

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

Janet Pauley; Duane Berkman Pauley, an infant, by Janet Pauley, his parent; and Delbert Thurman Pauley, Jr., an infant, by Janet Pauley, his parent, and on behalf of all other similarly situated,

Plaintiffs,

vs.

// CIVIL ACTION NO. 75-1268

Larrie Bailey, Treasurer of the State of West Virginia; Glen B. Gainer, Jr., Auditor of the State of West Virginia; West Virginia State Board of Education, Mary Martha Merritt, President, Members William M. Smith, James P. Clark, Duke A. McDaniel, Paul J. Morris, Bob E. Meyers, Carl J. Roncaglione, Charles H. Wagoner, Richard N. Schnacke, and Robert Ramsey, in their capacities as Members of the West Virginia State Board of Education; and Roy Truby, State Superintendent of Schools; David C. Hardesty, Tax Commissioner of the State of West Virginia; Board of Education of the County of Lincoln, a statutory corporation; Charles S. McCann, Lincoln County Superintendent of Schools; County Commission of Lincoln County; and Dennis Browning, Lincoln County Assessor,

Defendants.

OPINION, FINDINGS OF FACT  
AND CONCLUSIONS OF LAW  
AND ORDER

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Defendants.

OPINION, FINDINGS OF FACT  
AND CONCLUSIONS OF LAW  
AND ORDER

I.  
HISTORICAL BACKGROUND

This action was instituted in the Circuit Court of Kanawha County, by the parents of five (5) children who attended, at the time of the commencement of the action, public schools in Lincoln County, West Virginia.<sup>1</sup>

The action was filed pursuant to West Virginia Code Ch. 55, Art. 13, Sec. 1, et seq., cited as the "Uniform Declaratory Judgment Act".<sup>2</sup>

The relief sought by the plaintiffs is a declaration that they have been denied a thorough and efficient system of education in violation of Article XII, Section 1 of the Constitution of West Virginia, and further denied equal protection of the laws in violation of Article III, Sections 10 and 17, as a result of discriminatory classifications found in the educational financing system.

The constitutional infirmities raised by the plaintiffs within the language of the two cited provisions can be summarized

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1. The original action was styled Pauley, et al., v. Kelly, et al. An amended complaint was filed as Pauley, et al v. Bailey, et al., which reflects the change in the office of the Treasurer of the State of West Virginia, and further includes, the Auditor of the State of West Virginia, the members of the West Virginia State Board of Education, the State Superintendent of Schools, the Tax Commissioner of the State of West Virginia, the Board of Education of the County of Lincoln, the Superintendent of Schools of Lincoln County, the County Commission of Lincoln County, and the County Assessor of Lincoln County.

2. The original action was filed as a class action on behalf of other students in the Lincoln County school system. See West Virginia Rules of Civil Procedure 23(a). While the amended complaint which was filed subsequent to the decision by the West Virginia Supreme Court of Appeals in Pauley, et al v. Kelly, et al., 255 S.E.2d 859 (1979), did not expand the class specifically to include all children attending the public elementary and secondary schools of each county in West Virginia, there was no attempt during the course of the trial in this matter to exclude this general class from the impact of this decision. Accordingly, this Court finds that the pleadings should be treated in all respects as containing a broader class than that contained in the amended complaint. This is accomplished by the application of West Virginia Rules of Civil Procedure 15(b).

as:

1. The Legislature of the State of West Virginia has not provided by general law a thorough and efficient system of free schools in that it failed to:

a. Define and establish standards of a high quality system of education, and

b. Guarantee to each child enrolled in free schools that the standards which should be adopted, would be available, due to the lack of adequate financing to assure the implementation of the standards.

2. That the system of financing education throughout the State creates discriminatory classifications which cannot stand, as the State cannot demonstrate some compelling State interest to justify the unequal classification.

The plaintiffs finally contend, that upon the declaration of these unconstitutional ingredients of the system of free education in West Virginia, that a "Master" be appointed to monitor the transition from an unconstitutional to a constitutional system under the aegis of this Court.

The original complaint was dismissed by the Circuit Court of Kanawha County (Robert K. Smith, J). That case was decided upon the pleadings, admissions, affidavits and statistical material from public documents. However, no testimony was taken. Judge Smith did make findings of fact, the essence of which suggest at the very least that the public school system in Lincoln County was less than thorough and efficient.

However, notwithstanding the findings in relation to the condition of the quality of education in Lincoln County, Judge Smith held that there was an insufficient showing of any correlation between a deficient educational system that existed, and the school financing system in West Virginia.

In reversing Judge Smith, the West Virginia Supreme Court recognized that the granting of the Motion to Dismiss was procedurally erroneous, as genuine issues of fact existed, militating against disposition by a Motion to Dismiss or a Motion for Summary Judgment.

However the Supreme Court did not facilely reverse the lower court. In Pauley, et al v. Kelly, et al, supra., the Court provided a detailed legal historical analysis of constitutional provisions similar to West Virginia as they relate to education, as well as a mandate for further evidentiary development committed to certain and distinct guidelines.

Thereafter, this Court conducted a non-jury trial, commencing on August 10, 1981, and continuing, albeit not successively, for a period in excess of forty (40) days.

During the many days of trial, this Court attempted, with strict fidelity, to develop the issues which were directly or by implication outlined by the Court in Pauley, et al v. Kelly, et al, supra. These are summarized as follows:

1. What are suitable standards to set the core values of a thorough and efficient educational system;
2. Whether Lincoln County Schools specifically, and the public schools of West Virginia generally, meet these standards

of a thorough and efficient educational system;

3. Whether the equal protection requirements in terms of equality of substantive educational offerings have been met;

4. Whether the system of financing public education in West Virginia violates the constitutional guarantees of equal protection, and in providing a thorough and efficient system of free schools;

5. Whether the appraisal and assessment practices in the State of West Virginia comply with constitutional and statutory requirements;

6. Whether all state and local officers, agencies and departments, including but not limited to State Board of Education; State Superintendent of Schools; Tax Commissioner of the State of West Virginia; local county boards of education; local superintendents of schools, and local assessors are performing their constitutional and statutory responsibilities.

It is within this framework that this Opinion, Findings and Conclusions are made.

II.  
RESPONSIBILITY OF THE STATE VERSUS COUNTY  
BOARDS OF EDUCATION

Before undertaking a factual and legal analysis of the testimony, exhibits and arguments of counsel, it is imperative to discuss the relative roles of the State and the various fifty-five (55) local boards of education.

One of the more agonizing aspects of this case is a reconciliation of the constitutional mandate imposed upon the Legislature, and the direct responsibility of county school systems to "control

and manage all of the schools and school interests for all school activities" for the benefit of the children of the counties in which they reside. See West Virginia Code Chap. 18, Art. 5, Sec. 13.

The defendants, that are directly associated with the State Board of Education, take the position that they have no direct obligation to implement a thorough and efficient system of education. Their position is expressed in terms of recognizing their power in general supervisory terms over county school systems. They argue that it is the county that is directly responsible for the implementation of a school system for the benefit of its children.

The question that thus presents itself is whether there would be an erosion of the local authority, if the Thorough and Efficient clause is interpreted in such a manner that requires: (1) development of a statewide, high quality standard of education, and (2) the method and means these standards are implemented on a statewide basis.

This Court does not find that the defendants' interpretation of its duties and responsibilities vis-a-vis local boards, to be persuasive. Indeed, Pauley, et al v. Kelly, et al., supra. is quite specific in its demand that the Thorough and Efficient clause requires the development of certain high quality educational standards, and that it is in part by these quality standards that the existing educational system must be tested. See Pauley, et al v. Kelly, et al., supra. at 255 S.E.2d 859, 878.

Without deprecating the role of the county boards of education, their function must be viewed strictly within the constitutional requirement that the Legislature must provide for a thorough and efficient system of education.

The fountainhead of the county boards' authority must devolve from the State. If the State's position, as expressed in their brief is adopted, the result would be a reversal of the respective roles of State and local boards of education.

Education has been expressed in terms of being a statewide concern. See Ohio Valley Contractors v. The Board of Education of Wetzel County, et al., \_\_\_\_\_ W.Va. \_\_\_\_\_, 284 S.E.2d 374 (1982).

The most significant aspect of the relative roles of the State and counties in regard to educating the children of this State, is, that while the Legislature may feel that they are providing for a thorough and efficient system of education by delegating certain responsibility to county boards of education, if the evidence establishes that, on a statewide basis, each student is not being offered a high quality system of education, then, the Legislature must take an active and direct role to assure that its constitutional duty is being performed.

Our Legislature has decided that local school boards are an effective vehicle to help provide a thorough and efficient school system. See Ohio Valley Constructors v. The Board of Education of Wetzel County, supra. However, it is the Legislature that must: (1) adopt standards of a high quality system of education; and (2) provide resources to guarantee that these standards are being implemented. The vehicle for this implementation, certainly should be the county boards of education. However, unless the standards and resources are made available, the counties are rendered impotent to carry out its delegated responsibility.

III.  
STANDARDS OF A THOROUGH AND  
EFFICIENT SYSTEM OF EDUCATION

As suggested in Pauley, et al v. Kelly, et al, supra., in order to determine if the Legislature is providing a thorough and efficient system of education, the components of that system must be first established so that the existing system may be measured against what should be.

A definition of a thorough and efficient system of schools is defined in Pauley, et al v. Kelly, et al, supra. as:

The best the state of education expertise allows, the minds, bodies and social morality of its charges to prepare them for useful and happy occupations, recreation and citizenship, and does so economically.

Within that definition are legally recognized elements for the development in every child to his or her capacity of:

1. Literacy
2. Ability to add, subtract, multiply, divide numbers
3. Knowledge of government to the extent that the child will be equipped as a citizen to make informed choices among persons and issues that affect his own governance
4. Self-knowledge and knowledge of his or her total environment to allow the child to intelligently choose life work - to know his or her options
5. Work-training and advance academic training as the child may intelligently choose
6. Recreational pursuits
7. Interests in all creative arts, such as music, theatre, literature, individual arts
8. Social ethics, both behavioral and abstract, to facilitate compatibility with others in this society

The Court also realized that implicit in those enumerated elements, are "supportive" services such as:

1. Good physical facilities, instructional materials and personnel
2. Careful state and local supervision to prevent waste and to monitor pupil, teacher and administrative competency.

It is within these concepts as defined by the Court that the following Findings of Fact are made:

1. In order to provide a thorough and efficient system of education throughout the state, specific standards of a high quality education are necessary. Such standards must address the curriculum, personnel, facilities, and materials and equipment requirements in all program and supportive service areas, and the resources necessary to implement the standards must be provided.

2. In order to develop thorough and efficient programs, counties must:

- (a) have the ability to attract, employ, and retain a high quality staff of sufficient size to perform the educational tasks;

- (b) provide high quality, well-maintained educational facilities, with sufficient, appropriate spaces for all subject areas and services; and

- (c) provide high quality textbooks, work-books, and instructional supplies and equipment in numbers sufficient for each student in each subject area.

3. In order to develop each of the general elements of a thorough and efficient system of education, certain programs must

be offered as follows:

(a) "Literacy" is developed through virtually every program, but primarily through language arts, media programs, social studies, early childhood education, foreign language, and special education.

(b) The "ability to add, subtract, multiply and divide numbers" is developed through mathematics, early childhood education, science, music, home economics, industrial arts, vocational education, health education, and special education.

(c) "Knowledge of government to the extent that the child will be equipped as a citizen to make informed choices among persons and issues that affect his own governance" is developed primarily through social studies and language arts.

(d) "Self-knowledge and knowledge of his or her total environment to allow the child to intelligently choose life work -- to know his or her options" is developed through exposure to all educational programs including language arts, media, math, science, foreign languages, social studies, art, music, physical education, industrial arts, vocational education including home economics, health education, special education, counseling and guidance, and extracurricular activities.

(e) "Work-training and advanced academic training as the child may intelligently "choose" requires exposure to the same programs listed in (d).

(f) "Recreational pursuits" are developed through music, art, foreign languages, physical education, home economics, industrial arts, language arts, media, health education, and extra-curricular activities.

(g) "Interests in all creative arts, such as music, theatre, literature, and the visual arts" are developed through music, art, physical education, language arts, media, foreign language, and extracurricular activities.

(h) "Social ethics, both behavioral and abstract, to facilitate compatibility with others in this society" are developed through all programs that require interaction among students, teachers, and other staff, including programs in all the subject areas listed above.

4. In order to develop the legally recognized elements of a thorough and efficient system of education in every child to his or her capacity, appropriate programs must be offered to children of all abilities. Consequently, special education, remedial and advanced programs, are indispensable to a thorough and efficient system.

5. In order to develop the legally recognized elements of a thorough and efficient system of education, counties must be able to provide the following high quality education support services:

- (a) guidance services
- (b) health services

- (c) food services
- (d) transportation services

A.

In Order to Provide a High Quality Education, County School Systems Must Have the Ability to Attract and Retain a High Quality Professional Staff, Construct High Quality Facilities and Provide Necessary Instructional Materials and Equipment

General Staff Considerations for a Thorough and Efficient System of Education

6. All counties must have access to a qualified curriculum supervisor in each subject area. Smaller counties may be served by multi-county or regional supervisors with qualifications in the area of supervision. Curriculum supervisors are indispensable in designing and coordinating the curriculum, reviewing and providing materials and equipment, and coordinating staff continuing education.

7. In addition, all counties must have adequate administrative support at the school level. The building principal is the curriculum leader at the school level and should spend at least 50% of his time on curriculum development and oversight. In order to insure that this occurs, the principal must not have other duties such as teaching and must have adequate administrative, clerical, guidance and health staff support.

8. It is important to have an experienced and stable teaching staff. Factors involved in attracting and retaining staff include salaries, fringe benefits, facilities, equipment and materials, other working conditions and recruiting practices. All counties must be provided the means to attract and retain a high quality staff. In order to attract a high quality

teaching staff, a county must be able to offer salaries and benefits that are competitive with teaching and nonteaching salaries and benefits in other counties and nearby states. In order to provide incentives to teachers to locate in underserved or isolated areas of the state, the state should provide incentives in the form of tuition waivers, credit reimbursement, and scholarships for teachers who teach in such areas.

9. Adequate facilities, supplies and materials assist in the recruitment and hiring of teachers. Other working conditions affecting job choices include the presence of supervisory staff, pupil/teacher ratios, and noninstructional teaching duties. Finally, counties must have sufficient administrative personnel and budget to seek qualified candidates.

10. To aid in the recruitment effort, class sizes should not exceed twenty (20) in grades K-2 and twenty-five (25) in grades 3-12. Further, all teachers should have one (1) planning period daily.

11. A system of ongoing continuing education designed to meet the needs of staff in all subject areas must be instituted in each county. The current programs of "in-service" training are not adequate to assure teachers are current both in their substantive curriculum areas and in instructional methods. Continuing education becomes increasingly important as turnover among teachers in West Virginia declines. The State must mandate participation by teachers in workshops, meetings, lectures and conferences.

General Facility Considerations for a Thorough  
and Efficient System of Education

12. It is not possible to provide a thorough and efficient educational system without high quality facilities. There is a definite correlation between high quality educational program and quality, specialized facilities. Certain specialized facilities permit experimentation and develop a student's intellectual independence and analytic capabilities (e.g., science and language laboratories, media centers, computer facilities). Other facilities are necessary because of noise and other considerations (e.g., music, art, vocational courses), and for specialized but essential activities (e.g., auditoriums, vocational courses). Still other specialized facilities are necessary to permit certain activities notwithstanding the weather (e.g., gym).

13. Except as otherwise provided, for specific substantive areas, every general purpose instructional area must contain at least thirty square feet per pupil, contain ample, movable furniture and equipment, adequate storage and work areas, appropriate lighting and display areas, and be designed for use of audio-visual equipment. High quality facilities include adequate facility space: one hundred (100) to one hundred twenty (120) square feet per pupil for elementary schools and one hundred thirty (130) to one hundred sixty (160) square feet per pupil for secondary schools.

14. All facilities must be structurally safe, contain fire safety measures, sufficient exits and stairways for safe and easy flow of traffic, an adequate, safe and potable water supply,

an adequate sewage disposal system, sufficient and sanitary toilet facilities and plumbing fixtures, and adequate general instructional, administrative, and custodial storage. All facilities must contain adequate thermal control to maintain comfortable room temperatures, and a fresh air supply. Facilities must be adequately lighted, in good repair, and attractively painted. Facilities must be designed to prevent loud noises from traveling from one section of the building to another. Sufficient administrative offices must be provided.

15. Although W.Va. Code Chap. 18, Art. 9A, Sec. 21 establishes a division of facilities planning to establish standards and criteria for the construction of facilities, the state has not pursuant to this mandate established high quality standards. The Handbook on Planning School Facilities, however, serves generally as the kind of document. The statute does not provide funding to counties to construct facilities that meet such standards. Without state funding, many counties will be unable to construct high quality facilities.

16. In order to provide quality facilities throughout the state, West Virginia must adopt a state supported program based on need for funding capital and debt service expenditures for public schools. A state subsidized program for the construction of facilities will achieve a variety of efficiencies among which are:

- (a) Efficient use of resources with state planning.
- (b) Eliminate the waste inherent in the current facility financing approach which relies on local referendums and often produces construction plans that

are politically rather than educationally motivated.

(c) Long delays and extra costs incurred by local bond referendums are avoided.

(d) Significant efficiencies through economies of scale, the avoidance of duplication in planning efforts, and in the use of uniform guidelines to assist the elimination of unnecessary expenditures.

(e) There is an overall savings in interest and service charges when bonds are issued at the state level.

(f) Resources can be used more efficiently through planned economies (e.g., energy efficiency, life-cycle costing, economies of scale) which can be built into the statewide program.<sup>3</sup>

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3. This Court can only make certain findings relating to the issue which is at the core of this case -- does the system of financing public schools in West Virginia violate the Thorough and Efficient and Equal Protection clauses of the West Virginia Constitution?

While of course the main issue is fractured into a number of components, every consideration flows from a common denominator -- money. This Court has no authority nor inclination to offer specific recommendations as to the ways and means a public education system should be financed, this is exclusively a political decision. What this Court is saying in this Opinion, is that the current method of financing all aspects of public education are constitutionally inadequate. The method to bring the educational system into constitutional compliance must be left to the Legislature with the assistance of the "Master" or "Commissioner" who is to be appointed herein.

However, this Court would be remiss if it did not comment upon a method of financing the construction of facilities for public schools in the State of Maryland, which does, in the view of this Court, provide a high quality educational facility program.

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3. (Continued). In Maryland, an inter-agency committee for public school construction was established by the Legislature to administer the building program. This committee is composed of members of the Board of Public Works, Department of Education, Department of State Planning and Department of General Services.

Each county submits an educational facilities master plan containing an inventory of existing facilities, development of goals, population and enrollment data and projections, an assessment of facility needs and a community analysis. (These documents are similar to the comprehensive educational facility plans submitted by the various county boards of education under the West Virginia Better School Building Program.)

Ultimately, the agency approves projects in accordance with six (6) funding priority categories, with the actual construction being primarily subsidized on a state level through general obligation bonds authorized by the Legislature. Between 5-10% of the total cost is assumed by various counties where construction of a facility has been approved. The local costs are used for architect and engineering fees, certain site improvement costs, and certain furniture and equipment costs.

The reason that specific recognition is made of the Maryland system, is that the testimony clearly established that since Maryland adopted this method of construction of educational facilities, there is virtually no disparity in the quality of facilities among the counties in that State. This is in rather stark contrast to the conditions which are found to exist in West Virginia as will be described in a later portion of this Opinion.

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17. A state agency administration is essential to assure efficiency in the use of state funding for facility construction.

General Equipment and Materials Considerations  
for a Thorough and Efficient System of Education

18. In order to provide a thorough and efficient educational system, instructional equipment and materials must be available to all students. There can be no meaningful program without adequate supplies and equipment (e.g., vocational education, science, physical education, art, music). In some program areas, appropriate materials and equipment are necessary to permit experimentation,

to develop student proficiency, initiative, and analytic capacities (e.g., early childhood education, special education, media, science, language arts). All equipment and material costs associated with the delivery of a high quality educational program must be fully funded by the state, and dependence on local excess levy funds for this purpose must be eliminated.<sup>4</sup>

B.

Components of a Thorough and Efficient System of Free Schools within Specific Educational Offerings

The following are found to be the essential ingredients for each educational offering which must be adopted by the State of West Virginia and implemented by the county boards of education:

Curriculum - Art

19. (a) The art program has four aspects: seeing and feeling visual relationships, the making of art, the study of works of art, and the critical evaluation of art. A meaningful school art program includes experiences in all of these areas.

(b) A planned program in art is provided at all educational levels from kindergarten through high school.

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4. While the general discussion of the entire financing structure funding public education is reserved for a later portion of this Opinion, it must be recognized that the vice which subverts the entire funding scheme is the use of the excess levy. Possibly the most persuasive witness testifying in this case was Dr. Daniel B. Taylor, who has had an extremely comprehensive career in education in the State of West Virginia, culminating in his serving as State Superintendent of Schools from 1970 to 1979. Dr. Taylor's description of the reliance on excess levies to purchase textbooks by many counties, demonstrates the repugnancy of excess levies, especially when it results in the failure of all students to have their own textbooks, with the freedom to study during non-school hours.

(c) At all levels adequate and flexible facilities, quality equipment and materials, sufficient time, and properly trained and experienced teachers and supervisors are provided.

(d) Art programs are available to meet the needs for both artistically gifted and handicapped students.

(e) Every elementary child receives regularly scheduled art instruction from a certified art teacher in a specially equipped art room for a minimum of one hundred (100) minutes per week. Activities include drawing and painting, three dimensional activities, appreciation and supplementary art activities.

(f) Time, space, and materials are provided for supplementary, independent art experiences in the regular classroom at the elementary level.

(g) At the middle/junior high school level the art program is exploratory in nature and is required for all students. Preferably, every student has art for a minimum of three periods a week for a year; a less desirable option is one period daily for a semester. The elementary program is expanded to include additional craft and group activities in junior high/middle school.

(h) At the high school level, the program permits students to pursue art as part of the general education program and in specialized electives such as studio courses and/or art history courses of greater depth. The art program provides sufficient facilities, equipment, staff, and materials for in-depth instruction in drawing, painting, ceramics,

crafts, sculpture, printmaking, textile design, metal crafts, and photography.

(i) At least one year in studio art, art history, or humanities is required in grades 9-12. Classes carry one unit of credit and consist of a minimum of two hundred (200) minutes per week.

Personnel - Art

20. (a) Direction and supervision at county and state levels by art supervisors are essential to the development of effective school art programs.

(b) County-level art supervisors serve no more than fifty (50) teachers, and are guides and consultants, not itinerant teachers.

(c) County-level art supervisors have certification in art or art education, and teaching experience at the elementary or secondary school levels.

(d) Continuing education in art is available each year to all art teachers. The state art education coordinator provides assistance to counties in establishing art teacher continuing education programs.

(e) Art classes in grades K-12 do not exceed twenty-five (25); studio courses at the high school level do not exceed twenty (20). Special scheduling is provided for smaller courses.

(f) There is one certified art teacher for every three hundred fifty to four hundred (350-400) children at the elementary level. A high quality program cannot exist

if the regular classroom teacher has primary responsibility for art instruction.

(g) There is at least one certified art teacher for every one hundred twenty-five (125) students enrolled in art courses at the secondary level.

(h) Every art teacher has at least one period per day for planning and preparation of materials and displays.

#### Facilities - Art

21. (a) All art rooms have appropriate work surfaces, adequate display space, appropriate lighting, electrical outlets, sinks, and audio-visual facilities.

(b) Within every elementary school, one special art room is provided for every three hundred fifty to four hundred (350-400) children. All art rooms provide at least fifty (50) square feet of work space per pupil. At least three hundred fifty (350) square feet of storage space is available.

(c) Work and storage space are available in the regular elementary classroom.

(d) Every secondary school of five hundred (500) pupils or less has at least one general art room with no less than sixty-five (65) square feet of work area per pupil. The art room contains work areas suitable for ceramics, metal work, printmaking, textile design, sculpture, photography, and two-dimensional art activities. One-fourth of the area of the room or approximately four hundred (400) square feet of space is provided for storage.

(e) The general art room in the secondary school is designed for maximum flexibility for film or TV viewing, reading, lectures, exhibits, working in two- or three-dimensional media which require special materials and processes, and for extracurricular art education. It contains movable tables to accommodate a variety of activities.

(f) Secondary schools with more than five hundred (500) pupils have one or more of the following specialized art rooms that are adequately equipped and mechanically ventilated to permit types of work not possible in the general art room: metal crafts room; ceramics room; printmaking room; or photography room.

#### Equipment and Materials - Art

22. (a) Equipment for all schools includes ceramic kiln with automatic shut-off and adequate mechanical ventilation, film, slide, and overhead projectors, other electronic teaching aids as are available, projection screens, chalkboard, electrical hot plate, and basic hand tools.

(b) Consumable supplies at the elementary level include those materials appropriate to the age group: papers, cardboards, adhesives and solvents, fabrics and fibers, paints, inks, chalks, crayons, clay, glazes, metal, wire, wood, linoleum, brushes, cutters, and knives.

(c) Source materials at all levels include books, periodicals, color prints, art objects, circulating and permanent exhibits or original works of students and professional artists.

(d) At the secondary level the reference area or

school media center contains art-related books, periodicals, reproductions, slides, films, and tapes.

(e) At the secondary level basic tools, equipment, and supplies are provided for the general art room for sculpture, printmaking, drawing and painting, textile design, ceramics, and photography.

(f) Budget for consumable art supplies:  
elementary -- five dollars (\$5.00) per student per year in 1981 dollars over and above the general supply budget of the regular classroom teacher; junior high -- six dollars (\$6.00) per student per year in 1981 dollars (based on total students in the school); high school -- eight to ten dollars (\$8.00 - \$10.00) in 1981 dollars per student enrolled in art education per year.

(g) Adequate budget for repair and maintenance of art equipment.

Elements of a Thorough and Efficient Early  
Childhood Education Program

23. (a) The purpose of early childhood education (ECE), is to develop a program in all areas of a child's development -- social, physical, emotional, and psychological.

(b) Young children learn best through real-life experiences. Opportunities to experiment are essential in order to teach children to observe, investigate, and secure information. Language skills are developed by providing children opportunities to express their ideas through art, music, dance, and language.

(c) The program must recognize that children enter

kindergarten at very different levels of maturity, and that children raised in a rural setting have had different experiences from children raised in an urban setting. ECE seeks to fill those gaps.

(d) Children have opportunities to role play, develop gross motor skills, music and art skills that will assist in developing reading skills, develop science and math skills, language skills, and reasoning skills.

(e) The program is five days a week, for at least three and one-half (3-1/2) hours per day.

(f) A pre-kindergarten program is needed for all children to detect medical and special education problems and insure that children will be able to participate effectively in the kindergarten program.

(g) For children who are not ready for first grade after one year of early childhood education, a transitional second year is provided staffed with language development specialists.

#### Personnel - Early Childhood

24. (a) Each county has access to an ECE supervisor. Smaller counties have multi-county or part-time supervisors. The ECE supervisor has specialized training in early childhood education. The supervisor conducts continuing education that relates to the problems and concerns of the particular teaching group.

(b) The maximum ratio of children to teachers is twenty to one. To the extent that children enter a program from an isolated area and have had few experiences, the ratio

should be lower.

(c) All classes have an aide to assist in small group instruction, the preparation of materials, and emergency care.

(d) A parent educator is assigned to each school to coordinate activities between the teacher and the home to develop parental skills and inform parents of skills being developed at school and ways to participate in the education of their children.

(e) Support personnel include therapists, counselors, individuals needed to conduct screening, and a nurse who is at the school at least two days a week.

Facilities - Early Childhood

25. (a) The facility must contain a minimum of fifty (50) square feet per child (preferably sixty-five (65) square feet).

(b) The facility must have maximum natural light. A large portion should be carpeted and a large portion tiled. The room should be acoustically treated.

(c) Ample storage is provided for supplies and student belongings.

(d) The facility has its own restrooms, drinking fountain, work sink, waterproof countertop, and access to a segregated playground (either by time or space allocation).

(e) The furniture permits easy reorganization of the room. There are an adequate number of chairs and tables of appropriate height.

(f) The outdoor play area contains a covered all-weather

area and a large grassy area with climbing equipment and swings.

Materials and Equipment - Early Childhood

26. (a) The room contains materials and equipment for a variety of learning activities including: housekeeping materials to expose children to family roles and teach hygiene; blocks to develop gross motor skills and math concepts; a workbench to teach children to use tools and construct objects; in-class climbing equipment; a record player and rhythm instruments; art equipment and materials including paper, paint, scissors, glue, yarns, and moldable and creative materials; equipment, games, and materials for basic hands-on science and math experiences; and listening equipment and a variety of books and printed materials.

(b) Resting mats or cots are provided whether the program is half or full day.

Elements of a Thorough and Efficient Foreign Language Program

Curriculum - Foreign Language

27. (a) Foreign language instruction is provided to all elementary students, beginning in the third grade, at least three times per week. This may be integrated into other learning experiences of the school day.

(b) Junior high school and high school students have access to at least two languages.

(c) High school students have an opportunity to study at least two foreign languages for at least four years.

(d) Provision is made through programmed study or

other means for a student to study any major language he/she desires.

(e) Provision is made for students who enter high school with a background in foreign language from junior high school to continue at their level rather than to start again from the beginning. Such students continue past the fourth level to level five and advanced placement.

(f) A regular part of foreign language study is the study of the customs, traditions, values, and behavior patterns of the people in the countries where the language is spoken. Contributions to and influences on the student's own culture are also included. Language study is related whenever possible to international situations.

(g) Students have opportunities for the following activities: participation in language clubs, fairs, and festivals; viewing of films in the language; correspondence or tape exchanges with students in other countries; visits by native speakers of the language.

(h) Provision is made for the exploration of career options for those who possess foreign language skills and cross-cultural interests.

#### Personnel - Foreign Language

28. (a) Where there is more than one language teacher, a department chairman has been named.

(b) There shall be a supervisor for the foreign language program in every county. Small counties may use a foreign language teacher who supervises part time or a full-time multi-county supervisor.

(c) All members of the staff must meet state certification requirements in the language taught. Elementary instruction may be through an effective video program.

(d) All members of the staff participate in an ongoing foreign language continuing education program. Budgeting shall be provided for this purpose. Provision is also made for inter-class and inter-school visitation.

(e) During the planning period, the teacher has access to the instructional materials center or a room equipped to prepare recordings and visual aids.

#### Facilities - Foreign Language

29. (a) Every secondary foreign language teacher has a classroom to permit decoration to reflect the culture(s) of the language(s) being studied.

(b) The classroom is large enough to allow for rearrangement of furniture for such activities as small work and presentation of skits.

(c) Ample chalkboard, filing, bulletin board, and storage space are provided.

(d) Facilities for making and duplicating tapes are available.

#### Materials and Equipment - Foreign Language

30. (a) Textbooks or necessary course materials are provided for students at all grade levels. Textbooks and materials are periodically reviewed to insure availability of up-to-date linguistic and cultural information.

(b) To supplement the text, workbooks, tapes, test materials, filmstrips, flash cards, etc., are available

in sufficient supply.

(c) Materials such as practice tapes and records are available for student use at home.

(d) The classrooms have large maps of the foreign countries. Each foreign language teacher has use of a tape recorder and record player at all times. Each foreign language teacher has use of a film or filmstrip projector when needed.

(e) Each foreign language teacher has access to video cassette recorders, playback and monitor when needed.

(f) The school library contains reading materials -- books, magazines, newspapers -- in the foreign languages offered in the school.

(g) The school library has an extensive selection of books in English dealing with countries where the languages are spoken.

(h) The professional library contains current copies of the language journals of all languages taught and basic and current literature on the nature and teaching of foreign language learning.

#### Elements of a Thorough and Efficient Health Education Program

##### Curriculum - Health Education

31. (a) The goal of health education is the prevention of health problems. General areas of instruction include growth and development of the human body, mental and emotional health, personal health (i.e., dental health, hygiene, disease prevention, vision and hearing), sex education, nutrition, safety and first aid, consumer health (use of the health

care system), substance abuse, and environmental health.

(b) In grades K-6 the emphasis is on the growth of the human body, mental health, personal health, and nutrition for thirty (30) minutes per day.

(c) In junior high, the emphasis is on the substance abuse, safety, sex education, mental health, and personal health integrated into other subjects (e.g., physical education, home economics, science, social studies) plus one-half year of formal health education one time 7 to 9.

(d) In senior high, the emphasis is on substance abuse, consumer health, safety and first aid, sex education, mental health and personal health -- integrated into other subjects, with one-half year in formal health education; elective offerings in (i) diet and fitness, (ii) environmental health, (iii) mental and emotional health, (iv) safety and first aid (leading to certification), and (v) human sexuality.

(e) Activities include hands-on experiences particularly in grades K-6, the utilization of community resources, and the evaluation, appraisal and planning for improvement of individual health.

(f) Upon the basis of a complete health appraisal by the nurse, assessment of the individual's health needs is made once in junior high and once in senior high, and an individual health program developed (with assistance of the counselor, teacher, nurse, and other relevant personnel). This is followed up with individualized curriculum and/or treatment needs.

Personnel - Health Education

32. (a) Each county has a coordinator for all health services including curriculum, health services, and the school environment -- with appropriate training in health. Small counties may use a multi-county supervisor.

(b) There is a state level coordinator for health.

(c) Ancillary personnel needed include nurses, counselors, home economists, nutritionists, and adequate school service personnel to maintain facilities in healthful condition.

(d) Continuing education is provided annually to give all elementary teachers and relevant secondary teachers meaningful approaches to specific health problems.

Materials and Equipment - Health Education

33. (a) A text is supplied for each student in grades 1-6 and for courses taught at the secondary level.

(b) Grades 1-6 require substantial instructional materials including body models, smoking demonstration materials, health games, manipulatives, and learning stations.

Elements of Thorough and Efficient Industrial Arts and Home Economics Programs

Curriculum - Industrial Arts and Home Economics

34. (a) Industrial arts is a comprehensive educational program concerned with technology, its evaluation, utilization, and significance, and with industry, its organization, personnel, systems, techniques, resources, and products. Topics such as the environment, energy and power, communication, construction, manufacturing, and transportation

are explored as part of the elementary school curriculum.

(b) Home economics involves the study of child care and development, foods and nutrition, consumer education, health and home safety, home management, housing, clothing and personal and family living.

(c) Industrial arts and home economics are available to all students in the junior and senior high school levels.

(d) Industrial arts and home economics are each required for two semesters at the junior high/middle school level and shall consist of approximately two hundred twenty-five (225) minutes per week. Industrial arts classes shall be offered in communications (drawing and design, graphic arts, or visual graphics, and photography) and construction and manufacturing (wood, plastics, ceramics, and metals). Home economics courses shall include some or all of the following: child care and development; foods and nutrition; consumer education; health and home safety; home management; housing; clothing; and personal and family living.

(e) Industrial arts and home economics are offered as elective subjects in the senior high school, each class meeting not less than five periods per week for a semester.

(f) Students who are academically and/or economically disadvantaged and students who have physical, mental, and/or emotional impairments are provided special services and assistance, as required, to enable them to succeed in the industrial arts and home economics programs. Students identified as gifted and talented are provided learning activities consistent with their abilities.

(g) Industrial arts and home economics instruction are presented as educational activities in which not less than fifty percent of the available instructional time is spent in involvement with materials and tools, and/or hands-on activities.

(h) Industrial arts and home economics students have a functional student-directed organization to develop leadership ability and responsibility assignments.

Personnel - Industrial Arts and Home Economics

35. (a) A full-time state supervisor is provided in both industrial arts and home economics.

(b) Maximum pupil-teacher ratio is twenty (20).

(c) A daily planning period is provided for each teacher teaching a full schedule of classes.

(d) Industrial arts and home economics teachers maintain active participation in continuing education through formal study, work experiences, professional activities. Budgeted funds are expended for this purpose.

(e) Support personnel includes: teacher aides or para-professionals in classes where enrollment of students with special needs necessitates their assistance; guidance services to assist all students in determining their interests, aptitudes, and abilities, selecting the program that meets their career/avocational goals, and expanding their individual options; media/instructional resource center services; secretarial and clerical services; custodial services to assure safe and sanitary facilities; and maintenance services to assure safe and functional facilities and equipment.

Facilities - Industrial Arts and Home Economics

36. (a) Industrial arts laboratories average one hundred (100) square feet per pupil, and preferably one hundred twenty-five (125) square feet per student, exclusive of ancillary space.

(b) Facilities for instructional space activities, including use of all types of audio-visual equipment, is a necessary part of the laboratory-shop facility for home economics and industrial arts.

(c) Adequate storage space for each laboratory is provided for storage of materials, projects, and tools.

(d) Adequate washing facilities are provided in each laboratory.

(e) The facilities are accessible to the handicapped and there is direct access to the building, the outside, and auxiliary spaces.

(f) The laboratories are designed as specified in the Handbook on Planning School Facilities, Sec. 407 for industrial arts, and Sec. 420.01-.02 for home economics.

Materials and Equipment - Industrial Arts and Home Economics

37. (a) The school budget provides adequate funds to support all elements of the programs.

(b) Current textbooks and references are available to each student as appropriate.

(c) Supplementary material including pamphlets, periodicals, and other materials suitable for student use, which are directly related to the instructional activities, are available.

(d) Films, filmstrips, graphs, charts, projection transparencies and other instructional aids are provided in all areas being taught.

(e) Consumable supplies and materials are provided in sufficient quantity and quality to achieve course objectives.

(f) The equipment, tools, and machines specified by the state coordinator in the respective areas needed to fulfill program goals and course objectives shall be available and properly maintained.

(g) Specially designed or modified tools, machines and equipment, and books and other instructional materials are provided for students with special needs.

Elements of a Thorough and Efficient Language Arts Program

Curriculum - Language Arts

38. (a) A high quality elementary and secondary school language arts curriculum includes much more than the teaching of the reading and language skills tested on standardized achievement tests. In order to develop students who are literate in the modern American society, students must be given the opportunity to fully develop the entire range of communication skills, including the ability to read, write, speak, hear, and observe, as well as to understand and utilize contemporary mass media -- e.g., radio, television, film, and print.

(b) Individualized instruction is critical for the development of language arts skills, and the instruction must be tailored to the needs of each student at each grade

level. There are remedial, developmental, and enrichment components at all levels.

(c) In order to provide a high quality language arts program, there is a diversity of curriculum offerings, a wide variety of materials, appropriate equipment and facilities, as well as staff trained in various specialty areas (e.g., journalism, speech, drama, etc.).

(d) There shall be a state specified minimum "time on task" in language arts by grade level, K-8. Opportunity for writing and oral self-expression shall be included on a regular basis at each grade level.

(e) A county curriculum guide is developed for all levels, K-12, with a stated curriculum in language arts instruction (together with specified materials) and a sequential, coherent, systematic program or plan for the teaching of language arts.

(f) At all levels (K-12) every child with a possible learning problem is tested annually to diagnose any reading deficiencies which may exist. This test shall commence when the child is in kindergarten prior to entry into first grade to determine whether readiness skills have been acquired. Any child reading one year or more below ability shall be provided the services of a reading specialist and remedial reading program. An individualized prescriptive plan shall be developed for each such child which takes into account the child's strengths and weaknesses.

(g) All children shall receive instruction in writing,

including creative, expository, and narrative writing. Writing in grades 2 through 6 shall be as frequent as once a week at a minimum and preferably on a daily basis. All junior high students shall be given regular experiences in writing on at least a weekly basis in each language arts and social studies course. Students should be given opportunities for free expression.

(h) A quality writing program at the high school level assumes that grammatical, mechanical, and usage skills have been mastered at earlier levels. If these skills have not been mastered, individualized remediation is provided.

(i) The following writing opportunities are available to all high school students: creative and expository writing; writing in all modes of discourse (narration, argumentation, personal writing, reporting, analysis, etc.); frequent opportunities to respond to the writing of others; opportunities to write both prose and poetry.

(j) Reading at the elementary level involves frequent opportunities to respond to literature, instruction in how to locate information, opportunities to hear reading, and opportunities for self-selected reading.

(k) Junior high and high school students are given opportunities for frequent and wide self-selected reading through a variety of course offerings covering traditional world literature, contemporary literature, poetry and drama, and literature written for adolescents.

(l) The language arts program includes drama and film with frequent opportunities for students to see, read, and

perform a variety of drama from improvisational to traditional; opportunities to attend plays and hear actors talk about acting; opportunities to produce and/or take part in quality school and classroom plays; and opportunities to study film as a medium and as a vehicle for dramatic technique.

(m) The language arts program includes a debate and public speaking program with opportunities to learn debate and speaking skills and to participate in state and regional conferences and tournaments.

(n) The language arts program includes a mass media program which requires that all students learn how various media (radio, television, print) organize, structure, influence and deliver information. Students are provided an understanding of media industry structure and economics, and have experience in utilizing mass media for their own constructive enjoyment and enlightenment. Students have the opportunity to express and inform through the mass media including writing, editing, composing, printing, and photography in both print and non-print media (newspaper, television, radio, etc.).

#### Personnel - Language Arts

39. (a) Sufficient state specialists are employed by the State Department of Education to provide consultation, guidance, and leadership to counties in the development and implementation of language arts-reading programs, including remedial reading specialists.

(b) Each county has sufficient supervisors for language arts, as well as remedial reading, with responsibility to

provide leadership and support in the areas of language arts and reading for both elementary and secondary schools.

(c) In high school, there is a chairperson of the language arts department whose responsibilities is to provide leadership and support in the area of language arts and reading, and, with the principal, to evaluate and monitor the teaching staff.

(d) The principal of an elementary school is the instructional/curriculum leader of the school and shall have sufficient clerical and support staff to assist in the performance of administrative duties so as to allow time to provide leadership and support in language arts, reading, and other curriculum areas. The state specifies the principal's duties as an instructional leader and monitors this responsibility. There shall be no teaching principals. In addition, the principal is provided with training in the area of language arts and reading prior to receiving a principal's certificate and is provided an opportunity for annual training in the area.

(e) Every school has sufficient teaching staff trained in language arts so that individual attention can be provided students in each of the communication skills areas. Every school serving grades 7 through 12 has a teacher or teachers with training in speech, drama, journalism (both print and non-print), student publications, in addition to teachers with literature, language, and composition skills. Funds are available either to pay supplements to teachers expected to supervise student plays, etc., or to hire full-time

specialists in the above areas.

(f) Language arts classes have no more than twenty (20) students per teacher for first and second grades and twenty-five (25) thereafter. Remedial classes shall not exceed ten (10), for any one remedial specialist.

(g) In order to maximize the attention given each student, split grades should be avoided.

(h) Teachers at all levels, elementary, junior high school, and high school, shall have a daily planning period, to be used solely for planning purposes.

(i) Classroom teachers and specialists in language arts must be provided with an opportunity for ongoing training in the effective use of the language arts curriculum guide and in specific areas of need in the county. Such training shall include but not be limited to on-the-job training in the classroom and paid visits to innovative or model language arts programs and conference.

(j) The school has ready access to the services of diagnostic personnel including but not limited to a speech therapist, psychologist and/or the appropriate special education diagnostic personnel to insure that the child is an appropriate special education diagnostic personnel to insure that the child is an appropriate candidate for a remedial reading class, does not have a special education exceptionality, and receives appropriate supportive services while learning to read.

#### Facilities - Language Arts

40. (a) Every school has a media center with a broad

array of materials, accessible to all language arts teachers and students. It is critical for counties with inadequate county libraries and/or no college library to have better school media centers than counties where the public school students have easy access to good county and/or college libraries.

(b) Since atmosphere contributes to the stimulation of children and their attitudes toward learning, the classroom should be appealing, well-lit, and non-restrictive.

(c) Multi-purpose rooms with stage area and equipment storage are provided in elementary schools. Auditoriums with fully equipped stage, storage area, and attendant facilities shall be provided in secondary schools.

(d) Resource rooms for language arts teachers in which teachers can meet, develop materials and curriculum, and store language arts-related resources are provided.

(e) A dark room for photography at the senior high school level, and appropriate rooms for media activities (radio, television, newspaper, yearbook) are necessary.

#### Materials and Equipment - Language Arts

41. (a) Current program materials must be supplied including required text for each student, as well as access of all students to current supplemental texts of a varied nature in the classroom.

(b) Textbooks are available for different reading levels.

(c) Current supplementary materials are readily available in the classroom, e.g., books on a variety of subjects,

magazines, newspapers, games, reference works, varied types of writing instruments, programmed materials, flash cards, all appropriate to the particular communicative skill being taught and the reading levels of students.

(d) Current supplementary teacher's materials which are necessary to teach are provided, e.g., workbooks, diagnostic devices, etc. A minimum of Twenty Dollars (\$20.00) per student per subject area at 1981 costs is necessary for this cost in a textbook adoption year, while Ten Dollars (\$10.00) per student at 1981 costs is required in other years.

(e) Instructional equipment, e.g., overhead projectors, transparencies, tape recorders, films, record players, typewriters, and television are present in the classroom.

(f) For an effective writing program, in addition to textbooks and supplementary material available to each student, classroom references are available, including a variety of usage and style handbooks, reference materials such as dictionaries, thesauruses, almanacs, magazines, and publications including prose and poetry.

(g) All teachers have access to a ditto machine, xeroxing equipment, transparencies, and overhead projectors.

(h) In order to teach about and from media, each teacher has regular and easy access to the means to reproduce daily newspaper stories and magazine articles and the means to videotape television and record radio programming. Thus, the following materials and equipment are essential: videotape recorders and monitors, tape recorders, radios,

televisions, numerous magazines and newspapers, and reproduction equipment.

(i) To enable interested students to work with media (radio, television, films, and print) photographic reproduction equipment and materials, cameras, television sets, video cameras, portopacks, microphones, amplifiers, etc., are available.

(j) For speech and drama, resources are available to purchase and reproduce scripts, to purchase necessary costumes, makeup, scenery, and props. Sound and lighting equipment is provided. Course materials are available to study drama. For debate and public speaking, resources are available for travel to and from tournaments and conferences.

(k) In order to have a quality language arts program, it is critical to have adequate school resources for students to travel to see plays, attend journalistic and debate conferences and to hear outside speakers on various aspects of language arts. This need is essential in those communities where the public schools are the primary or only cultural or learning centers.

#### Elements of a Thorough and Efficient Mathematics Program

##### Curriculum - Mathematics

42. (a) The curriculum in grades K-8 shall develop basic skills which include the following areas: number concepts, computational skills, problem solving, applying mathematics to everyday situations, geometry, measurement (e.g., metric system), probability and statistics, estimation and

approximation, computer literacy (e.g., calculators), and the affective domain. Eighth graders have the opportunity to take algebra I.

(b) At least three units of mathematics are required for high school graduation. High schools offer at least four units of general math (such as consumer, general, vocational, proactical, basic skills, and shop math) and five units of academic math (such as algebra I and II, geometry, trigonometry, precalculus, computer science, and probability and statistics).

(c) Remediation is essential at all grade levels and must be available to all students who are working below their ability level. Remedial instruction should be coordinated with the basic text program and classes limited to fifteen (15).

(d) Programs must be established for high-ability students in mathematics at all grade levels.

(e) All students must have the opportunity to participate in enrichment activities including math clubs, contests, and field trips.

(f) Students shall be provided math instruction as follows: fifty-five (55) minutes daily, grades 1-4; two hundred seventy-five (275) minutes weekly, grades 5-8; two hundred twenty-five (225) minutes weekly, grades 9-12.

(g) The state must have mathematics program objectives which are reviewed regularly and upon which each county's mathematics program is based.

Personnel - Mathematics

43. (a) Classes do not exceed twenty-five (25), and fifteen (15) for remedial classes.

(b) There are adequate number of state mathematics curriculum supervisors.

(c) There shall be adequate supervisors for the mathematics program in every county pursuant to standards established by the state. This may be achieved in small counties with a math teacher who supervises at least half-time or with a full-time multi-county math supervisor for no more than three counties.

(d) Every school designates a math specialist to serve as diagnostician, develop and teach in remedial, enrichment, and gifted programs, and assist in mathematics program development and evaluation.

(e) Every teacher has at least one planning period per day.

(f) Adequate continuing education is provided to all teachers of mathematics. Continuing education occurs on an ongoing basis throughout the year. The county facilitates teachers' participation in professional meetings and provides teachers the opportunity to observe other teachers.

Materials and Equipment - Mathematics

44. (a) Basic materials, manipulative aids, and other supplementary materials which are an integral part of a successful mathematics program are provided. All materials needed to teach the textbook including workbooks are available at all grade levels.

(b) A complete set of materials is provided for students at varying ability levels.

(c) Every student has access to computers. Audio-visual equipment is available in order to present math materials in a variety of learning modes.

Elements of a Thorough and Efficient Media Program

Curriculum - Media Program

45. (a) A comprehensive media program provides vital support to the curricular, instructional, and learning aspects of the total educational program and provides instruction in media skills.

(b) The media program provides curricular support by providing adequate and current materials (print and non-print) in an organized fashion to support every area of the curriculum. A media collection includes, but is not limited to, books, filmstrips, periodicals, models, maps, globes, pamphlets, clippings, micro forms, charts, posters, pictures, art forms, programmed materials (micro computer software and other), newspapers, recordings (video and audio), etc., and access to 16mm film. The material in the collection reflects current and accurate information. More costly material is collected at the county or regional level.

(c) The media program provides instructional support by providing instructional materials and equipment and guidance in the strategies and techniques for utilizing instructional resources. Commercially prepared instructional materials available at the building level include filmstrips.

slides, transparencies, worksheets, workbooks, posters, charts, graphs, models, etc. The teacher also has access to 16mm films and other material judged to be too expensive to be kept at the individual school. When commercially prepared materials needed for instruction are not adequate or available, teachers have access to equipment to produce instructional materials as needed. Supplies, equipment and training are available to assist them in the production of instructional material. A space is provided to allow for teachers to plan and produce materials to be used for instruction.

(d) The media program provides learning support by providing adequate and current educational materials and equipment as outlined in Sec. b and c, as well as the best environment conducive to learning. Assistance and planning are provided to students for the utilization of materials provided for learning support. Instruction is provided to enable the student to retrieve, receive, and utilize the information provided in the material regardless of the format. Students receive instruction on producing their own material for use in the school setting.

(e) Time is made available for all students to utilize media material for individual learning, project development, and media skills instruction. The time provided is no less than forty-five (45) minutes for each high school student per week and no less than thirty (30) minutes for each elementary and junior high school student per week. This time does not include the time required

for the regular checking in and out of material. ("Study hall" is not scheduled in the media center.)

(f) The media program provides instruction in media skills that will enable students to retrieve, receive, and utilize information.

#### Personnel - Media Program

46. (a) State media staff includes two media coordinators and appropriate support staff. The state's responsibilities include planning, developing standards, making budget recommendations based upon need, providing consultative services, organizing staff development programs, producing instructional materials not available from other sources, evaluating, and researching.

(b) A regional media staff consists of one certified media specialist, paraprofessionals, and distribution staff as needed. The regional staff's responsibilities include providing advisory services, technical processing, building special collections, providing examination collections, producing radio and television programs, serving as centers for computerized instruction, etc., and carrying out staff development programs.

(c) The county media staff shall include at least one full-time certified media supervisor, and adequate support staff. Small counties may have multi-county supervisors, whose sole responsibility is in media.

(d) The school staff includes one full-time certified media specialist and one full-time media paraprofessional for each school with at least one hundred fifty (150)

students. For schools having less than one hundred fifty (150) students, one full-time media paraprofessional and a part-time certified media specialist; but no school has the services of a certified media specialist for less than two days per week or eight days per month. For schools having more than one hundred fifty (150) students, one additional certified media specialist for each four hundred fifty (450) students in excess of one hundred fifty (150) students is provided; an additional half-time media paraprofessional for each three hundred fifty (350) students in excess of one hundred fifty (150) students is provided.

Facilities - Media Program

47. (a) Reading/browsing area minimum size of forty (40) square feet for one-tenth of student body including but not limited to appropriate circulation, desks, furnishings, files, reference area, informal reading area, carrels, and carpeting.

(b) Media specialist's office adjacent to but not part of reading/browsing area.

(c) Maintenance, repair, and work area minimum two hundred (200) square feet, with equipment to facilitate processing, maintenance, and minor repair of books, materials, and equipment.

(d) Production area with equipment for production of photographic, graphic, and audio materials.

(e) Viewing/listening area with appropriate acoustically treated and light controlled areas.

(f) Equipment storage area.

(g) Periodical, book, and newspaper storage area.

(h) Classroom areas are equipped to accomodate a wide variety of media activities.

Materials and Equipment - Media Program

48. (a) Wide variety of print and non-print materials, including books, periodicals, newspapers, films, filmstrips, audio and video recordings, models, specimens, computer programs, educational games in all educational program areas, that are current and accurate.

(b) Wide variety of instructional equipment including projectors (16mm, 8mm, overhead, opaque, filmstrip, slides) audio and video recorders/players, projection screens, televisions, that are well maintained, operable, and accessible.

(c) Computers and other appropriate technology to assist instruction and make students familiar with current learning and information storage and retrieval tools.

(d) Wide variety of production equipment and supplies for teachers and students.

(e) A minimum annual allotment for maintenance of the collection of books, periodicals, audio-visual equipment, supplies, and other library and learning resources for the media program, excluding furniture, classroom texts, and classroom supplies, of not less than eight dollars (\$18.00) per student in the school in 1981 dollars (but not less than four thousand dollars (\$4,000.00) per school in 1981 dollars).

(f) The standards adopted by the American Library Association and Association for Education Communications and

Technologies, are incorporated by reference in these standards.

Elements of a Thorough and Efficient Music Program

Curriculum - Music

49. (a) A quality music program offers the following experiences at all grade levels for those involved: the performance of music, the creation and organization of music, and the perception, analysis, and description of music.

(b) Appropriate music instruction is provided to the special education student and to the gifted student at all grade levels. Such instruction is to be cooperatively planned in accordance with the child's individual education plan.

(c) Kindergarten students receive experiences with the characteristics of sound, the pulses of rhythms, and experiences in singing a variety of songs. These experiences are acquired through the use of physical movement, voice, and classroom instruments.

(d) Primary students have experienced an introduction to singing, music reading, harmonic and melodic structure, rhythmic patterns, listening skills, and creative opportunities upon the completion of the third grade.

(e) In addition to experiences listed in (d), intermediate students have opportunities to observe student and professional music performances and to participate in group singing. The study of composition in the general music course includes experiences in improvisation, environmental sounds, electronic music, and instrumental

and vocal compositions.

(f) At the elementary level music is taught a minimum of one hundred (100) minutes per week.

(g) Concerts, coordinated with the child's instruction, are provided to all elementary school students periodically throughout the year.

(h) An extension of the general elementary music program includes opportunities for specialized instruction in instrumental and vocal music. Students are provided opportunities for individual music experiences through playing musical instruments and small group singing. Students showing exceptional aptitude and interest are afforded the opportunity to receive concentrated experiences in instrumental and vocal music. Instruction in recorders, strings, woodwinds, brass, percussion, and keyboard is provided. Classes and/or individual lessons meet at least twice weekly for a total of not less than sixty (60) minutes.

(i) The junior high experiences provide all students with activities to gain musical understanding through general music classes and specialized study involving instrumental and vocal music. The general music program includes opportunities for music performance, musical participation, instrumental and vocal musical experiences, and professional concerts relevant to the interest of the junior high student. Student concerts and musical dramas are presented as a part of the school program.

(j) General music classes are required for all seventh and eighth grade students not enrolled in instrumental or

vocal classes. All seventh and eighth grade students are enrolled in such music classes no less than the equivalent of five periods per week for one semester.

(k) Beginning and intermediate class instruction on several instruments and voice is available in the junior high to any student desiring it. Mixed chorus is offered in the junior high. Band or wind ensemble is offered in the junior high school. Orchestra or string orchestra is offered in the junior high. Experience in small ensembles is available in the junior high to any student desiring such experience.

(l) Instrumental, vocal and general music classes are available as elective music courses to all students in grades 9 through 12.

(m) General music continues in high school in elective music courses. The general music program is expanded to give the student an opportunity to study voice, instruments, and music literature that can be used throughout life.

(n) There is at least one offering in each of the following areas at each high school: mixed chorus, band or wind ensemble, and orchestra or string orchestra. These courses meet as frequently and for as many minutes as comparable electives in other fields. Experiences in small ensembles are available in the high school to any student desiring such experience.

(o) A minimum of one additional organization or description-emphasis course is offered for each three (300) students above three hundred (300) in the school. At least

one alternative performing organization (for example, stage band or swing choir) is available in the high school for each four hundred fifty (450) students in the school.

(p) A student preparing for a music career will have the opportunity to take courses in individual music study, composition, music theory, and music history during senior high.

#### Personnel - Music

50. (a) Instruction in music is provided by music specialists at all grade levels. No single factor is more vital to the development and maintenance of a quality music program than a competent staff of adequate size.

(b) Music specialists will receive continuing education annually to include but not to be limited to an opportunity to visit innovative or model music programs and conferences. Teachers will be permitted professional leave with pay to attend.

(c) All counties shall have access to a qualified county music supervisor who will administer and design the entire music program, grades K-12, including responsibility for planning curriculum and evaluating all music staff in the county. When county music staff totals twenty (20), the county shall have a full-time music supervisor; with less than twenty (20), the county may have a multi-county music supervisor. A music supervisor should have at least a master's degree in music education.

(d) The average class size for general classroom music in traditional settings does not exceed twenty-five

(25).

(e) No music teacher teaches more than twenty-four (24) contact hours per week or more than the maximum number of hours for other teachers in the school.

(f) Each music teacher has at least one period daily, excluding travel time, for preparation and evaluation.

(g) The secondary school music program is organized in such a manner that one instrumental and one vocal teacher is available for the first five hundred (500) students and one music teacher for each additional five hundred (500) students. In no event should staff be insufficient to meet curriculum requirements.

(h) Guidance services are available to students desiring information on music careers.

#### Facilities - Music

51. (a) There is an adequate facility or facilities for teaching general and instrumental music in each elementary school. Such area(s) are large enough to accommodate the prevailing class size and provide ample space for physical movement.

(b) Such rooms contain stereo sound reproduction and recording equipment, piano, instruments, and appropriate furniture. Such rooms have direct access to instrumental storage, practice rooms, and storage rooms, and are acoustically isolated from one another and from other parts of the building.

(c) Sufficient storage space is available in each elementary school to store the necessary instruments, equipment

and instructional materials.

(d) Two rooms are available in each elementary school for individualized activities or practice.

(e) Each high school and junior high or middle school contains adequate rehearsal facilities for instrumental or choral groups. The facilities are twenty-four (24) square feet per pupil and capable of accomodating the largest prevailing class. There is direct access to instrumental storage, and other rooms in the music suite. They are isolated as much as possible from quite areas of the building. The facilities have storage for vocal and instrument accessories, wall cabinets for music folders, open shelving for books, tapes, cartridges, and record albums, wide doors with flush threshold for moving large instruments to and from the studio, two or three microphone outlets for recording in the studio, stereo sound reproducing system, and piano.

(f) The high school music rehearsal facility contains practice rooms.

(g) Each high school and junior high or middle school contains acoustically isolated classroom space for organization-emphasis and description-emphasis classes in music. These facilities may be used by students for music listening and for independent study.

#### Materials and Equipment - Music

52. (a) Consumable and nonconsumable supplies are available to each elementary and secondary music teacher. A budget is provided for the special supplies and equipment needed in

the teaching of music.

(b) An annual budget for the repair and maintenance of instruments and equipment equal to at least four percent of the current replacement value of an adequate inventory of instruments and equipment is provided. A fund is maintained for the replacement of school-owned instruments and contributes annually to this fund an amount equal to at least seven percent of the current replacement value of an adequate inventory of instruments.

(c) Each school provides a current basal series for each classroom. A copy of materials needed for out-of-class work is provided for each student. The accompanying recordings and teacher's books are also provided.

(d) A beginning or intermediate instruction book is provided for each student enrolled in instrumental classes.

(e) A library of large and small ensemble music for beginning and intermediate string, wind, and percussion players and vocalists is provided in each school and is properly stored.

(f) Each music room has convenient access to an adequate variety and number of rhythm and other instruments to accommodate the largest group taught. Secondary music rooms have a larger collection of melody instruments, such as recorders, guitars, brass, and woodwinds.

(g) Each room where music is taught contains a piano, necessary audio-visual equipment, melodic instruments, and staff liner.

(h) Each school has a wide variety of orchestral,

wind, brass, and percussion instruments and furniture sufficient to accommodate the largest group taught and of appropriate size for the age group being taught.

(i) Each school includes a library or learning resource center that contains a variety of music books, recordings, scores, films, filmstrips, transparencies, and programmed, and self-instructional materials.

(j) Each high school music room has appropriate recording equipment.

Elements of a Thorough and Efficient Physical Education Program

Curriculum - Physical Education

53. (a) Primary (K-3) curriculum includes movement education, self-testing activities, organized games and rhythms (e.g., fundamental movements, singing games and creative dance).

(b) Intermediate (4-6) program includes instruction in the following areas: stunts and tumbling, body mechanics and fitness; aquatics; running, throwing, jumping, catching, bending, twisting, low organized games; and rhythms.

(c) Elementary students have instruction thirty (30) minutes a day.

(d) The secondary school physical education program includes required instructional classes, intramurals, informal recreational programs, and broad outdoor educational offerings.

(e) Secondary instruction includes:

(1) Gymnastics.

(2) Rhythms (social and modern dance).

(3) Non-traditional team sports (volleyball, track and field, fieldball and speedball, lacrosse, field hockey, team handball).

(4) Lifetime sports (golf, bowling, tennis, archery, racquetball, handball).

(5) Outdoor recreational activities such as water sports (e.g., swimming, angling and fishing, kayacking, and land activities (e.g., backpacking, hunter safety and shooting sports, cross country skiing, orienteering, mountain climbing).

(6) At least twelve (12) elective offerings at the senior high level are chosen on a rotating basis among the five categories.

(f) Secondary intramurals are an outgrowth of the instructional classes at the junior high level and are voluntary. In senior high intramural offerings are in regular team sports.

(g) Any interscholastic offerings in basketball, track and field, gymnastics, golf, bowling, tennis, and swimming must be offered equally to boys and girls. Any additional offerings must be offered in equal number to boys and girls.

(h) An informal recreational program such as table tennis and shuffleboard is recommended.

(i) All secondary students have physical education three periods per week each year or the equivalent.

(j) Adapted physical education is provided for those students who, because of health reasons, are unable to

participate in regular classes.

Personnel - Physical Education

54. (a) Separate state supervisors for physical education and health.

(b) A county curriculum supervisor is necessary to coordinate county programs (in smaller counties, a multi-county coordinator would be acceptable). The county supervisor develops and monitors the program to assure the provision of a high quality program, and conducts continuing education.

(c) Certified physical education teacher for instructional program for all students K-12 plus staff to supervise intramural sports and interscholastic sports.

(d) Junior high and senior high must have a male and a female staff with different skills when the number exceeds one.

(e) Elementary staff - one certified teacher for every three hundred (300) students and proportionately above three hundred (300) students.

(f) Junior high - one certified teacher for every one hundred seventy-five (175) students.

(g) Senior high - one certified teacher for every three hundred (300) students.

(h) Maximum class sizes at the elementary level are the same as other classes, 1:35 at the junior high level, and 1:30 at the high school level.

(i) Physical education teachers have an ongoing program of continuing education in physical education to meet their needs, and funds are provided for teachers to

attend meetings.

Facilities - Physical Education

55. (a) The elementary indoor facility should be between four thousand (4,000) and four thousand, eight hundred (4,800) square feet, with a minimum ceiling height of twenty-two (22) feet. This room can double as a multipurpose room only if school does not exceed three hundred (300) students. Storage of two hundred to three hundred (200-300) square feet and recessed water fountains are provided.

(b) Outdoor elementary facilities include a covered blacktop area of four thousand (4,000) square feet, and a field game grassy area large enough to accommodate soccer, touch football, softball, etc.

(c) The secondary (high school and junior high school) indoor facilities include a gymnasium large enough to accommodate regulation basketball, volleyball, gymnastics and a class maximum of thirty to thirty-five (30-35). Minimum square footage is five thousand, four hundred (5,400) square feet of usable space or one hundred twenty-five (125) square feet per student, with a twenty-four (24) foot ceiling to the low beam. Adequate storage for gymnastics and other equipment, with large doors, is provided. Boys' and girls' dressing/locker rooms are provided that are a minimum of seven hundred fifty (750) square feet. Adequate lockers, benches, private toilet facilities, and drinking fountains are provided. Shower rooms are provided for each sex, directly accessible to the locker room through the drying rooms. Showers have individual controls and warm floors that drain adequately.

body-drying area is provided. Minimum size is one hundred (100) square feet, with towel holders, floor drains, and warm floors.

(d) Outdoor junior high and senior high facilities include a covered blacktop area of four thousand, eight hundred to five thousand, four hundred square feet and an adequate field games area.

(e) Outdoor senior high facilities include space for individual sports such as tennis and track.

Equipment and Materials - Physical Education

56. (a) Equipment basic to primary grades includes a variety of balls, ropes, hoops, balance beams (one for every five students in class), mats (one for every five students), and rhythm and movement records and equipment. In activities where individual use is contemplated, there shall be one piece of equipment for each member of the class.

(b) Equipment basic to intermediate grades includes soccer equipment, volleyballs and nets, basketballs, baskets, footballs, softballs and bats, folk and square dance records and equipment, gymnastic apparatus, and additional equipment to meet the county's curriculum.

(c) The elementary school must have available one dollar (\$1.00) per student per year at 1981 costs for basic equipment replacement.

(d) Equipment for the secondary programs must be sufficient to meet all the curriculum requirements. Replacement funds of two dollars (\$2.00) per student per year at the junior high level and three dollars (\$3.00) per student

per year at the senior high level at 1981 costs.

Elements of a Thorough and Efficient Science Program

Curriculum - Science

57. (a) Elementary (1-6) curriculum includes biological and physical science with "hands-on" experiences that develop an understanding of concepts of space, time, energy, and matter.

(b) In junior high (7-9), experiences are 40-50% laboratory. The following courses are required: Life Science - 1 year; Earth-Space Science or General Science - 1 year; and Physical Science - 1 year.

(c) All high schools (10-12) must offer Biological Science with 40% laboratory; Chemistry I with 60% laboratory; and Physics with 60% laboratory. Elective offerings available to all students must include biology electives such as Anatomy (physiology), microbiology (histology), Ecology, (environmental sciences), and other microscopic areas (e.g., forestry, sanitation, taxonomy). Elective offerings in chemistry such as Organic Chemistry, and Chemistry II; Elective offerings in Physics (e.g., Electronics, Basic Mechanics). Elective offerings in Physical Science (e.g., Geology, Astronomy, Meteorology or Earth Science); and independent study. The high school electives are essential for any student who wants to pursue a scientific career.

(d) Students in elementary school have science a minimum of ninety (90) minutes per week, which may be taught as part of another subject area in the primary grades.

(e) Junior high school students have science a minimum

of two hundred twenty-five (225) minutes per week. Senior high science courses meet two hundred seventy-five (275) minutes per week.

#### Personnel - Science

58. (a) Junior and Senior High School staff are certified in the particular science area being taught.

(b) Each county has access to a science supervisor to design the curriculum and conduct staff development. (Smaller counties may utilize a multi-county supervisor).

(c) Junior and Senior High staff receive specialized continuing education in their field of science annually.

(d) The maximum class size for a laboratory science class is twenty-four (24). Sixteen is an appropriate size. Larger class sizes are dangerous as well as not conducive to learning.

(e) Each teacher has a planning period and the space and materials to prepare for class.

#### Facilities - Science

59. (a) Sufficient laboratories at the junior high level so that all classes have access to a laboratory when needed. The laboratory should be at least one thousand (1,000) square feet, and have adequate counter space, acid-resistant sinks with water, gas and electricity, storage, shelving and demonstration table. In addition there must be a storage facility, preparation space, and classroom space for lectures.

(b) The facilities at the high school level include:

(1) a chemistry-physics laboratory which is with a minimum of one thousand, six hundred (1,600) square feet exclusive of

storage, with an instructor's demonstration table including sink, hot and cold water, gas and electricity, laboratory work space of 2-12/ feet per student with sink, water, gas, electricity, and storage, ventilated fume hood, a lecture area, storage areas of one hundred (100) square feet for both chemistry and physics, and a space for project preparation;

(2) a biology or general science laboratory which is a minimum of one thousand (1,000) square feet exclusive of storage, with an equipped instructor's demonstration table, student work space with acid resistant sinks with hot and cold water, impervious work surface, gas and electricity, storage, shelving, pupil tables and chairs, fire extinguisher, storage of at least two hundred (200) square feet, and a project preparation area.

#### Equipment and Materials - Science

60. (a) Appropriate supplies and equipment in sufficient quantities for use by each student. Students learn science concepts through experimentation and observation.

(b) Each student is provided a current science text.

(c) At the elementary level, a variety of materials and equipment for "hands-on" experimentation are provided, and teachers must be instructed in methods for using such equipment.

(d) The necessary instructional materials and equipment for a thorough and efficient science program in grades 7-12 include glassware, balances, microscopes, specimens, and chemicals in sufficient number for all students as exemplified in detail in the Kanawha County Secondary Science Program of

Studies.

(e) Because the function of science is to teach students to relate to the world around them, field trips integrated into the curriculum are an essential element of a science program at all grade levels. All students are provided the opportunity to participate in a science fair.

Element of a Thorough and Efficient Social Studies Program

Curriculum - Social Studies

61. (a) Social studies instruction is available at all grade levels, K-12. Social studies is required in grades K-11 with elective experiences available in grades 9-12.

(b) Curriculum guidelines, statements of philosophy in structuring the total program, and sequential objectives of the instructional program are available to teachers.

(c) Social studies programs include a wide variety of learning activities which appeals to many kinds of students: making surveys; tabulating and interpreting data; acting out scripts; using reference tools; role-playing; hearing and questioning classroom speakers; using case studies; listening to music; making a collage; brainstorming; studying films; working in a community project; conducting an investigation; advocating a thought-out position; simulating and gaming; making field trips; comparing points of view; studying social science books and articles; participating in discussions patterned on explicit strategies for behaviors such as communicating and valuing; participating in social studies fairs.

(d) Curriculum for grades K-6 includes basic concepts

of physical, cultural, economical, political, and social environment. In the primary grades this may be integrated with other parts of the curriculum.

(e) The following are broad subject areas that are to be taught in social studies grades 7-12: basic political systems and their impact on members of society; the role of a responsible citizen; basic economic systems and their impact on members of society; history, including local and labor history; the effects of spatial relationships and regionalization on the development of the human experience; man's relationship to his physical environment and his ability to survive with that system; the importance of multi-cultural understanding in a pluralistic society; and basic social systems and their impact on members of society.

#### Personnel - Social Studies

62. (a) A curriculum supervisor coordinates the social studies program on a full-time, part-time county, or full-time multi-county basis.

(b) Secondary schools have a department chairperson to coordinate the social studies program and serve as a communications link to the supervisor.

(c) Each county conducts a survey of needs and develops an ongoing continuing education program to address those needs. Continuing education in social studies is provided to all social studies teachers. The county has a travel budget to insure that outside experts in the field can participate in the in-service program.

(d) Teachers are provided an opportunity to attend

professional meetings.

(e) Students at all grade levels have opportunities for small group and individual instruction.

Facilities - Social Studies

63. (a) Each teacher has a regular classroom.

(b) Classrooms are designed to facilitate a diversified social studies program, and permit variation in types of activities and the size of groups.

(c) Classrooms are designed for the effective use of audio visual materials.

(d) Wall surfaces permit use for display.

Materials and Equipment - Social Studies

64. (a) Up-to-date texts or necessary course materials are provided to each student at every grade level.

(b) Additional instructional materials are provided that meet the needs of individuals and the conditions of the local community.

(c) Supplemental curriculum materials are provided for the disadvantaged and gifted students.

(d) Students have access to books, periodicals, newspapers, basic references, case studies, graphs, tables, maps, articles, and literary materials suitable for the subject area. Each social studies classroom contains up-to-date reference materials including dictionaries, encyclopedias, atlases, world almanacs, maps, globes, and paperback books.

(e) Classroom activities use the school and community as a learning laboratory for gathering social data and for confronting knowledge and commitments in dealing with social

problems.

(f) The school has available and readily accessible media to support the adopted curriculum including, for example, video equipment, film strip projectors, overhead projectors, multi-media kits, games, duplicating masters, outline maps, 16mm projectors, copiers.

(g) Each county has available, on a regional basis, or otherwise, a laboratory containing a wide variety of social studies materials for all courses and all ability levels as well as media production equipment including copying, laminating, and slide-tape presentation equipment.

(h) Each school library contains sufficient materials to permit student research in all social studies courses. The library also subscribes to at least one professional social science journal.

(i) Materials and equipment are available for individual student projects.

Elements of a Thorough and Efficient Vocational Educational Program

Curriculum - Vocational Education

65. (a) A prevocational program is available to all ninth graders with curriculum selected locally from state level described and detailed curricula. Program consists of at least fifty percent laboratory or hands-on experience.

(b) Sufficient vocational education program choices are available for all students to enroll in vocational education programs on a first choice basis.

(c) Capacity of vocational education program to enroll sixty percent (60%) to eighty percent (80%) of all tenth

to twelfth grade students, as needed for the area.

(d) The program is designed to develop such skills and technical knowledge for beginning workers as are justified by the opportunities for employment both within the area served by the school and within a three hundred (300) mile radius of the school.

(e) Activities approximate the range of conditions currently existing in the industry or occupation for which the student is being trained and reflect current technological advancement in the industry or occupation.

(f) If vocational education programs are provided in area vocational schools using half-day sessions, the travel time for students is sufficiently short to permit all students to receive a full half-day academic program in the feeder high school and at least three hours per day of vocational instruction and laboratory work at the area vocational school.

(g) Curriculum adapted for handicapped students and the staff, facilities, materials and equipment to provide high quality vocational education programs for such students.

(h) Remedial reading and math programs for students who need such assistance to succeed in the vocational education program.

(i) Diagnostic and assessment programs to identify the abilities and interests of students eligible for vocational education. Programs must have the capacity to diagnose and assess students with handicaps and other special needs.

(j) Vocational counseling services are available to every student. Vocational placement services are available

to every student.

(k) There is a vocational media program.

(l) Program description and curriculum content standards established by the bureau of the state department of education for each vocational education course area.

(m) The state department of education regularly reviews curriculum offerings and program content to insure that all vocational education needs are being met.

Personnel - Vocational Education

66. (a) The maximum pupil-teacher load per period is twenty (20).

(b) A certified vocational counselor is available in each vocational facility. No facility offering five or more vocational education programs has fewer than one full-time vocational counselor.

(c) Job placement specialists are available to provide job placement assistance and follow up, at a ratio of one job placement specialist for each three hundred (300) twelfth grade vocational students.

(d) Media specialists and media paraprofessionals in separate vocational schools at the same staff ratios as for other secondary media personnel.

(e) Diagnostic and assessment staff sufficient to provide high quality diagnostic and assessment services for vocational education for all students including those enrolled in special education programs.

(f) Remedial reading and remedial math specialists to provide remedial instruction to vocational students who

are below grade level in reading and math.

(h) Sufficient qualified administrative personnel at the state, county and regional levels to provide leadership and continuing education to vocational education instructors.

Facilities - Vocational Education

67. (a) The appropriate bureau of the state department of education shall have standards for the classroom laboratories for each vocational education subject or course area. Such standards must detail the specific needs for the facility as in the Handbook on Planning School Facilities.

(b) Facilities are barrier free for handicapped students.

Materials and Equipment - Vocational Education

68. (a) Materials and equipment used in vocational instruction approximate the range of conditions currently existing and reflect current technological advancement in the industry or occupation for which training is provided.

(b) The appropriate bureau of the state department of education shall establish a list of equipment and materials for each course area and shall review programs to assure their provision.

Elements of a Thorough and Efficient Special Education and Remedial Programs

Prefatory Remarks

69. (a) In order to develop the legally recognized elements of a thorough and efficient system of education in every child to his or her capacity, all educational offerings described in these findings must be available to children of all abilities at a level commensurate with their ability.

Special education, remedial and advanced programs are essential to a thorough and efficient system of education to assure development in every child to his or her capacity. All students at each grade level who are achieving below grade level must be provided a program of compensatory or remedial education.

Curriculum - Special Education and Remedial Programs

70. (a) Special education consists of many distinct conditions ranging from the retarded to the gifted and from the disturbed to children with physical problems. Consequently, there is broad variety of materials, equipment, personnel, facilities and curricula necessary to educate such children.

(b) Not only are these individuals diverse, the range of program settings needed to serve exceptional children varies significantly from a semi-hospitalized setting for the most severe to a regular classroom setting for the most moderate.

(c) Since special education students are by definition different, it is critical that the programs, facilities, materials and equipment are tailored to the individual and that the personnel be specifically trained in the specific area of handicap.

(d) The special education students have available the same general curriculum, activities, etc., as the regular students. There is no segregation from nonhandicapped students in nonacademic and extracurricular activities (e.g., art class, music class, meals, recess, recreation, assemblies, field trips, athletics, clubs) unless the child cannot benefit

therefrom even with supplementary aids. Equal opportunity to participate in athletics, art, music, recreation, field trips, physical education, etc., as nonhandicapped students is afforded.

(e) Every child has an individualized educational plan (IEP) in conformity with the State "Standards for the Education of Exceptional Children" and Public Law 94-142, 20 U.S.C. Sec. 1401, et seq., 45 C.F.R. Sec. 121a.

(f) Age span of children in a classroom does not exceed four years from the oldest to the youngest, except: behavior disordered: 2-3 years only, and profoundly retarded: 6 years only.

(g) No child is removed from the regular classroom by reason of exceptionality unless the appropriate education cannot be achieved satisfactorily in the regular classroom with supplementary personnel and services. No child is removed from special education setting and placed in regular classroom unless appropriate supportive services and personnel are provided.

(h) No child is removed from the regular classroom by reason of exceptionality, or otherwise placed unless (1) written notice is given to the parents of intent to do so, describing the proposed change and basis therefor in detail, and of the procedural safeguards available to the parents; (2) the classroom teacher participates in the placement process and consents to placement; (3) the parents are provided the right to an independent evaluation at public expense if the parent disagrees with the agency's evaluation;

(4) the right to a hearing before an impartial hearing officer upon timely and adequate notice and with access to all agency information; (5) the right to remain in the present educational placement until completion of proceedings, (6) the right to an effective opportunity to be heard, to confront and cross examine all witnesses, to obtain a transcript of the hearing, written findings and decision in detail; (7) the right to appeal to the state agency and thereafter, if necessary, and (8) the appointment of a surrogate parent where appropriate.

(i) No special education child should be required to spend more time in one-way travel time than the following: one half-hour for elementary school pupils; three quarters of one hour for junior high pupils; one hour for senior high pupils.

(j) Appropriate services and/or classes for all areas of exceptionality shall be provided. Areas include behavior disorders, deaf/blind, gifted, hearing impaired, educable mentally retarded, trainable mentally retarded, profoundly mentally retarded, physically handicapped specific learning disabilities, speech/language impaired, and visually impaired.

Personnel - Special Education and Remedial Programs

71. (a) There is a fully certified teacher in each of the eleven areas of exceptionality.

(b) The following is the maximum caseload per teacher by area of exceptionality.

AREA OF EXCEPTIONALITY	SELF CONTAINED	RESOURCE	ITINERANT
Behavioral Disorders	6*	12*	10
Deaf-Blind	3*	3	3
Gifted		20	15
Hearing Impaired	8*	8	8
Mental Retardation: Trainable	8*		
Profound	6*		
Educable Primary	10	15	
Educable Intermediate	10	15	
Educable MCE/AE	10	15	
Physically Handicapped	8*	12	12
Specific Learning Disabilities	8 10*	20	15
Speech and Language		40	40
Visually Impaired	10	15	17
<hr/>			
AREA OF EXCEPTIONALITY	HOME RESOURCE	CENTER/SCHOOL BASED	
Pre-School	15	10*	

\*with aide or paraprofessional

(c) An aide or paraprofessional is provided for each self-contained Behavior Disordered, Deaf-Blind, Hearing Impaired, Trainable or Profound Mentally Retarded, Physically Handicapped, Learning Disability self-contained classroom, and for each Behavior Disordered resource room.

(d) A fully certified and readily available regional and/or county area specialist in each of the eleven areas of exceptionality is located in the county or regional level for every eight teachers.

(e) There is a state coordinator in each area of exceptionality with appropriate staff to monitor and enforce standards.

(f) A minimum of 6-12 hours annually of meaningful continuing education for all teachers in special education is provided.

(g) All staff needed for the identification, screening, evaluation, placement and education of exceptional children, as set forth in the present state standards (sections 100, 200, 300 and 400) including but not limited to psychologists, speech therapists, physical therapists, nurses, such other specialists as are necessary to screen, diagnose and prescribe appropriate educational goals are available. In addition, counties must have access to social workers.

Facilities - Special Education and Remedial Programs

72. (a) Adequate classroom space is provided for all children and teachers including itinerant teachers. No segregated "out-buildings" are to be utilized for special education students. To protect against stigma, all classrooms are to be comparable to those housing the nonhandicapped.

(b) Facilities are physically accessible to handicapped persons.

(c) Each self-contained classroom for the Trainable

Mentally Retarded, Profoundly Mentally Retarded, Physically Handicapped is located on the ground floor, unless an elevator insures accessibility to other floors. Each facility serving the Trainable Mentally Retarded, Profoundly Mentally Retarded and Physically Handicapped individual has: (1) direct or convenient access to out-of-doors for evacuation during an emergency; (2) building entrance at ground level or equipped with an appropriate ramp with gradients; (3) loading and unloading locations for buses and other means of transportation situated in a safe area away from hazards; (4) toilet room, drinking fountain, and lavatories appropriately equipped for orthopedically impaired individuals, including necessary safety grab bars and at least one stall designed to accomodate a wheelchair, towel dispensers and other dispensers mounted within the reach of individuals in wheelchairs (toilet room shall be in easy access to the classroom); (5) specialized equipment such as handrails, adjustable seats and desks, tables of varying sizes to accomodate body clearance for wheelchairs, chairs on rollers, cots, portable reading racks, electric or manual typewriters, low chalkboards, standing table, relaxation chair, changing table, wheelchairs, walkers, parallel bars, posture mirror, floor mat, prone stander, ambulatory devices, rolls, wedges, therapy ball, eating, dressing, grooming aids, positioning aids, pressure relief devices, bosters, corner chairs and standing bars provided when necessary and as recommended by the physician and/or physical therapist, and/or occupational therapist and/or classroom teacher; (6) floors of a non-skid nature and

free of excessive wax with carpeted or padded area in the classroom; (7) adequate space and equipment provided, both indoors and outdoors, for physical activities and recreation and appropriate therapy and related services; (8) lunchroom facilities including furniture, eating utensils and equipment suitable to the individual needs of the student; (9) all doorways clear thirty-two (32) inches when open and be operable by a single effort (doors should be durable and equipped with kick-plates; long grasping bars, rather than doorknobs, are preferred). Thresholds to outside and inside doors should be kept at a minimum -- eliminated completely, if possible; (10) adequate space for storage and handling of special material and equipment; (11) switches and controls for lights, heat, ventilation, windows, draperies, door locks, fire alarms and all similar controls shall be placed within the reach of individuals in wheelchairs, and adapted for the population served; (12) meet the requirements of other West Virginia regulations and specifications for physical accessibility and of the American National Standard Institute (ANSI).

(d) Each facility for the deaf-blind (1) provides "FM" amplification system with individual aids for each student when applicable; multimedia instrumentation: access to portable VTR and monitor, overhead projector, tape recorder, record player, speech mirror, tapes, projection screen, film-strip projector, red flasher firelight activated by fire gong, and all regular deaf-blind educational materials that are necessary to implement the IEP; (2) is, to the extent possible, located within easy accessibility

to other appropriate facilities, such as swimming pool and gymnasium; (3) provides specialized equipment necessary for the implementation of physical therapy, prevocational and vocational training, and related components of the IEP; (4) provides necessary accoustical considerations such as carpeting, window shades or drapes, acoustical ceilings and other items which may be required; (5) complies with the West Virginia regulations and sepcifications as outlined in "Elimination of Structural Barriers" of the State Division of Vocational Rehabilitation.

(e) Each facility for the hearing impaired has: (1) acoustical plaster and tile (as appropriate on walls and ceilings), window shades or drapes, and carpeting for resource and special class facilities; (2) lighting controls in the teaching area, incadescent lighting (2ith no less than one hundred twenty-five (125) foot candles -- no more than one hundred fifty (150) candles), projection shades; (3) sufficient grounded electrical receptacles to accomodate multi-media instrumentation; (4) FM amplification system with individual aids for each student; multi-media instrumentation, i.e., overhead projector, tape recorder, record player, speech mirror, lipreading material, tapes, projection screen, filmstrip projector; and red flasher firelight activated by fire gong.

(f) Facilities shall be accessible to extent that exceptional children shall not be required to travel in excess of the time hereinbefore specified.

Materials and Equipment - Special Education and Remedial Programs

73. (a) A-1 regular instructional materials and equipment plus an adequate supply and range of specially adapted instructional materials and equipment, such as those set forth in the Kanawha County Schools materials and equipment list for special education.

(b) Access to a broad range of stimulating instructional materials so as to assure that special education students will not have to reread lower level texts and materials and that such materials will be of interest to age level.

(c) Adequate specially adapted buses designed to transport certain exceptional children.

(d) Access to county, regional or state instructional material supply to assure appropriate teaching materials.

#### Modified Educational Program

74. (a) For students in need of specialized instructional programs, but whose problems do not warrant special education services, modified education programs are developed to address their unique learning needs; such a procedure is modeled after the special education delivery process and provides specific instructional methods where necessary for particular identified educational needs of specific children with communication between teacher and parent. Appropriate personnel, facilities and materials and equipment are provided to implement each child's plan.

#### Title I - Comments and Findings

75. (a) The current federal program that provides funding for remedial education, Title I, is designed to meet only a small percentage of total remedial needs. Not all schools

are eligible for federal Title I funds and not all children are served in eligible schools. The program is directed primarily towards the remedial reading and math needs of students in the primary grades, and in no way indicates a county's total need for remedial education. Further, funding levels are not guaranteed.

(b) The state has a responsibility independent of the federal government to insure that the remedial education needs of all students are met. Remedial education requires additional funding to supplement the regular instructional program. Additional staff and facilities must be provided to reduce pupil/teacher ratios, and supplemental materials and equipment must be provided to meet the needs of different types of students. The extra expense of compensatory education must be recognized in the state's system of school finance.

Elements of a Thorough and Efficient System of Guidance and Counseling Services

76. (a) Counseling and guidance programs and services are designed to: Meet developmental concerns of all students, prevent anticipated deficiencies of particular students, remediate or coordinate the remediation of identified deficiencies, develop an understanding of the relationship between education and social roles, and help students make wise vocational and educational choices.

(b) The school counselor is available to provide counseling, consulting and coordinating and planning: counseling is the process of facilitating the resolution of personal/

social educational concerns of students through verbal interaction that stimulates new perceptions and behavior (e.g., career guidance, personal guidance). Consulting uses the counselor's skill and knowledge to aid parents, teachers, administrators, and concerned persons in facilitating the personal and educational growth of students and others. Coordinating and planning involves the planning, coordinating and directing of guidance related services and activities including career development, referrals to persons who can give specialized help in educational, vocational, and social planning, transitional programs to facilitate transition to a new school or to a job, and testing programs and other research and evaluation of students.

(c) Each county has a comprehensive plan for guidance services including a needs assessment of the county's students, a plan to address the needs of the county's students, and school programs to deal with the identified needs.

#### Personnel - Guidance and Counseling Services

77. (a) Certified guidance counselors are available in all schools at the secondary level (7-12) at a minimum of one full-time counselor for every three hundred (300) students.

(b) Certified guidance counselors are available in all elementary schools (K-6) at a minimum of one full-time counselor for every four hundred (400) students or one counselor for every twenty (20) teachers.

(c) Guidance counselors have adequate clerical assistance.

(d) All counties have access to a county guidance supervisor. Smaller counties can regionalize but the ratio does not exceed one supervisor for twenty-five to thirty-five (25-35) counselors. The supervisor coordinates staff development and services.

(e) Meaningful continuing education on a regular basis specifically directed to the needs of counselors must be provided at least one half day per month.

Facilities - Guidance and Counseling Services

78. (a) Office designed and located to allow for privacy, with an entrance separate from administrative entrance, of adequate size for group discussions, with convenient access to student records, with outside telephone communications, and with adequate storage and information display areas.

Materials and Equipment - Guidance and Counseling Services

79. (a) Access to books, programs, kits, slide/tape presentation, filmstrips, cassette tapes, 16mm movie, etc., with additional social, emotional, educational, and career development program materials and located in the media center of the school. Materials on topics such as how to study, making decisions, career interests, job hunting skills, divorce, parenting, and classroom management should be available in the media center and the guidance office.

(b) The availability of adequate reproduction facilities and supplies, typewriters, overhead projectors, filmstrip projectors, slide tape projectors, cassette recorders, and like equipment in the media center or otherwise.

Elements of a Thorough and Efficient Educational Health Program

Prefatory Comments and Findings

80. A thorough and efficient system requires school health services include nursing and dental services provided to all students. Students cannot learn if they have health problems. Poor health is associated with scholastic underachievement and increases the school dropout rate.

Nursing Services

81. (a) First aid and emergency care.

(b) Health appraisal of every child by health nurse - First priority at beginning of school year, Levels pre-K, 1, 4, 6, 7, 9, 10 and upon referral; Second Priority: grades 2, 3, 5, 8, 11, and 12. Such appraisal shall include: (i) health history and immunization status; (ii) vision screening for far and near acuity; muscle balance, myopia, far sightedness and color perception; (iii) hearing screening - pure tone testing and impedance testing if not available from other resources; (iv) assessment of emotional and mental status; (v) orthopedic observation and scoliosis screening; (vi) ear, nose, throat observations; (vii) observation of skin for symptoms of any health problem. The resources provided to the state for the applicable federally-funded health screening program (presently EPSDT) are used in the schools or in conjunction with the school program to provide maximum efficiency in the use of available resources.

(c) Referral and follow up: (i) referral to family physician or specialist as indicated; (ii) use of community

resources for indigent students; (iii) follow up to see that correction, remediation or adjustment is made.

(d) Health counseling is provided to individual students, to groups in school setting including inservice training conferences, to parents, and to other school personnel.

(e) With regard to exceptional children, the nurse identifies impairments in the formal screening process, obtains needed medical reports, orders and recommendations, compiles records on health status, and provides modified health appraisal with special equipment.

(f) Relative to communicable disease control, the nurse supervises compliance with immunization needs, conducts tuberculin testing, screens students during outbreak of communicable disease, and assists in communicable disease education program.

(g) The nurse assists in the promotion of environmental health and accident protection by conducting safety hazard inspections, by assisting in the development of school safety procedures, and by promoting healthful environment through conferences with principal and other staff.

(h) Special programs conducted or assisted by the nurse include: (i) cardiopulmonary resuscitation (CPR) instruction; (ii) breast self-examination; (iii) sickle cell testing; (iv) immunization; (v) anemia screening; (vi) family planning; (vii) drug awareness and assistance; (viii) maturation instruction (adolescent changes); (ix) first aid instruction; and (x) special nutritional instruction.

(i) Dental services include: screening for defects of

teeth and oral cavity; dental health education for care of teeth and prevention; referral to dentist or dental clinic; referral to community resources for indigent children; follow-up to see that correction is made, and provision of direction in good nutrition and health habits.

Records and Statistics - Nurse and Dental Hygienist

82. (a) Cumulative permanent records with pertinent health information.

(b) Statistics for evaluation of specific health needs.

(c) Interpretation of health data to school personnel and parents.

Personnel - Educational Health Program

83. (a) A registered nurse health services coordinator at the county level.

(b) One registered nurse for every one thousand (1,000) students if only within one school; one registered nurse per five hundred (500) to seven hundred (700) students where travel is involved, especially rural counties and where health needs are great, and/or few health care facilities are available in the community; one registered nurse to one hundred (100) students for exceptional children - ratio of students is less when multiple handicaps exist.

(c) One dental hygienist for every three thousand (3,000) students - ratio of students is less where severe dental defects exist or travel in rural areas is extensive.

(d) Availability of medical consultant.

(e) Availability of dental consultant.

(f) Availability of psychiatric consultant through the

local community health facility or otherwise.

(g) One secretary assigned to health services unit.

If personnel exceeds ten professional additional secretarial services needed.

(h) At the state level, there is a health services specialist to coordinate professional development and state program.

Facilities, Materials and Equipment - Health Services Program

84. (a) Each school has a clinic furnished with desk, chairs, at least two cots, scales, storage cabinets, first aid and emergency care supplies, telephone, bathroom, sink and work space, a screening room and an area for the ill, and a bulletin board.

(b) Nurse's equipment for screening procedures and health education include: (i) vision testing equipment for far and near acuity, near sightedness, far sightedness, muscle balance, color perception (e.g., Instaline); (ii) audiometer for hearing screening - pure tone, impedance if not available from other resources; (iii) equipment to measure blood pressure and stethoscope; (iv) otoscope; (v) ample small supplies and equipment - bandages, splinter forceps, tongue depressors, thermometer, record keeping materials; and (vi) ample educational materials - brochures, pamphlets, books, medical dictionary, audio-visual materials.

(c) Dental hygienist's equipment includes tongue depressors and instruments for screening; health education brochures, posters; audio visual aids.

(d) Equipment for special programs are provided including

CPR (mannequins, film), and sickle cell testing (centrifuge, mixing materials, lancets).

Elements of a Thorough and Efficient Educational Food Service Program

Prefatory Comments and Findings

85. (a) A planned and adequate school food service program is essential to the pupil's growth and development. An effective school food service program provides learning experiences which help develop desirable nutritional and health practices. Further, hungry children cannot have a positive learning experience.

(b) Factors to be considered for high quality food service include planning of a nutritious meal, service at an appropriate time, the appearance of the meal, and the setting and condition of the facility in which the meal is served. All schools serve a Type A school lunch.

Personnel - Food Service

86. (a) There is a coordinator of the school food service program at the county level who has adequate staff to establish goals for the program to meet the needs of all students, establish standards for food preparation and service, sanitation and safety, develop procedures for efficient management, plan, develop and coordinate in-service and pre-service, and distribute educational aids. Counties have sufficient school food service personnel to adequately staff schools, notwithstanding any maximum service personnel reimbursement from the state.

(b) All new school service personnel receive pre-service

training, and all personnel receive yearly in-service training in areas of menu planning, nutrition, sanitation, health, quantity food preparation, and mangement.

Facilities - Food Service

87. (a) A dining area adequate to seat comfortably a minimum of one-third (preferably one-half) of the student body at one time, with separation from both food preparation and serving areas.

(b) A kitchen with a minimum of three hundred (300) square feet, but dependent upon number of meals served, with appropriate floor coverings and walls.

(c) Adequate food storage and nonfood storage areas.

(d) Otherwise in conformity with the Handbook on Planning School Facilities.

Elements of a Thorough and Efficient System of Educational Transportation Services

Service

88. (a) The purposes of school transportation are to transport pupils safely to and from their curricular, co-curricular and extra-curricular educational activities, to provide maximum service to pupils, administer the program competently and effectively, and to provide service at the lowest cost consistent with established standards of operation.

(b) Appropriate services are provided to all students, including the handicapped. Transportation is provided for participants in co-curricular and extra-curricular activities at no cost to the student or organization.

(c) The following times are the maximum one-way travel times for pupils transported to school: elementary school

one-half hour; junior high school - three quarters of an hour; senior high school - one hour.

(d) There are sufficient buses so that pupils reach school on time but without unnecessary margin requiring an unjustified starting time from home to school and so that students leave school shortly after the end of the official school day.

(e) Buses do not carry more than the number that can be safely seated.

#### Personnel - Transportation

89. (a) Each county has sufficient administrative staff with special training in transportation. There is at least one full-time director if the number of buses operated is twenty (20) or greater.

(b) All school bus operators are given intensive pre-service and yearly in-service on topics including pupil discipline, defensive driving, emergencies, first aid, and preparing reports.

(c) All counties are able to hire sufficient bus operators to meet all standards notwithstanding any state service personnel reimbursement limit relative to bus operators.

(d) Each county has sufficient maintenance workers to keep buses in good working order meeting all state and county regulations.

#### Facilities - Transportation

90. (a) Each county has an adequate maintenance center with ample bus parking, storage, work, office, dressing and lounge space.

(b) Adequate, paved, parking spaces are provided for school employees, pupils, visitors and school buses. Spaces are provided for the handicapped. The bus loading zone is designed to accommodate all buses anticipated at one time.

Equipment - Transportation

91. (a) Buses are replaced as needed through a state-funded program. The replacement schedule takes into consideration the varying needs of counties resulting from differing road conditions and population density.

C.

Existing State Standards

All of the various core values of each discipline and service as recited herein were obtained through the receipts of thousands of pages of testimony, and the examination of a volume of exhibits. A substantial number of the witnesses were recognized as experts in their field, and this Court places great weight upon their training, background, and experience. With the exception of very competent cross-examination, the state did not produce any witnesses to refute the conclusions of these experts. Accordingly, notwithstanding the admonition of Justice Harshbarger, that "great weight is to be given to the Legislatively established standards" this was a virtual impossibility, because none existed with the precision and specificity as that offered by the plaintiff's witnesses.

While over the years the State Department of Education has adopted a variety of standards, none define a thorough and efficient system of education.

The State's standards are expressed three (3) distinct areas:

First, the State's system of classification; Second, the State's comprehensive educational program as contained in West Virginia Code Ch. 18, Art. 2, Sec. 23, and Third, standards developed under West Virginia Code Ch. 18, Art. 9A, Sec. 22 (generally referred to during the course of this trial as Senate Bill 15).

The following findings are made in regard to each of the above enumerated categories:

The State System of Classification

92. The state standards for classification are "subminimal" and bear no relationship to a high quality educational system. The classification procedure is not a meaningful or comprehensive process.

93. Elementary schools are classified according to Form EC-1, Standards for Classification of Elementary Schools. An elementary school may be either First Class, Second Class, or Unclassified. The EC-1 form contains forty quantitative questions requiring a yes or no answer and thirty qualitative questions scored on a scale of 1 (none) to 5 (excellent). Schools that fail to meet many of the standards contained in the EC-1 form, can still be considered "First Class." For instance, a school may have over thirty (30) pupils per teacher, may lack an instructional materials center, may not have a water supply approved by the State Department of Health, and yet can still be a First Class School if it meets enough of the standards. (EC-1 Form).

94. The Standards contained in the EC-1 form are found to be minimal and general. Due to their generality, even if schools were required to meet all of the EC-1 standards, the classification system would not produce a thorough and efficient

system of education. For instance, there is a general requirement that "all subjects required by State Law and State Board Regulations are scheduled and taught as part of the school's program." However, there is no requirement that these subjects be taught by specialized personnel, in appropriate facilities or with necessary equipment and materials.

95. The elementary school classification process is not designed to assure accuracy and actually encourage misrepresentation for the following reasons: (a) The statements are far too general; (b) The State Department of Education does not monitor and review responses; (c) There is no funding to improve schools that are not "first class", and (d) There is no incentive for an evaluating group to rate a school less than first class. The evaluating group often includes teachers and administrators from the school being reviewed and/or from the county in which the school is located. Many school evaluating groups feel pressured by administrative personnel or personal pride to have the school rated First Class. The State Department of Education does not provide adequate instructions to school personnel on how to complete the forms. Many questions are subject to numerous interpretations. The qualitative criteria are even more difficult to answer uniformly. There are no standards by which a group can determine what is average or excellent.

96. The North Central Association of Colleges and Schools (NCA) also accredits schools in West Virginia. Until recently it only accredited high schools, but currently there are a few elementary and junior high schools accredited in West Virginia. The association is voluntary and operates through dues and

volunteer inspections from staff of member schools. The more members NCA has in a state, the more operating revenues it receives.

97. The NCA standards are found to be minimum. These standards are of necessity general, because they apply to schools in the nineteen (19) states served by the association.

98. The Secondary School Standards for Classification were adopted by the State Board of Education fifteen years ago and are based on standards published in 1957. The secondary classification system contains the same problems of generality, inadequacy and inaccuracy contained in the elementary system.

99. The secondary classification system is a self-reporting system. The principal fills out a short form every year and submits it to the Superintendent of the County for his signature. The form (WVDE #22-10-52) is then sent to the State Department of Education. Schools are classified as First Class, Second Class, or Unapproved based on the principal's responses and recommendation. High schools and junior high schools are classified using similar forms.

100. A high quality educational program requires greater diversity in curriculum and lower pupil/teacher ratios than mandated in the NCA's high school standards. These standards are not descriptive of, or consistent with the requirements of a high quality educational program.

101. Approximately 90% of the high schools in West Virginia are accredited by the North Central Association. Only one or two have been dropped from the Association in the last four or five years. There is a huge range in the quality of schools accredited by the North Central Association. For example, Guyan Valley High

School in Lincoln County is accredited. Tucker County High School, Clay County High School, and all but one of the high schools in Mingo County are also accredited. St. Marys High School in Pleasants County, John Marshall High School in Marshall County, and Wheeling Park High School in Ohio County are identically accredited. These schools in Pleasants, Marshall and Ohio Counties are found to be vastly superior to those in Lincoln, Tucker, Clay and Mingo Counties which clearly lack sufficient variety in educational offerings and services to be considered high quality schools.

The Comprehensive Educational Program

102. West Virginia Code Ch. 18, Art., Sec. 23, requires the West Virginia Board of Education to "establish standards and criteria especially designed to guide the development of plans for a comprehensive educational program or programs in county school systems, to provide for their evaluation and approval, and to provide, as herein directed, for the allocation and distribution of state funds, ..." West Virginia Code Ch. 18, Art. 2, Sec. 23 mandates the development of high quality educational standards.

103. In 1965, the State Board of Education adopted the Comprehensive Educational Program (CEP), which established specific standards for educational program and service areas. The CEP was revised in 1970. The CEP contains the most specific resource standards ever adopted by the state. All of the standards established in the CEP are still components of a high quality program, although many program areas need to be up-dated. The State Department of Education has decided to retreat from the specific facility, staffing, curriculum and materials standards

contained in the CEP, and develop a new series of general program and "essential competency and learner outcome" documents. These documents do not articulate the various elements and inputs of a high quality education.

104. The eroding of the CEP process mandated by statute began when the funding ceased. The statute provided that limited funding should be appropriated for the program in the amount of Ten Dollars (\$10.00) per adult and senior high school student, Seven Dollars and Fifty Cents (\$7.50) per junior high student, and Five Dollars (\$5.00) per elementary student. In fact, the legislature appropriated a flat one million dollars per year, which required allocations to be reduced and distributed on a prorated basis. In 1972, funding ceased altogether and counties no longer submitted plans to the State Department.

105. Even had the statutory funding been appropriated, it would have been insufficient to raise all county programs to a thorough and efficient level. The funding was at best sufficient to cover the county costs of administering the planning process. Further, the funding was distributed on a per-pupil basis, instead of according to need. Students from a wealthy county received the same dollar amount as students from a poor county. There was no opportunity to eliminate existing inequalities.

106. The State Department's efforts to monitor the CEP process at the county level were extremely limited. The Department lacked funds to implement the standards. The state classification standards were theoretically drawn from the CEP. However, there is no correlation between the classification questions and the CEP. Recognizing the problems with the classification system and

this was the State's only method of assuring county compliance with the CEP, the State did not fulfill its statutory responsibility under West Virginia Code Ch. 18, Art. 2, Sec. 23.

107. The State Board of Education is in the process of adopting a series of general non-resource related documents to "supersede" the 1965 and 1970 CEP's. This process will effectively eliminate all gains achieved under the CEP. General program statements such as those currently being drafted do not define and will not produce a thorough and efficient system of education. Specific standards are needed, specifying required inputs such as facilities, staffing, and instructional materials, and resources are needed to implement those standards.

108. The only document adopted to date by the State Board of Education to replace the CEP is the Programmatic Definition for Middle Childhood Education. The State Department has drafted similar documents in the area of early childhood education, and in the area of adolescent education. In addition, the State Department has developed documents outlining essential competencies and learner outcomes in a number of subject areas. (See, e.g., social studies; science). The essential competency documents have not been adopted by the Board of Education and are merely recommendations. Since they do not describe in detail the inputs in terms of curriculum, personnel requirements and essential facilities, materials and equipment, such general documents are of little or no assistance in defining the elements of a high quality education.

Standards Developed Under  
West Virginia Code Ch. 18, Sec. 9A, Art. 22

109. The State Department of Education has drafted "Standards for Educational Quality" which are designed "provide a framework upon which each school district can build an educational improvement program relevant to its needs and resources". The very fact that this document makes a county's program dependent upon available resources effectively destroys any expectation of developing high quality standards. The "standards" are nothing more than a restatement of general principles already existing in statutes and West Virginia Board of Education policy. They do not help define the kinds of educational offerings and services needed for a thorough and efficient system of education.

110. It is clear that the State Department of Education does not intend to develop more specific standards. Though it was indicated that "indicators of quality" would be developed, it is clear that these are not standards and will likewise be lacking in specificity. However, even if the Department sought to develop high quality standards, West Virginia Code Ch. 18, Art. 9A, Sec. 22 contains the seeds of its own destruction. First, the statute repeatedly refers to the adoption of "minimum" standards. Second, the statute authorizes the State Board of Education to withhold three percent (3%) of a county's public school support if the county cannot meet standards developed rather than provide funds to help counties meet standards. Such a scheme is counter-productive. It effectively insures that only standards that all counties can meet with existing funding will be adopted.

IV.  
COMPARISON OF EXISTING EDUCATIONAL SYSTEM WITH THE  
DEVELOPED HIGH QUALITY EDUCATIONAL STANDARDS

The Supreme Court required that upon remand, once the contours

of a thorough and efficient educational system are developed, then a comparative analysis must be made of the developed standards with the existing educational system.

As predicted, the contemporary educational systems in Lincoln County, specifically, and West Virginia, generally, are "woefully inadequate". The West Virginia Supreme Court need not be "surprised" that the existing system would meet the standard now developed on remand. It does not!

While no county in West Virginia provides all the elements of a high quality educational system, it must be noted that certain counties, such as Pleasants, Ohio and Marshall do touch rather closely on many of the developed standards. It would be a perverse interpretation of this Opinion that these counties that have been able to achieve relatively high standards, should lose anything that they have gained. The impact of this Opinion on these systems, such as Ohio, Marshall and Pleasants counties is that they simply have a less arduous journey to travel to achieve the standards established by this Opinion, than would counties such as Lincoln, Mingo and Clay.

However, it will be necessary for counties such as Ohio, Marshall and Pleasants to also improve to the standards developed herein.

The following introductory findings are made regarding the demographic analysis of the counties which were considered during the course of the trial:

111. The Court has received substantial evidence concerning seven counties in West Virginia, Lincoln, Mingo, Clay, Tucker, Pleasants, Marshall, and Ohio. The evidence presented concerning

seven counties in West Virginia, Lincoln, Mingo, Clay, Tucker, Pleasants, Marshall, and Ohio. The evidence presented concerning these counties demonstrates that there are vast differences in educational opportunities among counties and that relatively poorer counties including Lincoln County have inadequate and unequal resources to provide a thorough and efficient system of education.

112. Lincoln County covers four hundred thirty-seven (437) square miles. In 1979-80 there were five thousand, three hundred, forty-eight (5,348) students or approximately twelve (12) students per square mile. Compared to other counties in West Virginia, Lincoln County is rural and sparsely populated. The terrain is rugged. There are three mountains separating the county's population. It is difficult to drive from one end of the county to the other in inclement weather. There is little industry in Lincoln County other than oil and gas production and a clay dummy factory employing seven or eight persons. The majority of people who live in Lincoln County work outside the county.

113. Most of the students in Lincoln County are from low-income families. Seventy-seven percent of elementary students and 66% of all students in Lincoln County were eligible for free and reduced price lunches in 1979-80. Eligibility is based on low personal income. A large percentage of students in Lincoln County are educationally deprived and qualify for Title I, a federal program designed to provide remedial instruction to low income students achieving below grade level.

114. There are currently twenty-one (21) schools in Lincoln County as compared to eighty-three (83) in 1961-62. The schools

are organized K-6 and 7-12. There are four secondary schools, one vocational school, and sixteen (16) elementary schools.

115. Lincoln County is a property poor county with little revenues for education. In 1980-81, Lincoln County ranked 47th in terms of revenues per pupil from the regular levy and ranked 38th in terms of state aid plus total property tax revenues (including the excess levy) per pupil.

116. Mingo County covers four hundred, twenty-three (423) square miles. In 1979-80, there were eight thousand, nine hundred, eighty-five (8,985) students in Mingo County, or approximately twenty-one (29) students per square mile. Mingo is an extremely rural county, and many of the students attending school in Mingo are from low-income families. Sixty-five percent of elementary students and 52% of all students in Mingo County were eligible for free and reduced price lunches in 1979-80. As of 1979-80, there were thirty-five (35) schools in Mingo County as compared to fifty-seven (57) schools in 1961-62. In 1980-81, Mingo County ranked 43rd in terms of regular levy revenues per pupil and ranked 31st in terms of state aid plus property tax revenues per pupil.

117. There were two thousand, six hundred, seventy-three students in Clay County in 1979-80. Seventy-three percent of students received free or reduced price lunches in 1979-80. As of 1979-80, there were ten (10) schools in the county, compared to twenty-nine schools in 1961-62. In 1980-81, Clay County ranked 28th in terms of regular levy revenues per pupil. However, because Clay does not have an excess levy, the county dropped 48th in terms of state aid plus property tax revenues per pupil.

118. Tucker County covers 421.67 square miles. In 1979-80, there were one thousand, eight hundred, eleven (1,811) students or approximately four students per square mile. A large percentage of the land in Tucker County is tax exempt because it is owned by the State or federal government. In the county are Blackwater Falls and Canaan Valley State Parks, the Monongahela National Forest, and the Dolly Sods Wilderness Area. Most of the land in the county is underdeveloped and there is very little industry. Tucker County is one of the leading tourist areas in the state, but revenues derived through sales taxes for tourism in the county are paid to the state, not to the county. There is a power plant located one mile east of Tucker County in Grant County, but Tucker County cannot benefit from that plant as Grant County does. Fifty-eight percent of students in Tucker County are eligible for free and reduced price lunches. There are currently six schools in Tucker County, compared to twenty-one (21) in 1961-62.

119. In 1980-81, Tucker County ranked 52nd in terms of regular levy revenues per pupil and ranked 51st in terms of state aid plus total property tax revenues per pupil.

120. In contrast to Tucker County, Pleasants County, with almost identical number of students in 1979-80, one thousand, seven hundred, eighty-seven (1,787), covers only 134.65 square miles. Pleasants County, which is located along the Ohio River, has valuable industrial and utility properties which produce large local tax revenues. Ninety-six percent of school taxes paid in the county is paid on Class III or Class IV property. Only 25% of the students in Pleasants are eligible for free and

reduced lunches. There have been five schools in Pleasants since 1961-62.

121. In 1980-81, Pleasants County ranked 1st in regular levy revenues per pupil, in regular levy plus state aid, and in state aid plus total property tax revenues per pupil.

122. Marshall County covers two hundred forty (240) square miles. In 1979-80, there were eight thousand, forty-seven (8,047) students or approximately 33.5 students per square mile. There are twenty-one (21) schools in Marshall County, compared to thirty-one (31) in 1961-62. In 1979-80, 21% of students in Marshall County qualified for free and reduced price lunches. In 1980-81, Marshall ranked 3rd in terms of regular levy revenues per pupil and in terms of state aid plus total property tax revenues per pupil.

123. Ohio County is a relatively small, highly industrialized county. There are twenty-two schools in Ohio County, compared to thirty-four (34) in 1961-62. In 1979-80, 22% of the eight thousand, one hundred, forty-one (8,141) students in Ohio qualified for free and reduced price lunches. In 1980-81, Ohio County ranked 10th in terms of regular levy revenues per pupil and 9th in terms of state aid and total property tax revenues per pupil.

The following are the findings of fact regarding both the inadequacies and inequalities in (1) educational programs (curriculum); (2) personnel or staff; (3) facilities; and (4) instructional materials and equipment.

Inequalities and inadequacies in Educational Programs Among Counties in West Virginia.

The following findings are made concerning the inadequacies and inequalities in program offerings in Lincoln County and other counties in the State of West Virginia:

Art

124. Lincoln County's art program is woefully inadequate when judged by the standards for a thorough and efficient program. There is no formal art program whatsoever at the elementary level. Because there are no art specialists, the quality and quantity of instruction depends on the talents of classroom teachers who frequently have little training or talent in art. There are no specialized art rooms at the elementary level and art supplies are virtually nonexistent with the exception of some construction paper, crayons, and glue. At the secondary level, there is one art teacher per school, which is inadequate when teachers are required to serve up to seven hundred, forty-three (743) students. All seventh and eighth graders receive art but for as little as nine weeks per year. Electives in grades 9-12 are limited to one course in three of the secondary schools and four at the fourth school. The secondary schools use regular classrooms for art, since specialized rooms are not available.

125. Other poor counties in West Virginia have inadequate art programs. In general, counties lack art specialists and adequate funds for consumable supplies. Tucker County lacks adequate staff, facilities, and equipment at all levels. For example, at the high school level only two art courses are taught and instruction is conducted in the old teachers' lounge. In Clay County even the largest elementary school lacks an art teacher. Staff, supplies, and facilities are inadequate throughout the

system. A similar situation exists in Mingo County. A Mingo County elementary teacher testified that she had a student who exhibited great artistic talent, but there were absolutely no resources available to assist the student. Without a specialized art teacher or supplies and equipment, the student's talents were not developed. Few elementary schools in Wood County have a specialized art teacher or facility.

126. The State Department of Education art supervisor testified from his experiences in a rural community in Virginia, that when adequate facilities and equipment are available, student interest in art blossoms. In rural areas of West Virginia, student enthusiasm in art would be generated by improved programs.

127. In Marshall County, all secondary schools have art facilities and teachers. John Marshall High School has an extensive set of offerings, adequate facilities, and equipment. However, only five elementary schools have special art facilities and many lack specialized staff. St. Mary's High School in Pleasants County offers five separate electives. In Ohio County, Elementary schools have specialized staff and well-equipped art facilities. Students learn crafts, painting, drawing, and other skills. At the junior high level, art rooms are adequately staffed and equipped to offer a high quality program.

#### Early Childhood Education

128. Early childhood education (ECE) in Lincoln County is generally inadequate and fails to meet thorough and efficient standards. Kindergarten class sizes exceeded twenty (20) in six schools as of 1979-80 and exceeded thirty (30) in some schools, and still some of the students cannot attend kindergarten. There

is only 90% attendance. There are no services available to students who have been diagnosed as having a learning, health or behavioral problem. Lincoln County lacks appropriate furniture and materials for the ECE program to permit children to participate in a variety of learning activities. Fifty percent of the facilities lack self-contained bathrooms and carpeting, both considered essential for a high quality ECE program. Lighting, storage, and paint are inadequate in a number of the facilities. Very few schools have appropriate play areas for kindergarten children. Finally, Lincoln County is unable to conduct a one-half day ECE program, due to lack of funds to transport students at midday.

129. Ohio County has a program of screening, diagnosis and pre-entry programs for kindergarten students, which remedies pre-entry problems and makes the kindergarten year more meaningful. The ECE program is directed by a specialist. Class sizes are appropriate as are facilities and materials and equipment.

#### Foreign Language

130. The foreign language program in Lincoln County is extremely inadequate, when compared to thorough and efficient standards. First, languages are not offered at the elementary level. No languages are offered until the ninth grade and no high school in Lincoln County offers more than two years of a foreign language. Two schools offer only one year of one language, when the minimum offering at a high school should be four years of two languages. Each secondary school needs at least one full-time foreign language teacher.

131. In contrast, Ohio County begins language instruction

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at the junior high school level, and at least three years of French, German, and Spanish are offered at the high school, in addition to Latin and Russian. The school has two classrooms equipped with listening and audio-visual equipment. At John Marshall High School in Marshall County students may take four years of Spanish or French.

#### Health Education

132. Health education throughout West Virginia is grossly inadequate or nonexistent despite the desperate health needs that exist in many areas of the state. There is not even a state level coordinator at the present time. Lincoln County is typical of many counties. It has no health education program; no organized health curriculum; no health personnel; no health resource materials and equipment.

#### Industrial Arts and Home Economics

133. Industrial arts and home economics are programs that require specialized equipment and facilities and as a result, poor counties, such as Lincoln, often have grossly inferior programs. Lincoln County offers no industrial arts program whatsoever. Home economics is not taught at the junior high level, as deemed essential for a high quality program. At the high school level, home economics courses are limited and are extremely under-equipped.

134. Similarly, there is no industrial arts program in Tucker or Mingo Counties. Home economics in Mingo County is extremely primitive. There are no offerings for seventh and eighth grade students. At Lenore High School alone, an additional three home economics teachers are needed to relieve crowding

and offer needed courses.

135. Ohio, Marshall, and Pleasants Counties all have industrial arts and home economics beginning in grades seven and eight. For example, Wheeling Junior High School in Ohio County requires all seventh and eighth grade students to take sewing, cooking, metal shop, and woodworking on a nine week rotation. There are four staff members for a school of four hundred fifty (450) students. Class sizes range from fifteen (15) to twenty (20). Industrial arts is housed in a large room with lecture and shop areas. There are two home economics laboratories, one for cooking and one for sewing. Each is properly equipped. Ohio, Marshall, and Pleasants counties also offer appropriate programs at the high school level.

136. High school students in Pleasants County have available general shop and home economics courses. High school students in Ohio County may take a series of nine-week vocational exploratory courses. John Marshall High School in Marshall County offers four years of industrial arts and has a well-equipped shop for the purpose. Numerous home economics courses are offered by four teachers in four well-equipped laboratories.

#### Language Arts

137. Lincoln County lacks the staff, facilities, and materials and equipment needed for a thorough and efficient language arts program. At the elementary level, the necessary components of a language arts program are virtually nonexistent. Classes are large, often exceeding thirty (30), and several schools have teaching principals. There are virtually no supplemental materials to accompany the basal text and no materials for

students reading above or below grade level. There are no media centers in the Lincoln County elementary schools. These deficiencies are compounded by the fact that many Lincoln County students enter school educationally deprived, and need enriched services; instead they receive a sorely limited program.

138. At the secondary level in Lincoln County, classes are also extremely large. One seventh grade English class at Guyan Valley High School had thirty-six (30) students in 1980-81. This is not a typical, and is contrary to the maximum class size of twenty-five (25) for a thorough and efficient education. The county does not provide a text to each student for high school language arts courses. Instead one set of books is provided for each classroom. This makes assignment of homework almost impossible. There are virtually no supplemental workbooks or reading materials available in the classes. Offerings are extremely limited and do not cover the full range of language arts subjects required for a high quality program. No advanced literature or creative writing courses are offered. Only one school offers a speech or communications course. None of the schools offer drama, because there are no auditoriums in Lincoln County schools. No real communication media course is offered.

139. Remedial language arts courses in Lincoln County are only provided in grades one through three through the federally-funded Title I program. The Superintendent of Lincoln County testified that students fall progressively behind without remedial courses as they go through school. Because the county does not have funds for remedial education in grades four to twelve, many students drop out of school at the earliest possible

time.

140. Tucker County faces many of the inadequacies faced by Lincoln County in language arts. The county was forced to xerox texts due to lack of funds. Supplemental materials are extremely lacking. At the high school level most classes have nearly thirty (30) students. Electives are limited to journalism and creative writing. There are no courses in drama or speech because there is no auditorium. Media and advanced literature courses are not offered. Class sizes are extremely large in Mingo County as well, and sufficient supplemental materials are not provided.

141. Ohio County generally has a thorough and efficient language arts program. At the elementary level classes do not exceed 20 to 1. Remediation is an integral part of the program for students with remedial needs. Because classes are small, teachers can group students and provide classes as small as twelve (12) for students achieving below grade level. Ohio County also has a tutoring program in the primary grades organized by the county tutoring supervisor, to provide one-on-one assistance for students needing such individualized attention. Instructional materials include texts, workbooks, tutoring materials, and supplemental materials. All elementary schools have a well equipped and supplied media center. At the junior high level, class sizes are again twenty (20) and under. Students concentrate on grammar, independent writing, and literature. The county has introduced courses in developmental reading. The county does need additional remedial specialists however. At Wheeling Park High School, students are exposed to a wide variety of language arts experiences. There are twenty (20) language arts

teachers on staff or one for every eighty (80) to ninety (90) students. The staff includes specialists in speech and drama, journalism, and remedial reading. Students may choose from courses in basic and advanced composition, creative writing, a variety of literature courses, basic reading courses, drama and speech, vocabulary and grammar, photography, and journalism. Facilities include twenty (20) classrooms, a dark room and a three hundred ninety-four (394) seat theatre equipped with stage, sound control, and dressing rooms. Journalism students attend workshops at West Virginia University and West Liberty College. St. Mary's High School in Pleasants County, although smaller than some high schools in Lincoln County, has an exemplary communication media program and appropriate facilities for speech and drama. Students produce their own daily television program, as well as plays.

#### Mathematics

142. Mathematics programs are inadequate throughout the state. Currently the state only requires two units of math in grades 9-12, and as a result, math performance is extremely low at the high school level as measured by the state-county testing program.

143. The mathematics program in Lincoln County lacks many of the elements of a thorough and efficient program. At the elementary level, classes are overcrowded and supplemental materials are not provided. Lincoln County cannot provide materials for hands-on experimentation or materials for students achieving above or below grade level. Only a few schools have Title I math programs. Other schools have no remedial

programs. At the secondary level, math classes often exceed thirty (30). Few courses are offered. Claculus and computer courses are not offered at any school. Only one of four schools offers trigonometry. Such courses are indispensible for students who seek to continue mathematics study in college. One school cannot even offer geometry. There are virtually no math offerings for non-college bound students. There are no small remedial classes for students with remedial needs.

144. Math programs are inadequate throughout the State of West Virginia. In Wood County, for instance, they have a math supervisor to conduct continuing education, coordinate the curriculum, and analyze test results. However, Wood County is unable to purchase mathematics workbooks due to lack of funds. Tucker County also lacks supplemental mathematics.

145. Ohio County has many of the elements of a thorough and efficient mathematics program. The program is directed by a curriculum specialist who is responsible for developing guidelines, evaluating the mathematics program, and designing and conducting in-service. Class sizes do not exceed twenty (20) and do not exceed fifteen (15) computer science courses. All mathematics teachers receive fifteen (15) hours of specialized math in-service yearly, designed to meet the needs of individual teachers. All students receive up-to-date texts, and other course materials. Those students who learn best through hands-on materials are provided them. All classrooms have access to a vareity of audio-visual equipment. Students are exposed to computers beginning in fourth grade. All junior high schools have a computer. The high school has a room with

twelve (12) TRS-80 computers. The county offers the courses recommended by the Math Task Force as well as numerous other electives. Students participate in math field days and appropriate field trips are provided.

#### Media

146. The most neglected program throughout the State of West Virginia is the media program. Adequate instructional materials centers are critical to all aspects of the instructional program, and to student success in academic work beyond high school. However, media programs, which demand large expenditures for instructional materials and equipment, are inadequate throughout West Virginia due to insufficient resources for education. The State Department of Education does not even have a full-time media coordinator. Instead, a staff person charged with directing a federal program, Title IV(c), devotes a small amount of time to media oversight.

147. The gross inadequacies in the media program in Lincoln County hinder the entire instructional program. At the elementary level, media programs are nonexistent. None of the sixteen (16) elementary schools have a media center or a media specialist, the two basic ingredients for a high quality media program. The secondary media program in Lincoln County is extremely inadequate. The program was evaluated by a media specialist from St. Albans High School in Kanawha County who concluded that staff, instructional materials and equipment, and facilities are inadequate in each of the four secondary schools. The media centers lack aides or sufficient media specialists to provide adequate instruction, supervision, and

supprot. Collections are grossly inadequate and out of date. Audio-visual equipment is frequently not housed in the media center due to lack of storage space. The facilities are extremely small. Most are just a single, small room, lacking office and conference areas. Most have no storage. Two of the libraries are used for study halls impairing the use of the rooms for media purposes.

148. Media programs are inadequate in many other counties in West Virginia. In Tucker County, library services are extremely inadequate at the elementary school level. The Davis-Thomas library for grades K-8 was unstaffed much of 1979-80. The Davis-Thomas library room lacks materials to fill up bookshelves because of lack of funds. The facility is used as a study hall part of each day, impairing the room's use for media. The Parsons Elementary library is housed in converted classrooms; the books are outdated. The reference materials and the library's collection of books are also inadequate. Neither Hamrick nor St. George has a librarian. Hamrick's library is housed in a windowless cubicle too small to accommodate a class. The room does not conform to fire safety standards. Lighting is poor and furniture is falling apart. The St. George book collection is in the multi-purpose room which is also used for meals. At the high school, the library must be closed between 11:00 a.m. and 1:00 p.m. because it is also housed in the multi-purpose room/cafeteria. A media center was not included in the budget for the school, built in 1979, due to lack of funding. Elementary school libraries in Clay and Mingo counties are not staffed or staffed only part time. Collections are extremely limited. Media programs in Monroe and Randolph Counties are also

inadequate. The media programs in Clay and Lincoln are among the worst in the state.

149. Although no county in West Virginia has a thorough and efficient media program because adequate funds are not available, Pleasants County and Ohio County include many elements of a quality media program. In Pleasants County, the elementary schools have libraries. The middle school (grades 5-8) offers courses in library science and weekly periods for all students in the instructional media center. The media center contains a large and varied collection. There are office, storage, and conference rooms. The high school media center is spacious with ample seating and a large collection.

150. Ohio County's media program is one of the best in the state. At Ritchie Elementary, for example, when the school was renovated, the auditorium was converted into a spacious, modern media center. One section of the center is devoted to class activities. There is an area for browsing, side rooms for special projects and tutoring services, a media office, storage room, and media production room. The media center is extremely well utilized by all students and teachers. The media staff coordinates the use of the media center. The Wheeling Park High School media center in Ohio County is like a "football field". There is total seating for two hundred sixty-one (261) students. The main center has seating for one hundred eighty-two (182) at tables, carrels, and in comfortable reading chairs. There are also four conference rooms for special projects. The library has a media production room for use by students and staff. There are three storage areas for equipment, audio-visual software,

and periodicals. There is also a technical processing room and county resource center. The media center is staffed by three full-time librarians as well as media aides.

#### Music

151. The music program in Lincoln County is woefully inadequate when judged by the standards for a thorough and efficient music program. There are seven music specialists for the entire county (21 schools). There is no general music program for elementary students. There are no specialized music teachers at the elementary level. Whatever instruction they receive in general music or voice comes from the classroom teacher. Many teachers lack the skills to teach music and all lack pianos, texts, record players, and instruments. Fifth and sixth graders who are able to purchase an instrument and wish to participate in the band are instructed one day per week for forty-five (45) minutes by one of the high school band directors. Only a handful of students participate. The elementary schools do not have music rooms so band classes are often held in bathrooms, school buses, corridors, outdoors, or any other vacant place.

152. At the secondary level in Lincoln County, general music courses are offered only to seventh and eighth graders, with the exception of a single course for high school students at Duval. Such courses are conducted in regular classrooms because there are no specialized music facilities for general music. Such rooms lack such rudimentary equipment as pianos. There are no choral music opportunities for junior high students. The only instrumental course is band. Students who cannot afford to purchase instruments cannot participate in the band. The band director of Guyan Valley

High School testified that the beginning of each year he holds a meeting for parents of students interested in joining the band. Usually as many as one hundred (100) people attend. However, as soon as the issue of instrument cost is raised, about half leave, because the cost is prohibitive. Nothing distinguishes the High School band rooms from other classrooms. The rooms are not equipped by the county and are not properly lighted or sound proofed. Most equipment is purchased by the band through continuous fundraisers. At Duval High School, a cinderblock room has just been built to house the band. This room is even less suitable than a regular classroom because funds ran out before the ceiling and floor covering could be purchased. However, it is an improvement over the old setting for the band in a small, windowless shack shared with the special education program.

153. Many other counties in West Virginia lack thorough and efficient music programs. In Tucker County only two elementary schools have music teachers. But children in grades K-6 receive no music instruction, because these teachers are only able to teach 7th and 8th grade students. Pianos and other instruments are almost non-existent at the elementary level. One elementary school has a bandroom which doubles as a maintenance room. The only high school music offerings are band and brass class. Few elementary schools in Wood County have a music room or specialized music teacher. Music facilities and staff are virtually nonexistent in Mingo County. At Lenore High School, band is conducted in one of the small outbuildings referred to as "chicken coops" on the bank behind the school.

154. In Marshall County, all schools have either full-time

or part-time services of a music specialist for instrumental, choral and general music. There are three full-time teachers at John Marshall High School. The music area includes an instrumental music lab, three practice rooms, a vocal classroom and office and storage space. The auditorium is used for performances. Major instruments are provided. There are nineteen (19) instrumental music, two music theory and appreciation, and eight choral music offerings.

155. In Ohio County, the staff includes a supervisor, eighteen (18) full-time and five part-time teachers. General music, taught by a certified music teacher, is available to all students in grades 1-8. Music theory and history are available to all students in grade 1-8. Music theory and history are available in high school. Choral opprotunities begin in Grade 5 and continue through grade 12. String music begins in grade four and band in grade five and continues through high school. Piano and guitar are available in high school. Textbooks, records and supplementary materials are provided at all levels. At the elementary level rhythm instruments, autoharps, a piano, record players, and audio visual equipment are available at each school. In addition to the elementary equipment, junior highs are supplied with band instruments. The High School has a library music collectio piano lab, and a great variety of instruments. All elementary schools except one have a music room. Some, such as Ritchie Elementary, have separate rooms for instrumental and vocal music. Each junior high has an acoustically designed band room with a separate room for vocal and/or general music. At the high school, facilities incude a band room with storage, a repair

room, choral room, piano labs, three soundproof practice booths and a teacher's office. In 1980-81, in Ohio County, approximately forty (40) hours of continuing education were offered in areas of general, vocal and instrumental music. The County has a budget for new instruments, repairs, and general instrumental and vocal music.

#### Physical Education

156. The physical education program in Lincoln County is inadequate. Elementary schools lack the personnel, facilities and equipment for a thorough and efficient physical education program. Six elementary schools are not served by a specialist, two schools share a teacher, and two other large schools need an additional instructor. Materials and equipment are limited at the elementary level. Some Title I schools were able to buy equipment with federal funds a number of years ago. The county provides balls and bats. Other equipment must be purchased by school fundraisers or PTA's. Elementary physical education is held in multipurpose rooms. These rooms in four schools have ceilings that are too low for many games such as volleyball and basketball. These rooms were built during the Better School Building Program and were planned with high ceilings. However, due to insufficient funds, ceilings were lowered to save money. At one school the PTA raised Nine Thousand Dollars (\$9,000.00) to provide a high roof. Two large elementary schools need an additional outdoor area to accommodate all students daily. Outdoor areas are adequate at only one elementary school.

156. The secondary physical education program in Lincoln County is also inadequate. Each of the secondary schools has

only one indoor physical education space for grades 7-12. As a result, the program is extremely limited. Students in grades 9-12 are not able to take physical education at all due to lack of staff and facilities. Seventh and eighth grade students receive physical education as mandated by the state. However, a broad range of activities is provided only at one school, where the teacher has been able to raise money privately for necessary equipment. Outdoor physical education sites and facilities are grossly inadequate. Two schools do not have a softball field, track or other fields and must rent Lions Club football fields that are not even adjacent to the school and that must be used for all physical education and interscholastic activities. Gymnasiums and locker rooms at all schools are terribly small and in severe need of renovation. The locker rooms present extreme health hazards. Interscholastic sports are extremely limited, consisting only of basketball, football and at two schools, track.

157. Ohio County has a high quality physical education program that meets the requirements of a thorough and efficient system. One example is the Wheeling Park High School program. There are nine health and physical education teachers. The gymnasium is two and one-half times the size of a regulation basketball court with five teaching stations. Within the gym area there are three separate rooms for nautilus equipment, the recreation course and archery and dance. There are dressing facilities for men and women, a health office, locker room for football and two health classrooms. Outdoor facilities include a track, baseball field, softball field and field hockey and

soccer area. There is equipment for a wide variety of courses.

158. John Marshall High School in Marshall County has a similarly high quality program. The physical education area includes a double gymnasium, a wrestling area, weight area, and dressing facilities. There are seven physical education and health teachers. Activities include gymnastics, wrestling, volleyball, basketball, bowling, dance, swimming (in summer), badminton, handball, golf, weightlifting, tennis, archery, flag football, and softball. All equipment for these sports are provided. Classes average twenty-five (25) students per teacher.

#### Science

159. The Lincoln County science program lacks many elements of a thorough and efficient system. Classes are too large, laboratories are virtually nonexistent, and materials and equipment are extremely scarce. As a result, most classes are taught without any laboratory experiences, the heart of any high quality science program. At the elementary level, there are no specialized science rooms. Teachers of grades 4-6 receive no science materials. The junior high science curriculum is strictly a textbook course. There are no laboratories available for experimentation. In 1980-81, science classes were as large as thirty-five (35) for 7th and 8th graders in one school in Lincoln County. At the high school level, each student does not have a text. Science lab equipment and materials are old and inadequate for the number of students served. Many science classes are conducted in regular classrooms or in lab rooms that no longer function. Science teachers use equipment brought from home due to lack of proper science materials. Science courses at the high school level are

extremely limited. Only one school offers physics. None of the schools offer advanced courses in chemistry or biology.

160. Many other counties in West Virginia do not have adequate science programs. They lack the facilities, materials, and equipment, curriculum and staff necessary for a thorough and efficient science program. Students without a good science foundation in high school cannot successfully compete in science programs and college and on-the-job.

161. Schools in wealthier counties in West Virginia have high quality science programs. St. Mary's High School in Pleasants County is smaller than many secondary schools in Lincoln County. Yet it has a well-equipped laboratory with lab stations for each student. As equipment is needed, it is purchased. Classes do not exceed twenty (20). Courses in advanced biology, advanced chemistry and physics are offered. A science teacher at St. Mary's High School testified that she chose to work there instead of at schools closer to her home due to the high quality facilities and equipment that are indispensable to a science program. The Pleasants County Middle School also has laboratories with ample materials and equipment. Ohio County provides adequate science materials in all grades. The county adopted a hands-on curriculum for the elementary schools and provides the required equipment. Some elementary schools have a specialized room for science. The junior highs have well-equipped labs as does Wheeling Park High School. The high school has six (6) biology labs with twenty-four (24) lab stations. Over twenty (20) advanced science courses are offered. There is clear evidence that smaller high schools in well funded counties in West Virginia have outstanding

well-equipped science programs. For instance, Dunbar High School in Kanawha County with four hundred fifty (450) students and Union High School in Grant County with one Hundred (100) students offer well-rounded programs in well equipped labs.

#### Social Studies

162. The social studies program in Lincoln County is not high quality, because it suffers from a dearth of materials and equipment and inadequate staff. At the elementary level, materials are limited to the adopted texts.

163. Few classrooms have reference books or audio visual equipment. Many rooms do not have such essentials as maps and globes. Secondary rooms are as poorly equipped. Students do not receive texts. Only one school offers even a single elective. Class sizes are large at all grade levels.

164. In contrast, Marshall County has sufficient texts, supplemental materials, and audio visual equipment. Class sizes are small and a wide variety of electives are offered at the high school level. Ohio County also has a thorough and efficient social studies program. Kanawha County has sufficient materials and equipment for a thorough and efficient program.

#### Vocational Education

165. The vocational education program in Lincoln County is competently and efficiently directed. Because Lincoln County has a high unemployment rate and is a depressed area, it has a high need for vocational programs. However, Lincoln County has fewer programs and resources for vocational education than many other counties in the State and does not have a thorough and efficient program. A limited number of vocational courses

(primarily business and home economics) are offered at the four high schools. In addition, Lincoln County has a vocational technical center which offers a limited number of industrial courses. Students from three high schools attend the center. Students from the fourth school, Harts, do not attend, because there is insufficient space and the school is too far away. These students do not have access to such programs. Demand for certain classes offered at the vocational school, such as welding and carpentry, exceeds the space available. Only about 60% of the demand of the students for existing programs are met by the center. In addition, there are courses that are not offered that should be, due to the employment opportunities in the region. One such program is mine maintenance. Lincoln County offers no pre-vocational program whatsoever. Vocational diagnosis and training of special education students in Lincoln County is extremely inadequate.

166. Lincoln County offers vocational courses in twelve (12) occupational categories. All of the counties surrounding Lincoln except Mingo offer more variety. Clay County offers courses in only nine (9) categories. For instance, Kanawha offers courses in forty-four (44) categories, and Cabell twenty-eight (28). There are ten to fifteen counties in West Virginia that seriously need additional facilities. The legislature provides far too few funds to meet the vocational needs of the state.

#### Special Education

167. Lincoln County is unable to provide thorough and efficient special education services to students in the County. The County is unable to comply with state and federal mandates

due to insufficient and unqualified staff, inadequate facilities and a dearth of materials and equipment.

168. A special education specialist who conducted a detailed survey of the Lincoln County special education program testified that many students currently placed in special education classes could function in regular classrooms if the regular program were not so deficient in staff, facilities and materials and equipment, and if special services were available to assist regular teachers. As a result, students are not served in the least restrictive environment.

169. Adequate identification, screening, evaluation and placement services are crucial to any special education program. However, such services are inadequate in Lincoln County. Lincoln County provides no vision, adaptive behavior, or physical/motor screening due to lack of staff and facilities. Behavioral screening is not conducted by trained staff, and hearing screening is conducted by RESA audiologists, creating long delays in placement of needy children. Psychological evaluation services were contracted in 1980-81, because Lincoln County had no psychologist on staff. Vocational assessments are not conducted, despite the fact that vocational training should be a part of all students' special education program.

170. Placement decisions are not made appropriately because psychologists and specialists in all areas of exceptionality are not available to participate in the placement decisions as mandated. In addition, classroom teachers are supposed to, but do not participate in such decisions due to lack of substitutes. Parents only participate half of the time due to the county's inability

to provide transportation and informational services.

171. Special education instruction is extremely inadequate in Lincoln County. Almost one-half of all special education personnel in Lincoln County are not properly certified and turnover is great. An analysis of the entire program is as follows:

(a) The speech and language therapists have case-loads that exceed the legal maximum and serve up to four schools. Students are served for as little as one-half hour per week. Facilities are inadequate in virtually every school in the county. Therapists typically work in hallways, cafeterias, teachers' lounges, storage rooms, windowless damp rooms, and corners of classrooms. Teachers often work without tables and chairs, tape recorders and other audio-visual equipment and language materials.

(b) The behavioral disorders program is currently itinerant. Two additional teachers are needed to create a resource program. Materials are needed.

(c) The gifted program does not serve two of the four high schools or half of the elementary schools. Those who are served receive only one-half hour of instruction per week. There are no rooms to work in, no advanced texts and supplemental materials and no funding for field trips and other enrichment activities.

(d) The learning disabilities program is extremely understaffed. Many students are not served, and those who are, receive only one to two hours per week of instruction when a minimum of five hours is necessary. Rooms and appropriate materials are needed.

(e) There is no program for the visually impaired.

(f) Two additional hearing impaired programs are needed and the existing programs need to be relocated out of substandard facilities.

(g) The program for Educable Mentally Retarded (EMR) students needs to be expanded to serve three additional schools. Existing rooms need to be upgraded or eliminated. Perhaps the worst situation exists at Duval High School. Until 1981-82, the program was located in a shack on the property shared by the band and termed "the doghouse" by students. This year the program is located in an inadequate facility in a former drive-in restaurant segregated from the school. The EMR program at all schools in Lincoln County lacks career awareness materials and training for all age levels, manipulative and programmed materials, and field trips.

(h) The program for Trainable Mentally Retarded students also needs to be expanded to serve an additional school where students have been identified. Segregated trailers used at one school are inappropriate. The programs lack most materials required by state guidelines. Vocational training needs to be provided.

(i) The county has no program for Profoundly Mentally Retarded students although two students reside in the county. One is sent out of the county. Another is not served.

(j) The physically handicapped are not served. The county needs a physical therapist, a properly equipped bus, and aides for regular classroom teachers. Many schools in Lincoln County are not accessible to the handicapped.

(k) Preschool handicapped students are not served.

172. Marshall County has a well-staffed and equipped special education program. Individual plans are developed for each of the approximately eight hundred twenty (820) students in special education. Special education personnel include a behavior disorder specialist, nineteen (19) EMR teachers, twenty-eight (28) gifted teachers, one (1) hearing impaired teacher, two (2) home/hospital teachers, one (1) physically handicapped teacher, six (6) special learning disability teachers, six (6) speech/language teachers, two (2) TMR teachers, two (2) psychologists in the county with access to two (2) additional psychologists from the RESA, and two (2) visually impaired teachers from the RESA. There is also a special education director, a physical therapist, a special education instructional specialist, and two (2) special education supervisors (1 elementary, 1 secondary) on the county staff, one (1) adaptive physical education specialist and an audiologist available through the RESA. Teachers have appropriate facilities and materials and equipment.

173. In addition, Marshall County there are currently three hundred (300) students who are in need of specialized instructional programs, yet, whose problems will not warrant special education services. For these children, modified education programs (MEP) have been developed to address these unique learning needs. The MEP is a procedure modeled after the special education delivery process which provides specific instructional changes where necessary and a much improved line of communication between teacher and parent as to what the problem is.

#### Remedial Education

174. It is essential for educationally disadvantaged

students to receive compensatory education programs throughout their school career. However, Lincoln County lacks adequate compensatory education programs at all levels. The only remedial services offered are provided by the federal Title I program to students in grades 1-3 who qualify for those services. Many students in those grades are needy, but do not qualify to be served. Remedial programs cannot be provided in grades 4-12 in Lincoln County despite severe deficiencies in the skills of many students and the clear recognition of school personnel of the need for such services. The Superintendent of Lincoln County testified that as many as 50% of secondary students in Lincoln County need remedial assistance. Lincoln County needs specialized remedial instructors for all grades and appropriate materials and equipment. The test scores of students in Lincoln County on the State-County testing program bear out this need. Students in Lincoln County score far below the state and national average in virtually all subjects at all grade levels. Scores get progressively worse in the higher grades.

175. Wealthier counties have available local funds for remedial programs. Ohio County has a one-on-one tutoring program for students in the primary grades organized by a specialist at the county level. In the intermediate grades, students are grouped according to ability and students with problems are served in classes as small as twelve (12). In addition, teachers have access to a variety of materials on all grade levels from their classrooms and the media centers in each school. These services are locally funded and supplement the Title I program. In junior high and high school, Ohio County offers courses at all ability levels. Class sizes throughout the county are generally

low. Remedial specialists are employed, and materials and equipment designed for varying ability levels of students are available.

#### Guidance

176. Guidance and counseling services are crucial at all grade levels. However, Lincoln County is unable to offer any guidance services at all to students in grades K-8. Only minimal counseling services are offered in grades 9-12. Duval, Guyan Valley and Hamlin High Schools have one guidance counselor each. Harts High School has a counselor for only two periods a day. Every high school guidance program is understaffed. None of the counselors have clerical assistance, or appropriate materials and equipment. Many other counties have inadequate guidance services. Few counties in West Virginia have elementary guidance counselors.

177. Marshall County has a high quality guidance program. Fourteen counselors serve the county and six of those are assigned to elementary schools. Ohio County has a high quality guidance program at the secondary level. The Junior High Schools all have at least one counselor. Counselors have appropriate offices and materials. Wheeling Junior High School has two counselors, due to its large disadvantaged population, despite a total enrollment of only four hundred fifty (450). Wheeling Junior High also has a program to prevent dropouts. Fifteen to twenty high risk students are instructed in a self-contained setting and are provided numerous enrichment activities. At Wheeling Park High School there are five counselors for one thousand, seven hundred, fifty (1,750) students. Each has an office. Ohio County also instituted a program two years ago to

reduce its dropout rate. Counselors identify students likely to drop out and a full-time staff social worker works to prevent the student from dropping out. Drop-out rates have declined 27% in the last two years.

#### Health Services

178. Despite the tragic health problems among many students in Lincoln County and the lack of health services in the county, the Lincoln County School System has no health service program. Until 1981-82, the county did employ one nurse. However, that position has been eliminated due to lack of funds. Many students in Lincoln County have severe, unaddressed health problems. Where such problems are not addressed, preventable conditions are allowed to ruin a child's health forever. What little first aid or health care is provided in Lincoln County is delivered by already over-worked teachers and principals. For instance, the principal of Fez Elementary, who also teaches two grades, must also check children for lice when there is an epidemic, and care for sick children. In contrast, all schools in Ohio County are served by a nurse on a full or part-time basis. Schools have clinics and appropriate equipment.

179. The state can most efficiently operate the health services in the schools by coordinating the present federally funded and state operated EPSDT (Early and Periodic Screening, Diagnosis, and Treatment) Program through the school system. Many of the substantial resources of the program presently going into transportation and outreach could be redirected into the actual service if it were done in coordination with the schools where the children are already present. Many of the screenings

needed to meet the standards for school health services could be funded through federal dollars.

#### Transportation

180. Lincoln County's transportation system is inadequate. Many students must be on a bus more than the maximum amount of time recommended by the State. Students of all grades are transported together instead of separating age groups, due to lack of buses. There are also insufficient buses for the handicapped.

181. Many students in Lincoln County are totally unexposed to the world outside of their home and school. However, even though students in rural and relatively isolated counties such as Lincoln and Mingo Counties need enrichment activities more than students who live in counties with a wealth of cultural and educational organizations and activities, these counties cannot afford to transport students for field trips. On the other hand, counties such as Pleasants provide field trips for all students with buses traveling long distances at county expense.

182. The state's system of funding transportation costs does not even meet the needs of Lincoln County to get students to school. Ninety-four percent of students in Lincoln County are transported. This high percentage, the rural nature of the county and the need for small schools have forced Lincoln County to spend a larger amount per mile transported than is reimbursed by the state, and to hire more than thirty-four (34) service personnel per one thousand (1,000) students. The current school bus replacement schedule is also inadequate for Lincoln County, due to the fact that 75-80% of the bus runs are on unpaved roads.

Inadequacies and Inequalities in Staff and Personnel in  
Lincoln County and Other Counties in West Virginia

183. West Virginia school systems vary significantly in the ratio of staff to students. Typically, the counties with the greatest concentrations of high-need students, have the fewest educational resources and the fewest staff. Therefore, the statistical disparities in staff, class size, turnover and salary among the counties are, to that extent, understated. When counties are ranked by state and local revenues from highest to lowest, the top fifth of counties had 68.61 professional staff per 1,000 net enrollment in 1979-80, while the bottom fifth had only 59.86 per 1,000.

184. A crucial factor in providing a high quality education in every subject offering is a small class size so that students can receive needed individual attention. Yet, differences in class sizes among counties in West Virginia are even more pronounced than differences in professional staff ratios. The average class size at the elementary level in Marshall, a wealthy county, is eighteen (18). In contrast, property poor counties have far larger class sizes. This is illustrated by a comparison of pupil/teacher ratios for elementary schools with a net enrollment greater than two hundred (200) in Lincoln, Mingo, Ohio, and Marshall counties. Of the nine elementary schools in Lincoln county with at least two hundred (200) students, only two have pupil teacher ratios less than twenty-five (25). Atenville Elementary has an average of thirty (30) pupils per class. There other schools have at least twenty-nine (29) pupils per class. In Mingo County, eight of eleven with enrollments greater than two hundred (200), have pupil/teacher ratios greater than twenty-five (25). In contrast, only

one school in Ohio and one school in Marshall have classroom ratios greater than 25 to 1.

185. There are large differences in class sizes at the high school level among counties in West Virginia. There are approximately fifteen (15) to seventeen (17) students per class at Jhon Marshall High School in Marshall County, many classes at Duval, Guyan Valley and Hamlin High Schools in Lincoln have between thirty (30) and forty (40) students per class. There are thirty-five (35) to forty-two (42) students per class at Lenore High School in Mingo County.

186. Similarly, the pupil to professional staff ratio is high in high schools located in property poor counties. Professional staff includes administration and professionals such as counselors and librarians in addition to teachers. The ratio in Cameron High School in Marshall County is 14.9 to 1, as compared to 19.5 to 1 in Burch High School and 21.1 to 1 in Gilbert High School, two schools in Mingo County.

187. Lincoln County has used every incentive position available to it under West Virginia Code Ch. 18, Art. 9A, Sec. 14 since 1977-78 and still is unable to hire sufficient staff to reduce class sizes and provide specialized staff in all areas.

188. Class sizes in Ohio, Marshall and Pleasants Counties are appropriate for delivery of a thorough and efficient education, while class sizes are too large in Lincoln, Clay, Mingo and Tucker Counties.

189. Property poor counties are unable to attract and retain highly qualified teachers. When counties are ranked by state and local revenues per net enrollment, the highest fifth of counties

have more experienced and highly educated instructional staff than the lowest fifth of counties. Whereas 42.3% of instructional personnel in the highest fifth have a masters degree or better, only 32.9% of personnel in the lowest fifth have such a degree. Similarly, 21.1% of personnel in the highest fifth have three (3) years or less experience, compared to 25.8% in the lowest fifth. Lincoln County has fewer staff with advanced degrees and more staff with 0.5 years experience than the state average.

190. Lincoln County has a high rate of turnover among instructional staff. Inexperienced teachers gain experience in Lincoln County and then leave to accept employment in adjoining counties. Lincoln County has few applicants for position. Lincoln County receives no more than four (4) applicants for each elementary position and fewer at the high school level. This turnover and replacement pattern has a major detrimental impact on the capability of providing high quality education. 20

191. Other property poor counties, such as Tucker and Mingo, experience high teacher turnover. Few teachers come to Tucker with experience or an advanced degree.

192. In contrast, wealthy counties such as Pleasants County have very low staff turnover and generally hire experienced individuals to fill vacancies. Even in the areas of science and math, Pleasants County has not failed to fill vacancies. Pleasants has as many as thirty (30) to forty (40) applicants per position. In 1979-80, only 18.4% of elementary instructional staff in Pleasants County had two years or less experience. In contrast, 31.9% of elementary instructional staff in Tucker County had two years or less experience.

193. In Marshall County there are approximately one hundred fifty (150) applicants per position. There has never been a situation where a vacancy has not been filled with a certified person. Staff turnover is low in all areas including special education.

194. The differences in the ability of counties to attract and retain staff is largely a function of differences in salaries. When counties are ranked by state and local revenues, the highest fifth of counties have average instructional staff salaries that are One Thousand, Eight Hundred Dollars (\$1,800.00) higher than salaries in the lowest fifth of counties.

195. Salaries vary among counties, because counties are authorized to pay salary supplements in addition to the state minimum salary schedule, and a county's ability to pay supplements is related to the county's local property wealth. As of 1980-81, county paid salary supplements for teachers in Lincoln County were Seven Hundred Dollars (\$700.00) for teachers with less than a master's degree and Nine Hundred Dollars (\$900.00) for teachers with a master degree or better. These are the same supplements that were offered in 1971-72. All counties surrounding Lincoln offer higher supplements. Other poor counties have minimal or no supplements. Tucker County offers no supplements. Clay County offers supplements of between Three Hundred Dollars (\$300.00) to Three Hundred Fifty Dollars (\$350.00) per year. Mingo County offers a maximum of One Thousand, Five Hundred Dollars (\$1,500.00) per year. On the other hand, Marshall County offers a salary supplement for teachers with a B.A. degree and no experience of Two Thousand, Seven Hundred Dollars (\$2,700.00) and at maximum

level exceeds Four Thousand Dollars (\$4,000.00). Hancock offers up to Five Thousand, Four Hundred, Ninety-one Dollars (\$5,491.00) to teachers at the highest level of education and experience, the highest supplement in the state.

196. Instructional personnel seeking a job or deciding whether to remain in a current position are also affected by the quality of school facilities and the availability of instructional materials and equipment in a county. Due to the poor quality of facilities and the general lack of adequate instructional supplies in Lincoln County, it is difficult to attract and retain staff. Some teachers leave jobs or turn down jobs solely because of inadequate facilities and equipment.

197. Many poor counties in West Virginia lack sufficient administrative and supervisory staff to deliver a high quality system of education. Lincoln County has only one specialist who supervises reading, grades K-3. Specialists are needed in the areas of math, physical education, science, social studies, secondary language arts, art, music, media, foreign languages, and guidance and testing.

198. Ohio County employs curriculum specialists in the major subject areas. These individuals coordinate the curriculum, prepare curriculum guides and work with staff members to insure that programs are effectively carried out. Pleasants, a small county, has recently employed a curriculum supervisor at the suggestion of a survey conducted by a consulting team hired to make recommendations in all educational areas.

199. Many counties in West Virginia are unable to deliver a thorough and efficient system of education because they lack

sufficient administrative staff at the school level. Four elementary schools in Lincoln County have teaching principals. Two schools share a principal. None of the elementary schools in the county have secretarial assistance. At the high school level, there is a need for additional clerical and professional administrative personnel. Due to understaffing, principals spend much of their day teaching, answering the phone, greeting visitors and deliverymen, taking care of sick children, and attending to numerous other non-instructional tasks. Because S.B. 15 will require that the counties maintain forty-nine (49) instructional personnel per one thousand (1,000) and Lincoln County presently has fewer than forty-nine (49) instructional personnel per one thousand (1,000), Lincoln County will be forced to further reduce its already inadequate administrative staff and add instructional personnel in order to receive reimbursement for all personnel on staff.

200. Roane County employs insufficient clerical personnel. Two schools have no secretary, and the high schools are inadequately staffed. A witness from Clay County testified that because schools in Clay County have teaching-principals and inadequate secretarial assistance, very little of the principal's time can be devoted to curriculum development and instructional leadership. The superintendent of Wood County also testified that the county should employ assistant principals at five large elementary schools and that the sharing of principals among smaller schools should be eliminated. However, the county has no funds to accomplish these goals.

201. Ohio County lacks sufficient administrative staff in

some of the small elementary schools. However, the junior and senior highs are adequately staffed. Wheeling Junior High School, with four hundred fifty (450) students, has a principal, assistant principal and a secretary, in addition to two guidance counselors. In contrast, Duval High School, with many more students and six grades, has the same administrative staff. Wheeling Park High School, with one thousand, seven hundred, fifty (1,750) students, employs one principal, five assistant principals, one activities director and five guidance counselors.

202. The state does not provide sufficient funds to counties to conduct a thorough and efficient system of continuing education for staff. The state provides no funds for county in-service except in the area of special education.

203. All teachers are required by the state to receive eighteen (18) hours of continuing education per year. This is the maximum that many counties can provide with existing funds. This is found to be insufficient. Lincoln County continuing education program is found to be inadequate. The county is unable to provide specialized training to teachers in their particular teaching field. It is unable to bring in sufficient experts from outside the county and have insufficient funds to send personnel to conferences. Lincoln County lacks the curriculum coordinators and the funds to pay substitutes that would be required to conduct an on-going program of "in-service" and teacher evaluation throughout the year. Instead, the program is concentrated in the first week of school and has little lasting impact.

Inadequacies and Inequalities in Facilities in Lincoln County and Other Counties in West Virginia

204. As a result of the state's reliance on local bonds to finance school facility construction, there is a vast disparity in the quality of facilities in West Virginia, ranging from modern, well-equipped buildings, to buildings which should be condemned as being unfit for occupancy.

205. Mingo County has the worst facilities in the state. Photographs introduced by the plaintiffs and testimony of witnesses from Mingo County corroborate the deplorable condition of facilities in Mingo County. Other counties illustrative of inadequate bond potential and poor facilities include Lincoln, Clay, Roane, Ritchie, Wirt, Calhoun, Pendleton, Greenbrier, Pocahontas, Randolph, and Monroe.

206. There are two general statistical indicators of the quality of facilities in a county. The first is the total value of facilities per pupil. The second is the number of square feet in buildings per pupil. In general, West Virginia counties with adequate bonding potential have made larger investments in facilities and equipment than counties with inadequate potential as the following table demonstrates:

<u>County</u>	<u>Total Value Building and Equipment Per Pupil</u>
Marshall	\$5,284.94
Ohio	\$5,517.14
Pleasants	\$5,362.11
Clay	\$3,727.27
Lincoln	\$2,511.11
Mingo	\$1,981.08
Tucker	\$3,696.58

207. The facilities in Lincoln County are grossly inadequate, despite the building program conducted under the Better School Buildings Program. Lincoln County's building program involved twenty-four (24) projects at a cost of approximately \$10.5 million dollars. As part of the plan, Lincoln County passed a bond issue in 1978 in the amount of Three Million, One Hundred Twenty-Five Thousand Dollars (\$3,125,000.00) utilizing virtually 100% of its bonding potential for 1977. Lincoln County was compelled to compromise its educational plan due to the inability to receive voter approval on two separate occasions, that included considerable consolidation prior to 1978. Concerning their original plans, however, Lincoln County was forced to design its program predicated on the amount of money available and using this factor to fashion which needs could be met. As a result, many needs went unmet. Additions that were constructed were in many instances not tiled, painted or furnished due to lack of funds, and landscaping and paving were incomplete. Further existing facilities were not adequately renovated.

208. Lincoln County's building program was administered as efficiently as possible within the finance and budget constraints imposed upon the Lincoln County officials. Construction has proceeded ahead of schedule. Lincoln County had difficulty in obtaining acceptable bids due to the increase material and equipment costs occasioned by road and bridge conditions, as well as higher labor travel costs due to its remote location. Lincoln County had to revise its plan because funds were not available to meet the bids. Lincoln County received a bid of Six Hundred Fifty Thousand Dollars (\$650,000.00) for Woodville

Elementary School, but was forced to construct a metal building costing Three Hundred Thousand Dollars (\$300,000.00) due to the insufficiency of funds.

209. It would cost approximately Six Million Dollars to renovate the facilities in Lincoln County so that all children in that county would be attending safe and sanitary schools. This cost would more than double so as to create a quality facility system, and would be even greater if facilities were consolidated as proposed in the county's original Comprehensive Educational Facilities Plan. The following are some of the basic needs of many of the schools in Lincoln County:

- (a) Additional classrooms are needed to relieve overcrowding;
- (b) Existing classrooms need to be remodeled, and refurnished;
- (c) Toilet facilities need to be expanded;
- (d) Art and music facilities need to be provided;
- (e) Adequate libraries need to be provided;
- (f) Outside play areas need to be improved and expanded and landscaping and paving are needed;
- (g) Special education facilities need to be improved and buildings must be made accessible to the handicapped;
- (h) Roofs need repair;
- (i) Science facilities need to be built or renovated;
- (j) Office facilities need to be expanded;

- (k) Auditoriums need to be provided at the high schools and physical education facilities expanded;
- (l) Storage space needs to be provided;
- (m) Health clinics need to be provided;
- (n) Emergency lighting is needed and classroom lighting needs to be improved; and
- (o) Asbestos ceilings need to be sealed at seven schools.

210. Conditions at many of the facilities in Lincoln County pose an immediate and serious health hazard. Two schools should be closed immediately and most others need substantial repair to meet state health standards. The water supply at many schools is unhealthful. At Ranger Elementary, water must be transported to the school due to inadequate supply. At Harts High School, the well is not approved. Restrooms are in poor condition in many of the schools. Restroom floors and fixtures are in poor repair, ventilation is inadequate, and there is no running water at some hand sinks. At two schools, sewage disposal systems are periodically saturated and sewage surfaces. At another school, untreated sewage discharges into a stream. At most schools in the county, water pools are in the playground area, roofs leak, ceilings are in poor repair, floors are worn, and lighting is inadequate. These conditions threaten the health and safety of students in Lincoln County and adversely affect the ability of students to concentrate in school.

211. Other property poor counties have similar facility problems. For example, with unused bonding potential of under one million dollars, Tucker County is completely unable to address

its facility needs. The following is a list of major needs in Tucker County:

- (a) A junior high/middle school;
- (b) Additional classrooms at each of the elementary schools;
- (c) Replace the St. George School, built in 1886;
- (d) Renovate Parsons Grade School;
- (e) Build a multi-purpose room at Parsons;
- (f) Add music, art and physical education rooms at Hamrick Elementary;
- (g) Add storage at all schools;
- (h) Add at least five (5) special education rooms;
- (i) Money for ongoing maintenance of facilities;
- (j) Tucker County High School: Add four (4) classrooms, landscape and pave, add ball fields, laboratories, teacher preparation area, media center, special education classrooms, and expand the cafeteria and band room.

212. Wood County has recently conducted an inventory of existing facilities needs. Wood County does not have the bonding capacity to address all of the identified needs. Randolph County also has substantial unmet needs. The county needs to replace its high school facilities built in the 1920's and 1930's. At Elkins High School the 1926 coal furnace does not function adequately and students must wear coats in class. Additional classrooms are needed in the elementary schools.

213. Pleasants County generally has high quality facilities. During the Better School Buildings Program the county built an

exemplary middle school with ample specialized spaces for all subjects. The existing high school and elementary schools were renovated. Pleasants does plan to replace the present bus garage and enlarge the vocational center with local current operating funds set aside over a three year period. In addition, the county had \$6.5 million in unused bond potential as of June 30, 1980, in order to meet future needs as they arise.

214. Ohio County also has high quality facilities. The county spent approximately \$25 million dollars during its building program, using more than \$17 million dollars in local funds. The county built a high quality comprehensive high school, several elementary schools and a junior high school. Existing buildings were renovated and redesigned to meet current needs. As of June 30, 1980, Ohio County had almost \$20 million dollars in unused bond potential to meet future needs.

Inadequacies and Inequalities in Instructional Materials and Equipment in Lincoln County and Other Counties in West Virginia

215. The State of West Virginia does not separately fund instructional materials and equipment, consequently there is a substantial variation among the various counties relating to the quality of materials and equipment.

216. Many counties have insufficient funds to purchase texts. Forty-five counties provide textbooks through excess levies, a source of funding totally dependent on the property wealth of the counties. West Virginia ranked 46th and last in textbook sales per capita on a nationwide basis for the two most recent years for which statistics were compiled. West Virginia represents only 0.7% of the national market for texts.

217. Although West Virginia law regulates the adoption by counties of elementary and secondary texts, there are no standards governing workbooks, supplemental texts and supplemental materials. There are no provisions for special education texts and materials except for blind and visually impaired programs. Further, although the law requires that counties adopt texts in required subjects, it does not govern optional subjects and does not require counties actually to purchase adopted texts.

218. It is common throughout the state that in property poor counties each secondary student does not have a text. All students receiving free and reduced price meals must be provided free texts. This law places the greatest burden on property poor, rural counties with a high incidence of personal poverty. Such counties are forced to provide a single set of texts per classroom, because they have insufficient resources to provide each student a text.

219. Text materials in use in West Virginia have copyright dates as early as 1932. Science books in current use in many instances are over twenty (20) years old. No standards have been adopted by the state to remedy the situation.

220. Lincoln County spends Eighty Thousand Dollars (\$80,000.00) in excess levy funds for texts each year. With these funds, the county provides texts in most subjects except art, music, physical education and health to all students through grade eight. At the high school level, the county can purchase only one set of forty texts for each classroom. As a result, students must share texts and are extremely limited in their ability to take books home. The purchase of supplies and equipment beyond the basic text

is extremely limited. Needed workbooks are not provided in many subjects. Materials are not provided for students reading above or below grade level. Art, music, science and social studies are taught in regular classrooms where specialized equipment is virtually nonexistent. Audio-visual equipment is lacking in all schools. Furniture is old and in many situations inappropriate for the grade level served. Many secondary classrooms are totally bare with the exception of desks, chairs, and a filing cabinet.

221. Lincoln County relies on school fundraisers to supply basic instructional materials and equipment. In some schools students are sent door-to-door to sell products to raise money for the schools. Such fundraisers are time consuming for administrators and have an adverse impact on students.

222. In Tucker County, materials and equipment are inadequate throughout the schools due to lack of funds. The county allocates only Nine Dollars (\$9.00) per pupil for all instructional materials and supplies other than texts. Equipment for "hands-on" experiences is lacking in all subject areas, as are supplemental materials and audio-visual materials and equipment. Basic materials such as glue, art supplies, crayons, paper and pencils are lacking because of insufficiency of funds.

223. In Randolph, the county allocates Ten Dollars (\$10.00) per pupil for supplies at the high schools and Thirteen Dollars (\$13.00) per pupil at the elementary level. This is all that is available for classroom instructional materials, library expenditures, and office expenses such as postage. Schools in Randolph County lack such basic supplies as glue and scotch tape. In order to operate a high quality program, Randolph County officials

feel they need Forty Dollars (\$40.00) to Fifty Dollars (\$50.00) per pupil at the high school level and Thirty Dollars (\$30.00) to Thirty-five Dollars (\$35.00) at the elementary level in present dollars.

224. Marshall County furnishes free textbooks and consumable supplies to all students in all subjects grades K to 12.

225. In order to insure that all students receive the texts and instructional materials and equipment needed to provide a thorough and efficient education, the state must provide adequate funding and eliminate dependence on local funds.

V.  
FINANCING OF PUBLIC EDUCATION IN WEST VIRGINIA

So that there can be no misunderstanding, this Court finds that the testimony offered during the course of this trial was clear and convincing that the inadequate school systems in Lincoln County, specifically and the State of West Virginia, generally, are products of the current school financing system.

To that extent, while certain portions of the school funding formula may be constitutionally proper, the system taken as a whole violates both the Thorough and Efficient and Equal Protection clauses of the West Virginia Constitution.

There are so many pervasive problems with the entire funding system, that the small portion of the formula and system that attempts to achieve parity throughout the state, are insufficient to salvage the entire scheme.

The principal problems are found in the total inability on a state level to finance facility construction and the problems inherent in the excess levy.

As expressed at the inception of this Opinion, there was incessant convincing testimony that the infrastructure of any sound educational system consists of: (a) curriculum; (b) personnel; (c) materials and equipment; and (d) facilities.

Since each of these elements have a symbiotic relationship, if there are any deficiencies in any one of the four components, the entire system is adversely affected.

Thus, with this recognition and finding that the evidence was clear and convincing that the financial support for at least two of these elements is so inferior in many counties throughout the state, the entire educational system is destroyed. These are: inadequate and insufficient materials and equipment, and inadequate, unsafe and unsanitary facilities.

This Court finds that the exclusive cause for the inadequate and insufficient materials and supplies is directly related to the reliance and utilization of funds raised through the local excess levy to subsidize the purchase of textbooks, and other learning materials and supplies.

Further, the inability to construct adequate, safe and sanitary facilities is correlated to the wealth of a county, since facility construction can only be accomplished by the issuance of bonds on a county level, and the bonding capacity is in direct proportion to the property values in that county.

Thus, given the vast disparity of property wealth in West Virginia, given the finding that property wealth is the sole basis upon which two of the denominators of a high quality educational system are formed, then the conclusion is inescapable that the absence of a thorough and efficient system of education in West

Virginia is directly related to property wealth, and the failure of the Legislature to provide a sufficient financial base to assure that each child in West Virginia is the recipient of a high quality system of education.<sup>5</sup>

In Pauley, et al v. Kelly, et al., supra. the Court required a full development of all the elements of the school financing system: (1) the local regular levy; (2) State Foundation Aid; (3) special or excess levy; (4) funding for facility construction; and (5) property appraisal systems.

After a single finding as to the basis upon which this Court determines that the financing system violates both the Thorough and Efficient and Equal Protection clauses, each of these enumerated elements will be discussed in the form of additional findings:

226. The present system of school finance prevents property poor counties from providing the educational components of a high quality system of education and creates substantial inequalities in educational programs among counties in West Virginia. The major sources of funding inadequacy and inequality are (1) the excess levy, and (2) facility funding. Despite the fact that

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5. This Court is not suggesting the finding that the other elements of a high quality education, i.e. curriculum and personnel, are adequate in West Virginia. However, the formula which is discussed in a later portion of this Opinion, is to be commended for a valiant attempt to achieve parity among all counties in these areas, however, there are so many built-in inequities within the formula, caused principally by the use of local excess levy, that it cannot survive constitutional scrutiny.

locally raised excess levies greatly vary by county due to large differences in property wealth, the school funding system relies heavily on such levies to provide basic educational programs. Many counties are unable to pass an excess levy or cannot raise sufficient funds through their excess levy, therefore, reliance on the excess levy is a primary source of the inability of counties to provide a thorough and efficient system of education. In addition, the state has no ongoing method of financing facilities, and again local revenue raising capacity depends on the county's property wealth. The facility financing system produces huge inadequacies and inequalities in facilities throughout the state. State funding does nothing to equalize these two elements of the school finance system, injects additional elements of inequality into the system through the foundation program and state supplemental aid, and provides inadequate funding for a high quality system of education.

#### The Excess Levy

227. The excess levy is the primary cause of the inability of many counties to meet their educational needs, because the amount of money that can be raised, and is raised, varies in large degrees based upon the amount and type of local property wealth of the county. West Virginia Code Ch. 11, Art. 8, Sec. 16 authorizes a county board of education to impose an excess levy on the property for up to five years at a rate equal to its regular levy rate, if 60% of the voters approve the levy. The maximum excess levy rate per One Hundred Dollars (\$100.00) of assessed valuation is 22.95 cents for Class I property, 45.9 cents for Class II property, and 91.8 cents for Class III and IV property.

West Virginia Code Ch. 11, Art. 8, Sec. 6c.

228. Counties have to rely on the excess levy as a basic element of funding. In 1979-80 excess levies represented almost 47% of local tax revenues. The excess levy is an inadequate source of funding to provide the necessary components of a thorough and efficient education in many counties in West Virginia, including Lincoln County.

229. The revenues realized from the excess levy in 1980-81 ranged from \$534.40 per pupil in Pleasants County to \$0.00 in eleven counties that were unable to pass an excess levy. Pleasants County had the highest excess levy yield of all counties, due to its substantial property wealth, even though it levied only a partial levy. In contrast to Pleasants County, Mineral County with a 100% excess levy raised only \$127.95 per pupil in 1980-81. By 1981-82, Pleasants County's excess levy yield had climbed \$701.16 per pupil, while Mineral County, with the smallest yield among counties with a maximum levy, raised only \$135.14 per pupil, barely more than the year before. Lincoln County raised only \$140.08 per pupil with a maximum excess levy in 1981-82.

230. The substantial reliance on the excess levy in West Virginia prevents counties such as Lincoln and Mineral, with limited capacity to raise revenues through an excess levy, from providing a thorough and efficient system of education. Property poor counties suffer twice: first because their regular levy raises a smaller amount of revenues; and second, because the special levy has a similarly lower revenue raising capacity.

231. Lincoln County has had a 100% excess levy continuously for over twenty-five years. The current excess levy is used to

provide salary supplements for professional employees of between Seventy Dollars (\$70.00) and Ninety Dollars (\$90.00) per month, salary supplements for service personnel of Twenty-five Dollars (\$25.00) per month, at least Eighty Thousand Dollars (\$80,000.00) for free textbooks, Forty Thousand Dollars (\$40,000.00) per year for the purchase of new buses, Forty-five Thousand Dollars (\$45,000.00) per year for the pension fund for retired employees, Twenty-five Thousand Dollars (\$25,000.00) for school maintenance, and Thirty-one Thousand Dollars (\$31,000.00) for teaching materials and supplies. Despite the excess levy, salaries are inadequate to attract and retain personnel, texts and other supplies and materials are inadequate and often unavailable for many students, additional maintenance is needed, and buses need to be replaced. All of the inadequacies and inequalities in educational programs and services have occurred despite Lincoln County's maximum regular and special levy effort.

232. As of 1980, eleven counties had no excess levy, and thirteen additional counties had only partial excess levies. The counties without excess levies in 1980 are the same counties that have been unable to pass levies year after year. The counties that are unable to pass excess levies are generally rural and sparsely populated, with little industry. In these counties, the average personal income and the level of educational attainment of the general population are low.

233. Counties that cannot pass an excess levy cannot offer a high quality educational program. Such counties cannot provide salary supplements and adequate texts or materials, and cannot maintain facilities. Counties that have had excess levies

over time have been able to build a quality program if they have sufficient property wealth. The multiplier effect of not having the resources over time is very significant. Even in wealthier counties the excess levy must be used to supplement staff salaries, to purchase textbooks, and to maintain facilities. Without the excess levies, salaries would be reduced, all students would not be provided free texts and materials, and preventive maintenance would be suspended. Wealthy counties would become "maintenance systems" without the funds now generated by the excess levy. In the wealthiest counties e.g. Ohio, Marshall and Pleasants, the excess levy is necessary to provide the quality of opportunity they now offer, which is not consistently of high quality in all program areas.

234. The use of excess levies to fund schools creates inefficiency. Counties that pass excess levies often do so by compromising education priorities in order to create a package acceptable to 60% of the voters. For example, Lincoln County has had to commit certain excess levy funds to supplement pensions for retired personnel to obtain additional support for passage of the excess levy. Further, because the state relies on excess levies to fund public education, county school administrators are forced to spend considerable time seeking passage of levies. This responsibility impedes the supervision and improvement of the instructional program. In addition, the excess levy often creates misunderstanding between the educational community and the public.

#### Facility Financing

235. West Virginia has no ongoing state financing mechanism

for school facility construction. The financial capability of a county to construct facilities depends on the county's local property wealth.

236. The West Virginia State Department of Education does not offer adequate support to school districts in planning school facilities. In order to have an efficient facilities system, the state needs to provide additional planning assistance to the counties. At a minimum, the state needs an architect, structural engineer, and four educational planners. These personnel have been unsuccessfully requested by the state director.

237. The principal sources of funding for school construction are local bond issues, and the Better School Buildings Program, which is nearing completion.

238. Counties are empowered to issue bonds for school construction up to a maximum of 5% of the county's assessed value. West Virginia Code Ch. 13, Art. 1, Sec. 3. This is called a county's bond potential. Bonds may only be issued after 60% of the voters have approved the bond. West Virginia Code Ch. 13, Art. 1, Sec. 4.

239. There is great variance in the bond potential of counties in West Virginia. The three counties in West Virginia with the smallest potential per pupil in 1980-81 were:

<u>County</u>	<u>Bond Potential</u>
Wayne	\$1,034
Mingo	\$1,045
Lincoln	\$1,086

The three counties with the greatest potential per pupil in 1980-81 were:

<u>County</u>	<u>Bond Potential</u>
Pleasants	\$4,438
Grant	\$3,645
Gilmer	\$2,956

The state average bond potential per pupil in 1980-81 was One Thousand, Six Hundred, Eighty Dollars (\$1,680.00). When counties are ranked according to equalized assessed value per pupil, the wealthiest fifth of counties have over twice the amount of bond potential per pupil as the poorest fifth.

240. When a county borrows to its legal borrowing limit, it is unable to construct additional facilities unless it has Better School Building Program funds or other sources of funds.

241. Unused bond potential is the measure of a county's current ability to construct facilities with local bond monies. Unused potential is that portion of bond potential which is not already committed. When counties are ranked according to equalized assessed value per pupil the wealthiest fifth of counties had in 1980-81, One Thousand, Nine Hundred and Ninety-nine Dollars (\$1,999.00) in unused potential per pupil, over three times the amount of unused potential per pupil available to the poorest fifth of counties.

242. There are substantial differences in unused bond potential among counties of similar enrollment. For example, Pleasants County, with net enrollment in 1980-81 of One Thousand Seven Hundred, Sixty-one (1,761), had assessed value of \$156,296.255.00. Tucker County, with One Thousand Seven Hundred, Ninety-one (1,791) students, had assessed value of only \$41,070.650.00. The difference in assessed value translated into a difference in bond potential of over \$5 million dollars, \$7,814,813.00 for Pleasants

compared to \$2,053,533.00 for Tucker. As of 1980, Pleasants had used only 16.7% of its bond potential and had unused potential of \$6,510,813.00. Tucker had used 58.4% of its potential and had unused potential of only \$853,533.00.

243. A similar comparison of Marshall, Ohio and Mingo Counties demonstrates that Marshall and Ohio Counties had greater assessed value and greater bond potential per pupil than Mingo County in 1980-81. Ohio County had used only .1% of its potential and Marshall only 19.5%. However, Mingo County had used 65.4% of its potential in 1980-81. As a result, Mingo had approximately \$3 million dollars in unused bond potential in 1980-81. while Marshall and Ohio Counties each had approximately \$19 million dollars in unused potential.

244. In addition to Tucker and Mingo, examples of counties with limited unused bond potential are Roane, Wirt, Calhoun, Lincoln, Clay and Pendleton. These counties and other counties in the state with inadequate bond potential are unable to construct high quality facilities. Their unused bond potential cannot meet existing facilities needs in these counties.

245. If a county has used most of its bonding capacity and Better School Buildings money, as have many counties in the state, it is powerless to build facilities unless it has access to excess levy monies for that purpose. Most counties, however, need to use excess levy funds for current operating purposes.

246. There are substantial differences in the cost of construction throughout the state. Isolated southern counties, including Lincoln, have costs approximately 15% higher than counties such as Cabell.

247. Many counties are unable to pass local bond levies. Since the inception of the Better School Building Program in 1971, there have been eighty-six (86) county bond elections in West Virginia. Fifty-five of those elections have failed. Approximately twenty (20) counties have been unable to pass local bond referendums. Some counties have tried repeatedly without success. Gilmer County attempted five times and never received more than 53.56 percent voter approval.

248. There are many factors that affect voter approval of a bond. Counties with a large percentage of poor or retired people are less likely to pass a bond. Counties with a high percentage of business and industrial property are more likely to pass a bond. Some counties have 40% of assessed valuation in residential ownership, while others have less than 10%. In counties with poor school facilities, voters tend to lose confidence in their ability to improve the situation.

249. Frequently counties are forced to permit political considerations to influence the composition of a bond issue, when the most educationally sound program does not receive 60% voter approval. Lincoln County held two bond elections in 1976. The county administration worked hard for passage of the bond, but it failed with only 42.49% in favor the first time and 38.50% in favor the second time. After changing the bond package by eliminating the planned consolidation of the high schools and several elementary schools, the bond passed in 1978 with 66.35% voter approval. The plan that met voter approval was not the most educationally thorough or the most efficient.

250. In recent years, some counties have passed bond

issues, but have been unable to sell them, due to the overall poor financial conditions existing nationwide occasioned by high interest rates. These counties include Brooke, Hancock and Raleigh.

251. Following the ratification of the Better School Buildings Amendment in 1972, which authorized the state to sell bonds for school facility construction, the Legislature adopted West Virginia Code Ch. 18, Art. 9C, Sec. 1, et seq., to establish a state program for the construction, renovation, and remodeling of school buildings. West Virginia Code Ch. 18, Art. 9C, Sec. 5 established the schedule for the distribution to the counties of the \$200,000,000 in state funds authorized by the Constitutional Amendment. The county entitlements were based on a three-step formula. The first step was a flat grant of Two Hundred Thousand Dollars (\$200,000.00) to each county. The second step involved a flat amount per pupil in net enrollment. The third step distributed funds in inverse relation to a county's bond potential. However, all counties received substantial funds under the third step.

252. The formula was not based on county needs or ability to finance school facilities. The formula was a means by which each county was given some money.

253. Interest accruing as a result of the investment of the state school building fund is distributed to the counties on a per pupil basis. As of August 31, 1981, the total state entitlement funds amounted to \$220,130,426.36.

254. Better School Building funds were distributed to a county after the State Board approved the county Comprehensive Educational Facilities Plan (CEFP) and the individual building

plan. Later the State Board adopted a policy to distribute entitlement funds to a county once the CEFPP was approved.

255. All county CEFPP's were to include a community analysis, a population and enrollment study, the educational plan, the evaluation of existing facilities, a determination of facility needs based on the foregoing sections, and a financing plan. In reality, the facility needs section was affected by the availability of funds therefore, counties with limited local resources approved plans that did not provide for high quality construction.

256. When counties are ranked by equalized assessed value and the counties that did not pass a local bond levy are excluded, the wealthiest fifth of counties received more state and federal funds under the Better School Building Program and had far more local bond potential than the poorest fifth of counties. The wealthiest counties had Eight Hundred Seventeen Dollars (\$817.00) per pupil in state and federal funds and One Thousand, Five Hundred and Seven Dollars (\$1,507.00) per pupil in local funds, compared to Six Hundred Ninety-seven Dollars (\$697.00) per pupil in state-federal funds and Eight Hundred Forty-five Dollars (\$845.00) per pupil in local funds for the poorest counties. As a result, the wealthiest counties had available almost Eight Hundred Dollars (\$800.00) more per pupil than the poorest counties under the Better School Building Program.

257. Counties that were unable to pass bonds and counties with limited bonding capacity were forced to reduce the scope of their Better School Building Program, because they had insufficient funds available. Counties such as Lincoln had to sacrifice quality by taking out special facilities, labs, and special

education classrooms and auditoriums, reducing size, building facilities with inexpensive finishes, using metal buildings, and leaving facilities unfurnished. Such counties could not incorporate life-cycle costing of buildings. Inexpensive buildings without proper insulation and heating and cooling systems are often more expensive to maintain. Counties such as Lincoln were forced to build additions to existing inadequate buildings instead of consolidating small schools.

258. Counties with lower assessed value were forced to build smaller, less costly facilities under the Better School Building Program, than counties with higher assessed value.

259. Virtually all of the state funds provided under the Better School Building Program have already been committed to approved projects. There is no on-going source of state funds for school construction. S.B. 15, West Virginia Code Ch. 18, Art. 9A, Sec. 21, requires the State Department of Education to conduct a statewide facility needs assessment but does not provide adequate funds to staff the State Department or to construct needed facilities.

260. Present and past state department facility directors acknowledge outstanding facility needs in the state of at least \$600 to \$900 million dollars in 1981 dollars. These existing needs and needs that will develop over time will not be met unless the state adopts a continuing program of school facility financing to replace the current reliance on local bond funding. It requires an annual expenditure of approximately 2.5% of the total valuation of the state's school facilities to maintain an ongoing program once the gross facility deficiencies are corrected.

261. Lincoln County performed more than adequately in administering its building program considering its limited resources and the constraints of the present method of financing facility construction. Lincoln County still has significant unfulfilled facility needs as stated herein.

262. If facility programs are planned and financed at the state level, a number of efficiencies can be realized. Energy efficiencies and other specifications can be required in all plans, and economies can be realized in planning and purchasing. In addition, state funding eliminates the costs associated with local bond elections. When counties are forced to administer a building program with minimal state assistance, local administrators must often ignore other duties.

#### State Foundation Aid and Regular Levy Monies

263. The "West Virginia Public School Support Plan" (hereinafter "support plan") is contained in West Virginia Code Ch. 18, Art. 9A, Sec. 1 through 20. A portion of the support plan is made up of the "basic foundation program" which is contained in West Virginia Code Ch. 18, Art. 9A, Sec. 3 through Ch. 18, Art. 9A, Sec. 10. This foundation program is made up of seven "foundation allowances" detailed in West Virginia Code Ch. 18, Art. 9A, Sec. 4 through Ch. 18, Art. 9A, Sec. 10 (hereinafter referred to as the "formula"). Each of these seven foundation allowances is often referred to as a "step" although that term is also never used in the Code. In addition to the allowances in the formula, there are three other allowances under the support plan. These amounts are added on to the formula amounts and are contained in West Virginia Code Ch. 18, Art. 9A, Secs. 14, 15 and 16.

264. The state pays a portion of the amount calculated under the formula. The portion paid by the state is equal to the difference between the sum total of the seven steps and the county's "local share" (as that term is defined in West Virginia Code Ch. 18, Art. 9A, Sec. 11 and which is described in Findings 273(e) and (f)). This local share is the element in the formula which factors in a consideration of the county's local property taxes. To calculate the total amount of state money appropriated to education under the formula, the shares of all the counties are added together. This total is referred to as "state foundation aid".

265. The amounts allocated to the counties under the formula and other aspects of the support plan depend on data such as number of "professional educators", "net enrollment", and "adjusted enrollment". Beginning in 1981-82, data from the second month of the prior school term is used in these computations. As a result, the amount of money a county school system receives under the formula for the school and fiscal year 1981-82 is based largely on teacher and pupil data from October, 1980 resulting in a perpetual one-year delay.

266. The amounts allocated to the counties under the formula are affected by pupil definitions. "Net enrollment" is defined as including all students enrolled in special education, early childhood education, and grades one through twelve. It is in reality the total of all students enrolled in free schools in West Virginia.

267. "Adjusted enrollment" includes net enrollment plus twice the number of pupils enrolled for special education "all

adjusted to the equivalent of the instructional term. . . ."

This means that students classified by a county in any special education category are given a weighting of three under the statute, regardless of the nature of the program provided, and regardless of the nature of the program provided, and regardless of the actual educational costs of the particular program provided. Students identified as special education students are the only students counted more than once under the statute. In practice, full-time equivalency (FTE) is used only for early childhood education students while the "head count" is used for all others in determining adjusted enrollment.

268. The foundation program contains numerous provisions that discriminate against and provide inadequate funding to property poor counties. These provisions of the formula are detailed in the following findings:

Step One

269. (a) Step one of the formula, West Virginia Code Ch. 18, Art. 9A, Sec. 4, gives the counties an allowance for each "professional educator" up to a maximum of fifty-five professional educators to each one thousand students in adjusted enrollment. The allowance for each educator is the amount required to pay the state minimum salaries as required by the Code.

(b) The term professional educator is defined to include the county superintendent, assistant superintendents, instructional director/managers and curriculum specialists, principals, assistant principals, counselors, librarians, remedial specialists, teachers in grades K-12, psychologists, nurses, and attendance directors, officers and social workers. West Virginia

Code Ch. 18, Art. 1, Sec. 1 and state guidelines.

(c) A county receives reimbursement for the salaries of professional educators only if the person is employed with state or county money. Further, if an educator is employed less than full time, he is counted less than full time.

(d) The step one reimbursement for actual teachers hired is most beneficial to and rewards those counties who hire the greatest number of teachers per one thousand (1,000) students up to fifty-five (55). Wealthy counties have more educators per one thousand (1,000) students than poor counties. Further, the step one amount directly affects allocations under steps three, five and six of the formula with a multiplier affect.

(e) the 55/1,000 reimbursement limit does not meet the needs of many counties in West Virginia. The ratio does not take into account the fact that some counties have smaller schools, more educationally disadvantaged students requiring more intensive educational services, and need more staff overall. Sixteen counties exceed 55/1,000. Another seven counties have ratios greater than 54/1,000. Many counties cannot provide a high quality education within the 55/1,000 limit.

(f) The amount of the foundation allowance a county is given under step one is equal to the "state minimum salaries" a county is required to pay its teachers pursuant to West Virginia Code Ch. 18A, Art. 4, Sec. 2. The minimum salary schedule gives a higher minimum salary to those teachers with the greatest educational background and/or teaching experience. This section rewards the counties that have teachers with the greatest amount of education and/or experience. There is a direct relationship

between educational expenditures per pupil and teacher expenses and education. This provision favors wealthy counties which can retain teachers.

(g) Because there is a one year delay between the school year for which salaries are budgeted and the data upon which the budget is based, the counties must pay teachers for current level of experience and education, from funds calculated from last year's levels of experience and education. The fact that all teachers are gaining more experience and many have more education and all are annually entitled to a higher salary under the state minimum salary is not reflected in the amounts available to the counties.

(h) Counties at or above the state average professional staff ratio per 1,000 are limited by West Virginia Code Ch. 18, Art. 9A, Sec. 4 in the number of additional staff than can be hired and whose salaries can be reimbursed under the formula in the following year to 20% of a county's total potential increase under this provisions (55/1,000 less their existing ratio or five professionals, whichever is greater). All professional staff employed above the state average ratio must be fully paid by the county in the first year of their employment. Poor counties are unable to fully fund staff members with local revenues.

(i) Step one does not reimburse counties for county salary supplements, for salaries exceeding ten months or for supplemental pay for extracurricular activities. These are all necessary expenses that must be paid by the county resources.

(j) Barbour, Braxton, Hardy, Pendleton, Pocahontas, Tucker and Webster did not provide a salary supplement in 1980-81.

(k) Under West Virginia Code Ch. 18A, Art. 4, Sec. 3

(first passed in 1969), principals receive monthly salary increments from state funds appropriated therefor in addition to the recommended salary schedule for them which is in existence in each county. The amount of the increment depends on the number of teachers the principal is responsible for supervising and the principal's level of educational background or whether she/he has a principal's certificate. The amount of increment provided under the 1981 amendments ranges from Seven Dollars and Twenty-five cents (\$7.25) to Fifty-three Dollars and twenty-five cents (\$53.25) per month. In calculating which principals are eligible for their salary increment under this step, the 55/1,000 limit is ignored. All principals receive this increment regardless of the number of professional staff per one thousand (1,000) students in the county.

(1) The amounts of the increments given in the statute do not accurately reflect the total amount of salary supplements which many counties pay principals since many counties further supplement principals' salaries from local funds. In addition, the minimum salary schedule and principal salary increments of the formula presume that a principal works for only ten months. In many cases principals work for a longer period each year and to the extent that this is true the additional salary and increment is not reimbursed under this section of the statute and must be paid for from additional county funds.

(m) As of 1982, a county must maintain a minimum of forty-nine (49) professional instructional personnel (defined in West Virginia Code Ch. 18, Art. 9A, Sec. 2 as classroom teacher, librarian or counselor) per one thousand (1,000) students in

adjusted enrollment, or suffer a pro-rata reduction in its allowance for professional educators. There is no consideration given to counties having smaller schools and a greater need for principals and other administrative staff. Thus some counties may be forced to return to teaching principals or do away with curriculum support positions. A county must use all incentive positions (discussed in later findings) to employ professional instructional personnel until the minimum ratio is obtained.

#### Step Two

270. (a) Step two, West Virginia Code Ch. 18, Art. 9A, Sec. 5, establishes the foundation allowance for service personnel. There are seventy-two (72) different service personnel positions, including bus operators, accountants, secretaries, aides, skilled craftsmen and repairmen, cooks, custodians and maintenance men.

(b) Beginning in 1981, the calculation of both the state total and county's share of the service personnel cost has been changed from a percentage of the step one calculation to a ratio per 1,000 students, with a maximum reimbursement ratio of thirty-four (34) service personnel per one thousand students in adjusted enrollment. The county must pay out of local funds for service personnel in excess of 34/1,000.

(c) The maximum ratio is uniform throughout the state and is not adjusted for the varying needs of counties (e.g., (1) for more bus drivers as a result of greater transportation burdens, required because of hilly terrain or other problems of geography, (2) for more custodians and maintenance staff needed for older and/or smaller schools serving sparsely populated areas, or (3) for a greater need for aides or tutorial staff

for greater compensatory educational needs.) The amount of the allowance under this section is computed on the average state minimum pay scale of all service personnel in the county.

(d) Twenty-eight counties exceeded the 34/1,000 ratio as of 1980-81. A majority of these counties generally have low property wealth and are rural. Those counties that are poor and rural have greater needs than other counties in the state. The state average is 33.03/1,000.

(e) Any county having fewer than 34/1,000 is limited in the number of additional service personnel it can employ each year to ten percent of its total potential increase (the difference between 34/1,000 and its present ratio) of two persons, whichever is greater.

(f) This step of the formula does not reimburse counties for social security and other payments resulting from paying salaries above the minimum salary schedule or from employing staff in addition to maximum ratios under the formula.

### Step Three

271. (a) West Virginia Code Ch. 18, Art. 9A, Sec. 6 is the foundation allowance for fixed charges. Under this step counties are reimbursed for the amounts of Social Security payments (West Virginia Code Ch. 18, Art. 9A, Sec. 6(1)), unemployment compensation contributions (West Virginia Code Ch. 18, Art. 9A, Sec. 6(2)), and workman's compensation contributions (West Virginia Code Ch. 18, Art. 9A, Sec. 6(3)) attributable to a county based only on the minimum salaries for professional educators and service personnel under steps one and two (West Virginia Code

Ch. 18, Art. 9A, Sec. 4 and Ch. 18, Art. 9A, Sec. 5)). The county must legally fund all such charges incurred due to salary supplements.

#### Step Four

272. (a) West Virginia Code Ch. 18, Art. 9A, Sec. 7, reimburses counties for a portion of their transportation costs, other than the cost of transportation personnel, e.g., bus drivers and maintenance staff, which must be included within the service personnel ratios of step two, West Virginia Code Ch. 18, Art. 9A, Sec. 5. For current operating costs under this step, a county receives an allowance equal to (a) 80% of its actual transportation costs (exclusive of salaries) for maintenance, operation and related costs, plus (b) 100% of insurance premiums paid by it on buses, buildings, and equipment used for transportation; plus (c) 80% of its cost of contracted transportation services and public utility transportation; and (d) an amount for aid in lieu of transportation equal to the state average amount per pupil for each pupil receiving such aid in the county.

(b) The counties actually receive reimbursement for costs incurred two years earlier. This adversely affects rural counties especially, that have to spend a larger share of their budget on transportation.

(c) For replacement of buses, counties receive a percentage of the current replacement value of their bus fleet: 10% until July 1, 1981; 11.1% until July 1, 1982; 12.5% after July 1, 1983. Only buses used full time, not extra or spare buses used for emergencies, are included in calculating the number

of buses in a county's "bus fleet". The replacement schedule does not recognize differences among counties in road conditions, terrain, or population density, and is inadequate for many counties.

(d) An additional limit on the amount that a county may receive for transportation under this allowance, is that its reimbursement may be no "greater than one-third above the computed state average allowance per mile multiplied by the total mileage in the county. West Virginia Code Ch. 18, Art. 9A, Sec. 7. Over the years reimbursement to seven different counties has been limited by this provision. Clay and Lincoln are among the counties that have been limited.

#### Step Five

273. (a) West Virginia Code Ch. 18, Art. 9A, Sec. 8, establishes the statewide foundation allowance for administrative costs as 0.7% of the total statewide step one allocation. The total is divided by fifty-five and each county is allotted an equal amount. The allocation is not based on actual administrative costs.

#### Step Six

274. (a) West Virginia Code Ch. 18, Art. 9A, Sec. 9, establishes the foundation allowance for other current expenses and substitute employees (professional and service). For current expenses, a state total equal to 4% of steps one and two is distributed to counties based on adjusted enrollment. For professional educator substitutes a state total of 2.5% of step one is distributed to counties proportional to the county allocation for professional educators. For service personnel substitutes, 2.5% of the total state allocation under step two is distributed

to counties according to the county allocation for service personnel.

(b) Prior to the 1981 amendments, current expense was 10% of the total amount of steps one and two. Then when the amount distributed under steps one and two increased under the 1981 amendments, the percentages of these steps allocated for step six was reduced from 10% to 6.5% (4% of steps one and two, plus 2.5% of step one and 2.5% of step two).

(c) Step six does not begin to cover actual costs for current expenses. There is no separate allocation for texts or other instructional materials and equipment. Utility costs have increased dramatically in recent years. Step six should provide adequate funding so that counties do not have to rely on the excess levy to fund current expenditures.

#### Step Seven

275. (a) West Virginia Code Ch. 18, Art. 9A, Sec. 10, establishes the foundation allowance to improve instructional programs. Twenty percent of step seven funds are allocated to counties proportional to adjusted enrollment. Eighty percent is distributed beginning with the county having the lowest average expenditure per pupil to bring it to the level of the next lowest average expenditure per county; these funds are then allocated to these two counties to bring them to the level of the county that is third from the bottom, and so on until funds run out.

(b) The 1981 amendments to the School Support Plan reduced the funds distributed during 1981-82 under step seven to nearly zero from \$31 million in 1980-81. The bulk of funds distributed under this section in previous years resulted from annual increases in the total local share charged to counties

under the formula from a base year of 1971-72. When the total amount of the local share increased, e.g., because of reappraisal of property or new construction, from the base year of 1971-72, the amount of that increase was distributed under step seven. The amendments reduced the amount almost to zero by changing the base year to July 1, 1981. There are two other potential sources of funds that this section of the Code anticipates: the general school fund and legislative appropriations. Since 1971, the Legislature has not appropriated any money for distribution under this section. The general school fund is a minor source of funds.

(c) While the concept of step seven is designed to achieve financial parity among the counties, in practice it will never overcome the inadequate funding faced by many counties in West Virginia because step seven does not take into account and equalize for differences in excess levy revenues. For some counties, excess levies represent a significant portion of current operating funds, while other counties are unable to pass an excess levy. In addition very little money is distributed through step seven. The projected 1982-83 increase in step seven funds is much larger than projected future increases because much of the 1982-83 increase results from the one-time mandated increase in local share. In 1982-83, many needy counties, such as Clay will not be eligible for the 80% equalizing funds under step seven.

(d) The sum of steps one through seven is the basic foundation program. When counties are ranked by property wealth, the wealthiest fifth of counties had the highest basic foundation program level in 1979-80. The disequalizing result in the foundation,

apart from the failure to equalize the funds from the special levies, is the product, primarily, of steps one and two which are tied to numbers, experience and qualifications of staff.

(e) The state pays to the counties only a portion of the basic foundation program or the total of steps one through seven. The state's share is calculated by subtracting from the sum of steps one through seven the counties' "local share". West Virginia Code Ch. 18, Art. 9A, Sec. 11 describes how a county's local share is calculated. The tax commissioner is required to make an appraisal in each county, and in the state as a whole, of all nonutility, real and personal property based on its true and actual value and maintain and revise the same annually. There are four classes of property in West Virginia for ad valorem taxation purposes. Calculations made in determining "local share" are made on the basis of the "most recent survey of property valuations in the state." First, 97.5% of the value of each class of public utility property in the county is determined. Then 47.5% of the appraised value of all other property in each class in the county is determined. Effective July 1, 1982, this amount will increase from 47.5% to 52.25% (representing 55% of 100% less 5% allowance for losses in collections). The value of each class of property so determined is then multiplied by the hypothetical levy rates set out in West Virginia Code Ch. 18, Art. 9A, Sec. 2. The rates per each hundred dollars of valuation are 22.5 (19.6 prior to 1981 amendments) cents on Class I property, 45 (39.2 prior to 1981 amendments) cents on Class II property, and 90 (78.4 prior to 1981 amendments) cents on Classes III and IV property. The products are then added to determine the amount of "local share" that will

be deducted from a county's foundation amount.

(f) A considerable portion of regular levy revenues are omitted from the local share, because (a) part of the actual regular tax rate charged by counties is uncharged in the local share computations, and (b) actual assessment levels exceed those used in calculating local share (referred to as "excess assessments"):

(i) Uncharged regular tax rate refers to the fact that in practice, counties use the following levy rates per hundred dollars valuation on the various classes of property for school purposes: 22.95 cents on Class I, 45.9 cents on Class II, and 91.8 cents on Classes III and IV. These rates are higher than the hypothetical rates used in "local share" calculation. This category of regular tax levy revenues is unequalized since it is disregarded in the formula computations. The uncharged regular tax rate amounted to 11.79% of regular tax levy revenues in 1980-81 and ranged from \$71.09/pupil in Grant County to \$14.18/pupil in Tucker County, a 5 to 1 ratio. This source of of unequalized local revenue will be substantially reduced by the increase of regular levy included in local share beginning in 1982-83.

(ii) Excess assessments are produced because only 47.5% of the appraised value of nonutility property in the county is considered in determining local share (effective July 1, 1982, 52.25%). However, the statute provides the actual assessed valuation in each of the four classes shall not be less than 60% of the appraised valuation (prior to July 1, 1981, "not less than 50% nor more than 100%"). In practice, none of the counties routinely assess their property as low as 50% though a number are in the 50's percentage range and at least in one instance one

class of property has been assessed in excess of 94%. The majority of classes of property are assessed in the 60% to 70% range. That portion of the assessment above 47.5% of appraised value is disregarded in calculating local share and is therefore unequalized. This "excess assessment" potential became mandated with the 1981 legislation. In the 1981-82 fiscal year the difference between 47.5% and 60% (and every year after that the difference between 52.25% and 60%) is mandated local monies, precluded by law from equalization. The excess assessments amounted to 19.23% of regular tax levy revenues in 1980-81, and ranged from \$213.19/pupil in Pleasants County to \$12.09/pupil in Monroe County, a 17.6 to 1 ratio.

(iii) In 1980-81 the total regular tax levy revenues per student ranged from Six Hundred, Fourteen Dollars and Seventy-six Cents (\$614.76) in Pleasants County to One Hundred Thirteen Dollars and Eighty-four Cents (\$113.84) in Monroe County.

(g) Total state aid did not even equalize for difference in local share in 1979-80. When counties are ranked by property wealth, the wealthiest fifth of counties receives approximately \$76/pupil more than the poorest fifth in state revenues plus local share. The same pattern exists when counties are ranked by state and local revenues; however, the difference is greater - \$157/pupil.

#### SOURCES OUTSIDE OF STATE FUNDS

##### Incentive for Staffing Improvement

276. (a) West Virginia Code Ch. 18, Art. 9A, Sec. 14 provides that those counties having higher ratios of adjusted enrollment to "professional staff" than the state average "will be granted

advance funds to employ sufficient additional staff to reach the state average". In the following fiscal year, their salaries are picked up by the formula. In any one fiscal year, no more than one-half of the additional staff needed to reach the state average may be funded under this provision. The only money the county receives for these incentive personnel is the state minimum salary for those persons, the exact amount depending on their experience and educational background. The county does not receive an increase in any of the other foundation allowances which would otherwise result from an increase in the number of professional educators such as that for fixed charges, administrative expenses, and other current expenses, such as materials and equipment. These costs and the county salary supplement must be picked up by the county for the entire year even though they are reimbursed for the "minimum salaries". As described above, when a county reaches the state average ratio it is still limited in its annual increase in professional educators and must pay for all additional staff from local funds in the first year of employment.

(b) The 1981 amendments to West Virginia Code Ch. 18, Art. 9A, Sec. 14 added a provision establishing an incentive program for service personnel. It is available to counties with ratios of adjusted enrollment to service personnel below the state average service personnel ratio per one thousand (1,000) students. The statute simply says these counties will be granted funds - it does not say when. However, in any given year the amount of funds allocated under the program to a county shall not exceed an amount sufficient to hire a number of service personnel that exceeds 10%.

of a county's total potential increase under West Virginia Code Ch. 18, Art. 9A, Sec. 5 for the year, i.e., 10% of the difference between the county's service personnel ratio per one thousand (1,000) students and thirty-four (34) per one thousand (1,000) for the year, i.e., 10% of the difference between the county's service personnel ratio per one thousand (1,000) students and thirty-four (34) per one thousand (1,000). As described above, when a county reaches the state average ratio it is still limited to this 10% increase and must pay for all additional service personnel from local funds in the first year of employment.

#### Allowance for Increased Enrollment

277. West Virginia Code Ch. 18, Art. 9A, Sec. 15 establishes the Allowance for Increased Enrollment. Under this section "there shall be appropriated . . . an amount equal to the average total state aid per net pupil" multiplied by the total increase in net enrollments of the counties. This amount is allocated to each county with increasing enrollment in an amount equal to that county's average per net pupil total state aid multiplied by the county's increase in enrollment. However, the statute says if the amount appropriated by the Legislature is not sufficient to provide payment in full for all counties, each county's share shall be reduced proportionately. During the fiscal years 1975-76 and 1976-77 funds appropriated under this allocation were insufficient to meet the needs of the counties. Allowances for 1975-76 were prorated at 48.25% and allowances for 1976-77 were prorated at 45.67%.

#### General School Fund

278. (a) The General School Fund consists of \$1 million dollars and the income and interest therefrom in addition to

monies appropriated by the Legislature. Each year since 1971, proceeds from school fund income and interest accrue to the general school fund and the board of the school fund releases this money to the State Department of Education for distribution to the counties through step seven. In 1979-80, the amount distributed was approximately Eight Hundred Thousand Dollars (\$800,000.00).

(b) Some poor counties received fewer funds for 1981-82 under S.B. 15, West Virginia Code Ch. 18, Art. 9A, Sec. 1 through 30, than they would have received under the old formula. These counties include Clay, Mingo, Randolph, Roane and Tucker. The state is not moving toward greater equity and adequacy of funding under this section.

#### Supplemental State Aid

279. Certain sources of state funds for the public schools are outside of the formula. Generally these are distributed to counties without regard to the fiscal ability of the county. The major sources of out-of-formula funds include state teacher retirement payments, teacher benefit payments, certain special education funds, driver education and school meal programs, and certain vocational monies.

280. The state-funded effort in special education is distributed to county boards authorized by West Virginia Code Ch. 18, Art. 20, Sec. 5. For fiscal years 1980-81 and 1981-82, 93% of the legislative appropriation is distributed on the following formula: one-third equally divided among the county boards, and two-thirds distributed to the boards based on the county's net enrollment. These funds can be used to maintain existing programs for exceptional children or state new ones. Three percent of the

total state appropriation is awarded in equal amounts to each of the state's Regional Educational Service Agencies, and the remaining 4% goes to these four special state projects: state-wide special olympics; instructional materials center (visually impaired); inservice training and training institutes; and continuing education. Continuing education is the only one of these four projects which provides funds directly to county boards. Special education, continuing education funds are distributed based on an amount per professional educator. None of the over \$6 million dollars in state funds for special education is distributed in a manner which takes into account the relative wealth of counties.

281. The State Department of Education administers seven United States Department of Agriculture child nutrition programs. Federal law requires three local dollars to match each federal dollar. Ten percent of the local monies are appropriations from the state while the other dollars come from student fees, etc. The state's allocation is based on the number of school meals served during the previous year. Funds are distributed to the county boards on the basis of the number of meals served, weighted according to the number of free or reduced meals in the county. Funds are distributed monthly. In 1981-82 the state will distribute approximately \$2 million under these programs.

282. State drivers' education funds are provided to county boards based on the ratio of pupils enrolled in drivers education in the county to the total number of such students in the state. Two Hundred Sixteen Thousand Dollars (\$216,000.00) have been distributed annually for the last three fiscal years. Again, these funds are not distributed according to the relative wealth of

counties.

283. State aid for vocational education is the only supplemental state aid distributed at least in part according to county need. Originally set up on a 50-50 matching basis of federal and state funds, this program now requires well over fifty percent of state effort. This program directs quarterly payments to county boards for vocational education. Counties must have approved curriculums, approved project applications and minimum student hours. All county boards participate. RESAs also receive funds as do colleges and universities for teacher training, multi-county vocational centers, the school for the deaf and the blind, and private research corporations. State funds are allocated through a formula that is directly related to the state foundation program. The amount per pupil from the regular levy and formula state aid is used to determine the ratio of allocations per contact hour. The eligible recipients that receive the least per pupil under the foundation program will receive the most in allocations of state vocational funds. The most needy recipient receives approximately one and one half times the rate per contact hour as does the least needy eligible recipient. The state formula is as follows:

$$\frac{\text{Average Statewide Share per Pupil (Regular levy and Formula State Aid)}}{\text{Local Share Per Pupil Contact Hours}} \times \text{County Contact Hours} = \text{County Adjusted}$$

The percent of county adjusted contact hours compared to the state total of adjusted contact hours is the percentage of the state funds allocated to each eligible recipient.

284. Other state supported vocational programs are not funded according to county wealth. These include:

- (a) Adult Basic Education Vocational - these monies,

in theory 90% federal to 10% state matching and in reality about two to one federal to state dollars, are used to educate persons over sixteen in basic skills. ABE funds go to county boards, based on project applications. The counties then may fund programs at health and correctional institutions within the county. Amounts for each county are based on (1) the number of eligible adults in the county; (2) past ABE performance in the county; and (3) amount of funds available. Funds also go to research and to colleges and universities for teacher training. Payments are made quarterly

(b) Vocational equipment replacement - This program involves total state dollars and no local match is required if the amount appropriated equals the value of equipment needing replacement. All county boards receive quarterly payments, based on the value of vocational education equipment that needs replacement. If funds are not sufficient to pay for all equipment scheduled for replacement, each county's share is reduced by the same percentage.

(c) Equipment for new vocational facilities - This program directs state dollars to county boards with new vocational education schools. Grants are made pursuant to project applications under a comprehensive facilities plan. Payments are made quarterly.

(d) Vocational construction - this is a state-funded program, although the 1980-81 appropriation came from federal revenue sharing funds, over which the state has a large amount of discretion. Some Appalachian Regional Commission funds are pledged to this program but have not yet been received. The dollars go to county boards for the construction of vocational

education facilities, including multi-county vocational schools. Grants are made according to competitive project applications, pursuant to the State Comprehensive Building Plan. Payments are made quarterly.

(e) New and expanding industries - This program directs grants to county boards on the basis of project applications, to provide vocational training in mining and other vocations. Just under \$2 million dollars will be distributed to counties under these programs in 1981-82.

285. Several state aid programs are not administered by the State Department of Education. These include the employee retirement plan, health and life insurance and liability insurance program.

286. Both professional personnel and service personnel employed by county boards belong to the "State Teachers Retirement System". West Virginia Code Ch. 18, Art. 7A, Sec. 1 et seq. Six percent of an employee's earnings each month is withheld as the employee's contribution into the retirement fund. The county board of education has no obligation to make employer contributions into this fund. The State Legislature funds the remainder of the ✓ contributions to the fund, which amounts to eighty-five to nineth<sup>y</sup> percent of the total cost. These funds are administered by a retirement board. The state appropriation for 1981-82 is \$35,800,000. The degree of benefit a county receives under the retirement system depends on the number of staff it is able to hire and the salary level of employees. In counties with large salary supplements, typically wealthy counties, teachers receive substantially larger retirement benefits from the state than teachers with identical

education and experience who taught in counties with small or no salary supplements.

287. All teachers and service employees are covered under the "West Virginia Public Employees Insurance Act". This provides both health insurance and life insurance in the amount of Ten Thousand Dollars (\$10,000.00). In the first year of employment employees pay 30% of the premium and the state pays 70%. In subsequent years, the full cost is paid by the state. West Virginia Code Ch. 5, Art. 16, Sec. 13. Again, the degree of benefit a county receives depends on the number of staff it is able to hire.

288. As of 1980-81 the state pays premiums for liability insurance for teachers and service and auxiliary personnel in connection with employment by county boards. The plan also provides liability insurance for school buildings and grounds, equipment, school buses and other vehicles. The degree of benefit depends on the number of staff the county is able to hire.

289. Overall, supplemental state aid benefits wealthy counties as much as or more than poor counties. The poorest fifth of counties received slightly more such aid per pupil than the wealthiest fifth, but received less than the second and third group of counties.

290. The state also provides funds to Regional Educational Service Agencies. The formula consists of one-third in identical amounts to each region, one-third on an adjusted enrollment basis and one-third on adjusted enrollment weighted inversely to local school tax potential in each region. Funds are distributed quarterly based on approved administrative budget. The

1981-82 appropriation is only Four Hundred Sixty-eight Thousand, Eight Hundred and Sixty-seven Dollars (\$468,867.00).

VI.

CORRELATIONS BETWEEN WEALTH AND EXPENDITURES FOR EDUCATION  
AND CORRELATION BETWEEN EXPENDITURES AND OFFERINGS  
AND ACHIEVEMENTS

This Opinion could not be complete without commenting and finding whether even if all the finances required for a thorough and efficient system of education would be made available, would the infusion of these resources produce a marked increase in scholastic achievement.

Many days of testimony were devoted to this rather fundamental question, with reams of arcane tables, charts and graphs considered and introduced.

While the methodology of the various expert witnesses varied, this Court determines that the following findings are justified by the totality of all the evidence, distilled to its more basic terms:

291. The inadequacies and inequalities in educational programs and services in West Virginia are the product of the school finance system. In West Virginia, the counties with the greatest local property wealth are the counties with the greatest ability to finance education, since state and local revenues for education are directly related to property wealth. These property wealthy counties also have a population more able to support education. Per capital income in West Virginia is directly related to property wealth and educational expenditures.

292. There is a substantial variation in the distribution

of property wealth among counties in West Virginia, whether weighted or equalized assessed valuation is considered. In 1979-80 the range in equalized assessed values per pupil ranged from \$547,693/pupil in Pleasants County to \$104,920/pupil in Wayne County. This is a difference of \$442,773. The ratio between the highest and lowest county is 5.22 to 1. The state average equalized property wealth was \$82,726 per pupil. Weighted values ranged from \$225,407 to \$56,538.

293. The difference in property wealth among counties in West Virginia translate into large differences in state and local revenues per net enrollment. In 1979-80, state and local revenues per pupil ranged from a high of \$2,339.00 in Grant County to \$1,340.00 in Logan County, a difference of \$999.00 per pupil. Even when the wealthiest and poorest districts are disregarded, the variation is form \$1,809.00 in Kanawha County at the 95th percentile to \$1,357.00 in Nicholas County at the 5th percentile. The state average revenues per pupil in 1979-80 was \$1,580.00.

294. There was a similar difference in current expenditures per pupil in 1979-80. The range was from \$2,163.00 per pupil in Pleasants County to \$1,358.00 per pupil in Roane County. Even when the wealthiest and poorest districts are disregarded, there is a range of \$402.00 between Monongalia County at the 95th percentile and Greenbrier County at the 5th percentile. The state average expenditures per pupil in 1979-80 was \$1,608.00. These findings concerning the range in revenues and expenditures were corroborated by defense witnesses.

295. In West Virginia, there is a strong relationship between a county's property wealth and its available state and local

revenues for elementary and secondary education. Counties with high property wealth generally have greater revenues for education, while low wealth districts generally have less state and local revenues.

296. The strong relationship between property wealth and state and local revenues in the state is produced by the extremely strong relationship between property wealth and local revenues and the failure to state aid to overcome this relationship. The wealthiest fifth of counties raised over two times the local revenues raised by the poorest fifth of counties in 1979-80. In contrast, the poorest fifth of counties received only slightly more state aid than the wealthiest counties.

Relationship Between Educational Expenditures,  
Educational Offerings and Student Achievement

297. The inadequacies and inequalities in educational offerings referred to in the findings herein, are directly related to differences in the level of educational expenditures in counties in West Virginia. Adequate resources are essential ingredients to providing high quality educational offerings. It is impossible to offer high quality programs without sufficient staff, facilities and materials and equipment, and that these can only be provided if adequate resources are available.

298. Students who do not have access to high quality programs in all subject areas are at a disadvantage when seeking employment or competing in higher education.

299. The comprehensive subject area studies conducted at the direction of the State Department of Education recognize the relationship between resources and effective educational programs.

A strong, positive correlation exists between the amount of expenditures in West Virginia schools and the achievement or educational success rate of the students in West Virginia schools.

300. There is a strong, positive relationship between educational expenditures and results on standardized achievement tests in West Virginia. The West Virginia Department of Education has operated a State-County Testing Program since 1962. Students in grades 3,6,9 and 11 are administered the Comprehensive Tests of Basic Skills, Form S. This test tests six basic skills areas -- reading, language, mathematics, reference skills, science and social studies -- using ten separately timed tests.

301. The clear weight of evidence demonstrates the direct relationships between educational expenditures and test scores.

302. Counties with the highest level of state and local revenues for education have the highest test scores, while counties with the lowest level of resources have the lowest scores.

303. Although there is a direct, positive relationship between educational expenditures and test scores, test scores can never be used as a sole, or even major, measure of educational quality or the equality of educational resources and opportunities in West Virginia. The West Virginia Department of Education Interpretation and Use Handbook states that the tests are "not meant to measure total achievement in any school or grade or in any discipline within a grade" and "must not be used as a basis for total evaluation of instruction". Further, the tests test only a limited number of skills. Many areas such as art, music, physical education, foreign language, and vocational education,

all essential areas of the curriculum, are not tested. Counties that choose to devote their resources to the skills tested will have higher scores than counties that emphasize other elements of the curriculum. However, there is no way of knowing a county's emphasis from the scores alone. Moreover, different students start at different levels and no matter what the level, resource input produces a substantial result.

What Changes Can Be Made to Solve the Constitutional Infirmities in the Method of Financing Public Education

As previously indicated, this Court does not deem it to be within the province of the judicial branch of government to determine the ways and means to finance public education in a constitutionally permissible manner. As suggested, for example, the method of financing facility construction in Maryland has demonstrated excellent results, and would in the view of this Court satisfy many of the problems which exist in Lincoln County, specifically, and West Virginia on a statewide basis, as they relate to facility construction.

Similarly, this Court heard considerable testimony from witnesses who were well qualified in the field of financing public education, and everyone concerned would be remiss if we didn't learn something from their experience and recommendations.

This Court found particularly impressive, several suggestions in line with those previously discussed regarding facility construction.

Chief among these is to either prohibit the use of excess levies to fund education, or to sufficiently discourage the use of excess levies to fund current educational costs by:

(a) Requiring that counties that adopt an excess levy either totally, or in excess of certain levels, would not be eligible to participate in the state funding program, or

(b) Include excess levies in the local share of the formula or foundation as it is legally known.

This Court further, can reach no other conclusion, based upon the volume of credible testimony, that the funding of all direct and indirect costs of the high quality education, must be fully included in the state financing system. Costs for all:

(1) Instructional salaries and benefits,

(2) Support and administrative staff salaries and benefits,

(3) Supplies and equipment

can be integrated within the funding formula, with the caveat, that if this is done, the state must conceive of a plan to bring the grossly deficient counties to the same level as the more progressive counties, or the same educational disparities will be perpetuated.

Further, the state must devote more resources to the "high cost items" such as special education, remedial and enrichment education, vocational education, and early childhood education.

The formula which is discussed in the previous section, could be revised so as to include the concept of pupil need and/or program cost weightings to determine the county's adjusted enrollment within the financing system, or to develop additional steps in the formula that concentrate on the cost of individual programs and the number of students needing those programs in each county.

Further, attention must be given by the Legislature to

eliminate the inadequacies and inequalities in the transportation of students throughout the state. Some suggestions heard in this regard during the trial were:

(a) Total state reimbursement of county transportation costs;

(b) Revise the formula with realistic cost variation factors to pay full costs of an efficiently operated transportation system;

(c) Provide transportation on a regional or state basis.

As will be discussed in the last portion of this Opinion, this Court feels that the deficiencies in the system of delivering education to West Virginia students, must be corrected now. The only method to accomplish this, as this Court perceives the magnitude of the problem, is to appoint a qualified individual to coordinate, under the aegis of this Court, the Legislative and Executive branches of government, as well as all state agencies and departments whose function is to sponsor and administer the educational system in West Virginia. As part of this endeavor, the various suggestions contained herein, as well as others that may not be specifically mentioned, should be explored so that the Legislature can provide a thorough and efficient system of education in free schools in West Virginia.

#### VII. PROPERTY TAX SYSTEM

Revenue generated through taxation of real and personal property is the principal source of funds available to county school boards, and is integral part of the foundation or formula

program on a state level.

Accordingly, the Supreme Court required evidentiary development as to whether property poor counties are assessing their property adequately, and whether the State Tax Commissioner is performing his statutory duties in assuring that each local assessor is assessing all real and personal non-utility property at its true and actual value.

This Court specifically finds that all counties, not just property poor counties, are not assessing their property adequately, and that is not a result of the problem with the local assessor, as much as it is the problem that the State Tax Commissioner is not discharging his statutory duty.

This Court further understands the Supreme Court's mandate on remand, was to review the total spectrum of problems relating to taxation of all utility and non-utility real and personal property.

This Court specifically finds that as a direct result of the failure of the Tax Commissioner of the State of West Virginia to perform his statutory duty, all utility and non-utility real and personal property, are not being uniformly assessed at their true and actual value.

The portion of the State Tax Commissioner's office responsible for discharging the local property tax function, is the local government relation division.

It is divided into two operating groups: (1) the fiscal supervision and services group, and (2) the property tax group.

The property tax group is divided into seven (7) sections:

(1) Business appraisals

- (2) Residential appraisals
- (3) Appraisal processing
- (4) Mapping and drafting
- (5) Certification and updating
- (6) Mineral valuation
- (7) Public utilities

This Court does not and would not attempt to disparage the current Tax Commissioner. In actuality, Commissioner Rose fully appreciates his duties and responsibilities, but this beleaguered gentleman, simply does not have the resources and staff necessary to satisfy his good intentions.

However a comment must be made of the role of the Tax commissioner vis-a-vis the local assessor.

This Court finds that whether through a misunderstanding of the law, or the lack of resources, the Tax Commissioner of the State of West Virginia has historically assumed a role which is too passive for an effective discharge of his duties in the area of real and personal property tax assessments.

Under West Virginia Code Ch. 18, Art. 9A, Sec. 11 and, particularly since the decision in Pauley, et al v. Kelly, et al, supra., the Tax Commissioner has extremely broad mandatory enforcement and penalty powers over the county assessor.

For reasons best known to the Tax Commissioner, he has never taken any legal action to correct varying assessment ratios among the counties, and considers an intra-class equalization as being the concern of county officials. This Court does not agree, and as the West Virginia Supreme Court expressed in Pauley, et al v. Kelly, et al, supra., the Tax Commissioner is vested with the

power to proceed to enforce the provisions of West Virginia Code Ch. 18, Art. 9A, Sec. 11, thus overruling State ex rel. Raece v. Battle, 149 W.Va. 761, 143 S.E.2d 328 (1965).

Accordingly the following Findings of Fact are hereby made:

304. The property tax is a major source of revenue for local unites of government: counties, school boards, and municipalities.

305. Effective and uniform tax appraisals and assessments require centralized management and administration from the Tax Department.

306. The Tax Department takes a very passive attitude in the supervision of ad valorem taxation in the state and relative to its statutory enforcement responsibilities. Despite tremendous variations in the assessment practices and results, the Tax Department does not generally see itself as having a substantial supervisory role. The Tax Department does not provide formulas, standards, or meaningful guidelines for the assessment of many types of property. The Tax Department acknowledges its obligation to provide information to the assessors to assist them in their responsibilities, but does little to monitor the counties in assuring that assessments are at market value or even that "certified values are met on individual parcels; assessments are examined only by class totals. Relative to enforcement, the State Tax Department has not initiated any legal actions in the courts to correct varying assessment ratios among the counties. The Tax Department has never ordered a reassessment in a county pursuant to West Virginia Code Ch. 11, Art. 3, Sec. 1.

307. The Tax Department has knowledge of types of property which are not being assessed.

308. The Tax Department takes the position that it does not have the authority to order or direct a reassessment of property in a county but only to bring to the attention of the assessor the fact that the assessor is not following the law and to bring some action against the assessor for failing to do so.

309. In 1958, the West Virginia Legislature provided for a statewide property appraisal program to be administered at the state level by the Tax Commissioner. The legislation (presently West Virginia Code Ch. 18, Art. 9A, Sec. 11), provided: "The tax commissioner shall make or cause to be made an appraisal in the several counties of the state of all nonutility real property and of all nonutility personal property which shall be based upon true and actual value..." For the purpose of carrying out this directive, the Tax Commissioner was authorized to employ professional appraisal firms and such assistance as available appropriations would permit.

310. Appraisal values for improvements to real property were and are based on cost manuals prepared for each county at the time of reappraisal. These cost manuals were prepared by the various professional appraisal firms hired by the Tax Commissioner to make the statewide appraisal during the period 1959 through 1967. The cost manuals vary from county to county due to the base valuation year used and the company that did the appraisal. The base year depends on when the county was reappraised.

311. There has been no appraisal by the Tax Commissioner of: active coal mining interests; no coal reappraisals at all in the counties of Cabell, Calhoun, Gilmer, Hancock, Marion, Mason,

Monongalia, Putnam, Roane, Tyler, Wetzel, Wirt; no appraisal of oil and gas producing properties for oil and gas reserves; no appraisal of timber reserves; no appraisal of limestone, dolomite, clay, or other minerals; no appraisal of intangibles or of other personal property except machinery and equipment.

312. The Tax Department states that its goal in the appraisal of nonutility real and tangible personal property is to value such property in West Virginia by 1985, based on 1980 market value. The Tax Department takes the position that the law does not require appraisals and assessments to be at market value.

313. Appraisals in West Virginia are not updated annually by the Tax Commissioner, and are not at market value. From July 1, 1967, the date specified by the Legislature for completion of the statewide appraisal ordered, until 1973, all new construction and other new property, exclusive of natural resources and intangible personal property, were placed on the base year of the county appraisal. After 1973, a few counties have received some appraisals of real property. With respect to the updating of appraisals: there is no procedure for updating of coal appraisals; there is no procedure for appraisals at all for oil and gas, therefore, no updating; there is no routinized procedure for the updating of residential and commercial real property appraisals; there are no guidelines or procedures for the annual updating of industrial and commercial personal property appraisals.

314. Current appraisals are at a fraction of actual market value throughout the state although the more recent appraisals tend to be a more realistic fraction of actual market value than do the more dated appraisals. On a statewide basis there are

different appraisal base years in different counties within any given species of property, and among the various species of property there are different appraisal base years within any given county. Appraisals of real property vary in base year by more than twenty years from county to county. Appraisals of industrial and personal property vary in base years by as much as five years county to county. Appraisals of commercial personal property vary in base year by as much as ten years county to county. The increase in market value attributable to the larger size of the tract is ignored by the Tax Department appraisal process.

315. The Tax Department periodically adjusts class total appraisal values in the counties even though the properties have not been recently appraised by the Tax Department. This adjustment is done on an ad hoc basis to ensure that assessed values do not exceed 10% of appraised values. There is no formula used statewide and no description of any methodology used to increase the total appraised value. As a result, more of a county's local tax revenue will fall into the definition of "local share" when the appraised value is increased.

316. The lack of current appraisals, or even geographically uniform outdated appraisals, has significant ramifications for the educational financing process, and particularly the statutory formula. Because an increase in appraised value increases the "local share" (West Virginia Code Ch. 18, Art. 9A, Sec. 11) and consequently reduces the "excess assessments" (assessments exceeding the local share available to a county school system which are not considered in the formula), the appraised value

totals set by the Tax Department have a significant impact on the total monies available to a county school system. The Commissioner has no precise standards upon which to base the appraised value class totals which are the underpinnings of the formula, since any substantial increases in assessments by local assessors are merely picked up by the Tax Commissioner in the appraised class totals, this results in a built-in incentive for assessors to not aggressively pursue assessments. When this happens, the increased assessments have little effect on county revenues for education because the resulting increase in appraisals causes the county's local share of the foundation to increase.

317. To eliminate the inequities inherent in the lack of precise appraisal totals, the only practical and efficient approach is the updating of appraisals annually through the use of computer technology. The most easily administered system would involve the placement of a computer terminal in each county assessor's office which would feed updated sales information automatically into a central computer allowing automatic annual updating of real property values. The Tax Department acknowledges that annual update figures are needed and that a computer approach is the most effective mechanism to accomplish it. There are, however, no plans to put such a program into effect.

318. Fractional assessments are the pattern throughout the state. One of the principal causes of lack of uniformity and inequality in assessments is fractional assessments which make uniformity much more difficult to reach. County assessors use the State Tax Department appraisals as a guide in making their assessments.

319. With respect to residential and commercial real property values, the following are the most recent appraisal year and certification years for Tax Department appraisals:

<u>COUNTY</u>	<u>APPRAISAL</u>	<u>CERTIFICATION</u>
Barbour	1962	1963
Berkeley	1973	1975
Boone	1965	1966
Braxton	1964	1965
Brooke	1961	1962
Cabell	1966	1967
Calhoun	1974	1976
Clay	1973	1974
Doddridge	1974	1976
Fayette	1977	1981
Gilmer	1975	1976
Grant	1975	1976
Greenbrier	1961	1963
Hampshire	1973	1975
Hancock	1961	1962
Harcy	1964	1965
Harrison	1964	1965
Jackson	1974	1976
Jefferson	1973	1975
Kanawha	1973	1981
Lewis	1977	1979
Lincoln	1975	1979
Logan	1965	1966
Marion	1960	1967
Marshall	1956	1962
Mason	1962	1963
Mercer	1961	1962
Mineral	1978	1980
Mingo	1964	1965
Monongalia	1962	1963
Monroe	1975	1976
Morgan	1973	1975
McDowell	1964	1966
Nicholas	1964	1965
Ohio	1961	1962
Pendleton	1966	1968
Pleasants	1973	1978
Pocahontas	1975	1978
Preston	1964	1965
Putnam	1977	1981
Raleigh	1962	1963
Randolph	1966	1967
Ritchie	1975	1976
Roane	1979	1980
Summers	1962	1963
Taylor	1963	1963
Tucker	1964	1965

Tyler	1962	1962
Upshur	1966	1967
Wayne	1962	1963
Webster	1964	1965
Wetzel	1977	1981
Wirt	1973	1975
Wood	1973	1977
Wyoming	1965	1966

320. There are no counties that are current on their commercial and residential real property appraisals. Residential/Commercial appraisals vary by more than twenty years (e.g., Marshall - 1958; Roane - 1980). This results in substantial disparities and inequalities in appraisal levels statewide. A hypothetical parcel of residential or commercial real property purchased for Twenty Thousand Dollars (\$20,000.00) in 1979 has the following approximate appraised value by the Tax Commissioner: Ten Thousand Dollars (\$10,000.00) in Kanawha County, base year of 1973; Twenty Thousand Dollars (\$20,000.00) in Roane County, base year of 1979; Two Thousand Dollars (\$2,000.00) in Marshall County, base year of 1958; Two Thousand Dollars (\$2,000.00) in Ohio County, base year of 1959; Eleven Thousand Dollars - Twelve Thousand Dollars (\$11,000.00 - \$12,000.00) in Lincoln County, base year of 1975; Five Thousand Dollars - Six Thousand Dollars (\$5,000.00 - \$6,000.00) in Logan County, base year of 1966.

321. Appraisals are low when the appraisals are not updated every year. Because of outdated appraisals in general, a residential landowner in Marshall County, for example (no recent appraisal), pays substantially less in taxes than a person who owns an identical or similar parcel of property in Lincoln County (recent reappraisal). Even though Lincoln and Marshall,

might reflect a similar percentage of assessment to appraisal, because Lincoln has a recent appraisal and Marshall not, the Lincoln County landowner (with identical property ownership) has a substantially greater tax burden.

322. Appraisals of different properties at different times within a county results in disparities in appraisal levels.

323. Written general guidelines on the appraisal of real property are contained in county manuals and the dates of these county manuals vary by the date the appraisal took place in the county and are generally out of date. The county manuals vary from one another for two reasons: (1) the counties were valued in different years, (2) they were done by different appraisal companies so the methodologies vary.

324. There is nothing in the county manuals indicating a uniform approach for commercial properties. Residential rental property is valued by the cost method; consideration is given to the income approach in certain counties. The Tax Department's approach in appraising rental property does not take into consideration the tax sheltered aspects of investing in that type of property.

325. Large tracts of undeveloped property tend to be more underappraised than many other types of property and are therefore grossly underassessed.

326. It is a sound appraisal policy to have a uniform appraisal approach statewide as to each kind of real property. The only information for assessing real property that is provided to assessors is that limited information in the Guide for Assessors which is insufficient in detail to give an adequate

basis for comprehensive assessment of real property.

327. There have been a number of counties asking for reappraisals that have not been done. There is no policy as to when a county will obtain a reappraisal of real property. Clay county will be provided an update on real estate next year even though it had a reappraisal on surface in 1974 while several other counties have not had one for over twenty years.

328. The West Virginia Tax Department does not do formal sales ratio studies.

329. The Tax Commissioner has no written guidelines telling county assessors how to perform their own sales ratio studies.

During the course of the trial, a great deal of testimony was received relating to particular areas where the appraisal and/or assessment techniques utilized on a local level, were either questionable, improper or non-existent. These fell into the following categories:

- (1) Pollution abatement equipment
- (2) Industrial and commercial machinery and equipment
- (3) Personal property of professionals (e.g. lawyers, physicians, etc.)
- (4) Leased equipment
- (5) Inventory
- (6) Intangible personal property, i.e., accounts receivable with tax situs in West Virginia
- (7) Non-exempt corporate stock (See West Virginia Code Ch. 11, Art. 5, Secs. 1 and 6)
- (8) Real and personal property of lending institutions.

- (9) Coal (active and reserve)
- (10) Oil and gas reserves
- (11) Producing oil and gas
- (12) Limestone, fire clay, dolomite, and sandstone
- (13) Timber.

The root of the failure of the Tax Commissioner to insure that all real and personal utility and nonutility property is properly assessed, is within the Commissioner's perception of his passive participation in the assessment process.

What the Tax Commissioner must recognize is, that effective ad valorem tax administration, requires tax leadership and direction from the state level.

Unquestionably the Tax Commissioner has significantly more expertise and resources than local assessors, and, the Commissioner must provide the guidance and information to local assessors on:  
(a) how to assess specific species of property; (b) the specific information needed for property assessments; and (c) adequate forms to be furnished to the taxpayer so that the return upon which so much reliance is given by the assessor, can provide the vital information to make the assessment.

This kind of leadership, guidance, and direction is virtually non-existent in West Virginia. Unquestionably the failure of the Tax Commissioner to properly discharge his role, has significantly affected resources available to all counties, generally, and schools systems, specifically.

Perhaps the genesis of the Commissioner's newly recognized active role in working with local assessors should be the "Assessor's Manual". The following specific findings are made in this area:

330. A primary reason for assessments not being at market value is the lack of meaningful guidance from the Tax Commissioner. The Assessor's manual is too general in focus and does not provide the specific requirements on how to deal with information obtained from specific returns and other specific sources.

331. The "Guide for Assessors" does not provide the type of guidelines and specific direction needed for comprehensive valuation of real property. It provides no examples of the methods discussed to appraise real property, no discussion on the details of the sales method of appraisal, no discussion the details of applying the indome approach to appraisal, and only an inadequate discussion of replacement. cost.

332. The assessor's manual fails to give any guidelines which recognize the increased value of coal when owned in large tracts and ignores the substantially increased value of actively mined and soon to be mined coal. The assessor's manual fails to give any guidelines for the valuation of oil and gas reserves and the formulas given in the assessor's manual for valuing producing oil and gas wells are out of date and presented in a manner that is confusing and vague to assessors. The assessor's manual provides no meaningful guidelines as to the assessment of timber.

333. With regard to personalty, the assessor's manual lacks the critical guidance in how to update industrial and commercial personal property values, has no standards relative to the appraisal and assessment of corporate stock, places tangible personal property in banks in Class I rather than Class III or IV, values inventory at cost rather than market value, and has no guidelines on assessing leases, i.e., coal, oil, gas

or otherwise. The methodology described in the assessor's manual for valuing rented data processing and copying equipment, i.e., substituting conservative estimates for actual selling prices when a company will not cooperate, illustrate the passivity of the Tax Department in not obtaining accurate sales price information from the manufacturer.

334. The lack of information and clarity and the vagueness and out-of-date information in the assessor's manual results in great diversity among counties in the assessment techniques and values applied to the various species of property.

335. The Tax Department needs the capability to provide updated figures annually to the counties. Although this could be done immediately by the Tax Department without additional resources, it could be done most effectively with the use of a computer. Appraisals, for example, on machinery and equipment, could be kept current by a computer which would be fed the relevant identifying information on the equipment and the index factor and/or the Green Guides and produce an up to date list which could be sent to assessors. Computers are used to maintain annual listings of true and actual value in other states.

336. A computerized process to categorize actual characteristics of real estate, establish a sales ratio program, and maintain annual updating could be established by the Tax Department. There are no present plans to implement this approach. The decision of whether or not to implement this plan lies with the Tax Commissioner. Without computerization to assist in the process of appraisal and updating, it is not possible to efficiently determine and regularly update market value. The most cost

effective approach would be to require each assessor's office to computerize and simply match the state's appraisal values with the county's values by computer.

Additionally, the testimony in regard to the Tax Commissioner's role vis-a-vis, public utility assessments is also of questionable value.

The Tax Commissioner is required to receive annually, reports from public service businesses, operating within the State of West Virginia, and to provide the Board of Public Works with a recommendation regarding the tentative assessed value of each public service business. This is generally referred to as the "Tentative Assessment".

Here again, the testimony revealed an absence of any effective way of monitoring the public utility return, to distinguish, for example, between operating (excluded from local assessments) from non-operating property (included in local assessments).

In one instance this resulted in the questionable exclusion of sixty thousand (60,000) acres of "fee mineral less gas, including coal reserves", from any assessment of Columbia Gas Transmission Corporation, as this was considered to be "operating property". While this conclusion may have been ultimately proper, there simply are no guidelines established by the Commissioner to advise and direct the local assessor in these very important areas, which could conceivably generate more revenue on a local level.

Further, there is absolutely no communication between the Tax Commissioner and the Public Service Commission to compare unaudited (the return to the Tax Commissioner) and audited informa-

tion (the return to the Public Utility Commission in rate cases).

It would certainly be a recommended practice, that the Tax Commissioner in discharging his statutory role, attempt to base his tentative assessment on audited information which is available in the office which may simply be a few doors away, in the Public Service Commission. These are the kinds of deficiencies that the Tax Commissioner must correct, so that he is in a position of faithfully fulfilling his statutory responsibility.

This Court could not leave the area of property tax assessment, without recognizing the provisions of West Virginia Code Ch. 18, Art. 9A, Sec. 11(f), require the total of the assessed valuation in each of the four classes of property, shall be no less than sixty percent (60%) of the appraised valuation of each class of property.

The result of this wide range of ratios between appraisals and ultimate assessment, has led one Circuit Judge in West Virginia to hold as a matter of law that this statutory provision is unconstitutional. The basis for this ruling is that the statute violates the provisions of Article X, Sec. 1 of the West Virginia Constitution, requiring equal and uniform taxation (Killen v. Logan County Commission and Amherst Coal Corp., Civil Action No. 81-P-31, January 6, 1982, Naaman Aldridge, J.) This Court has read Judge Aldridge's excellent Opinion, and based upon the testimony in the case sub judice, would have no reason to disagree with his conclusions.

#### VIII. STATE AND LOCAL ADMINISTRATIVE ROLE

The last area of concern on remand, was whether the state and

local administration of the educational process was in any way responsible for the failure to deliver a thorough and efficient system of education.

The following findings are hereby made:

337. The current system of public school administration in West Virginia is composed of three levels: The fifty-five (55) county boards of education; the eight Regional Education Service Agencies (RESAs); and the State Board of Education. West Virginia Code Ch. 18, Art. 2, Sec. 1 et seq., West Virginia Code Ch. 18, Art. 5, Sec. 1 et seq. This is an efficient system for the administration of public education.

338. The duties of the State Board of School Finance, West Virginia Code Ch. 18, Art. 9B, Sec. 1, et seq. have been assumed by the State Board of Education pursuant to West Virginia Code Ch. 18, Art. 9A, Sec. 17. This is an efficient mechanism for the administration of schools.

339. The State Department of Education in its role of calculating tax revenues and State aid has fulfilled its administrative responsibility. Though there was some limited evidence about the lack of sufficient resources at the state level for effective financial management assistance, the problems seem to be minor and certainly secondary to the tremendous absence of resource problems in many counties. No significant flaws are discernable in the budgeting and accounting process. Many counties lack expertise in certain areas, however, and need meaningful assistance in order to run an efficient system.

340. The State's administrative role relative to the development of standards in the establishment of comprehensive

educational program or programs in county school systems has not been effectively performed in recent years, as hereinbefore specified in detail. Instead, the State Department of Education has embarked on a mission to develop general policy statements pursuant to West Virginia Code Ch. 18, Art. 2, Sec. 23, which provides for the development of a Comprehensive Educational Program. The erosion of the Comprehensive Educational Program process began as early as 1972 when funding ceased. But the action of replacement of the standards by general and, for the most, meaningless statements in the form of "programatic definitions" was taken in 1979 by the State Board. The State Board, therefore, has not established standards, reviewed county plans, or evaluated county school systems on an ongoing basis as required by West Virginia Code Ch. 18, Art. 2, Sec. 23. However, without adequate funding to implement thorough and efficient standards, West Virginia Code Ch. 18, Art. 2, Sec. 23, if reactivated, would still not produce a high quality system of education in West Virginia.

341. There is substantial need for additional state supervision and technical assistance in the areas of facility planning, transportation routing, and curriculum support.

342. The State Board of Education has no effective mechanism at the present time for the presentation of grievances against county school officials acting inconsistently with the individual's statutory or other legal or educational responsibility.

343. The Regional Education Service Agencies serve a useful role in providing certain resources and personnel to the county school system. At present, RESAs provide services primarily in the area of special education, continuing education and joint purchasing.

(D-138; West Virginia Code Ch. 18, Art. 2, Sec. 26; "Resolution of Establishment for Regional Education Service Agencies" July 14, 1972, State Board of Education Policy No. 3233.) The role of RESAs should be expanded with adequate state funding to provide curriculum specialists to small counties, additional inservice training in specific subject areas and special education services in counties with small populations, and specialized media production centers. However, RESAs cannot be seen as a substitute for adequate staffing at the county level. RESAs were organized to provide supplementary services only. Many services need to be located in the county to limit travel time. For instance, in the area of special education, some testing and supervision can be conducted by the RESA, but most instruction must be conducted by county personnel. RESAs should not serve more than a limited area, preferably two to four counties, so as to assure accessibility.

344. The Lincoln County Board of Education and the Superintendent of Lincoln County are, generally speaking, operating the school system as efficiently as can be done given current resources and funding mechanisms.

345. Lincoln County has consolidated schools substantially in the past twenty years. There are currently twenty-one (21) schools in Lincoln County as compared to eighty-three (83) in 1961-62. Lincoln County would benefit from more consolidation particularly at the high school level. The Board, and the Superintendents, have made every reasonable effort available to it to consolidate unnecessary schools. Two schools, Cuzzie and Sumerco, have been recently closed, with those students transported to existing schools, although Lincoln County already

has grossly inadequate space in its system as a whole.

346. To the extent that Lincoln County (and many other counties as well) have not consolidated schools further, the fault lies in the current method of funding school construction in West Virginia through bond issues or excess levies which permits economy, efficiency, and sound educational planning to be subverted by other considerations.

IX.  
CONCLUSIONS OF LAW

The Court hereby concludes as a matter of law, and pursuant to West Virginia Code Ch. 55, Art. 13, Sec. 1 et seq., hereby declares, as follows:

THE CONSTITUTIONAL MANDATES REQUIRING A THOROUGH  
AND EFFICIENT SYSTEM OF EDUCATION AND EQUAL  
PROTECTION RELATIVE TO EDUCATION

1. The state's duty to provide a thorough and efficient education is imposed by Article XII, Sec. 1 of the West Virginia Constitution which provides: "The legislature shall provide, by general law, for a thorough and efficient system of free schools." This education provision requires the legislature to provide a public school system of high quality.

2. A thorough and efficient system must develop "as best the state of education expertise allows, the minds, bodies and social morality of its charges to prepare them for useful and happy occupations, recreations and citizenship,..." Pauley v. Kelly, 255 S.E.2d at 977-78. To implement such a system, high quality physical facilities, instructional materials, personnel, and careful state and local supervision must be provided; and thorough and efficient educational standards as well as funding to assure that they can be implemented in every county, are required.

Thorough and efficient educational standards are standards that clearly define the specific resources, including staff, instructional materials and supplies, equipment and facilities, necessary to provide high quality educational offerings for all essential educational programs and services.

3. As recognized by the West Virginia Supreme Court of Appeals in Pauley v. Kelly, 255 S.E.2d 859, 877 (1979), there are eight general elements of a thorough and efficient system of education:

- (a) Literacy,
- (b) The ability to add, subtract, multiply and divide numbers,
- (c) Knowledge of government to the extent the child will be equipped as a citizen to make informed choices among persons and issues that affect his own governance,
- (d) Self-knowledge and knowledge of his or her total environment to allow the child to intelligently choose life work -- to know his or her options,
- (e) Work-training and advanced academic training as the child may intelligently choose,
- (f) Recreational pursuits,
- (g) Interests in all creative arts such as music, theatre, literature, and the visual arts, and,
- (h) Social ethics, both behavioral and abstract, to facilitate compatibility with others in this society.

4. The state has a legal duty to develop general elements of a thorough and efficient education in all studies through the provision of high quality educational programs in the following

subject areas: art, early childhood education, foreign languages, health education, home economics, industrial arts, language arts, mathematics, media, music, physical education, science, social studies, vocational education, and extracurricular education.

(a) "Literacy" is developed through virtually every program, but primarily through language arts, media programs, social studies, early childhood education, foreign language, and special education.

(b) The "ability to add, subtract, multiply and divide numbers" is developed through mathematics, early childhood education, science, music, home economics, industrial arts, vocational education, health education, and special education.

(c) "Knowledge of government to the extent that the child will be equipped as a citizen to make informed choices among persons and issues that affect his own governance" is developed primarily through social studies and language arts.

(d) "Self-knowledge and knowledge of his or her total environment to allow the child to intelligently choose life work -- to know his or her options" is developed through exposure to all educational programs including language arts, media, math, science, foreign languages, social studies, arts, music, physical education, industrial arts, vocational education including home economics, health education, and extracurricular activities.

(e) "Work-training and advanced academic training as the child may intelligently choose" requires exposure to the same programs listed in (d).

(f) "Recreational pursuits" are developed through music, art, foreign languages, physical education, home economics, industrial arts, language arts, media, health education, and extracurricular activities.

(g) "Interests in all creative arts, such as music, theatre, literature, and the visual arts" are developed through music, art, physical education, language arts, media, foreign language, and extracurricular activities.

(h) "Social ethics, both behavioral and abstract, to facilitate compatibility with others in this society" are developed through all programs that require interaction among students, teachers, etc., and may include all the programs listed in (d).

5. The state has a duty to develop the legally recognized elements of a thorough and efficient system of education in every child to his or her capacity, by providing high quality programs to children of all abilities. This duty to provide the high quality substantive educational offerings to every child pursuant to the constitutional mandate is the duty to provide the resources in terms of the following components: the requisite curriculum offerings, personnel, facilities, and materials and equipment to assure the development of every child. Special education, remedial and advanced programs, are essential to a thorough and efficient system. The higher cost programs such as special education, remedial and enrichment education, vocational education, early childhood education, and secondary education must be reflected in the funding system.

6. A high quality program consistent with Article XII, Section 1 of the West Virginia Constitution requires that all

direct and indirect costs of the educational programs must be fully included in the state financing structure, i.e., curriculum costs, instructional, support and administrative staff salaries, benefits, supplies and equipment costs, and facility costs.

7. Further, in order to develop thorough and efficient programs, the state has a duty to provide that the counties have the ability to:

(a) attract, employ, and retain a high quality staff of sufficient size to perform the educational tasks, including sufficient administrative staff;

(b) provide high quality well-maintained educational facilities; and

(c) provide high quality textbooks, workbooks, and instructional supplies and equipment.

8. To support the educational program, the State has a duty to provide that the counties are able to provide high quality support services in the areas of counseling and guidance, health, food preparation, and transportation.

9. Based on the extensive testimony and documentary evidence presented in this case, this Court concludes as a matter of law that all elements of the educational services and programs set out in findings 19 to 91, comprise the essential standards of a thorough and efficient system of education.

10. The State Board of Education has the duty to "determine the educational policies of the State" "(s)ubject to and in conformity with the Constitution and laws of this State." Therefore the State Board must adopt educational standards consistent with Article XII, Section 1, of the West Virginia Constitution as

set out in Findings 19 to 91. West Virginia Constitution Article XII, Section 2, West Virginia Code Ch. 18, Art. 2, Sec. 5. Beginning with these standards, the State Board of Education, pursuant to its constitutional responsibility to supervise the schools of this state, West Virginia Constitution Article XII, Section 2, and implement the constitutional guarantee of a high quality education, West Virginia Constitution Article XII, Section 1, and the State Superintendent of Schools acting under the Board's general authority, have the duty to further develop such standards as the need arises, maintain their currency and relevancy to the "best the state of education expertise allows," and to pursue their implementation throughout the State on a uniform and equitable basis to assure that every child is afforded the substantive education offerings specified by the standards.

11. "The mandatory requirements of a thorough and efficient system of free schools, found in West Virginia Constitution Article XII, Section 1, demonstrates that education is a fundamental constitutional right in this State." Because education is a fundamental constitutional right, the equal protection guarantees of Article III, Sections 10 and 17, of the West Virginia Constitution demand equitable financing of the state's educational system. Pauley v. Kelly, 255 S.E.2d 859, 878.

12. Equal protection requires equality in substantive educational offerings and results. Pauley v. Kelly, 255 S.E.2d 859, 865, n.7. The state has a legal duty to provide equal educational opportunities by allocating resources to counties according to criteria substantially related to educational needs and costs. The requirement of a thorough and efficient system

of schools imposes the same duty on the state. Since equality in substantive educational offerings is guaranteed by the constitutional equal protection guarantee, it is the resources that is, the specific inputs in terms of curriculum offerings, personnel, facilities and materials and equipment, not the outcomes in terms of achievement test scores by which the constitutional adequacy of the school system must be measured.

13. Equal means that all factors contributing to differences in curriculum needs and costs among counties; including; concentrations of educationally disadvantaged and culturally isolated students; differences in concentrations of children needing services to address specific handicapping conditions; differences in the need for vocational education programs. must be incorporated into the financing structure. The State has a legal duty to insure that school systems with greater educational needs and costs receive sufficient educational resources to meet those needs so that all children with similar needs are treated equally and receive a high quality education.

14. The State also has a duty to eliminate the effects of unequal costs among counties of providing educational services due to factors such as county isolation, sparsity, terrain and road conditions.

15. The State has a duty to eliminate the effects of unequal costs among counties of providing non-instructional services such as transportation and facility construction, renovation and equipment.

16. The State has a duty to eliminate the effects of varying numbers of pupils among counties on the quality of county

educational services by equalizing the ability of counties to have sufficient county administrative staff and curriculum supervisors.

17. The State has a duty to eliminate the effects of small school size on the ability to offer a broad range of education programs and services.

18. The State has a duty to equalize the ability of counties to attract and retain sufficient high quality staff.

19. Since education is a fundamental constitutional right in West Virginia, and since the various discriminatory classifications are found to exist as stated herein, and since the state has not demonstrated any compelling state interest to justify the unequal classification, the result is that the educational system in West Virginia violates Article III, Section 10 of the West Virginia Constitution.

20. The current system of school finance prevents Lincoln County and many other poor counties from providing educational programs and services necessary to meet the standards of a thorough and efficient system of education. Due to inadequate resources, not a single program in Lincoln County meets the thorough and efficient requirements. All programs are hampered by insufficient staff, obsolete, inappropriate and overcrowded facilities, and a serious lack of necessary instructional texts, materials and equipment. Lincoln County fails to provide a thorough and efficient program of art, early childhood education, foreign language, health education, home economics, industrial arts, mathematics, media, music, physical education, science, social studies, vocational education, or extra-curricular

activities. Lincoln County is unable to meet the special education and remedial needs of students in the county. Lincoln County is unable to provide high quality supportive services in the areas of counseling and guidance, health, food service, and transportation as required in a thorough and efficient education system.

21. The inadequacies and inequalities in educational offerings in West Virginia are directly produced by the inadequacies and inequalities in the level of educational resources and expenditures among counties in West Virginia. The present system allocates funds according to factors such as the amount of a county's property wealth and its ability to pass excess and bond levies. These factors bear no relation to educational needs and costs of substantive educational offerings and results. Indeed, counties where children have the greatest educational needs attend school in counties which in most instances have the least taxable wealth per pupil and the fewest education resources.

22. The West Virginia school finance system thus violates the requirements of Article XII, Section 1 and Article III, Sections 10 and 17 of the West Virginia Constitution.

23. The reliance on locally funded excess levies to provide educational programs essential to a thorough and efficient system of education violates Article XII, Section 1 of the Constitution, because the amount of revenue that is raised through the excess levy varies dramatically among counties based upon the local property wealth of the county and the ability of voters to approve an excess levy. Counties that are unable to pass an excess levy cannot fund high quality programs. Many other counties are unable to provide high quality programs because even

a 100% levy is inadequate to meet the county's needs. Because the state is responsible for providing a thorough and efficient system of education, it cannot make fulfillment of this responsibility dependent on the ability to pass an excess levy or the amount of money that can be raised by an excess levy.

24. The state's failure to provide an ongoing program for the adequate funding of school construction violates Article XII, Section 1 and Article III, Sections 10 and 17 of the West Virginia Constitution:

(a) The Better School Building Program, West Virginia Code Ch. 18, Art. 9C, Sec. 1 et seq., does not begin to meet current facility needs in the state and does not provide ongoing funding to address future needs.

(b) Because the financial capacity of a county to construct facilities depends on the county's bonding capacity, (local property wealth) and on voter willingness to pass bond issues instead of criteria related to educational needs, the current method of funding facility construction violates the equal protection and thorough and efficient guarantees of the West Virginia Constitution.

(c) There is no state funding of facilities based upon need pursuant to uniform state criteria.

25. Numerous components of the West Virginia Public Support Plan, West Virginia Code Ch. 18, Art. 9A, Sec. 1 through 20, violate Article XII, Section 1 and Article III, Sections 10 and 17 of the West Virginia Constitution. Certain elements of the Support Plan are unconstitutional in effect because they compound the relationship between local wealth and resources for education

created by other elements of the school finance system. Other aspects of the Support Plan are unconstitutional per se, that is, they are violative of the constitutional mandates and would be objectionable even in a system that had eliminated the direct relationship between property wealth and educational resources.

26. The aspects of the Support Plan that are unconstitutional per se include:

(a) The arbitrary 55/1000 reimbursement limit in step one and the 34/1000 limit in step two which do not recognize that some counties with smaller schools or more children with educational problems need more staff in order to provide a thorough and efficient education;

(b) The requirement in step one that all counties must maintain a minimum of forty-nine (49) instructional personnel per one thousand (1,000) students regardless of a county's relative need for administrators;

(c) The failure of steps one and two to reimburse counties for staff costs, other than the minimum salary, such as county supplements and extended employment;

(d) The failure of step three to fund fixed charges attributable to county funded salary supplements;

(e) The failure of step four to fully fund transportation expenses including bus replacement and driver salaries; and

(f) The failure of step six to fully fund current expenses, including costs associated with the purchase of instructional materials and equipment.

(g) The use of an adjusted pupil count for determining

state assistance that includes an indential additional pupil count for all special educational students, such as gifted, that bears no relationship to the varying additional cost of educating such students.

27. The aspects of the Support Plan that unconstitutionally compound the wealth discrimination of the school finance system include:

(a) Steps one and two which reimburse counties for staff salaries according to the state minimum salary schedule, which provides higher salaries to personnel with greater experience and education. This factor of the finance system is constitutionally impermissible in the context of a funding system in which wealthy counties, because of their greater ability to attract and retain large numbers of more experienced, and better trained personnel, receive greater advantage from steps one and two than do poorer counties.

(b) Step three, which allocates funds for fixed charges, as a percentage of steps one and two, perpetrates the inequitable distribution of those steps.

(c) Step five exacerbates the wealth inequalities in the school finance system, because it provides the same amount of funds to all counties for administrative costs regardless of county property wealth and actual needs.

(d) Step six, which allocates funds for current expenses and substitute employees as a percentage of steps one and two, perpetuates the inequitable distribution of those steps.

(e) Step seven, although in name equalizing, because it allocates 80% of its funds in inverse proportion to county expendi-

tures per pupil, will never overcome the inequities of the school finance system, because it does not equalize excess levy revenues.

28. The net effect of the basic foundation program, steps one through seven, is that the wealthiest counties have the highest foundation level while the poorest counties have the lowest level, making the foundation program inequitable in violation of the West Virginia Constitution, Article III, Sections 10 and 17. In addition, the foundation program is not based on actual educational needs and costs and provides insufficient funds to counties to develop a high quality system of education as required by Article XII, Section 1 of the constitution.

29. The Incentive for Staffing Improvement, West Virginia Code Ch. 18, Art. 9A, Sec. 14, while intended to "encourage counties to move toward new and improved programs and to reduce class size", is ineffective in producing these results within the near future. The incentive only applies to counties with ratios of enrollment to professional staff higher than the state average. The state average bears no relation to staff needed for a thorough and efficient system. The provision limits the number of staff that can be added in a given year. Finally, the provision only provides current funding for the staff person's minimum salary. A county must pay for all benefits associated with the minimum salary in the first year and must pay all supplements and other costs associated with the employment of additional staff, including instructional materials and equipment. The county receives no increase in other steps dependent on steps one and two, namely steps three, five, and six. In short, this provision will never produce a thorough and efficient system of education in counties such as Lincoln that

are in desperate need of additional staff.

30. The existing method of distributing supplemental state aid outside of a comprehensive financing system violates Article III, Sections 10 and 17 and Article XII, Section 1 of the West Virginia Constitution. Most supplemental aid is distributed to counties without regard to their fiscal ability, and supplemental aid does not cover the county needs in such areas of supplemental funding as special education, vocational education, and drivers' education.

31. Several other state aid programs, not administered by the State Department of Education, also violate Article III, Sections 10 and 17. The State Teachers Retirement System, West Virginia Code Ch. 18, Art. 7A, Sec. 2, et seq., is inherently discriminatory and constitutionally infirm, because teachers of identical experience and education at retirement receive different benefits depending on the level of salary supplements in the county in which they taught. Teachers from wealthy counties with larger supplements receive substantially larger retirement benefits than teachers from counties with no supplement or an insignificant supplement. The health and life insurance and liability insurance programs are also inequitable and violative of Article III, Sections 10 and 17, because wealthier counties with greater numbers of staff receive greater benefits.

32. The State in funding public schools must insure that all of the duties set out in this part of the Conclusions are met.

33. The State has a legal duty to design a system of school finance which eliminates all expenditure inequalities and inadequaci

resulting from the use of the excess levy to fund public education.

34. Under no circumstances may the funding system rely on the excess levy to raise more than an insignificant amount of revenue for the public schools in any county. Any excess levy so permitted must be fully equalized among counties so that any given excess levy rate raises the same amount of revenues in each county in which it is levied.

35. The State has a legal duty to eliminate all expenditure inequalities and inadequacies resulting from unequal and deficient appraisal and assessment practices in West Virginia.

#### THE PROPERTY TAX SYSTEM

36. To meet the mandate of Article X, Section 1 of the West Virginia Constitution, there must be like treatment in the valuation of all species of property, both within a species of property and among all species of property. In conformance with this constitutional standard, it is the duty of the Tax Commissioner in all valuation efforts to value all property at true and actual value. West Virginia Code Ch. 11, Art. 3, Sec. 1.

37. The Tax Commissioner is not fulfilling his constitutional (West Virginia Constitution Article III, Section 5) and statutory (West Virginia Code Ch. 11, Art. 1, Sec. 1) duties to see that the constitutional mandates of equal and uniform taxation and equal taxation among species of property (West Virginia Constitution Article X, Section 1) are enforced.

38. Substantial interspecies inequities in violation of Article X, Section 1 of the West Virginia Constitution exist among virtually all species of property throughout the state, due to the Tax Commissioner's lack of effective methodology in appraisal

practice and failure to provide adequate guidelines to assessors from the Tax Commissioner. To meet the constitutional mandates of Article X, Section 1 of the West Virginia Constitution of taxation in proportion to value and equal valuation among species there must be like treatment among varying species of property. This requires that all valuations -- appraisals and assessments -- result in a like valuation for property of equal value, regardless of species or class. Different approaches to value may be employed for valuation purposes of difference species of property, but these approaches must be appropriate to reach equitable valuations.

39. A lack of meaningful guidelines to determine what is operating and non-operating property of public utilities that is immediately connected with a public service activity, allowing utilities to incorporate much non-operating property in their report to the state as a public utility and thereby escaping local taxation, creates inequity in valuation and taxation relative to other species of property in violation of Article X, Section 1 of the West Virginia Constitution.

40. The use of unaudited data by the Tax Commissioner's office, and his failure to obtain information from other sources in fixing the tentative assessments of public utilities in at least a few instances results in an understatement of net income and consequently an undervaluation in violation of Article X, Section 1 of the West Virginia Constitution.

41. To meet the constitutional mandate of equal and uniform taxation, there must be similar treatment of like species of property throughout the state. This imposes the duty on the Tax Commissioner to use and enforce uniform standards for valua-

tion for like properties statewide, absent some compelling reason to the contrary.

42. The failure of the Tax Commissioner to monitor assessment practices, provide comprehensive guidelines to assessors, and enforce general assessment standards results in inequality and lack of uniformity among counties in taxation in violation of Article X, Section 1 of the West Virginia Constitution.

43. The Tax Commissioner's failure to appraise all non-utility real property and personal property at its true and actual value in all counties of the state is in violation of West Virginia Code Ch. 18, Art. 9A, Sec. 11(b) and West Virginia Code Ch. 11, Art. 3, Sec. 1. Under West Virginia law, it is the duty of the Tax Commissioner in all valuation efforts to value all property at "its true and actual value, that is to say, at the price for which such property would sell if voluntarily offered for sale by the owner thereof, upon such terms as such property, . . . , is usually sold. . . ." West Virginia Code Ch. 11, Art. 3, Sec. 1.

44. The Tax Commissioner's failure to appraise all species of personal property is in violation of his statutory duty to appraise all property. West Virginia Code Ch. 18, Art. 9A, Sec. 1(b). The statute specifies that such appraisal, except for machinery, equipment, etc., shall be done by the prescription of "accepted methods of determining such values". The Tax Commissioner has failed to properly prescribe such methods for each species of tangible and intangible personal property.

45. The Tax Commissioner has the primary responsibility to implement the constitutional mandates of Article X, Section 1 of the Constitution by providing guidance to county assessors.

The State Tax Commissioner has a statutory duty pursuant to West Virginia Code Ch. 11, Art. 1, Sec. 2 to "give such information and require such action as will tend to produce full and just assessments throughout the state." These constitutional and statutory duties impose a general supervisory responsibility upon the State Tax Commissioner to prescribe such regulations, guidelines, standards, methodologies and formulas as are necessary to meet the constitutional mandate of equal and uniform taxation and taxation in proportion to value, and the statutory mandate of true and actual market value assessments.

46. The Tax Commissioner has the authority to issue comprehensive regulations relative to the assessment practices throughout the state, and in order to fulfill his duty to assure that the constitutional mandate of uniform and equal taxation is met, and to "require such action as will tend to produce full and just assessments", he has the duty to prescribe (1) uniform assessment practices and procedures, (2) adequate form returns for the reporting of all property in adequate detail, and (3) procedures for the gathering of all information requisite to the appraisal and assessment of property. (West Virginia Code Ch. 11, Art. 1, Sec. 2).

47. The Tax Commissioner has failed to prescribe guidelines and returns for the effective implementation of the canvass by the assessor's office. The canvass requires the assessor to call upon every person to provide to the assessor "a full and correct description of all of the real estate and personal property." West Virginia Code Ch. 11, Art. 3, Sec. 2. To efficiently and most effectively carry out this responsibility, the Tax Commissioner's

guidelines or regulations must assure the provision of appropriate returns to each taxpayer, be it individual corporation, partnership, or other entity, require the completion of the return in full by a specified date, and the return in full by a specified date, and require follow-up by correspondence and personal visit to the extent necessary to obtain compliance and complete information. Adequate and complete form returns must be prescribed by the Tax Commissioner to assure comprehensive reporting.

48. The Tax Commissioner has the responsibility for statewide enforcement of the constitutional and statutory mandates relative to ad valorem taxation, and he has failed to take measures to assure enforcement of the constitutional mandates of uniform and equal taxation and taxation in proportion to value. The Tax Commissioner has a clear duty to enforce the Constitution, West Virginia Code Ch. 11, Art. 1, Sec. 1. Further, he must take "such action as will tend to produce full and just assessments throughout the state" West Virginia Code Ch. 11, Art. 1, Sec. 2. He has a specific duty to "order and direct a reassessment" any time the assessments are not at true and actual value in any county. West Virginia Code Ch. 11, Art. 3, Sec. 1. He has the duty to make "such corrections in the valuations" as necessary to comply with the mandates of Chapter 11 of the Code. West Virginia Code Ch. 18, Art. 9A, Sec. 11. The Tax Commissioner's failure to correct valuations or direct reassessments in the face of clear knowledge that assessments are not at true and actual value is in violation of his enforcement duties.

#### STATE AND LOCAL ADMINISTRATIVE ROLE

49. The current administrative structure of public school

administration under the State Board of Education, consisting of RESAs and fifty-five county superintendents is a constitutionally effective administrative structure. West Virginia Constitution, Article XII, Section 1.

50. The State Board of Education has failed to fulfill its statutory duty to "determine the educational policies of the state" "(s)ubject to and in conformity with the Constitution and laws of this State". West Virginia Code Ch. 18, Art. 2, Sec. 5. The State Board's failure to adopt thorough and efficient standards violates Article XII, Sections 1 and 2 of the West Virginia Constitution and West Virginia Code Ch. 18, Art. 2, Sec. 5.

(a) The standards promulgated by the State Board of Education pursuant to West Virginia Code, Ch. 18, Art. 2, Sec. 6, West Virginia Code Ch. 18, Art. 2, Sec. 23 and West Virginia Code Ch. 18, Art. 9A, Sec. 22, have been far too general and minimal to define the elements of a thorough and efficient system of education for the state.

(b) The state standards for classification adopted pursuant to West Virginia Code Ch. 18, Art. 2, Sec. 6 bear no relationship to a high quality educational system. Nor does the State Board of Education monitor the classification process to insure accuracy. The North Central Association's accrediting system is similarly general and minimal, and cannot be considered consistent with the requirements of a thorough and efficient system of education.

(c) Although West Virginia Code Ch. 18, Art. 2, Sec. 23 mandates the development of high quality education standards

through the establishment of a comprehensive educational program, the State Board of Education has not complied with the provisions of this statute. The Board has begun a process of replacing earlier specific resource-related standards adopted pursuant to West Virginia Code Ch. 18, Art. 2, Sec. 23, with general, program statements, essential competencies and learner outcomes. Such standards do not fulfill the State Board's constitutional (Article XII, Section 1 of the West Virginia Constitution) of statutory (West Virginia Code Ch. 18, Art. 2, Sec. 23) duties.

(d) The State Department of Education has not used the mandate of S.B. 15, West Virginia Code, Ch. 18, Art. 9A, Sec. 11 to develop education standards of high quality education. West Virginia Code, Ch. 18, Art. 9A, Sec. 22 is violative of the mandate of West Virginia Constitution Article XII, Section 1 in that it authorizes the State Board of Education to withhold three percent (3%) of a county's public school support if the county does not meet standards developed under West Virginia Code Ch. 18, Art. 9A, Sec. 22, yet does not provide funds to permit counties to provide a thorough and efficient system.

51. The supervisory responsibility of the State Board of Education pursuant to West Virginia Constitution Article XII, Section 1 and Article XII, Section 2, include the responsibility to assist in the delivery of, and to monitor and delivery of, educational programs in the counties, which functions are not being adequately performed at the present time, nor could they be with the present staffing and funding of the State Department of Education in this regard.

52. The State Board is not meeting its constitutional

supervisory responsibility pursuant to West Virginia Constitution Article XII, Section 2, in failing to provide adequate assistance in the area of facility planning, transportation routing, and curriculum support and development.

53. The performance of the budgeting and accounting functions by the State Department of Education under the supervision of the State Superintendent of Schools and State Board of Education is an efficient and constitutionally proper administrative responsibility. West Virginia Constitution Article XII, Sections 1 and 2; West Virginia Code Ch. 18, Art. 9A, Sec. 17; West Virginia Code Ch. 18, Art. 9B, Sec. 1 et seq. These are not the cause of the inadequacies in the public schools.

54. The Lincoln County Board of Education and Superintendent of Schools are fulfilling their legal responsibilities in the general administration of the county's school system in an economical and efficient manner.

55. The unconstitutional condition of the public school system in Lincoln County and other counties is not due to inefficiency or failure on the part of the county school systems to follow existing school statutes. Inadequate and inequitable funding is the overriding cause of the current unconstitutionality of the system.

56. The State Board of Education, pursuant to constitutional responsibility in the general supervision of the schools of the state, West Virginia Constitution Article XII, Section 2, and its duty to enforce the constitutional mandate of a thorough and

efficient system of schools, West Virginia Constitution Article XII, Section 1, has the duty to provide a grievance mechanism and remedy at the state level for citizens to pursue grievance against county school board members, county superintendents, or other administrative officials for failure to provide elements of a high quality education that resources permit them to provide or for violation of any other legal duty, and to assure a remedy is provided for failure to perform such legal duties. The statutory remedy of removal from office, West Virginia Code Ch. 6, Art. 6, Sec. 5 and Ch. 6, Art. 6, Sec. 7, is not adequate for lesser failures to meet educational responsibilities. Such grievance mechanism must afford proper and timely opportunity to be heard, before an impartial official, upon reasonable notice, written reasons for decision, and procedure for appeal.

57. The named plaintiffs represent a class consisting of themselves and all other children presently or in the future attending schools in Lincoln County and their parents. These children and parents as all West Virginia children and parents, are entitled to enforcement of their rights under the West Virginia Constitution.

X.  
RELIEF

This Court has discharged what it considers to be its responsibility within the contours of Pauley, et al v. Kelly, et al., supra. The result is no less than a call to the Legislature to completely re-construct the entire system of education in West Virginia.

This immensely complicated process can only be accomplished

by a coordination of the Legislative and Executive branches of government at the highest levels, together with the State Board of Education; The State Department of Education; The Tax Commissioner of the State of West Virginia; County Boards of Education; County Assessors, as well as representative of the plaintiffs, and conceivably representative of other interested educational groups, e.g. West Virginia Association of School Administrators; West Virginia Secondary School Principal's Association; West Virginia Elementary School Principal's Association; West Virginia State Reading Council; West Virginia Association of Supervisors; West Virginia Education Association, and the West Virginia State Congress of Parents and Teachers.

Because of the far reaching systemic reforms mandated by this decision, the coordination of all the branches, agencies, officials and representatives of interested educational groups, is not best suited directly to this Court.

Instead the responsibility of developing a complete remedial plan, addressing the issues of educational standards, resources to fund those standards and public taxation, should be with a person with a knowledge, background and experience in the areas of concern, working under the aegis of this Court.

This concept of appointing a coordinator or "Commissioner", as the person will be designated, may be novel in form, but not in substance within the context of implementing judicial decisions which require a plan to conform to certain legal mandates.

In E. H. v. Matin, \_\_\_\_\_ W.Va. \_\_\_\_\_, 284 S.E.2d 232 (1981); and Cooper v. Gwin, \_\_\_\_\_ W.Va. \_\_\_\_\_, \_\_\_\_\_ S.E.2d \_\_\_\_\_ (1982);

the West Virginia Supreme Court recognized that it lacked certain expertise in institutional reform, and designated a lower court to serve as a coordinator to develop plans and programs consistent with stipulated legal standards adopted by the Court.

What this Court is attempting to do, is to anticipate what the Supreme Court may do in the future, and in the interest of judicial economy and efficiency have a plan developed within the confines of Pauley, et al v. Kelly, et al and this Opinion, in a more abbreviated period of time.

Actually, circuit courts in West Virginia have the power to appoint Commissioners, pursuant to West Virginia Code Ch. 51, Art. 5, Sec. 1. See also West Virginia Rules of Civil Procedure Rule 53.

Heretofore the role of the Commissioner in West Virginia has been rather narrow, and limited to those matters relating to hearing evidence and making findings in divorce cases, as well as presiding over matters relating to disputed accounts.

However, the appointment of a Commissioner is within the wide discretion of the trial court, see Hooper v. Wood, 100 W.Va. 272, 130 S.E. 444 (1925), and this Court does not feel compelled to limit its discretion within the narrow confines of the prior usage of a Commissioner.

The Legislature, State Educational Officers, and State Tax Commissioner, are required by this Opinion to conform to certain constitutional mandates. With the appropriate attitude which I am sure will be exhibited by all concerned, reflecting the change in the course of education which is required by this Opinion, and with the assistance of all of the fine representatives from

the Legislative and Executive branch, the parties, and the educational associations, all under the leadership and guidance of a qualified Commissioner, a plan implementing these constitutional mandates will, I am sure, come to fruition.<sup>6</sup>

Accordingly, this Court does hereby appoint to serve in the role of Commissioner, who shall, subject to the time periods later described, within one hundred twenty (120) days after consulting with the representatives of the plaintiffs, all the named defendants, state officials, bodies and agencies, Representative of the Speaker of the House of Delegates and the President of the Senate, and any interested educational groups as referred to herein, develop a master plan for the implementation of this decision.<sup>7</sup>

The plan, shall then be submitted to this Court, and must be consistent with the standards of a high quality system of education as recognized in this opinion. This Court shall retain continuing jurisdiction of all future proceedings necessary to insure the implementation of the approved plan by the appropriate

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6. The other alternate relief considered by this Court was to permit the Legislature a sufficient period of time to develop its own plan, consistent with the standards set forth in this Opinion and Findings.

However, this concept was not thought to be as acceptable as the referral of the development of the plan to a Commissioner. The reason for this is that the plan conceived as outlined in this Opinion, will have the cooperative spirit of all branches of government officials, agencies, and other interested groups, all under the skillful direction of the commissioner and under the aegis of this Court. It is felt that the latter alternative could best carry out the mandate of this Opinion within the shortest period of time, and actually, if all goes as planned, with less interference from the Courts.

7. The costs and expenses of the Commissioner shall be taxed as part of the costs of this case and assessed against all of the state defendants

state and county officials.

The referral of this case to the Commissioner named herein shall be deferred for a period of sixty (60) days to allow the state defendants time to present a Petition for Writ of Error if they so desire to the West Virginia Supreme Court of Appeals.

#### XI. EPILOGUE

During the early days of this trial, I listened to and observed all of the many witnesses who testified and a single recurring thought kept haunting me. That thought arose out of reading Justice Neely's excellent dissenting opinion in Pauley, et al v. Kelly, et al. Even though the educational system in West Virginia is in an outrageous condition, what is this case doing in the courts? Initially I thought that the resolution of all the myriad of problems associated with the public schools in West Virginia could only be solved by "prying more money from the Legislature" through the cumbersome legislative/political process suggested by Justice Neely.

Slowly, however, as more witnesses testified and more exhibits considered, that original thought dissipated and gave way to the realization of -- if not the judicial branch of government -- then who?

The other branches of government have over these many years not only the duty, but obviously the opportunity to have made the standards set forth herein a reality. Indeed, there should have been no reason to have instituted this suit in the first instance.

However, as occasionally occurs, despite the rather precise

constitutional mandates, other branches of government need the judicial direction to assist them in discharging their oath. This is the genius written the concept of separation of power, and judicial review.

What is most intriguing, is that despite the strong language in Pauley, et al v. Kelly, et al., that "our basic law makes education's funding second in priority only to payment of the state debt, and ahead of every other state function", and in State ex rel. Board of Education v. Rockefeller, \_\_\_\_\_ W.Va. \_\_\_\_\_, 281 S.E.2d 131, 135 "in the final analysis...our Constitution...gives a constitutionally preferred status to public education in this State", the Legislature still failed to adopt legislation which could have dispensed with further consideration of this case.

Instead Senate Bill 15, although a rather noble effort, failed to adequately address the fundamental deficiencies of the system -- the absence of standards of a high quality system of education, the absence of dispensing with the reliance on excess levies, and a plan for facility construction.

At the conclusion of this trial, after the last witness left the courtroom, the only thing that then haunted me, was a rather apt, albeit often used thought of Rabbi Hillel "If not now--when?" The "when" must be now, and the "who" is the judicial branch, bringing together the energy and talents of all interested West Virginians for the benefit of our most precious natural resource -- our children.

Accordingly, based upon the within opinion, findings of fact and conclusions of law, it is hereby ORDERED, ADJUDGED and DECREED as follows:

(1) The system of financing public schools in West Virginia is declared unconstitutional in that it:

(a) Violates the provisions of Article XII, Section 1 of the West Virginia Constitution on the basis that the Legislature has not provided for a thorough and efficient system of free schools;

(b) Violates the provisions of Article III, Sections 10 and 17 of the West Virginia Constitution, on the basis that it permits to exist discriminatory classifications in financing education and educational offerings.

(2) That in an effort to bring the public school system in West Virginia into constitutional conformity a master plan shall be developed with the assistance of the commissioner appointed hereunder. The master plan shall incorporate the standards of all the aspects of a high quality system of education regarding: (1) curriculum; (2) personnel, (3) facilities; and (4) materials and equipment, as defined herein.

The structure of the master plan shall include:

(a) All legislative proposals necessary to implement every component of a thorough and efficient and equal educational system, including the ingredients of a high quality system of education and the resources necessary to guarantee deliverance of the system to each public school student in West Virginia;

(b) All administrative or other regulatory proposals to implement a thorough and efficient and equal educational system as well as the implementation of a property tax system compatible with constitutional and statutory mandates and standards. To this extent, the plan that is hereinafter described to be developed

by the State Tax Commissioner shall be incorporated in the master plan;

(c) Any and all required changes within the West Virginia Board of Education, State Department of Education and Office of the State Tax Commissioner to implement a thorough and efficient and equal educational and property tax system, compatible with constitutional and statutory mandates and standards.

(3) That the Tax Commissioner of the State of West Virginia shall cause a plan to be developed to provide remedial action for all the deficiencies identified in the findings contained herein which shall include, but is not limited to:

(a) A detailed outline of comprehensive regulations or guidelines addressed to local assessors for their use in the valuation of all real and personal non-utility property;

(b) Recommended forms for the detailed reporting of all species of real and personal property by each taxpayer in the State of West Virginia, containing detailed explanations to the assessor as to how to make the actual assessment from the reported information;

(c) A description of the method of valuation of active coal;

(d) A description of the method of valuation of reserve coal;

(e) A description of the method of valuation of oil and gas producing properties;

(f) A description of the method of valuation of known oil and gas producing areas;

(g) A description of the method of valuation of timber property on a comprehensive basis throughout the State of West Virginia;

(h) A description of the method of valuation of active mining mineral interests including limestone, fire clay, dolomite, sandstone and other actively mined minerals;

(i) A description of the method of valuation of residential and commercial real property;

(j) A description of the method of valuation of industrial and commercial machinery and equipment;

(k) A description of the method of valuation of intangible personal property including stock and accounts receivable, etc.

(l) A description of the method establishing tentative assessments for public utilities;

(m) A description of enforcement techniques and procedures to be used by the Tax Commissioner including the events which would trigger their intended use and the utilization of subpoena power to remedy inadequate assessments;

(n) A description and time-table for the installation of computer capabilities with county terminals into and through which information from all current sales and other valuation information shall be processed, permitting the update of all residential, commercial and other real property valuations on an annual basis throughout the State of West Virginia.

(4) That subject to any action by the West Virginia Supreme Court of Appeals, the plans required to be developed herein shall

be submitted as follows:

(a) The plan required to be developed by the Tax Commissioner of West Virginia within ninety (90) days from and after the date of this Order.

(b) The master plan to be developed through the commissioner designated herein within one hundred twenty (120) days from and after the date of this Order.

(5) That the plans required to be submitted hereunder shall contain the procedures, mechanisms and time-tables for their execution in terms of proposed legislative and/or proposed regulations.

(6) That the function and duty of the commissioner appointed hereunder shall be as follows:

(a) To monitor the implementation of this Order;

(b) To coordinate and work with all representatives from the legislative and executive branches of government, representatives of the State Board of Education, State Department of Education; State Tax Commissioner; the plaintiff; local boards of education; local assessors, and it is recommended that representatives of any or all of the educational groups referred to herein be included all for purposes of developing and implementing the master plan described herein.

(c) To provide any and all assistance to the Legislator as requested;

(d) To obtain further information on the methods and manner for the implementation of this Order;

(e) To obtain any and all other expert assistance

necessary for the implementation of this Order, subject to the prior approval of this Court;

(f) To make any recommendations to this Court regarding any further relief that may be necessary.

(7) This Court shall retain jurisdiction until the master plan developed and approved by this Court is fully implemented.

(8) The terms of this Order may be suspended for a period of ninety (90) days so that any party who feels aggrieved hereunder shall present a Petition for Writ of Error to the West Virginia Supreme Court of Appeals.

(9) The objection and exception to the Court's ruling by the defendants is hereby saved.

ENTER this 11th day of May, 1982.

  
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Arthur M. Recht, Special Judge  
Circuit Court of Kanawha County