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July 6, 1993

The Honorable Keith Burdette  
President, West Virginia Senate  
Building 1, Room M-229  
Capitol Complex  
Charleston, West Virginia 25305

Dear President Burdette:

On March 31, 1993 you requested, pursuant to Senate Resolution No. 24 adopted by the West Virginia State Senate on March 23, 1993, an Opinion concerning the following:

(1) Whether or not the State Board of Education exceeded its constitutional, statutory or regulatory authority in assuming administrative control of the Logan County school system;

(2) Whether or not the State Board of Education followed due process procedures (including the conduct of fair and impartial hearings with the right of affected citizens to be present and give testimony) in assuming control of the Logan County school system;

(3) Whether or not the State Board of Education exceeded its authority and responsibility by proceeding to close certain schools in Logan County, including Sharples High School, which was confirmed by an act of the Legislature on the 25th day of April, 1975; and

(4) Whether or not the State Board of Education failed to act in good faith in assuming control of the Logan County school system.

The brief answers to these questions are as follows:

(1) The State Board of Education did not exceed its constitutional, statutory or regulatory authority in assuming administrative control of the Logan County school system.

(2) The State Board of Education followed due process procedures in assuming control of the Logan County school system. However, the Logan County Board of Education waived its right to a hearing in the matter. It is not clear whether the waiver was knowingly and intelligently made. The State Board of Education did provide to the Logan County Board of Education notice of the right to hearing.

(3) The matter of the closure of Sharples High School is presently in active litigation.<sup>1</sup> Pursuant to statutory duty and mandate, the Office of Attorney General is defending the State Board of Education in that matter. Because this matter is in litigation and will be resolved by the courts, we defer to the courts.

(4) A determination of whether or not the State Board of Education acted in good faith in assuming control of the Logan County school system is beyond the scope of this Office due to the absence of any evidentiary development or record because of the waiver of hearing by the Logan County Board of Education. It is noticed that the problems in the Logan County school system were long-standing, that the State Board of Education had sought unsuccessfully through the years to address them with less drastic action, and that in ultimately assuming control, the State Board of Education complied with necessary procedures.

What follows is the analysis used in reaching our conclusions. We have also chosen to include recommendations for consideration as to future system-wide problems at the county level.

**THE MANDATES OF THE WEST VIRGINIA  
CONSTITUTION REGARDING A THOROUGH  
AND EFFICIENT SYSTEM OF FREE SCHOOLS**

In reviewing this matter, reference must first be made to the supreme law of the State; the Constitution of West Virginia. The Constitution of West Virginia provides the blueprint for the functioning of the public school system in West Virginia. The Constitution of West Virginia provides, in part, as follows:

The Legislature shall provide, by general law, for a thorough and efficient system of free schools.

W. Va. Const. art. XII, § 1.

The general supervision of the free schools of the State shall be vested in the West Virginia Board of Education, which shall perform such duties as may be prescribed by law. . . .

W. Va. Const. art. XII, § 2.

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<sup>1</sup>While the pending litigation raises the other issues addressed herein, it is our understanding that in oral argument before the West Virginia Supreme Court of Appeals counsel for the petitioners conceded that the only issue was the various school closures. See also Second Amended Petition filed April 19, 1993; Memorandum of Authorities of Respondent filed April 19, 1993 and Answer, Demurrer and Brief of Respondent. Moreover, under the Administrative Procedures Act, the time to raise the other concerns addressed herein has long since passed.

The Legislature may provide for county superintendents and such other officers as may be necessary to carry out the objects of this article and define their duties, powers and compensation.

W. Va. Const. art. XII, § 3.

The school districts into which the state is now divided shall continue until changed pursuant to act of the Legislature: Provided, That the school board of any district shall be elected by the voters of the respective district without reference to political party affiliation. No more than two of the members of such board may be residents of the same magisterial district within any school district.

W. Va. Const. art. XII, § 6.

Under our Constitution, public education is the prime function of government. In West Virginia, education is a fundamental constitutional right. Pauley v. Kelly, 255 S.E.2d 859 at 878, 884 (W. Va. 1979). Moreover, the status of education as a fundamental constitutional right is heightened because it is afforded a preferred status. W. Va. Bd. of Educ. v. Hechler, 376 S.E.2d 839 at 841 (W. Va. 1988).

Our Court has defined the constitutional mandate of a thorough and efficient system of schools as one that "develops, as best the state of education expertise allows, the minds, bodies and social morality of its charges to prepare them for useful and happy occupations, recreation and citizenship, and does so economically." Pauley, 255 S.E.2d at 877.

The Court has defined the legally recognized elements of a thorough and efficient system of schools. These elements include the development in each and every child to his or her capacity of "(1) literacy; (2) ability to add, subtract, multiply and divide numbers; (3) knowledge of government to the extent that the child will be equipped as a citizen to make informed choices among persons and issues that affect his own governance; (4) self-knowledge and knowledge of his or her total environment to allow the child to intelligently choose life work -- to know his or her options; (5) work-training and advanced academic training as the child may intelligently choose; (6) recreational pursuits; (7) interests in all creative arts, such as music, theatre, literature, and the visual arts; (8) social ethics, both behavioral and abstract, to facilitate compatibility with others in this society." Pauley, 255 S.E.2d at 877. Moreover, the Court recognized that certain support services are implicitly necessary including: "(1) good physical facilities, instructional materials and personnel; (2) careful state and local supervision to prevent waste and to monitor pupil, teacher and administrative competency." Pauley, 255 S.E.2d at 877.

The Pauley decision was sweeping in its significance. It was one of the first decisions in the country to exhaustively define the necessary elements of a thorough and efficient system of free schools. Pauley placed upon the State the mandate to insure implementation of the constitutional requirements. Clearly, West Virginia has an absolute

constitutional duty to provide a complete educational system "attentive in every detail, extending beyond ordinary parameters and further producing results without waste." Pauley, 255 S.E.2d at 874. The imposition of such an important constitutional duty to provide a thorough and efficient system of free schools necessarily carries with it such power as may be needed to fulfill the obligation. Of course, the general supervision of schools is vested in the State Board of Education. W. Va. Const., art. XII, § 2. The Constitution also contemplates local, elected school board members. W. Va. Const., art. XII, § 6.

The Court has had occasion to comment regarding the governance of the public schools. In West Virginia Bd. of Educ. v. Hechler, 376 S.E.2d 839, 842 (W. Va. 1988), it was stated that "the general supervision and administrative control over a state's public school system is generally placed in the hands of a state board of education." Moreover, the Court continued that the general supervision mandate to the State Board of Education under art. XII, § 2 of the Constitution of West Virginia, "is not an axiomatic blend of words designed to fill the pages of our State Constitution, but it is a meaningful concept to the governance of schools and education in this state. Decisions that pertain to education must be made by those who possess expertise in the educational area. . . . [O]ne need not look further than art. XII, § 2 of the State Constitution to see that the 'general supervision' of state schools is vested in the State Board of Education." Hechler, 376 S.E.2d at 842-43.

Guidance is also provided by the Court through the decision issued in Bd. of Educ. of Kanawha v. W. Va. Bd. of Educ., 399 S.E.2d 31 (W. Va. 1990), wherein it was held that the State Board had the power to approve or disapprove school consolidation and closure plans adopted by county boards of education. In so deciding, the Court explicitly relied upon the Constitution's mandate that the supervision of the free schools of the state be vested in the State Board of Education. Bd. of Educ., 399 S.E.2d at 33. The Court found that the State Board is constitutionally "empowered to take whatever steps are necessary to fulfill its obligation to achieve the educational goals of quality and equality." Bd. of Educ., 399 S.E.2d at 35.

Article XII, § 2 of the West Virginia Constitution clearly charges the State Board with a duty to ensure that the constitutionally mandated educational goals of quality and equality are achieved. Bd. of Educ., 399 S.E.2d at 35, citing, Bailey v. Truby, 321 S.E. 302 (W. Va. 1984). Further, the State Board's authority to act in furtherance of this constitutional obligation overrides any legislative grant of authority to the county boards. Bd. of Educ., 399 S.E.2d at 35, citing, Bailey, 321 S.E.2d at 312.

**THE STATUTORY FRAMEWORK OF STATE  
BOARD OF EDUCATION OVERSIGHT TO  
INSURE THAT THE CONSTITUTIONALLY  
MANDATED EDUCATIONAL GOALS OF  
QUALITY AND EQUALITY ARE ACHIEVED**

With a statement of purpose being to provide assurances that the constitutional charge of providing a thorough and efficient system of education be provided for all public school students in West Virginia on an equal educational opportunity basis, the

Legislature enacted West Virginia Code § 18-2E-5 regarding school accreditation, standards compliance board, approval status, and intervention to correct impairments.

In pursuit of the constitutional fulfillment of a thorough and efficient system of education, the Legislature mandated that the State Board of Education:

Shall . . . establish and adopt high quality educational standards in the areas of curriculum, finance, transportation, special education, facilities, administrative practices, training of school district board members and administrators, personnel qualifications, professional development and evaluation, student and school performance, a code of conduct for students and employees and other such areas as determined by the state board of education . . . Each school district shall submit an annual improvement plan designed around locally identified needs showing how the educational program of each school in the district will meet or exceed the high quality standards.

W. Va. Code § 18-2E-5(b) (1988 Repl. Vol. and 1992 Cum. Supp.) (emphasis added).

Further, the Legislature insisted that the statewide system for accrediting or classifying public schools shall be a performance-based system. The State Board was directed to establish a schedule and review each school in a district and each local school district for accreditation purposes based on the information received through the performance-based accreditation system. W. Va. Code § 18-2E-5(b) (1988 Repl. Vol. and 1992 Cum. Supp).

The Legislature definitively spelled out areas of measurement of student and school performance. These areas are:

1. The acquisition of student proficiencies as indicated by student performance by grade level in the various subjects tested under the statewide testing of educational progress program and other appropriate measures;
2. School attendance rates;
3. The student dropout rate;
4. The percent of students promoted to the next grade and the number of waivers of the promotion standard granted;
5. The graduation rate;
6. The average class size;
7. The pupil-teacher ratio;
8. The number of exceptions to pupil-teacher ratio requested by the county board and the number of exceptions granted;

9. The number of split-grade classrooms;
10. The percentage of graduating students entering postsecondary education or training;
11. The pupil-administrator ratio;
12. Parent involvement;
13. Parent, teacher and student satisfaction; and
14. Operating expenditures per pupil.

W. Va. Code § 18-2E-5(c) (1988 Repl. Vol. and 1992 Cum. Supp.).

On the basis of information as to the above-listed criteria, the State Board was charged by the Legislature with the duty to issue to every school either full or probationary accreditation status. Full-accreditation status must be given when a school's performance on the criteria is at expected levels if all high quality educational standards are being met. Probationary status must be given when the performance falls below what is expected. W. Va. Code § 18-2E-5(c) (1988 Repl. Vol. and 1992 Cum. Supp.).

As to school district boards of education, the Legislature provided that the State Board must issue one of four levels of accreditation to each district. The four levels are: (1) full approval, (2) conditional approval, (3) probationary approval or (4) non-approval. W. Va. Code § 18-2E-5(f) (1988 Repl. Vol. and 1992 Cum. Supp.).

We must review the definition of each level as provided by the Legislature.

Full approval shall be given to a district board whose educational system meets or exceeds all of the high quality standards adopted by the state board and whose schools have all been given full accreditation status. Full approval shall be a period not to exceed four years.

Conditional approval shall be given to a district board whose educational system meets at least ninety-five percent of the high quality standards adopted by the state board and in which at least ninety-five percent of the schools have been given full accreditation status provided no school is seriously impaired. Conditional approval shall be for a period not to exceed one year. Provided, That for counties that have fewer than ten schools, the state board of education may grant conditional approval without regard to the ninety percent based on the total quality of the county educational program.

Probationary approval shall be given to a district board of education whose educational system has met less than ninety-five percent of the high quality standards, or which has eleven percent or more schools in the district given probationary status or serious impairment. Probationary approval is a warning that the district board must make specified

improvements. If the number of schools in the district given probationary status is not reduced to a number that would allow full accreditation to be granted in the following year, the district board shall be automatically given nonapproval. In addition, nonapproval shall be given to a district board of education which fails to submit an annual program plan or fails to demonstrate a reasonable effort to meet the high quality standards. The state board of education shall establish and adopt standards to identify school districts in which the program may be nonapproved or the state board may issue nonapproval status whenever extraordinary circumstances exist as defined by the state board of education.

W. Va. Code § 18-2E-5(f).

When a district is given nonapproval status, the State Board is mandated by the Legislature to declare a state of emergency in the district and further has the discretion to intervene in the operation of the district. In intervening, the State Board may limit the authority of the district superintendent and district board of education as to the expenditure of funds, the employment and dismissal of personnel, the establishment and operation of the school calendar, the establishment of instructional programs and policies, and such other areas as may be designated by the State Board by rule. The State Board may also take the direct action necessary to correct the impairments and can declare the office of the district superintendent vacant. W. Va. Code § 18-2E-5(g) (1988 Repl. Vol. and 1992 Cum. Supp.).

In order to make the determination of accreditation status of schools and the approval status of school districts, the State Board was mandated to appoint educational standards compliance review teams to make unannounced on-site reviews of the programs in any school or district in the State and to assess compliance with the high-quality standards adopted by the State Board. The compliance team is required to report the findings of its on-site review to the State Board as part of the determination of accreditation or approval status. W. Va. Code § 18-2E-5(h) (1988 Repl. Vol. and 1992 Cum. Supp.). It must be noted that the State Board has a duty to make all the accreditation information available to the Legislature, the Governor, the general public, and any individual who requests the information. W. Va. Code § 18-2E-5(h) (1988 Repl. Vol. and 1992 Cum. Supp.).

In accordance with the mandates of the Legislature, the State Board promulgated West Virginia Board of Education Policy 2320: Performance Based Accreditation System; High Quality Standards, Annual Performance Measures, Annual Improvement Plan, On-Site Review. The Policy essentially tracks the legislative requirements. Policy 2320 addresses high quality qualitative and quantitative standards as to curriculum, finance, transportation, special education and other programs, facilities, administrative practices and school-community relations, training of school district board members and administrators, personnel qualifications, professional development and evaluation, student and school performance. It also addresses the specifics of annual performance measures, annual district improvement plans, school accreditation, serious impairment, school district approval, and on-site reviews.

Important to the issue at present is the definition of the extraordinary circumstances that exist when the State Superintendent and the State Board may determine a school district to be on nonapproval status. Policy 2320 provides in part:

Extraordinary circumstances are conditions that constitute major impediments to the provision of educational programs and services for students. Extraordinary circumstances may include: misappropriation of funds; misuse of funds; or casual deficit for two or more years; a budget deficit above three (3) percent for any one year; falsification of reports and/or failure to submit required reports; violation of State Code and state board policies which impacts the provisions of any appropriate educational program; unhealthy or unsafe conditions for students and/or employees; or failure to provide a high quality and equal educational opportunity for students.

#### **THE FACTS REGARDING THE TAKEOVER OF LOGAN COUNTY SCHOOLS<sup>2</sup>**

The takeover of the Logan County School district had been brewing for a long period of time. The first problems leading to the takeover arose in 1985. An April 3, 1985 letter to the Certification Analyst for Logan County Schools from a State Department of Education Certification Unit Coordinator, which was copied to the Logan County Superintendent and to the Assistant Superintendent, raised concerns regarding the extensive number of professional school personnel being assigned out-of-field. On September 20, 1985 the State Director of School Transportation wrote to the Logan County Schools Superintendent, Dr. Samuel P. Sentelle, regarding the fact that Logan County was not in compliance with numerous transportation indicators.

On October 8, 1985 a letter from State Superintendent, Tom McNeel, was sent to Superintendent Sentelle noting several substantial deficiencies having serious legal and fiscal implications with respect to the special education program. On January 15, 1986 a Department of Education Unit Coordinator of Certification wrote to Mr. Jack Garrett, Assistant Superintendent of Logan County, about serious problems with respect to appropriate licensure of special education teachers, the logging system and certification of general and vocational education teachers. The letter was copied to Dr. Samuel Sentelle, Superintendent, Logan County Schools, and Callie Dent, Logan County Schools.

A letter to State Superintendent McNeel from Dr. Sentelle dated February 20, 1986 acknowledged certification problems and specifically recognized that Logan County would not be able to claim certain instructors on the certified payroll and that accordingly the special education child count would be reduced. A further letter dated

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<sup>2</sup>We have reviewed the following with respect to factual development: All material received by the West Virginia House of Delegates' subcommittee of the Education Committee charged with inquiring into the State Board of Education's takeover of the Logan County Schools, including tapes and transcripts of testimony before the subcommittee.



The Honorable Keith Burdette  
July 6, 1993  
Page 9

April 2, 1986 from Superintendent Sentelle indicates specific actions had been taken to address certification problems.

State Superintendent McNeel sent Dr. Sentelle a formal notice dated June 12, 1986 advising that 33 professional educators in the Logan system held no licensure and several others were assigned outside their certification. A conference was scheduled to give Dr. Sentelle an opportunity to show why state aid should not be withheld because of the licensure violations.

On June 27, 1986, Dr. Sentelle confirmed in writing actions that would be taken to "guarantee" that problems with certification would not develop in the future. However, on July 16, 1986, State Superintendent McNeel wrote to Logan Superintendent Dr. Sentelle and noted that 12 of the teachers remained uncredentialed and that one who had been employed for two years could not be certified as that individual did not even have a college degree. Dr. Sentelle was informed that the State Board on July 12, 1986 had voted to censor the Logan County Superintendent for his failings and to reduce state aid to Logan County in the amount of \$200,000, of which \$169,875 would be recoverable if the certification requirements were met by the end of the fourth school month of the 1986-87 school year.

There are numerous letters indicating that problems continued with respect to certification, licensure, and waivers for out-of-field teaching throughout the 1986-87, 1987-88, 1988-89, and 1989-90 school years. During the time of these continuing problems, on September 10, 1987 Ms. Cosma Crites was named Director of Personnel for Logan County schools. By June, 1988, it became clear that at least sixteen of Logan County's professional employees worked the entire school year without licensure for their assignments. The documents clearly indicate numerous attempts and efforts on the part of the State Department of Education to offer technical assistance and support. Also, in June and July, 1988, the new Logan County Schools Superintendent, Wesley Martin, was notified as to the various problems. Letters regarding the continuing problems continued through the 1989-90 and 1990-91 school years.

In July of 1991 Logan County was notified by the State Department of the accreditation status of each school and the district's approval status. Logan County received a probationary approval status. Fifteen schools in the Logan County system received probationary accreditation, two received a serious impairment accreditation, and seventeen received full accreditation.

Ms. Cosma Crites became Superintendent of Logan County schools on July 1, 1991. On October 30, 1991 she was informed by Dr. Marockie, State Superintendent, that a team of improvement consultants had been appointed to Man Junior High School, which had a seriously impaired status. The improvement consultants were charged with the task of making recommendations for correction of the impairment within sixty days. The other seriously impaired school in Logan County had been closed.

From October 27 through November 1, 1991 an on-site review of the Logan County school system was conducted by the State Department of Accreditation staff. The purpose of the review, of course, was to meet the mandate of West Virginia Code § 18-2E-5. An on-site oral exit interview was conducted with Superintendent Crites, Assistant Superintendent Garrett and Administrative Assistant Jane Watkins. A draft

final report was presented to Superintendent Crites on January 3, 1992. It was specifically noted that the report was a draft, that Logan County schools could respond in writing by February 7, 1992 and that for each rating of non-compliance, a written plan for compliance should be submitted. It was stressed that the report was considered preliminary until such time as it was acted upon by the State Board and officially released. The cover page of the report noted that the Logan County Schools Superintendent could distribute the report or any part of it. It also noted that the report was not final or official.

The report presented the results of the on-site review and listed standards and/or performance measures that were not met by the school district and various schools. Each standard that was not met was followed by commentary. The school district was reviewed against 92 standards and 14 performance measures.

The report identified specific points of noncompliance in the areas of curriculum, finance, transportation, facilities, personnel qualification and professional development and evaluation. Moreover, 22 schools were randomly selected for evaluation by the on-site review team. A randomized proportionate representation of schools was selected from each programmatic level. Noncompliances by schools were also included in the report. The report appears to be finely detailed. Not only are the negatives of noncompliances detailed but an effort was made to include recommendations and positive commendations.

The report also included a School District Recommendations section which presented areas that the team determined needed to be addressed based upon the findings at the individual Logan County schools. These recommendations reflected county-wide programs, services, practices or issues and were not in the form of citations. However, it was noted that failure to address the recommendations may result in probationary or nonapproval statutes for the county.

The bottom line is that the draft report clearly placed Logan County schools on notice of serious problems of noncompliance. Moreover, on February 10, 1992 Dr. Marockie wrote Superintendent Crites regarding the severe problems with certification of professional employees that had existed since at least 1986 when monetary sanctions were imposed. Dr. Marockie advised that corrective action had to be taken immediately to avoid the possibility of a reduction in state aid and other sanctions.

Associate State Superintendent William J. Luff, Jr. also wrote to Superintendent Crites on February 19, 1992 and advised that because of the high numbers of schools on probationary status and the county-level citations, the problems of certification needed to be aggressively addressed. The letter further noted that State Department staff was available to assist Logan County in dealing with the findings of the on-site review team.

On April 1, 1992 State Superintendent Dr. Marockie again wrote Superintendent Crites a two-page letter specifying major concerns with respect to the areas of certification of personnel. Some of the identified concerns involved falsification of information.

On April 2, 1992 Superintendent Crites was provided a summary of the Final On-Site Review Report to be presented to the State Board on April 9, 1992. At that April 9, 1992 meeting of the State Board, probationary approval status was conferred on the Logan County School District and probationary accreditation status was conferred on each of Logan County's schools. Superintendent Crites was directed to provide a written response to the findings contained within the on-site review report by May 20, 1992. The response was to state how and when the noncompliances would be corrected. The Final Report for On-Site Review of Logan County schools was also issued.

On May 18, 1992 Logan Superintendent Crites provided the On-Site Review Responses. The response report was comprehensive and attempted to address each issue raised by the Final Report for On-Site Review. However, the State Department determined that the response failed to adequately address quality educational practices, did not specify instructional and curriculum modifications, did not detail changes in administrative practices, and did not include revisions to policies, practices or institutional strategies to deal with performance deficiencies identified in the schools. The State Department determined the response to be broad and general. It contained no measures of accountability and no timetables.

Dr. Marockie notified Superintendent Crites on May 26, 1992 that he had instructed Department of Education staff to begin an intensive investigation of the Logan County school system to determine the status of Logan County schools in meeting the high-quality educational standards. Areas of specific review identified were personnel, special education and financial records. A team of staff members from various offices in the State Department visited Logan County on May 26-29 and June 1-3, 1992 and reviewed personnel files of professional employees, teacher assignment schedules, school master schedules, payroll records, board minutes and other records.

This investigative team found, among other things, the following:

- + An average of 27% of the professional educators had no contract for five school years.
- + An average of an additional 28% of the professional educators had an invalid contract for five school years.
- + Very few administrative contracts existed for five years for administration working more than 200 days.
- + Some 57% of the professional educators had no valid oath as required by West Virginia Code § 18A-5-7.
- + An average of 19.3% of the professional educators either had no licensure or no appropriate licensure for their assignments in the five years reviewed.
- + At the time of the on-site review, 29.7% of the professional educators had either no license or a license inappropriate for their assignment.

- + 17% of the professionals were paid salaries higher than that for which they were eligible.
- + 29.3% of the professionals' salary classifications had been incorrectly reported on the Logan County certified list at least once during the five-year review period.
- + At least 12 certificates were obviously altered or created for the apparent purpose of obtaining a higher salary.
- + Over the five-year review period erroneous information was submitted to the State Department by Logan County schools in its certified list showing the professional employees of the county system. Submission of the erroneous information resulted in state aid funds through the School Aid Formula for Logan County being calculated incorrectly over the five-year period resulting in maximum estimated amounts of \$49,539,111.
- + There were discrepancies and inaccuracies in the teacher assignment schedules reported to the Department when compared to the school teacher assignment schedules and the school roster schedules for 12.9% of the files reviewed.
- + During the October/November 1991 on-site review, copies of evaluations for most professional employees were not available. Although copies of evaluations were placed in some personnel folders between November 1991 and the May-June investigative review, there were numerous problems with the evaluations.
- + Logan County schools continued to persist in the use of long-term substitutes without posting positions to find certified professionals.
- + Preferred position postings routinely did not include job descriptions or qualifications.
- + Personnel files were in a complete state of disarray.
- + Students who were not eligible were counted as eligible thus inflating the special education child cost resulting in receipt of additional funds to which the county was not entitled. The overpayment for 1990-91 was \$202,858, and for 1991-92 was \$92,273, and for 1992-93 was \$348,453.
- + Special education students were reported as receiving categorical instruction by a single teacher when in fact they were receiving departmentalized instruction.

On July 9, 1992 Superintendent Crites, members of the Logan County Board, and members of the staff of Logan County schools appeared before the State Board to discuss the situation in Logan County. On July 10, 1992, upon motion by Mr. MacCallum, seconded by Mr. Cook, the State Board moved that extraordinary

The Honorable Keith Burdette  
July 6, 1993  
Page 13

circumstances may exist in the Logan County School system which could justify State Board intervention in the operation of the system and that the State Superintendent be authorized and directed to communicate this determination to the Logan County Board of Education and that the State Superintendent be directed to notify the Logan County Board of its right to request a hearing on the matter before the State Superintendent pursuant to Policy 1340 regarding Rules of Procedure for Administrative Hearings and Appeals.

Pursuant to Policy 1340 with respect to the State Board determining that extraordinary circumstances may exist that could merit state intervention in the operation of a county school system, the State Board must send notice of such a determination to the county. Within five days of receiving the notice, the county may request a hearing. The State Superintendent must conduct a hearing within 20 days of receipt of a request for hearing. Such a hearing is on the sole issue of whether intervention is appropriate and supported by sufficient evidence of extraordinary circumstances.

The required notice was sent to Superintendent Crites by letter dated July 10, 1992. By letter dated July 14, 1992, Superintendent Crites informed Dr. Marockie that at a special meeting of the Logan County Board of Education held on July 13, 1992 the Board voted to waive its right to request a hearing. Superintendent Crites noted that the Logan Board was concerned that a hearing would delay necessary preparations for the opening of school and place an undue hardship on Logan County students. By letter to Dr. Marockie dated July 16, 1992, Superintendent Crites advised that in addition to waiving the right to a hearing, the Logan County Board requested a special session with the State Board so that the Logan County Board could "get on with the process of improving the educational system as best they can."

On August 5, 1992 the State Board held a special meeting to address the Logan County situation. The Board passed several motions. First, a motion passed that extraordinary circumstances existed in the operation of the Logan County school district such that it should be placed on non-approval status. Second, the State Board limited the authority of the Logan County Board as to expenditure of funds, employment and dismissal of personnel, establishment and operation of the school calendar, the establishment of instructional programs and policies to the extent that the Logan County Board could take no action with regard to these matters until authority was restored by the State Board. The Board determined that Superintendent Crites could take no official action as Superintendent until and unless she received express approval from the State Superintendent. The office of the Superintendent of Logan County schools was declared vacant as of August 16, 1992 and John D. Myers was designated by the State Board as Superintendent and Chief Executive Officer of Logan County Schools, effective August 17, 1992 for a term expiring June 30, 1996. The State Board granted to the State Superintendent all authority necessary to take whatever action the State Superintendent deemed appropriate to correct the non-approval status of the Logan County school district. Finally, the State Board requested that it receive monthly status reports from the State Superintendent or his designee regarding progress toward correcting the non-approval status of the Logan County school district.

A letter was sent by Dr. Marockie to Don Steele, President of the Logan County Board, explaining the practical effect of the motions passed on August 5, 1992 affecting the operation of Logan County schools. The Logan Board was advised that it should

The Honorable Keith Burdette  
July 6, 1993  
Page 14

continue to meet at regularly scheduled intervals. The Logan Board was also told that it could not take action on any item that concerned personnel, finance, instruction or the school calendar. Such items were to be approved by Dr. Marockie based on the recommendations of Mr. Myers, who would then report to the Logan Board what actions had been approved.

### CONCLUSION AND RECOMMENDATIONS

Considering the facts in light of both the constitutional mandate of a thorough and efficient system of free schools supervised by the State Board of Education and the statutory framework, it can only be concluded that the State Board of Education acted in compliance with the law in assuming administrative control of the Logan County school system.

Statutory and regulatory requirements were followed in the assumption of control. Doubt has developed about the appropriateness of the takeover in part because there was never any hearing on the matter inasmuch as the Logan County Board waived that due process right. With a reading of West Virginia Code § 18-2E-5(g), once the motion of extraordinary circumstance was made, the Logan County Board should have been on notice via the letter and the Code that complete intervention in the Logan County system by the State Board could follow. A hearing was the vehicle available to the Logan County Board to prevent nonapproval status and intervention. Nevertheless, it seems plain from the July 14th and 16th letters regarding the waiving of the hearing that the Logan County Board did not fully appreciate the consequences of the State Board's action. This is particularly indicated by the comment that the Logan Board desired a meeting with the State Board so that the Logan Board could move forward in improving the educational system as best it could.

The Constitution, the case law and the statutory framework place with the State Board a responsibility for providing the children of West Virginia a thorough and efficient education system. Surely, a takeover of an entire district is an extraordinary measure to be used only as a last resort when the deficiencies in the district are themselves extraordinary.

We recognize that the takeover is highly unusual and unprecedented in this State. However, the State Board has the nondiscretionary constitutional duty to remedy educational deficits. Here, there were numerous and long-standing deficits that detrimentally impacted the school children of Logan County who have a fundamental constitutional right to a quality education.

Education is the top priority in the agenda of the State. Educational foundations must not be permitted to erode. The high achievement of our children is vital if they are to succeed in an ever-increasing technological world. One need only open a recent issue of a contemporary magazine to know that employers and businesses are calling for better educated pools of workers. Our future citizens must be able to read and write well enough to meet the demands of day-to-day life in a complex world. Further, education is important to maintaining our basic institutions, and is essential for transmitting values on which our society rests. Plyler v. Doe, 457 U.S. 202 (1982). Democratic freedom demands a well-educated citizenry.

Despite concluding that the takeover of Logan County schools was legally proper, we have concerns and reservations regarding the matter. Initially, it is noted that top-down hierarchical structures are increasingly criticized as ineffective and inefficient. Such hierarchies often exclude input from parents, individual school principals, school teachers and students. Hierarchical, centralized authority, decision-making and standardization often neglect the importance of local school districts as an integral part of our culture. In rural West Virginia, the local school system is often the basic community institution. The local community must be fully involved if progress is to be made.

While there was a great deal of communication between the State Department of Education and the administrators of Logan County schools, the Logan County Board itself appears to have been left out of the flow of communication. It is our recommendation that when there are serious long-standing problems of the sort that developed in Logan County schools, the Board should be directly advised. This communication could be easily facilitated by copying the local Board presidents on communications from the State Department of Education.

The State Department should also directly advise the local boards when they conduct the required on-site systems reviews. Moreover, the oral exit interviews should be conducted not only with the district administrators but with the local boards. An immediate change should be made to the regulations to require that a local board member or members participate in the preliminary oral exit interviews at the conclusion of the on-site review.

As to the present situation, administrators and board members at the State level must regard local administrators and board members as colleagues and should be responsive to the interests of the community. Remedying the problem in Logan County must be a concerted team effort in order to be successful. We find it quite troubling that no joint board meeting was held until late spring, 1993, almost nine months after the takeover.

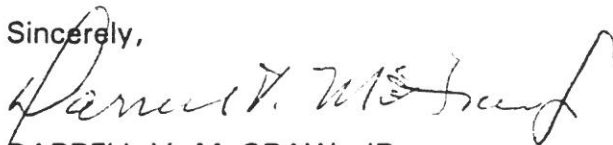
A collective and cooperative effort must be made by all parties. Most importantly, there must be involvement by all in addressing the problems. Priorities should be established as well as corrective action plans with measurable goals and specific timetables so that day-to-day operation is properly placed back in the hands of the Logan County Board and the State Department can resume its role of leadership, regulation, and assistance. We recommend that study and attention be directed by the Legislature and educators as to the specifics of what is to occur once a takeover has occurred. This is the area where the statutes and regulations are vague.

There are no statutory or regulatory guidelines directing how matters will progress once a takeover occurs. Specific statutory and/or regulatory guidelines must be developed so that all involved will know and appreciate their roles and duties. Specifics are needed as to how the direct involvement of the State Board is to be phased out. The specifics should be performance-based, observable and measurable.

The Honorable Keith Burdette  
July 6, 1993  
Page 16

We appreciate the opportunity to comment on this matter. In closing, we stress the necessity of a plan whereby the Logan County Board can assume control of the school system.

Sincerely,



DARRELL V. MCGRAW, JR.  
ATTORNEY GENERAL

DVM/jy

cc: Dr. Henry R. Marockie, State Superintendent  
Mr. John Myers, Logan County Superintendent  
Members of the State Board of Education  
Members of the Logan County Board of Education

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