

IN THE COMMON PLEAS COURT, PERRY COUNTY, OHIO

DALE R. DeROLPH, Parent

and Next Friend of

NATHAN DeROLPH

RANDY MISKELL

NORTHERN LOCAL SCHOOL DISTRICT

BOARD OF EDUCATION
LAW,

MEMORANDUM

J. KENNETH MILLER, a Member of

the Northern Local School

District Board of Education

STEVEN JOHNSON, Superintendent

of the Northern Local School

District

KEELY THOMPSON, Parent

and Next Friend of

CHRISTOPHER THOMPSON, a Minor

JOSEPH WINNENBERG

FINDINGS OF FACT,

CONCLUSIONS OF

ORDER AND

CASE NO. 22043

SOUTHERN LOCAL SCHOOL DISTRICT

BOARD OF EDUCATION

LOUIS ALTIER, a Member of
the Southern Local School District
Board of Education

CAROL SPANGLER, Superintendent
of the Southern Local School
District

DONNA BLANKENSHIP, Parent
and Next Friend of
JAMI BLANKENSHIP

MARK SEMANCO

DAWSON-BRYANT LOCAL SCHOOL
DISTRICT BOARD OF EDUCATION

CARL SWARTZWELDER, a Member of
the Dawson-Bryant Local School
District Board of Education

WAYNE WHITE, Superintendent of

the Dawson-Bryant Local School
District

DAVID BOWERS, Parent

and Next Friend of

ANDREW BOWERS, a Minor

CHRISTOPHER BOWERS, a Minor

JON CARVER

LIMA CITY SCHOOL DISTRICT

BOARD OF EDUCATION

JAMES EATON, a Member of

the Lima City School District

Board of Education

CHARLES BUROKER, Superintendent

of the Lima City School District

Board of Education

MARION GARY SOUTHERS, Parent and

Next Friend of SHERRI SOUTHERS, a Minor

BRIAN SOUTHERS. a Minor

ROBERT RIOS

YOUNGSTOWN CITY SCHOOL DISTRICT

BOARD OF EDUCATION

SOCRATES KOLITSOS, a Member

of the Youngstown City School

District Board of Education

and

EMANUAL CATSOULES, Superintendent

of the Youngstown City School

District Board of Education

PLAINTIFFS

VS .

STATE OF OHIO

c/o Attorney General of Ohio

STATE BOARD OF EDUCATION OF OHIO

TED SANDERS, Superintendent of

Public Instruction

and

OHIO DEPARTMENT OF EDUCATION

This action at bar was heard by the undersigned Judge of the Court of Common Pleas for Perry County at New Lexington, Ohio commencing October 25, 1993 and concluding December 8, 1993. Nicholas A. Pittner, John F. Birath, Jr., Sue Wyskiver Yount and Michael D. Smith appeared on behalf of the Plaintiffs. Attorney General Lee Fisher, Assistant Attorney General Christopher Culley, Mark A. Vander Laan, Joel S. Taylor, William M. Mattes and David K. Mullen represented the Defendants. A Brief of Amici Curiae was filed by Kimball H. Carey on behalf of the Buckeye Association of School Administrators and Ohio School Boards Association.

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MEMORANDUM

FINDINGS OF FACT

I. STIPULATIONS

The parties filed final Joint Stipulations of Fact with the Court on October 1, 1993. During the course of trial on November 29, 1993, the parties supplemented those Stipulations. This Court hereby incorporates the Final Joint Stipulations of Fact, including the Exhibits thereto, into these Proposed Findings of Fact and Conclusions of Law.

II. BIOGRAPHIES OF WITNESSES

1. Kern Alexander

Dr. Alexander is a Distinguished Professor at Virginia Tech in Blacksburg, Virginia, and he has held that position since 1988. Previous to that, he served as president of Western Kentucky University, an institution of approximately 15,000 pupils where he served for a period of three years. Dr. Alexander was a full professor at the University of Florida where he taught school finance for approximately 18 years. During that time, he also served as Associate Director of the National Education Finance Project, and while on leave from the University, coordinated the education budget for the State of Florida from 1982 to 1985.

Dr. Alexander holds a Bachelor of Arts Degree from Center College in Danville, Kentucky; a Master of Arts Degree from Western Kentucky University; a Doctor of Education Degree from Indiana University; and a Diploma in Educational Studies from the University of Oxford, Oxford, England. Prior to his college teaching, Dr. Alexander worked on a study of Kentucky school finance before joining the U.S. Department of Education where he served for approximately two years.

Dr. Alexander also founded the Journal of Education Finance and served as its chief editor for approximately 18 years. The journal is a national publication and generally considered to be one of the leading publications dedicated to the field of school finance. In addition, Dr. Alexander has edited or authored 20 books on the subject of school law and school finance. One of his publications, American Public School Law, published in 1992, is used as a textbook in graduate schools and universities around the country, as well as some law schools around the country. Dr. Alexander has also published numerous articles on topics related to school law and school finance, including an article in the Harvard Journal of Legislation reviewing the decision in the Kentucky school funding case.

In addition to his work in Ohio, Dr. Alexander has conducted studies of funding systems in the States of Tennessee, Arkansas, New Hampshire, Indiana, Utah, and others. He testified in the Kentucky, Tennessee, Alabama, Missouri, Rhode Island, and Montana funding cases. (Alexander Tr. 3584-605; Resume is Pl. Exh. 303)

2. Louis Altier

Louis Altier is a graduate of the schools in Perry County. He is President of the Southern Local Board of Education, where he has served for 22 years. He is Chairman of the Board of the Corning Bank, and is President of Altier Brothers, an oil and gas company.

He is a life-long resident of Perry County, Ohio. (Altier Tr. 1287-88, 91)

3. Stanley J. Aronoff

Stanley J. Aronoff is President of the Ohio Senate. Senator Aronoff was elected to the Ohio House of Representatives in 1960. After serving three terms in the House, he was elected to, and began serving in, the Senate in 1967, and has served continually in the Senate since that time. Currently, Senator Aronoff is Chairman of the Rules Committee, is Chair of the Legislative Service Commission, is a member of the Legislative Budget Office, and is an ex-officio member of every other Senate committee. Senator Aronoff also has served as Chairman of the Senate Finance Committee for six years, and was ranking minority leader on that Committee for two years. Senator Aronoff served on the Gilmore Cupp Committee pertaining to school equity. He also served on the Education 2000 Commission under Governor Celeste. (Aronoff Tr. 4805-10)

4. Craig Axline

Craig Axline is a guidance counselor, teacher and coach at Plaintiff Southern Local School District, where he has been employed for seventeen years. Mr. Axline teaches math, advanced math and advanced math II in the eleventh and twelfth grades. Mr. Axline coached girls' volleyball and girls' basketball. Mr. Axline

graduated from Sheridan High School, received a Bachelor of Science in Education from Ohio University in 1975, holds a Master's degree in Math Education. Mr. Axline holds teaching certifications in guidance and mathematics. (Axline Depo. 4-10)

5. Jamie Blankenship

Jamie Blankenship, a Plaintiff student, was enrolled in the 8th grade at the Intermediate School and prior to that, attended the Deering Elementary School in the 1992-93 school year, and before that attended the Deering Elementary School. Both schools are in the Dawson-Bryant Local School District. (J. Blankenship Depo. 4)

6. Keri Blankenship

Keri Blankenship, a student Plaintiff witness, was a seventh grade student at Dawson-Bryant Intermediate School in the 1992-93 school year, and attended kindergarten through sixth grade at the Deering Elementary School in the Dawson-Bryant School District. Keri is a handicapped child and has an Individualized Education Program (I.E.P.). (K. Blankenship Depo. 4-5; 19).

7. Charles Brown

Charles Brown is the Assistant Director, Division of School

Finance, directing the School Management Assistance section of the Ohio Department of Education. He has held that position since July of 1989. Prior to that, he worked as an area coordinator for the Department from 1987 to July of 1989. Prior to coming to the Department of Education, Mr. Brown served as Superintendent of schools and as a teacher. Mr. Brown received his bachelor of science from Marietta College in 1955 and his masters in 1985 from Ohio University. He did post master's work at Capital University.

8. Gregory Browning

Gregory R. Browning is Director, Office of Budget and Management for the State of Ohio. The OBM is a cabinet level agency. He was appointed by Governor George Voinovich. In addition, he is Senior Policy Advisor for Governor Voinovich and, as such, works closely with the Governor and staff in developing and refining policy agenda and initiatives that are important to the Voinovich administration. The Office of Budget and Management is responsible for the financial management of state government. It is specifically required to put forward, biennially, a state budget and capital budget. (Browning Tr. 4360,4390)

9. Charles Buroker

Dr. Charles Buroker is the superintendent of the Lima City School District. He has been employed in that position since 1988.

Dr. Buroker received his bachelors degree from Bluffton College in mathematics in 1965, his masters in guidance and counseling from Bowling Green State University in 1968, and his doctorate in higher educational administration in 1976. Dr. Buroker has co-authored a number of articles in the field of education, including the development of a strategic planning model, as well as articles dealing with alternative high school models. In addition to his superintendency, he serves on the board of the Northwest Ohio Educational Television Council, the Northwest Ohio Educational Research Council, and committees serving Bluffton College and The Ohio State University educational programs. Prior to assuming the superintendency of the Lima City School District, Dr. Buroker taught mathematics and coached for a number of years. He served as assistant principal at the Franklin Heights High School in the South-Western City School District, and later as superintendent of the Bluffton City School District. In 1983, Dr. Buroker served as superintendent of the Shawnee Local School District in Allen County (a suburb of Lima), prior to his becoming superintendent of the Lima City School District in 1988. (Buroker Tr. 2866-69).

10. Charles Dilbone

Charles (Chuck) Dilbone is employed by the Granville Exempted School Board of Education as principal at Granville High School. From 1987-88 through the 1992-93 school year, he was principal at Sheridan High School in the Northern Local School District. He

holds a Bachelor of Arts Degree in History from Muskingum College, a Masters in Education Administration from The Ohio State University, and completed course work for a Doctorate in Education Administration at Ohio University. Mr. Dilbone started his professional career at Zanesville High School where he taught history and coached for ten years and then became assistant principal at Zanesville High School for three years before becoming principal at Sheridan High School. (Dilbone Tr. 1984-86)

11. Betty Drummond

Betty Drummond is Assistant Director for Standards and Evaluations at the Ohio Department of Education. She has been employed by the Department of Education since 1979, and she has served the Standards and Evaluations Division as both a minimum standards consultant and as Assistant Director. Ms. Drummond holds a bachelor of science degree in elementary education from The Ohio State University and a master's in middle childhood education. In her employment with the Ohio Department of Education, Ms. Drummond was involved with school district evaluations under both the pre-1983 minimum standards and the current 1983 minimum standards. She was also involved in overseeing evaluations under the 1983 minimum standards. Ms. Drummond is currently a member of the committee which is reviewing and revising the 1983 minimum standards. (Drummond Depo. 1-9, 36, 176).

12. James Eaton

James Eaton is a member of the Board of Education of the Lima City School District, where he has served for six years. Mr. Eaton is the Assistant Vice President, Manager of Private Banking for the Huntington National Bank in Lima, Ohio. Mr. Eaton graduated from Lima Senior High School and attended The Ohio State University for three years before entering the Air Force in 1964. (Eaton Depo. 4-7)

13 Howard Fleeter

Howard Bruce Fleeter is employed by The Ohio State University as an Assistant Professor in the School of Public Policy and Management. He was in his fourth year of that employment during his initial deposition on February 25, 1993. Dr. Fleeter completed his bachelor's degree at Northwestern University in economics and spent six years at Berkeley where he completed his Ph.D in Public Finance in May of 1990. In spring of 1991, a representative of the Governor's office contacted the director of the School of Public Policy with regard to conducting a study of school funding in Ohio. Dr. Fleeter was involved in those discussions which resulted in a proposal for such a study to be submitted and approved. The study, funded by a grant from the Cleveland Foundation, took place over the summer and fall of 1991 and resulted in a written report to the Governor's Education Management Council (Fleeter Depo. Exh. B)

submitted in November, 1992. Dr. Fleeter has since been retained by the Department of Education for work on additional projects.

(Fleeter Vol. 1, 522)

14. Hazel Flowers

Hazel Flowers is the Director of the Ohio Department of Education, Division of Equal Educational Opportunities. She has been employed by the Ohio Department of Education for nineteen years as a consultant, an Assistant Director in the Division of Equal Educational Opportunities, and in her current position. Ms. Flowers holds a bachelor's degree in elementary education from The Ohio State University, a master's in administration and supervision from Xavier University and a Doctorate of Education Administration from Ohio State. Ms. Flower's duties include consulting school districts on race desegregation issues, administration of state and federal programs regarding race and equal educational opportunity, and the administration of Ohio's Effective Schools Program.

(Flowers Depo. 6-12, 159).

15. Jimmy Fortune

Jimmy Fortune is a professor of research and evaluation at Virginia Tech University where he has been employed for over twenty years. Dr. Fortune obtained his Masters Degree in Education in 1958 from Memphis State and a Doctorate in Education with a minor in

statistics from Stanford University in 1964. He has taught classes both in the public schools and at the college level. At Virginia Tech, Dr. Fortune currently teaches qualitative research, regression analysis, intermediate staff, research design, and evaluation design. Dr. Fortune's curriculum vitae is Pl. Exh. 304. (Fortune Tr. 3455-63)

16. Robert Franklin

Robert D. Franklin is Building Assistant Supervisor for the Ohio Department of Education. His duties include assisting school districts in obtaining building assistance from the State of Ohio, monitoring the passage of levies, and overseeing construction pursuant to the Building Assistance Program. He holds an undergraduate degree in Industrial Arts, a minor in physical education and a Masters Degree in vocational and industrial administration. Mr. Franklin has had many years of experience in both teaching in the public schools, training foreign workers in the construction trades, and supervising construction projects, both domestic and international. He has taught teachers who are in the process of obtaining their superintendent certificate at Kent State University, Ashland University and Lake Erie College. The courses he teaches pertain to school facilities, including the Building Assistance Program and its operations, eligibility for that program, the condition of school facilities, school safety and funding for construction. (Franklin Depo. 1-24)

17. John Herner

John Herner is employed by the Ohio Department of Education as Director of the Division of Special Education and has been since February 1992. (Herner Depo. 42) He obtained a bachelor's degree in elementary education in 1960 and a master's degree in 1962 from The Ohio State University. (Herner Depo. 6)

18. Thomas Hill

Thomas J. Hill is a member of the Board of Education of Plaintiff Northern Local School District. Mr. Hill has been a board member for 20 years and is a self-employed real estate salesman. Mr. Hill has been a resident of Glenford, Ohio for 40 years, and he graduated from high school in Glenford in 1953. Mr. Hill has been president of Plaintiff Northern Local School District Board of Education four times. (Hill Depo. 4-6)

19. Douglas Hiscox

Douglas Hiscox is presently the Assistant Superintendent at Canfield Local School District in Mahoning County, Ohio. At the time he was deposed, Mr. Hiscox was the Assistant Superintendent at Plaintiff Youngstown City School District, where he was employed since 1991. As Assistant Superintendent of Youngstown City School

District, Mr. Hiscox was responsible for supervising the administration and assuring that the Youngstown City School Districts objectives with regard to such matters as philosophy, curriculum and building operations were carried out. Mr. Hiscox visited all of the buildings in the Youngstown City School District on a regular basis. Mr. Hiscox graduated from Heidelberg College in 1977 with a Bachelor of Science in education. He received a Masters Degree in secondary education from Youngstown State University in 1981. Mr. Hiscox received his principal certificate in 1982 and his superintendent certificate in 1986. He at the time of his deposition, he was enrolled in a doctoral program at Youngstown State University. Mr. Hiscox taught science to grades 7-12 from 1977 to 1986 in the Strasburg-Franklin Local School District and the East Palestine City School District. He was the high school principal in the Leetonia Exempted Village School District from 1986 to 1988 and superintendent of Leetonia Exempted Village Schools from 1988 until 1991, when he became assistant superintendent of the Youngstown City Schools. (Hiscox Depo. vol 1, pp. 5-9, 22, 24)

20. Jack Hunter

Jack Hunter is supervisor of school facilities with the Ohio Department of Education. He is a licensed electrician, plumber, and Class 1 boiler operator. (Hunter Depo. 5-9). Jack Hunter has visited over 3,000 educational structures within the State of Ohio,

including school buildings, bus garages, stadiums, etc. (Hunter Depo. 33) Jack Hunter is the technical assistant consultant for asbestos abatement for the public schools. (Hunter Depo. 136). Jack Hunter has visited the plaintiff school districts and most buildings within each district. (Hunter Depo. 92-105)

21. Christopher Jackson

Christopher Jackson was a senior at the Dawson-Bryant High School in the 1992-93 school year. Chris is a student who loves computers, has had a computer at home since he was five years old, and during his senior year was making a project so that students could get accustomed to a bulletin board system and assisted the teacher in writing a program to assist students on the ninth grade sufficiency test. Christopher wants to attend college and major in computer programming. (Jackson Depo. 5, 17, 19-20).

22. Steve Johnson

Steve Johnson is the Superintendent of Plaintiff Northern Local School District; he has been Superintendent for seven years. Mr. Johnson is a graduate of Belmont High School in Dayton, Ohio; he received a Bachelor's of Science in Education from Ohio University in 1966, his Master's Degree in Education in 1970, and is currently enrolled in a doctoral program at Ohio University. Throughout his career in education, Mr. Johnson has served as a

coach for football, basketball and baseball, assistant principal, high school principal, athletic director, and principal. (Johnson Tr. 1381-84).

23. Socrates Kolitsos

Socrates Kolitsos is a member of the Board of Education of Plaintiff Youngstown City School District, where he has served for twelve years. He has been president of the Youngstown Board of Education. Currently, as a member of the Board, he is the Board of Education liaison to the National School Board Association and the chairman of the Vocational Education Committee. Mr. Kolitsos is a life-long resident of Youngstown. Mr. Kolitsos graduated from Rayen High School in the Youngstown City School District in 1962, and he holds a bachelor of arts degree from Youngstown State University. He has taken additional course work at James Madison University in Washington, D.C., University of Akron and Kent State. He also taught at Rayen and East High Schools in the Youngstown City School District. Mr. Kolitsos is currently employed as Director of Marketing and Operations for Professional Health Services in Lorain, Ohio. (Kolitsos Depo. 4-8, 16-17).

24. Marie Lichtenstein

Marie Lichtenstein is a first-grade teacher at Plaintiff Southern Local School District. Ms. Lichtenstein has been a teacher

at Southern Local for 16 years. Additionally, Ms. Lichtenstein is a Chapter One teacher and a reading recovery teacher. Ms.

Lichtenstein is also a member of Plaintiff Southern Local School District's Language Curriculum Development Committee. (Lichtenstein Depo. 4-5, 15).

25. Dewey Lykins

Dewey Lykins is employed as the Administrative Assistant in the Scioto County Office of Education. Mr. Lykins holds a bachelor's degree from the University of Rio Grande and a master's degree from Marshall University. He has been employed in the field of education in Ohio as a teacher, elementary school principal, high school principal and superintendent. Immediately preceding his employment with the Scioto County Office of Education, Mr. Lykins was Director of the Appalachian Access and Success Project, which is a grant project funded by the Ohio Board of Regents to examine the factors leading to the low levels of participation of Ohio's appalachian students in higher education. The Appalachian Access and Success Project generated a written report of its findings entitled "Appalachian Access and Success." (Lykins Tr. 2287-91)

26. Carol Marino

Carol Ann Marino has been employed by the Youngstown Board of Education since 1969 and is currently an administrator in the area

of curriculum and instruction. Dr. Marino graduated from Chaney High School in the Youngstown City School District and obtained a Bachelor's Degree in Science and Education in 1969 and a Master's Degree in Science Education with a Reading Supervisor's K-12 certification in 1974, both from Youngstown State University, and a Ph.D in Curriculum and Instruction from the University of Akron in 1987. Dr. Marino taught in the regular classroom and in Chapter I programs and served as Elementary Supervisor beginning in 1979 for eight years, as Director of Personnel for two years, and as Director of Instruction for four years through the 1992-93 school year. Currently, she is the coordinator for the Upper Elementary Learning Centers. Dr. Marino published an article on minimum competencies in The Ohio Reading Teacher, and she had responsibility for implementation of the 1983 minimum standards as Elementary Supervisor from 1979 to 1987. (Marino Tr. 3170-74)

27. Richard Maxwell

Richard Maxwell is presently employed by the Buckeye Association of School Administrators as a school finance consultant. He has held that position since April of 1993. Mr. Maxwell has served 31 years in public education, most recently as the Superintendent of the Holmes County Board of Education where he served from 1981 to 1993. Previous to that, he served as the superintendent of the West Holmes Local School District in Holmes County where he served from 1970 to 1981. Prior to his

administrative work, Mr. Maxwell taught in a number of school districts in Ohio. Mr. Maxwell completed his Master of Arts in Education work in 1968 at the University of Akron. His graduate advisor was Oliver Ocasek who is presently the President of the State Board of Education. Mr. Maxwell has had extensive involvement in issues regarding the funding of public education in Ohio, having taught school finance and school facilities at Ashland University since 1982. He has also lectured extensively for the State Department of Education on school finance issues. He has also published a school finance newsletter. (Maxwell Tr. 48-51; curriculum vitae is Pl. Exh. 1)

28. Benjamin McGee

Benjamin L. McGee is the Director of Pupil Personnel Services at the Youngstown City Schools and is responsible for special education programs, school health services, school attendance services, student accounting and maintenance, at-risk programming, and other areas. Mr. McGee graduated from South High School in Youngstown and obtained a bachelor's degree in education from The Ohio State University in 1972, and a master's degree in education administration from Youngstown State University in 1979, and is presently pursuing a doctorate in educational leadership. Mr. McGee's entire educational career has been at the Youngstown City Schools beginning in 1972. He taught classes, served as school social worker for four years, and served in various principal

positions before serving as Supervisor of Special Education Programs and then as Director of Pupil Personnel Services. (McGee Depo. 4-7)

29. Lee McMurrin

Lee McMurrin is the Superintendent of the Beachwood City Schools in Beachwood Ohio. At the time of his testimony, Dr. McMurrin was in his seventh year in that position having previously served as Superintendent of the Milwaukee City Schools in Milwaukee, Wisconsin for slightly more than 12 years. Prior to that, he served as a deputy superintendent of the Toledo City Schools for ten years and previous to that he served as an administrator in the South-Western City Schools in Franklin County, Ohio. Dr. McMurrin, at the time of his testimony, had completed 43 years of service in public education as a teacher and administrator. (McMurrin Tr. 2494-96)

30. John Kenneth Miller

John Kenneth (Ken) Miller is a member of the Board of Education of Plaintiff Northern Local School District, where he has served for six years. Mr. Miller also served a two year term as president of the Northern Local Board of Education.

Mr. Miller is a self-employed farmer, and he has been in the

agribusiness industry for 22 years. He graduated from Sheridan High School in the Northern Local School District in 1970 and entered the agribusiness industry the following year. Mr. Miller currently operates a cash grain operation that involved corn, soybeans and wheat covering over 2,100 acres. In addition, he runs a seed business, where he is solely responsible for all invoicing, sales, inventory control, purchasing and ordering. In addition to his businesses, Mr. Miller is a member of the board of the Federal Land Bank and is involved with the Production Credit Association and the Somerset Bank. Mr. Miller employs computer, accounting and financial skills in his professions. Mr. Miller has three children who have attended or currently attend school in the Northern Local School District: J.B., who graduated from Sheridan High School in 1992, Jodi, who is a junior at Sheridan High School, and Jessie, who is in the sixth grade in a modular unit at the high school/junior high school complex. (Miller Tr. 1602-08)

31. Roger Miller

Roger L. Miller is the Assistant Superintendent for Pupil Personnel at the Lima City Schools. He is responsible for the entire student discipline program, attendance, special education supervisors, and administrative staff in special education. He is also the hearing officer for student discipline appeals. Mr. Miller is a graduate of Lima Senior High School and obtained a Bachelor's Degree in Elementary Education in 1968 and a Master's Degree in

Guidance and Counseling in 1971. Mr. Miller's entire career in education has been with the Lima City Schools, beginning in 1968 teaching junior high special education, and later serving as Associate Principal from 1978 to 1982 and Principal at Lima Senior from 1982 until August 1991, when he became Assistant Superintendent for Pupil Personnel. (Roger Miller Depo. 4-6; 13-16)

32. Cheryl O'Connor

Cheryl O'Connor is the guidance counselor for the senior class at Lima High School in Plaintiff Lima City School District. She has been employed for eighteen years by the Lima City School District, and has served in her current position for eight of those years. Prior to becoming senior guidance counselor, Ms. O'Connor taught academic and vocational business. Ms. O'Connor holds a bachelor's degree in comprehensive business education from the University of Toledo and master's degrees in guidance, counseling, and educational administration from the University of Dayton. She holds a permanent teaching certificate, a four year provisional supervisory certificate, a four year provisional administrative certificate and an eight year professional guidance certificate. (O'Connor Tr. 3096-98)

33. Oliver Ocasek

Oliver Ocasek is President of the State Board of Education of

Ohio, on which there are 11 members. Prior to his election to the State Board of Education, President Ocasek served for 28 years in the Ohio Senate. During his tenure in the General Assembly, he served six years as Leader of the Ohio Senate, and also served as Chairman of the Senate Education Committee. While in the Ohio Senate, President Ocasek considered himself to be an advocate of funding for public education. President Ocasek has a Bachelors and Masters degree in education, and has completed his hours for a PX.D at Case Western Reserve University. In addition, President Ocasek taught high school, and also was principal of Tallmadge High School. He is the recipient of seven honorary doctorate degrees. In addition, for 32 years President Ocasek taught school finance, school law and school construction at the University of Akron. Since becoming a member of the State Board of Education, President Ocasek has visited 62 school districts. (Ocasek Tr. 2777-83, 2786)

34. Peggy Papritan

Peggy Lynn Papritan has been the principal at Glenford Elementary in the Northern Local Schools for seven years. Ms. Papritan obtained a Bachelor's Degree in Elementary Education in 1975 and a Master's Degree in Curriculum Supervision, with a concentration in children's literature and writing in 1983, both from The Ohio State University. She holds certifications in elementary education, gifted education, K-12 curriculum, supervision K-12, and elementary principal. She began her career in education

as a Title I (now Chapter I) reading teacher at Lancaster City Schools, taught language arts in the Southwest Licking Local Schools, and was enrichment coordinator at the Granville Exempted Village Schools. She is a member of various professional organizations and has served in leadership positions of those organizations. (Papritan Tr. 1913-15)

35. Jimmy J. Payton

Dr. Jimmy J. Payton is the Assistant Director of the Policy Research and Analysis Office at the Ohio Department of Education (ODE), and is the most senior member of the Simulation Unit within that office. (Payton Tr. 4882-83; 4911) Dr. Payton received a Bachelor's Degree from Otterbein College in 1969, a Master's Degree in Economics in 1971, and a Ph.D. in Educational Research and Development with a concentration in School Administration and School Finance in 1980 both from The Ohio State University. (Payton Tr. 4881) Dr. Payton was employed from 1971-73 at the Ohio Department of Taxation as a Tax Economist. For two to three years in the late 1970s, Dr. Payton was a consultant with the Education Review Committee of the Ohio General Assembly and worked on developing different approaches to improving the school finance formula and analyzing the results of different proposals regarding an income factor and a cost of doing business factor for school funding. (Payton Tr. 4881; Payton Depo. 10) From 1977 to 1981, Dr. Payton was employed by ODE as director of the State-Wide Student

Needs Assessment Program. (Payton Tr. 4881-82) Since October 1989, Dr. Payton has been employed by ODE as a Research Consultant.

(Payton Depo. 13)

Dr. Payton's current responsibilities include school finance research, simulations of proposed legislation relating to school finance and school finance reform in the state legislature, and simulations of various proposals that Dr. Ted Sanders, members of the state board, and school superintendents may request. Dr. Payton also assists in formulating the State Board of Education's budget requests and does simulations of various budget proposals for the legislature. (Payton Tr. 4832-83)

36. William Phillis

William Phillis is presently employed as an adjunct professor of school finance and school administration at Ashland University. He is also employed as the Executive Director of the Ohio Coalition for Equity and Adequacy of School Funding, an organization of some 500 Ohio school districts supporting reform in school funding. Prior to assuming his position with the Coalition, Dr. Phillis served as Assistant Superintendent of Public Instruction from August 2, 1976 to April 13, 1992. In that capacity, he was responsible for a wide range of duties including responsibility for administration of the Classroom Facilities Act and served as liaison to the Ohio General Assembly and the State Board of

Education. As Assistant Superintendent of Public Instruction, Dr. Phillis was in contact with virtually every city, local, exempted village, and joint vocational school district in the state. His contact included both telephone communications as well as travel to the districts. During the 16 year period, he traveled nearly 1/2 million miles to various school districts in the state. (Phillis Tr. 1667-68)

Dr. Phillis has served a total of 36 years in public education including service as a teacher and later principal at the Southeastern High School in Ross County, Superintendent of the Minford local School District in Scioto County, County Superintendent for Columbiana County and later, Superintendent of the Joint Vocational School as well.

In addition to his service to public education, Dr. Phillis serves as vice-chair of the Board of Trustees of the Ohio Valley College in Parkersburg, West Virginia, a member of the Board of Trustees of the Midwestern Children's Home, and as President of the Board of Fort Hill Christian Youth Camp in southern Ohio. Dr. Phillis is the recipient of numerous honors and awards including commendations from both the Ohio House of Representatives and Ohio Senate. (Phillis Tr. 1654-68)

Edna Pincham is Vice President of the Board of Education of the Youngstown City School District, where she has served since 1984. She has also served as Board President. Ms. Pincham holds an associate's degree from Youngstown State University. Ms. Pincham is currently employed as Assistant to the Mayor of Youngstown, a position she has held for eight years. She has also been Vice President of the Ohio PTA. (Pincham Depo. 4-13, 56).

38. William Pletcher

William Pletcher is a freshman at The Ohio State University. He graduated in June of 1993 from Cardington-Lincoln High School in the Cardington-Lincoln Local School District in Cardington, Ohio. Both Mr. Pletcher and the Cardington-Lincoln Local School District are named plaintiffs in the suit captioned Thompson. et al v. State of Ohio. et al., Case No. C2-91-464, now pending before Judge Holschuh in the United States District Court for the Southern District of Ohio, Eastern Division. (Pletcher Tr. 263335)

39. Tod Porter

Tod Porter is an Associate Professor of Economics at Youngstown State University. He holds both a Ph.D. and Masters in economics from Syracuse University with emphasis in both labor economics and public finance. He has been teaching at Youngstown State since 1984 and his course work includes both graduate courses

as well as statistics and principles courses. (Porter Tr. 1049-53)
Dr. Porter first became interested in school finance when he did a study of the effects of steel mill closings for the Youngstown City Schools in 1988. That study led to additional analysis of school funding on a statewide basis beginning in 1990. (Porter Tr. 1054-55; Resume is Pl. Exh. ga)

40. David Roach

Dr. David Roach is employed by the Washington County Board of Education which serves as fiscal agent for the SEOSERRC (Southeast Ohio Special Education Regional Resource Center). Dr. Roach serves as the Director of SEOSERRC and has served in that capacity since 1985. He holds a Bachelor of Arts, Masters of Science and Ph.D degrees from Ohio University. His Doctorate is in the field of educational administration. In addition to his duties as SERRC director, Dr. Roach also teaches special education at Ohio University and has been a regular participant in workshops on issues related to special education.

The SEOSERRC is one of 16 statewide regional resource centers, each of which is an agency of the State Department of Education but is governed by a regional board of governors. The SERRC is charged, generally, with the responsibility to provide assessment services to handicapped children, to provide inservice and training seminars in the area of special education, to coordinate the provision of

multi-district special education programs, to assist in the evaluation of school district programs for compliance with state and federal program requirements, and to provide assistance to school districts by making available a limited materials library. The SEOSERRC, in addition to Dr. Roach, employs 14 staff members, including eight professionals and six non-certified employees. (Roach Tr. 2666-74; Resume is Pl. Exh. 249)

41. Warren Russell

Warren Russell is the Director of Governmental Affairs for the Ohio Department of Education. He has been employed in that capacity since July 6, 1992. Prior to the most recent employment with the Department of Education Mr. Russell was employed by the Jostens Corp. as Director of Governmental Relations in a division of the corporation that dealt with the development and sale of educational software. In that capacity, he served a 12 state region including Ohio. The software that his division marketed was directed to public and private elementary and secondary schools.

From 1982 to 1990, Mr. Russell was Director of Legislative Services and Labor Relations for the Buckeye Association of School Administrators, and Ohio organization representing public school superintendents. The Buckeye Association of School Administrators (BASA) is a state affiliate of the American Association of School Administrators. In that position, Mr. Russell was responsible for

monitoring and reporting on the progress of legislation dealing with the funding of public schools in Ohio. In the course of that employment, he visited at least half of the 612 public school districts in Ohio. He was also responsible for the presentation of seminars dealing with various aspects of collective bargaining as that process affected school districts in Ohio.

Mr. Russell was first employed by the Ohio Department of Education during the period from 1978 to 1982 when he served as a Legislative Liaison, Policy Analyst. In that position, he reported to William L. Phillis, another witness in this case. In that capacity, Mr. Russell was responsible for assisting Dr. Phillis in representing the Department of Education in the legislature. He was also responsible for the information simulation system operated by the Ohio Department of Education. In that capacity, Mr. Russell participated in the development of two biennial education budgets.

Prior to joining the Ohio Department of Education, Mr. Russell taught in various public school districts having completed his Bachelor's of Science degree from Bowling Green State University in 1969 and his Master's of Arts Degree in psychology in 1972. Mr. Russell also undertook postgraduate work at Bowling Green following the award of his Master's Degree. (Russell Depo. 5-35)

42. John Theodore (Ted) Sanders

Dr. Sanders became Superintendent of Public Instruction for the State of Ohio on October 1, 1991. He came to Ohio from a position as Under-Secretary of Education for the United States Department of Education where he reported directly to the Secretary of Education. As Under-Secretary of Education he was responsible for the day-to-day operations of the United States Department of Education

Before assuming responsibilities for the U.S. Department of Education, Dr. Sanders served as Superintendent of Public Instruction for the State of Illinois, and prior to that, for the State of Nevada (1979 to 1985). Before his state administrative service, Dr. Sanders taught in various public schools and served as Assistant Superintendent for Administration for the State of New Mexico. (Sanders Tr. 274-82)

43. Colleen Sexton

Colleen Marie Athens Sexton is an Assistant Professor in Curriculum and Instruction at Ohio University in Athens, Ohio, where she teaches science education to future and practicing science teachers. She obtained a degree in biology from Quincy College (Illinois) in 1976; a Master's in Ecology and Conservation from Governor's State University (Illinois) in 1980; and a Ph.D. in Science Education from Ohio University in 1991. She began her teaching career in 1977 as a teacher of high school science. In

addition to her duties at Ohio University, she is the Curriculum Director of the Appalachian Distance Learning Project.

Dr. Sexton is a member of a number of professional organizations and honorary societies, and has published a number of articles including a recent textbook called "Teaching Science for All Children." Following the publication of "New Dimensions in Science Education," an Ohio Department of Education (ODE) guide for school districts' science curriculum, Dr. Sexton was employed by the ODE to present workshops regarding that publication. In October 1993, Dr. Sexton made a presentation regarding distance learning and read and evaluated technology grants at the request of the ODE.

(Sexton Tr. 846-60; 866-68; Resume is Pl. Exh. 93)

44. Kathleen Schindler

Kathleen Schindler has been employed by the Ohio Department of Education since 1980 and is currently the Assistant Director of the Division of Special Education. Ms. Schindler obtained a bachelor's degree in speech and hearing therapy from Bowling Green State University in 1964 and a master's degree in guidance and counseling from The Ohio State University in 1977. Ten educational consultants and six support staff report to her, and she reports to Mr. John Herner. (Schindler Depo. 5-7; 9-10)

45. Frank Schiraldi

Frank Schiraldi has been employed by the Ohio Department of Education since 1978. He is currently Assistant Director of the Division of Curriculum, Instruction, and Professional Development. Dr. Schiraldi obtained a Bachelor of Arts degree in History from Youngstown University in 1965, a Master of Arts degree in Political Science from Kent State University in 1972, and a Ph.D. from The Ohio State University in Educational Theory and Practice in 1988. Dr. Schiraldi is a member of the Ohio Department of Education Technology Task Force, and authored portions of the State Board of Education's Plan for Technology. Dr. Schiraldi testified before the Court and his deposition taken by Plaintiffs was properly submitted as evidence. (Schiraldi Tr. 5032-33; 5035; Schiraldi Depo. 146)

46. Mark Semanco

Mark Semanco is a Plaintiff teacher employed by the Dawson-Bryant Local School District where he has taught high school science since the 1981-82 school year. He obtained a Bachelor's Degree in Biological and General Sciences from Marshall University in Huntington, West Virginia in 1980 and a Master's Degree in Biological Science from the same university in 1981. Mr. Semanco has taken post-graduate work in education administration and is certified to teach grades 7 through 12 in chemistry, biology, and general science. (Semanco Depo. 4-6)

47. Michael Shoemaker

Michael C. Shoemaker is a State Representative from the 91st District, which includes half of Pickaway County, all of Ross County and all of Vinton County. Representative Shoemaker taught high school level classes at Paint Valley High School, Chillicothe High School, and Unioto High School, and he has held certification for grades 7-12 in mathematics, science, physical education and health. In the field of education, Representative Shoemaker has held the positions of football coach, track coach, basketball coach and athletic director

Representative Shoemaker was first elected to the Ohio House of Representatives to represent the 88th District in November of 1982. He has served on the Health & Retirement Committee, the Education Committee, the Public Utilities Committee, the Finance & Appropriations Committee, and the Veteran Affairs Committee. Representative Shoemaker is currently chairman of the Finance & Appropriations Committee. Representative Shoemaker has also served on select committees, including the Public Testing and Competency Committee, the State Medical Board Committee, the Health Maintenance Organization Study Committee, the Select Committee to Review and Study Ohio's Education System and the Correctional Institution Inspection Committee. Representative Shoemaker has chaired the Select Committee to Review and Study Ohio's Education

System, and he spends between 65-75 percent of his time as a legislator on education. (Shoemaker Tr. 4049-57; curriculum vitae is Pl. Exh. 308)

48. Carol Spangler

Carol Spangler is the Superintendent of the Southern Local School District in Perry County. In 1975, she received a Bachelor of Arts degree from Marshall University in the field of education and speech therapy. In 1976 she received a Master's degree in speech pathology and audiology from the same university. She has taken courses at Loyola College in Baltimore, Maryland, in the field of curriculum and supervision and child language and additional course work in curriculum and supervision at Ohio University. She has entered a doctoral program in educational administration at Ohio University, where she has completed course work in school finance, school law, educational administration, curriculum development, curriculum supervision, curriculum change in educational philosophy and history pertaining to curriculum. She has authored student publications as well as two nationwide publications, one for professionals working in the field of speech and language disorders and another regarding curriculum. Carol is a member of two educational honorary societies, belongs to the Association for Supervision of Curriculum Development, is chairperson of the local Educational Media Research Center, and is Vice-Chairman of SEOVEC, a computer consortium that operates shared

computer services to school districts and operates as the district's A-site for the state's Education Management Information System (EMIS). She holds an Ohio Superintendent's Certificate, an Ohio Assistant Superintendent's Certificate, an Educational Specialist's Certificate in the area of Special Education or Exceptional Child, and a professional certificate in the area of speech and hearing therapy.

Ms. Spangler's professional employment began in the area of special education working with speech disordered children in Annapolis, Maryland from 1976 to 1978. She then returned to Ohio and served one year as a speech/language supervisor for Southeastern Ohio Regional Resource Center (SEORRC). In 1979-80, she served as a speech language pathologist for Meigs County School District. Then at the Federal Hocking Local School District, she held several positions over a number of years, beginning as a speech language pathologist and moving to directing and supervising budgets of the district's special education programs. Around 1985, she became director of curriculum at Federal Hocking and served in that capacity for about five years. As director of curriculum, she was responsible for implementing the 1983 minimum standards, including developing many new courses of study, implementing a competency based testing program, and providing staff development. In 1990-91, she served as middle school principal at Federal Hocking, and she became Superintendent at Southern Local in August 1991. (Spangler Tr. 420-29)

Upon becoming Superintendent at Southern Local Schools in 1991, Ms. Spangler undertook a variety of duties, including chief executive officer for the board of education, chief manager of operations such as transportation, food services, personnel, budget development, finance issues, finance monitoring and financial planning, and serving as the district's purchasing agent, reviewing each purchase order. Superintendent Spangler is involved with and makes presentations for staff development. She is responsible for development, monitoring, and compliance for state and federal projects, and she performs grant writing for the district. A major responsibility has been the restructuring of the school district. (Spangler Tr. 429-33)

49. Phyllis Spohn

Phyllis Spohn is a second-grade teacher at Plaintiff Northern Local School District, where she has been employed for 23 years. In her 23 years of teaching at Plaintiff Northern Local School District, Ms. Spohn has been a teacher's aide, she has taught 1st, 2nd, 3rd, 4th and 5th grades, and she has taught gifted students in grades 3 through 6. She has taught her entire 23 years at the Glenford Elementary School in Plaintiff Northern Local School District. Ms. Spohn received her bachelor's degree in Elementary Education from Ohio State University, and she is certified in grades 1 through 8 and gifted education. (Spohn Depo. 4-6)

50. Carl Swartzwelder

Carl Swartzwelder is a member of the Board of Education of Plaintiff Dawson-Bryant Local School District. Mr. Swartzwelder has been on the Board of Education for four years. Mr. Swartzwelder is also on the Dawson-Bryant Local School District Athletic Board.

(Swartzwelder Depo. 6)

51. Susan Tavakolian

Susan Tavakolian has been employed by the Ohio Department of Education since January of 1984. She currently holds the position of Director of School Finance, having been appointed to that position when Dr. James Van Keuren was promoted to Assistant Superintendent of Public Instruction. Prior to becoming Director of School Finance, Dr. Tavakolian served as legislative liaison between the Department of Education and the legislature.

From 1985 to 1989, Dr. Tavakolian was in charge of the Department of Education's simulation unit and took an active role in the development of the Department's state budget proposals. As legislative liaison, she continued to be involved in the budget process but assumed additional responsibilities for other Department of Education legislative positions as well. She reported to William L. Phillis prior to his leaving the department. Dr.

Tavakolian holds a Ph.D from the University of Massachusetts and a Masters Degree in public administration from The Ohio State University. (Tavakolian Depo. 5-17)

52. Kenneth Taylor

Kenneth Taylor is employed by the Ohio Department of Education as an "Area Coordinator." Mr. Taylor reports to Ray Cook, who reports to Dr. Susan Tavakolian in the Division of School Finance. (Taylor Depo. 52). There are nine Area Coordinators' offices in the state, and two Area Coordinators are generally assigned to each office, but not all positions are filled. (Taylor Depo. 17) Mr. Taylor's office serves Area 5, consisting of Galia, Lawrence, Jackson, Scioto, Pike, Ross, Pickaway, Fayette, Highland, Adams and Brown Counties. The area would be considered an economically depressed area, with very few jobs. Many people leave the area to find employment elsewhere. (Taylor Depo. 51). Mr. Taylor has been employed in that position and has served basically those same counties since 1977. He knows the superintendent and the treasurer in each of the school districts in Area 5 to varying degrees. (Taylor Depo. 16). Mr. Taylor's duties include consulting with superintendents on school finance issues, collecting subsidy data for the School Foundation Program, school transportation work, and some driver's education work. (Taylor Depo. 14)

Mr. Taylor received a Bachelor's Degree in Agriculture from

The Ohio State University, an Education Degree from Rio Grande College with an emphasis in math and science, a Master's Degree in Education Administration from Xavier University, and currently holds a superintendent's certificate. From 1972 to 1977, Kenneth Taylor was employed by the Department of Education as an education consultant, and he read and approved Title 1 projects from approximately 60 school districts scattered across the state. Title 1 was a program of compensatory education for educationally disadvantaged students that has now become the Chapter 1 program. (Taylor Depo. 8-11)

53. Christopher Thompson

Christopher Joel Thompson is a Plaintiff Student and a sophomore at Miller High School in the Southern Local School District. (Thompson Tr. 1306-07). Chris was born in 1978, began his first formal schooling at the kindergarten level in 1984, and has attended Southern Local Schools continuously since that date. Chris has attended every school building that has been operated by the Southern Local School District since 1984, except for Moxahala Elementary and the new elementary and middle school facilities opened in the fall of 1993. Chris plans to attend college and would like to study genetics and engineering, with a minor in computer engineering or computer programming. (Thompson Tr. 1352-53)

54. Sue Tobin

Susan Gail Tobin is an attorney employed by the Ohio Legal Rights Service (OLRS) and has been since 1981. OLRS is a state agency that receives state and federal funds to protect and advocate the rights of persons who are, or alleged to be, mentally ill, developmentally disabled, or mentally retarded. Ms. Tobin obtained a bachelor's degree from Kenyon College in 1978 and a juris doctorate from The Ohio State University College of Law in 1981. (Tobin Depo. 6; 12-13; Resume is Tobin Depo. Exh. 1)

55. Robert Towner

Robert Towner is Athletic Director at Miller High School in Southern Local School District, and Principal of the Middle School. He is a graduate of Corning High School and received a Bachelor's Degree in Education from Ohio University in 1964. In 1971, he obtained a Master's Degree in Secondary School Administration from Ohio University. He is a holder of a Principal's Certificate, for grades 5-12. He has worked in Southern Local School District since 1964, teaching sixth grade, as well as health and physical education in the high school. He has served as assistant basketball coach as well as head varsity basketball coach, and has been Athletic Director since 1976. (Towner Tr. 819-21)

56. James Van Keuren

James Van Keuren is employed by the Ohio Department of Education as an Assistant Superintendent of Public Instruction. He received his Bachelor's degree from Olivet College, his masters in education administration from Bowling Green State University, an EDS degree from Kent State University, and a doctorate in educational administration from Akron University. Dr. Van Keuren taught in the Waynesfield Goshen Local School District, served as junior high school principal at the Oberlin City Schools, high school principal at the Ledgemont Local Schools, and later as Superintendent of that district. He also served one year as superintendent of the Rolling Hills Local School District before coming to the Department of Education. Dr. Van Keuren began his work with the Ohio Department of Education in June of 1983 as director of the Division of School Finance. He continued in that capacity until April of 1992 when he became Assistant Superintendent for finance and administration. (Van Keuren Tr. 4632-42)

57. Donald Washburn

Donald Washburn is a Plaintiff Superintendent from Dawson-Bryant Local School District (Dawson-Bryant). Mr. Washburn obtained a Bachelor's Degree in 1970 and a Master's Degree in Adult and Continuing Education with an emphasis in counseling from Moorehead State University and has taken post-graduate work at Ohio University. He holds superintendents' certifications and adult

vocational director's certification and has held a variety of teaching certificates. (Washburn Tr. 2305-06) Mr. Washburn's first employment as an educator was at Rock Hill Local Schools in 1970 as a special education teacher. He was employed as Lawrence County Career Development Coordinator for two years, and then was Deering Elementary Principal at Dawson-Bryant Local from 1981 to 1988. From 1988 to 1990, Mr. Washburn was supervisor of curriculum and federal programs for Dawson-Bryant, and following two years of employment at the PLASCO-Ross SERRC, became Dawson-Bryant Superintendent in August 1992. Mr. Washburn has worked with the Ohio University southern campus in developing workshops and in-service programs for teachers, and since 1990 he has taught classes for Ohio University. (Washburn Tr. 2314-26)

Mr. Washburn is a member of several governing boards and is serving or has served on five committees to which he was appointed by a representative of the Ohio Department of Education (ODE); two committees dealt with teacher in-service, the other two dealt with revision of state regulation of special education, and the fifth was the Learners Outcome Panel, that was charged with restructuring all elementary and secondary standards for education in Ohio. In 1989, Mr. Washburn was recognized as the outstanding visionary in the state of Ohio by the ODE. (Washburn Tr. 2306-14)

Wayne White was Superintendent of Plaintiff Dawson-Bryant Local School District from 1982 until 1992. Presently he is director of the Ohio Appalachian Center for Higher Education. He received his undergraduate degree in elementary education from Ohio University, and in 1971 obtained his Masters Degree in Education from Moorehead State University. He is the holder of a permanent Superintendent's certificate. Mr. White taught history, American government, physical education and health at the high school level. He also coached high school basketball. He serves on numerous boards, including bank and hospital boards. Mr. White also served on the Ohio Department of Education Committee on Kindergarten. (White Tr. 2053, 2064-70)

59. Jane Wiechel

Jane Wiechel is Director of the Early Childhood Education Division of the Ohio Department of Education. The Division of Early Childhood Education is responsible for screening and assessing needs of young children, pre-school education, and school-age child care. The Division of Early Childhood Education is primarily involved with five areas, including: pre-school special education; public pre-school; Head Start; school-age child care; and screening and assessing needs of young children. (Wiechel Depo. 18-19)

60. Joseph Winnenberg

Joseph R. Winnenberg is a high school teacher at Southern Local School District, in Miller High School. He teaches senior English, senior English-College Prep., humanities, personal computing, and desk-top publishing. Mr. Winnenberg taught at Logan City School District, and New Lexington High School before he started teaching at Miller High School in 1983. He has variously coached football, basketball and track in the Logan City School District and New Lexington High School, and has also coached high school football in the Southern Local School District. Mr. Winnenberg belongs to the National Council of Teachers of English, and has served on the Advisory Board to Educational Technology Services, which provides educational TV and computing services to the public school in southeastern Ohio. He taught at Hocking Technical College as a computer instructor, and has provided consulting services to numerous businesses in town and to career education. (Joe Winnenberg Tr. 741-45)

61. John Winnenberg

John Winnenberg is a member of the Board of Education of Plaintiff Southern Local School District, where he has served since 1978. He has been president and vice president of the board on several occasions. Aside from his duties as a Board member, Mr. Winnenberg volunteers at the Millcreek Elementary School one morning a week.

After Mr. Winnenberg graduated from Miller High School in the Southern Local School District, he received a bachelor's degree in elementary and secondary education from Bowling Green State University. He has been certified to teach in the areas of special education and elementary education. After receiving his degree from Bowling Green, Mr. Winnenberg returned to Perry County to teach seventh grade at the New Straitsville Elementary School in the Southern Local School District for one year.

Mr. Winnenberg was born and raised in Southern Perry County, and he has resided there all but five years of his life. Mr. Winnenberg's daughter Emily is a second grade student at Millcreek Elementary in the Southern Local School District. Mr. Winnenberg is heavily involved in the Southern Perry County community. He is a member of the Citizens for Southern Local group, which is active in school district improvement issues. He is also involved in the Tecumseh Theater Restoration and the Shawnee Historical Preservation groups, which are involved in restoring the buildings in downtown Shawnee, Ohio. Mr. Winnenberg has been on the Perry County Library Board since 1976, and he publishes a local newspaper called "Community Life News." (John Winnenberg Tr. 1223-28)

III. THE ENTITLEMENT TO ELEMENTARY AND SECONDARY PUBLIC EDUCATION IN OHIO AND THE ADMITTED INEQUITIES IN THE PROVISION OF ENTITLED EDUCATIONAL SERVICES

1. It is the responsibility of the state of Ohio to provide school districts with adequate resources that are equitably and reliably distributed. (Sanders Tr. 4552; Ocasek Tr. 2792)

2. It is the position of the State Board of Education that all children in Ohio should have access to equitable educational opportunities. (Phillis Tr. 1741)

3. By statute, the State Board of Education is charged with the responsibility of providing the system of public education throughout the state. This responsibility includes providing the most effective and highest quality education. (Ocasek Tr. 2788)

4. The State Board of Education and the Ohio Department of Education have communicated to the Ohio General Assembly that the current level of funding for public education in Ohio is neither equitable nor adequate. (Phillis Tr. 1797-9 a)

5. The mission statement of the Ohio State Board of Education is:

The mission of education is to prepare students of

all ages to meet, to the best of their abilities, the academic, social, civic and employment needs of the 21st century by providing high quality programs that emphasize the life-long skills necessary to continue learning, communicate clearly, solve problems, use information and technology effectively, and enjoy productive employment. (Pl. Exh. 10, p. ii)

6. The State Board of Education has recognized that in the 1990s, the State of Ohio needs to restructure school funding, realign our resources to allow for greater flexibility at the district and building levels, and continue modernizing our vocational educational system to reflect the needs of a dynamic workplace. (Pl. Exh. 10, p. 10)

7. As part of a strategic plan for education in the 1990s, the Ohio State Board of Education set a goal of re-structuring the state school funding system, noting that successful school reform requires a funding system that truly equalizes the educational opportunities for all students. (Pl. Exh. 10, p. 16)

8. The State Board of Education has recognized the state's obligation to provide a high quality educational program

for all pupils in the state. Plaintiff's Exhibit 140 is the State Board's Budget and Policy Recommendations to the Governor and the 119th General Assembly. That document recognized the constitutional responsibility of the State of Ohio, and further pointed out five weaknesses in the state funding formula, which are as follows: (Phillis Tr. 1736-39; Pl. Exh. 140)

a. The level of basic aid provided through the school foundation program does not approach the average expenditure per pupil in Ohio. In 1980, basic aid represented 59 percent of the average expenditure, in 1989, the gap had grown to 70 percent. The average expenditure per pupil is out-pacing the foundation level at an increasing rate. (Pl. Exh. 140)

b. Categorical funds are not equalized. Wealthy districts receive the same unit funding for vocational and special education as poor districts. Poor districts have less ability to pay the difference in the cost of those programs between state funding and the actual program cost. (Pl. Exh. 140)

c. The operation of a guarantee provision diminishes

the equalization effects of the foundation program.

(Pl. Exh. 140; Ocasek Tr. 2843; see also Defense Opening Statement, Tr. 27)

d. The present charge-off does not accurately measure the ability of districts to pay the local share of the foundation program. (Pl. Exh. 140)

e. Only small effort is given to the funding of capital improvements from the state level. (Pl. Exh. 140)

9. Ohio State Board of Education President Oliver Ocasek has stated publicly that he hopes the Plaintiffs win the instant case. Further, he informed the State Board of Education at its October, 1993 meeting that if the price of the State of Ohio winning the case was that he would have to testify that funding was adequate, that there was equity, and mills were equal, then he could not so testify and would just as soon lose the case.

10. The General Assembly has not appropriated sufficient funds to alleviate disparities between school districts. Equalization is not occurring as it should. The system is failing at the extremes, for the rich and for the poor. (Ocasek Tr. 2842)

11. The extent of disparity in school district expenditures between school districts in Ohio ranks our state as one of the most disparate states in the nation. (Russell Depo. 177; see also Alexander Tr. 3728)

12. Superintendent Sanders has conceded the disparities in funding to school districts is not morally right. (Sanders Tr. 415, 4556)

13. State Superintendent Sanders has informed the State Board of Education, "I do know that the state's system of school finance is not morally right. . . the disparity between high-spending and low-spending districts is too wide. . . classrooms in some districts are not equipped with appropriate instructional materials and equipment; many teachers use their personal funds to purchase supplies for their classrooms; the state still raises the majority of its resources for education through the property tax; the system has not responded to the categorical problems changing demographics of communities, families, and children; and categorical problems limit local communities' and schools' flexibility to address the underlying problems and needs of students." (Pl. Exh. 40, p. 5)

14. Defendants have admitted that the current system of funding public elementary and secondary education in Ohio is in need of reform. State Superintendent Sanders and the State Board of Education have communicated to the Ohio General Assembly the belief that "If every learner is to have access to the educational opportunities that will achieve the results we require as a state, we will need to comprehensively reform our school finance system." (Defense Opening Statement, Tr. 42; Sanders Tr. 348; Pl. Exh. 15 p.1)

15. Defendants have admitted that Ohio's educational system has become obsolete and cannot fully respond to the challenges our state will meet in the remainder of this century and into the next. (Sanders Tr. 349; Pl. Exh. 15 p. 2)

16. Defendants have recognized that inadequate resources could doom Ohio students to a second class educational system the effects of which will be felt far into the future. Similarly, inequitable distribution of resources will deny some students access to the educational opportunities students enjoy in wealthier districts. (Sanders Tr. 362; Pl. Exh. 15, p. 15)

17. Investment in education is essential to the state's economic growth and security. (Sanders Tr. 4550-4551)

18. In September of 1993, Superintendent Sanders notified the school superintendents of Ohio that-the legislative budget efforts for the current biennium had not been able to "...secure a level of funding sufficient to cover even the ongoing cost of current operations for all of our school districts." (Sanders Tr. 412; Pl. Exh. 39; Pl. Exh. 31)

19. Defendants have conceded that the disparities in the state's spending across school districts in the state are not good public policy. A range of two to one in expenditures for education is too great as a matter of public policy. (Sanders Tr. 4490-4491)

20. either the Ohio General Assembly, the Ohio Department of Education nor the State Board of Education has ever determined the amount of money required to provide a specific educational program for a specific school pupil. Amounts appropriated for the funding of public elementary and secondary education are a "budgetary residual" based on funds remaining after programs with legal entitlement have been provided for. (Russell Depo. 90; Tavakolian Depo. 142; Sanders Tr. 4525 4526; Phillis

Tr. 1725-26; Fleeter Depo. 11; Shoemaker Tr. 4161)

21. Many school districts in Ohio do not have enough money to cover the basic needs of the pupils whom they are statutorily and constitutionally obligated to educate. (Sanders Tr. 4548; Shoemaker Tr. 4175)

22. Neither the \$54 increase in the foundation level, the provision of \$60 million in "equity" money for the 1993-94 school year, nor the additional \$75 million in "equity" money for the subsequent year is sufficient to significantly reduce the degree of inequity in school funding in Ohio (Sanders Tr. 4544)

23. The Governor acknowledges that there are inequities in the system of public school funding in Ohio, and that unless this is remedied a court will order a remedy. Governor Voinovich wants to see more equity in the school financing system. (Browning Tr. 4464, 4466)

IV. THE HISTORY OF SCHOOL FUNDING IN OHIO

A. HISTORY OF OHIO'S PUBLIC SCHOOL FUNDING SYSTEM

1. The Northwest Ordinance of 1787 recognized that education is important in our society: "Religion, morality and knowledge being necessary for good government and the happiness of mankind, schools and the means of education shall forever be encouraged." (Pl. Exh. 161; Pl. Exh. 445; Pl. Exh. 142 p. 2)

2. In 1785, a land ordinance was adopted setting aside the 16th section of each township in each county of Ohio for the maintenance of public schools within the township. (Pl. Exh. 161)

3. The delegates to the Ohio Constitutional Convention of 1802 recognized that "schools and the means of instruction shall forever be encouraged by legislative provision, not inconsistent with the rights of conscience." (Pl. Exh. 445)

4. The 1802 Constitutional Convention delegates also found that the doors of Ohio's schools should be open without distinction or preference, and that the common school system of Ohio should be adequate to afford a liberal education, not merely the rudiments of education, to the whole population. (Pl. Exh. 445)

5. In 1821, Ohio's first general school act provided for

the establishment of school districts in each township and the for property within each district to be subject to school taxes. The Act was a failure because the levying and collections of taxes was at the discretion of the district. (Alexander Tr. 3631; Pl. Exh. 161)

6. In 1822, the Commissioners of Ohio's Common Schools recognized that "education should seek to bring its subjects to the perfection of their moral, intellectual and physical natures, so that they may be of the greatest use to themselves and others." The Commissioners also recognized that "with a population, made up entirely of individuals, thus educated, our penitentiary would hardly be needed, or if needed at all, its tenants would be few, and the expenses of that school or vise, trifling to the community." The Commissioners asked the question, "what man among us would not sooner pay tax for the purpose of educating the poor, in the ways of knowledge and virtue, than, in the penitentiary, be preparing them for doing more and more mischief to society." (Pl. Exh. 458, p. 3)

7. In 1825, Ohio's next major school act passed allowing for the election of school directors to manage the schools and a county board of examiners to certify teachers. The Act required districts to levy taxes on

property. (Pl. Exh. 161)

8. The current language of Article VI, Section 2 of the Ohio Constitution, commonly known as the "thorough and efficient clause," and requiring the Ohio General Assembly to secure a "thorough and efficient system of common schools throughout the state" was adopted as part of the 1851 Ohio Constitution on March 10, 1851. The 50th General Assembly of the State of Ohio under the Constitution of 1851, provided for the reorganization, supervision and maintenance of common schools in Ohio by act dated November 15, 1852. (Pl. Exh. 459)

9. The concept of "common schools" emerged from the writings of Henry David Thoreau and John Locke and later Thomas Jefferson, Benjamin Rush, Horace Mann, and Ohio's first Superintendent of Common Schools, Samuel Lewis. The concept was based on the view that education is one of the rights of man, that every person was entitled to knowledge, and that knowledge should be protected by government. The "common school" related to commonality of benefit from education. The word "common" in this context historically and philosophically means that the government participates in a social contract with all of the people in the state and they all participate equally. Government has no reason to treat them

differently. (Alexander Tr. 3628-29)

10. The term "system" as related to the concept of a system of common schools was discussed by Benjamin Rush as encompassing the concept of an organized delivery of public education on equal terms to all pupils, the concept of system was incremental in that the educational structure envisioned by the framers was one that developed from grade to grade. (Alexander Tr. 3632)

11. The terms "thorough and efficient" in the historical and philosophical context of the development of education clauses encompass the idea that an efficient system of public education is one that developed all of the human capital of the state based on the view that the state must efficiently utilize its human capital in order to produce wealth. Education enabled the people of the state to become producers as well as consumers. (Alexander Tr. 3634-36)

12. In the context of the historical development of the terms "thorough and efficient system" of "common schools", it is the obligation of the state to provide for the schools and to provide the resources for the operation of schools. The state has a burden of justification if it departs from equal distribution of

its resources for education. (Alexander Tr. 3636-37)

13. The delegates to the 1850 Ohio Constitutional Convention recognized that education is essential to self-government, freedom of the press, freedom of speech, and freedom of thought, and that "had not knowledge been shed upon the human understanding, all would have remained in the darkness of heathenism and governed by superstition and fanaticism." (Pl. Exh. 456, p. 15)

14. The delegates to the 1850 Ohio Constitutional Convention recognized that the institution of a thorough and efficient education system was necessary to allow Ohio to compete with the other states in the Union, and that in order to compete, Ohio would have to assist in "so great an enterprise." (Pl. Exh. 456, p. 15)

15. At the 1850 Constitutional Convention, the house committee that was convened to consider the role of the state in public education reported "[t]hat in the opinion of the committee, the education of our youth is the first care and highest duty of every parent, patriot, and statesman." (Pl. Exh. 456)

16. On September 3, 1912, Article VI, Section 3 of the Ohio

Constitution was adopted, providing for the organization, administration and supervision of state schools. The Ohio School Survey Commission followed in 1913, and many of their recommendations were enacted into law in 1914. Some of those enactments were:

a. Establishment of county school districts, which provided for the supervision of the schools in each county (Pl. Exh. 161);

b. Fifty percent (50%) state reimbursement for the salaries paid to employees of each county system. This partial reimbursement partially funded the supervision mandate; however, schools relied almost exclusively on property taxes for funding until 1935 when the foundation program was adopted. (Pl. Exh. 161)

17. On November 3, 1953, the current version of Article VI, Section 4 of the Ohio Constitution was enacted, establishing a state board of education and a superintendent of public instruction to be appointed by the state board of education. (Pl. Exh. 187, 190).

18. The history of the Foundation Program is as follows:

a. Prior to establishment of the foundation program, state support was only provided to financially weak districts under the provisions of an educational equalization law, which was repealed in 1935. (Pl. Exh. 161)

b. In 1935 the General Assembly passed the Foundation Program Act, which created a method of funding a basic education for all public school students. (Pl. Exhs. 167, 168). The Program was constructed so that each school district in the state had a guarantee that the district would receive in total support in state and local taxes an amount determined by computing the district's Foundation Program payment. (Pl. Exh. 161)

c. Under the original Foundation Program, a state sales tax was enacted to support schools, allowing 50 percent state funding for schools. The state share of funding remained at approximately 50 percent until 1946. From 1946 to 1965, the state share dropped to 30 percent. From 1965 to present, the state share has increased back to a level close to the 1935 level of state support of approximately 50 percent. (Phillis Tr. 1829; Pl. Exh. 161)

d. The original Foundation Program calculated the cost of a school district's foundation program payment based on four different rates according to grade level. These rates applied to the number of students in kindergarten, in grades 1-8, in grades 9-12, and in part-time, continuing education and evening schools. An amount for transportation was included. (Pl. Exh. 161)

e. Funds under the original Foundation Program were distributed based on ADA (average daily attendance). School districts received a flat distribution payment amounting to approximately 52 percent of calculated cost of each pupil level. A school district received additional aid if funds received from the flat rate plus 3 mills of assessed valuation were less than the calculated cost of the foundation program. (Pl. Exh. 161)

f. Significantly, the original Foundation Program introduced three concepts in school funding to Ohio: an equalization factor; a formula charge off based upon a local community's ability to fund schools; and a guaranteed amount of financial support for the district. (Pl. Exh. 167, 168)

g. Changes to the Foundation Program over the next 20 years were minimal and included the increase of both the charge-off and required local millage. Distribution changed from a basis of ADA (Average daily attendance) to ADM (average daily membership).

h. In 1956, the Foundation Program Act was repealed and replaced by a five-prong funding formula based on teacher units, a teacher salary allowance, a current operation expense allowance, and a formula charge-off deduction. Special education and vocational education units were also allocated by this formula. (Pl. Exhs. 167, 168)

i. The number of units under the 1956 formula was based upon the number of students in all instructional areas; one unit was assigned to each of thirty students in grades 1-12, and one unit was assigned for each kindergarten unit. Added to these classroom units were the number of approved special education and vocational units, one administrative unit for each 8 classroom units, and one supervisory unit for the first 50 approved classroom units and one for each additional 100 units. (Pl. Exh. 161)

j. Under the 1956 formula, a school district received the larger of two calculations

(1) The unit allowance times the number of units or; (2) The salary allowance of all certificated personnel according to the minimum teachers' salary schedule, plus amounts for retirement and sick leave, classroom operation and transportation less the 10 mil charge off. (Pl. Exh. 161)

k. In 1972, the foundation calculation returned to an ADM basis. The charge-off was applied to the basic aid amount plus supervisory amounts, with transportation, special education and vocational education classroom units not subject to the equalization charge-off. Municipal overburden funding was introduced, targeting funds to districts with an ADM of greater than 20,000. Districts with an ADM greater than 70,000 received additional amounts. (Pl. Exhs. 161, 168, 169)

l. In 1976, the equal yield formula was introduced. It was intended to provide an equal sum of combined state and local funds, on a per pupil per mill

basis, for each qualifying school district. The millage for each district was equalized to reflect estimated changes in the per pupil value of a mill figure due to reappraisal of real property values. (Pl. Exhs. 161, 167, 168). The Equal Yield Formula provided a 2-tiered system:

(1) Every district received an amount per pupil per mill for the first 20 mills;

(2) Additional amounts were given to school districts with millage above 20 mills up to 30 mills. (Pl. Exh. 161; see also Tavakolian Depo. 48)

m. The equal yield formula, subject to challenge in the case of *Cincinnati v. Walter* (1979), 58 Ohio St. 2d 368, operated differently than the school foundation program. The equal yield formula incorporated a "power equalizing" tier by which local millage in excess of 20 mills was augmented with additional state revenue. The power equalizing portion of the system was never fully funded, and the power equalizing concept was abandoned by the legislature in 1981. (Phillis Tr. 1836; Ocasek Tr. 2822-2823; Fleeter Depo. 13)

n. The Equal Yield Formula increased the disparity in the revenue actually received by school districts. Districts which voted the additional millage necessary to receive the incentive funds were usually wealthy districts. (Pl. Exh. 161)

o. In 1976, the current DPIA (disadvantaged pupil impact aid) replaced municipal overburden funding. DPIA changed the focus from districts with large populations to districts with high percentages of children from families on ADC. (Pl. Exh. 161)

p. In 1982, the foundation formula assumed its present form. This Formula, as described in Plaintiffs' Exhibit 399, was designed to assure each school district adequate funding to provide each student a basic education at 20 mills of levied property tax. (See Stip. 15; Pl. Exhs. 161, 168, 169)

19. Transportation was the first categorical program. Categorical funding for special education was introduced in 1945, and by 1958, there were six categorical line items. Currently, there are 70 categorical line items in the state budget. (Pl. Exhs. 161, 168, 169)

20. During the period from 1982-1990, Federal funds flowing to state school districts represented an average of four to five percent of the total budget for public elementary and secondary education. The remainder of the funds were made up of a combination of state and local tax revenues. (Russell Depo. 27)

B EDUCATION APPROPRIATIONS AS A FUNCTION OF THE STATE BUDGET

1. The biennial budget begins July 1 of every odd numbered year. The State of Ohio must have a balanced budget. (Browning Tr. 4364)

2. In the last biennium, the state went through four rounds of budget cuts. The Governor cut over \$700 million out of the budget. (Browning Tr. 4414)

3. The largest single item in the general revenue fund appropriation in the recent budget was Medicaid, reflecting 32.1 percent. Medicaid has increased approximately five times the rate of inflation. Medicaid is an entitlement program. (Browning Tr. 4374)

4. The budget for the Department of Rehabilitation and Correction has been growing dramatically. There has been a growth in incarceration from 16,000 in the early 1980s

to a projected 42,000 in July, 1994. The Department of Education and Superintendent of Public Instruction recognize the relationship between the number of high school dropouts and the size of the prison correction population. (Sanders Tr. 349; Pl. Exh. 15 p. 2; Browning Tr. 4376)

5. Both the appropriations for Medicaid and the Department of Rehabilitation and Correction have been growing at the same rate. (Browning Tr. 4377)

6. For the fiscal year 1994-95 biennium budget, prison spending rose over 33 percent. The budget proposed hiring 904 new correction officers, a proposal adopted by the General Assembly. The debate about hiring new guards was intensified by the Lucasville prison riots. (Browning Tr. 4395-96)

7. In the new biennium, Human Services received an increase of 16 percent. Spending for colleges and universities also rose about 6.6 percent. (Browning Tr. 4397)

8. The increase for primary and secondary education in the new biennium (FY94 and FY95) is only approximately 4 percent over the biennium. (Browning Tr. 4393)

9. The state education budget receives the remaining funds after state legislative appropriations for human services and corrections. (Sanders Tr. 4555; Pl. Exh. 40; Shoemaker Tr. 4161; Russell Depo. 92)

10. Over the past 16 years, the relative percent of the state budget devoted to elementary and secondary education has declined. (Russell Depo. 52; Shoemaker Tr. 4174-75; Pl. Exh. 182 p. 6; Tavakolian Depo. 50; Maxwell Tr. 138)

11. In FY81, total educational disbursements in the State of Ohio were 35.54 percent of all state disbursements. In FY93, educational disbursements were 31.39 percent of total state disbursements. (Pl. Exh. 38)

12. Pl. Exh. 142 is the final report of the Gillmore-Cupp Commission to Study School Funding and Expenditures, released to the Ohio Senate in 1989. That document recognized that primary and secondary education's share of the overall state operating budget gradually decreased over the decade of the 1980's. The Gillmore Cupp Commission determined that if education funding from 1979 to 1989 kept pace with increases in general revenue funding, there would have been \$3.1 billion more for education. (Shoemaker Tr. 4159-60; Pl. Exh. 142, p.

3)

13. The extent of disparities in funds available for the education of pupils among Ohio school districts has grown over the period from 1980 to 1990 and continues to grow. (Tavakolian Depo. 52)

14. When the legislature passed a \$1 billion increase in taxes in Ohio in December, 1992, President Ocasek was astounded that the money did not go for education. (Ocasek Tr. 2859)

15. In the total context of the most recent State Budget, education did not do well, and other areas of state government did better in funding. (Ocasek Tr. 2960)

16. The 1992-93 budget was the first to allocate Division of Youth Services tuition charges to school districts; those costs have formerly been absorbed by the State. (Tavakolian Depo. 168)

17. The new budget for FY94 and FY95 approved by the General Assembly included a \$115 million pay raise for state employees. (Browning Tr. 4397-98)

18. During his employment as Director of the Office of

Management and Budget, commencing in January, 1991, Director Browning's salary has increased 15 percent. He, as well as other state employees, enjoys standard state health benefits, including HMO coverage, dental and vision care, for him and for his family members.

(Browning Tr. 4442-44)

19. Within the current education budget of \$8 billion, there are some line items that do not go to public school districts, including those for county MRDD boards, for transportation and vehicle purchases, totaling \$13.3 million. Also, \$160 million is contained the budget for "auxiliary services," but this represents monies spent for children in non-public schools.

(Browning Tr. 4411)

C. THE IMPACT OF STATE BUDGET REDUCTIONS ON PUBLIC EDUCATION

1. The Governor of Ohio has the authority to reduce funds appropriated for the operation of the school foundation program at any time in the event of a projected shortfall in state tax revenues. Such reductions have been implemented by three Ohio Governors since 1980, with the latest of these cuts occurring in FY92. In that year, due to a projected shortfall of state revenues to meet state appropriations, Governor Voinovich cut \$88.8

million out of the state funding for primary and secondary education. (Stip. 13; Browning Tr. 5487)

2. In the 1992 cuts, the poorest 172 districts in the state were subject to a hold harmless clause. Those districts are listed in Stipulation Exhibit 14. (Stip. 13; Stip. Exh. 14; Browning Tr. 5487)

3. These reductions caused some school districts to seek spending reserve loans and others to seek increases in the size of emergency school assistance loans previously approved. (Brown Tr. 5487)

4. By law, the state of Ohio must have a balanced budget. The State cannot engage in deficit spending. By its actions in implementing budget cuts and reducing monies that otherwise would be going to public school districts, the State has forced some of those districts to borrow money that would otherwise not have been borrowed. (Brown Tr. 5494)

5. In January 1992, Superintendent Ted Sanders issued a memorandum to all city, county, local, exempted village and joint vocational school superintendents in the State of Ohio regarding the budget reductions imposed by the Governor in January of 1992 detailing the impact of the

\$88.8 million budget reduction on the school districts in the State of Ohio. (Pl. Exh. 17)

6. As a result of budget cuts required by the 1993 budget bill, H.B. 152, basic aid was held harmless, but the remainder of the SF-12 items received cuts of 1.37 percent. Consequently, DPIA, special education, gifted education and transportation were cut across the board by 1.37 percent, and vocational education was cut by .28 percent. (Pl. Exh. 442)

7. Senator Aronoff testified that in the last biennium, there were approximately \$700 million made in overall budget cuts by the State of Ohio. Neither Senator Aronoff nor Governor Voinovich, nor any legislator, is in a position to make any assurances to anyone that there will not be any further budget cuts in this biennium, the next biennium, or beyond. (Aronoff Tr. 4858-59)

8. Director Browning also conceded that it is possible that another budget crisis will arise in the next biennium, so that the state may once again have to reduce expenditures. This is because Ohio is required to have a balanced budget, and the Governor has authority in that regard to cut the budget, and the General Assembly can

act at will. (Browning Tr. 4414)

9. There are always unanticipated expenses that can occur that will affect the budget. Such expenses include the Lucasville prison riot, which was unanticipated and cost the State of Ohio at least \$10 million, as well as additional funds not yet tallied. (Browning Tr. 4417)

10. With reference to equity funds to school districts, Senator Aronoff testified that there is no assurance beyond the present biennium budget that there will be any further equity funds available to any school districts after FY95. (Aronoff Tr. 4854) Although the State of Ohio, according to Senator Aronoff's testimony, has a surplus of approximately \$100 million, Senator Aronoff refused to say whether any of those monies would go toward education. (Aronoff Tr. 4855)

11. President Ocasek's frustration as a legislator, and today as a taxpayer, is that the legislature can appropriate monies for only a two year period. Having been an educator, he finds it very difficult to run a school district on a two-year commitment. (Ocasek Tr. 2822-2823)

D. BUDGET AND POLICY RECOMMENDATIONS OF THE STATE BOARD OF

EDUCATION

1. Every two years the State Board is required by law to develop budget and policy recommendations to the Ohio General Assembly. (Russell Depo. 10)

2. The State Board of Education prepares and submits recommendations to the Ohio General Assembly in advance of the approval of each biennial budget. The State Board's recommendations are developed through the efforts of the State Board members and the Ohio Department of Education staff with input from state educational organizations and other interested persons. (Tavakolian Depo. 19)

3. State Board of Education budget proposals have been heard before the Education Subcommittee of the House Finance Committee. The level of appropriations is determined by the Full Finance Committee in the House and the Senate Finance Committee, neither of which routinely hear Department of Education testimony in support of its education budget. (Phillis Tr. 1800-01)

4. The State Board's budget proposals are based on estimates of the costs of the programs proposed together with a consideration of political realities. (Tavakolian

Depo. 143)

5. According to the Budget and Policy Recommendations for the 1992-93 biennium, the "common" school that served so well in the past is not able to cope effectively with the changes in the social and economic order. The school system must be restructured immediately to accommodate the current social and economic needs. The call for reform during the decade of the 1980s produced minimal results. The State Board of Education believes the "common" school can and will be restructured to more appropriately serve the pupils of Ohio. The State Board of Education's Policy and Budget Recommendations convey a sense of urgency for educational reform and restructuring. (Pl. Exh. 16, 1-2)

6. Tavakolian Exhibit 1 is the Legislative Recommendations to the Governor and Members of the 117th General Assembly adopted by the State Board of Education and submitted to the 117th General Assembly for FY88 and FY89. (Tavakolian Depo. 22; Tavakolian Depo. Exh. 1)

7. Tavakolian Exhibit 2 is the State Board's legislative Recommendations to the Governor and Members of the 118th General Assembly as adopted by the State Board of Education on or about Dec. 12, 1988. (Tavakolian Depo.

23; Tavakolian Depo. Exh. 2)

8. Tavakolian Exhibit 3 is the State Board's Policy and Budget Recommendations to the Governor and the 119th General Assembly as adopted by the State board on December 10, 1990. At that time, the State Board of Education determined that the Ohio Constitution may reasonably be interpreted as follows:

a. The General Assembly, not the local school district, bears full responsibility for providing an education system.

b. "Common" implies that schools must be available to all at no charge and implies a level of adequacy of uniform quality. Common schools must be supported by taxes and by their nature cannot be private.

c. "Thorough and efficient system" implies a high degree of uniformity of programs and services. It implies an appropriate curriculum that is reasonably uniform for all children. It also implies that each pupil in Ohio has an equal prospect for educational opportunities. (Tavakolian Depo. 27; Tavakolian Depo. Exh. 3)

9. Stipulation Exhibit 12 represents a comparison of the amounts requested by the State Board of Education as compared with the amounts actually appropriated for the operation of public schools for a number of years. That comparison reflects that in FY86 and FY87, the legislature appropriated more dollars than were requested by the State Board of Education. In all other years the appropriations were far less than required. The reason for the 1986-87 appropriation level was that the State Board of Education advanced a master plan for the improvement of public education with respect to those years but did not reflect the cost of those specific proposals in their budget requests. (Phillis Tr. 1729-30)

10. The State Board's Budget and Policy Recommendations for 1984 and other years included a recommendation for the equalization of funding for facilities. By that recommendation, funds would be appropriated such that a mill of tax for facilities in a poor school district would be brought up to a greater level so that there would be an equalization of funding for levels of tax effort. Equalization has been proposed by the State Board of Education a number of times but has not been approved. (Phillis Tr. 1732-33)

11. For the last two fiscal years (FY94 and FY95), the State Board of Education requested a billion dollars more in funding than that which was appropriated by the General Assembly. (Ocasek Tr. 2806)

12. For FY94 and FY95, the State Board of Education requested a \$1.9 billion increase from the General Assembly and received only a total of \$625 million increase in funds for public education. (Russell Depo. 53)

13. The \$1.9 billion increase that was requested for elementary and secondary education by the Department of Education for the 1994-1995 biennium, and which was not included in the State budget, represented amounts reasonably believed by Dr. Sanders and the State Board of Education to be necessary for the education of Ohio's public school pupils. (Sanders Tr. 4527)

14. President Ocasek referred to the Budget and Policy Recommendations of the State Board of Education for the 120th General Assembly (Pl. Exh. 15), in which the State Board of Education advocated the need for comprehensive reform in Ohio's system of funding public education. The current State Board of Education, upon which President Ocasek serves, concurs in that position, as does

President Ocasek, personally. (Ocasek Tr. 2794)

Additionally, President Ocasek testified that the current State Board of Education has adopted the three goals set forth in Pl. Exh. 15, including the goals of equity, adequacy and reliability of school funding.

President Ocasek concurs in these goals. (Ocasek Tr. 2795)

15. Dr. Payton compared the State Board's proposal adopted December 13, 1992 (Payton Depo. Exh. 6) with the Governor's budget proposal at that time and found that the State Board's proposal would have resulted in greater increase in equity in both FY94 and FY95 than will be achieved by the provisions enacted by the General Assembly. (Payton Depo. 170-71)

16. Each year, the Ohio Board of Education publishes its annual report. Each of those annual reports contains information regarding appropriations and expenditures for education throughout the State of Ohio, as well as information, charts and graphs regarding demographic information, financial information and test scores for school districts throughout Ohio. Annual reports of the State Board of Education for the years 1980 through 1991 were admitted into evidence as Plaintiff's Exhibits 356 to 367.

V. OPERATION OF THE SCHOOL FOUNDATION PROGRAM

1. Of the total revenue for the support of public schools in Ohio for FY92, 42.7 percent comes from state taxes, 5.7 percent comes from federal revenue sources, and 51.6 percent comes from local taxes. The percentage of state revenue is less for Ohio than for the nation, with the national percentage of state revenue being 48.3 percent.

(Alexander Tr. 3706; Pl. Exh. 302 p. 10)

2. Plaintiffs' Exhibit 399 is a publication of the Ohio Department of Education describing the operation of the school foundation program. Van Keuren Deposition Exhibit 14 is a description of the method by which the cost of doing business factor (an element of the foundation program) is calculated. (Pl. Exh, 399; Van Keuren Depo. Exhs. 13, 14)

B. STATE BASIC AID

1. Stipulations 8 through 12 and Stipulation Exhibits 11 through 13 deal with the concept of state basic aid and the basic aid levels from year to year as well as basic aid amounts requested compared to amounts appropriated.

2. For 1991, the basic aid level established by the school foundation program was \$2,781 per pupil. That level of funding consists of a combination of state and local funds. The basic aid level is reduced by a "charge off" which has consisted of 20 mills times the assessed valuation of the school district. The amount of the "charge off" will vary with the valuation of taxable property in the district. In 1991, the 20 mill "charge off" produced \$307 per pupil in the poorest school district, Huntington Local, and \$17,408 in the wealthiest school district, Perry Local. (Maxwell Tr. 57)

3. State Basic Aid is reflected on lines 5 and 6 of the Ohio Department of Education form SF-12. State Basic Aid is adjusted by the school district equalization factor, also referred to as the cost of doing business factor. The range of adjustment is from zero to 1.075 times the basic aid amount. The adjustment varies from county to county, with Cuyahoga County receiving the largest adjustment. (Maxwell Tr. 97)

4. The cost of doing business factor is calculated for school districts every two years with wage data obtained from the Bureau of Employment Services, which includes eight or ten different sectors in the economy used to

calculate the average weekly wages. School district employees wages would be figured into the public employee sector of the calculation, along with all of the other sectors, and would be a very small portion of the total calculation. Educational costs are not considered in computing the cost of doing business factor. (Payton Tr. 4921-22)

5. Cost of doing business factors are applied equally all school districts in a county, regardless of the actual cost of operations in the individual districts. (Maxwell Tr. 97)

6. Cost of doing business factors assume that costs are lower in rural districts. However, costs in rural districts, particularly in construction, may be as high or higher than in urban districts. (Shoemaker Tr. 4176-77)

7. If a school district buys textbooks, pays utility bills, purchases insurance, or is required to pay other fees, those expenses would not be affected by location in the state. (Payton Tr. 4921-22)

8. The cost of doing business factor for Southern Local is approximately 1.02, which is on the lower end of that

adjustment. For many expenses, the cost of doing business in Perry County is not less than the cost of doing business in any other county, because mechanical parts may have to be ordered from somewhere else, service personnel have to come from Columbus, and transportation costs must be paid for that travel.

(Spangler Tr. 480-81)

9. Average Daily Membership (ADM) is the number of pupils included in the basic aid portion of the school foundation calculation. ADM does not include one-half of the kindergarten pupils, pupils in special education units, or pupils in vocational units except that in school districts with pupils attending joint vocational schools, only 75 percent of the ADM count for vocational pupils is excluded. Preschool special education pupils are not included in ADM though special education programming for those pupils is required by law.

(Maxwell Tr. 101-104)

10. The increase in the charge-off from 20 mills to 20.5 mills in the first year and from 20.5 to 21.0 mills in the second year represents savings to the state of approximately \$13 million per year for each of those years. (Sanders Tr. 4528)

11. The increase in the "charge-off" from 20 mills to 20.5 mills in 1993-94 and 21 mills thereafter will require a greater contribution of local dollars to maintain the same relative level of funding. (Russell Depo. 89; Shoemaker Tr. 4173; Pl. Exh. 182, p. 4)

12. The combined effects of increased valuation through reappraisal, resulting in an increased "charge off" applied to the calculation of basic aid, with the lack of growth in local tax levy revenue due to the application of tax reduction factors leads to a circumstance under which some school districts can experience a growth in the value of local school district property and a net loss in school district operating revenue. This circumstance is an aspect of a problem with the current foundation program sometimes described as "phantom revenue." (Maxwell Tr. 98-99; Maxwell Depo. Exh. 3 pp. 37-38; Russell Depo. 87-88; Fleeter Depo. 22, 23)

13. The amount of the 20 mill charge-off provision of the foundation program is determined solely based on the valuation of taxable property in the school district without regard to the income of the school district residents. The sole reliance on property value for this purpose is considered by the State Board of Education to

be a weakness in the school foundation program.

(Tavakolian Depo. 57)

14. The changes in the foundation program for FY94 and FY95 have also created circumstances by which some school districts will actually receive less money, considering the operation of the foundation program and guarantee provisions, than they would have received without the changes. (Maxwell Tr. 139, 141, 143)

15. Failure to increase state basic aid level by a sufficient amount for the current biennium has further exacerbated the fundamental weaknesses in the school foundation program. (Maxwell Tr. 143)

16. Under the current biennial budget, approximately 130 to 140 Ohio school districts will receive less in state funds than they received previously. Absent the passage of additional local tax levies those districts are faced with the problem of continuing their education programs with reduced levels of funding. (Sanders Tr. 4494)

17. The amount of basic per-pupil aid guaranteed to local school districts by the foundation formula (\$2,817 per pupil for school year 1992-93) is determined by the General Assembly in conjunction with the biennial budget

process. (Stip. 9)

18. The State Board of Education, according to President Ocasek, has taken the position that the foundation figure should be \$4,000 per pupil. (Ocasek Tr. 2838)

19. The difference between average per pupil expenditure and state basic aid has increased each year over the past five years. One of the weaknesses is the school district per pupil expenditure is greater than the foundation formula amount. The disparity between the two numbers has increased over time. (Tavakolian Depo. 53; Russell Depo. 92)

C. THE RELIABILITY OF STATE FUNDING AND FORM SF-12

1. Reliability is an important aspect of school finance. If school districts are unable to rely on stable income, they cannot plan educational programs with the confidence that they will be sustained. (Sanders Tr 362-363; Pl. Exh. 15 p. 15)

2. The funding formula does not provide reliable funding for school districts. School districts cannot operate efficiently when they do not know what their revenue will be. The reliability of state funding has been a

problem for school districts in planning and budgeting.

(Taylor Depo. 96; Washburn Tr. 2330; Fleeter Depo. 1)

3. There is no single document to tell a school district Treasurer the total amount of local tax revenue that the school district will have for the year. The County Auditor is the sole source of information about the amount of local property tax revenue to be received.

(Russell Depo. 77, 78)

4. The final tax distribution of local property tax revenue is in the fall, the only time that a school district knows for sure how much it will receive in local tax revenue. (Brown Depo. 183; Russell Depo. 80)

5. The Department of Education notifies public school districts of the amount of money to be received from the school foundation program, which provides funding for basic aid, Disadvantaged Pupil Impact Aid, special education, gifted education, transportation, vocational education, and extended service, through the use of a form called an SF-12. (Taylor Depo. 97)

6. Payment of foundation funds is made based on an estimated number of students, and an estimated number of vocational, special education and gifted units, from

July through December. Upon receipt of updated information, the Department of Education recomputes the SF-12. (Stip. 12)

7. Approximately 80-85 percent of the state funds for public elementary and secondary schools are distributed through the programs reflected on the SF-12. (Maxwell Tr. 93)

8. Form SF-12 is the only document by which the Ohio Department of Education notifies school districts of the amount of School Foundation funds that the district will receive, and school districts are expected to rely upon that document. During FY90, five or six different SF-12 forms were mailed to school districts during the year. During FY92 at least one SF-12 per month was mailed to school districts. (Van Keuren Tr. 4751-4752; Phillis Tr. 1899)

9. For planning purposes, Southern Local relies heavily on the State Foundation 12 Report (SF-12). (Spangler Tr. 479)

10. The SF-12 forms provided to Southern Local School District for FY93 varied as much as \$55,000 from one form to another. For Southern Local \$55,000 is as much

as the district spends on all materials and supplies in a year. (Spangler Tr. 583-85; Pl. Exh. 87)

11. The average number of SF-12's received by school districts in Area 5, which includes Plaintiff Dawson-Bryant, increased in FY93 such that districts in the Area had a more difficult time planning because of the number of changes in their SF-12s. (Taylor Depo. 253)

12. For FY1993, the numbers of SF-12s received by each of the plaintiff school districts, and the amount of the line 23 total state support indicated thereon, was as follows:

Run Date
Dawson-
Bryant Local
Lima City
Northern
Local
Southern
Local
Youngstown
City

7-01-92

3,880,340.78

16,360,780.6

5

4,002,801.48

2,652,596.05

43,184,450.2

8

8-01-92

N/A

16,139,157.4

5

4,075,613.66

2,650,239.12

42,770,746.0

8

9-02-92

3,877,744.25

16,139,642.2

8

4,077,878.33

2,651,920.42

42,823,246.1

9

1-29-93

3,820,792.80

16,123,736.2

1

4,295,150.54

2,535,431.18

42,779,196.1

3

2-26-93

3,820,792.80

16,123,736.2

1

4,295,150.54

2,535,431.18

42,779,041.7

0

4-07-93

3,826,381.82

16,124,713.9

4

4,270,583.04

2,535,431.18

42,793,875.1

4

4-23-93

N/A

16,135,577.8

1

N/A

N/A

N/A

5-07-93

3,839,544.98

16,135,577.8

1

4,300,386.00

2,550,459.65

42,791,820.3

2

5-21-93

3,836,680.09

16,135,577.8

1

4,314,724.55

2,544,781.70

42,807,305.7

7

6-25-93

3,837,493.15

N/A

4,315,933.89

2,562,532.61

42,577,701.3

5

7-15-93

3,837,494.15

N/A

4,322,055.09

2,606,815.39

42,753,073.1

7

Plaintiffs' Exhibit 214 is a true and accurate summary of the FY93 SF-12s for each of the plaintiff districts, which were admitted into evidence as Plaintiffs' Exhibits 87, 131, 211, 212, and 213. (Pletcher Tr. 2643; Pl. Exhs. 87, 131, 211, 212, 213, 214)

13. Family income is a major factor in the formula for distribution of the equity funds, but is not a factor in the distribution of funds to school districts under the SF-12.

(Taylor Depo. 155; 158)

D. GUARANTEE PROVISIONS

1. Stipulation Exhibit 13 is a chart which accurately depicts the number of school districts receiving dollars under a guarantee provision rather than a formula amount, and the total cost of guarantee payments over and above formula payments for FY84 through FY93. (Stip. 11; Stip. Exh. 13)

2. The number of districts receiving guaranteed payments increased from 190 in FY84 to 360 in FY92 and 247 in FY93. Over one-third of all school districts in Ohio received guaranteed payments in FY93. The cost of the guarantee has increased from \$55.1 million in FY84 to \$156.9 million in FY92 and \$130.2 million in FY93. (Stip. Exh. 13)

3. Guarantee provisions of the school foundation program ensure that school districts will receive the greater of the program amount or the guarantee amount. There are three different guarantee provisions, the most common of

which is the basic aid guarantee. Stipulation Exhibit 13 reflects that for 1993, 247 school districts received payments of funds under a guarantee provision rather than under the foundation formula, costing the State an additional \$130.2 million. (Maxwell Tr. 111; Maxwell Depo. Exh. 3 p. 44)

4. Guarantee provisions of the foundation program are designed to prevent substantial losses of school district revenue due to changes in valuation or changes in the size of the pupil population. (Russell Depo. 114).

5. A majority of the funds distributed to school districts as a result of the guarantee provision of the funding system goes to the highest wealth districts. (Payton Depo. 156; Russell Depo. 118).

6. The Beachwood City School District has an average valuation per pupil of approximately \$288,000.00. (McMurrin Tr. 2499; Pl. Exh. 270). Beachwood City School District receives approximately \$90,000.00 per year under the state foundation program by reason of guarantee provisions. (McMurrin Tr. 2579)

7. Guarantee districts would stand to gain from the receipt

of additional funded units, such as special education or vocational units, since the loss of basic aid pupils to those units will not adversely affect their basic aid payment. (Russell Depo. 119)

8. The operation of the guarantee provisions of the foundation program is considered a weakness in the program by the State Board of Education. (Tavakolian Depo. 55; Russell Depo. 117; Shoemaker Tr. 4171; Pl. Exh. 142 p. 20)

9. Since 1980, the number of school districts receiving basic aid under a guarantee provision of the foundation program has tended to fluctuate in proportion to the amount of funding provided by the General Assembly. (Tavakolian Depo. 57)

E. CATEGORICAL FUNDING

1. Categorical funds are basically flat distributions based upon ADM (the number of students). The main categoricals, which have never been fully funded, include special education and vocational education. (Ocasek Tr. 2844)

2. There is no equalization for funding of categorical

units, so that each district receives funding for vocational, special education, and gifted units based on the same formula. (Taylor Depo. 105)

3. The Department of Education recommended to the 120th General Assembly that categorical program funds be equalized because the unit funds do not pay the full cost of the service being provided and the burden of making up the difference in costs falls more harshly on poor districts than rich. That recommendation was not approved. (Sanders Tr. 367-368)

4. The fact that categorical programs are not equalized is considered a weakness in the foundation program by the State Board. (Tavakolian Depo. 54)

F. SPECIAL EDUCATION UNIT FUNDING

1. Special Education unit funding is described in Stipulations 58, 59 and 61 through 75, together with Stipulation Exhibits 32 and 33

2. The State of Ohio provides funds for the support of special education programs and services through a "unit funding" mechanism whereby funds are allocated to school districts in accordance with a formula that includes

teacher compensation based on the state minimum teachers' salary schedule, retirement and all other fringe benefits at 15 percent of the state minimum teachers' salary and a fixed amount for all other expenses. (Stip. 58) For classroom units, the fixed amount is about \$8,900 and for a related services unit, about \$2,000. (Roach Tr. 2682; Herner Tr. 5520; Schindler Depo. 18)

3. A unit, in general terms, is a professional staff person, such as a teacher for a classroom unit, or a school psychologist, speech and hearing therapist, or occupational therapist for a related service unit. (Herner Tr. 5520)

4. The estimated average amount of funding provided in connection with a funded special education unit is \$30,000 to \$35,000. (Stip. 59)

5. Funded special education units are determined by the legislature and allocated by the State Department of Education. In the allocation of units, a preference is given to those that had the units last year; then to pupils formerly educated in MRDD units. (Russell Depo. 99)

6. Age ranges are applicable to funded special education units; if a child outgrows the unit, the child must be educated with local dollars if no additional unit funding is available. (Russell Depo. 100)

7. For the current year (1993-94) school districts have received a 1.37 percent reduction in funds for special education applied to categorical funding. (Pl. Exh. 442)

8. Since about 1990 (actually 7/26/91 per ORC 3317.13), there has been no increase in the state minimum teacher's salary schedule and, accordingly, no increase in the amount of funds provided by a funded special education classroom unit or a funded vocational or gifted unit. (I-lerner Tr. 5564; Maxwell rr. 144; Maxwell Exh. 6)

9. There are more applications for funded special education Units than there are units available. In order to apply for funding for a special education unit, a school district must first provide (without any guarantee of funding) the program and services that would qualify the unit for special education funding. (Van Keuren Depo. 196-197)

10. The amount provided for teacher salary and benefits

through a funded special education classroom unit is generally less than the actual cost of the unit.

(Russell Depo. 101; Van Keuren Depo. 195) Approximately 60 percent of the costs of providing the unit is paid by the unit amount. (Russell Depo. 102)

11. If no special education program is available in the local school district, the pupil may be served in a multi-district collaborative program. (Russell Depo. 103)

G. VOCATIONAL UNIT FUNDING

1. Joint vocational school programs are funded through a combination of unit funding and vocational school district tax levies. City school districts that provide vocational funding may receive unit funding for specific vocational programs but do not have the benefit of separate tax levies to fund vocational programs. For those districts, costs in excess of the unit funding costs are paid from the school district's general funds. (Tavakolian Depo. 104)

2. Funding provided to joint vocational school districts has been partially equalized since January 1989. (Shoemaker Tr. 4212)

3. Pupils included in vocational unit funding are excluded from ADM; thus, no state basic aid is received with respect to those students. The categorical aid that is received is less than the cost of operating the vocational program, with the difference coming from funds otherwise available for school district general fund expenditures. Vocational programming is required to be offered to all high school juniors and seniors. (Maxwell Tr. 117-119; Maxwell Depo. Exh. 3 p. 60)

H. DPIA

1. Disadvantaged Pupil Impact Aid (DPIA) is a dollar amount provided to school districts based on the concentration of disadvantaged pupils in the district. Disadvantaged pupils, for this purpose, are those on Aid to Dependent Children as a percent of the base 1\1)M. For 1993, a school district with 20 percent or more of its children on ADC will receive an additional \$1,092 for each such pupil. The state mean percent or more of pupils has increased from 12.62 percent in 1982 to 15.5 percent in 1992. (Maxwell Tr. 115; Stip. Exh. 2)

2. As the percent of the district's ADC pupils increases over certain threshold percents, the amount paid for

each eligible pupil also increases. The formula ranges from a low of five percent to a high of twenty percent. No additional per-pupil funding is provided above the twenty percent level. The additional funding per ADC pupil ranges from a hundred dollars per ADC pupil to a high of \$1,092 per ADC pupil. (Russell Depo. 120)

3. The foundation program provisions for additional revenue for ADC pupils assume that the education of those pupils will cost more, but the Department of Education has no current information as to the amount of the additional costs involved. (Russell Depo. 121)

4. The current formula does not accurately reflect the additional costs of educating pupils in high concentrations of poverty. (Russell Depo. 122)

5. The addition of revenues based on DPIA and other special needs funds may increase the total expenditures of school districts receiving those funds, but a large portion of the money received by the low-income districts is actually targeted to helping disadvantaged students and therefore is addressing special needs with the districts as opposed to equalizing spending on regular education between the districts. (Porter Tr. 1091; Pl. Exh. 100 Chart 4)

6. The shift to a three-year average of ADC pupils in the current budget has the effect of under-counting those pupils and reducing the actual amount of DPIA to be received by school districts. (Maxwell Tr. 228)

7. Although the DPIA system was implemented to provide funding for the education of disadvantaged pupils, it is currently being used as an urban impact aid system. There is no predictability in the DPIA system. (Shoemaker Tr. 4103-04)

8. For school foundation program calculations, the numbers of ADC pupils in a school district are determined by the Department of Human Services. The gain or loss of ADC pupils may have a substantial impact on a school district's revenue. (Van Keuren Depo. 85; Russell Depo. 123; Maxwell Tr. 116; Maxwell Depo. Exh. 3 pp. 46-47)

I. LOCAL REVENUE

1. PROPERTY CLASSIFICATIONS AND TAX ASSESSMENT

a. For taxation purposes, real property in Ohio is divided into two classifications; Class I, which consists of residential and agricultural property

and Class II, which consists of 311 other real property, including commercial, industrial, public utility and mineral. Tangible personal property used in business is treated as a separate category of property for tax purposes. (Maxwell Tr. 69)

b. Real property is assessed for taxation purposes at 35 percent of fair market value. Fair market value is determined once each six years by reappraisal, updated in the intervening three year period. (Maxwell Tr. 70)

c. Property taxes are assessed in mills; a mill is one thousandth of a dollar for each dollar of assessed valuation. Tax rates include: (1) voted millage, which is approved by vote of the electorate, and (2) unvoted or "inside" millage which is levied without a vote. Unvoted millage is limited to ten mills divided among the various taxing subdivisions. For school districts in Ohio, unvoted millage averages 4.6 mills. (Maxwell TR. 71)

d. The amount of inside millage is related to historical circumstances and unrelated to the cost of operating a public school. (Russell Depo. 136)

e. In order to determine the amount of local tax revenue to be received by a school district, it is necessary to know the value of real property by class and the value of tangible personal property in the district. It is also necessary to know the effective rate of taxation applicable to each class of property. Effective rates of taxation are determined by the Ohio Department of taxation and certified to the County Auditors of each county. (Maxwell Tr. 79-80; Maxwell Depo. Exh. 5)

f. Charles W. Brown of the Department of Education has observed a general trend toward an increase in local revenue and a decrease in state revenue as an over-all percent of school district operating revenue. (Brown Depo. 30)

g. Over the past six years, there has been a shift in the relative tax burden within Class I real property (residential and agricultural real property) in Ohio as residential values have increased at a faster rate than agricultural values. As a result, a relatively lower level of taxes is being paid by the agricultural sector than by the residential portion, while the amount received by the school districts is static due to

application of tax reduction factors. (R.C. Section 319.301; Maxwell Tr. 245)

h. The term "tax incidence" refers to the ultimate taxpayer. The type of property being taxed affects the ability to shift the tax burden to a taxpayer outside the district. (Porter Tr. 1057)

i. From 1980 to 1990, there has been a growth in disparity in the ability of school districts to raise revenue locally. The distribution of assessed value of taxable property became more unequal as the 1980's progressed. (Porter Tr. 1065)

j. The driving force behind the disparities in school funding is the growth in differences in the value of Class 2 real property among districts. The growth in inequity in the distribution of Class 2 property increased from 1981 through 1990 at a far greater rate than the growth in inequity in Class 1 property. (Fleeter Depo. 18)

k. The top of the distribution of school districts by valuation per pupil is pulling away from the middle and the bottom. (Porter Tr. 1112)

1. The coefficient of variation for assessed valuation shows a trend toward greater dispersion of valuation among Ohio school districts, both including and excluding the valuation of Perry Local Schools, the school district with the highest valuation in the state. (Porter Tr. 1081; Pl. Exh. 100, Table 2)

m. From 1980 to 1990, the per pupil assessed value of taxable property in Ohio increased by \$15,000, while the per pupil assessed value increased by a much smaller amount for each of the plaintiff school districts. In the case of Youngstown, the per pupil assessed value declined by nearly \$15,000. As a result of slow growth or decline in property values, as well as a loss in adjusted gross income, the Plaintiffs' ability to raise local funds for the operation of schools has changed dramatically for the worse. (Porter Tr. 1110; Pl. Exh. 100 Chart 7)

n. The Department of Education is not notified of challenges to property valuation and has no way of knowing if a challenge is filed for evaluation of any property. Only after an objection to an assessment has been ruled upon, and evaluation

changes, is the department notified. In fact, the Department of Education is required to use the data that is certified to it from the Department of Taxation. (Payton Tr. 4922-24)

o. Funds for public education which are gathered pursuant to state taxing laws are state funds, regardless of whether they represent the proceeds of local tax levies or the distribution of state tax dollars. (Alexander Tr. 3638)

2. HOUSE BILL 920 AND TAX REDUCTION FACTORS

a. Amended Substitute H.B. 920 was enacted by the General Assembly in 1976 and limits growth of real property tax revenues which would otherwise occur through inflation in property values. (Stip. 14)

b. House Bill 920 requires the application of tax reduction factors to voted property tax levies when property values are increased as the result of reappraisal, to the end that a school district will receive the same level of revenue from voted tax levies applied to its tax duplicate after reappraisal, as it did before reappraisal. Separate tax reduction factors are calculated and applied to Class I and Class II property.

(Maxwell Tr. 73-74; Maxwell Depo. Exh. 3 p. 15)

c. "Inside" or unvoted millage is not subject to a tax reduction factor and will produce additional revenue if property values increase. (Maxwell Tr. 74-77)

d. But for the reductions in the effective rate of real property taxes required by House Bill 920, a total of \$1.176 billion would have been levied for public school districts and joint vocational schools in Ohio in 1990 alone. (Maxwell Tr. 81; Pl. Exh. 7)

e. As a result of the application of tax reduction factors, the school districts in the State of Ohio lost a total of \$1.472 billion in real property tax revenue for the operation of public schools in FY92. (Sanders Tr. 321; Pl. Exh. 379)

r. In FY92, the tax reduction factor had the affect of reducing property taxes state-wide by an amount of 26.12 percent. (Pl. Exh. 379)

g. When reviewed on a district-by-district basis, the effects of H.B. 920 are varied and uneven among school districts depending on their proportion of real versus tangible property, how many inside mills the district

has, the extent of new construction, whether the district is at or close to 20 effective mills in either Class I or Class II property, and the extent of increases in the values of real property. While H.B. 20 has resulted in an overall statewide average reduction of 26.1 percent, this reduction varies from a low of 0 percent for some districts to a high of 53.1 percent for others. (Pl. Exh. 13, pp. 7, 8)

h. As a result of the application of tax reduction factors, the FY92 taxes in the Plaintiff School Districts were reduced by the following amounts:

SCHOOL DISTRICT	AMOUNT OF REDUCTION
Dawson-Bryant LSD	4.33 %
Lima CSD	17.57 %
Northern LSD	21.34 %
Southern LSD	22.48 %
Youngstown CSD	7.42 %

(Pl. Exh. 379)

i. Although H.B. 920 limits school districts from receiving growth in local property taxes as values increase, individual taxpayers may actually see their taxes increase, depending on the changes in the value of their individual properties. (Maxwell Tr. 83-84; Maxwell Depo. Exh. 3 p. 27)

j. H.B. 920 has resulted in a circumstance by which local revenues have not kept up with inflation unless the district has voted additional tax levies. Since the passage of H.B. 920, there have been over 3,700 school district tax levies. Wealthier districts have an easier time passing levies. (Russell Depo. 133; Shoemaker Tr. 4164; Pl. Exh. 13, Attachment D.)

k. Senator Aronoff, a Republican, would approve legislation that would allow property taxes to rise in some fashion with inflation. However, Governor George Voinovich, also a Republican, is against this position. (Aronoff Tr. 4862)

l. The operation of H.B. 920 is such that school districts with "brick and mortar" (new construction) growth will get additional revenue from an increase in value, while a district with growth solely due to inflation will not.

(Russell Depo. 134)

m. The complexities created by H.B. 920 are difficult for school districts to explain to voters. (Russell Depo. 140; Shoemaker Tr. 4163)

n. The absence of growth in local school district tax levy revenue as a result of the application of tax reduction factors is considered a weakness in the school funding system by the State Board of Education. (Tavakolian Depo. 60; Tavakolian Depo. Exh. 3, p. 19)

o. As a result of the limitation of H.B. 920, school districts have been required to propose more and more additional tax levies, with those levies being approved at an increasingly lower rate. (Taylor Depo. 283; Maxwell Tr. 247; Maxwell Depo. Exh. 9)

p. Plaintiff's Exhibit 13 is an analysis of the operation of H.B. 920 prepared for the Governor by the Department of Education at the request of the Superintendent of Public Instruction to encourage the Governor to support changes in H.B. 920. Such support is not yet forthcoming and no such changes have resulted. (Sanders Tr. 322)

3. OPERATION OF THE TWENTY MILL FLOOR OF TAX RATE REDUCTION

a. H.B. 920 sets a floor of effective tax rate reductions at twenty mills. That floor consists of a combination of effective voted millage and inside (unvoted) millage. (Russell Depo. 135)

b. School districts that have reached the 20 mill floor of millage reductions in either class or real property do not have their effective rates reduced further. Those districts will realize additional revenue from any growth in the value of the tax duplicate and do receive additional revenue each time values are increased due to reappraisal or update. (Maxwell Tr. 75-76; Maxwell Depo. Exh. 3 p. 17; Russell Depo. 137)

c. Identical school districts would receive different amount of local tax levy revenue from an equal increase in the valuation of real property depending on whether or not their effective tax rates had reached the twenty mill floor. (Russell Depo. 138; Pl. Exh. 13, pp. 4-5; Sanders Tr. 319)

d. The Department of Education would advise a school district at the twenty mill floor to propose tax levies not subject to a tax reduction factor, such as emergency tax levies, in order to preserve their ability to

realize growth in real estate valuation. Passage of such a levy would result in additional revenue without reduction. (R.C. Sections 319.301 and 5705.194; Russell Depo. 138)

e. Phantom revenue is an aspect of the school foundation program by which a school district can receive an increase in the value of its tax duplicate but not actually receive any additional income from local tax revenues while, being subjected to a larger "charge off" in the basic aid formula due to the increased valuation. (Sanders Tr. 326)

4. OTHER TYPES OF TAX LEVIES AVAILABLE TO SCHOOL DISTRICTS

a. Emergency tax levies are those producing specific amounts of dollar revenue for each year the levy is in effect. Emergency tax levies are not subject to the application of a tax reduction factor. A school district at the 20 mill floor of tax reduction could pass an emergency tax levy and receive not only the benefit of 20 mills times the full assessed value of the tax duplicate, but also the additional revenue produced by the emergency tax levy. (Revised Code Sections 5705.194 and 319.301; Maxwell Tr. 85-86)

b. School district income taxes were first approved by General Assembly in 1981, later repealed and reauthorized in 1989. Unlike municipal income taxes, school district income taxes tax the income of school district residents and do not tax corporate or partnership income. (Maxwell Tr. 87)

c. Of the approximately 93 school districts that have passed school district income tax levies for the operation of their schools, the vast majority have been school districts with low levels of commercial and industrial real property and tangible personal property. The income tax districts have primarily been rural school districts. (Maxwell Tr. 239)

d. Incremental property taxes were authorized by the General Assembly in 1990. Incremental taxes can provide for growth in school district revenue but the incremental tax rates may be subject to separate tax reduction factors. Incremental tax levies are difficult to pass because of complex ballot language. (R. C. Sections 5705.212 and 5705.213; Maxwell Tr. 88-89)

e. Replacement tax levies were authorized by the General Assembly in 1992. Replacement levies permit the replacement of an expiring tax levy that has been

reduced by application of tax reduction factors with a new levy at the full voted rate. (R.C. Section 5705.192; Maxwell Tr. 89 -91)

f. Because of the need to create a substantial fund of money at the time of constructing a school building, most school district facilities are constructed following the passage of a voted bond issue. In some instances, where eligible, that voted bond issue may include Classroom Facilities Act assistance. (Phillis Tr. 1685)

5. SCHOOL DISTRICT INCOME AND ITS EFFECT ON LOCAL

a. School districts having high levels of property valuation per pupil also have high levels of income of residents in the districts. (Pl. Exh. 302, p. 15)

b. From 1980 to 1990, the relationship between personal income of residents and assessed valuation of property increased, meaning that school districts with high levels of personal income tended, to a greater degree, to also have higher levels of taxable property. At the same time, low income districts tended more and more to have lower levels of non-residential taxable property and thus, less ability to export the tax burden outside

their borders. (Porter Tr. 1066)

c. From 1980 to 1990, after adjusting for inflation and district size, the poorest 200 Ohio school districts had a lower level of adjusted gross income in 1990 than in 1980. (Porter Tr. 1069; Pl. Exh. 100)

d. From 1980 to 1990, the middle group of school districts also lost income. (Porter Tr. 1070; Pl. Exh. 100)

e. From 1980 to 1990, there was modest growth in assessed value per pupil for low income districts while there were dramatic increases in assessed value per pupil in high income (top 200) districts. (Porter Tr. 1072; Pl. Exh. 100, Chart 2)

f. From 1980 to 1990, the level of assessed value per pupil of non-residential property changed little for the low income and middle income districts while the high income districts experienced substantial growth. As a result of the shift in taxable value, high income districts attained an advantage in the ability to shift the incidence of school tax to taxpayers outside the district. (Porter Tr. 1073; Pl. Exh. 100, Chart 3)

g. High income districts now have an advantage in shifting

their tax burden outside the district, whereas in the past, low income districts had that advantage. (Porter Tr. 1112)

h. From 1985 to 1990, the distribution of adjusted gross income among Ohio's school districts underwent a rapid change, becoming increasingly disparate as measured by changes in the coefficient of variation. (Porter Tr. 1076-77; Pl. Exh. 100. Table 1)

i. Correlation coefficients measure the strength of the relationship between two variables. There is a relationship between income and assessed valuation and that relationship has become increasingly stronger since 1980, indicating an increasing likelihood that a district with high levels of income will also have high levels of taxable property valuation. (Porter Tr. 1085; Pl. Exh. 100 Table 3)

j. Despite the fact that low income districts are increasing their rate of tax levy millage at nearly the same rate as high income districts, the local revenues generated in the high income districts have increased dramatically relative to the increases in revenue in low income districts. (Porter Tr. 1088; Pl. Exh. 100, Table 5)

k. From 1980 to 1990, the dispersion of income among Ohio school districts has become substantially more unequal, while the distribution of assessed value has also become more unequal. In addition, the relationship between assessed value and income has become stronger, indicating that districts with higher income are now more likely to have higher levels of assessed value. (Porter Tr. 1111)

l. The adjusted gross income for each of the plaintiff school districts declined from 1980 to 1990, while the state average showed a slight increase over the same period. In the case of Youngstown, adjusted gross income per return filed by district residents fell by nearly \$4,000.00. (Porter Tr. 1109; Pl. Exh. 100 Chart 6)

m. The 1989 federal adjusted gross income per return filed by district residents and state rank for the Plaintiff districts is as follow:

DISTRICT

AMOUNT

RANK

\$20,838

578

Lima City SD

\$22,209

516

Northern LSD

\$23,119

461

Southern LSD

\$19,245

607

Youngstown CSD

\$19,538

603

(Pl. Exh. 338)

6. LOCAL TAX LEVIES

a. Stipulation Exhibit 9 is a true and accurate depiction

of the total number of school district tax levies proposed, and the number of those levies approved and rejected by the voters of Ohio, for each year from 1984 through 1992. (Stip. 6; Stip Exh. 9)

b. Pl. Exh 317 is a document showing the number of school district operating levies which were proposed, passed and failed in the State of Ohio from November 1962 through November 1990. (Pl. Exh. 317; see also Pl. Exh. 400)

c. In 1983, 55 percent of the operating levies proposed in the State of Ohio passed. In 1991, that figure had declined to 47.6 percent passed. (Pl. Exh. 379)

d. Stipulation Exhibit 10 depicts the Plaintiff School Districts' tax levies from 1980 through the spring of 1993 and the corresponding results, except for the Plaintiff Youngstown City Schools. (Stip. 7; Stip. Exh. 9)

e. The levy history for the Youngstown City Schools is as follows: November, 1983, 7.9 mill operating levy failed; June 1983, 7.9 mill operating levy failed; May, 1988, 4.98 permanent improvement levy failed; November, 1988, 14.5 mill levy passed. There was an attempt to repeal

the 14.5 mill levy, but the repeal failed and the levy stayed in place. That levy is a five-year operating levy and will expire shortly. (Marino Tr. 3200; Stipulation Exhibit 10 is incorrect for Youngstown City Schools)

f. The passage of an additional local tax levy is the only method by which a school district can substantially increase its operating revenue, with the exception of possible equity money. (Brown Depo. 41, Aronoff Tr. 4855)

g. A school district property tax levy in excess of 10 mills has very little chance of passing except in dire circumstances. (Brown Depo. 215-16)

h. The assumption of primary responsibility for the passage of tax levy issues and bond issues often falls to the superintendent of Ohio's school districts. The activities undertaken in connection with that responsibility are often very time consuming. (Van Keuren TL[^]. 2724)

i. Superintendent Sanders has expressed the concern that so many of Ohio's superintendents are spending their precious time dealing with finances, passing levies and playing community politics instead of giving leadership to the improvement of learning. (Pl. Exh. 32, 1). 4)

j. It is difficult for school districts in Area 5, the area which includes Plaintiff Dawson-Bryant Local Schools, to increase local revenues because property tax levies are difficult to pass. People are reluctant to vote on tax issues. Even if property taxes are passed in lower wealth districts, it does not raise a large sum of money because the property valuation just simply is not there. (Taylor Depo. 145-46)

k. It would be difficult for the residents of Plaintiff Dawson-Bryant Local School District to pay an equal number of mills as the residents of the Beachwood City School District. (Taylor Depo. 279-80)

l. The Beachwood City School District levies approximately 25.9 effective mills. The state mean millage is 30.1 mills (McMurrin Tr. 2619)

m. Mr. Roger Miller, a life-long resident of Lima City Schools, has watched the finances of the district and various levy issues over the last 20 years. During that time, the district has not lost a levy other than one income tax proposal. The passage rate of levies had risen to 70 percent positive and 30 percent negative. Over the last several years, however, that percentage

has dropped down into the 60 percent and 50 percent range. The last levy in 1990 passed by only a handful of votes. The district is in the precarious situation of losing the ability to gain voter approval of tax levies. (Roger Miller Depo. 73-74)

n. Voters in Plaintiff Northern Local School District have rejected several recent levy proposals, and many voters have stated that they reject the proposals because school district tax proposals are some of the few tax raises that voters have an opportunity to oppose. (Hill Depo. 35)

o. Increasing revenues by voter approval of local tax levies is not an option for Southern Local. In one year, the cost of benefits for employees went up \$93,000, which would take 4 mills of local property taxation to generate. In 1989, the voters of the district approved an operating levy of 3.9 mills and the following year approved a facilities bond levy for 7 percent of the valuation of the district. At about the same time, the major employer in the district went out of business. Most of the families in the district qualify for free or reduced lunch benefits, an acknowledgment by the federal government that they cannot even pay for lunch. Industry is very limited in the district, and the reported

average family income is currently approximately \$18,000. There is no income base and there is no property base at Southern Local with which the district can increase its local revenues. (Spangler Tr. 48183)

p. For a board of education to try to pass a levy may cost from a few hundred dollars to two thousand dollars to pay election expenses. (Spangler Tr. 483) Because one mill raises so little in districts with low assessed valuation per pupil, those districts have very little to promise the voters in exchange for passing additional millage. (Spangler Tr. 483) Public trust and support is defeated by returning to the voters to ask them for additional millage when they cannot afford to pay. (Spangler Tr. 484)

q. In 1988 at Youngstown City Schools, there was significant community involvement and effort to pass a 14.5 mill operating levy. At that time, there was some industry to support payment of the millage, but due to plant closings, the amount of commercial property has declined since that time. (Marino Tr. 3186, 3200-02)

7. LOCAL TAX EFFORT

a. Taking into account both the value of assessed property

and the adjusted gross income as combined measures of ability to pay taxes, the poorest 200 school districts in Ohio actually exerted a greater level of tax effort in 1990 than the wealthiest 200 school districts.

(Porter Tr. 1105-1106; Pl. Exh. 102 Table 2)

b. Tax effort has very little to do with the variations in local school district revenue. If all wealth is considered, the correlation is negative; if only residential property and income is considered, the correlation is zero. (Porter Tr. 1107)

c. Fiscal effort between the top and bottom deciles of assessed valuation per pupil indicates that although there is a revenue and expenditure disparity, the level of effort between the rich and poor is virtually uniform. (Alexander Tr. 3667-68; Pl. Exh. 301 p. 51)

d. Ohio's funding system puts so much of the burden on the local property tax level as to invite disparities. Although one would expect poor districts to put forth lower effort because of the marginal value of the dollar, in fact, poor districts are making as much effort in Ohio as rich districts. (Alexander Tr. 3669-70)

e. The disparities in school district revenues and expenditures are not related to the tax effort of the school districts but rather are related to disparities in wealth. (Alexander Tr. 3673)

f. The variation in millage and tax effort measured in other ways is too small to explain the variation in local revenues. The difference in local revenues raised is more due to unequal distribution of assessed value than it is to effort. (Porter Tr. 1112)

g. A comparison of the Plaintiff school districts paired with similarly sized "high capacity" school districts indicates that it would require a levy of 318.6 mills for the Dawson-Bryant Local School District to raise the same level of revenue that the Beachwood City School District is able to raise with 31.8 mills; Southern Local Schools would be required to levy 155.8 mills to raise the same level of revenue that the Richmond Heights local school District can raise with 37.4 mills; Youngstown City Schools would be required to levy 94.4 mills to raise the same revenue that Mayfield City Schools can raise with a levy of 29.4 mills; Lima City would have to levy 50.8 mills to raise the same level of revenue that the Worthington City Schools can raise with 31.2 mills; and the Northern Local Schools would have to

levy 44.6 mills to raise the same revenue that Revere Local can raise with 29.0 mills. (Maxwell Tr. 66; Maxwell Depo. Exh. 3, p. 4)

8. THE EFFECT OF LOCAL TAX ABATEMENTS AND EXEMPTIONS, ZONING LAWS AND ECONOMIC CLIMATE

a. Stipulations 50 through 52 deal with the exemption and abatement of real property from taxation. Stipulation Exhibit 27 sets forth the extent of exemption and abatement from taxation of real property in each of the Plaintiff school districts.

b. Revised Code Section 3317.022, as effective July 26, 1991, provides that if more than twenty-five percent of a district's potential assessed value is state-exempted property, the district is entitled to a recalculation of its basic aid and will receive additional funds if any basic aid funds remain at the close of the fiscal year. As of August 30, 1993, no school district has received any additional funds by reason of this provision. (Stip. 52)

c. "Rollback" reimbursement represents payment by the state for reductions in school district property tax revenue. The rollback amount is 10 percent of the property tax

revenue that would have been received by the school district but for the reduction. In addition to the rollback exemption, there is an additional exemption of 2-1/2 percent of property taxes for qualified elderly residents, known as the "homestead exemption." Amounts of property taxes lost to school districts by reason of these exemptions are made up through the provision of funds from the State. These funds are included in State's education budget. (R. C. Section 319.302; Maxwell Tr. 125-26)

d. Real property in every school district in the state has been exempted or abated from taxation based on one or more provisions of the Revised Code. (Stip. 50)

e. Public school districts have no control over the exemption and abatement of taxable value of property in their districts. (Russell Depo. 87; Shoemaker Tr. 4164-65)

DAWSON-BRYANT

f. There is very little industry in the Dawson-Bryant School District and surrounding region. Most of the people who reside within the school district that have employment, work outside the district and, in many

instances, outside the state. Average income in the district is quite low compared to other districts in the state. (White Tr. 2072-73) The largest employer within the Dawson-Bryant Local School District is the school system. (White Tr. 2074)

g. The residents of Dawson-Bryant passed a 5.9 mill levy in May of 1993. Because there is no industry in the district, the tax is placed directly upon residents, whose income level averages approximately \$21,000 per year. Twenty-five percent (25%) of the district's 9 students are ADC recipients, more than 50 percent of the students qualify for free lunch, and additional students qualify for reduced lunches. Obviously, residents of the district do not have discretionary income to pay additional taxes. Thus, a tax levy for operation is not a viable option. (Washburn Tr. 2382-85)

h. The number of mobile homes in the district have increased from 257 in 1988 to 456 in 1993. The average annual taxes paid per mobile home for 1993 is only about \$39.24 per year. (Stip. Exh. 27, #1)

LIMA

a. The general population of the suburban area around the

City of Lima has grown slightly over the past ten years, while the population within the city has declined. Of the population decline over the past ten years, 85 percent is represented by individuals under the age of 18 who are white. As a result of the population shifts, demographics of the Lima City School District have continued to change to the end that school districts contiguous to the City of Lima have grown substantially, with one having grown over 200 percent since 1974.

(Buroker Tr. 2872-73)

b. People who move into the Lima City School District tend to be people who are moving to take advantage of low-income housing. As a result, the individuals who attend the Lima City Schools tend to be poor. (Buroker Tr. 2873-74)

c. Lima City School District has not proposed the passage of additional tax levies to its voters because it has one of the lowest tax bases and one of the lowest per capita incomes of any school district in the State of Ohio. The tax payers of the district are already assuming a significant burden. In addition, the voters of the city experience municipal overburden charges through the requirement that they pay for the services of water, sewer, and police protection. Thus, the

existing tax burden, combined with an ever increasing population living below the poverty line, makes the prospect of passage of an additional tax levy unlikely.

(Buroker Tr. 3075-76)

NORTHERN LOCAL

d. Plaintiff Northern Local School District has experienced a rapid increase in enrollment due in part to zoning laws which allow existing farmland to be split into small tracts for mobile homes. (Hill Depo. 48)

e. During the last seven years, families moving into the Northern Local School District have been lower income families, and the ability of the district's residents to pay additional taxes has decreased. (Dilbone Tr. 2047-48)

f. In addition to the rapidly increasing enrollment in Plaintiff Northern Local School District, mobile homes hurt Plaintiff Northern Local School District's local tax receipts because mobile homes are taxed at a different rate than real property. (Hill Depo. 48)

g. Mobile homes in a school district create special problems for the school district. Mobile homes are taxed

at a lower rate than permanent structures. A 3-bedroom mobile home will most likely yield about \$60 per year in taxes, where a 3-bedroom permanent house will probably yield between \$150 and \$300 per year in taxes. In addition, mobile homes bring numerous students into a particular district without bringing the tax revenue to support those students. (Shoemaker Tr. 4177-78)

h. The number of mobile homes in the Northern Local School District taxed by the Perry County Auditor have increased from 542 in 1988 to 755 in 1993. The district has collected amounts ranging from about \$27,031 per year to about \$41,224 per year on those mobile homes. (Stip. Exh. 27, #3)

SOUTHERN LOCAL

i. The economic situation in Southern Perry County and in Plaintiff Southern Local School District is poor. Employment is scarce, companies have closed their doors, and some of the larger employers in the county, coal businesses, have ceased operations. At one time the railroad was the major employer in the county, but it has closed its operations. (Altier Tr. 1289; Spangler Tr. 442-43)

j. The total assessed property valuation of Southern Local is approximately \$25,000.00, which is about \$23,000 per pupil. (Spangler Tr. 444)

k. In his position as Chairman of the Corning Bank, Mr. Altier has observed that the delinquent list of defaulted commercial and home loans grows every month. Repossession is much more frequent than it used to be. Bankruptcies have increased. (Altier Tr. 1291)

l. Large purchases of tracts of land have been made by the federal government in the Wayne National Forest, located in Plaintiff Southern Local School District. The federal government does not pay any taxes on this property. (Altier Tr. 1291-92)

YOUNGSTOWN

m. The Youngstown City School District's local revenue has been hurt by the economy of the Youngstown area. The Youngstown business community has been devastated since the steel mills closed down, and the city of Youngstown has given tax abatements to industry in an attempt to draw business to the area. The combination of the steel mills closing and the abatement process has had a detrimental impact on the Youngstown City School

District's financial projections. (Hiscox Depo. vol 1, 37; Kolitsos Depo. 26, Marino Tr. 3186)

n. The Select Committee to Review and Study Ohio's Education System heard testimony from the Superintendent of the Youngstown City Schools that the Youngstown-Mahoning Valley area lost 40,000 jobs between 1977 and 1987, resulting in income loss to employee wage earners and loss of personal tangible property value throughout the area. (Shoemaker Tr. 4065)

o. The plant closings in Youngstown have made it very difficult for the school system to function. The closings have caused tremendous unemployment, increased numbers of people on ADC, increased numbers of students on free or reduced priced lunches, increased numbers of single-parent families, increased latchkey situations, increased numbers of neglected children, and many people are functioning on a survival basis with food, clothing, and shelter needs. (Marino Tr. 3185-86)

p. The total value of abated property in the Youngstown City School District grew from \$4,073,310 in 1888 to \$16,928,920 in 1992. Property in the district, exempt from taxation, was valued at \$159,023,950 in 1992. (Stip. Exh. 27, #5)

q. In the Youngstown City School District, between tax year 1978 and 1987, the total assessed property value fell from slightly over \$1 billion to \$606 million, measured in 1990 dollars. By the 1990 tax year, total assessed value had fallen to \$547 million. (Pl. Exh. 108, p. 1)

r. In Plaintiff Youngstown City School District, 1 mill of taxes raised about \$62 for each student in 1979, \$41 in 1987, and only \$37 in 1990. (Pl. Exh. 108, p. 1)

s. The average daily membership (ADM) of the Youngstown City Schools has declined by about 1,866 students from 1982 to 1992. (Stip. Exh. 8) The decline occurred because there is very little work available, businesses are not successful, and Youngstown is not a safe place to raise a family. People try to stay out of Youngstown, and very few people drive through it because they are afraid. People do not come into the city. Those who can, move out of Youngstown and go to surrounding suburbs and other places. (Marino Tr. 3193-94)

J. REVENUE AND EXPENDITURE DISPARITIES THROUGHOUT OHIO

1. Plaintiffs' Exhibits 384-934 are Cost Per Pupil books published by the Ohio Department of Education for FY91

back to FY81, which detail the costs incurred by each of Ohio's public school districts for a given fiscal year. These publications are sent out to every school district in the state of Ohio, the Ohio Department of Education, the General Assembly and anyone else in the general public who requests them. The data contained therein are generated from the core of data maintained by the Ohio Department of Education and are presented by the Department as being an accurate and reliable representation of what is actually happening to the school districts in the state of Ohio. Mr. Daubenmire, Assistant Director of Programming and Data Collection for the Department, believes the data contained in the Cost Per Pupil books to be good data. (Daubenmire Tr. 5015-19)

2. Levels of assessed value per pupil are highly correlated with levels of spending per pupil. (Porter Tr. 1113)

3. There is a strong correlation between assessed valuation per pupil and total expenditures per pupil. With special needs money removed from the analysis, the correlation becomes even stronger. Roughly half of the variation in spending can be statistically traced to variations in assessed value per pupil. (Porter Tr. 1098-99; Pl. Exh. 100, Table 8)

4. The difference in expenditures between high and low valuation districts has increased during the period between 1981 and 1990. (Porter Tr. 1092; Pl. Exh. 100 Chart 5)

5. The top 200 school districts in Ohio ranked by assessed value per pupil spend more than \$1,000 more per pupil per year than the bottom 200 school districts. (Porter Tr. 1095; Pl. Exh. 100, Chart 6)

6. There is, in general, a greater degree of dispersion in spending among Ohio's school districts in 1990 than there was in 1981. (Porter Tr. 1095; Pl. Exh. 100, Table 7)

7. The differences in spending among Ohio school districts are primarily due to differences in the value of the tax bases of those districts rather than the tax effort of the voters. (Porter Tr. 1108)

8. If the per pupil spending in Plaintiff Northern Local School District was increased from the current \$3,000 per pupil to the state average of approximately \$4,500 per pupil, it would require an additional \$3 million in revenue. The school district would have to levy

approximately 30 mills in addition to what is already levied in order to bring the school district's per pupil spending up to the state average. (Johnson Tr. 1485)

9. The Beachwood City School District has an average valuation per pupil of approximately \$288,000.00.

(McMurrin Tr. 2499; Pl. Exh. 270) Beachwood spent approximately \$11,422.00 per pupil in FY92. (McMurrin Tr. 2597)

10. For the 1991-92 fiscal year (FY92), Ohio's average expenditure per pupil was \$4,900, which was less than the national average expenditure per pupil of \$5,170.

(Pl. Exh. 12, p. 51)

11 It would take Plaintiff Dawson-Bryant Local School District 33.65 school districts additional mills to raise its expenditure per pupil up to the FY91 state average of \$4,585. It would take Plaintiff Northern Local School District 29.21 mills to raise its expenditure per pupil up to the state average of \$4,585.

(Pl. Exh. 381)

12. In FY91, 5 percent of the pupils having the benefit of the greatest assessed valuation of property in the state (representing approximately 95,000 students) had an

average of \$171,228.44 of taxable valuation per pupil available for the support of their educational programs. Plaintiff Dawson-Bryant Local School District had \$21,000 in wealth, Lima City School District had \$36,000 in wealth, Northern Local had \$38,000 in wealth, Southern Local had \$24,600 in wealth, and Youngstown had \$36,646 in wealth per pupil for the support of their educational programs. (Alexander Tr. 3641-42; Pl. Exh. 301, Chart 1, p. 2)

13. Ranking all pupils in the state into decile rankings based on assessed valuation per pupil for FY91, shows that the pupils in the top decile have an average of \$146,069 per pupil available for the support of their education, while the pupils in the bottom decile have \$32,918 in per pupil valuation available for the support of their educational programs. (Alexander Tr. 3643; Pl. Exh. 301, Chart 2, p. 3)

14. In 1981, the wealthiest 30 percent of the pupils in the state had 43.6 percent of the assessed valuation for the support of their education, while the poorest 30 percent of the pupils had available 19.4 percent. By 1992, the wealthiest 30 percent of the pupils had 45.93 percent of the wealth available for the support of their education, and the poorest 30 percent of the pupils had 19.17

percent available. (Alexander Tr. 3644-45; Pl. Exh. 301, Chart 3, p. 4)

15. In 1981, the top decile of pupils ranked in order of assessed valuation per pupil had 18.06 percent of the wealth, while the bottom decile had 5.14 percent. By 1992, the top decile had increased its share of the wealth to 20.76 percent, while the bottom decile decreased to 4.83 percent. (Alexander Tr. 3645; Pl. Exh. 301, Charts 4 and 5, pp. 5-6)

16. For the 1990-91 school year, the top 10 percent of the pupils ranked in order of assessed valuation per pupil had available an average adjusted gross income of \$130,000 per pupil, while the bottom decile had an average adjusted gross income of \$42,654 per pupil. In general, pupils in school districts with higher levels of assessed valuation of property also have higher incomes. (Alexander Tr. 3647; Pl. Exh. 301, Chart 6, p. 7)

17. The differences in assessed valuation of property and differences in income result in differences in levels of revenue available for the education of pupils. The inequities flowing from these circumstances are created by the state's system of funding education. (Alexander

Tr. 3649)

18. For FY91, 500,000 pupils in the wealthiest 30 percent of Ohio school districts had substantially greater amounts of revenue combining state and local sources than did the poorest 30 percent. (Alexander Tr. 365051; Pl. Exh. 301 p. 15)

19. For FY91, in local revenue only, the wealthiest decile of pupils had an average of \$4,471.00, while the poorest decile had an average of \$986.22 available for their education. (Pl. Exh. 301, p. 17)

20. For FY91, 10 percent of the richest pupils in the state had instructional expenditures per pupil averaging \$3,358.76, while the instructional expenditures per pupil for Dawson-Bryant were \$1,989.38; for Lima City, \$2,603; for Northern Local, \$1,911.35; for Southern Local, \$2,272.59; and for Youngstown City, \$2,862.23. (Pl. Exh. 301, p. 23)

21. For FY91, substantial differences existed between the top and bottom deciles of pupils' regular instructional expenditure, with the highest decile spending \$2,688.00 per pupil, while the lowest decile spending \$1,734.00 per pupil. (Alexander Tr. 3656; Pl. Exh. 301 p. 26)

22. Unadjusted expenditures are those that do not involve a proration back of funds from the county office or c-- sites (centralized data processing sites). Unadjusted total current expenditures for the wealthiest 10 percent of the districts in FY91 averaged \$5,945 per pupil, for Dawson-Bryant Local School District, \$3,498.73; for the Lima City School District, \$4,120; for the Northern Local School District, \$3,205; for the Southern Local School District, \$3,810; and for the Youngstown City School District, \$4,956. (Alexander Tr. 3661-62; Pl. Exh. 301, p. 40)

23. For the 1990-91 school year, the wealthiest 30 percent of Ohio's pupils had the benefit of a substantially higher level of the non-adjusted current expenditures per pupil than did the poorest 30 percent. (Alexander Tr. 3663; Pl. Exh. 301, p. 41)

24. Comparing the Plaintiffs with the wealthiest school districts, the adjusted total current expenditures per pupil for FY91 for the wealthiest school district was \$6,078.36; Dawson-Bryant, \$3,860.91; Lima City, \$4,126.27; Northern Local, \$3,453.13; Southern Local, \$4,435.39; Youngstown City \$4,956.69. (Pl. Exh. 301, p. 42)

25. The same comparison applied to the top and bottom deciles of pupils indicated that the top decile had adjusted current expenditures per pupil of \$5,480, while the bottom decile had adjusted current expenditures per pupil of \$4,017. (Pl. Exh. 301, p. 43)

26. The same disparities evidenced in adjusted and unadjusted expenditures per pupil were also manifested to an even greater degree in the areas of capital outlay and debt service per pupil for FY91. (Alexander Tr. 3664; Pl. Exh. 301, pp. 44(a) and 45)

27. The analyses in Plaintiffs' Exhibit 302 compare revenue and expenditure patterns between groups of school districts representing 5 percent increments of the state's pupil population, with approximately 91,000 pupils in each group. (Alexander Tr. 3704)

28. The comparisons set forth in Plaintiff's Exhibit 302 demonstrate the revenue disparities between rich and poor school districts, the valuation disparities, and the differing expenditures by category. (Alexander Tr. 3704)

29. Plaintiff's Exhibit 302 at page 20 is an analysis at 5

percent intervals of the revenue receipts of all Ohio school districts ranging from wealthiest to poorest.

(Alexander Tr. 3708; Pl. Exh. 302, p. 20)

30. FY91, the 20 percent of Ohio's pupils in the wealthiest school districts received 24.46 percent of state and local revenue receipts, while the 20 percent of Ohio' 9 pupils in the poorest school districts received only 16.79 percent of state and local revenue. (Alexander Tr. 3710; Pl. Exh. 302 p. 23)

31. Assuming 25 pupils per classroom for FY91, Cuyahoga Heights Local School District had \$271,000 per classroom unit, while Huntington Local had only \$77,000 per classroom unit, for a difference of \$193,850 per classroom. (Alexander Tr. 3712; Pl. Exh. 302(a))

32. Plaintiffs' Exhibit 210 is a series of four charts representing comparisons of various expenditures in plaintiff school districts and other school districts of similar pupil populations in Ohio. Plaintiffs' Exhibit 210 is a true and accurate summary of information contained in Ohio Department of Education computer printouts, which were admitted into evidence as Plaintiffs' Exhibit 205-209 for FY87 through FY91. As demonstrated by Plaintiffs' Exhibit 210, in FY91, each

of the plaintiff school districts spent substantially less money on regular instruction, pupil support services, instructional staff services, transportation, and extracurricular sports than the districts with which they were matched. There was no match made with Youngstown City School District because there is no wealthy school district in the state the same size as Plaintiff Youngstown City Schools. (Pletcher Tr. 2640; Pl. Exh. 210; Pl. Exh. 205-209)

33. Plaintiffs' Exhibit 148 is a true and accurate summary of information contained in the state vital statistic's program for FY83 through FY92. (Pletcher Tr. 2641; Pl. Exh. 148, 149)

34. The trend in the difference between total state revenue per pupil and total state expenditures per pupil for FY83 to FY91 has been as follows:

STATE AVERAGES: COMPARISON OF
TOTAL REVENUE PER PUPIL AND
TOTAL EXPENDITURES PER PUPIL
FY1983-FY1991

TOTAL REVENUE

PER PUPIL

GENERAL FUNDS

TOTAL

EXPENDITURES

PER PUPIL

GENERAL FUNDS

DIFFERENCE

FY1983

\$2,452.47

\$2,289.41

+163.06

FY1984

2,714.37

2,551.80

+162.57

FY1985

2,803.47

2,747.19

+56.28

FY1986

3,011.90

2,975.33

+36.57

FY1987

3,251.30

3,177.01

+74.29

FY1988

3,454.10

3,379.00

+75.10

FY1989

3,733.31

3,694.66

+38.65

FY1990

4,009.41

3,961.04

+48.37

FY1991

4,152.37

4,159.20

-6.83

(Pl. Exh. 148)

K. FEDERAL FUNDS

1. Federal funds were excluded from Mr. Maxwell's study because the vast majority of those funds are earmarked for specific programs. (Maxwell Tr. 167-168)

2. Approximately 5 percent of the total dollars provided for the funding of elementary and secondary schools are federal dollars. The majority of the federal dollars are provided through a program known as Chapter I, which provides funds for the remediation of pupils in eligible schools. The Department monitors the usage of these funds. (Van Keuren Depo. 14-16)

3. Chapter I funds flow, generally, to less wealthy school districts and are restricted to reading, math, and language improvement programs, focused on the elementary level. (Van Keuren Depo. 21)

L. EQUITY FUNDS

1. Substitute H.B. 671 was enacted on June 30, 1992. The bill provided for the distribution of approximately \$45 million in equity funds to the poorest 218 school districts in Ohio in FY93 only. (Stip 16; Stip. Exh. 15)

2. As of March 22, 1993, 21 of the school districts that received equity funds under H.B. 671 had applied for emergency school assistance loans. As of that date, fourteen of those districts had been certified as having an operating deficit and had either been approved by the state controlling board for receipt of a loan or had their certification pending. Plaintiff Youngstown City School District received over \$2.1 million in equity funds, and was certified as having an operating deficit of \$7.047 million. (Pl. Exh. 225; Stip. Exh. 16)

3. If the school districts to whom the equity funds were distributed, many of those had to use those equity funds to repay spending reserve loans the districts were forced to obtain, or to repay emergency assistance loans they were forced to take out because of cuts in state aid. (Brown Tr. 5490) It was the actions by the state of Ohio that forced some of these school districts to

borrow against spending reserve and, in some cases, to enter the loan fund or increase the amounts they were going to borrow under the loan fund. (Brown Tr. 5491)

4. The formula by which equity funds are calculated and distributed includes both consideration of property valuation and income. The formula for the distribution of State Basic Aid includes only property valuation, without consideration of income. The amount of equity funds distributed to public school districts in FY93 represented less than 1 percent of the total foundation program expenditure and less than one-half of one percent of the total expenditure for public elementary and secondary education. (Maxwell Tr. 122-123)

5. The legislation for distributing the equity fund money is permanent law, but it takes an annual appropriation to create the funds. School districts in Area 5 tried not to use equity funds for salary and fringe benefits, because they could not depend upon the funds. (Taylor Depo. 158-59)

6. Equity funds were first placed in the budget at the recommendation of the Governor, not the State Board of Education or the Department of Education. The purpose of the equity fund was to target funds to low-wealth

districts (Russell Depo. 55)

7. Equity funds in the current budget include \$60 million in the first year and \$75 million in the second year. An additional \$15 million will be provided in the form of technology equity under a formula providing for distribution of the greatest amounts to the poorest districts. (Sanders Tr. 4482-4483)

8. Equity funds for FY93 were equal to \$45 million; for FY94, the budget proposes \$60 million in equity funds; and for FY95, the budget proposes \$75 million. For 1994, the \$60 million represent less than 1 percent of the state budget for primary and secondary education. For 1995, the same holds true. (Browning Tr. 4406; Stip. 20)

9. For 1994, the \$60 million in equity funds will be divided among 342 school districts, and for 1995 the number of school districts will be essentially the same. Director Browning testified that he could not give any assurance that any funds will be available for equity payments to any of these 342 school districts, after July 1, 1995. He testified: "We cannot appropriate beyond the biennium." (Browning Tr. 4407-08)

10. The inequities in the funding of public education in Ohio school districts continued to exist after the passage of the first equity distribution and will continue to exist after the current biennial budget distributions in FY94 and FY95. The Department of Education does not know how much additional money will be necessary to bring equity to the funding of public education. (Russell Depo. 56)

11. It is very important for school districts to have stability in their financial planning, and also to be able to predict with a high level of certainty continued receipt of funds. (Brown Tr. 5512) One of the purposes of equity funds was to provide poor school districts with greater educational opportunities. However, for a number of the poorer school districts, like Plaintiff Southern Local School District, these equity funds, coupled with significant expenditure reductions by the school district, have just kept the district from increased borrowing. (Brown Tr. 5512)

12. The money put toward equity fund payments to school districts would have been better spent if it had been put into increasing the basic aid level. (Shoemaker Tr. 4186)

13. The reason for the current distribution of equity money is that legislative leadership wanted an equity formula that would give the money to 218 districts, approximately the same number of school districts that had been exempted from the budget cuts in early 1993. (Tavakolian Depo. 218)

DAWSON-BRYANT

14. Seventy percent of the equity funds received by the Dawson-Bryant Local School District did not go to any new purchases or additional staffings, but rather \$186,000 of the equity funds in FY93 was spent for health benefit costs. (Washburn Tr. 2379)

15. For FY94, Dawson-Bryant is holding the equity fund money it received to finish the year in the black because health care costs are unknown. The only purchase out of those funds to be a new math series for students in grades 1 through 8. (Washburn Tr. 2381-82)

NORTHERN LOCAL

16. In FY93, Plaintiff Northern Local School District received approximately \$183,000 in equity funds. These funds were used by the district to purchase modular

classrooms, to hire the additional teacher needed to bring the district into compliance with the mandated 25 to 1 pupil to teacher ratio and to otherwise stay in the black financially. (Johnson Tr. 1474; 1393)

SOUTHERN LOCAL

17. Plaintiff Southern Local School District received \$289,000 in equity funds in FY93. (Stip. Exh. 17)

Southern Local used its equity funds to meet normal operations of the school district, including \$200,000 to meet two payrolls. The district purchased a few textbooks, but could not meet the text book and instructional material purchase plans. The district purchased one school bus, but the district needed to purchase two to three buses per year. (Spangler Tr. 496, 501)

18. Equity funds for Southern Local have nearly matched what the district was projected to borrow, so that funds have kept the district from operating in a deficit. (John Winnenberg Tr. 1234)

YOUNGSTOWN

19. Equity funds received by Youngstown City schools in FY93

helped to keep the district from borrowing money through the emergency school assistance loan fund. (Marino Tr. 3414)

20. Plaintiff Youngstown City School District received \$2.1 million in equity payments from H.B.671. That money was spent to help reduce the Youngstown deficit from \$7 million to \$5 million. The district did not purchase any new equipment, supplies, materials or textbooks with that equity money. (Hiscox Depo. vol 2, 83; Hiscox Depo. Exh. 25)

M. STUDY PERFORMED BY HOWARD FLEETER

1. In the Spring of 1991, a representative of the Governor's office contacted the director of the School of Public Policy at Ohio State University regarding the conduct of a study of school funding in Ohio. Dr. Fleeter was involved in those discussions, which resulted in a proposal for the conduct of such a study being submitted and approved. The study, funded by a grant from the Cleveland Foundation, took place over the summer and fall of 1991 and resulted in a written report to the Governor's Education Management Council submitted in November, 1992. (Fleeter Depo. Vol. 1, pp. 22-24) Fleeter Depo. Exh. B and Pl. Exh. 344 is Dr. Fleeter's

report.

2. Dr. Fleeter's report was used by the Department of Education in the formulation of budget and policy recommendations to the 120th General Assembly. (Pl. Exh. 15)

3. Dr. Fleeter presented his report at an education summit in December of 1992. (Fleeter Depo. 79) The findings of Dr. Fleeter's report, as commissioned by and reported to the State of Ohio are as follows:

a. A "good" education financing system must be equitable, but it must also ensure both the availability of an adequate level of resources to all districts and that this flow of resources is reliable in a dynamic and long-term sense. (Fleeter Depo. 1)

b. The equity problem challenging Ohio is essentially characterized by the significant imbalance in local tax base apparent across the state's wealthy and poor school districts--particularly that related to real and tangible business property wealth. (Fleeter Depo. 3)

c. Because income and property wealth is not uniformly distributed across school districts, some districts may have to tax a lower base at a higher rate in order to generate comparable revenues to a wealthier district taxing itself at a lower rate. Similarly, residents in relatively poor districts must make a proportionally greater tax payment "sacrifice" in order to generate a given level of revenues than would residents of wealthier districts. (Fleeter Depo. 4)

d. An equitable system of education finance should weaken the relationship between the quality of a child's education and the wealth of the child's school district. (Fleeter Depo. 9)

e. The foundation dollar amount for the 1991-92 school year (\$2,710) is not an indication of the minimum expenditure necessary to provide an adequate education for all of Ohio's school districts. Rather, this number is a budgetary residual, which is determined as a result of working backwards through the state aid formula after the legislature determines the total dollars to be allocated to primary and secondary education in each biennial

budget. (Fleeter Depo. 11)

f. There are extreme disparities among school resulting in sub-par facilities, under-staffing, lack of current text books and modern teaching equipment (i.e. computers), and other tangible and intangible measures. (Fleeter Depo. 11)

g. The current foundation formula replaced the prior equal yield formula in 1981. Over the first part of the decade of the 1980's, the foundation formula effectively narrowed disparities across districts, but in the latter half of the decade, these disparities increased. (Fleeter Depo. 11-12)

h. The equal yield system of school financing was implemented with the passage of the School Finance Reform Act of 1975. Ohio's equal yield program provided a minimum dollar per pupil guarantee (\$59.00 in FY80) on the first 20 mills of local property tax and a lesser "incentive" guarantee (\$42.00 in FY80) for local millage between 20 and 30. This power equalization program generated considerable criticism and was replaced in 1982 with the current foundation formula. Problems with the equal yield formula stemmed from the state's

failure to fully fund it, from "phantom revenue" complications arising from the operation of the state's property tax reduction factors, and most significantly, from the tendency of the incentive factor to favor districts of highest wealth and lowest need. The incentive portion of the formula operated to increase disparities between wealthy and poor districts because it was primarily the wealthy districts that were able to pass additional millage. (Fleeter Depo. 13)

i. Eight fundamental problems must be remedied in order to provide an equitable, adequate and reliable mechanism for funding public education in Ohio. (Fleeter Depo. 18)

(1) Disparities in Local Property Wealth

Differences in Class 2 real property valuation appear to be the driving force behind the Ohio school finance disparities. The rate at which inequity in Class 2 properties increased from 1981 to 1990 far exceeds the rate at which Class 1 property has grown inequitable. (Fleeter Depo. 18)

The coefficient variation for Class 2 property was 1.22 in 1981 and 2.20 in 1990. (Fleeter Depo p. 19)

(2) Interdistrict Cost (Price Differentials)

The present cost of doing business factor presents two problems. The first being the fact that the range from 1.0 to 1.075 does not fully reflect differentials in costs associated with school district operations. The second is that the cost of doing business factor does not account for differences in cost within particular counties. (Fleeter Depo. 21)

(3) Lack of Equalization of Categoricals

The lack of equalization of categorical programs is a structural flaw. (Fleeter Depo 22)

(4) Restriction of Local Revenue Growth

House Bill 920, implemented in 1976, allows for "tax reduction factors." Increases in

district property value due to inflationary price increases and the value of preexisting, unimproved property result in the calculation of "tax reduction factors," which lower a district's effective millage rate so as to leave property tax revenues unaffected by the increase in value as a result of inflationary pressures. No other state has a tax roll back or limitation measure which is this extreme in its effects. Every other state allows inflationary growth in the property tax base beyond inside millage (though many states tie permissible growth to the CPI or some other economic indicator). (Fleeter Depo. 25) An exception to the effective millage reduction is made for what is known as inside millage. Each district is allocated a certain number of inside mills (up to a maximum of ten, with most districts having 4-6), where resulting revenue is exempt from the millage roll backs due to inflationary pressures. These inside mills comprise a relatively small fraction of effective mills from most districts. However, a second exception applies to districts which are at the state minimum effective millage of 20 for either class of property. Since these

districts cannot have their millage rates rolled back in response to inflation, they effectively have 20 inside mills. More than 200 districts are at the 20 mill floor for either Class 1 or Class 2 property. (Fleeter Depo. 25)

(5) Attributed (Phantom) Revenue

Tax reduction factors (discussed supra) take effect when property is reassessed and effectively ensure that a district receives no more revenue than it would have received in the absence of inflation. However, the foundation formula sees the new, reassessed valuation figure and will reduce state assistance in response to the larger valuation per pupil. This has become known as the "double whammy" - districts lose once by not having local revenues increase in pace with inflation and lose a second time by having state assistance actually reduced. (Fleeter Depo. 22-23)

(6) Unfunded Mandates

For many school districts, current education funding levels are insufficient to ensure delivery of mandated education services.

(Fleeter Depo. 24)

(7) Responsiveness to Enrollment Decline

Changes in enrollment often have a pronounced asymmetric effect on growing and shrinking school districts. It is usually easier to increase the scale of education service in response to enrollment growth than it is to decrease the scale in response to decline in the number of students. This is largely due to the fact that it is easier to hire education personnel than it is to lay them off (or decrease their salaries)

When enrollment declines, districts appear wealthier to the state aid formula because valuation per pupil increases (the opposite occurs when enrollment increases). Districts which cannot downsize immediately end up receiving less state aid than before creating a budget problem.

(8) Unpredictability of the Biennial Budget

Process

Because state support of education is determined at each biennium as a part of the general fund budget in process, it is difficult for districts to plan beyond a two year time horizon.

j. Substandard physical plants are the most "concrete" evidence that education facilities and school quality are below acceptable levels in poor districts. (Fleeter Depo. 50)

k. The 9 percent debt limit has the effect of restricting capital funds for poor districts much more than for wealthy districts. (Fleeter Depo. 50)

l. In 1992, when ranked by quintiles containing approximately 20 percent of Ohio school districts, the lowest property wealth quintile had 20 districts on the guarantee, while the highest quintile had 252 districts on the guarantee. The second lowest had 38 districts, while the second highest had 122 districts, with the third quintile

having 75 districts guaranteed. (Fleeter Depo. 66,
Tbl. 10)

4. Dr. Payton agreed that the goals contained in Dr. Fleeter's report of equity, adequacy, and reliability were appropriate goals for a school funding system. (Payton Depo. 179) Dr. Fleeter's report (Payton Depo. Exh. 7) contains the same recommendations that have been presented to the legislature for several biennia. (Payton Depo. 185)

N. LEGISLATIVE TESTIMONY PRESENTED ON BEHALF OF THE OHIO DEPARTMENT OF EDUCATION AND STATE BOARD OF EDUCATION BY ASSISTANT SUPERINTENDENT OF PUBLIC INSTRUCTION WILLIAM PHILLIS

1. Dr. Phillis served as liaison between the Department of Education and the General Assembly from early 1977 through April 13, 1992. In that capacity, he was responsible for staffing the State Board of Education's Legislative Committee, assisting the State Board of Education in the development of its biennial legislative recommendations, including budget recommendations, and responsible to provide testimony to the various committees and subcommittees of the General Assembly considering education matters. Those committees and subcommittees included the Ways and Means Committee, the

Finance and Appropriations Committee, and the Education Committee, both the House and Senate. (Phillis Tr. 1715-16)

2. Some of the flaws in Ohio's system of funding public elementary and secondary education which Dr. Phillis testified to are as follows:

a. The Foundation Formula does not take into account income wealth in the distribution of state funds, but does factor in property wealth.

b. Categorical programs are not equalized.

c. Guarantees are not equalized. Guarantee provisions provide more basic aid to districts than those districts would receive if they were receiving aid from the formula calculation.

d. The 20-mill required local effort does not accurately measure the ability of districts to pay the local share of the basic program.

e. When property wealth increases, so does the 20-mill charge-off, so the state's share of basic aid decreases.

f. Tax reduction factors limit growth on personal property tax revenues to inside millage, new construction and increased value of tangible personal property, forcing many school districts to go to the voters to approve additional levies just to keep pace with inflation.

g. The foundation level has not kept pace with school district expenditures.

(Pl. Exhs. 155, 156, 168, 178)

O. EQUITY STATISTICS AS RELATED TO ANALYSES OF PUBLIC SCHOOL FUNDING IN OHIO

1. Equity statistics" are statistical measures of dispersion measuring the distribution of funds. Equity statistics are not measures of fairness or morality, nor do they generally take into account such things as differences in the costs of educating different children. They are primarily measures of horizontal equity. Both the coefficient of variation and the Gini coefficient indicate that there is less equity in the dispersion of school funds in 1991 than there was in 1968-69. (Alexander Tr. 3717-18; Pl. Exh. 301, pp. 78-

80)

2. The concept of vertical equity means that dollars are distributed according to need; horizontal equity refers to equal distribution of dollars per pupil. (Alexander Tr. 3864)

3. A Gini coefficient of .10 or above indicates a substantially disequalized funding system. Ohio's system of funding has remained above .10. (Alexander Tr. 3719; Pl. Exh. 301, p. 80)

4. Ohio is one of the most poorly equalized states in the United States. It is among the states with the greatest disparities expenditures per pupil of any state in the United States. (Alexander Tr. 3728)

5. Equity statistics do not take into account the quality of instructional program or quality of teachers. (Alexander Tr. 3728)

6. Ohio's system of funding public education is not consistent with the historical standards of a common system of public schools. (Alexander Tr. 3728-29)

7. Ohio's system of school funding is neither thorough nor

efficient. (Alexander Tr. 3733)

8. The deprivation of adequate educational resources to a school district over time results in inter-generational problems because many of the community members lack sufficient knowledge of options to know that they have been deprived. (Alexander Tr. 3749)

9. Based on the coefficient of variation, Ohio ranked 48th of the 50 states in the extent of disparity of school funding in 1990. (Alexander Tr. 3862)

10. Small improvements in the measures of dispersion do not indicate improvement in the system because of the great extent to which the system is unequitable. (Alexander Tr. 3932)

11. Equity statistics were not presented to the trial court in *Cincinnati v. Walter* [in any detail as in this case], (1979), 58 Ohio St. 2d 368. (Alexander Tr. 3934)

12. The coefficients of variation for the period from 1980--81 to 1990-91 were extreme and unacceptable in every case, though slightly lower in 1991 than in 1981. (Alexander Tr. 3951)

13. Dr. Jimmy Payton has performed several studies looking at school finance equity from different viewpoints in different years. (Payton Depo. 82) Specifically, Dr. Payton prepared a document for the written testimony of William Phillis presented to the General Assembly on 3-8-90 and 9-6-90 and admitted into evidence as Pl. Exh. 178. (Payton Depo. 86)

14. Dr. Payton testified that all school districts in Ohio should be part of an equity analysis because they do affect the results of such an analysis. (Payton Depo. 88) However, in such analyses, Dr. Payton usually excludes Perry Local School District, because of its unique circumstances, along with the island school districts. (Payton Depo. 130)

15. Dr. Payton did a quintile analysis comparing 1980 and 1990 data which showed that wealth distribution grew more disparate from 1980 to 1990. (Payton Depo. 189)

16. Before the Cupp Committee developed its report, Dr. Payton was asked by the Committee to create plans that would address certain issues, such as including an income factor in the funding formula, addressing the phantom revenue problem, equalizing categoricals, providing reward for effort of local school districts in

the formula, and other changes. (Payton Depo. 109-10)

17. The Department of Education's position to the Cupp Committee was supportive of a change in the funding formula to modify the foundation formula to include an income factor, phase out categoricals, address the phantom revenue problem, equalize categoricals, apply costs of doing business factor to categoricals, convert outside millage to inside millage to allow some growth in local revenues, and provide substantial amounts of additional state revenues into basic aid. (Payton Depo. 117-18) If the Department's position had been adopted, the proposed amount included a billion dollar per year increase from the state level with about \$400,000,000 in programs and \$600,000,000 to fund changes in the foundation formula to improve equity. (Payton Depo. 118-19) Dr. Payton undertook an equity analysis on the proposal compared to the present system and concluded that the proposed changes would improve equity in all the equity measures that he applied. (Payton Depo. 123)

18. Dr. Payton developed Plaintiff's Exhibit 158 which he indicated showed that equity had gotten worse between the years 1980 and 1990. After preparing the document, Dr. Payton determined that the co-efficient of variation of 1980 should have been approximately 18.6 and for 1990

approximately 20.56. (Payton Tr. 4906-07) Dr. Payton did not change his conclusion that equity had gotten worse between the years 1980 and 1990 and, in fact, still holds the conclusion that equity has gotten worse. (Payton Tr. 4929)

19. Comparing statistical trends in equity of distribution of school funds between the period from 1980 to 1987, there appeared to be some improvement in equity, but after 1987, there has been a moving away from equity in the distribution of funds. (Phillis Tr. 1910)

20. The first fiscal year in which the "equal yield for equal effort" formula was employed for distributing state funds for public education in Ohio was 1976. (Phillis Testimony, T.p. 1833)

21. Ohio returned to a foundation formula for distributing state funds for public education in 1981-82. (Plaintiffs' Trial Ex. No. 448, pp. 66, 68; Johnson Dep., Vol. I, pp. 105-6, 170)

22. The disparities in expenditures or revenues among school districts can be measured statistically with respect to a state school finance system. (Alexander Testimony, T.p. 3863-9; Guthrie Testimony, T.p. 5148-9, 5165)

23. One measurement of equity in a state school finance system is that of equal educational opportunity or wealth neutrality. The Pearson product moment correlation coefficient and the elasticity coefficient are used to measure the strength of the relationship between per pupil revenues or expenditures and a measure of wealth in the school district such as assessed valuation or median income per pupil. (Plaintiffs' Trial Ex. No. 448, pp. 69, 70 and 73; Johnson Dep., Vol. I, pp. 76, 125-6, 155-6, 161; Porter Testimony, T.p. 1218-1219)

24. A decline in value over time (i.e. a movement towards zero) of the correlation coefficient shows increased equity. The same is true for the elasticity coefficient. (Johnson Dep., Vol. I. pp. 189-92)

25. A second measurement of equity in a state school finance system is that of horizontal equity which is based upon the principle that there should be equal treatment of equals. In an analysis of horizontal equity, all students are treated as being equal, and the extent of disparities in revenues or expenditures is then measured. (Plaintiffs' Trial Ex. No. 448, pp. 69-70, Johnson Dep., Vol. I, pp. 72-3, 107; Alexander

Testimony, T.p. 3864-5; Guthrie Testimony T.p. 5383-4, 5398)

26. A third principle in state school finance analysis is that of vertical equity which has to do with students with different needs being given different resources to match those needs. (Johnson Dep., Vol. I, p. 107; Plaintiffs' Trial Ex. No. 448, p. 69; Porter Testimony, T.p. 1155; Alexander Testimony, T.p. 3864-5, 3888; Guthrie Testimony, T.p. 5384)

27. The removal from an analysis of horizontal equity of a state school finance system of monies associated with the special needs of certain students will allow an analysis of disparities in expenditures or revenues unassociated with special needs related to vertical equity. Including special needs moneys in such an analysis can make it misleading. (Porter Testimony, T.p. 1154-5; Plaintiffs' Trial Ex. No. 99, pp. 1, 5; Plaintiffs' Trial Ex. No. 100, p. 7; Plaintiffs' Trial Ex. No. 101, p. 1; Guthrie Testimony, T.p. 5224, 5324-7, 5383-4, 5398)

28. The only state subsidies to public education not tied to special needs are basic aid and equity funds. (Plaintiffs' Trial Ex. No. 99, p. 5)

29. Horizontal equity in a system of state school finance is measured statistically by such univariate measures of absolute dispersion as range, restricted range, federal range ratio, high-low ratio, and interquintile or interquintile range. It is also measured by more sophisticated bivariate measures of relative dispersion such as the coefficient of variation, Gini coefficient, and McLoone Index. The latter measure the characteristics of an entire distribution, or portion thereof, rather than simply the characteristics of several specific points in the distribution, as is the case with measures of absolute dispersion. (Plaintiffs' Trial Ex. No. 448, pp. 72, 74; Plaintiffs' Trial Ex. No. 99, p. 12; Plaintiffs' Trial Ex. No. 100, p. 11; Porter Testimony, T.p. 1135-1137; Guthrie Testimony, T.p. 5163-4; Alexander Testimony, T.p. 3865, 3870-1)

30. The Gini coefficient indicates how far the distribution of revenues or expenditures is from providing each proportion of students with equal proportions of revenues or expenditures. It contrasts the actual distribution with the absolute fiscal equality that would result from 10% of the students getting 10% of the revenues or expenditures, 50% of the students getting 50% of the revenues or expenditures, and so forth - a

distribution which would graphically be a straight diagonal line of 45 . Numerically, the Gini coefficient represents the area on a graph between the 45 line of absolute equality and the line representing the actual distribution (Lorenz curve) divided by the total area below the 45 line. The closer the value is to zero, the more equitable is the distribution. (Plaintiffs' Trial Ex. No. 301, p. 64; Plaintiffs' Trial Ex. No. 99, p. 13; Defendants' Trial Ex. No. 2, App. A. pp 4-5; Alexander Testimony, T.p. 3716, 3874)

31. The Gini coefficient puts relatively more weight on the middle of the distribution and is less influenced by extreme values than other measures of relative dispersion. (Plaintiffs' Trial Ex. No. 106, p. 522; Porter testimony, T.p. 1079; Guthrie Testimony, T.p. 5164)

32. The Gini coefficient is the best measure of disparities in revenues or expenditures among school districts in a state system of school finance. (Alexander Testimony, T.p. 3876; Guthrie Testimony, T.p. 5164)

33. The McLoone Index measures the extent to which revenue, or expenditures, for pupils below the median in the distribution deviate from the median. It is the ratio

of actual expenditures or revenue for pupils below the median to what these pupils would receive if they were at the median. As the value increases toward 1.0, equity increases in the lower half of the distribution.

(Plaintiffs' Trial Ex. No. 301, p. 64; Plaintiffs' Trial Ex No. 99, p. 13; Defendants' Trial Ex. No. 2, App. A. pp. 3-4)

34. The coefficient of variation for a distribution of revenues or expenditures is calculated by dividing the standard deviation of the distribution (i.e. the mean dispersion distance of each individual value from the distribution mean) by the mean of distribution. It can be expressed as a percentage or a decimal. As the value decreases, equity improves. (Defendants' Trial Ex. No. 2, App. A, pp. 2-3; Plaintiffs' Trial Ex. No. 301, p. 64; Plaintiffs' Trial Ex. No. 99, pp. 12-13; Alexander Testimony, T.p. 3716, 3873, 3891-2)

35. The coefficient of variation is more sensitive to change in the tails (richest and poorest districts) or extremes of the distribution than the McLoone Index or Gini coefficient. (Guthrie Testimony, T.p. 5164-5, 5361; Porter Testimony, T.p. 1077, 1079, 1182-1183; Plaintiffs' Trial Ex. No. 106, p. 522)

36. The range is the difference between the highest and lowest values in a distribution of revenues or expenditures per pupil. As the range decreases, equity increases. (Plaintiffs' Trial Ex. No. 301, p. 64; Plaintiffs' Trial Ex. No. 99, p. 12; Defendants' Trial Ex. No. 2, App. A, p. 1)

37. The high to low ratio (or ratio of revenue extremes) is calculated by dividing the highest value in a distribution of revenues or expenditures per pupil by the lowest value. As the value decreases, equity increases. (Defendants' Trial Ex. No. 2, App. A, p. 1)

38. The restricted range in a distribution of revenues or expenditures per pupil is the difference between the highest and lowest values at selected percentiles in the distribution. As the restricted range decreases, equity increases. (Defendants' Trial Ex. No. 2, App. A, p. 1; Plaintiffs' Trial Ex. No. 301, p. 64; Plaintiffs' Trial Ex. No. 99, p. 12)

39. The federal range ratio is the difference between the per pupil revenues or expenditures at the 95th and 5th percentiles in the distribution divided by the value at the 5th percentile. As the federal range ratio decreases, equity increases. (Plaintiffs' Trial Ex. No.

301, P. 64; Defendants' Trial Ex. No. 2, App. A, p. 2;
Alexander Testimony, T.p. 3719, 3872)

40. With respect to equal educational opportunity, there was less of a relationship between current expenditures per pupil and assessed valuation per pupil in school year 1988-89 than in either of school years 1980-81 or 1982-83, as shown by a decline in the correlation coefficient in a study done by Dr. Gary Johnson. This shows increased equity in 1988-89 from that in either 1980-81 or 1982-83. (Plaintiffs' Trial Ex. No. 448, pp. 76-7; Johnson Dep., pp. 105-6, 189-92)

41. There was less of a relationship between current expenditures per pupil (whether total expenditures, general fund expenditures, or general fund expenditures minus Disadvantaged Pupil Impact Aid were used) and assessed valuation per pupil in school year 1989-90 than in school year 1980-81, as shown by a decline in the correlation coefficient in a study done by Dr. Tod Porter. This shows increased equity in 1989-90 from that in 1980-81. (Plaintiffs' Trial Ex. No. 99, Table 8; Plaintiffs' Trial Ex. No. 101, Tables 4 and 6; Porter Testimony, T.p. 1186-1191, 1199-1200, 1203-1204)

42. There was less of a relationship between expenditures

per pupil and assessed valuation per pupil in school year 1988-89 than in school year 1980-81 as shown by a marginal decline in the correlation coefficient in a study done by Dr. Kern Alexander. There was more of relationship between revenues per pupil and assessed valuation per pupil comparing those same years as shown by a slight increase in the correlation coefficient. Dr. Alexander concluded that one could not clearly determine that the system of school finance was more or less fiscally neutral in 1988-89 than in 1980-81. (Alexander Testimony, T.p. 3912-3)

43. Dr. Gary Johnson analyzed horizontal equity in Ohio's system of school finance using pupil-weighted measures of current expenditures per pupil and excluding from the analysis the 2% of school districts with the highest per pupil expenditures so as to eliminate the statistical bias associated with skewness. (Plaintiffs' Trial Ex. no. 448, pp. 72-3, Johnson Dep., Vol. I, pp. 85-7, 129-30)

44. Dr. Johnson's analysis covered five alternate years from school years 1980-81 through 1988-89 with the equal yield formula being in effect for the first year and the foundation formula for the other four years. (Johnson Dep., Vol. I, pp. 105-6, 170; Plaintiffs' Trial Ex. No.

448, Table 1, p. 74)

45. Dr. Johnson's expenditures consisted of state and local moneys excluding debt service and capital outlay.

(Johnson Dep., Vol. I, pp. 128-9)

46. Dr. Johnson's analysis utilized a doctoral dissertation which contained analyses also of the horizontal equity of the distribution of revenues per pupil and analyses done without excluding the 2% of school districts.

(Johnson Dep. Ex. No. 3; Johnson Dep., Vol. I, pp. 60-1, 109, 178-9)

47. Dr. Tod Porter analyzed horizontal equity in Ohio's system of school finance using pupil-weighted measures of current expenditures per pupil (including state and local moneys) and excluding from the analysis only the small island school districts. (Plaintiffs' Trial Ex. No. 99, pp. 5, 6, 12, 20; Plaintiffs' Trial Ex. No. 100, pp. 7, 11)

48. Dr. Porter's analysis covered the three school years 1980-81, 1984-85, and 1989-90. (Plaintiffs' Trial Ex. No. 99, p. 17; Plaintiffs' Trial Ex. No. 100, pp. 17-18; Porter Testimony, T.p. 1179-1180)

49. Dr. Porter's analysis excluded state subsidies for vocational education from the distribution. (Porter Testimony, T.p. 1156-1157; Plaintiffs' Trial Ex. No. 99, p. 20; Plaintiffs' Trial Ex. No. 100, p. 7)

50. As a general matter, school districts with lower assessed valuations per pupil spend more money per pupil on vocational education than school districts with higher assessed valuations per pupil. (Payton Testimony, T.p. 4904-5, 4925)

51. Dr. Porter believed that an analysis which measures equity over time can be misleading if special needs moneys are included in total expenditures being analyzed. (Plaintiffs' Trial Ex. No. 99, p. 1; Plaintiffs' Trial Ex. No. 101, p. 1)

52. Dr. Porter believed that general fund expenditures excluded most categorical aid and sought to eliminate special needs moneys from his expenditure analysis by subtracting out DPIA funds from general fund expenditures. (Plaintiffs' Trial Ex. No. 101, p. 1; Plaintiffs' Trial Ex. No. 99, p. 5; Porter Testimony, T.p. 1195-1196)

53. General fund expenditures include categorical aid for

special education. (Daubenmire Testimony, T.p. 4944;
Phillis Testimony, T.p. 1839-1840)

54. Dr. Kern Alexander analyzed horizontal equity in Ohio's system of school finance in 1990 using pupil-weighted measures of distributions of revenues per pupil.

(Alexander Testimony, T.p. 3786-3789, 3914; Defendants' Trial Ex. No. 14, App. VI)

55. Dr. Alexander analyzed horizontal equity in Ohio's system of school finance in 1993 using pupil-weighted measures of distributions of, separately, revenues, expenditures including federal revenues, and expenditures excluding federal revenues, excluding in all three analyses the island school districts.

(Plaintiffs' Trial Ex. No. 301, pp. 63-89; Plaintiffs' Trial Ex. No. 301a, pp. 82a-89a; Alexander Testimony, T.p. 3899, 3903)

56. State moneys for special needs of pupils or school districts were excluded from some of Dr. Alexander's decile analysis; Dr. Alexander did not exclude these moneys in calculating his equity statistics. (Alexander Testimony, T.p. 3886, 3908, Plaintiffs' Ex. 310, pp. 25-26)

57. Dr. Alexander's 1990 analysis of revenues covered the school years 1980-81 and 1988-9. (Alexander Testimony, T.p. 3916-70)

58. Dr. Alexander's 1993 analysis of revenues covered the consecutive school years 1980-81 through 1990-91. (Plaintiffs' Trial Ex. No. 301, pp. 66-73)

59. Dr. Alexander's 1993 analysis of expenditures including federal revenues covered the alternate school years from 1968-69 through 1990-91. (Plaintiffs' Trial Ex. No. 301, pp. 74-81)

60. Dr. Alexander's 1993 analysis of expenditures minus federal revenues covered the alternate school years from 1980-81 through 1990-91. (Plaintiffs' Trial Ex. No. 301, pp. 82-89; Plaintiffs' Trial Ex. No. 301a, pp. 82a-89a)

61. In Dr. Alexander's 1993 analysis, revenues per pupil were \$161.23 less than expenditures per pupil in 1980-81. In 1984-85, revenues per pupil were \$418.27 more than expenditures per pupil for that year. (Plaintiffs' Trial Ex. No. 301, pp. 66, 74)

62. In Dr. Alexander's 1993 analysis, federal revenue per

pupil ranged from a low of \$6.29 per pupil in 1980-81 to a high of \$217.59 per pupil in 1984-85, as determined by the differences in expenditures for the years in common on the two charts. (Plaintiffs' Trial Ex. No. 301, p. 66; Plaintiffs' Trial Ex. No. 301a, p. 82a)

63. Data from Dr. Alexander's 1990 analysis was presented to a joint committee of the Ohio General Assembly. (Defendants' Trial Ex. No. 14, App. VI, pp. 47-50; Alexander Testimony, T.p. 3786-9)

64. Revenue data for Dr. Alexander's 1990 analysis was obtained on computer tape from the Ohio Department of Education. (Alexander Testimony, T.p. 3916-7)

65. Revenue and expenditure data for Dr. Alexander's 1993 analyses was obtained from the Cost Per Pupil publications of the Ohio Department of Education. Such data was entered by hand into Dr. Alexander's computer. Because of data problems, the equity statistics from the 1990 analysis of revenues for 198081 should be substituted for the equity statistics for that year in the 1993 analysis of revenues. (Alexander Testimony, T.p. 3915, 3918, 3920-2)

66. The Ohio Department of Education may correct in its

computers data published in the Cost Per Pupil publications without correcting the data in the publications. (Daubenmire Testimony, T.p. 4944-5; Alexander Testimony, T.P. 3918)

67. For 37 school districts in 1980-81, the Ohio Department of Education's computer data base reflects expenditure data which differs from that in Dr. Alexander's data base by more than \$250,000 for each of such districts. (Daubenmire Testimony, T.p. 4955-6)

68. For other years, Dr. Alexander's data base reflects that expenditures for a school district were rounded off to the nearest \$1 million, including for districts spending in total as little as \$1 or 2 million. (Daubenmire Testimony, T.p. 4956)

69. Dr. James Guthrie analyzed horizontal equity in Ohio's system of school finance using measures of the distribution of revenues per pupil (without weighing school districts by ADM) and different distributions of school districts consisting of a distribution excluding school districts with the 5% of students with the highest revenues per pupil and the 5% of students with the lowest revenues per pupil ("federal range"), a distribution excluding school districts with the 5% of

students with the lowest revenues per pupil ("modified federal range"), and a distribution with only the island districts and a school district partially in Indiana (College Corner) excluded. (Defendants' Trial Ex. No. 2, pp. 5-7, ex. 9-13, Guthrie Testimony, T.p. 5154-5, 5157, 5162, 5166)

70. Dr. Guthrie's analysis of the distribution of local revenues plus state basic aid revenues covered the school years 1978-79, 1980-81, 1984-85, 1987-88, and 1990-91 for both the federal range and modified federal range, and it covered the school years 1978-79 and 1990-91 for all school districts excluding the islands and College Corner. (Guthrie Testimony, T.p. 5223-4, 5226, Defendants' Trial Ex. No. 2, ex. 9-11)

71. Dr. Guthrie's analysis for the school years 1978-79 and 1990-91 for all school districts exclusive of the islands and College Corner also included a distribution of local revenues plus state basic aid, DPIA and categorical revenues and a distribution of local revenues plus augmented state revenues (state basic aid, DPIA, categorical revenues, and subsidies paid to school districts to reimburse them for lost property tax revenues as a result of the homestead exemption and a property tax rollback). (Guthrie Testimony, T.p.

5227-8; Defendant's Trial Ex. No. 2, ex. 12-13)

72. The school year 1978-79 is the earliest school year for which the Ohio Department of Education had complete data in its computer system. (Daubenmire Testimony, T.p. 5025; Guthrie Testimony, T.p. 5152)

73. As of September, 1993, local revenue data was not yet complete within the Ohio Department of Education for school year 1991-92. (Guthrie Testimony, T.p. 5170; Daubenmire Testimony, T.p. 4939)

74. Drs. Johnson, Porter, Alexander and Guthrie are each experts in the area of school finance.

75. Dr. Johnson found that there had been a slight improvement from 1980-81 to 1988-89 in the horizontal equity of Ohio's school finance system as measured by the range and restricted range. (Plaintiffs' Trial Ex. No. 448, p. 74)

76. Dr. Johnson found an improvement in horizontal equity in Ohio's school finance system from 1980-81 to 1988-89 as measured by the federal range ratio and a modest but steady improvement in equity by this measure from 1982-83 to 1988-89. (Plaintiffs' Trial Ex. No. 448, p.

74-75)

77. Dr. Johnson found a slight improvement in equity as measured by the McLoone Index for the lower half of the distribution of expenditures from both 1980-81 and 1982-83 to 1988-89. (Johnson Dep., Vol. I, pp. 171-172)

78. Dr. Johnson found no significant, or any consistent and clear, trends over the period 1980-81 through 1988-89 for the coefficient of variation, McLoone Index, or the Gini coefficient, although they exhibited collectively some degree of erosion in equity, particularly the coefficient of variation. (Plaintiffs' Trial Ex. No. 448, p. 75)

79. Dr. Johnson found that the adjusted range, adjusted restricted range, and the federal range ratio measures reflected an overall movement towards greater horizontal equity in Ohio's school finance system from 1980-1981 through 1988-89. (Plaintiffs' Trial Ex. No. 448, p. 75)

80. With respect to all measures of horizontal equity except for the Gini coefficient in Dr. Johnson's analysis, the equity of the distribution of expenditures was improved in 1988-89 over that in 1982-83. The Gini coefficient was the same in these two years. (Plaintiffs' Trial Ex.

No. 448, Table 1, p. 74)

81. With respect to the federal range ratio, coefficient of variation, McLoone Index, and Gini coefficient as measured in the dissertation utilized in Dr. Johnson's analysis, the equity of the distribution of expenditures per pupil was improved in 1988-89 over that in 1982-83 when the 2% of districts with the highest current expenditures were not eliminated from the analysis.

(Johnson Dep. Ex. No. 3, Table 2)

82. With respect to the federal range ratio, coefficient of variation, McLoone Index, and Gini coefficient as measured in the dissertation utilized in Dr. Johnson's analysis, the equity of the distribution of local plus state revenues per pupil was improved in 1988-89 over that in 1982-83 whether or not the 2% of districts with the highest revenues were eliminated from the analysis.

(Johnson Dep. Ex. No. 3, Table 4)

83. Dr. Porter found that there had been a slight movement away from horizontal equity in Ohio's school finance system from 1980-81 to 1989-90 in accordance with various statistical measures applied to different categories of expenditures per pupil (except for the McLoone Index for total expenditures which moved toward

equity). (Porter Testimony, T.p. 1096, 1181-1183, 1193-1194, 1196-1197; Plaintiff's Trial Ex. No. 99, pp. 6, 7, 17; Plaintiffs' Trial Ex. No. 100, pp. 10, 17, 18; Plaintiffs' Trial Ex. No. 101)

84. In his 1990 study, Dr. Alexander found horizontal equity in Ohio's system of school finance improved in 1988-89 over that in 1980-81 as measured by the federal range ratio, coefficient of variation, McLoone Index, and Gini coefficient applied to distributions of revenues per pupil. (Alexander Testimony, T.p. 3928-9, 3930-1, 3938-9, 3957-8; Defendants' Trial Ex. No. 14, App. VI, pp. 47-50)

85. In the 1990 study, the federal range ratio moved toward equity from 1.27 in 1980-81 to .8724 in 1988-89, a 31.3% change. Dr. Alexander characterized this as a modest improvement in equity. (Alexander Testimony, T.p. 3930-1)

86. In the 1990 study, the coefficient of variation moved toward equity from 26.45 in 1980-81 to 26.03 in 1988-89, a 1.2% change. Dr. Alexander characterized this as a slight increase in equity. (Alexander Testimony, T.p. 3938-9)

87. In the 1990 study, the Gini coefficient moved toward equity from .1403 in 1980-81 to .1245 in 1988-89, an 11% change. Dr. Alexander characterized this as a small increase in equity. (Alexander Testimony, T.p. 3957-8)

88. In the 1990 study, the McLoone Index moved toward equity from .86 in 1980-81 to .89 in 1988-89, a 3.5% change. Dr. Alexander characterized this as a relatively substantial increase in equity. (Alexander Testimony, T.p. 3971-5)

89. In his 1993 study of the equity of distributions of revenues per pupil, Dr. Alexander found horizontal equity in Ohio's system of school finance improved in 1990-91 over that in 1980-81 as measured by the federal range ratio, coefficient of variation, McLoone Index, and Gini coefficient. (Alexander Testimony, T.p. 3934-6, 3949, 3965-6, 3977-8)

90. In the 1993 study of revenues, the federal range ratio moved toward equity from 1.27 in 1980-81 to .7706 in 1990-91, a change of approximately 40%. (Alexander Testimony, T.p. 3934-6)

91. In the 1993 study of revenues, the coefficient of variation moved toward equity from 26.45 in 1980-81 to

25.04 in 1990-91, about a 5% change. (Alexander Testimony, T.p. 3949)

92. In the 1993 study of revenues, the McLoone Index moved toward equity from .86 in 1980-81 to .8815 in 1990-91, a 3% change. (Alexander Testimony, T.p. 3977-8)

93. In the 1993 study of revenues, the Gini coefficient moved toward equity from .1403 in 1980-81 to .1177 in 1990-91, a 16% change. (Alexander Testimony, T.p. 3965-6)

94. In the 1993 study of revenues, the federal range ratio, coefficient of variation, McLoone Index, and Gini coefficient all showed greater equity in 1990-1 than in 1981-82. (Plaintiffs' Trial Ex. No. 301, pp. 69-72)

95. In his 1993 study of the equity of distributions of expenditures (including federal revenues) per pupil, Dr. Alexander found that the federal range ratio, coefficient of variation, and Gini coefficient moved away from equity from 1976-77 to 1990-91, while the McLoone Index moved toward equity during this time period. (Plaintiffs' Trial Ex. No. 301, pp. 77-80)

96. In this 1993 study of expenditures, the federal range ratio changed from .8161 in 1976-77 to .8586 in 1990-91,

approximately a 5% change. (Alexander Testimony, T.p. 3937; Plaintiffs' Trial Ex. No. 301, p. 77)

97. In this 1993 study of expenditures, the coefficient of variation changed from 20.49 in 1976-77 to 21.43 in 1990-91, a 4.6% change. (Alexander Testimony, T.p. 3953)

98. In this 1993 study of expenditures, the Gini coefficient changed from .1128 in 1976-77 to .1165 in 1990-91, a 3% change. (Alexander Testimony, T.p. 3963-4)

99. In this 1993 study of expenditures, the McLoone Index changed from .8726 in 1976-77 to .8838 in 1990-91, a 1.3% change. (Alexander Testimony; T.p. 3974-5)

100. In his 1993 study of the equity of distributions of expenditures per pupil minus federal revenues, Dr. Alexander found that the coefficient of variation, Gini coefficient and McLoone Index moved away from equity from 1980-81 to 1990-91, while the federal range ratio moved toward equity during this time period. (Plaintiffs' Trial Ex. No. 301a, pp. 85a-88a)

101. In this 1993 study of expenditures minus federal revenue, the federal range ratio changed from .7959 in

1980-81 to .7346 in 1990-91, an 8% change. (Alexander Testimony, T.p. 3931-2)

102. In this 1993 study of expenditures minus federal revenue, the coefficient of variation changed from 19.81 in 1980-81 to 21.25 in 1990-91, a 7.3% change. (Plaintiffs' Trial Ex. No. 301a, p. 87a)

103. In this 1993 study of expenditures minus federal revenue, the McLoone Index changed from .8903 in 1980-81 to .8794 in 1990-91, a 1.2% change. (Alexander Testimony, T.p. 3978-9)

104. In this study of expenditures minus federal revenue, the Gini coefficient changed from .1078 in 1980-81 to .1143 in 1990-91, 1.6% change. (Alexander Testimony, T.p. 3966-7)

105. With respect to all measures of horizontal equity employed in Dr. Guthrie's analysis of the distribution of local and state basic aid revenues per pupil, equity improved from 1978-1979 to 1990-91 for both the federal range and modified federal range. Equity improved during this time period, as measured by the Gini coefficient and McLoone Index, for these revenues when all school districts except the islands and College Corner were

included in the analysis. (Guthrie Testimony, T.p. 5223-7; Defendants' Trial Ex. No. 2, pp. 5-6, ex. 9-11)

106. Equity as measured by the Gini coefficient and the McLoone Index improved from 1978-79 to 1990-91 in Dr. Guthrie's analysis of horizontal equity in revenues when all school districts except the islands and College Corner were included in distributions of revenues per pupil consisting of local revenues, state basic aid, DPIA, and categorical aid. Equity also improved for these measures during this time period for these school districts when state subsidies for homestead exemptions and property tax rollback were included in the revenue distribution. (Guthrie Testimony, T.p. 5227-30; Defendants' Trial Ex. No. 2, pp. 6-7, ex. 12-13)

107. In his analysis of the horizontal equity of the distribution of revenues per pupil, the only instances Dr. Guthrie found in which there was a movement away from equity from 1978-79 to 1990-91 was with respect to the ratio of revenue extremes and coefficient of variation when all school districts but the islands and College Corner were included in the distribution being analyzed (with the exception that the coefficient of variation remained unchanged when augmented state revenues were used). (Guthrie Testimony, T.p.5226-5230;

Defendants' Trial Ex. No. 2, ex. 11-13)

108. The ratio of revenue extremes and the coefficient of variation are sensitive to changes in the extremes of a distribution. (Guthrie Testimony, T.p. 5163-4, 5227, 5361-2; Porter Testimony, T.p. 1077; Plaintiffs' Trial Ex. No. 106, p. 522)

109. Dr. Guthrie found it to be virtually indisputable that Ohio's system of school finance was more equitable in 1991 than in 1979. (Guthrie Testimony, T.p. 5225, 5258)

110. Dr. Guthrie analyzed the horizontal equity of the distribution of local and state basic aid revenues per pupil for 1990-91 when augmented by the actual and projected distributions by school district of equity or equalization aid for each of the school years 1992-93, 1993-94, 1994-95. (Guthrie Testimony, T.p. 5230-1; Defendants' Trial Ex. No. 2, p. 7, ex. 14)

111. In the foregoing analysis of the hypothetical impact of equity aid upon 1990-91 revenue distribution, the addition of each of the three years' equity funds separately to 1990-91 revenues per pupil resulted in an improvement in equity in the ratio of revenue extremes, the coefficient of variation, and the Gini coefficient

while the McLoone Index remained constant. (Guthrie Testimony, T.p. 5231; Defendants' Trial Ex. No. 2, p. 7, ex. 14)

112. Neither of plaintiffs' expert witnesses who included special needs moneys in their expenditure distributions performed any analyses to determine if changes in horizontal equity over time as measured by equity statistics were being influenced by changes in expenditures for special needs. (Plaintiffs' Trial Ex. No. 301; Alexander Testimony, T.p. 3886-9, 3908-11; Plaintiffs' Trial Ex. No. 448)

113. Analyses of horizontal equity in distributions of assessed valuation per pupil do not necessarily tell one anything about horizontal equity in per pupil education expenditures or revenues. (Porter Testimony, T.p. 1165-1166; Alexander Testimony, T.p. 3792-3, 3798-9)

114. The use of per pupil revenues in analyses of horizontal equity in school finance more accurately reflects the State's responsibility as a provider of resources and is a better measure of equity than per pupil expenditures where the State's actions are at issue. (Guthrie Testimony, T.p. 5150, 5314)

115. School finance analyses comparing school districts may be performed in accordance with generally accepted standards in the area either by weighing school districts by their numbers of students or by leaving the districts unweighed. (Fortune Testimony, T.p. 3500-1; Guthrie Testimony, T.p. 5167-8)

116. The Cleveland City School District was the 29th highest spending district in the state on a per pupil basis in school year 1990-91. More than sixty percent of its pupils receive Aid to Dependent Children. (Defendant's Trial Ex. No. 4b, p. 30; Defendants' Trial Ex. No. 23, p. 6; Guthrie Testimony, T.p. 5182-3)

117. Outliers as that term is employed in statistics are points in a distribution which are at least two to three standard deviations from the mean. (Porter Testimony, T.p. 1141)

118. An outlier in statistics can also be a point which is unusual and wouldn't be representative in predicting the total population of a distribution. (Alexander Testimony, T.p. 3889)

119. In terms of expenditures per pupil, the only school districts in Ohio which are more than three standard

deviations from the mean are those at the high-spending end of the distribution. (Porter Testimony, T.p. 1144; Alexander Testimony, T.p. 3892-5; Guthrie Testimony, T.p. 5181-2)

120. Dr. Alexander did not exclude from his analyses any school districts simply because they were high-spending. The eight school districts, exclusive of the island districts, whose education spending in 1991 placed them more than three standard deviations above the mean were not excluded from Dr. Alexander's analyses in Plaintiffs' Trial Ex. No. 301. Their per pupil spending ranged from approximately \$7,000 to \$11,000. (Alexander Testimony, T.p. 3894-3901; Defendants' Trial Ex. No. 4b)

121. In an analysis of horizontal equity, outliers included in the distribution could affect the trend in equity statistics over time if they became more extreme relative to the mean. (Porter Testimony, T.p. 1146; Alexander Testimony, T.p. 3897)

122. Neither Dr. Porter nor Dr. Alexander did any analyses to determine if their changes in equity statistics over time were attributable to the movement of outliers relative to the mean. (Porter Testimony, T.p. 1150, 1189-1190; Alexander Testimony T.p. 3898)

P. GROWTH IN EDUCATION REVENUE

1. From 1979 through 1991, local revenues and state revenues (Basic Aid, DPIA, and categorical aid) for education increased 37% on a per pupil basis more than inflation as measured by the Consumer Price Index. (Defendants' Trial Ex. No. 2, p. 2, Ex. 1 thereto; Guthrie Testimony, T.p. 5190, 5193)

2. Monies provided by the legislature for funding public education have been increased since 1982 at more than double the rate of inflation. (Browning Testimony, T.p. 4380, 4469)

3. There was a 50% increase in real dollar expenditures on education from 1977 to 1991. (Alexander Testimony, T.p. 3930)

4. The state's share of education funding increased during the 1980's from 37% to 47% of total education spending. (Plaintiffs' Trial Ex. No. 100, p. 5; Porter Testimony, T.p. 1130; Phillis Testimony T.p. 1829. See also Alexander Testimony, T.P. 3851-3852)

5. Increases in the foundation level employed in the

formula for financing public education have exceeded the rate of inflation by 60% since 1980. (Browning Testimony, T.p. 4468)

6. The growth in local and state revenues for public education from 1979 to 1991 has been higher in lower per pupil revenue (Testimony, T.p. 5210, 5223, 5257-5258; Defendants' Trial Ex. No. 2, pp. 3-5, ex. 2-8).

7. Of the 50 school districts with the lowest per pupil assessed valuations in 1990, only 15 took out emergency school assistance loans from 1987-1993. (Brown Testimony, T.p. 5462-5463)

8. Local revenues and state revenues (Basic Aid, DPIA, and categorical aid) per pupil for education in Dawson-Bryant School District grew from 1979 through 1992 by 47% more than inflation as measured by the Consumer Price Index. (Guthrie Testimony, T.p. 5248-5250; Defendants' Trial Ex. No. 2, ex. 18 thereto)

9. Local revenues and state revenues (Basic Aid, DPIA, and categorical aid) per pupil for education in Southern Local School District grew from 1979 through 1992 by 45% more than inflation as measured by the Consumer Price Index. (Guthrie Testimony, T.p. 5248-5250; Defendants'

Trial Ex. No. 2, ex. 18 thereto)

10. Local revenues and state revenue (Basic Aid, DPIA, and categorical aid) per pupil for education in Northern Local School District grew from 1979 through 1992 by 53% more than inflation as measured by the Consumer Price Index. (Guthrie Testimony, T.p. 5248-5250; Defendants' Trial Ex. No. 2, ex. 18 thereto)

11. Local revenues and state revenue (Basic Aid, DPIA, and categorical aid) per pupil for education in Lima City School District grew from 1979 to 1992 by 49% more than inflation as measured by the Consumer Price Index. (Guthrie Testimony, T.p. 5248-5250; Defendants' Trial Ex. No. 2, ex. 18 thereto)

12. Local revenues and state revenues (Basic Aid, DPIA, and categorical aid) per pupil for education in Youngstown City School District grew from 1979-1992 by 42% more than inflation as measured by the Consumer Price Index. (Guthrie Testimony, T.p. 5248-5250; Defendants' Trial Ex. No. 2, ex. 18 thereto)

13. The effective mean millage for Class I residential and agricultural property in the State of Ohio in 1992 was 28.81 mills. For that year, the effective Class I

millage in Dawson-Bryant School District was 22.04 mills, in Southern Local School District it was 25.91 mills, in Northern Local School District it was 25.92 mills, in Lima City School District it was 24.93 mills, and in Youngstown City School District it was 41.92 mills. (Guthrie Testimony, T.p. 5250; Defendants' Trial Ex. No. 2, ex. 18 thereto)

14. The poorer the school district in property valuation, the greater is state basic aid for education as a percentage of assessed valuation per pupil, and state basic aid is more strongly distributed in inverse proportion to assessed valuation pupil in 1991 than in 1979. (Guthrie Testimony, T.p. 5232-5234; Defendants' Trial Ex. No. 2, pp. 7-8, ex. 15 and chart 5)

15. State aid (Basic Aid, categorical aid, DPIA and homestead exemption and rollback subsidies) is distributed in inverse proportion to the distribution of median income among Ohio school districts. (Guthrie Testimony, T.p. 5234-5235; Defendants' Trial Ex. No. 2, p. 8, ex. 16 and chart 6)

16. The increases in public education revenues described herein occurred during a time when required spending in the Medicaid program increased from 19% of the state's

general fund spending a dozen years ago to its current 32%. (Browning Testimony, T.p. 4374, 4377-4378; 4467-4469)

17. The operating expenses of the various departments and agencies of state government represent less than 20% of general revenue fund spending, with all other spending from that fund consisting of transfer payments and subsidies such as for education, higher education, human services programs, and property tax relief. (Browning Testimony, T.p. 4375-4376)

18. For fiscal year 1993, the General Assembly provided a \$45 million "equity appropriation" to be distributed to poorer school districts utilizing a formula based upon the school district's median income and assessed valuation per pupil. Similar appropriations were made to fiscal years 1994 and 1995 in the amounts of \$60 million and \$75 million respectively. For fiscal year 1994, the poorest school district receiving such funds is getting \$570 per pupil with the median amount in these districts being \$108 per pupil. (Joint Stipulation, 1116 and 20, ex. 15; Browning Testimony, T.p. 4382-4383; Sanders Testimony, T.p. 4482-4483; Aronoff Testimony, T.p. 4819)

19. In fiscal year 1990, Ohio ranked 11th and 14th among the

50 states in two different charts showing expenditures per pupil in public education. (Alexander Testimony, T.p. 4041)

20. In fiscal year 1990, Ohio ranked 22nd among the 50 states in total state and local taxes paid per \$1,000.00 in personal income. (Browning Testimony, T.p. 4373)

21. The General Assembly provided in the current budget bill for the use of \$10 million in lottery funds annually to leverage \$69 million or more in bond proceeds to be available for capital construction in the poorer school districts. (Browning Testimony, T.p. 4384; Sanders Testimony, T.p. 4484)

22. Senator Cooper Snyder introduced Senate Bill 237 in the fall of 1993. This bill provides for further increases in the local revenue charge-off, incorporating an income factor into the foundation funding formula, containing the phase-out of basic aid guarantees, equalizing the distribution of funds for categorical programs, and sharing growth in Class 2 real property among the school districts. (Aronoff Testimony, T.p. 4814-4817)

23. The state superintendent of public instruction believes that the changes he is recommending in the system of

public school finance should remain within the discretion of the General Assembly and not be directed by the courts. (Sanders Testimony, T.p. 4488-4490)

24. The actual cost of living differences between counties as measured by the average weekly wage of various sectors of the economy range up to 36%. (Payton Testimony, T.p. 4900-4901)

25. The per pupil expenditures in Defendants' Trial Ex. No. 4 a-c are adjusted expenditures. Joint vocational school district students are included in the ADM used to calculate this item on fulltime equivalency basis, and the monies expended by joint vocational school districts on such students are also included. (Payton Testimony, T.p. 4886-4887)

26. The vital statistics such as those in Stipulation Ex. No. 7 utilize unadjusted expenditures per pupil. Joint vocational school district students are included in the ADM used to calculate expenditures per pupil but the monies expended by joint vocational school districts on such students are not included. (Payton Testimony, T.p. 4888-4889)

27. Dr. Alexander utilized unadjusted expenditures per pupil

in computing the equity statistics in Plaintiffs' Trial Ex. Nos. 301 and 301a. (Alexander Testimony, T.p. 3968-3970)

28. The adjusted expenditures per pupil figure is a more accurate representation of how much money is spent on a school district's pupils in a particular fiscal year than unadjusted expenditures per pupil. (Payton Testimony, T.p. 4888)

29. The total assessed valuations certified to the Department of Education by the Department of Taxation for Perry Local School District for fiscal years 1990 and 1991 do not represent the assessed valuation on which the nuclear power plant in that school district actually paid taxes. For fiscal year 1990, the certified amount was nearly five times the amount on which taxes were paid, and for fiscal year 1991, the certified amount was twice the amount upon which taxes were paid. (Payton Testimony, T.p. 4902-4903)

VI. FINANCIAL DISTRESS: THE RESULT OF OHIO'S SCHOOL FUNDING SYSTEM

A. SCHOOL CLOSINGS FOR LACK OF FUNDS PROHIBITED

1. School districts are prohibited from engaging in deficit

spending for operating purposes except as specifically provided by law. (Russell Depo. 77; Brown Depo. 22; R. C. Section 5705.39)

2. Prior to the enactment of the emergency school assistance loan legislation, schools could close if a school district did not have sufficient operating revenue to maintain school operations. Over 55 such districts did close their doors or delay the opening of school for financial reasons. Stipulation Exhibit 26 is a true and accurate list of districts that closed due to a lack of operating revenue during the decade of the 1970s and some in the 1960s. (Stip. 45; Stip. Exh. 26)

3. Since 1979, school districts that do not have sufficient funds to complete the school year are no longer permitted to close. Also, schools are not permitted to delay the opening of school due to lack of funds. Those school districts that face a deficit are required by law to borrow funds to continue operations. (Russell Depo. 68; Stip. 44)

4. Those districts having less than ten days' true cash reserve at the end of a year are considered by the Department of Education to be "borderline" in terms of financial distress. (Brown Depo. 23)

5. One of the predictors of school district financial distress is the circumstance of a district spending more in general fund dollars in a given year than it receives. (Tavakolian Depo. 124)

6. Revenue trends that the Department considers to indicate financial distress include decreases in local or state revenue, or the loss of taxable value due to the exemption or abatement of property from taxation. (Brown Depo. 24)

7. The Department of Education considers a staff salary and benefit ratio of 83 to 85 percent of the general fund revenue to be a benchmark. "Loan fund districts" tend to spend more than the benchmark percentage on salaries and fringe benefits. (Brown Depo. 29)

8. For FY93, the Department projected that 207 school districts would end the year with a deficit and be required to borrow additional operating funds. Of those 207 districts, 127 were projected to be in need of emergency school assistance loans because the amount of their projected deficit exceeded the amount of their spending reserve. (Van Keuren Depo. 91-92; Van Keuren Depo. Exh. 3)

9. School districts will experience financial distress if local tax revenue does not increase, state revenue does not increase, and the costs of operation do increase. (Van Keuren Depo. 90)

10. Districts in financial distress offer a lesser quality of educational programming than those that are not. (Van Keuren Depo. 50)

11. Program reductions in financially distressed school districts that are required in order to participate in the emergency school assistance loan program result in lesser levels of educational programming than would otherwise have been available to those pupils. (Sanders Tr. 4610)

12. The amount of a school district deficit will be expected to double each year unless the school district either reduces expenses or increases revenue through the passage of an additional tax levy. The reason for the increase is the annual increases in salary and benefit costs resulting from increases in collective bargaining agreements. (Van Keuren Depo. 46)

13. Federal mandates prohibit reductions in special

education services. Generally reductions in expenditures by districts in financial difficulty impact regular education students more 90 than special education students. (Taylor Depo. 236)

14. The problem of school districts being unable to operate within available revenue is increasing because, in many instances, all available expenditure cuts have been made, the districts have been unable to pass additional local tax levies, the districts have not realized any additional revenue from existing local tax levies, and the level of state revenue has been inconsistent and unreliable. (Van Keuren Depo. 69)

15. The renewal of existing local property tax levies and the passage of additional tax levies are recommended by the Department of Education for local school districts that are in financial distress. (Brown Depo. 38-39; Stip. 22)

16. School district in financial distress must either reduce expenditures or raise additional revenue; expenditure reduction is governed by the provisions of statute, collective bargaining agreements and required compliance with state minimum standards. (Brown Depo. 41)

17. The Department of Education does not recommend that school districts in financial distress take any action that would be contrary to the terms of a negotiated collective bargaining agreement. (Brown Depo. 37; Stip. 36)

18. Plaintiffs' Exhibit 228 represents Ohio school districts that were in a deficit situation in FY93 and the spending reserve for each of the school districts. Plaintiff Youngstown City School District had a deficit of \$6.8 million and a spending reserve of only \$1.58 million. Plaintiff Southern Local School District had a deficit of \$363 thousand and a spending reserve of only \$11,520. (Pl. Exh. 228)

19. Plaintiffs' Exhibit 229 is a document showing Ohio school districts projected to have an operating deficit for FY92; these districts are considered to be probable loan fund districts. In that year, Plaintiff Southern Local School District had a projected deficit of \$491,000 and a spending reserve of \$15,810. (Pl. Exh. 229)

20. The point of greatest school district fiscal distress was formerly October 1, the date when the school district was required to adopt a permanent

appropriations measure. Current rules do not require County Auditors to submit amended certificates of estimated resources until after the November General Election. The delay in receipt of the final certificate of estimated resources creates uncertainty about whether to seek a loan. (Brown Depo. 85-88)

21. Senator Aronoff admitted that there are school districts in Ohio that are broke and out of funds. In Senator Aronoff's 8th Senatorial District, the Cincinnati School District is in dire financial straits. The total outstanding debt from Cincinnati to the State Loan Fund is over \$82 million, including accrued interest of \$8.7 million. (Aronoff Tr. 484244)

22. None of the financial woes experienced by school districts within the State of Ohio are the fault of the students within those school districts. (Brown Tr. 5516)

23. Those students in the financially troubled school districts are the individuals at greatest risk of suffering the most harm due to the lack of school funding. (Brown Tr. 5517)

B. FINANCIAL DISTRESS IN THE PLAINTIFF SCHOOL DISTRICTS

DAWSON-BRYANT

1. Since about 1985, the financial situation of the school district deteriorated. Expenses of the school district increased. Therefore the amount of carry-over funds decreased from year to year. To meet the situation, there were reductions in the certified staff, and the number of mechanics and school counselors were reduced. Even with these adjustments, expenses continued to exceed revenues and the carry-over balance continued to decline. (White Tr. 2077-79)

2. Dawson-Bryant's expenditures have exceeded revenues for several years, and the district anticipated a negative balance for FY93. Due to equity funds and efforts to reduce expenditures, the district did not have a negative balance at the end of FY93. Efforts to reduce expenditures FY93 included negotiating a reduced benefit package for all employees, increasing restrictions upon field trips to eliminating field trips, restricting text books and material purchases, rationing paper and other materials, and limiting maintenance to identified items that had to be addressed, repaired, and halting bus purchases. (Washburn Tr. 2374-75)

3. For FY94, additional efforts to reduce expenditures were

made, including reducing staff, replacing only one of three teachers who retired, not replacing a maintenance employee who retired, continuing to ration paper, continuing to eliminate field trips, and continuing the reduced benefit package of employees. No bus purchases and no library purchases can be made in FY94. (Washburn Tr. 2375-76)

4. The Dawson-Bryant Local school District is projected to receive less money in FY94 than it did in FY93. The reduction is because the district will be a guarantee district and their appropriations will be funded on the FY92 level. Also DPPF calculations are based upon the number of ADC students, and, although that number has continued to climb, the funding provided is now based on a three-year average, so that figure has not grown in accordance with the number of ADC students. Dawson-Bryant had a net loss of twelve students through open enrollment, and the district will have money deducted from its budget as a result of those students leaving. (Washburn Tr. 2436) In addition, categorical programs were cut 1.37 percent. Even with equity funds that will be received by the district, the FY94 budget will contain less money than the FY93 budget. (Washburn Tr. 2376-77)

5. The Dawson-Bryant Local School District has been certified by the Ohio Department of Education as having a projected operating deficit. (Sanders Tr. 4605-06; Stip. 145; Stip Exh. 56)

6. The financial distress of the Dawson-Bryant Local School District is not the result of poor management. Area 5 Coordinator, Mr. Ken Taylor, indicated that the management at Dawson-Bryant has been excellent, and he believes that if the districts in Area 5 are given additional funds, that they would effectively manage those funds and that they would strive to provide better programs and services for students in that area. (Taylor Depo. 285-87)

7. With reference to the economy of the Dawson-Bryant School District and region, there is very little industry. Most of the people who reside within the school district that are employed work outside the district and, in many instances, outside the state. Average income in the district is quite low compared to other districts in the state. (White Tr. 2072-73) The largest employer within the Dawson-Bryant Local School District is the school system. (White Tr. 2074)

8. The residents of Dawson-Bryant passed a 5.9 mill levy in

May of 1993. Because there is no industry in the district, the tax is placed directly upon residents whose income level averages approximately \$21,000 per year. 25 percent of the district's students ADC recipients and more than 50 percent of the students qualify for free lunch and additional students qualify for reduced lunches. Obviously, residents of the district do not have discretionary income to pay additional taxes. Thus, a tax levy for operation is not a viable option. (Washburn Tr. 2382-85)

9. Dawson Bryant was a member of the plaintiff class in Board of Education of City School District of City of Cincinnati v. Walter, 58 Ohio St. 2d 368, 390 N.E. 2d 813 (1979) cert. denied, 444 U.S. 1015.

10. State education payments to Dawson-Bryant are 430.59% of what the district's residents pay in state income tax. (Defendants' Trial Ex. No. 4c)

11. Eighty-five percent, or more, of Dawson-Bryant's budget is state money. (Washburn Testimony, T.p. 2470; White Testimony, T.p. 2163)

12. Dawson-Bryant is in the 99th percentile of all school districts in receipt of state aid as a percent or

revenue. (Plaintiffs' Trial Ex. No. 4)

13. Dawson-Bryant received \$477,154 in equity assistance funds in fiscal year 1993. (Stip. Ex. No. 17)

14. Dawson-Bryant received \$607,246 in equity assistance funds in fiscal year 1994. (Defendants' Trial Ex. No. 1, tab. 1)

15. Dawson-Bryant is scheduled to receive \$644,929 in equity money in fiscal year 1995. (Defendants' Trial Ex. No. 1, tab. 1)

16. Dawson-Bryant received approval for over \$10 million in state funds to finance the construction of a new high school and remodeling work on the existing high school and middle school. (Washburn Testimony, T.p. 2367; White Testimony, T.p. 2207)

17. Dawson-Bryant received \$50,000 in equity technology assistance in fiscal year 1993 for the purchase of new computers. (Washburn Testimony, T.p. 2380.)

18. In fiscal year 1992, Dawson-Bryant was protected from nearly \$51,000 in state budget cuts. (Stip. Ex. No. 14)

19. From 1986 to 1991, Dawson-Bryant received over \$731,000 under the guarantee provision of the state basic aid formula. This assured the district of more funds than it would have otherwise been entitled to under a straight application of the foundation formula. (White Testimony, T.p. 2149 and Plaintiffs' Trial Ex. No. 461)

20. From 1980 to 1992, Dawson-Bryant did not even attempt to place an education levy on the ballot. (Stipulation Ex. No. 10)

21. In 1987, Dawson-Bryant had a year-end spending reserve of \$947,603 and an effective millage rate of 20.09 mills. (Plaintiffs' Trial Ex. No. 255 and Stipulation Ex. No. 4, p. 2)

22. During Superintendent White's tenure, the year-end spending reserve was as high as \$1.3 million. (White Testimony, T.p. 2133)

23. In fiscal year 1993, Dawson-Bryant had an anticipated deficit of over \$113,000. (Stip Ex. No. 56)

24. The anticipated deficit in fiscal year 1993 never occurred because the equity money that the district received offset the anticipated deficit and kept the

district out of the loan fund. (Washburn Testimony,
T.p. 2472)

25. For fiscal year 1994, Dawson-Bryant had an anticipated deficit of over \$305,000. (Stip. Ex. No. 56)

26. The anticipated deficit in fiscal year 1994 will not occur because the equity money that the district received will offset the anticipated deficit. (Washburn Testimony, T.p. 2381-2382)

27. In fiscal year 1992, Dawson-Bryant levied property taxes with an effective millage of 8 mills below the state mean. (Stip. Ex. No. 57)

28. At approximately \$30,000 per mill, Dawson-Bryant could raise over \$240,000 per year in additional local revenue if it just taxed itself at the state mean. (White Testimony, T.p. 2162)

29. In fiscal year 1993, the voted operating millage for Dawson-Bryant was 18.74 mills less than the statewide average for total operating mills, and it levied property taxes with an effective millage of 6.98 mills less than the state average for residential and agricultural property and 8.04 mills below the state

average for all other property. (Defendants' Trial Ex. No. 23)

30. From 1979 to 1993, enrollment at Dawson-Bryant decreased by 353 students or 20%. (Stip. Ex. No. 1)

31. From 1979 to 1992, the pupil per teacher ratio improved 12.7%. (Stip. Ex. No. 3)

32. In 1988, salary and benefit costs accounted for 72% of Dawson-Bryant's budget. In fiscal year 1992, salary and benefit costs accounted for 82% of Dawson-Bryant's budget. (Plaintiffs' Trial Ex. No. 254)

33. In fiscal year 1993, Dawson-Bryant paid its teachers \$316,920 more than required by the state minimum salary schedule. (White Testimony, T.p. 2151-2152 and Plaintiffs' Trial Ex. No. 276, answer 1)

34. In school year 1991-1992, all teachers received a signing bonus of 2.5% of the base salary. (Semanco Deposition, p. 66)

35. Mr. Washburn, upon taking over the superintendency in August, 1992, agreed to a 2% raise for all teachers. (Washburn Testimony, T.p. 2329)

36. After its last review by the Ohio Department of Education, Dawson-Bryant was found to be in compliance with state minimum standards on June 27, 1991. (Stip. 99)

37. Dawson-Bryant offered no independent expert analysis to show that it did not have the means to comply with state minimum standards.

38. Dawson-Bryant offered no independent expert analysis to show that its revenues failed to keep pace with inflation.

39. From 1987-1992, revenue to Dawson-Bryant increased \$20,000 more than expenditures. (Plaintiffs' Trial Ex. No. 276, answer 2)

LIMA

40. People who move into the Lima City School district tend to be people who are moving to take advantage of low income housing. As a result, the individuals who attend the Lima City Schools tend to be poor. (Buroker Tr. 2873-74)

41. Mr. Roger Miller, a life-long resident of Lima City Schools, has watched the finances of the district and various levy issues over the last 20 years. During that time, the district has not lost a levy other than one income tax proposal. The passage rate of levies has risen to 70 percent positive and 30 percent negative. Over the last several years, however, that percentage has dropped down into the 60 and 50 percent range. The last levy in 1990 passed by only a handful of votes. The district is in the precarious situation of losing the ability to gain voter approval of tax levies. (Roger Miller Depo. 73-74)

42. The Lima City School District has not proposed the passage of additional tax levies to its voters because it has one of the lowest tax bases and one of the lowest per capita incomes of any school district in the State of Ohio, such that the tax payers of the District are already assuming a significant burden. In addition, the voters of the city experience municipal overburden charges through the requirement that they pay for the services of water, sewer, and police protection. Thus, the existing tax burden, combined with an ever increasing population living below the poverty line makes the prospect of passage of an additional tax levy unlikely. (Buroker Tr. 3075-76)

43. Lima City School District ("Lima") was a member of the plaintiff class in Board of Education of City School District of City of Cincinnati v. Walter, 58 Ohio St. 2d 368, 390 N.E. 2d 813 (1979) cert. denied, 444 U.S. 1015.

44. State education payments to Lima in 1991 were 246.02% of the state income taxes paid by its residents.
(Defendants' Trial Ex. No. 4c)

45. In school year 1990-91, Lima ranked in the bottom 13% of all school districts for average income per tax return and the bottom 12% for assessed valuation per pupil while its education expenditures per pupil ranked it in the top 47% of all school districts. (Defendants' Trial Ex. No. 4e)

46. In fiscal year 1993, Lima received \$908,973 in equity assistance funds. (Stip. Ex. No. 17)

47. In fiscal year 1994, Lima received \$1,084,085 in equity assistance funds. (Defendants' Trial Ex. No. 1, tab. 1)

48. In fiscal year 1995, Lima is scheduled to receive \$1,152,095 in equity assistance funds. (Defendants' Trial Ex. No. 1, tab. 1)

49. In fiscal year 1992, Lima was held harmless from over \$242,834 in state budget cuts. (Stip. Ex. No. 14)

50. From 1979 to 1993, enrollment in the Lima City School District dropped 2,075 or 25%. (Stip. Ex. No. 1)

51. From 1979 to 1992, the pupil/teacher ratio improved 2.79 pupils, or 13%, to 18.4 pupils per teacher. (Stip. Ex. No. 3)

52. In fiscal year 1991, Lima had the 57th lowest total ADM per classroom teacher ratio in the state. (Stip. Ex. No. 57)

53. In school year 1991-1992 Lima paid \$12,450,756 in teacher salaries. (Defendants' Trial Ex. No. 22b)

54. Under Ohio's minimum salary schedule, Lima was required to pay \$9,900,319 in teacher salaries. See O.R.C. 3317.13 (1990) (effective July 26, 1991). (Defendants' Trial Ex. No. 22b)

55. Lima failed to apply for school building assistance funds at any time that funds were made available. (Plaintiffs' Trial Ex. Nos. 377, 378 and Stip. Ex. No.

45)

56. In February 14, 1989, Lima was informed that it was in compliance with all state minimum standards. (Stip. 99)

57. Lima's high school is accredited by the North Central Association. (Stip. Ex. No. 37)

58. Lima was informed on June 10, 1991 that its special education program was in substantial compliance with all special education standards following its last evaluation. (Plaintiffs' Trial Ex. No. 282)

59. Lima offered no independent expert testimony to prove that it does not have the means to comply with state minimum standards.

60. Lima has not proposed a school levy to the voters since 1990. (Stip. Ex. No. 10)

61. For fiscal year 1991 Lima taxed itself at an effective class 1 millage rate of 24.67 mills and at an effective class 2 millage rate of 25.72 mills. The state mean effective millage rate for 1991 for class 1 was 28.73 mills and for class 2 was 29.2 mills. (Defendants'

Trial Ex. No. 4c)

62. In Lima, one mill raises \$261,000. (Buroker Testimony, T.p. 2985)

63. If Lima had taxed itself at the state mean for 1991, it would have raised approximately an additional one million dollars in that year alone.

64. Lima has 40 full-time equivalent teachers out of 470 who are funded through Chapter I and Disadvantaged Pupil Program fund monies. (Buroker Testimony, T.p. 2990)
These teachers provide intervention to students from kindergarten through high school. (Buroker Testimony, T.p. 2990)

65. Lima provides intervention in the form of specifically designed programs and curricula for at-risk high school students at the alternative high school. (Buroker Testimony, T.p. 2993)

66. Lima provides intervention for female high school students through a grant from the Department of Vocational Education. (Buroker Testimony, T.p. 2993-94)

67. Lima provides intervention for at-risk elementary

students through Project Intercept. (Buroker Testimony, T.p. 2995-96)

68. Lima offers adult education classes for community members. (Buroker Testimony, T.p. 2996) Current enrollment is approximately 1150 students. (Buroker Testimony, T.p. 2997)

69. Students in every school in Lima receive tutoring and intervention through the Adopt-A-School program. (Buroker Testimony, T.p. 2997-98)

70. In 1991, Lima spent \$307,348 of Disadvantaged Pupil Program Fund money for intervention at the elementary and high school levels. (Plaintiffs' Ex. 286; Buroker Testimony, T.p. 3002-03)

71. Lima spends \$1,200,000 every year in Chapter I money for intervention at the elementary and high school levels. (Buroker Testimony, T.p. 3010)

72. Almost all elementary classrooms in Lima have at least one computer. (Buroker Testimony, T.p. 3011)

73. Three elementary schools in Lima have writing-to-read computer labs, which help teach kindergarten and first

grade students how to read and write. (Buroker
Testimony, T.p. 3011)

74. Lima has a computer science magnet school for students
from kindergarten through eighth grade. (Buroker
Testimony, T.p. 3029)

75. Each of the middle schools in Lima has a computer lab
with about 30 computers in each lab. (Buroker
Testimony, T.p. 3012)

76. Lima Senior has a computer lab, each department has
computers, and the library has five computers, some
equipped with CD ROM capability. (Buroker Testimony,
T.p. 3012)

77. Lima has no significant debt, except for repayment of
energy management assistance bonds. (Buroker Testimony,
T.p. 3013)

78. Lima's superintendent claims that the district has
facilities needs of approximately \$19,000,000. (Buroker
Testimony, T.p. 3019)

79. If Lima were to in debt itself to the nine percent
limitation, it would raise \$20,000,000. (Plaintiffs

Trial Ex. No. 3; Buroker Testimony, T.p. 3020-21)

80. Lima has never been in a situation which required an emergency school loan or a spending reserve loan.

(Buroker Testimony, T.p. 3021-22)

81. Lima has an arts magnet school for students from kindergarten to eighth grade. (Buroker Testimony, T.p.

3029)

82. Lima is presently in compliance with all standards relating to special education. (Buroker Testimony, T.p.

3039; Plaintiff's Trial Ex. No. 282)

83. High school students in Lima grow in the development of independent thinking skills while learning to appreciate and respect opposing viewpoints. (Buroker Testimony,

T.p. 3041)

84. High school students in Lima develop an awareness of the importance of achieving and maintaining physical and

mental health and develop an awareness of aesthetic and

artistic values. (Buroker Testimony, T.p. 3041)

85. Lima Senior High School offers a wide range of educational programs for students and their individual

needs. A student is able to follow a college preparatory course, a vocational or business course, or a general education course. (Buroker Testimony, T.p. 3042)

86. Lima requires 21 credits for high school graduation, three more than the state requires. (Buroker Testimony, T.p. 3043)

87. The college preparatory course of study offered at Lima Senior High gives each student a firm foundation for success in college. (Buroker Testimony, T.p. 3044-45)

88. Lima offers six classroom Advanced Placement courses and one tutorial Advanced Placement Course. Plaintiffs' Trial Ex. No. 455; Buroker Testimony, T.p. 3048-49. In addition, Lima offers 18 "achievement courses", which are designed for college bound students who desire a more in-depth study of the subject matter. (Plaintiffs' Trial Ex. No. 455; Buroker

NORTHERN LOCAL

89. Plaintiff Northern Local School District has experienced a rapid increase in enrollment due in part to zoning laws which allow existing farmland to be split into tracts for mobile homes. (Hill Depo. 48) During the

last seven years, families moving into the Northern Local School District have been lower income families, and the ability of the district's residents to pay additional taxes has decreased. (Dilbone Tr. 2047-48)

90. In addition to rapidly increasing the enrollment in Plaintiff Northern Local School District, mobile homes hurt Plaintiff Northern Local School District's local tax receipts because mobile homes are taxed at a different rate than real property. (Hill Depo. 48)

91. Mobile homes in a school district create special problems for the school district. Mobile homes are taxed at a lower rate than permanent structures. A 3 - bedroom mobile home will most likely yield about \$60 per year in taxes, where a 3-bedroom permanent house will probably yield between \$150 and \$300 per year in taxes.

In addition, mobile homes bring numerous students into a particular district without bringing the tax revenue to support those students. (Shoemaker Tr. 4177-78)

92. If the per pupil spending in Plaintiff Northern Local School District was increased from the current \$3,000 per pupil to the state average of approximately \$4,500 per pupil, it would require an additional \$3 million in additional revenue. The school district would have to

levy over 30 mills in addition to what is already levied in order to bring the school district's per pupil spending up to the state average. (Johnson Tr. 1485)

93. Voters in Plaintiff Northern Local School District have rejected several recent levy proposals, and many voters have stated that they reject the proposals because school district tax proposals are some of the few tax raises that voters have an opportunity to oppose.

94. Northern Local was part of the plaintiff class in Board of Education of City School District of City of Cincinnati v. Walter, 58 Ohio St. 2d 368, 390 N.E. 2d 813 (1979), cert. denied, 444 U.S. 1015.

95. In fiscal year 1993, Northern Local received \$183,917 in equity assistance money. (Stip. Ex. No. 17)

96. In fiscal year 1994, Northern Local received \$297,094 in equity assistance money. (Defendants' Trial Ex. No. 1, tab. 1)

97. In fiscal year 1995, Northern Local is scheduled to receive \$401,215 in equity assistance money. (Defendants' Trial Ex. No. 1, tab. 1)

98. In fiscal year 1991, state education payments to Northern Local represented 182.35% of the state income taxes paid by its residents. (Defendants' Trial Ex. No. 4c)

99. Since 1982, Northern Local's voters have defeated 13 different school tax issues. (Stip. Ex. 10 and Johnson Testimony, T.p. 1453)

100. One mill in Northern Local raises approximately \$90,000. (Johnson Testimony, T.p. 1485)

101. In fiscal year 1992, Northern Local levied property taxes with an effective millage of 5.1 mills below the state mean. (Stip. Ex. 57)

102. In fiscal year 1992, Northern Local's total ADM per classroom teacher ratio ranked it in the top 23% of all school districts in Ohio. (Stip. Ex. No. 57)

103. In fiscal year 1992, Northern Local's staff per pupil ratio ranked it in the top 30% of all school districts in Ohio. (Stip. Ex. No. 57)

104. From 1979 to 1992 enrollment at Northern Local dropped 249 pupils or 10%. (Stip. Ex. No. 1)

105. From 1979 to 1992, the pupil per teacher ratio improved from 27.47 to 19.8, an improvement of almost 28%.
(Stip. Ex. No. 3)

106. From 1982-83 to 1990-91, the average teacher's salary at Northern Local increased 62.9%. This percentage increase was greater than that of all other Plaintiffs and greater than the state average percent increase.
(Plaintiffs' Trial Ex. No. 204)

107. Northern Local pays its teachers on average approximately \$1,000 per year over the amount required by state minimum salary requirements. (Johnson T.p. 1500)

108. Northern Local did not apply for funds made available by the State through the school building assistance program until December 8, 1992. (Plaintiffs' Trial Ex. Nos. 376, 377 and 378; Stip. Ex. No. 45; Van Keuren Testimony, T.p. 4800-4801)

109. Northern Local applied for and secured funds under the energy assistance bill which allowed it to get new windows, new lighting, and a new heating system at the jr./sr. high school complex. (Johnson Testimony, T.p.

1514-1515)

110. Northern Local could build a new elementary building with only local funds if the voters would approve a levy. (Johnson Testimony, T.p. 1447 and Miller Testimony, T.p. 1631)

111. Northern Local could build a new elementary building and rehab all buildings within the district with all local funds for less than 9% of its assessed valuation according to plans the architect gave to the district. (Miller Testimony, T.p. 1651)

112. During the last compliance review of Northern Local, the Ohio Department of Education found the district to be in compliance with state minimum standards. (Stip. 99)

113. Sworn interrogatory answers signed February 17, 1992 by Superintendent Johnson show that as of that date the district was in compliance with all minimum standards. (Johnson Testimony, T.p. 1490)

114. During its last PREP review, Northern Local also complied with all state requirements for special education students. (Plaintiffs' Trial Ex. No. 124)

115. Northern Local's Sheridan High School has been accredited by the North Central Association (hereinafter N.C.A.) since 1976. (Stip. Ex. No. 37)

116. Northern Local's Sheridan High School currently meets all N.C.A. standards. (Johnson Testimony, T.p. 1523)

117. N.C.A. standards are more demanding than state minimum standards. (Johnson Testimony, T.p. 1523, Brown Testimony, T.p. 5427-5428, 5432-5433)

118. No independent expert testified that Northern Local did not have "the means to comply with state minimum standards".

119. Northern Local offered no independent expert testimony to prove that its revenues failed to keep pace with inflation.

120. Northern Local's passage rate on the Ninth Grade Proficiency Test is higher than the state average. (Johnson Testimony, T.P. 1529)

121. Northern Local has the lowest dropout rate, highest graduation rate and the highest percent of college prep graduates of all Plaintiffs despite spending less per

pupil than all other Plaintiffs. (Stip. Ex. Nos. 4-8 and 57)

122. In fiscal year 1992, Northern Local School ranked in the bottom 1% of all Ohio school districts in total revenue per pupil, all funds (608); expenditure per pupil, general funds (606); and expenditure per pupil, all funds (606). (Stip. Ex. No. 57)

SOUTHERN LOCAL

123. The economic situation in Perry County and in Plaintiff Southern Local School District is poor. Employment is down, companies have closed their doors, and some of the larger employers in the company, coal businesses, have ceased operations. At one time the railroad was the major employer in the county, but it closed its operations. (Altier Tr. 1289; Spangler Tr. 442-43)

124. In his position as Chairman of the Corning Bank, Mr. Altier has observed that the delinquent list of defaulted loans, commercial and home loans, grows every month. Repossession is much more frequent than it used to be. Bankruptcies have increased. (Altier Tr. 1291)

125. Large purchases of tracts of land have been made by the

federal government in the Wayne National Forest, located in Plaintiff Southern Local School District. The federal government does not pay any taxes on this property.

(Altier Tr. 1291-92)

126. Increasing revenues by voter approval of local tax levies is not an option for Southern Local. In one year, the cost of benefits for employees went up \$93,000, which would take 4 mills of local property taxation to generate. In 1989, the voters of the district approved an operating levy of 3.9 mills and the following year approved a facilities bond levy for 7 percent of the valuation of the district. At about the same time, the major employer in the district went out of business. Most of the families in the district qualify for free or reduced lunch benefits, and the federal government has acknowledged that they cannot pay for lunch. Industry is very limited in the district and the reported average family income is approximately \$18,000. There is no income base and there is no property base at Southern Local with which the district can increase its local revenue. (Spangler Tr. 481-83)

127. For a board of education to try to pass a levy may cost from a few hundred dollars to two thousand dollars to pay election expenses. (Spangler Tr. 483) Because one

mill raises so little in districts with low assessed valuation per pupil, those districts have very little to promise the voters in exchange for passing additional millage. (Spangler Tr. 483) Public trust and support is defeated by returning to the voters to ask them for additional millage when they cannot afford to pay. (Spangler Tr. 484)

128. Southern Local was part of the plaintiff class in Board of Education of City School District of City of Cincinnati v. Walter, 58 Ohio St. 2d 368, 390 N.E. 2d 813 (1979), cert. denied. 444 U.S. 1015.

129. In 1991, the state education payments to Southern Local were 431.37% of the estimated state income tax its residents paid. (Defendants' Trial Ex. No. 4c)

130. The State of Ohio contributes approximately 80% of all Southern Local's revenues. (Spangler Testimony, T.p 479)

131. Southern Local received \$289,369 in equity assistance funds in fiscal year 1993. (Stip. Ex. No. 17)

132. Southern Local received \$374,873 in equity assistance funds in fiscal year 1994. (Defendants' Trial Ex. No.

1, tab. 1)

133. Southern Local is scheduled to receive \$430,784 in equity assistance funds in fiscal year 1995.

(Defendants' Trial Ex. No. 1. tab. 1)

134. Southern Local received \$90,000 in equity technology assistance in fiscal year 1993 for computer purchases.

(Stip. Ex. No. 19)

135. Southern Local received approximately \$7.9 million in state funds to finance the construction of a new K-8

building which opened in the fall of 1993. (Spangler

Testimony T.p. 444, 456)

136. Southern Local was eligible for the State school building assistance program in 1981; however, its voters

turned down the levy required for participation.

(Spangler Testimony, T.p. 604; Phillis Testimony, T.p.

1823-1824 and Stip Ex. No. 10)

137. Southern Local was held harmless from nearly \$39,000 in state budget cuts in fiscal year 1992. (Stip. Ex. No.

14)

138. From 1987 to 1993, Southern Local received over \$700,000

under the guarantee provision contained in the school foundation funding formula. (Plaintiffs' Trial Ex.No. 461 and Spangler Testimony, T.p. 612-614)

139. Although Southern Local ranks in the bottom 1% of all school districts for average income per tax return and the bottom 2% for assessed valuation per pupil, its 1990-91 expenditures per pupil rank it in the top 30% in the state. (Defendants' Trial Ex. No. 4a)

140. From 1979 to 1993, Southern Local's enrollment declined 324 students or 24%. (Stip. Ex. No. 1)

141. From 1979 to 1992, Southern Local's teacher/pupil ratio improved 22%. (Stip. Ex. No. 3)

142. In school year 1991-92, Southern Local paid its teachers approximately \$179,000 per year over the state minimum salary requirements. (Spangler Testimony, T.p. 628-629)

143. In 1991, Southern Local employed 8.52 more classroom teachers than required by state minimum standards. (Plaintiffs' Trial Ex. No. 2)

144. The average cost of a teacher at Southern Local is \$40,000 per year for wages and benefits. (Spangler

Testimony, T.p. 635)

145. In 1991, Southern Local employed 2.81 more education service personnel than required by state minimum standards. (Plaintiffs' Trial Ex. No. 42)

146. In 1991, Southern Local employed 1.14 more building administrators than comparable districts. (Plaintiffs' Trial Ex. No. 42)

147. In 1991, Southern Local employed 2.43 more secretarial/ clerical workers than comparable districts. (Plaintiffs' Trial Ex. No. 42)

148. Southern Local had a year-end carryover balance of \$488,568 in fiscal year 1987-88, \$389,309 in fiscal year 1988-89, and \$284,126 in fiscal year 1989-90. (Plaintiffs' Trial Ex. No. 42)

149. Southern Local totally depleted its spending reserve by December 1991 when it received a \$211,000 emergency assistance loan. Southern Local was approved for a loan in the amount of \$241,000 for FY92. This, along with a spending reserve of \$16,000 gave the district a total anticipated deficit of \$257,000. The district was able to cut costs and contain the loan amounts to a spending

reserve loan of \$16,000 and an emergency school advancement loan of \$195,000. Southern Local took a spending reserve loan of \$16,000 to fulfill its statutory obligation to take a spending reserve loan as a precondition to receiving an emergency school advancement loan. (Pl. Exh. 43 and 44)

150. In fiscal year 1992, Southern Local levied property taxes with an effective millage of 4.3 mills below the state mean. (Stip. Ex. No. 57)

151. In fiscal year 1993, 1 mill raised \$24,056 in Southern Local. Defendants' Trial Ex. No. 23. Superintendent Spangler testified that 1 mill raised approximately \$23,000. T.p. 679.

152. If Southern Local's effective millage matched the state mean in fiscal year 1992, it could have raised approximately \$100,000 in additional local revenue. (Stip. Ex. No. 57 and Defendants' Trial Ex. No. 23; Spangler Testimony, T.p. 679)

153. After its last review by the Ohio Department of Education, Southern Local was found to be in compliance with state minimum standards on June 13, 1989. (Stip. 99)

154. Southern Local's Miller High School is currently accredited by the North Central Association. (Spangler Testimony, T.p. 685)

155. Southern Local offered no independent expert analysis to show that it did not have the means to comply with state minimum standards.

156. Southern Local offered no independent expert testimony to show that its revenues failed to keep pace with inflation.

YOUNGSTOWN

157. In Plaintiff Youngstown City School District, 1 mill of taxes would have raised about \$62 for each student in 1979, but only \$41 in 1987, and only \$37 in 1990. (Pl. Exh. 108, p.1)

158. For FY93, Youngstown City School District projected a \$5 million deficit. (Hiscox Depo. Vol. I, 26)

159. Although the Youngstown City School District projected a \$5 million deficit in 1993, the district was able to avoid having to take out an emergency school assistance

loan by reducing staffing, loaning itself some funds from its self-insured health plan, changes in transportation policy, and delaying the start of construction projects. (Hiscox Depo. Vol. I, 28)

160. The projected deficit for FY94 for the Youngstown City School District was \$8 million, with revenue of \$78 million and expenses of \$86 million. Without the \$5 million reductions made in FY93, the deficit for 1994 would have been \$13 million. (Hiscox Depo. Vol. I, 31-32; see Pl. Exh. 225)

161. Mr. Hiscox cited a number of reasons for the escalating deficit of the Youngstown City School District. Among these reasons are the increased cost of the health plan, the costs of retraining teachers to meet Department of Education curriculum mandates, EMIS, special education requirements, and the maintenance of facilities. (Hiscox Depo. Vol. I, 33-34)

162. The Youngstown City School District's local revenue has been hurt by the economy of the Youngstown area. The Youngstown business community has been devastated since the steel mills closed down, and the city of Youngstown has given tax abatements to industry in attempt to draw business to the area. The combination of the steel mills

closing and the abatement process has had a detrimental impact on Youngstown's financial projections. (Hiscox Depo. Vol. I, 37; Kolitsos Depo. 26)

163. In Plaintiff Youngstown City School District, between tax year 1978 and 1987, the total assessed valuation fell from slightly over \$1 billion to \$606 million, measured in 1990 dollars. By the 1990 tax year, total assessed value had fallen to \$547 million. (Pl. Exh. 108, p. 1)

164. Youngstown City School District was a member of the plaintiff class in Board of Education of City School District of the City of Cincinnati vs. Walter, 58 Ohio St. 2d 3 813 (1979) cert. denied, 444 U.S. 1015. N.E. 2d

165. State education payments to Youngstown in 1991 were 317.56% of the state income taxes paid by its residents. (Defendants Trial Ex. No. 4c)

166. In school year 1990-91, Youngstown ranked in the bottom 1% of all school districts for average income per tax return and the bottom 14% for assessed valuation per pupil while its education expenditures per pupil ranked it in the top 15% of all school districts. (Defendants' Trial Ex. No. 4c)

167. From 1980-1990, Youngstown suffered an inflation adjusted decrease in assessed valuation of \$16,000 per pupil and adjusted gross income of \$4,000 per tax return. (Plaintiffs' Trial Ex. No. 100. charts 6 and 7)

168. Youngstown experienced an increase in education funding of \$323 per pupil, inflation adjusted, from 1979 to 1987. (Plaintiffs' Trial Ex. No. 103, P.6)

169. Youngstown's education expenditures increased while the real tax burden on owners of residential property decreased from Plaintiffs' Trial Ex. No. 103, p. 3.

170. From 1979 Lo 1987, state revenue increased from 50% to 70% of all general revenue funds in the Youngstown City School District. (Plaintiffs' Trial Ex. No. 103, p. 3)

171. In fiscal year 1993, Youngstown received \$2,101,575 in equity assistance funds. (Stip. Ex. No. 17)

172. In fiscal year 1994, Youngstown received \$2,747,395 in equity assistance funds. (Defendants' Trial Ex. No. 1, tab. 1)

173. In fiscal year 1994, Youngstown is scheduled to receive

\$3,073,604 in equity assistance funds. (Defendants' Trial Ex. No. 1, tab. 1)

174. In fiscal year 1992, Youngstown was held harmless from over \$627,000 in state budget cuts. (Stip. Ex. No. 14)

175. At the start of fiscal year 1991, Youngstown had a cash balance of \$4,738,418. By December 31, 1993, Youngstown had an anticipated deficit of \$9,864,240. (Hiscox Deposition Ex. No. 29, p. 5)

176. From 1979 to 1993, enrollment in the Youngstown City School District dropped 4,220 or 23%. (Stip. Ex. No. 1)

177. From 1979 to 1992, the pupil per teacher ratio improved 9.56 pupils, or 39%, to 14.8 pupils per teacher. (Stip. Ex. No. 3)

178. In fiscal year 1991, Youngstown had the 25th lowest total ADM per classroom teacher ratio in the state and the 39th lowest total ADM per staff ratio. (Stip. Ex. No. 57)

179. Current Superintendent Tutela significantly reduced the number of central office employees because he believed the central office budget was excessive and

disproportionate to the district's needs. (Marino
Testimony, T.p. 3354-5)

180. Due to the low pupil per teacher ratio and high
personnel costs, the district is trying to increase the
pupil per teacher ratio closer to the state standard of
25 to 1. (Hiscox Deposition, Vol. I, p. 25-26)

181. The starting salary for a teacher with no experience and
a bachelors degree in 1991-92 in the Youngstown City
School District was \$20,245, which was \$3,245 more than
the state minimum salary schedule required.
(Defendants' Trial Ex. No. 22a, and Ohio Revised Code
3317.13 (effective 7/26/91))

182. In school year 1991-92, Youngstown City School District
paid its teachers in excess of \$7.5 million beyond that
required by the state minimum salary schedule.
(Defendants' Trial Ex. No. 22a; Ohio Revised Code
3317.13 (effective 7/26/91))

183. By closing a school building, the Youngstown City School
District can save an estimated \$200,000-\$300,000 per
year. (Hiscox Deposition, Vol. I, p. 91)

184. Despite a report which made a recommendation to close 11

buildings from 1984 to 1992, Youngstown City School District closed no buildings. (Hiscox Deposition, Vol. I, p. 78 and Ex. No. 7, recommendation No. 6)

185. Youngstown took advantage of an energy assistance loan to obtain new windows and heat controls for buildings throughout the district. (Hiscox Deposition, Vol. II, pp. 127-128)

186. Youngstown City School District failed to apply for school building assistance funds at any time that funds were made available. (Plaintiffs' Trial Ex. Nos. 377, 378 and Stip. Ex. No. 45)

187. On February 2, 1990, Youngstown City School District was informed that they were in compliance with all state minimum standards. (Stip. 99)

188. All of Youngstown's high schools are accredited by the North Central Association. (Marino T.p. 3329)

189. Youngstown City School District was informed on July 18, 1991 that its special education program was in substantial compliance with all special education standards following its last evaluation. (Plaintiffs' Trial Ex. No. 288)

190. Youngstown offered no independent expert testimony to prove that it does not have the means to comply with state minimum standards.

191. Youngstown offered no independent expert testimony to prove that its revenues did not keep pace with inflation. In fact, Youngstown's expert stated that Youngstown's revenues did out-pace inflation from 1979 to 1987. (Plaintiffs' Trial Ex. No. 103, p. 6)

VII. SCHOOL DISTRICT BORROWING

1. Stipulations 22 through 45 and Stipulation Exhibits 20 through 26 deal with the requirements that school districts engage in mandatory borrowing and the magnitude and effects of those requirements.

A. THE OFFICE OF SCHOOL MANAGEMENT ASSISTANCE

1. The Office of School Management Assistance within the Ohio Department of Education is under the Division of School finance. (Tavakolian Depo. 66)

2. The Office of School Management Assistance was one of the areas of the Ohio Department of Education assigned

to Dr. Phillis. The Office was created by legislative action in 1978 following a number of school closings for lack of funds. The Office was created in conjunction with state loan funds and legislation prohibiting schools from closing their doors for lack of funds.

(Phillis Tr. 1744)

3. The Office of School Management Assistance has three primary areas of responsibility within the Ohio Department of Education: (1) to provide education to superintendents, treasurers and business managers through educational seminars during the school year; (2) to administer the emergency school advancement loan program; and (3) to provide financial reorganization or consolidation. (Brown Depo. 18)

4. In 1986, the Office of School Management Assistance also became responsible for the administration of the spending reserve loan program. (Brown Depo. 18)

5. The Office of School Management Assistance provides advisory assistance to school districts in financial distress but does not provide direct financial assistance. (Brown Depo. 35)

6. The Division of School Management Assistance does a two

year cash audit as part of the emergency school assistance loan process. The Division also does staffing analysis and looks to see if the general fund is supporting other funds such as cafeteria fund. (Brown Depo. 93-94)

7. Generally only borrowing authority available to a school district to avoid a year-end deficit is the spending reserve loan authority or the emergency school assistance loan authority. (Brown Depo. 43)

B. SPENDING RESERVE LOANS

1. Stipulations regarding the operation of the Spending Reserve loan program are numbered 26 through 30, appearing at pages 5 through 7 of the Stipulation document. In addition, Stipulation Exhibits 20 and 21 relate to the operation of the Spending Reserve loan program.

2. The first type of State mandated loan is spending reserve loan. The amount of a school district's spending reserve is based on the value of tangible personal property tax that the district is entitled to receive. The amount of tangible personal property tax varies widely from district to district. The number of public

school districts that have been required to apply for and take spending reserve loans has increased from year to year. (Russell Depo. 68; Revised Code Section 133.301)

3. Under the spending reserve loan program, school districts are permitted to borrow against a subsequent year's revenue receipts if at the end of a fiscal year, the district is without sufficient funds to pay committed expenses and if the Superintendent of Public Instruction approves such borrowing. Revised Code Section 133.301 (Phillis Tr. 1745-46; Stip. 23)

4. Spending reserve loans include an obligation on the part of the school district to repay both the principal and interest on the loan. (Revised Code Section 133.301; Sanders Tr. 30)

5. The spending reserve loan procedure was initially created in 1986 as a result of the fiscal year change, changing the January 1 to December 31 school fiscal year to a July 1 to June 30 fiscal year. Property taxes continued to be collected on a calendar year basis, and the proceeds from the collection in the first half of the year are less than the proceeds from the second half collection. The provision for borrowing a portion of the

second half collection was made to permit school districts to avoid having a year end deficit. (Brown Depo. 42-43; Phillis Tr. 1745-46)

6. Initially, the legislature intended to phase out the Spending Reserve program, but, as more and more school districts became dependent on the program, it became a permanent part of Ohio's funding legislation. (Phillis Tr. 1745-46)

7. In order to be approved for a spending reserve loan, a school district must establish that it has exercised all available revenue options and will, in the absence of such a loan, incur a deficit at the end of the fiscal year. (Phillis Tr. 1748; Stip. 30)

8. The amount of a school district's spending reserve will vary with the extent of tangible personal located in the school district. Generally, low valuation districts have less tangible personal property. (Revised Code Section 5705.29; Brown Depo. 44; Stip. 26)

9. Generally, tangible personal property tax is the most volatile of the taxes for the operation of public schools. Due to the application of different tax rates to different types of property, there is greater loss in

revenue from the loss of tangible personal property value than from the loss of real property value. (Brown Depo. 26; Russell Depo. 148)

10. The Department of Education advocates that districts begin the spending reserve loan process by June of the fiscal year before the year they expect to end in a deficit. In order to participate in the spending reserve loan program, a school district must include a spending reserve amount in its tax budget. School district tax budgets must be adopted in January of each year for the coming fiscal year commencing the following July 1. The spending reserve provision anticipates a deficit to occur at the end of the coming fiscal year (June 30), some eighteen months away. (Brown Depo. 46-50; Stip. 24)

11. The Superintendent of Public Instruction is required to annually submit to the General Assembly a comprehensive report of school district spending reserve borrowings. The aggregate amount of spending reserve borrowing approved, and the number of districts approved for spending reserve borrowing in each year from 1986 to 1992, is truly and accurately represented at Stipulation Exhibit 20. (Sanders Tr. 329; Stip 25; Stip. Exh. 20)

12. Each of the districts receiving approval for a spending

reserve loan had expenditures that exceeded the combination of revenue and any carry-over balance that the district may have had. (Sanders Tr. 330)

13. The only limitation on the maximum amount that can be approved for borrowing under the spending reserve loan program is the amount of tax revenue to be received by the school district during the first half of the following fiscal year. (Brown Depo. 53)

14. A spending reserve loan in excess of a school district's spending reserve amount may be granted at the discretion of the Superintendent of Public Instruction. For the 1991-92 year, 17 of the 165 spending reserve loans approved by the Superintendent of Public Instruction were loans in excess of the district's statutory spending reserve loan amount. (Brown Depo. 52, 59; Stip. 24)

15. Although there are guidelines available for the submission of a request for a spending reserve loan, the Superintendent of Public Instruction has no written guidelines or criteria for the approval of spending reserve loans in excess of a district's spending reserve. (Brown Depo. 55; Stip. 28, 29)

16. No reductions in program or expenditures is required for the approval of a spending reserve loan. (Brown Depo. 57; Stip. 27)

17. Any time a school district borrows an amount against next year's taxes, that district is taking away available resources for operations for that fiscal year. A school district can get into a spiral where it is continually borrowing and paying back the following year. A school district, therefore, is always taking away from the future. Any time a school district does such borrowing into the future, it robs future generations of children. (Brown Tr. 5482; Brown Depo. 60)

18. The statutory spending reserve amount for the Cleveland City School District is in the neighborhood of \$19 million. Cleveland borrowed more than that amount under the spending reserve loan program for each year from 1989 through 1991, with loans of \$40 million in 1991, \$35.5 million in 1990, and \$35 million in 1989. (Brown Depo. Exh. 1, p. 2; Brown Depo. 61)

19. The statutory spending reserve limit for the Akron City School District is between \$6 and \$7 million per year. That school district borrowed nearly twice that amount

each year from 1986 to 1992. (Brown Depo. Exh. 1, p. 1;
Brown Depo. 62)

20. Dayton and Hamilton City Schools have also borrowed substantial amounts in excess of their statutory spending reserve amounts. (Brown Depo. 63)

21. Since 1989, the numbers of school districts being approved for spending reserve loans have grown as well as the total amounts approved for borrowing. (Brown Depo. 65)

22. The Superintendent of Public Instruction now recommends every district include the proceeds of a spending reserve loan in its annual tax budget. (Brown Depo. 70)

23. Presently, most school districts include anticipated operating deficits and spending reserve loan amounts in their tax budgets. (Brown Depo. 74)

24. The \$88.8 million reduction in foundation funds in January, 1992 caused some districts to seek spending reserve loans. Some had not anticipated those needs in their budgets. Those districts were required to amend those budgets before being approved for spending reserve loans. (Brown Depo. 72)

25. Reports regarding the operation of the spending reserve loan program go to the General Assembly twice per year.

(Brown Depo. 58)

26. Van Keuren Deposition Exhibit 2 is a composite year end report of school district spending reserve loans as of February 14, 1992. Each of the loans reflected on that Exhibit has been approved by the Superintendent of Public Instruction. (Van Keuren Depo. 79)

27. School districts are required to borrow under the spending reserve loan provisions as a condition of borrowing under the emergency school assistance loan provisions. (Van Keuren Depo. 75)

C. THE OPERATION OF THE EMERGENCY SCHOOL ASSISTANCE LOAN PROGRAM

1. Stipulations regarding the operation of the emergency school assistance loan program are numbered 30 through 45 and include Stipulation Exhibits 22 through 26.

2. School districts unable to meet their financial commitments through the use of spending reserve loans are then required to seek approval for emergency school assistance loans. (Russell Depo. 69; Stip. 32; R.C.

Section 3313.483)

3. The process known as the "Loan Fund" began in 1978 when districts were prohibited from closing for lack of funds. Initially, the money was borrowed from the state, and paid back over the next two years. The Office of School Management Assistance within the Department of Education was created at that time to oversee the loan fund process. (Brown Depo. 76; Tavakolian Depo. Exh. 5; Tavakolian Depo. 120)

4. In 1989, the loan fund legislation was amended such that loans were no longer made by the State but from commercial banks. (Brown Depo. 78)

5. Emergency school assistance loans are second tier of borrowing for school districts that are in need of greater amounts of additional revenue than available under the spending reserve loan program. Since 1978, 273 school districts have borrowed over \$389 million under the emergency school assistance loan program. The bulk of these funds do not represent loans from the state of Ohio; rather, they represent loans from private institutions, such as banks and other lenders. Sixty percent of that borrowing has taken place in the last three fiscal years: 1993, 1992, 1991. (Phillis Tr. 1761;

Brown Tr. 5495; Sanders Tr. 330-331; Pl. Exh. 152, p. 4;
Tavakolian Depo. 116)

6. The procedures followed in applying for an Emergency School Assistance loan are contained in Brown Deposition Exhibit 3, a copy of which is sent to each school district each year. (Brown Depo. 100)

7. Under the emergency school assistance loan program, a school district which projects an operating deficit must first adopt a resolution setting forth that anticipated deficit. That resolution is certified to the Superintendent of Public Instruction and the Auditor of State, who then conducts an audit of the school district's finances to determine whether the district will indeed incur a shortfall of operating revenue after using all available resources (including spending reserve loans). School districts certified by the State Auditor to have projected operating deficits have no choice but to apply for an emergency school advancement loans. (Sanders Tr. 332; Phillis Tr. 1749-50; Brown Tr. 5461-62; Brown Depo Exh. 3 p. 1; Brown Depo. 83, 92; Van Keuren Depo. 58; Stip. 31)

8. Brown Deposition Exhibits 21-23 are documents used in the process of approving an emergency school assistance

loan. (Brown Depo. 251 and 254)

9. Emergency school assistance loans no longer represent a loan of state funds, but constitute approval of the Controlling Board to enter into a loan from a bank or other lending institution. (Russell Depo. 76)

10. Generally, the Department of Education does not participate in finding a lender for schools; Cincinnati was an exception due to the size of the loan. (Brown Depo. 251, 254)

11. The Controlling Board has never ultimately refused to approve an emergency school assistance loan. The Superintendent of Public Instruction has never declined to recommend such a loan, though there have been negotiations with school districts applying for such loans. (Brown Depo. 147; Stip. 37)

12. If the Auditor verifies the anticipated cash flow deficit after all available sources of revenue (including the use of spending reserve loans) are taken into account, the district is then required to request a loan from a local lending institution, commercial bank, underwriter or other prospective lender. Rejection of the district's initial request by a lending institution

is an essential step in the loan fund process. (Brown Depo Exh. 3 p. 1; Brown Depo. 83; Stip. 32)

13. The Auditor of State charges \$25.00 per hour for its examiners to be on site at the school district. (Brown Tr. 5461-62; Brown Depo. 97)

14. The Auditor's fee is charged to, and must be repaid by, the school district. The amount of that fee is added to the loan that must be repaid by the district. (Brown Tr. 5515; Van Keuren Tr. 4757-58)

15. The audit connected with the most recent emergency school assistance loan for the Cincinnati City School District cost approximately \$50,000. (Revised Code Section 3313.483; Van Keuren Tr. 4757-58)

16. With reference to the State Auditor's charges, in some instances the State of Ohio is not only forcing the school districts to borrow funds by implementing State budget cuts, but also is charging school districts for this "privilege" by telling them that they must pay the Auditor's fee. (Brown Tr. 5516)

17. The audit conducted by the Auditor of State in connection with an emergency school assistance loan

takes about two months. If a deficit is certified, the Superintendent of Public Instruction is required to apply for a loan for the school district if the district fails to do so. (Brown Depo. 91-92)

18. The Department of Education recommends that school districts anticipating a shortfall in operating revenue begin the emergency school advancement loan process in May or June of the year prior to the shortfall in order to have the loan approved in time for the October 1 final appropriations deadline. (Brown Depo. 88-89)

19. Emergency school assistance loans are repaid by the state diverting funds otherwise available to the school district under the school foundation program to the commercial lender for repayment of principle and interest on the loan. (Phillis Tr. 1753-54; Sanders Tr. 338; Brown Depo. Exh. 12, p. 2; Brown Depo. 154; Stip. 43)

20. As much as 30 percent of a school district's foundation payments have been diverted to private lenders for the repayment of the principle and interest on an emergency school assistance loan. (Brown Depo. 168)

21. School districts are authorized to pledge future

payments of school foundation funds as security for indebtedness other than emergency school assistance loans. No school district has yet pledged the same foundation payment twice, but such a circumstance is a possibility. (Brown Depo. 170)

22. All emergency school assistance loans were required to be repaid within two years prior to the passage of Senate Bill 289. Now some of those loans may remain outstanding for up to ten years. (Van Keuren Depo. 58; Phillis Tr. 1751-52)

23. As of 1992, "stretch loans," repayable within ten years, could be made if the amount borrowed was greater than \$25 million or 15 percent of the school district's budget. (R. C. Section 3313.483; Brown Depo. 78; Sanders Tr. 336)

24. A second emergency school assistance loan in excess of 7 percent of the school district's general fund will result in a district being placed under the supervision of the Superintendent of Public Instruction. Special legislation permits Cleveland to be the only district in the State with two loans which is not under state supervision. (Russell Depo. 70; R.C. Section 3313.4810)

25. In event of passage of an additional tax levy after approval of an emergency school assistance loan, the school district is required to borrow in anticipation of the receipt of the additional tax levy revenue in order to repay the loan. (Brown Depo. 84)

26. Many loan fund districts have tried unsuccessfully to pass levies on more than one occasion to avoid forced borrowing. It has become more difficult for school districts to pass operating levies. (Brown Depo. 2132-14)

D. MANDATORY REDUCTIONS IN SCHOOL DISTRICT EXPENDITURES

1. The Department of Education requires that school districts seeking a loan submit a plan of reduction of school district expenditures in an amount sufficient to permit repayment of the principle on the emergency school assistance loan. The Department does not advise school districts on what to cut, but does monitor the cuts to determine that no provision of a negotiated collective bargaining agreement is violated and that the proposed reductions are capable of being made. The Department of Education does not, however, encourage the reduction in non-required transportation services or the reduction of extracurricular programs. (Van Keuren Tr. 4767; Brown Depo. 126, 198; Tavakolian Depo. 80; Russell

Depo. 72; Van Keuren Depo. 61; Stip. 32)

2. The Superintendent of Public Instruction is required to review and evaluate each plan of reduction submitted in connection with a school district's request for an emergency assistance loan. (Stip. 33)

3. The expenditure reduction plan for an emergency school assistance loan requires a repayment schedule in amounts sufficient to permit repayment of the principal amount of the loan. The reduction plan does not require the repayment schedule to contain amounts necessary to pay the interest on the emergency school assistance loan. (Stip. 36)

4. Spending reserve loans are required to be taken as a condition of receiving an emergency school assistance loan. The plan of reduction submitted in connection with the emergency school assistance loan process does not include reductions sufficient in amount to repay the principle or interest on the spending reserve loan. Thus, for most school districts with outstanding emergency school assistance loans, subsequent borrowing under the spending reserve loan provisions will be required. (Brown Depo. 151; Russell Depo. 73; Stip. 36)

5. Teaching contracts cannot be terminated for lack of funds. Provisions for reduction in force (suspension of teaching contracts) are not available to school districts based on lack of funds. (R. C. Sections 3319.16 and 3319.17; Brown Depo. 200)

6. Negotiated collective bargaining agreements often contain limitations on the ability of boards of education to reduce personnel and personnel-related expenditures. School districts may not violate the provisions of those negotiated collective bargaining agreements in connection with a request for an emergency school assistance loan. (Phillis Tr. 1752)

7. Most school districts in financial distress have attempted to reduce expenditures by all available means prior to requesting approval for an emergency school assistance loan. Thus, the range of options for further reductions is extremely limited. Typically, such districts spend 85 percent to 90 percent of their total revenue on personnel, much of which is committed by one or more collective bargaining agreements, and have no other areas in which to reduce expenditures except personnel cuts. In some cases salary costs exceed 100 percent of the school district's operating budget. (Tavakolian Depo. 87; Phillis Tr. 1751-52; Van Keuren

Depo. 47)

8. The Department of Education does not require the reduction of any expenditure required under the terms of a negotiated collective bargaining agreement. (Sanders Tr. 334-335; Stip. 34, 35; Stip. Exh. 22)

9. Most reduction plans submitted by school districts in connection with requests for Emergency School Assistance Loans involve some kind of personnel cuts. (Tavakolian Depo. 130)

10. The Division of School Management Assistance does a two year cash audit as part of the emergency school assistance loan process. The Division also does staffing analysis and looks to see if the general fund is supporting other funds such as cafeteria fund. (Brown Depo. 93-94)

11. Part of the staffing analysis conducted by the Department of Education in connection with an application for an emergency school assistance loan is a comparison of the applicant school district to other districts' staffing levels in areas where minimum staffing is not mandated by regulation. The comparison districts are selected based solely on ADM and valuation

per pupil. This staffing analysis assumes that districts of similar size and wealth will have similar staffing patterns in those areas. (Van Keuren Tr. 4761; Van Keuren Depo. 60; Brown Depo. 124)

12. When a spending reduction plan is presented to the office of School Management Assistance, that office does not review compliance with state minimum standards. Rather, the only function that that office does with reference to minimum standards is to perform a head count (full-time equivalency count), to determine if the remaining staffing meets minimum standards. (Brown Tr. 5510; Brown Depo. 158)

13. School district plans of reduction in connection with emergency school assistance loans, in order of magnitude include: administrators first; classroom teachers second; and support personnel third. Personnel reductions result in the largest reduction in expenditures. (Brown Depo. 204)

14. The next largest area of expenditure reductions is materials, supplies, and textbooks; then early retirement incentives, non-purchase of school busses, and reduction in maintenance costs. Textbook purchases and deferral of maintenance have usually happened before

the school district has been required to apply for an emergency school assistance loan. It has become increasingly more difficult for school districts to find things to cut from their budgets. There has been a trend to increase use of student fees as a means of increasing school revenue. (Brown Depo. 205-207; Sanders Tr. 340)

15. Reduction of classroom teachers, textbooks and supplies adversely affects the level of educational opportunity for the pupils in districts participating in the emergency school advancement fund. (Brown Depo. 209; Phillis Tr. 1752)

16. As a result of the cuts a school district must make to receive a loan, educational programs are less effective while the school district is in the loan fund than they were before the district entered the loan fund. (Ocasek Tr. 2808-09)

17. With reference to Pl. Exh. 44, a July 7, 1992 letter from Carol Spangler to Charles Brown, Mr. Brown agreed with Superintendent Spangler that the referenced cutbacks in staffing and services to students are the very lifeblood of the school system. (Brown Tr. 5505; Pl. Exh. 44)

18. Pl. Exh. 232 is a memorandum from Charles Brown to Dr. James Van Keuren dated December 14, 1989 regarding the impact of insurance costs on loan fund districts for FY90. For example, the Brookfield Local School District had seen a 45 percent increase in insurance costs in that year, costing the school district an additional \$222,000. Similarly, Newton Falls Exempted Village School District had seen a 65 percent increase in insurance costs, costing the school district an additional \$340,000. In total, increased insurance costs had impacted 36 loan fund districts with an increase ranging from 6 percent to 69 percent and a dollar increase ranging from \$12,000 to approximately \$800,000. (Pl. Exh. 232)

19. School districts with an initial emergency school assistance loan are expected to check with the Department of Education before implementing new programs. (Brown Depo. 163-164)

20. Any equity funds received by a school district, which are intended to provide poor school districts with increased educational opportunities, may be required to be spent on the repayment of any outstanding emergency school assistance loan. The Department of Education encourages early repayment. (Brown Depo. 160; Brown Tr.

5512)

21. But for the equity funds provided to school districts in fiscal years 1993 and 1994, more than 70 school districts would be in the loan program, in addition to those school districts who are already participating in that program. (Brown Tr. 5496)

22. As of March 22, 1993, twenty-one of the school districts which received equity funds under H.B. 671 had applied for emergency school assistance loans. As of that date, fourteen of those districts had been certified as having an operating deficit and had either been approved by the state controlling board for receipt of a loan or had their certification pending. Plaintiff Youngstown City School District received over \$2.1 million in equity funds, and was certified as having an operating deficit of \$7.047 million. (Pl. Exh. 225; Stip. Exh. 16)

23. Absent additional cuts in school district expenditures or the addition of taxable value to the tax duplicate, the rate of a local school district tax levy necessary to satisfy school district indebtedness will increase from year to year. (Tavakolian Depo. 88)

24. School districts that have been unable to reduce

expenditures by a sufficient amount to repay an existing emergency school assistance loan will be required to apply for a subsequent loan. No school district has ever been denied the authority to obtain such a loan. (Van Keuren Depo. 70-71; Tavakolian Depo. 133)

25. The State Board of Education has proposed the forgiveness of indebtedness for certain loan fund districts, but such proposals have not been approved. (Russell Depo. 145)

26. The Department of Education recommended to the 120th General Assembly the creation of a fund to pay the emergency school assistance loans to school districts seeking to consolidate with other school districts but which were unable to do so because of accumulated indebtedness. That recommendation was not approved. (Sanders Tr. 371; Pl. Exh. 15, p. 17)

27. There was a finding of the House Select Committee to Review and Study Ohio's Education System that school districts should be given the statutory authority to close until the district passes needed millage if the school district decides that an emergency school loan is not in the best interests of the school system. (Shoemaker Tr. 4100-4101)

28. The Youngstown City School District has been approved for a emergency school assistance loan fund, and cuts have been made as a result of preparing to enter the loan fund. The teaching staff has been cut, and in December 1993, there were 73 substitute teachers working without regular teaching contracts, because those teachers may need to be eliminated. A shortage of substitute teachers exists because there are so many substitutes who have been serving in regular positions, substitutes have no hope of obtaining a teaching contract at this time when positions are being cut, and people do not want to come to Youngstown City Schools to teach. Secretarial and custodial positions have been abolished; nutrition staff and educational assistants have been laid off. (Marino Tr. 3203) Six administrators in FY94 are trying to do the same amount of work that was done by approximately 20 people in the Department of Instruction in FY93. (Marino Tr. 3204) Since August 1992, Youngstown City Schools have cut approximately 18 to 20 central office personnel. (Marino Tr. 3354-55) Cuts to the central office staff directly impact services to students. (Marino Tr. 3435-36)

E. THE MAGNITUDE OF BORROWING UNDER THE EMERGENCY SCHOOL ADVANCEMENT LOAN PROGRAM

1. From 1978 to 8/20/93, 273 Ohio school districts received emergency school advancement loans in the amount of over \$389 million. (Pl. Exh. 223)

2. In FY93, 66 school districts applied for emergency school advancement loans and forty-four were approved for the amount of \$113,600,000. Twenty-seven school districts received loans in that year in the amount of \$94,500,000. (Pl. Exh. 223 (dated 8/20/93)) (See Brown Deposition Exhibit 17; Stip. Exh. 23 (dated 5/12/93))

3. On or about October 26, 1993, the Ohio Department of Education issued a version of the document entitled "History of the Emergency School Advancement Loan Program." In FY94, as of 10/26/93, 50 school districts had applied for emergency school advancement loans. (Stip. 142; Stip Exh. 53)

4. Stipulation Exhibit 24 is a true and accurate list of school districts receiving emergency school assistance loans in each year from FY90 through FY92. That document reflects a total amount of school district borrowing, including principle and interest for those three years of \$114,182,629.50 (Stip 39; Stip. Exh. 24)

5. Van Keuren Deposition Exhibit 1 is a quarterly emergency school assistance loan status report as of March 31, 1992. Forty-four additional loans were authorized after that report for an additional \$102 million. (van Keuren Depo. 72)

6. The composite spending reserve borrowing for fiscal years 1986-1992 for the State of Ohio was as follows:

FISCAL YEAR	NUMBER OF SCHOOL DISTRICTS	TOTAL APPROVED FOR BORROWING
1986	129	\$173,453,435.00
1987	114	141,715,879.00
1988	89	

137,462,400.00

1989

100

114,429,253.00

1990

120

115,406,169.00

1991

129

121,581,281.00

1992

151

152,298,399.00

(Stip. Exh. 20; Brown Depo. Exh. 15; Brown Depo. 189)

7. Brown Deposition Exhibit 16 is a copy of a weekly loan report indicating the status of school districts in the emergency school assistance loan program as of December 21, 1992. The document does not reflect the approval of loans for Bridgeport, Southern Local in Columbiana

County or Cleveland. (Brown Depo. 190; see also Van Keuren Depo. Exh. 16, current as of 12/14/92; Stip. Exh. 54, current as of October 26, 1993)

8. Pl. Exh. 224 is a list of school districts which have participated in the state loan program between the years of 1979 and 1992. Plaintiff Southern Local School District received an emergency school advancement loan in FY92 for \$195,000. Many school districts in Ohio have received multiple emergency school advancement loans. Southern Local School District in Columbiana County has received six emergency school advancement loans since 1979. Union Scioto Local School District in Ross County has received four such loans. (Pl. Exh. 224)

9. Pl. Exh. 226 is a report from Charles Brown to Jim Van Keuren detailing spending reserve borrowing from FY86 through FY92 (as of February 14, 1992) According to that document, 330 different school districts received spending reserve loans in that time period, and many of those districts received multiple spending reserve loans. Youngstown City School District received a spending reserve loan of \$2 million in 1989, \$1.5 million in 1990 and \$1.83 million in 1992. Plaintiff Southern Local School District in Perry County received a spending reserve loan of \$12,500 in 1991 and \$16,000

in 1992. (Pl. Exh. 226; Pl. Exh. 227)

F. TRENDS IN BORROWING

1. The majority of loan fund districts are those with low property valuation. (Brown Depo. 221; Tavakolian Depo. 139)

2. The number of school districts required to borrow sequential emergency school assistance loans has increased from year to year. The trend toward increased borrowing is a matter of concern to the State Department of Education. (Russell Depo. 74)

3. A number of school districts have received as many as six consecutive emergency school assistance loans. For some, borrowing has become a way of life. (Phillis Tr. 1755)

4. School districts that have entered into consecutive emergency school assistance loans have tended to borrow more money with each subsequent loan. As a rule of thumb, school district indebtedness, if not decreased through a reduction of expenditures or an increase in revenue will tend to double each year. (Brown Depo. 192)

5. Districts that participate in the "loan fund" are often districts that have been unsuccessful in passing additional local tax levy millage on more than one occasion. In such instances, Department of Education representatives discuss the possibility of transfer of students and consolidation. (Van Keuren Depo. 45)

6. There are loan fund districts that would require more than 15 mills to get out of the loan fund; such a levy is considered to be extremely large and those districts will likely not be able to pass that much additional millage. The Department of Education encourages such districts to consider dissolving or consolidation. (Russell Depo. 144)

7. A school district property tax levy in excess of 10 mills has very little chance of passing except in dire circumstances. (Brown Depo. 215-216)

8. Some school districts presently in the loan fund are unlikely to ever get out of the loan fund. The Department of Education will conduct consolidation studies for such districts. (Brown Depo. 216-217)

9. Consolidation of school districts presents the concern of joining small poor school districts together to

create a large poor school district with no improvement in the level of available revenue for the consolidated district. (Brown Depo. 220)

10. Four of the big eight city school districts have been or are presently in the loan program. These are Youngstown, Akron, Cleveland and Cincinnati city school districts. (Brown Tr. 5463)

11. President Ocasek is aware of the magnitude of indebtedness being incurred by public school districts for the operation of schools in Ohio. President Ocasek also agreed that the indebtedness is imposed upon school districts themselves, as opposed to the State. Both the numbers of school districts engaging in borrowing of funds, and the magnitude of the borrowings have increased in recent years. Unless there is a change in the method by which public schools are funded, that circumstance is likely to continue. (Ocasek Tr. 2796-98)

12. In January of 1992, school foundation funds were reduced by \$88.8 million. As a result of that reduction, school districts were forced into the loan fund that otherwise would not have been in the loan fund. (Van Keuren Depo. 95)

13. Some already approved loan fund districts had to come back for more money, and some in process had to increase the amount of the loan request because of the reduction in state appropriations. (Brown Depo. 75; Tavakolian Depo. 208)

G. SPECIFIC LOAN DISTRICTS, INCLUDING PLAINTIFF'S

1. President Ocasek assisted the Akron City School District in obtaining emergency school assistance loans. Akron made substantial cuts to keep afloat, and the District is still in need of additional money. The cuts that were made included matters that related to educational programs. (Ocasek Tr. 2808)

2. The Cincinnati School District became indebted to such a degree that it could not possibly pay back its loan within two years. The General Assembly amended the emergency school assistance loan legislation to provide for an option of a ten year pay back. Pursuant to that option, the Cincinnati School District has borrowed in the range of \$48 million to \$50 million. (Phillis Tr. 1760; Sanders Tr. 336)

3. Cleveland is the only school district in the emergency school assistance loan program that has not been

required to borrow a spending reserve in addition to the emergency school assistance loan. Cleveland's loan of \$75.7 million for six years includes the equivalent of a \$44 million spending reserve loan for which it had been previously approved and an additional amount of \$31.7 million. (Brown Depo. 152-153; Goff Depo. 147; Sanders Tr. 336)

4. The most common cause of districts in Area 5, the area including Plaintiff Dawson-Bryant Local School District, going into the loan fund has been a steady erosion of the difference between revenue and income due to inflationary increases. (Taylor Depo. 143-44)

5. Plaintiff Northern Local School District is the only school district in Perry County which has not received an Emergency School Advancement Loan. (Hill Depo. 39)

6. Northern Local Schools is not a loan fund district but is considered borderline. (Brown Depo. Exh. 16; Brown Depo. 221)

7. The Southern Local School District borrowed money through the Emergency School Assistance Loan Program in FY92. As a prerequisite to entering the program, the district was required to take a spending reserve loan in

the amount of \$16,000. (Spangler Tr. 484-87) The district was required to submit a plan of repayment and expenditure reduction to the Department of Education. In FY91, the district spent \$3,485 in general fund expenditures per pupil, and that figure was reduced to \$3,408 per pupil in FY92. The district was required to report to the Department of Education on its status in the Emergency School Assistance Loan Program and the status of the expenditure reduction plan for FY92. Reductions included one principal, one library aide, two instructional aides, one custodian, one and one-half classroom teachers, one educational service personnel teacher (a physical education teacher), one part-time food service worker, and other reductions in personnel costs. (Spangler Tr. 493; Pl. Exh. 44, p. 2) The district knew that it was going broke for a number of years and had reduced materials, supplies, and equipment in previous years. (Spangler Tr. 653)

8. In August 1991, the Department of Education sent a letter to the Superintendent of Southern Local detailing a management review conducted by the Department. (Spangler Tr. 48; Pl. Exh. 42) This review was conducted before expenditure reductions were implemented by the district. Section 4 of that document details quantifiable state minimum standards that were exceeded

by the district at that time in areas of staffing or personnel expenses. For items A through E, the analysis showed that the Southern Local School District had no expenditures above the state minimum in each of those categories. (Spangler Tr. 49394; Pl. Exh. 42, sections 4 and 5)

9. As part of the cuts at Southern Local, plans to acquire text books and updated instruction materials were put on hold, professional leave and field trips were reduced, and extracurricular programs were reduced. The district instituted a pay-to-play program to meet athletic costs and to keep programs operating. (Spangler Tr. 496) The district was making cutbacks in staffing and direct services to students and options for further expenditure reductions were very limited. (Spangler Tr. 496-497)

10. Following the reductions pursuant to the emergency school assistance loan, the amount of contact between pupils and professionals was reduced. Much support that was needed from instructional aides has been taken away. In some areas, the class size is too high for effective instruction. High school English class sizes are over 30, which is too high for those students who need individualized attention for learning writing skills. At the elementary level, the 3rd grade classes had the

highest number of students with many of the classes having 30 students. Seven students were retained in that grade level, which was approximately 10 percent of the class. Retention kills a child's spirit for achievement and affects their motivation to learn for the remainder of their school career. It is obvious that the district was not providing appropriate intervention for those students who were retained. Further, because of limited financial resources, the district does not have adequate systematic intervention for students and does not meet the intent of minimum standards for student intervention. (Spangler Tr. 4979-99)

11. The principal and interest on Southern Local's loan was \$211,000, with repayment of that money during FY93 and FY94. A portion of principal and interest was paid each month so that in FY93, \$8900 per month was withheld from the district's school foundation check and paid to Bank One of Athens. (Spangler Tr. 500)

12. If Southern Local had to borrow more money, the Superintendent did not know where additional reductions could be made. (Spangler Tr. 502)

13. Youngstown City Schools was approved for a loan of over \$7 million in 1992. (Brown Depo. Exh. 16; Brown Depo.

221; Sanders Tr. 4604)

14. Plaintiff Youngstown City School District projects a debt for the 1993-94 school year of approximately \$9 million. (Kolitsos Depo. 23; Pincham Depo. 13)

15. The \$9 million deficit faced by Plaintiff Youngstown City School District and the resulting emergency school advancement loan has decreased the educational opportunities available in the district by forcing the district to cut necessary staff and materials. (Pincham Depo. 48)

H. RECEIVERSHIP

1. Receivership districts are those that have had more than one emergency school assistance loan, with the current loan being for seven percent or more of the district's general fund. Such districts are subject to monitoring by the Department of Education. Receivership districts are more closely monitored than other loan districts. (R.C. 3313.488, 3313.4810; Van Keuren Depo pp. 65-66; Brown Depo. 221; Phillis Tr. 1757-58; Tavakolian Depo. 134; Stip. 40)

2. The monitoring of "receivership" district is governed by

the provisions of Revised Code Section 3313.483. (Brown Depo. 221)

3. Districts under receivership (that is, subject to the provisions of Revised Code Section 3313.488) are prohibited from entering into any new program, contract or expenditure without the express written permission of the Superintendent of Public Instruction. Violation of this requirement could result in a monetary penalty of up to \$20,000 on the individual school officer involved. Revised Code Section 5705.412. (Brown Depo. 163-164, 226-227; Phillis Tr. 1757-58; Stip. 41)

4. Specific plans of reduction submitted to the Controlling Board by receivership district are monitored for compliance by the Department of Education and must be carried out. (Brown Depo. 226)

5. Disapproval of any school expenditure for a receivership district is rare. (Van Keuren Depo pp. 65-66; Brown Depo. 221, 242)

6. Cleveland is one of the districts which has received emergency school advancement loans. Through legislation passed by the general assembly, Cleveland was approved for a second loan without having to go into state

receivership. (Goff Depo. 146; Brown Depo. 236)

7. Receivership districts are required to engage in collective bargaining with employee groups. The Department of Education does not participate in the bargaining process but monitors the agreements. (Brown Depo. 229, 242)

8. Twenty-five school districts were receivership districts as of December 23, 1992. The number of receivership districts has increased in recent years. (Brown Depo. 230, 232)

9. The number and identities of school districts subject to state supervision pursuant to Revised Code Section 3313.488 for FY88 through FY96 as of July 20, 1993, are accurately represented at Stipulation Exhibit 25. (Stip. 42; Stip. Exh. 25; see also Brown Depo. 234; Brown Depo. Exh. 1a)

VIII. FACILITIES

A. GENERAL

1. Superintendent Sanders remarked regarding his visits to Ohio school buildings that some students were "making do in a decayed carcass from an era long passed." And others were educated in "dirty, depressing places." At trial, Superintendent Sanders testified that the State of Ohio is not doing enough to meet the facilities' needs of public schools. (Pl. Exh. 32, p. 5; Sanders Tr. 4573)

2. The overall condition of school facilities in the State of Ohio today is worse than it was 16 years ago when Dr. Phillis became Assistant Superintendent of Public Instruction. The state is losing the battle in terms of maintenance and upkeep of its public school buildings. (Phillis Tr. 1715)

3. Throughout his travels, Dr. Phillis has observed that the demeanor and behavior of students are a function of the quality of school facilities in which they receive their educational program. (Phillis Tr. 1693-94)

4. Robert Franklin testified that the environment in which a child learns is very important. It affects a student's whole attitude. Additionally, safety considerations are paramount in Mr. Franklin's opinion. In addition to problems he encountered in Plaintiff Northern Local

School District, described *infra*, Mr. Franklin gave examples of incidents where students have been directly affected or are eminently threatened by dangerous conditions, including:

In Buckeye Local in Belmont County, 300 students were hospitalized because carbon monoxide came out of heaters and furnaces on the roof of a school. Additionally, floors were buckled to the point where elementary students were jumping from the top of one buckle to the other buckle, in a room where classes were held.

In the Congress School District, one elementary school was built in 1903. The floors were so thin that one teacher, while walking across the floor of the classroom, had her heels go through the wood floor. In the basement of that school, there is a gas-fired boiler sitting on a very weak floor. If that floor gives way and the boiler crashes down, it will explode with leaking gas. That particular school district is not on the approved building list, but rather is on the list of school districts which have submitted letters of request for building assistance. (See B(15), *infra*.) (Franklin Depo. 241-243)

5. The condition of a school building is a factor in whether a classroom is conducive to teaching and learning. The learning environment and its cheerfulness is still obviously important today. (Schiraldi Depo. 32, 37, 65)

6. In connection with his administration of the Classroom Facilities Act and other travels as Assistant Superintendent of Public Instruction, Dr. Phillis has observed public school pupils in Flushing, Ohio, who do not have access to indoor plumbing in their elementary school building. He has observed pupils in the Edison Elementary School building in Mt. Gilead, Ohio, being housed in areas formerly used as coal bins. He has observed pupils in classrooms where water would run through the classroom whenever it rained. Teachers used wooden pallets with carpet over them to insulate the children from the water. He observed buildings in which the only library was an abandoned state library truck. He observed the Nelsonville York Elementary building which is, in his opinion, unsafe as the building is sliding down a hill. (Phillis Tr. 1691-92)

7. Representative Shoemaker described his tour in 1990 of the Eastern Brown Local School District. At Eastern

Brown High School, the cafeteria is divided in half 90 that proficiency test tutoring may be done in one-half of the cafeteria. The library is divided in half so that an art class made be offered in one-half of the library. The LD classroom is a converted storage room with no windows and a floor fan for ventilation. At the Ashridge elementary School in the Eastern Brown Local School District, Representative Shoemaker visited a 1st grade class with 30 students in the class and no room to work between the desks. All supplies for the class were piled on the windowsills. The students at Ashridge Elementary eat their lunches at their desks because there is no cafeteria. At the Russellville Elementary School in the Eastern Brown Local School District, Representative Shoemaker observed 30 SBH students being educated in a converted drivers ed. simulator travel. The Russellville building has no lockers. At the Sardinia Middle School in the Eastern Brown Local School District, the library is a bookmobile which is parked behind the school building. (Shoemaker Tr. 4127-34)

8. Representative Shoemaker described the tour he took in November of 1993 of the school buildings in the Nelsonville-York City School District. One of the school buildings in the district has been closed because the back wall of the building is falling down. One of the

elementary buildings in the district, which continues to house students, is sliding an inch a month down the side of a hill. The Nelsonville-York City School District pays a registered surveyor to monitor the movement of that building. At that elementary, kindergarten and reading classes take place in a rented trailer in the parking lot. At the junior high school in the NYCSD, the gymnasium, auditorium and cafeteria are the same room. There is no kitchen in this building, and food is transported from the high school for students' lunches. (Shoemaker Tr. 4124-27)

9. President Ocasek observed the Nelsonville School District facilities, and saw a very unfortunate situation. He described the middle school as being in a very deplorable condition. President Ocasek expressed concern for the safety of the children being educated in the Nelsonville Middle School. There were gas pipes exposed in the school, and there were cracks in the wall with screws on each side of the cracks. Wire connected to screws so that maintenance personnel could measure the width of the cracks to see if the cracks were worsening. The Nelsonville Middle School is sliding down a hill. (Ocasek Tr. 2787-89)

B. CLASSROOM FACILITIES ACT, OHIO REVISED CODE CHAPTER 3318

1. All school district facilities are owned by local school districts unless the facilities are leased or financed through the use of a school building assistance loan. (Stip. 126)

2. The construction of public elementary and secondary school buildings in Ohio may be and is primarily financed through the issue and sale of school district bonds upon the approval of the voters in the district. The bonds are to be repaid with the proceeds of property taxes levied on the taxable property of the school district for that purpose. (Stip. 127)

3. School districts are limited by law to a maximum bonded indebtedness of 9 percent of the district's total property valuation. This amount is exclusive of any energy assistance loans and other loans. However, "Special Needs" districts may apply to the State Superintendent for permission to exceed the 9 percent limit for total bonded indebtedness. A district may qualify as a "Special Needs" district if the Superintendent of Public Instruction finds (1) the district does not have available funds from state or federal funds to meet its projected needs, and (2) the projection of the district's growth of tax valuation

during the next five years indicates a likelihood of potential growth of an average of at least 3 percent per year. (Stip. 128)

4. The Classroom Facilities Act, Chapter 3318 of the Revised Code, provides a means by which a school district may purchase classroom facilities from the state. Such purchase is contingent on the existence of state funds, the approval of a school district's requests for such funds, and the passage of a local tax levy to provide funds to repay the state. (Stip. 129)

5. Title to school district facilities built with the use of Classroom Facilities Act funds is retained by the state until the loan is repaid or a period of 23 years, whichever first occurs. If the district has not repaid the state within 23 years, the Department of Education considers the loan forgiven and makes no effort to collect any remaining indebtedness. (Stip. 130)

6. Stipulation Exhibit 45 is a list as of 12/31/92 of all districts who have received funds under O.R.C. Chapter 3318, the total amount received by the districts, the total amount repaid, and the total amount not repaid at the end of 23 years. (Stip. 131)

7. The Classroom Facilities Act, which was under Dr. Phillis' jurisdiction as Assistant Superintendent of Public Instruction, is a loan program providing funds for the construction of school facilities. The facilities are owned by the Ohio Department of Education, and the school districts participating in the Act repay all or a portion of the loan from the statutorily-required local rate of participation which will vary from district to district. Amounts unpaid at the end of 23 years are forgiven. Revised Code Chapter 3318. (Phillis Tr. 1669)

8. Funds for Classroom Facilities Act assistance are provided from amounts paid back by school districts already participating in the program, as well as appropriations from the General Assembly. Stipulation Exhibit 45 sets forth a listing of those appropriations at times relevant to this case. Classroom Facilities Act funds may become available to eligible districts that have demonstrated building needs beyond their local capacity to fund. Initially, with reference to the Classroom Facilities Act, the maximum amount of a local school district's local indebtedness was 9 percent of its total assessed valuation. (Phillis Tr. 1672; O.R.C. 133.02)

9. Plaintiffs' Exhibit 136 sets forth the formula that the Ohio Department of Education uses to determine the priority rating of school districts on the School District Building Assistance Needs List. That document also sets forth the steps applicant school districts must take to be put on the list. (Pl. Exh. 136)

10. Van Keuren Deposition Exhibit 5 is a description of the operation of the Classroom Facilities Act prepared and published by the Department of Education. (Van Keuren Depo. 102-06)

11. Between 1981 and 1991, only 24 Ohio school districts were given funds under the Ohio School Building Assistance Program. (Pl. Exh. 137)

12. In order to participate in Classroom Facilities Act funds, a district must be included on a "list" of eligible districts. Lists are only created at such time as funds are available. After reviewing the applicants, the Department of Education conducts a statewide survey to determine those districts most in need of additional facilities. (Phillis Tr. 1671-72)

13. Approval for participation for Classroom Facilities Act funding involves an inspection by the Ohio Department of

Education officials and a determination of the number and percent of inadequately-housed pupils, as well as a prioritization of school district applicants based on the percentage of inadequately-housed pupils that need to be housed with state money. (Phillis Tr. 1675)

14. From 1976 to the present time, there have been three lists of districts eligible for Classroom Facilities Act funding; the initial list was prepared prior to 1976 when Dr. Phillis became Assistant Superintendent of Public Instruction. A second list was prepared in 1984 and a subsequent list in 1989. The 1989 list was revised with one additional district being included in 1991. (Phillis Tr. 1677)

15. Plaintiffs' Exhibit 378 is a list of the 44 school districts who have been approved for classroom facilities assistance pursuant to the provisions of Chapter 3318 of the Ohio Revised Code. This list was adopted by the State Board of Education on December 20, 1989, and updated in 1991. The list describes a total of over \$114,000,000 in value of approved facilities needs. Of these school districts, 18 have been approved for school building assistance, passed the requisite levies, and funds have been made available for school construction. Twenty-six (26) school districts remain on

the approved building list, for which no funds have been appropriated by the Ohio General Assembly. (Franklin Depo. 54; Phillis Tr. 1679-80; Stip. 132, 133)

16. All the pupils identified as "improperly housed" in 1989 in districts that have not received Classroom Facilities Act assistance continue to be improperly housed unless the school district has provided facilities without state assistance. (Van Keuren depo. 109)

17. After the State Board of Education and the State Controlling Board allocate funds to a specific classroom facilities project, the school district may then proceed to the local electors with a proposed bond issue which would bring the district's level of indebtedness at or near 7 percent of the district's valuation plus the 1/2 mill pay back. If the proposed local "pay back" issue did not pass but was close, the district would be given another opportunity. If the failure to pass was decisive, the district would revert to the bottom of the list. (Phillis Tr. 1679-80)

18. Because any school district beyond the 27 schools listed on Plaintiffs' Exhibit 378 are a least seven to nine years down the road before help will be available to them (assuming a level of appropriations by the General

Assembly), the Division of School Building Assistance of the Ohio Department of Education accepts letters of intent from school districts, indicating their interest to be placed upon the approved school building assistance list. Stipulation Exhibit 52 lists those 50 school districts who have filed letters of intent with the building assistance office, including Plaintiff Northern Local School District. (Franklin Depo. 54-55; Phillis Tr. 1688-89; Stip. 137)

19. It is the intent of the State Board of Education to take care of all 44 districts set forth on the approved building assistance list, Plaintiffs' Exhibit 378, before the State moves on to any more districts. These districts must pass levies and their projects must be completed before any new schools will make it on to the approved buildings list. (Franklin Depo. 77-78)

20. Classroom Facilities Act funds do not include funds for the equipment or operation of schools, but are limited to provision of school facilities only. (Phillis Tr. 1713-14; Van Keuren Depo. 106)

21. The state has final approval in the design of facilities funded with Classroom Facilities Act funds. (Phillis Tr. 1712)

22. Hunter Deposition Exhibit 5 are the guidelines for state school building assistance projects used by all architects as the general specifications for classroom school building design. (Hunter Depo. 164-65)

23. All building assistance funds come from the state lottery. However, not all lottery profits go toward building assistance funds. In fact, the amount of monies that are available for school building assistance depends upon what is appropriated by the Ohio General Assembly. During the short time that Robert Franklin has been with the Ohio Department of Education, the yearly amounts appropriated for school building assistance ranged from \$10 million to \$25 million. In 1990, the General Assembly appropriated \$25 million for school building assistance. In 1991, the appropriation was \$25 million. However, in 1992, the Ohio General Assembly appropriated only \$10 million for school building assistance. (Franklin Depo. 31, 77-82)

24. Factors that enter into the determination of eligibility for school building assistance funds include the number of inadequately-housed children and/or the condition of the facility. The rule of thumb followed by the Office of Building Assistance is that about 30 square feet per

student is needed in a classroom; 125 square feet per student for an elementary and junior high school student for rest rooms, cafeteria and gymnasium; and 150 square feet per high school student for those areas. (Franklin Depo. 83-85)

25. School districts may choose not to close unneeded school buildings because to do so would result in an erosion of public support which is essential to the passing of school district operating millage. (Phillis Tr. 1853-54)

26. In addition to all current legislative authorized funds for capital improvements, there presently exists an emergency need for additional capital facilities in the amount of at least \$50 million. (Van Keuren Tr. 4774)

27. Plaintiffs' Exhibit 139 is a listing of school districts in Ohio together with their assessed valuation, the amount determined to be needed pursuant to the 1990 Facilities Survey and the amount that could be raised within the 9 percent limit overall school district indebtedness. (Phillis Tr. 1706)

28. Plaintiffs' Exhibit 139 indicates that, assuming they had no other indebtedness, a substantial number of Ohio school districts could not raise sufficient funds to

provide their facilities' needs assuming they were willing to tax themselves to the statutory maximum of 9 percent. (Phillis Tr. 1707)

29. Approximately 60 percent of Ohio school districts could not meet their facility needs even if they voted indebtedness to the statutory maximum of 9 percent. (Phillis Tr. 1709)

30. Perry Local School District in Lake County was able to build a \$50,000,000 school building with current operating funds. Few school districts are able to undertake a construction project without first obtaining a voted bond issue. (Maxwell Tr. 248-49)

C. EMERGENCY SCHOOL REPAIRS PROGRAM

1. In 1991, the Ohio Department of Education maintained an Emergency School Repairs Program. This program was advertised by the State Superintendent Public Instruction, who sent a memorandum to all 612 public school districts in Ohio, requesting them to complete applications for emergency assistance. This was done on a first come, first-served basis. The funds could be used by the school districts for repairs of buildings, child safety, removal of leaking gasoline storage tanks,

replacement of boilers and heating devices, etc. Each school district that applied was eligible for a total of four grants, with each grant having a maximum amount of \$50,000. (Franklin Depo. 36-40)

2. Plaintiffs' Exhibit 375 lists the 76 school districts which were recipients of emergency school repair funds for FY91. Ninety (90) school districts requested help. Of the 90 school districts that requested help, the \$2,680,000 in grants would have been used up by 20 of the school districts to take care of their problems. However, the Department of Education determined to spread out the grants to help as many school districts as possible. These funds could be used only for repairs and not for additions or new buildings. (Franklin Depo. 40)

3. In FY92, and thereafter, no funds were appropriated by the General Assembly for emergency school repair. (Franklin Depo. 45)

4. With reference to the grants awarded under the emergency school repair grants, the first preference in the award of the grants were child safety issues, such as contamination of water systems because of gasoline leakage, replacement of fire alarm systems, etc. That

was the number one concern of the Department of Education, and according to Robert Franklin, "it should be everyone's. [A child's] education is second to their safety." (Franklin Depo. 48-49)

5. The Office of Building Assistance does not have the authority to close any public school buildings due to any safety or code violations. In fact, the Ohio Department of Education does not inspect schools for code and safety violations. (Franklin Depo. 119-20)

6. The grants made pursuant to the Emergency School Assistance program did not meet all the needs of the schools who applied, nor those who were on the approved list. The grant only helped the school district with, perhaps, one problem. Mr. Franklin testified that it would be beneficial if the State had an Emergency School Repair Fund on a yearly basis. (Franklin Depo. 51)

7. Jack Hunter, Supervisor of School Facilities for the Ohio Department of Education, testified that, with Robert Franklin, he visited school districts who had applied for emergency building assistance when the program was in existence. The Ohio Department of Education had numerous applications for these funds. Mr. Hunter visited every school and assessed the problem and

tried to assign a dollar value to it. However, there was not "anyway near enough money to solve [the school districts'] problems, and so all we could do was just put out one little fire that they had. You know, it was pathetic, really, to--to try to judge what we would give them." (Hunter Depo. 138)

8. When the Voinovich administration entered office, there was in existence the emergency school repair program that had \$2 million funding in FY91. The purpose of this program was to provide funds for emergency school repairs for school districts. Those funds would go to such problems as those experienced by Plaintiff Northern Local School District and the closing of its elementary building, and the presence of arsenic in its water, as described infra. That fund is no longer in existence, nor were any funds proposed by Governor Voinovich in his budget for emergency school repair programs. None was appropriated by the General Assembly. (Browning Tr. 4435-36)

9. Mr. Hunter testified that once the emergency building assistance program was closed out and no more monies were available, he still visited with some of the school districts who were unable to obtain needed funds through that program. He testified that these districts were

still asking and pleading for money. These districts are struggling with lack of funds to solve some of their significant problems. This lack of funds to address significant facilities' problems is state-wide and not confined to any particular area of the state. For every district that has been forced to cut back in expenses, the first thing that happens is the elimination of custodians and maintenance. Mr. Hunter continued:

"That's the way we operate in Ohio, unfortunately."

School districts have been deferring maintenance right and left, and have been doing so for several years. Mr. Hunter testified that, with reference to facilities, school districts are going downhill quickly. (Hunter Depo. 140-42)

D. 1990 OHIO PUBLIC SCHOOLS FACILITIES SURVEY

1. In 1989 and 1990, the Department of Education conducted a statewide survey of school buildings pursuant to direction of the General Assembly. The survey cost approximately \$3.5 million and included on-site review by a designated architect of each school building in the state that housed pupils. The results of that survey were compiled and published by the Department of Education. Plaintiffs' Exhibit 14 is the 1990 Ohio Public Schools Facilities Survey. (Van Keuren Depo.

110-115)

2. The 1990 Ohio Public School Facilities Survey identified \$10.2 billion in facilities' needs for public primary and secondary schools in Ohio. The \$10.2 billion figure represents the amount required to bring all the public primary and secondary schools in Ohio up to minimum standards. (Pl. Exh. 14; Franklin Depo. 33, 52; Stip. 135)

3. Plaintiffs' Exhibits 318 through 326 are the area reports associated with the 1990 Facilities Survey, providing a detailed facilities' report for each school district in Ohio.

4. The 1990 Ohio Public School Facilities Survey was also accompanied by the individual studies that were done for each school district within the state. These studies list specific schools within each school district and what repairs/renovations/additions/new construction had to be done. (Franklin Depo. 219-20)

5. Stipulation Exhibit 46 is the 1990 Ohio Public School Facilities Survey for Plaintiff Dawson-Bryant Local School District. The survey identified \$14,975,241 in facilities' needs. Dawson-Bryant has a new school

building project at the present time.

6. Stipulation Exhibit 47 is the 1990 Ohio Public Schools Facilities Survey for Plaintiff Lima City School District. The survey identifies \$42,495,955 in facilities' needs.

7. Stipulation Exhibit 48 is the 1990 Ohio Public Schools Facilities Survey for Plaintiff Northern Local School District. The survey identifies \$13,812,376 in facilities' needs.

8. Stipulation Exhibit 49 is the 1990 Ohio Public Schools Facilities Survey for Plaintiff Southern Local School District. The survey identifies \$7,363,528 in facilities' needs. Southern Local has a new elementary and middle school complex which addresses some of these needs.

9. Stipulation Exhibit 50 is the 1990 Ohio Public Schools Facilities Survey for Plaintiff Youngstown City School District. The survey identifies \$66,925,350 in facilities' needs.

10. Stipulation Exhibit 51 is a copy of a cover letter sent to each school district superintendent regarding the

1990 Ohio Public Schools Facilities Survey. That letter notes that the Department of Education was charged by the General Assembly to determine the amount of funds necessary to bring all facilities into compliance with:

- all state building code provisions
- ___ all state provisions related to asbestos removal
- ___ all other state and local provisions related to asbestos removal
- all other state and local provisions related to safety and health

11. The Department of Education also commissioned the development of a video presentation (Plaintiffs' Exhibit 451) describing the Facilities Survey. The video presentation was used at regional meetings in order to heighten the awareness of the public and the legislature. (Phillis Tr. 1699-1701)

12. The Facilities Survey was conducted through the use of architects who were instructed to apply uniform criteria in the analysis of each school building that was visited. All school buildings housing pupils in the state were included in the study. Contingency funds and "soft money", such as architects' and bond counsel fees, were excluded from the results of the study. (Phillis

Tr. 1696-98)

13. Jack Hunter helped design the survey forms and helped with the training of the architectural firms that completed the 1990 Ohio Public Schools Facilities Survey. He testified that the Facilities Survey was done very professionally and that he was satisfied with the methodology utilized to complete the survey. (Hunter Depo. 65-66)

14. In the opinion of Robert Franklin, the Building Assistant Supervisor for the Ohio Department of Education, the 1990 Ohio Public School Facilities Survey was "well done." Mr. Franklin agreed with the methodology utilized by the architects in the study, particularly because all architects met and used the same criteria. Ohio was the first state to provide such a guide for planning for school districts. (Franklin Depo. 236-37)

15. As of 1993, according to the testimony of Robert Franklin, the figure set forth in the Facilities Survey is very realistic. Between 1989 and 1993, there has been an 11 percent to 16 percent increase in construction costs. (Franklin Depo. 220, 228-29)

16. Construction costs increase at a rate of approximately 4 to 5 percent per year. As projects come up for approval, the Department meets with school districts and increases the amount of state funds for projects as needed. School buildings cost approximately \$85 to \$90 per square foot to build, with costs increasing. (Van Keuren Depo. 106)

17. The architects who completed the Facilities Survey were in every public school building within the state. (Franklin Depo. 235)

18. Robert Franklin testified that the need for building assistance monies, as set forth in the 1990 Ohio Public Schools Facilities Survey, is real. However, he added that with the way the State is trickling money into the program, it will take forever to complete the necessary work. Mr. Franklin expressed his concern for the children of Ohio thusly: "My main concern is that I'm afraid that before we get the buildings that are in real bad shape fixed, that maybe one of our kids will get hurt or maimed. And I can foresee that, if we don't take some action and -- and get some newer school buildings in place." Mr. Hunter further testified: "So how many \$25 millions [of yearly facility appropriations by the General Assembly] will go by before we can get [school buildings] up to standard?" (Franklin Depo. 33, 239)

19. The recommended guidelines of square feet per student are set forth in the 1990 Ohio Public School Facilities Survey, page 4, wherein it is recommended that elementary and middle school/junior high students have 125 square feet per student, and high school students have 150 square feet per student. This includes classroom space. For classrooms, the guideline is 30 square feet per student. (Franklin Depo. 222-23)

20. Standards and codes applicable to construction of new facilities are getting stiffer and stiffer as the years go on. For example, the Clean Air Act creates standards pertaining to the amount of air that circulates in a school. When students are in the halls between classes, and there is not proper ventilation, carbon dioxide is trapped, and children can get sick. Standards and codes that apply to the amount of air that must circulate are becoming more stringent. These are mandates by both the state and federal governments. (Franklin Depo. 218-19)

21. The survey of school facilities' building needs published by the Ohio Department of Education in 1990 measures the extent to which school buildings in Ohio do not comply with requirements of the building code. (Plaintiffs' Trial Ex. No. 14; Maxwell Testimony, T.p.

217-218)

22. As a general matter, existing buildings do not have to be brought into compliance with building code requirements. (Sanders Testimony, T.p. 4496; Phillis Testimony, T.p. 1826-1827)

23. The survey was conducted by private architects. There has been no independent audit or analysis of their work. (Browning Testimony, T.p. 4471)

E. ARCHITECTURAL BARRIER ABATEMENT

1. The 1990 Ohio Public Schools Facilities Survey reflects a total cost of \$153 million to make school buildings handicapped accessible. Jack Hunter testified that he agrees with the accuracy of this figure as it applies to mobility. However, the obligations for Ohio public schools are considerably more since the passage of the Americans With Disabilities Act (ADA). For example, under the Americans With Disabilities Act, all doors in school buildings must be braille-labeled, and all school buildings must have deaf-accessible, coin-operated telephones. Accordingly, the costs of bringing public school buildings in conformance with the ADA are considerably above \$153 million. Indeed, the financial

obligation to make buildings handicapped accessible at the present time may exceed the cost of abating asbestos. (Hunter Depo. 166-68; Van Keuren Depo. 123; Pl. Exh. 14)

2. The 1990 Facilities Survey determined that only 20 percent of the existing public school buildings in Ohio has satisfactory handicapped access. (Stip. 135)

3. By January 25, 1995, all public schools in the State of Ohio must be handicapped accessible, as mandated by the federal government. Further, by January 25, 1992, all new schools and additions must be built so that they are handicapped, barrier-free. By July 26, 1992, all school districts are required by the federal government to have plans in effect to meet the January 25, 1995 deadline. (Franklin Depo. 203-04; Hunter Depo. 166)

4. Robert Franklin has visited over 200 school districts in Ohio in the course of performing his duties as Director of Building Assistance. Mr. Franklin is also responsible for removal of architectural barriers in compliance with the federal Americans With Disabilities Act. (Franklin Depo. 166)

5. The State of Ohio provided grants for architectural

barrier abatement for fiscal years 1990 and 1991. For fiscal year 1990 and 1991, only \$3.38 million was appropriated for architectural abatement among public school districts in Ohio. The numbers and amounts of these grants are set forth in Plaintiffs' Exhibits 371 and 372. Since 1991, there have been no monies appropriated by the State of Ohio for assistance to public school districts for architectural abatement. (Franklin Depo. 171-173, 182)

6. For fiscal years 1990 and 1991, school districts could apply for a maximum of three grants for architectural barrier abatement. Recipients were awarded grants on a first come, first-served basis, whether the district was wealthy or poor. Seventy-six (76) school districts applied for funds and were not awarded any architectural barrier grants. (Franklin Depo. 174-78)

7. Plaintiffs' Exhibit 374 lists those school districts that applied for architectural abatement funds from the state, and those that received funds are marked by an asterisk (Franklin Depo. 197)

8. In FY88, a federal program existed which involved matching grants to local school districts for architectural barrier abatement. The maximum amounts of

the grants were \$80,000. This program was discontinued so that no further funds are available to school districts from the federal government for architectural barrier removal. Plaintiffs' Exhibit 373 lists those school districts who received matching federal grants for architectural barrier removal in FY88. This program was phased out in 1990. (Franklin Depo. 167-69)

9. There are now no funds available to public school districts in Ohio from either state or federal sources for architectural barrier abatements and conformance with the requirements of the Americans With Disabilities Act. (Franklin Depo. 210; Hunter Depo. 165)

10. Since FY91, no funds for architectural barrier abatement for public schools have been proposed by the Governor, nor have any such funds been appropriated by the General Assembly. (Browning Tr. 4437)

11. Realistically, it will take more money than is presently available for removal of architectural barriers to the handicapped in order for school districts to meet the January 25, 1995, deadline. School districts are not receiving any more money to accomplish this. With less than two years to go for school districts to meet the federally-mandated deadline, much work remains to be

done, including architectural design drawings and construction, aside from the obtaining of the necessary funds. (Franklin Depo. 205-07)

12. Robert Franklin testified about various costs associated with making facilities accessible to the handicapped, as required by law. These include conversion of bathrooms--\$15,000 each; installation of automatic doors--\$4,000 to \$8,000 each; installation of elevators--\$40,000 per floor; installation of a chair lift--\$18,000 to \$20,000 to go up ten stairs. (Franklin Depo. 201-02)

F. ASBESTOS ABATEMENT

1. Starting in 1980, the federal government adopted a mandatory program in which all public schools must be inspected with reference to asbestos. That Act was rescinded by President Reagan. In 1982, the federal government adopted a mandatory inspection act for asbestos for public schools. In 1986, the federal government mandated a greater degree of inspection for asbestos in schools and passed the Asbestos Hazard Emergency Response Act This Act creates a continuing mandate for elementary and secondary schools to critically inspect their buildings, prepare a management

plan for asbestos abatement, which plan must be renewed annually, and undergo tri-annual inspections by an approved certified asbestos inspector. (Hunter Depo. 33-38; Stip. 138)

2. The role of the Ohio Department of Education in asbestos abatement in public schools is strictly one of technical assistance. (Hunter Depo. 42)

3. Asbestos hazards are ranked from 1 to 4. A ranking of class 1 means that there is a health hazard and, if found, the school district must directly abate the asbestos or close off the affected area within 30 days. A rank of 2 means that there is potential for a health hazard, and if the asbestos-containing materials are damaged, then it will become a number 1 hazard. For rankings of 3 or 4, no action must be immediately taken. (Hunter Depo. 75-76)

4. Jack Hunter testified that of all public school structures in Ohio, over 99 percent have asbestos in them. Seventy-five percent (75%) have asbestos that should be abated or have a hazard ranking that would cause it to be abated either immediately or near term. (Hunter Depo. 70-71)

5. Jack Hunter testified that he has visited school districts in Ohio that have hazard 1 and 2 rankings and which have no money to abate these problems. He further testified that he is aware of public school districts in Ohio where there are number 1 asbestos hazards, and the school districts still have students and teachers in those affected areas. (Hunter Depo. 76, 83, 87, 89)

6. Asbestos does deteriorate, and this is why annual surveillance and three-year inspections are required. (Hunter Depo. 74)

7. Jack Hunter testified that, without question, asbestos is a hazard to humans. The potential for exposure to students is significant enough in any school that abatement should be given priority. (Hunter Depo. 91)

8. In 1984, the Ohio Department of Education established an ad hoc task force consisting of physicians, engineers, and persons knowledgeable about asbestos. This group estimated a cost of removing friable and damaged asbestos from the classrooms of the public primary and secondary schools in the state to be \$400,000,000. At the same time, the Federal Environmental Protection Agency estimated that the cost for removal of asbestos from public primary and secondary schools in Ohio would

be \$500,000,000. These figures apply to friable or damaged asbestos, and not the removal of all asbestos from public school facilities. (Hunter Depo. 59-62)

9. In October 1985, the State Board of Education recommended that all school districts remove all asbestos as soon as possible, as safe as possible, from school buildings. (Hunter Depo. 91-92)

10. The 1990 Ohio Public Schools Facilities Survey identified \$328,000,000 in funds needed for the abatement of asbestos in public school buildings. This figure must increase because not all school districts were included in the asbestos portion of the survey. (Stip. 140; Hunter Depo. 64)

11. The federal government initially provided some very small grants to school districts through the Ohio Department of Health to conduct the survey required by the Asbestos Hazard Emergency Response Act. The funds were limited on a first come, first-served basis to various school districts. Approximately \$900,000 was made available, and only 200 of the applying school districts received a share of funds. (Hunter Depo. 44--45)

12. Funds are available from the federal government to public school districts through the federal program known as Asbestos School Hazard Abatement Act (ASHAA). This has been in effect for eight to nine years and is administered by the Federal Environmental Protection Agency. In 1993, school districts within Ohio submitted \$120,000,000 in applications for projects which would abate class 1 asbestos hazards. Of those applications, only 29 school districts received loans and grants, consisting of \$14.7 million for abatement of these number one hazards. Most, if not all, of the hazards in the unfunded projects are in areas occupied by students and are class 1 hazards. (Hunter Depo. 80-87)

13. For FY90, \$18,000,000 was appropriated by the General Assembly for asbestos abatement for public schools; for FY91, the General Assembly appropriated \$6,000,000 for asbestos abatement. These funds were available on a first come, first-served basis. For FY90, \$140,000,000 in applications were received from public school districts for the \$18,000,000 of available funds. (Hunter Depo. 53-54; Stip. 139)

14. Plaintiffs' Exhibit 370 lists those school districts who received state grants for asbestos abatement for FY90. Plaintiffs' Exhibit 369 lists those school districts who

received state grants for asbestos abatement for FY91.

The percentage of distribution depends upon the tax valuation per pupil of the particular school district.

(Hunter Depo. 106, 115)

15. In 1990, over 240 school districts applied for \$140,000,000 in asbestos abatement monies from the state. Only 63 districts received funds. (Hunter Depo. 124-26; Pl. Exh. 370)

16. For FY91, approximately 34 school districts received asbestos abatement grants. More than 158 districts which had applied for grants received none. Fifty-one million dollars (\$51,000,000) was applied for by schools for 1991 asbestos abatement grants. (Hunter Depo. 128-30)

17. Since 1991, there have been no State monies available for asbestos abatement. Aside from ASHAA, the only other sources of available funds for asbestos abatement are local school district dollars. (Hunter Depo. 81; Van Keuren Depo. 132; Goff Depo. 128; Shoemaker Tr. 4108)

18. Plaintiffs' Exhibit 453 lists those applications pending from 158 school districts who have applied for State asbestos grants, and for which no monies are available from the State of Ohio. The total amount of the

applications is \$51,925,175 toward total project costs of \$70,716,820. (Hunter Depo. 106, 126-27)

19. Plaintiff Lima City School District presently has pending an application for a State asbestos abatement grant in the amount of \$1,200,000 toward a total project cost of \$1,432,850. No funds are available from the State. (Pl. Exh. 453)

20. In Plaintiff Northern Local School District, there is asbestos throughout the junior high school building, as well as each of the elementary buildings. (Johnson Tr. 1554)

21. Plaintiff Northern Local School District presently has pending an application for a State asbestos abatement grant in the amount of \$176,673 toward a total project cost of \$187,750. No funds are available from the State. (Pl. Exh. 453)

22. Plaintiff Southern Local School District presently has pending an application for a State asbestos abatement grant in the amount of \$544,839 toward a total project cost of \$579,000. No funds are available from the State. (Pl. Exh. 453)

23. For FY92, the Ohio Department of Education requested from the General Assembly \$10 million for asbestos abatement grants for public schools. No monies were appropriated by the General Assembly for asbestos abatement in the public schools. No request was made by the Ohio Department of Education for asbestos grants for FY93. (Hunter Depo. 134-35)

24. When the Voinovich administration came into office, there was in existence the above-described program that provided funding for asbestos abatement in public primary and secondary schools. The Administration has made no budget proposals for asbestos abatement funds for public schools since taking office, nor has the General Assembly appropriated any funds for public school asbestos abatement for the current biennium, fiscal years 1994-95. (Browning Tr. 4438-41)

G. FACILITIES IN PLAINTIFF SCHOOL DISTRICTS

1. Each of the Plaintiff School Districts in this action was determined by the Department of Education to have facilities needs greater in amount than could be raised by the Plaintiffs, assuming no other Indebtedness and the passage of locally-approved bond issues to the maximum amount permitted by law. In addition to the

Plaintiffs, 61 percent of the school districts in Ohio are unable to meet the amount of their facilities needs as determined by the Department of Education (assuming no other indebtedness). Revised Code Section 133.06. (Maxwell Tr. 131-134; Maxwell Depo. Exh. 3, p. 56, Exhibit 139)

DAWSON-BRYANT

2. There are four buildings at Dawson-Bryant in operation. The Monitor building houses 172 kindergarten through third grade students who reside in the village of Coal Grove. Deering Elementary serves approximately 364 kindergarten through 6th grade students who live outside the village. The Intermediate building serves students in grades 4 through 6 who attended Monitor, and also houses all students of the district for grades 7 and 8. Dawson-Bryant High School serves students in grades 9 through 12. (Washburn Tr. 2347-48)

3. Dr. Lee McMurrin, superintendent of Beachwood City Schools, testified that he visited the schools in the Dawson-Bryant District and, among other facilities, observed the classrooms. He described the materials in the classrooms as being old and worn out and dated. The laboratory materials are not there for the children or

teachers. He described the special education classes as being in cubbyholes that do not meet his standard. To house special education children in those types of classrooms is a disgrace to the State of Ohio and to all Americans, according to Dr. McMurrin. (McMurrin Tr. 2542-43)

4. The Monitor Elementary building has no multi-purpose room. There is no location for lunch or breakfast programs and no appropriate place for music or art to be held. There is no adequate location for a physical education program. (Washburn Tr. 2348-49)

5. Students at Monitor Elementary do not have the opportunity to engage in team sports such as basketball. It is important that students learn to work cooperatively in team activities and to learn fine and gross motor skills at an early age. The students that have attended and those that are attending Monitor Elementary are deprived of these opportunities. (Washburn Tr. 2351)

6. Kindergarten students at Monitor Elementary are inappropriately housed in a room that has exposed steam pipes that pop, crack, and distract students during cold weather. (Washburn Tr. 2349)

7. For fire drills at Monitor Elementary, students use old iron railing steps attached to the exterior of the building that are very slippery during inclement weather. (Washburn Tr. 2350-51) There is no nursing station or facilities if a student becomes ill. The library is small and dark and cannot accommodate more than ten students at a time. There is no place in the library for a student to take a book from the shelf and sit down to look at the book. (Washburn Tr. 2349-50)

8. From August 23, 1993 to August 30, 1993, the average temperature in Monitor Elementary was 94 to 96 degrees, with the central hallway near 98 degrees. (Pl. Exh. 272)

9. The Deering Elementary building is not handicapped accessible. The library is a former storage area located in the basement, which is not accessible to all students. There is a third grade student in a wheelchair who has never been to the library at Deering. That student must be wheeled outside and around the building to get into the multi-purpose room. Students at Deering Elementary have been carried up and down stairs to exit the building for fire drills and to go to classrooms or to a library. (Washburn Tr. 2355)

10. At Deering Elementary the area for parking and pick up and drop off of students is inadequate. The building has no facilities for a student who may become ill. Three Chapter I teachers are inappropriately housed in one classroom at the same time. The speech room is a former restroom. (Washburn Tr. 2353-54)

11. At Deering Elementary in the Dawson-Bryant Local School District, multi-factored evaluations for possible identification and placement of handicapped students are performed in an inappropriate area that was a closet and has one bare light bulb hanging from the ceiling and no heating or ventilation. The closet is located next to the boys' restroom, where there is a constant traffic flow. Part of the assessment calls for fine motor activities, which is extremely difficult to perform in winter with no heat in the room. (Washburn Tr. 2354-55)

12. From August 23, 1993 to August 30, 1993, the average afternoon (1:00 p.m.) temperature in Deering Elementary was 100 degrees downstairs, 115 degrees upstairs, and 115 degrees in the cafeteria. (Pl. Exh. 272)

13. The Intermediate Building at Dawson-Bryant has been cited for being out of compliance with EPA emission standards. The former superintendent signed an agreement

indicating that the building would be in compliance with those standards by July 1992. The building is still out of compliance with EPA standards. (Washburn Tr. 2355)

14. The coal heating system at the Intermediate Building is a health hazard for staff and students. The curriculum supervisor at Dawson-Bryant had a severe asthma attack as a result of the coal dust at Intermediate. The limited technology in the building creates problems with keyboards because of the coal dust. The coal dust can be seen in the air. The maintenance staff cleans the building thoroughly at night, but students' desks are covered with coal dust in the morning. A parent withdrew a student from the Dawson-Bryant Schools to avoid exposure of the student to the coal dust at Intermediate. (Washburn Tr. 2356, 2358)

15. At the Intermediate Building, the room used for a band room is inappropriate. It is a former coal bin with no ventilation, no windows, and no acoustic treatment whatsoever. Students complain of headaches after leaving band class. (Washburn Tr. 2356-57)

16. The Intermediate Building has no kitchen or cafeteria, and no free breakfast program can be offered. The building has no science labs and technology is limited.

There is one shower room for both boys and girls. There is no art or music room. (Washburn Tr. 2356-57)

17. At the Intermediate Building at Dawson-Bryant, a special education class is held in a former storage area; the Ohio Department of Education, Division of Special Education stated that the classroom needed to be moved from that area. The classroom has not been moved because there is no place to move the classroom. (Washburn Tr. 2355-59)

18. From August 23, 1993 to August 30, 1993, the average temperature in the Intermediate Building was over 95 degrees. (Pl. Exh. 272)

19. At Dawson-Bryant High School, the library is located in a modular building that is separate from the high school building and is not readily accessible to students. There is no band room or music room in the high school, so the band practices on the stage, while physical education classes are taking place in the gym. Those activities interfere with each other. (Washburn Tr. 2358-59)

20. In the science lab at Dawson-Bryant High School, the water and gas stations do not work. Opportunities for

experiments are inadequate. Because of the lack of opportunity and the lack of resources, the interests in the advanced sciences has declined. (Washburn Tr. 2359-60)

21. The one art class that is offered at the Dawson-Bryant High School is held in the cafeteria. (Washburn Tr. 2360)

22. Two special education classes at Dawson-Bryant High School are held in storage areas. (Washburn Tr. 2360-61)

23. The Dawson-Bryant High School cafeteria is not large enough to serve all the students from all the schools that are bussed in from other buildings. Students at the high school and at the Intermediate building have open lunch -- lunch on their own out of the buildings without supervision. The district cannot house all of the students for lunch because the kitchen and cafeteria are too small. (Washburn Tr. 2361-62)

24. The Dawson-Bryant Local School District is located in the southern part of the State, and it is not unusual for the district to have high temperatures in the buildings, both at the beginning of the school year and at the end of the school year. It is not realistic to

expect the students to be actively involved in learning when temperatures are in excess of 100 degrees.

(Washburn Tr. 2363-64) School districts are required to be open for instruction with pupils in attendance for not less than 182 days (including 2 days of professional meetings) in each school year, with five days permitted for calamity days, such as hazardous weather conditions including snow or heat. Any days exceeding the five days must be made up. (R.C. 3313.48; 3317.01(B)) PTO organizations at both Monitor and Deering Elementary Schools have volunteered to undertake fundraising projects to provide air conditioning for those facilities. The wiring in those two buildings, however, is not adequate and would not handle the additional current that would be required. At Monitor, if more than three teachers plug in fans at the same time in the building, the breaker kicks because the wiring will not handle the current. The district could not afford to re-wire both of the buildings to remedy the problem with the current or to install the air conditioners to be purchased by the parent group. (Washburn Tr. 2362-65)

25. The electrical wiring, especially at Monitor, limits the use of technology in the elementary building. (Washburn Tr. 2365)

26. The facilities at Dawson-Bryant deprive students of opportunities in fine arts and physical education at an early age, directly impacting their interest and abilities. Students at the Monitor and Intermediate buildings are eligible to receive free breakfasts, but are not being provided with those. Elementary, middle school, and high school students are deprived of science labs and science opportunities. Students' exposure to technology has been inadequate, and students are disadvantaged by the lack of integration of technology into the curriculum. (Washburn Tr. 2372-73)

27. In May 1993, the Dawson-Bryant Local Board of Education was successful in passing a bond issue that will allow the district to participate in the Building Assistance Program. The campaign and voter turn out indicate strong support and substantial financial commitment from the community. (Washburn Tr. 2365-66)

28. Under the building assistance project, the new facilities are to be completed in the fall of 1995. The plans include closing the Monitor and Intermediate buildings, making renovations and additions to the Deering Elementary building so that it can become a centralized K-5 building for the district, modifications and renovations to the present high school to become the

middle school, and a new high school. (Washburn Tr. 2367) The district is working within a budget, and after completion of the facilities project, facility problems will remain. A parking problem at the new high school will remain because of the limited space. The middle school and high school will share library, an art room, and a band room. Intermingling of students in grades 6 through 8 with high school students creates concerns about proper supervision of students. (Washburn Tr. 2369-70) The parking and safety problems at Deering will increase with the addition onto the building and the additional number of students and staff members. There will be no art or music/band room at Deering Elementary. (Washburn Tr. 2370-71)

29. The total cost of the facilities project at Dawson--Bryant is expected to be \$12.5 million. (Washburn Tr. 2371) The 1990 Ohio Public School Facility Survey indicated that the needs for Dawson-Bryant totalled \$14.9 million. The difference of \$2.4 million represents outstanding needs of the Dawson-Bryant School District after the new facilities are completed. (Washburn Tr. 2437-38)

30. The Building Assistance Program will not provide any operating or maintenance funds to accompany those

facilities. (Washburn Tr. 2373)

31. Plaintiff Dawson-Bryant Local School District does not have a cafeteria big enough to feed all of its students, 90 students are allowed to leave the school grounds for lunch. (Swartzwelder Depo. 51)

32. The high school and intermediate schools in Plaintiff Dawson-Bryant Local School District have coal-fired boilers which emit hazardous coal dust into the student classrooms. (Swartzwelder Depo. 53)

33. The coal dust at the intermediate building in the Dawson-Bryant Local School District is cleaned at the end of each day, but the classrooms are not cleaned in the morning when the students come in. Coal dust often covers students' desks. (J. Blankenship Depo. 17)

34. At Dawson-Bryant High School, Chris Jackson was disturbed by the noise from classrooms being close together, students from the elementary building in the high school, and noise from the heaters. (Jackson Depo. 38) He found the buildings at Beachwood to be in much better shape, with the environment of the whole school very open, noise free, very comfortable, with a comfortable room temperature, large rooms, small class

sizes, and teachers that seemed far superior. He viewed a swimming pool, two gymnasiums, an indoor track, a huge cafeteria, and a very nice auditorium. (Jackson Depo. 36)

35. There is no hot water in the restroom facilities throughout the Dawson-Bryant High School. The teacher's lounge has only cold water, and the only rooms in the building that have hot water are the home economics room and the cafeteria, other than the locker facilities where separate water heaters are available (Semanco Depo. 13-14)

LIMA

36. Plaintiff Lima City School District is unable to engage in preventative maintenance of its school facilities, instead, repairing roofs and windows on an emergency basis. (Eaton Depo. 31-32)

37. Plaintiff Lima City School District cannot raise enough money through the passage of a permanent improvement levy to meet its facilities needs. (Eaton Depo. 31-32)

38. Plaintiffs' Exhibit 285 is the architects' reports of the Lima City School District facilities done in

connection with the 1990 Facilities Survey conducted by the Ohio Department of Education. (Buroker Tr. 2966)

39. The Lima City School District operates 16 buildings that house pupils, as well as an educational center that houses the central office staff. The District has a stadium that also functions as a maintenance facility, as well as a separate football facility that accommodates baseball, softball practice, football, and track, together with locker rooms and facilities for selling concessions. The District's school buildings consist of eleven elementary buildings, three middle schools, a high school and an alternative high school. (Buroker Tr. 2875)

40. Three of the elementary school buildings in the District were built in the 1920s. Those buildings have wood floors and high ceilings with asbestos in the ceilings and in the piping. The plumbing in those buildings is deteriorating. In addition, the electrical service is in need of expansion. Exterior walls have also experienced deterioration. In order to update the electrical service, it would be necessary to run additional wiring through the walls and ceilings which would penetrate asbestos resulting in substantial effort and expense to prevent friable asbestos fibers from escaping into the

air. (Buroker Tr. 2877-78)

41. Only one of the eleven elementary schools in the Lima City School District is handicapped accessible. None of the elementary schools is air conditioned. Only one has a separate room available for instruction in art or music. (Buroker Tr. 2879)

42. The facilities' needs identified in Stipulation Exhibit 47, with respect to the Lima City School District, are substantially in existence today. Some energy-related improvements have been accomplished through a program permitting the school district to borrow funds for energy-related improvements. In the course of those improvements, the district converted six facilities that were still heating with coal furnaces to natural gas. (Buroker Tr. 2881)

43. The district has no plans to air condition any of the facilities because they lack funds to pay the utility bills associated with operating the air conditioners. (Buroker Tr. 2884)

44. South Middle School in the Lima City School District was built in 1917 and added in the 1920s with several additions subsequent to that. The building has a major

electrical problem because the electrical system was designed in the 1920s. Maintenance people have to wear rubber gloves and rubber vests to approach the electrical panel. In the past fall, a portion of the brick exterior of the South Middle School collapsed onto the sidewalk in front of the building. The sidewalk is used extensively by students coming to and from school. The building has three towers of similar design to the one that collapsed, all of which are presently in need of repair. South Middle School consist of three floors and a basement, none of which is accessible to orthopedically-handicapped individuals. The plumbing in the South Middle School needs to be totally replaced.

(Buroker Tr. 2885)

45. Lima City School District has three middle schools in total. Two of them were built in the late 1960s. One of the middle schools has an elevator, but none of the buildings meet current ADA requirements for accessibility to handicapped pupils. (Buroker Tr. 2886)

46. The Lima Senior High School consists of a building of approximately 255,000 square feet, housing about 1,400 pupils. The high school was built in the mid-1950s and every room has asbestos in the ceilings. The district has had several problems because any structure work in

the high school will disturb asbestos resulting in a need for substantial costs connected with monitoring and encapsulation. In one example, the shop teacher removed a dust collection system resulting in having disturbed friable asbestos resulting in a cost of \$15,000 to make the room safe for pupils. (Buroker Tr. 2888)

47. Construction work requires that the area be sealed off, the workers work in environmentally-protected suits, and the area be cleansed of friable asbestos before it can be used again by pupils. (Buroker Tr. 2888)

48. The Lima City School District also has asbestos in the gymnasiums in the elementary schools. Certain activities have to be limited because of the potential for releasing friable asbestos by having balls strike asbestos-laden ceilings. (Buroker Tr. 2889)

49. The district has a number of roofs that need to be replaced which have not yet been replaced. When the roof leaks onto the asbestos, either the ceiling below it falls and has to be replaced or it dries making the asbestos friable. The district has in place a monitoring plan as required by federal law. It incurs costs between \$40,000 and \$45,000 a year to contain asbestos in the buildings. (Buroker Tr. 2889-90)

50. The district presently operates eleven elementary schools and needs only seven elementary schools. It is unable to reorganize the elementary programs because to do so would require new facilities. The district lacks funds to build, equip, and supply new facilities.

(Buroker Tr. 2892-96)

NORTHERN LOCAL

51. School buildings at Plaintiff Northern Local include a middle school/high school complex consisting of a middle school built in 1970 and a high school built in 1960. There is an elementary school building at Somerset, two elementary school buildings at Glenford, and an elementary school building at Thornville. There also is a bus garage located behind Somerset Elementary School.

(Johnson Tr. 1387-88)

52. Plaintiff Northern Local School District educates some students in nine modular units, which is the equivalent of 18 classrooms. Three modulars are at the junior/senior high complex, housing 6th grade classes. At Thornville Elementary, there are four modular units, with eight classrooms. At Glenford Elementary, there are two units, with four classrooms. Class sizes in modular

units run anywhere from 25 to 30 students. (Johnson Tr. 1390)

53. Superintendent Johnson described the facilities problems encountered at the Somerset Elementary School in Plaintiff Northern Local School District. In July or early August of 1992, the bricks were bulging near the parapet at the north end of the building. Representatives from the State Department of Education inspected the building and suggested that they have an engineer come out and look at the building, and suggested Paul J. Ford Company of Columbus. That company examined the building and recommended the district close the school as soon as the weather started freezing and thawing. (Johnson Tr. 1398-99)

54. The Department of Education inspected the Somerset Elementary building in the Plaintiff Northern Local Schools and observed that the walls were bowed out and represented a hazard to the pupils using the building. The Department "strongly suggested" that the building be closed. No state funds were available to assist the Northern Local Schools. (Van Keuren Depo. 135)

55. After Mr. Johnson became aware of the problems with the Somerset building, and after he was advised by engineers

to remove the students from the building, he contacted Bob Franklin, Jack Hunter, James Van Keuren, Charles Brown of the Ohio Department of Education and Senator Steve Williams and Representative Paul Mechling to determine if there were any funds available for districts such as Northern Local with emergency problems. No money was available for such an emergency situation. (Johnson Tr. 1406-08)

56. In September of 1992, Robert Franklin visited Northern Local School District's Somerset Elementary building. This was after the Northern Local Superintendent, Steve Johnson, asked Mr. Franklin to visit the site. After inspecting the building, Mr. Franklin determined that the building was not safe and recommended that the school district remove all children and teachers from the school. Mr. Franklin testified that he was fearful that the mere passage of school buses may cause the building to vibrate and force the building walls to collapse. (Franklin Depo. 129-32)

57. Before Mr. Johnson became Superintendent of Plaintiff Northern Local School District, there were structural problems at the Somerset building, requiring steel beams to be put into the building in order to make sure it was structurally sound. Other problems with the Somerset

building continued until the building was closed. The windows in the Somerset building leaked air, and sand particles from the brick would blow through the windows and over the students' desks. The roofs leaked consistently in the Somerset building. The district covered the stage with wall board to create a library in the Somerset building. (Johnson Tr. 1400-02)

58. Before the Somerset building was closed and students were moved from that building, the district erected scaffolding around the entire building and portable canopies over each doorway to protect students from falling bricks. (Johnson Tr. 1402)

59. In October of 1992, the Board of Education of Plaintiff Northern Local School District decided to close the Somerset School building and move the students to another location. For the remainder of that school year, the Plaintiff Northern Local School District used five classrooms at the Junction City School and four classrooms at the New Lexington Elementary School, both in the New Lexington City School District. Kindergarten for the students of the former Somerset building was held in a church in Somerset. Two sixth grade classes from the former Somerset building were moved to the Northern Local junior/senior high school complex.

(Johnson Tr. 1404)

60. The closing of the Somerset School and the moving of the students to other school buildings created significant costs for Plaintiff Northern Local School District. Students had to be bussed both to Junction City and to New Lexington, which also caused students to miss part of their school day. The district was forced to pay additional mileage on the busses and to pay bus drivers additional hourly wages. In addition, Northern Local School District was forced to pay for the extra custodian and cooks which the New Lexington City School District was forced to add to accommodate the additional Northern Local students. (Johnson Tr. 1485)

61. The total cost to Plaintiff Northern Local School District associated with the closing of the Somerset building was approximately \$120,000. (Johnson Tr. 1408)

62. As a result of the closing of the Somerset building, classes throughout Plaintiff Northern Local School District were rearranged. Following the temporary arrangements made with New Lexington City School District, all sixth graders in the district were taken to the junior/senior high school complex. Fourth and fifth grade Somerset students were sent to Thornville

Elementary. Fourth and fifth grade special education classes were taken from Glenford Elementary and moved to Thornville Elementary. Kindergarten through third graders from the Somerset building were moved to Glenford Elementary. That arrangement continues to the present. (Johnson Tr. 1409-10)

63. The fifth and sixth grade students that were transferred from the Somerset building to the high school/junior high school complex are educated in modular units. The cost of those units is \$13,000 a month for a four-year lease. (Johnson Tr. 1410)

64. Students educated in modular classrooms at Sheridan High School in Plaintiff Northern Local School District are isolated from other students and other faculty members, and there are no restroom facilities available in the modular units. (Miller Tr. 1638; Johnson Tr. 25)

65. The addition of the modular classroom units in Plaintiff Northern Local School District has created overcrowding in the junior high school cafeteria. (Miller Tr. 1638; Johnson Tr. 1425)

66. The bus garage in Plaintiff Northern Local School District is an old vocational agricultural building. It

can accommodate only one bus at a time, and it has no lift area or any place for fluid drainage. Plaintiff Northern Local School District has thirty buses in its bus fleet. (Johnson Tr. 1411)

67. Plaintiff Northern Local School District is 30th in line to get on the list of school districts approved to receive funds under the building assistance program. (Johnson Tr. 1411-12; Stip. Exh. 52)

68. Plaintiff Northern Local School District did not apply for state school building assistance funds in 1989 because Superintendent Johnson called the Ohio Department of Education and was told at that time that the district did not qualify due to the valuation of the property in the district and the income level of the district. (Johnson Tr. 1517)

69. The buildings in Plaintiff Northern Local School District were constructed of brick using limestone mortar instead of Portland cement. As a result, the mortar in those buildings is deteriorating, and the district has had to repair the mortar in all the buildings except for the Somerset building. (Hill Depo. 16-18)

70. The Glenford Elementary School in Plaintiff Northern Local School District actually consists of two buildings which were constructed in 1917 and 1955. Both the windows and the roofs in each of these buildings leak on a continual basis. The ceilings in these buildings are high, the lighting is poor and there is no storage space in the older of the two buildings. The restroom facilities at the Glenford buildings are deplorable; if the plumbing fixtures stick, the water will continue to run until the water well is dry. During the 1989-90 school year, the furnace in the Glenford gymnasium blew up and the district had to purchase a new furnace for \$18,000. (Johnson Tr. 1414-16)

71. At Glenford Elementary, State Route 204 runs between two buildings that house students. State Route 204 is a heavily travelled highway, particularly by sand trucks. The trucks come down a hill on the highway toward the location where students cross the state route between the two buildings. Although school administrators have requested stop lights to be placed at the student crossing, there is no stop light at the crossing. (Papritan Tr. 1919-20) Kindergarten, 1st, and 2nd graders must cross State Route 204 five times a day for lunch, two recesses, and to load buses in the evening. These students must cross the highway to access

appropriate playground equipment and to go to the cafeteria located in the 1955 building. Students in the 1930 building must cross the street to be picked up by busses and parents. Older students in the modular units located next to the 1955 building cross State Route 204 once or twice a day to go to the library and to music. Reconstruction of the parking lot and driveway around the 1930 building is necessary to make it accessible to busses and other transportation and to reduce the number of times students are crossing the highway. (Papritan Tr. 193032)

72. When it is rainy, students at Glenford Elementary play on the road behind the 1955 building, although that road is open to traffic. (Papritan Tr. 1933) For safety of students, the playground needs pea gravel or mulch. (Papritan Tr. 1933)

73. The bus loading and unloading at the Glenford Elementary Buildings is unsafe. In the mornings, busses are stopping traffic on State Route 204 because the circle driveway behind the older building is in disrepair and cannot be used by buses. (Papritan Tr. 1928-29)

74. In the 1930 Glenford Elementary building, dust is all over students' desks, because the district could not

afford a furnace filter. Wind blows in around the windows, particularly on the 3rd floor in that building and snow comes ill around some of the windows as well. The restrooms smell badly, look terrible, and are in need of replumbing. Because of limited class space, kindergarten students must go down three flights of stairs to the bathroom. (Papritan Tr. 1934-35)

75. In the 1955 Glenford Elementary building, a girls' restroom with two stalls and a boys' restroom with one stall and two urinals serves about 200 students. The restroom facilities are inadequate for that number of children. The roof in the 1950 building leaks when it is not raining. Although there is a layer of roof on top that is guaranteed, there is a roof underneath that is not guaranteed. Water gets trapped between the two layers of roof and when it gets warm, black, moldy water with pieces of ceiling fall down. (Papritan Tr. 1935-36)

76. The auditorium of the Glenford buildings is an old vocational agricultural building located behind the older of the two Glenford school buildings. The high school drama club, at its own expense, renovated this Vo Ag building for use as an auditorium. The roof of the auditorium building leaks constantly, ruining

equipment for plays. The district also has a problem with rats getting into the building. Because of the rats and the safety problems with the building, Plaintiff Northern Local School District no longer uses that building as an auditorium. (Johnson Tr. 1417-18)

77. The sewage system at the Glenford Elementary School buildings is outdated and often becomes plugged up and backs into an adjacent creek. (Johnson Tr. 1419)

78. In November of 1992, the Ohio EPA found a high level of arsenic in the water wells which service the Glenford Elementary School buildings. The school district was forced to shut down the water supply to those buildings, and students were not permitted to wash their hands with this water or use the water to wash cafeteria trays. As a result, the district was forced to bring bottled water into the Glenford Elementary School on a daily basis. The district had to buy towelettes for students to wash their hands and cups for students to use for drinking. To solve the arsenic problem, Plaintiff Northern Local School District drilled a shallow well and installed a holding tank to insure that a proper volume of water would be available for the school buildings. The total cost to Plaintiff Northern Local School District to address the problem

of arsenic in the drinking water at Glenford Elementary was approximately \$20,000. (Johnson Tr. 1419-25)

79. When the problem of arsenic in the water at Glenford Elementary School became apparent, Superintendent Johnson contacted Bob Franklin, Jack Hunter and Jim Van Keuren, Charles Brown and State Senator Steve Williams to attempt to obtain financial assistance. No financial assistance was available through the Ohio Department of Education, and the \$20,000 cost for remedying the arsenic problem was paid for by Plaintiff Northern Local School District out of school district general funds. (Johnston Tr. 1423-1424)

80. Superintendent Johnson asked Robert Franklin if monies were available from the State to help with the arsenic situation, but was told no funds were available from the State of Ohio. Mr. Franklin testified that had there been an Emergency School Repair Fund in existence, then monies would have been available to help Northern Local School District with its building and water problems. (Franklin Depo. 134-37)

81. The Thornville Elementary School in Plaintiff Northern Local School District was constructed in 1908 with an addition added in 1928. As with the other buildings in

the district, both the windows and the roof leak continually. The lighting is poor throughout the building, and the wooden floors are warped. The cafeteria in the Thornville Elementary School is very small, and students must wait in the hall with their trays until other students using the cafeteria tables are done eating. At one point, particle board was placed over areas of peeling plaster; however, when that particle board was removed in the summer of 1993, it was discovered that there were maggot and ant infestations behind the particle board. (Johnson Tr. 1425-27)

82. Plaintiff Northern Local School District used to employ a maintenance supervisor, who performed plumbing, electrical and carpentry work throughout the district. After that individual retired, the district could not afford to replace him. Currently, Plaintiff Northern Local School District does not have a maintenance supervisor. (Johnson Tr. 1431; Hill Depo. 15)

83. The high school/junior high school complex in Plaintiff Northern Local School District experiences the same roof leakage problems as the other buildings in the district. The gym floor at the complex is beyond repair and a new floor is badly needed at a cost of \$75,000 to

the district. The rooftop heating units over the junior high school area need to be replaced at a cost of \$70,000 to the school district. The high school weight training room is a former storage area in the basement which is equipped with weights purchased by the students through fund-raising activities. The athletic locker facilities are deplorable, the showers do not work. The cafeteria and kitchen in the high school are too small for the number of students utilizing the building: the cafeteria for the junior high area is in the gymnasium. (Johnson Tr. 1432-36)

84. The sewage system at Sheridan High School is outdated, and when the system plugs up, raw sewage flows onto the outfield of the baseball field. It would cost the district over \$100,000 to repair the sewage problem at Sheridan High School. (Johnson Tr. 1438-39)

85. At Sheridan High School, the home economics room was divided into three classrooms for a severe behavior handicapped class and intervention labs for the junior high and high school students to prepare for ninth-grade proficiency tests. The renovations to create these rooms cost the school district \$20,000, and those funds were taken from the school district's general fund. (Johnson Tr. 1437-38)

86. Plaintiff Northern Local School District has recently been informed by an engineer employed to study the school district's facilities' problems that if the Thornville and Glenford buildings are not renovated soon, they will have to be closed. (Johnson Tr. 1443)

87. In order to construct a building complex for students in grades K through 8, Plaintiff Northern Local School District would have to generate \$14 to \$15 million. However, the district is by law restricted to generating 9 percent of their assessed valuation, which, as of November 1993, was approximately \$90 million. Accordingly, Plaintiff Northern Local School District can only raise a little over \$8 million locally to address its facility needs and therefore accepted a plan which no school board member, administrator nor the architect felt was the best solution for the district in order to fit inside the State Law for indebtedness by a school district. (Johnston Tr. P. 1444: Miller Tr. 1651)

88. The photographs contained in Pl. Exh. 113 accurately depict the condition of the Thornville Elementary building. The photographs contained in Pl. Exh. 114 accurately depict the condition of the newer Glenford

Elementary building. The photographs contained in Pl. Exh. 115 accurately depict the condition of the older Glenford Elementary building. The photographs contained in Pl. Exh. 116 accurately depict the condition of the Somerset building. (Pl. Exh. 113; Pl. Exh. 114; Pl. Exh. 115; Pl. Exh. 116; Johnson Tr. 1448-50)

89. Because of the debt limitations of Plaintiff Northern Local School District, the district decided that in order to remedy its facilities' problems, the best course of action would be to renovate the Somerset building, renovate the Glenford and Thornville buildings, renovate the junior/senior high complex and add additional classroom space and science facilities and purchase new equipment. In order to achieve these facilities' goals, in May and August of 1993, the district put a \$6.5 million bond issue before the voters. Both issues failed. Additionally, on November 2, 1993, the district put a \$6.3 million bond issue before the voters, and it failed. The November bond issue placed before the voters was for 5.26 mills, which would not have raised enough money to address all of Plaintiff Northern Local School District's Facilities needs. (Johnson Tr. 1444; Johnson Tr. 1453-54)

90. The facilities in Plaintiff Northern Local School District have not changed in the last 20 years. (Miller Tr. 1619)

91. Plaintiff Northern Local School District received \$683,000 in energy assistance funds under H.B. 264. This money was not given to the school district by the State of Ohio but rather it was loaned to the district. The district pays back that money to the State of Ohio at a rate of \$105,000 per year. (Johnson Tr. 1515)

SOUTHERN LOCAL

92. Dr. Phillis participated in the application of Plaintiff Southern Local School District in Perry County for Classroom Facilities Act assistance in 1980/1981. In that context, he visited the buildings at New Straitsville, Moxahala, Corning and the high school. At that time, he observed inferior heating and ventilation with extremes of temperature in the summer and winter, as well as an electrical system that was not satisfactory and buildings in a very inferior condition. (Phillis Tr. 1681)

93. In 1993, the Southern Local School District was

successful in obtaining Classroom Facilities Act funds together with passage of the necessary tax levy and bond issue in order to provide new school facilities. The need for those facilities had been continuous for a period of at least 12 years between 1980 and 1993.

(Phillis Tr. 1682)

94. The Southern Local School District had 821 improperly housed pupils identified in connection with its Classroom Facilities Act assistance application. Only 189 of the pupils in the District were found to be properly housed. (van Keuren Depo. Exh. 6)

95. When Superintendent Spangler was employed in August 1991, elementary students were housed at New Straitsville Elementary, Corning Elementary, and Moxahala Elementary; junior high students were housed at Miller Junior High at Shawnee, and high school students were housed at Miller High School. The New Straitsville and Shawnee buildings were built around 1915, with Shawnee having some additions after that. Moxahala and Corning were both built in the 1920s.

(Spangler Tr. 447-48)

96. As a result of lack of resources for comprehensive maintenance and upkeep, all of the buildings, other

than the high school, were in very poor condition in 1991 when Ms. Spangler became Superintendent. The heating, electricity, ventilation, plumbing, and sewage systems in the elementary and junior high buildings needed comprehensive repair. The sewage system at New Straitsville Elementary would flood over State Route 93 on occasion. Incidents such as the temperature in Moxahala's gym being only 20 degrees were not uncommon. The Corning, New Straitsville, and junior high buildings did not have a working intercom, and the high school building intercom worked only one-way. The bell systems at the elementary and middle schools would go down periodically, and cable TV at those buildings was nonexistent. Tornado drills at those buildings required the principal to walk through the buildings with a little compression can that blew a horn. Asbestos was a primary concern in the elementary and junior high buildings. At Shawnee, the major part of the building was constructed with asbestos in the lower layer of the plaster. Because plaster was falling, some mornings the custodian and principal at the Shawnee building would go into rooms and knock plaster off the ceilings so that big chips would not fall on students during the day. Students and teachers had plaster in their hair. During a Christmas program at the building, little flakes of plaster fell like snow. After the Shawnee

building was closed in the spring of 1993, Superintendent Spangler visited the building in the fall and found chunks of plaster all over the halls; because the floors were not being swept on a regular basis as when the building was in use, the plaster was more evident. At Shawnee, the roof leaked, the lighting was poor, the heating was inconsistent, and there was no hot water in the bathrooms. (Spangler Tr. 448-52; Altier Tr. 1292-93; Towner Tr. 822)

97. Louis Altier, President of the Southern Local Board of Education, testified that he has farm animals that are housed better than students were housed in the Shawnee building. Whereas his animals were dry and warm, that could not be said about the students in the Shawnee building. (Altier Tr. 1291)

98. The district did not have the financial resources to completely replace electrical systems and plumbing systems, to remove asbestos, and to perform the comprehensive maintenance that was necessary to keep the buildings in a safe condition. (Spangler Tr. 452)

99. Because of the elementary and middle school buildings' design and lack of maintenance, minor accidents occurred regularly, including falls, splinters, cooks

being burned because of close quarters, and students being stung by bees and wasps in the building.

(Spangler Tr. 452-53)

100. Chris Thompson attended the New Straitsville Elementary for kindergarten, for the two weeks he spent in 2nd grade before being advanced a grade, and for 3rd grade (1984-85 and 1986-87). The building gave Christopher "a dirty feeling." There was plaster falling off the walls and ceilings and cockroaches had been seen crawling on the floor in the restrooms. Chris avoided using the restrooms at all while at school; he waited the entire school day to use the bathroom at home. The gymnasium floor was warped and it was so small that Chris found it difficult to play some sports because students would run into the walls. There was no space outside of the out-of-bounds lines because the lines were so near the walls. The library was very small with inadequate book supplies and with outdated books. Following a storm, the roof leaked and a large piece of the ceiling fell onto the floor and the library was closed for about two to three weeks. Students had no access to the library during that time. (Thompson Tr. 1307-09) This was a violation of the 1983 minimum standards, which requires that libraries be available for student use during school hours. O.A.C. 3301-35-03(B)(2)(b)

101. In the 4th through 6th grades, Chris Thompson attended the Corning Elementary building (1987-88 to 1989-90). The building was very dirty, the bathrooms had cockroaches and other creatures crawling on the floors, possibly silverfish. A leaking roof was a real problem. In math class, water dripped like a waterfall from the ceiling into a bucket after rains. Sometimes, the students had to ask the teacher to be moved because the water was splashing on them. After a hard rain the night before, the constant drip into the bucket was very annoying. The library at Corning was very small with an inadequate supply of books and with outdated books. The science room was next to the furnace room, which made the science room very noisy, and it was hard for the students to concentrate or to hear the teacher talk. Plaster was falling off the walls at the Corning building. (Thompson Tr. 1310-11)

102. Chris Thompson attended the Shawnee building for the 1st grade (1985-86) and for the 7th and 8th grades (1990-91 to 1991-92). In the six years between his 1st grade and the 7th grade attendance, the building really had not changed much. The floors at Shawnee were warped, plaster was falling off the walls, and there were large holes in the walls in the front part of the

building. The art room was very small and dirty, had plaster falling off the walls and the ceiling, and it was located next to the furnace room and next to the gym. The art room was very noisy and did not have adequate space to work. (Thompson Tr. 1311-12)

103. When Chris Thompson was at Shawnee, the gymnasium had a leaking roof, and at one time part of the gym was flooded due to the leakage. When a ball hit the ceiling while students were playing kickball or volleyball, part of the ceiling came down. The locker rooms below the stage area and adjacent to the gym had almost no water pressure, stunk, and were unfit for student use. Students changed clothes in two storage rooms next to the stage, but had no shower facilities available. (Thompson Tr. 1313-14)

104. When Chris Thompson began to attend high school, the high school building did not have heat due to construction and renovation of the heating system in the fall of 1992 until the end of November or the beginning of December. Students had to wear coats and gloves to classes, and were subjected to fumes from large kerosene heaters when the building got very cold. (Thompson Tr. 1324-25)

105. Southern Local's high school was constructed under the State Building Assistance Fund over 30 years ago. (Spangler Tr. 447) In 1981, however, Southern Local voters did not approve the levy necessary to qualify for the State Building Assistance Fund. (Spangler Tr. 453) The State had identified improperly-housed pupils at Southern Local before the levy attempt in 1981. As of September of 1989, there were 821 improperly-housed pupils in Southern Local. All of the pupils who attended the elementary and middle school buildings at Southern Local remained improperly housed until the fall of 1993. (Pl. Exh. 378)

106. Through the State Building Assistance Fund, the residents of the district passed a levy in 1990 equal to 7 percent of the district's assessed valuation (6.45 mills), and the State Building Assistance Fund provided the remainder of the funds through a loan to construct a new elementary and middle school facility. The total project was \$9.6 million with \$1.7 million provided by local funds and \$7.9 million provided by the state. (Spangler Tr. 444-45, 456)

107. State Building Assistance Projects are closely monitored by the State. The district submits and develops designs that must be approved by the State,

and the State is involved and oversees the bidding of the project. Every purchase order and check that is written on the project is co-signed by the State Superintendent of Public Instruction. After completion, the State owns the facility until the bonds are paid off. (Spangler Tr. 446-47)

108. In the fall of 1993, Mill Creek Elementary, serving grades K through 4 and Miller Middle School, serving grades 5 through 8, opened after construction was completed. The new building is next to the existing Miller High School. (Spangler Tr. 454)

109. The new facilities have had a positive effect on students, most of whom are extremely proud of the facility. Administrators believe that students are achieving more. (Spangler Tr. 456-57)

110. Plans for the new facility had to be approved by the State, and were restricted by a budget requiring compromises in square footage, so that the superintendent's office is still across the street from the school buildings in a trailer, and many shared facilities were required. Elementary and middle school children share a cafetorium and managing that sharing particularly for lunch times is a problem. The

gymnasium is in middle school size and cannot be used for high school play or regulation tournaments. Two physical education classes share the gymnasium at the same time with a divider, and traffic and noise problems exist. (Spangler Tr. 454-55)

111. In 1991, architects had studied Miller High School and estimated that the cost to bring the high school up to code and to build a new facility for elementary and middle school would be \$13,000,000. The total project cost completed in 1993 at Southern Local was \$9.6 million. Unmet facility needs remain at Southern Local. (Spangler Tr. 455-56, 458)

112. Unmet needs at the elementary and middle school level include a classroom shortage, if programs or numbers of students increase. Particularly, the need for an additional special education classroom may be necessary next year, because the percentage of handicapped students is again on the increase. Also a low-income housing project to be constructed in Shawnee may result in growth in student enrollment. At this time, only one room that is currently being used by the DPPF program possibly could be converted to a classroom, but no other classrooms are available. (Spangler Tr. 45-59)

113. Although the district was able to purchase some furnishings with the new building project, those furnishings were not sufficient to provide for a library reading circle or for current equipment for the science labs. The K-6 art program has a brand new kiln room, but it does not have adequate equipment to use the room. The new gymnasium needs many mats and equipment, such as balance beams, parallel bars, and other items, for the physical education program to function. There is no budget and no money available to provide these items. (Spangler Tr. 460-61)

114. The Classroom Facility Act provides no monies for maintenance or repair of facilities. Southern Local has budgeted approximately \$11,000 per year for maintenance and repair of buildings, which is about one-tenth of what is needed for annual maintenance. (Spangler Tr. 461-63)

115. Miller High School was built about 30 years ago with Building Assistance Funds, and the district has not been able to provide much maintenance. (Spangler Tr. 463-64) Some repairs at the high school were made with State Building Assistance Funds because the facility was shared, such as the heating and ventilating system upgraded. Through an Energy Conservation Note (H.B. 264

Project), the Miller High School roof was repaired.

(Spangler Tr. 456) Yet, the following needs remain at

Miller High School:

(1) The electrical and lighting systems need work, including the replacement of fluorescent tubes and ballasts. The district was recently cited by the Health Inspector for failure to replace lights. The bell system is worn and the intercom only works one way. (Spangler Tr. 464-65)

(2) Other citations by the Health Inspection included the safety features in the chemistry lab, including the lack of a current eye-wash station. The custodial area and the plumbing there was cited as a safety violation. Another citation was found on some of the audio visual equipment and the way it was stored and kept, because it was not bolted down or strapped down properly. (Spangler Tr. 464-65)

(3) The internal air exchange system needs replaced, but was not replaced through the new building project. (Spangler Tr. 465)

(4) The plumbing and fixtures at the high school need replaced, and there were problems in the rest rooms and with water fountains. The water fountains were also cited on the recent Health Inspection. (Spangler Tr. 465)

(5) The foundation of the high school building needs water-proofing, but the cost of the sealing paint was prohibitive. (Spangler Tr. 466)

(6) Concrete work, including the front stairs to the high school that are chipped and cracked with broken railing, need work. Curbing also needs concrete work. (Spangler Tr. 466) The doors of the high school need repaired or replaced to secure the exit ways. (Spangler Tr. 466)

(7) Settling of the foundation needs addressed. (Spangler Tr. 467)

(8) The gym floor needs to be sealed. (Spangler Tr. 467)

(9) All the classroom furniture is more than 20 years old, has rough edges, and it does not meet current student needs. (Spangler Tr. 467)

(10) The science lab has water at only one laboratory station, and many gas outlets do not work, so it is impossible for the students to do experiments. The science teacher lacks basic equipment for experimentation in science, such as current scales and chemicals. (Spangler Tr. 467-68)

(11) The science area needs basic safety equipment, including a proper eye-wash station. The emergency shower for the science lab is a rubber hose hooked onto a water fixture. (Spangler Tr. 467-68)

(12) The industrial arts program should be an industrial technology program, but remains a 30 year old wood shop. The equipment becomes increasingly in disrepair as the years go by, and there are many safety needs. There is no emergency or first-aid equipment there. (Spangler Tr. 468)

(13) The high school locker rooms have many needs.

Many of the lockers do not work. There is no place for storage of football equipment except in some of the lockers. The showers do not work and the hot water works inconsistently to the locker rooms. There is no trainer's station, no whirlpool, no ice machine, and no weight room. A very basic set of weight equipment can be found in the boys' locker room, but girls have no access to the weights. There are no facilities for a trainer, no facilities for officials, and nothing other than an office for coaches such as a shower, basic first-aid, or storage.

(Spangler Tr. 467-70)

(14) Weight conditioning is of primary importance

in athletics, because it is necessary to protect players from injury. The athletes at Miller High School are not being afforded an adequate, safe facility on which to condition and train. Weight conditioning for both boys and girls occurs in the boys' locker room, which are cramped quarters, where the floor is often wet, thereby presenting a dangerous

situation. (Winnenberg Tr. 805-07)

(15) Although the gymnasium floor is new (because the contractors replaced it after flooding the gym floor), the bleachers are in need of replacement, and the stage curtain at one end of the gym cannot be closed because it is ripped down the middle. The stage area is badly deteriorated and the lights function, at best, intermittently with some not functioning at all. (Spangler Tr. 470-71)

(16) The athletic field has no visitors' side. It has only one section of very old bleachers on one side of the field that are in need of repair and many need replaced. The concrete work at the field needs to be upgraded or replaced. The wiring to the football lights and speaker system is very old. The concessions stand has inadequate facilities, including lack of water, although it does have electricity at most times. The track is a berm dust track, which is outdated and not typical for tracks in Ohio schools. The football field is maintained when the athletic director/principal has time to do

so. (Spangler Tr. 471-72)

(17) There is a separate facility outside Miller High School for the natural resources program. The building consists of a classroom area and a shop area. There is no intercom to the building, no water, and no heat to the building. The building is dark and is of free-standing metal construction. (Spangler Tr. 472-73) Students in Ohio should not be housed in a "classroom" such as this.

116. The bus garage at Southern Local is housed in a school building that was closed in the 1960s. The building has a lot of evident deterioration. The roof, plaster throughout the building, and the wood floor are all deteriorating. The lighting is very poor and the rest rooms that the bus transportation staff must use need much improvement. (Spangler Tr. 475-76)

117. The district still owns four buildings that are no longer in use. The Corning building is currently leased to a community group, and New Straitsville may be used similarly. However, the estimate to demolish the Shawnee building is \$800,000, because that building is filled with asbestos. Also, the Moxahala building is a

concern. The district needs to find funds to deal with their properties in a responsible manner. (Spangler Tr. 476-77)

118. Before the construction of the new school building, none of the buildings in Plaintiff Southern Local School District was fully handicapped-accessible. (Lichtenstein Depo. 64)

119. The Southern Local School District has sought volunteer work and contributions from local companies to assist them with their facility and energy needs. Mr. Altier testified that he was successful in convincing a company that was removing oil by the district's school bus garage and flaring the gas to allow the school district to use that gas in the bus garage. In the early 1980's, the school district was able to obtain the help of Hocking Technical College to drill a small well to supply gas to the high school. The school district was able to purchase transmission pipes at cost from local suppliers. Everything else was donated by local businesses or supply stores to the school to enable the school to utilize this gas. Mr. Altier testified that his company, Altier Brothers, continues to maintain and service those two wells, at no cost to the school district. (Altier Tr. 1294-95)

120. Volunteer work and contributions from Mr. Altier's company and other local businesses enabled the school district to reconstruct the football field years ago. Local individuals also helped to construct the bleachers, and local companies provided poles and transformers to light the football field. Volunteer labor and donations were also used to construct a softball field. However, the bleachers are now in need of repairing, but they cannot be repaired because the school district does not have the resources, and the local companies who contributed before are now either gone or struggling economically. (Altier Tr. 1296-97)

YOUNGSTOWN

121. Many buildings in Plaintiff Youngstown City School District are in disarray with bad roofs, windows needed, doors needed, and overcrowding situations. Some students use the school parking lot for a playground, and other students use a gymnasium for a cafeteria. (Kolitsos Depo. 43)

122. Most schools in Plaintiff Youngstown City School District are not free from architectural barriers. (Kolitsos Depo. 50)

123. Both Kirkmere Elementary School and Sheridan Elementary School are significantly overcrowded. (Kolitsos Depo. 50)

124. Plaintiff Youngstown City School District has set aside no funds for building maintenance and upkeep. All building and maintenance upkeep is performed on an emergency basis. (Pincham Depo. 42)

125. The 1990 Ohio Department of Education Facilities Survey determined that Plaintiff Youngstown City School District had facility needs in the amount of approximately \$67 million. (Hiscox Depo. vol 1, p. 92; Hiscox Depo Exh. 8)

126. When Plaintiff Youngstown City School District passed an operating levy in 1989, the Board intended to set aside a million dollars a year from that operating levy for capital improvements, but the district has been unable to do so due to increased operating expenses. The district had to stop the addition to the Cleveland Elementary School in the middle of the project. The only capital improvements since the 1989 levy have been window replacements, an addition to Sheridan Elementary, small additions to Volney and Kirkmere

Elementary schools. All capital improvements have been put on hold. (Hiscox Depo. vol 1, p. 94-96)

127. In 1978, an addition consisting of a multi-purpose cafeteria, auditorium and gymnasium was constructed on the Bennett Elementary School in Plaintiff Youngstown City School District. Even with that addition, there are space constraints at Bennett Elementary School. There are kindergarten and first grade classes of up to 37 students. The library space at Bennett Elementary is insufficient to handle all of the students because the district has taken some of the library space and tried to introduce a computer intervention lab, which is not yet fully operable. The computer intervention lab at Bennett Elementary is available to grades K through six, and it is for students who have performed on their achievement tests. The building has ten computers for intervention classes of twenty to twenty-two students. There are similar intervention labs in only half of the twenty elementary schools in the Plaintiff Youngstown City School District due to lack of available space and lack of funds for the equipment. (Hiscox Depo. vol 1, p. 102-105; Hiscox Depo. Exh. 8)

128. Bunn Elementary School houses the Youngstown City School District's multi-handicapped, orthopedically

handicapped, hearing-impaired and visual-impaired units. There is also a small general education population at Bunn Elementary. Bunn Elementary is totally handicapped accessible. (Hiscox Depo. vol 1, p. 106-109; Hiscox Depo. Exh. 8)

129. Cleveland Elementary School uses a portable classroom unit to address excess student needs. The scheduled addition to Cleveland Elementary School had to be interrupted due to lack of funds, and is not yet complete. The cafeteria at Cleveland Elementary does not meet fire code because it only has one entrance and exit through the same doorway. The district has not considered closing Cleveland Elementary because it is located in a heavily populated area of the district. There are no special education units at Cleveland Elementary, and the regular education classes are overcrowded at several grade levels. According to the 1990 Facilities Survey, Cleveland Elementary is the building that has the second greatest needs in Plaintiff Youngstown City School District. (Hiscox Depo. vol 1, p. 109-114; Hiscox Depo. Exh. 8)

130. In the Haddow Elementary School, there is asbestos on the floor of the boiler room which needs to be removed. (Hiscox Depo. vol 1, p. 115; Hiscox Depo. Exh. 8)

131. Harding Elementary School was part of Youngstown's five-year plan for addition and renovation, but that project has been interrupted due to lack of funds. There are two portable classroom units at Harding Elementary which have four classrooms and no restrooms. The building has split lunches and split classes in order to help alleviate the overcrowding situation. The Harding building is in a neighborhood where there is a security problem, which creates problems for the portable units because there are no phones in those units and there are no security guards for those units. The students in the portable units must leave those units to use the restroom in the main building. (Hiscox Depo. vol 1, p. 116-118; Hiscox Depo. Exh. 8)

132. The Harrison Elementary School is an inner city school in an inner city housing project area. Because the population of that area has been decreasing over the past years, and the boundaries have not changed, the population of students is small and there is a low student to teacher ratio. The combination of this low student to teacher ratio and a dedicated principal has resulted in high achievement levels for the students at Harrison Elementary. (Hiscox Depo. vol 1, p. 119-120; Hiscox Depo. Exh. 8; Marino Tr. 3246-47)

133. The Harrison Elementary School has a federally funded kindergarten extension program for at-risk students, in which students attend kindergarten all-day, every-day. (Hiscox Depo. vol 1, p. 121; Hiscox Depo. Exh. 8)

134. Hillman and Jackson Elementary Schools are in bad neighborhoods, and the buildings have had security problems. The buildings have had equipment stolen and had physical damage done. (Hiscox Depo. vol 1, p. 122-123; Hiscox Depo. Exh. 8)

135. Jefferson Elementary School was built in 1901, and it is beginning to experience foundation cracks and significant problems with exterior doors and the heating system. There is no computer lab in Jefferson Elementary School, and the computers are placed on carts for intervention classes. (Hiscox Depo. vol 1, p. 125-126; Hiscox Depo. Exh. 8)

136. The John White Elementary School building has a metal building addition that has neither heating nor air conditioning. In the summer it heats up during the day so the students can hardly bear to be in their rooms, and in the winter it stays so cold there is often frost on the interior walls. The building also houses special

education and remediation students in a portable unit. The library in John White Elementary has been divided to create more classroom space, so there is not sufficient library space. There is no computer lab, computers are placed on carts for intervention classes. (Hiscox Depo. vol 1, p. 126-128; Hiscox Depo. Exh. 8)

137. Kirkmere Elementary School is operating at a full capacity of over 550 students. The increase in enrollment at Kirkmere is due to voluntary bussing on the part of the school district to bring the building into racial balance. (Hiscox Depo. vol 1, p. 130-131; Hiscox Depo. Exh. 8)

138. The Lincoln Elementary School has some grades which are overcrowded, computers on carts, and insufficient recreational space. The playground doubles as a parking lot for staff and a shooting gallery for the neighborhood. (Hiscox Depo. vol 1, p. 132; Hiscox Depo. Exh. 8)

139. The Madison Elementary School has significant foundation cracks which the district needs to address. As with many other buildings in the district, computers are on carts for use in intervention classes when available. The playground at Madison is the parking

lot. The building has a portable unit which is used for a federally funded intervention program. (Hiscox Depo. vol 1, p. 134-135; Hiscox Depo. Exh. 8)

140. The Martin Luther King Elementary School is beginning to have extensive roof leaks which the district has been unable to address due to lack of funds. The building is not handicapped accessible. The Martin Luther King Elementary building has security problems, and equipment has been stolen from the building. (Hiscox Depo. vol 1, p. 136-137; Hiscox Depo. Exh. 8)

141. Taft Elementary School is overcrowded, and the first grade classes in 1992-93 school year had 33, 34 and 35 students, respectively. Some parents voluntarily agreed to allow the district to transport their students to other buildings in the district just to get the first grade classes down to a 30 to 1 ratio. There is also a portable unit at Taft Elementary School. The library space at Taft Elementary is insufficient to meet the needs of the students. (Hiscox Depo. vol 1, p. 141-143; Hiscox Depo. Exh. 8)

142. West Elementary School is the largest elementary school in the Youngstown City School District, and it serves almost 1,000 students. According to the 1990 Facilities

Survey, West would be the costliest building in the district to replace or repair, costing over \$5.4 million. The building has divided one classroom into three rooms to service gifted students. There are some classes at West Elementary School that have over 30 students. The computers at West Elementary are on carts and are used for intervention classes. (Hiscox Depo. vol 1, p. 144-146; Hiscox Depo. Exh. 8)

143. At Adams Junior High School, there is insufficient space for extra curricular activities. The gymnasium is small, and doubles as a cafeteria/auditorium. There is no proper seating capacity and no proper stage area. There are no outdoor facilities at Adams Junior High School, and the junior high football team plays at one of the other junior high schools in the district. (Hiscox Depo. vol 1, p. 150; Hiscox Depo. Exh. 8)

144. The Hayes Junior High School building has experienced significant security problems, the lighting and ventilation in the building are both poor. (Hiscox Depo. vol 1, p. 151; Hiscox Depo. Exh. 8)

145. Volney Rogers Junior High School is the only junior high in the district with a science lab. There are no science labs at the other junior high schools because

they are extremely expensive to install and the district cannot afford to use the classroom space to put in science labs. At Youngstown, the first lab courses are offered as a sophomore in high school. (Hiscox Depo. vol 1, p. 160; Hiscox Depo. Exh. 8)

146. Chaney High School is overcrowded, and the cafeteria is too small to adequately service all the students. The building does not have seating capacity in its auditorium for all of the students. (Hiscox Depo. vol 1, p. 162-163; Hiscox Depo. Exh. 8)

147. The following school buildings have been closed by the Youngstown City School District: Garfield Elementary in 1977, Thornhill following that, five elementary schools closed in 1980, a high school closed and became a junior high, a junior high closed and became a high school, and South High School closed in the spring of 1993. (Marino Tr. 3194-95) One reason that South High was closed was because of low test scores and the building was at risk of being classified as deficient by the Ohio Department of Education. (Marino Tr. 3433) Additional buildings were not closed because special education units and state and federal programs such as Chapter One needed additional space for fewer numbers of children. Also, labs were installed to assist

students with passing the 9th grade proficiency test in reading and math. Another consideration in closing buildings has been the emotional stress upon students, many of whom feel that their school is like a home to them. (Marino Tr. 3194-97)

H. FACILITIES IN SCHOOL DISTRICTS COMPARED TO PLAINTIFF'S

1. The Beachwood City School District consists of a primary school, housing grades 1, 2, and 3; an intermediate school, housing grades 4, 5, and 6; a middle school housing grades 7 and 8; and a high school, housing grades 9-12. The District also operates a preschool program and kindergarten program which are housed in the same building. (McMurrin Tr. 98)

2. Keri Blankenship visited Beachwood City School District where she saw differences from her school including ramps, a swimming pool, science labs, computer labs, and home economics classes. (K. Blankenship Depo. 22) There are no ramps at either Deering Elementary or the intermediate school where Keri has attended. Keri has had to have someone help her enter and exit the building, and her classes have been moved so that she would not have to climb all the stairs. (K. Blankenship Depo. 23-24)

3. The first, second, and third grades in the Beachwood City School District are housed at Bryden School. The Bryden School has recently been renovated with a new classroom for first graders with specially designed areas for various types of instructional activities within the classroom. The room includes a science center, computer center with four computers, a center for reading, as well as a center for arts, and various instructional areas. (McMurrin Tr. 2505)

4. Superintendent Johnson compared the facilities at the Hilliard City School District with the facilities at Plaintiff Northern Local School District. Northern Local School District has no auditorium. Hilliard had a fantastic auditorium and excellent gym facilities, as well as locker facilities. It would take Northern Local School District 4 mills to install the electric curtain raiser and some of the lights that the Hilliard City School District had for their stage area. Hilliard City School District had band rooms, excellent storage space, and individual rooms for students to play instruments. Hilliard had four different art rooms, where Northern Local only has one art room for grades six to twelve. Hilliard had a weight training room that is bigger than Northern Local's locker room. Northern

Local's wrestlers practice in the high school cafeteria, whereas Hilliard had a well equipped wrestling room. Whereas Northern Local does not have working gas jets in the school district's laboratories, Hilliard has the latest in technology in all of the science labs. (Johnson Tr. 1486-87)

5. The Granville High School facility is far superior to the Sheridan High School facility at Plaintiff Northern Local. At Granville, lighting in classrooms is designed so that part of the lights can be on and part can be off for overhead projectors and other visual aids. Track lighting in the room can be used to emphasize different bulletin boards or chalkboards. Each room has its own telephone for security purposes. (Dilbone Tr. 2007)

6. At Granville High School, five language classrooms have the capability to be a portable language lab with cordless headphones for students to wear. (Dilbone Tr. 2007; 2012) At Sheridan High School, one Spanish teacher brought in an old reel-to-reel tape recorder and that was the language lab available for three or four students. (Dilbone Tr. 2011-12)

7. The science lab at Granville High School is twice the

size of Sheridan High School's and is equipped with electric microscopes and racks of all new scopes. At Sheridan, microscopes were not electric. (Dilbone Tr. 2007-08)

8. Granville High School has a new greenhouse between two biology rooms and the biology teacher has his own office and storage area. (Dilbone Tr. 2007)

9. At Sheridan High School, explosive chemicals had been stored together, and when a new teacher was hired and pointed out the problem, those chemicals were separated, but Sheridan did not have adequate shelving. At Granville High School, safety and storage areas are provided. (Dilbone Tr. 2008-09)

10. At Sheridan High School, an extra table was needed for the art room because so many seniors who were required to take art were enrolled. The kilns were squeezed to the side of the room beside the table. At Granville High School, there is a separate room for sculpture and a separate room for kilns. Students at Sheridan were losing art projects and things were being stolen because the teacher did not have a place to keep art projects. At Granville, each student has their own large drawer for keeping projects. At Granville, art

rooms have tracking for lighting and there is an outdoor art studio for students to go outside and draw. The art teacher at Sheridan cannot offer students what the art teacher at Granville can because of facilities limitation. (Dilbone Tr. 2009; 2013)

11. Sheridan High School has one industrial technology room, while Granville High School has three rooms the size of the one room at Sheridan. One area is for mechanical drawing with all the latest equipment, another area is for lathes, computerized lathes, and CAD programs and communication programs. Another area is for woodworking and metalworking, which is loaded with equipment. There is a separate room for welding. At Sheridan, plastic partitions had to be erected so that students could weld in the same room. At Sheridan, only two or three students can weld, while ten students can weld in the facility at Granville. (Dilbone Tr. 2014) At Granville, there is a separate room for spraying. The teacher has a glassed-in office which overlooks all three industrial technology areas. (Dilbone Tr. 2009-10)

12. The gym at Granville High School is very large, well lit, and clean, with two large basketball floors and a balcony. The gym at Sheridan High School needs a new

floor and has poor lighting. (Dilbone Tr. 2010-11)

13. There are separate library facilities at Granville for junior high and senior high students. At the senior high level at Granville High School, there are separate rooms for students to study in groups, a mock fireplace reading area, and the library is many times bigger than Sheridan High School's. (Dilbone Tr. 2011)

14. Granville High School has a dark room and a radio-television production lab, while neither of these are available to students at Sheridan High School. The dark room at Sheridan was converted into a chemical room for storage. (Dilbone Tr. 2012)

15. Sheridan High School's locker rooms are deplorable, and the men's showers have fungus growing on them because of the way they were built. A student could not be expected to take a shower at Sheridan High School. At Granville High School, locker rooms are carpeted with individual showers and installed hair dryers. (Dilbone Tr. 2015)

16. Pl. Exh. 450 is a videotape with narration that was prepared in 1992 and 1993. Videotape footage was taken of school buildings within seven school districts,

including Plaintiff's Northern Local School District, Southern Local School District, and Dawson-Bryant School District, as well as Eastern Local School District in Brown County, Pickerington School District in Fairfield County, Nelsonville City School District, and Union Local School District in Belmont County. The videotape and narration thereon, and the description of the facilities contained in the videotape, are a fair and accurate portrayal of the conditions and facilities of the school districts observed and reflect the deplorable state of some of the school buildings shown. (White Tr. 2113-18)

I. STATE INACTION

1. While the State of Ohio continues to underfund the building needs of the public schools, it has begun to study the needs for new state office facilities and has approved the initial expenditure of \$37 million for the first phase of that project. This figure represents the cost of determining what the new state office needs are for Ohio and do not include any costs for construction. One proposal is for a hill-top campus in Columbus, the projected cost of which is \$150 million. (Browning Tr. 4426-27)

2. Director Browning testified that he and other state officials believe that some of the existing state buildings are old, in poor condition and in need of replacement. He specifically referred to the headquarters of the Ohio State Highway Patrol. Director Browning described what was wrong with the building, including: it is too small for the purposes of the department; the layout of the facility and design of the facility are inappropriate for the needs of the Department of Public Safety; there are problems with making the facility adaptable to 21st century technology; the building was built earlier in this century; there have been a number of problems with plumbing, leaking roofs, structural problems, and asbestos; and the building is not entirely handicapped accessible. Assuming that the State goes forward in construction of a new building for the State Highway Patrol or any other agency, Director Browning testified that he would expect that new building would be built according to all applicable building codes. He and the Voinovich administration want to be assured of the safety of State workers and visitors to those buildings. Director Browning also wants those buildings to be handicapped accessible regardless of whether he is required to do so by state and federal law.

(Browning Tr. 4429-32) The conditions of the Ohio State

Patrol headquarters building, as described by Director Browning, are similar to those that exist in Plaintiffs' facilities, as well as many other public school facilities in Ohio.

3. The proposal for construction of new state office buildings includes bonds that will be sold for that purpose, and these bonds will be retired from the general fund, which is the same fund that is tapped for educational funds for primary and secondary education. (Browning Tr. 4432)

4. As of the time of trial, the General Assembly had included in the budget for the current biennium (fiscal years 1994-95) approximately \$68 million to fund necessary projects approved through the Classroom Facilities Act. However, this program has not yet been funded. (Ocasek Tr. 2828; Phillis Tr. 1704; Browning Tr. 4419-20)

5. Of the proposed \$68 million for facilities construction, this amount will not complete those projects contained on the approved Classroom Facilities Act building list, Plaintiffs' Exhibit 378. In fact, present law as it is written requires that school districts on the approved buildings list must be taken

care of first. Not only will the present approved buildings list of school districts not be exhausted with the availability of \$68 million, but neither will the buildings needs of the school districts (including Plaintiff Northern Local) who have submitted letters of request for building assistance. (Stip. Exh. 52; Browning Tr. 4419-20, 24; Ocasek Tr. 2818)

6. The \$68 million represents less than 1 percent of the entire amount of public schools' facilities needs that have been identified by the State of Ohio. Stated another way, the 1990 Ohio Public Schools Facilities Survey determined that there was a total of \$10.2 billion in facilities needs for public primary and secondary schools in Ohio. This is the equivalent of 10,000 million dollars, and the General Assembly has proposed funding only 68 of those 10,000 million dollars in the new budget. These dollars will not "catch up" with the facilities needs of the public schools. (Ocasek Tr. 2818; Browning Tr. 4425; Franklin Depo. 33)

7. In the amount included by the General Assembly in the budget for fiscal years 1994-95, for public schools facilities construction, there are no funds for the maintenance of the new facilities following completion

of construction. (Browning Tr. 4419-20)

8. In 1993, Representative Shoemaker worked with Dr. Van Keuren in the Department of Education to develop a proposal to more adequately fund the Building Assistance Program. The proposal which passed the House on March 17, 1993, was for a \$150 million Building Assistance Program which would provide immediate money to school districts. The funds would be made up of bond sales which would be retired by \$10 million in initial lottery profits. The proposal met with resistance in the Senate, and the program which passed resulted in only \$68 million being appropriated to the Building Assistance Fund. (Shoemaker Tr. 4141-44)

9. At the same time the General Assembly was approving only \$68 million for school building assistance, Governor Voinovich and the General Assembly announced the proposal to sell State General Obligation Bonds to provide an extra \$50 million per year for state and local parks, with a cap of \$200 million outstanding at any one time. The purpose of these funds will be to maintain and upgrade state and local parks and recreation areas. These funds will be for facilities built in the 1950s and 1960s. This issue was passed at the last general election. The debt service for these

\$200 million worth bonds will come out of the general fund. These are funds from which monies from public education come. These funds will also be used to provide handicap access to the state and local parks facilities. (Browning Tr. 4433-34)

10. At the same time the General Assembly approved only \$68 million for school building assistance, the State paid \$5 million for a parking lot in downtown Columbus, even though there are no plans for building anything on it at the present time. (Browning Tr. 4428)

11. The State Board of Education strongly believes, and it is its position, in equalization both in facilities and in operating monies. (Ocasek Tr. 2824)

12. The State Board of Education, with respect to facilities, has proposed an equal yield concept, wherein the State takes under consideration the different taxpayer's millage in the various school districts to try to equalize so that the sum total of state and local money will be more in balance. No action has been taken by either the Voinovich Administration or the General Assembly to implement this proposal. (Ocasek Tr. 2823)

IX. EDUCATIONAL INPUTS

A. CLASS SIZE AND STAFFING RATIOS OVERVIEW

1. The Department of Education has the authority to enforce the requirements that educational service personnel be employed at the rate of at least five per thousand pupils and that the pupil to teacher ratio in grades K-4 on a district-wide average be not greater than 25 to 1. (Sanders Tr. 4577; OAC 3301-35-03(A)(3) and (4))

2. In April of 1992, the Department of Education entered into a settlement agreement in a suit styled South-Western Education Association, et al. v. Ohio State Board of Education, et al., Franklin County Common Pleas Court, Case No. 88CV-04-2598, brought against it by the South-Western Education Association and others, alleging that the Ohio Department of Education was not enforcing the state standards regarding the K-4 pupil to teacher ratio and the education service personnel per pupil ratio in public schools. (Russell Depo. 81; Stip. 107; Stip. Exh. 38, 39)

3. As a result of that settlement, letters were sent to 120 Ohio school districts indicating the Department's

belief that they did not satisfy required K-4 pupil to teacher ratio and education service personnel per pupil ratio. (Russell Depo. 82; Pl. Exh. 418; Pl. Exh. 454)

4. The 1983 Minimum Standards also require that school districts maintain at least 25 to 1 pupil to teacher ratio on a district-wide average (OAC 3301-3503(A)(3)), but that standard was not the subject of the settlement agreement in South-Western et al. v. Ohio State Board of Education, et al. (Stip. Exh. 38), and no letters were sent regarding violations of that requirement. (See Russell Depo. 82)

5. As a result of the Southwestern Education Association litigation, 45 school districts, including Plaintiff Northern Local School District, were found to be out of compliance with the mandated 25 to 1 K-4 pupil to teacher ratio. (Pl. Exh. 439; Stip. 108; Sanders Tr. 4587)

6. As of June 15, 1993, the Northern Local School District as well as approximately 30 other public school districts in Ohio did not comply with the requirement that it employ sufficient Educational Service Personnel teachers to meet the 25 to 1 standard. (Van Keuren Tr. 4713-14)

7. Area coordinators do calculations to determine whether districts meet the classroom pupil to teacher ratio and educational service personnel to pupil ratio. Twelve to fifteen school districts in Area 5 were notified that they were out of compliance with one or both of those ratios. After reviewing the data, four of those districts were found to be out of compliance in FY93. Those districts were required to send letters to the Department of Education indicating that before FY94 they would employ sufficient personnel to meet the standards. (Taylor Depo. 61-64)

8. As a result of the Department of Education's settlement agreement of the South-Western Education Association case, the South-Western City School District was required to employ 6 1/2 additional full-time equivalent employees. Some of the other 30 school districts found to be out of compliance and who were required to hire additional employees were districts that were in the loan fund at the time they were notified of the requirement to hire additional employees. The Department of Education has no information about how such districts are to obtain the funds to pay the costs of these additional staff. (Van Keuren Tr 4789-90)

9. Compliance with the mandated 25 to 1 pupil to teacher ratio could require additional staff, supplies, and facilities. (Russell Depo. 83; Goff Depo. 174)

10. Before a school district can employ additional personnel it must first determine that it has funds to pay the cost. (Sanders Tr. 4580)

11. If any of the Area 5 districts found to be out of compliance with the required pupil to teacher ratio and were required to borrow funds to hire additional employees to meet the standards, those districts would also be required to examine possible staff reductions when considering how to construct a repayment plan. (Taylor Depo. 65-66)

12. The Select Committee to Review Ohio's Education System recommended that the ratio of students to teacher in grades K-4 should never exceed 25 to 1 and be funded accordingly. The recommendation with regard to funding was not implemented by the legislature. (Shoemaker Tr. 4100)

13. Students in large class sizes receive less individual attention from a teacher than they would if the class

size was lower. (Dilbone Tr. 2004)

14. Even if a school district is in compliance with the required 25 to 1 pupil to teacher ratio on K-4 or district-wide, that school district may still have class sizes much larger than 25 pupils because the ratios are computed on district-wide averages. (Johnson Tr. 1598; OAC 3301-35-03(A)(3))

CLASS SIZE AND STAFFING RATIOS IN PLAINTIFF SCHOOL DISTRICTS

15. The 1983 Minimum Standards require school districts to maintain a ratio of a minimum of five full-time equivalent education service personnel (ESP) per 1,000 students. (OAC 3301-35-03(A)(4)) The ratio of ESP to students in two Plaintiff School Districts as of March of 1993 according to Ohio Department of Education records was below the state requirement as follows:

SCHOOL DISTRICT RATIO OF ESP PER 1,000 PUPILS

Dawson-Bryant LSD	3.33
Northern LSD	2.77

(Pl. Exh. 395)

DAWSON-BRYANT

16. Jamie Blankenship's class sizes in elementary school at Plaintiff Dawson-Bryant Local School District have ranged from 27 to 30 students per class. (J. Blankenship Depo. 19)

17. In the 1st, 3rd, 4th, 5th, and 6th grade levels in Dawson-Bryant Local School District, Christopher Jackson's class was combined with another grade level, which was called split-level classes. (Jackson Depo. 33-34)

18. At Dawson-Bryant High School, there are three full-time science teachers, and the transportation supervisor teaches two science courses at the high school. (Semanco Depo. 7; 33) Mr. Semanco teaches biology I, biology II, and chemistry and he is assigned bus duty, cafeteria duty, and hall duty. His volunteer services to the students include after-school tutoring for proficiency tests, chaperoning dances, coordinating a science fair, and a science club. (Semanco Depo. 8-9; 30)

19. The large numbers of pupils in science classes at

Dawson-Bryant High School present a problem, particularly in biology and chemistry, because of the limited facilities and equipment. (Semanco Depo. 4950)

20. The recommended caseload for a psychologist is 75 to a maximum of 125 new referrals for multi-factored evaluations. Last year, the psychologist serving Dawson-Bryant worked with between 150 and 160 new referrals in only two days per week. (Washburn Tr. 2323-24)

21. In contrast to the class sizes at Dawson-Bryant, in the Beachwood City School District, in grades 1-3 there are approximately 20 pupils per classroom. Each class has a small lab and a television/VCR combination. (McMurrin Tr. 2506-07)

LIMA

22. Since FY89, the overall pupil to teacher ratio in the Lima City Schools has increased from 17.88 to 18.03. (Buroker Tr. 3072-73)

23. The Lima City School District operates a number of "split classes" where it is necessary to combine multiple grades in order to effectively utilize a

classroom. Because of the requirements of the district's negotiated collective bargaining agreement, it is required to include a teacher's aide in any classroom in which enrollment exceeds 30. In order to minimize the number of teacher aides employed, the district utilizes "split classes." (Buroker Tr. 2895)

24. The Lima City School District employs four nurses to serve the student population of 6,250 pupils. (Buroker Tr. 2898) In many cases, the school nurses serve as the first line of health services for pupils in the district. (Buroker Tr. 2898)

25. The Worthington City School District has a higher level of nurses per student than does Lima City School District. (Buroker Tr. 2946)

26. Worthington City Schools has nine psychologists compared to three at Lima City Schools. The individual case load of psychologists at Worthington is 30 evaluations per year compared to 120 to 150 evaluations done by psychologists in the Lima City Schools. (Buroker Tr. 2946)

27. Additional personnel are needed at Lima City Schools to coordinate activities with the community, including

adopt-a-school programs, intervention programs, and other programs. Additional personnel are needed to identify student's needs early and intervening early. Students move through the district without proper study skills and critical thinking skills. Many of these things require individual intervention with students. (Roger Miller Depo. 68)

NORTHERN LOCAL

28. The ADM at Plaintiff Northern Local School District has increased by 46 students per year over the last three years. Superintendent Johnson attributes this to people moving into five acre plots and putting trailers into those areas. (Johnson Tr. 1393)

29. Superintendent Johnson has been advised by the Ohio Department of Education that the Northern Local School District is in violation of 25 pupils per teacher requirement at the primary level, but that has been remedied. (Johnson Tr. 1391, Pl. Ex. 128 and Tr. 1511)

30. To determine compliance with the 25 to 1 pupil to teacher ratio requirement, the Ohio Department of Education divides the total number of K-4 teachers a district has by the number students. Northern Local was

found to need another elementary teacher at the K-4 grades, but Northern Local could not afford to hire another teacher and there was no place to put another classroom. (Johnson Tr. 1392)

31. In Northern Local for the 1993-94 school year, at Thornville Elementary there are two 2nd grade classes with 34 and 35 students. At Glenford Elementary, there are classes with over 30 students. In the high school they have some Spanish classes with over 30 students in a classroom. The biology class has 190 students for seven Periods. (Johnson Tr. 1388)

32. Students in grades K-3 in Glenford Elementary School in Northern Local School District share a physical education teacher and a music teacher with students in the same grades at Somerset Building in Northern Local School District. Students at the Intermediate Building in Northern Local School District share a physical education teacher and a music teacher with students at the Thornville building. (Spohn Depo. 14)

33. The Glenford Elementary School in Northern Local School District does not have an art teacher. (Spohn Depo. 16)

34. Within the last three years, services to Glenford

Elementary students were reduced by moving a classroom aide to the high school for intervention. (Papritan Tr. 1918)

35. Northern Local School District has only one principal for grades 7 through 12. (Johnson Tr. 1430)

36. The principal at Glenford Elementary works 10 to 12 hour days and 7 days per week at times. She generally works 12 months with little vacation, although she is paid for and is required to work only 10½ months. She volunteers her time because the buildings are old and need much work. (Papritan Tr. 1918-27)

37. Class size is a problem at Glenford Elementary. In 1992-93, 32 1st graders were in one classroom and one 6th grade classroom had 38 students and another had 39. Ninety-nine percent of the students in the large 6th grade classes tested as having a deficiency in at least one area of reading. These students have had over 30 children in their classroom since kindergarten, and they have proceeded up through the elementary grades with large class sizes. These students will have no opportunity to have smaller class sizes until they reach the junior high level. The Iowa Test of Basic Skills showed that these 6th grade students were a

grade behind in achievement. That test also showed that all sections with large class sizes were behind. Students are not receiving appropriate intervention because class sizes are too large. (Papritan Tr. 1952-55; Spohn Depo. 57)

38. Integrated approaches to learning require observation and determination whether a child's needs are being met on an individual basis. That cannot be done effectively with 38 and 39 children in a classroom. Class size needs to be below 23. (Papritan Tr. 1952-53)

SOUTHERN LOCAL

39. Southern Local has a lack of teachers needed for intervention and appropriate class sizes, and a lack of teachers in some certification areas such as secondary reading. (Spangler Tr. 497-98; 590)

40. Introductory mathematics, science and English courses in Plaintiff Southern Local School District all have more than 25 students. (Axline Depo. 33-35)

41. Every class taught in the 7th and 8th grades in Southern Local has between 26 and 30 students. (Towner Tr. 839)

42. There are more than 25 students in many elementary classes in Southern Local School District. In the 1991-92 school year, one 3rd grade class had 33 students and a 1st grade class had 28 students. (Lichtenstein Depo. 46-47)

43. In 1992-93, class sizes at Southern Local in Science I and Algebra I were too large, resulting in too little individual student attention and causing students to repeat courses. (Thompson Tr. 1322-23)

44. Joseph Winnenberg teaches five separate courses, and therefore has five different course preparations each day. These preparations include developing lesson plans, providing evaluations of the students, and presentation. (Joe Winnenberg Tr. 748)

45. Superintendent Spangler performs many functions that other superintendents would not be performing directly. Southern Local has no public relations person, no director of curriculum or director of special education, and has only one 12-month administrator, which is the Superintendent. (Spangler Tr. 429) During the construction project at Southern Local, the district did not have a construction manager; rather,

the Superintendent performed those duties. (Spangler Tr. 429-33)

46. Southern Local does not have an administrator to make daily purchases for the school district. Instead, the Superintendent makes purchases for the district, including items such as lettuce, paint, and some basic supplies, which she routinely pays for out of her own personal funds. (Spangler Tr. 436-38)

47. If Southern Local had the financial means to hire additional personnel, such as transportation supervisor, cafeteria supervisor, or maintenance supervisor, the district could move away from crisis management. Administrators could spend time and attention evaluating what students need and making short and long range plans to meet those needs.

YOUNGSTOWN

48. There are many overcrowded school buildings in Plaintiff Youngstown City School District, and there are many classes where the pupil to teacher ratio is well above 25 to 1. (Kolitsos Depo. 78-79)

49. From 1987 to 1989, the district cut teaching positions

and reduced non-certified positions by not replacing personnel who left. Teachers on special assignment to assist in seven elementary and five high school buildings were cut. Guidance counselors were cut from three guidance counselors in each of the high schools to two and one-half in four and two in the other high schools. Extended time for speech therapists, audiologists, and psychologists were cut, and administrative positions were cut. One elementary reading supervisor was not replaced, and the Coordinator of Consumer Education and the Coordinator of Gifted Education were cut. Non-certified positions were also reduced, including educational assistants and secretaries. Over the two-year period at least thirty teachers were non-renewed. (Marino Tr. 3175-78)

50. Youngstown City School District plans future cuts in personnel. In 1991-92 school year, 18 elementary teachers were non-renewed for financial reasons, and up to 80 teachers were to be non-renewed for the 1992-93 school year. Such cuts will limit the curriculum that the district will be able to offer. (Hiscox Depo. vol 1, p. 46-47; Hiscox Depo. Exh. 1)

51. As of the 1992-93 school year, the district also planned to reduce the numbers of professional staff,

including psychologists, speech and hearing therapists, nurses, social workers, B-site technicians, clerical workers, teacher aides library aides, and custodians. (Hiscox Depo. vol 1, p. 49-50)

52. In the 1991-92 school year, Youngstown cut one-half of one secondary guidance counselor, and the district plans to cut two additional secondary guidance counselors in the future. After these cuts, 12 guidance counselors will remain for the entire district at the high school level. (Hiscox Depo. vol 1, p. 48; Hiscox Depo. Exh. 1)

53. For the 1993-94 school year, the district projected a reduction in force of approximately 80 additional teachers, in addition to cuts of educational assistants, counselors, psychologists and speech and hearing specialists. During that time period, the district was also faced with cuts to the reading, mathematics, and civics programs. (Kolitsos Depo. 27)

54. Split classes are implemented at Youngstown City Schools due to lack of funding. (Marino Tr. 3246)

In Youngstown, at the high school level for FY94, all of the teachers are required to teach six Classes.

Some teachers must prepare for more different courses than is appropriate. (Marino Tr. 3259)

55. Although the 1991 vital statistics for the Youngstown City School District show a pupil to teacher ratio of 18.8 pupils per teacher, that is an artificially low number. Youngstown City School District includes non-teaching personnel, such as visiting teachers and other administrators, in that figure, whereas other school districts in the state may not. (Hiscox Depo. vol 1, p. 63-64; Marino Tr. 3206-08)

56. Other factors that decreased Youngstown City Schools' pupil to teacher ratio but have not resulted in smaller class sizes for most regular education students include:

a. The district had to add 23 special education units between the years 1987-88 and 1990-91 requiring 23 additional special education teachers. (Marino Tr. 3439; Stip. Exh. 28)

b. The district also had to add teachers to begin serving preschool handicapped students as required by law. (Marino Tr. 3440)

c. The bilingual program added teachers to the pupil to teacher ratio. (Marino Tr. 3209-10)

d. Four teachers were also added to fulfill an applied academics program at the career center funded through vocational units. (Marino Tr. 3440)

e. Since 1983, the district has had in place a much needed secondary reading program in the junior highs and high schools that required additional teachers. However, the reading program was eliminated in FY94. (Marino Tr. 3209)

f. The home economics and industrial technology programs maintained by the district also decreased the pupil to teacher ratio because of the maximum student loads for those teachers and the limited number of stations available per pupil in some of those programs. The home economics and industrial technology programs have been maintained thus far, because of the needs of students and the fact that these courses deal with self-esteem issues and provide the opportunity for students to assist their plans for vocational programming. The industrial technology program will be a consideration for reduction as the result of the

district entering the loan fund. (Marino Tr. 3211-12)

g. In FY93, the district employed 5 visiting teachers who search out students not attending school and try to find social services to assist those students. One position was eliminated in FY94. (Marino Tr. 3240-41)

57. Eight licensed practical nurses service the 30 buildings at Youngstown City Schools. (Marino Tr. 3234) In FY93, Youngstown City Schools had a physician 1 1/2 hours per day. (McGee Depo. 11) The positions for a supervisor of health services and part-time medical doctor were eliminated in FY94. The duties of those persons have been given to other persons who already have full-time duties. (Marino Tr. 3234)

58. The district does not have sufficient personnel to address the areas of special needs students and at-risk students. (Hiscox Depo. vol 1, p. 51)

59. Youngstown City School District does not have a grant writer. (Marino Tr. 3438)

60. Youngstown City School District does not have certified

librarians in any of the elementary libraries. The educational assistants that have been hired to oversee the library have been given some training, but it is not adequate. The district cannot afford to put certified librarians in the elementary libraries.

(Marino Tr. 3232)

61. For FY94, 18 to 20 persons were cut from the Youngstown City Schools' central office staff. (Marino Tr. 3354)

62. Area Coordinators are responsible for posting vacancies for school districts to meet the requirement that a vacancy must be posted for a two-week period of time before a temporary certificate may be issued. A temporary certificate is necessary for an otherwise not properly certified person to fill the position. Special education is the most common vacancy posted in the Area 5 Coordinator's office. (Taylor Depo. 24-27)

63. If school districts were able to offer higher salaries to attract personnel, it would alleviate problems of recruiting for specialized positions such as special education, physical therapy, speech therapy, and foreign language teachers. Specifically, physical therapists employed in private industry or private practice can make \$33 per hour or more. Those persons

are not inclined to become school physical therapists at salaries offered by school districts. (Taylor Depo. 282-83)

64. Superintendents have been recruited from Area 5, an area which includes Plaintiff Dawson-Bryant Local School District, to other areas of the state, and superintendents have left for higher paying jobs in other areas of the state. (Taylor Depo. 55)

B. PAY SCALES AND RECRUITING OF STAFF

OVERVIEW

1. The state minimum salary schedule is an indexed salary schedule that includes annual incremental increases based on years of experience as well as different columns for different levels of training (R.C. 3317.13). Most Ohio school districts pay teachers on a similarly indexed salary schedule. Under such a schedule, most teachers will receive annual pay increases even though the base salary does not change in that year. (Tavakolian Depo. 86)

2. Increases in the State minimum teachers' salary in budget bills have carried with them a provision to

increase non-teachers' salaries by a like percentage.

(Tavakolian Depo. 169)

3. Since 1987, the average percent wage increase for local school districts has been between 3 and 4 percent. (Pl. Exh. 452; Pl. Exh. 441)

4. Indexed salary schedules are one of the factors that increase the costs of school district operations from year to year. A district in need of additional revenue would, because of annually increased operating costs (including salary costs), need to pass a greater rate of additional millage in each year that the need continued. (Russell Depo. 143)

5. School district expenditures for salaries and fringes are the most volatile of school district expenses. In recent years, increases in the cost of health care benefits have increased at a faster rate than salaries. (Brown Depo. 27)

6. Average teacher's salary on the vitals program (Stip. Exhs. 4-8) is affected by the experience level of the teachers in the district and the education level of the teachers in the district. (Washburn Tr. 2342-43)

7. The cost of teachers is the single largest element of a school district's budget; the cost of non-teaching personnel is the next largest. (Brown Depo. 203)

8. When a teacher attains additional education or additional experience, that teacher's contract may not be suspended or terminated in order to hire a teacher that might be less expensive. (Washburn Tr. 2343-44)

9. Ranked by deciles of property valuation, the median district average teacher salary in the highest decile for 1990-91 is \$35,846 and the lowest decile is \$27,521. As wealth declined, the median teacher salary also declined. (Alexander Tr. 3680; Pl. Exh. 301 p. 116)

10. The average teacher salary in the Plaintiff school districts is less than the average teacher salary in the rich districts (using the median of rich district average salaries). (Alexander Tr. 3679; Pl. Exh. 301 p. 115)

PAY SCALES AND RECRUITING OF STAFF IN PLAINTIFF DISTRICTS

11. Pl. Exh. 204 is a chart showing teachers' beginning and average salaries for the state and for the plaintiff

school districts for the years 1983-1991. Exh. 204 is a true and accurate summary of information contained in annual salary study books published by the Ohio Department of Education, Division of Computer Services and Statistical Reports, which have been admitted into evidence as Pl. Exh. 193-203 for the years 1981-1991. As demonstrated by Pl. Exh. 204, for FY1990-91, each of the plaintiff school districts offered its teachers an average salary which was below the state average salary, and all of the plaintiff school districts, except Lima City and Youngstown City, offered beginning salaries below the state average beginning salary. (Fletcher Tr. 2637; Pl. Exh. 204; Pl. Exh. 193-201)

DAWSON-BRYANT

12. In comparing average teachers' salaries among the various school districts in Lawrence County, five school districts paid more than the average teachers' salaries of Dawson-Bryant. (White Tr. 2166; Pl. Exh. 276; Washburn Tr. 2342)

13. Teachers at the Dawson-Bryant Local School District have years of teaching experience and education levels that are greater than the state average. Specifically, Dawson-Bryant teachers' average experience is 2 1/2

years above the state means, and percent of teachers holding a bachelor's degree plus 150 total semester hours is 5.3 percent above the state mean. (Washburn Tr. 2343; Stip. Exh. 4)

14. Three Dawson-Bryant teachers have interviewed for positions in other districts locally because those districts offered higher salaries. Another teacher was to be hired by a neighboring school district at a salary increase of \$7,000. (Washburn Tr. 2344-45)

15. A teacher at Dawson-Bryant with 27 years of experience, with a Master's degree and 30 semester hours of education above the Master's degree, would earn less than an average teacher in the State of Ohio, regardless of their experience and degrees. (Washburn Tr. 2345)

16. The salary schedule at Dawson-Bryant is inadequate to attract certificated people to move into the area. It is not competitive within the county or within the state. Teachers from the area have not been exposed to many cultural experiences and new ideas and methods of instruction. (Washburn Tr. 2346)

17. Dawson-Bryant could not obtain a speech pathologist for

two consecutive years. One year the district received no applications; another year the only applicant took a job in another state working 21 hours a week at a salary \$8,000 above Dawson-Bryant's full-time salary. (Washburn Tr. 2347)

LIMA

18. Lima City School District spends approximately 87 percent of its total general fund budget on salary and fringe benefits. (Buroker Tr. 2992)

19. The Lima City School Districts' teachers have on the average one more year of experience than the state average, but the district's average teachers' salary is about \$3,312 below the state average. (Stip. Exh. 5)

20. The Lima City School Districts' average teachers' salary is lower than all of the other districts of its type in the state. (Stip. Exh. 5)

NORTHERN LOCAL

21. Plaintiff Northern Local School District has lost teachers due to lack of competitive salaries. The

district lost a chemistry/physics teacher to a Columbus suburb, another chemistry/physics teacher to West Virginia University, a DH teacher to Heath City Schools, and a special education teacher to Cambridge City Schools. High school principal Chuck Dilbone went to Granville for a higher salary. In addition, the school district has been forced to reduce teacher aides, a maintenance supervisor, administrators, a home economics teacher and a business teacher. (Johnson Tr. 1475-76)

22. Northern Local School District cannot hire more experienced teachers because it does not have the funding to do so. Therefore, the school district is forced to hire beginning teachers whose salaries are lower. The trend toward hiring less experienced teachers has been more prevalent in Northern Local School District in the last 10 years. (Hill Depo. 4344)

23. Northern Local School District does not repair or replace its buildings, furniture, materials or supplies as much as the Board would like because salaries consume the budget. (Hill Depo. 45)

SOUTHERN LOCAL

24. For average teacher's salary, Southern Local ranks 557th in the state, which means that 556 school districts pay their teachers more on the average. (Stip. Exh. 7)

25. Also, wages paid to non-teaching employees are low for the county and low for the region. (Spangler Tr. 73536)

26. The district has trouble recruiting teachers in specialized areas, such as special education and dual certification. (Spangler Tr. 735-36)

27. Between FY90 and FY91, the costs of benefits provided to district employees increased 27 percent, which was attributed to health care costs, and not as a result of adding any additional employees. (Spangler Tr. 586-87)

YOUNGSTOWN

28. At Youngstown City Schools, the average teacher's salary for FY91 was \$32,485, below the state's mean for that year of \$35,326. (Stip. Exh. 8)

29. At Youngstown City Schools, it is important to have minority teachers on staff for the students and because the district is under a federal court mandate to have a

racially balanced staff. (Marino Tr. 3183-84)

30. The district has generally hired inexperienced teachers because they can be paid less than experienced teachers. (Marino Tr. 3179)

31. The district has had difficulties attracting teachers with certification in more than one area and much difficulty attracting minority staff. The salary schedule at Youngstown City Schools is not adequate to draw teachers into the community and is not adequate to recruit minorities. (Marino Tr. 3179-80; 3183)

C. COLLECTIVE BARGAINING

1. Since April 1, 1983, school districts have been required by law to engage in collective bargaining with employee organizations designated as exclusive bargaining representatives for employee bargaining units. (Stip. 46)

2. Many public school districts engaged in collective bargaining with employee groups prior to April 1, 1983. However, on that date, public schools and other public employers in Ohio were for the first time required by law to engage in collective bargaining with employee

groups. Most school districts have two unions, teaching and non-teaching. (Russell Depo. 59) The Cleveland City School District has more than nine recognized collective bargaining representative organizations. (Russell Depo. 60)

3. The only school district employees not subject by law to any collective bargaining agreement are the Superintendent and Treasurer of the school district. (Russell Depo. 67)

4. The vast majority of Ohio school districts have negotiated collective bargaining agreements. Most of the 85 percent of general fund revenue that goes for salary and benefits goes to employees pursuant to collective bargaining agreements. (Brown Depo. 36)

5. For the 1992-93 school year, 21 out of 661 public school and joint vocational districts in the state of Ohio were not subject to at least one collective bargaining agreement. (Stip. 48)

6. School districts are required to file their teaching contracts with the State Employee Relations Board (SERB). (OAC 4117-09-07) As of December 31, 1992, there were 631 teaching contracts and 523 non-teaching

contracts on file with the State Employee Relations Board. (Pl. Exh. 440)

7. The required scope of collective bargaining includes all wages, hours and terms and conditions of employment as well as the modification or deletion of any provision of an existing collective bargaining agreement. (Stip. 47)

8. Negotiated collective bargaining agreements normally include provisions for health and life insurance; provisions restricting the right of the board to limit teaching contracts. (Russell Depo. 60)

9. School district collective bargaining agreements often contain provisions that limit the ability of school districts to reduce the size of their teaching or non-teaching staff. The Department of Education expects school districts to abide by provisions in negotiated collective bargaining agreements. (Phillis Tr. 1900)

10. School district officials are required by law to certify the availability of funds to pay increased salary or benefit costs resulting from a collective bargaining agreement. That certification must include the availability of funds to operate the district's

educational program and to pay the costs of the increase for the current year and the next succeeding school year. Form SF-12 is one of the documents used in the process of that certification. (R. C. Section 5705.412; Van Keuren Tr. 4752; Russell Depo. 61)

11. Collective bargaining agreements may cover a period of up to three years, one year beyond the period for which the availability of funds must be certified. (R.C. Section 4117.09(E); Russell Depo. 61)

12. As a result of mandated collective bargaining, school districts now hire trained negotiators. (Russell Depo. 61-64)

13. Collective bargaining negotiations involve the time and efforts of the board of education and the school district administrative staff, as well as any outside professional staff that may be used. Such negotiations can go on for a year or more. (Russell Depo. 66)

14. Responsibility for participating in the negotiation of collective bargaining agreements is often part of the responsibilities of Ohio school superintendents. Activities associated with collective bargaining involve the expenditure of substantial amounts of

administrative time and effort. Collective bargaining agreements that result from those bargaining activities often included provisions for salaries and health care benefits, among others. (Van Keuren, Tr. 4739-40; Washburn Tr. 2328)

15. For most public school districts in Ohio, 85 percent or more of the total operating revenue is spent on staff salaries and benefits obligated under one or more collective bargaining agreements. (Russell Depo. 72)

16. Each of the Plaintiff School Districts is required to engage in collective bargaining with each recognized employee bargaining unit not less than once every three years. (Stip. 49)

17. Since 1983, Kenneth Taylor (Area 5 Coordinator) has seen salaries and fringe benefits become an increasing portion of the budgets of school districts in Area 5, which includes Plaintiff Dawson-Bryant. One of the reasons is the requirement that school districts collectively bargain with their employees. Another reason is inflationary increases in costs. (Taylor Depo. 91-92)

18. Much of the time of school administrators at Dawson-

Bryant Local Schools is taken by collective bargaining, including issues dealing with employment and working conditions. (Washburn Tr. 2328)

19. In the fall of 1992, Dawson-Bryant Local School District Board of Education had a teaching force that had been without a contract for a year and was faced with an important school facilities levy on the ballot that required the support of staff members. The board determined that a 2 percent increase for teaching staff could be granted based upon projected increases in revenues the district would receive through the state funding formula. (Washburn Tr. 2329) After the Board contractually agreed to the 2 percent increase, student enrollment figures from October became available showing that enrollment declined. Thus, costs did go up, but revenues did not go up accordingly. (Washburn Tr. 2330)

20. The Dawson-Bryant Local School District had moved into a self-funded insurance plan for its employees because of the high cost of obtaining health insurance for employees. In the fall of 1992, district officials obtained a commitment for a fully insured program and avoided the additional risk of self-insurance with a reduced benefit package for employees. The Board was

prohibited from implementing the new health insurance program by a grievance filed by a teacher over the reduction in benefits. Fourth quarter claims experience for the district became available, and the companies that had offered coverage under the fully insured option withdrew their offer, and provided the board with a quote in excess of \$800 per month for a family plan that excluded certain employees of the district. (Washburn Tr. 2331-37) Previously, insurance costs for a family plan were about \$400 per month and \$169 per month for a single plan. Of that cost, 75 percent of the cost is paid by the Board for family plans and 80 percent of the cost is paid by the Board for single plans. The proposed rate of \$800 per month was not only unacceptable or unaffordable for the district, but also for many of the certified and noncertified employees. The board had no choice but to attempt to find other options for insuring all of its employees. With one day of insurance coverage left, the Board found an insurance company to accept their program, which was a self-insurance program. The district is responsible for the first \$25,000 of costs per employee. (Washburn Tr. 2338-39) If the district's insurance coverage had expired and no coverage could have been found, the district would have been responsible for the benefits of all employees, including the total cost of any

claims that they may have incurred, as well as administering the cost of those claims which would have greatly jeopardized the financial status of the district. With great effort, the Board negotiated a reduction in benefits that included more out-of-pocket expenses for the employees and less insurance coverage for those employees. (Washburn Tr. 2340-41)

21. Health care costs have severely impacted the finances of the Dawson-Bryant Local School District and other school districts in the state. (Washburn Tr. 2330-41; 2348)

22. Collective bargaining has severely reduced the local control of the Dawson-Bryant Local School District and other school districts in the state. (Washburn Tr. 2328-41; 2348)

23. Prior to the time Northern Local School District began collective bargaining with its teachers' union, salaries and benefits accounted for approximately 72-75 percent of the Board's total budget. Currently, due to collective bargaining, salaries and benefits account for about 83 percent of the district's total budget. (Hill Depo. 46-47)

24. Over the past twenty years, collective bargaining in Youngstown has been difficult due to the school district's financial situation. Only one contract out of the last 5 contracts has been settled on time without some sort of a labor action. The trend has been a movement from two-year contracts to three-year contracts with a balloon payment in the third year of the contract. That balloon payment has a negative impact on the school district's financial situation. (Hiscox Depo. vol 1, p. 71-72)

25. In the fall of 1987, Youngstown City School District had a teachers' strike that closed the schools for 17 school days. (Marino Tr. 3175-76)

26. Health care costs for Plaintiff Youngstown City School District are approximately \$4 million per year. If the district decided that it wanted to charge its employees for health care, that decision would have to be negotiated with the employee unions. The district has attempted to negotiate such a change. (Hiscox Depo. vol 1, p. 35-36)

27. In the fall of 1993, Youngstown City School District had a teachers' strike that closed the schools for 18 school days. The issues that caused the strike included

a proposed reduction in the benefit package, salaries, insufficient staff development with the piloting of new instructional methods at the pilot learning centers, and inadequate materials and instructional supplies, including textbooks. Teachers were also concerned that the district would not renew teachers' contracts because of insufficient funds. The teachers' union and representatives of the school board were in court on a daily basis before Judge Kirchbaum, and then the board members, the superintendent and a negotiating team were locked into a room for several hours and finally came to a resolution. The benefit package was maintained, there was a freeze in salary for FY94, a five percent increase for FY95 and a five percent increase for FY96. The board and teachers agreed to staff development as much as possible for the learning centers and a \$40 per student purchase of instructional materials for students. (Marino Tr. 3188-90)

28. Youngstown City Schools will make up the school days that were missed as a result of the strike by scheduling school through June 23, 1994; however, some students will not attend school during the make up days. Even if days are made up, however, a strike is extremely disruptive for students. Students in Youngstown were on the streets with no where to go. No

schools in the area were accepting Youngstown students, and people were trying to move out of the district. Also, some students did not have media available and did not know that school started so they did not return to school on time. Also, students who attended summer school, and needed to pass the proficiency test, did not have a classroom to attend in the fall of 1993 to continue their progress because of the strike. (Marino Tr 3191-93)

D. TEACHER CERTIFICATION AND TRAINING

1. The Ohio Department of Education accredits institutions of higher learning that offer teacher education programs. (Sanders Tr. 4572)

2. Individuals may not be employed and paid as public school teachers in Ohio unless they hold teaching certificates issued by the Ohio Department of Education. (Sanders Tr. 4573)

3. In-service teacher training and pre-service teacher training are critical for reforming and restructuring education in Ohio. Without these programs, the leadership necessary for changing education will not be available and restructuring will be minimal or non-

existent. (Pl. Exh. 185)

4. Professional development is important, and continuous growth and development in content expertise, child development, cognitive psychology in all practices associated with teaching and learning are important.

(Schiraldi Tr. 5055)

5. The staff development and in-service for teachers of science at the Southern Local Schools, Lima City Schools, Dawson-Bryant Local Schools, Northern Local Schools, Cardington-Lincoln Local Schools, and Union--Scioto Local Schools are inadequate at the elementary, junior high, and senior high levels in all of those districts. (Sexton Tr. 915-19; Pl. Exh. 96 p. 24-27)

6. Adequate time of a curriculum specialist is needed for school districts to keep teachers apprised of the changes in various curricula areas, to drive change so that curricula are up-to-date, and to constantly coach teachers to strive for improvement. (Sexton Tr. 938; 952-53)

7. The implementation of the regional teacher training centers has resulted in reduced in-service opportunities for teachers. (Washburn Tr. 2307-08)

8. Plaintiff Dawson-Bryant Local School District provides limited in-service opportunities for its teachers.

(Swartzwelder Depo. 19)

9. During the 20 years that Thomas Hill has been a member of the Board of Education of Plaintiff Northern Local School District, the district has been forced to cut the in-service it offers its teachers by approximately two-thirds. (Hill Depo. 57)

10. At Northern Local, teachers are released early once a month for in-service, but one hour of in-service a month is not enough. (Papritan Tr. 1962-63)

11. Granville High School teachers generally have more experience than Sheridan High School (Plaintiff Northern Local) teachers. At Northern Local Schools, administrators must hire first-year teachers because of the district's financial constraints. At Granville High School, administrators hire the best person for the job. Granville offers its teachers longevity pay and teachers there can earn up to \$50,000 per year.

(Dilbone Tr. 2005-06)

12. Teachers at Plaintiff Southern Local School District

are no longer permitted to take professional days off for teacher training because Plaintiff Southern Local School District cannot afford to hire substitutes for those teachers. Because of lack of funding, there has been no district-wide effort to improve teaching methods. (Lichtenstein Depo. 32-33)

13. Until the last two years, the Youngstown City Schools received approximately \$1 per student to use for staff development locally. The in-service funds were eliminated and the ODE implemented regional teacher training centers. The district receives fewer services through the regional teacher training center than the district would have received with the approximately \$1 per pupil. (Marino Tr. 3422-23) Youngstown City Schools is part of a region that serves 15 counties in northeast Ohio. Akron, Canton, and Youngstown City Schools, three of the eight major cities, are served in the same regional center. The institution of the regional centers has spread the staff development money more thinly and has reduced local decision making. (Marino Tr. 3231)

E. CURRICULA

1. The Ohio Department of Education (ODE) is responsible

to enforce the requirements that school districts offer the required minimum number of school days per year and hours per day at high schools, middle schools and elementary schools. (Sanders Tr. 4574)

2. By regulations established and adopted in the Ohio Administrative Code (OAC), the ODE has defined the minimum number and types of courses that must be taught in the public schools. All courses of study must be submitted to the ODE and approved before they may be taught in the public schools. (Sanders Tr. 4575)

3. In addition, the ODE requires that with regard to some courses, pupil performance objectives be established and met for each pupil. The ODE also currently enforces the requirement that model courses of study must be offered at the school district covering each grade level in the areas of math and language arts and in additional areas that are soon to come. (Sanders Tr. 4575)

4. School district boards of education are required to develop written courses of study, obtain approval of those courses by board of education resolution, and submit those courses to the Ohio Department of Education for approval before those courses may be

taught. Once approved by the Department of Education, a copy of each course of study is kept on file in the school district office. Copies of such courses of study are not required to be kept in each classroom where the course is taught and often are not available in such classrooms. (Van Keuren Tr. 4726-27; OAC 3301-35-02(B)(1))

5. A local school district's course of study documents could be filed with the state and then virtually ignored by the teachers within the school district. (Goff Depo. 88-89)

6. A curriculum includes the body of knowledge that is to be imparted and how to impart it. The effectiveness of a curriculum is gauged primarily through students' scores on assessments. (Schiraldi Depo. 107)

7. All districts are responsible for offering driver's education to their students through some type of program. School districts may issue principal's letters, which release students to attend driver's education training outside the school. Alternatively, districts may offer the program within the district or contract with a driver's training program to offer a program. The in-school or contract program is a 60 hour

program. If the principal's letter is given, then the program is much shorter with less classroom time.

(Taylor Depo. 44-45) In consulting work with districts regarding finances, driver's education often comes up, because of the cost of the program. Thus, districts must choose between compromising the safety of their students or spending additional funds. (Taylor Depo. 45-47) There is no provision in the reimbursement formula for driver's education programs to account for the wealth of the school district. There is no adjustment in reimbursement if a car dealership provides a car for a school district to use. (Taylor Depo. 219)

8. Ohio school districts are authorized to offer Advanced Placement Courses as part of their high school curriculum. Advanced placement courses are those with which a student can pass proficiency tests and obtain college credit based on high school work. The ability to take and pass advanced placement courses represents a direct monetary advantage to pupils planning to go college. (Alexander Tr. 3692-93; Stip. 90)

9. In FY92, the school districts ranked in the top 25 percent of all Ohio school districts in order of assessed valuation per pupil offered a total of 399

advanced placement courses, while the school districts ranked in the bottom 25 percent offered only 40 advanced placement courses. That information is contained in Pl. Exh. 192, which is a true and accurate summary of Pl. Exh. 191, which is an Ohio Department of Education computer printout showing the advanced placement courses offered in the 25 percent wealthiest and 25 percent poorest school districts. (Fletcher Tr. 2648; Pl. Exh. 191, 192, 222)

10. The Ohio Department of Education published a curriculum development guideline around 1980. Before that time, no curriculum development publication from the ODE existed. (Schiraldi Depo. 18-19)

MODEL CURRICULA

11. Am. Sub. Senate Bill 140 (11th Gen. Assembly), enacted in 1989, required the State Board of Education to develop model-competency education programs and required those models to include model curricula, performance objectives, assessment methods, and intervention services in composition, mathematics, science, citizenship, and reading. (R.C. 3301.0716; Schiraldi Depo. 131-32) The mathematics model was adopted by the State Board in 1990, and the language

arts model covering reading and composition was adopted in 1991. Science and citizenship (social studies) models were in the final stages of completion in December 1993. In October 1993, the State Board of Education directed the Department of Education to develop additional models in the arts, foreign languages, and comprehensive health. Seven program areas will have model curricula. (Schiraldi Tr. 503637; 5086; Stip. 100, 101; Sanders Tr. 382-84; Goff Depo. 84)

12. Each model consists of four required parts: model curriculum, instructional objectives and performance objectives, and assessment strategies and intervention services. (R.C. 3301.0716) Instructional objectives are the grade level outcomes that are expected by students in that subject area for that grade level. Performance objectives are derived from the instructional objectives and require assessment at the classroom level and district-wide. Model curricula are pre-K through 12, because the Department of Education has paid increased attention to early childhood education. (Schiraldi Tr. 5039; 5043)

13. Before 1989, school districts submitted courses of study for approval to the department, but they were not

judged at all by the content. Since 1989, judgments have been made about the content of school districts' courses of study by Department of Education personnel. (Schiraldi Tr. 5086)

14. School districts are required to review the local curricula at each level and revise those curricula to comply with the state model. School districts that did not have available educational materials to implement the revised curricula would be required to provide those materials. (Sanders Tr. 382-84; Goff Depo. 79)

15. The content review of the instructional objectives, performance objectives, and the curriculum is more thorough than is the review of assessment strategies and methods and the intervention services. (Schiraldi Tr. 5088-89) Under model curricula, districts must include implementation of periodic assessment and a program of intervention services. There are a number of reporting requirements that a district must make following implementation of a model, including making available annually, by July 31, copies of the written assessment instruments, information about the dates and methods of administration of instruments, the scoring, and a number of other data. Districts are required to provide information upon request about the types and

description of the intervention services that they make available. (Schiraldi Tr. 5097) A district-wide grade level assessment is required at grades 1 through 8, which must be administered in a standardized fashion, and in the 9th grade, the students must take the 9th grade proficiency test. (Schiraldi Tr. 5098)

16. Each school district was to have adopted and have ODE's approval of a course of study (and performance objectives) conforming to the Model Mathematics Curriculum by the beginning of the 1992-93 school year. (Stip. 100)

17. As of the end of the 1992-93 school year, 131 school districts had not complied with the requirement that each district adopt, and obtain Ohio Department of Education approval of Mathematics courses of study meeting the requirements of the Model Mathematics Curriculum. (Sanders Tr. 4587; Stip. 102)

18. As of July 6, 1993, 94 districts, including Plaintiff Lima City School District, had not submitted a Model Math Curriculum, while an additional 13 districts in Mahoning County, including Plaintiff Youngstown, were authorized by the Department of Education to submit their model in the 1993-94 school year. (Pl. Exh. 397;

Stip. 103)

19. Fourteen school districts developed Model Math Curricula in the 1992-93 school year, which were not approved by the Department of Education during FY93. (Pl. Exh. 397; Stip. 104)

20. As of December 1993 (16 months after the deadline), 550 school districts had submitted math curricula for approval to the Ohio Department of Education, but only 480 of those had even been reviewed by ODE. (Schiraldi Tr. 5099-100; Stip. 100)

21. The total flexibility in designing a mathematics program that local school districts enjoyed prior to the models no longer exists. (Schiraldi Depo. 135) There are specific criteria upon which districts must compare satisfactorily with the model; a number of items that must be addressed and a matrix needs to be completed. (Schiraldi Depo. 136) The mathematics model includes specific performance objectives for grades 5-8. Those are there because they relate most directly to the outcomes of the 9th grade proficiency test. It is absolutely essential that the Department insure that what is included in the mathematics program support what is on the proficiency test in mathematics.

Compliance with the model math curriculum will require that students be taught the basic elements of the 9th grade proficiency test regarding mathematics by the time they have completed the 8th grade. (Schiraldi Depo. 137-39)

22. Model curriculum requirements are imposed at each grade level from kindergarten through 12th grade. School districts can do more than the state model but cannot do less. (Phillis Tr. 1905-06; Goff Depo. 79)

23. After a school district's curriculum in mathematics has been approved by the appropriate board of education (in the case of a local school district, it is the county board of education), there are four possible results from the Department of Education's review of that curriculum: (1) disapproval, (2) a one-year approval with very specific recommendations and directions for improvement, (3) five-year approval with directions for areas that need to be addressed and/or improved or, (4) five-year approval without reservation. (Schiraldi Tr. 5045-46)

24. The implementation of model math curricula would require school districts formerly using materials focused on computational math to purchase new textbooks

as well as other equipment and supplies to effectively teach math from a problem solving approach as is tested on the 9th grade proficiency test. (Sanders Tr. 385; Goff Depo. 81)

25. Manipulatives are now required in mathematics curricula in all Ohio school districts. The use of calculators is necessary to use mathematics as delineated in the model math curriculum. Students would learn the use of the calculator more effectively by having their own calculator. It is necessary for a school district to make available to its pupils the use of computers, that should be at all levels of instruction and must be a part of the learning environment. (Schiraldi Depo. 140-42)

26. One of the major changes that needs to take place in mathematics teaching and learning is conceptual development, which means that children, especially primary-age, need to spend far more time manipulating objects and materials. (Schiraldi Tr. 5049)

27. Technology is an integral part of the mathematics and the language arts models. (Schiraldi Tr. 5120)

28. Personnel at the Department of Education authored a

document for distribution to school district representatives at regional meetings across the state. (Schiraldi Tr. 5052) That document states: "Our school cannot afford calculators or computers, how can we implement the mathematics model? A: Mathematics education requires some technology (equipment, etc.) at all levels. Whatever technology is needed to implement the approved program must become a priority." (Plaintiff's Exh. 55)

29. To properly implement the model math curriculum, equipment in the form of calculators with graphic capabilities should be provided for all high school level instruction, scientific calculators with an algebraic operation system should be available to all middle and junior high or high school students, elementary students need ready access to calculators at all times, and each classroom needs appropriate display equipment for computer-based instruction. One of the five assumptions underlying the necessary successful implementation of the model math curriculum is that natural uses of technology in doing mathematics must be incorporated and learned by all. (Schiraldi Tr. 511617) An example of a performance objective contained in the model math curriculum is: kindergarten students will be able to manipulate, color, fold, and create simple

geometric shapes. An example of an instructional objective of the model is: a kindergarten student will be able to use a computer program such as Logo appropriately modified to explore paths and construct simple geometric shapes. (Schiraldi Tr. 5117-18)

30. The model language arts curriculum contains model performance objectives for grades 5 through 8 that correspond directly to the outcomes on the 9th grade proficiency test in reading and composition. (Schiraldi Depo. 165)

31. Implementation of the model science curriculum for school districts will involve significant changes from the way science is currently taught. Science needs to be hands on and activity-based. (Schiraldi Depo. 170; Goff Depo. 86)

32. The Model Science Curriculum will require the addition of lab facilities and equipment at the high school level, if sufficient facilities and equipment are not already present. (Goff Depo. 90-91)

33. The state model curriculum for science at the secondary level is required to include:

a. a suggested curriculum for teaching chemistry, physics, biology, and whatever additional sciences the state board may select;

b. lists of minimum supplies and equipment necessary for the teaching of each science for which a curriculum is suggested, with special emphasis on safety equipment;

c. acquisition and replacement schedules for the supplies and equipment to ensure the availability of at least minimum inventories in every high school; and

d. suggested safety procedures to include: (1) training for students and teachers in the safe handling and use of hazardous and potentially hazardous materials and equipment; (2) methods of safely storing and disposing of hazardous and potentially hazardous materials; and (3) provisions for a biennial assessment of each high school's safety equipment and procedures by someone other than the school personnel directly responsible for them. (R.C. Section 3301.0720)

34. The science and social studies model curricula will be

tied to the 9th grade proficiency test just as the language arts and mathematics curricula were tied to those respective parts of the 9th grade proficiency test. (Schiraldi Depo. 171)

35. In the fall of 1995, science will be added to the existing parts of the 9th grade proficiency test. (R.C. 3301.0710 and uncodified law 1992 H.B. 55 9)

36. Implementation of the model curricula is essential for achievement on the 9th grade proficiency test, because the curricula are directly related to the parts of the test. (Papritan Tr. 1960; Schiraldi Depo. 139; Schiraldi Tr. 5096)

37. There is no reimbursement or specific funding for school districts to implement model curricula. (John Winnenberg Tr. 1247)

CURRICULA IN PLAINTIFF SCHOOL DISTRICTS

DAWSON-BRYANT

38. Elementary Students at Plaintiff Dawson-Bryant have no opportunity to take foreign languages, computer classes, music or art classes other than band, and have

no access to a science lab. (J. Blankenship Depo. 14, 23-24)

39. Dawson-Bryant Local Schools does not offer foreign language instruction in the elementary grades. In contrast, foreign languages are being offered in the elementary grades and kindergarten at the Beachwood City School District. (J. Blankenship Depo. 19)

40. The junior high students at Dawson-Bryant have no science laboratory facilities. (Semanco Depo. 16) The first time that students are brought into a laboratory setting is in their sophomore year. (Semanco Depo. 18)

41. There is only one science laboratory at Dawson-Bryant High School. (Semanco Depo. 11) In 1991, the gas valves were not working and water at a majority of the sinks was not working. The gas valves were inspected and because they leaked, they were turned off. Only cold water is available in one sink in the prep room and one sink in the very back of the room. (Semanco Depo. 12-14)

42. In his fourth year of science courses at Dawson-Bryant High School, Christopher Jackson had performed only three labs. (Jackson Depo. 25) In biology, he dissected

a worm and a frog, and in chemistry, he did a few titrations. (Jackson Depo. 28)

43. The facilities at Dawson-Bryant High School limit science fair projects of students, so that it is very difficult for them to achieve superior ratings at a science fair. There is no place for students to house projects or to monitor the behavior of plants or animals. The heating and electrical systems are not reliable, so that aquariums and terrariums cannot be maintained. (Semanco Depo. 51-53) There are no facilities at Dawson-Bryant for the students at any level to work on science fair projects at school. So all the materials, experimentation, and work must be done at home on their own. (Semanco Depo. 29)

44. It is important to offer chemistry courses geared to a student's ability in mathematics. Dawson-Bryant does not offer such courses. (Semanco Depo. 32)

45. There are many other courses, such as AP science courses, astronomy, physiology, and others, that would be added if Dawson-Bryant had more facilities, more equipment, and more money for teachers. Additional courses have not been requested by teachers because there are no funds available to even have the water to

the science classroom restored. (Semanco Depo. 33; 37-38; 41-42)

46. Dawson-Bryant has submitted a written course of study for mathematics and language arts which has been approved by the Ohio Department of Education in that it is comparable to the Ohio models. However, DawsonBryant has not been able to adequately train staff to implement the math curriculum in the classroom, and the district does not have the resources and materials necessary to implement the math curriculum. The district has not been able to purchase any classroom materials, instruction materials, or textbooks or to provide any in-service or training to staff to successfully implement the model language arts program. (Washburn Tr. 2426-27)

47. Dawson-Bryant offers no honors program and no AP courses. To be considered for a college scholarship in some universities, a student must have successfully participated in an honors program or an AP course. Students at Dawson-Bryant are deprived of that opportunity. (Washburn Tr. 2430-32; Swartzwelder Depo. 50)

LIMA

48. Implementation of the model curriculum in mathematics and language arts is a totally new approach to instruction and requires textbooks that present information in accordance with the new methods of instruction. The Lima City School District was unable to buy elementary textbooks conforming to the instructional methods of the model math curriculum for the past three years. New K-8 math textbooks were purchased within the past year. During the interim period, the old textbooks were used. Those textbooks were not appropriate for use in the model math curriculum course of study. (Buroker Tr. 2932)

49. The Lima City School District has not yet implemented a model math curriculum at the high school. (Buroker Tr. 2932)

50. The Lima City School District also has maintained advanced placement and honors courses to try to prevent a mass out-migration of their brightest and best students. (Buroker Tr. 2962)

51. All of the advanced placement courses identified in Plaintiff's Exhibit 455 are not available to students for lack of enrollment. Pupils do not enroll because

many of the student population begins school developmentally behind. Many pupils lack success in school in order to take advantage of the higher level courses. (Buroker Tr. 3088-89)

52. Lima City School District has had no students take advantage of post-secondary enrollment options. (Buroker Tr. 3046)

NORTHERN LOCAL

53. There has been little substantive improvement in the curriculum in Plaintiff Northern Local School District since the early 1980s. (Miller Tr. 1620)

54. The curriculum in Northern Local School District has not been able to keep pace with the demands of modern society. (Miller Tr. 1621)

55. At Glenford Elementary in the Northern Local District, attempts to implement the state model math curriculum has been made only in some grades for which math books have been purchased. Purchase of the required manipulatives has been minimal, and is not adequate to meet the model course of study requirements. (Papritan Tr. 1959)

56. For the model language arts program, no materials have been purchased by the district, and the only materials available are some purchased by the teachers with their personal funds. (Papritan Tr. 1959; Miller Tr. 1644)

57. Northern Local School District administrators worked on the math curricula for over a year, sent it to the Department of Education for approval, and received a one-year approval because the high school math course of study was not set up to meet state standards. (Dilbone Tr. 2024)

58. Sheridan High School in Northern Local School District does not offer any advanced placement courses. (Miller Tr. 1626)

59. Although Northern Local School District has attempted to implement the new model math curriculum, the district only was able to spend \$30,000 for textbooks in grades three through six and has not been able to purchase any textbooks for grades seven through twelve. (Johnson Tr. 1484)

60. The following courses listed by area are offered at Granville High School, but not offered at Sheridan High

School in the Northern Local School District:

(1) English: AP English, radio-tv programming with the use of cameras and various equipment, and a course to prepare for the SAT test;

(2) Science: AP science will be offered within the next year;

(3) Math: AP calculus, trigonometry, math analysis;

(4) Social studies: AP history;

(5) Foreign languages: fourth-year Latin, fourth-year Spanish, fourth-year French, and fifth-year French;

(6) Industrial arts: woodworking, industrial technology, engineering, CAD, and design programs;

(7) Art: photography, sculpture, ceramics, drawing, print making, and commercial design, including four years of art courses. Even if

only one student signs up for a class, that student will still be provided the opportunity to take that course:

(8) Music: show choir, jazz band, men's ensemble, girl's ensemble, orchestra, and string orchestra;

(9) Physical education: weight training is done by outside consultants who are also trainers, so that coaches and teachers do not have to do weight training;

(10) Computer science: Granville has computer labs networked to New Albany Schools that permits communication between the schools, and various computer languages are offered;

(Dilbone Tr. 1994-2000)

61. Phyllis Spohn, a teacher with 23 years experience at Northern Local School District, testified as to what an elementary educational program should entail:

Children in elementary school who are capable should be exposed to foreign languages, provided a

variety of activities requiring them to use higher level thinking skills, a large number of resource materials, mentors. Once they have acquired the reading skills, they should be required to use them in their curriculum. Technology of all sorts would be encountered from the beginning. Children requiring remediations would have been focused on and have their needs met as quickly as possible, so they can bridge the gap and move on to better and higher level things.

Northern Local School District does not offer such a curriculum to its elementary students, but it would if the financial resources were available to do so. (Spohn Depo. 31-32)

62. At Northern Local School District, work on the district's model curricula in math and language arts fell back on the building principals, because county--wide curriculum people are spread so thin. At Granville, the district hired outside consultants for language arts to be the organizer and put together the written document for state approval. The district is planning to do the same with science and social studies model curricula. (Dilbone Tr. 2022-23)

SOUTHERN LOCAL

63. The registration manual from Miller High School (Pl. Exh. 52) lists the courses offered at Southern Local, but not all of the courses are offered in each school year. Specifically for 1993-94, Typewriting II and Accounting II are not offered, Spanish III and IV are combined, and Chemistry, Physiology I, and Physiology II are not offered. Because of staffing limitations, course offerings must be rotated, and a student who is a senior in the 1993-94 school year, for example, could not take Chemistry. (Spangler Tr. 536-37)

64. Superintendent Spangler, who has an extensive background in curriculum, testified that the course offerings at Miller High School are very narrow range of offerings for a secondary school in both the variety of courses and also in the depth of subject areas. (Spangler Tr. 538)

65. Many professional organizations in the field of science stress the importance of electives and advanced study in students' secondary careers, and those opportunities are not open to Southern Local students. (Spangler Tr. 538) The courses offered at Miller High School narrow the students' experiences, narrow their opportunities,

and narrow their future choices. The majority of students that Southern Local students will need to compete with will have a much broader range of course selections. (Spangler Tr. 539-40)

66. Southern Local offers only one foreign language, Spanish. (Axline Depo. 36; Spangler Tr. 539-40)

67. Southern Local offers no advanced placement courses. The only way that a student might accrue college credit at Southern Local would be to participate in a post-secondary option, but realistically, access to transportation and distance closes that option for the majority of students. (Spangler Tr. 539; Thompson Tr. 1330; Thompson Tr. 1356; Axline Depo. 25-26) Southern Local does not offer any summer school activities for students to take additional course work. (Thompson Tr. 1358)

68. Chris Thompson will have no opportunity to take Biology, Advanced Biology, or Physiology because they are no longer offered at Miller High School. (Thompson Tr. 1365)

69. During his entire elementary and junior high years, Christopher had only two hands-on activities at school

other than in the TAG program. First, in the 7th grade, the science teacher brought into the classroom three microscopes that operated with mirrors, for the twenty students in the class. The students looked at one of the microscopes instead of in it because it was so old. Second, in the 8th grade, the class did a section on rocks and the science teacher brought in several different types of rocks. Chris had no opportunities to do science experiments at the elementary or junior high level. (Thompson Tr. 131819)

70. The science laboratory at the Miller High School has five lab tables, one of which has working water, and only two or three of which have working gas outlets. The safety equipment is inadequate. In 1992-93, the Science I class in which Chris Thompson was enrolled performed one laboratory dealing with starch and sugar. The science teacher performed demonstrations because she did not have enough chemicals or materials for the entire class to perform activities. (Thompson Tr. 1325-27) From beginning of the 1993-94 school year until November 3, Science II students, one of which was Chris, had one laboratory experience and one demonstration, and the physics students had no laboratory experiences other than one measuring activity. (Thompson Tr. 1349-50)

71. The science equipment at the high school is limited to chemicals (which are seldom used) glassware (much of which is donated), and equipment that is very old and does not work, including: one oscillator that does not work; one small incubator for bacteria growth; a chicken incubator that has been at the high school for many years; and seven electric microscopes and six microscopes with mirrors. (Thompson Tr. 1348-49)

72. The skeleton for teaching physiology at Miller High School has foam deterioration. (Thompson Tr. 1348)

73. Plaintiff Southern Local School District has spent approximately \$50,000 to implement a mathematics curriculum conforming to the state mandated model mathematics curriculum. (John Winnenberg Tr. 1246)

74. Although Southern Local School District adopted a written math curriculum conforming to the model math curriculum, and bought some text books to teach that curriculum, it was unable to purchase new math books for grades 10 and 12. Those students are still using the old math books, and it is difficult to teach the model math curriculum from those old textbooks. (Axline Depo. 14-15)

75. Southern Local School District has not implemented a language arts curriculum which conforms to the state mandated model language arts curriculum because the school district does not have the resources to purchase materials necessary for the curriculum. (John Winnenberg Tr. 1248)

76. At times, parents and students have requested courses that are not offered at Southern Local, but parents often are not aware that broader course offerings might exist. (Spangler Tr. 553)

77. One of Mr. Altier's grandchildren, Jodi, was valedictorian at Miller High School in the Southern Local School District. She applied to Notre Dame University, but was not accepted. When she went to be interviewed at Notre Dame, she was asked how many Advanced Placement courses she had taken. Jodi did not even know what Advanced Placement meant. No Advanced Placement courses are offered in the Miller High School in Southern Local School District. Jodi was not accepted at Notre Dame, after going through school, getting a perfect 4.0 grade average, and being valedictorian. (Altier Tr. 1299-1301)

YOUNGSTOWN

78. Plaintiff Youngstown City School District does not offer an adequate educational program for all of its students because of lack of resources. (Pincham Depo. 22-23; Marino Tr. 3320-22)

79. The district has not been able to adequately upgrade programs already in existence due to lack of resources. (Pl. Exh. 295; Marino Tr. 3322-23)

80. Youngstown City School District does not have enough teachers and the needs of many students are not being met. However, the district has been forced to consider additional cuts in teachers and educational programs due to its financial problems. (Kolitsos Depo. 24)

81. The educational opportunities available to students in Youngstown City School District are decreasing due to the elimination of courses, including many courses in math, science and languages, and the narrowing of the scope of the extracurricular activities available to students. (Kolitsos Depo. 58-59)

82. Because of the financial condition in Youngstown City School District, many students are not getting the same

opportunities that other districts around the city of Youngstown have. Many students who graduate from the Youngstown City School District are at a disadvantage when competing with other students state-wide, regionally, and nationally. (Kolitsos Depo. 25)

83. The curriculum of Youngstown City School District does not meet the needs of its students, particularly those who are not passing the 9th grade proficiency test and those who are considered to be at risk. (Hiscox Depo. Vol. II, 59-60; Hiscox Depo. Exh. 17)

84. Services offered to students in 1st through 3rd grades are not adequate. First, many students are promoted to the 1st grade so that they may be involved in an all-day program, even though they are not ready for school. The district cannot afford to purchase language development kits or self-esteem kits to develop language and self-esteem. The primary level does not have hands-on instructional materials, including manipulatives. Materials are inadequate in all areas of the curriculum. Students do not have adequate access to computers or guidance services. (Marino Tr. 3223-24)

85. In FY94, the following cuts were made in courses offered in FY93 at the high school level: English and

Composition, General Math, Consumer Math, a vocational course called Fabric Services, and Typing II, (Marino Tr. 3302-04) Problems of Democracy, and Seminar in Social Problems. (Marino Tr. 3341-42) Only a course called Fundamentals of Algebra and Geometry and Computer applications for 1/2 credit were added.

Teachers in art classes may be teaching three courses during the same period, for example, art I, art II and advanced art all at the same time. (Marino Tr. 3302-04; 3341-42)

86. The high schools at Youngstown City Schools offer only one semester of health. No foreign language laboratories are available in the district. (Marino Tr. 3262-63) The district offers computer-assisted design (CAD), however, all of the CAD systems are out of date. (Marino Tr. 3265)

87. High school students in the Youngstown School District who are not college bound learn science from a textbook. (Marino Tr. 3261) The first time a student in the district has the opportunity to take a science lab course is in the 10th grade.

88. Courses that have been cut during Mr. Hiscox's tenure at Youngstown City School District include some upper

and lower level mathematics courses, industrial technology in some school buildings, drama and some science courses. (Hiscox Depo. Vol. II, p. 30-31)

89. The cuts to the math curriculum involved a shift in focus to at-risk students. Courses for advanced students such as pre-calculus and computer math at the junior high and senior high level have been cut because the computer labs were needed for intervention. (Hiscox Depo. Vol. II, p. 34-35)

90. The only significant additions to the curriculum in Youngstown City School District have been pursuant to state and federal mandates. (Kolitsos Depo. 51)

91. Youngstown City Schools is still in the process of finalizing the mathematics course of study and language arts course of study to comply with the state models. Because of changes and administrative cuts there are fewer people to complete that work. Teachers at Youngstown City Schools have not had adequate training to implement the model curricula for the students. (Marino Tr. 3230; Pincham Depo. 26; Hiscox Depo. Vol, I, p. 27)

92. The Youngstown City Schools District does not have

adequate materials to implement the model Language Arts curriculum, and does not have the money to buy them.

(Marino Tr. 3231-32)

93. The Youngstown City School District does not offer any advanced placement courses. Although some courses may have had that title, no courses have ever been offered that would allow a student to receive college credit for taking the course. (Hiscox Depo. vol 2, p. 51-52; Marino Tr. 3265)

94. Implementing advanced placement courses at the-high school level would require training for staff, purchasing instruction materials and equipment, regulating pupil to teacher ratio, and allowing time for teachers to prepare properly for the course. The district applied for a magnet school grant through which AP courses might have been implemented, but the district did not receive the grant. (Marino Tr. 3300-02)

95. The learning centers at Youngstown City Schools are an experiment or pilot project on the north side that involves some students from the south side of the city also. The centers were implemented in FY94 to make drastic changes to attempt to improve achievement and

to meet the needs of Youngstown students. At the primary learning centers a major change is that students have a very low pupil to teacher ratio -- 1 to 15. Students are placed in multi-age groupings such as 6 to 9 year olds on a four-year basis so that they stay with the same teacher for four years. Students have been advanced by age, even if they have not successfully completed curriculum work. (Marino Tr. 3308-11) About 25 percent of primary students at Youngstown City Schools is served in the learning center schools. (Marino Tr. 3353) The learning centers are funded through Chapter I and DPIA monies, and those remedial programs no longer exist for learning center students. The district is attempting to provide as many hands-on experiences as possible at the learning centers. These experiences, although not adequate, are much more than what is provided in 75 percent of the rest of the classrooms in the district. At the primary learning centers, there are three computers in each of the classrooms. (Marino Tr. 3308) The five primary learning centers feed into two upper elementary learning centers at Hayes and Hillman. (Marino Tr. 3346) The materials and equipment that are available at the primary learning centers are not available in the upper elementary schools because there is not enough money. The upper elementary schools have some

computers, but only ones that were already there. One upper learning center has a computer lab, but there is no computer lab at the other. (Marino Tr. 3349) The district did not have adequate funds to properly implement the learning centers, which was made obvious when one of the reasons for the fall 1993 teachers' strike was teachers' concerns about inadequate staff development and materials. (Marino Tr. 3311) Some staff development money and other funds have been taken from district-wide programs to serve the learning centers. (Marino Tr. 3434-35) The district does not have enough money to implement the learning center concept district wide. (Marino Tr. 3435)

96. On the north side of Youngstown is a community group called the North Side Coalition, made up of adults within the community that have a high interest in the school system and have been working with the district for several years to try to improve the education provided for their children. (Marino Tr. 3348)

COMPARISONS OF THE SCIENCE CURRICULUM IN PLAINTIFF SCHOOL DISTRICTS TO OTHER SCHOOL DISTRICTS

97. Since the implementation of the 1983 minimum standards, the Ohio Department of Education has urged school

districts to adopt changes in teaching methods, including inquiry-based education through Project Discovery. (Washburn Tr. 2311-12) Another effort was a publication by the Ohio Department of Education in 1988 entitled "New Dimensions in Science Education." This document encouraged school districts to implement science curricula to allow students to actively engage in the processes of science, including hands-on activities. (Sexton Tr. 861-65; Pl. Exh. 95) Similar recommendations have come from national science publications and the State Board of Education's Mathematics and Science Advisory Commission. (Pl. Exh. 95 p. 1-2; Pl. Exh. 94) Numerous workshops were held throughout the state by the Ohio Department of Education to explain to school districts how "New Dimensions in Science Education" should be implemented. However, there was no funding set aside for follow-up presentations. (Pl. Exh. 96 p. 3; Sexton Tr. 866-68) The State of Ohio has not yet completed a model course of study for science and, thus, the only guideline for science curriculum in the state is "New Dimensions in Science Education." (Pl. Exh. 96 p. 3)

98. Hands-on teaching in the sciences is very important, more important than the alternative of demonstration or audio-visual teaching. (Goff Depo. 77)

99. At the elementary level, Dawson-Bryant Local Schools and Union Scioto Local Schools fail to provide their students with inquiry-based science teaching. They severely lack science equipment and science resources for students to come to an understanding of science concepts. At the elementary level, Southern Local Schools, Cardington-Lincoln Local Schools, Lima City Schools, and Northern Local Schools do not provide adequate instruments or materials, resources, and facilities for their students in science. (Pl. Exh. 96 p. 11, 14; Sexton Tr. 906) The same inadequacies exist at Dawson-Bryant Local Schools, Union Scioto Local Schools, Southern Local Schools, Cardington-Lincoln Local Schools, Lima City Schools, and Northern Local Schools at the junior high level and at the high school level. Additionally, Southern Local, Lima City, and Northern Local Schools provide inadequate instruction and teaching methods to their students in science at the junior high level and at the senior high level. (Sexton Tr. 907-09; Pl. Exh. 96 p. 12-13)

100. The science instruments available to students at the Southern Local Schools, Lima City Schools, Dawson--Bryant Local Schools, Northern Local Schools, Cardington-Lincoln Local Schools, and Union-Scioto

Local Schools are inadequate at the elementary, junior high, and senior high levels in all of those districts.

(Sexton Tr. 909-14; Pl. Exh. 96 p. 20-22)

101. The science programs available to students at the Southern Local Schools, Lima City Schools, Dawson--Bryant Local Schools, Northern Local Schools, Cardington-Lincoln Local Schools, and Union-Scioto Local Schools are inadequate at the elementary, junior high, and senior high levels in all of those districts.

(Sexton Tr. 920-26; Pl. Exh. 96 p. 28-31) These districts are not providing their students with a complete science program to be able to compete with other students or in the job market when they move beyond those schools. (Sexton Tr. 920)

102. In FY91, the Richmond Heights Local Schools had an average daily membership (ADM) of approximately 755 pupils and it is somewhat similar in number of pupils to Plaintiff Southern Local Schools which had an ADM in FY91 of approximately 1,039. In FY91, the Richmond Heights Local Schools spent approximately \$2,429 per pupil more than Southern Local Schools. (Pl. Exh. 96 Appendix C) Generally, teachers at Richmond Heights Local Schools do not spend their own personal funds to provide students with science activities in the

classrooms, while teachers at Southern Local Schools generally do spend their own personal funds to provide science activities for students. Fewer science activities are provided for students at Southern Local Schools than at Richmond Heights Local Schools. Students at Richmond Heights Local Schools are provided opportunities for science field trips, while students at Southern Local Schools are not. At all levels, elementary, junior high, and high school, Richmond Heights Local Schools provides more science instruments for students, more science in-service for teachers, and a better overall science program for students than does Southern Local Schools. (Sexton Tr. 925-38; Pl. Exh. 96 p. 11-31)

103. In FY91, the Worthington City Schools had an average daily membership (ADM) of approximately 9,865 pupils and it is somewhat similar in number of pupils to Plaintiff Lima City Schools which had an ADM in FY91 of approximately 6,789. In FY91, the Worthington City Schools spent approximately \$964 per pupil more than Lima City Schools. (Pl. Exh. 96 Appendix C) Generally, teachers at Worthington City Schools do not spend their own personal funds to provide students with science activities in the classrooms, while teachers at Lima City Schools generally do spend their own personal

funds to provide science activities for students. Fewer science activities are provided for students at Lima City Schools than for students at Worthington City Schools. Worthington City Schools' students are provided opportunities for science field trips, while Lima City Schools' students are not. At all levels, elementary, junior high, and high school, Worthington City Schools provides more science instruments for students, more science in-service for teachers, and a better overall science program for students than does Lima City Schools. (Sexton Tr. 925-38; Pl. Exh. 96 p. 11-31)

104. The Superintendent of Lima City Schools toured the Worthington Kilbourne High School of the Worthington City Schools and observed science equipment and labs far superior to that which is available, computer labs with teaching staff available to provide assistance to students, and state-of-the-art athletic facilities. Comparing the laboratory equipment and supplies with those in Lima, he observed that the Worthington facilities and equipment are far superior. (Buroker Tr. 2939-40)

105. In FY91, the Beachwood City Schools had an average daily membership (ADM) of approximately 1,296 pupils

and it is somewhat similar in number of pupils to the Dawson-Bryant Local Schools which had an ADM in FY91 of approximately 1,400. In FY91, the Beachwood City Schools spent approximately \$7,901 per pupil more than Dawson-Bryant Local Schools. (Pl. Exh. 96 Appendix C)

Generally, teachers at Beachwood City Schools do not spend their own personal funds to provide students with science activities in the classrooms, while teachers at Dawson-Bryant Local Schools generally either spend their own personal funds to provide science activities for students or do not provide any science activities for students. Beachwood City Schools provides students with many science activities in the classrooms, while at Dawson-Bryant Local Schools, few science activities are provided for students. Beachwood City Schools' students are provided opportunities for science field trips, while Dawson-Bryant Local Schools' students are provided with the opportunity in some cases only if the students raise the money. At all levels, elementary, junior high, and high school, Beachwood City Schools provides more science instruments for students, more science in-service for teachers, and a better overall science program for students than does Dawson-Bryant Local Schools. (Sexton Tr. 925-38; Pl. Exh. 96 p. 1131)

106. In FY91, the Revere Local Schools had an average daily

membership (ADM) of approximately 2,563 pupils and it is somewhat similar in number of pupils to the Northern Local Schools which had an ADM in FY91 of approximately 2,022. In FY91, the Revere Local Schools spent approximately \$1,744 per pupil more than Northern Local Schools. (Pl. Exh. 96 Appendix C) At the elementary level, generally teachers at Revere Local Schools spend their own personal funds to provide students with science activities in the classrooms, but generally at the junior high and high school levels, teachers do not. At Northern Local Schools generally teachers either spend their own personal funds to provide science activities for students or do not spend more than the amount collected from students in lab fees. Fewer science activities are provided for students at Northern Local Schools than for students at Revere Local Schools. Revere Local Schools' students are provided opportunities for science field trips, while Northern Local Schools' students are provided with the opportunity in some cases only if the students raise the money. At all levels, elementary, junior high, and high school, Revere Local Schools provides more science instruments for students, more science inservice for teachers, and a better overall science program for students than does Northern Local Schools. (Sexton Tr. 925-38; Pl. Exh. 96 p. 11-31)

107. In school districts in Ohio, there are differences in opportunities to learn science and science concepts.

(Sexton Tr. 955)

108. Students attending the Plaintiff and other low-capacity school districts will have a more difficult time passing the science part of the 9th grade proficiency test because of the inadequacies in teaching science to those pupils. (Sexton Tr. 957)

109. Students attending the Plaintiff and other low-capacity school districts are being deprived of effective science teaching. (Sexton Tr. 958)

110. A 27-year old science curriculum specialist at the Youngstown City Schools, Mr. Paul Finch, was overseeing the removal of chemicals from the district's high school buildings and fumes accidentally got into his body. He has been on disability for three years. The district has not had funding to buy the safety equipment that Mr. Finch had requested for the science labs. Recently, the Fire Chief advised the district that it had acids inappropriately placed in storage cabinets. (Marino Tr. 3264-65)

A. GUIDANCE SERVICES

OVERVIEW

1. The 1983 minimum standards state that school guidance services shall be provided for pupils in kindergarten through 12th grade in accordance with a written plan adopted by the Board of Education. School guidance services are also required to include systematic aid to pupils regarding educational, career, civic, personal, and social concerns including the harmful effects of drugs, alcohol and tobacco; and appraisal, counseling, educational and career planning, referral and staff consultations. (OAC 3301-35-03(H))

2. The ODE defined the terms used in the 1983 minimum standards in its publication entitled "A K-12 Written Guidance Plan, Minimum Standards Implementation Series" as follows:

a. "Counseling Services" - Activities that a counselor uses to develop effective relationships with students assisting them to perceive their environment in realistic terms, to make appropriate choices and decisions, and to develop the facility for adjustment that permits students

to respond to life's present and future situations including the harmful effects of drugs, alcohol, and tobacco.

b. "Systematic Aid" - Assistance provided students through a planned, organized, and regularly scheduled process.

c. "Appraisal Services" - Assistance designed for students, parents, and teachers to examine the students' abilities, interests, aptitudes, and achievements as indicated by various tests and assessment measures used by the school.

d. "Career Planning" - Assistance provided students to help appraise their interests, abilities, aptitudes, and personality characteristics with respect to occupations; to acquaint students with occupational information; to educate students in skills required to find, use, and organize career materials; and to help students develop positive attitudes toward work and coworkers

e. "Educational Services" - Assistance provided students individually and through group techniques to help them function more effectively in their

school progress.

f. "Personal Services" - Assistance provided students to help achieve self-understanding and self-realization leading to individual satisfaction.

(Pl. Exh. 68 pp. 4-5)

GUIDANCE SERVICES IN PLAINTIFF SCHOOL DISTRICTS

DAWSON- BRYANT

3. The only guidance services Jamie Blankenship had available while in elementary school at Dawson-Bryant was when a guidance counselor spoke to her whole class about courses to take at the high school. (J. Blankenship Depo. 29-30)

4. The guidance counselor at Dawson-Bryant High School spends most of his time doing paperwork and trying to schedule students for classes. He does not have time for counseling. (Jackson Depo. 30)

5. In contrast, Beachwood High School students have the benefit of two counselors highly skilled in placing students in four year colleges. In their sophomore and junior years, pupils annually take a college tour to as

many as three different colleges and universities in order that the pupil may have a flavor of college experience. Some pupils have college acceptances from five or six universities before graduation. (McMurrin Tr. 2538)

6. Christopher Jackson attempted to talk to the high school guidance counselor about college and applying for college, but the counselor did not have the time. (Jackson Depo. 31)

7. The inability of the Dawson-Bryant Local School District to implement its written guidance plan and to provide systematic guidance services to pupils results in unmet student needs, including far too many students in the "general track" and a high pregnancy rate. The district is unable to implement a needed district-wide program dealing with self-esteem and self-concept. (Washburn Tr. 2416-18)

LIMA

8. Plaintiff Lima City School District has a K-12 written guidance plan, but that plan has not been fully implemented, and in particular, no guidance plan has been implemented in grades K-5. The written guidance

plan has not been implemented due to lack of funds to pay additional guidance counselors. (O'Connor Tr. 3118; Buroker Tr. 2900)

9. Lima City School District allocates each guidance counselor in the district \$80 per year to cover the cost of continuing education unit credits. That \$80 cost does not cover the amount the counselor is required to spend to maintain those credits, and the counselor must pay the difference from his or her own funds. (O'Connor Tr. 3098-99) Lima City School District does not provide more funds for guidance counselors to maintaining CEU credits because that money is not available. (O'Connor Tr. 3102)

10. At the elementary level at Lima City Schools, there is a real need for a guidance counselor, but the district does not have any guidance counselors in the elementary schools at all. The level of need exists because many elementary students are subjected to physical abuse, sexual abuse, and drugs in the home, and witness troubling things in the home on a regular basis, which impacts the learning of the students. The district has limited human resources to meet these needs of students. (O'Connor Tr. 3107; Roger Miller Depo. 67)

11. Habitual tardiness problems often start in the elementary grades and continue through high school. Elementary guidance could help solve the problem of habitual tardiness and keep more children in school. (O'Connor Tr. 3109-11)

12. Students who have family problems outside of school need significantly more guidance in school in order to help them reach their educational potential. (O'Connor Tr. 310)

13. Lima City School District is in need of additional guidance personnel at the high school level. (O'Connor Tr. 3119) Guidance counselors at the middle and high school at Lima have very little time for individual counseling. (Buroker Tr. 2900)

14. The entire guidance department of Lima City School District is allocated \$1,700 per year for the purchase of materials and supplies. (O'Connor Tr. 3119) The entire yearly budget for the guidance department at Lima Senior High School is \$792. (O'Connor Tr. 3120)

15. Additional funds would allow the Lima Senior High School guidance department to purchase other needed guidance resources which are available at other school

districts in the state. These resources include surveys which allow students to assess their strengths and interests with regard to higher education and videos regarding careers, college and financial aid. (O'Connor Tr. 3120-21)

16. Lima City School District has numerous students moving in and out of the district. This mobility rate makes it difficult for the Lima Senior High School guidance department to track proficiency test results for these students. (O'Connor Tr. 3126-27)

17. An appropriate guidance program for Lima City School District would be comprehensive and encompass all grades K-12. It would address the educational, emotional, social, and career needs of all students in the Lima City Schools. (O'Connor Tr. 3105) Lima does not have the resources to implement such a guidance program. Such a program would require video, college and career information, as well as the addition of a significant number of personnel which Lima City School District does not have the funding to provide. (O'Connor Tr. 3106-07)

SOUTHERN LOCAL

18. Plaintiff Southern Local School District only has one guidance counselor for the entire district. (Axline Depo. 32) Southern Local has approximately 1,022 students. (Stip. Exh. 7)

19. The guidance counselor at Southern Local School District does not have the time or resources to provide guidance services for all students in the district. The only students who are served are the students who want to go to college or the students who have a lot of problems. (Axline Depo. 27-28)

20. Students in Southern Local School District could perform better in school if they had better opportunities offered to them, including a broader range of subjects and more services, including guidance and intervention. (Towner Tr. 824, 841; Lichtenstein Depo. 52)

21. Through and until his 8th grade year, Chris Thompson had never seen a school guidance counselor. In that year, the one counselor for the district spoke to Chris' class to set up high school schedules. (Thompson Tr. 1321-22)

22. At the high school level, Chris Thompson had guidance

services only for scheduling. He has not received any information about colleges or college majors or scholarships from his guidance counselor. (Thompson Tr. 1352-53) He was not aware of what a national merit scholarship was or what test is required to qualify. (Thompson Tr. 1354)

23. Due to entering the Emergency School Advancement Loan Program, Southern Local School District bought no new guidance materials during the years 1991 to 1993. The district does not have current college guides or videos in order to assist students in choosing a college. (Axline Depo. 51-52)

YOUNGSTOWN

24. There is a tremendous need for guidance assistance at all levels at the Youngstown City Schools. Because of the drug trafficking within the neighborhoods where the children live, they must deal with adults who are chemically dependent, and some students are born with problems because their parents were chemically addicted. Violence in the community is a regular occurrence. Children are accosted at bus stops waiting to go to school; children have their clothes, jackets, and tennis shoes taken; students are often victims of

neglect due to lack of money to buy clothing or food. Obviously, there are great needs for guidance counseling for the students to deal with self-esteem issues and positive attitudes toward learning. In FY93, for 19 elementary buildings housing K-6 grades, the district had only one guidance counselor available. She was housed in one elementary building and regularly visited three other buildings, but was available to the remaining 15 buildings on an emergency basis only. (Marino Tr. 3226-28)

25. Youngstown City Schools has only one guidance counselor in each of the junior high buildings. Because of the attendance problems, behavioral problems and academic achievement problems, in addition to the involvement in gangs, one guidance counselor for approximately 400 junior high students is not adequate. (Marino Tr. 3252-55)

26. In the 1991-92 school year, Youngstown cut 1/2 of one secondary guidance counselor, and the district plans to cut two additional secondary guidance counselors. (Hiscox Depo. vol 1, p. 48; Hiscox Depo. Exh. 1)

27. Guidance services at the high school have been cut due to lack of funding. In FY94, Rayen and Wilson High

Schools each have three guidance counselors for student populations of over 1,200. Chaney and East High Schools have 2½ guidance counselors. Guidance services to high school pupils are not adequate. (Marino Tr. 3275-76)

G. EXTRACURRICULAR OFFERINGS IN PLAINTIFF SCHOOL DISTRICTS

OVERVIEW

1. Being on an athletic team teaches cooperation and how to work with people. The earlier those skills begin, the longer the lasting effects will be. (Marino Tr. 3306)

2. Extracurricular activities are very important for a well-rounded education for students and to assist with attitudes of students and school spirit. (Dilbone Tr. 2020)

DAWSON-BRYANT

3. If Dawson-Bryant instituted a pay-to-play for athletics, it would reduce the number of students that would be able to participate. Booster clubs provide equipment and supplies and even pay for coaches to participate in clinics. (Washburn Tr. 2386-87)

4. The only field trips that Jamie Blankenship could recall during the time she has been a student at Dawson-Bryant included trips to COSI, the Paramount Theater in Ashland and to the Briggs Library in Ironton. (J. Blankenship Depo. 7)

5. Jamie Blankenship participates in cheerleading at Dawson-Bryant, for which she must raise money for her uniform and she must pay for gymnastics lessons once a week. (J. Blankenship Depo. 11-12)

6. The extra-curricular activities which are not offered at Dawson-Bryant that Beachwood offers its students include: soccer, golf, wrestling, softball, tennis, and swimming. At the elementary and middle schools, Beachwood students have available intramurals, soccer, wrestling, swimming, softball, and baseball. None of those activities is available to middle or elementary school students at Dawson-Bryant. (Washburn Tr. 244344)

LIMA

7. Plaintiff Lima City School District does not offer adequate non-athletic extracurricular programs, particularly in the area of music. (Eaton Depo. 46)

8. Cultural enrichment opportunities for elementary pupils in the Lima City Schools are limited. Third graders are permitted to go to a girl scout camp, which is a nature center. Fifth graders are permitted to go to the civic center for a single arts performance. A study of pupils of the Washington McKinley Elementary School indicated that 70 percent of those pupils had never been to a shopping mall. (Buroker Tr. 2935)

9. As a result of limited athletic facilities, athletic teams have practices beginning at 3:15 p.m. and proceeding to 9:30 - 9:45 p.m., after which some pupils must walk home in the dark. The football stadium was built in 1937 as a WPA project. It is badly deteriorated and in great need of repair. (Buroker Tr. 2941)

10. The track serving the high school is in considerable disrepair and also in need of major renovation. (Buroker Tr. 2942)

11. The Lima City School District is in the Greater Miami Conference Athletic League. Included within that league are Middletown, Hamilton, Princeton, LaKota, Milford, and Sycamore School Districts. Lima's salaries for

coaching extracurricular sports is about 60 percent to 70 percent of the salaries paid coaches in the other schools in the athletic league. (Buroker Tr. 2945)

NORTHERN LOCAL

12. At one time, Glenford Elementary had an intramural basketball program but that has been cut. The only extra-curricular activity offered to students is Odyssey of the Mind, which is run by a parent volunteer at no cost to the district. (Papritan Tr. 1957)

13. Camp Ohio was an outdoor education program for 5th and 6th grade students in the Northern Local School District. Students paid about two-thirds of the cost and fundraisers paid for the other third. That program has been canceled because of the closing of Somerset and will not be implemented in the 1993-94 school year. (Papritan Tr. 1972)

14. Classes at Glenford Elementary in Plaintiff Northern Local School District are allotted one field trip per school year, and those field trips often do not take place because there is no funding available to pay for the buses to take the students on the field trip. (Spohn Depo. 48-49)

15. Academic and athletic extracurricular activities at Granville High School that are not offered at Sheridan High School include clubs for foreign languages and national honor societies for foreign languages, soccer for boys, and tennis, along with soccer for girls which will be offered in the 1994-95 school year. (Dilbone Tr. 2019)

SOUTHERN LOCAL

16. Because of its geographical location, students at Southern Local School District are culturally isolated. (John Winnenberg Tr. 1236)

17. Since 1990, Southern Local School District has been forced to discontinue its drama program, its Cultural Events Fund, and its Cultural Events Coordinator. (John Winnenberg Tr. 1237; Lichtenstein Depo. 10)

18. The Cultural Arts Fund in Southern Local School District was used to expose children to theater and the arts and to provide cultural events to the students of the school district. (Lichtenstein Depo. 10-11)

19. The Cultural Arts Fund was also used to supply local

funding required to receive grants from the Ohio Arts Council to provide artist-in-residency programs for the high school and elementary schools. Southern Local School District has not been able to apply for such grants since eliminating the Cultural Arts Fund.

(Lichtenstein Depo. 10-11)

20. At Miller High School, students have access to one academic club (Quiz Team) and eight extra-curricular activities total. At Southern Local, students must pay a \$35 fee to play a team sport, in addition to other costs they may have, such as shoes and equipment. In contrast Thomas Worthington High School offers approximately 40 academic clubs and 23 interscholastic sports. (Thompson Tr. 1343)

21. During nearly 10 years of schooling at Southern Local, Chris Thompson could remember experiencing only three field trips (other than pupil-paid-for TAG trips): one to Athens for a play, one to Hocking Tech; and another that he could not recall. (Thompson Tr. 1313-18)

22. When the school district had to go into the loan fund, it was necessary to cut out some extra-curricular activities, including the school newspaper and yearbook. In addition. the science fair coordinator's

position was eliminated, and the middle school science fair was consequently dropped. (Towner Tr. 828-29)

23. Athletics are important for Miller High School. Over one-half of the students at the high school participate in extracurricular athletic activities. Athletics give the student a chance to participate and also help the community's self-image. (Joe Winnenberg Tr. 809)

24. In school year 1992-93, Southern Local instituted a 15 percent across the board pay cut for coaches in all sports, in all grade levels. The district also eliminated the junior high coach and junior high track. Both the 7th grade girls' basketball coach and 7th grade boys' basketball coach positions were eliminated. Golf was dropped as a varsity sport. In addition, boys' and girls' 9th grade basketball was eliminated. None of these sports were picked up by the community. One varsity assistant football coach was also eliminated. (Towner Tr. 831-33; John Winnenberg Tr. 1237; Plaintiff Exhibit 81)

25. Individual sports, such as track, cross-country and golf are important, because they are the type of sports that an individual can continue once they graduate from high school. It is important for students to be able to

participate in these sports in high school. (Towner Tr. 838)

26. Presently, Southern Local School District is considering elimination of high school boys' and girls' track and cross-country. (Towner Tr. 836)

27. In school year 1992-93 Southern Local instituted a pay-to-play rule. The charge to participate in athletics is \$35 at the high school, and \$20 for junior high. The monies collected for pay-to-play do not pay for the costs of the activities. However, it does defray some of the transportation costs. No other school district in the Tri-Valley Conference, consisting of 11 schools in which Southern Local School District plays, has a pay-to-play rule. (Towner Tr. 833-34, a 37)

28. Southern Local cannot afford an athletic trainer. At one time Southern Local School District did have an athletic trainer, but had to eliminate that position in an effort to save costs. The cost of the athletic trainer at the time that position was eliminated was \$5,000 per year. The majority of teams in Southern Local's sports league have trainers. Trainers are important, because they provide care to the sport's participants. (Joe Winnenberg Tr. 808-09; Towner Tr.

835)

29. In the school year 1992-93, Joe Winnenberg coached varsity football at Miller High School in the Southern Local School District. During that time, he had two assistants, whereas in previous years, there were three varsity assistant football coaches. The amount he was paid for coaching was reduced 15 percent. His compensation as football coach was extremely low compared to other schools in the area. In fact, he received more compensation for being head football coach in 1980 in New Lexington High School than he did as a football coach at Southern Local School District in 1992. (Joe Winnenberg Tr. 800-01)

30. Southern Local has been unable to continue a program of replacing damaged and worn out football helmets and shoulder pads each year. The inability to replace this football equipment seriously increases a player's chances for injuries. (Joe Winnenberg Tr. 802)

31. The school district has also been unable to afford tape for football players. (Joe Winnenberg Tr. 804)

32. Weight conditioning is of primary importance in athletics, because it is necessary to protect players

from injury. The athletes at Miller High School are not being afforded an adequate, safe facility in which to condition and train. Weight conditioning for both boys and girls occurs in the boys' locker room, which are cramped quarters, where the floor is often wet, thereby presenting a dangerous situation. (Joe Winnenberg Tr. 805-07)

YOUNGSTOWN

33. The extra-curricular activities provided for students at Youngstown City Schools do not meet the students' needs. There are no activities offered at the elementary level at all, where there is much need for developing athletic skills. (Marino Tr. 3306)

34. Youngstown City Schools' students are not offered art clubs, music clubs, foreign language clubs, math clubs, science clubs, or community service programs on a district-wide basis. The district does not offer enough extra-curricular activities to meet the needs of the students. (Marino Tr. 3306-07)

35. Due to financial considerations, the Youngstown City School District has had to cut soccer, wrestling, cross country, and golf. The district has only one high

school where cross country is sanctioned by the schools and another high school where golf and soccer are sanctioned. (Hiscox Depo. vol 2, p. 71-75; Hiscox Depo. Exh. 20; Kolitsos Depo. 33, 60)

36. Extracurricular expenditures increased from \$213,000 in 1986 to \$475,000 in 1991 due to increases in salaries and fringe benefits, rental fees, and transportation costs. The increases were not due to additional extra curricular offerings. Booster clubs in Youngstown are almost non-existent, and they do not provide any funding for extra-curriculars. (Hiscox Depo. vol 2, p. 78; Hiscox Depo. Exh. 23)

37. Football games for the five high schools are held at the Youngstown State University football stadium because the high school stadiums need repairs and because of safety issues. The games are no longer played after dark, after a shooting and a fight and other incidents in FY93. In FY94, after a football game, a student was killed. Whether the high schools may continue to use the University facilities for games is uncertain. (Marino Tr. 3305-06)

C. BOOTS, EQUIPMENT, AND SUPPLIES IN PLAINTIFF SCHOOL DISTRICTS

OVERVIEW

1. Pupils in the public schools of Ohio should have access to current textbooks with materials necessary to implement the curriculum. (Sanders Tr. 380-81; Pl. Exh. 15)

2. The State Board of Education has taken the position that public school pupils in Ohio should have access to current textbooks, equipment, and supplies. (Ocasek Tr. 2824) President Ocasek referenced the Akron City Schools as an example of the detriment of cutting books and equipment. Akron first made financial cuts of \$9 million out of a \$160 million budget. Thereafter, the district eliminated \$3 to \$4 million more in expenses. Textbooks are not coming into the district, since Akron has cut back in that category of expenditures. President Ocasek testified that materials and personnel cannot be cut if you expect quality education. (Ocasek Tr. 2825)

3. Reductions by a school district in the number of teachers, textbooks, materials and supplies directly affect the level of educational opportunity available to students. (Brown Tr. 5513)

DAWSON-BRYANT

4. Carl Swartzwelder has been a board member of Plaintiff Dawson-Bryant Local School District for four years and at no time during his tenure has the school district made any significant purchase of textbooks.

(Swartzwelder Depo. 12)

5. Jamie Blankenship testified that the text books she used during elementary school at Dawson-Bryant Local School District were old, had pages missing, and writing all over them. (J. Blankenship Depo. 6)

6. Elementary students at Dawson-Bryant Local School District must pay for workbooks for reading classes.

(J. Blankenship Depo. 13)

7. Since the time that Jamie Blankenship has been attending school at Dawson-Bryant, the only improvements in the materials or equipment that are available to her include a couple of computers and three or four replacement books - only four students received the new books. (J. Blankenship Depo. 22)

8. The library materials at Deering Elementary School in the Dawson-Bryant Local School District are so outdated

that Jamie Blankenship had to go to the Briggs Library, a community library, to find all the information she needed for a research paper. (J. Blankenship Depo. 31-32)

9. There are no text books for the computer classes taught at Dawson-Bryant High School. (Jackson Depo. 16)

10. The consumable materials that Mr. Semanco requests and is provided for teaching science are not sufficient for his needs in teaching his high school science classes at Dawson-Bryant. (Semanco Depo. 20)

11. Money for science supplies and equipment over the last two (2) years at Dawson-Bryant has gotten tighter. The last item purchased by the district for Mr. Semanco's science classes was an aquarium, and that was three (3) years ago. Mr. Semanco provides from his own money materials for demonstrations in his classes, and spends about \$50 to \$60 per year on materials for his students. (Semanco Depo. 45-47)

12. Chemistry at Dawson-Bryant High School has become almost all demonstration. If the Board allows, sometimes chemistry students are permitted to do a titration using a very small amount of chemicals, but

due to lack of supplies, there are no other experiments for students in chemistry class. (Semanco Depo. 25-26)

13. Science teachers at Dawson-Bryant High School have no place to store extra materials, so it is difficult to purchase anything that is consumable until the time to use it. (Semanco Depo. 21) For chemistry, the Dawson-Bryant High School needs shelving space, chemical supply cabinets, chemical supply refrigerator, eye wash stations, emergency showers, titration equipment, and computers in the science laboratory. (Semanco Depo. 24-25)

14. Some of the equipment needs of the Dawson-Bryant High School science lab include goggles for each student, or an apparatus to sterilize goggles, quality specimen, dissection scopes, and microscopes. In 1981-82, the district had ten (10) microscopes and in the last ten (10) years have purchased three (3) additional ones. In the biology area, the science equipment includes the microscopes, aprons, and some goggles - but not enough for all students; in Biology, there is no other science equipment that is used. (Semanco Depo. 20-23)

15. Students going into health professions need a strong anatomy background and much of that teaching is done

through models, but Dawson-Bryant has no models.

(Semanco Depo. 50)

16. There is much science equipment needed at Dawson-Bryant High School, but items are not requested, because the teachers know that it is not a reality for the school.

(Semanco Depo. 53-54)

17. For the Biology II class at Dawson-Bryant High School, only fifteen advanced biology books are available, so they must be left in the room and used as reference

books. (Semanco Depo. 27)

18. Plaintiffs' Exhibit 266 is a list of needs, prepared in 1991, as determined by teachers and other employees of the Dawson-Bryant Local School District, in order to provide the programs needed for students within the district. (White Tr. 2082)

19. In every building at Dawson-Bryant, there are fundraisers to provide additional funds for additional opportunities and supplies for students that the district is unable to provide with present funding levels. Fundraisers take up instructional time and present concerns about children selling items on the street. (Washburn Tr. 2385-86)

LIMA

20. The Lima City School District has limited supply budgets and virtually no money for enrichment activities. (Buroker Tr. 2898)

21. Teachers in the elementary schools of the Lima City School District spend approximately \$300 per year of their own funds to buy school supplies. The district provides \$12 per student per year for supply budgets at the elementary school, and \$15 per student at the middle school. The district formerly charged fees for supplies. However, with 70 percent of the district's pupils on free or reduced price lunch, the numbers of pupils who could pay the fees were so small that district personnel were spending far too much time trying to collect fees so fees were eliminated at the elementary level. (Buroker Tr. 2922)

22. At the present time, the district charges fees for specialized courses in the middle and high schools only. (Buroker Tr. 2923)

23. In Lima, 57 percent of the texts in use in the elementary school have copyright dates of 1985 or

older. Sixty-seven percent of the middle school and 78 percent of the high school texts have copyright dates of 1985 or older. A textbook for Afro-American Studies having a date of 1972 is presently in use in the district. That textbook references African countries which have changed names and configurations as often as two or three times since the textbook was published. (Buroker Tr. 2930)

24. Apart from the textbooks purchased to attempt to implement part of the model math curriculum at the junior high level and replacing copies of current adoptions, the district has not purchased any new textbooks for six years. (Buroker Tr. 2933)

25. Complete revision of texts in each major course of study will require expenditure of approximately \$1,500,000. The district can only afford to spend \$100,000 a year on textbooks. (Buroker Tr. 2933)

26. A survey of equipment and supplies needs of individual classroom teachers in Lima revealed a total amount of current additional funds needed of \$2,120,344. (Buroker Tr. 2955)

NORTHERN LOCAL

27. Plaintiff Northern Local School District has had to cut back in purchasing textbooks. Plaintiffs' Exhibit 130 is a list of books and school materials that the district needs and would purchase if sufficient funds were available. The list totals over \$500,000 of needs. (Johnson Tr. 1477-78; Pl. Exh. 130)

28. At Northern Local Schools, it is difficult to obtain current course materials. Because of that, Ms. Spohn has ceased using textbooks in her 2nd grade class except in the area of mathematics. (Spohn Depo. 22)

29. Textbooks are not necessary to implement the model math curriculum, but textbooks are helpful because mathematics education involves a sequential building of skills. (Spohn Depo. 22)

30. Most teachers at Northern Local Schools rely on textbooks for most, if not all, of their instruction. (Spohn Depo. 23-24)

31. Even if Ms. Spohn desired to use textbooks in her teaching approach, there are no textbooks available in Glenford Elementary for use by her students in the areas of social studies, science, handwriting, spelling

and reading. The books that are available are too outdated to be of any educational use. (Spohn Depo. 25)

32. The encyclopedia that is available in the library of Glenford Elementary School in Northern Local School District is a 1981 version of the World Book Encyclopedia. (Spohn Depo. 39)

33. The library at the Glenford Elementary School in Northern Local School District is deficient in the areas of non-fiction books, resource encyclopedias, dictionaries, thesauruses, and biographies. The library at Glenford Elementary is closed three days a week because there is no staff person available to supervise the library. (Spohn Depo. 66)

34. During the 1992-93 school year, the principal at Sheridan High School and Junior High permitted students to use pop machines throughout the school day to gain additional money to buy things that could not be purchased because of the limited finances of the district. (Dilbone Tr. 2048)

35. Glenford Elementary has needs for equipment, materials and supplies, including storage spaces, materials for reading and writing, books for slick boxes, books on

tape, overhead projectors and other visual assistance for teaching, and computers, software, and printers. (Papritan Tr. 1982) Students in music class must sit on the floor because there is not enough space for chairs. When it is cold, administrators attempt to provide carpet squares for students to sit on, which are donated by carpet stores. The support materials at Glenford are inadequate to implement the whole language approach. (Papritan Tr. 1939-43)

36. The Glenford Elementary Principal has made efforts by writing grants to meet the needs for equipment, materials and supplies. Substantial amounts of administrator and teacher time is consumed in writing grants. For a venture capital and technology grant, the principal was out of the building five days and the teachers were involved a total of ten teacher days out of the building to write the grants. Although the results of those two grants were unknown, the principal has had denied two Jennings grants, one Effective Schools Grant, and a Third Grade Guarantee Grant. The investment of time in writing grants often provides no return. (Papritan Tr. 1943-44) To benefit students, teachers' and administrators' time would be better spent with children in the classroom than trying to write grants. (Sexton Tr. 952)

37. At Glenford Elementary, the students are involved in fundraisers to raise money for basic items including books, cultural assemblies, and incentives for achievement. These fundraisers involve the students selling cookies, M&Ms, calendars, flower bulbs, coupon books, and candy bars. Students also collect aluminum cans. However, most students had no means to bring the cans to school except on the school bus, and bus drivers complained about the number and smell of the cans, particularly beer cans, on the buses. Now, cans are collected monthly at a recycling spot. Fundraisers reduce the instructional time for students, but are done because there is not enough money. (Papritan Tr. 1944-49)

38. The Parent-Teacher Organization (PTO) at Glenford Elementary works to raise money with a bazaar, a spring festival, food sales at farm auctions, and spaghetti dinners. The PTO attempts to provide items such as playground equipment, books for the library and for classrooms, shelving for the library, tables and chairs for the library, and computers. (Papritan Tr. 1944-47)

39. The Glenford Elementary principal and teachers have made purchases for the school and for families of the

school's students with their own personal funds.

(Papritan Tr. 1949) Phyllis Spohn spends between \$400 to \$600 a year of her own money to buy materials and supplies for her 2nd grade classes. (Spohn Depo. 69)

40. A brand new teacher in the Northern Local School District who is supporting himself or herself cannot afford to buy \$300 or \$400 worth of materials for the classroom. Some teachers who have more flexibility with some of their cash will purchase materials. Thus, some teachers have materials, but not enough, and other teachers have nothing with which to implement the new model curricula. (Papritan Tr. 1981)

41. The Glenford Elementary School principal and teachers have sought out and obtained donated equipment, such as display racks retrieved from a dumpster. (Papritan Tr. 1949-52)

SOUTHERN LOCAL

42. The addition of a new building in Plaintiff Southern Local School District in 1992 did not provide funding to fill materials and resource needs of the school district. (John Winnenberg Tr. 1253; Lichtenstein Depo. 31; Towner Tr. 827)

43. Southern Local lacks materials, supplies and equipment. Equipment purchases over the last two and a half years, other than some equipment associated with the building project, have been only replacement purchases from the general fund. (Spangler Tr. 591)

44. Although Southern Local School District is on a five-- year textbook purchase plan, the district does not have the funds to purchase books pursuant to that plan. (Axline Depo. 48)

45. Some mathematics textbooks used at Southern Local School District are dated 1975 and 1976. (Axline Depo. 47-48)

46. The number of textbooks for students at Southern Local in some courses is inadequate. In 1992-93, for Spanish I, none of the students had a textbook at the beginning of the year. Later, there was a lottery for books, and if the students picked a lucky number, they received a book. For Science I, the students were required to purchase the workbook for \$10, which was used as the class text book. (Thompson Tr. 1323-24) Students do not have textbooks for Desktop Publishing II or Science II. (Thompson Tr. 1344)

47. During Chris Thompson's elementary and junior high years, (1985-86 to 1991-92) many of the text books were very old and out of date. (Thompson Tr. 1319-20) Also, the library books at the elementary and junior high level were not appropriate for the age and interest of the students, and research materials were inadequate and out of date. (Thompson Tr. 1320-21)

48. If Southern Local has an unexpected expenditure such as a transportation expense, funds may have to be shifted out of text books or the item may have to be done without. (Spangler Tr. 480)

49. The art budget for Southern Local Schools was \$.85 per child during the 1992-93 school year. The district's music textbooks are from 1978, and the district cannot afford to have its only piano tuned. The Southern Local Schools can no longer afford to provide students with field trips to see theater and orchestra productions in Columbus, Ohio. (Lichtenstein Depo. 1213)

50. The art supplies at the Shawnee building were very limited. Water colors were either used up, or only a few select colors were left. Students had to wait in line to use a stencil. Art supplies were very low and

in very poor quality. (Thompson Tr. 1312-13)

51. Southern Local School District has been unable to implement a language arts curriculum that conforms to the state model curriculum for language arts because the district cannot provide teachers with the necessary training and the school district cannot afford to purchase the necessary materials. (Lichtenstein Depo. 15) The teachers at Southern Local desire to implement the model language arts curriculum, and they are frustrated by the inability of the school district to purchase the necessary supplies. (Lichtenstein Depo. 24)

52. Teachers at Southern Local Schools often use their own money to purchase classroom supplies. First grade teacher Marie Lichtenstein spends over \$300 per year of her own money to purchase classroom supplies. (Lichtenstein Depo. 25)

53. The libraries at Southern Local still functions on a card catalog system, and the district cannot afford to provide a computer access experience for any of its students. (Spangler Tr. 475)

54. The library at Southern Local schools contains books

which have copyrights in the 1950s and 1960s. (John Winnenberg Tr. 1251)

55. Southern Local School District does not have paper to provide for students to write on or on which to copy tests. Some teachers in the district purchase their own paper. Teachers in Southern Local School District are issued 1 box of paper to last the entire school year. (Axline Depo. 16-17; Towner Tr. 825; Thompson Tr. 1346-47)

56. Southern Local is starved for the funds necessary to purchase every day supplies. Paper is rationed, paper clips are rationed, telephone time is rationed, time on the copier is rationed. Art supplies, the amount of books purchased for libraries, chalk, and even toilet paper and paper towels are rationed. (Spangler Tr. 589-90; Thompson Tr. 1347)

57. To aid in the purchase of paper, reference books and subscriptions to periodicals, a student council has an annual selling campaign which raises between \$2,000 to \$3,000. Mr. Towner also has a principal's fund, and the main sources of revenue for the fund are pop sales and school photographs. This fund raises about \$2,000, which also goes toward the purchase of needed supplies.

(Towner Tr. 826)

58. Southern Local does not provide employees with pay checks in envelopes, because envelopes would cost around \$300 a year and another approximately \$300 to put checks in envelopes and mail them in the summer. When the district cannot pay for paper for students, this expenditure cannot be considered. To receive pay checks in the summer time, teachers must provide the district with an envelope and a stamp for it to be mailed, or they must pick up the check personally.

(Spangler Tr. 589-90)

YOUNGSTOWN

59. Youngstown City Schools attempted to budget \$500,000 per year for five years for textbook purchases. (Pl. Exh. 296) Even if the purchases were made according to the textbook purchase plan, the needs of the students would not be adequately met. (Marino Tr. 3235) The district currently has many textbooks that are more than five years old and even if the plan is followed, there will be textbooks greater than five years old by the time they are replaced. In FY94, the district is using an 1980 music textbook in kindergarten through 4th grade. The purchase of new science textbooks at the

elementary level could not be completed because of lack of funds. The lack of updated textbooks affects students significantly because in many subjects that may be the only resource students have. (Marino Tr. 3237-38; Pincham Depo. 22-24)

60. In kindergarten, 1st and 2nd grades, for students who are not developmentally ready to transfer information from a book to a piece of paper, consumable materials are needed. The district does not charge students for those materials because so many people could not afford to pay for them. (Marino Tr. 3228-29)

61. Students in 4th through 6th grades do not have adequate hands-on materials for mathematics. They do not have adequate access to computers and computer software. They do not have adequate science hands-on equipment. Social studies materials are inadequate; and language arts materials are not sufficient. The district does not have adequate materials to properly prepare its students for the proficiency test. (Marino Tr. 324245)

62. The math and geometry books at the high school level in Youngstown City School District have a 1985 copyright, and the district estimates a cost of over \$163,000 to update those books. (Kolitsos Depo. 30; Pl. Exh. 297)

63. The language arts books used in the Youngstown City School District are also copyrighted 1985, and the district estimates a cost of \$140,000 to update those text books. (Pl. Exh. 297)

64. The only manipulatives at the high school level are some that have been purchased for students who have failed the mathematics proficiency tests. (Marino Tr. 3276)

65. The libraries in the high schools in the Youngstown City School District are insufficient to meet the research needs of the students. The students must go to other libraries such as Youngstown State University to receive information for research projects. (Hiscox Depo. vol 2, p. 71)

66. In the Youngstown City Schools, teachers do not have adequate supplies of paper and materials. Teachers often buy those items out of their own personal funds. (Marino Tr. 3229-30)

67. Students in Youngstown City School District often engage in fundraising activities to purchase supplies. Fundraising activities in Youngstown City Schools

include students selling magazines, candy, jewelry, and other items; students pick strawberries and sell them; students give coffee and donuts away at rest stops and obtain donations; and students organize other activities to raise money. At the elementary level, however; children have had money and candy for fundraisers stolen. It is no longer safe for the district to expect the students to go into the neighborhoods and sell items. Thus, less funds will be coming in from fundraisers. (Marino Tr. 3319)

68. Principals have candy and pop machines in their schools to raise funds, but people are complaining that these items are not good for the children and are asking that those items be removed. (Marino Tr. 3320)

I. VOCATIONAL EDUCATION

1. Vocational education is a service required to be offered by all public secondary schools. (R.C. Section 3313.90; Russell Depo. 107; McMurrin Tr. 2614)

2. Joint vocational schools are authorized to levy taxes for the support of their programs and, at the same time, receive vocational unit funding from the Ohio Department of Education. School districts that join a

joint vocational school district and send pupils there receive, for school foundation purposes, credit for one-fourth of the pupils attending the vocational school. (Russell Depo. 107)

3. Expenditures per pupil by joint vocational school districts are generally higher than expenditures per pupil by other school districts. (Payton Tr. 4925; Russell Depo. 110)

4. The Tri-County Joint Vocational School serves Southern Local students who want to go into the work force or to a technical college, but not for college preparatory students. A college bound student such as Chris Thompson logistically cannot take one or two courses at the J.V.S. and also pursue a college preparatory track. (Thompson Tr. 1329)

5. City school districts offer vocational programs as part of the school curricula. Cities that operate vocational programs have no separate levy of taxes to pay for the cost. The only source of outside funding for their vocational programming is the state unit funding that accompanies the vocational unit. (Russell Depo. 108)

6. The Lima City School District does not belong to a

joint vocational school district, but provides vocational programs locally for its pupils. Pupils attending joint vocational school districts are still counted in the ADM of the home school district at the rate of 1/4 pupil. Pupils attending vocational programs in the Lima City Schools and other city schools, however, are not counted as part of the city districts' ADM. (Buroker Tr. 2947)

7. Vocational programs provided by the Lima City School District cost more than the amount of unit funding received from the State of Ohio for those programs. The difference comes from the school district's general fund. (Buroker Tr. 2948)

8. The Lima City School District expends approximately \$430,000 per year from the School District's general fund to provide vocational programming. (Buroker Tr. 2949-50) As a result, the number of dollars available to regular education pupils are reduced. (Buroker Tr. 2950)

9. Amounts received and expended for vocational programming for students in the Lima City School District are included in the receipts and expenditures referenced in the vitals report (Stip. Exh. 5), both

with respect to general fund receipts and expenditures and all funds receipts and expenditures. (Buroker Tr. 2951)

10. The Youngstown City School District also does not belong to a joint vocational school district, but provides vocational programs locally. (Hiscox Depo. vol 1, p. 56)

11. For the 1992-93 school year, there were approximately 500 students in Youngstown's vocational program; there were approximately 800 students in the vocational program in the 1989-90 school year. (Hiscox Depo. Vol. I, p. 56; Hiscox Depo. Exh. 3)

12. The vocational program in Plaintiff Youngstown City School District was \$2 million over budget in 1992-93 school year because several programs are under-funded by the state. In particular, the state allocates funds "or vocational unit" on a per-teacher basis which do not adequately cover the costs of teachers. The school district has to make up the difference in funding. (Kolitsos Depo. 82-83)

13. Youngstown City School District's vocational program is offered at the Choffin Career Center. Several courses

were dropped for the 1993-94 school year due to lack of funding, including fabrics, cement I and II, and marketing. Although the Choffin Career Center has been labeled as a fully funded vocational program by the State of Ohio, the program itself costs the Youngstown City School District over \$2 million above the funding received from the state. (Hiscox Depo. vol 2, p. 5557; Pincham Depo. 32)

14. The vocational education program at Youngstown City School District has had to eliminate courses in marketing and accounting. (Kolitos Depo. 83-84)

E. TECHNOLOGY

OVERVIEW

1. The growth in technology has resulted in the need for an education system that supports an information age society, not a manufacturing society. (Sanders Tr. 292)

2. The use of technology in the classroom, including computers, interactive video, laser discs and distance learning, is important to the educational process. (Goff Depo. 196)

3. Technology, in the form of computer-assisted learning and instruction, has the power to open opportunities for pupils beyond the school and classroom. (Russell Depo. 35)

4. Technology in education was used almost exclusively, as recently as 10 years ago, in the administrative domain as opposed to the instructional domain. Ohio school districts have not even begun to take advantage of the full effect and power of technology in education. The importance of technology to teaching and learning increases every day. (Schiraldi Depo. 143; 150; 149)

5. One of the State Board of Education's charges is to develop and modify, as necessary, a state plan for technology to encourage and promote the use of technological advancements in educational settings. (R.C. Section 3301.07(N))

6. The State Board of Education has adopted a "State Plan for Technology" and that plan recognizes that the growth in technology has caused the need for major revision in the way that information is taught in the public schools. Technology deals with the automated access to information and includes such things as televisions, computers, cable, and CD-ROMs. The State

Plan for Technology states, in part, as follow:

"Massive, systematic changes in curriculum, professional development, and governance are vital if our young are to have the opportunities they deserve to become knowledge [sic] workers in the global information age." (Pl. Exh. 20, p. 1)

"The nature and application of technology and instruction should:

1. Enhance the teaching/learning process with a wide variety of technologies for all students and teachers regardless of gender, race, ethnicity, socioeconomic status, mental or physical limitations, geographic locations, or national origin by adhering access to a variety of technologies.

3. Integrate technology throughout the curriculum " (Id. p. 6, emphasis added)

"Professional development for educators is imperative if technology is to be effectively used in the teaching/learning process." (Id. p. 9)

"A professional development plan supporting effective use of technology should:

3. Ensure equitable access to professional development opportunities for all regardless of school district." (Id. p. 11)

7. The State Plan for Technology also quotes with approval Margaret Meade: "Teachers who never heard a radio until they were grown up have to cope with children who have never known a world without television. Teachers who struggled in their childhood with a button hook find it difficult to describe a button hook to a child brought up among zippers. Faced with this unwieldy circumstance, the modern teacher becomes not more but, in a sense, less fitted to teach the longer she teaches. We, then, as a society, and particularly those of our society who profess an interest in education, have a problem to solve.11 (Joe Winnenberg Tr. 794; Pl. Exh. 20)

8. A state-wide study of technology was completed by the State of Ohio Education Technology Equity Commission commissioned by the General Assembly (119th General Assembly, Substitute House Bill Number 671). (Pl. Exhs. 33, 34, 35)

9. Section II of the study (Pl. Exh. 34) includes an analysis of various aspects of technology by income strata of school districts and indicates that wealthy school districts have greater access to many aspects of technology than poor districts. Some of the disparities identified in that report include:

a. 15.7 percent of the poorest school districts have a cable access channel available while 55 percent of the wealthiest districts have such access. (Id. p. 14)

b. 37 percent of the poor schools have access to a dedicated modem line while 59.5 percent of the wealthiest schools have the same access. (Id. p. 18)

c. Similarly, 40 percent of the poorest schools have access to a full-time library or media specialist while 57 percent of the wealthiest have the same service. (Id. p. 20)

d. There is a "wealth related basis" to the disparity in library facilities, reporting that 6 percent of the poor schools have an automated library system

while 22.3 percent of the wealthy have the same service. (Id. p. 21)

e. Less than one-half of one percent of the poorest schools have computer systems linked to other buildings while 6.73 percent of the wealthiest districts are net-worked. (Id. p. 22)

f. 5.5 percent of the poorest districts have an on-line information service available, but that figure rises to almost one-third of the schools in the wealthiest districts. (Id. p. 22)

g. While only 17 percent of the poorest schools have available CD-ROM reference sources, 33 percent of the wealthiest schools have CD-ROM references available. (Id. pp. 21-22)

h. The wealthiest districts have a "substantial advantage" in greater access to TV/VCR resources for teaching. (Id. p. 27)

10. It is a policy of the Ohio Department of Education that all local school districts in Ohio ought to have more access to technology, at least to some minimally uniform level. (Goff Depo. 203)

11. Not local school districts in Ohio have minimally adequate access to the use of technology. (Goff Depo. 203)

12. The educational need for access to technology is the same for children in wealthy school districts as for those in poor districts. (Sanders Tr. 300; Schiraldi Depo. 160)

13. Poor school districts tend to have less access to computers and many other elements of technology than wealthy districts. Current levels of access to technology are less than what they need to be for the education of our children in the 1990s. (Sanders Tr. 299-300; Goff Depo. 202)

14. To bring about the use of technology and instruction as anticipated by the State Board of Education's State Plan for Technology, it will take additional state-wide funding to make the technology available and also to teach teachers how to use that technology. (Schiraldi Depo. 158; Sanders Tr. 301)

15. Apart from the administration of legislative appropriations for technology grants, the Department of

Education has done nothing to make it possible for school districts to acquire the kinds of technology that are the subject of the State Board of Education's overall technology plan. (Goff Depo. 201)

16. Some states provide greater access to technology in their public school systems than Ohio through the commitment of state funds. (Russell Depo. 36)

17. The goals of the Ohio Department of Education include movement to a performance-based system of education in Ohio that will help in attaining the six national goals of Education 2000. Technology is one of the tools to achieve those goals. (Russell Depo. 41-42)

18. The first priority for the expenditure of school district funds is to provide a program meeting minimum standards. Only if funds are available after that can the district invest in technology. (Sanders Tr. 4584)

19. President Ocasek is aware of the survey performed by the Ohio Department of Education, cataloging the various elements of educational technology available in public schools. The survey concluded that there is inadequate access to technology at all levels of public education in Ohio, K-12. The study further concluded

that districts that have high fiscal capacity have a greater level of access to technology than those with low fiscal capacity. President Ocasek testified that he has observed this situation. (Ocasek Tr. 2831)

20. Technology is very important for the education of public school students. The benefits of technology, according to President Ocasek, are indisputable. He testified that not only must we buy the hardware and obtain the technology, but schools also need in-service training. President Ocasek testified that educators in Ohio need to be trained to literally get them into the 21st century. This training will require additional funding. Both the State Department of Education and the State Board of Education are strongly in favor of in-service training programs for teachers to become knowledgeable in the use of technology. (Ocasek Tr. 2833)

21. Substitute H.B. 671 allocated \$5 million for technology grants. The amounts applied for or requested by school districts and consortiums totalled over \$36,326,000. (Stip. 19; Stip. Exh. 18, 19)

22. For FY94, the equity technology grants appropriated in the budget bill total \$7.5 million, and for FY95 \$8

million is appropriated. The amounts for FY94 and FY95 for equity technology grants will not fulfill the applications of the school districts that applied for the \$5 million available in FY93. (Browning Tr. 440809; Stip. 20)

23. Director Browning could not give any assurance that there will be any technology funds available to school districts after July 1, 1995. (Browning Tr. 4409)

24. Senator Aronoff testified that after FY95, there are no assurances to any school district that there will be any technology funds available. (Aronoff Tr. 4857)

25. State minimum standards do not require any particular types or levels of education technology to be employed in the public school system. McMurrin Testimony, T.p. 2568-2569.

TECHNOLOGY IN PLAINTIFFS SCHOOL DISTRICTS

DAWSON-BRYANT

26. The Dawson-Bryant Local School District's share of an equity technology grant through a consortium in FY93 provided only \$50,000 for a computer lab in two 1st

grade rooms at Deering Elementary to assist students in early language development. No such laboratories were implemented at the Monitor Elementary building.

(Washburn Tr. 2380-81)

27. At Dawson-Bryant, there is only one computer lab for all 7th and 8th grade students, consisting of eight computers; these computers have only been available in the last two years. At the high school, the district has one lab consisting of 20 computers to serve all high school students, which has only been available in the last two years. The district has a technology plan calling for integrating technology into all facets of instruction, beginning at the primary level, but the district does not have resources even to begin to implement that plan. Technology at Dawson-Bryant is not adequate. (Washburn Tr. 2418-20)

28. Jamie Blankenship testified that none of her teachers used the computer to teach. (J. Blankenship Depo. 8)

29. There are no computer programming courses available at the Joint Vocational School where students from Dawson-Bryant Local School District attend. (Jackson Depo. 8)

30. At the elementary level, Christopher Jackson had

available to him two TRS computers, which were outdated and seldom used. (Jackson Depo. 16-17) At the intermediate level, Chris could not get into the room to use the computers because they were in the math room and there was no computer class. The computers were Tandy Radio Shack 80's and were available irregularly during math class only. (Jackson Depo. 18-19)

31. Dawson-Bryant High School needs a bigger computer lab, because so many students signed up for a computer course that students were almost closed out of the room. (Jackson Depo. 22) The high school lab needs more computers and more space because the lab is crowded. The lab does not have enough equipment including computers and modems, and did not have enough software. (Jackson Depo. 13) Coal dust comes into the lab, which disabled many of the previous computers, and the lab is not properly lighted or properly heated. (Jackson Depo. 22)

32. In contrast to the technology available at DawsonBryant Local School District, pupils in the intermediate level at the Beachwood City School District have a full computer laboratory. Computers are used to access other school districts, including contacts with Finland and Germany, as well as other schools within the United

States by way of computers. (McMurrin Tr. 2517)

33. Beachwood City Schools not only provides technology to its pupils and teachers, but also has available resources to train individuals in the use of that technology, as well as to repair and maintain the technology when necessary. (McMurrin Tr. 2545-46)

LIMA

34. Plaintiff Lima City School District has been unable to keep up with the technological needs and the special education needs of the students in the district. (Eaton Depo. 41-43)

35. Although Lima has a substantial number of Computers and many classes have one computer available, the computers are Apple IIEs that are out of date. With only one computer in a classroom, it is virtually impossible to integrate the use of that computer into the educational program. At least three quarters of the staff have not had any training on the use of the computers that are available. (Buroker Tr. 2923-24)

36. At some elementary buildings in Lima there is only one television and video player per floor for use on a

shared basis. The middle schools have computer labs consisting, again, of Apple II(E) computers that are not interconnected. (Buroker Tr. 2925)

37. The libraries in the Lima City Schools are not computerized. A consortium of which Lima City Schools is a member received a one-time equity technology grant of approximately \$385,000. Lima's share of the grant will be used to computerize the library catalogues. (Buroker Tr. 2926; Stip. Exh. 19)

NORTHERN LOCAL

38. Plaintiff Northern Local School District does not have the resources, personnel or materials available to give the students the hands-on opportunity to use computers in the classroom. (Miller Tr. 1623)

39. It is possible that a student could graduate from high school at Northern Local without ever having used a computer. (Miller Tr. 1624)

40. Phyllis Spohn's 2nd grade class at Glenford Elementary only has access to one computer, an old Apple IIC. That computer can only be used for word processing because there is no other software available. (Spohn Depo. 33)

41. There is no computer laboratory at the Thornville Elementary or Glenford Elementary Schools in the Northern Local School District. There is a computer laboratory at Sheridan High School, which contains 20 computers for grades six through twelve. There are approximately 41 computers for the 34 elementary classrooms in the district. Most of these computers were obtained through lottery funds back in the 1980s. The district was able to purchase 8 or 10 of the computers with the help of local grocery stores. (Johnson Tr. 1428-29)

42. In 1992, Northern Local School District applied for a technology grant of \$101,583 from the State of Ohio but did not receive the grant. The demand for computers in the district exceeds the availability of computers. The district needs laboratories at the elementary school level, and separate laboratories at the middle school and senior high school level. The district also needs printers, software, CD-ROMs, and funds to train all staff in the use of computers. It would cost the district between \$75,000 and \$100,000 to equip one room in the school district for distance learning. (Miller Tr. 1625; Johnson Tr. 1472-73; Stip. Exh. 18)

43. Dilbone compared the technology at Granville High School in the Granville Exempted Village School District with the technology at Northern Local. Plans at Granville High School for computers include a comprehensive program for in-servicing of students and teachers and for maintenance, with a goal to provide a computer for each student within the next 2-3 years. In the 1993-94 school year, the district plans to connect computers with InfoOhio and Internet. Internet is a networking system with thousands of computers throughout the world for research and communication including libraries and satellites. Under the plan, students will have access to the schools' computer network and the research available on the school system from their home computers. (Dilbone Tr. 2000-01)

44. At Sheridan High School and Junior High, computers were purchased with pop machine money proceeds and through Big Bear receipt campaigns, and computers were bought on a piecemeal basis. The district did not have the ability to in-service teachers or to buy the proper software. (Dilbone Tr. 2002)

SOUTHERN LOCAL

45. Mr. Joseph Winnenberg is Chairperson of the Southern

Local School District Technology Committee. This is not a paid position. The committee's responsibilities pertain to technology in the school district and related primarily to computers. (Joe Winnenberg Tr. 748-49)

46. The Technology Committee at Southern Local was formed in 1991. At that time, the school district had in the high school three MacIntosh computers, and a couple of Apple IIEs. There were several other computers for use in grades K-8. In the early 1980s, the Southern Local School District was able to secure a couple of Apple IIEs, and finally ended up with 12 of those computers by the mid-1980s. However, due to lack of funds, the school district was unable to purchase any computers after that, and also was unable to provide basic maintenance for the existing computers. (Joe Winnenberg Tr. 750)

47. Southern Local School District is unable to meet most of the goals contained in the State Technology Plan, adopted by the State Board of Education. (Joe Winnenberg Tr. 795-99; Pl. Exh. 20)

48. The high school at Southern Local has only two working VCRs and two overhead projectors. The only other

technology available to teachers includes a couple of working film strip projectors, an antiquated film library, a couple of working cassette records, old record players, one portable piano, and two portable cassette recorders along with Whittle Communications. (Spangler Tr. 473-75; Joe Winnenberg Tr. 752)

49. In the 1992-93 school year, with only four computers at the high school, Mr. Winnenberg had between 50 and 60 students in the computer classes. There were far more students who desired to take those classes than could be accommodated. In fact, there were between 100 and 120 students who requested to be placed in the computer courses. The school district was unable to add any more computer courses because Mr. Winnenberg was carrying a maximum course load, and there was no more time in the teaching day for him to teach these courses. Due to the desire of students to use the limited number of computers, students would stay after school to work on the computers. (Joe Winnenberg Tr. 752-53)

50. By the end of June 1993, the high school was down to one working printer. Mr. Winnenberg is the individual who repairs printers and computers, but he could not find parts for the outdated equipment. There

were no funds available to repair the printers and other equipment. (Joe Winnenberg Tr. 753-54)

51. At the beginning of the 1992-93 school year, Mr. Winnenberg received one box of paper that was to last him throughout the year for his courses. That box of paper lasted one grading period, consisting of six weeks, and there are six grading periods in a school year. To obtain additional paper for use in their classes, the Desk Top Publishing class was able to raise a limited amount of funds through selling football programs and the school newspaper. These funds amounted to approximately \$100. With those monies, paper, toner cartridges, and printer cartridges were purchased. In order to obtain additional supplies, Mr. Winnenberg made the difference up out of his own pocket, contributing in excess of \$100 toward the purchase of additional paper and printer cartridges. He was not reimbursed for these expenses. In addition, Mr. Winnenberg has expended his own funds on material purchases prior to the 1992-93 school year. (Joe Winnenberg Tr. 755-56)

52. The Technology Committee at Southern Local visited the Upper Arlington School District and Reynoldsburg School District, to determine what those districts were doing

in the area of computer technology. It was difficult for the teachers who served on the Technology Committee to make these visits, since there are no funds available to hire substitute teachers. (Joe Winnenberg Tr. 757-58)

53. In the Upper Arlington School District, the Technology Committee saw excellent computer laboratories. The school district had Computer Assisted Design (CAD) systems. In their music laboratory, the Upper Arlington School District had a number of keyboards connected to computers. Students were able to compose music and listen to that music being played through the computer. There were 10 to 15 computers attached to keyboards and additional CAD stations. (Joe Winnenberg Tr. 759)

54. In the elementary school that the Technology Committee visited in Upper Arlington, there were a number of mini-computer labs, to which the students had access in close proximity to their classrooms. These laboratories were equipped with computers and printers. (Joe Winnenberg Tr. 760-61)

55. The Technology Committee also visited a junior high school in the Reynoldsburg City School District. During every period of the day, a computer technology and

basic computer literacy class were offered to 8th grade students. (Joe Winnenberg Tr. 761)

56. The charge of Southern Local School District Technology Committee was to formulate a technology plan for the school district. One plan considered using computers as teaching tools, but the cost of this approach was well beyond the financial means of the district. (Joe Winnenberg Tr. 762)

57. Technology in the schools is important. First, students are able to see the correlation between their academic learning process and what they probably will do in real life to create products. Second, technology is a tool by which people will gain employment in the future. Mr. Winnenberg testified that if a student does not understand technology, and does not see a relationship between using technology and completing the task, then the student will not be employable in today's job market. (Joe Winnenberg Tr. 763-64)

58. Southern Local was successful in obtaining a Jennings Grant for approximately \$3,000, the proceeds of which were used for a series of workshops for teachers in the summer of 1993. However, since the school district was experiencing computer problems at that time, it was

forced to change the location of the workshops to the New Lexington School District. (Joe Winnenberg Tr. 766)

59. The total cost for the technology plan prepared by the Southern Local School District Technology Committee was between \$300,000 and \$400,000. (Joe Winnenberg Tr. 767-71; Pl. Exh. 91)

60. Although Southern Local School District's technology needs were in excess of \$300,000, they were told by an employee of the State Department of Education of Ohio to apply only for approximately \$100,000 of state technology funds. Superintendent Carol Spangler and Mr. Winnenberg prepared the grant application for state technology funds. Mr. Winnenberg spent between 30 and 40 hours of time, for which he was not compensated. There is no grant writer for the school district. (Joe Winnenberg Tr. 769-70, 772)

61. The Southern Local School District was granted \$90,000 from the state technology fund. (Joe Winnenberg Tr. 773) Only 14 school districts, and consortia of school districts, were awarded technology grants totalling \$3.96 million. (Stip. Exh. 19)

62. By the rules of the technology grant from the state of

Ohio, the Southern Local School District is not permitted to use any of the funds for maintenance and repair of equipment. Thus, the district is not permitted to expend any of the monies on maintenance contracts for any newly-purchased equipment. (Joe Winnenberg Tr. 775-76)

63. As part of the technology plan for Southern Local School District, a technology-coordinator was to be hired by the district, but there are no funds available to hire a person for that position. (Joe Winnenberg Tr. 776)

64. Fifteen percent (15%) of the technology funds were specified for teacher training. However, this was not enough funds to provide enough training to implement the technology plan in the Southern Local School District. The six hours of training provided by 15 percent of the grant funds was not sufficient for teachers to make good use of computers in the classroom. (Joe Winnenberg Tr. 779-80)

65. There are no funds available for installation of the equipment purchased with technology funds. Rather, Mr. Winnenberg must install the computers and printers, without compensation. Due to the demands upon Mr.

Winnenberg's time, there has been a delay in installing the new computers and printers. (Joe Winnenberg Tr. 777)

66. High school computer students are being used to teach teachers and other students on the use of computers. The Southern Local School District cannot accomplish the goals that were set forth in their technology plan. (Joe Winnenberg Tr. 780, 782)

67. During the 1993-94 school year, the school district had 53 computers operating with close to 30 printers in use. The computer classes ran out of paper during the second week of school, exhausting the one box of paper that was issued for the school year. Each teacher in the Southern Local School District gets only one box of paper to last the entire year. (Joe Winnenberg Tr. 783-84)

68. The Southern Local School District intends to apply for further state technology grants; however, this year's application for technology funds from the Ohio Department of Education stated that schools who receive grants during the prior year are not eligible in the following year. (Joe Winnenberg Tr. 787)

69. The decrease in the amount of funds available for teacher education in the Southern Local School District is problematic. Teacher education is extremely important and teachers must keep up, because technology is moving ahead so quickly. (Joe Winnenberg Tr. 792)

70. Channel 1 is provided by Whittle Communications and the equipment for it was also provided by that organization. Other than Channel 1 and the link to the computer A-Sight for EMIS, the Southern Local School District has no link to the outside world. (Spangler Tr. 474-75)

71. Students at Southern Local have had no instruction upon computers at the elementary or junior high levels, and access to any computers at those levels has been very limited. (Thompson Tr. 1351)

72. Computers are not integrated into the science classes or laboratories at Southern Local. (Thompson Tr. 1349-50)

YOUNGSTOWN

73. One out of 29 libraries in the Youngstown City School District is computerized. Funding for computerizing

that library was primarily through Chapter II funds.

(Marino Tr. 3268-69)

74. Students who attend school in Plaintiff Youngstown City School District lack technology in the classroom. The school district lacks computers, computer labs and software. The school district also lacks science labs.

(Kolitsos Depo. 34)

75. Youngstown City School District does not have a systematic method for introducing technology into the curriculum. The district simply cannot afford to purchase the necessary computer equipment. (Hiscox

Depo. vol 2, p. 27)

76. Youngstown City Schools would purchase more computers for regular education, but cannot due to lack of

resources. (McGee Depo. 80)

77. High Schools in the Youngstown City Schools have two computer laboratories, one available only to students who need proficiency intervention and one lab open to all students. The laboratories for the proficiency

intervention were purchased through DPIA funds and teachers for the lab are paid for through DPPF and DPIA funds. The restriction on the use of the labs to only

those students not yet passing the proficiency test is a matter of logistics; only so many students can use the limited number of computers and a large number of students have not yet passed the test. (Marino Tr. 3344-45) Each lab open to all students had 15 to 18 computers in FY93. Due to the closing of South High School, for FY94 each lab open to all high school students has about 30 computers for as many as 1,200 students. These must be shared by all teachers in all areas of the curriculum. Access to computers in Youngstown's high schools is inadequate. (Marino Tr. 3266-68)

I. MINIMUM STANDARDS

A. MINIMUM STANDARDS EVALUATIONS THROUGHOUT OHIO PRE-1983 STANDARDS

1. Prior to 1983 and at the time of the Walter decision, there were in effect separate minimum standards for elementary, junior high, and high school. (Drummond Depo. 10)

2. The pre-1983 minimum standards were divided into standards for elementary schools and for high schools. (Stip. 96) and evaluations were also divided into

elementary and high school. The process involved one consultant from the Department of Education spending a day per building with a prescribed set of items on a checklist. The consultant visits to classrooms varied from a matter of very few moments to entire class periods. (Schiraldi Depo. 27-29; Schiraldi Depo. Exh. 1)

3. Facilities were examined and noted in the pre-1983 standards evaluations including such things as the learning environment and its cheerfulness, the variety of instructional products that were on display, the color and brightness of the room, and whether the room was conducive to the emotional conditions of learning. (Schiraldi Depo. 32)

4. Some of the items noted during pre-1983 evaluations at the elementary level, included number of outlets in a room, quality of lighting, the numbers of books in libraries or media centers, the availability of seating in those rooms, the requirement for running water to be available in the media center, the dates of textbooks and encyclopedias in the library, and availability of reference materials. Textbooks with copyright dates of over 5 years were identified as needing attention. (Schiraldi Depo. 33-34)

5. For pre-1983 high school evaluations, evaluators typically spent a day at each high school regardless of the numbers of pupils who attended there. High schools evaluated in one day ranged from 200 to 300 students to 2,000 students. (Schiraldi Depo. 45-46) At the secondary level, pre-1983 standards required a certain number of seats in the library, running water in the library, a dust removal system in the industrial arts area, current health environmental inspections, and having certain forms on file from health and fire officials. (Schiraldi Depo. 40-41) The checklist for evaluation of Ohio high schools also included such things as requirement of numbers of volumes of books in the library based on level of enrollment, the requirement of expenditure for library books based on the level of student enrollment, and sufficient electrical outlets in each room; physical education facilities with tack board and chalk board, area for reference materials, locker rooms and locker facilities based on the level of enrollment, shower facilities based on class enrollment, and facilities for staff; facilities for science with adequate safe chemical storage, apparatus and equipment storage, reference materials area, preparation room, lighting for the visual task to be accomplished, utilities at students'

stations, and an exhaust system. (Schiraldi Depo. Exh. 1; pages marked 1-19)

1983 MINIMUM STANDARDS

6. In 1983, the Ohio Department of Education implemented OAC Chapter 3301-35, "Standards for Kindergarten Through Twelfth Grade," which replaced the previous standards published in 1968 for high schools and in 1970 for elementary schools. (Drummond Depo. 25, 28; c.f., Pl. Exh. 409, 410 and 411; Stip. 95, 96)

7. The pre-1983 standards focused on facilities, copyright dates, and physical conditions. The 1983 standards constituted a major shift in focus to curriculum processes in teaching and learning. (Schiraldi Depo. 65-66) In the 1983 standards, there were no specific physical requirements but rather facilities standards were determined by what was prescribed in the instructional program. Evaluations under the 1983 standards became a less quantitative process. (Schiraldi Depo. 74; 77; 79)

8. The Department published two series of documents that address the various requirements of the 1983 standards. These documents were titled the "Implementation Series"

and the "Leadership Series" and were designed to help school districts implement the 1983 minimum standards. The booklets were disseminated to all school districts in the state. (Schiraldi Depo. 87; Spangler Tr. 55455; Washburn Tr. 2401; Pl. Exh. 56-78)

9. The Leadership Series states in the Forward of each of those documents: "As was the case with most of the documents in the original implementation series, the leadership series serves to specify the requirements of standards." (Pl. Exh. 69-78)

10. There were no school evaluations during the year in which the 1983 standards were implemented. (Schiraldi Depo. 73) Due to the suspension and time for implementation of the standards, some school districts in Ohio may not have been evaluated for six to eight years. (Schiraldi Depo. 83-84)

11. The first year of evaluation under the 1983 minimum standards was the 1984-85 school year. (Drummond Depo. 29; Schiraldi Depo. 73)

12. Evaluation of school districts under the 1983 minimum standards involved the consultant from the State Board of Education checking a box on a form as to whether

certain obligations were being fulfilled and programs were being provided by each school district. (Pl. Exh. 339; Schiraldi Depo. Exh. 2; Taylor Depo. 57)

13. School districts were required to fill out forms in preparation for evaluations under the 1983 minimum standards. The documents involve determining the amount of time spent in certain areas of instruction, a self-evaluation filled out by the school district, a check list of policies adopted by the board of education, and an outline of steps to take to prepare for a standards evaluation. (Pl. Exh. 340, 341, 342, and 343)

14. When evaluations under the 1983 minimum standards were in effect, evaluators visited between 60 and 70 school buildings per year. (Drummond Depo. 37)

15. Under the 1983 minimum standards, all courses of study for school districts were required to be submitted to the Department of Education before that instruction was delivered to students. (Schiraldi Depo. 109-10) Under the 1983 minimum standards, courses of study were not judged by their content. They were reviewed only for required components including, (1) letter of approval from the appropriate Board of Education, (2) inclusion

of philosophy and goals, (3) scope and sequence, and (4) evaluation section. If those four elements were present, then the courses of study would have met the necessary requirements. (Schiraldi Depo. 113-14)

Department of Education consultants reviewed approximately 15,000 to 20,000 of those courses of study annually (including non-public and public school districts) and spent approximately 45 minutes per volume in that review. (Schiraldi Depo. 116; 119)

16. Under the 1983 minimum standards, courses of study were required to be approved every five years. A school district might have its board approve a course of study without any revisions, submit a copy for approval, and the course of study without any revisions would receive another five year approval. (Schiraldi Depo. 122-23)

Other than the evaluation of school districts for minimum standard compliance, which was a one-day visit every five years, the Ohio Department of Education has no information to indicate whether courses are actually being taught in accordance with courses of study on file. (Schiraldi Depo. 126-28; Goff Depo. 74; Drummond Depo. 57)

17. In the 1983 standards evaluation process, the evaluator would check to see if criteria and procedures were in

place in order to conduct such a review, and the evaluator would determine the date of the last review. The evaluation would not determine the effectiveness of the district's educational program and resources. (Drummond Depo. 50)

18. The requirement under the 1983 minimum standards that school districts review their curriculum every five years does not mean that course materials must be current within a five-year cycle. If a local school district decides that their materials are current, there is no limit as to how old course materials may be. (Goff Depo. 74)

19. With respect to promotion and retention of students, criteria required under the 1983 standards, the evaluator would not determine whether the criteria set out by the school district were good or bad, but rather the determination was whether criteria existed. (Drummond Depo. 67)

20. Under 1983 minimum standards evaluations, written position descriptions for certificated and classified staff were not evaluated by the quality of the written description, but rather the inquiry was one of determining whether the position description existed.

(Drummond Depo. 72)

21. In regard to procedures for notifying parents of pupil achievement, conduct and attendance problems, the evaluator under the 1983 standards looked for the existence of a written procedure and did not evaluate the merits of the procedure. (Drummond Depo. 87)

22. The 1983 minimum standards require that there be in-service for both classified and certified staff. The evaluator only looked to see that an in-service activity had been scheduled and did not determine whether that activity was meritorious. (Drummond Depo. 90)

23. Under 1983 minimum standards evaluations, the evaluator did nothing to examine the level of quality of a lesson plan being taught in a school classroom or how that lesson plan was delivered by teachers. The only review that was undertaken was to determine whether a lesson plan existed. (Drummond Depo. 110-18, 125)

24. After a minimum standard evaluation visit at a local school district, a school district where deficiencies were found enters a period known as "reconciliation." (Goff Depo. 66)

25. During the reconciliation period, a report from the Department of Education would be sent to the local school district, and the school district would be given the opportunity to either correct information on that report or, if the information was found to be correct, the Department would provide a timeline to make necessary adjustments to bring the school district into compliance with minimum standards. (Goff Depo. 66-67)

26. Under the 1983 minimum standards, evaluators made no assessments of the conditions of buildings in which educational programs were operated unless the condition of the building interfered with implementation of the curriculum. (Drummond Depo. 161)

27. Under the 1983 minimum standards, there was no limit to the numbers of pupils that might be in one class as long as the averages of all classes in the district met the 25 to 1 pupil to teacher ratio set out in the standards. (Drummond Depo. 185)

28. Under the 1983 minimum standards, any child could progress through 12 years of public education and never have the opportunity to operate a computer. (Drummond Depo. 185)

29. The library standards under the 1983 minimum standards would be satisfied if an area of a school was designated as a library and accessible to people regardless of whether that area was supervised.

(Drummond Depo. 188)

30. The ten most frequent violations of 1983 minimum standards found in school district evaluations were as follows:

- a. Fire inspection and correction;
- b. Health inspection and correction;
- c. Course of study adoption and ODE approval;
- d. Library expenditures (one-half of one percent);
- e. Self-evaluation of program and resources;
- f. Teacher and administration certification;
- g. Board policies;
- h. Instruction time allocations (Grades K-8);
- i. Safety drills; and
- j. Instructional equipment and materials.

(Pl. Exh. 406; Drummond Depo. 146; Drummond Depo. Exh. 10; Goff Depo. 72)

31. Under the 1983 minimum standards, it is possible to

complete public education in a program meeting the 1983 minimum standards and not have the necessary skills to move into the world of work or higher education.

(Russell Depo. 45-46)

32. The State Board of Education is charged to "Formulate and prescribe minimum standards to be applied to all elementary and secondary schools in the state for the purpose of requiring a general education of high quality. Such standards shall provide adequately for: a curriculum sufficient to meet the needs of pupils in every community; . . . efficient and effective instructional materials and equipment, . . . buildings, grounds, health and sanitary facilities and services; admission of pupils, and such requirements for their promotion from grade to grade as will assure that they are capable and prepared for the level of study to which they are certified . . ." (R. C. Section 3301.07(D))

33. The 1983 minimum standards do not insure a general education of high quality as reflected by the large number of pupils that do not pass the 9th grade proficiency tests. (Sanders Tr. 4592)

34. Dr. Sanders is aware of no instance in which the

charter of a public school district has ever been challenged for failure to comply with the 1983 minimum standards. (Sanders Tr. 4600)

35. In March 1992, State Superintendent Sanders suspended evaluations under the 1983 minimum standards, and no on-site evaluations have been conducted of any school districts since that time. Minimum standard evaluations were suspended in order for the Department to spend more time on intervention activities in school districts. All of the 1983 state minimum standards are presently in the process of revision and are expected to be finalized in 1994. (Russell Depo. 44; Ocasek Tr. 2857; Drummond Depo. 170; Stip. 97)

36. There is no intent to resume compliance evaluations under the 1983 Minimum Standards. Those persons formerly responsible for the conduct of routine school evaluations were reassigned to duties assisting schools that had failed to pass the 9th grade proficiency tests to the greatest extent. (Sanders Tr. 399-401)

37. Since March of 1992, no public school (excluding the schools run by the Ohio Department of Youth Services and the Ohio Department of Rehabilitation and Corrections) has been subject to a scheduled evaluation

in the five year cycle for compliance with the 1983 Minimum Standards. (Stip. 98)

38. President Ocasek agreed that the 1983 Minimum Standards are in need of revision. One of the reasons for revision is the need to bring substance to educational problems. Another goal is to insure that students have a chance to learn. (Ocasek Tr. 2858)

39. When the 1983 minimum standard evaluations were discontinued in March of 1992, there were some outstanding violations of minimum standards by school districts. (Goff Depo. 71)

40. The State Board's goal for outcome based education includes a movement to performance based standards. The suspension of evaluation of the 1983 minimum standards is part of that movement. (Russell Depo. 43)

41. Ohio presently provides public elementary education on a "factory model" concept by which children are moved from grade to grade regardless of whether they have learned what is expected of them. Generally, the 1983 State Minimum Standards embody the "factory model" concept of public education. Those standards have been described by Dr. Sanders as ones by which boards of

education are judged by the eloquence of their policies rather than the quality of education provided students.

(Sanders Tr. 288-90)

42. The Department of Education has not determined any school district to be in or out of compliance with minimum standards since March 1992. (Drummond Depo. 180; see Stip. 98)

43. Minimum standards have evolved from a process of defining input in the pre-1983 standards, to defining a combination of inputs and expectations in the 1983 standards to a stage now where defining educational output is the focus. (Schiraldi Depo. 211)

44. The standards evaluations were on a five-year cycle. (Stip. 97) Thus, one-fifth of all Ohio school districts, which were scheduled to be evaluated in the year standards evaluations were suspended, have not been evaluated in nearly seven years. (Stip. 97)

45. Since the ODE's last evaluation for minimum standards of each of the Plaintiff school districts at various times ranging from 1988 to 1991 (Stip. 99), the ODE can give no assurance of whether the Plaintiff school districts are currently in compliance with minimum

standards. (Drummond Depo. 166)

B. MINIMUM STANDARDS IN PLAINTIFF DISTRICTS

DAWSON-BRYANT

1. The Dawson-Bryant Local School District does not have adequate funding to meet the following 1983 minimum standards found in Ohio Administrative Code 3301-05:

(1) Intervention is not provided according to pupil needs. (Washburn Tr. 2411; O.A.C. 3301-35-02(B)(2)(d))

(2) Ohio Studies is not offered to students. (Washburn Tr. 2412; O.A.C. 3301-35-02(B)(5))

(3) Art instruction is not provided for 7th or 8th grade students for at least 80 minutes per week. (Washburn Tr. 2413; O.A.C. 3301-35-02(B)(12)(c))

(4) Required science laboratory courses are not provided for students at the high school level. (Washburn Tr. 2413; O.A.C. 3301-35-02(B)(13)(b)(xii) and (B)(8)(a)(i))

(5) Two staff members do not have certification for the subject area that they are teaching. (Washburn Tr. 2413; O.A.C. 3301-35-03(A)(2))

(6) There is no professional library for staff. (Washburn Tr. 2413; (O.A.C. 3301-35-03(A)(11))

(7) Instructional materials and equipment at Dawson-Bryant are not current. Out-of-date textbooks include: World Geography, 1980; Problems of American Democracy, 1984; World History, 1980; Accounting, 1982; Economics, 1978; Reading Series District Wide, 1985. Those textbooks are not current. (Washburn Tr. 2414; O.A.C. 3301-35-03(B)(1)(b))

(8) District libraries other than the high school are not staffed by a certificated librarian or supervised by a certificated librarian. Further, libraries are not available throughout the school day, as required. (Washburn Tr. 2414-15; O.A.C. 3301-35-03(B)(2)(b))

(9) In FY93, the district did not spend one-half of one percent of its budget on libraries. (washburn Tr. 2415) No library purchases can be budgeted in

FY94. (Washburn Tr. 2376; O.A.C. 3301-35-03(B)(2)(d))

(10) District libraries do not have facilities to accommodate the enrollment and educational goals of the school. (Washburn Tr. 2409-10; O.A.C. 3301-35-03(C))

(11) None of the buildings at Dawson-Bryant meet the requirement that school buildings have first-aid facilities and space for placement or isolation of ill students. (Washburn Tr. 2415-16; O.A.C. 3301-35-03(C)(1))

(12) School guidance services are not provided for pupils in K-12 grade in accordance with the boards' written guidance plan. Services do not include systematic aid to pupils regarding the required areas. (Washburn Tr. 2416- 1a; O.A.C. 3301-35-03(H))

(13) Physical education programs cannot be provided at the elementary levels because the district does not have the facilities. (Washburn Tr. 2406; O.A.C. 3301-35-03(C); Pl. Exh. 64 p. 45-50)

2. Other areas of deficiency at the Dawson-Bryant Local Schools that are covered by the state minimum standards and addressed in ODE's publications regarding the minimum standards include:

(1) Kindergarten students are not provided with a quality music education program for three 20 - minute instructional periods a week with a music specialist. (Washburn Tr. 2404-05; Pl. Exh. 64, p. 22)

(2) The district has no educational options program, because staff shortages prevent the necessary supervision. (Washburn Tr. 2406-07; Pl. Exh. 65)

(3) Competency assessment and testing resources, and personnel are deficient. (Washburn Tr. 2407-08; Pl. Exh. 66)

(4) The district has not been able to provide any foreign language before the 9th grade, no in-service education for the foreign language teacher, and no type of electronic assistance for foreign language classes. (Washburn Tr. 2409; Pl. Exh 71 pp. 22; 27; 29)

(5) The district's libraries do not have materials to meet minimum collection guidelines. (Washburn Tr. 2410-11; Pl. Exh. 76, Appendix E)

LIMA

3. The Lima City School District is unable to comply with the 1983 state minimum standards in the following areas:

(1) The district is unable to provide appropriate pupil intervention for those not achieving at an acceptable level as evidenced by pupil performance on standard achievement tests and pupil performance objectives, and as evidenced by passage rates on the 9th grade proficiency test.

(OAC 3301-35-02(B)(2)(d))

(2) Textbooks are not current. (Buroker Tr. 2958-59; OAC 3301-35-03(B)(1)(b))

(3) The district provides no elementary guidance services. (Buroker Tr. 2959; OAC 3301-35-03(H))

NORTHERN LOCAL

4. Plaintiff Northern Local School District is not able to meet the 1983 minimum standards with respect to:

(1) The amount of money required to be spent for library supplies and materials is not met (OAC 3301-35-03(B)(2)(d))

(2) Intervention with students at the elementary level is not according to pupil needs and is not adequate. (OAC 3301-35-03(b))

(3) Instructional materials and equipment are at times inadequate at all grade levels. (OAC 3301-3503(B)J

(4) The district has also not been able to provide the in-service for the staff that is needed. (Johnson Tr. 1481-82; OAC 3301-35-03(A)(9))

5. The following violations of the 1983 minimum standards exist at Glenford Elementary in the Northern Local Schools:

(1) Materials are not adequate to support attainment of objectives specified in courses of study. (Papritan Tr. 1964; O.A.C. 3301-35-03(B))

(2) There is no space for temporary placement or isolation of an injured pupil. (Papritan Tr. 1964; O.A.C. 3301-35-03(C)(1))

(3) Intervention is not provided according to pupil needs. (Papritan Tr. 1964; O.A.C. 3301-35-02(B)(2)(d))

(4) Textbooks are not available for teacher and pupil use at each grade level, and textbooks are not current. (Spohn Depo. 25; OAC 3301-35-03(B))

(5) Reference materials in the library are not current and the encyclopedia set does not have a reference date within the past five years. (Spohn Depo. 39; OAC 3301-35-03(B)(2)(iv))

(6) The library is not properly staffed and library services are not available throughout the school day. (Spohn Depo. 66; OAC 3301-35-03(B)(2)(b))

SOUTHERN LOCAL

6. The following are some of the areas in which the Southern Local School District is does not meet the 1983 minimum standards as described by the Ohio

Department of Education 1983 Minimum Standards

Implementation Series publications:

(1) Southern Local does not have a designated equipment coordinator and no new equipment has been purchased in two and one-half years.

(Spangler Tr. 560; Pl. Exh. 59, p. 9)

(2) The libraries do not contain adequate reference materials that are current. (Spangler Tr. 560-61;

Pl. Exh. 59, p. 14-15)

(3) The district does not have substitute teacher monies available to hold the kinds of committees for selection in developing courses of study.

(Spangler Tr. 561-62; Pl. Exh. 60, p. 15)

(4) Appropriate material selection is not possible because of district finances. (Spangler Tr. 56263;

Pl. Exh. 60, p. 18)

(5) The district has no course of study progression for dance. The district does not have the music, materials, expertise, or equipment that would be necessary. (Spangler Tr. 563; Pl. Exh. 64, pp. 5-

13)

(6) The music instructions for kindergarten students does not meet the 1983 minimum standards and is inadequate. (Spangler Tr. 563-64; Pl. Exh. 64, p. 22)

(7) Advanced art course opportunities are inadequate. (Spangler Tr. 564; Pl. Exh. 64, p. 39)

7. The Southern Local School District is not meeting the 1983 minimum standards in the following areas:

(1) Intervention as defined in the standards is not being provided. (Spangler Tr. 566; O.A.C. 3301-35-02)(E)- (2)(d)

(2) In-service for certificated and classified staff is inadequate and does not include the required opportunities. (Spangler Tr. 566-68; OAC 3301-35-03(A)(9))

(3) The professional library is inadequate and the materials are outdated. (Spangler Tr. 568; OAC 3301-35-03(A)(11))

(4) The district is unable to purchase adequate

numbers of text books to make them available to teachers and pupils at each grade level, and text books are not current. Some classes have no textbooks. In American history classes, there are inadequate numbers of text books, so those classes are meeting in the library and using library resources. In Spanish class, students are using xeroxed materials. (Spangler Tr. 574) The following text books currently in use at Southern Local at the high school level are not current:

"Century 21 Accounting," 1978 copyright;
"Practical Record Keeping," 1976; "Procedures in a Modern Office," 1983; "Practical English and Action, IV," 1960; "Literature of England," 1961;
"Mechanical Drawing," 1962; "Metal Working," 1962;
"Spanish IV," 1975; "Another Spanish Book," 1971;
"Civics, Citizens and Society," 1983; "Biologies of Science of Life," 1980; "Human Physiology," 1977; "Modern Chemistry," 1982; "Mathematics in Life," 1977; "Advanced Mathematics," 1978;
"Consumer and Career" for senior math, 1983;
"Mechanics in Agriculture," 1980. (Spangler Tr. 573-74; 569; Pl. Exh. 79; OAC 3301-35-03(B)(1))

(5) Instructional materials and equipment do not support attainment of objectives in specified

courses of study, are not available for teacher and pupil use at each grade level, and are not current. (Spangler Tr. 575)

(6) The libraries do not have the materials sufficient to support the attainment of objectives specified in courses of study. They do not have sufficient material appropriate pupil ages, interests, and educational needs. Further, the district has not been able to provide instruction of certificated staff in the use of library services and in the production of instructional materials. (Spangler Tr. 570; OAC 3301-35-03(B)(2)(a)(ii) and (iii) and OAC 3301-35-03(B)(2)(c)(ii))

(7) The district has not spent in each year one-half of one percent of its budget on library materials. (Spangler Tr. 705; OAC 3301-35-03(B)(2)(d))

(8) School guidance services are inadequate and not systematic; also, the only guidance counselor is certified only for grades 9 through 12, so no counseling services are available in grades K-8 by a certificated counselor. (Spangler Tr. 571; OAC 3301-35-03(H)(1) and (2))

YOUNGSTOWN

8. The high school evaluation for East High School of the Youngstown City School District that occurred in 1983 (under the pre-1983 standards), indicated that a previous evaluation of that high school had taken place in March 1976. In two areas, staff personnel and facilities, there were notations that violations of 295 pre-1983 minimum standards found in 1976, were also present as violations in the February-March 1983 onsite evaluation. (Schiraldi Depo. 60; Schiraldi Depo. Exh. 1, pp. 3-4) Consultants had no responsibility for follow-up regarding deficiencies in an evaluation, and it was the responsibility of the school to respond to deficiencies and the Assistant Director (of an ODE Division) to follow up. (Schiraldi Depo. 63-64) The 1983 evaluation of East High School in the Youngstown City School District noted that consideration should be given to updating basic textbooks, which meant that the books were more than five years old, for the books used in:

Civics, world history, black history, physical science, chemistry, advanced mathematics, comprehensive homemaking II, French, and general business. (Schiraldi Depo. Exh. 1, p. 2)

Also, East High School of the Youngstown City Schools was found to be non-compliant because no money was appropriated for library books and no money was expended. (Id. p. 11)

9. The Youngstown City School District is not able to meet the following requirements of the 1983 minimum standards:

(1) The Board of Education has not adopted and the Department of Education has not approved a mathematics course of study conforming to the model math curriculum. (Marino Tr. 3277; OAC 3301-35-02(}3)(1)(a))

(2) Intervention is not being provided according to pupil needs, which is obvious by the number of students who are failing the proficiency test. (Marino Tr. 3278; OAC-35-02(B)(2)(d))

(3) The district has not provided adequate opportunities for in-service education for its teachers. (Marino Tr. 3278-79; OAC 3301-35-03(A)(9))

(4) Instructional materials and equipment are not adequate to support attainment of objectives specified in courses of study. (Marino Tr. 327980; OAC 3301-35-03(B)(1)(a))

(5) Textbooks are not current. (Marino Tr. 3279-80; OAC 3301-35-03(B)(1)(b))

(6) The district's library collection does not support attainment of objectives specified in courses of study and are not appropriate to pupil ages, interests and educational needs, and are not current. (Marino Tr. 3280; OAC 3301-3503(B)(2)(a))

(7) Students are not provided with systematic guidance services and those services are not adequate. (Marino Tr. 3226-28; 3252-55; 3275-76; OAC 3301-35-03(H))

(8) The school health program for pupils is inadequate (McGee Depo. 11; Marino Tr. 3234; OAC 3301-35-03(D))

II. EDUCATIONAL OUTPUTS

A. OUTCOMES-BASED EDUCATION

1. One of the recommendations the Governor's Task Force on Education outlined in its August 1991 study was to de-regulate education and change the education system from being activity and input oriented to being responsibility and outcome focused. (Pl. Exh. 334, p. ii)

2. The Ohio Department of Education has been required by the State Board of Education to establish performance-based standards for elementary and secondary education that are based on high expectations for all students and clearly define what every student should know, be able to do, and be like upon graduation from high school; and 2) to develop a performance-based system of preparation and licensure that defines what all teachers and other educators must know, be able to do, and be like to begin practice, and uses quality control mechanisms to assure the public's confidence in the State's educator core. (Pl. Exh. 433; Goff Depo. 132)

3. The Department of Education's goal with outcome-based education is to establish and define a mastery level of educational achievement. This mastery level connotes more than a minimum level of proficiency. (Goff Depo. 134)

4. The current (non-competency based) education system does not guarantee any student a particular level of competence when he or she receives a diploma. (Goff Depo. 139)

5. Proficiency tests are one method of measuring the outcomes which are the subject of competency-based education. (Goff Depo. 136)

6. The Learners Outcome Panel is the committee charged by the Ohio Department of Education to formulate a plan to implement a new set of standards that would guarantee all students the opportunity to be successful. (Washburn Tr. 2421) The philosophy for the new standards is that "all students can learn with time being the only variable and mastery being the only constant." Plaintiffs' Exhibit 273 is a set of goals that the Learners Outcome Panel established as those items that all students need to possess when they complete their educational experience. (Washburn Tr. 2422) To implement the plan for the Learners Outcome Panel, it will take additional revenue to successfully train the teachers and administration in local school districts to implement the new standards. Substantial costs will also be involved in integrating technology

into all grade levels and all subject areas. (Washburn Tr. 2425-26)

B. PROFICIENCY TESTS

1. With the passage of H.B. 231 in 1987, the Ohio Department of Education was charged with the development of proficiency tests to be administered in the ninth and twelfth grades. (See Pl. Exh. 181; R. C. Section 3301.0710)

2. With the passage of H.B. 55 in 1992, the Ohio Department of Education was charged with the development of proficiency tests to be administered in the fourth and sixth grades. (R. C. Section 3301.0710)

3. O.A.C. Chapter 3301-13, regarding the administration of proficiency tests, was adopted by the State Board of Education pursuant to the requirements of Revised Code Sections 3301.0710 and 3301.0711, 3313.61 and other sections. (Stip. 110)

4. At the time of trial, the twelfth grade proficiency test was scheduled to be administered for the first time in February, 1994. Passage of that test will not be a requirement for graduation. (Sanders Tr. 405)

5. The statutory purpose of the 9th grade proficiency tests is to ensure "that students who receive a high school diploma demonstrate at least ninth grade levels of literacy and basic competency in reading, writing, mathematics, science and citizenship." (R.C. 3301.0710)

6. The ninth grade proficiency test measures that body of knowledge that pupils are expected to have mastered by the ninth grade. (Sanders Tr. 404)

7. Proficiency tests are a method of measuring the outcomes which are the subject of competency-based education. (Goff Depo. 136; Sanders Tr. 4502)

8. In order to establish the desired outcomes for the 9th grade proficiency test, four committees of interested persons and teachers were nominated to recommend learning objectives. The charge of those four committees was to develop desired outcomes for the ninth grade proficiency test in the areas of mathematics, reading, citizenship and writing. (Pl. Exh. 181; Pl. Exh. 350; Pl. Exh. 398; Pl. Exh. 434)

9. Passing scores for the ninth grade proficiency test are 28 out of 40 in reading, 24 out of 40 in math, 28 out

of 50 in citizenship, and a 5 on an 8 point scale in writing. Pl. Exh. 355.

10. Effective with the 1993-1994 school year, a student who has completed all of the curriculum requirements for a high school diploma but has not yet passed the ninth grade proficiency test would not receive a diploma. (Pl. Exh. 350; Stip. 111)

11. The Department of Education is opposed to proposed legislation which would provide for the award of a high school diploma to pupils who have not passed the proficiency test if other circumstances are present. (Goff Depo. 136)

12. The General Assembly mandated the 9th Grade Proficiency Tests and the State Board of Education has determined unanimously that it will not step back from the ninth grade proficiency test as a condition for a high school diploma. (Ocasek Tr. 2848). Other than the problem of funding for public schools, the most serious problem faced by President Ocasek as a member of the State Board of Education is the question of the ninth grade proficiency test. Part of the reason for his concern is the economic consequence to a pupil not obtaining the high school diploma. (Ocasek Tr. 2852)

13. In September 1993, the Board of Education of the Lancaster City School District was reprimanded by Superintendent Sanders for proposing to issue a certificate of attendance for graduating seniors who had completed their course requirements but had not passed the Ninth Grade Proficiency Test. (Pl. Exh. 37)

14. The Ohio Ninth Grade Proficiency Test is the most significant measure of the academic achievement and competency of Ohio's students. (Pl. Exh. 41, p. 26)

15. Among others, rates of passage on the ninth grade proficiency tests are indicia of the quality of an educational program. (Van Keuren Depo. 49)

16. The mathematics section of the Ohio Ninth Grade Proficiency Test is the state's key benchmark for monitoring Ohio's progress on Goal 4 of the Education 2000 goals, which states that "by the year 2000, U.S. students will be first in the world in science and mathematics achievement." (Pl. Exh. 41, p. 35)

17. On November 29, 1992, the Superintendent of Public Instruction notified the Governor of an impending crisis due to massive failures of pupils to pass the

ninth grade proficiency tests and the potential failure of those pupils to graduate from high school. (Sanders Tr. 407; Pl. Exh. 29)

18. Pl. Exh. 83 is the state-wide results of the Ohio Ninth Grade Proficiency Tests for the November 1992 test administration. This report was released on February 10 1993. (Pl. Exh. 83)

19. As of October 26, 1993, approximately 17,000 Ohio High School seniors after at least six opportunities to do so, had not yet passed all four parts of the ninth grade proficiency tests and, accordingly, will not be awarded a high school diploma with the rest of their graduating class, absent passage prior to graduation. (Sanders Tr. 394-95; Stip. 112)

20. The rate of high school drop-outs will increase as students continue to fail the 9th grade proficiency test. (Flowers Depo. 128)

21. In July 1993, the Ohio Legislative Office of Education Oversight (LOEO) issued a report entitled "The Ninth Grade Proficiency Test: Is It A Fair And Appropriate Measure Of A State-Wide Standard?" Although that study concluded that the Ninth Grade Proficiency Test was, in

general, fair and appropriate, the LOEO study concluded that African-American students and female students scored lower than the state mean on the mathematics portion of the state test. The LOEO study also concluded that students from low-income, rural school districts and low-income city school districts had passage rates below the state mean on the Ninth Grade Proficiency Test. (Pl. Exh. 36, pp. 21-23)

22. As the percent of ADC pupils increases, the percent of pupils passing all four parts of the ninth grade proficiency test declines. (Phillis Tr. 1784; Pl. Exh. 184 Attachment 1 (located immediately following p. 9))

23. On the average, pupils in school districts having lower levels of taxable property have lower passage rates on the ninth grade proficiency tests than pupils in districts with high valuation. (Tavakolian Depo. 78)

24. Pupils from high socio-economic backgrounds have a greater likelihood of passing the ninth grade proficiency tests. Those same pupils generally attend schools that have greater levels of expenditure per pupil. (Russell Depo. 181-182)

25. African-American students tend to have lower passage

rates on the ninth grade proficiency test than the average for all students across all four tests.

(Flowers Depo. 134)

26. The State Board of Education has determined that the passage rates of minority students on the ninth grade proficiency tests are shockingly low and unacceptable, meaning that the system has failed those students."

(Sanders Tr. 393; Pl. Exh. 21; Russell Depo. 178-179)

27. The discrepancy found in mathematics achievement at the basic level between all Ohio students and black Ohio students on the National Assessment of Education Progress (NAEP) was the second-largest performance gap in the nation. (Pl. Exh. 41, p. 36)

28. The percent of pupils passing all four parts of the ninth grade proficiency tests from the Plaintiff school districts is substantially less than for the wealthiest quintile of school districts in the state. (Pl. Exh. 301 p. 109-13)

29. When Superintendent Sanders suspended State Minimum Standards evaluations in March 1992, the State Department of Education identified 48 districts which had more than 75 percent of their ninth grade students

fail one or more parts of the Ninth Grade Proficiency Test and that had shown little or no progress in increasing the proportion of students who pass on their first attempt. Those 48 districts were targeted for specific intervention from the State Department of Education. Those districts are listed in Pl. Exh. 28. (Pl. Exh. 24, 28)

30. The total pupil population of the 48 districts targeted for specific intervention was 384,528. (Pl. Exh. 28; Defendant Exh. 4C)

31. The Department of Education has determined that the schools in greatest need of intervention are those with the lowest passing rates on the ninth grade proficiency tests. Students in need of greatest resources are those who have taken, but not passed all four parts of the ninth grade proficiency tests. (Sanders Tr. 360)

32. The Department of Education proposed additional resources for intervention for pupil who had not passed all four parts of the ninth grade proficiency tests but those resources were not appropriated. (Sanders Tr. 362)

33. Since the institution of the ninth grade proficiency

tests, there have been no additional state funds allocated to assist pupils in passing the proficiency tests. (Sanders Tr. 4623)

34. In FY95, a fourth grade proficiency test will be required to be administered. (R.C. Section 3301.0710(A)(1) and uncodified law 1992 H.B. 55 8). In the following year, intervention for each student who does not pass will be required by statute:

"[T]he board of education of any school district in which the student is enrolled in that year shall provide intervention service to the student in any skill in which the student failed on those tests to demonstrate at least 4th grade levels of literacy and basic competency." (R.C. Section 3301.0711(D))

C. THE RELATIONSHIP BETWEEN SCHOOL DISTRICT EXPENDITURES AND PERFORMANCE ON PROFICIENCY TESTS AND ACHIEVEMENT TESTS

1. Dr. Fortune testified regarding the relationship between regular instructional expenditures of a school district and school district performance on proficiency tests and achievement tests. In his analysis, Dr. Fortune used a "T-Test" model which has been in

existence since about 1936 to analyze the relationship.

Dr. Fortune has used the T-Test analysis in studies conducted in Alabama, Missouri and Rhode Island.

(Fortune Tr. 3471-3478)

2. In Dr. Fortune's opinion, based upon a reasonable degree of statistical probability and certainty, regular instructional expenditures are associated with school performance as defined by a percent of students passing the 9th grade proficiency tests, and as defined by achievement scores on the composite NCE (normal curve equivalence) for students achieving above certain levels on NCE's. The top 30 percent of school districts in the State of Ohio have, by subject matter, higher levels of students succeeding or passing the proficiency tests and scoring satisfactorily on achievement scores. (Fortune Tr. 3494; Pl. Exh. 306, 306A; Pl. Exh. 305)

3. In Dr. Fortune's opinion, there is an association between instructional expenditures per student and percent of students scoring above 36 NCE on the standardized achievement tests. Those districts that have the higher expenditures have higher percentages of students scoring above 36 NCE and 64 NCE than districts with low student expenditures. (Fortune Tr. 3521, 3525;

Pl. Exh. 306A; Pl. Exh. 305)

D. TESTING IN PLAINTIFF SCHOOL DISTRICTS

DAWSON-BRYANT

1. As of the fall of 1993, 32 out of 99 seniors (class of 1994) at Dawson-Bryant Local Schools had not passed all four parts of the 9th Grade Proficiency Test.

(Washburn Tr. 2429) In contrast, as of the date of trial, only one out of 100 of the high school seniors at the Beachwood City School District had not yet passed the ninth grade proficiency test. The pupil has been diagnosed as having severe learning problems.

(McMurrin Tr. 2537)

2. The efforts at Dawson-Bryant to assist students in passing the test include meeting with students and emphasizing importance of the test, offering a summer school remediation program, after-school tutoring, pull-out programs for students for intervention, and a DPPF program that involved hiring two certificated teachers to tutor students at the high school three days a week. The district does not have the resources to pay tutors to assist students with the ninth grade proficiency test, so staff have volunteered to work

with groups of students. (Washburn Tr. 2429;
Swartzwelder Depo. 46; Semanco Depo. 55)

3. Because resources at Dawson-Bryant have been directed to helping students pass the ninth grade proficiency test and receive a high school diploma, higher functioning students have not been provided with additional exposure to curriculum, course offerings, or subject content areas that would assist them in passing the 12th Grade Proficiency Test, which will impact those students in being considered for scholarships for higher education. (Washburn Tr. 2429)

LIMA

4. At Lima Senior High School, as of the November 19, 1993 administration of the Ninth Grade Proficiency Test, 36 of 268 seniors had not passed all four parts of the proficiency test and were in danger of not receiving a diploma. (O'Connor Tr. 3128; Buroker Tr. 2956)

5. As of the time of trial, only 53 percent of the juniors and 37 percent of the sophomores in the Lima City School District had passed all four parts of the ninth grade proficiency test. (Buroker Tr. 2956)

6. Mathematics is the portion of the ninth grade proficiency test failed by most pupils in the Lima City School District. Dr. Buroker believes that the lack of resources to purchase textbooks appropriate to the needed math curricula, manipulatives, and calculators, together with sufficient staff inservice have contributed to the low passage rates. (Buroker Tr. 2956)

7. For pupils in the Lima City School District and elsewhere in the state who have not yet passed all four parts of the ninth grade proficiency tests, curriculum advancement essentially ceases in those areas where passage is required. Pupils who have passed the proficiency test advance curriculum levels. (Buroker Tr. 2957)

NORTHERN LOCAL

8. Plaintiffs' Exhibit 82 is the results of the Ninth Grade Proficiency Tests for the school districts located in Perry County for the November 1991 test administration. (Pl. Exh. 82)

9. In the fall of 1993, 13 of the 154 senior at Sheridan High School have not yet passed all four parts of the

9th grade proficiency test. (Johnson Tr. 1479) In contrast, Mr. Dilbone testified that at Granville High School, only two seniors out of 100 have not yet passed the math portion of the 9th grade proficiency test. (Dilbone Tr. 2026)

10. Class size is a problem at Glenford Elementary. In 1992-93, 32 1st graders were in one classroom and one 6th grade classroom had 38 students and another had 39. Ninety-nine percent of the students in the large 6th grade classes tested as having a deficiency in at least one area of reading. These students have had over 30 children in their classroom since kindergarten, and they have proceeded up through the elementary grades with large class sizes. These students will have no opportunity to have smaller class sizes until they reach the junior high level. The Iowa Test of Basic Skills showed that these 6th grade students were a grade behind in achievement. That test also showed that all sections with large class sizes were behind. Students are not receiving appropriate intervention because class sizes are too large. (Papritan Tr. 1952-55; Spohn Depo. 57)

11. In order to provide intervention for the ninth grade proficiency tests, Plaintiff Northern Local School

District can only afford to set up an intervention lab consisting of five or six old computers, which is staffed by an elementary teacher's aide. The lab and computers are open to seventh and eighth grade students who are having academic problems and anticipate having problems passing the proficiency test, as well as high school students who have failed a portion of the test.

(Johnson Tr. 1480)

12. In contrast, intervention at Granville High School is provided to students for assistance with the 9th grade proficiency test on an individual basis, as needed. At Granville, teachers are paid to provide intervention on weekends for citizenship. That type of intervention is not available at Sheridan High School. At Granville, intervention is not just for remediation, but is intended to allow students to expand, so intervention is offered on an individual basis for algebra II, trigonometry, chemistry, and physics students. At Sheridan High School and Junior High, intervention is remedial. Because there were many students that have not passed the 9th grade proficiency test in the 9th, 10th, 11th, and 12th grades, the focus had to be on the older students. Due to the large numbers of older students with intervention needs, students in the 8th and 9th grades are left without any intervention

outside the classroom. (Dilbone Tr. 2020-21)

13. Ms. Spohn testified that during her 23 years of teaching, she has found that students during the 1992-93 school year were not scoring as well on the Iowa Test of Basic Skills as students had in the past. Ms. Spohn testified that the variety of curriculum choices has not changed over the period of time in which she has been teaching. (Spohn Depo. 18)

SOUTHERN LOCAL

14. Plaintiffs' Exhibit 82 is the results of the Ninth Grade Proficiency Tests for the school districts located in Perry County for the November 1991 test administration. (Pl. Exh. 82)

15. Plaintiffs' Exhibit 84 is a district profile printout for Southern Local School District showing selected demographic, fiscal and outcome variables, including results on the 1990-91 Achievement Ability Tests. (Pl. Exh. 84)

16. The initial passage rate for all four parts (mathematics, written composition citizenship and reading) of the 9th grade proficiency test at Southern

Local was 11 percent. (Spangler Tr. 576) In the November 1992 administration, the overall passage rate was 25 percent. (Spangler Tr. 577)

17. As of the time of trial, 16 out of 79 seniors at Southern Local had not passed all four parts of the 9th grade proficiency test. (Spangler Tr. 593)

18. Students in Southern Local have performed better in reading because the district provides more early attention to that subject matter through federal Chapter 1 programs at the elementary level. (Spangler Tr. 577)

19. Students have performed more poorly on mathematics and citizenship because there have been radical changes in the approach to teaching those areas and the district has been slow to catch up on current approaches because of lack of funding to purchase necessary materials and train teachers. (Spangler Tr. 577)

20. The improvement in scores from 1991 to 1992 can be attributed to concentrated efforts in mathematics and particularly the purchase of some resources to support the elementary program. Students who had access to these resources reached the 9th grade in 1992, and math

passage rates showed great improvement that year.

However, the district has not been able to provide these resources to all students.

21. Superintendent Spangler requested assistance from the Ohio Department of Education regarding proficiency tests. Department consultants came to the district and met with teachers to discuss approaches to teaching and learning but other than visits from a consultant, some meetings, and the provision of some models developed at the state level, the department provided no tangible assistance. Superintendent Spangler requested assistance from the Department with a summer institute for teachers and requested the Department to provide additional personnel who could work directly with students and with teachers in classrooms, and both requests were refused based on lack of state funds. (Spangler Tr. 579-81; Sanders Tr. 403-04; Pl. Exh. 25)

22. To increase the passage rate on the 9th grade proficiency test at Southern Local, the district needs more staff, more educational resources, and comprehensive staff development, including funds to hire substitutes to allow teachers to attend teacher training and funds for summer institutes. (Spangler Tr. 581-82)

23. The test results for competency testing and ability achievement testing in the Southern Local School District show that the few areas that have received resources and comprehensive staff development are showing improvement. Specifically, there have been positive increases in mathematic scores, particularly below grade 6 where the district has been able to address more fully changes in curriculum, and materials to support that change. Students would perform better in all areas if the district had the necessary resources to provide the required course materials, intervention and teacher training. (Spangler Tr. 58283)

YOUNGSTOWN

24. As of the November 19, 1992 administration of the ninth grade proficiency test, 68 percent of the students in Youngstown City School District who had taken the 9th grade proficiency test had not passed all four parts. (Hiscox Depo. vol 2, 37-38)

25. As of November 17, 1993, 300 of 773 seniors had not yet passed the 9th grade proficiency tests. (Marino Tr. 3270; 3276)

26. Students at Youngstown City Schools have the most difficulty with the math portion of the 9th grade proficiency test. The next most difficult part of the test is citizenship. Students do better on writing and reading, and they have done so since the test was first implemented. The district has spent money on writing and reading over the last few years. A writing program was developed in conjunction with Youngstown State University and others through a grant out of the Ohio Board of Regents. The district spent money to train teachers, to develop guides, and to provide material. The district also spends money on a secondary reading program and requires students to take that course if tests scores showed a need. The district did not spend money on math and citizenship because funds were not available. (Marino Tr. 3284-86)

27. The problems Youngstown students have had with the mathematics portion of the ninth grade proficiency test have resulted in a retooling of the district's mathematics curriculum to focus on intervention for students failing the mathematics portion of the test. Such retooling has cost the school district a great deal of money because teachers must be pulled from the classroom for in-service and training. (Hiscox Depo. vol 2, 37-38)

28. The Youngstown City School District found that it did not have sufficient opportunity or resources to adjust any its curriculum areas prior to the first administration of the 9th grade proficiency test. Because of this, the district has been forced to react to high levels of pupil failure, rather than being proactive in planning to assist its students in passing the ninth grade proficiency test. (Hiscox Depo. vol 2, 40-41)

29. The Youngstown City School District anticipates that the addition of a science section to the proficiency test will create the same problems for the district as the math section of the proficiency test has caused. As a result, the district is currently attempting to restructure the science curriculum to address the proficiency test. (Hiscox Depo. vol 2, 39)

30. Some of the reasons that the Youngstown City School District's students have had high failure rates on the 9th grade proficiency tests include not providing materials, equipment, computers, and up-to-date text books, the lack of up-to-date staff development for teachers, the lack of attention to achievement and attendance issues, and failure to provide experiences

to develop the backgrounds of students. If the district had sufficient resources to provide all of these things, the students would be doing well. The students have the ability to pass the test, but are having difficulty because the district has not been able to provide them with the things they need. (Marino Tr. 3295-98; 3325-3327; Pincham Depo. 49-50; Kolitsos Depo. 27-28)

31. Youngstown City Schools qualified for assistance from the Department of Education regarding the 9th grade proficiency because of the low passing rate. The district received a visit from a group from the state department. Youngstown City Schools administrators requested money for staff development, but the department had none. The Department of Education provided no tangible assistance to the district regarding the 9th grade proficiency test. (Marino Tr. 3294-95; Hiscox Depo. Vol 2 89)

32. Plaintiff Youngstown City School District has purchased materials for pupil intervention to increase proficiency test passage rates, but it does not have the money to provide in-service to teachers to train them in the intervention. (Pincham Depo. 27)

33. In Youngstown, intervention provided to students who do not pass the 9th grade proficiency test includes "accelerated" intervention courses in reading, mathematics or citizenship. The district would like to place an intervention course for composition in the English Department next year. Not all students have access to the intervention courses because some vocational track students do not have the time during the school day to take intervention courses. The district has not been able to fund intervention for students before or after school. (Marino Tr. 3286-89) Computer laboratories for 9th grade proficiency tests remediation are available to any pupils who have not passed the tests and only during the regular school day. Pupils with full schedules are unable to access the computer laboratories. Summer school intervention for proficiency tests has been offered, but the district cannot provide transportation. Attendance was better when the summer school program was offered in each of the local high schools, but last year the intervention was offered in a central location and attendance declined. (Marino Tr. 3290-91)

34. Every year at Youngstown City Schools, parents seek a summer school program for their children who have failed or not doing well or need help. The district

does not have money to put such a program in place.

(Marino Tr. 3291-93)

E. DROPOUT RATES. GRADUATION RATES, AND NON-ATTENDANCE

1. One of the goals of the Ohio Department of Education is to graduate more pupils. (Russell Depo. 184; Pl. Exh. 11)

2. The percentage of Ohio ninth graders finishing and graduating from high school in four years decreased from 79.1 percent in 1987 to 77.1 percent in 1990 to 75.5 percent in 1991. (Pl. Exh. 12, p. 15; Pl. Exh. 41, p. 16)

3. In FY90, the wealthiest quintile of school districts in the state of Ohio had an average graduation rate of 86.33, while the poorest quintile had a graduation rate of 80.43. (Pl. Exh. 316)

4. The dropout rate is lower for rich districts than it is for Plaintiff districts, with the exception of Northern Local Schools. (Alexander Tr. 3674; Pl. Exh. 301 p. 92)

5. Over the decade from 1980 to 1990, the earnings of college graduates increased at a significant rate while

those of high school graduates and dropouts did not.

(Porter Tr. 1071)

6. Educational failure ends up being costly to the state. High school dropouts and unsuccessful students risk becoming tomorrow's dependents of human services or correctional institutions. (Sanders Tr. 349; Sanders Exh. 15 p. 2)

7. The lack of a high school diploma is more common than not among the inmates of Ohio's correctional institutions. (Sanders Tr. 349; Browning Tr. 4396; Russell Depo. 185)

8. Incarceration costs between \$15,000 and 30,000 per inmate per year. (Russell Depo. 185)

9. Drop-outs will increase as students continue to fail the 9th grade proficiency tests. (Flowers Depo. 128)

10. The Lima City Schools has a dropout rate of 30 percent for the entire district. Of those who graduate, only about 20 percent go on to four year colleges, with an additional 15 percent attending two year colleges. The percentage of college attendance has decreased over time. (Buroker Tr. 2875)

11. The dropout rate for the Lima Senior High School senior class for the 1992-93 school year was 9.32 percent. The dropout rate for the junior class for the same year was 13 percent; for the sophomore class was 7 percent; and for the freshman class was 2 percent. (O'Connor Tr. 3133-3134)

12. Lima City School personnel make efforts to file truancy actions against parents of pupils who do not attend school. Students are also named in the actions at the junior and senior high levels. The district had almost 100 referrals last school year regarding attendance problems at the elementary level. The district holds attendance hearings with the parents, children's services, and Juvenile Court at which parents are informed that legal action will be taken against them if they do not send their children to school. Instituting legal action against a parent for failure to send their child to school is a very time-consuming process for the personnel at the district. (Roger Miller Depo. 63-65)

13. The high mobility rate is a concern in Plaintiff Lima City School District. Mobility rate is determined by dividing the total number of withdrawals and the number

of new students entering a building in a given year by the total population of that building. The lowest mobility rate for any of the elementary schools in the Lima City School District is Westwood, which serves a typical suburban middle class neighborhood. In that school, the mobility rate is 30 percent. The highest mobility rate is in one of the inner city schools where the mobility rate is 89 percent. Many of the students in the Lima City School District will attend three or four school buildings in the same year. This circumstance adversely affects the educational opportunities of those pupils. (Buroker Tr. 2894)

14. The drop-out rate for Youngstown City Schools in fiscal year 1991 was abnormally low for an inner city school because for the years 1980 through 1990, students were not counted as a drop-out until the student was dropped off the school records as an expulsion. That is no longer the practice in Youngstown, and Mr. Hiscox expects the drop-out rate to be much higher in future years. (Hiscox Depo. vol 1, 67; Hiscox Depo. Exh. 5)

15. In FY91, approximately 59 percent of the students at Youngstown City Schools graduated from high school; the graduation rate has declined from 73 percent in FY83. (Stip. Exh. 8)

16. Pupil attendance is a problem in the Youngstown City School District. In fiscal year 1991, the pupil attendance rate in Youngstown was about 90 percent, which according to Mr. Hiscox is below average. The problems with attendance in Youngstown City School District are due to the socio-economic problems in the area and the fact that the district does not have programs for at-risk students. (Hiscox Depo. vol 1, 66; Hiscox Depo. Exh. 5)

17. Attendance at Youngstown City Schools begins to fall off at the junior high and senior high levels. In FY93 the district had five visiting teachers, but only four in FY94. Visiting teachers search out students who are not attending school, try to get them in contact with agencies to find help, and try to bring students to school and make sure students attend school. Because they go out into the community, the projects, and to homes, bulletproof vests were purchased for the visiting teachers. (Marino Tr. 3240-42) The district also had a home school visitation program that was funded through DPPF. The home school visitation program helped with the attendance at the elementary level. Staff members went into the community and obtained clothing for students and got children to

doctors. Students were placed in touch with agencies to service their needs for counseling or abusive situations. The home school visitation program has been eliminated due to lack of funds. (Marino Tr. 3240-42)

18. Youngstown cannot afford to hire additional visiting teachers. (Marino Tr. 3269-70) The district would like to implement programs to improve attendance, but have not because of money. (Marino Tr. 3445)

19. At Youngstown, many students are promoted from the elementary buildings because of age and not because of success at the elementary level. At one elementary center, 250 students out of 600 students were promoted because of age. Some students have difficulties as the result of having a variety of teachers, rather than one teacher beginning at the 7th grade level. Materials and the availability of computers are not adequate. Students could conceivably go through the Youngstown City Schools and never touch a computer. (Marino Tr. 3249-51)

20. Mobility of Youngstown City Schools students is tremendous, particularly in the early grades. Children may attend two, three, or four schools during one

school year. Some classes start with 25 students and at the end of the school year there are 25 different students in that class. (Marino Tr. 3239)

21. Youngstown City Schools offers no alternatives to suspension or expulsion at any of the school buildings. Alternatives have been examined, but were not put into place because of the cost. (Marino Tr. 3255-56; Hiscox Depo. vol 2, 28)

22. Youngstown City Schools has over 1,300 9th grade students -- almost twice the number of seniors because many of those students have not achieved 4¼ credits to be considered a sophomore. The district has 773 seniors. In FY93 the district had 327 dropouts. (Marino Tr. 3270-71)

F. EXCELLENT AND DEFICIENT SCHOOLS

1. The Ohio Department of Education is required by statute to identify excellent and deficient schools. (R.C. Section 3302.01; R.C. 3302.02; O.A.C. 3301-15)

2. The State Board of Education's plan for identifying and determining excellent and deficient schools and school districts relies upon student results on achievement

and proficiency tests, student and professional staff attendance rates, and drop-out rates to evaluate schools and school districts. (Pl. Exh. 12, p. 19)

3. Passage rates on 9th grade proficiency tests is a criteria for determining whether a school is excellent or deficient. (Goff Depo. 193; Phillis Tr. 1783-85; Pl. Exh. 183; Sanders Tr. 398-99)

4. The notation of excellent and deficient schools was delayed at least one year due to problems with EMIS and resulting data collection problems. In the meantime, however, the regulations requiring the Department of Education to identify excellent and deficient schools are still effective. (Goff Depo. 120, 193; Sanders Tr. 398-99)

5. The Department of Education will again be required to identify excellent or deficient schools beginning in the winter of 1994 or the winter of 1995. (Goff Depo. 195)

G. EFFECTIVE SCHOOLS PROGRAM

1. The Ohio Department of Education, Division of Equal

Educational Opportunity, operates the Effective Schools Program. The philosophy of the Effective Schools Program is that a school's effectiveness to educate--- i.e., effectiveness in the teaching and learning environment--cannot and should not be determined by the socioeconomic status of the students that are served. (Flowers Depo. 160)

2. The Effective Schools Program is based on effective schools research which examined schools which were paired in the sense that they had similar facilities, number of teachers, experience of teachers, socioeconomic status of youngsters, number of youngsters, and per people expenditure. The only difference was that one school was below the district - wide testing level, and the other school was significantly higher. The research attempted to define factors that were prevalent in the high achieving schools. (Flowers Depo. 160)

3. The Effective Schools Program is based on five correlates identified in that research, which Ohio has expanded to seven. The seven correlates are: 1) high expectations for all students to learn; 2) sufficient opportunity for learning; 3) parental involvement; 4) time on task; 5) teaching methodology; 6) strong

building leadership; and 7) safe and orderly environment. (Flowers Depo. 166)

4. Under the Effective Schools Program, the state provides school based funds not to exceed \$500,000.00 to a school that will address those seven correlates of effective schools. The funds are made available through a state-wide competition. A total of 1.45 million dollars is available annually. Funds are allocated based on the quality of the program and the intensity of the need. For school year 1992-93 the average Effective Schools Grant was \$3,500.00 per building. In FY92, 408 buildings received Effective School Grants. (Flowers Depo. 161-164, 166)

5. Fifty percent of Effective Schools Grant applications received are not awarded in part due to lack of funds. (Flowers Depo. 168)

6. In 1993 the Ohio Department of Education received over 800 applications for effective schools grants, but only 408 were funded. (Flowers Depo. 170)

H. PARTICIPATION IN HIGHER EDUCATION

1. Among others, the number of students participating in college preparatory programs are indicia of the quality of an educational program. (Van Keuren Depo. 49)

2. In the 50 poorest school districts in the State of Ohio, for the years 1985-1991, an average of 38.9 percent of students continued to some form of higher education after high school. In the 50 richest school districts, the percentage for the same number of years was 69.6 percent. (Lykins Tr. 2294; Pl. Exh. 217, 247, and 248)

3. Roughly 31 percent of Ohio's appalachian students--Ohio Appalachia includes Plaintiffs Dawson-Bryant, Northern Local, and Southern Local--participate in post-secondary training, while 41 percent of all Ohio students and 61 percent of students nationally participate in some form of post-secondary training. (Lykins Tr. 2290; White Tr. 2058)

4. The Access and Success Study, conducted for the Ohio Appalachian Center for Higher Education, has shown that the students of Appalachia have a lower self esteem. 84 percent to 85 percent of parents in Appalachia want their children to go to college. However, only one-third of these parents have gone on to higher

education. Because of income constraints and the fact that two-thirds of the parents have a low educational attainment, many children in Appalachian Ohio do not want to go on to higher education. (White Tr. 2058)

5. In the 1990 fiscal year, the wealthiest quintile of Ohio school districts had 70 percent of its graduates go on to post-secondary education, while the poorest quintile had 50 percent of its students go on to post--secondary education. (Pl. Exh. 316)

6. Dr. McMurrin, Superintendent of the Beachwood City School District, which is the highest spending district in the state, believes that a college education is important for all students regardless of whether or not that pupils' parents went to college and regardless of the district in which the pupil may reside. (McMurrin Tr. 2625) Upwards of 98 percent to 100 percent of the Beachwood High School graduates go on to four year colleges. Many attend ivy league schools including Yale and Cornell. Others attend state universities. (McMurrin Tr. 2537)

7. There are students at Lima Senior High School whose educational needs are not served and who are not able to obtain the most out of high school and perhaps not

able to proceed to college. (O'Connor Tr. 3167-3168)

There are very few post-high school opportunities for a student who graduates from high school with a general education diploma. In order to succeed after high school, a student needs to be prepared to enter a two or four-year institution of higher learning or be trained in skills necessary to enter the skilled workforce (O'Connor Tr 3146)

8. Fifty percent (50%) of the students graduating from Plaintiff Northern Local School District go on to some form of higher education, including two and four-year colleges and technical colleges. (Johnson Tr. 1510)

9. Southern Local ranks 590th out of 612 school districts for percent of college preparatory students; Southern Local has 19.3 percent college preparatory students, while the state average is 49.4 percent. (Spangler Tr. 540-45; Pl. Exh. 88; Stip. Exh. 7)

10. Southern Local students have a low retention rate in post-secondary institutions. Only about half of the students who begin college finish their first year and continue. This indicates some difficulty in the students competing if they enter a four-year college. Additionally, the district receives reports each year

about the number of students who enter colleges and need remedial courses. That percentage has remained very high in both English and mathematics. A FY93 report indicated that 8 out of 11 students from Southern Local needed some type of remediation at the college level. (Spangler Tr. 680)

11. Children in the Youngstown City School District are often graduated without having received an education adequate for them to enter the mainstream of higher learning or the mainstream of the workplace. (Pincham Depo. 19)

12. Students at the Youngstown City Schools are surveyed in the 9th grade, and at that time 80 percent of those students believe that they will go on to college. However, only approximately 300 students out of more than 1,400 juniors and seniors take the ACT test and only about 50 students take the SAT test. Between the 9th grade and the 11th and 12th grades, many students become frustrated and lose hope. (Marino Tr. 3317-18)

13. The Youngstown City School District's involvement in programs assisting students in attending college are limited to pilot projects that are not adequately meeting the needs of the students at Youngstown.

(Marino Tr. 3312-16)

I. EDUCATION 2000 GOALS

1. While at the U.S. Department of Education, Dr. Sanders was involved in the development of the goals that later became known as "Education 2000" goals. Those goals were the result of an education summit conference convened by President Bush with the governors of all 50 states. The circumstances causing the summit were concerns about the economic competitive stature of the United States and the fact that the quality of the state educational programs has a direct bearing on the economic competitive stature of the country. (Sanders Tr. 284-85)

2. The Education 2000 Goals are:

#1. By the year 2000, all children in America will start school ready to learn.

#2. By the year 2000, the high school graduation rate will increase to at least 90 percent.

#3. By the year 2000, American students will leave grades four, eight and twelve having demonstrated

competency in challenging subject matter including English, mathematics, science, history and geography; and every school in America will ensure that all students learn to use their minds well, so they may be prepared for responsible citizenship, further learning, and productive employment in our modern economy.

#4. By the year 2000, U.S. students will be the first in the world in science and mathematics achievement.

#5. By the year 2000, every adult American will be literate and will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

#6. By the year 2000, every school in America will be free of drugs and violence and will offer a disciplined environment conducive to learning.

(Pl. Exh. 11)

3. The Education 2000 goals were adopted in part because of President Bush's observation that "we are working

for change in education because the world is changing. Our schools were designed for another era; now they must catch up with the times." That same need exists in Ohio. (Russell Depo. 48; Pl. Exh. 12, p. 12)

4. Education 2000 goals have been endorsed by both the present and former governors of Ohio, the State Board of Education and by Dr. Sanders, who believes that those goals represent the direction that education should be taking. (Sanders Tr. 286-87; Ocasek Tr. 2813)

5. Pl. Exh. 41 is the State of Ohio's Third Annual Progress Report on Education, submitted September 1993, which outlines Ohio's progress on the attainment of the Education 2000 goals. In the prologue to that document, Governor Voinovich states:

As members of a democracy, each of us must actively engage in examining and responding to the ever changing needs of our society and the world in which we live. This is especially true in terms of the educational opportunities we provide every Ohioan. Improving the quality of the education of our children receive is the key to insuring that our state has a prosperous economy and a vibrant

future. Very simply, our children must develop the necessary skills and knowledge to obtain and keep a job, and our employers must be able to draw upon a workforce that is trained or is capable of being trained for the workplace of tomorrow. "Just as good" is not good enough anymore in education.

(Pl. Exh. 41, p. 1; see also Pl. Exh. 368, p. 1.)

6. None of the Education 2000 goals has yet been attained in the State of Ohio. (Sanders Tr. 355)

7. The Education 2000 goals will not be reached if the current funding system remains in place; a change in the funding system would help attain those goals. (Russell Depo. 188)

8. Technology will be extremely important to attaining the national goal that we be first in math and science by the year 2000. (Phillis Tr. 1721)

9. One of the Education 2000 goals that the State Board of Education has approved is the goal that all children will start school ready to learn. As of the time of trial, according to President Ocasek, the State of Ohio has not met that goal. In order to reach that goal,

additional funding will be required beyond that which is presently available. (Ocasek Tr. 2930)

10. The goals of the Education 2000 Plan includes every student graduating, ready to read and write and going into the job market. There is another goal also to graduate at least 90 percent of public school students. These two goals have a potential conflict because if schools just graduate students for the sake of graduation, then that student is not ready to be in the job market. (Aronoff Tr. 4878)

11. In order to attain the goal that children in grades 4, 8, and 12 be proficient in core subjects by the year 2000, it will be necessary to provide equipment, materials, and supplies, as well as appropriate teacher pupil ratios. (Phillis Tr. 1722)

12. Some school districts will have an extremely difficult challenge in attaining some of the Education 2000 goals; many of the "big eight" school districts in Ohio have graduated nearly 50 percent of their pupils. In order to raise the graduation rate to 90 percent, substantial changes will be necessary. Funds to aid disadvantaged pupils have remained essentially static while the number and percent of such pupils in major

urban centers has increased. (Phillis Tr. 1719-21)

13. The Board of Education at Dawson-Bryant has not adopted the Education 2000 goals because with the district's resources, there is absolutely no way that they could hope to attain those goals. (Washburn Tr. 2444)

14. Plaintiff Southern Local School District has not endorsed the Education 2000 goals, although the members of the board of education believe the goals are worthy. (John Winnenberg Tr. 1260) The Education 2000 goals were not endorsed by Plaintiff Southern Local School District because the Board did not have the resources to commit to what the goals called for. (John Winnenberg Tr. 1260; Spangler Tr. 588-89)

XII. SPECIAL EDUCATION

1. Stipulations 53 to 75, which include Stipulation Exhibits 28 through 33, relate to special education and are incorporated by reference here.

A. STATE AND FEDERAL REQUIREMENTS REGARDING SERVICES FOR SPECIAL EDUCATION PUPILS

1. As a result of federal law enacted in 1975 (20 U.S.C.

1401 et seq.) and state law enacted in 1976 (R.C. Chapter 3323 as revised), significant changes came about in the education of handicapped children. First, the laws ensured that handicapped children had the opportunity to attend public school and they could not be excluded. Second, the education that those children received was required to be appropriate. Third, if parents perceived that the child's education was not appropriate, due process procedures were available to the parent. (Herner Depo. 11-12)

2. The number of identified school aged pupils (5-21 years of age) with disabilities receiving required special education and related services in FY93 was approximately 200,848. (Stip. Exh. 30)

3. Children with disabilities are now entitled to a free, appropriate public education at age three. (Herner Depo. 24) This entitlement became effective in July 1991. (R.C. 3323.02 as amended 7-1-91)

The State's Plan and Assurances to the Federal Government

4. The State of Ohio, in conjunction with its request for and receipt of federal funds for the education of pupils with disabilities, is required to submit a plan

for special education to the United States Department of Education every three (3) years. (Stip. 55)

5. Since reenactment of the Individuals With Disabilities Education Act, (the I.D.E.A.), 20 U.S.C. 1401 et seq., in 1990, the State of Ohio has requested and received funds from the United States Government pursuant to the I.D.E.A. (Stip. 56)

6. The State's plan for special education includes representations to the United States Department of Education that the State will ensure that:

a. all handicapped children entitled to receive special education are provided with an appropriate public education, and

b. each public school district provides an appropriate program of special education and related services to each eligible pupil enrolled in the school district. (Stip. 57)

7. In most areas, the federal law and regulations and state law and regulations impose the same entitlements.

(20 U.S.C. Section 1401 et seq. and R.C. 3323)

However, federal law requires identification of a

developmentally handicapped student if the student has an IQ of 70 or below, but Ohio has implemented the requirement that students be identified if the IQ is 80 or below. (McGee Depo. 91)

Identification and Evaluation

8. Children are identified as children with disabilities following a multi-factored evaluation conducted by the school district in which the child resides. Such evaluation includes assessment of all areas related to the suspected disability, including, where appropriate, health, vision, hearing, social and emotional status, adaptive behavior, general intelligence, and academic performance. When the conduct of a multi-factored evaluation requires medical or other professional assessment, it is required to be done at the school district's cost. (OAC 3301-51-02(D): Roach Tr. 2678)

9. If a medical evaluation is required for the particular type of suspected handicap of a student, the school district must assure that the evaluation is provided at no cost to the parent. (Herner Depo. 69-70)

IEP Development

10. Children identified as eligible for special education and related services as the result of a multi-factored evaluation are then entitled to an Individualized Educational Program (IEP) which is cooperatively developed at a meeting between the parents and the school district's placement team. In determining what a free appropriate public education is for a particular child, the special education and related services must be tailored to the unique needs of that child and the services must be provided regardless of the cost. (Schindler Depo. 72-73) Whatever services are determined by the IEP team to be necessary to provide the student with an appropriate education, those services must be provided. (OAC 3301-51-02(E); Roach Tr. 2679; Herner Depo. 79)

Programs

11. Special education programs require smaller class sizes than are normally provided in regular education programs as well as specialized educational materials. (OAC 3301-51-03 et seq.; Maxwell Tr. 149)

12. Department of Education standards for the education of handicapped pupils require class size limitations that include both minimum and maximum numbers of pupils. For

example, a class for pupils with a severe behavior handicap may include no less than six nor more than twelve pupils with no more than ten pupils in any instructional period. The pupils must be within an age range of 48 months and must be educated in a separate classroom with a specially certified teacher. (OAC 3301-51-04(E)(3); Roach Tr. 2676)

13. Low-incidence disabilities are those found least common in the general pupil population. Low incidence handicapping conditions typically include multi-handicapped, visually impaired, hearing impaired, orthopedically handicapped, other health impaired and severe behavior handicaps. (Roach Tr. 2681-82)

14. If no appropriate special education program is available locally, the school district in which the pupil resides is required to provide the nearest available appropriate program, to provide transportation to that program and to pay the amount by which the cost of that program exceeds any available State unit funding. (Maxwell Tr. 151)

15. Some special education students in Ohio travel as much as three hours per day to attend their special education program. (Herner Depo. 119-20)

Related Services

16. Special education pupils may also be entitled to additional services, known as related services.

Related services include such things as occupational therapy, speech therapy, physical therapy, and transportation. (OAC 3301-51-01(W); Roach Tr. 2677)

Parent's Rights

17. Once a student has been identified as needing special education services, a school district must find funds to provide the services or the district can be sued. (Roger Miller Depo. 42)

18. If a special education student does not receive services to which he is entitled, he or his parent may file a complaint with the State Department of Education, the Federal Department of Education, or they may file a request for due process hearing. After a due process hearing, the case can be taken to a state level review and then to common pleas court or to federal court. (Tobin Depo. 58-59; 21-22)

19. If a school district has financial problems and has a

need to move a special education unit or classroom of children to a different building or to provide different services, a parent may request a due process hearing based on the allegation that the change constitutes a change in placement triggering their due process rights. (Tobin Depo. 32)

20. There are very few due process hearing requests in the State of Ohio. It is very expensive and most parents do not have the means to afford a lawyer to forward the request for a due process hearing. Most legal services will not take the cases. Some parents have not gained a level of understanding to be aware of their right to request a hearing. (Tobin Depo. 58-59)

21. The mechanisms and legal procedures in place to assert the rights of handicapped pupils in Ohio are not always effective. (Tobin Depo. 88-89)

B. FUNDING FOR SPECIAL EDUCATION

1. Federal funds for special education represents approximately 5 percent of the total amount spent on special education programming in the public schools for 1988-89. Initially, the 1975 Education of all Handicapped Children Act authorized a federal

contribution of 40 percent of the national average cost of educating children with disabilities. (Pl. Exh. 235 pp, 9-10)

2. The total special education program made available to students is funded from state, federal, and local dollars. The total dollars have an impact on the services being provided, including the types of services. (Schindler Depo. 12)

3. The gap between the amount of funds for special education programs requested of the General Assembly by the State Board of Education and the amount appropriated by the General Assembly has widened from about \$1 million in calendar year (CY) 1980 to about \$13.2 million in FY1985 to about \$121.6 million in FY93. (Stip. Exh. 33)

The State Unit Funding Mechanism

4. The State of Ohio provides funds for the support of special education programs and services through a "unit funding" mechanism whereby funds are allocated to school districts in accordance with a formula that includes teacher compensation based on the state minimum teachers' salary schedule, retirement and all

other fringe benefits at 15 percent of the state minimum teachers' salary and a fixed amount for all other expenses. (Stip. 58) For Classroom units, the fixed amount is about \$8,000 and for a related services unit, about \$2,000. (Roach Tr. 2682; Herner Tr. 5520; Schindler Depo. 18)

5. A unit, in general terms, is a professional staff person such as a teacher for a classroom unit, or a school psychologist, speech and hearing therapist, or occupational therapist for a related service unit. (Herner Tr. 5520)

6. The estimated average amount of funding provided in connection with a funded special education unit is \$30,000 to \$35,000. (Stip. 59)

7. The state minimum salary schedule has not increased since July 26, 1991 and the required payment for an employer to the State Teachers' Retirement Fund is approximately 14 percent of each teacher's salary. (Herner Tr. 5564; R.C. Section 3307.53)

8. Generally, the amount of money spent on the education of handicapped pupils exceeds the amount of any unit funding provided for the education of those pupils

through the school foundation program. (Tavakolian Depo. 94; Herner Depo. 110; Schindler Depo.32)

9. Costs of special education programs that exceed state and federal unit funding are paid from the school district's general fund. The greater the payment from the general fund, the fewer the funds that are available for regular education pupils. (Roach Tr. 2724; Ocasek Tr. 2814)

10. The costs of educating special education students generally exceeds the cost of educating regular education students. School districts expend more for special education students than for regular education students because of the requirements for small class sizes in special education, and requirements for supplementary services and related services for special education students. (Herner Tr. 556-66)

11. The method of calculation for state approved unit funding is the same for all districts regardless of school district wealth. (Stip. 58)

12. The State Board of Education has recommended equalization of unit funding, so that wealth of school districts would be considered in the unit funding

reimbursement. (Herner Tr. 5565)

Allocation of Funded Units

13. The number of special education units is authorized by the General Assembly in each biennial education budget.

(Stip. 63)

14. The Ohio Department of Education determines the number and types of state funded special education units to be allocated to school districts in any year based on the total number of units authorized by the General Assembly for which funds have been appropriated by the General Assembly for that year. (Stip. 64)

15. The Ohio Department of Education has not adopted any administrative regulations describing the manner in which funded special education units are allocated among Ohio school districts. However, past biennial budget bills have included provisions for numbers and types of units and preferences for allocations of additional units. (Stip. 70)

16. Districts having the minimum number of pupils to qualify for a funded special education unit and that have had such a unit in the previous year have a

priority for the receipt of a funded unit of the same type in a subsequent year. (Stip. 68)

17. The first priority for the receipt of any new or additional funded special education units is awarded to school districts that provided special education to pupils previously being educated in a county board of mental retardation and developmental disabilities. (Stip. 67) This priority for funding was established when the Department of Education settled its liability in a court case and made certain assurances about the distribution of special education units. (Herner Tr. 5574-75; Schindler Depo. 19) The case was captioned Roncker v. Walter (U. S. District Court, S. D. of Ohio, Western Division; Case No. C-1-80-029) (Pl. Exh. 237 p. 14)

18. The second priority for the receipt of any new or additional funded units is to serve children with low--incidence handicaps. (Roach Tr. 2714)

19. The third priority for funded units is for low - incidence categories: hearing handicapped, visually handicapped, and orthopedically handicapped. The lowest priority is afforded to specific learning disabled, which is the condition with the greatest

increase in the number of identified handicapped pupils. (Herner Depo. 99)

20. All handicapped pupils have the same level of entitlement regardless of the severity of their handicap, however; the priority for the allocation of funded units is allocated to the most severely impaired. (Russell Depo. 104) For example, a learning disabled student has the same entitlement to a free and appropriate public education as any other disabled student. (Herner Tr. 5571)

21. School districts are not eligible to receive funding for a unit unless that unit has been established by the school district and is in operation during the first full week in October. (Stip. 65) Thus, a teacher must be employed during the first full week in October in order to receive funding at a later time. (Herner Depo. 52)

22. Many handicapped children who were served in MRDD programs have moved into public school programs, and there are fewer children in MRDD programs than there used to be. (Herner Depo. 106) Most of these children are multi-handicapped, have more severe needs, and are most costly. (Herner Depo. sa-ss; Herner Tr. 5530)

Lack of Available Funded Units

23. The total number of special education teacher units for which funding was allocated through the unit funding mechanism, was 11,737 units in FY87, decreased to 11,731 units in FY88 and in FY89, and increased only to 12,061 units in FY90 and 12,386 in FY91. (Stip. Exh. 32)

24. The number of unfunded special education units operated by Ohio School Districts without state reimbursement grew from 614 units in FY89, to 637.5 units in FY91, and to 847 units in FY93. These units were funded with school district general funds and any available federal funds. (Stip. Exh. 31; Stip. 61)

25. If a school district does not receive state funding for special education units, and if students have been identified as needing special education services, the district must serve those students. The district must employ a teacher and fund that salary through the general fund. (Taylor Depo. 105)

26. It has been more than five years since a funded supervisory unit was granted. A district required to

provide a special education supervisory unit must meet certain regulations including that the supervisor hold an Ohio special education teacher certificate, that the person have three years teaching experience in one of the areas of handicapped children to be supervised, and that the person hold a superintendent, special educational administrative specialist, principal, or supervisor certificate. (Herner Tr. 5572-74)

27. At least since 1985, there has always been requests for additional special education units by school districts beyond the number of funded units. The Ohio Department of Education has estimated that approximately 1,100 to 1,180 were requested in the fall of 1992 that were unable to be funded by the Department of Education. (Schindler Depo. 22)

28. The State Board of Education requested of the General Assembly an additional 341 funded special education units for FY94 and 341 additional units for FY95, for a total of 682 new units. (Stip. 72)

29. The legislature appropriated 100 additional special education units for FY94, and 370 additional special education units for FY95. (Herner Tr. 5530) However, those numbers are maximum numbers of units that can be

funded but they will not be able to be funded 100 percent of the formula as in the past, because the money is not available to do 90. Thus, funding for each of the units will be based on the formula, but then reduced in a prorated fashion. Funding for special education was reduced when the final budget was established by 1.37 percent for FY94 and another 1.1 percent for FY95. The increase in number of units for FY94 is less than a 1 percent increase over FY93; the increase of new units for FY95 is about a 3 percent increase over the units available in FY94. Yet, the number of special education students has increased every year in the last few years, and has been more dramatic in the last two to three years. (Herner Tr. 5569-70 and 5575)

Lack of Funding to Follow Movement of Students

30. The system of funding for special education does not provide for funds to follow special education children as they move from district to district. Funding for services does not follow the children. (Tobin Depo. 55)

31 Most identified handicapped pupils continue to be handicapped until they either graduate or leave the public school system. (Herner Depo. 102-03) Yet, many

of the Plaintiff school districts do not have funded units available to serve handicapped students as they progress through the grade levels. (Spangler Tr. 518-519; Washburn Tr. 2433; Roger Miller Depo. 44)

Experimental Units

32. In FY92 and FY93, approximately 300 experimental special education units were in place and in FY94, that number grew to approximately 3,800 units, approximately 40,000 students, for well over one-third of all classroom units operating in the state. Under the experimental units, special education students were permitted to be educated by teachers who are not certified to teach special education. (Herner Tr. 5558-60)

33. Programs for special education students are required to be taught by properly certified special education teachers. (OAC 3301-51-04 (A)(4); (B)(4); (C)(4); (D)(4); (E)(4); (F)(4); and (G)(4))

34. Guidelines for operating experimental units were written by the Division of Special Education staff and have never been adopted by the State Board of Education. (Herner Tr. 5559-00)

35. Each special education pupil in Ohio is entitled to a free appropriate public education, which includes, among other things, special education and related services that meet the rules for special education adopted by the State Board of Education. The 300 experimental units violate the entitlements of each pupil in those units. (R.C. Sections 3323.02, 3323.01(B)(C) and (D); OAC 3301-51-01 (T))

36. At the Special Education Regional Resource Centers (SERRC centers) where specific summer training was provided regarding experimental units, there were not enough training opportunities to accommodate all of those who requested the units. (Herner Tr. 5603)

37. A condition for applying for an experimental unit was that the school district would involve their staff in training. There has been no specific follow up by the Division of Special Education to monitor that assurance other than the routine monitoring of school districts. (Herner Tr. 5603-04)

38. The number of reviews or evaluations that are conducted each year by the Ohio Department of Education, Division of Special Education for compliance by school districts

for special education law and regulation have decreased since 1991. (Herner Tr. 5607)

39. There is no provision in the Ohio Administrative Code (Special Education Bluebook) or Ohio law for a waiver of the maximum class sizes in special education units. (Herner Tr. 5606-07)

40. A special education student educated in a class with more than the maximum number of students permitted under the administrative code, even if a "waiver" of that maximum number had been granted by the ODE, Division of Special Education, would constitute a violation of the child's right to a free appropriate public education, because that education must be provided in accordance with the rules adopted by the State Board of Education. (R.C. Sections 3323.02, 3323.01(B)(C) and (D); OAC 3301-51-01 (T))

Other Reimbursement for Certain Services

41. Individual and small group instruction, attendant services, interpreter services, reader services, home instruction for SBH and orthopedically handicapped, occupational therapy and physical therapy are reimbursed at varying rates all less than 100 percent

of the cost of providing the services.

42. State reimbursement limits vary from service to service. For example, home instruction and tutoring services are reimbursed by the state at 50 percent of the cost of the teacher. (Schindler Depo. 102-03) Attendant services reimbursement is limited to "one hour per day at the current state minimum wage rate for each three children." (OAC 3301-51-06(B) and (B)(9))

Funding for Special Education Services Not Related to Need

43. Funding for school psychologists is based on the average daily membership of school districts and not on the numbers of special education students or the needs of special education students served by those districts. (Herner Tr. 5578)

44. Funding for speech and hearing therapists is based on the average daily membership of school districts and not on the numbers of special education students or the needs of special education students served by those districts. (Herner Tr. 5578)

Required Services For Which No State Reimbursement Exists

45. Many school districts are providing special education services, as required by state and federal law, without any financial assistance from the state. (Sanders Tr. 387; Pl. Exh. 15 p. 23)

Physical Education Programs

46. Under Ohio's regulations and the federal regulations, students in Ohio are required to have available a physical education program, whether that be regular or adapted, in order to participate. (Herner Tr. 5589-90)

Extended School Year Services (ESY)

47. About 1989, the Department of Education settled a law suit and issued a memorandum to all Ohio school districts requiring that the decision whether to provide extended school year services to a handicapped child must be made at an IEP meeting, and must be based upon a decision whether the child will fail to achieve the goals of their IEP in the absence of an extended year program. The memorandum also required school districts to provide written notice to parents of their right to request an extended school year program, and the Ohio Department of Education agreed to monitor districts' compliance with the memorandum through their

program review evaluation procedures (PREP). (Tobin Depo. 23-24)

48. School districts were not providing extended school year services before litigation and settlement regarding that issue because the states did not fund services beyond a 180-day school year. (Tobin Depo. 56)

49. If a student requires more than 180 days of programming to receive a free and appropriate public education, then the school district is required to provide that. Responsibility for the cost of providing that programming is left with the local school district. (Herner Depo. 129-30)

Tuition to Department of Youth Services

50. School districts are required to pay the cost of tuition for pupils educated in the custody of the Department of Youth Services. Such districts may be required to pay this cost even though the pupils have never been enrolled in the public schools of the district and are educated in facilities far removed from the district. The Department of Education proposed to relieve school districts of this obligation; that proposal was not approved by the 120th

General Assembly. (Sanders Tr. 372-73)

Educational Aides

51. State regulation requires the services of an educational aide in connection with some special education programs. Unit funding for those programs does not include a specific allocation of funds to pay the cost of the aide. (Stip. 73) Until the 1993 budget bill, there was no state funding provided to pay the cost of that employment. (Sanders Tr. 388; Sanders Exh. 15 p. 23; Shoemaker Tr. 4162-63)

52. The State Board of Education requested of the General Assembly an additional \$8,025,000 per year for educational aides. (Stip. 75) Only \$1,500,000 per year of the biennium was appropriated by the legislature. (Herner Tr. 5532) The appropriation was only for multi-handicapped programs in which the special education rules mandate an aide. (Herner Tr. 125)

53. There are approximately 880 multiply handicapped units in operation in public school districts in the state, plus about 648 multiply handicapped units in operation in MRDD boards of education, totalling about 1528 units. Thus, the \$1,500,000 would result in

approximately \$1,000 toward the salary of each required aide. (Herner Tr. 5580)

Residential Placements

54. If a special education child needs residential placement, the cost of providing that programming is left to the local school district. (Herner Depo. 130)

Assistive Technology and Other Equipment

55. If assistive technology is required for a special education child to receive an appropriate public education, the school district must make that assistive technology available. There is no state reimbursement for assistive technology costs. (Herner Depo. 131)

56. Federal regulations effective in the fall of 1993 added specific language regarding assistive devices and assistive technology that must be made available to handicapped pupils. If through the IEP process it is determined that certain equipment is needed in order for a special education child to benefit, based on the needs of the child, then that assistive technology would be required to be provided by the school district. (Schindler Depo. 55-56)

Transition Services

57. The federal regulation issued in the fall of 1992 included some very specific new requirements dealing with a required statement on each IEP for children 16 years of age or older, or as young as 14 years of age if determined to be needed, addressing transition services. (Schindler Depo. 61) However, there have been no state funds for reimbursement made available to school districts regarding this additional requirement. (Herner Tr. 5590)

58. If a school district in the 1993-94 school year had no reference to transition services for students 16 years of age or older on IEP's, that district would be out of compliance with the requirements of special education law and regulations. (Herner Tr. 5591)

New Handicapping Conditions

59. The fall 1992 regulations also included two new handicapping conditions, autism and traumatic brain injury. The federal government required each state to sign assurances and amendments to state plans indicating that they were aware of those requirements

and would address them when the regulations became final. (Schindler Depo. 66-67)

60. No state unit funding has been made available for the new handicapping conditions of autism and traumatic brain injury (TBI). (McGee Depo. 74)

Facilities

61. A physically handicapped child must be provided access to all programs of a school district, and the Office for Civil Rights has determined that accessibility can not be provided by carrying a student up a flight of stairs. (Herner Depo. 62-64)

62. Unit funding does not provide any amount for the provision of physical facilities for a special education unit. (Herner Depo. 111)

63. As Director of the Division of Special Education at the Ohio Department of Education, Mr. John Herner makes recommendations to the Department, and then the Department forwards recommendations to the State Board of Education regarding budget requests. As a part of those recommendations, Mr. Herner made no recommendations about facilities. Mr. Herner was not

aware of the dollar amounts needed for handicapped accessibility of school buildings in Ohio contained in the 1990 Ohio Department of Education School Facilities Survey, and was not aware that the requirements under the Americans with Disabilities Act of 1990, including hearing and visually impaired adaptations, required under the Act were not included in the Ohio Public School Facilities Survey Report. (Herner Tr. 5576-77)

Title VI-B Funds

64. Each year, as of December 1, the number of pupils with disabilities in each school district are reported to the federal government. This report is known as the December child count. (Roach Tr. 2706) 65. Title VI-B funds are federal dollars granted under the I.D.E.A. based on the number of special education pupils in the state in December each year. (Schindler Depo. 37) At least 75 percent of the monies must flow through the state to the local school districts on a per-pupil basis for children with disabilities who are served. (Herner Tr. 5539)

66. Title VI-B funds cannot be used for non-handicapped pupils, and cannot be used for students who qualify for educational services under Section 504 of the

Rehabilitation Act. A school district cannot use those monies for attorneys' fees involved in a due process hearing or for due process hearing costs. Further, a school district cannot use those monies to supplant expenditures otherwise undertaken with state and local monies in a prior year. In fact, it is the intent of Title VI-B monies to supplement services to disabled students. (Herner Tr. 5583-84)

C. FEDERAL GOVERNMENT EVALUATION OF OHIO (OSEP REPORT)

1. In 1991, the Office of Special Education Programs (OSEP) of the federal government came to Ohio with a team of people to monitor whether Ohio was complying with federal special education regulations. (Schindler Depo. 82-83) OSEP's Final Report following the compliance review contains a number of findings or violations of federal regulations by the State of Ohio, which also constitute violations of Ohio's commitments to the federal government. (Schindler Depo. Exh. 4; Herner Depo. 133; Pl. Exh. 237)

2. OSEP made findings of violations of federal regulations in at least 20 separate aspects of Ohio's special education system. (Pl. Exh. 237)

a. OSEP found that the Ohio Department of Education (ODE) had failed to adequately monitor school districts' compliance with various special education requirements. (Id. 41-44)

b. OSEP found ODE did not exercise its general supervisory authority in a manner that ensured that all public agencies complied with the requirements of Part B (of the federal law). (Id. iv)

c. OSEP found that placement decisions for certain students were not based upon completed IEPs. (Id. 11)

d. OSEP found that ODE was not properly monitoring to ensure compliance with the IDEA regulation that requires placement in the least restrictive environment (34 C.F.R. Section 300.552(a)(2)). (Id. at 11)

e. OSEP found that for the public agencies (local school districts) reviewed, ODE had previously identified deficiencies and had approved corrective action plans for each agency. However, at the time of OSEP's review, the corrections had

not been made. (Id. 11; 13-14)

f. OSEP found that ODE did not fully ensure that children with disabilities, in public agencies visited by OSEP, were removed from the regular educational environment only when the nature and severity of the disability was such that education in the regular classes with supplemental aids and services could not have been achieved satisfactorily. (Id. 11; 13-14)

g. OSEP found that decisions regarding whether to educate children with disabilities in the regular classroom were based on factors such as administrative convenience, availability of space, building accessibility and the availability of paraprofessionals in regular education classes. (Id. 14)

h. OSEP found that ODE did not ensure that educational placement decisions for children with disabilities in public agencies visited by OSEP were determined at least annually. Although ODE has a method for determining compliance with this requirement, OSEP found deficiencies at seven public agencies that had not been identified by

ODE in its most recent monitoring reports to those agencies. (Id. 18)

i. ODE is responsible for ensuring that each public agency ensures that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services. ODE is also responsible for ensuring that each public agency makes provision for supplemental services to be provided in conjunction with regular class placement. OSEP found that ODE did not meet these responsibilities because ODE did not effectively monitor compliance with those requirements. Although ODE was found to have a method to monitor these requirements, OSEP found deficiencies at public agencies that ODE had failed to identify. (Id. 14-15)

j. OSEP found that public agencies did not make placement options available to the extent necessary to implement the IEP for each student with a disability as demonstrated by, among other things, an administrator's statement: "the district applies for units with the State and what the State approves is all that is available. Units determine placement." (Id. P. 20)

k. ODE is responsible for ensuring that public agencies ensure that each child with a disability participates with children who do not have disabilities, to the maximum extent appropriate to the needs of the child, in the various extracurricular and nonacademic services and activities provided by each responsible public agency. OSEP found that ODE did not meet its responsibility to ensure that all public agencies establish and implement procedures to meet these requirements. OSEP determined that these determinations were made on the basis of other factors such as administrative convenience, availability of space, facility accessibility, and the availability of paraprofessional assistance in regular education classes. (Id. 21-22)

1. OSEP found that ODE's method for identifying deficiencies was not fully effective and concluded that ODE did not ensure that public agencies that had been monitored carried out the necessary actions to correct identified deficiencies. (Id. 44-45)

3. OSEP identified approximately 100 deficiencies

regarding federal requirements for the Youngstown City School District. (Pl. Exh 237) Of those deficiencies, approximately 84 were violations and approximately 16 were required items that the school district had incompletely or inaccurately established. Following are some examples of those deficiencies:

a. Of the IEPs reviewed by OSEP at Youngstown City Schools, 56 deficiencies were found in a review of 90 IEPs. (Id. p. 9)

b. Six deficiencies were identified by OSEP and not identified by ODE's most recent monitoring report to Youngstown City Schools. (Id. p. 44)

c. Supplementary aids and services provided in regular education classes by an SST are not available at Youngstown City Schools. "A central office administrator stated that, 'because of the State's funding mechanism we don't have the number of students required to be eligible for an SST unit.'" (Id. p. 20)

d. ODE's monitoring reports to a number of public agencies including Youngstown City

Schools did not identify deficiencies regarding the availability of related services for students with disabilities. When OSEP reviewed records and conducted interviews at those agencies, it found that related services set forth on IEPs had not been provided. (Id. p. 31)

e. For a number of public agencies including Youngstown City Schools, OSEP reviewed records developed after corrective actions had been implemented, and identified deficiencies that ODE had also identified in its latest monitoring reports to those agencies. ODE had approved the corrective action plans for those agencies and, according to ODE's monitoring documentation, all deficiencies were scheduled to have been corrected prior to OSEP's visit; however, when OSEP visited the agencies, it found deficiencies in the records that it reviewed. (Id. p. 11)

f. OSEP found that at Youngstown City Schools following initial placement into a specific special education program, placements were

not reviewed annually unless parents or teachers requested that the current placement be reconsidered. (Id. p. 19)

g. Although ODE identified and required the correction of deficiencies at several public agencies including Youngstown City Schools, OSEP found that these agencies had not fully complied with the requirements of §300.550 (b) (2) (removal of a student from the regular education environment only when the nature of severity of the disability was such that education in the regular classes with supplementary aids and services could not have been achieved satisfactorily). (Id. pp. 13-24)

4. Following the 1991 compliance review by the Office of Special Education Programs (OSEP), a final corrective action plan to bring the Ohio Department of Education Division of Special Education into compliance with federal law was adopted. OSEP indicated to Mr. Herner that it was important to follow the time lines in the plan, and that the time lines represented the outside limit of what OSEP could accept. The Ohio Department of Education had represented that they would have a set

of draft rules for special education to OSEP in August of 1993. Those draft rules were still not in existence as of December 8, 1993. Further, the Department represented to OSEP that it would have a draft parent notification form sent to OSEP by October of 1993; that document as well was not completed as of December 8, 1993. (Herner Tr. 5585-86)

5. OSEP required that Ohio's rules be changed to provide adaptive physical education for students as part of their special education programming and not as a related service for that program. The Director of the ODE, Division of Special Education sent a memorandum regarding adaptive physical education to school districts in Ohio stating that districts must revise their procedures to ensure that students who require adaptive physical education are provided with that service, and that the determination by the IEP committee must be based upon the individual student's needs and not upon the availability of the services. The memorandum also indicated that school districts shall require staff members involved in the development or implementation of students' IEPs to be notified and trained with respect to adaptive physical education requirements. However, no additional state funding has been provided to school districts regarding adaptive

physical education. (Herner Tr. 5587-88)

6. OSEP required that additional areas of compliance would be necessary to be reviewed by the Ohio Department of Education when it reviewed local school districts for compliance with federal and state law. (Herner Tr. 5594-95)

7. The state's plans for special education is the means by which the State of Ohio assures the federal government that it will comply with this obligation to the federal government. (Pl. Exhs. 236, 244, 242, and 241; Schindler Depo. 69)

D. STATE REVIEW OF SCHOOL DISTRICTS

1. Despite the fact that Dr. Sanders issued a directive suspending the monitoring of school districts' compliance with state minimum standards, the Division of Special Education still has, under federal regulations, a requirement to monitor local school districts for compliance with special education regulations. (Schindler Depo. 81)

2. The state's program for the evaluation of special education programs was formerly known as "PREP"

(Program Review and Evaluation Procedure) and is now known as "SIR" (School Improvement Review). (Roach Tr. 2672)

3. Currently, there is no specific plan for how often a school district may be evaluated by the Ohio Department of Education, Division of Special Education. In some cases, it is two to three years and in other cases, it is several years. Mr. John Herner, Director of the Division of Special Education, did not know how far that time frame could range. (Herner Tr. 5597)

E. SERVICES TO SPECIAL EDUCATION PUPILS IN THE SEOSERRC REGION

1. There are 16 Special Education Regional Resource Centers (SERRC centers) in the State of Ohio, which exist to assist the state in meeting its obligations, one of which is a comprehensive system for staff development. (Herner Tr. 5555)

2. SERRC centers are funded primarily with Federal Title VI-B funds, and no state funds are provided directly to the SERRC centers. (Herner Tr. 5556; 5597-98)

3. The Southeastern Ohio Special Education Regional Resource Center (SEOSERRC) serves ten counties and 27

school districts within those counties, including the Northern Local and Southern Local School Districts in Perry County. (Roach Tr. 2673-74)

4. The SEOSERRC collects special education data for, and receives such data from the Ohio Department of Education. (Roach Tr. 2674)

5. In the region served by the SEOSERRC, children tend not to be identified as handicapped until they have failed one or more grades because earlier identification would require the provision of costly special education programs and related services for which no state funds are available. (Roach Tr. 2684)

6. Within the SEOSERRC region, identification is delayed due to lack of availability of assessment personnel. The state funds one psychologist for each 2,500 students. In an area of small school districts at some distance from each other, the necessary travel time dilutes the availability of the psychologist to a point that identification of pupils is often delayed. (Roach Tr. 2684-85)

7. Speech pathologists are funded based on one unit per 2,000 pupils. The demands of travel in the SEOSERRC

region result in limited availability of services to pupils in the region. (Roach Tr. 2686)

8. Within the SEOSERRC region, the services that tend to be included in IEPs are based on what is available rather than the needs of the pupil. (Roach Tr. 2685)

9. Within the SEOSERCC region, the services of occupational and physical therapists are limited and pupils tend to receive only a small portion of the services needed from these disciplines. Children typically in need of occupational or physical therapy are those with severe motor impairments. The failure to provide services to these pupils when needed results in a tightening of the muscles such that the pupils may be unable to sit properly and attend to their lessons. (Roach Tr. 2687)

10. The SEOSERRC assists districts in the region in the employment of special education personnel, including occupational and physical therapists. The district has been unable to hire sufficient numbers of therapists and currently need, within the region, 16 additional occupational and physical therapists. (Roach Tr. 2690)

11. No extended school day services are available within

the SEOSERRC region. (Roach Tr. 2691)

12. Due process hearings are the method provided for the resolution of disputes regarding handicapped pupils.

The SEOSERRC advises school districts to avoid due process hearings at all costs because of the requirement that the school district pay the costs of the hearing officer (an attorney, under Ohio regulations), the cost of the hearing transcript, the cost of their own defense counsel and, if not successful, the cost of the parents' attorney as well.

(Roach Tr. 2694)

13. Within the SEOSERRC region, low-incidence handicapped programs are operated on a multi-district cooperative basis because most districts do not have sufficient numbers of pupils to qualify for a funded low incidence

unit. (Roach Tr. 2681-82) 14. In the SEOSERRC region,

all multidistrict special education units are low incidence units. (Roach Tr. 2695)

15. In the SEOSERRC region, the lack of stability in multi-district special education units is also a problem as a unit may move from district to district each year, with little coordination of curriculum from district to district. (Roach Tr. 2696; Pl. Exh. 235 pp. 19-20)

16. Pupils from Northern and Southern Local School Districts participate in the low-incidence special education programs in the region. Pupils from the Northern and Southern Local with hearing impairments are required to attend special education programs in Zanesville, at a cost of between \$6,000 to \$8,000 per pupil per year to the home school district. (Roach Tr. 2698)

17. Transportation is one of the problems inherent in multi-district special education units in the region, since pupils must be transported for long distances, often over rough roads. Pupils are tired before they arrive at school and often medication has worn off and the pupils need to be re-medicated. The need to adhere to transportation schedules often results in a shortened school day and limited opportunity to participate in extracurricular activities. (Roach Tr. 2696-97; Pl. Exh. 235 p. 19)

18. Some special education pupils within the SEOSERRC region travel as much as 1 hour and 45 minutes one way to their special education program, though Department of Education guidelines recommend a maximum travel time of 45 minutes. (Roach Tr. 2699)

19. The incidence over-all pupils with disabilities in the SEOSERRC region is greater than the state average; Southern Local has been consistently above the state average incidence rates. (Roach Tr. 2707; Pl. Exh. 251 Table 1)

20. The incidence of multi-handicapped pupils is consistently greater in the SEOSERRC region than the state average, while the incidence in Southern Local has increased to a rate well above the state average. (Roach Tr. 2708; Pl Exh. 251 Table 2)

21. The incidence rates for developmentally handicapped pupils in the SEOSERRC region is greater than the state average and is nearly twice the state average in Southern Local. (Roach Tr. 2709; Pl. Exh. 251 Table 2a)

22. During the period from 1989 to 1993, the incidence of multi-handicapped pupils in the public school in the region served by the SEOSERRC increased by approximately the same number of pupils as the decline in pupils with that type of handicap in the programs operated by the County Boards of Mental Retardation and Developmental Disabilities, suggesting the those pupils are entering the public schools from MRDD programs.

(Roach Tr. 2711-12)

23. There is a significant lack of materials for the special education classes held in the SEOSERRC region; often material borrowed from the SEOSERRC lending library becomes the classroom materials. The SEOSERRC staff saves colored paper for Southern Local. (Roach Tr. 2727)

24. There is very little technology available for the handicapped pupils in the SEOSERRC regions. (Roach Tr. 2728)

25. While training programs are available for special education teachers in the region, many are unable to take advantage of those programs because of lack of funds to provide a substitute teacher in their absence. (Roach Tr. 2729-31)

26. Special education classes in the SEOSERRC region are held in the basement of some schools, in some instances on a stage with a curtain drawn across while a physical education class is held in the adjacent gym at the same time. Classes are held in trailers. Classes improperly mix junior high pupils with high school pupils outside of the age range limitations for special

education units. (Roach Tr. 2726)

27. Many of the buildings in the region are multi-story buildings. Only one of those buildings has an elevator. In some instances, orthopedically handicapped pupils have to eat in their classrooms because the lunchroom is not accessible. (Roach Tr. 2730)

F. SERVICES TO AND FUNDING FOR SPECIAL EDUCATION PUPILS
PLAINTIFF SCHOOL DISTRICTS

1. The state does not provide funding to pay for any of the facilities or space that is used by special education units operated by school districts. (McGee Depo. 47)

2. In FY93, the following numbers of special education units were in operation in the plaintiff school districts: Dawson-Bryant Local Schools 9; Lima City Schools more than 61; Northern Local Schools 14, Southern Local Schools 8; and Youngstown City Schools 219. (Stip. Exh. 28; Johnson Tr. 1461; McGee Depo. 37)

DAWSON-BRYANT LOCAL SCHOOL DISTRICT

3. In FY92, the special education count of 134 students at

Dawson-Bryant Local Schools represented 13 percent of the total student population. (Stip. Exh. 29)

4. In each year since 1980, Dawson-Bryant has operated at least 2 special education units without any reimbursement from the state. In FY93-94, the district is operating 9 special education units with only 6.87 of those units receiving any state reimbursement. (Stip. Exh. 28)

5. In the 1989-90 school year, Plaintiff Dawson-Bryant Local School District was billed \$15,423.72 for a student educated at the Henry County Board of Mental Retardation and Developmental Disabilities. (Pl. Exh. 258)

6. The Dawson-Bryant Local School District does not receive adequate in-service regarding special education from the special education regional resource center (SERRC) because the SEOSERRC has limited staff and limited resources. (Washburn Tr. 2322)

7. The services provided to Dawson-Bryant Local School District by the Lawrence County Board of Education do not meet the needs of the district. The district has requested on several occasions for assistance in a

variety of areas without success. Specifically, in 1986, the district requested additional psychological services from the county board due to an increase in referrals for multi-factored evaluations, but Dawson-Bryant still only receives approximately two (2) days a week from the county psychologist because the person must be shared with another district. (Washburn Tr. 2323-25)

8. Students at Deering Elementary School were carried up and down the stairs for fire drills and to go to classrooms and to the library. (Washburn Tr. 2355)

9. Keri Blankenship, a handicapped student with an Individualized Education Program (I.E.P.) attending the Intermediate School in the Plaintiff Dawson-Bryant Local School District, testified about her experiences at Dawson-Bryant. (K. Blankenship Depo. 19)

a. Keri's only access to a computer while at the elementary school was during recess she went to a classroom to work on the computer. The computer made it easier for her to do her school work. (K. Blankenship Depo. 15-16)

b. Keri's complaint, in her own words, was "in fifth

and sixth grade I wanted computers, but I didn't get it." She wanted the computer to do her school work. (K. Blankenship Depo. 19-20)

c. Beginning in the sixth grade at the Intermediate School, Keri has had to leave her classes five minutes before the bell so she could beat the crowd. (K. Blankenship Depo. 12-13)

d. Keri liked art and music at the elementary school, but there is no art or music offered at the Intermediate School available to Keri. (K. Blankenship Depo. 15)

e. Keri could see and smell the coal dust in some of her classrooms at The Intermediate School and it ruined her clothes. (K. Blankenship Depo. 20-21)

f. The only computer lab is at the high school to which Keri has no access. (K. Blankenship Depo. 25)

g. There is no science lab at the Intermediate School for Keri. (K. Blankenship Depo. 25)

h. Keri first received a computer to do her school

work for the seventh grade. (K. Blankenship Depo.

7; 35)

i. In the 7th grade, Keri is mainstreamed for several classes and works on school work two hours a day on a computer. (K. Blankenship Depo. 6)

j. Keri has an aide, Ms. Grove, who assists her on the computer and in movement around the Intermediate School between classes. (K. Blankenship Depo. 7-9)

k. Keri has not belonged to any clubs or after school activities except for Spanish Club, which was run by a parent volunteer. (K. Blankenship Depo. 1718)

l. Keri has taken no field trips for science class. (K. Blankenship Depo. 26)

m. Keri is not happy because she has to climb steps a lot to get into and out of the school building and to get from class to class. There are no ramps inside or outside the building to assist her. (K. Blankenship Depo. 29)

n. Keri cannot go to lunch with her friends, because

they either travel to the high school for lunch or leave the building during the open session lunch.

(K. Blankenship Depo. 30)

o. Keri cannot participate in gym class; during that class she just sits there and watches. (K.

Blankenship Depo. 31)

p. There were no physical activities at all in which she could participate in gym class at the Intermediate School or at the elementary school.

(K. Blankenship Depo. 31)

q. Keri receives physical therapy once a week during the school year, but not during the summer. Her therapy is received in any room that can be found.

(K. Blankenship Depo. 31-33)

10. Dawson-Bryant has not been able to meet the requirements of special education regulations as shown by the following instances of violations:

a. In FY93, the district was not able to remain within the required time lines for completing a multi-factored evaluations and IEP conferences for new referrals of students. (Washburn Tr. 2433; OAC

3301-51-02(E)(1)(c))

b. The district had no placement available for a student identified as severe behavior handicapped (SBH). (Washburn Tr. 2433; OAC 3301-51-01(H); 3301-51-03(A); 3301-51-04(E)(1) to (4))

c. The learning disabled (LD) class at the high school in FY94 has 25 students, and the maximum limit is 24 students, with 12 in any one instructional period. (Washburn Tr. 2434; OAC 3301-51-04(G)(3))

d. In FY93, the speech pathologist passed away, and the district had no applicants for the position. The district had no choice but to hire a non-certificated person for that position. (Washburn Tr. 2434; OAC 3301-51-05(N)(5))

e. At Dawson-Bryant, there are no transition services listed on IEPs for students who are 16 years old or older, which are required. Because staff members have not received any in-service training to write transition statements and to provide transition services, the district simply does not put transition statements on IEPs. (Washburn Tr.

2435-35; 34 CFR 300.346(b) and 300.18)

f. There is no adaptive physical education available in the Dawson-Bryant Schools. (Washburn Tr. 2435; OAC 3301-51-02(E)(4)(k))

LIMA CITY SCHOOL DISTRICT

11. The enrollment of Lima City Schools has decreased from 7,314 students in 1982-83 to 6,463 in 1992-93. During the same time period, the special education enrollment has continued to escalate. The percentage of students identified as requiring special education rose from 12.9 percent in 1982-83, to 15.2 percent in 1992-93. (Roger Miller Depo. 41; Stip. Exh. 29)

12. The reason for the increase in identified special education students is that the district has undergone a transition. Many families have built homes in the suburbs and go to the county schools. Lima City Schools does not have any areas that can be developed and the city has deteriorated. Many homes have been torn down because of the lack of housing and lack of development. As a result of the economic downturn, more and more students have special needs. (Roger Miller Depo. 41-42)

13. Lima City Schools has requested state funding for a developmentally handicapped (DH) Unit, a multi-handicapped (MH) unit, a physical therapy unit, and an occupational therapy unit, but those requests have been denied. (Roger Miller Depo. 35-36)

14. In 1992, the Department of Education required Lima City School District to add an additional unit for developmentally handicapped pupils because 13 of 18 units had more than the maximum allowed number of pupils. No state funding was provided for that additional unit. (Buroker Tr. 2908)

15. As multi-handicapped (MH) students move through the system from middle school to high school, the district will have a need for MX units at the high school. If the units are not state funded, the service is still required to be provided; the district must pay for those services with general fund monies. (Roger Miller Depo. 44)

16. Unit funding received from the state does not cover the cost of the unit, and the district must make up the difference out of the general fund. (Roger Miller Depo. 37)

17. The district has difficulty in the placement of students moving into the Lima City School District who have been identified as being handicapped or suspected to be handicapped because all of the district's funded units are full and there are no programs in which to place those students. (Buroker Tr. 3037)

18. In the week to 10 days before March 4, 1993, five students who had already been identified as developmentally handicapped (DH) students with IEPs transferred to the district from other schools. The district is required to test those students and then place each of them in a classroom with services in accordance with their identified needs. (Roger Miller Depo. 61)

19. In FY92, Plaintiff Lima City School District had special education costs of \$354,181.98 above that which were reimbursed by the state. (Pl. Exh. 280)

20. Lima City Schools is attempting to obtain grants for funds to implement an inclusion program in the special education area. (Roger Miller Depo. 58)

21. The Lima City School District provides special

education programming for pupils in other school districts. Pursuant to directives of the Ohio Department of Education, the Lima City School District prepares forms indicating the total amount by which the cost of providing special education programs exceeds any state unit funding for those programs and submits those charges to the district of Residence. For the 1992-93 school year, the Lima City School District determined that the excess cost above state support for the instruction of a learning disabled pupil is \$1,493.81, and for a severe behavior handicapped pupil, \$3,535.41. (Buroker Tr. 2914-16; Pl. Exh. 279)

22. The Lima City School District has several pupils placed in low incidence handicapped programs outside the district. In one instance, the district is required to pay as much as \$13,000 per year for a student placed in such a program. The district spends approximately \$210,000 a year for the payment of tuition to other districts, including pupils educated in the Division of Youth Services Programs. (Buroker Tr. 2920)

23. A majority of the special education students at Lima City Schools do not attend school in the building where they would attend if they were not handicapped. For students who are placed in school buildings more than

two miles from their residence, the district is required to provide transportation. For other students, transportation may be required as a related service. Special education students are transported by either bus or taxi. (Roger Miller Depo. 39-41)

24. Some special education pupils in the Lima City School District are transported by taxi cab because the district does not have enough specially equipped buses. (Buroker Tr. 2917) The cost for the taxis alone is almost \$100,000 per year. (Miller Depo. 39-41) Sixty--five percent of the cost of transporting handicapped pupils is paid from the School District's general fund, while the remaining 35 percent comes from state funding. (Buroker Tr. 2917)

25. Pupils incarcerated in Division of Youth Services facilities are students for whom the Lima City School District is now required to pay the cost of tuition. Those pupils are not permitted to be counted in average daily membership, nor is there any state assistance available for those pupils. Division of Youth Services tuition charges were not imposed until about the last three (3) years. (Buroker Tr. 2921)

26. Lima City Schools operates an educational unit in the

adolescent psychiatric ward at St. Rita's Hospital.

The entire funding for the educational unit is paid for by St. Rita's Hospital. The district did not have funds available to provide instruction for those students.

(Roger Miller Depo. 21-23)

27. The number of students at Lima City School District that have been served in residential facilities outside the district has increased from 30 students in 1982-83 to 106 students in 1992-93. (Roger Miller Depo. Exh. 1; see Roger Miller Depo. 25-26) Lima City Schools is responsible for the psychological evaluations for those students and the psychological re-evaluations for each of those students every three years. The district can have the residential facilities complete those psychological examination and bill the district, but it is extremely expensive; because of the district's finances, district psychologists attempt to do as many of the psychological exams as possible. (Roger Miller Depo. 28) The district is also responsible for developing the individualized education program for students in residential facilities. The district is billed for the cost over any state reimbursement of students' educations in residential facilities. (Roger Miller Depo. 27-30)

28. Lima City Schools employs three psychologists (Roger Miller Depo. 20) and served 982 special education students in FY92. (Stip. Exh. 29) In FY93, 106 special education students were residential placements out of the district. (Roger Miller Depo. 27-30; Roger Miller Depo. Exh. 1)

29. The Lima City School District has experienced a decline in the level of state funding for certain types of services, including those of school psychologists, because eligibility for state funding for those services is based on total pupil enrollment rather than the number of handicapped students to be served. While the districts total pupil enrollment has declined, the percentage of the enrollment represented by handicapped pupils has increased. (Buroker Tr. 2907)

30. Lima City Schools has had an increase in students placed on home instruction from 49 students in FY82 to 104 students in FY91 and 86 students in FY92. (Roger Miller Depo. Exh. 4) Some special education students that have committed acts within the school that pose a danger to themselves or other persons or property have been placed on home instruction. Those students' education services through home instruction is not reimbursed by the state, except for some limited SPH

students. (Roger Miller Depo. 47-48)

31. Lima City Schools has had an increase of students on home instruction due to pregnancy from 29 students in FY82 to 62 students in FY91 and 51 students in FY92.

(Roger Miller Depo. Exh. 4)

32. Title VI-B Federal Funds are used by Lima City Schools to pay the salary for 16 special education supervisors, for an occupational therapy unit, and for a physical therapy unit, because those positions are not funded or reimbursed by the state. Also, Title VI-B funds are used to employ a secretary to take care of tuition billing and tuition payments. (Roger Miller Depo. 31)

33. Lima City Schools could better meet the needs of special education students if Title VI-B monies were available for equipment and supplies, rather than the provision of mandated services. (Roger Miller Depo. 31; 43)

34. Plaintiff Lima City School District has been unable to keep up with the technological needs and the special education needs of the students in the district. (Eaton Depo. 41-43)

35. Available resources dictate the types of special education programs available to the student in the Lima City School District. Some types of handicapped pupils are delayed in identification until such time as a space opens up for that particular child. Students are often identified in the fourth and fifth grades, while if they attended other districts, they would be identified and placed in special education programs much earlier. (Buroker Tr. 3086-87)

36. In 1991, the district was cited by the Ohio Department of Education for not having up-to-date evaluations on four developmentally handicapped pupils. This problem relates to the lack of school psychologists. (Buroker Tr. 2910; Pl. Exh. 282)

37. The district was also cited for failure to deliver required physical therapy services for pupils. The district has been required to contract with a full-time physical therapist and pay in excess of \$50,000 per year because of the shortage of trained individuals. (Buroker Tr. 2911; Pl. Exh. 282 p. 27)

38. The Lima Senior High School and the South Junior High School are not handicapped accessible at the Lima City School District. (Buroker Tr. 3080-81)

39. The Lima City School District has acquiesced in parental demands for educational programs and services in order to avoid having to undergo due process hearings. (Buroker Tr. 3084-85)

40. The requirement that the Lima City School District provide special education and related services to its handicapped pupils has diminished the dollars available for regular education pupils because state aid for the funding of special education programs does not meet the total cost of those programs. (Buroker Tr. 2912)

NORTHERN LOCAL SCHOOL DISTRICT

41. Plaintiff Northern Local School District employs six DH teachers, six LD teachers and one SST (special services teacher) in special education units. (Johnson Tr. 1460) Plaintiff Northern Local School District operates thirteen special education units, ten of which receive some funding from the state. (Johnson Tr. 1461; Stip. Exh. 28 is incorrect for Northern Local)

42. Plaintiff Northern Local School District incurs excess cost of over \$20,000 per year for two hearing-impaired students who travel to Zanesville for hearing-impaired

class. Plaintiff Northern Local School District also sends students to a MH class in the New Lexington City Schools, which cost the district approximately \$6,500 per student per year. Plaintiff Northern Local School District also has a MX student who is sent to class at Crooksville every day and the district pays the student's mother \$8.50 per hour plus mileage to drive that student to school. In addition, there is an interpreter who must be with that student throughout the day, at a cost of \$15.00 per hour to the district. (Johnson Tr. 1462-63)

43. A due process hearing with respect to the MH student who is being educated at Crooksville has cost the district over \$20,000. (Johnson Tr. 1464)

44. Plaintiff Northern Local School District needs another DH unit, and probably two additional LD units. The district has applied at different times to the State Department of Education for additional special education units but has never received any additional funds. The district has been informed by the director of the Southeast Regional SERRC on several occasions that there are no available units. Accordingly, there are some years that Plaintiff Northern Local School District has not applied for additional special

education units based on that information. (Johnson Tr. 1466)

45. At Sheridan High School, special education is all over the building. SBH classes were served in a book room. Later, the typing room was divided with one-third of the room taken for a SBH room. Part of the library was divided into classrooms for learning-disabled students. The developmentally handicapped high school teacher is traveling from room to room at the high school. There are rooms at Sheridan High School that house special education students that do not have windows or ventilation. (Dilbone Tr. 2016-18)

46. Glenford Local does not have appropriate facilities for developmentally handicapped students to learn to take care of themselves or to prepare a meal, because of the lack of appropriate facilities. (Papritan Tr. 1958)

47. The district has encountered situations where it cannot meet the recommendations contained in the last PREP Report issued by ODE. The district still has class sizes over the maximum numbers permitted by the state. The district has a DH class with 18 students in it and a LD class with close to 20 students. (Johnson Tr. 1527-1600)

48. Class sizes in special education at Glenford Elementary has been above the state maximum for several years. In 1992-93, one special education class had a 21 students, although the maximum is 12 and, with an aide, the maximum is 15. (Papritan Tr. 1952; OAC 3301-5104(G)(3))

49. Glenford Elementary School in Plaintiff Northern Local School District does not have a special education supervisor to oversee the school's special education programs. That task is performed by the principal. (Spohn Depo. 71)

50. Northern Local has had problems obtaining teachers with special education certificates and have had to employ persons to teach special education who had only two or three courses in special education. (Dilbone Tr. 2016-19)

51. Special education students attending Glenford Elementary in the Northern Local School District miss 15 minutes of instructional time each morning (which equals about 45 hours of instruction lost each year) and another 10-15 minutes in the afternoon because of the bus scheduling and shuttles between the districts' buildings. (Papritan Tr. 1929-30)

SOUTHERN LOCAL SCHOOL DISTRICT

52. The special education child count for Southern Local has increased from 131 students (13 percent of the student population) in FY89, to 153 students (15 percent of the student population) in FY93. (Stip. Exhs. 1; 29)

53. Special education students in Plaintiff Southern Local School District are rarely identified before they reach the first-grade level (Lichtenstein Depo. 48), despite the requirement that all handicapped students are entitled to service at age three. (R.C. Section 3323.02)

54. For many students at Southern Local, the waiting period for identification of the handicapped child can be significant. If, in fact, that child is not identified, then for that period of time that they are not receiving services, they have unmet special education needs. (Spangler Tr. 719)

55. Certain programs cannot be cut, including special education and certain aspects of transportation and mandated programs. (Spangler Tr. 503) For FY93,

Southern Local was spending about \$4,932 per special education student while expenditures for all students, including disabled students, averaged about \$3,003 per pupil. The district has spent as much as \$9,000 on a pupil in a hearing-impaired classroom. A transportation route for one particular handicapped pupil may cost more than \$4,932 per year. (Spangler Tr. 503-05)

56. The district has a need for additional special education units that have been requested and not received. (Spangler Tr. 507)

57. Students in the district have had a need for aide attendants, but the district has not always provided those services. Aide attendants for some orthopedically impaired children has been paid for out of the general fund, without any state reimbursement. The district has had some problems meeting an orthopedically handicapped student's needs with the limited number of staff. In one instance, the student was unable to find assistance in getting to the rest room and was afraid to ask for help. Her catheter went unattended and she developed a severe kidney infection, which could have been life-threatening. (Spangler Tr. 508-10)

58. The needs of special education students for

supplemental services teachers, aide attendants, occupational physical therapy, often go unmet at Southern Local. (Spangler Tr. 510)

59. A Program Review and Evaluation Procedures (PREP) review is an on-site review of the school district's special education programs, policies and procedures conducted by the Ohio Department of Education, Division of Special Education. (Spangler Tr. 511) Recommendations in a report of the on-site visit include areas in which the Division of Special Education found evidence that the district might not be acting in accordance with the rules for education of handicapped children (OAC Sections 3301-51-01 to -10) (Spangler Tr. 512)

60. The most recent PREP review by the Division of Special Education of Northern and Southern Local was undertaken and a report issued to the Perry County Board of Education on January 26, 1990 (Pl. Exh. 47) This document is the most complete reporting done of the on-site visit. (Spangler Tr. 659) There have been no further on-site reviews at Southern Local since the report was issued. (Spangler Tr. 730) The report contains the following items that were the subject of PREP Review recommendations for Southern Local. Each of

these are the result of the lack of funds, and none of them have been remedied since the report was issued.

a. Record keeping as required for special education students is a problem in the district. Southern Local has no on-site special education director and does not have the support staff that is needed to do proper record keeping. (Pl. Exh. 47, p. 18; Spangler Tr. 512-14; OAC 3301-51-02(A) to (E))

b. District personnel have been reluctant to inform parents as required by law of some of the costly rights such as medical evaluations, when they know that funds are limited. Physical condition was not a part of multi-factored evaluations, as required. The district has been able to budget only \$300-\$350 for medical exams and this problem has not been fully remedied. (Pl. Exh. 47, pp. 21-22; Spangler Tr. 515-16; OAC 3301-51-05(H))

c. Teachers should be involved in the conference to plan the program for a special education child whom they instruct. However, the district does not have the money to take teachers out of the classroom to be a part of those conferences. (Pl. Exh. 47, p. 23; Spangler Tr. 516; OAC 3301-51-

02(E))

d. The district has not been able to make available to the speech/language pathologist an portable tape recorder and a supply of tapes as required.

(Pl. Exh. 47, p. 28; Spangler Tr. 516-17; OAC 3301-51-05(N))

e. Special education rules require that a number of services must be open to each child with a handicapping condition. At the junior and senior high levels, there is no continuum of program options for severe learning disabled (SLD)

students. (Spangler Tr. 518-19; OAC 3301-51-03)

There are students who need another level of service other than the individual small group instruction that is available, and for those students a free appropriate public education is not available in the least restrictive environment at Southern Local. (Spangler Tr. 731; OAC 3301-51-01(T))

61. During a visit to a developmentally handicapped class at Shawnee building in the Southern Local Schools, in February of 1992, Dr. Roach found no material specifically designed for children with disabilities;

none of the textbooks in use were dated past 1962. The class for children with learning disabilities was housed with another class in a room designed for only one, the material was not appropriate and the room extremely crowded. Speech therapy was provided in a closet. There was no mirror as required by state standards. (Roach Tr. 2723)

62. When the district has fixed resources, and a greater portion of those resources need to be devoted to children with disabilities, the portion available for non-disabled children is reduced. (Spangler Tr. 511)

YOUNGSTOWN CITY SCHOOL DISTRICT

63. The Youngstown City School District's enrollment has declined from 15,331 in FY89 to 14,419 in FY92, but the number of students identified with special education needs has increased from 1,938 in FY89 to 2,042 in FY92. (Stip. Exhs. 8 and 29)

64. As early as FY84, the Youngstown City Schools operated more than 27 special education units for which it received no state reimbursement. In each fiscal year 1989, 1990, and 1991, the district operated approximately 32 units with no state reimbursement. In

FY92, the district operated about 27 unfunded units.

(Stip. Exh. 28)

65. The Stambaugh school building in Youngstown City School District houses some of the district's SBH units for grades K through 12. (Hiscox Depo. vol 1, p. 75; Hiscox Depo. Exh. 6)

66. The buildings in Plaintiff Youngstown City School District where orthopedically handicapped students are placed are accessible to those students except for Rayen High School. Other buildings in the district which do not serve orthopedically handicapped students are not handicapped accessible. (Hiscox Depo. vol 1, p. 138-39)

67. The Office for Civil Rights has ordered the Youngstown City School District to make Rayen High School handicapped accessible. Included in that project is the requirement that the district install an elevator at Rayen High School at a cost of \$160,000. The district also had to make some changes in restrooms and add entrance ramps. The total bill for the project is estimated to be over \$200,000. The district applied for state assistance in funding this project, but that application was denied. (Hiscox Depo. vol 1, p. 15556;

Hiscox Depo. Exh. 9; Hiscox Depo. Exh. 10)

68. The order of the OCR to make the Rayen building handicapped accessible resulted from a complaint filed by parents of handicapped students at the school. The district was ordered to put an elevator in the building, and to modify the auditorium so students in wheelchairs can enter the auditorium. The auditorium modifications have not been completed because the auditorium is designed in such a way that ramps cannot be installed and lifts cannot be installed to the stage area. (Hiscox Depo. vol 2, p. 6-12; Hiscox Depo. Exh. 9; Hiscox Depo. Exh. 10)

69. At Rayen High School, entrances have been remodelled, electrical apparatus for opening doors have been installed, and bathrooms, drinking fountains, telephones, and candy machines have been modified to be accessible for handicapped persons. The district remains out of compliance because it has not installed an elevator for handicapped access to the cafeteria so that handicapped students may eat with nonhandicapped students. The district remains under the order to put an elevator in the building, which will cost \$165,000. The deadline to complete the elevator was August 1993. (McGee Depo. 44; 47) In November 1993, the Youngstown

City School District had not completed the elevator at Rayen High School. (Marino Tr. 3420)

70. The Office of Civil Rights has required the Youngstown City Schools to make other buildings and programs handicapped accessible. Around 1991, the district had to spend \$60,000 in Title VI-B flow-thru monies earmarked for books and supplies to put an elevator into a junior high. Also, \$20,000 of general fund money was spent for an elevator that cost \$80,000. Other than a \$25,000 special grant, the district has received no funding from the state to assist with accessibility issues. (McGee Depo. 43)

71. Youngstown City Schools had planned an addition to Cleveland Elementary, but because of lack of funds, the project was scrapped and special education students are still bussed across town to receive services. Many SLD and DH students are unable to attend class in their home school due to space limitations and must be bussed across the district in order to access SLD and DH classrooms. (McGee Depo. 46; McGee Depo. Exh. 1; Pl. Exh 289)

72. Unit funding does not cover the cost of operating the units at Youngstown City Schools. (McGee Depo. 31)

73. In FY93, Youngstown City Schools served approximately 460 specific learning disabled (SLD) students. For those students, the district operated 43 units, but only 27 of those were funded units. (McGee Depo. 25; Exh. 1, p. 4)

74. The state requires supervisory units if a district operates 20 special education units in a high or low incidence handicapped area. Youngstown City Schools is required to fund two high incidence supervisors and one low incidence supervisor, but receives no state reimbursement for those units. (McGee Depo. 26)

75. In FY93 Youngstown City Schools operated 13 speech therapy units, with unit funding for only 9.2 units, even though the district has had the ADM in past years to justify additional units. (McGee Depo. 26)

76. Youngstown City Schools operates two occupational therapy units and one physical therapy unit. The district has the ADM to qualify for additional units. However, the district has received no additional units in P.T. or O.T. in 8 or 9 years. (McGee Depo. 26-27)

77. Personnel from the State Department of Education,

Division of Special Education have indicated that additional funded special education units are not available because the state legislature has not funded them. (McGee Depo. 29-30)

78. Youngstown City Schools pays excess costs to other school districts for students who are being served in those other districts. Excess costs are paid to Cleveland, Berea, Alliance, Columbus City Schools, and for some children placed in residential facilities in Pennsylvania. The district is responsible for the educational programming of the students who are placed out of the district, because the parents of the students or their guardians are residents of Youngstown City Schools. (McGee Depo. 17-18) The district must pay between \$35,000 and \$38,000 per year in excess costs to other districts, but one expensive student might double that figure. (McGee Depo. 20-21)

79. Excess costs are also paid to the Department of Youth Services, when children are adjudicated to that department. (McGee Depo. 17) Youngstown City Schools does not receive any reimbursement from the state if a student is adjudicated to DYS, because the district cannot count the student in its ADM and no money is received for those students. The district must pay

between \$1,700 and \$2,200 per student for tuition at DYS, depending on the fees of the location where the student is attending. (McGee Depo. 19) If a student has special needs, the district may incur additional expenses. The district pays approximately \$40,000 to \$42,000 per year for DYS students. (McGee Depo. 20)

80. Youngstown City Schools has two teaching units at a hospital for substance abuse students. The district had difficulty collecting tuition from other school districts, and for many students was stuck with the cost of the services provided. (McGee Depo. 22)

81. Currently, Youngstown City Schools has 23 hearing impaired, 11 orthopedically impaired, 1 visually impaired, 4 specific learning disabled (SLD), and 3 developmentally handicapped students attending Youngstown City Schools from other school districts. For those students, the state determines how much expense is incurred by the Youngstown City Schools over and above state reimbursement, and that amount is charged out to the districts of the students' residence. That amount for last school year was approximately \$300,000 for these students. (McGee Depo. 21; 23)

82. At Youngstown City Schools, 55 out of 75 positions for educational assistants are currently funded by the general fund, which is a cost of almost \$1 million. (McGee Depo. 34)

83. The amount Youngstown City Schools is required to spend out of its general fund for special education, which is not reimbursed by the state is increasing. The unit funding is not keeping up with district expenditures and the district is serving a special population who has increasing needs. (McGee Depo. 35)

84. Youngstown City Schools has \$5 million per year in special education expenditures that are not reimbursed by the state aside from basic aid from state funds. (Marino Tr. 3204)

85. Plaintiff Youngstown City School District must transfer money out of the general fund to pay mandated special education costs. This situation adds to the significant deficit which has been incurred by the Youngstown City School District. (Hiscox Depo. vol 2, p. 20)

86. Speech therapists and psychologists for serving special education students are funded not on the number of special education students, but upon the district total

enrollment. Youngstown City Schools has been informed that because total enrollment has declined, they can expect cuts in unit funding for speech therapy and psychologist in FY95. (McGee Depo. 38) Although total enrollment has decreased (Stip. Exh. 8), the number of special education students in the district has continued to increase in recent years. (Stip. Exh. 29)

87. Federal Title VI-B funds are intended to enhance special education programming. (McGee Depo. 27)

88. Youngstown City Schools has been forced to use Title VI-B funds to hire personnel to be in compliance with special education requirements and to provide basic services. (McGee Depo. 26-27)

89. Federal funding has not kept up with the Youngstown City Schools' expenses as they continued to rise. Programs funded out of Title VI-B flow-thru monies have been compromised. (McGee Depo. 33-34)

90. Even with the increase requirements in the special education area, the Youngstown City School District has seen no increase in funding on the federal level in Title I, Title II, or Title VI-B funds. The funding level for these funds has been the same in the entire

time that Mr. Hiscox has been employed by Youngstown.

(Hiscox Depo. vol 1, p. 39)

91. Youngstown City Schools has a need for a more functional curriculum, including materials and supplies that would make courses look more relevant and important to students. Youngstown City Schools needs more involvement for special education students in technology. Many special education students could benefit from exposure to individual computerized instruction. (McGee Depo. 78)

92. The state does not provide funds for extended school year services. Youngstown City Schools has been required to provide extended vocational programs for a student and job coaches in a summer job program for students. (McGee Depo. 50-51)

93. Youngstown City Schools incurs expenses for audiology, medical testing of students in MRDD programs, transitional services, and Option 4 services for students who need to be placed on supported employment. The district receives no state reimbursement for any of these expenses. (McGee Depo. 51-52)

94. School districts must spend money on expensive

equipment that is required as a part of a student's individual education program. For example, Youngstown City Schools has had to buy two visual techs for visually impaired students in the past four years, which cost \$3,000 each. Youngstown City Schools has also had to buy touch talkers, which cost \$5,000 each. There is no state reimbursement to school districts for these types of equipment. (McGee Depo. 59-60)

95. Youngstown City Schools is deficient in computer--assisted instruction, particularly for special education students, because of limited finances. (McGee Depo. 67-68) In some instances, equipment for certain special education students should have been purchased sooner, but the district did not have the financial resources. (McGee Depo. 68-69)

96. In some instances, the Youngstown City Schools may have purchased equipment required for special education students, but it is provided at a hardship to the district, putting a squeeze on other funding areas. Youngstown City Schools has been forced to compromise regular programming in order to provide for special education students' needs. (McGee Depo. 71)

97. Youngstown City Schools has only 4.7 funded handicapped

preschool units, and each unit may serve only 8 students. If more than 7 students are served in a unit, the district is required to employ an assistant for the room. The state does not provide any reimbursement for the assistant. The district has 74 identified handicapped preschool students with 16 additional students waiting to be tested for eligibility; thus, the district needs 10 to 13 units. The state has no more units to provide reimbursement. All preschool handicapped costs that are not reimbursed must be paid by the district's general fund or Title VI-B funds. (McGee Depo. 27)

98. To serve its handicapped preschool students, Youngstown City Schools is paying rent to agencies for space for preschool units because of the lack of space in the school buildings. These agencies are child care and preschool sites served by the Department of Human Services. The Ohio Department of Education has established a set of requirements for an appropriate preschool unit, requiring districts to go through a number of inspections and assessments from the fire marshall, and making facilities corrections to be in compliance. Costs for these inspections and corrections to the rented facilities owned by agencies are borne by the school district. The district is obligated to

provide pathway lighting, locks to secure files, and other expenditures to bring the agency buildings into compliance in order to house the preschool handicapped units. (McGee Depo. 44-47)

99. Office for Civil Rights (OCR) complaints that have been lodged against Youngstown City Schools have included complaints about accessibility, curriculum, lack of compliance with tie-down regulations on busses for wheelchair students, lack of access by special education students to a computer lab, and lack of psychological counseling for a student. The district has also been ordered to provide compensatory education as a result of some of those complaints. (McGee Depo. 85-86)

100. In February 1993, the district was notified of a due process hearing request that may also be a referral to OCR regarding equipment for a visually impaired orthopedically handicapped student that may cost the district more than \$10,000. (McGee Depo. 87) In February 1993, Youngstown City Schools was in the middle of several IEP challenges. (McGee Depo. 94)

101. The Special Education Regional Resource Center (SERRC) serving Youngstown City Schools has provided some

materials and supplies for special education teachers, but the materials have been rather dated at times, and the SEOSERRC has not been able to provide the kind of high-tech equipment that today's special education student needs. (McGee Depo. 53)

102. Projected cuts at Youngstown City Schools for special education services include personnel in supervisory units, support personnel, speech therapy, psychological services, and learning disability services. (McGee Depo. 83-84)

103. The federal government (OSEP) evaluated the state of Ohio and the Youngstown City Schools regarding compliance with federal regulations for special education services. The federal government found that the state has not met some of its charges imposed by federal law. (McGee Depo. 60-61)

104. OSEP identified approximately 100 deficiencies regarding federal requirements for the Youngstown City School District. (Pl. Exh 237)

105. There are areas where Youngstown City Schools is not at the present time meeting state special education mandates. The district is out of compliance with OCR's

accessibility requirements and has ongoing OCR charges and IEP challenges. (McGee Depo. 43-47; 93-94)

106. At Youngstown City Schools, because funds are taken from the regular education program to pay for handicapped students' programs, the regular education programs are compromised. Even though those programs are compromised and funding is shifted, there still often is not enough funding to provide adequately for the needs and enhancements for the special education population. Thus, both groups of students suffer. (McGee Depo. 92-93)

107. Youngstown City Schools is not receiving as much money as required to appropriately meet the needs of their students. (McGee Depo. 99)

108. School districts cannot rely on the generosity of foundations or private businesses when they have mandates to deliver services. (McGee Depo. 81-82)

G. SERVICES TO SPECIAL EDUCATION PUPILS IN HIGH AND LOW CAPACITY DISTRICTS AND COMPARISONS TO PLAINTIFF SCHOOL DISTRICTS

1. Dr. David Roach compared the Plaintiff "low capacity"

school districts, including Union Scioto and Cardington-Lincoln Local School Districts, to "high capacity" school districts or matched pair districts on Plaintiffs' Exhibits 252 and 252a. (Roach Tr. 2715-16)

2. Comparing the Plaintiff school districts' expenditures with high capacity school districts' expenditures for special education programs, excluding all state unit funding, indicates that high capacity school districts spend substantially more per pupil for special education programming, in dollars and in percent of general fund budget, because the high capacity districts pay their teachers more and because they provide more services. (Roach Tr. 2719-20; Pl. Exh. 252)

3. Over the three-year period from FY89 through FY91, the high capacity districts studied spent on the average \$8,651 for special education pupils, while the average per pupil expenditure for handicapped pupils in low capacity districts was \$4,318. (Pl. Exh. 252 p. 8)

4. Dr. Kern Alexander compared "poor" school districts to "rich" school districts by examining the top and bottom approximately five percent of the pupils in school districts ranked in order of assessed property

valuation per pupil. (Alexander Tr. 3641)

5. Special education expenses represent a greater percentage of total school district expenditures for the poor districts than for the rich. For the Plaintiffs, it is higher than either the rich or the poor and higher than the state average. (Alexander Tr. 3675; Pl. Exh. 301 p. 106)

6. For the Plaintiff school districts, special education expenditures represent 27.76 percent of total regular instruction expenditures for FY91; for the same period, special education expenditures represented 10.81 percent of regular instructional expenditures for the rich school districts and 20.81 percent for the poor school districts. (Alexander Tr. 3678; Pl. Exh. 301 p. 107)

7. In contrast to the special education programs offered at Plaintiff districts, pupils in the Beachwood City School District with learning disabilities receive special education programming in the first grade. The Bryden School has two learning disability teachers who are divided into individual and small group sessions in a resource room for children with learning disabilities. (McMurrin Tr. 2512)

8. Rarely does a tutor at Granville High School have more than one student during a tutoring session. Each tutor has his or her own office and work area. (Dilbone Tr. 2016-17)

9. Comparing his experience at Youngstown to his experience at Leetonia, Mr. Hiscox believes that there is a higher level of incidence of handicapped students in the inner city schools. (Hiscox Depo. vol 2, p. 21)

10. The Mayfield Heights City Schools (Mayfield) has special education classes with smaller class sizes in DH programming than is found in Youngstown City Schools. Mayfield has educational assistance in LD and DH programs, which is unavailable at Youngstown City Schools because the district does not have the funds. Mayfield special education students have access to computers, and computer instruction, which special education students at Youngstown City Schools do not have. Mayfield's buildings were more handicapped accessible than Youngstown City Schools'. Mayfield had a job training program in which the program was taken the students rather than shuffling students from service to service to the detriment of the students, as it often occurs at Youngstown City Schools. Mayfield

was able to provide more materials to augment the curriculum and offered more courses and more cohesive courses than Youngstown City Schools. (McGee Depo. 63)

11. Problems faced by some special education students in receiving the services to which they are entitled in the state include lack of technology, lack of staff, unavailability of programs, lack of unit funding, inaccessibility of buildings, lack of occupational therapists and physical therapists, lack of supplemental service teachers, and lengthy travel to education placements. (Tobin Depo. 77-79)

H. PRESCHOOL SPECIAL EDUCATION

1. The Division of Early Childhood Education administers the Individuals With Disabilities Education Act. This program provides pre-school special education. Since July 1, 1991, school districts are mandated to provide special education and related services to identified 3 and 4 year old children with disabilities. (Wiechel Depo. 97, 102; Stip. 76)

2. As of December 1992, the number of preschool children with disabilities being served under the Individuals With Disabilities Education Act increased to 12,200.

However, there were approximately 23,000 eligible children who could qualify for the services. Accordingly, only slightly more than 50 percent of the eligible population is being served at the present time. (Wiechel Depo. 104; see Stip. 77)

3. Funding for the Individuals With Disabilities Education Act program is provided by state foundation units. In 1991-92, there were 850 pre-school units. One unit equalled approximately \$36,500. In 1992-93, there were 885 funded pre-school units. However, 1,400 units were requested for that year by public school districts. The number of units awarded by the state are based upon the funding available from the General Assembly. (Wiechel Depo. 110-13)

4. For 1992-93, \$34,000,000 was appropriated for pre-school special education units of which \$31,000,000 was actually available to public school districts. For fiscal year 1994, the State Board of Education recommended that the number of pre-school special education units be increased to 1,838 and increased in fiscal year 1995 to 2,018 units in order to fully serve all eligible children. (Wiechel Depo. 112-116)

I. SECTION 504 OF THE REHABILITATION ACT AND ADA MANDATES

1. The class of individuals protected under Section 504 of the Rehabilitation Act (29 U.S.C. Section 794) is more broad than is the class of individuals protected under the IDEA (20 U.S.C. 1401 et sea.; Tobin DePo. 63-64)

2. No state funds are specifically allocated to serve the needs of children who are entitled to accommodation and education services under Section 504 of the Rehabilitation Act (29 U.S.C. Section 794; Herner Depo. 67)

3. Many children with major language needs reside in large urban school districts. The needs of those children are not served by funds from the ODE, Division of Special Education, unless they also happen to meet the requirements of being educationally handicapped. (Herner Depo. 156-57)

4. The Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. Section 1201 et seq., imposes additional obligations on school districts, and prohibits discrimination of students who are participating in activities that do not receive federal funding, such as a latchkey program. (Tobin Depo. 65-66)

XIII. UNSERVED PUPILS

A. CHAPTER PROGRAMS

1. The purpose of federal Chapter monies is to address the educational problems of special need students. (Marino Tr. 3445)

2. Plaintiffs' Exhibit 50 lists the number of Chapter 1 eligible students in each of the Plaintiff Districts and the number of those students who are served. The figure for the number of students eligible is duplicated because a particular student may be eligible for chapter programs in reading, language arts, and math. Each of the Plaintiff districts serves fewer students than are eligible, even after accounting for duplicated counts. (Pl. Exh. 50; Johnson Tr. 1459)

DAWSON-BRYANT

3. Dawson-Bryant identifies students as eligible for Chapter I services only if they score 45 percent or below on a standardized norm reference test, while under federal guidelines students are eligible for Chapter I services if they score 49 percent or below on such a test. (Washburn Tr. 2398)

4. Chapter I services are sporadic at Dawson-Bryant. At Monitor Elementary, Chapter I services are provided in reading for kindergarten through 3rd grade. No math or language arts services are provided at Monitor. At Deering Elementary, Chapter I services are provided to kindergarten through 4th grade in reading and 4th grade in math. No services are provided in language arts or math in the primary level grades. No Chapter I services are available in the 5th or 6th grade at Deering. At the Intermediate building, Chapter I services are provided only in math for grades 5 and 6. Waiting lists of students eligible to receive services exist at all grade levels. (Washburn Tr. 2399)

5. In FY93, 1,213 students were eligible to receive Chapter I services in math, language arts, and/or reading. Only 233 students actually received services. Eighty-one percent of the identified student needs, which entitled Dawson-Bryant students to Chapter I services remain without those services. Students at Dawson-Bryant are deprived of educational services for which they have documented needs. (Washburn Tr. 2399; Pl. Exh. 50)

6. The Lima City School District currently has 3,700 pupils eligible for Chapter I services in the math, reading, and language arts. Out of those 3,700 pupils, 1,300 are presently being served in math and/or reading, while 2,400 (65 percent) of pupils' identified needs are unserved. (Buroker Tr. 2904; Pl. Exh. 50)

7. At Lima, a portion of the Chapter I funds are used to provide extended day kindergarten for those pupils who are most developmentally delayed. Sixty to sixty-two percent of the pupils are enrolled in extended day kindergarten. (Buroker Tr. 2904-05; Pl. Exh. 50)

NORTHERN LOCAL

8. At Plaintiff Northern Local School District, 2,448 students have identified Chapter I needs in language, reading, and math. Plaintiff Northern Local School District serves 207 Chapter I eligible students, and thus, 92 percent of students' needs for Chapter I services remain unserved. (Johnson Tr. 1459; Pl. Exh. 50)

9. Sixteen out of 23 students from Ms. Spohn's 1992-93 2nd grade class at Plaintiff Northern Local, qualified for

the Chapter I reading program. (Spohn Depo. 19-20)

SOUTHERN LOCAL

10. To be eligible for Chapter I services at Southern Local, a student must score below the 36 percentile in reading, math, or language arts on a standardized achievement test and must be economically disadvantaged. (Spangler Tr. 526-27) Frequently, students are served in Chapter I programs in reading labs or math labs, which are additional classroom programs for students that attend on a pull-out basis with a small group of students or perhaps individually with a teacher for supplement instruction. (Spangler Tr. 527-28)

11. At Southern Local, 228 students out of 1,157 students who are eligible, receive service in math, reading, and/or language arts, and thus, 81 percent of the identified students needs are unserved. (Spangler Tr. 527-530) Of the eligible students, the ones that need the service most are served first. (Spangler Tr. 530; Pl. Exh. 50)

12. Chapter I services are sporadic at Southern Local. Some Kindergarten students are provided with the

extended-day program, some students in grades 1 through 4 receive services in reading, students in grades 5 and 6 receive no services in any subject area, some students in grades 7 and 8 receive services in mathematics, and some students in grades 9 and 10 receive services in mathematics. Services are provided where the greatest test score need appears and where the greatest need is expressed by staff and parents. Finances limit the service provided. (Spangler Tr. 653-64)

YOUNGSTOWN

13. In Youngstown City Schools, about 9,285 students are eligible for Chapter I services in reading, mathematics, and/or language arts. Pupils may be eligible for more than one service, but at Youngstown City Schools, are served only in one program. (Marino Tr. 3424-25) Presently, 2,367 students are served and 6,878 are not served in the areas of their identified needs, leaving 74 percent of students' needs unserved. (Pl. Exh. 50) The district is only serving those students in greatest need. (Marino Tr. 3248; Pl. Exh. 50)

14. Youngstown City Schools offers no after-school

activities for elementary students. At one time, there was some limited after-school programming through Chapter I funds and through drop-out prevention grants, but the money has run out. (Marino Tr. 3234)

B. PRESCHOOL EDUCATION

1. Jane Wiechel, Director of the Early Childhood Education Division of the Ohio Department of Education, testified that early intervention can make a difference in reducing a child's need for intervention as he grows older. In addition, research supports that a quality preschool program can reduce drop-outs long term, reduce teen pregnancies, and reduce the need for special education. Preschool has been proven to make a difference long term for youngsters. (Wiechel Depo. 33)

2. A study of the effects of preschool and kindergarten attendance commissioned by the Division of Early Childhood Education of the Ohio Department of Education in 1992 found that preschool is beneficial to the development of pupils, and implementation of preschool programs should be encouraged. (Pl. Exh. 419, p. 8; Pl. Exh. 420, p. 69)

3. Quality public preschool can make a difference for poor

children. Poor children have a special need to succeed in school so that they will be equipped to break out of the poverty cycle. (Wiechel Depo. 191-92)

4. The State Board of Education has advocated preschool programs for children living in districts with high ADC populations. (Tavakolian Depo. 42)

5. The ODE has recognized that early childhood education is a critical component in a child's educational career, and that high quality programs are necessary to provide this component. (Pl. Exh. 424)

6. Careful economic evaluation of preventative programs, such as assisting parents in preparing for their role as their children's first teachers, better preparing disadvantaged and other at-risk children to enter school, and reducing the incidents of teen pregnancy, has demonstrated that they pay off for the taxpayer, generally returning savings of \$4 plus interest and inflation for every dollar invested. (Pl. Exh. 420)

7. Children attending preschool generally have higher achievement, are more likely to stay in school and not drop out, are less likely to be placed in special education, and are more likely to go on to some type of

post-high school training. For every dollar invested in these preschool programs, there is a \$5 return.

(Wiechel Depo. 179-80)

8. Children who attend preschool have markedly lower retention rates in the elementary grades when compared to children with no preschool experience. (Pl. Exh. 419, p. 8)

9. Children who attended preschool are much less likely to have been placed into a Chapter I program than children who had not attended preschool. (Pl. Exh. 419, p. 8; Pl. Exh. 420, p. 70)

10. There are clearly more children eligible for preschool services than are being served. Parents also need education and training. Furthermore, individuals who work in these programs, including teachers, classroom assistants and volunteers, have an ongoing need for, and must have opportunities for staff development. (Wiechel Depo. 186)

11. Over half of the eligible preschool pupils in Ohio currently do not receive services through state-funded programs. (Sanders Tr. 306)

12. For the 1993-94 school year, 95 preschool handicapped units were provided with all local funds; that is, without the benefit of a state funded unit. (Russell Depo. 106)

13. Plaintiff Dawson-Bryant Local School District does not offer public preschool, and it does not have the money or the space to offer it. (Swartzwelder Depo. 64)

14. There is no licensed preschool facility in the Dawson--Bryant School District. Dawson-Bryant has not been able to implement a preschool program because of the cost. (Washburn Tr. 2387-89)

15. Plaintiff Northern Local School District does not operate a public preschool program; that program is operated by the Perry County Board of Education. (Hill Depo. 55)

16. Chris Thompson had no preschool experience at Plaintiff Southern Local School District. (Thompson Tr. 1307)

17. Plaintiff Youngstown City School District does not have the funding to provide adequate preschool programs to students in the district. (Pincham Depo. 34-35)

18. Plaintiff Youngstown City School District does not have, nor can it support, a comprehensive preschool program. (Pincham Depo. 37)

19. Plaintiff Youngstown City School District does not offer general education preschool, but only offers the required preschool for handicapped pupils. (Hiscox Depo. vol 1, p. 45)

20. In Youngstown, there are severe needs for preschool services to students who are not handicapped. Children living in the projects and other poverty situations do not receive the same kind of beginning a normal child would receive. The majority of them do not have two parents and they do not have books and materials in the home. Children are coming to school with speech patterns at the three-year old level. Some students may qualify for special education programs because of language delays. Many students come to kindergarten not ready to learn, but the district cannot afford to implement preschool services. (Marino Tr. 3219)

21. Youngstown City Schools retains 33 percent of its 1st graders. (Marino Tr. 3233) The retention is [in part] the result of lacking preschool services, inadequate kindergarten services, large class sizes, and unmet

student needs. (Marino Tr. 3233)

C. HEAD START

1. Head Start is a program that was designed to serve children who are from families at 100 percent of the federal poverty level or below, and it is designed to basically provide four major components of services. These components are educational, parent involvement, social, and health and medical. The educational component is a half-day, every day preschool experience. The parental component involves getting parents to participate in the program in terms of working as classroom assistants and engaging in parental education so that parents better understand how their children learn, grow and develop. The health and medical component of Head Start looks at youngsters in terms of dental and physical examinations. Head Start then works with either Medicaid providers or works with the family to get those kinds of services. (Wiechel Depo. 71-75)

2. There are both federal and state components to Head Start. The Division of Early Childhood Education is responsible for the state component of Head Start in Ohio. In the biennial budget for fiscal years 1992 and

1993, only one-third of the eligible Head Start population was being served with federal funds. The General Assembly then decided to make a line item appropriation for Head Start. (Wiechel Depo. 75-76)

3. The federal Head Start component serves 37,000 youngsters in Ohio. The number of additional children served by the Ohio component is 8,500. However, the projected _____ for 1992-93 for youngsters who are eligible for Head Start in the state is 82,000. Accordingly, only 47 percent of eligible Head Start youngsters are being served, leaving a majority of eligible Head Start children who are not being served in the State of Ohio. (Wiechel Depo. 77-85)

4. The highest concentrations of Head Start eligible children are in urban areas, particularly within the large city school districts. (Wiechel Depo. 96)

5. Head start programs included in the ODE budget for the current biennium do not represent funds that are available for regular public school education. (Russell Depo. 130)

6. In the Policy and Budget Recommendations of the State Board of Education for the Members of the 120th General

Assembly, the State Board of Education recommended the expansion of funding for high-quality, developmentally appropriate Head Start or comprehensive preschool programs for every child whose family earns at or below 185 percent of the poverty level. The intent of the State Board of Education was to create a single line item for preschool children, which also included Head Start. The State Board of Education recommended \$69,000,000 for fiscal year 1994 for these programs, and \$104,000,000 for fiscal year 1995. However, in the proposed budget for fiscal year 1994, only \$44,500,000 was included, and for fiscal year 1995, only \$73,000,000 was included for these programs. (Wiechel Depo. 119-22)

7. The funds going to Head Start in the current budget do not go to public school districts. Rather, these funds typically go to community action agencies or private child care programs that have been approved as Head Start agencies. (Browning Tr. 4403)

8. None of the monies contained in the state budget for Head Start programs go to public primary and secondary schools, nor do any of the monies for day care services go to public school districts. (Browning Tr. 4403-04)

9. The Head Start program at Dawson-Bryant serves about 50 percent of eligible students in Lawrence County, with eligibility based upon income levels. (Washburn Tr. 3487-2388)

10. Chris Thompson had no head start experience at Plaintiff Southern Local School District. (Thompson Tr. 1307)

11. Sixty percent of the eligible pupils in the Lima City School District have Head Start, the remainder do not. (Buroker Tr. 2898)

12. The Head Start services available in Youngstown serve between 40 to 50 percent of the students that are eligible. (Marino Tr. 3219)

D. SCHOOL-AGE CHILD CARE

1. School-age child care, or latchkey, programs are important to families in terms of knowing that their youngster has a place to be while they are at work. Further, it provides opportunities to the youngster to engage in different kinds of projects in areas in which they have interest. School-age child care refers to both before and after school care. (Wiechel Depo. 38,

46)

2. The State of Ohio provides no funds to public school districts to operate school-age child care programs.

(Wiechel Depo. 42)

3. The Ohio Department of Education has a total of \$200,000 available to provide up to \$10,000 start-up grants to public school districts for school-age child care programs. These funds cannot be used for operating costs. These funds can be used only for publicity in terms of recoupment of youngsters and purchase of materials and supplies for before-and-after-school programs. (Wiechel Depo. 44-45)

4. More school districts applied for school-age child care grants than received these grants. (Wiechel Depo. 49)

5. The Ohio Department of Education sponsored a study of school-age child care programs that concluded that school-age child care is not being provided to a great extent in urban areas with higher minority populations. There are higher concentrations of non-minorities in school-age child care programs. (Wiechel Depo. 38-39)

6. Dawson-Bryant does not have a school age child care

(latchkey) program. Mr. White spoke to Jane Wiechel with the State Department of Education concerning state assistance for implementation of a latchkey program. He was informed that funding would not be available probably for years. (White Tr. 2080-82)

7. Students at Youngstown City Schools have a need for latchkey services because many of them have no one at home. Grant monies provide minimal latchkey services for some students. (Marino Tr. 3238-39)

E. KINDERGARTEN

1. In 1992, the Division of Early Childhood Education sponsored a Longitudinal Kindergarten Study which tracked over 6,000 children. That study compared three kindergarten schedules (all-day, every day; half-day; and alternate day kindergarten) in relationship to student achievement, retention, placement in Chapter 1, and placement into special education. (Wiechel Depo. 10, 52-53, 65; Pl. Exh. 419)

2. The study concluded that all-day, every day kindergarten had higher achievement levels when the students entered grade school. Further, for those students who attended half-day kindergarten, there were

more likely to be higher retention rates in grades 1, 2 and 3, as well as higher numbers enrolled in Chapter 1 programs, than those students who attended all-day, every day kindergarten. (Wiechel Depo. 61-62; Pl. Exh. 419)

3. In 1990, the General Assembly passed legislation, sponsored by Representative Shoemaker, that made kindergarten mandatory. The legislation allowed school districts to determine whether they would have full day or half day kindergarten, depending upon the availability of appropriate facilities and funding. (Shoemaker Tr. 4204-05)

4. Although the State Legislature implemented mandatory kindergarten for public school districts, it did not provide public school districts with any funding to implement mandatory kindergarten programs [aside from ADM]. (Shoemaker Tr. 4265)

5. The Department of Education encourages all-day, every-day kindergarten programs, especially for children in poverty conditions, and has sought funds from the 120th General Assembly for such programs. No funds were appropriated. (Sanders Tr. 358; White Tr. 2071)

6. The Department of Education had considered requiring all-day, every-day kindergarten in the past few years. Concerns regarding facilities and costs of facilities were raised by administrators in Area 5, which includes Plaintiff Dawson-Bryant Local School District, regarding that implementation. (Taylor Depo. 160-161)

7. The State Board of Education encourages all-day, every-day kindergarten, as opposed to half day kindergarten. All-day, every-day kindergarten is a better educational program. With all-day, every-day kindergarten, students are far more ready for school. The readiness of students for school is 90 fundamental that President Ocasek could not emphasize it strongly enough. Head Start and all-day, every-day kindergarten are absolutely worth their weight in gold when it comes to students entering the first grade. (Ocasek Tr. 2827, 2828; Washburn Tr. 2396)

8. The report of the Select Committee to Review and Study Ohio's Education System recommended that kindergarten be required for all individuals. (Shoemaker Tr. 4100) Representative Shoemaker believes that every youngster should have all-day, every-day kindergarten. (Shoemaker Tr. 4101)

9. 77 percent of Ohio kindergarten programs meet on half--day schedules. 18 percent of Ohio kindergarten programs meet on alternate days. 5 percent of Ohio kindergarten programs meet all-day, every-day. (Pl. Exh. 419, p. 6; Wiechel Depo. 65)

10. The school districts that provide all-day, every-day kindergarten do not receive any additional state reimbursement, except for perhaps additional transportation operation expenses, if incurred. (Taylor Depo. 160)

DAWSON-BRYANT

11. The Dawson-Bryant Local School District has been unable to institute all-day, every-day kindergarten. Rather, the school district switched from half day, every day kindergarten to all-day, alternate-day kindergarten. (White Tr. 2080)

12. The results of kindergarten screening at Dawson-Bryant indicate that most students entering kindergarten are not prepared for their kindergarten experience. Dawson-Bryant students have fewer strengths and far greater needs than the national norms. The screening results from 1989 to 1993 show that the needs of

Dawson-Bryant students entering kindergarten are growing on a yearly basis. Students are entering kindergarten less well prepared developmentally each year. (Washburn Tr. 2389-95; Pl. Exh. 271)

13. The kindergarten teacher-to-pupil ratio at Monitor Elementary is 26 to 1 and at Deering Elementary is 33 to 1. The alternate day program and the teacher-to-pupil ratio greatly reduces the students' opportunity to have a successful kindergarten experience. Students who are prepared for kindergarten are neglected because limited resources are directed toward students falling in lower development skills. (Washburn Tr. 2395-97)

14. FY94 is the first year that Dawson-Bryant has had a Chapter I extended-day kindergarten. Not all of the students who are eligible can be served, and those students are not served are on a waiting list. (Washburn Tr. 2397)

LIMA

15. Forty percent of the students in Plaintiff Lima City School District who need all-day, every-day kindergarten do not receive that service. (Buroker Tr. 2898)

NORTHERN LOCAL

16. Plaintiff Northern Local School District offers kindergarten on an all-day, every-other-day basis. Superintendent Johnson testified that there is a need for all-day, every-day kindergarten in the school district because there are more at-risk students moving into the school district. (Johnson Tr. 1471)

17. At Glenford Elementary, there are students eligible for extended-day kindergarten who are not receiving that service and there are students who need preschool services who are not receiving those services. (Papritan Tr. 1955)

SOUTHERN LOCAL

18. Kindergarten at Southern Local is every other day, or two and one-half days a week. Twenty students who receive extended-day kindergarten through Chapter I funds, attend school four days a week, most weeks and some weeks, five days. Approximately 40 students at Southern Local were eligible for extended-day kindergarten service in FY94, but the district is able to serve only 20 students. (Spangler Tr. 530-31)

19. Chris Thompson's kindergarten year at Plaintiff Southern Local consisted of alternate days of instruction (two day weeks alternated with three day weeks). (Thompson Tr. 1373)

YOUNGSTOWN

20. Plaintiff Youngstown City School District currently offers kindergarten on a half-day, every day basis. (Hiscox Depo. vol 1, 57; Marino Tr. 3222-23)

21. Plaintiff Youngstown City School District does not offer full-day kindergarten to all of its students. The full-day courses are offered through the federal Chapter I program, and that program is offered to a limited number of students. There are many students in Plaintiff Youngstown City School District who qualify through at-risk identification for full-day kindergarten who are not being served. (Hiscox Depo. vol 2, 98; Marino Tr. 3222-23)

22. To provide all-day every day kindergarten in Youngstown would double the kindergarten staff, double the required number of rooms and increase the materials necessary; due to lack of funds, the district cannot

implement the program. (Marino Tr. 3220-21) The district cannot afford to purchase instructional materials such as language development kits to help the students to become ready for school. (Marino Tr. 3220; Pincham Depo. 35)

F. GIFTED EDUCATION

1. Ohio requires the identification of gifted pupils but does not require that those so identified receive special programming related to their status as gifted pupils. All pupils who are gifted should receive programs responsive to their needs as gifted pupils. (Sanders Tr. 304; Spangler Tr. 532; Stip. 80, 83, 84)

2. Gifted services provide additional opportunities tailored more specifically to meet the educational needs of gifted children. (Herner Depo. 60)

3. The level of service for gifted students depends upon the school district that the student attends. (Herner Depo. 47)

4. Over 63 percent of the approximate 220,000 gifted pupils in Ohio have not received appropriate educational services. (Sanders Tr. 359; Pl. Exh. 15 p. 12; Pl. Exh. 12, p. 50; Stip. 86)

5. Thirty-seven percent of gifted pupils in Ohio receive the benefit of some type of gifted program. Of the 37 percent who receive the benefit of such programs, only 34 percent are funded through state funded units, with the remainder paid through school district general funds. (Sanders Tr. 309; Pl. Exh. 12, p. 50; Stip. 87)

6. The only action that the Department of Education intends to take regarding unserved gifted pupils is to continue to recommend to the General Assembly that more funding be made available to serve gifted pupils. (Herner Depo. 59)

7. The Division of Special Education of the Ohio Department of Education requested approximately 700 additional units for gifted pupils in its FY94 and FY95 budget requests. The State Board of Education recommended to the 120th General Assembly that 180 additional new units per year be funded. (Herner Depo. 127-28) The general Assembly authorized 11 additional gifted units for the state in FY94 and 11 additional units for FY95, subject to the availability of funds. (Sanders Tr. 360; Russell Depo. 113; Stip. 89)

8. The gap between amount of funds for gifted education

programs requested by the Ohio State Board of Education and the amount appropriated by the General Assembly has grown from \$1.4 million in calendar year 1984 to over \$32.1 million in FY93. (Stip. 88; Stip. Exh. 36)

9. President Ocasek testified that there are gifted students who are not getting the programming that the State Board of Education has "cried out for." In its most recent budget and policy proposals, the State Board of Education sought considerable additional funding for the purposes of providing for gifted instruction. In the main, that proposal was not granted. President Ocasek testified that the academic and gifted are probably the most neglected students in the public schools. (Ocasek Tr. 2820-11)

10. President Ocasek testified about the whims of the General Assembly. In his 28 years in the General Assembly, it was his experience that the legislature would, at times, provide increased funding for classes for the gifted. However, when times got tough, gifted programs would be the first to be reduced, and emasculated. President Ocasek stated that the State has a grave responsibility to our many talented students. (Ocasek Tr. 2812)

11. By lack of identification and lack of gifted services, underachievers are developed, and those often students do not achieve the grades that they should and do not go on to college as they should. (Marino Tr. 32993300)

12. Gifted students who are not served often find college difficult because they have never been challenged. (Papritan Tr. 1956)

13. The incidence of gifted child within the SEOSERRC region approximates that of the state average, and was approximately 1 percent higher in 1994. Of those pupils identified as gifted for 1992, 26.3 percent received some programming with local funds, 7.9 percent received programming supported by federal funds and 62.6 percent were not served at all. During the same period, 67.9 percent of the gifted pupils in the Northern and Southern Local school districts were not served. (Pl. Exh. 250 p. 1)

14. Over the past three years, the percent of gifted children in the SEOSERRC region that did not receive any special programming has increased each year. (Roach Tr. 2704; Pl. Exh. 250 p. 1)

15. Stipulation Exhibit 35 is a chart which truly and

accurately depicts for each of the Plaintiff School Districts the number of identified gifted students, the number each district has reported as being "served" in accordance with Ohio Department of Education standards, and the percent of identified gifted pupils served for each school year from 1989 to 1993. (Stip. 82; Stip. Exh. 35; see also Pl. Exh. 51)

16. Combining state and local funds, in FY93 Plaintiff Dawson-Bryant Local Schools serve 18 percent of its gifted pupils; Southern Local, 21 percent; Northern Local, 21 percent; Lima City, 31 percent and Youngstown, 52 percent. (Stip. Exh. 35; Pl. Exh. 51)

17. A substantial number of gifted pupils in Ohio do not receive the benefit of educational programs designed to serve their needs as gifted pupils. (Sanders Tr. 305)

DAWSON-BRYANT

18. In 1989-90, 30 percent of students identified as gifted were served at Dawson-Bryant. That percent has decreased to 19 percent in the 1992-93 school year. (Stip. Exh. 35; Pl. Exh. 51) Some gifted students at Dawson-Bryant are served, but only in grades 4 through 6, one day per week in a pull-out program. (Washburn

Tr. 2430)

19. In the fall of 1993, the gifted program students were preparing to participate in a competition with students from other school districts. The students received their assignment which was on Haiti, but there was nothing in the students' library about Haiti. There are no services available before the 4th grade or after the 6th grade for gifted students. (Washburn Tr. 2430)

20. The talented and gifted program at Plaintiff Dawson--Bryant Local School District is located in a modular classroom because there is no other classroom space available for that program. (Swartzwelder Depo. 40)

LIMA

21. Gifted services at Lima are available for some gifted pupils in grades 3, 4, and 5. Pupils scoring highest on an eligibility test receive all-day programming one day per week. A second group of pupils receives 1/2 day of programming one day per week. Limited gifted services are available in the sixth grade with very minimal services thereafter. (Buroker Tr. 2936)

22. In FY93, 31 percent of the identified gifted pupils in

the Lima City School District received services directed to gifted programming. (Buroker Tr. 2937; Stip. Exh. 35; Pl. Exh. 51)

NORTHERN LOCAL

23. There were 203 gifted pupils at Plaintiff Northern Local School District for the 1992-93 school year, of which 42 (21 percent) are served. Gifted services are provided to students in grades three through six in the Plaintiff Northern Local School District. (Johnson Tr. 1468; Stip. Exh. 35; Pl. Exh. 51; Spohn Depo. 8; Papritan Tr. 1956-57)

24. There are only two teachers in Plaintiff Northern Local School District certified to teach talented and gifted ("TAG") classes. In the past, Northern Local held teacher in-service one-half day a month for teachers who taught a cluster of gifted children. That inservice has been cut. (Spohn Depo. 8; Papritan Tr. 1956-57)

25. Plaintiff Northern Local School District only offers a TAG program for grades 3-6 because the state has allocated Plaintiff Northern Local School District only one funded gifted unit which does not cover any more than that limited offering. (Spohn Depo. 9)

SOUTHERN LOCAL

26. Identified gifted students at Southern Local are served only in grades 3 through 8, with one day of service per week. Less than 80 percent of the eligible students in grades 3 through 8 are served. (Spangler Tr. 669)

27. The district served 42 percent of its identified gifted students in FY89 but that percent declined to 21 in FY93. (Spangler Tr. 533-34; Stip. Exh. 35; Pl. Exh. 51)

28. Gifted students at Southern Local are not receiving instruction for which they are eligible. There is considerable research that gifted pupils who are not served will be effected in their motivation to achieve in school and in their school aptitudes. (Spangler Tr. 535)

29. Attending Southern Local is a senior high school student who is a very talented vocalist. He has an identified need for additional specialized training in vocal music, and that need would be met in many other school systems. The district offers the student no gifted education and a very narrow range of curriculum options. (Spangler Tr. 535)

30. Chris Thompson participated in the talented and gifted (TAG) program in grades 3 through 8 once a week. He looked forward to going and he enjoyed the atmosphere, the projects, and the hands-on activities. Chris had access to a chemistry set at TAG, and he believed that started him "into liking science so much." However, shortages affected the TAG program as well, and the chemicals in the chemistry set became lower and lower during Chris' years in TAG until there were very, very few chemicals. There were also shortages of glue, calligraphy pens (the class had two), and other supplies. The TAG program was involved in county-wide field trips, which were paid for by students selling M & M's and frozen foods, along with parents putting on sports tournaments to raise money. If a student did not raise enough money to pay his way on a field trip, either the money was paid by the parent and student or the student was not permitted to go on the field trip. (Thompson Tr. 1313-1318)

YOUNGSTOWN

31. In FY93, Youngstown served only 52 percent of its 1,845 identified gifted students. (Stip. Exh. 35; Pl. Exh. 51; Marino Tr. 3298)

32. Service for gifted students at Youngstown City Schools ranges from being identified and having no service, to one day of service, to full service for some students in grades 4, 5, and 6. Some students are involved in a creative and performing arts program one day per year and those students are counted as served. Ten percent (10%) of the population of Youngstown City Schools is identified as gifted, but only five classroom units, which are partially funded by the state, are serving gifted students in grades 4, 5, and 6. Not all identified 4th, 5th and 6th grade students or students in other grades are served. (Marino Tr. 3298-3300) Approximately 110 to 120 gifted students received full service in grades 4, 5, and 6. (Marino Tr. 3418; Hiscox Depo. vol 2, 26; Kolitsos Depo. 35)

G. CHILDREN FROM LOW INCOME FAMILIES AND PUPILS ON ADC

1. An ADC family is classified as poverty level, is often a single-parent home, and qualifies for some degree of public assistance. A child from such a family is likely to have many complex needs and typically lack early enriching experiences, such as exposure to books, cultural experiences, and learning their abc's. (Spangler Tr. 440)

2. Disadvantaged Pupil Impact Aid (DPIA) is a dollar amount given to school district based on the concentration of disadvantaged pupils in the district. Disadvantaged pupils, for this purpose, are those on Aid to Dependent Children as a percent of the base ADM. For 1993, a school district with 20 percent or more of its children on ADC will receive an additional \$1,092 for each such pupil. The state mean percent of ADC pupils has increased from 12.62 percent in 1982 to 15.5 percent in 1992. (Maxwell Tr. 115; Stip. Exh. 2)

3. School districts receive Disadvantaged Pupil impact Aid (DPIA) funds from the state when at least 5 percent of their students are on ADC. School districts receive additional funds at 5 percent increments thereafter, and when a school district has over 10 percent of their students on ADC, the district receives \$500 per student as opposed to \$100 per student. (Johnson Tr. 1469)

4. President Ocasek has advocated more funding for Disadvantaged Pupil Impact Aid (DPIA). President Ocasek testified that he is upset because there are DPIA-worthy students not in urban areas but the school districts do not have enough of those students to qualify for the DPIA program. (Ocasek Tr. 2829)

5. The Ohio Department of Education, Division of Equal Educational Opportunities, administers the Disadvantaged Pupil Program Fund (DPPF). The DPPF program is designed to help school districts with large numbers of economically disadvantaged youngsters to deal with providing extra supplemental services for these children. The funding formula is based on a school district's ADC count. In order to be eligible for the funds, the district must have at least 50 students or 5 percent of their ADM identified as eligible for ADC. (Flowers Depo. 100-102)

6. Under the DPPF program, local school districts receive a fixed amount of funding per pupil, as determined by a formula. (Flowers Depo. 105)

7. DPPF funds are targeted for students that have specific problems, but not for special education students. Legislative restrictions have been imposed so that accelerating percentages of the money must be spent on DPPF activities with the current restrictive portion at 40 percent. (Taylor Depo. 277-78)

8. In FY92, the Department of Education requested \$56 million in DPPF funds from the General Assembly and

received \$40 million. (Flowers Depo. 105)

9. Between 20 and 25 percent of the pupils in the state of Ohio receive DPPF services. (Flowers Depo. 121). There are pupils in Ohio school districts who are eligible to be served by DPPF programs who are not served. (Flowers Depo. 122)

10. Stipulation Exhibit 2 is a chart which truly and accurately depicts the percentage of ADC students in each of the Plaintiff School Districts for each school year from 1982 to 1992, and the state average ADC percent for each year. (Stip. 2, StiP. Exh. 2)

11. During the period of time from 1977-1992 that Dr. Phillis served as liaison to the General Assembly, the task of preparing children for the work force changed dramatically, making the attainment of greater levels of education more and more economically significant for Ohio's public school pupils. At the same time, the percent of children in the public schools receiving aid for dependent children increased from approximately 10 percent to approximately 16 percent of Ohio's public school population. In addition, the percentage of handicapped children as well as children coming to the public school system from dysfunctional homes has

substantially increased over the last 12 to 15 years.

(Phillis Tr. 1717-18)

12. Major cities have approximately half, and in some cases more than half, of their pupils coming from ADC families. (Phillis Tr. 1778)

13. Between 1982 and 1990, the percentage of students coming from ADC families increased from 20 percent to 29 percent in the low income school districts while increasing only 3 percent in the middle income districts and no increase at all in percentage of ADC students in the high income districts. (Porter Tr. 1101; Pl. Exh. 101 Table 7)

14. The percent of ADC pupils in wealthy school districts is extremely small compared to the percent of ADC pupils in the Plaintiff school districts. Youngstown City School District had 51.12 percent ADC pupils in FY91, while the richest school districts had only 1.84 percent ADC pupils during the same period. ADC pupils, particularly in higher concentrations, represent greater educational needs. (Alexander Tr. 3674; Pl. Exh. 301 p. 91; Sanders Tr. 357)

15. Above the 20 percent poverty rate, the educational need

increases on a non-linear basis, that is, at a faster rate than additional percentage increases in the poverty level. (Sanders Tr. 357-58)

16. There is a substantial need for intervention at or before the kindergarten level for ADC pupils. (Russell Depo. 127)

17. There has been an increase in the number of ADC pupils in recent years with the majority of those pupils being concentrated in the eight urban centers of the state and a growing number in poor rural parts of the state. (Russell Depo. 124; Tavakolian Depo. 235)

18. In 1981-82, the percent of Dawson-Bryant Local's students on ADC was 13.32 percent, but that rate has increased to 24.9 percent in FY92. (Stip. Exh. 2)

19. For the FY92, Lima City School District had 32 percent of its pupils on ADC, ranking it the highest in the county, third of districts of its type, and 14th of 612 in the State of Ohio. The percent of ADC pupils has increased from 24.8 percent to 32 percent over the past ten years. (Buroker Tr. 2896; Stip. Exh. 5; Stip Exh. 2)

20. The high levels of poverty present significant educational needs for the pupils in the Lima City School District. Many of the pupils come from families in poverty suffering from physical, emotional, and in some cases, sexual abuse. (Buroker Tr. 2896-97)

21. Over the last several years, Superintendent Johnson has seen a different type of student coming into the Northern Local schools, which has attributed to the number of single parent families and lower income families that are moving into their district. Students are coming to school in some cases without proper care at home, they certainly are not ready to learn. This is taxing on the teachers, and discipline has become more of a problem than the district has ever had. During the 1992-1993 school year Plaintiff Northern Local School District had approximately 35 students in from foster homes. According to Superintendent Johnson, many of these students are "hard core," and cause discipline problems. (Johnson Tr. 1394-1395)

22. Plaintiff Northern Local School District had 6.23 percent of its students on ADC in 1982 and 9.3 percent of its students on ADC in 1992. (Stip. Exh. 2; Stip. Exh. 6)

23. In the 1993-94 school year, Plaintiff Northern Local School District had 10 percent of its students on ADC. Superintendent Johnson received an SF-12, indicating that the district would get \$100,000 in DPIA funds that year. Shortly thereafter, Superintendent Johnson received another SF-12 whereby the state indicated that DPIA funds would be distributed according to a three--year average of the ADC percent, and Plaintiff Northern Local School District DPIA allocation was reduced from \$100,000 to \$22,000. (Johnson Tr. 1469)

24. The reported average family income of residents of Southern Local is \$18,700, which is the third lowest of any school district in the state. That figure is computed by taking the aggregate income of all filers in the district and dividing that by the number of filers, so that if a number of persons did not file returns or did not have income that required filing a return, they are not included in that average. (Spangler Tr. 442)

25. Many of the students at Southern Local are economically disadvantaged. In 1981-82, 18.84 percent of the students in Southern Local were from families who received ADC, and by FY92 that percentage had grown to 22.9 percent. (Spangler Tr. 440; Stip. Exh. 2; Stip.

Exh. 7)

26. In 1982, 30.19 percent of Plaintiff Youngstown City Schools' students were from ADC families. By 1992, that rate had increased to 54 percent. (Stip. Exh. 2) Of all the school districts in the state, the Youngstown City Schools racks second in ADC percent. (Stip. Exh. 8)

H. FREE AND REDUCED PRICE LUNCH

1. At Dawson-Bryant Local, 63 percent of the students at Monitor Elementary receive free lunches, at Deering Elementary 41 percent of the students receive free lunches, at Intermediate, 37 percent receive free lunches, and at the high school 5 percent. Additional students are eligible for free or reduced price lunches. As students get older, due to the open lunch policy, peer pressure, and pride, some students do not apply for free or reduced priced lunches. (Washburn Tr. 2384-85)

2. Christopher Jackson was entitled to participate in a reduced or free lunch program at Plaintiff Dawson--Bryant Local School District, but if he wanted to eat the reduced-price lunch at the Intermediate School, he had to travel to the high school. (Jackson Depo. 3435)

3. Sixty-one percent of the students in the middle and high schools in Plaintiff Lima City School District qualify for free or reduced lunch, and 70 percent of the elementary pupils are so qualified. Buroker Tr. 2874)

4. Approximately 53 percent of the students at Southern Local receive free or reduced-price lunches, which includes 68 percent of the elementary students, 57 percent of the middle school students, and 36 percent of the high school students. As students get older, and particularly at the high school level, many students do not fill out the forms to qualify for the free or reduced-price lunches because of their pride. (Spangler Tr. 441)

5. In FY93 at Youngstown City Schools, nine out of 19 elementary buildings had 90 percent of their students eligible for free and reduced price lunches. At one of the buildings the rate was 99 percent. The lowest percent for any building in the district is 36 percent, which is one of the high schools. Many students at the high school level do not apply for their free and reduced lunches because they are too embarrassed to let their friends know that they do not have the money to

pay for lunch. Although the percentages at the high school buildings would not accurately represent the poverty level of those students, the overall rate for the entire district is in the 70 percent range. (Marino Tr. 3212-3215)

I. AT RISK CHILDREN

1. In the 1991-92 Annual Report of the State Board of Education, the Board recognized that many of Ohio's children are growing up in dysfunctional and/or impoverished households and are therefore at risk. The State Board recognized that it has an obligation to provide all Ohio youngsters, including those who are disadvantaged, with quality learning opportunities that will allow them to become lifelong learners and to achieve more fulfilled lives as adults. (Pl. Exh. 12, p. 1)

2. Those Ohio school districts with the greatest level of educational need are those who receive the lowest levels of funds to provide for the education of their children. (Alexander Tr. 3681)

3. At-risk pupils tend to concentrate in low-wealth, low--income school districts; those with the least capacity

to provide a high quality educational program. At-risk pupils require higher levels of revenue. (Phillis Tr. 1779; Pl. Exh. 287)

4. Cleveland and the other large 8 school districts have higher populations of at-risk pupils. These pupils are more costly to educate. (Van Keuren Depo. 54)

5. Plaintiff Lima City School District has a tremendous need throughout the elementary, middle, and high schools for intervention with students on an individual basis. Many students come from broken homes. Over half of the students come from single-parent homes. Over half the students are receiving free and reduced priced lunches. The drug trade in the community is rampant, and the drugs within the homes has impacted the education of Lima's children. (Roger Miller Depo. 53)

6. The Lima City School District has a high teenage pregnancy rate. Allen County has one of the highest teenage pregnancy rates in the state. Teenage pregnancy is a problem associated with lack of success in school and availability of welfare benefits. Lack of success in school is a result of pupils not being developmentally ready for education. The district lacks the resources to bring about a change in that

circumstance. (Buroker Tr. 2899)

7. Plaintiff Lima City School District has an alternative high school which houses at-risk students who are not adapting well to a traditional classroom environment and who are at risk of dropping out. The alternative high school is a converted elementary school adjacent to the senior high school building. The program serves freshman and sophomores, who have failed at least once during their school career. Such pupils receive highly individualized programs designed to provide a successful academic experience in order that they can begin to work back into the regular program or vocational or occupational work education program. The alternative high school lacks necessary programs and equipment (including computers) which would be appropriate to a high school setting. (Eaton Depo. 16-17; Buroker Tr. 2960-61; Roger Miller Depo. 54-56)

8. During the past year, approximately 35 percent of the pupils who were placed in the alternative high school program because they were likely to drop out of school did not drop out of school. The alternative high school program at Lima is funded through a series of grants. In the event that the grant funding is not continued, the alternative high school program will be eliminated.

(Buroker Tr. 2968)

9. Plaintiff Youngstown City School District has a large number of at-risk students. The district would like to institute summer programs, after-school programs and Saturday programs, but the district cannot afford to pay the additional employee costs and program costs associated with such programs. (Hiscox Depo. vol 2, 27-28)

10. Student pregnancy is a problem at Youngstown City Schools and is moving into the lower grade levels, even as low as 6th grade. The Mahoning County census in 1990 indicated more than 3,600 teen pregnancies in Mahoning County with teen pregnancies on the rise. (Marino Tr. 3246)

11. Programs to deal with the teenage pregnancy problem in the Youngstown City Schools are not adequate. Representatives of several county agencies worked with school administration to develop a teenage pregnancy prevention curriculum; however, the district had no money to implement the curriculum or to provide proper staff development to present the curriculum. Part of the vocational home economics program at the junior high is intended to address the problem, but it does

not reach all students because it is limited to 60 students. The Grads Program operates at the high school for students that already have children. However, some African-American males find it important to brag about the number of babies they have produced. Significant work needs to be done regarding responsibility and preventive education, but the district does not have the money to do it. (Marino Tr. 3274-75)

12. Youngstown City School District does not have sufficient personnel to address the areas of special needs students and at-risk students. (Hiscox Depo. vol 1, 51)

J. THE SPECIAL NEEDS OF THE INNER CITY SCHOOL DISTRICTS

1. Plaintiff's Exhibit 287 is a document containing vital statistics on the largest eight city school districts in Ohio. The document was prepared at the request of the Superintendent of Public Instruction to emphasize the extent of need present in those cities. In addition, the Department of Education conducted regional meetings to demonstrate the problems of city school districts to local legislators. (Phillis Tr. 1781-82)

2. The Lima City School District has severe problems with weapons in school, including guns, knives, brass knuckles and look-a-like weapons. The district has observed an emergence of gang activity and sale and distribution of drugs. The district has been required to place security personnel as a result of the gang activity in and around the schools. (Buroker Tr. 2900 and 2902)

3. In the 1992-1993 school year, Lima City Schools had 29 student expulsions, for assaults on teachers, weapons, dangerous instruments, disruption, failure to follow directions, vandalism, and physical abuse of another student. Expelled students ranged in age from a 4th grade student, expelled for bringing a gun to school, to high school age. In FY92, the district had more than 300 student suspensions. (Roger Miller Depo. 9-10)

4. From the fall of 1992 through March 4, 1993, Lima City Schools had already expelled between 30 and 33 students, which more than the number of students expelled in the previous year. (Roger Miller Depo. 11) In the City of Lima, there are shootings, drug raids, and violence of all types daily, and those activities are being seen more and more in the school buildings. Lima City Schools has established a discipline

committee to address the increasing student discipline problem. Lima City Schools has no security guard because the district's finances do not permit it.

(Roger Miller Depo. 18-19)

5. Plaintiff Youngstown City School District has no program to assist parents in preparing their children to come to school ready to learn. The district does not have the resources to address the societal problems inherent in an inner city school district, including parental support and teen pregnancy. (Hiscox Depo. vol 2, 29)

6. Plaintiff Youngstown City School District faces unique problems because it is an inner-city school district. Flight of businesses and population from the inner-city has left in the district many children of urban poor families who cannot afford to leave. Along with the social problems inherent in the poor inner-city, Plaintiff Youngstown City School District is faced with a majority of children from poor backgrounds who did not have the stimulus to grow socially and emotionally. (Pincham Depo. 20, 50-52)

7. The north side of Youngstown is a high-poverty area. In one part of the community, close to the University, is

a highly drug-infested area with a lot of violence and a lot of death. The Hillman area is on the south side of Youngstown, is extremely dangerous and many cars are stolen from parking lots on a regular basis. Youngstown City Schools' teachers have cars stolen as well.

(Marino Tr. 3346-47)

8. Many of the students of Youngstown City Schools come from single-parent families. There is much mobility of students throughout the district, and many students live in low-income housing or federal housing projects. The projects are very dangerous place to live. There is much drug trafficking, weapons, and killing in the projects, and anyone who can get out does. Students generally have little opportunity to travel even about the city because they do not have transportation, and the city busses cost money. An extremely low number of students move into the district and those would be people looking for low-income housing. (Marino Tr. 3212-15)

9. Plaintiff Youngstown City School District has confiscated both drugs and weapons from students in the Youngstown City Schools. (Kolitsos Depo. 44-45)

10. The suburban schools that surround the City of

Youngstown have mainly caucasian students, growing businesses, more two-parent families, and more residents who are working. (Marino 3186-87)

11. The number of homes for sale in the Youngstown City Schools has increased over the years. A huge majority of the students at South High School are African--American, and when that school was closed in the spring of 1993, and it became known that those students were going to be transported into other schools within the district that had an majority white population, many people began trying to move out of the school district. (Marino Tr. 3187-88)

12. Youngstown City Schools hired a Chief of Security in FY92. At Rayen and Wilson High Schools, there are two policeman inside and two outside every day. At Chaney and East High Schools, there is one policeman on duty during the day. The district has transportable weapons search machines to search students for weapons. Principals have requested the machines for dances and other activities. The district has random searches and opportunities for students to turn in weapons. Guns, knives, and other implements have been confiscated from students. Some students bring weapons for their own personal safety. Guns have also been confiscated from

students in the elementary buildings. In FY93 the most common disciplinary problem in the Youngstown City Schools was assault and battery, the second was insubordination and the third was weapons. The district had 26 weapons incidents in the FY93. (Marino Tr. 3271-73; Kolitsos Depo. 46)

13. Youngstown City Schools has security systems called Sonitrol in the school buildings, but despite the system, materials and equipment have been lost to theft in recent years. The district has lost a significant number of Channel 1 televisions, computers, typewriters, and other items that can be sold. (Marino Tr. 3273-74)

14. Dr. Porter has served on the Level I screening committee for those seeking admission to the Northeast Ohio University's College of Medicine. The program he screens for is an accelerated program by which students may complete a bachelor's degree and an M.D. in a period of six years. In the selection process, a pool of approximately 100 applicants is established, with the ultimate selection of about 30 persons. The selection process places heavy emphasis on standardized test results as well as the quality of the applicant's high school preparation, particularly in the areas of

science with emphasis on hands-on laboratory experience. High school valedictorians who apply for this program are interviewed. It has been Dr. Porter's experience that high school valedictorians from the inner city high schools in Youngstown do not have good enough test scores to make them viable candidates.

(Porter Tr. 1113-1118; Marino Tr. 3314-15)

K. RACIAL AND ETHNIC CONSIDERATIONS

1. The Ohio Department of Education annually identifies racially isolated school buildings in Ohio. The guideline for racial isolation, as published by the Division of Equal Educational Opportunities, is plus or minus 15 percent of the district-wide average of minority students. (Flowers Depo. 34-37)

2. There are 42 school districts in Ohio that have racially isolated buildings, including Plaintiffs Lima City School District and Youngstown City School District. (Flowers Depo. 38, 44; Hiscox Depo. 84)

3. Racially isolated buildings have the lowest number of degreed teachers, the oldest textbooks, the oldest furniture, and the most narrow curricula options. The facilities of racially isolated schools are generally

inferior to other schools. (Flowers Depo. 39-41)

4. Racial isolation makes a difference in the type of education that the students in racially isolated schools receive. Pupils in racially isolated buildings have a lesser level of educational opportunity than peoples in other buildings that are not racially isolated. (Flowers Depo. 41, 44)

5. All school children in Ohio do not have equal educational opportunity. (Flowers Depo. 64, 67)

6. When a non-English speaking student enters a school district, the school district is responsible for providing instruction to that child, including assistance in learning English. It is the sole responsibility of the school district to provide that assistance. There are no direct state funds provided by the Department of Education to pay the cost that might be associated with that additional instruction. (Flowers Depo. 78)

7. The percent of minority to non-minority pupils in the Lima City Schools has increased by approximately 10 percent over the past ten years to the present 43 percent minorities. (Buroker Tr. 2874)

8. Of all the school districts in the state, the Youngstown City Schools ranks 9th in minority percent.

(Stip. Exh. 8)

9. The minorities served by the Youngstown City Schools are mostly African-American with a population of Hispanic students, most of which are Puerto Rican, some Vietnamese, Russian, and Arabic. As a result of an Office for Civil Rights determination, the district was required to develop bi-lingual programs, which has been in place over approximately the past twelve years. The district spends around \$26,000 per year to tutor students who do not speak English. (Marino Tr. 3198)

10. Plaintiff Youngstown City School District has over 360 students who have English as a second language. The program to teach English to these students no longer receives funding from the state; that program is funded from the school district's general fund. (Hiscox Depo. vol 2, 45; Hiscox Depo. Exh. 13)

XIV. TRANSPORTATION

A. OPERATION

1. School districts are required to provide transportation or payment in lieu of transportation to pupils in grades kindergarten through eight who live more than two miles from the public school to which they are assigned, to parochial school pupils on the same basis as public school pupils and to special education pupils for whom transportation is a necessary related service. (Stip. 114; R.C. Section 3327.01; Maxwell Tr. 120-21)

2. School districts having no appropriate special education program available locally must provide transportation to special education programs in other school districts. (Stip. 115)

3. The Department of Education administers state funds for the payment of a portion of the operational cost of pupil transportation. The state funds to school districts for the operation of transportation programs have steadily declined over the years. From 1973 to 1991, the percentage of transportation costs reimbursed by the State of Ohio decreased from 62.75 percent to 36.91 percent. The percentage of reimbursement has decreased from 46.68 percent in 1980, to 43.11 percent in 1987, to 36.91 percent in 1991. (Pl. Exh. 408; Van Keuren Depo. 138; Tavakolian Depo. 97; Russell Depo. 95; Stip. 116; White Tr. 2092-93; Pl. Exh. 264; Pl.

Exh. 260, 261, 262, 262A and 263; Pletcher Tr. 2645;
Pl. Exh. 220, 221)

4. The method for computing transportation operation payments is the same for each district regardless of the wealth of the district. (Stip. 121)

5. The gap between amount of funding for transportation operation expenses, not including bus purchases, requested by the State Board of Education, and the amount appropriated by the General Assembly for calendar year 1980 and 1981 was \$0, but that has grown to over \$42.4 million in FY93. (Stip. 117; Stip. Exh. 40)

6. Van Keuren Deposition Exhibit 11 was prepared by the Department of Education as part of the budget process to justify its request for additional funds for transportation. The percent of state funding for the transportation of handicapped pupils is approximately the same as the ratio of funding for non-handicapped. (Van Keuren Depo. 140)

7. The dollars per pupil and cents per mile rate of reimbursement for type I transportation (yellow bus transportation) for all school districts, exclusive of

any bus purchase amounts decreased from \$71 per pupil or \$.64 per mile in FY90 to \$69 per pupil or \$.59 per mile in FY93. (Stip. 119; Stip. Exh. 42)

8. The bottom 30 percent of the districts in the state in terms of valuation generally tend to transport more children at higher costs. (Alexander Tr. 3661; Pl. Exh. 301 p. 39)

9. There are students in the State of Ohio who ride a school bus more than one hour and twenty minutes to get to school. (Taylor Depo. 118)

10. The transportation operation expenses for Dawson-Bryant Local Schools increased from \$291,872 in FY88 to \$369,784 in FY92 (over 26 percent), while reimbursement for those costs remained stagnant over that period. (Taylor Depo. 111-14; Taylor Depo. Exhs. 4 and 6)

11. From FY87 to FY91, the total annual miles driven by the school busses at Dawson-Bryant decreased from 190,440 to 179,640, yet the cost of driving those total miles increased from \$306,298 to \$361,069. During the same period of time, the state rate of reimbursement decreased. Thus, in FY87, the district's unreimbursed transportation operation expenses increased from

\$127.97 per pupil in FY87 to \$197.65 per pupil in FY91

12. Some students at Glenford Elementary in the Northern Local District ride a school bus one and one-half hours a day to arrive at school. They are tired and hungry before they begin school. The ride home is also one and one-half hours, and they are often too tired to do homework. In the wintertime, the travel time is longer. (Papritan Tr. 1958-59)

13. For FY92, Plaintiff Southern Local Schools spent an average of \$146.46 in general fund dollars for the transportation of regular education pupils. That amount was in excess of state reimbursement for transportation. (Maxwell Tr. 120-21)

14. State funding for transportation costs for the Youngstown City School District does not meet the needs of the district because of transportation costs associated with desegregation and handicapped transportation. The district must make up the difference between the cost of the transportation and state funding through general fund revenues. (Hiscox Depo. vol 2, 105)

B. BUS PURCHASES

1. Before 1983, the reimbursement for bus purchases was based on a sliding scale that took into account a school district's valuation per pupil. Lower valuation per pupil districts received a higher percentage of reimbursement. (Stip. 122; Taylor Depo. 128, 178; White Tr. 2097-99)

2. In 1984, the bus purchase reimbursement was changed whereby districts received reimbursement of 50 percent of the cost of the vehicle, without any regard for the school district's valuation. (Stip. 122; Taylor Depo. 128-129; White Tr. 2097-99)

3. Next, for FY92 and FY93, the reimbursement formula provided districts with \$22,500 reimbursement for each bus purchased, no matter what the cost of the bus. (Taylor Depo. 129; White Tr. 2097-99)

4. Van Keuren Deposition Exhibit 12 is a memo setting forth the Department of Education's criteria for the replacement of school busses and the allocation of bus purchase funds for FY93. (Van Keuren Depo. Exh. 12)

5. Effective January 1, 1993, and applied to districts in FY94, bus purchase amounts are allocations to districts

based on a formula set forth in O.A.C. (Stip. 123; Stip. Exh. 44; Taylor Depo. 22; Tavakolian Depo. 198) Under the new formula, a bus can be purchased when a district has sufficient funds to make the purchase. (Taylor Depo. 125-126)

6. The Department of Education has not adopted any administrative regulation setting forth a formula for the calculation of school bus purchase reimbursements for school districts. The requirements of O.A.C 3301-85-01(D), effective January 1, 1993, that funding for the purchases of school buses be based, in part, on an equity factor and a rough road factor are carried out by the Department of Education staff through a "department rule" not included in Ohio Department of Education regulations. (Van Keuren Tr. 4768-69; Stip 123; Stip. Exh. 44)

7. Districts who were dependent upon state reimbursement for bus purchases made requests for replacement of vehicles before 1985 because the districts were receiving a higher percentage of reimbursement. After the formula changed and they were receiving a smaller percentage of the total cost, there were fewer requests to replace vehicles because of the lack of funds to pay the local district's share. (Taylor Depo. 130)

8. Under the system of fund distribution in effect prior to July 1, 1993, many school districts, in particular loan fund school districts, could not afford to buy school busses and would go as long as six years without buying a new school bus. (Van Keuren Depo. 159)

9. Before FY94, Area Coordinators had to review each request for replacement of a school bus, and determine if the old bus met the Department of Education's criteria for replacement. The criteria for replacement of a gasoline powered vehicle was 100,000 miles, or ten years old, or sufficient mechanical problems; and for a diesel engine bus was 150,000 miles, or 15 years old, or sufficient mechanical problems. (Taylor Depo. 127)

10. The change from taking into account wealth of a school district to not taking into account wealth for bus purchase reimbursement caused low wealth districts to pay more out of their general fund for transportation expenses after the change. (Taylor Depo. 189)

11. The gap between amount of funding for bus purchases requested by the Ohio State Board of Education, and the amount appropriated by the General Assembly has grown from \$4.35 million in 1985-86 to \$21.5 million for

1994-95. (Stip. 118; Stip. Exh. 41)

12. School districts were advised what their allocations for bus purchases might be for FY94, based upon speculation regarding what the legislature might approve in a total amount of money for bus purchases. As of June 24, 1993, districts planning for the 1993-1994 school year did not know for sure what their allocation was going to be. (Taylor Depo. 183)

13. The Department of Education has received requests for state assistance for the purchase of school busses at the rate of 500 to 600 more busses per year than funds were available to purchase. Under the system of distributing funds for bus purchases to go into effect for FY94, there will continue to be need in excess of available funds. (Van Keuren Depo. 151)

14. Some school districts have borrowed money to purchase school buses. (Taylor Depo. 126)

15. In recent years, the costs of gasoline, vehicles, and personnel and maintenance for school vehicles have all increased. (Taylor Depo. 192-193)

16. The number of school busses purchased by school

districts has declined because the level of funds for bus purchases has remained fairly static while the cost of the busses has increased. An average new bus costs about \$40,000. (Tavakolian Depo. Exh. 14 pp. 2 and 3; Tavakolian Depo. 258)

17. While Superintendent at Dawson-Bryant, Mr. White replaced, on the average, a bus and a half each year. This totaled approximately \$60,000 every year. Prior to 1983, the school district would have received from the State of Ohio \$45,000 toward the purchase of those buses. In 1983, that amount was reduced to \$30,000, and after 1991 the amount of reimbursement from the state was then \$22,000. The district had to make up the difference between the state reimbursement and the cost of the bus from the district's general fund. (White Tr. 2096- 2100)

18. With reference to transportation, Dawson-Bryant had 14 buses in operation during Mr. White's superintendency. These buses traveled over 1,000 miles each school day. The roads in the district include very difficult roads to travel, particularly in winter time. Not all roads are paved within the district. Some students spend as much as 1 hour and 45 minutes on the bus each morning, and each evening. (White Tr. 2084-87) That situation

could be eliminated if additional drivers and additional busses were available. (Washburn Tr. 2436)

19. The majority of students in Plaintiff Northern Local School District are transported by bus. Plaintiff Northern Local School District owns thirty buses, with twenty-four on the road every day. The district owns nine gasoline buses and twenty-one diesel buses. Northern Local's bus fleet travels over 2,400 miles each day, for a total of over 430,000 miles a year. (Johnson Tr. 1456-1457; Hill Depo. 50-51)

20. The Ohio Department of Education recommends that gas buses be replaced at 130,000 miles and diesel buses be replaced at 195,000 miles. Four of the gasoline buses owned by Plaintiff Northern Local School District have over 180,000 miles; one gasoline bus has over 200,000 miles. Plaintiff Northern Local School District has three diesel buses with over 180,000 miles and one diesel bus with over 200,000 miles. At the end of the 1993-94 school year, Plaintiff Northern Local School District will have fifteen buses that exceed state standards for replacement of buses. (Johnson Tr. 1457)

21. The cost of a new school bus is \$45,000 to \$50,000. Plaintiff Northern Local School District has received

roughly \$45,000 from the state toward the purchase of three buses, with the balance being paid from the school district general funds over a three-year period.

(Johnson Tr. 1458)

22. The new bus formula whereby school districts will receive an allocation of funds each year will be detrimental to Plaintiff Northern Local School District where the school buses travel 2,000 miles a day on narrow gravel roads as compared to a city school district where the bus may travel 15 miles a day on city streets. (Hill Depo. 62; Johnson Tr. 1456)

23. Plaintiff Southern Local's transportation appropriations are generally not enough to buy new buses, so the district buys used buses with over 80,000 to 100,000 miles on them. The average bus at Southern Local has about 120,000 to 130,000 miles. The average useful life of a new bus with a gasoline engine in Southern Local is around six or seven years. The average bus at Southern Local is nine years old, with some that are 12 and 13 years old and two that are 14 years old. Southern Local buses break down on the road nearly every week. The district must send another bus to pick up the students. (Spangler Tr. 523-24)

24. Each bus in Plaintiff Southern Local's bus fleet, with one exception, has over 100,000 miles. Those buses are required to travel over steep and narrow roads in the Southern Local School District. (John Winnenberg Tr. 1255)

25. In FY93, some students in Plaintiff Southern Local School District were bused one hour each way to school. (Lichtenstein Depo. 45)

26. Expenditure reductions at Southern Local included cuts to bus replacements. In FY93, the district had to borrow buses from New Lexington City Schools from December until the end of May to maintain transportation routes for students. (Spangler Tr. 522-23)

C. TRANSPORTATION OF HANDICAPPED PUPILS

1. A handicapped bus is the same as a regular bus, but with pieces of equipment that must be added, such as roof hatches and radios, and optional equipment, such as wheel chair lifts and other special adaptations for handicapped children. In most cases, reimbursement for special education buses is a partial reimbursement. If a district, due to terrain or other conditions, needs

additional horse power or capacity or other optional items, then the district must pay for those items over and above the state reimbursement. There is no provision for additional reimbursement based on a district's needs or wealth. (Taylor Depo. 41)

2. School foundation funds for the purchase of busses to transport handicapped pupils, whether or not specially equipped for orthopedically handicapped pupils, have been allocated on a first-come, first-served basis. (Stip. 124; Spangler Tr. 521-22)

3. Each year from 1980 to and including 1993, there have been more requests from Ohio school districts for funds to purchase handicapped busses than funds available. (Stip. 125)

4. State reimbursement for the costs of transporting handicapped students in private vehicles does not cover the district's expenses for that transportation. (Taylor Depo. 141-142)

5. For handicapped bus reimbursement, Area Coordinators help to determine whether the vehicles need replaced and if additional vehicles are needed. (Taylor Depo. 28-29) After it is determined that a school district

has a need for handicapped bus, data is submitted to the Department of Education central office and the district is then placed on a list. Districts are eligible for reimbursement for handicapped buses on a first-come, first-serve basis, with those districts submitting data to Department, through the Area Coordinator's office first. Generally the number of buses requested exceeds the funds available (Stipulation 125), so those districts that are successful in obtaining a bus are simply carried over to the second of the biennium. (Taylor Depo. 32) If a district on a waiting list has sufficient funds to buy a handicapped bus, then they may buy the bus and wait for reimbursement at a later time. If district funds are not available, the district must make repairs, wait until funds are available, or provide other methods of transportation. (Taylor Depo. 37-38)

6. The Lima City School District has one bus equipped with a wheel chair lift for the transportation of orthopedically handicapped pupils. A second bus has been ordered but has not yet been delivered. During the previous school year, the District spent \$100,000.00 for taxi service for the transportation of physically handicapped and severely behavioral handicapped pupils because it did not have busses properly equipped for

some pupils. (Buroker Tr. 2919)

7. Plaintiff Southern Local School District has purchased two retired special education small buses between August 1991 and the fall of 1993. (Spangler Tr. 51921) The Southern Local School District Treasurer went to the Area Coordinator's office and "camped out" in order to be the first to deliver the forms to get the state reimbursement. (Spangler Tr. 521-22)

XV. LOCAL CONTROL

A. UNFUNDED MANDATES

1. The Superintendent of Public Instruction believes there is too much regulation of public schools. (Sanders Tr. 4578-79)

2. Senator Aronoff admitted that the State of Ohio confers mandates on local school governments, and on occasion those have been unfunded mandates. (Aronoff Tr. 486364)

3. During his tenure as Area Coordinator, Mr. Taylor has had complaints and concerns raised about increasing costs of unfunded or under-funded mandates and has had similar complaints and concerns about the reduction and

the ability of districts to maintain local control.

(Taylor Depo. 285)

4. Prior to 1989, Department of Education personnel undertook a survey of the cost of unfunded legislative mandates imposed on school districts. That survey identified 42 separate mandates. That survey was shared with the Schafrath Committee. (Tavakolian Depo. Exh. 4; Tavakolian Depo. 73)

5. Amended Senate Bill 30, effective July 31, 1992, required the Legislative Budget Office (LBO) to estimate the cost to school districts of each new school law that became effective during the preceding two calendar years, including the total costs for the entire state, the costs on a per pupil basis, on a per school basis and on a per school district basis. LBO generated a report of those costs entitled "The Cost of Implementing School Laws." (Pl. Exh. 401; Russell Depo. Exh. 5; Russell Depo. 152, 153)

6. The General Assembly has imposed obligations on school districts for which no specific appropriation of fund has been authorized to pay the cost of the obligation. (Tavakolian Depo. 71)

7. There is a great deal of testimony in the record regarding various programs, policies and procedures which Ohio school districts are required to implement and for which little or no funding is available from the state. These unfunded or under funded mandates include, but are not limited to, the following:

(1) The missing children program. (R.C. Section 3313.96; Tavakolian Depo. 71, 148);

(2) The requirement that school districts comply with the state's proficiency testing requirements (Sanders Tr. 316-17; Maxwell Tr. pp. 152-54):

(3) Ability/achievement testing, (Sanders Tr. 316-17);

(4) The types and amounts of special education programs and services, which have increased much faster than reimbursement for the costs of those programs has increased (Maxwell Tr. 152) A school district in Ohio has no choice about whether to make an assurance to the State of Ohio that it will provide a free and appropriate public education for handicapped students in the district. (Herner Tr. 5584-85);

(5) Mandatory special education and related services for three and four year olds (Sanders Tr. 316-17; Russell Depo. 158);

(6) The types and amounts of transportation services required of school districts, which have increased while the state's reimbursement of those costs declined. (Maxwell Tr. 152);

(7) Transportation for eligible preschool handicapped pupils (Sanders Tr. 316-17);

(8) Compliance with the mandates of the Education Information Management System (EMIS) (Sanders Tr. 316-17; Russell Depo. 152; Russell Depo. Exh. 5; Pl. Exh. 401, p. IV; Tavakolian Depo. 148);

(9) Mandatory health screenings (Russell Depo. 152; Russell Depo. Exh. 5; Pl. Exh. 401, p. IV);

(10) Health care costs, substantially increasing for schools. (Russell Depo. 156, 158);

(11) Increase in the percentage of salaries upon which boards of education are required to make retirement contributions for non-teaching

employees under the State Employees' Retirement System (R.C. 3309.491; Phillis Tr. 1723; Russell Depo. 152, 156; Russell Depo. Exh. 5; Pl. Exh. 401, p. IV);

(12) Tuition-free schooling for children residing with grandparents (Russell Depo. 152; Russell Depo. Exh. 5; Pl. Exh. 401, p. IV);

(13) Tuition-free schooling for children residing in shelters for domestic violence, (Russell Depo. 152; Russell Depo. Exh. 5; Pl. Exh. 401, p. IV);

(14) Increased payments to the department of youth services, resulting in an estimated loss to 381 affected school districts of over \$4 million (Russell Depo. 152; Russell Depo. Exh. 5; Pl. Exh. 401, p. IV);

(15) Criminal record checks (R.C. 109.57; Tavakolian Depo. 148; Russell Depo. 150);

(16) Radon testing (Phillis Tr. 1723);

(17) Removal of underground storage tanks (Phillis Tr. 1723; Russell Depo. 169);

(18) Water and well testing (Phillis Tr. 1723);

(19) Increases in auditors and treasurers' fees (House Bill 603, effective June 24, 1988; Phillis Tr. 1723; Tavakolian Depo. 172; Russell Depo. 158, 169; Maxwell Tr. 152-54);

(20) Increased requirements on school district health benefits for part-time employees (Phillis Tr. 1723);

(21) Pupil/teacher ratios, education service personnel ratios and library expenditure requirements (Phillis Tr. 1723; Tavakolian Depo. 187; Maxwell Tr. 152-54);

(22) Model curriculum requirements, particularly model science curriculum which is in the planning stages, will have a significant impact on school district budgets because many schools are not properly equipped with laboratory and science equipment. (Phillis Tr. 1724; Russell Depo. 154; Maxwell Tr. 152-54);

(23) The Ohio Department of Education recommendation

that school districts carry liability insurance in light of the 1099 of sovereign immunity (Tavakolian Depo. 148; Russell Depo. 157);

(24) Driver's license supervisions and other student discipline requirements (Tavakolian Depo. 175);

(25) The requirement that school districts provide free textbooks, which has increased the operating costs of schools as the cost of texts have gone up (Tavakolian Depo. 176);

(26) Compliance with the Americans With Disabilities Act, which will require the expenditure of funds for buildings that are not now handicapped accessible; no state funds are presently available for that purpose. (Tavakolian Depo. 180; Russell Depo. 158, 162);

(27) Federal requirements for the inspection, identification and, in some cases the encapsulation or removal of asbestos, which have had an adverse financial impact on Ohio public schools. State funds to defray the cost of those activities have not been sufficient to pay the costs. (Russell Depo. 158, 161; Maxwell Tr.

152-54);

(28) Increases in state minimum salaries (Russell Depo. 158);

(29) Collective bargaining has severely reduced the local control of school districts in the state.
(Washburn Tr. 2328-41; 2348)

(30) Prevailing wage laws, which have had a substantial adverse impact on a school district's ability to deal with maintenance and building needs. (Russell Depo. 160);

(31) Liability for back wages and increased costs for tutoring; prior to 1988, it was a common practice for a school district to pay special education tutors at an hourly rate of pay with the rate substantially less than the compensation or regular classroom teachers. The Ohio Supreme Court Decision in State ex rel Brown v. Milton-Union Exempted Village Board of Education, 40 Ohio State 3d 21, 531 NE2 1297 (1988), resulted in school districts being required to compensate tutors at the same rate for classroom teachers. That decision also resulted in back pay claims against

Ohio school district totalling in the area of \$25 to 30 million. (Russell Depo. 164; Van Keuren Depo. 31-32);

(32) Increases in the cost of public utilities for schools (Russell Depo. 168); and

(33) Department of Education regulations requiring additional bus driver training to be provided by school districts. In addition, the requirement that school bus drivers obtain commercial drivers' licenses requires additional training for those employees. The Department of Education also requires school districts to provide training for pupils who ride school buses. (Van Keuren Tr. 4763-64):

B. THE EDUCATIONAL MANAGEMENT INFORMATION SYSTEM

1. One under funded legislative mandate that was mentioned repeatedly by witnesses from both the Plaintiff school districts and the Department of Education is the Educational Management Information System (EMIS). (Sanders Tr. 316-17; Russell Depo. 152; Russell Depo. Exh. 5; Pl. Exh. 401, p. IV; Tavakolian Depo. 148; Shoemaker Tr. 4163; Papritan Tr. 916-17; Taylor Depo.

150-151; Goff Depo. 116)

2. The Ohio Department of Education began to develop EMIS in the fall of 1989 with the passage of S.B. 140, which required the system. (Goff Depo. 105)

3. The major effect of EMIS on local school districts was the requirement that local school districts report and submit comprehensive information electronically rather than on paper. EMIS requires school district personnel to input a variety of information for each student into the computer system. This information includes name, parents' names, address, county, date of birth, grade level, homeless, economic disadvantage, attendance (days absent and days present), expulsion or suspensions, moving out or re-entering the district and the date, district attended, and testing information, including competency testing, any type of standardized testing, and special education information. (Goff Depo. 113; R.C. Section 3301.0714)

4. The imposition of EMIS required substantial amounts of new information to be reported that had not been previously reported under the paper system, including grade distribution in grades nine through twelve by subject and results of student progress on the

competency-based education programs. (Goff Depo. 114)

5. Implementation of the EMIS involved personnel time of the school districts and also costs to the districts that were not reimbursed, including hardware purchases, terminals, multiplexors and printers, which had to be added to each school building. School districts had to designate a person as EMIS coordinator, which caused personnel costs in extended time or supplemental contracts, in addition to administrative time. The training provided to implement EMIS was not adequate. (Taylor Depo. 150-151; Goff Depo. 116)

6. For FY93, after EMIS had been implemented, the ADM counts, teacher counts, and unit counts for local school districts were all performed by pencil and paper in addition to the EMIS reporting. (Taylor Depo. 152-154)

7. The Legislative Budget Office has estimated the cost of implementing the EMIS system for a school district based on the state average school district ADM of 2,519 pupils to be \$35,084, even after an average of \$7,960 had been received per school district from the state. The total estimated unreimbursed cost per pupil for the implementation of EMIS is over \$13. (Pl. Exh. 401, p.

IV)

8. In March of 1991, Assistant Superintendent William Phyllis recognized that the level of funding appropriated for EMIS was too low to allow many districts to fully participate in EMIS. Assistant Superintendent Phyllis recommended that the Legislature substantially increase the funding for the EMIS program. (Pl. Exh. 185)

9. The General Assembly appropriated \$3.6 million for EMIS for fiscal year 1990; the fiscal year 1994 appropriation was \$8.9 million. The ODE did not provide top level leadership for the development of EMIS, and the ODE did not conduct a feasibility study to assess the hardware, software, personnel and training needs of local school districts. In fiscal year 1990 and 1991, the State Legislature provided approximately \$1 per pupil to local school districts for the development of EMIS. In fiscal year 1992, that figure is \$2 per pupil; in fiscal year 1993, that dollar figure was \$2.50 per pupil; and in fiscal year 1994 and 1995, the Legislature has budgeted \$3 per pupil for each school district for the development of EMIS. ODE has determined that the funding that it has provided is still not enough to meet the school districts' EMIS

expenses. (Pl. Exh. 443)

10. At the time of trial, the Department of Education had spent over \$27 million on the EMIS system and it did not yet provide reliable data on each of the elements required to be reported by local school districts.

(Sanders Tr. 4539)

C. LOAN PROGRAM AND RECEIVERSHIP DISTRICTS

1. Typically, the local control available to school districts that have taken emergency school assistance loans is limited to the authority to manage reductions.

They do not have the option of operating programs to enhance learning opportunities. They do not have opportunity to strive toward the national goals. They are in the business of managing reductions, managing hurt. (Phillis Tr. 1758)

2. Most school districts in financial distress have attempted to reduce expenditures by all available means prior to requesting approval for an emergency school assistance loan. Thus, the range of options for a further reductions is extremely limited. Typically, such districts spend 85 percent to 90 percent of their

total revenue on personnel, much of which is committed by one or more collective bargaining agreements, and have no other areas in which to reduce expenditures except personnel cuts. In some cases salary costs exceed 100 percent of the school district's operating budget. (Tavakolian Depo. 87; Phillis Tr. 1751-52; Van Keuren Depo. 47)

3. School district plans of reduction in connection with emergency school assistance loans, in order of magnitude include: administrators first; classroom teachers second; and support personnel third. Personnel reductions result in the largest reduction in expenditures. (Brown Depo. 204)

4. The next largest area of expenditure reductions is materials, supplies, and textbooks; then early retirement incentive, non-purchase of school busses, and reduction in maintenance costs. Textbook purchases and deferral of maintenance have usually occurred before the school district has been required to apply for an emergency school assistance loan. It has become increasingly more difficult for school districts to find things to cut from their budgets. There has been a trend to increased use of student fees as a means of increasing school revenue. (Brown Depo. 205-207;

Sanders Tr. 340)

5. School districts with an initial emergency school assistance loan are expected to seek approval of the Department of Education before implementing new programs. (Brown Depo. 163-164)

6. Any equity funds received by a school district, which are intended to provide poor school districts with increased educational opportunities, may be required to be spent on the repayment of any outstanding emergency school assistance loan. The Department of Education encourages early repayment. (Brown Depo. 160; Brown Tr. 5512)

7. School districts that have been unable to reduce expenditures by a sufficient amount to repay an existing emergency school assistance loan will be required to apply for a subsequent loan. No school district has ever been denied the authority to obtain such a loan. (Van Keuren Depo. 70-71; Tavakolian Depo. 133)

8. Districts under receivership (that is, subject to the provisions of Revised Code Section 3313.488) are prohibited from entering into any new program, contract

or expenditure without the express written permission of the Superintendent of Public Instruction. Violation of this requirement could result in a monetary penalty of up to \$20,000 on the individual school officer involved. (R. C. Section 5705.412; Brown Depo. 163164, 226-227; Phillis Tr. 1757-58, 160; Stip. 41)

9. Specific plans of reduction submitted to the Controlling Board by receivership district are monitored for compliance by the Department of Education and must be carried out. (Brown Depo. 226)

D. PLAINTIFF SCHOOL DISTRICTS DO NOT HAVE LOCAL CONTROL

1. The record is replete with testimony from each of the Plaintiff districts that there is little or no local control of educational operations due to legislative mandates and the Plaintiff districts' financial situations.

DAWSON-BRYANT

2. The costliest unfunded mandates, on an annual basis for FY93 for Plaintiff Dawson-Bryant Local School District, and the costs thereof, were as follows:

PROFICIENCY TESTS	\$19,200.
EMIS	\$25,000.
EXTENDED SERVICE	
AND SUPPLEMENTAL CONTRACTS	\$80,000.
UNREIMBURSED SPECIAL	
EDUCATION COSTS	\$346,911.
UNREIMBURSED TRANSPORTATION	
COSTS	\$262,528.
(FY92)	
ADA COMPLIANCE	\$488,000.

(Pl. Exh. 276, Response to Interrogatory 1; White Tr.

2130-31)

3. Collective bargaining has severely reduced the local control of the Dawson-Bryant Local School District and other school districts in the state. (Washburn Tr. 2328-41; 2348)

4. Plaintiff Dawson-Bryant Local School District has not been able to implement policy choices due to lack of resources, some of which include full handicapped access to buildings, all-day, every-day kindergarten, facility improvements, technology integration, textbook replacement, full science lab facilities for grades K-12, and advanced placement options. (Pl. Exh. 276,

LIMA

5. The Lima City School District is unable to exercise local control over its educational programs because it lacks sufficient available resources to do so. Revenue has not kept pace with expenditures, and as a consequence of that, it has been necessary to reduce staff on two or three different occasions, and to shift staff from general fund programs to special use fund programs such as Job Training Partnership Act, drug-free schools, vocational grants, and federal magnet school grants. Grant programs such as these are temporary in nature and once the funding runs out, the programs will likely be curtailed. (Buroker Tr. 2959-60)

6. Over \$10 million has been spent for which no additional funding was provided by the General Assembly on unfunded mandates and increases in costs of mandates since 1980. The costliest unfunded mandates, on an annual basis for FY93 for Plaintiff Lima City School District, and the costs thereof, were as follows

STATE AUDITOR AUDITS \$27,500.

PROFICIENCY TESTS	\$21,421.
EMIS	\$121,793

(total,

FY 90-93)

MISSING CHILDREN NOTIFICATION	\$66,153.
ALLOCATION OF "AT-RISK" FUNDING ...	\$897,187.
SERS CONTRIBUTION	\$63,976.
UNREIMBURSED SPECIAL	
EDUCATION COSTS	\$625,975.

(Pl. Exh. 284, Response to Interrogatory 1; Buroker Tr.

3006-3007)

7. The Lima City School District has not been able to implement policy choices due to lack of resources, some of which include all-day, every-day kindergarten, facility improvements, materials acquisition, elimination of split classes, equipment replacement, individual counseling services, and expanded education service personnel services at the elementary level.

(Pl. Exh. 284, response to Interrogatory 3)

NORTHERN LOCAL

8. For Plaintiff Northern Local School District local control has been abrogated because of state-mandated

programs for which the state provides little or no funding. The district is forced to pay for mandated programs and left without enough funding to pay for other programs that the school district desires to implement. (Hill Depo. 41)

9. Plaintiffs' Exhibit 129 is a list of mandates placed upon the Northern Local School District by the State of Ohio. The costliest unfunded mandates, on an annual basis for FY93 for Plaintiff Northern Local School District, and the costs thereof were as follows:

PROFICIENCY TESTS	\$25,000.
MODEL CURRICULA	\$40,000.
EMIS	\$30,000.
INCREASE IN STRS CONTRIBUTION	\$135,200.
INCREASE IN SERS CONTRIBUTION	\$112,500.
EXTENDED SERVICE AND	
SUPPLEMENTAL CONTRACTS	\$1,034,300
(total FY88-FY93)	
UNREIMBURSED SPECIAL	
EDUCATION COSTS	\$70,000.
WATER WELL TESTING	\$50,000.

(Johnson Tr. 1477; Pl. Exh. 129, Response to Interrogatory 1)

10. Plaintiff Northern Local School District has not been able to implement policy choices due to lack of resources, some of which include building repair, all-day, every-day kindergarten, textbook renewal, staff development programs and inservice, advanced placement options, additional guidance personnel, bus replacement, equipment replacement, and full handicapped access to buildings. (Pl. Exh. 129, Response to Interrogatory 3)

11. Defining "local control" is not only having the freedom to provide more money to the education of one's children but also control over and participation in the decision-making process as to how local tax dollars are to be spent, in Superintendent Johnson's opinion, Plaintiff Northern Local School District has very little local control. (Johnson Tr. 1483)

12. In the 1990s, the Board of Education for Plaintiff Northern Local School District has been engaged predominantly in crisis management. (Miller Tr. 1610)

13. Training for personnel at Glenford Elementary in the Northern Local School District to implement the Education Management Information System (EMIS) was

inadequate. (Papritan Tr. 1917-18) Implementation of EMIS resulted in reduction in education services to students at Glenford Elementary, because a teacher's aide was taken from the classroom to input EMIS data. (Papritan Tr. 1918)

SOUTHERN LOCAL

14. The costliest unfunded mandates, on an annual basis for FY93 for Plaintiff Southern Local School District, and the costs thereof, were as follows:

EMIS	\$28,460.
MODEL CURRICULA	\$22,500.
COUNTY BOARD COST INCREASES	\$35,070.
EXTENDED SERVICE AND	
SUPPLEMENTAL CONTRACTS	\$40,421.
UNREIMBURSED SPECIAL	
EDUCATION COSTS	\$44,000
UNREIMBURSED TRANSPORTATION	
COSTS	\$50,000
ADA COMPLIANCE	\$32,000

(Pl. Exh. 89, Response to Interrogatory 1; Spangler Tr. 585-586, 721; John Winnenberg Tr. 1256)

15. The policy choices that the Board of Education of Plaintiff Southern Local School District has been unable to implement because of a lack of resources include all of those listed on Plaintiff's Exhibit 89, Response to Interrogatory No. 3, with the exception of number 5, in that technology integration has occurred to some extent with grant funds, and number 26, in that full handicap access has occurred with funds from the new building project and some specialized abatement funds. (Spangler Tr. 587) Specific policy choices which Southern Local has been unable to implement include all-day, every-day kindergarten, facility improvements, cultural event enrichment, advanced placement classes, drama class/club, technology integration, and textbook replacement. (Pl. Exh. 89, Response to Interrogatory 3)

16. The Southern Local Board of Education does not have the money to make decisions or choices, because all of the district's funds are devoted to mandates and costs over which the district has no control. The board does not have adequate funds over which to exercise local control. (Spangler Tr. 588)

17. The Board of Education for Plaintiff Southern Local School District has moved out of an era where it was

planning to implement educational programs designed to provide a benefit to students to an era of reacting to state mandated programs and funding regulations. (John Winnenberg Tr. 1259)

18. As a member of the Board of Education of the Southern Local School District, Mr. Altier, has very little local control concerning the use of the school district's funds for the education of the district's children. (Altier Tr. 1298)

YOUNGSTOWN

19. Plaintiff Youngstown City School District is subject to state and federal mandates that have expanded the district's responsibilities and that forces the district to take money away from the education of children with special needs. Funding from the state has not kept pace with these mandates, thus exacerbating the district's financial problems. (Kolitsos Dep. 76)

20. Unfunded or underfunded mandated programs that affect Plaintiff Youngstown City School District include special education requirements, EMIS, model curricula, in-service and training of teachers, and proficiency

testing. (Hiscox Depo. vol 2, 133-135)

21. Plaintiff Youngstown City School District is a B-site so it has had to absorb the cost of EMIS and the cost for the B-site, for which it received no financial assistance from the state. Youngstown received \$22,000 from the state for EMIS, but it cost the district approximately \$300,000 to run the B-site on a yearly basis. (Hiscox Depo. vol 1, 38-39)

22. The only power Plaintiff Youngstown City School District Board of Education has is to set policy, hire a superintendent, business manager and treasurer, and to address curricula decisions as well as possible with the limited finances available. The growth of mandates and the budgetary problems of the school district have limited the curricula choices the district can make. The board of education, in reality, has very little power. (Kolitsos Depo. 82)

23. The Board of Education of Plaintiff Youngstown City School District has been faced with a situation where many of the decisions it must make are what courses and programs to cut because of lack of funding. The proactive decisions of the board of education are restricted by the school district's financial

situation. Even decisions regarding reorganization of the district and consolidation of buildings are considered not because they are necessarily in the best interest of the students, but because of the district's financial situation. In fact, some of the consolidation decisions which are being considered by the board are not in the best educational interest of the students. (Hiscox Depo. vol 2, 142-143)

E. GENERALLY

24. There are no limits on the property tax millage which can be approved by local voters to support operation of the public school system. Phillis Testimony, T. p. 1866; Sanders Testimony, T.p. 4497-4498.

25. In 1991, the effective millage on residential and agricultural (Class I) property in Ohio ranged in the various school districts from approximately 20 mills to nearly 65 mills. Defendants' Trial Ex. No. 4b.

26. School districts have the responsibility for determining how to spend any revenues raised which are in excess of those required to meet state requirements. Phillis Testimony, T.p. 1869; McMurrin Testimony, T.p. 2568; Sanders Testimony, T.p. 4498-4499.

27. The average teacher's salary in a school district ranges from approximately \$25,000 a year to approximately \$40,000 a year in the various school districts. Defendants' Trial Ex. No. 23.

28. Salaries and fringe benefits normally represent 80% or more of a school district's budget. Phillis Testimony, T.p. 1866; McMurrin Testimony, T.p. 2552; Maxwell Testimony, T.p. 198; Spangler Testimony, T.p. 607-608; White Testimony, T.p. 2239; Johnson Testimony, T.p. 1503; Marino Testimony, T.p. 3405.

29. School districts determine which certified and non-certified persons to employ from the pool of job applicants. Phillis Testimony, T.p. 1865; McMurrin Testimony, T.p. 2554; Sanders Testimony, T.p. 4499; Spangler Testimony, T.p. 682.

30. School districts determine the level of pay and fringe benefits for their employees within the context of collective bargaining. McMurrin Testimony, T.p. 2555-2556; Sanders Testimony, T.p. 4499; Phillis Testimony, T.p. 1865; Maxwell Testimony, T.p. 266.

31. School boards and superintendents exercise control over

teaching assignments, teacher evaluations, and teacher discipline. McMurrin Testimony, T.p. 2554, 2556-2557; Phillis Testimony, T.p. 1869.

32. Courses of study are designed locally either within the school district or by the county board of education. Schiraldi Testimony, T.p. 5040, 5050-5051; Sanders Testimony, T.p. 4499, 4501; Spangler Testimony, T.p. 426-427, 598-599, 681; Phillis Testimony; T.p. 1867; McMurrin Testimony, T.p. 2562-2563; Johnson Testimony, T.p. 1560; Hiscox Deposition, Vol. II, pp. 141-143.

33. School districts determine what educational materials and technology to employ in teaching courses and may select textbooks from a list approved by the Ohio Department of Education. McMurrin Testimony, T.p. 2563, 2616.

34. The courses of study designed by local school districts for subjects in which there is a model curriculum must be directed toward reaching the defined outcomes or results required by the particular model curriculum. Local school districts are free to select texts, educational materials and technology for such courses as long as they are directed toward achieving the desired outcomes. Schiraldi Testimony, T.p. 5041;

Sanders Testimony, T.p. 4499-4501; Phillis Testimony, T.p. 1867-1868; McMurrin Testimony, T.p. 2564-2565.

35. The requirement for passage of the Ninth Grade Proficiency Test impacts the local design of curricula and selection of materials and technology only to the extent that the courses of study, materials and technology must result in the student acquiring the knowledge to pass the test. Sanders Testimony, T.p. 4501-4503; Schiraldi Testimony, T.p. 5050-5051, 5118-5119; McMurrin Testimony, T.p. 2564.

36. School districts are free to determine questions of basic structure of the school district such as how many schools to maintain and whether or not to have a middle school as opposed to a junior high school. Phillis Testimony, T.p. 1869-1870; McMurrin Testimony, T.p. 2559; Sanders Testimony, T.p. 4501.

37. According to Assistant Superintendent Hiscox, Youngstown maintains local control by virtue of electing a school board, passing policy, adopting budgets, deciding curriculum, deciding which books to buy, setting minutes of instruction required over state minimums, deciding which buildings remain open and redrawing intradistrict boundaries. Hiscox Deposition,

Vol. 2, pp. 141-143.

38. Ms. Marino agreed with Mr. Hiscox's testimony on local control. T.p. 3394-3395.

39. Mr. Kolitsos, Youngstown City School District Board of Education member, listed local board powers as setting policy, hiring the superintendent, hiring the business manager and treasurer, and deciding curriculum issues. Kolitsos Deposition, p. 81.

40. Ms. Pincham, Youngstown City School District Board of Education member, stated local control exists in the area of expenditures, hiring, firing, curriculum changes, open enrollment and text purchases. Pincham Deposition, p. 58.

41. The Northern Local Board of Education sets policy for all aspects of the operation of the district. Miller Testimony, T.p. 1609.

42. The Northern Local Board of Education reviews and approves the budget every year. Miller Testimony, T.p. 1641.

43. The Northern Local Board of Education is also

responsible for money management throughout the course of the year. Miller Testimony, T.p. 1642.

44. The Northern Local Board of Education approves the curriculum every year. Miller Testimony, T.p. 1642.

45. The Northern Local Board of Education decides whether to place a tax issue on the ballot and local voters decide whether to approve such an issue in a local election. Miller T.p. 1652.

46. Mr. Hill, a Northern Local Board of Education member, testified that the local board duties include policy choices, money management, personnel decisions, curriculum approval, textbook purchase approval, creation and submission of the budget, building management, how to spend equity money and when to seek tax levies. Hill Deposition, pp. 12-15, and 4042.

47. Mr. John Winnenberg, a Southern Local Board of Education member, testified that Southern Local's board has the power to reject curriculum, review and adopt or reject the budget, pass resolutions to put tax levies on the ballot, and oversee building maintenance. T.p. 1263-1265.

48. According to Mr. Winnenberg, Southern Local has made some improvement to its educational system since 1978.

T.p. 1271-1272.

49. According to Superintendent Spangler, the local board of education decides on disciplinary procedures, whether to charge student fees, place taxes on the ballot, join an accrediting agency, allow open enrollment and establish a preschool. T.p. 682-684.

50. The local board also decides who to employ and who to contract with for supplies and services, building maintenance, operation and design. Spangler Testimony, T.p. 681-684.

51. Southern Local decided how to spend its equity money in fiscal year 1993. Spangler Testimony, T.p. 501.

52. During his entire tenure, Dawson-Bryant Superintendent White never made a formal recommendation to place a school tax issue on the ballot. T.p. 2197. This is an example of local control.

53. During Mr. White's tenure (1985-86), the district decided to build an addition at Deering Elementary out of general fund monies. T.p. 2182. The cost of this

multipurpose room was \$300,000. T.p. 2272.

54. During Mr. White's tenure, the district also replaced the roof on both Deering Elementary and the high school, and purchased a new boiler for the high school.

All repairs were made with money taken from the general fund. T.p. 2212-2213. The general fund moneys were 85% state money. T.p. 2213.

55. Dawson-Bryant decided to spend some of their equity funds on new textbooks this year. Washburn, T.p. 2382.

56. Last year, Dawson-Bryant decided to spend some of their equity money on repairing the outdoor track at the high school. Washburn, T.p. 2481.

57. According to Mr. Swartzwelder, a Dawson-Bryant Board of Education member, the board hires employees and negotiates contracts. Swartzwelder Deposition, p. 8.

58. The local board at Dawson-Bryant decided to close Andis Elementary to improve its educational program for its elementary school children. Swartzwelder Deposition, p. 10.

59. The local board at Dawson-Bryant decided to purchase

some new computers with equity money. Swartzwelder
Deposition, p. 19.

60. The local board at Dawson-Bryant also chose to spend
\$90,000 on supplemental contracts for extracurricular
activities. Swartzwelder Deposition, p. 30.

61. According to Mr. Washburn, Dawson-Bryant's effective
tax rate is below the 20.5 mill floor, but its voted
rate, which indicates the levy rate actually approved
by the voters, is 23 mills.(Washburn Testimony T.p.
2376, Defendants' Exh. 4)

62. Lima City School District's Board of Education controls
whether and when teachers are hired and fired. Buroker
Testimony, T.p. 2976.

63. Lima City School District's Board of Education approved
all contracts to which the district is a party. Buroker
Testimony, T.p. 2976.

64. Lima City School District's Board of Education controls
whether and when to put a levy before the voters.
Buroker Testimony, T.p. 2976.

65. Lima City School District's Board of Education approves
all class schedules. Buroker Testimony, T.p. 2976-2977.

66. Lima City School District's Board of Education determines the course of study in the district. Buroker Testimony, T.p. 2977.

67. Lima City School District's Board of Education determines graduation requirements above state minimums. Buroker Testimony, T.p. 2977.

68. Lima City School District's Board of Education adopts the school district's policies. Buroker Testimony, T.p. 2977.

69. Lima City School District's Board of Education approves the district's budget. Buroker Testimony, T.p. 2977.

70. Lima City School District's Board of Education decides whether or not to direct available funds to try to meet minimum standards. Buroker Testimony, T.p. 2977.

XVI. THOROUGH AND EFFICIENT CLAUSE

1. Article VI, Section 2 of the Ohio Constitution mandates that the Ohio General Assembly "secure a thorough and efficient system of common schools." According to the Ohio Supreme Court,

A thorough system could not mean one in which part or any number of the school districts were starved for funds. An efficient system could not mean one in which part or any number of the school districts of the state lacked teachers, buildings, or equipment.

Miller v. Korn (1923), 107 Ohio St. 287, 298; see also Board of Education v. Walter (1979), 58 Ohio St. 2d 386, 387 (recognizing and applying the Miller test)

The testimony in the record indicates that under this standard, Plaintiff school districts, and school districts throughout the State of Ohio, lack "necessary teachers, buildings or equipment." Thus, the operation of the system of laws providing for the education of Ohio's 1.7 million school aged children violates the thorough and efficient clause of Article VI, Section 2 of the Ohio Constitution.

2. The State Board of Education has determined that a practical test for a "thorough and efficient system of common schools" is the question, "Would I, as a parent, be willing to have my children educated in any of the 612 school districts in Ohio?" If the answer is "no," the system would appear to be suspect. (Tavakolian

Exh. 3 p. 2)

3. Plaintiffs' Exhibit 309 is a copy of House Concurrent Resolution No. 5 introduced by Representative Shoemaker in the House of Representatives in January of 1993. The resolution expresses a pledge to support Ohio's public school districts, recognizing the Legislature's responsibility to provide and bring about a thorough and efficient school system and an adequate system of funding. The resolution passed the House but did not pass the Senate. (Shoemaker Tr. 4150-52; Pl. Exh. 309; Pl. Exh. 310)

4. Each of the Plaintiff school districts has substantial facilities needs, as outlined in Section VIII G, supra, and incorporated by reference herein. Each of the Plaintiff school districts in this action was determined by the Department of Education to have facilities needs greater in amount than could be raised by the Plaintiffs assuming no other indebtedness and the passage of locally-approved bond issues to the maximum amount permitted by law. (R. C. Section 133.06; Maxwell Tr. 131-134; Maxwell Depo. Exh. 3, p. 56, Exhibit 139)

5. Dawson-Bryant's expenditures have exceeded revenues for several years, and the district anticipated a negative balance for FY93. Due to equity funds and efforts to reduce expenditures, the district did not have a negative balance at the end of FY93. Efforts to reduce expenditures FY93 included negotiating a reduced benefit package for all employees, increasing restrictions upon field trips to eliminating field trips, restricting text books and material purchases, rationing paper and other materials, and limiting maintenance to identified items that had to be repaired, and halting bus purchases. (Washburn Tr. 2374-75)

6. At Dawson-Bryant High School, there are three full-time science teachers, and the transportation supervisor teaches two science courses at the high school. (Semanco Depo. 7; 33) Mr. Semanco teaches biology I, biology II, and chemistry and he is assigned bus duty, cafeteria duty, and hall duty. His volunteer services to the students include after-school tutoring for proficiency tests, chaperoning dances, coordinating a science fair, and a science club. (Semanco Depo. 8-9; 30)

7. Jamie Blankenship testified that the text books she used during elementary school at Dawson-Bryant Local School District were old, had pages missing, and writing all over them. (J. Blankenship Depo. 6)

8. There are no text books for the computer classes taught at Dawson-Bryant High School. (Jackson Depo. 16)

9. The consumable materials that Mr. Semanco requests and is provided for teaching science are not sufficient for his needs in teaching high school science classes at Dawson-Bryant. (Semanco Depo. 20)

LIMA

10. The Lima City School District has educational needs that cannot be met with available funds. Included within these are early intervention for preschool pupils age 3 to 4, all-day, every-day kindergarten for virtually all pupils, a lower student to teacher ratio, for grades 1 through 3, additional technology for grades K-12, supplies and materials, textbooks, elementary guidance, and additional guidance. (Buroker Tr. 2954)

11. In Lima, 57 percent of the texts in use in the

elementary school have copyright dates of 1985 or older. Sixty-seven percent of the middle school and 78 percent of the high school texts have copyright dates of 1985 or older. A textbook for Afro-American Studies having a date of 1972 is presently in use in the district. That textbook references African countries which have changed names and configurations as often as two or three times since the textbook was published.

(Buroker Tr. 2930)

12. A survey of equipment and supplies needs of individual classroom teachers in Lima revealed a total amount of current additional funds needed of \$2,120,344.

(Buroker Tr. 2955)

13. The Lima City School District operates a number of "split classes" where it is necessary to combine multiple grades in order to effectively utilize a classroom. Because of the requirements of the district's negotiated collective bargaining agreement, it is required to include a teacher's aide in any classroom in which enrollment exceeds 30. In order to minimize the number of teacher aides employed, the district utilizes "split classes." (Buroker Tr. 2895)

14. Glenford Elementary in Plaintiff Northern Local has needs for equipment, materials and supplies, including storage spaces, materials for reading and writing, books for slick boxes, books on tape, overhead projectors and other visual assistance for teaching, and computers, software, and printers. (Papritan Tr. 1982) Students in music class must sit on the floor because there is not enough space for chairs. When it is cold, administrators attempt to provide carpet squares for students to sit on, which are donated by carpet stores. The support materials at Glenford are inadequate to implement the whole language approach. (Papritan Tr. 1939-43)

15. The library at the Glenford Elementary School in Northern Local School District is deficient in the areas of non-fiction books, resource encyclopedias, dictionaries, thesauruses, and biographies. The library at Glenford Elementary is closed three days a week because there is no staff person available to supervise the library. (Spohn Depo. 66)

16. The Glenford Elementary principal and teachers have made purchases for the school and for families of the school's students with their own personal funds.

(Papritan Tr. 1949) Phyllis Spohn spends between \$400 to \$600 a year of her own money to buy materials and supplies for her 2nd grade classes. (Spohn Depo. 69)

17. In Northern Local in 1992-93, 32 1st graders were in one classroom and one 6th grade classroom had 38 students and another had 39. Ninety-nine percent of the students in the large 6th grade classes tested as having a deficiency in at least one area of reading. These students have had over 30 children in their classroom since kindergarten, and they have proceeded up through the elementary grades with large class sizes. These students will have no opportunity to have smaller class sizes until they reach the junior high level. The Iowa Test of Basic Skills showed that these 6th grade students were a grade behind in achievement. That test also showed that all sections with large class sizes were behind. Students are not receiving appropriate intervention because class sizes are too large. (Papritan Tr. 1952-55; Spohn Depo. 57)

18. In Northern Local for the 1993-94 school year, at Thornville Elementary there are two 2nd grade classes with 34 and 35 students. At Glenford Elementary, there are classes with over 30 students. In the high school they have some Spanish classes with over 30 students in

a classroom. The biology class has 190 students for seven periods. (Johnson Tr. 1388; 1598)

19. Students in grades K-3 in Glenford Elementary School in Northern Local School District share a physical education teacher and a music teacher with students in the same grades at Somerset Building in Northern Local School District. Students at the Intermediate Building in Northern Local School District share a physical education teacher and a music teacher with students at the Thornville building. (Spohn Depo. 14)

20. The Glenford Elementary School in Northern Local School District does not have an art teacher. (Spohn Depo. 16)

21. Within the last three years, services to Glenford Elementary students were reduced when a classroom aide moved to the high school for intervention. (Papritan Tr. 1918)

22. Northern Local School District has only one principal for grades 7 through 12. (Johnson Tr. 1430)

SOUTHERN LOCAL

23. Superintendent Spangler testified that she did not

believe any of the students at Southern Local are receiving a high quality education. (Spangler Tr. 591) Further, many of the students exit the system with unmet needs, which is not providing an adequate education. Also, she testified that students have been deprived of education at Southern Local as a result of the facilities' problems, the lack of textbooks, the lack of current textbooks, the lack of library materials, the lack of teacher time for specific intervention, the lack of support services, the lack of guidance personnel, and the denial of a diploma. (Spangler Tr. 592-93)

24. As part of the cuts at Southern Local, plans to acquire text books and updated instruction materials were put on hold, professional leave and field trips were reduced, and extra curricular programs were reduced. The district instituted a pay-to-play program to meet athletic costs and to keep programs operating. (Spangler Tr. 496) The district was making cutbacks in staffing and direct services to students and options for further expenditure reductions were very limited. (Spangler Tr. 496-497)

25. Following the reductions pursuant to the emergency school advancement loan, the amount of contact between

pupils and professionals was reduced. Much support that was needed from instructional aides has been taken away. In some areas, the class size is too high for effective instruction. High school English class sizes are over 30, which is too high for those students who need individualized attention for learning writing skills. At the elementary level, the 3rd grade classes had the highest number of students, with many of the classes having 30 students. Seven students were retained in that grade level, which was approximately 10 percent of the class. The district was not providing appropriate intervention for those students who were retained. Further, because of limited financial resources, the district does not have adequate systematic intervention for students and does not meet the intent of minimum standards for student intervention. (Spangler Tr. 497-99)

26. Southern Local lacks materials, supplies and equipment. (Spangler Tr. 591)

27. Although Southern Local School District is on a five-year textbook purchase plan, the district does not have the funds to purchase books pursuant to that plan. (Axline Depo. 48)

28. Southern Local is starved for the funds necessary to purchase every day supplies. Paper is rationed, paper clips are rationed, telephone time is rationed, time on the copier is rationed. Art supplies, the amount of books purchased for libraries, chalk, and even toilet paper and paper towels are rationed. (Spangler Tr. 589-90; Thompson Tr. 1347)

29. To aid in the purchase of paper, reference books and subscriptions to periodicals, a student council has an annual selling campaign which raises between \$2,000 to \$3,000. Mr. Towner also has a principal's fund, and the main sources of revenue for the fund are pop sales and school photographs. This fund raises about \$2,000, which also goes toward the purchase of needed supplies. (Towner Tr. 826)

30. Southern Local has a lack of teachers needed for intervention and appropriate class sizes, and a lack of teachers in some certification areas such as secondary reading. (Spangler Tr. 497-98; 590)

31. Introductory mathematics, science and English courses in Plaintiff Southern Local School District all have more than 25 students. (Axline Depo. 33-35)

32. Every class taught in the 7th and 8th grade in Southern Local has between 26 and 30 students. (Towner Tr. 839)

33. There are more than 25 students in many elementary classes in Southern Local School District. In the 1991-92 school year, one 3rd grade class had 33 students and a 1st grade class had 28 students. (Lichtenstein Depo. 46-47)

34. In 1992-93, class sizes at Southern Local in Science I and Algebra I were too large, resulting in too little individual student attention and causing students to repeat courses. (Thompson Tr. 1322-23)

35. Mr. Joseph Winnenberg teaches five separate courses, and therefore has five different course preparations each day. These preparations include developing lesson plans, providing evaluations of the students, and presentation. (Joe Winnenberg Tr. 748)

36. Superintendent Spangler performs many functions that other superintendents would not be performing directly.

Southern Local has no public relations person, no director of curriculum or director of special education, and has only one 12-month administrator, which is the Superintendent. (Spangler Tr. 429)

During the construction project at Southern Local, the district did not have a construction manager; rather, the Superintendent performed those duties as well.

(Spangler Tr. 429-33)

37. Southern Local does not have an administrator to make daily purchases for the school district. Instead, the Superintendent makes purchases for the district, including items such as lettuce, paint, and some basic supplies, which she routinely pays for out of her own personal funds. (Spangler Tr. 436-38)

YOUNGSTOWN

38. Youngstown City Schools attempted to budget \$500,000 per year for five years for textbook purchases. (Pl. Exh. 296) Even if the purchases were made according to the textbook purchase plan, the needs of the students would not be adequately met. (Marino Tr. 3235) The district currently has many textbooks that are more than five years old and even if the plan is followed, there will be textbooks greater than five years old by the time they are replaced. In FY94, the district is using an 1980 music textbook in kindergarten through 4th grade. The purchase of new science textbooks at the elementary level could not be completed because

lack of funds. The lack of updated textbooks affects students significantly because in many subjects that may be the only resource students have. (Marino Tr. 3237-38; Pincham Depo. 22-24)

39. Students in 4th through 6th grades do not have adequate hands-on materials for mathematics. They do not have adequate access to computers and computer software. They do not have adequate science hands-on equipment.

Social studies materials are inadequate; and language arts materials are not sufficient. The district does not have adequate materials to properly prepare its students for the proficiency test. (Marino Tr. 324245)

40. In the Youngstown City Schools, teachers do not have adequate supplies of paper and materials. Teachers often buy those items out of their own personal funds. (Marino Tr. 3229-30)

41. There are many overcrowded school buildings in Plaintiff Youngstown City School District, and there are many classes where the pupil to teacher ratio is well above 25 to 1. (Kolitsos Depo. 78-79)

42. The Youngstown City School District has been approved

for an emergency school assistance loan fund, and cuts have been made as a result of preparing to enter the loan fund. The teaching staff has been cut, and in December 1993, there were 73 substitute teachers working without regular teaching contracts, because those teachers may need to be eliminated. A shortage of substitute teachers exists because there are 90 many substitutes who have been serving in regular positions, substitutes have no hope of obtaining a teaching contract at this time when positions are being cut, and people do not want to come to Youngstown City Schools to teach. Secretarial and custodial positions have been abolished; nutrition staff and educational assistants have been laid off. (Marino Tr. 3203) Six administrators in FY94 are trying to do the same amount of work that was done by approximately 20 people in the Department of Instruction in FY93. (Marino Tr. 3204) Since August 1992, Youngstown City Schools have cut approximately 18 to 20 central office personnel. (Marino Tr. 3354-55) Cuts to the central office staff directly impact services to students. (Marino Tr. 3435-36)

43. From 1987 to 1989, the district cut teaching positions and reduced non-certified positions by not replacing personnel who left. Teachers on special assignment to

assist in seven elementary and five high school buildings were cut. Guidance counselors were cut from three guidance counselors in each of the high schools to two and one-half in four and two in the other high schools. Extended time for speech therapists, audiologists, and psychologists were cut, and administrative positions were cut. One elementary reading supervisor was not replaced, and the Coordinator of Consumer Education and the Coordinator of Gifted Education were cut. Non-certified positions were also reduced, including educational assistants and secretaries. Over the two-year period at least thirty teachers were non-renewed. (Marino Tr. 3175-78)

44. Youngstown City School District plans future cuts in personnel. In 1991-92 school year, 18 elementary teachers were non-renewed for financial reasons, and up to 80 teachers were to be non-renewed for the 1992-93 school year. Such cuts will limit the curriculum that the district will be able to offer. (Hiscox Depo. vol 1, p. 46-47; Hiscox Depo. Exh. 1)

45. As of the 1992-93 school year, the district also planned to reduce the numbers of professional staff, including psychologists, speech and hearing therapists, nurses, social workers, B-site technicians, clerical

workers, teacher aides, library aides, and custodians.

(Hiscox Depo. vol 1, p. 49-50)

46. In the 1991-92 school year, Youngstown cut one-half of one secondary guidance counselor, and the district plans to cut two additional secondary guidance counselors in the future. After these cuts, 12 guidance counselors will remain for the entire district at the high school level. (Hiscox Depo. vol 1, p. 48; Hiscox Depo. Exh. 1)

47. For the 1993-94 school year, the district projected a reduction in force of approximately 80 additional teachers, in addition to cuts of educational assistants, counselors, psychologists and speech and hearing specialists. During that time period, the district was also faced with cuts to the reading, mathematics, and civics programs. (Kolitsos Depo. 27)

48. Split classes have been implemented at Youngstown City Schools due to lack of funding. (Marino Tr. 3246)

49. In Youngstown, at the high school level for FY94, all of the teachers are required to teach six classes. Some teachers must prepare for more different courses than is appropriate. (Marino Tr. 3259)

XVII. EQUALITY OF EDUCATIONAL OPPORTUNITY

The Ohio Constitution requires that

All laws, of a general nature, shall have a uniform operation throughout the state (Article II, Section 26), and:

All political power is inherent in the people. Government is instituted for their equal protection and benefit. (Article I, Section 1).

1. Aside from the Defendants' admissions that there are vast disparities in educational opportunity in Ohio, (see Proposed Findings of Fact Section III, supra, incorporated by reference herein) the record is replete with testimony, mainly in the form of comparisons between the Plaintiff districts and other Ohio school districts, that levels of educational opportunity offered throughout the state of Ohio are widely disparate. That evidence involves the expert testimony of Dr. Alexander and testimony from various witnesses associated with the Plaintiff school districts who toured other Ohio school districts and compared the educational offerings at those districts to the

offerings in the Plaintiff districts.

A. EDUCATIONAL OPPORTUNITIES ARE NOT EQUITABLY DISTRIBUTED IN

OHIO

1. Director Browning testified that he and the Voinovich administration recognize that there is an equity problem among the primary and secondary public schools in Ohio. By this, he means the system of financing public education is imperfect and needs to be changed.

More dollars need to get into the hands of poor school districts. The Voinovich administration would like to see poor school districts have more money to provide better services. Wealthier school districts have more money to spend and they spend it and provide more services. (Browning Tr. 4401-02)

2. In 1987, the House Select Committee to Review and Study Ohio's Education System held hearings in Youngstown, Cincinnati, Perry County, Wooster, Bowling Green, Chillicothe, Maple Heights, Kent State, Toledo, Dayton, Cleveland, Fremont, Columbus, Defiance, Akron, Batavia and Athens. The report of the Select Committee to Review and Study Ohio's Education System issued in December of 1988. (Pl. Exh. 311) The state legislature has not made any significant progress

toward the recommendations contained in that report.

(Pl. Exh. 311, 312, 314; Shoemaker Tr. 4062-4064, 4098, 4123)

3. The guiding principle behind school reform must be that of minimizing disparities while maximizing equity and adequacy. (Sanders Tr. 373; Pl. Exh. 15 p. 17)

4. In 1990 the Ohio Department of Education, through testimony of Dr. Tavakolian and Dr. Phillis presented several conclusions regarding the equity of educational opportunity in Ohio to a committee of the Ohio General Assembly. The Department's legislative testimony included a quintile analysis showing that the poorest districts have the lowest paid teachers, fewer teachers with master's degrees, higher pupil-teacher ratios, the lowest graduation rates and the fewest pupils going from high school to post-secondary education. The testimony noted, "...[T]he distribution of property wealth in combination with state aid seems to have an effect on these outcome measures that does not support equity in educational opportunity. (Tavakolian Depo. Exh. 12 p. 10; Tavakolian Depo. 242)

5. An equity analysis of the Ohio School Finance System was prepared by the Ohio Department of Education. That

analysis includes a quintile comparison indicating that while the foundation program works reasonably well to 20 mills of support, the expenditures above 20 mills create severe disequalization. The same material was referenced by Senator Cupp in a document known as the "Cupp Report." The analysis indicates that as average operating expenditures per pupil increase so does the average beginning teacher salary, the average teacher salary, the average experience of teachers, the percentage of teachers with masters degrees, the graduation rate, the percentage of children going to college. At the same time, as expenditures increase, the pupil/teacher ratio tends to decline. (Phillis Tr. 1769-1771)

6. Senator Aronoff recognizes that there are disparities among the various school districts in Ohio in terms of wealth, and this translates into disparities in per pupil expenditures among the various school districts.

One part of the equity problem is dollars behind the student, and the other part is quality of education. Further, Senator Aronoff admitted that there are school districts that do not have enough funds available to them to educate their students and who do not provide, in his opinion, satisfactory educational opportunities to their students. (Aronoff Tr. 4834-38)

B. DR. ALEXANDER'S CURRICULUM STUDY

1. Dr. Alexander first became involved in Ohio school funding matters in 1989 when he was requested to conduct a study to determine whether there were disparities in Ohio of significant magnitude.

(Alexander Tr. 3607-08) The initial study conducted by Dr. Alexander and a team of researchers included review of data from 1981 through 1989 provided by the Ohio Department of Education. That study was completed and released on December 11, 1990. The report concluded that Ohio's distribution of monies for its public schools is widely disparate, and funds are apportioned in such a way as to deprive children in poorer school districts of equal educational opportunity. (Alexander Tr. 3609-11)

2. Dr. Alexander conducted an additional study of Ohio school funding in which he reviewed both expenditure per pupil and revenue per pupil for the period from 1969 through 1991. In addition, Dr. Alexander reviewed the curriculum for rich and poor school districts.

(Alexander Tr. 3315-16; Pl. Exh. 449) Dr. Alexander's review resulted in the preparation of two written documents, Plaintiff's Exhibit 302 and a supplementary

Exhibit identified as 302(A), which together constitute the first report. The second report is Plaintiff's Exhibit 301. (Alexander Tr. 3618-19)

3. Dr. Alexander concluded, based on his analysis of Ohio school funding, that Ohio is badly disparate, and the lack of funds clearly deprive many children in the state of equal educational opportunity. He further concluded that the malapportionment of resources for public education is related to the disparities in wealth, which in turn results in revenue differences for public schools. These revenue differences produce a lesser level of educational service for children in poor school districts, which discriminates against them and deprives those pupils of the opportunity to develop their talent on an equal basis. (Alexander Tr. 3621-22)

4. Plaintiffs' Exhibit 449 consists of approximately 117 course offering books for the richest and poorest Ohio school districts and was used in the Alexander study. (Pl. Exh. 449)

5. Analyzing the curriculum in rich and poor school districts, it was determined that rich school districts have approximately 54 percent of the courses that are

offered or above the basic level of required courses, while the poor school districts offer only 23.9 percent of courses above the basic levels. (Alexander Tr. 3687)

6. Of the school districts surveyed, 38.2 percent of the rich school districts offered three foreign languages, while only 3.4 percent of the school districts studied offered three foreign languages; 23 percent of the rich school districts offered four foreign languages, while only one of the poor offered four foreign languages. Six of the 55 rich schools offered five foreign languages; none of the poor had similar offerings. (Alexander Tr. 3691; Pl. Exh. 301, p. 143)

7. Of the schools studied, 9.1 percent of the schools in the rich districts offered advanced placement courses and economics, while only 1.7 percent of the poor schools had similar offerings. Of the rich schools, 21.8 percent had advanced placement courses in European history, while none of the poor school districts had similar offerings. Of the rich schools, 70.9 percent offered advanced placement in English, while only 8.5 percent of the poor schools had similar offerings. Of the rich school districts, 58.2 percent offered advanced placement U.S. History courses, while only 1.7

percent of the poor school districts had similar offerings. Of the rich districts, 60 percent offered advanced placement courses in calculus, while only 3.4 percent of the poor school districts had similar offerings. Of the rich school districts, 30.9 percent offered advanced placement courses in chemistry, while only 1.7 percent of the poor school districts had similar offerings. (Pl. Exh. 301, pp. 152-167)

8. Taking into account the size of schools, the ratio of courses per pupil in the areas of English, social studies and math is substantially greater in every instance for the rich schools than for poor schools. (Alexander Tr. 3695; Pl. Exh. 301, p. 170)

9. Among schools between 500 and 1,000 pupils, rich schools offered substantially more curriculum offerings in the areas of English, social studies, math, science, foreign language, and fine arts than poor school districts. (Alexander Tr. 3697; Pl. Exh. 301, p. 175)

10. Wealth differentials from rich to poor have a substantial bearing on the quality of educational opportunity. Rich school districts have more funds, spend more funds, and have better educational programs than poor districts. Poor districts, in turn, have

lower levels of wealth, greater educational needs, and poorer curriculum. (Alexander Tr. 3702)

C. PLAINTIFF DAWSON-BRYANT COMPARED WITH THE BEACHWOOD CITY SCHOOL DISTRICT

1. One of the starkest contrasts in educational opportunity presented at trial exists between Plaintiff Dawson-Bryant Local School District and the Beachwood City School District. A delegation from Dawson-Bryant, including Mr. White, Mr. Washburn, and Mr. Semanco, toured the Beachwood City School District and testified at trial regarding that experience. In addition, Dr. Lee McMurrin, Superintendent of Beachwood, toured Dawson-Bryant and testified at trial regarding what he observed.

2. Plaintiffs' Exhibit 267 is the Beachwood High School courses of study, which is revised every year. Each of the courses listed therein are available to students in the current year. (McMurrin Tr. 2536)

3. Plaintiff's Exhibit 268 is a list of extracurricular activities available to the students at the Beachwood High School and Middle School, as well as clubs and extracurricular sports activities, including swimming,

tennis, softball, baseball, and track. (McMurrin Tr. 2539-40)

4. Plaintiff's Exhibit 269 is a program of studies for the Beachwood Middle School, including activities presently available to the students of that School District. (McMurrin Tr. 2541)

5. In the fall of 1992, Beachwood Superintendent Lee McMurrin visited the schools of the Dawson-Bryant Local School District. At the time of that visit, Superintendent McMurrin viewed educational programs ranging from what might have been seen in the late 1800s to modern state-of-the-art educational programs. (McMurrin Tr. 2541)

6. During the course of Superintendent McMurrin's visit to classrooms in the Dawson-Bryant Local School District, he observed school children in classrooms with materials that were old, worn out, dated, missing laboratory materials that were not available, special education classes being held in cubby holes, which Dr. McMurrin described as "a disgrace to the State of Ohio and probably to all of us in America." (McMurrin Tr. 2542-43)

7. Dr. McMurrin reviewed the teachers' salary schedules at Dawson-Bryant and observed that they were not likely to attract teachers to the area. As a result, the staff has become ingrown and is forced to function without additional training or stimulation from the outside world. He observed that under those conditions, it is difficult to attract people into the school district.
(McMurrin Tr. 2543)

8. Dr. McMurrin observed that the educational program of the Dawson-Bryant Schools badly needed current up-to-date instructional materials, maps, globes, textbooks within the classroom, as well as catch-up in terms of staff training and the infusion of new and challenging ideas. Physical facilities needs also must be met.
(McMurrin Tr. 2546)

9. When the Beachwood City School District revised its math curriculum in advance of, but in compliance with the model math curriculum, new textbooks were purchased in order to assist instruction in the new curriculum. In addition, manipulatives and other assistive devices were provided. (McMurrin Tr. 2616)

10. Expenditures per pupil for the Beachwood City School District increased from \$6,388.18 in fiscal year 1983,

to \$11,143.66 in fiscal year 1991. For fiscal year 1983, the expenditure per pupil for Dawson-Bryant School District was \$1,850.12, and for fiscal year 1991, the expenditure per pupil was \$3,248.40. Assuming an average of 25 pupils per classroom in the Dawson-Bryant School District, if Dawson-Bryant expended the same amount on each pupil as did Beachwood in fiscal year 1991, there would have been an additional \$200,000 per year per classroom in Dawson-Bryant School District. (White Tr. 2111-12)

11. High school courses and services offered at Beachwood that are not offered at Plaintiff Dawson-Bryant include:

(1) AP courses and honors programs (Washburn Tr. 24392442; White Tr. 2100; McMurrin Tr. 2535);

(2) Home arts, technical education, TV production, drama (Washburn Tr. 2439-42);

(3) Science laboratories in which students can actually do hands-on experiments (Washburn Tr. 2439-42; McMurrin Tr. 2535);

(4) CD-ROM's available for research activities

(McMurrin Tr. 2530);

(5) Facilities including a swimming pool (including swimming instruction), indoor track, second gymnasium, a theater, and a place for musical performances (Washburn Tr. 2439-2442; McMurrin Tr. 2532)

(6) Textbooks which are not more than four or five years old. (McMurrin Tr. 2618);

(7) Beachwood students generally have smaller class sizes (Washburn Tr. 2439-42; Swartzwelder Depo. 56-59);

(8) Students at Beachwood have four foreign languages to choose from while students at Dawson-Bryant have only one (Washburn Tr. 2439-42; McMurrin Tr. 2533); also

(9) Students at Beachwood have several literature courses to choose from; Dawson-Bryant students have only basic English and literature requirements offered (Washburn Tr. 2439-42; - McMurrin Tr. 2533)

12. Middle school courses and services offered at Beachwood which are not offered at Dawson-Bryant include:

- (1) Honors program (Washburn Tr. 2439-42);
- (2) Gifted program (Washburn Tr. 2439-42; McMurrin Tr. 2522, 2527-28);
- (3) A reading specialist and extended reading instruction (Washburn Tr. 2439-42; McMurrin Tr. 2522);
- (4) Accelerated math programs, including pre-algebra and algebra. (McMurrin Tr. 2522);
- (5) Foreign languages (Washburn Tr. 2439-42; McMurrin Tr. 2529);
- (6) Science classes with laboratories (Washburn Tr. 2439-42; McMurrin Tr. 2522-23);
- (7) An arts program, unified arts and home arts (Washburn Tr. 2439-42):
- (8) Full-time guidance services (Washburn Tr. 2439-42; McMurrin Tr. 2526); and

(9) A full sized library with thousands of reference materials and books, as well as computer access to Encyclopedia Britannica and Comptons. (McMurrin Tr. 2529).

13. Elementary courses and services offered at Beachwood which are not offered at Dawson-Bryant include:

(1) Beachwood students have foreign language beginning in kindergarten for all students (Washburn Tr. 2439-42; Swartzwelder Depo. 56-59; McMurrin Tr. 2502)

(2) All-day, every day kindergarten (White Tr. 2103; McMurrin Tr. 2502)

(3) The kindergarten and elementary students at Beachwood have the services of a certified librarian. (McMurrin Tr. 2530)

(4) The instructional programs at Beachwood in grades 1-3 include hands on science experiments and literature used as a basis for teaching reading. Pupils publish books in the course of their educational program. Pupils in the first grade

have a developmental music program and each pupil in the second and third grades study violin.

(McMurrin Tr. 2508-09)

(5) Elementary pupils in grades 1-3 have an opportunity to take field trips to the Greater Cleveland area, including trips to the Playhouse and Opera. Some performances are brought to the school building, including a violin program presented by the Concertmaster of the Cleveland Symphony Orchestra. (McMurrin Tr. 2510)

Performing artists are brought to the Bryden School (grades 1-3) each year, including musicians and authors. (McMurrin Tr. 2511)

(6) The intermediate level at Beachwood includes grades 4, 5, and 6, which are operated in a separate building known as the Hilltop School. Each grade is a self-contained unit with a teacher. Specialists in the areas of art, music, and physical education serve each class. The separate art room is available for instruction in art as well as a room for vocal music and instrumental music. A full-time reading teacher is available, as well as a math specialist who focuses on math instruction at the sixth grade

level. (McMurrin Tr. 2515-16)

(7) Pupils at the intermediate level also participate in "business partnerships." The community has had 65 different businesses volunteering to be partners with fifth grade pupils assisting them in the development of business activities. (McMurrin Tr. 2518-19)

(8) Fifth graders also have the opportunity to work with authors brought into the school each year. Gifted pupils in grades 4-6 have a "pull-out" program in reading and language arts, as well as a specialized teacher assigned full time to gifted programs at the Hilltop school. (McMurrin Tr. 2521)

(9) Intervention to students who score at 64 NCE or below on a standardized test; Dawson-Bryant students only receive intervention if they score 40 NCE or below, and then only if there is enough room for them in the Chapter I class. (Washburn Tr. 2439-42)

(10) Beachwood Elementary students have a guidance program where they do group guidance activities in

self-esteem and motivation, and have access to a school nurse; Dawson-Bryant students have very limited guidance and very limited nursing services. (Washburn Tr. 2439-42)

(11) Beachwood has an art teacher four days per week for the first, second and third grades, while Dawson-Bryant has one art teacher for the entire district. (Washburn Tr. 2439-42; Swartzwelder Depo. 56-59; McMurrin Tr. 2502)

(12) A guidance counselor and reading specialist are assigned to assist pupils in the kindergarten program. (McMurrin Tr. 2502)

14. Mr. Semanco compared the science curriculum at Dawson-Bryant to the science curriculum at Beachwood. At Beachwood High School, each science teacher had his or her own room and was not required to share rooms. All the safety equipment to allow extensive laboratory procedures was available, and the equipment was well maintained. Different chemistry courses were offered according to students' mathematical abilities. Each science room was self-sufficient with equipment, so that one teacher did not have to go down the hallway to borrow a beaker or a test tube. Computers were in the

classrooms, including the science lab. Two courses were offered in science fair, and the high school had designated rooms only for that. Beachwood teachers had no responsibilities (such as bus or playground duties) other than teaching, allowing them time in their classrooms to prepare to teach. (Semanco Depo. 59-61)

15. The graduates of Dawson-Bryant are not adequately prepared to compete with graduates of the wealthy school districts for employment or higher education. (Washburn Tr. 2445) Students at Dawson-Bryant are being deprived of an adequate education because 32 percent of those students entering their senior year of high school have not passed the 9th grade proficiency test, which measures the minimum amount of skills necessary to complete the 9th grade. Additionally, the needs of students are not being met by the services provided by the district. (Washburn Tr. 2445-49)

D. PLAINTIFF NORTHERN LOCAL SCHOOL DISTRICT COMPARED WITH GRANVILLE CITY SCHOOL DISTRICT

1. There are major differences in the staffing levels for administrative and support services at Granville High School compared to Sheridan High School. Granville provides adequate administrative and support staff to

allow the high school principal to place his major focus on the education and achievement of students. Northern Local has recently cut the junior high principal and the maintenance supervisor for the district. Northern Local lacks adequate staff to supervise special education programs, facilities and repairs, cafeterias, and transportation to allow administrators to focus on students' needs. (Dilbone Tr. 1986-92; 2004-05; 2016)

2. Compared to Northern Local, Granville High School offers additional support and administrative staff, and therefore a far better educational program for students. (Dilbone Tr. 1992-94)

3. At Granville High School, three music teachers are employed for the high school who have some responsibility to the middle school to assist, plus one person for percussion and another person to teach individual voice lessons. At Sheridan High School, there is one band instructor for grades 5-12 and one music choir director for grades 7-12. Approximately 400 students at the high school level are served at Granville, while 1,000 students are served in grades 7-12 at Sheridan. (Dilbone Tr. 1997-98; 1989)

4. English teachers at the high school level at Sheridan High School are serving 150 to 170 students. At Granville High School, English teachers at that level serve about 75 to 80 students. English teachers at Sheridan will not assign as many papers because of the lack of time to grade those assignments. (Dilbone Tr. 2003-04)

5. The following courses, listed by area, are offered at Granville High School, but not offered at Sheridan High School in the Northern Local School District:

(1) English: AP English, radio-tv programming with the use of cameras and various equipment, and a course to prepare for the SAT test:

(2) Science: AP science will be offered within the next year;

(3) Math: AP calculus, trigonometry, math analysis;

(4) Social studies: AP history;

(5) Foreign languages: fourth-year Latin, fourth-year Spanish, fourth-year French, and fifth-year French;

(6) Industrial arts: woodworking, industrial technology, engineering, CAD, and design programs;

(7) Art: photography, sculpture, ceramics, drawing, print making, and commercial design, including four years of art courses. Even if only one student signs up for a class, that student will still be provided the opportunity to take that course;

(8) Music: show choir, jazz band, boy's ensemble, girl's ensemble, orchestra, and string orchestra:

(9) Physical education: weight training is done by outside consultants who are also trainers, so that coaches and teachers do not have to do weight training;

(10) Computer science: Granville has computer labs networked to New Albany Schools that permits communication between the schools, and various computer languages are offered;

(Dilbone Tr. 1994-2000)

6. Mr. Dilbone compared the technology at Granville with the technology at Plaintiff Northern Local. Plans at Granville High School for computers include a comprehensive program for in-servicing of students and teachers and for maintenance, with a goal to provide a computer for each student within the next 2-3 years. In the 1993-94 school year, the district plans to connect computers with InfOhio and Internet. Internet is a networking system with hundreds of thousands of computers throughout the world for research and communication including libraries and satellites. Under the plan, students will have access to the schools' computer network and the research available on the school system from their home computers. (Dilbone Tr. 2000-01)

E. PLAINTIFF SOUTHERN LOCAL COMPARED TO RICHMOND HEIGHTS LOCAL SCHOOL DISTRICT AND WORTHINGTON CITY SCHOOL DISTRICT

1. Southern Local Superintendent Carol Spangler visited Richmond Heights during FY93 and saw a fine program of education, but she did not see frills. Richmond Heights had a great deal more staff than Southern Local, with a public relations person, assistant principals, lunch room aides, and more instructional aides of all categories. The educational district bussed students

over four square miles and had a fleet of brand new buses. The program offered was much broader, and it extended to lower grade levels. (Spangler Tr. 543; Lichtenstein Depo. 60)

2. The following courses are offered to students in grade 7 through 12 at Richmond Heights, but are not offered at Southern Local: talented and gifted programs for students in grade 7-12, 7th Grade Advanced Math, 7th Grade French, 8th Grade French, 7th Grade Living Skills, 8th Grade Computer Lab, Middle Schools Publications, Graphic Arts I, Mechanical Drawing, Show Choir, Creative Crafts, Architectural Drawing, AP Macro Economics, Latin I:, Latin II, Russian I, French I, French II, French III, French IV, French V, Trigonometry, Logic and Probability, Calculus, Discrete Mathematics, Music History and Appreciation, Modern American Issues, Graphic Arts I, Metal Working I, Wood Working II, Graphics II, Metal Working II, Home Construction and Maintenance, Special Studies in Industrial Arts, Special Studies in Graphics Arts, Special Studies in Photography, Painting and Ceramics. Richmond Heights also offers a number of vocational programs on site, while the students at Southern Local must travel to Tri-County Joint Vocational School to take vocational courses. Further, if a student wishes

to prepare a college preparatory curriculum, the course work provided at the Joint Vocational School is not appropriate. Thus, students desiring a college preparatory track are effectively precluded from selecting any vocational courses. (Spangler Tr. 54653)

3. An English class at Richmond Heights had available a row of lap top computers. (Thompson Tr. 1328) Computers were integrated into the library, including the card catalog for the library. (Thompson Tr. 1330) At Richmond Heights students had access to a homework hotline to check on assignments and to obtain assistance with homework. (Thompson Tr. 1330-34)

4. Chris Thompson compared the educational offerings at Southern Local to the offerings of the Worthington City School District Students at Thomas Worthington High School have access to an auxiliary gym for basketball and other activities during lunch time. (Thompson Tr. 1338)

5. At Thomas Worthington High School, students could attend a study area where teachers were available to help with homework. (Thompson Tr. 1333-34)

6. Class size for English II for Southern Local is about

30 students, while class sizes in similar English classes at Thomas Worthington High School are much smaller. (Thompson Tr. 1334-35)

7. Students at Thomas Worthington High School have Algebra I in the eighth grade, and then have the opportunity to take precalculus and calculus. Students at Southern Local do not have access to Algebra I until the ninth grade and have no opportunity to take calculus at all. (Thompson Tr. 1335-36)

8. Most classrooms at Thomas Worthington High School have two or three computers in each, while the classrooms at Miller have no computers. For the twenty students at Southern Local enrolled in advanced math, in which assignments are basically revolving around computer technology, the teacher must borrow one computer from the computer room for the entire class to use. (Thompson Tr. 1336)

9. Director Browning's daughter attends Thomas Worthington High School, where advanced placement courses in physics, chemistry and American and European history are offered. Four different foreign languages are offered at the high school, and his daughter may choose among such extra-curricular activities as cross

country, softball, swimming, track, basketball and soccer. To his knowledge there has never been a shortage of textbooks in the classrooms in the Worthington schools. (Browning Tr. 4448-54)

10. The lack of up-to-date textbooks, materials, equipment, and supplies, and the lack of field trips, course offerings and other opportunities available to Chris Thompson at Southern Local has deprived him of the ability to effectively compete with students who have attended far better funded programs with greater educational opportunities. This deprivation will make it more difficult for him to gain admission to the colleges he may wish to attend, which would better prepare him for a career, may well limit his access to scholarships, and will lengthen the time he will be required to attend college. (Thompson Tr. 1357-1360)

11. Christopher Thompson does not want his 10-month old sister to attend the Southern Local Schools because materials and opportunities are not available there. He has concerns about her riding the bus to school because of the overcrowding and standing up on busses, and busses breaking down on the road. (Thompson Tr. 135 a-59)

12. Marie Lichtenstein, a teacher in Plaintiff Southern Local School District, testified that students in her classroom have less educational opportunity currently than they did when she began teaching 16 years ago. (Lichtenstein Depo. 51)

F. PLAINTIFF YOUNGSTOWN COMPARED WITH THE MAYFIELD HEIGHTS CITY SCHOOL DISTRICT

1. Mayfield Heights City Schools offers much more high technology than Youngstown City Schools. For example, students can take Japanese and can be involved in a language emersion program at the high school which allows the students to immerse themselves in the culture and the language they are studying. Mayfield has a number of advanced placement courses with equipment and supplies to facilitate those courses. Mayfield has a nurse at the high school full-time, while Youngstown City Schools shifts health service personnel one-half day per week at one building and one day per week at another building. (McGee Depo. 61-66)

XVIII. FUNDAMENTALITY

There is adequate evidence in the record to allow this Court to find that education is a fundamental right of the

1.7 million school-aged children in the state of Ohio. This evidence is based upon unrefuted testimony regarding the undeniable history and development of Ohio's education system and the increase in the importance of an education for competition in our now global society.

1. The State of Ohio requires by law that all school aged pupils attend either the public schools of the state, a private school meeting the minimum standards prescribed by the state or be lawfully excused from such attendance. The failure of a parent to cause the attendance of such a pupil may result in criminal prosecution against that parent. (Stip. 141)

2. Article VI, Section 2 of the Ohio Constitution mandates that the General Assembly "secure a thorough and efficient system of common schools."

3. The concept of "common schools" emerged from the writings of Henry David Thoreau and John Locke and later Thomas Jefferson, Benjamin Rush, Horace Mann, and Samuel Lewis. The concept was based on the view that education is one of the rights of man, that every person was entitled to knowledge, and that knowledge should be protected by government. The "common school" related to commonality of benefit from education. The

word "common" in this context historically and philosophically means that the government participates in a social contract with all of the people in the state and they all participate equally. Government has no reason to treat them differently. (Alexander Tr. 3628-29)

4. The term "system" as related to the concept of a system of common schools was discussed by Benjamin Rush as encompassing the concept of an organized delivery of public education on equal terms to all pupils, the concept of system was incremental in that the educational structure envisioned by the framers was one that developed from grade to grade. (Alexander Tr. 3632)

5. The terms "thorough and efficient" in the historical and philosophical context of the development of education clauses in the state constitution encompass the idea that an efficient system of public education is one that developed all of the human capital of the state based on the view that the state must efficiently utilize its human capital in order to produce wealth. Education enabled the people of the state to become producers as well as consumers. (Alexander Tr. 363436)

6. In the context of the historical development of the terms "thorough and efficient system" of "common schools," it is the obligation of the state to provide for the schools and to provide the resources for the operation of schools. The state has a burden of justification if it departs from equal distribution of its resources for education. (Alexander Tr. 3636-37)

7. The Delegates to the Ohio Constitutional Convention of 1802 stated that "schools and the means of instruction shall forever be encouraged by legislative provision, not inconsistent with the rights of conscience." (Pl. Exh. 445)

8. The 1802 Constitutional Convention delegates also found that the doors of Ohio's schools should be open without distinction or preference, and that the common school system of Ohio should be adequate to afford a liberal education, not merely the rudiments of education, to the whole population. (Pl. Exh. 445)

9. In 1822, the Commissioners of Ohio's Common Schools recognized that "education should seek to bring its subjects to the perfection of their moral, intellectual and physical natures, so that they may be of the greatest use to themselves and others." The

Commissioners also recognized that "with a population, made up entirely of individuals, thus educated, our penitentiary would hardly be needed, or if needed at all, its tenants would be few, and the expenses of that school or vise, trifling to the community." The Commissioners asked the question, "what man among us would not sooner pay tax for the purpose of educating the poor, in the ways of knowledge and virtue, than, in the penitentiary, be preparing them for doing more and more mischief to societY." (Pl. Exh. 458, p. 3)

10. The delegates to the 1850 Ohio Constitutional Convention Debates recognized that education is essential to self-government, freedom of the press, freedom of speech, and freedom of thought, and that "had not knowledge been shed upon the human understanding, all would have remained in the darkness of heathenism and governed by superstition and fanaticism." (Pl. Exh. 456, p. 15)

11. The delegates to the 1850 Ohio Constitutional Convention recognized that the institution of a thorough and efficient education system was necessary to allow Ohio to compete with the other states in the Union, and that in order to compete, Ohio would have to assist in "so great an enterprise." (Pl. Exh. 456, p.

15)

12. In his first annual report to the General Assembly regarding the Ohio public schools dated January 1838, Samuel Lewis, the first Superintendent of Common Schools in Ohio, made the following observation regarding the state funding of schools:

This, then, is the standard of education fixed by ordinance -- by constitution -- by sundry legal enactments, and is now demanded by the most unanimous voice of the people of our State; this must be so provided as to secure the participation of all children of the State; and if we have particular difficulties to surmount, we must adapt our means to the ends. Neither the expense nor the labor is to be an objection, when the object to be accomplished is paramount. This supposes that a suitable number of convenient schoolhouses shall be furnished, and supplied with a sufficient number of competent male and female teachers, with all other conveniences required, to make the school an agreeable, as well as useful place for children.

(Pl. Exh. 457, p. 8)

13. At the 1850 Constitutional Convention, the house committee that was convened to consider the role of the state in public education reported "[t]hat in the opinion of the committee, the education of our youth is the first care and highest duty of every parent, patriot, and statesman." (Pl. Exh. 456)

14. Today, in President Ocasek's opinion, public education for children is more important than it has ever been. (Ocasek Tr. 2790) President Ocasek observed that the failure of our public education system will result in the loss of economic competitiveness and increase in costs of social welfare. (Ocasek Tr. 2791)

15. President Ocasek testified that, as a teacher of education, as an educator, and as a legislator, he considers education to be a fundamental right of the students in the State of Ohio. (Ocasek Tr. 2861)

16. President Ocasek has taught, and believes, that funding of public, primary and secondary education in Ohio is not equal, and that inequality is a serious problem. (Ocasek Tr. 2862)

17. President Ocasek testified that the Constitution of the State of Ohio is not silent on the subject of

education. Therefore, boys and girls in Ohio should be given the opportunity and the right to a public education. Indeed, according to President Ocasek, education is not adequately funded in Ohio. (Ocasek Tr. 2793, 2963)

18. President Ocasek testified that Ohio is being compared to the world, and since education is international, we cannot be provincial. (Ocasek Tr. 2935)

19. Pl. Exh. 41 is the State of Ohio's Third Annual Progress Report on Education, submitted September 1993, which outlines Ohio's progress on the attainment of the Education 2000 goals. In the prologue to that document, Governor Voinovich states:

As members of a democracy, each of us must actively engage in examining and responding to the ever-changing needs of our society and the world in which we live. This is especially true in terms of the educational opportunities we provide every Ohioan. Improving the quality of the education our children receive is the key to insuring that our state has a prosperous economy and a vibrant future. Very simply, our children must develop the necessary skills and knowledge to obtain and keep a job, and our employers must be able to draw

upon a workforce that is trained or is capable of being trained for the workplace of tomorrow. "Just as good" is not good enough anymore in education.

(Pl. Exh. 41, p.1)

20. In the area of mathematics, students in the United States and in Ohio do not do as well as students in other countries. Because of this, math is an area of emphasis in public education in Ohio. (Goff Depo. 100)

21. Assistant Superintendent Goff testified to the importance of a mathematics education:

In order to survive in this society, you need to have some fundamental knowledge of mathematical concepts. So that, (1) you can take advantage of job opportunities, if that is what you want, or you can avoid being taken to the cleaners by those who know more than you do in a variety of ways, whether it is a credit card or loan or charging you interest or whatever; that you have at least some fundamental knowledge that you can use in those areas. (Goff Depo. 100)

22. Dr. Goff testified that other areas of education are

equally important:

I think reading is fundamental; writing to me is very, very important. Social studies as to understanding your government and how to be an involved citizen, yes, they are important. (Goff Depo. 101)

23. The number of jobs available to people without a high school diploma is declining. The pressure is upward in terms of educational level, both at the high school diploma level and beyond. While the Ohio Department of Education has not conducted any specific studies in this regard, that circumstance is a basic assumption of the belief that Ohio needs to move toward an outcomes--based education. (Goff Depo. 143)

24. Roughly 80 percent of Ohio's prison inmates coming into the system are below 6th grade proficiency in reading level. (Shoemaker Tr. 4058)

25. It costs the State of Ohio around \$12,000 per year to house an adult in prison and between \$18,000-\$20,000 to house a juvenile in prison. (Shoemaker Tr. 4058)

26. The State Board of Education wants to ensure that all

school children have the same opportunity for access to equal educational benefits, regardless of where they live. (Tavakolian Depo. 191; Tavakolian Depo. Exh. 7)

27. The State Board of Education believes: "If every learner is to have access to the educational opportunities that will achieve the results we require as a state, we will need to comprehensively reform our school finance system." (Tavakolian Depo. Exh. 7 p. 1; Tavakolian Depo. 192)

28. The State Board of Education of Ohio has recognized that Ohio's educational system has become obsolete and cannot fully respond to the challenges our state will meet in the remainder of this century and the next. (Tavakolian Depo. Exh. 7 p. 2; Tavakolian Depo. 196)

29. On December 11, 1992, Dr. Ted Sanders, State Superintendent of Public Instruction, sent a memo to all school districts urging that "The Governor and the General Assembly must provide Ohio with a long-term plan to deal with adequacy, equity and stability in school funding." (Tavakolian Depo. Exh. 8 p. 1; Tavakolian Depo. 202, 205)

30. Plaintiff's Exhibit 152 is testimony presented to the

Senate Education Committee, H. Cooper Snyder, Chairman,
on May 21, 1991. (Phillis Tr. 1777) In that testimony,
Dr. Phillis on behalf of the State Board of Education
presented the following to the Senate Education
Committee:

"To appreciate the strains placed on school district
funding, let me offer a few remarks on the role of
the school in our changing economic and social order.

"In a world undergoing rapid and far-reaching
demographic, economic, and social changes, school
systems have increasingly added social responsibilities
to their traditional educational role. The school has
become a surrogate parent for many children. Fewer and
fewer children come from traditional two-parent
families with a working father and a homemaker mother.
Social programs such as the missing children program,
school breakfast and lunch programs, drug abuse
programs, health programs, teen pregnancy programs, and
parenting programs are implemented through the schools
to meet the needs of changing family structure.

"The school population has changed dramatically in the
last 10 years. While the total enrollment has
decreased, the numbers of ADC children have increased.

The school system is now required to provide services for preschool handicapped children. The ADC and handicapped populations are expensive to educate and require many supportive services. Population projections indicate that these trends are likely to continue. Shifts in the age ranges of the population will place additional pressure on the educational system to deal effectively with these special populations. By the year 2000, 12.6 percent of the Ohio population will be over 65 years of age, compared to 10.8 percent in 1980. The work force will be dwindling at the same time that there is an increased demand for service sector workers.

"Future jobs will need additional schooling. Thirty percent of the new jobs by the year 2000 will require 4 or more years of college, compared to 22 percent of current jobs.

Ohio is a participant in a world market. A competitive global economy demands well-educated and highly skilled workers. Poorly-educated youth who cannot adequately read, write, and compute will no longer find jobs. There is a demand for higher achievement, 100 percent graduation rate, greater vocational-technical competence, and greater accountability. In sum, there

is a demand for a world-class education program to produce a world-class work force that can create world-class products." (Pl. Exh. 152, pp. 2-3)

CONCLUSIONS OF LAW

I. THE PARTIES

1. Plaintiff Nathan DeRolph is a minor and a student in the Northern Local School District of Perry County, Ohio; Plaintiff Christopher Thompson is a minor and a student in the Southern Local School District of Perry County, Ohio; Plaintiff Jami Blankenship is a minor and a student in the Dawson-Bryant Local School District; Plaintiffs Andrew Bowers and Christopher Bowers are minors and students in the Lima City School District; and Plaintiffs Sherri Southers and Brian Southers are minors and students in the Youngstown City School District. (The above-named student plaintiffs are hereafter collectively referred to as the "pupil plaintiffs.") Plaintiff Nathan DeRolph has brought this action through Dale DeRolph, his parent and next friend. Each of the other pupil plaintiffs, likewise, brings this action through his or her parent as identified in the caption of the First Amended Complaint. The parents of the pupil plaintiffs identified in this complaint also assert

claims against the defendants in this action based on harm suffered by the parents as a result of the school funding system described herein.

2. Plaintiff Randy Miskell is a teacher employed by the Northern Local School District Board of Education; Plaintiff Joseph Winnenberg is a teacher employed by the Southern Local School District Board of Education; Plaintiff Mark Semanco is a teacher employed by the Dawson-Bryant Local School District Board of Education; Plaintiff Jon Carver is a teacher employed by the Lima City School District Board of Education; and Plaintiff Robert Rios is a teacher employed by the Youngstown City School District Board of Education. (The above-named teacher plaintiffs are hereafter collectively referred to as the "teacher plaintiffs.") Each of the teacher plaintiffs is responsible for providing instruction to students attending school in their respective districts.

3. Plaintiff Northern Local School District Board of Education, with its office in Perry County, Ohio, is the governing body of the Northern Local School District; Plaintiff Southern Local School District Board of Education, with its office in Perry County, Ohio, is the governing body of the Southern Local School District; Plaintiff Dawson-Bryant Local School District Board of Education, with its office in Lawrence

County, Ohio, is the governing body of the Dawson-Bryant Local School District; Plaintiff Lima City School District Board of Education, with its office in Allen County, Ohio, is the governing body of the Lima City School District; and Plaintiff Youngstown City School District Board of Education, with its office in Mahoning County, Ohio, is the governing body of the Youngstown City School District. (The above-named plaintiff boards of education are hereafter collectively referred to as the "board of education plaintiffs.") Each of the board of education plaintiffs is required by the Constitution and laws of the State of Ohio and of the United States to provide an educational program for those pupil plaintiffs who are residents of their respective school districts as well as all other public school pupils entitled to attend the schools of their respective school districts. The board of education plaintiffs are authorized to bring this action by O.R.C. Sections 3313.17 and 3313.47

4. Plaintiff J. Kenneth Miller is a duly elected, qualified, and acting member of the Northern Local School District Board of Education; Plaintiff Louis Altier is a duly elected, qualified, and acting member of the Southern Local School District Board of Education; Plaintiff Carl Swartzwelder is a duly elected, qualified, and acting member of the Dawson-Bryant Local School District Board of

Education; Plaintiff James Eaton is a duly elected, qualified, and acting member of the Lima City School District Board of Education; and Plaintiff Socrates Kolitsos is a duly elected, qualified, and acting member of the Youngstown City School District Board of Education. (The above-named plaintiff board of education members are hereafter collectively referred to as the "board of education member plaintiffs.")

5. Plaintiff Steven Johnson is the Superintendent of the Northern Local School District of Perry County; Plaintiff Carol Spangler is the Superintendent of the Southern Local School District of Perry County; Plaintiff Wayne White is the past Superintendent of the Dawson-Bryant Local School District and has been succeeded by Donald Washburn; Plaintiff Charles Buroker is the past Superintendent of the Lima City School District; and Plaintiff Emanuel Catsoules is the Superintendent of the Youngstown City School District and has been succeeded by Alfred Tutela. (The above-named superintendent plaintiffs are hereafter collectively referred to as the "superintendent plaintiffs.") Each of the superintendent plaintiffs is charged with responsibility for the overall administration of their respective school districts and with the provision of educational programs and services to the pupils of each of their respective school districts. Each of the superintendent and board of education

plaintiffs are also charged with the responsibility of providing an appropriate special education program and related services for each handicapped pupil residing in each of their respective school districts.

6. Defendant State of Ohio, through the Ohio General Assembly, is required to provide for a system of public education in the State of Ohio in accordance with the Constitution and laws of the State of Ohio.

7. Defendant State Board of Education is the governing body charged with general supervision of public education in the state and has those powers enumerated in O.R.C. Section 3301.07.

8. Defendant John T. ("Ted") Sanders is the duly appointed, qualified and acting Superintendent of Public Instruction for the State of Ohio, having those powers and responsibilities described in O.R.C. Sections 3301.08 through and including 3301.12. Defendant Sanders is charged with the overall responsibility for the administration of the laws and regulations governing the operation of public school districts in Ohio, including the implementation and operation of the school funding system as that term is used herein. Defendant Sanders is made a party to this action solely in his official capacity.

9. Defendant Ohio Department of Education is the administrative unit and organization through which the policies, directives, and powers of the Defendant State Board of Education are administered. The Ohio Department of Education consists of the State Board of Education, the Superintendent of Public Instruction, and a staff to perform the duties and exercise the required functions of the department. O.R.C. Section 3301.13.

10. Statutes governing the financing of elementary and secondary education are presumed constitutional and can be declared invalid only if Plaintiffs establish their unconstitutionality beyond a reasonable doubt.

II. THE FOLLOWING PROVISIONS OF THE OHIO CONSTITUTION ARE APPLICABLE TO THE CLAIMS ASSERTED BY THE PLAINTIFFS IN THIS CASE:

1. Section 2 of Article I of the Ohio Constitution provides:

All men are, by nature, free and independent and have certain inalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing, and protecting property, and seeking and

obtaining happiness and safety.

2. Section 2 of Article I of the Ohio Constitution provides, in part:

All political power is inherent in the people. Government is instituted for their equal protection and benefit .

3. Section 7 of Article I of the Ohio Constitution provides, in part:

Religion, morality, and knowledge, however, being essential to good government, it shall be the duty of the general assembly to pass suitable laws to protect every religious denomination in the peaceable enjoyment of its own mode of public worship, and to encourage schools and the means of instruction

4. Section 26 of Article II of the Ohio Constitution provides:

All laws, of a general nature, shall have a uniform operation throughout the state; nor, shall any act, except such as relates to public schools, be passed, to take effect upon the approval of any other authority

than the general assembly, except, as otherwise provided in this constitution.

5. Section 2 of Article VI of the Ohio Constitution provides:

The general assembly shall make such provisions, by taxation, or otherwise, as, with the income arising from the school trust fund, will secure a thorough and efficient system of common schools throughout the state; but no religious or other sect, or sects, shall ever have any exclusive right to, or control of, any part of the school funds of this state.

6. Section 3 of Article VI of the Ohio Constitution provides:

Provision shall be made by law for the organization, administration and control of the public school system of the state supported by public funds: provided, that each school district embraced wholly or in part within any city shall have the power by referendum vote to determine for itself the number of members and the organization of the district board of education, and provision shall be made by law for the exercise of this power by such school districts.

7. Section 4 of Article XII of the Ohio Constitution provides:

The General Assembly shall provide for raising revenue, sufficient to defray the expenses of the state, for each year, and also a sufficient sum to pay principal and interest as they become due on the state debt.

III. THE FOLLOWING PROVISIONS OF THE OHIO REVISED CODE AND THE EFFECTS THEREOF ARE APPLICABLE TO THE CLAIMS OF PLAINTIFFS IN THIS CASE:

1. Every child of compulsory school age, including each of the pupil plaintiffs in this action, must attend a school or participate in a special education program that conforms to the minimum standards prescribed by the Defendant State Board of Education until the child either completes high school and receives a diploma or certificate of attendance, receives an age and schooling certificate, or is excused under standards adopted by the Defendant State Board of Education.

O.R.C. Section 3321.03.

2. A parent, guardian, or other person having care of a child of compulsory school age, including each parent

of a pupil plaintiff in this action, who violates the requirements of compulsory school attendance imposed under O.R.C. Chapter 3321 is subject to a fine and may be required to give a bond conditioned upon his causing the child to attend school, and is subject to imprisonment for failure to pay the fine or to give the bond. O.R.C. Sections 3321.38 and 3321.99.

3. School district boards of education in Ohio, including the board of education plaintiffs, are required to offer elementary and secondary education programs meeting the minimum standards prescribed by the Defendant State Board of Education pursuant to O.R.C. Section 3301.07(D).

4. School district boards of education in Ohio, including the board of education plaintiffs, are required by law to offer free educational programs that include instruction for the required number of hours per day and days per year. O.R.C. Section 3313.48.

5. School district boards of education in Ohio, including the board of education plaintiffs, are prohibited from closing or delaying the opening of school for financial reasons. School district boards of education that lack sufficient revenue to operate their educational

programs are required by law to apply for a loan from a commercial lending institution and, if such application is denied, to seek authorization from the State Controlling Board to borrow funds to maintain operations. O.R.C. Sections 3313.483, 3317.63 and 3317.64.

6. Pupils attending the public schools of Ohio, including the pupil plaintiffs in this action, may not be excluded from school for disciplinary reasons (suspended or expelled from school) without due process of law. O.R.C. Section 3313.66.

7. School district boards of education in Ohio, including the board of education plaintiffs, are required by law to provide a free appropriate special education program together with related services to all handicapped pupils three through twenty-one years of age entitled to attend school in their districts. O.R.C. Section 3323.02, et seq.

8. Public elementary and secondary school buildings in Ohio are primarily financed through the issue and sale of school district bonds upon the approval of the voters in the district. The bonds are then repaid with the proceeds of property taxes levied on the taxable

property of the school district for that purpose.

9. The rates of tax millage necessary to provide and equip identical school facilities within the state varies widely because of the disparities in the value of taxable real and personal property from school district to school district, even taking into account the building assistance program.

IV. HARM TO THE PLAINTIFFS

1. Taxpayers in Plaintiff school districts, because of having lower assessed valuation per pupil must tax themselves at greater rates to produce the same level of revenue to fund school facilities than taxpayers in school districts having higher levels of assessed valuation per pupil.

2. The method of funding the common schools of Ohio results in wide disparities in school revenues per pupil, thereby harming each of the plaintiffs in this action.

3. The variation in fiscal ability between Ohio school districts with high levels of assessed valuation per pupil and those with low levels of assessed valuation

per pupil is reflected in wide differences in educational opportunity available to the pupils attending the respective public schools.

4. The system of funding public elementary and secondary schools in Ohio does not provide sufficient revenue to afford an adequate education program to pupils in plaintiff school districts and other school districts in Ohio.

5. The system of funding public elementary and secondary schools in Ohio provides substantially less in state funds for the education of pupils than the actual cost of providing that education in any school district.

6. School districts in Ohio have, for the past decade, faced increased operating costs because of unfunded legislative requirements imposed by the Defendants.

7. The current system of funding public elementary and secondary education in Ohio fails to provide an adequate mechanism for increasing school district revenue as expenses of operation increase.

8. The system of funding public elementary and secondary schools in Ohio harms pupils and the parents of pupils

attending the plaintiff school districts and other school districts by impeding their ability to contribute to the general economic and social condition of the state.

9. The system of funding public elementary and secondary schools in Ohio harms pupils and the parents of pupils attending the plaintiff school districts and other school districts by subjecting them to a reduced level of knowledge, effectively diminishing their inalienable rights of enjoying and defending life and liberty, acquiring, possessing, and protecting property, and seeking and obtaining happiness and safety.

10. The system of funding public elementary and secondary schools in Ohio effectively denies local control to the citizens and electors of the plaintiff school districts, to the board of education plaintiffs and board of education member plaintiffs and to other school district boards of education and their members in Ohio because those school districts are denied sufficient resources to make policy choices in the best interests of their pupils.

11. The teacher plaintiffs in this action are required to provide, within their areas of certification and

assignment, an adequate educational program for those pupils placed in their charge. As a result of the state system of funding elementary and secondary public schools, the teacher plaintiffs and other public school teachers in Ohio are denied a sufficient level of resources to permit them to carry out that responsibility, thus denying them the ability to afford the pupils in their charge the level of educational opportunity to which those pupils are entitled.

12. The Defendant State of Ohio has, through the adoption of Chapter 3323 of the Revised Code and actions pursuant to that adoption, determined by statute that some public school pupils in Ohio have a right to a free appropriate public education and related services designed to meet the unique needs of those pupils.

13. The Defendant State of Ohio has failed to provide sufficient funds to enable the plaintiff school districts and other school districts and their superintendents to provide appropriate educational programs and adequate facilities to serve the needs of handicapped pupils in those districts.

14. Statutory requirements imposed by the Defendant State of Ohio that Ohio school districts provide

individualized educational programs and related services for handicapped pupils have reduced the level of resources available for the education of non-handicapped pupils.

15. The defendants have created and maintained an arbitrary distinction between classes of pupils without any rational basis by affording rights and benefits to some public school pupils based on the determination of a handicapping condition and denying the same rights and benefits to the remainder of the pupils in the state, in violation of the Ohio Constitution.

16. Plaintiffs are entitled to a declaration that the present system of funding public elementary and secondary education in Ohio is unconstitutional as applied to them. This Court finds that there is clear and convincing evidence that the legislation and constitutional provisions involved herein are clearly incompatible and that the same has been established beyond a reasonable doubt.

17. Defendants and their agents have acted in Perry County, Ohio in the administration of the system of funding complained of and are subject to the jurisdiction of this Court.

18. Plaintiffs have no adequate remedy at law for such unconstitutional conduct of defendants in that money damages would be totally inadequate to redress the grievances alleged in this Complaint.

19. Plaintiffs have suffered and will continue to suffer irreparable harm as a result of the actions of defendants

20. The defendants have failed to provide a "thorough and efficient system of common schools throughout the state", in violation of Section 2 of Article VI of the Ohio Constitution, to the damage of plaintiffs and in violation of their rights.

21. The system of funding public education in Ohio, as set forth in the record before the Court, has resulted in an inadequate level of educational opportunity for pupil plaintiffs and the other pupils of the plaintiff school districts, and defendants thereby have deprived the pupil plaintiffs, their parents and others of a fundamental right in violation of the Ohio Constitution.

22. The system of funding public education in Ohio, as

described in this Complaint, has created constitutionally impermissible disparities in the level and types of educational opportunity for the pupils attending the plaintiff school districts as compared to those available for pupils elsewhere in Ohio, and that system, and defendants herein, have invidiously and arbitrarily discriminated against plaintiffs and others, to the injury and detriment of plaintiffs. Plaintiffs are thereby deprived of equal protection of law, due process of law, and uniform operation of laws, all as guaranteed by the Ohio Constitution.

23. The system of funding public education in Ohio fails to provide adequate or sufficient revenue to enable the board of education plaintiffs, teacher plaintiffs, and superintendent plaintiffs to provide an adequate educational program and related services for the handicapped pupils of the school district, as required by law, in direct violation of the obligations of the State of Ohio pursuant to the provisions of O.R.C. Chapter 3323.

24. The system of funding public education in Ohio, as described in this Complaint, and defendants failure to provide adequate or sufficient revenue to enable the board of education plaintiffs, teacher plaintiffs, and

superintendent plaintiffs to provide an adequate educational program and related services for the non-handicapped pupils of the school district, as required by law, is a denial of equal protection of law as guaranteed by the Ohio Constitution.

V. THE COURT HEREBY ORDERS AND DECLARES:

1. The responsibility to afford school children the Constitutional right to receive the benefits of a thorough and efficient system of public schools devolves upon the General Assembly by the force of the Constitution's command, and not upon the school districts, which are creatures of the General Assembly.

2. Since the duty to make provision for a thorough and efficient system is the State's duty, the failure of the Plaintiff school districts to carry out that function is a failure of the State to carry out the commands of the Ohio Constitution in violation of Section 2 of Article VI and Section 26 of Article II.

3. The State may not constitutionally delegate the responsibility for financing education to the school districts.

4. Public education is a fundamental right in the State of Ohio, guaranteed by the Constitution of the State of Ohio.

5. The current system of funding public elementary and secondary education is unconstitutional as applied to plaintiffs and others. The specific provisions included within this determination are:

a. R.C. § 133.301--Additional borrowing authority of school districts. This provision, to the extent that it is utilized to require school districts to borrow funds from private lenders to pay obligations that are, in fact, obligations of the State, represents a violation of §§ 1 and 3 of Article VIII, as well as § 4 of Article XIII, which requires the State to raise sufficient revenue to pay its expenses.

b. R.C. § 319.301--Calculation of tax reduction percentages for carryover property in each class. This statute directly contributes to the harm complained of in this action. The limitations of this section far exceed the tax reduction requirements of § 2a of Article XIII of the Ohio Constitution. The excessive reliance on local

property taxes as a means of funding education in Ohio directly contributes to the harm inflicted on the Plaintiffs in this case.

c. R.C. §§3313.483, 3313.487, 3313.488, 3313.4810 and 3313.4811--Collectively, the emergency school assistance loan provisions. These statutes not only contribute to the Constitutional deprivations complained of, they also represent a violation of 1 and 3 of Article VIII, as well as § 4 of Article XII, which requires the State to raise sufficient revenue to pay its expenses.

d. Various provisions of R.C. Chapter 3317: § 3317.01--School foundation program; eligibility; administration of funds; § 3317.02--Definitions; equalization factors (foundation program); § 3317.022--Computation of state aid distribution by districts; § 3317.023--Adjustments to basic state aid; § 3317.024--Distribution of moneys appropriated for specific programs; § 3317.04--Minimum amounts of payments to districts; and § 3317.13--Salary schedule and job classification for teachers. These statutes individually and together operate to deprive Ohio's school children of an equal opportunity to a high quality

education as mandated by the Constitution and Ohio statutes. The entire school foundation program as it is currently enacted and applied is unconstitutional. School children, both handicapped and non-handicapped, are denied an adequate education because of the funding system in place.

e. R.C. Chapter 3318--Classroom Facilities Act. This chapter contributes to the constitutional deprivations demonstrated in this case, not because of the funds provided under the act but because of the extent to which the legislature has failed to provide sufficient funds to serve the facilities needs of Ohio's public schools.

f. R.C. §§ 3317.05, 3317.051 and 3317.052--Unit funding for mandated programs. These provisions are unconstitutional in that the State has mandated programs and services for both handicapped and vocational pupils, but funded those programs in such a fashion as to cause substantial inequity among the pupils receiving these programs and dilution of funds available for the education of other pupils. Handicapped

children are denied the equal protection of the Ohio Constitution with respect to the provision of a free appropriate education that meets the requirements of federal and state provisions.

6. That the Defendant State of Ohio is directed forthwith to provide for and fund a system of funding public elementary and secondary education in compliance with the Ohio Constitution.

7. A Constitutionally acceptable system of school funding must:

a. Recognize that the State has ultimate responsibility for the establishment, organization, and maintenance of the system of public schools in the State.

b. Ensure that the State provide for a thorough and efficient system of public schools throughout the geographic area of the State. Such a system would include facilities in good repair and supplies, materials and funds necessary to maintain these facilities in a safe manner applicable with all local, state, and federal requirements.

c. Provide to all school children throughout the State, including handicapped children, regardless of where they live, free schools on an equal basis, which includes equitable and adequate educational opportunities, educational materials, equipment and supplies to all children. Adequate educational opportunities shall consist of the following:

1. Sufficient oral and written communication skills to function socially and economically in Ohio and globally;

2. Sufficient mathematic and scientific skills to function as a contributing citizen to the economy of Ohio and globally;

3. Sufficient knowledge of economic, social and political systems, generally, and of the history, policies, and social structure of Ohio and the nation and enable the student to make informed decisions;

4. Sufficient understanding of governmental processes and of basic civic institutions to enable the student to understand and

contribute to the issues that affect his or her community, state, and nation;

5. Sufficient self-knowledge and knowledge of principles of health and mental hygiene to enable the student to monitor and contribute to his or her own physical and mental well-being;

6. Sufficient understanding of the arts to enable each student to appreciate his or her cultural heritage and the cultural heritages of others;

7. Sufficient training, or preparation for advanced training, in academic or vocational skills, and sufficient guidance, to enable each child to choose and pursue life intelligently;

8. Sufficient levels of academic or vocational skills to enable public school students to compete favorably with their counterparts in Ohio, in surrounding states, across the nation, and throughout the world, in academics or in the job market;

9. Sufficient support and guidance so that every student feels a sense of self-worth and ability to achieve, and so that every student is encouraged to live up to his or her full potential;

10. Sufficient facilities, equipment, supplies and instruction to enable both female and male students to compete equally within their own schools as well as schools across the State of Ohio and worldwide in both academic and extracurricular activities;

11. Sufficient monitoring by the General Assembly to assure that this State's common schools are being operated without there being mismanagement, waste or misuse of funds; and

12. Sufficient facilities for each school district across the State that are adequate for instruction, safe, sanitary and conducive to providing a proper education as outlined by the above-related criteria.

8. The Superintendent of Public Instruction and the State

Board of Education shall forthwith prepare a report setting forth proposals for the elimination of wealth based disparities among the school districts within the State of Ohio. Said report shall be presented to the Ohio Legislature upon completion.

9. The Superintendent of Public Instruction and the State Board of Education shall forthwith prepare a report after the legislative sessions are completed for calendar year 1994 and 1995 setting forth the steps being taken to eliminate the wealth based disparities among the school districts within the State of Ohio. The report shall state what action has been taken and what effect or anticipated effect such action will have on the school districts of this State.

10. The State Board of Education shall provide a summary of all proposals and reports required by this Order to the Superintendent and school board presidents of the Plaintiff School Districts as well as all school districts throughout this State.

11. This Court does not deem this case a proper one in which to retain ongoing jurisdiction. It is this Court's desire to retain jurisdiction for a period of time to assure this Order is followed and steps are

being taken to resolve the matters involved in the case at bar. The progress of the State to resolve these issues shall be monitored upon a timely motion by either party or by a motion of this Court.

12. The Plaintiffs are awarded costs in this matter including reasonable attorneys fees.

MEMORANDUM

This case having come on before this Court for trial on October 25, 1993 and evidence having been adduced and exhibits having been admitted into evidence this Court thereafter took this matter under advisement. The case at bar is an action seeking a declaratory judgment that Defendants' current system of funding public elementary and secondary education, including special education programs, as it applies to Plaintiffs herein, violates the Ohio Constitution and laws of the State of Ohio.

The Plaintiffs seek a mandatory injunction from this Court that would require Defendants to establish an educational system and fund a system that complies with the Ohio Constitution. Plaintiffs are further seeking a declaration that at the present

time the right to a public elementary and secondary education in Ohio is a fundamental right pursuant to the Ohio Constitution.

The case at bar was tried for 30 days commencing October 25, and ending December 8, 1993. The transcript of these proceedings total 5,642 pages. The additional deposition testimony read and ruled on by this Court included 5,185 pages with 215 objections with the total record of testimony being 10,827 pages. Over 500 exhibits have been reviewed by this Court and admitted into evidence. Thirty-eight witnesses testified at trial while thirty-three testified by way of deposition. Seven attorneys presented the evidence at trial with four representing Plaintiffs and three representing the Defendants- The preparation time involved in this case from the standpoint of the Court and attorneys has been enormous. In reading, cross-referencing and ruling on post trial briefs alone and proposed Findings of Fact and Conclusions of Law as well as reading over 5,000 pages of depositions, this Court consumed over 123 hours. The effort put forth, professionalism and thoroughness to detail exhibited by the attorneys in the case at bar was exemplary.

THE REQUIREMENT OF A THOROUGH AND EFFICIENT SYSTEM OF COMMON SCHOOLS

The Ohio Constitution requires the General Assembly representing the State of Ohio to "secure a thorough and

efficient system of common schools throughout the State." Article VI § 2. Article I § 7 makes it a duty of the General Assembly "to encourage schools and the means of instruction." Education of our youth has a long history of importance to the citizens of this State and our founding fathers spoke to that issue at the 1851-52 Constitutional Convention where comments such as the following were made:

Educate them and they become useful members of the community that has cared for them... Education will tend to make men moral and useful members of society; therefore, let us provide for the education of every child in the State.

Report of the Debates and Proceedings of The Convention for the Revision of the Constitution of the State of Ohio, 1850-51 (Columbus, Samuel Medary, Printer to the Convention, 1851), Vol. II pp. 11, 13.

As was seen by this State's founding fathers the education of its youth is of benefit to both the government and the community at large. If they are to receive this benefit it is incumbent upon the government to provide our youth with the tools for education-to provide bridges to opportunity over the dangerous and troubled waters of ignorance.

THE BRIDGE BUILDER

An old man, traveling a lone highway,
Came at the evening cold and gray,
To a chasm deep and wide.

The old man crossed in the twilight dim,
For the sullen stream held no fears for him,
But he turned when he reached the other side,
And builded a bridge to span the tide.

"Old man! cried a fellow pilgrim near,
You are wasting your strength with building here.
Your journey will end with ending day
And you never again will pass this way.
You have crossed the chasm deep and wide,
Why build you a bridge at eventide?"

And the builder raised his old gray head,
"Good Friend, on the path I have come," he said.
"There followeth after me today
A youth whose feet will pass this way,
This stream which has been as naught to me,
To that fair-haired boy may a pitfall be;
He too, must cross in the twilight dim,
Good Friend, I am building this bridge for him."

Anonymous

If our youth are to be successful the State must bridge the gap which separates our present educational system from educational excellence. In that the State is bound to provide a thorough and efficient education it is helpful to note how the delegates to the 1851 Constitutional Convention defined these terms. Statements made by delegates show that "thorough" was intended to mean "complete, absolute and exact" while "efficient" was intended to mean "effective and working well". 1850-51 Debates and Proceedings, Vol. II, p. 702. The Supreme Court of Ohio in *Miller v. Korn*, 107 Ohio St. 287, 297 (1923) stated in regard to the thorough and efficient clause:

[Section 2, Article VI] calls for the upbuilding of a system of schools throughout the state, and the attainment of efficiency and thoroughness in that system is thus expressly made a purpose, not local, not municipal, but statewide.

With this very state purpose in view, regarding the problems as a statewide problem, the sovereign people made it mandatory upon the General Assembly to secure not merely a system of common schools but a system thorough and efficient throughout the state.

A thorough system could not mean one in which part or any number of the school districts were starved for funds. An efficient system could not mean one in which part or any number of the school districts of the state lacked teachers, buildings or equipment.

Miller 107 Ohio St. at 297-298; see also Board of Education v. Walter 58 Ohio St. 2d 386,387 (1979) (recognizing and applying the Miller test).

The phrase "a system of common schools" inherently must include the concept that the schools of this state must provide a system of education with a common basis that will allow students to be educated at similar levels and provide students with similar opportunities for growth and educational benefits.

THE HISTORY OF SCHOOL FUNDING LEGISLATION

Ohio's history of school funding as set forth in Walter is essentially a history of local control over education and the use of property as the primary means to finance that education. Thompson v. Ohio Case No. C2-91-464 (October 6, 1993) (J. Holschuh), Memorandum and Order, pp. 2-3. In 1821 the legislature passed an act that provided for school districts within each township, and at the option of the district, made the property within the township subject to school taxes. Today there is no

option. If a school district wishes to exist it not only must pass tax levies but do so in a sufficient amount to meet the needs of their students.

In 1935 the Foundation Program was begun. That program is the basis for our present funding formula in the State of Ohio. The funding formula in the Walter case was the equal yield formula. This formula was in use during the 1975-76 school year and by 1978 was replaced with the current funding formula at issue today. The formula under scrutiny in Walter was an "equal yield" or "power equalizing" formula that called for state funds to supplement and thereby equalize voted school district operating millage between 20 and 30 mills. Today's formula provides no such incentive and limits school districts strictly to the proceeds of their own local tax duplicates to produce revenue in excess of 20 mills. Much has been said by the State during the trial at bar in defense of the current funding formula. This Court finds it extremely difficult to understand why a formula that is supposedly fair and equitable to all school districts and school children throughout this State has required \$105 million to be distributed to the poorest school districts over the last two years with an additional \$75 million appropriated next year. There is no guarantee that these "equity" funds will continue and it would appear that an equitable funding formula would not require the infusion of these additional funds. It is indeed extremely beneficial for the students of our poorer

districts to have received these "equity" funds but the necessity for them merely points out the inequities and inadequacies of the present system.

RELEVANCE OF EVIDENCE

In the post trial briefs the parties addressed several issues in regard to the relevancy of evidence. The Court reserved ruling on the same until having had an opportunity to review the briefs. In regard to the Defendants' statistical evidence this Court finds the same to be relevant; however, finds the Defendant's evidence as to the School Price Index to lack the necessary showing concerning the specific methodology employed in conducting the study on the calculations used. In addition, the information has not been substantiated. This Court finds that the Defendants have failed to satisfy the requirements of Rules 703 and 705 of the Rules of Evidence and therefore denies the admission of any evidence in regard to the School Price Index.

The Defendants have objected to the Plaintiffs use of evidence regarding a number of subjects. The Defendants specifically object to certain evidence regarding the loan fund, facilities survey, collective bargaining, course comparisons, availability of technology and test results. This Court denies the Defendants objections to the same. In order to review the constitutionality of an entire system it is necessary to review

the entire system. To do so requires analyzing how the individual Plaintiffs and Plaintiff school districts compare with others in the system. In some cases the Plaintiffs are in better shape and in some cases the Plaintiffs are in a less favorable position.

RELEVANCE OF BOARD OF EDUCATION VS. WALTER

The defense argues in the case at bar that the Walter decision is binding precedent upon this Court and that Walter is res judicata to the issues presently before this Court. This Court rejects that argument. While Walter dealt with the state school funding system in place in the 1970's this Court is faced with adjudging the constitutionality of the school funding system in place today. Numerous changes have come about since Walter. The statutes upheld therein have either been repealed or amended since the Walter decision. As previously set forth herein, this State no longer funds its public education with an "equal yield" or "power equalizing" element in their state funding mechanism. The minimum standards that the Supreme Court reviewed were changed to new standards in 1983 and are no longer enforced by the State through their regular evaluations. "As a general rule, in order for the principle of res judicata to be applied, the parties to be subject to the subject action must be identical to those of the former action or be in privity with them." Johnson Island, Inc. v. Board of Township Trustees of Danbury 69 Ohio St. 2d 241, 244 (1982); Lakewood v. Rees 132 Ohio St. 339, 403

(1937). Some of the Plaintiffs in this action were not alive when Walter was decided. Others did not hold their present status positions as parents of public school students, superintendents, board of education members or teachers. Several claims at issue herein were not part of the Walter case due to legislation being enacted since. Statutes requiring school districts to borrow money to keep their doors open, the revenue limiting impact of H.B. 920, as well as the state mandated funding requirements for special and vocational education have all combined to bring about the issues which face this Court today. In addition, this Court has been presented with a building needs survey conducted at the request of the State which shows over \$10 billion dollars in needs. Plaintiff Youngstown and Lima School Districts alone show needs of over \$109 million dollars. These massive facilities needs were not raised in Walter.

Likewise this Court does not find the doctrine of stare decisis to bind this Court. Stare decisis applies when the facts and issues of the latter case are substantially the same as the former case. *Rocky River v. State Employer Relations Board* 43 Ohio St. 3d 1, 5 (1989); *Johnson v. Ohio Bureau of Employment Services* 48 Ohio St. 3d 67, 69 n. 1 (1990). The facts and issues herein, as previously set forth, are not substantially the same. The Walter decision is confined to the facts before the Court therein and is not binding upon this Court.

THE STANDARD OF PROOF

It is the law of the State of Ohio that statutes are presumed to be constitutional. It has been held by the Supreme Court of Ohio that "it must appear beyond a reasonable doubt that the legislation and constitutional provisions are clearly incompatible." *State v. Defenbacher* 165 Ohio St. 142 (1955), paragraph 1 of syllabus. See also *Roseman v. Fireman and Policemen's Death Benefit Fund* 66 Ohio St. 3d 443 (1993); *Ewing v. Lindley* 23 Ohio St. 3d 222 (1986); *State v. Kinney* 69 Ohio St. 2d 567 (1982). It has further been held that when the application of a statute is in question the application must be shown to be unconstitutional by clear and convincing evidence as it relates to a presently existing state of facts. *State v. Renalist* 56 Ohio St. 2d 276, 278-79 (1978) *Belden v. Union Century Life Insurance Co.* 143 Ohio St. 329 (1944), paragraph 6 of the syllabus.

EDUCATION AS A FUNDAMENTAL RIGHT

A major issue before this Court is the question as to whether education is a fundamental right for the individuals of this State guaranteed by the Constitution of the State of Ohio. In *Walter* the Supreme Court of Ohio in reversing the Court of Appeals found based on the facts before it that education was not a fundamental right.

In so holding the Supreme Court stated:

"Finally, because this case deals with difficult questions of local and statewide taxation, fiscal planning and education policy, we feel that this is an inappropriate cause in which to evoke 'strict scrutiny.' This case is more directly concerned with the way in which Ohio has decided to collect and spend state and local taxes than it is a challenge to the way in which Ohio educates its children."

Walter, *supra*, 390 N.E. 2d at 819.

As this Court has previously stated Walter is confined to its own set of facts. In the case at bar much testimony was elicited regarding local and statewide taxation, fiscal planning and education policy as was the case in Walter, however; the crux of the present case is the astounding impact our state system of education is having on the youth of this State. Today we find ourselves in a global economy. The Defendants have argued that "disparities" in funding between our school districts are simply differences in the amount of money available to school districts to fund their educational programs. To those students being educated in buildings with asbestos dangers, out of date textbooks, overcrowded classrooms and a lack of standard

educational equipment as well as technology the disparities in funding are more than "simply differences" in the amount of money available to school districts to fund their educational programs. They are a deprivation of a fundamental right guaranteed to them by the framers of our State Constitution. The Plaintiffs produced expert testimony from Dr. Fortune that based upon a reasonable degree of statistical probability and certainty, regular instructional expenditures are associated with school performance as defined by a percent of students passing the ninth grade proficiency tests, and as defined by achievement scores on the composite NCE (normal curve equivalence) for students achieving above certain levels on NCE's. The school districts in the State of Ohio with expenditures in the top 30 percent have, by subject matter, higher levels of students succeeding or passing the proficiency tests and scoring satisfactorily on achievement scores.(Fortune Tr. 3493; Pl. Exh. 306, 306A; Pl Exh. 305). The disparity of funding in our school districts is not "simply differences" in amounts of moneys available. Ohio ranks forty-eighth out of the 50 states in extent of disparity of school funding.(Porter Tr. 1108, Alexander Tr. 4026).

The Constitution of the State of Ohio explicitly provides that "religion, morality and knowledge" are "essential to good government". It also describes the "inalienable rights" recognized under the constitutional document as "enjoying and defending life and liberty, acquiring, possessing and protecting

property and seeking and obtaining happiness and safety." Art. I § 1. Ohio Rev. Code §3301.07 (c) calls for a "high quality of education." The explicit rights set forth in Art. I § 1 are severely restrained if not impossible to meet without a "high quality" education. Everyday education becomes more and more important and the connection between education and the rights guaranteed by Art. I § 1 becomes greater and greater. Today we live in a high tech world. A world that is becoming more technologically advanced at a rapid pace. The measure of education never has been viewed as a static measure.

We must consider public education in the light of its full development and its present place in American life throughout the nation.

Brown v. Board of Education of Topeka 347 U.S. 483,492
(1956)

In light of our founding fathers' constitutional guarantees and the extreme importance of education in today's society this Court finds education to be a fundamental right guaranteed by the Ohio Constitution. Having so found, the legislation involved herein is subject to strict judicial scrutiny and may be upheld only upon a showing that it is justified by a compelling state interest. The Plaintiffs are entitled to equal protection of the laws of this State. The Ohio Supreme Court has held that "the limitations upon

governmental action by the Equal Protection Clauses of the Ohio and United States Constitution are essentially identical." Kinney v. Kaiser Aluminum and Chemical Corp. 41 Ohio St. 2d 120, 125 (1975). "Once the existence of a fundamental right or a suspect class is shown to be involved, the state must assume the heavy burden of proving that the legislation is constitutional." Beatty v. Akron City Hospital 67 Ohio St. 2d 483, 492 (1981).

The Ohio Supreme Court since the Walter decision has uniformly used the "two tiered" test rejected in Walter and previously propounded in San Antonio Indep. School Dist. v. Rodriguez 411 U.S. 1 (1973); Beatty v. Akron City Hospital, Supra, See also Sedar v. Knowlton Const. Co. 49 Ohio St. 3d 193, 551 N.E. 2d 938 at 947 (1990); Conley v. Shearer 64 Ohio St. 3d 284, 595 N.E. 2d 862 (1992); Roseman v. Fireman and Policemen's Funds 66 Ohio St. 3d 443, 613 N.E. 2d 574 (1993)

THE TEST OF A COMPELLING STATE INTEREST

The Defense has taken the position that "local control" of education provides a compelling or legitimate state interest that justifies the large disparities in funding and educational opportunity afforded to the students of this State. If in fact such "local control" existed to any significant degree throughout the State the same may qualify as a compelling or legitimate state interest. The Supreme Court in Walter described local

control to be where "each school district can develop programs to meet perceived local needs." Board of Education v. Walter, 58 Ohio St. 2d 368, 380 (1979). Local control in many of this State's school districts and specifically in the Plaintiff school districts is a cruel illusion. Plaintiff Northern Local School District has primarily engaged in "crisis management" during the 1990's and has been forced to forego building repairs, textbook renewal, advanced placement options and full handicapped access. (Pl. Exh. 129). Plaintiff Lima City Schools has spent over \$10 million dollars since 1980 to comply with unfunded state mandates and has been unable to purchase necessary educational equipment and supplies, expand elementary guidance services or offer all-day every-day kindergarten. (Pl. Exh. 284). Plaintiff Dawson-Bryant School District has been unable to implement advanced placement courses, all-day every-day kindergarten, textbook replacement and full handicapped access to its building. (Pl. Exh. 276). Plaintiff Southern Local School District is simply reacting to state mandated regulations and deciding what programs and services to cut. They further have been unable to implement any textbook replacement schedule, advanced placement courses or cultural enrichment programs for their students. (Pl. Exh. 89). Plaintiff Youngstown City School District no longer makes proactive decisions about what programs to add and policies to implement based upon the best interest of the students. Instead, due to such mandated programs as EMIS, model curricula and proficiency testing the boards decisions mainly regard the

cutting of programs. (Taylor Depo. 150-151; Goff Depo. 116, Kolitsos Depo.76).

It can be argued that the local school districts possess control of local education through the ability to raise their level of funding through tax increases. Due to the Plaintiff school districts being some of the poorest in the State this is not a viable option. The fact that school districts have the "ability" to determine how dollars are spent in some circumstances is a hollow argument when there are not sufficient funds to provide for the educational and facility needs of their particular school district. It should further be noted that some of the Plaintiffs in this action are minors. The State has an obligation to provide them with a thorough and efficient education. The vast majority of students in this State who have not reached the voting age are completely disenfranchised and have no ability to raise additional funds nor decide how to expend funds received by their school districts.

If the Plaintiff school districts were able to exert local control to the extent that they could compete on an even playing field with other school districts, we would not see the mass exodus of students that has been experienced by Plaintiff Youngstown City Schools. When Youngstown Schools adopted an open enrollment plan opening their doors to students from adjoining districts not one student enrolled while 80 of their students

left to enroll elsewhere. (Marino Tr. 3441). As the Plaintiffs have argued in this case local control without discretionary funds is a myth and does not justify the vast disparities in educational funding and educational opportunity throughout this State. There is only one system of education in this State and that is a state system. The local control currently realized by the Plaintiff school districts is not sufficient justification for the discriminatory educational opportunities afforded to the students of this State

THE MANDATES FOR HANDICAPPED CHILDREN

Ohio Revised Code §3323.02 provides for the education of handicapped children within the State of Ohio. It reads as follows:

It is the purpose of this chapter to assure that all handicapped children of compulsory school age in the state shall be provided within appropriate public education. No educational program for handicapped children shall be operated except in accordance with procedures, standards and guidelines adopted by the state board of education...

The Defense argues that this Court is not the proper forum for this special education claim. It is argued that special

education claims are actionable through the administrative hearing process and that the remedies available through such process have not been exhausted. It has been uniformly held that the exhaustion of administrative remedies is not necessary where exhaustion would be futile or inadequate. See *Honig v. Doe* 484 U.S. 305, 327; *Doe by and through Doe v. Smith* (C.A.6 1989), 879 F.2d 1340, 1343; *Crocker v. Tennessee Secondary School Athletic Association* (C.A.6 1989), 873 F. 2d 933; *Mitchell v. Walter* (S.D. Ohio E.D. 1982), 538 F. Supp. 1111, 1114.

In this action, it would be futile for the Plaintiffs to pursue their claims through administrative hearings in that the laws governing said hearings do not provide for filing actions against the State nor joining the State as a party. See R.C. 3323.05; OAC 3301-51-02 (G). Hearing officers and State Level Reviewing Officers are empowered to hear due process hearings before an appeal to the Court of Common Pleas. See R.C. Section 3323.05. The power granted to hearing officers is confined to making decisions that "Shall Be in Accordance with the Rules of Special Education Adopted by the State Board of Education and Federal Rules and Regulations." OAC 3301-51-02 (6) (13). Some of the rules that define the authority of the hearing officers are the same rules the Plaintiffs seek to be declared unconstitutional. The hearing officers have no authority to pass upon the constitutionality of said rules. See *State ex rel. Columbus Southern Power Co. v. Sheward* 63 Ohio St. 3d 78, 81

(1992) (administrative agency is without jurisdiction to determine constitutional validity of a statute). Based upon the above, this Court finds that exhaustion of the administrative remedies would be futile and that the Plaintiffs are properly before this Court.

The handicapped students of this State are entitled to appropriate special education programs. This appropriate education is protected as an inalienable right by the equal protection clause and the uniform operation of laws provisions of the Ohio Constitution. See Art. I, Sections 1 and 2; Art. II, Section 26 of the Ohio Constitution.

The funding of special education services for the pupils of this State are not adequate to provide an appropriate education as required by the laws of this State. See ORC 3323.02. School districts throughout this State have been forced to rely on their general fund monies more and more in recent years in order to fund the required special education units that are mandated by but unfunded by the State of Ohio. The number of unfunded special education units operated by Ohio school districts without state reimbursement rose from 614 units in FY89 to 637.5 units FY91 and further to 847 units in FY93. (See Stip. Exh. 31). Despite the fact that special education units are mandated by the State, the State does not provide any funding for facilities or space needed for the units. (McGee Depo. 47). Plaintiff Youngstown City ran 32

units without state funding for FY89, 90 and 91. Every year since 1980, Dawson-Bryant has operated at least two special education units without any reimbursement from the State.(Stip. Exh. 28).

Probably the saddest set of facts regarding the special education of our State's students involves the identification of students as being in need of special education services. In the Southeastern Ohio Special Education Regional Resource Center geographical area (which includes three Plaintiff school districts) children tend to not be identified as handicapped until they have failed one or two grades. To do so earlier would require districts to provide more programs which typically would not be funded by the State. (Roach Tr. 2684-85). The education system as it presently exists harms those who need it most. Instead of this system being receptive to the needs of our handicapped children, school districts are forced to delay identification of these students for financial reasons. At the other extreme, scores of talented and gifted students across this State are receiving no additional services despite being eligible as gifted students. In 1989 Plaintiff Southern Local School District served 42 per cent of their gifted pupils while in 1993 only 21 per cent were being served. (Spangler Tr. 534); while only 37 per cent are served statewide.

The special educational needs of Plaintiff Keri Blankenship are not being met appropriately at Plaintiff Dawson-Bryant School

District. Miss Blankenship's access throughout the school is limited due to her handicap and she has not participated in physical education class activities for the seven years of her school career. The system of funding the needs of this State's special education students is not adequate and deprives those students of the educational programs required by ORC 3323.05 as well as the Ohio Constitution.

NON-HANDICAPPED CHILDREN ARE
ENTITLED TO EQUAL PROTECTION
AND DUE PROCESS OF LAW

Due to the funding requirements attached to the education of special education pupils, many school districts within this State including the Plaintiffs, are forced to rely on general fund monies to attempt to comply with the standards established for the education of students with special needs. Too often this scenario results in the non-handicapped student being deprived of the "high quality" of education to which he or she is entitled. Special education students have an entitlement under the law to an appropriate public education. The special education students in the Plaintiff districts ; receive less opportunities for growth than the student in wealthier districts. When the general fund is used to assist in providing the special education requirements the poorer school districts are hurt worse than the wealthier ones. (See Spangler Tr. 522, Buroker Tr. 2912 and McGee

Depo. 92-93). The funding for special education students is required and there is no argument that these students need the services to which they are entitled. Likewise, there is no rational basis for funding the education of non-handicapped students at a funding level based on what remains after funding special education rather than being based on the actual needs of those nonhandicapped students. To so fund these students is a violation of their equal protection and due process rights. See Art. II, §26 and Art. I §16.

THE OHIO CONSTITUTION REQUIRES THE LEGISLATURE
TO PROVIDE A SYSTEM OF THOROUGH
AND EFFICIENT SCHOOLS

As is set forth at Article VI §2 of the Ohio Constitution the General Assembly is charged with the duty to "secure a thorough and efficient system of common schools throughout the state..." The Plaintiffs argue that the legislature has not fulfilled their duty. In *Miller v. Korn* 107 Ohio St. 287, 297, 298 (1923) the Supreme Court of Ohio stated

A thorough system could not mean one in which part or a number of the school districts were starved for funds. An efficient system could not mean one in which part or any number of the school districts of the state lacked teachers, buildings or equipment.

See also Board of Education v. Walter 58 Ohio St. 386, 387 (recognizing and applying the Miller test)

This Court heard thirty days of testimony as the only individual in the State of Ohio to be present for the entire proceedings. Attorneys, bailiffs, court reporters and members of the gallery were either replaced or were absent from some sessions. Throughout this case this Court heard from school children, teachers, principals, superintendents, school board members, legislators and other state personnel. The sincerity and conviction to education from both the Plaintiff and Defense witnesses was evident. This Court saw grown men and women cry as they explained the conditions and situations in which some of the youth of this State are educate(l. They deserve better and the State as their bridge builders to the future are duty bound to provide them with better tools for a successful life. The law requires the same. Some students in the Plaintiff school districts lack equipment, supplies, textbooks, technology, proper handicap access and many of our special education students are not receiving an appropriate public education.

In the Walter case the Supreme Court of Ohio relied upon the State's assurances that education was thorough and efficient in part based upon the minimum standards being met. Today the new minimum standards are not even being monitored and haven't been

for several years. The new standard for review is the ninth grade proficiency test. At trial time 32 of 99 Seniors from Plaintiff Dawson-Bryant had not passed; 16 of 79 Seniors at Plaintiff Southern Local; 13 of 154 at Plaintiff Northern Local; 300 of 773 at Plaintiff Youngstown City Schools and 27% of Lima Seniors had not passed. Can a system that has nearly 17,000 Seniors who have not as yet passed the ninth grade proficiency test consider itself thorough and efficient? The same question can be asked of a system whose equality of funding ranks it the third worst in the country behind Missouri (declared unconstitutional) and Alaska. Due to poor test scores Superintendent of Public Instruction Dr. Ted Sanders identified forty-eight school districts that qualified for intervention from the Department staff. Those school districts included some of the largest districts in the State including Columbus, Cleveland, Cincinnati and Dayton as well as Plaintiffs Youngstown and Southern Local. The total pupil population for those districts is over 380,000 pupils. The Supreme Court in Miller v. Korn held that an efficient system could not mean one in which part or any number of the school districts lacked teachers, buildings or equipment. See Miller Supra. [Emphasis added]. Can it be argued that a system that has identified over 10 billion dollars in facilities needs doesn't at least in part lack buildings sufficient to meet the dictates of the Ohio Constitution? According to the State's survey there are \$328 million dollars in needs for asbestos removal as well as \$153 million dollars for handicap access.

Some of our students are being educated in former coal bins in Mt. Gilead. In Flushing the students have no restroom in the school building itself. In Brown County the only library is an abandoned library truck; the band practices in the kitchen and plays in the cafeteria during lunch. In Nelsonville the building is slipping down a hill. At Plaintiff Northern Local children are educated in modular units situated outside the school with no running water. At Plaintiff Southern Local students recently completed their entire school careers in buildings that for the most part were determined to be improper housing in 1981. Prior to obtaining their new facility Southern Local Board Member Louis Altier was of the opinion that his animals were housed better than his district's school children at least they were dry and warm. (Altier Tr. 1293).

In order to meet their financial burdens school districts have been forced to borrow funds. Since 1978 school districts have borrowed \$389 million dollars. Of that figure 60 per cent was borrowed in FY91, 92 and 93. Schools who receive building assistance funds receive no additional funds for building maintenance and repair. Plaintiff Southern Local has a budget of \$11,000 for maintenance and repair which Superintendent Spangler believed to be about a tenth of the amount needed each year. The plight of Southern Local was further illustrated by her testimony when she stated:

And there will be people out there that will say you know "We gave that nice building to those poor people and they didn't even take care of it, and you know, "they neglected it." And they won't realize that we desperately want to take care of it, but with \$11,000 a year, we can't.

(Spangler Tr. 463)

The record of this action is replete with evidence that the Plaintiff school districts are starved for funds or lack teachers, buildings, or equipment. See Miller at 297-98; Walter at 386-87. Numerous examples of deficiencies faced by the Plaintiffs can be found in this Court's Findings of Fact: Southern Local at pp. 209-210 (teachers), pp. 183-192 (buildings), pp. 263-265 (equipment); Northern Local at pp.208-209 (teachers), pp. 175-183 (buildings), pp. 261-263 (equipment); Dawson-Bryant at pp. 206-207 (teachers), pp. 167-173 (buildings), pp. 258-259 (equipment); Lima City at p. 207 (teachers), pp. 173-175 (buildings), p. 206 (equipment); and Youngstown City at pp. 210-214 (teachers), pp. 192-197 (buildings), pp. 265-267 (equipment). Southern Local's financial situation is evidenced by their request to have the SEOSERRC office save colored paper for them from their trash and Southern Local's policy that requires teachers to either pick up their

checks in the summer months at the school or provide the school with a stamp. While some of the Plaintiff school districts must ration paper, paper clips and use out of date textbooks our wealthier districts are able to provide violin classes in the second grade and have contests through computer networking allowing their students to compete directly against children from Finland, Germany and other American cities. (McMurrin Tr. 2509, 2517)

PROVISIONS OF THE OHIO CONSTITUTION

The present system of school funding established by statute is neither thorough nor efficient. The present system does not advance a legitimate state interest by operation of the statutes in question. State ex rel. Nagel v. Olin 64 Ohio St. 2d 341 (1980). The Plaintiff school children are entitled to the rights set forth in the Ohio Constitution at Article I §7 and Article VI §2 and 3. Likewise, they are afforded the protections of Article II §26 which requires a uniform operation of the laws. The vast disparities between school district's educational opportunities, services, equipment and facilities within our State are not consistent with the Plaintiffs rights to a uniform operation of the laws under Article II §26. The twenty mill floor of tax reduction set forth in R.C. 319.301 creates widely disparate amounts of tax levy millage for school districts that are otherwise in identical circumstances. (Russell Depo. 138, Pl.

Exh. 13, pp. 4-5; Sanders Tr. 319)

Along with the twenty mill floor problem there is an additional problem known as "phantom revenue." This situation arises when local property values increase based on the growth of inflation. Due to tax reduction factors the tax revenues remain constant despite the inflation. The basic aid formula is structured, however; to determine a local charge-off figure based on multiplying the 20.5 mill level times the duplicate value of the school district. What occurs then is that a district that has inflationary growth but no additional revenue appears richer to the foundation formula and therefore is sent less state basic aid. The combination of the 20 mill floor and the effects of the "phantom revenue" result in an arbitrary distribution of the State's wealth and does not serve a "legitimate state interest."

The present educational funding system for the State of Ohio violates the debt limitations and the State's duty to raise revenue provisions set forth at Article VIII §'s 1 and 3 and Article XII § 4. There is only one system of public education in the State of Ohio and that is a state system. As Dr. Alexander testified

It's all one big pot of money. So if-if they allow the local to run away, then they find themselves short at the state level in trying to fulfill their thorough and

efficient system obligation. Then that's the state's
own creation

Alexander Tr. 3757

The State is obligated by law to produce a thorough and efficient system of education for all students within this State. To ensure that end the State is likewise obligated to provide sufficient funds to meet that requirement within the constraints of the Ohio Constitution. This State's current funding system which transfers major obligations for funding from the State to the local school districts does not operate within those constraints.

The Plaintiff individuals in this case possess a right to a thorough and efficient system of education. The deprivation of that right operates as a substantial deterrent to the pupil's future economic well being. The failure of a student to graduate from high school and receive a diploma in the 1990's due to low proficiency test scores has an enormous impact on that student's ability to pursue liberty or property. As was held in *Nicoletti v. Brown* 740 F. Supp. 1268 (N.D. Ohio 1987) "substantive due process... protects the individual from being deprived of liberty or property except for legally recognized, legally justified reasons." This Court finds that the Defendants herein have not established legally recognized nor legally justified reasons for their deprivation of the Plaintiffs' rights. This Court finds

that there is clear and convincing evidence that the legislation and constitutional provisions involved herein are clearly incompatible and that the same has been established beyond a reasonable doubt.

ATTORNEY FEES

The Plaintiffs have requested that this Court award reasonable attorneys' fees in this matter. The Civil Rights Attorneys Fee Awards Act of 1976, Section 1988, Title 42, U.S. Code, as amended, provide for attorney fees:

In any action or proceeding to enforce a provision of sections 1981, 1982, 1983, 1985 and 1986 [of Title 42 U.S. Code], ... the Court, in its discretion, may allow the prevailing party ... a reasonable attorney's fee as part of the costs.

The language of the Act is permissive, and therefore an award of Section 1988 attorney's fees is committed to the sound discretion of the trial court. *Hensley v. Eckerhart* 461 U.S. 424 citing H.R. Rep. Co. 94-1558, P. 1 (1976); *Tater v. Raybuck* 742 F. 2d 977 (C.A. 6, 1984); *Gibney v. Toledo Bd. of Ed.* 40 Ohio St. 3d 152 (1988). A Court will normally grant a prevailing plaintiff attorneys' fees unless special circumstances would render such an award unjust. *Newman v. Piggie Park Enterprises, Inc.* 390 U.S.

400, 402 (1968); *Northcross v. Bd. of Ed. of Memphis City Schools* 611 F. 2d 624; S. Rep. No. 94-1011 p. 4 (1976). The Sixth Circuit noted that the provisions permitting an award of attorneys' fees are "remedial measures" that should be liberally construed to achieve the public purposes involved in the congressional enactment. *Seals v. Quarterly County Court of Madison County, Tenn.* 562 F. 2d 390 (C.A. 6, 1977).

It is generally recognized in Ohio that this State's equal protection provision at Article I § 2 imposes essentially the same limitation on government action as the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. *State ex rel Nyitray v. Industrial Commission* 2 Ohio St. 3d 173, 175 (1983). Violations of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution are clearly within the rubric "any rights, privileges and immunities secured by the Constitution and laws as set forth in Section 1983. *Three Rivers Cablevision v. City of Pittsburgh* 503 F. Supp. 1118, 1133 (W.D. Pen. 1980).

As to the special education claims of the Plaintiffs, where the administrative procedures under O.R.C. 3323.05 and Section 1415, Title 20, U.S. Code would be futile a civil action "may be brought in any State Court of Competent Jurisdiction..." and the court "shall grant such relief as the court determines is appropriate." Section 1415 (e)(2), Title 20 U.S. Code. As to

attorney fees the following is provided:

(B) In any action or proceeding brought under this subsection, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to the parents or guardians of a child or youth with a disability who is the prevailing party.

Section 1415 (e)(4)(B), Title 20, U.S. Code.

Section 2721.11 of the Ohio Revised Code sets forth:

In any proceeding under sections 2721.01 to 2721.15, inclusive of the Revised Code, the court may make such award of costs as is equitable and just.

Based upon the above-stated authority this Court finds it proper in this action to award the Plaintiffs reasonable attorney fees.

ONGOING COURT JURISDICTION

This Court does not deem this case a proper one in which to

retain ongoing jurisdiction. It is this Court's desire to retain jurisdiction for a period of time to assure this Order is followed and that steps are being taken to resolve the issues involved herein. Therefore, Dr. Ted Sanders in his capacity as Superintendent of Public Instruction for the State of Ohio and the State Board of Education are required to forthwith prepare a report setting forth proposals for the elimination of wealth based disparities and present the same to the Legislature upon completion. Thereafter, the State Superintendent and Board of Education shall forthwith prepare a report after the legislative sessions for calendar year 1994 and 1995 setting forth the steps taken to resolve the issues involved herein.

Judge Linton D. Lewis, Jr.

New Lexington, Ohio

July 1, 1994

The Education of All Handicapped Pupils Act was reenacted as the Individuals With Disabilities Education Act (I.D.E.A. in 1990).

Federal law now refers to "disabled" children, while Ohio law and regulations refer to "handicapped" children.