

PUBLIC AID FOR THE TRANSPORTATION OF PRIVATE
ELEMENTARY AND SECONDARY SCHOOL
PUPILS IN THE UNITED STATES

by

Susan Elaine Mittereder

Dissertation submitted to the Faculty of the
Virginia Polytechnic Institute and State University
in partial fulfillment of the requirements for the degree of
- DOCTOR OF EDUCATION
in
Educational Administration

APPROVED:

M. David Alexander, Co-Chairman

Richard G. Salmon, Co-Chairman

Kenneth E. Underwood

Lawrence McCluskey

K. Forbis Jordan

Mary P. McKeown

May, 1984

Blacksburg, Virginia

PUBLIC AID FOR THE TRANSPORTATION OF PRIVATE
ELEMENTARY AND SECONDARY SCHOOL PUPILS
IN THE UNITED STATES

by

Susan Elaine Mittereder

(ABSTRACT)

The purpose of this study was to assess the legal and financial status of public aid for the transportation of private elementary and secondary school pupils in the United States. A combination of legal and survey research methodology was used to approach the study in three phases.

A survey was sent to all states to identify those which were providing publicly-funded transportation to nonpublic school pupils through November, 1982. Upon completion of this initial survey all reported state and federal court cases relating to the public financing of private school transportation were then researched, including the landmark Everson case of 1947. Through a second survey financial data for the 1981-82 school year were collected and analyzed for those states identified as providers of private school transportation aid.

The study showed that thirty states were providing transportation services to nonpublic pupils in 1982, with twenty-one of these states mandating such transportation by local school districts. The extent of publicly-funded transportation offered to private school pupils in the

provider states was found in general to be at least comparable to or possibly even more extensive than that provided at public expense to public school pupils.

The study also indicated that, excluding the Everson decision by the Supreme Court in 1947, the issue of nonpublic pupil transportation provision has been decided almost wholly on a state constitutional basis of church and state separation requirements. The exception to this has been the involvement of the federal courts in the 1970's in deciding the constitutionality of outside-district transportation provided by public funds for nonpublic pupils.

In regard to the financial analysis the ten provider states with complete fiscal data reported that \$148.6 million was spent to provide nonpublic pupil transportation services. Another \$25.5 million was estimated for private school transportation costs in five additional provider states with partial data. While the remaining fifteen provider states authorized private school transportation, a documentation of costs was not reported to the study and it is possible that recorded financial data may not exist to differentiate public and private school pupil transportation costs in these states.

ACKNOWLEDGEMENTS

There are a number of people whom I wish to thank for their invaluable assistance in helping me to complete this study. I would especially like to thank Drs. David Alexander and Richard Salmon for their continuous support, humor, and encouragement throughout the various stages of this undertaking. I cannot imagine two finer co-chairmen! A very special thanks also goes to Dr. Kenneth Underwood, whose generosity of spirit has been a gift to me in my work with him during the past several years. He has provided me with a number of opportunities that have rounded out my educational experiences at Virginia Tech. I would like to thank Dr. Larry McCluskey, whose guidance was especially valuable during the final stages of the study. I am also appreciative of the efforts of both Drs. Forbis Jordan and Mary McKeown for providing their expertise in helping to critique the study.

It is difficult to express the gratitude I feel toward my friends and family for their support. To my roommate and those friends "behind the scenes" who boosted my confidence and helped me to maintain a sense of humor, a special thanks. You know who you are! Finally, to my parents and to my sister, I could not have done it without you! Your encouragement and love have kept me going throughout all the ups and downs of my graduate program, as well as other little bumps along the way.

TABLE OF CONTENTS

	Page
ABSTRACT	ii
ACKNOWLEDGEMENTS	iv
TABLE OF CONTENTS	v
LIST OF TABLES	ix
CHAPTER	
1. INTRODUCTION	1
An Overview	1
Need for the Study	7
Purpose of the Study	12
Procedure	12
Legal Analysis	13
Financial Analysis	14
Design of the Study	16
Limitations	17
Chapter 1 Footnotes	18
2. A REVIEW OF NONPUBLIC PUPIL TRANSPORTATION CASES THROUGH <u>EVERSON</u> IN 1947	21
Introduction	21
Pre- <u>Everson</u> Cases	22
State Cases Rejecting Transportation of Nonpublic Pupils	22
State Cases Upholding Transportation of Nonpublic Pupils	28

TABLE OF CONTENTS (continued)

CHAPTER	Page
Conclusions on State Cases, 1923-1946	31
An Analysis of the <u>Everson</u> case	37
Facts of <u>Everson</u>	38
Decision in <u>Everson</u>	38
Implications of <u>Everson</u>	41
Chapter 2 Footnotes	47
3. A REVIEW OF NONPUBLIC PUPIL TRANSPORTATION CASES FOLLOWING <u>EVERSON</u>	51
Introduction	51
Post- <u>Everson</u> Cases	53
State Cases, 1947-1959	53
State Cases, 1960-1969	57
State Cases, 1970-1982	70
Conclusions on State Cases, 1947-1959	98
Conclusions on State Cases, 1960-1969	100
Conclusions on State and Federal Cases, 1970-1982	107
Summary	118
Chapter 3 Footnotes	133

TABLE OF CONTENTS (continued)

CHAPTER	Page
4. CURRENT LEGAL AND FINANCIAL STATUS OF NONPUBLIC PUPIL TRANSPORTATION IN THE UNITED STATES	146
Data on Legal Authority of Provider States to Transport Nonpublic Pupils	146
Comparison of Public and Nonpublic Transportation Services	175
Legal Status of Within and Outside District Transportation	182
Data on Financial Costs of Nonpublic Pupil Transportation in Provider States	188
Sources of Public Funding for Nonpublic Pupil Transportation	189
Public Expenditures for Public and Nonpublic Pupil Transportation	194
Recipients of State Reimbursements for Nonpublic Pupil Transportation	208
5. SUMMARY, FINDINGS, CONCLUSIONS, RECOMMENDATIONS, AND DISCUSSION	212
Summary of Legal Case Review	213
Findings on the Legal Status of Nonpublic School Transportation	219
Findings on the Financial Status of Nonpublic School Transportation	223
Conclusions and Recommendations for Further Study .	236
Conclusions	236
Recommendations for Further Study	240
Discussion	242
BIBLIOGRAPHY	249

TABLE OF CONTENTS (continued)

	Page
APPENDIX	
A. SAMPLE OF INITIAL SURVEY LETTER TO CHIEF STATE SCHOOL OFFICERS	257
B. SAMPLE FOLLOW-UP LETTER TO NON-RESPONDENTS OF INITIAL SURVEY	260
C. SAMPLE SURVEY RESPONSE CARD FOR NON-PROVIDER STATES IN INITIAL SURVEY	262
D. SAMPLE OF SECOND SURVEY COVER LETTER TO STATE TRANSPORTATION DIRECTORS	264
E. SECOND SURVEY TO STATE TRANSPORTATION DIRECTORS	266
F. SAMPLE FOLLOW-UP LETTER TO NON-RESPONDENTS OF SECOND SURVEY	269
G. GLOSSARY OF TERMS	271
VITA	275

LIST OF TABLES

TABLE	Page
2.1 Basis of State Court Decisions Rejecting Nonpublic Pupil Transportation, 1923-1946	44
2.2 Basis of State Court Decisions Upholding Nonpublic Pupil Transportation, 1923-1946	46
3.1 Basis of State Court Decisions Rejecting Nonpublic Pupil Transportation, 1947-1959	123
3.2 Basis of Court Decisions Upholding Nonpublic Pupil Transportation, 1947-1959	124
3.3 Court Decisions Interpreting Nonpublic Pupil Transportation Statutes or Practices, 1947-1959	125
3.4 Basis of State Court Decisions Rejecting Nonpublic Pupil Transportation, 1960-1969	126
3.5 Basis of Court Decisions Upholding Nonpublic Pupil Transportation, 1960-1969	127
3.6 Court Decisions Interpreting Nonpublic Pupil Transportation Statutes or Practices, 1960-1969	128
3.7 Basis of State and Federal Court Decisions Rejecting Nonpublic Pupil Transportation, 1970-1982	129
3.8 Basis of Court Decisions Upholding Nonpublic Pupil Transportation, 1970-1982	130
3.9 Court Decisions Interpreting Nonpublic Pupil Transportation Statutes or Practice, 1970-1982	132
4.1 Status of Publicly-Funded Nonpublic School Pupil Transportation in the United States, November, 1982	148
4.2 Comparison of Nonpublic Pupil Transportation Services to Public Pupil Transportation Services Within Provider States	176
4.3 Legal Status of Within and Outside District Transportation Provision in Provider States to Public and Nonpublic School Pupils	183

LIST OF TABLES (continued)

TABLE	Page
4.4 Source of Public Funding for Nonpublic Pupil Transportation in Provider States, 1981-1982 School Year	190
4.5 Public and Nonpublic School Pupils Transported at Public Expense in Provider States, 1981-1982 School Year	195
4.6 Recipient of State Reimbursement in Provider States with State-Level Funding of Nonpublic Pupil Transportation, 1981-1982 School Year	209
5.1 Reported Costs for Nonpublic School Pupils Transported at Public Expense, 1981-82 School Year . . .	244
5.2 Nonpublic School Pupils Transported at Public Expense, 1981-82 School Year - Estimated Costs	245
5.3 Numbers of Nonpublic Pupils Transported at Public Expense, 1981-82 School Year, in Rank Order	246
5.4 Percentage of Pupil Population Transported to Nonpublic Schools in 1981-82 School Year, by Provider State	247
5.5 Percentage of Pupil Population Transported to Nonpublic Schools and Percentage of Private School Enrollment in Provider States	248

CHAPTER 1
INTRODUCTION

An Overview

In the early years of American schooling most children were able to walk to their local school. For those who did not live close by, transportation to school was considered a parental responsibility. By the mid-1800's, however, some public school advocates, such as Horace Mann in Massachusetts, were urging the public provision of transportation for children who did not live within walking distance of the public school.¹

Nevertheless, it was not until 1869 in the Massachusetts legislature that public funding for pupil transportation was first enacted in the United States.² By 1919 the public provision of pupil transportation had been legalized in all states, and school pupil transportation was becoming one of the most rapidly growing programs of public school systems.³

The rapid growth of pupil transportation corresponded not only with its legalization, but also paralleled the increased capability of motorized vehicles, the development of a network of hard-surfaced highways, and the consolidation of school systems.⁴ As the number of public school transportation programs grew throughout the United States, there was also a substantial increase in the number of pupils transported per year.

Although the United States Department of Education estimated that only 365,000 pupils were transported at public expense during the 1919-20 school year, the number had more than tripled five years later.⁵ As public school districts were consolidated after the second World War, two out of every five students in the United States were being transported on public school buses at the rate of 17.1 million passengers per year.⁶ By the 1981-82 school year this number had grown to almost 23 million pupils being transported at public expense in 335,160 buses.⁷

The pupils being transported initially at public expense, in school transportation programs of the early 1920's, were limited to those attending public schools. However, as tax-funded transportation programs for public school pupils increased, private school advocates began to pressure local school boards and state legislatures to secure similar aid for nonpublic pupils.⁸

This lobbying effort in the 1920's and 1930's for public appropriations to aid private school pupils was not limited to transportation, but also included the provision of textbooks and other services for pupils attending nonpublic schools. In terms of the monetary aid appropriated to private school pupils at this time, efforts by private school supporters were more successful in obtaining pupil transportation than other forms of state aid.

The issue of providing textbook aid to private school pupils was argued before the United States Supreme Court in 1930, just prior to the litigation beginning at the state level on private school

transportation. This 1930 textbook case, Cochran v. Louisiana State Board of Education, was the first major Supreme Court case testing aid to private schools.⁹

The Supreme Court in Cochran ruled that a state plan in Louisiana to provide textbooks to parochial pupils was not in violation of the Fourteenth Amendment to the federal constitution, and did not constitute the taking of public property for a private purpose.¹⁰ The court based its decision in Cochran on the legal theory that the textbook aid was for the benefit of the child and not the institution.¹¹ This concept of "child benefit" was subsequently used in later state and federal court cases dealing with the appropriation of public funds in aid of nonpublic school pupils.

After the Cochran decision, requests for aid to nonpublic pupils were expanded. As the costs of pupil transportation rose and as the private school enrollment increased, transportation aid or services was instituted in a number of states. Since the majority of these private school pupils attended schools that were sectarian, the provision of publicly funded transportation aid to these pupils initiated objections that it was in violation of the constitution as an aid to sectarian institutions and that it violated religious freedom guarantees.

By 1946 nonpublic pupil transportation was being practiced in some form in sixteen states.¹² Public school districts and citizens began to appeal to state courts about the constitutionality of providing transportation to mostly private sectarian pupils. The decisions of the courts varied among the states, with seven decisions forbidding

such transportation aid¹³ and four decisions allowing it,¹⁴ before the landmark Supreme Court case of Everson v. Board of Education in 1947.¹⁵ Everson decided the federal constitutional question by ruling that the First Amendment's prohibition against the establishment of religion by law was not violated by the spending of tax funds in New Jersey to pay bus fares for parochial students.¹⁶ Because the Supreme Court did not address the issue of whether transportation aid violated the constitution of New Jersey, the topic was left for the individual state courts to decide.

Thus the issue of providing transportation to private school pupils did not end with the Everson decision. Despite the apparent solution of the federal First Amendment question in Everson as applied to the states, the varying degrees of strictness of church-state separation requirements within individual state constitutions has kept the topic under constant litigation in those states which have provided for the transportation of their private elementary and secondary school pupils.

A review of federal and state cases for this study on the issue of public funding for transporting nonpublic pupils revealed that there were sixty-eight reported cases in twenty-eight states between 1923 and 1982. Legal attacks on statutory provisions for this form of transportation aid were generally centered on its unconstitutionality as 1) being in aid of sectarian institutions or violating guarantees of religious freedom, 2) misusing public school funds for other than a

public school purpose, or 3) appropriating public money for private purposes.¹⁷

Recent reports indicated that nonpublic pupil transportation aid was provided in over half the states.¹⁸ Because transportation of private school pupils has been a widespread practice in the United States, litigation of the aid has carried the potential of polarizing supporters of American public and private education along religious lines. The Supreme Court has recognized the potentially divisive political effects of certain aid programs to private schools and their pupils.¹⁹ The court's concern was highlighted in Nyquist when it invalidated New York's plan for maintenance, repair, and tuition grants to private schools and income tax benefits for nonpublic school parents in the state:

The potential for political divisiveness related to religious belief and practice is aggravated in these two statutory programs by the need for continuing annual appropriations and the likelihood of larger and larger demands as costs and populations grow.²⁰

Since private education in the United States is mainly sectarian in nature, with eighty-five percent of the private schools religiously oriented, this political polarization over transportation or other forms of aid to private schools may align itself along religious affiliation. This idea is anathema to those who maintain that the original intention of the First Amendment was to forestall church-state entanglements.²¹

The increasing amount of public money being appropriated to directly or indirectly benefit nonpublic pupils or schools has become an important concern during the current period of reduced fiscal

resources for public education. The magnitude of state aid to primarily sectarian schools was earlier addressed in the dissenting opinion of Wolman v. Walter, in which the Supreme Court discovered that the initial appropriation by the Ohio legislature for implementation of the statute was \$88 million for aids such as texts, testing services, diagnostic and therapeutic services, instructional materials, and field trip transportation.²² Later, in a 1980 ruling in Committee for Public Education & Religious Liberty v. Regan, the High Court found that direct payments to private schools for testing, scoring, and recordkeeping in New York would have totaled \$8-10 million annually.²³ Justice Blackman in his dissent of Regan noted that the annual payments would have amounted to 1.0-5.4% of the personnel budgets of an individual religious school receiving assistance under the statute.²⁴

Size or magnitude of the sectarian aid program has become a factor of such importance that it might alone represent a turning point on deciding whether the line of separation of church and state has been broken. This was recognized specifically in Wolman v. Walter by Justice Brennan in his dissenting opinion, as he criticized the majority decision for not evaluating the magnitude of the Ohio appropriation in determining the compatibility of the statute with the Establishment Clause of the First Amendment. He contended:

... the evaluation of financial magnitude compels in my view the conclusion that a divisive political potential of unusual magnitude inheres in the Ohio program. This suffices without more to require the conclusion that the Ohio statute in its entirety offends the First Amendment's prohibition against laws 'respecting an establishment of religion.' 25

As size of funding to private sectarian pupils or schools has become an increasing concern regarding the use of public money, it is important that the public is able to account for the amount that is being spent. In terms of state aid to provide transportation to nonpublic school pupils, this accountability should extend not only to an awareness of the existence of state programs and their legality or illegality to exist, but also an awareness of the financial cost to the public and the public schools in providing such aid.

Need for the Study

The status of state programs to provide private school transportation has changed constantly as state legislatures enacted new legislation, or as courts were asked to rule on existing transportation aid programs. Several sources reported figures in the past ten years on the number of states which have transportation aid programs, but the information on individual states has been conflicting and lacked comparability in reporting the extent or type of transportation aid or services provided.

Alexander reported in 1980 that twenty states authorized public transportation of parochial pupils, while in twenty other states court decisions or statutes specifically prohibited transportation of parochial or nonpublic school pupils.²⁶ A study by the Ohio PTA during the same year on public funding for nonpublic schools indicated that only ten states provided full transportation to nonpublic pupils while two states were listed as partial providers.²⁷

Two reports on the status of parochial busing were published within a six year period by Americans United for Separation of Church and State (Americans United), an organization whose main goal has been to espouse the constitutional principle of church-state separation. In 1976 Americans United in their publication Church & State claimed that sixteen states provided parochial and private schools with transportation services comparable to or even more extensive than services provided to public schools, while another eleven states provided partial or limited transportation services.²⁸ By 1983 Church & State reported that thirty states allowed some form of publicly-funded transportation to parochial and other private schools.²⁹

The two most comprehensive studies on the legal status of public funding of private school transportation were doctoral dissertations by Radloff in 1969 and Olson in 1972. Radloff examined the legal status of both parochial school transportation at public expense and the use of busing to achieve racial balance in the public schools.³⁰ Olson reviewed parochial school transportation within the broad contexts of general public support of nonpublic education and the church-state relationship.³¹

Radloff's study in 1969 showed that nine states had permissive statutory provisions for providing parochial pupil transportation and sixteen states mandated the authorization of transportation for parochial pupils.³² Three years later Olson indicated that the overall status of transportation aid had not changed considerably since

the Radloff study, although other forms of aid to private schools had increased. However, their information on individual state transportation programs conflicted, as Olson's study disclosed that twenty-six states authorized transportation of at least some nonpublic school pupils, twenty states prohibited the practice, and four states allowed the practice without clear legal authorization to transport pupils to private schools.³³

While the research by Radloff and Olson provided a background for a legal update on private school transportation in the United States, neither study estimated the financial costs involved in transporting private school pupils at public expense. However, Olson noted the need for a study to determine the costs of providing private school transportation:

Accurate information about the numbers of nonpublic school children transported at public expense is not readily available and in fact it may not exist. While transportation of nonpublic school pupils occurs in at least thirty states, there are great variations in the service provided Since in most cases the transportation is provided by the public schools and they are reimbursed for total pupils transported, there is no incentive to maintain accurate records of nonpublic school pupils.

The study questionnaire [in Olson's dissertation] revealed that many state education officials were not very knowledgeable about transportation of nonpublic school pupils. This may be due in part to the fact that actual transportation is done by local school districts. It may also reflect, however, the general disinterest in nonpublic schools by State Departments of Education that has been found in other studies. Also, this absence of records and apparent lack of interest may be the result of efforts by state department administrators to avoid excessive entanglement between the state and private schools.³⁴

Increasing concern over the magnitude of public funding in general for nonpublic pupils and schools also has indicated a need to determine

actual costs of specific types of aid. While controversy over tax-paid nonpublic pupil transportation was traced back more than forty years, the growth in costs of transportation relative to other budgetary categories in the past ten years has compounded the seriousness of the concern.

Since the inception of most public pupil transportation programs sixty years ago, there has been a considerable increase in costs. In 1920 the states were spending over \$14.5 million for pupil transportation.³⁵ By 1960 public school systems were expending an estimated \$486 million on transportation, a figure that was increased to \$1.2 billion in 1970.³⁶ Latest figures show that by 1981 pupil transportation had increased to over \$4.8 billion.³⁷

The rapidly increasing costs of transportation over the past ten years partially were traced to the rising cost of fuel. As the price of fuel rose throughout the 1970's, transportation budgets were increased, demanding a greater percentage of money allocated for education. Additional costs for specialized forms of handicapped transportation, and the complexities of recent federal and state regulations on transportation have also contributed to the rise in public school transportation costs. By 1979 the \$3.2 billion cost for transportation accounted for an estimated 4.5 percent of annual current operations for elementary and secondary education, a higher proportion for transportation than any previous school year.³⁸

Despite the availability of general financial transportation data on a national basis, there was a lack of information on the proportion

of public funding attributed to transporting private school pupils within these data. A single comprehensive cost estimate was attempted by Americans United for Separation of Church and State in 1976. Their research indicated that \$140 million per year was expended by sixteen states in providing full transportation service to nonpublic pupils.³⁹ The study, however, did not include eleven states classified as partial private pupil transportation providers, nor could it account for the continuing inflation of transportation costs which continued from the mid-1970's to the early 1980's. It is very likely that any current cost estimate of those states presently providing transportation services to nonpublic pupils would represent a figure greatly increased over the \$140 million estimate of 1976.

Given the vast amounts of public funds spent on pupil transportation in general and the growing proportion of transportation in the overall education budget, the potential magnitude of public funding to transport nonpublic pupils must be recognized. The need to provide research on the public cost of private pupil transportation has been highlighted by both the current weakened economic condition of public education and the continuing political debate over further proposed aid to private schools in the form of tuition tax credits and educational vouchers.

In the context of accounting for the amount of public funds spent on providing transportation to nonpublic school pupils in the United States, it has been important to understand the legalities of providing such aid. A current updated report on the legal status of publicly

supported private pupil transportation is necessary as a resource of information on present controlling state statutes, constitutional provisions, judicial decisions, attorney general opinions, or state administrative regulations or opinions.

Purpose of the Study

The purpose of this study was to determine the present legal status of public aid for the transportation of private elementary and secondary school pupils in all fifty states and to determine the cost of transporting private school pupils in those states which presently provide such transportation either on a mandated or permissive basis.

Procedure

In order to determine the current legal and financial status of private school transportation in the United States, a combination of legal and survey research methodology was used for this study. Initially, a survey was sent to all states to identify which provide transportation to nonpublic school pupils. Second, through legal research all judicial cases relating to private pupil transportation were located. Finally, through survey research financial cost data were collected and then analyzed for those states identified in the initial survey as either mandating or permitting the transportation of elementary and secondary nonpublic pupils.

Legal Analysis

A survey was mailed in August, 1982, to the chief state school officer of each state (See Appendix A) in order to assess which states were providers or non-providers of nonpublic pupil transportation. For those states classified as providers of private school transportation, a request was made to determine the legal basis. Specifically, the following data and documents were requested:

1. A copy of the legislation or statutory citation of the current law;
2. The name or citation of any court case which had been litigated in the state; and
3. Any other legal basis for the policy, such as a constitutional provision, an attorney general's opinion, or any state administrative regulation carrying the weight of law.

Upon completion of the initial state survey, all reported legal cases related to the public financing of private school transportation were identified.

The following legal sources were then utilized to locate pertinent federal and state school transportation cases:

1. American Digest System, including the Fourth Decennial Digest (1926-36) to the present General Digest Sixth Series;
2. National Reporter System, including Supreme Court, federal, regional, and state reporters;
3. American Jurisprudence;
4. American Law Reports, Annotated; and
5. Shepard's Citations.

The following guides were used to assist in this legal research:

1. How to Find the Law, M. L. Cohen, ed.

2. Law and Education, H. C. Hudgins, Jr. and R. S. Vacca.
3. Legal Research Illustrated, J. M. Jacobstein and R. M. Mersky.
4. Legal Research in a Nutshell, Morris L. Cohen.
5. Legislative Analysis: How to Use Statutes and Regulations, W. P. Statsky.

Financial Analysis

The initial survey on the legal status of nonpublic transportation indicated that thirty states either permitted or mandated some form of transportation aid or services to private school pupils. Twenty states either did not follow such a practice or were prohibited by law from establishing such transportation assistance.

The thirty provider states from the initial survey were then identified as the sources of data for a second survey. The purpose of the second survey was to determine the individual state costs of providing transportation services to nonpublic pupils in the United States. Within each of the thirty states, the state director of transportation was established as the survey contact person for obtaining data on the cost analysis portion of the transportation study.

The second survey for the study (See Appendices D and E) was mailed on June 17, 1983, to the thirty transportation directors. The following information was requested on the provision of private school pupil transportation within each of the provider states for the 1981-82 school year:

- 1) the number of public and nonpublic pupils transported;

- 2) the source of funding for nonpublic pupil transportation in the state;
- 3) the total state and local school transportation expenditures for public and nonpublic pupils; and
- 4) the method of state reimbursement for the provision of nonpublic pupil transportation.

A cut-off date of July 11, 1983, was established for receipt by mail of all transportation cost data requested from the provider states. Those provider states not responding by that date were contacted by mail a second time in order to obtain the requested data (See Appendix F). A final cut-off date of August 5, 1983, was set for the receipt of survey data from the second request. Finally, as incomplete data were received from some of the responding provider states, a written or telephone follow-up request was carried out to determine the availability of the requested survey data.

Data received from the provider states on numbers of pupils transported, source of funding, total transportation expenditures, and method of state reimbursement for the provision of nonpublic pupil transportation for the 1981-82 school year were tabulated and analyzed. Data on the cost of private school transportation were organized in written and tabular form to present the transportation costs for each state and to provide a total cost estimate of private school transportation for all provider states reporting such costs in the second survey.

Design of the Study

Chapter 1 presents a brief overview on private school transportation and its litigation, the need for the study, the purpose of the study, the procedure for the study, the design for the study, and the limitations of the study.

The second chapter chronologically reviews state court cases on the transportation of nonpublic pupils prior to 1947. The purpose of the review is to present those points of law on which the state cases were decided prior to the Supreme Court case in Everson v. Board of Education in 1947. The chapter concludes with an analysis of the Everson decision.

Chapter 3 chronologically reviews all state and federal court cases on the transportation of nonpublic pupils from the Everson decision in 1947 through 1982. The pertinent concepts and principles of law are examined to note the varying decisions on the topic based primarily on state constitutional considerations.

Chapter 4 presents the data obtained from both phases of the survey research on public funding of private school transportation. The first part of the chapter presents the information obtained from the initial survey on the legal status of nonpublic pupil transportation. The chapter concludes with the results of the second survey's financial data assessing the costs of transporting private school pupils in the identified provider states.

Chapter 5 provides a general summary and a legal case review summary, the findings and the conclusions of the study, and

recommendations for further research. The chapter concludes with a discussion section.

Limitations

This study was limited to research on the transportation of "regular" day school private elementary and secondary school pupils, including grades K-12, and did not include state transportation programs for the handicapped, for whom it was possible to attend either day or residential private school programs.

In order to identify time limits on the study, the review of the legal status of publicly-funded private school transportation was limited to cases reported as of November, 1982, and the financial information used was limited to data available from each state education agency on the provision of transportation aid or services to private school children for the 1981-82 fiscal year.

NOTES - CHAPTER 1

1Harold E. Mitzel, ed., Encyclopedia of Educational Research, Volume 4 (New York: The Free Press, 1982), p. 1956.

2E. Glenn Featherston and D. P. Culp, Pupil Transportation (New York: Harper and Row, 1965), p. 2.

3J. F. Abel, Consolidation of Schools and Transportation of Pupils, U.S. Bureau of Education Bulletin No. 41 (Washington, D.C.: GPO, 1923), p. 22.

4Mitzel, supra note 1, at 1956.

5Mitzel, supra note 1, at 1956; Featherston and Culp, supra note 2, at 2.

6Mitzel, supra note 1, at 1956.

7"Industry Statistics, School Transportation in 1981-82," School Bus Fleet, 28, No. 8 (1984), 87.

8Donald E. Boles, The Two Swords, (Ames, Iowa: Iowa State University, 1967), p. 3.

9Cochran v. Louisiana State Board of Education, 281 U.S. 370, 50 S. Ct. 335 (1930).

10Id.

11Id.

12Philip B. Kurland and Gerhard Caspar, eds., Everson v. Board of Education. Vol. 44 of Landmark Briefs and Arguments of the Supreme Court of the United States: Constitutional Law (Arlington, Virginia: University Publications of America, 1975), p. 52.

13See State ex rel. Van Straten v. Milquet, 192 N.W. 392 (Wisconsin, 1923); State ex rel. Traub v. Brown, 172 A. 835 (Delaware, 1934); Judd v. Board of Education, 15 N.E. 2d 576 (New York, 1938); Gurney v. Ferguson, 122 P. 2d 1022 (Oklahoma, 1942); Sherrard v. Jefferson County Board of Education, 171 S.W. 2d 963 (Kentucky, 1943); Mitchell v. Consolidated School, 135 P. 2d 79 (Washington, 1943).

14See Board of Education v. Wheat, 199 A. 628 (Maryland, 1938); Nichols v. Henry, 191 S.W. 2d 930 (Kentucky, 1946); Adams v. County Commissioners, 26 A. 2d 377 (Maryland, 1942); Bowker v. Baker, 167 P. 2d 256 (California, 1946).

15Everson v. Board of Education, 330 U.S. 1, 91 L.Ed. 711, 67 S.Ct. 504 (1947).

16Id.

17Everson v. Board of Education, 168 A.L.R. 1392 (1947).

18Manley Elmer Olson, "Use of Public Funds for Transporting Pupils Who Attend Nonpublic Schools," Diss. University of Minnesota, 1972, p. 234; "Transportation Parochial Rolls Onward," Church & State, 36, No. 2 (1983), p. 10.

19E.g., Lemon v. Kurtzman, 403 U.S. at 623 (1971); Committee for Public Ed. & Religious Lib. v. Nyquist, 413 U.S. at 797 (1973).

20Nyquist, 413 U.S. at 797.

21Richmond [Virginia] Times Dispatch, 4 July 1982, Sec. B, p. 7.

22Wolman v. Walter, 97 S.Ct. at 2598 (1977).

23Committee for Pub. Ed. & Rel. Lib. v. Regan, Slip Opinion No. 78-1369, Dissent by Justice Blackmun, p. 3.

24Id., at 4.

25Wolman, 97 S.Ct. at 2610.

26Those states providing public funds for parochial school transportation were: California, Connecticut, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Mexico, North Dakota, Ohio, Oregon, Pennsylvania, and Rhode Island. Kentucky, Louisiana, and New Mexico were listed as local discretion, and Maryland's statutory authorization is on a county basis. Kern Alexander, School Law (St. Paul, Minn.: West Publishing Company, 1960), p. 186.

27Full private school transportation providers were listed as: California, Delaware, Iowa, Massachusetts, Maine, Michigan, Minnesota, New York, Ohio, and Pennsylvania. Partial providers were Louisiana and New Mexico. "A Look at Public Funds for Nonpublic Schools..." Ohio P.T.A. 'White Paper' Status Report, Xerox, n.p., September, 1980, pp. 1-32.

28Full service private school transportation states were: Connecticut, Delaware, Kansas, Maine, Massachusetts, Michigan, Minnesota, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, South Dakota, Vermont, Wisconsin. Partial service states were: California, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maryland, New Mexico, North Dakota, Oregon, West Virginia. "The High Cost of Parochial Busing," Church & State, 29, No. 2 (1976), p. 11.

²⁹The following states were listed as providing some type of aid for parochial school busing: Alaska, Arizona, Arkansas, California, Connecticut, Delaware, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Dakota, Ohio, Pennsylvania, Rhode Island, South Dakota, West Virginia, Wisconsin. "Transportation Parochial Rolls Onward," supra note 18, at 10.

³⁰John Paul Radloff, "Public School Transportation in the United States: The Legal Status of Transporting Parochial Pupils and of the Utilization of Transportation to Achieve Racial Balance," Diss. University of Denver, 1969.

³¹M. Olson, supra note 18.

³²Permissive states in the Radloff study were: California, Connecticut, Hawaii, Kentucky, Louisiana, Maine, New Mexico, North Dakota, West Virginia. States with mandatory provisions were: Delaware, Illinois, Indiana, Kansas, Maryland, Massachusetts, Michigan, Montana, New Hampshire, New Jersey, New York, Ohio, Oregon, Pennsylvania, Rhode Island, Wisconsin. J. P. Radloff, supra note 30, at 77.

³³Permissive states in the Olson study were: Alabama, Arkansas, California, Connecticut, Indiana, Kentucky, Louisiana, Maine, Maryland, Montana, North Dakota, New Mexico, Virginia, Vermont, Wyoming. Mandatory states were listed as: Delaware, Illinois, Kansas, Massachusetts, Michigan, Minnesota, New Hampshire, New Jersey, New York, Ohio, Oregon, Pennsylvania, Rhode Island, West Virginia, Wisconsin. M. E. Olson, supra note 18, at 250.

³⁴Id., at 257.

³⁵J. F. Abel, supra note 3, at 22.

³⁶National Center for Education Statistics, The Condition of Education: 1982 (Washington, D.C.: GPO, 1982), p. 60.

³⁷"Industry Statistics," supra note 7, at 87.

³⁸National Center, supra note 36, at 40 and 60.

³⁹"The High Cost of Parochial Busing," supra note 28, at 11.

CHAPTER 2
A REVIEW OF NONPUBLIC PUPIL TRANSPORTATION CASES
THROUGH EVERSON IN 1947

Introduction

As local school boards and state legislatures began to authorize the provision of transportation to nonpublic elementary and secondary school pupils, opponents of private school aid appealed to the state courts regarding the constitutionality of this transportation provision to primarily sectarian pupils. From 1923 to 1946 there were a total of eleven judicial decisions rendered in nine states, with seven cases ruling against the public provision of private school transportation and four cases ruling in favor.²

Those seven cases rejecting nonpublic pupil transportation provision were all contested on violations of state constitutional prohibitions within the individual states. Since no decision had yet been based on a violation of the United States constitution, the states were not required to follow any constitutionally interpreted mandate forbidding such transportation.

The public provision of transportation of pupils to private elementary and secondary schools continued to spread through the 1930's and 1940's. By 1946 sixteen states were authorizing some form of transportation aid or services to their nonpublic pupils.³ The United States Supreme Court for the first time agreed to hear a case on

the topic. In 1947 the Court set forth a decision, Everson v. Board of Education, upholding the federal constitutionality of a New Jersey statute allowing the spending of tax funds to pay bus fares of parochial students, as not being in violation of the First Amendment.⁴

However, this decision addressed only the issue of federal constitutionality in terms of the Establishment Clause of the First Amendment. Since Everson did not rule on whether such nonpublic pupil transportation violated the provisions of a particular state constitution, the case represented a turning point, in that the question of constitutionality of nonpublic pupil transportation was again turned back to the states to decide on the basis of their own state constitutions.

Chapter two chronologically traces the early case history of nonpublic pupil transportation as the issue was litigated in the state courts prior to 1947, and then as it was litigated in the United States Supreme Court that year. This legal case review presents those points of law on which the state cases on nonpublic pupil transportation were decided prior to Everson, and concludes with an analysis of the facts, the decision, and the implications of this landmark case.

Pre-Everson Cases

State Cases Rejecting Transportation of Nonpublic Pupils

In 1923 the Wisconsin supreme court handed down the first state case on nonpublic pupil transportation in State v. Milquet.⁵ The

court maintained that a local school board had no statutory authority to make a contract to transport children to parochial schools. In view of state constitutional restrictions, state law required only the establishment of district schools which were free to all children and in which no sectarian education should be allowed. Thus the court ruled that a local school board could not transport pupils to a sectarian school, since it could not expend public funds for any other purpose than a free, nonsectarian education.⁶

Eight years later the state supreme court in South Dakota ruled against the provision of transportation of pupils to a private sectarian school after the closing of a district public school.⁷ In Hlebanja v. Brewe, parents had billed a local district for costs of sending their children to a parochial school after the district school had been closed. The court stated that the local school board had statutory authority to provide schooling for all pupils in the district only in public schools, and was prohibited by state constitutional restrictions against appropriating money for expenses, including transportation, for attendance at a sectarian school.⁸

In State v. Brown the New Castle County Superior Court of Delaware was asked to specifically address the constitutionality of nonpublic pupil transportation provided for through a legislative appropriation from the state's general fund.⁹ The court struck down the state provision of nonpublic transportation as being in violation of a Delaware constitutional provision prohibiting public aid to sectarian, church, or denominational schools. In determining whether

transportation was "aid" to a private school, the court examined the words in a North Dakota Supreme Court ruling on a similar state constitutional provision:

What, then, constitutes benefit or aid? Webster defines ... aid as to 'support, either by furnishing strength or means to help to success.'¹⁰

Using this definition of aid, the Delaware court was of the opinion that transportation did constitute direct aid to sectarian schools, since it helped to "build up, strengthen, and make successful the schools as organizations."¹¹

The 1938 case of Judd v. Board of Education¹² was to become a benchmark case for later rulings against the public provision of nonpublic pupil transportation in other states. The Commissioner of Education in New York had ruled that if free transportation should be provided in a district for free common schools, similar transportation facilities had to be provided for all pupils attending private and parochial schools. But the New York Court of Appeals disagreed and found the Commissioner's ruling on the state's transportation statute to be in violation of a state constitutional provision prohibiting any direct or indirect contribution of public funds made in "aid of maintenance and support" of any private or sectarian school.¹³ Such a direct or indirect contribution was seen as a violation of the complete separation of church and state in civil affairs.

The state court in Judd was explicit in its rejection of a child benefit theory which argued that the furnishing of transportation to

pupils in private or parochial schools was not an aid in support of schools, but rather in aid of their pupils. The court reasoned:

Free transportation of pupils induces attendance at the school. The purpose of the transportation is to promote the interests of the private school or religious or sectarian institution that controls and directs it Without pupils there could be no school. It is illogical to say that the furnishing of transportation is not an aid to the institution while the employment of teachers and furnishing of books, accommodations and other facilities are such an aid.¹⁴

The Judd decision also rebutted the notion that the nonpublic pupil transportation statute could be sustained solely as a valid exercise by the legislature of the police power of the state. It was pointed out by the court that any claim that nonpublic pupil transportation was in the interest of the health, safety and welfare of the parochial schools could be overruled if the statute was repugnant to a constitutional provision, such as that against aid to sectarian schools. Even the state's police power had to be "exercised in harmony with the restrictions imposed in the fundamental law" of the constitution.¹⁵

The court in Judd was cited three years later by the Oklahoma Supreme Court in 1941 in Gurney v. Ferguson.¹⁶ Oklahoma's statute mandated that if a school board provided for the transportation of public school pupils, then it must also provide for the transportation of private school pupils whose schools were along or near certain designated routes. These nonpublic pupils were entitled to the "... same rights, benefits, and privileges"¹⁷ as to transportation so provided by the school district. Again, as in Judd, a state court was to find such a legislative enactment

to violate the state's constitutional prohibition against public money being used to support a sectarian institution.

The Oklahoma court agreed with the New York decision in Judd by rejecting the child benefit theory that nonpublic school transportation benefited the child, as distinguished from the sectarian organization.¹⁸ Gurney further clarified the issue of public provision of transportation as being an aid of nonpublic schools by comparing it to similar aid for public schools:

If the cost of the school bus and the maintenance and operation thereof was not in aid of the public schools, then expenditures therefor [sic] out of the school funds would be unauthorized and illegal. Yet, we assume it is now acquiesced in by all that such expenditures are properly in aid of the public schools and are authorized and legal expenditures. If the maintenance and operation of the bus and the transportation of pupils is in aid of the public schools, then it would seem necessary to follow that when pupils of a parochial school are transported that such service would likewise be in aid of that school.¹⁹

The first nonpublic pupil transportation case in Kentucky was heard in 1943 as a result of a state law requiring that pupils attending private schools be given the same transportation rights as pupils of public schools. The Court of Appeals in Sherrard v. Jefferson County Bd. of Education²⁰ agreed with the previous reasoning of the state courts in both New York and Oklahoma that public funding of transportation for nonpublic pupils was an unconstitutional aid to sectarian institutions, and not an aid to benefit the pupils.²¹ In aiding religious schools, the state law violated a Kentucky constitutional provision requiring that taxes be levied and collected for "public purposes" only and that no sum should be collected for

education other than in the "common schools" or free, public schools.²² Transportation of pupils to nonpublic schools was deemed by the court to be a misuse of the common and public school fund other than for the public schools.

In 1941 when the state of Washington provided for the transportation of private or parochial school children along designated public school routes in all cases where public pupils were transported, the legislature declared that its intent was to exercise the police power of the state in minimizing accidents and hazards for those children attending school in accordance with the compulsory attendance laws of the state. In striking down the state's transportation statute two years later, the state supreme court declared that such broad police power must not be exercised in "contravention of plain and unambiguous constitutional inhibitions."²³ It was maintained in Mitchell v. Consolidated School Dist. No. 201 that the statute was an unconstitutional, improper use of the common school fund for other than a common school purpose, and that it contravened the constitutional inhibition that schools maintained by public funds be free from sectarian control. Further, when the court was asked to consider the nonpublic transportation an aid to pupils and parents rather than schools, the court declared this to run afoul of the state constitutional inhibition against the use of public funds in aid of individuals.²⁴

Cost of transporting the nonpublic pupils was a factor in Mitchell, even though the private school children were to ride on buses along

already established routes. The court felt that even if the additional expense incurred was small, this was no defense:

... for every pupil carried, there is an additional expense to the school district. For each pupil, the cost of actual transportation may be slight. Whether the expense be small or great is, of course, no justification for the use of common school funds for other than common school purposes.²⁵

In the aggregate, with twenty-four thousand pupils attending nonpublic schools in the state, the Washington court predicted that the cost of nonpublic transportation could become a substantial drain on the common school fund.

State Cases Upholding Transportation of Nonpublic Pupils

The first state case upholding the provision of transportation to nonpublic pupils was decided by a Maryland court of appeals in 1938.²⁶ The decision had limited statewide application, as the statute under question pertained only to nonpublic pupils who attended Baltimore County schools not receiving state aid. These pupils were to be transported on public school buses on the same terms as public school children.²⁷ The court in Board of Education v. Wheat upheld the nonpublic pupil transportation law as being within the function of enforcing attendance at school and not an unconstitutional use of public funds for private purposes.

Since accommodation of the nonpublic pupils on public school buses appeared to the court in Wheat to be a removal of danger to enforce compulsory attendance, the transportation served a public function.

The court rejected the idea that the provision of such transportation violated both Maryland's state constitutional prohibition and federal Fourteenth Amendment restrictions against the use of public funds for private purposes.²⁸ Further, the court argued that the statutorily-provided transportation was an incidental benefit to primarily sectarian schools:

This conclusion that the act must be regarded as one within the function of enforcing attendance at school, renders it unnecessary to consider separately the objection that a religious institution is aided. Art. 36, Declaration of Rights. The institution must be considered as aided only incidentally, the aid only a by-product of proper legislative action.²⁹

The next case to favor nonpublic pupil transportation, Adams v. St. Mary's County, was heard by the same court in Maryland in 1942.³⁰ The decision differed only slightly from the court's decision in Wheat, as the second Maryland statute authorized the county of St. Mary's to appropriate money for the transportation of private school children attending schools receiving no state aid.³¹ The court in Adams considered the reasoning of Wheat to be sound, in that the provision of aid or transportation services was aid and protection to the children so that they could comply with compulsory attendance laws of the state. In the words of the court, "... the county's carrying the children of parochial schools by any means is a valid action."³²

The last two judicial decisions, prior to the United States Supreme Court agreeing to hear a case on the transportation of nonpublic pupils, were in Kentucky and California in 1946. In the first of these, Nichols v. Henry, the Kentucky Court of Appeals was asked to

rule on a permissive statute which allowed each county to provide supplementary transportation out of its general funds for children attending common, private, sectarian or parochial schools in compliance with compulsory school attendance laws.³³ The Kentucky court in Nichols felt that the act under question dealt with an entirely different question than in the previous case of Sherrard,³⁴ where the same court had ruled that public school funds could not be used to transport pupils attending private schools. The court in Nichols overturned the effect of its previous decision by allowing the use of general county funds for the supplemental transportation of private school pupils. By further stating that such tax legislation was for the public purpose of providing for the health and safety of the children, the court indicated that the transportation was only a possible indirect benefit to the private sectarian school.

In the last state case before Everson, the District Court of Appeals in California in 1946 was called upon to determine the constitutionality of nonpublic transportation legislation regarding the use of public funds in aid of any sectarian school or any other school not under the control of officers of the public schools.³⁵ The permissive statute under scrutiny in Bowker v. Baker allowed school districts to transport pupils, in attendance at schools other than public schools, in the same manner and terms and over the same routes of travel as for public pupils. In finding the statute constitutional, the court followed the general line of reasoning of those other cases upholding such transportation as within the police power of the state

in promoting the public welfare by aiding the education of the young. The direct beneficiaries of the transportation were declared to be the children, with only an indirect benefit to the private schools. An indirect benefit was not an appropriation of public money for private purposes, nor an improper state aid to denominational schools.³⁶

Conclusions on State Cases, 1923-1946

The nonpublic pupil transportation cases reviewed thus far were all decided by state appellate courts on state constitutional interpretations. In the seven cases rejecting the provision of transportation to private school pupils, the majority of judicial decisions centered on the provision as being an impermissible aid to sectarian schools. (See Table 2.1 at chapter's end.) Although the constitutionality of nonpublic transportation aid or services was also questioned in the four cases upholding such provision, the courts chose instead to base their decisions on a combination of public welfare or child benefit theories. (See Table 2.2 at chapter's end.)

The prevailing pattern in the state courts prior to the Supreme Court's Everson v. Board of Education in 1947 was to examine the issue of nonpublic pupil transportation in regard to state constitutional restrictions on the separation of church and state. These state constitutional requirements against direct or indirect aid to any sectarian institution, for example, were more rigorous than the federal constitutional church-state restrictions found in the Free Exercise or Establishment Clauses of the First Amendment. Before Everson the issue

of nonpublic pupil transportation had not been litigated in the federal courts, as a substantive federal question had not yet been addressed.

When the state courts addressed the issue of providing private school transportation before 1947, the states of Wisconsin, South Dakota, Delaware, New York, Oklahoma, Kentucky, and Washington rejected either local or state authorized provision of transportation aid or services. Since the initial 1943 Kentucky decision of Sherrard was overturned in Nichols in 1946 to favor nonpublic transportation, Kentucky then joined Maryland and California in upholding local and state authorized transportation aid or services.

Decisions against nonpublic transportation.

In those decisions which ruled against transportation aid or services to nonpublic schools, objections centered either on the lack of statutory authority for local boards who were providing such transportation, or on the violation of state constitutional restrictions. Regarding the latter, local provision of private school transportation and state laws authorizing the transportation were considered unconstitutional as 1) being an impermissible aid to sectarian institutions, 2) violating guarantees of religious freedom, 3) misusing public school funds for other than public school purposes, or 4) appropriating public money for private purposes.

Several of the earliest transportation decisions later became the leading cases against nonpublic pupil transportation. In State v. Brown the Delaware court defined "aid" and then charged that

transportation was a forbidden, direct aid which served to strengthen and build up sectarian schools.³⁷ This reasoning impacted the decision in Judd, the New York decision which was the strictest pre-Everson case against publicly funded transportation to nonpublic schools.³⁸

By adhering to the direct aid notion of transportation provision, Judd served as a stringent rejection of the child benefit theory of transportation which was the line of reasoning most often adopted by proponents of nonpublic transportation provision. While Judd did not negate the notion that such transportation served a health and safety purpose for private pupils, the court pointed out that this factor was overruled by the vital importance of the constitutional restriction specifically forbidding aid to sectarian schools.³⁹

The same line of reasoning was adhered to in Mitchell in 1941 when the state supreme court found Washington's mandatory nonpublic pupil transportation statute unconstitutional.⁴⁰ The anti-aid decisions in Judd and Mitchell illustrated the dilemma faced by the courts when examining publicly funded transportation for private school pupils. The child benefit theory used to justify funding transportation services seemed to pit the health and safety of the child against the constitutional argument forbidding aid for sectarian purposes. When proponents of transportation aid presented their case in terms of a health and safety measure for the child's benefit, the courts' decisions against such aid were not always popular, particularly in states with large parochial populations.⁴¹

The Gurney decision in 1941 reiterated the earlier reasoning in State and Judd in defining transportation as an aid to sectarian schools. The court further added that if transportation was a legitimate aid to the public schools and public school districts, it had to be considered a direct aid to the private schools themselves and not simply an aid to the children.⁴²

Two state courts objected to the constitutionality of using the state's public school funds for transporting nonpublic pupils.⁴³ This was changed, however, in Kentucky when the legislature substituted the use of general funds rather than school funds for providing supplemental transportation for nonpublic pupils. The state appellate court then removed its objection to transportation as an unconstitutional aid and reversed its decision to allow the permissive transportation statute.⁴⁴

Only the Mitchell court during this time period objected to the provision of nonpublic pupil transportation on the basis of appropriating money for private purposes. Subsequent state courts did not find the argument in Mitchell on this particular point to be a strong one, and it was later rejected in Everson:

Appellants endeavor to uphold the act upon that [child benefit] qualification, contending that the transportation of pupils to and from the school insures exclusively to the benefit of the pupils and their parents Conceding validity to the argument, it runs afoul of another constitutional inhibition: Art. VIII, §7, which provides that 'No county, city, or town, or other municipal corporation shall hereafter give any money or property ... in aid of any individual ... except for the necessary support of the poor and infirm⁴⁵

The decision of the court in Mitchell did not hinge on this particular constitutional infringement, as the court had also deemed the transportation statute to be both an unconstitutional aid to sectarian schools and a misuse of the public school fund.

In forbidding the use of the public school fund in Washington for the purposes of transporting nonpublic pupils, the Mitchell decision was the first to discuss the issue of cost as a concern in providing the transportation. Although the amount of money expended was small on a per pupil basis, the court foresaw the day when aggregate nonpublic transportation costs could become a "substantial" burden on public school funds in the state.⁴⁶

Decisions upholding nonpublic transportation.

In those three states where court decisions favored the provision of nonpublic pupil transportation, there were state constitutional guarantees against the misuse of school or other public funds. However, the pro- transportation aid decisions in Maryland, Kentucky, and California were based on court interpretations which avowed that the provision of transportation aid or services to nonpublic pupils served a necessary public purpose.⁴⁷

In general, the public-purpose interpretation by the courts favored nonpublic pupil transportation by adhering to four related ideas. Publicly funded transportation to private schools was deemed to be 1) a function of enforcing compulsory attendance, 2) a removal of danger, serving a health and safety purpose for the pupil, 3) a valid use of

the state's police power in promoting the public welfare, and 4) a direct benefit to the child and thus only an incidental benefit to the private school.

Because the supporting ideas were so closely related, the courts in Wheat, Adams, Nichols, and Bowker did not rely on one particular line of argument. For example, in Wheat the court upheld the provision of transportation services to private school pupils as being a function of helping to enforce the state's compulsory attendance laws. It served a public purpose to remove transportation-related danger for the children required to attend school. At the same time, since the intent of the transportation was to enforce compulsory attendance and not necessarily to aid the private school, any benefit gained by the primarily sectarian schools was to be considered incidental. The court, in its own words, found it "unnecessary" to examine the objection of aid to religious institutions.⁴⁸

Likewise, the other courts favored nonpublic transportation by arguing a public purpose for its provision. In Adams, transportation aid or services was aid and protection to children so they could comply with compulsory attendance,⁴⁹ while in Nichols the court not only agreed, but indicated that transportation was only an indirect benefit to the school.⁵⁰ Again in Bowker the child benefit theory was maintained, so that children were the direct beneficiaries of the transportation and schools were only indirectly benefited. Indirect benefits to private schools could not then be labeled as

unconstitutional misappropriations of public moneys for private purposes.⁵¹

Although only three state courts had upheld nonpublic transportation prior to Everson, their reasoning was consistent in favoring a public purpose - child benefit approach to transportation as a legitimate form of public aid to private schools and their pupils. It would have been speculative to try to determine the influence of their line of thinking on subsequent state constitutional decisions upholding nonpublic transportation, since the Supreme Court ruling in Everson probably had a greater impact on later courts looking favorably upon transportation as an acceptable use of public funds.

An Analysis of the Everson Case

As illustrated in the first part of this chapter, nine states had litigated the question of nonpublic pupil transportation before a challenge of New Jersey's transportation statute resulted in a private school transportation case being heard by the United States Supreme Court in Everson. The case was appealed to the Supreme Court after the state's court of appeals reversed a lower court's judgment that the legislature was without power under the state constitution to authorize reimbursement to nonpublic parents for costs expended in transporting their children to parochial schools.

Facts of Everson

The 1941 New Jersey statute under question in Everson authorized local school districts to transport nonpublic pupils, on the condition that they were already providing transportation to their public school pupils. Acting under this statute, the local board of education of Ewing Township then passed a resolution allowing the reimbursement of transportation costs to parents who sent their children to Catholic parochial schools in the community.⁵²

A local taxpayer, Arch R. Everson, then filed suit in a state court by charging that the New Jersey statute and board resolution violated both the state and federal constitutions. After the lower court ruled that the statute was in violation of the state constitution, the case was then appealed to the New Jersey Court of Errors and Appeals. This court reversed the lower court's holding and ruled that neither the statute nor the board resolution was in violation of the state or federal constitutions.⁵³

Decision in Everson

When the case was brought by appellant Everson to the Supreme Court in November of 1946, there were two main contentions to his argument against the authorized transportation reimbursements to parents of pupils attending parochial schools. First, he charged that the statute and resolution authorized the state to take by taxation the private property of some and bestow it upon others, to be used for their own

private purposes. This was an alleged violation of the Due Process Clause of the Fourteenth Amendment.⁵⁴ Secondly, the use of tax money to reimburse and transport primarily Catholic pupils was seen as an alleged use of the state's power to support church schools. This support was contended to be in violation of the prohibitions of the First Amendment, which was made applicable to the states by the Fourteenth Amendment.⁵⁵

The Supreme Court disagreed with the first contention of appellant Everson's argument. The New Jersey legislature had appropriately decided that a public purpose was served by using tax-raised funds to pay the bus fares of all children, including parochial pupils. The court indicated that:

The fact that a state law, passed to satisfy a public need, coincides with the personal desires of the individuals most directly affected is certainly an inadequate reason for us to say that a legislature has erroneously appraised the public need.⁵⁶

In upholding the transportation reimbursement to parents, the court similarly reasoned that a private purpose was not necessarily served "because it provides that tax-raised funds will be paid to reimburse individuals on account of money spent by them in a way which furthers a public program."⁵⁷

The second argument against the transportation provision was seen by the court as a claim that the statute violated the Establishment Clause of the First Amendment. In rejecting this claim, the majority of the court noted the difficulty in "drawing the line" between providing public funds for general public welfare and publicly

supporting religious institutions.⁵⁸ The New Jersey transportation statute had to be considered in accordance with the limitations of the First Amendment, but it was important not to "... strike that state statute down if it is within the state's constitutional power even though it approaches the verge of that power."⁵⁹

It was reasoned by the majority of the Supreme Court in Everson that the provision of transportation by New Jersey to nonpublic pupils served a public purpose as "part of a general program under which it (the state) pays the fares of pupils attending public and other schools."⁶⁰ The court likened the provision of transportation to nonpublic pupils to other general government services such as police and fire protection, sewage disposal, or public roads and sidewalks. To prohibit such public services to sectarian institutions was "obviously not the purpose of the First Amendment," as the state's power is "no more to be used so as to handicap religions, than it is to favor them."⁶¹

The Supreme Court in Everson accepted the child benefit theory and rejected the notion that the public provision of transportation was support of the nonpublic schools:

The State contributes no money to the schools. It does not support them. Its legislation, as applied, does no more than provide a general program to help parents get their children, regardless of their religion, safely and expeditiously to and from accredited schools.⁶²

Measured by the standards of the First Amendment, New Jersey's transportation statute met the test of constitutionality. In the words of the court, "The First Amendment has erected a wall between church

and state. That wall must be kept high and impregnable. We could not approve the slightest breach. New Jersey has not breached it here."⁶³

Implications of Everson

Since the basic question before the Supreme Court in Everson was whether transportation of children to church schools constituted state support of religion, the Court was asked to rule for the first time on the applicability to the states of the Establishment Clause of the First Amendment through the Due Process Clause of the Fourteenth Amendment. In deciding that the public provision of transportation to nonpublic pupils was for the child's benefit, the Court maintained that such transportation was not government support or establishment of religion. By protecting the health and safety of pupils who were required to attend school under state compulsory attendance laws, the state in furnishing nonpublic transportation was merely providing a service to the pupils as part of a general welfare program which served a public purpose. Thus, the reasoning in Everson was clearly in agreement with the thinking of those previous state court decisions which had upheld the provision of nonpublic pupil transportation.

In order to determine whether nonpublic transportation aid or services violated the Establishment Clause, the Court reviewed the historical "background and environment of the period in which that constitutional language was fashioned and adopted."⁶⁴ Regarding the Establishment Clause, the Supreme Court had this to say:

The 'establishment of religion' clause of the First Amendment means at least this: Neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion. Neither a state nor the Federal Government can, openly or secretly, participate in the affairs of any religious organizations or groups and vice versa. In the words of Jefferson, the clause against establishment of religion by law was intended to erect 'a wall of separation between Church and State.' 65

While the words of the Court in Everson appeared to be strong testimony in favor of total separation of church and state, the acceptance by the Court of the child benefit theory in allowing nonpublic transportation aid diluted this conclusion. Opponents of public aid to nonpublic pupils and schools viewed the Everson decision as a breach of that separation between church and state, and a precedent case for subsequent litigation of other types of public aid to primarily sectarian schools.

Justice Rutledge, in a strong dissent to the majority opinion of Everson, shared this concern:

Neither so high nor so impregnable today or yesterday is the wall raised between church and state by Virginia's great statute of religious freedom and the First Amendment New Jersey's statute sustained is the first, if indeed it is not the second breach to be made by this Court's action. That a third, and a fourth and still others will be attempted, we may be sure.⁶⁶

Joined in his dissent by three other Justices, Rutledge saw the public welfare-child benefit reasoning of Everson's majority as a "ready method for nullifying the (First) Amendment's guaranty"⁶⁷ against support of religion. For this reason, he did not view Everson as "just

a little case over bus fares."⁶⁸ Though the Everson decision on transportation might have been distant to the complete establishment of religion, Rutledge's dissent paraphrased Madison's warning that the case might be the "first step in that direction."⁶⁹

If Everson was a landmark case in favor of aid to nonpublic pupils, it was also a turning point in the litigation of nonpublic pupil transportation provision. Since the question of the federal constitutionality of such transportation had been answered, the topic of nonpublic pupil transportation was turned back to the states to decide. Everson did not rule on whether the New Jersey statute or resolution were constitutional regarding the New Jersey constitution. Nor did the Court comment on whether similar statutes would violate other states' constitutional provisions. In leaving open the question of state constitutionality, the Court allowed the provision of nonpublic transportation to become once again an individual state issue.

Table 2.1

BASIS OF STATE COURT DECISIONS REJECTING NONPUBLIC PUPIL TRANSPORTATION, 1923-1946

YEAR	STATUTORY RULING		RULING ON UNCONSTITUTIONALITY OF THE TRANSPORTATION		
	Absence of statutory authority	Impermissible aid to sectarian school	Violation of guarantees of religious freedom	Misuse of public school funds	Appropriation of public money for private purposes
1923	<u>State v. Milquet</u> 192 N.W. 392 (Wisc., 1923)			<u>Milquet</u> (Wisc., 1923)	
1931	<u>Hlebanja v. Brewe</u> 236 N.W. 296 (S.Dak., 1931)	<u>Hlebanja</u> (S.Dak., 1931)			
1934		<u>State v. Brown</u> 172 A. 835 (Del., 1934)			
1938		<u>Judd v. Board of Ed.</u> 15 N.E. 2d 576 (N.Y., 1938)	<u>Judd</u> (N.Y., 1938)		
1941		<u>Gurney v. Ferguson</u> 122 P. 2d 1002 (Okla., 1941)			

Table 2.1 (cont'd)

YEAR	STATUTORY RULING		RULING ON UNCONSTITUTIONALITY OF THE TRANSPORTATION		
	Absence of statutory authority	Impermissible aid to sectarian school	Violation of guarantees of religious freedom	Misuse of public school funds	Appropriation of pub. money for private purposes
1943		<u>Sherrard v. Jeff. Co. Bd. of Ed.</u> 171 S.W. 2d 963 (Kent., 1943)		<u>Sherrard</u> (Kent., 1943)	
		<u>Mitchell v. Consol. Sch. Dist.</u> 135 P. 2d 79 (Wash., 1943)	<u>Mitchell</u> (Wash., 1943)	<u>Mitchell</u> (Wash., 1943)	<u>Mitchell</u> (Wash., 1943)

Table 2.2

BASIS OF STATE COURT DECISIONS UPHOLDING NONPUBLIC PUPIL TRANSPORTATION, 1923-1946

YEAR	Function of enforcing compulsory attendance	Removal of danger for health and safety	Use of police power of state to promote public welfare	Benefit to child	Incidental benefit to sectarian school
1938	<u>Board of Education v. Wheat</u> 199 A. 628 (Md., 1938)	<u>Wheat</u> (Md., 1938)		<u>Wheat</u> (Md., 1938)	
1942	<u>Adams v. St. Mary's</u> 180 Md. 550 (Md., 1942)	<u>Adams</u> (Md., 1942)		<u>Adams</u> (Md., 1942)	
1946		<u>Nichols v. Henry</u> 191 S.W. 2d 930 (Kent., 1946)		<u>Nichols</u> (Kent., 1946)	<u>Nichols</u> (Kent., 1946)
			<u>Bowker v. Baker</u> 167 P. 2d 256 (Calif., 1946)	<u>Bowker</u> (Calif., 1946)	<u>Bowker</u> (Calif., 1946)

NOTES - CHAPTER 2

¹See State ex rel. Van Straten v. Milquet, 192 N.W. 392 (Wisconsin, 1923); State ex rel. Traub v. Brown, 172 A. 835 (Delaware, 1934); Judd v. Board of Education, 15 N.E. 2d 576 (New York, 1938); Gurney v. Ferguson, 122 P. 2d 1022 (Oklahoma, 1942); Sherrard v. Jefferson County Board of Education, 171 S.W. 2d 963 (Kentucky, 1943); Mitchell v. Consolidated School, 135 P. 2d 79 (Washington, 1943).

²See Board of Education v. Wheat, 199 A. 628 (Maryland, 1938); Nichols v. Henry, 191 S.W. 2d 930 (Kentucky, 1946); Adams v. County Commissioners, 26 A. 2d 377 (Maryland, 1942); Bowker v. Baker, 167 P. 2d 256 (California, 1946).

³Philip B. Kurland and Gerhard Caspar, eds., Everson v. Board of Education. Vol. 44 of Landmark Briefs and Arguments of the Supreme Court of the United States: Constitutional Law (Arlington, Virginia: University Publications of America, 1975), p. 52.

⁴Everson v. Board of Education, 330 U.S. 1, 91 L. Ed. 711, 67 S.Ct. 504 (1947).

⁵State v. Milquet, 180 Wis. 190, 192 N.W. 392 (Wisc., 1923).

⁶Id., at 395.

⁷Hlebanja v. Brewe, 58 S.D. 351, 236 N.W. 296 (S.Dak., 1931).

⁸Id., at 297.

⁹State v. Brown, 36 Del. 181, 172 A. 835 (Del., 1934).

¹⁰Id., at 837. Synod of Dakota v. State of South Dakota, 2 S.D. 366, 50 N.W. 632 at 635.

¹¹Id., at 837.

¹²Judd v. Board of Education, 278 N.Y. 200, 15 N.E. 2d 576 (N.Y., 1938), cert. denied, 317 U.S. 588, 87 L.Ed. 481, 63 S.Ct. 34 (1942).

¹³Id., at 582

¹⁴Id., at 582.

¹⁵Id., at 584.

¹⁶Gurney v. Ferguson, 190 Okl. 254, 122 P.2d 1002 (Okla., 1941).

¹⁷Id., at 1003.

18Id.

19Id., at 1004.

20Sherrard v. Jefferson County Bd. of Ed., 294 Ky. 469, 171 S.W. 2d 963 (Kent., 1943).

21Gurney, 122 P.2d at 1003, 1004; Judd, 15 N.E. at 582.

22Sherrard, 171 S.W. 2d at 962, 963.

23Mitchell v. Consolidated School Dist. No. 201, 17 Wash. 2d 61, 135 P.2d 79 (Wash., 1943).

24Id., at 81, 82.

25Id.

26Board of Education v. Wheat, 174 Md. 314, 199 A. 628 (Md., 1938).

27Id., at 628, 629. The State of Maryland provides for nonpublic pupil transportation on a countywide basis, only as state legislation is enacted individually for a county to provide such transportation.

28Id., at 630.

29Id., at 632.

30Adams v. St. Mary's County, 180 Md. 550 (Md., 1942).

31E.g., Wheat, 199 A. 628. Statute under question in Wheat entitled nonpublic pupils to receive transportation services by riding on public school buses.

32Adams, 180 Md. at 557.

33Nichols v. Henry, 301 Ky. 434, 191 S.W. 2d 930 (Kent., 1946).

34Compare Sherrard, 171 S.W. 2d 963. The statute in question required that nonpublic pupils be given the same transportation rights as public school children. Such transportation was deemed a misuse of the public school fund.

35Bowker v. Baker, 73 C.A. 2d 653, 167 P.2d 256 (Calif., 1946).

36Id., at 263.

37State, 172 A. at 837.

38Judd, 15 N.E. 2d 576.

39Id., at 584.

40Mitchell, 135 P.2d 79.

41Kurland and Caspar, supra note 3, at 44. Shortly after the May, 1938, Judd decision which rejected nonpublic pupil transportation in New York, the voters of the state in November amended their state constitution to allow publicly-funded transportation to any school.

42Gurney, 122 P.2d at 1004.

43Sherrard, 171 S.W. 2d 963; Mitchell, 135 P.2d 79.

44Nichols, 191 S.W. 2d 930.

45Mitchell, 135 P.2d at 81.

46Id.

47Wheat, 199 A. 628; Adams, 180 Md. 550; Nichols, 191 S.W. 2d 930; Bowker, 167 P.2d 256.

48Wheat, 199 A. at 632.

49Adams, 180 Md. 550.

50Nichols, 191 S.W. 2d at 934-35.

51Bowker, 167 P.2d at 260.

52Everson, 330 U.S. at 3.

53Id., at 1-4.

54Id., at 5.

55Id.

56Id., at 7.

57Id.

58Id., at 14.

59Id., at 16.

60Id., at 17.

61Id., at 17, 18.

62Id.

63Id.

64Id., at 8.

65Id., at 15-16.

66Id., at 29.

67Id., at 56.

68Id., at 57.

69Id.

CHAPTER 3

A REVIEW OF NONPUBLIC PUPIL TRANSPORTATION CASES

FOLLOWING EVERSON

Introduction

The Supreme Court's decision in favor of nonpublic pupil transportation in Everson gave credence to the acceptability of transportation as a possible state or local aid to nonpublic pupils and their schools. By removing the federal constitutional barrier to such aid, the Everson decision encouraged supporters of private school aid to renew their efforts to gain individual state legislation to permit or mandate nonpublic pupil transportation.

In the thirty-five year period following Everson from 1947 through 1982, there were a total of 57 cases reported on the topic of private school transportation in 25 states. While a majority of these decisions were decided on the issue of whether nonpublic transportation aid was constitutional, some of the cases simply involved judicial interpretations on the acceptability of certain provisions of existing transportation statutes.

The issue of cross-district busing of nonpublic school pupils was brought before the courts for the first time during the period after 1947. This aspect of private school transportation raised federal constitutional questions as to whether such transportation benefits violated the Establishment Clause of the First Amendment, or created a

classification of beneficiaries along religious lines in violation of the Fourteenth Amendment.

Federal constitutional issues were raised over the provision of outside-district busing for nonpublic pupils. However, none of the cross-district busing cases went beyond the federal district court level. Although the issue has not been tried before the Supreme Court, the Court did dismiss an appeal of a federal district court decision in Pennsylvania which upheld the acceptability of private school transportation across district lines. The Court cited the lack of a substantial federal question, thus indicating that the topic presented no new constitutional issues beyond what had already been decided by the court, presumably in Everson.

Chapter three chronologically traces the history of both intradistrict and interdistrict nonpublic pupil transportation following the Supreme Court's 1947 decision in Everson in favor of within-district transportation. This legal case review presents those points of law on which state and federal judicial decisions were based on the transportation of private school pupils from 1947 to 1982. The judicial cases are grouped into three time periods in the chapter (1947-59, 1960-69, 1970-82) in order to outline the changing trends in decisions by the various courts on the topic. Tables are provided after the chapter's conclusions to illustrate these changes (See Tables 3.1 - 3.9).

Post Everson CasesState Cases, 1947-1959

The two nonpublic pupil transportation cases immediately following Everson in 1947 did not raise any federal or state constitutional issues. In the first of these, Connell v. Board of School Directors, the Pennsylvania Supreme Court in May, 1947, ruled that a school district was authorized to use school funds only for the free transportation of public school pupils. Because no duty of the school district existed to furnish free transportation to parochial schools, the court avoided any constitutional argument on the topic.¹

Connell rejected nonpublic pupil transportation on the basis that no statutory authority existed for a local school district to provide such aid. Likewise, an appellate state court in Iowa during the same year decided that state law limited publicly funded transportation to public school pupils in Silver Lake Consolidated School District v. Parker. The absence of statutory authority to provide nonpublic pupil transportation made it unnecessary for the court to consider any constitutional question.² Again, as in Connell, no reference was made to Everson by the judiciary in Silver Lake.

The first state case to mention the Everson decision was decided on state constitutional grounds rather than federal constitutional grounds as in Everson. In Visser v. Nooksack Valley School Dist. No. 506,³ the Washington Supreme Court in 1949 ruled for the second time against the mandatory provision of transportation to nonpublic pupils.⁴ The

transportation statute was found invalid on state constitutional grounds prohibiting the appropriation of public money for the support of any religious establishment. Although the court in Visser noted that the appellant's defense of such transportation placed "great reliance on the principles announced in Everson," the court was also careful to point out that the "... right of individual states to limit such public transportation to children attending the public schools is carefully preserved."⁵

The facts in a 1951 state case in New Mexico showed that Roman Catholic parochial schools were being subsidized with state tax funds through the employment of teachers and the provision of free textbooks and bus transportation. The highest court in New Mexico maintained in Zellers v. Huff that the transportation provision was a direct violation of the state constitution forbidding aid for the support of any sectarian school.⁶

McVey v. Hawkins in Missouri was also settled on state constitutional grounds two years later.⁷ In this case the state appellate court struck down two earlier statutes from 1939 authorizing a public school district to pay for the transportation of children to public or private schools using a partial state reimbursement. The court rejected the child benefit theory that private school transportation was a lawful health and welfare exercise of the state's police power. Instead, the transportation of nonpublic pupils on a pupil school bus was held to be an improper use of public school funds conflicting with state constitutional provisions.⁸

Quinn v. School Committee of Plymouth was the first post-Everson case which allowed the transportation of private school pupils.⁹ However, the 1955 decision was unusual in that the state supreme court ruled that the local school committee could not question the constitutionality of Massachusetts's mandatory nonpublic transportation statute. The court maintained that no personal or property rights of the school committee were involved in making transportation available to nonpublic pupils "to the same extent" as that available to public school pupils.¹⁰

The constitutionality of Kentucky's private school transportation statute had been addressed previously in Nichols in 1946.¹¹ The state appellate court's decision to allow the use of general funds, rather than school funds, for transporting nonpublic students was then reiterated in Rawlings v. Butler ten years later.¹² The Rawlings court further ordered that the fiscal court in Kentucky had to bear the costs of such transportation on a 'per capita' basis in order to determine the additional cost of transporting the private school pupils.¹³ This per capita method of publicly funding nonpublic transportation was subsequently upheld by the same court in 1960 in Board of Ed. of Jefferson County v. Jefferson County.¹⁴

The Pennsylvania Supreme Court in 1956 again enjoined a local school district from transporting nonpublic pupils in the absence of state law. In School District of Robinson Township v. Houghton the court maintained that the board of directors of a school district was without discretionary power to transport private school pupils on

public school buses, since the School Code did not authorize such transportation.¹⁵ No constitutional question could be addressed, as the state legislature had never permitted the transportation by law.

New Jersey's first nonpublic pupil transportation decision after Everson also did not involve a constitutional issue. The federal constitutional question of private school transportation had been answered in Everson, while any New Jersey constitutional issue had been solved through a 1947 constitutional amendment passed by the state's electorate to allow such transportation.¹⁶ Shortly after the Everson decision was rendered, the people of the state had adopted the Constitution of 1947 which provided in Article VIII, Section IV, paragraph 3 that:

... the legislature may, within reasonable limitations as to distance to be prescribed, provide for the transportation of children within the ages of five to eighteen years inclusive to and from any school.¹⁷

Although Central Regional High School v. State Bd. of Ed. referenced the constitutionality of nonpublic transportation in New Jersey, the actual decision was a matter of interpreting the particular statute in effect. The state supreme court in Central held that a regional high school district had the statutory power to transport resident parochial pupils in lower grades along its already established routes.¹⁸

A 1959 New York decision confirmed the federal and state constitutionality of expending public funds to transport private school pupils in that state. The state supreme court, by citing Everson, held that the transportation did not violate the First or the Fourteenth

Amendment of the federal constitution in Board of Education of Central School District v. Allen.¹⁹ The court said that the distinctions between the immediate case and Everson were "not valid and material."²⁰ Further, the constitutionality of nonpublic pupil transportation had been assured by a 1938 amendment to the state constitution which permitted the state legislature to provide for the expenditure of public funds for the transportation of children to and from any school.²¹

A local ordinance relating to the transportation of pupils to and from nonpublic schools had been passed by the city of Augusta, Maine. The state supreme court in 1959 in Squires v. Inhabitants of City of Augusta struck down the local law by citing the absence of express authority from the legislature in the city's charter or in a state statute to enact such an ordinance.²² However, the court seemed to support nonpublic pupil transportation by concluding that if a "properly worded enabling act" by the legislature was enacted, the expenditure for nonpublic transportation would meet state constitutional requirements.²³ Referring to Everson as the "law of the land" for the federal constitution, the court felt that in regard to the separation of church and state, the Maine constitution carried no more stringent requirements than the U.S. Constitution.²⁴

State Cases, 1960-1969

In 1960 the Connecticut Supreme Court of Errors was asked to rule on the constitutionality of a permissive statute that allowed local

school districts to transport pupils to nonprofit private schools. Snyder v. Town of Newtown was a complex decision in which the court, despite rejecting the statute as an improper use of school funds, was careful to point out that such transportation constituted a permissible aid to sectarian schools.²⁵

The court in Snyder followed the reasoning used in Everson that the statute did not violate the First Amendment to the federal constitution.²⁶ Nor did the nonpublic pupil transportation statute violate the state constitution in providing public funds for a private purpose. The court again cited Everson that "... it is much too late to argue that legislation intended to facilitate the opportunity of children to get a secular education serves no public purpose."²⁷

Nor was the transportation statute in Snyder found to be a constitutional violation of the state's prohibition against the compulsory support of a church. Transportation to private schools served a public health, safety, and welfare purpose. The court urged that a broader meaning be given to the word "support" in such a prohibition. The court doubted that it was ever intended that "support" be used "in so narrow a sense as to prevent every sort of incidental public assistance to, and encouragement of, religious activity."²⁸

Application of Silver in 1960 was another challenge of the provisions of New York's mandatory transportation for private school pupils.²⁹ The state supreme court repeated its approval of the federal and state constitutionality of the transportation by referring

to the Everson decision and its own previous decision in Board of Education of Central School District v. Allen. The court also refused to become involved in interpreting the actual provisions of the state's transportation law by pointing out that the Commissioner of Education could make determinations on mode of transportation and mileage. The court would not change these determinations unless they were found to be "purely arbitrary".³⁰

The Alaska Supreme Court in 1961 rejected state-funded transportation of nonpublic pupils in a strongly worded argument against the state constitutionality of such a mandatory provision by the legislature. The court in Matthews v. Quinton did not feel bound by the favorable Everson decision on federal constitutionality, but ruled instead on three state constitutional issues.³¹ The state's highest appellate court resolved that the mandatory transportation statute: 1) violated the state's Organic Act which prohibited the appropriation of public money for the support of sectarian or denominational schools; 2) violated the state constitutional prohibition against direct public benefits to sectarian schools; and 3) did not constitute a valid exercise of the state's police power in view of other constitutional inhibitions.³² The decision in Matthews v. Quinton clearly rejected the child benefit theory by espousing the idea that the provision of transportation to nonpublic pupils was a direct benefit to the school. In doing so, the court mentioned similar reasoning proposed by court decisions on transportation in five other

states, the dissenting opinion in Everson, and three transportation and textbook aid dissents.³³

The general trend of state courts in the early 1960's was to reject the provision of state or locally funded transportation to private schools. Similar to the reasoning employed by most of these courts, the Wisconsin state supreme court in 1962 likewise rejected the provision of statewide nonpublic transportation services.³⁴ The 1961 Wisconsin statute under question in Nusbaum provided for the transportation of all pupils attending public and nonpublic schools on regularly approved routes. The transportation of nonpublic pupils was provided only to the nearest public school to which pupils would be entitled to attend.³⁵

The state's supreme court in Nusbaum chose not to follow the decision of Everson, in light of state constitutional provisions against the expenditure of public funds for the benefit of religious societies or seminaries. The Wisconsin court deemed that the federal constitution's First Amendment, which prohibits laws respecting an establishment of religion, was open to more flexibility of interpretation than the section of the Wisconsin constitution just cited.³⁶ The court concluded that the transportation statute under question directly violated this state constitutional prohibition against public aid to religion, since the majority of benefiting schools were sectarian.³⁷

By 1967 the status of nonpublic pupil transportation had changed dramatically in Wisconsin. During that year the Wisconsin state

constitution was amended by a statewide referendum to provide for the inclusion of private school pupils regarding publicly-funded transportation:

Art. I, sec. 23. 'Transportation of school children. Nothing in this constitution shall prohibit the legislature from providing for the safety and welfare of children by providing for the transportation of children to and from any parochial or private school or institution of learning.' 38

Immediately the Wisconsin legislature elected to provide for the transportation of children to any parochial or private school by amending the existing school transportation statutes. Transportation was to be offered on a "reasonably uniform basis" to both public and nonpublic pupils.³⁹

Within two years of the constitutional and statutory provision of nonpublic pupil transportation, Wisconsin's state supreme court was asked to interpret certain provisions of the statute. In 1969 after a local school board eliminated in-city transportation for all students, the court in Cartwright v. Sharpe ruled that the board had not acted in an arbitrary or unreasonable manner. The elimination of optional city transportation for both public and nonpublic pupils was within the legal scope of a school board's discretionary powers.⁴⁰

Another 1969 case in Wisconsin involved the discretionary power of a school board to transport a private school pupil to his school within the terms outlined in the state transportation law. The particular provision of the statute under question in State ex rel. Knudsen v. Board of Ed. required the school board to transport nonpublic school pupils to their private school, provided the school was the nearest the

pupil might reasonably choose to attend within a five mile boundary limit.⁴¹ The state supreme court held that the local board had arbitrarily determined that a particular pupil's choice of school was unreasonable, and that reasons supporting the pupil's choice of private school should have been considered.⁴²

In Oklahoma a local school board had instituted the practice of transporting nonpublic pupils on public school buses over previously established routes. The state's supreme court in Board of Education v. Antone could not justify this use of school buses operated at public expense even on a public welfare theory, due to a state constitutional provision forbidding use of public money for sectarian purposes.⁴³ The court in 1963 in Antone agreed with the earlier reasoning in Gurney from 1941. This previous Oklahoma decision concluded that if the cost of transportation maintenance and operation served as an aid to public schools, it would necessarily follow that transportation to a nonpublic school was also an aid of that school.⁴⁴

The state of Rhode Island mandated that the school committee of any town should provide to private school pupils the same transportation rights and privileges to and from schools as that provided to pupils attending public schools. Chaves v. School Committee in 1965 did not involve a constitutional issue.⁴⁵ The principal question the court was asked to resolve in this case was whether the statute required the school committee to bus private school students to the town boundary line if the private school was located outside of town. The court ruled to the contrary by stating that "... in the absence of equivocal

or ambiguous language, there is no room for construction ... and the language (of the statute) must be applied literally."⁴⁶

In 1966 the Delaware Supreme Court handed down a ruling in Opinion of the Justices that statewide mandatory nonpublic pupil transportation was unconstitutional.⁴⁷ The court felt it was not instrumental to their decision whether the benefit of free transportation to nonpublic schools was a primary or only a secondary benefit to pupils or parents. The free transportation to and from private schools was a violation of the state's prohibition against tax funds for educational purposes being used to aid church schools.⁴⁸ The Justices decision upheld the reasoning of an earlier Delaware decision in 1934 on appropriating school or general funds for the purposes of transporting private school pupils.⁴⁹

The Delaware court believed that its conclusion in Justices against such transportation aid was "... in accord with what appears to be the majority rule as established in a line of cases in other jurisdictions"⁵⁰ The court also stated that the Everson decision regarding federal constitutionality did not involve a strict constitutional provision similar to that in Delaware's constitution proscribing any or all aid to sectarian schools.

The state court's decision on nonpublic pupil transportation left little, if any, room for argument on the constitutionality of the topic in Delaware. Shortly after Opinion of the Justices, the Delaware constitution was amended by adding an article that stated that the General Assembly may provide for transportation for nonpublic-nonprofit

school children to nonpublic-nonprofit schools.⁵¹ The state legislature then quickly passed a statute which mandated equal treatment regarding pupil transportation as between nonpublic schools and public schools.

Prior to 1965 there was no statutorily authorized transportation service for nonpublic children in Pennsylvania. In that year the state legislature mandated that local school districts provide free transportation to private schools when it was so provided to public schools. The mandatory transportation provision was upheld by the state's supreme court in 1967 in a strongly worded opinion in Rhoades v. School District of Abington Township.⁵² The case referred to the Supreme Court's decision in Everson as the "law of the land."⁵³ The Pennsylvania court followed the public welfare - health and safety reasoning of Everson toward the transportation of nonpublic pupils.

The Pennsylvania transportation statute, despite any direct or indirect benefit to a church-related institution, was not found to violate state constitutional provisions against the compelled support of a place of worship, maintenance of a ministry, or preference of a religion.⁵⁴ The court was scathing in its denouncement of plaintiffs' claim in Rhoades that the transportation provision violated the cited state constitutional prohibitions. Such assertions were found to be "so feeble of merit that they must fall in the slightest breeze of analysis Even in quixotic imagination, a school bus cannot be regarded as a place of worship."⁵⁵

The state of New Jersey had four private school transportation cases appealed to its superior court between the late 1960's and early 1970's. At question in the first case was the transportation statute which was enacted after the 1947 constitutional convention amended the state constitution to allow nonpublic pupil transportation. The statute authorized New Jersey school districts to provide transportation services to private school children on already established public school transportation routes. Although the superior court in 1967 reaffirmed the federal and state constitutionality of this transportation law in Fox v. Board of Ed. of West Milford, the court rejected the creation of routes designed solely for nonpublic pupils.⁵⁶ The expenditure of public funds for that purpose was perceived as violating the legislative intent of the statute.⁵⁷

The New Jersey transportation statute under question in Fox was then amended in 1968. The new transportation statute no longer restricted the busing of private school students to established public school routes. Instead, the amended law mandated transportation to "remote" in-state private schools which were not more than twenty miles from the pupil's residence. If the per pupil cost of this transportation exceeded a set amount, that amount was then reimbursed to the nonpublic pupil's parents for expenses incurred in transporting the child to the private school.⁵⁸

The state court's decision in McCanna v. Sills contended that the amended 1968 New Jersey statute did not violate the Establishment Clause of the First Amendment of the federal constitution.⁵⁹ The

court applied a "test" to the transportation law to determine whether it could withstand the strictures of the Establishment Clause. The criteria for the test had been set down by the United States Supreme Court in Abington Township v. Schempp in 1963:

The test may be stated as follows: What are the purpose and the primary effect of the enactment? If either is the advancement or inhibition of religion, then the enactment exceeds the scope of legislative power as circumscribed by the Constitution. That is to say that to withstand the strictures of the Establishment Clause there must be a secular legislative purpose and a primary effect that neither advances nor inhibits religion.⁶⁰

The New Jersey court in McCanna then explained that the Supreme Court in Board of Education v. Allen in 1968 had approved of its earlier Everson decision as being in compliance with this 'Schempp test.'⁶¹ Since the New Jersey statute was reasoned by the state court as being constitutional in terms of the Everson decision, it was likewise constitutional in regards to the Schempp test.⁶² There was no improper legislative purpose to the New Jersey law, nor did the provision of nonpublic pupil transportation advance or inhibit religion.⁶³

The next transportation case in New Jersey did not specifically raise any issues of constitutionality regarding the transportation statute previously examined in McCanna. During that same year, in 1968, the state court was asked to interpret requirements of the statute in busing remote students. In Board of Education v. Gateway the court stated that remote nonpublic pupils were entitled to transportation to school so long as any remote public school pupil was

transported by a district, including a regional public school district.⁶⁴

The New Jersey Supreme Court in West Morris v. Sills then repeated the findings of McCanna and Gateway in upholding the state's transportation statute in 1971 against charges of unconstitutionality and discrimination of public school pupils.⁶⁵ The court additionally ruled that the statute did not deny equal protection of the laws to private school pupils because transportation was only provided in districts required to furnish busing to public schools. Nor was it deemed unreasonable that certain nonpublic pupil restrictions were specified in the statute for cost and mileage limits.⁶⁶

In 1967 the state legislature of Hawaii authorized the State Department of Education to 'provide suitable transportation to all school children ... of the state.'⁶⁷ The state board subsequently established regulations for the granting of subsidized bus transportation to school children attending both public and nonpublic sectarian or private schools.

The Hawaii nonpublic transportation statute and bus regulations were invalidated the next year by the state supreme court in 1968 in Spears v. Honda.⁶⁸ The provision of public transportation to nonpublic pupils was found to violate the state constitutional prohibition against appropriating public funds for the support or benefit of any sectarian or private educational institution. Tracing back to the state's 1950 constitutional convention proceedings, the court concluded that the child benefit theory as applied to bus

transportation and similar general welfare programs for nonpublic pupils had been specifically rejected by the convention.⁶⁹

The ruling case on nonpublic pupil transportation in Ohio was Honohan v. Holt in 1968. The Ohio school transportation statute had been amended in 1966 to include all children attending a school for which the state board of education prescribed minimum standards.⁷⁰ Local school boards were required to transport pupils to nonpublic schools up to a distance of thirty minutes travel time.

The decision in Honohan v. Holt relied heavily on the Supreme Court's reasoning in Everson in upholding public funding of transportation to private schools. Following the standards of Everson, the state appellate court maintained that the Ohio bus law was not constitutionally distinguishable from the New Jersey law which was held in Everson to be constitutional regarding the Establishment Clause of the First Amendment.⁷¹ Nor did the court view the Ohio constitutional provision as being more restrictive than the First Amendment. Using a child benefit theory of indirect sectarian school aid for transportation, the court ruled that the bus provision was not support of a religious place of worship.⁷²

Honohan was the second state decision in 1968 that gave credence to the idea that the United States Supreme Court had reiterated its holding in Everson on transportation aid to sectarian pupils within its Allen decision on textbooks.⁷³ While Everson held that transportation aid to parochial pupils did not violate the Establishment of Religion Clause of the First Amendment, the Allen

decision "extended that holding beyond the field of transportation into the field of school books."⁷⁴ The Honohan court also pointed out that the Supreme Court had passed over at least two recent opportunities to reverse its stance in Everson on transportation. The Supreme Court had dismissed appeals in 1960 and 1968 on two cases which had upheld nonpublic pupil transportation in Snyder v. Town of Newtown in Connecticut and in Rhoades v. School District in Pennsylvania.⁷⁵

A 1963 Michigan statute required local school districts to provide transportation without charge for every resident child to the public or nearest state-approved nonpublic school. The Court of Appeals in Alexander v. Bartlett⁷⁶ in 1968 applied the test used in School District of Abington Township v. Schempp to measure the transportation statute by the federal First Amendment:

- 1) Does the statute have a secular legislative purpose?
- 2) Does the statute have a primary effect that either advances or inhibits religion? ⁷⁷

The court then ruled that the transportation statute did not offend the First Amendment of the federal constitution. The purpose of the statute was "to help children get to public and nonpublic schools in safety ... to receive their education."⁷⁸ This was clearly a secular legislative purpose, so that the law's primary effect could not be said to either advance or inhibit religion.

The same reasoning was used by the court in Alexander to determine the state constitutionality of Michigan's busing statute. Since the statute was judged secular in purpose, it similarly did not violate

state constitutional provisions relating to the free exercise of religion, the prohibition of an establishment of religion, or the improper use of school funds for nonpublic purposes.⁷⁹

State Cases, 1970-1982

An early transportation statute from 1931 granted to West Virginia county boards of education the authority to publicly provide adequate means of transportation for all school age children. In 1970 the state supreme court in State ex rel. Hughes v. Board of Education asserted that once boards had opted to provide transportation at public expense, they could not arbitrarily discriminate among children of school age by excluding nonpublic pupils.⁸⁰ The refusal to transport parochial pupils was determined by the court to be a denial to Catholic parochial school children and their parents of equal protection of the laws as guaranteed by the Fourteenth Amendment of the federal constitution.⁸¹

Furthermore, the denial to parochial pupils of equal transportation rights and benefits was held in Hughes to deprive Catholic children and their parents of their right of religious freedom of the federal First Amendment and also the comprehensive provisions of the West Virginia constitution. By serving a public purpose of protecting the safety of school children, the transportation statute's requirements on busing private school pupils did not constitute an expenditure of public funds for private purposes, as prohibited by the state constitution.⁸²

A 1969 Minnesota statute authorized that "school children attending any schools ... are entitled to the same rights and privileges relating to transportation."⁸³ The state then reimbursed districts equally for public and nonpublic pupils. The supreme court of the state was asked to rule on the constitutionality of this transportation plan in Americans United v. Ind. School District in 1970.⁸⁴

The most troublesome issue presented to the court in Americans United was whether the transportation statute authorized the use of public money for the support of sectarian schools in violation of the Minnesota constitution. The court noted that while the transportation statute went "'to the verge of constitutional power,' we cannot say that it goes beyond that power."⁸⁵ The court was persuaded that there was merit to the argument that the transportation of pupils served a legitimate secular purpose in promoting the safety of children required to attend school by compulsory law. In stating this secular purpose, the court referenced the First Amendment test laid down by the Supreme Court in Schempp.⁸⁶ The Minnesota transportation met the test by the court, as the primary effect and purpose of the law was not to benefit religion, nor to support sectarian schools.

The courts in Wisconsin were similarly involved in the topic of nonpublic pupil transportation during the 1970's. There were five state and federal court decisions in Wisconsin during this time. The issues ranged from statutory interpretations to the violation of equal protection rights of private school pupils.

The first Wisconsin case litigated during this time was Vanko v. Kahl in 1971.⁸⁷ Petitioners in the case challenged amendments made to the transportation statute regarding pupil attendance areas for private schools. Nonpublic pupils were being transported by local school districts on an attendance area basis, with the stipulation that attendance areas of private schools with the same religious denomination should not overlap.⁸⁸ The state supreme court in Vanko did not interpret the statute as placing a restriction upon children attending religious schools, nor as making a statutory classification based on religious affiliation. Instead, the attendance area basis for private school transportation was judged by the court to have been established as a "general rule for determining which schools pupils are to be assigned to, public, private, or parochial."⁸⁹ The statute in Vanko was thus ruled constitutionally valid.

In a related 1978 transportation case, court records showed that Holy Trinity Community School in Wisconsin had requested that an attendance area be designated for its private pupil attendance within a particular school district. The school's request had been denied since the attendance area was already assigned to other Roman Catholic Schools. The school then claimed in Holy Trinity Community School v. Kahl that it had previously incorporated in 1971 and no longer had any formal ties to the Roman Catholic church.⁹⁰ School bylaws in the incorporation of Holy Trinity provided that there be no affiliation with any religious denomination.⁹¹

The Wisconsin court discovered in Holy Trinity that only the Catholic religion was taught during the school's released-time program for religious instruction. Despite this information, the court concluded that state officials could not make an inquiry to determine whether or not the private school was affiliated with a religious denomination. The facial validity of Holy Trinity's bylaws and charter had to be accepted. To do otherwise involved adjudication of matters of faith or dogma, thus fostering excessive government entanglement with religion.⁹²

An earlier Wisconsin case in 1975, Deutsch v. Teel, questioned a local school board's decision on the provision of transportation to a particular private school. The Milwaukee school board had eliminated bus service to a private elementary academy relocated 400 feet beyond city limits. The case was filed in the United States District Court by the parents of the private academy's pupils.⁹³ The federal court ruled that the board's policy was without a rational basis and violated students' equal protection rights. The court, however, declined to issue a broader ruling directed to the facial validity of the Wisconsin transportation statute, since relief had been provided to the plaintiffs.⁹⁴

Young v. Board of Education in 1976 involved a statutory interpretation of Wisconsin's transportation plan for nonpublic students.⁹⁵ Where the statute did not require transportation more than five miles beyond school district boundaries, the state's supreme court in 1976 reasoned that statutory construction was not available to

either raise or lower the specific number of miles even when the private school was 130 feet beyond a school district's boundary line.⁹⁶

A related case occurred in Wisconsin four years later in 1980 in O'Connell v. Kniskern.⁹⁷ The United States District Court was asked to look at the state's optional provision for local school districts to provide transportation beyond the five mile limit mentioned in Young. After voters in the Mukwonago School District voted down the financing of bus transportation to a Catholic high school located slightly beyond the district's boundary, plaintiffs in O'Connell charged that the Wisconsin statute operated to deny equal protection of the laws as guaranteed by the Fourteenth Amendment of the United States Constitution.⁹⁸

The District Court maintained in O'Connell that the transportation statute did not operate to discriminate on the basis of a suspect classification, as charged, but merely implemented a benefit, and not a right. The benefit was distinguished by whether the nonpublic pupil attended a private school either within or outside the five mile limit.⁹⁹ The imposition of a geographical limitation by the legislature on a school district's duty to transport was deemed a legitimate government objective by the court. The federal equal protection guarantee was never meant to take away all power of classification from the states.¹⁰⁰

An earlier Wisconsin transportation case in 1979 was an appeal in Hahner v. Board of Education regarding the required busing of private

school pupils during public school vacation periods.¹⁰¹ The state court stipulated that the local school board did not have the discretion to deny transportation during such vacation times, as the prime purpose of the publicly-funded transportation was to "insure the safety and welfare of the pupils."¹⁰² Added expense and rescheduling to provide the private schools transportation were judged not to be the concern of the court, but were the responsibility of the Wisconsin public school districts.

The sole transportation case involving nonpublic pupils in Idaho occurred in 1971. During the previous year the state legislature mandated that local school districts transport public and private school pupils wherever practicable within their boundaries. The trial court in Epeldi v. Engelking¹⁰³ relied on two decisions of the United States Supreme Court in Schempp and Allen to test the constitutionality of Idaho's transportation statute.¹⁰⁴ Applying the test of a secular legislative purpose and a primary effect that neither advanced nor inhibited religion, the court reasoned that the law did serve a legislative purpose. The law provided "all children in the state with the same right of bus service to the school of their choice."¹⁰⁵

The state supreme court, however, rejected the trial court's use of the Schempp-Allen test in Epeldi in determining the transportation statute's constitutionality under the stricter church-state provisions of the Idaho constitution. The court reasoned that the state constitution was intended to more positively enunciate the separation of church and state by specifically prohibiting aid to any sectarian

school.¹⁰⁶ It was the court's conviction that the transportation of nonpublic school pupils was in violation of the specific state prohibition against public aid to parochial schools.¹⁰⁷

The court in Epeldi also criticized the West Virginia state court's decision in Hughes from the previous year.¹⁰⁸ In the latter case the court held that the refusal to transport parochial pupils was a denial of their right to the Fourteenth Amendment's equal protection of the laws and their First Amendment's right of religious freedom. This argument was rejected in the Epeldi case as being a "circuitous route to arrive at a predetermined goal."¹⁰⁹

There were two related nonpublic pupil transportation cases in Illinois during the 1970's. A 1971 revised state law had mandated that school boards provide nonpublic pupils the same transportation along regular school bus routes as that provided for public school pupils. The constitutionality of this mandate was first challenged in 1973 by the Cook County School District in Board of Education v. Bakalis.¹¹⁰ After examining other states' judicial decisions on such transportation, the state's supreme court used a three-part test to determine the statute's constitutionality. The court found that:

- 1) The Illinois statute had been enacted for the secular legislative purpose of protecting the health and safety of children traveling to and from nonpublic schools.
- 2) The primary effect of the statute neither advanced nor inhibited religion. Any benefit to the parochial school or controlling church was incidental.
- 3) The statute did not foster an excessive government entanglement with religion. ¹¹¹

After making these conclusions, the court in Bakalis held the statute to be constitutional regarding the federal constitution's First Amendment.¹¹² However, the court's interpretation of state constitutional restrictions of public aid for sectarian support also yielded similar substantive results. The statute was found not to violate state constitutional restrictions prohibiting 1) appropriations for sectarian purposes, 2) preference for any religious denomination, or 3) the use of public funds for private purposes.¹¹³

Since the question of federal and state constitutionality of Illinois' transportation statute had been previously decided in Bakalis, the issue did not appear before the same court three years later in People v. State Board of Education.¹¹⁴ Here the Illinois court provided enforcement for the transportation law by upholding the loss of state funds to a district which had failed to provide transportation, as required by the statute, to private elementary and secondary schools.¹¹⁵

By the early 1970's no statutory authority existed in Missouri to expend public funds to transport nonpublic elementary and secondary school pupils. Plaintiffs filed suit in federal court and contended that the denial of such transportation to parochial school pupils was in violation of the due process and equal protection provisions of the United States Constitution. This 1973 case, Luetkemeyer v. Kaufman, differed from other cases in that it asked two basic questions in regard to the federal constitution:

- 1) Is the state of Missouri, by providing bus transportation only to public school pupils, then compelled by the constitution to provide like transportation to private school pupils?
- 2) Must the Missouri transportation law, while it does not provide transportation to private school pupils, be declared repugnant to the constitution? 116

Plaintiffs in Luetkemeyer had argued that the denial of school transportation of pupils, solely because of their nonpublic school enrollment, was an 'arbitrary and unreasonable classification which unconstitutionally denied plaintiffs equal protection of the laws' as prohibited by the Fourteenth Amendment.¹¹⁷ The United States Federal District Court disagreed. The court concluded that Missouri's classification was not irrational, but promoted a legitimate state purpose in historically supporting the separation of church and state in denying state funds to sectarian schools.¹¹⁸

In answer to plaintiff's charges of an invidious classification which infringed upon their fundamental right to select a school of their choice and to freely exercise their religion, the court was equally adamant in its rejection of these charges. The court maintained again that the state had a legitimate state interest. While plaintiffs had a right to send their children to a parochial school to satisfy compulsory attendance, the state of Missouri had not forced them to forego the exercise of their religion to secure a public benefit.¹¹⁹

The federal court in Luetkemeyer concluded that the state of Missouri was not constitutionally compelled to provide transportation to private schools. Nor was the transportation law repugnant to the

constitution in excluding nonpublic school pupils. The court referenced the concurring opinion of Justice Douglas in Sherbert v. Verner¹²⁰ as being generally applicable to Luetkemeyer:

This case is resolvable not in terms of what an individual can demand of government, but solely in terms of what government may not do to an individual in violation of his religious scruples. The fact that government cannot exact from me a surrender of one iota of my religious scruples does not, of course, mean that I can demand of government a sum of money, the better to exercise them. For the free Exercise Clause is written in terms of what the government cannot do to the individual, not in terms of what the individual can exact from the government. ¹²¹

Plaintiffs' demands for an injunction in the case of Luetkemeyer to enjoin Missouri's school transportation statute were then denied by the court.

A later Missouri case at the state supreme court level was not strictly a school transportation case. Mallory v. Barrera in 1976 involved the use of Title I funds received by the state from the federal government's Elementary and Secondary Education Act.¹²² The state's highest court in Mallory ordered that the state's use of both state and federal funds to provide textbooks and transportation for parochial school pupils was impermissible under Missouri's constitutional restrictions.¹²³ The Mallory court pointed out that the provision of transportation to parochial students had been rejected in Missouri by a state appellate court in McVey v. Hawkins over twenty years earlier.¹²⁴ The court in McVey had found such transportation impermissible under the state's constitutional provisions limiting the uses for which public funds could be expended.

Two cases in New York involved constitutional challenges to that section of the state's school transportation statute which allowed optional transportation by city school districts. After a city board of education in the state eliminated transportation to both private and parochial pupils outside school district boundaries, parents of the pupils brought suit in O'Donnell v. Antin.¹²⁵ The Court of Appeals of New York in 1975 agreed with the lower court's ruling in O'Donnell that the statute's permissive transportation provisions for nonpublic pupils did not place an undue burden upon parents' free exercise of religion. Despite the fact that parochial pupil parents would have to provide outside-district transportation at their own expense, the city was not obligated by law to provide such transportation.

In 1976 the New York City Board of Education instituted a new policy providing transportation only to school children who lived five miles or less from their school. An additional requirement provided that the school had to be in the same borough as the child's residence. Although children not meeting the two requirements of school board policy were given free passes for public transit lines, a private school parent brought suit against the city school board in Finkel v. New York City Bd. of Education.¹²⁶ The plaintiff Finkel charged that the school board's transportation policy violated his civil rights under the equal protection of the laws of the federal Fourteenth Amendment.

The United States Federal District Court in Finkel in 1979 could find no validity in plaintiff's claim that New York's school

transportation statute was facially unconstitutional in that it established mandatory transportation for noncity districts and permissive transportation for city districts.¹²⁷ The federal court pointed out that this argument had been dismissed in O'Donnell by New York's appellate court and also subsequently dismissed by the United States Supreme Court.¹²⁸ The court also did not accept plaintiff's claim that his civil rights had been discriminated against by the school board's pupil and school location requirements for transportation. The board's choice of policy in limiting its transportation had not been arbitrary in the sense of singling out plaintiff for special treatment, but had been based on reasonable financial considerations.¹²⁹ While the school board's practice might result in some inequality, a classification which has a reasonable basis was not found to offend the Fourteenth Amendment's Equal Protection Clause.¹³⁰

In 1975 Iowa's school transportation code was amended to allow local school districts to either transport nonpublic school pupils to their schools located outside boundary lines or to contract with continuous school districts to provide this service. Since neither option was available to Iowa public school students, suit was filed to challenge the constitutionality of the law in Americans United for Separation of Church and State v. Benton.¹³¹ It was alleged by plaintiffs that the disparity of treatment violated the Establishment Clause of the First Amendment, since over ninety-eight percent of nonpublic pupils were enrolled in sectarian schools.¹³²

In deciding the first cross-district transportation case, the United States Federal District Court in Benton in 1976 employed the tri-partite test for constitutionality regarding the Establishment Clause. The Iowa law was then found to be constitutionally deficient.¹³³ Although the court agreed that the amended statute had a legitimate secular purpose in providing safe transportation, the flow of state aid to primarily sectarian schools was considered by the federal district court to be a direct advancement of religious activity.¹³⁴

A key factor in the court's findings in Benton was the differential treatment of affording benefits to nonpublic pupils, without similar benefits being available to public school pupils. The absence of any direct payment to Iowa's nonpublic schools was found to be immaterial. Transportation was deemed a nonpublic school benefit.¹³⁵ It was found to be a "charge upon all taxpayers which benefits nonpublic schools by lessening their overall expenses and by necessitating the construction and maintenance of fewer schools."¹³⁶

In 1965 the state supreme court in Rhode Island ruled in Chaves v. School Committee that state law did not require school committees to bus residents to private schools outside their public school districts.¹³⁷ The Rhode Island state legislature then amended the school transportation statute in 1971 to require busing to certain public and private schools outside the public school district. The Board of Regents for Education subsequently interpreted the statute as requiring outside-district private school transportation, as long as

the distance to the private school was as far as the minimum distance of busing public school pupils.¹³⁸ The statute also required the public school district to bus nonpublic pupils to consolidated private schools which were established to serve residents of specific areas within the state of Rhode Island.

The Exeter-West Greenwich Regional School District in Jennings v. Exeter-West Greenwich challenged the scope of the transportation statute and refused to transport private school pupils outside the district beyond the distance it transported public school pupils.¹³⁹ The case was appealed to the state supreme court after the state board of education ruled against the school district. After examining the Rhode Island transportation statute, the court attacked the law and ruled that it:

... did not limit circumstances in which a private school could declare that it serves a specific geographical area, and did not limit the size of the service area that the private school could establish, lacked adequate legislative standards, lacked adequate safeguards against abuse, constituted unreasonable delegation of legislative power, and thus was unconstitutional as applied to private school districts not in existence when the statute was enacted. ¹⁴⁰

The case in Jennings was then remanded to the state board of education for further proceedings.

After two successive court decisions by the Rhode Island Supreme Court against outside-district busing of nonpublic pupils in Chaves and Jennings, the Rhode Island legislature rewrote the school transportation statute to provide busing to any regionalized public or private school up to a fifteen mile radius.¹⁴¹ The United States

Federal District Court was asked to review the revised statute in 1977 in Members of Jamestown Sch. Com. v. Schmidt.¹⁴² In the first of a series of three Rhode Island transportation cases bearing the same name, the federal district court in Jamestown I discovered that the rewritten transportation statute did not, as it purported to, provide like transportation benefits to public and sectarian school children. The evidence showed instead that the state law benefited a single class of children who attended private schools. Facts further indicated that the vast majority of these nonpublic schools were sectarian in nature.¹⁴³

Using the tri-partite test employed by a federal district court in a 1975 Iowan cross-district busing case,¹⁴⁴ the United States Federal District Court similarly judged Rhode Island's outside-district transportation law in terms of the federal constitutional restrictions of the Establishment Clause. The court then concluded in Jamestown I that the additional option of outside-district transportation to private school pupils violated the Establishment Clause in advancing religion and also in fostering excessive government entanglement with religion.¹⁴⁵

In 1978 the Rhode Island state legislature passed another amended version of the school transportation statute, which provided a program for busing pupils to schools not within the limits of a city or town in which pupils reside. This latest transportation act of the General Assembly divided the state of Rhode Island into five transportation districts. The act also provided that pupils, whether they attended

public schools or nonpublic-nonprofit regionalized or consolidated schools, should be transported at public expense. There were two provisions to the amended law: 1) a pupil who both resides in and attends school in the same transportation district receives transportation; and 2) under certain conditions, a pupil who attends school outside his residential transportation region, but within fifteen miles of his residence, may obtain a special variance from the State Commissioner of Education to obtain school transportation.¹⁴⁶

Two school committees in Rhode Island brought an action in federal district court seeking judgment that the newly amended outside-district transportation provision violated both state and federal constitutional provisions. The United States District Court then certified specific questions to be addressed by the Rhode Island Supreme Court in hearing the case. The state supreme court in Jamestown II found the statute to be constitutional in all respects in terms of Rhode Island's constitution:

- 1) The statute did not violate the state's constitutional duty to promote the public schools since it was a general program utilizing the police powers of the state to assist in the compliance of the compulsory education law. Further, the statute was an attempt by the state legislature to facilitate the diffusion of knowledge, by extending transportation to nonpublic pupils. ¹⁴⁷
- 2) The statute did not violate the state constitutional declaration that the permanent school fund be used for supporting the public schools, as it did not mandate using the fund for transportation purposes. ¹⁴⁸

Since the state supreme court in Jamestown II refused to answer any federal constitutional questions on the statute's nonpublic

cross-district school busing, an opening for further litigation of the topic remained for public school districts and opponents of private school aid in Rhode Island.

The next challenge to the Rhode Island transportation statute came in federal district court in 1981 in Jamestown III.¹⁴⁹ The court was called upon this time to determine the federal constitutionality of the statewide provision of cross-district busing to nonpublic pupils in Rhode Island. The federal district court found the amended transportation statute to be "essentially indistinguishable" from the predecessor statute found unconstitutional by the same court in Jamestown I in 1977 in regards to the Establishment Clause.¹⁵⁰

The federal court again employed the tri-partite test which had become customary in Establishment Clause cases. Although the statute had a secular health and safety purpose, it required school committees to publicly provide private sectarian pupils with transportation options not available to public school pupils.¹⁵¹ The lack of "benevolent neutrality," which was required in church-state separation, had the constitutionally impermissible effect of advancing religion. The court was clear in its admonishment of the transportation benefiting religious schools:

The benefits that such religious schools derive from this program are obvious. The free transportation permits the religious schools to attract students from towns and cities located at greater distances from the school at no cost to the institution for transportation. This in turn facilitates the process of regionalization which results in greater revenues and reduced operating expenses for the church....¹⁵²

Upon due consideration of the constitutional violation of the Establishment Clause by the transportation statute, the court ordered an injunction against enforcement of the transportation statute in Rhode Island.¹⁵³

In 1967 the North Dakota state legislature for the first time enacted a statute which permitted the transportation of nonpublic school students on public school buses. The transportation was to be provided on already-established school bus routes on a "seats available" basis. The statute specifically required that no county equalization funds or state funds be paid for any deviation by school districts from the established routes. Since all state aid for public school transportation was based on bus capacity and mileage, the number of pupils transported had no effect on the amount of state aid.¹⁵⁴

In 1975 the legislators in North Dakota amended the school transportation code to include a flat per pupil amount for state transportation aid. When school districts requested that the state pay this per pupil rate for each nonpublic pupil transported, the issue was brought before the state courts.

The North Dakota Supreme Court in 1977 in Dickinson Public School District v. Scott held that the statutory phrase, "each pupil who is transported," was to be strictly construed as applying only to public school pupils.¹⁵⁵ State payments for transportation were authorized only for those public school pupils transported. The state supreme court was careful to interpret only the language of the statute:

We specifically note that we do not reach any constitutional question which might be raised as to any of the sections mentioned

herein. None of the parties raised or discussed any constitutional question, and we decide none. 156

The court in Dickinson, while upholding the denial of state aid for nonpublic pupil transportation, did not forbid the provision of transportation services to private school pupils by local school districts in North Dakota.

Private school transportation in Pennsylvania had been provided since 1965 by a mandatory statute which was upheld by the state supreme court in Rhoades in 1967.¹⁵⁷ The state transportation code was then amended in late 1972 to provide free transportation to any resident pupil to any nonprofit school located within the district, or any such school located up to ten miles outside school district boundaries.¹⁵⁸

The extension of publicly-funded transportation for nonpublic pupils enrolled in private schools outside district boundaries was challenged in court by several Pennsylvania school districts. The first such case, School Dist. of Pittsburgh v. Com. Dept. of Ed., was heard in the Commonwealth Court of Pennsylvania in 1978.¹⁵⁹ Since the Pittsburgh School District had no public pupils enrolled outside its school district boundaries, the local school board had refused to provide outside-district busing to nonpublic pupils. The school board asserted that it was thus complying with the "identical provision" of transportation called for in the transportation statute for public and nonpublic pupils.¹⁶⁰

The commonwealth court in Pittsburgh, however, concluded that the local school district in Pennsylvania could be compelled to transport nonpublic pupils beyond district boundaries, even where like benefits were not provided to public pupils.¹⁶¹ The school district then charged that nonpublic pupils would be the primary beneficiaries of the statute's provision of outside-district busing, and this would advance religion, in violation of the federal constitution's Establishment Clause. The court countered that the cause was not due to the statute, but rather to the school board's policy of not having public school pupils enrolled outside the district.¹⁶² The Pennsylvania transportation statute was found by the court to make no distinction in conferring its benefits on public or nonpublic pupils. Further, the court in Pittsburgh added that the entire process of transporting parochial pupils had been found in Rhoades and Everson to be a child benefit without religious significance.¹⁶³

The Pittsburgh decision was affirmed the next year in 1979 by the Supreme Court of Pennsylvania in Springfield School District v. Dept. of Ed.¹⁶⁴ The latter case involved the same Pennsylvania statute as in Pittsburgh, and was an appeal regarding outside-district transportation by three school districts in Springfield, Pequea Valley, and also Pittsburgh.

Appellant school districts in Springfield challenged the constitutionality of Pennsylvania's transportation statute under the First and Fourteenth amendments and three state constitutional provisions. The state supreme court used the tri-partite test to

establish the constitutionality of the state law under the Establishment Clause of the First Amendment. In applying this test, the court found that the statute:

1. had a health and safety secular purpose.
2. did not advance or inhibit religion, as the law conferred equal busing benefits to nonpublic and public pupils.
3. presented no problem of excessive government entanglement with religion, as the "only contact between the state and the nonpublic school is in the relatively sterile environment of calendar control."¹⁶⁵

The court in Springfield also rejected the reasoning of the federal district court's decision in Rhode Island in Jamestown regarding the comparison of transportation benefits to public and nonpublic pupils.

The Pennsylvania court indicated:

We do not accept the district court's implicit premise that the equality of benefit is to be determined by a comparison of the cost involved. The benefit provided is safe transportation to and from school for all students; the fact that the cost of conferring this benefit may vary is not significant for this purpose. A constitutional consideration would arise only if the cost of transportation for the students attending sectarian schools was so disproportionate that it became apparent that the transportation provided to the public school youngster was merely a ruse to confer a benefit to the sectarian school pupil. Such is clearly not the case here. ¹⁶⁶

The thinking of the court in Springfield in this respect also rejected another contention of appellant school districts that the statute violated the federal Fourteenth Amendment. School districts charged that the transportation act 1) conferred greater benefits upon nonpublic than public pupils, and 2) excluded pupils of nonpublic schools operated for profit. The first point was ruled out since the

court determined the benefits were equal. While the Pequea Valley School District maintained that the act established an "invidious, intentional and systematic discrimination" against those pupils in for-profit schools, the supreme court disagreed:

... It is not unreasonable ... that the General Assembly thought that parents who could afford the costs of sending their children to nonpublic profit-making schools could also afford the costs of seeing that their children were safely transported to such a proprietary school The local school districts and the Commonwealth itself have only limited resources with which to combat a host of social and economic ills. 167

The Equal Protection Clause could not set aside statutory classifications unless "no grounds could be conceived to justify them," according to the court.168

The state supreme court then further rejected school districts' challenges to the act on state constitutional grounds of violating religious freedom through aid to sectarian schools. The limitations of the Pennsylvania constitution in this regard were adjudged by the court as not extending beyond the standards set by the restrictions of the First Amendment of the federal constitution.169 The transportation statute was found to be constitutional in all respects.

In Bennett v. Kline in 1980 plaintiffs again challenged the constitutionality of Pennsylvania's Public School Code provisions allowing the use of state and federal funds to transport public and nonpublic school pupils.170 After citing the two earlier state supreme court decisions on the topic, the United States District Court in Bennett reasoned that the First and Fourteenth Amendment questions on transportation aid had been foreclosed. The Pennsylvania Supreme

Court had rejected both violations' charges and the United States Supreme Court had dismissed an appeal on the rulings for want of a substantial federal question.¹⁷¹ Plaintiffs attempted to persuade the federal court to consider "new" issues on the statute regarding the disproportionate costs of busing public and nonpublic pupils, the use of federal funds for transportation, and the provision of parental reimbursements. However, the district court dismissed all claims by stating that no new distinguishable constitutional issues had been presented in respect to Pennsylvania's transportation statute.¹⁷²

The first court decision in Massachusetts on nonpublic pupil transportation had been decided by the state supreme court in 1955 in Quinn v. Plymouth.¹⁷³ No constitutional issue was raised in the case and the court ruled that transportation should be made available for nonpublic pupils to the same extent as that available to public pupils.¹⁷⁴ The next case on the topic did not occur until almost twenty-five years later in 1979 in Murphy v. School Committee of Brimfield.¹⁷⁵

The Murphy case involved three Massachusetts school committees who had declined to provide transportation to resident nonpublic pupils attending private schools located outside their school districts. After being ordered to provide such nonpublic transportation by the trial court, the school committees appealed to the Massachusetts Supreme Judicial Court.¹⁷⁶ This court in Murphy then examined the section of the state's transportation statute which read that pupils who attend private elementary and secondary schools "shall be entitled

to the same rights and privileges as to transportation ... as are provided by law for pupils of public schools"177

The court agreed with the reasoning used previously in Quinn for Massachusetts private school transportation. The Murphy court adhered to the idea that nonpublic students were entitled to receive outside-district transportation only if, and to the extent that, public school students enrolled in comparable programs received transportation to public schools outside the district.¹⁷⁸ Comparable distance to schools outside district boundaries was not the primary criteria to be considered. Rather, the court ruled that district lines were to be the dividing factor in determining the extent of "same rights and privileges" for busing.¹⁷⁹ In the absence of specific statutory language by the legislature, the court necessitated a difference between intradistrict and extradistrict obligations on the part of the school committees to provide nonpublic transportation.

A third judicial case on private school transportation in Massachusetts occurred in 1982 when the state attorney general sought to enforce the "same rights and privileges" provisions of the transportation statute. Attorney General v. School Committee of Essex was the first instance of the highest state court in Massachusetts directly addressing the constitutionality of Massachusetts' nonpublic transportation plan in regard to the state's anti-aid amendment prohibiting aid to any religious school. 180

Using a constitutional test similar to the three-prong test for the federal constitution's Establishment Clause, the Essex court upheld the

statute as constitutional in providing transportation to nonpublic pupils. The statute was found to serve a secular health and safety purpose, and was considered a remote aid to sectarian schools. The transportation aid was not judged to be politically divisive nor financially wasteful of public funds.¹⁸¹

The state supreme court in Essex then made two particularly noteworthy interpretations on the statute:

- 1) Since the statute required transportation to private school pupils attending school in fulfillment of compulsory attendance, no transportation was required to be provided by school committees to private school pupils who had attained the age of sixteen (the cut-off age of compulsory attendance laws). If this was not a liberal interpretation of the transportation law, then the court concluded that it was the state legislature's duty to change the law.
- 2) For private school pupils to be provided transportation "to the same extent" as public, the statute was construed to mean that any nonpublic student was required only to be transported to an approved private school that was either the same distance or closer than the public school to which the student was entitled to attend.¹⁸²

The Essex decision had financial implications for many local school committees in Massachusetts in that it removed several state mandates for transporting nonpublic pupils. The commonwealth provided reimbursement to local districts for mandatory private school transportation.¹⁸³ If the local school committee chose to transport nonpublic pupils beyond the requisites of the law, it would have to do so at local expense.

A 1978 act by the Connecticut legislature permitted any regional or local board of education to provide transportation for resident pupils to nonpublic-nonprofit schools located in contiguous school districts.

The legislation also provided state reimbursement to the school district for one half the cost of such transportation, up to a specified aggregate and per pupil amount as set by the legislature.¹⁸⁴ In 1978 homeowners from Cromwell, Connecticut, charged that this transportation statute was in violation of both the Establishment Clause of the First Amendment and the Equal Protection Clause of the Fourteenth Amendment to the federal constitution.¹⁸⁵

The case was brought to trial in federal district court in Connecticut by plaintiff homeowners in 1979 in Cromwell v. Toffolon.¹⁸⁶ The United States District Court did not accept plaintiffs' claim that the statute's provisions were a violation of equal protection of the laws in discriminating against children attending schools within their residential districts. This claim was adjudged to be "totally without merit."¹⁸⁷ Since the interest in outside-district transportation was not a fundamental right, the state had only to show a legitimate state purpose reflecting a concern for the health and safety of children attending schools outside their township of residence.

The court then dismissed all charges in Cromwell that the statute in question violated any aspect of the Establishment Clause of the First Amendment. The court listed a complex series of rebuttals:

1. The claim that most beneficiaries were of the Roman Catholic denomination was not constitutionally significant, as there was no claim of any requirement that disqualified pupils of another sect. Nor had case law incorporated into the principle of religious neutrality "any standard approaching equal dollar allotments for each group of religious adherents."

2. The claim that a special benefits program had been created for a single class of pupils had been refuted by the fact that nonpublic-nonprofit pupils were not the only group who could receive such outside-district transportation (i.e., special education, vocational education, and agriculture training students). District lines were not, of themselves, considered "constitutionally significant." Further, since the transportation statute was only part of a state welfare program, other statutes had to be examined to see if similar benefits were provided to other pupils. 188
3. No substantial aid was conferred on sectarian schools, since no direct dollars went to nonpublic schools. Also, budgetary restrictions were made by the legislature within "constitutionally acceptable" levels.

The incidental benefit conferred by the statute on nonpublic schools had a ceiling on state appropriations and was not grossly disproportionate compared to the expense of public school busing.189

4. The administrative process for approving schools and for reporting on the number of transported private school pupils did not create an impermissible government entanglement with sectarian institutions. 190

The Connecticut transportation statute was not found by the federal district court to be politically divisive, since the amount of state assistance at issue was not perceived as significant. The cost of the state's busing program did not begin to approximate the expenses authorized by the legislation invalidated in part on entanglement grounds by the United States Supreme Court in Lemon v. Kurtzman.191

The last case reviewed in this chapter is State v. Lincoln in 1982 in the state of Nebraska.192 The trial court in the case ordered the school district of the city of Lincoln to provide requested nonpublic school transportation in accordance with state law. The city appealed the decision to the state supreme court by alleging that the statute's

nonpublic transportation provisions violated the federal and state constitutions.

Nebraska's transportation statute was not found by the state supreme court to be a direct appropriation of public funds to a nonpublic institution. Rather, the statute provided a transportation service to pupils and an incidental benefit to private elementary and secondary schools. This was not judged by the court to be a violation of state constitutional provisions prohibiting direct aid "to" nonpublic institutions.¹⁹³

The statutory provision of transportation in Nebraska to nonpublic pupils also did not grant special privileges to a particular group in violation of either the state constitution or the equal protection of the laws granted by the federal constitution. The state supreme court in Nebraska reasoned that the legislature merely desired to grant the same transportation privileges to nonpublic pupils as were given public school pupils within a district.¹⁹⁴ The court attributed a health and safety purpose to the transportation statute. The primary effect of the law was safe transportation, with a busing service being the only interaction between religion and government.¹⁹⁵ The court's final conclusion in Lincoln was that Nebraska's nonpublic transportation plan was not an establishment of religion in violation of the First Amendment.

Conclusions on State Cases, 1947-1959

The state transportation cases under study from 1947 to 1959 represented the first judicial decisions on nonpublic pupil transportation following the Supreme Court's acceptance of such aid in relation to the federal constitution. A review of the eleven cases litigated during this time indicates that a majority of the states chose to exercise the option left open by the Supreme Court to decide the issue of nonpublic pupil transportation on a state constitutional basis. (See Tables 3.1 and 3.2 at the end of the chapter.)

Out of the eleven cases on private school transportation, seven decisions rejected the aid. In four of these decisions, the court found a lack of proper statutory authority for local school districts to provide transportation to their nonpublic pupils.¹⁹⁶ Three other cases rejected such transportation provision as conflicting with state constitutional provisions forbidding either aid to sectarian schools or the misuse of public school funds for impermissible purposes.¹⁹⁷

State appellate courts upheld the provision of transportation to private elementary and secondary school pupils in only two cases between 1947 and 1959. In neither of the decisions could Everson be considered the determining case to the courts' thinking. In Quinn the Massachusetts court did not consider any constitutional question on the transportation topic.¹⁹⁸ In New York the voters had amended their state constitution nine years before Everson to permit publicly-funded pupil transportation to any school. The Allen decision simply restated the state and federal constitutionality of the transportation.¹⁹⁹

Two states which had already approved nonpublic transportation, New Jersey and Kentucky, were involved during this time in court cases which interpreted the statutory provision of transportation services. Rawlings v. Butler in Kentucky involved the method of financing transportation services to nonpublic pupils out of general funds, while Bd. of Ed. v. Jefferson County later upheld this decision.²⁰⁰ The state supreme court in New Jersey in Central was asked to interpret the power of a regional school district to transport certain nonpublic pupils under the state's transportation statute.²⁰¹

Both Kentucky and New Jersey had had previous rulings which affirmed the provision of transportation to private school pupils in their states.²⁰² New Jersey, like New York, had additionally approved a constitutional amendment to permit tax-funded transportation to any school.²⁰³ The reoccurrence of interpretative litigation on the topic of nonpublic transportation, as exemplified by the cases in Kentucky and New Jersey during this time period, indicated a pattern which would repeat itself in other states in the years to come.

Even in states which had previously approved the constitutionality of such transportation through the judicial process, there was continuing litigation of the topic. The Rawlings, Jefferson County, and Central cases at this time marked the beginning of state courts being asked to become further involved in the issue of transportation of nonpublic pupils. The involvement of the courts was no longer limited to determining the constitutional acceptability of transportation aid, but also included judicial interpretations of

existing legislative statutes or the actual provision of transportation services at the local level.

Conclusions on State Cases, 1960-1969

Litigation on nonpublic pupil transportation began to increase in the 1960's. Of the seventeen transportation aid cases reviewed between 1960 and 1969, five decisions rejected state or local provisions for nonpublic pupil transportation, while eight decisions favored such state plans. (See Tables 3.4 and 3.5 at the end of the chapter.) The remaining four cases involved judicial interpretations on the implementation of state nonpublic pupil transportation laws by local school districts. (See Table 3.6.) All cases reviewed were decided at the state appellate court level, and the federal courts showed no involvement in nonpublic pupil transportation provision during this time.

There was one prevailing reason for the five state supreme courts to overturn private school pupil transportation plans within their individual states. The basis of each of the state court decisions in Alaska, Wisconsin, Oklahoma, Delaware, and Hawaii was the violation of state constitutional provisions which specifically prohibited aid to sectarian schools or institutions.²⁰⁴ The courts in these states generally rejected the child benefit theory of transportation aid. Instead, the courts held that the constitutional violation of direct or indirect aid to sectarian schools was the overriding factor in their decisions against the transportation of nonpublic pupils.

The varying opinions of other state courts on the child benefit theory of transportation aid was recognized by the court in Delaware, for example, in the 1966 case of Opinion of the Justices:

We have considered the cases expressing the view that free public transportation to a sectarian school aids the parents ... promotes the safety of the children; and that, therefore, it helps the parents and the children primarily, and the school only incidentally. This has been known as the 'child benefit theory' In addition to the effectiveness of the Brown case [an earlier Delaware case against transportation aid], several other considerations militate against the persuasiveness of [other] cited cases and the acceptance of the view therein stated: First, none of those cases, except Bowker, involved a constitutional limitation, similar to our Article 10, Section 2, explicitly forbidding aid to sectarian schools Secondly, it is noteworthy that the child benefit theory includes the proposition that the aid or benefit to the school is secondary or incidental. Manifestly, Article 10, Section 3 proscribes any and all aid to sectarian schools, including secondary or incidental aid. 205

The dependent factor in both the Delaware and other state court decisions against transportation aid was the strictness of the individual state constitutional provisions against aid to sectarian schools.

The finality of both anti-aid decisions in Opinion of the Justices in Delaware and Nusbaum in Wisconsin was perhaps partly responsible for subsequent constitutional amendments on transportation in the two states in the late 1960's.²⁰⁶ Each of the states had strict constitutional provisions against aid to sectarian schools, and the constitutional question of transportation aid to private schools was apparently closed by these two court decisions. After the 1962 Nusbaum decision, the voters of Wisconsin by statewide referendum provided for the inclusion of private school pupils in publicly-funded elementary

and secondary school transportation. The Delaware populace did likewise in the state shortly after the strict Justices decision in 1966.

The chance within a particular state for a successful statewide voter referendum for a constitutional amendment on transportation aid was enhanced by a high private school population. Those states which have passed constitutional amendments related to transportation have historically had high private school populations. Wisconsin and Delaware in the late 1960's joined two other high nonpublic school population states that had constitutional amendments on transportation for nonpublic pupils.²⁰⁷ New York voters previously instituted such an amendment in 1938 after the anti-aid Judd decision, and New Jersey did likewise in 1947 immediately following Everson.²⁰⁸

By the late 1960's the balance of transportation cases had changed in favor of private school transportation programs. During the time period between 1960 and 1969 there were slightly more state court decisions upholding nonpublic transportation, than those rejecting such plans.

There were two noticeable trends in those states favoring nonpublic transportation. First, the majority of these states represented high-private-school population states in the northeast region of the United States. States such as Connecticut, Pennsylvania, Ohio, New Jersey, Rhode Island, and New York had judicial decisions which favored publicly-funded private school transportation in the 1960's. The percentage of state school population enrolled in private schools in

these states ranged from a low of 11.0% in Ohio to a high of 15.7% in Pennsylvania for 1978.²⁰⁹

Secondly, state courts were beginning to accept the mandatory provision of statewide transportation plans for private school pupils. Everson had involved a permissive statute in New Jersey on nonpublic busing. The majority of earlier state judicial decisions had generally rejected mandatory transportation plans for primarily sectarian pupils.²¹⁰ Subsequent judicial decisions indicated a reversal of this pattern, as courts began to accept required local busing. Four states which did not have constitutional amendments regarding school transportation accepted mandatory plans for private school pupil transportation. Such transportation plans were upheld by state appellate courts in Rhode Island, Pennsylvania, Ohio, and Michigan during the 1960's.²¹¹

The health-safety, general welfare argument used by Everson was still evident during this time in state court decisions favoring the provision of private school transportation. Snyder in Connecticut, as well as Rhoades in Pennsylvania, were two strong cases favoring this reasoning.²¹² The Honohan decision in Ohio in 1968 was closely aligned with Everson and the Supreme Court's ruling on school transportation as a child benefit.²¹³ The court in Honohan concluded that Ohio's bus law was "not constitutionally distinguishable" from the New Jersey law in Everson.²¹⁴

However, the state courts in the late 1960's also began to use a new "test" for the constitutionality of transportation statutes under

the Establishment Clause of the First Amendment. The state appellate courts adopted the "Schempp test" used in 1963 by the United States Supreme Court in Abington Township v. Schempp to determine whether state enforced religious exercises could withstand the strictures of the First Amendment. New Jersey's state supreme court in McCanna and Michigan's state court of appeals in Alexander both used this test to ascertain the constitutional acceptability of their state provisions of nonpublic pupil transportation.²¹⁵

The Schempp test required that a legislative enactment must have a secular purpose and a primary effect that neither advanced or inhibited religion. In McCanna the New Jersey court decided that nonpublic school transportation as a child benefit was an acceptable secular purpose for the public's welfare. The New Jersey statute was thus constitutionally acceptable in light of the federal constitution.²¹⁶ Any state constitutional question on transportation had been resolved earlier by the 1947 state constitutional amendment allowing it.

The court in Alexander took the Schempp test one step further in establishing the state constitutionality of Michigan's nonpublic school transportation provision. The provisions of Michigan's constitution on the free exercise of religion and the prohibition of an establishment of religion were judged by the state court as being no more restrictive than the federal First Amendment.²¹⁷ Therefore, the reasoning of the court in Alexander in using the Schempp test was also applicable to the upholding of the transportation law on state constitutional grounds.

The court was able to use the Schempp test to establish both federal and state constitutionality of Michigan's transportation statute.

Other cases in support of private school transportation showed similar comparisons by the courts between the federal Establishment Clause and state constitutional prohibitions against support of religion. A state constitutional prohibition against support of religion was considered by several state courts to be closely aligned with the prohibition against the establishment of religion as required by the First Amendment. At least four key pro-transportation aid cases during the 1960's were decided on the basis of whether nonpublic pupil transportation represented support of religion. None of these states' constitutions contained a direct prohibition against aid to sectarian schools. This was an important omission in those state constitutions, since all anti-transportation aid cases during this time had been decided in terms of a specific impermissible aid provision in individual state constitutions.

For example, in the Connecticut case of Snyder v. Newtown in 1960 the state supreme court had been asked to rule on whether private school transportation violated the state's constitutional prohibition against the compulsory support of church. The court ruled that it did not.²¹⁸ Likewise, in Rhoades v. Abington in 1967 the Pennsylvania Supreme Court ruled that such transportation did not violate state constitutional provisions against the compelled support of a place of worship, the maintenance of a ministry, or the preference of a particular religion.²¹⁹ In Honohan v. Holt in Ohio in 1968 the court

based its favorable nonpublic transportation ruling on its judgment that the state's constitutional church-state provisions were not any more restrictive than the First Amendment.²²⁰ Last, in Alexander during the same year, the state appellate court held that private school transportation did not violate state constitutional provisions related to the free exercise of religion nor the prohibition against establishment of religion.²²¹

The court cases on transportation in the ten year period after 1960 showed a more definitive pattern than similar decisions in the twelve year period following Everson. The 1960's cases rejecting nonpublic pupil transportation did so on specific state constitutional prohibitions against direct or indirect aid to sectarian schools or institutions. Those state cases which upheld such transportation were in basic agreement with the child benefit - public welfare of Everson. Further, the Everson reasoning was generally applicable in those states whose constitutions did not have church-state provisions that the court determined to be any stricter than the Establishment Clause of the First Amendment.

There was a close similarity between the 1950's and the 1960's in regard to the courts continuing to act as interpreters of state laws on nonpublic pupil transportation. In these cases the issue of constitutional acceptability of the transportation laws had already been decided either by constitutional amendment or a previous court ruling on the constitutional issue. The state supreme court was asked twice in 1969 in Wisconsin to rule on the scope of local school boards'

discretionary power in implementing the state's mandatory nonpublic transportation provisions.²²² In 1968 in New Jersey the court interpreted several sections of the state school transportation statute in regard to the applicability of the law to particular nonpublic pupils.²²³ The Kentucky appellate court in 1960 was requested for the second time to judge the fairness of the state's finance formula for nonpublic pupil transportation costs.²²⁴ While this interpretative role of the courts may not be considered as critical as that of constitutional arbiter, such cases represented a related and continuing role of the courts on the issue of private school transportation.

Conclusions on State and Federal Cases, 1970-1982

The most litigious period in the history of nonpublic pupil transportation was from 1970 through 1982. During this thirteen year span the twenty-nine cases dealing with private school transportation equalled the number of cases litigated in the twenty-three years following the Everson decision.

Out of the twenty-nine decisions rendered on the issue after 1970 there were only seven which rejected state transportation provisions for nonpublic pupils. (See Table 3.7 at the end of the chapter.) Fifteen judicial decisions upheld such provisions, while seven decisions involved court interpretations of various transportation statutes or local board transportation policies. (See Tables 3.8 and 3.9.)

A noticeable increase in transportation litigation occurred after 1975. Between 1970 and 1974 there had been seven judicial decisions on nonpublic pupil transportation. This number more than tripled after 1975 when there were twenty-two such decisions. There were several possible explanations for the marked increase in the number of nonpublic transportation cases brought before the courts in the late 1970's. First, there had been a rapid increase in transportation fuel costs in the United States after the Middle Eastern oil embargo of the early 1970's. The cost of transportation as part of overall school budgets had escalated for both private and public schools in the United States. As a result, private school supporters sought increased transportation aid from public sources.

Political pressure for increased aid at the state level was partially targeted at initiating new nonpublic pupil transportation programs in states where none existed. During the 1970's there were at least four cases which challenged state transportation programs for the first time in Minnesota, West Virginia, Illinois, and Nebraska.²²⁵ All four state transportation statutes were successfully upheld despite church-state anti-aid provisions in two of the states' constitutions.²²⁶

Private school lobbying efforts in some states were also successful by the mid-1970's at increasing transportation services beyond what had previously been provided at public expense. The extension of nonpublic pupil transportation services across school district boundaries was a particularly contentious issue for opponents of private school aid.

Cross-district busing programs were challenged in the courts under state and federal constitutional church-state prohibitions in five states, and statutory provisions were questioned in one other state. (See cases marked "CR" in Tables 3.7, 3.8, 3.9.) The issue of outside-district transportation services for nonpublic pupils was thus a second causative factor for the increased transportation litigation of the late 1970's. Between 1976 and 1982 there were thirteen such cases involving either a constitutional or provisionary question on cross-district busing.

The argument over cross-district busing of primarily sectarian pupils was also part of the reason for the involvement of the federal courts for the first time in the overall issue of nonpublic school transportation. (See cases marked both "F" and "CR" in Tables 3.7, 3.8, 3.9.) The possibility that transportation benefits were being offered to nonpublic pupils, beyond those available to public pupils in a particular state, raised a potential federal constitutional violation of the Establishment Clause. The extension of transportation benefits in this way to nonpublic pupils risked a possible court interpretation that outside-district busing had either the primary effect of government advancing religion by benefiting religious schools, or of fostering excessive government entanglement with religion.

In addition to the First Amendment question, the federal courts were also asked to rule on whether certain state transportation laws or local school board transportation policies violated the guarantee of equal protection of the laws of the Fourteenth Amendment. There were

five such cases at the federal district court level between 1975 and 1980. (See cases marked both "F" and "14th" in Tables 3.7, 3.8, 3.9.) In Wisconsin and in New York the courts had to determine whether local school board policies had a reasonable basis and were not arbitrary in setting certain geographical limits.²²⁷ In three other cases the federal courts were asked to examine the nonpublic transportation statutory provisions in Connecticut, Wisconsin, and Pennsylvania.²²⁸ The courts scrutinized the laws for discrimination against pupils on the basis of religion. It was held in all cases by the judiciary that the three states had used proper statutory classifications for transportation based on legitimate governmental objectives such as the health and safety of the children, and not on religious status.

Changes in transportation cases after 1970.

There were noticeable changes in specific issues that the courts were asked to examine after 1970 in regard to nonpublic pupil transportation. For example, out of the seven cases in which the courts rejected private school transportation, only the Epeldi decision in 1971 involved regular day transportation within school district boundaries.²²⁹ Mallory in Missouri was complicated by the question of using Title I funds from the federal government for transporting parochial pupils, while Luetkemeyer within the same state challenged the lack of any statutory authority in Missouri law for providing nonpublic school transportation.²³⁰ The remaining anti-aid

transportation decisions were based on the provision of extended outside-district transportation to private school pupils.²³¹

As the issues presented to the court changed by the 1970's, so did the courts' reasoning in rejecting nonpublic transportation aid plans. The most common constitutional basis for striking down nonpublic transportation after Everson had been the violation of a specific state anti-aid amendment. While three of the cases in Idaho, Iowa, and Missouri still involved a specific anti-aid provision,²³² it was not necessary for the courts to use a strict state constitutional interpretation to rule out cross-district busing. The broader tri-partite test for church-state separation was applied to cross-district busing in Iowa and in Rhode Island. The provision of such transportation was rejected in both states as either advancing religion or fostering excessive government entanglement with religion.²³³

In pro-transportation aid decisions after 1970 the courts shifted from using the Schempp-Allen test for constitutionality under the Establishment Clause, to the expanded tri-partite test of the Supreme Court. Americans United v. Independent School District²³⁴ in 1970 was the last transportation case in which a state court applied the Schempp reference by the Supreme Court in Allen in 1968 for distinguishing between forbidden involvements of the state with religion under the Establishment Clause.²³⁵ This Schempp test of 1) secular legislative purpose, and 2) primary effect of not advancing or inhibiting religion, was expanded to include a third "test" from the

Supreme Court's Lemon v. Kurtzman in 1971.²³⁶ This third test forbade excessive government entanglement with religion.

The first transportation case to apply the tri-partite test was Illinois' Cook County v. Bakalis in 1973, followed by the 1979 Pennsylvania cross-district busing case, Springfield v. Department of Education.²³⁷ In both cases the state supreme courts upheld the constitutionality of private school transportation under the restrictions of the Establishment Clause. The courts claimed that the transportation served a health and safety secular legislative purpose which provided incidental benefits to parochial schools in Bakalis²³⁸ and equal busing benefits to public and private school pupils in Springfield.²³⁹

The upholding of nonpublic pupil transportation by most of the courts from 1970 through 1982 continued to be on a child benefit theory. (See Columns 1-5 in Table 3.8.) The reasoning of Everson was maintained that transportation for primarily sectarian private school pupils was a child benefit, which served a general welfare, health and safety purpose in enforcing state compulsory attendance laws. The child benefit theory of transportation was viewed by the courts during this time as one that fulfilled a secular legislative purpose which did not advance religion nor foster excessive government entanglement with religion.

As mentioned earlier, an Illinois mandatory nonpublic school transportation statute withstood the federal constitutional tri-partite test in Bakalis on a child benefit argument. The Illinois Supreme

Court's interpretation of state constitutional restrictions regarding public aid for sectarian support yielded similar substantive results. The transportation statute was found not to violate state constitutional restrictions prohibiting appropriations for sectarian purposes, preference for any religious denomination, or the use of public funds for private purposes.²⁴⁰

The reasoning of the Illinois court in Bakalis in comparing federal and state constitutionality appeared to be similar to that used in the 1968 Michigan decision in Alexander v. Bartlett.²⁴¹ However, one of the state supreme court justices in Bakalis specially concurred with the majority's decision upholding the constitutionality of nonpublic pupil transportation in the state. While Justice Ryan agreed with the majority decision, he pointed out that he "would not reach the result by equating the provisions" of the Illinois constitution with the First Amendment.²⁴² The health and safety, child benefit argument for transportation was enough to uphold state constitutionality of the statute. The Illinois court's decision, by applying the same reasoning for the federal and the stricter state constitutional provisions, was felt by Justice Ryan to essentially dilute the specific restrictions meant by the state constitution on church and state separation.²⁴³

The possible dilution of state constitutional restrictions on church-state separation was further illustrated by several court decisions which upheld nonpublic pupil transportation between 1970 and 1982. At least three judicial decisions were identified in which private school transportation plans were approved by the state supreme

courts in spite of specific anti-aid provisions of their individual state constitutions.²⁴⁴ The cases were in Minnesota, Nebraska, and Massachusetts.

In the first case in Minnesota, Americans United v. Independent School District, the state supreme court in 1970 was asked to rule on a state law which entitled all school children to the same rights and privileges relating to transportation.²⁴⁵ The main question before the court was whether the transportation of sectarian pupils constituted support of sectarian schools in violation of a specific state constitutional restriction. In applying the Schempp test, the court in Americans United ruled that the transportation statute served a legitimate health and safety purpose whose primary effect was not to benefit religion or to support sectarian schools.

The court in Americans United admittedly had reservations in presenting the decision:

In holding that L.1969, c. 570, authorizing public transportation of parochial school students, does not violate Minnesota Constitution article 8, section 2, prohibiting the use of public money for the support of parochial schools, we do so with the conviction that this legislation brings us to the brink of unconstitutionality. Indeed, we may be 'too perilously close to that public support of religion forbidden by the First Amendment' 246

The court further hinted that if transportation was a general welfare necessity for the health and safety of school children, perhaps a constitutional amendment was a possibility to insure the continuance of services:

In this area [of religion], government, it is said, must remain entirely neutral. Consequently, if the welfare of the state requires the use of public appropriations to insure the continued

existence of sectarian schools, the danger of a breach of the 'impregnable wall' between church and state is sufficiently real to suggest the necessity for a constitutional amendment. 247

The Nebraska court in State v. Lincoln in 1982 did not show similar reservations as the court in Americans United in upholding that state's nonpublic school transportation services.²⁴⁸ In using the tri-partite test for constitutionality, the Nebraska court reasoned that such services were secular in purpose and were an incidental benefit to sectarian schools. As such, Nebraska's nonpublic transportation statute did not violate state constitutional provisions which prohibited aid directly "to" nonpublic institutions.²⁴⁹ The court pointed out in particular that the language of the state constitution had been changed from prohibiting appropriations "in aid of" nonpublic schools to a prohibition of appropriations "to" such institutions.²⁵⁰ A literal court interpretation of the constitutional provision thus allowed indirect, incidental transportation aid in benefit of the child.

The third case in which a court upheld a nonpublic transportation statute despite an anti-aid provision was also in 1982 in Attorney General v. Essex.²⁵¹ Again, the court used the tri-partite test and determined that the law served a secular health and safety purpose and was a remote aid to sectarian schools. In order to constitute aid to sectarian schools, the transportation had to amount to "substantial assistance" to be violative of the Massachusetts anti-aid amendment.²⁵² Since the aid was remote and served a general welfare purpose to primarily benefit the child and to secondarily benefit the

school, the court in Essex held that the law did not violate the prohibition against public aid to private schools.²⁵³

Cross-district busing.

The extension of busing outside school district boundaries to nonpublic pupils proved to be a major transportation issue in the courts after the mid-1970's. Private school cross-district busing programs came under state and federal constitutional scrutiny in Iowa, Rhode Island, Wisconsin, Pennsylvania, Massachusetts, and Connecticut. (See cases marked "CR" in Tables 3.7, 3.8, 3.9.) In all of the states except Massachusetts a federal constitutional issue was raised under the First or Fourteenth Amendment and brought before the federal district court in the particular state.

The various court opinions on the constitutionality of outside-district transportation to private schools were divided. In the majority of cases the courts looked at the compatibility of transportation services or benefits offered to public and private school pupils. In Iowa's Americans United v. Benton the United States District court determined that the outside-district transportation option was not available to public school pupils. This violated the federal Establishment Clause of the First Amendment as an advancement of religion.²⁵⁴ Likewise, the federal district court in both of its Jamestown decisions ruled that the effect of Rhode Island's outside-district busing statute was to confer benefits to a single class of children attending private schools. The court in Rhode Island

also said this was in violation of the Establishment Clause in both advancing religion and in possibly entangling government with religion.²⁵⁵

While the state supreme court in Murphy v. Brimfield did not rule on the constitutionality of Massachusetts' cross-district busing, the court was careful to use district boundary lines as the determining factor for defining "the same rights and privileges" for the transportation of public and nonpublic pupils.²⁵⁶ The Massachusetts court later upheld the federal and state constitutionality of cross-district busing in the state in Attorney General v. Essex. In allowing transportation across district boundary lines, however, the court construed the Massachusetts statute to mean that any private school student was required to be transported to a private school that was the same distance or closer than the public school to which he was entitled to attend.²⁵⁷

The Massachusetts supreme court's interpretation in Essex was far more restrictive in terms of "equal" benefits for nonpublic pupils than the decisions of the state court in Pennsylvania on cross-district busing. Pennsylvania's school transportation statute had been amended in late 1972 to provide free transportation to private schools located up to ten miles outside school district boundaries.²⁵⁸ The state supreme court found the statute to be constitutionally acceptable under both the state and federal church-state separation requirements.²⁵⁹ In Pittsburgh v. Commonwealth the court refuted the charge that nonpublic pupils would be the primary beneficiaries by reasoning that

the cause was not the statute, but rather the local school board's policy of not enrolling public pupils outside the district.²⁶⁰ When later challenged with the cost differential between public and nonpublic transportation, the Pennsylvania court took its decision on the equality of transportation benefits one step further in

Springfield:

We do not accept the district court's implicit premise that the equality of benefit is to be determined by a comparison of the cost involved. The benefit provided is safe transportation to and from school for all students; the fact that the cost of conferring this benefit may vary is not significant for this purpose. A constitutional consideration would arise only if the cost of transportation for the students attending sectarian schools was so disproportionate that it became apparent that the transportation provided to the public school youngster was merely a ruse to confer a benefit to the sectarian school pupil. Such is clearly not the case here. ²⁶¹

The Springfield decision was appealed to the United States Supreme Court, where the appeal was dismissed for want of a substantial federal question.²⁶² The federal district court in Pennsylvania the next year in Bennett then reiterated the state court's decision in upholding the constitutionality of the state's extensive cross-district busing program for private school pupils.²⁶³

Summary

Chapter three has chronologically traced the legal case history of nonpublic pupil transportation in the state and federal courts after the Supreme Court's Everson decision in 1947. The pattern of litigation during the thirty-five year period from 1947 to 1982

indicated not only an increase in the number of states initiating publicly-funded transportation programs, but also a general increase in the extent of transportation services offered to primarily sectarian school pupils. Both increases were reflected in the numerous transportation cases which were initiated during this time on state and federal constitutional challenges of church and state separation restrictions.

Challenges to state and local nonpublic pupil transportation services were slow to evolve shortly after Everson. In the initial period reviewed from 1947 through 1959, there were only eleven cases. Four of the decisions rejected local transportation practices based on a lack of legislative authority, while three decisions struck down private school transportation services as violating state constitutional restrictions. There were no clear-cut court decisions relating to the federal or state constitutionality of such programs during this time.

Litigation on publicly-funded private school busing increased by the 1960's. The case review between 1960 and 1969 indicated a reversal in the courts' acceptance of nonpublic transportation services, with eight decisions favoring such services and only five decisions rejecting state or local transportation provisions for private schools.

During the 1960's there was no involvement by the federal courts on the topic of private school transportation, and decisions were generally made by the highest state appellate court. These state courts were prone to reject the transportation as violating specific

state constitutional restrictions against public aid to sectarian schools or institutions. On the other hand, several major pro-transportation aid decisions between 1960 and 1969 were decided on the basis of whether such transportation represented a state constitutional violation of support of religion, similar to the strictness of church-state separation requirements of the federal Establishment Clause. The continuing argument used by the courts in most of the favorable nonpublic transportation decisions was reminiscent of the reasoning used by the Supreme Court in Everson. Transportation was considered a child benefit which served a health and safety, general welfare purpose of the state.

The state courts in the 1960's often used the Schempp test of the Supreme Court to determine the federal constitutionality of nonpublic transportation under the Establishment Clause. This test required that a legislative enactment must have a secular purpose and a primary effect that neither advanced nor inhibited religion. By the early 1970's this test was expanded to include a restriction against excessive entanglement with religion. This revised tri-partite test was then employed by the courts as a constitutional measure for private school transportation decisions.

Between 1970 and 1982 the number of cases on elementary and secondary nonpublic school busing almost doubled. Out of the twenty-nine decisions rendered by the courts, only seven decisions rejected such transportation provisions outright. Fifteen cases upheld nonpublic transportation from public funds, while seven cases did not

directly involve constitutional challenges to the issue, but were basically interpretative in nature.

The late 1970's comprised a particularly active period of court involvement in the public funding of transportation to nonpublic schools. The prime cause for increased court involvement was the institution of cross-district busing for the first time in a number of states. Constitutional challenges to extension of transportation services across school district boundary lines to nonpublic pupils was responsible for the majority of court cases after 1975. The issue of outside-district transportation was taken to the federal courts, as well as the state courts, as it involved a new challenge to the Establishment Clause.

The state and federal courts generally used the tri-partite test for constitutional validity of state nonpublic cross-district transportation services under the federal restrictions against the establishment of religion. The court decisions on cross-district busing were split at the federal district court level, although a Pennsylvania case favoring cross-district transportation was appealed to the United States Supreme Court and rejected for lack of a substantial federal question.²⁶⁴ The case strongly upheld the constitutionality of such busing under the Establishment Clause, as having a secular child benefit purpose which did not advance religion, nor entangle government with religious matters.

Overall, between 1923 and 1982 there were a total of sixty-eight nonpublic transportation cases reported. From 1923 to the Everson

decision there was a total of eleven cases in nine states. (See Tables 2.1 and 2.2 at the end of Chapter 2.) After Everson the litigation greatly increased to a total of fifty-seven decisions in twenty-five of the states. (See Tables 3.1-3.9 at the end of Chapter 3.) The most intense period of litigation was after 1975, when there were a total of twenty-three cases through 1982. If the trend toward increased services to nonpublic elementary and secondary pupils continues to follow the pattern of the last ten years, it is probable that litigation of the topic will continue into at least the near future. Since the issue of nonpublic transportation still remains basically an individual state issue, it is also likely that court decisions will vary among the states. However, the state and federal courts in general probably will continue to accept certain provisional measures for nonpublic transportation, as long as similar or equal transportation services are offered to public school pupils through state and local funding.

Table 3.1
BASIS OF STATE COURT DECISIONS REJECTING NONPUBLIC PUPIL TRANSPORTATION, 1947-1959

YEAR	RULING ON UNCONSTITUTIONALITY OF THE TRANSPORTATION				
	STATUTORY RULING	Impermissible aid to sectarian school	Violation of guarantees of religious freedom	Misuse of public school funds	Appropriation of public money for private purposes
<u>1947-1959</u>					
1947	<u>Connell v. Bd. of Sch. Dir.</u> 52 A.2d 645 (Pa., 1947)				
	<u>Silver Lake v. Parker</u> 238 Iowa 984 (Iowa, 1947)				
1949		<u>Visser v. Nooksack</u> 207 P.2d 198 (Wash., 1949)	<u>Visser</u> (Wash., 1949)		
1951		<u>Zellers v. Huff</u> 236 P.2d 949 (N.Mex., 1951)			
1953				<u>McVey v. Hawkins</u> 258 S.W.2d 927 (Missouri, 1953)	
1956	<u>Robinson v. Houghton</u> 128 A.2d 58 (Pa., 1956)				
1959	<u>Squires v. Augusta</u> 153 A.2d 80 (Maine, 1959)				

Table 3.2
BASIS OF COURT DECISIONS UPHOLDING NONPUBLIC PUPIL TRANSPORTATION, 1947-1959

YEAR	Function of enforcing compulsory attendance	Removal of danger for health and safety	Use of police power of state to promote public welfare	Benefit to child	Incidental benefit to sectarian school	OTHER:
<u>1957-1959</u>						
1955						<u>Quinn v. Plymouth</u> 125 N.E.2d 410 (Mass., 1955) No const. question involved as personal property rights of the school committee were involved.
1959		<u>Central v. Allen</u> 192 N.Y.S. 2d 186 (N.Y., 1959) (Upheld <u>Everson</u>)	<u>Central</u> (N.Y., 1959)	<u>Central</u> (N.Y., 1959)		

Table 3.3

COURT DECISIONS INTERPRETING NONPUBLIC PUPIL TRANSPORTATION
STATUTES OR PRACTICES, 1947-1959

<u>YEAR</u>	<u>CASE CITATION - INTERPRETATION</u>
<u>1947-1959</u>	
1956	<u>Rawlings v. Butler</u> - Fiscal court must pay out of general funds for nonpublic pupil 290 S.W.2d 801 transportation on a per capita basis. (Kent., 1956)
1958	<u>Central v. State Bd.</u> - Regional high school district has statutory power to transport 141 A.2d 542 lower grades along its established routes. (N.J., 1958)

Table 3.4

BASIS OF STATE COURT DECISIONS REJECTING NONPUBLIC PUPIL TRANSPORTATION, 1960-1969

YEAR	STATUTORY RULING	RULING ON UNCONSTITUTIONALITY OF THE TRANSPORTATION				
	Absence of statutory authority	Impermissible aid or benefit to sectarian school	Violation of guarantees of religious freedom	Misuse of public school funds	Appropriation of public money for private purposes	Invalid exercise of states police power
<u>1960-1969</u>						
1960				<u>Snyder v. Newtown</u> 161 A.2d 770 (Conn., 1960) (Ruled trans. aid was otherwise permissible)		
1961		<u>Matthews v. Quinton</u> 362 P.2d 932 (Alaska, 1961)				<u>Matthews</u> (Ak., 1961)
1962		<u>State v. Nusbaum</u> 115 N.W. 2d 761 (Wisc., 1962)	<u>Nusbaum</u> (Wisc., 1962)			
1963		<u>Bd. of Ed. v. Antone</u> 384 P.2d 911 (Okla., 1963)	<u>Antone</u> (Okla., 1963)			
1964						
1965						
1966		<u>Opinion of the Justices</u> 216 A.2d 668 (Del., 1966)		<u>Justices</u> (Del., 1966)		
1967						
1968		<u>Spears v. Honda</u> 449 P.2d 130 (Haw., 1968)				
1969						

Table 3.5
BASIS OF COURT DECISIONS UPHOLDING NONPUBLIC PUPIL TRANSPORTATION, 1960-1969

Function of enforcing compulsory attendance	Removal of danger for health and safety	Use of police power of state to promote public welfare	Benefit to child	Incidental benefit to sectarian school	Schempp test: 1) secular legis. purpose 2) not adv. or inhibit religion	State const. not diff. from <u>Everson</u> decision	No constitutional issue involved
<u>1960-1969</u>							
1960	<u>Snvder v. Newtown*</u> 161 A.2d 770 (Conn., 1960) (Statute was rejected, however, as improper use of school funds)	<u>Snvder</u> (Conn., 1960)					<u>Applic. of Silver</u> 205 NYS 2d 650 (N.Y., 1960) Upheld <u>Everson</u> , <u>Allen</u> (N.Y.); State constit. amend. passed in 1938.
1961							
1962							
1963							
1964							
1965							<u>Chaves v. Sch.</u> <u>Comm.</u> , 211 A.2d 639 (RI, 1965) Involved question of outside district trans. to bound. line.
1966							
1967	<u>Rhoades v. Abington</u> 226 A.2d 53 (Pa., 1967)	<u>Rhoades</u> (Pa., 1967)					<u>Fox v. Milford</u> , 226 A.2d 471 (N.J., 1967) Reaff'd <u>Everson</u> ; state const. amend. passed in 1947.
1968			<u>Honohan v. Holt</u> 244 N.E. 537 (Ohio, 1968)	<u>Honohan</u> , (Ohio, 1968)	<u>McCanna v. Sills</u> 247 A.2d 691 (N.J., 1968)		<u>Honohan</u> (Ohio, 1968)
					<u>Alexander v. Bartlett</u> 165 N.W. 2d 445 (Mich., 1968)		
1969							

Table 3.6
 COURT DECISIONS INTERPRETING NONPUBLIC PUPIL TRANSPORTATION
 STATUTES OR PRACTICES, 1960-1969

YEAR	CASE CITATION	INTERPRETATION
<u>1960-1969</u>		
1960	<u>Bd. of Ed. of Jeff. Co. v. Jeff. Co.</u> 333 S.W.2d 746 (Ky., 1960)	Cost of nonpublic transportation on a per capita basis.
1961		
1962		
1963		
1964		
1965		
1966		
1967		
1968	<u>Bd. of Ed. v. Gateway</u> 248 A.2d 564 (N.J., 1968)	Remote regional nonpublic pupils entitled to transportation.
1969	<u>Cartwright v. Sharpe</u> 162 N.W.2d 5 (Wisc., 1969)	Elimination of optional city transportation within board's discretionary power.
	<u>Knudsen v. Elmbrook</u> 168 N.W.2d 295 (Wisc., 1969)	Unreasonable determination by board against pupil's choice of school.

Table 3.7

BASIS OF STATE AND FEDERAL COURT DECISIONS REJECTING NONPUBLIC PUPIL TRANSPORTATION, 1970-1982

YEAR	STATUTORY RULING	RULING ON UNCONSTITUTIONALITY OF THE TRANSPORTATION						
		Absence of statutory authority	Impermissible aid or benefit to sectarian school	Violation of guarantees of religious freedom	Misuse of public school funds	Invalid exercise of state police power	Violated TRI-PARTITE test for Est. Clause	OTHER:
1970-1982								
1970								
1971			<u>Epeldi v. Enceking</u> 488 P.2d 860 (Idaho, 1971)					
1972								
1973							(F) <u>Luetkemeyer v. Kaufman</u> 364 F.Supp. 376 (MO, 1973), aff'd on appeal, 42 L.Ed.2d 134, 95 S.Ct. 167, 419 U.S. 889 (1974). Class. along relig. lines for trans. was legitimate state purp. for sep. of church and state. Non-provision of trans. to nonpublic did not infringe First or Fourteenth Amendment.	
1974								
1975								
1976		(F) <u>Ans. Unit. v. Benton</u> , 413 (CR) F.Supp. 955 (Iowa, 1976)				(CR) <u>Benton</u> (1976), Outside dist. busing: 2-direct adv. of religion	<u>Jennings v. Exeter</u> 352 A.2d 834 (R.I., 1976) Outside dist. trans. statute lacked adequate safeguards, was an unreasonable delegation of legis. power.	
		<u>Mallory v. Barrera</u> 544 S.W.2d 556 (Missouri, 1976)	<u>Mallory</u> (1976)	<u>Mallory</u> (1976)				
1977						(F) <u>Jamestown I</u> (CR) 427 F.Supp 1338 (R.I., 1977) Out- side dist. busing: 2-adv. of religion 3-excessive gov. entan.		
1978								
1979								
1980								
1981						(F) <u>Jamestown III</u> (CR) 525 F.Supp 1045 (R.I., 1981) Out- side dist. busing: 2-adv. of religion, 3-excessive gov. entan.		
1982								

NOTE: F - Case dealt with a federal constitutional issue.
CR - Case dealt with cross-district transportation of nonpublic pupils.

Table 3.8

BASIS OF COURT DECISIONS UPHOLDING NONPUBLIC PUPIL TRANSPORTATION, 1970-1982

YEAR	Function of enforcing compulsory attendance	Removal of danger for health and safety	Use of police power of state to promote public welfare	Benefit to child	Incidental benefit to sectarian school	Schempp test: 1-secular legislat. purpose 2-not adv. or inhibit religion	Fourteenth Amendment	FRI-PARTITE test for Est. Clause	No constitutional issue involved	OTHER:
1970-1982										
1970	<u>Amer. Unit. v. Ind.</u> 179 N.W. 2d 146 (MN, 1970)	<u>Amer. Unit.</u> (MN, 1970)	<u>Hughes v. Hughes</u> 8d. 174 S.E. 2d 711 (WV, 1970)					<u>Hughes</u> (WV, 1970) denial of trans. denies equal prot. of laws.		<u>Hughes (WV, 1970)</u> denial of trans. denies First Amendment.
1971							<u>W. Morris v. Sillis</u> 279 A.2d 609 (NJ, 1971) stat. class had reas. basis, did not deny equal prot.			
							<u>Vanko v. Kahl</u> 188 N.W. 2d 460 (WS, 1971)			
1972										
1973								<u>Cook City v. Bakalis</u> 299 N.E.2d 737 (IL, 1973)		
1974										
1975										<u>O'Donnell v. Antin</u> 335 N.E. 2d 354 (NY, 1975) appeal dismissed, 96 S.Ct. 258, 423 U.S. 919, 46 L.Ed.2d 145 Cross-district optional in city transportation.
1976										
1977										
1978										<u>(CR) Pittsburgh v. Commonwealth</u> 382 A.2d 772 (PA, 1978) appeal dismissed, 443 U.S. 901, 99 S.Ct. 3091, 61 L.Ed.2d 869.

NOTE: F - Case dealt with a federal constitutional issue.

CR - Case dealt with cross-district transportation of nonpublic pupils.

14 - Case dealt specifically with a 14th Amendment issue.

Table 3.8 (continued)

Function of enforcing compulsory attendance	Removal of danger for health and safety	Use of police power of state to promote public welfare	Benefit to child	Incidental benefit to sectarian school	Schempp test: 1-secular legislat. purpose 2-not adv. or inhibit religion	Fourteenth Amendment	TRI-PARTITE test for Est. Clause	No constitutional issue involved	OTHER:
1979	(CR) <u>Jamestown II 405 A.2d 16 (RI, 1979)</u> Ruled on state const. only.	(CR) <u>Springfld. v. Dept. of Ed.</u> 397 A.2d 1154 (PA, 1979) appeal dismissed 443 U.S. 901. 99 S.Ct. 3091 61 L.Ed.2d 869.	(CR) <u>Jamestown II (RI, 1979)</u>				<u>Springfield</u> (PA, 1979) <u>Springfield</u> (PA, 1979) Elim. of profit non-pub. school was justifiable class.		
	(CR) <u>Cromwell v. Tolon</u> 495 F.Supp. 915 (CT, 1979)	<u>Cromwell</u> (CT, 1979)		<u>Cromwell</u> (CT, 1979)	(14TH) (F) <u>Finkel v. N.Y.C.</u> 474 F.Supp. 468 (NY, 1979) Opt. nonpub. city trans. was reas. class. for financial considerations, did not viol. equal prot.				
							<u>Cromwell</u> (CT, 1979) No unconst. class. of beneficiaries.		
1980						(CR) <u>O'Connell v. Kniskern</u> 484 F.Supp. 896 (WI, 1980) Stat. class. had reas. basis			
						(CR) <u>Bennett v. Kline</u> 486 F.Supp. 36 (PA, 1980) affirmed w/o published opinion, 633 F.2d 209.		<u>Bennett</u> (PA, 1980) No new constit. issues involved.	
1981									
1982		<u>State v. Lincoln</u> 320 N.W.2d (NB, 1982)		<u>Lincoln</u> (NB, 1982)			<u>Lincoln</u> (NB, 1982)		
(CR)	<u>Attv. Gen. v. Essex</u> 439 N.E.2d 770 (MA, 1982)	<u>Essex</u> (MA, 1982)		<u>Essex</u> (MA, 1982)					

Table 3.9
 COURT DECISIONS INTERPRETING NONPUBLIC PUPIL TRANSPORTATION
 STATUTES OR PRACTICES, 1970-1982

YEAR	CASE CITATION -	INTERPRETATION
1970		
1971	<u>W. Morris v. Sills</u> 279 A.2d 609 (N.J., 1971)	Exceptions for mileage and cost allowable for nonpublic transportation.
1972		
1973		
1974		
1975	(F) <u>Deutsch v. Teel</u> (14) 400 F.Supp. 398 (Wisc., 1975)	Board's decision was without a rational basis on eliminating bus service and violated equal protection rights. No rule on statute's facial validity, however.
1976	<u>People v. State Bd. of Ed.</u> 344 N.E.2d 5 (Ill., 1976)	Upheld loss of state funds for district not complying with mandatory nonpublic pupil transportation.
	(CR) <u>Young v. Bd. of Ed.</u> 246 N.W.2d 230 (Wisc., 1976)	Statutory construction not available to adjust transportation mileage limits.
1977	<u>Dickinson v. Scott</u> 252 N.W.2d 216 (N.D., 1977)	State payments for transportation authorized for public school pupils only.
1978	<u>Holy Trinity v. Kahl</u> 262 N.W.2d 210 (Wisc., 1978)	State could not make inquiry into private school religious affiliations, cannot adjudicate matters of faith.
1979	<u>Hahner v. Board of Ed.</u> 272 N.W.2d 474 (Wisc., 1979)	Board did not have discretionary power to eliminate nonpublic transportation during public school vacations.
	(CR) <u>Murphy v. Brimfield</u> 389 N.E.2d 399 (Mass., 1979)	"Same rights and privileges" for nonpublic and public transportation determined by school district boundary lines.
1980		
1981		
1982	<u>Attv. Gen. v. Essex</u> 439 N.E.2d 770 (Mass., 1982)	Nonpublic transportation not required by statute beyond compulsory attendance age. "To the same extent" for nonpublic transportation meant <u>same distance</u> or <u>closer</u> than public school to which pupil entitled to attend.

NOTE: F - Case dealt with a federal constitutional issue.
 CR - Case dealt with cross-district transportation of nonpublic pupils.
 14 - Case dealt specifically with a 14th Amendment issue.

NOTES - CHAPTER 3

1Connell v. Board of School Directors, 52 A. 2d 645 (Pa., 1947).

2Silver Lake Consol. Sch. Dist. v. Parker, 238 Iowa 984 (Iowa, 1947).

3Visser v. Nooksack Valley School Dist. No. 506, 207 P.2d 198 (Wash., 1949).

4See earlier case, Mitchell, 135 P.2d 79 (Wash., 1943).

5Id., at 204.

6Zellers v. Huff, 236 P.2d 949 (N. Mex., 1951).

7McVey v. Hawkins, 365 Mo. 44, 258 S.W.2d 927 (Missouri, 1953).

8Id., at 30.

9Quinn v. School Committee of Plymouth, 125 N.E. 2d 410 (Mass., 1955).

10Id., at 412.

11Nichols, 191 S.W. 2d 930.

12Rawlings v. Butler, 290 S.W. 2d 801 (Kent., 1956).

13Id., at 807, 808.

14Board of Ed. of Jefferson County v. Jefferson County, 333 S.W. 2d 746 (Kent., 1960).

15School District of Robinson Township v. Houghton, 128 A.2d 58 (Pa., 1956).

16Bd. Ed. Central Reg'l High Sch. v. State Bd. of Ed., 141 A.2d 542 (N.J., 1958).

17Id., at 543.

18Id.

19Board of Education of Central Sch. Dist. v. Allen, 192 N.Y.S. 2d 186 (N.Y., 1959).

20Id., at 187.

21Id., at 188.

22Squires v. Inhabitants of City of Augusta, 153 A.2d 80 (Maine, 1959).

23Id., at 87, 88.

24Id., at 88. Despite the court's favorable wording in Squires, no evidence in this study was found to indicate that a state statute has been passed to allow nonpublic pupil transportation in Maine subsequent to the decision.

25Snyder v. Town of Newtown, 161 A.2d 770 (Conn., 1960), appeal dismissed, 365 U.S. 299, 81 S.Ct. 692, 5 L.Ed.2d 688 (1960).

26Id., at 774.

27Everson, 330 U.S. at 67.

28Id., at 771.

29Application of Silver, 205 N.Y.S. 2d 650 (N.Y., 1960).

30Id., at 652.

31Matthews v. Quinton, 362 P.2d 932 (Alaska, 1961).

32Id., at 937-939, 944.

33Id., at 941. Decisions in Del., N.Y., Okla., Wash., Kent., and diss. opinions in Md., La., and N.J.

34State v. Nusbaum, 115 N.W.2d 761 (Wisc., 1962).

35Id., at 761.

36Id., at 770.

37Id.

38Cartwright v. Sharpe, 162 N.W.2d at 8 (Wisc., 1969).

39Id.

40Id., at 5.

41State ex rel. Knudsen v. Board of Ed., Elmbrook Sch., 168 N.W. 2d 295 (Wisc., 1969).

42Id., at 295.

43Board of Education for Ind. Sch. Dist. No. 52 v. Antone, 384 P.2d 911 (Okla., 1963).

44Gurney, 122 P.2d at 1004.

45Chaves v. School Committee, 211 A.2d 639 (R.I., 1965).

46Id., at 641.

47Opinion of the Justices, 216 A.2d 668 (Del., 1966).

48Id., at 668, 670.

49See State v. Brown, 172 A. 835.

50Id., at 670-671.

51Delaware survey response to the study, Opinion of Delaware Attorney General, December 11, 1969.

52Rhoades v. School District of Abington Township, 226 A.2d 53 (Pa., 1967), appeal dismissed, 389 U.S. 11, 88 S.Ct. 61, 19 L.Ed.2d 7 (1967).

53Id., at 62.

54Id., at 62, 53.

55Id., at 63.

56Fox v. Board of Ed. of West Milford, 226 A.2d at 472 (N.J., 1967).

57Id.

58McCanna v. Sills, 247 A.2d 691 (N.J., 1968).

59Id., at 691.

60Abington Township v. Schempp, 374 U.S. 203, 83 S.Ct. 1560, 10 L.Ed. 2d 844 (1963).

61McCanna, 247 A.2d at 693-694.

62Id., at 694.

63Id.

64Board of Education v. Gateway Regional High School Dist., 248 A.2d 564 (N.J., 1968).

65See McCanna, 247 A.2d 691; Gateway, 248 A.2d 564.

66Id., at 618.

67Spears v. Honda, 449 P.2d 130 (Hawaii, 1968).

68Id.

69Id., at 130, 134.

70Honohan v. Holt, 244 N.E. 2d 537 (Ohio, 1968).

71Id., at 541.

72Id., at 544.

73See McCanna v. Sills, 247 A. 2d 691.

74Honohan, 244 N.E. 2d at 542.

75Supra notes 25 and 52.

76Alexander v. Bartlett, 165 N.W.2d 445 (Mich., 1968).

77Id., at 447.

78Id., at 445.

79Id., at 445, 447.

80State ex rel. Hughes v. Board of Education, 174 S.E. 2d 711 (W.Va., 1970).

81Id., at 719.

82Id., at 720.

83Americans Unit. Inc. as Pro., Etc. v. Ind. Sch. D. No. 622, 179 N.W. 2d 146 (Minn., 1970).

84Id.

85Id., at 156.

86Id.

87State ex rel. Vanko v. Kahl, 188 N.W.2d 460 (Wisc., 1971).

88Id., at 460.

89Id., at 464.

90Holy Trinity Community School v. Kahl, 262 N.W. 2d 210 (Wisc., 1978).

91Id., at 213.

92Id., at 215.

93Deutsch v. Teel, 400 F.Supp. 598 (Wisc., 1975).

94Id.

95Young v. Bd. of Ed., Joint District No. 10, 246 N.W. 2d 230 (Wisc., 1976).

96Id., at 232.

97O'Connell v. Kniskern, 484 F.Supp. 896 (Wisc., 1980).

98Id., at 898.

99Id., at 899.

100Id., at 900.

101Hahner v. Board of Ed., 278 N.W.2d 474 (Wisc., 1979).

102Id., at 479.

103Epeldi v. Engelking, 488 P.2d 860 (Idaho, 1971).

104Id., at 862.

105Id.

106Id.

107Id., at 868.

108Hughes, 174 S.E. 2d 711.

109Epeldi, 488 P.2d at 868.

110Board of Ed., Sch. Dist No. 12, Cook City v. Bakalis, 299 N.E.2d 737 (Ill., 1973).

111Id., at 743.

112Id.

113Id.

114People ex rel. Bd. of Ed., Dist. No. 142 v. State Bd. of Ed., 344 N.E.2d 5 (Ill., 1976).

115Id.

116Luetkemeyer v. Kaufman, 364 F.Supp. 376 (Missouri, 1973), affirmed, 419 U.S. 889, 95 S.Ct. 167, 42 L.Ed. 2d 134 (1974).

117Id., at 381-82.

118Id., at 377.

119Id., at 377, 387.

120Sherbert v. Verner, 374 U.S. 398, 83 S.Ct. 1970, 10 L.Ed.2d 965 (1963). This was a First Amendment case which involved a request for dispensation from a general regulatory law. It reaffirmed the principle in Everson that no state could exclude members of any faith, because of their faith or lack of it, from receiving the benefits of public welfare legislation. Sherbert held that the disqualification of a Seventh Day Adventist plaintiff as a beneficiary under South Carolina's Unemployment Compensation Act could not withstand constitutional challenges, as South Carolina could not justify that disqualification by a compelling state interest.

121Id., at 412.

122Mallory v. Barrera, 544 S.W.2d 556 (Missouri, 1976). This is a "spinoff" case from Wheeler v. Barrera, 417 U.S. 402, 94 S.Ct. 2274, 41 L.Ed.2d 159 (1974). The court ruled that the "correct rule" is that the federal law under Title I is to the effect that state law should not be disturbed. See Mallory v. Barrera at 559.

123Id., at 562.

124McVey v. Hawkins, 258 S.W.2d 927 (1953).

125O'Donnell v. Antin, 335 N.E.2d 854 (N.Y., 1975), appeal dismissed, 96 S.Ct. 258, 423 U.S. 919, 46 L.Ed. 2d 245.

126Finkel v. N.Y. City Bd. of Ed., 474 F.Supp. 468 (N.Y., 1979).

127Id., at 470.

128See O'Donnell, 335 N.E.2d 854. Supra note 125.

129Finkel, 474 F.Supp. at 471.

130Id.

131Ams. United for Separation of Ch. & St. v. Benton, 413 F.Supp. 955 (Iowa, 1975).

132Id., at 958.

133Id., at 955.

134Id., at 959-60.

135Id.

136Id., at 960.

137Chaves, 211 A.2d 639.

138Jennings v. Exeter - West Green Reg. Sch. Dist. Com., 352 A.2d at 635 (R.I., 1976).

139Id., at 636.

140Id., at 634.

141See Chaves, 211 A.2d 639; Jennings, 352 A.2d at 635.

142Members of Jamestown Sch. Com. v. Schmidt, 427 F.Supp. 1338 (R.I., 1977). Shortened version of the case name is Jamestown I.

143Id., at 1343.

144See Benton, 413 F.Supp. 955.

145Jamestown I, 427 F.Supp. at 1348, 1349.

146Members of Jamestown School Com. v. Schmidt, 405 A.2d 16 (R.I., 1979). Referred to as Jamestown II.

147Jamestown II, 405 A.2d at 21-23.

148Id., at 22.

149Members of Jamestown Sch. Committee v. Schmidt, 525 F.Supp. 1045 (R.I., 1981). Referred to as Jamestown III.

150Jamestown III, 525 F.Supp. at 1048, 1049.

151Id., at 1049.

152Id., at 1051.

153Id.

154Dickinson Public Sch. Dist. No. 1 v. Scott, 252 N.W.2d (N.D., 1977).

155Id., at 217.

156Id., at 219.

157Rhoades, 226 A.2d 53.

158School Dist. of Pittsburgh v. Com. Dept. of Ed., 382 A.2d at 774 (Pa., 1978), appeal dismissed, 443 U.S. 901, 99 S.Ct. 3091, 61 L.Ed.2d 869.

159Id., at 772.

160Id., at 774.

161Id., at 777, 778.

162Id., at 777.

163Id.; See Rhoades, 226 A.2d 53; Everson, 330 U.S. 1.

164Springfield School Dist. v. Dept. of Ed., 397 A.2d 1154 (Pa., 1979), appeal dismissed, 443 U.S. 901, 99 S.Ct. 3091, 61 L.Ed.2d 869.

165Id., at 1160, 1163, 1168.

166Id., at 1164.

167Id., at 1169.

168Id.

169Id., at 1171.

170Bennett v. Kline, 486 F.Supp. 36 (1980), affirmed without published opinion, 633 F.2d 209.

171Id., at 37, 38. See Pittsburgh, 443 U.S. 901; Springfield, 397 A.2d 1154.

172Id., at 39.

173Quinn, 125 N.E.2d 410.

174Id., at 412.

175Murphy v. School Committee of Brimfield, 389 N.E.2d 399 (Mass., 1979).

176Id., at 400.

177Id., at 401.

178Id., at 403.

179Id.

180Attorney General v. School Committee of Essex, 439 N.E.2d 770 (Mass., 1982).

181Id., at 775.

182Id., at 777.

183Opinion of Massachusetts Attorney General, September 24, 1982.

184Cromwell Property Owners Asso. v. Toffolon, 495 F.Supp. 915 (Conn., 1979).

185Id.

186Id.

187Id., at 918.

188Id., at 920, 921.

189Id., at 922.

190Id., at 925.

191Id.; See Lemon v. Kurtzman, 403 U.S. at 610.

192State, Etc. v. Sch. Dist. of City of Lincoln, 320 N.W.2d 472 (Neb., 1982).

193Id., at 476.

194Id., at 477.

195Id., at 480.

196Connell, 52 A.2d 645; Silver Lake, 238 Iowa 984; Robinson, 128 A.2d 58; Squires, 153 A.2d 80.

197Visser, 207 P.2d 198; Zellers, 236 P.2d 949; McVey, 258 S.W.2d 927.

198Quinn, 125 N.E.2d at 412.

199Allen, 192 N.Y.S.2d at 186, 187.

200Rawlings, 290 S.W.2d 801; Jefferson County, 333 S.W.2d 746.

201Central, 141 A.2d 542.

202See Nichols, 191 S.W.2d 930; Everson, 330 U.S. 1.

203Central, 141 A.2d at 543.

204Matthews, 362 P.2d 932; Nusbaum, 115 N.W.2d 761; Antone, 384 P.2d 911; Justices, 216 A.2d 668; Spears, 449 P.2d 130.

205Opinion of the Justices, 216 A.2d at 670-71.

206Id., and State v. Nusbaum, 115 N.W.2d 761.

207U.S. Bureau of the Census, Statistical Abstract of the United States: 1981, 102nd edition (Washington, D.C., 1981), p. 138. Recent 1978-79 census data showed 13.3% private school population in Delaware, and 15.7% in Wisconsin.

208Allen, supra note 19 at 188; Central, supra note 16 at 543. New York's private school population during 1978-79 was 15.2%, while New Jersey's was 14.3%.

209U.S. Bureau of the Census, supra note 207 at 138. Of the 30 transportation provider states identified in this study, 10 states had 11% or more of their pupils enrolled in private schools.

210See, e.g., Everson, 330 U.S. 1; Judd, 15 N.E. 2d 576; Gurney, 122 P.2d 1002; Visser, 207 P.2d 198.

211See Chaves, 211 A.2d 639; Rhoades, 226 A.2d 53; Honohan, 244 N.E.2d 537; Alexander, 165 N.W.2d 445.

212Snyder, 161 A.2d 770; Rhoades, 226 A.2d 53.

213Honohan, 244 N.E.2d 537.

214Id., at 541.

215McCanna, 247 A.2d 691; Alexander, 165 N.W.2d 445.

- 216Id., at 696.
- 217Alexander, 165 N.W.2d at 445, 447.
- 218Snyder, 161 A.2d 770.
- 219Rhoades, 226 A.2d 53.
- 220Honohan, 244 N.E.2d 537.
- 221Alexander, 165 N.W.2d 445.
- 222Cartwright, 162 N.W.2d 5; Knudsen, 168 N.W.2d 295.
- 223Gateway, 248 A.2d 564.
- 224Jefferson County, 333 S.W.2d 746.
- 225Amer. United, 179 N.W.2d 146; Hughes, 174 S.E.2d 711; Bakalis, 299 N.E.2d 737; Lincoln, 320 N.W.2d 472.
- 226See Americans United and Lincoln.
- 227Deutsch, 400 F.Supp. 598; Finkel, 474 F.Supp. 468.
- 228Cromwell, 495 F.Supp. 915; O'Connell, 484 F.Supp. 896; Bennett, 486 F.Supp. 36.
- 229Epeldi, 488 P.2d 860.
- 230Mallory, 544 S.W.2d 556; Luetkemeyer, 364 F.Supp. 376.
- 231Benton, 413 F.Supp. 955; Jennings, 352 A.2d 634; Jamestown I, 427 F.Supp. 1338; Jamestown III, 525 F.Supp. 1045.
- 232Epeldi, 488 P.2d 860; Benton, 413 F.Supp. 955; Mallory, 544 S.W.2d 556.
- 233Id. Benton; Jamestown I, 427 F.Supp. 1338; Jamestown III, 425 F.Supp. 1045.
- 234Amer. United, 179 N.W.2d 146.
- 235See Abington v. Schempp, 374 U.S. 203 (1963); Board of Ed. v. Allen, 392 U.S. 236 (1968).
- 236Lemon v. Kurtzman, 403 U.S. 602, 91 S.Ct. 2105 (1971).
- 237Bakalis, 299 N.E.2d 737, Springfield, 397 A.2d 1154.

- 238Id., at 743.
- 239Id., at 1163.
- 240Bakalis, 299 N.E.2d 737.
- 241Alexander, 165 N.W.2d 445.
- 242Bakalis, 299 N.E.2d at 749, 750.
- 243Id., at 752.
- 244Amer. United, 179 N.W.2d 146; Lincoln, 320 N.W.2d 472; Essex,
439 N.E.2d 770.
- 245Amer. United, 179 N.W.2d at 149.
- 246Id., at 154.
- 247Id., at 157.
- 248Lincoln, 320 N.W.2d 472.
- 249Id., at 476.
- 250Id.
- 251Essex, 439 N.E.2d 770.
- 252Id., at 774.
- 253Id., at 776.
- 254Benton, 413 F.Supp. 955.
- 255Jamestown I, 427 F.Supp. 1338; Jamestown III, 525 F.Supp.
1045.
- 256Murphy, 389 N.E.2d 399.
- 257Essex, 439 N.E.2d 770.
- 258Pittsburgh, 382 A.2d 772.
- 259Id.; Springfield, 397 A.2d 1154.
- 260Pittsburgh, 382 A.2d at 778.
- 261Springfield, 397 A.2d at 1164.

262Id., 443 U.S. 901, 99 S.Ct. 3091, 61 L.Ed.2d 869.

263Bennett, 486 F.Supp. 36.

264Springfield, 397 A.2d 1154.

CHAPTER 4
CURRENT LEGAL AND FINANCIAL STATUS
OF NONPUBLIC PUPIL TRANSPORTATION IN THE
UNITED STATES

Outlined previously in chapters two and three was a chronological case review of the litigation of nonpublic pupil transportation in the federal courts and state appellate courts throughout the nation. The purpose of chapter four is to present data collected for this study on the legal and financial status of publicly-funded private school transportation in those states which were identified as providers of such transportation services.

Presented in the first section of this chapter is the information obtained from the initial survey on the legal authority of provider states to transport nonpublic elementary and secondary school pupils. The chapter concludes with the results of a second study questionnaire which was designed to assess the costs of transporting parochial and other nonpublic school pupils in each of the provider states.

Data on Legal Authority of
Provider States to Transport
Nonpublic Pupils

An initial survey was mailed in August, 1982, to the chief state school officer of each state in order to identify those states which were providers or non-providers of publicly-funded private school

transportation (See Appendix A). For each state classified as a provider of nonpublic pupil transportation, a request was made to determine the statutory or other legal basis for the transportation provision. The following data and documents were requested:

1. A copy of the legislation or statutory citation of the current law;
2. The name or citation of any court case which had been litigated on the topic in the state;
3. Any other legal basis for the policy, such as a constitutional provision, an attorney general's opinion, or any state administrative regulation carrying the weight of law.

Responses to the survey were returned by all fifty states by November, 1982. The survey responses indicated that thirty states either permitted or mandated some form of transportation aid or services to nonpublic school pupils. These states were classified as "Provider States." (See Table 4.1.) Twenty states reported that either no statutory authorization existed to provide for public funding to transport private school pupils, or the state constitution or state code prohibited public funding to transport such pupils. (See Appendix C for sample response.) These twenty states were classified as "Non-Provider States." (See Table 4.1.)

No further data were compiled for the twenty non-provider states, since no legal authority to provide nonpublic pupil transportation was indicated in any of their survey responses. The legal information provided in the survey by the thirty provider states was then divided

Table 4.1

Status of Publicly-Funded Nonpublic School Pupil Transportation
In the United States, November, 1982

Provider States		Non-Provider States
1. Alaska	25. Rhode Island	1. Alabama
2. Arizona	26. South Dakota	2. Arkansas
3. California	27. Washington (c)	3. Colorado
4. Connecticut	28. West Virginia	4. Florida
5. Delaware	29. Wisconsin	5. Georgia
6. Idaho (a)	30. Wyoming (d)	6. Hawaii
7. Illinois		7. Maine
8. Indiana		8. Mississippi
9. Iowa		9. Missouri
10. Kansas		10. Montana
11. Kentucky		11. Nevada
12. Louisiana		12. North Carolina
13. Maryland (b)		13. North Dakota
14. Massachusetts		14. Oklahoma
15. Michigan		15. South Carolina
16. Minnesota		16. Tennessee
17. Nebraska		17. Texas
18. New Hampshire		18. Utah
19. New Jersey		19. Vermont
20. New Mexico		20. Virginia
21. New York		
22. Ohio		
23. Oregon		
24. Pennsylvania		

(a) Statutory authorization for nonpublic transportation found unconstitutional, but local practice may be in existence for nonsectarian pupils.

(b) Specific statutory authorization required for individual counties in state. No state funding authorized.

(c) Local district must be reimbursed by parent for actual per seat cost of nonpublic transportation.

(d) No statutory authority. State Board of Education allows as a local operational policy.

into three categories which could be reported on individually for each state. The information was categorized as follows:

- (1) The statutory or other legal authority for the provision of publicly-funded nonpublic pupil transportation aid or services within the state.
- (2) An outline of the type of transportation services provided to nonpublic elementary and secondary school pupils at public expense within the state.
- (3) A classification of publicly-funded nonpublic pupil transportation in the state as being either: (a) more restricted than public school pupil transportation services; (b) limited to a seats available, established routes basis on public school buses; (c) equivalent to or the same as public school pupil transportation services; or (d) more extended than public school pupil transportation services. (See Glossary in Appendix G for definition of terms used.)

The following section presents the state-by-state survey data collected on the current legal status of publicly-funded nonpublic transportation in the United States:

Alaska

- (1) Alaska mandated the transportation of nonpublic pupils by statute:

Ch. 09, Sec. 14.09.020. Transportation for nonpublic school students. In those places in the state where the department or a school district provides transportation for children attending public schools, the department also shall provide transportation for children who ... attend nonpublic schools ... where the children, in order to reach the nonpublic schools, must travel distances comparable to, and over routes the same as, the distances and routes over which the children attending public schools are transported. The commissioner shall administer this nonpublic school student transportation program, integrating it into existing systems as much as feasible, and the cost of the program shall be paid from funds appropriated for that purpose by the legislature.

The statutory provision of transportation to nonpublic pupils was supported by a December 17, 1979 opinion by the Alaska Attorney

General:

... it is our view that state financing of private school bus transportation does not violate article VIII, section 1 of the Alaska State Constitution which prohibits the payment of money from public funds 'for the direct benefit of any religious or private educational institution.'

- (2) Alaska mandated within district nonpublic transportation, along the same routes as public school pupils, and over comparable distances as public are transported.
- (3) Equivalent or same services mandated.

Arizona

- (1) Arizona permitted the transportation of nonpublic pupils by statute:

Sec. 15-342, Ch.3, Subsection 12: The governing board may: Provide transportation for any child or children when deemed for the best interest of the district, whether within or without the district, county or state.

- (2) Arizona permitted within district transportation or outside district, county, or state transportation, when deemed in the best interest of the district.
- (3) Equivalent or same services permitted.
Extended services permitted.

California

- (1) California permitted the transportation of nonpublic pupils by statute:

California State Education Code, Section 39808: The governing board of any school district may allow pupils ... in attendance at a school other than a public school ... transportation upon the same terms and in the same manner ... as permitted pupils attending the district school.

- (2) California permitted within district transportation on the same terms, manner, routes of travel as public school pupils. (Seats available basis indicated on second survey response.)
- (3) Equivalent or same services permitted.

Connecticut

- (1) Connecticut mandated within-district nonpublic pupil transportation and permitted outside-district nonpublic pupil transportation by statute:

Connecticut General Statutes, Sec. 10-281: Transportation for pupils in nonprofit private schools within school district. Any municipality or school district shall provide, for its children attending private schools therein ... the same kind of transportation services provided for its children attending public schools; provided, in no case shall a municipality or school district be required to expend for private school transportation, in any one school year, a per pupil transportation expenditure greater than an amount double the local per pupil expenditure for public school transportation during the last completed school year.

Sec. 10-280a. Transportation for pupils in nonprofit private schools outside school district. Any local or regional board of education may provide transportation to a student attending an elementary or secondary nonpublic school ... outside the school district ... provided no grant shall be provided for costs ...

beyond a contiguous school district ... located within the state of Connecticut.

- (2) Connecticut mandated within district nonpublic pupil transportation, same transportation services as public; nonpublic pupil expenditure cannot amount to twice the public cost.

Connecticut permitted outside district nonpublic pupil transportation, not beyond contiguous school district, within the state.

- (3) Equivalent or same services mandated.

Extended services permitted.

Delaware

- (1) Delaware mandated the transportation of nonpublic pupils by statute:

Section 2905: The State Board of Education shall make rules and regulations concerning the transportation of pupils in nonpublic, nonprofit elementary and secondary (high) schools in this State ... Pupils enrolled in nonpublic, nonprofit schools shall only be entitled to transportation within the described boundaries

- (2) Delaware mandated within district nonpublic pupil transportation, and up to the district boundary line.

- (3) Equivalent or same services mandated.

Idaho

(1) The 1982 survey response from Idaho indicated some confusion on the legality of transporting nonpublic school pupils in the state. The authorizing statute in the survey response stated:

Idaho Code, Ch. 14, 33-1501: ... the board of trustees of each district ... shall, where practicable, provide transportation for the public and private school pupils within the district

However, the compiler's notes for the statute indicated that "insofar as it [the statute] authorizes allocation of funds for the transportation of private school pupils [sic] was held to violate Art. 9, Sec. 5 of the Constitution in Epeldi v. Engelking, 94 Idaho 390, 488 P.2d 860 (1971), cert. denied, 406 U.S. 957, 92 S.Ct. 2058, 32 L.Ed. 2d 343 (1972)."

Informal guidelines later issued by the Idaho Attorney General on December 23, 1982, indicated that the 1971 Epeldi decision prohibited the providing of transportation to parochial school children, possibly leaving open the question of whether the provision of transportation to private nonsectarian school students would be permitted. However, the guidelines also cited transportation cases in other states where court decisions had ruled against such transportation, thus shedding doubt on its constitutionality. Finally, the guidelines further indicated that since Idaho's transportation statute, as applied to the specific issue of private nonsectarian pupils, "has not been ruled upon by the Idaho

Supreme Court, it is entitled to a presumption of validity" It is possible that school districts in Idaho could permit private school pupils to ride on public school buses, as this was indicated in the same guidelines of the Attorney General. The guidelines stated that "a school board might conclude it 'practicable to transport private nonsectarian school students to the extent that seats were available on buses, routes and stops were not altered, etc. ... it would seem that a local board would be justified in considering the economic impact of transporting private children in its determination as to the practicability"

(2) Idaho - by local practice, some districts might have been transporting private nonsectarian pupils on an established route, seats available basis (legal guidelines indicated that Epeldi may not have invalidated such transportation).

(3) Limited services may have existed to permit nonsectarian private school transportation, by local practice.

Illinois

(1) Illinois mandated the transportation of nonpublic pupils by statute:

School Code, Ch. 122, Sec. 29-4: The school board of any school district that provides any school bus ... for transporting pupils to and from the public schools shall afford transportation, without cost, for children who attend any school other than a public school, who reside at least $1\frac{1}{2}$ miles from the school attended, and who reside on or along the highway constituting the regular route

of such public school bus If a school district is required by this Section to afford transportation without cost for any child who is not a resident of the district, the school district providing such transportation is entitled to reimbursement from which the child resides

(2) Illinois mandated nonpublic pupil transportation for resident pupils who lived $1\frac{1}{2}$ miles from the private school, along the regular public school route to the nonpublic school; if pupil lived less than $1\frac{1}{2}$ miles from private school, nonpublic pupil transportation was provided on the same basis as public.

Illinois permitted separate nonpublic routes, if it was safer, more economical and efficient.

(3) Equivalent or same services mandated.

Indiana

(1) Indiana mandated the transportation of nonpublic school pupils. The survey response indicated that there was no separate public funding authorized for nonpublic pupil transportation in the state, but pupils were bused on a seats available basis on already established public school routes.

(2) Indiana mandated within district nonpublic pupil transportation on a seats available basis on already established routes on public school buses.

(3) Limited services mandated, on a seats available-established routes basis.

Iowa

- (1) Iowa mandated the transportation of nonpublic pupils by statute:

Iowa Code, Ch. 285, Sec. 285.1, Subsection 14: Resident pupils attending a nonpublic school located either within or without the school district of the pupil's residence shall be entitled to transportation on the same basis as provided for resident public school pupils ... and the public school district shall determine bus schedules and routes.

- (2) Iowa mandated within and outside district nonpublic pupil transportation on the same basis as public school pupils.

Transportation was provided: on public school buses; by contracting with nonpublic schools, contiguous school district, or private parties; or by reimbursing parent for providing the transportation.

- (3) Equivalent or same services mandated.

Extended services mandated on same basis as public.

Kansas

- (1) Kansas mandated the transportation of nonpublic pupils by statute:

K.S.A. 72-8306, Subsection (a): ... pupils residing in such school district attending private or parochial schools of elementary or high school grades ... who shall reside on or along the highway or street constituting the regular route of a school bus ... where such transportation is provided for pupils attending the public schools, shall be entitled to the privilege of ... transportation upon such regular route as arranged for ... pupils attending public schools.

(b) Whenever any school district shall provide or furnish transportation ... for pupils attending the public schools, it may provide or furnish transportation for pupils attending ... private or parochial schools ... to such extent and upon such conditions as the school district shall deem appropriate. The authorization contained in this subsection (b) shall be in addition to the requirement provided in (a)

(2) Kansas mandated within district nonpublic pupil transportation along regular routes, under the same terms and conditions imposed upon public school pupils.

Kansas permitted nonpublic pupil transportation "to such extent and upon such conditions" as the school district deemed appropriate, in addition to the required transportation.

(3) Equivalent or same services mandated.

Extended services permitted, to such extent and upon such conditions as the school district deemed appropriate.

Kentucky

(1) Kentucky permitted the transportation of nonpublic pupils by statute:

K.R.S. 158.115: Each county may furnish transportation from its general funds, and not out of any funds or taxes raised or levied for educational purposes ... to supplement the present school bus transportation system for the aid and benefit of all pupils ...

(2) Kentucky permitted within district nonpublic pupil transportation from general funds only, for pupils who did not live within reasonable walking distance from school, to supplement the public school transportation system.

(3) Equivalent or same services permitted.

Louisiana

- (1) Louisiana mandated nonpublic pupil transportation by statute:

Revised Statute 17:158: Each parish and city school board shall provide transportation for any student attending a school of suitable grade approved by the State Board ... if the student resides more than one mile from such school and the school is within the jurisdictional boundaries of the parish or school board If transportation is not provided ... by reason of economically justifiable reasons ... the Department of Education ... shall reimburse the parent ... at the rate of One Hundred Twenty-Five and no/100 dollars per student The provisions of this Section shall apply to eligible public and nonpublic school students.

- (2) Louisiana mandated within district nonpublic pupil transportation if student resided more than one mile from school, or reimbursed parents for providing transportation if it was not economically feasible. Survey also indicated transportation was provided on a seats available, already-established routes basis.

- (3) Equivalent or same services mandated.

Maryland

- (1) The Legislative process in Maryland which pertained to nonpublic school transportation required a specific legislative act in order for a county to locally provide such transportation. Ten counties reportedly mandated nonpublic pupil transportation (Anne Arundel, Baltimore, Cecil, Charles, Frederick, Howard, Montgomery, Prince George's, St. Mary's, Talbot), although there were some differences in

restrictions or their actual provision of services. Two counties permitted transportation to nonpublic pupils (Alleghany, Washington).

The Bylaw of the Maryland State Department of Education, 13.15.02, provided a method to assure that no state funds were expended for private or parochial school pupil transportation. Section .02A stated:

The cost to be excluded for each nonpublic school pupil riding on a public school bus is equal to the total allowed for administrative costs plus the total allowed for pupil transportation formula costs (excluding costs for handicapped pupils being transported) divided by the total number of school pupils transported by the local school system excluding handicapped pupils (average per-pupil cost). [Source of survey information is "Transportation of Nonpublic School Pupils in Maryland," an undated report provided by the Maryland State Department of Education.]

- (2) Ten Maryland counties mandated within district nonpublic pupil transportation. Two Maryland counties permitted within district nonpublic pupil transportation.
- (3) Equivalent or same services either mandated or permitted in twelve Maryland counties.

Massachusetts

- (1) Massachusetts mandated the transportation of nonpublic pupils by statute:

G.L.c. 76, Sec. 1, paragraph 2: Pupils who, in the fulfillment of the compulsory attendance requirements of this section, attend private schools of elementary and high school grades so approved shall be entitled to the same rights and privileges as to transportation to and from school as are provided by law for pupils

of public schools and shall not be denied such transportation because their attendance is in a school which is conducted under religious auspices ... nor because pupils of the public schools in a particular city or town are not actually receiving such transportation.

(2) Massachusetts mandated within district nonpublic pupil transportation only to pupils of compulsory school age and to private schools that were closer to or the same distance as the entitled public school.

Massachusetts mandated outside district nonpublic pupil transportation if outside district transportation was provided to public school pupils, and if the compulsory age requirement and private school distance requirements were met.

Massachusetts permitted within or outside district nonpublic pupil transportation to pupils beyond the compulsory age requirement or beyond the distance requirement, or even if no public school pupils were transported outside the district.

(3) Equivalent or same services mandated.

Extended services mandated or permitted, depending on whether age and distance criteria were met.

Michigan

(1) Michigan mandated the transportation of nonpublic pupils by statute:

380.1321(1) - Sec. 1321.(1) A board of a school district providing transportation for its resident pupils ... shall provide transportation for each resident pupil ... for whom the school district is eligible to receive state school aid for transportation. These people shall be attending either the public or the nearest state approved nonpublic school in the school district to which the pupil is eligible to be admitted

380.1321(2) - Sec. 1321(2) ... A school district shall not be required to transport or pay for the transportation of a resident pupil attending a nonpublic school who lives in an area less than $1\frac{1}{2}$ miles from a public school in which public school pupils are not transported, except that the school district shall be required to transport or pay for the transportation of the resident pupil from the public school within the area to the nonpublic school the pupil attends.

380.1322(1) ... Transportation to public and the nearest state approved nonpublic school located within or outside the district ... shall be provided under the rules promulgated by the state board.

(2) Michigan mandated within district and outside district transportation for nonpublic pupils, provided public school pupils were transported. Nonpublic transportation was required under the following circumstances: to the nearest eligible nonpublic school; if the pupil resided within $1\frac{1}{2}$ miles of the eligible public school, the nonpublic pupil would be transported from the public school to the attending nonpublic school; along regular public school routes and not on days public pupils were not transported; if cost of nonpublic transportation was excessive, the nonpublic parents was reimbursed at a flat rate per mileage limits.

Michigan permitted outside district transportation for nonpublic school pupils, even if public school pupils were not similarly

transported. State reimbursement was provided them for within district transportation to points from which the nonpublic pupils were transported.

(3) Equivalent services mandated.

Extended services mandated, if public services were provided.

Extended services permitted, even if public services were not provided.

Minnesota

(1) Minnesota mandated the transportation of nonpublic pupils in

Minnesota Statutes 123.76-123.80:

123.76: School children attending any schools, complying with section 120.10, sub-division 2, are therefore entitled to the same rights and privileges relating to transportation.

123.78 Subdivision 1: The school board of any district which is not or hereafter eligible to receive state aid for transportation ... shall provide equal transportation within the district for all school children to any school when transportation is deemed necessary by any board Subdivision 1a(a) ... The school board of any local district shall provide school bus transportation to the district boundary ... if the transportation is to schools maintaining grades or departments not maintained in the district (b) The school board of any local district may provide school bus transportation to a nonpublic school in another district for school children residing in the district ... whether or not there is another nonpublic school within the transporting district, if the transportation is to schools maintaining grades or departments not maintained in the district If the board transports children to a nonpublic school located in another district, the nonpublic school shall pay the cost of such transportation provided outside the district boundaries.

(2) Minnesota mandated within district nonpublic pupil transportation and to the district boundary line for pupils attending a private school outside the district, with the same rights and privileges for private and public school pupils.

Minnesota permitted outside district nonpublic pupil transportation if the school had grades or departments not maintained in the district, or if the attendance at such schools was provided for more safely, economically, or conveniently.

(3) Equivalent or same services mandated.

Extended services permitted at nonpublic expense.

Nebraska

(1) Nebraska mandated the transportation of nonpublic pupils by statute:

State of Nebraska School Laws, 1981, Section 79-487: ... The school board or board of education of any public school district providing such transportation facilities for children attending public schools shall also provide transportation without cost for children who attend nonprofit schools Such transportation shall be provided for only such children attending nonprofit private schools who reside in a district which provides transportation to public school students, and such transportation shall extend only from some point on the regular public school route nearest or most easily accessible to their homes to and from a point on the regular public school route nearest or most easily accessible to the school or schools attended by such children

(2) Nebraska mandated within district nonpublic pupil transportation along regular public school routes only at times public school transportation was being provided.

(3) Equivalent or same services mandated.

New Hampshire

(1) New Hampshire mandated the transportation of nonpublic pupils by statute:

New Hampshire Rev. Stat. Ann., Section 189:9: Pupils attending approved private schools, up to and including the twelfth grade, shall be entitled to the same transportation privileges within any town or district as are provided for pupils in public schools.

(2) New Hampshire mandated within district nonpublic pupil transportation, with the same transportation privileges as public school pupils.

(3) Equivalent or same services mandated.

New Jersey

(1) New Jersey mandated the transportation of nonpublic pupils by statute:

New Jersey Statutes Annotated, 18A: 39-1: When any school district provides any transportation for public school pupils to and from school pursuant to this section, transportation shall be supplied to school pupils residing in such school district in going to and from any remote school other than a public school ... located

within the State not more than 20 miles from the residence provided the per pupil cost of the lowest bid received does not exceed [a flat amount determined each year] and if such bid shall exceed said cost then the parent, guardian ... shall be eligible to receive said amount toward the cost of his transportation

- (2) New Jersey mandated within and outside district transportation to nonpublic school pupils up to 20 miles from pupil's residence, provided the cost did not exceed a flat annual rate, and provided remote public pupils were transported. If the cost restriction could not be met, the nonpublic school parent was eligible to receive flat reimbursement.
- (3) Extended services mandated.

New Mexico

- (1) New Mexico permitted the transportation of nonpublic pupils by statute:

Sec. 22-16-7.A: A board of county commissioners may contract with a school bus service operator for the transportation of students attending schools, other than public schools, within the county The contract shall provide for the school bus service operator to use the same school bus routes as established for students attending public schools in the county.

- (2) New Mexico permitted nonpublic pupil transportation within each county on established public school bus routes, from general county funds only. Transportation was on a seats available basis, with no extra cost to be incurred.
- (3) Equivalent or same services permitted.

New York

- (1) New York mandated the transportation of nonpublic pupils by statute:

Education Law, Section 3635, Subsection 1: Sufficient transportation facilities ... shall be provided by the school district for all the children residing within the school district to and from the school they legally attend ... up to a distance of fifteen miles, the distances in each case being measured by the nearest available route from home to school Transportation for a lesser distance than two miles in the case of children grades kindergarten through eight or three miles in the case of children grades nine through twelve and for a greater distance than fifteen miles may be provided by the district, and ... shall be offered equally to all children in like circumstances residing in the district. The foregoing provisions of this subdivision shall not require transportation to be provided for children residing within a city school district

- (2) New York mandated nonpublic pupil transportation in noncity school districts either within or outside the district up to fifteen miles from the school legally attended. Transportation was to be offered equally to all children in like circumstances.

New York permitted nonpublic city transportation and within or outside district nonpublic pupil transportation for distances less than the 2 or 3 mile requirements or over the fifteen mile limit, if transportation was offered equally to all children in like circumstances.

- (3) Extended services mandated up to 15 miles distance.

Extended services permitted, beyond 15 miles distance.

Ohio

- (1) Ohio mandated the transportation of nonpublic pupils by statute:

Section 3327.01 R.C.: In all city, exempted village, and local school districts where resident pupils in grades kindergarten through eight live more than two miles from the school ... to which they are assigned by the board of education or to and from the nonpublic school which they attend, the board of education shall provide transportation for such pupils to and from such school The board may provide transportation for resident school pupils in grades nine through twelve to and from the high school to which they are assigned ... or to and from the nonpublic high school which they attend

A board of education shall not be required to transport elementary or high school pupils to and from a nonpublic school where such transportation would require more than thirty minutes of direct travel time as measured by school bus from the collection point

- (2) Ohio mandated within and outside district nonpublic pupil transportation up to 30 minutes travel time for grades K through 8 for pupils more than 2 miles from public school of residence or private school of attendance.

Ohio permitted within and outside district nonpublic pupil transportation up to 30 minutes travel time for pupils in grades 9 through 12 to public high school of residence or nonpublic school of attendance.

- (3) Equivalent or same services mandated, only up to 30 minutes travel time.

Oregon

- (1) Oregon mandated the transportation of nonpublic pupils by statute:

ORS 332.415 Whenever any district school board lawfully provides for transportation for pupils attending public schools, all children attending any private or parochial school under the compulsory school attendance laws shall, where the private or parochial school is along or near the route designated by said board, be entitled equally to the same rights, benefits and privileges as to transportation provided.

- (2) Oregon mandated nonpublic pupil transportation when public pupil transportation was provided and the nonpublic school was along or near the designated route. Nonpublic pupils were entitled to the same transportation rights, benefits and privileges as public.

- (3) Equivalent or same services mandated.

Pennsylvania

- (1) Pennsylvania mandated the transportation of nonpublic pupils by statute:

Act 372 of 1972 authorizes: ... any school district to provide, out of district funds, for the free transportation of any resident pupil to and from the public or nonpublic, nonprofit kindergarten, elementary school or secondary school in which the pupil is lawfully enrolled provided that such school is located within the school district boundaries or not more than 10 miles outside the district boundaries by the nearest public highway.

... the route established for transportation to and from such school by the responsible school district need not conform to the shortest route

The Act mandates that when provisions are made by a board of school directors for free transportation of public school pupils to

and from school, identical provision shall be made for the free transportation of pupils to and from the nonpublic, nonprofit school ... on such dates and periods that the nonpublic school is in regular session ... but must be so arranged to provide similar conditions as to distance, shelters and hazardous areas as is provided for resident pupils ... from the public schools.

(2) Pennsylvania mandated within and outside district nonpublic pupil transportation up to 10 miles outside school district boundaries following nonpublic school's calendar. Identical provision for public and private school pupils was to be arranged for distance, shelters, and hazardous areas.

(3) Extended services mandated.

Rhode Island

(1) Rhode Island mandated the transportation of nonpublic pupils by statute:

General Laws of Rhode Island, Ch. 21, Section 16-21-1: The school committee of any town shall provide suitable transportation to and from school for pupils attending public and private schools of elementary and high school grades, except such private schools as are operated for profit

Ch. 21.1: Transportation of School Pupils Beyond City and Town Limits. Section 16-21.1-1: ... creates a state plan for the busing of pupils beyond city or town limits ... to attend a public school ... outside of the city or town which provides a program or curriculum not available ... to afford bus transportation to pupils who attend non-public non-profit schools which are consolidated, regionalized or otherwise established to serve residents of a specific area within the state, and who may be counted for purposes of reimbursement to cities and towns under the state aid formula

Section 16.21.1-2: There are hereby established school bus districts within the state to provide bus transportation for pupils

... who attend public schools ... and non-public non-profit schools which are consolidated, regionalized A pupil attending a school, including a public school ... or a non-public non-profit school kindergarten through grade twelve ... shall be provided with bus transportation to the school or facility which the pupil attends, within the region in which the pupil resides, by the school committee of the city or town within which the pupil resides.

Section 16-21.1-3: Variance to require a city or town to provide bus transportation to a pupil who attends a school ... outside the region in which the pupil resides shall be granted by the commissioner of education if he finds that there is no similar school within the region ... and that the school building which the pupil attends is within fifteen (15) miles of the city or town of which the pupil is a resident. (Enacted by P.L. 1977, ch. 149, section 1)

(2) Rhode Island mandated the transportation of nonpublic pupils within a city, town, or transportation district (established by state law), to schools which offered otherwise unavailable programs or curriculum.

Rhode Island permitted the transportation of nonpublic pupils outside the transportation region up to fifteen miles from the city or town of residence, if a variance was obtained from the commissioner of education for a school offering an otherwise unavailable program or curriculum.

(3) Equivalent or same services mandated within district or transportation region.

Extended services permitted outside transportation region.

South Dakota

(1) The survey response from South Dakota indicated that, "There is no statutory authorization in this state to provide for public funding to transport private school pupils." However, a local school district could be reimbursed by the state for part of the cost of transporting nonpublic pupils. In a September 10, 1971 opinion, the South Dakota Attorney General indicated that state law, SDCL 13-31-2.6: "... merely provides that such costs [of local discretionary nonpublic pupil transportation] when provided can be included in the formula for reimbursement as part of the state aid for school transportation. When asked to give an opinion on the constitutionality of this statute, the Attorney General stated that "... it is the function of the courts and not the Attorney General to declare that a legislative enactment is unconstitutional ... it is my opinion that until such times as our courts determine that ... [it] is unconstitutional, said statute should be regarded as constitutional." The statute under question in the Attorney General's opinion in 1971 was SDCL 13-31-2.6, which provided:

Resident school pupils for the purposes of sections 13-31-2.1 to 13-31-2.5, inclusive, shall include pupils in public and nonpublic elementary or secondary schools at which their attendance satisfies the compulsory education laws of this state.

Part of the referenced statute, SDCL 13-31-2.1, provided that the department of public instruction compute the transportation support for school districts "... for resident school children enrolled in

schools from their place of residence to school and return and between attendance centers within the district on regularly established public school bus routes as determined by the school board."

- (2) South Dakota permitted within district nonpublic pupil transportation on regularly established public school bus routes as determined by the school board.
- (3) Equivalent or same services permitted.

Washington

- (1) Washington permitted parent-reimbursed transportation of nonpublic pupils by statute:

RCW 28.24.065: Every school district board of directors may authorize children attending a private school ... to ride a school bus or other student transportation vehicle to and from school so long as the following conditions are met:

- (1) The board of directors shall not be required to alter those bus routes or stops established for transporting public school students;
- (2) Private school students shall be allowed to ride on a seats available basis only; and
- (3) The board of directors shall charge an amount sufficient to reimburse the district for the actual per seat cost of providing such transportation. (1981, Chapter 307, Section 1)

- (2) Washington permitted within district nonpublic pupil transportation on unaltered, already established routes on a seats-available basis only, as long as the school district was reimbursed for the actual per seat cost of the transportation provision.
- (3) Restricted services permitted.

West Virginia

(1) West Virginia mandated the provision of public financial assistance for the transportation of nonpublic school pupils by statute:

West Virginia Code, Section 18-5-13, Subsection (6a): The [local] boards subject to the provisions of this chapter and the rules and regulations of the state board, shall have authority: "To provide at public expense adequate means of transportation, including transportation across county lines, for all children of school age who live more than two miles distance from school by the nearest available road" and "To enter into agreements with one another to provide on a cooperative basis, adequate means of transportation across county lines for children of school age"

(2) West Virginia mandated nonpublic pupil transportation, including across county lines, if public school pupils were provided transportation.

(3) Extended services mandated.

Wisconsin

(1) Wisconsin mandated the transportation of nonpublic pupils by statute:

School Finance, Section 121.54, Subsection (1): Where an annual or special meeting of a common school district or a union high school district, or the school board of a city school district or unified school district determines to provide transportation for such pupils, state aid shall be paid in accordance with §121.58 and there shall be reasonable uniformity in the transportation furnished such pupils whether they attend public or private schools. This subsection does not apply to pupils who reside in a city ... with a population exceeding 40,000 Subsection (2)(b)1: ... the school board of each district operating high

school grades shall provide transportation to and from the school he attends for each pupil residing in the school district who attends any elementary grade, including kindergarten, or high school grade at a private school located 2 miles or more from his residence, if such private school is a school within whose attendance area the pupil resides and is situated within the school district or not more than 5 miles beyond the boundaries of the school district measured along the usually traveled route. Subsection (3)(c): ... there shall be reasonable uniformity in the minimum distance that pupils attending public and private schools will be transported.

(2) Wisconsin mandated the transportation of nonpublic pupils within and outside the school district, not more than 5 miles beyond district boundaries if the private school was within the attendance area in which the nonpublic pupil resided. There had to be reasonable uniformity between public and private pupil transportation.

(3) Extended services mandated.

Wyoming

(1) There was no authorizing statute for providing publicly-funded nonpublic pupil transportation in Wyoming. However, the survey response indicated that:

The State Board of Education has suggested ... that local boards of education develop their own operational policies on the matter. As a result, we are aware of several situations where non-public school students are permitted use of public school transportation facilities when it can be demonstrated that such use does not result in any additional cost to the public schools.

The State of Wyoming provides neither direct financial aid nor reimbursement of costs for the transportation of private school pupils Given the strong constitutional language ... and the equally strong requirement for separation of church and state, it would not be possible to appropriate public funds for such benefit.

- (2) Wyoming permitted nonpublic pupil transportation as a local operational policy within the school district, on public school buses when no additional cost could be demonstrated.
- (3) Equivalent or same services permitted.

Comparison of Public and Nonpublic Transportation Services

Table 4.2 presents in tabular format a partial summary of survey information compiled in the previous section on the legal status and classification of nonpublic pupil transportation within each of the identified thirty provider states. The table compares publicly-funded transportation services for nonpublic pupils in each provider state to those transportation services which were provided to public pupils within the state. Nonpublic pupil transportation services in each provider state have been categorized as either: 1) restricted; 2) limited; 3) equivalent or the same; or 4) extended (See Appendix G for Glossary of Terms).

The information in Table 4.2 also indicates whether the particular category of nonpublic transportation service in each state was mandated by state law, or permitted by state law, state regulations, or local practice. Contained in the footnote section with the table are any restrictions or requirements that denoted the extent of nonpublic pupil transportation provided in each of the thirty states through public funding.

Table 4.2

Comparison of Nonpublic Pupil Transportation Services
To Public Pupil Transportation Services
Within Provider States

Provider State	Nonpublic Pupil Transportation Services			
	Restricted Services	Limited Services(a)	Equivalent or Same Services	Extended Services
Alaska			Mandates	
Arizona			Permits	Permits(b)
California			Permits	
Connecticut			Mandates	Permits
Delaware			Mandates(c)	
Idaho		Permits(d)		
Illinois			Mandates	
Indiana		Mandates		
Iowa			Mandates	Mandates(e)
Kansas			Mandates	
			Permits(f)	
Kentucky			Permits(g)	
Louisiana			Mandates(h)	
Maryland			Mandates (i)	
			Permits (i)	
Massachusetts			Mandates(j)	Mandates(k)
				Permits(l)
Michigan			Mandates	Mandates(m)
				Permits(n)
Minnesota			Mandates(c)	Permits(o)
Nebraska			Mandates	
New Hampshire			Mandates	
New Jersey				Mandates(p)
New Mexico		Permits(g)		
New York				Mandates(q)
				Permits(r)
Ohio			Mandates(s)	
Oregon			Mandates	
Pennsylvania				Mandates(t)
Rhode Island			Mandates(u)	Permits(v)
South Dakota			Permits	
Washington	Permits(w)			
West Virginia				Mandates(x)
Wisconsin				Mandates(y)
Wyoming		Permits(z)		

(See next page for footnotes.)

Table 4.2 - Footnotes

- (a) Provided on a seats available-established routes basis.
- (b) Outside district, county or state.
- (c) Included transportation to school district boundary.
- (d) Survey indicated local practice may have existed in some school districts to transport nonsectarian private school pupils, although legality may be questionable.
- (e) On "same basis" as provided public school pupils; Benton (1976) ruled out cross-district busing that was an option available only to nonpublic pupils.
- (f) Nonpublic transportation permitted "to such extent and upon such conditions as the school district shall deem appropriate."
- (g) Out of general county funds only.
- (h) Second survey indicated a seats available, established routes basis.
- (i) No state funds expended. Actual provision of nonpublic transportation varied within the twelve counties, at their own local expense, although most provided transportation on established routes. Ten counties mandated nonpublic transportation, while two counties permitted such transportation.
- (j) Only to nonpublic pupils who met age and distance requirements.
- (k) Only if public schools pupils were transported outside, and if age and distance requirements were met.
- (l) Even if age and distance requirements were not met, at local expense.
- (m) If public pupils were transported outside the district.
- (n) Even if public pupils were not transported outside the district.
- (o) If private school had grades or departments not maintained in the district, at nonpublic school expense.
- (p) Up to 20 miles from nonpublic pupil residence, within annually set cost restriction.
- (q) Up to 15 miles from nonpublic pupil residence.

Table 4.2 - Footnotes (continued)

- (r) Beyond 15 mile limit if offered to all children in like circumstances.
- (s) Only up to 30 minutes travel time required.
- (t) Not more than 10 miles from school district boundaries, for public and private school pupils.
- (u) Within city, town, or established transportation district, to schools offering unavailable curriculum or programs.
- (v) Outside transportation region, up to 15 miles from city or town..
- (w) District was not required to alter established routes or stops; parent reimbursed district for total cost.
- (x) Transportation across county lines authorized.
- (y) Not more than 5 miles beyond district boundaries if private school was within attendance area of nonpublic pupil.
- (z) No state aid; state board of education allowed local operational policy where no additional cost was demonstrated.

The following section contains the legal data presented in Table 4.2:

Restricted Services for Nonpublic Pupils

1. Only one provider state permitted restricted transportation services to nonpublic school pupils:

Washington - required reimbursement by the nonpublic parent for the total cost of the transportation

Limited Services for Nonpublic Pupils

1. Three provider states permitted limited transportation services to nonpublic school pupils:

Idaho - permitted the local practice of transporting nonsectarian pupils

New Mexico - permitted funding through non-school, general county funds only

Wyoming - allowed no state aid, nonpublic transportation was a local policy option demonstrating no additional costs

2. One provider state (Indiana) mandated limited transportation services to nonpublic school pupils.

Equivalent or Same Services for Nonpublic Pupils

1. Three provider states permitted equivalent or same transportation services to nonpublic school pupils:

California Kentucky South Dakota

2. Nine provider states mandated equivalent or same transportation services to nonpublic school pupils on a statewide basis:

Alaska	Kansas	New Hampshire
Delaware	Louisiana	Ohio
Illinois	Nebraska	Oregon

3. One provider state (Maryland) authorized equivalent or same transportation services to nonpublic pupils only on an individual county-wide basis, as provided by law.

Extended Services for Nonpublic Pupils

1. No state authorized extended transportation services strictly on a permissive basis to nonpublic school pupils.
2. Four provider states mandated extended transportation services to nonpublic school pupils:
New Jersey Pennsylvania West Virginia Wisconsin
3. One provider state (New York) mandated extended transportation services up to a specified distance, and then permitted extended transportation beyond that distance if it was offered to all children in like circumstances.

Combination of Both Equivalent/Same and Extended Services for Nonpublic Pupils

Eight states authorized a combination of both equivalent or same transportation services and extended transportation services to nonpublic school pupils either on a permissive or mandatory basis. Within the combination of equivalent/same or extended services offered by these states, there were four categories:

1. One provider state (Arizona) offered publicly-funded transportation to private school pupils only on a permissive

basis, but the services could be the same or equivalent, or extended beyond the district, county, or state.

2. Three provider states mandated the same or equivalent transportation to nonpublic pupils, while also permitting extended services:

Connecticut

Minnesota - permitted extended transportation if the private school had grades or departments not maintained in the district.

Rhode Island - mandated the same or equivalent transportation within the city, town, or the established transportation district, to private schools which offered unavailable curriculum or programs. Extended transportation was then permitted by variance outside the city or town up to fifteen miles in distance.

3. One provider state (Iowa) mandated the same or equivalent transportation services to nonpublic pupils and additionally mandated extended transportation on the same basis as that provided public school pupils (See Ams. United v. Benton, 413 F. Supp. 955, 1976).
4. Two provider states authorized an array of transportation services to their nonpublic school pupils:

- (a) Massachusetts mandated the same transportation to nonpublic pupils as public school pupils if certain age and distance requirements were met. However, the state mandated extended nonpublic transportation only if public pupils were transported outside the district, but then permitted extended services at local expense even if age and distance requirements were not met.
- (b) Michigan mandated the same or equivalent transportation to nonpublic pupils, and also extended transportation to such pupils if public school pupils were transported outside school district boundaries. However, extended transportation was permitted even if public pupils were not provided outside district transportation.

Legal Status of Within and Outside District Transportation

Table 4.3 summarizes the individual state survey information on the legal status of providing within and outside district transportation to public and nonpublic pupils within the thirty provider states. The table indicates whether publicly-funded transportation in each state was mandated or permitted either within the local school district or both within and outside district boundaries. The restrictions for age, distance, routes, and seat availability for nonpublic pupils are listed individually for each provider state.

The information in Table 4.3 from the legal survey shows that sixteen states authorized only within district transportation to both their public and nonpublic school pupils. Of these sixteen states,

Table 4.3

Legal Status of Within and Outside District Transportation
Provision in Provider States to Public and Nonpublic School Pupils

Provider State	Public and Nonpublic School Pupils		Nonpublic School Pupils Only
	Within District Transportation	Within and Outside District Transportation	Within and Outside District Transportation
Alaska	M (along some routes)		
Arizona		P (outside district, county, or state, on a seats available basis)	
California	P (same routes of travel, seats available basis)		
Connecticut		*	M (within district) P (outside district, within state)
Delaware	M (to district boundary)		
Idaho	P (routes not to be altered seats available basis, nonsectarian pupils)		
Illinois		*	M (along regular routes, although separate routes permitted)
Indiana	M (already established routes, seats available basis)		
Iowa		M (on same basis as public pupils)	
Kansas	M (along regular routes) P (to such extent deemed appropriate by school district)		
Kentucky	P (supplements public school transportation system)		
Louisiana	M (established routes, seats available basis)		
Maryland	M (by ten counties) P (by two counties for nonpublic)		
Massachusetts		M (if age and distance requirements are met, and public pupils are transported outside district)	P (outside district even if age and distance requirements are not met or if public pupils are not transported outside district)
Michigan		M (within district, along regular routes) M (outside district, if public pupils are transported)	P (outside district even if public pupils are not transported)
Minnesota		M (within district, to district line) P (outside district)	
Nebraska	M (along regular public school routes)		

NOTE: "M" indicates that the transportation provision cited is mandated in the particular state.
 "P" indicates that the transportation provision cited is permitted in the particular state.
 * indicates legal status of outside district transportation provision for public school pupils not available in survey information.

Table 4.3 (continued)

Provider State	Public and Nonpublic School Pupils		Nonpublic School Pupils Only
	Within District Transportation	Within and Outside District Transportation	Within and Outside District Transportation
New Hampshire	M (same privileges as public pupils, on established routes)		
New Jersey		*	M (up to 20 miles from nonpublic pupil residence)
New Mexico	P (within county, on established routes, seats available basis)		
New York		M (in noncity districts, up to 15 miles in distance) P (beyond 15 miles in distance)	
Ohio		M (grades K-8) P (grades 9-12) (up to 30 minutes travel time required for nonpublic)	
Oregon	M (along designated routes)		
Pennsylvania		M (not more than 10 miles outside district even if district opts not to transport public outside district)	
Rhode Island		M (within city, town or transportation district) P (outside transportation, up to 15 miles from city or town)	
South Dakota	P (on established routes)		
Washington	P (established routes, seats available basis)		
West Virginia		M (includes across county lines, on established routes)	
Wisconsin		*	M (not more than 5 miles beyond district boundary, within private school attendance area)
Wyoming	P (as local policy, on public school buses)		

seven states (California, Idaho, Kentucky, New Mexico, South Dakota, Washington, and Wyoming) authorized within district transportation by permissive state law or state regulations. Eight other states (Alaska, Delaware, Indiana, Kansas, Louisiana, Nebraska, New Hampshire, and Oregon) statutorily provided for mandatory school transportation within school district boundaries. One state (Maryland) did not authorize nonpublic pupil transportation statewide. By state law, certain individual counties authorized such transportation, and of these, ten counties in Maryland were mandatory while two counties were permissive.

Eight provider states in the survey were found to authorize within and outside district transportation to both their public and nonpublic school pupils. One state's transportation authority (Arizona) was permissive, while three other states (Iowa, Pennsylvania, and West Virginia) provided mandatory within and outside district transportation. Iowa mandated nonpublic transportation service on the same basis as public, while Pennsylvania authorized the practice of transporting private school pupils outside the school district even when public pupils in the district were not. West Virginia authorized school transportation across county lines.

Of the eight states identified as providing public and nonpublic transportation both within and outside school districts, four of the states (Minnesota, New York, Ohio, and Rhode Island) had combined mandatory-permissive statutes. Minnesota and Rhode Island mandated within district transportation and also permitted outside district transportation services. Rhode Island developed school bus

districts to facilitate transportation to regionalized public and nonpublic schools within the state. While New York mandated non-city school transportation up to fifteen miles in distance, the state also permitted local option by school districts to go beyond that limit. Ohio mandated school transportation for pupils in kindergarten through the eighth grades and permitted the transportation of ninth through twelfth grade pupils. Nonpublic pupils in Ohio were authorized to receive transportation for distances up to thirty minutes travel time.

Data in Table 4.3 also show that in four states (Connecticut, Illinois, New Jersey, and Wisconsin), the information provided by the states involved only the authorization of nonpublic pupil transportation. All four states were shown to provide both within and outside district transportation to nonpublic pupils.

The survey information on the four states' provision of nonpublic transportation indicated that Connecticut had a combined mandatory-permissive statute. Within district transportation to private schools was mandated in the state, while similar transportation to schools across district boundaries was permitted. Illinois reported that within and outside district transportation was mandated to nonpublic pupils along regular routes, but separate routes were permitted. New Jersey mandated both within and outside district transportation, but limited the distance to not more than five miles beyond school district boundaries within specified school attendance areas.

Two states in the survey (Massachusetts and Michigan) were found to mandate both within and outside district transportation for their

public and nonpublic school pupils. Massachusetts set certain age and distance requirements in order for nonpublic pupils to be transported similarly to public pupils. Michigan required that nonpublic within-district transportation be along regular routes. Outside district transportation for private school pupils was required only if public school pupils were transported between districts. Additionally, nonpublic pupil transportation outside the district was permitted by local option in both states even when public school pupils were not transported across district boundaries.

Information in Table 4.3 also indicates that sixteen of the provider states authorized the provision of nonpublic pupil transportation on either an "established routes" basis or on an "established routes, seats available only" basis. Nine states (Alaska, Illinois, Kansas, Michigan, Nebraska, New Hampshire, Oregon, South Dakota, and West Virginia) offered transportation to private schools on an "established routes" basis. Eight of the states mandated the provision of such transportation by local school districts, while only South Dakota statutorily provided nonpublic transportation services on a permissive basis. Seven other states (Arizona, California, Idaho, Indiana, Louisiana, New Mexico, and Washington) allowed the transporting of private school pupils only on an "established routes, seats available" basis. Only Indiana and Louisiana mandated the provision of nonpublic pupil transportation within their state, while the other five states authorized such transportation on a local option, permissive basis.

Data on Financial Costs of Nonpublic Pupil
Transportation in Provider States

A second survey for the study (See Appendices D and E) was mailed on June 17, 1983, to the school transportation directors of each of the thirty provider states identified earlier in the initial legal survey. The purpose of the second survey was to determine the individual state costs of providing transportation services to nonpublic pupils in the United States. The following information was requested on the provision of such transportation services to regular day public and nonpublic school pupils within each provider state for the 1981-1982 school year:

- 1) the number of public and nonpublic pupils transported;
- 2) the source of funding for nonpublic pupil transportation within the state;
- 3) the total state and local school transportation expenditures for public and nonpublic pupils; and
- 4) the method of state reimbursement for the provision of nonpublic pupil transportation in the state.

A cut-off date of July 11, 1983 was established for receipt by mail of all school transportation data requested in the survey from the thirty provider states. Any provider state not responding by that date was contacted by mail a second time in an attempt to obtain the requested data (See Appendix F). By October, 1983, twenty-eight out of thirty provider states had returned the financial survey for the study.

Results of the survey were then organized in tabular form to present the data.

Sources of Public Funding for Nonpublic Pupil Transportation

Data in Table 4.4 illustrate the sources of public funding for nonpublic pupil transportation for each of the responding provider states during the 1981-1982 school year. Survey results show that:

1. Three states (Alaska, Iowa, and Louisiana) provided full state funding for nonpublic pupil transportation.
2. Seven states (Connecticut, Delaware, Massachusetts, Minnesota, New York, Ohio, and Rhode Island) had partial state funding for nonpublic pupil transportation.
3. Nine states (Idaho, Indiana, Kansas, Kentucky, Maryland, Nebraska, New Mexico, Washington, and Wyoming) reported no state funding for private school transportation.
4. Two states (New Hampshire and New Mexico) responded that nonpublic pupil transportation was funded solely by the local education agency.
5. Ten states (Alaska, Michigan, Minnesota, Nebraska, New Jersey, New York, Ohio, Oregon, South Dakota, and West Virginia) indicated that the state reimbursement to the local education agency for the transportation of nonpublic pupils was not distinguishable from the state reimbursement for the transportation of public school pupils.

Table 4.4
Source of Public Funding for Nonpublic Pupil Transportation
in Provider States, 1981-1982 School Year

Provider State	Full State Funding	Partial State Funding	No State Funding	All Local Ed. Agency Funding	State Reimbursement for Public and Nonpublic Pupils Not Distinguishable	Local Funding for Public and Nonpublic Pupils Not Distinguishable	Non-School Governmental Agency Funding
Alaska	X				X		
Arizona							
California							
Connecticut		X					
Delaware		X					
Idaho			X				
Illinois	No response to survey						
Indiana			X				
Iowa	X						
Kansas			X			X	
Kentucky			X				X-By County Fiscal Court
Louisiana	X						
Maryland			X				X-By County Commissioners or Council
Massachusetts		X					
Michigan					X		
Minnesota		X			X		
Nebraska			X		X	X	
New Hampshire				X		X	
New Jersey					X		
New Mexico			X	X			X-By County General Funds
New York		X			X		
Ohio		X			X	X	
Oregon					X	X	
Pennsylvania	No response to survey						
Rhode Island		X					
South Dakota					X	X	
Washington			X				
West Virginia					X	X	
Wisconsin						X	
Wyoming			X				

Table 4.4 (continued)

Provider State	No Separate Public Funding. Nonpublic pupils transported: 1) R-on already established public school routes 2) S-on a seats available basis 3) C-using other criteria	Other Funding	Additional Information:
Alaska			Statute mandates transportation on established routes.
Arizona	X S O-If LEA will benefit by transporting nonpublic pupils.		
California	X R S		Statute permits transportation on established routes, seats available basis.
Connecticut			
Delaware			Per pupil amount provided by state for nonpublic pupil transportation. No local funds used.
Idaho			Transportation to sectarian schools forbidden by <u>Epeldi</u> (1971). Legal guidance by state Attorney General (12/82) suggests nonsectarian transportation might be permitted on an established route, seats available basis, where practicable.
Illinois			Statute mandates transportation on established routes, but also permits separate routes.
Indiana	X R S		Statute mandates transportation on established routes, seats available basis.
Iowa			
Kansas	X R		Statute mandates transportation on established routes.
Kentucky			
Louisiana	X R S O - when LEA opts to provide transportation, state law mandates it for all pupils.	X - Parent reimbursement allowed when public school transportation not available.	
Maryland			
Massachusetts			
Michigan	X O - Nonpublic transportation to be identical to public, even if additional vehicles must be purchased.		Statute mandates transportation on established routes.
Minnesota			
Nebraska	X R		Statute mandates transportation on established routes.
New Hampshire	X R		
New Jersey			State aid for approved transportation is 90% of the adjusted cost of the route.
New Mexico		X - State does not provide funding for nonpublic pupils.	No data on nonpublic trans. is required to be kept by the state on costs, funding, or number of pupils transported. Statute permits trans. on established routes.*
New York			
Ohio			

*Constitutionality of the statute is under question, although it has not been tested in court.

Table 4.4 (continued)

Provider State	No Separate Public Funding. Nonpublic pupils transported: 1) R-on already established public school routes 2) S-on a seats available basis 3) O-using other criteria	Other Funding	Additional Information:
Oregon	X R		Statute mandates transportation on established routes.
Pennsylvania			
Rhode Island		X - Nonpublic and public school transportation expenditures reimbursed together under state percentage equalizing formula.	
South Dakota-X	O-By local option.		Statute permits transportation on established routes.
Washington	X R S O - Student must pay 100% of cost.		Statute permits transportation on an established route, seats available basis with total student reimbursement.
West Virginia-X	R O - Nonpublic transportation to be equivalent to public.		Nonpublic and public transportation data not "broken out statistically" in transportation office.
Wisconsin			Transportation costs are included in school operational costs and become part of state aid formula.
Wyoming			The state does not appropriate funds for nonpublic transportation. However, state board suggests LEA's develop own operational policies. Several districts do transport without additional cost.

6. Eight states (Kansas, Nebraska, New Hampshire, Ohio, Oregon, South Dakota, West Virginia, and Wisconsin) reported that local transportation funds for nonpublic pupils in the state were not distinguishable from local transportation funds for public pupils.
7. Three states (Kentucky, Maryland, and New Mexico) provided nonpublic pupil transportation through non-school governmental agency funding. Kentucky funded such transportation through the county fiscal court, while Maryland used funds from the county commissioners or council. New Mexico allowed only general county funds to be used for private school transportation.
8. Twelve states indicated that no separate public funding was provided for nonpublic pupil transportation. Four of these states (California, Indiana, Louisiana, and Washington) provided transportation to private school pupils on a seats-available, established-routes only basis. Five of the states (Kansas, Nebraska, New Hampshire, Oregon, and West Virginia) provided the transportation on already-established public school routes, while Arizona used a seats-available basis for transporting nonpublic pupils. Michigan required that nonpublic pupil transportation be identical to that provided for public pupils, even if additional vehicles had to be purchased. South Dakota permitted private school transportation on a local school district option basis.

Legal authority to provide statewide nonpublic pupil transportation on either an established routes basis or on a seats-available, established routes only basis was indicated in the "Comments" section of Table 4.4. Eleven states (Alaska, California, Illinois, Indiana, Kansas, Michigan, Nebraska, New Mexico, Nebraska, Oregon, South Dakota) legally limited nonpublic transportation services on this basis by state statute. Idaho suggested that a seats available, established routes basis for nonpublic pupil transportation be permitted according to informal guidelines issued by the state attorney general's office. Three additional states (Arizona, Louisiana, West Virginia) responded that an established routes or seats-available, established routes basis existed in their states for nonpublic transportation, but no statutory authority was indicated limiting transportation services to that basis.

Public Expenditures for Public and Nonpublic Pupil Transportation

Information in Table 4.5 depicts a breakdown of the number of public and nonpublic pupils transported at public expense by each of the provider states during the 1981-1982 school year. Cost figures for state, local, and total public expenditures for public, nonpublic and combined public-nonpublic pupil transportation services are also reported in the table.

Table 4.5

Public and Nonpublic School Pupils Transported at Public Expense in Provider States, 1981-82 School Year

Provider State	Public School Pupils Transported at Public Expense	Nonpublic School Pupils Transported at Public Expense	State Trans. Expenditure (in millions)			Local Trans. Expenditure (in millions)			State & Local Trans. Expenditure (in millions)		
			Public School Pupils	Nonpublic School Pupils	Both Public and Nonpublic Pupils	Public School Pupils	Nonpublic School Pupils	Both Public and Nonpublic Pupils	Public School Pupils	Nonpublic School Pupils	Both Public and Nonpublic School Pupils
Alaska	35,897	759	18.2 (est.)	0.3 (est.)	18.5 (est.)	0.8	0.0	0.8	19.0	0.3*	19.4
Arizona	180,059	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
California ^A	868,000	NA	229.0	NA	229.0	230.0 (est.)	NA	230.0 (est.)	459.0 ^A	NA	459.0 ^A
Connecticut	340,359	38,443	20.5	2.7	23.2	38.3 (est.)	5.6 (est.)	43.9 (est.)	58.8	8.3	67.2
Delaware	85,959	17,240	20.4	2.4	22.8	0.0	0.0	0.0	20.4*	2.4*	22.8*
Idaho	120,200	0	18.7	-	-	3.3	-	-	22.0	-	-
Illinois	758,752	45,442 ^B	No response to survey			-	-	-	-	-	-
Indiana ^C	623,469	16,555	NA	NA	NA	NA	NA	NA	NA	NA	NA
Iowa	238,999	25,003	26.7 (est.)	5.1 (est.)	31.8 (est.)	26.7 (est.)	0.0	26.7 (est.)	53.4	5.1*	58.5
Kansas	161,862	2,030	33.9	0.0	33.9	17.3	0.0	17.3	51.2	0.0 ^D	51.2
Kentucky	456,854	8,567	71.4	0.0	71.4	11.5	NA ^D	NA	82.9	NA ^D	NA
Louisiana	525,705	42,522	83.8	13.2 ^E	97.0	0.0	0.0	0.0	83.8*	13.2* ^E	97.0*
Maryland	453,052	7,096 ^F	90.2 ^D	0.0	90.2	11.5	NA 0.8 ^F	NA	101.7 ^D	0.8 ^F	NA
Massachusetts	537,003 ^G	25,161	NA	NA	NA	NA	NA	NA	90.6	2.9	93.5
Michigan	975,904 ^I		NA	NA	88.0 ^I	NA	NA	92.0 ^I	NA	NA	180.0 ^I

Note: (est.)-Figure is estimated.
 NA -Figure is not available.
 NR -No response was made to the survey item.
 * -State revenues only.
 + -Local revenues only.
 ++ -State cost figure available only.
 x -Local cost figure available only.
 # -State maintains nonpublic transportation as 'no cost.'

A Includes special education.
 B No response to financial survey; figure obtained from legal survey in study.
 C All data from Indiana are from 1980-81 school year.
 D Funded by local, non-school funds.
 E Includes \$6.4 million in parent reimbursement program.
 F Transported in 1977. Latest nonpublic figure available.
 G Includes 2,034 special education pupils in nonpublic schools.
 H Includes regular day and 'other' pupils.
 I Data are not differentiated.

Table 4.5 (continued)

Provider State	Public School Pupils Transported at Public Expense	Nonpublic School Pupils Transported at Public Expense	State Trans. Expenditure (in millions)			Local Trans. Expenditure (in millions)			State & Local Trans. Expenditure (in millions)		
			Public School Pupils	Nonpublic School Pupils	Both Public and Nonpublic School Pupils	Public School Pupils	Nonpublic School Pupils	Both Public and Nonpublic School Pupils	Public School Pupils	Nonpublic School Pupils	Both Public and Non- public School Pupils
Minnesota	810,501	58,092	NR ^J	NR ^J	NR ^J	NA	NA	NA	NA	NA	NA
Nebraska	58,593 ^I		NA	NA	NA	NA	NA	NA	NA	NA	NA
New Hampshire	82,705	9,907	0.0	0.0	0.0	NA ^I	NA ^I	13.4	NA ^{I+}	NA ^{I+}	13.4 ⁺
New Jersey ^K	496,967	101,924	108.6	30.6	139.2	NA	NA	6.8	108.6 ⁺⁺	30.6 ⁺⁺	146.0
New Mexico	129,823	NA	34.7	0.0	34.7	0.0	NA ^Q	NA	34.7 [*]	NA ⁺	NA
New York	1,559,604	291,763	NA	NA	396.4	NA	NA	65.8	378.3	81.9	462.2
Ohio	1,198,921	150,010	81.3	NA ^I	81.3	121.1	NA ^I	121.1	202.4	NA ^I	202.4
Oregon	238,690	1,926	35.3	NA ^I	35.3	30.2	NA ^I	30.2	65.6	NA ^I	65.6
Pennsylvania	No response to survey		-	-	-	-	-	-	-	-	-
Rhode Island	77,813	8,584	NA ^M	NA ^M	NA ^M	16.5	1.1	17.6	16.5 ^x	1.1 ^x	17.6 ^x
South Dakota	45,168	923 ^M	NR	NR	6.0	NR	NR	12.2	NA	NA	18.2 ^I
Washington	350,000	0 ^P	76.2	0.0 ^P	76.2	NR	0.0 ^P	NR	76.2 ⁺⁺	0.0 ^P	-
West Virginia	289,061	NA ^Q	NA	NA	NA	NA	NA	NA	NA ^Q	NA ^Q	NA ^Q
Wisconsin	528,741	62,385	NR	NR	NR	NA	NA	NA	NA ^R	NA ^R	NA ^R
Wyoming	40,387	NA	19.8	0.0 ^S	19.8	NA	0.0 ^S	NA	19.8	0.0 ^S	19.8
TOTALS	11,234,551 1,034,497 ^I	916,332	968.8	54.3	1,494.7	507.2	7.5	677.8	1,943.0	148.6	1,993.8

Note: (est.)-Figure is estimated.
 NA -Figure is not available.
 NR -No response was made to the survey item.
 * -State revenues only.
 + -Local revenues only.
 ++ -State cost figure available only.
 x -Local cost figure available only.
 † -State maintains nonpublic transportation as 'no cost.'

D Funded by local, non-school funds.
 I Data are not differentiated.
 J Cost of transporting nonpublic pupils is part of formula for state aid to LEA.
 K Data are estimated.
 M State transportation aid included in percentage equalizing formula in overall aid to LEAs.
 N Includes dual enrollment pupils.
 P Non-transported at public expense; total reimbursement of costs by parents.
 Q Not available from transportation office.
 R Transportation costs are part of school operational costs in state aid formula.
 S No public funds appropriated for nonpublic transportation; there is no authorizing statute; state board of education allows LEAs to develop their own operational policies when no cost is demonstrated.

Number of Pupils Transported.

Data were obtained from the survey on the number of public and nonpublic pupils transported during the 1981-1982 school year in twenty-nine of the thirty provider states (Pennsylvania did not respond to the survey). The survey results in Table 4.5 reveal that during the 1981-1982 school year:

1. A total of 11,234,551 public school pupils were transported in twenty-seven provider states.

Michigan and Nebraska did not differentiate between public and nonpublic pupils transported.

2. A total of 916,332 nonpublic school pupils were transported in twenty provider states.

Data on the number of nonpublic pupils transported were not available in Arizona, California, New Mexico, West Virginia, and Wyoming.

Idaho reported that no nonpublic pupils were transported at public expense. Washington reported transporting nonpublic pupils, although none were transported at public expense due to a program of required nonpublic parent reimbursement.

3. A total of 1,034,497 public and nonpublic pupils were transported at public expense in Michigan and Nebraska. Data provided did not differentiate between public and nonpublic pupils.
4. A grand total of 13,185,380 public and nonpublic pupils were transported at public expense in the twenty-nine responding provider states.

State Transportation Expenditures.

The following section presents the data in Table 4.5 for the state money expended in each of the twenty-eight responding provider states during the 1981-1982 school year for the transportation of public

school pupils, nonpublic school pupils, and both public and nonpublic school pupils.

Reported data on state expenditures for transporting public school pupils:

1. Sixteen provider states reported data on their state transportation expenditure for public school pupils:

Alaska	Idaho	Louisiana	Ohio
California	Iowa	Maryland	Oregon
Connecticut	Kansas	New Jersey	Washington
Delaware	Kentucky	New Mexico	Wyoming

2. Eight provider states reported that data were not available on the state expenditure for transporting public school pupils:

Arizona	Massachusetts	Nebraska	Rhode Island
Indiana	Michigan	New York	West Virginia

3. Three provider states did not respond to the survey question requesting data on the state expenditure for transporting public school pupils:

Minnesota	South Dakota	Wisconsin
-----------	--------------	-----------

4. One provider state reported that no state money was expended for the transportation of public school pupils:

New Hampshire

Reported data on state expenditures for transporting nonpublic school pupils:

1. Six provider states reported data on their state transportation expenditure for nonpublic school pupils:

Alaska
Connecticut

Delaware
Iowa

Louisiana
New Jersey

2. Eleven provider states reported that data were not available on the state expenditure for transporting nonpublic school pupils:

Arizona	Massachusetts	New York	Rhode Island
California	Michigan	Ohio	West Virginia
Indiana	Nebraska	Oregon	

3. Three provider states did not respond to the survey question requesting data on the state expenditure for transporting nonpublic school pupils:

Minnesota	South Dakota	Wisconsin
-----------	--------------	-----------

4. Eight provider states reported that no state money was expended for transporting nonpublic school pupils:

Idaho	Kentucky	New Hampshire	Washington
Kansas	Maryland	New Mexico	Wyoming

Reported data on state expenditures for transporting both public and nonpublic school pupils:

1. Eighteen provider states reported data on their state transportation expenditure for both public and nonpublic school pupils:

Alaska	Kansas	New Jersey	South Dakota
California	Kentucky	New Mexico	Washington
Connecticut	Louisiana	New York	Wyoming
Delaware	Maryland	Ohio	
Iowa	Michigan	Oregon	

2. Six provider states reported that data were not available on the state expenditure for transporting both public and nonpublic school pupils:

Arizona	Massachusetts	Rhode Island
Indiana	Nebraska	West Virginia

3. Two provider states did not respond to the survey question requesting data on the state expenditure for transporting both public and nonpublic school pupils:

Minnesota	Wisconsin
-----------	-----------

4. One provider state reported that no state money was expended for transporting both public and nonpublic school pupils:

New Hampshire

5. One state reported that no nonpublic pupils were transported, and therefore the state had no total expenditure for both public and nonpublic transportation:

Idaho

Local Transportation Expenditures.

The following section presents the data in Table 4.5 for the local money expended in each of the twenty-eight responding provider states during the 1981-1982 school year for the transportation of public school pupils, nonpublic school pupils, and both public and nonpublic school pupils.

Reported data on local expenditures for transporting public school pupils

1. Eleven provider states reported data on local transportation expenditures for public school pupils:

Alaska	Idaho	Kentucky	Oregon
California	Iowa	Maryland	Rhode Island
Connecticut	Kansas	Ohio	

2. Twelve provider states reported that data were not available on the local share of transporting public school pupils:

Arizona	Michigan	New Hampshire	West Virginia
Indiana	Minnesota	New Jersey	Wisconsin
Massachusetts	Nebraska	New York	Wyoming

3. Two provider states did not respond to the survey question requesting data on local expenditures for transporting public school pupils:

South Dakota	Washington
--------------	------------

4. Three provider states reported that no local money was expended for the transportation of public school pupils:

Delaware	Louisiana	New Mexico
----------	-----------	------------

Reported data on local expenditures for transporting nonpublic school pupils

1. Three provider states reported data on their local transportation expenditure for nonpublic school pupils:

Connecticut	Maryland (1977 data)	Rhode Island
-------------	----------------------	--------------

2. Sixteen provider states reported that data were not available on the local share of transporting nonpublic school pupils:

Arizona	Massachusetts	New Hampshire	Ohio
California	Michigan	New Jersey	Oregon
Indiana	Minnesota	New Mexico	West Virginia
Kentucky	Nebraska	New York	Wisconsin

3. One provider state did not respond to the survey question requesting data on the local expenditure for transporting nonpublic school pupils:

South Dakota

4. Eight provider states reported that no local money was expended for transporting nonpublic school pupils:

Alaska	Idaho	Kansas	Washington
Delaware	Iowa	Louisiana	Wyoming

Reported data on local expenditures for transporting both public and nonpublic school pupils:

1. Thirteen provider states reported data on their local transportation expenditures for both public and nonpublic school pupils:

Alaska	Iowa	New Hampshire	Ohio	South Dakota
California	Kansas	New Jersey	Oregon	
Connecticut	Michigan	New York	Rhode Island	

2. Eleven provider states reported that data were not available on the local share of transporting both public and nonpublic school pupils:

Arizona	Maryland	Nebraska	Wisconsin
Indiana	Massachusetts	New Mexico	Wyoming
Kentucky	Minnesota	West Virginia	

3. One provider state did not respond to the survey question requesting data on the local expenditure for transporting both public and nonpublic school pupils:

Washington

4. Two provider states reported that no local money was expended for transporting both public and nonpublic school pupils:

Delaware

Louisiana

5. One state reported that no nonpublic pupils were transported, and therefore the state reported no local expenditure for both public and nonpublic transportation.

Idaho

State and Local Transportation Expenditures.

The following section presents the data in Table 4.5 for the total state and local money expended in each of the twenty-eight responding provider states during the 1981-1982 school year for the transportation of public school pupils, nonpublic school pupils, and both public and nonpublic school pupils.

Reported data on total state and local expenditures for transporting public school pupils:

1. Nineteen provider states reported data which showed their total state and local transportation expenditure for public school pupils:

Alaska	Iowa	Massachusetts	Oregon
California	Kansas	New Jersey	Rhode Island
Connecticut	Kentucky	New Mexico	Washington
Delaware	Louisiana	New York	Wyoming
Idaho	Maryland	Ohio	

- (a) Within this group, three provider states reported state revenues only for the expenditure of public funds for transporting public school pupils:

Delaware Louisiana New Mexico

- (b) For two provider states within this group, only the state cost figure for transporting public school pupils was reported:

New Jersey Washington

- (c) For one provider state within this group, only the local cost figure for transporting public school pupils was reported:

Rhode Island

2. Nine provider states did not report data to show their total state and local expenditure for transporting public school pupils:

Arizona	Minnesota	South Dakota
Indiana	Nebraska	West Virginia
Michigan	New Hampshire	Wisconsin

Reported data on total state and local expenditure for transporting nonpublic school pupils:

1. Ten provider states reported data which showed their total state and local transportation expenditure for nonpublic school pupils:

Alaska	Iowa	Maryland	Rhode Island
Connecticut	Louisiana	New Jersey	
Delaware	Massachusetts	New York	

- (a) Within this group, four provider states reported state revenues only in the expenditure of public funds for transporting nonpublic school pupils:

Alaska Delaware Iowa Louisiana

- (b) Within this group, one provider state reported local revenues only in the expenditure of public funds for transporting nonpublic school pupils:

Maryland (1977 figures)

- (c) For one provider state within this group, only the state cost figure for transporting nonpublic school pupils was reported:

New Jersey

- (d) For one provider state within this group, only the local cost figure for transporting nonpublic school pupils was reported:

Rhode Island

2. Fourteen provider states did not report data to show their total state and local expenditure for transporting nonpublic school pupils:

Arizona	Michigan	New Mexico	West Virginia
California	Minnesota	Ohio	Wisconsin
Indiana	Nebraska	Oregon	
Kentucky	New Hampshire	South Dakota	

- (a) Within this group, three provider states reported that local revenues only were expended for the transportation of nonpublic school pupils:

Kentucky - funded by county fiscal court
 New Hampshire
 New Mexico - funded by general county funds

- (b) Within this group, six provider states did not differentiate between public funds for transporting public school pupils and public funds for transporting nonpublic school pupils:

California	New Hampshire	Oregon
Michigan	Ohio	South Dakota

- (c) Within this group, six provider states did not report any financial data. All six also reported that no separate funding was provided for nonpublic pupil transportation:

Arizona	Minnesota	West Virginia
Indiana	Nebraska	Wisconsin

3. Three provider states reported a "no cost" figure for nonpublic pupil transportation.

Kansas and Wyoming - nonpublic pupils were transported at no additional cost beyond public school transportation expenditures

Washington - cost was covered by total parental reimbursement

4. One provider state (Idaho) reported that no nonpublic pupils were transported during the 1981-1982 school year, and thus no cost was reported.

Reported data on total state and local expenditure for transporting both public and nonpublic school pupils:

1. Seventeen provider states reported data which showed their total state and local transportation expenditure for both public and nonpublic school pupils:

Alaska	Kansas	New Jersey	South Dakota
California	Louisiana	New York	Wyoming
Connecticut	Massachusetts	Ohio	
Delaware	Michigan	Oregon	
Iowa	New Hampshire	Rhode Island	

- (a) Within this group, two states reported state revenues only in the expenditure of public funds for transporting both public and nonpublic school pupils:

Delaware Louisiana

- (b) One provider state within this group reported local revenues only in the expenditure of public funds for transporting both public and nonpublic school pupils:

New Hampshire

- (c) One provider state within this group provided only a local cost figure for transporting both public and nonpublic school pupils:

Rhode Island

2. Nine provider states did not report data to show their total state and local expenditure for transporting both public and nonpublic school pupils:

Arizona	Maryland	New Mexico
Indiana	Minnesota	West Virginia
Kentucky	Nebraska	Wisconsin

3. Idaho and Washington reported that no nonpublic pupils were transported at public expense, as indicated in the previous section, numbers 3 and 4.

Recipients of State Reimbursements for Nonpublic Pupil Transportation

Table 4.6 presents survey data from the 1981-1982 school year on the recipients of state reimbursements for nonpublic pupil transportation in those responding provider states which had either full or partial state funding of such transportation. The survey results indicated that:

1. Thirteen provider states provided private school transportation reimbursements to the local education agencies:

Alaska	Massachusetts	Ohio	Wisconsin
Connecticut	Minnesota	Rhode Island	
Iowa	New Jersey	South Dakota	
Louisiana	New York	West Virginia	

2. Three provider states provided state reimbursements to the parents of nonpublic school pupils for transportation:

Delaware	Louisiana	New Jersey
----------	-----------	------------

3. One provider state made transportation payments directly to its nonpublic schools on a per pupil basis:

Delaware

4. Three provider states reimbursed a combination of recipients for the costs of transporting nonpublic school pupils:

Delaware - reimbursed parent or the nonpublic school
 Louisiana - reimbursed the LEA or the parent
 New Jersey - reimbursed the LEA or the parent

Table 4.6

 Recipient of State Reimbursement in Provider States With State-Level Funding
 of Nonpublic Pupil Transportation, 1981-1982 School Year

Provider State	Local Educational Agency	Parent Reimbursement by State	Payment to Nonpublic School	Combination of Recipients:	Other:	Only local, and no state funds for nonpublic transportation	Not Applicable:
Alaska	X						
Arizona							*
California							*
Connecticut	X						
Delaware		X	X	Parent, Nonpublic School			
Idaho							x-None transported. No state funding.
Illinois	No response to survey						
Indiana							*
Iowa	X						
Kansas							*
Kentucky						X-by county fiscal court	
Louisiana	X	X		LEA, parent			
Maryland						X-by county commissioners or council	
Massachusetts	X						
Michigan						X-No state funds available for direct payment to non-public schools.	*
Minnesota	X						
Nebraska							*
New Hampshire						X	
New Jersey	X	X		LEA, parent			
New Mexico						X-general county funds only	
New York	X						
Ohio	X						
Oregon							*
Pennsylvania	No response to survey						
Rhode Island	X						
South Dakota	X						

*Question 2 in survey response indicated no separate funding in the state for non-public transportation.

Table 4.6 (continued)

Provider State	Local Educational Agency	Parent Reimbursement by State	Payment to Nonpublic School	Combination of Recipients:	Other:	Only local, and no state funds for nonpublic transportation	Not Applicable:
Washington							X-Parent reimburses for cost.
West Virginia	X						
Wisconsin	X						
Wyoming							*

5. Five provider states reported that only local funds, and no state funds, were expended for nonpublic pupil transportation:

Indiana	Maryland	New Mexico
Kentucky	New Hampshire	

6. The question of state reimbursement for nonpublic pupil transportation was not applicable for eight provider states. The survey responses of each of these states indicated that no separate funding was provided within the state for nonpublic transportation:

Arizona	Indiana	Michigan	Oregon
California	Kansas	Nebraska	Wyoming

Two other provider states indicated no public funding of nonpublic pupils, and thus no state reimbursement:

Idaho - no nonpublic pupils were transported
 Washington - no nonpublic pupils were transported at public expense due to required parent reimbursement

CHAPTER 5

SUMMARY, FINDINGS, CONCLUSIONS, RECOMMENDATIONS, AND DISCUSSION

The purpose of this study was to determine the present legal status of public aid for the transportation of nonpublic elementary and secondary school pupils in the United States and to determine the cost of transporting nonpublic school pupils in those states currently providing such transportation. A combination of legal and survey research methodology was used to approach the study in three phases.

Initially, a survey was sent to all states to identify those which were providing publicly-funded transportation to private school pupils through November, 1982. Upon completion of this initial survey all reported legal cases relating to the public financing of private school transportation were then researched through December, 1982. Finally, through a second survey financial cost data for the 1981-82 school year were collected and then analyzed for those states identified in the initial survey as either mandating or permitting the transportation of nonpublic school pupils.

Presented in the first section of this chapter is a summary of the study's legal case review. This summary broadly explains the evolving changes of the decisions of the state and federal courts toward the constitutionality of private school transportation. Major findings and conclusions of the study are then outlined on both the legal and financial status of transporting nonpublic pupils in the United States.

The chapter concludes with recommendations for further study on the topic, as well as a discussion section at the end of the chapter.

Summary of Legal Case Review

Excluding the Supreme Court's decision in Everson v. Board of Education in 1947, nonpublic pupil transportation has remained primarily a state constitutional issue which has been decided on an individual basis within the states. However, there have been certain changes in the courts' decisions in the various states both before and after Everson. These changes in the reasoning behind the courts' decisions on nonpublic pupil transportation have shown a general trend toward greater acceptance of publicly-funded transportation services for private school pupils and their schools.

From 1923 to 1946, there were a total of eleven judicial decisions rendered in nine states, with a majority of seven cases ruling against the public provision of private school transportation. Only four decisions at this time favored transportation as an aid to private schools. In those decisions ruling against transportation aid or services to nonpublic schools, objections were based either on the lack of statutory authority for local boards to provide such transportation, or on the violation of specific state constitutional restrictions against impermissible aid to sectarian institutions. In particular, the constitutional restrictions were against 1) violations of religious

freedom guarantees, 2) the misuse of public school funds for other than public school purposes, 3) the appropriation of public money for private purposes, or 4) direct or indirect aid to sectarian institutions. In pro-transportation aid decisions during this time period, however, the courts interpreted the provision of nonpublic pupil transportation as serving a public purpose of health and safety, and as a direct benefit to the child and not to the school. The publicly-funded transportation services served to remove a danger to the nonpublic school pupil who was required to attend school because of the state's compulsory attendance law.

The Everson decision in 1947 gave further credence to the child benefit-health and safety idea of nonpublic pupil transportation. Although anti-aid opponents of such transportation services had hoped that the Everson decision would settle this issue by ruling against its federal constitutionality, this was not the case. Everson upheld New Jersey's provision of private school transportation against the claim the statute violated the Establishment Clause of the First Amendment. The Supreme Court in Everson accepted the child benefit theory and rejected the notion that the public provision of transportation was support of nonpublic schools. Further, since the decision did not rule on the state constitutionality of such transportation, Everson essentially returned the issue to the state courts to decide. Subsequently, the majority of nonpublic transportation aid litigation has occurred in the individual state court systems.

Despite the favorable pro-aid decision in Everson, seven of the eleven state court cases from 1947 through 1959 rejected nonpublic pupil transportation aid. The courts cited either a lack of statutory authority by local school boards for such transportation aid or a conflict with specific state constitutional provisions forbidding aid to sectarian schools. Even in the two pro-transportation aid cases during this time, Everson was not a deciding factor in either state court's reasoning.

By the 1960's litigation had increased in state courts on the issue of providing publicly-funded transportation to private schools. The balance of court decisions changed from that of the majority of courts rejecting transportation aid to one of a more general acceptance by the states in allowing the public provision of nonpublic pupil transportation. Between 1960 and 1969, only five decisions out of seventeen decisions in the state courts overturned private school transportation plans. In each of these five cases the states had state constitutional provisions which specifically prohibited aid to sectarian schools. Rejection of nonpublic transportation aid was further eroded by the subsequent actions of two of these states in ratifying transportation aid amendments to their state constitutions.

The health-safety, general welfare argument used by the Supreme Court in Everson was prevalent during the 1960's in most state court decisions which favored the provision of nonpublic school transportation. State constitutional provisions on the free exercise of religion, and prohibitions against the establishment of religion or

the support of religion were considered by most state courts to be closely aligned with the federal constitutional prohibition against the establishment of religion in the First Amendment.

The state court cases on private school transportation during the 1960's showed a more definitive pattern of support for such transportation than those decisions immediately following the Supreme Court's decision in Everson in 1947. Between 1960 and 1969 the five cases rejecting nonpublic pupil transportation were centered on specific state constitutional prohibitions against direct or indirect aid to sectarian schools. Those eight decisions upholding nonpublic pupil transportation aid as permissible were in the majority and were in agreement with the Everson philosophy of child benefit-public welfare. The Everson reasoning was held applicable in those states whose constitutions did not contain church-state separation provisions judged to be any stricter than that of the First Amendment's Establishment Clause.

The thirteen years between 1970 and 1982 showed an even more marked increase in the number of nonpublic pupil transportation aid cases heard by the courts. Out of twenty-nine decisions reviewed for the study, twenty-two occurred after 1975. Transportation services to nonpublic pupils during the 1970's were extended in a number of states beyond what had previously been provided at public expense. In addition, several states successfully initiated new private school transportation programs despite strict church-state anti-aid provisions in their state constitutions. Other states extended private school

transportation services across school district boundaries at public expense. This latter action, which was also known as cross-district nonpublic pupil transportation services, became a particularly litigious issue for both the state courts and federal courts. For the first time since Everson the federal courts addressed the issue of publicly-funded transportation services for private school pupils.

Out of the nearly thirty transportation cases after 1970 through 1982, only seven decisions rejected state transportation provisions for private school pupils. The issues and questions involved in the topic had changed somewhat from the earlier cases of the Everson era. Early transportation cases had generally rejected nonpublic transportation on violations of specific state constitutional anti-aid amendments. The issue of outside-district transportation services for nonpublic pupils in the 1970's added a complexity which had not been reviewed by previous courts. Outside-district transportation services to private schools were viewed by the courts as different from the provision of within-district transportation that was comparable to that provided to public school pupils. It was not necessary to use a strict constitutional interpretation to rule outside-district transportation as an impermissible aid. Rather, the broader tri-partite test for federal First Amendment violations [The statute must have (1) a secular legislative purpose, and (2) a primary effect that neither advances nor inhibits religion, and the statute (3) may not foster excessive government entanglement with religion.] was applied by several courts to rule as unconstitutional the outside-district transportation services

to primarily sectarian pupils as either advancing religion or fostering excessive government entanglement.

Despite litigation on the provision of outside-district transportation in six states, the precise direction of the courts has been unclear. In general, when the judiciary adhered to a child benefit-general welfare theory of transportation provision, the court was likely to rule such nonpublic pupil transportation aid or services a secular legislative purpose and not an advancement of religion or a fostering of excessive government entanglement. However, the use of this tri-partite test to determine federal constitutionality of nonpublic transportation was extended by several state courts to also apply to their state constitutional church-state requirements. The result certainly has been a dilution of state constitutional provisions which historically have been interpreted as stricter than the requirements of the federal Establishment Clause.

Although the predictability of individual state courts, or even federal district courts, has been tenuous at best, the trend of recent court decisions has shown an acceptance of publicly-funded private school transportation services, provided services were equivalent to or identical to those for public school pupils. The power of the child benefit theory several decades after Everson apparently has been the predominant deciding factor for private school transportation aid ruled permissible.

Findings on the Legal
Status of Nonpublic School Transportation

The first phase of the study assessed the legal status of private school transportation aid in the United States by examining the legal authority of each state providing transportation aid or services to nonpublic school pupils. Major findings on this aspect of the study are outlined in the following section:

1. Survey responses from the fifty states showed that thirty states permitted or mandated some form of transportation aid or services to nonpublic school pupils. Twenty states reported that either no statutory authorization existed to provide for public funding to transport private school pupils or that their state constitution or state code prohibited public funding to transport such pupils. (See Table 4.1.)

2. The majority of state nonpublic pupil transportation programs were mandatory rather than permissive in nature. Of the thirty states identified in the study as providers of nonpublic pupil transportation, twenty-one states were found to statutorily mandate such transportation (Alaska, Connecticut, Delaware, Illinois, Iowa, Indiana, Kansas, Louisiana, Massachusetts, Michigan, Minnesota, Nebraska, New Hampshire, New Jersey, New York, Ohio, Oregon, Pennsylvania, Rhode Island, West Virginia, Wisconsin). One state, Maryland, mandated nonpublic transportation on a countywide basis in

ten counties, and permitted such transportation in two counties. Eight states were categorized as providing nonpublic transportation on a permissive basis authorized either by statute, or by guidelines of the state attorney general or the state board of education. (Arizona, California, Idaho, Kentucky, New Mexico, South Dakota, Washington, Wyoming)

3. In general, the courts accepted mandatory statewide transportation provisions for nonpublic school pupils. While early state court decisions usually rejected the required public transportation of private school pupils, recent judicial decisions have indicated a reversal of this pattern. Most states' nonpublic pupil transportation programs were found to be mandatory, and they generally have been ruled acceptable by the courts.

4. All but one of the provider states authorized statewide transportation aid or services to nonpublic school pupils through statutory provision in their school codes. Only one provider state, Wyoming, indicated that there was no statutory authorization of such transportation. Four states (Delaware, New Jersey, New York, Wisconsin) provided additional legal authorization of nonpublic pupil transportation by state constitutional amendments adopted through statewide public referendums.

5. The extent of publicly-funded transportation offered to nonpublic pupils in the United States generally was found to be comparable to that provided at public expense to public school pupils. Only five of the provider states (Idaho, Indiana, New Mexico, Washington, Wyoming) were found to offer transportation services to nonpublic pupils on a more restricted or more limited basis than transportation provided to public school pupils. The remaining twenty-five states provided private school transportation services that were equivalent to, identical to, or even more extensive than public school transportation services within their states.

6. The trend in the provision of nonpublic transportation in the United States has been one of increased services since the early 1940's. Private school transportation in general has changed from that of a permissive, local option basis to a mandatory basis where nonpublic pupil transportation services were comparable to or possibly even more extensive than services provided to public school pupils.

Within the twenty-two states which mandated nonpublic pupil transportation aid, only one state (Indiana) limited the transportation program to a service provision which was less than that provided to public school pupils. Eight of those states (Iowa, Illinois, New Jersey, New York, Ohio, Pennsylvania, West Virginia, Wisconsin) mandated transportation that was extended beyond district boundary lines, while five other states (Connecticut, Massachusetts, Michigan, Minnesota, Rhode Island) permitted localities to offer outside-district

transportation services to nonpublic pupils if certain statutory requirements were met.

Within the eight permissive provider states, one-half the states (Idaho, New Mexico, Washington, Wyoming) provided transportation services to nonpublic pupils on a more restricted or limited basis than public school pupils. Only Arizona provided extended transportation services to nonpublic pupils outside the district, county, or state.

7. Almost half of the provider states provided legal authorization for transporting private school pupils outside school district boundaries. Since the study's survey requested information only on the provision of nonpublic transportation services, information was not always reported on public school transportation requirements. However, available information indicated that ten provider states (Arizona, Iowa, Massachusetts, Michigan, Minnesota, New York, Ohio, Pennsylvania, Rhode Island, West Virginia) authorized within district and outside district transportation to both their public and nonpublic school pupils. Four provider states (Connecticut, Illinois, New Jersey, Wisconsin) were also found to authorize outside district transportation to nonpublic pupils, but comparable information was not available in order to to determine whether similar legal authorization was available for public school pupils. The remaining sixteen provider states authorized only within district transportation to both public and nonpublic school pupils.

8. Excluding the Everson decision by the Supreme Court in 1947, the issue of nonpublic pupil transportation has been decided almost wholly on a state constitutional basis of church and state separation requirements. The exception to this has been the federal litigation of cross-district transportation of nonpublic pupils in terms of the Establishment Clause of the First Amendment. However, conflicting federal decisions have occurred. Two federal district courts in Iowa and Rhode Island have ruled cross-district transportation aid an advancement of religion, and two federal district courts in Pennsylvania and Connecticut have judged such aid to be constitutionally acceptable. Since other states have continued to provide transportation across district boundaries, the issue is likely to be litigated again in the future.

Findings on the Financial Status
of Nonpublic School Transportation

The last phase of the study was designed to assess the cost of transporting nonpublic pupils in all states that provided such transportation during the 1981-82 school year. This aspect of the study was limited to reporting the actual cost data provided in survey responses by each of the thirty provider states. Therefore, the following findings on the financial status of nonpublic pupil transportation reflect the restrictions imposed on the study by the lack of reported information:

1. Data for the study were not available from all thirty provider states on the cost of publicly-funded private school transportation as a separate, reported expenditure. Of the thirty states surveyed for the study through the state school transportation directors on the cost of providing transportation to their nonpublic pupils, only twelve states (Alaska, Connecticut, Delaware, Iowa, Idaho, Louisiana, Maryland, Massachusetts, New Jersey, New York, Rhode Island, Washington) reported separate data on the number of nonpublic pupils transported and the total state and/or local nonpublic transportation expenditure. Five states (Kansas, New Hampshire, Ohio, Oregon, South Dakota) reported nonpublic data which provided a count of nonpublic pupils transported but none of these states differentiated costs between public and nonpublic transportation. Five other states reported partial data, which either did not provide a count of nonpublic pupils transported (California, New Mexico, Wyoming), did not differentiate costs between public and nonpublic transportation (Michigan), or did not maintain a recorded expenditure of non-school funds for nonpublic transportation (Kentucky). Eight states (Arizona, Illinois, Indiana, Minnesota, Nebraska, Pennsylvania, West Virginia, Wisconsin) reported no financial data for either nonpublic or public school transportation.

2. The reported cost of public school pupil transportation in nineteen provider states totaled \$1.9 billion for 1981-82. These costs were generated from state and local funds for the nineteen provider states responding with transportation data in the public school

category. (Alaska, California, Connecticut, Delaware, Idaho, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, New Jersey, New Mexico, New York, Ohio, Oregon, Rhode Island, Washington, Wyoming)

3. The reported cost of nonpublic school pupil transportation in ten provider states totaled \$148.6 million for 1981-82. These costs were generated from state and local funds for the ten provider states responding with transportation cost data in the nonpublic school category. (Alaska, Connecticut, Delaware, Iowa, Louisiana, Maryland-1977 data only, Massachusetts, New Jersey-state funds only, New York, Rhode Island-local funds only) (Data for the reported costs of nonpublic transportation are found in Table 5.1 at the end of this chapter.)

The reported costs for the ten provider states (\$148.6 million) were considered a conservative estimate, for several reasons. New Jersey's reported figures in this total sum included only state costs for nonpublic pupil transportation, while Rhode Island's reported figures were local costs only. The state's share for nonpublic transportation in Rhode Island was included in the statewide percentage equalizing formula for LEAs and was not reported to the survey. In addition, since Maryland's reported cost figure for nonpublic transportation was derived from a 1977 study included in the survey response, the actual cost in the 1981-82 school year would have been substantially higher.

4. The estimated cost of nonpublic school pupil transportation for the states of Kansas, New Hampshire, Ohio, Oregon, and South Dakota totaled \$25.5 million in the 1981-82 school year. (See Table 5.2)

The estimated costs of nonpublic pupil transportation was determined by using reported information from these provider states with complete data on both numbers of transported pupils and total state and local expenditures for the transportation of both public and nonpublic pupils. A statewide average cost for each transported pupil was figured along with the total number of nonpublic pupils transported at public expense in each state.

The total estimated cost of \$25.5 million in Table 5.2 for nonpublic pupil transportation for Kansas, New Hampshire, Ohio, Oregon, and South Dakota was then combined with the total reported costs of such transportation in the ten provider states in Table 5.1. The estimated and reported cost figures in the study accounted for \$174.1 million expended in one half of those states providing transportation services to nonpublic school pupils in the 1981-82 school year.

5. Only a partial count of the actual number of nonpublic pupils transported in the thirty provider states was reported in the survey for the 1981-82 school year. Twenty provider states reported transporting a total of 916,332 nonpublic pupils, which represented approximately 7.5 percent of the total number of pupils transported in those states. (Alaska, Connecticut, Delaware, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Minnesota, New

Hampshire, New Jersey, New York, Ohio, Oregon, Rhode Island, South Dakota, Wisconsin)

Two states which reported pupil data could not differentiate between 1,034,497 public and nonpublic pupils transported (Michigan, Nebraska). Data were not available on the numbers of nonpublic pupils transported in Arizona, California, New Mexico, West Virginia, and Wyoming.

Although legal guidelines were issued in December, 1982, to permit the local option to transport nonsectarian pupils in Idaho, the state reported that no private school pupils were transported at public expense during the 1981-82 school year. Washington reported transporting nonpublic pupils, although none were transported at public expense due to required parental reimbursement for total transportation costs. Although several attempts were made to collect data from Pennsylvania, the state did not respond to the financial survey.

6. The numbers of nonpublic pupils transported at public expense during the 1981-82 school year varied widely among provider states. Likewise, the percentages of nonpublic pupils transported within the total pupil population transported also varied considerably among the states.

Numbers of nonpublic pupils transported to private schools in the 1981-82 school year varied widely among those states offering public support for such transportation. Not unexpectedly, states with low incidence of private school population such as Alaska (759 nonpublic

pupils transported) and South Dakota (923 nonpublic pupils transported) reported very small numbers of nonpublic pupils transported at public expense. High incidence private school population states such as Ohio and New York transported large numbers of nonpublic pupils, with 150,010 and 291,763 nonpublic pupils being transported, respectively. (See Table 5.3 at chapter's end for the ranking of total nonpublic pupils transported by state.)

While the examination of total numbers of nonpublic pupils transported provided a measure of the magnitude of transportation services provided to nonpublic schools, it did not show the relative level of transportation services provided in comparison with the total pupil population transported by the various states. A more revealing comparison was made by determining each provider state's percentage of nonpublic pupils transported of the total pupil population transported in the state. (See Table 5.4 at chapter's end.)

Provider states reporting data on pupils transported showed wide variance in the percentages of nonpublic pupils transported. States such as Oregon, Kansas, and Kentucky transported fewer than two percent of their transported pupils to private schools. On the other hand, states such as New York, Delaware, and New Jersey had percentages of fifteen percent and higher of their transported pupils attending private schools. Overall, more than half the reporting states transported fewer than ten percent of their transported pupils to nonpublic schools. The bulk of these states indicated that less than five percent of their transported pupils attended nonpublic schools.

7. States reporting high percentages of nonpublic pupils transported were also identified as high private school population states.

Those states with high percentages of the school age population attending nonpublic schools reported high percentages of nonpublic pupils transported. States that reported the highest levels of percentages of nonpublic pupils transported showed similar high percentages of nonpublic school enrollment. (See Table 5.5.) For example, states that transported ten percent or more of their transported pupils to nonpublic schools were states that had enrollments of ten percent or more of their pupils in nonpublic schools.

8. Despite the recurring church-state controversy over whether nonpublic pupil transportation has been an aid to primarily sectarian pupils or their schools, data were unavailable from provider states to indicate the percentages of pupils actually transported to religious schools.

Only three provider states (Louisiana, Ohio, and Oregon) provided estimates on the percentage of transported nonpublic pupils who attended private sectarian schools. Louisiana reported a figure of 89%, while both Ohio and Oregon estimated that 90% of their transported pupils attended religious schools. Eighteen provider states responded that information on percentages of transported sectarian pupils was not

available. The remaining provider states did not respond to the question on the survey.

9. The absence of reported costs on the provision of nonpublic pupil transportation was a result of the lack of recordkeeping by many provider states to differentiate such costs from public pupil transportation, as well as the lack of any separate funding for private school transportation.

Four provider states (Minnesota, New York, Michigan, New Jersey) indicated that although they provided partial state funding of nonpublic pupil transportation, their state transportation funds could not be distinguished for public and nonpublic pupils. Six other provider states (Kansas, Nebraska, Ohio, Oregon, South Dakota, West Virginia) indicated that they could not distinguish either state or local funds separately for public and nonpublic school transportation. Similarly, New Hampshire responded that private school transportation was funded totally from local funds, but that costs were not distinguishable for public and private school transportation.

Additionally, six states (Arizona, California, Indiana, Kansas, Wisconsin, Wyoming) reported that there was no separate funding for nonpublic pupil transportation. These states generally transported pupils as part of already existing public school transportation programs. In essence, approximately one-half of the provider states did not have recordkeeping procedures which yielded separate costs for the transportation of private and public pupil transportation services.

10. The majority of provider states used a combination of state and local funds to finance private school transportation aid or services. Only nine states reported the sole use of either state, local, or other separate funding for such transportation. Four states (Alaska, Delaware, Iowa, Louisiana) reported financing nonpublic pupil transportation using only state school funds, while New Hampshire provided such transportation through the use of strictly local educational funds. Three states (Kentucky-county fiscal court funds; Maryland-county funds; New Mexico-general county funds) allowed only the use of local, non-school governmental agency funding for transporting pupils to private schools. Washington by law required total parent reimbursement for the costs of providing nonpublic transportation services.

11. Of the fourteen provider states which reported either full or partial state funding of nonpublic pupil transportation, all but one of these states (Delaware) provided the funds directly to the local education agencies.

Delaware alone allowed transportation payments directly to its nonpublic schools on a flat per pupil basis. This state also authorized state transportation reimbursements to the parents of transported nonpublic school pupils, as did Louisiana and New Jersey, in addition to state transportation payments to local school districts in these two states.

12. Those states that authorized transportation for their nonpublic school pupils on public school buses on an "established routes" and/or "seats-available basis" generally did not report nonpublic transportation as a separate expenditure from public school transportation costs.

The two largest categories of states that did not report financial data on the cost of nonpublic pupil transportation were: 1) those states which did not differentiate financial data for nonpublic and public transportation, but included the costs as a total nonpublic-public figure (California, Kansas, Ohio, Oregon, Michigan, New Hampshire, South Dakota, Wyoming); and 2) those states which reported no financial data at all on either public or nonpublic transportation costs (Arizona, Indiana, Minnesota, Nebraska, West Virginia, Wisconsin). (See Table 4.5.)

The difficulty in obtaining data from the majority of these fourteen non-reporting states was traced to two related factors in the states' funding of transportation and their method of providing transportation services to private school pupils. First, the majority of the nonreporting states did not view nonpublic pupil transportation as a funding provision that was separate from the financing of transportation for public school pupils. Eleven of the fourteen non-reporting states (Arizona, California, Indiana, Kansas, Michigan, Nebraska, New Hampshire, Oregon, South Dakota, West Virginia, Wyoming) responded in the survey that there was no separate funding of nonpublic pupil transportation in their states. Second, these same states stated

that such transportation services were provided only on an established routes and/or seats available basis. Seven of these eleven non-reporting states (California, Indiana, Kansas, Michigan, Nebraska, Oregon, South Dakota) authorized by statute that the provision of nonpublic transportation was required on public school buses using already established routes or available seats. Four of the states (Arizona, New Hampshire, West Virginia, Wyoming) responded to the surveys that, in practice, nonpublic pupils were transported on this basis.

13. Conversely, nine out of ten provider states that reported complete data on the costs of statewide nonpublic pupil transportation (Alaska, Connecticut, Delaware, Iowa, Louisiana, Massachusetts, New Jersey, New York, Rhode Island) mandated such transportation, but did not require local school systems to transport nonpublic school pupils on already-established routes or on a seats-available basis within the public school transportation system. (Alaska was the exception, with transportation mandated on established routes.) Rather, such required transportation was categorized as a separate, identifiable form of state aid to local school districts in these states. Four of the states reported full state funding (Alaska, Delaware, Iowa, Louisiana) to cover private school transportation costs, while the remainder of the states reported partial state funding to local school districts.

14. The responses of the twenty provider states not reporting financial data on nonpublic pupil transportation costs could be categorized into five groups. These five groups of nonreporting states are as follows:

- (a) Eight provider states (California, Kansas, Ohio, Oregon, Michigan, New Hampshire, South Dakota, Wyoming) did not differentiate transportation expenditures for public and nonpublic school pupils. Nonpublic costs were included as part of the total transportation cost for both public and nonpublic school transportation (California, Michigan, New Hampshire, Ohio, Oregon, South Dakota). Kansas and Wyoming reported nonpublic transportation as a "zero" cost in the survey response, yet also indicated that the cost was included in the total public school transportation costs.
- (b) Two provider states (Idaho, Washington) reported that there was no cost to the public, either out of state or local funds, for nonpublic pupil transportation in the state. Idaho indicated that no private school pupils had been publicly transported during the 1981-82 school year, thus no cost was reported. (Idaho, however, was included in this study as a provider state due to the legal guidelines issued by the Idaho Attorney General in December, 1982.) The state of Washington transported nonpublic pupils, but the program required

reimbursement for costs from the parents of pupils attending private schools.

- (c) Two provider states (Kentucky, New Mexico) reported that nonpublic pupil transportation was provided statewide through the use of local, non-school governmental agency funds. The state school transportation department did not report these costs. Kentucky's nonpublic pupil transportation was paid from the local fiscal court funds. New Mexico provided no state funding for transportation of nonpublic pupils and did not require the state department of education to keep data on numbers of pupils transported, the costs, or the funding for the transportation of such pupils. Costs for nonpublic pupil transportation in New Mexico were paid out of county general funds
- (d) Six provider states (Arizona, Indiana, Minnesota, Nebraska, West Virginia, Wisconsin) reported no financial data in the survey on either the cost of public or nonpublic transportation in their states. Three of the states (Indiana, Minnesota, Wisconsin) reported the number of nonpublic pupils that were transported, but did not provide financial data. One state (Nebraska) reported an undifferentiated public-nonpublic count on the number of pupils transported, but did not report financial data. Two states (Arizona, West

Virginia) reported that neither the numbers of nonpublic pupils transported nor financial data were available.

- (e) Two provider states (Illinois, Pennsylvania) did not respond to the financial survey. Each were contacted by letter twice, and attempts were made repeatedly by telephone to contact sources at the state department of education in Pennsylvania.

Conclusions and Recommendations for Further Study

Conclusions

The following conclusions were derived from the major findings of the study:

1. The trend toward increased transportation services for nonpublic school pupils is likely to continue in the foreseeable future. The study noted that the number of states providing publicly-funded transportation to private schools has increased over the years, as has the extent of transportation services to nonpublic pupils within those provider states. Also, the courts have shown a greater acceptance of transportation aid since the 1960's, on a basis of at least equivalent transportation services to public school pupils.

State legislatures may be more willing to react to increased pressures from private school advocates to either institute new transportation aid programs in states which presently do not have such

aid, or to increase the services offered to nonpublic school pupils in already-existing transportation programs. The state courts also have been more willing in recent years to accept the child benefit theory of nonpublic transportation provision despite state constitutional restrictions prohibiting aid to sectarian institutions. The provision of publicly-funded private school transportation now appears less likely to be rejected in most states on state constitutional grounds of church-state separation requirements.

2. Transportation as a form of private school aid appears vulnerable for private school advocates to target in state legislatures, even in states where other extensive forms of nonpublic school aid do not exist. If a state chooses to authorize transportation to private schools by public school districts on already-existing routes, for example, the cost of the additional services is not readily apparent as it is absorbed into the public school transportation program. As this study has shown, the costs of providing transportation services to nonpublic and public pupils were often not differentiated by states. This allowed nonpublic pupil transportation to remain indistinguishable as a specific cost. The lack of substantiated cost data for nonpublic school transportation services tends to dilute opposition to such aid.

Opposition to nonpublic pupil transportation is further diluted by the fact that over one-half the states were shown to have statutory authorization for such transportation aid or services in their school

codes. The wide acceptance of transportation aid is also strengthened by the balance of recent court decisions that supported the provision of mandatory transportation to private school pupils. Although the topic remains a constitutional issue in many states, the state courts that have supported transportation aid tended to cite favorable decisions in other states with similar church-state separation requirements in their constitutions.

The net result may be a "snowballing" effect. As more states adopt transportation as a legitimate form of public aid to nonpublic pupils and their schools, other states are more likely to respond to private school lobbying efforts and follow that trend in the future.

3. The results of the financial survey of this study are as important for what could not be shown in terms of the costs of nonpublic pupil transportation, as that which was actually reported on the financial status of such transportation in the United States. The reported data for nonpublic pupil transportation were incomplete and inconsistent from state to state, and thus it was not possible to provide a total picture of the aid on a national basis. Several reasons are suggested for the lack of reported financial data from the various states:

- (a) There might have been an unwillingness by states to report costs on the provision of transportation to private schools, possibly to avoid a church-state conflict. Data may have

existed in some states, but the extent of the aid was not reported.

- (b) A number of states mandated private school transportation but apparently did not require any documentation of costs. Recorded data simply may not have existed regarding the statewide costs of nonpublic pupil transportation in several states.
- (c) Several states did not differentiate costs between publicly-funded public and nonpublic pupil transportation. Perhaps such states adhered to the child benefit theory that the aid was for the health and safety of the child and not the private schools. Consequently, since the recipients of the publicly-funded benefit were the children, the transportation aid was not viewed as a public-private school matter.
- (d) Certain states allowed only the use of non-school governmental agency funding for nonpublic pupil transportation. These costs were not necessarily reported to the state education agencies which were surveyed for this study.
- (e) The provision of transportation services to nonpublic pupils in some states was interpreted not to be direct financial aid or reimbursements to such pupils or their schools. This

provision was not considered an additional cost to the public beyond the costs of the public school transportation program. The use of public school buses on already-existing routes for private-school transportation required no separate funding under this view, and there was subsequently no recording or reporting of costs for transporting private school pupils.

The consequence of the lack of adequate statewide data is that educators and the public in general are unaware of the cost of private school transportation in half the states that provide such aid, and they are certainly uninformed about the total cost of transportation aid nationally.

Recommendations for Further Study

Based on the findings of this study, it is recommended that the following be considered for future studies:

1. This study did not compare the actual provision of transportation services with individual states' statutory requirements for nonpublic pupil transportation. For example, certain states mandated that a specific level of services was required for transportation to private schools. It is possible that local school districts, in actual practice, go beyond the state's requirements by adjusting routes or distances traveled. A more in-depth study should

be conducted to match legal requirements and actual transportation service provision for nonpublic pupils.

2. Further study is also necessary to compare the actual transportation services provided to nonpublic and public school pupils in those states which indicated outside-district transportation of pupils. It is possible that more extensive transportation services are being provided to primarily sectarian pupils than to the public school pupils within some states. This could constitute a First Amendment violation of the federal constitution.

3. Further research should be undertaken to establish the costs of nonpublic pupil transportation in those states which did not report nonpublic pupil transportation expenditures to this study. More research is necessary in these states to determine whether nonpublic pupil and cost data are recorded within the states but were not reported to this study, or whether such data are not recorded and an estimation of costs is necessary.

4. Twenty states were not identified in this study as providing nonpublic pupil transportation services. An update should be conducted to determine whether the legal status of nonpublic transportation aid has changed in these states since the completion of the present study. Additionally, research which analyzes selected characteristics (such as

the percentage of private school enrollment, the religious composition of the general state population, state constitutional church-state requirements, and the status of other statewide private school aid) within each state should be undertaken to predict those non-provider states which are most likely to fund nonpublic pupil transportation services in the future.

Discussion

The provision of transportation to nonpublic pupils is a form of public aid to private school pupils and their schools which has increased over the years and is now well-established in over one-half the states which provide some form of transportation aid or services to their nonpublic pupils. The effect of private school transportation aid has been cumulative over the past forty years until it is apparent that the cost to the public, and possibly the public schools, is now a substantial, but only partially-known expenditure.

In particular, the provision of transportation to nonpublic pupils within already-existing public school transportation systems allows many private schools in the United States to benefit from an almost indistinguishable form of public aid, since the overall costs of such transportation are extremely difficult to assess. By providing transportation to nonpublic pupils on the same buses and same routes as public school pupils, the cost of transportation to private schools was

absorbed into the cost of the public school transportation programs in a number of states. Fifteen states in the study were found to authorize nonpublic transportation by statute or by general practice on a seats available and/or established routes basis. The cost of the nonpublic transportation in the majority of these states was then not considered a separate cost from the public school transportation or else it was considered essentially a "no cost," if no additional cost was evident for the provision of such services.

One consequence of combining the cost of statewide financing of nonpublic and public school transportation is that it is difficult, if not impossible, to trace the provision of nonpublic transportation as a direct financial aid or benefit to private schools. Combining the costs also overstates the actual cost of public school transportation while understating the benefits to the private school pupils or their schools.

Additionally, if one assumes that there is a fixed amount of resources within a state for funding educational services, then the use of public funds for private school transportation diverts funds from use by the public schools and foregoes expenditures for other necessary services to the state's public school system. Exactly how much the cost of private school transportation diminishes the resources available to public schools nationally remains undetermined, since the total cost of such transportation remains unknown due to the lack of reported data for this study.

Table 5.1

Reported Costs for Nonpublic School Pupils Transported
at Public Expense, 1981-82 School Year

Provider State	Nonpublic Pupils Transported at Public Expense	State & Local Transportation Expenditure for Nonpublic Pupils (in millions)
Alaska	759	\$ 0.3
Connecticut	38,443	8.3
Delaware	17,240	2.4
Iowa	25,003	5.1
Idaho	0*	0.0*
Louisiana	42,522	13.2
Maryland	7,096§	0.8§
Massachusetts	25,161	2.9
New Jersey	103,924	30.6++
New York	291,763	83.9
Rhode Island	8,584	1.1x
Washington	OR	0.0R
Totals	560,495	\$148.6

NOTE: * - No nonpublic pupils reported transported during 1981-82 school year.
 § - 1977 reported figure.
 ++ - State cost figure available only.
 x - Local cost figure available only.
 R - Nonpublic pupils are transported, but none at public expense due to 100% parent reimbursement.

Table 5.2

Nonpublic School Pupils Transported at Public Expense,
1981-82 School Year - Estimated Costs

Provider State	Pupils Transported at Public Expense*	State & Local Transportation Expenditure* Both Public and Nonpublic School Pupils	Statewide Average Cost Per Transported Pupil	Nonpublic Pupils Transported at Public Expense*	Estimated Expenditure for Statewide Nonpublic Pupil Transportation
Kansas	163,892	\$ 51,239,478	\$ 313	2,030	\$ 635,390
New Hampshire	92,612	13,358,062	144	9,907	1,426,608
Ohio	1,348,931	202,367,406	150	150,010	22,501,500
Oregon	240,616	65,569,202	273	1,926	525,798
South Dakota	46,091	18,242,964	396	923	365,508
TOTAL	1,892,142	\$350,777,112		164,796	\$25,454,804

245

*All data reported by states in financial survey of study.

Table 5.3

Numbers of Nonpublic Pupils Transported at
Public Expense, 1981-82 School Year, in
Rank Order

Provider State	Nonpublic Pupils Transported	Provider State	Nonpublic Pupils Transported
1. New York	291,763	13. New Hampshire	9,907
2. Ohio	150,010	14. Rhode Island	8,584
3. New Jersey	103,924	15. Kentucky	8,567
4. Wisconsin	62,385	16. Maryland	7,096
5. Minnesota	58,092	17. Kansas	2,030
6. Illinois	45,442	18. Oregon	1,926
7. Louisiana	42,522	19. South Dakota	923
8. Connecticut	38,443	20. Alaska	759
9. Massachusetts	25,161		
10. Iowa	25,003		
11. Delaware	17,240		
12. Indiana	16,555		

Table 5.4

Percentage of Pupil Population Transported to Nonpublic Schools
in 1981-82 School Year, by Provider State

Between 0-5% Transported	Between 5-10% Transported	Between 10-15% Transported	Between 15-20% Transported
Oregon 0.8	Illinois 5.7	Connecticut 10.1	New York 15.8
Kansas 1.2	Minnesota 6.7	Wisconsin 10.6	Delaware 16.7
Kentucky 1.8	Louisiana 7.5	New Hampshire 10.7	New Jersey 17.3
South Dakota 2.0	Iowa 9.5	Ohio 11.1	
Alaska 2.1	Rhode Island 9.9		
Indiana 2.6			
Massachu- setts 4.5			
Maryland *			

Note: *Figures for Maryland were excluded since the state does not transport nonpublic pupils on a statewide basis, and available figures for transported nonpublic pupils were from a 1977 study.

Table 5.5

Percentage of Pupil Population Transported to Nonpublic Schools
and
Percentage of Private School Enrollment in Provider States

Between 0-5% Transported	Between 5-10% Transported	Between 10-15% Transported	Between 15-20% Transported
Oregon 0.8 (7.8) ^A	Illinois 5.7 (14.6)	Connecticut 10.1 (12.7)	New York 15.8 (15.9)
Kansas 1.2 (7.4)	Minnesota 6.7 (10.0)	Wisconsin 10.6 (15.5)	Delaware 16.7 (18.1)
Kentucky 1.8 (9.5)	Louisiana 7.5 (16.7)	New Hampshire 10.7 (10.0)	New Jersey 17.3 (14.7)
South Dakota 2.0 (6.2)	Iowa 9.5 (9.3)	Ohio 11.1 (12.2)	
Alaska 2.1 (3.2)	Rhode Island 9.9 (15.6)		
Indiana 2.6 (8.8)			
Massachusetts 4.5 (11.2)			

^A Percentage of private school enrollment in each state appears in parentheses. Figures represent 1980 private school enrollment and are the latest figures available from the U.S. Census Bureau, County and City Data Book, 1983.

BIBLIOGRAPHY

- Abel, J. F. Consolidation of Schools and Transportation of Pupils. U.S. Bureau of Education Bulletin No. 41. Washington, D.C.: GPO, 1923.
- Alexander, Kern. School Law. St. Paul, Minn.: West, 1960.
- Boles, Donald E. The Two Swords. Ames, Iowa: Iowa State University, 1967.
- Cohen, Morris L., ed. How to Find the Law. St. Paul, Minnesota: West, 1977.
- Cohen, Morris L. Legal Research in a Nutshell. St. Paul, Minnesota: West, 1982.
- Featherston, Glenn and D. P. Culp. Pupil Transportation. New York: Harper and Row, 1965.
- "The High Cost of Parochial Busing." Church & State, 29, No. 2, 1976.
- Hudgins, Jr., H. C. and Richard S. Vacca. Law and Education: Contemporary Issues and Court Decisions. Charlottesville, Virginia: Michie, 1979.
- "Industry Statistics, School Transportation in 1981-82." School Bus Fleet, 28, No. 8 (1984), 87.
- Jacobstein, J. Myron, and Roy M. Mersky. Legal Research Illustrated. Mineola, New York: Foundation Press, 1977.
- Kurland, Philip B. and Gerhard Caspar, eds. Everson v. Board of Education. Vol. 44 of Landmark Briefs and Arguments of the Supreme Court of the United States: Constitutional Law. Arlington, Virginia: University Publications of America, 1975.
- "A Look at Public Funds for Nonpublic Schools..." Ohio P.T.A. 'White Paper' Status Report. n.p. September, 1980.
- Mitzel, Harold E., ed. Encyclopedia of Educational Research. Vol. 1. New York: Free Press, 1982.
- National Center for Education Statistics. The Condition of Education: 1982. Washington, D.C.: GPO, 1982.

Olson, Manley Elmer. "Use of Public Funds for Transporting Pupils Who Attend Nonpublic Schools." Diss. University of Minnesota, 1972.

Radloff, John Paul. "Public School Transportation in the United States: The Legal Status of Transporting Parochial Pupils and of the Utilization of Transportation to Achieve Racial Balance." Diss. University of Denver, 1969.

Richmond [Virginia] Times Dispatch, 4 July 1982, Sec. B, p. 7.

"School Bus Statistics." School Bus Fleet, 25, No. 6 (1981), 64.
Cited by Clyde H. Burnett, Jr. "A Study of the Funding of Pupil Transportation in Virginia. Diss. Virginia Polytechnic Institute & State University, 1981.

Statsky, William P. Legislative Analysis: How to Use Statutes and Regulations. St. Paul, Minnesota: West, 1975.

"Transportation Parochiaid Rolls Onward." Church & State, 36, No. 2, 1983.

U.S. Bureau of the Census. County and City Data Book, 1983. Cited by U.S. Education Week, April 11, 1984.

U.S. Bureau of the Census. Statistical Abstract of the United States: 1981. 102nd edition, Washington, D.C.: 1981.

Cases CitedSupreme Court Cases:

Cochran v. Louisiana State Board of Education, 281 U.S. 370, 50 S. Ct. 335 (1930)

Everson v. Board of Education, 330 U.S. 1, 91 L.Ed. 711, 67 S.Ct. 504 (1947)

Everson v. Board of Education, 168 A.L.R. 1392 (1947)

Sherbert v. Verner, 374 U.S. 398, 83 S.Ct. 1970, 10 L.Ed. 2d 965 (1963)

Lemon v. Kurtzman, 403 U.S. 602, 91 S.Ct. 2105 (1971)

Committee for Public Ed. & Religious Lib. v. Nyquist, 413 U.S. 756 93 St.Ct 2955 (1973)

Wheeler v. Barrera, 417 U.S. 402, 94 S.Ct. 2274, 41 L.Ed. 2d 159 (1974)

Wolman v. Walter, 433 U.S. 229, 97 S.Ct. 2593 (1977)

Committee for Pub. Ed. & Rel. Lib. v. Regan, 444 U.S. 646, 100 S.Ct. 840 (1980)

State Transportation Cases:

Alaska

Matthews v. Quinton, 362 P.2d 932 (1961)

California

Bowker v. Baker, 167 P.2d 256 (1946)

Connecticut

Snyder v. Town of Newtown, 161 A.2d 770 (1960)

Cromwell Property Owners Ass'n v. Toffolon, 495 F.Supp. 915 (1979)

Delaware

State v. Brown, et al., 36 Del. 181, 172 A. 835 (1934)

Opinion of the Justices, 216 A.2d 668 (1966)

Hawaii

Spears v. Honda, 449 P.2d 130 (1968), rehearing denied (1969)

Idaho

Epeldi v. Engelking, 488 P.2d 960 (1971)

Illinois

Board of Ed., Sch. Dist. No. 12, Cook Cty. v. Bakalis, 299 N.E.2d 737 (1973)

People ex rel. Bd. of Ed., Dist. No. 142 v. State Bd. of Ed., 344 N.E.2d 5 (1976)

Iowa

Silver Lake Consol. Sch. Dist. v. Parker, 238 Iowa 984 (1947)

Ams. United for Separation of Ch. & St. v. Benton, 413 F.Supp. 955 (1976)

Kentucky

Sherrard v. Jefferson County Bd. of Ed., 294 Ky. 469 (1942), 171 S.W.2d 963 (1943)

Nichols v. Henry, 191 S.W.2d 930 (1946)

Rawlings v. Butler, 290 S.W.2d 801 (1956)

Board of Ed. of Jefferson County v. Jefferson County, 333 S.W.2d 746 (1960), rehearing denied (1960)

Maine

Squires v. Inhabitants of City of Augusta, 153 A.2d 80 (1959)

Maryland

Board of Education v. Wheat, 199 A.628 (1938)

Adams v. St. Mary's County, 180 Md. 550 (1942)

Massachusetts

Quinn v. School Committee of Plymouth, 125 N.E.2d 410 (1955)

Murphy v. School Committee of Brimfield, 389 N.E.2d 399 (1979)

Attorney General v. Sch. Comm. of Essex, 439 N.E.2d 770 (1982)

Michigan

Alexander v. Bartlett, 165 N.W.2d 445 (1968)

Minnesota

Americans Unit. Inc. as Pro., Etc. v. Ind. Sch. D. No. 622, 179
N.W.2d 146 (1970)

Missouri

McVey v. Hawkins, 258 S.W.2d 927 (1953)

Luetkemeyer v. Kaufmann, 364 F.Supp. 376 (1973), affirmed on
appeal, 95 S.Ct. 167, 42 L.Ed. 2d 134, 419 U.S. 889 (1974)

Mallory v. Barrera, 544 S.W.2d 556 (1976)

Nebraska

State, Etc. v. Sch. Dist. of City of Lincoln, 320 N.W.2d 472 (1982)

New Jersey

Bd. Ed. Central Reg'l High Sch., Etc. v. State Bd. of Ed., 141
A.2d 542 (1958)

Fox v. Board of Ed. of West Milford, 226 A.2d 471 (1967)

McCanna v. Sills, 247 A.2d 961 (1968)

Board of Education v. Gateway Regional High Sch. Dist., 248 A.2d
564 (1968)

West Morris Regional Board of Education v. Sills, 279 A.2d 609
(1971)

New Mexico

Zellers v. Huff, 236 P.2d 949 (1951)

New York

Judd v. Board of Education, 15 N.E.2d 576 (1938), writ. of cert.
denied, 317 U.S. 588, 87 L.Ed. 481, 63 S.Ct. 34 (1942)

Board of Education of Central Sch. Dist. v. Allen, 192 N.Y.S.2d
186 (1959)

Application of Silver, 205 N.Y.S.2d 650 (1960)

O'Donnell v. Antin, 335 N.E.2d 854 (1975), appeal dismissed, 423
U.S. 919, 46 L.Ed.2d 245, 96 S.Ct. 258

Finkel v. N.Y. City Bd. of Ed., 474 F.Supp. 468 (1979)

North Dakota

Dickinson Public Sch. Dist. No. 1 v. Scott, 252 N.W.2d 216 (1977)

Ohio

Honohan v. Holt, 244 N.E.2d 537 (1968)

Oklahoma

Gurney v. Ferguson, 122 P.2d 1002 (1941)

Board of Education for Ind. Sch. Dist. No. 52 v. Antone, 384 P.2d 911 (1963)

Pennsylvania

Connell v. Board of School Directors, 52 A.2d 645 (1947)

School District of Robinson Township v. Houghton, 128 A.2d 58 (1956)

Rhoades v. School District of Abington Township, 226 A.2d 53 (1967)
appeal dismissed, 389 U.S. 11, 19 L.Ed. 7, 88 S.Ct. 61

School Dist. of Pittsburgh v. Com. Dept. of Ed., 382 A.2d 772 (1978), appeal dismissed, 443 U.S. 901, 61 L.Ed.2d 869, 99 S.Ct. 3091

Springfield School Dist. v. Dept. of Ed., 397 A.2d 1154 (1979),
appeal dismissed, 443 U.S. 901, 61 L.Ed.2d 869, 99 S.Ct. 3091

Bennett v. Kline, 486 F.Supp. 36 (1980), affirmed without published opinion, 633 F.2d 209

Rhode Island

Chaves v. School Committee, 211 A.2d 639 (1965)

Jennings v. Exeter-West Green. Reg. Sch. Dist. Com., 352 A.2d 634 (1976)

Members of Jamestown Sch. Com. v. Schmidt, 427 F.Supp. 1338 (1977)

Members of Jamestown Sch. Com. v. Schmidt, 405 A.2d 16 (1979)

Members of Jamestown Sch. Committee v. Schmidt, 525 F.Supp. 1045 (1981)

South Dakota

Hlebanja v. Brewe, 236 N.W. 296 (1931)

Washington

Mitchell v. Consolidated School Dist. No. 201, 135 P.2d 79 (1943)

Visser v. Nooksack Valley School Dist. No. 506, 207 P.2d 198 (1949)

West Virginia

State ex. rel. Hughes v. Board of Education, 174 S.E.2d 711 (1970)

Wisconsin

State v. Milquet, 192 N.W. 392 (1923)

State v. Nusbaum, 115 N.W.2d 761 (1962)

Cartwright v. Sharpe, 162 N.W.2d 5 (1969)

State ex rel. Knudsen v. Board of Ed., Elmbrook Sch., 168 N.W.2d 295 (1969)

State ex rel. Vanko v. Kahl, 188 N.W.2d 460 (1971)

Deutsch v. Teel, 400 F. Supp. 598 (1975)

Young v. Bd. of Ed., Joint Dist. No. 10, 246 N.W.2d 230 (1976)

Holy Trinity Community School v. Kahl, 262 N.W.2d 210 (1978)

Hahner v. Board of Ed., 278 N.W.2d 474 (1979)

O'Connell v. Kniskern, 484 F.Supp. 896 (1980)

APPENDICES

APPENDIX A
INITIAL SAMPLE OF SURVEY LETTER
TO CHIEF STATE SCHOOL OFFICERS



VIRGINIA POLYTECHNIC INSTITUTE AND STATE UNIVERSITY

Blacksburg, Virginia 24061

DIVISION OF ADMINISTRATIVE AND EDUCATIONAL SERVICES

August 12, 1982

Wayne Teague
 Superintendent of Education
 State Department of Education
 Montgomery, Alabama 36130

Dear Mr. Teague:

We are presently conducting a study to determine the current status of public financing of transportation for elementary and secondary private school pupils in the United States. In general, transportation assistance for private school pupils is provided in ways such as direct financial aid, reimbursement of costs, or actual service provision by the state or locality.

In conducting the initial phase of our study we would like to determine not only which states presently provide transportation for private school pupils, but also the legal basis within each state for the particular policy. We are soliciting your cooperation in the following manner:

- A. If your state does not provide state or local assistance to transport private school children, please complete and return the enclosed card to us as soon as possible.
- B. If your state does provide state or local financial assistance for the transportation of private school children, we would like to request the following information from you:
 1. A copy of the legislation authorizing pupil assistance for the transportation of private elementary and secondary school children in your state. If it is not possible to obtain a copy of the legislation, would you please provide us with the statutory citation so that we may locate the specific legislation.

However, if you provide transportation assistance for private school pupils in your state and it is not specifically indicated by statute, please inform us of this fact, and provide us with the legal basis of such assistance, i.e., a state attorney general's opinion or other documents.

2. The name and/or citation of any court case(s) which has/have been litigated in your state concerning the legality of transporting private school pupils. If there has been no litigation in your state regarding this topic, please indicate this instead.

Wayne Teague
Page 2
August 12, 1982

Your cooperation in helping us to obtain the requested information would be most appreciated. We would be glad to send you a copy of the executive summary of our study upon its completion. We realize that expenses may be incurred by your office in providing us with copies of documents. Therefore, please bill us accordingly.

Again, thank you. If you should have any questions regarding the information which we have requested, please contact Ms. Susan Mittereder at the address below.

Sincerely yours,

M. David Alexander
Associate Professor

Richard G. Salmon
Associate Professor

Susan E. Mittereder
Research Associate

ppg

Please forward the requested
material to:

Ms. Susan E. Mittereder
Room 220, UCOB
Division of Administrative and
Educational Services
Virginia Polytechnic Institute
and State University
Blacksburg, VA 24061
(703) 961-5111

APPENDIX B
SAMPLE FOLLOW-UP LETTER TO NON-RESPONDENTS
OF INITIAL SURVEY



COLLEGE OF EDUCATION

VIRGINIA POLYTECHNIC INSTITUTE AND STATE UNIVERSITY

Blacksburg, Virginia 24061

DIVISION OF ADMINISTRATIVE AND EDUCATIONAL SERVICES

September 12, 1982

Robert G. Scanlon, Secretary
Department of Education
Commonwealth of Pennsylvania
Box 911
Harrisburg, PA 17126

Dear Dr. Scanlon:

On August 12, 1982, a letter was mailed to your office seeking information for a study on the current status of public financing of transportation for elementary and secondary private school pupils in the United States (see attached letter). We are pleased that as of October 4, 1982, we have received responses from forty-one states.

However, as of this date we have not received the requested information from your state. We realize that you receive many such requests for information. Unfortunately, without complete data from all states the study will be limited and its utility restricted. Would you please check the progress of our earlier request, so that we may complete this aspect of our research as soon as possible?

Thank you for your assistance in helping us to obtain the information necessary to represent all states in our survey. If you should have any questions, please do not hesitate to contact us.

Sincerely,

M. David Alexander
Associate Professor

Richard G. Salmon
Associate Professor

Susan E. Mittereder
Research Associate

sem

APPENDIX C
SAMPLE SURVEY RESPONSE CARD
FOR NON-PROVIDER STATES
IN INITIAL SURVEY

POSTCARD FOR NO PUBLIC FUNDING TO TRANSPORT PRIVATE SCHOOL PUPILSCHECK THOSE STATEMENTS BELOW WHICH PERTAIN TO YOUR STATE:

1. There is no statutory authorization in this state to provide for public funding to transport private school pupils.
- AND
2. The state constitution and/or the state code in this state prohibits public funding to transport private school pupils. This prohibition of such funding:
(CHECK ANY THAT APPLY BELOW:)
- A. is presently unchallenged by any court decision.
- B. is supported by court decision(s).
- C. is supported by a state attorney general's opinion.
- D. Other: _____

NAME OF RESPONDENT/TITLE: _____

ADDRESS: _____

CITY/STATE/ZIP: _____ PHONE: _____

Ms. Susan E. Mittereder
 Room 220, UCOB
 Division of Administrative
 and Educational Services
 Virginia Polytechnic Institute
 and State University
 Blacksburg, VA 24061

APPENDIX D
SAMPLE OF SECOND SURVEY COVER LETTER
TO
STATE TRANSPORTATION DIRECTORS

COLLEGE OF EDUCATION



VIRGINIA POLYTECHNIC INSTITUTE AND STATE UNIVERSITY

Blacksburg, Virginia 24061

DIVISION OF ADMINISTRATIVE AND EDUCATIONAL SERVICES

June 17, 1983

Stanley M. Jendzejec
 Administrator, State Office Building
 Room 100
 Providence, Rhode Island 02903

Dear Mr. Jendzejec:

In August, 1982, a letter was mailed to the chief state school officers of all states in order to determine the legal status of public financing of transportation for nonpublic elementary and secondary school pupils in the United States. A response was received for our study from each state, and we are now conducting the final phase of financial data collection. Since our initial results indicated that thirty states mandate or permit the transportation of nonpublic pupils at the elementary and secondary level, we are contacting the state directors of pupil transportation within those states.

The initial response we received from Arthur R. Pontarelli, Commissioner, indicated that Rhode Island does provide at least some transportation aid or services, either by a mandatory or permissive statute or by existing practice, to elementary and/or secondary private school pupils. For the second phase of our study, the directors of pupil transportation were selected because of their familiarity and knowledge of the intricacies of financing school transportation. We would like to ask for your assistance in collecting information on the cost of providing nonpublic pupil transportation in your state for the 1981-82 school year.

Attached is a brief questionnaire which we would like you to answer as completely as possible by July 8, 1983. If you have any documents that you feel would validate the requested data, or which might provide additional information to our study of private school pupil transportation costs, would you please include these along with your survey response?

Your cooperation in helping us to obtain the requested information will be most appreciated. We would be glad to send you a copy of the executive summary of our study upon its completion, at your request. If you should have any questions regarding the information we have requested, please contact Ms. Susan Mittereder at 703/961-5111.*

Sincerely yours

M. David Alexander
 Associate Professor

Susan E. Mittereder
 Research Associate

Richard G. Salmon
 Associate Professor

*Please forward the survey and requested information to the name/address at the bottom of the questionnaire.

APPENDIX E
SECOND SURVEY
TO
STATE TRANSPORTATION DIRECTORS

TRANSPORTATION SURVEY

THE INFORMATION REQUESTED IN THIS SURVEY CONCERNS THE TRANSPORTATION OF REGULAR DAY PUBLIC AND NONPUBLIC ELEMENTARY AND/OR SECONDARY SCHOOL PUPILS FOR THE 1981-82 SCHOOL YEAR. PLEASE ANSWER ALL QUESTIONS, OR INDICATE THAT THE REQUESTED DATA ARE NOT AVAILABLE FROM YOUR STATE. WE REALIZE THAT RECORDS VARY FROM STATE TO STATE, AND THAT IT MAY BE NECESSARY TO ESTIMATE CERTAIN FIGURES BASED ON THE AVAILABILITY OF INFORMATION. IF ESTIMATES ARE USED, PLEASE INDICATE THIS ON THE PARTICULAR QUESTION(S).

NAME OF RESPONDENT TO SURVEY _____
 TITLE _____
 ADDRESS _____
 CITY/STATE/ZIP _____

1. HOW MANY ELEMENTARY AND SECONDARY SCHOOL PUPILS WERE TRANSPORTED AT PUBLIC EXPENSE IN YOUR STATE DURING THE 1981-82 SCHOOL YEAR?
 (INCLUDE BOTH PUBLIC AND NONPUBLIC PUPILS) _____
 - A. HOW MANY OF THESE PUPILS WERE ENROLLED IN PUBLIC SCHOOLS? _____
 _____ DATA ARE ESTIMATED. _____ DATA ARE NOT AVAILABLE.
 - B. HOW MANY OF THESE PUPILS WERE ENROLLED IN NONPUBLIC SCHOOLS? _____
 _____ DATA ARE ESTIMATED. _____ DATA ARE NOT AVAILABLE.
 - C. HOW MANY OF THESE NONPUBLIC PUPILS TRANSPORTED ARE ENROLLED IN SECTARIAN SCHOOLS? _____
 _____ DATA ARE ESTIMATED. _____ DATA ARE NOT AVAILABLE.

2. HOW WAS THE TRANSPORTATION OF NONPUBLIC SCHOOL PUPILS PUBLICLY FUNDED WITHIN YOUR STATE FOR THE 1981-82 SCHOOL YEAR? PLEASE CHECK ALL THAT APPLY TO YOUR STATE.
 - A. _____ FULL STATE FUNDING OF NONPUBLIC TRANSPORTATION
 - B. _____ PARTIAL STATE FUNDING OF NONPUBLIC TRANSPORTATION
 - C. _____ NO STATE FUNDING OF NONPUBLIC TRANSPORTATION
 - D. _____ ALL LOCAL EDUCATIONAL AGENCY SCHOOL FUNDING FOR NONPUBLIC TRANSPORTATION
 - E. _____ STATE REIMBURSEMENT TO THE LOCAL EDUCATIONAL AGENCY FOR THE TRANSPORTATION OF NONPUBLIC PUPILS NOT DISTINGUISHABLE FROM THE STATE REIMBURSEMENT FOR THE TRANSPORTATION OF PUBLIC SCHOOL PUPILS
 - F. _____ LOCAL TRANSPORTATION FUNDS FOR NONPUBLIC PUPILS NOT DISTINGUISHABLE FROM LOCAL TRANSPORTATION FUNDS FOR PUBLIC PUPILS
 - G. _____ NON-SCHOOL GOVERNMENTAL AGENCY FUNDING FOR TRANSPORTATION OF NONPUBLIC PUPILS. PLEASE INDICATE THIS SOURCE OF FUNDING: _____

 - H. _____ NO SEPARATE PUBLIC FUNDING PROVIDED FOR NONPUBLIC PUPIL TRANSPORTATION IN THIS STATE. NON-PUBLIC PUPILS ALLOWED TO BE TRANSPORTED:
 - _____ ON ALREADY-ESTABLISHED PUBLIC SCHOOL ROUTES
 - _____ ON A "SEATS AVAILABLE" BASIS
 - _____ USING OTHER CRITERIA. PLEASE EXPLAIN: _____

 - I. _____ OTHER FUNDING. PLEASE EXPLAIN: _____

3. WHAT WAS THE TOTAL STATE AND LOCAL SCHOOL TRANSPORTATION EXPENDITURE FOR ALL ELEMENTARY AND SECONDARY SCHOOL PUPILS IN THE STATE DURING THE 1981-82 SCHOOL YEAR? IF POSSIBLE, PLEASE DESIGNATE THE AMOUNTS FOR TOTAL TRANSPORTATION OPERATING EXPENDITURE AND TOTAL TRANSPORTATION CAPITAL OUTLAY EXPENDITURE FOR THE YEAR.

TOTAL TRANS. OPERATING EXPENDITURE	TOTAL TRANS. CAPITAL OUTLAY EXPENDITURE	TOTAL SCHOOL TRANSPORTATION EXPENDITURE
1981-82	1981-82	1981-82
_____ DATA ARE ESTIMATED.	_____ DATA ARE ESTIMATED.	_____ DATA ARE ESTIMATED.
_____ DATA ARE NOT AVAILABLE.	_____ DATA ARE NOT AVAILABLE.	_____ DATA ARE NOT AVAILABLE.

A. OF THIS TOTAL EXPENDITURE, WHAT WAS THE TOTAL STATE MONEY EXPENDED IN THE 1981-82 SCHOOL YEAR FOR THE TRANSPORTATION OF:

PUBLIC SCHOOL PUPILS	NONPUBLIC SCHOOL PUPILS	BOTH PUBLIC AND NONPUBLIC PUPILS
_____ DATA ARE ESTIMATED.	_____ DATA ARE ESTIMATED.	_____ DATA ARE ESTIMATED.
_____ DATA ARE NOT AVAILABLE.	_____ DATA ARE NOT AVAILABLE.	_____ DATA ARE NOT AVAILABLE.

B. OF THIS TOTAL EXPENDITURE, WHAT WAS THE TOTAL LOCAL MONEY (FROM ALL LOCAL SOURCES) EXPENDED IN THE 1981-82 SCHOOL YEAR FOR THE TRANSPORTATION OF:

PUBLIC SCHOOL PUPILS	NONPUBLIC SCHOOL PUPILS	BOTH PUBLIC AND NONPUBLIC PUPILS
_____ DATA ARE ESTIMATED.	_____ DATA ARE ESTIMATED.	_____ DATA ARE ESTIMATED.
_____ DATA ARE NOT AVAILABLE.	_____ DATA ARE NOT AVAILABLE.	_____ DATA ARE NOT AVAILABLE.

4. IF YOUR STATE FUNDS NONPUBLIC PUPIL TRANSPORTATION IN FULL, OR PARTIALLY, IS THE STATE REIMBURSEMENT MADE TO:

- A. _____ THE LOCAL EDUCATIONAL AGENCY
- B. _____ DIRECTLY TO THE PARENT AS FULL OR PARTIAL REIMBURSEMENT OF TRANSPORTATION COSTS
- C. _____ DIRECTLY TO THE NONPUBLIC SCHOOL
- D. _____ A COMBINATION OF ANY OF THE ABOVE. PLEASE EXPLAIN, BRIEFLY: _____

- E. _____ OTHER: _____

- F. _____ DOES NOT APPLY. ONLY LOCAL AND NO STATE FUNDS ARE EXPENDED FOR NONPUBLIC PUPIL TRANSPORTATION.

5. WOULD YOU PLEASE SEND US A COPY OF YOUR STATE TRANSPORTATION FORMULA?

_____ COPY IS ATTACHED. (IF THERE IS ANY COST INVOLVED, PLEASE BILL US.)

6. IF YOU HAVE A SEPARATE STATE FORMULA OR METHOD OF FUNDING TRANSPORTATION OF NONPUBLIC SCHOOL PUPILS, WOULD YOU PLEASE SEND US A COPY?

_____ COPY IS ATTACHED. _____ NO SEPARATE STATE FORMULA FOR NONPUBLIC PUPIL TRANSPORTATION.

.....

APPENDIX F
SAMPLE FOLLOW-UP LETTER TO NON-RESPONDENTS
OF SECOND SURVEY



COLLEGE OF EDUCATION

VIRGINIA POLYTECHNIC INSTITUTE AND STATE UNIVERSITY

Blacksburg, Virginia 24061

DIVISION OF ADMINISTRATIVE AND EDUCATIONAL SERVICES

July 11, 1983

Ted B. Randall
 Coordinator, Program
 Planning & Development
 Office of Education
 100 N. First Street
 Springfield, IL 62777

Dear Mr. Randall:

On June 17, 1983, a letter was mailed to your office seeking your assistance in collecting information on the cost of providing nonpublic pupil transportation in your state for the 1981-82 school year. We are pleased that as of July 11, 1983, we have received responses for our study from the majority of states that either mandate or permit the transportation of nonpublic elementary and secondary school pupils.

However, as of this date we have not received the requested information from your state. We realize that you may receive many such requests for information. Unfortunately, without complete data from all states, our study cannot be completed.

Would you please check the progress of our earlier request, so that we may complete this aspect of our research as soon as possible? If you are in the process of returning the transportation survey at this time, please disregard receipt of this second request. If it is not possible for you to complete the financial information on transportation from your office, would you kindly refer the survey to the appropriate agency within your state department of education?

Your cooperation in helping us to obtain the financial information will be most appreciated. If you should have any questions regarding the requested survey information, please contact Ms. Susan Mittereder at the address or phone number below.

Sincerely,

M. David Alexander
 Associate Professor

Susan E. Mittereder
 Research Associate

Richard G. Salmon
 Associate Professor

Please return the survey to:

Ms. Susan E. Mittereder
 Room 220, UCOB
 Division of Administrative
 and Educational Services
 Virginia Polytechnic Institute
 and State University
 Blacksburg, VA 24061 703/961-5111

APPENDIX G
GLOSSARY OF TERMS

GLOSSARY OF TERMS

The following terms pertinent to the study are defined as follows:

Public school. A public school is commonly defined as one that meets three basic qualifications: 1) it is tax supported, 2) it is under the immediate operational control of a governmental agency, and 3) it must be free and open to all.

Nonpublic school. Any school which is not classified as public was considered to be a nonpublic school. The nonpublic school may be either a sectarian or nonsectarian school. For the purposes of this study, nonpublic school and private school were used synonymously.

Parochial school. A nonpublic school which is operated and maintained by a particular religious organization. This term has been used synonymously with a sectarian or religious school, which is a nonpublic school with legal or fiscal ties to any religious denomination or sect.

Mandatory nonpublic pupil transportation. The state has required by law that local school divisions shall provide for the transportation of pupils who attend nonpublic schools and who reside within the school division boundaries. The actual transportation provision mandate may vary from state to state, including, for example, equal rights and privileges for public and nonpublic pupils, the use of already established public school routes only, the provision of within or outside district transportation, or the use of mileage restrictions.

Permissive nonpublic pupil transportation. The state permits by law that local school divisions may, but are not required to, provide for the transportation of nonpublic school pupils who reside within their boundaries. Permissive transportation allows for local option in making the decision whether to transport private school pupils.

Outside district transportation. The provision of publicly-funded transportation is sometimes provided to pupils across school district boundaries, from the school district of pupil residence to a contiguous school district in which the pupil's school of attendance is located. The terms cross-district and inter-district transportation are synonymous terms. Use of the term cross district was found in the review of court cases on nonpublic pupil transportation, while use of the term outside district transportation is more commonly found in financial literature.

Within district transportation. The provision of publicly-funded transportation is generally provided to the school of attendance within the pupil's school district of residence. The term intra-district is applicable, although infrequently used.

Restricted transportation services. Transportation services provided at public cost to nonpublic school pupils are less than those provided to public school pupils. States with "restricted services" have specific statutory restrictions which disallow the provision of equivalent or same transportation services to nonpublic pupils as those provided to public school pupils.

Limited transportation services. Transportation services provided at public cost to nonpublic school pupils are required or permitted by statute strictly on a seats available, established route basis on public school buses.

Equivalent or same transportation services. Transportation services provided at public cost to nonpublic school pupils are either (1) separate, but equivalent to those services provided to public school pupils, or (2) the same services provided to public school pupils on the same routes of travel. Included in this category are those states in which the statutory wording for nonpublic pupil transportation provides for equal, same or equivalent transportation rights or services.

Extended transportation services. Transportation services provided at public cost to nonpublic school pupils are more extensive than those provided to public school pupils. Nonpublic pupil transportation outside school district boundaries is defined as "extended", since public school pupils are not, in practice, transported across school district lines to the same extent as nonpublic pupils, even when such provision is provided for by statute.

**The vita has been removed from
the scanned document**