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An Analysis of State Statutes, Policies, and Practices Related to Public Finaning of Urban Non-Public Parochial Schools: Elementary and Secondary

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AN ANALYSIS OF STATE STATUTES, POLICIES, AND PRACTICES
RELATED TO PUBLIC FINANCING OF URBAN NON-PUBLIC
PAROCHIAL SCHOOLS: ELEMENTARY AND SECONDARY

This investigation attempted to present a nationwide appraisal of existing state statutes, policies, and practices related to financing of urban non-public parochial school programs and services on the elementary and secondary levels.

The general research problem involved an analysis of state statutes, policies, and practices which provided financing in the four major areas of the study: (1) textbooks, (2) teacher services, (3) auxiliary materials/services, and (4) cooperative/innovative programs. Several specific research purposes assisted in carrying out the general research problem:

1. Identifying selected U.S. Supreme Court decisions have influenced public financing of non-public parochial schools.
2. Determination of what statutes, policies, and programs exist among the participating states related to financing of parochial schools in the four focus areas of textbooks, special subject teachers, auxiliary materials and cooperative/

innovative programs.

3. Identifying similarities in statutes, policies, and practices among the fifteen selected states with urban parochial characteristics.
4. Analyzing how the fifteen selected states have reacted to selected U.S. Supreme Court decisions.
5. Developing a summary, drawing conclusions, and making recommendations related to public financing of non-public schools.

The focus was limited to fifteen states with urban areas having student enrollments of 50,000 or more. An historical analysis of U.S. Supreme Court decisions was conducted in terms of (1) statutes, policies, and practices related to the four major areas of the study; (2) challenges of major Professional and Citizens Groups; and (3) side effects and implications.

As a result of the study, three general conclusions were reached: (1) more state statutes were found to be unconstitutional as a result of "Excessive Entanglements" with religion than for any other legal reason; (2) state statutes and policies that established public control over parochial programs/services most often achieved the "Primary Secular Effect" approved by the courts; and (3) direct aid to students in parochial schools was a more widely practiced and accepted method of financing parochial school programs/services than direct aid to parents or direct aid to schools.

AN ANALYSIS OF STATE STATUTES, POLICIES,
AND PRACTICES RELATED TO PUBLIC FINANCING
OF URBAN NON-PUBLIC PAROCHIAL SCHOOLS:
ELEMENTARY AND SECONDARY

by

Leon Hendricks

A Dissertation Submitted to the Faculty of the School of
Education of Loyola University of Chicago in Partial
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VITA

The author of this study, Leon Hendricks, was born to Reverend Obe Hendricks and Estelle (Gibson) Hendricks on May 10, 1941, in Biscoe, Arkansas.

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CHAPTER I

INTRODUCTION

RATIONALE:

Historically, it is a fact that non-public education pre-dates public education in America. The first traces of legislation providing aid to the development of public education was found in Massachusetts in 1642 and 1647.¹ The American Colonies at that time were still separate units under the British Colonies. By the time of the American Revolution, two grammar schools and three schools of writing had been established in the city of Boston.² The development of many state school systems was given impetus, as a result of the first Federal Legislation in the area of public education, through the Ordinances of 1785 and 1787.

The early public school as an institution was limited in curricular offerings. Generally, more reliance for education was placed in the home while the school served as an extended source for formal training. As the nation's educational needs changed, the public school concept among the states was extended to include more children.

¹Nathaniel B. Shurtleff, Records of Massachusetts Bay vol. II 1642-1649 (Boston, Press of A.M. White, 1853), p.203.

²Caleb H. Snow, History of Boston (Boston, Abel Bowen Press, 1850), p. 359.

Many of the early immigrants felt that these schools did not meet the cultural, social, and economic needs of their children because they had protestant leanings and were non-denominational. Therefore, they continued to establish and support private, sectarian schools of their own.³ Although these schools could not be financially supported as a part of the common school movement, they developed and grew as viable alternatives to the public school.

From this period of early development until today, parents who select non-public parochial schooling for their children have sought financial relief from dual taxation - taxation for public schools - tuition for parochial schools.

The first relief came from the financial support of the church through contributions, gifts, and grants. As society rapidly changed socially, culturally, and economically new demands for financial assistance were presented requesting public money for non-public parochial schools. The states have refused again and again indicating that such aid would constitute a violation of the First Amendment to the U.S. Constitution; Separation of church and state clause. The controversy has been the subject of private opinion, informal and formal study,

³Glen A. Gabert, A History of the Roman Catholic School System in the U.S. "A Documentary Dissertation" (Loyola University, 1971), p. 182.

commission investigation, and litigation. Federal, state, and local support have been solicited and received in the struggle to provide funding for parochial schools. Federal enactments, state statutes, and local programs have been developed and sometime implemented only to find that many are inconsistent with court guidelines of constitutionality.

Within the last decade, there have been approximately thirty-five theses and dissertations attempting to clarify and give meaning to the areas of financing non-public parochial schools, urban non-public education, and church/state relations.⁴ Metropolitanism, population shifts, inflation, ethnicity, and socio-cultural changes have also added to the problems of financing urban parochial schools.

These issues represent areas of major concern and emphasize the need for solid bodies of primary data which clarify and give meaning to the past and present for the development and implementation of policies and programs for parochial school students in the United States. The current study is undertaken with this goal in mind.

Statement of the Problem:

The problem of public aid to non-public parochial schools has several bases. First, the federal government

⁴University Microfilms International, Comprehensive Dissertation Query Service, (Ann Arbor, Michigan), (April, 1977).

has no direct control or authority over education. Since education is not mentioned in the Constitution, it becomes the right of the states under the Tenth Amendment.⁵ States' statutes, school policies, and programs have many common features, however they differ sometimes on important items in approach and method. Such differences are manifest in their methods of providing services and programs to students attending non-public parochial schools.

Second, most disputes regarding financial aid at the state court levels arise out of differing viewpoints as to states rights, group rights, or individual rights. Further, assumptions about the states discretionary power granted by the Tenth Amendment have resulted in the passage of statutes and programs later declared unconstitutional by appellate courts.

Third, precisely organized patterns of law concerning non-public parochial aid are not available. Therefore, court decisions and case law must resolve controversies and give operational meaning to written regulations when rules do not exist on a given question. This shaping of educational policy by the Supreme Court has brought criticism as reflected by the following references:

Black Robed School Board

Federal Board of Education

⁵Arval A. Morris, The Constitution and American Education (St. Paul, Minn: West Publishing Co., 1974), p. 115.

Super Board of Education⁶

Fourth, Meek v. Pittenger⁷ involving textbook loans, teacher services, materials, and auxillary services to parochial schools in Pennsylvania, a Supreme Court, decision struck down several major efforts to ease the financial burden of parochial school parents.

As a result, many state statutes, policies, and programs have been challenged and defeated in the courts. Also, lower, appellate, and federal court decisions have produced conflicting interpretations between states. Legal guidelines are not understood by legislators in drafting legislation, and state school officers are unclear as to which programs and services are constitutional or not. Many states have drastically limited or dropped categories of aid because of additional difficulty in applying state aid formulas in urban areas where parochial schools are undergoing serious financial crises.

These issues stated above bring sharply into focus the need for information which will assist in understanding the courts' actions as it relates to programs and services to parochial school students. With these issues in focus, chief state school administrators may become more effective in developing more practical ways of providing services and programs to children attending non-public parochial schools.

⁶Edmund E. Reutter, Schools and the Law (New York: Oceana Publications Inc., 1960), p. 17.

⁷Meek v. Pittenger - 95 S. Ct. 1753 (1975).

The findings presented in this study represent one such attempt.

General Research Purpose:

The general purpose of the study was to analyze state statutes, policies, and practices related to public financing of urban non-public parochial elementary and secondary schools. It generated a body of data based upon primary information that was clear, and in non-technical language for use by educational administrators in developing programs and providing services for parochial school students within the states.

Specific Research Purposes:

The specific research purposes assisted in carrying out the general research purpose of the study. They included:

1. To identify selected U.S. Supreme Court decisions which have influenced public financing of non-public parochial schools.
2. To determine what state statutes, state Board of Education policies, and programs exist related to public financing of parochial schools in the four focus areas of textbooks, special subject teachers, auxillary materials, and cooperative/innovative programs.
3. To identify similarities in statutes, policies, and practices among the fifteen selected states with urban parochial school characteristics.
4. To analyze how the fifteen selected states have reacted to selected U.S. Supreme Court decisions.
5. To develop a summary, draw conclusions, and make recommendations relating to public financing of non-public schools.

Data presented in the study is expected to assist school officers in knowing what public financing other states provide to parochial school students and how this financing is accomplished. It will help them identify geographical characteristics, legislative trends, revenue sources of other states, and possible sources of new support for parochial school students. The analysis of data may provide a valuable source of information in the planning and implementation of state non-public parochial school programs.

Scope and Limitations of the Study:

A preliminary survey effort was conducted in order to determine the availability of statutes, programs, and court documents. For the purposes of satisfying the design (Narrative Analysis), the importance of this preliminary step was kept in mind.

The results of this pilot effort showed that approximately twenty-five lower, appellate and Supreme Court decisions could be identified for consideration in the study. Although the study involved a nationwide study, the focus was limited to states within urban dioceses/archdioceses which have high concentrations of parochial school students (have student elementary and secondary enrollments of 50,000 or more) and represent each of the six geographical regions of the United States (Northeast, Middle East, Plains, Great Lakes, South, and West Far West).

The historical analysis was limited to:

-Statutes, policies, and programs related to the four major areas of the study: textbooks, teacher services, auxiliary services and materials, and cooperative and innovative programs.

-Challenges of major professional and citizens groups.

-Side effects and implications.

Some states reactions (restructuring of programs, statutes) to U.S. Supreme Court decisions are still in progress, therefore, the analysis is limited to data regarding past and present actions.

Interpretation of the law is the business of the court. Legislators formulate statutes, school boards generate policy. Then chief state school officers use them as guidelines in the operation of schools. Conflicting lower court decisions limit comparisons and generalizations.

It is important to remember that information presented here does not seek to replace advice of counsel or an attorney, nor produce final guidelines, but rather to assist educators in understanding their legal rights and responsibilities related to non-public parochial school financing and programming.

Definition of Terms:

Public School-a term used in the study referring to schools established, recognized, certified, and financed by the state for its school age children. The state has the primary responsibility for these schools.

Private School - any non-public school or system owned, operated, and financed by private citizens, groups, or organizations.

Non-Public Parochial Education - any non-public school/system owned, operated, and/or financed for Religious/Sectarian purposes by private citizens, groups, or organizations.

Parochiade - State and local laws that are aimed at providing aid to parochial schools or students.

Diocese - A basic administrative unit composed of churches/parishes and districts and administered by a Bishop.

Archdiocese - A basic administrative unit composed of churches/parishes, districts, and Dioceses and administered by an Archbishop.

Public Financing - using public tax dollars used to provide materials, services, and programs.

Chief State School Officer - the person charged with the responsibility of operating schools within the state. Elected or appointed, he usually has a title of State Superintendent, or Director of Public Instruction.

Church/State Relations - the "establishment" clause of the First Amendment designed to produce separation of government and Religion.

Textbooks - non-sectarian/religious basal books provided either on loan or free.

Special Subject Teachers - the use of specialized person-

nel in non religious areas as reading specialist, teacher-librarians, shop teachers.

Auxillary Services - special services as psychological, health, consumer education, vocational education, driver education.

Cooperative Programs - public and parochial school joint programs as dual enrollment, reading exchange classes, cultural exchanges.

State Statutes - a school code - statutes at large - state school law. These terms are used synonymously in this study.

Urban - Dioceses and Archdioceses within a state having student enrollments of 50,000 or more.

Released-time, shared-time - a program operated cooperatively by a public and a parochial school for the purpose of releasing public school students during the school day for religious instruction.

Dual Enrollment - students who are enrolled in both a public and a parochial school and receiving instruction from both.

Ecumenical Schools - an alternative interdenominational school operated by several Christian denominations, but independent of either.

4½ day schools - a program where students are dismissed after four hours of class one day each week after which time they are dismissed. Teacher inservice, team planning, and other related faculty activities continue.

Voucher - a method of providing direct aid to parents in the form of redeemable certificates for use at any school of

their choice, public or non-public.

Lower Court - the trial and Inferior Court within the states.

Appellate Court - the highest court in the state, usually called the State Supreme Court.

Federal Court - any of the ninety two district courts on the U.S. Court of Appeals.

Supreme Court - the highest appeals court in the United States.

Tests of Constitutionality - standards applied by the courts as to the legality of statutes, laws, and programs.

Friends of the Court - a person or group not involved in a case, but supplies arguments, evidence, authority, or counsel that may cause the present decision to be made in his interest.

Opinion - a statement by a Judge or Court detailing reasons upon which the decision and his judgment is based. It is separate from the decision and may be pro or con.

Litigation - a dispute brought to a court of justice for the purpose of enforcing a right.

Reporter Region - Court publications of all decisions of the state appellate courts. The country is divided into nine regions.

Preponderance - having more weight, being more credible, or convincing on one side than the other.

Authority - the legislative source of funding.

Legal Question - that point which parties are not agreed, and submits it to the decision of a Judge and/or jury.

Revenue Sharing - a method used by the Federal government to return some of its tax dollars to the states for the operation of its programs.

Types of Parochial School Aid:

Direct - aid that goes directly to the child or parochial school without passing through the public schools or other public agencies.

Indirect - aid that passes to parochial schools or students through public schools and agencies. Dollars, services, programs, or credits are included.

Basic - aid that is intended to support foundational programs and services in the operation of parochial schools.

Supplemental - aid that augments basic programs/services.

Personal - aid to the person (child or parent).

Institutional - aid to the schools, dioceses, archdioceses.

Instruments:

The instruments used included:

I. Letters of inquiry

A. Chief State School Officers

B. State Departments of Education

C. Professional and Citizens Groups

II. Survey designed specifically for this study

(See copy in appendix B)

Design of the Study:

The over-all design of the study may be labeled Descriptive Analysis (Documentary - Frequency). Treatment of the purposes is not limited to a report of "what exists", but also an analysis of imminent characteristics, patterns, and trends that may shape future educational statutes, policies, and programs for non-public parochial schools in America. Although the design varies somewhat from the usual descriptive research, it represents a first step in charting territory for later experimentation and the management-type decisions of state school officers.⁸

Because certain facts, questions, and characteristics relating to non-public parochial aid have been unclear or obscure, the above designs and treatment were used in order to discover influential forces which shape statutes, policies, and practices among the states.

The analysis of statutes, policies and practices was conducted in terms of consistencies, variations in method, comparisons, contrasts, and trends among/between the states. In order to achieve the purposes of the investigation, a five step procedure is used, the first two being documentary in nature. This allowed for the analysis (step 3) to proceed based upon primary, factual, and chronologically organized data.

Presentation of material in the analysis, definitions,

⁸David R. Cook, A Guide to Educational Research (Boston: Allyn and Bacon, 1972) p. 47.

and summaries sections relating to characteristics, patterns, and trends in financing was made, using a narrative analysis style for ease of understanding and clarity by school administrators (steps 3-5); adopted from Good's Educational Research Method.⁹

It is expected that this investigation will not only add to the existing body of knowledge relating to the development of constitutional non-public parochial school programs, but that the procedure used will be useful in researching other similar educational issues - state aid programs, church/state relations, etc.

See Procedure Section - Step 3 for further descriptions in detail.

Procedure and Method:

The descriptive-survey method of research was used as described by Good. Good indicated that the purposes of this method may be the following:

- Securing data concerning existing situation
- Identifying standards/norms for comparison
- Determining how to make the next step
- Instruments (development, administration, and treatment)¹⁰

Step 1: Collection of Data

⁹Carter V. Good, Introduction to Educational Research (New York: Appleton-Century-Crofts, Inc., 1959), p. 167.

¹⁰Ibid., p. 191.

- A. Preliminary survey
- B. Copies of state school codes obtained (50 states) from the state offices and/or the publication of Statutes at Large.
- C. Letters of inquiry sent to eight professional and citizen's groups requesting information. Dissertations related to the topic from agencies listed in Related Literature section obtained by written correspondence.
- D. Survey sent to fifty state chief school officers. Responses to instrument designed to yield data regarding:
 - what state statutes, policies and practices have existed or currently exist in the four major areas of this study.
 - survey questionnaire coded to include kinds of Dioceses within state by enrollment figures and region.
 - (1) Urban
 - (2) Inner City
 - (3) Fringe City
 - (4) Rural
 - (5) New England
 - (6) Mid-East
 - (7) Great Lakes
 - (8) Plains
 - (9) Southeast

(10) West and Far West

(11) Other

-Urban/inner city Dioceses represented the focus of the study. Others were considered for side effects and implications.

- E. Summary of U.S. Supreme Court Decisions 1880 to present, historical notes, digest, and interpretation, U.S. Annotated Code.
- F. U.S. Supreme Court decisions on Education - Federal Digest, Specific case - The Constitution and American Education 1974 Morris.
- G. Obtained a copy of the U.S. Constitution - U.S. Annotated Code.
- H. Translation materials - Dictionaries: Black's - 1 volume
Bourier's - 2 volumes
Kelsoe's Programmed Introduction to Law

Step 2: Sorting and Organization of Data

- A. A tally and summary in table form was constructed of state statutes, policies, and practices categorized into four major non-public parochial school aid areas:
- (using table format)
- free textbooks
 - auxillary services
 - special subject teachers
 - innovative and cooperative programs

- B. U.S. Supreme Court tests of constitutionality categorized for each state's statutes, policies, and/or practices.
- C. U.S. Supreme Court decisions and related cases categorized into the four major areas in chronological order.
- D. Specific practices and programs categorized into four major areas for documentation and illustration: i.e., textbooks, teacher services, auxiliary services and materials, and cooperative and innovative programs.
- E. Positions taken by citizen's groups charted in table form.
- F. Format developed for presentation of material - Carter v. Good.

Step 3: Analysis

Data Analysis Procedures

The analysis and treatment of data do not require a legal background in that data used to formulate characteristics, patterns, and trends were developed from lower court cases and Supreme Court decisions already interpreted by legal experts. Translation of technical language were handled as mentioned in methods and procedure section. Where lower court decisions were found to be conflicting, the first reliance or focus was on Supreme Court decisions. If no Supreme Court decision is available, the second line

of defense was precedent. Where neither of the above was found, this was pointed out and no recommendations or suggestions are given.

In order to satisfy the purposes of the study, the following interpretive criteria references was used:

- I. CONSTITUTIONAL CRITERIA - In order to be constitutional, a statute, policy, or program must have passed the "primary secular effect test" as applied by the U.S. Supreme Court to
 - A. free textbooks
 - B. teacher services
 - C. innovative and cooperative programs
 - D. auxillary services
- II. COURT CONFLICT CRITERIA - The Supreme Court represented the final authority and the primary basis for analysis. In its absence, lower court agreements and precedent were secondary bases. No further rules or tests are used as a basis for analysis.
- III. GEOGRAPHIC CRITERIA - Each state is in one of the nine Reporter Regions. Comparisons and contrasts within the region generated likenesses and differences among a majority of states within the region determined the findings presented.
- IV. TREND CRITERIA - Lower court decisions sustained by the Supreme Court represents a trend in providing programs and services. Lower court agree-

ment and precedent represented possible course and direction.

- V. PATTERNS AND SIMILARITIES CRITERIA - When two or more states participate in the same Friend of the Court Litigation, common lawsuits, or small compacts, for purposes of this study, their statutes were classified as similar or patterned.
- states that provide textbooks, teachers, programs, services directly are similar or patterned.
 - states that provide textbooks, teachers, programs, services indirectly are similar or patterned.
 - states that mandate aid from their general, special, etc. funds are considered similar or patterned.

For each of the four areas under investigation textbooks, special subject teachers, auxillary services, and cooperative programs, the analysis was conducted in terms of the following:

- A. Consistency - statutes, policies, and practices in urban areas may be in agreement, or the same among several states and dioceses. Friends of the court litigations, State's Attorney's opinion, or common lawsuits have produced consistent legislation and/or practices in some dioceses, states, or regions. These factors are highlighted in the analysis.
- B. Variations - Differences exist in state methods of providing the same kind of aid. These differences

(variations) are found in the statutes, policies, and/or practices were examined in terms of the kind and amount of change present.

C. Comparisons and Contrasts - Likenesses and Differences in method, source, amount, and expenditure. Statutes, policies and practices of the states were examined in order to find out how they are alike or different. Such items as, source of revenue, amounts, and percentage of per pupil expenditure were considered.

D. Trends - General course and direction for providing future aid to non-public parochial schools. State's statutes, policies, and practices currently existing were examined in order to determine general course and direction. Factors considered include: age of statute, method of financing Parochial programs, source of revenue, percentage of per pupil expenditure.

TREATMENT OF TRENDS IN THE NARRATIVE

Trends were developed as a method of looking at the past and present in order to point out possible future courses and directions. The Supreme Court and legal experts have interpreted the law and made decisions based upon a preponderance of fact, evidence, and precedent. Utilizing this data as a base, trends related to providing aid to non-public schools were formulated. The following procedural steps were carried out in the narrative to further analyze the trends as identi-

fied:

1. Legal trends were developed from the data that assisted in determining whether or not lower court decisions conflict, whether definite and clear areas of aid have been established by Supreme Court decisions, and the number and type of cases awaiting adjudication by appellate courts.
2. Geographic trends were developed from data that helped in determining similar methods of providing aid within the region, and where opposition to aid originated from within that region or state.
3. Statute trends were developed from data that assisted in determining whether state statutes specifically mandate aid to parochial school students or implied it, and where the authority and source for revenue generated from most frequently.
4. Programs and services trends were developed from data which assist in determining whether certain programs and services are being provided or excluded categorically by a majority of states, the number of programs and services provided, and whether they are increasing or decreasing.
5. General trends were developed from data regarding citizens groups positions for or against parochial aid, opposition strategies, and constitutional grounds for challenging parochial aid as cited by case briefs.

Step 4: Definition of terms:

Legal terms and technical language underlined for defining and/or translation. (Specific for related literature).

Latin and Old English terms are replaced as needed for clarity and understanding.

Step 5: Summary and Recommendations:

- A. A summary of state statutes, policies, and practices giving textbooks, special subject teachers, services, and cooperative programs to urban non-public parochial school children were given from the data, charts, and illustrations.
- B. Selected constitutional and unconstitutional statutes as challenged by groups and decided by the U.S. Supreme Court are cited.
- C. A summary of urban similarities, differences, and contrasts in statute structure, state and regional patterns are cited.
- D. General trends and suggested guidelines are offered for use by chief state school officers and educational practitioners prior to developing programs and establishing practices for non-public schools in a state. (Supreme Court Justice's opinions used here)
- E. Suggestions for further research generated.

Summary:

Inquiries were sent to the State Departments of Education as representatives of the fifty states requesting school codes, statutes at large, or laws relating to non-public

parochial schools. Representatives of forty-two states or 84% responded with the requested material, with some sending additional material. Two states indicated that no statutes provide aid to non-public parochial schools and therefore could not respond. For the eight states, or 16%, not responding, school codes were obtained from the Loyola University curriculum library and the Chicago State University lending library. Responses were received over a three month period from 100% of the states and regions where litigation involving parochial schools has occurred.

The survey of chief state school officers was sent to all fifty states. Forty-two responses, or 84% were received. According to purposes of survey, the enrollment figures received fifteen states, or 30% have student enrollments of 50,000 or more which determines urban status for focus in the study. For chief state school officers not responding, enrollment statistics were obtained from the Council for American Private Education (CAPE), Washington, D.C.

The data received were categorized, tabulated, and presented to facilitate interpretation of the findings. They are treated collectively so as to protect the confidentiality of the respondents. Copies of the survey as summarized were compiled and sent to chief state school officers who requested them.

The following chapter reviews the literature pertinent to the study.

The data obtained through letters of inquiry, surveys, search agencies, public institutions, and private groups is presented and discussed in the following chapter. It reviews only those materials considered pertinent to the study.

CHAPTER II

REVIEW OF RELATED LITERATURE

In order to achieve the purposes of the study, it was important to collect primary and factual data related to statutes, policies, and programs that provide public financing for urban non-public parochial elementary and secondary schools. It was further important to organize the data into a non-technical and meaningful sequence which assists in their presentation and analysis for use by state chief school officers, state departments of education, and other educators.

The information presented in this section surveys two major areas: (1) an overview of the legal framework for public financing of non-public parochial schools; historical background, the main issues, recent court litigation, and side effects, and (2) related studies and investigations.

This chapter does not include all of the literature researched for the study. Approximately one hundred eleven studies were reviewed with the aid of the Xerox University Microfilm Services.¹ The material presented represents a compilation of the literature that has significance to the above mentioned areas.

¹University Microfilm International, Comprehensive Dissertation Query Services, (Ann Arbor, Michigan), (April, 1977).

OVERVIEW OF THE LEGAL FRAMEWORK
FOR FINANCING NON-PUBLIC SCHOOLS

Religion in a Nation can be a strong force, serving either to unify or divide a people. In the United States, there is no one religious viewpoint, or official religion. Church and state are separate entities; thus, religions in America coexist with each other in a secular state. While harmony usually prevails, friction sometimes threatens this peaceful coexistence.

Since the United States Constitution does not mention education, it has been delegated to the states under the "reserved powers" clause of the Tenth Amendment. Numerous reasons have been suggested for the lack of reference to education in the United States Constitution. The founding fathers of this country had recently freed themselves of highly centralized forms of government whose administration they felt was unendurable. Therefore, they were not prepared to grant the federal government any more power than necessary. Many of them were products of private schools maintained and operated by religious groups. They felt that education should be a function of the home and church, and should not be interfered with by the federal government. Many of the framers of the United States Constitution, such as James Madison, Thomas Jefferson, and George Mason, were strong advocates of separation of church and state. It was believed that "religious freedom was the

crux of the struggle for freedom in general...."²

The first instance of Federal legislation directing public money to public schools took place before the U.S. Constitution was adopted. The Ordinances of 1785 and 1787 provided for land grants to the territories for the maintenance of public schools and established the policy that "religion, morality, and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged".³ This act gave impetus to the development of school systems in many states.

Subsequent instances of the Federal government providing for public education include:

- The Morrill Act - 1862 - Establishment of land grant colleges
- U.S. Office of Education Act - 1867 - Established by federal statute, the purpose of this office was to collect statistics and facts, and to disseminate information to aid education in the United States
- Hatch Act - 1887 - This act provided funds for agricultural research
- Smith-Lever Act - 1914 - This act provided funds for the extension of agricultural studies
- Smith-Hughes Act - 1917 - Provided aid for teacher study, preparation, and

²Reuter, Schools and the Law, p. 15.

³Arval A. Morris, The Constitution and American Education (St. Paul, Minn.: West Publishing Co., 1974), p. 377.

salaries in areas of agriculture, home-economics, trades, industry, and commerce

- Vocation Education Act - 1917 - Federal aid to support vocational education in secondary schools
- Smith-Bankhead Act - 1920 - Provided aid for the rehabilitation of disabled persons
- Civilian Conservation Corps - 1932 - Federal support of educational activities in connection with the conservation corps
- National Youth Administration - 1932 - Federal support of educational activities in connection with the Vocational Youth Administration
- Agricultural Adjustment Act - 1933 - Federal support of education of farmers, immigrants, and Indians
- Lanham Act - 1941 - Under the direction of the U.S. Office of Education, this act provided aid for training war plant workers
- G.I. Bill - 1944 - Following World War II and the Korean war, grants were provided to servicemen for their education in high school or in college. Funds were allotted for books, tuition, and living expenses
- National School Lunch Act - 1946 - Improved lunch programs in non-public and public schools
- Special Milk Program Act - 1958 - Similar to the lunch act, funds are provided for encouraging children to drink milk and supplying it to the schools
- Vocation and Economic Opportunity Acts - 1963-64 - Formula grants are provided for state agencies to assist

in supplying programs to persons of all ages who desire and need educational training for career vocations

- Environmental Education Act - 1970 - Project grants to encourage education about problems of environmental quality and ecological balance through development of new approaches, inservice training, evaluation, and dissemination
- Drug Abuse Act - 1970 - Project grants are provided for public and private groups for coordination of drug abuse prevention programs in schools and communities
- Emergency School Aid Act - 1972 - Provides funds for wider inclusion of private schools in Federal programs such as bi-lingual education, ethnic studies, guidance and counseling, etc.
- Special Projects Act - 1974 - Consolidation under the educational Amendments of 1974 of most discretionary programs and funds of the U.S. Commissioner of Education
- National Defense Education Act - 1958 - Strengthening of specific areas of education: Mathematics, Science, Foreign Languages, Counseling
- Elementary and Secondary Education Act - 1965 - Federal aid to elementary and secondary schools for compensatory and auxillary programs, public and non-public

It is under the "child benefit" theory that many parochial school students participate in tax supported programs. Assistance such as free lunches, milk, guidance counseling, and transportation, health services, vocational programs,

books, are provided directly to the students, not the school.⁴ Although massive amounts of public money have been provided for students in parochial schools by the federal government and the states, it has been difficult to deliver these dollars because of the first amendment questions not yet totally resolved.

The First Amendment of the U.S. Constitution provides that, "Congress shall make no law respecting an establishment of religion, or prohibiting the exercise thereof...."⁵ The first prohibition is called the "establishment clause" and the second, the "free exercise clause"; these two clauses provide a double guarantee of religious freedom while maintaining a sense of neutrality. When fully implemented, these two clauses produce a separation of church and state. Further, these provisions have been incorporated into the Fourteenth Amendment under the due process and equal protection clauses, and apply to the states and their subdivisions.

The Tenth Amendment to the U.S. Constitution states that "power not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people...."⁶ This

⁴Joseph Rivell, "Aid to Private School and the Child Benefits Theory" (unpublished Ed.D. Dissertation, Boston University, 1972), p. 1754.

⁵Morris, The Constitution and American Education, p.377.

⁶Edmund E. Reutter, Schools and the Law (New York: Oceana Publications Inc., 1960), p. 16.

provision makes it clear that the federal government is limited to certain specific powers. The states and the people can exercise any powers not prohibited by this provision.

The Fourteenth Amendment to the U.S. Constitution guarantees that "no person shall be deprived of his rights without due process of law...."⁷ and must be afforded "equal protection"; this provision has been interpreted to include children who attend public and non-public schools in a state.⁸

In an educational context, three types of constitutional law problems have arisen:

(1) Those concerning attempts to prescribe religion as a part of the public school curriculum; (2) Those concerning attempts to obtain public tax funds for the support of parochial schools; and (3) Those concerning a public school curriculum requirement that is alleged to violate a pupil's right to the free exercise of his religion.⁹

While there is considerable similarity among the fifty state systems of schooling, education in the United States has been developed on the general principle of state responsibility and control. The states have plenary power over education and are responsible for establishing free schools, whereby children may receive a

⁷ Reutter, Schools and the Law, p. 16.

⁸ Barera v. Wheeler

⁹ Morris, The Constitution and American Education, p. 375.

good common school education.

About five million students attend private or parochial schools in the United States and approximately ninety-eight percent of these students attend Roman Catholic parochial schools.¹⁰ All of these schools have a right to exist under *Pierce vs. Society of Sisters*, 1925.¹¹ Parents of students attending these schools must financially support them and are seeking relief through a variety of legislative and judicial devices that would channel public tax funds to private and parochial schools thereby relieving tuition payments in full or in part.

Traditionally, parochial schools have been supported by tuition and local church revenues. Society and the courts have interpreted the First Amendment to mean that general education, sponsored by religious groups, is to be denied most forms of tax assistance. Currently, thirty-eight state constitutions explicitly deny public funds for sectarian education while the other twelve do not rule out such assistance.

Financial aid may be classified as direct or indirect, basic or supplementary, personal or institutional. Direct, basic, and institutional support of parochial schools is ruled out for the following reasons:

- (1) most state constitutions currently rule out such aid to parochial schools;

¹⁰Ibid., p. 409.

¹¹Ibid., p. 409.

- (2) the United States Supreme Court has declared such aid as unconstitutional;
- (3) such support, if approved, would result in restrictions that would limit the independence rooted in the nature of parochial schools.

Many states provide indirect and/or supplemental aid to parochial schools. This aid is provided directly to the student in order to avoid the separation of church/state issue. The methods and sources of providing aid have generated some litigation and periferal issues that will be discussed in Chapters III and IV. Several of these methods and sources used by the states include:

- (1) General state funds - services and programs such as transportation, textbook loans, and special subject teachers are provided through the states distributive fund. Approximately thirteen states currently provide this type of aid.
- (2) Federal funds - Massive aid to elementary and secondary schools is provided through NDEA - 1958 and ESEA - 1965. Services and programs such as special subject teachers, textbooks, machines, innovative programs, vocational education, driver education, guidance and counseling, lunch and breakfast are provided.

- (3) Lotteries - Lotteries were established as an additional source of revenue for parochial school programs. Since the first experiment in New Hampshire, 1964, lotteries have been operating in thirteen states and introduced in sixteen others.¹² Only four states earmark funds for education: Connecticut, New Hampshire, New Jersey, and New York. The moral question of legalizing lotteries aside, they do appear to offer some relief to financially pinched state treasuries.
- (4) Vouchers - The voucher system has been experimented with in New Hampshire, New York, and California by the federal government. Parents would be given redeemable vouchers issued by a local "Education Voucher Authority" as payment for a child's education at any school. The parents as consumers would select the best school for their children. In order for this system to be effective, a first-rate system of gathering and disseminating school information would be needed.
- (5) Tax Credits - A plan of allowing parents who send their children to parochial schools to either

¹²Lucille Gigante, "State Lotteries and Educational Finance" Phi Delta Kappan, Vol. 57 No.7 (March, 1976) p.476.

purchase services or products free of taxation or to deduct these payments from federal or state taxes.

- (6) Tuition Grants - The state provides funds for instructional services received at parochial schools. Parents are re-imbursed after the secular services are given.

Attempts to direct tax funds to parochial school students have been generally classified in this study in four areas: Auxillary services, textbook loans, instructional materials and equipment, and innovative and cooperative programs. Certain programs and services to parochial school students have been allowed to stand while others have been struck down by the courts as unconstitutional. The two main issues that have determined whether or not aid is allowed have been (1) the Child Benefit Theory and (2) Excessive Entanglement. These two issues are presented briefly in this section and will be further discussed in Chapters III and IV.

The Child Benefit Theory is based upon the premise that all children have a right to be provided an education that will develop sufficiently the mind and character, thus enabling him to know how to live and participate effectively in American democracy.¹³ This right is guaranteed in the First Amendment and protected under the Fourteenth Amendment.

¹³Morris, The Constitution and American Education p.113.

The Child Benefit Theory further suggests that aid may be provided to the child wherever he may be: public, private, or parochial school. Under this principle, public tax dollars provide programs and services directly to the child.

All forms of aid under the Child Benefit Principle have not been sustained by the courts. Some have been ruled out because of Excessive Entanglement between church and state. The "free exercise" and "establishment" clauses of the First Amendment provide the basis for Excessive Entanglement with matters of church and state. Any aid that would violate the tenets of the First Amendment or impair the free exercise of religious freedom creates entanglements which are protected under the Fourteenth Amendment's due process/equal protection clauses.

Most of the existing cases have been filed under the Fourteenth Amendment, alleging that certain programs and/or services to parochial school students deprive others of their First Amendment rights. Therefore, the Child Benefit Theory vs. Excessive Entanglement must be reviewed again by the court to determine which programs/services can be constitutionally allowed for children who attend parochial schools. Two recent U.S. Supreme Court decisions, Meek vs. Pittenger, and Wolman vs. Walter, bring these issues into sharper focus. While deciding the Meek case, the court referred to the Wolman case still being adjudicated in Federal district court. An apparent inconsistency or conflict is found in the court's rulings relating to auxillary ser-

vices; struck down in Meek and upheld in Wolman. However, a consistent rationale was given as it relates to the primary, secular effect of the program/service.

The criterion for the rulings in both decisions involved a general adherence to the Child Benefit Principle. The Pennsylvania statute did not create a strictly non-religious role in providing the services thus creating excessive entanglement. The Ohio statute specifically spelled out state controls and administration thus achieving the primary, secular effect. Several peripheral issues were raised by judicial opinions in both cases that produced side effects and implications that will be mentioned in Chapter IV and suggested as areas for further study.

States' statutes that provide programs and services to parochial school students have been challenged in the courts by professional and citizen's groups. All four of the major areas of focus in this study have been the subjects of the litigation.

Together, the American Jewish Congress, the Civil Liberties Union, the National Association for the Advancement of Colored People, and the U.S. Catholic Conference have filed more than forty lawsuits challenging the constitutionality of state statutes providing aid to non-public parochial schools.¹⁴

¹⁴Thomas J. Flygare, "State Aid to Parochial Schools: Diminished Alternatives" Phi Delta Kappan, Vol.57 No. 3

The rebuffed parochial schools now can turn for aid to about a dozen programs provided by the sweeping provisions of the 1965 ESEA Act and its subsequent amendments which channel indirect aid through the still standing cases of: *Everson vs. Board of Education*¹⁵ - Transportation to parochial school children, and *Cochran vs. Louisiana State Board of Education*¹⁶ - free textbook loans.

There is no precise estimate of the value of federal, state and local aid programs to parochial schools. However, state aid alone, once limited to a few scattered instances of busing and textbook loans, was more than \$100 million in 1970.¹⁷

At this point in the history of education in the United States, we are still embattled in the fight over "control" of education. The courts have explicitly interpreted the U.S. Constitution (Tenth Amendment) to mean that the state and its people have plenary control and responsibility.

Originally, the founding fathers, "framers of the Constitution", wanted to limit the federal government from unduly controlling or establishing religion through education. They accomplished this goal with the First and Tenth Amendments. They later added the Fourteenth Amendment "due pro-

¹⁵ *Everson v. Board of Education* - 330 U.S. 1, 67 S.C. 504, 91 (1941) N.J.

¹⁶ *Cochran v. Board of Education* - 54 Cal 375 (1880)

¹⁷ Rolf Winter, "The Crumbling Wall", The Wall Street Journal (November 10, 1970) p. 3.

cess" which protects children in a state from being deprived of their right to a good public school education. The issue is how can the states meet their responsibility of providing all public and non-public students in the state with a good education without violating either the First or the Fourteenth Amendments.

Final solutions to the issues, legal and moral, are not available. States are still structuring legislation and new programs designed to meet court tests of constitutionality. As related litigation is adjudicated, the states and educational officers will have a better framework for providing aid to parochial school students and a beginning at solving some of its financial problems.

The child benefit theory has provided a broad foundation rule for spending public dollars on parochial and private school children as long as the court tests (primary secular effect) are met. What is more important than the rule, test, or who wins cases is that these issues do not interfere with the state's responsibility for quality public education for all children. If too much of our energies and time are spent structuring statutes, policies, and programs, and preparing court fights, the serious problems of financing education in the United States will be neglected and both public and non-public education will suffer while bordering on the brink of bankruptcy.

RELATED STUDIES AND INVESTIGATIONS

State Statutes - Policies - Programs

Few formal investigations exist relating directly to parochial school statutes, policies, and programs financed by public dollars. Most information available has been compiled by legal researchers, federal or state commissions, or interest groups (pro and con).

Morris notes that the importance of parochial education is revealed by the fact that forty-eight of the fifty states have constitutional provisions requiring that the state legislature create a system of public education for all children in a state.¹⁸

Kollar in a study on judicial opinions suggests reasons for this emphasis on education.

The dominant purposes of compulsory education are the development of good citizenship and the development of sufficient intellectual skills.... The overall goal seems to be the development of sufficient mind and character that will enable a person to know how to live and participate effectively in American democracy.¹⁹

Former Justice Frankfurter further noted the reasons for understanding how we arrived where we are today:

...into the public school system of today is the story of changing conceptions regarding the American democratic society, of the functions of state-maintained education...and of the role

¹⁸Morris, The Constitution and American Education, p. 113.

¹⁹Blaine J. Kollar, "Judicial Opinions Involving Public Funds or Services for Nonpublic Elementary and Secondary Schools" (unpublished Ed.D. dissertation, Duke University, 1974), p. 130.

therein of the free exercise of religion by the people. The non-sectarian or secular public school was the means of reconciling freedom in general with religious freedom. The sharp confinement of public schools to secular education was a recognition of the need of a democratic society to educate its children in an atmosphere free from pressures...and keep scrupulously free from entanglement in the strife of sects.... This development of the public school as a symbol of secular unity was not a sudden achievement nor attained without violent conflict.²⁰

Religious influences on education is not restricted to parochial education, nor is it of recent origin. Horace Mann was forced to defend himself against the charge of being anti religious when he attempted to restrict religious instruction to Bible reading without interpretation and comment. The issue was not whether religion should be taught in public schools, but which particular sect and to what extent. Actually, the major purpose of education was to teach reading so that the Bible could be read, as witnessed by the "Old Deluder Satan" Act of Massachusetts in 1647.²¹

The Tenth Amendment which establishes power of the states over education also gives them power to police education. Forty-eight state statutes now force parents to send their children to school - public or non-public. A typical example of these laws is found in Washington's statute requirements which provide compulsory school attendance at certain

²⁰ McCullum v. Board of Education - 333 U.S. 203-214, 68 S. Ct. (1948).

²¹ Morris, The Constitution and American Education, p. 123.

ages, a safe place to learn, and place an obligation on parents, or their substitutes, to see to it that children attend school regularly.

All parents, guardians, and other persons in this state having custody of any child eight years of age and under fifteen years of age, or of any child fifteen years of age and under eighteen years of age not regularly and lawfully engaged in some useful and remunerative occupation or attending part-time school in accordance with the provisions of Chapter 28A-28RCW or excused from school attendance thereunder, shall cause such child to attend the public school of the district in which the child resides....Proof of absence from any public or private school shall be prima facie evidence of a violation of this section. Private school for the purposes of this section shall be one approved or accredited under regulations established by the state board of education. RCW 28A.27.010.²²

Less than half of the state constitutions make specific references to services, other than education, that a state may elect to provide. Only one state (New York) has a constitutional provision requiring that the state provide a service other than education: (Welfare).²³

Peterson, Rossmiller, and Volz indicate that the state delegates power to state Boards of Education including legislative, executive, and quasi judicial functions. As the state Board makes policies, the state superintendent

²² Morris, The Constitution and American Education, p. 124.

²³ Ibid., p. 113.

usually functions as the highest administrative officer for the school system in operating the schools and school districts.²⁴ Policies, programs, and services for non-public parochial school children must be consistent with standards set forth by legislative action. Well structured and designed programs delivering services to parochial school students may also qualify for federal revenues.

State statutes and policies generally determine what programs and services can be provided as a minimum to children in a state. The exact statutory pattern of administrative operation varies from state to state. In the absence of clear and precise written regulations, the courts provide interpretive assistance for the development of programs and services for parochial school students. Chief state school officers can use the analyses of court decisions and leading cases to design programs consistent with the statutes for all children in the state.

Since the Meek vs. Pittenger decision in Pennsylvania,²⁵ the constitutionality of many state statutes have been questioned, services and programs have become fewer in number, and only a few major areas of aid alternatives remain.

²⁴LeRoy Peterson, Richard A. Rossmiller, Marlin M. Volz, The Law and Public School Operation (New York: Harper and Row Publishers, 1969) p. 13.

²⁵Vincent D. Sorohan, "Administration of State Aid Programs to Non-Public Schools, Ohio, Pennsylvania, Rhode Island", (unpublished Ed.D. Dissertation, Columbia University, 1972) p. 2051.

Recently, Zirkel organized an eleven member commission on the impact of court decisions on education: a national study designed to investigate the measurable effects of various key court decisions on public education. Then using the compilation as a base, commission members will design a model of a hypothetical school district in compliance with the holdings of the high court. Employing this model, the commission and other researchers can develop research designs to compare court decisions with what actually happens in the field.²⁶

Terrell H. Bell, former Commissioner of Education, has said that "misplaced values and the resultant misspent dollars are a major source of trouble for schools...the sacrifice of a few white wall tires for black walls...could solve our educational, energy, and inflation problems if we had the will".²⁷

Further, the newly created "By-Pass"²⁸ provision of ESEA opens up another alternative for parochial schools in that the state may be by-passed in serving any eligible non-public school district. This suggests that the federal government can provide aid not only under the child benefit

²⁶Perry Zirkel, "Help Needed With Research Study Proposal" Phi Delta Kappan, Vol. 21 No.3 (February, 1977) p.4.

²⁷Terrell H. Bell, AASA Convention Reporter - Arlington, Virginia (1975) p.2.

²⁸U.S.O.E., Council for American Private Education, Handbook for Private School Administrators, Washington, D.C. (1974) p.6.

theory, but also directly to parents as well.

Anker's investigation of urban problems with the superintendency found that "the educational systems in many of America's biggest cities are teetering on the brink of total collapse. Time-honored methods of governance are inadequate, financing a cruel joke...the only solution that makes sense is a national system of financing".²⁹ The question then becomes whether the American system of financing education can continue to meet the needs of the present and future if we are to guarantee equal educational opportunity to all children in a state.

The Schlickman study commission has reasoned that the solutions may rest in three main areas of study:

- (1) The role and needs of non-public school students
- (2) How non-public schools can be appropriately related to public schools without impairment of their freedom
- (3) The constitutional means by which the state can aid non-public elementary and secondary school students to fulfill its task³⁰

²⁹Irving Anker, "The Urban Bankruptcy and the Schools" Phi Delta Kappan, Vol. 58 No.4 (December, 1976) p. 350.

³⁰Eugene Schlickman, The Schlickman Commission appointed by Governor Ogilvie - Illinois (1970).

Gigante's national study of state lotteries found that although this source of revenue is valuable, only four states funds yield money for education and produces only 2% of the state's educational expenditures.³¹

Spillane studied the voucher plan and found weaknesses in the voucher system because of the difficulty in providing a first-rate, fifty state system for gathering and disseminating information about public and non-public schools in each state.³²

Attempts to define church/state relations and to give meaning to financing non-public parochial education are still too few in number to present final solutions or guidelines.³³

Brother Olson's investigation points out that "some neglected areas on parochial education need study:

- Consortia and school merger models
- Innovative methods of financing
- Special education programs in non-public education".³⁴

This study proposes to provide information for state school officers that will assist them in knowing what stat-

³¹Lucille Gigante, "State Lotteries and Educational Finance" Phi Delta Kappan, Vol.57 No.7 (March, 1976)p.476.

³²Robert R. Spillane, "Fostering Consumerism in Education" Phi Delta Kappan, Vol. 50 No. 3 (November, 1973) p. 180.

³³Joseph Sullivan, "Analysis of Public Aid to Non-Public Schools" (unpublished Ph.D. dissertation, Yale University, 1974) p. 3272.

³⁴Brother John D. Olson, CFX, Doctoral Dissertations on Catholic Education - 1968-1975 NCEA, Secondary School Department, Washington, D.C. p.4.

utes, policies, and practices exist among the fifty states so that programs and services may be provided to parochial school students consistent with the law.

CHAPTER III

PRESENTATION OF DATA

Public aid to non-public parochial education is a reality in America. Although many state statutes providing programs and services for parochial schools have been ruled unconstitutional, it is unlikely that all such aid to students will be discontinued.¹ The general research problem involved an analysis of statutes, policies, and programs related to public financing of urban non-public parochial schools. Several specific research purposes assisted in carrying out the general research problem:

1. To identify selected U.S. Supreme Court decisions which have influenced public financing of non-public parochial schools.
2. To determine what state statutes, State Board of Education policies, and programs exist among the fifteen participating states related to public financing of parochial schools in the four focus areas of textbooks, special subject teachers, auxiliary materials, and cooperative/innovative programs.
3. To identify similarities in statutes, policies, and practices among the fifteen selected states with urban parochial school characteristics.
4. To analyze how the fifteen selected states have reacted to selected U.S. Supreme Court decisions.
5. To develop a summary, draw conclusions, and make recommendations related to public financing of non-public parochial schools.

¹ William A. Kramer, "Viewpoint", Public Aid to Church Related Schools, Bulletin 304-2, (April 1970) p.3.

The presentation of data related to specific purposes 1-3 will be accomplished in Chapter 3. Chapter 4 will be concerned with the analysis of selected material, and Chapter 5 will present the summary, conclusions, and recommendations.

Good's Educational Research Method was used to generate data relating to the problem as presented in the narrative analysis style.

In order to provide clarity and understanding in the presentation of data, this chapter is separated into four sections for treatment. First, an introductory section provides information regarding states participating in the study, student enrollments, regional divisions, and criteria for selection. Second, selected decisions of the U.S. Supreme Court related to parochialism are identified in chronological order. Third, a nationwide appraisal of selected state statutes and practices in the four areas of the study is presented. Fourth, data relating to identification of similarities in statutes and practices among the fifteen focus states are presented in terms of: existing programs and services, actual sources and methods of funding, and positions of professional and citizen's groups.

The original design of the study was organized so that state policies could be treated in a separate section. The data generated did not support such an organization

in that:

1. Separate policies relating to parochial school financing were not available in all states.
2. In some states, policy implications were continued within the statutes and financing practices.
3. Other states had no policies due to constitutional prohibitions.

Therefore, implied and practiced state policies are discussed within the statute and practices sections.

The information presented in this chapter has been gathered from surveys of Chief State School Officers, State Departments of Education, Professional and Citizen's groups, lending libraries, and searches of centralized information centers. Data have been selected for use on the basis of whether they contribute to satisfying the purposes of the study, whether the sources are primary, and whether they assist with clarity in presentation. Content within the chapter follow Good's "Educational Research Method" relating to securing data about the existing situation and identifying standards for the next step.²

²Carter V. Good, Introduction to Educational Research, (New York: Appleton-Century-Crofts, Inc., 1959) p. 167.

Sample for the Study

Data from forty-two states are included in the initial portion of this study in an attempt to present an overall picture of the United States with regard to financing non-public parochial education. (Figure 1) Fifteen programs for financing of the forty-two states were selected for further analysis. These states were selected because high concentrations of parochial school students exist, student enrollments in elementary and secondary schools exceeded 50,000, and large urban centers in each region could be represented for analysis purposes. (Table 1)

Further, more litigation and opposition to Parochial laws, as presented in this study, have originated in these fifteen states than in the other non-focus states combined.

The impact of this situation is illustrated in the Mid-East and Great Lakes regions where approximately 1.5 million or 58% of the 2.6 million elementary and secondary parochial school students represented in the focus areas are concentrated. Approximately 3 million students attend parochial schools in these urban centers. (Figure 3) This figure represents 17% of the total school population (public and Private) in the focus states. The 17% figure is somewhat higher than the national selection of parochial schools rate of 14%, possibly due to the enrollment criteria by which focus states were selected.

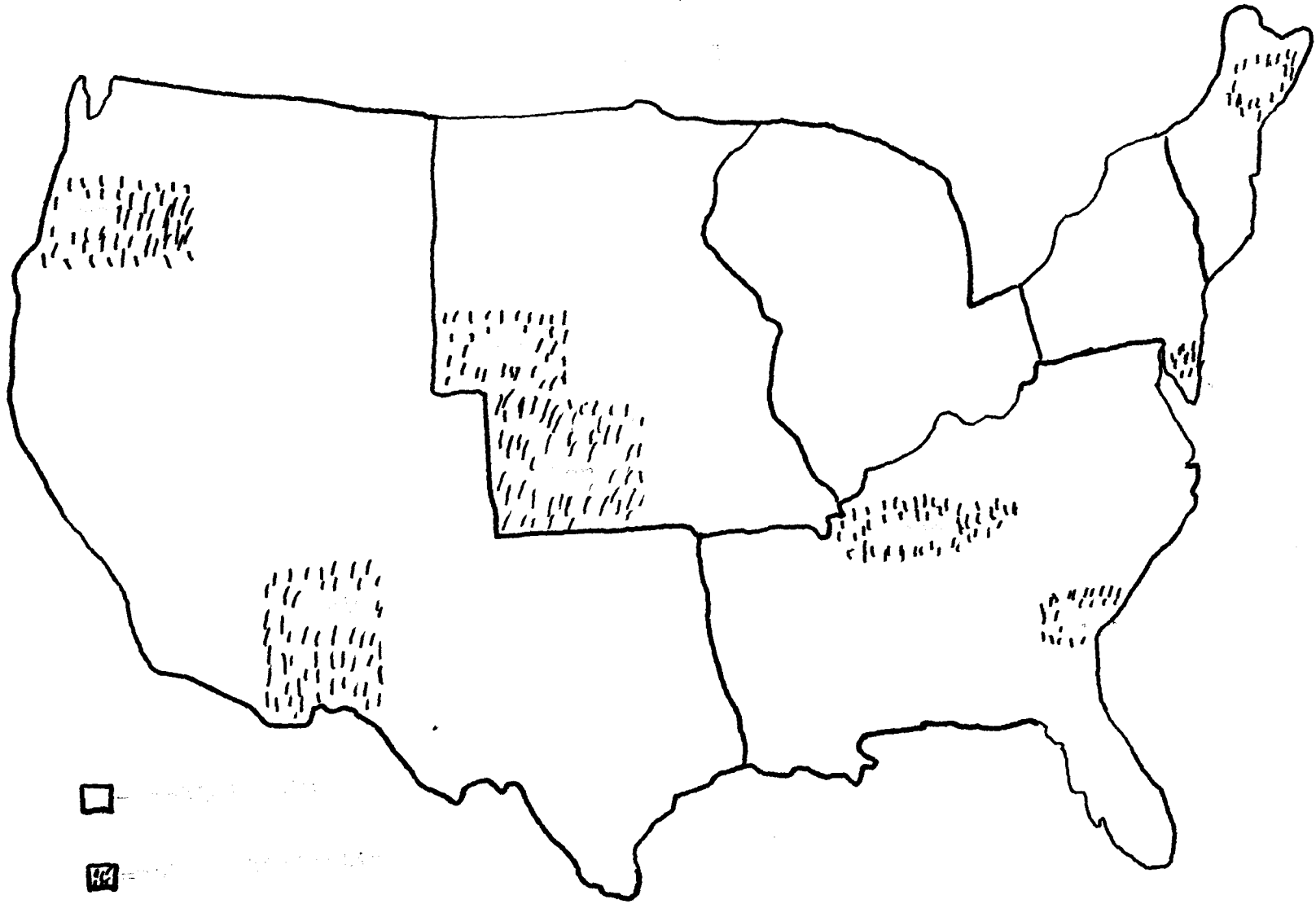


TABLE 1
 STUDENT ENROLLMENTS (1975-76) FOCUS STATES
 PUBLIC AND PAROCHIAL SCHOOL STUDENTS

State	Elementary (K-8)		High School (9-12)		Totals	
	<u>Public</u>	<u>Parochial</u>	<u>Public</u>	<u>Parochial</u>	<u>Public</u>	<u>Parochial</u>
Connecticut	427,392	44,847	189,757	19,157	617,149	64,004
Massachusetts	800,000	-	390,000	-	1,190,000	144,000
New Jersey	1,072,695	156,306	471,935	70,225	1,544,630	226,531
New York*	-	284,000	-	121,000	-	405,000
Pennsylvania	-	265,794	-	96,951	-	362,745
Illinois	1,497,000	236,943	724,000	73,886	2,221,000	310,829
Indiana	605,949	53,289	580,851	41,025	1,186,800	94,314
Michigan	1,377,474	157,705	647,850	53,801	2,025,324	211,506
Ohio	1,146,866	194,054	1,099,997	67,485	2,246,863	261,539

TABLE 1 - continued

State	Elementary (K-8)		High School (9-12)		Totals	
	<u>Public</u>	<u>Parochial</u>	<u>Public</u>	<u>Parochial</u>	<u>Public</u>	<u>Parochial</u>
Missouri	710,000	84,000	333,000	29,700	1,043,000	113,700
Florida	-	133,000	-	67,000	-	200,000
Kentucky	455,000	42,000	195,000	18,000	650,000	60,000
Louisiana*	535,607	103,579	250,829	39,680	786,436	143,259
California	-	236,369	-	79,097	-	331,011
Texas	300,000	40,000	200,000	12,500	500,000	52,500
	8,927,983	2,031,886	5,082,220	949,051	14,010,203	2,980,988

*Approximate figures

The United States Supreme Court and
Aid to Non-Public Parochial Schools

The United States Constitution established a dual court system composed of federal and state courts with the Supreme Court having final review. The system of federal courts involves a three layered arrangement with the bottom tier being occupied by district courts, the second tier by appeals courts, and finally at the top is the U.S. Supreme Court. (Chart 1) Cases may come to the federal courts as a result of questions regarding federal law being involved or on appeal from state courts. The power to decide a case by a federal court must meet two tests: (1) The case must fit the power designated to the federal courts - Article III, Section 2

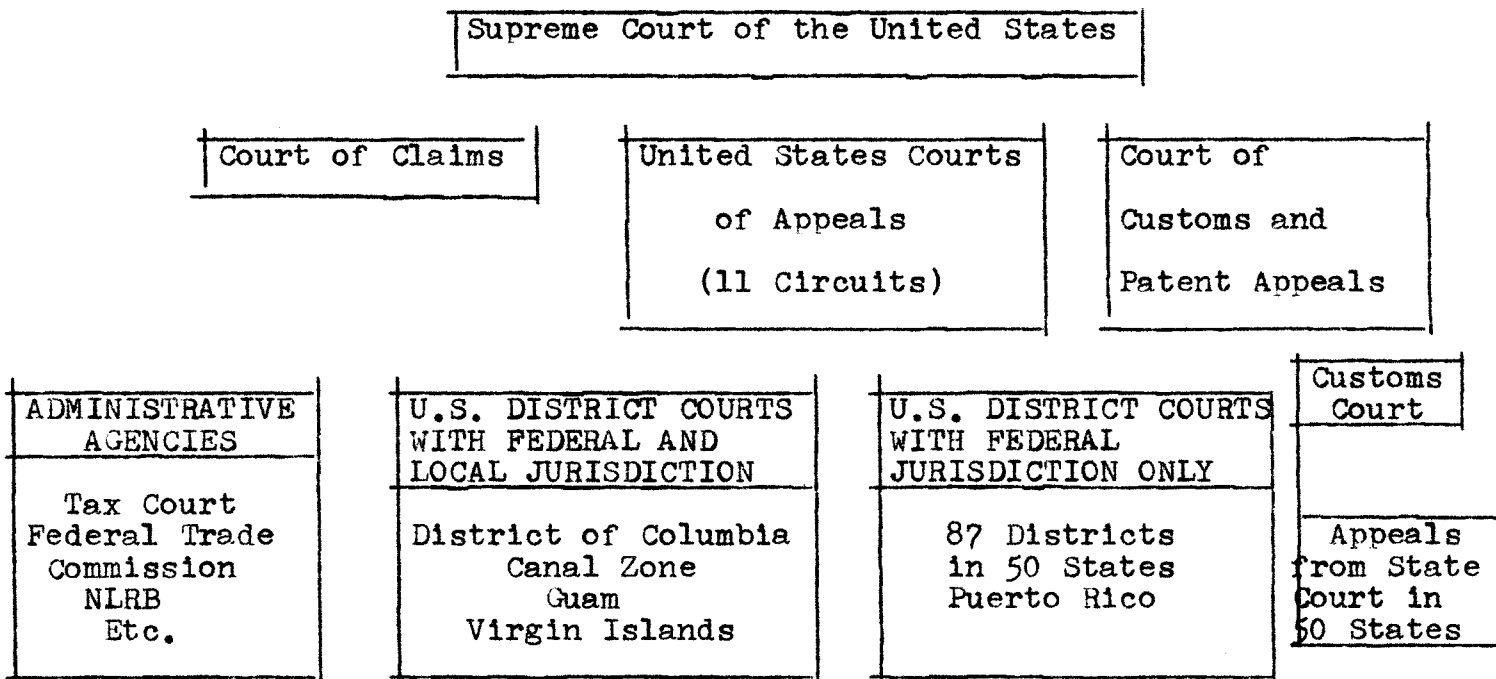
The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting Ambassadors...Ministers... Consuls...Admiralty...State and State...Citizen and State...Citizen and Citizen...and foreign states, citizens or subjects.

and (2) The case must be of a type that Congress has empowered federal courts to adjudicate.³

The U.S. Supreme Court is the final authority on constitutional questions of federal law including the Constitution. Parochial cases brought before the high

³Morris, The Constitution and American Education p. 70

CHART 1



(From "The United States Courts", House Document No. 180, 88th Congress, 1st Session.)

court have included questions related to the constitutionality of state statutes that provide aid to parochial schools. The court has interpreted the Constitution related to these issues more than thirty times in the last three decades. (Illustration 1 Appendix B)

As the number and types of constitutional issues increase, the court's workload of education related cases gets heavier. Decisions of the U.S. Supreme Court during the thirty year period mentioned earlier adhere to the Child Benefit Theory and suggest general direction for future actions which will be further discussed in the next chapter.

Further, four "standard tests" have been developed that, when applied to state statutes, assist in the determination of constitutionality. (Illustration 2 Appendix B) Examples of the tests include:

- the law must have a primary secular purpose
- the law must neither aid or inhibit religion
- the law must involve no excessive governmental entanglement with religion
- the law must be secular, neutral, and non-ideological in effect

These tests provide standards by which the courts can base future decisions regarding the acceptability of specific programs and services to parochial school students and to parochial schools. A recent application

occurred in Ohio where statutes providing materials and equipment were ruled unconstitutional because the law did not establish the "non-ideological effect", or meet the "no religious entanglement" requirement.⁴ The "standard tests of constitutionality" were applied to state statutes as questions arose. Additional tests were applied depending upon the nature of the programs or services at issue.

Thirty-two cases decided by the U.S. Supreme Court have been identified as relating to this study. (Table 2 Appendix B) Seventeen of the states where the litigation originated are participating in this study. More than half of the U.S. Supreme Court cases identified for the study occurred in the Mid-East and Great Lake Regions.

New York - 5 cases

Pennsylvania - 7 cases

New Jersey - 3 cases

Illinois - 2 cases

The survey of Chief State School Officers showed that thirty-nine percent of programs and services have been discontinued in their states as a reaction to Supreme Court decisions. Examples of such programs and services include:

⁴Wolman v. Walter, 417 F. Supp. 1113, Ohio 1976
45 U.S.L.W. 4861.

textbooks, teacher services, salary supplements, transportation, auxiliary services, materials and equipment, tax credits, shared-time, vouchers, and enforced accreditation.

Legislators and Chief State School Officers then return to the drawing board to draft new legislation and policies for programs and services that are constitutional while at the same time comparable in quality, scope, and opportunity for parochial school students. The results and some examples of their efforts will be discussed in the next section, and later in Chapter IV - Trends in Legislation.

The National Study: Statutes,

Practices, and Supporting Research

Data presented in this section involved all of the participating states (42), including those selected for focus. For organization purposes, the material is separated into two topic areas:

- Research data from Chief State School Officers and State Departments of Education
- Supporting research data from the literature received

Statutes and Practices

Specific data related to the focus states are presented in the next section of this chapter. The data gathered from forty two states assisted in finding out

what statutes and practices exist relating to public financing of parochial school programs and services. Thirty-six of the states were found to have such statutes that either provide aid to parochial school students directly, or that allow state agencies to include them in state programs. An examination of statutes nationally was conducted noting three factors: wording, content, effect.

The wording and phrasing used within the text of statutes were found to range from ambiguous and vague to very specific.

Ambiguous example:

...eligible part time public school students who qualify as residents....shall be entitled to attend schools of the district....to take any courses.... and receive auxiliary services which are made available to full time students.

Specific example:

The voters and/or trustees or board of education of a school district shall provide resident children who attend schools other than public with any or all health and welfare services and facilities, including but not limited to....in/so/far as these services and facilities may be requested by the authorities of schools other than public.

The more specific and accurate statutes assist educators in achieving the desired effect in drafting program and service content. The content of accurate statutes generally included a statement of law, authority, eligibility, and appropriation. Some states have included documentation for statutes in the form of case law and court precedent. An example of such wording includes:

The Office of Education shall provide the following free of charge to any student in this State who is enrolled in grades kindergarten through 12 at a public school or at a school other than a public school which is in compliance with the compulsory attendance laws of this State and Title VI of the Civil Rights Act of 1964 the loan of secular textbooks listed for use by the Office of Education. The foregoing service shall be provided directly to the students at their request or at the request of their parents or guardians. The Office of Education shall adopt appropriate regulations to administer this Section and to facilitate the equitable participation of all students eligible for benefits hereunder.

The secretary shall not be required to purchase or otherwise acquire textbooks, pursuant to this section, the total cost of which, in any school year, shall exceed an amount equal to twelve dollars for the school year 1973-1974 and fifteen dollars for the school year beginning July 1, 1974 and thereafter twenty dollars for the school year beginning July 1, 1975 and thereafter multiplied by the number of children residing in the State who on the first day of October of such school year are enrolled in grades kindergarten through twelve of a nonpublic school within the State in which the requirements of the compulsory attendance provisions of this act may be met.

The effect of statutes was found to be either inclusive or exclusive. The wording and content as interpre-

ted by the states has produced the inclusive effect in thirty-six of the forty-two states participating in the study. Six states had constitutional provisions that rule out all parochial: North Dakota, Arkansas, Montana, Utah, Nevada, and Colorado. The most unusual method of exclusion was found in Colorado, a "non-regulatory state". Under this type of provision, the state does not regulate public school districts, nor charter non-public schools. The only state provisions include certification of teachers and a few Title IV B programs and services.

State statutes that include parochial schools students may be allowed to stand adhering to the "Child Benefit Principle" or ruled out because of "Excessive Entanglements". The courts' interpretation of these two issues mentioned earlier has served as foundation bases for determining whether or not parochial statutes are allowed to stand.

Application of the constitutional tests in such a way as to prohibit all religious mention may be to indicate hostility toward religion and the church. "The history of man is inseparable from religion."⁵ The founding fathers did not intend hostility toward religion, but

⁵Arval A. Morris, The Constitution and American Education (St. Paul, Minn: West Publishing Co. 1974), p. 377.

rather controls that restrict governmental interference with religious freedom. Federal and state constitutions embody the concept of vigilance best illustrated in the words of James Madison:

It is proper to take alarm at the first experiment on our liberties.... Who does not see that the same authority which can establish Christianity, in exclusion of all other religions, may establish with the same ease any particular sect of Christians in exclusion of all other sects? That same authority which can force a citizen to contribute three pence of his property for the support of any one establishment, may force him to conform to any other establishment in all cases whatsoever.⁶

This concept of vigilance as it related to state parochial statutes is kept alive by citizens groups and the courts through repeated litigation and decision. The states' legislators and Chief State School Officers make efforts to adhere to federal and state constitutions while at the same time attempting to provide comparable educational programs and services to all children. Those legislators who are cautious consult with educators prior to drafting legislation in order to allow aid that will meet constitutional requirements, and not destroy the balance of full funding of public schools. Until the above requirements are met, the legislators must reject methods of aid that cannot withstand the tests of law.

⁶Ibid. p. 377.

This cooperative relationship between legislators and educators has produced statutes that not only include the rules of law, but also statements relating to educational policy of the state. Therefore, within the text of many state statutes or immediately following the statement of law, policy statements for Boards of Education and their administrative agencies can be found. (Illustration p. 52)

Although the range of alternatives have been diminished, substantial numbers of programs and services for parochial school students still exist among the states. Thirty-six of the forty-two participating states allowed for such opportunities for non-public parochial school children. The number of states providing aid in each of the four categories include:

textbooks.....	18 states
teacher services.....	4 states
auxiliary materials.....	30 states
cooperative/innovative programs.....	33 states

Programs and services provided for elementary school students are also provided for high school (secondary) students. (Illustration 1 Appendix B) The only differences that were found to exist occurred in the specialized curricular areas offered at the secondary level only; i.e.:

vocational and technical education, career education, sex education, driver education, etc. The practices of providing state financing for parochial school students may be influenced by several factors including: enrollments, litigation, constitutional provisions, appropriations, and pressure groups. The nature, intensity, and effect of such influences vary state to state and by regions. These influences and their effect will be discussed later in Chapters 3 and 4. The survey of programs and services in the nation suggest four major categories for presentation and discussion: textbook, teacher services, auxiliary services and materials, and cooperative/innovative programs.

Textbooks furnished by the states have been referred to by the statutes in two manners: first, free textbooks were those which are purchased by the state for parochial school students at parental request with specified maximum costs. Second, textbooks on loan were borrowed by parochial school students, but remain the property of the state. The term textbooks as mentioned in the statutes includes materials as: basal textbooks, supplementary texts, workbooks, and dictionaries for regular classroom use.

The practice of furnishing textbooks occurred more frequently among larger urban centers where a high concentration of parochial students were located. California, Chicago, New York, and Pennsylvania represented four such

urban centers where student parochial school enrollments exceeded 150,000. The survey of Chief State School Officers indicated providing textbooks was practiced less in the Plains and Far West regions. Except where other legal factors intervene, as in the Mississippi case where desegregation was involved, the prevailing opinion of the court was to allow secular textbooks to be furnished for parochial school students.

Teacher services encompasses two general categories as mentioned by the states; special subject teachers, and teachers on loan to parochial schools. The practice of paying the salaries of parochial school personnel for instructional services provided elementary and secondary school students has not been successful as a method of providing Parochiade.⁷ Since *Lemon v. Kurtzman*, this type of assistance to parochial schools has been denied in Illinois, Pennsylvania, and Rhode Island.

Auxiliary services and materials as provided by the states' statutes included a diversity of programs and services. Since a clear distinction between auxiliary services and instructional materials was not available from the data, the terms are used interchangeably and combined

⁷Lemon v. Kurtzman, 91 S. Ct. 2105 (1971)

for presentation in this section. Auxiliary services as mentioned by the states included: psychological, health, guidance, counseling, testing, speech, hearing, and exceptional children's services, transportation, breakfast, lunch, and milk programs. Instructional materials included tapes, slides, film, projectors, maps, phonographs, transparencies, library materials, pamphlets, periodicals, and school supplies. (Table 3 p.81-82)

Cooperative and innovative programs have not been as controversial as other areas previously discussed. These types of programs were found in sixty-eight percent of the participating states, and were generally funded and implemented by local public and parochial schools. They have been categorized for presentation purposes to include dual enrollment, released-time, ecumenical schools, four and a half days a week schools, the physically handicapped, vocational and technical related education, bilingual education, inservice training, and ethnic education. (Table 3)

These cooperative kinds of programs represented an effort by public and parochial school systems to explore, establish, and implement services to all students in a specified or target population area. Although these programs sometimes presented a unique approach to education

and learning, they revealed a commonly shared situation: the search for financial stability and alternative approaches for funding.⁸ Fifty-eight percent of the focus states provided these programs utilizing state and local sources of funding, while ninety-three percent provided them through state and federal participation sources.

Some states' statutes are explicit and stringent in their prohibition of aid to church related schools. Yet, decisions of the U.S. Supreme Court, carefully worded legislation, and practices seem to have opened the way for constitutional aid. As a result, patterns of financing parochial school programs and services appear to be emerging. Several of these patterns and practices will be discussed in the next section.

Supporting Research Data from the Literature

Information selected for this section presents supporting research data collected from the literature for the study relating to federal and state patterns of financing parochial school programs and services.

Federal Financing of Non-Public Parochial Schools:

Since *Meek v. Pittenger*, 1975, efforts to obtain public aid for parochial schools have increased. The

⁸ Council for American Private Education, Handbook for Private School Administrators, U.S. Government Printing Office, Washington, D.C., 1974 p. 10.

search for additional sources and better methods has also continued. Nationally, the funding sources for programs and services of parochial schools generate from two sources: public or private. The public sources of finding - federal, state, and local were examined in this study.

Federal funding is available to all states under the Education Amendments of 1974 which provide several types of aid: categorical aid, formula grants, and contracts.⁹

Categorical aid funds are those which are applied to a target area designated by Congress to serve ethnic minorities and other groups. The largest number of U.S. Office of Education programs funds are distributed by formula grants, project grants, or contracts. Consolidated programs for state management are combinations of existing programs, -ESEA Title programs and NDEA - into Title IV B and C, funded through the state in order to allow more local decision-making in the spending of funds. These formula grants are based mainly upon student population. Consolidated programs for USOE management under the Special Projects Act of 1974, combine most of the discretionary funds of the U.S. Commissioners Office for competitive project grants and contracts. After Congress sets priorities for spending, the commissioner disperses these funds

⁹Lucille Gigante, "State Lotteries and Educational Finance". Phi Delta Kappan Vol. 57 No. 7 (March 1976) p. 476.

in areas designated by the Congress, or in those areas of his choosing.

In addition to the previously discussed federal forms of aid to parochial schools and students, the states have used a number of financing approaches.

State Financing Approaches for Parochial Schools

Throughout the country, there were several emerging patterns and practices through which state and local governments provided financing for parochial programs and services. They included: tax exemptions, credits (property, sales, exise), municipal services, and deductible contributions. The survey of Chief State School Officers showed that in the four areas of aid selected for the study, more reliance was placed on federal sources of funds than state and local sources combined. (Illustration 1 Appendix B)

State lotteries represented another attempt at seeking new sources of revenue for parochial education. Since the first state lottery was experimented with in 1964 in New Hampshire, this idea has been increasing in popularity. Although thirteen states had lotteries at the time of this national survey, bills which would set them up were introduced in sixteen others.¹⁰ These funds were earmarked

¹⁰Ibid. p. 478.

for education in four states: Connecticut, New Jersey, New York, and New Hampshire. While lotteries generally yield a very small portion of state education expenditures, (one-two percent in these states), New Hampshire's lottery produced approximately 16% of all state school expenditures. Several regional characteristics appear regarding state lotteries as a source of revenue:

- Approximately 85% of the states in the New England, Mid-East, and Great Lakes regions have established state lotteries.
- Approximately 81% of states with bills pending in the legislature were located in the Plains, Southern, and Far West regions.
- The greatest percentage of established state lotteries, 87%, occurred in the New England region where the first experiment was conducted.¹¹

The total amount of additional revenue made available through lotteries was somewhat less than hoped, however some financial relief for the draining states' treasuries was generated.

As the search continued for additional sources of funds, Chief State School Officers attempted to maintain current levels of expenditures for elementary and second-

¹¹Ibid. p. 476.

ary school students. Reliance on public funding of parochial school programs and services at the state level appears to be decreasing. As mentioned earlier in this chapter court challenges and public opposition to Parochiade has limited the states' ability to expend public funds for the education of parochial school students. The states rely more on federal sources of revenue for parochial school student programs. Fewer instances of litigation exist regarding federal aid sources due to the fact that the Congress structures its legislation after careful observation of state actions.¹²

The constitutionality of Parochiade statutes for programs and services represents only the first step for the legislatures of the federal and state governments. It is important that appropriate delivery mechanisms be established in order to implement statutes. This area represents an opportunity for educators and legislators to work together in establishing the law and formulating educational policy. The processes used by the states in delivering Parochiade do not differ greatly, however some differences are found in their methods. (Table 5) These methods used by focus states include:

-Direct payments to the public school district where

¹²Council for American Private Education Handbook for Private School Administrators, p. 3.

funds are given directly to the public school district by the state. Parochial schools and Dioceses may apply for a certain percentage of these funds at levels determined in the statute.

- Direct payments to parents involves a re-imbusement to parents by the state or district for educational expenditures authorized and eligible as indicated by the state statute.
- Credits to parents encompasses the provision for income tax credits to families in the amount of their educational expenditures at parochial schools.
- And vouchers where parents of all children are given vouchers (redeemable on state and federal treasuries) assignable to any school of their choice: public, private, religious, profit-making, etc.

Although methods of delivering funds to parochial school students are outlined by a statute, the state is not mandated to provide programs and/or services, particularly when funds are not made available through legislative appropriations.

On a national scale, approximately 68% of the participating states provide programs and services at public expense in the four areas of study. Many states statutes allowing aid have been vague and/or ambiguous, thus relying on the courts for interpretation and meaning. Such liti-

gation has occurred in the form of challenges to state statutes providing aid. Three successful federal methods of financing parochial school programs have included: categorical aid, flat grants, and contracts. As these federal and state patterns of financing emerge, educators and legislators will have more data available in order to design and implement constitutional legislation/ programs for parochial schools and students.

Specific statutes, challenges, and funding methods used by the focus states will be presented in the next section.

THE FOCUS STATES: SELECTED STATE
STATUTES AND SUPPORTING LITERATURE

The fifteen focus states selected for the study represent all six of the geographic regions of the United States and approximately 2.6 million elementary and secondary parochial school students. This section presents data related to state statutes and practices in the four major areas of the study. It further presents data regarding sources and methods of financing parochial school programs and services and the reactions of professional and citizens' groups.

Statutes in the Focus States

The survey of Chief State School Officers showed that forty-seven percent of the focus states have similar statutes providing textbooks that have been ruled constitutional and currently (1975-1976) data still stand, or they have not been challenged.

Textbooks

This section contains examples of exact statutes relating to textbooks, teacher services, auxiliary services/materials, and cooperative/innovative programs for parochial school students.

Quotations from seven states statutes are presented in the following order:

Textbooks - Illinois and Pennsylvania

Teacher Services - Michigan

Auxiliary Services/Materials - Michigan and New York

Cooperative/Innovative Programs - California and

Washington

Illinois

Sec. 10-17. The Illinois Office of Education shall provide the following free of charge to any student in this State who is enrolled in grades kindergarten through 12 at a public school or at a school other than a public school which is in compliance with the compulsory attendance laws of this State and Title VI of the Civil Rights Act of 1964 the loan of secular textbooks listed for use by the Office of Education. The foregoing service shall be provided directly to the students at their request or at the request of their parents or guardians. The Office of Education shall adopt appropriate regulations to administer this Section and to facilitate the equitable participation of all students eligible for benefits hereunder.

Pennsylvania

Section 923-A. Loan of Textbooks, Instructional Materials and Equipment. Nonpublic school children. Purchase of books. The secretary shall not be required to purchase or otherwise acquire textbooks, pursuant to this section, the total cost of which, in any school year, shall exceed an amount equal to twelve dollars for the school year 1973-1974 and fifteen dollars for the school year beginning July 1, 1974 and thereafter twenty dollars for the school year beginning July 1, 1975 and thereafter multiplied by the number of children residing in the Commonwealth who on the first day of October of such school year are enrolled in grades kindergarten through twelve of a nonpublic school within the Commonwealth in which the requirements of the compulsory attendance provisions of this act may be met.

The situation is somewhat different in the area of "Teacher services". Specific statutes relating to this

area do not presently appear in the school codes and statutes. Two Supreme Court decisions appear to have had national bearing on this situation: The Pennsylvania Purchase of Services decision, and the Rhode Island Salary Supplement decision in 1971 were both held unconstitutional.¹³ Generally, personnel services to parochial schools have been limited to administrative and supervisory functions needed to maintain minimum standards and guidelines imposed by the states for programs and services provided and for accreditation of parochial schools. Since it is difficult to provide teacher services constitutionally, many instructional services are provided to parochial school students directly through auxiliary service programs as illustrated by the Michigan and New York statutes.

Teacher Services

A quotation from the Michigan State Statute is presented in this section. No other states were found to have statutes relating to teacher services currently in force (1975-1976) data.

Michigan

Act 302, 1921. Section 388.551 Private, denominational and parochial schools: supervision; assistants; intent of act. Sec. 388.511. Sec. 1. The superintendent of public instruction is hereby given supervision of all the private, denominational, and parochial schools of this state in such matters and

¹³Lemon v. Kurtzman, 91 S. Ct. 2105 (1971).

manner as is hereinafter provided. He shall employ such assistants and employees as may be necessary to comply with the provisions hereof and fix the compensation thereof: the number of assistants and assistants and employees and the compensation payable thereto being subject to the approval of the State Administrative Board. Such salaries and expenses shall be paid by the treasurer of the state of Michigan upon the warrant of the auditor general from the fund as herein designated, at such time and in such manner as other state officers and employees are paid. The superintendent of public instruction shall have the authority to remove any appointee under this act at any time that he may deem such removal advisable. It is the intent of this act that the sanitary conditions of such schools, the courses of study therein, and the qualifications of the teachers thereof shall be of the same standard as provided by the general school laws of the state.

Those statutes that provide auxiliary services and instructional materials are similarly explicit and provide such programs and services as: psychologists, speech therapists, social workers, health services, transportation, testing services, maps, charts, teaching machines, film, etc.

Auxiliary Services and Instructional Materials

Statute quotations from the states of Michigan and New York are presented in this section.

Michigan

Act 269 Section 340.622 Auxiliary services for school children; state funds, use; rules, regulations. Sec. 622. Whenever the Board of Education of a school district provides any of the auxiliary services specified in this section to any of its resident children in attendance in the elementary and high school grades, it shall provide the same auxiliary services on an equal basis to school children in attendance in the elementary and high school grades at nonpublic schools. The Board of Education may use state school aid funds

of the district to pay for such auxiliary services. Such auxiliary services shall include health and nursing services and examinations; street crossing guards services; national defense education act testing services; speech correction services; visiting teacher services for delinquent and disturbed children; school diagnostician services for all mentally handicapped children; teacher counsellor services for physically handicapped children; teacher consultant services for mentally handicapped or emotionally disturbed children; remedial reading; and such other services as may be determined by the legislature.

New York

912. Health and welfare services to all children. The voters and/or the trustees or Board of Education of a school district, shall provide resident children who attend schools other than public with all or any of the health and welfare services and facilities including but not limited to health, surgical, medical, dental, and therapeutic care and treatment, and corrective aids and appliances, authorized by law and now granted or hereafter made available by such voters and/or trustees or Board of Education for or to children in the public schools in so far as these services and facilities may be requested by the authorities of schools other than public. Such services may include, but are not limited to all services performed by a physician, dentist, dental hygeinist, nurse, school psychologist, school social worker or school speech correctionist, and may also include dental prophylaxis, vision and hearing tests, the taking of medical histories and the administration of health screening tests, the maintenance of cumulative health records and the administration of emergency care programs for ill or injured pupils.

In order to allow parochial school students maximum opportunity for participation in state and federally funded programs, welfare clauses are included to assist the flow of funds through public school districts. This area is referred to as cooperative and innovative programs. The California and Washington state statutes represent examples of how these provisions allow for parochial school students

to receive services at public expense. These programs include: dual enrollment, vocational and technical classes, books, materials, released-time, consumer education, career education, and other similar programs. Approximately 66% of the focus states have statutes providing these services and programs to parochial school students.

Cooperative and Innovative Programs

The California and Washington state statutes are used as examples of the focus states statutes.

California

Code 5665: Code 9221-25 Private school pupils may be permitted to enroll in public high schools, space permitting, in vocational and shop classes, and in classes relating to the Natural and Physical sciences ...private school pupils may borrow, free of charge, instructional materials...for use by pupils entitled to attend the public school of the district.

Washington

Code 28A - 141 An eligible part-time public school student who qualifies as a resident....shall be entitled to attend schools of the district....to take any courses....and receive auxiliary services which are made available to full time students.

The data summarized in Table 3 illustrates existing programs/services provided by state statutes among the focus states.

State statutes serve to establish the rule of law regarding educational policies and practices for non-public parochial schools. All of the statutes of focus states similarly allow financial help for parochial school stu-

TABLE 3

EXISTING PROGRAMS/SERVICES PROVIDED TO NON-PUBLIC
PAROCHIAL SCHOOL STUDENTS BY FOCUS STATES

STATE	Text books			T S	Auxiliary Services and Materials							Coop. and Innovative Programs		
	Programs/ Services	Free Textbooks	Textbooks on Loan		Special Subject Teachers	Health & Psycho- logical Services	Guidance and Counseling	Breakfast	Lunch	Transportation	Instructional Materials	Handicapped	Released-Time	Vocational & Technical
Connecticut	-	-	-	-	ES	ES	ES	ESES	ES	-	-	-	-	ES
Massachusetts	-	-	ES	-	-	-	-	-	ES	-	-	-	-	ES
New Jersey	-	ES	ES	-	-	-	-	ESES	-	-	-	-	-	ES
New York	ES	ES	-	-	ES	ES	ES	ESES	ES	ES	-	ES	ES	ES
Pennsylvania	-	-	ES	-	ES	ES	ES	ESES	ES	ES	-	ES	ES	ES
Illinois	-	ES	ES	-	ES	ES	ES	ESES	ES	ES	-	-	ES	ES
Indiana	-	-	-	-	ES	ES	-	-	ES	ES	-	ES	ES	ES
Michigan	-	-	-	ES	ES	-	ES	ESES	-	ES	-	ES	ES	ES

TABLE 3

EXISTING PROGRAMS/SERVICES PROVIDED TO NON-PUBLIC
PAROCHIAL SCHOOL STUDENTS BY FOCUS STATES

STATE	Text books			Auxiliary Services and Materials								Coop. and Innovative Programs		
	Programs/ Services	Free Textbooks	Textbooks on Loan	Special Subject Teachers	Health & Psycho- logical Services	Guidance and Counseling	Breakfast	Lunch	Transportation	Instructional Materials	Handicapped	Released-Time	Vocational & Technical	Other Federal
Ohio	-	ES	ES	-	ES	ES	ES	ES	ES	ES	ES	-	ES	ES
Missouri	-	-	-	-	-	-	-	ES	-	-	ES	-	ES	ES
Florida	-	-	-	ES	ES	ES	-	ES	ES	ES	ES	ES	ES	ES
Kentucky	-	-	-	-	-	-	-	-	-	-	-	-	S	ES
Louisiana	-	-	-	-	-	ES	ES	ES	ES	-	ES	-	es	ES
California	-	ES	ES	ES	ES	ES	ES	ES	ES	ES	ES	ES	ES	ES
Texas	-	-	-	-	-	-	ES	ES	-	-	-	-	-	ES

*Code: E=Elementary S=Secondary ES=Elementary and Secondary

dents, however, none mandate such assistance. Where participation in textbook programs, teacher services, auxiliary services, cooperative/innovative programs are requested, aide may be provided.

Supporting Research Data From the Literature

Textbooks

Public reaction and litigation to Parochial statutes have resulted in structurally well designed and worded legislation in terms of content and context. The Illinois and Pennsylvania textbook statutes are examples where the content and context for providing textbooks are very precise and specific. Elements incorporated include: the rule of law, intent, name of program/service, eligibility, authorization for funding, the responsible administrative agency, legal references, program costs, grade levels eligible, expenditure dates, source of funds, and method of appropriation.

Twenty percent of the focus states furnished free textbooks while forty percent provided textbooks on loan. The states that furnished texts to students in parochial schools are located geographically in areas where large pockets of them are found and where the demands for financial assistance have been the greatest. Elementary and secondary enrollments in each of these focus states exceeded 200,000 except Massachusetts with 140,000 students enrolled in the state's parochial institutions. Other

states have elected not to furnish textbooks to these students either because their state constitutions prohibit such practices, parents have not requested them, or there are few numbers of students enrolled in parochial schools within the state. Although forty-seven percent of the participating states had statutes allowing public funds for textbooks, only forty-two percent of them actually do so.

Several leading cases challenging the constitutionality of statutes that provide textbooks to parochial school students have been upheld by the Supreme Court: Board of Education v. Allen - 1968, Meek v. Pittenger - 1975, and Wolman v. Walter - 1977.¹⁴ The practice of furnishing free textbooks has been ruled unconstitutional on occasions as a result of conflicts found with state constitutions in two states: Mississippi, Norwood v. Harrison - 1973 and New Jersey, Marburger v. New Jersey - 1974.¹⁵

Teacher Services

Currently three of the focus states have statutes on record referring vaguely to teacher services on a very limited scale. This situation exists due to several possible causes: first, where certain nuns and brothers

¹⁴Board of Education v. Allen, 392 U.S. 236 88 S. Ct. 1923, (1968)
 Meek v. Pittenger, 95 1753 (1975)
 Wolman v. Walter, 417 F. Supp., 1113 (N.D.) Ohio
 (1977) - 45 U.S.L.W. 4861

¹⁵Norwood v. Harrison, 413 U.S. 455 93 S. Ct. 2804, 37
 (1973)
 Marburger v. New Jersey, 415 U.S. 503 96 S. Ct.
 2910, (1974)

taught sectarian religion in public schools during school hours, they were permanently enjoined from teaching in public schools;¹⁶ second, the employment of sectarian teachers wearing religious garb while teaching has been generally held not to constitute sectarian instruction while in public schools;¹⁷ and third, instructional personnel who were paid by public funds for teaching secular subjects in parochial schools produced "excessive entanglements" with religion not allowed by the separation of church and state concept provided for in the First Amendment to the U.S. Constitution.¹⁸ Rhode Island's teachers salary supplement and Pennsylvania's purchase of services agreements were ruled out in 1971 as benefit was flowing to religious teachers under parochial school control thereby rebuffing the states' attempt to provide secular teacher services.¹⁹

The finality of the courts ruling has contributed to states reactions in not providing teacher salaries for parochial school personnel. Instead, the pattern found to

¹⁶Zellers v. Huff - 236 p. 2d 949 N.M. (1951).

¹⁷Wooley v. Spaulding - 393 U.S. 503, 89 S.Ct. Ky. (1956).

¹⁸Lemon v. Kurtzman, 91 S. Ct. 2105 (1971) Penn.

¹⁹Ibid. Lemon v. Kurtzman

exist in some states is to allow specialized and secular teacher services for parochial school students in the areas of Auxiliary Services and Cooperative/Innovative programs.

Auxiliary Services and Materials

Sixty percent of the focus states provided auxiliary services and instructional materials to parochial school students. Among these states, 93% offered a diversity of services and programs on both the elementary and the secondary levels. The most frequently funded areas included: transportation, guidance and counseling, health and psychological services, reading services, and instructional materials as library resources, standardized tests, periodicals and school supplies. These states also take advantage of federal funding for auxiliary support programs such as breakfast, lunch, milk, handicapped children services, transportation, and education of the minority and the disadvantaged.

Most recently, the Supreme Court struck down state statutes providing auxiliary services and direct loan of instructional equipment to parochial schools in two states; Pennsylvania²⁰ and Ohio.²¹ Even though the teachers providing services were public employees and not under religious

²⁰Wolman v. Walter, 417 F. Supp. 1113 Ohio (1976)

²¹Meek v. Pittenger, 95 S. Ct. 1753 Penn. (1975)

discipline and control as in *Lemon*, the Court indicated that "the tenets of the establishment clause were violated and created excessive entanglements between church and state".²² Referring to instructional materials in the Pennsylvania and Ohio cases, the Court held that the direct loan of instructional equipment as charts, maps, laboratory apparatus, etc. appear non-sectarian, however "its functions become subsumed in the religious mission of the schools".²³ Certain services and materials were not ruled out in either of these decisions, and remain available for parochial school students. Specifically deemed constitutional were bus transportation, speech and hearing services, psychological services, testing and scoring, library materials, periodicals and school supplies. Although the Court saw possible entanglements in Ohio's therapeutic services, guidance and counseling and referrals for remedial services, they were allowed to stand because the state law required that only state or local employees may offer these services in public schools or away from non-public school premises.²⁴

²²*Lemon v. Kurtzman*, 91 S. Ct. 2105 Penn. (1971)

²³*Meek v. Pittenger*, 95 S. Ct. 1753 Penn. (1975)

²⁴*Wolman v. Walter*, 45 U.S.L.W. 4861 (1977)

The Court has more clearly outlined guidelines for determining which programs and services may be provided to parochial school students in its decisions.²⁵ Forty-seven percent of the focus states provided most parochial school aid in the area of auxiliary services. In a few of these states, New York, Pennsylvania, California, Illinois, and Ohio, there was the possibility that millions of dollars in Parochiade would not be spent on auxiliary services and materials as had been previously assumed constitutional and acceptable. The likelihood of continued parochial school closings, mergers, and consolidations appears imminent unless new aid programs are created, more stable parochial school financing models are developed, and/or financial assistance and tuition relief is found for non-public parochial school parents.

Cooperative and Innovative Programs

Some of the most promising alternative education programs in this area have been challenged in the courts and upheld. The released-time program for religious instruction was upheld by the Court suggesting that as long as the instruction occurred off public school property, the practice can continue, thus clarifying an earlier decision

²⁵Meek v. Pittenger, 95 S. Ct. 1753 Penn. (1975)

McCullum v. Board of Education.²⁶ Forty percent of the focus states' statutes allowed for released-time programs. Since public school pupils may be released for religious instruction at parochial schools, the question becomes, may parochial school pupils be allowed to enroll and attend special classes at public schools? Shared-time or dual enrollment has also been upheld as long as the practice is "desirable and approved by the Board of Education for part-time attendance at public schools."²⁷ Dual enrollment programs were usually found in secondary schools where specialized courses were offered. They included such programs as: vocational and technical education, driver education, drug education, consumer education, occupational education, career education and others. Federal support programs and services, as the ESEA Titles to students in parochial schools were upheld by the Court in 1974.²⁸ Services to these students were allowed because as the Court said, "they need not be identical, but comparable in quality, scope, and opportunity".²⁹

²⁶Zorach v. Clauston, 383 U.S. 306, 72 S. Ct. 679 96 (1952)

McCullum v. Board of Education, 333, U.S. 203-214 (1948)

²⁷Morton v. Board of Education, 216, N.E. 2d 305 Ill. (1966)

²⁸Wheeler v. Barrera

²⁹Council for American Private Education, Handbook for Private School Administrators. p. 3.

All of the focus states' statutes allowed for aid to parochial school students under the cooperative/innovative programs category either through federal, state, or local funding sources. Focus states in the Mid-East and Great Lakes regions have more frequently taken advantage of these programs while the New England, Plains, South and West regions have not participated in significant numbers.

The area of cooperative and innovative programs is growing in popularity as a viable source of Parochiade. This popularity may have been partly due to fewer instances of litigation and opposition. Further, the ESEA of 1965 and subsequent amendments, the Environmental and Drug Abuse Acts of 1970, and the Emergency School Aid Act of 1974 have created promising cooperative models for public and private school interests. Following the Child Benefit Principle, wider paths of access for parochial school participation can be established and additional sources of income can be explored.

Among the focus states, fifty-one percent of programs and services provided utilized federal sources of funding while twenty percent by the state governments, and fourteen percent were supported by local governments. (Table 4) In a majority of these states, basic parochial aide programs were supplemented with federal sources, particularly in the areas of auxiliary services and cooperative/innovative programs.

TABLE 4

SOURCE OF FUNDS FOR PAROCHIAL SCHOOL STUDENTS

State	Text- books	Teacher Services	Auxiliary Services and Materials	Cooperative and Innovative Programs
Connecticut	-	S/L	F/S	F/L
Massachusetts	S	-	S	F
New Jersey	F/s	-	F	F
New York	F/S	-	F/S	F/S
Pennsylvania	S	-	F/S	F/L
Illinois	S	-	F/S	F
Indiana	-	-	F/S/L	F
Michigan	-	S (Spec. Ed. only)	F/S	F
Ohio	S	-	F/S	F
Missouri	-	-	F/S	-
Florida	-	F/L	F/L	F/L
Kentucky	-	-	F	-
Louisiana	-	-	-	-
California	F/S	F	F/S/L	F
Texas	-	-	F	F

Code:

F=Federal Government Source of Funding

S=State Government Source of Funding

L=Local Government Source of Funding

The drain on state treasuries in supporting urban parochial programs and services has stimulated state action in seeking new sources of constitutional revenue. Examples of such efforts included Pennsylvania's flat track harness racing act which provided 75% of its income to schools and also the cigarette tax act designating 14% of its income for schools.³⁰ Through these state sources, now discontinued, \$22.6 million were collected and spent on parochial school programs and services.

Financing Practices in the Focus States:

Actual Methods and Sources

All of the participating states that offered parochial used the direct payments to the public school district method of funding programs and services. (Table 5) California used a mixture of approaches by utilizing the ESEA Titles as an additional support mechanism for parochial school aid.³¹ The direct payments method comes into question each time litigation occurs challenging the right of school districts to spend public money for any service. The courts have allowed methods of funding to stand as long as the state statute providing the service or pro-

³⁰Milton J. Shapp, "Facts and Figures Concerning Act 109" The Pennsylvania Non Public Elementary and Secondary Act (May, 1971) p. 1.

³¹Manuel V. Ceja, "Alphabetical Listing of Public School Programs Which Non-Public Schools are Eligible", California State Department of Education, 1976.

TABLE 5

CURRENT METHODS OF PROVIDING AID TO
NON-PUBLIC PAROCHIAL SCHOOL STUDENTS

State	Textbooks			T S	Auxiliary Services and Materials						Coop. and Innovative Programs				
	Programs/ Services	Free Textbooks	Textbooks on Loan		Special Subject Teachers	Health Services	Psychological Services	Guidance and Counseling	Breakfast	Lunch	Transportation	Instructional Materials	Handicapped	Released-Time	Vocational & Technical
Connecticut	-	-	-	-	DD	DD	DD	-	DD	DD	DD	-	-	-	-
Massachusetts	-	DD	-	-	-	-	-	-	-	DD	-	-	-	-	-
New Jersey	-	DD	-	-	-	-	-	-	DD	DD	DD	-	-	-	-
New York	DD	-	-	-	DD	-	DD	DD	DD	DD	DD	DD	NC	DD	-
Pennsylvania	-	DD	-	-	DD	DD	DD	DD	DD	DD	DD	DD	NC	DD	-
Illinois	-	DD	-	-	DD	DD	DD	DD	DD	DD	DD	DD	-	DD	-
Indiana	-	-	-	-	-	DD	DD	-	-	DD	DD	-	NC	DD	-
Michigan	-	-	-	DD	DD	DD	-	DD	DD	DD	-	DD	NC	DD	-

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	Free Textbooks	Textbooks on Loan	Special Subjects Teachers	Health Services	Psychological Services	Guidance and Counseling	Breakfast	Lunch	Transportation	Instructional Materials	Handicapped	Released-Time	Vocational & Technical	Other Federal
Ohio	-	DD	-	DD	DD	DD	DD	DD	DD	DD	DD	DD	DD	-
Missouri	-	-	-	-	-	-	-	DD	-	-	DD	-	DD	-
Florida	-	-	DD	DD	DD	DD	-	DD	DD	DD	DD	NC	DD	-
Kentucky	-	-	-	-	-	-	-	-	-	-	-	-	DD	-
Louisiana	-	-	-	-	DD	DD	DD	DD	DD	DD	DD	NC	DD	-
California	0	DD	DD	DD	DD	DD	DD	DD	DD	DD	-	NC	-	-
Texas	-	-	-	-	-	-	DD	DD	-	-	-	-	-	-

*Code: DD=Direct Payment to District; NC=No Cost; 0=Other

gram was constitutional.³²

No states reported other methods of delivering aid to parochial school students. The survey of Chief State School Officers indicated that credits to families and vouchers were not practiced in their states. The courts have ruled these forms and methods as unconstitutional in several instances:

-Jackson v. California

-Sloan v. Lemon

-Minnesota v. Minnesota Civil Liberties Union³³

From the data presented, several generalizations may be suggested; first, the effect of court decisions has served to narrow down the range of alternatives of programs and services for elementary and secondary parochial school students, second, additional sources of funds are becoming less available, and third, new methods for delivering aid to parochial schools do not appear promising. This situation suggests that the amounts and types of public aid for parochial schools are declining and will continue to decline until additional funding sources are located, and a diversity of delivery mechanisms consistent with federal and state constitutions can be developed.

³²Wolman v. Walter, 417 F. Supp. 1113 Ohio (1976).

³³Morris, The Constitution and American Education, p. 853.

Position Statement: Professional and Citizen's Groups
and Organizations

Arguments by groups and organizations have been marshaled on both sides of the Parochiade issue. Some of these groups and individuals played more of a key role in defending or contesting public aid legislation in the courts and in the states than others. Those involved in this study were selected because they were known to take positions for or against Parochiade in their states, or they assisted Chief State School Officers (as advisors and consultants) in developing programs/services for parochial school students

Among the groups and organizations that participated in this study, the ones that generally favored government aid to church related schools were: Citizens for Educational Freedom, The National Union of Christian Schools, National Society for Hebrew Day Schools, U.S. Catholic Conference, Lutheran Church Schools (Missouri Synod), and other denominational church schools. Some groups that generally opposed such aid were: Civil Liberties Union, Americans United for the Separation of Church and State, League of Women Voters, American Jewish Congress and the American Association of School Administrators. Some groups and organizations took positions based upon the merits of each issue while others played

only a consultative role. Some of these groups included: Friends Council on Education, National Association of Independent Schools, Council for American Private Education, National Association for the Advancement of Colored People, and the Parent-Teachers Association.

Several organizations were mentioned more often than others by Chief State School Officers as presenting the strongest resistance to non-public school aid. (Table 6) The American Civil Liberties Union topped the list as having been directly or indirectly involved in 83% of litigation among the states; Americans United for the Separation of Church and State - 32% involvement in litigation; League of Women Voters - 4%; American Jewish Congress - 4%; National Association for the Advancement of Colored People - 4%; other religious groups - 4%; Parent-Teacher Association - 10%.

The Chief State School Officers indicated that their strongest allies were: States Attorneys - 20%; U.S. Catholic Conference - 96% of the time; and that parochial schools in general represented strong support of Parochial programs and services when questions of constitutionality arose before a statute was enforced. States attorneys have been asked for legal opinions which sometimes took place in the form of litigation brought before the state courts. The categories of state aid most

challenged by these organizations and groups nationwide were textbooks - 30% and the purchase of teacher services - 30%. 60% of Supreme Court litigation considered in this investigation centered around these two areas. Auxiliary services and materials were involved in 23% of cases and tax credits in 15%.

As a result of this involvement, professional organizations, citizen's groups, and individuals have played a prominent role in determining the quality, scope, and level of programs and services for non-public parochial schools. They did so by participation in the legislative process as citizens, pressure groups, and in the policy making process as advisors and consultants. (Table 7) They further assisted in clarifying issues developed for and against Parochiade as they relate to governmental limitations and possible excessive controls over parochial schools. Some arguments for:

Non public schools perform a "public service"; they serve the "secular purpose" of the state through the education of competent, useful citizens. They do not seek support for religious instruction.

Parents have the constitutional right to choose their children's school. Protection of this right requires that all parents be enabled financially to exercise it, or the free exercise clause of the First Amendment becomes meaningless.

Government Aid to church-related schools does not violate the First Amendment establishment clause.

Continuation of a pluralistic society, essential to a democracy, requires options also in education;

TABLE 7

EXISTING STATE LEVEL ADVISORY GROUPS

<u>California</u>	- State Department of Education
<u>Connecticut</u>	- Title IV Advisory Committee
<u>Florida</u>	- State Board of Education; State Association of Non-Public Schools; Florida Catholic Conference
<u>Illinois</u>	- State Board of Education; Task Forces on Special Education, Vocational Education, Gifted Education, Bilingual Education, Title I Programs; States Attorney
<u>Indiana</u>	- None
<u>Kentucky</u>	- None
<u>Louisiana</u>	- State Board of Elementary and Secondary Education
<u>Massachusetts</u>	- Massachusetts Study Committee
<u>Michigan</u>	- State Board of Education; State Advisory Committee on Auxiliary Services
<u>Missouri</u>	- None
<u>New Jersey</u>	- New Jersey Catholic Conference
<u>New York</u>	- State Education Department; Committee on Education
<u>Ohio</u>	- State Board of Education; State Citizen's Advisory Committee; States Attorney
<u>Pennsylvania</u>	- State Board of Education; State Citizen's Advisory Committee; States Attorney
<u>Texas</u>	- Texas Citizen's Advisory Committee

and all children, regardless of the school they choose to attend, are the concern of the society.

Good education thrives on competition. Supporters of nonpublic schools are interested in a good education for all children, including those in the public schools.

Citizens pay taxes for education as such, not just for a certain favored segment of education. Good education, not a particular school system, is the priority. Supporters of nonpublic schools pay their taxes for all education, they also save the public large sums of money each year (estimated at five billion or more annually) by paying for the education of their children.

Some arguments against:

Aid to church-related schools will weaken the public schools. Many small, weak nonpublic schools will be established and lessen support for the public schools (today nonpublic schools account for about 14 percent of the elementary and secondary enrollment in the United States).

Church-related schools are divisive (in view of some studies which contradict this claim, there has been less recent emphasis on this argument).

In the absence of constant vigilance, public aid could result in increasing public control with the result that church-related schools accepting aid would lose their identity as church institutions and become, in effect, public and secular schools (expressed by some opponents to and some proponents of nonpublic schools).

Aid to nonpublic schools would increase taxes (this argument takes into account only current aid, not the possibility that denial of aid might force the discontinuation of many nonpublic schools and throw the entire burden of educating the children presently enrolled in them on public schools, at a greatly increased cost, with increased taxes to cover the additional cost).

Aid to non-public schools may open the way to circumvent civil rights legislation (this argument is unfair to the extent that it generalizes on the

motives of all advocates of nonpublic schools).³⁴

The concern of the states embraces the welfare of all schools and students, public and non-public. Although their primary responsibility is to maintain a free public system of education for children, private and parochial schools should be nurtured and supervised as alternatives to public education as established in *Pierce v. Sisters of the Holy Name Society*.³⁵ The data showed that public and parochial school groups have vigorously supported their interests through constitutional challenges of programs and services provided to parochial school students, and by participating in the legislative and policy making process.

This kind of discussion, debate, and involvement is good in that it continues to test the strength of the Judiciary in maintaining proper balance in the separation of church and state. It prevents state legislators from passing statutes which violate either federal or state constitutional provisions, it encourages Chief State School Officers to work with legislators and other educators in drafting policies for parochial schools, it identifies the

³⁴William A. Kramer, "Information for Leaders in the Lutheran Church - Missouri Synod", Public Aid to Church Related Schools, Bulletin 304-2 April, 1970.

³⁵*Pierce v. Society of the Sisters of the Holy Name of Jesus and Mary*, 268 U.S. 510, 45 S. Ct. 571, 39 (1925).

need for public and non-public interest groups to personally and financially commit themselves to support for their schools, it stimulates thoughtful consideration regarding new and innovating approaches to public and private education, and it provides for further interpretation of the general purposes of elementary and secondary education in America.

Final conclusions regarding textbooks, teacher services, auxiliary services, materials and cooperative programs are not possible or feasible from the data presented here, nor does the study attempt any. However, some commonalities, characteristics, patterns, and trends are identifiable among the states and will be discussed in Chapter IV, Analysis.

CHAPTER IV

ANALYSIS OF FINDINGS - FOCUS STATES

Financial aid to non-public parochial education is now an accomplished fact. Such aid is available to students, to teachers on a limited scale, and to schools under the Child Benefit Principle, through grants and contract arrangements. This investigation attempted to analyze statutes, policies, and programs that relate to public financing of urban non-public parochial school programs and services. Preceding chapters have been concerned with several specific research purposes designed to assist in carrying out the problem:

1. Identifying selected U.S. Supreme Court decisions which have influenced public financing of non-public parochial schools.
2. Determining what state statutes, policies, and programs exist among the participating states related to financing of parochial schools in the four focus areas of textbooks, special subject teachers, auxiliary materials, and cooperative/innovative programs.
3. Identifying similarities in statutes, policies, and practices among the fifteen selected states with urban parochial characteristics.

4. Analyzing how the fifteen selected states have reacted to selected U.S. Supreme Court decisions.
5. Developing a summary, drawing conclusions, and making recommendations related to public financing of non-public schools.

Chapter IV is limited to an analysis of the data related to how the fifteen focus states have reacted to selected U.S. Supreme Court decisions. Chapter V will present the summary, conclusions, and recommendations for further research.

The design of the study (descriptive-analysis), assisted in discovering what statutes, programs, and practices exist, and also some influential forces which have shaped parochial aide financing sources and methods among the states. The analysis of statutes, policies, and practices was conducted in terms of consistencies, variations, comparisons and contrasts, and trends among/between the focus states. Presentation of significant relationships and generalizations were determined using Barnes research method which requires three types of evidence from responses, frequency tables, and reasons for what exists:¹

- Evidence that the situations are associated
- Evidence that one situation did not occur before the other

¹Fred P. Barnes, Research for the Practitioner in Education. (Va: National Association for Elementary School Principals, 1972), pp. 44-45.

-Evidence that rules out other influential forces

Presentation of material in this section was made using the narrative-analysis style. In order to satisfy the specific purposes and to provide clarity and understanding, the chapter is organized according to the following pattern.

First an introductory section includes an explanation of the procedure, data collection, and responses from participants in the study. Second, relationships between focus states' data and the U.S. Supreme Court decisions are analyzed. Third, data related to state statutes, policies, and practices of the focus states are discussed in terms of the four areas of the study. Fourth, financing methods and sources of funds are analyzed. Fifth, research data received from professional and citizen's groups are compared and contrasted. Sixth, side effects and influences related to financing non-public parochial schools are discussed, and finally, a summary of the findings is presented.

Procedures for the Study

The survey developed for the study was sent to state personnel requesting information. Representatives of forty-two of the State Departments of Education and/or Chief State School Officers responded, (see Appendix A). Additional information was received from six major professional

and citizen's groups, centralized information centers, and the U.S. Office of Education. Data presented and analyzed have been selected for use on the basis of whether they contribute to satisfying the purposes of the study, whether the sources are primary, and whether the presentation of such data provides clarity.

The analysis and treatment of data were conducted in terms of comparisons and contrasts, considerations, consistencies, variations, and trends found to exist among the state statutes, policies, and practices. Specific interpretive criteria references were used to assist with presentation:

- Constitutional Criterion provided a reference for measuring constitutionality of state statutes and practices as applied by the U.S. Supreme Court.
- Geographic Criterion provided boundary references for comparisons and contrasts within and among regions of the United States.
- Patterns and Similarities Criterion allowed for similarities and differences to be identified and classified in terms of programs and services provided to non-public school students.
- Trend Criterion references provided interpretive standards for determining general course and direction of aid to non-public school students.

Materials presented in the analysis section are discussed using the narrative-analysis format.

Relationships Between Focus States Data
and United States Supreme Court Decisions

The use of public tax funds to support parochial school programs and services by the states has resulted in some moral, political, and constitutional issues discussed later as pros and cons to parochialism. Attempts to resolve and interpret these issues have involved concerned individuals, citizen's and professional groups, institutions, the legislatures, and the courts. This section represents an analysis of the data from the U.S. Supreme Court in an attempt to interpret and resolve many of the issues.

The financing of non-public parochial school auxiliary programs and teacher services has suffered some critical setbacks as a result of adverse U.S. Supreme Court decisions as *Meek v. Pittenger* and *Wolman v. Walter*.²

Under the Tenth Amendment to the U.S. Constitution,³ the states have the responsibility for the education of all children. In carrying out this responsibility, the states have entangled themselves in litigation regarding

²*Wolman v. Walter*, 417 F. Supp. 1113, 45 U.S.L.W. 4861. Ohio (1976).

³Arval A. Morris, The Constitution and American Education. (Minnesota: West Publishing Co., 1974). p. 377.

the constitutionality of statutes and/or practices. This litigation occurred at all levels of the court system, trial to appellate. As a result, the U.S. Supreme Court was involved in more than thirty two cases in the last three decades, in interpreting the law regarding public financing of non-public education.

Each time that the high court acted, new information for planning and implementation of programs and services was generated. When the court upheld a statute, or practice, patterns emerged for providing specific aid to non-public parochial aid to elementary and secondary school students. When statutes or practices were rejected, several reactions appeared possible:

- the elimination of specific categories of aid
- restructuring of statutes and policies
- conflicting patterns of providing aid from state to state
- more reliance on federal funds

As these reactions occurred among and between the states, additional data related to the Child Benefit Principle (the limitation of public tax dollars, and benefits to students) was generated. [Excessive Entanglement v. Child Benefit Principle]

Among the focus states, this issue was found to be

the focal point for determining the constitutionality of parochial laws. Several standards that were applied most frequently by the U.S. Supreme Court included: the primary secular purpose, the no-excessive entanglements standard, and the neutral-ideological effect. In order to apply the standards, the court developed nine other specific tests which assisted in applying the standard criterion in state financed teacher salaries, field trips, materials and equipment programs/services to elementary and secondary school students.⁴ These specific tests as applied to the focus states aid programs and services statutes in the four areas of this study have greatly influenced the decrease in parochial to elementary and secondary school students. Thus, the U.S. Supreme Court's decisions were found to be primarily influenced by:

- application of the standard criterion
- application of the nine specific tests
- precedent

The data showed that seventeen or fifty-two percent of the thirty-two U.S. Supreme Court decisions identified for the study were rejected, while fifteen or forty-eight percent were upheld.

From this information, it may be concluded that

⁴Illustration 2, Appendix B

parochiade has not done very well in the courts over the last thirty years, however, before final judgments can be made, it is necessary to consider the specific programs/services and the legal questions at issue. The data generated suggest three major findings of the study:

1) State statutes were found unconstitutional more frequently as a result of "Excessive Entanglement" with religion than for any other legal reason. Forty-two per cent of cases selected for the study were litigated in this area. The "Free Exercise" and "Establishment" clauses of the First Amendment to the U.S. Constitution provide the basis for separation of church and state. Providing financial aid to religious/sectarian institutions resulted in "Excessive Entanglements" with religion as indicated by the court's rejection of Pennsylvania's Purchase of Services agreements, and auxiliary services and materials state statutes, Rhode Island's teacher salary supplements, and New Jersey's textbook program. The more these practices and programs varied from the Child Benefit Theory, the more likely it was to be rejected. Those statutes, policies, and practices that impinged upon a person's right to freely exercise his religion, or advanced one religion, were found to violate the First Amendment and the Fourteenth Amendment. "Excessive Entanglements" with religion, as it relates to states' statutes, have

influenced the behavior of educators, legislators, and concerned groups as they plan and develop programs for non-public parochial students. First, the focus states have consistently established non-public parochial school advisory groups whose task it was to:

- A. assist in determining the needs of non-public school students
- B. provide, coalate, and disseminate data for the state board or Chief State School Officer, regarding non-public education in the state.
- C. Advise the Chief State School Officer in matters pertaining to non-public school operations.

These advisory groups were found to exist at the state, diocesan, and local levels. Second, alliances between legislators and educators were established in order to cooperatively structure parochial statutes free of religious entanglements. Consequently, educators (principals, superintendents, etc.) recruit legislators to support parochial programs and services and legislators then were in a position to call in political favors at election time. Third, parochial statutes were first tested for constitutionality by states' attorneys before implementation. Chief State School Officers have added an additional step to the statute formulation procedure in order to insure:

- constitutionality with state constitution
- constitutionality with federal constitution
- compliance with fair employment acts

Fourth, school superintendents and principals have established programs and services of a more ecumenical nature involving:

- basic instruction that is not slanted toward religion
- cooperative programming between public and non-public schools
- non-ideological material and secular textbooks

Based upon this finding, it is probable that the U.S. Supreme Court's interpretation of the constitution as it relates to excessive entanglements will continue to influence public financing of parochial school programs and services. State Boards of Education, Chief State School Officers, local superintendents and legislators will be more aware of the difficulties and pitfalls of parochial financing, more refined methods and procedures of program planning will be established, and additional data will be provided for decision making as it related to financing non-public parochial school programs.

2. There was a significant relationship between public control over parochial programs/services and achievement of the "primary secular effect". Because tax dollars are generated from the public, the court has indicated that

these dollars must be spent and controlled by the public sector.⁵ There was a better chance that the public dollars were used to achieve the secular effect when controlled by the state or other public agencies than by a religious group. The influences on parochial financing were several:

- A. In order to maintain public control, states loaned textbooks to parochial school students upon written request. These books are purchased by the state from a state approved list; and ALL materials remain the property of the state. The loaned books are monitored by state officers annually related to their location, use, and condition.
- B. Religious orders have adjusted their regulations to that nuns, priests, ministers, may pursue teaching careers in the public schools while providing minimal services to the church. Also, specialized personnel (reading, math, etc.) have been assigned to provide secular services in sectarian schools.
- C. Auxiliary materials and services eg. (counseling, medical, testing, etc.) which could easily be converted for religious purposes are provided by public school personnel and off sectarian school property. Where questions arise, local dioceses

⁵Wolman v. Walter, J 417 F. Supp. 1113, 45 U.S.L.W. 4861. Ohio (1976).

provide for dual enrollment of students through cooperatively planned strategies.

The implication of this finding is that where public control was clearly established, parochial school statutes, policies, and practices tended to survive court scrutiny. The impact of public control for achievement of the secular effect was clearly demonstrated in Ohio. While *Meek v. Pittenger* was being litigated in Pennsylvania, the Ohio legislature quickly repealed a similar auxiliary services law, restructured and passed another more consistent with justices' opinion, and provided a "public control" clause that clearly established the secular motive. This quick reaction to court decisions in progress is only possible when there is cooperation between the public, parochial, and private sectors. The future of public financing of parochial school programs and services rests in the ability of public and non-public school groups to work and plan together for the long and short term.

3. Direct aid to students in parochial schools was found to be the more widely practiced method of financing parochial school programs and services. Direct aid to schools and teachers were not found to be allowed by the courts. Building additions, vouchers, tax credits, and tuition grants were defeated by the courts and therefore not practiced by the states. Direct aid to the student, following

the Child Benefit Principle, was supported at every level, local, state and federal. As mentioned earlier, parochial students or parents may request textbooks or other services provided to all children by the state as long as these services are publicly controlled and meet the secular effect, the state may do so. Among the focus states, consistent methods and procedures for providing aid to the student have become the basis for structuring programs and services. Care is taken to avoid programatic loopholes that may tend to augment religious doctrine or assist sectarian institutions in their mission.

These major findings seem to imply that legislators, educators, and private groups must work and plan together if public financing of elementary and secondary programs and services are to survive court scrutiny. They also suggest that knowledge of existing data, court findings, and public involvement represent important elements in the present and future of parochial school financing. Knowledge and awareness are important, however, school personnel who are responsible for planning and development of parochial programs, must be skillful, resourceful, and creative in their approaches to financing parochial schools.

Some implications for middle management also surface. Intermediate agencies at the state and local levels must be established for monitoring and improvement purposes. Although this situation creates new structures and

agencies also needing to be financed, it will at the same time assist the states in achieving compliance with state and federal constitutions, provide additional data related to financing parochial school programs and services, and create more jobs for educational personnel.

The data generated several supportive findings that add to the general body of available knowledge and provide additional information for future decision-making:

1. Among the focus states, more parochial laws conflicted with state constitutions than with the U.S. Constitution. Challenges brought before the U.S. Supreme Court were primarily based upon violations of the Fourteenth Amendment, "due process", or the First Amendment, "Establishment". (Table 2) States that test statutes before implementation and appropriation of funds by requesting states attorney opinions and citizen participation, were found to achieve compliance with their constitutions more often.
2. Parochial statutes, policies, and/or practices most often challenged and defeated were based upon formulas involving special needs of students, racial and ethnic distribution, and/or target groups. Most states support public education through some type of aid formula. Including

elementary and secondary parochial school students in these formulas by recognition of special needs, ethnic distribution, etc. resulted in challenges against the basic formula and the inclusion of parochial school students.

3. There was a significant relationship between statute compliance and cooperative planning. When citizens, educators, and legislators, public and private, planned and implemented programs and services together, less opposition and litigation occurred. Compliance with state and federal constitutions was achieved more often among the focus states.
4. Litigation against parochial laws occurred more often in large urban areas with elementary and secondary enrollments of 50,000 or more, than in smaller areas. Also, more programs and services were provided in these areas where populations were labeled minority, disadvantaged, and poverty. Among the focus states, concentrations of minority and disadvantaged students existed, higher percentages of students were enrolled in parochial schools, and more programs and services were requested. As more financing was needed to provide these programs and services, more litigation occurred.

5. Adverse court decisions since *Meek v. Pittenger* has resulted in a decrease in the number of state financed programs and services while the dollar amount has increased. When a category of aid was struck down by the high court in a state, other states reacted by discontinuing similar kinds of parochial aide. Large amounts of money already appropriated was returned or withheld until new legislation was structured cooperatively or other federal sources were located.

The focus state statutes, policies, and practices that provide financing for parochial school programs and services have not successfully survived court scrutiny in great numbers.

Litigation has altered the number and type of programs and services offered to parochial school students. As the selected cases show, many attempts have been rejected by the courts. States reactions to these decisions were found to include:

- further state sponsored (counter) litigation
- elimination of categories of aid
- re-structuring of statutes and practices
- more reliance on federal dollars

As litigation and opposition continue, the states get a clearer picture of the "excessive entanglement"

issue and learn more about its meaning and application as related to financing of non-public parochial education. However, it is not enough to understand meaning and application. The states must also be aware of the manner and method of applying the courts standards as they relate to specific areas of parochial education: Textbooks, Teacher Services, Auxiliary Services and Materials, and Cooperative/Innovative Programs. These areas represent the focusing point of this study and are discussed in the next section.

State Statutes and Practices: Focus States

The information presented in this section analyzes the data related to statutes and practices of the focus states in the four areas of the study: Textbooks, Teacher Services, Auxiliary Services and Materials, Innovative and Cooperative Programs. Each area is treated separately and presented in terms of comparisons, contrasts, consistencies, and trends.

-Textbooks-

The data generated by the study related to furnishing textbooks to parochial school students show that some of the focus states furnish free textbooks while others furnish textbooks on loan. Both practices, as discussed earlier and implemented by the states, are similar in that textbooks must be requested by the parent/student and remain the property of the state. Therefore, for purposes

of this study, these two terms are combined and used interchangeably.

Until 1964, few U.S. Supreme Court cases had come into litigation challenging the constitutionality of statutes or the practice of providing textbooks to parochial schools. Before *Cochran v. Louisiana* in 1930, the prevailing practices had been established in two very early cases tried in Maine⁶ and then in New York.⁷ The lower courts ruled in both cases that public funds could not be used to furnish textbooks and other supplies to any but public schools. With the advent of the 1965 Civil Rights Law, school districts were required to loan textbooks to parochial school pupils. The U.S. Supreme Court upheld this concept in New York in 1968. Since that time, the states have furnished textbooks to parochial school students following the Child Benefit Principle. Nine of the fifteen states selected for focus in this study provide textbooks to elementary and secondary school students. The data collected provide the basis for several generalizations listed below:

1. Textbook statutes, in 42% of the focus states,
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⁶*Donahoe v. Richards* 1854.

⁷*Smith v. Donahoe* 1922.

⁸*Board of Education v. Allen*, 392 U.S. 236 88 S. Ct. 1923, (1968).

were found to give the states the power to purchase secular textbooks and to loan them to parochial school students at parent request. State statutes that had clauses, codes, or sections mandating free textbooks to students in public and non-public schools did not go far enough in determining Child Benefit. Only after the Allen and Cochran decisions did statutes begin to reflect the secular purpose intended by the law. Legislators and educators began to work cooperatively in the drafting of structure and content of textbook statutes. As a result, these statutes among the focus states are very similar in several ways:

- parents or students may request textbooks on loan from the state
- textbooks provided must be selected from an approved list
- source of funding, manimum expenditure per child, and method of appropriation were determined by state law.

2. There was a significant relationship between a state statute establishing authority and control over public funds for textbooks and constitutionality. Secular textbooks themselves do not represent a constitutional question; rather, it is the

method of providing such materials, and the purpose of the statute. In order to achieve textbook statute compliance, the implications for educators involve:

- acquiring a state approved purchase list
- determining that materials have secular effect
- providing benefits directly to the child, and
- establishing public control over loaned materials.

State educational agencies have the responsibility of monitoring textbook programs. The impact of these responsibilities and structures caused additional departments or offices and personnel to be established to carry out this function. There was also a financial impact in that the new structures and salaries needed to be financed. Therefore, the result of adverse court decisions served to reduce the number of state financed textbook programs while increasing the cost of providing those that remained. It appears then that in the future, constitutional textbook program costs will increase dramatically due to the added financing of new state structures and salaries needed to monitor and implement state laws.

3. The term textbooks has been expanded to include: basal books, supplementary reading material, and related supplies. Since reading is not considered a separate skill, but a language arts concept involving English, grammar, writing, spelling, materials involving all of these areas were included on state approved purchase lists. Basal, supplementary, and related materials could be loaned to parochial school students. Thus, a wide range of selection and diversity of materials had to be provided to parochial school students. It becomes clear that with increased selection and diversity of materials, new departments to fund, and additional salaries to pay, the dollar amount of parochial school programs would increase. Holding down the costs of state financed textbook programs then becomes a new problem for legislators and educators.

The states that furnish textbooks to parochial school students tended to have large concentrations of non-public school enrollments and high Catholic school enrollments; 100,000+ (New Jersey, New York, Pennsylvania, Illinois, Ohio, Michigan, California). In these urban areas, parochial schools are at the brink of financial disaster, having caused school consolidations, mergers, and closings to be considered. Providing textbooks represented one source of relief. This relief has not been without challenges.

The issue of furnishing textbooks in all schools came to the Supreme Court in one of the focus states, Louisiana-1930 - Cochran v. Board of Education. The Louisiana statute was upheld with Justice Hughes delivering the court's opinion:

One may scan the acts in vain to ascertain whether any money is appropriated for the purchase of school books for the use of any church, private, sectarian, or even public school. The appropriations were made for the specific purpose of purchasing school books for the use of the school children of the state, free of cost to them. It was further to benefit the state that the appropriations were made.

A statute was viewed as having the effect attributed to it and the taxing power of the state was exerted for a public purpose. The Child Benefit Theory was enunciated in the U.S. Supreme Court decision. Since 1930, five textbook cases have reached the U.S. Supreme Court, three of which were upheld and two were ruled unconstitutional. In Board of Education v. Allen, New York's statute was upheld following the same principle as the Louisiana case in mandating the Board to lend textbooks to private and parochial school students in grades 7-12. Pennsylvania's statute providing free textbooks was upheld in that it was indistinguishable from the New York program. Shortly thereafter, related issues were faced and upheld by the court in Ohio - Wolman v. Walter. On the other hand, two textbook programs were struck down during this same period. The Mississippi statute Norwood v. Harrison, 1973,

was overturned because it clearly represented an attempt to avoid compliance with federal desegregation orders. The New Jersey textbook statute was overruled in 1974 because it attempted to re-imburse only private school parents for sums of money expended on secular textbooks and instructional materials.

The review of state textbook statutes, policies, and practices as it related to financing non-public parochial school textbooks within the focus states suggest general patterns and similarities.

First, textbook statutes and practices have been modeled after the Louisiana program and have been consistently upheld by the courts: textbooks may be loaned to elementary and secondary parochial school students. Second, only books acceptable in public schools were lent to parochial schools. Third, textbook programs of the focus states clearly established the state's authority to purchase and control textbooks on loan. And fourth, textbooks were furnished free of charge to public and non-public school students.

The textbook programs of the nine focus states follow the patterns discussed above. (Table 3) Also, statute, structure, content, and purpose were similar. Variance from these examples as in Mississippi and New Jersey have not been met favorably by the courts. It has been made

clear by the court that the slightest inconsistency with the "Child Benefit Theory" could lead to "Excessive Entanglements" with religion.

The six states that did not furnish textbooks were found not doing so either because state constitutions specifically forbid such practices or parochial school enrollments were scattered or there was no need for such assistance or few parent requests.

As the focus states attempt to furnish textbooks to all children within their boundaries, several trends appear imminent;

- as state constitutions are revised and amended, provisions for parochial school textbook programs modeled after the Louisiana program are added
- textbook statutes now mandate inclusion of non-public parochial school students
- Chief State School Officers and/or Boards of Education are responsible for monitoring textbooks loaned to non-public parochial school students.
- the states are establishing non-public school advisory councils to assist with legislation, policy-making, and monitoring of textbook programs
- the per pupil amount and the number of textbook aid provided is increasing among the focus states
- the larger urban areas which contain high concentrations of Catholic students participate more

frequently in textbook programs.

State to state, these nine textbook programs that have survived constitutional scrutiny were very much similar. The practice of financing parochial school textbooks is in reality an accepted concept under the Child Benefit Principle. Since the Louisiana case, most opposition and litigation has occurred in the Mid-East and Great Lakes regions where more programs exist which suggest regional patterns and similarities. However, the data does not support such a conclusion. It appears more probable that the population mobility in urban centers, and concentrated parochial elementary and secondary enrollments played more of a role in the determination of the litigation than any other factors.

Teacher Services

About six years ago in *Lemon v. Kurtzman*, the U.S. Supreme Court struck down Rhode Island and Pennsylvania laws providing salary supplement to teachers of secular subjects in non-public schools, in that, state aid was flowing to teachers "under religious control and discipline". Direct religious instruction in the public schools is generally held to be sectarian instruction and therefore not permitted by the courts. Religious issues coming before the courts are more likely to involve tangential

issues as religious garb, sectarian influences, or use of materials than direct religious instruction. For the purpose of this investigation, teacher services refer to payment of salaries to parochial school personnel for services (instructional) provided for elementary and secondary school students in the parochial school.

Among the focus states, the survey showed that only three states provided any teacher services to parochial school students: Michigan, Florida, and California. These programs, however, do not fit the teacher services category as used in this study. They were classified as auxiliary services and innovative/cooperative programs. These two areas will be discussed later in this chapter. Several generalizations can be made:

- state statutes directly providing funds for teacher services do not appear in the codes of the focus states
- earmarked funds from special public sources i.e. (cigarette tax, harness racing) for teacher services do not meet constitutional tests
- public financing for teachers of secular services and salary supplements were found to be unconstitutional.

Two cases have come to the U.S. Supreme Court challenging the constitutionality of teacher services statutes. In a simultaneous action, the U.S. Supreme Court

struck down Rhode Island's teacher salary supplement and Pennsylvania's purchase of services agreement for teachers of secular subjects in parochial schools. In both decisions, the court strongly emphasized that state aid was flowing to teachers who were under religious control and discipline. The states have not found a method of applying the Child Benefit Principle to this area of parochial education. Indirect child benefits through instruction has not been established as constitutional. Therefore, none of the focus states currently has statutes, policies or practices in this area. While specific statutes providing purchase of service agreements or salary supplements for parochial school teachers were forbidden, some auxiliary services may be provided by public school personnel on loan; i.e. special reading and math, health, guidance, counseling, psychological. Religious order personnel who are certified by the state and the Board of Education may apply to perform these services in public or parochial schools. The affects of the courts rejection of the teacher services category have been:

- providing teacher salaries in non-public parochial schools appears to be a disappearing phenomenon
- parochial school superintendents and principals have sought increased tuition rates, fees, and fund raisings from their parents and congregation

-specialized public school personnel are assigned to provide secular services to parochial school students under the auxiliary services category

Public and non-public school supporters apparently have given in to court action in that no plans or other statute restructuring were reported in progress. Specific programs and services offered to non-public parochial school students were found to be provided as auxiliary services and are discussed in the next section.

Auxiliary Services and Materials

The area Auxiliary Services and Materials includes a diversity of programs and services. The states used several terms in referring to this area which include: auxiliary services, auxiliary instructional materials, and auxiliary or ancillary services. For the purpose of this study, the term auxiliary services and materials is used to refer to all services and instructional materials mentioned above. In order to provide clarity and organization in the discussion, it is necessary to separate auxiliary services from instructional materials.

Auxiliary services include: psychological, health, guidance, counseling, speech, hearing, vision, testing, field trips, transportation, breakfast, lunch, milk programs, and special services to exceptional children.

Instructional materials include: tapes, slides, film, projectors, maps, phonographs, transparencies, library materials, pamphlets, periodicals, and school supplies.

Ninety-three per cent of the focus states offered a diversity of auxiliary services and materials on both elementary and secondary levels. Kentucky represented the only state that provides no materials or auxiliary services. (Table 3) The focus states have provided auxiliary services and materials in two basic ways: direct loan to non-public schools and indirect through public school districts. The data collected generate several generalizations for consideration:

1. There was a direct and proportional relationship between the student enrollment (elementary and secondary) of a state and the number of auxiliary services/materials provided. The larger the parochial student enrollment, the more diversity of services provided.
2. The survey showed that more programs and services provided financing through auxiliary services/materials than any of the other three areas within the study.

3. The practice of financing auxiliary services and materials still needs more clarity.
4. Focus state statutes vary in their definitions and implementation methods of the auxiliary services/materials category.
5. The U.S. Supreme Court has separated auxiliary services and materials into two areas:
 - financing of non instructional services
 - financing of instructional materials and equipment

The area of auxiliary services and materials has had more opposition and litigation than any of the other three considered in this study. Several reasons explain why this is so: first, more programs, services and materials are provided under this category; second, definitions of services are less clear than others; and third, parochial schools may receive benefits indirectly under this area because many services/materials are non-teaching items.

Including Everson (transportation) 1947, seven of the thirty-two U.S. Supreme Court selected cases were related to the constitutionality of auxiliary services/materials. (Table 2)

While transportation of parochial school students to and from school was upheld in Everson, field trips were struck down in Wolman. The Arkansas state law requiring vaccination was upheld, funds for reports, examinations

and records were struck down in Levitt. In Lemon (Pennsylvania), Marburger (New Jersey), Meek (Pennsylvania) and Wolman, certain auxiliary services and materials were declared unconstitutional.

The court has scrutinized auxiliary services/materials more times than any other area as evidenced by the amount of litigation. Varying decisions make it difficult to determine which statutes, and/or practices are constitutional. Although variations appear in their decisions, some patterns and similarities have merged in the U.S. Supreme Court's rulings. Some consistencies, comparisons, and contrasts are found in the decisions themselves and are presented in this section.

In the leading transportation case of Everson, reimbursement to parents for transporting parochial school students to and from school was upheld. Another method of providing transportation, as in Illinois, was to allow parochial school students to ride buses provided for public school students as long as the statute did not require door to door service. While the U.S. Supreme Court has determined that a state may provide for the expenditure of public funds for transporting of pupils of a non-public school without violating the First and Fourteenth Amendments to the Federal Constitution, state courts were not bound to follow this decision with respect to their own constitutions. Neither are they bound to accept the reasoning upon

which the case was ruled, namely, the "Child Benefit Theory".

In cases of the court's decision and its opinion, the question becomes: does transportation of parochial school pupils aid the schools? One answer is found in a Wisconsin case⁹ which indicates that two benefits are possible:

1. increased enrollment, and
2. relieving the parochial school of expenses connected with pupil transportation when such costs are in whole or part paid by parochial schools.

Among the fifteen focus states, three of their transportation statutes (New York, Missouri, and Kentucky) have been declared unconstitutional because of requirements to transport parochial school students which violated public school students Fourteenth Amendment rights and relieved parochial school transportation expenses. Three state transportation statutes (Connecticut, California, and New Jersey) have been upheld; two states have repealed invalidated statutes (Massachusetts, Pennsylvania) providing transportation to parochial school children, but not on constitutional grounds; and the other seven focus states (Illinois, Indiana, Michigan, Ohio, Florida, Louisiana, Texas) have general provisions prohibiting the use of

⁹State v. Nusbaum, 15 N.W. 2nd 761 (Wisc.) 1962.

public funds for sectarian purposes.

The transportation issue as an auxiliary service has also been raised as it related to providing field trips for parochial school students. This issue and related data will be discussed later in this chapter.

Since *Lemon v. Kurtzman* 1971, auxiliary services/materials in the focus states have suffered some critical setbacks as a result of U.S. Supreme Court decisions. The states hardest hit by their litigation were located in the Middle East and Great Lakes regions (Pennsylvania, Rhode Island, Ohio). In order to understand the court's actions, make comparisons and contrasts, and discover consistencies, some background is necessary.

After the trend of rejecting teacher service and auxiliary services because teachers and programs were under religious control and discipline, (*Lemon v. Kurtzman*), the Pennsylvania legislature began carefully drafting their auxiliary services programs to avoid the pitfalls of *Lemon* by having public employees provide auxiliary services, not under religious "control or discipline". At issue in *Meek v. Pittenger* (Pennsylvania) were three auxiliary services (e.g.: counseling, psychological services, speech and hearing therapy) by public school employees to non-public parochial school pupils and the direct loan of instructional materials and equipment to

non-public schools. Notwithstanding this distinction, the court's in Meek 1975, felt that this provision violated the tenets of the establishment clause and would create excessive entanglements of church and state.

At the time of Meek, an Ohio statute very similar to that of Meek was on appeal and pending before the High Court. After Meek, the litigation in Ohio was repealed and a new law was designed to conform to the principles of Meek. The new auxiliary services and materials law included: standardized testing and scoring, diagnostic services, therapeutic services, instructional materials, equipment, and field trip transportation. The legislature then appropriated \$88 million to public school districts who in turn disbursed them to non-public school districts to finance these programs. All services provided non-public school pupils were also provided to public school pupils under separate laws and expenditures for non-public school students were not to exceed expenditures per pupil in the public schools. The Supreme Court in Wolman (Ohio) upheld auxiliary services (standardized testing and scoring, diagnostic services, speech, hearing, psychologicals), and therapeutic services (guidance, special remedial services). The instrumental difference between Meek and Wolman was that Wolman specifically footnoted that these services would be provided by public employees on public school or

state property - a neutral site.

The direct loan of instructional equipment was struck down for essentially the same reasons as Meek. Justice Blackman writes:

...the new law represents a change in form, but not in substance. In view of the impossibility of separating the secular education function from the sectarian, the state aid inevitably flows in part¹⁰ in support of the religious role of the school...

In overruling field trips, the court concluded that the non-public school controlled all essential aspects of the trip, including timing, frequency, and destination. Therefore, it is the schools not the children who are the recipients of the service. The trips are an integral part of educational experience, and where a teacher works for a sectarian institution, an unacceptable risk of fostering religion is an inevitable by-product.

Through a series of shifting majorities, the court has upheld standardized testing and scoring, diagnostic services, therapeutic services, while striking down instructional materials and field trips. The auxiliary services upheld, while important, certainly are not the most costly in the overall non-public parochial school budgets.

The loss of expensive budget items as instructional materials and equipment at public expense has grave financial consequences for parochial schools. Parochial schools

¹⁰Wolman v. Walter.

in the focus states that provided these auxiliary services/materials must now find other ways to finance these items. New laws, policies, and practices must be drafted to avoid the pitfalls of Meek in the areas of auxiliary services.

It is important to note that in both Pennsylvania and Ohio cases, the court pointed out the large urban nature of the non-public school systems as having an effect on their decision. Justice Steward noted that in Pennsylvania, 75% of all non-public schools were church related or religiously affiliated. In Ohio, 95% were church related, 92% of which were Catholic. Thus, "because of the predominantly religious character of the schools benefiting from the programs, the law is unconstitutional, in as much as it has the primary effect of advancing religion..."¹¹

Auxiliary services and instructional materials programs have been reduced appreciably over the past six years. Some trends that have developed may assist educators providing programs and services for the future:

- newer state statutes providing auxiliary services include legal footnotes spelling out that the service is provided by public employees in public schools or on state owned property

¹¹Thomas J. Flygare, "Schools and the Law", Phi Delta Kappan, Vol. No. 59 (Sept., 1977), p. 51.

- the Child Benefit Principle is not applicable to the loan of instructional materials and equipment
- state's systems with non-public parochial student enrollments of 50,000 or more are assumed by the court to be religiously oriented
- per pupil expenditures on non-public parochial services may not exceed that expended on public school students in a state

Although the court allowed non-public school buildings to be used by public schools, financing of repairs and maintenance was not allowed in *Committee for Public Education v. Nyquist* (1973). In 1974, *Wheeler v. Barrera* (Missouri), the Supreme Court upheld a provision of the ESEA Title I that provided services to educationally deprived children in private as well as public schools. The justices ruled that public schools in Missouri must provide Title I services that are not identical, but comparable in quality, scope, and opportunity for private school children. The court thus upheld its mandate for non-public school students to benefit from Title I services, but avoided telling the state how to deliver these services.

In view of the litigation and state practices considered, many opportunities currently exist for states to provide cooperatively planned, implemented and financial programs/services. The data suggest several generalizations and

trends related to cooperative and innovative programs:

- adverse U.S. Supreme Court decisions have not reduced parochial school participation in federally funded cooperative/innovative programs
- the Middle East and Great Lakes regions more frequently take advantage of these programs while others have not participated in significant numbers
- since the 1965 Education Act and its amendments, more federal dollars have been provided for cooperative and innovative programs
- specialized vocational and technical services offered at the high school level have taken the place of some teacher services and referred to as dual enrollment and part-time attendance programs
- a greater percent of cooperative programs/services are provided in states where public and non-public administrators plan cooperatively
- cooperative and innovative programs tend to favor public school sites for their locations
- the focus states rely more on federal tax dollars to support cooperative and innovative programs

In some focus states, constitutions or laws prohibit all or some of the cooperative/innovative approaches whether financed by state, local, and/or federal sources. Non-public school participation in this area has not been

tampered with as much by the courts. Therefore, statutes, policies and practices providing these services show a high level of consistency. In 60% of the focus states, private and public school state administrators cooperate in the planning and implementation of these programs.

Some trends that appear eminent in this area include:

- categorical aid (formula grants), project grants and contracts to non-public parochial and public schools engaged in cooperative programs is increasing
- focus states design statutes with dual enrollment, or part-time attendance provisions for inclusion of non-public parochial students in cooperative programs
- U.S. Supreme Court decisions are consistently allowing cooperative/innovative programs to take form under the Child Benefit Theory
- many states' cooperative/innovative programs were no cost programs - i.e. released-time, shared-time, dual enrollment
- cooperative and innovative programs being provided by the focus states are increasing. Teacher services and auxiliary services/materials statutes declared unconstitutional may be allowed as cooperative and innovative programs

Almost a dozen cooperative/innovative programs between public and non-public schools in the focus states

have been considered in this investigation. Many more exist on a national scale. The area of cooperative and innovative programs has grown in popularity recently as a viable source of parochial education partially due to fewer instances of litigation and opposition and the narrowing range of alternatives not yet struck down by the courts.

Chief State School Officers, State Boards of Education, and the legislators, have much planning ahead as a result of setbacks in the areas of teacher services and auxiliary services and materials. The court's misgivings regarding the Ohio textbook statutes, although upheld, also represent a problem for the future.

If non-public parochial schools are to continue receiving financial relief at current levels, cooperative efforts between public, non-public educators, legislators, and community groups must be maintained.

The future of parochial education rests with the states' ability to design statutes, policies, and programs for parochial school students that meet the constitutional tests as applied by the U.S. Supreme Court. Further, additional methods and sources of revenue for education must be found for the support of public and non-public education. Methods and sources of revenue, professional groups positions, and influences will be discussed in the next section.

Analysis of Research Data From the
Literature and Data From the Focus States

Efforts to obtain public financing for non-public parochial schools have increased among the large urban focus states. These urban centers are characterized by their high educational costs, low student achievement, over-crowded buildings, and low income families. Legislators, Chief State School Officers, State Boards of Education, and non-public school officials have sought additional sources of revenue for financing non-public parochial schools as well as new methods of delivering aid once it is provided.

Within the last decade, four additional sources of state tax relief were identified for discussion. They include: state lotteries, vouchers, tax credits, and tuition re-imburements. Among the focus states, none of these additional sources of revenue have been successful.

State lotteries popularity increased in the mid and late 1960's to the point where 85% of the states in the New England, Great Lakes, and Middle East regions had some form of lottery. New Hampshire, New York, New Jersey, and Connecticut earmarked these funds for education producing a one to two percent yield. The additional revenue made available for financing non-public parochial education was much less than hoped thus the search continued.

The educational voucher program, popularized by Christopher Joncks (1970) has many variations, however, all involved parental choice. The parents of each school aged child would have been given vouchers (redeemable on state and federal treasuries) assignable to any school of their choice: public, private, religious, etc.

Of the varying models developed, none were used by the states participating in this investigation.

Tuition grants, re-imburements to parents, and tuition subsidies also have not been successful. The court struck down tuition grants to parents in Jackson v. California (1972) and tuition subsidies to parents in Sloan v. Lemon (1973) Pennsylvania, thus narrowing the range of alternative sources of revenue for parochial school parents. Currently, none of the focus states provide tuition grants or re-imburements to parents of parochial school students.

At this point, the last hope became tax credits. Tax credit legislation would have allowed parents who send their children to parochial schools some form of income tax deductions. In a Minnesota case and companion case in 1975,¹² the U.S. Supreme Court declined to review a state court decision holding that a state income tax

¹²Minnesota v. Minnesota Civil Liberties Union, 95 S. Ct. 1990-91 (1975) - 224 NW 2nd 344 (1974).

credit violated the establishment clause of the U.S. Constitution. Currently, none of the focus states allow tax credits for parents of parochial school students.

From the information presented above, additional sources of state revenues for financing non-public parochial programs and services have not been found. A summary of the states search for additional sources of revenue provides us with a better picture of the current situation:

- state lotteries, educational vouchers, tuition subsidies, and tax credits have produced little or no added revenue
- the courts have ruled against tax credits, tuition grants, and earmarked funds specifically for non-public parochial schools
- the states do not currently rely on any of the four sources for financing non-public parochial school programs

Since additional sources of state revenue for financing non-public parochial school programs/services are lacking, the focus states were found to rely more and more on federal funds to supplement their already heavily taxed populations. Among the focus states, 51% of the programs and services provided utilized federal sources of funding while 20% are financed by state governments and 14% by local governments and agencies. (Table 5) This reliance

on federal sources of revenue became greater as state financed programs were struck down by the courts. Public dollars for education became more limited, while urban non-public parochial school enrollments increased.

Federal sources of funding, as the National School Lunch Act, Special Milk and Breakfast Program, and the Emergency School Aid Act, have been made available to private school children on an increasing basis. The Elementary and Secondary Education Act of 1965 (ESEA) was the federal government's first large scale attempt to aid all school children. It mandated delivery of a diversity of programs and services to children in non-public schools including:

- instructional and specialized services for the deprived, migrant, and institutionalized children
- school library resources, textbooks, and materials
- guidance, counseling, and testing
- innovative programs
- bi-lingual, vocational, environmental, and ethnic education
- education for the handicapped
- health and nutrition services
- reading improvement
- in-service and pre-service for teachers
- special classes outside school hours

Parochial school educators then had access to these services through public agencies as applicants, planners, and beneficiaries. The ESEA therefore represented a Model for Cooperative efforts by public and non-public school interests in providing federal assistance to children in parochial schools.

The impact of ESEA was significant to financing of non-public parochial education for several reasons:

- compliance provisions mandated public and non-public participation of professionals and parents

- all children, especially the dis-advantaged, were required to be involved

- uniform standards were designed and provided for participation

- methods, procedures, and delivery mechanisms were established for states to provide assistance constitutionally

- ongoing assessment and evaluation was included in order to provide data related to needs and effect

Adverse Supreme Court decisions have not affected participation of parochial school students in these programs.

On the federal level, the number of services and dollars spent are increasing. The future of federal assistance is dependent upon the ability of legislators, educators, and the public to work, plan, and implement aggressively all of the programs and services intended for parochial school children by Congress.

Acquiring additional sources of funding represented only one part of the non-public parochial school financing problem. Once funds were located, the major issue was to establish appropriate and constitutional delivery mechanisms in order to implement programs and services. The four delivery mechanisms discussed earlier included: direct payment to the districts, direct payments to parents, credits to parents, and vouchers. The only mechanism approved by the courts and utilized by the focus states was direct payments to districts.

Some reasons for the unsuccessful delivery mechanisms not being used included:

- state authority and control was not established
- entanglements with religion was not avoided
- the primary purpose of the financing was not secular
- the aid was not comparable in quality, scope, and opportunity

The limited number of methods and mechanisms of delivering aid suggest several trends:

- already available state funds are not being spent
- the number of state financed non-public parochial school programs/services is declining
- the practice of relying on federal programs and their delivery methods are increasing
- the number of state statutes related to parochial aid is declining

The focus states' practices do not differ greatly in their method of delivery of aid to parochial school students. Until the unsuccessful methods of delivery of aid are tested and approved or new mechanisms developed, states must rely on the most acceptable practice - direct payments to public school districts. Professional and Citizens groups and the courts will play a major role in developing appropriate delivery mechanisms for non-public parochial aid. Their involvement and effect will be discussed in the next section.

Professional, Citizen's Groups and Organizations

Professional, Citizen's groups played an important role in the determination of the quality, scope, and financing of non-public parochial aid programs and services among the focus states. Fifty-three per cent of Chief State School Officers indicated that the following groups have been active pro, con, or neutral in their state as related to parochial aid:

- Citizens for Educational Freedom
- The National Union of Christian Schools
- The National Society for Hebrew Day Schools
- United States Catholic Conference
- Lutheran Church Schools (Missouri Synod)
- American Civil Liberties Union

- Americans United for the Separation of Church and State
- League of Women Voters
- American Jewish Congress
- American Association of School Administrators
- Friends Council on Education
- National Association of Independent Schools
- Council for American Private Education
- National Association for the Advancement of Colored People
- Parent Teacher Association

The main roles and functions of these groups on the local, state, and national levels were advisors/consultants to the state Boards of Education, pressure groups, legislative assistants, and monitors of local and state level programs. Approximately 25% of these groups have developed positions for parochial, 35% against, while 40% only played a consultative role within the focus states. Because Professional and Citizen's groups have participated in 35% of the litigation in the focus states, and the importance of their roles and functions, 66% of the focus states have developed state level advisory groups that assist in the legislative process, policy-making, and program monitoring.

These groups have affected public financing of non-public parochial schools in the focus states by:

1. forming unions (allies) to present a united front for or against parochiade
2. preparing intensive, systematic, organized campaigns related to parochiade statutes, policies, and programs
3. developing political organizations from the state to the precinct levels
4. stating arguments pro and con clearly and disseminating issues to the media and to the public
5. establishing compromises that are politically practical and realistic between opposing groups

The participation and interface between these groups ultimately determine the amount, type, and level of financing for non-public parochial education. The citizens of the state, ultimately determine what the laws shall be, who shall develop them (legislators), and how they are interpreted (courts). When opposing groups to parochiade were the predominate force in a state, statutes and policies generally reflected that position. The same was true for favorable positions. Among the focus states, more citizen's groups opposed current financing practices than supported them. (Table 6) The selected U.S. Supreme Court decisions reflect this same position nationally in that many statutes, policies, and programs have been held as a violation of state and federal constitutions.

The Citizen's groups that were most active in the focus states included:

- The American Civil Liberties Union - involved in 83 % of litigation
- The National Catholic Conference - involved in 53% of litigation

The states where groups were most active were Pennsylvania, Florida, New Jersey, and Connecticut. (Table 7)

The strongest forces in favor of parochial programs among the focus states were the U.S. Catholic Conference, and other parochial/independent schools. Members of these groups were found most often as advisors and consultants to State School Officers and Boards of Education in the formulation of policy and implementation of programs. The strongest forces against parochial programs were the American Civil Liberties Union, and the Americans United for the Separation of Church and State. These groups were found to be more often opposing aid directly and participating in litigation challenging financing.

As a result of the involvement, participation, and interface of Professional and Citizen's groups, several trends surfaced:

- the positions taken by Professional and Citizen's groups in a state had significant effects on the constitutionality of statutes and practices

- Professional and Citizen's groups tend to favor state financing of auxiliary services, cooperative and innovative programs more than the loan of materials, teacher services, or textbooks
- states involved their allies in drafting legislation, policies, and practices while excluding resistors
- parochial and private school supporters are joining their efforts in a unified front
- non-public parochial schools are vigorously supporting culturally pluralistic, broad-based, inclusive public school programs which provide for participation of parochial schools

The development of these trends suggest the nature of the importance of the prominent role and function played by Professional and Citizen's groups among the focus states in the financing of non-public parochial education.

If aid to non-public schools is to continue, it is paramount that such support serve the primary secular purposes of the state in a consistent manner, serve to enhance all education not a particular segment or group, protect the constitutional rights of parents who choose public schools for their children, and continue to keep open viable alternatives in education.

The effect of Professional and Citizen's groups within the focus states significantly determined the

current non-public parochial school position today. This discussion, debate and involvement represent a healthy situation in that it:

- continues to test the strength of the judiciary in maintaining a proper balance in the separation of church and state
- assists in clarifying the Child Benefit Principle v. Excessive Entanglement issue
- encourages Legislators, Chief State School Officers, and Boards of Education to plan together
- identifies the need for citizen participation in educational planning
- assists in clarifying and disseminating the general purposes of public and non-public elementary and secondary education in America

The parochial issues: legal, moral, financial, and political are still far from settled. The information generated by this investigation represents only one attempt to identify some of the legal and financial issues surrounding aid to non-public parochial schools. Some side effects and influences related to these main issues are presented in the next section.

Some influences and Side Effects

Public financing of non-public parochial education has

and remains currently an issue which raises moral, legal, political, and religious questions.

1. What kinds of public aid can be legally provided?
2. Can public aid be received by sectarian schools and still maintain their autonomy and identity?
3. What should be the roles of legislators, educators, citizens?
4. Is it "right" for parochial schools to receive any public assistance?
5. Did the founding fathers intend to separate church and state in matters of education?

These issues permeate the educational framework at the local, state and federal levels. At the local, school district, and diocesan levels, educators have attempted to provide programs and services for non-public parochial students that are consistent with state constitutions; at the state level, legislators and educators have worked together to structure legislation and formulate policies that include all children of the state while not violating federal guidelines; and at the national level, the Congress of the United States has enacted legislation designed to encourage equal opportunity of education among the states.

Concerned individuals, groups, and institutions have had influences on the issues at every level. Some of these influences have been more intense than others, and they

have been diverse. Within the last two decades, the most visible and pronounced influences have been the courts. The U.S. Supreme Court has interpreted federal and state laws more than thirty-two times, related to the parochial aid issue, thus clarifying which statutes, policies, and practices were allowable legally. The second most pronounced influence was found to be Professional and Citizen's groups who through their interface and participation successfully challenged many areas of non-public parochial aid. Third, elementary and secondary enrollments have influenced financing because of the general decline in total enrollments and the concentrations of students in large urban cities selected as focus states in this study. And fourth, the ability of the states to find additional sources of funds to finance non-public parochial programs, given the fact that most of the focus states were near or already at their maximum taxing power.

In addition to the above mentioned major influences, others were present. The sources of these major influences generate from the political arena and the current atmosphere of party politics, socioeconomic conditions within a state, pronouncements and encyclicals of churchmen, desegregation, and educators. These influences (primary or secondary) do not occur singly or surface separately. Rather, they present themselves at every level (local, state, and national),

and simultaneously. The over-riding issue of the "Child Benefit Principle v. Excessive Entanglement" as discussed in this investigation among the focus states has included most or all of these influences simultaneously. Therefore, the difficulty of the courts resolving the issues totally can be identified more clearly.

Care must be taken in order to avoid classifying some states reactions and side effects as conclusions which may not be supported by available data. Many of these questions are merely indicators and symptoms of the actual problem. Some such indicators included:

- closing, consolidations, mergers of non-public parochial schools
- increased local and state taxation
- increased federal participation and control
- public funding of higher education
- ecumenaculism in parochial education

These indicators represent side effects of major issues surrounding the separation of church and state (financing of non-public parochial schools) which still need clarification and interpretation. Once the issues are clearly identified and stated, information is collected regarding these issues, assumptions made and tested, only then can generalizations/conclusions regarding their effect be reasonably made about financing non-public parochial schools. This study represents one such attempt.

These influences related to financing non-public parochial schools in the focus states have revolved around the major issue of excessive entanglements v. the Child Benefit Principle. Litigation of parochial statutes, policies, and practices served as arenas for discussion, debate, and decisions by citizen's groups, legislators, educators, and the courts. Together, these groups had considerable impact on the current parochial situation.

Among the fifteen focus states, nineteen U.S. Supreme Court cases were found to directly affect the four major areas of the study in the past forty years:

textbooks - 6 cases

teacher services - 2 cases

auxiliary services and materials - 7 cases

cooperative/innovative programs - 4 cases

The effect of this litigation served to redefine textbook statutes to include only secular books adopted by public schools, to eliminate teacher services statutes from state codes, to drastically reduce the number of auxiliary materials and to increase state reliance on federal sources for cooperative/innovative programs.

Additional state sources of income for parochial school programs and services have not been found. Several public sources of revenue tried by the states (lotteries, vouchers, tax credits, and tuition re-imburements) did

not meet original expectations or were ruled out by the courts. Appropriate and constitutional delivery mechanisms for funds already available were found difficult to develop.

A summary of the data collected and presented gives more meaning to the present situation among the focus states, and supports the seven major findings of the study. Related to the findings are some trend indications:

- state statutes tend to indicate policy statements as well as the rule of law
- state statutes are being drafted by constitutional experts in concert with educators
- distinctions are made between parochial and private schools
- more similarities exist in policies and programs in the Middle East and Great Lakes Regions than the other regions
- states with elementary and secondary parochial enrollment of 50,000 or more offered more programs and services, had more litigation and opposition to parochialism, and utilized advisory groups in legislation and policy making
- states with less than 50,000 parochial school students tended not to provide programs and services
- focus states' elementary and secondary enrollments were 75% or more Catholic

-practices that move away from the Child Benefit Principle became likely targets for litigation

These trends among the focus states suggest a general course and direction for the nation, however, it is important to remember that final conclusions cannot be made until more primary data are collected and tested.

Legislators, Chief State School Officers, and educators are still attempting to draft statutes, policies, and programs that meet constitutional tests while coping with other influences and side effects. Some general conclusions, recommendations, and further research topics which may assist in this process were generated and will be presented in the next chapter.

CHAPTER V

SUMMARY AND CONCLUSIONS

The current study has attempted to add to the existing body of knowledge by analyzing state statutes, policies, and practices related to public financing of urban non-public parochial elementary and secondary schools.

Five specific research approaches were utilized to carry out the major research purposes:

- 1) Identification of U.S. Supreme Court decisions which influence financing of non-public parochial schools.
- 2) Determination of what statutes, policies, and programs currently exist in the four major areas of the study which included: textbooks, teacher services, auxiliary services/materials, and cooperative/innovative programs.
- 3) Identification of similarities in statutes, policies, and programs among the fifteen selected focus states.
- 4) Analysis of state reactions to selected Supreme Court decisions.
- 5) Summary and recommendations.

The data were obtained utilizing three methods:

- 1) letters of inquiry were sent to fifty State Educational agencies;
- 2) questionnaires sent to fifty State Chief School Officers;
- 3) Xerox University Microfilm Searches

Prior to selection of fifteen focus states, which had high concentrations of parochial school student enrollments (50,000 or more), a pilot study, involving three states, Pennsylvania, Washington, and California, was conducted. (Appendix B1) Eighty-four per cent of the Chief State School Officers and/or their designees surveyed in the national effort participated in the study by supplying requested information.

The overall design of the study was descriptive-analysis in that facts, questions, and characteristics related to public financing of parochial schools were located, presented, and described using the narrative-analysis format.

Chapter I was primarily concerned with an historical overview, and data collection procedures and methods. Chapter II presented the literature involving: (1) an overview of the legal framework for public financing of parochial schools; historical background, the main issues, and recent litigation and (2) related studies and investi-

gations. Chapters III and IV focused on identification of statutes, policies, and programs in the four major areas of the study and an analysis of the data presented. Chapter V consists of a summary, conclusions, and recommendations.

For clarity and understanding, the current chapter is organized in the following manner. First, the preceding re-statement of the problem was given. Second, the data are briefly summarized. Third, conclusions based upon the findings are presented, and fourth, recommendations for the states, educators, and/or further research are given.

Summary of the Data

Non-public parochial education in America has survived amid much debate, discussion, and litigation as a viable alternative to public education. The origin, development, and growth of parochial schools provided a foundation and framework for the establishment of public education in the United States.

The two systems grew and developed simultaneously through periods of cultural, social, and political upheaval in a newly formed country consisting of several ethnic, religious, and cultural groups. From these groups emerged a democratic form of government which allowed for the peaceful co-existence of people, organizations, and systems that were culturally, ethnically, and religiously

different. Education was left as a power reserved to the states under the Tenth Amendment to the U.S. Constitution. It is under this amendment that the states establish, operate, and regulate education and schools in their territories.

Each of the fifty states has developed laws governing education. State Boards of Education and Chief State School Officers have developed policies and practices in carrying out these laws.

The statutes, policies, and practices governing public and non-public education must be consistent with state and federal regulations. It is at this point that the states have had considerable difficulty. Drafting legislation, developing policies, and implementing programs for public and non-public schools that are constitutionally allowable, have contributed to the dilemma of financing non-public parochial education in America.

The First Amendment clauses (establishment and free exercise) attempt to provide a double guarantee of freedom while maintaining a neutral balance. As implemented, these two clauses produce a separation of church and state which is further protected by the Fourteenth Amendment (due process and equal protection).

In addition to federal restrictions placed on financing parochial schools, there were state regulatory provisions. While there is considerable similarity among the

fifty state systems of schooling, their plenary power over education have produced differences that have caused three types of constitutional problems to arise:

- 1) Religion as a part of the public school curriculum
- 2) Curriculum requirements that violate First and Fourteenth Amendment rights
- 3) Financial support for parochial school programs and services

Further, state compulsory school attendance laws requiring children between specific ages to attend school, have been supported by the courts. Under *Pierce v. Society of Sisters*, 1925¹, the school attendance requirement may be satisfied by attending a non-public school. Currently, approximately five million elementary and secondary students are enrolled in non-public schools. (1975-76 data).

These three above listed conditions have influenced the specific major issues surrounding public financing of parochial schools. Several include:

- 1) Separation of church and state
- 2) Federal v. State control in education
- 3) Court policy-making in the educational arena
- 4) Parent and student rights to tax dollars

¹*Pierce v. Society of the Sisters of the Holy Name of Jesus and Mary*, 268 U.S. 510, 45 S. Ct. 571, 39 (1925).

Attempts to resolve these educational issues have involved the court system repeatedly. Litigation from the trial court to appellate division has provided some interpretations, meaning, and direction, however, many items remain unclear, untouched, or vague.

Summary of the Main Issues

As a result of conflict and litigation, the issues have been quantified into two major areas:

The Child Benefit Principle which is based upon the premise that a child has a right to receive aid wherever he may be: public, private or parochial school; Excessive Entanglements which is founded upon the First and Fourteenth Amendments of the U.S. Constitution's prohibition of tax dollars for sectarian purposes.

Recently two U.S. Supreme Court decisions, (Meek v. Pittenger and Wolman v. Walter), brought these two issues into sharper focus. Generally adhering to the Child Benefit Principle, the court allowed several programs to stand: textbooks, testing, diagnostic services, and therapeutic services. Auxiliary services, materials, equipment, and field trips were struck down because of Excessive Entanglements with religion.

Given the fact that court decisions have not been favorable toward parochial education receiving tax dollars, the rebuffed parochial school educators continue to experi-

ment and test new forms of aid. Several unsuccessful attempts of aid include:

- tax credits for elementary and secondary school parents
- educational vouchers
- direct payment to parochial schools and parents

Several, more successful attempts to acquire parochiade funds have included:

- dual enrollment
- released-time
- ecumenical schools
- indirect payments to public school districts
- competitive grants and contracts
- technical/vocational education

and about a dozen federal programs and service categories provided under the sweeping provisions of the 1965 ESEA Act and its subsequent amendments.

Litigation affecting parochial school financing has represented a last resort effort of Professional and Citizens groups to influence non-public parochial funding pro or con. Several groups most influential in presenting challenges were the American Civil Liberties Union, Americans United, and the public schools. Categories of parochiade most often challenged by these groups were:

textbooks - thirty per cent of cases

teacher services - thirty per cent of cases
auxiliary services and materials - twenty-three per
cent of cases
cooperative/innovative programs - fifteen per cent
of cases

The participation and involvement of these groups have played an important role in determining the quality, scope, and level of programs and services financed for non-public parochial schools. Legal issues and questions raised have led to discussion, debate, and litigation which shed new light on public financing of parochial school programs. Based upon this new information generated by the findings, several general conclusions are presented in the next section.

Conclusions

As a result of this study, several specific conclusions can be made regarding state statutes, policies, and programs related to financing non-public parochial school programs and services:

- 1) More state statutes were found to be unconstitutional as a result of "Excessive Entanglements" with religion than for any other legal reason.

- A. Fifteen of the thirty-two selected U.S. Supreme Court decisions directly influence public financing of non-public parochial education in that they collectively contain:

- (1) the contents of the two main issues of Excessive Entanglements v. The Child Benefit Principle.
- (2) all of the U.S. Supreme Court tests.
- (3) litigation involving the four major areas of this study

Fifteen U.S. Supreme Court decisions directly influencing parochial schools in chronological order:

Pierce v. Sisters	1925/Oregon	Right of non-public school to exist
McCullom v. Bd. of Educ.	1948/Illinois	Released-time
Everson v. Bd. of Educ.	1947/New Jersey	Transportation
Zorach v. Clauson	1952/New York	Released-time
Cochran v. Bd. of Educ.	1957/Louisiana	Textbooks
Bd. of Educ. v. Allen	1968/New York	Textbooks
Lemon v. Kurtzman	1971/Rhode Island Pennsylvania	Teacher services and auxiliary materials and equipment
Jackson v. California	1972/California	Tuition grants
Sloan v. Lemon	1973/Pennsylvania	Tuition subsidy
Norwood v. Harrison	1973/Mississippi	Textbooks
Marburger v. New Jersey	1974/New Jersey	Textbooks and Auxiliary services/materials
Wheeler v. Berrera	1974/Missouri	ESEA Services
Meek v. Pittenger	1975/Pennsylvania	Auxiliary services, materials, equipment, text books

Minnesota v. Minnesota Civil Liberties Union	1975/Minnesota	Tax credits
Wolman v. Walter	1977/Ohio	Auxiliary ser- vices, materials, equipment, text- books, field trips, tests, diagnostic ser- vices, testing services

B. In six of the above mentioned decisions, state statutes were upheld, seven were struck down, while two state statutes were separated for favorable and unfavorable rulings. (Table 2, Appendix C)

2. State statutes and policies that established public control over parochial programs/services most often achieved the "Primary Secular Effect" approved by the courts.

A. Focus states' textbook statutes and policies held constitutional were similar or patterned in that textbooks were provided at parent or student request. Further similarities existed in the areas of delivery mechanisms, method of implementation, appropriation, and state monitoring practices.

B. The focus states were similar in not directly providing for teacher services to parochial schools. No direct references were found in

statutes and policies related to contracting teacher services as a separate category. Indirect references were included in the auxiliary services and cooperative/innovative programs categories.

- C. Among the focus states, statutes, policies, and practices vary in providing auxiliary services, materials, and equipment to parochial school students. These variations occurred in the name classification: (auxiliary services, auxiliary materials, ancillary services, auxiliary programs); source of revenue: state financing, state/federal, state/local, local/state/federal, and state/private; and expenditure allocations: expenditures shall not exceed that amount spent on each public school student, expenditure shall be limited to an amount appropriated by the legislature, and unlimited expenditures.
- D. Among the focus states, statutes, policies, and practices were similar and patterned as related to the area of cooperative/innovative programs. There were consistent patterns of reliance on private and federal sources of funding for cooperative/innovative programs as:

- ESEA programs and services
- federally funded contracts and grants
- privately funded competitive contracts and grants
- no additional cost programs as released-time and dual enrollment

3. Direct aid to students in parochial schools was a more widely practiced and acceptable method of financing parochial school programs and services than direct aid to parents or school districts.

A. Reactions to financing practices among the states to U.S. Supreme Court decisions caused:

- 1) additional litigation at the trial and appellate levels
- 2) further clarification of previous parochial decisions
- 3) continuing efforts to locate new and constitutional sources/methods of financing
- 4) alternative financing approaches to be developed.

B. Because direct aid to students was more widely practiced and accepted, supported by the Child Benefit Principle, court cases, decisions, and precedent, all other parochial financing practices run a high risk of being excessively

entangled in religion.

C. Adverse U.S. Supreme Court decisions have reduced the number of parochial school financing alternatives, however, the number of programs and services and their costs have increased. Unconstitutional statutes, policies, and practices are restructured as in *Meek v. Pittenger*, to meet court guidelines. Therefore, acceptable statutes, policies, and practices that meet court guidelines, were more comprehensive than before, and have been copied by other states. The net effects were increased numbers of programs and costs.

The thirty-two U.S. Supreme Court cases selected for the study add meaning and some clarity in support of the above conclusions. Seventeen of the decisions were unfavorable while fifteen were favorable. The plurality of unfavorable decisions does not support a final conclusion that the court is not favorable to financing non-public parochial school programs/services. For the purpose of this study, those fifteen U.S. Supreme Court decisions which influence state statutes, policies, and practices most provide the basis for conclusions. Several generalizations related to these findings were also generated:

-State statutes, policies, and programs that adhere

to the Child Benefit Principle, while clearly establishing state control, may be allowed by the courts.²

-State statutes, policies, and programs that violate the First and/or Fourteenth Amendments cause Excessive Entanglements with religion that will be rejected by the courts.³

-During the past thirty years, the court has upheld parochial statutes, policies, and practices that adhere to the Child Benefit Principle.

Among the focus states, many similarities existed. Several include constitutional statutes, policies, and programs that uniformly exclude public funds being used for sectarian benefit, clearly identified programs/services to be provided, established state authority and control, provisions for source and methods of funding, and monitoring structures for evaluation purposes.

In contrast, statutes, policies, and programs ruled out by the court have consistently showed weaknesses in four of the above areas:

- sectarian benefit
- state authority and control

²Wolman v. Walter 417 F. Supp. 1113, Ohio 1976.
45 U.S.L.W. 4861.

³Meek v. Pittenger 95 S. Ct. 1753 Pennsylvania (1975).

-source of funds

-method of delivering funds

Currently more similarities exist in each of the four areas of the study than differ.

Although litigation has limited the range of alternatives to parochial school financing, many programs and services are provided by the states. Among the fifteen urban focus states, seven provided textbooks. This was accomplished by loaning books directly to the student at the written request of a parent or the student himself. Other school supplies, reading materials, and manipulatives have been classified as "textbook related" and are provided under this category. Teacher services as a category was not found to exist among the states. This category of programs has been discontinued as a separate entity, however, teachers hired and salaried by public schools may perform secular teaching services for parochial school students under the auxiliary services and cooperative programs categories.

All of the focus states were found to provide some form of auxiliary services. As a general rule, auxiliary services and materials that meet the primary secular effect and are not ideological in nature, can be provided by the states. Such services include: guidance, counseling, testing, therapeutic services, transportation, handicapped

education, technical and vocational education. Cooperative and innovative programs are acceptable for several reasons:

- 1) involvement by public school districts is basic
- 2) grants, contracts, and agreements won competitively require state and federal constitution compliance prior to approval of funds, and
- 3) funds for innovative projects may be awarded directly or indirectly to any qualifying agency.

Similarities and patterns were found to exist among the focus states not only in financing practices, but also in the areas of litigation and court influences. U.S. Supreme Court decisions and its influences are discussed in the next section.

Influences of U.S. Supreme Court Decisions

The impact of adverse court decisions has influenced the states in providing programs and services to non-public parochial schools. These influences have led to several reactions:

- 1) Dropping of programs/services - when the court rejects a state program or service, it gives reasons for that rejection which includes legal questions and acceptable practices. By analyzing court decisions, the states may either drop rejected programs/services or restructure them

them according to acceptable practice as outlined in the courts decision.

- 2) Re-structuring of statutes - one state may learn from another's mistakes in statute structure and content. An example: while *Meek v. Pittenger* was being litigated in Pennsylvania 1975, the Ohio legislature quickly repealed a similar auxiliary services law, restructured and passed another more consistent with justices' opinions, and thus provided a "public control" clause that clearly established the secular motive.
- 3) Establishment of state level advisory groups - twelve of the fifteen focus states had state level advisory groups who assist with gathering data for legislators, the development of state non-public parochial school policy, determining needs, and monitoring progress. These groups were involved in planning and implementation of programs and services as a method of gaining support for states' non-public parochial programs.
- 4) Reliance on federal assistance - as state financed programs and services were ruled unconstitutional, a heavier reliance on federal sources of income occurred. This reliance was accomplished mainly by securing funds through the ESEA of 1965,

its amendments, and by competitively winning federal grants and contracts. Several of these federally funded programs were common among the states.

(Table 3)

Although the adverse U.S. Supreme Court decisions apply specifically to the statute, policy, or program being challenged, it leaves other states with similar conditions in serious quandry as to their programs' validity. Rulings related to the four major areas of the study (textbooks, teacher services, auxiliary materials and services, and innovative/cooperative programs) during the past decade have tended to be narrowly drawn, often ambiguous, and not predictable. The net effect has been that plaintiffs seek further litigation to clarify previous rulings.

It appears that future rulings will be made on a decision by decision basis. Therefore, Chief State School Officers, legislators, and educators will not have a consistent set of standards that apply as they structure, plan, and implement state statutes, policies, and programs. Not only must legislators and educators be competent, skillful, and creative in their respective fields, but also in the area of reasonably guessing what the court will do in the future.

Recommendations

States and School Officers

The frustration with large urban state school systems

has grown to such an extent that Jimmy Carter, President of the United States, has sought relief for parochial and private schools in such alternatives as:

- equalizing federal funds spent on public and non-public children
- community schools
- tax credits to parents
- private funding sources

Based upon the data generated by this study, some recommendations are presented for the states and school officials:

- 1) state statutes and policies related to financing of non-public parochial schools should be developed and published in separate sections of state school codes and widely disseminated within the state.
- 2) Updated state statutes and policies affecting non-public and parochial schools should be available to all school officials and others responsible for implementing, monitoring, and evaluating parochial school programs.
- 3) Legislators, educators, citizen's groups, and the private sector should be represented on state level advisory groups in order to adequately protect the public interests.
- 4) Legal experts in school law, and constitutional law should be involved in the structuring of

statute, policy, and program content, purpose, intent.

- 5) Large urban centers with elementary and secondary enrollments of 50,000 or more, should develop a "communication network" among and between states for consistency of planning.
- 6) All state statutes providing financing for non-public parochial school programs/services should be tested by state's attorneys before implementation.
- 7) Additional personnel should be recruited to monitor, re-assess needs, and evaluate state financed parochial school programs.
- 8) Well organized public relations campaigns, related to the state's programming and services provided to non-public parochial schools and their value to the public, should be developed by the state for controlled dissemination to the public.

State Departments of Education and Chief State School Officers do not have the authority to make the necessary policy decisions in order to carry out these recommendations. Realizing that the laws and/or policies may restrict educators power to carry out effective change in the area of parochial school financing, alternative strategies may be found by establishing exploratory study groups, task forces, and action research projects.

Recommendations for Further Study

Through a national appraisal and focus on fifteen urban states, this study has attempted to present in an organized, chronological, and clear manner, primary data that related to state statutes, policies, and programs which affect non-public parochial schools. The specific research purposes:

- 1) Identifying and selecting U.S. Supreme Court decisions
- 2) Determining what statutes, policies, and practices currently existed
- 3) Identifying similarities among the fifteen focus states
- 4) Analyzing state's reactions to court decisions

assisted in carrying out the major purpose of the study. As a result of the investigation, many questions were generated, several of which are suggested for further study:

For purposes of the current study, programs/services were categorized into four major areas:

textbooks

teacher services

auxiliary services/materials

cooperative/innovative programs

Future studies could focus on one category with an in-depth analysis of each program or service.

- A study of the Warren and Burger Courts' philosophical unity v. un-predictability in educational decisions.
- Non-public parochial school consolidation and merger models
- Tax credits for elementary and secondary school parents
- Ecumenicalism in non-public parochial schools
- Alternative parochial school finance models
- Excessive Entanglements v. The Child Benefit Theory
(History - Future)

It is hoped that the information presented in this dissertation will assist legislators, Chief State School Officers, and educators in the difficult tasks of planning and implementing programs and services for non-public parochial school students in elementary and secondary schools.

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A P P E N D I X A

- I Letters Requesting Data
- II Letters from Chief State School Officers and
State Departments of Education
- III Letters from Professional and Citizens Groups

A P P E N D I X A - I

Leon Hendricks
8558 S. Euclid Ave.
Chicago, Illinois 60617

I am currently a Doctoral Candidate in Administration and Supervision at Loyola University, Chicago, and Assistant Principal at Martin Luther King Junior High School, Harvey. The purpose of this communication is to seek information for a Doctoral Dissertation designed to determine what STATUTES, POLICIES, AND PROGRAMS currently exist among the states related to public financing of Urban non-public elementary and secondary schools in America. This National study seeks to identify characteristics, patterns, and trends in method and procedure used by states in providing 1) textbooks, 2) teacher services, 3) auxiliary services, and 4) cooperative programs for non-public parochial schools.

This information will be used to develop a handbook for use by state offices and officers in designing and implementing non-public parochial school programs that meet recent U.S. Supreme Court tests of constitutionality (Meek v. Pittenger).

Specific publications and related information requested from your state include:

- A. Copy of State School Code or Policies
- B. Cooperative Programs, Services between public and private elementary and secondary schools
- C. State report on Independent, Private, and Parochial schools - teacher/student statistics
- D. Other related information

Thank you for your cooperation and consideration.

Sincerely,

Leon Hendricks

Mr. Leon Hendricks
8558 South Euclid Avenue
Chicago, Illinois 60617

*mailing, shipping, copying charges will be paid upon billing.

Leon Hendricks
8558 S. Euclid Ave.
Chicago, Illinois 60617
May 6, 1977

I am currently a Doctoral Candidate at Loyola University in Chicago. The purpose of this communication is to ask for your assistance in completing the enclosed survey regarding Public Financing of Non-Public Parochial Schools.

This National study seeks to determine methods of aid, sources of aid, group reactions and participation, and trends. Data compiled in this survey will be used to develop a handbook for use by State School Officers in designing and implementing Non-Public Parochial programs that meet United States Supreme Court tests of constitutionality (Meek v. Pittenger).

Your time and consideration is greatly appreciated.

Sincerely,

Leon Hendricks

Leon Hendricks
8558 S. Euclid Ave.
Chicago, Illinois 60617

Xerox University Microfilm
300 N. Zeeb Road
Ann Arbor, Michigan 48106

Dear Sir:

I am currently a Doctoral Candidate in Administration and Supervision at Loyola University, Chicago, and would like to have a search for information on the following topic:

"State statutes, policies, and programs related to public financing of urban non-public parochial elementary and secondary schools in America"

Possible search headings:

- Supreme Court Decisions and State Aid
- State aid for Private Schools
- Church/State Relations
- Cooperative programs between Public and Non-public Schools

Also, information concerning Challenges to State Aid by Citizen's Groups - i.e.

- Citizens for Educational Freedom (CEF)
- National Association for the Advancement of Colored People (NAACP)
- National Catholic Conference (NCC)
- Jewish Defense League

Thank you for your consideration.

Sincerely,

Leon Hendricks

Leon Hendricks
8558 S. Euclid Ave.
Chicago, Illinois 60617
November 8, 1976

Publication Sales
N.C.E.A.
One Dupont Circle
Suite 350
Washington, D.C. 20036

Dear Sirs:

Please send your most recent copy of the publication:

Cooperative Programs Between Public and Non-Public
Elementary Schools; published by the Elementary
Department N.C.E.A.

Also please send a copy of:

Doctoral Dissertations on Catholic Education (Finance)
1968-1975; published by the Secondary School Depart-
ment, 1975

Enclosed find payment for postage and mailing.

Sincerely,

Leon Hendricks

Leon Hendricks
8558 S. Euclid Ave.
Chicago, Illinois 60617
November 8, 1976

Superintendent of Documents
U.S. Government Printing Office
Washington, D.C. 20402

Dear Sirs:

Please send your most recent copy of the publications:

Handbook for Private School Administrators; prepared
by the Council for American Private Education

Enclosed find payment for above.

Sincerely,

Leon Hendricks

Leon Hendricks
8558 S. Euclid Ave.
Chicago, Illinois 60617
November 8, 1976

American Educational Research Association
1201 Sixteenth Street, N.W.
Washington, D.C. 20036

Dear Sirs:

Please send your most recent copy of:

REVIEW OF EDUCATIONAL RESEARCH

Mailing charges enclosed.

Sincerely,

Leon Hendricks

A P P E N D I X A - I I

STATE OF ALASKA

DEPARTMENT OF EDUCATION

DIVISION OF MANAGEMENT, LAW AND FINANCE

199

JAY S. HAMMOND, GOVERNOR

POUCH F - JUNEAU 99811

April 6, 1977

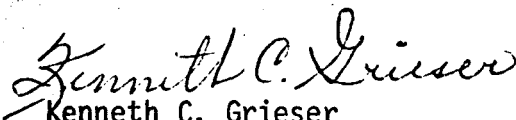
Leon Hendricks
8558 S. Enclid Avenue
Chicago, Illinois 60617

Dear Mr. Hendricks:

In reply to your recent letter requesting information on private and denominational schools in Alaska, I have enclosed copies of several documents including regulations pertaining to private and denominational schools, teachers and student statistics, copies of the law, applications to establish a private school, etc.

I hope this data will be of help to you.

Sincerely,


Kenneth C. Grieser
Deputy Director
Management, Law and Finance

Enclosures

KCG/krk

STATE OF ALASKA

DEPARTMENT OF EDUCATION

DIVISION OF MANAGEMENT AND FINANCE

200

JAY S. HAMMOND, GOVERNOR

POUCH F - STATE OFFICE BUILDING
JUNEAU 99811

May 31, 1977

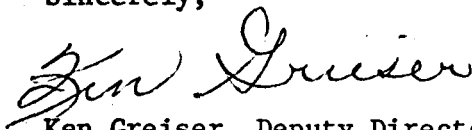
Leon Hendricks
8558 South Enclid Avenue
Chicago, Illinois 60617

Dear Mr. Hendricks:

Enclosed is the completed questionnaire which you recently submitted.

Also attached are copies of the law pertaining to private and denominational schools.

Sincerely,



Ken Greiser, Deputy Director
Management, Law and Finance

Enclosures: 7

KCG/krk



STATE OF CALIFORNIA
DEPARTMENT OF EDUCATION
STATE EDUCATION BUILDING, 721 CAPITOL MALL, SACRAMENTO 95814

May 24, 1977

Mr. Leon Hendricks
8558 S. Euclid Avenue
Chicago, Illinois 60617

Dear Mr. Hendricks:

Enclosed per your survey form request of May 6, 1977,
you will find "An Alphabetical Listing of Public School
Programs in Which Nonpublic Schools Are Eligible to
Participate".

I hope this will prove to be helpful to you in your national
survey as part of your doctoral dissertation.

Sincerely,

A handwritten signature in cursive script that reads "Robert D. McCarthy".

Robert D. McCarthy
Consultant in Private School Education
(916) 322-2838

RDMc:es
Enclosure

WILSON RILES
Superintendent of Public Instruction
Director of Education



STATE OF CALIFORNIA
DEPARTMENT OF EDUCATION
STATE EDUCATION BUILDING, 721 CAPITOL MALL, SACRAMENTO 95814

November 1, 1976

Mr. Leon Hendricks
8558 S. Euclid Avenue
Chicago, Illinois 60617

Dear Mr. Hendricks:

In response to your recent letter addressed to Newton K. Chase, I wish to advise that Mr. Chase retired as of last April and I have become his successor for the Private Schools' Office.

Your check for \$3.00 is enclosed since it is not necessary for the following information and enclosures for your study:

1. General Information sheet
2. Summary of California Laws that apply to Private Schools taken from the Education Code (note address if you wish to order one)
3. An Alphabetical Listing of Public School Programs in Which Nonpublic Schools are Eligible to Participate
4. Annual Report of Enrollment in California Private Elementary and High Schools
5. An Order Form for the California School Directory
6. A list of Selected Publications

One other bit of information you may wish to order from our Washington, D.C. Office is the Handbook for Private School Administrators for Effective Participation in Federal Education Programs Administered by the U.S. Office of Education. You can obtain this for 75¢ by writing to Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 2-4-2; Publications No. HE-19.180:P93 Stock No. 017-808-01489.

I hope these will assist you in your special project.

Sincerely,

Robert D. McCarthy
Consultant in Private School Education
(916) 322-2838

RDMc:es
Enclosures

code
COLORADO DEPARTMENT OF EDUCATION
Office Building, 201 E. Colfax
Denver, Colorado 80203
Telephone (303) 892-2212
Alvin M. Frazier, Commissioner

Development & Demonstration Unit
(303) 892-2230

June 8, 1977

Leon Hendricks
8558 South Euclid Avenue
Chicago, ILL 60617

Dear Mr. Hendricks:

Your survey and letter dated May 6 has been forwarded to my office after Mr. Doug Bassett from our communication unit attempted to initiate some answers. I do not believe I can do much better.

Colorado is a non-regulatory state which means other than certified teachers, we do not regulate programs in the public school districts. The State is further unusual that it does not certify or charter private schools.

The only data that is collected here is an annual attendance account which includes children attending private schools within a school district's boundaries.

The Title IV-B program which I administer does include private school children along with public because of the intention of the Federal law. Our data again is generated from the annual account I referred to in the paragraph above.

With this structure existing in Colorado, it is practically impossible to satisfy most of the question in your survey.

I am sorry I cannot be of further assistance.

Sincerely yours,

Richard DeFore

Richard DeFore, Supervisor
School Libraries & Learning Resources

RD:db

1126
PUBLIC SCHOOLS OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF PROFESSIONAL PUBLICATIONS AND STAFF DEVELOPMENT
PRESIDENTIAL BUILDING
418 TWELFTH STREET, NORTHWEST
WASHINGTON, D. C. 20004

204

April 13, 1977

Mr. Leon Hendricks
8558 South Euclid Avenue
Chicago, Illinois

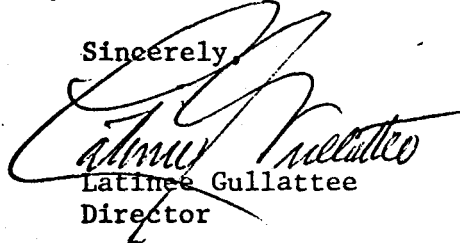
Dear Mr. Hendricks:

This is in reply to your letter requesting information on non-public schools in the District of Columbia.

I would like to suggest that you write to the Office of State Administration, District of Columbia Public Schools (the same address), under whose purview non-public education comes. That office would be the best informed source of the information you need.

Best wishes of success with your research.

Sincerely,



Latine Gullattee
Director

LG:hlc

STATE OF FLORIDA
DEPARTMENT OF EDUCATION

TALLAHASSEE 32304

March 31, 1977

Mr. Leon Hendricks
8558 S. Euclid Avenue
Chicago, Illinois 60617

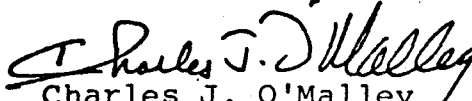
Dear Mr. Hendricks:

In response to your request for information concerning nonpublic school programs in the state of Florida, we are enclosing herein copies of material which may be of some value to you. Among the enclosures you will find:

1. A handbook recently prepared by the Florida Department of Education re state rules and regulations pertaining to nonpublic elementary and secondary schools.
2. A directory of nonpublic elementary and secondary schools in the state of Florida. (Please note that this is not "official," as there are "loopholes" in Florida's registration statute.)
3. A brochure describing the Florida Association of Academic Nonpublic Schools (FAANS). Since this association represents close to 75% of the state's nonpublic school population, you may wish to contact the directors of each of the associations for additional information.
4. A copy of a questionnaire which was recently sent out to select nonpublic elementary and secondary schools throughout the state. We have not compiled the data at this time, so we are unable to provide you with accurate information concerning the types of cooperative programs currently in operation.
5. Reports on meetings co-sponsored by the Florida Department of Education and the nonpublic school leadership in the state. The agenda items and conference reports may give you some insight as to the types of programs in operation in Florida.

If you should need additional information, please do not hesitate to contact us.

Sincerely,


Charles J. O'Malley
Consultant
Nonpublic Schools

wjw
Enclosures

cc: Mr. Roger Sikkenga
Dr. Marshall Frinks



STATE OF GEORGIA
DEPARTMENT OF EDUCATION
OFFICE OF THE STATE SUPERINTENDENT OF SCHOOLS
STATE OFFICE BUILDING

ATLANTA 30334

March 29, 1977

JACK P. NIX

Superintendent of Schools

JOE EDWARDS

Deputy State Superintendent

Mr. Leon Hendricks
8558 S. Euclid Avenue
Chicago, Ill. 60617

Dear Mr. Hendricks:

This will acknowledge your letter as received March 25. In order that you might receive as much material as possible, we will be pulling together as many of those things as we can possibly send to you during the week and mail them to you.

I regret that we have been unable, for the past several months, to even provide copies of the school laws to local school superintendents free of charge. The rapidly escalating costs have caused us to be in position of having to charge \$20.45 (actual cost of the publication) to local school officials as well as other interested individuals. If you would like to have a copy of this publication, please feel free to make a check payable to the Georgia State Department of Education and we will send the law book by return mail.

Sincerely,

Joe Edwards
Deputy State Superintendent
of Schools

JE:bb

P.S. Fourth-class, book rate for the above publication is \$.38, and delivery would be made within 4 or 5 days. Postage rate for UPS is \$.78, and delivery would be made the next day. Please include this in your check.

JE



STATE OF IDAHO
DEPARTMENT OF EDUCATION

207

LEN B. JORDAN OFFICE BUILDING
BOISE, IDAHO 83720

ROY TRUBY
STATE SUPERINTENDENT OF PUBLIC
INSTRUCTION

May 31, 1977

Leon Hendricks
8558 S. Euclid Ave.
Chicago, Illinois 60617

Dear Mr. Hendricks,

Enclosed with this note is your survey regarding state aid to non-public schools in Idaho. We have answered the questions as completely as possible but you will notice many blank spaces. Depending on the question, these blanks mean "No", "Not Applicable", or "Unanswerable".

Good fortune with your project.

Sincerely,

A handwritten signature in cursive script that reads "Jon M. Fennell".

Jon M. Fennell, Consultant
Management Information

JMF/nc
enclosure



STATE BOARD OF EDUCATION
ILLINOIS OFFICE OF EDUCATION

Joseph M. Cronin
State Superintendent of Education

208

May 16, 1977

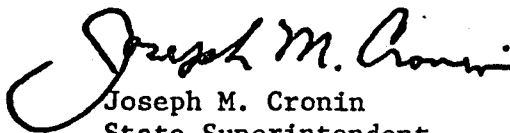
Mr. Leon Hendricks
8558 South Euclid Avenue
Chicago, Illinois 60617

Dear Mr. Hendricks:

This is a reply to your letter dated May 6. The attached survey instrument has been completed per your request.

Best wishes for success in your research efforts.

Sincerely,



Joseph M. Cronin
State Superintendent
of Education

Attachment



State of INDIANA

Department of Public Instruction
Harold H. Negley, Superintendent
Room 229, State House • Indianapolis 46204
317/633-6610

Division of School Finance
Room 225, State House
317/633-4275

209

April 13, 1977

Mr. Leon Hendricks
8558 South Euclid Avenue
Chicago, Illinois 60617

Dear Mr. Hendricks:

Your letter to Mr. Raymond Slaby in regard to financing of non-public elementary and secondary schools has been referred to me for an answer.

Public funds in Indiana are never used for financing educational programs in non-public elementary and secondary schools. Transportation may be provided for non-public school pupils living on the regular bus route.

Enclosed is a copy of our Digest of School Finance in Indiana.

Sincerely,



George Glenn, Assistant Director
Division of School Finance
Department of Public Instruction
Room 225 - State House
Indianapolis, Indiana 46204

GG/es
Enclosure

STATE OF IOWA • DEPARTMENT OF PUBLIC INSTRUCTION

GRIMES STATE OFFICE BUILDING • DES MOINES, IOWA 50319

210

ROBERT D. BENTON, Ed.D., STATE SUPERINTENDENT



July 25, 1977

Leon Hendricks
8558 S. Euclid Ave.
Chicago, Illinois 60617

Dear Mr. Hendricks:

Some of the questions on your survey are not appropriate to the State of Iowa. For your information and study, I have enclosed sections of the 1977 Code of Iowa regarding state aid for transportation, textbooks and shared time.

Sincerely,

Gary L. Olney
Gary L. Olney, Ph.D.

GLO:jts

encls.

STATE OF LOUISIANA
DEPARTMENT OF EDUCATION

211



J. KELLY NIX
State Superintendent

P. O. Box 44064
Baton Rouge, La.
70804

March 28, 1977

Mr. Leon Hendricks
8558 South Euclid Avenue
Chicago, Illinois 60617

Dear Mr. Hendricks:

Enclosed are three Department of Education publications which may help in preparing your Doctoral Dissertation.

The Louisiana School Directory, Session 1976-77 contains our most current school statistics information. Benefit Laws, Publication 1285 and The Administrative Structure of Louisiana's Public Educational System, Publication 1456 do not contain 1976 Legislative action.

If you need information regarding our Federal Programs, you should write Dr. Dan Lewis, Title IV, Department of Education, P. O. Box 44064, Baton Rouge, Louisiana 70804.

If we can be of further assistance, please let us know.

Sincerely,

A handwritten signature in cursive script that reads "Pam Beacom".

(Mrs.) Pam Beacom
Research Library

pgb
Enclosures (3)

June 16, 1977

Mr. Leon Hendricks
8558 South Euclid Avenue
Chicago, Illinois 60617

Dear Mr. Hendricks:

Please excuse the delay in sending the materials you requested. The revisions of the guidelines for the implementation of the nonpublic pupil aid program have just been completed and is the reason for the delay.

Enclosed are copies of:

- 1) Minnesota Statutes, Chapter 396 (Sections 4 and 5 have not been implemented)
- 2) Rules and Regulations
- 3) Revised Guidelines
- 4) Minnesota Educational Directory (See pages 94-107)
- 5) Minnesota State Publications (See page 6)
- 6) Summary Report - 1976

I hope these materials will be of assistance in the completion of your project.

Sincerely,



Carolyn Hellervik
Consultant for Nonpublic Pupil Aid
612-296-8130

CH:1bu

State of Mississippi

213

DEPARTMENT OF EDUCATION
C. E. Holladay, Superintendent

Albert J. Comfort, Jr., Ed.D.
Coordinator



A. C. Bilbo
Assistant Coordinator

TITLE I. ESEA

JACKSON, MISSISSIPPI

March 24, 1977

Mr. Leon Hendricks
8558 South Euclid Avenue
Chicago, Illinois 60617

Dear Mr. Hendricks:

This will acknowledge your letter received in this office on March 24.

Enclosed is a listing of the parochial schools in this State and copies of the sections in the Mississippi School Code which affect non-public schools.

The best of luck to you.

Sincerely,

A handwritten signature in cursive script, appearing to read "A. C. Bilbo".

A. C. Bilbo
Assistant Coordinator

ACB:sm

Enclosures

P. J. NEWELL, JR.
ASSISTANT COMMISSIONER



214
DIVISION OF INSTRUCTION

DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION
STATE OF MISSOURI
Jefferson City 65101

March 31, 1977

Mr. Leon Hendricks
8558 South Euclid Avenue
Chicago, Illinois 60617

Dear Mr. Hendricks:

Your letter of March 28, 1977, to Commissioner Mallory has been directed to my office for reply.

The Missouri Constitution is thought to be one of the most restrictive state constitutions concerning the separation of church and state. Therefore, I do not have a list of cooperative programs and services between public and private elementary and secondary schools to send you pursuant to your request.

Under separate cover, I am sending you the following:

- (1) Missouri School Laws (this includes portions of the Missouri Constitution relating to education and the school statutes relating to education).
- (2) The current data that we have on nonpublic schools in Missouri.
- (3) A copy of the December 30, 1976, Opinion of the Supreme Court of Missouri relating to Title I, ESEA, and services for elementary and secondary private school students. You will note on page 6 of the Opinion that the Supreme Court of Missouri states the public policy of the state with regard to education.

I hope that the documents being sent to you under separate cover will meet your needs in your study.

Sincerely,

P. J. Newell, Jr.



OFFICE OF PUBLIC INSTRUCTION

215

STATE CAPITOL
HELENA, MONTANA 59601
(406) 449-3095

Georgia Rice
Superintendent

May 20, 1977

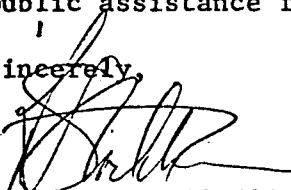
Mr. Leon Hendricks
8558 S. Euclid Avenue
Chicago, Illinois 60617

Dear Mr. Hendricks:

Your letter to Superintendent Rice of May 6, 1977 has been referred to me for reply. Your letter is concerning public financing of non-public schools.

Montana has one of the strictest constitutional provisions against the use of any public money for private schools that there is in existence in the United States today. As the administrator of our public school fund, I can state that private schools in the State of Montana do not receive any public assistance financing.

Sincerely,


ROBERT W. STOCKTON
Administrator
Department of Financial Services

RWS:bw

THE UNIVERSITY OF THE STATE OF NEW YORK
THE STATE EDUCATION DEPARTMENT
ALBANY, NEW YORK 12234

216

BUREAU OF NONPUBLIC SCHOOL SERVICES
518: 474-1556
518: 474-7062

BUREAU OF INTERCULTURAL
RELATIONS AND NONPUBLIC
SCHOOL SERVICES

November 24, 1976

Mr. Leon Hendricks
8558 South Euclid Avenue
Chicago, Illinois 60617

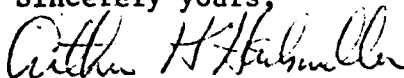
Dear Mr. Hendricks:

Your letter of October 19, 1976, to Dr. Heath has been referred to the Bureau of Nonpublic School Services.

Enclosed for your information is a copy of various laws that are currently in effect in New York State. We do not have a State School Code, but you will note in the copy of "Minimum Requirements for Schools in New York State", that the nonpublic schools are required to comply with the minimum requirements on the same basis as public schools.

If our Bureau can be of further assistance to you, please do not hesitate to contact me.

Sincerely yours,



Arthur H. Hartmuller, Chief
Bureau of Nonpublic School Services

AHH:kh
Enclosures

P.S. Your check for handling and postage is being returned to you.



217

NEVADA DEPARTMENT OF EDUCATION

Capitol Complex
Carson City, Nevada 89710

JOHN R. GAMBLE
Superintendent
LINCOLN W. LISTON
Director
Office of Technical Assistance

May 23, 1977

Mr. Leon Hendricks
8558 S. Euclid Avenue
Chicago, Illinois 60617

Dear Mr. Hendricks:

Nevada provides no financial aid to non-public parochial schools.

Article 11, Section 10 of the Nevada Constitution states:
"No public funds of any kind or character whatever, State, County or Municipal, shall be used for sectarian purpose".

Sincerely,

Lincoln W. Liston
Lincoln W. Liston, Director
Office of Technical Assistance

LWL:mb

DEPARTMENT OF PUBLIC INSTRUCTION



STATE OF NORTH CAROLINA

RALEIGH

May 23, 1977

Mr. Leon Hendricks
8558 S. Euclid Avenue
Chicago, Illinois 60617

Dear Mr. Hendricks:

Much of the data requested in your survey, enclosed with your letter of May 6, 1977, can not apply to the State of North Carolina's official relationship with non-public schools because not one cent of State money is made available to any elementary or secondary private schools.

We are enclosing a kit of materials which may be of some use to you inasmuch as this State does indeed supervise all private schools receiving pupils of compulsory school attendance age.

Cordially yours,

A handwritten signature in cursive script, appearing to read "Calvin L. Criner".

Calvin L. Criner
Coordinator
Non-Public Schools

CLC:hjp
Enclosure: a/s



THE STATE OF NORTH DAKOTA
Department of Public Instruction

Howard Snortland, Superintendent
Lowell L. Jensen, Deputy
BISMARCK, NORTH DAKOTA 58505

May 11, 1977

Mr. Leon Hendricks
8558 S. Euclid Avenue
Chicago, Illinois 60617

Dear Mr. Hendricks:

There are no funds provided for parochial schools. The only assistance is provided by services which are provided with federal funds.

Sincerely,

DEPARTMENT OF PUBLIC INSTRUCTION

A handwritten signature in cursive script, appearing to read "H. J. Snortland".

H. J. SNORTLAND, Superintendent

HJS:cba

STATE OF OHIO
DEPARTMENT OF EDUCATION

COLUMBUS

43215

220



MARTIN W. ESSEX
SUPERINTENDENT OF
PUBLIC INSTRUCTION

March 31, 1977

HERBERT D. BRUM
DIRECTOR
DIVISION OF
SCHOOL FINANCE
811 Ohio Departments Building
614-466-4230
614-466-6266

Mr. Leon Hendricks
8558 South Euclid Avenue
Chicago, Illinois 60617

Dear Mr. Hendricks:

I am enclosing copies of the Ohio Revised Code for providing services and materials to Nonpublic pupils as well as the guidelines which govern the administration of these programs.

Currently, Ohio's enrollment in Nonpublic schools is approximately \$264,000.00. The enrollment has leveled off and begun to increase slightly this year. I hope the enclosed information will be helpful.

Sincerely,

A handwritten signature in cursive script that reads "Herbert D. Brum".

Herbert D. Brum, Director
Division of School Finance

HDB:ya



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF EDUCATION
BOX 911, HARRISBURG, PA. 17126
June 7, 1977

221

Mr. Leon Hendricks
8558 S. Euclid Ave.
Chicago, Illinois 60617

Dear Leon:

Your letter of May 6, 1977, together with the survey on Public Financing of Nonpublic Parochial Schools has been forwarded to me for a response.

This is quite a coincidence for I believe we met several years ago at the ASCD Conference in San Francisco. If I recall, you were then principal of an elementary school in Chicago. I am with the State Department of Education administering aid programs for students attending nonpublic schools.

On your survey sheet I indicated that there would be attachments. I trust these will provide you with additional information.

Accept my very best wishes in attaining your goal. If I can be of any further assistance, please let me know.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Bob", written over a horizontal line.

Robert J. Czukoski
Chief
Division of Nonpublic School Services

Attachments



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF EDUCATION
BOX 911, HARRISBURG, PA. 17126

222

October 28, 1976

Mr. Leon Hendricks
8558 Euclid Avenue
Chicago, Illinois 60617

Dear Mr. Hendricks:

I have your letter of October 19, 1976, in which you request certain items pertinent to state financing of nonpublic education.

I have compiled a packet of such materials and they are being sent under separate cover.

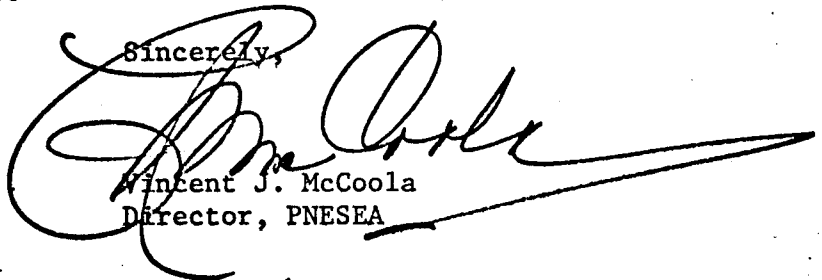
Please be advised that the final draft copy of the School Code has not as yet been enacted into law. Consummation is expected in early 1977.

Generally, items allied to your A, B, C, and D delineations have been sent to you. Your check for \$3.00 was deposited to the credit of the Department.

I trust that the materials sent to you will provide the service you need.

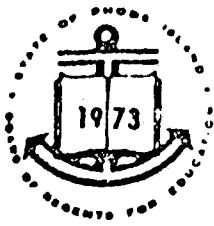
This office is happy to be of service and your interest in Commonwealth education is appreciated.

Sincerely,



Vincent J. McCoola
Director, PNESEA

VJM/dth8



STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF EDUCATION

Hayes Street, Providence, Rhode Island 02908

223

Thomas C. Schmidt, Commissioner

April 28, 1977

Mr. Leon Hendricks
8558 S. Euclid Avenue
Chicago, Illinois 60617

Dear Mr. Hendricks:

This is an answer to your request for information about nonpublic school regulations and policies in Rhode Island. There is no separate code or handbook for private schools. The laws governing education are contained in Title 16 of the General Laws of Rhode Island.

I have copied the sections which make specific reference to private schools:

- § 16-19-2, Approval of Private Schools
- § 16-21-2, Transportation

Transportation of children to sectarian schools has long been an issue of wide dispute in Rhode Island. After the Supreme Court of Rhode Island ruled in 1965 that current version of the law, Section 16-21-2, did not require school committees to provide transportation for children to private and sectarian schools outside the committee's local district, the legislature rewrote the statute to require school committees which bussed children to public schools to bus local children to any private, or sectarian school in the state which had "regionalized", that is declared itself open to children in a specific area within the state. This was in 1965. The Rhode Island Supreme Court struck down that statute as well, holding that the statute impermissibly delegated legislative power to private and sectarian schools; this was in 1976.

The legislature responded again, attempting to provide transportation for children attending non-public schools within constitutional limits. I have included a copy of the section of the law as it was passed in 1976.

In 1977, the law was challenged in the District Court of the United States for Rhode Island by two school committees of small communities. The verdict favored the challenging communities; however in an opinion from that Judge - Judge Pettine - and the Attorney General of the state, it was declared that his ruling referred only to the two plaintiffs. I have enclosed the memo which was sent to Public School Superintendents by the Commissioner of Education on March 23, 1977. This is absolutely the most final word on transportation in the State. There have been no attempts to discontinue transportation in any other community, either within the local limits or to regional schools across town lines.

There are 15 regional schools in the state - 13 sponsored by the Catholic Diocese of Providence, one Hebrew Day School, and one private school. The nonpublic school population of the state accounts for about 15% of the school enrollment. There are 78 Catholic Schools in the State and fifteen Independent Schools, one of which is the Hebrew Day School and one a Christian Day School sponsored by the Lutheran Church. The school enrollment for 1976-77 is as follows:

Public Schools	176,240	84.81%
State Operated Schools	1,549	0.75%
Catholic Schools	23,316	12.18%
Independent Schools	4,706	2.26%

Continuing with the School Laws, I have included also the following sections:

§ 16-21-3, 4	Standards for School Buildings and Fire Drills
§ 16-21-10...14	Health and Safety Regulations
Chapter 22	Curriculum
§ 16-23-2	Loan of Textbooks
§ 16-38-2	Immunization
Chapter 40	Private Schools

The Standards for Approval of Schools are the same for private as public with one exception, a teacher in a private school need only have a degree - state teacher certification is not necessary. I have enclosed copies of the standards for elementary and secondary schools approval.

Nonpublic school children participate in Federal Programs according to mandates of the guidelines for each program. There are 1110 children in 41 Catholic schools participating in Title I for disadvantaged children in the present school year.

Mr. Leon Hendricks
8558 S. Euclid Avenue
Chicago, Illinois 60617

Page 3

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Every nonpublic school receives an allocation for Part B of Title IV which is administered by the appropriate LEA. Children are involved in Part C programs (the competitive monies) on an equitable basis.

Some private schools (at their own discretion) are participating in the Federal lunch and milk programs.

I trust that this information will be helpful to you in completing your dissertation. If I can be of any further service, do not hesitate to call on me.

Sincerely,

Sister M. Rosalia, R.S.M.

Sister M. Rosalia Flaherty, R.S.M.
Consultant, Nonpublic Schools

SMRF/ljl

Enclosures 



STATE OF VERMONT
DEPARTMENT OF EDUCATION
MONTPELIER
05602

April 21, 1977

Mr. Leon Hendricks,
8558 S. Euclid Ave.,
Chicago, Ill. 60617

Dear Mr. Hendricks:

In reply to your recent letter to Dr. Leon Bruno of this department, enclosed is some statistical information on non-public schools in this state.

The Vermont School Board Association has sets of the Vermont Education statutes on sale for \$5.00 a set. The address of the association is:

Vermont School Board Association
62 State Street
Montpelier, Vermont 05602

Basically, Vermont law does not permit local education agencies to provide textbooks, teacher services or auxiliary services to non-public schools. Locally funded auxiliary services may be provided to pupils in non-public schools, and this is done to some extent. Federally funded auxiliary services must be provided to such pupils on an equitable basis.

Sincerely yours

A handwritten signature in cursive script, appearing to read "Edward L. Ryan".

Edward L. Ryan, Chief
Education Field Services

ELR/bd



COMMONWEALTH of VIRGINIA

STATE DEPARTMENT OF EDUCATION
RICHMOND, 23216

April 6, 1977

Mr. Leon Hendricks
8558 South Euclid Avenue
Chicago, Illinois 60617

Dear Mr. Hendricks:

Dr. Robert Turner received your letter requesting information designed to determine the Statutes, Policies, and Programs in Virginia which are related to public financing of urban non-public elementary and secondary schools. He asked that I would respond to your request.

The Virginia Constitution limits any kind of public assistance to private schools; however, the State does allow for dual enrollment and use of facilities, equipment, etc. by students attending non-public schools.

Article IV, Section 16 of the State Constitution, Appropriations to religious or charitable bodies, states,

"The General Assembly shall not make any appropriation of public funds, personal property, or real estate to any church or sectarian society, or any association or institution of any kind whatever which is entirely or partly, directly or indirectly, controlled by any church or sectarian society. Nor shall the General Assembly make any like appropriation to any charitable institution which is not owned or controlled by the Commonwealth; the General Assembly may, however, make appropriations to nonsectarian institutions for the reform of youth criminals and may also authorize counties, cities, or towns to make such appropriations to any charitable institution or association."

Article VIII, Section 10, State appropriations prohibited to schools or institutions of learning not owned or exclusively controlled by the State or some subdivision thereof; exceptions to rule,


Mr. Leon Hendricks
April 6, 1977
Page 2

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"No appropriations of public funds shall be made to any school or institution of learning not owned or exclusively controlled by the State or some political subdivision thereof; provided, first, that the General Assembly may, and the governing bodies of the several counties, cities, and towns may, subject to such limitations as may be imposed by the General Assembly, appropriate funds for educational purposes which may be expended in furtherance of elementary, secondary, collegiate or graduate education of Virginia students in public and nonsectarian private schools and institutions of learning, in addition to those owned or exclusively controlled by the State or any such county, city, or town; second, that the General Assembly may appropriate funds to an agency, or to a school or institution of learning owned or controlled by an agency, created and established by two or more states under a joint agreement to which this State is a party for the purpose of providing educational facilities for the citizens of the several states joining in such agreement; third, that counties, cities, towns, and districts may make appropriations to nonsectarian schools of manual, industrial or technical training, and also to any school or institution of learning owned or exclusively controlled by such county, city, town, or school district."

I have asked the Office of Public Information and Publications to forward you a copy of Virginia's School Laws and its supplement. I trust that this will provide you with the information needed relative to public financing of non-public elementary and secondary schools in Virginia.

Cordially,



Vernon L. Wildy
Coordinator
Education and Service Programs

VLW/de

Superintendent of Public Instruction

DR. FRANK B. BROUILLET • OLD CAPITOL BLDG., OLYMPIA, WASH. 98504



November 1, 1976

Mr. Leon Hendricks
8558 S. Euclid Ave.
Chicago, ILL 60617

Dear Mr. Hendricks:

I am responding to your letter of October 19, 1976, regarding information requested about nonpublic schools for your Doctoral studies. Enclosed you will find your check which is not required for the information you are seeking.

I am also enclosing for your information a copy of the statutes relating to the approval process for nonpublic schools in the state of Washington. In addition to that, I want to refer you to a publication, if you have not already discovered it - State And Federal Laws Relating To Nonpublic Schools, published by Bascomb Associates, Incorporated, 7961 Eastern Avenue, Silver Springs, Maryland, 20910.

Also enclosed find a copy of some information relative to our Ancillary Services - Part-time Attendance Law which tells about access on the part of private school students to public school courses and services not offered by the private schools. We do not publish a annual report separately on independent private and parochial schools but I am including for your information a report that I used for the State Board of Education which indicates the number of students and the number of private schools approved.


In addition to a statewide advisory committee on nonpublic education appointed by the State Board of Public Instruction,

Mr. Leon Hendricks
Page 2
March 25, 1977

I am enclosing a list of current publications available through the Department of Public Instruction. If you wish to order, please send your order to the Publications Section of the Department of Public Instruction.

It is hoped that this information has been of some help to you.

Sincerely,



Donald E. Dimick
Assistant Superintendent

DED:jmh

Enclosure



Barbara Thompson, Ph.D.
State Superintendent
Dwight M. Stevens, Ph.D.
Deputy State Superintendent

DIVISION FOR SCHOOL BOARD AND ADMINISTRATOR SERVICES
Donald E. Dimick, Assistant Superintendent

March 25, 1977

Mr. Leon Hendricks
8558 South Euclid Avenue
Chicago, Illinois 60617

Dear Mr. Hendricks:

This will acknowledge your letter requesting information relating to statutes, policies and programs related to public financing of non-public elementary and secondary schools.

The constitution of the state of Wisconsin does not permit the payment of any direct aid to non-public schools. The state Attorney General has held that Meek vs. Pittenger applies to federal funds in Wisconsin. Indirect assistance is provided in the following areas:

- (1) Pupil transportation. Children attending non-public schools are provided free public transportation to and from school on the same basis as it is provided to children attending the public school in that same district. The public school provides the transportation and the cost is paid by local taxes and state pupil transportation aid.
- (2) Teacher certification. If the non-public schools wish their teachers to qualify for teaching experience toward an unlimited certificate, the non-public school may request a program review by the Department of Public Instruction. If the program review indicates that the experiences gained teaching in a non-public school are comparable to those which would be gained in a public school, credit toward the teaching certificate is allowed.
- (3) National School Lunch Program. This program is supervised by the Department of Public Instruction in both the public and non-public schools. Federal school lunch aid is processed through the Department of Public Instruction for both types of schools.
- (4) Other federal programs. Participation in other federally funded programs is carried on through the local public school district. Eligible non-public school children may participate in these federally funded programs under the general supervision of the local public schools.

Mr. Leon Hendricks

-2-

November 1, 1976

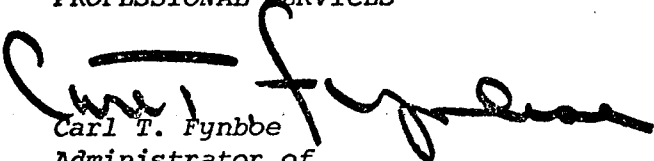
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we also have a very active organization for nonpublic schools, the Washington Federation of Independent Schools and a corollary organization called the Washington Council on Private Education. Also enclosed find some other materials which may be of interest to you.

After reviewing these materials, you may have additional questions. If so, know you are welcome to call (206) 753-1137 or write.

Sincerely,

DIVISION OF
PROFESSIONAL SERVICES



Carl T. Fynbbe
Administrator of
Nonpublic Education

CTF:ic

Enclosures

A P P E N D I X A - III

COUNCIL FOR AMERICAN PRIVATE EDUCATION

1625 EYE STREET, N. W. (SUITE 1010)

WASHINGTON, D. C. 20006

(202) 659-8286

April 13, 1977

Dear Mr. Hendricks:

The HEW-OE publication most helpful to you would be STATE AND FEDERAL LAWS RELATING TO NONPUBLIC SCHOOLS, published April, 1975. There are, unfortunately, no more copies available; however, the Office of Nonpublic Educational Services informs me that they will be happy to xerox from the publication any specific state or federal regulations you may request. Their address is:

Mr. Dwight R. Crum, Director
Nonpublic Educational Services
U.S. Office of Education
Washington, D.C. 20202

Best of luck in the progress toward your doctoral candidacy.

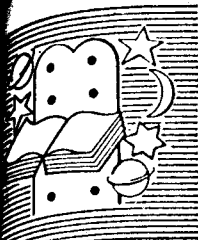
Sincerely,

Robert L. Lamborn
Robert L. Lamborn
Executive Director

Mr. Leon Hendricks
8558 South Euclid Avenue
Chicago, Illinois 60617

MEMBERS: THE AMERICAN LUTHERAN CHURCH; AMERICAN MONTESSORI SOCIETY; ASSOCIATION OF MILITARY COLLEGES AND SCHOOLS OF THE U.S.; FRIENDS COUNCIL ON EDUCATION; LUTHERAN CHURCH—MISSOURI SYNOD. BOARD OF PARISH EDUCATION; NATIONAL ASSOCIATION OF EPISCOPAL SCHOOLS; NATIONAL ASSOCIATION OF INDEPENDENT SCHOOLS; NATIONAL CATHOLIC EDUCATIONAL ASSOCIATION; NATIONAL SOCIETY FOR HEBREW DAY SCHOOLS; NATIONAL UNION OF CHRISTIAN SCHOOLS; U.S. CATHOLIC CONFERENCE.

EXECUTIVE DIRECTOR: DR. ROBERT L. LAMBORN



National Society for Hebrew Day Schools

Torah Umesorah



תורה ומסורה

229 Park Avenue South, New York, New York 10003 • Telephone (212) 674-6700

ב"ה

April 14, 1977

Mr. Leon Hendricks
8558 S. Euclid Avenue
Chicago, Illinois 60617

Dear Mr. Hendricks:

We have your form letter asking for information in terms of your forthcoming doctoral thesis.

I'm enclosing our annual report which will give you some idea of the scope of our program. Unfortunately, the specific information you requested does not necessarily tally with all our purposes.

However, in terms of federal aid or state aid to nonpublic schools, I can tell you that we have always taken a public stand favoring such aid, provided it is constitutionally feasible. I'm also enclosing some items which bespeak our point of view.

We also have participated in litigation and have been involved in a number of briefs, amicus, in which we have supported all state and federal legislation favoring such aid.


To the best of my knowledge, we shall continue to take such a position, whether it's tax credit, books, transportation, guidance services, or whatever remedial and therapeutic items are available.

If you need further information, please do not hesitate to get in touch with me.

Sincerely yours,

Rabbi Bernard Goldenberg
Director, School Organization
and Professional Services

BG:gl
encl.



Wisconsin Association of Non-Public Schools

P.O. Box 186
Green Bay, WI 54305

March 25, 1977

Mr. Leon Hendricks
8558 South Euclid Ave.
Chicago, IL 60617

Dear Mr. Hendricks:

Enclosed you will find a copy of the constitution for the Wisconsin Association of Nonpublic Schools (WANS). I believe that constitution will answer some of the questions you may have for your research.

In addition I could offer the following information. Our Association is currently in litigation against the State Department of Public Instruction relative to the way in which the elementary and secondary education act is implemented in Wisconsin. Because of the Meek v. Pittenger decision our Attorney General opines that we are to be denied on-site services.

We are provided pupil transportation in Wisconsin. We are allowed to have diagnosis made on learning disabilities and other health related cases such as special therapy, etc. We have the school lunch program and that is about the extent of our participation in public funded programs because of Wisconsin's restrictive constitution.

In the past we have had legislation proposed in our state which attempted to provide both tax deductions and tax credits for tuition paid to private schools. The first case of tax deduction was defeated about 1972 and the second case of tax credits was dropped with the Meek and Pittenger decision in 1974-75.

I hope this has been some help to you. Good luck in your research.

Sincerely yours,

Msgr. Mark J. Schommer

Rev. Msgr. Mark J. Schommer
President, Wisconsin Association
of Nonpublic Schools

MJS/dp

Enclosure

BOARD OF PARISH EDUCATION 238
THE LUTHERAN CHURCH—MISSOURI SYNOD
3558 S. Jefferson - St. Louis, Missouri 63118

3-26-77

Mr. Tom Hendricks
8558 S. Euclid ave.
Chicago, Illinois 60617

Dear Mr. Hendricks:

Several items are enclosed in
response to your request.

Since you are emphasizing
state aid rather than federal aid
I have attached a listing of names
of individuals involved in Lutheran
education who may be able to
share some current information
with you.

Sincerely,

W. N. South



A P P E N D I X B

- I Tables
- II Figures
- III Illustrations and Charts

A P P E N D I X B - I

TABLE 2

SELECTED U.S. SUPREME COURT CASES AFFECTING NON-PUBLIC PAROCHIAL AID

CASE	DATE	STATE	CONSTITUTIONAL QUESTION	DECISION
Pierce v. Society of Sisters of the Holy Names of Jesus and Mary	1925	Oregon	1st Amendment "Free Exercise Clause"	Right of private schools to exist upheld
West Virginia Board of Education v. Barnette	1943	W. Va.	1st Amendment "Establishment Clause"	Forced flag salute held unconstitutional
Everson v. Board of Education	1947	New Jersey	1st Amendment "Establishment Clause"	re-imbusement to parent for transportation upheld
McCullum v. Board of Education	1948	Ill.	1st Amendment "Free Exercise Clause"	Released-time for religious instruction held unconstitutional (on tax supported Property)

TABLE 2 cont.

CASE	DATE	STATE	CONSTITUTIONAL QUESTION	DECISION
Commonwealth v. Bey (Mohamadens) 4 day school	1950	Penn.	1st Amendment "Free Exercise Clause"	Parent convicted for not sending child to school one day a week. (Five days of school law upheld)
Zorach v. Clauson	1952	New York	1st Amendment "Free Exercise Clause"	Released-time for religious instruction off public property upheld
Tudor v. Board of Education	1953	New Jersey	1st Amendment "Establishment Clause"	Distribution of Bibles in school held unconstitutional
Wolley v. Spaulding	1956	Kent.	1st Amendment "Establishment Clause"	Wearing of religious garb while teaching does not establish religion. (law upheld)

Table 2 cont.

CASE	DATE	STATE	CONSTITUTIONAL QUESTION	DECISION
Sweezy v. New Hampshire	1957	New Hamp.	1st Amendment "Free Exercise Clause" "Establishment Clause"	Academic freedom in teaching held constitutional
Cochran v. Board of Education	1957	La.	1st Amendment "Establishment Clause" 14th Amendment	Free textbooks to students upheld
Millard v. Board of Education	1957	Ill.	1st Amendment "Establishment Clause"	Public use of sectarian school buildings held constitutional
Engel v. Vitale	1962	New York	1st Amendment "Establishment Clause"	Prayer aloud held unconstitutional
Abington School District v. Schempp	1963	Penn.	1st Amendment "Establishment Clause"	Bible verse reading held unconstitutional

TABLE 2 cont.

CASE	DATE	STATE	CONSTITUTIONAL QUESTION	DECISION
Archie Cude v. Arkansas	1964	Ark.	1st Amendment "Free Exercise Clause"	Parent convicted for not vaccinating child (law upheld)
Calvary Bible Presbyterian Church of Seattle v. Board of Regents of the University of Washington	1967	Wash.	1st Amendment "Establishment Clause"	The Bible as a text for teaching at a university held constitutional
Board of Education v. Allen	1968	New York	1st Amendment "Free Exercise Clause"	Loan of textbooks to students upheld
Lemon v. Kurtzman	1971	Rhode Island	1st Amendment "Establishment Clause"	Teachers salary supplement held unconstitutional
	1971	Penn.	1st Amendment "Free Exercise Clause"	Purchase of teacher services agreement unconstitutional
	1971	Penn.	1st Amendment "Establishment Clause"	Textbooks upheld

TABLE 2 cont.

CASE	DATE	STATE	CONSTITUTIONAL QUESTION	DECISION
	1971	Penn.	1st Amendment "Due Process"	Educational materials held unconstitutional
Jackson v. California	1972	Calif.	1st Amendment "Free Exercise Clause" 14th Amendment "Equal Protection"	Tuition grants to parents held unconstitutional
Wisconsin v. Yoder (Old Amish order)	1972	Wisc.	1st Amendment "Free Exercise Clause: 14th Amendment "Due Process"	Parent upheld for not sending 14 year old to high school
Levitt v. Committee for Public Education	1973	New York	1st Amendment "Establishment Clause"	Funds for exams, reports, and records held unconstitutional
Committee for Public Education v. Nyquist	1973	New York	1st Amendment "Establishment Clause"	Funds for repair and maintenance of facilities held unconstitutional

TABLE 2 cont.

CASE	DATE	STATE	CONSTITUTIONAL QUESTION	DECISION
Sloan v. Lemon	1973	Penn.	1st Amendment "Establishment Clause"	Tuition subsidy to parents <u>unconstitutional</u>
Hunt v. McNair	1973	S.C.	1st Amendment "Establishment Clause"	Higher education grants for construction upheld
Norwood v. Harrison	1973	Miss.	1st Amendment "Free Exercise Clause" "Establishment Clause" 14th Amendment "Due Process"	Free textbooks for segregated private schools held <u>unconstitutional</u>
Marburger v. New Jersey	1974	New Jersey	1st Amendment "Establishment Clause"	Free textbooks and instructional materials held <u>unconstitutional</u>
Wheeler v. Barrera	1974	Missouri	1st Amendment "Establishment Clause"	ESEA Title I services to dis- advantaged child- ren held <u>constitutional</u>

TABLE 2 cont.

CASE	DATE	STATE	CONSTITUTIONAL QUESTION	DECISION
Meek v. Pittenger	1975	Penn.	1st Amendment "Establishment Clause" 14th Amendment "Equal Protection"	Laws providing funds for auxiliary services, materials and equipment held unconstitutional
Minnesota v. Minnesota Civil Liberties Union	1975	Minn.	1st Amendment "Establishment Clause"	Laws providing for tax credits to parochial school parents unconstitutional
Wolman v. Walter	1977	Ohio	1st Amendment "Establishment Clause"	Laws providing funds for textbooks tests, diagnostic services and therapeutic ser- vices upheld. Laws providing funds for materials and equipment and field trips held unconstitutional

TABLE 8

TRENDS IN NEW LEGISLATION AMONG THE STATES RELATED

STATE:	TO NON-PUBLIC PAROCHIAL SCHOOL AID																
	Legislation/Programs Services	Bilingual/Bi-Cultural Education	Ethnic Heritage	Consumer Education	Indian Education	Cooperative Research	Career/Vocational Education	Child Care/Preschool	Metric Education	Inter-District Transportation	Textbooks, Supplies Services	Vouchers	Testing Services	Guidance Health	Personnel Services	Conservation Education	Federal Programs Only
Connecticut	-	-	-	-	-	-	-	-	-	X	-	-	-	-	-	-	-
Massachusetts	-	-	-	-	-	-	-	-	-	X	X	-	-	-	-	-	X
New Jersey	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
New York	-	-	-	-	-	-	-	-	-	X	-	-	X	X	X	-	-
Pennsylvania	-	-	-	-	-	-	-	-	-	-	X	X	X	X	X	-	-
Illinois	X	X	X	-	X	X	X	X	-	-	X	X	-	-	-	-	-
Indiana	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Michigan	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-

STATE:	Ohio	Missouri	Florida	Kentucky	Louisiana	California	Texas
Legislation/Programs	-	-	-	-	-	-	-
Services	-	-	-	-	-	-	-
Bilingual/Bi-Cultural Education	-	-	-	-	-	-	-
Ethnic Heritage	-	-	-	-	-	-	-
Consumer Education	-	-	-	-	-	-	-
Indian Education	-	-	-	-	-	-	-
Cooperative Research	-	X	-	-	-	-	-
Career/Vocational Education	-	X	-	-	-	-	-
Child Care/Preschool	-	X	-	-	-	-	-
Metric Education	-	X	-	-	-	-	-
Inter-District Transportation	-	-	-	-	-	-	-
Textbooks, Supplies	X	-	-	-	-	-	-
Services	-	-	-	-	-	-	-
Vouchers	-	-	-	-	-	-	-
Testing Services	X	-	-	-	-	-	-
Guidance	X	-	-	-	-	-	-
Health	-	-	-	-	-	-	-
Personnel Services	-	-	-	-	-	-	-
Conservation Education	-	X	-	-	-	-	-
Federal Programz Only	-	-	-	-	-	-	X

TABLE 8 cont.

A P P E N D I X B - I I

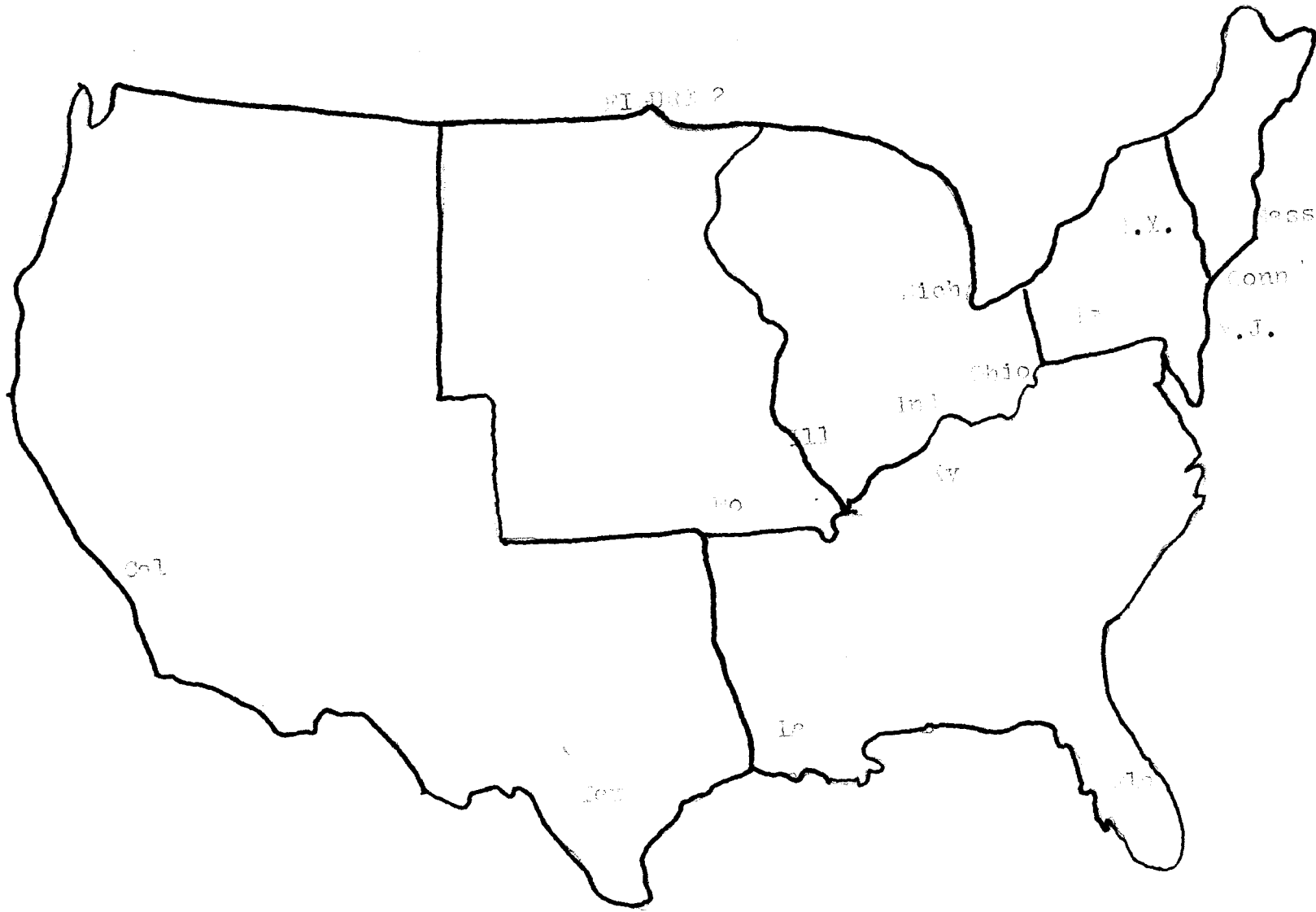


FIGURE 2

UNITED STATES - POPULOUS STATES (15)

A P P E N D I X B - I I I

ILLUSTRATION 1

U.S. CONSTITUTION EXERPTS

AID TO NON-PUBLIC PAROCHIAL EDUCATION

Preamble: We the People of the United States, in order to form a more perfect union, establish Justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

Amendment 1: Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof: or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Amendment 5: No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in service in Time of War or Public danger; nor shall any person be subject for the same offense to be twice put in

jeopardy of life or limb; nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment 10: The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

Amendment 14: All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 5 The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

ILLUSTRATION 2

STANDARD U.S. SUPREME COURT

TESTS OF CONSTITUTIONALITY

1. The law must have a primary secular purpose.
2. The law must neither aid nor inhibit religion.
3. The law must involve no excessive governmental entanglement with religion.
4. The law must be secular, neutral, and non-ideological in effect.

ADDITIONAL TESTS FOR SPECIAL AREAS

1. The law must not discriminate because of sex or race.
2. The law must insure public ownership and control of materials and equipment.
3. The law must insure public employment and control of participating teachers.
4. The law must provide supplementary rather than supplanting aid.
5. The law must provide aid comparable in quality, scope, and opportunity, not necessarily identical.
6. The law must not provide aid for religious worship or instruction.
7. The law must not aid construction on private school premises.
8. The law must provide for integrated groupings for programs, so that private and public school students are not identifiable.

9. The law must provide aid to the students, not the school or the teachers.

ILLUSTRATION 3

STATES PARTICIPATING IN THE STUDY

STATE	SENT DATA	SENT QUESTIONNAIRE	NOT PARTICIPATING
Connecticut		X	
Maine			X
Massachusetts		X	
New Hampshire		X	
Vermont	X		
Rhode Island	X	X	
Delaware	X		
D.C.	X		
Maryland			X
New Jersey	X	X	
New York	X		
Pennsylvania	X	X	
Illinois	X	XX	
Indiana	X	X	
Michigan	X	X	
Ohio	X	X	
Wisconsin	X		
Iowa		X	
Kansas			X
Minnesota	X	X	
Missouri	X	X	
Nebraska			X

STATE	SENT DATA	SENT QUESTIONNAIRE	NOT PARTICIPATING
North Dakota	X	X	
South Dakota		X	
ALABAMA		X	
Arkansas		X	
Florida	X	X	
Georgia	X		
Kentucky		X	
Louisiana	X	X	
Mississippi	X		
North Carolina	X		
South Carolina			X
Tennessee			X
Virginia	X		
West Virginia	X		
Wyoming	X		
Alaska	X	X	
Arizona			X
California	X	X	
Colorado	X	X	
Hawaii	X	X	
Idaho		X	
Montana		X	
Nevada		X	
New Mexico	X	X	

STATE	SENT DATA	SENT QUESTIONNAIRE	NOT PARTICIPATING
Oklahoma		X	
Texas		X	
Utah		X	
Oregon		X	X
Washington	X		

A P P E N D I X C

- I Summary of Pilot Study
- II Summary of Chief State School Officers Responses

A P P E N D I X C - I

Loyola University - Chicago
 -School of Education-

TO: Dr. Max Bailey
 FROM: Leon Hendricks - 8558 S. Euclid Ave. Chicago, Ill.
 DATE: November 13, 1976
 RE: Dissertation Proposal - Administration and Supervision
 "Summary of Pilot Effort to Collect Data"

TITLE: An Analysis of State Statutes, Policies, and Practices Related to Public Financing of Urban Non-Public Parochial Schools - Elementary and Secondary

A pilot effort was conducted between October 25, 1976 and November 5, 1976 for the purpose of demonstrating that necessary data is available and collectable.

Three states were used in the pilot effort, Pennsylvania, Washington, and California. Step I (A,B,C,D,E,F, & G), Collection of Data as outlined in Procedure Section was used in locating and collecting material.

This pilot effort was summarized in terms of the following structure:

- I Data Requested - letters and communications
- II Source of Request - where located or collected
- III Data Received - materials summarized; letters, responses, other
- IV Procedure Notation - data received satisfies steps in procedure

Data Requested:

- School codes, statutes-at-large, and/or section regarding non-public school financing
- State publications on cooperative programs between public and non-public schools
- Teacher/student statistics report for private schools

Source of Request:

State Department of Education, State of California
 Dr. Wilson Riles, Superintendent of Public Instruction
 and Director of Education

Data Received:

- A summary of California laws that apply to elementary and secondary non-public schools-self explanatory

- Private elementary and secondary enrollment report-1975
- Alphabetical listing of public-nonpublic programs and services with purpose, eligibility, legal authorization, and administrative unit included
- State definitions (legal) regarding attendance, non-profit status, registration, health, safety, etc. standards
- Selected publications (331 listed for auxiliary use)

Procedural Notation:

Satisfies Step IA of Procedure

Data Requested:

- School codes, statutes-at-large, and/or section relating to non-public school financing
- State publications on cooperative programs between public and nonpublic schools
- Teacher/student statistics report for private schools

Source of Request:

Superintendent of Public Instruction, Dr. Frank B. Brouillet
Olympia, Washington

Data Received:

1. A summary of Washington laws that apply to elementary and secondary non-public schools (Washington Administrative Code, WAC) 180-90. Self-explanatory
2. Copy of private school enrollment, 1973-1976; number of approved private schools, pending applications, combined schools, and schools closed.
3. Handbook of state and federal programs which affect non-public school programs and activities-participation of non-public children in Federally Funded Programs - Bureau of School Service and Research
4. Copy of Auxiliary Services and Attendance and Part-time Attendance Act; Chapter 392-Section 181 including purposes; definitions - rights, enrollment practices, reports, appropriations, and compliance rules.

Procedural Notation
Satisfies Step IA of Procedure

Data Requested:

- School codes, statutes-at-large, and/or section relating to non-public school financing
- State publications on cooperative programs between public and non-public schools
- Teacher/student statistics report for private schools

Source of Request:

State Department of Education - Commonwealth of Pennsylvania
Vincent McCoola - Director Pennsylvania ESEA

Data Received

Response attached to date

LIBRARY AND RESOURCE INFORMATION
 REQUESTED AND RECEIVED
 Step ID, E, F, & G

ITEM	SOURCE	CONTENTS	DATE RECD.
U.S. Supreme Court Decisions 1880-present	Loyola Legal Library	Listing of court decisions, historical notes and interpretations	on loan 11/4/76
Digest of General Bills and Resolutions-1973-76	Chicago State University	Summary of bills, resolutions and changes in legislative process. Categorized in numerical order by subject, sponsor, title, etc.	on loan 11/2/76
The Constitution and American Education, 1974	Dr. Monk	Basic information and problems for study of the constitution, procedure and American education	on loan
The U.S. Constitution	Loyola Legal Library	Self explanatory	11/4/76 xeroxed
Dictionary: Blacks' Bouviers'	John Marshall Law School	Definitions-examples	personal copies
Review of Educational Research	American Education Research Association	Reviews of research and literature of importance-selected topics	10/30/76
Handbook for Private School Administrators	Council for American Private Educators	Programs, contacts, explanations sponsored by U.S.O.E.	11/4/76

<u>ITEM</u>	<u>SOURCE</u>	<u>CONTENTS</u>	<u>DATE RECD</u>
Cooperative Programs between public and private schools	N.C.E.A. - Elementary and Secondary Dept.	Program listings-state, city, school, description, issues	11/2/76
Doctoral Dissertations on Catholic Education	N.C.E.A. Secondary Dept.	Comprehensive indepth description of dissertations completed	10/25/76

A P P E N D I X C - I I

STATE AID TO NON-PUBLIC PAROCHIAL SCHOOLS
 SURVEY SUMMARY: ELEMENTARY AND SECONDARY

Data Summary:

I	Total Number of Responses.....	42
	A. Number of questionnaires.....	28
	1. Number of Chief State School Officers Com- pleting Survey.....	3
	2. Number of Designees Completing Survey.....	25
	B. Number of States Providing Requested Information.....	14
II	Approximate Number of Public School Pupils Represented:	
	Total.....	22,250,000
	Elementary.....	13,710,000
	Secondary.....	8,540,000
III	Approximate Number of Non-Public Parochial School Pupils Represented:	
	Total.....	3,400,000
	Elementary.....	2,500,000
	Secondary.....	900,000

*Note:

Some items left unanswered or marked NA by representatives do not provide for all categories to equal the total number of responses. Responses will be given in actual number and per cent.

Summary of Responses

I	<u>ELEM</u>	<u>SECONDARY</u>	<u>PROGRAM/SERVICE</u>
	<u>3/10%</u>	<u>3/10%</u>	Free Textbooks
	<u>9/32%</u>	<u>9/32%</u>	Textbook Loans to Students
	<u>10/37%</u>	<u>10/37%</u>	Auxiliary Materials (teaching machines, manipulatives, etc.)
	<u>4/14%</u>	<u>4/14%</u>	Teacher Services (Secular Subjects)
	<u>19/68%</u>	<u>19/68%</u>	Cooperative Programs (Title III, IV, etc., ESEA)
	<u>8/28%</u>	<u>9/32%</u>	Released Time
	<u>9/32%</u>	<u>7/25%</u>	Health Services
	<u>9/32%</u>	<u>9/32%</u>	Psychological Services
	<u>7/25%</u>	<u>7/25%</u>	Guidance
	<u>17/60%</u>	<u>17/60%</u>	Lunch Program
	<u>11/39%</u>	<u>11/39%</u>	Breakfast Program
	<u>11/39%</u>	<u>11/39%</u>	Handicapped Programs
	<u>12/42%</u>	<u>12/42%</u>	Transportation Services
	<u>10/37%</u>	<u>13/46%</u>	Vocational & Technical Service
			Other (Diagnostic tests, Field trips, Ethnic education, Bilingual education, Environmental education, In-service & Preservice, Consumer education, Preschool, Career education)

II If the service, program, item is provided, check the appropriate space regarding the manner given:

	STATE STATUTE	STATE BD POLICY	LOCAL REGULATION	OTHER
TEXTBOOKS	11/39%	2/7%	1/4%	1/4%
TEACHER SERVICES	Spec. Ed. Only 2/7%	1/4%	4/14%	2/7%
AUXILIARY SERVICES	8/28%	3/10%	3/10%	2/7%
COOPERATIVE PROGRAMS	9/32%	1/4%	5/18%	8/28%

III Source (s) of Funding - Check Appropriate Box (es)

	COOP.	TEXTBOOKS	TEACHER SER.	AUX. SER.
State Dist. Fund	_____	<u>5/18%</u>	<u>2/7%</u>	<u>7/25%</u>
Flat Grants	_____	_____	_____	_____
Matching Grants	_____	_____	_____	_____
Special Grants	<u>1/4%</u>	_____	_____	_____
Earmarked Funds	<u>1/4%</u>	<u>2/7%</u>	<u>1/4%</u>	<u>2/7%</u>
Vouchers	_____	_____	_____	_____
Tax Credits	_____	_____	_____	_____
Federal Source	<u>11/39%</u>	<u>4/14%</u>	<u>3/10%</u>	<u>6/23%</u>
Other	LEA-ESEA			

IV How are per pupil expenditures determined for Non-Public Parochial students?

3/10% - state law

2/7% - State Board policy

2/7% - School District Discretion

7/25% - Other (Federal only)

V Has either the source or method of funding non-public parochial schools been challenged in court?

9/32% yes 11/39% no if yes, complete below:

a. 5/18% lower court _____ date, if known

4/14% appellate court _____ date, if known

4/14% Supreme Court 1971, '73, '74, '75, '77 date, if known

b. Who brought the action?

8/28% Citizen's Group; 1/4% Private Citizen; 1/4%

State's Attorney; 2/7% Other _____

c. Who won the decision? State 2/7%; Group 6/23%

VI What position have Citizen's Groups taken regarding aid to Non-public Parochial schools in your state?

<u>NAME</u>	<u>FAVOR</u>	<u>AGAINST</u>	<u>NEUTRAL</u>	<u>UNKNOWN</u>
Citizen's for Educational Freedom	<u>3/10%</u>	_____	_____	_____
Jewish Defense League	<u>1/4%</u>	<u>1/4%</u>	_____	_____
Catholic Conference	<u>8/28%</u>	_____	_____	_____
Civil Liberties Union	_____	<u>6/23%</u>	_____	_____
League of Women Voters	_____	<u>1/4%</u>	<u>2/7%</u>	_____
N.A.A.C.P.	_____	<u>1/4%</u>	_____	_____
Polish American Union	_____	_____	_____	_____
Other <u>P.T.A.</u>	_____	<u>3/10%</u>	_____	_____

Which group presents the strongest resistance to Non-public Parochial school aid?

~~A.C.L.U. (6); A.U.S.C.S. (2); P.E.A.R.L. (1) PUBLIC SCHOOLS (1); Other Religious Groups (1)~~

Which group presents the least resistance to non-public parochial school aid?

Catholic Conference (6); Parochial Schools (2)
Joint Effort (1)

VII Describe non-public school new statutes, policies, programs proposed by your state in areas of:

Textbooks - Kg. Materials-1; LEA Textbooks-4

Teacher Services - Materials & Services-2; Clerks-1

Auxiliary Services - LEA Transportation-1; Interdistrict Transportation-1; Supplies-2

Cooperative Programs - Federal programs ESEA only-5

Other - Tests, Trips, Guidance, Instructional Materials, Library Resources, Tuition Grants, Title IV

VIII Which of the following participates in the development of policies and practices for non-public parochial schools at the State level?

4/14% Public Citizen's Groups On Task Forces & Panels

7/25% Private Organizations Catholic Conference, State Association for Non-Public Schools

7/25% State Advisory Committee Title IV Advisory Committee, Committee on Education

10/37% State Board of Education Committee on Equalization, North Central Association

4/14% State's Attorney or Legal Counsel

1/4% Other The Legislature; Parochial School Liaison

IX Have you or do you develop programs/services with other State Chief School Officers?

1/4% yes

5/18% no

Committee on Evaluation & Information Systems

X Has any of your state's statutes, policies, programs been declared unconstitutional by the courts in the last ten years?

11/39%yes 6/23% no _____ unknown

If yes, name the law, service, etc. declared unconstitutional:

tax credits-2; shared-time-1; salary supplement-2;

auxiliary services-3; textbooks-4; transportation-1;

teacher services-2; vouchers-1; materials-1; enforced

accreditation-1; innovative programs-1; parochial-1

APPROVAL SHEET

The dissertation submitted by Leon Hendricks has been read and approved by the following committee:

Dr. Max A. Bailey, Director
Associate Professor, Administration and Supervision,
Loyola

Dr. Melvin P. Heller
Professor and Chairman, Administration and
Supervision, Loyola

Dr. Robert L. Monks
Assistant Professor, Administration and Supervision,
Loyola

The final copies have been examined by the director of the dissertation and the signature which appears below verifies the fact that any necessary changes have been incorporated and that the dissertation is now given final approval by the Committee with reference to content and form.

The dissertation is therefore accepted in partial fulfillment of the requirements for the degree of Doctor of Education.

December 20, 1978
Date

Max A. Bailey
Director's Signature