DOCUMENT RESUME

ED 045 791 UD 011 142

AUTHOR Parmenter, Tom, Ed.
TITLE Title I and Parent Participation. Inequality in Education, Number 6.
INSTITUTION Harvard Univ., Cambridge, Mass. Center for Law and Education.
PUB DATE Oct 70
NOTE 35p.

EDRS PRICE EDRS Price MF-$0.25 HC-$1.85
DESCRIPTORS *Community Control, Community Involvement, *Federal Laws, Legal Problems, Legal Responsibility, *Parent Participation, Political Attitudes, *Political Issues, Resource Allocations, School Integration, Special Education
IDENTIFIERS Center For Law And Education, *Elementary Secondary Education Act Title I, Harvard University

ABSTRACT

In this special issue of "Inequality in Education", ESEA Title I and parent participation are the central themes. The leading article describes Title I actions in Calais, Maine, and Providence, Rhode Island. The problems in both these towns appear to be quite different from those in large, industrial cities. The community which would benefit from Title I often seems apathetic and uninterested. The article raises the issue of the organization of the "invisible poor" of small towns, the question of education as an organizing issue, and the suitability of litigation as a solution to complex policy issues. The other central essay concerns bureaucratic politics and poverty politics. It is concluded that Federal and State governments have little control over Title I spending; local school districts are virtually free to meet their own priorities. It is suggested that groups have more say about expenditure of federal funds. In addition, this issue of the magazine includes a section of feature reports on research, litigation, government action, and legislation concerning education and the law. Such topics as school integration, resource allocation, special education, equal protection, community control, and student rights are discussed. (Author/JW)

Special Issue: Title I and Parent Participation

INEQUALITY IN EDUCATION

Number Six

Center for Law and Education
Harvard University

POWER TO THE PEOPLE THROUGH TITLE I? *Maybe.*

by Tom Parmenter

CALAIS, Maine – "I spent a dozen years in New York and I envisioned this place as Utopia, but when you get here, you find all the things you thought you were leaving in the city right here in a different form: violence, corruption, prejudice." – George S. Johnson, Esq., Pine Tree Legal Assistance.

PROVIDENCE, Rhode Island – "Community participation has been very successful in this state. We've only had trouble with one committee, the one in Providence; it just seems to have sprung up from nowhere, making demands." – State Title I official.

Schools in both these cities are defendants in Title I actions. School officials in both cities are troubled, not only by being asked to defend in court their use of federal funds, but also at seeing local poor people abandon silent acquiescence to

photo by James A. Bensfield

the decisions of experts, i.e. themselves. Officialdom in general has become accustomed during the past decade to the shock of being directly confronted by their poor clientele with the results of the decisions. This is all very new and very unpleasant to educators who, secure in the belief that the complexities of education protected them from embarrassing questions, have suddenly found themselves being asked some very embarrassing questions indeed, such as: "What did you do with our Title I money?"

But there is such a thing as expertise; there is at least expertise in talking to experts; and that is part of the lawyer's expertise. Lawyers can serve their communities in many ways, by helping with divorces and wills, by representing demonstrators who have been arrested, by advising on strategy for building the community's power, by guiding them through the maze of baffling regulations and more baffling decisions in such complex areas as welfare and education. But the very expertise that makes this help possible can, if it is not tempered with deference to the wishes of the community or a strong urge to build the community's self-confidence, keep the community away from the aid available from lawyers.

Distaste for Outsiders

An examination of experiences in Calais and Providence may make this problem clearer for lawyers who wish to help their communities, and, in particular, for those who are interested in education as an organizing issue.

Perhaps the most striking similarity in the two towns is the horror with which school people regard any intrusion into their affairs, whether in the form of a lawsuit, polite inquiry, a sit-in, or nothing more than a Title I Advisory Committee trying to give some advice. Mrs. Patricia Overberg, chairman of the Providence Advisory Committee, is particularly proud of a court victory in one of her first skirmishes over Title I, "Briggs is still bitching about getting an injunction on his first day as superintendent." In Calais, one of the side effects of the Title I suit was a growth of interest in a day-care center. A local school principal was asked to serve on the board, but resisted strongly. "He couldn't understand how we could be interested in helping pre-schoolers if we were fighting the school board on Title I. And he's one of the progressives," George Johnson, the attorney bringing the suit, said. "I've been tagged as an enemy of education for suing the school board."

This distaste for being disturbed by outsiders sometimes boils over into hysteria. Richard Briggs, the Providence superintendent, wrote Mrs. Overberg threatening to call the police if she was responsible for another "invasion of my privacy." In this case, the invasion was a letter of inquiry addressed to his home. Letters to his office had gone unanswered. Brigg's letter – with copies to virtually every school employe and parent involved in any way with Title I – went on to make (or almost make) a more serious charge: "I have had all the threats from individuals in Providence that I intend to take. My automobile has been damaged, my children have suffered verbal abuse over the telephone and my son has been assaulted. If this is your idea of a typical community, I must disagree and indicate my strong feeling that it suffers from a serious sickness." Nothing quite so serious has happened in Calais, but a meeting of the state's Community Action Program directors on community participation in Title I was seriously disrupted by state education officials who managed to get themselves invited and then refused to leave without a vote from the group.

The point here is fairly obvious. Even the slightest effort directed at making school officials accountable for their actions is likely to be interpreted by them as an assault on themselves as well as on the system they serve. It doesn't matter whether their reactions stem from feelings of guilt, delusions of professional immunity, confusion of identity between themselves and their institutions, or genuine concern that divided authority will lead to a reduction in educational quality. Given the appropriate situation, the educationist's tendency to get up tight can be a valuable asset to the community. These overreactions should be expected. When they come, the community can exploit, for ordinarily they are either insulting to the community or likely to diminish the esteem which ordinary people ordinarily feel for expert authority. Overberg was able to use the superintendent's innuendoes against the community to win the support, or at least the neutrality, of local people who otherwise would have been indifferent or opposed to her efforts to increase community involvement in Title I. In Calais, Pine Tree Legal Assistan[illegible] had been routinely advising its clients

to apply for free or reduced-price hot school lunches when they were eligible. The schools, which had been charging the full rate to everyone, simply dropped the lunch program when too many people began asking for lower costs. This sort of whiff-of-grape, taste-of-the-lash response can, of course, immobilize a community, but the amount of harsh community punishment the schools can mete out without becoming completely ineffective is limited, and the greater the community's interest, the lower these limits will be. And such drastic actions are useful themselves as organizing tools; they show the community where it stands in the eyes of the schools and shows it the necessity of banding together for self-protection.

Title I, ESEA, has qualities that make it particularly suited to the needs of community organizers. These are discussed in detail in *Inequality in Education,* Number Five, and will simply be alluded to here. The money is designated for poor people. Community participation, while by no means mandated by the Act and certainly not actively promoted by those who administer the funds, is still an approved component of a well-run program. Further, the schools need the funds and will be reluctant to give them up, even in the face of community pressure to spend them as they are supposed to be spent. Title I has had generally satisfactory effects on community organization both in Calais and in Providence. In Calais, Pine Tree Legal Assistance was looking for community organization and found Title I; in Providence, one woman set out to find Title I and ended up with community organization.

Ignored by Norman Rockwell

Calais, Maine, has wide tree-shaded streets, a bandstand in the park, yellow stop signs, a two-story, three-block downtown, and lots of freckle-faced, sandy-haired kids, but somehow you can't see the 40 per cent of the people living below the poverty line, 30 per cent unemployment, the unaccredited high school, the people between eighteen and thirty-five who just aren't there any more. If the *Saturday Evening Post* were still being published, Norman Rockwell might make quite a warm and charming cover picture of classes being held in the gym while the band practices at the other end. He could do another, nostalgic and strong, of Calais's poor people at work (if they can get it), digging clams, lobstering, chopping down trees, stitching shirts, packing fish. Norman Rockwell is painting covers for *Ramparts* these days, but the people who run Calais seem to figure that if they hold the pose long enough he'll come back to them.

Pine Tree Legal Assistance opened its office in Calais a year ago. It has two attorneys, one dealing with the legal problems of the Passamaquoddy, a state-owned-and-operated Indian tribe, the other, George Johnson, responsible for problems of the white poor.

"I got my foot in the door in this community with divorces and a lot of non-legal work. I stayed away from class actions and test cases for a long time," Johnson says. "I concentrated on things like Alcoholics Anonymous and free eyeglasses. People got to know that when they came here we'd be around. Then I began looking around for something that would help me organize the community." His first try was welfare. He invited an already organized welfare group from downstate to attempt to get the community interested in a plan to raise welfare payments by 23 per cent, but in Calais people hide their "commodity" food and don't like to have it known that they receive AFDC payments. Welfare workers told people that joining an organization would mean a cut in payments. An organization resulted, but not one with staying power and not one that was interested in anything beyond its narrow view of welfare.

An attempt to organize an overtly political representation of the poor for the town meeting (which is still a politically viable phenomenon in this part of the country) was even less successful.

In this issue

No one was interested in getting together to push for a dental clinic. Proposals for a community-run day-care center met with apathy.

The first flicker of interest from the community was in response to harsh enforcement of school rules, particularly the dress code. Winter days can be thirty-below in Calais, but the dress code prohibited slacks for girls. A group of students began to be organized under the eye of Pine Tree with the hope that the restrictions could be eased. On one of those thirty-below mornings, a leader of the dress-code group was in a small crowd outside the high-school door. They had arrived before the official school opening time, which they knew, but which a teacher had explained to them by yelling through the closed door. Coming to the door was a mistake, rising expectations and all that. The students weren't quite so full of the necessity of maintaining the rule as the teacher was. They wanted to get warm and all they knew was that the teacher was in a position to open the door. They began yelling in unison, *"Open the door! Open the door!"* The door was opened, but only to identify the ring-leaders. The cold impelled the students inside the door and the teacher was brushed aside. She had become by this time quite frightened. She seemed about to burst into tears and one of the students, the dress-code agitator, tried to pat her on the back, to comfort her and apologize to her. That was the last straw, unfortunately, and the teacher ran to barricade herself in the principal's office. All participants in the storming of the doors were suspended, several for long periods. The student who "attacked" the teacher was attending school on a contract his rural district had made with Calais to provide high school to its children, and was banned permanently from the system. The dress code was dropped, but not until appropriate time had passed.

At about the same time, Johnson was taking a more direct role in school affairs. He had helped reorganize the moribund Parent-Teachers Association and had seen it pass a resolution questioning the lack of accreditation. Johnson had begun talking about Title I at the meetings. Finally, when the school board refused to explain adequately their spending of Title I funds, the PTA got interested enough in the way the schools were being run to put up a write-in candidate for the three-member school board. A member of the city council resigned to run against her, but was unsuccessful. She won by a small margin, and after riding out a court challenge by the other two board members, she was seated. The final result was disheartening, however. The other two members of the school board – the personnel manager from the shirt factory and a paper-mill executive, two of the largest employers in the county – usually manage to work things out between themselves before the school board meets. And since all three board members were named as defendents in a Title I action brought shortly after the election, she felt betrayed by her supporters and no longer trusts them, particularly Johnson.

Title I Litigation

The Title I violations alleged are of the usual sort, stemming largely from the notion that a dollar is a dollar and that strings can't and shouldn't be attached to money. A local school principal complains: "I can't see getting a lot of money and building a building and filling it with equipment and then hanging a sign on the door that says, 'Poor Kids Only.' " And he really can't see it. The Calais school system is pressing the limits of its taxing power; a town full of poor people is a poor town. It needs every dollar it can get. And the idea that being poor is a special burden worthy of special consideration is alien. And the poor people in Calais don't really know how to explain it.

It wasn't easy to sell the idea of the suit to the few poor people who had had their interest in education aroused. "People up here are incredibly naive about their rights and very respectful of their local government. You can go after the state or federal government, or even business, but not the local government," Johnson said. "We had to convince them we weren't looking to put anybody up against the wall. They finally decided there was nothing wrong with asking someone to conform to the law."

In the course of building public support for the suit, Pine Tree was challenged to help start a day-care center. "I was sort of pushed into day care," Johnson said. "They said if I was really interested in helping children and not just in being a lawyer, I would help them start a day-care center. Well, we did, with a private donation of $2500 and a good deal of work. It will involve as

high a percentage of poor people in the staff and management as possible. I'm trying to get out of it. People have a tendency to ask questions and look at me. I quit going to meetings once this summer, but everything began to slow down and iose direction so I'm back to going to meetings for a while."

Community participation in Calais is like that, it seems. Reviving the PTA was one start, but really a middle-class start. Poor people don't like to go to meetings; "They all wear gloves and hats and veils like they were going to church," one mother said. The write-in election was a start, but a very limited one. The dress-code agitation, the Title I suit, the day-care center, are all starts, but they scare away almost as many people as they attract. "Lots of people still think Pine Tree is part of the state welfare department, but we're also known as the hippie lawyers," Johnson said. He has a beard.

If the suit succeeds, the Title I program will be run with community participation for the first time, or it may be closed out. This year's application was one-third smaller than last year's. If community participation in Title I succeeds, there are other issues for the community to consider.

Discipline: "You can walk into any school around here, even where there are eight or ten classes going and literally hear a pin drop. They value quiet above all. One district fired the wife of a Pine Tree attorney from a teaching job. 'I personally feel that your philosophy of pupil control leaves much to be desired,' the superintendent wrote her. All she was doing was letting them make a little noise and not bringing out the ruler for every slight infraction. Now she's running an alternative school, twenty kids and two teachers."

Lunch: "They said they were dropping the hot-lunch program because the facilities were inadequate. They were inadequate, almost completely inadequate, but until we started pressing them on providing free or reduced-price lunches for the kids who were supposed to get them, they seemed to think the facilities were adequate enough. But now, instead of just the poor kids coming to school in the middle of winter with a couple of sandwiches, every kid will be doing it. Of course, they won't be able to punish kids by taking away their lunch privileges anymore. Not that the privilege amounted to much. They used to have the hot food in the gym and then drink their milk in the hall waiting for the bus to take them back to their school. All the kids in town were served at the high school. They gave them twenty minutes to do it all in. But now they have nothing at all."

Quality: "The high school is one of two unaccredited high schools in New England, but since only eight-ten kids a year go on to college, they don't seem to care, or maybe they just can't pay for the facilities they need on the money they get; I don't know. The vocational high school is no better. They offer boat building and auto repairing. Since you *have* to go somewhere else to be a boat builder, there are no yards here, and since you can be an auto mechanic anywhere and there are already plenty here, they are just perpetuating the exodus of young people."

But for all that, community participation in Calais is a feeble thing, involving a sum total of perhaps three or four dozen families in one way or another. Most of the community participants have to be regularly bolstered and encouraged by Johnson and community conservatism is endemic. Even so, Johnson says, "Schools were the only thing they were really willing to stand up and fight for because they were emotionally involved. It's the children. We have a great deal of community participation now relative to what was before, which was nothing. But militancy is an urban thing, it seems."

Tough Talk in Providence

So it does seem. "When I was picked as chairman of the Title I advisory committee, I knew nothing about politics and nothing about education. I didn't even know what Title I was. The first thing they did was take me to Washington. They figured if they showed me a good time I'd be a good parent. They've never done it since for anybody except themselves." Nobody talks like that in Calais. The speaker is Mrs. Patricia Overberg, Pat Overberg, chairman of the Title I Parents Advisory Committee of Providence, Rhode Island, and enemy of the educational establishment. "There isn't anything they can do to shut me up. They tried giving me a picayune job, the kind they use to buy off poor community people. I told 'em that I was a commercial artist and if I had to go back to work

it wasn't going to be for a piddling $1.60 an hour. They told me, 'You can fight the system so much better from within. You can change it if you work here.' I told them what I thought of that.

"They pass out jobs that pay a little more than welfare and give them that small smidgen of independence that they can't get on welfare and then without their even knowing it they've sold out their community."

Pat Overberg is friendly and garrulous, self-confident, an enthusiastic fighter. She is poor but not downtrodden. She has some college education and a good trade. She is in this business because she believes in it and because it suits her style.

She has been educated in fighting the schools by the schools themselves. "At my first meeting as a parent advisor I learned that Title I was for children from five to seventeen. Then at my second meeting all they talked about was spending Title I money on adult education. There was disagreement, but not over spending the money on adults. I hopped up and said if there are only supposed to be children in the Title I program, it seems to me you'd be breaking the law. That stopped the adult-education thing, but not one of those experts and professionals had mentioned the law all day. That started me thinking."

She returns to the theme often. "Administrators and politicians are doing all this organizing, not us. If they were doing the jobs they were elected and appointed to do, there wouldn't be any dissension, any rabble rousers, any left, any community organizers." Not that she thinks administrators and politicians will ever see it her way. "You have to have angry people to organize. If they're not angry, show 'em something to get angry about. You'll find something, Title I is something to get angry about."

Building on Paranoia

But for almost two years, she was the only person in Providence who was angry about Title I, unless you count the school people who were angry at her. For months at a time she was the only parent at advisory committee meetings. Other parents on the board were para-professional school workers. "One thing about paid personnel, if they don't get paid for coming to a meeting, they don't come. Besides that, they worried about the program – because it paid them – and not about the kids. They were just as bad as the administrators. I wanted parents who were interested in the children."

She built a small poverty constituency in her first two years consisting of a handful of the appointed board members and a small group who regularly attended board meetings. The group was never more than a dozen and that dozen required constant service – reminders of meetings, baby-sitters, rides – or it would have fallen apart. It was less a community than an expression of the limits of Pat Overberg's energy. Sometimes no one came to meetings. Sometimes no one seemed very interested. A combination of school-administrator paranoia, Robert's-Rules-of-Order paranoia on the part of Overberg's group, and an imaginative bit of regulation-reading tipped the balance and started the community going.

The administrative blunder: "The superintendent had a lot to do with getting the National Welfare Rights Organization and the ACLU on our side. He said in public that if he had them on the board they would influence us to have 'black hippie communal pot parties' – if you can believe that – and six days later the NWRO marched on his office and demanded and got six seats on the board. And the ACLU has been a great help ever since."

Parliamentary procedure: "In March we recommended that the budget for the summer psychological clinic be increased. In April we asked if the increase had gone through and they told us we hadn't made the presentation correctly. It's one thing to be refused; it's another to not even be listened to. Then they said we hadn't even made the motion, they were calling us a bunch of liars, so we went and got an injunction on parent participation in Title I. Then they began to get worried about us. When we started asking where the money was being spent they decided we weren't official after two years of work. They tried to abolish the committee, but we wouldn't let them. We did agree with their idea that the present committee was really a new committee, but all that meant was that I was still eligible to be chairman after two years of training that had been made null and void."

Regulation finding: "I started on this Title I business when I got here in February," said Stan Holt, a Providence community organizer. "It

photo by Tom Parmenter

wasn't until we found that Title I money could be spent for clothing if children didn't have any clothes that NWRO got interested. They had been working on the welfare department for clothes for years. When they heard about the possibility of $48 for clothes they got interested. Then, after we won, they found that only children already in Title I programs could get the money, so mothers began saying that they wanted their kids in the Title I programs, not for the remedial reading training, but because it was a line on that $48. Then, when they were told that the programs were full they went down to the schools and saw the children of doctors and lawyers sitting in the poor people's seats, and then they started to get mad."

It was only at this point that a lawsuit became a possibility in Providence. Violations of Title I regulations and guidelines were widespread. They had been going on since the program was begun. A substantial amount of money had been misdirected or misapplied or at least spent without adequate controls or community participation, but it was not until there was a community and not just a group of certifiably poor people that the suit made sense. In Calais, the suit served as a catalyst for a latent community, but in a large urban area with community organizations already busy with areas other than education, the filing of a suit would have had no impact on the community. Even if plaintiffs in such a suit won, and even if adjustments had been made in the Title I program as a result, it is likely that the absence of community interest would have meant that in a short time the schools would have been able to return to the status quo without attracting the notice of anyone, even the court that granted the "victory" in the first place. But the Providence community was interested in education, and, as such things go, very well informed about it. Thus, a suit might be expected to work because the people were there to capitalize on a victory or fight back if defeated.

Lawyers, however, are distinctly an adjunct to the Providence community, and not necessarily a welcome one. The community has always had help from lawyers, but it is clear to all that nothing would have been accomplished without a lot of marching and shouting and sitting in. But beyond that, the community people really don't trust lawyers. "Lawyers make deals," was Overberg's first comment on the subject. Where George Johnson has to beg and plead and keep his hand in much longer than he thinks he ought to just to keep his fragile community going, in Providence the lawyers are on permanent probation.

Part of the difficulty stems from the desire of community organizers to keep their people on the move. "A suit is not something that poor

people can do. All the action stops. A suit takes the action out of the hands of the people," Overberg said. Stan Holt presents a more complex view: "Legal action is simply a question of strategy. In the civil rights movement we saw many good law suits go down the drain because they didn't have the people behind them. The judicial system is very political and unless you have the people behind a suit, it doesn't do any good to win. Lawyers are too fond of jumping to the legal process before the people are motivated." In Providence, the Title I suit is merely part of the pressure being put on the school system. At the same time, the poor community is moving ahead with its organizing, with its marches, with its lobbying. The organization is growing self-confident. It has not stopped bowing to expert educators to start bowing to expert lawyers. The Providence group views its lawyers pretty much the way General Motors does, as an available source of advice and as practitioners of legal technology. It is only where legal action can perhaps stimulate community organization, as in Calais, that a suit without a sound base in the community seems justified.

Beautiful Actions

From the point of view of an organized community, however, the atmosphere of inaction that lawyers seem to surround themselves with does not go well with the excitement of the group's "actions," its marches, sit-ins, press conferences. "There's nothing that drives a sophisticated enemy up the wall faster than 200 people on his doorstep," Overberg said. "Not his office, his *home*! While we're there, we leaflet the neighborhood to tell people what their neighbor has been doing. On one action we went on there was a wedding going on in the neighborhood and everybody was out on the lawn watching us march. The bride and groom and everyone else was taking pictures. It was *beautiful*!" And it probably was, but the pressures that shape public policy do not come from the neighbors, they come from other people who occupy the same universe of discourse as the bureaucrat being picketed. And while it might be possible to picket all the individuals responsible for the present operation of Title I in any community, and while an active community organization will probably hit as many such people as it can, it remains true that a law suit can hit all of them, and affect their actions as much or more than direct action can, so long as the community is behind the suit. Legal action is one useful kind of pressure that is at the community's disposal, which makes its disinterest in law and lawyers disturbing. When challenged about this, Overberg answered, "But we're changing the rules of the game." That, of course, is one thing that lawyers are very good at, rules, using them and changing them.

Of course, community work is still a relatively new area for many lawyers and a certain amount of heavy-footedness is to be expected. Condescension is deadly. Strategy must, if at all possible, flow from the needs of the community. As always, lawyers are legal agents, men on somebody else's vital business, attorneys. They will serve the law if they can, but they must serve their clients. If they appear before the community as servants, then perhaps they will no longer be seen as men whose arid craft absorbs the community's spirit. They must, if they can, make a case for the law with the communities they seek to serve. If the people of Calais were prepared to leave Johnson's side, to stand all night in the mayor's front yard, or chant slogans at the school superintendent's door, or, given the kind of place it is, engage in some more decorous confrontation, their chances of winning in the end would be much greater. Unless they reach the point where they can find their own way to the free eyeglasses, and Alcoholics Anonymous, and Title I suits, they will never be free of the forces that have held them down. But it is to be hoped that at the same time they will remember that there are prizes they can win with lawyers that they cannot win without them, that some obstacles can never be overrun without using every pressure available, that in areas like education, where injustice may lie hidden in files and forms and parenthetical phrases, it might be useful to have a lawyer on hand. It is up to lawyers, hat in hand, to remind them.

This article raises issues; it does not settle them. Can community organizations press complex policy issues, in court or out? Can the "invisible poor" of small towns be organized? Is education a useful organizing issue? How can a "community lawyer" balance law reform and service to his clients? We invite your comments on these and related issues and on this article.

– The Center for Law and Education

Title I

BUREAUCRATIC POLITICS AND POVERTY POLITICS

by Jerome T. Murphy

Title I is barely five years old, yet rarely has any federal program been so often evaluated and found so seriously wanting in its first few years. It has been the subject of wake after wake, but never yet a funeral. While the discussion of the program's "failure" continues, federal appropriations are increased, new teachers are hired, and more children affected. I am not interested in being host to another wake, but with focusing on Title I's anatomy, in the hope that a better understanding of how it works, and why, can lead to improvement. It is my belief that understanding can best be achieved by viewing key administrators at the federal, state, and local level as primarily political figures – rather than educators – subject to the demands of their constituencies and to the constraints of their bureaucracies.

Federal and state officials presently have little influence over the use of the Title I funds they disburse, virtually all control lies at the local level, but some corrective action is possible, mainly through the development of countervailing local power on the part of the program's clients, the poor.

Title I's Origins

The Elementary and Secondary Education Act was passed in 1965, a time when many people in Washington believed in the possibility of eliminating poverty. The notion underlying the Act was familiar and very American: Give poor children the opportunity to do well in school and they will do well as adults. The Act, particularly in its first and most important title, expressed the political atmosphere that prevailed during President Johnson's "unconditional war" on poverty. Further, it reflected the influence of what Daniel P. Moynihan has called "persons whose profession might be justifiably described as knowing what ails societies and whose art is to get treatment underway before the patient is especially aware of anything noteworthy taking place . . . ."[1]

Of such people, the most important in the story of ESEA was Francis Keppel, Commissioner of Education at the time the law was passed, and a strong advocate of concentrating resources on disadvantaged children. Keppel, building on a bill introduced the year before by Senator Wayne Morse (D., Oregon) which included a politically appealing formula for concentrating funds on cities and rural areas at the same time, managed to shepherd ESEA through Congress without major amendments.

It is important to understand that the reform was not a response to public pressure. Unlike the great national programs passed during the New Deal, Title I did not arise from public demand. The poor were unorganized and had made no demands for such legislation. Nor was Title I a natural outgrowth of tried and tested programs at the local level. At the time it was developed, only three states had passed legislation specifically geared to disadvantaged children, and those laws funded only small pilot projects. Other local efforts were new, few, and concentrated in a limited number of cities. Nor was Title I the creature of the established educational organizations or educational administrators. The "old guard" bureaucracy in the Office of Education (USOE) viewed its job as providing technical assistance to the states and local schools when requested. They saw USOE more as a service organization than a focal point for leadership or initiative; the guiding principle was deference to the states and the local schools, and they had reservations about Title I. The attitude of the professionals who staff the state and local school systems was little different. They were dismayed to learn that ESEA was not general aid. In a national survey of school administrators in May 1966, approximately 70 percent stated that Title I funds should not be allocated on the basis of poverty.[2] As far as the educational associations in Washington were concerned, their primary interest was general support for on-going public school activities. Although they accepted the poverty theme as a necessary compromise to achieve aid for the public school system, their emphasis was on breaking barriers to federal aid, on the ground that this would be a major step toward general support at a later date. Furthermore, they were reluctant to oppose a strong President at the height of his political power.

In sum, Title I was not a reflection of pressure from the poor and had little support among educational administrators. Some urban school officials saw the need for categorical aid, but most support from within the profession was based on the notion that Title I was the first step toward general aid. The main support for aid to schools in poverty areas came from reformers in the Executive Branch.

Allocation of Responsibility

These reformers were faced with a formidable problem in legislative draftsmanship. They felt the need to increase federal leverage, given USOE's traditionally weak role in American education, but they recognized that federal control of schools was a major issue when the bill was drafted. Every effort was made to avoid this and other issues which for 100 years had prevented broad federal aid for education. The result was a complicated compromise which did little to disturb the balance of power in education. It provided influence for each level of government, but at the same time set limits. The formula devised for Title I was unusual in that it by-passed the states and localities in determining roughly on whom the money should be spent. (This feature made it politically acceptable since funds were concentrated in urban centers and poor rural areas.) Funds were to be distributed among school districts based on the relative incidence of poverty, and within districts in areas of high concentration of poverty. But the formula grant system cuts both ways: although it by-passes state and local governments, it establishes a fixed amount for each state and locality, once the total federal appropriation is known. This absence of competition for program funding combined with the local view that the money is rightfully theirs immensely weakens the ability of federal officials to bargain with state officials over improvements in program content or administration.

The USOE also by-passes the state departments of education to establish "basic criteria" which must be met by local districts in operating their Title I projects, but USOE has no control over the projects. (It is worth noting that this basic criteria authority was viewed as a threat to local control of the schools and was the most hotly contested provision during congressional debate.) The states have the responsibility for approving projects, but they must follow the basic federal criteria in carrying out this responsibility. Local districts have access to earmarked funds and latitude in designing projects, and are circumscribed only to the degree that state supervision and federal enforcement are effective. Thus, even on paper, the local school districts had the greatest say in how Title I funds were to be spent. Other factors, discussed below, also tended to favor local interests over state and federal.

Federal Efforts

The reformers involved in the development and passage of ESEA were for the most part not involved in its implementation. They went on to other legislation, leaving ESEA to the lower level staff of USOE. This staff had had virtually no impact on the development of Title I and in general would themselves have chosen more traditional approaches or general aid. They did not have experience with grants-in-aid of the size and scope of Title I, nor had they ever been called on to write basic, nationally applicable, criteria governing the approval of projects. Efforts were made to bring in new staff to meet this responsibility, and USOE did change significantly. Nevertheless, the USOE old guard, if not always controlling policy, for the most part staffed the program and made the day-to-day decisions that set the tone for federal operations.

Furthermore, USOE has not had enough people to monitor the states effectively. Title I is administered by the Division of Compensatory Education in the Bureau of Elementary and Secondary Education. In early 1970 the day-to-day monitoring that was done by USOE was done by three area desk officers in the Operations Branch. The area desk office for Massachusetts, a fairly typical state, was also responsible for Title I in 23 other states as well as Puerto Rico and the Virgin Islands. He had no assistants and spent much of his Title I time answering Congressional mail. Two-thirds of his time was spent working on other projects of the Bureau of Elementary and Secondary Education which have nothing to do with Title I.[3]

MORE ON TITLE I, PAGE 27
See **Notes and Commentary** section for new rules and regulations, court decisions, and lawsuits on Title I parent participation, clothing allowances, and standing to sue.

His role with respect to the states was passive. He described his relationship with the Massachusetts Title I director as "very nice."[4] In six months, he had met with the Massachusetts director once and talked with him on the telephone half a dozen times. He saw his job as trouble-shooting, answering complaints and providing service, and did not view himself as a program "monitor." He admitted that he didn't have time to keep up with what was going on in his states except through information provided by state officials.

One important Title I official who has been with the program since its start succinctly described the prevailing modus operandi:

> "Title I is a service-oriented program with predetermined amounts for the states. This sets the framework where the states are entitled to the money. Other than making sure states got their money and making sure it was spent, there was no role for the Office of Education. I don't know anyone around here who wants to monitor. The Office of Education is not investigation-oriented, never has been and never will be."[5]

USOE's Title I operation has not only been understaffed and disinclined to monitor the states, it also has virtually ignored the fairly comprehensive reviews of state and local programs conducted by the HEW Audit Agency. These reports, designed to determine whether funds are being spent legally, are always passed on to the Division of Compensatory Education for action. According to the Martin-McClure Study, *Title I of ESEA: Is It Helping Poor Children?*:

> "The audit reports have brought to light numerous violations of law and have recommended that millions of dollars be recovered by the Federal government. Yet in only three cases has the Office of Education sought and received restitution of funds illegally spent .... Even in the most flagrant cases of unlawful use of the money – the two swimming pools in Louisiana, for example – the Office of Education failed to act."[6]

The fundamental question is why has the USOE not been aggressive in monitoring and following up on the audits. The answer is not only that the staff is limited and unwilling to monitor; an important part of the explanation is that it is one thing to try to persuade a state to follow certain criteria, but an altogether different thing to accuse it of misusing funds which they view as their money. While Congressmen abhor waste and never tire of abusing bureaucrats who countenance waste, there are general principles which do not necessarily apply to individual cases, particularly if the alleged misuse occurs in their own districts. Top federal officials recognize the political nature of their jobs and know that they need Congressional support to survive, therefore they are not anxious to arouse Congressional wrath – especially when there is a high probability that they will not get the money back. USOE staff remembers well Keppel's failure in his attempt to cut off Chicago's Title I funds for civil rights violations; Mayor Daley simply took the President aside at a public ceremony and arranged for the funds to be reinstated.[7]

Rose-tinted glasses

Further, for the first few years, the pressure to get the program moving quickly and to avoid charges of federal control led to a natural tendency to look at the sunny side. There was tremendous pressure from the upper reaches of the Johnson administration as well to generate statistics on the number of schools involved, the number of children affected, and so forth, so that a successful program could be shown to the public and Congress. Finally, USOE's behavior has in part been adapted to take advantage of its strategically weak bargaining position. It is virtually impossible for USOE to cut off funds which the states view as their rightful entitlement under the law. The states know this and so does USOE. Thus, orders or demands by USOE are bound to be ineffective since they cannot be backed up with action. Furthermore, demands might alienate the states and result in loss of communication. Since USOE's influence comes mostly from the power of persuasion, and since it presently relies almost totally on the states for information about local programs, it is absolutely essential that USOE maintain cordial relations with the states. Under these bargaining conditions, the states are in a position to exact a price for their good will. As a result, USOE will be willing to sanction (perhaps covertly) deviations from the statute in exchange for open communications. Thus, the agency's service orientation and deference to local officials can be understood in part as rational behavior,

designed to achieve the greatest possible influence from a weak bargaining position. USOE's problem, then, is not simply the lack of will or lack of staff, but lack of political muscle. And like other politicians, most top federal administrators are unwilling to take many risks unless pushed. Certainly that is the case with the Federal Title I office today.

An exemplary failure

The effects of political constraints on federal efforts to exercise leadership can best be seen by following USOE's attempts to use their authority to write basic criteria to foster the establishment of local community and parent advisory councils. Since the beginning of the program, USOE officials have believed that the more parents were involved in local Title I programs, the better their children would do in school. This argument has not impressed the states; the history of USOE's effort is a series of reversals.

The first set of basic criteria, issued by USOE in Spring 1967, called for parent participation, but did not define the nature of this participation beyond saying that it should be "appropriate."[8] The second set of criteria, issued in Spring 1968, called specifically for involvement of parents "in the early stages of program planning and in discussions concerning the needs of children."[9] On July 2, 1968, USOE issued a separate memorandum on parental and community involvement stating that "local advisory committees will need to be established."[10]

It began to appear that USOE was serious. It might be appropriate to discuss parent involvement, but it was quite a different thing to call for formal committees which could be identified, counted, and perhaps even exert some influence. Many educators felt professionally threatened, and after seventeen days of pressure from national education associations, local educators, and Congressmen, USOE issued a "clarifying memorandum."[11] In effect, this told the states to do as they pleased about parental involvement. Most were pleased to do nothing, although some advisory committees, often stacked with teacher aides and other paraprofessionals, continue to function. A few even function effectively.

In 1969 the Division of Compensatory Education was still unsatisfied. It convinced the Nixon administration to amend the law to include local advisory committees. The recommendation was made and was adopted by the House Education and Labor Committee, but was dropped during floor debate in the House because of strong opposition, particularly from Southerners. The amended bill that was passed further confused the matter with unclear language on the extent of USOE's authority.[12] Six months after the passage of the law, USOE is still struggling against opposition from educational associations to come out with a guideline requiring local parental advisory councils. Given this confusion, those states disagreeing with the idea of advisory councils have even more reason to simply ignore it.[13]

The pattern is well established. Local and state educators have also been able to exert their influence to stop USOE from enforcing concentration of Title I funds, comparability, and limits on equipment expenditures. Guidelines emerging from USOE have been vague and ambiguous, allowing local educators plenty of room to maneuver.

This, then, is the context in which USOE operates. It lacks the staff and the inclination to engage in compliance activities, it is in a weak bargaining position with the states, and it is stopped by Congress and organized interests when it tries to exercise leadership.

Lacking significant prodding from the poor, federal Title I administrators treat the Congress, and state and local educators as the program's constituency. Until recently they have had no other.

State Efforts

All the problems with the administration of Title I do not lie within USOE or between it and Congress. Important barriers to implementation are found at the state level, and in relations between the federal, state, and local educational authorities. As noted above, I will take Massachusetts as my example of state efforts at monitoring the program.

One important problem is that many state departments of education, mirroring USOE, do not have a tradition of educational leadership, but rather grew out of the necessity of administering varied state education laws. One study in 1965 described the Massachusetts Department as "a conglomerate historical institution trying earnestly

and valiantly to become an organization." Later that year the state legislature completely reorganized the Department; the new and heavy responsibilities for Title I were assumed just after this major rearrangement.

The reorganization of the Department, while it rationalized functions, did not answer one of its major needs, higher professional salaries. Professional staff are paid considerably less than educators with equivalent training and experience in local school districts or USOE.

For several years the state Title I director has been attempting to increase his staff; he has four assistants at present. He has searched particularly for black professionals, but he has been unable to find people – black or white – who are both competent and willing to join the state department of education. Further, even if all staff positions were filled, it would be impossible for the Department to monitor effectively the 430 Title I projects in the state. Indeed, the staff could not even visit each project in the course of a year, much less understand what each is doing.

Friendly, si, persuasion, no

The state department is no more disposed to compliance activities than USOE. The state Title I director[14] believes that initiative and leadership should come from the local school districts. He prefers to give technical assistance and service to local schools. He seeks to discourage any questionable practices through friendly persuasion, not find cutoffs. To paraphrase one student of federalism,[15] what usually happens is that state and local educators, working in the same program, trained in the same schools, and active in the same professional associations, think along the same lines and have relatively little trouble in reaching a meeting of minds.

Financial control is even worse. The HEW Audit Agency has checked the Massachusetts accounts on two occasions. The federal auditors found that poor financial management had allowed federal allotments totalling more than $1 million to lapse for each of three years.[16] In Boston, for instance, the HEW audit reported that although the school committee had failed to use $263,000 of its allotment, the program directors explained failure to concentrate funds on eligible children by saying that there was not enough money to do so.

The explanation for this mix-up is simple: The state hardly audits at all. One man has the job of auditing all local projects. Local districts are merely required to submit a one-page financial statement which breaks down Title I expenditures by educational categories, such as food, administration, and instruction, and divides expenditures into salaries, contracted services, and other expenses. It is useless in determining compliance with the law. It took until November 1968 for the Department to complete this rudimentary procedure for one-third of the *1967* projects. In the meantime, no auditing of 1968 expenditures had taken place, according to the second HEW audit.

The HEW auditors examined four districts closely and found inadequate time and attendance records, unsubstantiated overtime payments to teachers, inadequate accounting procedures, and unremitted unused funds totalling $1.5 million. One district was found to have made inaccurate financial reports. The Title I coordinator in this district informed me that he had found out about the error because he met with the HEW auditors after they had finished examining his books. He said he had never heard from the Department. While the state director expresses confidence that funds are not being misused, he admits that he cannot prove it.

Program evaluation is another problem area. Title I is relatively idiosyncratic among aid programs in requiring local evaluation which educators know can be used against them in the establishment of new priorities. Add to this the fact that few local educators are expert in evaluation and it is no wonder that there has been resentment of this provision. After all, to the extent that evaluations do not disclose meaningful information on results, local districts cannot be challenged in their local priorities on the basis of evidence of failure.

In one city,[18] for instance, I found a local evaluation of a reading program that asserted that fourth grade Title I children had gone from five months behind non-Title I children at the beginning of the 1967-68 school year to four months behind at the end of the year. This statement was indeed true and the gap was closing, but the local evaluation failed to point out the reason. Non-Title I children had regressed two months

while the Title I group had only regressed one month.

It is not surprising that an independent review of one state evaluation concluded, "The analysis in the state report is meaningless, then, because the data it collected could serve no conceivable evaluative purpose. Collecting this information was, in the strict sense of the word, entirely futile . . . ."[19] The state is hopeful of improving this situation but without an unforeseen infusion of funds and professionals willing to work at state pay rates, nothing is likely to happen.

Even if the money and personnel were available for all the relatively neglected areas of monitoring – not only project auditing and evaluation but also significant state-local consultation – major obstacles to federally-initiated reform would remain. The state is no more able to impose its wishes on local school districts than the federal government is able to dictate to the states. The absence of competition for Title I funds weakens the state's bargaining position as it does USOE's. Districts receive fixed amounts by formula almost regardless of the quality of their programs. Few applications for funds have ever been rejected by the state, and funds have never been withheld. Also, there is a strong tradition of local control of the schools which the Title I director characterized as " 'The Battle Hymn of the Republic' of New England educators."[20] Without any counter-pressures from the local level, the states are bound to yield to the wishes of local educators except in cases of blatant violations of the law. Because of these political factors and because of the serious personnel problem, states have little leverage on local districts. Like their counterparts at the federal level, state Title I officials reflect their weak bargaining position; they are reluctant to act as monitors and regulators.

Conclusion

What emerges from this discussion is clear: federal and state governments have little control over Title I spending; local school districts are virtually free to meet their own priorities. This is not to say that local educators blatantly violate the law, only that they are in control of the situation and are able to stretch the law to meet their needs, which are defined by their constituency.

Why has Title I been administered in this way? To blame the problems solely on timidity, incompetence, "selling out," or on evil men is to beg the question. I have identified a number of contributing factors: the reformers were not the implementers; inadequate staff; a disinclination to monitor; a law and tradition favoring local control; absence of pressure from the poor. Finally, our federal system of government encourages local intervention in the establishment of federal priorities. As a result, those federal priorities not diluted by Congressional intervention can be ignored during the program's implementation.

Strengthen the poor

What can be done? There are no panaceas and no short cuts to a better program, but there are several steps that can be taken to improve Title I. For one thing, the program is obviously in need of better management at the federal and state level. This means people, competent people trained in the techniques of program management. But this is not as simple as it seems. After all it is no accident that salaries in the Massachusetts department of education are not competitive. The problem is not money, it is politics. What better way is there to keep the Department weak than to have salaries so low that only the least competent apply. There are problems, of course, in improving Title I management but they are not insurmountable. But in order for management changes to make a difference they need to be accompanied by a shift in political power. It is the almost complete power of the local districts which must be challenged, and it must be challenged at the local level. Creation of countervailing *local* forces is called for, in order to prod federal, state and local officials to act more forcefully. Efforts to establish strong local advisory councils could help produce local responsiveness to the educational needs of the poor. Their demands for public accountability and a role in the development of programs can increase the influence of the poor at the local level. But if strong local advisory councils are an important first step, efforts are also needed at the state and federal level. In Massachusetts, for example, community groups have banded together to encourage the state department of education to issue strong guidelines governing local advisory councils. The effect of such pressure is to encourage local councils, but also to strengthen the bargaining position of the state with local

school districts. Whether the community groups get everything they want seems doubtful, but the state's constituency has been broadened – *they no longer will be totally beholden to the wishes of local public schoolmen.*

Similarly, community groups should band together on a nationwide basis, to bring pressure to bear on USOE and the Congress. Until recently, whenever USOE attempted to exert any influence the only people they heard from were the spokesmen for public educators who, understandably, were trying to protect their interests; typically USOE responds to this constituency. In the last few months, however, pressure has been coming from such groups as the Washington Research Project, the NAACP, and the Center for Law and Education, and they have had some success. Nevertheless, additional forces are needed to expand their efforts. Such pressure will have a significant impact only if poor parents are organized for national pressure. Furthermore, the chances of impact may be greatest at the federal level. Federal officials share with poor parents the distinction of being on the outside of our nation's school system. Assuming that some desire for reform remains in USOE it is not inconceivable that they could join hands with the poor on some issues to put the squeeze on a recalcitrant public school system. For example, USOE and the poor probably have a mutual interest in increasing public school accountability for Title I. To date USOE has never used its broad authority to require good evaluation at the local level. Given a strong push by an effective lobby, USOE could be in a better bargaining position to impose this priority on public school educators.

Clearly, building an effective grass-roots lobby is a difficult task filled with pitfalls; going "too far," for example, could backfire and result in the replacement of Title I with general aid to the schools. Nevertheless, risks need to be taken, and until countervailing community power grows at every level, Title I will continue to provide frustration and reports of failure.

FOOTNOTES

1. Moynihan, Daniel P., *Maximum Feasible Misunderstanding.* New York: The Free Press, 196[illegible], p. 23.
2. Bailey, Stephen K., and Edith K. Mosher, *ESEA: The Office of Education Administers a Law.* Syracuse University Press, 1968, p. 306.
3. The area desk operation has grown considerably in size in recent months. In October 1970, there were 18 area desk officers monitoring the states. This rapid growth reflects the growing concern with Title I administration. Although this increase in staff gives the appearance of greater control of the program, it is too early to assess its impact at the state and local level. This impression was confirmed in interviews at USOE on October 6, 1970, and at the Massachusetts Department of Education on October 14, 1970.
4. Interview with Benjamin Rice, Midwest and Eastern Regional Representative, Division of Compensatory Education, USOE, November 26, 1969.
5. Interviewee asked not to be identified, November 26, 1969.
6. p. 97
7. Bailey and Mosher, *op. cit.*, pp. 151-152. The incident, as might be imagined, had considerable impact on USOE's attitudes on enforcement.
8. Memorandum from John F. Hughes, Director, Division of Compensatory Education, USOE, to Chief State School Officers, April 14, 1967.
9. Memorandum from Commissioner Harold Howe II, USOE, to Chief State School Officers, March 18, 1968.
10. Memorandum from Commissioner Harold Howe II, USOE, to Chief State School Officers, July 2, 1968.
11. Memorandum from Commissioner Harold Howe II, USOE, to Chief State School Officers, July 19, 1968.
12. P.L. 91-230, April 13, 1970.
13. Willis-Harrington Report on the Massachusetts Department of Education, 1965.
14. Interview with Robert L. Jeffrey, Senior Supervisor in Education and Massachusetts Department of Education Title I Director, December 9, 1969. At a subsequent interview on October 14, 1970, he expressed similar views.
15. Elazar, Daniel J., *American Federalism: A View from the States.* New York: Thomas Y. Crowell Company, 1966, p. 149.
16. HEW Audit Agency, *Report on Review of Grants Awarded to the Commonwealth of Massachusetts Under Title I, Elementary and Secondary Education Act of 1965,* January 23, 1969. This audit covers Title I operations in 1966-68. The first audit covered the first year of operation, 1965-66.
17. During the last year, two additional auditors have been added to the Title I staff, but they do not spend all their time on Title I nor do they audit local projects.
18. There is no need to single out one city in this short article. Title I funds are allocated to most school districts in the country and there is no reason to believe that this particular district was worse than any other.
19. Cohen, David K., and Tyll R. Van Geel, "Public Education" in *The State and the Poor,* edited by Samuel H. Beer and Richard E. Barringer. Cambridge: Winthrop Publishers, Inc., 1970, p. 231.
20. Interview with Robert L. Jeffrey, *op. cit.*, December 9, 1969.

N.B. A substantially different version of this article appears in the *Harvard Educational Review,* V. 41, No. 1.

NOTES AND COMMENTARY

This section of Inequality in Education *features reports on research, litigation, government action, and legislation concerning education and the law. Readers are invited to suggest or submit material for inclusion in this section.*

INTEGRATION

Detroit

CIRCUIT COURT BANS STATE DELAY OF DESEGREGATION EFFORTS; DISTRICT ORDERS HIGH SCHOOL INTEGRATION

On November 4 on remand, the District court heard arguments and granted plaintiffs' motion that the Detroit board of education submit a plan for integration of the city's high schools for the second semester of this school year. The plan was to be submitted by November 16. The hearing on the board's further obligations under the fourteenth amendment will be held December 8. Earlier details below.

Bradley et al v. Milliken, Civil Action No. 35257 (D.C.E.D. Mich.), 6 Cir., October 13, 1970.

States may not move to overturn desegregation efforts by local school boards, the Sixth Circuit Court of Appeals has ruled. The court found unconstitutional the Michigan state legislature's rollback of the Detroit school board's voluntary plan of desegregation.

The Detroit situation is complicated and turbulent. On April 7, 1970, the city school board adopted a plan to desegregate 12 of its 22 high schools. At the same time, in conformity with a mandate from the state legislature, the board adopted a seven-region plan of decentralization. Each region had approximately the same racial composition. The desegregation plan was approved by a vote of 4-2 despite considerable public resentment. Students were notified of their new school assignments the same month. The plan was utilized busing, but followed a general policy of sending students to schools close to their homes and did not, in fact, increase the proportion of children required to travel by bus to school. Busing, nonetheless, and its presumed attendant disruption became the subject of public debate over the plan.

Combined efforts to rescind the desegregation plan and to recall the four board members who had voted for it were successful. On July 7, the state legislature approved a bill changing Detroit's system of school administration, including changes in the school board's composition; delaying the desegregation plan until the new board could review it; ordering a return to the old attendance zones for the fall term this year; and mandating a new eight-region decentralization plan including an open-enrollment plan which favored neighborhood attendance in the schools. The recall movement was successful and on August 4 the four board members were removed.

Neither the Circuit nor the District court has ruled on which, if either, decentralization plan is preferable. The Circuit court did rule, however, that decentralization programs of any sort cannot be used to justify segregation or delay integration.

Parents of black children attending the Detroit schools file suit August 18 seeking desegregation of the city's schools. Plaintiffs sought preliminary relief as to faculty and students as well as construction policies; their motion also attacked the constitutionality of the state legislature's desegregation rollback and a return to the April 7 plan. The District court denied all relief and did not rule on the constitutionality of the rollback. Plaintiffs appealed, and on October 13, the Sixth Circuit ruled. Both the delay of the April 7 plan and the mandate for open enrollment with priority given to those choosing schools close to their homes were found to violate the Fourteenth Amendment.

The court noted that the board had acted on April 7 "further to implement the mandate of the Supreme Court in *Brown*," and that many court decisions have held that state action "will not be permitted to impede, delay, or frustrate proceedings to protect the rights guaranteed to members of all races under the Fourteenth Amendment .... State action cannot be interposed to delay, obstruct, or nullify steps lawfully taken for the purpose of protecting rights guaranteed by the Fourteenth Amendment."

The state had attempted to justify the legislature's rollback on the grounds that implementation of the eight-region decentralization plan would require time, but the court did not even consider the argument. As to the state's

assertion that the act was a valid exercise of legislative power, the court noted that acts generally lawful become unlawful when undertaken to deprive persons of constitutional rights.

The Sixth Circuit's opinion in the Detroit case is in line with a number of other recent rulings in this area. The opinion cited several cases relating to attempts by legislatures in southern states to thwart disestablishment of dual school systems [E.g., *Griffin v. County Board of Education of Prince Edward County,* 377 U.S. 218 (1964)] and northern and western attempts to rescind fair housing ordinances (E.g., *Reitman v. Mulkey,* 387 U.S. 369 (1967)]. The Detroit opinion adds force to a number of holdings directly related to de facto school segregation, in which state action to impede voluntary desegregation has been found unconstitutional. In *Keyes v. School District No. One, Denver* 303 F. Supp. 279, 313 F. Supp. 61 (D.C. Colo.) the District court declared the recision of a previous board's voluntary desegregation plan by a new board to have been unconstitutional. In *Lee v. Nyquist* F. Supp. (D.C.W.D. N.Y.) a three-judge court held New York's anti-busing provision unconstitutional. The general application of this principle would mean that once a school board chooses to desegregate, its act would not be subject to any recision, delay, or obstruction by any other arm of the state.

On remand in the Detroit case, plaintiffs will move to implement the April 7 plan by the second semester of school. Plaintiffs are represented by Bruce Miller and Lucille Watts of the Detroit NAACP, Louis R. Lucas of the national NAACP, and Paul Dimond and J. Harold Flannery of the Center for Law and Education.

Louisiana

PAROCHIAL SCHOOL SYSTEM SUED AS STATE-SUPPORTED INTEGRATION ESCAPE

Auzenne et al v. School Board of the Roman Catholic Diocese of Lafayette, Louisiana, Civil Action No. 15804 (W.D. La.).

This action seeks to bring about the immediate desegregation of two parochial schools in Opelousas, La., which serve the same area in St. Landry civil parish. The all-black Holy Ghost school is separated physically from the Academy of the Immaculate Conception (which has five black children) only by an integrated Roman Catholic cemetery. The public schools of Opelousas were integrated under court order last fall and the black plaintiffs contend that continued operation of the dual Catholic system constitutes a government-supported out for segregationist parents.

Plaintiffs argue that education in itself is a public function and further that the substantial amounts of federal and state aid accepted by these schools makes them liable to application of the equal protection clause of the fourteenth amendment. Defendants presently receive the benefits of state and federal breakfast, lunch, and milk programs; Title I programs; testing under the National Defense Education Act; free school books and supplies from the state; free transportation and public health services; as well as tax benefits. They anticipate further aid in paying teachers' salaries under Louisiana's Secular Educational Services Act.

Plaintiffs also seek redress as beneficiaries of assurances of desegregation made by the defendants in agreements with the Department of Health, Education and Welfare. [See *Bossier Parish School Board v. Lemon,* 370 F. 2d 847 (5th Cir. 1967, cert denied 388 U.S. 911 (1967)], as well as under their federal right to make a non-discriminatory contract with the Academy [See *Jones v. Mayer Co.,* 392 U.S. 409 (1968)]. Finally, plaintiffs are asking for application and extension of *Green v. Kennedy* 309 F. Supp. 1127 (D.C.D.C. 1970). They seek not only a ruling that federal tax exemption for schools and segregation are incompatible, but also application of the principle that acceptance of the tax exemption creates an affirmative duty to desegregate that cannot be eliminated merely by dropping the tax exemption.

Defendants have been granted a stay pending

LIBRARIES PLEASE NOTE

Because of unexpected expenses, including the establishment of a library at the Center for Law and Education and heavy demand for our litigation packets, we will be asking our library subscribers to pay $6.00 for the coming year. In return, *Inequality in Education* will regularize its publication schedule and will provide single back issues free on request to libraries.

decisions by the United States Supreme Court in a number of desegregation cases now before it as well as the outcome of attacks on the state's Secular Educational Services Act. Plaintiffs have appealed the stay to the Fifth Circuit on the grounds that the issues in this case are broad enough to be considered independent of the issues in these other cases.

Plaintiffs' attorneys include the Rev. Joseph Cooney, S.J., of University Legal Services of Washington, D.C., and Stuart Abelson and J. Harold Flannery of the Center for Law and Education.

RESOURCE ALLOCATION

Hobson v. Hansen II
RICH FAVORED IN D.C. SCHOOLS, COURT SAYS, ASKS EXPLANATION

Hobson v. Hansen, Civil Action No. 82-66 (D.C.D.C.) September 1, 1970, motion for further relief in *Hobson v. Hansen,* 269 F.Supp. 401 (D.C.D.C. 1967), *aff'd sub nom Smuck v. Hobson,* 408 F.2d 175 (D.C. Cir. 1969).

District Judge Skelley Wright ruled September 1 that with respect to per pupil expenditure, "the richest and whitest areas of [Washington, D.C.] are being substantially favored over poorer and blacker areas." The court also ordered the school system to show cause why it should have more than five per cent variation in per pupil expenditures in the schools.

In his 1967 decision Judge Wright had enjoined "discrimination on the basis of racial or economic status" in the operation of the District of Columbia school system. (at 517) The evidence then revealed that per pupil expenditures had been substantially higher in predominantly white schools, located in the wealthiest neighborhoods of the system, than in other schools. In the 1967 opinion, the court held that "the minimum the Constitution will require and guarantee is that for their objectively measurable aspects these schools be run on the basis of real equality, at least unless any inequalities are adequately justified." (at 496)

In May 1970, plaintiffs filed a motion for enforcement of the 1967 decision, alleging that differences in per pupil expenditures had widened, and seeking an order requiring that per pupil expenditures from regular funds (excluding Impact Aid and Title I ESEA funds) in each elementary school not deviate more than 5% from the systemwide average, absent an "adequate justification." "Adequate justification" was explicitly defined to include "compensatory education for educationally deprived pupils . . ." [See *Inequality in Education,* Number Five, p. 18.]

The school system filed an opposition to the plaintiff's motion and a motion to vacate the permanent injunction based upon asserted compliance with its terms. Subsequently, the court required the system to file reports showing current information, by school, on per pupil expenditures from regular and other sources of funds (for example, Title I and Impact Aid), latest available information on income levels of the various school areas and a calculation of the correlation between per pupil expenditures at the schools and the income level of their neighborhoods.

In his September 1 opinion, Judge Wright found with respect to per pupil expenditures plaintiffs' contentions were correct. The system had argued that this resulted, in part, from the fact that some schools were under capacity while others were overcrowded. Concluding that such disparities "may be eliminated" the court ordered the system to show why "busing of pupils from low-income area, overwhelmingly black, overcrowded schools . . . to high income area, whiter and underpopulated schools would not eliminate unnecessary differences in per pupil expenditure" relating to the utilization factor. Data submitted by the schools indicated that there were 12 overcrowded schools, and 17,000 empty classroom spaces in the system.

The court noted the system's arguments that differences resulted, in part, from the presence of a disproportionately large number of the most highly paid teachers at high expenditure schools; and that it would be unduly burdensome "to order absolutely equal distribution of highly-paid teachers . . . ." Reiterating the conclusion expressed in *Hobson I* that higher teacher salaries are in general an indicator of "teacher quality," Judge Wright said that if reassignment was inappropriate, "it would seem that the schools which do not have their share of such teachers should be compensated with a corresponding

benefit, as for example with special equipment or teaching assistants . . . ." Accordingly, the court ordered the system to show why it "should not devise a plan to equalize within a five per cent variation expenditures for teaching costs out of regular funds among all . . . elementary schools for the 1971 fiscal year."*

*The school board argued in its response to the motion that two recent cases – *Danchidge v. Williams,* 397 U.S. 471 (1970) (fixed maximum welfare payment upheld) and *McInnis v. Shapiro,* 293 F. Supp. 327 (N.D. Ill., 1968), *aff'd, sum nom. McInnis v. Ogilve,* 394 U.S. 322 (1969) (inter-district differences in per pupil expenditures upheld) – had in effect undermined the requirement of intra-district expenditure equality. The court did not comment on this argument.

MICHIGAN SUPREME COURT OUTLAWS REQUIRED FEES IN "FREE SCHOOLS" CASE

Bond v. Public Schools of the Ann Arbor School District, 178 N.W. 2d 484 (Sup. Ct. Mich 1970)

The Supreme Court of Michigan has ruled that schools cannot require students to pay fees for books, supplies, and equipment, as well as for interscholastic athletics, and general purposes, and still conform to Article 8, Section 2 of the state's constitution (1963) which establishes "a system of free public elementary and secondary schools as defined by law." The Supreme Court stated, "The first rule a court should follow in ascertaining the meaning of words in a constitution is to give effect to the plain meaning of such words as understood by the people who adopted it." In this case, the court ruled, free meant "without cost or charge." The court further ruled that the books and supplies being charged for were "necessary to a system of free public elementary and secondary schools."

The suit was a class action brought by parents of children attending the Ann Arbor schools. The trial court had enjoined the requiring of general fees and athletic fees, but had denied relief on fees for books, supplies, and equipment, and refused to order repayment of $140,000 in general fees collected since the action was begun. The Michigan Supreme Court granted the remainder of the relief sought on appeal. The court accepted the test used by the Idaho Supreme Court in a similar case [*Paulson v. Minidoka County School District,* 463 P.2d. 935, 938 (1970)] that included "necessary elements of any school's activity" under a state constitutional guarantee of free schools, as well as the similar test advanced by plaintiffs, which included anything that was "an integral fundamental part of the elementary and secondary education."

The state supreme court ordered that the $140,000 in general fees that had been collected be distributed to the plaintiff class after attorney's fees had been deducted and ordered notice by mail and newspaper advertisement of the decision.

INTEREST IN TAX VOTE NOT LIMITED TO TAXPAYERS, COLORADO COURT RULES

Pike et al v. School District No. 11 in El Paso County, No. 24657, Colorado Supreme Court, August 31, 1970.

The Colorado Supreme Court has affirmed the results of a school tax referendum which permitted people who did not own property or pay taxes to vote. Plaintiffs in this action had argued that the election results, which resulted in an increase in per pupil expenditures from $681 to $811 in the local schools, should be disregarded because the state law limited the franchise in such elections to "the registered qualified taxpaying electors of the district." The Colorado Supreme Court ruled that the exclusion of those who paid no taxes was unconstitutional.

The Colorado court relied on three United States Supreme Court opinions to reach this conclusion: *Kramer v. Union Free School District* [395 U.S. 621 (1969)]; *Cipriano v. City of Houma* [395 U.S. 701 (1969)]; and *City of Phoenix v. Kolodziejski* [399 U.S. 204 (1970)].

The counsel for the board of School District No. 11 of El Paso County had relied on *Kramer* and *Cipriano* when he advised inclusion of non-taxpayers. [The trial court found that enough such persons had voted to change the results of the election.] The rule that emerged from these cases was that limitations on the electorate had to be based on compelling state interest and could exclude those citizens who were "primarily interested" or "primarily affected" by the election results. *Kolodziejski,* which was decided while the Colorado case was being argued, held that property owners and nonproperty owners alike have a sufficient interest in public facilities and services of the city to make unconstitutional the limitation of the franchise to property owners alone and further that property taxes are ordinarily passed on to tenants and that most nonproperty owners are tenants.

The Colorado court struck the word "taxpaying" from the questioned law [1969 Perm. Supp., C.R.S. 1963, 128-38-21] wherever it appeared in an unconstitutional context. Joe A. Cannon and David Barnhizer of the Westside Legal Services Office of Colorado Springs intervened in the case in behalf of the non-taxpaying class.

SPECIAL EDUCATION

Boston

SUIT SEEKS END TO SLIPSHOD TESTING, PLACEMENT IN "SPECIAL" PROGRAMS

Stewart et al v. Philips et al, Civil Action No. 70-1199-F (D.C. Mass.).

The Boston school system is defendant in a suit designed, in effect, to put the system's testing department in receivership. The suit seeks to eliminate faulty classifications which result in improper placement of children in special education classes for the mentally retarded and also to add parent participation to the classification process.

Boston places children in classes for the mentally retarded on the basis of a score of 79 or below on a single IQ test. The test used in Boston is standardized on the basis of a white, middle-class group, which plaintiffs maintain results in lower scores for dissimilar groups. Scores on the test, plaintiffs further maintain, result from a wide variety of causes including emotional disturbance, perceptual difficulties, difficulty in speaking English, or cultural differences, none of which have any bearing on a judgment that a child is retarded. Investigations of the child's medical history, school record, and family background are not sufficient to turn up such influencing factors. The suit also charges that Boston's testers lack training to give the tests or make the background investigations.

The suit charges that wrongful placement of a child in a class for the mentally retarded when that child is not mentally retarded results in irreparable harm. None of the seven named plaintiffs are mentally retarded, according to independent psychological evaluations. All have been placed in classes for the mentally retarded. The harm comes from the stigma of being classified mentally retarded, as well as from the nature of the instruction given in the classes, which is repetitive from year to year and does not allow the mentally retarded child to make any forward progress.

The suit also charges that "the manner in which retardation is measured by defendants necessarily causes race and poverty to become significant determinants of placement."

Plaintiffs seek compensatory and punitive damages for each member of each plaintiff class. The suit also asks that the court establish a Commission on Individual Educational Needs which would include representatives of a number of public and private organizations interested in special education as well as parents of Boston school children. The commission would, in the remedy sought by plaintiffs, oversee a testing procedure designed to eliminate the faults of the present system. The proposed system includes requirements that each child be given a battery of tests (described in the complaint) designed to detect all sources of low IQ scores; that the test be given under the supervision of a psychologist whose qualifications for such work satisfy the standards of the American Psychological Association; that parents be given notice, access to all documents, and a prior hearing with respect to their children's placement in special classes; that medical examinations and medical histories be included in the classification routine; and that until the Boston schools have demonstrated competence to conform to these and other conditions that might be set by the commission, the testing shall be contracted out to local psychologists and mental health clinics, with the selection of a particular psychologist to be left to the parents. Finally, the suit seeks re-testing of all children now in special education classes with tests to conform to these standards. Any child who is found to have been misclassified, the suit asks, is to be placed in a special transitional, or "catch-up," school so that he will be in better shape to compete with children whose educations have not been allowed to lapse because of classification errors.

The suit is being brought by Michael Altman

and Will Osborn of the Boston Legal Assistance Project; the Center for Law and Education is of counsel. Defendants in the suit are members of the Boston School Committee and state and local officials with administrative responsibility for Boston's testing and teaching programs in special education.

CLASS ACTION IN MILWAUKEE SEEKS END TO WAITING LIST FOR RETARDED CHILDREN

John Doe et al v. Board of School Directors of the City of Milwaukee, Case No. 377770, (Civil Division, Circ. Ct., Milwaukee Cty., Wisc.) April 13, 1970.

A class action seeking to end the practice of placing mentally retarded children on a waiting list for special education classes has been filed in Milwaukee. The plaintiff and 30 other identified members of the plaintiff class have already been placed in special education classes, but no date has been set for trial on the issues.

The suit charges that placing retarded children on a waiting list and providing no educational services for them violates the federal and state constitutions as well as state statutes. Both the state constitution and statutes assert a right to attend public schools. State statutes also require Milwaukee, but not other Wisconsin cities, to provide special education classes.

Judge Max Raskin of the Circuit Court of Milwaukee county issued a temporary injunction April 13, 1970, ordering the city schools to find a place for the plaintiff. The remaining members of the plaintiff class who had been identified were admitted to special classes this fall, but the waiting list is still being used for new applicants, some of whom are out of school more than a year before being placed.

The attorneys in the case are Sarah Joan Bales of Freedom through Equality, the local OEO legal services project, and John Scripp, a former project staff attorney now in private practice.

EQUAL PROTECTION

CHINESE? ENGLISH? EQUAL PROTECTION? IT'S ALL GREEK TO COURT; APPEAL TO NINTH CIRCUIT PLANNED

Lau et al v. Nichols et al (D.C.N.D. Cal.) Civil Action No. C-70 627, decided May 26, 1970, appealed to 9 Cir.

Failure to provide adequate instruction in English to children for whom it is not the native language is a denial of their rights to an education and to an equal educational opportunity, according to a suit filed on behalf of Chinese children against the San Francisco Unified School District. Judge Lloyd H. Burke ruled in District Court May 26 that, "These Chinese-speaking students – receiving the same education made available on the same terms and conditions to the other tens of thousands of students in the San Francisco Unified School District – are legally receiving all their rights to an education and to equal educational opportunities. Their special needs, however acute, do not accord them special rights above those granted other students."

The opinion noted that both parties had stipulated that some two-thirds of the Chinese-speaking children in the district got no special instruction in English whatsoever, and that of the remainder, more than half received less than an hour a day's help and from teachers who did not speak their language.

Plaintiffs had argued that a right to an education assumed a right to learn English since virtually all instruction is conducted in English and also because various citizenship duties for which education is training could not be fulfilled without facility in English. As causes of action, they asserted that denial of the opportunity to learn English constituted depriving the plaintiff classes of an education and of equal protection, and that it was discrimination on the basis of race and national origin. The suit also sought to establish violation of a number of state laws relating to compensatory and bilingual education. Plaintiffs argued that they were seeking parity under state law with other children with learning difficulties, such as the physically and mentally handicapped,

→ *to page 22*

Realistic, detailed study of participation

COMMUNITY CONTROL

Community Control: the Black Demand for Participation in Large American Cities. Alan A. Altshuler. Pegasus. 1970. 238 pages. $6.95 hardcover; $2.75 paperback.

Alan Altshuler has taken on the considerable task of setting forth a rationale for community control in urban neighborhoods. His concern is with the allocation of power, and with the necessity that blacks share in that allocation. Altshuler begins not with an ideology but with a sense of political crisis that requires management, and an injustice that requires rectification. These starting points – quite different from those who assume that black hegemony is necessary, and work their way backward to their rationale – force Altshuler to be political in the best sense. He is aware of the complexity of his subject: of the conflict of interests among all the parties, black and white; of the possibility that power devolution may increase these conflicts. He has read widely; he has also (to judge from his preface) talked widely as well, and that combination has yielded a book which seeks to be realistic in its assessment of possibilities, and not merely right in its theoretics.

The book capably marshalls arguments and counterarguments addressed to the notion of community control. Altshuler deals briefly with the gamut of questions that have been posed in discussions of schools, poverty programs, police, etc.: these ranging from the anti-libertarian potential of community control to the possibility that such control would be a dead end for the black community. He is, for the most part, fair in his statement of the arguments, and abundantly footnotes other sources of information.

The book is probably best – that is, most useful – in attempting to specify the conflicts, and the trade-offs, that would arise in setting up a districted system of urban government. While his adoption of the district of 50,000-75,000 people as appropriate is somewhat hasty and arbitrary, his examination of the allocation of functions – representation, finance, personnel, contracting – is not. These sections should prove invaluable to lawyers who find themselves addressing the specifics of sub-districting in the context of particular issues. Altshuler's extended discussion of the needs and perceptions of the professionals, for example, bears directly on the kinds of accommodation that will be necessary if decentralized school systems are to be permitted to function.

There is little indication that community control will yield social harm, or even exacerbate social tensions. There is some indication that it will increase the legitimacy of local government. There are hopes that it may improve the quality of the offering available to those neighborhoods whose spokesmen are currently demanding it. This very unpredictability suggests the need for caution in moving from centralized to decentralized bureaucracy; it also indicates the feasibility of some movement in that direction. To the extent that *Community Control* sets forth the guidelines for such movement, and in so doing moves the discussion from the ideological debating table, Altshuler has performed a much-needed service.

David L. Kirp

← *from page 21*

and, specifically, that they were seeking enforcement of §71 of the California Education Code, which, in the language of the section, "encourages bilingual instruction in order to develop a greater proficiency in English" and states that such bilingual education is "educationally advantageous to the pupils."

Relief sought included preliminary and permanent injunctions against linguistic discrimination and requiring the provision of bilingual instruction in English. Plaintiffs also sought the establishment of a testing program to assess the English-language abilities of all Chinese-speaking children in the system and a judgment declaring that the policies objected to were in violation of the state and federal constitutions and state laws.

Although the suit was dismissed by the District Court, the school system has increased the budget for teaching English as a second language. Plaintiffs, however, do not feel that the program is adequate to the needs of these children, nor is it big enough to accommodate all the Chinese

children who need it.

The case is being handled by Edward H. Steinman and Charles J. Wong of the Chinatown-North-Beach office of the San Francisco Neighborhood Legal Assistance Foundation. The appeal is now pending before the 9th Circuit Court.

STUDENT RIGHTS

Press

PRIOR RESTRAINT ON STUDENT PRESS STILL PERMITTED DESPITE DEVELOPMENTS

A number of recent federal court decisions limit, but do not prohibit, prior restraint of student publications. In none of the three cases reported here was the form of prior restraint engaged in by school authorities approved.

Rowe v. Campbell Union High School District, Civil Action No. 51060 (D.C.N.D. Cal.) September 5, 1970.

Zeltzer v. Campbell Union High School District, Civil Action No. 51501 (D.C.N.D. Cal.) September 5, 1970.

A California statute and a local school policy prohibiting distribution of printed matter on school campuses without prior approval of form and content by school officials have been declared unconstitutional by a three-judge panel.

The court ruled that the statute [Cal. Educ. C. §§9012-13] and the local policy statement were impermissibly broad. The court stated that defendants' arguments that students were immature did not lead to the conclusion that all printed matter should be prohibited, but only that certain, well-defined limitations are called for. Students in the cases had been threatened with suspension.

The court, which based its ruling in large part on *Tinker,* was moved to comment on defendants' notions as to what constituted disruption. The court stated that there were two kinds of disruption, which it termed *intellectual* and *physical:*

> "The primary thrust of the former category is that students are entitled to an 'unimpaired' education; that the administration should have control over virtually all of a student's intellectual experiences during the school hours in order to insure the type of education it deems best; that the contrary, disagreeable, and impolite contents of the student publications not authorized by the school officials disrupt this 'controlled' situation. This concept of 'disruption' is simply unacceptable under *Tinker*."
>
> "The other major contention in the 'intellectual' branch of the disruption argument is that distribution of these papers, which are often critical of the faculty and administration, will impair the effectiveness of the criticized parties by reducing students' respect and confidence in them. This contention has been made and rejected in a number of 'school' cases."

As for physical disruption, the court said that it was subject to "narrower, more particular regulation." The court stated that the time, place, and manner of distribution could be set by the schools and that obscenity and advocacy of violation of school rules could be subject to prior restraint. The court asked the school board to submit within 90 days a proposed regulation on distribution and dissemination of printed materials on the school grounds.

Eisner et al v. Stamford Board of Education, Civil Action No. 13220, (D.C. Conn.) July 2, 1970.

Plaintiffs, students at Rippowam High School, Stamford, Conn., were threatened with suspension if they continued to distribute their mimeographed underground newspaper at the school. The school at that time had a rule against "using pupils for communications." This rule was expanded to prohibit any distribution on campus without prior approval by school officials of content and manner of distribution. In granting plaintiffs' motion for summary judgment, the court ruled that the regulation was unconstitutional ***blanket*** prior restraint on free speech. The court stated that prior restraint requires strong justification because it is usually undesirable, but that in schools there might be "constitutionally valid" reasons for restricting free

speech. One such reason suggested by the court was to prevent disruption, but no disruption occurred in the *Eisner* situation. The court further stated that any school control over publications should be limited by procedural safeguards, among which it listed specification of the manner of submission, the party to whom submission must be made, and the time within which a decision must be rendered. Such safeguard should also include an adversary proceeding for settlement of disputes and the right of appeal.

The court further remarked,

> "The remedy for today's alienation and disorder among the young is not less but more free expression of ideas. In part, the First Amendment acts as a 'safety valve' and tends to decrease the resort to violence by frustrated citizens. Student newspapers are valuable educational tools and also serve to aid school administrators by providing them with an insight into student thinking and student problems. They are valuable peaceful channels of student protest which should be encouraged, not suppressed."

Riseman et al v. School Committee of Quincy, Civil Action No. 70-964-F, September 29, 1970.

The First Circuit Court of Appeals has issued a temporary restraining order stopping the Quincy, Massachusetts, board of education from enforcing rules on distribution of unapproved literature on school grounds. The Appeals court also ordered that plaintiff be permitted to proceed in forma pauperis.

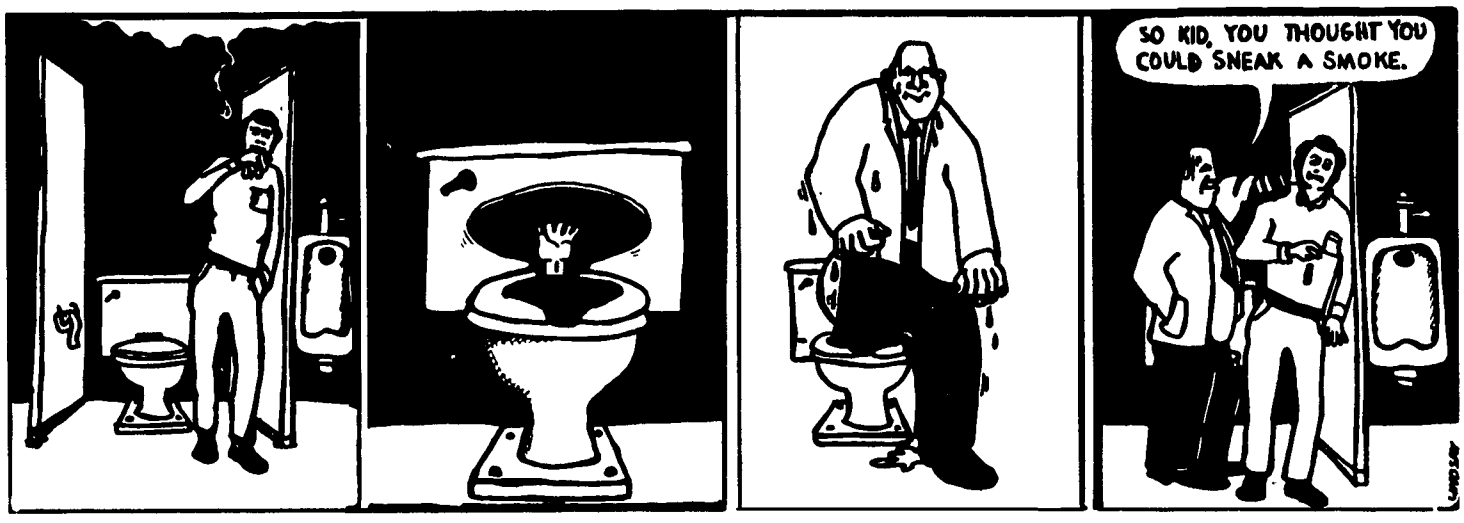
The plaintiff is a Quincy schoolboy who was suspended last spring for five days for distributing literature on the April 15 Vietnam Moratorium on campus. School officials employed a rule designed to prohibit advertising to stop Riseman's distributions. Riseman is attacking the school rule on the grounds of vagueness, denial of free speech, denial of due process, and overbroadness.

Appeal was made on the denial of a temporary restraining order by the District court in Boston. The Appeals court's order specifically stated, "Students shall have the right to engage in orderly and not substantially disruptive distribution of such papers on the school grounds, provided that neither the distributors nor the distributees are then engaged, or supposed to be engaged, in classes, study periods, or other school duties." The right to determine time, place, and manner of distribution was left with school officials. Michael Altman of the Boston Legal Assistance Project and Carolyn Peck of the Center for Law and Education are attorneys in the action.

STUDENT ADVOCACY CENTER IN DAYTON; EXPERIMENT IN EDUCATIONAL LITIGATION

A concerted effort to use the courts and the legal approach to influence educational policy in the public schools of a single city will be made by the Center for the Study of Student Citizenship, Rights, and Responsibility in Dayton, Ohio. The center, which is financed by the Office of Economic Opportunity and housed at Central State University, will attempt to build a constituency of consumers of education to whom the public schools will feel answerable.

In its initial year, the center proposes to engage in programs designed to increase the



Ripped off from the underground press.

amount of information available to the public on the operation of the schools and to encourage people to press their grievances against the programs and policies of the schools. The center has already interested itself in dropouts, disciplinary procedures, relative availability of resources and services, and special education.

The director of the center is Art Thomas, former education director of Dayton Model Cities. He was fired from the post after he led black students out of a Dayton high school during racial disturbances there. He is suing to protest the dismissal. Thomas is black, but the activities of the center are not limited to black students.

"Vague and confused"

NO CONSTITUTIONAL RIGHT TO SIT OUT PLEDGE OF ALLEGIANCE IN HICKSVILLE

Richards v. Board of Education Union Free School District #17, Civil Action No. 70-C-625 (E.D.N.Y.) July 10, 1970.

Suspension of a student for refusal to participate in patriotic exercises has been upheld by Judge Anthony J. Travia of the federal District court for the eastern district of New York. The judge ruled, in dismissing an action brought by a student at Hicksville Junior High, Hicksville, L.I., that no grounds for a constitutional claim were involved in a school rule that required him to stand silently or leave the room during the recitation of the Pledge of Allegiance and singing of the National Anthem.

Although the defendant did not testify in court, the judge relied on the transcript of a school board meeting at which he had presented his case to reach the judgment that his refusal to stand was based on "vague and confused feelings." The judge quoted the following testimony in his opinion as indication of Richard's feelings:

> "Well, I told them that I didn't feel that there is liberty and justice for all in this country, so I felt that it is a non-existent thing, and I didn't feel that I was pledging to ideals, I felt – although I do believe in those ideals – I felt that I was pledging to a thing that is written, or that is believed by many people, that is a fallacy."

The youth also told the board that the Star Spangled Banner was a "war-monger" song.

Richards had been suspended five days for insubordination after he sat down during patriotic exercises. After distinguishing the case from cases in which children's religious beliefs were affronted and after stating various state laws requiring "instruction in patriotism and citizenship," the court stated that the plaintiff's acts were not protected under *Tinker v. Des Moines* [393 U.S. 503 (1969)] because they were accompanied by disruption. The *Tinker* case specifically does not protect free speech in schools when it produces disruption, although it also states that fear of disruption is not sufficient grounds for limiting free speech.

According to Travia's opinion, the disruption consisted of "unfriendly facial motions of other students" attested to by the teacher, and "derogatory comments" made by other students on two occasions. This, the teacher had testified, interrupted the taking of roll and other administrative work which had to be done by the teacher during the ten-minute homeroom period. The patriotic exercises took three minutes, he said, and even without other interruptions he frequently is rushed to complete this work.

Tinker, however, also notes:

> "Any departure from absolute regimentation may cause trouble. Any variation from the majority's opinion may inspire fear. Any word spoken . . . that deviates from the views of another person may start an argument or cause a disturbance. But our Constitution says we must take this risk . . . ."

Tinker also states that it is disruption of the *educational* process that is to be avoided.

The *Richards* opinion noted but did not discuss, *Frain v. Baron* [307 F. Supp. 27 (E.D.N.Y. 1969)], in which the factual situation was strikingly similar. In *Frain,* New York City students brought an action in the Eastern District objecting to requirements that they leave the room or stand silently during recitation of the Pledge of Allegiance. These students objected to the same phrases in the Pledge on the same grounds with the same justification. The *Frain* court stated that, "The policy of the New York City Board of Education is a sincere attempt to prevent disorders which may develop as the reaction of infuriated members of the majority to the silent dissent

expressed by plaintiffs. The flaw in the policy is that the constitution does not recognize fears of a disorderly reaction as ground for restricting peaceful expression of views."

The *Frain* decision, written by Judge Orrin G. Judd, issued a preliminary injunction halting the practice and asking for further argument.

An appeal is being entered in the *Richards* case. The Center for Law and Education is of counsel. The plaintiff will argue on appeal that the disruption cited in the *Richards* opinion was not sufficiently serious, even under the *Tinker* exception, to warrant a five-day suspension. No disciplinary action was taken against those who differed publicly with Richards. The appeal will also be directed toward the articulation of a standard on what constitutes behavior under *Tinker* that "materially disrupts classwork or involves substantial disorder or invasion of the rights of others." [393 U.S. 503,513].

EDUCATION RIGHTS ATTORNEY

The Center for the Study of Student Citizenship, Rights, and Responsibilities [see above] is seeking an attorney to engage in a wide variety of education litigation. Please write to Art Thomas, Director, 5309 Eastport Avenue, Dayton, Ohio 45418 stating qualifications and requirements.

NOTES ON CONTRIBUTORS

Jerome T. Murphy, now a doctoral candidate at the Harvard Graduate School of Education, was a member of the legislative staffs of the Office of Education and the Secretary of Health, Education, and Welfare from 1964 through 1968. In 1968 and 1969 he was associate staff director of the National Advisory Council on the Education of Disadvantaged Children. **David L. Kirp** is director of the Center for Law and Education. **Tom Parmenter,** *bon vivant,* is also editor of *Inequality in Education.*

UNION TEACHERS BACK STUDENT RIGHTS

The annual convention of the American Federation of Teachers adopted a resolution on "democratization of the schools" calling for greater student freedom from school-imposed regimentation. The resolution, adopted August 19, 1970, stated that students should have freedom of speech and expression, including freedom of dress and grooming, freedom to picket or petition, and freedom to publish and distribute literature on school grounds, as well as freedom of assembly and association, including the right to organize at school, all without "repression by administrators or teachers."

SUPREME COURT LETS SCOVILLE STAND

On October 12, 1970, the Supreme Court denied a petition for certiorari by the defendant school board in *Scoville v. Board of Education of Joliet Township High School District 204.* The Appeals Court decision, discussed in some detail in *Inequality in Education,* Number Five, upholds the right of high school students to distribute "material critical of school policies and authorities" on school grounds.

INEQUALITY IN EDUCATION
Number Six, November 13, 1970
Center for Law and Education
Publisher
38 Kirkland Street
Cambridge, Massachusetts 02138

Co-Chairmen:
Abram Chayes
Harvard Law School

David Cohen
Harvard Graduate School of Education

Director: David Kirp

Editor: Tom Parmenter

Production and Circulation: Kathryn A. Wright

The Center for Law and Education is an interdisciplinary research institute established by Harvard University and the United States Office of Economic Opportunity to promote reform in education through research and action on the legal implications of educational policies, particularly those policies affecting equality of educational opportunity. *Inequality in Education* is distributed six times a year.

Clothing; Comparability; Parents; Standing

TITLE I

PARENTS OF EDUCATIONALLY DEPRIVED MAY SUE ON TITLE I, COURT RULES

Colpitts et al v. Richardson et al, Civil Action No. 1838 (D.C. Me. October 20, 1970).

In an important decision, a federal District court in Maine has held that parents of poor and educationally disadvantaged children have standing to sue to enforce Title I of the Elementary and Secondary Education Act of 1965 [20 U.S.C. Sec. 241a et seq], and that federal courts have jurisdiction over such an action.

This class action was brought by a parent of educationally deprived children in Calais, Maine on behalf of her children and all other disadvantaged children in the Calais system. Plaintiffs contend that although Title I was enacted by Congress specifically to help local school districts meet the special educational needs of poor children, the Calais School Unit has used a substantial portion of Title I funds for general school purposes which only incidentally benefit the "target children" who are the sole beneficiaries of the Act. The defendants, the local, state and federal educational officials responsible for the administration of Title I in Calais, have denied plaintiffs' allegations and also moved to dismiss the action on the grounds that the plaintiffs lack standing and the court lacks jurisdiction.

On October 20, 1970, at the conclusion of a hearing, Judge Edward T. Gignoux denied the motions to dismiss. Citing, *inter alia, Flast v. Cohen* [392 U.S. 83 (1968)], *Peoples v. U.S.* [427 F. 2d.561 (D.C. Cir. 1970)], and *Gomez v. Florida* [417 F. 2d. 569 (5th Cir. 1969)], the court held that parents of Title I "target" children have standing to seek judicial enforcement of Title I since such children are the intended beneficiaries of the Act. [20 U.S.C. Sec. 241a.] The court also agreed with plaintiffs' contention that the "right to an education" secured to each plaintiff by Title I is itself such a precious and important right that the court could not conclude "to a legal certainty" that less than $10,000 was "in controversy" as to each child. [*St. Paul Mercury Indemnity Co. v. Red Cab Co.*, 303 U.S. 283, 288 (1938).] Since plaintiffs' claims arose under a federal statute, the court concluded that it had jurisdiction as against all defendants under the "federal question" jurisdiction statute [28 U.S.C. Sec. 1331(a).]

The Secretary of Health, Education and Welfare (HEW), the U.S. Commissioner of Education, and the Maine Commissioner of Education also pressed upon the court the contention that even if there was standing and jurisdiction to enforce Title I against the local Calais defendants, the plaintiffs have no cause of action to enforce Title I against them. But the court held that insofar as the complaint alleged that state and federal officials have failed to perform statutory duties to enforce Title I in Calais, and that such failure has adversely affected the rights of the plaintiffs, the complaint stated a cause of action against state and federal as well as against local defendants. The court expressly reserved opinion, however, as to what relief might be appropriate should plaintiffs later succeed in proving the allegations of their complaint.

Plaintiffs are represented by George S. Johnson of Pine Tree Legal Assistance and Mark G. Yudof and Jeffrey W. Kobrick of the Center for Law and Education. The Secretary of HEW and the U.S. Commissioner of Education are represented by Peter Mills, United States Attorney, and John B. Wlodkowski, Assistant United States Attorney. The Maine Commissioner of Education is represented by Charles R. Larouche, Assistant Attorney General. Calais school officials are represented by Francis A. Brown, of Calais.

COURT ORDERS PARENTAL PARTICIPATION IN SAN JOSE'S TITLE I PROGRAMS

Sanchez et al v. Rafferty et al, Civil Action No. C-70 1633, 1970.

Plaintiffs in a Title I suit brought against the San Jose, Cal., Unified School District have gained a significant degree of parental participation in compensatory education through a consent decree.

The decree provides that the school district enter into a contract with some agency responsive to the needs of parents of disadvantaged children and to the communities from which they come. The agency's responsibility will be to effect "meaningful parent and community participation in the planning, operation, and appraisal of all Title I programs in the district and the regulations, guidelines, and program guides promulgated pursuant thereto."

The decree also included a minimum definition of meaningful participation. The community advisory committee for Title I is to be composed of at least 75 per cent parents or community representatives. School employes who otherwise fit that description are to be counted as representing the district. The committee is to participate in all policy making for Title I, although final approval remains with the school board. Policy decisions of the community board cannot be made unless 51 per cent of those present and voting are parents or community representatives. The district is to supply comprehensive information on its Title I projects including education and training for members of the advisory committee. If members of the committee request it, meetings will be conducted in Spanish as well as English. Members of the committee are to be "permitted and encouraged" to visit the schools and discuss the programs with teachers and school officials. The school district will make an annual independent financial audit of the Title I program. The advisory committee is to prepare for the state superintendent and the U.S. Commissioner of Education an annual evaluation of the program; the school system is not to participate in the evaluation except by providing information as requested; the advisory committee can seek outside consultation if it wishes.

Plaintiffs were represented by Stephen Manley, Grace M. Kubota, William Dawson, Joel G. Schwartz, and James N. Ono of the Santa Clara County Legal Services Project of San Jose.

CONTINUING SAGA OF COMPARABILITY; CONGRESS SETS NEW JULY 1972 DEADLINE

The U.S. Office of Education has once again issued regulations requiring that services offered by a school district to Title I schools be comparable with those offered in non-Title I schools before the effects of Title I are added in, but the exceptions to the rule may prove more important than the rule. The new requirements will not take effect until July 1972.

The regulations require that school systems submit financial data showing expenditures of state and local funds in Title I and non-Title I schools showing teachers' salaries, salaries of other instructional personnel, costs of equipment and books, and the ratio of teachers and other instructional personnel to children. If this data shows more than 5 per cent variation between schools receiving Title I funds and schools not receiving them, USOE requires submission of a plan for correction of the discrepancies. This data and the plans are to be submitted by July 1971. The requirements will be enforced through intervention and mediation by state education agencies and USOE as well as by fund cutoffs.

The new regulations bear a close resemblance to the memorandum on comparability issued by USOE last spring. [See *Inequality in Education*, Numbers Three and Four, page 37.] This memorandum was quickly scotched by Congressional action moving the deadline to 1972. [See *Inequality in Education*, Number Five, page 22.] But there are important differences.

First, there is the question of teachers' salaries, which are by far the most important source of differences in per pupil spending. The most important source of differences in teachers' salaries is seniority pay, but the new regulations exempt differences in per pupil costs due to differences in seniority pay from the computation of comparability. Teacher seniority pay was included in the spring memorandum. The new regulation does require that differences in teachers' pay due to merit raises or special training should be included in calculating comparability.

The second significant aspect of the new guideline is that the relevant comparison is made between schools actually receiving Title I funds and those not receiving such funds. Districts have

discretion to target funds to any school which has a higher than average concentration of poor children. This means that districts will be able to pick those schools in the eligible group with the highest per pupil expenditures and then average the schools with low per pupil expenditures (which are eligible but not receiving Title I funds) with the non-eligible schools with high per pupil expenditures. This will lead to two results:

> Title I aid will not be going to the neediest schools;
>
> The district will not be found in violation of the comparability requirements.

COMMUNITY PARTICIPATION SUPPORTED IN THIRD CIRCUIT MODEL CITIES CASE

North City Area Wide Council, Inc., et al v. Romney, No. 18,466, (3d Cir) July 14, 1970.

The Third Circuit Court of Appeals has given strong support to community participation in federal programs in an opinion on administration of the Model Cities program in Philadelphia. In reaching its opinion, the court relied on requirements in the Demonstration Cities Act [42 U.S.C.A. §3301 *et seq*] of "widespread citizen participation" and on repeated policy statements on community involvement by the federal program administrators. The Department of Housing and Urban Development had objected to Philadelphia's programs, according to the opinion, "because of insufficient involvement by the city and too much reliance on AWC in both operation and evaluation of the program." AWC is the North City Area Wide Council, a coalition of community organizations which had contracted with the city to provide citizen participation. Philadelphia responded to HUD's request by substantially reducing AWC's role in the program. This change in the program was made unilaterally, without AWC's participation. The grant then came through from HUD and the city began setting up a new community group to replace AWC which refused to continue its participation under the new circumstances. AWC then brought a class action seeking to stop the program until the legality of the changes was established. The District dismissed the suit for lack of standing on the part of AWC and further held that neither the city nor HUD had violated any acts or regulations.

The question of standing was not pressed by the government because of recent Supreme Court decisions [See *Association of Data Processing Service Organizations, Inc. v. Camp*, 397 U.S. 150 (1970); *Barlow v. Collins*, 397 U.S. 159 (1970)]. The government did argue that the action was not reviewable because it was "agency action . . . committed to agency discretion by law" [5 U.S.C. §701(a)(2)]. The court stated that this assertion was incorrect and that the question concerned agency conformity to statutory requirements, which is reviewable.

The court ruled that both HUD and the city had violated the Demonstration Cities Act by making fundamental changes in the program without community participation:

> "As noted above, the issue is not citizen veto or even approval, but citizen participation, negotiations, and consultation in the major decisions which are made for a particular Model Cities Program. While not every decision regarding a Program may require full citizen participation, certainly decisions which change the basic strategy of the Program do require such participation."

Although the court stated that the community participation requirements of the Demonstration Cities Act were novel, they bear a striking resemblance to the Title I regulation calling for "maximum practical involvement of parents of educationally deprived children in the area to be served in the planning, development, operation, and appraisal of projects. . . ." [45 C.F.R. Sec. 116.8(f)].

LAW & EDUCATION CENTER IN NEW HOME

The Center for Law and Education has moved to new quarters, providing us ample space to house our enlarged staff of attorneys. The new address is:

Center for Law and Education
Harvard University
38 Kirkland Street
Cambridge, MA 02138.

Our phone number is 617-495-4666.

PROVIDENCE SUIT ALLEGES TYPICAL RANGE OF URBAN TITLE I VIOLATIONS

Babbidge v. Richardson, Civil Action No. 4410 (D.C.R.I.), filed September 11, 1970.

A lawsuit asserting a wide range of Title I violations, many of them typical of the sort found in northern urban school systems, has been filed by a group of poor parents against the Providence, R.I., school board and against the federal and state agencies and officials responsible for overseeing the Providence programs.

Central issues raised by the suit are parental involvement in the Title I process, use of Title I funds for the benefit of ineligible children, and use of Title I funds to purchase for poor children what state and local funds purchase for others.

The suit questions the spending of some $9 million in Title I funds since the beginning of the program in 1965, both as a matter of contract between the three levels of government and as a matter of conformity to federal regulations and guidelines which have the force of law.

In its first three years of Title I operations, Providence had no parental involvement in Title I whatsoever. In the fourth year, 1968, a committee was appointed by Providence school officials. Many of the members of the committee were Providence school officials or parents employed by the school system. By 1969, a more representative parents' committee began to emerge from the poor community.* This group began to press for more power, including taking away the voting power of all school department personnel and giving the parents' committee a veto over project applications. A year after these community-based changes began, the parents' group voted to investigate complaints about the city's programs. According to the complaint in the suit, they were afforded no cooperation and their suggestions were summarily dismissed. By April 1970 the committee had been disbanded under pressure from the city superintendent of schools and a new committee, without veto power, was formed.

The suit alleges that only once have any parents been permitted to make an adequate examination of the city's Title I proposals. In that instance, in 1970 examination was permitted only after two members of the committee filed suit in state court and obtained an injunction. Even so, the committee did not receive copies of the 1970 summer application until four days before it was to be submitted to the state education department for approval. The committee asked the state for more time, but the request was refused, although the city did promise to deliver the 1970-71 application to the committee by June 15. The committee received it July 27, just four days before it was due to be submitted to the state department. Nor has other information on the Title I program been made available to parents, the suit charges.

The suit attacks the Providence concentration formula, which makes any child eligible for Title I services, regardless of family wealth, who lives in a census tract with a proportion of poor children higher than that of the city as a whole.

Violations of the supplement-not-supplant standard are also alleged in the suit. Title I funds, it is stated, are used to provide services for children in the eligible areas which are identical with services paid for elsewhere out of state and local funds. These suspect programs include remedial reading services, special education classes, and guidance counselling.

A further basis for the suit is found in Program Guide 44, Guideline 4.7, issued by the U.S. Office of Education, which requires that Title I funds add 50 per cent to the state and local allocation per pupil. Providence adds only about one-quarter to its non-federal Title I expenditures, $200 in Title I funds and about $900 in state and local funds.

Remedial action sought in the suit includes injunctions requiring conformance to the laws, regulations, guidelines, and assurances of the Title I process on the part of local, state, and federal officials, establishment of an information program on Title I for parents, affirmation of the power of the parents' advisory committee to take a significant part in the Title I process (including hearing complaints, preparing a general plan, and assisting in choosing personnel).

The suit also asks appointment of a master to run the Title I programs in Providence until they are brought into conformance with the laws, and, finally, that illegally expended Title I funds be reallocated to lawful Title I projects.

Attorneys in the action include Cary J. Coen, Joseph F. Dugan, and Harold E. Krause Jr.,

of Rhode Island Legal Services; Mark G. Yudof and J. Harold Flannery of the Center for Law and Education; and Michael B. Trister of the Washington Research Project of the Southern Center for Policy Studies.

MASSACHUSETTS STATE BOARD ADOPTS STRONG PARENT INVOLVEMENT RULES

The Massachusetts state board of education has adopted guidelines for parent involvement in Title I that go beyond the new federal guidelines discussed elsewhere in this section. [page 32]

The Massachusetts guidelines were adopted after negotiations between the staff of Education Commissioner Neil V. Sullivan and the Title I Task Force, a coalition of 25 Community Action Programs with more than 20 other groups, including the Massachusetts Welfare Rights Organization, the state Office of Economic Opportunity, the Center for Law and Education, Cape Cod and the Islands Legal Services, the Boston Title I Enrichment Advisory Committee, and a number of other community organizations.

The Massachusetts guidelines differ most importantly from the new federal guidelines in specifying that advisory council members be elected (in elections established in cooperation with local community organizations) and in including an appeals procedure in cases where the advisory council and the local education agency differ.

The guidelines, which were adopted by the board on October 27, before the federal rules were released, appear below. The board's recommendations, which have no legal force, are omitted.

GUIDELINE I – The local education agency (LEA) shall establish a Title I parent advisory council or councils that represent parents of public and non-public school children receiving Title I services and living in eligible attendance areas as defined by Title I Regulations. In determining the size and number of parent advisory councils the LEA shall ensure parent representation from each school receiving Title I services.

GUIDELINE II – The local education agency shall provide for a parent advisory council (councils) elected by the parents of public and non-public school children receiving Title I services and living in eligible attendance areas, as identified in GUIDELINE I. The LEA shall, in formulating elective procedures, involve local organizations which serve educationally disadvantaged children and their families.

GUIDELINE III – The LEA shall provide parent advisory councils with the means to supply information concerning parents' and children's views about unmet educational needs in Title I project areas, recommend priorities among the children's educational needs and methods of satisfying those needs, and participate in the planning and appraisal of Title I programs.

GUIDELINE IV – The local education agency shall develop and maintain an information, training and technical assistance program for parent advisory council members. Such information shall include copies of official applications, and other accessible government programs for educationally deprived children and such documents and records as are available to the general public, as provided for by Public Law 91-230, Section 110.

GUIDELINE V – The local educational agency shall submit a written description of its compliance with these Title I guidelines for parent involvement with each application for a Title I project to be funded after June 30, 1971. Such description shall outline the procedure used to establish parent advisory councils and include assurance that each parent advisory council is representative, describe the LEA's information, training and technical assistance program for parent advisory council members, and explain how the parent advisory council or councils have been involved in planning the proposed project.

GUIDELINE VI – If a parent advisory council's written comments about the completed Title I proposal raise substantial doubt concerning the effectiveness of the project, the LEA and the parent advisory council may be required to furnish additional information before a final determination is made by the SEA. The LEA or the parent advisory council chairman shall have the right of appeal to the Commissioner of Education regarding the implementation of any Guideline cited herein.

MODELING IN FRONT OF 3-WAY MIRROR, USOE TRIES ON CLOTHING GUIDELINES

The United States Office of Education is attempting to establish guidelines on the use of Title I funds for clothing. Community groups in a number of cities have been seeking such funds on the grounds that adequate clothing is a prerequisite for a good education, but most educators feel that the funds that are available to them are better spent on items directly related to education, such as books and teachers. The idea is controversial and USOE's three memorandums on the subject reflect that controversy.

Guideline No. 60, issued August 14, 1970, stated that purchase of clothing under Title I programs would be permitted in certain circumstances. There had to be documentation of the need for the clothing, including evidence that funds for clothing could be gotten nowhere else. The clothing could be provided only to children *participating* in Title I programs and not to children eligible but not in a program. The guideline also required that adequate controls for provision of clothing, including evaluation of the effectiveness of the clothing component, be established. Clothing was only to be purchased as part of a comprehensive Title I program. The memorandum on the guideline was signed by Thomas J. Burns, acting associate commissioner for elementary and secondary education.

On September 15, over the signature of Acting Commissioner T. H. Bell, Guideline No. 60A was issued. 60A "expands and clarifies" 60, according to Bell. 60, Bell said, "was intended to

be read as discouraging across-the-board clothing expenditures under Title I." Additions made in 60A included a prohibition on direct payments to children or parents, a prohibition of flat rates for clothing allowances, a restatement of the requirement that clothes be supplied only to children participating in Title I activities [and quoting, without a trace of a smile Section 116.17(g) of the Title I regulations, which state that "Each project must be *tailored* . . . toward meeting . . . the . . . needs of educationally deprived children. . . . Emphasis added.], and stating that clothing expenditures could not be increased over those of the previous year, although few programs included clothing at all last year.

Then, on October 16, Bell issued Guideline No. 60B, which cancelled the prohibition on increasing expenditures over the previous year. 60B went on to state that the national average per pupil expenditure "for each child for whom clothing was provided" was about $12. The range of state averages of per pupil expenditure "for each child for whom clothing was provided" was $1 to $29. Presumably these figures represent spending for clothing only and are intended to serve as guides for states in judging how much should be spent on clothing under Title I, although neither point is clear from 60B.

There are 26 letters in the English alphabet.

USOE PREPARING GUIDELINES ON PARENT PARTICIPATION, COMMENTS INVITED

The United States Office of Education has announced that it is preparing regulations requiring parental involvement in projects paid for under Title I, ESEA. The announcement was made in a memorandum to chief state school officers released October 30 and reprinted below.

USOE has asked for comments on the proposed guidelines. A group of organizations which have been interested in increasing community participation in Title I programs expressed general satisfaction with the proposals but made a number of specific criticisms in a letter to USOE. The group asked that Section A be changed to make it clear that parents of eligible children rather than of children being served by Title I make up the parent councils and that such councils be established in every school where Title I funds are allocated and not simply for the whole school system. The letter also asked that Item 6 under Section B include a statement that training and technical assistance for parent councils is a proper use of Title I funds. Finally, the group sought establishment of an appeals procedure. They suggested that each local application to the state for Title I funds be accompanied by a statement by the parent council, setting forth agreement and disagreement with the application. It would be the duty of the state to settle such

differences, the letter suggested. The letter also asked that the guidelines be clearly labelled as minimum requirements so that states might go beyond them if they wished.

The letter to USOE was signed by representatives of the League of Women Voters, the National Welfare Rights Organization, the National Committee for the Support of Public Schools, the NAACP Legal Defense and Education Fund, Inc., the American Friends Service Committee, the Law and Education Center, the National Council of Negro Women, and the Washington Research Project of the Southern Center for Policy Studies.

After setting forth the statutory basis for the proposed guideline [§415 of Title IV of P.L. 90-247, as amended by P.L. 91-230] which gives the commissioner authority to issue rules and regulations on parent participation, Acting Commissioner T. H. Bell's memorandum, issued October 30, states:

I have, in accordance with the statute, determined that parental involvement at the local level is important in increasing the effectiveness of programs under Title I of the Elementary and Secondary Education Act. Accordingly, regulations which are being developed currently will require that each Title I application of a local educational agency (other than a State agency directly responsible for providing free public education for handicapped children or for children in institutions for neglected or delinquent children) shall include:

A. An assurance that the local educational agency has established a system-wide council composed of parents of children to be served in public and non-public schools participating in Title I activities. Where there already exists a group whose membership includes a majority of parents of children to be served or whose membership may be so modified as to include a majority of parents of children to be served, such a group may carry out the functions of a parent council. Members of such a council must be chosen in such a manner as to ensure that they are broadly representative of the group to be served. In addition, each local educational agency is encouraged to form similar councils at each school participating in Title I activities.

B. A description of the program conducted by the local educational agency to inform parents and parent councils on Title 1 in general and the project applied for in particular. Specifically, the local educational agency must state how it has developed and maintained an affirmative information program for parents and how it has and will provide parents open access to information at appropriate times and in appropriate detail, and if requested records at reasonable cost, on the following subjects:

1. The provisions of Title I and Title I Regulations;
2. The local educational agency's past Title I projects and programs, and the evaluation of those projects and programs – special emphasis might be placed on the district's assessment of the best projects conducted under Title I;
3. The Title I projects and programs which the local educational agency is currently conducting;
4. The local educational agency's plans for future Title 1 projects and programs, together with a description of the process of planning and developing those projects and programs, and the projected times at which each stage of the process will start and be completed;
5. Other Federal, State, and local programs which may be available for meeting the special educational needs of educationally deprived children;
6. The means by which parents may be included in the planning, development, and operation of Title I projects and programs; and
7. Such other information relating to parents' efforts to involve themselves in the planning, development and operation of Title I projects and programs as parents may reasonably seek.

C. A description of the activities conducted by the local educational agency to involve its parent council in the planning and development of the Title I project application. Specifically, the local educational agency must state how:

1. Appropriate school officials have been

available for consultation with the parent council on the content, administration, and evaluation of completed, existing and future Title I projects and programs at well-publicized times and places convenient to parent councils and/or representatives of their own choosing;

2. A procedure has been established to answer the questions of the parent council concerning the planning, development, and operation of a Title I project or program;
3. The parent council has had the right to inspect and obtain a reasonable number of copies of official applications, and other pertinent files, documents, and records free of charge;
4. Views of the parent council concerning the unmet needs of children residing in Title I project areas, and any priority assigned to those needs, have been incorporated into the local educational agency's planning process; and
5. Views of the parent council concerning the concentration of funds and services in specific schools and grade levels have been incorporated into the local educational agency's program development activities.

D. A description of the activities planned by the local educational agency to involve parents in the operation of the Title I project or program for which funds are sought. Specifically, the local educational agency must state how its parent council will be afforded an opportunity to:

1. Provide suggestions on improving projects or programs in operation;
2. Voice complaints about projects or programs and make recommendations for their improvement;
3. Participate in appraisals of the program; and
4. Promote the involvement of parents in the educational services provided under Title I of the Act.

E. A description of the means by which the parent council has had an opportunity to inspect and to present its views with respect to the application prior to its submission. The local educational agency must state how complaints of parent councils concerning the projects or programs described in the application have been handled.

F. Such other pertinent information as the State educational agency may require.

The provisions of this advisory statement will be implemented by a forthcoming amendment of the Title I Regulations.

T. H. Bell
Acting U. S. Commissioner of Education

Florida

TITLE I CENTER MUST INTEGRATE ALONG WITH OTHER SCHOOLS IN SYSTEM

Wright et al v. Board of Public Instruction of Alachua County, Fla., No. 29999 summary calendar (5th Cir.) August 4, 1970.

The Fifth Circuit Court of Appeals has ruled against a voluntary Title I program in Gainesville, Fla., because the plan resulted in segregation. The system, desegregated under court order last year, had set up voluntary development centers in a formerly all-black elementary school and high school using funds from Title I and other federal programs. Appelants objected because the enrollment under the voluntary plan was 249 Negroes and 34 whites in the elementary school. Expected enrollment by race in the high school program followed the same pattern.

The court directed the District court "to require that all assignments to these schools in the remedial sectors thereof be on objective and non-racial standards. Such a program is to be encouraged, but the white children in need of such training must be assigned along with the Negro children in need of such training." The court permitted the school board to continue operation of a vocational education program at the high school on a voluntary basis, but asked that a bi-racial committee be established to oversee this operation and the rest of the system, to assure that no racial classification persisted.

PUEBLO TITLE I SUIT DISMISSED

Cochiti Pueblo v. Bernalillo School District, Civil Action No. 1813 (D.C.N.M.) Dismissed, August 20, 1970. Appealed to 9th Circuit.

The federal District court in Albuquerque dismissed this action brought by five Indian Pueblos in Sandoval County, New Mexico. The suit charged discrimination against Indians, including lack of representation on the local school board, and also sought to correct alleged misuse of federal school funds under Title I, the National School Lunch Act, and the Johnson-O'Malley Act. Counts alleging discrimination and improper representation were dismissed without prejudice, but the counts dealing with misuse of funds were dismissed with prejudice.

There was no written opinion in the case, but in an oral statement, Judge Bearle Payne stated that the plaintiffs did not constitute a class and also stated that private citizens had no right to challenge the administration of federal funds.

Attorneys in the case include David H. Getches of the Native American Rights Fund, Daniel Rosenfelt of the Indian Legal Defense Fund, Sylvia Drew of the NAACP Legal Defense Fund, Inc. [See *Inequality in Education,* Numbers Three and Four, page 36.]

RIGHT TO TITLE I PROGRAMS ASSERTED BY BLACK PLAINTIFFS IN GEORGIA APPEAL

George et al v. H.B. O'Kelly et al, Civil Action No. 13714, (D.C.N.D. Ga.) June 26, 1970, appealed to 5th Circuit.

Plaintiffs in this action, all poor black children, sought to compel the Candler County (Georgia) Board of Education to accept Title I funds. The district refused to apply for the funds following a desegregation order in *United States v. Georgia* [F.Supp. (1970)] which made the district eligible for federal funds.

The District court dismissed the case June 26, 1970, on the grounds that plaintiffs had shown no racial discrimination was involved in the decision, and also because there was no showing of illegality in the administration of the schools. Plaintiffs had contended that the school system had authority to apply for up to $120,000 in Title I funds, based on the number of eligible children, and that failure to apply for these funds was a denial of equal educational opportunity. Plaintiffs argued that the injury was particularly great for black children who had in the past been assigned to segregated schools and were therefore particularly in need of compensatory education. Failure to apply for the funds when no local spending was required to obtain them was an abuse of discretionary authority, the suit stated, and constituted a continuation of segregated and inferior education for black children.

An appeal has been taken to the 5th Circuit asserting an absolute right to such programs, particularly where schools have been previously segregated. Attorneys in the case are Howard Moore Jr. and Peter E. Rindskopf of Atlanta and Elizabeth Rindskopf of the American Friends Service Committee.

SUPPLEMENTARY TITLE I LITIGATION MATERIALS

This supplement to the Center's Title I packet of last spring includes: the U.S. Office of Education's new clothing guidelines; proposed USOE parental participation guidelines with a critique prepared by a national coalition of civic organizations and poverty groups interested in Title I; recent USOE statements on comparability and public information; complaint from Title I action filed in Providence, R.I.; report of a decision on standing and federal jurisdiction from Maine; text of a consent decree on parental involvement from California; a "community" pamphlet on Title I prepared by the National Welfare Rights Organization; and the names, addresses, and telephone numbers of USOE officials responsible for receiving complaints on Title I by region.

One set of these new materials will be sent free to all OEO legal services projects. Additional copies for non-profit organizations, $2.50. Others are asked to pay $5.00. These fees go to defray printing costs. Write:

Center for Law and Education
38 Kirkland Street
Cambridge, Massachusetts 02138

Attn: Title I Supplement