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## *Center Update*

# The Right to Education and the Financing of Equal Educational Opportunities in North Carolina's Public Schools

by Mebane Rash Whitman

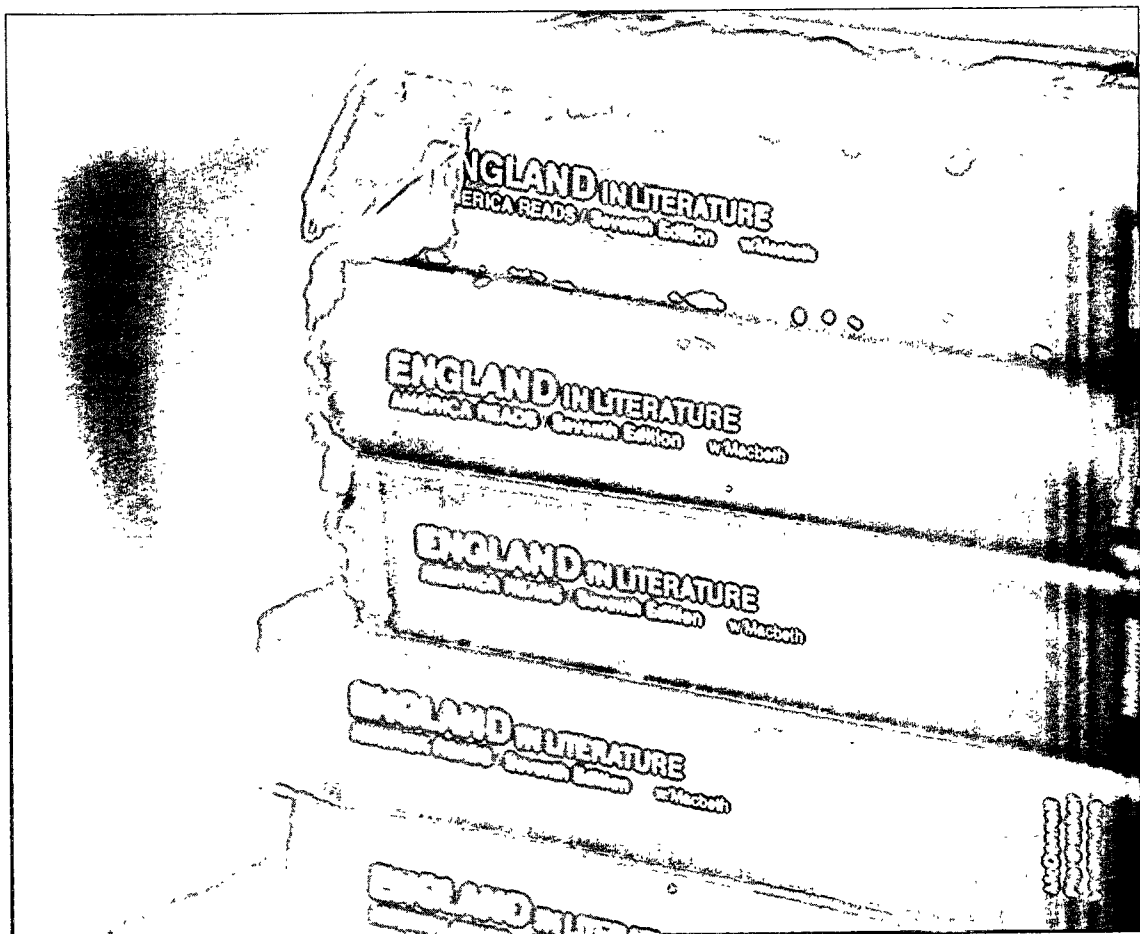
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**North Carolina Constitution, Article I, Section 15.** *Education.* The people have a right to the privilege of education, and it is the duty of the State to guard and maintain that right.

**North Carolina Constitution, Article I, Section 19.** *Equal protection of the laws.* No person shall be denied the equal protection of the laws; nor shall any person be subjected to discrimination by the State because of race, color, religion, or national origin.

**North Carolina Constitution, Article IX, Section 2 (1).** *General and uniform system; term.* The General Assembly shall provide by taxation and otherwise for a general and uniform system of free public schools, which shall be maintained at least nine months in every year, and wherein equal opportunities shall be provided for all students.

**North Carolina Constitution, Article IX, Section 2 (2).** *Local responsibility.* The General Assembly may assign to the units of local government such responsibility for the financial support of the free public schools as it may deem appropriate.



**I**magine going to school and having classes in the hallway, the cafeteria, or even a closet. The lighting is inadequate, making it difficult for you to see your textbook. The plaster walls that define your learning space are cracked, and the paint on them is peeling. Overhead, you can see some rusting pipes, and sometimes the roof leaks when it rains. In your science classroom, there aren't enough microscopes—much less the measuring devices, sinks, and safety equipment needed for experiments. Many of your textbooks are outdated, and sometimes you have to share your workbook because there aren't enough to go around.

On the other hand, imagine going to school in a newer facility with dependable heating and air conditioning. Lots of courses are offered: calculus, advanced biology, chemistry, and physics, several foreign languages, journalism, as well as creative writing. There are plenty of desks, blackboards, and textbooks, plus many state-of-the-art computers that can be checked out overnight. The media center has audiovisual equipment that you can use to produce your own videos for special projects; the chemistry lab has many high-tech instruments, including digital read-out balances; the library has more than

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**Table 1. Percentage of Funding for Public Education from Local, State, and Federal Sources in the 50 States, 1995-96  
(Ranked in order of least local support)**

State	Local	State	Federal
1 Hawaii	2.0	89.5	8.4
2 New Mexico	14.9	74.3	10.7
3 Alabama	19.1	70.9	10.0
4 Kentucky (tie)	23.9	67.2	8.9
Alaska (tie)	23.9	63.6	12.6
6 Washington	24.3	69.4	6.3
<b>7 North Carolina</b>	<b>24.9</b>	<b>66.5</b>	<b>8.6</b>
8 Arkansas	26.1	65.4	8.5
9 Delaware	26.7	65.2	8.2
10 Oklahoma	27.6	63.5	8.9
11 Mississippi	29.1	55.6	15.3
12 Idaho	31.1	61.2	7.7
13 Louisiana	32.5	54.4	13.2
14 West Virginia	33.7	58.5	7.8
15 California	34.2	57.0	8.8
16 Utah	35.2	58.4	6.4
17 Michigan	35.6	57.9	6.5
18 Oregon	36.4	56.5	7.1
19 Kansas	37.3	57.4	5.3
20 Montana	40.4	49.6	10.0
21 Georgia	40.7	52.6	6.7
22 Tennessee	40.9	50.3	8.7
23 Indiana	42.5	52.3	5.2
24 Florida	43.3	49.5	7.2
25 Minnesota	43.8	51.7	4.5
26 Wyoming	44.5	49.0	6.5
27 South Carolina	45.2	46.1	8.7
28 Iowa	45.4	49.5	5.1
29 Maine	45.5	47.5	6.9
30 North Dakota	46.5	42.5	11.0
31 Texas	47.7	43.5	8.8
32 Arizona	49.3	42.0	8.7

**Table 1, continued**

State	Local	State	Federal
33 Colorado	50.3	44.2	5.5
34 Wisconsin	51.5	44.1	4.4
35 Ohio	52.0	41.7	6.3
36 Pennsylvania	52.6	41.8	5.6
37 New York	54.6	39.3	6.1
38 Maryland	54.9	39.3	5.8
39 Rhode Island	55.0	41.0	4.0
40 Missouri	55.8	37.3	6.8
41 New Jersey	56.0	40.3	3.6
42 Connecticut	56.5	39.1	4.4
43 Nebraska	57.3	38.4	4.2
44 Virginia	58.4	36.3	5.3
45 Massachusetts	59.2	35.5	5.3
46 Nevada	60.9	34.4	4.7
47 Illinois	61.3	29.9	8.8
48 South Dakota	63.7	26.1	10.1
49 Vermont	65.2	29.7	5.1
50 New Hampshire	90.0	7.0	3.0
<b>National Average</b>	<b>45.0</b>	<b>47.9</b>	<b>7.1</b>

Source: National Education Association, *Ranking of the States 1996*, NEA Research Division, Washington D.C., 1996, pp. 41-42.

26,000 volumes; the art department has a kiln, a press, and extensive art supplies; there is a publishing center—complete with an up-to-date graphics department where the school newspaper is printed. Classes are smaller, so your teachers have more time to help you.

Although it is hard to imagine that schools could be so different, these schools are not hypothetical. They are composite descriptions of schools across North Carolina.

The reason these schools differ is because they receive disparate amounts of funding from federal, state, and local governments—the traditional funding sources of public schools across the nation. In the United States, the nationwide average of federal funding is 7.1 percent. State and local governments chip in roughly equal amounts—47.9

percent and 45.0 percent respectively.<sup>1</sup> In North Carolina, 8.6 percent of public school funding is federal, 66.5 percent is state, and 24.9 percent is local. (See Table 1 on pp. 44-45.) Deriving such a substantial percentage of funds from local governments, however, creates the problem. Most local funds are raised by property taxes, a tax levied by cities and counties on property that is owned by residents. The rates of taxation vary widely from locality to locality, as does the tax base—the value of property that exists in a city or county on which a tax may be imposed. Therefore, the revenue generated by property taxes varies enormously.

The resulting disparities in expenditures exist in school districts across the nation. A recent nationwide study by the U.S. General Accounting office found that most states have failed to eliminate

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## *Snapshots of Schools Across North Carolina: Are They Adequate and Equal?*

- In Robeson County, at Rowland Norment Elementary School, the facilities are in desperate need of repair. "This school is infested with termites, has corroded exposed pipes, cracked walls, and peeling paint. The school has poor lighting and poor acoustics. The library has tables with broken legs and numerous books that are outdated and in poor condition." At St. Paul's High School, the science classes need "microscopes, Bunsen burners, electronic balances, multimeters, models, charts, and other basic science supplies. Some safety equipment, such as the eye wash, does not work, while other safety items, such as goggles and gloves, are simply not available."<sup>1</sup>
- In Halifax County, at Inborden Elementary School, signs are posted throughout the school warning of asbestos. But that is not the only problem. "Textbooks are frequently in short supply. In addition to shortages, students must often make do with worn out and outdated textbooks. Other supplementary materials that are recommended to accompany state textbooks are frequently unavailable, or must be shared with other classes. Classrooms often do not have resources such as dictionaries."<sup>2</sup>
- In Vance County, "there are no elementary school programs in second languages, drama, creative movement education, choral music or instrumental music—all of which are basic elements in North Carolina's Standard Course of Study." Furthermore, "[t]he school system has experienced considerable difficulties attracting and retaining well-qualified teachers."<sup>3</sup>
- In Hoke County, increasing enrollment presents a variety of problems. "With no locally paid teachers we have an inordinate number of combination grade classes (There are not enough teachers to provide for self-contained grade levels.) and frequently exceed class size maximums."<sup>4</sup>
- In Cumberland County, "[f]ew, if any, schools have adequate technology in the area of computers. Indeed, many of these schools lack much more basic equipment, such as overhead projectors. . . . The children of Cumberland County do not have anything approaching the educational opportunities available to children in wealthier North Carolina school districts."<sup>5</sup>

### FOOTNOTES

<sup>1</sup> Affidavit filed with the plaintiffs' amended complaint in Halifax County Superior Court on Sept. 26, 1994, by Purnell Swett, Superintendent of the Robeson County School System.

<sup>2</sup> *Ibid.*, by Willie J. Gilchrist, Superintendent of the Halifax County School System.

<sup>3</sup> *Ibid.*, by A. Craig Phillips, Superintendent of the Vance County School System.

<sup>4</sup> *Ibid.*, by William C. Harrison, Superintendent of the Hoke County School System.

<sup>5</sup> *Ibid.*, by John R. Griffin, Jr., Superintendent of the Cumberland County School System.

wide funding differences between rich and poor school districts. North Carolina had the 15th highest gap in funding between wealthy and poor districts, according to the GAO, even though the state ranked 19th in its efforts to equalize funding.<sup>2</sup> For example, in 1994–95, Hyde County spent \$7,460 per-pupil—almost double the amount (\$3,809) that Onslow County spent. (See Table 2 on pp. 48–55.)

### The Right to Education

**I**n two landmark legal efforts in the early 1970s, parents challenged the funding of school systems near Pasadena, Calif., and San Antonio, Texas. In *Serrano v. Priest*,<sup>3</sup> the California Supreme Court ruled that the reliance on local property taxes to fund the California school system violated the federal

constitution. The Texas action, *San Antonio Independent School District v. Rodriguez*,<sup>4</sup> brought in federal district court, reached the U.S. Supreme Court on appeal before *Serrano*. In 1972, the U.S. Supreme Court ruled against the Mexican-American parents from Texas. (See Table 3 on pp. 62-63.)

In reaching its decision, the Court relied upon two important legal principles. First, the Court said that the U.S. Constitution does not guarantee the right to an education, as it does rights such as free speech and privacy. Second, the Court said that the way the Texas schools were financed did not violate the equal protection clause of the 14th Amendment of the U.S. Constitution. Although the Court conceded the system the state used to finance schools was imperfect, it refused to become involved because "direct control over decisions concerning the education of one's children is a need that is strongly felt in our society."<sup>5</sup> This is one legal principle that undergirds school finance policy: "The courts have firmly established the *states'* authority over education."<sup>6</sup> The U.S. Supreme Court's decision in *Rodriguez* foreclosed the use of federal courts and the federal Constitution for school finance challenges, such as the *Serrano* appeal. Thus, since 1972, plaintiffs have looked to state courts for relief in funding disparity suits. Defendants rarely argue that the disparities in funding do not exist. Rather, the issue is whether the disparities are unconstitutional.

### Plaintiffs' Arguments: Disparities are Unconstitutional

Most successful school finance suits have had several factors in their favor. First, they have been brought on the basis of education clauses or equal protection clauses in *state constitutions*. The North Carolina Constitution has such an education clause. Article I, Section 15 states that the people of this state have a right to the privilege of education and that it is the duty of the state to guard and protect that right. Also, Article IX, Section 2(1) directs the General Assembly to provide a *general and uniform* system of free public schools. This provision is comparable with the education provisions in other state constitutions, some of which require "thorough," "efficient," "suitable," or "adequate" systems of free public schools.

For example, the Ohio Supreme Court ruled in April 1997 that the state's system for funding its public schools is unconstitutional because it is not "thorough and efficient." Writing for the majority in the 4-3 decision, Ohio Justice Francis E.

Sweeney Jr. said: "When a district falls short of the constitutional requirement that the system be thorough and efficient, it is the state's obligation to rectify it." Sweeney was critical of the state's formula for aiding school districts, while charging that the Ohio legislature had thrust most of the responsibility of paying for education onto local districts. "By our decision today, we send a clear message to lawmakers: The time has come to fix the system," Sweeney wrote. "Let there be no misunderstanding. Ohio's public school financing scheme must undergo a systematic overhaul."<sup>7</sup>

**"The courts have firmly established the states' authority over education."**

—WILLIAM E. SPARKMAN,  
IN *BOSTON COLLEGE LAW REVIEW*

Such clauses can help establish that education is a fundamental state right. Article I of the North Carolina Constitution is entitled the "Declaration of Rights" and Section 15 follows sections on religious liberty and the freedom of speech. It precedes sections on *ex post facto* laws (a law that punishes a person for something he did, even though at the time it was done the action was not a crime) and slavery. It could be argued that the nesting of education in our state Constitution among some of the most important individual rights indicates that education is a fundamental right in this state, and as such, it would be protected by the equal protection clause.

State constitutional equal protection provisions, while substantially equivalent to the federal equal protection clause, possess an "independent vitality."<sup>8</sup> Thus, the equal protection clause of state constitutions may be interpreted independently of the U.S. Supreme Court's interpretation of the federal equal protection clause, so state courts are largely unrestrained by the precedent set in *Rodriguez*. If plaintiffs can prove either that education is a fundamental state right or that wealth is a suspect classification (such as race or national origin), then the court may apply the legal standard of *strict scrutiny*, and the funding scheme will be struck down unless the state can prove it is necessary to achieve a compelling government purpose.

Plaintiffs in funding suits, citing these state constitutional provisions, assert that the disparities in funding among school districts are unconstitu-

**Table 2. Per-Pupil Expenditures, Average Daily Membership, and Low Wealth and Small Schools Allocations for N.C. School Systems, 1994-95**

School System	State		Federal		Local		Total	
	PPE	Rank	PPE	Rank	PPE	Rank	PPE	Rank
Alamance County	\$3,262.74	107	\$174.92	98	\$ 749.84	69	\$4,187.50	109
Burlington City	3,275.53	101	198.32	82	1,043.14	26	4,516.99	70
Alexander County	3,372.12	80	167.15	105	521.28	105	4,060.55	116
Alleghany County	4,509.32	4	379.47	17	695.98	79	5,584.77	5
Anson County	3,699.73	33	268.92	50	700.86	78	4,669.51	52
Ashe County	3,833.28	25	291.40	43	605.73	95	4,730.41	47
Avery County	4,088.48	14	325.22	32	952.30	34	5,366.00	12
Beaufort County	3,577.19	44	334.88	26	864.14	46	4,776.21	43
Bertie County	3,862.47	24	375.48	18	485.40	113	4,723.35	49
Bladen County	3,741.00	30	468.44	6	675.02	84	4,884.46	40
Brunswick County	3,313.08	95	213.01	79	1,016.66	29	4,542.75	65
Buncombe County	3,377.75	78	165.22	107	1,056.92	22	4,599.89	57
Asheville City	3,621.23	38	765.20	1	2,224.98	2	6,611.41	2
Burke County	3,446.12	64	169.76	101	764.64	65	4,380.52	89
Cabarrus County	3,226.94	112	137.39	115	775.75	61	4,140.08	112
Kannapolis City	3,393.73	74	189.42	91	873.64	44	4,456.79	78
Caldwell County	3,325.67	93	178.16	97	754.43	67	4,258.26	103
Camden County	4,311.88	8	289.15	45	704.90	75	5,305.93	13
Carteret County	3,288.68	98	231.18	68	1,015.60	30	4,535.46	67
Caswell County	3,803.81	26	249.81	59	610.71	93	4,664.33	54
Catawba County	3,210.12	114	133.66	116	863.59	47	4,207.37	107
Hickory City	3,360.19	84	235.40	64	1,146.09	17	4,741.68	46
Newton-Conover	3,779.07	28	217.35	74	1,165.33	16	5,161.75	17
Chatham County	3,353.72	85	141.32	113	1,088.59	20	4,583.63	59
Cherokee County	3,909.68	22	317.74	35	480.98	114	4,708.40	50
Chowan-Edenton	3,936.40	21	256.53	55	759.83	66	4,952.76	37
Clay County	4,395.04	6	214.64	77	451.56	116	5,061.24	27
Cleveland County	3,408.53	72	198.41	81	687.48	80	4,294.42	101
Kings Mountain	3,582.39	42	230.50	69	944.49	35	4,757.38	45
Shelby City	3,504.34	51	398.59	15	1,052.79	23	4,955.72	36
Columbus County	3,504.21	52	416.44	13	533.50	104	4,454.15	80
Whiteville City	3,618.84	39	293.99	41	503.05	109	4,415.88	86
Craven County	3,274.34	102	430.72	11	714.06	74	4,419.12	84
Cumberland County	3,125.98	117	291.75	42	753.62	68	4,171.35	111
Currituck County	3,626.55	36	195.70	85	1,431.70	9	5,253.95	15

ADM	ADM Rank	State Allocation	
		Low Wealth	Small School
11,151	29	\$ 0	\$ 0
6,378	55	NA	0
4,878	67	158,951	0
1,455	112	2,054	617,021
4,330	71	404,995	0
3,443	83	119,387	0
2,390	100	0	518,348
7,655	43	360,345	0
3,949	75	500,363	631,805
5,379	62	452,020	0
8,885	36	0	0
23,518	8	0	0
4,493	70	NA	0
12,780	26	575,084	0
14,973	19	0	0
3,922	78	NA	0
11,466	28	587,365	0
1,210	115	106,527	561,460
8,031	40	0	0
3,379	84	267,058	521,874
13,513	24	0	0
4,168	73	NA	0
2,751	94	NA	0
6,262	56	0	0
3,366	86	195,094	571,594
2,572	97	181,276	592,045
1,200	116	38,343	604,698
8,362	37	524,590	0
3,926	77	NA	0
3,193	87	NA	0
7,586	44	862,220	0
2,764	93	NA	0
14,233	21	714,228	0
49,030	4	2,041,430	0
2,892	92	0	538,392

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tional because of the resulting *inequalities* among districts as well as the *inadequate educational opportunities* that exist for the school children from the poorer districts. “Adequacy arguments, demanding for all students an opportunity to enjoy the schooling mandated by the state’s charter, offer a natural . . . alternative [to inequality arguments].”<sup>9</sup> In North Carolina, the adequacy of education might be measured by comparing the educational program provided in a given school district with the Basic Education Program (BEP) required to be provided by statute.<sup>10</sup>

Under the BEP, schools must offer a core curriculum, including arts, communication skills, physical education, math, computer skills, science, second languages, social studies, and vocational education. The BEP also sets forth minimal standards for facilities, equipment, materials, class size, and staffing. To the extent that districts fail to meet the requirements of the BEP, an inadequacy claim could be brought in North Carolina. In 1994, a significant portion—36.1 percent—of the BEP remained unfunded.<sup>11</sup> Since then, the legislature has stopped using the term BEP but has continued funding portions of the program—focusing particularly on class-size reductions in the lower grades, according to Jim Johnson, senior fiscal policy analyst at the General Assembly.<sup>12</sup> The funding system, critics say, is unconstitutional because it results in districts with inadequate course offerings, facilities, and equipment as measured against the BEP—which determines “what each child in the North Carolina public schools is guaranteed.”<sup>13</sup>

An equality argument, on the other hand, would go one step further, noting to the court that the BEP is just that—basic. The BEP does not equalize educational opportunities among school districts: therefore, the BEP does not require the teaching of calculus, advanced biology, chemistry, physics, or other classes needed to get into college—and often available in wealthier school districts. In an appendix to the BEP, such classes are suggested as appropriate electives for high school, but school districts that choose to offer these classes “are expected to do so at local expense.”<sup>14</sup> Instead of using the BEP to define what is adequate, the law could be challenged on the grounds that the BEP itself is inadequate. Among other things, the BEP does not, for instance, take into account the special education needs of children from poorer districts.

Also, in successful suits, the factual records generally have been extensive and well documented. “Plaintiffs meticulously documented how



**Table 2, continued**

School System	State		Federal		Local		Total	
	PPE	Rank	PPE	Rank	PPE	Rank	PPE	Rank
Dare County	\$ 3,408.76	71	\$ 172.35	99	\$ 1,557.20	6	\$ 5,138.31	20
Davidson County	3,219.95	113	138.64	114	613.10	92	3,971.69	117
Lexington City	3,509.89	49	256.67	54	1,323.37	11	5,089.93	24
Thomasville City	3,637.87	35	353.02	23	1,100.76	19	5,091.65	23
Davie County	3,445.54	65	179.73	95	920.39	41	4,545.66	64
Duplin County	3,341.35	87	276.21	49	488.66	112	4,106.22	114
Durham County	3,271.16	104	194.25	88	1,969.43	3	5,434.84	11
Edgecombe County	3,461.55	59	335.91	25	776.25	60	4,573.71	61
Forsyth County	3,250.18	110	167.26	104	1,638.45	4	5,055.89	28
Franklin County	3,394.23	73	289.04	46	678.81	83	4,362.08	94
Gaston County	3,280.53	99	181.94	94	791.40	59	4,253.87	104
Gates County	4,062.08	16	243.09	61	867.64	45	5,172.91	16
Graham County	4,626.00	3	576.50	3	292.37	119	5,494.87	7
Granville County	3,338.67	88	234.56	65	849.54	51	4,422.77	81
Greene County	3,984.51	19	458.17	8	619.62	91	5,062.30	26
Guilford County	3,369.91	82	178.73	96	1,563.25	5	5,111.89	22
Halifax County	3,689.51	34	470.05	5	504.19	108	4,663.75	55
Roanoke Rapids City	3,444.69	66	195.24	86	1,176.35	15	4,816.28	41
Weldon City	4,075.14	15	438.92	10	1,425.19	10	5,939.25	4
Harnett County	3,384.78	76	225.24	71	492.97	111	4,102.99	115
Haywood County	3,607.86	41	263.97	52	1,064.85	21	4,936.68	38
Henderson County	3,257.48	109	191.79	90	930.41	40	4,379.68	90
Hertford County	3,435.03	69	363.05	19	717.52	72	4,515.60	71
Hoke County	3,469.31	56	327.23	31	440.26	117	4,236.80	105
Hyde County	5,742.78	1	529.72	4	1,187.84	14	7,460.34	1
Iredell Co.-Statesville	3,314.27	94	169.86	100	933.21	38	4,417.34	85
Mooresville City	3,261.82	108	113.08	119	887.41	43	4,262.31	102
Jackson County	3,794.71	27	348.82	24	818.69	55	4,962.22	34
Johnston County	3,457.00	60	166.92	106	684.03	82	4,307.95	98
Jones County	4,478.67	5	425.57	12	570.44	98	5,474.68	8
Lee County	3,247.12	111	244.50	60	822.32	54	4,313.94	97
Lenoir County	3,474.75	54	331.83	27	771.82	63	4,578.40	60
Lincoln County	3,329.79	91	167.79	103	684.08	81	4,181.66	110
Macon County	3,614.40	40	254.27	56	766.33	64	4,635.00	56
Madison County	4,145.14	11	322.36	33	510.81	107	4,978.31	32

ADM	ADM Rank	State Allocation	
		Low Wealth	Small School
3,931	76	\$ 0	\$ 0
16,988	17	296,390	0
2,927	91	NA	0
2,101	104	NA	0
4686	69	0	0
8,043	39	488,569	0
27,215	7	0	0
7,843	42	548,565	0
38,811	5	0	0
6,443	54	619,083	0
28,544	6	0	0
1,873	109	192,376	601,472
1,225	113	69,684	594,428
6,848	51	582,650	0
2,715	95	232,254	529,303
54,756	3	0	0
6,177	57	1,058,078	0
3,066	89	NA	0
1,216	114	NA	0
13,067	25	1,462,094	0
7,109	47	50,130	0
10,473	30	0	0
4,253	72	528,087	0
5,489	60	874,766	0
771	118	0	635,187
13,617	23	NA	0
3,183	88	NA	0
3,374	85	0	0
15,852	18	1,045,218	0
1,524	111	106,250	619,517
7,936	41	106,113	0
10,227	31	499,929	0
9,091	35	159,994	0
3,581	82	0	0
2,497	99	140,410	552,706

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**"Allowing local communities to go above and beyond established minimums to provide to their people encourages the best features of democratic government."**

—COURT RULING, 1973, IN  
SAN ANTONIO INDEPENDENT  
SCHOOL DISTRICT v. RODRIGUEZ

state school-finance systems discriminated against school children as a result of the fiscal capacity of the school district—a factor that has nothing to do with education. They also documented the ways in which inequalities in financing resulted in unequal educational facilities, staff, course offerings, equipment, and instructional materials."<sup>15</sup>

Sympathetic courts have been concerned that taxpayers in property-poor districts paid in some cases higher tax rates for education than taxpayers in property rich districts. Because the higher tax rates generated revenues in comparatively smaller amounts, property-poor districts could not afford to spend for the education of their pupils, on a per-pupil basis, the same amounts that the rich towns could. Several options exist, including: 1) the state could redistribute property taxes from the richer to poorer districts, or 2) it could supplement local revenues with state funds from statewide taxes. However, courts often find that such state programs do not adequately *equalize* the amounts available to individual districts.

North Carolina already has two programs in place designed to provide additional funds to low-wealth counties. Since 1991, counties have been eligible to receive *low wealth supplemental funds* if their property tax base is below the state average and their tax rate is above the state average. So, only low-wealth counties making high tax efforts are able to get the dollars. The North Carolina General Assembly appropriated \$47.5 million dollars in fiscal year 1996–97 for this program. (See Table 4 on p. 64.) However, as a *Fayetteville Observer-Times* editorial pointed out, that amount "doesn't sound so impressive when it's doled out among the 70 percent or so of schools that qualify. And remember: The goal had been \$100 million a year. Even *that* figure had been considered low. The amount originally

**Table 2, continued**

School System	State		Federal		Local		Total	
	PPE	Rank	PPE	Rank	PPE	Rank	PPE	Rank
Martin County	\$ 3,623.67	37	\$ 395.39	16	\$ 955.61	33	\$ 4,974.67	33
McDowell County	3,471.14	55	188.96	92	639.82	88	4,299.92	99
Mecklenburg County	3,270.42	105	202.08	80	1,545.13	7	5,017.63	30
Mitchell County	4,044.48	17	220.01	73	460.38	115	4,724.87	48
Montgomery County	3,578.93	43	303.75	39	537.32	103	4,420.00	83
Moore County	3,273.02	103	228.57	70	1,022.70	28	4,524.29	69
Nash Co.-Rocky Mount	3,270.12	106	285.86	47	930.55	39	4,486.53	72
New Hanover County	3,276.69	100	214.81	76	1,040.26	27	4,531.76	68
Northampton County	3,715.64	32	358.75	20	625.44	90	4,699.83	51
Onslow County	3,059.62	119	231.73	67	517.60	106	3,808.95	119
Orange County	3,455.51	62	187.41	93	1,437.80	8	5,080.72	25
Chapel Hill-Carrboro	3,178.15	116	123.86	118	2,252.39	1	5,554.40	6
Pamlico County	4,030.26	18	328.61	28	572.33	97	4,931.20	39
Pasquotank County	3,441.24	67	264.08	51	714.82	73	4,420.14	82
Pender County	3,372.67	79	303.61	40	863.45	48	4,539.73	66
Perquimans County	4,197.76	9	448.89	9	609.65	94	5,256.30	14
Person County	3,384.68	77	252.53	57	912.86	42	4,550.07	63
Pitt County	3,303.56	96	258.01	53	808.39	58	4,369.96	93
Polk County	4,164.10	10	236.73	63	1,043.44	25	5,444.27	10
Randolph County	3,188.01	115	115.46	111	549.69	102	3,893.16	118
Asheboro City	3,419.55	70	232.10	66	1,118.16	18	4,769.81	44
Richmond County	3,501.75	53	291.33	44	567.07	99	4,360.15	95
Robeson County	3,452.54	63	402.72	14	554.22	101	4,409.48	87
Rockingham County	3,461.79	58	224.00	72	704.64	76	4,390.43	88
Rowan Co.-Salisbury	3,341.48	86	165.10	108	730.10	71	4,236.68	106
Rutherford County	3,467.92	57	240.44	62	773.24	62	4,481.60	74
Sampson County	3,507.37	50	309.46	37	559.86	100	4,376.69	91
Clinton City	3,371.35	81	250.90	58	973.88	32	4,596.13	58
Scotland County	3,533.22	46	313.00	36	937.23	36	4,783.45	42
Stanly County	3,388.64	75	156.05	110	581.40	96	4,126.09	113
Albemarle City	3,724.96	31	283.76	48	1,044.68	24	5,053.40	29
Stokes County	3,437.29	68	162.04	109	859.27	49	4,458.60	77
Surry County	3,361.73	83	197.70	83	630.33	89	4,189.76	108
Elkin City	3,945.70	20	196.12	84	1,011.52	31	5,153.34	18
Mount Airy City	3,759.23	29	194.56	87	1,199.11	13	5,152.90	19

ADM	ADM Rank	State Low Wealth	Allocation Small School
4,898	66	\$ 362,107	\$ 0
6,052	59	391,996	0
84,216	1	0	0
2,320	102	115,116	525,848
4,141	74	246,419	0
9,851	32	0	0
16,998	16	707,325	0
20,318	10	0	0
3,732	81	416,370	521,520
19,835	11	1,755,236	0
5,464	61	0	0
7,509	46	NA	0
2,120	103	135,816	541,287
6,081	58	495,603	0
5,340	63	350,052	0
1,899	108	195,205	544,822
5,273	64	0	0
18,646	12	690,101	0
2,083	105	0	544,135
14,622	20	424,821	0
3,797	80	NA	0
8,106	38	844,425	0
22,518	9	3,066,840	0
13,931	22	593,952	0
17,939	14	461,214	0
9,738	33	492,221	0
6,813	52	560,281	0
2,505	98	NA	0
6,971	50	677,107	0
7,053	48	383,965	0
2,079	106	NA	0
6,462	53	186,061	0
7,579	45	239,162	0
1,028	117	NA	0
1,911	107	NA	0

—continues on p. 54

said to be needed was \$200 million.”<sup>16</sup>

Also in place since 1991, *small schools supplemental funds* provide additional money to counties with enrollments below 3,150 students or to counties with enrollments between 3,000 and 4,000 students and property tax bases below the state average. This funding is intended to help very small school districts provide the standard course of study and additional teachers. The N.C. General Assembly appropriated \$15.4 million for this program in the 1996–97 fiscal year. (See Table 4 on p. 64.)

**“No one can look at the disparities in schools statewide and draw any other conclusion than that funding is inequitable.”**

—Editorial,

*The Wilson Daily Times*

### Defendants’ Arguments: Disparities are Constitutional

Many states, on the other hand, have held that disparities in school financing do not violate state constitutions. (See Table 3 on pp. 62–63.) To the extent that defendants successfully argue that education is not a fundamental right or that wealth is not a suspect class, courts will apply a different legal test, the *rational basis* standard. Many courts, have held that local control is a rational basis for upholding the state’s system of financing public schools.

One of the major reasons cited by courts for sustaining inequitable financing schemes has been the preservation of local control. Also, courts say “[a]llowing local communities to go above and beyond established minimums to provide to their people encourages the best features of democratic government.”<sup>17</sup> Local control has long been the rallying cry of school districts: locally set tax rates and locally elected school boards are two of the most visible signs of local control in most communities. It arises from a deeply ingrained conviction held by Americans—that children’s education can best be provided by the community in which they will live and work as productive citizens in the future.

Most defendants also argue that the issue of financing the public schools is a policy or political

**Table 2, continued**

School System	State		Federal		Local		Total	
	PPE	Rank	PPE	Rank	PPE	Rank	PPE	Rank
Swain County	\$ 4,344.77	7	\$ 742.57	2	\$ 385.30	118	\$ 5,472.64	9
Transylvania County	3,333.53	90	215.78	75	934.70	37	4,484.01	73
Tyrrell County	5,389.20	2	355.77	22	817.59	56	6,562.56	3
Union County	3,293.92	97	148.38	112	853.62	50	4,295.92	100
Vance County	3,516.32	48	304.26	38	846.35	52	4,666.93	53
Wake County	3,125.49	118	133.16	117	1,219.65	12	4,478.30	75
Warren County	3,896.32	23	467.54	7	641.44	86	5,005.30	31
Washington County	4,134.43	13	327.61	30	493.74	110	4,955.78	35
Watauga County	3,551.99	45	169.33	102	840.46	53	4,561.78	62
Wayne County	3,326.71	92	357.53	21	640.00	87	4,324.24	96
Wilkes County	3,524.24	47	193.62	89	738.27	70	4,456.13	79
Wilson County	3,334.86	89	317.97	34	809.96	57	4,462.79	76
Yadkin County	3,456.73	61	214.02	78	703.44	77	4,374.19	92
Yancey County	4,143.64	12	327.78	29	657.36	85	5,128.78	21
<b>State Totals</b>								
PPE	\$3,369.08		\$230.93		\$979.36		\$4,579.37	
<b>ADM</b>								
<b>Allocations:</b>								
Low Wealth								
Small Schools								

**NOTES**

*Per Pupil Expenditure:* PPE is based on current expense expenditures. It excludes capital expense expenditures and child nutrition.

*Average Daily Membership:* The total number of school days within a given term or school year that a student is on the current roll of a class, regardless of his being present or absent, is the "number of days in membership" for that student. The sum of the "number of days in membership" for all students divided by the number of school days in the term yields ADM. The final ADM is the total days in membership for all students over the school year divided by the number of days school was in session. ADM is a more accurate count of the number of students in school than enrollment.

*NA:* Not applicable because low wealth funds are allocated by county, not by school district.

*For an explanation of the low wealth and small schools allocations and 1996-97 appropriations, see pages 51-53 of this article.*

*Sources:* Selected Financial Data 1994-95, Statistical Research Section, Department of Public Instruction. For PPE Ranking, see Table 5. For ADM ranking, see Table 10. See also Overview: Fiscal and Budgetary Actions, North Carolina General Assembly 1995 Session, Fiscal Research Division, Raleigh, N.C. For low wealth allocation, see pages 395-396. For small schools allocation, see pages 397-399.

ADM	ADM Rank	State Allocation	
		Low Wealth	Small School
1,611	110	\$ 110,715	\$ 667,872
3,891	79	0	0
760	119	49,914	686,571
17,273	15	370,286	0
6,982	49	497,751	0
76,273	2	0	0
3,034	90	335,555	558,497
2,630	96	271,135	555,314
4,770	68	0	0
18,336	13	1,547,345	0
9,656	34	464,442	0
11,719	27	303,983	0
5,038	65	278,771	0
2,354	101	110,547	554,009
<hr/>			
1,131,090			
		\$ 35,283,809	
			\$14,389,725

matter for the legislature, not the courts. Courts may use the constitutional principle of separation of powers between the three branches of government to stay out of disputes like school finance, which basically come down to the level of funding that will be provided for public education.<sup>18</sup> When courts agree with this theory, they decide that the issues are not *justiciable*, or proper for the court to decide.

State defendants also can assert that equal educational *opportunities*, not equality of *results* or resources, is the promise of state constitutional provisions. Parity or substantial equivalence of funding between rich and poor districts is alleged to be sufficient. "There is no mandate in state constitutions to do this," says Vanderbilt University professor Thomas McCoy, whose specialty is school funding suits. "Courts are taking a very liberal or broad view of their state constitutions to arrive at the conclusion that education funding must be equal."<sup>19</sup> The concept of equal educational opportunities is also argued to refer to equal *access* to schools, thus only barring racial segregation.<sup>20</sup> Because access to education for all children is provided and, similarly, no absolute denial of education has occurred, defendants argue that the equal protection clause is inapplicable.

### Remedies Prove Elusive

Once a court decides that a state's system of funding its public schools is unconstitutional, then what? In many cases, the court has directed the legislature to devise a remedy to address the constitutional violation. However, when the remedy is left to the legislature, redress often is not forthcoming because (1) of the political power of legislators from property-wealthy districts, and (2) voter resistance to paying the higher taxes required to equalize funding.<sup>21</sup>

It has been difficult for the legislature in New Jersey, for example, to develop a public school fi-

***"Courts are taking a very liberal or broad view of their state constitutions to arrive at the conclusion that education funding must be equal."***

—THOMAS MCCOY, PROFESSOR  
VANDERBILT UNIVERSITY

nancing scheme that addresses the court's concerns and has popular support. The result in such cases may be inaction, inadequate legislation, or inadequate funding. The courts have been reluctant to step in and reinvolve themselves in fashioning the remedy for several reasons: (1) separation of powers—judicial deference to the legislative remedy; (2) taxing and appropriations powers—clearly within the legislature's province in state constitutions; and (3) fear that the judiciary's protection of the rights of less powerful groups will result in an organized effort to amend the state's constitution.<sup>22</sup>

Another option is for the court itself to formulate the remedy. In Kentucky, the Supreme Court held that the entire system of school finance and governance violated the state constitution's mandate to provide an "efficient system of common schools

throughout the state."<sup>23</sup> The Court then spelled out education standards in terms of equality and adequacy. The legislature was ordered to fund the system adequately.

Most courts, however, have been more cautious in setting forth remedies. And, often there is a "gap between right and remedy [that] can be traced to fundamental conflicts between the interests of the grievants and those of the institutional actors."<sup>24</sup>

### **Two Remedies with Drawbacks: Earmarking and Lotteries**

**T**wo remedies often relied on by states to provide new revenue for schools, earmarking and lotteries, have significant drawbacks and should

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## *Public School Forum and Center Criticize Education Funding Disparities*

by Tom Mather

**N**ot only are there large disparities in the local funding for school systems across the state, but those gaps continue to widen, studies by the Public School Forum of North Carolina and the N.C. Center for Public Policy Research show. But critics say the groups' studies distort the differences between school systems by focusing on measures of local spending and taxes rather than the total educational resources available to students, including state and federal support.

The Center has conducted previous studies of school finance in 1984, 1985, and 1989.<sup>1</sup> The Forum—a nonprofit group of educators, politicians, and business leaders—has published annual studies of local school finance in North Carolina since 1987. The Forum's most recent study, released in October 1996, found that poorer school systems are able to generate much less local money for their schools than wealthier districts—even though many poor systems are taxing themselves at greater rates than wealthy systems.<sup>2</sup>

Such disparities in the ability to raise rev-

enues—compounded by greater funding demands for welfare programs in poorer counties—translate into wide differences in the abilities of counties to help pay for additional teachers, school buildings, advanced placement courses, and extras such as classes in the arts and foreign languages, the Forum says. And those gaps have been widening.

"What is most startling is not the disparity across this state in property wealth, tax rates, welfare mandates, and capital and current expenditures—we've seen that for years—it is the degree to which these differences continue to grow," says John Dornan, the Forum's executive director.

That conclusion is disputed by others, however, who contend that North Carolina is far ahead of most states in equalizing spending for public schools. Charles D. Liner, a professor in the Institute of Government at the University of North Carolina at Chapel Hill, says measures

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*Tom Mather is the associate editor of North Carolina Insight.*

be considered carefully before being implemented in a state.<sup>25</sup> Earmarking refers to the practice of dedicating state revenue for a specific program, in this case the financing of public schools. Thirty states earmark revenue for this purpose. There are two ways to earmark funds. The conventional method is to earmark revenue from a specific tax (sales or tobacco tax, for example) to be dedicated to funding public education. California developed another way to earmark funds when it decided to dedicate a certain percentage of its overall state budget to education—40 percent of California's general fund is earmarked for this purpose. Often, once funds are earmarked, it is difficult to obtain additional funds for the specified purpose. Plus, earmarking a percentage of a state budget obviously impacts the funding of other state programs.

North Carolina already earmarks funds for education. In 1983 and then again in 1986, the General Assembly authorized counties to levy an additional one-half cent sales and use tax, with a specified percentage of the resulting revenue earmarked for school construction. Legislators in 1987 increased the corporate income tax and earmarked the additional revenue for school construction by establishing the Public School Capital Building Fund and the Critical School Facility Needs Fund.<sup>26</sup> The earmarked funds for capital needs provided school districts with \$1.5 billion dollars from 1984 to 1993, half of the total dollars spent on construction during this period.<sup>27</sup> Local governments paid the balance of the school construction bill.<sup>28</sup>

In a related matter that could have a bearing on such issues, Senate President Pro Tem Marc

such as *local* property tax rates and per pupil expenditures are poor ways to compare the adequacy of different school districts because they disregard the equalizing effect of funding from the state and federal governments.

"The advantage of North Carolina's system of school finance is that the state government is responsible for providing from statewide tax sources the resources needed to provide a basic education program in every school system, without regard to the ability or willingness of local taxpayers to support the schools," Liner says. In other words, state allocations to local school systems are not based on money, per se, but on what the schools need to get the job done—such as the numbers of teachers, assistants, and textbooks. Thus, per pupil expenditures from the state tend to be higher in small, rural systems where it costs more money to provide the same level of resources as in urban districts.

The Public School Forum's study analyzes and ranks the state's counties on their relative abilities, actual expenditures, and efforts to support their public schools. It does not examine the impact of state and federal funding, except for the supplemental funding for low-wealth districts that the state began in 1991. Most of the state's wealthiest counties encompass major cities and retirement havens, according to the study. By contrast, most of the poorest counties are located in rural areas in the Coastal Plain and the mountains.

The gap between these wealthy and poor counties is illustrated by their funding for educational programs and school construction. The Public School Forum found that the state's 10 wealthiest counties spent on average \$2,103 per student for educational programs *and* school construction in 1996, compared to \$589 per student

—continues

***"The numbers continue to tell the story. Low-wealth, rural counties from one end of the state to the other, continue to try to match the educational opportunities of wealthier counties. But they aren't going to be able to do it without state help. Ironically, the longer the state delays taking action, the bigger the problem becomes."***

—JOHN DORNAN, DIRECTOR, THE PUBLIC SCHOOL FORUM OF NORTH CAROLINA



Basnight (D-Dare) in the 1997 session proposed establishing a special dedicated fund for public education in the state budget for the first time. The proposal, still in its preliminary stages, would earmark a portion of the budget for educational programs—such as boosting teacher pay.<sup>29</sup>

Many states have earmarked funds from lotteries to fund public education. However, lotteries may in fact harm educational funding for the following reasons: “(1) Lotteries contribute only a fraction of the funding needed for education, . . . (2) Lotteries are an unstable source of revenue, due to waning interest over time and their susceptibility to changes in the economy. (3) Education budgets might be reduced, then refilled by lottery proceeds—lessening the actual enhancement of the budget. (4) When lotteries are used, the public may

in the 10 poorest counties—a gap of \$1,514 per student, or 242 percent. That gap was \$1,294 (222 percent) in the Forum’s 1994 study and \$1,280 (267 percent) in its 1991 study. The Forum also found that the 10 wealthiest counties spent on average \$1,441 per student just on educational programs in 1996, compared to \$431 per student in the 10 poorest counties—a gap of \$1,010 per student, or 234 percent. Likewise, the 10 wealthiest counties spent on average \$648 per student for constructing and renovating schools in 1996, compared to \$156 per student in the 10 poorest counties—a difference of \$492 per student, or 315 percent.

Liner, however, says it’s not valid to combine current expenses and capital expenditures when comparing school systems. That’s because current expenses are for present, on-going needs, while capital expenses can occur infrequently to meet long-term needs. The Forum’s study counts construction costs based on a five-year running average—rather than spreading them out over the life of school buildings, which can last 30 years or more. Also, much of the local spending for school construction comes from state aid, including local option sales tax revenues. Another factor is that systems in rapidly growing areas, such as Wake County, tend to have much higher construction costs due to the large numbers of new schools needed to keep up with their population growth—although such differences can be partially offset by higher renovation expenses in poor, rural counties.

falsely believe that schools are adequately funded, making it difficult to raise funds through other sources.”<sup>30</sup>

### North Carolina: Funding Disparities Continue to Increase

**I**n 1984, 1985, 1989, and again in 1996, research by the N.C. Center for Public Policy Research found a significant difference in per-pupil spending among North Carolina’s school districts. “Financial disparity is not the only factor leading to educational disparity, but financial equity does represent the cornerstone of any effort to build a ‘uniform system of free public schools,’” wrote education analyst Lanier Fonveille when the Center first reported this disparity in 1984.<sup>31</sup>

Comparing the gap between *local* spending in the state’s richest and poorest counties is misleading, Liner says, because such gaps tend to be evened out by funding from the state and federal governments. When school districts are compared by spending from all sources, he says, many of the state’s poorest systems rank among the highest in *total* per pupil expenditures. For example, the top 10 school systems in total spending per student include such relatively poor, rural counties as Alleghany (5th in total spending), Graham (7th), Hyde (1st), Jones (8th), Swain (9th), and Tyrrell (3rd). Likewise, some of the state’s wealthiest, urban counties rank lower than might be expected in total per pupil spending, including Orange (25th), Forsyth (28th), Mecklenburg (30th), and Wake (75th). (See Table 2 on pp. 48–55 for a list of all school systems in the state with their rank in local, state, federal, and total per pupil expenditures.)

The Public School Forum’s study also looked at local tax rates, concluding that much of the funding gap is due to the wide differences in the tax bases of counties. For example, Wake County generated \$210.3 million in property tax revenue for the 1995–96 fiscal year from a tax rate of 55 cents per \$100 valuation. Yet nearby Vance County was able to generate just \$8.5 million in tax revenues that year—with a higher tax rate of 75 cents per \$100 valuation. Thus, a wealthy county such as Wake can raise substantial amounts of money for its schools with only very small changes in its tax rate.

Fonville, pointing out the wide variety of course offerings among the school districts, said, "expenditure equity is not the same as program equity." She noted that while every school cannot offer advanced Latin, minimum course requirements and creative efforts such as cross-district services and access to community colleges could provide more equality in course offerings. "By funding a minimum, comprehensive program and imposing statewide standards, the state could focus on program equity as well as expenditure equity," concluded Fonville. The Basic Education Program (BEP) was later adopted by the state legislature. Nevertheless, funding disparities have not decreased.

Instead, the disparity in *state per-pupil expenditures* among the 119 school districts actually in-

Such disparities are compounded by the fact that poorer counties generally allocate a higher portion of their locally-generated revenue for mandated welfare payments. For example, welfare payments account for 7 percent of the local revenue in Wake County but 34 percent in Vance County.

These findings have prompted the Public School Forum and the N.C. Center for Public Policy Research to urge the state to do more to level the playing field between the state's wealthiest and poorest school systems. In a news release accompanying its 1989 study, the Center urged the General Assembly to create a State Equalization Fund to address disparities in public school finance. In 1990, the Center's director, Ran Coble, testified before the Equity Subcommittee of the legislature's Education Study Commission and urged lawmakers to establish such a fund, taking into account each school system's local per-pupil expenditures, tax wealth, and its tax effort relative to other counties.

"The long-term goal for this Equalization Fund would be to bring all counties closer to the state average for total per-pupil expenditures," Coble said. "Under this plan, counties which have low tax wealth but which nevertheless tax this wealth heavily for education purposes would receive proportionately more money from the state than those counties having either higher wealth or making less of an effort to fund education. In other words, those counties making the most effort with the least

**"All animals are equal.  
But some animals are more  
equal than others."**

—GEORGE ORWELL, *ANIMAL FARM*

creased.<sup>32</sup> In 1983–84, Hyde County spent the most state funding per-pupil (\$1,761) and Cumberland County spent the least (\$1,345)—a difference of \$416. Hyde County spent *31 percent* more than Cumberland County. In 1987–88, the difference between Hyde County (\$2,967) and Onslow County (\$2,098)—the highest and lowest that year—was \$869, or *41 percent*. In 1994–95, the difference be-

resources would receive the benefit."<sup>33</sup>

The combined work of the Center, the Forum, and legislative staff were instrumental in the establishment of both a Low Wealth Supplemental Fund and a Small Schools Supplemental Fund in 1991. By 1996–97, that appropriation had grown to \$47.5 million in the low-wealth fund and \$15.4 million in the small-schools fund, for a total of nearly \$63 million. (See Table 4 on p. 64.) Even so, the disparity between rich and poor districts has increased—perhaps because local supplements have increased, the Basic Education Plan was never fully funded, or federal funding has been cut so sharply.

"The numbers continue to tell the story," says John Dornan, the Forum's director. "Low-wealth, rural counties from one end of the state to the other, continue to try to match the educational opportunities of wealthier counties. But they aren't going to be able to do it without state help. Ironically, the longer the state delays taking action, the bigger the problem becomes."

Liner also is critical of the Forum's use of local tax rates to compare school systems. Although tax rates might be much higher in rural counties, rural property owners actually could pay much lower taxes than urban residents because of differences in assessed values. In some small counties, he says, the sales of property are so limited that such transactions do not provide a reliable basis for adjusting property tax rates.

"Using tax rates is highly misleading," says

—continues

tween Hyde County (\$5,743) and Onslow County (\$3,060)—again the highest and lowest—was \$2,683, or 88 percent, a significant increase in spending disparity over the past ten years.

The disparity in *total per-pupil expenditures* also increased significantly, despite a decrease between 1983–84 and 1987–88. The affluent Chapel Hill/Carrboro City district spent 58 percent more per-pupil than the poorest district in 1983–84, Davidson County. That difference had decreased to 56 percent when comparing the highest spending Tryon City system in Polk County and the lowest spending Onslow County system in 1987–88. But, in 1994–95, that difference dramatically increased to 96 percent when comparing total per-pupil expenditures for Hyde County (\$7,460) and Onslow County (\$3,809).<sup>33</sup>

Liner, who says comparing assessments is mixing apples and oranges. “There is no way I know to reliably adjust for differences in assessments and property tax bases.”

Any effort to guarantee full equality in spending, Liner says, would mean that the state could not allow local units to supplement state funds. “Under our system, you’ll never have total equality, because we allow local counties to add to it,” he says. “If you try to equalize funding, you say to Wake County: ‘You cannot spend money to improve your schools.’”

The high level of state support, together with the state’s method for allocating funds to local systems based on average daily membership, tends to have a strong equalizing effect on the resources available to local school systems, Liner says. In 1995–96, two-thirds (66.5 percent) of the total funding for public education in North Carolina came from state funds—ranking 6th highest among the 50 states. (See Table 1 on pp. 44–45.)

“North Carolina’s system does not seek to achieve equality in spending, but rather sets a basic level of education resources to be provided everywhere,” Liner says. “Under the Basic Education Program enacted in 1985, that level of support is defined as a standard course of study that should be available to every child in the state—and the state government, not local units, is responsible for providing it. We must be sure that our system operates so that the state government is in fact providing the resources that all

And, the difference in *local per-pupil expenditures*<sup>34</sup> is still huge. In 1987–88, the Chapel Hill/Carrboro City system spent 5.3 times more money per-pupil (\$1,535) than the Fairmont City system in Robeson County (\$287). The Chapel Hill/Carrboro City system spent 7.7 times more money per-pupil (\$2,252) than the Graham County system (\$292) in 1994–95.

The disparities between rich and poor school districts are reflected in other ways as well, such as course offerings available to students. For example, in the 1996–97 academic year, relatively wealthy West Mecklenburg High offered 294 classes to its 1,400 students—compared to the 131 classes that relatively poor Hoke County High offered to the same number of students. Another wealthy school, Asheville High, offered 190

our children need—regardless of the size of the school system or the ability and willingness of local taxpayers to support the schools.”

Researchers with the Public School Forum and the N.C. Center for Public Policy Research acknowledge that North Carolina does a better job than most states in equalizing state funding, but say that doesn’t eliminate substantial disparities in the quality of education available in different school districts across the state.

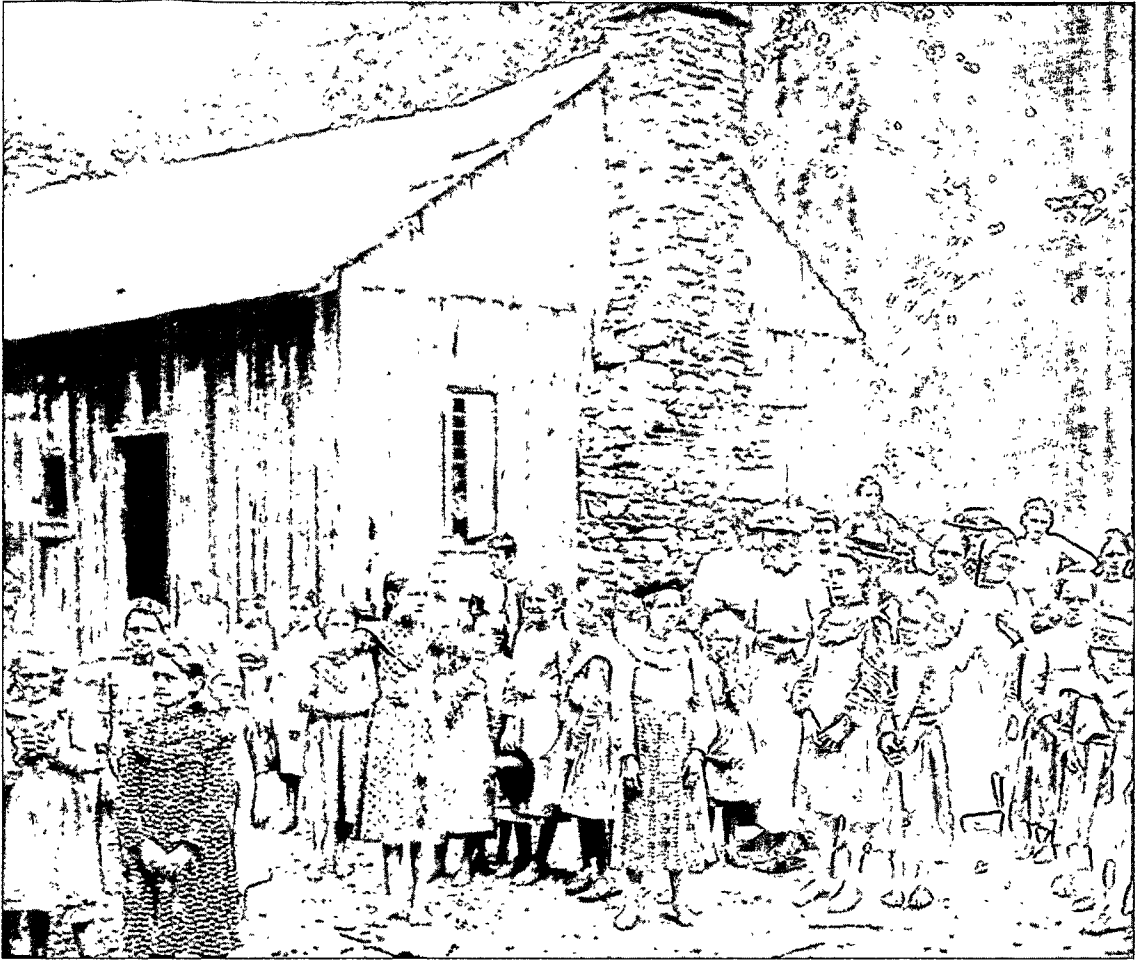
“Certainly the state does a lot better job in providing a basic level of education than a lot of other states do,” says J.B. Buxton, director of policy and research for the Forum. “The question is: What is basic? . . . The BEP was never fully funded, never fully implemented—compared to what is on the books.”

## FOOTNOTES

<sup>1</sup>For previous Center studies on school finance, see: Jody George, “The Right to Education in State Constitutions: Courts Split on School Finance Issue,” *North Carolina Focus*, 1989, pp. 45–50; Bill Finger and Marianne M. Kersey, “Disparity in Public School Financing—An Update,” *North Carolina Focus*, 1989, pp. 250–255; Bill Finger, “Disparity in Public School Financing—An Update,” *North Carolina Insight*, Vol. 7, No. 4 (April 1985), pp. 44–49; and Jody George, “Courts Split on School Finance Issue,” *North Carolina Insight*, Vol. 7, No. 1 (June 1984), pp. 38–41.

<sup>2</sup>*North Carolina Local School Finance Study 1996*, Public School Forum of N.C., 3739 National Drive, Suite 210, Raleigh, N.C. 27612; phone (919) 781-6833.

<sup>3</sup>Ran Coble, presentation to the Equity Subcommittee of the Education Study Commission of the N.C. General Assembly, March 14, 1990.



**A one-room schoolhouse in the mountains of North Carolina, circa 1900.**

classes to its 1,150 students—compared to the 100 classes that poorer North Davidson High offered to its 1,200 students. (See Table 5 on p. 65.)

In 1990, five years after the BEP was enacted, the State Auditor concluded that “[t]he distribution of BEP funds based on [average daily membership] **does not** contribute to equalized opportunity for education.”<sup>35</sup> According to a report to the General Assembly from the N.C. Civil Liberties Union and the American Civil Liberties Union, there are four reasons for this shortfall: 1) the BEP has not been fully funded; 2) the BEP,

although it establishes standards for facilities, does not allocate resources for capital projects; 3) the BEP, although it acknowledges the greater needs of children with special needs, does not provide

additional resources to school districts with large at-risk populations; and 4) the BEP does not take into account the differing abilities of school districts to supplement state dollars with local funds.<sup>36</sup> The state’s low-wealth supplemental funding program also is not making a significant difference in equalizing funding disparities, according to the Public School Forum of N.C.<sup>37</sup>

***“Financial disparity is not the only factor leading to educational disparity, but financial equity does represent the cornerstone of any effort to build a ‘uniform system of free public schools.’”***

—LANIER FONVEILLE,  
EDUCATION ANALYST

**Table 3. State Courts' Rulings on the Financing of Public Schools**

The following 16 state courts have held that funding disparities violated their state constitution:

1. Alabama	<i>Alabama Coalition for Equity v. Hunt</i> , 624 So.2d 107 (Ala. 1993);
2. Arizona	<i>Roosevelt Elementary School District No. 66 v. Bishop</i> , 877 P.2d 806 (Ariz. 1994);
3. Arkansas	<i>Dupree v. Alma School District No. 30</i> , 651 S.W.2d 90 (Ark. 1983);
4. California	<i>Serrano v. Priest</i> , 487 P.2d 1241 (Cal. 1971)( <i>Serrano I</i> ); <i>Serrano v. Priest</i> , 557 P.2d 929 (Cal. 1976)( <i>Serrano II</i> ); <i>Serrano v. Priest</i> , 226 Cal. Rptr. 584 (Cal. 1986)( <i>Serrano III</i> ); <i>Butt v. State</i> , 842 P.2d 1240 (Cal. 1992);
5. Connecticut	<i>Horton v. Meskill</i> , 376 A.2d 359 (Conn. 1977);
6. Kentucky	<i>Rose v. Council for Better Education</i> , 790 S.W.2d 186 (Ky. 1989);
7. Massachusetts	<i>McDuffy v. Secretary of Executive Office of Education</i> , 615 N.E.2d 516 (Mass. 1993);
8. Montana	<i>Helena Elementary School District No. 1 v. State</i> , 769 P.2d 684 (Mont. 1989), <i>amended</i> , 784 P.2d 412, 413-14 (Mont. 1990);
9. New Hampshire	<i>Claremont School District v. Governor</i> , 635 A.2d 1375 (N.H. 1993);
10. New Jersey	<i>Robinson v. Cahill</i> , 303 A.2d 273 (N.J. 1973); <i>Abbott v. Burke</i> , 575 A.2d 359 (N.J. 1990);
11. Ohio	<i>DeRolph v. State</i> , ___ Ohio St. 3d ___ (No. 95-2066, March 24, 1997);
12. Tennessee	<i>Tennessee Small School Systems v. McWherter</i> , 851 S.W.2d 139 (Tenn. 1993);
13. Texas	<i>San Antonio Independent School District v. Rodriguez</i> , 411 U.S. 1 (1973); <i>Edgewood Independent School District v. Kirby</i> , 777 S.W.2d 391 (Tex. 1989)( <i>Edgewood I</i> ); <i>Edgewood Independent School District v. Kirby</i> , 804 S.W.2d 491 (Tex. 1991)( <i>Edgewood II</i> ); <i>Carrollton-Farmers Branch Independent School District v. Edgewood Independent School District</i> , 826 S.W.2d 489 (Tex. 1992)( <i>Edgewood III</i> );
14. Washington	<i>Seattle School District No. 1 v. State</i> , 585 P.2d 71 (Wash. 1978);
15. West Virginia	<i>Pauley v. Kelly</i> , 255 S.E.2d 859 (W. Va. 1979); and
16. Wyoming	<i>Washakie County School District No. 1 v. Herschler</i> , 606 P.2d 310 (Wyo. 1980).

North Carolina ranked 39th in per-pupil expenditures for public education among the 50 states in 1995-96.<sup>38</sup> Examining the federal, state, and local shares of total per-pupil spending reveals that the federal share generally has decreased. In 1978-79, the federal share of total expenditures

was 13.1 percent; in 1987-88, it was 7.7 percent; and in 1995-96, it was 8.6 percent. The share of state funds continues to average about two-thirds: in 1983-84, the state share was 64.0 percent; in 1987-88, it was 69.3 percent; and in 1995-96, it was 66.5 percent. The share of local funds is still

**Table 3, continued**

The following 17 state courts have held that funding disparities *did not* violate their state constitution:

1. Colorado	<i>Lujan v. Colorado State Board of Education</i> , 649 P.2d 1005 (Colo. 1982);
2. Georgia	<i>McDaniel v. Thomas</i> , 285 S.E.2d 156 (Ga. 1981);
3. Idaho	<i>Thompson v. Engelking</i> , 537 P.2d 635 (Id. 1975); <i>Idaho Schools for Equal Educational Opportunity v. Evans</i> , 850 P.2d 724 (Id. 1993);
4. Illinois	<i>People ex rel. Jones v. Adams</i> , 350 N.E.2d 767 (Ill. 1976); <i>Committee for Educational Rights v. Edgar</i> , 641 N.E.2d 602 (Ill. 1994);
5. Maryland	<i>Hornbeck v. Somerset County Board of Education</i> , 458 A.2d 758 (Md. 1983);
6. Michigan	<i>Milliken v. Green</i> , 212 N.W.2d 711 (Mich. 1973); <i>East Jackson Public Schools v. State</i> , 348 N.W.2d 303 (Mich. 1984);
7. Minnesota	<i>Skeen v. State</i> , 505 N.W.2d 299 (Minn. 1993);
8. Nebraska	<i>Gould v. Orr</i> , 506 N.W.2d 349 (Neb. 1993);
9. New York	<i>Board of Education v. Nyquist</i> , 439 N.E.2d 359 (N.Y. 1982); <i>REFIT v. Cuomo</i> , 199 A.D.2d 488 (N.Y. 1993);
10. North Carolina	<i>Britt v. N.C. Board of Education</i> , 86 N.C. App. 282, 357 S.E.2d 432, 436 (1987); <i>Leandro v. State</i> , 468 S.E.2d 543 (N.C. 1996);
11. North Dakota	<i>Bismarck Public School District No. 1 v. State</i> , 511 N.W.2d 247 (N.D. 1994);
12. Oklahoma	<i>Fair School Finance Council v. State</i> , 746 P.2d 1135 (Okla. 1987);
13. Oregon	<i>Olsen v. State</i> , 554 P.2d 139 (Or. 1976); <i>Coalition for Equitable School Funding v. State</i> , 811 P.2d 116 (Or. 1991);
14. Pennsylvania	<i>Danson v. Casey</i> , 399 A.2d 360 (Pa. 1979);
15. South Carolina	<i>Richland County v. Campbell</i> , 364 S.E.2d 470 (S.C. 1988);
16. Virginia	<i>Scott v. Commonwealth</i> , 443 S.E.2d 138 (Va. 1994); and
17. Wisconsin	<i>Kukor v. Grover</i> , 436 N.W.2d 568 (Wis. 1989).

significant, decreasing only slightly from 23.6 percent of the total in 1983-94 to 23.0 percent in 1987-88, and increasing to 24.9 percent in 1995-96. (See Table 1 on pp. 44-45 for the percentages of local, state, and federal funding for public education by state. Also see Table 6 on p. 67 for a

description of what North Carolina's public school financing system pays for.)

Charles D. Liner, a faculty member of North Carolina's Institute of Government and a public school finance analyst, finds that such differences in spending are not very meaningful when trying

to assess the adequacy of resources in various school districts. "[A] large county with a dispersed student population will have much higher transportation costs per student than a small, urban unit. Likewise, heating costs for a school in the mountains will be higher than for a school in the coastal areas. The cost of providing teachers from state funds varies because state salaries are based on teachers' education and experience. Units with low turnover of teachers may account for more state funds per student for teacher salaries because their more experienced teachers receive higher state salaries."<sup>39</sup>

North Carolina's system for funding its schools is one of the fairest in the United States, Liner says, because it bases allocations to local districts not on money, per se, but on the resources

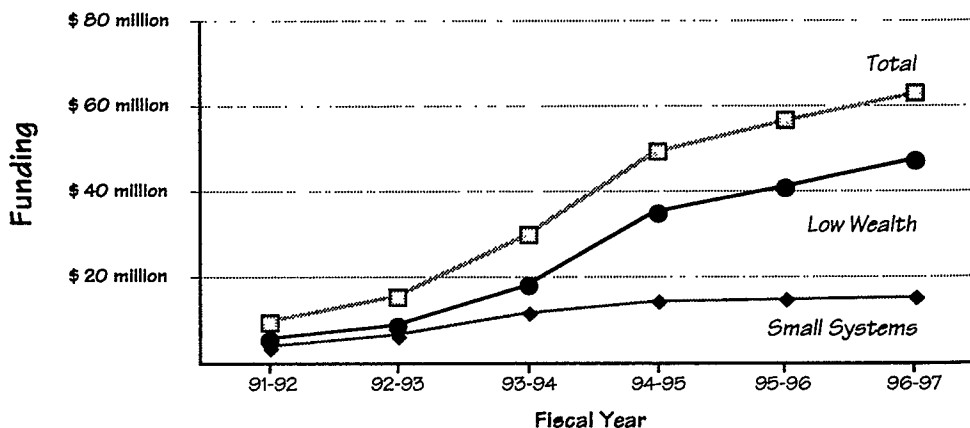
schools need to educate children—such as teachers, assistants, and textbooks. "Our system does not guarantee equality, but sets a minimum level," he says. "The BEP says all of the state's citizens are responsible for educating children. It says we'll do it based on what each kid needs—regardless of the size of a school or system." (See the article, "Public School Forum and Center Criticize Education Funding Disparities," on pp. 56–60.)

Per-pupil expenditures do not succeed in reflecting the differences between large and small school systems, or rural and urban school systems. Nor are they an *ideal* measure of the quality of educational opportunity. However, they are the most readily available statistics that can be meaningfully compared.

**Table 4. Supplemental Funding for Low Wealth and Small School Systems in North Carolina, FY 1991–96**

Type of Supplement	Total Appropriations by Fiscal Year					
	1991–92	1992–93	1993–94	1994–95	1995–96	1996–97
Low Wealth Schools	\$6,000,000	\$9,000,000	\$18,063,577	\$35,283,809	\$41,483,809	\$47,528,813
Small School Systems	4,000,000	7,000,000	11,731,907	14,389,725	15,117,295	15,434,577
Total Supplements	\$10,000,000	\$16,000,000	\$29,795,484	\$49,673,534	\$56,601,104	\$62,963,390

Source: N.C. Department of Public Instruction, based on appropriations from the N.C. General Assembly.



## Lawsuits in North Carolina

In 1994, a lawsuit (*Leandro v. State*) asserting unconstitutional school funding disparities was filed on behalf of five low-wealth counties in North Carolina—Cumberland, Hoke, Halifax, Robeson, and Vance. “The complaint states that despite the constitutional requirement, the system for funding public schools does not provide adequate or equal educational opportunities for students in North Carolina’s low-wealth counties. It asserts that the education provided is inadequate when compared to both the minimal requirements contained in the State’s Basic Education Program (BEP) and to the programs, facilities and opportunities available in wealthier counties. . . . The complaint says that students from these districts frequently have to un-

dertake remedial work once in college and face a lifetime of relative disadvantage as a result of inadequate educational opportunities. The suit seeks a declaration that the overall North Carolina school funding system violates the State Constitution. . . .”<sup>40</sup>

This is not the first time such a suit has been filed in North Carolina. In 1987, plaintiffs from Robeson County lost in the N.C. Court of Appeals in *Britt v. N.C. Board of Education*.<sup>41</sup> In *Britt*, the plaintiffs contended that education was a fundamental right under North Carolina’s Constitution, and that this right was being violated by the state’s school finance system as it then existed. At the trial court level, the plaintiffs’ case was dismissed on a motion and, therefore, little evidence was presented. The appeals court dismissed the plaintiffs’ arguments, and relied upon the history surrounding

**Table 5. Comparison of Course Offerings by Selected High Schools in Low- and High-Wealth School Districts, 1996–97 School Year**

Name of High School	Enrollment (Approx.)	Rank in Local PPE <sup>1</sup>	Rank in Total PPE <sup>2</sup>	Total Courses Offered (#) <sup>3</sup>
<i>Low Wealth</i>				
Alexander County Central High	970	105	116	85
Harnett County Central High	980	111	115	115
Hoke County High	1,400	117	105	131
North Davidson County High	1,200	92	117	100
<i>High Wealth</i>				
Asheville High	1,150	2	2	190
Chapel Hill High	1,600	1	6	150
Northwest Guilford County High	1,500	5	22	262
West Mecklenburg County High	1,400	7	30	294

<sup>1</sup> Rank in per pupil expenditures from local governments in the 1994–95 fiscal year; see Table 2 on pp. 48–55.

<sup>2</sup> Rank in per pupil expenditures from local, state, and federal governments in the 1994–95 fiscal year; see Table 2 on pp. 48–55.

<sup>3</sup> Total number of courses offered to students in the 1996–97 academic year, including honors, advanced placement, and non-academic classes (such as shop). Numbers for Hoke County High School are for the fall term only.

Source: Numbers on enrollments and courses compiled by the N.C. Center for Public Policy Research from interviews with administrators in each school. Numbers on per pupil expenditures from N.C. Department of Public Instruction; see Table 2 on pp. 48–55.



***"Inadequate and inequitably distributed state funding means that the kind and quality of a child's education depends solely on where he or she lives. What results is a dual system of public education: one for the rich and one for the poor."***

—N.C. CIVIL LIBERTIES UNION AND AMERICAN CIVIL LIBERTIES UNION IN  
*A RIGHT DENIED: EDUCATIONAL INEQUITY IN NORTH CAROLINA'S SCHOOLS*

the drafting of the state Constitution. "The fundamental right," the court held, "that is guaranteed by our Constitution, then, is to equal *access* to our public schools—that is, every child has a fundamental right to receive an education in our public schools."<sup>42</sup> Instead of relying on the plain meaning of the language in the N.C. Constitution that requires equal educational opportunities for all students, the court interpreted Article IX, Section 2(1) to mandate only "equal access to full participation

in our public schools, regardless of race or other classification."<sup>43</sup> Because *Britt* was not decided by the N.C. Supreme Court,<sup>44</sup> the facts of the case were less than ideal as a vehicle for testing the state's school finance system, and it did not raise adequacy issues, the 1987 defeat did not close the door for the *Leandro* case.

The State of North Carolina and the State Board of Education filed a motion to dismiss *Leandro* for failure to state a claim. The Superior Court judge,

***Scene from an elementary school in Iredell County, circa 1938.***



**Table 6. Primary Components of the System for Funding  
Public Schools in North Carolina**

<b>State Money Pays For:</b>	<b>Local Money Pays For:</b>
Superintendents	School Sites*
Principals	School Buildings
Assistant Principals	Temporary Classroom Units
Teachers	Water and Sewage Facilities*
Teacher Assistants	Plant Maintenance
Library and Media Personnel	Utilities
Office Support Personnel	School Furniture*
Bus Drivers	Additional School Buses and Garages
	Custodians
Vocational and Technical Education Program	Food Services
Special Education for Handicapped Students	
Alternative Education for At-Risk Students	
Transportation System	
School Safety	
Basic Textbooks	
Low-Wealth Schools Supplemental Fund	
Small Schools Supplemental Fund	
Critical School Facility Needs Fund	
Public School Building Capital Fund	
State School Technology Fund	
<b>Both State and Local Money Pays For:</b>	
Instructional Supplies:	
blackboards	
reference books	
library equipment	
maps	
science equipment	

\* Money from the state bond referendum passed in November 1996 can be used to pay for some traditional local expenses, such as school sites, furnishings, and water and sewage facilities.

*Source:* See North Carolina General Statutes, sections 115C-12, -96, -106, -156, -232, -249, -263, -265, -272, -285, -289, -301, -315, -316, -408, -418, -489, -517, -521, -522, -524, -525, -546.1. Also see Chapter 507, sections 17.1 and 17.2 of the 1995 N.C. Session Laws.

“OUR COURTS HAVE HELD that education is a fundamental right with several components including the right to a free education for at least nine months every year within a state-wide system that is general and uniform and free from race-based discrimination. What they have not held is that the General Assembly’s decision to assign a part of the funding responsibilities to counties, as specifically authorized by the Constitution, is unconstitutional, or that the Constitution contains a funding based requirement for an adequate education. This does not mean that adequacy is left to whim or caprice by the Constitution; it means that adequacy as measured by level of funding is left in the hands of the people through the votes they cast for their representatives in the General Assembly and on boards of county commissioners.”

—EDWIN M. SPEAS, JR.,  
SPECIAL LITIGATION, OFFICE OF THE ATTORNEY GENERAL,  
IN A LETTER TO THE N.C. CENTER FOR PUBLIC POLICY RESEARCH, MAY 2, 1996

E. Maurice Braswell, denied the motion. The Court of Appeals granted an interlocutory appeal to the State, and oral arguments were heard on January 25, 1995. On March 19, 1996, the Court of Appeals reversed the trial court’s order denying the state’s motion to dismiss.<sup>45</sup> Chief Judge Gerald Arnold, a former state legislator, wrote the opinion and Judges John Lewis and Ralph Walker concurred.<sup>46</sup>

After noting that “education is primarily the responsibility of parents, teachers, and state and local school officials, and not of state judges,”<sup>47</sup> the court held that the “general and uniform” clause of the N.C. Constitution requires *system* uniformity, not spending or program uniformity.<sup>48</sup> Then, Judge Arnold opined that the plaintiffs’ claim under the “equal opportunities clause” of the Constitution was foreclosed by the *Britt* decision,<sup>49</sup> which “established that the Constitution provides no fundamental right to equal educational opportunities, but simply ‘equal access to our public schools.’”<sup>50</sup> According to the opinion of the court, school children in North Carolina do not have a right to an adequate education because the fundamental right afforded by the Constitution is “limited to one of equal access to education, and it does not embrace a qualitative standard.”<sup>51</sup> The strict scrutiny legal standard was not used to evaluate the plaintiffs’ equal protection or substantive due process arguments because the court had already decided that students did not have a fundamental right to an adequate education, so these claims were dismissed.<sup>52</sup>

The Court of Appeals decision was criticized roundly in the press. An editorial in a paper located in one of the plaintiffs’ home counties decried: “It is a grossly unfair outrage for the people of North Carolina that not only has this process been allowed to stand, but that it has been given a seal of approval by a state court.”<sup>53</sup> *The Charlotte Observer* reported that John Leandro, the father of one of the students who brought the suit, said “If you have access to an education that’s inadequate, you might as well not have access.”<sup>54</sup>

That sentiment was echoed in an editorial in *The Charlotte Observer*: “Thanks to the Court of Appeals, it is clearer now that North Carolina’s Constitution doesn’t guarantee much of an education.”<sup>55</sup> And an editorial in *The Wilson Daily Times* concluded, “No one can look at the disparities in schools statewide and draw any other conclusion than that funding is inequitable. Such funding penalizes some unfortunate students and rewards others, and violates American principles of fairness and equality.”<sup>56</sup>

Attorney General Mike Easley, the state’s lawyer, acknowledged that although the system is constitutional, it’s not necessarily fair. Editorials in the *Greensboro News & Record* and the *Greenville Daily Reflector* thought the decision was a fair interpretation of the Constitution and that the General Assembly was the appropriate branch of government to deal with funding equity questions.<sup>57</sup> The controversial decision will be reviewed by the N.C. Supreme Court.<sup>58</sup>

## The Importance of Resolving the Issue

Since 1991, when funds were first appropriated for low-wealth and smaller school districts, the N.C. General Assembly has attempted to remedy disparity in school finance, with almost \$63 million appropriated in fiscal year 1996-97. (See Table 4 on p. 64.) However, the gap is now 96 percent in total spending per-pupil between the district that spends the most and the district that spends the least. Some studies document the widening of the gap,<sup>59</sup> and others document the effects of such a system. "Inadequate and inequitably distributed state funding means that the kind and quality of a child's education depends solely on where he or she lives. What results is a dual system of public education: one for the rich and one for the poor," said one report to the General Assembly.<sup>60</sup>

"Our only real hope," notes an editorial in *The Robesonian*, "is that the state legislature [will] finally wake up and correct this glaring inequity, an inequity they have allowed to stand for far too long. They have the political power to correct this political explosive problem. We can only hope they have the courage to do so." ☐

## FOOTNOTES

<sup>1</sup> National Education Association, *Ranking of the States 1996*, NEA Research Division, Washington, D.C., 1996, pp. 41-42.

<sup>2</sup> U.S. General Accounting Office, *School Finance: State Efforts to Reduce Funding Gaps Between Poor and Wealthy Districts*, Report to U.S. Congress, No. 6AO/HEH5-97-31, Washington, D.C., February 1997, pp. 1-23.

<sup>3</sup> *Serrano v. Priest*, 487 P.2d 1241 (Cal. 1971) (*Serrano I*).

<sup>4</sup> *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1 (1973).

<sup>5</sup> *Ibid.*, p. 49.

<sup>6</sup> William E. Sparkman, "The Legal Foundations of Public School Finance," 35 *Boston College Law Review* 569 (1994) (emphasis added).

<sup>7</sup> *DeRolph v. State*, \_\_\_ Ohio St. 3d \_\_\_ (No. 95-2066, March 24, 1997). Also see Jeanne Ponesca, "Justices Reject Ohio System of School Finance," *Education Week*, April 2, 1997, pp. 1 and 31.

<sup>8</sup> *Serrano v. Priest*, 557 P.2d 929, 950 (Cal. 1976) (*Serrano II*).

<sup>9</sup> Peter Enrich, "Leaving Equality Behind: New Directions in School Finance Reform," 48 *Vanderbilt Law Review* 101, 183 (1995).

<sup>10</sup> N.C. General Statute § 115C-81(a1) (1994).

<sup>11</sup> Complaint for Plaintiffs, *Leandro v. State* (94 CVS 520), filed Sept. 26, 1994 with the Halifax Co. Clerk of Superior Court, p. 10.

<sup>12</sup> The state deadline for full funding was 1993, but that deadline was extended to July 1995. The legislature in recent years has disregarded portions of the BEP, such as plans for hiring more administrators in high schools. But it has strived to meet some of the BEP goals, such as reductions in class sizes, and exceeded other goals, such as providing new textbooks.

<sup>13</sup> N.C. State Board of Education, *The Basic Education Program for North Carolina's Public Schools*, 1988, p. 1.

<sup>14</sup> *Ibid.*, Appendix, pp. 46-47.

<sup>15</sup> D.C. Long, "Rodriguez: The State Courts Respond," *Phi Delta Kappan*, March 1983, pp. 481-84.

<sup>16</sup> Editorial, "No Clout: Poorer schools didn't get respect or cash," *Fayetteville Observer-Times*, Fayetteville, N.C., July 7, 1995. According to John Dornan, executive director of the Public School Forum of North Carolina, the formula for allocating low wealth supplemental funds was revised in 1993. The result was halving the goal that the State was pursuing in addition to changing the qualification and effort requirements.

<sup>17</sup> See "Under the Dome," column in *The News & Observer*, Raleigh, N.C., Jan. 9, 1997, p. 3A.

<sup>18</sup> *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1 at 48, note 102 (1973).

<sup>19</sup> Funding decisions are usually legislative matters.

<sup>20</sup> Mark Curriden, "Unequal Education at Issue," *ABA Journal*, May 1994, p. 36.

<sup>21</sup> *Britt v. N.C. Board of Education*, 86 N.C. App. 282, 357 S.E.2d 432, 436 (1987).

<sup>22</sup> "Unfulfilled Promises: School Finance Remedies and State Courts," 104 *Harvard Law Review* 1072, 1078-80 (1991).

<sup>23</sup> *Ibid.*, pp. 1082-85.

<sup>24</sup> *Rose v. Council for Better Education*, 790 S.W.2d 186 (Ky. 1989).

<sup>25</sup> "Unfulfilled Promises," see note 22 above, p. 1078.

<sup>26</sup> For a complete discussion of these remedies, see Mary Fulton and Laura Sonovick, "Percentage of public elementary and secondary school operating costs from Federal, State, and Local Governments," *Clearinghouse Notes*, Education Commission for the States, 707 17th St., Suite 2700, Denver, Colo., 80202-3427, phone (303) 299-3600, 1995, pp. 1-2.

<sup>27</sup> N.C. General Statute § 115C-546.1 to -2; N.C. General Statute § 115C-489 to -489.4.

<sup>28</sup> Charles D. Liner, "Twelve Years and \$3 Billion Later: School Construction in North Carolina," *Popular Government*, Institute of Government, Chapel Hill, N.C., Fall 1994, Vol. 60, pp. 30-43.

<sup>29</sup> See generally, Charles D. Liner, *State and Local Government Relations in North Carolina: Their evolution and current status*, Institute of Government, Chapel Hill, N.C., 1995, pp. 186-87.

<sup>30</sup> For a complete discussion, see Fulton and Sonovick, note 26 above.

<sup>31</sup> Lanier Fonvielle, "Disparity in Public School Financing," *North Carolina Insight*, Vol. 7, No. 1, June 1984, p. 31.

<sup>32</sup> The number of school districts in North Carolina has decreased from 143 in 1982-83, to 142 in 1983-84, to 140 in 1987-88, to 119 in 1994-95, to 117 in 1996-97.

<sup>33</sup> For many small school districts with low average daily membership, like Hyde County, the per pupil expenditures are very high. North Carolina allots most of its state education dollars on a "resource" basis; see Table 6 on p. 67. Therefore, small school districts have higher unit costs than large school districts. For this reason, although Hyde County has the highest total per pupil expenditures of any school system in the state, it does not provide the most representative example of funding disparities in North Carolina. See Table 2 on pp. 48-55.

<sup>34</sup> For another look at local school financing among the school districts, see *North Carolina: Local School Finance Study 1996*, published in 1996 by The Public School Forum of North Carolina, 3739 National Dr., Raleigh, N.C., 27612; phone (919) 781-6833.

<sup>35</sup> Office of the State Auditor, *Performance Audit Report, North Carolina Department of Public Instruction, Chapter VII—Impact of the Basic Education Program on Public Schools and a Review of School Financing*, 1990, p. 2 (emphasis in the original).

<sup>36</sup> *A Right Denied: Educational Inequity in North Carolina's Schools*, N.C. Civil Liberties Union and the American Civil Liberties Union, June 1991, p. 35-37.

<sup>37</sup> See note 35 above, p. 5.

<sup>38</sup> National Education Association, *Ranking the States 1996*, NEA Research Division, Washington, D.C., 1996, p. 48.

<sup>39</sup> Charles D. Liner, "Spending and Employment in the Public Schools," *Popular Government*, Institute of Government, Chapel Hill, NC, Spring 1990; p. 32.

<sup>40</sup> Robert Spearman, Parker, Poe, Adams, & Bernstein L.L.P. Press Release, May 25, 1994. See also Complaint for Plaintiffs, *Leandro v. State* (94 CVS 520), filed Sept. 26, 1994 with the Halifax Co. Clerk of Superior Court, p.10.

<sup>41</sup> *Britt*, see note 21 above.

<sup>42</sup> *Ibid.*, p. 436.

<sup>43</sup> *Ibid.*

<sup>44</sup> *Britt v. N.C. Board of Education*, 320 N.C. 790, 790 (1987). The Supreme Court denied the plaintiffs' petition for discretionary review and allowed the defendant's motion to dismiss the appeal for lack of a substantial constitutional question.

<sup>45</sup> *Leandro v. State*, 468 S.E.2d 543, 552 (1995).

<sup>46</sup> *Ibid.*, pp. 547 and 552.

<sup>47</sup> *Ibid.*, p. 548.

<sup>48</sup> *Ibid.*, p. 549 (emphasis in the original).

<sup>49</sup> *Ibid.*

<sup>50</sup> *Ibid.*

<sup>51</sup> *Ibid.*, p. 550.

<sup>52</sup> *Ibid.*, p. 551.

<sup>53</sup> "Schools lose another round," *The Robesonian*, Lumberton, N.C., March 20, 1996, p. A4.

<sup>54</sup> Foon Rhee, "Court deals blow to schools suit," *The Charlotte Observer*, Charlotte, N.C., Mar. 20, 1996, p. 1A.

<sup>55</sup> "Access vs. adequacy," *The Charlotte Observer*, Charlotte, N.C., Mar. 22, 1996, p. A12.

<sup>56</sup> "School funding is legal but not fair," *The Wilson Daily Times*, Wilson, N.C., Mar. 25, 1996.

<sup>57</sup> "Equity in schools is up to the legislature," *News & Record*, Greensboro, N.C., Mar. 21, 1996, p. A16; "Another chance," *Daily Reflector*, Greenville, N.C., Mar. 25, 1996.

<sup>58</sup> The N.C. Supreme Court agreed to review the case on June 13, 1996. Oral arguments were held on Oct. 17, 1996, but the Court had not reached a decision at press time.

<sup>59</sup> See Public School Forum, note 34 above.

<sup>60</sup> See N.C. Civil Liberties Union, note 36 above, p. v.

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## *Center Recommends That the State Address the Financing of Equal Educational Opportunity in North Carolina*

**D**espite steady appropriations for low-wealth and small school districts by the N.C. General Assembly, disparities in educational opportunity persist in the North Carolina public schools. At least three indicators point to North Carolina's failure to live up to its constitutional promise of public schools where "equal opportunities shall be provided for all students." Those indicators are: (1) the gap in per pupil expenditures between the state's public school systems with the least to spend per student and those with the most; (2) differences in number of courses offered at high schools located in wealthy and poor school districts in North Carolina; and (3) the state's failure to fully fund its Basic Education Plan, which provides a statutory promise of a base level for educational opportunity in the state.

**Differences in per pupil expenditures.** In the 1994-95 school year, the gap between the public school system that spent the most per student for public education and the one that

spent the least approached 96 percent. Hyde County spent \$7,460 per pupil, while Onslow County spent only \$3,809. The Asheville City Schools spent the second most per student at \$6,611—some 74 percent more than the resource-poor Onslow County district. Factors such as size of school district and education-level of teachers have a strong impact on per-pupil expenditures, but so does whether state and local officials decide to provide adequate funding for local schools. In that sense, the fact that the gap has persisted and even grown over time is troubling. In 1987-88, for example, the North Carolina Center for Public Policy Research found that the gap between the school system that spent the most and the one that spent the least—including federal, state, and local appropriations—was 56 percent. In 1983-84, the gap was 58 percent. The legislature began appropriating funds for small and low-wealth school systems in 1991, and this has helped move up some of the least able of the