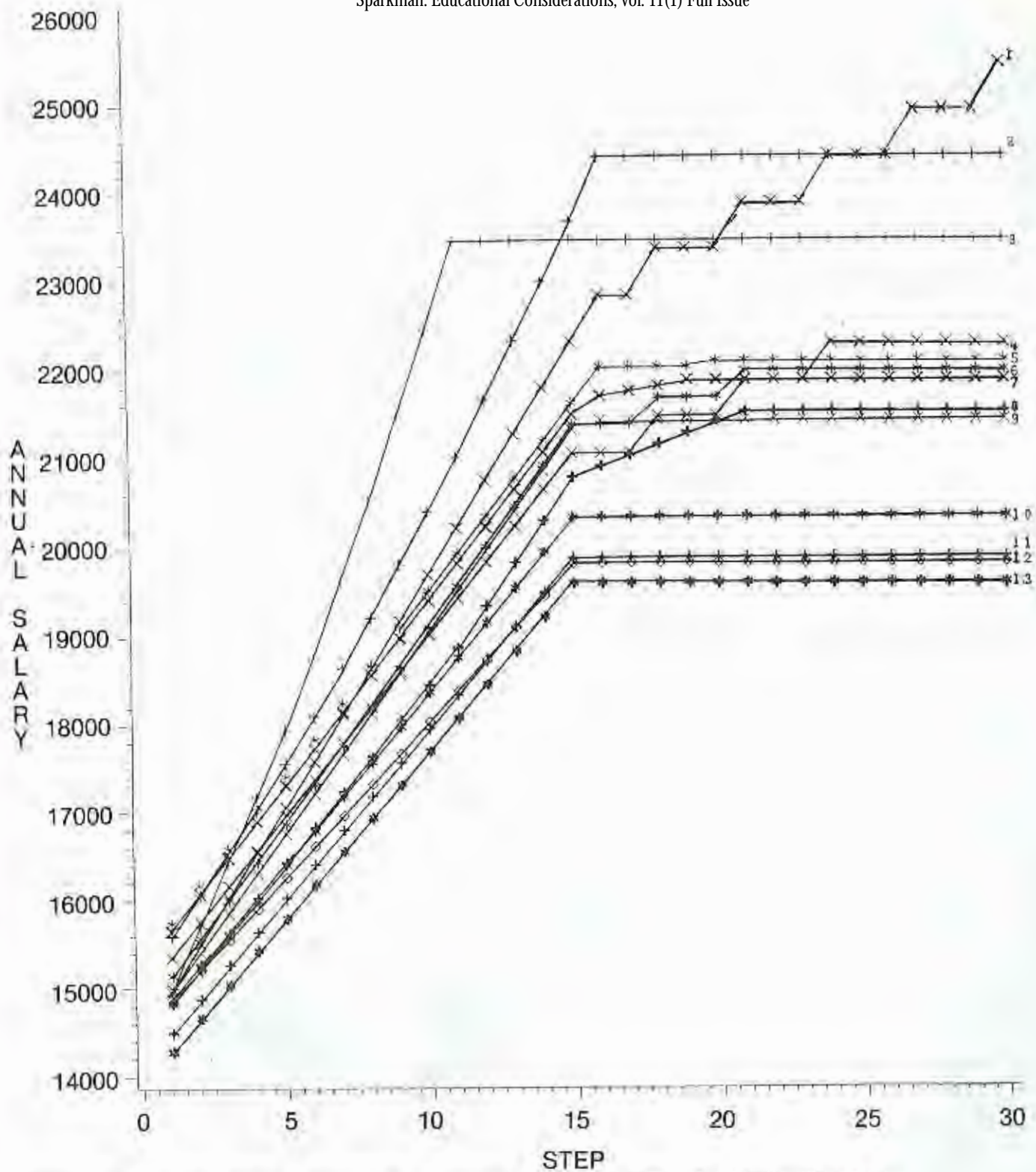


Figure 1. Salaries Paid Teachers with Master's Degrees in 13 Districts Within One Metropolitan Area.

It appears that local officials feel a need to compete as much as possible for beginning teachers and this competition is only somewhat moderated by available revenue. Toward the higher end of the scales, the amount of revenue moderates the competition more and seems to become a highly significant determinant of teachers' salaries.

Implications for Equity

As stated earlier, the evidence indicates that contemporary efforts to adjust state finance plans for differences in the salaries paid teachers are, at best, premature. If, as demonstrated in the Florida study, districts with higher revenue-generating potential pay higher salaries, then giving districts with high teachers' salaries more revenue ap-

appears to be illogical. If given more revenue, the data indicate districts would pay teachers higher salaries. Subsequent studies of the cost of teachers would show those districts currently having high teacher cost indices to have even higher indices following the receipt of additional revenue. Thus, a cyclic closed system would be in operation. Higher salaries generate more revenue and greater revenue generates higher salaries which generate more revenue and so on.

Finance equity dictates that differences in the quality of education among districts is not to be a function of the wealth of the districts. With differences in the cost of educational resources dominated by differences in the salaries of teachers and the salaries of teachers strongly affected by district wealth, cost adjustments can, and are likely to, contribute to a reduction in finance equity.

References

¹Florida has recently moved from its initial price level indices toward a Cost of Education Index based on the techniques reported by Jay G. Chambers in "Development of a Cost of Education Index: Some Empirical Estimates and Policy Issues," *Journal of Education Finance*, 5 (Winter 1980). See Analysis and Development of a Cost of Education Index for Use in the Florida Education Finance Program, Tallahassee, Florida: Florida Department of Education, SRI Project 1161, 1979-1980.

²James N. Fox, "Cost-of-Living Adjustments: Right Intent, Wrong Technique," *Phi Delta Kappan*, 56 (April 1975): 548-549.

³Kenneth M. Matthews and Carvin L. Brown, "Determinants of Metropolitan Teachers' Salaries: Implications for School Finance," *Journal of Education Finance*, 5 (Winter 1980): 286.

⁴Kenneth M. Matthews and G. Thomas Holmes, "District Revenue Potential and Teacher Salaries in Florida: Implications for Teacher Cost Indices," *Journal of Education Finance*, 7 (Winter 1982): 351.

⁵Leanna Stiefel and Robert Berne, "Price Indexes for Teachers in Michigan," *Selected Papers in School Finance*, (Washington, D.C.: National Institute of Education), 1981: 184.

⁶Kenneth M. Matthews and Carvin L. Brown, "Response to: The Development of a Cost of Living Index: Some Empirical Estimates and Policy Issues," *Journal of Education Finance*, 5 (Fall 1980): 236-237.

⁷Nancy Wentzer, "Adjusting for Input Price Differences Across School Districts: A Comparison of Alternative Techniques," *Journal of Education Finance*, 6 (Winter 1981): 313.

⁸Ibid., 326.

⁹Bruce L. Gensemer, "School District Responses to Variations in the Cost of Purchasing Resources," *Journal of Education Finance*, 7 (Fall 1981): 138.

¹⁰Ibid., 149.

¹¹Kenneth M. Matthews, "An Exploratory Study of Changes in Economic Conditions and Teacher Salaries in Metropolitan Areas," (Paper presented to the American Education Finance Association, March 1980): 6-7.

¹²The issues involved are discussed in depth in "Implications of Regional Cost Adjustments" by Kenneth M. Matthews and G. Thomas Holmes (paper presented to the American Education Finance Association, March 1983) and "Implications of Regional Cost Adjustments to School Finance Plans" by Kenneth M. Matthews and G. Thomas Holmes (paper submitted for publication).

¹³Jefferson Parish School Board, "Request for Proposals for Conducting a Comprehensive Salary and Job Classification Study," August 18, 1982, (mimeographed).

¹⁴Rockdale County School Board, "Request for Proposals for Conducting a Comprehensive Wage and Salary Study," November, 1982, (mimeographed).

¹⁵The authors have heard officials from each of these three districts claim that their respective districts "pay the highest salaries."

¹⁶Matthews and Holmes, "Implications," 1983.

¹⁷Rank order of the school districts on assessed property valuation per pupil in average daily attendance was obtained from the Georgia School Finance Project, Michael W. LaMorte, director.

Table 1: Correlations Between Rank in Teacher Salary Paid and Rank in Assessed Valuation per Average Daily Attendance.

| | B.S. | M.Ed. | Ed.S. | Ed.D. |
|--------------------------|------|-------|-------|-------|
| 0 years experience | .51 | .72 | - | - |
| maximum years experience | .78 | .82 | .78 | .81 |

*The state does not certify teachers at these levels until they have three years of experience.

Before we implement a merit pay plan, we need to concentrate our efforts on increasing teacher salaries across the nation.

Merit Pay: Is It the Icing Without the Cake?

by Deborah Inman

The issue of merit pay is one of the most controversial in education today. The findings of **A Nation at Risk and Action for Excellence** have generated a momentum regarding quality education unlike any experienced in quite a few years. Like many problems in education, the condition of our public schools had to become almost fatalistic in the eyes of society in general and the legislators in specific before the necessary measures for improvement would be supported.

One of the underlying problems associated with the poor quality of public education is the low salary level of school teachers. As a result of these low salaries, many of the best teachers leave the classroom in an effort to make more money and upgrade their standard of living. This departure of many of the more competent teachers has become a possible explanation for the lower standards of quality in our public schools today. Merit pay has been suggested as the solution to this problem. Many believe that if the better teachers were paid more than the less competent teachers, then the more effective teachers would stay in the classroom rather than moving into administration or leaving the public school system altogether.

The basic concept of merit pay is very American in that it supports upward mobility with the more competent receiving higher salaries than the less qualified. It is this American concept that forms one of the basic qualifiers in the definition of professional. The present educational pay system does not differentiate between good, bad, or indifferent teachers. For the most part, all teachers are treated the same, relieving teachers of the responsibility to excel. As such, the present nondifferentiated salary schedule for teachers prevents education from being defined as a profession. There are some, however, who believe that merit pay will encourage educational professionalization by removing the rewards for mediocrity

which are established in our present system (Bruno and Nottingham, 1974). On the other hand, others believe that individuals who become teachers work for intrinsic rather than extrinsic rewards (Deci, 1976). And, of these, there are some who do not believe that intrinsic and extrinsic rewards can work together cooperatively to encourage the highest level of productivity. In fact, it has been found that in some instances extrinsic rewards can reduce intrinsic motivation (Deci, 1976). This is attributed to the basic need to feel competent and self-determining. The prime concern is that an individual's motivation will be influenced more by external benefits than by personal interest and genuine concern. There are those, however, who believe that all extrinsic rewards are not harmful. These individuals believe that extrinsic rewards such as praise and support can reinforce intrinsic motivation as opposed to merit pay which would inevitably control behavior. Advocates of this viewpoint support merit praise rather than merit pay. On the other hand, those who support both merit praise and merit pay make a valid point: merit praise alone will not support today's economy, and therefore something must be done to increase teacher salaries.

The purpose of this article is fourfold. First, it is to clarify the underlying need for merit pay. Second, it is to evaluate the feasibility of merit pay. Third, it is to discuss proposed legislation, and fourth, it is to determine whether merit pay is the best solution to the immediate problems facing education today.

Steps obviously need to be established to improve the quality of education. Means need to be created for honor, prestige and remuneration in an effort to keep the best teachers in the classroom to ensure quality education. Teachers who are more competent and productive should be treated differently than those who are less effective. Advocates of merit pay believe that each of these issues can be properly addressed through a merit pay system. Opponents of merit pay disagree stating that the system will not improve the quality of education, but instead, will encourage mediocrity. They believe that rather than pay the good teachers more while leaving the less effective ones in the system at lower pay scales that it would be more effective to replace these less competent teachers with capable teachers by raising the salary scale for all teachers. They believe that if teacher salaries are increased then education can attract more qualified individuals to the classroom.

Both the advocates and opponents of merit pay make one very clear statement: "you get what you pay for." If society is not willing to support a system that recognizes extraordinary teaching and effort, then it should not expect extraordinary teaching and effort. The public, in general, has difficulty understanding this sudden revelation regarding less qualified school teachers. However, there are many reasons for finding less qualified teachers in the schools; the most prominent being the changing times. Until the late 1960s, the schools attracted the brightest and most capable female college graduates because teaching was, for the most part, the best job available. As the job market expanded to make other vocations available to women and as women gained support for equal opportunity employment, the school system was not prepared to compete (since they had never had to actively recruit) and many of the bright, capable women who would have previously chosen to be a school teacher, now preferred other vocations. It was a real challenge to be ac-

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cepted into different vocations such as business, engineering and law. Consequently, if education wants to attract these bright, capable individuals, the public school leadership must be prepared to compete for them.

It is evident that the present salary system for teachers must be changed if education is going to attract and keep the most qualified teachers. Initially, the idea behind merit pay was to provide an incentive to teachers and to correct some of the inadequacies of across the board raises in traditional salary scales. The question to be addressed now is whether merit pay is a feasible alternative to the present system. In theory, merit pay for teachers is attractive, but in practice, it is difficult to implement. The primary obstacle is the evaluation process. Hooker (1978) found that politics and personal relations play a large role in a merit pay system. McDowell (1973) described the problems of using evaluations made by a single individual based on a study by Worth. The most critical questions regard the evaluation criteria. The identification of the characteristics which distinguish meritorious educators is, in itself, quite controversial. Few educators agree on what it is that causes a good teacher to be effective. Some would like to base it on achievement scores of the students at the beginning and end of the school year. Others believe that increasing and maintaining high student attendance rates is a valuable measure. Still others think it should be based on creative teaching methods or additional time spent preparing for class outside of the regular school day. And finally, there are those who believe that a teacher's involvement with professional associations and research should be considered. Other characteristics for consideration include number of graduate hours, years of experience and so forth etc. Obviously, there are a host of attributes that different evaluators would like to see considered. Unfortunately, there are none to date that reflect those which both teachers and administrators agree on.

Merit pay is not a new idea. The first attempt at such a program was in 1908, reaching a peak in the 1920s, and diminishing in the 1930s to 1940s. Interest in merit pay was rekindled in the 1950s with the actual use of merit pay stabilizing in the 1960s at approximately 10 percent. A decline began again with the decade of the seventies with only four percent of the school districts using it and only another four percent considering such a plan. The school districts that tried merit pay and then abandoned it cited several reasons for doing so, including administrative problems, personnel problems, collective bargaining, financial problems and other problems. The area that created the most distress centered on personnel problems caused by: unsatisfactory evaluation procedures, staff dissension and lack of proper funding. These three areas continue to be the center of controversy regarding the feasibility of implementing merit pay plans. Administrators and teachers perceive different criteria as important in the evaluation process. Not only is there disagreement regarding the actual criteria, but there is grave concern regarding the appointment of the evaluator. The question of who, if anyone, has or should have the authority to evaluate teachers' performance is quite controversial. The concern regarding staff dissension is caused by the need of each individual for recognition of competence. In school systems where only 15 percent or 25 percent of the total number of teachers can be accommodated by a merit pay plan may create problems if, by chance, more teachers were qualified for the merit pay. Additionally, dissension may be created by the mere fact

that when a select few receive recognition, those who do not may feel that the entire community thinks of them as incompetent. Funding is always a problem whenever a school improvement plan is introduced. Inevitably, more funds will be required for implementation, but seldom are the funds obtained before the idea is introduced. Merit pay is no exception and, in fact, cannot be realistically considered if the necessary funds are not identified prior to implementation.

Today, three states including Tennessee, California and Florida, have proposed legislation supporting various forms of merit pay. Tennessee's Master Teaching Program designates four career stages. These include apprentice, professional, senior, and master teacher. The salary increase for each level would range from \$1,000 to \$7,000. The actual increase would be determined by career level and length of contract in terms of the number of months per year. Of the total number of teachers in each local school system, supplements would be provided for up to 25 percent for senior teacher status and up to 15 percent for master teacher status.

California is endorsing incentives for master teachers with the intention of raising salaries for both beginning teachers and master teachers. Master teachers would receive a \$4,000 annual raise and starting salaries for beginning teachers would increase \$4,500 over a three-year period.

Florida's master teacher-differentiated staffing plan encourages teachers to apply for "associate master teacher" or full "master teacher." Associate master teachers would receive salary increases of \$3,000 and full master teachers would receive \$5,000 bonuses. Criteria for determining eligibility for associate master teacher and full master teacher include years of experience teaching, education degrees received, evaluation and testing.

Each of the three states has experienced various difficulties in proposing a merit pay plan. In Tennessee, one of the major obstacles was that the teachers were not informed of the plan until two hours before the governor announced it to the legislature. As a result, teachers are less inclined to support the program because they feel very strongly that they, as teachers, should have some input into the decision-making process involved in establishing such a program. California's major obstacle has been funding. Although the legislature and the educators want to raise sales or corporate taxes to finance the program, the governor opposes tax increases of the magnitude that would be necessary to support such a plan. Because the governor supports incentives for master teachers, compromises are being discussed. Florida, on the other hand, has made considerable progress with the state legislature's approval of a tax increase to implement the governor's school improvement plan.

The positive steps taken by these states toward legislation for merit pay support the need to carefully deliberate the problems that merit pay is expected to solve in an effort to determine if merit pay should, in fact, be the first step. If the problem is a public school system that is rated as inadequate and ineffective, then attention should be focused on all teachers, not just a select few. The nation's commitment to education has declined over the past ten years. With the decline of support for education, comes the decline in quality. The bottom line is: you get what you pay for. The average salary for all school teachers across the United States is far below that of other professions with the same number of years of

education and work experience. Perhaps it is time to professionalize education. But, in my opinion, we need to start with the base salary for all teachers. There appears to be more willingness to support only the best teachers rather than broad support, which would provide for across the board raises for all teachers. Beginning teachers are grossly underpaid. Therefore, I believe that before we implement a merit pay plan, we concentrate our efforts on increasing teacher salaries across the nation in an effort to attract and keep the more qualified and effective teachers in the public schools. After teacher salaries are raised across the board, then various types of merit pay might be very feasible. I believe a merit pay plan should be designed to improve instruction thereby increasing achievement while relating salary to performance. The American Association for School Administrators has made a statement regarding its position on merit pay for teachers. It states that "ultimately, a merit pay plan should be judged by its ability to assure effective education for all students" (*The School Administrator*, September 1983, p. 24). This, I believe, is an indication that the immediate need is effective teachers for all students which can only be assured by increasing salaries for all teachers. After all, if you get what you pay for, then it is time that we pay for what we expect if we are going to demand it.

Bibliography

Bhaerman, Robert D. "Merit Pay? No!" *National Elementary Principal*, 52,5 (February 1973), pp. 63-69.
Bruno, James E. and Nottingham, Marvin A. "Linking Fi-

nancial Incentives to Teacher Accountability in School Districts," *Educational Administration Quarterly*, 10,3 (Autumn 1974), pp. 46-62.

Deol, Edward L. "The Hidden Costs of Rewards," *Organizational Dynamics*, 4,3 (Winter 1976), pp. 61-72.

Educational Research Service, *Merit Pay for Teachers*. ERS Report. Arlington, Virginia, 1979.

ERIC Clearinghouse on Educational Management and the National School Boards Association, *Research Action Brief*, Number 15, February 1981.

Hooker, Clifford P. "A Behavior Modification Model for Merit U." *Phi Delta Kappan*, 59,7 (March 1978), p. 481.

McDowell, Stirling. "Merit Salaries (and Other Devices)." *Education Canada*, 13,1 (March 1973), pp. 14-19.

McKenna, Charles D. "Merit Pay? Yes!" *National Elementary Principal*, 52,5 (February 1973), pp. 69-71.

Robinson, Glen E. "Paying Teachers for Performance and Productivity: Learning From Experience." *Concerns in Education*, Educational Research Service, May 1983.

Sergiovanni, Thomas J. "Factors Which Affect Satisfaction and Dissatisfaction of Teachers." *Journal of Educational Administration*, 5,1 (May 1967), pp. 66-82.

Sergiovanni, Thomas J. "Financial Incentives and Teacher Accountability: Are We Paying for the Wrong Thing?" *Educational Administration Quarterly*, 11,2 (Spring 1975), pp. 112-15.

Tursman, Cindy. "Merit Pay Revisited." *The School Administrator*, September 1983, pp. 19-24.

The problems posed by recurrent and resistant salary problems in education will require fundamental reconsideration of school organizational, operational and administrative strategies.

Teacher Salary Differentials and Out-of-Field Teaching

by Bettye MacPhail-Wilcox
and
Robert T. Williams

The quality of public education has been criticized widely in the last five years, and the recent spate of national studies¹ has echoed and magnified such criticism to a deafening roar. Unfortunately there have been few sustained and systematic efforts to determine the validity of the charges against public schools or the subsequent matter of explaining decline. The tendency has been to accept the allegation of decline as fact and develop an arm-chair hypothesis about the causes. Hence, one must wonder on what basis the proposed cures are founded.

Though there are many explanations for this peculiar set of circumstances, one important reason concerns the difficulty of defining, measuring, and relating variables that connect the quality of education with the quality of teaching. The relationships between these concepts are ambiguous and undergirded by assumptions that are often unexamined. For example, accepting decline on the basis of falling test scores for students and teachers assumes that a given standardized test does in fact measure things that truly reflect the quality of education.

The case for linking the quality of education with inadequate salaries is even more tenuous, and the absence of a tidy methodology makes the rationalization of no action or postponed action more defensible than it might otherwise be. However, it is possible to examine the quality-salary issue in another light. This research brief provides the rationale for doing so as well as some preliminary evidence on the matter, and implications for administrators and educational policymakers.

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Background Considerations on Quality and Salary

To date the evidence of a relationship between the quality of education and teacher salaries rests on propositions derived from economic theory, descriptive studies based on these propositions, and reports of declining test scores among students and teachers. Economic theory postulates that unsatisfactory social and economic benefits within a profession will lead to a decline in the supply of specialized labor for the profession. It also postulates that as the supply of specialized labor dwindles, those remaining in the labor pool of the profession will have a different set of characteristics than those who leave the profession.²

As reported earlier, declining test scores for students and teachers have been interpreted as evidence that the quality of public education is suffering and that the quality of teachers is declining also. Though this rests on an assumed relationship between test score and quality, the fact is that standardized test scores for students and potential teachers have fallen coincidentally with the purchasing power of teachers.³ It also has been demonstrated that the mean test scores of teachers who remain in the profession are lower than the mean test scores of teachers who leave the profession.⁴ Further, numerous surveys of classroom teachers and potential teachers report intolerably low salaries as a key reason for malcontent within the profession, a primary motivating factor for leaving the profession, and sufficient cause not to enter the profession.⁵

Despite the evidence regarding the changing composition of the remaining and potential labor pool of teachers and widespread reports of inadequate salaries as the reason for teacher flight,⁶ national reports fail to make a strong recommendation about raising teacher salaries or the recommendation is buried near the end of the list. No doubt political expediency in the face of tight fiscal conditions explains part of the behavior, as do ideological propositions that salary is inconsequential to teachers. But, reluctance to address the issue forcefully also may be based on an unwillingness to accept the assumed relationship between quality of education and quality of teaching as reflected in test scores.

Given this possibility, another line of inquiry about the relationship between educational quality and teacher salaries can be undertaken. It, too, is rooted in economic theory, and it assumes that proper certification in a discipline contributes to the quality of teaching, and subsequently to the quality of education. (The rationale and sample employed in this preliminary investigation follow.

Rationale and Sample

Assuming that some minimal knowledge in a discipline, represented by certification, is necessary to teach effectively, this study sought to determine the statistical relationship, if any, between the highest and lowest paying school districts in one state and the proportion of teachers assigned to classes outside of their certification. We reasoned that given a sufficient salary differential, the supply of appropriately certified teachers would be significantly different in high- and low-paying school districts. Further, we believed that salary would explain a large portion of the variation in out-of-field teaching among school districts.

To test these predictions, two groups of school districts in North Carolina were identified as subjects. Group one included all school districts (N = 44) that did not pay a

salary supplement beyond the minimum salary mandated by the statewide schedule in 1981. These districts comprised 31 percent of all districts in the state. The second group contained all districts that paid at least \$500 above the minimum specified by the state salary schedule, and it comprised 15 percent of the total districts in the state ($N = 22$).

Method and Findings

A linear regression model, using the general linear model of the statistical analysis, was constructed using percent of out-of-field teachers in eight disciplines as the dependent variable. Classification as a high- or low-paying district was the independent variable. The results of the model were significant ($p < .0001$) and salary classification explained 52 percent of the variation in out-of-field teaching between the two groups of districts. The mean percent of teachers out-of-field in low-paying districts was significantly greater than the mean percentage of out-of-field teachers in the high-paying districts. The percentage of unexplained variation may be due to error and factors that can be controlled by policy and administrators. Those variables need to be identified and included in the model as next steps to this preliminary study.

These findings are consistent with economic propositions that posit a relationship between the supply of specialized labor and the level of economic benefits available to the labor pool relative to those available in alternative labor pools. They corroborate reports of teachers and potential teachers who either leave the field or do not enter it, and they suggest new descriptive evidence relating the quality of education and low teacher salaries. The credibility of the relationship rests on an assumed link between proper certification, quality of teaching, and quality of education.

In the absence of casual studies, judgments about the efficacy of test scores and certification in explaining quality must rely on a preponderance of evidence and transportable theories. Further, the generalizability of these findings beyond one state remains to be demonstrated. However, the approach does provide a unique view of the salary-supply-quality issue, and it does have some important implications for administrators and policy makers.

Implications and Recommendations

Negative newspaper coverage about the quality of education, conditions of fiscal stringency, and political resistance to the redistribution of existing resources make it unlikely that legislatures will opt for across-the-board salary increments that will make teaching a competitive labor market. Outside of agitating for rational consideration of the quality issue and the systematic effort to examine the issue, what can administrators and policymakers do to mitigate the threat of insufficient qualified labor?

Timeworn practices of assigning teachers to subject

areas and grade levels for which they are unprepared seems professionally unacceptable. Adopting policies providing for provisional endorsement seems equally flimsy. Both have the effect of hiding the problem as opposed to treating the problem, and it is difficult to believe that such actions are based on assessments of what is best for children.

Effecting differentiated staffing patterns with different salary **ranges** has some appeal as a means of enhancing instruction provided by improperly certified personnel. Master teachers or team leaders might be employed to teach, supervise, and otherwise assist and monitor the teachers and curriculum-in-use. Their additional responsibilities and expertise in diagnosis, supervision, and organizing are legitimate reasons for differentiating salaries. The use of nontraditional instructional design and delivery systems which capitalize on the high technology information represent another category of interventions worth exploring.

Clearly, the problems posed by recurrent and resistant salary problems in education will require fundamental reconsideration of school organizational, operational, and administrative strategies. They, in fact, have been needed for some time, but the time and climate seem most appropriate now. Truly, the challenge for public education in the 1980s and beyond lies within the profession.

References

1. See for example, *A Nation At Risk, Action for Excellence, Academic Preparation For College, Making the Grade, Education and Economic Progress: Toward a National Education Policy, and High School: A Report On American Secondary Education.*
2. Michael W. Kirst and Walter I. Garms, "The Demographic, Fiscal, and Political Environment of Public School Finance in the 1980s," Policy Paper No. 80-C1, American Educational Finance Association Annual Meeting, San Diego, March 1980, pp. 25-26.
3. See any of a number of releases from the College Board Testing Program and salary studies conducted and reported by the National Education Association during the last five years.
4. Walter E. Hathaway, "Testing Teachers," *Educational Leadership*, December 1980, pp. 210-215; Timothy Weaver, "In Search of Quality: The Need for Talent in Teaching," *Phi Delta Kappan* September 1979, p. 29; and Victor Vance and Phillip C. Schlecty, "The Distribution of Academic Ability in the Teaching Force: Policy Implications," *Phi Delta Kappan*, September 1982, pp. 22-27.
5. American Council on Education and the University of California at Los Angeles, *The American Freshmen: National Norms for 1982*, as reported in the *Raleigh News and Observer*, January 30, 1983, p. 4A.
6. Bettye MacPhail-Wilcox, "Preservice Teacher Flight In Texas," *Texas Outlook*, Winter 1981-82, pp. 26-28.

Several changes need to be made in the instructions to the HEGIS finance form to enhance the usefulness of the information.

The Utility of HEGIS Data in Making Institutional Comparisons

by Mary P. McKeown and Lucy T. Lapovsky

For the last decade, the National Center for Educational Statistics (NCES) has collected data about institutions of postsecondary education through the rubric of the Higher Education General Information Survey (HEGIS). Data have been collected concerning the general characteristics of institutions including proprietary schools, their student bodies, faculties, facilities, degrees awarded, expenditures, and revenues. The purposes of the HEGIS data collection efforts have included the development of an adequate and timely set of data that could be used in policy considerations at the national level and policy review at the state level, and which would permit intra- and interstate comparisons. The administrator of NCES, Marie Eldridge, has suggested that HEGIS data could be used to reflect and track federal, state, and institutional responses to the challenges presented in the Commission on Excellence Report "A Nation at Risk," or any of the other reports currently in vogue.¹

Those decisionmakers and others interested in inter- and intrastate comparisons of postsecondary educational institutions have available several other sources of information including M.M. Chambers' surveys² and the Halstead and McCoy analyses of data³ based on HEGIS information. A high level of interest in comparative information is evidenced by the existence of many studies prepared to gather, critique, interpret, and/or analyze data on higher education.⁴ Of particular interest to those involved with decisionmaking related to higher education policy are data that may be used to influence decisions related to levels of adequate support and to measures of quality among institutions.

However, equally widespread as the comparative

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studies are critiques of the usefulness and comparability of national data, especially HEGIS data. Both structural and technical differences among states have been identified and weaken the comparability of data among states.⁵ HEGIS provides a valuable national source of data, despite problems associated with the surveys. The data are readily accessible and are being used increasingly by educational researchers, planners, and decisionmakers.

Like the coordinating and governing boards in many states, the State Board for Higher Education in Maryland has adopted the concept of comparing Maryland institutions with selected peer institutions to assess the relative standing of the Maryland institutions. In order to make comparisons, the Maryland State Board for Higher Education has been using data collected through the Higher Education General Information Survey (HEGIS). To make comparisons meaningful, the Maryland General Assembly directed the State Board for Higher Education to assess the comparability of data.

In order to address this issue, Maryland's staff met with staff from the coordinating/governing boards and institutions in comparison states. The purposes of this study were the following: to identify problems of comparability with HEGIS data; and to make suggestions to NCES for improvement of the data and of the data collection effort. The study was made possible by a grant from the Personnel Exchange of the State Higher Education Executive Officers—National Center for Education Statistics (SHEEO-NCES) network.

This study concentrated on data from four of the HEGIS forms: finance, faculty salaries, enrollment, and degrees awarded by academic program. Data from the finance form were found to be least comparable. Differences in reporting among institutions were found on the other forms, but these differences were few in number. Most of the following discussion, therefore, will concentrate on reporting issues relating to the finance form.

Problems of comparability with HEGIS data that were encountered can be classified into three categories:

1. Universe definition
2. Funding differences
- and 3. Reporting problems.

The discussion that follows was based primarily on conversations with personnel from institutions and coordinating boards in California, Illinois, Michigan, Maryland, North Carolina, Texas, Virginia, and Wisconsin. Problem areas are addressed in the discussion that follows from the perspective of comparisons of a system of higher education like the University of California with other systems or parts of systems. Other comparisons might permit different conclusions to be reached.

Universe Definition

The first of the comparability problems to be addressed concerns the issue of which functions of a university/campus/system are included in the HEGIS universe and which are excluded. A related issue is more complex: what **should** be included and what **should** be excluded.

The National Center for Education Statistics uses what is known as a "FICE" code (Federal Institutional Code) to identify institutions of postsecondary education. However, not all institutions, or parts of systems of institutions, have been assigned this identifying code. Further complicating the issue is the fact that not all pieces of an institution or campus are identified.

When placed in the perspective of the HEGIS finance form, several areas are of concern. All entities that have a FICE code are easily identifiable and can be reported without difficulty. However, not all parts of universities have FICE codes; moreover, elements included within entities with FICE codes change over time as the organizational structure of the institution/campus/system change.

The HEGIS finance form instructs that those parts of campuses without FICE codes should be included with the "appropriate campus." Proper inclusion can only be accomplished if a central system office is involved in the completion of the forms. An individual campus is unlikely to be aware of the fact that a part of its University does not have a FICE code and is not included on another campus form. If a system office is involved, it may select the "appropriate campus."

For political as well as other reasons an institution may not choose to include an entity, for example, an agricultural experiment station, with any existing campus. Inclusion of other entities, such as central administration, would require prorating revenues and expenditures across several campuses. The internal consequences and the time involved to allocate the costs of central administration may be deemed to be unworthy of the effort, or of too low a priority to be completed.

There are several consequences of these problems. First, researchers do not know what was included in or excluded from the HEGIS finance universe without asking specific questions. For example the Universities of California and Illinois submitted separate HEGIS finance forms for their central administration, although these entities do not have FICE codes. NCES then apparently prorates these costs among each university's campuses according to enrollment. Staff of the University of California believes this is a reasonable allocation while the University of Illinois' staff does not believe this method of allocation correlates well with actual expenditures. Alternatively, the Universities of Texas and Maryland did not report the costs of their system administrations. The University of Michigan prorates its central system costs among its campuses before submission of the HEGIS form. In addition, the University of Maryland does not report any information on its agricultural experiment station. The list of varying treatments could continue, but questions about the seriousness of the problem and possible solutions remain.

This problem is serious, especially when a small number of schools are being studied for very specific comparative purposes. For example, at the University of California, the central system costs per student amount to more than \$800 per FTES; this is not an insignificant amount. A more efficient solution than having each researcher who works with the data collect this information can be suggested.

NCES could compile information on the entities that make up a university and which are not explicitly identified in the NCES directory. Data on obvious entities such as system administrations, research laboratories, and experiment stations could be requested. Universities could then identify how these entities are reported on the HEGIS finance forms. Institutions should be given the option of submitting a separate HEGIS finance form for each of these entities knowing that NCES will edit the submission into the campuses with FICE codes. This solution would eliminate the need to call the University of California to locate the Lawrence Hall of Science on the Berkeley

campus or the Scripps Oceanography Lab included in the San Diego campus. It must be noted that someone at the system level does need to be involved in this effort because individual campuses will not have the total picture.

Funding Differences

The problems associated with differences in the methods by which institutions in the various states fund institutions of higher education result in legitimate differences in reporting the funding differences often need to be understood in order to explain why an institution is funded at the level it is; these are differences which are not related to inconsistent reporting. Several types of funding differences will be discussed; the examples given are meant to be illustrative of the great variations that exist.

Faculty salaries are affected by the total compensation package provided. The level of fringe benefits provided by the states varies substantially and impacts faculty salary comparisons. For example, in Texas and Tennessee the state pays the employees' share of social security contributions. Virginia froze all faculty salaries for FY 1984 but will pick up the employees' retirement contributions equivalent to five percent of salaries; Tennessee already pays the employees' share of fringe benefits.

Faculty salary comparisons also are affected by the definition of faculty rank. For example, the University of California does not use the rank of instructor. However, the University of California uses the rank of lecturer in a manner equivalent to the way most institutions use the instructor rank.

Another major difference in funding concerns the activities that are included in an institution's budget versus the budget of its related foundation(s). None of the foundation expenditures would or should enter the HEGIS universe, but legitimate differences are attributable to the existence of foundations. For example, at the University of Michigan, the foundation administers several named professorships, chairs, and other grant funds. At the University of Illinois, Urbana-Champaign, all intercollegiate athletic expenditures and revenues are handled by the University of Illinois Athletic Association which is a separate entity and, therefore, is not a part of the HEGIS universe.

An interesting problem encountered was the reporting of extension education. At most of the universities visited, extension education was conducted through state-funded campuses. Expenditures and revenues of the activity were reported on the HEGIS finance form; however, extension enrollments frequently were not included on the enrollment form. For example, at the University of California, approximately 135,000 head-count regular students and more than 300,000 head-count extension education students were enrolled. None of the extension students were included in the HEGIS universe. At the University of Maryland, all of extension education is handled through a separate campus which receives no state funds. Enrollments for this campus were reported on a HEGIS enrollment form.

Among institutions with medical schools, the amount of state support for the affiliated hospitals differs significantly and cannot be identified on the HEGIS form. The hospital expenditures are readily identifiable on the appropriate campus' HEGIS finance form but the state subsidy for the hospital is included with all of the state funds received by the campus.

The problem of funding differences does not negate

the use of HEGIS data in any way. These differences often will produce results that will prompt a researcher to learn more about the institutions which are being compared so that the results can be explained. Knowledge of funding differences can enhance the ability to interpret the data.

Reporting Problems

Reporting problems are the result of insufficient instructions on the HEGIS form, insufficient information on the part of the institution, and/or insufficient incentives to complete the forms correctly. The instructions on the HEGIS form provide wide latitude for interpretation. For institutions that have a budget program structure different from the HEGIS program structure, the exercise of mapping the institution's budget programs to the HEGIS programs requires interpretation by the person completing the form. For example, in Maryland, "public safety" is a separately identified programmatic area for which institutions receive appropriations. Several institutions reported these expenditures in plant operations while others reported the expenditures in Institutional support. Either placement was justifiable within the directions.

A major reporting problem concerns fringe benefits. The instructions are clear that fringe benefits should be included, but many institutions do not budget fringe benefits and do not know how much they are. Fringe benefit expenditures can amount to as much as 25 percent of an institution's expenditures for salaries and wages; therefore, this is a significant reporting problem.

There are two possible solutions to this problem. One would be an explicit question on the HEGIS finance form: "Are fringe benefits included?" Answers could range from yes, to a certain percent, to no. For example, in California all fringe benefits are included while in Texas only the fringe benefits that run through the institutional budgets are included which is just a small percent of the total fringe benefits. Another solution would be an explicit instruction to estimate the total cost of fringe benefits if actual data are not available. Then a question could be included to ascertain whether the fringe benefit data are actual or estimated.

Another problem encountered was the accurate reporting of faculty salaries. At many institutions where faculty receive salary stipends from sources other than regular salary funds, e.g. endowment income, the stipends are frequently not reported. The University of Texas at Austin, which does not report salary stipends, found that the result of this underreporting is to reduce the average salary of full professors by about \$1,000.

What are the solutions to the reporting problems? If more people use the HEGIS data, more institutions may be willing to spend the additional time required to report accurately. In those instances where the information is not available and the institution is uncomfortable making an estimate, this should be noted. The most common example of this is the reporting of fringe benefits.

Summary and Conclusions

Problems of comparability with HEGIS data were found in this study, and were classified into three categories: universe definition, funding differences, and reporting problems. The majority of problems were related to the

HEGIS finance forms. However, the problems associated with the use of HEGIS data in comparing institutions do not negate the use of HEGIS data in any way.

HEGIS is the only available, universally collected information source on higher education institutions and their characteristics. Data collected through HEGIS surveys provide researchers with a valuable, and commonly understood, tool that can be used in decisionmaking. As is true with the use of other sophisticated tools like computers, the challenge facing those using HEGIS data is understanding how to best use this tool. The HEGIS finance form is a special case that, like a specialized computer software package, requires special care and instruction in use.

Specifically, the results of this study suggest that several changes be made in the instructions to the HEGIS finance form to enhance the usefulness of the information for researchers and others using these data. First, the addition of information on the entities that make up a university and that are not explicitly identified in the NCES Directory would be valuable. Data on entities such as system administrations, research laboratories, and experiment stations could be requested, and universities could identify how these entities are reported on the HEGIS finance forms. It is essential that someone at the system level of a university or the state level be involved in this effort to ensure that the total university system is included in the HEGIS universe.

Second, the inclusion of an explicit question on fringe benefits would be of value to those using the HEGIS forms in the comparison of institutions. The answer to the question of whether the data are actual or estimated, and to whether fringe benefits are included at all, would provide additional information that would be of use to those making comparisons among institutions.

Third, the continued and more widespread the use of HEGIS data in comparisons among institutions may prompt more individuals responsible for completion of the forms to spend the additional time to report accurately. Because it is unlikely that the collection of another survey would be viewed positively by institutional personnel, it is important that the HEGIS surveys be continued and used by those in decision-making positions.

Notes

*Marie Eldridge, "Improving the Quality and Relevance of Data through an Effective Partnership," proceedings of the SHEEO-NCES Communication Network National Conference, May 18, 1983, Silver Spring, Maryland.

*M.M. Chambers, *Grapevine*, published monthly, Department of Educational Administration and Foundations, Illinois State University, Normal, Illinois.

*D. Kent Halstead and Marilyn McCoy, *Higher Education Financing in the Fifty States: Interstate Comparisons, Fiscal Year 1979*, National Center for Higher Education Management Systems, Boulder, Colorado, 1982.

*Paul Lingenfelter, "The Uses and Abuses of Interstate Comparisons of Higher Education Funding," *Business Officer*, September 1983, p. 14.

*See, for example, James A. Hyatt and Robert K. Thompson, "State and Institutional Comparative Analyses Using HEGIS Finance Data: A Review" *Business Officer*, June 1980.

AEFA offers educators conference, yearbook and journal.

American Education Finance Association: A Focus for the Education Finance Debate

by Nelda H. Cambron-McCabe

The American Education Finance Association (AEFA) was established in 1975 "to provide a forum for the discussion and debate of issues in educational finance, and to encourage and support experimentation and reform which will make education finance practice responsive to emerging needs." As the only professional organization focusing on educational finance, the AEFA attracts members from diverse groups in the education finance field including academicians, researchers, local and state school administrators, teachers, attorneys, political scientists, economists, and legislators. The association facilitates communication among these various groups through an annual conference, a yearbook, and the *Journal of Education Finance*.

The Association

Although the American Education Finance Association has a relatively brief history, its antecedent was the National Conference on School Finance established in 1958 by the Committee on Educational Finance of the National Education Association (NEA). Under the direction of NEA, these annual conferences drew state and local officers of NEA affiliates, state education agency personnel, and professors of school administration. The early conferences addressed wide-ranging issues, and many of the themes and topics are reminiscent of today's AEFA meetings.

Because of the changing structure and priorities of

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NEA, the organization sponsored its last school finance conference in 1972. The urgency of school finance issues and the expressed interest of previous conference attendees prompted the National Educational Finance Project to sponsor a national meeting in 1973. In 1974 the Institute for Educational Finance (IEF) at the University of Florida and Phi Delta Kappa filled the void, and in 1975 the IEF received funding under Title V of the Elementary and Secondary Education Act to continue the meeting. To ensure continuation of the annual education finance conferences, supporters at the 1975 meeting established a professional organization and elected Professor Roe L. Johns as the first president. Later that year the AEFA was legally constituted.

With the formation of AEFA and the changing nature of education finance in the 1970s, the traditional interests expanded to include new and diverse groups concerned with financial reform. In contrast to the earlier NEA group, the largest percentage of AEFA's membership consisted of academicians and researchers, state education agency personnel and local school administrators with significant representation of legislators, legislative staff members, federal agency personnel, and teacher organizations.

In addition to individual memberships, the Association provides for sustaining and institutional members. The sustaining membership evolved from an interest and concern of other professional associations that an organization should exist for the debate of educational finance issues. These memberships have been significant in allowing AEFA to expand its activities. The American Association of School Administrators and the National Education Association are charter sustaining members and were later joined by the American Federation of Teachers and for several years by the Association of School Business Officials. These organizations have a representative on the board of directors and participate fully in all association business. The institutional membership (\$100 per year) was established for colleges and universities. The institutional benefits include four copies of the annual yearbook, two subscriptions to the *Journal of Education Finance*, and four student registrations at the annual conference.

Of particular interest to graduate students are the Jean Flanagan Research Awards recognizing outstanding dissertation research in school finance. At each annual conference, three awards are presented in the memory of Jean Flanagan, who organized the original NEA finance conferences and was influential in establishing AEFA.

Membership in AEFA

Membership benefits have expanded beyond simply the opportunity to attend an annual conference. Through the comprehensive association membership of \$70, members receive an annual yearbook, a subscription to the *Journal of Education Finance*, conference registration, and all organizational mailings.

In 1980, AEFA initiated its first yearbook, *School Finance Policies and Practices—The 1980's: A Decade of Conflict*. This series, published by Ballinger Publishing Company, has enabled the Association to provide an in-depth review of critical issues and to further accomplish its overall goals. Other yearbook titles are *Perspectives in State School Support Programs*, *The Changing Politics of School Finance*, and *School Finance and School Improvement: Linkages for the 1980s*. Editors include James W.

Guthrie, K. Forbis Jordan, Nelda Cambron-McCabe, and Allan Odden.

Another benefit of comprehensive membership is a subscription to the **Journal of Education Finance**. The **Journal of Education Finance**, published by the Institute for Educational Finance at the University of Florida, has been a part of AEFA membership since the organization was established in 1975. Through AEFA representation on the **journal's** board of editors, the association influences editorial and publication policies. Additionally, the executive editor of the **Journal** serves as an ex officio member of the AEFA board of directors.

The annual conferences focus on emerging and continuing issues in education finance. The 1983 conference addressed topics such as the federal role in school finance, fiscal condition of education, linkages between

education and business, and strategies for coping with declining state budgets. The theme of the 1984 meeting to be held in Orlando, Florida, on March 15-17, is "Financing of Educational Excellence." The program has been designed to explore a number of issues, but especially to examine the costs and implications of the national task force reports on education.

Requests for further information can be directed to the president of AEFA at 350 McGuffey Hall, Miami University, Oxford, Ohio 45056.

1. Bylaws of the American Education Finance Association adopted May 12, 1978, p. 1.

During the 1980s, educators will be forced to take on more responsibilities. Recent cases show the courts willing to abide by a "hands-off" policy as long as constitutional and/or statutory rights are not violated.

Current Issues in Public School Law

by Julie Underwood O'Hara

The phrase "legalization of education" is common. My understanding of that phrase is that it is a complaint made by educators that attorneys instead of educators are running our schools. Assuming that the phrase has been a valid assessment of the past, it appears that it is not going to continue to be true for the '80s. It seems we have entered a new era in education law, in both substance and approach. During this era educators will be forced to take on more responsibilities.

Education law during the late '60s and early '70s mainly involved philosophical issues. The courts were asked to address some basic social issues in our country. They accepted this task and discussed the concepts of equality and liberty, and officially recognized the constitutional rights of students as citizens of the United States. During this period individuals went to courts to solve perceived injustices. Education law was focused in the courts and involved litigation between and among teachers, students, administrators, and parents.

The next phase of education law was played out in a different arena. Throughout the '70s education experienced a wave of impact mainly from the U.S. Congress. Before this time federal involvement in education had been relatively minimal. But the same hand that started granting funds begin regulating. During this time we encountered The Lau regulations, The Buckley Amendment, Title IX, 94-142 and the more general type of regulation, such as OSHA. The legislation was primarily enacted to insure the rights which had earlier been delineated by the courts.

During the first two eras under discussion there were many important decisions made by noneducators. In the '60s the courts made many major policy decisions and in the '70s Congress and federal administrative agencies made equally as many implementation decisions. Now we are in the '80s. During this time what educational deci-

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sions will have to be made, who is going to make them and how will they work through the legal system?

It appears the major substance of education law in the 80s will be internal issues involving policies and the educational process: personnel management, testing, religion, handicapped students, and interpretation and application of rules. The early cases of this era indicate a change in tenor too. They indicate an increased willingness to allow the local districts autonomy on these issues unless there is a constitutional or statutory violation.

One example of internal issues is presented in a recent U.S. Supreme Court decision dealing with a student suspension, **Board of Education of Rogers v McCluskey**.¹ This case dealt with a due process issue in the suspension of two students for intoxication. There the Court held it was plain error for the lower court to substitute its construction of a board rule for the board's own interpretation.

(E)ven if The District Court's and the Court of Appeals' views (of the Board rule) struck us as clearly preferable to the Board's . . . the Board's interpretation of its regulations controls. . . .²

The Court refused to second-guess the board in the area of interpreting its own policy.

In personnel management the most pressing and pervasive issue for local school districts is reduction in force. There have been several court decisions regarding the reassignment, demotion, and nonrenewal of school staff. These cases may give you some guidance in this area, unless, of course, your collective bargaining agreement contains controlling provisions. Then the agreement would, of course, control your local situation.

Courts have held that layoffs³ or reassignments⁴ of personnel can be an acceptable procedure during reductions in force. According to these cases a reassignment will be left to the district's discretion and can be carried out without due process procedures if it is not a demotion, i.e. if it is a move between co-equal positions. A transfer or a reassignment is a demotion when the employee receives less pay or has less responsibility, is moved to a job which requires less skill or is asked to teach a subject and grade for which he is not certified, or for which he has not had substantial experience.⁵ Districts often make reduction decisions according to seniority. The courts have accepted this when the seniority system was already in place and its use was not arbitrary or discriminatory.

There is a renewed insistence on the part of federal courts in this area that individuals seek remedies provided in state law.⁶ The courts increasingly look to appropriate state law and local policy as a basis for decisions. The courts are moving to a hands-off stance toward public school personnel decisions unless there has been a violation of constitutional or federal statutory law.

The United States Supreme Court in early 1983, handed down an interesting case which may have a bearing on personnel matters. It also exemplified a rather unexpected view of public schools. In this case, **Perry Education Association v Perry Local Education Association**,⁷ the members of a minority union filed suit against the district and the board members challenging the negotiated contractual provision which denied the minority union access to the school's mail system. The Supreme Court held that no first amendment rights were infringed upon because the school's mail system was not a public forum of expression.

In the area of curricular decisions, there are a number of major issues on the horizon. It appears there are crucial

questions to be faced by state and local districts in implementing performance evaluation policies. Most common recently have been testing issues. These testing issues really overlap personnel questions, since many states are now using teacher certification tests for licensing.

As we begin to use competency tests as a basis for decisions about individual students and teachers, we must be aware of the potential for misuse and resulting liability. For students, the possibilities exist whether the tests are used for classification practices, grade promotion, denial of a diploma or even eligibility for athletics. The thrust of the cases is that testing is acceptable if it is not really just a sham for racial or ethnic classification⁸ and if it is valid and reliable.⁹ As educators, we would hope our testing schemes could live up to these minimums.

Another issue on the education law forefront is religion. On the local level this involves issues such as prayer, silent meditation or other exercises with religious overtones in school. The larger picture entails accreditation or regulation of private schools, tuition tax benefits, and the proposed constitutional amendment concerning prayer in school.

Recently the United States Supreme Court in *Jaffree v Board of School Commissioners*¹⁰ reiterated the conclusion that "conducting prayers as part of school program is unconstitutional." However, other issues are not quite as clear: Two federal district courts, one in New Mexico¹¹ and one in Tennessee,¹² and the Massachusetts Supreme Court¹³ have ruled that a statute providing for a moment of silence for meditation or prayer for students is unconstitutional. The courts concluded the primary effect of the legislation was to encourage religion. However, there are a few similar cases in other courts pending. There is a possibility that other jurisdictions may come out differently on the issue.

The United States Supreme Court resolved a conflict in the districts in *Mueller v Allen*.¹⁴ The Court ruled on a Minnesota statute allowing all state taxpayers, in computing their state income tax, to deduct expenses incurred in providing "tuition, textbooks, and transportation" for their children attending elementary and secondary school under an establishment of religion claim. A statistical analysis presented as evidence showed that the statute in application primarily benefited parents whose children attended religious institutions. Moreover, state officials had to determine whether particular textbooks qualified for the tax deduction, and disallow deductions for textbooks used in teaching religious doctrines. Nonetheless, the Court distinguished previous decisions which found tuition tax benefits to private-school students violated the establishment clause and upheld the statute. This opinion will undoubtedly spur the many private aid plans across the country.

In the area of services for handicapped students, the United States Supreme Court gave us some guidance in *Board of Hendrick Hudson v Rowley*.¹⁵ Rowley was treated as a question of interpreting 94-142,¹⁶ the specifics being whether a deaf child who was progressing easily from grade to grade needed to be provided a sign language interpreter. The Court held that the school district was not required to provide that extra level of services which would allow the student to compete equally with non-handicapped students. Instead, the district need only provide a level of services which would allow the student to benefit from the educational process, and progress satisfactorily to satisfy the requirements of 94-142. The Court noted specifically that Congress had not imposed upon districts any specific substantive standards, each district

has discretion as long as there is beneficial personalized instruction developed in the IEP and carried out.

Finally, in the area of curriculum is the heated topic of censorship, book removal. Last year the Supreme Court handed down *Board of Education of Island Trees v Pico*.¹⁷ This case involved the removal of books from a school library. The Court held that local school boards may not remove books from library shelves simply because they dislike the ideas contained in those books and seek by their removal to "prescribe what shall be orthodox." Books may, however, be removed for other reasons. The Court recognized that boards should select what is suitable for students to read and study. The selection, however, should be based on educational considerations. The Court specifically recognized the local district's discretion in this and other matters and stated that federal courts should not ordinarily intervene in the resolution of conflicts which arise in the daily operation of schools. However, the district's discretion must be exercised in such a manner that individuals' rights are not infringed upon.

Thus, a new theme seems to emerge from the courts' decisions. The current cases have a common thread which is the idea that the courts are willing to abide by a "hands off" policy as long as constitutional and/or statutory rights are not violated. The ramification for local districts is that they will have more discretion, and should exercise that discretion wisely. The following guidelines have emerged from the courts:

1. Be aware of individuals' rights and consider them before acting.
2. Review your policies with current constitutional and statutory standards in mind.
3. If you have policies, follow them.
4. Anticipate problems or questions as much as is possible and work through them before they occur.
5. Be aware of rights and laws but don't let fear of a lawsuit dictate educational policy.

Footnotes

1. 102 S.Ct. 3469 (1983)
2. 102 S.Ct. at 3472
3. E.g. *California Teachers' Association v. Board of Trustees of Goleta Union School District*, 132 Cal. App. 3d 32, 183 Cal. Rptr., 754 (Cal. Ct. App. 1982);
4. E.g. *Soria v School District No. 2* (Mont. July 7, 1983)
5. E.g. *Glanville v Hickory County Reorganized School District*, 637 S.W. 2d 328 (Mo. App. 1982)
6. E.g. *Elrod v Harrisonville Cass R-IX Schools*, 555 F. Supp. 107 (D.C. Mo., 1982)
7. 103 S. Ct. 948 (1983)
8. *U.S. v Gadsden County School District*, 572 F.2d 1049 (5th Cir. 1978); *Castaneda v Pickard*, 648 F.2d 989 (5th Cir. 1981)
9. *Debra P. v Turlington*, 564 F. Supp. 177 (M.D. Fla., 1983)
10. 103 S. Ct. 842 (1983)
11. *Duffy v Las Cruces Public Schools*, 557 F. Supp. 1013 (D.C.N.M. 1983)
12. *Beck v McElrath*, 548 F. Supp. 1161 (D.C. Tenn. 1982)
13. Opinions of the Justices to the House of Representatives, 440 N.E. 2d 1159 (Mass. 1982); *Kent v Commission of Education* 402 N.E. 2d 1340 (Mass. 1980)
14. 103 S.Ct. 3062 (1983)
15. 102 S.Ct. 3034 (1982)
16. Education for All Handicapped Children Act of 1974, 20 U.S.C. §1401 et seq (1976)
17. 102 S.Ct. 2799 (1982)

No otherwise qualified handicapped student may be discriminated against solely on the basis of the handicap when participating in school athletic programs.

Section 504 of the Rehabilitation Act and the Right to Participate in School Athletic Programs

by Carol L. Alberts

Section 504 states that "no otherwise qualified individual shall, solely by reason of his handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance."¹ Under the act, a handicapped person is defined as one who has, has a record of having, or is regarded as having a physical or mental impairment that substantially limits one or more major life activities. Examples of major life activities include seeing, speaking, breathing, walking, caring for oneself, and learning.²

In 1977, three years after the enactment of the Rehabilitation Act, the American Medical Association (AMA) published a revised set of medical eligibility guidelines for student athletes.³ According to these guidelines, disorders such as uncontrolled diabetes, jaundice, active tuberculosis, enlarged liver, the absence of a paired organ, and sensory impairments were grounds for disqualification from athletic participation.⁴ Although these eligibility guidelines were not legal mandates, they often were re-

garded as such by school district physicians and administrators. Based on these AMA recommendations, numerous handicapped athletes were denied the right to participate in school athletic programs and sought redress in the courts. The cases that emerged involved student athletes who were either absent a paired organ or had a visual or auditory impairment.

In general, students who wish to participate in school athletic programs are required to obtain medical eligibility clearance from school district physicians prior to participating. Handicapped students declared medically ineligible by school physicians have several avenues of redress. Although laws vary from state to state, decisions made by district physicians often can be appealed to higher administrative authorities, claims of violations of state education laws can be filed in state courts, and claims of violations of federal laws can be filed in federal courts.

The purpose of this article is to examine the court decisions regarding the participation rights of handicapped athletes, and develop policy guidelines for school districts based on judicial interpretation of state and federal laws.

State Cases

The case of *Spitaleri v. Nyquist*⁵ in 1973 was the first and most widely publicized case dealing with a handicapped student's right to participate in school athletics. The plaintiff, a high school freshman who had lost vision in one eye, was denied the right to participate in the contact sport of football. The school district's decision to disallow participation relied heavily on the district physician's recommendation that was based on the AMA guidelines for medical evaluation of the prospective sport participants. The plaintiff administratively appealed the decision of the school district to the commissioner of education. Following the commissioner's upholding of the ruling, the plaintiff filed a complaint in a New York Supreme Court to reverse the decision.⁶ According to judicial interpretation of New York Education Law section 310,⁷ decisions made by the commissioner of education cannot be judicially overruled unless they are arbitrary, capricious, or illegal. Despite the fact that the plaintiff provided evidence that he was an outstanding athlete with a history of successful participation, and that his parents were willing to sign a waiver releasing the school board from liability, the court upheld the ruling of the commissioner. The court indicated that the decision was not arbitrary, capricious, or illegal and, as grounds for the commissioner's decision, cited both the **Regulations of the Commissioner of Education**,⁸ which require a health examination by the school physician prior to strenuous activity, and the AMA guidelines for medical eligibility.

Two New York cases that immediately followed *Spitaleri* also were based on Education Law section 310. Ironically, both cases originated from the same school district, but resulted in different decisions. In the first case, **In the Matter of Pendergast v. Sewanhaka Central High School, District No. 2**,⁹ the decision of the commissioner to bar a high school student absent a paired organ (testicle) from participation was reversed by the court. Although the court recognized that the AMA guidelines listed the absence of a paired organ as grounds for medical ineligibility, it distinguished the facts of this case because the remaining testicle could be effectively protected, it did not increase the risk of injury to other parts of the plaintiff's body or other participants, and the missing organ was not

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functionally necessary for sport participation.

In the second case a year later, **Colombo v. Sewanhaka Central High School District No. 2**,¹⁰ a fifteen-year-old high school student who was totally deaf in one ear and had a 50 percent loss of hearing in the other ear was barred from participation in the contact sports of football, lacrosse and soccer. Affidavits were filed on behalf of the plaintiff by a private physician and two experts in education of the deaf indicating that it was appropriate for the plaintiff to participate. In addition, the plaintiff's parents testified that their son had never sustained an injury throughout his extensive participation in contact sports. Furthermore, the parents were willing to sign a waiver releasing the board from liability. The plaintiff indicated he had hopes of a college scholarship and that nonparticipation would have a devastating effect on his attitude toward school and his self-esteem. Nonetheless, the court upheld the commissioner's decision and indicated that the risk of total deafness, the possibility of other bodily injury due to a lack of perception of the source of sound, and the risk of injury to other participants was substantial enough to find that the commissioner's decision was not arbitrary or capricious.

It is apparent that the standard for judicial review, as defined by New York Education Law section 310, made it difficult for a student, initially declared medically ineligible to participate, to seek successful redress in the courts. The enactment of a federal statute, the Rehabilitation Act of 1973, however, may provide otherwise qualified handicapped athletes with an opportunity to acquire relief. As a result of the enactment of this statute along with the **Spitaleri** decision, New York Education Law section 4409 was passed by the New York Legislature. According to this law, the courts could judicially overrule the commissioner of education if they found that participation was in the best interest of the student and was reasonably safe. To meet these two criteria, plaintiffs were required to produce a verified petition from their parents and affidavits from two licensed physicians indicating that the student was medically qualified to participate. The law also released the school district from liability in the event of injury since, in effect, it was defining reasonable and prudent behavior.

In the case of **Swiderski v. Board of Education City School District of Albany**,¹¹ a first-year high school student with a congenital cataract restricting vision in one eye filed a claim under Education Law section 4409. The supreme court ruled that it was in the student's best interests for her to participate in the athletic program provided she wear protective eyewear. As defined by Education Law section 4409, the school district was released from liability in the event of injury.

In an almost identical 1978 case, **Kampmeier v. Harris**,¹² a junior high school student with defective vision filed a section 4409 claim. Although the lower court ruled in favor of the school board, the plaintiff was successful on appeal. The court indicated that school district immunity from liability was not a factor to be weighed in considering the best interests of the student, and that it was reasonably safe for the student to participate if she wore protective eyewear.¹³

Federal Cases

A number of students declared medically ineligible for athletic participation have filed claims in federal court alleging violations of section 504 of the Rehabilitation Act

of 1973.¹⁴ In the **Kampmeier** case discussed earlier, the plaintiff also filed suit against the commissioner of education in federal court. In **Kampmeier v. Nyquist**,¹⁵ a preliminary injunction against the school district was sought to require the district to permit the plaintiff to participate in the athletic program. In order for the motion to be granted, the plaintiff needed to establish a **prima facie** case demonstrating a clear showing of probable success at the trial, and second, that irreparable injury would result if she were not allowed to participate before trial.

The federal district court denied the motion for the preliminary injunction, and the case was appealed to the federal court of appeals. The appeals court upheld the district court ruling. In rendering its decision, the court indicated that although federal law prohibits discrimination against otherwise qualified handicapped individuals solely on the basis of their handicap, it is not improper for a school district to bar participation if substantial justification exists for the school policy; and, plaintiffs had failed to provide any medical or statistical evidence that the school policy was not based on substantial justification. Thus, the court concluded that a clear showing of probable success had not been demonstrated by the plaintiffs. The court also indicated that under the doctrine of **parens patriae**, school officials have an interest in protecting the well-being of students within their district.

The only federal case that has rendered a full decision based on a section 504 violation involved a New Jersey high school student born with only one kidney. The plaintiff in **Poole v. South Plainfield Board of Education**,¹⁶ brought suit against the board for refusal to allow him to participate in the interscholastic wrestling program. The court focused on three issues: (1) whether the board's refusal to allow the plaintiff to participate denied an otherwise qualified individual the right to participate solely on the basis of his handicap; (2) whether section 504 mandates apply to all programs within a school system that receives federal funds, or whether only those programs within the school system that receive the funds directly must comply; and (3) whether section 504 creates a private cause of action for compensatory damages.

The board refused to allow the student to participate, because the school district medical director deemed it inadvisable for a student with only one kidney to participate due to the severe consequences of injury to the remaining vital organ, and the board's legal counsel indicated that under the doctrine of **in loco parentis**, the board had a moral and legal responsibility, which was not abrogated by a release and waiver, in the event of injury to the plaintiff's kidney. However, the court indicated that the purpose of section 504 was "to permit handicapped individuals to live life as fully as they are able, without paternalistic authorities deciding that certain activities are too risky for them."¹⁷ Given this purported intent, the court ruled in favor of the plaintiff, concluding that barring a student absent a kidney from participation on an interscholastic wrestling team constituted a section 504 violation. The court also held that section 504 not only created a private cause of action, but that since injunctive relief was not possible (plaintiff had graduated from high school), remedies such as monetary relief were appropriate. Also, it made no difference to the court whether the athletic program received federal funding, assuming of course that the district in total was a recipient of such aid. In support of this position, the court ruled that Congress did not intend "to ban discrimination during school hours while per-

mitting it in officially sponsored extracurricular activities."¹⁷ In addition, the court clearly indicated that the doctrine of *in loco parentis* did not give the board the right or duty to impose its own rational decision over the rational decision of the plaintiff's parents. However, the board did have the duty to alert the plaintiff and his parents to the dangers involved and to deal with the matter rationally.

In a 1981 case, *Wright v. Columbia University*,¹⁸ a college freshman filed a section 504 claim seeking a preliminary injunction against the university that had declared him medically ineligible to participate in intercollegiate football. The plaintiff, a student sighted in only the left eye, was actively recruited by Columbia University to play football, was given a scholarship, and subsequently was denied the right to participate due to his handicap. Columbia University maintained that since the football program, as a discrete entity from the rest of the university, did not receive federal funds, it fell outside the purview of the Rehabilitation Act. On this issue, the court reiterated the *Poole* rationale, that the athletic program was an integral part of the University which received federal funds, therefore, the University must comply with the mandates of section 504.

In granting the preliminary injunction, the court found that the plaintiff would suffer irreparable damage if he were denied the right to participate since it could jeopardize his chances for a professional football career. It also recognized that a qualified ophthalmologist indicated that it was reasonably safe for the student to participate, and that the plaintiff was aware of the risks as well as the consequences of injury to his good eye. As in the *Poole* decision, the court also indicated that the doctrine of *in loco parentis* was not intended to permit school officials to overrule the rational decision of students and parents when it was established that they were aware of the risks and consequences of their decision.¹⁹

In a recent case, a high school senior who was absent a kidney was granted a preliminary injunction to play interscholastic football. The federal district court in *Grube v. Bethlehem School Area District*²⁰ held that the plaintiff had provided enough medical and statistical evidence to indicate that his participation would not be harmful to himself or others. According to the court, this showing of evidence distinguished this case from *Kampmeier* where a preliminary injunction was denied. As in *Wright* the plaintiff also provided evidence that irreparable harm would result if he were not allowed to participate, since a football scholarship was necessary in order for him to attend college.

Discussion of Federal Case Decisions

The only federal case dealing with section 504 of the Rehabilitation Act which did not rule in favor of the handicapped student was *Kampmeier*. Interestingly, although the right to participate was denied on the grounds of section 504, the student was granted the right to participate according to the state court's interpretation of state law. Analysis of the case law indicates that the federal courts have not given all otherwise qualified handicapped athletes a "carte blanche" right to participate. Rather, the courts have required school districts to provide "substantial justification" for policies which render handicapped students ineligible; and handicapped athletes to provide medical and statistical evidence that the school district policies were not substantially justified. In the case of

Kampmeier, the court ruled that the student's evidence was not substantial enough to find a section 504 violation. In the *Wright*, *Poole* and *Grube* decisions, however, the court ruled in favor of the students, indicating that the school policies barring participation were not sufficiently justified. In fact, in *Poole* the court indicated that numerous administrative rulings made by the Commissioner of Education in New Jersey that barred otherwise qualified handicapped students from participation were contrary to section 504 mandates as defined by the supremacy clause of the Constitution.²² According to the supremacy clause all state laws must fall within the legal confines of federal laws where the statutes are applicable.

Conclusions and Implications

Recent judicial interpretation of state and federal laws regarding handicapped students' right to participate in athletic programs has focused on the legal definitions of handicapped and otherwise qualified. According to AMA guidelines, individuals who have sensory impairments or are absent a paired organ are medically ineligible for athletic participation. These same physical abnormalities fall within the purview of the legal definitions of handicapped as defined by section 504. Furthermore, no otherwise qualified handicapped student may be discriminated against solely on the basis of the handicap.

By virtue of selection of an interscholastic team, a handicapped student may demonstrate that he is otherwise qualified to participate in spite of his handicap. Although the courts historically have been reluctant to overrule school administrative decisions, federal courts will still intervene where clear statutory rights have been violated.

According to the *Poole* decision, the doctrine of *in loco parentis* does not give school administrators the right to overrule parental decisions. The duty of the school board is twofold: to make students and parents aware of the dangers involved; and to require all parties to deal with the matter in a rational manner. Furthermore, the question of future liability is not a factor to be weighed in the determination of a student's eligibility. Each case dealing with handicapped students must be reviewed individually as procedurally defined by Public Law 94-142.

Notes

1. 29 U.S.C. section 794.
2. *Id.*
3. *Disqualifying Conditions for Sport Participation, Medical Evaluation of the Athlete—A Guide* (Chicago, Illinois: American Medical Association, 1977).
4. *Id.*
5. *Spitaleri v. Nyquist*, 345 N.Y.S.2d 878 (N.Y. Sup. Ct. 1973).
6. *Id.*
7. N.Y. Education Law section 310 (McKinney 1980).
8. Regulations of the Commissioner of Education, 8 N.Y.C.R.R. section 135.4(c) (i) (h) (1976).
9. *Pendergast v. Sewanhaka Central High School, District No. 2*, (Supreme Court, Nassau County, 1975).
10. *Colombo v. Sewanhaka Central High School, District No. 2*, 383 N.Y.S.2d 518 (N.Y. Sup. Ct. 1976).
11. *Swiderski v. Board of Education City School District of Albany*, 408 N.Y.S.2d 744 (N.Y. Sup. Ct. 1978).

12. *Kampmeier v. Harris*, 403 N.Y.S.2d 638 (N.Y. Sup. Ct. 1978), *rev'd*, 411 N.Y.S. 744 (N.Y. App. Div. 1978).
13. *Kampmeier v. Harris*, 411 N.Y.S.2d at 746.
14. Prior to the enactment of section 504 of the Rehabilitation Act, several federal courts enjoined school districts from preventing handicapped students from participating in athletic programs. See *Borden v. Rohr* C75-844 (S.D. Ohio Dec. 30, 1975), where the court granted a preliminary injunction enjoining a school district from preventing a student with sight in only one eye from participating in the interscholastic basketball program. See also *Suemnick v. Michigan High School Area Athletic Association* No. 4-70592 (E.D. Mich. 1974) where the court enjoined a school district from disallowing a high school student with only one leg from participating in the varsity football program.
15. *Kampmeier v. Nyquist*, 553 F.2d 296 (2d Cir. 1977).
16. *Poole v. South Plainfield Board of Education*, 490 F. Supp. 948 (D. N.J. 1980).
17. *Id.* at 952.
18. *Id.*
19. *Wright v. Columbia University* 520 F. Supp. 789 (D. Penn. 1981).
20. Four years prior to the **Wright** decision, a federal district judge in Missouri allowed two college students sighted in only the left eye to play intercollegiate football after they signed a waiver releasing the college from liability. Interestingly, although the Rehabilitation Act was in force, it was not cited as grounds for the court's decision to allow participation. *Evans & Redding v. Looney* No. 77-6052 CV SJ U.S. District Court W.D. Missouri September 2, 1977.
21. *Grube v. Bethlehem Area School District* 550 F. Supp. 418 (D. Penn. 1982).
22. U.S. Const. art. VI, cl. 2.

In cases involving evolution and creation, the courts have made every effort to ensure that the wall of separation between church and state remains high and impregnable.

The Evolution of Creationism in Public Schools

by Stephen B. Thomas

Early in American history, it was not uncommon for the school day to begin with a reading from the Bible and a prayer. Christmas and Easter vacations were routine in the schools as were related assemblies, plays, and musicals. Released-time programs for religious instruction on school grounds, Gideon Bible distribution, and the posting of the Ten Commandments were common practices. When questions would arise regarding the origin of man and the universe, more often than not, the biblical creation was imparted as fact in both science and nonscience classes. Each of these practices has been successfully challenged in the courts beginning in the early 1960s. One of the more recent of these controversies deals with the discussion of related theories on the origin of man and is the topic of this article. Both anti-evolution and anti-creation cases will be discussed.

Anti-evolution Case Law

Unlike recent litigation, early case law dealing with disputes in public schools over the origin of man did not examine whether it was permissible for public school teachers to discuss the creation as described in Genesis; rather the controversy was whether any position other than that provided in the Bible, scientific or religious, also could be discussed.¹ Perhaps the most widely publicized of all related cases was the infamous Monkey Trial, **Scopes v. State**, with Clarence Darrow, among others, representing the plaintiff, and William Jennings Bryan, Jr., among others, representing the state.²

The Tennessee Anti-evolution Act of 1925 prohibited the teaching of evolution in the public schools and universities within the state. Any teacher found in violation of the act was to be fined between \$100 and \$500. The act was intended to restrict the curriculum to the creationist interpretation of the origin of man and the universe. The law was considered necessary by the legislature, which

argued that the "public welfare required it." Similarly, the Supreme Court of Tennessee declared the law constitutional as within the authority of the state legislature. The court concluded that "by reason of popular prejudice, the cause of education and the study of science generally will be promoted by forbidding the teaching of evolution We are not able to see how the prohibition of teaching the theory that man has descended from a lower order of animals gives preference to any religious establishment or mode of worship."³

It was not until 1968, in **Epperson v. Arkansas**, that the United States Supreme Court ruled on a case that involved a similar forty-year-old anti-evolution statute.⁴ However, violators of the Arkansas statute were to be dismissed, rather than merely fined. Ms. Epperson was employed by a public school in 1964 to teach high school biology. The textbook selected by the school administration included a chapter on Darwinian theory. Although Ms. Epperson was obliged to teach the class and to use the new text, "to do so would be a criminal offense and subject her to dismissal."⁵ Accordingly, she filed suit seeking to enjoin the state from dismissing her when she fulfilled her contractual responsibility to teach the class using prescribed methods and materials. The United States Supreme Court ruled that the state law was in violation of the first amendment because it proscribed a particular body of knowledge for the sole reason that it conflicted with a particular religious doctrine. The Court restated its position that "[t]he law knows no heresy, and is committed to the support of no dogma, the establishment of no sect."⁶ It further observed that "the state had no legitimate interest in protecting any or all religions from views distasteful to them. . . ."⁷

Two years after *Epperson* a statute similar to those passed in Tennessee and Arkansas was declared unconstitutional by the Mississippi Supreme Court.⁸ The rationale of the court relied heavily on the earlier Supreme Court decision and held that the law violated the first amendment. The court acknowledged the state's right to prescribe the public school curriculum, but limited such freedom to actions that do not compromise rights identified in the federal Constitution. The Court stated that "[i]t is much too late to argue that the [s]tate may impose upon the teachers in its schools any conditions that it chooses, however . . . restrictive they may be of constitutional guarantees."⁹

With the Mississippi and Arkansas anti-evolution statutes declared unconstitutional and laws in Tennessee and Oklahoma repealed, case law took on new directions. Local, rather than state, practices now were challenged. Although many districts had included evolution, natural selection, and related scientific theories in their science curriculums prior to the *Epperson* decision, other districts were reluctant to do so because of local political pressures.

In a 1972 case from Houston, Texas, a group of students sought to enjoin the teaching of evolution and the adoption of textbooks presenting related theories.¹⁰ Plaintiffs contended that such instruction inhibited their free exercise of religion and established the religion of secularism. The federal district court disagreed with plaintiffs' arguments and ruled that the complaint failed to state a claim upon which relief could be granted and that neither the first nor fourteenth amendments were violated. The court observed that "[t]eachers of science in the public schools should not be expected to avoid the discussion of

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every scientific issue on which some religion claims expertise."¹¹

Another anti-evolution case came from Gaston County, North Carolina, in 1973 where a student teacher was discharged without warning by a "hostile *ad hoc* committee" for responding to student questions regarding evolution.¹² The student teacher personally supported principles of evolution, professed to be an agnostic, and questioned the literal interpretation of the Bible. However, he did not initiate the controversial discussion regarding evolution and creation and responded only to specific questions asked of him. The district court argued that although academic freedom is not a fundamental right, the right to teach, to inquire, to evaluate, and to study are of fundamental importance to a democratic society.¹³ However, such rights are not absolute; the state has a vital interest in protecting young, impressionable minds from extreme propagandism. Nevertheless, standards directing teacher behavior may not be vague, nor may they "be allowed to become euphemisms for 'infringement upon' and 'deprivation of' constitutional rights."¹⁴ A teacher should not be forced to speculate as to what conduct is proscribed, because creating such uncertainty would make the teacher more reluctant to "investigate and experiment with new and different ideas." Such a relationship was ruled to be "anathema to the entire concept of academic freedom."¹⁵ In peroration, the court observed that "[i]f a teacher has to answer searching, honest questions only in terms of the lowest common denominator of the professed beliefs of those parents who complain the loudest, . . . the state . . . is impressing the particular religious orthodoxy of those parents upon the religious and scientific education of the children by force of law."¹⁶

In 1975, another challenge came to a Tennessee statute. However, the case of *Daniel v. Waters*¹⁷ did not deal with an anti-evolution law or challenge the right of educators to teach evolution. Rather, it was specifically concerned with the contents of biology textbooks. The Tennessee law required all biology textbooks used in the public schools to . . . identify each scientific theory of the origin of "man and his world" as "theory" and not fact. However, since the Bible was not defined as a textbook under the law, a disclaimer was not required for the Genesis accounting of creation. Also, the law required an equal emphasis between scientific theories with disclaimer provisions and "other theories," including but not limited to the Bible, but excluding occult and satanical beliefs. The Sixth Circuit Court of Appeals ruled that the statute violated the federal Constitution.¹⁸

A rather unique evolution-related case was filed in the District of Columbia Circuit Court of Appeals in 1980.¹⁹ This case did not involve the teaching of evolution in the public schools but, rather, involved a museum exhibit. The plaintiffs in this case alleged that current and proposed exhibits in the Smithsonian Institution's Museum of Natural History violated religious neutrality by supporting secular humanism in violation of the first amendment. They sought either an injunction prohibiting the exhibits and the federal support of them or an order requiring equal funding of an exhibit explaining the biblical account of creation. In ruling on behalf of the Smithsonian, the court reasoned that a solid secular purpose is apparent from the exhibits, that the exhibits did not materially advance the religion of secular humanism, and that the display did not sufficiently impinge on plaintiff's religious practices. Fur-

ther, no government entanglement with religion was identified.

Anti-creation Case Law

Recent cases involving the origin of man and the universe have not challenged the presence of evolution in the public school classroom but, rather, have attempted to limit or eliminate the inclusion of the biblical creation in the science curriculum. For example, in a 1982 case a teacher was fired for overemphasizing creationism.²⁰ In this case, the plaintiff taught biology and other science classes for the Lemmon, South Dakota School District. Between 1974 and 1980, the board received numerous complaints regarding plaintiff's failure to cover basic biology principles due to his prolonged discussions on the origin of man, evolution, and creation, with particular emphasis on the latter.

The board established a textbook committee to select an appropriate text for the biology classes and promulgated guidelines to be followed in teaching. Essential content was identified and time parameters were set. The guidelines allowed one week for the study of the origin of man and permitted the instructor to compare evolution theory and the creationist viewpoint. Following the identification and development of guidelines and materials, the board notified the teacher that failure to teach as directed would represent grounds for nonrenewal of contract. In spite of this warning, the plaintiff, according to the board, again spent too much time on the origin of man and neglected to teach "basic biology." On appeal, the state supreme court ruled that the lower court decision was not "clearly erroneous" in that the board had not abused its authority in not renewing the teacher's contract.

Perhaps the most important of the creation science cases is *McLean v. Arkansas Board of Education*.²¹ In March 1981, the Balanced Treatment for Creation-Science and Evolution-Science Act was signed into law. The law was challenged on three grounds: it constituted an establishment of religion (first amendment); it violated a right to academic freedom (free speech, first amendment); it was impermissibly vague (due process, fourteenth amendment). The court spent little time on the free speech and due process arguments because it declared the act to be in violation of the establishment clause. In reviewing such claims, the court must determine whether the act has a secular legislative purpose; whether the act either advances or inhibits religion; and whether the act requires excessive entanglement with religion.²²

The Arkansas statute was ruled to have violated each criterion, any one of which would have rendered it unconstitutional. Following a review of legislative history, the court concluded that creation science was inspired by and patterned from the Bible, and it was ruled not to be a true "science."²³ Accordingly, the court concluded that a secular service would not be served by the act, the act's major purpose was to advance religion, and the act would require the monitoring of classroom discussions to insure compliance, thereby necessitating an impermissible level of government entanglement with religion.²⁴

In a recent case, Louisiana public schools also were to be required by state law to give a balanced treatment between creation science and evolution science. A federal district court, however, in *Agullard v. Treen*,²⁵ declared the law to be in violation of the Louisiana Constitution and enjoined the state from implementing the statute's requirements. However, the court's rationale was different

from that in Arkansas. The court reasoned that the Board of Elementary and Secondary Education is the ultimate policy-making power over public education in Louisiana and not the state legislature. By requiring a balanced treatment of creation science and evolution science, the legislature infringed upon a function of the board. Accordingly, the act was declared impermissible based on state law rather than the first amendment.

Conclusion

Conflicts between science and religion are not unique to the twentieth century. During the Italian Renaissance, Bruno attempted to defend and advance the teachings of Copernicus. He proposed that the universe is beyond human measurement; that there are worlds other than earth; and that the sun is the center of "our corner of infinity." Although he proclaimed that God created the universe, he was unwilling to repudiate Copernicus' findings and reaffirm Aristotle's views that the sun and the stars revolve around the earth.²⁰ As a result, he was imprisoned and later burned at the stake for heresy. Galileo was warned by the church that he also would be executed if he continued to share his scientific findings. As a result, he recanted Copernican notions and publicly claimed such findings to be lies. Kepler also was pressured and censored in his work which advanced the findings of Copernicus. He is reported to have sarcastically stated that since the sun-centered theory of the solar system was not acceptable to the church, and since the church's theory that the sun and the stars revolve around the earth was no longer acceptable to reason, the heavenly bodies would have to arrange themselves according to some third order. Accordingly, he argued that even the stars are not beyond orthodoxy.²⁷ Today, the topics of debate have changed, but the basis to the conflict remains the same—science versus religion.

In cases involving evolution and creation, the courts have made every effort to ensure that the wall of separation between church and state remains high and impregnable. To accomplish this objective, they have ruled that the study of evolution and related theories is "science" and not a "religion of secular humanism." Correspondingly, they have ruled that creation science is "religion" and not science. Therefore, it has no valid place in the science curriculum.²⁸

Notes

1. For a general discussion of the evolution controversy and related first amendment cases, see Michael M. Greenburg, "The Constitutional Issues Surrounding The Science-Religion Conflict in Public Schools: The Anti-evolution Controversy," 10 *Pepperdine L. Rev.* 2, 461-87 (1983).
2. 289 S.W. 363 (Tenn. 1927).
3. *Id.* at 366-67.
4. 393 U.S. 97 (1968).
5. *Id.* at 100.
6. *Watson v. Jones*, 13 Wall. 679, 728 (1872).
7. *Joseph Burstyn, Inc. v. Wilson*, 343 U.S. 495, 505 (1952).
8. *Smith v. Mississippi*, 242 So. 2d 692 (Miss. 1970).
9. *Id.* at 697.
10. *Wright v. Houston Independent School Dist.*, 366 F. Supp. 1208 (S.D. Tex. 1972).
11. *Id.* at 1211.
12. *Moore v. Gaston County Bd. of Educ.*, 357 F. Supp. 1037 (W.D.N.C. 1973).
13. See e.g., *Sweezy v. New Hampshire*, 354 U.S. 234 (1957).

14. *Moore v. Gaston County Bd. of Educ.*, 357 F. Supp. at 1041.
15. *Id.*
16. *Id.* at 1043.
17. 515 F.2d 485 (6th Cir. 1975). See also, *Steele v. Waters*, 527 S.W.2d 72 (Tenn. 1975).
18. A California court decision indirectly suggested that if the Tennessee statute only had required that evolution be identified as "theory" and had not mentioned religious publications or positions, it may have been permissible. In that case, *Seagraves v. California*, No. 278979 [(Cal. Super., Sacramento (1981))], the court required the state board of education to promulgate guidelines stipulating that evolution cannot be taught as dogma. In spite of this state decision and its rationale, the courts would, nevertheless, review not only a statute's wording, but also would examine its intent or motive. If the intent of the law were to discredit evolution in an effort to aggrandize creation science, the statute still would be held to violate the Constitution.
- In Indiana, the state textbook commission did not require that evolution be labeled a "theory," but its actions were equally controversial. The commission had placed a biology book developed by the Creation Science Research Center on the state approved list for use in public school biology classes. The text was adopted by several school districts and a law suit resulted. A state superior court ruled that such use of the text was a first amendment violation. *Hendren v. Campbell*, No. 5577-0139 (Ind. Super., Marion County, April 14, 1977).
19. *Crowley v. Smithsonian Institution*, 636 F.2d 738 (D.C. Cir. 1980).
20. *Dale v. Board of Educ., Lemon Independent School Dist.*, 316 N.W.2d 108 (S.D. 1982).
21. 529 F. Supp. 1255 (E.D. Ark. 1982).
22. *Lemon v. Kurtzman*, 403 U.S. 602, 612-13 (1971).
23. According to the court, the essential characteristics of a science are (1) it is guided by natural law; (2) it has to be explained by reference to natural law; (3) it is testable against the empirical world; (4) its conclusions are tentative (i.e., are not necessarily the final word); and (5) it is falsifiable.
24. For a related discussion, see Michael F. Taylor, "McLean v. Board of Education: Creation Science's First Confrontation with the Establishment Clause," 36 *Ark. L. Rev.* 2, 326-37 (1982); Edward Testino, "Creation Science and the Balanced Treatment Acts: Examining McLean v. Board of Education and a Modest Prediction on *Keith v. Department of Education*," 7 *Oklahoma City L. Rev.* 1, 109-29 (1982); Steven O. Dean, "First Amendment Concerns Regarding Balanced Science Instruction in Evolution and Creation," 10 *Ohio Northern Univ. L. Rev.* 1, 147-58 (1983).
25. Civil Action No. 81-4787 (U.S. Dist. Ct. for the Eastern Dist. of La., November 22, 1982).
26. *Moore v. Gaston County Bd. of Educ.*, 357 F. Supp. at 1042.
27. *Id.* at 1042-3.
28. See Clifford P. Hooker, "Creation Science Has No Legitimate Educational Purpose: *McLean v. The Arkansas Board of Education*," 1 *Education Law Reporter* 1069 (1982).

The student-institutional relationship in higher education continues to be subtly redefined by appellate decisions.

Legal Aspects of the Student-Institutional Relationship:

Revisiting Concerns Over Reasonable Standards in College and University Policies

by Joseph Beckham

Notoriety from litigation involving the college student's constitutional and statutory rights may have obscured awareness of some of the traditional forms of lawsuits involving the student-institutional relationship. While colleges and universities, particularly those state-supported institutions constrained by fourteenth amendment guarantees or recognized as providing "program specific" entitlements under federal statute, are often challenged on the basis of a denial of constitutional or federal statutory rights, the student-institutional relationship in higher education continues to be subtly redefined by appellate decisions which apply to public and private sector institutions.¹

These judicial decisions respond to student initiated suits alleging arbitrary and capricious action, breach of contract or fraudulent misrepresentation by agents or employees of higher education programs. While broadly classified as consumer protection litigation, these forms of lawsuit are as old as the common law. Their recent application in cases involving higher education reflects the intense marketplace competition among institutions and a recognition that students have economic and property interests which deserve legal protection.

Often characterized as nuisance suits these legal challenges focus attention on the discretion of faculty and administrators when a student's property interest in obtaining a degree or receiving appropriate certification is threatened. The actual dollar amount in controversy may be nominal, but the stakes for a student-plaintiff are often high, particularly when career options are foreclosed by academic policy or decision.

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Arbitrary and Capricious Action

Courts have long recognized that behaviors which are motivated by bad faith, arbitrariness or capriciousness may be actionable at law. Evidence that a student has been treated radically different from others tends to establish arbitrary and capricious action, particularly when an institutional representative fails to follow recognized institutional procedures, irregularities in the application of standards are discovered, academic decisions prejudicial to the student appear unrelated to academic performance or there is lack of uniformity in the administration of standards.

While a legal presumption exists that academic standards and their application by agents of the university are reasonably related to the institution's mission and objectives, it often becomes necessary for the college official to rebut a *prima facie* showing of arbitrary and capricious conduct by articulating the rational relationship between the policy as applied and the legitimate purposes of the institution. Typically, where a court does discover evidence of arbitrary or capricious action the court will refer the matter to the institution for a hearing in which the institution must justify its policy or practice.

Cases involving allegations of arbitrary and capricious action usually involve the institution's denial of a degree or dismissal for academic deficiencies. A law student whose cumulative grade point fell below required standards for graduation was informed by an academic standards committee that he could continue for a fourth year, but that regardless of whether he improved his overall average, he would not be given the degree. He refused to accept the conditions, but did enroll and managed to bring his cumulative average up to the requisite graduation standard in his fourth year.

While the court recognized that the law school had absolute discretion to deny the request for readmission to a fourth year, it took cognizance of the institution's previous practice of allowing other probationary students to enroll and correct deficiencies during a fourth year. In some cases, these students had met requirements and been awarded their law degree. The imposition of a condition that the student could not be granted a degree even if he satisfied degree requirements was deemed arbitrary and a manifest abuse of discretion by the court.²

In another case, a student successfully alleged a cause of action for arbitrary treatment when singled out from other students and compelled to meet special requirements not originally outlined in order to complete a degree.³ Similarly, a student dropped from medical school for failing to pass a second-year final examination successfully challenged the dismissal by establishing that the examination had been incorrectly administered and other affected students had been granted the opportunity for reexaminations before any action dismissing them was attempted.⁴

Allegations of arbitrary and capricious treatment have not been sustained in cases where the institution has promulgated clear, unambiguous academic policies on minimum grade point averages and change of grade requirements. In one of these cases, the student sought to invest the minimum grade point policies with an alternative meaning which the court described as "frivolous" and inconsistent with the institution's uniform application of the policy.⁵ In another, the student was unable to establish that a faculty advisor's interpretation of the procedure for awarding grade changes should prevail over the ex-

press written policy of the school. In the latter instance, the court was particularly impressed by the extent to which the institution had accorded the student procedural due process in the administrative appeal of a dismissal decision.⁶

Contract Agreement

Colleges once stood *in loco parentis* in their supervisory authority over students, but this doctrine has lost much of its vitality in recent years. As an alternative, courts have applied contract notions to the relationship between colleges and students, interpreting college bulletins, program guides and brochures as creating mutual obligations between institution and student. In some instances, oral representations by faculty advisors, deans and chairpersons have been relied upon as a basis for initiating a suit for breach of contract.

Courts do not appear to apply these contract standards rigorously, choosing to resolve many ambiguities in favor of the institution and often abstaining from resolving substantive matters of academic policy. Nevertheless, fundamental fairness to the parties involved in a lawsuit requires that the court consider the extent to which a contractual relationship did exist between parties and the potential harm when one party has breached a duty under terms of the contract.

Two contractual situations have been recognized by courts as representative of a student-institutional relationship. Where college brochures or bulletins constitute a contractual inducement to enroll and students can be said to have reasonably relied upon contractual terms in undertaking a field of study, students may sue to force specific compliance with the proposed program or seek an award of monetary damages for their reliance on the contractual obligation. In a second situation, oral and written representations related to degree and program requirements, often the result of inaccurate or improper advisement, have been the bases for suits in which students seek award of the degree or program modifications consistent with the alleged contractual obligation.

An illustration of the first instance involved students enrolled in the school of architecture of Ohio University. The school had lost accreditation, but its faculty and college administrators repeatedly assured students they would obtain an accredited degree. Provisional two-year accreditation was secured when these same institutional representatives gave assurances to accrediting officials that the institution would work toward meeting all requirements for accreditation. Subsequently, this provisional accreditation was withdrawn when the university elected to phase out the architecture program in response to financial problems. The students enrolled in the architecture program sued, alleging that an implied contract based on the oral representations of university faculty and administrators was breached when the university failed to maintain accredited status.

The court recognized a contractual obligation because the faculty and staff of the school continually conveyed the promise that the institution would work toward full accreditation. Since students acted upon this promise and continued to enroll, pay fees and tuition and attend classes, the court concluded that the students had acted reasonably in reliance upon these promises and that the institution breached the implied contract when it withdrew funding and support for the program. In recognizing that college governing boards have the authority to dis-

continue programs, the court qualified this power by emphasizing that contractual commitments which are undertaken must be honored or damages for breach of contract awarded unless the institution can show financially exigent conditions so overwhelming as to permit a defense of impossibility of performance.⁷

A student's reliance on the oral representations of faculty advisors or written academic policies have often been the basis for contract suits. In one representative case, the student sought the award of the master's degree when he relied upon a faculty member's erroneous advice relative to the scoring of a final comprehensive examination. When the college applied a higher standard than the professor had indicated, the student was denied the degree and sued to force the institution to make the award of the master's.

Although the student asserted that he would have passed the examination using the criteria articulated by the professor, the court found this a highly speculative contention. Showing a characteristic judicial reluctance to intervene in academic policy and noting that the institution had offered the student a reexamination without prejudice, the court refused to require the award of the degree.⁸

Any contract between a student and the institution implicitly requires the student to demonstrate academic competence and the institution to act fairly and in good faith. While courts are extremely reluctant to compel the award of a degree, it is important for the institution to meet its obligations to the student and avoid irreparable injury. Statements which guarantee special services such as remedial or tutorial programs for the disadvantaged or which specify academic procedures which the student must follow are frequently recognized as actionable contract claims by courts.⁹ While the judicial branch is reluctant to interfere by requiring award of an academic degree, the courts will not defer to the professional educator when it comes to the contractual obligation to provide student services express or implied by the institution.

Fraudulent Misrepresentation

While a student's reliance on statements made by university administrators may be a basis for a contractual obligation, there are few cases in which the agent's representations have been construed as attempts to fraudulently induce the individual to pay fees or perform services. Cases of fraudulent misrepresentation are rare, confined primarily to proprietary institutions in which the inducements were considered gross and the defrauded person was unable or unlikely to be sufficiently informed to know better.

Nevertheless, as recruiting practices and marketing strategies signalling increased competition for students and faculty proliferate, it is advisable to exercise caution in representing the program of an institution. Courts seem particularly protective of students who have been induced to enroll in programs which promise placement assistance bordering on a guarantee of employment or mislead students into believing they have special aptitude through the use of inappropriate testing and bogus courses.¹¹

A public community college lost a jury verdict to a student who complained that he was induced to enroll in a one-year welding technology program through representations of faculty and administrators. These representations induced him to believe certain classes would be available and program completion would prepare the student for

employment in the trade. The representations were false in that several courses were not offered, machines and materials were not available at the college and the year-long course of study was not sufficient to adequately prepare him for employment as a welder. A jury verdict was returned which awarded \$125,000 to the student, but was overturned by the trial judge on the ground that Oregon statute law implies governmental immunity for state college officials in the exercise of their role as counselors. In reinstating the jury award to the student the Oregon Supreme Court concluded that the college's representatives acted recklessly in assuring the student that material and equipment would be available.¹²

Conclusion

Two legal concepts of particular relevance to the educator can be extrapolated from the litigation described in this article. One of these concepts applies the standard of reasonable prudence to the acts of higher education officials and asks what a reasonably prudent person might have done in circumstances similar to those which gave rise to the litigation. Such a test of liability would require that the university employee act in good faith without malice or intent to injure. Further, the standard would require the institution to justify the reasonableness of its policy, often demonstrating that the policy as applied bears a rational relationship to a valid institutional purpose.

A second concept, that of reasonable reliance, is often emphasized by courts because reliance is both a measure of damages and evidence of a contractual obligation. If a student relies on inaccurate, false or misleading information, the injury suffered may create liability for the institution. By invoking the concept, courts ask whether, given all the facts surrounding a particular circumstance, it was reasonable for the student to rely on the express or implied policies announced by the institution's representatives.

Taken together, both legal concepts suggest a number of maxims already familiar to the professional educator. Reasonably prudent conduct would almost certainly compel an institution to provide accurate information to students, maintain adequate records, insure confidentiality, arrange for valid evaluation of academic performance and uniformly apply academic standards. The doctrine of reasonable reliance would mandate publication of clear and specific policies, periodic notice of standards, maintenance of adequate facilities and services to support stu-

dent participation in programs and adequate opportunity to complete a program before its discontinuance.

Beyond the application of professional best practice standards consistent with the rule of law, there is a vital role played by administrators, counselors and faculty in mitigating institutional liability. The educator is both an institutional representative and an advocate for the student. In that facilitative role, it is possible to resolve some disputes through a process of mediation or accommodation. Where valued academic standards permit no flexibility, early and periodic notice of those standards can head off student complaints. Alternately, a system of internal appeal and administrative review of decisions which have injurious consequences for the student are advisable. Under all circumstances, current case law underscores the application of fundamental fairness and reasonableness in conflicts between student and higher education institution.

Notes

1. See, for example, Virginia Davis Nordin, "The Contract to Educate: Toward a More Workable Theory of the Student-University Relationship," *Journal of College and University Law*, Vol. 8, No. 2 (1982).
2. *Paulsen v. Golden Gate University*, 93 Cal. App. 3d 825, 158 Cal. Rptr. 190, *rev'd*, 25 Cal. 3d 803, 159 Cal. Rptr. 858, 602 P.2d 778 (1979).
3. *Valvo v. University of Southern California*, 136 Cal. Rptr. 865 (Cal. App. 1977).
4. *Maitland v. Wayne State University Medical School*, 257 N.W.2d 195 (Mich. App. 1977).
5. *Watson v. University of South Alabama College of Medicine*, 463 F. Supp. 720 (S.D. Ala. 1979).
6. *Hines v. Rinker*, 667 F.2d 699 (8th Cir. 1981).
7. *Behrend v. State*, 55 Ohio App. 2d 135, 379 N.E.2d 617 (Ohio App. 1977). See also *Eden v. Board of Trustees of State University of New York*, 49 App. Div. 2d 277, 374 N.Y.S.2d 686 (App. Div. 1975).
8. *Olsson v. Board of Higher Educ.*, 426 N.Y.S. 2d 248, 402 N.E.2d 1150 (App. Div. 1980).
9. See *Yakin v. University of Illinois*, 508 F. Supp. 848 (E.D. Ill. 1981).
10. *Delta School of Business v. Shropshire*, 399 So. 2d 1212 (La. App. 1981).
11. *Joyner v. Albert Merrill School*, 411 N.Y.S.2d 988 (Civ. Ct. 1978).
12. *Dizick v. Umpqua Community College*, 577 P.2d 534 (Or. 1979).

Sexual harassment is a pervasive social problem affecting institutions of higher education.

Sexual Harassment in Higher Education: Institutional Liability

by Arlene Metha

Sexual harassment on college and university campuses is a severe and complex problem. It not only threatens the traditional bonds and relationships between faculty and students and between academic colleagues, it becomes a barrier to individual achievement and institutional productivity. University officials have estimated that as many as 125,000 women experience some type of sexual harassment by instructors each year (Engelmayer, 1983). Dzelich (1983) argues in her book, *The Lecherous Professor*, that the credibility of higher education is damaged by sexual harassment and will be more threatened if sexual harassment isn't curbed.

A heightened awareness of the magnitude and invidiousness of sexual harassment has led to a multiplication of the number of complaints of sexual harassment being filed with academic institutions, with agencies (e.g. Equal Employment Opportunity Commission), and with the courts. Although adjudicating sexual harassment cases is tricky and only a small percentage of the grievances result in any disciplinary action, as a recent article in the *Wall Street Journal* noted, some institutions are cracking down:

Harvard University recently reprimanded its third professor in four years for sexual harassment. San Jose State University fired a professor after five female students accused him of making unwanted sexual advances. And at the University of Michigan, where harassment complaints against professors are up five-fold since 1980, three professors have resigned under duress following harassment grievances. Hillsborough Community College in Florida dumped its presi-

dent after a state ethics commission found that he propositioned women colleagues (Engelmayer, 1983, p. 22).

This article provides a brief discussion of the legal basis for claims of sexual harassment, the extent of the problem in academe, and the institution's responsibility in recognizing and handling complaints of sexual harassment.

Legal Basis

Both the Equal Employment Opportunity Commission (EEOC) and the courts have recognized sexual harassment as a form of unlawful sex discrimination under Title VII of The Civil Rights Act of 1964. The 1980 EEOC's Guidelines on Discrimination Because of Sex (29 CFR§1604.11) specify that sexual harassment is a violation of Section 703 of Title VII. These guidelines state that unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature will be considered sexual harassment when: (1) submission to such conduct is made either explicitly or implicitly a term or condition of employment, (2) submission to or rejection of such conduct is used as the basis for employment decisions affecting the individual, or (3) such conduct has the purpose or effect of substantially interfering with the individual's work performance or creates an intimidating, hostile, or offensive working environment. [29 CFR§1604.11(a) (1980)].

Sexual harassment also has been judged to be a violation of Title IX of the Education Amendments of 1972, which provides that: "no person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance." If faculty or staff members of educational institutions that receive federal assistance impose or attempt to impose themselves sexually upon students and condition their academic success upon submission to sexual demands, the incident more than likely constitutes discrimination on the basis of sex under Title IX. The rationale for including sexual harassment within the prohibitions of Title IX is that in instances of sexual harassment a student of one gender is required to meet a different condition from that required of a student of another gender to receive the same educational benefit. Thus, discrimination on the basis of sex has taken place (Buek, 1978). Additionally, with the 1982 U.S. Supreme Court decision in *North Haven Board of Education v Bell*, 102 S. Ct. 1922, which extended Title IX coverage to employees, sexual harassment of employees also is prohibited by Title IX. However, since prior to the *North Haven* decision sexual harassment of an employee by an employee in institutions of higher education was not covered by Title IX unless it could be shown to have a discriminating impact on students, few complaints of sexual harassment were filed under Title IX. Title IX does require schools and colleges to provide internal grievance procedures for sexual harassment victims. In the provision of such grievance procedures academic institutions can use the Title IX procedures already in place or, due to the sensitive nature of sexual harassment, may choose to provide special procedures.

Recognizing the seriousness and importance of the problem of sexual harassment, during the past few years several institutions of higher education have initiated studies to examine the extent of sexual harassment on their campuses. They are often surprised by their findings.

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For example, a survey of sexual harassment at the University of Florida (Oshinsky, 1980) found that 20 percent of the graduate women and 17 percent of the undergraduate women experienced some form of "unwanted sexual attention from their instructor(s)." Perhaps even more significant than the actual numbers of students reporting harassment was that 70 percent of the female respondents did not feel free to report incidents of sexual harassment to university officials for fear of reprisal.

Metha and Nigg (1980) surveyed Arizona State University and found that the incidence of sexual harassment among female students was 13.3 percent; among female staff, 11.2 percent; and among female faculty, 13.7 percent. The 13 percent of the female student body reporting sexual harassment represented more than 2,300 women. The same report indicated that only 20 percent of the harassed women attempted to lodge a complaint about the incident and less than half of these were satisfied with manner in which their complaints had been handled.

A 1980 *Time* magazine article cited cases at Yale, San Jose State, Berkeley and Harvard and concluded that harassment of female students by male professors was not an uncommon occurrence. The same article, entitled "Fighting Lechery on Campus," reported that 10 percent of the American women with degrees in psychology indicated that they had sexual contact with their professors. This figure rose to 25 percent for women who had earned their degrees within the past two years.

The National Advisory Council on Women's Education Programs, established by Congress to advise and report on matters of sex equity in education, also surveyed several institutions of higher education concerning sexual harassment (Till, 1980). Its findings revealed that institutions typically have handled complaints of sexual harassment through inadequate or inappropriately designed mechanisms. The responses of sexual harassment victims depicted the harasser as a person with a history of similar incidents and with considerable stature, influence, and power on the campus.

At the University of California, Benson and Thomson (1982) surveyed senior women undergraduates to determine the nature and effects of sexual harassment by male instructors at Berkeley. Approximately 20 percent of the women sampled had been sexually harassed by male instructors. Of the harassed students, about one third had experienced verbal advances; 20 percent, physical advances; and 6 percent sexual bribery. Perhaps more important, one in three of the women respondents personally knew another woman student who had been sexually harassed by a male instructor.

A study of sexual harassment of students at Iowa State University (Committee on Women, 1982) found only a small percentage of students reporting sexually harassing experiences such as physical advances, explicit propositions, or sexual bribery. However, 13 percent of the female respondents avoided taking a class from or working with a faculty member whom they knew or had heard made sexual advances to students.

The *Chronicle of Higher Education* (McCain, 1983) recently reported the findings of a survey commissioned by the faculty of Arts and Sciences at Harvard University. According to the study, 32 percent of the tenured female professors, 49 percent of those without tenure, 41 percent of the female graduate students, and 34 percent of the undergraduate women had encountered some form of harassment from someone in authority at least once while at

Harvard. Of those reporting harassment, 15 percent of the graduate students and 12 percent of the undergraduates indicated they had changed their academic programs because of the incidents.

Whitmore (1983) surveyed students, faculty, and staff at the University of California at Davis and found that one in seven women respondents (13.5 percent) had been sexually harassed and one in 100 men respondents (1.1 percent) had been sexually harassed. Among women respondents, 21.4 percent of the staff, 20 percent of the faculty, 16.5 percent of the graduate/professional students, and 7.3 percent of the undergraduates had been sexually harassed during their tenure at UC Davis.

These and other studies illuminate the seriousness of the problem of sexual harassment on college and university campuses. The legal responsibility of the institution in addressing this problem is discussed in the following section.

Institutional Liability

The doctrine of *respondent superior* says that the principal is responsible for the negligent acts of his agents. The extent to which this doctrine can be adapted to impute the sexually harassing actions of employees to employers has been a subject of some dispute. However, since neither Title VII, the EEOC, or state law differentiate between private and public employers, to the extent that courts have said employer liability exists, institutions of higher education are liable in the same manner as private employers. A review of the more important cases in the private section then, should provide some indication of the liability of institutions of higher education.

EEOC Guidelines on Discrimination Because of Sex (29 CFR§1604.11) addresses the question of employer liability. They state that employers are responsible for not only their acts but also those of their supervisory employees or agents, regardless of whether the specific acts of sexual harassment complained of were authorized or even forbidden by the employer and regardless of whether the employer knew or should have known of the acts. However, employers may rebut liability for acts of sexual harassment committed by employees by demonstrating that they took "immediate and appropriate corrective action." [29 CFR§1604.11(d) (1980)]. In addition, the Final Amendment to the Guidelines on Discrimination Because of Sex [29 CFR§1604.11(e) (1980)] refers to the possible liability of employers for acts of non-employees toward employees. Such liability will be determined on a case-by-case basis, considering all the facts, including whether the employer knew or should have known of the conduct, the extent of the employer's control and other legal responsibility with respect to such individuals.

Several recent cases have provided clarification as to the interpretation and application of these guidelines and Title VII requirements.

In *Continental Can Company, Inc. v State of Minnesota*, 297 N.W. 2d 241 (Minn. 1980) the Minnesota Supreme Court found Continental Can liable because it took no action in an instance where the victim of sexual harassment notified her superior of offensive acts but refused to identify her harassers. The court reasoned that if employers have reason to believe that sexual demands are being made on employees and fail to investigate they are giving tacit support to the discrimination in that the absence of sanctions encourages abusive behavior (Nolan, 1982).

In *Bundy v Jackson*, 741 F.2d 934 (D.C. Cir. 1981) the

U.S. Court of Appeals for the District of Columbia addressed not only the question of what constitutes sexual harassment under Title VII, but also the question of employer liability. The court held that sexual harassment, in and of itself, is a violation of the law and is not conditional upon the complaining employee losing any tangible job benefits or being penalized as a result of the discrimination. Prior to this decision it was unclear as to whether objectionable acts, derogatory remarks, and verbal or physical advances are sexual harassment *per se*, or whether it is the adverse employment consequences which make these actions sexual harassment. As to employer liability, the **Bundy** court reiterated the liability of the employer for sexual harassment committed by supervisory personnel when the employer had full notice of the harassment committed by supervisors and did virtually nothing to stop or even investigate the practice.

In higher education, the lead case using Title VII as the legal basis for a sexual harassment complaint is **Stanko v. Trustees of Clark University, et al.** (Worcester Superior Court, No. 82-22184). The case began when Bunster, a Chilean exile and anthropologist who came to this country under the sponsorship of Margaret Mead, in June of 1980 filed a complaint with Clark University claiming she had been subjected to sexual harassment, and retaliation for refusal of sexual favors by her department chair, Sidney Peck. Prior to the filing of the complaint, Bunster had repeatedly complained to university officials who failed to investigate her complaint. A storm of controversy erupted after the filing, with Peck's supporters, and Peck, claiming that the sexual harassment issue was a ruse being used by the university to punish him for his leftist political activities and his labor activities (Peck had been an anti-Vietnam protester and had led the faculty negotiation of salaries the year before which had cost the university \$1 million).

In the fall of 1980 the university's committee on personnel (COP) heard testimony from four other women, including Stanko, another member of the sociology department, all of whom testified to having experienced or witnessed sexually harassing actions by Peck. Testimony was given with the assurance from the university that their names would not be revealed. The committee subsequently concluded that there was "substantial evidence" to support charges against Peck and recommended that the university president draw up charges against Peck. In December the university issued charges against Peck for sexual harassment, moral turpitude, and conduct unfit for a university professor.

What followed was a series of charges and countercharges. In January 1981, Peck filed a complaint with the National Labor Relations Board (NLRB) in which he alleged that the university's investigation of him resulted from his participation in labor activities. Concurrent with or subsequent to the filing of the NLRB complaint, Peck drafted but did not file a multimillion dollar suit naming as defendants Clark University, Bunster and Stanko, as well as the three other women who testified to the COP.

During this same period Stanko and Bunster complained to the university about "the inadequacy of the university's process for the handling of sexual harassment complaints as well as the negative impact on women who bring such complaints and the chilling effect upon other potential complainants." In November, Stanko and Bunster filed discrimination charges against Clark University with the EEOC protesting sexual harassment and sex dis-

crimination, and retaliation against them for making complaints. By March when the university still had not acted, Stanko and Bunster refused to participate in any hearings of Peck, objecting to the procedures being either unclear or unfair and claiming that the institution was still not fully addressing the issue of sexual harassment and sex discrimination.

The next day, Clark University, with the knowledge of Peck's NLRB complaint and threatened civil action, entered into an agreement with Peck. In this agreement the university agreed to drop all charges against Peck, Peck agreed he would not chair any department at Clark, and both parties mutually released one another from liability. The day after having reached an agreement with the university Peck filed a defamation suit for \$23.7 million against Bunster, Stanko, and the other three witnesses (**Sidney M. Peck v. Ximena Bunster, et al.**, Middlesex Superior Court, No. 81-1423). Shortly thereafter Bunster and Stanko brought suit against Peck and Clark University (**Stanko v. Trustees of Clark University, et al.**, Worcester Superior Court, No. 82-22184).

The case was finally resolved when, in April 1982, Bunster, Stanko and Peck entered into a settlement which compromised the disputed claims and counterclaims. The parties affirmed that "employees and students should have the right under Massachusetts and federal law to engage in concerted action to improve their condition of work, including the elimination of sexual harassment and/or other discrimination, and that this right includes and should include the right to talk with other employees and students, to discuss conditions of their work or study, and to request that these conditions be changed." The parties to the settlement agreement also concurred that "the failure of the Clark University administration to implement and utilize a coherent, fair and prompt grievance procedure in order to resolve the complaints and denials of sexual harassment in this case was detrimental to all parties and resulted in an unnecessary escalation of the conflicts among them."

The implications to be drawn from this case are very important in that the events at Clark University provide a disturbing picture of what can result if institutions of higher education truncate their legal procedures and provide legal protection for some parties and not for others (Field, 1981). Clark University was eventually named by both parties in ensuing complaints. Since this case was never litigated, we are left without a specific answer to what institutional liability will be found in such instances. However, since the failure of Clark to not only provide grievance procedures but to fairly and promptly address complaints was apparently so blatant that the aggrieved parties took care to so attest in their settlement agreement, it would seem to illustrate the necessity for institutions to adopt adequate grievance procedures to protect themselves from such allegations and any attendant liability.

Employer liability under Title IX allegations of sexual harassment is less clear. It could be argued that the recipient institution would be liable for discrimination in the program regardless of whether or not it was itself the perpetrator. However, because of the personal nature of sexual harassment as a discriminatory act, a stronger position might be that for such a violation to constitute discrimination, it must be based upon actual knowledge by the institution as evidenced by a policy, lack of policy or failure to act upon the complaint (Buek, 1978).

The only suit thus far to challenge sexual harassment of students under Title IX is **Alexander v. Yale University**, 459 F. Supp. 1(D. Conn. 1977). Six plaintiffs suing individually as well as a class, claimed a violation of Title IX by Yale University because of alleged incidents of sexual harassment against female students by male faculty and staff of the institution. The plaintiffs (five present and former female students and one male professor) charged Yale with condoning continued sexual harassment, and argued that the institution's "failure to combat sexual harassment of female students and its refusal to institute mechanisms and procedures to address complaints and make investigations of such harassment interferes with the educational process and denies equal opportunity in education" (459 F. Supp. 2).

The district court refused to accept the class action suit and dismissed five of the original six plaintiffs for various reasons. However, it did rule that one of the plaintiffs, a female student who allegedly received a poor grade in her major field due to her rejection of a male professor's sexual demands, was entitled to bring private action under Title IX. The plaintiff further alleged that she had complained promptly to the university but was not accorded a mechanism to deal with her charge of sexual harassment. The court addressed the question of institutional liability by stating that an institution which fails to respond to complaints "may sensibly be held responsible for condoning or ratifying the employee's invidiously discriminatory conduct" (459 F. Supp. 4). However, at trial the district court found in favor of Yale University, ruling that the plaintiff was not adversely affected by a lack of a grievance mechanism to deal with sexual harassment and that the original claim of sexual harassment could not be substantiated. On appeal to the Second Circuit, the decision of the lower court was upheld. The appeals court also noted that Yale University had instituted a grievance mechanism and procedures to address complaints since the original complaint was filed. The court also found some of the complaints moot in that the complainants had already graduated from Yale (**Alexander v. Yale University**, 631 F.2d 178, 2d Cir. 1980).

Conclusions

Sexual harassment is a pervasive social problem affecting institutions of higher education. Although the several studies of sexual harassment in academe are not agreed as to the exact extent of the problem, they do agree that it is widespread and that it seriously affects the climate of learning.

The past few years have witnessed a growing number of cases being litigated in the private sector under Title VII. As a result of this litigation a new body of law has

evolved that has served to further clarify what constitutes sexual harassment and the institution's liability for the acts of its employees. This case law suggests an increasing institutional responsibility. However, not only are employees of institutions of higher learning covered by Title VII, but more recently, by Title IX. It is anticipated that with the extension of Title IX coverage to employees, more sexual harassment complaints will be filed under Title IX. As they are litigated the issues surrounding institutional responsibilities and liabilities will hopefully be resolved.

References

- Benson, D.J. & Thomson, G.E. Sexual harassment on a university campus: The confluence of authority relations, sexual interest and gender stratification. **Social Problems**, 1982, 29, 236-251.
- Buek, A.P. Sexual harassment: Fact of life or violation of law? University liability under Title IX. Washington, D.C.: National Advisory Council on Women's Educational Programs, 1978.
- Committee on Women at Iowa State University. Sexual harassment of students at Iowa State University. Ames, Iowa: Iowa State University, 1982.
- Dzeich, B. The lecherous professor. Boston, MA.. Beacon Press, 1983.
- Engelmayer, Paul A. "Violence by students, from rape to racism raises college worries," **The Wall Street Journal**, Monday, November 21, 1983.
- Field, A. Harassment on campus: Sex in a tenured position? **MS**, September 1981, 69-70, 73, 100-102.
- "Fighting lechery on campus." **Time**, February 4, 1980, 84.
- McCain, N. Female faculty members and students at Harvard report sexual harassment. **The Chronicle of Higher Education**, November 2, 1983, 27 (10), 1, 14.
- Metha, A. & Nigg, J. Sexual harassment on campus: An institutional response. **Journal of the National Association for Women Deans, Administrators & Counselors**, 1983, 46, (2), 9-15.
- Nolan, D. Sexual harassment in public and private employment. **West's Education Law Reporter**, 1982, 227, 227-237.
- Oshinsky, J. Sexual harassment of women students in higher education. Unpublished doctoral dissertation, University of Florida, 1980.
- Till, F.J. Sexual harassment: A report on the sexual harassment of students. Washington, D.C.: National Advisory Council on Women's Educational Programs, 1980.
- Whitmore, R. Sexual harassment at UC Davis, Davis, California: University of California at Davis, 1983, 1-92.

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The National Organization on Legal Problems of Education: Serving the Profession

by Martha M. McCarthy

The National Organization on Legal Problems of Education (NOLPE) is a nonprofit, nonadvocacy organization that was established almost three decades ago to provide a vehicle for the dissemination of unbiased information about current issues in school law. Among those who played significant roles in championing the need for such an organization in the early 1950s were Edward Bolmeier, Lee Garber, Robert Hamilton, Madaline Remmlein, and Roger Shaw. The organization was officially launched at a school law conference in June 1954, at Duke University, where 57 charter members contributed one dollar each toward organizational expenses. Within six weeks, NOLPE had over 200 members.

The fact that NOLPE was organized the same year that the Supreme Court delivered its landmark decision in **Brown v. Board of Education** was not totally coincidental. The organization's founders correctly anticipated that the **Brown** ruling marked a new era of judicial intervention in the educational domain and that litigation and legislation would become increasingly significant in determining school policies and practices.

NOLPE's central purpose since its conception has been to improve education by promoting interest in and understanding of the legal framework within which schools operate and the rights of students, parents, school boards, and school employees. As NOLPE has grown over the years, its programs and services to attain this purpose have continually expanded. Currently NOLPE publishes

newsletters, serials, books, and monographs on a variety of school law topics; hosts an annual convention and regional seminars where school law problems are presented and discussed; provides a network for school attorneys and school law professors; and serves as a clearinghouse for information on educational law.

Membership and Governance

Membership in NOLPE is open to all individuals and organizations with a special interest in educational law. Among its current 3,000 members are practicing attorneys, administrators and faculty members in schools of education and law schools, school board members, public and private school administrators and teachers, staff members of state and federal education agencies and professional associations, and libraries. NOLPE has members in every state in the United States as well as in Germany, Puerto Rico, Canada, Australia, Brazil, China, and Japan. One of NOLPE's major strengths lies in the diversity of its membership which facilitates bringing a variety of perspectives together to address complex educational law problems.

NOLPE is governed by a board of directors consisting of the president, immediate past president, president-elect, vice-president and nine directors. Officers are elected annually, and three board members are elected each year to serve three year terms. The Nominations Committee attempts to devise a slate of officers and board members reflecting the various role groups in NOLPE and broad geographic representation. The NOLPE board meets before and after the Annual Convention and often holds a midyear meeting.

The NOLPE executive director, who is appointed by the NOLPE Board, manages the operation of the organization as set forth in the constitution and by-laws. Marion McGhehey served in this role for two decades (from 1962 until his death in 1982), during which time NOLPE membership increased almost tenfold and the organization attained international stature in the field of school law. Tom Jones is now executive director and has played a key role in the implementation of several new services for NOLPE members. The NOLPE staff has been located in Topeka, Kansas (5401 Southwest Seventh Avenue, Topeka, Kansas 66606) since 1960.

Programs and Publications

Each year NOLPE hosts several seminars which address current legal issues such as the federal rights of handicapped children and collective bargaining. The seminars, which are held in various geographical regions, are limited in enrollment to provide an opportunity for maximum participation and in-depth exploration of specific legal topics. NOLPE also co-sponsors various school law conferences with other state and national professional associations.

NOLPE's Annual Convention provides a forum for the discussion of current school law problems with experts from all parts of the United States and foreign countries. Lawyers can receive continuing legal education credit for attending the convention as well as NOLPE regional seminars. The convention format stimulates dialogue among attorneys, professors, and practitioners and also provides an opportunity for specific role groups to meet and share ideas. For example, the NOLPE network of professors of school law meets to exchange teaching strategies and materials and share current research interests. The con-

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vention also includes a business meeting at which time the membership discusses future programs and activities and elects officers and board members.

NOLPE publications are invaluable in keeping the membership up-to-date on school law issues. Among NOLPE's regular publications are the following:

1. **NOLPE Notes** is a monthly newsletter containing brief summaries of reported and unreported cases, administrative decisions, legislative developments, and publications of interest. An Insert with an update on the current Supreme Court docket is included in each issue.
2. **NOLPE School Law Reporter** is a monthly loose-leaf publication with cites and brief summaries of all reported state and federal school cases by topic. It also includes analyses of recent cases of particular interest.
3. **NOLPE Case Citations** is an index to current cases on a particular school law topic (e.g., search and seizure, home education) which is published five times a year.
4. **The Yearbook of School Law** is an annual publication in which the previous year's federal and state court decisions affecting public and private schools and higher education are analyzed.

5. **Convention Proceedings** is an annual publication composed of papers on timely school law topics that were presented at the NOLPE Convention.

In addition to the regular publications, NOLPE publishes other books and several monographs each year on topics such as student suspensions and expulsions, teacher evaluation, and discrimination in employment. Recently, a mini-monograph series was launched which is designed to offer practical legal guides in areas such as how to conduct a due process hearing.

NOLPE occupies a unique position in that it is the only national organization that focuses specifically on educational law concerns. As school law issues have become more numerous and complex, the organization has attempted to respond through its programs, services, and publications. Based on the results of a comprehensive needs assessment conducted by the board of directors in 1980-81, the **NOLPE School Law Journal** was discontinued, and the mini-monograph series and **Case Citations** were initiated. Both of the new publication ventures have been extremely successful. The NOLPE Board of Directors currently is engaged in developing long-range plans for the organization and is committed to keeping NOLPE responsive to its membership and at the forefront in the field of educational law.

Recommendations from selected reform reports show common themes.

Comparison of Recommendations from Selected Education Reform Reports*

by K. Forbis Jordan

Recommendations for improving American public elementary and secondary education have become a matter of public discussion since the release of the report from the Secretary of Education's National Commission on Excellence in Education. Interest has increased with reports from the Twentieth Century Fund and the Education Commission of the States. At least 30 reports of various types have been completed or are underway. They include data gathering on the shortage of mathematics and science teachers, research studies of schools and students, proposals for curricular reform, and finally comprehensive proposals relating to educational programs and teachers.

In terms of information about high school students, "High School and Beyond," an ongoing study by James Coleman, focuses on educational processes and outcomes and includes a sample of 58,000 students from 1,000 public and private high schools. John Goodlad's "A Study of Schooling" is based on extensive site visits and longitudinal data from 1,000 classrooms. TheodoreSizer is completing "A Study of High Schools" for the National Association of Secondary School Principals; this study involves extensive observation gained by field visits to 65 high schools. The Carnegie Foundation for the Advancement of Teaching is completing an extensive study of 15 exemplary high schools and also is utilizing data from "High School and Beyond" and "A Study of Schooling" in arriving at its recommendations. The College Entrance Examination Board has completed a project designed to identify the academic competencies needed for success in college. The National Science Foundation also is scheduled to release a series of recommendations for improving precollege science and mathematics programs. Mortimer Adler's "Paideia Proposal" calls for a dramatic

revision of the high school curriculum with greater attention to academic rigor and substance.

Even though the reports appear to be directed at both elementary and secondary schools, most of the attention has been given to recommendations for changes in the high schools. Little attention has been given to changes needed in elementary schools so that they can provide the type of educational experiences needed by students to succeed in the "new" high schools.

The three most comprehensive reports with policy implications for the manner in which schools are conducted have come from Secretary of Education Bell's National Commission on Excellence in Education, the Twentieth Century Fund Task Force on Federal Elementary and Secondary Education Policy, and the Education Commission of the States' Task Force on Education for Economic Growth. Each report has been sponsored by a different organization and appears to have a slightly different orientation. For example, the primary focus of the Excellence Commission's report is on recommendations for secondary schools. The Twentieth Century Fund report focuses more on the concerns about education in urban areas, and the recommendations principally call for federal actions. The recommendations in the report from the Education Commission of the States have a broader focus and appear to be oriented toward the economic needs of the nation.

Rather than being based on new field studies or a detailed analysis of a research data base, the three reports tended to rely upon available research data and expert testimony in arriving at their observations and recommendations. The Excellence Commission was appointed by Secretary of Education Terrell Bell and consisted of 18 members, with 6 from higher education and 4 from elementary and secondary education institutions or organizations. The Twentieth Century Fund consisted of 12 members with 10 from higher education, but the previous responsibilities of these persons varied considerably. The Education Commission of the States' Task Force on Education for Economic Growth had 41 members, including 14 business leaders, 13 governors, and 6 educators.

In terms of the intended audience, the Excellence Commission was oriented to the president and the citizens of the nation. The Twentieth Century Fund was focused on the federal role and had a heavy urban emphasis. The target of the report from the Education Commission of the States was the business community and state and local public officials with responsibilities for schools.

Certain common themes exist among the three reports. One is the attention given to recommendations about the curriculum in the schools. Others are related to time spent in school, expectations of performance and responses from students, and programs for special populations. One common recommendation that has received most attention is the concept of the master teacher or career ladders for teachers, commonly referred to as merit pay.

Rather than reviewing each of the reports in detail, in the following discussion, the recommendations of the reports have been grouped into ten major topics or areas. In some cases, a topic will be found in only one report, in others possibly two, and in a few instances all three reports. The major topics include educational program (or school curriculum); time; college entrance requirements; performance standards for students; teacher preparation, performance, and pay; leadership and management; fiscal

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support; federal role; implementation; and business/education partnerships.

Efforts to implement the recommendations from the reports may encounter difficulty for a variety of reasons. Interest groups may not agree on the merits of various recommendations. Some recommendations might be implemented by reallocating current fiscal or human resources, but additional funds likely will be required to initiate other actions. Potential problem areas include the following:

1. Increases in high school graduation requirements may contribute to a conflict between groups seeking more rigorous "college prep" courses for all students and those seeking relevant offerings for the non-college-bound student.

2. The imposition of greater rigor in the school program may increase the educational problems of disadvantaged youth or may lead to increased attention being given to ways in which schooling can be individualized to accommodate the differences among students.

3. As to the "time" recommendations, implementation of the extended day likely will require additional staff or overtime pay for current staff, and the lengthened school year likely will require increases in the base salary. The counter position is that the uses made of existing time should be analyzed to determine how that time may be used more efficiently and effectively.

4. Recommendations for differential pay may face problems unless sufficient funds are provided to raise the

salaries for all teachers when the master teacher or merit pay programs are implemented.

5. Interest groups may agree with the concept of the master teacher or merit pay, but not able to agree on procedures such as what is to be evaluated, how the evaluation is to be conducted, or who is to do the evaluation.

6. Certification for persons with training in an academic area, but without pedagogical training, likely will be met with resistance so long as the supply of teachers exceeds the demand.

7. Neither the Excellence Commission nor the ECS Task Force calls for a dramatic expansion of the federal role or for large increases in federal funds, but implementation of most of the recommendations will be difficult for state and local agencies without additional funds from some source.

8. Even though the three reports have been characterized as comprehensive in the breadth of their recommendations, they do not call for a dramatic restructuring of either the schools' curriculum or the educational delivery system. In essence, the effect of most of the recommendations would be to "add to" existing activities or components of the educational enterprise.

* This article has been prepared by the author in his private capacity and does not represent the position of the Congressional Research Service.

COMPARISON OF RECOMMENDATIONS FROM SELECTED EDUCATION REFORM REPORTS

| | The National Commission on Excellence in Education | Twentieth Century Fund Task Force | ECS* Task Force on Education for Economic Growth |
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| CURRICULUM | <p>Significantly more time should be devoted to learning the "new basics"—English, mathematics, science, social studies, and computer sciences, and for the college-bound a foreign language.</p> <p>Rigorous programs should be provided to advance students' personal, educational, and occupational goals, such as the fine and performing arts and vocational education. Elementary schools should provide a sound base in English language development and writing, computational and problem-solving skills, science, social studies, foreign language, and the arts.</p> | <p>The federal government should clearly state that the most important objective of elementary and secondary education in the United States is the development of literacy in the English language.</p> | <p>The school curriculum should be strengthened. States and communities should identify skills they expect the schools to impart.</p> <p>The academic experience should be more intense and more productive. Courses not only in mathematics and science, but also in all disciplines, must be enlivened and improved. The goal should be both richer substance and greater motivational power—elimination of "soft," non-essential courses, more enthusiastic involvement of students in learning, encouragement of mastery of skills beyond the basics, e.g., problem-solving, analysis, interpretation, and persuasive writing.</p> |

* Education Commission of the States.

| | Excellence Commission | Twentieth Century Fund | ECS Economic Growth |
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| CURRICULUM (cont.) | Foreign languages should be started in the elementary grades with 4-6 years of study. | | Educators, business and labor leaders, and other interested parties should clearly identify the skills that the schools are expected to impart to students for effective employment and citizenship. |
| High School Graduation Requirements | All students seeking a diploma should be required to complete (a) 4 years of English, (b) 3 years of mathematics, (c) 3 years of science, (d) 3 years of social studies, and (e) one-half year of computer science. For the college-bound, 2 years of foreign language in high school are strongly recommended. | —No comparable provision— | —No comparable provision— |
| Course Content | (Detailed implementing recommendations are included for each subject area.) | —No comparable provision— | (A list of "Basic Skills and Competencies for Productive Employment" is contained in the Appendix.) |
| Proficiency in a Second Language | For the college-bound, two years of a foreign language in high school are strongly recommended. | Every American public school student should have the opportunity to acquire proficiency in a second language. | —No comparable provision— |
| Time | Significantly more time should be devoted to learning the "new basics." School districts and state legislatures should strongly consider 7-hour school days, as well as a 200- to 220-day school year. | —No comparable provision— | Every state should increase the duration and intensity of academic learning time. Students should be introduced earlier to such critical subjects as science. Schools should examine each school year, especially the twelfth grade, to ensure that time is not wasted. |

| | Excellence Commission | Twentieth Century Fund | ECS Economic Growth |
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| Time (cont.) | Time available for learning should be expanded through better classroom management and organization of the school day. Additional instructional time should be found to meet the needs of slow learners, the gifted, and others who need more instructional diversity than can be provided in the conventional school day and year. | | Both states and localities should consider lengthening the school year and the school day by extending teachers' contracts. Learning time should be increased by establishing a wider range of learning opportunities beyond the normal school day and year. |
| Textbooks and Instructional Materials | Textbooks and tools of learning and teaching should be upgraded and updated to assure more rigorous content and to reflect current applications of technology, the best scholarship, and research findings. | —No comparable provision— | —No comparable provision— |

Funds should be made available to develop texts for the disadvantaged, learning disabled, and gifted and talented.

Textbook Adoption

In adopting textbooks, states and localities should evaluate texts on the basis of their capacity to present rigorous and challenging material clearly and should require publishers to furnish evaluative data on effectiveness.

—No comparable provision—

—No comparable provision—

Excellence Commission

Twentieth Century Fund

ECS Economic Growth

Homework

Students in high schools should be assigned homework.

—No comparable provision—

States and local school districts should establish firm, explicit, and demanding requirements concerning homework.

Effective Study and Work Skills

Effective study and work skills should be introduced in the early grades and continued throughout the student's schooling.

—No comparable provision—

—No comparable provision—

PROGRAMS FOR SPECIAL POPULATIONS

The federal government, in cooperation with states and localities, should help meet the needs of key groups of students such as the gifted and talented, socioeconomically disadvantaged, minority and language minority students, and the handicapped.

Federal efforts to provide special education programs for the poor and the handicapped should be continued.

Federal programs for the disadvantaged and limited English speaking should be maintained.

States and school districts should increase participation of young women and minorities in courses where they are under-represented.

States and school districts should identify and challenge academically gifted students.

States and school systems should specifically include handicapped children in programs for education and economic growth.

Special Fellowships for Academies

—No comparable provision—

Special federal fellowships should be awarded to students to encourage the creation of small, individualized programs staffed by certified teachers and run as small-scale academies.

—No comparable provision—

COLLEGE ENTRANCE REQUIREMENTS

Four-year colleges and universities should raise their admission standards in line with the recommended requirements for high school graduation.

—No comparable provision—

Colleges and universities should raise their entrance requirements.

Excellence Commission

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PERFORMANCE STANDARDS FOR STUDENTS

Grades should be reliable indicators of a student's readiness for further study.

—No comparable provision—

States and school systems should establish requirements concerning discipline, grades, and other matters.

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| Standardized Tests | Standardized tests should be administered at major transition points from one level of schooling to another and particularly from high school to college or work. The purpose would be to certify credentials, identify the need for remedial work, and identify opportunities for enrichment. | —No comparable provision— | Effective programs should be established to monitor student progress through periodic testing of general achievement and specific skills. The testing program should be linked to a carefully designed program of remediation and enrichment for students who need special help. |
| Student Progress | Placement and grouping of students, as well as promotion and graduation policies, should be guided by the academic progress of students and their instructional needs, rather than by rigid adherence to age. | —No comparable provision— | Student progress should be measured by tests of general achievement and specific skills with promotion based on mastery, not age. States and local districts should establish firm, explicit, and demanding requirements concerning student grades. |
| Student Absences and Failures | Attendance policies with clear incentives and sanctions should be used to reduce the amount of time lost through student absenteeism and tardiness. | —No comparable provision— | States, school systems, principals, teachers, and parents should work to reduce student absences and school failures. Efforts to deal with absenteeism and dropouts should include revitalizing course materials and making educational schedules flexible enough to accommodate students with special problems. |

| | Excellence Commission | Twentieth Century Fund | ECS Economic Growth |
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| Discipline | The burden on teachers to maintain discipline should be reduced by developing and enforcing firm and fair conduct codes and by considering alternative rooms, programs, and schools for disruptive students. | —No comparable provision— | States and local school districts should establish firm, explicit, and demanding requirements concerning student discipline. |
| TEACHERS | Teacher preparation should be improved, and teaching should be made a more rewarding profession. | A major federal initiative should be undertaken that emphasizes the critical importance of quality teachers in America's schools. | States and school districts should improve methods for recruiting, training and paying teachers. |
| Teacher Preparation | Persons preparing to teach should be required to meet high educational standards, and to demonstrate competence in academic disciplines. Master teachers should be involved in designing teacher preparation programs. Resources should be used to solve the problem of a shortage of mathematics and science teachers. | —No comparable provision— | Every state and local school district, with the fullest participation of teachers, should drastically improve methods of training teachers. States, singly or in cooperation with one another, should establish better pre-service and in-service education programs for teachers. |

| | Excellence Commission | Twentieth Century Fund | ECS Economic Growth |
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| Teacher Certification | Efforts should be made to have qualified persons with academic training in mathematics and science eligible to teach. Other areas of critical need, such as English, must also be addressed. | —No comparable provision— | Teacher certification processes should be changed to make it possible for qualified "outsiders" to serve in the schools. |
| Master Teachers | School boards, administrators and teachers should cooperate to develop career ladders for teachers that distinguish among the beginning instructor, the experienced teacher, and the master teacher. | A national Master Teachers Program should be established, funded by the federal government, that recognizes and rewards teaching excellence. | States should create career ladders for teachers. |
| Teacher Education Institutions | Colleges and universities should be judged on the performance of their graduates. | —No comparable provision— | Each state should substantially restructure and renew its teacher training curriculum, and should upgrade the academic quality of the teacher training curriculum so that entering teachers will meet higher standards. |
| Teacher Salaries or Grants | Teacher salaries should be increased and made professionally competitive and market sensitive. School boards should adopt an 11-month contract for teachers. Teacher salaries should be performance based. | Master teachers would be awarded a grant of \$40,000 per year for a period of 5 years. An incentive approach should be adopted to provide awards to teachers of exceptional merit; awards should be numerous enough to attract national attention and substantial enough to keep the master teachers in the classroom. | Every state and local school district, with the fullest participation of teachers, should drastically improve methods for paying teachers. Financial incentives for teachers should be keyed to differing responsibilities and to filling critical needs in certain subject areas. |
| Teacher Performance | Salary, promotion, tenure, and retention decisions should be tied to an effective evaluation system that includes peer review so that superior teachers may be rewarded, average ones may be encouraged, and poor ones may be either improved or terminated. | The master teacher proposal is designed to "pave the way for reconsideration of merit-based personnel systems." | Boards of education and higher education officials should cooperate with teachers and administrators on ways to measure the effectiveness of teachers and reward outstanding performance. Procedures should be tightened for deciding which teachers to retain and dismiss. |
| | Excellence Commission | Twentieth Century Fund | ECS Economic Growth |
| Teacher Performance (cont.) | Master teachers should be involved in supervising teachers during their probationary years. | | |
| Recognition of Teachers | —No comparable provision— | —No comparable provision— | States, communities, the media, and businesses should devise new ways to honor teachers. |
| Loans/Grants for Prospective Teachers | Incentives, such as grants and loans, should be made available to attract outstanding students into the teaching profession. | A scholarship program should be used to augment the supply of teachers in mathematics and science as well as in foreign languages. | Scholarships and other financial incentives should be used to attract the most able people into teaching. |

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| LEADERSHIP AND MANAGEMENT | Citizens across the nation should hold educators and elected officials responsible for providing the leadership necessary to achieve these reforms. | The executive and legislative branches of the federal government should emphasize the need for better schools and a better education for all young Americans. | Schools should use effective management techniques. |
| Principals | Principals and superintendents must play a crucial role in developing school and community support for reforms. Administrative burdens and related intrusions on the teacher should be reduced to add to the time available for teaching and learning. | —No comparable provision— | Principals should be in charge of educational programs. Pay should be related to responsibilities and effectiveness. States should set higher standards for recruiting, training, and monitoring the performance of principals. |
| School Boards | School boards must consciously develop leadership skills at the school and district levels if the reforms are to be achieved. | —No comparable provision— | —No comparable provision— |
| Educators, Parents, and Citizens | Excellence Commission | Twentieth Century Fund | ECS Economic Growth |
| | The Commission calls upon educators, parents, and citizens at all levels to assist in bringing about the reforms proposed in this report. | —No comparable provision— | —No comparable provision— |
| FISCAL SUPPORT | Citizens should provide the fiscal support and stability required to bring about the reforms. | The federal government must continue to help meet the special needs of poor and minority students while taking the lead in meeting the general and overwhelming need for educational quality. | Schools should make the best possible use of resources. More funds are needed from all sources for selective investments in efforts that promote quality. |
| Federal Government | (See "PROGRAMS FOR SPECIAL POPULATIONS.") | <p>Categorical programs required by the federal government should be funded through the federal treasury.</p> <p>The federal government should fund the Master Teachers Program.</p> <p>The federal government has a responsibility to help overcome the unevenness of state efforts to fund education.</p> <p>School districts with substantial numbers of immigrant children should receive federal impact aid.</p> <p>Federal funds now used for bilingual education should be used to teach non-English-speaking children how to speak, read, and write English.</p> | The federal government has an essential supporting role in financing education. |

| | Excellence Commission | Twentieth Century Fund | ECS Economic Growth |
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| States and Localities | Slate and local school officials, including school board members, governors, and legislators have the primary responsibility for financing and governing schools, and incorporating these reforms into educational policies and fiscal planning. | —No comparable provision— | States and localities have the chief responsibility for supporting the schools and making educational policy. States should continue efforts to secure more equitable distribution of educational resources. More human, financial, and institutional resources should be invested in education. |
| FEDERAL ROLE | <p>The federal government's role includes several functions of national consequence that states and localities are unlikely to be able to meet: protecting the constitutional and civil rights of students and personnel; collecting data, statistics, and general information about education; supporting teacher training in these areas of shortage or key national needs; and providing student financial assistance and research and graduate training. Assistance should be provided with a minimum of administrative burden and intrusiveness.</p> <p>The federal government has the primary responsibility to identify the national interest in education and also to help fund and support efforts to protect and promote that interest.</p> | <p>The executive and legislative branches of the federal government are called upon to emphasize the need for better schools and a better education for young Americans.</p> <p>The federal government should promote and support proficiency in English for all children in the public schools, but especially for those who do not speak English, or have only a limited command of English.</p> <p>Federal attention and assistance should go to economically depressed localities with concentrations of immigrant and/or impoverished groups as well as those that already are making strong efforts to improve their educational performance. The federal government should emphasize programs to develop basic scientific literacy among</p> | (See "Federal Government" under "FISCAL SUPPORT" above.) |

| | Excellence Commission | Twentieth Century Fund | ECS Economic Growth |
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| FEDERAL ROLE (cont.) | | all citizens and programs to provide advanced training in mathematics and science for secondary school students. | |
| | | (Also, see "TEACHERS" above.) | |
| Federal Research Efforts | (See "FEDERAL ROLE" above.) | Federal support should be provided for specific research activities such as basic data, educational performance, evaluation of federal education programs, and fundamental research into learning processes | —No comparable provision— |

IMPLEMENTA-
TION PLAN

(See "LEADERSHIP
AND MANAGEMENT.")

—No comparable provision—

Each state should develop and implement a plan for improving education in grades K-12. Each governor should appoint a broadly inclusive task force on education for economic growth. This task force should develop an implementation plan for the state.

Each local school district also should develop its own implementation plan.

BUSINESS/
EDUCATION
PARTNERSHIPS

—No comparable provision—

—No comparable provision—

Partnerships for improving education should be formed with participation by businesses, labor, and the professions. Public officials, higher education officials, and school officials should establish their own partnerships.

BOOK REVIEWS

New book captures the vitality, excitement and challenges of the present era.

Schools + Politics + Money = Turmoil, Change, Uncertainty

by Edward A. Parish

The Changing Politics of School Finance, edited by Nelda Cambron-McCabe and Allan Odden. Cambridge, Massachusetts: Ballinger Publishing Co., 1982. 289 pp.

The Changing Politics of School Finance, the 1982 yearbook of the American Education Finance Association, is written at the halfway mark of Reagan's four-year administration. It analyzes the political and financial patterns of education in the past and provides a framework for predicting the future. Nelda Cambron-McCabe and Allan Odden, the editors, have gathered able writers with cogent perspectives on the many facets of finance politics. Unlike many collections which have several writers, this volume suffers little discontinuity. The book is arranged logically and is cohesive and integrated.

The first chapter, by Laurence Iannacone, sets a high standard for succeeding chapters. Entitled "Turning Point Election Periods in the Politics of Education," this chapter establishes the tenor for the whole volume. A turning point election period (TPEP) marks a pivotal change in political priorities. This conceptual tool permits one to put the past in perspective and, consequently, to better understand the present. Iannacone envisions a sequential five-step process of change:

1. Voter discontent.
2. An initial "triggering" election.
3. A realignment election.
4. Articulation of a new policy mandate.

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5. A final test election.

TPEPs provide a convenient vehicle for political analysis. These turning points can occur at any level of government. At the federal level, 1984 may mark the "final test election." This TPEP analysis has many implications for the future of school finance. If correct, the 1984 election is a portentous one, either finalizing a significant change or merely indicating continued realignment. This chapter captures the drama of political change. As one reads the succeeding selections, whether about local politics or private schools, each subject lends itself to a continuation of the TPEP analysis.

Many of the chapters begin with historical considerations. Federal aid is traced to the eighteenth century. A review of public aid to private schools starts 150 years ago. The chapter on financing urban schools begins in the 1930s. Despite this reflection on past decades and earlier centuries, the emphasis is on the recent past, the present, and the future. This volume is clearly concerned with where we are, how we got there, and where we may be going in financing education in the United States.

The breadth of the subjects addressed can be captured by a brief statement of some of the more interesting conclusions:

The next two years will decide which federal programs, if any, survive.

Particularly at the state level educators are likely to be more influential in political decisions about education.

School finance reform may be the result of shifting revenue and expenditures, not the cause.

Future tax and expenditure limitation amendments are likely to be few in number and moderate in effect.

Private schools will gain as a result of the paradox of increased government aid and decreased government entanglement.

Urban schools will suffer, receiving less federal aid, but required to meet more stringent minimum standards imposed by the state.

Retrenchment is inevitable but proper managerial strategies can deal effectively with the social and political realities of contraction.

These conclusions hint at the scope of **The Changing Politics of School Finance**. The sole exception to the volume's cohesiveness is the chapter on courts and finance reform by Tyll van Geel. The format for the rest of the book is to examine the past, analyze the dynamics of current trends, and to make predictions. Van Geel instead poses broad philosophical questions such as, "To what degree do constitutional governments work?" He then sets forth a model which he believes will facilitate predictions regarding change. Van Geel concludes that future models should be reduced to mathematical formulas. His model has its place, but this is not it.

Cambron-McCabe and Odden have captured the vitality, excitement and challenges of the present era. The writers have dealt with important issues clearly and succinctly. The issues are complex, but these scholars have shared incisive perceptions of the major dilemmas of American school finance.

This book is an important contribution to the literature of educational law.

Educators and the Law

by Robert J. Shoop

Martha M. McCarthy and Nelda Cambron. **Public School Law: Teachers' and Students' Rights.** Allyn and Bacon, Inc. Publishing Co., Boston, Massachusetts, 1981, 336 pages, \$16.95.

As the title implies, this book is organized into two

sections dealing with the law as applied to teachers and the law as applied to students. The main body of the book is preceded by an introductory chapter establishing the legal context of public education. The book covers a wide range of the most recent court decisions relating to teachers and students.

The book is written in a readable, non-technical manner that should make it a helpful reference for superintendents, principals and teachers. However, all of the topics are very well documented should the reader choose to explore specific cases or points of law in greater detail. The authors also included a glossary of basic legal terms for quick review.

It is an excellent book which gives a broad and comprehensive overview of the subject matter. Its strength lies primarily in its convenient and accessible format that allows the reader to use the book as a reference. The summaries at the conclusion of each chapter are particularly helpful in this regard. This book is an important contribution to the literature of educational law.

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