

EDUCATION FINANCE COMMITTEE

The Education Finance Committee was assigned two studies. Section 4 of 1997 Senate Bill No. 2338 directed a study of the financing of elementary and secondary schools and the availability of state support for school construction, a review of the formulas used to equalize state aid for student transportation and special education, funding sources that would be alternatives to property taxes, and any other issues related to the financing of elementary and secondary education. Senate Concurrent Resolution No. 4047 directed a study of the short-term and long-term impact of federal education legislation and other direct and indirect mandates from whatever sources on the educational goals and fiscal well-being of school districts.

Committee members were Senators Layton Freborg (Chairman), Dwight C. Cook, Tony Grindberg, Jerome Kelsh, Les J. LaFountain, Rolland W. Redlin, Terry M. Wanzek, and Jim Yockim and Representatives Rick Berg, James Boehm, Michael Brandenburg, Lois Delmore, Pat Galvin, William E. Gorder, Bette Grande, Howard Grumbo, Lyle L. Hanson, Dennis Johnson, RaeAnn Kelsch, Richard Kunkel, and David Monson.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 1998. The Council accepted the report for submission to the 56th Legislative Assembly.

Financing of Elementary and Secondary Education Study

Background Initiation of the Foundation Aid Program

A foundation aid program designed to provide financial assistance to local school districts has been in effect in North Dakota since 1959, at which time the Legislative Assembly enacted a uniform 21-mill county levy and provided a supplemental state appropriation to ensure that school districts would receive 60 percent of the cost of education from nonlocal sources. This initial program was adopted in part because the Legislative Assembly recognized that property valuations, demographics, and educational needs varied from school district to school district. The Legislative Assembly embraced the broad policy objective that some higher cost school districts in the state "must continue to operate regardless of future school district reorganization plans." Taking into account the financial burdens suffered by the low valuation, high per student cost school districts, the Legislative Assembly forged a system of weighted aid payments that favored school districts with lower enrollments and higher costs. This initial program also allocated higher weighting factors to districts that provided high school services.

The 1970s

For several legislative sessions after 1959, the foundation aid program remained essentially unchanged. However, during that time, federal and state courts were beginning to address issues of spending levels for elementary and secondary education and whether those levels should be dependent upon the wealth of the school district in which a student resides. The Legislative Assembly, in an attempt to preempt the issue in North Dakota, responded by amending the foundation aid program in a way that evidenced a higher level of sophistication. The state more than doubled the per student payment and replaced the flat weighting factor with one that recognized four classes of high schools. Elementary weighting factors were altered as well. Adjustments continued to be made during the mid-1970s. A new category encompassing seventh and eighth grade students was created, and fiscal protection for schools experiencing declining enrollments was instituted. This latter provision ensured that no school district could receive less in foundation aid payments for a current year than that district would have received based on its enrollment during the previous school year. For the 1975-77 biennium, the foundation aid appropriation was \$153.4 million. In 1979 the Legislative Assembly appropriated \$208.4 million for the foundation aid program and added an additional appropriation of \$1 million to pay for free public kindergartens.

The 1980s

The next major development affecting education finance occurred with the approval of initiated measure No. 6 at the general election in November 1980. This measure imposed a 6.5 percent oil extraction tax and provided that 45 percent of the funds derived from the tax must be used to make possible state funding of elementary and secondary education at the 70 percent level. To meet this goal, the 1981 Legislative Assembly allocated 60 percent of the oil extraction tax revenues to the school aid program. Initiated measure No. 6 also provided for a tax credit that made the 21-mill levy inapplicable to all but the owners of extremely high-value properties. The Legislative Assembly eliminated the 21-mill county levy and increased state aid to compensate for the revenues that would have been derived from the levy.

During the early 1980s, discussions continued to center around purported funding inequities. Districts spending similar amounts per student and having similarly assessed valuations were not levying similar amounts in property taxes to raise the local portion of education dollars. It was alleged that the system encouraged some districts to levy much smaller amounts than their spending levels and assessed valuations justified.

In response, the Legislative Council's Education Finance Committee, during the 1981-82 interim, examined a method of funding education known as the "70-30" concept. This proposal was a significant departure from the existing foundation aid formula in that it took into account the cost of providing an education in each school district. The formula required determination of the adjusted cost of education and then required the computation of a 30 percent equalization factor to arrive at each district's entitlement. It was contemplated that a local mill levy would be employed to raise the district's local share of the cost of education.

Proponents touted this approach as one that included a comprehensive equalization mechanism and which recognized local variances in the cost of education. Opponents argued it did nothing more than award high spending districts and penalize those that had been operating on restricted budgets. The interim committee did not recommend the concept.

Discussions regarding the many aspects of education finance continued through the 1980s. Legislative Council interim committees explored weighting factors, considered the effects of increasing the equalization factor, and explored the excess mill levy grant concept. During the 1987-88 interim, the Education Finance Committee even established specific goals and guidelines to guide its deliberations on matters of education finance. While the interim committees articulated the need to alter the state's education funding system, they reached little agreement beyond recommending increases in the level of per student aid.

State Litigation

In 1989 legal action was initiated for the purpose of declaring North Dakota's system of public school finance unconstitutional. The complaint in *Bismarck Public School District No. 1 v. State of North Dakota* charged that disparities in revenue among the school districts had caused corresponding disparities in educational uniformity and opportunity which were directly and unconstitutionally based upon property wealth.

On February 4, 1993, after hearing 35 witnesses and examining over 250 exhibits, the district court issued 593 findings of fact and 32 conclusions of law. The court listed these "constitutionally objectionable" features of the school financing system:

- Disparities in current revenue per student are the result of variations in school district taxable wealth.
- The 22-mill equalization factor in the foundation aid formula fails to equalize for variations in district wealth because the equalization factor is below the state average school district tax rate for current revenue and leaves much of the school millage outside the foundation formula.
- The low level of foundation educational support fails to ensure substantial equality of resources for students in similarly situated school districts.
- The use of cost weightings that are inaccurate unjustifiably benefits districts with large amounts of taxable wealth.
- The flat grant allocation of tuition apportionment ignores the vast differences in taxable wealth among school districts and operates as a minimum guarantee for wealthy districts.
- The transportation aid program exacerbates existing resource disparities by reimbursing some, often wealthy, districts for more than the actual cost of transportation and requires other, often poorer, districts to fund a substantial share of transportation costs from other revenue sources.
- The special education funding program exacerbates existing resource disparities by giving higher spending districts an advantage in obtaining state reimbursement of special education costs and requiring school districts to fund a large share of the excess costs of special education programs from their disparate tax bases.
- The state aid for vocational education exacerbates existing resource disparities.
- The state system for funding school facilities relies on the unequal taxable wealth of school districts.
- The payment of state aid to wealthy districts enables them to maintain large ending fund balances.
- The failure of the state to ensure that resource differences among school districts are based on factors relevant to the education of North Dakota students, rather than on the unequal taxable wealth of North Dakota school districts.

The district court declared the North Dakota school financing system to be in violation of the Constitution of North Dakota, Article VIII, Sections 1 and 2 and Article I, Sections 21 and 22. The Superintendent of Public Instruction was directed to prepare and present to the Governor and the Legislative Assembly, during the 1993 legislative session, plans and proposals for the elimination of the wealth-based disparities among North Dakota school districts.

Response to the Litigation

In response to the district court's order, the Superintendent of Public Instruction presented the following recommendations to the 1993 Legislative Assembly:

- Raise the per student payment to \$3,134.
- Fund special education by dividing the 13 disabilities categories into three broad categories and assigning weighting factors to each.
- Fund vocational education by assigning weighting factors to high-cost and moderate-cost programs.
- Provide transportation reimbursements based on six categories of density.
- Provide state funding of education at the 70 percent level.
- Establish a uniform county levy of 180 mills.
- Distribute tuition apportionment in the same manner as foundation aid.
- Provide that federal and mineral revenues in lieu of property taxes and districts' excess fund balances be part of a guaranteed foundation aid amount.
- Allow districts the option of levying 25 mills above the 180-mill uniform county levy.
- Require that all land be part of a high school district and that districts having fewer than 150 students become part of a larger administrative unit.
- Provide \$25 million for a revolving school construction fund.

The Legislative Assembly offered its response by way of House Bill No. 1003 (1993). The bill was the appropriations bill for the Superintendent of Public Instruction, and, as it progressed through the legislative process, it became the principal 1993 education funding enactment. The bill:

- Set the state support for education at \$1,572 per student for the first year of the 1993-95 biennium and at \$1,636 for the second year.
- Raised the equalization factor from 21 to 23 and then to 24 mills.
- Set weighting factors at 25 percent of the difference between the prior statutory amount and the five-year average cost of education per student, as determined by the Superintendent of Public Instruction, for the first year of the biennium and at 50 percent of the difference for the second year of the biennium.
- Capped state transportation payments at 100 percent for the first year of the 1993-95 biennium and at 90 percent for the second year of the biennium and directed that any savings resulting from imposition of the 90 percent cap during the second year of the biennium be used by the Superintendent of Public Instruction to increase the per student transportation payments available under North Dakota Century Code (NDCC) Section 15-40.1-16.
- Reiterated the existing statutory requirement that school districts admitting nonresident students charge tuition but exempted school districts that admit nonresident students from other districts offering the same grade level services.
- Directed the Legislative Council to conduct another study of education finance and appropriated \$70,000 for purposes associated with the study, including necessary travel and consultant fees.

1993-94 Interim Study

The Legislative Council's interim Education Finance Committee began its efforts during the 1993-94 interim before an appeal of *Bismarck Public School District No. 1* was taken to the North Dakota Supreme Court. The committee was aware that many of the issues addressed by the trial court had been the subject of interim studies and legislative deliberations for many years. However, the committee also realized that the requisite number of Supreme Court justices (four) might not necessarily agree with the lower court's determination that the state's system of funding education was unconstitutional.

The North Dakota Supreme Court issued its decision on January 24, 1994--*Bismarck Public School Dist. No. 1 v. State of North Dakota*, 511 N.W.2d 247 (N.D. 1994). Although three of the five justices held that the state's education funding system was unconstitutional, the Constitution of North Dakota, Article VI, Section 4 requires four members of the court to declare a statute unconstitutional.

A majority of the Supreme Court indicated that there were three principal areas in need of attention--in lieu of revenues, equalization factors, and transportation payments. The Supreme Court did not, however, mandate specific legislative action. The court indicated the areas of concern and left it up to the Legislative Assembly to determine how those areas should be addressed. In a dissenting opinion, Chief Justice VandeWalle stated:

- . . . [T]he present funding system is fraught with funding inequities which I believe have not yet transgressed the rational-basis standard of review but which appear to me to be on a collision course with even that deferential standard.

The Supreme Court decision was issued midway through the 1993-94 interim. By the time the Education Finance Committee had completed its work, it had considered 35 bill drafts and three resolution drafts. Twenty-seven pieces of legislation were recommended to the Legislative Council for introduction during the 1995 legislative session.

The committee's recommendations included increases in the minimum high school curriculum; establishment of an additional Governor's school; appropriation of funds for elementary summer school programs, professional development programs, professional development centers, and refugee student assistance; placement of all land in a high school district; alteration of the weighting categories; a variable equalization factor; reclassification of special education categories; distribution of tuition apportionment according to average daily membership; an increase in transportation payments from 28 cents to \$1 per day for all students transported by schoolbuses; and an \$80 million increase in the level of foundation aid over that appropriated during the 1993-95 biennium.

Education Finance - 1995 Legislative Assembly

Although the 1995 Legislative Assembly enacted a variety of bills dealing with education and education finance, the most significant provisions were found in three bills--Senate Bill No. 2059, Senate Bill No. 2063, and Senate Bill No. 2519.

Senate Bill No. 2059 dealt with the funding of transportation. The bill maintained the per mile payment of 25 cents for small buses and 67 cents for large buses, and it added a payment for in-city transportation of 25 cents per mile. The per head payment for in-city students riding schoolbuses or commercial buses was increased from 17.5 cents to 20 cents per one-way trip. The 90 percent cap on payments, which was instituted by the 1993 Legislative Assembly, was left in place.

Senate Bill No. 2063 dealt with the funding of special education. The bill provided that \$10 million must be used to reimburse school districts for excess costs incurred on contracts for students with disabilities, for low-incidence or severely disabled students, and for certain boarding care. The bill also provided that \$400,000 must be used to reimburse school districts for gifted and talented programs approved by the Superintendent of Public Instruction, and \$500,000 must be used to reimburse school districts with above-average incidence of moderately or severely disabled students. Any amount remaining in the special education line item must be distributed to each school district in accordance with the number of students in average daily membership. The line item for special education was \$36,850,000. The bill also provided that, during the 1995-96 school year, no district or special education unit could receive less than 95 percent of the amount it received during the 1993-94 school year, excluding reimbursements for student contracts, boarding care, and gifted and talented programs. During the 1996-97 school year, no district or special education unit could receive less than 90 percent of that amount.

Senate Bill No. 2519 provided an increase in the per student payment for isolated elementary schools and high schools and increased by 20 percent the weighting factors applied to students attending school out of state. The bill raised the equalization factor from 24 mills to 28 mills for the first year of the biennium and to 32 mills for the second year of the biennium, and provided that thereafter the equalization factor would be tied by a mathematical formula to increases in the level of foundation aid. The equalization factor would not be permitted to fall below 32 mills nor rise above 25 percent of the statewide average school district general fund mill levy. Weighting factors, which had been set at 50 percent of the difference between the factor stated in statute and the five-year average cost of education per categorical student, were left at 50 percent of the difference for the first year of the biennium and then raised to 65 percent of the difference for the second year. High school districts whose taxable valuation per student and whose cost of education per student were both below the statewide average could receive a supplemental payment, again based on a mathematical formula. The sum of \$2,225,000 was appropriated for supplemental payments. Per student payments were set at \$1,757 for the first year of the biennium and at \$1,862 thereafter.

The 1995 Legislative Assembly appropriated \$517,598,833 for foundation aid, transportation aid, supplemental payments, tuition apportionment, and special education. That figure exceeded the 1993-95 appropriation by \$41,561,941.

Education Finance - 1997 Legislative Assembly

The 1997 Legislative Assembly incorporated the substantive provisions of its education finance package within Senate Bill No. 2338. That bill set the per student payments at \$1,954 for the 1997-98 school year and at \$2,032 for the 1998-99 school year. The equalization factor, which was raised to 32 mills by the 1995 Legislative Assembly and thereafter tied by a mathematical formula to future increases in the level of foundation aid, was left at 32. All references to formulated increases were removed. Weighting factors, which were set at 65 percent of the difference between the statutory factor and the five-year average cost of education per categorical student, remained at 65 percent for the 1997-98 school year and increased to 75 percent for the 1998-99 school year.

Supplemental payments to high school districts whose taxable valuation per student and average cost of education are below the statewide average were maintained by House Bill No. 1393, but the mill range for eligible districts was raised from the 1995 level of 135-200 mills to the 1997 level of 150-210 mills. Payments to school districts for the provision of services to students with special needs were increased from the 1995-97 appropriation of \$36,850,000 to the current appropriation of \$40,550,000. Ten

million dollars of this amount was set aside for student contracts, \$400,000 for the provision of services to gifted students, and the remainder was to be distributed on a per student basis.

The total amount appropriated for the foundation program, transportation, supplemental payments, tuition apportionment, and special education by the 1997 Legislative Assembly was \$559,279,403. That figure exceeds the 1995-97 appropriation by \$41,680,570.

State Demographics - Effects on Education Finance

Over the past two decades, central United States has experienced a dramatic decline in childbirth. Much of the baby boom generation has finished having children and its successors, the members of Generation X, have delayed starting families and have chosen to have significantly smaller families. This decline has been especially noteworthy in an area covering 279 counties in six states. The area includes the states of Wyoming and Montana, half of Kansas, approximately three-fourths of Nebraska, and most of South Dakota and North Dakota.

In this state, much of the demographic decline has been attributed to changes in agriculture. What was once a highly labor-intensive industry has become a highly capital-intensive industry. People who at one time resided in rural areas because of their involvement in agriculture had to move elsewhere to take advantage of job opportunities. In 1900 over 90 percent of this state's population resided in rural areas. Today, over two-thirds reside in the 17 "urban" communities having more than 2,500 residents.

In 1960 nearly one-quarter of the state's population was under the age of 10. Today, deaths exceed the number of births in 31 of the 53 counties. This decline in population can be seen even in relatively short periods of time. In 1990 children under the age of 6 comprised 9.1 percent of the state's population. By 1996 that figure dropped to 7.7 percent. Assuming a continuation of the downward trend in birthrates, coupled with outmigration, the state's kindergarten through grade 12 student population is expected to drop from a 1997 level of 121,708 to 100,152 within ten years.

With these factors as a backdrop, the committee concluded that fewer children and fewer taxpayers will affect the number of school closures and school district consolidations. It will affect the availability of public and private sector services available in parts of the state. It will affect real estate prices and the availability of job opportunities, and it will result in increased migration of people toward economically viable centers.

School District Boundary Restructuring

School district boundary restructuring is the inevitable result of cyclical decline. A declining student population results in a declining budget. A declining budget results in a declining number of staff. A declining number of staff results in a declining number of programs and services. A declining number of programs and services results in declining educational quality and opportunity and inevitably leads to a further decline in the number of students. Research has shown there are 12 factors that point to the need for boundary restructuring by a school district. Those factors are:

- A small critical mass of students.
- Declining student enrollment.
- Declining fund balances.
- Prior or projected budgetary reductions.
- Escalating property taxes.
- Inflation.
- Cost-ineffective class sizes.
- Minimal or declining course offerings and programs.
- Minimal or declining educational support services.
- Staff members teaching multiple preparations.
- Antiquated facilities and equipment.
- Cost-ineffective physical plants.

Research has also shown that certain efficiencies come with school district boundary restructuring. If class sizes are in the low 20s per teacher, there is a reduction in the cost-ineffectiveness found with small classes. Cost savings are achieved by a reduction in the number of duplicatory programs, services, and specialty areas, including libraries, gymnasiums, shops, science laboratories, home economics rooms, food service equipment, athletic or physical education equipment, custodial equipment, and computer technology. Cost savings are also achieved through a reduction in the number of staff, including support staff, custodians, and administrators. Larger year-end budget balances allow for even further gain through investment.

The potential benefits of successful boundary restructuring tend to include:

- Reduced tax rates or more equalized tax rates and therefore greater equity.
- Options to expand the number of, or improve the quality of, courses, programs, and services.
- Fewer course preparations for teachers and therefore greater specialization and enhanced teaching quality.
- Cost-effective class sizes.
- Cost effectively used and higher quality facilities.
- Greater access to more modern equipment, textbooks, references, and computer technology.
- Enhanced curriculum development.
- Enhanced staff training development.
- Increased instructional support personnel.
- Higher staff salaries and benefits.
- More attractive atmosphere for businesses and homeowners.

Potential School District Boundary Restructuring in North Dakota - Testimony and Recommendation

Although research defines a viable school district as one having at least 120 students in grades 9 through 12, the committee considered scenarios involving a high school enrollment of at least 75 students. This level of enrollment was chosen because the first of the state's weighting factor categories references school districts having fewer than 75 students in grades 9 through 12.

North Dakota has 231 school districts. One hundred seven of those have more than 75 students enrolled in grades 9 through 12. It is anticipated that by the 2010-11 school year only 52 districts will have more than 75 students in grades 9 through 12, and of those, only 37 will have more than 120 students in grades 9 through 12.

In order to determine an effective and efficient number of school districts, the committee looked at the placement of the 65 school districts that presently have high school enrollments in excess of 120 students. If those 65 were the only school districts in the state, the greatest distance that a student would have to travel in order to attend school would be 77 miles. If the number of school districts was increased to 78, the maximum distance to be traveled by a student is reduced to 30 miles. If the number of school districts was increased to 89, the maximum distance to be traveled by a student is 25 miles. If the number of school districts was increased to 116, the maximum distance to be traveled by a student is 20 miles.

The committee was concerned that a scenario that required the existence of 116 school districts meant the demise of 115 other districts. The committee determined that of the current 231 districts, 49 are kindergarten through grade 8 districts and 182 are high school districts, and if a statute were to require all land to be in high school districts, or all school districts to be high school districts, the net effect would be the elimination of roughly half the school districts determined to be unnecessary.

The committee considered a bill draft that required school districts to offer all educational grade levels from 1 through 12 or become attached, through reorganization or dissolution, to a district that does offer those grade levels. Noncomplying school districts would be given one year within which to reconfigure themselves. Although the bill draft did not require the closure of schools, opponents residing in kindergarten through grade 8 districts expressed concern that closure would be the inevitable result. They also expressed concern that the bill draft would generate much infighting among residents as they determined the districts to which their property would be attached and finally, that the bill draft would require them to pay higher property taxes. They indicated to the committee that the issue should be left alone and that the responsibility to determine when closure of a district is appropriate should be within the sole purview of school district residents. The committee determined that overriding concerns regarding equity and educational opportunity validated the bill draft. However, in order to provide maximum opportunity for citizens to consider available options and make the transitions contemplated by the bill draft, the committee added a delayed effective date.

The committee recommends House Bill No. 1033 to require that on or before June 30, 2002, each school district offer all educational grade levels from 1 through 12 or become attached, through reorganization or dissolution, to a district that does offer those grade levels.

School Construction

School buildings and their required maintenance efforts have been likened to a five-stage life cycle. The first 20 years of a building's life comprise stage I. During this period, maintenance costs are normally limited to minor repairs and small improvements necessitated by changes in instructional programs. Stage II consists of the period between 20 and 30 years. During this period, buildings require increasing annual maintenance expenditures and more frequent replacement of wornout equipment. Stage III consists of the period between 30 and 40 years. General maintenance needs increase rapidly at this point. Most of the original equipment has been replaced and major items, such as roofs and lighting fixtures, normally have to be

replaced during this period. Stage IV consists of the period between 40 and 50 years. This is a time of accelerated deterioration. In most instances, the needs, neighborhood, or the community have changed. The school may no longer be located where the children reside. A building of this age is frequently not old enough to be abandoned but too old to serve the school district effectively. The fifth and final stage consists of the period in excess of 50 years. At this point, research shows that the building should be completely reconstructed or abandoned.

North Dakota has over 21.6 million square feet of school space, 31.2 percent of which is less than 10 years old, 10.8 percent of which is between 10 and 30 years old, 41.7 percent of which is between 30 and 50 years old, and 15 percent of which is over 50 years old. A recently conducted survey of North Dakota school districts indicated that necessary repairs and maintenance to existing schools would carry a fiscal impact in excess of \$421 million. The scope of the projects referenced in the survey included site work (paving and lighting), building exteriors (windows, doors, and exterior walls), roofing, handicapped accessibility (restrooms, drinking fountains, and elevators), teaching areas (classrooms, laboratories, and music rooms), nonteaching areas (corridors, restrooms, and media centers), heating, ventilation, and air-conditioning systems, plumbing systems, electrical services, and electrical systems (public address, clocks, and fire alarms).

Basic Ways to Finance School Construction and Building Repair

In surveying the manner in which other states finance school construction and building repairs, it became apparent that nine funding methods exist, most of which exhibit both positive and negative features:

1. Current or existing revenues. This method is often referred to as "pay-as-you-go financing." It is usually available only to the wealthiest school districts or to districts willing and able to compromise their needs over a period of time.
2. Reserve funds. This method involves setting aside tax revenues in order to accumulate moneys for future construction projects.
3. General obligation bonds. This method involves serial bonds, or those that mature at different intervals over a period of time. Their use is generally regulated by the state through limits on the amount of a district's bonded indebtedness. The limit is usually based on the assessed valuation of property in the district.
4. Complete state support. Hawaii is the only state that offers complete state support, and even it allows a local contribution to capital expenditures. California and Florida offer assistance that is close to full state support. Maryland used to offer such support but is now phasing it out. While this funding method is initially attractive, districts have found that it requires their extenuating needs to be placed against and reviewed with other equally compelling state-level needs.
5. State-local sharing. Some states provide a fixed percentage of each school district construction or repair project. While this is attractive to districts that have the ability to raise matching funds, it does very little to assist districts that are not capable of raising such funds.
6. Flat grants. Some states allocate a certain dollar amount annually to assist school districts with capital expenses. The allocations are generally based on formulas covering square footage, local effort, and necessity.
7. Equalization aid. This type of support supplements those districts that do not have the ability to pay for facilities.
8. State loans. Some states maintain a permanent loan fund. This fund tends to be modest in relation to school district needs. The state generally limits the number of districts that can benefit from the loan fund, as well as the extent to which the districts may benefit.
9. Authorities and lease-rental financing. Under this method, a school district relies on another authority or entity to construct a building and then leases it from that authority or entity until the bonds used to construct it have been repaid.

Financing School Construction in North Dakota

The principal state funding mechanism for school construction is the school construction fund program. Loans are made to school districts by the Board of University and School Lands from the coal development trust fund. The outstanding principal amount of school construction loans from the trust fund is statutorily limited to \$25 million. The Superintendent of Public Instruction accepts applications for loans and determines an interest rate for each loan based on a school district's financial circumstances. The interest rate set by the Superintendent of Public Instruction may not exceed the lesser of two percent below the net interest on comparable tax-exempt obligations or six percent.

As of October 29, 1997, additional loans in the amount of \$10.3 million have been approved by the Superintendent of Public Instruction. The loans have not been funded because the approved loan amount exceeds the available funds by over \$2.1 million. It will not be possible to fund these loans, in full, until principal repayments of an equal amount are received on the outstanding loans. Given the scheduled principal repayments, sufficient funds will not be available to fund all the school construction projects approved through 1997 until June 1, 2000.

Proposals for Change

One method suggested to the committee for increasing school construction funding involves eliminating the cap on the dollar amount of school construction loans that could be made from the coal development trust fund. This would allow the Board of University and School Lands to loan an additional \$20 million to \$25 million for school construction projects. However, the concern regarding this option is that it is a short-term fix. Given current requests for assistance, the program would be capped out again in approximately four to five years, and new loans would again be limited to the amount of principal repayments received each year under the expanded program. These repayments are estimated to be in the range of \$2.5 million.

A second method suggested to the committee involved having the Board of University and School Lands sell the school construction loans it is holding under the existing program. This would allow for replenishment of the \$25 million available under the existing program. However, the Legislative Assembly would be required to provide a biennial appropriation to the Municipal Bond Bank in an amount that would equal the difference between the interest payments made by the schools on their outstanding (bonds) loans and the interest payments that the Bond Bank would make on the bonds it would sell in order to obtain the funds needed for purchase of the loans. The amount that would be needed by the Bond Bank under such a program would be approximately \$420,000 per year or \$840,000 per biennium. A proposal for the source of the funds was the investment earnings on the trust fund itself. Those earnings presently are deposited in the state's general fund.

A third method suggested to the committee involved the establishment of a new school construction fund program that would use the investment earnings of the trust fund. The Legislative Assembly would be required to provide a continuing appropriation to a new school construction fund covering investment earnings on approximately \$50 million. These moneys would be available only for the following purposes:

1. To make an annual payment to the Municipal Bond Bank in the amount necessary to make interest payments on Bond Bank bonds issued to buy existing school loans from the trust fund;
2. To make annual payments to the Municipal Bond Bank in the amount necessary to make interest payments on additional Bond Bank bonds issued to make new school construction loans at a blended rate of approximately two percent, provided an annual limit of \$10 million, or some other amount determined by the Legislative Assembly, was set; and
3. To make direct, below-market interest rate loans to school districts.

This method would provide a new school construction fund with approximately \$3 million each year. If the existing program is fully funded at the time an alternate program such as this would be implemented, the amount needed annually by the Bond Bank to make interest payments on the bonds issued to buy the \$25 million in outstanding school loans would be approximately \$420,000. Each \$10 million of additional school construction loans, if funded by the Bond Bank and made with an average interest rate of two percent, would require an annual subsidy of approximately \$400,000.

After three bienniums, and assuming a demand each year for \$10 million in school construction loans, \$60 million of new school construction loans would have been funded together with \$25 million of loans made under the existing program. The total school construction loan amount would be \$85 million, at a cost to the state of \$16.5 million. Without allowing for any investment earnings, the new school construction fund would have a balance at the time of approximately \$8.98 million. At the same time, however, the fund would be committed to provide \$2.42 million in interest subsidy payments to the Bond Bank for an additional 14 years. Thereafter, the annual amount would decrease as each series of Bond Bank bonds matures.

The fourth and final method suggested to the committee could be used in addition to the other options or established on its own. This method involves the establishment of a state credit enhancement program. The benefit of such a program would be to strengthen the credit quality of the program's bond rating, thereby lowering the interest rates on the Bond Bank bonds issued to fund school construction loans. Lower interest rates would lower the cost of each school loan annual subsidy or one-time buydown amount and would allow either more loans or lower interest rate loans.

Under a credit enhancement program, provisions would be made for the direct payments to the Bond Bank of state aid appropriated to a school district if the school district fails to make full and timely debt service payments on its construction loan.

Committee Consideration and Recommendation

The committee was concerned that the present school construction loan program is at its capacity and that future loans will be restricted to the amount of principal repayments made each year. The committee therefore recommends Senate Bill No. 2041 to increase the coal development trust fund loan limit from \$25 million to \$40 million.

Because the committee also recognized that for many school districts a building replacement project is very nearly beyond their means, the committee recommends Senate Bill No. 2042 to allow for the withholding of state-aid payments to a school district if the district fails to make full and timely payments on any evidences of indebtedness sold to the Bond Bank. The committee determined that the likelihood of ever having to employ such a provision was extremely remote. However, the committee also

determined that a state-aid intercept program would result in lower interest rates. The benefit to school districts would be the availability of more moneys for school construction loans or lower cost school construction loans.

Education Funding - Equity Issues

Equity in educational funding continues to be a nebulous concept. Traditionally, issues of equity or fairness have been measured in terms of per student revenues and per student expenditures. For the 1995-96 school year, however, the range of funding per student, after eliminating both the high and low extremes, still exceeded \$2,000. During the 1984-85 school year, the state contribution was approximately 42 percent. Ten years later, the state contribution had fallen to 38.4 percent.

The inequity in per student funding is magnified when the discussion turns to facility funding, because equity factors are not built into facility funding. If every school district in the state were to levy 10 mills for facility funding, the district at the 95th percentile would raise \$152.98 per mill and the district at the fifth percentile would raise \$38.30. The difference is four to one.

The mill levy system was termed one of the greatest factors in school district funding disparity. If a piece of property worth \$50,000 were located in the district at the 95th percentile, its owners would pay \$1,479.10 in property taxes. If that same property were located in the district at the fifth percentile, its owners would pay \$758.90 in property taxes. The difference is nearly two to one. If one includes all school districts, the disparity in levies is greater than six to one.

The committee was presented with a number of options for reducing this kind of disparity. The first would involve increasing funding and concentrating it in a formula that would include local property taxation. The state would therefore pay a greater share of the cost in those districts that could not levy higher taxes. While greater equity could be achieved through a reduction in, and therefore an increase in the size of, taxing units, ultimate equity, however, could be achieved only through the creation of one consolidated school district. An alternative to having one consolidated district would involve requiring that all existing districts levy exactly the same number of mills. If all districts were to levy 200 mills, for example, it may be more equitable than the present system, but a significant number of school districts would have their levies substantially increased.

Another method for achieving equity requires that all districts levy a specific number of mills and that the state deduct that same number of mills. This method would turn some money back to the state for redistribution to less wealthy districts. A recapture provision would have to be instituted as well as a provision capping districts that levy excessive mills.

Although such suggestions were termed "politically imponderable," the effect of other equity measures was found to be equally undesirable. If achieving equity in educational funding is based strictly on per student dollars, a much greater state contribution is required. However, with that increase in the state's contribution comes considerably more state control. That control will determine which facilities will be built, at what cost, and at what location. That control will also determine programming standards and curriculum.

Committee Consideration and Conclusion

The committee considered a bill draft that would require school districts to impose a minimum levy of 125 mills. If a school district did not levy at least 125 mills, the Superintendent of Public Instruction would have to withhold from the district's foundation aid an amount equal to the difference between the amount actually raised by the district and the amount that would have been raised had the district levied 125 mills.

The statewide average general fund mill levy is 186 mills, and the statewide average total mill levy is slightly higher than 200 mills. Under the bill draft, only \$242,000 would be returned to the state for redistribution. Because each high school district in the state levies at least 125 mills, the bill draft would affect only elementary or "K-8" districts. The committee determined that the bill draft would not be necessary if all property in the state belonged to a high school district.

The committee also considered a bill draft that would allow school districts to use their building fund levies for the purchase and maintenance of educational technology and for the salaries of school district personnel who supervise the use and maintenance of the technology.

Thirty-three school districts have an educational technology levy. Many of those districts without a technology levy would have difficulty passing a levy for any purpose. Because most districts have a building levy, it was initially thought that the proposed bill draft could make available much needed moneys for technology. However, testimony indicated that the bill draft would also cause significant equity problems. Many of the districts that cannot afford technology purchases are the same districts that cannot afford necessary school building repairs and maintenance. In effect, the bill draft would involve taking already inadequate

dollars and increasing the purposes for which those dollars could be expended. Secondly, by allowing the wealthier districts to utilize building fund dollars for technology, the bill draft would in effect increase the gap in technology spending between wealthy and nonwealthy districts.

The committee then considered an amended version of the bill draft. The amended version would appropriate up to \$7 million of an anticipated \$12 million foundation aid carryover to be used as matching grants for school district technology acquisition. The amended version also replaced the existing technology levy with one that would allow up to five mills to be levied by board action, rather than by voter approval. While the committee recognized that there is an acute need for technology in the state's school districts, the committee viewed the bill draft as proposing a contingency fund for technology. The committee was reluctant to earmark moneys for a specific purpose, preferring instead to allow local school districts flexible decisionmaking with respect to their expenditures.

IMPACT OF FEDERAL EDUCATION LEGISLATION AND MANDATES FROM WHATEVER SOURCES ON SCHOOL DISTRICTS

North Dakota Statutory Mandates

Each school district in this state is governed by an elected board. North Dakota Century Code Chapter 15-29 requires each such elected school board:

1. To establish for all children of legal school age residing within the district a system of free public schools which must furnish school privileges equally and equitably;
2. To organize, establish, operate, and maintain such elementary and high schools as it deems requisite and expedient; and
3. To employ and pay teachers, a superintendent of schools, principals, and a business manager.

The North Dakota Century Code also requires that there be 173 full days of classroom instruction and that during those days certain subjects be taught. North Dakota Century Code Section 15-38-07 provides that these subjects include "spelling, reading, writing, arithmetic, language, English grammar, geography, United States history, civil government, nature study, and elements of agriculture." Physiology and hygiene must also be taught. In teaching these subjects, the teacher is to:

1. Give special and thorough instruction concerning the nature of alcoholic drinks and narcotics and their effect upon the human system;
2. Give simple lessons in the nature, treatment, and prevention of tuberculosis and other contagious and infectious diseases;
3. Give, to all pupils below the high school and above the third year of schoolwork, no fewer than four lessons in hygiene each week for 10 weeks of each school year from textbooks adapted to the grade of the pupils; and
4. Give, to all pupils in the three lowest primary school years, no fewer than three oral lessons on hygiene each week for 10 weeks of each school year, using textbooks adapted to the grade of the pupils as guides or standards for such instruction.

North Dakota Century Code Chapter 15-38 requires that instruction be given in the Constitution of the United States beginning with grade 8, that physical education be taught in all grades, that there be moral instruction "tending to impress upon the minds of pupils the importance of truthfulness, temperance, purity, public spirit, patriotism, international peace, respect for honest labor, obedience to parents, and deference to old age," and that there be oral instruction in the humane treatment of animals.

In addition to the subjects that must be taught, NDCC Section 15-41-25 specifies a list of subjects that must be made available to students at least once during each four-year period. These subjects are:

1. English, four units.
2. Mathematics, three units.
3. Science, four units.
4. Social studies, three units, which must include one unit of world history and one unit of United States history, each of which must be integrated with a strong geography component.
5. Health and physical education, one unit.
6. Music, one unit.
7. Any combination of the following course areas: business education, economics and the free enterprise system, foreign language, industrial arts, vocational education, six units.

With respect to who teaches children enrolled in the state's public schools, NDCC Section 15-36-11 requires all persons teaching in the public schools to hold valid North Dakota teaching certificates. Section 15-41-25 expands this requirement for high school teachers by providing that "every teacher in any high school in this state teaching any of the course areas or fields mentioned in

section 15-41-24 shall have a valid teacher's certificate and shall have a major or minor in the course areas or fields that the teacher is teaching if the high school is to receive any approval by the department of public instruction." Section 15-47-46 expands this requirement for teachers of kindergarten and grades 1 through 8 by requiring that such teachers also have appropriate majors, minors, or endorsements for the levels or areas in which they are teaching.

Finally, NDCC Section 15-35-01.2 requires that the State Fire Marshal is to inspect each public or private school at least once every three years. If deficiencies are noted, the school district superintendent is required to correct any deficiencies within a time period acceptable to the State Fire Marshal. If a deficiency qualifies as an imminent hazard, the school is subject to immediate closure.

The North Dakota Century Code includes financial penalties for noncompliance with some of the above-referenced requirements. Section 15-40.1-06, which sets forth the educational support per student, provides that school districts not meeting the minimum curricular requirements of Section 15-41-24 or the teaching qualifications of Section 15-41-25 are entitled to only \$220 per student. School districts not maintaining an accredited status receive per student payments that are reduced by \$200 for each year such districts remain unaccredited.

North Dakota Regulatory Mandates

Until 1997 the Superintendent of Public Instruction had the authority to adopt rules, regulations, standards, guidelines, statements, and policies implementing a variety of statutory provisions. In 1997 Senate Bill No. 2336, the Legislative Assembly did not limit the statutory provisions that could be the subject of administrative promulgations but rather required that such promulgations be "rules" adopted in accordance with NDCC Chapter 28-32. Senate Bill No. 2336 also provided that any promulgation "adopted by the superintendent of public instruction in a manner other than that set forth in chapter 28-32 is ineffective after October 31, 1999." Among the best-known promulgations subject to the October 31, 1999, sunset are those referred to as the state accreditation standards. Published in a 1991 document entitled *North Dakota Accreditation Standards, Criteria and Procedures for the Classification of Elementary, Middle Level/Junior High, and Secondary Schools*, these standards articulate the minimum requirements for school district administration, instructional personnel, instructional programs, student evaluations, student personnel services, library media services, and school district policies. The criteria are broken down into those that are required and those that are optional. Schools are reviewed annually to ensure compliance with the required criteria and are given a biennial review to determine application of the optional standards and criteria.

North Dakota Judicial Mandates

While the North Dakota Supreme Court has been involved in education litigation from a variety of perspectives, including teacher personnel files, duties of school district clerks, the right of parents to educate their children at home, and the appropriateness of annexation proceedings, it was the court's involvement in the case of *Bismarck Public School District No. 1 v. State of North Dakota*, 511 N.W.2d 247 (N.D. 1994) which generated the greatest potential for financial impact on school districts. The complaint, filed in 1989, charged that disparities in revenue among the school districts had caused corresponding disparities in educational uniformity and opportunity which were directly and unconstitutionally based upon property wealth. The district court supported this charge, declared the state's system of financing education to be unconstitutional, and directed the Superintendent of Public Instruction to prepare and present to the Governor and the Legislative Assembly, during the 1993 legislative session, plans and proposals for the elimination of the wealth-based disparities among North Dakota school districts.

On appeal, the North Dakota Supreme Court upheld the state's system of funding education by a vote of 3-2, with three justices concluding the state's system was unconstitutional. The Constitution of North Dakota, Article VI, Section 4 requires that four of the five members of the court declare a statute unconstitutional. The majority of the court articulated the areas those justices believed were most in need of attention--in lieu of revenues, the equalization factor, and transportation payments.

Federal Statutory Mandates

Federal statutory mandates that affect schools and school districts are found in numerous titles of the United States Code (U.S.C.). Examples include:

- U.S.C. Title 8 - Immigration and Nationality: Addresses the unlawful employment of aliens and unfair immigration-related employment practices.
- U.S.C. Title 15 - Commerce and Trade: Addresses toxic substances and includes the regulation of various chemicals that

- may be used by students or school personnel, as well as issues of asbestos and radon detection and removal or control.
- U.S.C. Title 29 - Labor: Addresses fair labor standards, age discrimination, vocational rehabilitation, the Employee Retirement Income Security Act (ERISA), and the Family and Medical Leave Act (FMLA).
- U.S.C. Title 41 - Public Contracts: Addresses drug-free workplace requirements.
- U.S.C. Title 42 - Public Health and Welfare: Addresses topics ranging from safe drinking water to voting rights and contains a variety of civil rights legislation, including the Americans with Disabilities Act.

Among the federal statutory mandates, there are three legislative enactments that have received significant attention--the Individuals With Disabilities Education Act, Goals 2000: Educate America Act, and the School-To-Work Opportunities Act.

Individuals With Disabilities Education Act

Formerly known as the Education for All Handicapped Children Act, this legislation is designed to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs, to assure that the rights of children with disabilities and their parents or guardians are protected, to assist the states and localities to provide for the education of all children with disabilities, and to assess and assure the effectiveness of efforts to educate children with disabilities.

These goals are ensured through an entitlement formula that originally promised funding equal to:

- . . . the number of children with disabilities aged 3-5, inclusive, in a State who are receiving special education and related services . . . and the number of children with disabilities aged 6-21, inclusive, in a State who are receiving special education and related services . . . multiplied by . . . 40 per centum, for the fiscal year ending September 30, 1982, and for each fiscal year thereafter, of the average per pupil expenditure in public elementary and secondary schools in the United States.

In order to obtain funding, a state must submit a plan that:

1. Sets forth the policies and procedures designed to assure that funds paid under the Act will be expended in accordance with the provisions of the Act;
2. Establishes programs and procedures to assure that funds received by the state will be utilized only in a manner consistent with the goal of providing a free appropriate public education for all children with disabilities;
3. Describes a comprehensive system of personnel development which must include a description of the procedures and activities the state will undertake to ensure an adequate supply of qualified special education and related services personnel;
4. Describes the procedures and activities the state will undertake to ensure that all personnel necessary to carry out this Act are appropriately and adequately prepared;
5. Sets forth policies and procedures to assure that to the extent consistent with the number and location of children with disabilities in the state who are enrolled in private elementary and secondary schools, provision is made for the participation of such children in the program assisted or carried out under this Act by providing special education and related services for such children;
6. Sets forth policies and procedures which assure that the state shall seek to recover any funds made available to any child who is determined to be erroneously classified as eligible to be counted under this Act;
7. Provides satisfactory assurance that the control of funds provided under this Act shall be in a public agency for the uses and purposes provided in this Act;
8. Provides for reporting and recordkeeping as required by the Secretary of Education;
9. Provides procedures for program evaluations at least annually;
10. Provides that the state has an advisory panel to set policies and procedures for developing and implementing interagency agreements defining the financial responsibilities of each agency for providing children with disabilities with free appropriate public education and resolving interagency disputes;
11. Sets forth policies and procedures relating to the establishment and maintenance of standards to ensure that personnel necessary to carry out the purposes of this Act are appropriately and adequately prepared and trained; and
12. Sets forth policies and procedures designed to provide a child with a smooth transition from early intervention programs to preschool programs and providing a method for ensuring that, by the time a child reaches age 3, an individualized education program or family service plan has been developed and is being implemented.

The moneys received by the state are then distributed to school districts that submit applications to the Superintendent of Public Instruction. These applications must:

1. Provide satisfactory assurance that payments will be used for excess costs directly attributable to programs which:

- a. Provide that all children residing within the jurisdiction of the local educational agency or the intermediate educational unit who are disabled, regardless of the severity of their disability, and are in need of special education and related services will be identified, located, and evaluated, and provide for the inclusion of a practical method of determining which children are currently receiving needed special education and related services and which children are not currently receiving such education and services;
 - b. Establish policies and procedures in accordance with detailed criteria prescribed under this title;
 - c. Establish a goal of providing full educational opportunities to all children with disabilities, including:
 1. Procedures for the implementation and use of the comprehensive system of personnel development;
 2. The provision of, and the establishment of priorities for providing, a free appropriate public school education to all children with disabilities, first with respect to children with disabilities who are not receiving an education and second with respect to children with disabilities who are receiving an inadequate education;
 3. The participation and consultation of the parents or guardian of such children; and
 4. To the maximum extent practicable and consistent with the provisions of this title, the provision of special services to enable such children to participate in regular education programs;
 - d. Establish a detailed timetable for accomplishing the goal described in subsection c; and
 - e. Provide a description of the kind and number of facilities, personnel, and services necessary to meet the goal described in subsection c;
2. Provide satisfactory assurance that:
 - a. The control of funds provided under this subchapter, and title to property derived from such funds, shall be in a public agency for the uses and purposes provided in this subchapter, and that a public agency will administer such funds and property;
 - b. Federal funds expended by local educational agencies and intermediate educational units for programs under this subchapter:
 1. Shall be used to pay only the excess costs directly attributable to the education of children with disabilities; and
 2. Shall be used to supplement and, to the extent practicable, increase the level of state and local funds expended for the education of children with disabilities, and in no case to supplant such state and local funds; and
 - c. State and local funds will be used in the jurisdiction of the local educational agency or intermediate educational unit to provide services in program areas which, taken as a whole, are at least comparable to services being provided in areas of such jurisdiction which are not receiving funds under this subchapter;
 3. Provide for:
 - a. Furnishing such information (which, in the case of reports relating to performance, is in accordance with specific performance criteria related to program objectives), as may be necessary to enable the state educational agency to perform its duties under this subchapter, including information relating to the educational achievement of children with disabilities participating in programs carried out under this subchapter; and
 - b. Keeping such records, and affording such access to such records, as the state educational agency may find necessary to assure the correctness and verification of such information furnished under subsection a;
 4. Provide for making the application and all pertinent documents related to such application available to parents, guardians, and other members of the general public, and provide that all required evaluations and reports be public information;
 5. Provide assurances that the local educational agency or intermediate educational unit will establish or revise, whichever is appropriate, an individualized education program for each child with a disability at the beginning of each school year and will then review and, if appropriate, revise its provisions periodically, but not less than annually;
 6. Provide satisfactory assurance that policies and programs established and administered by the local educational agency or intermediate educational unit shall be consistent with the provisions of this title; and
 7. Provide satisfactory assurance that the local educational agency or intermediate educational unit will establish and maintain procedural safeguards in accordance with the provisions of this title.

All local school district applications must be approved by the Superintendent of Public Instruction before the distribution of funds. During the 1997-99 biennium, the state will receive approximately \$14 million from the federal government for special education. The state general fund appropriation for special education for that period is \$40,550,000.

Goals 2000: Educate America Act

Goals 2000: Educate America Act is, according to its legislative history, a "means for the federal government to give a major boost to school reform in the United States." The Act begins with the congressional articulation of the following eight goals:

1. That by the year 2000, all children will start school ready to learn;
2. That by the year 2000, the high school graduation rate will increase to at least 90 percent;
3. That by the year 2000, all students will leave grades 4, 8, and 12 having demonstrated competency over challenging subject matter including English, mathematics, science, foreign languages, civics and government, economics, the arts,

history, and geography, and every school in America will ensure that all students learn to use their minds well, so they may be prepared for employment in our nation's modern economy;

4. That by the year 2000, the nation's teaching force will have access to programs for the continued improvement of their professional skills and the opportunity to acquire the knowledge and skills needed to instruct and prepare all American students for the next century;
5. That by the year 2000, the United States students will be first in the world in mathematics and science achievement;
6. That by the year 2000, every adult American will be literate and will possess the knowledge and skills necessary to compete on a global economy and will exercise the rights and responsibilities of citizenship;
7. That by the year 2000, every school in the United States will be free of drugs, violence, and the unauthorized presence of firearms and alcohol and will offer a disciplined environment conducive to learning; and
8. That by the year 2000, every school will promote partnerships that will increase parental involvement and participation in promoting the social, emotional, and academic growth of children.

After agreeing on the national goals, Congress enacted legislation designed to provide a framework for meeting the goals. This framework included:

1. Promoting coherent, nationwide systemic education reform;
2. Improving the quality of learning and teaching;
3. Defining appropriate and coherent federal, state, and local roles and responsibilities for education reform and lifelong learning;
4. Establishing valid and reliable mechanisms for building a broad national consensus on American education reform; assisting in the development and certification of high-quality, internationally competitive content and student performance standards; and assisting in the development and certification of high-quality assessment measures that reflect the internationally competitive content and student performance standards;
5. Supporting new initiatives at the federal, state, local, and school levels to provide an equal educational opportunity for all students to meet high-academic and occupational skill standards and to succeed in employment and civic obligations;
6. Providing a framework for the reauthorization of all federal education programs by:
 - a. Creating a vision of excellence and equity that will guide all federal education and related programs;
 - b. Providing for the establishment of high-quality, internationally competitive content and student performance standards and strategies that all students will be expected to achieve;
 - c. Encouraging and enabling all state educational agencies to develop comprehensive improvement plans that will provide a coherent framework for the implementation of reauthorized federal education and related programs in an integrated fashion that effectively educates all children to prepare them to participate fully as workers, parents, and citizens;
 - d. Providing resources to help individual schools, including those serving students with high needs, develop and implement comprehensive improvement plans; and
 - e. Promoting the use of technology to enable all students to achieve the national education goals;
7. Stimulating the development and adoption of a voluntary national system of skill standards and certification to serve as a cornerstone for the national strategy to enhance work force skills; and
8. Assisting every elementary and secondary school receiving funds under this chapter to actively involve parents and families in supporting the academic work of their children at home and in providing parents with skills to advocate for their children at school.

In order to meet the national goals, Congress established a National Education Goals Panel to advise the President, the Secretary of Education, and Congress. The panel consists of 18 members. Eight members are Governors, four are congressmen, four are state legislators, and two are presidential appointees.

The panel reports annually to the President, the Secretary of Education, and Congress regarding the progress that the nation and the states are making toward achieving the national education goals. The panel is also charged with reviewing voluntary national content standards and voluntary national student performance standards, reporting on promising or effective actions being taken at the national, state, and local level to achieve the national education goals, and helping to build a nationwide bipartisan consensus for the reforms necessary to achieve the national education goals.

The Act also makes funding available to states wishing to engage in state-level and local-level systemic reform. In order to obtain federal moneys, a state must submit an application at the time and in the manner required by the Secretary of Education and provide assurances that the state will cooperate with the Secretary of Education, that the state has in place adequate authority to allow it to carry out a state improvement plan, that the state content standards and state student performance standards developed for student achievement are not less rigorous than such standards used prior to March 1, 1994, and that the state will provide broad public participation in the planning process. A state awarded moneys in this manner must in turn provide, through a competitive process, subgrants to its participating school districts.

There is still much ongoing debate regarding the mandatory versus voluntary nature of this Act. Within the Act, the following prohibition on federal mandates, direction, and control can be found:

Nothing in this chapter shall be construed to authorize an officer or employee of the Federal Government to mandate, direct, or control a State, local educational agency, or school's curriculum, program of instruction, or allocation of State or local resources or mandate a State or any subdivision thereof to spend any funds or incur any costs not paid for under this chapter. (20 U.S.C. § 5898)

The Act goes on to provide that:

. . . [T]he congress agrees and reaffirms that the responsibility for control of education is reserved to the States and local school systems and other instrumentalities of the States and that no action shall be taken under the provisions of this chapter by the Federal Government which would, directly, or indirectly, impose standards or requirements of any kind through the promulgation of rules, regulations, provision of financial assistance and otherwise, which would reduce, modify, or undercut State and local responsibility for control of education. (20 U.S.C. § 5899) . . . Nothing in this chapter shall be construed to require a State, a local educational agency, or a school, as a condition of receiving assistance under this subchapter--(1) to provide outcomes-based education; or (2) to provide school-based health clinics or any other health or social service. . . . Nothing in this chapter shall be construed to require or permit any Federal or State official to inspect a home, judge how parents raise their children, or remove children from their parents, as a result of the participation of a State, local educational agency, or school in any program or activity carried out under this chapter.

School-To-Work Opportunities Act

In 1992 there were approximately 3.4 million individuals aged 16 through 24 in this country who had not completed high school and were not currently enrolled in high school. That amounts to 11 percent of this age group.

Congressional findings at the time indicated that:

1. Three-fourths of all students entered the work force without baccalaureate degrees and that many of those students did not possess the academic and entry-level occupational skills necessary to succeed in the changing United States workplace;
2. Unemployment among youth in the United States is intolerably high and that earnings of high school graduates have been falling relative to the earnings of those having more education;
3. The workplace is changing in response to heightened international competition and new technologies and that such forces are shrinking the demand for and undermining the earning power of unskilled labor;
4. The United States lacks a comprehensive and coherent system to help its youth acquire the knowledge, skills, abilities, and information about and access to the labor market necessary to make an effective transition from school to career-oriented work or to further education and training; and
5. The work-based learning approach, which is modeled after the time-honored apprenticeship concept, integrates theoretical instruction with structured on-the-job training and that this approach combined with school-based learning can be very effective in engaging student interests, enhancing skill acquisition, developing positive work attitudes, and preparing youth for high-skill, high-wage careers.

The congressional solution was to create school-to-work opportunity systems that are a part of a comprehensive education reform package, that are integrated with the systems developed under Goals 2000, and that offer opportunities for all students to participate in an education and training program that will enable them to earn portable credentials, prepare them for their first jobs in high-skill, high-wage careers, and which will increase their opportunities for further education. It was the intent of Congress to facilitate the creation of a universal, high-quality school-to-work transition system that:

1. Enables youth to identify and navigate paths to productive and progressively more rewarding roles in the workplace;
2. Enables youth to utilize workplaces as active learning environments by making employers joint partners with educators in providing opportunities for participation in high-quality, work-based learning experiences;
3. Enables youth to promote the formation of local partnerships dedicated to linking the worlds of school and work;
4. Promotes the formation of local partnerships between elementary and secondary schools and local businesses as an investment in future workplace productivity and competitiveness;
5. Helps all students attain high academic and occupational standards; and
6. Builds on and advances a range of promising school-to-work activities such as tech-prep education, career academies, school-to-apprenticeship programs, cooperative education, youth apprenticeships, school-sponsored enterprises, business education compacts, and promising strategies that assist school dropouts.

Hence, Congress enacted the School-to-Work Opportunities Act of 1994. The Act was designed to:

1. Improve the knowledge and skills of youth by integrating academic and occupational learning and by building effective

- linkages between secondary and postsecondary education;
2. Encourage the development and implementation of programs that will require high-paid, high-quality, work-based learning experiences;
 3. Motivate all youth to stay in or return to school;
 4. Expose students to a broad array of career opportunities and facilitate the selection of career majors, based on individuals' interests, goals, strengths, and abilities;
 5. Increase opportunities for minorities, women, and individuals with disabilities by enabling such individuals to prepare for careers that are not traditional for their race, gender, or disability; and
 6. Further the national education goals set forth in the Goals 2000: Educate America Act.

In order to receive federal development grants for the school-to-work program, a Governor must submit an application to the Secretaries of Labor and Education. The application must include a timetable and an estimate of the amount of funding needed to complete the planning and development necessary to implement a comprehensive statewide school-to-work opportunities system for all students; a description of how the appropriate state officials and agencies will collaborate in the planning and development of the statewide school-to-work opportunity system; a description of the manner in which the state has obtained and will continue to obtain the active and continued participation in the planning and development of the statewide school-to-work opportunities system of employers and other interested parties, business associations, industrial centers, employees, labor organizations or associations, teachers, related services personnel, students, parents, community-based organizations, tribes, and registered apprenticeship agencies. Implementation grants are also available under the Act, as are grants for school-to-work programs for Indian youth and grants for local partnerships.

The Act contains specific provisions prohibiting the displacement of currently employed workers by students participating in school-to-work programs or the replacement of temporarily laidoff workers by students participating in the program.

As with Goals 2000, the debate continues regarding whether or not this program is a federal mandate. The Act itself, in 20 U.S.C. § 6234, provides:

Nothing in this Act shall be construed to authorize an officer or employee of the federal government to mandate, direct, or control a state's, local educational agency's, or school's curriculum, program of instruction, or allocation of state or local resources or mandate a state or any subdivision thereof to spend any funds or incur any costs not paid for under this Act.

Federal Regulatory Mandates

In North Dakota, the Superintendent of Public Instruction is given broad statutory authority to regulate education. One example of this broad authority can be found in the directive to "adopt rules for the accreditation of the public and private schools of the state." Federal regulations, on the other hand, appear to be more closely related to specific statutory sections. In some instances, the regulations are merely rephrasings of actual statutes. In other instances, they are designed to assist the public by providing examples of appropriate reimbursement computations or examples of correctly completed applications.

Federal Judicial Mandates

The increase of a federal presence in local education management comes not only from the exercise of congressional powers but also from the exercise of judicial powers. Examples of recent United States Supreme Court and federal appellate court decisions are included to demonstrate how judicial holdings may place on school districts requirements that were not articulated in legislation or necessarily even contemplated during a legislative process. They are also included to demonstrate the existence of inconsistencies and an occasional lack of clarity, which may result in:

1. School districts doing more than they legally need to, thereby incurring additional costs;
2. School districts doing less than they legally need to and incurring costs associated with litigation; or
3. School districts incurring costs simply to determine the scope and extent of their duties and obligations, given current judicial decisions.

Religious Issues

The Village of Kiryas Joel is a New York religious community of Hasidic Jews. The majority of the children from the village attend private religious schools. These schools, however, did not provide services to handicapped children. Before the Supreme Court's decision in *Aguilar v. Felton*, 473 U.S. 402, 105 S. Ct. 3232 (1985), assistance for Kiryas Joel children who needed special education services was provided by the local school district at an annex to one of the religious schools. In response to *Aguilar*, which barred the New York City Board of Education from sending public schoolteachers into parochial schools to provide remedial education for disadvantaged students, the school district discontinued this manner of providing special education

services to Kiryas Joel children and required that those students needing special education services attend public schools outside the village. This alternative proved unacceptable to the families of these students. The parents claimed placing the children in public schools caused them to suffer trauma and fear due to the drastic differences in culture between the groups. In response to this problem, the New York Legislature created a separate school district which had boundaries identical to the village.

In a 6-3 decision with six different written opinions, the United States Supreme Court, in *Kiryas Joel Village Sch. Dist. v. Grumet*, 114 S. Ct. 2481 (1994), invalidated the New York law as violating the establishment clause. Writing for the Court, Justice Souter held the law was invalid because governmental authority to run the school district was granted primarily on the basis of religion. The law was directly opposite to the state policy of consolidating school districts and was created by a special act of the legislature, rather than under the general laws governing school districts. The Court found that the statute failed the test of neutrality and led the Court to disbelieve that the legislature would provide this benefit equally to other religious and nonreligious groups.

In *Agostini v. Felton*, 65 USLW 4524 (1997), the United States Supreme Court overruled *Aguilar* by holding that a federally funded program providing supplemental, remedial instruction to disadvantaged children on a neutral basis is not invalid under the establishment clause when such instruction is given on the premises of sectarian schools by government employees under a program containing safeguards, such as those present in New York City's Title I program. The New York City program allocated aid on the basis of neutral, secular criteria that neither favored nor disfavored religion. The aid was made available to both religious and secular beneficiaries on a nondiscriminatory basis. Under such circumstances, the Court held, the aid is less likely to have the effect of advancing religion. The Supreme Court also held that the *Aguilar* court erred in concluding that New York City's Title I program resulted in an excessive entanglement between church and state.

Speech and Expression Issues

In *Lovell v. Poway Unified Sch. Dist.*, 847 F. Supp. 780 (S.D. Cal. 1994), the United States District Court for the Southern District of California held a student's statement that she was going to "shoot" a school counselor if she did not get a requested schedule change was not a threat and was protected by the First Amendment. The court viewed the statement in light of the fact that the student had spoken to the counselor several times that same day, that the student did not act in a physically threatening manner, and that the counselor did not seek immediate assistance or speak with anyone else about the incident until several hours later. In this context, the court determined the statement could not be seen as "serious expression of intent to harm or assault." Accordingly, the three-day suspension based on this statement was a violation of the student's First Amendment right of free expression.

Search and Seizure Issues

A private security officer employed by a school district discovered a student in a lavatory and smelled smoke. He asked the student if he had been smoking. The student admitted he had been smoking and continued to act in a suspicious manner. The officer then did a patdown search of the student and discovered several bags of crack cocaine. The court, in *In re S. K.*, 647 A.2d 952 (Pa. Super. Ct. 1994), held the smoke in the bathroom and the student's admission created reasonable suspicion for the patdown and the continued behavior and finding of cigarettes created reasonable suspicion for the more thorough search that led to the discovery of the crack.

In contrast, the Illinois Court of Appeals, in *People v. Dilworth*, 640 N.E.2d 1009 (Ill. App. Ct. 1994), overturned the conviction of a student who had been caught with cocaine on school property. The school was assigned a full-time police officer who, acting on a tip from a teacher, searched a student's locker and found no contraband. While the search was under way, the student to whom the locker was assigned began talking with the defendant. The two students began giggling and the officer thought they had played him for a fool. The defendant student was holding a flashlight in his hand. The officer grabbed the flashlight, opened it, and found cocaine inside. The defendant student was convicted on the basis of this evidence. The appellate court, however, found the search unreasonable, holding that "the student's privacy interests are not so diminished as to permit an intrusion based primarily on an officer's subjective perception of an affront to his dignity."

Gender Discrimination

Having stricter grade standards for cheerleaders than for football players was held by the California Court of Appeals in *Fontes v. Irvine Unified Sch. Dist.*, 30 Cal. Rptr. 2d 521 (Cal. Ct. App. 1994) not to be a violation of equal protection based on gender discrimination. The court reasoned that because cheerleading was open to students of both sexes, the classification did not

discriminate against females, but rather against cheerleaders. The court, however, held the classification not rationally related to any legitimate purpose and therefore invalidated the school policy.

Sexual Abuse

The Georgia Court of Appeals, in *Doe v. Howell*, 441 S.E.2d 767, 768-69 (Ga. Ct. App. 1994), held a teacher was immune from a suit for negligent supervision of a student who was sexually molested by another student while the classroom was dark for purposes of seeing a film. The court viewed supervision as a discretionary function. Because the assaulting student had no prior history of such behavior, the court held the assault was not reasonably foreseeable by the teacher.

In *Spivey v. Elliott*, 29 F.3d 1522, 1526 (11th Cir. 1994), the United States Court of Appeals held that a special relationship did exist between the state and an 8-year-old hearing-impaired boy who was a resident at a state-run school for the deaf and that this relationship did create the duty to protect the boy from sexual assault by other students.

Special Education

The Eighth Circuit Court of Appeals, in *Petersen v. Hastings Pub. Schs.*, 31 F.3d 705, 707 (8th Cir. 1994), held that a school was not required to provide a particular sign language system to hearing-impaired students. In this case, parents had claimed that because the system chosen by the school was different from the one used by the student at home, the district failed to provide the student with an adequate education. The court reasoned the school district met the requirements of providing a "free appropriate public education" in that the district's program was given with sufficient services to permit the child to benefit educationally.

In *Cremeans v. Fairland Local Sch. Dist.*, 633 N.E.2d 570 (Ohio App. 1994), the appellate court held that:

1. Cost is not a relevant concern when a district is fashioning an appropriate program for a disabled child;
2. Cost is not a relevant concern when the only appropriate program is highly expensive;
3. Cost is a relevant concern when a district is choosing between several options which provide an appropriate program.

In *Neely v. Rutherford County Schs.*, 851 F. Supp. 888 (M.D. Tenn. 1994), the Federal District Court in Tennessee joined other jurisdictions in holding that the relevant consideration in determining whether a service falls under the medical services exemption is not a bright line test dependent on whether a physician or a nurse provides the service. (See also, *Clovis Unified Sch. Dist. v. California Office of Admin. Hearings*, 903 F.2d 635, 642 (9th Cir. 1990); *Granite Sch. Dist. v. Shannon M.*, 787 F. Supp. 1020, 1026 (D. Utah 1992); and *Bevin H. v. Wright*, 666 F. Supp. 71, 75 (W.D. Pa. 1987)). In *Neely*, a student required constant attendance by a respirator specialist to ensure the child's breathing tube did not malfunction or become blocked. The court held this was a related service to be provided by the district. The school argued this was a service that fell within the "medical services" exclusion of the supportive service definition. Medical services fall within the definition of "related services" if they are for diagnostic or evaluation purposes. "Medical services" means services provided by a licensed physician to determine a child's medically related disability that results in the child's need for special education and related services." (34 C.F.R. 300.16 (4))

The court rejected the school district's argument holding that services necessary for the child to benefit from special education were not so burdensome to the district as to fall within the medical services exclusion. This determination focused on the cost of the service and found the cost was not extensive enough to put the service in the category excluded by the medical services exclusion.

Conclusion

The committee concluded that federal education legislation and other direct and indirect mandates do impact school districts, both in terms of their educational goals and their fiscal well-being. However, the committee also recognized that it is incumbent upon the state to uphold federal laws. The committee determined that while the state may choose to strengthen requirements set forth in federal laws, it cannot, through legislative, regulatory, or judicial procedures, weaken or otherwise circumvent such laws. The committee therefore makes no recommendation regarding the study.