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Hager, Charles Thomas

THE LOSS OF IMPACT AID AND IMPLICATIONS FOR AMERICAN PUBLIC SCHOOL SYSTEMS

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THE LOSS OF IMPACT AID AND IMPLICATIONS FOR AMERICAN PUBLIC SCHOOL SYSTEMS

by

Charles Thomas Hager

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ABSTRACTS

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The relationship between the American public educational system and the financing of education has been debated for many years. The proper amount of funding which is necessary for public school systems to operate their schools in such a manner as to meet the needs of the local community is often a central topic for debate. Therefore, the purpose of this historical study was to review and analyze judicial decisions which have influenced policy making in regard to providing funding to public education where there was a demise of federal funds as specifically related to federal Impact Aid.

The data for this study was obtained from court cases and federal commission reports. Additional data was collected from historical reviews of the financing of public education. From this data the following major conclusions were drawn:

1. Although the states have the responsibility for education, federal judiciaries also have had much to say in regard to educational financing at the state level.
2. School systems will be required to find additional methods for funding education within local units.
3. Dramatic approaches will have to be used to find money for education; i.e., more comprehensive plans must be

developed. Rather than looking at fiscal problems through short range goals and incremental planning, school districts need to consider plans with long range goals. In short, a planning framework is absolutely essential.

4. Whatever form creative financing might take, it must be legally correct. If necessary while developing long range goals, funds should be utilized to obtain the best legal counsel. Although initially this may be expensive, it may save enormous amounts of money in the long run by keeping the school system out of court. An added benefit may be positive public relations.

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CHAPTER I

INTRODUCTION

1.Ø Overview

During the decades of the Eighties general concern over the financing of education in the United States has increased. In fact, the "Fifteenth Annual Gallup Poll of the Public's Attitudes Toward Public Schools" indicates the fiscal statues of education has become one of the publics' major concerns with regard to the American educational system.[1] Certainly the financing of education, debated by parents, educators, and politicians, was pushed to the forefront of educational concerns by the March 1973 landmark United States Supreme Court decision in San Antonio Independent School District v. Rodriguez.[2] This decision dealt with the unequal expenditure of funds between different school systems within a state. However, much has occurred in the decade since Rodriguez was handed down. The dramatic changes in the economy of the United States of

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[1]George H. Gallup, "The 15th Annual Gallup Poll of the Publics' Attitude Toward Public Schools," Phi Delta Kappan, September 1983, p. 34.

[2]Thomas J. Flygare, "School Finance a Decade After Rodriguez," Phi Delta Kappan, March 1983, p. 477.

America during this period of time are a perfect example of the difficulties which have plagued the American society. In 1973 citizens were concerned about increasing gasoline prices and not about the overall economic conditions of the states, the nation, and certainly not the world. Now that the decade of the Eighties has arrived, some feel it is possible to find much more interest among the citizenry in regard to the larger economic picture. Shane writes in his book that taped interviews with many people indicate the citizens of the United States have come closer to realizing the importance of the "global community" of which they are members.[3]

To help educational decision-makers to better understand the complicated and involved economic issues which the American education system faces, two objectives must be accomplished; 1) the history of financing of American education must be reviewed, and 2) the Federal Impact Aid program must be studied. Educational leaders must be able to discern the critical areas where financial change and legal action meet. But perhaps even more importantly, educational leaders must be prepared to anticipate effectively and efficiently critical economic issues or risk the consequences to students and the unique system of education which exist in America.

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[3]Harold G. Shane, Curriculum Change Toward the 21st Century (Washington, DC: National Education Association of the United States, 1977), p. 50.

1.1 Status of Financing Education

Most school systems are faced with problems such as teaching basics, teacher burnout, merit pay/differential staffing, and the recession of funds. Another challenge is the uproar over "educational excellence.[4] However, these examples only represent a few of the many perplexities which exist. These and many other problems have created needs/requests for considerable funding or increases in state tax rates.[5] These appeals became even more vociferous, at least through the very early 1980's, when the nation sensed no end to the recession of the Eighties, one of the longest in our country's history.[6]

The response to most of these problems, although not necessarily the most effective answer, has been to request large amounts of funding. The American system of education, which attempts to educate all children for the common good, has in this century looked toward governments, both federal and state, to provide the needed funding.[7] Prior to

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[4]Milton Goldberg and James Harvey, "A Nation at Risk: The Report of the National Commission On Excellence in Education," Phi Delta Kappan, September 1983, p. 14.

[5]E. Kathleen Adams, "The Fiscal Condition of the States," Phi Delta Kappan, May 1982, p. 599.

[6]Allen Odden, "Financing Educational Excellence," Phi Delta Kappan, January 1984, p. 311.

[7]Mike M. Milstein, Impact and Responses: Federal Aid and State Educational Agencies (New York: Teacher College Press, 1976), p. 4.

President Reagan's administration, the states often turned to the federal government for help in solving fiscal problems in public education.[8] However, the new Reagan federalism policy has successfully obstructed and curtailed the utilization of these funds. A quote from President Reagan's speech to the 1981 National Conference of State Legislatures will help place this federalism policy in perspective.

> The designers of the Constitution realized in federalism there is diversity. The Founding Fathers saw the federal system as constructed something like a masonry wall. The states are the bricks, the national government is the mortar. For the structure to stand plum with the Constitution there must be a proper mix of that brick and mortar. Unfortunately, over the years many people have come to believe that Washington is the whole wall.[9]

The present United States Secretary of Education, T. H. Bell, while speaking at the Harvard Graduate School of Education in April 1982 stated his view that, "...education is clearly the most important responsibility of our state governments."[10] Furthermore, he reiterated the federalism belief that state governments should be strengthened in order to help local governments meet and solve local educational problems. Accomplishing the goals of federalism

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[8]Examples of fiscal help that has been provided by the federal government are the Defense Education Act of 1958, the Elementary and Secondary Education Act of 1965, and the Educational Amendments of 1974.

[9]Terrel H. Bell, "The Federal Role in Education," Harvard Educational Review, November 1982, p. 375.

[10]Ibid., p. 376.

will allow for the diversity within the union of states to be preserved.[11] The role of the federal government will be to, "...enhance the capacity of state and localities to make education more productive."[12]

An additional problem becomes apparent when searching through the states current financial status. Unavoidably, there is a chance that disparities in state wealth will grow larger and larger.[13] Those states which are able to export goods such as high-tech materials and natural resources will find themselves progressing ahead of those states which are not wealthy; i.e., states which rely on antiquated heavy industrial production.[14] E. Kathleen Adams, an economist for the Educational Commission of the States, in an article about the fiscal situation of the states has provided four reasons why there will be a decline in the ability of states to finance themselves:

1. There have been significant effects by the states during the period of 1977 to 1980 to reduce tax burdens.

2. Many changes in the federal individual and corporate income tax structure have been put into force.

3. A severe recession began in 1981.

4. There have been major reductions in federal aid to

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[11] Ibid.

[12] Ibid.

[13] Adams, op. cit., p. 598.

[14] Ibid.

states and localities.[15]

Studying the four points which Adams presents, it is possible to see the fourth point would have the most significance for this research focus. However, looking at the myriad of research concerning public school funding, it is possible to find authors who disagree with Adams' fourth point. For example, Odden[16] believes there has been a, "...recent turnabout in attitudes toward the funding of education."[17] Whether or not experts and writers in the field of educational finance agree or disagree, the following quote by Adams is an example of the type of situation which provides budgetary problems for the states.

> Between 1976 and 1979 total federal aid to the states rose by an average of 11.5%. This growth rate dropped to 10.3% from 1979 to 1980 and approximately 3.9% from 1980 to 1981.[18]

Perhaps examining figures of more recent budgetary spending by the federal government would provide a clearer and more precise perspective of this area. Recent data released by the National Education Association (NEA) indicates that the federal government's portion of public school funding has decreased to a twenty-year low of 6.4%.[19] Due to this low figure, states will be receiving

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[15]Ibid.

[16]Odden, op. cit., p. 311.

[17]Ibid.

[18]Adams, op. cit., p. 599.

[19]Editors, "Federal Government's Share of School

less federal aid and, therefore, if they wish not to raise state taxes, will be passing funding reductions on to the local educational units. Certainly education will not be left out of the reduction process since it is one of the most expensive programs in state and/or local budgets.

It has been suggested that state budgetary surpluses be utilized to ease the financial burden. Surplus funds might be available to some states for a short time; however, these funds would be depleted quickly.[20] Data from an annual survey conducted by the National Association of State Budget Officers indicated that the average surplus across the nation had dropped from 9% in 1980 to 3% in 1981. Further, it was expected that the 1982 surplus would only be 1.5%. In fact, from Fiscal Year 1981 to Fiscal Year 1982 the number of states with deficits or a balance of less than 1% had almost doubled, i.e., from sixteen to twenty-nine states.[21]

These disheartening figures do not indicate that education has taken a back seat to other topics. If anything, in this presidential election year of 1984, education has become a cause around which to rally.[22] Every

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Funding Drops," School Week, April 27, 1984, p. 1.

[20]Adams, op. cit., p. 599.

[21]Ibid.

[22]David L. Clark, Terry A. Astuto, and Paula M. Rooney, "The Changing Structure of Federal Education Policy in the 1980's," Phi Delta Kappan, November 1983, p. 190.

side, Democratic or Republican, legislative or executive, liberal or conservative, has utilized education as a significant plank from which a "platform" will be built. Undoubtedly, these political platforms were brought about by a predominant incident: the publication of the National Commission on Excellence in Education report, "A Nation at Risk." In fact, Clark, Astuto, and Rooney state in their article, that the President has obtained an image as a supporter of certain educational improvements. As a result of the President's supportive image the Democratic Party will be unable to functionally utilize educational issues in their political campaign of 1984.[23]

The history of educational financing, with particular emphasis on federal effects, needs to be examined so educators can better understand the fiscal situation of today's American education scene. To accomplish this would provide the historical background necessary to understand educational financing in the same manner Charles Silberman believed in the necessity of the study of the history of education. He believed teachers would make the wisest judgments in regard to curriculum issues when they understood the history and philosophy of education.[24] To that extent, the five stages of the history of federal effects on education, which are presented in Mike Milstein's

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[23]Ibid.

[24]Charles E. Silberman, Crisis in the Classroom (New York: Random House, 1970), p. 491.

book, Impact and Responses: Federal Aid and State Educational Agencies,[25] are most helpful when attempting to place large amounts of information into perspective for this historical study. Although these stages are not all inclusive they do present an outline of the federal influence on educational financing. In addition to Milstein's five stages a sixth stage will be developed. This addition will allow this research focus to include data that has been collected recently.

STAGE ONE. (1600-1860) Interest in the financing of education began in the colonial period before the Constitution of the United States was even inscribed by America's forefathers.[26] To some extent educational financing can be traced back to the Massachusetts Law of 1642 enacted by the General Court of Massachusetts which required parents to provide for the education of their children.[27] Although not specifically speaking to financing education, this law laid the foundation for a later law (1647) known as the "Old Deluder Satan Act".[28] This law required towns to establish schools and provide for the teacher's salary. Of course this was not a nationally established generated regulation since the United Stated had

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[25]Milstein, op. cit., pp. 8-12.

[26]Ellwood P. Cubberley, Public Education in the United States (Boston: Houghton Mifflin, 1934), p. 14.

[27]Ibid.

[28]Ibid.

not been established, but it undoubtedly laid the groundwork for the mandatory requirement of towns maintenance of schools.[29] As the ratification of the Constitution neared, the newly established government became more involved in education. This involvement can be seen in a concept which was proposed by Colonel Henry Dickering in 1773.[30] Although Dickering's plan, one which would provide funds from the sale of lands in Ohio for public service such as education, did not pass it was a stepping stone to the Survey Ordinance of 1785 under the Articles of Confederation.[31] This particular ordinance provided for one section of land in every township to be set aside for the purpose of education. This detail, for which credit is often given to the Northwest Ordinance Act, was written into the Northwest Ordinance of 1787 almost two years later.[32] The ordinance proclaimed, "Religion, morality and knowledge, being necessary to good government and the happiness of mankind, schools and the means of education shall be forever encouraged."[33]

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[29]Ibid.

[30]Walter I. Grams, James W. Gutherie, and Lawrence C. Pierce, School Finance: The Economics and Policies of Public Education, (Englewood Cliffs: Prentice-Hall, 1978), p. 156.

[31]Ibid.

[32]The territory that this ordinance included currently consists of all or part of Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin.

The Congress of the United States of America adopted the policy of the Congress of the Confederation which called for setting aside the sixteenth section of land in the new territories for educational purposes. Ohio was the first state admitted to the Union under this requirement (1802). The Congress continued to utilize this policy until the Oregon Territory was established in 1848. At this time a change in policy required two sections of land, the sixteenth and thirty-sixth, be set aside for education. This principle continued in use until 1896 when Utah was admitted and four sections, the second, sixteenth, thirty-second, and the thirty-sixth, of land were set aside.[34] Shamefully, Fletcher Swift found in studying land grants that these lands were often mishandled.[35] Within the thirty states which had contributed property, over 80 million acres of land were set aside for education. However, the permanent school endowment funds only gained a small portion of the amount which they should have received. But the fact this law was enacted and even updated, to include four sections of land rather than the original one section, is a tribute to the government which desired to ensure that the children of America were educated. If the period of history in which the ordinance was first enacted is considered, the

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[33]Milstein, op. cit., p. 8.

[34]Roe L. Johns and Edgar L. Morphet, The Economics and Financing of Education (Englewood Cliffs: Prentice-Hall, 1969), p. 418.

[35]Ibid.

desire is seen in an even more dramatic light, for the average citizen of this era felt education was best left to parents and hard work.

STAGE TWO. (1860-1900) This stage began during the period of the American Civil War, with the passage of the first Morrill Act which was signed into law by President Abraham Lincoln in 1862. The purpose of this act was to develop land grant colleges throughout the country. In fact, this act was the first of its kind to authorize federal support for specific aspects of public education. According to the Act, the grants of land were to be utilized for the following purposes:

> ...endowment, support, and maintenance of at least one college where the leading objective shall be, without excluding other scientific and classical studies, and including military tactics, to teach such branches of learning as are related to agriculture and the mechanic arts...[36]

Many well known schools were established through this act, e.g., Cornell University, Massachusetts Institute of Technology, and North Carolina State University.

Federal activity was very successful during this period; however, it was not the only activity. In fact, following the Civil War and the collapse of the South, the federal government tried on several occasions, with the introduction of the Hoar and Blair Bills, to institute federal school systems in the Southern States. Due to the

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[36]Ibid.

lack of widespread support, neither of these bills passed the United States Congress. Although these activities were not successful, it appears that the federal government had some desire to influence public education.

STAGE THREE. (1900-1930) The next stage was, "inspired by the decreasing flow of skilled craftsmen immigrating to this country and by the United States involvement in World War I."[37] Among many other acts which were passed, this stage brought with it federal legislation that, "stands as the longest continuous federal grant to states for educational purposes."[38] This act, known as the Smith-Hughes Act of 1917, furnished funding under conditions where federal-state matching funds were provided for vocational education. Milstein indicates this act supplied three new "dimensions" to federal help for our educational system. These dimensions being as follows:

> 1. It was the first categorical grant. That is, it was the first grant made to attain specified outcomes. (The Morrill Act encouraged certain curricular offerings, but did not limit land grant institutions to these pursuits.)
>
> 2. It was the first grant to be administered by the SEAs. In fact, until the late 1950s the Smith-Hughes Act and subsequent vocational appropriations measures that modified it through the next 40 years, was the only experience SEAs had regarding federal grant administration.
>
> 3. It was the first grant for which the states had to commit their own funds. Smith-Hughes called for "matching" federal-state financial input. This feature

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[37] Ibid.

[38] Ibid.

remained as a standard federal procedure until quite recently.[39]

Although other minor bills passed the United States Congress during this juncture, the Smith-Leaver Act, another vocational bill, and the Smith-Hughes Act were the last major attempts by the federal government to make provisions for direct funding to state educational institutions until the beginning of World War II.[40]

STAGE FOUR. (1930-1945) This stage of federal fiscal activity provides much funding but no direct aid to the schools. The fourth stage was a direct response to the depression and the dreadful economic conditions in which the American public found itself. Some of the programs which contributed funding to objectives which are related directly to these conditions were the Civilian Conservation Corps (1933)[41], the Federal Emergency Relief Administration (1933)[42], the Public Works Administration (1933)[43], the National Youth Administration (1935)[44], and the Federal Surplus Commodities Corporation (1935).[45] However, these

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[39]Ibid.

[40]John D. Pulliam, History of Education (Columbus: Merrill Publishing Co., 1982), p. 105.

[41]Milstein, op. cit., p. 9.

[42]Ibid.

[43]Ibid.

[44]Ibid.

[45]Ibid.

programs, although educationally related, did not provide federal funds directly to the educational systems of the states. In fact, except for the next two programs mentioned below, very little legislative action actually occurred which added much funding to the schools in a direct manner. This type of funding situation was created by a nation which was attempting to climb out of an economic condition that it had never seen before---the Great Depression.

On the other hand, there were two acts which passed the Congress of the United States during this period which led to further action in subsequent years. The first act was the National School Lunch Act of 1946[46] which grew out of the 1935 Federal Surplus Commodities Corporation.[47] A second law, the Lanham Act of 1941[48], developed further legislation which will be reviewed to some length later in this study. This act resulted in the passage of Public Law 815[49] and Public Law 874[50], more commonly known as Impact Aid. The purpose of these two public laws was to provide funding to areas where federal installations, particularly military bases, created financial burdens.

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[46]Ibid.

[47]Ibid.

[48]Ibid., p. 10.

[49]Ibid.

[50]Ibid.

STAGE FIVE. (1945-1965) Milstein's final stage was one which begins with the movement of the United States out of the World War II era. During this time federal grants were transposed from temporary funding programs for special-needs to programs which received large amounts of funds and were permanent in nature. During this period a shifting of funds occurred from the Veterans Readjustment Bill (G.I. Bill), which from 1945 until 1952 received the largest amount of funding, to programs which were considered by Congressmen to improve educational institutions.[51] In fact, "Congress attempted to assure the national objectives by 'appropriating funds for special purposes and requiring that those funds be spent for those purposes'."[52]

Due to Congressional pressure, an interesting metamorphosis took place, which changed the emphasis of federal funding programs. That is to say, the federal government grasped for more and more unlimited controls over how the programs would function, along with how they would be funded. In essence, the state government's educational agencies became nothing more to the federal government than tools for "administrative convenience."

Certainly, much of the desire by the federal government for expanded control of the educational sphere occurred because of the government's great increase in

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[51] Ibid.

[52] Ibid.

fiscal spending. Milstein points to the fact that the federal government's share of educational financing increased from near $50 million in 1945 to over $2.5 billion in 1970. This additional fiscal support was utilized to fund many programs which influenced elementary and secondary schools. Examples of these programs are:

1. The Cooperative Research Act of 1954 (Public Law 83-531).

2. The National Defense Education Act of 1958 (Public Law 85-864).

3. The Manpower Development and Training Act of 1962 (Public Law 87-415).

4. The Vocational Educational Act of 1963 (Public Law 88-210).

5. The Economic Opportunity Act of 1964 (Public Law 88-452).

6. The Elementary and Secondary Education Act of 1965 (Public Law 89-10).

7. The Education Profession Development Act of 1967 (Public Law 90-35).[53]

STAGE SIX. (1965-Present) Milstein's stages, which appeared in his 1976 copyrighted book, have not taken into account the situations which have occurred since that publication date. This situation necessitates at least a continuation of stage five, or for clarity an inclusion of an additional stage. This sixth stage developed around two concepts which were previously explained in stage five. The first concept is the continuation of programs for special-

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[53]Ibid.

need students at all levels local, state, and national. These programs, beginning with the Elementary and Secondary Education Act of 1965, have directed financial aid toward specific groups of students and have disregarded general-purpose aid to education, except for the Impact Aid program.[54]

Hundreds of programs were enacted to help special groups. Out of this growth can be found the second concept: a need for improvements in fiscal resource utilization. Current economic conditions have served to place pressure on politicians and educators alike to safeguard the distribution and use of fiscal resources.[55] Actual

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[54]Walter W. McMahon and Terry G. Geske, ed., Financing Education: Overcoming Inefficiency and Inequity (Chicago: University Of Illinois Press, 1982), p. 319.

[55]Clayton D. Hutchins, Albert R. Munse, and Edna D. Booker, Federal Funds for Education 1956-57 and 1957-58. U.S. Department of Health, Education, and Welfare, Office of Education, (Washington, D.C.: Government Printing Office, 1959), pp. 5-6, cited by Roe L. Johns and Edgar L. Morphet, The Economics and Financing of Education: A System Approach, (Englewood Cliffs, NJ: Prentice-Hall, 1969), p. 435.
In order to better understand the intricacies of the distribution of funds problem, one needs only to glance at the many methods utilized to dispense federal funds. As an example, the following nine methods of distribution of aid for education were enumerated:

1. Allotted on the basis of land areas
2. Distributed in proportion to population figures
3. Awarded to states as flat grants
4. Given to conditions that matching funds are provided from state and local revenues
5. Provided as the cost of educational program or of operating a school
6. Appropriation to meet a Federal obligation such as payments in lieu of taxes on Federally owned property
7. Allocated as equalization aid to provide greater assistance to the financially weaker areas

existence or hints of inflation-deflation and/or recession-depression have given cause for the American public to demand the most benefits from the utilization of the country's tax dollars. Although inflation has recently decreased and more workers have obtained employment in each succeeding month, there have been more and more threats of an increase in the prime interest rate. For example, in the May 9, 1984 issue of The Wall Street Journal an article appeared which discussed the lifting of the prime interest rate by half of a percentage point to twelve and one-half percent, the highest level since October 1982. Further predictions of a boost in the prime rate by analysts in the same article serve to illustrate the federal government's large borrowing policy and the rapid economic growth of the nation's industries. These predictions and problems have caused financial experts to feel concern over the nation's economy.[56] Only time will allow for further developments within this stage or even a possible creation of an additional stage.

Since there is a trend toward developing and utilizing creative methods to deal with the loss of funding, especially federal funding, in these most difficult times,

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8. Paid to cover the cost of tuition and of other educational expenses of individuals

9. Granted in accordance with contracts for services on research programs in various colleges, universities, and industries

[56]Edward P. Foldessy and Tom Herman, "Most Big Banks Lift Prime Rate 1/2 Point to 12 1/2%," The Wall Street Journal. Eastern ed., May 9, 1984, p. 3, col. 1.

this study is significant in that it provides educational leaders with an analysis of the legal aspects of creative funding when faced with fiscal burdens. It offers educational decision-makers a historical perspective while examining specific court battles, e.g., a battle rising out of Onslow Country, North Carolina, over the scheduled loss of all Impact Aid funds and charging of tuition fees. The study will provide information and facts educational leaders must be aware of when contemplating reaction to the loss of specific federal funding such as Impact Aid. This knowledge may help to keep school districts out of time consuming and expensive litigation in the courts.

1.2 Questions to be Answered

The major purpose of this historical study is to review and analyze judicial decisions which have influenced policy making in regard to providing funding to public education where there is a demise of federal funds or at least a drastic curtailment of such funds as specifically related to federal Impact Aid. Below are listed several questions which this study seeks to answer.

1. What is the historical background for federal financing of education?
2. What is Federal Impact Aid?
3. How is Federal Impact Aid distributed and what are its effects?
4. How has Federal Impact Aid utilization been affected by

judicial decision/s?

5. What happens when a school district attempts to be financially creative and improve the district's financial support system?

1.3 Coverage and Organization of Issues Involved

The remainder of the study is divided into four major portions. Chapter II is a review of the literature related to the history of educational financing of the unique American system of education. Furthermore, Chapter II reviews the federal Impact Aid program.

Chapter III includes a narrative discussion of the major legal issues related to educational financing. An attempt is made in this chapter to show the relationship between the legal issues and major educational issues.

Chapter IV is a discussion of a court case related to the loss of educational funding provided by the federal government. Facts of this case and decisions are presented.

The final chapter, Chapter V, contains a summary of the information obtained from a review of the literature and from an analysis of the judicial decisions. The questions asked in the introductory part of this study will be reviewed and answered in the concluding chapter.

1.4 Definition of Terms

For the purpose of this study, the following selected terms are defined:

Federal Support---A process whereby the federal government attempts to make certain, through fiscal policy, that state educational bodies facilitate national objectives. The assurance of this process comes with the controls that are placed on the federal funds[57] which are provided to the states. The American Association of School Administrators has provided the following list of the five general categories of federal support:

1. Aid to promote the cause of education.
2. Aid to broaden the scope of education.
3. Aid to educate individuals for whom the federal government accepts responsibility.
4. Aid to improve the quality of education.
5. Aid to compensate for deficiencies in the school tax base.[58]

Impact Aid---This program provides the only "non-categorical" funds given to local educational units, the

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[57]General Accounting Office, "Terms Used in the Budgetary Process," (Washington, D.C.: U.S. Printing Office, July 1977), cited by Fremont J. Lyden and Ernest G. Miller, Public Budgeting: Program Planning and Implementation (4th ed; Englewood Cliffs: Prentice-Hall, 1982), p. 408; indicates the definition of "federal funds" to be:

> Amounts collected and used by the Federal Government for the general purpose of the Government. There are four types of Federal fund accounts: the general fund, special funds, public enterprise funds, and intragovernmental funds. The major Federal fund is the general fund, which is derived from general taxes and borrowing.

[58]Percey E. Burrup, Financing Education in a Climate of Change (Boston: Allyn and Bacon, 1977), p. 149.

purpose of which is to offset the financial burden placed on educational systems by federal activities. In other words, the federal government attempts to compensate local units, "for the burden placed on them by Federal immunity from State and local taxation and by educating federally-connected children."[59]

Financing---The management of public resources.[60]

Creative Financing---This purposefully broad and general term denotes a concept of educational financing methods which are conceived and utilized to meet the new and challenging economic, political, and social conditions facing the American society. The example used in this study is the requirement for non-resident parents to pay school tuition fees for their dependent children.

Education---Throughout this research, "education" refers to public education (K-12). Unless so indicated parochial or private schools are not included.

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[59]Commission on the Review of the Federal Impact Aid program, A Report on the Administration and Operation of Title I of Public Law 874, Eighty-First Congress, U.S. Department of Education (Washington, D.C.: U.S. Printing Office, September 1981), p. ii.

[60]Jess Stein, ed., The Random House College Dictionary (New York: Random House, 1980).

CHAPTER II

THE HISTORY OF FINANCING EDUCATION AND IMPACT AID

2.Ø Introduction

Although there has been an increase in the study of America education during the 2Øth Century those studies have in effect raised new questions that need to be investigated.[1] The present chapter begins with an historical analysis of financial support of American education. The chapter gives specific attention to Public Law 81-874 (School Assistance for Federally Affected Areas) and the effects it has had on the financing of education in federally impacted areas.

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[1]Silberman,op. cit., pp. 382-383. The study of education has been addressed in the writings of such authors as Lawrence A. Crimin and Charles E. Silberman. Silberman indicates in his writings that educators need to possess a better understanding of the development of the unique American system of education.

2.1 European Origins

The roots of American education have been traced to the ancient Greeks, Romans, and Christians.[2] The, "Leaders of the American Revolution were familiar with the writings of classical antiquity and often quoted the ancient writers."[3] Cubberley identified three foundation stones of Western civilization:

> 1. the Greeks placed a premium on personal and political freedom, that
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> 2. the Roman strength lay in law, government, and the practical arts, and that
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> 3. Christianity forms the connecting link and the preserving force between the old and the new civilization.[4]

Education in Europe came to a near standstill after the destruction of the Roman Empire by the Germanic barbarians during the Fifth and Sixth Centuries. The ancient world ceased to move forward. In fact, had it not been for the Christian Church many gains might have been lost. Cubberley wrote, "Only the Christian Church remained to save civilization from the wreck, and it too almost went under."[5] Further he stated,

> It took ten Centuries to partially civilize, educate, and reduce to national order this heterogeneous hord of new peoples, and to preserve enough of the ancient civilization that the modern world has been able to

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[2]Cubberley, op. cit., pp. 1-2.

[3]Pulliam, op. cit., 1982), p. 7.

[4]Cubberley, op. cit., p. 2.

[5]Ibid., p. 3.

> reconstruct its main outline from fragments which remained. During this long period the Church had to rely on oral and scenic teaching, and prohibition and punishment. The day of literary learning was still far off.[6]

This situation continued until the beginning of the Renaissance.[7] The Renaissance was the expiatave of education. The rise in the "scientific method of thinking" by scholars such as Copernicus, Galileo, Boyle, Gilbert, Newton, and Harvey, had a particularly great influence on education. The "scientific method" defied and modified the accepted beliefs of the time.[8] According to Oppenheimer and others Christianity enabled the scientific method. Without Medieval Christianity there would have been no scientific method at all. Along with the "scientific method" of thinking came the revolutionary and more powerful instrument for disseminating information to large groups of people---the Johannes Gutenberg movable metal type printing press. Even though, 1454 is the normally recognized date for the invention of the movable metal type press, Gutenberg had begun to utilize a metal printing press as early as 1440. The printing press significance is often illustrated

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[6]Ibid.

[7]This era is defined by the Webster's New Collegiate Dictionary as, the transitional movement in Europe between medieval and modern times beginning in the 14th century in Italy, lasting into the 17th century, and marked by a humanistic revival of classical influences expressed in a feeling of the arts and literature and by the beginning of modern sciences.

[8]Pulliam, op. cit., p. 9.

with the recognition that the most important book in Western civilization, the Holy Bible, was printed in 1456.

Some scholars have often labeled this period as a time in which the masses of "common" poor people were educated.[9] Coullard points out that the aristocracy in England was the only large group of people in that country who were truly educated. In fact, the common man was generally left out of the "rebirth" process. The established attitude was that the common man was "...born to obey, not to govern, and that education of the lower classes was both unnecessary and dangerous."[10] Further, the upper echelon of the ruling class believed a revolution might occur in a society where all men were educated.[11] Many of Europe's ruling class moved to the New World naturally bringing along with them their beliefs on education. The distinguished educational historian Edger Knight pointed out that:

> Governor Berleley of Virginia, in his remarkable reply to the authorities in England in 1671, thanked God that there were no free schools and no printing presses in the province, and hoped that there would be none for a hundred years. "Learning," he said, "has brought disobedience, and heresy, and sects into the world, and

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[9]John Coullard, "The Legal Aspects of Funding Public Education Through Real Property Taxation: 1971 Serrano to the Present" (Doctoral dissertation, University of North Carolina at Greensboro, 1978), p. 11. Yet in contrast, Coullard mention that this mislabeled concept is far from the truth.

[10]Ibid.

[11]Ibid.

> printing has divulged them, and libers against the best government. God Keep us from both!"[12]

Along with the Renaissance came the Reformation. The Protestant Reformation was a revolution against Church authority. This movement might possibly have affected the American colonial situation to a much greater extent than any other movement to date. In fact, the Reformation's impact had a profound affect on the economic, political, and social life of the colonies.[13] Cubberley suggested,

> Another outgrowth of the Italian Renaissance, and for the history of education in America a much more important development, was the change in attitude toward the dogmatic and repressive rule of the Church which came as a somewhat natural result of the work of the Renaissance scholars, the new life in Christendom consequent upon the Crusades, the revival of commerce, the rise of city governments, the formation of lawyer and merchant classes, the founding of new States, the evolution of the university organization, and the discovery and spread of the art of printing. All of these united to stimulate thinking, to awaken a new attitude toward the old religious problems, and to prepare Western Europe for a rapid evolution out of the medieval conditions which had for so long dominated all actions and thinking.[14]

The Reformation created an added necessity for schooling since emphasis was placed on the ability to read the Holy Bible. The Reformation, not necessarily progressive and often reactionary, wished, "to capture the minds of men"[15] and, therefore, placed emphasis on reading;

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[12]Edger W. Knight, Education in the United States (Boston: Ginn & Co., 1929), p. 64.

[13]Pulliam, op. cit., p. 9.

[14]Cubberley, op. cit., p. 6.

i.e., ability to read the Bible.[16] During the Reformation the "learning of the Church" became the dominant factor in man's education and thus it was thought man could "gain a means to salvation."[17] The family and Church, not the State, assumed the responsibility for educating children.

Religious institutions proposed a philosophy of "universal education" for all children. The institution sought to develop the theological concept of Martin Luther's "priesthood of all believers" doctrine and ensure that children could read the Bible. The Protestant institution carried the idea one step further by providing, "...secondary education of higher quality for the elite destined to enter positions in government or the Church."[18] The secondary school was well established by 1450. Secondary education clearly became a dominant influence in Europe by 1850.

In Italy classical secondary schools were known as Court Schools. In France they were called Colleges and Lycees. In Germany they were referred to as Gymnasia, while in England they were called Latin Grammar Schools.[19] Cubberley noted the Latin Grammar School, founded by Dean Colet, at Saint Paul's in London, was copied across England

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[15]Ibid., p. 10.

[16]Ibid., pp. 10-11.

[17]Ibid., p. 3.

[18]Ibid., p. 10.

[19]Ibid., p. 5.

and was the type of school the colonists brought to the American colonies.[20] The European educational systems had their roots planted deeply in Greek and Roman histories. Thus American educational systems developed after the European system, were reflective and affected by early European events, i.e., Renaissance, Protestant Revolts, scientific inquiry and world exploration and trade.[21]

Some educational historians believe the area of educational finance was affected to some degree by the early European systems. They believe such effects were initiated by the English Poor Laws of 1597 and 1601.[22] These laws, providing for apprentice fees to be utilized to educate pauper children, helped to influence the taxation structure for financing the education of the poor. However, one can even look further back into history to find the concept of apprenticeships had been a custom in England long before the colonists set sail for America. More importantly, the practice of apprenticeships changed from a locally controlled custom to a naturally controlled system. In 1562 the "Statute of Artificers" established the guidelines for this change and helped to demonstrate that a larger body of government had a concern in some type of education.[23]

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[20]Ibid., pp. 5-6.

[21]Ibid., p. 3.

[22]Coullard, op. cit., p. 14.

[23]Cubberley, op. cit., p. 34.

2.2 Colonial Past

The educational environment in the American colonies was created to a great extent in the shape of those educational institutions which the colonists had left behind in Europe. In fact, "The first schools in America were clearly the fruits of the Protestant Revolts in Europe."[24] This was especially true when the colonial schools were compared with English schools. Pulliam states, "English textbooks and school methods were widely accepted in all the American colonies..."[25] The colonists, who left Europe due to extensive religious oppression, came to the New World to establish their own settlements where they, and others like them, could live and learn as their religious beliefs prescribed. Although, many changes took place in the American educational system, it was decades before a truly American system of education began to emerge. However, the early colonial settlements certainly helped to establish a foundation for the ensuing American development of schools.

The New England colonies had the most lasting impact on the American style of education.[26] The New Englanders had developed within their settlements a concern for religious studies and the influences of Parliamentary

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[24]Cubberley, op. cit., p. 12.

[25]Pulliam, op. cit., p. 19.

[26]Cubberley, op. cit., p. 13.

Rule.[27] These concerns led to the passage of many important laws. The first two laws, which were enacted in 1634 and 1638,[28] led to the, "establishment of the principle of common taxation of all property for town and colony benefits---a principle that lies at the basis of all present-day taxation for the support of schools."[29]

The next two laws dealt with ensuring for the education of children and the establishment of schools. Initially, the Massachusetts Law of 1642 was enacted by the

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[27]Ibid., p. 31.

[28]Ellwood Cubberley, in his 1934 book entitled Readings in Public Education in the United States, provided a detailed description of these two laws by quoting from the "Records of the Governor and Company of Massachusetts Bay in New England." The two laws appeared as follows:

> 1634. It is further ordered, that in all rates & publique charges, the townes shall have respect to levy every man according to his estate, & with consideration of all other his abilities, whatsoever, & not according to the number of his person.
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> 1638 The court taking into consideration the necessity of all equall contribution to all common charges in townes, & observing that the chiefe occasion of the defect hearin ariseth from hence, that many of those who are not freemen, nor members of any church, do take advantage thereby to withdraw their helpe in such voluntary contributions as are in use---
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> It is therefore hereby declared, that every inhabitant in any towne is lyable to contribute to all charges, both church & community, whereof he doth or may receive benefit; & withall it is also ordered that every such inhabitant who shall not voluntarily contribute proportionately to his ability, with other freemen of the same towne, to all common charges, as well for upholding the ordinances of the churches as otherwise, shalbee compelled thereto by assessment & distress to be levied by the cunstable, or other officer of the towne, as in other cases.

[29]Ibid., p. 14.

General Court of Massachusetts at the insistence of the Puritan Church. The Church realized many youth, due to the inattention of their parents or masters, were not being provided the proper education which was required by their religion.[30] This law allowed for the settlement officials to

> ascertain, from time to time, if parents and masters were attending to their educational duties; if all children were being trained "in learning and labor and other employments profitable to the Commonwealth;" and if children were being taught "to read and understand the principles of religion and the capital laws of the country."[31]

This was the first time in the English speaking world that children were to be provided instruction in reading.[32] In 1647, the next law was enacted when the General Court of Massachusetts realized the 1642 law was not meeting the needs for which it was first passed. This law known as the 1647 Ould deluder Satan Law (Old Deluder Satan Act) required,

> 1. That every town having 50 households should at once appoint a teacher of reading and writing, and provide for his wages in such manner as the town might determine; and
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> 2. That every town having 100 households must provide a (Latin) grammar school to fit youths for the university, under a penalty of 5L for failure to do so.[33]

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[30]Ibid., p. 17.

[31]Ibid.

[32]Ibid.

[33]Ibid., p. 18.

There were other laws in support of education which were enacted during this time. For example, Dedham, Massachusetts, became the first town to utilize property tax as a means to support schools.[34] This law, enacted in January 1645, provided tax funds to be utilized to both pay teachers' wages and to build necessary school facilities. As well, in 1673, the Plymouth Colony, which did not become part of the Massachusetts Colony until 1692, began to gather funds from the Cape Cod fishing industries to establish free schools.[35]

On the other hand, the Southern colonial educational system developed differently than the New England colonies. Cubberley mentions that contrasts can be found in three distinct areas. First, the New England colonist came to the New World because of their dissent against the English National Church. Yet many Southern colonists generally were supporters of the Church and came to America for monetary profits.[36] The second contrast is exemplified in the development of settlements and the utilization of the land. The Southern colonies became well known for their massive plantations rather than the small town development which was so common in the North. In fact, "The marked differences in climate and possible crops led to the large-

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[34]Pulliam, op. cit., p. 33.

[35]Ibid., p. 19.

[36]Ibid., p. 22.

plantation type of settlements, instead of the compact little New England town."[37] The final contrast is found first in the utilization of indentured white servants and eventually black slaves. This difference, "...led to the development of classes in society instead of to the New England type of democracy, making common schools impossible.[38] In addition, the aristocracy could afford private tutors for their plantation schools, private boarding schools, or even education in England, while the poor were left with only apprenticeship training. Cubberley states,

> The education of the leading classes my have been "wider and more generous" than in the New England Colonies, but it was an education of a small class rather than that of the great bulk of a people.[39]

Pulliam declares the "most conspicuous" aspect about the Southern educational situation prior to the Revolution to be, "...the lack of public interest in schools."[40] Further he provides the following factors as causes for this situation.

1. It was strongly believed by the dominant planter class that each man was responsible for the education of his own children.

2. It was against prevailing custom to tax one person for the education of the sons of others.

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[37]Ibid.

[38]Ibid.

[39]Ibid., p. 23.

[40]Pulliam, op. cit., pp. 26-27.

3. The Southern Colonies had widely scattered populations not concentrated in cities and towns, therefore, physical remoteness made an educational system almost impossible.

4. The classes most interested in education could afford to hire tutors or to send their sons to England.

5. The southern attitude toward (or lack of Puritan ideas) religion failed to bring about the New England emphasis on education as a means of salvation.[41]

Yet, Pulliam does mention that regardless of the lack of a developed and functional educational system, the South did provide, "...many of the most learned and able leaders in the revolutionary period.[42]

Regardless of the differences in the educational systems of the New World, it can be stated that many of the laws enacted during the early colonial period in America, especially in 1634, 1638, 1642, and 1647, helped to lay the groundwork for American education. In fact, the following five points dealing with financing education in the early colonies, developed out of some of these laws.

1. The state could compel education. The 1642 law provided this precedent, but it did not establish compulsory attendance at school.

2. The state could require civil units to maintain teachers. This was done by the 1647 law, but again there was no forced attendance.

3. Both of these laws provided for supervision and control of education by civil authorities.

4. Permission was granted, but no order given, to use public funds to support education.

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[41]Ibid.

[42]Ibid.

5. Public funds, if used, could be raised by common taxation of all property.[43]

These early laws helped to develop a means of education for children of the colonists. However, in the beginning, growing educational emphasis did not include support nor concern for secondary education. At this point in the educational history of the colonies, there only was concern for the very basic kinds of education. However, as mentioned earlier, a secondary school, commonly known in England as the Latin Grammar School, eventually did come into existence. These schools, financially supported through tuition, were concerned with preparing boys to continue on to colleges such as Harvard, Yale, or Princeton. In addition to the Latin Grammar schools, the Middle colonies established the Academy. The interest of this type of school, unlike the Latin Grammar School, was to provide boys with vocational training.[44]

According to Pulliam, the values taught during this period greatly affected educational systems of later generations. Furthermore, the laws which were enacted, concerning the establishment of school districts, compulsory education, and taxation, have indeed had an enormous effect on the American education system in general.[45]

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[43]Coullard, op. cit., p. 16.

[44]Ibid., pp. 26, 29-30, and 35-36.

[45]Ibid., p. 37.

2.3 Revolutionary War to the War of 1812

Although the War for Independence was brought to a triumphant end for a majority of the colonists, it certainly had no positive stimulation on American education. Coullard mentions in his dissertation, "The end of the war saw a bankrupt government whose major concern was survival."[46] This continual instability lasted from the end of the Revolutionary War until the War of 1812. "The time between the Declaration of Independence and the War of 1812 is generally regarded as a period in which American education deteriorated."[47] During this period education lost the support it once had from England. Gwynn and Chase mentioned the following three negative aspects of this period;

1. Textbooks that had been supported from abroad now had to be produced at home.

2. England's support of colleges ceased.

3. In great part, the financing of parochial and charity schools had to be taken over by the colonists without hope of support from abroad.[48]

Although education was not included in the Constitution adopted in 1789, the concept of education was on the minds of many of the country's early leaders. In fact some of the signers of the Constitution, such as James

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[46]Ibid., p. 19.

[47]Ronald F. Campbell and others, Introduction to Educational Administration, fifth ed. (Boston: Allyn and Bacon, 1977), p. 30.

[48]J. Minor Gwynn and John B. Chase, Jr., Curriculum Principals and Social Trends, fourth ed., (Toronto, Canada: Macmillian, 1969), p. 6.

Madison and Charles Pinckney,[49] attempted to include a Constitutional provision creating a "National University."[50] George Washington even left part of his estate at Mount Vernon as a proposed site for the eventual creation of the higher educational institution.[51] However, "The University was never built, partly because Congress failed to act and partly because of legal and financial arguments."[52]

The lack of overall support for the National University does not mean that there was a near lack of desire to help support education. Indeed, the United States Military Academy at West Point, New York, was established by Congress in 1802 and became, "...the first of many acts which created special educational institutions with specialized functions."[53] Moreover, the Northwest Territory Ordinances of 1785 stated that a portion of land[54], the

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[49]Pulliam, op. cit., p. 53.

[50]Ibid.

[51]Ibid.

[52]Ibid.

[53]Ibid., p. 56.

[54]Cubberley, op. cit., pp. 91-91. "Congress, in 1785, adopted a rectangular form of land survey, under which the new territory was laid out into 'Congressional Townships,' six mile square. Each township was in turn subdivided into sections one mile square, and into quarter sections, and a regular system of numbering for each was begun." "When the first state came to be admitted, Ohio, in 1802, the question arose to the right of the new State to tax the public lands of the United States. By way of settling this question amicably Congress offered to the new

Sixteenth section, which consists of one square mile of each township in the territory should be set aside for the development of schools. However, many early Americans were not concerned with schooling all children since they believed that education needed could be obtained through work experiences and not through tax supported schools. In fact, Coullard uses the following quote to point out this idea.

> No other single problem concerned with education presented greater difficulties to our forefathers than that of its support. To begin with, most of them agreed with Jefferson that government is best which governs least. Certainly they believed that the government to be best that taxed least. But they quite generally disagreed with Jefferson when he held that the support of education is one of the undoubted responsibilities of government.[55]

Since the Constitution did not mention and/or make provisions for education, then from what established authority did states assume responsibility? The authority is derived from Article X of the Bill of Rights:

State that if it would agree not to tax the lands of the United States, and the same when sold for five years after sale, the United States would in turn give to the new State the sixteenth section of land in every township for the maintenance of schools within the township. The offer was accepted, and was continued in the case of every new State admitted thereafter, except Texas, which owned its own land when admitted, and West Virginia and Maine, which were carved from original States. With the admission of California, in 1850, the grant was raised to two sections in each township, the sixteenth and thirty-sixth, and all States since admitted have received two sections in each township for schools. In the admission of Uath, Arizona, and New Mexico, due to the low land value of much of the land, four sections were granted to each of these States."

[55]Paul Monroe, Founding of the American Public School System (New York: Hafner Publishing, 1971, facsimile of 1940 ed.), v. I, p. 295.

> The powers not delegated to the United States by the Constitution, not prohibited by it to the States, are reserved to the States respectively, or the people.[56]

Although all state constitutions presently have provisions for education, initially only seven of the first twenty-three states composing the Union incorporated into their state constitutions provision for education. These states were: Maine, Massachusetts, New Hampshire, New York, and Vermont.

Laws for establishing and supporting education in the United States were "permissive" laws. In other words, communities, if they desired to do so, could establish schools and tax themselves for their support. Then if a community did not have a strong belief in an effective education for children, that community would not make provisions to develop an adequate educational system. For those communities who wished to have a valid educational system numerous methods for funding were developed, e.g. the "rate bill," or tuition. Other methods of financing education were also utilized.

> In addition to fishing revenue there was salt working, lotteries, funds from congressional and state land grants, and even distribution of a federal treasury surplus in 1836. Also used were occupational taxes, liquor license fees and theatre fees...[57]

Eventually, the permissive education laws became mandatory laws in each of the states. The finances

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[56]Campbell, op. cit., p. 31.

[57]Coullard, op. cit., p. 23.

necessary to operate the schools were provided through laws which were enacted in the state legislatures. "Thus, in each state we witnessed the development of the school code that provides a framework by which the school districts of the states are regulated."[58] The nation grew with the purchase of the Louisiana Territory in 1803 and the addition of new states to the Union. Each of these new states added during this period, e.g., Kentucky, Tennessee, Ohio, Louisiana, developed their state constitution after the previous states which had included education in their constitutions.[59]

2.4 The War of 1812 Until the First World War

There were some very important occurrences in education during this period of time (See TABLE 1). However, along with such occurrences came the burden of trying to finance education. Help from philanthropists was graciously accepted, but this means of support was not sufficient.

> The theory behind taxation of every person for the education of all children was eventually accepted in most parts of the country, and the belief that schools must be both free and tax supported developed into general public policy before the end of the Civil War.[60]

As the country expanded in a westerly direction, there was

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[58]Campbell, op. cit., p. 32.

[59]Pulliam, op. cit., p. 57.

[60]Ibid., p. 68.

general acceptance of the concept of an education for all children. Taxes were somewhat harder to collect on the frontier!

Coullard points out four phases which finally lead to state control of the educational systems. These phases are:

> 1. Permissive legislation recognized school districts as an administrative unit with taxing powers.
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> 2. The state encouraged formation of school districts by providing financial aid from permanent school funds which existed from various funding plans---monies from the sale of land, lotteries, federal allotments, and state taxes. This phase was still not compulsory, but the financial incentive provided did weaken opposition.
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> 3. Introduction of the factor of compulsion. The formation of school districts were required, but the state and district financial support remained inadequate, forcing many to charge a tuition called a "rate bill," for each student attending. Thus everybody paid a tax rate base, but those using the schools were required to pay an additional assessment.
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> 4. The passage of legislation providing for the establishment of compulsory and completely tax supported schools.[61]

These steps did not occur overnight. Indeed, even when the laws were provided some states appeared to be extremely slow in their enforcement. Pulliam provided the following.

> Educational programs were hindered by the old traditions that children should be educated first by their parents and second by the church. However, in the long run frontier democracy overcame the prejudices against public schools.[62]

As stated earlier, states moved from permissive

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[61]Coullard, op. cit., pp. 27-28.

[62]Pulliam, op. cit., p. 70.

taxation to mandatory taxation for educational purposes. However, the moves never were easy. As with any new political concept there were battles in most state legislatures. For example, in Pennsylvania during 1834 the legislature tried to repeal the Free-School Law. Thaddus Stevens, a member of the State House was expected to support the repeal. Instead, Stevens supported the free public schools over the pauper schools and made the following statement about free public schools.

> This law often objected to, because its benefits are shared by the children of the profligate spendthrift equally with those of the most industrious and economical habits. It ought to be remembered that the benefit is bestowed, not upon the erring parents, but the innocent children. Carry out this obligation and you punish children for the crimes or misfortunes of their parents. You virtually establish cases and grades founded on no merit of the particular generations, but on the demerits of their ancestors; an aristocracy of the most arduous and insolent kind---the aristocracy of wealth and pride.[63]

Stevens had, "...used the common man ideal, the need for equality and the argument that public schools cost less than jails or welfare programs."[64] to indicate his perception of a free education.

Following the collapse of the Confederacy after the Civil War there were numerous attempts to obtain federal funding for reconstructing the educational systems in the Southern states. For example, the Hoar Bill, introduced on the floor of the Congress in 1870, would have established a

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[63]Coullard, op. cit., p. 29.

[64]Pulliam, op. cit., p. 72.

federal school system in the South. However, this bill, was defeated due to a lack of autonomy on the part of the state and local governments.[65] Another example can be found in the Blair Bill which would have given federal funding to the states in proportion to the number of illiterates in each state. However, this bill, which allowed for state autonomy never passed the House of Representatives.

Due to these defeats no further action occurred which would have provided legislation for providing federal funding for state educational systems. In fact, the only federal financial aid for education received by states was obtained through the Second Morrill Act of 1892 and this act was for aid to higher education.

Near the end of the second half of the nineteenth century the flood of debate over taxation for educational support had subsided, particularly for the high school.[66] In fact, in 1874 a landmark case[67] was handed down by the Michigan Supreme Court which authorized the expenditures of "funds under the general grant or powers,"[68] or in other words, the right of the state to levy taxes to support high schools. This decision ultimately was the final blow to the

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[65]Ibid., pp. 94-95.

[66]Ibid., p. 99.

[67]Stuart v. School District No.1 of Village of Kalamazoo, Michigan (1874).

[68]E. Gordon Gee and David J. Sperry, Education Law and the Public Schools: A Compendium, (Boston: Allyn and Bacon, 1978), p. S-25.

opposition for general taxation to support educational purposes.

By the time this period came to a close, the typical educational system in most states was composed of eight-year elementary schools and four-year high schools and colleges which had become firmly established in the American society. Not only was there a great increase in student populations during this time, but there was also a large increase in the expenditures for school facilities.[69] For example, from the late 1800's and well into the 1900's, the United States experienced a population growth like it had never experienced before. In fact, the population in a thirty year span, 1870-1900, doubled from 34,905,000 to 76,094,000. While at the same time the funds spent on education jumped from $130,383,008 to $550,069,217.[70]

During the time period between the Civil War and the First World War, the government was controlled by the Republican Party. One of this party's dominant political ideologies was that business and industry should be promoted and that there should be a hands-off policy in regard to the support of public education.[71] Indeed, what educators financially obtained during this period was often achieved through individuals and private enterprise which saw a need

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[69]Pulliam, op. cit., pp. 91-92.

[70]Coullard, op. cit., p. 32.

[71]Pulliam, op. cit., p. 97.

for reform.[72] Not only was "big business" a dominant factor in changing America, but in addition, this was a time when America was forming a different society. During this same period new cities were developing which were destined to become some of the major cities of the twentieth century. Large numbers of people were moving from rural America to the urban societies. Along with this movement from rural areas was added a great number of immigrants who had just arrived in America. Certainly, "...the idea of the independent farmer class as a dominant one in America was beginning to fade."[73]

As cities grew even larger and the Industrial Revolution surged onward, there emerged a concept which gained added support: the vocational school movement. Although vocational training existed for many years, emphasis had never been placed on this training until the period from 1907 to 1917. The federal government became involved in this movement when the Smith-Hughes Act was enacted by Congress.

> This law provided federal aid for the states by paying vocational teachers' salaries in the high schools and aiding teacher training institutions in the education of such teachers. The states were required to match the federal grant on a dollar-by-dollar basis.[74]

Another vocational training law enacted by Congress

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[72]Ibid.

[73]Ibid.

[74]Ibid., p. 104.

was the Smith-Leaver Act. This act helped students by providing for agricultural courses in the schools and establishing 4-H Clubs. Although some other minor bills passed Congress, e.g., George-Reed Act of 1929, the Coper-Kitcham Act of 1929, and the George-Dean Act of 1937, the Smith-Leaver Act and the Smith-Hughes Act were the last major attempts by the federal government to provide funding for education until the Second World War.[75]

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[75]Ibid., p. 105.

TABLE 1[76]

Time Line

DATE	EVENT
1821	First American High School, Massachusetts
1823	First Normal School in the United States, Vermont
1827	Massachusetts Law Compelled High Schools
1837	Massachusetts Established the First State School Board
1862	Morrill Land Grant College Act
1866	Fourteenth Amendment Protects Life and Property
1874	Stuart v. School District No. 1 of Village of Kalamazoo
1888	Teachers College of Columbia Founded
1892	Committee of Ten Established
1892	The Second Morrill Act
1909	First Junior High School, California
1910	First Junior College
1914	Smith-Leaver Act
1917	Smith-Hughes Act

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[76] James A. Johnson and others, Introduction to the Foundation of American Education (Boston: Allyn and Bacon, 1969), p. 244. and Pulliam, op. cit., pp. 92-93.

2.5 The First World War Until the Present

As mentioned earlier, there was relatively little support by the federal government for public education until after the Second World War. However, this does not mean education stood at a complete standstill. For example, there were changes in the structure of the plan of organization (6-3-3, 6-6, 6-2-4, or 4-4-4), consolidation of schools occurred, junior high schools became popular, and vast amounts of growth took place in the high schools. Certainly, while the population increased, it could not match the increase in school expenditures---597 percent (1950-1970).[77]

After the Second World War, important actions were taken by the federal government to help support education. Some of these efforts were the 1944 Servicemembers Readjustment Act (G.I. Bill), the 1946 National School Lunch Act, the 1950 Public Laws 81-815 and 81-874 (Impact Aid), and the 1964 Economic Opportunity Act (Job Corp). However, probably none of these bills had more effect on public education than the National Defense Education Act of 1958 (NDEA), which was passed after the "Sputnik" episode awakened the scientific community. Since the United States had not become the first country to enter outer space, this bill was passed, "...for the purpose of giving aid to education as a means of strengthening the nation."[78]

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[77]Coullard, op. cit., p. 33.

Another step taken by the federal government that had a great effect on public education was the Elementary and Secondary Education Act of 1965 (ESEA). The purpose of this act was to ensure through state and local control that there would be sufficient funding to purchase textbooks and other instructional materials for the public and private schools across the nation. But, "The primary purpose was to ensure that children from low-income families had access to adequate materials."[79]

The number of legislative actions appears to have diminished after the end of the Johnson Administration. However, the passage of Public Law 94-142 (Education for the Handicapped), the 1976 Educational Appropriation Act, and the establishment of the Department of Education are all indicators that the federal government's concern and control over education have not waned. This is especially true in the landmark court cases that were litigated in the area of school finance. The most notable of these cases being Serrano v. Priest[80] and Rodriguez v. San Antonio Independent School District.[81]

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[78]Pulliam, op. cit., p. 139.

[79]Ibid., p. 140.

[79] Serrano v. Priest, 5 Cal.3d. 584, 487 P.2d. 1241, 96 Cal.Rptr. 601 (1971).

[81] Rodriguez v. San Antonio Independent School District, 337 F.Supp. 280 (W.D. Tex. 1971).

2.6 Introduction to Impact Aid

School Assistance for Federally Affected Areas (SAFA), better recognized as Impact Aid, was enacted by the Eighty-First Congress in September 1950. The purpose of this act was to meet the responsibilities which the federal government had to those regions of the country where the location of government activities had an effect on the economy of the local community and in particular, the local educational agency. The influence the federal government can have on a community should not be dismissed as being minimal, for the United States government, "...is the nation's biggest property owner and employer..."[82] In fact, in the "Federal Funds" editorial of the July 1977 issue of American Education, it was reported for Fiscal Year 1976 that over 2.4 million school childrens' parents or guardians lived and/or worked on federal property. This vast number of children represented approximately eleven percent of all children who were attending school in the United States of America.[83] The same article indicated every state of the Union plus the District of Columbia, Guam, Puerto Rico, and the Virgin Islands received Impact Aid funds. During Fiscal Year 1976, California received the most funding with $79,244,498 while Vermont received the least with $177,031. The state of North Carolina received $11,088,255,

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[82]Carol Sue Joffe, "The Impact-Aid Program," American Education, (July, 1977), 31-32.

[83]Ibid.

which was distributed to sixty-four of its school districts. Further, a Battelle Memorial Institute report indicated that Impact Aid, "...reaches over one-fourth of the school districts in the United States."[84] Moreover, it continues on to state that, "These districts educate over one-half of all elementary and secondary school students."[85]

Impact Aid, or at least the impact of federal activities, can have an effect on a major portion of the local educational agencies across the United States. For this reason, and because of the legal suits which will undoubtedly develop out of the scheduled decrease in funding for Impact Aid programs, a historical review of this congressional legislation will be conducted. The purpose of this review is to provide a history of Impact Aid and to review the economic conditions, both of which have been reviewed in court battles. The first suit was filed in North Carolina, where the Onslow County Board of Education attempted to institute a tuition charge for dependents of non-domiciliaries of North Carolina who were attending schools in Onslow County. This effort to institute such a tuition charge was due to the sharp decrease in Impact Aid that the county was receiving. Although this case has been decided in favor of the plaintiffs, i.e., the uniformed

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[84]Harold A. Hovey and others, School Assistance in Federally Affected Areas, U. S., Educational Resources Information Center, ERIC Document ED Ø34 9Ø3, December, 1969.

[85]Ibid.

members of the armed forces living in Onslow County, at both the District and Appeals level it is an indication that further court battles may be forthcoming.

2.7 Historical Background

Public Law 81-815, School Facilities in Areas Affected by Federal Activities, and Public Law 81-874, Educational Agencies Affected by Federal Activities, were enacted after the United States Congress held hearings in regard to the effects of federal government activities on communities and their local educational agencies.[86] These hearings revealed there was a burden placed on school districts because of federal activities. Further, they indicated that federal activities increased the enrollments in school districts and under specific conditions helped to remove property from the local tax base.

After extensive debate, the Congress enacted Public Law 81-815 and Public Law 81-874. However, because most funding today and for the past few years has been obtained through Public Law 81-874 rather than Public Law 81-815, this review concentrates on the former. An example of the greater amount of funding can be seen by comparing the funds provided by each Act during Fiscal Year 1978---Public Law

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[86] U.S., Commission on the Review of the Federal Impact Aid Program, A Report on the Administration and Operation of Title I, of Public Law 874, Eighty-First Congress, Chairman, Harold E. Rogers (Washington: Government Printing Office, 1981), pp. 8-9.

81-874 provided $770,000,000 while Public Law 81-815 only provided $30,000,000.[87] Because Congress believed that it had created an unnatural burden for educational agencies across the United States, it drew up the following "Declaration of Policy" for Public Law 81-874:

> In recognition of the responsibility of the United States for the impact which certain federal activities have on the local educational agencies in the areas in which such activities are carried on, the Congress hereby declares it to be the policy of the United States to provide financial assistance for the local educational agencies upon which the United States has placed financial burdens by reason of the fact that--
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> (1) the revenues available to such agencies from local sources have been reduced as a result of the acquisition of real property by the United States; or
>
> (2) such agencies provide the education for the children residing on federal property; or
>
> (3) such agencies provide education for children whose parents are employed on federal property; or
>
> (4) there has been a sudden and substantial increase in school attendance as the result of federal activities.[88]

In looking at the Congressional history of Impact Aid, the Battelle report stated that the reasons for Impact Aid were three-fold. First, "...many federally connected children were not receiving adequate educational opportunity."[89] Many districts were charging extra fees

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[87]Lawrence L. Brown, III and others, Impact Aid Two Years Later, U. S., Educational Resource Information Center, ERIC Document ED 151 972, March, 1978.

[88]U. S., Congressional Record. 81st Cong., 2d Sess. (1950), No. 1124, 1101-1109.

(tuition) or even refusing to accept federally connected children. Furthermore, many districts were losing funds due to a decrease in the local tax base; therefore, a situation ensued in which,

> ...many districts were unable to provide a reasonable standard of education because they did not have a sufficient tax base to provide both for local pupils and large numbers of pupils living on federal installations.[90]

Thus, many believe that the Impact Aid program would be a solution, because it would inhibit the following situations:

> 1) Many federally connected children were not receiving adequate educational opportunity.
>
> 2) Tuition charges were considered an undue burden on federal parents when free public education was available to the children of all other parents.
>
> 3) Severe educational problems made federal employment less attractive...[91]

The second reason was, "...to offset the economic burden of federal activities on school districts."[92] In other words, to maintain the same educational opportunity as before federal impact, the local district had to provide opportunity at the same cost-per-pupil. Yet, they were unable to do so since the federal activity had increased school cost and had not helped to increase school district revenues. The Battelle report made the following statement in reference to this situation:

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[89]Brown, op. cit., p. 19.

[90]Ibid.

[90]Ibid.

[92]Ibid.

> The cost of educating pupils drawn to a school district by a federal activity could conceivably be offset by the added revenues of a school district caused by that activity. However, in the case of students living on a federal installation (e.g., a military base) whose parents work on the installation, the school district cannot collect property tax on either the residence of the child nor upon the place of employment of the parent. In the case of a child living in private (taxable) property but whose parent works on federal (tax exempt) property, it can be argued that the school district incurs the full cost of education of the child but is denied part of the tax revenues that it would normally receive from children of employed parents because the place of work of the parent is not taxable.[93]

The third and final reason was, "...to provide a mechanism for increasing federal support of elementary and secondary education."[94] During the era in which the Impact Aid program was enacted, people were seeking ways to help support the increasing cost[95] of educating children. Little funding was provided by the federal government prior to Impact Aid and, once enacted, this program provided a step toward greater federal support that was to come in the following years.

When examining the governmental funding policies of Public Law 81-874 the era in which this law was debated and

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[93]Ibid., p. 20.

[94]Ibid., p. 19.

[95]The Battelle report indicated the following reasons for the increased cost of education: (1) more pupils attained school age, (2) school retention rates increased, (3) those engaged in education demanded increased compensation commensurate with their worth as they see fit, (4) various new technologies made available many instructional aids all at significant cost, and (5) public standards for schools improved.

enacted should be kept in mind. In a technical paper for the Assistant Secretary for Planning and Evaluation, U. S. Department of Health, Education and Welfare, Brown indicated that the following three conditions existed during this period:

> 1) America was in the midst of a buildup for the Korean War.
>
> 2) Very little federal funding was available for elementary and secondary education.
>
> 3) By comparison to today's standards, states provided a smaller share of the cost of educating students.[96]

Now that the setting for School Assistance for Federally Affected Areas has been examined by looking at the purposes for Impact Aid and the era in which it was enacted, attention is now focused on how the program functions. This portion of the paper examines how funds are authorized and how they are provided to the local educational agency.

2.8 How Funds are Authorized

According to Impact Aid legislation, the responsibility for determining whether or not an educational agency shall receive funding in the hands of the Commissioner of Education.[97] The Commissioner (Secretary), after consulting with local and or state educational

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[96]Brown, op. cit., p. 23.

[97]Since the development of the Department of Education, the responsibility falls into the hands of the Secretary of Education rather than a Commissioner of Education.

agencies, makes his/her judgment based on three situations as to whether an educational agency is entitled to receive federal funding through Public Law 81-874 and just how much the agency will receive. These three situations are:

> 1) That the United States owns Federal property in the district of such local educational agency, and that such property (A) has been acquired by the United States since 1939, (B) was not acquired by exchange for other federal property in the school district which the United States owned before 1939, and (C) had an assessed value (determined as of the time or times when so acquired) aggregating 10 per centum or more of the assessed value (similarly determined as of the time or times when such federal property was so acquired); and
>
> 2) that such acquisition has placed a substantial and continuing financial burden on such agency; and
>
> 3) that such property is not being substantially compensated for the loss in revenue resulting from such acquisition by (A) other federal payments, or (B) increase in revenue acquisitions to the agency from the carrying on of federal activities with respect to the property so acquired.[98]

Most of the federal funds that are acquired by local educational agencies are provided through Section 3(a) and Section 3(b).[99] These sub-paragraphs provide the exact definitions of those who are to be counted when applying for Impact Aid. Essentially, these students are divided into two categories, category "A" and category "B". Category "A" children are defined in Section 3(a) as, "...children who reside on federal property with a parent employed on federal property."[100] This is to say that these childrens' parents

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[98]Congressional Record, op. cit., p. 1101.

[99]Ibid.

[100]Brown, op. cit., pp. 24-25. In addition,

live and work on federal property. On the other hand, category "B" children are those children, "...who reside with a parent employed on federal property."[101] In other words, these parents either live or work on federal property, but do not do both. In addition to obtaining categorical accounting through a survey of students, the local educational agency must also meet the following average daily attendance (ADA) requirements in order to obtain funding:

> 1) At least three percent of its enrollment must be federally connected. In addition, there must be at least ten percent federally connected pupils in the district.
>
> 2) Four hundred students must be federally connected.[102]

According to Lawrence L. Brown's technical analysis paper,

> P.L. 81-874 is the closest approximation to general aid from the federal government for elementary and secondary education, since Impact Aid funds become part of the general operational accounts of the school districts and no special accounting of their use is required.[103]

However, after the 1974 Educational Amendments Act (Public Law 93-380) was enacted by the United States Congress, two exceptions were made to this no-strings-attached usage. These exceptions are:

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although no large amount of money is provided, funding can be obtained through Section 7 (Major disaster assistance).

[101] Ibid.

[102] Hovey, op. cit., p. 16.

[103] Brown, op. cit., p. 24.

1) Funds provided for handicapped children of military personnel and handicapped children living on Indian lands support special programs that meet the needs of these children.

2) Payments for children from public housing projects must be used for ESEA Title I-type programs which provide services and compensatory education for disadvantaged children.[104]

2.9 How Funds are Provided

Funds for Public Law 81-874 are provided to local educational agencies through what is referred to as an "entitlement system." The definition of an "entitlement" is,

> ...a percentage of an agency's "local contributing rate" and is intended to compensate for the burden imposed by the various types of federally connected children at a rate which approximates locally raised education costs.[105]

In other words, the amount of funding received is dependent upon the number of category "A" and category "B" students multiplied by the local contribution rate. The local contribution rate is determined by one of the two methods which takes into account the previous two years' operating costs. The two methods utilized are:

1) The rate is determined by consideration of the per pupil locally raised revenues of "comparable" districts in the same state as the applicant district.

2) The rate is set at the greater of one-half of the national or state average of per-pupil costs.[106]

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[104]Ibid.

[105]Ibid. p. 25.

[106]Hovey, op. cit., p. 17.

In addition, because of unusual geographic conditions that may exist between the applying districts and the comparable districts, the Commissioner (Secretary) may increase the local contribution rates for the applying agency. In this manner the district will receive extra federal funds so that it may be compensated for the unusual geographic conditions under which it exists.[107]

Thus far, only category "A" and category "B" children have been examined. However, at this point it is necessary to point out that there are numerous sub-categories of the "A" and "B" categories. (See TABLE 2)

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[107] Congressional Record, op. cit., p. 30.

TABLE 2.[108]

Sub-categories of Category
"A" and "B" Children

Category"A"

1) "A" children in heavily impacted areas.

2) Civilian "A" children in other districts.

3) Civilian "A" children in public housing.

4) Military and Indian "A" children in other districts.

5) Military "A" children in public housing.

6) Handicapped military and Indian "A" children in heavily impacted districts.

7) Handicapped military and Indian "A" children in other districts.

Category"B"

1) Civilian "B" children who reside on federal property.

2) Civilian "B" children who reside on public housing property.

3) Civilian "B" children whose parents work on federal property in the county of the district where the school is attended.

4) Civilian "B" children whose parents work on public housing property in the county of the district where the school is attended.

5) Civilian "B" children whose parents work on federal property in the state but not in the county of the district where school is attended.

6) Civilian "B" children whose parents work on public housing property in the state but not the county

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[108]Brown, op. cit., p. 30.

of the district where school is attended.

7) Military "B" children.

8) Handicapped military "B" children.

The Congress delineated these sub-categories in Public Law 81-874 in order to indicate the different amounts of burden placed on local educational agencies by different kinds of federally connected students. The difference in the entitlements vary from ninety percent to 150 percent within category "A", while it varies from only forty-four percent to seventy-five percent in category "B." For example, handicapped military children in category "A" receives 150 percent entitlement, whereas, handicapped military children in category "B" only receive seventy-five percent. Therefore, it should be noted that category "A", where there is a lose of tax revenues for place of residence and work, receives a higher entitlement than category "B", where there is a lose of tax revenues for place of residence or work.

There are two other aspects that affect the amount of entitlements which are provided through Public Law 81-874. The first is that military families often do business on a military installation rather than in the local community. Although this situation is not as prevalent as it was in past years, many military families, whether they live on a military installation or not, utilize the commissary instead of the local grocery stores, the exchange rather than the local department stores, the package store rather than the local ABC store, and recreational facilities on base rather than off base. In addition, military families may be exempt from certain tax structures. These situations might cause a great loss of revenue for a local

community, which of course helps to support its own school district.[109] In addition, a second situation is also taken into consideration. In this case a higher percentage of funding (entitlements) is provided for those districts where there is a heavier than usual impact of category "A" students, i.e., where the enrollment of the district is made up of twenty-five percent or more of category "A" students.

Thus far, this review has only considered the number of children and the categories into which they are placed for obtaining federal funding through the School Assistance for Federally Affected Areas programs. However, there are other situations that are also considered when examining how much financial assistance a local educational agency will receive. These situations are as follows:

> 1) Special provisions authorize Impact Aid to school districts having a partial loss of tax base as a result of the removal or real property from the tax rolls through federal acquisition.
>
> 2) Special provisions authorized Impact Aid for districts experiencing a sudden and substantial increase of children resulting from federal activities.
>
> 3) Special provisions authorize Impact Aid for districts to receive an amount for a reduction in federally connected children be cessation or decreased of federal property.[110]

Now that the overview of the structure of Impact Aid has been presented, it is possible to consider another area, an area often thought of when considering governmental

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[109] Ibid., p. 26.

[110] Ibid., pp. 26-27.

legislation. This area is the controversies that developed out of the no-strings-attached funding for local educational agencies.

2.10 Controversies

As the budgetary history of Impact Aid is examined one finds that this program has been shrouded in controversy since its conception. As with most federal programs battles have developed, e.g., the President v. the Congress, congressional representative from affected areas v. representative from non-affected areas, Republican big-business supporters v. Democratic social program supporters, budgetary conservatives v. budgetary liberals, and newcomers to the political arena v. incumbents. In the Battelle report, Hovey points out that supporters believed Impact Aid, "...is the most effective of all federal educational programs..."[111] and that it allows the government to meet its responsibilities of educating the federally connected children where a burden has been placed on local educational agencies. While on the other hand, its strongest opponents believe Impact Aid,

> ...constitutes a kind of educational pork barrel that allows areas that are benefited by the location of federal installations to collect an additional benefit...[112]

Problems at the national level have basically revolved

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[111] Hovey, op. cit., p. 17.

[112] Ibid.

around the conflict between the President and the Congress.

Presidents of both major political parties---both Democratic and Republican---have attempted to reduce the funding for the Impact Aid program.[113] But until very recently, with declining economic conditions, the Congress has appropriated larger amounts of funding than the Executive Branch requested. During the decade of the seventies Congress began a change of attitude. The Legislative Branch began to cut back on the dollar amount of funding for the Impact Aid program. Nevertheless, Congress still appropriated more funding than the President requested. TABLE 3 indicates the difference in the amount of funds Presidents requested and the amount the Congress appropriated from 1970 to 1978.

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[113]This was particularly achieved through the "Tier System" that was enacted with the 1974 Education Amendment Act. This system will be discussed later.

TABLE 3.[114]

History of Entitlements,[a]

Budget Request and Appropriations

for the Impact Aid Program (P.L. 81-874)

Fiscal Year	Entitlements[a]	Request	Appropir-ations	Difference Between Request and Appropriations
1970	$597,500	$187,000	$504,500	+ $317,500
1971[b]	897,200	410,000	536,068	+ 126,500
1972	924,000	425,000	592,580	+ 167,580
1973	976,000	415,000	635,495	+ 220,495
1974	979,000	273.500	574,416	+ 300,916
1975	1,053,500	320,300	636,016	+ 315,716
1976[c]	988,900	426,227	739,000	+ 312,773
1977	1,115,100	315,000	768,000	+ 453,000
1978	1,185,450	370,000	770.000	+ 400,000

NOTES:

a. Excludes disaster assistance and hold harmless provisions.
b. Public housing children eligible, although no appropriations made for them until FY-1976.
c. Reforms enacted in the Education Amendments of 1974 became effective in FY-1976.
d. Amount of money is listed in millions of dollars.

[114]Brown, op. cit., p. 32.

By examining figures presented in an article written by Catherine Morgan in the August 1983 issue of Ladycom, it is possible to update the figures presented in Table 3. Further, it is possible to examine how they affected federally impacted areas in today's American society. Morgan writes that a 1981 Presidential Commission indicated,

> ...as many as 500 local educational agencies are so dependent upon Impact Aid payments that a major reduction in those payments would result in the closure of their schools, or serious reductions in their level of operation.[115]

An example of this reduction in funding can be found in a comparison between the amounts of funds appropriated in 1980 ($754,000,000) and the amount appropriated for 1983 ($450,000,000), a reduction of almost sixty percent. Under the current administration, with the support of Congress, the funding of category "B" children has been cut by approximately two-thirds since 1980. But more significantly, it is scheduled to be phased out in 1985.[116] In addition, there has been a limit placed on the amount of funding to be provided for the loss of taxable property due to federal ownership and there is no funding appropriated in the 1984 budget for heavily impacted areas.[117]

Controversies have not only occurred at the national

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[115]Catherine W. Morgan, "The Battle Over Impact Aid," Ladycom, (August, 1983), 76-78.

[116]Ibid., p. 76.

[117]Ibid.

level, indeed, the Impact Aid program has caused many school districts to enter the world of politics, an area in which most wish they did not have to engage. For example, in North Carolina, although not in accordance with Impact Aid legislation, some County Commissioners have not appropriated local funding to schools until they were aware of the amount of funds the districts would receive from the Impact Aid program. The reasoning behind this approach is that County Commissioners believe they can cut funding to the local educational agency and then spend these funds in other categories of their local budget. Although no court battles have developed out of this situation,[118] on more than one occasion school boards have appealed to the Clerk of Court to obtain the funding they believed was necessary to operate their school systems.

2.11 Reforms

Although the general provisions for providing federal assistance through Impact Aid has remained stable throughout the bills history, there have been some amendments. Most of these changes fall into the area of either increases in local contribution rates or expanded coverage by redefining federally connected children sub-

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[118]Although no legal suits have been recorded in North Carolina, this is not the case for the nation. Two court battles that have occurred involving Impact Aid are:
1) Hergenreter v Hayden, 295 F.Supp. 251 (D. Kan. 1968)
2) Shepard v Goodwin, 280 F.Supp. 869 (E.D. Va. 1968)

categories and federal property.[119]

The most significant reform was the "Tier System" developed by Congress in its 1974 Education Amendments. The purpose behind this change was to ensure that payments for public housing children were made[120] and a structure for prorating funding was developed. In his paper, Brown provided the following explanation of how the tiers are to be funded:

> In Tier 1, payments are made at 25 percent of entitlements for all categories of children, including public housing children.
>
> In Tier 2, the various sub-categories are prioritized: "A" payments are made at rates ranging from 88 percent to 100 percent of entitlements (including the amount paid under Tier 1). Total "B" payments in the second tier range from 53 percent to 60 percent of entitlements. No additional payments are made in Tier 2 for public housing children, so public housing payments remained at 25 percent through the second tier. If there were not enough funds appropriated to completely fund Tier 2, no payments in Tier 2 may be made. In this event, payments would be made through Tier 1 and through the hold harmless provisions.
>
> In Tier 3, all remaining entitlements are paid. Payments for public housing children account for most funds paid in the third tier.[121]

See TABLE 4 for a description of the percent of entitlements and the percent of entitlements funded at each tier of the different sub-categories.

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[119]Brown, op cit., p. 27.

[120]Public housing children were eligible to be counted prior to this time, however, funds were never earmarked for these children.

[121]Brown, op. cit., p. 28.

TABLE 4.[122]

Federally Connected Children with Corresponding Entitlements and Payment Rates Under the Tier System

Category	Entitlement (%)	Percent of Entitlement Tier 1	Tier 2	Tier 3
"A" Children--Parents work & live on federal property.				
"A" Children in Heavily Impacted Districts--Military & civilian "A" children whose school district contains 25% or more "A" children.	100	25	75	0
Civilian "A" Children in Other Districts--Civilian "A" children in districts that are not heavily impacted.	90	25	63	12
Civilian "A" Children in Public Housing--Children whose parents live & work on public housing property.	90	25	0	75
Military & Civilian "A" Children in Other Districts--Children whose parents live & work on federal property or Indian lands. Non-Indian children who have parents in the uniformed services. School district is not heavily impacted.	100	25	65	10
Military "A" Children in Public Housing.	100	25	0	75
Handicapped Military &	150	25	75	0

[122]Ibid., p. 40.

Indian "A" Children in Heavily Impacted Districts. Handicapped Military & Indian "A" Children in Other Districts.	150	25	Ø	10

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"B" Children--Parents work or live on federal property, but not both.				
Civilian "B" Children Who Reside on federal Property--Children with civilian parents who live but do not work on federal property.	45	25	32	43
Civilian "B" Children Who Reside on Public Housing Property--Civilian "B" children whose parents live but do not work on public housing property.	45	25	Ø	75
Civilian "B" Children Whose Parents Work on Federal Property in the County of the District Where School is Attended.	45	25	32	43
Civilian "B" Children Whose Parents Work on Federal Property in the County of the District Where School is Attended.	45	25	Ø	75
Civilian "B" Children Whose Parents Work on Federal Property in the State but not in the County of the District Where School is Attended.	40	25	28	47
Civilian "B" Children Whose Parents Work on Public Housing Property In the State but not the County of the District Where School is Attended.	40	25	Ø	75
Military "B" Children--	50	25	35	40

Children whose parents are in the uniformed services and who either live or work on Federal property.				
Handicapped Military "B" Children.	75	25	35	40

In addition to this change (prorating) the Act also affected category "B" children. Not only were some entitlements reduced but some were altogether eliminated. The reductions occurred in the following areas:

> 1) Civilian "B" children whose parents work on federal property in the state but not in the county of the district where school is attended.
>
> 2) Civilian "B" children whose parents work on public housing property in the state but not in the county of the district where school is attended.[123]

While reductions occurred in the above two areas, elimination occurred for," ...'B' children whose parents worked outside of the state in which the local educational agency is located."[124]

Brown continued to examine other provisions that were developed in the 1974 Act. The first was the "absorption provision" which essentially said that some school districts had to take on the cost of educating a certain percentage of category "B" children. The second provision was a waiver which changed Section 5, which originally read as follows:

> States are prohibited from counting Impact Aid payments as local revenue in determining an agency's eligibility for a share in a state aid program.[125]

This waiver allowed states to count the funds when the state

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[123]Ibid.

[124]Ibid.

[125]Ibid., p. 29.

had developed a, " ...program to equalize educational expenditure among districts."[126] The third and final provision was the enactment of four "hold harmless provisions." These four provisions are:

> 1) A general hold harmless which applies to any reduction in payment.
>
> 2) A hold harmless which limits reductions resulting from changes for out-of-county and out-of-state category "B" children.
>
> 3) Another hold harmless partially offsets reductions in payments for other categories of children resulting from the funding of public housing children.
>
> 4) A hold harmless to prevent a large loss in payments as a result of specific military base closings.[127]

2.12 Summary

The history of financing American public education indicates a rapidly changing and developing concept. Education moved from dominance by English traditions, to support of public education by state and local governments within the Union. Moreover, the federal government experienced a change in the attitude by providing federal financial support to the American public educational systems.

Beginning with the Northwest Ordinance the federal government has continued effective financial support throughout American public educational history. Even though the level of support varies from administration to

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[126] Ibid.

[127] Ibid., pp. 2Ø and 31.

administration and from decade to decade the financial support nonetheless continues. Beginning with the decade of the 80's President Ronald Reagan's initiated budget cuts that eliminated over two billion dollars from American education---"...from 9.8 percent in 1981 to 7.1 in 1985."[128] Moreover, President Reagan's 1986 budget proposed the elimination of impact-aid category "B" payments.[129]

The inclusion of Impact Aid information in a speech to such a large body as the National Association of Secondary School Principals (NASSP) and its further inclusion in well distributed education writings helps to indicate the significance Impact Aid has played in financing public education in the United States. In fact this review of Public Law 81-874 indicates that although the basic purposes of Impact Aid has not changed, certainly the organization has changed. In the past few years, with inflation rate and interest rate economic problems, there has been a change in the attitude of Congressional representatives. The old fashion cure-all of throwing money at an economic problem is no longer an effective solution. Regardless of the solutions used by Congress, Impact Aid is a program which many educators, and especially educational finance watchers, are concerned about and are watching very

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[128]Thomas F. Koerner, ed., "Senator Calls for Greater Investment in Education," NASSP NewsLeader, XXXII (February, 1985), 5.

[129]Ibid., p. 16, col. 3.

closely.

CHAPTER III

COURT CASES

3.0 Introduction

The financing of public education has always been the responsibility of state legislatures.[1] However, in the 1960's the judicial branches of both state and federal governments had more affect then ever before on specific financing schemes. Burrup writes,

> During the 1970s, largely as a result of many important court decisions, more than half of the fifty states made significant changes in their school finance systems.[2]

For example, McInnis v. Shapiro[3] challenged of Illinois' legislature enacted predicating an educational funding

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[1]Perry A. Zirkel, Ed. A Digest of Supreme Court Decisions Affecting Education (Bloomington, IN: Phi Delta Kappa, 1978), p. 1.

[2]Percy E. Burrup and Vern Brimley, Jr. Financing Education in a Climate of Change (Boston, MA: Allyn and Bacon, 1982), p. 206.

[3]McInnis v. Shapiro, 293 F.Supp. 327 (N.D. Ill. 1948), aff'd sub nom McInnis v. Ogilvie, 394 U.S. 322 (1969).

system based extensively on property taxes. Illinois funding system resulted in large variations of per-pupil expenditures across the state. On the other hand, there was another system of state grants and federal funds which provided a minimal level of funding, approximately $400.00 per student. Families from the less affluent districts challenged the system[4] because it "...involved the provision of unequal revenues per pupil in different school districts in the same state...".[5] The District Court of the Northern District of Illinois dismissed the case and thus upheld the utilization of property taxation and the use of maximum tax rates for funding Illinois public schools. On appeal the United States Supreme Court affirmed without hearing the lower court decision. The Supreme Court maintained,

> ... courts have neither the knowledge, nor the means, nor the power to tailor the public moneys to fit the varying needs of these students throughout the state. We can only see to it that the outlays on one group are not invidiously greater or less than that of another..."[6]

The Supreme Court insisted a state should not be restricted from establishing a funding system based on property taxes which was rational and decentralized, especially when there was a minimum level of funding provided from the state to each district. Burrup indicated that this kind of response from a Supreme Court was very common. In fact, he emphasize

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[4]Zirkel, op. cit., p. 9.

[5]Burrup p. 209.

[6]Ibid., p. 210.

that the Supreme Court, "... appeared to view the problem of providing equal educational opportunity only in terms of the question of racial discrimination."[7] and not really in terms of financing education.[8]

Throughout the decades of the 70's and 80's judicial activities encapsulated important financial decisions. In fact, activist in support of improving and/or changing inequitable state school finance systems continued to emphasize that the education a child receives should, "...not be a function of wealth, race, or geography."[9] Equalization proponents such as John E. Coons, William Clune, and Stephen Sugarman believed,

> ... the "power equalization" theory that was first enunciated by Harlan Updegraff half a century ago with its argument that equal tax effort should generate equal resources in all school districts.[10]

Another proponent of eliminating inequities in state school finance systems, Arthur E. Wise, while believing in providing funding in accordance to the, "... degree of social or economic disadvantage borne by school students."[11] provided the following three suggestions for revising school finance systems:

1. The state should collect and distribute all school

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[7]Ibid.

[8]Ibid.

[9]Ibid.

[10]Ibid., p. 211.

[11]Ibid., 210.

revenues to local school districts.

2. There should be an equalization of tax bases of local school districts by redrawing district lines.

3. There should be a manipulation of equalization formulas.[12]

Listed below are judicial decisions which have had a significant affect on the financing of public education in the United States. These cases provide a view which indicates how attitudes in the judicial systems were affected and ultimately changed by activist in support of improving equitable financing of public education. In addition, these court decisions provide a base of information which is needed to review objectively other public educational financing situations.

3.1 Serrano v. Priest

The Serrano[13] case focused on the utilization of local property taxes to support public education in the state of California. The California state educational system depended heavily on local property taxes to financially support public education. The unequal sharing of tax dollars in the different school districts was believed by some to violate the equal protection clause of the Fourteenth Amendment[14]. The Serrano "class action suit"

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[12]Ibid., pp. 210-211.

[13]Serrano v. Priest, 5 Cal.3d. 587, 487 P.2d. 1241, 96 Cal.Rptr. 601 (1971).

[14]"...nor deny to any person within its jurisdiction

filed by John Serrano, Jr. and other plaintiffs against Ivy Baker Priest, State Treasure, sought:

> 1. A declaration of the unconstitutionality of the existing financing system.
>
> 2. An order directing the reallocation of school funds in order to remedy the claimed invalidity.
>
> 3. An adjudication that the trial court retain jurisdiction to act itself to restructure the system if the defendants and the legislature fail to act within a reasonable time.[15]

The courts prior to Serrano had attempted to stay out of confrontations over taxation, thus creating, "...legal stability prior to Serrano."[16] However, on August 30, 1971, a decision handed down by the California Supreme Court moved the courts into the property taxation struggle and in great measure affected the state school system.

P. E. Burrup's book, Financing Education in a Climate of Change, aids in understanding what the California Supreme Court was dealing with in the Serrano case.

> In 1967, the educational expenditure per person in California ranged from $274.00 in one district to $1,710.00 in another, a ratio of 1 to 6.2. In the same year, two districts in the same county (Beverly Hills and Baldwin Park) expended $1,223.00 and $577.00 per pupil. This inequity was due to the difference in the assessed valuation of property per pupil to be educated ($50,885.00 in Beverly Hills and $3,706.00 in Baldwin Park---a ratio of nearly 14 to 1). The taxpayers in Baldwin Park paid a school tax of 54.8 mills ($5.48 per $100.00 of assessed valuation) while those in Beverly Hills paid school taxes of only 23.8 mills ($2.38 per $100.00 of assessed valuation). Thus, a tax effort in the poorer district of twice that in the wealthier one

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the equal protection of the laws..."

[15]Coullard, op. cit., p. 45.

[16]Ibid., p. 35.

> resulted in school expenditure of only 47 percent of that of the wealthier districts.[17]

Until the Supreme Court of California ruled on Serrano, other courts had not found favor with concepts expressed in the "equal protection clause" for financing public education. Nonetheless, legal efforts in Illinois[18] and Virginia[19] had helped to intensify the assault of opponents on the utilization of property tax as a means of financing public education. The California Supreme Court Justices, in a six-one decision,[20] found the state financing system for public schools to be unconstitutional and violated the state's financing formula. Moreover, the Justices stated that California's system of educational finance violated the equal protection clause of the Bill of Rights. A quote from Justice Sullivan, writer of the court's majority opinion, more fully explains the court's attitude and decision.

> We have determined that this funding scheme invidiously discriminates against the poor because it makes the quality of a child's education a function of the wealth of his parents and neighbors. Recognizing as we must the right to an education in our public school is a

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[17]Percy E. Burrup, Financing Education in a Climate of Change (Boston, MA: Allyn and Bacon, 1974), pp. 4-5.

[18]McInnis v. Shapiro.

[19]Burruss v. Wilkerson, 310 F.Supp. 572 (1969), aff'd 397 U.S. 44 (1970).

[20]The Justices supporting the courts majority opinion were Donald R Wright (Chief Justice), Raymond L. Sullivan, Raymond E. Peters, Mathew O. Tobriner, Stanley Mosk, and Louis H. Burke. Only Justice Marshall F. McComb dissented from the court's opinion.

> fundamental interest which cannot be conditional on wealth, we can discern no compelling state purpose necessitating the present method of financing. We have concluded therefore, that such a system cannot withstand constitutional challenges and must fail the equal protection clause.[21]

3.2 Serrano II

During the time between the decision on Serrano and the decision on the appeal of the defendants in this case, referred to as Serrano II[22], the United States Supreme Court handed down a landmark decision in the field of educational financing. The Court on March 1973, in Rodriguez v. San Antonio[23] insisted,

> ... that education is not a fundamental right within the United States Constitution and that the Fourteenth Amendment, at least where wealth is involved, does not require absolute equality or precisely equal advantages.[24]

The Rodriguez decision made it necessary for state courts to predicate rulings on state laws and state constitutions rather than on the federal Constitution. Therefore, the Serrano II decision was based on provisions found within the California State Constitution rather than in the United States Constitution, i.e. Serrano I. The Los Angeles Superior Court found on April 10, 1974, and the California

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[21]Coullard, p. 47.

[22]Serrano v. Priest, 135 Cal. Rptr. 345 (1977).

[23]Rodriguez v. San Antonio Independent School District, 411 U.S. 1 (1973).

[24]Ibid., p. 49.

Supreme Court affirmed in December 1976, that the California educational financing plan violated the equal protection clause of the California Constitution by conditioning the availability of school revenue upon the wealth of the school district and by making the quality of education dependent upon the level of expenditure in that district.[25]

3.3 Rodriguez v. San Antonio Independent School District

As mentioned earlier, the Supreme Court Rodriguez case was decided in the interval between Serrano and Serrano II. The Rodriguez case , began with three urban Texas school districts challenging the Texas State Board of Education and the Texas Commissioner of Education maintaining that the Texas educational financing system was unconstitutional. Specifically, the plaintiffs suggested the educational financing system created an "underassessment" in poorer school districts, "...which provided disproportionate amounts of state funds."[26] The system centered around a financing formula which provided approximately fifty percent funding from the state's Minimum Foundation Program[27] and approximately twenty percent funding from the local school units.[28]

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[25]Coullard, op. cit., p. 48.

[26]Burrup, 1982, op. cit., p. 217.

[27]This program was designed to provide a minimum public educational opportunity for all children in the state of Texas.

The Rodriguez case was a third Serrano type case creating a domino effect[29] and was decided in a lower federal court in late 1971. Then a federal district court ruled that the Texas funding system was unconstitutional since it violated both the United States Constitution and the Texas Constitution. The court allowed Texas Legislature two years to reorganize the state public school funding system or else the court would take the steps necessary to correct the situation.[30]

However, on appeal the United States Supreme Court, on March 21 1973, reversed the lower court decision on a narrow five to four vote.[31] The Supreme Court insisted the Texas system provided a minimum education to all people through its Minimum Foundation Program, and met the state's constitutional goal of a universal public education.[32] Even though the United States Supreme Court Rodriguez decision effected all federal court decisions, i.e., reversing the

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[28]Zirkel, op. cit., p. 13.

[29]Burrup, op. cit., p. 217. Professor Burrup indicates the above fact in his book and goes on to write that the other two cases involved in the domino effect were Serrano from California and Van Dusartz v. Hartfield from Minnesota.

[30]Ibid.

[31]Ibid. The majority opinion was written by Justice Lewis F. Powell and supported by Chief Justice Warren E. Burger and Justices Potter Stewart, Harry A. Blackmun and William H. Rehnquist. The dissenting opinion was prepared by Justice William J. Brennan, Jr. and supported by Justices Byron R. White, William O. Douglas and Thurgood Marshall.

[32]Zirkel, op. cit., p. 14.

lower court decision in Rodriguez and establishing judicial philosophy for Van Dusartz,[33] this decision had no effect on the state judicial decisions.[34]

In Rodriguez, the United States Supreme Court predicated its decision on the fact that no "suspect class"[35] suffered due to the state financing formula. Rather, the Court insisted that all people suffered, regardless of income or race.[36] In addition, the Court stated, in the majority opinion written by Justice Lewis F. Powell, that there was,

> ... no loss of a fundamental right since education, in itself, is not constitutionally protected and since the minimum education guaranteed to every student is sufficient for the exercise of protected political (voting) and First Amendment (expression) rights.[37]

The Supreme Court side-stepped a very difficult question, i.e., was there a constitutional right to a public education, by handing down this decision. In dissent, Justice Thurgood Marshall maintained that

> ... the right of every American to an equal start in life, so far as the provision of a state service as important as education is concerned, is...vital...[38]

Certainly it is possible to agree with Justice Marshall but

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[33]Van Dusartz v. Hartfield, 334 F.Supp. 870 (1971).

[34]Burrup, op. cit., p. 217.

[35]Zirkel, op. cit., p. 14.

[36]Ibid.

[37]Ibid.

[38]Ibid., p. 61.

what is not so certain is how to provide this "right" to individuals.

> For a state to provide an equal start in life to each individual, the education would have to be individually (and therefore unequally) provided in order to over come the variances in needs provided by "home, school, or genetics,"... The inherent monumental difficulty, if not impossibility, in providing such equality makes the name of it as a "right" extremely tenuous.[39]

3.4 Robinson v. Cahill

Another Serrano type educational financing decision was Robinson v. Cahill.[40] This New Jersey Supreme Court decision was handed down on January 19, 1972. The State Supreme Court insisted

> ... that the state's educational financing system created inequalities that violated the state constitution's educational provisions and also the equal protection clause of the Fourteenth Amendment. The court said that people living in districts with low assessments of property per child were being discriminated against and that a system likewise discriminates against taxpayers who shoulder unequal burdens in providing funds for education. It also declared that it was not suggesting "that the same amount of money must be spent on each pupil in the state. The differing needs of pupils would suggest to the contrary."[41]

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[39] Ibid.

[40] Robinson v. Cahill, 62 N.J. 473, 303 A. 2d. 273 (1973), cert denied, 414 U.S. 976 (1973). The court was composed of the following justices, none of whom dissented from the court decision: Chief Justice Joseph Weintraub, and Justices Nathan L. Jacobs, Frederick W. Hall, Worrall F. Mountain, Mark A. Sullivan, Milton B. Conford, and Arthur W. Lewis. Justices Sullivan, Conford, and Lewis were temporarily assigned to the New Jersey Supreme Court from the Superior Court to fill vacancies on the Supreme Court.

[41] Burrup, op. cit., pp. 8-9.

On April 1973, an unanimous New Jersey Supreme Court maintained that the New Jersey educational system violated the New Jersey Constitution in that, "... it failed to fulfill the 1875 mandate in the state constitution concerning equal educational opportunity"[42] and the equal protection clause of the Fourteenth Amendment to the Bill of Rights. Further, the New Jersey Supreme Court insisted that to, "...rely primarily on local property taxes for financing public schools..."[43] rendered the financial funding practice unconstitutional. In Robinson v. Cahill the New Jersey Supreme Court faced many judicial questions: (1) What did the State Constitution phrase "a thorough and effective system of free public schools"[44] mean; (2) The Supreme Court forced the General Assembly to enact a new school finance bill, The Public School Education Act of 1975, to ensure that a state system was less dependent on local property taxes; (3) However, even after the legislation enactment, the Governor suggested to the Supreme Court that the General Assembly might not fund the new bill; and (4) the Supreme Court responded with a judicial order to close the schools. Finally, the New Jersey General Assembly enacted a state income tax bill to fund the Education Act of 1975. Once the income tax bill passed the Legislature, the public

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[42]Ibid., p. 215.

[43]Ibid.

[44]Coullard, op. cit., p. 62.

schools were reopened.

The New Jersey Supreme Court chose to examine only the constitutionality of legislative action concerning school finance. Judicial restraints were effective and the court suggested no further action.

> We do not go further for several reasons. We continue to be hesitant in our intrusion into the legislative process, forced only so far as demonstrably required to meet the constitutional exigency. As well, it would be premature and inappropriate for the court at the present posture of this complex matter to undertake, a priori, a comprehensive blueprint for 'thorough and efficient' education, and seek to impose it upon the other branches of government. Courts customarily forbear the specification of legislative detail, as distinguished from the obligation to judge the constitutionality thereof, until after promulgation by the appropriate authority...[45]

3.5 Spano v. Board of Education

In the 1972 Spano v. Board of Education[46] case the New York Supreme Court addressed the equal protection clause and financing educational programs. Andrew Spano and others from Lakeland Central School District No. 2 sued the state board of education insisting that there was an unfairness in the manner in which New York levied and distributed school tax funds.[47] The New York Supreme Court ruling acknowledged there were inequities in the state school financing system

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[45]Burrup, 1982, op. cit., p. 216.

[46]Spano v. Board of Education of Lakeland Central School District No. 1, 68 Misc. 2d. 804, 328 N.Y.S. 2d. 229 (1972).

[47]Burrup, 1982, p. 216.

and these inequities should be corrected, "... within the prerogative of the legislature rather than the courts."[48] In fact, the New York Supreme Court, insisted that,

> "One scholar-one dollar"--a suggested variant of the "one man-one vote" doctrine proclaimed in Baker v. Carr, 396 U.S. 186, 82 S. Ct. 691, 7 L.Ed.sd 663--may well become the law of the land. I submit, however, that to do so is the prerogative and within the "territorial imperative" of the Legislature, or, under certain circumstances, of the United States Supreme Court.[49]

The court, utilizing decisions handed down in McInnis v. Ogilvie[50] and Burruss v. Wilkerson,[51] insisted that the court was aware of the inconsistencies existing within the state financing system. But the court maintained that state legislatures and not judges had the duty and responsibility to correct the problem areas found within the financing systems.

3.6 Additional Serrano Type Cases

Other Serrano type cases have been heard throughout judicial systems in the United States. The following three cases are examples which demonstrate how suits have been litigated in three separate states, i.e., Pennsylvania, Ohio, and Maryland.

In Danson v. Casey[52] the Pennsylvania Supreme Court

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[48]Burrup, op. cit., p. 9.

[49]Coullard, op. cit., p. 89.

[50]McInnis v. Ogilvie, 394 U.S. 322 (1969).

[51]Burruss v. Wilkerson.

in a three-two decision[53] sustained a Commonwealth Court decision on March 14, 1979. The Supreme Court decision, written by Justice Samuel J. Roberts, spoke to three points. These points are,

> 1) There was an absence in the allegations that the Philadelphia school district or its students had suffered any legal harm.
>
> 2) The Pennsylvania Constitution provides for a thorough and efficient system of public education but does not guarantee Philadelphia students educational services identical to the programs available to all other public school students in the Commonwealth.
>
> 3) The fact that the Philadelphia school district could not levy taxes was not a violation of the Pennsylvania Constitution.[54]

A second Serrano type case entitled Board of Education of the City School District of the City of Cincinnati v. Walter[55] was litigated in the Supreme Court of Ohio. On June 13, 1979 the court handed down a six-one decision.[56] This class action suit attempted to have the Ohio system of financing education declared unconstitutional

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[52]Danson v. Casey, 399 A 2d. 360.

[53]Supporting Justice Robert's decision were Chief Justice Michael J. Eagen and Justice Rolf Larson. Justices Louis L. Manderion and Robert N. C. Nix, Jr. dissented and filed an opposing opinion.

[54]Danson v. Casey, op. cit., p. 361.

[55]Board of Education of the City School District of the City of Cincinnati, 390 NE 2d. 813, 55 P 2d 590.

[56]Justice William B. Brown wrote the court's opinion and was supported by Chief Justice Frank D. Celebrazze and Justices Thomas M. Hubert, Paul M. Brown, A. William Sweeney, and Robert E. Holmes. Dissenting was Justice Ralph S. Locher.

by the court. Justice William Brown wrote that an earlier decision by the Court of Appeals could be sustained on one point in that the financing system did not violate the Ohio Constitution because a thorough and efficient public education was provided. However, the Supreme Court's decision differed from the Appeals Court decision when Justice Brown wrote that the financing system did not violate the equal protection clause of the state constitution.[57]

The third case, Hornbeck v. Somerset County Board of Education,[58] was decided on by the Court of Appeals of Maryland on April 5, 1983. In this case the court handed down a four-one decision.[59] Previously the Circuit Court of Baltimore had held the state educational financing program to be unconstitutional since it did not provide a thorough and efficient system of public schools. Additionally, the lower court stated that the financing program violated the equal protection clause of the State and Federal Constitution.

However, Justice Murphy, writing the Appeals Court decision, said,

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[57]Board of Education v. Walter, op. cit., pp. 813-814.

[58]Hornbeck v. Somerset County Board of Education, 458 A 2d. 758.

[59]Justice Robert C. Murphy wrote the courts decision and was joined by Justices Marvin H. Smith, Rita C. Davidson, and James F. Couch, Jr. Dissenting was Justice Harry A. Cole.

1. The Maryland Constitution did not mandate exact equality of per pupil funding and expenditures.

2. The Maryland financing system does not violate the federal equal protection clause.

3. The Maryland financing system does not violate the equal protection guarantee of the Maryland Declaration or Rights.[60]

3.7 Mueller v. Allen

In the April 18, 1983 Mueller v. Allen[61] case United States the Supreme Court addressed church-state issues---tax credit for parents with children attending private elementary schools. The case actually began in the state of Minnesota when taxpayers, Van D. Mueller, June Noyes and others, brought suit against the Commissioner of the Department of Revenue of Minnesota, Clyde E. Allen, and parents who had utilized a Minnesota law[62] which allowed parents to take a state tax deduction for expenses incurred in educating their children. This law allowed "all" parents to use the cost of tuition, textbooks, and transportation for determining their deductions. The plaintiff's suit alleged that the state statute violated the Establishment Clause found in the First Amendment to the Bill of Rights.

In 1955 the state legislature enacted the original statute. The law was revised twice, once in 1976 and again

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[60] Hornbeck, op. cit., p. 758.

[61] Mueller v. Allen, U.S. Minn. (103 S.Ct. 3063).

[62] M.S.A. 290.09, subd. 22.

in 1978. The concept behind the enactment was to, "...permit state taxpayers to claim a deduction from gross income for certain expenses incurred in education their children."[63] The revised statute allowed tax deductions in amounts not to exceed:

GRADE	AMOUNT PER DEPENDENT
K-6	$500.00
7-12	$700.00

During the school year in which this case was heard, some 820,000 students in Minnesota were provided a free public education. While at the same time, 91,000 students enrolled in private elementary and secondary schools.[64] Approximately 5,000 schools were established in the private sector and 95% of these schools were parochial in nature.

When the case was first decided by Judge Robert G. Renner in the United States District Court for the District of Minnesota the court ruled in favor of the defendants. The court held that the state statute met the "three-part" test as delineated in Lemon v. Kutzman.[65] Therefore, the

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[63]Clifford P. Hooker, ed., West Educational Law Reporter, XI (St. Paul: West Publishing Company, 1983), p. 776.

[64]Ibid.

[65]Lemon v. Kutzman, 403 U.S. 602, 91 S.Ct. 2105, 2109, 2111, 29 L.Ed. 2d. The "three-part" test is composed of the following three areas:

1. A law must have a secular purpose.
2. A law can neither advance nor inhibit a religion.
3. A law can not establish "an excessive government entanglement with a religion.

statute did not violate the Establishment Clause. The court concluded the following:

> 1. The tax deduction in question has the secular purpose of ensuring that the States' citizenry is well educated, as well as of answering the continued financial health of private schools, both sectarian and nonsectarian.
>
> 2. The deduction does not have the primary effect of advancing the sectarian aims of non-public schools.
>
> 3. Section 290.09(22) does not 'excessively entangle' the State in religion.[66]

An appeal to the case was brought before Chief Judge John F. Nangle's Eighth Circuit Court of Appeals. This court was in agreement with the District Court and wrote that certain deductions[67] were not contrary to the United

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[66]West, XI, op. cit., pp. 764-765.

[67]Ibid., p. 766. The Court of Appeals included the following deductions as educational expenses:
1. Tuition in the ordinary sense.
2. Tuition to public school students who attend public schools outside their residence school districts.
3. Certain summer school tuitions.
4. Tuition charged by a school for slow learner private tutoring services.
5. Tuition for instruction provided by an elementary or secondary school to students who are physically unable to attend classes at such school.
6. Tuition charged by a private tutor or by a school that is not an elementary or secondary school if the instruction is acceptable for credit in an elementary or secondary school.
7. Montessori School tuition for grades K through 12.
8. Tuition for driver education when it is part of the school curriculum.
Also, the District Court found that the following items fell into the category of deductions for "textbooks":
1. Cost of tennis shoes and sweatsuits for physical education.
2. Camera rental fees paid to the school for photography classes.
3. Ice skate rental fees.
4. Rental fee paid to the school for calculators for

States Constitution.

The case finally arrived at the United States Supreme Court on appeal from the Circuit Court. The Supreme Court agreed with the decision of the two lower courts in a five-four decision.[68] In looking at the law and trying to make their decision the court examined and responded in the following areas:

1. The court continues to reject an argument which says, "...any program which in some manner aids an institution with religious affiliation..." violates the Establishment Clause.[69]

2. The statute meets the signpost of the "three-point" test lain down by in Lemon v. Kutzman.[70]

When examining the "three-point" test, the Court looked at the laws' effort to meet the secular concept. One portion of this examination was to determine if it would affect a small or large group of people. The court stated that Mueller v. Allen was open to a broad "spectrum of

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mathematics classes.
5. Costs of home economics materials needed to meet minimum requirements.
6. Costs of special metal or wood needed to meet minimum requirements of shop classes.
7. Costs of supplies needed to meet minimum requirements of art classes.
8. Rental fees paid to the school for musical instruments.
9. Costs of pencils and special notebooks required for class.

[68]Writing the Courts opinion was Justice William H. Rehnquist with support from Chief Justice Warren E. Burger and Justices Byron R. White, Lewis F. Powell, Jr., and Sandra Day O'Connor. On the other hand, Justice Thurgood wrote the dissent and was supported by Justices William J. Brennan, Harry A. Blackmun, and John Paul Stevens.

[69]West, XI, op. cit., p. 776.

[70]Ibid., p. 768.

groups."[71] The law was written so deductions could be taken by all parents who had incurred educational expenses. This included parents who sent their children to public schools as well as to secular and nonsecular private schools.

3.8 Lawrence County v. Lead-Deadwood School District No. 40-11[72]

On January 9, 1985 the United States Supreme Court handed down another decision affecting school finance. The Court in a seven-two decision,[73] insisted that, "...states cannot require local governments to distribute federal payments in lieu of taxes in the same manner as they distribute general revenue."[74]

The case evolved from a 1979 South Dakota legislative enactment[75], "...requiring local governments to distribute the payments in the same manner as taxes."[76] The word "payments" referred to funds received by local

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[71]Ibid., p. 769.

[72]Lawrence County v. Lead-Deadwood School District No. 40-1, 469 U.S., 105 S.Ct. 695 L.Ed.2d 635 (1985).

[73]Justice Byron R. White wrote the Courts opinion and was joined by Chief Justice Warren E. Burger and Justices William J. Brennan, Thurgood Marshall, Harry A. Blackmun, Lewis F. Powell, Jr., and Sandra Day O'Connor. Those opposing the Court majority decision were Justices William H. Rehnquist and John Paul Stevens.

[74]Tom Mirga "In Lieu of Taxes," Education Week, January 16, 1985, p. 12, col. 4.

[75]SDCL 5-11-6.

[76]Education Week, op. cit. p. 12.

governments for compensation for the loss of taxable property to the federal government. By federal legislation, the local governments were allowed to spend the money, "for any government purpose."[77] The state law attempted to place restrictions on spending of federal funds by the local governments. However, Lawrence County government officials rebuffed the state statute. The county government maintained, "...that it [the law] was invalid under the United States Constitution's supremacy clause, which holds that federal laws supersede state laws when the two conflict."[78]

The Circuit Court of the Eighth Judicial Circuit of Lawrence County, presided over by Judge Scott G. Moses, sustained the country's position that local government had the right to distribute funds in the manner suitable to local county discretion. The lower court decision precluded local school districts from obtaining approximately sixty percent of the federal funding[79] received by the local government. At this point and inspired to obtain a large percentage of federal funds, the Lead-Deadwood School District entered the judicial process.[80]

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[77]Ibid.

[78]Ibid.

[79]Ibid.

[80]The case was originally sited as Lead-Deadwood School District No. 40-11 v. Lawrence County. When the case moved to the Supreme Court the names were reversed.

On appeal to the South Dakota Supreme Court the Lead-Deadwood School District found a more sympathetic ear. The state supreme court reversed the trial court insisting the legislative enactment was unconstitutional,"... because the state law required that funds be spent for governmental purposes, and since support of schools is such a purpose, it did not conflict with the federal law."[81]

On appeal the United States Supreme Court on January 9, 1985, reversed the South Dakota Supreme Court ruling insisting the original lower court ruling was correct. Associate Justice Byron R. White, wrote that the South Dakota Supreme Court, "...plain-language analysis, however, is seriously flawed."[82] The Court maintained that local governments had the right to choose how the federal funds should be spent. Justice White suggested that when Congress passed the original law---Payment In Lieu of Taxes Act of 1979---Congress,

> ...recognizing that the costs associated with maintaining and serving federal lands were varied and unpredictable, and that local governments needed the flexibility to allocate in lieu payments to those needs as they arose.[83]

Certainly funding of elementary and secondary schools falls into the category of not always being predictable.[84]

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[81] Ibid.

[82] Ibid.

[83] Ibid.

3.9 Summary

The Tenth Amendment to the United States Constitution stipulates that education is the responsibility of the fifty individual state legislatures.[85] However, the cases mentioned clearly indicate that both state and federal judiciaries have had much to say about education finance since 1970.

An example of the affect the United States Constitution and federal statutes have on local financing can be witnessed in a court case which began in Onslow County, North Carolina in 1982. The District Court of Eastern North Carolina and the Fourth Circuit Court of Appeals heard a case in which the plaintiffs brought suit against the Onslow County School Board for its creative financing scheme, i.e., the School Board's response to the decrease in federal Impact Aid funding.

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[84] Ibid. Justice White wrote,

> Absent elaborate and speculative calculations and budget juggling, the allocation of federal payments in the same proportion as local revenue would most likely result in a windfall for school districts and other entities that are already fully funded by local revenues.

[85] "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States..."

CHAPTER FOUR

THE ONSLOW COUNTY COURT CASE

4.Ø Introduction

In May of 1983 the United States government and several individual plaintiffs[1] brought suit in District Court for the Eastern District of North Carolina, New Bern Division, against the Onslow County Board of Education, the State of North Carolina, and Governor James B. Hunt. This suit was in response to a plan by the School Board, authorized by legislative enactment,[2] allowing a tuition fee charge for any "non-domiciliary" child who attended public

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[1]These individual appellees are 1) Major Daniel M. Roland, individually and next friend of Mary Alice Rowland, 2) Major Werner Hellmer, individually and next friend of Werner K. Hellmer and Jessica R. Hellmer, 3) Commander William Hicks, individually and next friend of Tamara Hicks and Jason Hicks, 4) Lieutenant Commander Harold A. Sloas, individually and as next friend of Harold Sloas, Elliott Sloas, and Susan Sloas, 5) Captain Floyd H. Winn, individually and as next friend of Bethany Winn, 6) Captain Charles D. Wardel, individually and as friend of Casi Wardel and Erek Mark Downey, 7) Master Sergeant George Bowers, individually and as next friend of Loretta Bowers, Mark Bowers, Kevin Bowers, and 8) Master Sergeant Paul Tipton, individually and as next friend of Paula Tipton, Gina Tipton, and Ginger Tipton.

[2]North Carolina General Statute 115c-336.1, Local Board of Education; Tuition Charge.

school in Onslow County. This tuition fee plan levied by the School Board was a reaction to a substantial decline of federal Impact Aid funds under Public Law 874.

4.1 Background of the Location

Onslow County is located along the coastline of eastern North Carolina. Since April of 1941, when construction began, it has been the home of Marine Corps Base, Camp Lejeune. According to a sign found at Camp Lejeune the Base claims to be the "world's most complete amphibious training base."[3] Camp Lejeune has a perimeter of sixty-eight miles, including fourteen miles of ocean front property. Approximately 110,000 acres of land is for utilization by the federal government.[4] In addition, adjacent to Camp Lejeune is Marine Corps Air Station (Helicopter) New River. This station, reactivated in October 1951, after deactivation following World War II, has a land mass of 26,000 acres.[5] The combined installations have a military population of over 35,500 and a civilian population of over 4700.[6] The daytime population, which includes dependents, reaches a high of approximately 60,000

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[3]The Main Gate entrance sign.

[4]Welcome Brochure, Camp Lejeune, (El Cajan, CA: National Military Publications, 1984), p. 3.

[5]Ibid., p. 5.

[6]Memorandum In Support of Plaintiffs' Motion for Summary Judgment, p. 2, United States of America, et.al., v. Onslow County Board of Education, (E.D. NC 1982).

people.[7] Beside the families which live on the installations, there were also over 4500 families residing in Onslow County proper.[8]

Onslow County provides a free public education[9] to children residing in the county.[10] During the 1981-82 School Year the School Board operated twenty-five schools and had an enrollment of 16,668 students.[11] Of these students, approximately 2900 were military dependent children.[12]

As indicated in Chapter Two, in 1951 the United States Congress enacted Public Laws 815 and 874, to help defray the cost of educating children who were federally-connected and additionally to help where land had been removed from the taxing structure of local government. In 1951, under Public Law 874, Onslow County received a payment of $7,027.00[13] This funding continued to increase until it

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[7]Welcome Brochure, op. cit., p. 3.

[8]Judgment, p. 5., United States of America v. Onslow County Board of Education, (Court of Appeals for the 4th Circuit, 1984).

[9]North Carolina General Statute 115c-1 (Supp. 1981).

[10]The Base also provides an education to children residing in base housing. The Camp Lejeune Dependents' Schools operate seven schools aboard the Base, consisting of one high school, one junior high school, and five elementary schools. During 1981 the school system educated approximately 3900 students.

[11]Judgment, op. cit., p. 5.

[12]Memorandum in Support of Plaintiffs' Motion for Summary Judgment, op. cit., p. 3.

reached a high point in 1975-78 of over $1,000,000.00 per year.[14] After 1979 the amount received annually from Public Law 874 began to decline. For example, in Fiscal Years 1981 and 1982 the funding received dropped by over one-third from $664,634.00 to $404,409.00. This decline was due to cut backs in the federal budget.[15] In fact, during Fiscal Year 1982 the Board only received $218,114.00 of the $404,409.00, the remainder being held by the United States government until the Onslow County tuition plan suit was resolved.[16]

In addition to Public Law 874 funds, the Board also received funding from Public Law 815, capital outlay funding.[17] The system received $2,916,598.00 from the School Construction Assistance Program from Fiscal Year 1952 to Fiscal Year 1967.[18] After 1967 the Onslow County School Board applied for no further funding under Public Law 815.

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[13]Judgment, op. cit., p. 8.

[14]Ibid., p. 9.

[15]Ibid.

[16]Daily News [Jacksonville, NC], April 12, 1984, p. 1A, col. 3.

[17]In order to be eligible for this funding the receiving school district had to agree to the following statement found in the law:

"The Applicant's school facilities will be available to the children for whose education contributions are provided in Public Law 815, as amended, on the same terms, in accordance with the laws of the State in which the Applicant is situated, as they are available to other children in Applicant's school district."

[18]Judgment, op. cit., p. 9.

4.2 State Statue and School Board Resolution

Federal cutbacks in budgets became a matter of concern to many federal and state agencies during the 1980's. This also was the case for the Onslow County Board of Education. The School Board believed that cutbacks would not allow sufficient funds to provide a "...quality education for all of its students."[19] The Board passed the following resolution on July 6, 1982 in order to obtain sufficient funding for educating students:

> WHEREAS, the Onslow County Board of Commissioners have not appropriated sufficient local funds to meet the budget request by the Board of Education necessary to maintain the existing level of quality education in the schools; and
>
> WHEREAS, in the past years, the Onslow County school system has received Federal funding under Public Law 874 to provide educational cost for non-resident military dependent children residing off-base and attending schools in Onslow County; and,
>
> WHEREAS, funding under Public Law 874 is no longer available and Congress has failed as of the date of this Resolution to appropriate funding to provide educational costs for non-resident military dependent children;
>
> WHEREAS, it is anticipated that based upon prior years attendance averages, approximately two thousand non-resident military dependent children will seek enrollment in the Onslow County Public Schools; and,
>
> WHEREAS, under North Carolina General Statutes, Section 115C-366.1, Boards of Education in North Carolina may charge tuition to persons of school age not domiciliaries of the States of North Carolina, and persons of school age who are domiciliaries of the State but who do not reside within the school district; and,

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[19] United States of American v. Onslow County Board of Education, (E.D. NC 1983).

WHEREAS, the lack of adequate local funding and the loss of funds under Public Law 874 leaves the Board of Education without sufficient funds to maintain its existing level of quality education for all pupils enrolled and it is now necessary and in the best interests of the Onslow County school system and its students that tuition be charged where permitted by law,

NOW, THEREFORE be it resolved as follows:

(1) Tuition shall be charged to all persons of school age who are not domiciliaries of the State and all persons of school age who are domiciliaries of the State but who do not reside within the school district,

(2) Tuition shall not be charged in any case where there exists a written agreement with the local board of education where the student is domiciled,

(3) The amount of tuition for the 1982-1983 school year shall be $245.00 per student and shall be paid on or before the due date of regular school fees.

(4) Those persons enrolling a student in school shall be responsible for the payment of such tuition and the failure to make such payment on or before 1st day of October shall result in the dismissal of the student.

This resolution of July 6, 1982, was based on the following 1981 North Carolina General Statute 115c-366.1 as amended in 1982:

(a) Local boards of education may charge tuition to the following persons:

(1) Persons of school age who are not domiciliaries of the State.

(2) Persons of school age who are domiciliaries of the State but who do not reside within the school administrative unit or district.

(3) Persons of school age who reside on a military or naval reservation located within the State and who are not domiciliaries of the State. Provided however, that no person of school age residing on a

> military or naval reservation located within the State and who attends the public schools within the State may be charged tuition if federal funds designed to compensate for the impact on federal schools of military dependent persons of school age are funded by the federal government at not less than fifty percent (50%) of the total per capita cost of education in the State, exclusive of capital outlay and debt service, for elementary or secondary pupils, as the case may be, of such school administrative unit.
>
> (b) The tuition charge for a student shall not exceed the amount of per pupil local funding.
>
> (c) The tuition required in the section shall be determined by local boards of education each August 1 prior to the beginning of a new school year.

4.3 Background of the Case

A group of plaintiffs believing the North Carolina statute and the School Board resolution to be unlawful, entered a Memorandum In Support of the Plaintiffs' Motion for Summary Judgment in in District Court in October, 1982, before Judge Franklin T. Dupree. The plaintiffs maintained that these two governmental actions violated the following four facts of law:

1. Two counts under the Supremacy Clause
2. One count under the Equal Protection Clause, and
3. One count of a breach of contract.[20]

The plaintiffs insisted the Supremacy Clause of the United States Constitution had been violated. The statute and resolution allowed for double taxation of the military

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[20]Memorandum In Support of Plaintiffs' Motion for Summary Judgment, op. cit., pp. 9-11.

families involved[21]; i.e., the plan subjected the plaintiffs to both taxation in their state of residency and in North Carolina and Onslow County. Since military sponsors, like other parents, are responsible for their children, they also were being discriminated against.[22] Both double taxation and discrimination against military personnel is considered illegal under the Soldiers and Sailors Civil Relief Act.

Utilizing previous Judicial decisions[23], the plaintiffs maintained the United States Supreme Court in the 1819 McCulloch v. Maryland case insisted that it was illegal for any state or local government to interfere with or pass regulations which conflict with federal laws or an agency of the federal government. Further, it is also illegal to establish state or local rulings which discriminate against federal activities.[24] The plaintiffs believed, as indicated in California v. Buzard[25], that one reason the United States Congress enacted the Soldiers and Sailors Civil Relief Act was to shelter servicemen from, "...the burden of supporting the governments of the States where he [is] present solely in compliance with military orders."[26]

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[21]Ibid.

[22]Ibid., pp. 10-11.

[23]McCulloch v. Maryland, 17 U.S. 316, 4 L.Ed. 549 (1819).

[24]Memorandum In Support of Plaintiffs' Motion for Summary Judgment, op. cit., p. 12.

[25]California v. Buzard, 382 U.S. 386, 393, 86 S.Ct. 479, 483, 15 L.Ed.2d. 436, 441 (1966).

The tuition plan in their eyes,

> ...conflicted with this congressional intent by requiring non-domiciliary servicemembers stationed at Camp Lejeune and living in Onslow County to support school systems established by governments in North Carolina as well as those in their home states.[27]

The Onslow plan and the North Carolina statute were pre-empted by federal law and, therefore, a violation of the Supremacy Clause.[28]

Allegations were made that,

> The North Carolina statute and the Onslow tuition scheme are nothing less than efforts to raise revenue from the residents of Onslow County who are present there only on military orders.[29]

"The Memorandum In Support of Plaintiffs' Motion for Summary Judgment" insisted that since the Soldiers and Sailors Civil Relief Act provided immunity to servicemen from state and local "taxes" in all states, except the servicemembers home state, the Onslow plan was referred to as a "tuition" by the state and local governments rather than a tax. Utilizing this wording the state and local governments attempted to accomplish in a circuitous manner what the federal government had attempted to prohibit.[30] In other words, the tuition plan's fee forced the servicemen to

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[26]Memorandum In Support of Plaintiffs' Motion for Summary Judgment, op. cit., p. 12.

[27]Ibid., pp. 12-13.

[28]Ibid., p. 13.

[29]Ibid.

[30]Ibid., pp. 13-14.

support schools in Onslow County as well as schools in their home states where the sole right of taxation exists.[31] Therefore, the plaintiffs claimed that the State statute and the Board resolution should both be preempted.[32]

The non-taxation provision portion of the Soldiers and Sailors Civil Relief Act[33] endeavored to ensure that

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[31] Some of the plaintiffs paid taxes in their home states: Indiana (Wardel and Winn), Iowa (Hellmer), Georgia, (Rowland, and Florida (Sloas). These taxes could be utilized to support educational needs within the respective state. The remaining plaintiffs are subject to taxation within their home state should the state require payment of such.

[32] Memorandum In Support of Plaintiffs' Motion for Summary Judgment, op. cit., p. 14. The attorneys used the Chicago & North Western Transportation Co. v. Kalo Brick Tile Co., 450 U. S. 311,317,101 S.Ct. 1124, 1130, 67 L.Ed. 258, 265 (1981) in which the United States Supreme Court outlined the test for preemption of local laws.

> [W]hen Congress has chosen to legislate pursuant to its constitutional powers, then a court must find local law pre-empted by federal regulation whenever the "challenged statute 'stands as an obstacle to the accomplishment and execution of the full purpose and objective of Congress,'" Perez v. Campbell, 402 U.S. 637, 649 (1971), ...quoting Hines v. Davidowitz, [312 U.S. 52, 67-68 (1967)]
>
> ...Making this determination "is essentially a two-step process of first ascertaining the construction of the two statutes and then determining the constitutional question whether they are in conflict." Perez v. Campbell, supra, at 644...

[33] The taxation immunity portion of the SSCRA of 1940, 50 U.S.C. App. 574(1) reads as follows:

> For the purpose of taxation in respect of the personal property, income, or gross income of any [servicemember] by any State, ...or political subdivision, ...of which such person is not a resident or in which he is not domiciled, compensation for military or naval service shall not be deemed income for services performed within, or from sources within such State, ...[or] political subdivision, ...and

servicemen are not taxed twice or even threatened with multiple taxation.[34] In fact, by passing the Relief Act, Congress made sure servicemembers were not in jeopardy of being taxed twice when they were "...serving within various taxing jurisdictions through no choice of their own."[35] Therefore, servicemembers living in a state other then their own home state "...do not acquire a domicile in the host state merely as a result of moving there under orders."[36]

In addition to the violation of the Supremacy Clause by subjecting servicemen to dual taxation, the tuition plan also violated the Supremacy Clause by discriminating against servicemen because of their military status. Although

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personal property shall not be deemed to be located or present in or to have a situs for taxation in such State, ...

[34]Dameron v. Brodhead, 345 U.S. 322, 326, 73 S.Ct. 721, 97 L.Ed. 1041, 1046 (1953) made the following statement, with emphasis added, about multiple taxation or the threat thereof:

> [T]hough the evils of potential multiple taxation may have given rise to this provision, Congress appears to have chosen the broader technique of the statute carefully, freeing servicemen from both income and property taxes imposed by any state by virtue of their presence there as a result of military orders. It saved the sole right of taxation to the state of original residence whether or not that state exercised the right. Congress, manifestly, thought that compulsory presence in a state should not alter the benefits and burdens of our system of dual federalism during service with the armed forces.

[35]Memo In Support of Plaintiffs' Motion for Summary Judgment, op. cit., p. 15.

[36]Ibid. Also see United States v. Arlington County, 326 F.2d. 929 (4th Cir. 1964).

designated a tuition fee which applies to all non-domiciliaries, the plaintiffs alleged this fee to be a tax which was discriminatory since it had as a purpose a tuition charge, "... for the education of the children of non-domiciliary servicemembers in Onslow County."[37] Since a majority of the people affected by this plan were members of the armed forces an unequal impact fell upon this specific group. Consequently this plan was "... nothing less than discrimination against persons in the service of the United States."[38] Neither was the resolution in accordance with a decision handed down in McCulloch, nor was it in accordance with another court case entitled Phillips Chemical Co. v. Dumas Independent School District.[39] In the Phillips case the United States Supreme Court ruled that discriminatory fees could not be imposed "... upon those who deal with the federal government."[40] In this case, the company could not be charged an additional tax on the property leased from the federal government while a lower tax was being charged for state or local property leasing. The court wrote,

> [A] State may not single out those who deal with the Government, in one capacity or another, for a tax burden not imposed on others similarly situated.[41]

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[37]Ibid., p. 18.

[38]Ibid.

[39]Phillips Chemical Company v. Dumas Independent School District, 361 U.S. 376, 80 S.Ct. 474, 4 L.Ed.2d. 384 (1960).

[40]Memo In Support of Plaintiffs' Motion for Summary Judgment, op. cit., p. 19.

Phillips was followed by another legal decision dealing with the same type issue. The 1977 United States v. County of Fresno[42] case spoke to the protection which would be gained by different groups within a state or locality when a burden was shared by all alike. The Court ruled a burden should be shared by all people:

> ... local residents affected by the regulation or tax at issue will, in protecting their own interests in the political process, also protect those of similarly situated federal employees.[43]

That is, the Court believed if equal protection did not exist a local community or state would certainly discriminate against the federal employees and no check on the abuse would ever come into existence. As an illustration, servicemen would be prohibited from

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[41]Ibid., p. 20. Also see Moses Lake Homes, Inc. v. Grant County, 365 U.S. 744, 81 S.Ct. 870, 6 L.Ed.2d. 66 (1961). The court wrote in the Grant case that,

> If anything is settled in the law, it is that a state may not discriminate against the Federal Government or its lessees. See, e.g., Phillips Co. v. Dumas School District, 361 U.S. 376; United States v. City of Detroit, 355 U.S. 466, 473; City of Detroit v. Murray Corp., 355 U.S. 489. In United States v. City of Detroit, supre, we said:
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> "It still remains true, as it was from the beginning that a tax may be invalid even though it does not fall directly on the United States it it operates so as to discriminate against the Government or those with whom it deals." 355 U.S. at 473.

[42]United States v. County of Fresno, 429, U.S. 452, 97 S.Ct. 699, 50 L.Ed. 2d 683 (1977).

[43]Memo In Support of Plaintiff's Motion for Summary Judgment, op. cit., p. 21.

participating in state or local political processes. This became more clear when the situation was explained by the Court in the following manner:

> [T]he political check against the abuse of power to tax a State's constituents is absent when the state taxes only a federal function. A State's constituents can be relied upon to vote out of office any legislature that imposes an abusively high tax on them. They cannot be relied upon to be similarly motivated when the tax is instead on a federal function.[44]

The plaintiffs insisted this situation existed in the utilization of the Onslow County School Board tuition plan. Servicemen could not participate in the local selection of School Board members nor representatives to the state legislature. Therefore, the plaintiffs could not act to protect themselves. Thus the School Board's plan would help to relieve the taxpayers of some tax liability and the local community could only be expected to support the plan. As a result of the purpose of the plan and the composition of the local community, no group similar to the servicemen existed and the rights of those affected were not protected.[45]

The plaintiffs also utilized a ruling from Douglas Independent School District No. 3 v. Jorgensen,[46] a case ruled on in 1968, which resulted from the enactment of a South Dakota state school financing law. This law kept

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[44]Ibid.

[45]Ibid., pp. 21-22.

[46]Douglas Independent School District No. 3 v. Jorgensen, 293 F. Supp. 849, 854 (D.S. Dak. 1968).

local South Dakota communities from using Impact Aid funding. The court stated,

> Enforcement of [the South Dakota law] would mean penalizing children and their parents who either live or work on Federal lands within the State of South Dakota and effectively denying them the same school privileges as other children in the State. This is a discrimination without justification, and we must strike it down as unconstitutional.[47]

In addition to the violation of the Supremacy Clause on the two aforementioned counts, the plaintiffs also believed their rights had been violated on two other counts. First, they believed their rights had been violated in the area of the Fourteenth Amendment's Equal Protection clause and secondly, in the area of a breach of a contract.

The plaintiffs alleged that the State statute and the School Board's tuition plan violated the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution. The tuition plan discriminated, "... without rational basis against non-domiciliaries of North Carolina who are residents of North Carolina and are employed on Federal property."[48] Although the Equal Protection Clause does not disallow any government from burdening a specific group of people with a tax, the Clause does indicate that the enacting governmental body must have "... some legitimate, articulated purpose,"[49] to do so.

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[47]Memo In Support of Plaintiffs' Motion for Summary Judgment, op., cit., p. 24.

[48]Plaintiffs' Complaint, p. 11, United States of America, et. al. v. Onslow County Board of Education, (E.D. NC 1982).

The plaintiffs utilized a decision handed down in Plyler v. Doe.[50] This 1982 case concluded that it was illegal to exclude a group of children from the local public schools, "... unless it furthers some substantial goal of the State."[51], and plaintiffs insisted the Onslow tuition plan did not further any substantial goal. Further, by supporting their local and state system of education by a tuition plan Onslow County and the State of North Carolina had utilized the same justification used in Plyler, i.e., an utilization of, "... tuition charges to conserve its resources for the other residents of the County."[52] In striking down this justification, the United States Supreme Court wrote,

> Of course, a concern for the preservation of resources standing alone can hardly justify the classification used in allocating those resources... The State must do more than justify its classification with a concise expression of an intention to discriminate.[53]

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[49]Ibid., p. 24. Also see, San Antonio Independent School District v. Rodriguez, 411 U.S. 1, 17, 93 S.Ct. 1278, 36 L.Ed. 2d 161 (1973); United States Department of Agriculture v. Moreno, 413 U.S. 528, 533, 93 S.Ct. 2821, 37 L.Ed. 2d 782 (1973); Jefferson v. Hackney, 406 U.S. 535, 546, 92 S.Ct. 1724, 32 L.Ed. 2d 285 (1972); Richardson v. Belcher, 404 U.S. 78, 81, 92 S.Ct. 254, 30 L.Ed. 2d 231 (1971); Dandridge v. Williams, 397 U.S. 471, 485, 96 S.Ct. 1153, 25 L.Ed. 2d 491 (1970).

[50]Plyler v. Doe, 102 S.Ct. 2382, 2398 (1982).

[51]Memo In Support of Plaintiffs' Motion for Summary Judgment, op. cit., p. 25.

[52]Memo In Support of Plaintiffs' Motion for Summary Judgment, op. cit., p. 26.

[53]Plyler v. Doe.

The plaintiffs also mentioned that other Court decisions, such as San Antonio School District v. Rodriguez and Massachusetts Board of Retirement v. Murgia,[54] required very careful scrutiny of any decision to restrict public education for a specific group of children. The plaintiffs therefore asked how it can be held illegal to discriminate against children of illegal aliens when trying to conserve fiscal resources and not be illegal to discriminate against the children of servicemembers who have volunteered their service in the defense of their nation? Servicemembers within a community can neither participate in the local political process and change the tuition plan, nor can they avoid the fee since they have no choice as to where they will be stationed.

The second and final count dealt with a violation of an assurance given by the Onslow County School Board in return for federal school construction funding under Public Law 81-815, i.e., a breach of a contract. The federal government had provided nearly $3,000,000 in construction funds for fifteen construction projects.[55] These funds were given in "... good faith to the Board, based upon its assurance that it would provide a free education to federally-connected children."[56] The plaintiffs believed

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[54]Massachusetts Board of Retirement v. Murgia, 427 U.S. 307, 313, 96 S.Ct. 2562, 49 L.Ed. 2d 520 (1976).

[55]Memo In Support of Plaintiffs' Motion of Summary Judgment, op. cit., p. 28.

the School Board having received these funds, "... should now be required to fulfill its contractual obligations."[57]

The plaintiffs insisted the United States Congress, in passing Public Law 81-815, had tried to ensure that children of parents who are employed on federal property would not be charged a tuition fee and then be included in the accounting process when a local school board applies for and attempts to obtain Impact Aid funding. The Congress stated,

> The reason for excluding children for whom tuition is charged is obvious since it is not the purpose of this bill to provide assistance to educational agencies with respect to anything but free education.[58]

The Onslow County Board of Education had given assurances when it applied for Impact Aid (Public Law 81-815) funding for each of the fifteen construction projects.[59] With each application, the Board agreed,

> The Applicant's school facilities will be available to the children for whose education contributions are provided in Public Law 815, as amended, on the same terms, in accordance with the laws of the State in which the Applicant is situated as they are available to other children in the Applicant's school district...[60]

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[56]Ibid., p. 31.

[57]Ibid., p. 28.

[58]Ibid., p. 29.

[59]Three examples of these projects are: 1) a request date 12 November 1959 to construct a school for $275.000.00, 2) a request date 27 May 1960 for $150,000.00 to construct a classroom building, and 3) a request dated 22 November 1964 for $444.490.00 to build a school.

[60]Memo In Support of Plaintiffs' Motion for Summary Judgment, op. cit., p. 29.

The "Memorandum In Support of Plaintiffs' Motion for Summary Judgment" emphases that United States v. Sumter School District No. 2[61] had in fact already dealt with the same type of situation as now found in Onslow County. The Sumter School District had notified the local military command that the District would no longer educate children living on the local military installation unless a tuition fee was paid to the District.[62] However, the court prohibited this action, stating,

> The Commissioner made the grants, the money was paid, in good faith, on the "assurances." The plaintiffs now asks good faith compliance of those who realized the benefits. No one would deny that the children are entitled to education. Sumter County owes the integrity of its heritage, the performance of its solemn, binding, contractual obligations. If Sumter County will not perform as a matter of honor, the Court must enforce as a matter of right.[63]

4.4 District Court Decision

Judge Dupree first examined the "breach of contract" allegation.[64] Here the plaintiffs alleged that the Onslow County Board of Education was not fulfilling its contractual obligations when it refused to provide a free public education to non-domiciliary military-connected children the

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[61]United States v. Sumter School District No. 2, 232 F. Supp. 945, 950 (E.D. S.C. 1964).

[62]Memo In Support of Plaintiffs' Motion for Summary Judgment, op. cit., p. 30.

[63]Ibid., p. 31.

[64]Memorandum of Decision, op. cit., p. 5.

same as it provided the state service to local students.[65] The School Board had signed an agreement when it submitted every application of capital expenditure funds. This agreement required an equal education for military-connected children. On the other hand, the defendants disputed this claim stating that the free public education was based on receiving funding from the Impact Aid program and that the loss of funds had compelled the Board to null and void the contracts.

Considering both sides of the case, the judge came to the conclusion that the "Defendants' position is well taken."[66] He believed there was no way the School Board could have anticipated, when it signed the contracts, that large cuts in federal funding would occur. He utilized a quote from Pennhurst State School v. Halderman[67] when he wrote his decision, "[I]f Congress intends to impose a condition on the grant of federal moneys, it must do so

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[65]Ibid. Also see Lemon v. Bossier Parish School Board, 240 F.Supp. 709 (W.D.La. 1965), aff'd, 370 F.2d 847 (5th Cir.), cert. denied, 388 U.S. 911 (1967). This case states,

> ... the school facilities of such agency will be available to the children for whose education contributions are provided in this chapter on the same terms, in accordance with the law of the State in which the school district of such agency is situated, as they are available to other children in such school district...

[66]Memorandum of Decision, op. cit., p. 5.

[67]Pennhurst State School v. Halderman, 451 U.S. 1, 17 (1981).

unambigiously."[68] Therefore, Judge Dupree found the plaintiffs' count must fail since the decline in funding places such a "large, unanticipated expenditure on the Board."[69]

Judge Dupree then turned to the pre-emption argument as based on the Soldiers and Sailors Civil Relief Act. He sited California v. Buzard[70] when he described the purpose of this act:

> ... to relieve military personnel from the burden of supporting two state governments---the government of the state of their domicile and the government of the state where presently stationed.[71]

Although the plaintiffs contended the Soldiers and Sailors Civil Relief Act prohibits charging of a tuition fee, "Because the tuition charge conflicted with Congressional legislation..."[72] the defendants rebutted the Supremacy Clause violation by responding in three areas. These responses were,

> 1) that the tuition is not a tax, being instead merely a charge for services rendered.
>
> 2) that the pre-emption is not to be lightly enforced, and since Congress has not spoken directly on the issue, and this involves an area undoubtedly within the province of the state, education, pre-emption should not be presumed.

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[68]Memorandum of Decision, op. cit., p. 6.

[69]Ibid.

[70]California v. Buzard, 382 U.S. (1966).

[71]Memorandum of Decision, op. cit., p. 7.

[72]Ibid.

3) that the Tenth Amendment prevents interpretation of the Act in such a way as to prevent the tuition plan.[73]

The judge quickly dismissed the first rebuttal of the defendants by citing United States v. Tax Commission:[74]

"... the tuition can only be understood as an 'enforced contribution to provide for the support of government,' the standard definition of a tax."[75]

However, much more time was spent in responding to the defendant's second rebuttal. First Judge Dupree explained that this case involved "conflict pre-emption" rather than "occupation of field."[76] That is, the issue at hand was "... whether the state law presents an obstacle to accomplishing and executing the purpose and objectives of Congress."[77] He utilized the 1982 Toll v. Moreno[78] case when he provided an example of a state which attempted to circumvent the purpose of Congressional legislation. In this situation the State of Maryland decided to charge a higher tuition fee to domiciled non-immigrant aliens[79]

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[73]Ibid.

[74]United States v. Tax Commission, 421 U.S. 599, 606 (1975).

[75]Memorandum of Decision, op. cit., p. 7.

[76]Judge Dupree utilized definitions from National Agriculture Chemical Association v. Rominger, 500 F.Supp. 465 (E.D.Cal. 1980) when he explained this case as a "conflict pre-emption" case.

[77]Memorandum of Decision, op. cit., 8. Also see Jones v. Rath Packing Company, 430 U.S. 519 (1977).

[78]Toll v. Moreno, 102 S.Ct. 2977 (1982).

working for foreign companies in the United States and wishing to attend classes at the University of Maryland. The additional fees, over and above that charged to Maryland residents, were to be utilized in supporting the cost of educating these alien students. The judge then indicated that when the Supreme Court ruled the Maryland plan to be unconstitutional the United States Congress, "through the several statutes and treaties involved, had declared a policy of tax exemption..."Accordingly, Maryland through its tuition plan, could not do indirectly what it was prevented from doing directly."[80]. Therefore, he concluded the federal government had in fact spoken to pre-emption.

Once finished with the second rebuttal, Judge Dupree turned to the third and final rebuttal made by the School Board and State. Here the Tenth Amendment was utilized to defend the Board's stand. Examining this rebuttal the judge used findings from Toll v. Moreno, California v. Buzard, and Sullivan v. United States[81] along with statutes from the Impact Aid legislation.[82] Normally, the concepts raised by these legal decisions and the Impact Aid sections, i.e.,

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[79]These individuals held G-4 visas. This type of visa is given to a non-immigrant alien who works for specific foreign companies.

[80]Memorandum of Decision, op. cit., pp. 8-9.

[81]Sullivan v. United States, 395 U.S. 169 (1969). This case prevented the double taxation which is created when a taxpayer is required to pay taxes to two state or local governments.

[82]Sections 263 and 631.

exemption for paying certain taxes, pre-emption, and Toll, would require the Onslow tuition plan to be declared unconstitutional.[83]

However, Judge Dupree believed the "defendants [had] successfully raised the Tenth Amendment as a defense to plaintiffs' pre-emption theory.[84] He maintained that had the defendants raised this same defense prior to 1976, the year that National League of Cities v. Usery[85] was decided,[86] that, "... the Tenth Amendment had been considered nothing more than truism, imposing no burdens on the valid exercise of power by the federal government."[87] But according to Judge Dupree, "Usery, breathed new life into the Tenth Amendment."[88]

Usery had caused courts not just to accept the Tenth Amendment as a truism, but to look deeper into the case and the circumstances surrounding the case. Then in 1981 in Hodel v. Virginia Surface Mining & Reclamation Association, Inc.,[89] the courts established requirements for the Tenth

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[83]Memorandum of Decision, op. cit., p. 10.

[84]Ibid., p. 11.

[85]National League of Cities v. Usery, 426 U.S. 833 (1976).

[86]Memorandum of Decision, op. cit., p. 11.

[87]Ibid.

[88]Ibid.

[89]Hodel v. Virginia Surface Mining & Reclamation Association, Inc., 452 U.S. 264, 287-288 (1981).

Amendment. In this case the Court wrote,

> There must [first] be a showing that the challenged statute regulates the "States as States." Second, the federal regulation must address matters that are indisputably "attributes[s] of state sovereignty." And third, it must be apparent that the States' compliance with the federal law would directly impair their ability to "structure integral operations in areas of traditional governmental functions."[90]

Additionally, the same Court said, "Meeting these three requirements is not enough for '[t]here are situations in which the nature of the federal interest advanced may be such that it justifies state submission."[91]

Judge Dupree concluded that the first two requirements had been met. He wrote, "Thus, any statute which prevents taxation must not only regulate the 'States as States' but must also indisputably regulate attributes of state sovereignty'."[92] On the other hand, the third requirement was not as simple to explain and was the reason the Onslow County School Board was in court. That is the defendants believed education to be a traditional governmental function and that it could not go forth without additional funding provided by the tuition fee.

In scrutinizing this requirement, Judge Dupree, utilized a finding from Equal Employment Opportunity Commission v. Wyoming[93] which stated, "In determining

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[90]Memorandum of Decision, op. cit., p. 11.

[91]Ibid.

[92]Ibid., p. 12.

[93]Equal Employment Opportunity Commission v.

whether there is a direct impact on integral governmental function, the inquiry does not depend on 'particularized assessments of actual impact'."[94] Rather what is conveyed is,

> ... a more generalized inquiry with the focus on "the States' ability to structure operations and set priorities over a wide range of education" as well as "the direct and obvious effects of the federal legislation on the ability of the States to allocate their resources."[95]

Onslow Country's governmental agencies are responsible for providing certain services to the citizens of the county. Certainly, education is one of these services. The School Board insisted it was not able to provide a quality education and this has a direct effect on the county. The Board insisted that, "The impairment on these functions occasional by the inability to tax and the restructuring which may result is forbidden by the Tenth Amendment."[96]

For this requirement Judge Dupree concluded there was no overriding federal interest which would require states submission. The federal government only had as its major purpose the intent of obtaining and retaining personnel in the armed forces of the United States. Also, since the War Powers were not enacted during this period,

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Wyoming, 51 U.S.L.W. 4219, 4223 (1983).

[94]Memorandum of Decision, op. cit., p. 12.

[95]Ibid.

[96]Ibid., p. 13.

unlike the time in which the Soldiers and Sailors Civil Relief Act was enacted by Congress, there was no national interest at stake.[97]

Judge Dupree wrote that contrary to the Toll v. Moreno decision, there was no federal interest to justify submission by the state and local governments. He gave two reasons for this decision:

> 1) ... nowhere in the Supreme Court's opinion is the Tenth Amendment issue addressed, and this court will not assume that the Tenth Amendment was implicitly addressed and rejected.[98]
>
> 2) ... Toll is distinguished on Tenth Amendment grounds. Because Toll also involved a tuition plan, the first two prongs of the Usery test are easily met. The third prong, however, is the distinguishing factor.[99]

The Onslow County case placed emphasis on the importance of elementary and secondary education being offered at the local level.[100] This in itself was the distinguishing factor from Toll. Toll involved higher education which was funded by the state of Maryland. Dupree concluded that financial constraints at the state level were less injurious than those made at a local level. In other words, cuts in budgets which affect an entire state are not as severe proportionally as those which would occur at Onslow County School Board level.[101] Additionally, the difference in the

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[97] Ibid.

[98] Ibid., p. 14.

[99] Ibid.

[100] Plyler v. Doe, 102 S.Ct. 2382, 2397 (1982).

influx of personnel was mentioned. In Toll, the effect of a few students entering the state-wide university system was much less than the influx of a large number of military personnel coming into Onslow County.[102] This line of reasoning led Judge Dupree to find that "the plaintiffs could only succeed on their pre-emption challenge."[103]

Judge Dupree then moved to the next count, i.e., the Supremacy Clause challenge. The plaintiffs alleged that the tuition plan was a "tax on the agents of the federal government and therefore on the government itself."[104] In considering this challenge the judge utilized findings from United States v. County of Fresno where the court contended that "for a tax to be void under the supremacy clause, the legal incidents of the act must fall on or in some manner against the federal government."[105] At this point the issue then became whether or not the Onslow tuition plan discriminated against the federal government.[106]

Citing a conclusion from Personnel Administrator of Massachusetts v. Feeney,[107] Judge Dupree looked past the

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[101]Memorandum of Decision, op. cit., pp. 14-15.

[102]Ibid., p. 15.

[103]Ibid.

[104]Ibid.

[105]Ibid.

[106]Ibid.

[107]Personnel Administrator of Massachusetts v. Feeney, 442 U.S. 256 (1979).

facial neutrality of the Onslow tuition plan, since "that alone is not dispositive in determining whether an ordinance is discriminatory."[108] Rather he considered such factors as the following:

1) historical background of the decision,

2) the sequence of events leading up to the decision, and

3) any legislative history that might be available.[109]

Additionally, he considered whether the plan was "because of" rather than "in spite of."[110]

The window dressing of the tuition plan used the term "non-domiciliaries" when describing who would be required to pay the tuition fee. However, the judge believed that, "The preamble of the Board's ordinance clearly shows the discriminatory purpose contemplated by Feeney."[111] The Board said it could not possibly provide the quality education it should without the financial support it needed from the federal government.[112]

Judge Dupree found that neither the State's statute nor the Board's resolution could be upheld.[113] He insisted

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[108]Memorandum of Decision, op. cit., p. 16.

[109]Ibid. Also see Arlington Heights v. Metropolitan Housing Development Corporation, 429 U.S. 252 (1977).

[110]Ibid.

[111]Ibid.

[112]Onslow County Board of Education Resolution of July 6, 1982.

[113]Memorandum of Decision, op. cit., p. 18.

that non-domiciliaries could not vote in local or state affairs, and furthermore that no like-group in the community existed which would protect the rights of the non-domiciliaries. Because of this, the plaintiffs were, "entitled to judgment on supremacy clause grounds."[114]

Finally, Judge Dupree did not examine the fourth and last count of the plaintiffs, i.e., the Equal Protection Clause argument. The final judgment had been decided on the Supremacy Clause and there was no need to address Equal Protection.[115]

4.5 Appeals Court Decision

The Onslow County School Board decided to appeal the District Court decision to the United States Court of Appeals for the Fourth Circuit in Richmond, Virginia. The argument was heard by the Fourth Circuit Court on October 31, 1983. The final decision for the defendant's appeal was written by Justice Donald Russell, with concurrence from Justices James M. Sprouse and Judge H. Emory Widener.[116] The decision was then handed down on February 28, 1984. The Appeals Court affirmed the judgment of the District Court stating,

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[114]Ibid.

[115]Ibid.

[116]Clifford P. Hooker, ed., West Educational Law Reporter, XVI (St. Paul: West Publishing Company, 1984), p. 717.

> We do not doubt the Board's genuine concern over providing a quality education for all school-children in Onslow County. Federally connected children and their parents in the military, however, have been caught in a political and fiscal crossfire between the federal, state and local governments, a battle not of their own making, The federal Constitution will not abide this attempt by the Onslow County Board of Education to balance its school budgets at the expense of those who have undertaken to serve our country in arms.[117]

Although the Fourth Circuit Court sustained the District Court decision, there were different judicial philosophical points.

Point 1: The Appeals Court first addressed the contractual issue. The reason the court chose to examine this issue first, was based on "the general principle that dispositive non-constitutional issues are to be treated before reaching constitutional matters."[118] In this issue the court decided only one dispute existed, i.e., the length of time for which the Board had to provide a free public education to the military-connected children in its administrative district.[119]

The plaintiffs believed the obligation to educate their children should be for as long as the, "school facilities constructed with federal funds under P.L. 815 are still in use in Onslow County."[120] On the other hand, the

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[117]Memorandum of Decision, op. cit., p. 51.

[118]Ibid. Also see, Wolston v. Reader's Digest Association, Inc., 43 U.S. 157, 160-61, n. 2 (1979).

[119]Ibid., p. 15.

[120]Ibid., pp. 15-16.

defendants insisted that obligation to provide an equal education was terminated when the federal payments from Public Law 874 were no longer available to the County for its current expense budget.[121]

Considering these opposing statements, the Appeals Court differed with the lower court's finding. The court stated, "School construction and aid under P.L. 815 and impact aid under P.L. 874 are distinct programs serving distinct purposes", and that there is no "indication that Congress intended to create the sort of linkage between the programs that [the] defendants allege."[122] Contrary to how Judge Dupree used the Pennhurst case in his District Court, the Appeals Court maintained that "Pennhurst posed a quite different issue from that we now face."[123]

In Pennhurst Judge Dupree utilized a portion of the decision which said the government could not place ambiguous conditions on the granting of federal funds. However, the Appeals Court concluded that the legislation being contested in Pennhurst, the Developmentally Disabled Assistance and Bill of Rights Act "lacked any explicit language making it a 'condition' of accepting federal funds."[124] This, the Appeals Court insisted, was a distinct contrast to the

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[121]Ibid., p. 17.

[122]Ibid., pp. 17-18.

[123]Ibid., p. 19.

[124]Ibid.

process in obtaining funds from Impact Aid. The Appeals Court pointed out the distinguishing difference in the two cases, i.e., "... here the Board, not the federal government, is trying to create an implied condition attached to the receipt of federal funds..."[125]

Also in closing out the contractual breach count and finding against the School Board, the Appeals Court ruled on the "intent of the parties at the time the contract was made."[126] The Appeals Court insisted that the funds which Public Law 874 provided had no contract attached because these were current expense funds. While in contrast, Public Law 815 required a contract since its purpose was to provide capital outlay funds which were considered to be long-term investments. The court even wrote,

> We find it incredible as a matter of law to suppose that the Board believed that its obligation would expire following the school year in which it received P.L. 815 funds, even though facilities built with the aid could have decades of useful life.[127]

At this point, the Appeals Court became divided on what manner the other counts should be handled. Judge Widener believed that since the contractual count was in

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[125] Ibid.

[126] Ibid., p. 21.

[127] Ibid., pp. 21-22. Also see Lemon v. Bossier Parish School Board which addressed the duration question. This case stated,

> ... contractual assurances will be binding on the board at least as long as it continues to sue the facilities constructed with the funds for which the assurances were given.

favor of the plaintiffs, that there was no reason to continue on with constitutional matters. He utilized the following quote from Ashwander v. TVA[128] in explaining his stance,

> The Court will not pass on a constitutional question although properly presented by the record, if there is also present some other ground upon which the case may be disposed of. This rule has found most varied application. Thus, if a case can be decided on either of two grounds, one involving a constitutional question, the other a question of statutory construction or general law, the Court will decide only the latter.[129]

On the other hand, Circuit Justices Russell and Sprouse believed the twin Supremacy Clause counts should be addressed during the hearing. The insistence on this point originated from the fact that nowhere in the briefs was there mentioned a time period for which the building might be utilized. Therefore, the judges concluded that the same issues which brought the Onslow County case to the Appeals Court level might once again happen after the buildings become obsolete and no longer utilized. Justices Russell and Sprouse maintained, "These issues are now ripe for judication, and no useful purpose would be served by delaying their resolution."[130]

Point 2: There was no doubt in the mind of the majority of the members of the Appeals Court that pre-

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[128]Ashwander v. TVA, 297 U.S. 288, 341, 347 (1936).

[129]Memorandum of Decision for the Court of Appeals, op. cit., p. 52.

[130]Ibid., p. 23.

emption of the tuition plan was an important matter of concern.[131] The court first examined the tuition plan in regard to pre-emption. In doing so, the court ruled that it was

> ... required to perform a two-step analysis of "first ascertaining the construction of the two statutes and then determining the constitutional question whether they are in conflict.[132]

The construction question caused the court to examine the following factors and to site the indicated court cases. First, the court found that pre-emption may occur whether found explicitly in the language or implicitly in the purpose of the statute (Jones v. Rath Packing Co.).[133] The court then had to determine if the plan "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress (Chicago).[134] From here the court turned to California v. Buzard which had, as a major concern, the problem of "multiple state taxation of the property and income of military personnel."[135] Finally

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[131]Ibid., p. 24. The Appeals Court wrote, stating from Gibbons v. Ogden, 22 U.S. (9 Wheat.) 1, 211 (1824), that,

> It has been long recognized that state enactments which "interfere with, or are contrary to the laws of Congress, made in pursuance of the constitution" must yield to federal preemption.

[132]Ibid., p. 25. The District Court had utilized the same approach as found in Chicago & North Western Transportation Co. v. Kalo Brick & Tile Co..

[133]Ibid., pp. 25-26.

[134]Ibid., p. 26.

the court turned to sales or use taxes. Here, utilizing Sullivan v. United States[136] the court found that these kinds of taxes are legal since they "are by their nature imposed only once and then only where there has been a retail sales transaction."[137]

Although the Onslow County School Board viewed "the tuition charge as akin to a user fee for services provided,"[138] the Appeals Court found that the North Carolina school financing scheme for public education was not built on user fees, but rather on taxes paid into the General Fund of the State of North Carolina. The court concluded,

> ... that the Board's tuition charge is but an ill-disguised replacement for those taxes that North Carolina cannot impose on military personnel who are non-domiciliaries because of [Section] 574 (1) [of the SSCRA], and for which the Board no longer considers federal impact aid under P.L. 874 adequate compensation.[139]

Having examined the construction of the Onslow tuition plan, the court turned its attention to the second step of the analysis as required by Chicago. That is, the court attempted to ascertain if a conflict exist between the

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1975) and United States v. Commonwealth of Puerto Rico, 478 F.2d 451, 454 (1st Cir. 1973).

[136]Sullivan v. United States, 395 U.S. 169, 175-77 (1969).

[137] Memorandum of Decision for the Court of Appeals, op. cit., p. 27.

[138]Ibid., p. 28.

[139]Ibid., p. 29.

tuition plan and the Soldiers and Sailors Civil Relief Act. In doing so , the court utilized LeMaistre v. Lefers[140] as a looking glass. The court examined this situation and the Relief Act, "... with an eye friendly to those who dropped their affairs to answer their country's call."[141] They insisted that section 574(1) of Soldiers and Sailors Civil Relief Act was "enacted as a 'necessary and proper' means to effectuate the War Powers of Congress," and "is entitled to no less deference."[142] Having considered the construction and conflict, as required by Chicago, the court found the "Board's ordinance unconstitutional under the Supremacy Clause."[143]

The Appeals Court then began to look into the utilization of the Tenth Amendment as a defense to pre-emption. The court cited some of the same cases as did the lower court and in many instances found as did the lower court. For example, they used Usery to demonstrate that states had the right,"... to structure integral operations in areas of traditional governmental functions."[144] Also, they mentioned how, "... sufficiently strong federal interests can override a Tenth Amendment claim under the

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[140]LeMaistre v. Lefers, 333 U.S. 1, 6 (1948).

[141]Memorandum of Decision for the Court of Appeals, op. cit., p. 29.

[142]Ibid., pp. 31-32.

[143]Ibid., p. 32.

[144]Ibid., p. 35.

National League of Cities doctrine."[145] as mentioned in Hodel and how the court had to look at this kind of situation through the three pronged test as laid out in this case.

The Court of Appeals held with the lower court on the first two of the three conditions of the three pronged test. However, they varied from the Judge Dupree's interpretation on the third condition. They did not question the traditional state function of education, rather the court doubted the state's contention that, "... integral operation will be so impaired by the Relief Act that the state's 'separate and independent existence' will be endangered."[146] The court believed the Act to have such a small effect on the state, i.e., only affecting those communities near federal installations, that the circumstance in this case could not be read as they were in Usery.[147]

In addition, had all three of these conditions been met, the court said it would still find an overriding interest in favor of the federal government---"attracting

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[145]Ibid., p. 36.

[146]Ibid., pp. 37-38.

[147]Ibid. Usery, though the Commerce Clause, had a much more general affect on the entire state. In this case,

> ... the Court found unconstitutional the 1974 amendments to the Fair Labor Standards Act...which had extended to almost all employees of state governments and their political subdivisions the minimum wage and maximum hours provision of the Act.

and retaining military personnel."[148] This rebuttal of Judge Dupree's findings, was based on a decision in Peel v. Florida Department of Transportation.[149] This case dealt with the War Powers Act and Congress' authority to utilize the act. The decision concluded that the War Powers Act was of extreme importance to both the Congress and the Nation and,

> held that where Congress has acted in a direct manner under its war power and has not unduly encroached upon the state's integral governmental functions, the tenth amendment is not a limitation on its power.[150]

The District Court found for the state and in doing so, according to the Appeals Court,[151] had tipped the scales in favor of the state in two ways. The District Court had,

> 1) ... asserted that national interests are "different in kind and degree" where legislation under the War Powers is examined in peacetime rather than in an hour of conflict, and the legislation is "financial" in nature.[152]
>
> 2) ... sought to dilute the precedential strength of Toll, which had upheld federal imposition of a financial burden on state higher education without addressing the Tenth Amendment's effect, by emphasizing the greater role of localities in financing primary and secondary education.[153]

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[148] Ibid., p. 39.

[149] Peel v. Florida Department of Transportation, 600 F.2d 1070 (5th Cir. 1979).

[150] Memorandum of Decision for the Court of Appeals, op. cit., p. 40.

[151] Ibid.

[152] Ibid.

[153] Ibid., p. 42.

In the final area the Appeals Court said that, "Congressional power to raise and maintain military forces are in no way conditional on the imminence of conflict."[154] The court even went so far as to mention that during peacetime conditions, there may exist more of a need to insure the rights under the Soldiers and Sailors Civil Relief Act. The reason the court provided for making this statement was that during a time of peace the armed forces are in an all volunteer status and the government is in need of financial incentives in order to recruit the volunteers.[155]

After reasoning through the first favor given to the state, the court looked into the second favor. In this area, the Appeals Court simply utilized a finding from Hodel, i.e.,

> ... the Supreme Court has stated that the nature of federal action is the determinative factor in Tenth Amendment analysis, and that an adverse impact on state and local economics alone is insufficient to establish a Tenth Amendment violation.[156]

But the Appeals Court did not stop after covering these points. It mentioned that, "... a more fundamental

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[154]Ibid., p. 40.

[155]Ibid. Also see Case v. Bowles, 327 U.S. 92 (1946). Here the United States Supreme Court ruled in favor of the utilization of the Emergency Price Controls Act. In this case the federal government attempted to impose a price ceiling on the cost of timber harvested from state owned lands. The Court said that the Emergency Price Control Act could be used under the War Powers Act.

[156]Ibid., p. 42.

objection to [the] invocation of a Tenth Amendment defense..."[157] existed. The Court believed the National League of Cities v. Usery case did not apply in the case of actions Congress takes under its War Powers.[158] The findings from Usery had only been utilized in regard to the Commerce Clause situations.[159] Thus the Appeals Court held the application of the Soldiers and Sailors Civil Relief Act under the War Powers to be constitutional, thereby overruling the District Court findings in this area.[160]

Point 3: Once finished with the pre-emptive argument, the Appeals Court looked to the District Court's finding that the Board's tuition plan was unconstitutional under the Supremacy Clause. The District Court found that the plan discriminated against federally-connected persons. On this conclusion, the Appeals Court agreed with the lower Court.[161]

The Appeals Court wrote in its decision that, according to Graves v. New York ex rel. O'Keefe,[162] it is

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[157]Ibid.

[158]Ibid., p. 43.

[159]Ibid. Also see Hodel; Equal Employment Opportunity Commission; and Federal Energy Regulatory Commission v. Mississippi, 456 U.S. 742, 758 (1982).

[160]Ibid., p. 46.

[161]Ibid., p. 47.

[162]Graves v. New York ex rel O'Keefe, 306 U.S. 466 (1939).

legal to tax federal employees as long as the tax is not discriminatory.[163] However, this was the exact point raised by the plaintiffs, i.e., the Onslow tuition plan was discriminatory against federally-connected individuals. On the other hand, the defendants argued that the plan affected people other than federally-connected individuals. Nevertheless, the response from the Appeals Court in regard to this fact was, How could a plan aimed at a class of people composed of 92% federally-connected individuals not be considered discriminatory?[164] The court amplified this problem, by indicating that the federally-connected individuals had no right to vote in public elections in North Carolina, and as a result not able to defend themselves within the state or local political process.[165]

Point 4: Finally, in looking at the last count of the plaintiffs ,the Appeals Court judges decided not to address the Equal Protection claim of the plaintiffs. The reason provided for this decision was the "disposition of the other issues in the case."[166]

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[163]Memorandum of Decision for the Court of Appeals, op. cit., p. 47.

[164]Ibid., p. 49.

[165]Ibid. Also see Owens v. Chaplin, 228 N.C. 705, 47 S.E.2d 12 (1948) and Hall v. Wake County Board of Elections, 280 N.C. 600, 187 S.E.2d 52 (1972).

[166]Ibid., p. 51.

4.6 Summary

After the Fourth Circuit Court of Appeals handed down its decision, the Onslow County School Board decided not to appeal the court's finding any further. Although the School Board's attorney, Marshall Dodson, believed that the case should be taken to a higher court,[167] the Board voted, in a two-one decision,[168] not to appeal the issue to the Supreme Court.[169] In fact, the idea of charging a tuition fee for non-domiciliary children to attend school in Onslow County was totally dismissed by the School Board.

The decision of the courts, both District and Appeals, indicated that a local school system could not interfere with a law enacted by the United States Congress. In the Onslow case, the School Board could not balance its budget by enacting a tuition fee for military connected non-domiciliary children--children of federal employees.

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[167] Daily News, op. cit., p. 1A, col. 3.

[168] Ibid. School Board members Barney McLean and Howard Aman voted against continuing on appeal the United States Supreme Court. Lois Meadows was the only member voting to continue the appeal. There were four members who did not vote.

[169] The School Board chose not to continue the case although others; the National Association of Federally Impacted Schools and the states of North Carolina, Virginia, and New Jersey, said they would file briefs in the Supreme Court as friends of the court.

CHAPTER FIVE

SUMMARY, CONCLUSIONS, and RECOMMENDATIONS

5.Ø Summary

Throughout American public education history, educational financing has been a concern. From the 1647 Old Deluder Satan Law to the 1986 Gramm-Rudman-Hollings deficit reduction plan, America has funded public education through many plans. In the eighteenth century American public education was funded by two different schemes. Education was generally paid for by the wealthy land owners in the southern colonies. In the New England colonies, education was funded by taxation within the small compact towns. However, as America progressed into the nineteenth century, American public education brought with it more state control. This state influence was felt not only in the areas of curriculum and personnel but also in the local budgeting process. The fight for free public schools spurred on during this period of time was further emphasized during the twentieth century, specifically after World War II when the federal government began to intervene in public school financing as did the state governments during the previous century.

In Chapter One, questions were posed which this

research attempted to examine and analyze. The first three of the five questions were discussed in Chapter Two and the remaining questions were answered in Chapters Three and Four.

The first question asked was, What is the historical background for federal financing of education? Research indicates that federal influences on educational financing began with our early history, i.e., the Northwest Ordinance of 1787 and the Morrill Act of 1862. However, the federal government had its greatest influences after World War II with the enactment of such laws as the G.I. Bill, the National School Lunch Act, the Impact Aid program, and the National Defense Education Act. The federal government provided an enormous amount of funding for free public education during this period of time.

The second question answered in Chapter Two was, What is federal Impact Aid? The Impact Aid program was enacted by the United States Congress in order to financially help relieve a burden which had been placed on local school districts due to increased federal activities during and following World War II and the Korean War. These federal activities had increased the enrollments in school districts and in certain situations had removed property from the local tax base. In addition, it was determined that parents of many federally connected children were being charged fees, while many of their children were receiving a less than adequate education.

The third question dealt with the distribution of Impact Aid funding and the effects of the program. Impact Aid monies were provided to school districts which meet established guidelines. If a district is successful meeting these Congressional guidelines, i.e., a certain number of Category "A" students (parents live and work on federal property) and/or Category "B" students (parents live or work on federal property), then non-categorical funds are provided through an entitlement system to the school district. Since Impact Aid funds are non-categorical, almost any school system would like to be in receipt of this federal help. In fact, a reduction in this funding program might mean that numerous school systems across the nation would have to reduce their level of operations.

The fourth question asked was in respect to how Impact Aid utilization had been affected by legal decisions. There are strong opponents to Impact Aid who believe that the program is a "pork barrel" which provides additional financial assistance to a community which already has gained by the location of a federal installation in its local area. However, as a specific program, Impact Aid has not come under the scrutiny of the American judicial system as have other public school financing schemes. In fact, nowhere is there a case which speaks to the constitutionality of the program. However, a loss of Impact Aid in recent years has caused local school boards to attempt to obtain additional funding through other means.

These other means of obtaining funding are the topic to which the final question speaks. That is, what happens when a school district attempts to be financially creative and improve the district's financial support system? The court battle which grew out of a decision by the Onslow County (NC) School Board to charge a tuition fee to non-domiciliary children who attended public school in the county is an example of what may happen to a school district attempting to improve its financial base. After approximately two years of litigation it was decided that the School Board had stepped into an area already covered by a Congressional act, i.e., The Soldiers and Sailors Civil Relief Act, and that it had gone too far in attempting to charge a tuition fee to federal employees

5.1 Conclusions

With the conflicts that can be created by a school system attempting to improve its funding base, it is difficult, within the framework of this study, to arrive at conclusions which will ensure that a school system will be able to prevent time consuming, public image damaging, and expensive litigation in the courts. However, there are conclusions which can be identified and utilized by school administrators that will help school officials to negotiate around hazards placed in their path to a better funding scheme. The conclusions have a historical and logical sequence to them.

1 - American education moved from a period of support by the English prior to the Revolutionary War through a period of local financing control during the eighteenth century into a period of state financial control during the nineteenth century.

2 - The twentieth century, especially after World War II, brought educational financing more under the influence of federal control.

3 - Most federal funding bills were enacted after World War II and continued into the 1970's.

4 - Impact Aid (Public Laws 81-815 and 81-874) was a financing program enacted during the period of growing federal financial support after World War II.

5 - Economic conditions have caused the federal government to look for areas in the federal budget which may be reduced.

6 - Federal budget cuts will continue into the future and federal funding for education will certainly be affected by these cuts.

7 - The Impact Aid program is one of the areas which the Congress may cut in order to reduce federal funding.

8 - The Tenth Amendment to the Constitution stipulates that education is the responsibility of the states and state judicial branches have acted accordingly.

9 - Although the states have the responsibility for education, federal judiciaries also have had much to say in regard to educational financing at the state level.

10 - School systems will be required to find additional methods for funding education within local units.

11 - Dramatic approaches will have to be used to find money for education; i.e., more comprehensive plans must be developed. Rather than looking at fiscal problems through short range goals and incremental planning, school districts need to consider plans with long range goals. In short, a planning framework is absolutely essential.

12 - Whatever form creative financing might take, it must be legally correct. If necessary while developing long range goals, funds should be utilized to obtain the best legal counsel. Although initially this may be expensive, it may save enormous amounts of money in the long run by keeping the school system out of court. An added benefit may be positive public relations.

5.2 Recommendations for Further Study

The purpose of this research was to provide information which would help school officials make better educational decisions. In order to do so, a review of financing education in America and a study of Impact Aid was provided. Through this method certain questions were answered. However, by attempting to answer the five stated questions, other areas needing further study have emerged. The following suggestions for further study are recommended:

A. Additional research needs to be done on "creative organizational approaches to financing" in Section

6 schools with an eye on relations with local public schools.

B. Research needs to be done on "creative organizational approaches to financing" local public schools while considering positive relations with Section 6 schools.

C. The theoretical dimensions of autonomy, cooperation, and related issues could be explored without directly applying conclusions to particular school issues. That is, a philosophical construct could be created with applications considered by others at a later date.

5.3 Postscript

Developing schemes which will help to provide relief from losses in funds and/or higher cost of materials and personnel necessitates that impetus be given to "creative financing." The rise in the cost of education will undoubtedly continue with increased in the cost of materials and personnel. Additionally, budget slashing will continue to occur as American education moves toward the next decade. For example, in the area of federal financing, the United States Congress, in its 1986 Military Construction Authorization Legislation[1] required the Department of Defense to develop a plan to transfer all Section Six Schools[2] to state control. This transfer plan was to be

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[1]Public Law 99-167.

[2]Section Six schools are those schools established on military installations, in the United States and Puerto

submitted to Congress by March 1, 1986 with a transfer target date of July 1, 1990.[3] This would mean that control of all eighteen Section 6 school systems would be turned over to the states in which they are located. Since the plan has not yet been released to the public, there are no indications of the amount of funding which would be provided to the receiving states. In fact, in light of deficit reduction there is a fear that limited or no funds will be provided to these states.

Presently, one can also find a concern over further reductions in the Impact Aid program.[4] The Gramm-Rudman-Hollings deficit reduction plan will have an impact on the amount of funding to be received by state from the federal government. On January 13, 1986, at a workshop in Washington, D.C., the Executive Director of the Association of Federally Impacted Schools, shared some information to

Rico, for children who reside on the federal property. This action is authorized under Subsection 6(a) of Public Law 81-874. This Subsection states that the schools must be established if one of the two following conditions occur:

1) If no tax revenues of the State or any political subdivision thereof may be expended for the free public education of such children; or

2) If it is the judgment of the Commissioner, after he has consulted with the appropriate state educational agency, that no local educational agency is able to provide suitable free public education for such children.

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[3]Letter from Dr. Beth Stephens, Director of Section Six Schools; to Dr. E.C. Sloan, Superintendent of the Camp Lejeune Dependents' Schools; dated January 8, 1986.

[4]The Presidential budget for FY 1987 would eliminate all funding for Impact Aid in category "B" payments.

the workshop participants in regard to the reduction of Impact Aid funding. He stated, "The decline in these funds is estimated to be as follows assuming all categories are reduced by the same percent of cut: FY'86 (-4.85), FY'87 (-10%)."[5]

Creative financing involves responses to major financial situations such as local, state and federal budget cutting, an increase in the cost of people and materials, and legislative and judicial actions taken at both the state and federal levels. Predicting the kind and extent of differing financial responses for the years to come is impossible. New laws and court decisions will undoubtedly make the road to a perfect educational financial system uncertain. But possibly this research has brought to light previous issues which will have an impact on future situations and assist school officials in making sound decisions in regard to financing.

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[5]Dr. E.C. Sloan's temporary additional duty (TAD) report to the Commanding General of Marine Corps Base, Camp Lejeune, North Carolina; dated January 15, 1986.

BIBLIOGRAPHY

A. Court Cases:

Arlington Heights v. Metropolitan Housing Development Corporation, 429 U.S. 252 (1977).

Ashwander v. TVA, 297 U.S. 288, 341, 347 (1936).

Burruss v. Wilkerson, 310 F.Supp. 572 (1969), aff'd 397 U.S. 44 (1970).

California v. Buzzard, 382 U.S. 386, 393, 86 S.Ct. 479, 483, 15 L.Ed. 2d. 436, 441 (1966).

Case v. Bowles, 327 U.S. 92 (1946).

Chicago North Western Transportation Co. v. Kalo Brick and Tile Co., 450 U.S. 31, 317, 101 S.Ct. 1124, 1130, 67 L.Ed. 258, 265 (1981).

City of Detroit v. Murray Corp., 355 U.S. 489.

Dameron v. Brodhead, 345 U.S. 322, 326, 73 S.Ct. 721, 97 L.Ed. 1041, 1046 (1953).

Dandridge v. Williams, 397 U.S. 471, 485, 96 S.Ct. 1153, 25 L.Ed. 2d. 491 (1970).

Douglas Independent School District No. 3 v. Jorgensen, 293 F. Supp. 849, 854 (D.S. Dak. 1968)

Equal Employment Opportunity Commission v. Wyoming, 51 U.S.L.W. 4219, 4223 (1983).

Federal Energy Regulatory Commission v. Mississippi, 456 U.S. 742, 758 (1982).

Graves v. New York ex rel O'Keefe, 306 U.S. 466 (1939).

Gibbons v. Ogden, 22 U.S. (9 Wheat.) 1, 211 (1824).

Hall v. Wake County Board of Elections, 280 N.C. 600, 187 S.E. 2d. 52 (1972).

Hines v. Davidowitz, 312 U.S. 52, 67-68 (1967).

Hodel v. Virginia Surface Mining & Reclamation Association, Inc., 452 U.S. 264, 287-288 (1981).

Jefferson v. Hackney, 406 U.S. 535, 546, 92 S.Ct. 1724, 32 L.Ed. 2d. 285 (1972).

Jones v. Rath Packing Company, 430 U.S. 519 (1977).

Lawrence County v. Lead-Deadwood School District No. 40-1, 469 U.S., 105 S.Ct. 695 L.Ed. 2d. 635 (1985).

LeMaistre v. Lefers, 333 U.S. 1, 6 (1948).

Lemon v. Bossier Parish School Board, 240 F.Supp. 709 (W.D.La. 1965).

Lemon v. Kutzman 403 U.S. 602, 91 S.Ct. 2105, 2109, 2111, 29 L.Ed. 2d.

Massachusetts Board of Retirement v. Murgia, 427 U.S. 307, 313, 96 S.Ct. 2562, 49 L.Ed. 2d. 520 (1976).

McCulloch v. Maryland, 17 U.S. 316, 4 L.Ed. 549 (1918).

McInnis v. Shapiro, 293 F.Supp. 327 (N.D. Ill. 1948), aff'd sub nom McInnis v. Ogilvie, 394 U.S. 322 (1969).

Moses Lake Homes v. Grant County, 365 U.S. 744, 81 S.Ct. 870, 6 L.Ed. 2d. 66 (1961).

Mueller v. Allen, U.S. Minn. (103 S.St. 3063).

National Agriculture Association v. Rominger, 500 F.Supp. 465 (E.D.Cal. 1980).

National League of Cities v. Usery, 426 U.S. 83 (1976).

Owens v. Chaplin, 288 N.C. 705, 47 S.E. 2d. 12 (1948).

Peel v. Florida Department of Transportation, 600 F. 2d. 1070 (5th Cir. 1979).

Pinehurst State School v. Halderman, 451 U.S. 1, 17 (1981).

Perez v. Campbell, 402 U.S. 637, 649 (1971).

Personnel Administrator of Massachusetts v. Feeney, 442 U.S. 256 (1979).

Phillips Chemical Company v. Dumas Independent School District, 361 U.S. 376, 80 S.Ct. 474, 4 L.Ed. 2d. 384 (1960).

Plyler v. Doe, 102, S.Ct. 2382, 2398 (1982).

Richardson v. Belcher, 404 U.S. 78, 81, 92 S.Ct. 254, 30 L.Ed. 2d. 231 (1971).

Robinson v. Cahill, 62 N.J. 473, 303 A. 2d. 273 (1973), cert denied, U.S. 976 (1973).

Rodriguez v. San Antonio Independent School District, 337 F.Supp. 280 (W.D. Tex. 1971).

Rodriguez v. San Antonio Independent School District, 411 U.S. 1 (1973).

Serrano v. Priest, 5 Cal. 3d 548, 487 p.2d. 1241, 96 Cal.Rptr. 601 (1971).

Spano v. Board of Education of Lakeland School Central District No. 1., 68 Misc. 2d. 804, 328 N.Y.S. 2d. 229 (1972).

Stuart v. School District No. 1 of Village of Kalamazoo, Michigan (1874).

Sullivan v. United States, 395 U.S. 169, 175-77 (1969).

Toll v. Moreno, 102 S.Ct. 2977 (1982).

United States v. Arlington County, 326 F. 2d. 929 (4th Cir. 1964).

United States v. City of Detroit, 355 U.S. 466, 473.

United States v. Commonwealth of Puerto Rico, 478 F. 2d. 451, 454 (1st Cir. 1973).

United States v. County of Champaign, Illinois, 525 F. 2d. 374, 377 (7th Cir. 1975).

United States v. County of Fresno, 429 U.S. 452, 97 S.Ct. 699, 50 L.Ed. 2d. 683 (1977).

United States v. Sumter School District No. 2, 232 F.Supp. 945, 950 (E.D. S.C. 1964).

United States v. Tax Commission, 421 U.S. 599, 606 (1975).

United States Department of Agriculture v. Moreno, 413 U.S. 528, 533, 93 S.Ct. 2821, 37 L.Ed. 2d. 782 (1973).

Van Dusartz v. Hartfield, 334 F.Supp. 870 (1971).

Wolston v. Reader's Digest Association, Inc., 43 U.S. 157, 160-161, n. 2 (1979).

B. Books:

Burrup, Percy E. Financing Education in a Climate of Change. Boston: Allyn and Bacon, 1974.

_____. Financing Education in a Climate of Change. Boston: Allyn and Bacon, 1977.

_____. Financing Education in a Climate of Change. Boston: Allyn and Bacon, 1982.

Burke, Arrid J. Financing Public Schools in the United States. New York: Harper and Brothers, 1957.

Campbell, Ronald F. and others. Introduction to Educational Administration. Boston: Allyn and Bacon, 1977.

Cubberley, Elwood P. Public Education in the United States. Boston: Houghton Mifflin, 1934.

_____. Readings in Public Education in the United States. Boston: Houghton Mifflin, 1934.

Ganerke, Warren E. and Jack R. Childress, eds. Theory and Practice of School Finance. Chicago: Rand McNally, 1967.

Gee, E. Gordon and David J. Sperry. Education Law and the Public Schools: A Compendium. Boston: Allyn and Bacon, 1978.

Grams, Walter I., James W. Gutherie, and Lawrence C. Pierce. School Finance: The Economics and Policies of Public Education. Englewood Cliffs: Prentice-Hall, 1978.

Gwynn, J. Minor and John B. Chase, Jr. Curriculum Principals and Social Trends. Toronto: Macmillian, 1969.

Johns, Roe L. and Edgar L. Morpher. The Economics and Financing of Education. Englewood Cliffs: Prentice-Hall, 1969.

Johnson, James A. and others. Introduction to the Foundation of American Education. Boston: Allyn and Bacon, 1978.

Knight, Edgar W. Education in the United States. Boston: Ginn and Company, 1929.

Lyden, Fremont J. and Ernest G. Miller. Public Budgeting: Programs Planning and Implementation. Englewood Cliffs: Prentice-Hall, 1982.

McMahon, Walter W. and Terry G. Geske. Financing Education: Overcoming Inefficiency and Inequality. Chicago: University of Illinios Press, 1982.

Milstein, Mike M. Impact and Responses: Federal Aid and State Educational Agencies. New York: Teachers College Press, 1976.

Monroe, Paul. Founding of the American Public School System. New York: Hafner Publishing, 1971.

Pulliam, John D. History of Education. Columbus: Merrill Publishing, 1982.

Shane, Harold, G. Curriculum Change Toward the 21st Century. Washington, DC: National Education Association of the United States, 1977.

Silberman, Charles, E. Crisis in the Classroom. New York: Random House, 1970.

C. Journals:

Adams, E. Kathleen. "The Fiscal Conditions of the States," Phi Delta Kappan, XLIII (May, 1982), 598-600.

Augenblick, John. "School Finances in the 1980's Part I: Alternative Approaches to Providing State Aid for Schools," Spectrum, II (Spring, 1984), 38-45.

_____. "School Finances in the 1980's Part II: State Issues for the 1980's," Spectrum, II (Summer, 1984), 37-47.

Bell, Terrel H. "The Federal Role in Education," Harvard Educational Review, LI (November, 1982), 375-380.

Brown, Lawrence L., Alan L. Ginsburg, and Martha Jacobs. "A Proposal to Rationalize the Federal Program of Impact Aid Assistance to School Districts," Journal of Educational Finance, IV (Winter, 1979), 273-294.

Clark, David L., Terry A. Astuto, and Paul M. Rooney. "The Changing Structure of Federal Education Policy in the 1980's," Phi Delta Kappan, LXV (November, 1983), 188-193.

Flygar, Thomas. "School Finance a Decade After Rodriguez," Phi Delta Kappan, LXIV (March, 1983) 477-478.

Gallup, George H. "The 15th Annual Gallup Poll of the Public's Attitude Toward Public Schools," Phi Delta Kappan, LXV (September, 1983), 33-47.

Goldberg, Milton and James Harvey. "A Nation at Risk: The Report of the National Commission of Excellence in Education," Phi Delta Kappan, LXV (September, 1983), 14-19.

Hentschke, Guilbert and John Yagielski. "School District Fiscal Strain: Implications for State and Federal Financial Assistance," Journal of Education Finance, VIII (Summer, 1982), 52-72.

Joffe, Carol Sue. "The Impact-Aid Program," American Education, (July, 1977), 31-32.

Magers, Dexter A. "Two Tests of Equity Under Impact Aid Public Law 81-874," Journal for Education Finance, III, (Summer, 1977), 124-128.

Odden, Allen. "Financing Educational Excellence," Phi Delta Kappan, LXV (January, 1984), 311-318.

Roland, Neil. "Federal Impact: A Determination of the Net Fiscal Effect of Federal Installations on Local Educational Agencies," Journal of Education Finance, VI (Spring, 1981), 415-439.

Ward, Cynthia V. L. "School Finance Project Opinion Survey, "Journal of Education Finance, VI (Spring, 1981), 505-511.

D. ERIC:

Brown, Lawrence L., and others. Impact Aid Two Years Later. U.S., Educational Research Information Center, ERIC Document ED 151 972, March, 1978.

Hovey, Harold A., and others. School Assistance in Federally Affected Areas. U.S., Educational Research Information Center, ERIC Document ED 034 903, December, 1969.

E. Miscellaneous

Coullard, John. "The Legal Aspects of Funding Public Education Through Real Property Taxation: 1971 Serrano to the Present." Unpublished EdD dissertation, University of North Carolina at Greensboro, 1978.

Daily News [Jacksonville, NC], April 12, 1984.

Department of Defense, Section 6 Schools. Personal correspondence between Dr. Beth Stephens, Director, and Dr. E. C. Sloan, Superintendent of Schools, Camp Lejeune Dependents' Schools. January 8, 1986

"Federal Government's Share of School Financing Drops," School Week, 99 (April 27, 1984), 1-4.

Foldessy, Edward and Tom Herman. "Most Big Banks Lift Prime Rate 1/2 Point to 12 1/2%," The Wall Street Journal, Eastern ed., May 9, 1984.

Hooker, Clifford P. ed. West Educational Law Reporter, XVI, St. Paul: West Publishing Company, 1984.

_____, West Educational Law Reporter, XI, St Paul: West Publishing Company, 1983.

Hutchins, Clayton D., Albert R. Munse, and Edna D. Brooker. Federal Funds for Education 1956-57 and 1957-58. Washington, DC: Government Printing Office, 1959.

Koerner, Thomas F. "Senator Calls for Greater Investment in Education," NASSP Newsletter, 32, February, 1985.

Marine Corps Base Camp Lejeune. "Welcome Brochure." ElCajan CA: National Military Publications, 1984. (Mineographed)

North Carolina, General Statute, 115c-1 (Supp. 1981).

North Carolina, General Statute, 115c-336.1 (1982).

"Reagan Proposes Record Education Budget," School Week, 87 (Ferruary 3, 1984), 1-4

Sloan, E. C. "TAD Report." Camp Lejeune, NC: Camp Lejeune Dependents' Schools, Camp Lejeune, 1986. (Mineographed)

Stein, Jess, ed. The Random House College Dictionary. New York: Random House, 1980.

"Tuition for Military Kids Outlawed," School Week, 92 (March 3, 1984). 1-4.

U. S. Congressional Record Vol. CXXIV.

United States of America, et.al., v. Onslow County Board of Education, "Judgment," District Court, Eastern District of North Carolina, 1982.

_____, "Memorandum In Support of Plaintiffs' Motion for Summary Judgment," District Court, Eastern District of North Carolina, 1982.

_____, "Memorandum of Decision," District Court, Eastern District of North Carolina, 1982.

_____, "Memorandum of Decision," 4th Circuit Court of Appeals, 1983.

U. S. Superintendent of Documents. A Report on the Administration and Operations of Title I, of Public Law 874, Eighty-First Congress. Washington, DC: Government Printing Office, 1981.