

**AN ANALYSIS OF POTENTIAL IMPACTS
RESULTING FROM A POSSIBLE MERGER
OF THE ORANGE COUNTY SCHOOLS AND
CHAPEL HILL-CARRBORO CITY SCHOOLS**

**A STAFF REPORT PRESENTED TO
THE ORANGE COUNTY BOARD OF COMMISSIONERS**

SEPTEMBER 15, 2003

POTENTIAL SCHOOL MERGER IMPACTS

INTRODUCTION

At the January 25, 2003 annual planning and goal setting retreat of the Orange County Board of Commissioners (BOCC), Commissioner Moses Carey proposed that the Board consider whether the Orange County Schools (OCS) and Chapel Hill-Carrboro City Schools (CHCCS) should be merged. In March 2003, the Board adopted a goal for the 2003 calendar year that tasked staff to prepare an analysis of the implications of a potential merger of the two school systems and contemplated the Board making a decision in Fall 2003 as to whether or not to pursue merger.

During the semi-annual joint meeting between the BOCC and the two Boards of Education that was held on April 14, 2003, there was discussion about the substantial amount of time and effort that would be required to research literally “all” of the potential impacts of merging the two school systems. Accordingly, the County and school staffs developed a more narrow focus of potential merger implications to evaluate, based on the list of points that had been included in the BOCC goal (Appendix A). Numbered elements highlighted in blue on that list are the ones specifically examined by County and school staffs as part of this analysis. The yellow highlighted element was refined and examined as a “comparison of programs between districts”.

Other points from that list, not included in this evaluation, are those that either required clarification or appeared to be so broadly constructed as to require substantially more effort than any of the staffs would be able to devote while still addressing other Board priorities and County responsibilities. Those considerations enumerated in the 2003 BOCC goal but not addressed in this analysis, and other considerations that might subsequently be raised by the BOCC, could certainly be examined in the future, depending on how the Board decides to proceed with the whole topic of school merger.

PREAMBLE

As suggested during the joint work session between the BOCC and Boards of Education on April 14, 2003, staff analysis has focused on the financial, organizational, and legal considerations of a possible school merger. Results of this analysis should assist governing board members to examine the amount of detail and effort staffs should pursue in analyzing the other elements further down the road. To a large extent, this report to the Orange County Commissioners draws on statutory provisions and the experience of other jurisdictions that have considered and/or implemented merger. As such, this document is generally intended to present factual information rather than opinion.

Perhaps just as important as what this report is, is what it is not. Staff analysis conducted in support of this document did not match the scope and depth of other analyses that some other jurisdictions have engaged outside consultants or legal firms to produce prior to making a merger decision. For Orange County, there may or may not be a reason to pursue that more detailed analysis at a later point in the process. This document is also not a merger plan. That likewise would be a subsequent step in any merger decision the BOCC may make. The elements and functions of a formal merger plan, as established in North Carolina law, are described later in this report.

There will be a number of questions of interest to elected officials, parents, students, school personnel, and citizens that will not be addressed in this initial analysis. Examples include:

- What school would my child attend in a merged system?
- How long would my child have to ride a bus each day?
- Would I have to change teaching positions, moving from one school to another?
- What extracurricular activities or athletic teams would I be able to participate in at my school?
- What programming (e.g. elementary foreign language instruction) would be available at each or specific individual schools?
- Would savings be achieved by merging school systems, and if so how much?

These are all very important questions to parents, students, teachers, administrators, and elected officials. However, they are beyond the scope of this analysis. Such questions, and

others that may be raised in the coming months, would need to be examined carefully as part of a more formal merger analysis and merger plan, or during the transition period leading up to the effective date of merger, should the Orange County Board of Commissioners make a decision to merge the Orange County and Chapel Hill-Carrboro City Schools.

HISTORICAL PERSPECTIVE

This report and its appendices include a variety of background information that some readers may find of interest in understanding the context of school merger, both statewide and, more specifically, in Orange County.

NORTH CAROLINA

Dating back to 1870 with Greensboro, and especially in the early 20th century, numerous municipalities throughout North Carolina sought and received authority from the State legislature to create special chartered school districts. The literature indicates that these were often established to take advantage of the larger tax bases that often existed in urbanized areas, and to thereby afford a higher level of education funding within the special district than might otherwise have been available through the surrounding county school system. The number of school systems in North Carolina, including the 100 county systems, peaked in the late 1950s at 174. The more recent trend towards merger and consolidation began in 1960 with the merging of the Charlotte and Mecklenburg County school systems. As of 2003, there remain 117 local school administrative units in the State. One merger plan, involving the Cleveland County, Shelby, and Kings Mountain school administrative units, was approved in 2000 by the State Board of Education but has not been implemented because of litigation in the matter.

In 1986, the State Superintendent appointed a panel of then-sitting school superintendents from across North Carolina in response to a State Board of Education request that a “how to” manual on school merger be prepared. The expressed charge to those professional educators was to develop a document that would assist boards of education in studying the implications of merger and to facilitate wise decision-making in that regard. The resulting manual includes sections such as a historical background on school merger in North Carolina; extensive questions and answers about potential merger effects; legal requirements

and suggested steps for implementing merger; and perceived advantages and obstacles to undertaking merger. As that document focuses on merger initiated by local boards of education and not by boards of county commissioners, it is noted here for its potential value as a resource to those readers who may wish to review it at Appendix B.

Appendix C is a list provided by the State Board of Education staff that outlines the various merger plans and types that have been approved in North Carolina since 1960. Although Orange County staff are far from expert in understanding all the nuances and particular circumstances behind the various merger studies and plans that have been pursued in other jurisdictions, staff did, to varying degrees, examine the mergers that have taken place (or are pending) in the following jurisdictions:

- Cleveland/Shelby/Kings Mountain
- Alamance/Burlington
- Stanly/Albemarle
- Guilford/Greensboro/High Point
- Union/Monroe
- Durham/Durham City

As a point of interest, a copy of the August 2003 decision of the North Carolina Court of Appeals in the Cleveland County merger case is included at Appendix D. Although the arguments in the case are not pertinent to Orange County, the case is interesting because it deals with the only approved school merger plan currently active in North Carolina.

ORANGE COUNTY

The subject of a potential merger of the Orange County and Chapel Hill-Carrboro School systems is one that has arisen periodically with different levels of urgency in recent decades. In 1985, the Orange County Board of Commissioners empanelled a study commission to examine the potential impacts of a merger of the two school systems. That group recommended that merger not be pursued at that time, but noted its belief that “a single school system will prove to be desirable in the future”. In 1986, the Study Commission submitted four recommendations to facilitate the future possibility of merger. These were:

1. Equalize the per pupil funding countywide.
2. Fund construction of new schools based on a cooperative facilities plan developed by the two school systems.
3. Encourage the school districts to investigate areas where economies may be affected by joint operations such as transportation, food service, and maintenance.
4. Encourage the school districts to pursue areas of educational cooperation such as special services.

The Executive Summary of the 1986 School Merger Study Commission Report is included as Appendix E of this analysis and report. The entire 1986 Study Commission document, including subcommittee reports, can be reviewed at the County's website (www.co.orange.nc.us) on September 15, 2003.

The matter of educational funding equity (and to some extent its potential relationship to merger) was the subject of close scrutiny by the BOCC in 1990. Staff developed, and the Board reviewed, numerous scenarios that examined hypothetical approaches and tax rate impacts associated with progress towards "funding equity" between the two school systems on a per pupil basis over a period of years. A goal related to pursuit of "equitable school funding" has been included in the BOCC's annual set of formal goals since the early 1990s.

Some progress on the four recommendations outlined in the 1986 study has been achieved, particularly when the disparities in annual student growth between the systems were not so pronounced. Despite the recognition that there is a funding disparity arising from the annual levying of the Chapel Hill-Carrboro City Schools special district tax, and despite occasional efforts in the early to mid-1990s to restrain increases in that district tax while providing more current expense funding for both systems through the General Fund ad valorem tax, it is clear that funding equity remains a very challenging goal. On the other hand, the County and school systems have enjoyed great cooperation and success in developing and implementing annual updates to a 10 year Capital Investment Plan (CIP). Cornerstones of that achievement have been four successful school bond referenda in 1988, 1992, 1997 and 2001, and a BOCC capital funding policy providing for a clearly defined stream of annual pay-as-you-go revenues earmarked for school (and County) capital construction.

Other examples of cooperation since the mid-1980s include, but are certainly not limited to:

- Development and implementation of a school capital impact fee program
- Development and implementation of school construction standards
- Development and implementation of the Schools Adequate Public Facilities Ordinance and Memoranda of Understanding (SAPFO)
- Bus transportation/maintenance/fueling
- Special services for students with unique needs
- Siting of East Chapel Hill High School near the OCS/CHCCS boundary

GOVERNANCE AND IMPLEMENTATION

Among the central elements of this analysis are the statutorily permissible methods by which school merger may be accomplished and the roles and functions of various entities in considering, planning, approving, and implementing a merger.

MERGER MECHANICS

Procedures for merging two or more local school administrative units are outlined in Article 7 of Chapter 115C of the North Carolina General Statutes. The statutes contemplate merger under the following four different scenarios:

- NCGS §115C-67 – “Merger of units in same county” involves merger plans submitted by the boards of education involved and bearing the approval of the board of county commissioners.
- NCGS §115C-68 – “Merger of units in adjoining counties” involves merger of county school administrative units in one or more adjoining or contiguous counties with a city school administrative unit and having the approval of the “tax-levying body for the school units”.
- NCGS §115C-68.1 – “Merger of units by the board of county commissioners” details merger procedures for two or more school administrative units located totally within the boundaries of the county.
- NCGS §115C-68.2 – “Merger of units by the local boards of education” requires the State Board of Education to adopt a merger plan when a city administrative unit notifies the State Board that it is dissolving itself.

There are similarities among all four statutory approaches to school merger, such as the requirement for the preparation and approval of a merger plan. However, there are also important distinctions in the provisions articulated for the different categories of merger. Since only the third category in the list above is applicable to the current circumstances in Orange County, this report on potential merger implications will focus almost exclusively on the county commissioner-initiated form of merger described in NCGS §115C-68.1. Provisions of the other statutorily authorized forms of merger can be reviewed in the excerpts from the North Carolina General Statutes at Appendix F.

COUNTY COMMISSIONER-INITIATED MERGER

As noted above, North Carolina law authorizes the board of commissioners of a county to adopt a plan for the consolidation and merger of local administrative units that are located wholly within the county into a single countywide administrative unit. Such a plan of consolidation and merger must be prepared and approved in the same manner as a school administrative unit initiated consolidation and merger except that, in a county commissioner initiated consolidation and merger, (1) the plan “shall require that the county . . . provide local funding per average daily membership to the resulting local school administrative unit for subsequent years of at least the highest level of any local school administrative unit in the county during the preceding five fiscal years before the merger”; (2) the boards of education “shall not participate [in the] preparing, entering into, submitting, or agreeing to [the] plan”; and (3) “the plan shall not be contingent upon approval of the voters.” *NCGS § 115C-68.1(a) and (c)*. A county initiated plan of consolidation and merger must in all other respects meet the requirements of a consolidation and merger plan initiated by school administrative units.

Upon approval by the State Board of Education, the plan of consolidation and merger becomes final and “shall be deemed to have been made by authority of law and shall not be changed or amended except by an act of the General Assembly.” *NCGS § 115C-67*. This provision is important in several respects. It makes clear that the plan of merger is only a plan until it is approved by the State Board of Education. When approved, it has the effect of law. And, after it is approved by the State Board of Education, it cannot thereafter be amended through the consolidation and merger process. Only an act of the General Assembly can amend a State Board of Education approved merger plan.

MERGER PLAN IMPLEMENTATION AND ELEMENTS

The State Board has no set schedule under which a merger must be implemented. Each individual merger plan details its own timetable. Some mergers have been carried out within a matter of months; others have taken two years or more from a decision to merge to the actual effective date of a new merged school system. For purposes of the financial analysis (provided later in this report) of the tax rate impacts of a hypothetical decision to merge the two school systems in Orange County, staff have used the illustrative assumption that a merger decision by the BOCC would be made in one fiscal year, there would be a full fiscal year available for transition activities, and that a merged school system would come into existence as of July 1 of the following fiscal year (e.g. if a merger decision were made in FY 2003-04, FY 2004-05 would be a transition year, and a merged Orange County School system would take effect July 1, 2005). This timeline is certainly wide open to refinement. County staff conversations with State Board staff suggest that any reasonable merger timeline that works for the parties involved is likely to be acceptable to the State Board of Education. State Board staff indicated that the State Board does not get into setting the date. That said, while there have been examples of January 1 effective dates, State Board staff suggested that a merger effective date of July 1, at the start of a fiscal year, is clearly preferable.

The plan of merger must include the following with respect to the governance of the merged school administrative unit:

- (1) the establishment and maintenance of a board of education which shall administer all the public schools of the newly created administrative unit;
- (2) the termination of any terms of office proposed in the reorganization;
- (3) the method of constituting and continuing the board of education;
- (4) the manner of selection of members of the board of education, including (i) the number of members of the board, (ii) the method of their election or appointment, (iii) whether members shall be nominated, elected or appointed from districts or at-large, (iv) the manner of determining the nominee, and (v) whether the election shall be partisan or non-partisan;
- (5) the length of the board members' terms of office;
- (6) the dates of induction into office;
- (7) the organization of the board;

- (8) the procedure for filling vacancies;
- (9) the compensation to be paid members of the board for expenses incurred in performance of their duties.

SCHOOL BOARD COMPOSITION AND ROLES

Except in the case of merger initiated by a board of county commissioners, a board of commissioners has no authority to change the composition or manner of selection of a local board of education (*NCGS §153A-76*). And, the general law requires that a county board of education consist of five members elected by the voters of the county at-large and on a non-partisan basis. However, the laws authorizing merger of school administrative units create flexibility in the creation of the board of education that will govern the consolidated and merged administrative unit. That flexibility is limited, however, by the fact that the plan of merger must be approved by the State Board of Education and by the fact that any board of education election plan must meet State and federal constitutional requirements and the 1965 Voting Rights Acts, 42 USC § 1973. Generally speaking, constitutional requirements and the Voting Rights Act with respect to elections relate to discrimination in elections and the “one person, one vote principle.”

Under Section 5 of the Voting Rights Act, certain local governing bodies of specific states identified in the Federal Register must obtain preclearance from the United States Attorney General for changes with respect to voting in their jurisdictions. Fortunately, Orange County is not, under federal law, a preclearance county under the Voting Rights Act.

Nevertheless, Section 2 of the Voting Rights Act prohibits the denial or abridgement of the right to vote for reasons of race, color or membership in a language minority group. Challenges under Section 2 generally involve claims that voting rights have been diminished either by fragmenting a protected population among different districts, over-concentrating a protected population in one or more district, or placing a protected population in a large multi-member district. While intentional discrimination against a protected group clearly violates Section 2 of the Voting Rights Act, it is not necessary to prove that a merger plan involving voting districts was adopted with discriminatory intent in order for the plan to be found in violation of the Act. If a merger plan has the practical effect of denying a protected group an effective means of participating in the political process, the plan violates the Act.

A merger plan involving voting of school board members on the basis of districts must also meet constitutional requirements. It must, for example, not violate the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution or Article I, § 19 of the North Carolina Constitution, which also guarantees, among other things, equal protection under the law. A party challenging a consolidation and merger election plan containing districts may allege that the plan, though population group-neutral on its face, rationally cannot be understood as anything other than an effort to separate voters into different districts on the basis of race, color or membership in a language minority group, and that the separation lacks sufficient justification.¹ The plan can also be attacked if its purpose is determined to be to “invidiously minimize or cancel out the voting potential of racial or ethnic minorities.”²

A consolidation and merger plan calling for the board of education to be elected using a district method or a combination district and at-large method will require population studies. For example, districts can be created that are nearly equal in total population, voting age population or registered voter population. All three methods have been used and challenged in the federal courts. All three have been upheld by the federal courts in the absence of evidence of invidious discrimination in selecting the method. In the absence of invidious discrimination, the federal courts have taken the view that they should defer to the state’s choice of apportionment base. Many of these election law issues were addressed in the protracted litigation involving the merger of the Durham County/Durham City schools.

An example of a non-partisan, at-large election system for a consolidated and merged school administrative unit is the consolidation and merger of the Alamance County administrative unit with the Burlington City administrative unit. An example of a combination district and at-large system for a consolidated and merged administrative unit is the consolidation and merger of the Durham City administrative unit with the Durham County administrative unit. Both of these mergers were county commissioner initiated mergers. The merger plans for these two systems are provided for reference at Appendices G and H, respectively.

¹ *Shaw v. Reno*, 509 U.S. 630, 49, 113 S.Ct. 2816, 2828 (1993)

² *Mobile v. Bolden*, 446 U.S. 55, 66, 100 S.Ct. 1490, 1499 (1980)

The State Board of Education does not approve the merger plan until it has received the approval of the United States Department of Justice with respect to the plan for the election of the consolidated and merged board of education. North Carolina law provides the procedure and responsibility for submission to the United States Attorney General of any actions taken in North Carolina which could result in a change affecting voting under the Voting Rights Act. The procedures for obtaining Department of Justice approval of acts of North Carolina governments affecting voting are codified in Article 6A of Chapter 120 of the North Carolina General Statutes. It is not clear whether the county attorney would submit a board of commissioner initiated merger plan affecting voting of the consolidated and merged board of education or whether the State Board of Education would submit the plan. That question, of who would submit the plan, would have to be resolved if the Board of Commissioners submits a consolidation and merger plan to the State Board of Education.

Appendix I contains 1996 correspondence from and involving the Orange County Attorney related to the Board of Commissioners' consideration of a modification in the structure of the Board of Commissioners. That correspondence provides illustrations of district election systems and provides further information on constitutional requirements that would be applicable to a district election involving a consolidated and merged board of education.

As noted previously in this document, there is no formal role for boards of education in a merger pursued in the county commissioner-initiated process outlined under NCGS §115C-68.1. That section provides specifically that "the county and city boards shall not participate". That said, this merger analysis clearly has included an informal role for both school systems. Both school staffs have contributed to the research, analysis, preparation, and presentation of this report. The principal topic at the September 29, 2003 joint work session of the County Commissioners and the two Boards of Education is expected to be potential impacts of a possible school merger. One can also reasonably expect that, whatever decisions regarding potential school merger may be made by the BOCC in the coming months, both school boards will be substantially involved in keeping their parents, staff, students, and other constituents informed about the facts involving the school merger process.

While there appears to be some variation and flexibility with regard to who is responsible for the operation of the schools during a merger, a review of the literature (especially merger studies and plans conducted for other jurisdictions in North Carolina) suggests some

common themes. Existing school boards continue to operate for some defined period, typically at least the remainder of the current fiscal year, and perhaps right up to the effective date of merger when the new merged district comes into existence.

An interim board may be appointed for a period of time, perhaps one fiscal/academic year, to focus on the decisions that must be made and implemented no later than the effective date of merger (such as selecting a superintendent, negotiating contracts of other executive employees and contractors, determining what programs will be provided at which schools, any redistricting needed to adjust school attendance zones, etc.). It is at this point that questions such as the examples cited on page 3 of this report would begin to be addressed. Composition of the interim board seems to be tailored to the specific circumstances of each merger. It is fairly typical for a merger plan to specify that a certain number of interim board members will be appointed from the membership of the existing boards and that the board of commissioners may decide to appoint one or more members of their choosing to the interim board.

Merger plans that staff reviewed reserved to the interim board of education and the permanent board of education of the merged administrative unit the important decision of selecting a superintendent for a newly merged system. They did not include roles for either the Board of County Commissioners or the existing school boards. As noted earlier, the interim board also may make decisions about the contracts of other senior administrators. There are examples of merger plans also addressing these issues, such as providing that if either superintendent of an existing system, or other administrators under contract in one system or the other, are not selected to perform similar duties in the new merged system, that they will be assigned positions with duties commensurate with their background and skills under terms consistent with their existing contracts. Some merger plans also constrain existing boards of education from extending administrator or vendor contracts beyond end dates already established as of the date of approval of the merger plan.

State Board staff emphasized in conversations with them that State law requires that consolidated school administrative units continue to receive existing State allotments of funds for two fiscal years following the effective date of merger for central office administration, vocational education, special needs, and limited English proficiency (LEP). Accordingly, even

though (for example) there would only be one superintendent position in a newly merged school administrative unit, State funding would continue for two years for any other superintendent positions that may have existed in the other school systems prior to merger.

Discussion with State Board staff indicated that the timing of the engagement of the State Board of Education in a Commissioner-driven merger initiative is fairly flexible. The State Board's specified role, while critically important, is limited in scope to reviewing and approving the merger plan submitted by the board of commissioners. The statutes do not specify any other role for the State Board under NCGS §115C-68.1.

The State Board typically meets for one two-day period every month. Basically, when a board of commissioners adopts a merger plan, it transmits the plan to the State Board for consideration at the State Board's next meeting (and in accordance with State law sends information copies of the merger to the affected school boards). Typically, that merger plan will be reviewed and approved over the span of one or two meetings of the State Board.

Informally, County staff envisions that should the Orange County Commissioners make a decision to merge the two school systems, there would be extensive contact among County, schools, and State Board staff in developing a merger plan that will satisfy the statutory requirements.

Consolidation and merger³ of the school administrative units in Orange County would require changes to both the Schools Adequate Public Facilities Ordinance (SAPFO) machinery and the County's Impact Fee Program. Upon consolidation and merger it would be necessary for there to be a memorandum of understanding among the consolidated board of education, Orange County, Carrboro, Chapel Hill and Hillsborough. Generally, the operation of the Certificate of Adequate Public Schools (CAPS) program would only be affected administratively by consolidation and merger of the administrative units. However, the County's Capital Investment Plan (CIP) would undergo revision. For example, the methodology for projecting student generation would have to be revisited since it is driven in

³ It should be noted that the term "consolidation" refers technically to combining one or more individual schools, whereas the term "merger" refers to the combination of two or more local school administrative units. "Consolidation and merger" is a phrase used extensively in this Article of Chapter 115C, but for Orange County's situation, the distinction between the two terms is not meaningful.

part by statistical information based on student generation calculations and projections that are not the same for the two existing school systems. The same is true with respect to the Impact Fee Program. That is, a new Technical Report would have to be commissioned to create the basis for determining the maximum rates at which impact fee(s) could be set in the consolidated and merged school administrative unit.

The period during which an interim board of education and/or interim budget preparation committee is functioning, and before the effective date of consolidation and merger, would be the time the updated and reorganized student generation information should be produced and approved through the impact fee process and the SAPFO process.

PUBLIC INFORMATION/EDUCATION AND PUBLIC INPUT

Long before this analysis and report were completed, Orange County citizens began to avail themselves of opportunities to participate in the informal processes of public input regarding potential school merger. Phone calls, letters, and electronic mail to elected officials; comments made at public meetings of governing boards; and letters to the editors of local newspapers, are all mechanisms that have been used effectively thus far to communicate individual and group viewpoints. The Board of Commissioners has already established two formal public hearings on the subject for October 16 and 23, 2003. County staff are working on developing pages at the County's website where readers can access materials (for example, this document) related to potential merger and at which citizens can submit comments about this analysis, about public presentations regarding potential school merger impacts, or about any other aspect of the potential merger process.

Depending on what decisions the Board of Commissioners makes during Fall 2003 regarding subsequent steps related to potential school merger, it might be appropriate to consider other means of soliciting constituent feedback. The Board could consider some or all of the following mechanisms for additional outreach, as appropriate:

- Additional formal public hearings
- Panel or roundtable discussions
- Facilitated focus groups
- Presentations to civic or non-profit groups
- Development of a Frequently Asked Questions (FAQ) document

- Guest columns in local print media
- Guest appearances on local radio/cable programs

Since the Board of Commissioners took up the issue of potential school merger earlier this year, there have been numerous suggestions made that any merger consideration be the subject of a public referendum. As noted earlier, a board of county commissioner initiated consolidation and merger cannot be subject to a referendum. *NCGS § 115C-68.1(c)*. In the absence of authority from the General Assembly for the Board of County Commissioners to conduct a non-binding referendum on the question of merger, such a non-binding referendum should not occur. Those instances where a county commissioner initiated merger was accompanied by a referendum were in fact the result of a consolidation and merger plan that was approved by the General Assembly. Such a merger process is not a county commissioner initiated merger under *NCGS § 115C-68.1* at all but rather a special act of the General Assembly creating a merger plan.

There are examples of General Assembly local act merger plans. Such a local act from the 1991 Session of the General Assembly resulted in the consolidation of the Guilford County, Greensboro City and High Point City school administrative units. That local act called for an election in which the voters were asked to approve either the consolidation of the school administrative units or a change in the boundaries of the administrative units. The voters of Guilford County approved the consolidation and merger of the school administrative units in Guilford County in that election. That merger and the referendum process for accomplishing it withstood judicial scrutiny. *Guilford County Board of Education, et al. v. The Guilford County Board of Elections, et al.*, 110 N.C. App. 506, 430 S.E.2d 681 (1993). A copy of that local act is included at Appendix J as an example of a General Assembly approved merger process and plan.

PROGRAMMATIC CONSIDERATIONS

An analysis of what programmatic changes would be needed and the associated costs to equalize facilities and programs in a newly merged system would likely be conducted during the established transition period. For now, the staffs of the two school districts have worked cooperatively to develop a comparison of program differences and similarities between the

two districts in twelve areas. Summary tables are provided at Appendix K along with more detailed back-up sheets. Overall, the staff was previously aware of most of the differences that were identified and found them, in some cases, to be less than what was expected. At the same time, it is clear that disparities exist and significant resources would be required to eliminate them.

Although generalizations are sometimes difficult to draw about such extensive programs, staffs at this time reached the following conclusions regarding differences between the districts.

Personnel

- OCS tends to have smaller class sizes in grades K-5, smaller core classes in middle school, and larger core classes in high school.
- CHCCS tends to provide more specialists, certified support personnel, and teacher assistants.
- OCS tends to allocate personnel at the district level whereas CHCCS allocates positions directly to schools based on enrollment.
- If each district's allocations were brought up to the level of the better allocated district, a significant number of personnel would need to be added in both districts.

Elementary Programs

- CHCCS provides additional positions such as world language teachers, science specialists, and literacy collaborative specialists.
- CHCCS offers a more expansive summer school program; OCS has a kindergarten academy in addition to its summer school program.
- OCS offers a year-round option
- Overall approach to elementary education is similar in the two districts.

Secondary Programs

- The districts have different graduation requirements, including a service learning requirement in CHCCS.
- OCS offers a year-round middle school option.

Core Courses - High School

- AP course offerings are fairly similar, with CHCCS having more in world languages.
- CHCCS offers Japanese and German.

- OCS offers more honors options in social studies and science; CHCCS offers more AP courses and electives in social studies.

Career and Technical Education

- Both districts' programs go beyond the Standard Course of Study; however, they offer considerably different courses and other opportunities. CHCCS has Finance and IT Academies whereas OCS has strong agricultural pathways and programs in culinary arts, cosmetology, carpentry, and early childhood.
- Opportunities exist for greater collaboration in this area.

Core Courses - Middle School

- CHCCS offers more electives, including German and Latin and second year languages.

Arts Courses - High School

- OCS offers year-long courses whereas many CHCCS courses are semester.
- CHCCS has more specific courses in the arts and a wider array of offerings.
- CHCCS offers orchestra/strings.
- Comparability would require additional staff and facility upgrades.

Arts Courses - Middle School

- CHCCS offers dramatic arts, orchestra, and dance.
- OCS courses are broader in scope and more interdisciplinary.
- Comparability would require additional staff and facility upgrades.

Athletics

- Both districts have strong athletic programs at the high school and middle school levels. CHCCS offers a few sports that OCS either doesn't offer or plays on a co-ed basis (e.g. field hockey, golf, and lacrosse).
- CHCCS coaching supplements are generally higher.

Exceptional Children

- CHCCS provides more extensive services in this area to a larger population of students and has more instructional and support personnel.

Supplements and Benefits

- CHCCS salary supplements for teachers and student support personnel tend to be higher.
- CHCCS stipends for athletics and co-curricular activities tend to be higher.

Clubs and Activities

- Although both districts have an extensive array of clubs, CHCCS has about twice as many, including more clubs emphasizing diversity.

FINANCE

TAX DIFFERENTIAL AND IMPACTS OF POTENTIAL MERGER

Most of the local funding provided by the Orange County Commissioners to the Orange County Schools and Chapel Hill-Carrboro City Schools is allocated annually on a per pupil basis. By State statute, current expense funding is allocated each fiscal year based on student membership projections certified each March by the North Carolina Department of Public Instruction (DPI). In accordance with long-standing Board of Commissioner capital funding policies, both recurring capital outlay and ten year long-range CIP funding are allocated to the school systems on the basis of their respective shares of total student membership in the two school systems. Accordingly, this analysis focuses on the funding disparity that derives from CHCCS district tax proceeds.

As noted elsewhere, an important statutory provision of the county commissioner-initiated form of school merger is the requirement that the resulting merged local school administrative unit receive local expense funding on a per pupil basis that is at least as high as the highest per pupil amount in any of the five fiscal years immediately preceding the effective date of merger. State Board staff emphasized that the resulting amount per pupil must be provided as of the effective date of merger. In 1991, DPI disseminated guidelines (Appendix L) for calculating the per pupil amount that would be required to be provided in a merged Orange County School system. County staff anticipates at this point that if commissioner-initiated merger is ultimately pursued, the precise calculation of that figure would be performed and verified with DPI staff and documented in the merger plan that would be submitted to the State Board of Education.

The analysis reflected in the tables at Appendix M indicates that, given the stated assumptions, an increase in the County General Fund tax rate of approximately 17 cents per \$100 assessed valuation would be needed to provide equalized funding per pupil for a merged Orange County School system that hypothetically would come into existence on July

1, 2005. That scenario also assumes that the Chapel Hill-Carrboro City Schools special district tax, currently levied for FY 2003-04 at the rate of 20 cents per \$100 valuation, would be set at the rate of zero for FY 2005-06. Staff will provide a more detailed explanation of this analysis during the presentation at the September 15, 2003 Board of Commissioners work session.

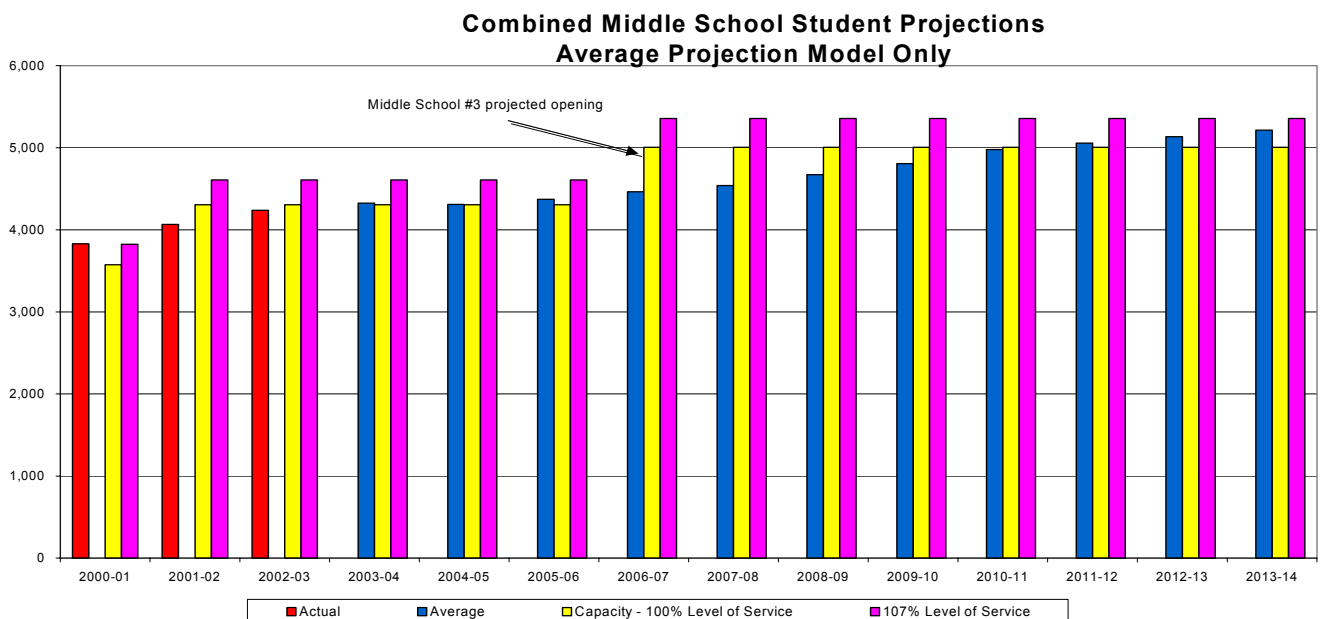
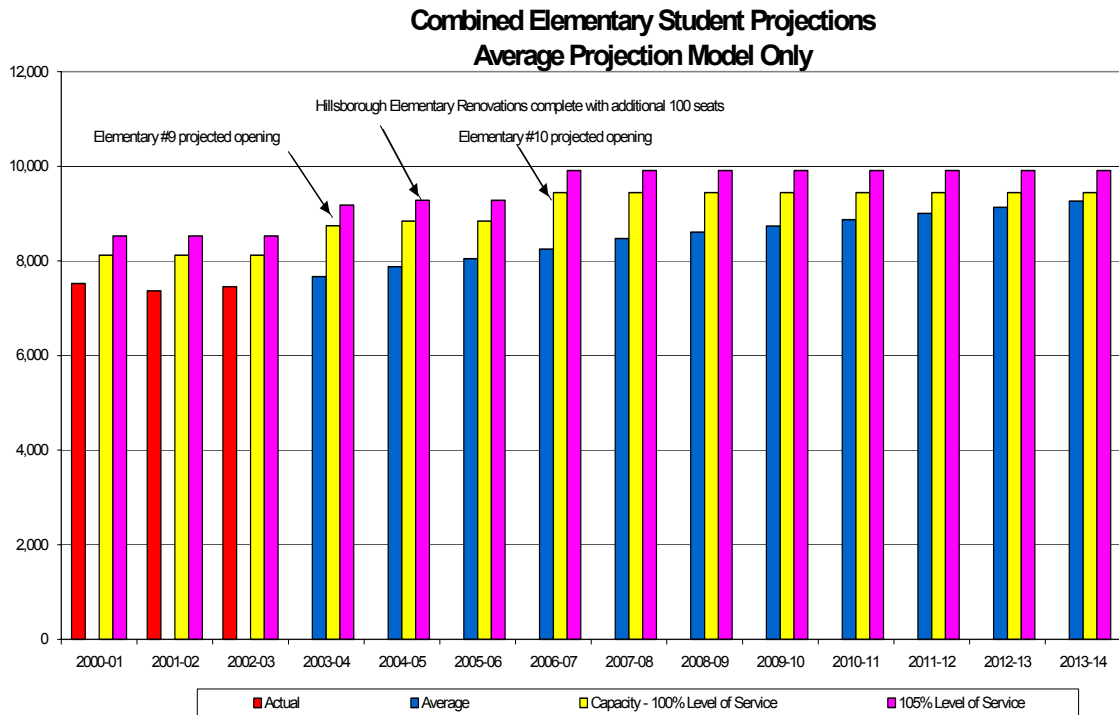
POTENTIAL FINANCIAL IMPACTS

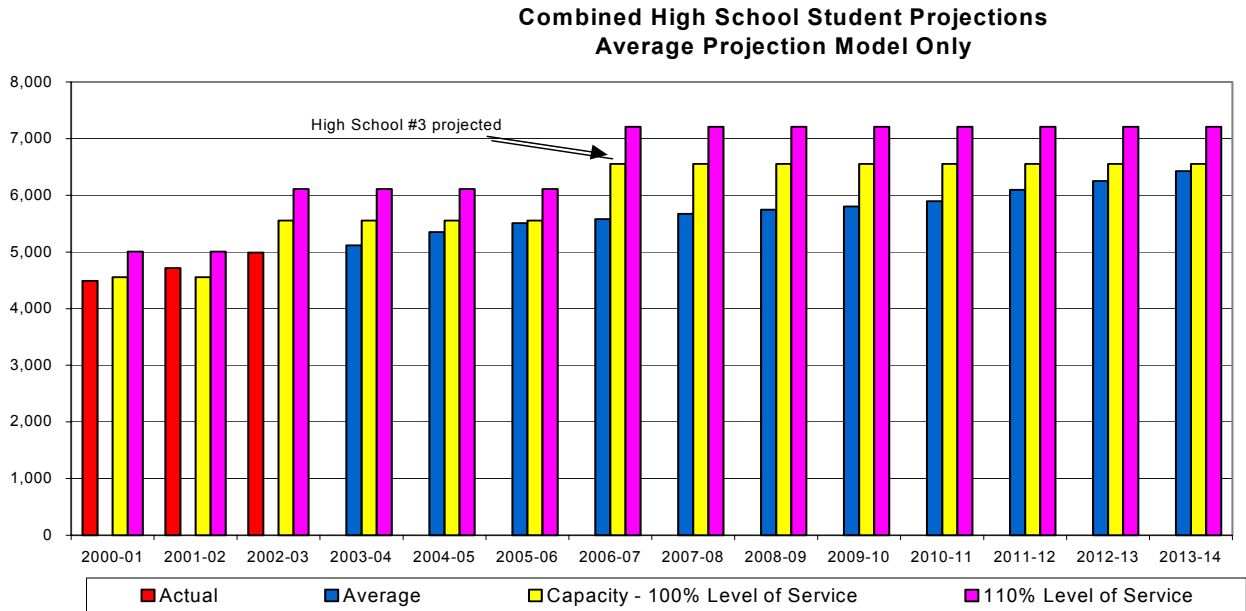
Orange County's General Fund and the Chapel Hill-Carrboro City Schools special district tax rates would be directly affected by a possible merger. Municipal and rural fire district tax rates would be unaffected (except to the extent that any tax-rate setting bodies might consider the collective impact of all applicable tax rates on property owners in a particular tax jurisdiction in making decisions about what tax rates to set for any given fiscal year). This point is important because there is a misperception in some quarters that the Chapel Hill-Carrboro City Schools are funded in part by one or both of the Towns of Chapel Hill or Carrboro. Neither Town provides direct funding for the operation of the school system. The tax differential and impacts of a potential merger of the school systems, then, are examined most usefully in a comparison of effects on properties that are located within the boundaries of the Chapel-Hill Carrboro City Schools, and those that are located outside those boundaries.

The County's ten year capital investment plan could be affected by a potential merger in that the timelines anticipated for opening new schools towards the end of the 2003-2013 planning period could be delayed to some extent. The combining of available building capacity between the two systems could allow unused space in one system or the other to be filled by the reassignment of some students from one school to another within a newly merged system.

An important part of the SAPFO machinery among Orange County and its municipal and school partners is an annual certification (as of November 15) of existing student membership and school capacity in both school systems. The actual membership figures become the basis for projecting student membership, through an agreed upon set of forecasting models, for capital planning purposes for the subsequent ten year CIP cycle. The current set of certified projections (Appendix N), prepared as of November 15, 2002, indicate that with

current and programmed additional capacity from CHCCS Elementary #10, OCS Middle School #3, and CHCCS High School #3, there would be adequate capacity at each level (elementary, middle, and high) in a merged system to accommodate currently projected student growth through the end of the 2013-14 CIP period without exceeding the “Level of Service” capacity criteria established in the SAPFO machinery.





Another ramification worth noting is the potential impact that equalized per pupil funding resulting from merger would have on the percentage of the County’s General Fund earmarked for education. Current Board of Commissioner policy sets a target of 48.1 percent as the portion of annual General Fund expenditures that should be allocated to public education. The actual percentage in recent years budgeted for schools has generally been in the range of 48 to 50 percent. If equalized funding were achieved through increases in the General Fund ad valorem tax rate, there would be a substantial increase in the resulting portion of General Fund expenditures allocated for schools. On the other hand, if equalized funding were achieved through implementation of some form of countywide supplemental ad valorem tax (similar to the mechanism now used for the CHCCS district tax), the percentage of General Fund expenditures for education would be unaffected.

The special tax district existing in the Chapel Hill-Carrboro City School District would not be abolished by a plan to consolidate and merge the Chapel Hill-Carrboro City school administrative unit with the Orange County school administrative unit. NCGS § 115C-12(7), which statute authorizes the State Board of Education to approve the consolidation and merger of board of education administrative units, expressly provides that “such merger of

units and reorganization of school units shall not have the effect of abolishing any special taxes that may have been voted in any such units.” The Attorney General has also opined, with respect to the State Board of Education approved plan to consolidate and merge the Union County administrative unit with the Monroe City school administrative unit, that the plan of merger, which provided for continuing the supplemental tax in differing amounts in the two school districts, was consistent with North Carolina law. Nothing in the North Carolina General Statutes or in the Attorney General’s opinion discusses levying supplemental taxes. However, the implication is that after merger, a supplemental tax could be levied on the property in the district where it is authorized and the tax proceeds used by the consolidated and merged board of education to meet the needs of all of the schools in the consolidated and merged administrative unit. As was suggested in the February 4, 2003 letter from the County Attorney (Appendix O), levying such a tax may create a constitutional problem. It creates at least a constitutional question.

FUNDING EQUITY

There has been significant interest in the community about, and the Board of Commissioners specifically requested examination of, opportunities to equalize funding for both districts that do not include a possible merger. Staff analyzed three general approaches that could be pursued in working towards the attainment of equalized local funding per student in both school districts. These are outlined briefly below.

Implementation of a Countywide Supplemental Tax for Education Funding

Article 36 of Chapter 115C of the State statutes addresses the subject of voted tax supplements for school purposes. The relevant statutory excerpts are provided for reference at Appendix P. NCGS § 115C-501 provides that boards of county commissioners may call an election to determine whether voters wish to implement a countywide ad valorem tax, the proceeds of which are used to “operate schools of a higher standard”. If the voters approve the tax, its proceeds are apportioned among the local school administrative units in the same per pupil manner as local current expense funding. Since Orange County’s population exceeds 100,000, the law provides that the maximum rate at which the tax could be set would be 60 cents per \$100 assessed valuation.

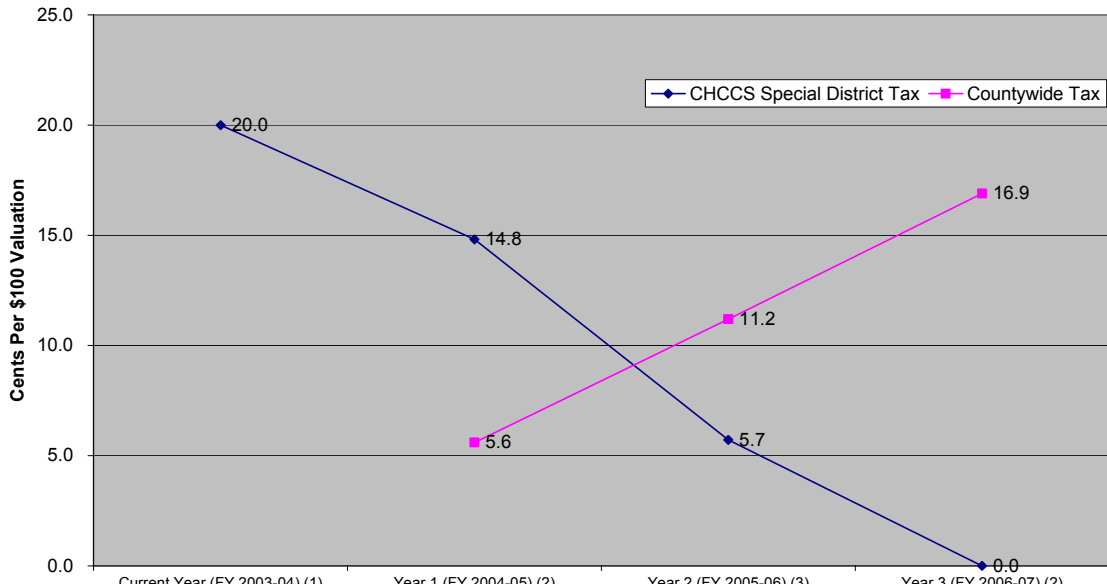
NCGS § 115C-512 provides that in a specific set of circumstances, a merger of school systems automatically causes any supplemental tax operating in one of the pre-merger districts to become applicable throughout the entire resulting merged district. This expansion occurs without the approval of voters of the district. Although this section of the law does not apply to Orange County, it is conceivable that special legislation approved by the General Assembly could modify the provisions of that section to make it apply to Orange County. In such circumstances, then, a merger between the Orange County Schools and Chapel Hill-Carrboro City Schools would entail the entire CHCCS district tax becoming applicable throughout a newly merged Orange County Schools system without an election on the matter.

To demonstrate a way to equalize funding in Orange County, either as part of a merger plan or as an alternative to merger, staff performed an analysis of how a hypothetical countywide supplemental tax could be implemented and increased over various periods of time to provide additional funding on a per pupil basis to both existing school systems. Among the key assumptions in this analysis were 1) that the existing CHCCS district tax would incrementally be decreased to zero over the same period that a countywide tax was being phased in and 2) that the phasing of these two tax rates would happen in such a way as to ensure that CHCCS would be “held harmless” and continue to receive at least the approximately \$1,167 per pupil that it expects to receive in 2003-04 in proceeds from the CHCCS district tax. Tables and charts reflecting this analysis are provided at Appendix Q and will be explained by staff at the September 15 County Commissioners’ work session.

Using the other assumptions footnoted in the appendices (primarily, student growth based on SAPFO projections; 3% tax base growth in non-revaluation years; and 25% tax base growth in revaluation years), staff produced scenarios that would equalize per pupil funding using the countywide tax mechanism over periods of three, five, and ten years. These are shown graphically below. It should be noted that the lower cumulative tax rates needed to achieve equalized funding over longer periods of time reflect the impacts that the County’s four year revaluation cycles would have. The amount generated by one cent on the tax rate historically rises significantly with each revaluation. Therefore the actual tax rate needed to generate the same amount of revenue during the post-revaluation fiscal year is lower than in the pre-revaluation year.

The three year scenario estimates that cumulative countywide district tax increases of 16.9 cents would be needed to equalize per pupil funding between the two school systems:

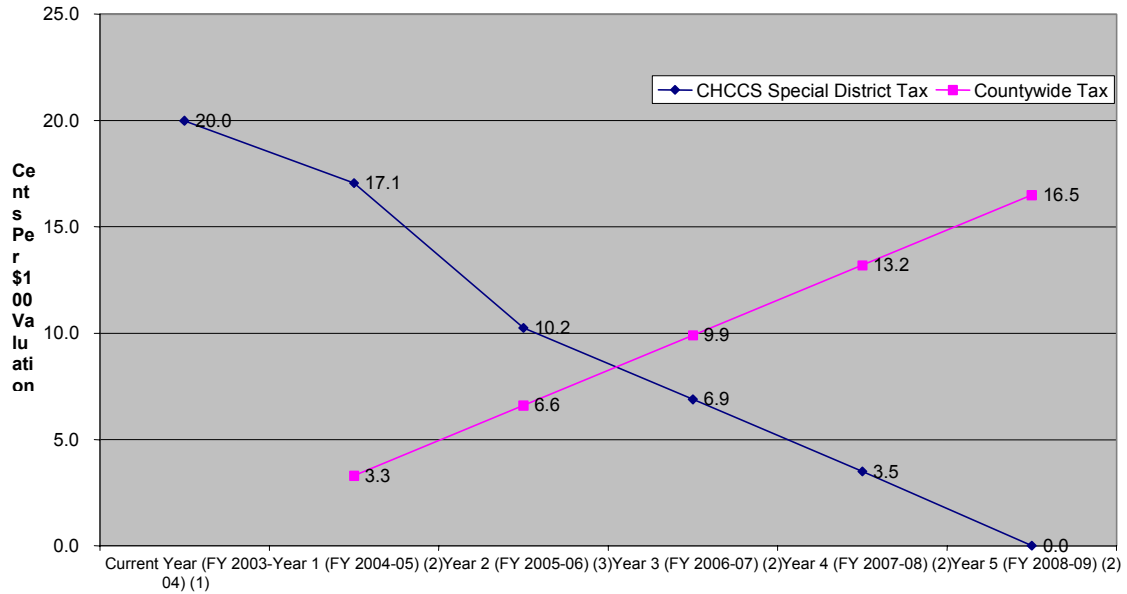
Three Year Scenario to Achieve Equitable Funding with Countywide Tax



(1) Assessed property valuation used in calculating County's approved FY 2003-04 property tax collection estimates (for budgetary purposes)
 (2) Non-revaluation year; projected annual growth rate assumed at 3%
 (3) Revaluation year; projected annual growth rate assumed at 25%

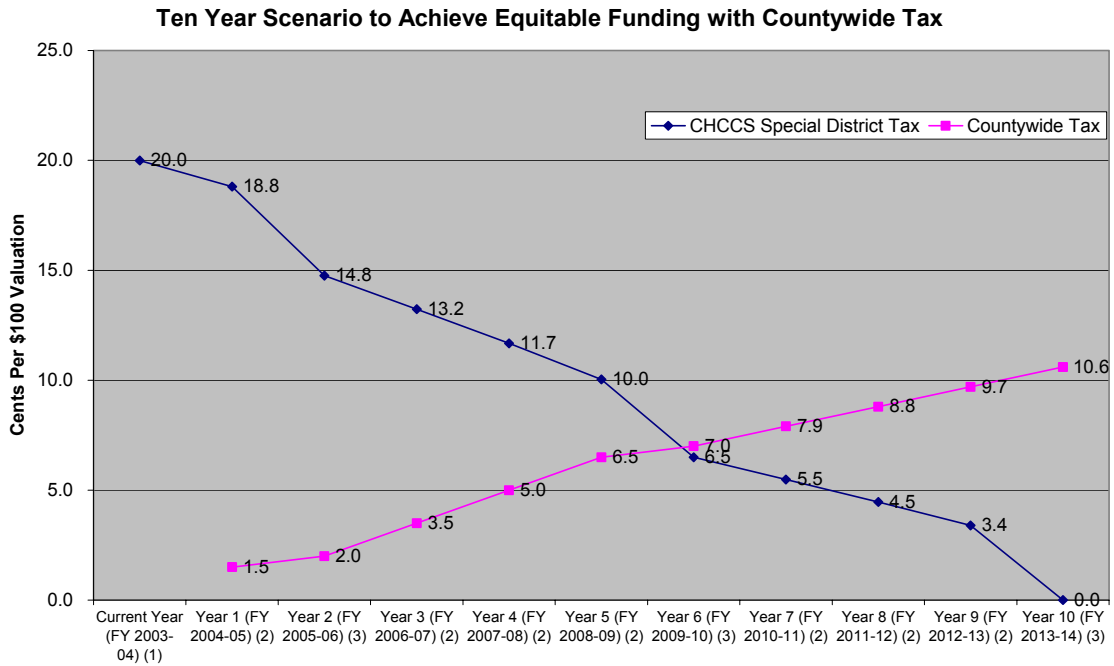
The five year scenario estimates that cumulative countywide district tax increases of 16.5 cents would be needed to equalize per pupil funding between the two school systems:

Five Year Scenario to Achieve Equitable Funding with Countywide Tax



(1) Assessed property valuation used in calculating County's approved FY 2003-04 property tax collection estimates (for budgetary purposes)
 (2) Non-revaluation year; projected annual growth rate assumed at 3%
 (3) Revaluation year; projected annual growth rate assumed at 25%

The ten year scenario estimates that cumulative countywide district tax increases of 10.6 cents would be needed to equalize per pupil funding between the two school systems:



(1) Assessed property valuation used in calculating County's approved FY 2003-04 property tax collection estimates (for budgetary purposes)
 (2) Non-revaluation year; projected annual growth rate assumed at 3%
 (3) Revaluation year; projected annual growth rate assumed at 25%

Increase Countywide Ad Valorem Tax Rate

Another set of scenarios for pursuing equalized per pupil funding that has similar outcomes and identical tax rate impacts to the countywide tax approach outlined above involves phased increases in the County's General Fund ad valorem tax rate earmarked for higher annual per pupil current expense appropriations with corresponding incremental decreases in the CHCCS district tax. The analysis at Appendix Q is applicable, and will be reviewed during the September 15 work session.

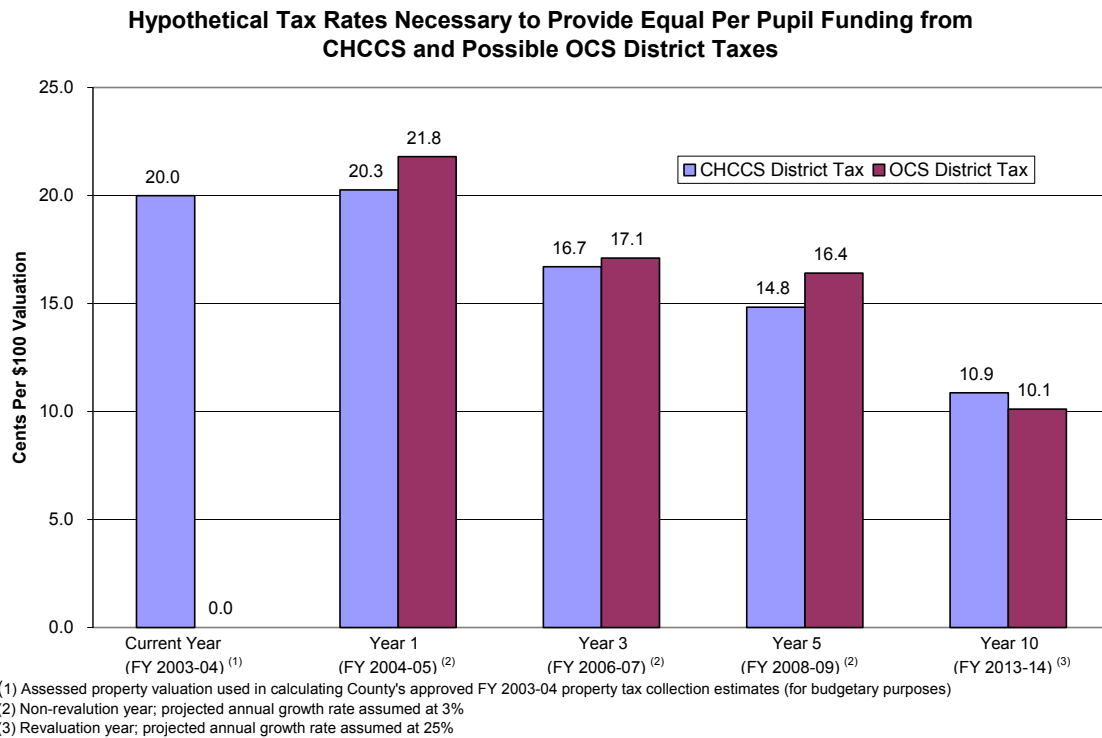
Implementation of Orange County Schools Supplemental Tax

Article 36 of Chapter 115C also addresses how a supplemental tax applicable within just one school administrative unit may be implemented. Such a tax requires a majority vote in a referendum and would take effect at the beginning of the fiscal year next following an affirmative vote. A board of commissioners may call for an election on its own initiative. Under certain other circumstances, it has a duty to call an election when it receives a petition to do so approved by the pertinent board of education.

Implementation of a supplemental tax in the Orange County school administrative unit would not directly affect the levying of the existing CHCCS district tax. CHCCS has historically indicated it would be accepting of the establishment of an OCS district tax except to the extent that any “catch up” of funding by OCS might constrain the amount of current expense funding that CHCCS might receive in a given year. In practice, the two district tax rates would be set independently each year by the board of commissioners, doubtless with recommendations or requests for a specific tax rate presented by each board of education as part of their annual budget proposal.

If an Orange County Schools district supplemental tax were to be created, the tax base from which proceeds would be derived would be all property subject to ad valorem taxation that is outside the boundaries of the Chapel Hill-Carrboro City Schools but inside the geographical boundaries of Orange County. Tables reflecting projected tax base, student populations, and estimates of district tax proceeds are included at Appendix R. It is important to note as a practical matter that because of the disparity in the property tax base located in the two school districts, it would take a higher tax rate within an OCS special district to generate the same amount of revenue as would be generated by the CHCCS district tax. For illustrative purposes only, if both an OCS and CHCCS district tax had been in place for FY 2003-04, it would have taken approximately 1.8 cents on an OCS district tax rate to generate the equivalent revenue produced by one cent on the CHCCS district tax rate (one cent on the CHCCS district tax currently generates about \$625,000 and one cent on an OCS supplemental tax rate would generate about \$350,000). On the other hand, because the OCS district has approximately 4,000 students fewer than CHCCS, the impact of lower OCS tax base is substantially mitigated when trying to achieve funding equity. It would have taken an OCS district tax rate of roughly 22.4 cents per \$100 valuation to generate the same \$1,167 per pupil projected to be produced in 2003-04 by the CHCCS district tax of 20 cents.

For the purposes of this analysis, County staff examined several scenarios under which the simultaneous operation of these two district taxes would lead to equalized funding over differing periods of time – one, three, five, and ten years. A “hold harmless” consideration was assumed in this analysis as well, with CHCCS continuing to receive no less annually from the estimated proceeds of its district tax than the \$1,167 per pupil anticipated in FY 2003-04. The resulting snapshot of the hypothetical special district tax rates that would be necessary to provide equal per pupil funding in various years is depicted graphically below:



The supporting data table is at Appendix S. As with the other hypothetical approaches to pursuing equalized funding, staff will explain this analysis at the September 15 work session.

ACKNOWLEDGEMENTS/REFERENCES/SOURCES

Many of the source documents staff consulted are provided in various appendices, or noted elsewhere, in this report. County staff would like to thank especially the staffs of the two school systems for their research, input, and feedback regarding this analysis. Thanks are also due to staff from the State Board of Education, Institute of Government, North Carolina Public School Forum, Association of County Commissioners, various county Finance and Elections departments, as well as citizens whose interest in this topic will help to shape the discussion about potential school merger in the coming months.

**ORANGE COUNTY
ANALYSIS OF POTENTIAL SCHOOL MERGER IMPACTS
September 15, 2003**

TABLE OF APPENDICES

Appendix Reference	Appendix Title & Description	Report Page Reference
A	3/24/03 BOCC Adopted Goal - School Merger Implications	2
B	1987 Department of Public Instruction Manual for Merger	5
C	List of Special Chartered School District Mergers Since 1960	5
D	August 2003 NC Court of Appeal Decision – Cleveland County School Merger Case	5
E	Executive Summary of the 1986 School Merger Study Commission Report	6
F	Excerpts from North Carolina General Statutes (NCGS §115C-67 through 115C-68.2); explanation of types of school mergers	8
G	Alamance/Burlington School Merger Plan with Attorney General's Opinion Letter	11
H	Durham County/Durham City School Merger Plan	11
I	9/24/96 County Attorney Letter re: Modification in the Structure of the Board of Commissioners	12
J	1991 General Assembly Session Senate Bill 457 – Guilford School Merger Local Act	16
K	Program Comparisons - CHCCS and OCS	17
L	State Board of Education Guidelines for Computation of Minimum Local Funding Requirement Upon Merger of School Systems by Boards of County Commissioners	19
M	Table - Funding for Hypothetical School Merger Effective July 1, 2005	19
N	Tables/Charts re: Certified 10 Year Student Membership Projections; prepared as of November 15, 2002 in accordance with School Adequate Public Facilities Ordinance	20
O	2/04/03 County Attorney Letter re: School Merger	23
P	Excerpts from North Carolina General Statutes (NCGS §115C-501 – 514; explanation of voted tax supplements for school purposes	23
Q	Tables/Charts – Three/Five/Ten Year Analyses to Achieve Equitable Funding with Countywide Tax for Education	24
R	Tables/Charts - reflecting projected tax base, student populations, and estimates of district tax proceeds	28
S	Table – Hypothetical Tax Rates Necessary to Provide Equal Per Pupil Funding from CHCCS and Possible OCS District Taxes	29

