

MINUTES OF THE SENATE COMMITTEE ON EDUCATIONThe meeting was called to order by CHAIRMAN JOSEPH C. HARDER a
Chairperson1:30 ~~xxx~~/p.m. on WEDNESDAY, JANUARY 23, 1985 in room 254-E of the Capitol.

All members were present except:

Committee staff present:

Mr. Ben Barrett, Legislative Research Department
Ms. Carolyn Rampey, Legislative Research Department
Ms. Avis Swartzman, Legislative Revisor's Office
Mrs. Millie Randell, Secretary

Conferees appearing before the committee:

After calling the meeting to order, Chairman Joseph C. Harder welcomed the new and returning members of the Committee and introduced the legislative staff.

The Chairman then recognized Mr. Dale Dennis, Kansas Assistant Commissioner for Education, who explained the State Board of Education legislative recommendations to the Committee. These include broadening the authority of interlocals except for levying taxes, increasing community college capital outlay from one mill to two mills with a protest petition, amending the School District Equalization Act so as to count handicapped three and four-year olds as .5 of a pupil for the purpose of computing state aid, permitting SRS workers to serve as educational advocates for exceptional children under certain conditions, having the State to provide matching funds for instructional television, recommending that the State capital outlay aid of one and one half million dollars be appropriated for instructional equipment only for area vocational technical schools, and allowing USD's additional budget authority of one-half of one percent for summer remedial programs in grades one through four. (Attachment 1)

When the Chair asked the Committee's pleasure, Senator Allen moved, and Senator Anderson seconded the motion to introduce Committee bills as requested by the State Board of Education. The motion carried.

The Chair then recognized Ms. Patricia E. Baker, legal counsel for the Kansas Association of School Boards. Ms. Baker stated that KASB is requesting a bill to amend K.S.A. 72-5413 by striking "professional employee appraisal procedures" from the list of manditorily negotiable items and by allowing USD's to establish the framework of the school day within the negotiated length of the school day. (Attachment 2) The second request, Ms. Baker continued, is to amend K.S.A. 72-5423 by allowing school boards the authority on items not covered by an existing agreement until commencement of negotiations for a successor to the existing contract. (Attachment 3)

When the Chair asked the Committee's pleasure regarding these requests, Senator Montgomery moved, and Senator Langworthy seconded a motion for the Committee to introduce the bills as requested by the KASB. The motion carried.

The Chair recognized Mr. Craig Grant, Director of Political Action, Kansas-NEA, who stated that Kansas-NEA is requesting a resolution which would reduce the amount of federal block grant money that is currently retained by the State Department of Education for administration of such grants. The reduction, he said, would be phased in over several years until the amount retained by the Department reaches the 5% level. Mr. Grant distributed copies of SCR 1667 (Attachment 4) which, he said, was introduced last year and relates to the resolution he is requesting.

When the Chair entertained motions from the Committee, Senator Kerr moved, and Senator Arasmith seconded the motion to introduce a resolution as requested by Kansas-NEA. The motion carried.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON EDUCATION

room 254-E, Statehouse, at 1:30 ~~a.m.~~/p.m. on WEDNESDAY, JANUARY 23, 1985

When Dr. M. D. McKenney, Acting Director, United School Administrators, was recognized by the Chair, Dr. McKenney stated that USA is requesting a due process bill for administrators. Dr. McKenney stated that his request is similar to a bill that was introduced last year but that his request eliminates superintendents from the language of the bill. (Attachment 5)

When the Chairman asked the Committee's pleasure, Senator Anderson moved, and Senator Allen seconded a motion for the Committee to introduce a bill as requested by USA. The motion carried.

On behalf of Dr. A. W. Dirks, USD 259, Wichita, the Chairman passed out copies of the USD 259 Board of Education Legislative Proposals for the 1985 Legislative Session. (Attachment 6)

The Chair recognized Dr. Merle Hill of the Kansas Association of Community Colleges, who distributed copies of the KACC Legislative Program for 1985. (Attachment 7) Dr. Hill stated that the Kansas Association of Community Colleges supports permissive legislation to allow a capital-outlay levy of two mills instead of the current one mill levy.

The Chairman informed the Committee that an Education Commission of the States quarterly publication, Footnotes, (Attachment 8) is available to them at no charge. He then distributed sample copies of the publication, along with subscription forms (Attachment 9) for those interested. He asked members to return their forms to the secretary for forwarding to ECS for processing.

Mr. Dale Dennis, Kansas Assistant Commissioner for Education, requested permission to speak about a problem that had arisen within school districts following a proposed regulation recently published by the Internal Revenue Service. He explained how the problem involves various district vehicular equipment, including school buses and maintenance vehicles and urged the Committee to address the problem as soon as possible.

The Chairman explained that he wished the Committee to be informed of the problem as described by Mr. Dennis and asked for suggestions from the Committee relative to the problem. Senator Warren then moved, and Senator Karr seconded a motion to direct the Chairman to draft a letter on behalf of the Committee to be sent to the Kansas Congressional delegation in Washington, D.C. relating to the new IRS regulation. The motion carried.

The Chairman then informed the Committee of an invitation he had received for members to attend the monthly session of the State Board of Education on February 12. Following discussion, the Chairman announced that the February 12 Committee meeting would be a visit to the State Board meeting for those members who wished to attend.

The Chairman adjourned the meeting.

SENATE EDUCATION COMMITTEE

TIME: 1:30 p.m. PLACE: 154-E DATE: January 23, 1985

GUEST LIST

NAME

ADDRESS

ORGANIZATION

G.W. Alish

Wichita, Ks.

USA-259

Craig Grant

Lawrence, Ks.

Kansas-NEA

Michael Stotsky

Lawrence Ks.

Intern. Sen. District

M. D. DICKENNEY

TOPERA

UNITED SCHOOL ADMINISTRATORS

Bob Johnson

Olathe, Ks.

United School Administrators

Richard Lumb

Topeka

K.A.I.B.

Pat Barber

Topeka

K.A.S.B.

Jacquie Dakes

Yates Center

K.A.S.B.

Bill Curtis

Topeka

K.A.S.B.

Richard George

Carbondale

Senator Allegretti

Al Burnett

Topeka

USOBT

SENATE EDUCATION COMMITTEE

TIME: 1:30 p.m.

PLACE: 254-E

DATE: January 23, 1985

GUEST LIST

NAME

ADDRESS

ORGANIZATION

Mary Ann Bumgarner

Lawrence

Senate Budget Intern

Martin Howard

Toronto

Cap-Journal

ELISA BORRERO

CALIFORNIA

—

LEE HILLY

"

—

Merle Hill

Topseba

KACC

RECOMMENDATIONS

DESCRIPTION

FY 1986 ESTIMATED COST

ATTACHMENT 1
(1/23)

<p>ACADEMY FOR HIGH ACHIEVING YOUTH</p>	<p>The State Board recommends that a summer program be funded which will recognize, motivate, challenge, and stimulate students who are high achievers.</p>	<p>\$ 150,000</p>
<p>ALL MEMBERS OF THE PROFESSIONAL STANDARDS BOARD TO VOTE</p>	<p>The State Board recommends that the statutes be amended to permit all members of the Teaching and School Administration Professional Standards Advisory Board to vote.</p>	<p>NONE</p>
<p>AUTHORITY OF INTERLOCALS (1)</p>	<p>The State Board recommends that the statutes be amended to permit interlocals to provide any educational services that are authorized for unified school districts except to levy taxes.</p>	<p>NONE</p>
<p>CAREER INCENTIVE PLANS</p>	<p>The State Board recommends that local boards of education begin planning and developing career incentive plans that encourage good teachers to remain in the classroom. The development of a career incentive plan will require input and cooperation from teachers, administrators, and board members. Local boards, with the assistance of the State, should be prepared to implement such a plan during the 1988-89 school year.</p>	<p>MINIMAL</p>
<p>CERTIFICATION FEES</p>	<p>The State Board recommends that the statutes be amended to permit the State certification fee to be changed from a minimum of \$13 and \$18 to \$16 and \$25.</p>	<p>The fee would be determined by the State Board. The fee is used to fund the certification unit.</p>
<p>COMMUNITY COLLEGE CAPITAL OUTLAY LEVY (2)</p>	<p>The State Board recommends that community colleges be given authority to increase their capital outlay levy from 1 mill to 2 mills with a protest petition to vote.</p>	<p>NONE</p>
<p>CREDIT HOUR STATE AID FOR COMMUNITY COLLEGES AND WASHBURN UNIVERSITY</p>	<p>The State Board recommends that credit hour State aid for community colleges and Washburn University be increased 10 percent, which is comparable to the average general fund budget increase recommended for school districts. The State Board is committed to the improvement of teacher salaries and believes that a 10 percent increase would assist boards of trustees in making teacher salaries more competitive.</p>	<p>\$ 2,600,000</p>
<p>EARLY CHILDHOOD EDUCATION FOR THE HANDICAPPED (3)</p>	<p>The State Board recommends that the School District Equalization Act be amended to include handicapped three and four-year old children.</p>	<p>FY 1986 \$ 1,305,450 FY 1990 \$ 8,143,897</p>
<p>EDUCATION ADVOCATE PROGRAM (4)</p>	<p>The State Board recommends that the statutes be amended to permit social rehabilitation service workers to serve as education advocates for exceptional children under certain conditions.</p>	<p>NONE</p>
<p>IMPROVEMENT OF TEACHER SALARIES</p>	<p>The State Board recommends that the State authorize an overall average general fund budget increase of 10 percent which should permit school district salaries to increase a minimum of 11 percent and to raise Kansas' ranking. In addition, the State Board requests local boards of education to review budgets in terms of school improvement objectives and to give high priority to adequate budgeting for salaries that will bring classroom teachers more in line with the national average.</p>	<p>General State Aid \$ 60,000,000 Income Tax Rebate \$ 10,000,000</p>
<p>INSERVICE EDUCATION</p>	<p>The State Board recommends that the State fund the inservice education program approved by the 1984 Legislature (1984 H.B. 3092).</p>	<p>\$ 2,800,000</p>
<p>INSTRUCTIONAL TELEVISION (5)</p>	<p>The State Board recommends that the State provide funding on a matching basis to assist school districts in implementing instructional television programs.</p>	<p>\$ 200,000</p>
<p>LIMITATION ON OUT-DISTRICT TUITION AND OUT-DISTRICT STATE AID FOR STUDENTS OVER 64/72 LIMITATION</p>	<p>The State Board recommends that out-district tuition and out-district State aid be authorized for students over the 64/72 limitation.</p>	<p>State \$ 456,000 County \$ 456,000</p>
<p>STATE AID FOR VOCATIONALLY APPROVED COURSES AT WASHBURN UNIVERSITY</p>	<p>The State Board recommends that all approved first and second-year vocational programs be financed at the rate of 1.5 times the undergraduate credit hour aid similar to community colleges.</p>	<p>\$ 125,000</p>
<p>STATE CAPITAL OUTLAY FOR AVTS (6)</p>	<p>The State Board recommends that the State capital outlay aid in the amount of \$1,500,000 be appropriated for instructional equipment only.</p>	<p>\$ 1,500,000</p>
<p>THE SPECIAL EDUCATION AT 95 PERCENT OF EXCESS COST</p>	<p>The State Board recommends that the State fund special education aid at 95 percent of excess cost.</p>	<p>\$ 7,000,000</p>
<p>SUMMER REMEDIAL PROGRAMS (7)</p>	<p>The State Board recommends that unified school districts receive one-half of 1 percent in additional budget authority for summer remedial programs for pupils enrolled in grades one through four.</p>	<p>State Aid \$ 2,582,750 Property Tax \$ 3,031,930</p>

1985 SENATE EDUCATION COMMITTEE

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Vice Chairman
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Rep. Marvin Smith
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Rep. Vernon Williams
2402 Coolidge, Wichita 67204
296-7677

NOTE: The above telephone numbers are
legislative offices in the State Capitol

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145 North 127th Street
Wichita 67230
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STATE BOARD OF EDUCATION LEGISLATIVE RECOMMENDATIONS

1985



Kansas State Department of Education

Kansas State Education Building

120 East 10th Street Topeka, Kansas 66612

An Equal Employment/Educational Opportunity Agency

72-5-113. Definitions. When used in this act and in acts amendatory thereof or supplemental thereto:

(a) The term "persons" includes one or more individuals, organizations, associations, corporations, boards, committees, commissions, agencies, or their representatives.

(b) "Board of education" means the board of education of any school district, the board of control of any area vocational-technical school, and the board of trustees of any community junior college.

(c) "Professional employee" means any person employed by a board of education in a position which requires a certificate issued by the state board of education or employed by a board of education in a professional, educational or instructional capacity, but shall not mean any such person who is an administrative employee.

(d) "Administrative employee" means, in the case of a school district, any person who is employed by a board of education in an administrative capacity and who is fulfilling duties for which an administrator's certificate is required under K.S.A. 72-7513; and, in the case of an area vocational-technical school or community junior college, any person who is employed by the board of control or the board of trustees in an administrative capacity and who is acting in that capacity and who has authority, in the interest of the board of control or the board of trustees, to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward or discipline other employees, or responsibly to direct them or to adjust their grievances, or effectively to recommend a preponderance of such actions, if in connection

Attch. 2
1/23

with the foregoing, the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

(e) "Professional employees' organizations" means any one or more organizations, agencies, committees, councils or groups of any kind in which professional employees participate, and which exist for the purpose, in whole or part, of meeting, conferring, consulting and discussing with boards of education with respect to the terms and conditions of professional service.

(f) "Representative" means any professional employees' organization or person it authorizes or designates to act in its behalf or any person a board of education authorizes or designates to act in its behalf.

(g) "Professional negotiation" means meeting, conferring, consulting and discussing in a good faith effort by both parties to reach agreement with respect to the terms and conditions of professional service.

(h) "Mediation" means the effort through interpretation and advice by an impartial third party to assist in reconciling a dispute concerning terms and conditions of professional service which arose in the course of professional negotiations between a board of education or its representatives and representatives of the recognized professional employees' organization.

(i) "Fact-finding" means the investigation by an individual or board of a dispute concerning terms and conditions of professional service which arose in the course of professional negotiation, and the submission of a report by such individual or board to the parties to such dispute which includes a determination of the issues involved, the findings of fact regarding such issues, and the recommendation of the fact-finding individual or board for resolution of the dispute.

(j) "Strike" means an action taken for the purpose of coercing a change in the terms and conditions of professional service or the rights, privileges or obligations thereof, through any failure by concerted action with others to report for duty including, but not limited to, any work stoppage, slowdown, or refusal to work.

(k) "Lockout" means action taken by a board of education to provoke interruptions of or prevent the continuity of work normally and usually performed by the professional employees for the purpose of coercing professional employees into relinquishing rights guaranteed by this act and the act of which this section is amendatory.

(l) "Terms and conditions of professional service" means (1) salaries and wages, including pay for duties under supplemental contracts; hours and amounts of work; vacation allowance, holiday, sick, extended, sabbatical, and other leave, and number of holidays; retirement; insurance benefits; wearing apparel; pay for overtime; jury duty; grievance procedure; including binding arbitration of grievances; disciplinary procedure; resignations; termination and nonrenewal of contracts; re-employment of professional employees; terms and form of the individual professional employee contract; probationary period; ~~professional employee appraisal procedures~~; each of the foregoing is a term and condition of professional service, regardless of its impact on the employee or on the operation of the educational system; and (2) matters which relate to privileges to be accorded the recognized professional employees' organization, including but not limited to, voluntary payroll deductions, use of school or college facilities for meetings, the dissemination of information related to the professional negotiations process and related matters to members of the bargaining unit on school or college premises through direct contact with members of the bargaining unit, the use of bulletin boards on or about the facility, and the use of the school or college mail system to the extent permitted by law, reasonable leaves of absence for members of the bargaining unit for organizational purposes such as engaging in professional negotiating and partaking of instructional programs properly related to the representation of the bargaining unit; and (3) such other matters as the parties mutually agree upon as prop-

delete

erly related to professional service. Nothing in this act, or acts amendatory thereof or supplemental thereto, shall authorize the diminution of any right, duty or obligation of either the professional employee or the board of education which have been fixed by statute or by the constitution of this state. Except as otherwise expressly provided in this subsection, the fact that any matter may be the subject of a statute or the constitution of this state does not preclude negotiation thereon so long as the negotiation proposal would not prevent the fulfillment of the statutory or constitutional objective. Matters which relate to the duration of the school term, and specifically to consideration and determination by a board of education of the question of the development and adoption of a policy to provide for a school term consisting of school hours, are not included within the meaning of terms and conditions of professional service and are not subject to professional negotiation.

matters relating to the number of teaching or class periods to be included in the school day, and the starting and ending times of the school day and the starting and ending dates of the school year,

(m) "Secretary" means the secretary of human resources or his or her designee.

(n) "Statutory declaration of impasse date" means June 1 in the current school year.

(o) "Supplemental contracts" means contracts for employment duties other than those services covered in the principal or primary contract of employment of the professional employee, and shall include but not be limited to such services as coaching, supervising, directing and assisting extra-curricular activities, chaperoning, ticket-taking, lunchroom supervision, and other similar and related activities.

72-5423. Rights and duties of boards of education reserved; recognition and negotiation required; applicability of open meetings law, exceptions; strikes not authorized; adoption of agreements by reference. (a) Nothing in this act, or the act of which this section is amendatory, shall be construed to change or affect any right or duty conferred or imposed by law upon any board of education, except that boards of education are required to comply with this act, and the act of which this section is amendatory, in recognizing professional employees' organizations, and when such an organization is recognized, the board of education and the professional employees' organization shall enter into professional negotiations on request of either party at any time during the school year prior to issuance or renewal of the annual teachers' contracts. Notices to negotiate on new items or to amend an existing contract must be filed on or before February 1 in any school year by either party, such notices shall be in writing and delivered to the superintendent of schools or to the representative of the bargaining unit and shall contain in reasonable and understandable detail the purpose of the new or amended items desired.

(b) Except as otherwise expressly provided in this subsection, every meeting, conference, consultation and discussion between a professional employees' organization or its representatives and a board of education or its representatives during the course of professional negotiation and every hearing conducted by the secretary under K.S.A. 72-5426 for determination of the question of the existence of impasse is subject to the provisions of the Kansas open

New (b) Terms and conditions of employment, as defined in 5413(1) above, which are not covered by an existing agreement shall be subject to the control of the board of education until the commencement of negotiations for a successor to the existing contract.

(old (b) becomes (c) and so forth)

meetings law, and any amendments or supplements thereto. Meetings, conferences, consultations and discussions held by the secretary under K.S.A. 72-5426 for investigation of the question of the existence of impasse, and meetings, conferences, consultations and discussions held during the course of and in connection with, and the meeting required at the conclusion of, impasse resolution proceedings, as provided for in K.S.A. 72-5427 and 72-5428, are specifically made exempt from the provisions of the Kansas open meetings law, and any amendments or supplements thereto.

(c) Nothing in this act, or the act of which this section is amendatory, shall be construed to authorize a strike by professional employees.

(d) Any agreement lawfully made under the provisions of this act, or the act of which this section is amendatory, may be adopted by reference and made a part of the employment contract between any professional employee of the applicable negotiating unit and a board of education for a period of not to exceed two years.

Senate Concurrent Resolution No. 1667

3-12

0017 A CONCURRENT RESOLUTION urging the State Department
0018 of Education to reduce the amount it retains from federal
0019 block funds for administration of federal grants for education
0020 programs.

0021 WHEREAS, Federal funding for education programs main-
0022 tained in the states has been consolidated into federal block
0023 grants; and

0024 WHEREAS, Federal guidelines allow the states to deduct 20%
0025 of the federal block grants for administration of the programs;
0026 and

0027 WHEREAS, The State Department of Education, under au-
0028 thorization of the State Board of Education, administers federal
0029 block grant funding of education programs maintained in this
0030 state; and

0031 WHEREAS, The actual cost of administering the federal block
0032 grant program in this state is an amount which is equal to 5% or
0033 less of the total amount of the block grants, but the State De-
0034 partment of Education retains the full amount authorized for
0035 administration; and

0036 WHEREAS, The purpose and intent of federal block grants is
0037 to provide moneys to local school districts to enhance learning
0038 opportunities for children: Now, therefore,

0039 *Be it resolved by the Senate of the State of Kansas, the House*
0040 *of Representatives concurring therein:* That the Legislature, in
0041 recognition of the facts contained in the preamble of this resolu-
0042 tion, hereby strongly urges the State Department of Education to
0043 reduce by 5% per fiscal year the amount it retains for adminis-
0044 tration of federal block grant programs until the amount retained
0045 is equal to 5% of the amount authorized therefor; and

0046 *Be it further resolved:* That the Secretary of State is hereby
0047 directed to send enrolled copies of this resolution to each
0048 member of the State Board of Education and to the Commis-
0049 sioner of Education.

HOUSE BILL No. 2767

By Committee on Education

(By Request)

1-24

0018 AN ACT concerning school districts, area vocational-technical
0019 schools and interlocal cooperatives; certain procedures relat-
0020 ing to termination and nonrenewal of contracts of certain
0021 administrators employed thereby; amending K.S.A. 1983
0022 Supp. 72-5451, 72-5452, 72-5453 and 72-5455, and repealing
0023 the existing sections.

0024 *Be it enacted by the Legislature of the State of Kansas:*

0025 Section 1. K.S.A. 1983 Supp. 72-5451 is hereby amended to
0026 read as follows: 72-5451. As used in this act:

0027 (a) "Board" means the board of education of any school
0028 district, the board of directors of any interlocal cooperative
0029 composed of school districts, or the board of control of any area
0030 vocational-technical school.

0031 (b) "Administrator" means any ~~employee of person who is~~
0032 *employed by a board in an administrative, supervisory or direc-*
0033 *torial capacity and who is required to hold a school administra-*
0034 *tor's certificate issued by the state board of education, or who is*
0035 *designated in K.S.A. 72-8202b, and amendments thereto, or*
0036 *whose position the board determines to be administrative or,*
0037 *supervisory or directorial in nature with responsibilities and*
0038 *remuneration comparable to those of certified administrators.*
0039 ~~The term administrator shall not mean or include a superin-~~
0040 ~~tendent of schools.~~

0041 (c) ~~Not renew Nonrenew~~ the contract" or "nonrenewal of
0042 the contract" means that an administrator remains on duty to
0043 complete the term of a current contract but is not offered a
0044 contract for the subsequent contract, calendar or fiscal year.

0045 (d) "Terminate the contract" or "termination of the con-

0046 tract" means that an administrator is discharged or dismissed
0047 from service prior to the expiration of the contractual term of
0048 employment.

0049 Sec. 2. K.S.A. 1983 Supp. 72-5452 is hereby amended to read
0050 as follows: 72-5452. (a) Written notice of a board's the intention
0051 of a board to ~~not renew~~ nonrenew the contract of employment of
0052 an administrator shall be given to the administrator on or before
0053 April 15 of the year in which the term of the administrator's
0054 existing contract of employment expires. An administrator shall
0055 give written notice to the board on or before May 15 of the
0056 administrator's rejection of renewal of the contract of employ-
0057 ment. Terms of a contract may be changed at any time by mutual
0058 consent of both the administrator and the board.

0059 (b) Written notice of the intention of a board to terminate
0060 the contract of employment of an administrator shall be given to
0061 the administrator at any time prior to termination of the con-
0062 tract upon determination by the board that conditions exist to
0063 warrant termination.

0064 Sec. 3. K.S.A. 1983 Supp. 72-5453 is hereby amended to read
0065 as follows: 72-5453. (a) Whenever an administrator is given
0066 written notice of a board's the intention of a board to ~~not renew~~
0067 nonrenew or terminate the administrator's contract of the ad-
0068 ministrator, the administrator may request a meeting with the
0069 board by filing a written statement of the reason or reasons for
0070 the nonrenewal or termination of the contract. The board shall
0071 give the statement to the administrator within 10 days from the
0072 date of the request therefor with the clerk of the board within 10
0073 days from the date of receipt of the written statement of nonre-
0074 newal of a contract.

0075 (b) The administrator shall be given a hearing before the
0076 board upon written request filed with the clerk of the board.
0077 The written request shall be filed within 10 days from the date
0078 of receipt by the administrator of the written statement of the
0079 reason or reasons for the nonrenewal or termination of the
0080 contract.

0081 (c) The board shall hold ~~such meeting~~ a hearing within
0082 10 days after the filing of the administrator's request. The meet-

0083 ing hearing provided for under this section shall be held in
0084 executive session and, at such meeting, the board shall specify
0085 the reason or reasons for the board's intention to not renew the
0086 administrator's contract. The administrator shall be afforded an
0087 opportunity to respond to the board. Neither closed unless the
0088 administrator requests an open hearing. Each party shall have
0089 the right to have counsel present and to receive the advice of
0090 counsel. Within 10 days after the meeting hearing, the board
0091 shall reconsider its reason or reasons for nonrenewal or termi-
0092 nation of the contract and shall make a final decision as to the
0093 matter.

0094 Sec. 4. K.S.A. 1983 Supp. 72-5455 is hereby amended to read
0095 as follows: 72-5455. The provisions of this act shall apply only to
0096 those administrators who have at any time completed two con-
0097 secutive years of employment as an administrator in the school
0098 district, area vocational-technical school, or for the interlocal
0099 cooperative then currently employing such the administrator,
0100 except where the administrator alleges the nonrenewal or ter-
0101 mination of the contract is the result of the administrator having
0102 exercised a constitutional right. Any board may waive the two
0103 year requirement for any administrator employed by it who,
0104 prior to such employment, was an administrator who had com-
0105 pleted not less than two consecutive years of employment in any
0106 school district, or area vocational-technical school, or for any
0107 interlocal cooperative in this state.

0108 Sec. 5. K.S.A. 1983 Supp. 72-5451, 72-5452, 72-5453 and
0109 72-5455 are hereby repealed.

0110 Sec. 6. This act shall take effect and be in force from and
0111 after its publication in the statute book.

WICHITA PUBLIC SCHOOLS
UNIFIED SCHOOL DISTRICT No. 259
WICHITA, KANSAS

BOARD OF EDUCATION
LEGISLATIVE PROPOSALS
FOR
1985 LEGISLATIVE SESSION

DECEMBER 4, 1984

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Wichita Public Schools U.S.D. 259
Administration Building
428 South Broadway
WICHITA, KANSAS 67202

Office of the Superintendent

October, 1983

LONG-RANGE GOALS

The Wichita Board of Education has identified the following priorities for the district and its administrative leadership during the next five years:

- I. **Curriculum and Instruction.** The new administration shall develop a plan for continuing to keep curriculum and instruction responsive to the changing demands of the community and the school environment. The plan should also address such issues as pupil motivation, discipline, rules, and regulations.
- II. **Teacher Evaluation, Development, and Incentives.** The new administration shall, after a reasonable time period, present evidence to the Board that the administration is responsive to the issues of teacher competence, improvement of instruction through staff development, and recognition of career paths and incentives for superior performance.
- III. **Financial Considerations.** The new administration shall continue the work of the current administration in working with the community, government, and business leaders to secure added financial support for many school needs.
- IV. **Planning and Administration.** The new administration shall continue working to improve supervision of teachers and other employees and to recruit and train employees reflective of the community as a whole. Further, the administration shall exercise leadership in promoting improved building level administration and pupil performance.

DISTRICT GOALS FOR 1984-85

The following district goals were derived from fifty-one goal statements initiated at the building level and from department heads. Subsequently, the goals were discussed in the Cabinet Seminar and the selected goals appear in priority order.

- I. **Maximize individual achievement for all pupils in basic academics, citizenship, personal adjustment, and work skills.**

This includes public school pupils participating in a variety of programs such as regular, special, and vocational education.

- II. **Implement school improvement plans at each building on a continuing basis.**

Activities and evaluation will include the following categories identified in effective school research:

1. Enhancing school climate
2. Stimulating pupil academic achievement
3. Implementing curriculum content

4. Improving basic skills
5. Encouraging parent and community involvement
6. Developing administrative leadership
7. Promoting instructional excellence

III. Evaluate the curriculum with specific reference to added graduation requirements.

This will include expanded program options for learners with special needs and the ability to meet new State Department graduation requirements and new local requirements that meet or may exceed those of the state.

IV. Utilize appropriate technological advances to support the instructional programs, provide sufficient services, and enhance computer literacy.

These technological advances include microcomputers, main frame terminals, word processors, phototype setting equipment, cablevision, and other technological advances to improve instruction, accountability, and the K-12 computer literacy plan.

V. Increase involvement of the adult citizenry and business community in the educational process and expand various coalitions to support the Wichita Public Schools.

Parents and public school children and other adults along with community agencies will be involved in building an effective school coalition. Participation is solicited for group activities and for instructional help at each school.

VI. Reemphasize affirmative action and integration commitments and provide appropriate multicultural activities for pupils and employees.

Continuous recognition of a pluralistic society and the diversity of the Wichita community will be emphasized. Further, it means attention to employment practices and the selection of appropriate materials for instruction.

VII. Implement the districtwide plan for staff development.

The plan includes participation by the staff to meet individual and group needs. Emphasis will be placed on improving employee morale and performance. It further includes improving communications throughout all levels of the district and among various groups of employees.

VIII. Emphasize the importance of prekindergarten for all pupils including those in need of special programs.

Local, state, and federal resources will be sought to expand pre-kindergarten classes to support cost effective instruction.

IX. Continue to review and implement the long-range plan for building utilization, maintenance, facility improvement, and school consolidation.

A broad base of community support will be necessary and the plan must be educationally sound and economically efficient.

INTRODUCTION

The Board of Education is elected to promote and support the highest quality of education possible for the pupils and patrons of U.S.D. 259. In fulfilling this statutory function, the Board is mindful of the need to emphasize continued improvement in the areas of Basic Skills, Compensatory Education, Special Education, and Vocational and Continuing Education. The Board is committed to recruit, employ, and retain well qualified personnel at all levels and to demand high productivity. The Wichita School District employs more than 5,000 classified and certificated personnel and is cognizant of morale factors, of job satisfaction, and adequate pay. These employees are taxpayers, consumers of goods and services, and contribute to the economic base of the city of Wichita and the state of Kansas.

It is further important that the Board provide adequate services for pupils from transportation to school lunches and from clean classrooms to warm buildings in winter. There is also a growing need to provide youth with technological skills, computer equipment, and required software. The foregoing conditions require prudent management and adequate financial support and the Board can do no less than seek adequate resources to serve the approximately 44,584 pupils who represent more than eleven percent of all the public school pupils in Kansas. The Board recognizes that local and state educational expenditures represent an INVESTMENT in youth for the state of Kansas. The Board has approved the following proposals with best interest of pupils as its highest concern.

The Board's Legislative Proposals are not in priority order, but are grouped into broad areas of pupil services, personnel issues, and budgetary concerns.

FUND EXCESS COSTS FOR SPECIAL EDUCATION

Rationale: It is important to support regular, handicapped, language different, and gifted pupils. Equality of opportunity requires different programs for various abilities and interests and special services to help children reach their fullest potential. Local districts should be fully funded for excess costs to implement the mandate for special education. It is important to recognize that any downward proration of funding would require greater general fund transfers. With fewer children being diagnosed and assigned under the state and federal mandate, increases should not be as great. However, all costs related to transportation, utilities, medical services, and educational services will increase similarly to the wider community. State funding for special education must be in accord with these economic factors.

SPECIAL EDUCATION FUND

Year	Special Ed. Beginning Enrollment*	Special Ed. Enrollment % of Total	Special Ed. Budget	General Fund Transfer to Special Ed. Budget	General Fund Transfer to Special Ed. Per Pupil	Categorical Aid per Unit	Appeal to State Board of Tax Appeal	Levy for Special Ed.
1973-74	1,566	3.1%	\$ 2,718,000	\$1,324,000	\$ 845.47	-----	-----	1,296
1974-75	1,629	3.4%	3,505,500	1,376,000	844.69	\$3,793.00	-----	1,482
1975-76	1,528	3.2%	4,949,800	2,095,000	1,371.07	4,000.00	-----	1,500
1976-77	2,270	4.9%	6,990,300	3,255,200	1,434.01	4,000.00	\$1,013,500	1,490
1977-78	2,815	6.3%	9,012,700	4,194,200	1,489.95	4,500.00	581,100	1,483
1978-79	3,288	7.1%	10,499,500	5,593,200	1,701.09	4,815.00	-----	**
1979-80	3,479	7.6%	11,361,600	5,593,200	1,607.70	6,500.00	-----	**
1980-81	3,645	8.1%	13,640,000	6,260,400	1,717.53	7,060.00	-----	**
1981-82	4,040	8.9%	14,555,900	6,573,500	1,627.10	8,060.00	-----	**
1982-83	3,971	8.8%	15,696,900	6,573,500	1,655.38	9,979.00	-----	**
1983-84	3,803	8.5%	16,389,700	6,573,500	1,728.50	10,339.00	-----	**
1984-85	3,825	8.6%	17,943,400	6,690,600	1,749.18	11,434.00	-----	**

*These figures represent September 15 enrollment data. They do not include over 1,500 regular pupils who each year receive speech and language services.

**The one and one-half mill levy was eliminated by the legislature and included in General Fund.

COMPARISON OF SPECIAL EDUCATION
TUITION AMOUNTS 1980-81 to 1984-85

<u>Program</u>	<u>1980-81 Amount</u>	<u>1981-82 Amount</u>	<u>1982-83 Amount</u>	<u>1983-84 Amount</u>	<u>1984-85 Amount</u>
Autistic	\$ 9,863	\$11,400	\$12,412	\$10,650	\$10,577
DDK	8,466	8,457	10,491	6,406	7,734
EMH	4,377	4,875	5,182	5,482	5,723
Gifted	3,021	2,966	3,085	2,991	3,158
HI	6,277	6,498	6,493	6,725	8,577
LD	3,777	3,896	4,110	4,094	4,441
MH & PI	5,515	5,659	6,125	6,086	5,052
PSA	5,517	5,590	5,799	6,176	6,728
SMH	9,663	12,469	13,780	19,107	19,371
TMH	6,087	6,471	7,056	7,741	7,697
VI	8,040	6,138	7,080	6,767	6,799

SUPPORT LEGISLATIVE FUNDING FOR PREKINDERGARTEN PROGRAMS

Rationale: Many districts recognize the need for prekindergarten programs as a cost effective means of reducing the demand for special education, lessening costly remedial programs, and reducing pupil failures. Early Childhood Education is one of the most highly researched topics and the values are clearly evident. Research studies show long term benefits. One of the most recent studies "*Preschools: It Still Makes a Difference*" indicated long term benefits. Evidence continues to mount supporting the positive effects of preschool programs on economically deprived children. The latest comes from the longitudinal 'Ypsilanti Study,' which began almost twenty years ago and was the inspiration for the federally funded Head Start programs that began in 1964. The study was conducted and published by High/Scope Press and focused on the economic benefits of the program versus the costs. According to a report prepared by David P. Weikart for a recent conference for southern legislators, "there was at least a \$4,130 payoff after inflation for every \$1,000 invested in the preschool program in Ypsilanti." American Educator, Winter 1983

It is proposed that prekindergarten programs be financially supported by the state equivalent to the support for kindergarten and that these local programs be voluntary for districts and pupils. Financing pre-kindergarten programs should be from new sources and not diminish other funds.

PROVIDE FOR FULL FUNDING FOR PUPILS WHO ARE WARDS OF THE STATE

Rationale: Acting through one or more of its agencies, the state of Kansas is the lawful custodian for a large number of minors. Some of the agencies involved are:

- juvenile (regional) youth centers
- group youth homes
- SRS
- drug and alcohol treatment centers
- youth residential facilities

As youth move, out of, or between these agencies, the public schools are impacted. A large proportion of these youth are special education pupils with guaranteed educational rights. Nearly all of them are high risk youth who require "special handling" and additional support services in order to make educational progress.

In districts where substantial numbers of these youth are served, the impact to provide services is substantial. Further, the mobility of this group frequently makes the September 15 official enrollment date of little import.

AMEND PROFESSIONAL NEGOTIATIONS ACT TO PERMIT MORE
BUILDING LEVEL PROGRAM FLEXIBILITY AND INSTRUCTIONAL
OPPORTUNITIES FOR PUPILS

Amend IV. Professional Negotiations, by adding a new subsection
11 of Section A, page 5, to read as follows:

"11. So that it specifically excludes, the number of teaching
periods, the starting and ending times of the school day, and the
starting and ending dates for the school year from the list of
mandatorily negotiable items."

Rationale: It is important to consider extensions of the school day,
the school year, and new patterns of organizing schools such as
Individually Guided Instruction and Middle Schools. With added
graduation requirements mandated by the state, it is necessary to
expand opportunities for exploratory courses and to meet added requirements
in basic skills. These changes and reforms should not be thwarted
by labor disputes.

AMEND PROFESSIONAL NEGOTIATIONS ACT TO PERMIT BOARDS OF
EDUCATION AUTHORITY IN AREAS NOT COVERED BY CURRENT
CONTRACT

Amend IV. Professional Negotiations, by adding a new subsection
12 of Section A, page 5, to read as follows:

12. II. "So that KSA. 72-5423 specifically states that all
terms and conditions not covered by an existing
negotiated agreement shall be subject to the control
of the board of education until the commencement of
negotiations for a successor to the existing contract."

Rationale: This amendment would allow boards of education to make
necessary decisions in areas not specifically covered by an agreement.
Presently, the board's hands are tied even if neither side has ever
requested to negotiate on some issues.

PROVIDE ADDITIONAL FUNDING FOR STATEWIDE VOLUNTARY INSERVICE PROGRAM

Rationale: It is appropriate for the state to initiate and encourage a statewide voluntary plan for inservice. The state should also recognize the obligation to appropriate adequate funds. U.S.D. -259 having recognized the importance and value of inservice has increased its budget markedly for the staff development office. The inservice plan is intended to help good teachers to become even better and also to provide additional skills for those desiring and requiring improvement. New technology, improved instructional techniques, and new knowledge should be available to teachers similar to other professions. Districts that have already made progress and expanded their inservice should not be penalized from receiving additional funds.

CHANGE OFFICIAL ENROLLMENT DATE

Rationale: The starting of school later in the fall causes severe problems in large districts. It takes more time to complete the official enrollments and to verify enrollments in a large district. Surveys indicate that enrollment is not complete until at least twelve days after labor day. Therefore, it is proposed that the official enrollment date be changed from September 15 to the third Wednesday after labor day beginning in September 1985.

REQUEST IMMUNITY FROM LIABILITY FOR PROVIDING SPECIAL HEALTH SERVICES

Rationale: Protection is needed for all B.O.E. employees involved in providing prescribed special health care services to pupils served in regular and special education programs. Therefore, it is requested that school employees have immunity from liability or if immunity is not possible, request B.O.E. employees be included under the protection of the Kansas Tort Claims Act.

IMPROVE RETIREMENT BENEFITS FOR PERSONNEL

Rationale: Improvement in KPERS benefits should include increasing contributions from individuals from the current four percent contribution to six percent to insure a higher retirement benefit. The state has decreased its percentage of contribution during the previous 5 years from 7.5%, 6.5%, 5.3%, 4.7%, to 4.5%. Since the median contribution during the above period was 5.7%, it would not be unreasonable to request at least a 5.5% level funding by the state regardless of the amount of investment income received.

KPERS has made some excellent improvements in the last few years, both for those retired and for those yet to retire including lessening of the penalty for early retirement. Professional organizations and Wichita district employees are in strong support of retirement being permissible at an earlier age with a reduced penalty. Any plan or procedure should be actuarially sound to preserve the fiscal integrity of KPERS. Stress factors in education suggest that in some instances voluntary retirement at an earlier age would be beneficial to both children and professionals. Therefore, it is proposed that voluntary retirement be permissible with reduced penalty.

<u>Current Law</u>	<u>Proposed Change</u>
Age 65 - 100%	Age 65 - 100%
64 - 96.4%	
63 - 92.8%	60 - 85%
62 - 89.2%	
61 - 85.6%	
60 - 82.0%	55 - 70%

PROVIDE STATE SUPPORT OF FIFTY PERCENT

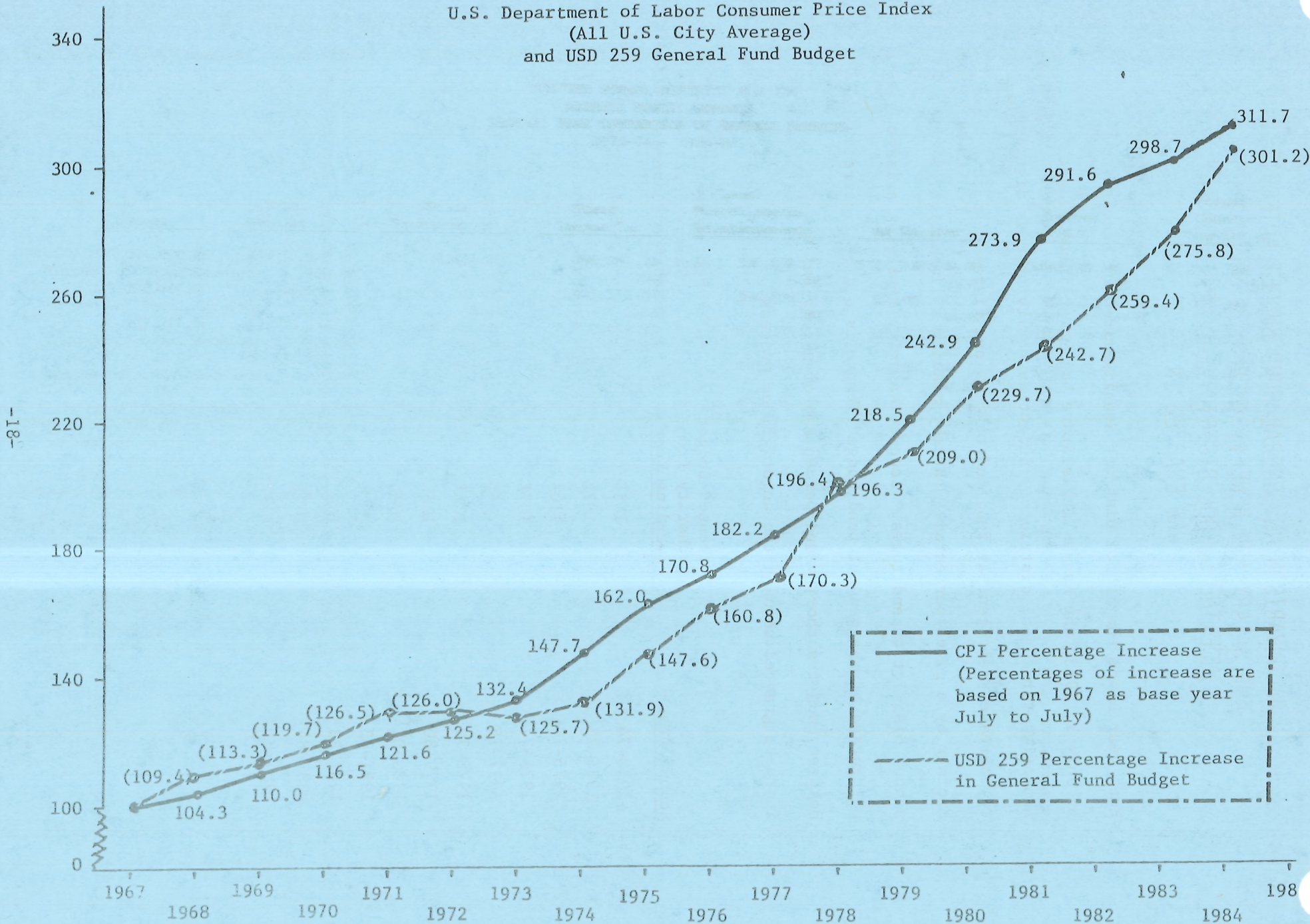
Rationale: Kansas legislators are requested to continue their commitment to move from 45.9 percent statewide financial support toward the previously agreed goal of fifty percent. The role of the state should be a shared one in the financing of public education. That share must reflect the declining participation of the federal government and the limited ability of the local district to meet state mandates and regulations. Therefore the state participation should move toward a statewide average of 48% in 1985-1986 and 50% in 1986-1987. This percentage will permit continued local control and require the state to increase its allocation due to mandates, inflation, and other factors that increase budget per pupil costs. Another equally important role is to equalize educational opportunity in order to guarantee adequate educational opportunity for pupils regardless of the wealth of the school district in which they reside.

A COMPARISON OF GENERAL FUND BUDGET AUTHORITY
AND SALARY AND BENEFIT INCREASES FOR USD 259
SINCE THE SCHOOL DISTRICT EQUALIZATION ACT
WAS ENACTED IN 1973

Each year since the School District Equalization Act became law on July 1, 1983, the Kansas legislature has established budget authority for school districts. Budget authority permits districts to increase their general fund budget from one fiscal year to another by a given percentage, thereby placing a limitation on school district expenditures. Because salaries represent a large percentage of the general fund budget, there is a direct correlation between budget authority and percentage of salary and benefit increase granted through the negotiations process.

<u>School Year</u>	<u>Increased Budget Authority from Preceding Year</u>	<u>Percentage of Salary and Benefit Increase</u>
1973-74	105%	5.50%
1974-75	107%	7.00%
1975-76	110%	12.20%
1976-77	107%	7.20%
1977-78	105%	5.50%
1978-79	106%	6.01%
1979-80	106%	8.80%
1980-81	109%	12.00%
1981-82	105%	9.00%
1982-83	106.25%	8.25%
1983-84	105%	5.0%
1984-85	109.27%	11.2%

A COMPARISON OF YEARLY PERCENTAGE INCREASES
 U.S. Department of Labor Consumer Price Index
 (All U.S. City Average)
 and USD 259 General Fund Budget



MAINTAIN BUDGET AUTHORITY UNDER CURRENT LAW

Rationale: Employee salaries and benefits represent the major part of the school district budget, and increases in employee salary and benefit packages are tied closely to increases in budget authority. It is imperative that the limitations placed on increased budget authority by the legislature realistically reflect existing and projected inflationary rates. Medical costs, utilities, and many required maintenance services are continuing to increase at an accelerated rate. Budget authority should be provided that is consistent with inflationary and cost of living factors. Budget controls should be continued to prevent educational opportunity from being disequalized with the wealthier school districts having an advantage because of their ability to tax themselves a greater amount with less effort. The poorer districts would be at a distinct disadvantage because increased tax rates would raise fewer dollars than in wealthy districts. It is believed that 105%-110% would be the appropriate Budget authority.

UNIFIED SCHOOL DISTRICT NO. 259
WICHITA PUBLIC SCHOOLS
GENERAL FUND COMPARISON OF REVENUE SOURCES
1973-74 - 1984-85

	Budget	Total Receipts	State Equalization	State Income Tax	Local Miscellaneous Reimbursements	Ad Valorem	Federal (874)	Sedgwick Country Foundation
1973-74	\$47,274,200.00	\$46,956,145.39	\$21,319,674.00	\$ 298,094.20	\$ 320,874.17	\$ 21,536,034.65	\$668,384.00	\$2,813,084.37
	Percent of Total Receipts	100.00%	45.40%	.64%	.68%	45.87%	1.42%	5.99%
1974-75	49,593,600.00	49,448,156.85	22,823,619.00	1,945,573.37	394,538.59	22,193,602.34	782,421.00	1,308,402.55
	Percent of Total Receipts	100.00%	46.16%	3.93%	.80%	44.88%	1.58%	2.65%
1975-76	55,503,100.00	54,825,855.22	25,380,590.00	3,733,079.20	515,379.31	23,153,775.03	742,779.87	1,300,251.81
	Percent of Total Receipts	100.00%	46.29%	6.81%	.94%	42.23%	1.36%	2.37%
1976-77	60,442,200.00	59,231,791.08	26,542,584.00	6,229,705.16	440,084.49	24,100,736.02	648,478.65	1,270,202.76
	Percent of Total Receipts	100.00%	44.81%	10.52%	.75%	40.69%	1.09%	2.14%
1977-78	64,045,000.00	61,441,406.01	25,739,367.00	5,997,186.11	465,143.99	27,415,815.47	583,841.99	1,240,051.75
	Percent of Total Receipts	100.00%	41.89%	9.76%	.76%	44.62%	.95%	2.02%
1978-79	73,850,300.00	72,245,469.60	24,985,282.00	6,655,093.36	672,551.80	38,963,878.18	486,251.93	482,412.33
	Percent of Total Receipts	100.00%	34.58%	9.21%	.93%	53.94%	.67%	.67%
1979-80	78,558,300.00	76,807,163.94	28,638,807.00	8,731,091.63	645,016.30	38,244,960.31	547,288.70	0%
	Percent of Total Receipts	100.00%	37.20%	11.37%	.84%	49.79%	.71%	0%
1980-81	86,375,000.00	79,238,257.11	29,988,579.00	10,178,472.45	784,080.47	37,833,795.33	453,329.86	0%
	Percent of Total Receipts	100.00%	37.85%	12.85%	.98%	47.75%	.57%	0%
1981-82	91,261,500.00	93,448,183.75	28,656,942.00	13,513,451.86	708,201.49	50,333,98.58	235,600.82	0%
	Percent of Total Receipts	100.00%	30.67%	14.46%	.76%	53.86%	.25%	0%
1982-83	97,992,300.00	95,224,237.61	30,167,573.00	12,575,917.13	666,876.45	51,727,262.02	86,609.01	0%
	Percent of Total Receipts	100.00%	31.68%	13.21%	.70%	54.32%	.09%	0%
1983-84	103,687,100.00	99,290,955.65	26,188,774.00	14,880,667.53	637,775.96	57,501,091.14	2,647.02	0%
	Percent of Total Receipts	100.00%	26.38%	14.99%	.64%	57.91%	.08%	0%
1984-85	113,222,400.00	105,816,473.37	24,658,789.76	17,464,207.32	811,346.00	62,815,130.29	67,000.00	0%
	Percent of Total Receipts	100.00%	23.30%	16.50%	.77%	59.37%	.06%	0%
	(estimated)							

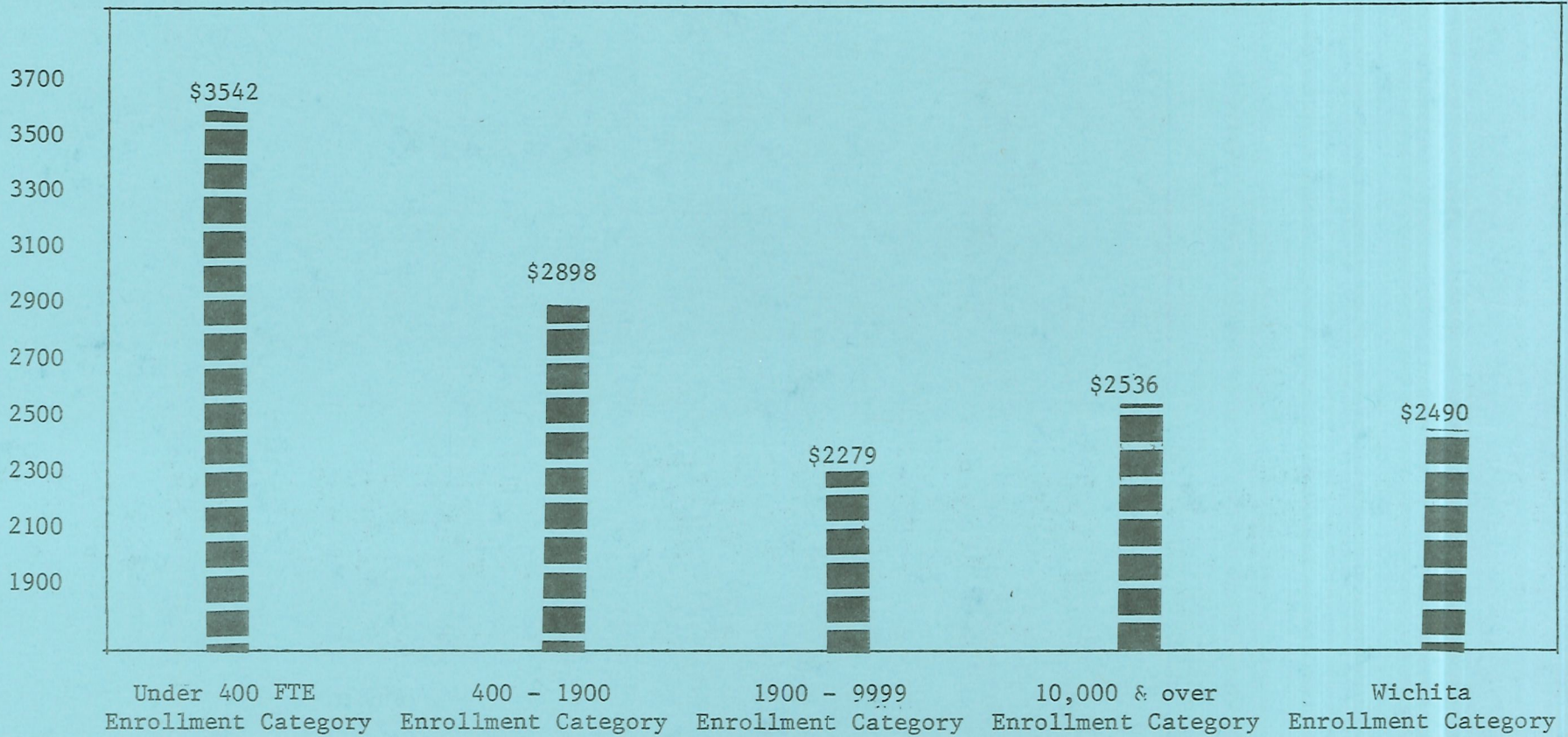
- (1) Beginning in 1978-1979, the General Fund Budget includes the levies for Social Security, Special Education (1 ½ Mill), and Vocation (2 Mill), which were not previously included in the General Fund.
- (2) Includes revenue for Motor Vehicle Property Tax and Dealers Vehicle Stamp Tax
- (3) Includes \$400,000.00 of interest income from Capital Outlay investments.

1983 - 1984

MEDIAN BUDGETS PER PUPIL

DISTRICT ENROLLMENT CATEGORIES

Dollars
Budgeted
Per Pupul



INCREASE IN CREDIT HOUR STATE AID

Since 1978-79, credit hour state aid as a percentage of operational revenues for the nineteen Kansas community colleges has decreased from 31.66 to 25.78 percent. To offset this percentage decrease in credit hour state aid, the community colleges have been forced to raise local mill levies an average of 77 percent in six years. In fact, seven of the colleges have had to increase their mill levies between 102 and 153 percent in this period.

In this period of decreasing operational support for community colleges, full-time-equivalency enrollment has increased by more than 20 percent. In the same period, there has been increased operational support for the unified school districts and the state universities in spite of their declining enrollments.

The Kansas Association of Community Colleges believes the local taxpayers have shouldered a disproportionate share of operational expenses at the state's public community colleges. The colleges are requesting for 1985-86 the same proportion of operational revenues received in 1978-79. The cost to the state to provide this requested percentage of operational support is approximately \$4 million.

ELIMINATION OF THE OVER-64/72-HOUR RESTRICTION ON OUT-DISTRICT TUITION

Kansas community colleges receive neither out-district tuition from the counties nor state out-district aid for students who have earned more than 64/72 credit hours. Kansas is the only state with such a limiting provision applying to its community college system. The restriction does not apply to credit hour state aid.

The characteristics of students enrolling in community colleges have changed significantly since this limiting provision was introduced in 1965. Many of today's students are adults returning to college to retrain or retool for new jobs and careers. Without

county out-district support for these students, a local community college district must make up the differences in instructional costs. Fairness dictates that a student's county of residence should bear the same cost it does for fewer than 64/72 hours. The estimated fiscal note to the state is \$456,000.

PERMISSIVE LEGISLATION TO ALLOW A CAPITAL-OUTLAY LEVY OF TWO MILLS

Current statutes authorize a community college board of trustees to levy a capital-outlay tax of one mill for a period not exceeding five years. The levy is subject to protest petition. Most community college facilities are now aging to the point where more maintenance is required. In addition, capital equipment is rapidly increasing in cost. A one-mill levy in many cases is not sufficient to keep up with deteriorating facilities and increasing prices for equipment. The requested permissive legislation would be subject to the same protest petition requirements now in force. There is no fiscal note to the state attached to this legislation.

ECONOMIC DEVELOPMENT FUNDING

The Kansas community colleges are a multimillion dollar business, and their economic impact can be even greater than it is. States like North Carolina and South Carolina are utilizing their community colleges to serve industries and contribute to economic growth. The Kansas community colleges are eager to accept the challenge to do the same thing here and are requesting \$150,000 for the State Department of Education to be used to assist the colleges initiate economic development efforts.

The majority of workers of the year 2000 are already in the workforce. Retraining of the existing workforce is a national priority and should become a top priority for Kansas. Better than any other educational unit, community colleges can provide the education and retraining needs of today's and tomorrow's workforce.

It has been suggested by the Secretary of Commerce that our failing competitive advantages in foreign markets may derive in large measure from our underinvestment in human resources. The Kansas community colleges are requesting a modest investment of \$150,000 in human resources in Kansas to enable them to begin turning good workers into better workers for industry in Kansas.

KANSAS COMMUNITY COLLEGES ACADEMIC ADVANCEMENT FUND

As state resources to support higher education become less readily available, the private sector becomes an important source to which the community colleges can turn for assistance. The Kansas Community College Academic Advancement Fund, to be administered by the State Department of Education, would be continuously appropriated and used to provide academic advancement awards in the form of a 60-40 match of funds received by community colleges or their auxiliary foundations from private sources.

To be eligible for the matching funds a college would have to raise a minimum of \$10,000 in private contributions which are in excess of the average annual unrestricted cash contributions received by the college in the three previous fiscal years. No funds could be pledged for matching more than once.

The purpose for which the matching funds from the state may be used are for advancing education at the college by the purchase or rental of scientific, instructional or technical equipment, professional development and training for faculty or other appropriate activities which the college's board determines would advance the quality of education at the college.

The fiscal note to initiate the academic advancement fund would be \$1 million.

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In This Issue

In this issue we provide an abridged transcript from one of the seminars at the 1984 ECS Annual Meeting in August in St. Paul. This seminar addressed "Political Leadership in Defusing Education Crises — the Private School Issue." (Full tapes of all sessions are available from Beverly Schutz, at ECS, for \$7.00.)

This issue also contains three notes on various aspects of the rights of the handicapped in education. Grace Belsches-Simmons and Patricia Lines provide an update on recent litigation on the rights of handicapped students (p. 4); Judy Bray outlines aspects of state law for handicapped students with a 55-jurisdiction table (p. 7); and Van Dougherty contributes a note on a case about a handicapped teacher (p. 12).

Patricia A. Brannan reviews *Allen v. Wright*, a 1984 Supreme Court case dealing with the question of who enforces new rules against race discrimination in private schools (p. 10).

Finally, this issue includes an index to *Footnotes* numbers 13 through 19 (p. 11).

POLITICAL LEADERSHIP IN DEFUSING EDUCATION CRISES — THE PRIVATE SCHOOL ISSUE

The conflict between state governments and newly organized private schools, particularly fundamentalist Christian schools, has generated considerable controversy in some states. Over the past few years, state efforts to regulate these schools reached crisis proportions in Nebraska. The crisis was eventually resolved with a new law, loosening the state's control over these schools. At the ECS annual meeting last August, we asked panelists at one of the seminars to consider what political leaders can do to avoid polarization and conflict over this issue. Panelists included Chuck O'Malley, Governor Robert Kerrey, Robert M. Spire and Senator Anne Lindeman.

Chuck O'Malley, executive assistant to the secretary for private education, U.S. Department of Education: I've been asked to go to Nebraska twice, as an unofficial mediator in that situation, in early and late 1982, and I found it to be a very hot climate, even in October. My hat is off to Governor Kerrey and his task force for stemming that problem. We will be focusing on the state issue, but there is another level of involvement that has received little attention, the federal role. President Reagan had received many letters encouraging him to intervene on behalf of Reverend Sileven, a pastor who was jailed for operating an unapproved school. We strongly discouraged him from doing this, believing that it was an issue best left to state leaders. At the same time, Secretary Bell asked each of the major private and public school organi-

zations to contact their constituencies in Nebraska, asking them to help defuse the situation. At one point, some people believed that our office was responsible for encouraging people to telephone state board members at 2 or 3 a.m. in the morning. We certainly were not behind that, but the federal government can be drawn into these issues, whether it wants to be or not. We thought our role was best as mediator, behind the scenes, and that is what we tried to do.

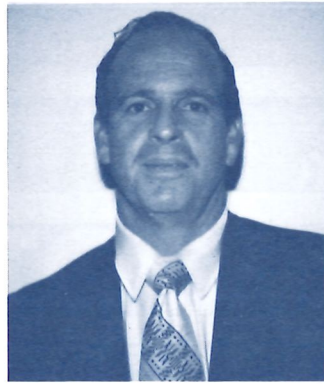
The Honorable Robert Kerrey, governor of Nebraska: As an incoming governor, I had inherited a situation where it seemed impossible for anyone to be rational. Politics dictated maintaining the status quo. Eighty percent of the people in

(continued on page 2)

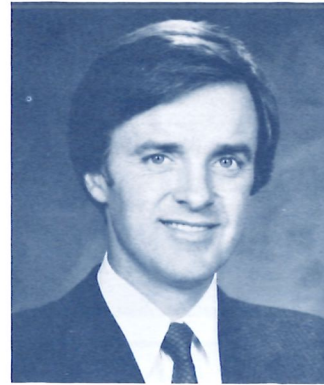




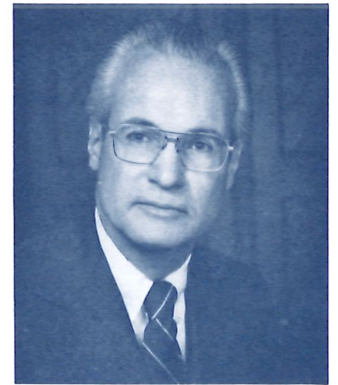
Lindeman



O'Malley



Kerrey



Spire

Nebraska supported the method then current for certifying schools; that is, to require accreditation through the state department and to require use of certified teachers. Most Nebraskans, myself included, took the position that the state had a good law, and that we were making a reasonable attempt to carry out our state constitutional mandate to educate children. There had been attempts to accommodate the few people who, for religious reasons, disagreed with the law, but the legislature rejected these efforts overwhelmingly.

The situation was extreme. At one point a county sheriff was prepared to use incendiary grenades to enforce the law. Fortunately, things didn't go this far, but local officials did use force to close a school, and a church was padlocked for a period of time. That event did not, incidentally, serve to inspire any changes in opinion. Reverend Sileven, the individual operating the school, made some inflammatory statements, including one in which he asked God to intervene and kill the politicians who had placed him in jail. The opposing camps were not offering love and kindness.

As I entered my first session with the legislature, a few senators, generally regarded as conservative or reactionary, wanted a change in the law. I had started the legislative session opposing any change in the law, but it just didn't look right — padlocking a church, and sending parents to jail. It didn't appear to me to be consistent with the goal of providing a maximum amount of individual freedom. Yet, popular sentiment ran strongly against doing anything to accommodate these people.

We found receptive legislators, but many were reluctant to change their public positions. You either lined up with the state of Nebraska or with the other side. Given the constant scrutiny of the press, it was not possible for me to meet with Reverend Sileven or any of the people on the "other side." It would not be seen as neutral. So I asked Bob Spire, a prominent attorney in Omaha, and three other people to take a look at our law, our constitution and to talk to people on both sides. Spire and his committee were able to talk to people, and they recommended a change in the law. I supported their report.

That recommendation was met with resounding disapproval, initially. But in the end we were successful. The legislature passed a law and we have moved forward on the issue. We managed to get two polarized groups of people to agree on it and we have lowered voices over this issue. The law has its problems, especially in implementation, but it has resolved the political issues for the time being.

Robert M. Spire, chairman of the Governor's Committee to Study Private Schools: I must say something that Governor Kerrey is too modest to say. The situation was terribly emotional. People were not listening to each other, but the decibel level was so high that you couldn't hear anyway. It took a courageous act of leadership for a governor to step in and say this situation needed correcting. But that is what he did. Everyone else had stayed away from the issue, considering it too hot to touch. But our governor appointed a study panel. It was a nonpolitical group with no vested interest in the issue.

There were four of us, with no strong political ties. I don't know the religious affiliation of the other members of the panel; I only know that no one was a fundamentalist. There were no professional educators. There was one former teacher, and an expert on constitutional law.

We studied the issue on a crash basis, because the governor had asked for a report in time to do something in the legislative session. We talked to fundamentalists, including Reverend Sileven, home schoolers, the teachers association, the Catholic leaders and Seventh Day Adventists. I think even the fact that we were listening to people helped. We concluded that there was a legitimate first amendment issue at stake. This was a bombshell: No one had said that in Nebraska. We recommended that the state carve out a small exception to give some breathing room to the fundamentalists.

Our recommendations were received with less than enthusiastic approval. Bill Ramsey, a friend of mine and president of the State Board of Education, felt that the recommendations were totally improper. Two days after he saw them, I saw him. His appearance reminded me of a passage in the 1700 diary of Pepys: "I have just come from seeing General Har-

wood hanged. Considering the circumstances he looked quite good.”

The new law follows our recommendations, more or less. It provides for an exemption for schools if all the parents dissent from certification requirements for religious reasons. It requires teachers either to be certified, or to take a standardized test, or to meet criteria to be developed by the state board. The law also requires these schools to provide specific information to the state. Buildings must meet health and safety standards. Although there continue to be substantial differences among our committee members, the State Department of Education, the teachers association and others, there is now real cordiality among the parties. We are talking to each other. In some cases, we are choosing to disagree, but we are talking to each other. We have a law, and neither I nor the other lawyer, a constitutional expert, really understand it. (We thought we might get a Philadelphia lawyer to interpret it for us.) But the important thing is that it does recognize the first amendment issue and makes some provision for it.

The issue seems to be universal. France, for example, is currently engaged in a political battle with the Catholic Church over control of private schools. This is a broader issue, and one needs to understand this and develop tolerance.

The Honorable Anne Lindeman, state senator, Arizona: Arizona is among the most populist states in the country, and this is reflected in the state constitution. People are not wild about government — at any level of any kind, and especially where it affects our children. Therefore, we have absolutely no regulation of private schools. We have for a long time had established Catholic and other private schools, and lately an increase in fundamentalist Protestant schools. We have had no problem with these schools, but a few years ago we experienced a growing home-school movement. We already had experience with the Mormon “kitchen schools.” (We have the second largest Mormon population in the United States, second only to Utah.)

Practicing Mormons do not send their youngest children to school, but rather they send four or five neighboring children to the home of one, where a parent provides instruction, usually in the kitchen. This has gone on for years.

Then, four or five years ago, a number of non-Mormon parents decided they did not want their children in public schools, could not afford a private school and wanted to keep their children at home. They didn’t do this for religious reasons, but for academic and nurturing reasons. The law required approval from local officials, who refused it. Locals were beginning to lose population in their schools, and home schools meant losing still more money. Second, there was a genuine concern that children would not receive an education. There was a fear that children would be kept at home to take care of younger children or to work in the fields, given our large immigrant population.

The first bill I saw would have ended compulsory education requirements altogether. When it got to the senate, we wanted some checks and balances. Admittedly it didn’t get as hot as it did in Nebraska, but I breathed a big sigh of relief when the bill passed. Our fundamentalist population became very paranoid, just because we were looking at compulsory education laws, even though we had no intention of touching their schools.

Our law is now based on the premise that it is the state’s responsibility to provide free public education to those who want it, and to allow those who do not want it to make other choices. Our law allows home instruction if the family registers with the local superintendent, provides the same subject matter that is required of other children and has the child take the same tests taken by other children. We don’t set test limits because we don’t do that for public school children, but we require an evaluation if there is no evidence of progress for a child. If evaluation does not produce evidence of progress, local officials can require the child to attend school. Some of the county superintendents were not pleased with all this responsibility, but we found that there were very few children involved and that they were doing well academically anyway. Local school officials have told me that it is sometimes difficult to place a home-schooled child at his or her age-grade level, because they are too far ahead when they do decide to enroll in public schools. We also believe that most of the children will be back in regular school by the 5th or 6th grade.

My prediction is that the home-school movement will affect all states sometime in the future. It seems to be a growing movement, and there are now several companies producing materials for home-schoolers. It’s a big business, and everyone can expect a number of home-schoolers in their state.

O’Malley: I agree that the home-school movement is growing. I have organized an informal “Koffee Klatch” that meets every few months in Washington. At our last meeting, we discussed the home school movement — we had John Holt, a guru of home instruction; Charles Marston, the private education coordinator for the state of New Hampshire; and Patricia Lines. The meeting drew in a number of very articulate parents who were engaged in home instruction and it was fascinating.

And it is part of the broader issue. Both Governor Kerrey and Senator Lindeman exemplify a desire to achieve fairness in dealing with their constituency. I think the critical element of fairness involves listening — to private school people, including fundamentalists and home-schoolers and others, and to everyone concerned with education.

Audience Discussion

Patricia Lines: From what I knew of the Nebraska situation two and three years ago, I think our panelists may have understated the degree to which this issue had polarized people. I met legislators, for example, who agreed that there

were first amendment issues involved, but would not touch the issue because of the political costs. So, Governor Kerrey, how much did your initiative cost you?

Kerrey: My friends in public education said I had capitulated to the private school movement. I thought this was foolish — you don't ordinarily capitulate to 200 to 300 people, a clear minority. Capitulation is what you do when facing an overpowering enemy. But in the end, the political cost was minimal. We arrived at a position that we could defend. People came to see our intervention as a case of government seeking to protect the rights of a minority. I honestly think the political costs were not very great.

Question: How much aid do your states provide to these private institutions? Isn't the public sector fearful that recognition will be the camel's nose in the tent, and lead to diversion of public funds to a nonpublic system that is not of high quality?

O'Malley: In working with the Florida Catholic Conference in my prior position, I found that financial assistance was not the kind of issue that polarized people. The Nebraska case was different. It focused on a concern that schools would be closed down, along with a lot of misunderstandings. Hopefully, the various efforts to get people to talk together will help.

Lindeman: Arizona does not offer any assistance to private schools. The only aid private schools receive is through federal programs. Further, the fundamentalist schools do not want any government money. They don't want to touch it. The ones that do want it are the older Catholic and other established schools. The regulation and aid issues are separable.

Reverend Gerald Carlson, American Association of Christian Schools: Although our organization does not make policy for our schools, I believe 99% of our schools do not want any public aid. Our schools are concerned that if we take any kind of aid, then we will also be subject to regulation. Our concern is that government does not interfere with our civil rights to operate our schools. We also see this as a broader issue. For example, our selfish interest would be in minimizing the home-school movement, because we might lose students too. But we also realize that the fundamental interest in civil rights includes home-schoolers and we support their cause. ■

In our next issue we will provide excerpts from another seminar: "Comparable Worth, An Emerging Legal Issue." Alice McDonald, chief state school officer from Kentucky, moderated. Panelists included Chris Greigore from the attorney general's office in the state of Washington, who was responsible for defending the state's position there, and Nina Rothchild, commissioner of employee relations for the state of Minnesota.

UPDATE: THE LEGAL RIGHTS OF HANDICAPPED STUDENTS

by Grace Belsches-Simmons and Patricia Lines

Well over four million handicapped children receive special education today, at an average annual cost of around \$5,000 per child — about double the average cost of educating a nonhandicapped child. The high cost of educating these children has, some fear, diminished resources for nonhandicapped children. Federal support has shifted away from assistance to disadvantaged and poor children toward the handicapped, including children of the middle and upper classes. Cost aside, state and federal legislatures today guarantee handicapped children a free appropriate public education. Perhaps in recognition of the high costs, courts seem to be interpreting laws providing education for the handicapped conservatively, leaving as much as seems feasible under the law to the discretion of state and local education officials. This note provides highlights on recent litigation in this area.

Background

The public did not focus on the rights of handicapped students until 1972, when Pennsylvania and the District of Columbia agreed to admit handicapped children to public schools. Consent decrees in *Pennsylvania Association for Retarded Children v. Pennsylvania (PARC)* and *Mills v. Board of Education (Mills)* held that it violated the U.S. Constitution's guarantee of equal protection to exclude these children from school. Although consent decrees (agreed upon by the parties without a trial) are of somewhat uncertain status as judicial precedent, most legal scholars interpret these cases as establishing a federal constitutional right of access for the handicapped.

In 1973, Congress passed the Rehabilitation Act of 1973; section 504 requires equal treatment for the handicapped in all federally funded programs. Two years later, with the Education for All Handicapped Children Act (EACHA, also known as P.L. 94-142), Congress set specific standards and provided funding to states who meet its requirements. All states now participate in the program.

EACHA is more specific than anything preceding it, but nevertheless leaves many unanswered questions about the rights of these children and the responsibilities of the school officials serving them. Almost immediately, disputes over interpretations of the statute found their way into the courts.

The Right to a Free Appropriate Public Education

The right to a "free appropriate public education" is the heart of EACHA. Approximately two-thirds of the state special

three or four hours. In *Irving Independent School District v. Tatro*, the Court held that CIC was a related service and not a medical service. The Court felt school nurses and even properly trained teachers and other nonmedical personnel were competent to perform the service, and must do so since it is essential to the child's attendance at school.

The Court was persuaded by the regulations of the U.S. Department of Education, which defined related services to include services that could be administered by a school nurse or other qualified person, but not those services requiring a physician. Amber's parents, babysitter and teenage brother were all qualified to provide CIC, and Amber would be expected to do it herself as she grew older. The school argued that because a physician must prescribe and supervise the CIC procedure, it was a medical service and excluded from the requirements of EACHA. The Court rejected this view, pointing out that even nonhandicapped children received oral medications and emergency injections from school nurses.

Typically, procedures such as CIC would be handled by the school nurse, but in his or her absence, the Supreme Court decision implies that it does not seem unreasonable to expect one or two teachers at a school to receive training and perform the task. The guide seems to be: Can a lay person do it? And are similar tasks performed for nonhandicapped children?

Additional Services: The Case of an Extended School Year

EACHA does not mention all possible education programs in its definition of special education services or related services. The statute simply requires a program that is designed to meet the unique needs of the child. In *Rowley*, the Supreme Court declined to establish any test for determining the adequacy of services provided to children, but made it clear that those services could be much broader than those provided nonhandicapped children. Some of these services may be major.

EACHA does not explicitly require that schools provide year-round special education services where appropriate, but in some cases, the regular school year (of about 180 days) will fail to meet the educational needs of the child. Although statutes in several states specify that an extended school year must be provided when evidence shows that a summer interruption would cause severe regression, other states refuse to provide free special education services for more than 180 days. These states argue that the law is concerned only with the kind and quality of services provided by the school district, and leaves decisions about the duration of the services to the state. Courts, however, are rejecting such arguments and requiring states to include an extended school year in the IEP, where necessary, to meet the educational needs of the child.

This year in *Crawford v. Pittman*, the U.S. Court of Appeals for the Fifth Circuit struck the state of Mississippi's policy

of refusing to provide for summer school in IEPs. The court held that denying an extended school year to children despite their individual needs was a misreading of the state's obligations under the federal statute. The court noted: "Rigid rules like the 180-day limitation violate not only the Act's procedural command that each child receive individual consideration but also its substantive requirements that each child receive some benefit and that lack of funds not bear more heavily on handicapped children than non-handicapped children." In those cases where the break will cause regression, so that the child (and teacher) have to "start over" every September, the courts seem to be saying that the IEP should provide some summer services for the child.

Exclusive Remedies and Attorney's Fees

In a third Supreme Court case, *Smith v. Robinson*, the U.S. Supreme Court held that if EACHA applies, it is the exclusive avenue for asserting equity claims on behalf of handicapped children. The Court was influenced by the detail and comprehensive nature of the law and the heavy reliance on state and local agencies. Rejecting simultaneous application of section 504 of the Rehabilitation Act and section 1983 of the civil rights laws, the Court noted:

Not only would such a result render superfluous most of the detailed procedural protections outlined in the statute, but, more important, it would run counter to Congress' view that the needs of handicapped children are best accommodated by having the parents and the local education agency work together to formulate an individualized plan for each handicapped child's education.

Since EACHA does not authorize attorneys' fees, plaintiff was unable to recover these expenses. Section 504, the fourteenth amendment and the civil rights laws may still be invoked, but only where EACHA does not apply.

Conclusion

Rowley, *Tatro* and recent appellate court cases make it clear that state and local education agencies will be required to provide a great variety of special education and related services to handicapped children. But they also make it clear that courts will defer to the judgment of professional educators in areas where they have expertise; that is, judgments about education. Courts are most comfortable dealing with questions of admission to the public program. The courts will address questions about school assignment, class assignment and teacher qualifications, and the IEP, but they defer to some extent to educators on all of these decisions. Finally, *Smith v. Robinson* signals a strong preference for allowing parents and state and local officials cooperatively to resolve issues under EACHA, rather than having courts do so under more general constitutional or statutory theories.



education statutes have similar provisions. In the summer of 1982, the U.S. Supreme Court interpreted the term in *Board of Education of Hudson Central School District v. Rowley*. Parents of Amy Rowley, a deaf child, sought an interpreter, so Amy could realize her full potential in school. Failure to do so, they alleged, violated Amy's statutory right to a free appropriate public education. The school did several things to accommodate Amy, but didn't want to pay for an interpreter. William Rehnquist, writing for the majority, held that the statute does not mandate "a potential-maximizing education," leaving local agencies considerable discretion to decide what is "appropriate." The Court recognized the difficulty of allowing the federal government to require more specific corrective measures when it does not take full financial responsibility for those measures.

The Right to an Individualized Education Program

Many state statutes and EACHA require that every handicapped child be given a written Individualized Education Program (IEP). The IEP is prepared at a meeting between a school district representative, the child's teacher, the parent and, in some cases, the child. The IEP is not a contract, but describes the school district's plan for an appropriate education for the handicapped child.

Parents who are dissatisfied with an IEP can ask for a hearing and if they remain dissatisfied, go to court. Since the IEP is the only representation of the school district's efforts, it is often the subject of litigation.

How "individualized" must an IEP be? Generally, the requirement is for individualized attention to the child's program, not for individualized instruction. In New York, in *Karl v. Board of Education*, an educable mentally retarded woman, age 21, challenged the adequacy of her IEP on grounds that it was not sufficiently individualized. She complained that her assignment to a food service class with a student-adult ratio of 12:1 was inadequate and that she should be placed in a situation with a ratio no greater than 9:1. The U.S. Court of Appeals for the Second Circuit ruled against her, refusing to be drawn into judgments best left for the professional educator. The court observed that she received individual tutoring at other times and if educators believed that was enough, it was.

Mainstreaming: When Is It Not "Appropriate"?

"Appropriate" education is an ambiguous term, and at times it may clash with other requirements of EACHA. While the act clearly requires mainstreaming — placement in a regular classroom — wherever possible, such placement may be outweighed by other factors, such as sound evidence of the inability of the child to adjust to the regular school environment or the child's need for extraordinary medical services. Mainstreaming is also preferred in about half the state statutes.

Balancing appropriateness against mainstreaming can be tough. For example, in *Department of Education of Hawaii v. Katherine D.*, the Ninth Circuit reviewed a decision not to mainstream. Katherine wears a tube in her throat to keep her breathing clear, and requires some medical services during the school day. The IEP therefore recommended only homebound speech therapy and parent counseling. Her parents rejected the IEP, requested a hearing and sent Katherine to a private school at their expense. The Ninth Circuit found that the IEP fell short, and noted from the child's experience at private school that she could benefit from placement in a regular classroom. The Ninth Circuit held the school district liable to her parents for her private school tuition. Reimbursement for private school or other money damages is generally considered an extraordinary remedy, but this case seemed clear to the Ninth Circuit.

But mainstreaming is not always appropriate. In Arizona, in *Wilson v. Marana Unified School District No. 6*, school officials decided to transfer a girl with cerebral palsy, after noting that she was making insufficient progress. Her teacher was certified only to teach children with learning disabilities. They chose a district, 30 minutes away, that employed a teacher certified to teach children with *physical* disabilities. While the parents did not dispute the fact that their daughter suffered from a physical and not a learning disability, they objected to the transfer because they did not want her separated from friends or labeled as "handicapped." Interestingly, it was the parents who urged reliance on *Rowley*, arguing that their daughter did not require the best possible education. The Ninth Circuit upheld the transfer, emphasizing the discretionary authority of state officials to decide what is appropriate. The court also observed that the preference for mainstreaming the child did not take priority if a transfer was "appropriate."

Related Services

EACHA requires schools to provide "related services." This includes transportation and "developmental, corrective and other *supportive* services." The act specifies speech pathology, audiology, psychological services, physical and occupational therapy, and counseling services. Limited medical services are included: "Medical services shall be for diagnostic and evaluation purposes only as may be required to assist a handicapped child to benefit from special education, and includes the early identification and assessment of handicapping conditions in children." This definition is not comprehensive and much litigation has taken place over the parameters of the term "related services." For example, what is a medical service (other than diagnostic services) and what is not?

In July of 1984, the U.S. Supreme Court decided a case brought on behalf of Amber Tatro, an 8-year-old girl with spina bifida. To avoid kidney injury, Amber required a procedure known as clean intermittent catheterization (CIC) every

List of Cases

- Anderson v. Thompson, 658 F.2d 1205 (7th Cir. 1981).
- Board of Educ. of Hudson Cent. School Dist. v. Rowley, 102 S. Ct. 3034 (1982).
- Crawford v. Pittmann, 708 F.2d 1028 (5th Cir. 1983).
- Department of Education v. Katherine D., 727 F.2d 809 (9th Cir. 1984).
- DuBois v. Connecticut State Board of Education, 727 F.2d 44 (2d Cir. 1984).
- Irving Ind. School Dist. v. Tatro, 104 S. Ct. 3371 (1984).
- Karl v. Board of Educ., 736 F.2d 873 (2d Cir. 1984).
- Mills v. Board of Educ., 348 F. Supp. 866 (D.D.C. 1972).
- Pennsylvania Ass'n for Retarded Children v. Pennsylvania, 343 F. Supp. 279 (E.D. Pa. 1972).
- Smith v. Robinson, 104 S. Ct. 3457 (1984).
- Wilson v. Marana Unified School Dist. No. 6, 735 F.2d 1178 (9th Cir. 1984).
- Wolf v. Legislature of Utah, Civ. No. 182646 (County Ct., Utah, Jan. 8, 1969).

Related Readings

- Citron, Christiane H. *The Rights of Handicapped Students*. Denver, Colo.: Education Commission of the States, 1982.
- McGuire, C. Kent. *State and Federal Programs for Special Student Populations*. Denver, Colo.: Education Commission of the States, 1982.
- Moore, Mary T., Lisa J. Walker, Richard P. Holland. *Finetuning Special Education Finance: A Guide for State Policymakers*. Washington, D.C.: Education Policy Research Institute of Education Testing Service, July 1982.
- U.S. General Accounting Office. *Disparities Still Exist in Who Gets Special Education*. Washington, D.C.: Report to the Chairman Subcommittee on Select Education and Labor, House of Representatives, 1982.
- Yudof, Mark. "Special Education — The Education For All Handicapped Children Act in the Light of *Board of Education v. Rowley*," *ECS Footnotes*, no. 16, fall 1983 at 1-2. ■

'RELATED SERVICES': A REVIEW OF STATE STATUTES

by Judith L. Bray

All 50 states, as well as American Samoa, the District of Columbia, Guam, Puerto Rico and the Virgin Islands, receive federal funds under the Education for All Handicapped Children Act (EACHA, also known as P.L. 94-142), and thus are required to provide "related services" to handicapped students. The meaning of the term as it is defined in federal law has been debated frequently in court, as noted in the previous article by Belsches-Simmons and Lines. In many states, however, legislatures have chosen to define the term in their own special education statutes. In so doing, they are not relieved of the obligation to meet the minimum requirements of "related services" under EACHA, but a stricter standard specified under state law can be enforced in an EACHA hearing. A recent decision by the U.S. Court of Appeals for the First Circuit held that EACHA gives federal courts authority to enforce both federal law and consistent state law. The case is *Town of Burlington v. Department of Education For the Commonwealth of Massachusetts*, 736 F.2d 773 (1984).

About half of the state special education statutes define services related to education of the handicapped. The following table shows services that are specified under EAHCA, and indicates which state statutes include these particular requirements in their definition of "related services." Some services actually provided may be missing in the statutes but are defined in administrative regulations not reflected in the table. In addition, the table lists only services enumerated as supporting or relating to special education. Provisions for transportation or counseling services, for example, may exist in other state statutes or regulations but do not appear in the table if the state has not included them as "related services" in its special education statutes.

While some of the legislative definitions mirror the requirements of, or borrow language from EACHA, a surprising number identify services that are not mentioned in the federal statute. Among the definitions of related services:

- 2 states include administrative services
- 3 require job placement
- 5 include orientation and mobility training
- 7 consider special teaching a related service
- 10 mandate specialized facilities, materials or equipment
- 6 authorize parent counseling

More unusual provisions for related services include summer school (Alaska), specialized driver training (California) and music therapy (Texas).

The law center has a new secretary — Cheryl Espinoza. She has "learned the ropes" so fast she acts like an old hand already. We are already taking her for granted. But, welcome, Cheryl, and you are terrific!



'RELATED SERVICES': A REVIEW OF STATE STATUTES

(See related article, page 7.)

	Related Services Not Mentioned	Related Services Mentioned But Not Defined	Diagnosis and/or Evaluation	Transportation	Speech Pathology, Development or Therapy	Audiology or Special Services for the Deaf	Psychological Services or Counseling	Physical Therapy or Training	Occupational Therapy or Training	Medical Services for Diagnostic or Evaluation Purposes	Medical Services Needed To Benefit From Education Program
STATE											
ALABAMA			X	X				X	X		
ALASKA				X							
ARIZONA		X									
ARKANSAS		X									
CALIFORNIA					X	X	X	X	X		
COLORADO	X										
CONNECTICUT			X	X	X	X	X	X	X	X	
DELAWARE			X	X	X		X	X	X	X	
FLORIDA			X	X				X	X		
GEORGIA	X										
HAWAII			X	X	X			X	X		
IDAHO					X	X	X				
ILLINOIS	X										
INDIANA		X		X							X
IDWA		X		X							X
KANSAS											
KENTUCKY			X				X	X	X	X	
LOUISIANA			X				X	X	X	X	
MAINE		X	X	X							
MARYLAND				X						X	
MASSACHUSETTS								X			
MICHIGAN	X										
MINNESOTA	X										
MISSISSIPPI	X										
MISSOURI			X	X			X				
MONTANA		X									
NEBRASKA											
NEVADA	X										
NEW HAMPSHIRE				X						X	X
NEW JERSEY	X										
NEW MEXICO	X										
NEW YORK					X	X	X	X	X		

	Related Services Not Mentioned	Related Services Mentioned But Not Defined	Diagnosis and/or Evaluation	Transportation	Speech Pathology, Development or Therapy	Audiology or Special Services for the Deaf	Psychological Services or Counseling	Physical Therapy or Training	Occupational Therapy or Training	Medical Services for Diagnostic or Evaluation Purposes	Medical Services Needed To Benefit From Education Program
NORTH CAROLINA			X	X	X	X	X	X	X	X	
NORTH DAKOTA				X							X
OHIO			X	X	X	X	X	X	X	X	X
OKLAHOMA		X		X							
OREGON		X									
PENNSYLVANIA		X				X					
RHODE ISLAND		X	X	X							
SOUTH CAROLINA				X			X				
SOUTH DAKOTA		X									
TENNESSEE			X	X				X	X		
TEXAS			X	X	X	X	X	X	X		
UTAH		X									
VERMONT	X										
VIRGINIA				X				X	X		X
WASHINGTON	X										
WEST VIRGINIA			X	X							
WISCONSIN	X										
WYOMING		X	X								
AMERICAN SAMOA		X									
DISTRICT OF COLUMBIA	X										
PUERTO RICO		X									
VIRGIN ISLANDS			X	X	X	X	X	X	X	X	
GUAM	X										

Research assistance for this table was provided by Cheryl Espinoza

PARENTS OF PUBLIC SCHOOL CHILDREN CAN'T CHALLENGE FEDERAL TAX EXEMPTIONS TO SEGREGATED PRIVATE ACADEMIES

by Patricia A. Brannan

In the Summer 1983 issue of *Footnotes* (no. 15), we discussed *Bob Jones University v. United States*, where the U.S. Supreme Court held that race discrimination was not charitable and private schools practicing race discrimination were not eligible for tax-exempt status under the U.S. Internal Revenue Code. The following, reproduced from Committee Report, a newsletter of the Lawyers' Committee for Civil Rights Under Law (Washington, D.C.), discusses the question of who can go to court to obtain enforcement of this principle.

Parents of black school children who attend public schools in desegregating school districts cannot challenge the Internal Revenue Service's grant of tax exemptions to racially discriminatory private schools operating in their communities, so ruled the Supreme Court on July 5, 1984. The 5-3 decision on the question of plaintiffs' "standing" came in *Allen v. Wright*, a Lawyers' Committee suite filed in 1976 as a nationwide class action.

In this case, plaintiffs alleged (1) that the IRS procedures for granting tax exemptions to private schools were inadequate to identify all white schools that were created or expanded as havens for white children in the wake of public school desegregation, and (2) that the grant of exemptions fostered racially segregated educational opportunities, thereby interfering with efforts to desegregate racially dual public school systems. Evidence cited in the complaint showed that federal courts in plaintiffs' communities had found certain schools to be racially discriminatory and some to be interfering with public school desegregation.

The Supreme Court made clear last term in *Bob Jones University v. United States* that the federal government may not lawfully grant tax exemptions to discriminatory private schools. The *Wright* plaintiffs sought Internal Revenue Service procedures that would more effectively identify these private schools.

The case was dismissed for lack of standing by the District of Columbia District Court; the Court of Appeals reversed, but the Supreme Court majority disagreed.

The majority perceived plaintiffs' claim of injury to have two aspects. The first is the harm school children allegedly suffer when their government grants financial aid to discriminatory private schools. Such an injury may be viewed as a "stigma" based on the race of the school children. For the Court, this aspect of the alleged injury is no more than a claim that the

government should operate in conformity with the law — it does not confer standing. "Stigmatic injury," the Court explained, affords standing only to those persons directly denied equal treatment by the challenged discriminatory conduct, and plaintiff school children had not applied for admission at the schools alleged to be discriminatory.

The second aspect of the alleged injury could be perceived, the Court said, as a diminution in the equal educational opportunities in the public schools that plaintiffs suffer as a consequence of federal tax exemptions to private schools. On this point, the Court found plaintiffs had not alleged that there "were enough racially discriminatory private schools receiving tax exemptions in [their] communities for withdrawal of those exemptions to make an appreciable difference in public school integration." (This claim was, in fact, a part of plaintiffs' complaint, but the early dismissal of the complaint precluded discovery on this issue, for which there is an abundance of supportive material.) In any event, the Court found speculative the notion that withdrawal of tax exemptions from discriminatory schools would result in the return of white students to the public schools, thus affecting appreciably the amount of additional integration within plaintiffs' schools.

The Court's analysis was heavily underscored with references to the principle of separation of powers and the necessity that the Executive Branch, not the Judicial Branch, take responsibility for faithful execution of the laws. ■

Patricia A. Brannan is an attorney with Hogan & Hartson, the Washington, D.C. firm that represented the parents in *Allen v. Wright*.

A THANK YOU! — AND AN APOLOGY

The Law and Education Center is grateful to readers who filled in the reader questionnaire inserted in our summer issue. We also apologize for any inconvenience caused by our failure to use the correct postal frank. We suspect that many questionnaires were returned or lost due to our error. Based on those that sneaked through, it is clear that our readers have diverse interests. While no single topic obtained anything near a majority "vote" as highest priority, equity was the highest-ranking issue. School finance equity, sex equity and comparable worth all ranked very high. So did issues relating to time in school, merit pay, teacher testing, textbooks and public aid to private education. We will be developing material for *Footnotes* in these areas.

Thank you again, and even when we don't ask, please let us know what topics you would like to see covered in *Footnotes*.

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FITZGERALD V. GREEN VALLEY AREA EDUCATION AGENCY

by Van Dougherty

Section 504 of the Rehabilitation Act of 1973 provides that no otherwise qualified handicapped individual may be discriminated against, solely because of handicap, in programs receiving federal financial assistance. This includes programs with funds received through the Education of the Handicapped Act (EHA). Section 504 of this law protects the handicapped, including teachers and students. A recent case makes it clear that violation can be costly, in terms of lost talent, court costs and damages to be paid to the individual.

Scott Fitzgerald applied for a position as a special education instructor with the Green Valley Area Education Agency (Iowa). Fitzgerald suffered from left side hemiplegia due to cerebral palsy, but he had sufficient use of his left arm, leg and hand to walk without assistance and to lift children. He also had a current Vermont driver's license with no restrictions and was previously licensed to drive in New York where he also had a chauffeur's license. After arranging an interview, Fitzgerald informed a local school official of his condition and was told that he had to be able to drive a school bus, a requirement not previously mentioned. Under state law, in order to obtain a bus driver's permit, a person must have full

and normal use of both hands, arms, legs and feet. On the basis of that law and Fitzgerald's handicapping condition, he was told that he did not qualify for the job. But because the position was in a program assisted by EHA funds, the education agency was obligated to consider ways to accommodate the handicap. Aside from the bus driving requirement, Fitzgerald was clearly qualified and no accommodation was necessary. Although Green Valley could not be held responsible for a state law imposing physical requirements for obtaining a bus driver's permit, the agency could have eliminated the need for him to drive a bus. By failing to consider alternatives, the agency failed to fulfill its obligation under section 504.

A federal district court ordered the school district to pay \$6,150 in damages for mental anguish, loss of earnings and attorney fees. The case is *Fitzgerald v. Green Valley Area Education Agency*, 589 F. Supp. 1130 (S.D. Ia. 1984). ■



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The ECS Law and Education Center was formed to:

- o Promote the practice of preventive law as an essential part of public education policy making
- o Take steps to safeguard the constitutional rights of students and others before litigation becomes necessary
- o Foster a knowledge of and appreciation for constitutional principles among state education leaders
- o Seek ways of reducing litigation and minimizing the role of attorneys and judges in education

We have a wide range of papers on issues such as equity, including the right to be free of discrimination based upon race, sex, handicap or English language ability; competency testing programs; school finance policies; principles governing the treatment of religion and values in the public schools; choice in education; and regulation of home instruction and private schools.

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