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The University of North Carolina at Greensboro, 1987

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Centralization of Public Education Governance in Sun Belt States: Legislation And Litigation: 1966-1986

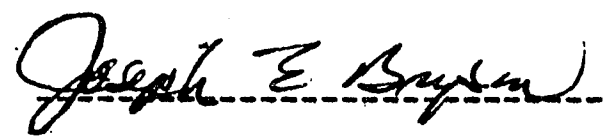
By

Herman Bruce Norville, Sr.

A Dissertation Submitted to
the Faculty of the Graduate School at
The University of North Carolina at Greensboro
in Partial Fulfillment
of the Requirements for the Degree
Doctor of Education

Greensboro

1987

Approved by 

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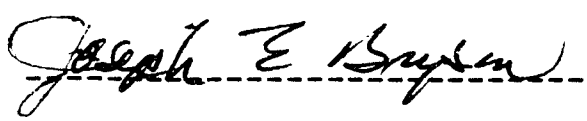
Dissertation Adviser---- 

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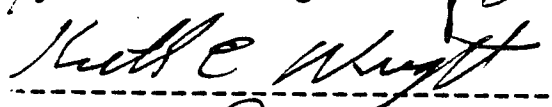
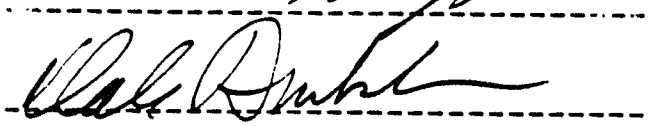
Committee Member 

Committee Member 

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NORVILLE, HERMAN BRUCE. Ed. D. Centralization of Public Education Governance in Sun Belt States: Legislation and Litigation: 1966-1986. (1987). Directed by Joseph E. Bryson. 251 pp.

During the past twenty years, 1966-1986, a political phenomenon has been occurring in the American Sun Belt states--the centralization of public education governance began to be passed from school boards to general assemblies in the twenty-one states from Virginia to California. Such issues as teacher evaluation, teacher competency testing, teacher in-service competency testing, student competency testing, interscholastic athletics regulating pass/play, school district mergers, the drop out rate and school finance are but a few of the legislative activities.

A review of recent legislative enactments and judicial decisions establishes that while there has been decentralization at the national level, there has been centralization at the state level.

The following conclusions can be drawn : (1) Centralization involves major constitutional issues such as academic freedom in selection of local curriculum, states' rights in setting graduation requirements, and the authority of school administrators and school boards in the governance of the schools; (2) The most striking feature of state/local relations in the last twenty years has been the growth in state control over education, and it appears

likely to continue; (3) More demanding high school graduation requirements have been approved in eighteen of the twenty-one Sun Belt states and appear likely to continue ; (4) Changes in curricula have been enacted in ten states and based on research will be enacted in eight more; (5) Student evaluation/testing has been enacted in fourteen states and will become more wide spread; (6) Instructional time has been increased in ten states and proposed in eight others; (7) Master Teachers/ Career Ladder Plans have been enacted in four states, proposed in nine and may spread to other areas; (8) The courts will not interfere with the exercise of discretion by school directors in matters confided by law to the school administrators' judgment unless there is a clear abuse of the discretion, or a violation of law, the courts will continue to show a strong support for school officials; (9) To date, litigation has not yielded any unified body of legal theory, courts uphold state standards as often as courts strike them down; and (10) the "No Pass/No Play" statute spread to West Virginia and South Carolina with little of the controversy that accompanied its birth in Texas two years ago, and appears likely to be enacted by many other states.

TABLE OF CONTENTS

CHAPTER FOUR

LIST OF TABLES

Chapter 1

Introduction

1.0 Overview.

During the past twenty years, 1966-1986, a political phenomenon has been occurring in the American Sun Belt states--the centralization of public education governance began to be passed from school boards to general assemblies in the twenty-one states from Virginia to California along the Southern border of the United States. Such issues as teacher evaluation, teacher competency testing, teacher in-service competency testing, student competency testing, interscholastic athletics regulating pass/ play, school district mergers, the drop out rate and school finance are but a few of the legislative activities.

Local school boards are governmental creations. They have all the powers specifically given to them by the state Constitution and legislative enactments and all the powers not specifically denied. The review of recent legislative enactments and court cases establishes that centralization of educational

administration in public schools is a real and present dilemma for educational leaders today. While there has been decentralization at the national level, there has been centralization at the state level. The current conservative political and moral climate and public dissatisfaction with taxes, foreign policy, busing, forced desegregation, and government in general have caused many people to scoff at public schools. In the United States a broad range of public services are administered and, in part, financed by local government entities. One of the most important services provided in this way is education. Localities are responsible for the management of schools in almost every state.[1]

Demands for urban decentralization and community control are perceived to be indices of the inaccessibility, irresponsibility, and unresponsiveness of the institution of urban government in the 1980's. Community involvement in schools can be a two-edged sword, providing support and interest on one side and criticism and interference on the other. School boards and administrators must be prepared through legal

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1. Mario Fantini and Marilyn Gittell, Decentralization: Achieving Reform, (New York: Praeger Publishers, 1973), p. 3.

principles, appropriate philosophies, and clearly-defined guidelines to conduct educational programs of schools without being unduly swayed by pressure groups.[2]

A review of judicial decisions can help educational leaders understand the shift in the balance of power toward the state level and away from the federal and local levels. Federal revenue sharing and conversion of federal categorical money to state bloc grants are giving states more influence. At the same time, states are taking policy prerogatives from local governments through school finance reform, accountability, and other areas of state regulations. State governments have become more aggressive in trying to influence local priorities through assessment and testing.[3]

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2. Joseph E. Bryson and Elizabeth W. Detty, The Legal Aspects of Censorship of Public School Library and Instructional Materials, (Charlottesville, Virginia: The Michie Company, 1982), p. 2.

3. Edith K. Mosher and Jennings L. Wagoner,Jr. The Changing Politics of Education, (Berkeley, California: McCutchan Publishing Company, 1978), p. 151.

1.1 Status of Centralization Practices in the Public Schools

The administration of education programs has been viewed by scholars and judges as the best means to insure program success. The premise of this argument is that the smallest unit competent to accomplish the school program is the one best suited to do so.[4] Local school boards and school administrators across the United States have long complained of intrusions by the state and federal governments into the schools. The myriad state and federal reports and guidelines, which have always accompanied state and federal funds, have been a source of irritation, but little more until now. Centralization of school boards' authority has always been a major topic in the governance of schools.[5]

The primary prerequisite for better management was thought by early reformers to be centralization of power in a chief executive who had considerable delegated

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4. Stephan Landsman, "Can Localities Lock the Doors and Throw Away the Keys?" Journal of Law and Education, Vol. 7 No. 3 July, 1978, p. 432.

5. Michael G. Killian, "Local Control--The Vanishing Myth in Texas," Phi Delta Kappan, Vol. 66 No. 1 November, 1984, p. 193.

authority from a school board elected at large. The watchwords of reform became centralization, expertise, professionalism, non-political control and efficiency.[6] The basic administrative structure and pattern for current school policy making were established around the turn of the twentieth century.[7] During this period separation of education from community politics was reinforced, and there were several key impacts on the lay school board, which was the formal structure for community influence. The depression left the communities without funds. States started to pick up general social and education funding. In theory, American schools are a product of the local communities in which the schools reside. But schools are also financed and overseen by state governments. About three-fifths of the total elementary and secondary school budget now come from sources other than local property tax.[8]

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6. Mario Fantini and Marilyn Gittell, Decentralization : Achieving Reform, (New York: Praeger Publishers, 1973), p. 3.

7. Mosher and Wagoner, The Changing Politics of Education, p. 156.

8. Neil Postman and Charles Weigartner, The School Book, (New York: Dell Publishing Company, 1973), p. 141.

1.2 Questions to be Answered.

The major purpose of this study is to examine and analyze legislative enactments and judicial decisions influencing policy making as it relates to centralization of governance of public schools in the Sun Belt states.

1. What does an analysis of state statutes reveal concerning centralization?

2. What does an analysis of judicial decisions reveal concerning centralization?

3. Predicated on an analysis of state statutes and judicial decisions, what are the emerging legal trends and issues concerning centralization?

4. Predicated on an analysis of state statutes and judicial decisions, what are reasonable policies for school officials concerning centralization?

1.3 Methodology

This is an analysis and review of legislative enactments and judicial decisions about the centralization of public school governance in the Sun-Belt States. The Sun-Belt States, the twenty-one states from Virginia to California along the Southern border of the United States, were chosen because they give a representative sample of the trends of education in all fifty states. The states are : Alabama; Arizona; Arkansas; California, Colorado; Florida; Georgia; Kansas; Kentucky; Louisiana; Mississippi; Missouri; Nevada; New Mexico; North Carolina; Oklahoma; South Carolina; Tennessee; Texas; Utah; and Virginia.

The methodology is descriptive. An indepth review and search was made of the Education Index and cross referenced with the Cumulative Index to Journals in Education. Computer assisted searches were then initiated using a combination of word descriptors from the Thesaurus of the Educational Resources Information Center (ERIC). An investigation was also made using the Cumulative Book Index, the Reader's Guide to Periodical Literature, the Index to Legal Periodicals, and the

Legal Resource Index. A search was made of existing studies in the field using Dissertation Abstracts.

Letters were sent to the State Department of Public Instruction in each of the Sun-Belt states selected for review. Each state was asked for the latest information available about legislation and litigation on centralization. Eleven of the twenty-one states responded with helpful information for a return rate of 52.4%. (See Apppendix-- for sample.)

General references and a broad overview of issues can be found in the Encyclopedia of Educational Research, and in fastbacks published by Phi Delta Kappa. The National Organization on Legal Problems of Education's (NOLPE) Cases on... series which listed case citations on given topics was very helpful. NOLPE also publishes a School Law Reporter that reviews all current cases.

Legal research was assisted by the use of the massive National Reporter System, The American Digest System, Corpus Juris Secundum, and American Jurisprudence. A Uniform System of Citations was helpful in sorting through legal citations and putting the

citations into a pattern. Black's Law Dictionary was especially helpful for identifying terms and for producing definitions of legal phraseology. A valuable secondary source was the American Law Reports (ALR). The ALR is a combination of case reporter and journal and is useful in giving insight into legal terms.

1.4 Definition of Terms.

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

Centralization--the condition whereby the "administrative authority for education in constituent communities of a state is vested, not in the local communities themselves, but in a central body."

Decentralization--the authority is vested in local autonomous bodies and the administration of education in that state is to be thought of as decentralized. It involves not only a dividing up of administrative responsibility, but a shift of power from a citywide and/or county wide board to a number of local boards of education.

Closed policy making system--education is not open on a continuous basis to influence from its environment. Professional educators and school board members have predominant influence and do not systematically seek views of the lay community.

Statute--a statute is defined as a law enacted by the legislative power in a county or state, or in the United States, not dependent upon equity or common law. Before state statutes are enacted, they are usually improved and refined by a process of wide public debate and hearings where all groups affected by the proposed legislation can express their own criticism or support.

No Pass/No Play Rule--a statute in Texas in which a student may not participate in extracurricular activities if the student has one failing grade for the previous grading period.

Jeffersonian--of or characteristic of Thomas Jefferson, of or like Jefferson's ideas and principles, democratic. This philosophy favored government by the people or elected representatives with equality of rights, opportunity or treatment.

Hamiltonian--of or originated by Alexander Hamilton, or in accord with Hamilton's federalist doctrines. The Federal Party was a political party in the United States (1789-1816) led by Alexander Hamilton and John Adams, which advocated the adoption of the Constitution and the establishment of a strong, centralized government.

1.5 Coverage and Organization of Issues Involved.

The remainder of the study is divided into four major parts. Chapter 2 reviews literature related to the history of centralization and the effect of history on centralization of school policy and administration in the present. Furthermore, Chapter 2 traces the growth of community concern for centralization which has led to the controversy over decentralization, such as the "No Pass/No Play" statute passed by Texas, West Virginia and South Carolina.

Chapter 3 contains an examination of state statutes of the twenty-one Sun-Belt states selected for review in this study. Centralization of school boards' authority relating to curriculum reform, graduation requirements,

college admissions, student evaluation/testing, instructional time, a longer school day and a longer school year are just a few of the criteria used.

Chapter 4 analyzes state statutes that have been litigated that deal with centralization of the control of tenure for teachers, the decision who can levy taxes for schools in a county, the knowledge that county boards of education are not agencies of the counties, but are local agencies of the state. Also, desegregation and busing of students, the assigning and reassigning of students, teachers, and principals in creating, consolidating or altering school districts are all examined.

Chapter 5 is a dicusssion and analysis of major cases relating to the centralization of the school boards' authority in the governance of schools.

The concluding Chapter 6 of the study contains a summary of the information obtained from a review of the literature and from analysis of the state statutes and judicial decisions. The questions asked in the introductory part of the study are reviewed and answered in this chapter. Finally, recommendations for

legislative enactment, including legislation permitting more local school districts, are made and recommendations for further study are given.

Chapter 2

Review of the Literature

2.0 Introduction.

Centralization of educational administration means the condition whereby the " administrative authority for education in constituent communities of a state is vested, not in the local communities themselves, but in a central body " such as a state department of education or state board of education. When on the other hand, authority is "vested in local autonomous bodies, the administration of education in that state is to be thought of as decentralized."[1]

One ultimate criterion of autonomy is the power to levy taxes. In the case of a centralized form of administration, the central body levies the school tax. Under the decentralized form of administration each local community levies its own taxes.[2]

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1. Black's Law Dictionary, Fifth Edition, St. Paul, Minnesota : West Publishing Company, 1986, p. 80.

2. Francois S. Cillie, Centralization or Decentralization? A Study in Educational Adaptation, (New York: Teachers College, Columbia University, 1940),p. 4.

Recently, there has been a shift in the balance of power toward the state level and away from the federal and local levels. Federal revenue sharing and conversion of federal categorical money to state bloc grants are giving states more influence. At the same time," states are taking policy prerogatives from local governments through school finance reform, accountability, and other areas of state regulation."[3]

A few states have completely revamped the traditional notion of a state department of education. In these states (Massachusetts, Pennyslvania, South Dakota, and Virginia) the secretary of education is in the governor's office. The department is founded on the concept of a unified, centralized system for preschool through graduate school, and the advantage of the new system is, supposedly, the secretary's access to the governor's political confidence and influence. The secretary, through the governor, is also in a better position to coordinate all agencies related to education. A state board of education must, however,

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3. Edith K. Mosher and Jennings L. Wagoner, Jr. The Changing Politics of Education, (Berkeley, California: McCutchan Publishing Company, 1978), p. 151.

live with the ambiguity that the secretary is its chief executive officer and also a spokesman for the governor.[4]

2.1 Interest Groups.

Since state board members have " few strong views on specific policies and most state departments of education have traditionally responded to, rather than exercised, leadership, the impact of interest groups has been substantial." These groups have not only been the principal advocates of increased state aid, but have supported the views of professional educators in such regulatory areas as curriculum and certification.[5]

The most important single interest group has been the state teachers' association- the affiliate of the National Education Association. Although it has grown rapidly in big cities, the American Federation of Teachers has not concentrated its lobbying or organizational efforts at the state level. As in other areas of state politics, the state affiliates of the

4. Ibid., p.154.
5. Ibid.

National Education Association differ considerably in the amount of political pressure they can exert. The Texas State Teachers Association is strong enough to commit state legislators to salary proposals during campaigns or primary elections; it has been notably successful in overriding the governor's budget recommendations. The California Teachers Association, on the other hand, has been unable to commit a majority of the state legislature to its school finance proposals.[6]

In most states at various points in history, interest groups favoring stated assistance have formed temporary coalitions and in some cases long standing alliances. These coalitions may develop into permanent organizations, may be ad hoc, one-time affairs, or may be the strategic devices of the state department of education. The aim is to combine political resources in order to maximize influence for a bill or an issue. The strategy is usually to achieve consensus among the various interest groups outside the maneuvering of the state legislature. In effect, coalitions modify competing programs and compromise values so that a

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6. Ibid., p.155.

unified demand is presented to the legislature and the governor. In this way, coalitions are performing one of the functions of political parties.[7]

2.2 Background.

The basic administrative structure and pattern for current school policy making were established around the turn of the twentieth century. During this period separation of education from community politics was reinforced, and there were several key impacts on the lay school board, which was the formal structure for community influence. Around 1900, a national group of opinion makers emerged, including university presidents, school superintendents, and lay allies from the urban business and professional elites. One of their prime aims was to "emancipate" the schools from what they contended was excessive decentralization and partisan politics. Indeed, many politicians at the time regarded the schools as a useful support for the spoils system and awarded teaching jobs and contracts in return for political favors. A decentralized, ward-based committee

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7. Ibid., p.156.

system for administering the public schools provided effective linkages to community opinion, but was also an administrative nightmare with tinges of corruption.[8]

The primary prerequisite for better management was thought to be centralization of power in a chief executive who had considerable delegated authority from a school board elected at-large. The watchword of reform became "centralization, expertise, professionalism, nonpolitical control, and efficiency." Civil service bureaucracies of certified professionals were granted the extensive powers once held by subcommittees of the school board. The preferred model was the large-scale industrial bureaucracy that rapidly emerged in the turn-of-the-century economy.[9]

Since the turn of the century, American political institutions and processes of government have been significantly reshaped in directions first set forth by the civic reformers and muckrakers of the early 1900's. Corruption in political parties had led to control of governmental structures and public services by seemingly

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8. Mosher, The Changing Politics of Education p. 156.
9. Ibid.

incompetent politicians. And so, with economy and efficiency as their watchwords, the "Progressives" concentrated their efforts on getting politics out of the system. They placed their confidence in increased professionalism and centralization of governmental policy-making, encouraged by the technological revolution of the first half of the twentieth century and the emergence of scientific management as a panacea for government ills.[10]

Centralization of services on all levels was promoted to resolve the problems of corruption, incompetence, and lack of responsibility. The machinery set up by the reform movement gained added momentum after World War II, when the country turned to its neglected internal needs. Centralization took hold and public bureaucries expanded beyond all expectations. Professionalism became an integral part of the bureaucratic system, in effect internalizing much of the public-policy process.[11]

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10. Mario Fantini and Marilyn Gittell, Decentralization: Achieving Reform (New York: Praeger Publishers, 1973), p. 3.
11. Ibid.

Post World War II studies of decision-making in American cities generally agree that power has become concentrated in urban bureaucratic structures. The political party, elected officials, business and labor groups, and civic associations have consequently had a declining role in the development of public policy in the larger cities.[12]

In theory, American schools are a product of the local communities in which they reside. But they are also financed and overseen by state governments. About three-fifths of the total elementary and secondary school budget now come from sources other than local property tax. And since they are bound by Constitutional restraints, they are influenced to some extent by federal law. It is quite a mixture of overlapping regulations and interests. Most people favor the idea that whenever possible, school policy should be formulated by the people who are directly served by the school. Often it turns out that the community is only what some particularly aggressive person or group says it is. Any three people demanding to fire a teacher or

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12. Ibid.

principal can say they represent the community- and who can prove them wrong? Fortunately, in most towns in America people can vote for members of a school board and for school budgets. In this way they can express, in a highly abstract form, the community will. But in large cities, such as New York and Chicago, it is much more difficult for people to give coherent expression to their views. Decentralization has helped to some extent, but the fact is that at the moment most large-city dwellers have inadequate access to the formulation of school policy. And since so many blacks, Chicanos, Puerto Ricans, and other minorities live in our large cities, they are particularly vulnerable to the will of other people. Thus, it is not surprising that many of them feel that community control is a mockery, in its present state at least. The same opinion is presently held by those whose children are being bused against their will. So we end up where " we started: what community control means depends on where you are, what you want, who you are afraid of, and how much power you have."[13]

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13. Neil Postman and Charles Weingartner, The School Book, (New York: Dell Publishing Company, 1973), p. 141.

During the past fifty years, the school and other public institutions have become increasingly large, impersonal, and bureaucratic. The word "alienated" is commonly used to describe how people feel toward some of the basic institutions. In the case of school,, decentralization is supposed to represent the cure. Through decentralization, it is believed, people will get in closer touch with their schools, and thus be able to participate more meaningfully in decisions affecting their own children. But there are a few problems.[14]

Starting from the beginning, in the liberal ideology, it has been widely asserted that centralization is one of the best protections against the tyranny of provincialism. There can be no doubt that this is true in many ways. What prevents a community from deciding that it will prohibit, by law, blacks or Jews or Catholics from attending its schools? The answer is, the largest centralized agency in the country- the United States government. It is probably true to say that, insofar as civil liberties are concerned, the federal judicial system has done more to protect against

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14. Ibid.

infringement, in this century, than any other institution. And so the argument "against large, concentrated power is by no means clear-cut. Such power can be used, and has been, to protect people from the whimsical, idiosyncratic, and tyrannical exercise of localized power."[15] Moreover, centralized authority can undoubtedly accomplish many things that diversified authority cannot. A serious crisis arises, though, when centralized authority runs amok- as in the Vietnam war- or when its bureaucratic structure gets so congealed that change becomes almost impossible- as in the case of many centralized school systems. At that point, movement toward decentralization is almost always healthy.[16]

But the question is "How can decentralization be achieved without losing, at the same time, all the benefits of centralization? " This is the puzzle at the center of most of the controversy over decentralizing schools. In New York, for example, it was obvious that a school system of over one million children and 50,000 teachers could not be administered intelligently. But many questions remain unanswered. The teachers worry

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15. Ibid. p. 151.
16. Postman and Weingartner, The School Book, p.151.

that autonomous communities might disregard hard-earned protections against arbitrary dismissals. Administrators worry about how funds will be distributed. Some parents worry about the schools becoming overly politicized. These are worries particularly relevant to large-city systems. Outside the cities, you do not find much centralization- at least not of the type that causes alienation and gross inefficiency.

2.3 Issues.

The issues can be summed up like this:"If we really want neighborhood schools, then neighborhood people must decide what kinds of schools they want, including who should teach in and administer them."

Many black and Hispanic parents believe that their children are being victimized by an uncaring, remote bureaucracy, and they feel justified in using whatever

means are at their disposal to wrest control of the schools from such centralized authority. This means inevitably that there will be no quiet solutions in the years ahead.[17]

Efforts for new reform through decentralization have emerged in recent years from the failure of the American political structure to adjust itself to the changing needs of society. "Expansion of the bureaucracy and narrowing of the policy process limits the channels for the exercise of power, which particularly affects new, upwardly striving groups." Earlier, immigrants to the cities had means of mobility available to them; the unskilled labor force, the local political party, and government service were major routes for entering the system. Today, however, America's economic and political institutions no longer provide such ready means of access for new groups. Demands for decentralization and community control are a reflection of that general political circumstance. "The movement represents an effort by powerless groups to become a part of the system and, at the same time, to make the system

17. Postman and Weingartner, The School Book, p.152.

responsive to their needs." They seek a means of shared responsibility in the allocation of the resources of the society.[18]

In dealing with the issue of political reform in American cities, one cannot ignore the issue of racism. The Kerner Commission Report documented much of what has happened in American cities and demonstrated the key role racism plays in what is defined as the urban crisis. Urban institutions reflect a basic racist attitude in their composition and attitude, and attempts to achieve change will have to appraise this circumstance realistically. Because the decentralization movement was spurred by the black community, it is often viewed only as a spearhead for black control. "The political manifestation of racism seems to have shifted from the anti-integration movement to an anti-community power movement." This cannot be underestimated, in terms of its importance, as a part of the opposition strategy in challenging movement toward decentralization and community control. Many professionals who favor reform and admit to the shortcomings of urban institutions

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18. Fantini, Decentralization: Achieving Reform, p. 7.

nonetheless look to the bureaucratic system and the professional for internal reform rather than risk a black power takeover.[19]

Particularly because of this fear, it is difficult to convince many who recognize the need for change that only through the infusion of new energy from outside the present system can reform become meaningful or even possible. The major emphasis in the decentralization movement until now has been to revise the system from within : to force a redistribution of power from within the system itself, that is, to foster state legislation or a city plan that shifts power from the central city to a neighborhood agency. Federal programs all embody provisions for some community role in the program. The more extreme the demands for opposition to such reforms of the system, the more extreme the demands for community control." As the pressures mount and the opposing stands become more solidified and polarized,

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19. Ibid.

inaction and frustration may increase demands for destruction of existing institutions and their replacement by alternate systems."[20]

Two results of minority pressure for community involvement in "educational decision making are (1) administrative decentralization and community participation, (2) administrative decentralization and community control." However, regarding community control, controversy abounds over whether elected public officials and professional educators or community groups will have the power and authority to run the schools.[21]

The controversy over the decentralization of schools focuses essentially on the issue of community control. "School districts can encourage school improvement through policy statements that promote local autonomy and ownership."[22]

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20. Ibid., p. 8.
21. Allan C. Ornstein, "Administrative Decentralization and Community Policy: Review and Outlook," Urban Review v. 15, No. 1 Fall 1983, p. 5.
22. Ibid.

2.4 Florida.

Although many states have been moving toward central boards, the opposite is true in Florida. The ten Regents of Florida have come under attack from legislators and a feud between the governor and the legislature over building a quality higher educational system has the state's educational system in a state of turmoil.[23]

David Rogers discusses both ideological and managerial precepts that came into play in the school decentralization struggle that took place in New York City in the 1970's. He describes the impact of decentralization on one poor predominantly Black district. Educators will never forget the terms Ocean Hill-Brownsville.[24]

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23. Sam Miller, "Florida: Decentralization by the Legislature," Change v. 12, No.7 October, 1980, p. 39.

24. David Rogers, "School Decentralization: It Works," Social Policy Vol. 12, No.4 September, 1982, p. 18. See also Naomi Levine, Ocean Hill-Brownsville: Schools in Crisis :A Case History (New York: Popular Library, 1969.)

2.5 The Court.

"Nowhere in the government has the concentration of authority been more pronounced than in the Court's interpretation of our laws, by means of which the Court has created a number of national standards to be applied to all state and much individual action." Perhaps even more national standards have been established by Congressional laws and Agency regulations. Increasingly the nation has been made to accept and enforce the <u>same</u> rules governing such locally controversial matters as race relations, the conduct of local schools regarding prayers, curriculum, student relationship to the school's disciplinary authority, other student rights, and public finance. The nation as a whole obeys the same rules regarding the regulation of air pollution, water pollution, solid waste disposal, health and industrial safety, sex or race discrimination in employment, food and drug quality, and social services for the poor, the aged and children. The nation is also subject to national regulations of banking and finance, money market manipulation, and taxation policy which shapes its local economic activity. Each state and local

community has been encouraged to identify the same local educational problems as requiring more attention, and to invest heavily in limited access highways and mental health centers. Even our legal procedures have been standardized among states regarding the need for counsel, rules of evidence, and characteristics of the jury system. And the Court has interposed the Federal Constitution to prohibit state enactments (and thus standardize the practice) in such widely diverse areas as policies governing marriage, sex offenses, pornography, criminal procedures and punishments, abortion and so on. Most of these areas have traditionally been within State, not Federal, jurisdiction.[25]

For several years now, political analysts have contended that education is a relatively closed policy making system compared to Congress or city councils. By "closed," these analysts mean that education is not open on a continuous basis to influence from its environment.

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25. Thomas W. Vitullo-Martin, "No Exit: The Closing of Choice in Education," Paper presented at Annual Meeting of the American Political Science Association (Chicago, Illinois, September 2-5, 1976) 32 pages. (U.S. Educational Resources Information Center, ERIC Document ED 141194 September, 1976).

Professional educators and school board members have predominant influence and do not systematically seek views of the lay community. The government of education is thus characterized by periods of stability under dominance of educational officials with little influence from the community and shorter periods of abrupt change that often destroy professional careers. These short periods of public interest are characterized by a turnover of boards and superintendents.[26]

The idea of government "close to the people" has been an article of faith since colonial days and has reappeared in different guises in each new epoch in the nation's history. It is possible to discern a dominant motif as each succeeding age has taken up anew the continuing decentralist-centralist debate. John C. Calhoun's doctrine of concurrent majorities held that economic and other interests were so distinctive in different parts of the country that each section should have a veto over national policies. The logical result of this doctrine was to leave most public policy decisions to the separate states. After the Civil War,

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26. Mosher, The Changing Politics of Education, p. 157.

the idea of decentralization was linked to the cause of limited government in the period of industrial growth. The "national idea" in the first half of the twentieth century was reflected in the progressive expansion of the federal government's role in solving state and local problems. The doctrine of states rights and the constitutional argument for "dual federalism" gave way to the forces that saw in centralization a fuller realization or the ideals of American democracy. For years, the centralist tradition has been the carrier of innovation, while the decentralizers have sought consolidation and slow change in order to maintain continuity with the American past.[27]

By the middle 1960's, the ideological and political spectrum had shifted considerably. While centralization was still proposed by some progressive voices as a solution to certain problems like pollution control and welfare reform, decentralization became fashionable among liberals. The 1968 Republican National Convention declared in its platform that decentralization of power

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27. George R. La Noue and Bruce L.R. Smith, The Politics of School Decentralization, (Lexington, Massachusetts: D.C. Heath and Company, 1973), p.1.

was needed to "preserve personal liberty, improve efficiency, and provide a swifter response to human problems." The decentralization idea was a classic case of political opposites gathering under a common banner. The idea has filtered so deeply into the nation's political consciousness that President Nixon, in his 1971 State of the Union Address, spoke the rhetoric if not the substance of community control in his call for a "new American revolution."[28]

2.6 Battles Over Decentralization

The battles over decentralization intersect with a number of broader trends affecting the cities- such as erosion of party loyalties and the fiscal crisis affecting state and local governments. The cities have wanted power and resources decentralized to the city's level, but cities have been wary when neighborhoods seek a further devolution of powers. Also, the states have sought a larger role in the federal system, and generally have been less enthusiastic about the

28. Ibid., p. 2.

decentralization when municipalities petition for home rule.[29]

2.7 Key Assumptions.

There are a few key institutional assumptions that serve to influence operations in a school. Although there have been gradual adjustments of the assumptions themselves, the basic thrust and climate generated by the assumptions remain the most important "control" on the behavior of those within the institution. The first of these givens is that receiving public education is a privilege and not a right; the second is that the school is a place only for a select group, those who satisfy certain requirements; and the third is that, if those seeking entry do not satisfy these requirements, those seeking entry literally have no place in the mainstream of education.[30]

These assumptions are largely a carry over from the nineteenth century thinking. Then, schools were indeed places for the few, not the many- schools were copied

29. Ibid., p. 3.
30. Mario Fantini and Marilyn Gittell, Decentralization: Achieving Reform (New York: Praeger Publishers, 1973), p. 25.

from those of Western Europe, where broad-based education had emerged at a time when medievalism and its authoritarian social institutions still flourished. American schools were originally intended to screen for the ministry, later to prepare for the law or science. The kind of knowledge considered most worthy was that asssembled by scholars and consisting largely of the "classics." The task of education was to pass on this body of knowledge to students; those students who succeeded were then considered "educated." Thus, the present system is a creature more of historical accident than of sound educational planning.[31]

2.8 Decentralization.

Do not confuse "decentralization" and "community involvement." It is one thing to give others a chance to express views before a decision is reached; it is quite another to give people the power to reach critical decisions and be willing to abide by them. "Decentralization involves not only a dividing up of administrative responsibility, but a shift of power from

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31. Ibid., p. 26.

a citywide board to a number of local boards of education."[32]

Yet decentralization is no guarantee of school responsiveness. If New York City, for instance, is broken up into 33 local administrative districts, as recommended in its current decentralization plan, any one of those sub-districts will still be the fourth largest city school district in the state. "Decentralization assures neither the kind of identity that citizens in small towns generally feel with their schools nor the feeling of ready access to them."[33]

Decentralization must not be viewed as a panacea, but as a very real and understandable rebuff to the educational system from those citizens our public schools allege to serve in urban areas. The federal government's role in public school education is not public school governance. The public is demanding control of its schools at the local level. If mass education and the concept of an educated electorate are to be preserved in a recognizable form, "we must get the

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32. Gregory R. Anrig, "The Decentralization Controversy," Education Digest, Vol. 51 No. 3 November, 1985, p. 125.
33. Ibid.

federal government out of the day-to-day operation of our schools and return school governance to the duly elected bodies designated by law to control them."[34]

Cliff Eagleton maintains the centralization of authority and responsibility is rapidly leading to ineffectiveness in public education and to its irrelevance in modern America. If successful American education and a successful free society are intertwined, America's leadership should address public goals which lead toward decentralizing the decision-making process within this institution.[35]

2.9 Texas.

Local school boards and school administrators in Texas have long complained of intrusions by the state and federal governments into the schools. The myriad state and federal reports and guidelines, which have always accompanied state and federal funds, have been a source of irritation, but little more.

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34. John H. Holcomb, "The Public Wants Its Schools Back," Education Digest, Vol. 48 No.8 April, 1983, p. 18.

35. Cliff Eagleton, "Returning Public Schools to Local Control," Education Digest, Vol. 50 No. 7 March, 1985, p. 14.

Despite the restrictions attached to the receipt of state and federal funds, local school boards in Texas have traditionally enjoyed substantial autonomy in providing for the education of the children living in the school districts. The state legislature and the state board of education have specified only that each of the more than 1,100 independent school districts in Texas must provide a "well-balanced curriculum" -giving local boards considerable latitude in defining and implementing that directive. Consequently, each district has established its own goals and priorities and developed its own curriculum and evaluation processes within the broad framework provided by the state and in line with current accreditation standards.[36]

Now, suddenly and dramatically, the rules of the game have changed. In Texas Education Code 21.101, the state board of education has clearly defined "well-balanced curriculum," and the state has told local school boards, "Thou shalt teach it!" The Code goes on

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36. Michael G. Killian, "Local Control- The Vanishing Myth In Texas," Phi Delta Kappan, Vol. 66 No. 3 November, 1984, p. 192.

to make clear that " the State Board of Education is the primary policy-making body for public education."[37]

Texans have long been proud of the fact that the system of public education is responsive to the needs of local students and the local community as these needs are identified by locally elected school boards. Many citizens have celebrated local control as one of the school system's greatest virtues.[38]

Inequality of educational opportunity became more and more evident in Texas. Critics repeatedly pointed out the disparities that existed among local school districts in the ability to support education; these fiscal inequalities were also challenged in the courts.

Given the situation, it is not surprising that in 1982 the sixty-seventh Texas legislature mandated sweeping changes in the schools. The reform legislation, House Bill 246, began by repealing all existing curriculum mandates--447 courses and topics, ranging from high school algebra to the protection of birds on their nests--that had been added to the curriculum since

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37. Ibid.
38. Ibid., p. 193.

1949. House Bill 246 told exactly what the "well-balanced curriculum" would include.[39]

House Bill 246 also requires local school boards to enact policy changes that will significantly weaken the board's autonomy to determine local curricula. Boards that fail to make these changes will jeopardize the chances for accreditation and thus for state funds. In addition, House Bill 246 mandates major changes in teacher preparation programs and raises certification standards dramatically. Thus, in Texas, educational reform has meant more state control. From now on, the primary function of local boards will be to implement state mandates.[40]

Across Texas, local school board members are suddenly faced with loss of autonomy in decisions related to most areas of school operation. No longer do local school boards have wide discretion in establishing policies on curriculum or educational philosophy.

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39. Ibid.
40. Ibid., p. 194.

Increased state control of education has several advantages. For example, every student in Texas- regardless of the district- will receive a sound education, if the student chooses to take advantage of the opportunities that are available. Moreover, salaries for Texas teachers have increased significantly, and the state is now trying to recognize and reward master teachers.

At the same time, increased state-level control of Texas education has its disadvantages. Chief among these is the fact that members of the state board of education are now appointed- and thus no longer directly accountable to local constituents. Local control has suffered a mortal blow in Texas.

Scattered across the United States are small, generally homogeneous communities that still try to run the communities' political lives as though the United States were not a massive nation-state with a single, centralized culture, fostered by a common kind of schooling and cemented by universal access to the monolithic messages of television and McDonald's. In the lives of these rural citizens, the tension between

Jeffersonian and Hamiltonian political philosophies still has daily force.[41]

2.10 Nonintervention.

Not all the efforts to maintain local authority manifest themselves as power struggles, and not all of the efforts revolve around the schools. There are states in the Great Plains in which the notion of nonintervention in local affairs is still the political norm. There are localities in which school issues have been resolved to the general satisfaction of the public, but the question of standards for police protection or reduction in post office service have become the focus of heated debate. However, schooling is often a tinderbox, partly because it involves children and partly because many small communities consider local schooling to be the last area over which communities have a prayer of maintaining control.[42]

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41. Faith Dunne, "Good Government vs. Self-Government: Educational Control in Rural America," Phi Delta Kappan, Vol. 65 No. 4 December 1983, p. 254.
42. Ibid.

Small rural communities see the local school as the font of the communities's continuing existence. The relationships and loyalties formed in the school are expected to yield dividends in the form of a new generation of local citizens who will support the values that keep the community alive.

The rural citizenry as a whole frequently sees the school as the center of daily community life, regardless of whose children are enrolled in school at the moment. School life seems to have a function that goes beyond entertainment, attending a varsity athletic event or a school play is an affirmation of membership in the community, a statement of the relationship between the individual and the place, which confirms important ties.

Given the importance of the school to the self-image of many rural communities, it should not be surprising that education has become the ground for last-ditch battles between the "locals" and the "experts." Both locals and experts profess that the

central problem is one of educational quality, though in most cases the real issue is educational control.[43]

Joseph Murphy maintains the states should take an active and direct role in education reform; supporting school reform effort, providing technical assistance, defining and controlling educational content, and assessing the outcomes of education. This is what the legislature in Texas did.[44]

Jack Schuster says the national level education policy is being rapidly decentralized which offers options to proponents of a vigorous federal role in education.[45]

Donald Sanders maintains that prevailing trends in American education- centralization, bureaucratization and hyperrationalization- are being pressed upon the institutions of schooling through current modes of educational change. Sanders says a better approach is to

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43. Ibid.

44. Joseph Murphy, et.al "A Stronger State Role in School Reform," Educational Leadership, Vol. 12 No. 2 October, 1984, p.20.

45. Jack Schuster, "Out of the Frying Pan: The Politics of Education in a New Era," Phi Delta Kappan , Vol. 63 No. 9 May, 1982, p.588.

increase human control over education locating responsibility for educational improvement with the teachers themselves.[46]

2.11 Primary Role of Government.

The primary role of the federal and state governments should be to provide resources and stimulation for the major decisions and changes at the school level. A first step toward achieving this goal would be a reorientation of priorities from the turn-of-the-century reforms of centralization, depoliticization, expertise and civil service competence. The new priorities would be increased representation, the school as the unit of governance, and decentralization. Conflicting values inherent in education would be brought into the open, not obscured behind a facade of professional expertise.[47]

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46. Donald P. Sanders and Marian Schweb, "Schooling and the Development of Education," Educational Forum, Vol. 45 No. 3 March 1971 p. 270, Education Resources Information Center ERIC Document 245256.

47. Mosher, The Changing Politics of Education, p. 166.

The central office has a crucial support role for staff and parents' training, evaluation, and oversight. The role of the central office will be more extensive in the high schools because of such needs as work-study and off-campus programs that can best be coordinated centrally. Experience in other states such as Florida demonstrates that school site decision making requires preparation for principals, teachers, and parents.

One type of governance plan embodies the recognition that it is the individual school, rather than the entire district, that is the critical link between the child and the substance of education. The school site is also large enough to have relevance for state aid formulas. There is a need to know whether money for special federal and state programs is reaching the schools with the most needy pupils. Even in school districts with three or more schools, it is the local school site that is the biggest concern to many parents. In addition to what is done in government, the issue of

how things are done and how people feel about their governance is crucial.[48]

Governors and state legislators are installing top-down mandated, statewide reform in the way teachers are paid; and state education departments, prodded by task force reports, are demanding a larger core of required curriculum. At the same time that industry is dismantling its top-down structure to achieve participatory management, schools are being pushed into greater degrees of centralization.[49]

The impulse to reform the schools from the top down is understandable; it is consistent with the history of management science. The explicit model for such reform was the factory; the teacher was the worker on the assembly line of education; the student, the product; the principal, the foreman; the superintendent, the chief executive officer; the school board, the board of directors, and the taxpayer, the shareholder.[50]

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48. Ibid. p. 168.

49. John C. Prasch, "Reversing the Trend Toward Centralization," Educational Leadership, Vol. 42 No. 2 October, 1984, p. 27.

50. Dennis P. Doyle and Terry W. Hartle, "Leadership in Education: Governors, Legislators, and Teachers," Phi Delta Kappan, Vol. 67 No. 1 Sepember, 1985, p. 24.

States change policy through statutes and regulations, which have a standardizing effect. Moreover, the new focus of state policy making is aimed at the core of instructional policy, including what should be taught, how it should be taught, and who should teach it.[51]

State regulations cannot be easily adapted to the diverse contexts of local school sites. State goals are sometimes in conflict with one another. For example, state policies designed to attract and retain highly qualified teachers are clearly in conflict with state policies designed to insure that a certain minimum amount of content is covered in all classrooms. Outstanding teachers are attracted to a profession that offers independence and an opportunity to be creative.[52]

A few years ago, state-mandated testing was often viewed as an unnecessary intrusion by the state into local affairs. But today, state legislatures, state departments of education, local school districts, and

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51. Michael W. Kirst, "The Changing Balance in State and Local Power to Control Education," Phi Delta Kappan, Vol. 66 No. 3 November, 1984, p. 190.
52. Ibid.

test publishers are all working together to bring about more state-mandated testing and to generate more comparative data. In the eighties, testing is becoming the preferred means of trying to affect change in education.[53]

State mandates work better for some policy changes than for others. For example, state mandates can move local policies toward higher academic standards through state curricular requirements and tests. But other objectives, such as increasing the amount of homework, are best encouraged through state technical assistance rather than through a state mandate requiring a specified number of hours of homework each week.[54]

An aggressive stance by the states on these instructional issues forces policy makers to make tradeoffs and seek some balance between state and local control, between strategies that insure compliance and strategies that offer technical assistance. More regulation in curricular areas might be accompanied by

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53. Beverly Anderson and Chris Pipho, "State-Mandated Testing and The Fate of Local Control," Phi Delta Kappan, Vol. 66 No. 3 November, 1984, p. 210.

54. Kirst, "The Changing Balance...", p.190.

deregulation somewhere else--perhaps in state categorical programs. In addition, state education agencies often lack specialists in curriculum and instruction who are capable of providing needed technical assistance to local educators. For example, in 1982 the Department of Public Instruction in California had ten nutritionists and 12 child-care facility specialists on its staff-- but only one half-time specialist in mathematics.[55]

The states are playing a large role in instruction in the 1980's because of a lack of initiative and power at the local level and in the professional organizations. Local school boards, administrators, teachers, parent/ teacher organizations, and taxpayers are playing purely reactive roles. Nor have statewide organizations of school boards or administrators devised specific plans and urged the states to monitor the results of implementing plans in the local districts.

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55. Ibid.

These organizations lack the capacity for policy analysis that the states have built in the years betweeen 1965 and 1980.[56]

Many of the new state initiatives focus on curriculum mandates, particularly graduation requirements. Local considerations can influence the curriculum at the local level, and many of the reformers feel that granting local districts too much leeway in setting curricular requirements could deprive students of an opportunity to study essential subjects in sufficient depth.

The recent spate of reports on the state of education nationwide is indicative of a loss of confidence in the ability of local authorities to provide high-quality education. Consequently, state legislatures have felt compelled to step in and preempt local discretion.[57]

Yet the literature on effective schools suggest that the most important changes take place when those responsible for each school are given more

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56. Ibid.
57. Ibid.

responsibility rather than less. While centralization may be better for naval units, steel mills and state highway departments, the effective schools literature suggests that it is more important that principals, teachers, students and parents at each school have "a shared moral order."[58]

2.12 National Governors' Conference.

The nation's governors called for a radical overhaul of public education, including establishing procedures where states can intervene to educate children "in districts that cannot or will not respond to repeated evidence of systemwide failure."

"We're tackling seven tough issues that professional educators usually skirt," said Tennessee Governor Lamar Alexander, chairman of the National Governors' Association.[59]

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58. Chester E. Finn, Jr. "Toward Strategic Independence: Nine Commandments for Enhancing School Effectiveness," Phi Delta Kappan, Vol. 65, No. 8 April, 1984, p. 523.

59. John Monk, "Governors Call For Overhaul of Education," The Charlotte Observer Sunday, August 24, 1986, Section A p.1.

Among the goals and recommendations in the 171 page study, were:

Governors should support the creation of a national board of professional teacher standards.

States should develop ways to evaluate principals, including setting up statewide centers to evaluate administrators.

Families should be allowed to select--within limits--which public schools they want their children to attend within a state. "Providing choice among public schools is another form of accountability," the report says.

Parents need better "report cards" about what students know and can do.

The states, not the federal government, have the constitutional responsibility to improve the nation's educational systems.

Fair career-ladder salary systems for teachers should be worked out that recognize differences in teacher competence.[60]

The Carolinas have already implemented a few of the measures, including some of the most far reaching proposals.

In South Carolina, the 1984 Education Improvement Act authorizes the state school board to intervene in local districts where educational standards are not being met. South Carolina also instituted a principal assessment center. Both states have begun programs for targeted 4-year-olds considered likely to have educational deficiences. And several North Carolina school districts, including Charlotte-Mecklenburg Schools, have implemented teacher career-ladder programs.

The governors' recommendations are advisory. By the clout of their public positions, the governors said they want to influence the nation's quality of life by

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60. Ibid.

setting an agenda for better education during the next five years.

Besides jobs, the report mentions several reasons why Americans should be concerned about poor public education today:

One-third of U.S. college freshmen read below a seventh grade level.

U.S. eighth graders' math skills rank ninth among 12 major industrial countries in the world.

Politically the report is likely to benefit the governors. Being for education is akin to being against taxes.

2.13 Justice Powell and Education.

In his tenure on the United States Supreme Court, Associate Justice Lewis F. Powell, Jr. has emerged as a key figure in cases dealing with education. With the Court frequently split five to four on school cases, Justice Powell is often the swing vote, and even when

in the minority, his disenting opinions have exerted significant influence on later decisions. His jurisprudence in this area devolves from the extensive experience as a school board president and member of the Virginia Board of Education, and reflects his recognition of the competing forces at play in American public education. Justice Powell's opinions reflect his attempt to balance these forces, to find a proper equilibrium between individual rights and those of the community. The strengths and weaknesses of Powell's decision-making can be seen in school management cases.[61]

Justice Powell believes in the importance of local control in education. His emphasis on educational policy is primarily a matter of local control. Phrases common to Justice Powell's opinions are "balancing," " case by case analysis," and "an accommodation of competing values." This fails to yield a rule of law which can be clearly understood and consistently applied.

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61. Melvin I. Urofsky, "Mr. Justice Powell and Education: The Balancing of Competing Values," Journal of Law and Education, Vol. 13 No. 4 October, 1984, p. 581.

Justice Powell maintains aliens not wishing to become citizens should not be allowed to teach, but aliens who want to be "Americans," even if illegally, should be taught. In a case whose ramifications are yet to be explored, the Court by a narrow margin held that denial of a free public school education to undocumented alien children is a violation of the equal protection clause of the Fourteenth Amendment.[62]

Even when Justice Powell has extended constitutional rights, as was done to some extent in Youngberg v. Romeo, Justice Powell has attempted to avoid more than minimal intrusion by the courts into local control. In this case the Court held that a state must provide institutionalized mental patients (in this case a severally retarded man) minimum training adequate to ensure safety and freedom of movement. Justice Powell found a constitutional right to "minimally adequate and reasonable training," the first time the Court had gone so far as to uphold rights of the retarded or handicapped to some form of education even if, as in this case, it was merely to train the patients

62. Plyer v. Doe, 457 U.S. 202 (1982).

so as to "ensure safety and freedom from undue restraint."[63]

While this may be stretching the definition to include this as an "education" case, the function of training for the mentally retarded or physically handicapped is certainly analogous to schooling for "normal" persons. At the time of the suit Nicholas Romeo was thirty-three years old, but had the mental capacities of an eighteenth-month old child. After the death of his father, his mother, no longer able to care for him by herself, had him committed to Pennhurst State School and Hospital, where, in order to restrain him, the staff routinely tied him to his bed or chair for long periods of time. In part this was protective, but nonetheless Romeo suffered injuries on 77 separate occasions, and the hospital had made no effort to train him to take care of himself even within the admittedly narrow limits of his ability.[64]

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63. Youngberg v. Romeo, 457 U.S. 307 (1982).
64. Ibid. at 319.

Justice Powell thinks the courts should interfere as little as possible in the schools, since courts are the governmental agencies least qualified to set policy. But while this flexible, case by case analysis in Justice Powell's hands may yield the results the Justice believes desirable, primarily the noninterference by the courts in school affairs, in other hands just the opposite may occur. The Court has not overlooked the worth of local control, but rather it has given it less importance in its overall evaluation than Justice Powell would have preferred.[65]

For Justice Powell, schools involve a host of community values, and so long as basic constitutional rights are not transgressed, the Justice believes local interests and values should determine policy. A teacher, according to Justice Powell, serves as a role model for students, exerting a subtle but important influence over the students' perceptions and values. Thus, through both the presentation of course materials and the example the teacher sets, a teacher has an opportunity to influence the attitudes of students toward government, the

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65. Urofsky, "The Balancing of Competing Values," p. 605.

political process, and a citizen's social responsibilities.[66]

In Rodriguez, Justice Powell said no group of children was singled out by the State and then penalized because of the parents' status. Rather, funding for education varied across the State of Texas because of the tradition of local control. In this case, Justice Powell discussed at length whether education is a fundamental right and therefore subject to searching equal protection analysis.[67]

In this chapter, the literature about centralization has been reviewed. In Chapter Three, state statutes of the Sun Belt states will be analyzed.

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66. Ibid., p. 601.
67. San Antonio School District v. Rodriguez, 411 U. S. 1.(1973).

Chapter 3

Analysis of Sun-Belt Statutory Approach to Public Education

3.0 Introduction.

In spite of the strong tradition of local autonomy for the schools, the states have taken the stronger role in education in the last twenty years. Today state legislatures are making-- and state departments are carrying out-- policy in areas that used to be handled solely by local school boards. Chapter 3 is organized along the following lines: 3.1 Curriculum Reform; 3.2 Graduation Requirements; 3.3 College Admissions; 3.4 Student Evaluation/Testing; 3.5 Instructional Time; 3.6 Longer School Day; 3.7 Longer School Year; 3.8 Master Teachers/ Career Ladder Plan.

3.1 Curriculum Reform.

Table 3-1 indicates that ten Sun-Belt states have enacted curriculum reform legislation and that eight legislatures have proposed statutes. Only Missouri, Oklahoma and Georgia have had no action as yet.

O= Proposed X= Enacted Y= No Action As Yet

CHAPTER THREE

CENTRALIZATION OF PUBLIC EDUCATION GOVERNANCE

LEGISLATION AND LITIGATION: 1966-1986

TABLE NUMBER ONE

CURRICULUM REFORM

ALABAMA	X
ARIZONA	X
ARKANSAS	X
CALIFORNIA	X
COLORADO	O
FLORIDA	O
GEORGIA	Y
KANSAS	O
KENTUCKY	X
LOUISIANA	X
MISSISSIPPI	O
MISSOURI	Y
NEVADA	O
NEW MEXICO	X
NORTH CAROLINA	O
OKLAHOMA	Y
SOUTH CAROLINA	O
TENNESSEE	X

O= Proposed X= Enacted Y= No Action As Yet

TEXAS	X
UTAH	O
VIRGINIA	X

The legislature of Florida has tried decentralization of the schools by legislative act. One entry in Florida School Laws begins "It is the finding of the Legislature that a comprehensive prescriptive program of primary education... is needed in order to improve the results of public education in this state in all grades in years to come."[1]

In Florida, the state's school boards association has asked the state senate to put a moratorium on new education legislation until the impact of a bevy of measures recently enacted is fully understood. Among the new laws : one that requires students to earn 24 credits-- most in strict academic courses--before they can be graduated; several that will combine by 1986-87 to require all tenth grade students to write a paper every week of the school year; and one that requires students to take three years of both mathematics and science. See table 3-1 on pages 64-65.[2]

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1. Florida School Laws 1985 Edition, Chapters 228-246, Section 230.2312, Florida Statutes, Department of Education, p.54

2. Florida School Laws 1985 Edition, Chapters 228-246, Section 233.011, Florida Statutes, Department of Education, Ralph D. Turlington, Commissioner of Education, p. 120.

Section 228.0855 sets up the Florida Model School Consortia establishing one or more secondary schools or elementary schools operating as prototype technology schools throughout Florida. A designated school shall be administered by a local model school board of trustees.[3]

The State Board of Education is the chief policy making and coordinating body or public education in Florida. The State Board has the general powers to determine, adopt, or prescribe such curriculum, rules, regulations, or standards as are required by law or as the State Board may find necessary for the improvement of the state system of public education.[4]

House Bill 246 in Texas requires local school boards to enact policy changes that will significantly weaken the local boards' autonomy to determine local curricula. H B 246 began by repealing all existing curriculum mandates. The lawmakers went on to mandate that each school district "shall offer a well-balanced curriculum." In Education Code 21.101, the state board of education has clearly defined "well-balanced

3. Florida School Laws, p. 12.
4. Florida School Laws, p. 13.

curriculum," and the state has told local boards, "Thou shall teach it!"[5]

House Bill 72 in Texas requires school districts to offer prekindergarten classes if the school district can identify 15 or more children who are unable to speak English or who come from families whose income is below the subsistence level. However, school districts may be exempt from the rule if the district must construct new classrooms in order to offer the program.[6]

Local instructional plans may draw upon state curriculum frameworks and program standards as appropriate. The responsibility for enabling all children to participate actively in a balanced curriculum which is designated to meet individual needs rests with the local school districts. Districts are encouraged to exceed minimum requirements of the law. A primary purpose of the public school curiculum in Texas shall be to prepare "thoughtful, active citizens who understand the importance of patriotism and can function productively in a free enterprise society with

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5. Texas School Law Bulletin, Section 21.101, Texas Education Code, p. 157.
6. Ibid.

appreciation for the basic democratic values of the State of Texas and national heritage."[7]

A new legislative idea surfaced in Alabama that would limit the hours that high school students could work after school on part-time jobs. With the passage of this bill, teenagers between the ages of 16 and 18 will not be permitted to work later than 10 p.m. on school nights.[8] The bill was introduced by State Senator James Bennet and State Representative Hoyte Trammell, with the support of the Alabama Education Association. The goal of the bill is to " increase student achievement by making students more attentive in the classroom." Students under the age of 16 will not be allowed to work later than 7 p.m. on nights preceding school days. Moreover, the younger teenagers will not be allowed to work more than 18 hours each week.[9]

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7. Texas School Law Bulletin, Section 21.101 (d), Texas Education Code, p. 158.
8. Chris Pipho, "A Bumper Crop of Education Activity," Phi Delta Kappan, Vol. 68, No. 1 September, 1986, p. 6.
9. Code of Alabama, 1975 Vol. 13, Section 16-1-19, and Section 16-8-28 revised 1986.

Senate Bill 813 in California is anchored in a set of seriously flawed assumptions about teaching, schooling, and the role of the state in generating change. State level policy makers assume that teaching is closer to making cars than to carving marble. S B 813 aims to change what happens between a teacher and a student. The law includes provisions that tell teachers what to teach and how much time to spend teaching it; it sets grade level standards, specifying which tests to give; and it mandates how teachers are to be trained, selected and evaluated.[10]

3.2 Graduation Requirements

As table 3-2 on pages 71-72 shows, eighteen of the twenty-one Sun-Belt states have enacted legislation requiring tougher graduation requirements. The other three, Colorado, Mississippi and South Carolina have proposed legislation requiring more units for graduation.

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10. California Education Code, sections 1741 and 1752.

O= Proposed X= Enacted Y= No Action As Yet

CHAPTER THREE

CENTRALIZATION OF PUBLIC EDUCATION GOVERNANCE

LEGISLATION AND LITIGATION: 1966-1986

TABLE NUMBER TWO

GRADUATION REQUIREMENTS

ALABAMA	X
ARIZONA	X
ARKANSAS	X
CALIFORNIA	X
COLORADO	O
FLORIDA	X
GEORGIA	X
KANSAS	X
KENTUCKY	X
LOUISIANA	X
MISSISSIPPI	O
MISSOURI	X
NEVADA	X
NEW MEXICO	X
NORTH CAROLINA	X
OKLAHOMA	X
SOUTH CAROLINA	O
TENNESSEE	X

O= Proposed X= Enacted Y= No Action As Yet

TEXAS	X
UTAH	X
VIRGINIA	X

In Louisiana, the state board of education recently changed high school graduation requirements so that by 1988, all students in the state will have to pass three years of mathematics (two years of algebra and one year of geometry) and two years of science (one year of biology and one of chemistry) to obtain a diploma.[11]

Arizona has revised Statutes Title 15, sections 341 and 342, which address general powers and duties of local school district Governing boards. This section sets up a Governing Board whose duty is to prescribe and enforce rules for the governance of the schools, not inconsistent with state law or rules prescribed by the state board of education.

The Governing Board prescribes the course of study, competency requirements and criteria for the promotion and graduation of pupils as provided in sections 15-701.01[12]

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11. Louisiana State Statutes, Section 2.099.00 which requires 23 Carnegie units of credit and the passing of the Eleventh Grade Graduation Test.

12. Arizona Revised Statutes, Title 15, Sections 341, 342 and 15-701.01

California's Senate Bill 813 was to put steel in the graduation requirements and to direct students to sit longer in school and take more tests. Since state officials viewed teachers as part of the problem, the law raised beginning salaries.[13]

The Georgia Education Review Commission issued a report in December, 1984, spelling out 77 skills that all high school students must master before graduation. At the same time, says a recent publication of the United States Department of Education, the Georgia State Board of Education is working on "specific curriculum requirements for all grade levels in all subject areas."[14] And while Georgia is upgrading its science and mathematics requirements for graduation, the shortage of teachers in these disciplines is so acute that some Georgia school systems are exploring the possibility of importing teachers from Germany.[15]

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13. California Education Code, Sections 1741 and 1752.
14. Official Code of Georgia Annotated, section 20-2-941 et seq.
15. O.C.G.A. section 20-2-940.

At the high school level in New Mexico, graduation requirements have been increased. Each student entering the ninth grade will be required to prepare an individual program of study, to be signed by a parent or guardian. This program must include four years of English, three years of mathematics, two years of science, three years of social science, one year of physical fitness, one year of communication skills (with the major emphasis on writing and speaking), and nine elective units. Beginning in the 1987-88 school year, all courses offered for graduation credit must include a final examination for all students. Moreover, students are not to receive high school diplomas unless the students pass state competency tests in the areas of reading, English, mathematics, science and scocial science.[16]

3.3 College Admissions

As table 3-3 on pages 77-78 shows, nine states have enacted statutes on college admissions, five have

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16. New Mexico Statutes Annotated, section 22-10-20.

proposed legislation and seven have taken no action as yet.

O= Proposed X= Enacted Y= No Action As Yet

CHAPTER THREE

CENTRALIZATION OF PUBLIC EDUCATION GOVERNANCE

LEGISLATION AND LITIGATION: 1966-1986

TABLE NUMBER THREE

COLLEGE ADMISSIONS

ALABAMA	Y
ARIZONA	X
ARKANSAS	O
CALIFORNIA	X
COLORADO	O
FLORIDA	X
GEORGIA	X
KANSAS	Y
KENTUCKY	X
LOUISIANA	X
MISSISSIPPI	X
MISSOURI	X
NEVADA	O
NEW MEXICO	Y
NORTH CAROLINA	X
OKLAHOMA	O
SOUTH CAROLINA	Y
TENNESSEE	Y

O= Proposed X= Enacted Y= No Action As Yet

TEXAS	Y
UTAH	Y
VIRGINIA	O

Students have the right to attend college when the students meet the admissions requirements set up by the Board of Trustees of the college.[17]

17. Kentucky School Laws, Conduct of Schools, Section 158.140, p. 201.

3.4 Student Evaluation/Testing

Table 3-4 on pages 81-82 shows 14 states have enacted legislation regarding student evaluation/testing. Four states, Arizona, Colorado, Oklahoma, and South Carolina have proposed legislation and three, New Mexico, North Carolina and Utah have taken no action as yet.

O= Proposed X= Enacted Y= No Action As Yet

CHAPTER THREE

CENTRALIZATION OF PUBLIC EDUCATION GOVERNANCE

LEGISLATION AND LITIGATION: 1966-1986

TABLE NUMBER FOUR

STUDENT EVALUATION/TESTING

ALABAMA	X
ARIZONA	O
ARKANSAS	X
CALIFORNIA	X
COLORADO	O
FLORIDA	X
GEORGIA	X
KANSAS	X
KENTUCKY	X
LOUISIANA	X
MISSISSIPPI	X
MISSOURI	X
NEVADA	X
NEW MEXICO	Y
NORTH CAROLINA	Y
OKLAHOMA	O
SOUTH CAROLINA	O
TENNESSEE	X

O= Proposed X= Enacted Y= No Action As Yet

TEXAS	X
UTAH	Y
VIRGINIA	X

Educational screening and evaluation of students in Louisiana is a requirement of the schools. According to section 2.057.00 of the Education Code, each school shall have a committee at the school building level that shall ensure that educational screening activities is conducted.[18]

In Kentucky, the results of student evaluation/tests shall be published in the local newspaper by October 1 of each year. Section 158.690 of the Revised Kentucky Statutes says the local boards of education shall publish an annual performance report on district accomplishments and activities pertaining to product goals including retention rates and student performance on basic and essential skills tests by school and grade level.[19]

Missouri considered passing a reform bill for several years before passing H. B. 463, the Excellence in Education Act of 1985. One of the provisions of the new law is that a joint committee of the general

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18. Bulletin 1508, Pupil Appraisal Handbook, State of Louisiana.

19. Kentucky School Laws, Annotated, Section 158.690, p. 214.

assembly must be convened, first in 1988 and then every fourth year thereafter, to review and study the public schools and to make recommendations for legislative action. This provision for legislative oversight appears to be a unique requirement in a state reform law. The new law provides for student competency testing in all basic skill areas, requires each school district to establish a policy on discipline, and sets up an "incentives for school excellence" program in which a 21-member advisory committee is to help the State Department of Education develop inservice training programs and a variety of school and community projects.[20]

North Carolina's testing program covers grades 3, 6 and 9 with the California Achievement test. School units have the option of testing the other grades from local funds. The competency test has been moved from the eleventh grade to the tenth grade so that more time can be spent with those who need help to graduate.

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20. Vernon's Annotated Missouri Statutes, Vol. 2 A Section 162.621

3.5 Instructional Time

Table 3-5 on pages 86-87 shows ten states have enacted legislation on the length of the instructional time. Eight states have proposed statutes and three, Nevada, North Carolina and Utah have shown no action as yet although North Carolina may have a statute proposed soon.

O= Proposed X= Enacted Y= No Action As Yet

CHAPTER THREE

CENTRALIZATION OF PUBLIC EDUCATION GOVERNANCE

LEGISLATION AND LITIGATION: 1966-1986

TABLE NUMBER FIVE

INSTRUCTIONAL TIME

ALABAMA	X
ARIZONA	O
ARKANSAS	X
CALIFORNIA	X
COLORADO	O
FLORIDA	X
GEORGIA	O
KANSAS	O
KENTUCKY	X
LOUISIANA	X
MISSISSIPPI	O
MISSOURI	X
NEVADA	Y
NEW MEXICO	O
NORTH CAROLINA	Y
OKLAHOMA	O
SOUTH CAROLINA	O
TENNESSEE	X

O= Proposed X= Enacted Y= No Action As Yet

TEXAS	X
UTAH	Y
VIRGINIA	X

In Louisiana, section 2.037.11 requires the minimum school day to include 330 minutes of instructional time exclusive of recess, lunch, and planning periods.[21]

Texas requires a 45 minute planning period during the seven hour school day. Section 13.902 requires a period of not less than 45 minutes for parent-teacher conferences, reviewing students' homework and planning and preparation.[22]

In Kentucky, section 158.060 declares six hours of actual school work shall constitute a school day. The daily session, including recesses and intermissions, shall not exceed nine hours in a twenty-four hour period, or a school day.[23]

Oklahoma has a six hour school day of instructional time for any group of pupils other than nursery, kindergarten, or first grade. The State Board of Education defines the amount of instructional time in the school day.[24]

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21. Louisiana Revised Statutes, Section 17:154.1
22. Texas School Laws, Section 13.902, p. 75.
23. Kentucky School Laws, Section 158.060, p. 194.
24. Oklahoma Statutes Annotated, Title 70 Section 1-111.

3.6 Longer School Day

North Carolina, Arkansas, Florida and Louisiana are the only four states that have enacted statutes for a longer school day. Table 3-6 on pages 90-91 shows five states: Georgia; Mississippi, Missouri, South Carolina and Utah have proposed legislation. Twelve states have taken no action as yet..

O= Proposed X= Enacted Y= No Action As Yet

CHAPTER THREE

CENTRALIZATION OF PUBLIC EDUCATION GOVERNANCE

LEGISLATION AND LITIGATION: 1966-1986

TABLE NUMBER SIX

LONGER SCHOOL DAY

ALABAMA	Y
ARIZONA	Y
ARKANSAS	X
CALIFORNIA	Y
FLORIDA	X
GEORGIA	O
KANSAS	Y
KENTUCKY	Y
LOUISIANA	X
MISSISSIPPI	O
MISSOURI	O
NEVADA	Y
NEW MEXICO	Y
NORTH CAROLINA	X
OKLAHOMA	Y
SOUTH CAROLINA	O
TENNESSEE	Y
TEXAS	Y

O= Proposed X= Enacted Y= No Action As Yet

UTAH	O
VIRGINIA	Y

In Florida, the school day has been lengthened so that all grades above the third shall comprise not less than 5 net hours excluding intermissions.[25]

In North Carolina, the State Board of Education has ruled that a school day must include six hours of instruction. See the table on pages 90-91.

3.7 Longer School Year

As Table 3-7 on pages 93-94 shows a longer school year has been enacted in five states. The five states are: Arkansas; California; Florida; North Carolina; and Tennessee.

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25. Florida School Laws, Chapter 228, section 228.041 subpart 13.

O= Proposed X= Enacted Y= No Action As Yet

CHAPTER THREE

CENTRALIZATION OF PUBLIC EDUCATION GOVERNANCE

LEGISLATION AND LITIGATION: 1966-1986

TABLE NUMBER SEVEN

LONGER SCHOOL YEAR

ALABAMA	Y
ARIZONA	O
ARKANSAS	X
CALIFORNIA	X
COLORADO	O
FLORIDA	X
GEORGIA	O
KANSAS	Y
KENTUCKY	Y
LOUISIANA	Y
MISSISSIPPI	O
MISSOURI	Y
NEVADA	O
NEW MEXICO	Y
NORTH CAROLINA	X
OKLAHOMA	Y
SOUTH CAROLINA	O
TENNESSEE	X

O= Proposed X= Enacted Y= No Action As Yet

TEXAS	O
UTAH	Y
VIRGINIA	O

In North Carolina, the same bill that added one hour to the length of the school day, added twenty days to the length of the school year.[26]

Eight states have taken no action as yet. The eight states are : Alabama; Kansas; Kentucky; Louisiana; Missouri; New Mexico; Oklahoma; and Utah. See table 3-7 on pages 93-94.

3.8 Master Teachers/Career Ladder Plan

As Table 3-8 on pages 96-97 shows, four states, California, Florida, Tennessee, and Utah have enacted master teacher/career ladder plans. Nine states have proposed legislation. The nine states are : Arizona, Colorado, Kansas, Kentucky, Mississippi, New Mexico, North Carolina, Texas and Virginia.

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26. North Carolina School Laws, G.S. Sections 115C-12(11), 115C-47(S).

O= Proposed X= Enacted Y= No Action As Yet

CHAPTER THREE

CENTRALIZATION OF PUBLIC EDUCATION GOVERNANCE

LEGISLATION AND LITIGATION: 1966-1986

TABLE NUMBER EIGHT

MASTER TEACHERS/CAREER LADDER PLANS

ALABAMA	Y
ARIZONA	O
ARKANSAS	Y
CALIFORNIA	X
COLORADO	O
FLORIDA	X
KANSAS	O
KENTUCKY	O
LOUISIANA	Y
MISSISSIPPI	O
MISSOURI	Y
NEVADA	Y
NEW MEXICO	O
NORTH CAROLINA	O
OKLAHOMA	Y
SOUTH CAROLINA	Y
TENNESSEE	X
TEXAS	O

O= Proposed X= Enacted Y= No Action As Yet

UTAH	X
VIRGINIA	O

Eight states have taken no action as yet. The eight states are: Alabama, Arkansas, Georgia, Louisiana, Missouri, Nevada, Oklahoma, and South Carolina.

The Master Teacher Plan adopted by the Florida legislature in 1984 has been changed from a program of one time or temporary grants to a three step career ladder. The old plan had been criticized for its quota system and for basing awards of a limited amount of state money on a small number of meassures. Some reports said that only three percent of Florida teachers would be able to qualify for the extra money.[27]

The new career ladder, to become effective in the 1987-88 school year, will allow districts to work with teachers for one year to develop a plan that meets state guidelines. Each district's plan will then have to be approved by the state board of education.[28]

The career ladder proposal in North Carolina is in the pilot program stage. Sixteen school units are doing a pilot study of the career ladder.

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27. Florida School Laws, Section 229.601 Career Education Program, p.32.
28. Florida School Laws, Section 229.601 CSHB 1240/984.

Although the career ladder idea started as an interpretation of various recommendations to raise teacher salaries and to improve the image of the professions, the existing programs may not be what some of the earlier task forces had in mind. The big story is that the legislature of North Carolina has taken the idea, molded it, changed it, and interpreted it in the legislature's own way, and then acted- -but not yet putting full funding to the plan.

The Utah legislature approved H.B. 110, allocating $15 million to a career ladder program for teachers. The new law gave state aid to local school districts to develop career ladder plans. Included in the plan is an extended year proposal for teacher contracts, which includes a differentiated staffing plan and advancement up a career ladder according to individual performance, which could include information about student achievement.[29]

Critics of curriculum reform, tougher graduation requirements, college admisions, student evaluation/testing, instructional time, longer school

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29. Code of Utah, Section 201.02

day and year and a master teacher/career ladder plan offer three main objections : (1) the new education changes in some states are based on unreasonable and unrealistic assumptions about public schools; (2) changes are being made without regard to their impact on school system curriculums or on the availability of teachers; (3) changes in many parts of the United States--especially in the South--could erode the tradition of local control of education and the governance of schools is in jeopardy.[30]

3.9 Summary of Analysis of Sun-Belt Statutory Approach to Public Education Chapter.

In this chapter, state statutes of the Sun-Belt states that deal with local control and local authority have been examined. In spite of evidence that increasing the number of regulations and procedures often increases bureaucratization rather than school effectiveness, and in spite of evidence that school improvement is best accomplished at the building level, many state

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30. Jerome Cramer, "Some State Commandments of Excellence Ignore Reality and Undercut Local Control," The American School Board Journal, Vol. 171, No. 9, September, 1984, p. 25.

departments of education have come up with new strategies that are demonstrably effective in improving local schools. Districts can encourage school improvement through policy statements that promote local autonomy and ownership. School buildings should be under the control of building principals.

More demanding standards across the board were critical in Arkansas. Greater high school course requirements and the addition of a seventh period were Florida's focus. Reinstatement of minimum high school graduation requirements and tougher courses were important in California. A high school exit examination and merit pay were pivotal in South Carolina. Expanded student testing and grade-to-grade promotion were emphasized in Texas. The career ladder for teachers was the cornerstone of reform in Tennessee.

One state statute in Arkansas says if fewer than 85 percent of the students in a school district pass a statewide test--and if no progress is made toward meeting the 85 percent minimum within two years--the state can dissolve the school system and force the

students to attend school elsewhere. This would erode the tradition of local control of education.[31]

The education reform movement exploded the myth that reform comes from merely passing a law at the state level. Education occurs in the local community, and that is where any law is implemented. And at the local level, the law is subject to reasonable interpretation in light of all the circumstances in the local schools.

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31. Ark.Stats. Section 80-1502.

Chapter 4

Statutes Litigated

4.0 Introduction.

Powers not conferred on the federal government by the United States Constitution are delegated to the states. The state Constitutions and statutes spell out the broadness and state constraints of power. It has been generally accepted that it is the duty of school officers to administer the affairs of the corporation as directed by statute in the exercise of such powers and authority as are vested in them. As in the case of school districts, such officers have no powers other than those conferred by legislative act, either expressly or by necessary implication, and doubtful claims of power are resolved against them.[1]

In this study, the following Sun-Belt States are considered: 4.1 Alabama, 4.2 Arizona, 4.3 Arkansas, 4.4 California, 4.5 Colorado, 4.6 Florida, 4.7 Georgia, 4.8 Kansas, 4.9 Kentucky, 4.10 Louisiana, 4.11 Mississippi,

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1. Andrew v. Stuart Sav. Bank, 204 Iowa 570, 215 NW 807; Wright v. Board of Education, 295 Mo. 466, 246 S.W. 43; 27 ALR 1061.

4.12 Missouri, 4.13 Nevada, 4.14 New Mexico, 4.15 North Carolina, 4.16 Oklahoma, 4.17 South Carolina, 4.18 Tennessee, 4.19 Texas, 4.20 Utah, and 4.21 Virginia.

Cases considered in this chapter are from the United States Supreme Court, the United States Courts of Appeals, the United States District Courts and the State Appellate Courts.

The courts will not interfere with the exercise of discretion by school directors in matters confided by law to their judgment unless there is a clear abuse of the discretion, or a violation of law. And the burden is upon those charging an abuse of discretion to prove it by clear and convincing evidence. To date, litigation has not yielded any unified body of legal theory, courts uphold state standards as often as they strike them down.[2]

Generally speaking, school laws must comply with the rules governing the validity of statutes, and must not violate constitutional requirements applicable to all laws alike, such as those relating to title and

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2. Safferstone v. Tucker, 235 Ark 70, 357 S.W. 2d 3.

subject matter, or prohibiting special or local regulations.[3]

4.1 Alabama.

State statutes that have been ligitated in Alabama that deal with centralization are on the control of tenure for teachers, the decision who can levy taxes for schools in a county, and the decision that county boards are not agencies of the counties, but are local agencies of the state.

A local law was declared unconstitutional in Alabama in Madison County that was a House Bill which authorized the governing body of Madison County to levy sales or use taxes in areas of the county served by Madison County school system, with revenues generated to be given only to Madison County school system. The reason was the subject matter was subsumed by statute authorizing county-wide tax to generate revenue for all school assistance within the county.(1985).[4]

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3. 68 Am Jur 2d Schools Section 8 et seq.
4. Code 1975, section 40-12-4; Const. section 105--Opinion of the Justices, 469 So. 2d 105.

In 1983 the State Tenure Commission is totally a creature of legislature and was created by a quasi-judicial body.[5]

The only two actions that may properly be taken in regard to existing contract of tenured teacher are to supersede or cancel such contract. (1984).[6]

An attendance supervisor who had not served that position for three years was not tenured as a supervisor, and did not sustain a loss of status when reassigned to a teaching position in her area of certification as a vocational teacher. (1984).

All teachers are subject to the direction of the board of education following the recommendation of the county superintendent, as to the position in which they shall serve during any succeeding year.

A transfer from one position to another position or from one school to another school or from one grade to

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5. Tuscaloosa City Bd. of Educ. v. Roberts, 440 So. 2d 1058.

6. Code 1975, section 16-24-3. Debrow v. Alabama State Tenure Commission, 474 So. 2d 99, certiorari quashed Exparte Alabama State Tenure Comm. 474 So.2d 101.

another grade can be made without in any wise jeopardizing a teacher's continuing service status.[7]

In order to be a supervisor for purposes of teacher tenure provisions, a school district employee must be actively involved with both students and teachers in the school setting.(1985)

A school district employee who held the position of assistant to the superintendent and federal programs coordinator, whose office was located in the central office of the school system, and whose responsibility as federal programs coordinator involved little, if any participation with students or teachers held an administrative position and was not a "supervisor" for purposes of tenure law.[8]

Having given a teacher a third-year contract to serve as high school principal, a city board of education could not, in effect, vote to deny principal tenure by transferring him to vocational supervisor position before he completed term of his contract; that

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7. Code 1975, Sections 16-24-2(b), 16-24-6- Smith v. Alabama State Tenure Comm. 454 So.2d 1000.

8. Code 1975 Sections 16-24-1, 16-24-2-Alabama State Tenure Comm. v. Singleton, 475 So.2d 185.

improper termination was thus ineffective to prevent teacher from receiving tenure as principal. (1984)[9]

Tenure rules are to be read into all contracts entered into by school boards and teachers. (1985)[10] Teacher Tenure Act should be construed in favor of teachers who are Act's primary beneficiaries. (1984)[11]

County boards of education are not agencies of counties, but local agencies of state, charged by the legislature with the task of supervising public education within counties.(1984) The powers delegated to school boards are purely derivative, and under a well-recognized canon of construction, only such powers, however remedial in their purpose, can be exercised as are clearly comprehended within the words of the statute or that may be derived from necessary implication. Any doubt or ambiguity arising from the terms of the grant must be resolved in favor of the people.[12]

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9. Code 1975, sections 16-24-2(b), 16-24-6- Smith v. Alabama State Tenure Comm., 454, So.2d 1000.

10. Owen v. Rutledge, 475 So.2d 826.

11. Code 1975, Section 16-24-1-Berry v. Pike County Bd. of Education, 448 So.2d 315.

12. Code 1975, sections 16-8-8, 16-8-9-Hutt Through Hutt v. Etowah County Bd. of Educ., 454 So.2d 973; Wright v. Board of Education, 295 Mo.466, 246 S.W. 43, 27 ALR 1061.

Municipal boards of education are not agencies of municipalities, but agencies of the state empowered to administer public education within cities; as such, municipal boards enjoy immunity from tort liability, even though municipalities enjoy no such immunity.(1984)[13]

In a Constitutional Amendment in 1984, as to ability grouping in context of schools that have only recently become desegregated, ability grouping in such context is only forbidden if it results in resegregation of classes or schools.[14]

See Clark v. Jefferson County Board of Education in Chapter 5 for a discussion of whether a county board of education has the authority to operate a child day care center.

A new legislative idea in Alabama that has not been litigated would limit the hours that high school students could work. If this bill passes muster, teenagers between the ages of 16 and 18 would not be

13. Ibid.
14. Bester v. Tuscaloosa City Bd. of Educ., 722 F.2d 1514.

permitted to work later than 10 p.m. on school nights. The goal of the bill is to increase student achievement by making students more attentive in the classroom. Students under the age of 16 would not be allowed to work later than 7 p.m. on nights preceeding school days. Moreover, these younger teenagers would not be allowed to work more than 18 hours each week.(1986)[15]

4.2 Arizona.

A statute in Arizona was taken to court in 1985 in which the State School for the Deaf and Blind was created by the legislature and its duly enacted statutes control; the School has only those powers specifically or impliedly granted it by statute. The object of a power sought to be exercised by boards of education must be reasonably germane to the purposes of the grant of power to them to control instruction in the public schools of their respective districts, and it has been said that local school boards must perform within the limits of the Bill of Rights. This statute deals with

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15. Code of Alabama, 1975 Vol. 13, Section 16-1-19 and 16-8-28 revised 1986.

the question of who controls the School for the Deaf and Blind and the answer is the legislature who created it.[16]

In the same case, the Appellate Court ruled that the Board of State School for the Deaf and Blind had no authority to discharge or continue a teacher's salary despite provisions in purported tenure policy allegedly adopted by School authorizing Board to suspend teacher with pay, as purported tenure policy was not legally effective because it conflicted with state statutes governing the School.(1985)

State constitutions and statutes provide for a general and uniform system of common schools. The question has arisen at to what constitutes uniformity. "Uniform" is held to mean that there should be no discrimination as between the different counties or sections. Equal and uniform privileges and rights should control over all the state, but this does not mean that

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16. Arizona Revised Statutes, Sections 15-1301 to 15-1361- Bower v. Arizona State School for the Deaf and Blind, 704 P.2d 809, 146 Ariz. 168; Goodman v. School District, 32 F2d 586, 63 ALR 92; Swart v. South Burlington Town School Dist., 122 Vt. 177, 167 A2d 514, 81 ALR2d 1300, cert. den. 366 US 925, 6 L Ed 2d 384, 81 S.Ct. 1349.

each and every school shall have exactly the same course of study, the same qualification in teachers and the same items of expenses in conducting the schools. The local details of the schools and their administration may be committed by general provision to the local authorities. The fact that different arrangements are made by the local bodies does not constitute lack of uniformity.[17]

Uniformity does not require equal classification, but it does demand that there be a substantially uniform system and equal school facilities without discrimination.[18]

Any provisions in the tenure policy allegedly adopted by the State School for the Deaf and Blind which conflict with legislation governing the School are not enforceable. The State School for the Deaf and Blind could not adopt a tenure policy similar to public school district tenure policy set forth in A.R.S. Sections 15-501 to 15-550, as the School could not adopt for itself

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17. Re Kindergarten Schools, 18 Colo 234, 32 P 422; Smith v. Simmons, 129 Ky 93, 110 S.W. 336; Lehew v. Brummell, 103 Mo. 546, 15 S.W. 765; Carolina Grocery Co. v. Burnet, 61 S.C. 205, 39 S.E. 381.

18. Wooley v. Spalding, Kentucky 293 SW 2d 563.

a policy that the legislature declined to adopt. This statute gets into the self-governing issue.(1985)[19]

4.3 Arkansas.

An Arkansas Statute Section 80-1234 unambiguously grants local school boards the power to assign, reassign, and transfer teachers within the district. The school board's temporary reassignment of a math teacher to perform computer duties, under its powers granted by Arkansas Statute Section 80-1234, was not a breach of duty, so that the teacher was not entitled to writ of mandamus. There is no requirement that the teacher be assigned duties of his preference or that he consent to transfer or reassignment.(1985)[20]

In Arkansas in 1984, a statute requiring a parent or guardian to send his children between the ages of seven and 15, inclusive to a private, public, or parochial school did not violate the father's First Amendment rights to free exercise of religion where the

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19. Arizona Revised Statutes, sections 15-1301 to 15-1361.

20. Chandler v. Perry-Casa Public Schools Dist. No. 2, 690 S.W.2d 349, 286 Ark. 170.

father, seeking to educate the child at home, made no showing of religious or cultural tradition similar to that involved in the case upholding Amish educational system nor that similarily serious harm would result to practices of a distinct group. This statute dealt with the parent's direct control of his child's educational choice.[21]

One law in Arkansas says if fewer than 85 percent of the students in a school district pass a statewide test--and if no progress is made toward meeting the 85 percent minimum within two years--the state can dissolve the school system and force the students to attend school elsewhere. This would erode the tradition of local control of education.[22]

In Heard v. Payne, the primary rule in construction of the statutes is to give effect to the intention of the legislature. The legislature's intent is to be ascertained from an examination of the language used, evil to be remedied, and object to be attained. The initial and primary source for determining legislative

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21. Ark.Stats. Section 80-1502; U.S. C. A. Const. Amend. 1. Burrow v. State, 669 S.W.2d 441, 282 Ark.479.
22. Ark.Stats. Section 80-1502.

intention is the plain meaning of statutory language used, and where unambiguous, that plain meaning of the language controls.(1984)[23]

Public education is the responsibility of school administrators, and courts are reluctant to intervene in conflicts which develop in the day to day operation of a school system. This has to do with regulations and supervision of schools and educational institutions in general.(1985)[24]

In school district's action against board of education challenging its determination as to district's boundary line, evidence that two maps relied on by adjoining school district had been altered, that former county supervisor recognized line appearing on original maps as being existing boundary line and that maps located in state education office showed only original boundary line, supported finding that disputed sections were all located in plaintiff school district.(1984)

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23. 665 S.W. 2d. 865, 281 Ark. 485.
24. Boyd v. Board of Directors of McGehee School Dist. No. 17, 612 F.Supp. 86.

A statute which deals with the formation, dissolution or change in school district did not apply to county board of education's attempt to determine location of boundary line between two school districts.

A statute which ratified actions taken by county boards of education prior to March, 1951, in creating, consolidating or altering school districts did not apply to action brought by school district to determine its boundary line, in which all parties agreed that no official changes had been made to line.

A statute which cured any defect which may have existed in formation of an existing school district and empowered county boards of education to fix boundaries of such districts where they were uncertain because of lost records or other reasons was inapplicable to determination of location of boundary line between two districts which did not exist at time of statute's adoption.[25]

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25. Izard County Bd. of Educ. v. Violet Hill School District No. 1, 663 S.W. 2d 207.

4.4 California.

A junior high program can be established without the consent of the governing board of elementary school district as long as a majority of the boards of trustees of elementary school districts comprising the high school district approve or upon an election ordered by governing board of the high school district.(1984).

A junior high school program may be discontinued under West's Ann. Cal. Educ. Code section 37077 if each of the governing boards of the elementary school districts the comprising high school district in which it is located adopt a resolution approving discontinuance.(1984)[26]

Discriminative pattern of assignment of faculty and staff is among most important indicia of segregated school system. This shows the existence and propriety of a segregated school system.(1984)[27]

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26. West's Ann. Cal.Educ. Code Section 37061--San Dieguito Union High School District v. Rosander (Cardiff School District), 217 Cal. Rptr.737, 171 C.A.3d 968, review denied.

27. Diaz v. San Jose Unified School Dist., 733 F.2d 660, certiorari denied 105 S.Ct. 2140, 85 L.Ed. 2d 497.

A county superintendent of schools is a separate legal entity performing a transitory function to meet specific and limited needs of some school districts. A superintendent is there for a limited period of time.(1985)[28]

Under California law, beneficial ownership of all property of state school systems is vested in the state, school moneys belong to the state, and apportionment of funds to school district does not give that district a proprietary right therein.(1983)[29]

A school district, in giving its certificated employees the day after Lincoln's birthday off, had declared a "holiday" within meaning of section of Education Code empowering it to declare holidays, obligating it to give a holiday to its classified employees under another section of the Code; governing boards are not limited to declaring local holiday only to commemorate events, and day after Lincoln's birthday qualified as a "holiday" within meaning of Code

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28. West's Ann. Cal. Educ. Code sections 1700, 1741, 1752, 1761,1771(b), 1830(b)- Neumarkel v. Allard, 209 Cal.Rptr. 616, 163 C.A. 3d 457.

29. Stones v. Los Angeles Community College Dist. 572 F. Supp. 1072.

notwithstanding fact that certificated employees were not paid for holidays.(1984)[30]

Statutory power of local governing bodies of school districts to create separate work schedules for certificated employees and classified employees allows classified and certificated employees to be scheduled to begin work at different times of the year or to have different days off each week; the statute does not empower governing body to give classified and certificated employees different holidays.(1984)[31]

In a statute providing that governing board of school district shall provide for the payment of actual and necessary expenses of employees of the district incurred in the course of performing services for the district and that the governing board may direct any employee of the district to attend any convention or conference or to visit schools for discussion or observation, the second sentence is not a limitation upon the first and the statute does not restrict

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30. West's Ann. Cal. Educ. Code sections 37222, 45203-California School Employees Ass'n v. Tamalpais Union High School Dist., 206 Cal. Rptr. 53, 159 C.A. 3d 879.

31. West's Ann. Cal. Educ. Code Sections 37222, 45203.

reimbursement to expenses incurred in attendance at conventions, conferences, or school visitations. (1984)[32]

The section of school code governing paid holidays required school district to pay classified employees, including cafeteria workers, bus drivers and instructional aides, for those days designated as local holidays and professional conference days when students would otherwise have been in attendance, but were not, and for which certified employees were paid. (1984)[33]

Since the school district had credited all full-time employees involved in appeal with a full year of service retirement credit for work performed in each of the academic years 1977 through 1982, no additional service credit could be earned for summer employment, regardless of additional employer and employee contributions. (1984)[34]

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32. West's Ann. Cal. Educ. Code section 44032-California School Employees Assn. v. Travis Unified School Dist., 202 Cal.Rptr. 699, 156 C.A. 3d 242.

33. West's Ann. Cal. Educ. Code section 45203-California School Employees Assn v. Azusa Unified School Dist., 199 Cal. Rptr. 635, 152 C.A.3d 580.

34. West's Ann. Cal. Gov. Code sections 20861, 20862-Service Employment Intern. Union, Local 22, AFL-CIO v. Sacramento City Unified School Dist., 198 Cal. Rptr. 884, 151

Governing board of an elementary school district has the authority to require its pupils not to attend a junior high school system if elementary system had withdrawn; however, this statute does not aid in the interpretation of the withdrawal procedures but merely deals with the effect of an appropriate election on power of board of district to withdraw its students.(1985)[35]

In case of permanent and probationary employees of a school district, employer's power to terminate employment is restricted by statute; substitute and temporary employees, on the other hand, fill a short range needs of school district and generally may be summarily released. (1984)[36]

A statute governing evaluation and assessment of performance of certificated employees of school districts, does not create statutory precondition to

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C.A.3d 705.

35. West's Ann.Cal. Educ. Code sections 37065, 37085- San Dieguito Union School Dist. v. Rosander (Cardiff School Dist.) 217 Cal.Rptr. 737, 171 C.A. 3d 968, review denied.

36. West's Ann. Cal. Educ. Code Sections 44918, 44920-- Taylor v. Board of Trustees of Del Norte Unified School District, 683 P. 2d 710, 204 Cal. Rptr. 711.

reassignment from administrative to teaching position.(1985)[37]

School district's grievance settlement with teacher, which merely recited that district agreed not to discriminate against teacher on basis of race, color, religion, sex, national origin, or age, and further stated that district denied that it, in fact, discriminated against teacher at any time, did not in any way protect teacher from future transfers.(1984)[38]

As an "administrator," petitioner had no tenure, although she did have tenure as a classroom teacher. (1985)[39]

A county superintendent employee must be in a "teaching position" to acquire permanency and such positions are limited to classroom instruction; however, a school district employee need only be in a position requiring certification in order to acquire permanency

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37. West's Ann. Cal. Educ. Code Sections 44660--44665, Jones v. Palm Springs Unified School Dist., 216 Cal. Rptr.75, 170 C.A. 3d 518, review denied.

38. Bolin v. San Bernardino City Unified School Dist., 202 Cal. Rptr. 416, 155 C.A. 3d 759.

39. West's Ann. Cal.Educ. Code section 44951--Tucker v. Roach, 210 Cal. Rptr. 295, 163 C.A. 3d 1051.

and such positions include administrative positions and nonteaching positions. A school district employee in an administrative or supervisory position or in both a teaching position and administrative position can acquire permanent status; however, a similar county superintendent employee cannot. Certified employees of county superintendent of schools, who worked in administrative, supervisory, or support staff positions but did not possess permanent or probationary status and, therefore, were not entitled to tenure or tenure-related benefits, including such benefits related to termination.(1985)[40]

The legislature has a defined statewide interest in new school construction and in impact of new residential developments upon overcrowding of school facilities, so that state laws with respect thereto control over local ordinances. This takes the power away from the local boards of education.(1983)[41]

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40. West's Ann. Cal. Educ. Code Sections 1293, 1294, 1296, 44882, 44955--Neumarkel v. Allard, 209 Cal. Rptr. 616, 163 C.A.3d 457.

41. West's Ann. Cal. Educ. Code section 65970 (a-e)--Candid Enterprises, Inc. v. Grossmont Union High School Dist., 197 Cal. Rptr. 429, 150 C.A.3d 28, vacated 705 P.2d 876, 218 Cal. Rptr. 303, 39 C.3d 878.

A rule that where a statute sets up a number of special funds for single purpose or there are a number of allocations of money from different funds for that one purpose the allocations, considered together, should be treated as being only "one item of appropriation", within constitutional provision limiting bills to one item of appropriation, was applicable to statute restructuring public finance of local public entities in response to enactment of Proposition 13.(1984)[42]

Appropriation addressing debt expense of unfunded pension liability to State Teachers' Retirement System was reasonably germane to general purpose of restructuring of public finance of local public entities in response to enactment of Proposition 13, and under circumstances presented by the enactment of such Proposition, there was no constitutional limitation of bills to "one item of appropriation," in enacting one complex appropriation measure which financed services financially impaired, so that the continuing

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42. West's Ann. Cal. Educ. Code section 23401 et seq.; West's Ann. Cal. Const. Art. 2, section 10, Art. 3 section 3 Art. 4 section 12 (d) St. 1979, c.282, section 106--California Teachers Ass'n v. Cory (Teachers' Retirement Bd. of State Teachers' Retirement Ass'n), 202 Cal. Rptr. 611, 155 C.A. 3d 494.

appropriations statutes in the Education Code were valid appropriation.[43]

4.5 Colorado.

School districts in Colorado are given a wide latitude in discretion concerning whom to award tenure. This is left up to the local boards of education.(1984)[44]

In construing statute, courts in Colorado have a duty to ascertain legislative intent and give effect to such intent whenever possible.(1984)[45]

The mere allegation that weight of the evidence considered by school board supports different decision than one reached in regard to school closure is insufficient to state a claim for relief. (1984)[46]

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43. West's Ann. Cal.Educ. Code section 23401, et.seq.; St. 1979, c. 282, section 106; West's Ann. Cal. Civ. Code section 3287,West's Ann. Cal. Const. Art. 13A section 1 et.seq.

44. Carlile v. South Routt School District RE-3J in Routt County, State of Colorado, 739 F2d 1496.

45. Industrial Com'n of State of Colorado v. Board of County Com'rs of Adams County, 690 P.2d 839.

46. Rules Civ. Proc. Rule 106 (a)(4)--Bruce v. School Dist. No. 60, 687 P.2d 509.

In a school closure case, allegations of arbitrary and capricious action and abuse of discretion in closing certain school, the substance of which allegations was that other schools were better candidates for closure under the board of education's express criteria, were insufficient to state a claim for relief and were properly stricken by the trial court from plaintiff's declaratory judgment claim.[47]

4.6 Florida.

In Florida all absentee ballots voted in the school board election were required to be invalidated, even though a specific number of invalid votes could not be established with mathematical certainty sufficient to change the result of the election, where there was clear fraud and intentional wrongdoing in extensive absentee vote buying such that over 30 percent of the absentee ballots could be said to be tainted and over 10 percent of the absentee voters admitted that their votes were bought and the vote-buying scheme adversely affected the sanctity of the ballot and the public's perception of

47. Rules Civ. Proc., Rules 106, 106 (a)(4) Ibid.

the integrity of the election was "so conspicuously corrupt and pervasive that it tainted the entire absentee voting procedure." (1984)[48]

The school board's first proposed single-member district plan devised to replace at-large election scheme in county for school board members, found to be racially discriminatory, included a board member district employing an area which was significantly larger than any of the other four districts in said plan, so that it lacked sufficient compactness and contiguity to be acceptable. (1984)[49]

The Department of Education was entitled to refund of Title 1 section 20 U.S. C.(1976 Ed.) section 241a et seq. funds expended in Florida schools for period in which services provided in each Title 1 school were not at least "comparable" to services being provided in non-Title 1 schools. Any federal funds received under Title 1 of Elementary and Secondary Education Act of 1965, section 101 et seq. as amended 20 U.S.C.A. section 2701 et seq. that are expended on any Title 1 school that

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48. Bolden v. Potter, 452 So.2d 564.
49. N.A.A.C.P. v. Gadsden County School Bd., 589 F. Supp. 953.

fails to provide levels of educational services to children from low income families comparable to those services provided to other children are misspent funds.(1985)[50]

A superintendent of schools who appealed from action of school board employing administrative employee of school district for a two-year period instead of one year period recommended by superintendent was entitled to legal council appointed by the board to represent him in the dispute.[51]

A school board attorney was "consultant or other professional person" and was thus ineligible for enrollment in the Florida Retirement System. This gave him a conflict of interest in the case. (1984)[52]

A transfer of continuing contract of a principal, upon closing of his former kindergarten center, to a position of assistant principal at junior high school was proper, inasmuch as the two positions were similar,

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50. State of Florida, Dept. of Educ. v. Bennett, 769 F.2d 1501.
51. Greene v. School Bd. of Hamilton County, 444 So.2d 500.
52. Potter v. State Dept. of Admin. Div. of Retirement, 459 So.2d 1170.

and school board was not obligated to reassign him to one of principalship vacancies which had developed in the school system. (1984)[53]

Though a superintendent may under Florida statute section 230.33(7)(e)suspend a tenured teacher during emergencies for a period extending to and including day of next regular special meeting of the school board, a suspension should be with pay and, furthermore, reasons for the suspension must be one or more of those stated in sections 231.36(4)(c).[54]

4.7 Georgia.

Georgia's Fair Dismissal Act, creating property interest for all teachers under contract to particular local board of education for four consecutive years or more, did not fail on its face to comport with due process.(1985)[55]

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53. West's F.S.A. sections 120.57(1), 228.041(10)(b); F.S. 1981, section 231.36(3)--Osburn v. School Bd. of Okaloosa County, 451 So.2d 980.

54. West's F.S.A. sections 230.33 (7)(e), 231.36(4)(c)--Strange v. School Bd. of Citrus County, 471 So.2d 90.

55. O.C.G.A. sections 20-2-940 et seq.; U.S.C.A. Const.Amend. 14--Holley v. Seminole County School Dist., 755 F.2d 1492, rehearing denied 763 F.2d 399.

The county board of education's policy which required that its employees holding elective office abide by the same leave policies that were applicable to all employees did not enact "standard, practice or procedure" with respect to voting which was required to be approved pursuant to Voting Rights Act and thus did not violate Act, as board's action constituted nothing more than its refusal to adopt legislative leave policy and served in effect as reaffirmation of its policy requiring employees to fulfill their contracts with exception of time away from job allowed to all. (1984)[56]

The primary responsibility for formulating individual education programs for handicapped students rests with state and local educational agencies.(1984)[57]

Official Code of Georgia Annotated, section 20-2-992, which provides that immunity of state and local boards of education is not waived, is not effective to

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56. Voting Rights Act of 1965, sections 5, 7 42 U.S.C.A.section 1973c, 1973e--White v. Dougherty County Bd of Educ., 579 F.Supp. 1480, affirmed 105 S.Ct. 1824, 85 L.Ed.2d 125.

57. Education of the Handicapped Act, section 601 et seq. 602(19), as amended 20 U.S.C.A. section 1400 et seq. 1601(19)--Burger v. Murray County School Dist., 612 F.Supp. 434.

preserve sovereign immunity when Constitution itself has waived it. (1985)[58]

A referendum on whether to provide for election of members of county school board, as opposed to existing system of appointment by successive grand juries, was a "special election" for purposes of determining whether members of public were barred from campaigning or checking voters' lists within 250 feet of the polls. (1984)[59]

Georgia's compulsory school attendance law was not sufficiently definite to provide a person with ordinary intelligence, who desired to avoid its penalties by having his or her children attend private school, fair notice of what constituted " private school" and, thus was void for vagueness.(1983)[60]

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58. Const. Art. 1, section 2, par. 9--Thigpen v. McDuffie County Bd. of Educ., 335 S.E.2d 112, 255 Ga. 59.

59. O.C.G.A. sections 21-2-2, 21-2-408(a,c),21-2-414(a),21-3-321(a)--Stiles v. Earnest, 312 S.E.2d 337, 252 Ga. 260.

60. O.C.G.A. section 20-2-6(a) code, section 32-2104; U.S.C.A. Const. Amend.14-- Roemhild v. State, 308 S.E.2d 154.

4.8 Kansas.

Statutory construction is a matter of law. This is a common sense ruling about the general rules of construction of state statutes.(1984)[61]

School boards are authorized to provide rules and regulations on the operation of schools in Beline v. Board of Education, 210 Kan. 560,563,571, 502 P.2d 693. Local school boards are authorized to close attendance facility in Brickell v. Board of Education, 211 Kan. 905, 917, 508, P.2d 996. The state board of education possesses general supervisory powers over district boards in State ex.rel. v. Board of Education, 212 Kan. 482, 485, 486, 492, 493, 497, 511 P.2d 705.

See Hadley v. Junior College District of Metropolitan Kansas City in Chapter 5 for a discussion of the "one man, one vote" principle applied to the election of local governmental officials.

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61. State ex.rel.Stephan v. Board of County Com'rs of County of Lyon County, 676 P.2d 134, 234 Kan. 732.

An order dismissing action to determine constitutionality of 1973 School District Equalization Act as moot, vacated and remanded; rights hereunder unresolved in Knowles v. State Board of Education, 219 Kan. 271, 272, 273, 547 P.2d 699.

An apportionment of monies contained in fund established hereunder by state finance council not unconstitutional as being a usurpation of executive powers by the legislature in State, ex.rel. v. Bennett, 222 Kan. 12, 24, 564 P.2d 1281.

Where there was no indication that a matter of legislative merit was tied to unworthy matter or that matters having no relation to each other were intermixed, the fact that the legislature consolidated several bills into a chapter dealing with financing of community colleges and municipal universities through out-district tuition did not render chapter unconstitutional.(1984)

All school authorities are created by and are subordinate to the legislature. It is for the legislature to determine whether the authority shall be exercised by a state board of education, or distributed

to county, township, or city organizations throughout the state. Accordingly, the legislature may compel local organizations of the state to maintain schools in their respective territories, even without the consent of those who will be taxed.[62]

The power of the legislature to impose a system of public school education on local communities is not limited to the common branches. So too, the legislature may not only determine what schools shall be maintained in school districts, but may provide that if such schools are not maintained, residents of the district shall attend the schools of a neighboring district, and the expense of such attendance shall be borne by the district of their residence.[63]

4.9 Kentucky.

A statute which provides that no person shall upbraid, insult or abuse any teacher of the public schools in the presence of the school or a pupil of the

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62. 68 Am Jur 2d section 7 p. 401.See also State ex.rel. McCausland v. Freeman, 61 Kan. 90, 58 P 959.

63. 68 Am Jur 2d section 7 p. 403.

school is an unconstitutional violation of the state and federal constitutional right to free speech.(1985)[64]

The absence of bad faith on part of the state in misusing federal funds granted to the state to supplement its expenditures for educating disadvantaged children did not absolve the state from liability for misusing funds to supplant its expenditures. Statutory authority for granting federal funds to states to supplement state expenditures for educating disadvantaged children was not ambiguous in prohibiting states from using funds to supplant state expenditures, and thus recovery of misused funds could not be denied on the ground that state did not accept grant with knowing acceptance of its terms.(1985)[65]

Even though the grant agreement awarding federal funds to states to supplement their expenditures for educating disadvantaged children had contractual aspect, any ambiguity in requirements for obtaining the grant

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64. K.R.S. 161.190; Const. sections 4, 8; U.S.C.A. Const. Amend. 1--Com. v. Ashcraft, 691 S.W.2d 229.

65. Elementary and Secondary Education Act of 1965, section 101 et seq. as amended 20 U.S.C.A. section 2701 et seq.--Bennett v. Kentucky Dept. of Educ. 105 S.Ct. 1544, 84 L.Ed.2d 590.

would not be resolved against the government as drafter or the grant agreement since the grant program originated in and remained governed by statutory provisions expressing judgment of Congress concerning desirable public policy, the federal government could not prospectively resolve every possible ambiguity concerning particular applications of grant requirements in light of structure of grant program, and states had opportunity to seek clarification of grant requirements.

Requirements of program granting federal funds to states to supplement state expenditures for educating disadvantaged children that prohibition against using funds to supplant state expenditures would be satisfied if state and local funding was maintained at level or school district, school or grade level was not ambiguous in light of separate statutory provisions requiring state and local spending not to be reduced at level of school district or individual schools.(1985)[66]

A board of education plan to bus certain white students to a different junior high school on basis of overcrowding at their former school and underutilization

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66. 20 U.S.C.A. (1976 Ed.) section 241g(c)(2).

of space at transferee school was not arbitrary or capricious and district court would not issue an order to compel the board to transport such students to a school nearer to former school, where prior court order with regard to desegregation of city schools continued to be substantially complied with, there was no evidence of inferior education at transferee school or that additional time and distance of busing to transferee school would affect students' health or safety.(1983)[67]

4.10 Louisiana.

An evidence sustained trial court in Louisiana finding that the school board was not actuated by a racially discriminatory motive in enacting apportionment plan which increased the number of seats from 12 to 13 and which included some

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67. Equal Educational Opportunities Act of 1974, section 204(b, 20 U.S.C.A.Section 1703(b); U. S. C.A. Const. Amend. 14; K.R.S.158.110--Joslin v. Board of Education of Fayette County, Ky., 585 F.Supp.37.

single-member districts and some multimember districts and that no plan could be drawn which would include more than one "safe" majority black district.(1985)[68]

Conclusory assertions that a better plan might have been drawn than that enacted by the school board did not meet the burden of proof of illegality of reapportionment plan. The dilution of the member voting power which occurred at the time that the school board was increased from 12 members to 13 members, with the additional seat being held by the lone black representative, did not justify or compel finding that the reapportionment plan was discriminatory.[69]

Even though a school principal prevented the performance of contract for musical entertainment at a junior prom and caused its cancellation, he was not personally liable for breach of contract, where his actions were implicitly authorized by his employer school board and he did not exceed his authority in any of his actions.(1983)[70]

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68. Seastrunk v. Burns, 772 F. 2d 143.
69. Ibid.
70. L.S.A. C.C. art. 3010, 3013--Herbert v. Livingston Parish School Board, 438 So.2d 1141.

The Louisiana State Board of Elementary and Secondary Education, which formally embraced settlement agreement negotiated on its behalf, could not disavow the agreement by asserting that it was signed by officials of the division of administration and not by Board officials. (1984)[71]

The parish board of education's school desegregation plan, which proposed to dismantle dual system by dividing parish into zones and designating in each zone certain schools at each educational level to provide magnet or special focus programs, was properly rejected where it would not have been fully implemented for three years and where it would have allowed at least 39 essentially one race schools to remain in 113 school system with 48 percent of parish's elementary students continuing to attend one race schools.(1983)[72]

The school board's motion to amend standing desegregation order to permit rezoning of school attendance districts to make allowances for suburban

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71. Kiper v. Louisiana State Bd. of Elementary and Secondary Educ., 592 F.Supp.1343.

72. U.S.C.A. Const. Amends. 14, 15--Davis v. East Baton Rouge Parish School Board, 721 F.2d 1425.

school enrollments and for continuing decline in intercity school enrollment, would be granted as plan was consistent with a unitary system. (1985)[73]

The district court's decision, in imposing court-ordered desegregation, to desegregate all black middle school by mandatory student transfers was not an abuse of discretion, notwithstanding the fact that transfers led to an imbalance in racial percentages among middle schools from and to which transfers occurred. (1983)[74]

Under State Constitution, State Board of Elementary and Secondary Education is given power to supervise and control state's public schools, which includes determination of educational policy, but power is subject to direction of legislature by virtue of article creating Board and defining scope of its power.(1983)[75]

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73. Trahan v. Lafayette Parish School Board, 616 F. Supp.220.

74. U.S.C.A. Const. Amends. 14, 15--Davis v. East Baton Rouge Parish School Board, 721 F.2d 1425.

75. L.S.A. Const. Art. 8 sections 3(A), 5(A,D)--Aguillard v. Treen, 440 So.2d 704, answer to certified question conformed to 720 F.2d 676, appeal after remand 765 F.2d 1251.

Insofar as Balanced Treatment for Creation-Science and Evolution-Science Act represented a legislatively mandated course of study, it was in keeping with State Constitution's charge to legislature to establish and maintain public education system, and Act did not violate article of State Constitution creating State Board of Elementary and Secondary Education and defining that Board's powers, duties and responsibilities. (1983)[76]

In 1985, in L.S.A.-R.S. 17: 286.1 et seq., a Louisiana statute which requires teaching of creation science in Louisiana public schools whenever evolution is taught, violates the establishment clause of the First Amendment, as its purpose is to promote a religious belief. In July, 1985, a federal appeals court struck down a Louisiana law requiring all public schools to give "balanced treatment" to creationism and evolution as scientific theories of the origin of life.[77]

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76. L.S.A. Const. Art. 8 sections 1, 3, U.S.C.A. Const. Amends. 1, 14--Aguillard v. Treen, 440 So.2d 704, answer to certified question conformed to 720 F.2d 676, appeal after remand 765 F.2d 1251.

77. L.S.A.- Revised Statutes, 17: 286.2

The Fifth U.S. Circuit Court of Appeals, upholding a district court decision, ruled that the 1981 law violates the First Amendment ban on government establishment and promotion of religion. "The act's intended effect is to discredit evolution by counterbalancing its teaching at every turn with the teaching of creationism, a religious belief," the court ruled in Aquillard v. Edwards.[78]

4.11 Mississippi.

The state of Mississippi has had very little on centralization in its courts in the last few years. According to N.F. Smith of the Mississippi State Department of Education, Mississippi does not have any statutes on centralization of school board's powers.

Governance issues were on the ballot in Mississippi in January, 1983. Mississippi voters approved a proposal to create a state board of education made up of laypeople. SCR 506 changes the state board of education to a nine member lay board. SCR 519 permits taxation of property according to use.

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78. 765 F.2d 1251.

The type of legislation in Mississippi is known as the citizen initiative. Since the 1950's, the citizen initiative has become a new form of legislative process. Citizens, through simple or complex webs of interest groups, can propose laws or constitutional amendments and have them decided at the polls. In the 1982 general election, 236 such proposals were decided in 42 states and in the District of Columbia.[79]

The citizen initiative has not been taken to court to date. Citizens feel that they have voted for the constitutional amendment or the law and in Mississippi they have not kept the courts busy.

4.12 Missouri.

The purpose of the mandate of the Missouri Teacher Tenure Act is that all within one classification be treated the same as to minimize the exercise of unfair, capricious and corrupt favoritism in the promotion, demotion, and retention of profesional teachers.(1985)[80]

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79. Mississippi Code, 1972 Annotated, revised 1984.

80. Vernon's Annotated Missouri Statutes, section 168.102-168.130--Vilelle v. Reorganized School Dist.No.R-1, Benton County, 689 S.W. 2d 72.

See Kirkpatrick, Secretary of State of Missouri, et.al, v. Preisler, et. al. in Chapter 5 for a discussion of one man's vote worth as much as another man's.

See Harfst v. Hoegan in Chapter 5 for a discusion of the will of a parent and the will of a school board conflicting, the school board must find statutory power authority for its exercise of power.

The board of directors of a school district has broad powers in the management of the district, including the setting of teachers' salaries, but those powers are subject to all applicable statutory requirements. (1985)[81]

The creation of magnet schools was a proper remedy to alleviate segregation, particularly since the magnet schools would be supplemented by extensive program of interdistrict transfers and compensatory education.(1984)[82]

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81. Vilelle v. Reorganized School District No.R-1, Benton County, 689 S.W. 2d 72.

82. Liddell v. State of Mo., 731 F.2d 1294, certiorari denied 105 S.Ct. 82, 83 L.Ed.2d 30.

The district court in a case involving integration of public schools of city did not err in ordering State to pay full capitol and operating cost of magnet schools in city, in view of State's status as a violator of the Constitution.(1984)[83]

The state would not be required to pay capitol or operating costs of suburban magnet schools developed to alleviate segregation in a city school district.

With regard to diverse and sometimes conflicting rules of statutory construction, the ultimate guide is the intent of the legislature; other rules of construction may be considered merely as aids in reaching that result, but the purpose and object of legislation should not be lost sight of. Ascertainment of legislative intent is both the goal and the utlimate rule of statutory construction, and thus only subordinate aids which should be resorted to are those which subserve rather than subvert legislative intent.(1983)[84]

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83. Leggett v. Liddell, 105 S.Ct. 82, 83 L.Ed.2d 30 and North St. Louis Parents and Citizens for Quality Education v. Liddell, 105 S.Ct. 82, 83 L.Ed. 2d 30 appeal after remand 785 F.2d 290.

A school board has wide discretion in its management of a school district, but it cannot act in an arbitrary, capricious, unreasonable or unlawful manner.(1985)[85]

State funded interdistrict transfers were an appropriate remedy in a case involving integration of public schools. As a remedy for an interdistrict violation, voluntary interdistrict transfers complied with constitutional standards, in that remedy was closely tailored to nature and scope of violation, remedy restored victims of discrimination as nearly as possible to position they could have occupied absent that discrimination and district court's order with respect to interdistrict transfers did not infringe on state or local government autonomy.(1984)[86]

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84. Tribune Pub. Co. v. Curators of University of Missouri, 661 S.W. 2d 575.

85. Vilelle v. Reorganized School Dist.No.R-1, Benton County, 689 S.W. 2d 72.

86. Liddell v. State of Mo., 731 F.2d 1294, certiorari denied 105 S.Ct. 82, 83 L.Ed. 2d 30; Leggett v. Liddell, 105 S.Ct. 82, 83 L.Ed.2d 30 and North St.Louis Parents and Citizens for Quality Education v. Liddell, 105 S.Ct. 82, 83 L.Ed. 2d 30, appeal after remand 758 F.2d 290.

The courts are impressed with a judicial obligation to ascertain legislative intent and scope and application of statutes in judiciable controversies however laden with difficulty the task may be. (1983)[87]

In the same case, definitions of words or phrases incorporated in a statute supersede commonly accepted dictionary or judicial definitions.

4.13 Nevada.

Nevada has also had citizen initiatives in the form of Questions 8 and 9. Voters have had these on their ballots and have voted twice to repeal personal property tax on household goods and a repeal of tax on food.

4.14 New Mexico.

The court must ascertain and give effect to the intention of the legislature when construing a statute. (1985)[88]

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87. Tribune Pub. Co. v. Curators of University of Missouri, 661 S.W.2d 575.

88. Board of Educ. of Alamogordo Public School Dist. No.1 v. Jennings, 701 P.2d 361, 102 N.M. 762.

Criminal Offender Employment Act applies to State Board of Education.(1984).[89]

Authority of the State Board of Education in the rule or regulation-making context is not limited to those powers expressly granted by statute, but includes all powers that may be fairly implied therefrom. (1984).[90]

State Board of Education may issue regulations appropriate to its statutory functions, including its adjudicatory functions in reviewing local board actions. (1984)[91]

4.15 North Carolina.

An independent school district, which has not caused segregation in a neighboring independent district has no duty to rectify a racial imbalance in the other district. Even assuming arguendo, that county school

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89. N.M.S.A. 1978, sections 28-2-1 to 28-2-6--Garcia v. State Bd. of Educ. 694 P.2d 1371, 102 N.M. 306, certiorari denied 694 P.2d 1358, 102 N.M. 293.

90. N.M.S.A. 1978, section 22-10-20--Redman v. Board of Regents of New Mexico School for Visually Handicapped, 693 P.2d 1266, 102 N.M. 234.

91. N.M.S.A. 1978, section 22-10-20--Ibid.

board had acted with discriminatory intent and consciously operated "white haven" schools, city school board had failed to show that county's actions directly or substantially caused present, near segregated state of its schools, and thus city school board had proven neither the presence of a constitutional violation nor the requisities for interdistrict relief.(1984)[92]

A board of education in North Carolina cannot escape the responsibility for its actions, based on recommendations of its agents, including superintendent and principal, by simply refusing to inquire into their agents' reasons for recommending dismissal of various teachers. (1984)[93]

The purpose of the Teachers Tenure Act is to provide teachers of proven ability for children of the state by protecting such teachers from dismissal for political, personal, arbitrary or discriminatory reasons. (1984)[94]

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92. Goldsboro City Bd.of Educ. v. Wayne County Bd. of Educ., 745 F.2d 324.

93. G.S. sections 115C- 271, 115C-276, 115C-284, 115C-286, 115C-288--Abell v. Nash County Bd. of Educ., 321 S.E. 2d. 502, 71 N.C. App. 48, review denied 329 S.E.2d 389, 313 N.C.506.

Under the section of the State Constitution prohibiting local acts establishing or changing lines of school districts, a "local act" is one that applies to fewer than all counties without rational distinction between included and excluded counties in relation to purpose of the act. (1984)[95]

An Act providing means by which an area could be de-annexed and transferred to a county administrative unit, which operates in one county alone, is a local act, rather than a general act, within meaning of section of State Constitution prohibiting local acts establishing or changing lines of school districts.(1984)[96]

An Act, which refers only to a city school administrative unit and a county school administrative unit, rather than school districts, and which provides that transfer of area between units can only be accomplished through mutual agreement of city and county

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94. G.S. section 115C-325 et seq.--Bennett v. Hertford County Bd. of Educ., 317 S.E. 2d 912, 69 N.C. App.615.

95. Const. Art.2, sections 24, 24(1)(h); G.S. section 115C-70(a)--Floyd v. Lumberton City Bd.of Educ., 324 S.E. 2d 18, 71 N. C. App. 671.

96. Ibid.

board of education, making it clear that entities involved comporting with statutory definition of administrative unit, does not affect areas which are "school districts," but rather affects administrative units, and thus, the act falls outside purview of section of State Constitution prohibiting local acts establishing or changing lines of school districts, even though boundary of affected administrative unit might be coterminous with boundary of school district.(1984)[97]

The Supreme Court of North Carolina is not at liberty to give statute construction at variance with legislature's intent. (1985)

See United States v. North Carolina in Chapter 5 for the discussion of twenty-two counties failing to get federal approval before changing how boards of education members are elected .[98]

Every statute is to be considered in light of the State Constitution and with a view to its intent. (1984)[99]

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97. G. S. sections 115C-66,115C-70(a); Laws 1981, c. 1248, section 1 et seq.

98. Delconte v.State, 329 S.E.2d 636, 313 N.C. 384.

The State Board of Education derives its power from both Constitution and General Assembly. (1985) This is the lawsuit about the length of the school day, as Polk County was in a pilot program that added one hour to each school day.[100]

By statutes and under traditional common-law principles, the superintendent and the principal are agents of the board of education.[101]

Although a special school tax might have been authorized by utilizing voter approval mechanism of statute, any act actually levying such a tax would plainly be local, and not general, in nature, and thus, insofar as local act repealed former act levying supplemental tax by abrogating the tax, it repealed a local act, and does not violate state constitutional provisions forbidding enactment of local legislation.(1984).[102]

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99. Faulkner v. New Bern-Craven County Bd.of Educ., 316 S.E. 2d 281, 311 N.C. 42.

100. Const. Art. 9 sections 4, 5; G.S. sections 115C-12(11), 115C-47(8)--Morgan v. Polk County Bd. of Educ., 328 S.E.2d 320, 74 N.C. App. 169.

101. G.S. sections 115C-271, 115C-276, 115C-284, 115C-286, 115C-288--Abell v. Nash County Bd. of Educ., 321 S.E.2d 502, 71 N.C. App.48, review denied 329 S.E. 2d 389, 313 N.C. 506.

A county board of education is a corporate body which has a legal existence separate and apart from its members. (1984)[103]

Even if de-annexation and transfer of area to county administrative unit by joint action of county board of education and city board of education pursuant to procedure set forth in act was unconstitutional, as contended by plaintiffs, then the original annexation of the area, which was accomplished in the same manner, would also be unconstitutional, and thus, the area in question would be part of a county administrative unit, which was what the act sought to enable. (1984)[104]

Actions of city and county boards of education in de-annexing area pursuant to act providing means by which area could be de-annexed and transferred to county

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102. Const. Art. 2, section 24(1)(h); Art 14 section 3; G.S. section 115C-501 et seq.Laws 1981, c. 1248, secton 1 et seq. --Floyd v. Lumberton City Bd. of Educ., 324 S.E. 2d 18, 71 N.C. App. 671.

103. G.S. section 115C-40--Miller v. Henderson, 322 S.E. 2d 594, 71 N.C. App. 366.

104. G.S.1981, 115C-307 c. 1248, section 1 et seq.--Floyd v. Lumberton City Board of Education, 324 S.E. 2d 18, 71 N.C.App. 671.

administrative unit by joint action of county board and city board did not usurp the statutory authority of State Board of Education pursuant to a statute providing that school districts may be created or modified exclusively by action of State Board, since the act under which city and county boards de-annexed area does not establish or change, and hence does not create or modify, school district lines.[105]

Procedures set forth in an act providing means by which area could be re-annexed and transferred to a county administrative unit by joint action of county board of education and city board of education, including public notice, a public hearing, and resolution by city and county boards respectively, are constitutionally sufficient. This statute providing that merger or reorganization of administrative units by the State Board of Education shall not have effect of abolishing any special taxes that may have been voted in any such units was inapplicable. (1984)[106]

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105. Ibid.
106. Ibid.

A statute authorizing the dismissal of a career teacher for "inadequate performance" is not unconstitutionally void for vagueness. As applied to a career teacher who was discharged for failing to control her students, a statute authorizing dismissal of a career teacher for "inadequate performance" was not unconstitutionally void for vagueness, as evidence clearly showed that the teacher was aware that her job as a school teacher entailed maintaining good order and discipline in the classroom, and that her failure to maintain good classroom order on numerous, specific occasions was the basis for steps taken to dismiss her. (1985)[107]

A statute providing that a career teacher may be dismissed for inadequate performance was not unconstitutionally vague since the term "inadequate performance" was one that a person of ordinary understanding could comprehend. (1984)[108]

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107. G.S. sections 115C-307(a), 115C-325(e)(1)--Crump v. Durham County Board of Education, 327 S.E.2d 599, 74 N.C. App.77.

108. G.S. section 115C-325(e)(1)a; U.S.C.A. Const. Amend. 14--Nestler v. Chapel Hill/Carrboro City Schools Board of Education, 311 S.E. 2d 57, 66 N.C. App. 232, review denied 315 S.E. 2d 703, 310 N.C. 745.

4.16 Oklahoma.

A state statute allowing the dismissal of a teacher for "public homosexual activity" was not unconstitutionally vague where the state cases construing "crime against nature" statute which set forth prohibited conduct had clearly defined acts which such statue proscribed. (1984) This interfers with the local decision of who will teach in the school.[109]

A state statute which provided for suspension or dismissal of teachers for engaging in "public homosexual activity" did not violate the establishment clause of the First Amendment.[110]

A state statute which provided for suspension or dismissal of teachers for "advocating...encouraging or promoting public or private homosexual activity" was unconstitutionally overbroad in hindering free speech

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109. 21 O.S. 1981, section 886; 70 O.S. 1981, section 6-103.15--National Gay Task Force v. Board of Education of City of Oklahoma City, 729 F.2d 1270, probable jurisdiction noted 105 S.Ct. 76, 83 L.Ed. 2d 24, affirmed 105 S.Ct. 1858, 84 L.Ed. 2d 776.

110. U.S.C.A. Const. Amend. 1; 70 O.S. 1981, section 6-103.15.

rights of teachers, and further requirement that there be finding of teacher's "unfitness" prior to punishment was not sufficient to preserve the constitutionality of the statute.[111]

A complaint brought against a school superintendent who allegedly spanked and beat a ten-year old student with unnecessary and excessive force while administering school discipline stated cause of action, as allegations, together with inferences to be drawn and reference to superintendent's willful and wanton conduct, placed the superintendent outside the scope of his employment and therefore outside the protection of political subdivision Tort Claims Act. (1983)[112]

See Hennessey et.al. v. Independent School District No. 4 Lincoln County, Oklahoma in Chapter 5 for a discussion of the use of school buildings for meetings when the organization is unsupportative of the school board.

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111. Ibid.
112. 51 O.S. 1981, section 151 et seq.-Holman By and Through Holman v. Wheeler, 677 P.2d 645.

The state of Oklahoma has a number of Opinions by the Attorney General that are treated just as a state statute. The Board of Education has the authority to enter a compromise or settlement in a lawsuit pending against it rendered on July 9, 1979 as Attorney General Opinion number 79-191.

4.17 South Carolina.

In interpretation of statutes, the primary function of trial courts is to ascertain and give effect to intention of the legislature. The court has to try to understand the intention of the legislature. (1983)[113]

Transfers of teachers are within the wide discretion of school officials.(1985)[114] lpp Principals, as supervisors of teachers, fit within definition of "teacher" under the Teacher Employment and Dismissal Act. (1984)[115]

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113. Marchant v. Hamilton, 309 S.E.2d 781, 279 S.C. 497.
114. Stevenson v. Lower Marion County School District No.Three, 327 S.E.2d 656, 285 S.C. 62.
115. Code 1976, section 59-1-130--Snipes v. McAndrew, 313 S.E.2d 294, 280 S.C.320 .

Although the Teacher Employment and Dismissal Act does create a property interest in continued employment as a teacher; it does not create a property interest in continued employment as a principal. This seems to be a dual standard that is focused against the principal. (1984)[116]

4.18 Tennessee.

A statute will not be construed so that the body of the act is broader than its caption, making the act invalid, if such construction can be avoided. The main point to be made must be left for the body of the act, not given away in the title.(1983)[117]

Bradford Special School District Act is an inappropriate delegation of legislative power and is unconstitutional in that effectiveness of the Act is conditioned upon approval of majority of voters in special school district.(1985)[118]

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116. Ibid.
117. Simpson v. Sumner County, 669 S.W. 2d 657.
118. Priv. Acts 1984, c. 240 sections 1 et seq. 2--Gibson County Special School Dist. v. Palmer, 691 S.W. 2d 544.

There being no express provision in the State Constitution which permits the legislature to re-delegate its taxing authority to voters in special school district nor any "sanction by immemorial usage" of such delegation of taxing power, Bradford Special School District Act and Gibson County Special School District Act which not only delegate taxing authority to two separate special school districts but make levy of tax increase in each district hinge upon the popular vote of voters in respective special school districts and so an attempt to delegate taxing authority to people in special school districts, is unconstitutional. (1985)[119]

The doctrine of elision (omission) is not favored. The rule of elision applies if it is made to appear from face of statute that the legislature would have enacted it with objectionable features omitted, and thus portions of the statute which are objectionable will be held valid and enforceable, provided there is left enough of act for complete law capable of enforcement and fairly answering object of its passage. (1985)

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119. Const. Art. 11 section 9.

Bradford Special School District unconstitutionally attempted to delegate legislature's taxing authority to the people in special school districts where, after exclusion of unconstitutional provisions, the remaining portions of the acts were functional and would provide raise in taxation generating additional revenue necessary for those special school districts in keeping with purpose of legislation, where the legislation contained severability clause, and where after elision of unconstitutional referendum provisions and facts, the remaining provisions were constitutional, valid and ineffective.[120]

4.19 Texas.

To prove denial of constitutional rights under the Fourteenth or Fifteenth Amendments, by choice of at-large scheme for the election of school board trustees, plaintiffs were bound to prove that the plan had discriminatory impact upon their voting strength and that the system was inplemented or maintained with the

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120. Const. Art. 2, section 29; T.C.A. section 67-5-1704, 67-5-1704(c)--Gibson County Special School Dist. v. Palmer, 691 S.W. 2d 544.

intent to discriminate. To consider this, the court was to consider the totality of circumstances generally and also criteria outlined by the court in judicial precedent. (1984)[121]

The findings of the district court were that the Fourteenth and Fifteenth Amendment rights had not been denied, because the at-large system for election of school board trustees had not been created or maintained with discriminatory intent, and that there had been a failure to prove that the system operated to dilute black votes or that it had discriminatory impact effectively established that there was no right of action under the Voting Rights Act.[122]

The Commissioner of Education does not exercise judicial power to determine the legality of contracts or the legal rights of parties thereto. It is for the Commissioner of Education to give controlling interpretation as to what kinds of controversies regulation allowing trial-type procedural benefits to

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121. U.S.C.A Const. Amends. 14, 15; Fed. Rules Civ. Proc. Rule 52 (a), 28 U.S.C.A.; Voting Rights Act of 1965,section 2 et seq. as amended, 42 U.S.C.A. section 1973 et seq. -- McCarty v. Henson, 749 F.2d 1134.

122. Ibid.

aggrevied parties applies. In all matters involving administration of school law, the party need not exhaust administrative remedies where pure questions of law are involved. (1985)[123]

The Commissioner has the power to determine in the first instance the extent of his jurisdiction implicit in phrase "any dispute...arising under the school laws of Texas" as that phrase is used in statute governing appeals to the Commissioner of Education, and will not be controlling on reviewing court, his interpretation of administrative regulations will be of controlling effect.

Coaches are hired as teachers and may be assigned to other teaching duties at the discretion of the school district, unless coach's contract specifically limits the duties to which he may be assigned.[124]

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123. Grounds v.Tolar Independent School Dist., 694 S.W. 2d 241, error granted. see also Spring Independent School Dist. v. Dillon, 683 S.W. 2d 832 and V.T.C.A. Education Code sections 11- 13(a).

124. Ibid.

A statute pertaining to liability of professional employees of a school district provides total immunity for professional school employees, except in circumstances where, in disciplining a student, the employee uses excessive force or his negligence results in bodily injury to the student.(1984)[125]

Negligence resulting in bodily injury to students is directed at the manner of student discipline in which no force is used but negligence in the imposition of the punishment results in bodily injury to the student.

A general law will not be presumed to repeal a specific statute. Strong terms are required to show a legislative intent to supersede by a general act a special act. (1984)[126]

Since matters of school administration have been committed to school authorities, courts should not decide disputed questions of fact that have not been

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125. V.T.C.A. Education Code section 21.912(b)--Diggs v. Bales, 667 S.W. 2d 916.

126. Lakeridge Development Corp. v. Travis County Water Control and Imp. Dist. No. 18, 677 S.W. 2d 764.

decided by the proper administrative authority. (1983)[127]

A statute authorizing detachment of real property from one school district and annexation to another school district provides no discretion to county officials, Commissioner of Education or State Board of Education beyond whether statutory criteria have been established. (1985)

The statute directing Commissioner of Education to act for general purposes of efficiency and improvements in public education and empowering him to carry out the duties and responsibilities placed upon him by the legislature and State Board of Education lacks concrete standards to guide the Commissioner in exercise of any discretion it purports to vest in him, and thus, did not permit implication of discretion to deny statutorily sufficent petitions for detachment of real property from one school district and annexation to another.[128]

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127. Benton v. Wilmer-Hutchins Independent School Dist., 662 S.W. 2d 696, dismissed.

128. V.T.C.A., Education Code sections 11.13(a), 11.52(b); section 19.261 (now 19.021).

Texas has passed a "no pass/no play" statute. After the statute went into effect in January, 1985, a group of 45 parents and students brought a lawsuit arguing that the rule was unconstitutional because it deprived students of the right to participate in extracurricular activities. Moreover, they charged that the rule was applied inequitably because it did not affect students who did not take part in extracurricular activities but who failed to pass one course or more.

A Houston district judge decided that the rule was unconstitutional and enjoined its enforcement against two baseball players. As a result of the injunction, these two students played in a state high school semifinal game, and their team won. Parents of students on the losing team filed a lawsuit agruing that the game was unfair because one team was allowed to use players who had failing grades. Another district judge agreed with the protesting parents and upheld the constitutionality of the rule.[129]

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129. V.T.C.A., Education Code, section 19.031.

The Texas Supreme Court was asked by Attorney General Jim Mattox to resolve the conflict. On June 10, 1985, the Texas Supreme Court lifted the Houston injunction and ruled unanimously that a "student's (right) to participate in extracurricular activities does not rise to the same level as the right to free speech and free exercise of religion." Thus the court rebutted the argument that the rule violated freedom of speech because a student with a failing grade could not participate in such activities as the debate team, the student newspaper, or the student government. The court also upheld the right of the State of Texas to regulate extracurricular activities. The court stated "We find the rule rationally related to the legitimate State interest in providing a quality education to Texas' public school students."[130]

The reaction to the decision varied from those who think that academic standards should be a matter of local control to those who, like Governor White, think that the decision represents the establishment of academics as a "priority" in the schools. The lifting of

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130. Ibid.

the Houston injunction against the "no pass/no play" rule was not necessarily the final decision on this matter.[131]

4.20 Utah.

The Utah legislature has approved H.B.110, allocating $15 million to a career ladder program for teachers. The new law has not been challenged in court. It gives state aid to local school districts to develop career ladder plans. Included in the measure is an extended-year proposal for teacher contracts, which include a differentiated staffing plan and advancement up a career ladder according to individual performance, which could include information about student achievement. At least half of the state funds appropriated for H.B.110 must be allocated to teachers as a reward for effective teaching performance.[132]

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131. Ibid.
132. Code of Utah, section 201.02

4.21 Virginia.

The high tide of state intervention in local instructional policy is washing over such one time bastions of local control as Virginia and Louisiana. Political leaders discovered that a proposal simply to spend more money for education or to raise teacher salaries was not going to pass state legislatures. But more money combined with reform turned out to be a winner, as shown in Texas, where the state taxes were increased by the largest amount in history in the summer of 1984.[133]

Virginia has become the latest state to enact a law calling for schools to open after Labor Day. This has not been challenged in the courts as yet. The Commonwealth of Virginia, pushed by tourism interests, gave in to advocates of the new law who said that the increased tax dollars generated on Labor Day Weekend would help school funding. In Virginia, about 80 school districts have started classes before Labor Day, and about 60 districts have opened after Labor Day.

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133. Virginia School Laws, Section 171.030, 1986.

Nine states--Arkansas, Iowa, Minnesota, Missouri, South Dakota,, South Carolina, Texas, Vermont, and West Virginia-- and the District of Columbia already have laws calling for school to open either after Labor Day or after September first. In most states, the tourism lobby was active in getting the rule moved from the jurisdiction of local school boards to the state level. In some states, resort owners were active, saying that they had no source of labor after schools opened in late August.[134]

During the past decade, state control has grown and has become more focused, while there have been very few attempts to expand local discretion. New state curricula that specify the grade level at which particular math concepts must be learned (for example, the Texas proposal) create rigid timetables that seem likely to destroy the kind of school climate that usually characterizes effective schools.

Society is witnessing a major change in the relationship of the states to the schools. State mandates (statutes) are now far more common than

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134. Virginia School Laws, Section 171.031, 1984.

technical assistance. Technical assistance and related programs supported on research evidence are not especially popular at the policy level--either in Washington or in the state legislatures. Legislators and state agency staff do not understand the need for technical assistance to support local change efforts.

4.22 Summary of Litigated Statutes Chapter.

Decision making in the Sun-Belt states schools is being increasingly centralized by state legislatures that pass laws specifying the details of school curriculum. In the process, the locus of authority is being shifted upward to the state level. Legislative mandates are the lever, and public opinion is the fulcrum.

Based on the research in this chapter, the press to centralize decision making in education at the state level is now an accomplished fact. It exists almost every where in the Sun-Belt states, and has been achieved through mandates by state statute rather than through policies of the state board of education or directives from the state department of education.

Because most of the recent curricular changes mandated by state legislatures are not directly tied to appropriations, the new statutory requirements will stand forever unless they are repealed by the legislatures or overturned by the courts. To date, litigation has not yielded any unified body of legal theory, courts uphold state standards as often as they strike them down. Before 1986, federal legislation frequently encouraged curriculum development and innovation. But there were always two important features of federal legislation that related to curriculum improvement. First, the special curriculum opportunities made available under federal legislation were always optional; that is districts had to apply for and receive the special funds to implement the programs and in the process, agree to accept the restrictions that applied. Second, federal laws were self-terminating; that is appropriations would run out, and discussions about the purposes and problems of the programs would always find their way to the floor of the Congress where politicians ran for re-election on the strength of the programs.

Some states have adopted laws designed to decentralize decision making and to give increased control over the curriculum to those who actually work in the schools. For example, in South Carolina, the Education Improvement Act of 1984 mandates school improvement and by implicaton, curriculum development at the building level.

Chapter 5

Court Cases

5.0 Overview of Court Cases.

Local school boards and school administrators across the United States have long complained of intrusions by the state and federal governments into the schools. The myriad state and federal reports and guidelines, which have always accompanied state and federal funds, have been a source of irritation, but little more until now. Centralization of school boards' authority has always been a major topic in the governance of schools.

Despite the restrictions attached to the receipt of state and federal funds, local school boards across the nation have traditionally enjoyed substantial autonomy in providing for the education of the children within their districts. The state legislatures and the state boards of education have specified only that school districts must provide a well-balanced curriculum -

giving local boards considerable latitude in defining and implementing that directive. Consequently, each district has established its own goals and priorities and developed its own curriculum and evaluation processes within the broad framework provided by the states and in line with current accreditation standards.

Now, suddenly and dramatically, the rules of the game have changed. As in Texas, many state boards of education have clearly defined "well-balanced curriculum" and the state has told local school boards, "Thou shalt teach It!" The Code of Education goes on to say that the State Board of Education is the primary policy-making body for public education and directs the public school system.[1]

Under the virtuous banner of reform, a more fundamental and far-reaching revolution is taking place in education. In exchange for reform, American citizens have quietly surrendered their control over the education of their children.

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1. Michael G. Killian, "Local Control-The Vanishing Myth In Texas,"Phi Delta Kappan Vol.66 No. 3 November, 1984 p. 192.

In this chapter, the following cases are covered that are from the Sun-Belt : 5.1 Hadley v. Junior College District; 5.2 United States v. North Carolina; 5.3 Kirkpatrick, Secretary of State of Missouri, et.al v. Preisler et.al.; 5.4 Harfst v. Hoegen.; 5.5 Hennessey v. Independent School District No. 4 Lincoln County, Oklahoma; and 5.6 Clark v. Jefferson County Board of Education.

5.1 Hadley v. Junior College District of Metropolitan Kansas City.

Facts

This case involves the extent to which the Fourteenth Amendment and the "one man, one vote" principle apply in the election of local governmental officials. Appellants were residents and taxpayers of the Kansas City School District, one of eight separate school districts that have combined to form the Junior College District of Metropolitan Kansas City. Under Missouri law separate school districts may vote by referendum to establish a consolidated junior college district and elect six trustees to conduct and manage the necessary affairs of the district. The state law

also provides that these trustees shall be apportioned among the separate school districts on the basis of "school enumeration," defined as the number of persons between the ages of six and 20 years, who reside in each district. In the case of the Kansas City School District this apportionment plan results in the election of three trustees, or 50% of the total number, from that district. Since that district contains approximately 60% of the total school enumeration in the junior college district, appellants brought suit claiming that their right to vote for trustees was being unconstitutionally diluted in violation of the Equal Protection Clause of the Fourteenth Amendment. The Missouri Supreme Court upheld the trial court's dismissal of the suit, stating that the "one man, one vote" principle was not applicable in this case. The United States Supreme Court held that the Fourteenth Amendment requires that the trustees of this junior college district be apportioned in a manner that does not deprive any voter of his right

to have his own vote given as much weight, as far as practicable, as that of any other voter in the junior college district.[2]

Decision

In Avery v. Midland County, the Court applied the same principle to the election of Texas county commissioners, holding that a qualified voter in a local election also has the constitutional right to have his vote counted with substantially the same weight as that of any other voter in a case where the elected officials exercised "general governmental powers over the entire geographic area served by the body."[3]

Discussion

The Court has consistently held that in situations involving elections, the States are required to insure that each person's vote counts as much, insofar as it is practicable, as any other person's. If one person's vote is given less weight through unequal apportionment, his

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2. Hadley v. Junior College District of Metropolitan Kansas City, 397 U.S. 50. (1970).
3. Avery v. Midland County, 390 U.S. 474 (1968).

right to equal voting participation is impaired just as much when he votes for a school board member as when he votes for a state legislator. While there are differences in the powers of different officials, the crucial consideration is the right of each qualified voter to participate on an equal footing in the election process. If there is any way of determining the importance of choosing a particular governmental official, the Court thinks the decision of the State to select that official by popular vote is a strong enough indication that the choice is an important one.[4]

5.2 United States v. North Carolina.

Facts

The Justice Department filed suit Tuesday, December 9, 1986, accusing North Carolina of failing to get federal approval before changing how board of education members are elected in twenty-two counties.[5]

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4. Hadley v. Junior College District 397 U.S. 55 (1970).
5. United States v. North Carolina, --U.S.--.

The case involves the counties of Anson, Beaufort, Bertie, Camden, Chowan, Cleveland, Craven, Edgecombe, Franklin, Gates, Halifax, Hertford, Hoke, Lee, Nash, Northhampton, Perquimans, Rockingham, Scotland, Vance, Washington, and Wayne.

The lawsuit accused the State Board of Elections, the State Board of Education, and election and education boards in the twenty-two counties of violating Section 5 of the Voting Rights Act of 1964.

Decision

The law requires North Carolina and forty of its counties to receive clearance from the Justice Department or Federal Courts before changing election methods. The intent is to prevent the disenfranchisement of minority voters.

The suit, which the department's civil rights division filed in U.S. District Court in Raleigh, asks that the defendants be required to seek clearance for

any voting changes already in effect and to block any further use of the changes.[6]

In Raleigh, State Elections Director Alex Brock sharply criticized the Justice Department, saying a lawsuit was unnecessary to win compliance.

Brock said school board elections vary widely from county to county. Many counties simply may have thought it unnecessary to inform the federal government of minor changes in election procedures, he said.

Discussion

In the past two decades, North Carolina has revamped completely its method for electing members of its boards of education. The state previously provided that board members were selected by the North Carolina General Assembly based on nominations by political parties. Changes in state law provided for direct election of county board of education members beginning in 1970. Subsequent changes included residency

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6. "U.S. Sues N.C. Over Boards of Education," The Charlotte Observer Wednesday, December 10, 1986, Section B, page 1.

requirement and an increase in the number of school board members.

5.3 Kirkpatrick, Secretary of State of Missouri, et.al. v. Preisler et.al

Facts

Missouri's 1967 congressional redistricting statute created districts which varied from the ideal, based on 1960 census figures, by 12,260 (2.84%) below to 13,542 (3.13%) above. The District Court found that the state legislature had not relied on the census reports but used less accurate data, that it had rejected a plan with smaller variances, and that by simply switching some counties from one district to another it would have produced a plan with markedly reduced variances, and accordingly held that the statute did not meet the constititional standard of equal representation "as nearly as practicable" and that the State failed to provide acceptable justification for the variances.

Decision

Article 1 section 2 of the Constitution requires that "as nearly as is practicable one man's vote in a congresional election is to be worth as much as another's." The United States Supreme Court held that States should create congressional districts which provide only the limited population variances which are unavoidable despite a good-faith effort to achieve absolute equality.[7]

Discussion

Regardless of the manner in which school officers are appointed or elected they are state, not local, officers. The education function is classified as one of statewide responsibility. This legal fact does not change even though certain aspects of the educational function may be delegated to local authorities. Local school board members are selected as the legislature prescribes, they hold office by virtue of legislative

7. Kirkpatrick, Secretary of State of Missouri, et.al. v. Preisler et.al. 394 U.S. 527 (1969).

enactments, and their powers may be extended or limited in the discretion of the legislature.

The powers of local boards, since they are granted by the legislature, may be changed at any time. Relationships between local boards and general municipal and county government vary from state to state and also may vary within a state if the classification of districts for the operation of a given statute is made on a reasonable basis, such as population. Because it is not possible to foresee and legislate with particularity on every problem which may possibly arise in school administration, the courts have agreed that in addition to express powers, local boards may exercise powers necessarily implied to enable them to carry out the express powers granted. School boards can have implied powers related only to education, not to general government concerns. When in doubt, the courts, under common law, are inclined to find against an implied power. There are no inherent powers in school boards.[8]

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8. E. Edmund Reutter and Robert R. Hamilton, The Law of Public Education, (Mineola, New York: The Foundation Press, 1970), p. 108.

5.4 Harfst v. Hoegen

Facts

When the will of the school board and the will of the parents conflict, the school board must find statutory authority for its exercise of power. The school board cannot employ its power to enforce religious worship by children even in the faith of their parents. The inclusion of a Catholic parochial school in a public school system and the maintenance of it as a part of and an adjunct to the parish church in its religious teachings was violative of a constitutional provision forbidding school districts from making payments from any public fund to sustain any private or public school controlled by a sectarian denomination.[9]

Decision

Public money, coming from taxpayers of every denomination, cannot be used for the help of any religious sect in education or otherwise. With the adoption of the Federal Bill of Rights, the whole power

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9. Harfst v. Hoegen 163 S.W. 2d 609. (1942).

over the subject of religion, at that time, was left exclusively to the state governments. It has been recognized in the courts that generally we acknowledge with reverence the duty of obedience to the will of God. The Constitution of the State of Missouri has persistently declared that "all men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences," and "that no human authority can control or interfere with the rights of conscience."[10]

Discussion

This is a suit by parents of public school children, against members of a school board, seeking an injunction against the use of school funds for purposes alleged to be sectarian and religious.

There is a constitutional inhibition which forbids any school district to make payments from any public

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10. United States v. Macintosh, 283 U.S. 605, 51 S.Ct. 570, 75 L.Ed. 1302.

fund to sustain any private or public school controlled by any sectarian denomination.[11]

The constitutional policy of the state of Missouri has decreed the absolute separation of church and state, not only in governmental matters, but in educational ones as well. Public money, coming from taxpayers of every denomination, may not be used for the help of any religious sect in education or otherwise.

5.5 Hennessey et.al. v. Independent School District No. 4 Lincoln County, Oklahoma.

Facts

A Parent-Teacher Association sought a writ of mandamus (a written order, requiring that a specified thing be done) to require the school board to allow use of school facilities for its meetings. The school board regulations denying the use of the school building to any organization "unsupportative of the school board or any part of the school system," or organizations which "deal in personalities, or engage in frequent criticisms

11. Missouri State Constitution, Article XI, section 11.

against the school system and the school personnel in particular."[12]

Decision

The school board has absolute discretionary authority as to whether or not to open a school building to activities and meetings of outside organizations, but once this discretion has been excerised and the decision has been made to permit use of property for any of the enumerated purposes, board must not adopt a discriminatory and unconstitutional policy as to who will be allowed access to its facilities, but its classifications must be reasonable. The Supreme Court of Oklahoma held that absent evidence that any of the board's stated rules had been violated or that the use by the parent-teacher association of the school facilities would not be in the best interests of the community, the board's refusal to allow the parent-teacher association which was unsupportative of the school board or any part of the school system or which dealt in personalities or engaged in frequent criticisms

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12. Hennessey et. al. v. Independent School District No. 4 Lincoln County, Oklahoma, 552 P. 2d 1141.

against the school system and the school personnel in particular, were unconstitutional abridgements of freedom of speech. The board's refusal to allow the parent-teacher association to use the building was arbitrary and discriminatory.

Discussion

Discretion of an administrative body must not be used in discriminatory manner, but administrative action must have reasonable or rational basis if it is to avoid stigma of arbitrariness. The grounds for reversal are constitutional. The board's rules and regulations as set forth and their implications violate the First and Fourteenth Amendments to the Constitution of the United States as an abridgement of freedom of speech. It is a denial of equal protection and is also a violation of the Constitution of Oklahoma Art. 2 section 22. A regulation by a governmental body such as a school board which permits a public official or body to determine what expressions or views will be permitted or allows the board to engage in invidious discrimination among groups by the use of statute granting discretionary

powers and by a system of selective enforcement cannot stand.[13]

A governmental body may not restrict expressive activity because of its message. Free expression must not, in the guise of a regulation, be abridged or denied.[14]

A board as instrumentality of the state may not restrict speech simply because it finds views expressed by any group abhorrent.[15]

5.6 Clark v. Jefferson County Board of Education

Facts

Appellant Clara Clark owns two day care centers in Jefferson County, Alabama. She filed suit against the Board of Education, and sought an injunction to prohibit the continued operation by the Board of Education of the child care programs. Clark, in her suit, claimed that the Board of Education was not empowered to operate the

13. Cox v. State of Louisiana, 379 U.S. 536, 85 S.Ct. 453, 13 L.Ed. 2d 471 (1965).
14. Grayned v. City of Rockford, 408 U.S. 104, 92 S.Ct. 2294, 33 L.Ed. 2d 222 (1972).
15. Joyner v. Whiting, 477 F.2d 456 (4th Cir. 1973).

child care centers. The trial judge, after hearing testimony and considering numerous exhibits, refused to grant Clark any relief.[16]

The trial judge held that the operation of a child care center was an activity within the broad powers granted to county boards of education. Clark appealed. The sole issue is: Does a county board of education have the authority to operate a child care center?

Decision

The Supreme Court of Alabama carefully considered Clark's argument that a public body, without statutory authority, is encroaching upon an area of private enterprise. Upon consideration of the facts and the law, the Supreme Court rules that while there is no specific statutory grant of authority to local boards of education to operate day care centers, there is authority for such activity under the broad grants of power which the Court has recognized.

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16. Clark v. Jefferson County Board of Education, 410 So. Rep.2d 23 (1982).

County boards of education have authority under their broad discretionary authority conferred by statute and under authority granted to the State Board of Education to operate day care centers.

Discussion

The County Board contends that "the curricular and extracurricular offerings of the public school system within the state" are established by local boards of education in the exercise of their broad discretionary authority conferred by statute and that in Alabama, this grant of authority is manifested throughout Chapter 8 of Title 16 of the Alabama Code.

The Board says that where there is a broad grant of statutory authority, no specific grant of authority to operate a child care program is required. Review of Chapter 8 of Title 16 reveals no specific statute which authorizes county boards of education to support and maintain varsity athletic programs, band programs, or even lunchroom facilities. However, no one would seriously argue that the maintenance of such activities

is not within the discretionary prerogative of county boards of education.

5.7 Summary of Court Cases Chapter

A school district can exercise only those powers fairly implied or expressly granted by statutes. The rule that local boards possess not only express, but also implied powers is a rule of expediency by the courts as a legal basis for sustaining board action which to the judges appears educationally sound. There is no device for determining in advance of a court's ruling what it will deem to be educationally defensible.

The heyday of educational policy making by the courts is over. With the Rodriguez decision in 1973, which upheld prevailing patterns of school finance, the Supreme Court signaled that there were limits to the willingness of the judiciary to reshape policy and practice in the schools. Now attention has shifted away from the courts and back to the legislature--first at the federal and more recently at the state level.

In Hadley v. Junior College District, the Missouri Supreme Court upheld the trial court's dismissal of the suit, stating that the "one man, one vote" principle was not applicable in this case.

North Carolina learned to get federal approval before changing how county board members are elected in twenty-two counties in United States v. North Carolina.

Regardless of the manner in which school officers are appointed or elected, they are state, not local, officers. The education function is classified as one of statewide responsibility. This legal fact does not change even though certain aspects of the educational function may be delegated to local authorities. Local school board members are selected as the legislature prescribes, they hold office by virtue of legislative enactments, and their powers may be extended or limited in the discretion of the legislature.

In Harfst v. Hoegen, when the will of the school board and the will of the parents conflict, the school board must find statutory authority for its exercise of power. In Hennessey, the school board learned that it could not prohibit a parent-teacher association from

using its school facilities for its meetings just because the parent-teacher association was unsupportative of the school board.

In Clark v. Jefferson County, the Supreme Court of Alabama held that while there is no specific statutory grant of authority to local boards of education to operate day care centers, there is authority for such activity under the broad grants of power which the Court has recognized.

The courts will not interfere with the exercise of discretion by school directors in matters confided by law to their judgment unless there is a clear abuse of the discretion, or a violation of the law. The courts are passive institutions, depending on others to initiate suits; they can not seek out new worlds to conquor.

Chapter 6

Summary, Conclusions and Recommendations For Further Study

6.0 Introduction.

Governors and state legislators are installing top-down, mandated, statewide reform in the way teachers are paid; and state education departments, prodded by task force reports, are demanding a larger core of required curriculum. At the same time that industry is dismantling its top-down structure to achieve participatory management, schools are being pushed into greater degrees of centralization.

Since the turn of the century of American public education, centralization of school boards' authority has been a continuous issue for school boards, school administrators, teachers and legislatures. Based on an analysis of research presented in this study, it is apparent that centralization involving public schools is a growing concern. Moreover, any level of public

education may be confronted with controversy concerning centralization.

Prevailing social, political, moral, and religious trends which influence community pressures on schools may lead to a centralization controversy. The advocate of centralization may be a parent, a member of the community, a local or national organization, members of the general assemblies, a student, a teacher, a principal, a superintendent, or even a school board member. Centralization attempts may or may not be settled to the satisfaction of the complainant, the community or the school board. As the school board appeals process is exhausted, resolution may require litigation.

Centralization involves major constitutional issues such as academic freedom in selection of a local curriculum, students' rights, parents' rights to direct the education of children, states' rights in setting graduation requirements, and the authority of school administrators and school boards. Therefore, school officials should have access to appropriate information concerning both the educational and legal issues related

to centralization in order to make sound educational and legal decisions. The comprehensive summaries of recent studies regarding centralization and the identification of potentially litigious educational issues provided by this research may assist school officials in making sound educational decisions where centralization is concerned.

6.1 Summary.

The recent wave of reform comes hard on the heels of the aggressive state initiatives that began with the passage of the Elementary and Secondary Education Act of 1965. The most striking feature of state/local relations in the last twenty years has been the growth in state control over education. Today, the organizations of professional educators and the local school organizations are making suggestions for only marginal change. And under the Reagan Administration, the federal role has been restricted to cheerleading and sponsoring small pilot programs.

The first question listed in Chapter 1 was: What does an analysis of state statutes reveal concerning centralization?

Concern about the quality of American education has exploded in the last two years. A restructuring of federal, state and local relations is ceding considerably more control of education to the states. This spurt in state activity comes at the end of a decade of steady growth in state control. The Education Commission of the States reports that as many as 290 high-level state commissions are now studying the quality of public education. And these commissions have been responsibile for a great deal of change. Among those :

More demanding high school graduation requirements have been approved in 35 states. In California, where requirements had been left to local districts, a new law requires 13 credits for graduation. One credit equals one year of coursework. By 1986 Florida required 24 units of credit for graduation-- up from 18--including three years of math and science. In Florida, one unit equals half a year's coursework.

Textbooks and curricula have been revised in 21 states. A major study now in progress is looking for ways for groups of states to establish cooperative textbook purchasing policies, which would give them the combined leverage needed to force publishers to produce more demanding books.

Longer school days and years have been tested in 16 states. North Carolina is entering the fourth year of a pilot program that lengthens the school year from 180 to 200 days.

States change policy through statutes and regulations, which have a standardizing effect. The new focus of state policy making is no longer on peripheral groups, such as the handicapped or minority students; instead it is aimed at the core of instructional policy, including what should be taught, how it should be taught, and who should teach it.

The second question asked in Chapter 1 was What does an analysis of judicial decisions reveal concerning centralization?

People are witnessing a major change in the relationship of the states to the schools. State mandates (statutes) are now far more common than technical assistance.

The courts will not interfere with the exercise of discretion by school directors in matters confided by law to their judgment unless there is a clear abuse of the discretion, or a violation of law. And the burden is upon those charging an abuse of discretion to prove it by clear and convincing evidence. To date, litigation has not yielded any unified body of legal theory, courts uphold state standards as often as they strike them down.

The third question asked in Chapter 1 was Predicated on an analysis of state statutes and judicial decisions, what are the emerging legal trends and issues concerning centralization?

The "No Pass/No Play" statute--the idea of requiring students to earn minimum grades before they participate in extracurricular activities--spread to West Virginia and South Carolina with little of the

controversy that accompanied its birth in Texas two years ago.

Texas borrowed an idea from New Jersey and allowed Dallas schools to experiment with alternative certification of teachers. The idea is to permit "experts" who do not hold education degrees to take teacher-training courses while they work as novice teachers.

The fourth question asked in Chapter 1 was Predicated on an analysis of state statutes and judicial decisions, what are reasonable policies for school officials concerning centralization?

The first heyday of educational policy making by the courts is over. The landmark events--the desegregation cases, the opinions on student rights, the right to education suits-- occurred a decade or more ago. With the Rodriguez decision in 1973, which upheld prevailing patterns of school finance, the Supreme Court signaled that there were limits to the willingness of the judiciary to reshape policy and practice in the schools. Though the period since Rodriguez has not been devoid of noteworthy litigation, attention has largely

shifted away from the courts and back to the legislatures--first at the federal and more recently at the state level.

Court decisions altered the balance of authority. They afforded blacks--and later, limited English speakers, the handicapped, women, and those living in property-poor school districts-- legal rights that they had not enjoyed previously. These decisions also had a second significant consequence: they gave minorities new legitimacy and political clout. The judicial decisions that created new rights for certain groups usually did not mandate detailed remedies or order new expenditures but served instead as charters of principle. State legislatures and Congress subsequently filled in the details, securing kinds and levels of assistance in centralization undreamed of in the original decisions.

6.2 Conclusions.

New state curricula that specify the grade level at which particular math concepts must be learned (the Texas proposal) create rigid timetables that seem likely

to destroy the kind of school climate that usually characterizes effective schools.

The question is "How can decentralization be achieved without losing, at the same time, all the benefits of centralization? This is the puzzle at the center of most of the controversy over decentralizing schools. The teachers worry that autonomous communities might disregard hard-earned protections against arbitrary dismissals. Administrators worry about how funds will be distributed. Some parents worry about the schools becoming overly politicized.

The issues can be summed up like this : If we really want neighborhood schools, then neighborhood people must decide what kinds of schools they want, including who should teach in and administer them.

Based on an analysis of research presented in this study, it is apparent that while industry is dismantling its top-down structure to achieve participatory management, schools are being pushed into greater degrees of centralization. Nevertheless, certain conclusions can be drawn from the research : (1) Centralization involves major constitutional issues such

as academic freedom in selection of local curriculum, students' rights, parents' rights to direct the education of children, states' rights in setting graduation requirements, and the authority of school administrators and school boards in the governance of the schools; (2) The most striking feature of state/local relations in the last twenty years has been the growth in state control over education, and it appears it will continue; (3) More demanding high school graduation requirements have been approved in eighteen of the twenty-one Sun Belt states and are likely to continue;(4) Changes in curricular have been enacted in ten states and will be enacted in eight more; (5) Student evaluation/testing has been enacted in fourteen states and will become more wide spread; (6) Instructional time has been increased in ten states and proposed in eight others; (7) Master Teachers/Career Ladder Plans have been enacted in four states, proposed in nine and need funding to spread; (8) The courts will not interfere with the exercise of discretion by school directors in matters confided by law to the school administrators' judgment unless there is a clear abuse of the discretion, or a violation of law, the courts

will continue to show a strong support for school officials; (9) To date, litigation has not yielded any unified body of legal theory, courts uphold state standards as often as courts strike them down; (10) The "No Pass/No Play" statute--the idea of requiring students to earn minimum grades before the students participate in extracurricular activities--spread to West Virginia and South Carolina with little of the controversy that accompanied its birth in Texas two years ago, and will be enacted by many other states.

6.3 Programatic Recommendations.

A major step in reform would be a complete overhaul and pruning of the state education code to permit more local choice. Then each school would elect a citizens-staff council composed of parents, teachers, and administrators. Large amounts of state and local unrestricted funds would be allocated to each school to spend as they chose. Newport-Mesa, California, has a small scale version of this. It results in markedly different funding patterns; some schools stress more textbooks, others stress more counselors. The local school would decide the instructional priorities, how

much time to spend for basics, and the school organization. As in San Jose, California, the teachers may want to form a faculty senate at each school that would elect representatives to the school site council and discuss other major site issues.

This type of governance plan embodies the recognition that it is the individual school, rather than the entire district, that is the critical link between the child and the substance of education. The school site is also large enough to have relevance for state aid formulas. There is a need to know whether money for special federal and state programs is reaching the schools with the most needy pupils. There is a need to know whether these schools are receiving an equitable share of the local district's budget for regular programs. Even in school districts with three or more schools, it is the local school site that is the biggest concern to many parents. In addition to what is done in government, the issue of how things are done and how people feel about their governance is crucial.

Complete decentralization must evolve from the careful preparation of all parties concerned. Ideally, decentralization of power should grow out of earlier stages of administrative decentralization and community involvement in school district operations so that concern can focus on responsiveness rather than power testing.

Federal, state and city officials need to discuss the kinds of mutual assistance necessary for implementing decentralization so that responsiveness to the community is realized. Clear guidelines need to be developed to orient community leaders to the responsibilities involved.

There is a need for honesty about the limits on the autonomy of local school districts. The limitations of laws, contracts, and finance are always disillusioning for superintendents and board of education members seeking change. Even limited powers are better than none. The new leaders of decentralized school districts should have available to them the resources necessary for training, guidance, and assistance in developing the responsiveness being sought by urban citizens.

6.4 Recommendations For Further Study

There is a need for further study about centralization. There is a desire by local school boards to know how much control has been removed from the local boards and placed in the jurisdiction of the State Boards of Education by the legislatures. Who should control schools and school curriculum?

Teachers are expected to cover more content, be evaluated more strictly than ever, instruct in such a way as to cultivate critical thought, and raise test scores at the same time. Both centralized decision making and legislated curriculum presume that there is one best way to help young people learn. Both presume that those farthest removed from the place where the action of teaching and learning takes place can make better decisions about what should be taught and how improvement can be fostered than those who are closest to the action. What will be the outcome of this naive thought?

Senate Bill 813 in California aims to change what happens between a teacher and a student. The law includes provisions that tell teachers what to teach and how much time to spend teaching it; it sets grade level standards, specifying which tests to give; and it mandates how teachers are to be trained, selected and evaluated. Who should select teachers for schools?

Senate Bill 813 is the climax of almost two decades of legislative distrust of teachers, administrators, and local school boards. What began as an effort to correct inequities in funding and to create opportunities for poor and minority children has ballooned into a virtual state-funded and state-operated school system. The role that the legislature has chosen to play as super school board has produced four volumes of law that run to three thousand pages and express little faith in the competence of professionals or the lay public to judge what is best for children. How is this distrust overcome?

What are the probable consequences of legislative centralization? No one knows with certainty, but there seems likely to be diminished enthusiasm on the part of

professionals and inability to improve curriculum over time.

Does centralization inhibit the commitment of teachers and principals and blunt their motivation to improve the schools? Does legislating programs tend to freeze the curriculum and almost guarantee stagnation and mediocrity in the schools? Is the professional autonomy of teachers at stake?

There is a need for further study about centralization.

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CAROLYN WARNER
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July 11, 1986

Mr. Herman B. Norville
Route 1, Box 1188
Rutherfordton, NC 28139

Dear Mr. Norville:

Mr. Dave Tate has asked me to respond to your letter of July 1 regarding statutes dealing with local governance of school districts.

Enclosed please find copies of Arizona Revised Statutes Title 15, sections 341 and 342, which address general powers and duties of the local school district Governing Board and sections 701, 701.01, and 715 which address courses of study, graduation requirements, and special K-3 academic assistance.

If I can be of any further assistance, please let me know.

Sincerely,

Annette Berger
Education Program Specialist
School Finance Unit
(602) 255-5695

cia371

Enclosures

15-701.01. High school; graduation; requirements; community college or university courses

A. Prior to the 1984-1985 school year, the state board of education shall prescribe minimum course of study and competency requirements for the graduation of pupils from high school. Prior to the 1986-1987 school year, the governing board of a school district shall prescribe course of study and competency requirements for the graduation of pupils from the high schools in the school district. The governing board may prescribe course of study and competency requirements for the graduation of pupils from high school which are in addition to or higher than the course of study and competency requirements which the state board prescribes.

B. The governing board may prescribe competency requirements for the passage of pupils in courses which are required for graduation from high school.

C. A teacher shall determine whether to pass or fail a pupil in a course in high school as provided in section 15-521, subsection A, paragraph 10 on the basis of the competency requirements, if any have been prescribed. The governing board, if it reviews the decision of a teacher to pass or fail a pupil in a course in high school as provided in section 15-342, paragraph 12, shall base its decision on the competency requirements, if any have been prescribed.

D. Graduation requirements established by the governing board may be met by a pupil who passes courses in the required or elective subjects at a community college or university, if the course is at a higher level than the course taught in the high school attended by the pupil or, if the course is not taught in the high school, the level of the course is equal to or higher than the level of a high school course. The governing board shall determine if the subject matter of the community college or university course is appropriate to the specific requirement the pupil intends it to fulfill and if the level of the community college or university course is less than, equal to or higher than a high school course, and the governing board shall award one-half of a carnegie unit for each three semester hours of credit the pupil earns in an appropriate community college or university course. If a pupil is not satisfied with the decision of the governing board regarding the amount of credit granted or the subjects for which credit is granted, the pupil may request that the state board of education review the decision of the governing board, and the state board shall make the final determination of the amount of credit to be given the pupil and for which subjects. The governing board shall not limit the number of credits required for high school graduation which may be met by taking community college or university courses. For the purposes of this subsection, "community college" means a community college under the jurisdiction of the state board of directors for community colleges or a postsecondary educational institution under the jurisdiction of an Indian tribe recognized by the United States department of the interior and "university" means a university under the jurisdiction of the Arizona board of regents.

15-701. Common school; promotions; requirements; certificate; supervision of eighth grades by superintendent of high school district

A. The state board of education shall prescribe minimum course of study and competency requirements for the promotion of a pupil from the eighth grade and minimum competency requirements for the promotion of pupils from the third grade. Before the 1984-1985 school year, the state board shall develop guidelines for the school districts to follow in prescribing criteria for the promotion of pupils from grade to grade in the common schools. These guidelines shall include recommended procedures for insuring that the cultural background of a pupil is taken into consideration when criteria for promotion are being applied.

B. Pursuant to the guidelines which the state board of education develops, and prior to the 1986-1987 school year, the governing board of a school district shall prescribe criteria for the promotion of pupils from grade to grade in the common schools in the school district. These criteria may include such areas as academic achievement and attendance. The governing board may prescribe course of study and competency requirements for the promotion of pupils from the eighth grade which are in addition to or higher than the course of study and competency requirements which the state board prescribes.

C. A teacher shall determine whether to promote or retain a pupil in grade in a common school as provided in section 15-521, subsection A, paragraph 10 on the basis of the prescribed criteria. The governing board, if it reviews the decision of a teacher to promote or retain a pupil in grade in a common school as provided in section 15-342, paragraph 11, shall base its decision on the prescribed criteria.

D. A governing board shall issue certificates of promotion to pupils whom it promotes from the eighth grade of a common school. The certificates shall be furnished by the county school superintendent. Such certificates shall be signed by the county school superintendent and the principal or superintendent of schools. Where there is no principal or superintendent of schools, the certificates shall be signed by the teacher of an eighth grade and the county school superintendent. The certificates shall admit the holders to any high school in the state.

E. Within any high school district or union high school district, the superintendent of the high school district shall supervise the work of the eighth grade of all schools employing no superintendent or principal.

7. Sell, lease or long-term lease to the state, county or city any school property required for a public purpose, provided the sale, lease or long-term lease of the property will not affect the normal operations of a school within the school district.

8. Annually budget and expend funds for membership in an association of school districts within this state.

9. Enter into leases or lease-purchase agreements for school buildings or grounds, or both, as lessor or as lessee, for periods of less than five years.

10. Sell school sites or enter into long-term leases or lease-purchase agreements for school buildings and grounds, as lessor or as lessee, for a period of five years or more, but not to exceed ninety-nine years, if authorized by vote of the school district electors in an election called by the governing board as provided in section 15-491.

11. Review the decision of a teacher to promote or retain a pupil in grade in a common school or to pass or fail a pupil in a course in high school. Any request, including the written request as provided in section 15-341, the written evidence presented at the review and the written record of the review, including the decision of the governing board to accept or reject the teacher's decision, shall be retained by the governing board as part of its permanent records.

12. Provide transportation for any child or children if deemed for the best interest of the district, whether within or without the district, county or state.

13. Enter into intergovernmental agreements and contracts with school districts or other governing bodies as provided in section 11-952.

14. Include in the course of study which it prescribes for high schools in the school district vocational and technical education programs and vocational and technical program improvement services for the high schools, subject to approval by the state board of education. The governing board may contract for the provision of vocational and technical education as provided in section 15-789.

15. Suspend a teacher or administrator from his duties without pay for a period of time not to exceed ten school days, if the board determines that suspension is warranted pursuant to section 15-341, subsection A, paragraphs 25 and 26.

16. Dedicate school property within an incorporated city or town to such city or town for use as a public right-of-way if:

(a) Pursuant to an ordinance adopted by such city or town, there will be conferred upon the school district privileges and benefits related to municipal zoning, and

(b) The dedication will not affect the normal operation of any school within the district.

15-341. General powers and duties

A. The governing board shall:

1. Prescribe and enforce rules for the governance of the schools, not inconsistent with law or rules prescribed by the state board of education.

2. Maintain the schools established by it for the attendance of each pupil for a period of not less than one hundred seventy-five school days, or its equivalent as approved by the superintendent of public instruction for a school district approved by the state board of education to operate on an extended school year operation basis or to offer an educational program on the basis of a four day school week, in each school year, and if the funds of the district are sufficient, for a longer period, and as far as practicable with equal rights and privileges.

3. Visit every school in the district and examine carefully into its management, condition and needs.

4. Exclude from schools all books, publications, papers or audiovisual materials of a sectarian, partisan or denominational character.

5. Manage and control the school property within its district.

6. Purchase school furniture, apparatus, equipment, library books and supplies for the use of the schools.

7. Prescribe the course of study, subject to approval by the state board of education, and course of study and competency requirements and criteria for the promotion and graduation of pupils as provided in sections 15-701 and 15-701.01.

8. Furnish, repair and insure the school property of the district.

9. Construct school buildings on approval by a vote of the district electors.

10. Make in the name of the district conveyances of property belonging to the district and sold by the board.

11. Purchase school sites when authorized by a vote of the district at an election conducted as nearly as practical in the same manner as the election provided in section 15-481 and held on a date prescribed in section 15-491, subsection F, but such authorization shall not necessarily specify the site to be purchased.

12. Construct, improve and furnish buildings used for school purposes when such buildings or premises are leased or leased on a long-term basis from the national park service.

13. Purchase school sites or construct, improve and furnish school buildings from the proceeds of the sale of school property only on approval by a vote of the district electors.

14. Hold pupils to strict account for disorderly conduct on school property.

15. Discipline students for disorderly conduct on the way to and from school.

16. Deposit all monies received by the district as gifts, grants and devises with the county treasurer who shall credit the deposits as designated in the uniform system of financial records. If not inconsistent with the terms of the gifts, grants and devises given, any balance remaining after expenditures for the intended purpose of the monies have been made shall be used for reduction of school district taxes for the budget year, except that in the case of accommodation schools the county treasurer shall carry the balance forward for use by the county school superintendent for accommodation schools for the budget year.

17. Provide that, if a parent or legal guardian chooses not to accept a decision of the teacher as provided in section 15-521, subsection A, paragraph 10, the parent or legal guardian may request in writing that the governing board review the teacher's decision. Nothing in this paragraph shall be construed to release school districts from any liability relating to a child's promotion or retention.

18. Provide for supervision over pupils in instructional activities by certificated personnel and in noninstructional activities by certificated or noncertificated personnel. Supervision in noninstructional activities does not require the physical presence of certificated personnel. For the purposes of this paragraph noncertificated personnel have the same powers and duties as certificated personnel.

19. Use school monies received from the state and county school apportionment exclusively for payment of salaries of teachers and other employees and contingent expenses of the district.

20. Make an annual report to the county school superintendent on or before August 1 each year in the manner and form and on the blanks prescribed by the superintendent of public instruction or county school superintendent. The board shall also make reports directly to the county school superintendent or the superintendent of public instruction whenever required.

21. Deposit all monies received by school districts other than student activities monies or monies from auxiliary operations as provided in sections 15-1125 and 15-1126 with the county treasurer to the credit of the school district except as provided in paragraph 22 of this subsection, and the board shall expend the monies as provided by law for other school funds.

22. Establish a bank account in which the board may during a month deposit miscellaneous monies received directly by the district. The board shall remit monies deposited in the bank account at least monthly to the county treasurer for deposit as provided in paragraph 21 of this subsection and in accordance with the uniform system of financial records.

23. Provide adequate data to the state board for vocational and technical education for the follow-up survey as provided in section 15-203, subsection A, paragraph 34.

24. Employ an attorney admitted to practice in this state whose principal practice is in the area of commercial real estate, or a real estate broker licensed by this state who is employed by a reputable commercial real estate company, to negotiate a long-term lease for the school district if the governing board decides to enter into a long-term lease as lessor of school buildings or grounds as provided in section 15-342, paragraph 7 or 10. Any long-term lease negotiated pursuant to this paragraph shall provide that the lessee is responsible for payment of property taxes pursuant to the requirements of section 42-271, subsection A, paragraph 3.

25. Prescribe and enforce rules for disciplinary action against a teacher who engages in conduct which is a violation of the rules, regulations or policies of the governing board but which is not cause for dismissal of the teacher or for revocation of the certificate of the teacher. Disciplinary action may include suspension without pay for a period of time not to exceed ten school days. Disciplinary action shall not include suspension with pay or suspension without pay for a period of

time longer than ten school days. The rules shall include notice, hearing and appeal procedures for violations which are cause for disciplinary action. The governing board may designate a person or persons to act on behalf of the board on these matters.

26. Prescribe and enforce rules for disciplinary action against an administrator who engages in conduct which is a violation of the rules, regulations or policies of the governing board regarding duties of administrators but which is not cause for dismissal of the administrator or for revocation of the certificate of the administrator. Disciplinary action may include suspension without pay for a period of time not to exceed ten school days. Disciplinary action shall not include suspension with pay or suspension without pay for a period of time longer than ten school days. The rules shall include notice, hearing and appeal procedures for violations which are cause for disciplinary action. The governing board may designate a person or persons to act on behalf of the board on these matters. For violations which are cause for dismissal, the provisions of notice, hearing and appeal in chapter 5, article 3 of this title shall apply. The filing of a timely request for a hearing suspends the imposition of a suspension without pay or a dismissal pending completion of the hearing. The provisions of this paragraph do not entitle administrators to tenure rights as provided in chapter 5, article 3 of this title.

B. Notwithstanding subsection A, paragraphs 9, 11 and 13 of this section, the county school superintendent may construct, improve and furnish school buildings or purchase or sell school sites in the conduct of an accommodation school.

15-342. Discretionary powers

The governing board may:

1. Expel pupils for misconduct.

2. Exclude from the primary grades children under six years of age.

3. Make such separation of groups of pupils as it deems advisable.

4. Maintain such special schools during vacation as deemed necessary for the benefit of the pupils of the school district.

5. Permit a superintendent or principal or his representatives to travel for a school purpose, as determined by a majority vote of the board. The board may permit members and members-elect of the board to travel within or without the school district for a school purpose and receive reimbursement. Any expenditure for travel and subsistence pursuant to this paragraph shall be as provided in title 38, chapter 4, article 2. The designated post of duty referred to in section 38-621 shall be construed, for school district governing board members, to be the member's actual place of residence, as opposed to the school district office or the school district boundaries. Such expenditures shall be a charge against the budgeted school district funds. The governing board of a school district shall prescribe procedures and amounts for reimbursement of lodging and subsistence allowance expenses. Reimbursement amounts shall not exceed the maximum amounts established pursuant to section 38-624, subsection C.

6. Construct or provide in rural districts housing facilities for teachers and other school employees which the board determines are necessary for the operation of the school.

15-715. Special academic assistance to pupils in kindergarten programs and grades one through three

A. All common and unified school districts shall develop a plan to supplement the regular education program by providing special academic assistance to pupils in kindergarten programs and grades one through three. The purpose of the special academic assistance is to assist pupils in developing the minimum skills necessary for fourth grade work by the end of the third grade. The plan shall include:

1. Procedures for use in identifying pupils in need of special academic assistance.

2. Special services for provision of special academic assistance through the regular program of instruction.

3. Procedures for involving parents in the program.

4. Evaluation procedures for use in assessing the progress of the pupils in the program.

B. All common and unified school districts shall implement their program of special academic assistance to pupils in kindergarten programs and grades one through three by the 1986-1987 school year.

C. The teacher of a pupil enrolled in a special academic assistance program shall review the pupil's academic achievement each regular reporting period. Parents shall be notified of the progress of their child in the special academic assistance program by the established reporting method of the school district.

D. The annual financial report of a school district as prescribed in section 15-904 shall include a description of the special academic assistance programs, the amount of monies expended on the programs and the number of pupils enrolled in the programs by program and grade level.

E. The state board of education shall develop and provide the following to all common and unified school districts:

1. Minimum competency requirements for the promotion of pupils from the third grade.

2. Model plans for special academic assistance programs which include all of the items specified in subsection A of this section.

F. The department of education shall provide technical assistance to school districts in developing and implementing their plan. The assistance shall include assistance with all of the items specified in subsection A of this section.

Kansas State Department of Education

Kansas State Education Building

120 East 10th Street Topeka, Kansas 66612-1103

July 8, 1986

Herman B. Norville
Route 1, Box 1188
Rutherfordton, North Carolina 28139

Dear Mr. Norville:

Your letter to Warren Bell has been referred to me for a response. Please be advised that the State of Kansas does not have a statute dealing with centralization of powers. However, I enclose herein a copy of Article 6, Section 5 of the Kansas Constitution which specifies that the public schools shall be maintained by locally elected boards of education.

I hope this information is of assistance.

Very truly yours,

Rodney J. Bieker, Director
Legal Services Section

RJB:blh

Enclosure

§ 4. Commissioner of education. The state board of education shall appoint a commissioner of education who shall serve at the pleasure of the board as its executive officer.

Revisor's Note:
See Revisor's note under article heading.

Research and Practice Aids:
Schools and School Districts⇨47.
C.J.S. Schools and School Districts § 87.

§ 5. Local public schools. Local public schools under the general supervision of the state board of education shall be maintained, developed and operated by locally elected boards. When authorized by law, such boards may make and carry out agreements for cooperative operation and administration of educational programs under the general supervision of the state board of education, but such agreements shall be subject to limitation, change or termination by the legislature.

Revisor's Note:
See Revisor's note under article heading.

Research and Practice Aids:
School and School Districts⇨51.
Hatcher's Digest, School Districts § § 69 to 71.
C.J.S. Schools and School Districts § 105.

Law Review and Bar Journal References:
Cited in "Students' Constitutional Rights in Public Secondary Education," Harold D. Starkey, 14 W.L.J. 106 (1975).

CASE ANNOTATIONS

1. School dress code regulating hair length of male students upheld; school boards authorized to provide rules and regulations. Beline v. Board of Education, 210 K. 560, 563, 571, 502 P.2d 693.

2. Cited in holding local school board authorized to close attendance facility. Brickell v. Board of Education, 211 K. 905, 917, 508 P.2d 996.

3. Cited; state board of education possesses general supervisory powers over district boards. State, *ex rel.*, v. Board of Education, 212 K. 482, 485, 486, 492, 493, 497, 511 P.2d 705.

4. Mentioned in action involving collective negotiations of teachers' association with school board. *National Education Association v. Board of Education*, 212 K. 741, 748, 512 P.2d 426.

§ 6. Finance. (a) The legislature may levy a permanent tax for the use and benefit of state institutions of higher education and apportion among and appropriate the same to the several institutions, which levy, apportionment and appropriation shall continue until changed by statute. Further appropriation and other provision for finance of institutions of higher education may be made by the legislature.

(b) The legislature shall make suitable provision for finance of the educational interests of the state. No tuition shall be charged for attendance at any public school to pupils required by law to attend such school, except such fees or supplemental charges as may be authorized by law. The legislature may authorize the state board of regents to establish tuition, fees and charges at institutions under its supervision.

(c) No religious sect or sects shall control any part of the public educational funds.

Revisor's Note:
See Revisor's note under article heading.

Research and Practice Aids:
Colleges and Universities⇨4, 6(1); Schools and School Districts⇨16 et seq., 98 et seq.
Hatcher's Digest, Constitutional Law § 67; School Districts § 100.
C.J.S. Colleges and Universities § § 9, 10; Schools and School Districts § § 17 et seq., 376 et seq.
Am. Jur. 2d Colleges and Universities § § 30, 31.

Law Review and Bar Journal References:
Cited in "Student Fees in Public Schools: New Statutory Authority," Joe Allen Lang, 16 W.L.J. 439, 441, 442, 448 (1977).

CASE ANNOTATIONS

1. Order dismissing action to determine constitutionality of 1973 School District Equalization Act as moot, vacated and remanded; rights hereunder unresolved. Knowles v. State Board of Education, 219 K. 271, 272, 273, 547 P.2d 699.

2. Apportionment of monies contained in fund established hereunder by state finance council not unconstitutional as being a usurpation of executive powers by the legislature. State, *ex rel.*, v. Bennett, 222 K. 12, 24, 564 P.2d 1281.

§ 7. Savings clause. (a) All laws in force at the time of the adoption of this amendment and consistent therewith shall remain in full force and effect until amended or repealed by the legislature. All laws inconsistent with this amendment, unless sooner repealed or amended to conform with this amendment, shall remain in full force and effect until July 1, 1969.

(b) Notwithstanding any other provision of the constitution to the contrary, no state superintendent of public instruction or county superintendent of public instruction shall be elected after January 1, 1967.

(c) The state perpetual school fund or any part thereof may be managed and invested as provided by law or all or any part thereof may be appropriated, both as to principal

LARRY FRANCIS, P
DON HASTINGS, Ass.
FRED ARROWOOD, Ass .ipal

"Home Of The Fighting Trojans"

CHASE HIGH SCHOOL
Route 5
Forest City, N. C. 28043
Telephone: 245-7668

Route 1 Box 1188
Rutherfordton,
North Carolina 28139
July 1, 1986

Mr. Richard A. Boyd, Superintendent
State Department of Education
Jackson, Mississippi 39205

Dear Mr. Boyd:

I am an educator and a student at the University of North Carolina-Greensboro, working on my dissertation on School law with Dr. Joseph E.Bryson. I need your help.

The topic of my dissertation is "The Legal Aspects of Centralisation/ Decentralization of School Boards Authority (Power) Being Removed from School Boards and Placed in the General Assemblies of Sun-Belt States."

Please mail me a copy of your state statutes dealing with Centralizatio found under Governance under Schools and School Districts. I have enclosed a self-addressed, stamped envelop. I will be most appreciative of your help.

Note:
We do not have any statutes of this nature.
N.P. Smith
SDE-Mississippi

Sincerely,

Herman B. Norville

Herman B. Norville

ARTHUR L. MALLORY
Commissioner

Area Code 314
751-3527

State of Missouri
DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION
P.O. BOX 480
JEFFERSON CITY, MISSOURI 65102

July 11, 1986

Mr. Herman B. Norville
Route 1, Box 1188
Rutherfordton, North Carolina 28139

Dear Mr. Norville:

Your recent letter addressed to Mr. Otis Baker has been referred to my desk for response. I am enclosing a copy of Section 171.011, RSMo, which gives statutory authority to local boards of education to make all necessary rules and regulations for the operation of the local school system. We have no state statutes which deal with centralization of school boards' authority.

I trust that the information provided will be helpful.

Sincerely,

Jack Roy
Director of School Laws

JR:cmn

Enclosure

CHAPTER 171

SCHOOL OPERATIONS

171.011. School board may adopt rules and regulations.—The school board of each school district in the state may make all needful rules and regulations for the organization, grading and government in the school district. The rules shall take effect when a copy of the rules, duly signed by order of the board, is deposited with the district clerk. The district clerk shall transmit forthwith a copy of the rules to the teachers employed in the schools. The rules may be amended or repealed in like manner.

(L. 1963 p. 200 §11-1)
(Source: RSMo 1959 §163.010)

Construction and application

Subject to statutory guidelines and due process considerations and subject also to rule that a board may not act in an unreasonable, arbitrary, capricious or unlawful manner in the exercise of its discretion, statutes which establish and regulate public schools grant to boards of education and directors of school districts broad powers and discretion in the management of school affairs; such powers encompass employment, termination of employment and fixing of compensation. School Dist. of Kansas City v. Clymer (App. 1977) 554 S.W.2d 483.

Under §171.031 permitting school board to prepare a school calendar, school board had authority to change the calendar unilaterally. Adamick v. Ferguson-Florissant School Dist. (App. 1972) 483 S.W.2d 629.

Even though revised school calendar was not signed by order of board of education or deposited with district clerk, where teachers had ample and actual notice of changes in calendar and calendar was changed because of financial matters, calender was valid. Id.

Even though school calendar was enclosed in same envelope with employment contract, where employment contracts were mailed to teachers at time when school district and teachers knew there was possibility the new school tax rate would not be passed and some sort of schedule disruption was likely, letters transmitting contracts mentioned this financial crisis and contract stated that teacher was hired to teach such number of days as board of education established, calendar was not part of the employment contract which school district could not change unilaterally. Id.

The board alone has the duty of providing methods and means to be employed in maintaining schools, schoolhouses, etc. 252 S.W.2d 441.

A rule prescribed by board that a pupil who is absent six half days in four weeks without satisfactory excuse shall be expelled, is reasonable. 71 Mo 628. Likewise a rule is reasonably made while smallpox is prevalent, excluding pupils who have not been vaccinated. 119 S.W. 424.

A Missouri school board may govern the appearance of students through specifically worded and narrowly drawn dress and appearance codes only if the district can factually justify such codes as being reasonably necessary to promote intelligent conduct and control of its schools and only if the district can factually justify such codes as being reasonably necessary to carry out the educational mission of the school district. Op. Atty. Gen. No. 21, Cox, 4-2-73.

School districts may not charge fee for summer or night school to residents under 21; may make charges for damage to school property and for extracurricular activities; must provide band instruments if credit is given for band participation; must furnish gym shoes to indigents; must furnish materials for making products as part of classes; may withhold transcript from student if he fails to pay a legal fee imposed for misuse of school property. Op. Atty. Gen. No. 66, Mallory, 3-7-73.

A board of directors of a six-director school district has no authority to prescribe rules governing the selection of candidates for election to membership on such board. Op. Atty. Gen. No. 236, McCubbin, 10-21-71.

A school board has the discretionary authority to pay the premiums for life insurance for its employees as part of their compensation. Op. Atty. Gen. No. 500, Vanlandingham, 11-18-69.

School boards have the power to provide for education of residents under 5 years of age and, except as to those entitled to admittance as matter of right, boards have power to regulate admittance ages. Op. Atty. Gen. No. 100, Hearnes, 1-18-66.

Board of directors of school district may direct where pupils will attend school within the district in order to provide best educational facilities for school children. Op. Atty. Gen. No. 7, Benne, 1-31-53.

We do not think any court would deny the right of the board to admit pupils under six in the fall when they will have reached the age before January first, but whether the board could deny entry after that time to pupils becoming of school age thereafter would depend on how late in the term the question arose. The board has a reasonable direction in making rules that it deems necessary in order to conduct the school efficiently for all concerned. Op. Atty. Gen., Lee, 10-15-32.

Conduct of pupils

A teacher has the right to inflict reasonable punishment for misconduct by whipping. It must be administered for a salutory purpose to maintain the discipline and efficiency of the school. There is no such thing as a reasonable punishment from a malicious motive. 88 Mo. App. 354.

When the board fails to make rules for government of school, the teacher may make such rules as are reasonable and necessary and may enforce them. He may prohibit pupils from quarreling or fighting in going to and from school, and may prescribe the course of study when no other lawful authority has done so. 85 Mo. 485.

Though no rules have been made, the board may, after examination and hearing, expel a pupil who defies the teacher and intentionally tries to demoralize the school by swearing, fighting, or other obnoxious and filthy conduct. 42 Mo. App. 24.

School boards have authority to employ personnel for the purpose of provid-

THOMAS G. CLAUSEN
Superintendent of Education

P.O.BOX 94064
Baton Rouge, LA 70804-9064
1-800-272-9872

July 9, 1986

Mr. Herman B. Norville
Route 1, Box 1188
Rutherfordton, North Carolina 28139

Dear Mr. Norville:

Thank you for your letter dated July 1, 1986 regarding our state's centralization statutes. Due to the nature of your request, I have forwarded your letter to Mr. David Hamilton, Legal Counselor, Louisiana Department of Education.

Best of luck to you in your endeavor.

Sincerely,

Dan K. Lewis, Ed.D., Director
Consolidated Educational Programs

DKL:co

cc: Mr. David Hamilton

THOMAS G. CLAUSEN
Superintendent of Education

P.O.BOX 94064
Baton Rouge, LA 70804-9064
1-800-272-9872

July 28, 1986

Mr. Herman B. Norville
Route 1, Box 1188
Rutherfordton, North Carolina 28139

RE: Request for Information

Dear Mr. Norville:

I received correspondence from Dan K. Lewis, Ed.D., director of Consolidated Educational Programs for the Louisiana Department of Education, in which he requested that I respond to your inquiry concerning the law of Louisiana with regard to centralization or decentralization of the authority of school boards in view of legislative enactments. In your request for information, you ask for copies of our laws pertaining to this topic.

Title 17 of Louisiana's Revised Statutes is the section of our law which addresses this question most directly. In particular, R.S. 17:81 establishes plenary of authority in local boards. In other words, local boards may do all that is necessary to operate public school systems except as limited by legislative enactment, regulations of the Louisiana Board of Elementary and Secondary Education (BESE) and, of course, court cases. To duplicate all of these laws, regulations, and court cases would not only be quite expensive, but, with the lay offs of state employees, quite a problem in staff time.

However, I have enclosed copies of Bulletin 741, the standards for approval of schools; Bulletin 746, certification requirements; Bulletin 1740, Regulations for the Implementation of the Handicapped Children's Act; and copies of the cases of BESE vs. Nix and Aguillard vs. Treen, both of which deal with the legislative authority in the area of the operation of local public schools K through 12.

Aside from that, I refer you to Volumes 13, 13A, and 13B of West's Louisiana Statutes Annotated. I regret that I cannot furnish you with a copy of this, but because of budget cuts, we do not have sufficient funds to duplicate such extensive materials. Copies of the bulletins which I have furnished you

have been printed out of last year's budget, and that is the reason why we can send them to you.

I also want to point out to you that there are certain general state laws which govern activities of local school boards because they are political subdivisions of the state. In particular, R.S. 38:2211, et seq., is the bid law which must be followed by local school boards; R.S. 44:1 through 42 governs public records; R.S. 42:1101, et seq., is the code of governmental ethics for all public employees; R.S. 42:4.1 is Louisiana's Open Meetings Law. Once again, I am afraid that budgetary and staff limitations and cutbacks prohibit us from furnishing you with copies of these laws. However, West's Louisiana Revised Statutes contain these laws, and I suggest that if you need copies of them, you seek them in a law school library.

I hope that the information we have furnished will assist you in your research effort. I regret we were not able to provide you with copies of all of the appropriate laws, but, as I have stated often above, budgetary and layoff problems prohibit us from doing so. If you have any questions concerning the specific provisions of these laws and regulations, please feel free to contact me.

Sincerely,

David A. Hamilton
General Counsel

DAH:cmh

Enclosures

cc: Dan K. Lewis, Ed.D.

EUGENE T. PASLOV
Superintendent of Public Instruction

STATE OF NEVADA

Capitol Complex
Carson City, Nevada 89710

DEPARTMENT OF EDUCATION

July 31, 1986

Herman B. Norville
Chase High School
Route # 5
Forest City, NC 28043

Dear Mr. Norville:

I have reviewed our state statutes that might pertain to your topic of centralization. I find nothing that addresses your concerns.

I'm sorry I could not help. Best of luck to you.

Sincerely,

Mary Peterson

Mary Peterson
Education Consultant

MP:ak

STATE OF SOUTH CAROLINA
DEPARTMENT OF EDUCATION
COLUMBIA 29201

Charlie G. Williams
State Superintendent of Education

September 30, 1986

Mr. Herman B. Norville
Route 1 Box 1188
Rutherfordton, North Carolina 28139

Dear Mr. Norville:

Enclosed is a copy of School Districts of South Carolina: Organization and Administration. This publication is now being revised and the new one should be ready for distribution around the first of next year. Because there are some changes we are not making a charge for this copy and you may want to contact us again sometime after the new copy is available to obtain an updated one. We are returning your check to you in the amount of $3.00.

Very truly yours,

Dale C. Stuckey

Dale C. Stuckey, Esq.
Legal Counsel

nb

Enclosure (Check-$3.00)

COMMONWEALTH of VIRGINIA
DEPARTMENT OF EDUCATION
P.O. BOX 60
RICHMOND 23216-2060

July 11, 1986

Mr. Herman B. Norville
Route 1, Box 1188
Rutherfordton, N.C. 28139

Dear Mr. Norville:

This is in reference to your recent letter requesting information for your dissertation on the topic of "The Legal Aspects of Centralization/ Decentralization of School Boards Authority Being Removed from School Boards and Placed in the General Assemblies of Sun-Belt States."

There is no information currently on record which deals specifically with your topic. I am, however, enclosing copies of pages from the 1984 edition of Virginia School Laws on the Board of Education. I hope this may be of some assistance to you.

Best wishes on your dissertation.

Sincerely,

William L. Helton
Administrative Director
Teacher Education, Certification,
and Professional Development

WLH:dj

Enclosures

This dropout-prevention program is a bold alternative to alternative education

By Dean Banks

IF YOU LIKE EXERCISES in bold policy-making, consider this scenario from the South Texas coa. 't's spring 1986 and a new school year looms. Recent state reforms are raising academic standards and tightening attendance requirements. Already, approximately 20 percent of your tenth graders, largely Hispanics, are dropping out of school. Last year, your school system lost more than 1,100 students in grades 9-12, a number almost equal to the enrollment of one of your five high schools. There's no question that your dropout program is dropping behind.

The major obstacles to improvement? Your budget allows only a $2,850 per-pupil expenditure a year (compared with a national average of $3,677), and the economy looks as if it will get worse before it gets better. Besides, most of the school board and many school system employes are enthusiastic about the current method of dealing with dropouts: voluntary, self-paced participation in high school equivalency programs, jobs programs, and the schools' out-of-school Alternative Education Center.

So, do you try expanding what you have—cautiously—or do you rethink the whole situation and perhaps push ahead on a broader front? Facing these conditions in the Corpus Christi Independent School District, Superintendent Charles Benson and his staff opted for boldness—and a sharp change of course.

"Alternative education didn't get to the heart of the problem," the superintendent says. "We agreed the educational structure must be sensitive enough to meet the needs of kids who no longer fit into the regular classroom, but we wanted a systematic program—a safety net—to identify kids who are going in that direction and to help them stay in school. The schools need to become less reactive, more 'proactive.' "

The result was Project Intervention, developed as "the beginning of a comprehensive approach to the dropout problem." The program objectives would head up a school board member's dream list: improve school attendance; decrease disruptive behavior in the classroom and community; improve achievement in mathematics, English, and reading; develop vocational skills; increase parental involvement; and so on.

Influenced by the staff's commitment to experimentation and flexibility, the school board "reluctantly" approved Benson's proposal in June 1986. Most board members doubted that kids having serious trouble in school could be helped within that same environment.

After an encouraging first semester, the project has remained on course, focusing

Dean Banks is a college instructor and researcher-analyst who writes frequently about public policy.

To sell dropout prevention, cite the economic stakes

Although Project Intervention (see main article) has idealistic goals, its administrators are realistic about the difficulties the program faces—especially in getting enough money to translate ideals into action.

Except for Communities In Schools, Inc., the initial components of the project are secure enough: Most of the $400,000-$450,000 budget comes from the old alternative education system. And administrators see some hope for future expansion because of the additional state aid generated by the students already reentering or staying in school: The 325 students brought back in fall 1986 could add up to more than $700,000 from the state capital.

But Texas observers say dropout programs could die of their own success. State aid is money sliced from a public pie that might well be eaten up by an increase in successful dropout intervention programs, they say. At a recent Texas conference on the dropout problem, Project Intervention consultant Carrie Cheatham and several other delegates calculated that the ideal state program could add more than $5,000 per student to the current annual cost of public education.

Cheatham says the money is out there and that schools can get it. "Educate the public and private sectors about the dollars now being wasted because of inadequate dropout programs," she says. "The formula developed at the state conference is: For every dollar spent on Intervention, nine dollars will be returned to society." In other words, argue the economics:

- The expense to the public of dealing with dropouts who get in trouble with the law (police protection, court action, probation, and incarceration). Statistic: 85 percent of the prison population in Texas consists of dropouts.
- The expense of services to many dropouts who don't get involved in crime (adult education, welfare payments, unemployment insurance, placement services). According to James S. Catterall, an education professor at the University of California, Los Angeles, and author of the 1986 report "On the Social Costs of Dropping Out of School," approximately 25 percent of the money spent in the U.S. on welfare services—and 15 percent of the money spent for unemployment services—could be eliminated if schools solved the dropout problem.
- The loss of tax revenues. Statistic: the 86,000 Texas dropouts from the graduating class of 1985-86 represent a loss of $5.7 billion in taxes over their lifetimes.
- The broad economic losses attributable to diminished productivity. Statistic: Corporations responding to a recent national survey spent approximately $3 billion between 1983 and 1985 for remedial training of employes, especially to upgrade reading skills.

Though statistics and estimates vary, none of the administrators in Corpus Christi doubts that the social and economic stakes are enormous.—D.B.