

\$50,000-\$30,000 (30 Districts)	\$4,900	23%	\$483
\$30,000-\$10,000 (40 Districts)	\$5,050	31%	\$462
Below \$10,000 (4 Districts)	\$3,325	79%	\$305

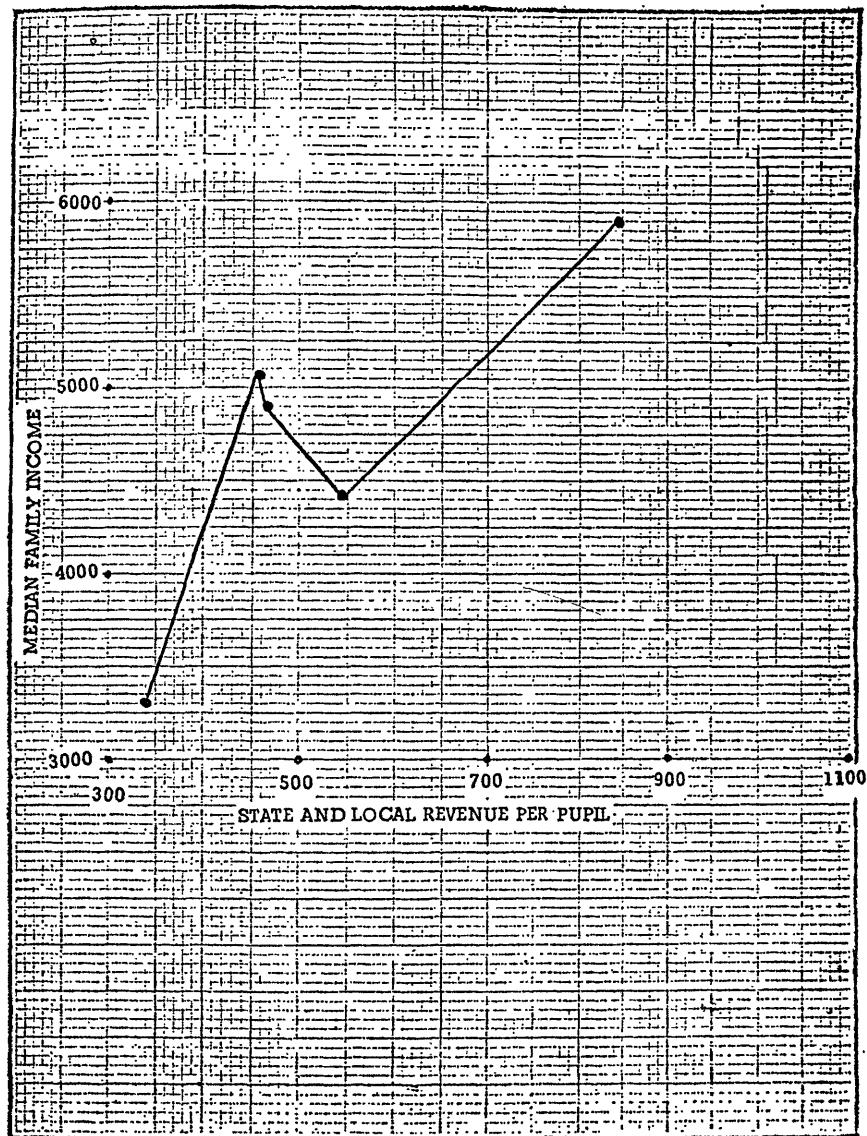
Median Family Income and School Revenue

The relationship between income and revenues is also an important one. It shows that it is not simply governmental or jurisdictional poverty that is inversely correlated with school quality, but personal poverty as well. Table I (page 6) indicates that districts in the highest category of income (\$5,900) receive the most costly education and, those in the lowest income category (\$3,325) receive the least expensive school services. While the relationship near the average are somewhat mixed, they do not work against the prevailing pattern because the range (only \$600 in income) is too small to be meaningful. In short, as Graph II (page 9) demonstrates, the directness of the association between income and school quality is clear.

Race and School Revenue

The correlation between the proportion of Mexican-Americans and Negroes in the schools and the quality of school services is precisely the reverse of the income-school services relationship. That is, the lower the proportion of Mexican-Americans and Negroes, the higher the school expenditures; the higher the proportion of minority group enrollment, the lower the resources devoted to education. Again, as in the income relationship, the Table I (page 6) and Graph III (page 12) show some small inconsistency in the three middle categories, but the direction of the numbers and of the line on the graph tell an eloquent and vivid story of denial of equal educational opportunity.

GRAPH II
THE RELATIONSHIP BETWEEN MEDIAN FAMILY INCOME
AND STATE-LOCAL REVENUES*



* Source: Policy Institute, Syracuse University Research Corporation, Syracuse, New York.

A similar relationship was found between the percentage of Mexican-American pupils and school expenditures in a study conducted by the U. S. Commission on Civil Rights (see Chart I, page 11). Their examination of Texas school systems with at least 10% Mexican-American enrollment showed that with a minor anomaly in the category of districts with the lowest proportion of Mexican-Americans, school expenditures declined as the proportion of Mexican-Americans increased.

DISTRICT WEALTH AND TAX EFFORT

One of the cruel ironies in the current approach to supporting schools in Texas is that the communities which have the least money for their schools are the very districts which tax themselves most heavily to raise school revenues. Using equalized tax rates which permit comparisons among districts, Table II (page 13) shows an unbroken and consistent inverse relationship between equalized district wealth and effort. The richer a district is, the less severely it need tax itself—and as the third column on the table shows—the more it realizes in locally raised revenues. In short, as tax rates increase the amount realized decreases.

DISTRICT WEALTH AND HIGHEST TAX EFFORT AND YIELD

Table III (page 16) takes the relationship between district wealth and tax effort a step further. The table assumes a similar tax effort—effort made by the district with the highest tax rate in the sample—throughout all districts, and examines the resultant differences in yield. The table clearly shows that increased tax effort only magnifies the differences in possible return between wealthier and poorer districts.

CHART I
EXPENDITURES PER PUPIL IN ADA IN
TEXAS

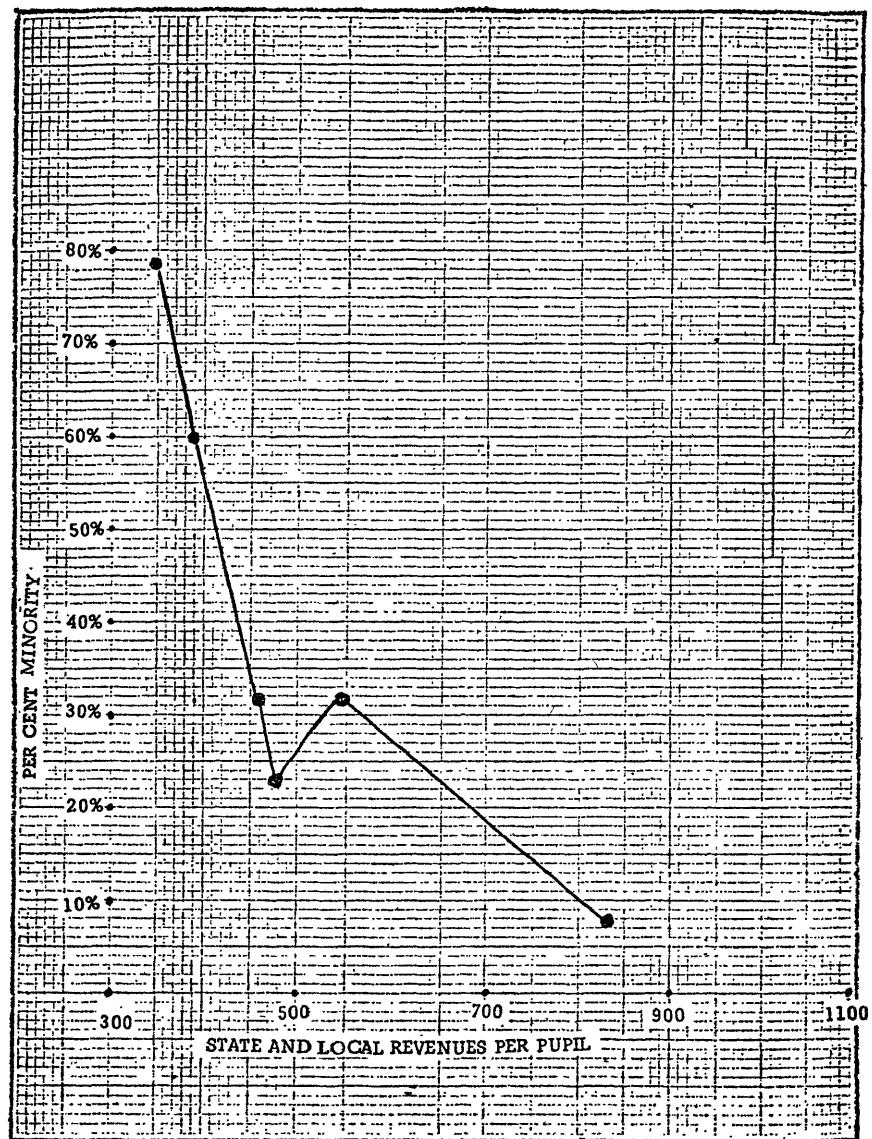
Districts 10 per cent or more Mexican-American
 with total enrollment 300 pupils or more*

(Expenditures are from State and local revenue only.)

Percent Mexican- American of District Enrollment	DISTRICTS IN SAMPLE			ESTIMATES FOR ALL DISTRICTS	
	Number of Districts	Per Pupil Expenditures	Number of Districts	Per Pupil Expenditures	
10-19.9	55	\$457	85	\$444	
20-29.9	38	484	59	477	
30-49.9	32	444	49	444	
50-79.9	39	377	60	382	
80-100	23	292	30	297	

* Source: U. S. Commission on Civil Rights study encompassing a random sample of districts in Texas. For the raw data, upon which the study was based, see Appendix D. For an explanation of the sampling techniques utilized for the Commission study, see United States Commission on Civil Rights, *Mexican-American Education Study, Report I: Ethnic: Isolation in the Public Schools of the Southwest*, p. 7-8 (1971). A copy of the report is attached as Appendix E.

GRAPH III
THE RELATIONSHIP BETWEEN PER CENT MINORITY
AND STATE-LOCAL REVENUES*



* Source: Policy Institute, Syracuse University Research Corporation, Syracuse, New York.

TABLE II
 THE RELATIONSHIP OF DISTRICT WEALTH
 TO
 TAX EFFORT AND TAX YIELD*
 TEXAS SCHOOL DISTRICTS CATEGORIZED
 BY EQUALIZED PROPERTY VALUES,
 EQUALIZED TAX RATES**, AND
 YIELD OF RATES

CATEGORIES Market Value of Taxable Property Per Pupil	EQUALIZED TAX RATES ON \$100	EQUALIZED YIELD PER PUPIL (Equalized Rate Applied to District Market Value)
Above \$100,000 (10 Districts)	.31	\$585
\$100,000-\$50,000 (26 Districts)	.38	262
\$50,000-\$30,000 (30 Districts)	.55	213
\$30,000-\$10,000 (40 Districts)	.72	162
Below \$10,000 (4 Districts)	.70	60

Table IV (page 17) concludes our analysis of the relationship between wealth and effort. It points up that increased effort is not only a futile exercise, as is apparent in Table III (page 16), but that the resulting burden increases at a much greater rate for poorer districts than for richer if they both seek to realize the highest return in our sample.

THE RELATIONSHIP BETWEEN DISTRICT WEALTH AND STATE AND FEDERAL AID

Given these disparities in local revenue raising ability, how effectively is the Texas equalization aid system

*Source: Policy Institute, Syracuse University Research Corporation, Syracuse, N. Y.

**See Appendix C for an explanation of the equalized tax rate.

working? The answer may be found in Table V (page 18). While there appears to be a mild equalizing direction in the state aid system, its equalizing effect fails to operate in favor of the poorest districts. In other words, wealthier districts receive less aid than poorer ones in four of the five wealth categories, but the system provides more aid to the three categories clustered around the average than it does to the poorest class of school districts.

Possibly more important than its failure to aid adequately the neediest districts is the mildness of its equalizing tendencies. In a state where state aid provides more money for education than do local revenues, steeply equalizing financial program could redress the imbalances among districts in local revenue capacity. In Texas that does not happen. State aid provides only \$52 more to the second richest category than to the highest despite a local revenue gap of over \$320. Between the next two categories state aid provides virtually no equalization despite a local gap of more than \$60. As local revenue falls off most steeply, state aid, as already noted, fails to equalize.

TABLE III
THE RELATIONSHIP BETWEEN DISTRICT
WEALTH AND HIGHEST TAX EFFORT*
TEXAS SCHOOL DISTRICTS CATEGORIZED
BY EQUALIZED PROPERTY VALUE AND
YIELD GENERATED IF HIGHEST TAX RATE
IS APPLIED TO ALL DISTRICTS

CATEGORIES Market Value of Taxable Property Per Pupil	Hypothetical Yield of Highest Tax Rate Per Pupil
Above \$100,000 (10 Districts)	\$2,356

* Source: Policy Institute, Syracuse University Research Corporation, Syracuse, N. Y.

\$100,000-\$50,000 (26 Districts)	918
\$50,000-\$30,000 (30 Districts)	519
\$30,000-\$10,000 (40 Districts)	292
Below \$10,000 (4 Districts)	108

TABLE IV
THE RELATIONSHIP BETWEEN DISTRICT
WEALTH AND HIGHEST TAX EFFORT*
TEXAS SCHOOL DISTRICTS CATEGORIZED
BY EQUALIZED PROPERTY VALUE AND
TAX RATE REQUIRED TO GENERATE
HIGHEST YIELD IN ALL DISTRICTS

CATEGORIES Market Value of Taxable Property Per Pupil	Tax Rate Needed to Equal Highest Yield
Above \$100,000 (10 Districts)	\$.64 per \$100
\$100,000-\$50,000 (26 Districts)	1.49 per \$100
\$50,000-\$30,000 (30 Districts)	2.58 per \$100
\$30,000-\$10,000 (40 Districts)	4.88 per \$100
Below \$10,000 (4 Districts)	12.83 per \$100

* Source: Policy Institute, Syracuse University Research Corporation, Syracuse, N. Y.

TABLE V
 THE RELATIONSHIP BETWEEN DISTRICT WEALTH AND SCHOOL
 REVENUES
 REVENUES OF TEXAS SCHOOL DISTRICTS*
 CATEGORIZED BY EQUALIZED PROPERTY VALUES AND SOURCE OF
 OF FUNDS

CATEGORIES	Market Value of Taxable Property Per Pupil	Local Revenues Per Pupil	State Revenues Per Pupil	State & Local Revenues Per Pupil (Columns 1 and 2)	Federal Revenues Per Pupil	Total Revenues Per Pupil (State-Local- Federal, Columns 1, 2 and 4)
Above \$100,000 (10 Districts)		\$610	\$205	\$815	\$ 41	\$856
\$100,000-\$50,000 (26 Districts)		287	257	544	66	610
\$50,000-\$30,000 (30 Districts)		224	260	484	45	529
\$30,000-\$10,000 (40 Districts)		166	295	461	85	546
Below \$10,000 (4 Districts)		63	243	305	135	441

* Source: Policy Institute, Syracuse University Research Corporation, Syracuse, N. Y.

State action, then, has created a system of financing the public schools of Texas that is characterized by marked disparities in educational expenditures. Those disparities have arisen because the state has created local districts with unequal sources of revenue and then has adopted a state aid system that fails to overcome those inequities. Federal aid, on the other hand, indicates how an equalizing system can operate. Although the amounts of federal aid are too small to compensate for the disparities that arise from state action, with the exception of the middle category of districts in Table V (page 17) federal aid flows in greater magnitudes to poorer school systems.

THE RELATIONSHIP OF DISTRICT WEALTH TO EDUCATIONAL QUALITY

In the preceding discussion we have demonstrated the inequities and disparities that characterize school support in Texas. That analysis has been conducted in terms of revenues, tax rates, equalized property value and the like. But what is most pressing about the problems we have uncovered is that they have a direct and ascertainable impact on the quality of education afforded youngsters by the State of Texas. While a variety of indicators might be used, we have selected two as examples of the differences in educational quality that exist among school districts.

The first indicator is related to the quality of professional personnel (teachers, guidance counselors, administrators, etc.) in the district. It takes the average cost per pupil for professional personnel, thus subsuming a number of factors including professional training, length of tenure, pupil teacher ratio, and other less tangible factors. While in individual cases no one would argue that a particular higher salaried professional is more skilled or valuable than one earning

slightly less, in aggregate terms and over large numbers of individuals, research suggests that the more a system pays for its staff in comparison with other districts, the better the quality of its personnel. Table VI (page 20) and Graph V (page 21) show the relationship. Without exception, the wealthier the district the higher the professional cost per pupil.

The second indicator of quality tells virtually the same story. When the ratio of professional personnel to pupils is examined, with the slight exception that the bottom two categories exchange places, the richer the district, the higher the ratio of teachers per 100 pupils. (See Table VI (page 20) and Graph VI (page 22).)

In short, higher revenues for education are important because they purchase higher quality education. As we have shown, richer districts not only have the higher revenues but do spend them for more and higher quality teachers, administrators, and guidance counselors.

BEXAR COUNTY

Besides examining Texas school finance through the representative sample of 110 school districts, we have also studied a subsample composed of the six districts in Bexar County which happened to be a part of our larger sample. For a few criteria, we have been able to locate reliable data, and in those instances we have shown relationships for the entire county. In either situation, the six or the twelve district Bexar County subsample, patterns emerge almost as clearly as they have for the statewide study. However, exceptions and anomalies crop up due to the small number of districts within Bexar county. Yet despite some statistical muddiness, when we conducted an analysis that was paral-

lel to that conducted on the 110 district sample, the conclusions we reached were essentially identical with those we find in the larger study.

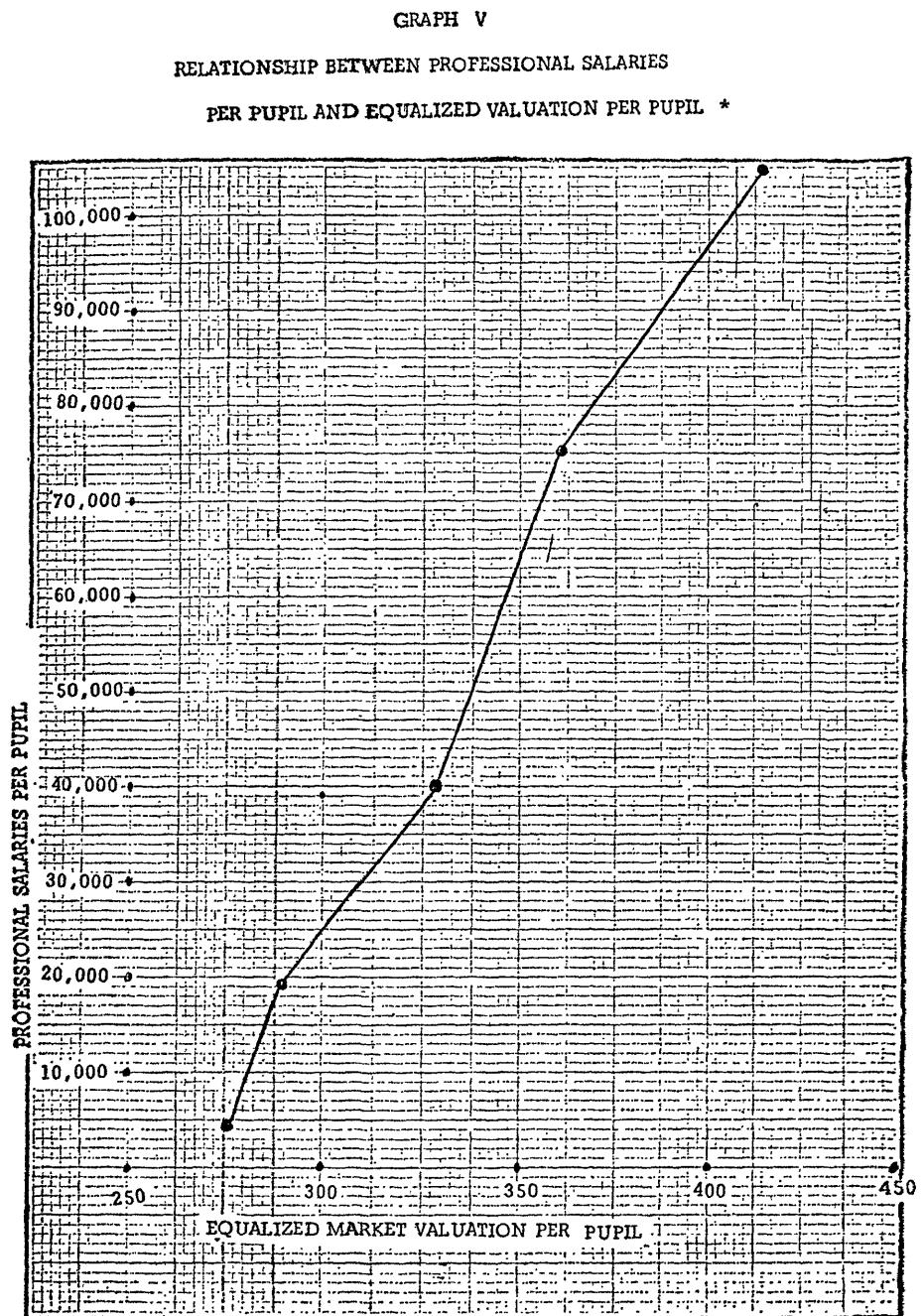
TABLE VI
THE RELATIONSHIP OF DISTRICT WEALTH
TO EDUCATIONAL QUALITY*
TEXAS SCHOOL DISTRICTS CATEGORIZED
BY EQUALIZED PROPERTY VALUATION,
AND SELECTED INDICATORS OF
SCHOOL QUALITY

CATEGORIES	Market Value of Taxable Property Per Pupil	Professional Salaries Per Pupil	Professional Personnel Per 100 Pupils
Above \$100,000 (10 Districts)	413.12	5.57	
\$100,000-\$50,000 (26 Districts)	359.72	5.17	
\$50,000-\$30,000 (30 Districts)	327.66	4.84	
\$30,000-\$10,000 (40 Districts)	290.16	4.37	
Below \$10,000 (4 Districts)	276.65	4.54	

DISTRICT WEALTH, INCOME, RACE AND
STATE-LOCAL REVENUE

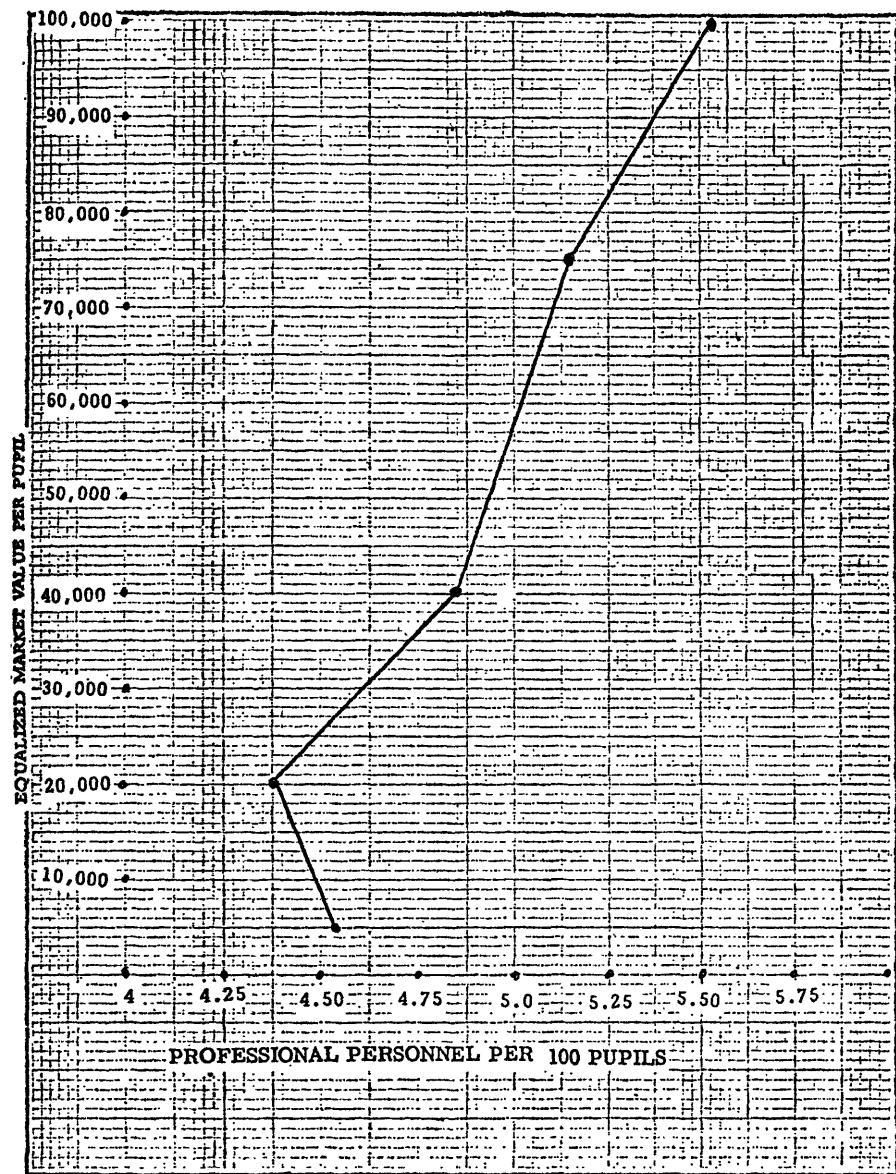
The relationship of district wealth, income, race, and school expenditures in Bexar County holds no surprise to readers of this study. As district wealth as measured by property value declines, so do per pupil expenditures from state and local revenues. Again, as in the state as a whole, we find a wide range of variations, nearly 10:1 in property values, and better than 2:1 in

* Source: Policy Institute, Syracuse University Research Corporation, Syracuse, N. Y.



*Source: Policy Institute, Syracuse University Research Corporation, Syracuse
New York.

GRAPH VI
THE RELATIONSHIP OF PROFESSIONAL PERSONNEL TO
EQUALIZED MARKET VALUE PER PUPIL .*



* Source: Policy Institute, Syracuse University Research Corporation, Syracuse, New York.

expenditures. While these variations are somewhat smaller than those we found in the state 110 district sample, the fact that variations of that magnitude exist within a single county is remarkable. For the districts on the short end of those discrepancies, the effects are particularly difficult, since they are often in direct competition with their more favored neighbors for personnel and other school resources.

Income variations are both wide and strongly correlated with school expenditures. Table VII (page 25) shows the familiar Texas pattern: more affluent districts provide consistently more expensive school services. Similarly the relationship between race and revenues is as readily apparent in Bexar County as it is in Texas generally. While, as noted above, there are more anomalies in the middle range of wealth in this small sample than we found in the larger, the nature of small, nonrepresentative samples would suggest no other outcome.

DISTRICT WEALTH AND TAX EFFORT

Perhaps the greatest deviation from statewide patterns appears in tax effort. Although the phenomenon of poorer districts exerting higher tax effort yet realizing lower yields, does not emerge as a consistent pattern, (see Table VIII, page 26), it is clear that at best only a minor part of low spending in poorer districts, like Edgewood, can be attributed to a lower level of effort than some of their more fortunate Bexar County neighbors.

District Wealth and Highest Tax Effort and Yield

Employing the same analytical technique as we did for the larger sample, however, we find that even if the poorer districts were to expend tax effort equal to the highest effort of any district in the county, the resultant differences in yield would consistently favor the

wealthy. Thus, in order to realize a yield equal to the highest district in the county, poorer districts would have to expend consistently greater effort than would those with higher property valuation per pupil. This phenomenon is demonstrated in Table IX (see page 27).

RELATIONSHIP OF DISTRICT WEALTH TO STATE AND FEDERAL AID

When we examine the relationships among different sources of funding in Table X (see page 29) a crucial effect emerges once again. State aid is unable to offset inequities in relative capacities to finance education that grow out of differences in local taxable resources. Ranging from \$225 for Alamo Heights, the wealthiest district, to \$250 in Harlandale, the next to the poorest (whose property value per pupil is but one fifth of that in the wealthiest) is about as mild a pattern of equalization as one could devise. When the fact that Edgewood with less than one twelfth the valuation per pupil of Alamo Heights gets only \$3.00 more in state aid, it would appear that there is no meaningful equalization through state resources in Bexar County.

TABLE VII
RELATIONSHIP BETWEEN DISTRICT
WEALTH INCOME, RACE, AND STATE-
LOCAL REVENUE

SELECTED BEXAR COUNTY SCHOOL DIS-
TRICTS RANKED BY MARKET VALUATION
MEDIAN FAMILY INCOME, PROPORTION OF
MINORITY PUPILS, AND STATE-LOCAL
REVENUE

School Districts Ranked from High to Low by Market Value Per Pupil ¹	Median Family Income from 1960 Census ²	Per Cent Minority Pupils ³	State-Local Revenue Per Pupil ⁴
ALAMO HEIGHTS (49,478 Market Value Per Pupil)	\$8,184	14%	\$558
NORTH EAST (28,202 Market Value Per Pupil)	\$5,900	7%	\$415
SAN ANTONIO (21,944 Market Value Per Pupil)	\$4,691	72%	\$353
NORTH SIDE (20,794 Market Value Per Pupil)	\$4,600	18%	\$362
HARLANDALE (11,345 Market Value Per Pupil)	\$4,436	62%	\$323
EDGEWOOD (5,960 Market Value Per Pupil)	\$3,405	75%	\$248

¹Policy Institute, Syracuse University Research Corporation, Syracuse, N. Y.

²*Ibid.*

³Director of Public Elementary and Secondary Schools in Selected Districts, O.E., HEW.

⁴*Op. cit.*, Syracuse University Research Corporation.

TABLE VIII
 THE RELATIONSHIP OF DISTRICT
 WEALTH TO TAX EFFORT AND
 TAX YIELD
 BEXAR COUNTY SCHOOL DISTRICTS
 RANKED BY PROPERTY VALUES, EQUAL-
 IZED TAX RATES, AND YIELD OF RATES

Districts Ranked High to Low by Market Valuation Per Pupil	Equalized Tax Rates on \$100 ¹	Yield Per Pupil Equalized Rate Applied to District (Market Value) ²
ALAMO HEIGHTS	\$.68	\$343.00
JUDSON	.27	106.00
EAST CENTRAL	.35	109.65
NORTH EAST	.56	173.46
SOMERSET	.33	87.61
SAN ANTONIO	.62	136.05
NORTH SIDE	.52	108.13
SOUTH WEST	.27	60.19
SOUTH SIDE	.39	64.61
HARLANDALE	.51	59.13
SOUTH		
SAN ANTONIO	.61	101.73
EDGEWOOD	.42	26.28

¹Computed from Market Valuations and Assessed Valuation in *The Governors Committee on Public Education: The Challenge and the Chance*, 1968 and Actual Tax Rates from the *Public School Directory*, Texas Education Agency, 1967-68.

²Computed from *op. cit.*, the *Governors Committee on Public Education: The Challenge and the Chance*, 1968, and *op. cit.*, SURC Data.

TABLE IX
**RELATIONSHIP BETWEEN DISTRICT
WEALTH AND HIGHEST TAX EFFORT**
**BEXAR COUNTY DISTRICTS RANKED BY
EQUALIZED PROPERTY VALUE AND TAX
RATE REQUIRED TO GENERATE HIGHEST
YIELD IN ALL DISTRICTS**

Districts Ranked from High to Low Market Valuation Per Pupil	Tax Rate Per \$100 Needed to Equal Highest Yield ¹
ALAMO HEIGHTS	\$.68
JUDSON	1.04
EAST CENTRAL	1.17
NORTH EAST	1.21
SOMERSET	1.32
SAN ANTONIO	1.56
NORTH SIDE	1.65
SOUTH WEST	2.10
SOUTH SIDE	3.03
HARLANDALE	3.20
SOUTH SAN ANTONIO	5.77
EDGEWOOD	5.76

Indeed, what equalization there is among school districts in the area is a function of federal aid, with Edgewood receiving better than three times the allotment of Alamo Heights. Greater amounts of federal aid are virtually perfectly aligned with increasing poverty in the County.

¹Policy Institute, Syracuse University Research Corporation, Syracuse, New York.

TABLE X
 THE RELATIONSHIP BETWEEN DISTRICT WEALTH
 AND SCHOOL REVENUES
 REVENUES OF SELECTED BEXAR COUNTY SCHOOL
 DISTRICTS RANKED BY PROPERTY VALUES AND
 SOURCE OF FUNDS

Selected Districts From High to Low By Market Valuation Per Pupil	Local Revenues Per Pupil ¹	State Revenues Per Pupil ²	State & Local Revenues Per Pupil ³	Federal Revenues Per Pupil ⁴	Total Revenues Per Pupil (State-Local- Federal) ⁵
Alamo Heights	\$333	\$225	\$558	\$ 36	\$594
North East	182	233	415	53	468
San Antonio	134	219	353	69	422
North Side	114	248	362	81	443
Harlandale	73	250	323	71	394
Edgewood	26	222	248	108	356

SCHOOL EXPENDITURES AND SCHOOL
 QUALITY

Table XI (page 31) displays the striking relationship of district wealth and school quality in Bexar County. Utilizing a wider series of indicators than we did for the larger sample, we find fairly clear patterns of direct correlations between wealth and school quality. In Bexar County as in the State as a whole, the richer school districts appear to be purchasing better quality education for their pupils.

¹Policy Institute, Syracuse University Research Corporation, Syracuse, New York.

²*Ibid.*

³*Ibid.*

⁴*Ibid.*

⁵*Ibid.*

TABLE XI
 THE RELATIONSHIP BETWEEN DISTRICT WEALTH AND EDUCATIONAL
 QUALITY
 TEXAS SCHOOL DISTRICTS CATEGORIZED BY EQUALIZED PROPERTY
 VALUATION AND SELECTED INDICATORS OF EDUCATIONAL QUALITY

Selected Districts From High to Low by Market Valuation ¹ Per Pupil	Professional Salaries Per Pupil ² Per Cent	Teachers With ³ College Degrees	Masters Degrees	Per Cent of Total Staff With Emergen- cy Permits ⁴	A Student Counselor Ratios ⁵	Professional Personnel Per 100 Pupils
ALAMO HEIGHTS	\$372.00	100%	40%	11%	645	4.80
NORTH EAST	288.00	99	24	7	1516	4.50
SAN ANTONIO	251.00	98	29	17	2320	4.0
NORTH SIDE	258.00	99	20	17	1493	4.30
HARLANDALE	243.00	94	21	22	1800	4.00
EDGEWOOD	209.00	96	15	47	3098	4.06

¹Policy Institute, Syracuse University Research Corporation, Syracuse, New York.

²*Ibid.*

³U. S. District Court, Western District of Texas, San Antonio Division, *Answers to Interrogatories*, Civil Action No. 68-175-SA.

⁴*Ibid.*

⁵*Ibid.*

Respectfully submitted,

JOEL S. BERKE
Director
Educational Finance &
Governance Program of the
Policy Institute
Syracuse Univ. Research Corp.
Syracuse, New York

Sworn to before me this 1st day of October, 1971.

HELEN P. MARION
Notary Public

My commission expires: June 1, 1975.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION
CIVIL ACTION NO. 68-175-SA
DEMETRIO P. RODRIGUEZ, ET AL

v.

SAN ANTONIO INDEPENDENT
SCHOOL DISTRICT, ET AL

AFFIDAVIT

My name is Don Webb. I am Associate Professor of Economics, Trinity University. I hold a B.A. Degree from Austin College and a Masters of Arts and Ph.D. in Economics from Southern Methodist University. For the past seven years I have taught Economics at Trinity University. One of my fields of specialization is Urban Government Fiscal Issues and Public Finance. I have given particular study to the use of local property taxes in financing Texas public schools.

Initially, in attempting to analyze the financing of Texas public schools, one must consider that, although the costs of education (i.e., the cost of buildings, supplies and personnel) vary slightly throughout the state, it remains generally the same within a single metropolitan area. In the present suit, at least part of each school district named is located within the city of San Antonio. The named districts, which have 93% of the public school students in Bexar County, are all located in the San Antonio metropolitan complex (a single urban economic area whose citizens reside and work within it).

Since all the districts are within this single metropolitan area, the inequities of their fiscal capacity to raise and collect tax revenues for the maintenance and

operation of their schools can be clearly demonstrated. Costs are the same, and they utilize the same employment pool.

Imagine first that each district has on its tax rolls an equal value of taxable property. Attached herewith is Chart 1 which assumes market value of property in each district at \$100. The ratio at which each district assesses is then noted (shown also as "Assessed Value"). Following is the tax rate per \$100 of assessed value, (shown also is tax per \$100 of assessed value). Finally, each district's tax is shown as a percent of the market value of its taxable property—"tax effort". Significantly, Edgewood, is taxing at 1.05% of market value while both Northeast and Alamo Heights are each making a lesser tax effort.

Not reflected in such tax effort figures, however, are the differences in family income. Dr. Charles Feldstone of the Trinity University Urban Data Bank has furnished me with the figures that I have attached to this affidavit as Chart 2, showing median per capita income and median per household income in each of the named districts.

Using an annual income of \$4000 for a family of four living in an urban area as the line of demarcation between poverty and non-poverty (the figure established by the Social Security Administration in 1962 and adjusted for today's inflation), it is clear that the median income in Edgewood and other poor districts in Bexar County falls very close to the poverty level. And, at that level, the Social Security Administration estimates families must spend all of their income for necessities—approximately one-third of total income going for food, approximately one-fourth for rent, and the remaining income (roughly \$117 per month) must

cover costs of clothing, transportation, house furnishings, medical and personal needs and insurance.

The ability of these poor, therefore, to pay taxes is almost non-existent, and as income increases above the poverty level, "ability to pay" taxes also increases. Other conditions being equal, a family with an income of \$4000 per annum and paying \$100 per annum in school taxes is making a greater tax effort than a family whose income is \$8000 per annum and is paying \$200 per annum in school taxes. The Federal tax structure recognizes this disparity in "ability to pay" between taxpayers by placing minimal tax liability upon those whose income is below \$4000 per year.

Consequently, the willingness of the poor to make a strong tax effort for education as reflected in the high tax efforts of some of the poorest districts merely underscores the strong motivation of all citizens, regardless of income, to provide quality education for their children.

Looking only at tax effort one might expect to find those districts making the greatest effort are able to maintain the highest expenditure levels per student. This, however, is not the case. Chart 3 shows the amount of state funds spent per student by each of the named districts. Without exception, every school district with high property values per student spends substantially more per student for education than those districts with low property values per student (see Chart 4). The conclusion is obvious: it is those school districts with high tax bases that are able to support high expenditure school programs with tax rates and efforts that are relatively low, while school districts with low tax bases are unable to support such programs—even with tax rates and efforts that are substantially higher.

The impossibility of poor school districts raising their levels of income and expenditures to the wealthier districts' levels is illustrated by Chart 5. The only available means Edgewood has to raise its income and expenditures to the other districts as shown in Chart 3 is to increase its local ad valorem taxes to raise funds per student comparable to those raised by the other districts. To reach Northeast's level, Edgewood taxes must be increased almost eight times, and to reach Alamo Heights' level, Edgewood taxes would have to be increased nearly six times.

DON WEBB

STATE OF TEXAS :
COUNTY OF BEXAR :

BEFORE ME, the undersigned authority, on this day personally appeared Don Webb, who, being by me first duly sworn, on his oath deposes and says:

I am the Affiant in the above entitled and numbered cause, and that the matters stated in the above and foregoing Affidavit are true and correct.

DON WEBB

SUBSCRIBED and SWORN to before me under my official hand and seal this 30th day of Sept., 1971.

MARY MYERS
Notary Public in and for
Bexar County, Texas.

CHART NO. 1

1970

BASIS OF TAXATION FOR BEXAR COUNTY
SCHOOL DISTRICTS^a

School District	Southside	Southwest
San Antonio ISD	South San Antonio	
Somerset		
Northside		
Northeast		
Judson		
Harlandale		
Edgewood		
East Central		
Alamo Heights		
Market Value (MV)	\$100 \$100 \$100 \$100 \$100 \$100 \$100 \$100 \$100 \$100 \$100 \$100	
Assessed Ratio (AR)	0.486 0.50 0.70 0.588 0.644 0.60 0.571 0.435 0.328 0.627 0.90 0.80	
Assessed Value (AV)	48.6 50.0 70.0 58.8 64.4 60.0 57.1 43.5 32.8 62.7 90.0 80.0	
Tax Rate per \$100 of AV	\$1.75 \$1.88 \$1.50 \$1.52 \$1.20 \$1.50 \$1.79 \$1.74 \$1.20 \$1.60 \$1.89 \$1.20	
Tax per \$100 of AV	\$0.85 \$0.94 \$1.05 \$0.89 \$0.77 \$0.90 \$1.02 \$0.76 \$0.39 \$1.00 \$1.70 \$0.96	
Tax as percent of MV	0.85 0.94 1.05 0.89 0.77 0.90 1.02 0.76 0.39 1.00 1.70 0.96	

^adata obtained from *Texas Municipal Reports* (Austin: Municipal Advisory Council of Texas, 1971).

CHART NO. 2

School District	Median Per Capita Income	Median Income Per Household
Alamo Heights	\$2,807.59	\$8,001.64
Edgewood	995.01	4,686.53
Harlandale	1,453.70	5,553.16
Northeast	2,618.05	8,927.56
Northside	2,042.75	7,313.07
San Antonio Independent School District	1,493.33	4,928.87
South San Antonio	1,357.62	5,091.09

1967-1968 CALCULATED FROM FIGURES FURNISHED BY TEXAS EDUCATION AGENCY

Chart 3

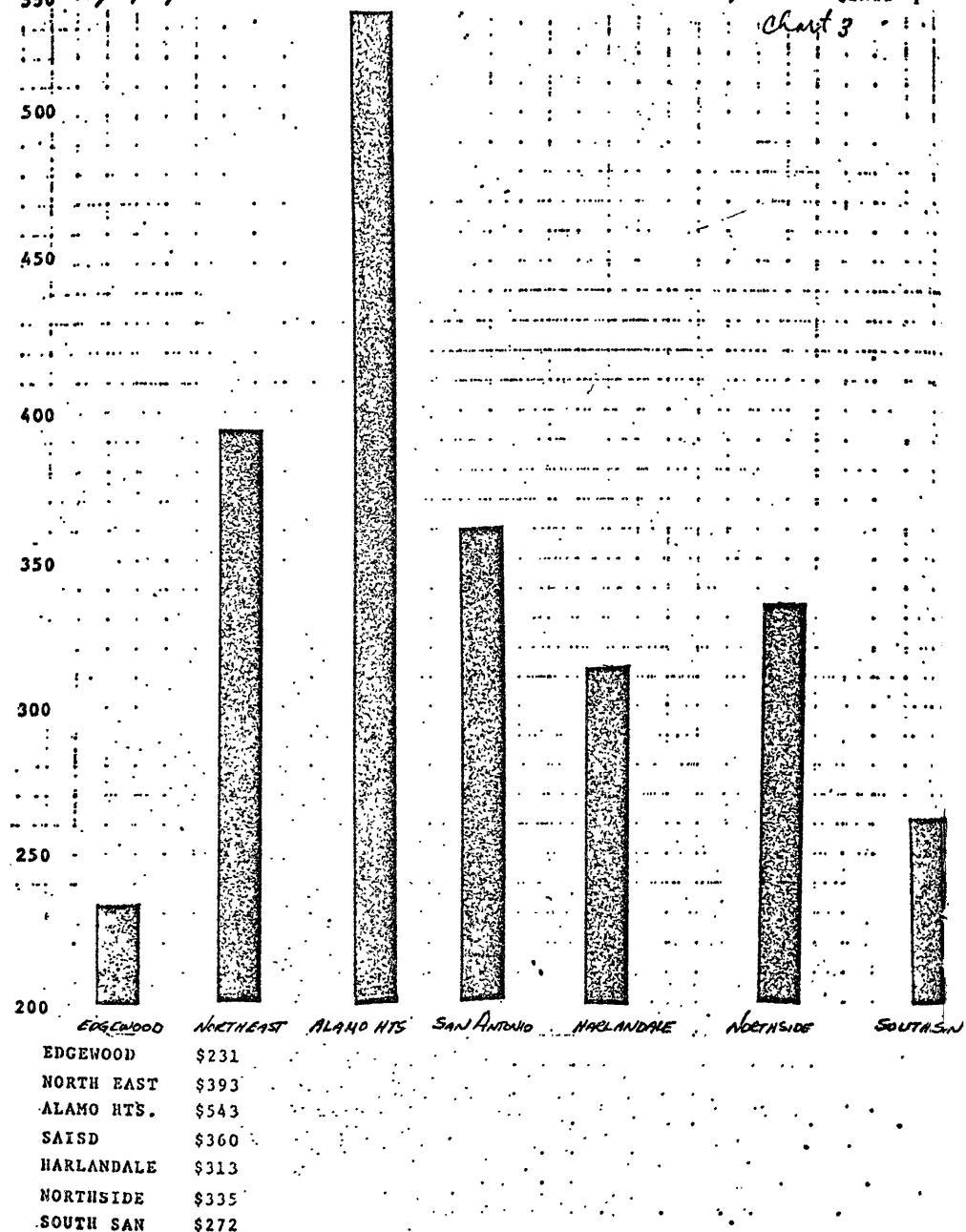


CHART NO. 3

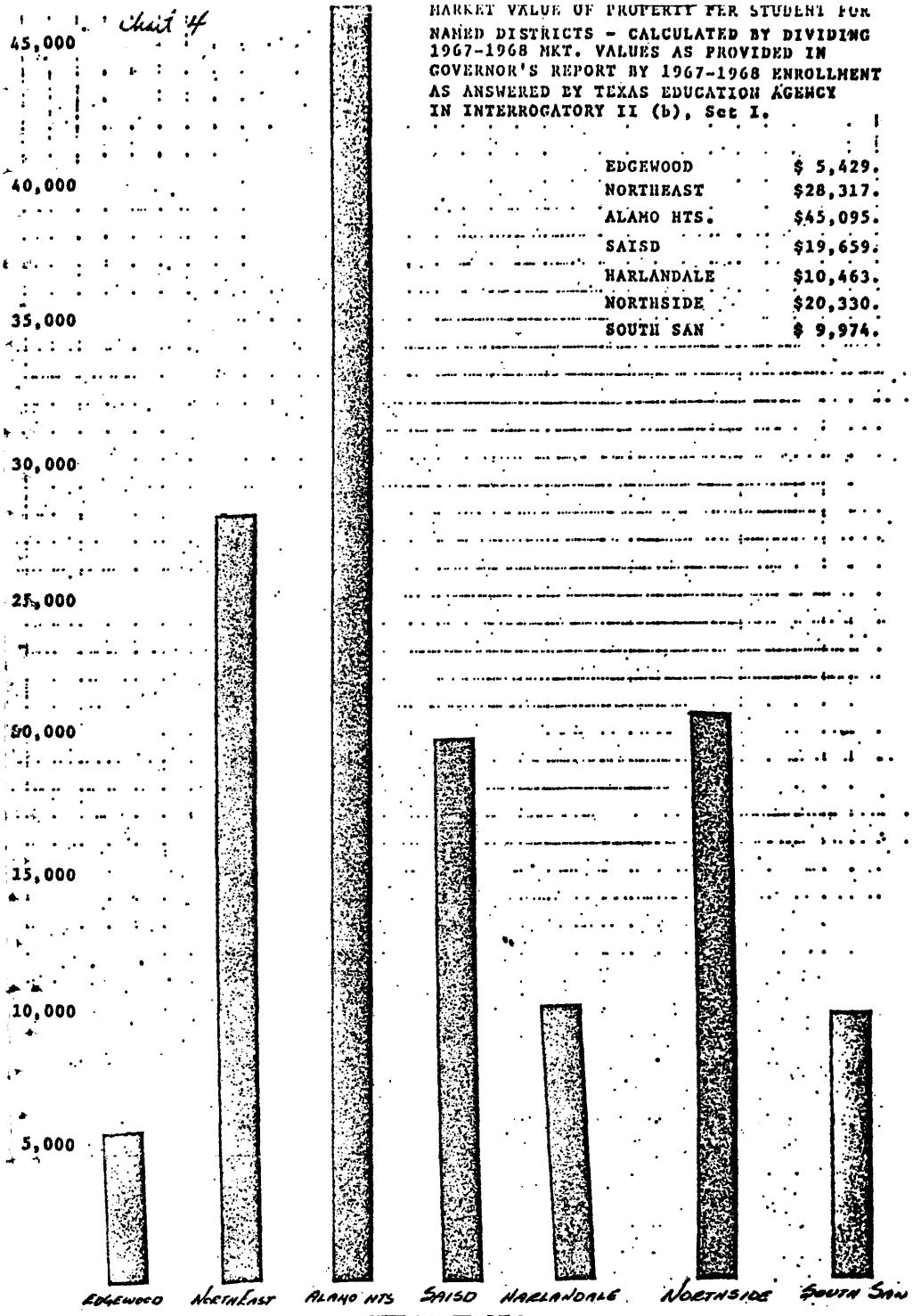


CHART NO. 4

FUNDS PROVIDED PER PUPIL FROM LOCAL AD VALOREM TAXES
1967-1968 CALCULATED FROM FIGURES FURNISHED BY TEXAS EDUCATION AGENCY

Chart 5

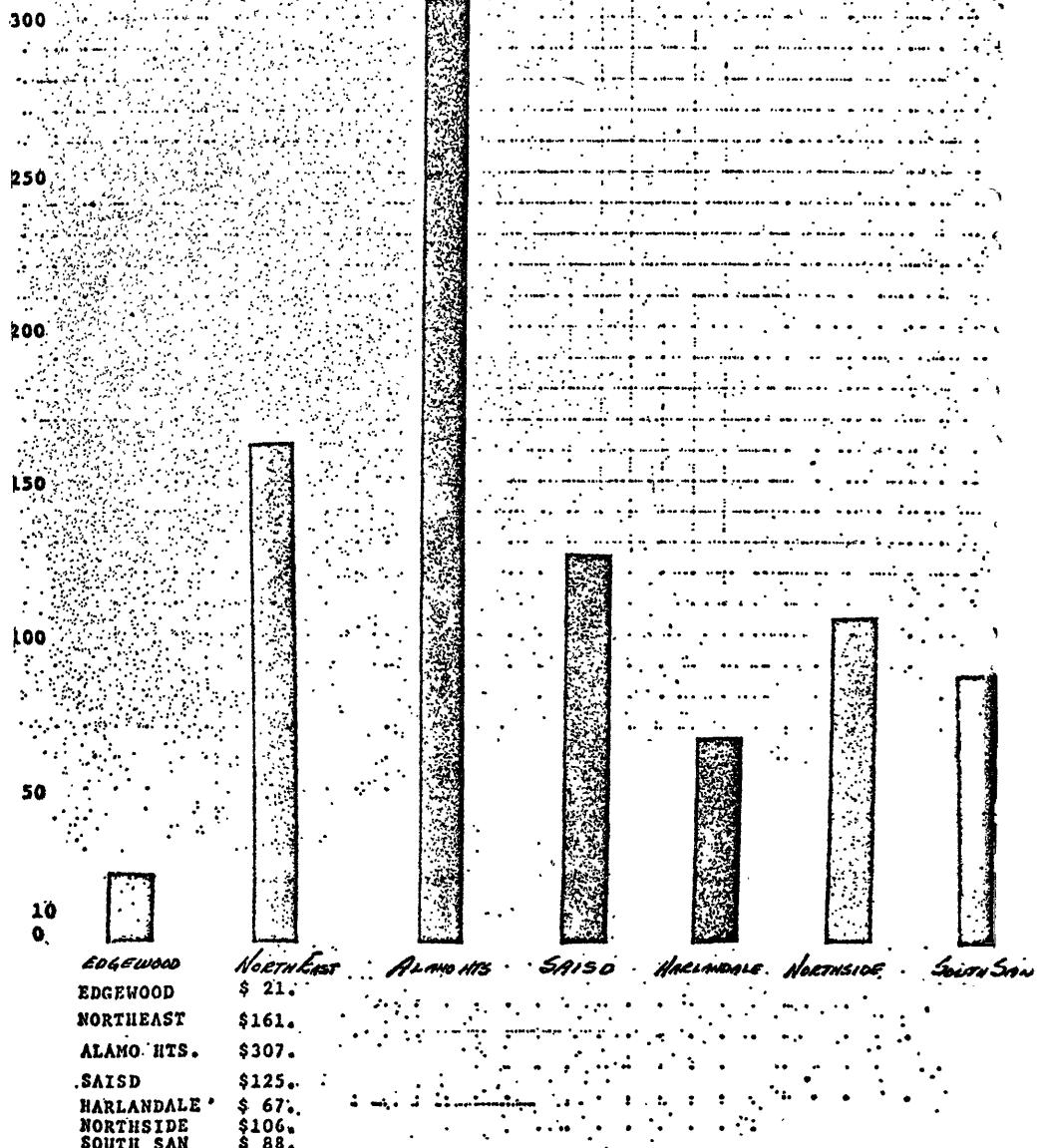


CHART NO. 5

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION
CIVIL ACTION NO. 68-175-SA
DEMETRIO P. RODRIGUEZ, ET AL

v.

SAN ANTONIO INDEPENDENT
SCHOOL DISTRICT, ET AL

AFFIDAVIT

My name is J. Richard Avena. I am the Director of the Southwestern Field Office for the United States Commission on Civil Rights. I have been employed by the Commission for approximately four years. Prior to this, I was a Researcher and Translator for the Legislative Reference Service of the Library of Congress in Washington, D. C. The United States Commission on Civil Rights is an independent bipartisan factfinding agency established by the United States Congress under the Civil Rights Act of 1957 as part of the Executive Branch of government. It is the duty of the Commission to:

1. Investigate complaints alleging that citizens are being deprived of their right to vote by reason of their race, color, religion or national origin, and, in the case of Federal elections, by fraudulent practices.
2. Appraise the laws and policies of the Federal Government with respect to denial of equal protection of the laws under the United States Constitution.
3. Collect and study information concerning legal developments constituting a denial of equal protection of the laws under the United States Constitution.

4. Serve as a national clearinghouse for civil rights information.
5. Submit reports of its activities, findings and recommendations to the President and the United States Congress.
6. Analyze past and present patterns of discrimination.

In furtherance of its duties, the Commission on Civil Rights investigates charges of discrimination against Mexican-Americans, conducts hearings, collects evidence and publishes findings. These reports (such as that issued after a 6-day hearing in San Antonio) clearly document a pattern of discrimination against Mexican-Americans in Texas and in other southwestern states having a common border with Mexico. This pattern of discrimination includes discrimination in education, housing and employment.

In the field of education, in the past, there have been segregated schools for Mexican-Americans in Texas. Wherever Mexican-Americans have lived in large numbers in Texas, there have been discriminatory practices in housing. At the time the school district lines which we are concerned with were being drawn, Texas courts were enforcing deed restrictions that barred Mexican-Americans from any but the poorest neighborhoods. And, in the field of employment, in Texas and throughout the Southwest, Mexican-Americans have been purposefully excluded from the better paying jobs in professional, technical, managerial and craft occupations.

This discrimination has resulted in a generally poorer education, more substandard housing, more limited job opportunities, smaller incomes and more deprivation of civil and political rights for Mexican-

Americans (and more specifically for those Mexican-Americans who reside within the Edgewood District) than for other white Americans in Texas.

J. RICHARD AVENA

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION
CIVIL ACTION NO. 68-175-SA
DEMETRIO P. RODRIGUEZ, ET AL

v.

SAN ANTONIO INDEPENDENT
SCHOOL DISTRICT, ET AL

AFFIDAVIT

I am Dr. Jose Cardenas, Superintendent of Schools, Edgewood Independent School District, a core city school district in Bexar County, Texas. Situated in the western section of the City of San Antonio, it covers an area of 14 square miles and includes some 25,000 school age children. The property in the district is mostly residential. There is an absence of industry and little business and commercial property. Edgewood is a poor district with a low tax base. As a result, its ad valorem tax revenues fall far short of the monies available in other Bexar County school districts. With this inequitable financing of its schools, Edgewood cannot hire sufficient qualified personnel, nor provide the physical facilities, library books, equipment and supplies afforded by other Bexar County districts. In short, all the school districts named in this lawsuit, except Edgewood, collect and spend substantially more money per student than Edgewood and as a consequence are able to provide a higher quality of education for their students than Edgewood is able to provide.

The State financing system of numerous independent school districts in the same geographic metropolitan area, providing for separate and independent taxing units, taxing rates, and resultant tax income, allows for

the condition that exists in which there are such vast differences in educational facilities and money spent for each student's education. Certainly that part of the State financing system which requires independent school districts to retain and expend, within their respective boundaries all of the school taxes collected for the educational purposes of such respective districts and the use of a "school district" as a unit for varying allocation of educational funds accomplishes no educational objectives.

Three years ago the Governor's Committee on Public Education described these inequities in "A Tale of Two Districts", (See Appendix A), the comparison of a core city district and a suburban district in Bexar County. One district had 91 professional personnel beyond the Minimum Foundation program. The other had 45 less than that prescribed by the Minimum Foundation program. One district had 5% of its teachers on emergency permits; the other had 52% on emergency permits. One district received \$221 in state aid per ADA; the other received \$217 in state aid per ADA. One district had \$29,650 in full property value per ADA; the other had \$5,875. The deprived district in this comparison was Edgewood. But I would like to go further and relate the tale of two school children, one residing in the Edgewood District and the other a resident of the Northeast District.

To begin with, the student in the Edgewood district is of substantially the same age, aptitude, motivation and ability as the student in the other district named in this suit. Their parents, as well, I can assure you are at least as highly motivated to provide the highest possible education for their children as are parents in the other districts.

To illustrate the Edgewood residents are making a high tax effort, have burdened themselves with one of the highest proportions of bonded indebtedness in the county to pay for capital improvements and, never, in the history of the district have they failed to approve a bond issue. The desire of the Edgewood residents for quality education for their children might best be evidenced by the choosing of priorities under the Model Cities program. A large portion of the Edgewood district is in the Model Cities area and the residents of this area have made education the first priority. At the outset of the program, they established education as the primary goal, willing to postpone the solution of health and housing problems, if necessary, until that goal was achieved.

Yet despite this desire of the Edgewood residents, the Edgewood youngster finds himself without adequate classroom space. One study estimated that the Northeast School District child was being provided with 70.36 square feet as compared to the 50.4 square feet for the Edgewood child. In addition, too few janitors result in poorly kept and maintained buildings. And, the Edgewood child may find himself in one of the school buildings in the Edgewood District with a leaky roof because the district does not have the funds to repair them.

Further, even though the Edgewood student is provided with a classroom text by the State of Texas, the local district is unable to provide him with supplemental text books nor with adequate library books. Approximately 3.9 library books per child are available for the Edgewood student, where in contrast, the Northeast Independent School District provides approximately 9.42 library books per child.

Inadequate funding also directly results in a limited curriculum. Any subject which requires a small teacher child ratio is out for the Edgewood students, or if offered, results in unusually large classes elsewhere. Subjects such as homemaking, conversational language, shorthand, and experimental sciences courses all depend on small classes and individual attention. Such courses are available to the Northeast school child, where the teacher-pupil ratio is 1/19, but cannot be paid for by the resources of the Edgewood district, where the average ratio is 1/28.

Since one third of the work force every year is new in the Edgewood District, the Edgewood child has long learned to do without experienced teachers. Edgewood does receive qualified applicants for its positions, but those same applicants apply in the other Bexar County Districts as well, and Edgewood cannot compete with the salaries such districts offer. In some areas the failure of the Edgewood District to successfully compete for personnel is particularly acute. For example, there are 5,672 children for every counselor in the Edgewood District; Alamo Heights is able to provide a counselor for every 1,319 children, and the Northeast district has 1 counselor for every 1,553 children with the other named districts falling between those extremes. Clearly, there is no chance for the Edgewood youngster to receive the counseling available to his Northeast counterpart.

Because of the Edgewood district's lack of financial capabilities, the Edgewood youngster yearly loses the benefits of those State and Federal programs which are awarded on the basis of matching funds from the individual school district. This directly results in the Edgewood youngster being without an adequate amount of guidance materials and testing supplies that are made

available under these programs. If the Edgewood youth of our example is handicapped, he is also unable to benefit from film and other instructional aids because the media service costs the school district \$1.00 per ADA and Edgewood School District cannot afford the additional \$23,000 per year from local sources. The same is true of the services of educational television stations. Although the Northeast youngster can take advantage of the programs offered by education channels such as KLRN, the Edgewood youngster does not find these services available because the school district cannot afford one-half of the \$30,000 required to participate in such programs.

The bottom lines of Appendix A, showing a Tale of Two Districts vividly reflects two results of the present state financing system. It first shows 32% of Edgewood students leaving school between grades seven and twelve, while in the same period only 8% of the Northeast students dropped out and failed to receive their high school diploma. If all grade levels are examined, my own figures show that the drop out rate for Edgewood is close to 50%. Second, the average senior test score for the Edgewood youngster was 12.1; for the Northeast district senior 19.1.

Edgewood must have greater income per student, so that it will be able to hire better qualified teachers, more counselors, provide better building facilities, scientific equipment, libraries, equipment and supplies, and maintain a broader and better curriculum. Only then will we be able to prevent the irreparable injury to our children that is the result of the present inequitable system.

DR. JOSE CARDENAS

THE STATE OF TEXAS
COUNTY OF BEXAR

Before me, the undersigned authority, on this day personally appeared Dr. Jose Cardenas, who, being by me first duly sworn, on his oath deposes and says:

I am the Affiant in the above entitled and numbered cause, and that the matters stated in the above and foregoing Affidavit are true and correct.

DR. JOSE CARDENAS

Sworn to and Subscribed before me under my official hand and seal this 30th day of September, 1971.

CARLOS R. CONTRERAS
Notary Public in and for
Bexar County, Texas

APPENDIX A
TALE OF TWO DISTRICTS

District Characteristics	Core City District	Suburban District
Enrollment -----	22,000	23,000
Family Income (Annual) -----	\$ 3,300	\$ 7,400
Extra Professional		
Personnel beyond -----	(45)	91
Percent of Teachers on		
Emergency Permits -----	52%	5%
State Aid Per ADA -----	\$ 217	\$ 221
Full Property Value Per ADA--	5,875	29,650
Performance Measures		
Dropout Rate (Grades 7-12) ----	32%	8%
Average Senior Test Score -----	12.1	19.5

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION
CIVIL ACTION NO. 68-175-SA
DEMETRIO P. RODRIGUEZ, ET AL

v.

SAN ANTONIO INDEPENDENT
SCHOOL DISTRICT, ET AL

AFFIDAVIT

I am Dr. Daniel C. Morgan, Jr., Associate Professor of Economics, University of Texas at Austin. Attached as Appendix A is a summary of my professional education, professional work and professional qualifications.

The present Texas system of financing public education deprives poor children, children living in poor districts and racial minorities of an equal educational opportunity. Among the 1300 school districts in Texas there are immense disparities in taxable property per student, and this has resulted in widely varying expenditures for education. This variance cannot be explained by differing municipal policy decisions; rather poor districts are systemically incapable of raising as many education dollars as rich districts—despite the higher tax effort in the former districts. The result of this discrimination is that children in poor districts suffer in any comparison of indicators of educational quality; e.g., academic achievement, functional literacy, numbers of years in school.

These inequities are recognized so far as *local* school revenues are concerned, but there is a too-prevalent impression that the State government's system of education aid overcomes much of this difficulty, or perhaps can overcome much of it. This mistaken belief is that

the *State* government's "Minimal Foundation Program" ("MFP") assures some *minimal* level of education for all children; that it achieves some *equal* level of either education per child or money expenditure per child; that it equalizes the capacity of school districts to support education; and that "MFP" places a much lower effective tax burden on the poorer school districts, thereby offsetting their inherently heavier burdens.

But the present Minimum Foundation Program of Texas does *not* do any of these things. Clearly it does not do them in actual practice, and the system is presently structured so that it is most unlikely ever to do them. This was demonstrated in Morgan and Hayden, *Elementary and Secondary Education Aid: Toward an Optimal Program for Texas* (Austin: The Institute of Public Affairs of the University of Texas). See Appendix B.

When one comes to understand the State government's "Minimum Foundation Program" one recognizes that it is actually closer in its nature to an "incentive matching grant" approach to State aid than it is to a true Strayer-Haig "foundation program." Since the classic work by George Strayer and Robert Haig in 1923 most education finance authorities and economists have not advocated the incentive matching grant approach to educational financing. Increasingly, these experts recognize that in practice a pure incentive matching grant system is more apt to increase inequalities than to reduce them, and, second, that the incentive approach assures no minimum and/or equal level of performance or aid. To illustrate these deficiencies, consider the following simple example:

Assume that Rich District has a tax base of \$10,000 per pupil and that Poor District has a tax

base of only \$1,000 per pupil (by no means an extreme assumption in Texas today). Suppose that the State government in Austin has established a matching index of one-to-one, meaning that the State will match each dollar's spending by a district with a dollar of aid from the State. Now suppose that Rich District and Poor District make what we will assume to be an equal tax effort: each taxes itself 10 per cent of its tax base in order to provide revenue for education. Rich District then raises \$1,000 per pupil while Poor District raises only \$100 per pupil. The State government then grants Rich District \$1,000 per pupil in State aid while it grants Poor District only \$100 per pupil. Or, suppose instead that both districts make whatever tax effort is required of them in order to provide their children with an equal, desirable level of education per pupil. Say that this is \$1,000 per student. Then Rich District can achieve it with a 5 per cent tax effort; a 5 per cent rate applied to the \$10,000 tax base will yield \$500, which the State matches "one-for-one", yielding \$1,000 to Rich District. But Poor District will require a 50 per cent tax rate to achieve such level; a 50 per cent rate applied to its \$1,000 base will yield \$500, which the State will match with \$500, thus providing the total \$1,000.

When we understand this example and recognize the enormous disparities among Texas' 1300 school districts, we see why the "incentive matching grant" approach to State aid fails to provide equal educational opportunity or even minimal opportunity—while at the same time that it fails to equalize tax effort or wealth among the state's school districts.

Many observers do not see that the present system operating in Texas is a disguised incentive matching grant system. The salary schedule of the misnamed "Minimum Foundation Program", however, illustrates this point; for the salary portion constitutes about

four-fifths of the State government's outlay to its school districts. The salary schedule of MFP causes the State government to provide money to the school districts in accordance with the qualifications of the teachers employed by the school districts: (1) the degree attainments of the teacher; and (2) the number of years of teaching experience of the teacher. The State pays a portion of the teacher's salary: its portion depends on the above qualifications. The following example presents an MFP-type of teacher-salary schedule:

Suppose that the State government formulates the following schedule for aiding the salaries of five categories of teachers in ascending order of qualifications:

Category	State Aid to District
I (lowest)	\$1,000
II	2,000
III	3,000
IV	4,000
V (highest)	6,000

Assume that a one-to-one State formula is operative. And suppose that a given district hires ten teachers. If it is willing and able to hire all ten teachers of lowest quality, it will receive \$10,000 from the State, i.e., 10 teachers at \$1,000 per teacher. Suppose, by extreme contrast that the district is able to hire all ten teachers of highest quality: it will receive \$60,000 from the State, i.e., 10 teachers at \$6,000. While the salary schedule may provide an incentive for rich districts to employ higher quality teachers, poor districts are unable to raise the absolute number of dollars required to employ the higher quality teachers. Indeed, a lower tax effort yields the richer districts the revenues required to employ the higher quality teachers.

Thus, the Texas MFP system enables the wealthier districts to gain the most in State aid per pupil with a

minimal tax effort. Moreover, the MFP system grants no aid whatever to Texas school districts for capital expenditures. This forces poorer districts to expend higher percentages of their economic capacities on essentials like school buildings and equipment before utilizing these capacities on the quality and numbers of teachers they employ. Further, in our present context, it is helpful to remind ourselves of "sacrifice theory" in taxation. Under "sacrifice theory"—well formulated in the nineteenth century—an equal percentage of resources taxed away from low "income" families constitutes a greater sacrifice than that same percentage taxed away from higher "income" families.

Thus, despite the nomenclature which is employed in describing the Texas financing scheme, and notwithstanding popular illusions as to its efficacy, the *impact* of that system is clear: the State of Texas has created a class of children which it deems less deserving of education because they are poor or living in poor school districts.

DANIEL C. MORGAN, JR.

STATE OF TEXAS :
COUNTY OF BEXAR :

BEFORE ME, the undersigned authority, on this day personally appeared Dr. Daniel C. Morgan, Jr., who, being by me first duly sworn, on his oath deposes and says:

I am the Affiant in the above entitled and numbered cause, and that the matters stated in the above and foregoing Affidavit are true and correct.

DANIEL C. MORGAN, JR.

SWORN TO AND SUBSCRIBED before me under
my official hand and seal this 5th day of October, 1971.

MARY MYERS
Notary Public in and for
Bexar County, Texas.

APPENDIX A

DANIEL C. MORGAN, JR.

I. Degrees:

B.B.A.: University of Texas, 1953 (Finance)
M.A.: University of Texas, 1955 (Economics)
Ph.D.: University of Wisconsin, 1961 (Economics)

II. Titles and Committees, Economics Dept., University of Texas—Austin:

Associate Professor; Full Member, Graduate Faculty; Graduate Advisor, Head Economics 302-303 (Beginner's Courses); Personnel Committee; Welfare Committee; Ad Hoc Committee to Review English Requirements for the Bachelor of Arts Degree, Plan I.

III. Membership in Learned Societies

American Economic Association, National Tax Association, Associate Member Brookings Institution

IV. Selected Publications

Books:

Retail Sales Taxation: An Appraisal of New Issues. University of Wisconsin Press, 1964.
Financing Higher Education in Texas: Needs and Methods. Austin: University of Texas Press, 1965.

Elementary and Secondary Education Aid: Toward an Optimal Program for Texas. Austin: Institute of Public Affairs of the University of Texas, 1970.

Articles:

"Reappraisal of Sales Taxation: Some Recent Arguments," *National Tax Journal*, XVI, No. 1 (1963).

- “The Kefauver Drug Hearings in Perspective” *Social Science Quarterly*, June, 1964.
- “A Comment on ‘A Further Reappraisal of Sales Taxation’,” *National Tax Journal*, XVII, No. 3 (1964).
- “The Report of the Governor’s Committee on Higher Education: Fiscal Aspects,” *Public Affairs Comment*, X, No. 6 (1964).
- “Equity Considerations of Retail Sales Taxation,” in *1965 Proceedings of the Fifty-Eighth Annual Conference on Taxation*,” National Taxation Association.
- “The Family Assistance Plan: Background and Relationship to Texas,” *Public Affairs Comment*, September, 1970.
- “Does the State Government ‘Exploit’ Its Urban Centers?” *National Tax Journal*, (forthcoming).

V. Honors:

Ford Foundation Fellowship; UT President, Texas Association of College Teachers; Book Review editor, *Journal of Economic Issues*; Liberal Arts Fellow, Harvard; Chairman, Lt. Governor’s Advisory Committee on Revenue and Taxation; Member of Citizens Tax Advisory Commission, City of Austin.

APPENDIX B

The actual Texas Minimum Foundation Program determines its payments to its school districts on the basis of "units of need." These units of need are determined by the number of "classroom-teacher units" and "professional units," which are allocated by the State on the basis of the school districts' respective "average daily attendance" during the preceding school year. The allocation of classroom teacher units is derived from Article 2922-13 of *Vernon's Annotated Revised Civil Statutes of the State of Texas*. One classroom teacher unit is allotted for each certain number of pupils in average daily attendance, with one unit being allotted for lower number of pupils in small districts than in large districts. (The number of pupils required for one unit has varied over the years.) There are also units given for "special-service teachers," such as librarians and nurses; and there are also supervisor or counselor units, exceptional children units, principal units, and superintendent units. The bulk of the cost of the Foundation Program—usually averaging about 80 per cent of the total—derives from the "Salaries" portion. Article 2922-14 of "*Vernon's Statutes*" establishes the State's minimum salary schedule. The funds allocated depend on both the "education" and the "experience" of the employed personnel. "Education" refers to the categories such as "Master's Degree," "Bachelor's Degree," "Three Years College," "Two Years College," "One Year College," "Non-certificate," etc. "Experience" refers to 0 years, 1 year, etc., through 12 years or more for most of the categories of "education," and from 0 years through 26 years or more for the Master's Degree. In addition to "Salaries," the computed cost to the State for a school district is constituted by "Operating Costs" plus "Transportation Costs." "Op-

erating costs" are established in Article 2922-15 of *Vernon's Statutes*. They are based on the number of approved classroom teacher units and exceptional-teacher units employed in a district, with smaller districts receiving a bit more for each approved unit. "Transportation Aid" is established by a formula for its computation in Article 2922-15 of *Vernon's*.

The "Local Fund Assignment" is the portion of the Foundation Program that must be raised by the local school districts themselves. The percentage can be altered but has generally been 20 per cent in recent decades. The presumed aim is for the districts themselves to pay 20 per cent of the MFP bill in accordance with their respective fiscal capacities. (Actually, the districts are charged with the specified percentage, like 20 per cent, of the MFP for the immediately preceding year.) In actual practice the computation of the Local Fund Assignment has been quite complicated and has failed to achieve any "equalization" among districts of varying fiscal capacity. (For an explanation of what the complexities of the system are and why it fails, see *Elementary and Education Aid, op. cit.*, pp. 62-66.)

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION
CIVIL ACTION NO. 69-175-SA
(Title Omitted in Printing)

**NOTICE OF APPEAL TO THE
SUPREME COURT OF THE UNITED STATES**

I.

Notice is hereby given that the State Board of Education and Porter M. Bailes, Jr., M.D., Vernon Baird, Jack Binion, Doyle Corley, William H. Evans, Paul G. Greenwood, E. R. Gregg, Jr., George C. Guthrie, Paul R. Haas, Charles D. Hart, James W. Harvey, Ben R. Howell, Richard Kirkpatrick, Walter R. Kock, Paul Mathews, Carl E. Morgan, Frank M. Pool, Edwin L. Rippy, M.D., Winthrop Seley, James E. Weeks, Herbert O. Willborn, J. W. Edgar, Commissioner of Education, and Crawford C. Martin, Attorney General of Texas, the Defendants above named, hereby appeal to the Supreme Court of the United States from the following portion of the judgment entered in this action on the 23rd day of December, 1971, and the clarification of such judgment entered on the 26th day of January, 1972:

“(1) The defendants and each of them be preliminarily and permanently restrained and enjoined from giving any force and effect to said Article 7, sec. 3 of the Texas Constitution, and the sections of the Texas Education Code relating to the financing of education, including the Minimum Foundation School Program Act (Ch. 16), and that defendants, the Commissioner of Education and the members of the State Board of Education, and each of them, be ordered to reallocate the funds available for financial support of the school

system, including, without limitation, funds derived from taxation of real property by school districts, and to otherwise restructure the financial system in such a manner as not to violate the equal protection provisions of both the United States and Texas Constitutions;

“(2) The mandate in this cause shall be stayed, and this Court shall retain jurisdiction in this action for a period of two years in order to afford the defendants and the Legislature an opportunity to take all steps reasonably feasible to make the school system comply with the applicable law; and without limiting the generality of the foregoing, to reallocate the school funds, and to otherwise restructure the taxing and financing system so that the educational opportunities afforded the children attending Edgewood Independent School District, and the other children of the State of Texas, are not made a function of wealth, other than the wealth of the State as a whole, as required by the equal protection clause of the Fourteenth Amendment to the United States Constitution. In the event the legislature fails to act within the time stated, the Court is authorized to and will take such further steps as may be necessary to implement both the purpose and the spirit of this order. See *Swann v. Adams*, 263 F.Supp. 225 (S.D. Fla. 1967); *Klahr v. Goddard*, 254 F.Supp. 997 (D. Ariz. 1966). Needless to say, the Court hopes that this latter action will be unnecessary.” (December 23, 1971, Judgment).

“(1) The defendants and each of them be preliminarily and permanently restrained and enjoined from giving any force and effect to the operation of said Article 7, sec. 3 of the Texas Constitution, and the sections of the Texas Education Code relating to the financing of education, including the Minimum Foundation School Program Act, insofar as they discriminate against Plaintiffs and others on the basis of wealth other than the wealth of the State as a whole, and that defendants

the Commissioner of Education and the members of the State Board of Education, and each of them, be ordered to reallocate the funds available for financial support of the school system, including, without limitation, funds derived from taxation of real property by school districts, and to otherwise restructure the financial system in such a manner as not to violate the equal protection provisions of both the United States and Texas Constitutions;

“(2) The mandate in this cause shall be stayed for a period of two years in order to afford the defendants and the Legislature an opportunity to take all steps reasonably feasible to make the school system comply with the applicable law; and without limiting the generality of the foregoing, to reallocate the school funds, and to otherwise restructure the taxing and financing system so that the educational opportunities afforded the children attending Edgewood Independent School District, and the other children of the State of Texas, are not made a function of wealth other than the wealth of the State as a whole, as required by the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. Our holding that the plaintiffs have been denied equal protection of the laws under the Fourteenth Amendment to the United States Constitution by the operation of Article 7, sec. 3 of the Texas Constitution, and the sections of the Texas Education Code relating to the financing of education, including the Minimum Foundation Program, shall have prospective application only, and shall not become effective until after the expiration of two years from December 23, 1971. This order shall in no way affect the validity, incontestability, obligation to pay, source of payment or enforceability of any presently outstanding bond, note or other security issued, or contractual obligation incurred by a school district in Texas for public school purposes, nor the validity or enforceability of any tax or other source of payment of any such bond, note, security or obligation; nor shall this judgment in

any way affect the validity, incontestability, obligation of payment, source of payment or enforceability of any bond, note or other security to be issued and delivered, or contractual obligation incurred by Texas school districts, for authorized purposes, during the period of two years from December 23, 1971, nor shall the validity or enforceability of any tax or other source of payment for any such bond, note or other security issued and delivered, or any contractual obligation incurred during such two year period be affected hereby; it being the intention of this Court that this judgment should be construed in such a way as to permit an orderly transition during said two year period from an unconstitutional to a constitutional system of school financing. The Court retains jurisdiction of this action to take such further steps as may be necessary to implement both the purpose and spirit of this order, in the event the Legislature fails to act within the time stated, but, as we understand the law, this constitutes no impediment with respect to the finality of this judgment for the purpose of appeal, and none is intended. See *Swann v. Adams*, 385 U.S. 440 (1967), 263 F.Supp. 225 (S.D. Fla. 1967); *Reynolds v. Sims*, 377 U.S. 533 (1964); *Gunn v. Committee to End the War in Vietnam*, 399 U.S. 383 (1970); and *Klahr v. Goddard*, 254 F.Supp. 997 (D. Ariz. 1966). Needless to say, we hope that no further action by this Court will be necessary." (January 26, 1972, clarification of judgment.)

II.

This appeal is taken pursuant to 27 U.S.C. § 1253.

III.

The Clerk will please prepare and certify a transcript of the entire record in this cause for transmission to the Clerk of the Supreme Court of the United States in accordance with Rule 12 of the Rules of the United States Supreme Court.

IV.

The following questions are presented by this appeal:

- (1) Whether Section 3 of Article VII of the Constitution of the State of Texas and the sections of the Texas Education Code relating to the financing of education, including the Minimum Foundation School Program Act, chapter 16, are in violation of the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States.
- (2) Whether the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States requires equal dollar expenditures or “fiscal neutrality” in the financing plans of the public schools by the State of Texas.
- (3) Whether there exists any judicially manageable standards in connection with public school financing by the State of Texas.
- (4) Whether the Court has applied the proper test in passing upon the validity of public school financing in the State of Texas.
- (5) Whether the Court has the authority to grant affirmative relief in connection with reallocating public funds for financial support of the public schools of the State of Texas.

Respectfully submitted,

CRAWFORD C. MARTIN
Attorney General of Texas

(Signature)

PAT BAILEY
Assistant Attorney General

Box 12548, Capitol Station
Austin, Texas 78711

Attorneys for Defendants

(Proof of Services Omitted)

Texas CONSTITUTIONAL AND STATUTORY PROVISIONS

Section 3 of Article VII of the Constitution of the State of Texas provides as follows:

Sec. 3. One-fourth of the revenue derived from the State occupation taxes and poll tax of one dollar on every inhabitant of the State, between the ages of twenty-one and sixty years, shall be set apart annually for the benefit of the public free schools; and in addition thereto, there shall be levied and collected an annual ad valorem State tax of such an amount not to exceed thirty-five cents on the one hundred (\$100.00) dollars valuation, as with the available school fund arising from all other sources, will be sufficient to maintain and support the public schools of this State for a period of not less than six months in each year, and it shall be the duty of the State Board of Education to set aside a sufficient amount out the said tax to provide free text books for the use of children attending the public free schools of this State; provided, however, that should the limit of taxation herein named be insufficient the deficit may be met by appropriation from the general funds of the State and the Legislature may also provide for the formation of school district by general laws; and all such school districts may embrace parts of two or more counties, and the Legislature shall be authorized to pass laws for the assessment and collection of taxes in all said districts and for the management and control of the public school or schools of such districts, whether such districts are composed of territory wholly within a county or in parts of two or more counties, and the Legislature may authorize an

additional ad valorem tax to be levied and collected within all school districts heretofore formed or hereafter formed, for the further maintenance of public free schools, and for the erection and equipment of school buildings therein; provided that a majority of the qualified property taxpaying voters of the district voting at an election to be held for that purpose, shall vote such tax not to exceed in any one year one (\$1.00) dollar on the one hundred dollars valuation of the property subject to taxation in such district, but the limitation upon the amount of school district tax herein authorized shall not apply to incorporated cities or towns constituting separate and independent school districts, nor to independent or common school districts created by general or special law.

OPINIONS AND JUDGMENTS BELOW

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

CIVIL ACTION NO. 68-175-SA

DEMETRIO P. RODRIGUEZ, ET AL.,

v.

**SAN ANTONIO INDEPENDENT SCHOOL
DISTRICT, ET AL..**

Before GOLDBERG, Circuit Judge; SPEARS, Chief District Judge; and ROBERTS, District Judge.

PER CURIAM:

Pursuant to Rule 23, Federal Rules of Civil Procedure, plaintiffs bring this action on behalf of Mexican American school children and their parents who live in the Edgewood Independent School District, and on behalf of all other children throughout Texas who live in school districts with low property valuations. Jurisdiction of this matter is proper under 28 U.S.C. §§ 1331, 1343. This Court finds merit in plaintiffs' claim that the current method of state financing for public elementary and secondary education deprives their class of equal opportunity of the laws under the Fourteenth Amendment to the United States Constitution.¹

¹See *Serrano v. Priest*, 5 Cal. 3d 584, — P. 2d — (1971); and *Van Dusartz v. Hatfield*, — F. Supp. — (D. Minn. 1971). *Serrano* convincingly analyzes discussions regarding the suspect nature of classifications based on wealth, and *Van*

Edgewood and six other school districts lie wholly or partly within the city of San Antonio, Texas. Five additional districts are located within rural Bexar County. All of these districts and their counterparts throughout the State are dependent upon federal, state, and local sources of financing. Since the federal government contributes only about ten percent of the overall public school expenditures, most revenue is derived from local sources and from two state programs—the Available School Fund and the Minimum Foundation Program. In accordance with the Texas Constitution, the \$296 million in the Available School Fund for the 1970-1971 school year was allocated on a per capita basis determined by the average daily attendance within a district for the prior school year.

Costing in excess of one billion dollars for the 1970-1971 school year, the Minimum Foundation Program provides grants for the costs of salaries, school maintenance and transportation. Eighty percent of the cost of this program is financed from general State revenue with the remainder apportioned to the school districts in “the Local Fund Assignment.” TEX. EDUC. CODE ANN. arts. 16.71-16.73 (1969). Although generally measuring the variations in taxpaying ability, the Economic Index employed by the State to determine each district’s share of “the Local Fund Assignment” (TEX. EDUC. CODE ANN. arts 16.74-16.78) has come under increasing criticism.²

Dusartz points out that in this type case “the variations in wealth are state created. This is not the simple instance in which the poor man is injured by his lack of funds. Here the poverty is that of a governmental unit that the state itself has defined and commissioned.”

²See THE CHALLENGE AND THE CHANCE, RPT. OF THE GOVERNOR’S COMM. ON PUBLIC SCHOOL EDUC.

To provide their share of the Minimum Foundation Program, to satisfy bonded indebtedness for capital expenditures, and to finance all expenditures above the state minimum, local school districts are empowered within statutory or constitutional limits to levy and collect ad valorem property taxes. TEX. CONST. art. 7, §§ 3, 3a; TEX. EDUC. CODE ANN. art. 20.01, et seq. Since additional tax levies must be approved by a majority of the property-taxpaying voters within the individual districts, these statutory and constitutional provisions require as a practical matter that all tax revenues be expended solely within the district in which they are collected.

Within this ad valorem taxation system lies the defect which plaintiffs challenge. This system assumes that the value of property within the various districts will be sufficiently equal to sustain comparable expenditures from one district to another. It makes education a function of the local property tax base. The adverse effects of this erroneous assumption have been vividly demonstrated at trial through the testimony and exhibits adduced by plaintiffs. In this connection, a survey of 110 school districts^a throughout Texas demonstrated that while the ten districts with a market value of taxable property per pupil above \$100,000 enjoyed an equalized tax rate per \$100 of only thirty-one cents, the poorest four districts, with less than \$10,000 in property per pupil, were burdened with a rate of seventy cents. Nevertheless, the low rate of the

58-68 (1968). The accuracy of the Economic Index is the subject of separate litigation in Fort Worth Ind. School Dist. v. J. W. Edgar, (N.D. Tex., Fort Worth Div.).

^aThe total number of districts in the state is approximately 1200.

rich districts yielded \$585 per pupil, while the high rate of the poor districts yielded only \$60 per pupil. As might be expected, those districts most rich in property also have the highest median family income and the lowest percentage of minority pupils, while the poor property districts are poor in income and predominantly minority in composition.³

Data for 1967-1968 show that the seven San Antonio school districts follow the statewide pattern. Market value of property per student varied from a low of \$5,429 in Edgewood, to a high of \$45,095 in Alamo Heights. Accordingly, taxes as a percent of the property's market value were the highest in Edgewood and the lowest in Alamo Heights. Despite its high rate, Edgewood produced a meager twenty-one dollars per pupil from local ad valorem taxes, while the lower rate of Alamo Heights provided \$307 per pupil.

Nor does State financial assistance serve to equalize these great disparities. Funds provided from the combined local-state system of financing in 1967-1968 ranged from \$231 per pupil in Edgewood to \$543 per pupil in Alamo Heights. There was expert testimony to the effect that the current system tends to subsidize the rich at the expense of the poor, rather than the other way around. Any mild equalizing effects that state aid may have do not benefit the poorest districts.

For poor school districts educational financing in Texas is, thus, a tax more, spend less system. The constitutional and statutory framework employed by

³Plaintiffs' Exhibit VIII shows 1960 median family income of \$5,900 in the top ten districts and \$3,325 in the bottom four. The rich districts had eight per cent minority pupils while the poor districts were seventy-nine percent minority.

the State in providing education draws distinction between groups of citizens depending upon the wealth of the district in which they live. Defendants urge this Court to find that there is a reasonable or rational relationship between these distinctions or classifications and a legitimate state purpose. This rational basis test is normally applied by the courts in reviewing state commercial or economic regulation. *See, e.g., McCowan v. Maryland*, 366 U.S. 420 (1961); *Williamson v. Lee Optical of Oklahoma*, 348 U.S. 483 (1955). More than mere rationality is required, however, to maintain a state classification which affects a "fundamental interest," or which is based upon wealth. Here both factors are involved.

These two characteristics of state classification, in the financing of public education, were recognized in *Hargrave v. McKinney*, 413 F. 2d 320, 324 (5th Cir. 1969), *on remand*, *Hargrave v. Kirk*, 313 F. Supp. 944 (M.D. Fla. 1970), vacated on other grounds sub nom., *Askev v. Hargrave*, 401 U.S. 476 (1971). Among the authorities relied upon to support the *Hargrave* conclusion "that lines drawn on wealth are suspect" is *Harper v. Virginia Bd. of Elections*, 383 U.S. 663, 668 (1965).⁴ In striking down a poll tax requirement because of the possible effect upon indigent voting, the Supreme Court concluded that "(l)ines drawn on the basis of wealth or property, like those of race . . . are traditionally disfavored. . . . To introduce wealth or payment of a fee as a measure of a voter's qualifica-

⁴In addition, the court relied upon *Douglas v. California*, 372 U.S. 353 (1963), and *Griffin v. Illinois*, 351 U.S. 12 (1956), which are decisions invalidating state laws that discriminated against criminal defendants because of their poverty.

tions is to introduce a capricious or irrelevant factor.” Likewise *McDonald v. Bd. of Elections Comm’rs of Chicago*, 394 U.S. 802, 807 (1969), noted that “a careful examination on our part is especially warranted where lines are drawn on the basis of wealth . . . which would independently render a classification highly suspect and thereby demand a more exacting judicial scrutiny.”

Further justification for the very demanding test which this Court applies to defendants’ classifications is the very great significance of education to the individual. The crucial nature of education for the citizenry lies at the heart of almost twenty years of school desegregation litigation. The oft repeated declaration of *Brown v. Bd. of Education*, 347 U.S. 483, 493 (1954), continues to ring true:

Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.

Because of the grave significance of education both to the individual and to our society, the defendants

must demonstrate a compelling state interest that is promoted by the current classifications created under the financing scheme.

Defendants insist that the Court is bound by the opinions in *McInnis v. Shapiro*, 293 F. Supp 327 (N. D. Ill. 1968), aff'd mem. sub nom., 394 U.S. 322 (1969); and *Burrus v. Wilkerson*, 310 F. Supp. 572 (W.D. Va. 1969), aff'd mem. sub nom., 397 U.S. 44 (1970). However, we disagree.

The development of judicially manageable standards is imperative when reviewing the complexities of a state educational financing scheme. Plaintiffs in *McInnis* sought to require that educational expenditures in Illinois be made solely on the basis of the "pupils' educational needs." Defining and applying the nebulous concept "educational needs" would have involved the court in the type of endless research and evaluation for which the judiciary is ill-suited.⁵ Accordingly, the court refused the claim that the equal protection clause of the Fourteenth Amendment demands such an unworkable standard. The subsequent affirmance, without opinion, by the Supreme Court would not, in our opinion, bar consideration of plaintiffs' claim that lines in Texas have been drawn on the basis of wealth. The same situation prevails with respect to *Burrus* where the Court, in referring to the "varying needs" of the students, found the circumstances "scarcely distinguishable" from *McInnis*.

In the instant case plaintiffs have not advocated that

⁵Difficulties in defining the term are discussed at note 4, 293 F. Supp. 329.

educational expenditures be equal for each child.⁶ Rather, they have recommended the application of the principle of “fiscal neutrality.” Briefly summarized, this standard requires that the quality of public education may not be a function of wealth, other than the wealth of the state as a whole. Unlike the measure offered in *McInnis*, this proposal does not involve the Court in the intricacies of affirmatively requiring that expenditures be made in a certain manner or amount. On the contrary, the state may adopt the financial scheme desired so long as the variations in wealth among the governmentally chosen units do not affect spending for the education of any child.

Considered against this principle of “fiscal neutrality,” defendants arguments for the present system are rendered insubstantial. Not only are defendants unable to demonstrate compelling state interests for their classifications based upon wealth, they fail even to establish a reasonable basis for these classifications. They urge the advantages of the present system in granting decisionmaking power to individual districts, and in permitting local parents to determine how much they desire to spend on their children’s schooling. However, they lose sight of the fact that the state has, in truth and in fact, limited the choice of financing by guaranteeing that “some districts will spend low (with high taxes) while others will spend high (with low taxes).”⁷ Hence, the present system does not serve to

⁶Indeed, it is difficult to see how the defendants reach a contrary conclusion since even the *McInnis* plaintiffs did not request precisely equal expenditures per child.

⁷As the Court said in *Van Dusartz v. Hatfield*, *supra*, note 1: “By its own acts, the State has indicated that it is not primarily interested in local choice in school matters. In fact, rather than reposing in each school district the eco-

promote one of the very interests which defendants assert.

Indicative of the character of defendants' other arguments is the statement that plaintiffs are calling for "socialized education." Education like the postal service has been socialized, or publicly financed and operated almost from its origin. The *type* of socialized education, not the question of its existence, is the only matter currently in dispute. One final contention of the defendants however calls for further analysis. In essence, they argue that the state may discriminate as it desires so long as federal financing equalizes the differences. Initially, the Court notes that plaintiffs have successfully controverted the contention that federal funds do in fact compensate for state discrimination.⁸ More importantly, defendants have not adequately explained why the acts of other governmental units should excuse them from the discriminatory consequences of state law. *Hobson v. Hansen, supra*, 269 F. Supp. at 496, countered defendants' view by finding that the federal aid to education statutes⁹

nomic power to fix its own level of per pupil expenditure, the State has so arranged the structure as to guarantee that some districts will spend low (with high taxes) while others will spend high (with low taxes). To promote such an erratic dispersal of privilege and burden on a theory of local control of spending would be quite impossible."

"Plaintiffs' Exhibit 8, Table X, indicates that while Edgewood receives the highest federal revenues per pupil of any district in San Antonio, \$108, and Alamo Heights, the lowest, \$36, the former still has the lowest combined local-state-federal revenues per pupil, \$356, and the latter the highest, \$594.

⁸The statutes involved were the Economic Opportunity Act, 42 U.S.C. §§ 2781-2791 (1964); the Elementary and Secondary Education Act, 20 U.S.C. §§ 241a-411 (1970 Supp.), and federally impacted areas aid, 20 U.S.C. §§ 236-244 (1964), as amended, (1970 Supp.).

. . . are manifestly intended to provide extraordinary services at the slum schools, not merely to compensate for inequalities produced by local school boards in favor of their middle-income schools. Thus, they cannot be regarded as curing any inequalities for which the Board is otherwise responsible.

Since they were designed primarily to meet special needs in disadvantaged schools, these funds cannot be employed as a substitute for state aid without violating the Congressional will. Further support for this view is offered by a series of decisions prohibiting deductions from state aid for districts receiving "impacted areas" aid.¹⁰ Performance of its constitutional obligations must be judged by the state's own behavior, not by the actions of the federal government.

While defendants are correct in their suggestion that this Court cannot act as a "super-legislature," the judiciary can always determine that an act of the legislature is violative of the Constitution. Having determined that the current system of financing public education in Texas discriminates on the basis of wealth

¹⁰These cases have held that the statute clearly provides that the aid is intended as special assistance to local educational agencies, and that to permit a reduction in state aid would violate the Congressional intent. *Douglas Ind. School Dist. No. 3 v. Jorgenson*, 293 F. Supp. 849 (D. S.D. 1968); *Hergenreter v. Hayden*, 295 F. Supp. 251 (D. Kan. 1968); *Shepheard v. Godwin*, 280 F. Supp. 869 (E.D. Va. 1968); *Carlsbad Union School Dist. v. Rafferty*, 300 F. Supp. 434 (S.D. Cal. 1969), *aff'd*, 429 F. 2d 337 (9th Cir. 1970), and *Triplett v. Tiemann*, 302 F. Supp. 1244 (D. Neb. 1969). After these actions arose, the statute was amended to prohibit aid to schools in any state which has "taken into consideration payments under this subchapter in determining the eligibility of any local educational agency in that State for State aid . . ." 20 U.S.C. §§ 240 (d) (2) (1969).

by permitting citizens of affluent districts to provide a higher quality education for their children, while paying lower taxes, this Court concludes, as a matter of law, that the plaintiffs have been denied equal protection of the laws under the Fourteenth Amendment to the United States Constitution by the operation of Article 7, § 3 of the Texas Constitution and the sections of the Education Code relating to the financing of education, including the Minimum Foundation Program.

Now it is incumbent upon the defendants and the Texas Legislature to determine what new form of financing should be utilized to support public education.¹¹ The selection may be made from a wide variety of financing plans so long as the program adopted does not make the quality of public education a function of wealth other than the wealth of the state as a whole.

¹¹On October 15, 1969 this Court indicated its awareness of the fact that the Legislature of Texas, on its own initiative, had authorized the appointment of a committee to study the public school system of Texas and to recommend "a specific formula or formulae to establish a fair and equitable basis for the division of the financial responsibility between the State and the various school districts of Texas." It was then felt that ample time remained for the committee to "explore all facets and all possibilities in relation to the problem area," in order for appropriate legislation to be enacted not later than the adjournment of the 62nd Legislature, and since the Legislature appeared ready to grapple with the problems involved, the trial of this cause was held in abeyance pending further developments. Unfortunately, however, no action was taken during the 62nd Session which has adjourned. Hopefully, the Governor will see fit to submit this matter to one or more special sessions so that members of the Legislature can give these complex and complicated problems their undivided attention.

Accordingly, IT IS ORDERED that:

(1) The defendants and each of them be preliminarily and permanently restrained and enjoined from giving any force and effect to said Article 7, § 3 of the Texas Constitution, and the sections of the Texas Education Code relating to the financing of education, including the Minimum Foundation School Program Act (Ch. 16), and that defendants, the Commissioner of Education and the members of the State Board of Education, and each of them, be ordered to reallocate the funds available for financial support of the school system, including, without limitation, funds derived from taxation of real property by school districts, and to otherwise restructure the financial system in such a manner as not to violate the equal protection provisions of both the United States and Texas Constitutions;

(2) The mandate in this cause shall be stayed, and this Court shall retain jurisdiction in this action for a period of two years in order to afford the defendants and the Legislature an opportunity to take all steps reasonably feasible to make the school system comply with the applicable law; and without limiting the generality of the foregoing, to reallocate the school funds, and to otherwise restructure the taxing and financing system so that the educational opportunities afforded the children attending Edgewood Independent School District, and the other children of the State of Texas, are not made a function of wealth, other than the wealth of the State as a whole, as required by the equal protection clause of the Fourteenth Amendment to the United States Constitution. In the event the legislature fails to act within the time stated, the Court

is authorized to and will take further steps as may be necessary to implement both the purpose and the spirit of this order. See *Swann v. Adams*, 263 F. Supp. 225 (S.D. Fla. 1967); *Klahr v. Goddard*, 254 F. Supp. 997 (D. Ariz. 1966). Needless to say, the Court hopes that this latter action will be unnecessary.

Dated December 23, 1971.

IRVING L. GOLDBERG
United States Circuit Judge

ADRIAN A. SPEARS
Chief United States District Judge

JACK ROBERTS
United States District Judge

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

CIVIL ACTION NO. 68-175-SA

DEMETRIO P. RODRIGUEZ, ET AL.,
v.
SAN ANTONIO INDEPENDENT SCHOOL
DISTRICT, ET AL.,

Before GOLDBERG, Circuit Judge; SPEARS, Chief District Judge; and ROBERTS, District Judge.

CLARIFICATION OF ORIGINAL OPINION

PER CURIAM:

Having fully considered defendants' motion for clarification of judgment and the plaintiffs' response thereto, as well as the amicus curiae briefs submitted, the Court is of the opinion that the requests in said motion constituting nothing more than "clarifications" are already implicit in the full context of the language contained in our original opinion; nevertheless, in an attempt to dispell all possible doubt as to what was intended, prevent disruptions in the operation of the public school system in Texas, and avoid further delay on the final disposition of this litigation, it is ORDERED that paragraphs (1) and (2) on pages 8 and 9 of the opinion of this Court entered on December 23, 1971, be and they are hereby amended to read as follows:

- (1) The defendants and each of them be preliminarily and permanently restrained and enjoined

from giving any force and effect to the operation of said Article 7, § 3 of the Texas Constitution, and the sections of the Texas Education Code relating to the financing of education, including the Minimum Foundation School Program Act, insofar as they discriminate against plaintiffs and others on the basis of wealth other than the wealth of the State as a whole, and that defendants, the Commissioner of Education and the members of the State Board of Education, and each of them, be ordered to reallocate the funds available for financial support of the school system, including, without limitation, funds derived from taxation of real property by school districts, and to otherwise restructure the financial system in such a manner as not to violate the equal protection provisions of both the United States and Texas Constitutions;

(2) The mandate in this cause shall be stayed for a period of two years in order to afford the defendants and the Legislature an opportunity to take all steps reasonably feasible to make the school system comply with the applicable law; and without limiting the generality of the foregoing, to reallocate the school funds, and to otherwise restructure the taxing and financing system so that the educational opportunities afforded the children attending Edgewood Independent School District, and the other children of the State of Texas, are not made a function of wealth other than the wealth of the State as a whole, as required by the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. Our holding that the plaintiffs have been denied

equal protection of the laws under the Fourteenth Amendment to the United States Constitution by the operation of Articles 7, § 3 of the Texas Constitution, and the sections of the Texas Education Code relating to the financing of education, including the Minimum Foundation Program, shall have prospective application only, and shall not become effective until after the expiration of two years from December 23, 1971. This order shall in no way affect the validity, incontestability, obligation to pay, source of payment or enforceability of any presently outstanding bond, note or other security issued, or contractual obligation incurred by a school district in Texas for public school purposes, nor the validity or enforceability of any tax or other source of payment of any such bond, note, security or obligation; nor shall this judgment in any way affect the validity, incontestability, obligation of payment, source of payment or enforceability of any bond, note or other security to be issued and delivered, or contractual obligation incurred by Texas school districts, for authorized purposes, during the period of two years from December 23, 1971, nor shall the validity or enforceability of any tax or other source of payment for any such bond, note or other security issued and delivered, or any contractual obligation incurred during such two year period be affected hereby; it being the intention of this Court that this judgment should be construed in such a way as to permit an orderly transition during said two year period from an unconstitutional to a constitutional system of school financing. The Court retains jurisdiction of this action to take such further steps as

may be necessary to implement both the purpose and spirit of this order, in the event the Legislature fails to act within the time stated, but, as we understand the law, this constitutes no impediment with respect to the finality of this judgment for the purpose of appeal, and none is intended. See *Swann v. Adams*, 385 U.S. 440 (1967, 263 F. Supp. 225 (S.D. Fla. 1967); *Reynolds v. Sims*, 377 U.S. 533 (1964); *Gunn v. Committee to End the War in Vietnam*, 399 U.S. 383 (1970); and *Klahr v. Goddard*, 254 F. Supp. 997 (D. Ariz. 1966). Needless to say, we hope that no further action by this Court will be necessary.

Dated January 26, 1972.

ADRIAN A. SPEARS,
Chief United States District Judge, acting for and on behalf of all three judges designated to hear and determine this cause, with full authority from each such judge to so act.

Texas CONSTITUTIONAL AND STATUTORY PROVISIONS

Section 3 of Article VII of the Constitution of the State of Texas provides as follows:

Sec. 3. One-fourth of the revenue derived from the State occupation taxes and poll tax of one dollar on every inhabitant of the State, between the ages of twenty-one and sixty years, shall be set apart annually for the benefit of the public free schools; and in addition thereto, there shall be levied and collected an annual ad valorem State tax of such an amount not to exceed thirty-five cents on the one hundred (\$100.00) dollars valuation, as with the available school fund arising from all other sources, will be sufficient to maintain and support the public schools of this State for a period of not less than six months in each year, and it shall be the duty of the State Board of Education to set aside a sufficient amount out the said tax to provide free text books for the use of children attending the public free schools of this State; provided, however, that should the limit of taxation herein named be insufficient the deficit may be met by appropriation from the general funds of the State and the Legislature may also provide for the formation of school district by general laws; and all such school districts may embrace parts of two or more counties, and the Legislature shall be authorized to pass laws for the assessment and collection of taxes in all said districts and for the management and control of the public school or schools of such districts, whether such districts are composed of territory wholly within a county or in parts of two or more counties, and the Legislature may authorize an

additional ad valorem tax to be levied and collected within all school districts heretofore formed or hereafter formed, for the further maintenance of public free schools, and for the erection and equipment of school buildings therein; provided that a majority of the qualified property taxpaying voters of the district voting at an election to be held for that purpose, shall vote such tax not to exceed in any one year one (\$1.00) dollar on the one hundred dollars valuation of the property subject to taxation in such district, but the limitation upon the amount of school district tax herein authorized shall not apply to incorporated cities or towns constituting separate and independent school districts, nor to independent or common school districts created by general or special law.

CHAPTER 16. FOUNDATION SCHOOL PROGRAM

SUBCHAPTER A. GENERAL PROVISIONS

Section

- 16.01. Purpose.
- 16.02. Disposition of Money Appropriated.
- 16.03. Status of Private and Parochial Schools.
- 16.04. Program Eligibility.

[Sections 16.05 to 16.06 reserved for expansion]

SUBCHAPTER B. CLASSIFICATION OF PROFESSIONAL POSITIONS AND SERVICES

- 16.07. Classification.
- 16.08. Duties of Public School Principals.

[Sections 16.09 to 16.10 reserved for expansion]

SUBCHAPTER C. PROFESSIONAL UNITS

- 16.11. Professional Units—Allotment—General Rules.
- 16.12. Professional Units—Allotment Formulas.
- 16.13. Classroom Teacher Units.
- 16.14. Vocational Teacher Units.
- 16.15. Special Service Teacher Units.
- 16.16. Comprehensive Special Education Program for Exceptional Children.
- 16.17. Supervisor and/or Counselor Units.
- 16.18. Principal Units.
- 16.19. Superintendent Unit.
- 16.20. Repealed.
- 16.21. Allocation of Units in Certain Districts.
- 16.22. Administration—Office Assignments.

[Sections 16.23 to 16.30 reserved for expansion]

SUBCHAPTER D. SALARIES

- 16.301. Minimum Salary Rules.
- 16.302. Classroom Teachers: 1969–1970.
- 16.303. Classroom Teachers: 1970–1971.
- 16.304. Vocational Teachers, Counselors, Supervisors: 1969–1971.
- 16.305. Special Service Teachers: 1969–1971.
- 16.306. Teachers of Exceptional Children: 1969–1971.
- 16.307. Supervisors and/or Counselors: 1969–1971.
- 16.308. Principals: 1969–1971.
- 16.309. Superintendents: 1969–1971.
- 16.310. 10-Month Year.
- 16.311. Professional Salaries: Total Cost.
- 16.312. Salaries: Beginning 1971–1972.

PUBLIC SCHOOLS

Section

- 16.313. Promotions, Demotions, Etc.
- 16.314. Increases in 1974 and 1978.
- 16.315. Teachers Aides.
- 16.316. Certified Teachers Holding Law Degree.

[Sections 16.317 to 16.44 reserved for expansion]

SUBCHAPTER E. CURRENT OPERATING COST

- 16.45. Current Operating Cost.

[Sections 16.46 to 16.50 reserved for expansion]

SUBCHAPTER F. TRANSPORTATION SERVICES

- 16.51. Transportation Services.
- 16.52. Public Schools Transportation System.
- 16.53. County and District Transportation Funds.
- 16.54. Use of Buses for Extracurricular Activities, Etc.
- 16.55. Approved School Bus Routes.
- 16.56. Calculation of Allotment.
- 16.57. Routes and Systems: Evaluation and Approval.
- 16.58. Use of Transportation Funds for Other Purposes.
- 16.59. Rules of Commissioner.
- 16.60. Appeals.
- 16.61. Purchase of Vehicles.
- 16.62. Transportation Allotment for Exceptional Children Program.
- 16.63. Contract with Public Transportation Company.

[Sections 16.64 to 16.70 reserved for expansion]

SUBCHAPTER G. FINANCING THE PROGRAM

- 16.71. Financing—General Rule.
- 16.711. Committee to Study Financing of Program.
- 16.72. Total Amount Chargeable to Districts.
- 16.73. Estimate of Total Cost of Program; Local Assignment.
- 16.74. County Economic Index.
- 16.741. Livestock Sales From Feedlots.
- 16.75. County Assignment.
- 16.76. School District Assignment.
- 16.77. Notification of Local Fund Assignment.
- 16.78. Excess of Local Funds Over Amount Assigned.
- 16.79. Administration of Foundation School Program.
- 16.80. Dormant School Districts.
- 16.81. Territory Not in School District.
- 16.82. Cumulative Effect.
- 16.83. Falsification of Records, Report.

[Sections 16.84 to 16.860 reserved for expansion]

FOUNDATION SCHOOL PROGRAM

SUBCHAPTER G-1. FOUR-QUARTER SCHOOL YEAR

Section

- 16.861. Transition to Four-Quarter System; Curriculum Revision.
- 16.862. Operation on Quarter Basis.
- 16.863. Foundation School Program Credit.
- 16.864. Four-Quarter Operation Authorized.

[Sections 16.865 to 16.90 reserved for expansion]

SUBCHAPTER H. QUARTERLY SEMESTER PILOT PROGRAMS

- 16.91. Pilot Program.
- 16.92. Limitation.
- 16.93. Cost Basis.
- 16.94. Calculation of Costs.
- 16.95. State's Share of Cost.

[Sections 16.96 to 16.970 reserved for expansion]

SUBCHAPTER H-1. THREE-SEMESTER PILOT PROGRAMS

- 16.971. Pilot Program.
- 16.972. Limitation.
- 16.973. Cost Basis.
- 16.974. Calculation of Costs.
- 16.975. State's Share of Cost.

[Sections 16.976 to 16.979 reserved for expansion]

SUBCHAPTER I. SUPPLEMENTAL STATE SALARY AID TO SCHOOL DISTRICTS

- 16.98. Supplemental State Salary Aid.

Acts 1971, 62nd Leg., p. 1449, ch. 405, which by sections 1 to 53 incorporated the provisions of certain acts passed during the regular and second called sessions of the 61st Legislature into the Education Code, and which by section 54 repealed the acts so incorporated, provided in sections 55 and 56:

“Sec. 55. Nothing in this Act is intended to make any change in the substantive law, but this Act is merely intended to be a recodification of the present law.

“Sec. 56. If any other Act passed at the same session of the Legislature conflicts with any provision of this Act, the other Act prevails.”

Special acts:

Counties of 19,500 to 19,680—Acts 1971,
62nd Leg., p. 1910, ch. 574.

§ 16.01

PUBLIC SCHOOLS

SUBCHAPTER A. GENERAL PROVISIONS

Section 16.01. Purpose

The purpose of the Foundation School Program is to guarantee to each child of school age in Texas the availability of a Minimum Foundation School Program for nine full months of the year and to establish the eligibility requirements for the public school districts of Texas in connection therewith.

§ 16.02. Disposition of Money Appropriated

Appropriations enacted by the legislature for the promotion of the educational opportunities afforded by this state under this Foundation School Program shall be paid in accordance with the requirements and in the manner provided in this chapter.

§ 16.03. Status of Private and Parochial Schools

No provision of this chapter shall be interpreted inimically to the status previously enjoyed by the private or parochial schools operating in this state.

§ 16.04. Program Eligibility

(a) Beginning with the school year 1977-1978, any child in this state over 5 and under 21 years of age at the beginning of the school year, who has not yet graduated from high school, shall be entitled to the benefits of the Basic Foundation School Program for the ensuing school year. Such eligible child shall be admitted tuition-free to the public schools of the district in which he, his parents or legal guardian, resides. Provided, however, that for the school years 1969-1970 through 1976-1977, the qualifying age limits at the beginning of each school year shall be in accord with the following table:

QUALIFYING AGE LIMITS AS OF BEGINNING OF SCHOOL YEAR:

	1969-1970 through 1972-1973	1973-1974 and 1974-1975	1975-1976 and 1976-1977
Beginning Age:			
Years	6	5	5
Months	0	7	4
Highest Age:			
Years	20	20	20

FOUNDATION SCHOOL PROGRAM § 16.04

(b) Notwithstanding the provisions of Subsection (a) of this section, the program of preschool education shall be extended first to "educationally handicapped" children as preparation for the regular school program in which such children will participate in subsequent years. For purposes of this section, a child is "educationally handicapped" if he cannot speak, read, and comprehend the English language or if he is from a family whose income, according to standards promulgated by the State Board of Education, is at or below a subsistence level. The program shall include an appreciation for the cultural and familial traditions of the child's parents and also an awareness and appreciation of the broader world in which the child must live; assist the child in developing appropriate language skills; prepare the child to participate in the world of his peers and the broader cultural stream into which he will progressively move as he matures; begin the development of the mental and physical skills and cooperative attitudes needed for adequate performance in a school setting; and begin the development of his unique character and personality traits.

(c) The benefits of this program for preschool education shall be extended on a first priority basis to "educationally handicapped" children below existing age limits as shown in the following table:

**QUALIFYING AGE LIMITS AS OF BEGINNING
OF SCHOOL YEAR:**

Beginning Age:	1972-1973 and Thereafter		
	1970-1971	1971-1972	Thereafter
Years	5	5	5
Months	5	2	0
Highest Age:			
Years	21	21	21

(d) A scholastic is a student in average daily attendance within the age limits prescribed in this section.

Added by Acts 1971, 62nd Leg., p. 1507, ch. 405, § 29, eff. May 26, 1971.

[Sections 16.05 and 16.06 reserved for expansion]

§ 16.07

PUBLIC SCHOOLS

SUBCHAPTER B. CLASSIFICATION OF PROFESSIONAL POSITIONS AND SERVICES

§ 16.07. Classification

To effectuate the Foundation School Program here guaranteed, school districts are authorized to utilize the following professional positions, or units, and services:

- (1) professional positions;
 - (A) classroom teachers;
 - (B) vocational teachers;
 - (C) special service teachers, among which shall be included librarians, school nurses, school physicians, visiting teachers, and itinerant teachers;
 - (D) teachers of exceptional children;
 - (E) supervisors and/or counselors;
 - (F) principals, part-time;
 - (G) principals, full-time;
 - (H) superintendents; and
- (2) services;
 - (A) current operating cost other than professional salaries and transportation; and
 - (B) transportation.

§ 16.08. Duties of Public School Principals

Public school principals, who shall hold valid administrative certificates, shall be responsible for:

- (a) assuming administrative responsibility and instructional leadership, under the supervision of the superintendent, for discipline, and the planning, operation, supervision, and evaluation of the educational program of the attendance area in which he is assigned;
- (b) submitting recommendations to the superintendent concerning assignment, evaluation, promotion, and dismissal of all personnel assigned to the attendance center; and
- (c) performing any other duties assigned by the superintendent pursuant to school board policy.
- (d) Nothing herein shall be construed as a limitation on the powers, responsibilities and obligations of the school board as now prescribed by law.

Added by Acts 1971, 62nd Leg., p. 81, ch. 44, § 1, eff. April 1, 1971.

[Sections 16.09 and 16.10 reserved for expansion]

SUBCHAPTER C. PROFESSIONAL UNITS**§ 16.11. Professional Units—Allotment—General Rules**

(a) The total number of professional units allotted to each district shall be the sum of the professional units, hereinafter prescribed, for classroom teachers, vocational teachers, special service teachers, teachers of exceptional children, supervisors and/or counselors, full-time and/or part-time principals, and superintendents.

(b) Such professional unit allotments shall be contingent upon the employment of qualified personnel and upon the payment of not less than the minimum salary as prescribed in this chapter.

(c) No district will be required to employ professional personnel for the full number of professional units for which it is eligible, but where a fewer number are employed, grants shall be based upon the number actually employed during the current school year; and

(d) All personnel allotted under the Foundation School Program shall be allocated to school districts on the basis of current average daily attendance without regard to race, creed, or color of students.

(e) In addition to the method of allocating professional units under the Minimum Foundation Program on the basis of current average daily attendance, any school district may choose to utilize the preceding year's average daily attendance to establish the basis for allocation of professional units in compliance with the formulas in this chapter.

(f) Where a school district is consolidated or contracted with another district, or annexed in whole or part to another district or districts, or where the number of grades taught has been reduced, or where the scholastics are transferred to another district, or where there is an annual fluctuation in the attendance in the district, or where for any reason there is a marked increase or decrease in the attendance of any school district, adjustments in professional allotments shall be made by the state commissioner of education subject to the applicable rules and regulations of the State Board of Education.

(g) Attendance in grades not classified to be taught by the county school board shall not be included in determining professional unit eligibility.

(h) Attendance of non-resident scholastics whose grades are taught in their home districts shall not count for teacher eligibility, unless the transfer of such scholastics has been approved by the county school board and the state commissioner of education.

(i) Any school district which is not dormant as defined in Section 16.80 of this code may, with approval of the boards of trustees of the districts concerned, the county school superintendent, and the state

§ 16.11

PUBLIC SCHOOLS

commissioner of education, contract for a period of one year to transfer its entire scholastic enrollment, both white and colored, to a contiguous district. The scholastic census rolls of both districts shall be combined, the per capita apportionment paid directly to the receiving district, and the combined average daily attendance used in determining the number of professional units for which the receiving district shall be eligible.

(j) Any school district containing 100 square miles or more and having fewer than one pupil per square mile, and which operates and maintains a four-year accredited high school, may be allotted by the state commissioner of education the number of professional units determinable as earned by the application of a sparse-area formula approved by the State Board of Education. The state commissioner of education shall consider in making such allotments the density and distribution of population in the district, road conditions, and the proximity of the school to another four-year accredited high school.

(k) In determining the number of professional units allotted to each school district in the foundation school program, the attendance of orphan, dependents, or neglected children who are wards of the state shall be considered eligible average daily attendance in the receiving school district or districts to which these children are transferred after approval by the county school board and the state commissioner of education.

Subsecs. (d), (e) amended by Acts 1971, 62nd Leg., p. 1510, ch. 405, § 34, eff. May 26, 1971.

§ 16.12. Professional Units—Allotment Formulas

(a) Subject to the general rules set out in Section 16.11 of this code, the number of professional units for each district shall be determined as prescribed in the succeeding sections of this subchapter.

§ 16.13. Classroom Teacher Units

Classroom teacher professional units for each school district shall be determined, and teachers allotted in the following manner:

(1) to school districts having fewer than 15 pupils in average daily attendance, no classroom teacher unit, except that in cases of extreme hardship, such districts may be allotted on a year-to-year basis one classroom teacher unit if so recommended by the county school board and approved by the state commissioner of education;

(2) to school districts having from 15 to 25 pupils, inclusive, in average daily attendance, one classroom teacher unit;

FOUNDATION SCHOOL PROGRAM**§ 16.14**

- (3) to school districts having from 26 to 109 pupils, inclusive, in average daily attendance, two classroom teacher units for the first 26 pupils and one classroom teacher unit for each additional 21 pupils (no credit to be given for fractions);
- (4) to school districts having from 110 to 156 pupils, inclusive, in average daily attendance, six classroom teacher units;
- (5) to school districts having from 157 to 444 pupils, inclusive, in average daily attendance, one classroom teacher unit for each 24 pupils, or fractional part thereof in excess of one-half;
- (6) to school districts having from 445 pupils to 487 pupils, inclusive, in average daily attendance, 19 classroom teacher units; and
- (7) to school districts having from 488 or more pupils in average daily attendance, one classroom teacher unit for each 25 pupils, or fractional part thereof in excess of one-half.

Amended by Acts 1971, 62nd Leg., p. 1506, ch. 405, § 27, eff. May 26, 1971.

§ 16.14. Vocational Teacher Units

- (a) Vocational teacher professional units, vocational supervisor professional units, and vocational counselor professional units for each school district shall be determined and allotted as prescribed by this section.
- (b) Each school district having a four-year accredited high school shall be eligible, under rules and regulations of the State Board of Education, for two vocational teacher units to teach one or more vocational programs provided there is a need thereof, and provided the programs shall have been approved by the commissioner of education.
- (c) Additional vocational teacher units for four-year accredited high schools may be allotted according to needs determined by a survey of the community and approved by the commissioner of education.
- (d) A district having an accredited high school which qualifies, according to the rules and regulations of the State Board of Education, for less than one vocational teacher unit, may be allotted by the commissioner of education a fractional part of a vocational teacher professional unit. A fractional part of a vocational teacher professional unit shall entitle a district to employ a part-time vocational teacher or assign a classroom teacher to serve as part-time vocational teacher.
- (e) Each school district having a four-year accredited high school shall be eligible, under rules and regulations as approved by the State Board of Education, for such specialized vocational supervisor units

§ 16.14

PUBLIC SCHOOLS

and vocational counselor units as there is a need thereof, and in the number determined by application of formulas adopted by the State Board of Education and subject to approval by the commissioner of education.

(f) Vocational professional unit allotments, except classroom teachers who also served as part-time vocational teachers, shall be made in addition to other professional unit allotments. Vocational teacher units shall be included in determining the total current operating cost for each district. In addition to this allowance, there shall be an additional allocation of \$400 for each vocational teacher unit.

(g) School districts which, because of limited enrollments, tax resources, or facilities are unable to offer appropriate vocational education in all occupational areas needed may enter into contracts with post-secondary public institutions, as defined by the State Board of Education, to provide for such appropriate vocational education instruction provided the instructors and instructional materials and equipment utilized meet secondary school program requirements.

(h) Such contracts shall be executed pursuant to rules and regulations of the State Board for Vocational Education (State Board of Education) and the cost to the state shall not exceed the cost that would result if said programs were operated by the respective school districts entering into such contracts.

Amended by Acts 1971, 62nd Leg., p. 1511, ch. 405, § 35, eff. May 26, 1971.

§ 16.15. Special Service Teacher Units

(a) Special service teacher professional units for each school district, which may be separate for whites and Negroes, shall be based upon the number of approved classroom teacher units, and shall be determined and teachers allotted, in addition to other professional unit allotments, in the manner prescribed by this section.

(b) Districts which have 20 or more approved classroom teacher units shall be eligible for one special service teacher unit for each 20 classroom teacher units, no credit to be given for fractions.

(c) Districts not eligible for a full special service teacher unit may enter by vote of their respective boards of trustees, into one cooperative agreement to provide special service teachers, as prescribed in subsection (b) of this section, to be recommended and supervised by the county school superintendent, and employed by the county school board. The state commissioner of education shall, upon the county superintendent's certification of such agreement, allot to each district party thereto a fractional part of a special service teacher unit, said

FOUNDATION SCHOOL PROGRAM § 16.16

fraction to be not greater than the number of approved classroom teacher units for that district divided by 20.

(d) School districts may choose from the five types of special service teacher units listed in Section 16.07(1)(C) of this code the number of each classification that it desires, to the extent of total eligibility for such units, but the allocation of special service teacher units shall not preclude the assignment of classroom teachers to special service duties. The state commissioner of education shall establish qualifications for special service teachers which shall be subject to regulations made by the State Board of Education.

§ 16.16. Comprehensive Special Education Program for Exceptional Children

(a) It is the intention of this section to provide for a comprehensive special education program for exceptional children in Texas.

(b) As used in this section:

(1) "Exceptional children" means children between the ages of 3 and 21, inclusive, with educational handicaps (physical, retarded, emotionally disturbed, and/or children with language and/or learning disabilities) as hereinafter more specifically defined; and children leaving and not attending public school for a time because of pregnancy—which disabilities render regular services and classes of the public schools inconsistent with their educational needs.

(2) "Physically handicapped children" means children of educable mind whose body functions or members are so impaired from any cause that they cannot be adequately or safely educated in the regular classes of the public schools without the provision of special services.

(3) "Mentally retarded children" means children whose mental capacity is such that they cannot be adequately educated in the regular classes of the public schools without the provision of special services.

(4) "Emotionally disturbed children" means children whose emotional condition is medically and/or psychologically determined to be such that they cannot be adequately and safely educated in the regular classes of the public schools without the provision of special services.

(5) "Language and/or learning disabled children" means children who are so deficient in the acquisition of language and/or learning skills including, but not limited to, the ability to reason, think, speak, read, write, spell, or to make mathematical calcula-

§ 16.16

PUBLIC SCHOOLS

tions, as identified by educational and/or psychological and/or medical diagnosis that they must be provided special services for educational progress. The term "language and/or learning disabled children" shall also apply to children diagnosed as having specific developmental dyslexia.

(6) "Special services" required for the instruction of or program for exceptional children means special teaching in the public school curriculum within and/or without the regular classroom; corrective teaching, such as lipreading, speech correction, sight conservation, corrective health habits; transportation, special seats, books, instructional media and supplies; professional counseling with students and parents; supervision of professional services and pupil evaluation services; established teaching techniques for children with language and/or learning disabilities.

(c) Under rules, regulations and/or formulae adopted by the State Board of Education subject to the provisions of this section, exceptional children teacher units, in addition to other professional and paraprofessional unit allotments herein authorized, shall be allotted to any eligible school district in the number determinable thereunder. Exceptional children teacher units for pupils who are both severely physically handicapped and mentally retarded shall be allocated on a separate formula from other type units.

(d) Professional personnel for the operation and maintenance of a program of special education shall be:

- (1) exceptional children teachers;
- (2) special education supervisors;
- (3) special education counselors;

(4) special service teachers, such as itinerant teachers of the homebound and visiting teachers, whose duties may or may not be performed in whole or in part on the campus of any school; and

(5) psychologists and other pupil evaluation specialists. The minimum salary for such specialist to be used in computing salary allotment for purposes of this section shall be established by the commissioner of education.

(e) Paraprofessional personnel for the operation and maintenance of a program of special education shall consist of persons engaged as teacher aides, who may or may not hold a teacher certificate. The qualifications and minimum salary levels of paraprofessional personnel for salary allotment purposes of this section shall be established by the commissioner of education.

(f) Quantitative bases for the allotment of all special education unit personnel under Subsection (c) of this section shall be established by the commissioner of education under rules adopted by the State Board of Education. Any school district, at its expense, may employ any special education personnel in excess of its state allotment, may supplement the minimum salary allotted by the state for any special education personnel, and any district is authorized at local expense to pay for all or part of further or continuing training or education of its special education personnel.

(g) Special education unit personnel may be employed and/or utilized on a full-time, part-time, or upon a consultative basis, or may be allotted by the commissioner of education, pursuant to cooperative districts' agreement, jointly to serve two or more school districts. Two or more school districts may operate jointly their special education program and any school district may contract where feasible with any other school district for all or any part of the program of special education for the children of either district, under rules and regulations established by the commissioner of education.

(h) To each school district operating an approved special education program there shall also be allotted a special service allowance in an amount to be determined by the commissioner of education for pupil evaluation, special seats, books, instructional media and other supplies required for quality instruction.

(i) To each school district operating an approved special education program, there shall be allotted also a transportation allowance for transporting of children in special education programs who are unable to attend the special education program for exceptional children in public school unless such special transportation is provided. The annual transportation allotment shall be \$150 per exceptional child pupil receiving such transportation. Such allocated transportation funds shall be used only for transportation purposes for children who are enrolled in a program of special education or who are eligible for such enrollment.

(j) The minimum monthly base pay and increments for teaching experience for an exceptional children teacher or a special service teacher conducting a 9, 10, 11, or 12 months special education program approved by the commissioner of education shall be the same as that of a classroom teacher as provided in the Foundation Program Act; provided that special education teachers shall have qualifications approved by the commissioner of education. The annual salary of special education teachers shall be the monthly base salary, plus increments, multiplied by 9, 10, 11, or 12, as applicable.

(k) The minimum monthly base pay and increments for teaching experience for special education counselors and supervisors engaged

§ 16.16

PUBLIC SCHOOLS

in a 9, 10, 11, or 12 months special education program approved by the commissioner of education shall be the same as that of a counselor and/or supervisor as provided in the Foundation Program Act; provided that such counselors and supervisors shall have qualifications approved by the commissioner of education. The annual salary of special education counselors and supervisors shall be the monthly base salary, plus increments, multiplied by 9, 10, 11, or 12, as applicable.

(l) The salary costs of special education teacher units, other professional and paraprofessional units authorized in Subsections (c), (d), and (e) of this section, operating costs as provided in Subsection (h), and transportation costs as provided in Subsection (i), computed as other costs of the Foundation School Program Act for local fund assignment purposes thereof, shall be paid from the Foundation Program School Fund. Provided further, that any school district may supplement any part of the comprehensive special education program it operates or participates in with funds or sources available to it from local source, public and/or private.

(m) Under rules and regulations of the State Board of Education, eligible school districts may contract with nonprofit community mental health and/or mental retardation centers, public or private, or any other nonprofit organization, institution, or agency approved by the State Board of Education, for the provision of services to exceptional children as defined by this section, who reside with their parents or guardians.

(n) Special education program units shall be included in determining the total current operating cost for each district.

(o) The Foundation School Fund Budget Committee shall compute all amounts required for comprehensive special education program purposes to be included in the amounts to be placed in the Foundation School Fund for the ensuing biennium at the same time that certifications are made for other Foundation School Fund purposes.

Amended by Acts 1971, 62nd Leg., p. 1491, ch. 405, § 19, eff. May 26, 1971.

§ 16.17. Supervisor and/or Counselor Units

(a) The state commissioner of education shall establish, subject to regulations by the State Board of Education, qualifications for supervisors and counselors. Supervisor and/or counselor professional units for each school district, which may be separate for whites and Negroes, shall be determined and supervisor and/or counselor units allotted, in addition to other professional unit allotments, as prescribed by this section.

FOUNDATION SCHOOL PROGRAM § 16.18

(b) The basic allotment shall be one supervisor or counselor unit for the first 40 classroom teacher units and one supervisor or counselor unit for each additional 50 classroom teacher units, or major fractional part thereof. If a district is eligible for one such unit, the district may employ for such unit either a supervisor or a counselor, but not both. If a district is eligible for two or more such units, the district may employ supervisors only, counselors only, or a combination of the two to the extent of total eligibility.

(c) Districts having fewer than 40 classroom teacher units may enter, by vote of their respective governing boards, into one cooperative agreement to provide supervisors and/or counselors to be recommended and supervised by the county superintendent and employed by the county school board. Under such agreements the combined classroom teacher units of the cooperating districts shall be used in calculating eligibility for supervisor and/or counselor units, but if the county employs a supervisor from the county administrative funds, 40 classroom teacher units shall be deducted from the combined total. The state commissioner of education shall, upon the county superintendent's certification of such agreement, allot to each district party to such agreement a fractional part of a supervisor or counselor unit, said fraction to be not greater than the number of approved classroom teacher units for that district divided by 40.

§ 16.18. Principal Units

(a) Principal units shall be of two types: full-time principal units and part-time principal units. A part-time principal unit shall entitle a district to assign a classroom teacher to serve as a part-time principal and to receive an additional salary allowance as hereinafter provided in this chapter.

(b) The principal unit allotment as hereinafter provided shall be based upon the number of approved classroom teacher units and shall be made in addition to other professional unit allotments. Principal units for each school district, which may be separate for whites and Negroes, shall be determined and allotted as prescribed in this section.

(c) No district having fewer than three approved classroom teacher units shall be eligible for a principal allotment.

(d) To districts having from three to 19 classroom teacher units and not having an accredited four-year high school, one part-time principal unit shall be allotted.

(e) To districts having from nine to 19 classroom teacher units and having a four-year accredited high school, two part-time principal units shall be allotted. Additional part-time principal units shall be allotted. Additional part-time principal units shall be allotted, if nec-

§ 16.18

PUBLIC SCHOOLS

essary, to the extent that at least one part-time principal will be available for each campus on which a school with more than two classroom teachers is operated in the district.

(f) To districts having 20 or more approved classroom teacher units there shall be allotted one full-time principal unit for the first 20 classroom teacher units and one full-time principal unit for each additional 30 classroom teacher units, but fractions shall not be considered in computing principal allotments.

(g) Part-time principal units, in addition to full-time principal unit allowances provided above, shall be allowed as follows: one from the first 20 classroom teachers, and one from each additional 30 classroom teachers. Service as part-time principal shall be in addition to part-time classroom duties. Those so designated shall receive an additional allowance as hereinafter provided in this chapter. Additional part-time principal units shall be allotted, if necessary, to the extent that at least one full-time or part-time principal will be available for each campus on which a school with more than two classroom teachers is operated in the district.

§ 16.19. Superintendent Unit

(a)¹ Superintendents shall serve the entire school district. Allotments for superintendent units as provided for herein shall be made in addition to other professional unit allotments. Superintendent units for each district shall be determined and allotted in the following manner: A district having one or more four-year accredited high schools shall be eligible for one superintendent allotment. A district which does not have a four-year accredited high school shall not be eligible for a superintendent allotment.

¹ There is no paragraph (b) in the enrolled bill.

§ 16.20. Repealed by Acts 1971, 62nd Leg., p. 1533, ch. 405, § 54 (1), eff. May 26, 1971

Section 16.20 provided for the determination of professional units allotment on a combined average daily attendance, and was derived from:

Acts 1965, 59th Leg., p. 1029, ch. 509.
Acts 1969, 61st Leg., p. 3024, ch. 889, § 2.
Vernon's Ann.Civ.St. art. 2922-13d.

§ 16.21. Allocation of Units in Certain Districts

Notwithstanding the provisions of Sections 16.11 and 16.13 of this code, the number of professional units allocated to school districts which operate and have operated for at least three consecutive years a four-year accredited high school and have an average daily attendance range between 84 and 156 pupils for the immediate preceding

FOUNDATION SCHOOL PROGRAM § 16.301

year shall be based on the following formula: a school district having 84 to 106 pupils, inclusive, in average daily attendance shall be allotted six classroom teacher units and a superintendent unit. A school district having 107 to 156 pupils, inclusive, shall be allotted seven classroom teacher units and a superintendent unit.

Amended by Acts 1971, 62nd Leg., p. 1512, ch. 405, § 36, eff. May 26, 1971.

§ 16.22. Administration—Office Assignments

For utilization of classroom teacher unit allotment purposes, the Central Education Agency shall regard and recognize as classroom teacher(s) within the definition of 'teacher' as described in the Texas State Public Education Compensation Plan, teacher certificated personnel employed or assigned by any school district to teach, as classroom teachers, and/or to perform administration-office assignments or tasks. (S.B.No.990, 62nd Legis., Reg.Sess., 1971.)

Added by Acts 1971, 62nd Leg., p. 3362, ch. 1024, Art. 2, § 44, eff. Sept. 1, 1971.

[Sections 16.23 to 16.300 reserved for expansion]

SUBCHAPTER D. SALARIES

Subchapter D relating to Salaries, originally consisting of §§ 16.31 to 16.40, was amended by Acts 1971, 62nd Leg., p. 1449, ch. 405, § 26, effective May 26, 1971, to consist of §§ 16.301 to 16.316 relating to the same subject. See, also, the italicized note preceding § 16.01 of this chapter.

§ 16.301. Minimum Salary Rules

(a) The board of trustees of each and every school district in the State of Texas shall pay their teachers upon a salary schedule providing a minimum beginning base salary, plus increments above the minimum for additional experience in teaching as hereinafter prescribed. The salaries fixed herein shall be regarded as minimum salaries only and each district may supplement such salaries.

(b) All teachers and administrators shall have a valid Texas certificate. Salary increments for college training shall be based upon training received at a college recognized by the commissioner of education for the preparation of teachers.

(c) Payment of at least the minimum salary schedule provided herein shall be a condition precedent: (1) to a school's participation in the Foundation School Fund; and (2) to its name being placed

§ 16.301

PUBLIC SCHOOLS

or continued upon the official list of affiliated or accredited schools. The annual salaries as provided herein may be paid in 12 equal payments at the discretion of the local school boards.

(d) The salary of each professional position shall be determined as provided by this subchapter.

§ 16.302. Classroom Teachers: 1969–1970

(a) For the 1969–1970 school year, the annual salary of classroom teachers shall be the monthly base salary, plus increments, multiplied by nine. For the 1970–1971 school year, the annual salary of classroom teachers shall be the monthly base salary plus increments multiplied by 10.

(b) Classroom teachers shall be paid for the school year 1969–1970 on the basis of the following salary schedules:

SALARY SCHEDULE 1969–1970 YEARS OF TEACHING EXPERIENCE

Teacher, B.A.	Salary Month	9 or					16 or More
		0–1	2–3	4–5	6–8	More	
		600	630	662	695	730	
Teacher, M.A.	Salary Month	0–3	4–5	6–7	8–10	11–13	14–15
		660	695	730	767	805	845
							866

(c) The above schedule reduced by \$7 per month at each step shall apply to all teaching positions and special service positions authorized under the Minimum Foundation Program, with the provision that all teaching positions authorized for more than nine months shall receive the monthly salary multiplied by the number of months allowed.

(d) Non-degree teachers shall receive .80 of the monthly salary for B.A. degree teachers multiplied by the number of months allowed for the position in which they are employed.

(e) Salaries for the following positions shall be based on the monthly salaries for teachers with the same experience and degree and shall be computed as indicated below:

(1) Supervisors and counselors shall receive 1.06 of the monthly teacher salary multiplied by 10.

(2) Head teachers shall receive 1.08 of the monthly teacher salary multiplied by 9.

(3) Part-time principals shall receive 1.15 of the monthly teacher salary multiplied by 9½.

FOUNDATION SCHOOL PROGRAM § 16.303

(4) Full-time principals shall receive 1.20 of the monthly teacher salary multiplied by 11.

(5) Superintendents in districts with 600 ADA or less shall receive 1.25 of the monthly teacher salary multiplied by 12. Superintendents in districts with 601–5,000 ADA shall receive 1.50 of the monthly teacher salary multiplied by 12. Superintendents in districts with 5,001 or more ADA shall receive 1.75 of the monthly salary multiplied by 12.

§ 16.303. Classroom Teachers: 1970–1971

(a) For the 1970–1971 school year, classroom teachers shall be paid on a monthly basis as provided in the schedule below:

SALARY SCHEDULE 1970–1971						
SALARY BY STEPS ABOVE BASE						
Base Salary	1	2	3	4	5	
Teacher, B.A. Month	600	630	662	695	730	767
Base Salary	1	2	3	4	5	6
Teacher, M.A. Month	660	695	730	767	805	845
					866	888

(b) Beginning teachers shall be paid the base salary. Other teachers shall be placed at the monthly salary step immediately above the monthly salary step in the 1969–1970 salary schedule nearest the monthly salary received by the teacher in 1969–1970. The annual salary for each teacher shall be the appropriate monthly salary multiplied by 10. The above schedule shall apply to all teaching positions and special service positions authorized under the Minimum Foundation Program, with the provision that all teaching positions authorized for more than 10 months shall receive the monthly salary multiplied by the number of months allowed.

(c) Non-degree teachers shall receive .80 of the monthly salary for B.A. degree teachers multiplied by the number of months allowed for the position in which they are employed.

(d) Salaries for the following positions shall be based on the monthly salaries for teachers with the same experience and degree and shall be computed as indicated below:

(1) Supervisors and counselors shall receive 1.20 of the monthly teacher salary multiplied by 10.

(2) Head teachers shall receive 1.08 of the monthly teacher salary multiplied by 10.

(3) Part-time principals shall receive 1.15 of the monthly teacher salary multiplied by 10.

§ 16.303

PUBLIC SCHOOLS

(4) Full-time principals shall receive 1.25 of the monthly teacher salary multiplied by 11.

(5) Superintendents in districts with 600 or less ADA shall receive 1.30 of the monthly teacher salary multiplied by 12. Superintendents in districts with 601–5,000 ADA shall receive 1.50 of the monthly teacher salary multiplied by 12. Superintendents in districts with 5,000–50,000 ADA shall receive 1.75 of the monthly teacher salary multiplied by 12. Superintendents in districts with 50,001 or more ADA shall receive 2.25 of the monthly teacher salary multiplied by 12.

§ 16.304. Vocational Teachers, Counselors, Supervisors: 1969–1971

(a) The minimum monthly base pay and increments for teaching experience for a vocational teacher conducting a 9, 10, or 12 months' vocational program approved by the commissioner of education shall be the same as that of a classroom teacher as provided herein; provided that vocational trade and industrial teachers having qualifications approved by the State Board of Vocational Education shall be eligible for the minimum monthly base pay for a classroom teacher who holds a recognized bachelor's degree and a valid teacher's certificate.

(b) The annual salary of vocational teachers shall be the monthly base salary, plus increments, multiplied by 9, 10, or 12, as applicable for 1969–1970, and by 10, 11, or 12 as applicable for 1970–1971.

(c) The minimum salaries hereinabove prescribed for vocational teachers mean total salaries of such teachers to be received for public school instruction, whether they be paid out of state and/or federal

(e) The minimum monthly base salary and increments for teachers in distributive adult education.

(d) Expenses where allowable shall be paid from a separate vocational fund. No such expense shall be counted as part of the cost of Minimum Foundation School Program.

(e) The minimum monthly base salary and increments for teaching experience for vocational supervisors and vocational counselors shall be the same as that prescribed in the Foundation Program salary schedule for supervisors and counselors. The annual salary for such vocational supervisors and vocational counselors shall be the monthly base salary plus increments multiplied by 10 in the case of vocational counselors and 11 in the case of vocational supervisors. This subsection expires at the end of the 1970–1971 school year.

§ 16.305. Special Service Teachers: 1969–1971

(a) The minimum monthly base salary and increments for teaching experience for special service teachers shall be the same as those provided herein for classroom teachers. The annual salary of such teachers shall be the monthly base salary, plus increments, multiplied by 9 for 1969–1970, and by 10 for 1970–1971.

(b) A registered nurse shall be considered, for the purpose of computing salaries, as having a bachelor's degree, and a librarian having a recognized certificate or degree based upon five years of recognized college training therefor shall be considered as having a master's degree.

§ 16.306. Teachers of Exceptional Children: 1969–1971

The minimum monthly base salary and increments for teaching experience for teachers of exceptional children shall be the same as that prescribed in this subchapter for classroom teachers. The annual salary of such teachers shall be the monthly base salary, plus increments, multiplied by 9 in 1969–1970, and by 10 in 1970–1971, except that in cases where the commissioner of education approves such a unit for more than nine months, the annual salary shall be the monthly base salary, plus increments, multiplied by the number of months approved by the commissioner of education.

§ 16.307. Supervisors and/or Counselors: 1969–1971

The minimum monthly base salary and increments for teaching experience for supervisors and counselors shall be that prescribed in the salary schedules as printed above for 1969–1970 and 1970–1971, respectively.

§ 16.308. Principals: 1969–1971

(a) The minimum monthly base salary and increments for teaching experience for full-time principals shall be in compliance with the provisions set out in the above printed salary schedules for 1969–1970 and 1970–1971, respectively.

(b) The classroom teacher who serves as part-time principal on a campus to which are assigned seven or more classroom teacher units shall receive the salary prescribed for a part-time principal in the 1969–1970 and 1970–1971 schedules for each of these respective years.

§ 16.308

PUBLIC SCHOOLS

(c) The classroom teacher who serves as a part-time principal on a campus to which are assigned three to six classroom teacher units shall receive the salary prescribed for the head teacher in the above-printed salary schedules for 1969–1970 and 1970–1971, respectively. In addition to the allotment of part-time principals as provided in Section 16.18 of this code, districts containing an accredited high school and having fewer than nine classroom teacher units shall be granted one head teacher.

§ 16.309. Superintendents: 1969–1971

The minimum monthly base salary increments for teaching experience for superintendents shall be as prescribed in the salary schedules for 1969–1970 and 1970–1971, respectively.

§ 16.310. 10-Month Year

Beginning with the school year 1970–1971, all classroom teaching positions and all other positions previously authorized for less than 10 months shall be paid at an annual rate calculated on the basis of 10 months' compensation for 10 months' service. Such service shall include the 180-day school term providing instruction for pupils plus not to exceed 10 days of inservice education and preparation for the beginning and ending of the school term.

§ 16.311. Professional Salaries: Total Cost

The total cost of professional salaries of positions allowable for purposes of this subchapter shall be determined by application of the salary schedule to the total number of approved professional units, provided that such professional units are serviced by approved professional position employments.

§ 16.312. Salaries: Beginning 1971–1972

(a) The annual salary of personnel authorized for employment under the Minimum Foundation Program for the school year 1971–1972 and for each year thereafter shall be the monthly base salary, plus increments, shown in the schedule (entitled "Texas State Public Education Compensation Plan") below, multiplied by the number of months prescribed in the position description herein for each respective position. The salaries fixed in this schedule are minimum salaries only, and each district may supplement such salaries.