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STATE REGULATION OF NONPUBLIC SCHOOLS: DOES THE TIE STILL BIND?

*Eric A. DeGroff**

I. INTRODUCTION

“Blest Be the Tie that Binds”
by John Fawcett, 1740-1817¹

Long-time adherents to the faith still appreciate the sentiment of the old hymn penned by John Fawcett. Those associated with religiously affiliated schools, however – as well as administrators of secular private schools – may not feel very blessed by the regulatory ties that bind their institutions to state mandates. Although state legislatures clearly have authority to impose reasonable restrictions on private elementary and secondary schools, they have always varied greatly as to how closely they actually regulate. Even within a given jurisdiction, the applicable laws and regulations are subject to change, often only incrementally, but sometimes more dramatically.

An examination of state regulatory schemes can reveal a fascinating combination of social and political forces that help create a particular regulatory climate. As compelling as that may be, a static view of regulatory structures reveals little about how those forces may be changing and is of little predictive value. This article, therefore, is intended to go beyond a mere discussion of current regulatory schemes. Although the article examines the diversity of state regulatory programs now in effect, its primary purpose is to address to what extent the level of state regulation in general has

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1. *Covenant Hymnal* 489 (Covenant Press 1973).

changed in recent years. Or to put it another way, to what extent does the tie still bind?

American elementary and secondary education has always reflected a strong element of individual choice.² Commentators, however, have noted that the public's concern over school choice began to intensify in the late 1970s and 1980s.³ Today, public awareness of the issue is reflected in developments such as the groundbreaking school voucher programs in Milwaukee and Cleveland,⁴ the dramatic increase in charter school programs nationwide,⁵ the proliferation of public interest groups and governmental agencies that identify themselves with school choice issues,⁶ and the abundance of recent books and articles on the subject.⁷ Peter Cookson,

2. See John W. Whitehead, *Judicial Schizophrenia: The Family and Education in a Secular Society*, 1982 J. Christian Juris. 49 (noting that, under early American common law, parents had both the right and the duty to educate their children, and schools were generally considered "extensions of the home and the church").

3. Jeffrey R. Henig, in *Rethinking School Choice: Limits of the Market Metaphor* 5-6 (Princeton U. Press 1993), suggests that the current interest in "educational choice" actually predated the 1970s, but that early attention to the issue was "episodic" and largely limited to the "educational community." Calls for school choice began gaining wide-spread public attention and political efficacy in the mid-1980s. See also Jeffrey R. Henig, *School Choice Outcomes*, in *School Choice and Social Controversy: Politics, Policy and Law* 68 (Stephen D. Sugarman & Frank R. Kemerer eds., Brookings Instn. Press 1999); Ralph D. Mawdsley, *Parents' Rights to Direct Their Children's Education: Changing Perspectives*, 162 Educ. L. Rep. 659 (May 9, 2002) (suggesting that there have been four distinct historical periods of development in the balancing of parental rights and state interests, dating back to the early 1900s, with the most recent beginning in the 1970s).

4. In June 1998, the Wisconsin Supreme Court approved the extension of the Milwaukee school voucher program to include religious schools, and later that year the United States Supreme Court denied certiorari. See *Jackson v. Benson*, 578 N.W.2d 602 (Wis. 1998), cert. denied, 525 U.S. 997 (1999). On June 27, 2002, the United States Supreme Court held that a similar program in Cleveland, Ohio, was constitutional despite the fact that ninety-six percent of the students participating in the program attended religiously-affiliated schools. *Zelman v. Simmons-Harris*, 536 U.S. 639 (2002).

5. Of the forty-seven states that responded to the survey upon which this article is based, twenty-nine reported that a charter school program had been developed in their jurisdiction. Responses to that survey question are not included in the Appendix of this article, but remain on file with the author.

6. If one includes not-for-profit foundations, think tanks, interest groups, and religious, racial and ideological organizations, along with state departments of education having offices of charter or alternative education, at least 200 organizations can be identified that work in some way with the issue of school choice. See Hubert Morken & Jo Renee Formicola, *The Politics of School Choice* 275 (Rowman & Littlefield Publishers 1999).

7. See e.g. Morken & Formicola, *supra* n. 6; Peter W. Cookson, Jr., *School Choice: The Struggle for the Soul of American Education* (Yale U. Press 1994); Peter W.

author of *School Choice: The Struggle for the Soul of American Education*, attributes the increased public concern over choice to the loss of an historic consensus concerning the value of public institutions generally and the greater acceptance of market-centered approaches to resolving social issues.⁸

Today, an estimated five million children, or 10 percent of the nation's elementary and secondary school population, attend nonpublic schools.⁹ Roughly 85 percent of those children attend religiously affiliated schools.¹⁰ On the surface, these figures indicate a high degree of individual choice. However, the exercise of real choice depends, in part, on how much variety is permitted among nonpublic schools. Although few question the right of civil authorities to exercise some control over private schools, to the extent that state and local governments actually exert such control, parental choice is constrained. The nature and degree of regulation by government agencies is, then, every bit as important in determining the degree of school choice actually exercised by families as is the number of students attending nonpublic schools.¹¹

Cookson, Jr., *The Choice Controversy* (Corwin Press 1992); Henig, *supra* n. 3; Sugarman & Kemerer, *supra* n. 3; Joe Price, *Educational Reform: Making the Case for Choice*, 3 Va. J. Soc. Policy & L. 435 (1996); Andres A. Cheng, *The Inherent Hostility of Secular Public Education Toward Religion: Why Parental Choice Best Serves the Core Values of the Religion Clauses*, 19 U. Haw. L. Rev. 697 (1997); Dwight Edward Tompkins, *An Argument for Privacy in Support of the Choice of Home Education by Parents*, 20 J. L. & Educ. 301 (1991); Dominick DiRocco, *Making the Grade: School Choice Comes to New Jersey*, 22 Seton Hall Legis. J. 281 (1997); Elizabeth T. Lugg & R. Andrew Lugg, *Vouchers as School Choice: An Analysis of Jackson v. Benson - the Milwaukee Parental Choice Program*, 29 J. L. & Educ. 175 (2000).

8. Cookson, *supra* n. 7 (cited in Robert C. Bulman & David L. Kirp, *The Shifting Politics of School Choice*, in *School Choice and Social Controversy: Politics, Policy and Law* 36, 37-38 (Stephen D. Sugarman & Frank R. Kemerer eds., Brookings Institution Press 1999).

9. Jeffrey R. Henig & Stephen D. Sugarman, *The Nature and Extent of School Choice*, in Sugarman & Kemerer, *supra* n. 3, at 25. The numbers increase to roughly six million children, or twelve percent of the school population, if one includes home-schooled children. *Id.* at 29 tbl. 1-1. Some have estimated the percentage of privately educated students as high as thirteen percent of the school-aged population, with an additional one or two percent receiving home instruction. See Natl. Ctr. for Educ. Statistics, U.S. Dept. of Educ., *The Condition of Education* 132 (U.S. Govt. Printing Off. 1998). Even the higher figure may well understate the actual numbers. See *infra* n. 17 and accompanying text.

10. Henig & Sugarman, *supra* n. 9, at 25.

11. See E. Vance Randall, *Private Schools and State Regulation*, 24 Urb. Law. 341 (1992) (suggesting that, "although the federal constitution guarantees individuals the right of choice between public or private schools, the substantive dimensions of the

Ralph Mawdsley, Professor of Educational Administration at Cleveland State University, recently considered the question of parents' rights to direct the education of their children.¹² He suggested that, for parents who choose to educate their children outside the public schools, parental authority may be even greater today than under the common law of the Nineteenth Century.¹³ Professor Mawdsley's thought-provoking article, however, considered the issue from the standpoint of judicial constraints on government regulation. It did not explore in any detail the level of regulation actually imposed by government agencies.

This article is intended to help answer two of the questions Professor Mawdsley's article generates. First, to what degree is real choice available in nonpublic schools? Second, how has the actual level of regulation changed over time? To answer these questions, the author conducted a written survey addressed to the departments of education in each of the fifty states and the District of Columbia. The survey questions focused on areas of control that would seem most likely to affect the quality and character of an educational program. Some examples include the presence or absence of formal accreditation or approval requirements for nonpublic schools, teacher certification requirements, curricular requirements, mandatory testing and reporting, and controls over the school calendar or clock.

The survey used by the author was virtually identical to a survey instrument used by the Florida Department of Education to analyze state regulation and report to the Florida House of Representatives in 1986.¹⁴ With permission from Florida officials, the author essentially duplicated the format and questions used some fifteen years earlier.¹⁵ The data,

choice to opt for private education are not clear").

12. Mawdsley, *supra* n. 3.

13. *Id.* at 678.

14. Comm. on Educ., K-12, Fla. H.R., *Regulation of Nonpublic Elementary and Secondary Schools in Florida: An Oversight Report Prepared for the Committee on Education, K-12* (1986) (hereinafter the "Florida Report") (on file with the author).

15. To be more precise, two questions were actually deleted from the original survey form that pertained to building and safety requirements and regulation of boarding schools. In place of those questions, two new questions were substituted concerning (1) the adoption of charter school programs; and (2) whether state officials had evaluated the effectiveness of the regulations they had chosen to impose. The format of the questionnaire, however, was virtually identical to the earlier instrument, and all other questions from the original survey instrument were retained with their

therefore, constitute the results of a fifteen-year longitudinal study of state regulation over the period 1986 to the present. In addition to providing a snapshot of present state regulation, the current survey responses, when compared with those obtained by Florida officials in 1986, provide at least a rough index of the level of change in state regulation during the past fifteen years.¹⁶

An analysis of private school regulation would not be complete without some comparison of the actual level of state

original wording.

A total of forty-seven state agencies responded to the current survey, including forty-four of the forty-five states that had responded in 1986. When survey responses began to arrive, it was clear that some of the questions had been interpreted by respondents in different ways. For example, a respondent from one state might indicate that state accreditation or approval was mandatory for private schools, but that church schools were exempted (a response of "M" to question three on the survey, with a note in question four that church schools were exempted). A respondent from another state with exactly the same rule, however, might indicate that state approval was voluntary except for secular schools (a response of "V" to question three followed by an appropriate notation). Likewise, a respondent might indicate that teacher certification or curricular requirements were necessary in his or her state, but indicate in a footnote that the requirements applied only to schools seeking voluntary accreditation (responses of "yes" to the relevant questions, followed by a footnote), while a respondent from another state with an identical rule might indicate that teacher certification and curricular requirements were not necessary, with a footnote clarifying "unless the school seeks voluntary accreditation" (a response of "no" to the relevant questions followed by the explanatory note). Thus, apparently straightforward "yes" or "no" responses to the survey questions could not always be taken at face value.

Adding to the challenge of comparing current responses with those from fifteen years earlier was the fact that most (perhaps all) of the current survey forms were completed by different personnel from those who responded to Florida officials fifteen years ago. In addition, the current respondents sometimes could not determine whether differences in the two responses to a particular question actually represented a change in the law or resulted simply from differences in interpreting the questions.

To help address these concerns, the laws and selected regulations of the responding states were reviewed to check the accuracy of the survey responses and to determine when particular laws might have changed. A number of survey responses were also followed by telephone calls to the respondents in order to clarify specific answers. Thus, the current survey results presented in the Appendix reflect an examination of multiple sources of data, including the completed survey forms themselves. Changes in state laws and regulations are noted with an "X" in the column between the "Old" and "New" survey responses for each state.

16. This report does not purport to be the first or the most extensive synopsis of state private-school regulations. Indeed, a very thorough survey, though now somewhat dated, was prepared by the United States Department of Education in 1993. See Off. of Nonpublic Educ., U.S. Dept. of Educ., *The Regulation of Private Schools in America: A State-by-State Analysis* (U.S. Govt. Printing Off. 1993). I am not aware, however, of any previous efforts to complete a longitudinal study that would allow direct comparison of survey responses over a significant period of time.

oversight with the degree of control that is constitutionally permissible. Accordingly, Part II of this article gives a brief overview of constitutional issues raised by state regulation of private schools. Part III provides a synopsis of current regulatory schemes, based upon the current survey results, and briefly discusses some of the concerns relevant to various types of state control. Part IV presents a brief overview of changes noted by comparing current survey responses with those documented in the Florida Report of 1986.

II. CONSTITUTIONAL ISSUES IMPLICATED BY STATE REGULATION OF NONPUBLIC SCHOOLS

A. Background

An analysis of concerns raised by state regulation of private schools might begin by asking why the question of school choice has become a constitutional "issue" in the first place. The importance of effective education can hardly be debated. Yet the increasing popularity of private religious schools, coupled with the growth of unauthorized educational programs, reflects a growing antipathy toward state ownership or regulation as a means of achieving that end.¹⁷ The debate regarding government's role in education is often highly charged. More than a mere clash over methods or personal preferences, it reflects a fundamental divergence of views concerning the role of the family, the function of the state and, ultimately, the origin and nature of man.¹⁸ At one end of the spectrum are

17. The term "unauthorized educational program" is attributable to Patricia M. Lines who has served for many years as a policy analyst for the United States Department of Education. The term encompasses enrollment at unaccredited private schools and home schools where such programs are unacceptable under state compulsory attendance laws. See Patricia M. Lines, *Private Education Alternatives and State Regulation*, 12 J.L. & Educ. 189, 192 (1983). Unapproved schools, and parents out of compliance with compulsory attendance statutes, typically do not seek state approval and are consequently not reflected in statistics estimating the percentage of school-aged children receiving nonpublic education. Many such students are associated with fundamentalist Christian organizations. Some commentators believe that the segment of the student population now experiencing the greatest growth is those attending unapproved (mostly Christian) schools. Thus, it is likely that estimates of the nonpublic school population actually understate the relevant percentages. See *supra* nn. 9 and 10 and accompanying text.

18. See e.g. Herbert W. Titus, *Education - Caesar's or God's: A Constitutional Question of Jurisdiction*, 1982 J. Christian Juris. 101. Although the debate over school choice has intensified in the last two or three decades, twentieth century

those who view education as one of the state's primary functions.¹⁹ Such persons typically envision public education as a means of uniting social classes and promoting democratic values. Thus, some have pressed for even greater state control as a means of "liberat[ing] . . . 'child[ren] . . . from the shackles of such intermediate groups as [the] family."²⁰ At the other end of the spectrum are those who view the family as part of a divinely created order, and who see the educational process as unavoidably religious in nature.²¹ Somewhere in the middle,

fundamentalist Christians are by no means the first to have questioned the wisdom of a public monopoly on education. Although he would have acknowledged an appropriate supportive role for the state, the 19th-century political philosopher John Stuart Mill opined that

[a] general state education is a mere contrivance for molding people to be exactly like one another, and as the mold in which it casts them is that which pleases the predominant power in the government . . . in proportion as it is efficient and successful, it establishes a despotism over the mind.

John Stuart Mill, *On Liberty*, in *The Harvard Classics* vol. 25, 303 (Charles W. Eliot ed., P. F. Collier & Son 1909).

19. See e.g. *City of Louisville v. Commonwealth*, 121 S.W. 411, 411-12 (Ky. App. 1909) ("public education . . . is regarded as . . . one of the first duties of a democratic government. . . . The power to tax is an essential attribute of the sovereignty. . . . So is the power to educate the youth of a state, to fit them so that the state may prosper.").

20. Laurence H. Tribe, *American Constitutional Law* 988 (Foundation Press 1978). See also Martha Minow, *A Colloquium on Parents, Children, Religion and Schools*, 78 U. Det. Mercy L. Rev. 407, 413 (2001), who points out that Amy Gutman, in her book *Democratic Education*, "urged that parents should have no right to control their children's education because the larger polity can justify requiring all children to learn a common set of democratic values. . . . [P]luralism in the actual content of education must be filtered through the demands of a democracy, needing its own replication." Minow further noted that Meira Levinson, in *The Demands of Liberal Education* 162 (Oxford U. Press 1999), "even more aggressively limits the range of acceptable schooling, and argues for national and publicly defined assessments of students."

21. The Roman Catholic Church has been among the most ardent supporters of parental rights and responsibilities in the education of children. In an open letter to families from Pope John Paul II in 1994, the Vatican declared that parents have the primary responsibility and right to educate their children even in matters of religious teaching, and that the roles of both church and state are subsidiary to, and in support of, that of the parents.

Parents are the first and most important educators of their own children, and they also possess a fundamental competence in this area: they are educators because they are parents. They share their educational mission with other individuals or institutions, such as the Church and the State. But the mission of education must always be carried out in accordance with a proper application of the principle of subsidiarity.

Letter To Families From Pope John Paul II (Vatican Press 1994) (emphasis in original).

For a similar perspective from a different source, see Donald A. Erickson, *Freedom's Two Educational Imperatives: A Proposal*, in *Public Controls for Nonpublic*

perhaps, are those who simply see merit in the social implications of diverse educational goals and institutions.²²

Because of the uniquely decentralized educational system in the United States,²³ the individual states have primary responsibility for balancing these competing views. In doing so, they must navigate in waters that have never been fully charted by the United States Supreme Court.²⁴ One result has been a notable degree of variation among the states. Every state has some form of compulsory education law. In all states, attendance at a private school is considered a permissible alternative to public school attendance. Beyond that, however, the states vary with respect to accreditation or approval requirements, teacher certification requirements, curricular guidelines and a host of other issues. Following is a brief synopsis of some of the constitutional issues around which state regulatory agencies must navigate as they chart their course.

Schools 160 (U. of Chi. Press 1969), who has suggested that:

Education, probably more akin to religion than most men realize, is not a process that leaves life aspirations and moral commitments unaffected. To the extent that schooling is efficacious, the power to choose the goals of learning is the power to manipulate society. . . . I think it a priceless principle that radically different educational purposes are not only tolerable but desirable in our democracy.

22. See e.g. Neal Devins, *State Regulation of Christian Schools*, 10 *J.Legis.* 351, 352 (1983), who argues as follows:

Freedom of choice lies at the heart of American democracy. Yet some individuals contend that in the field of education, government regulations should promote a state-selected system of values. A democracy should encourage all of its citizens to develop and refine their personal interests so that they can effectively participate in the political process. A pluralistic society, like ours, certainly should not attempt to breed conformity through its educational system.

See also Randall, *supra* n. 11 (suggesting that “[a] high degree of state intervention which prescribes the scope and nature of private schools runs the risk of eliminating cultural diversity, innovative educational practices, and experimentation”).

23. James Guthrie & Judith Bodenhausen, *The United States of America, in Educational Policy: An International Survey* 215 (St. Martin’s Press 1984).

24. Ralph D. Mawdsley, *Legal Problems of Religious and Private Schools* 84 (4th ed., Educ. L. Assn. 2000).

B. Parental Rights

1. Early Cases: The Fourteenth Amendment

Although the Supreme Court has never firmly fixed the outer boundaries of permissible state regulation of primary and secondary schools, it provided significant guideposts in three landmark decisions during the 1920s – *Pierce v. Society of Sisters*,²⁵ *Meyer v. Nebraska*,²⁶ and *Farrington v. Tokushige*.²⁷

Pierce is still regarded by some as a clear endorsement of the right of parents to direct the upbringing and education of their children.²⁸ The Society of Sisters was an Oregon corporation whose primary mission included the care of orphans and the establishment and maintenance of primary schools to educate the young. The State of Oregon enacted a law requiring parents and guardians of children aged eight to sixteen to send their children to public schools.²⁹ The effect of the new statute would have been to drive most private schools out of business and deny parents the opportunity to choose private education as an alternative to public schooling.³⁰ Accordingly, the Society and other plaintiffs sought injunctive relief against enforcement of the act.³¹ The federal district court granted the requested relief, and the Supreme Court ultimately affirmed.

More recent Supreme Court opinions seem to reflect a narrowing of *Pierce*'s holding, asserting that the case "simply affirmed the right of private schools to exist and operate."³² The *Pierce* Court itself, however, recognized that the trial court had clearly articulated that "parents and guardians, as a part of their liberty, might direct the education of children by

25. 268 U.S. 510 (1925).

26. 262 U.S. 390 (1923).

27. 273 U.S. 284 (1927).

28. See e.g. Stephen G. Gilles, *Liberal Parentalism and Children's Educational Rights*, 26 Cap. U. L. Rev. 9, 26 (1997).

29. The statute at issue was Oregon's Compulsory Education Act, adopted November 7, 1922, Laws Or. 1923, p. 9.

30. *Pierce*, 268 U.S. at 534.

31. *Id.* at 532.

32. *Runyon v. McCrary*, 427 U.S. 160, 177 (1976); *Norwood v. Harrison*, 413 U.S. 455, 461-62 (1973); *Wis. v. Yoder*, 406 U.S. 205, 239 (1972) (White, J., concurring). It appears that Justice White's concurring remarks in *Yoder* have gained currency as the correct view of *Pierce*'s holding. See e.g. Mawdsley, *supra* n. 24, at 80.

selecting reputable teachers and places.”³³ The Court unambiguously affirmed that view:

[W]e think it entirely plain that the [Compulsory Education] Act of 1922 unreasonably interferes with the liberty of parents and guardians to direct the upbringing and education of children under their control. . . . The child is not the mere creature of the State; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations.³⁴

Some scholars have noted that the plaintiffs in *Pierce* were the adversely affected private schools, not the parents themselves. The Court’s opinion, however, did not emphasize the rights of the schools. It focused, instead, on the liberty interests of the schools’ patrons. The Court noted that it was affirming the lower court’s grant of injunctive relief in order to protect “against interference with the freedom of patrons or customers.”³⁵

The *Pierce* decision relied, in part, upon the Court’s earlier decision in *Meyer v. Nebraska*.³⁶ The State of Nebraska had enacted a law that prohibited the teaching of a foreign language to anyone who had not passed the eighth grade. Robert T. Meyer, a teacher at Zion Parochial School in Hamilton County, Nebraska, was convicted under the statute for teaching a ten-year-old student to read from a book of German verses. The Supreme Court held the statute unconstitutional as a violation of the Fourteenth Amendment’s guaranty of liberty. While acknowledging uncertainty as to the full extent of the liberty contemplated by that Amendment, the Court determined that liberty must include at least the right “to acquire useful knowledge [and to] bring up children.”³⁷ In explaining its decision, the Court affirmed that it is “the natural duty of the parent to give his children education suitable to their station in life. . . . [Meyer’s] right thus to

33. *Pierce*, 268 U.S. at 534.

34. *Id.* at 534-35. To see how disparate are the interpretations of *Pierce* that continue to this day, compare Gilles, *supra* n. 28, at 26 (“The *Pierce* Court’s specific formulations speak volumes about how limited the scope of ‘reasonable’ regulation of education is”), with Minow, *supra* n. 20, at 423 (suggesting that *Pierce* “still imagines children as at least as much belonging to the state as to their parents”).

35. *Pierce*, 268 U.S. at 536.

36. *Id.* at 534; see also *Meyer v. Neb.*, 262 U.S. 390 (1923).

37. *Meyer*, 262 U.S. at 399.

teach and the right of parents to engage him so to instruct their children, we think, are within the liberty of the Amendment.”³⁸

Two years after *Pierce*, the Supreme Court considered, for the first time, a comprehensive state regulatory scheme for private schools, which had been enacted by the territorial government of Hawaii.³⁹ At the time of the Court’s decision in 1927, Hawaii had 163 private foreign language schools teaching the Japanese, Chinese, and Korean languages to over 20,000 students. The statute in question did not prohibit the operation of such schools. It forced them, however, to comply with onerous permit requirements. The permit requirements were so comprehensive that the schools could not have employed a teacher, taught a subject, used a book, admitted a pupil, or engaged in activity of any consequence without prior approval from the Department of Public Instruction.⁴⁰ The schools were also required to pay annual *per capita* fees to obtain operating permits from the territorial government.⁴¹ Enforcement of the statute threatened to bankrupt the affected schools.⁴²

The Supreme Court determined that the challenged restrictions went “far beyond mere regulation of privately-supported schools. . . . They give affirmative direction concerning the intimate and essential details of such schools, entrust their control to public officers, and deny both owners and patrons reasonable choice and discretion in respect to teachers, curriculum and textbooks.”⁴³ Without considering the independent validity of its individual provisions, the court held the Act, as a whole, unconstitutional as a violation of the Fourteenth Amendment liberty interests of owners, parents, and students.⁴⁴

2. First Amendment Challenges

Although *Pierce* and *Meyer* involved primarily religiously affiliated schools, suit was brought in both instances on the

38. *Id.* at 400.

39. See *Farrington v. Tokushige*, 273 U.S. 284 (1927).

40. *Id.* at 291, 298-99.

41. *Id.* at 291-92.

42. *Id.* at 297.

43. *Id.* at 298.

44. *Id.* at 298-99.

basis of the Fourteenth Amendment's guaranty of liberty. It is clear, however, that state regulation of religiously affiliated schools may also raise First Amendment concerns.

a. Establishment Clause

The Establishment Clause of the First Amendment, as applied to the states through the Fourteenth Amendment, prohibits the making of any "law respecting an establishment of religion."⁴⁵ The courts have emphasized that the provision does not require total separation of church and state.⁴⁶ Its purpose is simply "to ensure that no religion will be sponsored or favored, none commanded, and none inhibited."⁴⁷

Although the courts have been unable to settle on any single standard,⁴⁸ the formula most often used to evaluate Establishment Clause claims is the so-called *Lemon* test.⁴⁹ Under the *Lemon* test, government regulation violates the Establishment Clause if it fails any of following three requirements. First, the regulation must have a "secular purpose." A regulation motivated, in part, by a religious purpose may be upheld as long as it is "not motivated wholly by religious considerations." However, the "mere existence of some secular purpose" will not satisfy the test if the policy or practice is "dominated by religious purposes."⁵⁰ It has been suggested that the question implicit in the first prong of *Lemon* is "whether the government intends to convey a message of endorsement or disapproval of religion."⁵¹ The second

45. U.S. Const. amend. I.

46. *Lynch v. Donnelly*, 465 U.S. 668 (1984).

47. *Walz v. Tax Commission*, 397 U.S. 664, 669 (1970).

48. See e.g. *Wallace v. Jaffree*, 472 U.S. 38, 112 (1985) (Renquist, J., dissenting) (noting that recent Supreme Court opinions had "expressed doubt on the usefulness of the *Lemon* test"); see also *Jones v. Clear Creek Unified Sch. Dist.*, 977 F.2d 963, 966 (5th Cir. 1992) (observing that the Supreme Court had used a total of five tests, including the three prongs of *Lemon*, to evaluate the validity of state action under the Establishment Clause).

49. *Lemon v. Kurtzman*, 403 U.S. 602 (1971).

50. *Lynch*, 465 U.S. at 680, 691; accord *Wallace* 472 U.S. at 56 ("statute must be invalidated if it is entirely motivated by a purpose to advance religion"); accord *Stone v. Graham*, 449 U.S. 39, 41 (1980) ("posting the Ten Commandments on schoolroom walls is plainly religious in nature").

51. *Lynch*, 465 U.S. at 691 (O'Connor, J., concurring). See also *Am. Jewish Cong. v. City of Chi.*, 827 F.2d 120, 126 (7th Cir. 1987) (This "purpose requirement 'aims at preventing the relevant governmental decision maker . . . from abandoning neutrality and acting with the intent of promoting a particular point of view in religious matters.'")

requirement is that the primary effect of the regulation in question must not be to either advance or inhibit religion. The primary "concern of the effects test is . . . 'whether the symbolic union of church and state effected by the challenged governmental action is sufficiently likely to be perceived by adherents of the controlling denomination as an endorsement, and by nonadherents as a disapproval, of their individual religious choices.'"⁵² The third and final prong of *Lemon* requires that the regulation in question not result in excessive entanglement of the government with matters of religion.⁵³

Government regulation of private religious schools can generally be justified by a valid secular purpose. Challenges to such regulation, therefore, tend to focus on *Lemon's* second and third prongs. As the *Farrington* court indicated, a regulatory scheme can be so burdensome or pervasive that its practical effect is to threaten the existence of the regulated school or deny school patrons any meaningful choice.⁵⁴ Even if not motivated by a spirit of hostility, such regulation can foster excessive entanglement with school administrative policies. If a school is religiously affiliated and if it functions as an extension of the church's religious mission, then intensive regulation may constitute a denial of religious freedom. This issue was squarely addressed in *Surinach v. Pesquera de Busquets*.⁵⁵

In *Surinach*, the First Circuit Court of Appeals considered an edict by the Puerto Rican Department of Consumer Affairs requiring extensive financial disclosure from all private schools in the Commonwealth. Although the Department tried to justify the independent utility of the required financial reports on the basis of the agency's mandate to control inflation, the Roman Catholic dioceses in Puerto Rico viewed the reporting requirement as possibly a first step toward a system of government-regulated cost restraints. To avoid that potential outcome, the Catholic schools sought judicial intervention.⁵⁶

(quoting *Corp. of the Presiding Bishop v. Amos*, 483 U.S. 327, 335 (1987)).

52. *Am. Jewish Cong.*, 827 F.2d at 127 (quoting *Grand Rapids Sch. Dist. v. Ball*, 473 U.S. 373, 390 (1985)).

53. *Lemon*, 403 U.S. at 612-13.

54. 273 U.S. at 298.

55. 604 F.2d 73 (1st Cir. 1979).

56. *Id.* at 74.

While expressing no opinion regarding the propriety of the reporting requirement for nonsectarian schools, the First Circuit held that the Commonwealth's regulation was unconstitutional, as applied to Catholic schools, under the religion clauses of the First Amendment. Though there was no apparent intent on the part of the Commonwealth to inhibit religion, the reporting requirement posed a threat of further state interference that could have touched upon the internal policies of church-related schools, thus leading to an "impermissible degree of entanglement."⁵⁷

b. Free Exercise Clause

Of the two religion clauses in the First Amendment, the Free Exercise Clause has generally been the more effective tool in challenging state regulation of religiously affiliated schools. In weighing the significance of private religious convictions against competing state interests, the freedom to practice religion historically has held a "preferred position."⁵⁸ For several decades, courts evaluated Free Exercise claims by using the four-part test established in *Sherbert v. Verner*⁵⁹ and applied in the landmark case of *Wisconsin v. Yoder*.⁶⁰ Under that test, the individual or institution challenging the regulation first had to demonstrate that its challenge was based upon a sincerely held religious belief. Although the state could not judge the merits of the belief, it could evaluate its sincerity and question whether the belief was truly religious or merely reflective of a personal philosophy or way of life.⁶¹ If successful in demonstrating a sincerely held religious belief, the party challenging the regulation was then required to show that the regulation unduly interfered with the exercise of that belief.⁶²

57. *Id.* at 78.

58. See e.g. *Prince v. Mass.*, 321 U.S. 158, 164 (1944); accord *Commonwealth v. Beiler*, 79 A.2d 134 (Pa. 1951); *Shapiro v. Dorin*, 99 N.Y.S.2d 830 (1950).

59. 374 U.S. 398 (1963).

60. 406 U.S. 205 (1972).

61. See e.g. *State v. Kasuboski*, 275 N.W.2d 101, 105-06 (Wis. App. 1978) (concluding that parents' withdrawal of their child from the public school system was motivated, not by religious conviction, but by ideological or philosophical belief).

62. See e.g. *Yoder*, 406 U.S. at 220; *State v. Shaver*, 294 N.W.2d 883 (N.D. 1980). For a more thorough discussion of Free Exercise analysis, see generally Jeffrey A. Drake, *Attempted State Control of the Religious School: Congress Shall Make No Law Inhibiting the Free Exercise of Religion?* 7 Ohio N.U. L. Rev. 956 (1980). See also

Legislation that unduly burdened the exercise of religious beliefs was considered unconstitutional unless the state could demonstrate "a compelling state interest in the regulation of a subject within the state's constitutional power to regulate."⁶³ The third and fourth elements of the *Sherbert* test, then, required the state to establish that its regulation was necessitated by a "compelling state interest," and its regulatory scheme was the least burdensome means to achieve that interest.⁶⁴

Even under *Sherbert's* "compelling interest" test, the court's decision could depend largely upon how the state's interest was characterized. The *Yoder* court defined the government's interest in compulsory education broadly as that "degree of education . . . necessary to prepar[e] individuals to be self-reliant and self-sufficient participants in society" and "to prepare citizens to participate effectively and intelligently in our open political system."⁶⁵ The state courts, by contrast, have tended to characterize state interests more narrowly. For example, the Nebraska Supreme Court stated, with reference to a challenged teacher certification requirement for private schools, that "the State has a compelling interest in the quality and ability of those who are to teach its young people."⁶⁶ When a state's interest is defined narrowly, in terms practically synonymous with the specific regulation at issue (*e.g.*, to ensure that teachers are properly qualified), rather than broadly, in terms of the final product desired (*e.g.*, to ensure that young citizens are prepared for self-government and self-reliance), a "compelling interest" is much easier for the state to establish. The regulated party's only recourse then may be to challenge whether the regulation is the least intrusive means for the state to achieve its interest.

Michael D. Baker, Student Author, *Regulation of Fundamentalist Christian Schools: Free Exercise of Religion v. The State's Interest in Quality Education*, 67 Ky. L.J. 415 (1979).

63. *Sherbert*, 374 U.S. at 403.

64. See *e.g. State v. DeLaBruere*, 577 A.2d 254, 264 (Vt. 1990).

65. *Yoder*, 406 U.S. at 221.

66. *Neb. v. Faith Baptist Church*, 301 N.W.2d 571, 579 (Neb. 1980). Other cases in which courts have characterized allegedly compelling state interests in a narrow way, virtually identical to the challenged regulation itself, include *Dolter v. Wahlert High Sch.*, 83 F. Supp. 266 (N.D. Iowa 1980) (application of Title VII to private high school); *State v. Andrews*, 651 P.2d 473 (Haw. 1982) (application of licensing requirements to day school); *Iowa v. Moorhead*, 308 N.W.2d 60 (Iowa 1981) (application of teacher certification requirement to church school).

With its surprising decision in *Employment Division v. Smith*, the Supreme Court severely restricted the further application of *Sherbert's* compelling interest test.⁶⁷ Under *Smith*, a neutral, generally applicable law that “incidentally” burdens religion is evaluated under the far-less-rigorous “rational basis” test except under very limited circumstances. Under a “rational basis” test, the state need only demonstrate that the regulation in question is rationally related to, or reasonably designed to accomplish, a legitimate governmental objective.⁶⁸ However, even under *Smith*, a state regulation may still be subject to the more rigorous compelling interest test if a party’s challenge implicates both a Free Exercise claim and an alleged violation of another constitutionally protected right, in a so-called “hybrid” claim.⁶⁹

Objections to governmental regulation of religiously affiliated schools typically fall within the hybrid claim exception. Because challenges to government regulation by parents of faith, or by denominational or parochial schools, generally implicate both Free Exercise concerns and Fourteenth Amendment liberty interests (and, perhaps, free speech claims as well), *Smith* normally does not preclude review under the compelling interest test.⁷⁰

Two opinions rendered on the same day in 1993 by the Michigan Supreme Court illustrate the importance of the hybrid claim exception. In *People v. DeJonge*, the parents of a home schooled student challenged Michigan’s teacher certification requirement as applied to home schooling

67. 494 U.S. 872 (1990).

68. 16C C.J.S. *Constitutional Law* §§ 970-72 (1985).

69. 494 U.S. at 881-82. One can question whether the hybrid claim exception makes sense, as it appears the Court is engaging in a form of new math, suggesting that $0 + 0 = 1$. The Sixth Circuit Court of Appeals has questioned the approach, opining that it is “completely illogical” and essentially ignoring it in *Kissinger v. Bd. of Trustees of Ohio St. U.*, 5 F.3d 177, 180 (6th Cir. 1993). The First, Ninth, Tenth and District of Columbia Circuits, however, have all adopted the hybrid claim exception, though they have applied it in different ways. See e.g. *Thomas v. Anchorage Equal Rights Commn.*, 165 F.3d 692, 705 (9th Cir. 1999); *Swanson v. Guthrie Indep. Sch. Dist. No. I-L*, 135 F.3d 694, 700 (10th Cir. 1998); *EEOC v. Catholic U. of Am.*, 83 F.3d 455, 467 (D.C. Cir. 1996); *Brown v. Hot, Sexy, & Safer Prods.*, 68 F.3d 525, 539 (1st Cir. 1995).

70. For a more complete discussion of *Smith* and the hybrid claim exception, see Ralph D. Mawdsley, *Employment Division v. Smith Revisited: The Constriction of Free Exercise Rights Under the U.S. Constitution*, 76 Educ. L. Rep. 1 (1992).

parents.⁷¹ The DeJonges had demonstrated to the court's satisfaction that their decision to home school was based upon a sincerely held religious belief.⁷² Finding that the parents' challenge was grounded in both the Free Exercise Clause and a claim of parental rights under the Fourteenth Amendment, the court applied a compelling interest standard to the regulation and held that the state had not met its burden of proving that the certification requirement as applied to the DeJonges was necessary to achieve a compelling state interest. Remarkably, on the same day, the court rendered a separate opinion in a challenge to the same requirement by another home schooling family, in *People v. Bennett*.⁷³ The factual circumstances in *DeJonge* and *Bennett* were virtually identical except that the Bennetts did not claim that their decision to home school was based on religious conviction.⁷⁴ The court emphasized that the Bennetts' liberty interest as parents was not considered a "fundamental" right, and that the compelling interest test was required "only when the interests of parenthood are combined with the Free Exercise Clause."⁷⁵ Applying the rational basis test, and finding that the Bennetts had not met their burden of proving the teacher certification requirement was unreasonable, the court upheld the regulation as applied to the Bennetts.⁷⁶

C. State Interests

Although private schools clearly have a right to exist, and parents are guaranteed the liberty to choose nonpublic schooling for their children, the courts have consistently affirmed the right of states to regulate nonpublic schools. States have a substantial interest in ensuring that all children receive an adequate education.⁷⁷ They, therefore, have the right to regulate the manner in which private schools perform their basic educational function, and may require such schools

71. 501 N.W.2d 127 (Mich. 1993).

72. *Id.* at 136-37.

73. 501 N.W.2d 106 (Mich. 1993).

74. *Id.* at 112.

75. *Id.* at 120.

76. *Id.*

77. See e.g. *Wolman v. Walter*, 433 U.S. 229, 240 (1977); *Levitt v. Comm. for Pub. Educ.*, 413 U.S. 472, 479 (1973).

to meet certain minimum standards.⁷⁸ Even the *Pierce* Court acknowledged the state's right to reasonably regulate private schools:

No question is raised concerning the power of the state reasonably to regulate all schools, to inspect, supervise and examine them, their teachers and pupils; to require that all children of proper age attend some school, that teachers shall be of good moral character and patriotic disposition, that certain studies plainly essential to good citizenship must be taught and that nothing be taught which is manifestly inimical to the public welfare.⁷⁹

Pierce thus explicitly recognizes a basis for reasonable state regulation of private school attendance, minimal curricular requirements and reasonable qualifications for teachers. The key question is that of reasonableness.

This article has briefly reviewed the holdings in *Pierce*, *Farrington*, *Surinach* and *Yoder*, among others. Together, the cases reviewed stand for the propositions that (1) a state may not regulate so exhaustively as to threaten the existence of private schools; (2) a state may not regulate the intimate details of private school policies and administration; (3) a state may not so regulate religious schools as to become excessively entangled in the affairs of the church; and (4) when the compelling interest test is implicated under *Smith's* hybrid rights doctrine, a state must regulate in the least burdensome manner. In conclusion, the critical question is really "whether a state agency which cannot prohibit outright the operation of nonpublic schools may nevertheless regulate them out of existence by imposing statutory or regulatory requirements which nonpublic schools cannot meet."⁸⁰

78. See e.g. *Lemon*, 403 U.S. at 613 ("A State always has a legitimate concern for maintaining minimum standards in all schools it allows to operate."); *Bd. of Educ. v. Allen*, 392 U.S. 236, 246-47 (1968) (affirming that states have power to require "minimum hours of instruction," trained teachers, and certain subjects of curriculum).

79. *Pierce*, 268 U.S. at 534.

80. Mawdsley, *supra* n. 24, at 80.

III. EXTENT OF STATE REGULATION

A. *Background*

The degree of regulation permitted by the courts substantially exceeds the amount of control actually exercised by most states. Faced with strong lobbies and reasoned arguments on both sides of the issue, most states have elected to walk a line well within the outer boundaries. Also, judicial decisions may have given a degree of caution to would-be regulators. Courts have differed at the margins in terms of where they draw the line, but they have consistently held that overly aggressive regulatory schemes are unconstitutional.⁸¹ Hereafter, sections B and C will describe some of the common state regulatory schemes as reflected in the current state survey results, which are included in the Appendix of this article. Section B will discuss some of the thinking that may have led to the present regulatory climate and highlight the range of positions taken by states regarding mandatory accreditation or approval of private schools. Section C focuses on states' teacher certification requirements and curricular guidelines.

B. *Common Regulatory Schemes Reflected in the Current Survey Results*

The United States Supreme Court has never held unconstitutional a requirement for state approval or accreditation of private schools. Likewise, the state courts that have considered the issue have consistently held that mandatory accreditation is constitutional, provided the underlying state standards are not overly burdensome. In *State v. Shaver*,⁸² the Supreme Court of North Dakota upheld a state statute requiring accreditation of nonpublic schools.⁸³

81. During a four-year period in the late 1970's alone, the courts in three states addressed the issue of comprehensive "minimum standards" as applied to private schools. In each case, the standards were held to violate the federal and/or state constitutions. See *Ky. St. Bd. for Elementary and Secondary Educ. v. Rudasill*, 589 S.W.2d 877 (Ky. 1979), cert. denied, 446 U.S. 938 (1980); *State v. Whisner*, 351 N.E.2d 750 (Ohio 1976); *State v. LaBarge*, 357 A.2d 121 (Vt. 1976).

82. 294 N.W.2d 883 (N.D. 1980).

83. North Dakota law no longer requires state accreditation for private school. State approval is still required, N.D. Cent. Code § 15.1-06-06 (2001), but private schools may apply for a waiver of the accreditation requirement, N.D. Cent. Code §

Likewise, the Nebraska Supreme Court, in *State ex rel. Douglas v. Faith Baptist Church*,⁸⁴ strongly affirmed that state's mandatory accreditation statute. In contrast, the Ohio Supreme Court, in *State ex rel. Nagle v. Olin*,⁸⁵ encountered a state accreditation requirement contained in an unusually detailed and comprehensive set of regulations that Ohio imposed on accredited schools. Because the court found the specific requirements for accreditation overly burdensome with respect to sectarian schools, the statute was deemed unconstitutional. The court suggested, however, that it would not have opposed less-exhaustive regulations:

[U]ntil such time as the State Board of Education adopts minimum standards which go no further than necessary to assure the state's legitimate interests in the education of children in private elementary schools, the balance is weighted, *ab initio*, in favor of a First Amendment claim to religious freedom.⁸⁶

The Kentucky Supreme Court, in 1979, also rendered a sweeping decision overturning that state's regulatory system as applied to private schools. The court did not, however, hold that mandatory accreditation was unconstitutional *per se*.⁸⁷

The most common justification for mandating approval or accreditation of private schools is to give the state the means to ensure compliance with its educational standards. If the state has the authority to establish specific standards for private schools, then it seems axiomatic that it also has the right to take the steps necessary to ensure compliance with those standards.⁸⁸ It is not surprising, then, that of the twenty-six states that reported in the current survey that they require registration, approval or accreditation of private schools, twenty-two reported having specific curriculum and/or teacher certification requirements that schools must meet in order to obtain approved or accredited status.⁸⁹ In fact, most of the

15.1-06-08 (2001).

84. 301 N.W.2d 571 (Neb. 1981). See also *State ex rel. Kandt v. N. Platte Baptist Church of N. Platte*, 345 N.W.2d 19 (Neb. 1984).

85. 415 N.E.2d 279 (Ohio 1980).

86. *Id.* at 288.

87. *Rudasill*, 589 S.W.2d at 877.

88. See Randall, *supra* n. 11, at 341.

89. See Appendix noting the following state responses: (1) California, Connecticut, Delaware, Iowa, Kansas, Maryland, Minnesota, New Hampshire, Rhode Island, Vermont, West Virginia, and Wisconsin have mandatory curricular requirements for

states that reported having mandatory approval or accreditation requirements also indicated that their curricular standards were relatively detailed and comprehensive.⁹⁰

Opponents of mandatory accreditation sometimes suggest that the civil government has no lawful jurisdiction over the administration of church-related schools.⁹¹ Where operation of a school is an extension of a church's religious mission, the state – it is argued – has no legitimate authority. To these schools, the accreditation process itself is objectionable regardless of whether the school has any objection to the underlying educational standards themselves.⁹² Others have objected to mandatory approval requirements on the basis that there simply is no proven correlation between state regulation of private schools and academic achievement.⁹³

private schools; (2) Wyoming has a teacher certification requirement but no apparent curricular standards; and (3) Alabama, Michigan, Nebraska, North Dakota, Ohio, Pennsylvania, South Dakota, Tennessee, and Washington have both.

90. See Appendix.

91. See *e.g.* *New Life Baptist Church Acad. v. Town of East Longmeadow*, 885 F.2d 940 (1st Cir. 1989) (upholding Massachusetts' requirement for approval of private schools by local school committee against objections of fundamentalist Baptist church).

92. *Id.* at 943. (indicating the New Life Baptist Church had no objection to compliance with the local committee's curricular standards, but objected to the requirement that it "bend the knee" by recognizing state sovereignty and seeking committee approval).

Some private school administrators, including those at New Life Baptist Church, have suggested substituting a mandatory testing requirement for formal accreditation or state approval, as a means of demonstrating educational quality while avoiding the doctrinal dilemma of either acknowledging the civil authorities as "sovereign," by submitting to mandatory approval, or closing their doors for lack of approval. Survey responses indicated that 18 states currently require some form of periodic testing and reporting – and it appears that some may use such requirements as a substitute for accreditation or approval. However, the majority of states that require student testing also require formal accreditation, approval or registration, and likely use the test results as a means of documenting the schools' continued eligibility for state approval.

States that require private schools to report the results of student testing include Alaska, Idaho, Indiana, Kansas, Minnesota, Mississippi, Nebraska, New Mexico, New York, North Carolina, North Dakota, Ohio, Pennsylvania, South Dakota, Tennessee, Vermont, West Virginia and Wyoming. Of those, all except Alaska, Idaho, Indiana, Mississippi, and New York require some form of state accreditation, approval or registration. However, Idaho, Indiana, Kansas and New Mexico exempt non-accredited schools from the reporting requirement, and Wyoming exempts church schools.

Testing and reporting requirements have been held constitutional by federal and state courts that have considered the issue. See *e.g.* *Ohio Assn. of Indep. Schools v. Goff*, 92 F.3d 419 (6th Cir. 1996); *DeLaBruere*, 577 A.2d 254.

93. See *e.g.* Charles E. Ross, "Train Up a Child in the Way He Should Go." *State Regulation of Private Religious Education*, 9 Miss. C. L. Rev. 101, 109 (1988). One of the questions added to the current survey form asked whether the state agency could

Although the courts have consistently upheld the power of states to require accreditation of private schools, many states have chosen not to do so. In fact, only twenty-six of the forty-seven states that responded to the survey require some form of accreditation, approval or registration for private schools.⁹⁴ Of those twenty-six states, at least seven expressly exempt church schools from the requirement.⁹⁵ In addition to the twenty-six states that require some form of formal state recognition, thirteen provide for some form of voluntary state accreditation, approval or registration if a school qualifies and chooses to seek it.⁹⁶ A number of states offer a range of options. For example, some states require registration or a minimum level of approval, but they authorize a more rigorous level of approval or accreditation if the school requests it.⁹⁷

Although it appears that no state requires formal accreditation for all private schools, two states – Iowa and South Dakota – permit only minimal exceptions. Iowa requires that private schools obtain state accreditation unless a school

point to any evidence of a correlation between the quality of education in private schools and the requirement for state approval. Survey forms on file with the author show that no state could offer any such evidence.

94. See Appendix noting that the following states indicate that they require accreditation, registration or formal approval in order to operate a private school: (1) California, Connecticut, Delaware, Kansas, Minnesota, New Mexico, North Carolina, and Wisconsin require registration; (2) Alabama, Pennsylvania, Tennessee, and Wyoming also require registration as a general rule, but exempt religious schools; (3) Michigan, New Hampshire, North Dakota, Rhode Island, Vermont, Washington, and West Virginia require formal state approval for private schools; (4) Maryland, Nebraska, and Ohio also require state approval for private schools generally, but exempt religious schools; (5) Iowa and South Dakota apparently require state accreditation for all private schools; and (6) Massachusetts and Utah require approval by local school committees. Among the states that mandate registration only, the requirements are often minimal. Kansas, for example, seems to require only that the school register its name and address with state officials to facilitate access to student records in the event the student transfers.

95. See Appendix noting that states that exempt church schools from otherwise-mandatory approval or registration include Alabama, Maryland, Nebraska, Ohio, Pennsylvania, Tennessee, and Wyoming.

96. See Appendix noting that Alaska, Colorado, Idaho, Illinois, Indiana, Kentucky, Mississippi, Montana, New Jersey, New York, Oklahoma, and South Carolina have provisions for voluntary state accreditation or approval. Oregon provides for voluntary “registration” of private schools.

97. See Appendix noting that California, Connecticut, Kansas, Michigan, New Hampshire, New Mexico, North Carolina, North Dakota, and Tennessee are among the states that require private schools to register or obtain state approval, and further authorize such schools voluntarily to seek a more demanding form of formal state approval or accreditation.

can show that all of its teachers are licensed.⁹⁸ South Dakota's survey response indicated that there are no exceptions to the requirement for state accreditation; but a relevant South Dakota statute actually provides a narrow exception for students receiving "alternative instruction."⁹⁹

Not surprisingly, the states that require formal accreditation or approval tend to regulate more closely in other respects, as well. Both Iowa and South Dakota, for example, have detailed curriculum requirements for private schools and require that teachers be certified by the state, that classes be conducted for a specified number of days per year and hours per day, that the schools administer annual standardized tests, at least for certain grades, and that the schools submit enrollment, attendance, or similar data to public officials.

Two states whose survey responses gave the appearance of minimal state oversight actually regulate private schools quite closely. Both Massachusetts and Utah indicated that nonpublic schools need not obtain state approval, but both states require formal approval by a local committee in order to operate a private school.¹⁰⁰ The local committees in both states have discretion to impose detailed and comprehensive – and somewhat disparate – standards for the operation of private schools.¹⁰¹

98. See Appendix noting that Iowa law exempts from this requirement "religious congregations established before 1967 that do not believe in education beyond grade 8" – specifically, the Amish schools, which are not required to be accredited or to employ licensed teachers.

99. S. D. Codified Laws § 13-27-3 (1999).

100. See Appendix.

101. The potential for inconsistent application of the standards in these states creates a unique set of problems for an arrangement of this nature. In Massachusetts, for example, the compulsory attendance law, General Laws c. 76 § 1, provides the only mandatory standard by which local committees must evaluate private schools – and does so in very general terms – stating as follows:

... [S]chool committees shall approve a private school when satisfied that the instruction in all the studies required by law equals in thoroughness and efficiency, and in the progress made therein, that in the public schools in the same town; but shall not withhold such approval on account of religious teaching

Although the Commonwealth's Commissioner of Education has given local committees advice in the form of Guidelines for Approval of Massachusetts Private Schools, the Guidelines are quite general in nature and are non-binding. Moreover, there is no oversight or review by, or appeal to, the Commonwealth of a decision by a local committee to grant or deny approval of a school.

At the opposite end of the spectrum are states that take what might be described as a “hands off” approach. Nine states reported that they do not provide even voluntary state accreditation or approval for private schools.¹⁰² Of those, Georgia requires private schools to obtain a business license, and Missouri requires private schools to obtain a license from the State Division of Family Services. Taking a different approach, Texas and Virginia have procedures for voluntary accreditation by private organizations but no longer provide accreditation directly by the state. In Texas, schools may seek accreditation from a private organization (TEPSAC), but the state is not involved. In Virginia, accreditation can be sought from any one of a wide range of private accrediting bodies, both secular and religiously affiliated, which are approved by the Commonwealth.

While some states do not require formal state registration or approval of private schools, they nevertheless provide significant benefits for approved schools or for graduates from such schools. In New York, for instance, registration by private schools is strictly voluntary, but “[o]nly those private schools which are registered with the Board of Regents may issue diplomas and administer the Regents Exam.”¹⁰³

C. Other Regulatory Requirements

1. Teacher Certification

Of all the programmatic standards imposed upon private schools by the states, teacher certification may be the most controversial. Proponents of teacher certification argue that certification requirements are necessary to further the state’s interest in assuring an adequate education for its citizens. “[E]xempting certain schools from the [teacher] certification requirements completely would impair [the state’s interest in ensuring that children receive a minimally adequate

102. See Appendix noting that Arizona, Arkansas, Colorado, Florida, Georgia, Maine, Missouri, Texas, and Virginia all reported that the states themselves do not accredit or approve private schools.

103. Likewise, Kentucky provides scholarship money to state certified private schools, and allows personnel from certified schools to participate in teacher and principal intern programs. In Massachusetts and New York, state approval is necessary for receipt of state funds for special education students in private schools. (These data are from survey response forms on file with the author.)

education], at least when it might be administratively difficult to ensure that students taught by uncertified teachers . . . actually did obtain the desired amount of education.”¹⁰⁴ Even proponents of such requirements, however, acknowledge the difficulty of demonstrating any statistical correlation between teacher certification and the quality of classroom teaching.¹⁰⁵

Religiously affiliated schools, especially the smaller evangelical Christian schools, typically oppose mandatory certification, both because of its perceived impact on key mission-driven personnel decisions and because of the practical difficulties of finding and attracting teachers whose views are harmonious with the church and whose qualifications are acceptable to the state.¹⁰⁶

As to the legality of teacher certification requirements, the United States Supreme Court has never forbidden such a practice. In fact, the *Pierce* court explicitly stated that regulators could require “that teachers shall be of good moral character and patriotic disposition.”¹⁰⁷ Among the state courts, teacher certification requirements have been upheld, although the supreme courts of Ohio, Kentucky and Vermont have overturned what they considered overly pervasive regulatory schemes that happened to include such requirements.¹⁰⁸ In *State v. Whisner*,¹⁰⁹ the Ohio Supreme Court held that the state board of education’s minimum standards for nonpublic schools violated the free exercise of religion of parents who sent their

104. Mark Tushnet, *Public and Private Education: Is There a Difference?* U. Chi. Leg. F. 43, 70 (1991).

105. J. Eric Evenson II, Student Author, *State Regulation of Private Religious Schools in North Carolina – A Model Approach*, 16 Wake Forest L. Rev. 405, 426 (1980) (“While the state failed to *prove* that these regulations ensure quality education, the reason is obvious: such a showing is impossible. . . . If the state is required to prove with empirical evidence that its regulations advance the compelling interest of education, it simply cannot do so.”)

106. See *Fellowship Baptist Church v. Benton*, 815 F.2d 486, 492 (8th Cir. 1987). See also Evenson, *supra* n. 105, at 412, 422 (noting that “religious schools have objected to having to use only state-qualified teachers in their schools because teachers necessarily impart values to the students they teach and religious schools object to a lessening of control over those values”).

107. 268 U.S. at 534.

108. *State v. Whisner*, 351 N.E.2d 750 (Ohio 1976); accord *State ex rel. Nagle v. Olin*, 415 N.E.2d 279, 285-87 (Ohio 1980) (noting that the State Board of Education had failed to adopt “new [less intrusive] standards for application to nonpublic schools” in response to *Whisner*); *Rudasill*, 589 S.W.2d 877; *LaBarge*, 357 A.2d 121.

109. 351 N.E.2d 750.

children to Christian elementary schools.¹¹⁰ Under the standards, the board had power to control curricula, specify teaching methods, regulate the physical layout of the schools, mandate minimum hours of instruction, dictate educational policies, and specify teacher qualifications.¹¹¹

The Kentucky Supreme Court also overturned its state's comprehensive regulatory system, which included a teacher certification requirement, finding that it violated the state bill of rights. In explaining its decision, the court focused on a Kentucky constitutional provision that "specified that no person should be compelled to send his child to any school to which he may be conscientiously opposed."¹¹²

The Vermont Supreme Court overturned a parent conviction under a state truancy statute requiring attendance at approved schools. Under the statute, schools were approved if they could demonstrate the capacity to provide an education equivalent to that of the public schools. In order to be approved, the school not only had to hire certified teachers, but also demonstrate that it "had the resources required to meet its stated objectives, including financial capacity, faculty, curriculum, physical facilities, and special services."¹¹³

The decisions by the Ohio, Kentucky and Vermont courts were apparently based, in large measure, on circumstances unique to the specific cases rather than a general rejection of teacher certification requirements. The Kentucky court, for example, explained that its holding was based on a state constitutional provision that was "more restrictive of the power of the state to regulate private and parochial schools than is the first amendment to the federal constitution as it has been applied to the states."¹¹⁴

The Ohio Supreme Court, in *Whisner*, did not directly address the state's teacher certification requirement even though that was one of the regulatory provisions to which the

110. *Id.* at 765 (For example, a rule "which allocates instructional time . . . unduly burdens the free exercise of religion and interferes with the rights of conscience" (internal citation omitted).

111. *Id.* at 764-68.

112. Annotation, *Validity of State Regulation of Curriculum and Instruction in Private and Parochial Schools*, 18 A.L.R. 4th 649, 654 (1982) (referring to *Rudasill*, 589 S.W.2d at 879).

113. *LaBarge*, 357 A.2d at 124.

114. *Rudasill*, 589 S.W.2d at 879, n.3.

defendants objected.¹¹⁵ The court merely held that Ohio's minimum standards were overly intrusive taken as a whole:¹¹⁶

In our view, these standards are so pervasive and all-encompassing that total compliance with each and every standard by a non-public school would effectively eradicate the distinction between public and non-public education, and thereby deprive these appellants of their traditional interest as parents to direct the upbringing and education of their children.¹¹⁷

The Vermont Supreme Court's decision to reverse the conviction of parents under the state's truancy statute was based upon a finding that the state had not met its burden of proving that the education received by the children in question was less than "equivalent."¹¹⁸ Although the teacher certification requirement was one of the standards to which the parents had objected, the court did not specifically address it.

Other state and federal courts that have considered teacher certification requirements have consistently found them reasonable. Those upholding such requirements include the courts in Iowa,¹¹⁹ Nebraska,¹²⁰ North Dakota,¹²¹ Alabama,¹²² Massachusetts,¹²³ Maine¹²⁴ and Michigan.¹²⁵

115. 351 N.E.2d at 757.

116. *Id.* at 764.

117. *Id.* at 768.

118. *LaBarge* 357 A.2d at 123-24.

119. *Fellowship Baptist Church v. Benton*, 620 F. Supp. 308 (S.D. Iowa 1985), *aff'd. in part and rev'd. in part on other grounds*, 815 F.2d 485 (8th Cir. 1987); *Johnson v. Charles City Community Schools Bd. of Educ.*, 368 N.W.2d 74 (Iowa 1985), *cert. denied*, 474 U.S. 1033 (1985).

120. *Faith Baptist Church*, 301 N.W.2d 571 (Neb. 1981); *accord Meyerkorth v. State*, 115 N.W.2d 585 (Neb. 1962), *app. dismissed*, 372 U.S. 705 (1963).

121. *State v. Anderson*, 427 N.W.2d 316 (N.D. 1988); *State v. Patzer*, 382 N.W.2d 631 (N.D. 1986) (upholding certification requirement as applied to home schooling parents); *State v. Rivinius*, 328 N.W.2d 220 (N.D. 1982), *cert. den.*, 460 U.S. 1070 (1983); *State v. Shaver*, 294 N.W.2d 883 (N.D. 1980).

122. *Jernigan v. State*, 412 So.2d 1242 (Ala. Civ. App. 1982).

123. *Braintree Baptist Temple v. Holbrook Pub. Schools*, 616 F. Supp. 81 (D. Mass. 1984).

124. *Bangor Baptist Church v. Me. Dept. of Educ. & Cultural Servs.*, 549 F. Supp. 1208 (D. Me. 1982).

125. *People v. Bennett*, 501 N.W.2d 106 (Mich. 1993) (upholding teacher certification requirement as applied to home schooling parents not claiming the exercise of First Amendment rights); *Sheridan Rd. Baptist Church v. Dept. of Educ.*, 396 N.W.2d 373 (Mich. 1986).

Given the general acceptance by the courts of teacher certification requirements, it is noteworthy that so few states actually impose such a requirement. Of the forty-seven respondents to the current survey, thirty-eight either do not require teacher certification at all or require it only for schools seeking voluntary accreditation or approval. Of the nine states that require teacher certification even for schools not seeking accreditation or approval,¹²⁶ at least six allow exceptions for religiously affiliated schools or institutions that can demonstrate a sincerely held religious objection.¹²⁷ Twenty-eight states do not require teachers in any private school to be certified,¹²⁸ although seven of those states either demand an alternative minimum level of education or require that private schools be able to establish that their teachers are capable or qualified.¹²⁹ If one eliminates the states that require certification only for schools seeking voluntary accreditation or approval and those states that allow religious exemptions, it appears that only two states – South Dakota and Washington – require teacher certification for religiously affiliated schools.¹³⁰

126. See Appendix which shows that states that appear to require teacher certification even for non-accredited schools include Alabama, Alaska, Iowa, Michigan, Nebraska, Pennsylvania, South Dakota, Washington, and Wyoming.

127. See Appendix showing that states allowing religious exemptions from the teacher certification requirement include Alabama, Alaska, Michigan, Nebraska, Pennsylvania, and Wyoming.

128. See Appendix indicating that states not requiring teacher certification include Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Illinois, Kentucky, Maryland, Massachusetts (although local school committees apparently may require teacher certification), Minnesota, Missouri, Montana, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Oregon, Rhode Island, South Carolina, Texas, Utah (although it is unclear whether local school committees may require certification), Virginia, and Wisconsin.

129. See Appendix noting that Connecticut and Maryland laws require private school teachers to meet minimum educational requirements, but the Connecticut law applies only to teachers in state-approved schools, and the Maryland law expressly exempts teachers in church schools. California, New York, Minnesota and Oregon require that non-public school teachers be “capable” or “qualified”, but the Oregon law applies only to teachers in “registered” schools and Minnesota law provides a number of ways other than state certification for establishing the requisite qualification. Utah requires that teachers in non-public schools be able to give the same quality of instruction as do public school teachers. Three other states – Iowa, Kansas, and North Dakota – exempt non-accredited schools from the teacher certification requirement, but require non-accredited schools to establish that their teachers are “competent” or professionally licensed, though not certified.

130. See Appendix noting that even Washington exempts teachers from certification requirements upon a showing of “unusual competence.”

2. Curricular Requirements

Regulatory agencies have justified at least minimal curricular requirements under the theory that schools should prepare children to become self-sufficient and capable of participating in a representative government.¹³¹ Others have suggested that private schools perform an essentially public function in educating children, and that the state therefore has a substantial interest in determining what is taught.¹³² Other, more-ideological proponents of state regulation view the issue as part of the larger question of ultimate authority to control the education and upbringing of a child.¹³³

For many private schools, state curricular requirements have little practical impact because the state mandates core subjects that the vast majority of schools would provide anyway.¹³⁴ Moreover, as one scholar has reported, the curricula in parochial schools tend to parallel those used in the public schools,¹³⁵ and denominational schools that seek accreditation from private agencies must also offer a strong foundation of basic courses. The curricula at non-accredited evangelical and fundamentalist Christian schools are the most likely to differ significantly from the norm.¹³⁶ It is therefore not surprising that challenges to curricular standards tend to come from such schools. Parents and administrators of some Christian schools have objected to comprehensive curriculum requirements as an infringement upon their faith-based educational programs.¹³⁷ At the very least, by requiring that certain subjects be taught, the state necessarily “substitutes its own educational priorities for those of the school.”¹³⁸

131. See e.g. Devins, *supra* n. 22, at 362-63 (discussing the justification for programmatic regulations in general).

132. See e.g. Randall, *supra* n. 11, at 344 (commenting on the justification for state standards in general).

133. See e.g. Minow, *supra* n. 20, and accompanying text.

134. See *infra* nn. 145-48 and accompanying text.

135. Frances R. A. Paterson, “Supreme Court: Enemy of Freedom?” *Constitutional Law in Christian School Textbooks*, 29 J.L. & Educ. 405, 406 (2000).

136. *Id.*

137. Ross, *supra* n. 93, at 104 (pointing out that “[a]t the most fundamental level, the battle between the state and parents for control of the child’s education is a struggle to influence how the child thinks [B]y far the most potent . . . instrument of power is the ability to control what other people believe. Whoever controls what a child learns has tremendous impact on the formation of the child’s beliefs”).

138. *Government Regulation of Religious Organizations*, 100 Harv. L. Rev. 1740,

The legal authority of states to impose reasonable curricular requirements upon private schools, including denominational and parochial schools, is well established. The *Pierce* court provided a foundation for such a requirement more than seventy years ago: "No question is raised concerning the power of the State . . . to require that . . . certain studies plainly essential to good citizenship must be taught, and that nothing be taught which is manifestly inimical to the public welfare."¹³⁹

Since *Pierce*, both federal and state courts have consistently upheld state curriculum requirements in principle,¹⁴⁰ but have imposed a number of limitations. Viewed as a whole, the decisions provide that (1) required subjects must be "rationally related" to the goals of self-sufficiency and participation in the democratic process;¹⁴¹ (2) the state's regulation may not be so pervasive as to destroy any real difference between public and religiously-affiliated education;¹⁴² (3) the state may not prohibit the teaching of any subject which is not "manifestly inimical to the public welfare";¹⁴³ and (4) the state may not dictate the manner in which required subjects are taught.¹⁴⁴

1757 (1987). See also Evenson, *supra* n. 105, at 425.

139. 268 U.S. at 534.

140. See e.g. *Johnson*, 368 N.W.2d 74; *Braintree Baptist Temple*, 616 F. Supp. 81; *Bangor Baptist Church*, 549 F. Supp. 1208; *Shaver*, 294 N.W.2d 883. See also *W. Va. St. Bd of Educ. v. Barnette*, 319 U.S. 624, 631 (1943) (noting that "the State may 'require teaching by instruction and study of all in our history and in the structure and organization of our government, including the guaranties of civil liberty which tend to inspire patriotism and love of country.'" (quoting *Minersville Sch. Dist. v. Gobitis*, 310 U.S. 586, 604 (1940) (Stone, J., dissenting))).

141. See e.g. *Rudasill*, 589 S.W.2d at 883, n. 10 ("Obviously, such basic studies as reading, writing, spelling, grammar, history, mathematics and civics are so related . . . This is not to say that other subjects may not bear a more remote but still rational relationship.").

142. See *Whisner*, 351 N.W.2d at 765 (noting that the Ohio regulations to which plaintiffs objected in *Whisner* not only stipulated which subjects had to be taught, but specified the number of hours per day that had to be devoted to each subject. In effect, the entire school day was subject to state control. The court stated as follows:

We refer, first, to ED6-401-02(G) [the statutory provision pertaining to required curriculum], which allocates instructional time in the comprehensive curriculum . . . almost to the minute. . . . We think that ED6-401-02(G) "unduly burdens the free exercise of religion" and interferes "with the rights of conscience," by requiring a set amount of time to be devoted to subjects which, by their very nature, may not easily lend themselves to the teaching of religious principles (e.g., mathematics)).

143. See e.g. *Meyer*, 262 U.S. 390. See also *Bartels v. Iowa*, 262 U.S. 404 (1924).

144. *Douglas v. Faith Baptist Church of Louisville*, 301 N.W.2d 571, 579 (upholding the state regulations, but noting that the state had made "no effort to dictate in what manner . . . knowledge shall be imparted").

Given their clear legal authority to adopt reasonable curriculum requirements, it is not surprising that thirty-eight of the forty-seven states responding to the current survey have chosen to do so. However, seven of those states impose curriculum requirements only upon schools seeking voluntary accreditation, approval, or licensure,¹⁴⁵ and one of those states – Alabama – expressly exempts church schools. Among the thirty-eight states that impose some form of curricular standards, there is substantial variation concerning what is actually required. A number of states mandate only a minimal list of subjects such as citizenship or federal and state history and government,¹⁴⁶ while others provide an extensive list of required subjects,¹⁴⁷ or mandate that private schools teach the same subjects as do their public counterparts.¹⁴⁸

Nine respondents to the current survey indicated that they impose no curricular standards upon private schools.¹⁴⁹ A decision to forego imposing curriculum requirements upon private schools places greater reliance on the marketplace to ensure that the educational programs offered at such schools are at least adequate. However, as attorney William Ball has

145. See Appendix noting that Alabama, California, Delaware, Illinois, and New Jersey require private schools to offer the same subjects as do public schools or, at least, an “equivalent” curriculum. Connecticut, Minnesota, New York, North Dakota, Rhode Island, South Dakota, Vermont, Washington, West Virginia, Wisconsin, and Wyoming specifically list subjects that must be offered in private schools, although the lists vary substantially in scope from state to state. Missouri, New Hampshire, and Texas require only that private schools provide a short list of subjects related to history and government. Other states indicating that they impose curricular requirements, but whose survey responses did not specify the nature of those requirements, include Colorado, Georgia, Idaho, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Michigan, Mississippi, Montana, Nebraska, Ohio, Oklahoma, Oregon, Pennsylvania, Tennessee, and Utah.

Those that impose such requirements only upon schools seeking state accreditation or approval, or only under similar circumstances, include Indiana, Maine, Mississippi, Oklahoma, Oregon, Tennessee, and West Virginia.

146. *Id.* and accompanying text.

147. See Appendix showing that Rhode Island’s list of mandated subjects is notable for its breadth of scope, while states requiring only a minimal list of core academic subjects include South Dakota, West Virginia, and Wisconsin. Other states that require specific subjects tend to fall somewhere between the extremes.

148. See *supra* n. 145 and accompanying text.

149. See Appendix indicating that states reporting that they impose no curricular requirements on private schools included Alaska, Arizona, Arkansas, Florida, Massachusetts (although it appears that, under state guidelines, the local school committees may impose such requirements), New Mexico, North Carolina, South Carolina, and Virginia.

suggested, market forces or pressures might be just as effective as state regulation: "Parents are not long going to invest money in schools which are worthless. Parents who care enough about their children to enroll them in private schools are, by and large, parents who are keenly interested in their children and willing to sacrifice for them."¹⁵⁰

IV. CHANGES IN STATE REGULATORY SCHEMES

A total of forty-four states responded to both the current survey and the 1986 survey by the State of Florida. A comparison of responses reflects a substantial amount of change over the fifteen-year period covered, but the direction of change is somewhat mixed. To appreciate more fully the nature and degree of the change, one must distinguish between the relatively minor, incremental revisions that some states have implemented and more fundamental overhauls of regulatory philosophy or approach. The category of fundamental changes includes: (1) de-regulation of private schools; (2) cessation of state accreditation or approval; (3) significant revamping of accreditation standards; or (4) establishment of a new system of accreditation that did not previously exist.

Of the forty-four states that responded to both surveys, twenty-two reported some type of change.¹⁵¹ Most of the changes were relatively minor, and are briefly summarized in this section. Although exceptions exist, it appears that the states that maintained their existing regulatory structure, but modified specific elements, tended to ratchet the requirements up more often than not. Responses from eight states, for example, reflected new or more stringent curriculum requirements or teacher qualification standards, while only two states indicated reductions in those areas. By contrast, more states have eliminated minimum-hours-of-instruction requirements than have adopted new ones, though a slightly larger number of states now appear to require mandatory testing.

150. Devins, *supra* n. 22, at 354-55.

151. The following discussion does not address every reported change, but focuses on those changes that were most significant to the author.

With regard to teacher certification specifically, five states reported that they have either heightened their certification requirements or imposed new educational standards,¹⁵² while the response from one state indicated that requirements have been relaxed somewhat for non-accredited schools.¹⁵³ For the most part, the new or more rigorous certification requirements apply only to schools seeking voluntary accreditation. In some instances, the new certification requirements expressly exempt religiously-affiliated schools. Two of the five states reporting an increase in teacher certification standards – Connecticut and Mississippi – apply the new requirements only to schools seeking voluntary accreditation. Similarly, Nebraska and Wyoming have adopted new requirements for teacher certification, but they exempt religious schools or “schools of conscience.”¹⁵⁴

As to curriculum standards, four states indicated that requirements have been newly imposed or made more rigorous,¹⁵⁵ while one state eliminated previously existing curricular requirements.¹⁵⁶ Among the states adopting new curricular requirements, Delaware was most notable. In 1997, the Delaware legislature substantially re-wrote the state laws on education and incorporated a new requirement that the curricula of private schools be essentially the same as for the state’s public schools.

New curricular requirements in other states have been less ambitious. Missouri’s newly adopted mandate, for example, merely requires the teaching of the federal and Missouri constitutions and American history and institutions. Mississippi also revised its curricular standards, but the revisions apply only to schools seeking voluntary accreditation. New Mexico appears to be the only state that has reduced or eliminated a previous curricular requirement; but the prior

152. Survey responses from Connecticut, Mississippi, Nebraska, New York and Wyoming indicated apparent increases in teacher certification standards or educational requirements.

153. Iowa reported that the state still requires teacher certification for accredited schools, but non-accredited schools may now employ non-certified teachers who hold state professional licenses.

154. See *infra* nn. 242, 401.

155. Those reporting more stringent curricular requirements were Delaware, Idaho, Missouri and Mississippi.

156. New Mexico reported an apparent reduction or elimination of curricular requirements.

requirement had applied only to schools seeking voluntary accreditation in any event.

In contrast to the states that made only minor revisions, seven states substantially altered their approach to regulation.¹⁵⁷ Most of these seven states seem to be getting out of the business of overseeing nonpublic schools. Although there are exceptions to that trend, even the exceptions do not truly constitute more rigorous control; they are, rather, simply changes in approach.

One state that has substantially revised its approach to private school regulation, Arkansas, has essentially deregulated its private schools. The change in Arkansas can be traced back to the passage of the Quality Education Act in 1983,¹⁵⁸ but the new standards developed by the State Board of Education pursuant to that Act did not become effective until 1987, thus bringing the revision within the study period of 1986 to the present.¹⁵⁹ Since 1987, nonpublic schools in Arkansas no longer have the option of state accreditation. They may seek voluntary accreditation from the Arkansas Nonpublic School Accrediting Association, a private entity, but the state is no longer involved. Colorado likewise reported that, beginning October 1999, the state no longer accredits private schools, even on a voluntary basis, and does not officially recognize any private accrediting agencies.¹⁶⁰

In addition to Arkansas and Colorado, three other states apparently elected, during the study period, to cease accreditation or registration of private schools by the state. Georgia previously imposed a system of mandatory registration on all private schools, but now only requires private schools to obtain state business licenses. Georgia's previous system of state regulation had been held unconstitutionally vague in *Roemhild v. State*.¹⁶¹ Similarly, Texas reported that it has not

157. States that have adopted fundamental structural changes in their regulatory regimes during the study period include Arkansas, Colorado, Georgia, Iowa, Texas, Maine and Mississippi. An eighth state – Nebraska – appears from the survey responses to have dramatically changed its regulatory regime, as well. The changes reflected in the Appendix, however, were effective August 1984 and therefore occurred prior to the study period.

158. Now codified at Ark. Code Ann. §§ 6-15-201 *et seq.* (2002).

159. Telephone interview with Brenda Matthews, Assistant to the Director, Legislative Services, Arkansas State Board of Education.

160. See Appendix.

161. 308 S.E.2d 154 (Ga. 1983).

required accreditation of nonpublic schools since 1989. Previously, the state had required that nonpublic schools obtain state approval to operate, but had exempted church schools from that requirement. Likewise, Maine no longer requires formal approval of nonpublic schools.

The 1986 Florida Report indicated that four states (Arizona, Florida, Missouri, and Virginia) did "not regulate or [only] minimally regulate[d] private schools."¹⁶² After the more recent survey, four additional states (Arkansas, Colorado, Georgia and, Texas), and possibly a fifth state (Maine), fall within the no- or minimal-regulation category.¹⁶³ Thus, the number of states that either "do not regulate or minimally regulate" private schools has at least doubled since 1986.

Two states have adopted new accreditation standards during the study period, but the new standards arguably do not represent greater regulation because they are not mandatory. Iowa, for example, revamped its accreditation standards during the study period, making them significantly more rigorous. State accreditation is voluntary, however, and a number of previously accredited schools elected to relinquish their accreditation, some as a matter of principle, rather than comply with the new requirements.¹⁶⁴ A second state, Mississippi, established a separate state accreditation process for nonpublic schools, but the new state-accredited status is strictly voluntary.

V. CONCLUSION

State oversight of nonpublic schools in the United States is a fact of life. Although parents have a constitutional right to select a private school for their children, the states have equally-well established authority to reasonably regulate nonpublic education. The degree of control actually imposed by state governments differs substantially from state to state, and state laws and regulations are subject to change over time.

162. See Florida Report, *supra* n. 14, at 38.

163. Although the survey responses suggest that Missouri has increased its oversight of private schools, the only changes indicated by state officials are (1) a provision requiring licensing by the State Division of Family Services; and (2) a curricular requirement mandating the teaching of federal and state constitutions, history and American institutions.

164. Telephone conference with Mr. Eric Heitz, Consultant, Iowa Department of Education.

About half of the states that responded to both the 1986 Florida survey and the current survey reported making some change in private school regulation during the fifteen-year study period. As might be expected, most states do not readily adopt wholesale revisions of their regulations. Rather, they periodically adjust specific requirements as circumstances warrant. Though there are exceptions, the states that have made such incremental adjustments have tended to increase the rigor of their requirements or broaden their applicability. On the other hand, the few states that have reconsidered their overall regulatory structure and made significant changes have generally chosen to de-regulate private schools or significantly lessen their level of oversight. Accordingly, the number of states that have elected not to regulate, or to minimally regulate, private schools has roughly doubled during the past fifteen years. A substantial majority of states still provide some form of formal state accreditation, approval or registration; but only about half of the states *require* that private schools be accredited, approved or registered, and a number of those states exempt religiously affiliated schools from the requirement. No state could offer any evidence that its accreditation or approval requirement actually affects the quality of education.

In conclusion, state regulatory ties still bind at least as firmly in most jurisdictions as they did fifteen years ago, and most nonpublic schools remain accountable to state agencies. Nevertheless, a growing minority of states have substantially deregulated nonpublic schools and elected to let the marketplace control. Moreover, the vast majority of states have elected not to regulate as stringently as they could under the federal and state constitutions.

APPENDIX
COMPARISON OF THE OLD AND NEW SURVEYS

KEY:

Licensure - L	Enrollment - E
Registration - R	Charter - C
Accreditation - A	Mandatory - M
State Approval - S.A.	Voluntary - V

	NEW		OLD	
	Alabama		Alabama	Alaska
Do state law/Rules provide for regulation of non-public schools?	YES		YES	YES
Types of Regulation	R		R	A
Mandatory or Voluntary?	M ¹⁶⁵		M	V
Exemptions	Church Schools		Church Schools	
Does State law specify subjects which must be taught by non-public schools?	YES ¹⁶⁶		YES	NO
Does State law establish a means of determining equivalency between public and non-public school diplomas?	NO		NO	NO
Do State laws require nonpublic schools to conduct classes:				
Specific number of hours/day:	YES		YES	NO
Specific number of days/year:	YES		YES	YES ¹⁶⁷

165. Certification is required annually for all private schools except for church schools. Ala. Code § 16-28-1(1) (2002).

166. Private schools other than church schools must offer instruction in the branches of study offered in the public schools. Ala. Code § 16-28-1(1)(b) (2002).

167. Exempt schools must operate during at least 180 days per year. Alaska Stat. § 14.45.110(b) (2002). Non-exempt schools must comply with the same requirement as a public school. Alaska Stat. §§ 14.45.030, 14.45.010(b)(1).

Are nonpublic schools required to administer specific tests?	NO		NO	YES ¹⁶⁸	YES
If tests are required, are they: Administered annually? Reported to the state?					
Must nonpublic schools report attendance or other information to public officials?	YES ¹⁶⁹		YES	YES ¹⁷⁰	YES
Are teachers in nonpublic schools required to be certified?	YES ¹⁷¹		YES	YES ¹⁷²	YES
Are there any other requirements for nonpublic school teachers?	NO		NO	NO	NO
Do State laws/rules authorize the creation of charter schools?					
Do State laws/rules provide for a nonpublic school advisory board or commission?	NO	X	YES	NO	NO

168. Exempt schools must administer national standardized tests measuring achievement in specified subjects. For students in grades 4, 6 and 8, composite test results must be reported. Alaska Stat. § 14.45.120 (2002).

169. Private schools other than church schools must report on enrollment, attendance, course of study, number of instructors, length of term, tuition, funds, value of property and general condition of the school. Ala. Code § 16-1-11 (2002).

170. For non-exempt schools only. Alaska Stat. § 14.45.030 (2002). Exempt schools must "make an annual report to the commissioner of the number of students in each grade and the school calendar." Alaska Stat. §§ 14.45.110(b) (2002). Exempt schools must also certify that they maintain various other records, i.e., immunizations, academic achievement, etc. Alaska Stat. § 14.45.130 (2002).

171. Instruction in private schools other than church schools must be by state-certified instructors. Ala. Code § 16-28-1(1)(a) (2002).

172. Applies to non-exempt schools only. Alaska Stat. § 14.30.010(b)(1) (2002).

	NEW		OLD		NEW		OLD	
	Arizona		Arizona		Arkansas		Arkansas	
Do state law/Rules provide for regulation of non-public schools?	NO		NO		NO	X	YES	
Types of Regulation						X	A	
Mandatory or Voluntary?						X	V	
Exemptions								
Does State law specify subjects which must be taught by non-public schools?	NO		NO		NO ¹⁷³	X	YES	
Does State law establish a means of determining equivalency between public and non-public school diplomas?	NO		NO		NO		NO	
Do State laws require nonpublic schools to conduct classes:								
Specific number of hours/day:	YES ¹⁷⁴		YES		NO	X	YES	
Specific number of days/year:	YES ¹⁷⁵		YES		NO	X	YES	
Are nonpublic schools required to administer specific tests?	NO		No Response		NO	X	YES	

173. Although state law authorizes the State Board of Education to designate subjects taught in private elementary schools, see Ark. Code Ann. § 6-16-103 (2002), the Board no longer requires the teaching of any specific subjects in nonpublic schools according to the survey response form.

174. Ariz. Rev. Stat. Ann. §§ 15-802B.1., F.2. (2002).

175. *Id.*

If tests are required, are they: Administered annually? Reported to the state?						
Must nonpublic schools report attendance or other information to public officials?	NO	X	YES	NO		NO
Are teachers in nonpublic schools required to be certified?	NO		NO	NO	X	YES
Are there any other requirements for nonpublic school teachers?	NO		NO	NO	X	YES
Do State laws/rules authorize the creation of charter schools?						
Do State laws/rules provide for a nonpublic school advisory board or commission?	NO		NO	NO		NO

	NEW		OLD		NEW		OLD	
	California		California	Colorado		Colorado		Colorado
Do state law/Rules provide for regulation of non-public schools?	YES		YES	NO ¹⁷⁶	X			YES
Types of Regulation	R ¹⁷⁷	X	R					A
Mandatory or Voluntary?	M		M					V
Exemptions			NONE					
Does State law specify subjects which must be taught by non-public schools?	YES ¹⁷⁸	X	YES	YES				YES
Does State law establish a means of determining equivalency between public and non-public school diplomas?	NO		NO	NO				NO
Do State laws require nonpublic schools to conduct classes:								
Specific number of hours/day:	NO		NO	NO	X			YES
Specific number of days/year:	NO		NO	YES ¹⁷⁹				YES

176. Colorado's Public School Accreditation Rules were amended October 1999. From that time on, Colorado has not accredited private schools even on a voluntary basis, and no longer formally recognizes private school accrediting agencies. Telephone conference with Ms. Suzie Parker, Program Assistant, State Board of Education, Aug. 28, 2001. The Colorado state code still indicates that the state has the authority to appraise non-public schools for accreditation, but only upon the school's request. Colo. Rev. Stat. Ann. § 22-2-107(g) (2002).

177. Non-public schools may also seek voluntary accreditation per survey response.

178. Students attending private schools are exempt from California's compulsory attendance law if the school provides instruction in the several branches of study required to be taught in the public schools. Cal. Educ. Code § 48222 (2003).

179. Survey response says yes, but the state no longer reviews private schools for the purpose of accreditation.

Are nonpublic schools required to administer specific tests?	NO		NO	NO		NO
If tests are required, are they: Administered annually? Reported to the state?						
Must nonpublic schools report attendance or other information to public officials?	YES		YES	YES		YES
Are teachers in nonpublic schools required to be certified?	NO ¹⁸⁰		NO	NO		NO
Are there any other requirements for nonpublic school teachers?	YES ¹⁸¹	X	YES	NO		
Do State laws/rules authorize the creation of charter schools?						
Do State laws/rules provide for a nonpublic school advisory board or commission?	NO		NO	NO		NO

180. However, the law requires that students attending private schools be taught by "persons capable of teaching." Cal. Educ. Code § 48222 (2003).

181. Fingerprinting is required unless the teacher has a valid credential issued by the Commission on Teacher Credentialing or is licensed by another state agency that requires a criminal record summary. Cal. Educ. Code § 44237 (2003).

	NEW		OLD		NEW		OLD	
	Conn.		Conn.	Delaware		Delaware		Delaware
Do state law/Rules provide for regulation of non-public schools?	YES		YES	YES				YES
Types of Regulation	S.A. R		R	R				R
Mandatory or Voluntary?	V/M ¹⁸²		V					
Exemptions	NO			NO				
Does State law specify subjects which must be taught by non-public schools?	YES ¹⁸³		YES	YES ¹⁸⁴	X			NO
Does State law establish a means of determining equivalency between public and non-public school diplomas?	NO		NO	NO				NO
Do State laws require nonpublic schools to conduct classes:								
Specific number of hours/day:	NO		NO	NO				NO
Specific number of days/year:	YES	X	NO	NO	X			YES

182. Registration is mandatory, but state approval is voluntary. It appears that this situation does not differ from the circumstances at the time of the prior survey. See Florida Report, *supra* n. 14, at 76, n. 20.

183. Compulsory attendance law requires parents and those who have care of children to instruct them or cause them to be instructed in specified subjects. Conn. Gen. Stat. § 10-184 (2001). Private elementary and secondary schools where property is tax exempt must provide instruction in U.S. history, government, and the duties and responsibilities of citizenship. Conn. Gen. Stat. § 10-18 (2001).

184. To satisfy compulsory attendance requirement, private schools must provide "regular and thorough instruction in the subjects prescribed for the public schools of the State." Del. Code Ann. tit. 14, § 2703(2) (2002). The law also requires all public and private schools to provide "regular courses of instruction on the Constitution of the United States, constitution and government of Delaware, and the free enterprise system" in grades eight through high school. Del. Code Ann. tit. 14, § 4103(a), (b) (2002). [Note: 71 Del Laws, c. 180, effective July 16, 1997, substantially re-wrote the Delaware statutes on education, including these two provisions.]

Are nonpublic schools required to administer specific tests?	NO		NO	NO		NO
If tests are required, are they: Administered annually? Reported to the state?						
Must nonpublic schools report attendance or other information to public officials?	YES		YES	YES		YES
Are teachers in nonpublic schools required to be certified?	NO		NO	NO		NO
Are there any other requirements for nonpublic school teachers?	YES ¹⁸⁵	X	NO	NO		
Do State laws/rules authorize the creation of charter schools?						
Do State laws/rules provide for a nonpublic school advisory board or commission?	NO	X	YES	NO		NO

185. Minimum education requirements imposed only for teachers in state approved private schools. Teachers in approved non-public schools may qualify for provisional or professional educator certificates. Conn. Agencies Reg. §§ 10-145d-620(66), (67).

	NEW		OLD		NEW		OLD	
	Florida		Florida		Georgia		Georgia	
Do state law/Rules provide for regulation of non-public schools?	NO		NO		NO	X		YES
Types of Regulation					L ¹⁸⁶	X		R
Mandatory or Voluntary?						X		M
Exemptions								NONE
Does State law specify subjects which must be taught by non-public schools?	NO		NO		YES			YES
Does State law establish a means of determining equivalency between public and non-public school diplomas?	NO		NO		NO			NO
Do State laws require nonpublic schools to conduct classes:								
Specific number of hours/day:	YES		YES		YES			YES
Specific number of days/year:	YES		YES		YES			YES
Are nonpublic schools required to administer specific tests?	NO		NO		NO			NO
If tests are required, are they:								
Administered annually?								
Reported to the state?								
Must nonpublic schools report attendance or other information to public officials?	YES		YES		YES			YES

186. Business license only per survey response.

Are teachers in nonpublic schools required to be certified?	NO		NO	NO		NO
Are there any other requirements for nonpublic school teachers?	NO		NO	NO		NO
Do State laws/rules authorize the creation of charter schools?						
Do State laws/rules provide for a nonpublic school advisory board or commission?	NO		NO	NO		NO

	NEW		OLD		NEW		OLD	
	Idaho		Idaho		Illinois		Illinois	
Do state law/Rules provide for regulation of non-public schools?	YES		YES		YES		YES	
Types of Regulation	A		A		S.A. R		S.A. R	
Mandatory or Voluntary?	V		V		V		V	
Exemptions								
Does State law specify subjects which must be taught by non-public schools?	YES ¹⁸⁷	X	NO		YES ¹⁸⁸	X	NO	
Does State law establish a means of determining equivalency between public and non-public school diplomas?	NO		NO		NO		NO	
Do State laws require nonpublic schools to conduct classes:								
Specific number of hours/day:	YES		YES		NO ¹⁸⁹		NO ¹⁹⁰	
Specific number of days/year:	YES		YES					
Are nonpublic schools required to administer specific tests?	YES ¹⁹¹	X	NO		NO		NO	

187. See Idaho Code §§ 33-202 and 33-118 (1995 Repl. Vol. & 1999 Supp.).

188. The Illinois compulsory education statute requires that private school students be taught the same branches of study that are required of students of similar age and grade in the public schools. 105 Ill. Rev. Stat. Ann. Ch. 5, para. 26-1.1. State regulations contain a detailed list of required subjects for various grade levels.

189. Survey response says yes, but the standards still appear to apply only to registered or approved schools, just as reported in the 1986 survey.

190. If a school voluntarily seeks state approval, then minimum hour and day standards do apply.

191. Applies to accredited schools only.

If tests are required, are they: Administered annually? Reported to the state?					
Must nonpublic schools report attendance or other information to public officials?	YES		YES	YES ¹⁹²	YES ¹⁹³
Are teachers in nonpublic schools required to be certified?	YES ¹⁹⁴		YES	NO	NO
Are there any other requirements for nonpublic school teachers?	NO		NO	NO ¹⁹⁵	NO
Do State laws/rules authorize the creation of charter schools?					
Do State laws/rules provide for a nonpublic school advisory board or commission?	YES	X	NO	NO	NO

192. Survey response says no, but clarifies that reporting requirements do apply to schools that seek voluntary state approval or recognition. No apparent change since the earlier survey in 1986.

193. Applies to accredited schools only.

194. Applies to accredited schools only.

195. According to survey response, non-public schools seeking voluntary state recognition must specify and substantiate the school's policy for employment of teachers and administrators.

	NEW		OLD		NEW		OLD	
	Indiana		Indiana		Iowa		Iowa	
Do state law/Rules provide for regulation of non-public schools?	YES		YES		YES		YES	
Types of Regulation	A R ¹⁹⁶	X	A		A S.A.	X	S.A.	
Mandatory or Voluntary?	V		V		V ¹⁹⁷		M	
Exemptions					Amish Schools		Amish Schools	
Does State law specify subjects which must be taught by non-public schools?	YES ¹⁹⁸		YES		YES		YES	
Does State law establish a means of determining equivalency between public and non-public school diplomas?	NO		NO		NO		NO	
Do State laws require nonpublic schools to conduct classes: Specific number of hours/day:	YES	X	NO		YES	X	NO	
Specific number of days/year:	YES	X	NO		YES		YES	
Are nonpublic schools required to administer specific tests?	YES ¹⁹⁹	X	NO		NO		NO	

196. System of state recognition was established effective with the 1991-'92 school year to facilitate transferability of academic work between public and non-public schools. See Ind. Code § 20-1-1-6.2 (2002). Recognition, like accreditation, is strictly voluntary. See Ind. Code §§ 20-1-1-6.2, 20-10.1-1-0.5 (2002).

197. To qualify as a "non-public school" under state compulsory attendance provision, the school must be accredited or instruction must be by a licensed practitioner. Iowa Code Ann. §§ 280.2, 299.1 and 299A.1 (2002).

198. Non-accredited schools are exempt per survey response. See Ind. Code §§ 20-8.1-3-17.3; 20-10.1-1-0.5 (2002).

199. Applies to accredited schools only. See Ind. Code § 20-10.1-16-9 (2002).

If tests are required, are they: Administered annually? Reported to the state?						
Must nonpublic schools report attendance or other information to public officials?	YES		YES	YES		YES
Are teachers in nonpublic schools required to be certified?	YES ²⁰⁰	X	NO	NO ²⁰¹	X	YES
Are there any other requirements for nonpublic school teachers?	NO		NO	YES	X	NO
Do State laws/rules authorize the creation of charter schools?						
Do State laws/rules provide for a nonpublic school advisory board or commission?	YES	X	NO	YES		YES

200. Applies to accredited schools only.

201. Non-public schools must either be accredited or employ licensed practitioners as instructors. Iowa Code Ann. § 280.2 (2002). Accredited non-public schools must employ certified teachers. Iowa Admin. Code r. 281-12.4(8) (2003).

	NEW		OLD		NEW		OLD	
	Kansas		Kansas		Kentucky		Kentucky	
Do state law/Rules provide for regulation of non-public schools?	YES		YES		YES		YES	
Types of Regulation	A ²⁰²		A		A ²⁰³ S.A.	X	A	
Mandatory or Voluntary?	V		V		V		V	
Exemptions								
Does State law specify subjects which must be taught by non-public schools?	YES		YES		YES ²⁰⁴		YES	
Does State law establish a means of determining equivalency between public and non-public school diplomas?	NO		NO		NO		NO	
Do State laws require nonpublic schools to conduct classes:								
Specific number of hours/day:	YES		YES		YES		YES	
Specific number of days/year:	YES		YES		YES		YES	

202. Non-accredited private schools must register the name and address of the school to facilitate access to student records in the event of transfer. Kan. Stat. Ann. §§ 72-53.101, 102 (2001).

203. Accreditation is by a private regional accrediting association or by a private statewide association.

204. Private and parochial schools must “offer instruction in the several branches of study required to be taught in the public schools.” Ky. Rev. Stat. Ann. § 158.080 (2002). Private schools seeking state certification must use state-approved texts. Ky. Rev. Stat. Ann. § 156.445(3) (2002).

Are nonpublic schools required to administer specific tests?	YES ²⁰⁵	X	NO	NO	NO
If tests are required, are they: Administered annually? Reported to the state?					
Must nonpublic schools report attendance or other information to public officials?	NO		NO	YES	YES
Are teachers in nonpublic schools required to be certified?	YES ²⁰⁶	X	NO	NO	NO
Are there any other requirements for nonpublic school teachers?	YES ²⁰⁷		NO	NO	NO
Do State laws/rules authorize the creation of charter schools?					
Do State laws/rules provide for a nonpublic school advisory board or commission?	NO		NO	YES	X NO

205. Applies to accredited schools only.

206. Applies to accredited schools only per survey response. *See also* Kan Stat. Ann. §§ 72-9002, 72-9003 (2002) (requiring accredited nonpublic schools to adopt written personnel evaluation policies and procedures for certified employees).

207. Instruction in private schools must be by a "competent instructor," but the teacher need not be certified. Kan. Stat. Ann. § 72-1111 (2001).

	NEW		OLD		NEW		OLD	
	Maine		Maine		Maryland		Maryland	
Do state law/Rules provide for regulation of non-public schools?	YES		YES		YES		YES	
Types of Regulation	A S.A.		S.A.		S.A.		S.A.	
Mandatory or Voluntary?	V ²⁰⁸	X	M		M		M	
Exemptions			Church Schools		Church Schools		Church Schools	
Does State law specify subjects which must be taught by non-public schools?	YES ²⁰⁹		YES		YES		YES	
Does State law establish a means of determining equivalency between public and non-public school diplomas?	NO		NO		NO		NO	
Do State laws require nonpublic schools to conduct classes:								
Specific number of hours/day:	YES ²¹⁰		YES		NO	X	YES	
Specific number of days/year:	YES ²¹¹		YES		YES ²¹²		YES	

208. Accreditation is by private regional accrediting association. Non-approved private schools are recognized solely for purposes of compliance with the state's compulsory education act.

209. Applies only to state approved private schools. Private schools holding regional agency accreditation need not comply.

210. Applies only to state approved private schools.

211. Applies only to state approved private schools.

212. Approved private schools must operate at least 170 days, but church schools are exempt from this requirement.

Are nonpublic schools required to administer specific tests?	NO	X	YES	NO	NO
If tests are required, are they: Administered annually? Reported to the state?					
Must nonpublic schools report attendance or other information to public officials?	YES ²¹³		YES	YES	YES
Are teachers in nonpublic schools required to be certified?	YES ²¹⁴		YES	NO	NO
Are there any other requirements for nonpublic school teachers?	NO	X	YES	YES ²¹⁵	YES
Do State laws/rules authorize the creation of charter schools?					
Do State laws/rules provide for a nonpublic school advisory board or commission?	NO		NO	NO	NO

213. Applies only to state approved private schools.

214. Applies only to state approved private schools.

215. State law establishes minimum education requirements, but church schools are exempt from these requirements.

	NEW		OLD		NEW		OLD	
	Mass.		Mass.		Michigan		Michigan	
Do state law/Rules provide for regulation of non-public schools?	YES		YES		YES		YES	
Types of Regulation	S.A. ²¹⁶		A		S.A. ²¹⁷		S.A.	
Mandatory or Voluntary?	V		V		M			
Exemptions								
Does State law specify subjects which must be taught by non-public schools?	NO		NO		YES ²¹⁸		YES	
Does State law establish a means of determining equivalency between public and non-public school diplomas?	NO		NO		NO		NO	
Do State laws require nonpublic schools to conduct classes:								
Specific number of hours/day:	YES		YES		NO	X	YES	
Specific number of days/year:	YES		YES		NO	X	YES	
Are nonpublic schools required to administer specific tests?	NO ²¹⁹		NO		NO		NO	

216. Applies to publicly funded special education students only. Otherwise, the statute provides for mandatory approval by the local school committee.

217. State approval is mandatory, but formal accreditation from the state or a private association is voluntary. Mich. Comp. Laws § 380.1561(3)(a) (2002).

218. *Id.*

219. Applies to publicly funded special education students only.

If tests are required, are they: Administered annually? Reported to the state?					
Must nonpublic schools report attendance or other information to public officials?	YES ²²⁰		YES	YES	YES
Are teachers in nonpublic schools required to be certified?	NO		NO	YES ²²¹	YES
Are there any other requirements for nonpublic school teachers?	NO	X	YES	YES ²²²	YES
Do State laws/rules authorize the creation of charter schools?					
Do State laws/rules provide for a nonpublic school advisory board or commission?	NO		NO	NO	NO

220. Mass. Gen. Laws ch. 71 § 34G (2003) (report required only where a private school ceases operating).

221. Certification requirement may be met by obtaining: (1) a Michigan teaching certificate; (2) a substitute, full-year, or emergency teaching permit; or (3) a bachelor's degree. Requirement may be waived if school claims an objection to teacher certification requirement based upon a sincerely held religious belief.

222. Must undergo criminal history check.

	NEW		OLD		NEW		OLD	
	Minnesota		Minnesota	Miss.		Miss.		
Do state law/Rules provide for regulation of non-public schools?	YES		YES	YES		YES		YES
Types of Regulation	A S.A. L R		R	A ²²³		A		
Mandatory or Voluntary?	M		M	V		V		
Exemptions	NO		NO					
Does State law specify subjects which must be taught by non-public schools?	YES ²²⁴		YES	YES ²²⁵	X	No Provision		
Does State law establish a means of determining equivalency between public and non-public school diplomas?	NO		NO	NO		NO		
Do State laws require nonpublic schools to conduct classes:								
Specific number of hours/day:	NO	X	YES	NO ²²⁶		NO		
Specific number of days/year:	NO	X	YES	NO		NO		

223. A separate state accreditation process was established for non-public schools in 1992.

224. Instruction must be provided in at least the following subjects: basic communication skills, including reading, writing, literature and the arts; mathematics and science; social studies, including history, geography and government; and health and physical education. Minn. Stat. Ann. § 120A.22 subd. 9 (2002).

225. Applies only to schools seeking voluntary accreditation.

226. Miss. Code Ann. § 37-13-91(2)(e) (2002).

Are nonpublic schools required to administer specific tests?	YES ²²⁷			YES ²²⁸	X	NO
If tests are required, are they: Administered annually? Reported to the state?	YES NO					
Must nonpublic schools report attendance or other information to public officials?	YES ²²⁹		YES	YES	X	NO
Are teachers in nonpublic schools required to be certified?	NO		NO	YES ²³⁰	X	NO
Are there any other requirements for nonpublic school teachers?	YES ²³¹	X	NO	NO		NO
Do State laws/rules authorize the creation of charter schools?	YES ²³²					

227. Minn. Stat. Ann. § 120A.22 subdiv. 11(2002).

228. Results need not be reported to the state, but must be available for inspection.

229. Minn. Stat. Ann. § 120A.24 (2002).

230. Applies only to schools seeking voluntary accreditation.

231. To be qualified, the instructor must comply with one of six options: (1) hold a Minnesota teaching license; (2) be directly supervised by a person holding a valid teaching license; (3) complete a teacher competency examination; (4) provide instruction in a school that is accredited; (5) hold a baccalaureate degree; or (6) be the parent of a child who is assessed yearly on a national standardized achievement test. Minn. Stat. Ann. § 120A.22.subdiv. 10 (2002).

232. Minn. Stat. Ann. § 124D.10 (2002).

Do State laws/rules provide for a nonpublic school advisory board or commission?	YES ²³³		YES	NO		NO
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233. Minn. Stat. Ann. § 123B.445 (2002).

	NEW		OLD		NEW		OLD	
	Missouri		Missouri		Montana		Montana	
Do state law/Rules provide for regulation of non-public schools?	YES	X	NO		YES		YES	
Types of Regulation	L ²³⁴	X			A R	X	A	
Mandatory or Voluntary?					V		V	
Exemptions								
Does State law specify subjects which must be taught by non-public schools?	YES ²³⁵	X	No Provision		YES ²³⁶		YES	
Does State law establish a means of determining equivalency between public and non-public school diplomas?	NO		No Provision		NO		NO	
Do State laws require nonpublic schools to conduct classes:								
Specific number of hours/day:	NO		NO		NO		NO	
Specific number of days/year:	NO		NO		YES		YES	
Are nonpublic schools required to administer specific tests?	NO		NO		NO	X	YES	

234. Licensure is by the State Division of Family Services, not the State Department of Education.

235. Private schools must provide courses in the Constitutions of the United States and Missouri, and in American history and institutions. No pupil may receive a certificate of graduation unless he has passed an examination on these subjects. Mo. Rev. Stat. § 170.011 (2001).

236. Mont. Code Ann. § 20-5-109(4) (2002).

If tests are required, are they: Administered annually? Reported to the state?					
Must nonpublic schools report attendance or other information to public officials?	YES ²³⁷		YES	YES	YES
Are teachers in nonpublic schools required to be certified?	NO		NO	NO	NO
Are there any other requirements for nonpublic school teachers?	NO		NO	NO	NO
Do State laws/rules authorize the creation of charter schools?					
Do State laws/rules provide for a nonpublic school advisory board or commission?	NO		NO	NO	NO

237. Mo. Rev. Stat. §§ 167.181(4), 167.183 (2002).

	NEW		OLD		NEW		OLD	
	Nebraska		Nebraska		Nevada		Nevada	
Do state law/Rules provide for regulation of non-public schools?	YES		YES		N/A		YES	
Types of Regulation	A S.A.	X	A				L	
Mandatory or Voluntary?	M		M				M	
Exemptions	YES ²³⁸	X	NONE				YES ²³⁹	
Does State law specify subjects which must be taught by non-public schools?	YES		YES				YES ²⁴⁰	
Does State law establish a means of determining equivalency between public and non-public school diplomas?	YES	X	NO				NO	

238. Non-public schools may seek voluntary accreditation. Whether or not they seek accreditation, as a general rule they must at least be "approved" in order to operate legally. However, parents are permitted to absent their children from mandatory school attendance requirements and attend school at home or in churches or private schools that do not meet requirements for legal operation. To do so, they must complete an affidavit that affirms a sincerely held religious conviction as a basis for exemption. *See* Nebr. Admin. Code, tit. 92, ch. 13 (effective August 22, 1984).

239. Exemptions apply to religious institutions and institutions in operation before July 1, 1975. *See* Nev. Rev. Stat. Ann. § 394.211 (2002).

240. Nev. Rev. Stat. Ann. § 394.130 (2002) (nonpublic schools must teach the same subjects as public schools). In addition, nonpublic schools must include education on the Constitutions of the United States and Nevada. *See* Nev. Rev. Stat. Ann. § 394.150 (2002).

Do State laws require nonpublic schools to conduct classes: Specific number of hours/day: Specific number of days/year:	NO NO	X	NO YES	YES YES
Are nonpublic schools required to administer specific tests?	YES		YES	NO
If tests are required, are they: Administered annually? Reported to the state?				
Must nonpublic schools report attendance or other information to public officials?	YES		YES	YES ²⁴¹
Are teachers in nonpublic schools required to be certified?	YES ²⁴²	X	NO	YES
Are there any other requirements for nonpublic school teachers?	NO		NO	YES

241. Must send reports to the superintendent, Nev. Rev. Stat. Ann. § 394.130(2) (2002), and maintain records for periodic inspection by the superintendent, Nev. Rev. Stat. Ann. § 394.245 (2002).

242. Applies to all legally operating schools. Schools of conscience are exempted.

Do State laws/rules authorize the creation of charter schools?					YES ²⁴³
Do State laws/rules provide for a nonpublic school advisory board or commission?	YES	X	NO		NO ²⁴⁴

243. See Nev. Admin. Code §§ 386.010 – 386.390 (2002).

244. Oversight by the State Board of Education and the Superintendent of Public Instruction. See Nev. Rev. Stat. Ann. §§ 394.017, 394.112 (2002); Nev. Admin. Code § 394.221 (2002).

	NEW	OLD	NEW	OLD
	New Hampshire	New Hampshire	New Jersey	New Jersey
Do state law/Rules provide for regulation of non-public schools?	YES	YES	YES ²⁴⁵	YES
Types of Regulation	A S.A.	S.A.	R ²⁴⁶	R
Mandatory or Voluntary?	V/M	M	V	V
Exemptions		NONE		
Does State law specify subjects which must be taught by non-public schools?	YES ²⁴⁷	YES	YES ²⁴⁸	YES
Does State law establish a means of determining equivalency between public and non-public school diplomas?	NO	NO	NO	NO
Do State laws require nonpublic schools to conduct classes:				
Specific number of hours/day:	NO	NO	YES ²⁵⁰	X ²⁵¹ NO
Specific number of days/year:	YES ²⁴⁹	YES	YES	NO

245. N.J. Stat. Ann. § 18A: 69-1 (2002). However, the regulations do not apply to schools operated by a religious denomination or charitable institution.

246. N.J. Stat. Ann § 18A: 69-2 (2002).

247. Must furnish instruction in the history and government of the United States and New Hampshire. N.H. Rev. Stat. Ann. § 189:11 (2000). Other than history and government, there are no *per se* standards. However, in order to receive program approval (i.e., accreditation), a complete description of the educational program and activities must be submitted. N.H. Admin. R. Ann., Educ. 404.02 (2003).

248. N.J. Stat. Ann. § 18A:38-25 (2002) requires parents to enroll their children in instruction equivalent to that provided in public schools. In *State v. Massa*, 231 A.2d 252 (N.J. 1967), the Court determined that equivalency only means academic equivalency, not equivalency in social development.

249. N.H. Code Admin. R. Ann., Educ. 401.03 (2003).

250. Must attend the same days and hours that the public school is in operation. N.J. Stat. Ann. § 18A:38-26 (2002).

251. See N.J. Stat. Ann. § 18A:38-26.

Are nonpublic schools required to administer specific tests?	NO		NO	NO		NO
If tests are required, are they: Administered annually? Reported to the state?						
Must nonpublic schools report attendance or other information to public officials?	YES ²⁵²		YES	YES ²⁵³	X	NO
Are teachers in nonpublic schools required to be certified?	NO		NO	NO		NO
Are there any other requirements for nonpublic school teachers?	YES ²⁵⁴		YES	NO		NO
Do State laws/rules authorize the creation of charter schools?	YES ²⁵⁵		YES	YES ²⁵⁶		
Do State laws/rules provide for a nonpublic school advisory board or commission?	YES ²⁵⁷		YES	YES ²⁵⁸		YES

252. Must furnish an annual statistical report to the department of education, N.H. Rev. Stat. Ann. § 194:31 (2002). See also N.H. Admin. R. Ann., Educ. 403.02 (2003).

253. N.J. Stat. Ann. § 18A: 6-4 (2002).

254. There does not appear to be a minimum standard, but N. H. Admin. R. Ann., Educ. 403.02 (2000) requires some reporting about the staff for state approval.

255. See N.H. Rev. Stat. Ann. § 194-B: 1-22 (2002).

256. N.J. Admin. Code tit. 6A, § 11-1.1 (2002).

257. N.H. Admin. R. Ann., Educ. 406.01 (2003).

258. Referred to on the survey, but could not find in the administrative code or statutes.

	NEW		OLD	NEW	OLD
	New Mexico		New Mexico	New York	New York
Do state law/Rules provide for regulation of non-public schools?	YES		YES	YES	YES
Types of Regulation	A ²⁵⁹ S.A. R		R A	S.A. R ²⁶⁰	R
Mandatory or Voluntary?	V/M		V/M	V	V ²⁶¹
Exemptions				YES ²⁶²	
Does State law specify subjects which must be taught by non-public schools?	NO	X	YES ²⁶³	YES ²⁶⁴	YES
Does State law establish a means of determining equivalency between public and non-public school diplomas?	NO		NO	YES	X NO

259. Accreditation is voluntary, but registration is mandatory. See N.M. Admin. Code tit. 6, § 30.2.1.8 (2000).

260. N.Y. St. Educ. Dept., *Guidelines for Determining Equivalency of Instruction in Nonpublic Schools* (hereinafter "Guidelines for Determining Equivalency") 6-7 (stating that secondary schools must be registered). For a nonpublic school to award diplomas, the Board of Education must approve the program as equivalent. N.Y. Educ. Laws § 210 (McKinney 2002). See also N.Y. Educ. Laws § 3210(2)(e) (McKinney 2002) (regarding elementary schools).

261. Accreditation is voluntary, but if the school wishes to award diplomas it must be accredited. See *Guidelines for Determining Equivalency*, *supra* n. 260, at 7.

262. Survey response says no, but there appears to be an exception for elementary schools operated by established religious groups. See N.Y. Educ. Laws § 3210(2)(e) (McKinney 2000).

263. Applies to accredited schools only. Florida Report, *supra* n. 14, at 81.

264. Grades 1-6 require the following subjects: arithmetic, English, reading, spelling, writing, music, geography, health education, physical education, science, U.S. history, New York State history, and visual arts. In grades 7-8: English, social studies, science, mathematics, physical education, health education, New York State history, visual arts, music, practical arts, technology education, home and career skills, and library and information skills must be taught. High schools must include studies in English, social studies, American history, mathematics, science, health, physical education, and art or music. High schools must also include education on physical fitness, alcohol and drug abuse, highway safety, school safety, and fire prevention. See *Guidelines for Determining Equivalency*, *supra* n. 260, at 11-12, question 24. See also N.Y. Educ. Laws §§ 806, 808, 3204 (McKinney 2002).

Do State laws require nonpublic schools to conduct classes:					
Specific number of hours/day:	YES ²⁶⁵	X	YES	YES	YES
Specific number of days/year:	YES	X	YES	NO ²⁶⁶	NO
Are nonpublic schools required to administer specific tests?	YES ²⁶⁷	X	NO	YES ²⁶⁸	YES
If tests are required, are they: Administered annually? Reported to the state?				YES NO ²⁶⁹	
Must nonpublic schools report attendance or other information to public officials?	YES ²⁷⁰		YES	YES ²⁷¹	YES
Are teachers in nonpublic schools required to be certified?	NO		NO	NO	NO

265. Private schools must comply with the length of day and number of day provisions applicable to public schools. See N.M. Stat. Ann. § 22-12-2 (2002). Each school district sets its own attendance rules pursuant to N.M. Stat. Ann. § 22-12-7 (2002).

266. The length of the school year and day should approximate that of a public school, which is a 180-day calendar where a day is five hours for grades one through six and five and one-half hours in grades seven through twelve. See Guidelines for Determining Equivalency, *supra* n. 260, at 8, question 6; N.Y. Educ. Laws § 3210(2)(a) (McKinney 2002).

267. Accredited schools must administer standardized tests per survey response.

268. Private schools must administer certain State-mandated tests and are encouraged to administer national standardized tests. See Guidelines for Determining Equivalency, *supra* n. 260, at 3. The tests must include the Pupil Evaluation Program (PEP) and Program Evaluation Tests (PET), Preliminary Competency Tests and Regents Competency Tests before the end of grade 12. *Id.* at 9, question 13.

269. Test results need not be reported to the state, but schools are encouraged to report such information voluntary to the superintendent upon request. *Id.* at 10, question 15.

270. N.M. Stat. Ann. § 22-22-2 (2000).

271. In order for a school to be reimbursed for record keeping, attendance reports must be submitted to the State Education Department. See Guidelines for Determining Equivalency, *supra* n. 260, at 9, question 11.

Are there any other requirements for nonpublic school teachers?	NO ²⁷²	X	YES ²⁷³	YES ²⁷⁴	X	NO
Do State laws/rules authorize the creation of charter schools?	YES ²⁷⁵			YES ²⁷⁶		
Do State laws/rules provide for a nonpublic school advisory board or commission?	YES ²⁷⁷		YES	NO		NO

272. Only for accredited schools as required by an accrediting agency per survey response.

273. State law requires health screening. Florida Report, *supra* n. 14, at 81.

274. Teachers must be qualified in light of the goals of the school. *See Guidelines for Determining Equivalency, supra* n. 260, at 8, question 7.

275. N.M. Stat. Ann. § 22-8B-6 (2002) gives the local school board authority to approve a charter school.

276. *See* Charter Schools Act of 1998, Art. 56, § 2850 (copy on file with author).

277. N.M. Admin. Code tit. 6 § 30.3.1.8 (2000) (advisory board is known as the Nonpublic Schools Commission).

	NEW	OLD	NEW	OLD
	North Carolina	North Carolina	North Dakota	North Dakota
Do state law/Rules provide for regulation of non-public schools?	YES	YES	YES	N/A
Types of Regulation	A ²⁷⁸ R	R	S.A. ²⁷⁹ A L	
Mandatory or Voluntary?		M	V/M ²⁸⁰	
Exemptions	NO	NO	NO	
Does State law specify subjects which must be taught by non-public schools?	NO	NO	YES ²⁸¹	
Does State law establish a means of determining equivalency between public and non-public school diplomas?	NO	NO	NO	

278. Non-public schools that seek to operate in North Carolina must submit a "notice of intent to operate" to the designated state official. N.C. Gen. Stat. §§ 115C-552, 115C-560 (2002). Accreditation, however, is optional. See N.C. Gen. Stat. § 115C-555 (2002).

279. N.D. Cent. Code § 15.1-06-06 (2000) (requires every non-public school to be approved). Survey response indicates that accreditation is voluntary. See N.D. Cent. Code § 15.1-02-11 (2002) (providing that the "superintendent of public instruction may adopt rules governing the accreditation of public and nonpublic schools").

280. Approval and licensure are mandatory per survey response. See N.D. Cent. Code § 15.1-06-06 (2002). Accreditation is voluntary.

281. N.D. Cent. Code § 15-38-07 (2000) requires that the following subjects be taught in all schools: spelling, reading, writing, arithmetic, language, grammar, geography, US history, government, nature, agriculture, physiology, hygiene, and health instruction on alcohol and narcotics and infectious diseases. See N.D. Cent. Code § 15.1-21-02 (2001). The minimum curriculum in approved high schools includes English, mathematics, science, social studies, health, music, and vocational education. See N.D. Cent. Code § 15-41-24 (2000).

Do State laws require nonpublic schools to conduct classes: Specific number of hours/day: Specific number of days/year:	NO		NO	YES ²⁸³		
	NO ²⁸²	X	YES	YES		
Are nonpublic schools required to administer specific tests?	YES		YES	YES ²⁸⁴		
If tests are required, are they: Administered annually? Reported to the state?	YES			YES ²⁸⁶		
	NO ²⁸⁵					
Must nonpublic schools report attendance or other information to public officials?	NO ²⁸⁷	X	YES	NO		
Are teachers in nonpublic schools required to be certified?	NO		NO	YES ²⁸⁸		
Are there any other requirements for nonpublic school teachers?	NO	X	YES	NO		

282. N.C. Gen. Stat. § 115C-548 (2002) requires that the school operate for nine calendar months, but has no length of day requirement.

283. N.D. Cent. Code § 15-34.1-03 (2000) requires private school students to attend the same length of time as is required for public schools.

284. N.D. Cent. Code 15.1-06-07 (2002).

285. See N.C. Gen. Stat. §§ 115C-549, 557 (2002) (requiring a national standardized test to be administered yearly). While the results do not have to be reported, they must be available for inspection per survey response.

286. N.D. Cent. Code § 15.1-06-07 (2002).

287. See N.C. Gen. Stat. §§ 115C-548, 556 (2002).

288. N.D. Cent. Code § 15.1-18-03 (2001) requires every teacher in any high school to have a teaching license. See also N.D. Cent. Code § 15.1-06-06 (2002), requiring each teacher to be certified in order for the private school at which he teaches to be approved.

Do State laws/rules authorize the creation of charter schools?	YES ²⁸⁹			NO		
Do State laws/rules provide for a nonpublic school advisory board or commission?	NO	X	YES	NO		

289. N.C. Gen. Stat. § 115C-238.29E (2002).

	NEW		OLD		NEW		OLD	
	Ohio		Ohio		Oklahoma		Oklahoma	
Do state law/Rules provide for regulation of non-public schools?	YES		YES		YES		YES	
Types of Regulation	R ²⁹⁰ C		C		A ²⁹¹		A	
Mandatory or Voluntary?	M		M		V ²⁹²		V	
Exemptions	Religious Schools ²⁹³		YES					
Does State law specify subjects which must be taught by non-public schools?	YES ²⁹⁴		YES		YES ²⁹⁵		NO ²⁹⁶	
Does State law establish a means of determining equivalency between public and non-public school diplomas?	YES ²⁹⁷	X	NO		NO		NO	

290. Registration is mandatory. See Ohio Rev. Code Ann. § 3332.11 (West 2002). Voluntary accreditation or charter is issued if the school meets the minimum requirements. Ohio Rev. Code Ann. § 3301.16 (West 2002).

291. Okla. Stat. Ann. tit. 70, § 3-104 (2003).

292. Okla. Stat. Ann. tit. 70, § 3-104(10) (2003).

293. Non-chartered, non-taxed religious schools are exempt. Florida Report, *supra* n. 14, at 82.

294. *Id.*

295. Accredited private schools must teach the same subjects as public schools per survey response.

296. Unless accredited. Florida Report, *supra* n. 14, at 82.

297. A minimum score on a proficiency test is required for a diploma. Ohio Rev. Code Ann. § 3313.612 (West 2002).

Do State laws require nonpublic schools to conduct classes: Specific number of hours/day: Specific number of days/year:	YES ²⁹⁸		YES	YES ²⁹⁹		NO
Are nonpublic schools required to administer specific tests?	YES ³⁰⁰	X	NO	NO		NO
If tests are required, are they: Administered annually? Reported to the state?	YES YES ³⁰¹		NO			
Must nonpublic schools report attendance or other information to public officials?	YES		YES ³⁰²	NO ³⁰³	X	YES

298. Days and hours must be equivalent to public schools in each district. Ohio Rev. Code Ann. § 3321.07 (West 2002).

299. Requires a school day of six hours for accredited schools. Okla. Stat. Ann. tit. 70, § 1-111 (West 2003).

300. Ohio Rev. Code Ann. § 3301.0711 (Anderson 2002). Since 1989, no chartered, non-public school may award a high school diploma unless the student has attained a passing score on the required examinations. Ohio Rev. Code Ann. §§ 3313.612, 3301.0710 (West 2002).

301. Statewide proficiency tests are required. Ohio Rev. Code Ann. § 3301.0710 (West 2002). Test results must be reported annually to the state per survey response.

302. A report must be sent to the State Board of Education, the contents of which are determined by the Board. Ohio Rev. Code Ann. § 3301.14 (West 2002).

303. Attendance reports must be kept, and private schools must notify the district attendance officer of student absences. Okla. Stat. Ann. tit. 70, § 10-106 (West 2003).

Are teachers in nonpublic schools required to be certified?	YES ³⁰⁴		NO	YES ³⁰⁵		NO ³⁰⁶
Are there any other requirements for nonpublic school teachers?	YES		NO	NO		NO
Do State laws/rules authorize the creation of charter schools?	YES ³⁰⁷		NO	YES ³⁰⁸		
Do State laws/rules provide for a nonpublic school advisory board or commission?	YES		NO	YES	X	NO

304. Survey response said no, but the Ohio state statute indicates that there are minimal standards for certification of teachers in non-tax supported schools. The standards provide for certification without further educational requirements beyond a bachelor's degree from an accredited college or university. Ohio Rev. Code Ann. § 3301.071 (West 2002).

305. Applies to accredited schools only per survey response.

306. Unless the school is accredited. Florida Report, *supra* n. 14, at 82.

307. Ohio Rev. Code Ann. § 3314.01 (West 2002).

308. See Okla. Stat. Ann. tit. 70, § 31-132 (West 2003).

	NEW		OLD	
	Oregon		Oregon	Penn.
Do state law/Rules provide for regulation of non-public schools?	YES		YES	YES
Types of Regulation	R ³⁰⁹		R	L ³¹⁰ R
Mandatory or Voluntary?	V ³¹¹		V	M ³¹²
Exemptions	NO			Religious Schools
Does State law specify subjects which must be taught by non-public schools?	NO ³¹⁴		NO	YES ³¹⁵
Does State law establish a means of determining equivalency between public and non-public school diplomas?	NO		NO	NO

309. Or. Rev. Stat. Ann. § 345.525 (2001).

310. For licensing requirement, *see* 24 Pa. Consol. Stat. Ann. § 6705 (2002), and for registration provision, *see* Pa. Code tit. 22 § 51.4 (2003).

311. Or. Rev. Stat. §§ 345.525, 345.515 (2001) provide that a school "may" be registered.

312. Mandatory for schools offering education for a fee to twenty-five or more students total or to five or more pupils at a time, 24 Pa. Consol. Stat. §§ 6705, 6706 (2002). To invoke the mandatory provisions, the education must also be for the purpose of preparing an individual for advanced study. 24 Pa. Consol. Stat. § 6702 (2002).

313. Exemptions from the mandatory licensing requirement are given to schools operated by bona fide religious institutions, schools operated by the Commonwealth, and schools already accredited by an association approved by the State Board. These schools may voluntarily choose to be licensed, and thus subject to the regulations. 24 Pa. Consol. Stat. § 6705 (2002).

314. Or. Rev. Stat. Ann. § 345.030 (2001) requires that students either attend a school in which they are taught the courses of study usually taught in the public schools, or demonstrate equivalent knowledge.

315. Curriculum requirements vary, however, based on grade level. For general requirements applicable to all levels, *see* Pa. Code tit. 22 § 51.52 (2003). Also, 24 Pa. Consol. Stat. Ann. 13-1327(b) (2002) provides attendance and curriculum requirements for church schools. For nursery schools and kindergartens, *see* Pa. Code tit. 22 § 53.33 (2003). For elementary schools, *see* Pa. Code tit. 22 § 55.31 (2003). For secondary schools, *see* Pa. Code tit. 22 § 57.31 (2003).

Do State laws require nonpublic schools to conduct classes:					
Specific number of hours/day:	NO		NO	YES ³¹⁷	YES
Specific number of days/year:	YES ³¹⁶		YES	YES	YES
Are nonpublic schools required to administer specific tests?			NO	YES	YES
If tests are required, are they: Administered annually? Reported to the state?					
Must nonpublic schools report attendance or other information to public officials?	YES ³¹⁸		NO	NO ³¹⁹	X YES
Are teachers in nonpublic schools required to be certified?	NO		NO	YES ³²⁰	YES ³²¹
Are there any other requirements for nonpublic school teachers?	YES ³²²		NO	YES	YES ³²³

316. Must be equivalent to that required in the public schools. Or. Rev. Stat. Ann. § 339.030(1)(a) (2001).

317. Pa. Code tit. 22 § 51.61 (2003). Length of day varies depending on the level of education, ranging from two and one-half hours to five and one-half hours. Length of year is 180 days unless an equivalent number of total hours is approved by the State Board of Private Academic Schools.

318. Only if the school is registered.

319. No requirement to report attendance, but attendance must be maintained as a permanent record. Pa. Code tit. 22 § 51.72 (2003).

320. Teachers in religious schools or those accredited by a Board-approved agency are exempt.

321. Requirements differ for various grade levels as follows: kindergarten, Pa. Code tit. 22 §§ 53.2, 53.22 (2003); elementary schools, Pa. Code tit. 22 § 55.11 (2003); and secondary schools, Pa. Code tit. 22 § 57.11 (2003).

322. Teacher must have qualifications of fitness to teach in a registered school. Or. Rev. Stat. Ann. § 345.525(2)(a) (2001).

323. General requirements for teachers are found in Pa. Code tit. 22 § 51.31 (2003), and pertain to age, citizenship, health, etc. Other general provisions are contained in Pa. Code tit. 22 § 51.34 (2003).

Do State laws/rules authorize the creation of charter schools?	YES ³²⁴				YES ³²⁵
Do State laws/rules provide for a nonpublic school advisory board or commission?	YES ³²⁶		YES	YES	YES ³²⁷

324. See Or. Rev. Stat. Ann. § 338.035 (2001).

325. 24 Pa. Consol. Stat. Ann. § 17-1703-A (1999).

326. See Or. Rev. Stat. § 345.575 (2001).

327. State Board of Private Academic Schools. See 24 Pa. Consol. Stat. Ann. § 6703 (2002).

	NEW	OLD	NEW	OLD
	Rhode Island	Rhode Island	South Carolina	South Carolina
Do state law/Rules provide for regulation of non-public schools?	YES	N/A	YES	YES
Types of Regulation	S.A. ³²⁸ R		S.A.	X L R
Mandatory or Voluntary?	M ³²⁹		M	
Exemptions			YES ³³⁰	
Does State law specify subjects which must be taught by non-public schools?	YES ³³¹		NO	NO
Does State law establish a means of determining equivalency between public and non-public school diplomas?	NO		NO	NO

328. For approval requirement, *see* R.I. Gen. Laws §§ 16-40-1, 16-19-2 (2002); for provision concerning registration, *see* R.I. Gen. Laws § 16-40-11 (2002).

329. R.I. Gen. Laws §§ 16-40-1, 11 (2002).

330. Parochial, denominational, and church-related schools need not be accredited. S.C. Code Ann. § 59-65-10 (2002).

331. R.I. Gen. Laws § 16-19-2 (2002) requires that reading, writing, geography, arithmetic, and U.S. and Rhode Island history and government be taught to the same extent as required in public schools in order for a private school to gain approval. In addition, to be granted approval, the instruction in private schools must be substantially equivalent to the curriculum requirements for public schools. R.I. Gen. Laws §§ 16-22-2-21 (2002).

Do State laws require nonpublic schools to conduct classes: Specific number of hours/day: Specific number of days/year:	YES ³³²			NO		NO
	YES			NO	X	YES
Are nonpublic schools required to administer specific tests?	NO			NO		NO
If tests are required, are they: Administered annually? Reported to the state?						
Must nonpublic schools report attendance or other information to public officials?	YES ³³³			YES ³³⁴		YES
Are teachers in nonpublic schools required to be certified?	NO			NO		NO
Are there any other requirements for nonpublic school teachers?	YES			NO		NO

332. The instruction must be "substantially equal" in length to that in the public schools. R.I. Gen. Laws § 16-19-2 (2002). However, the regulations governing attendance in public schools do not set forth a specific number of hours or days. See R.I. Gen. Laws § 16-19-1 (2002).

333. Attendance must be reported to the Superintendent of Schools and Department of Elementary and Secondary Education. R.I. Gen. Laws § 16-19-2 (2002).

334. Must report attendance, grade, and number of teachers employed to the County Superintendent. S.C. Code Ann. § 59-13-130 (2002).

Do State laws/rules authorize the creation of charter schools?	YES ³³⁵			YES ³³⁶		
Do State laws/rules provide for a nonpublic school advisory board or commission?	NO			NO		NO

335. Commissioner of Education may recommend granting of a charter. See R.I. Gen. Laws § 16-77-3 (2002).

336. S.C. Code Ann. §59-40-70(B) (2002) allows a local board to approve a charter school. Title 59, Chapter 40 contains several provisions regarding charter schools.

	NEW		OLD		NEW		OLD	
	S. Dakota		S. Dakota		Tenn.		Tenn.	
Do state law/Rules provide for regulation of non-public schools?	YES		YES		YES		YES	
Types of Regulation	A ³³⁷		A		R A ³³⁸ S.A.		R	
Mandatory or Voluntary?	M				V/M ³³⁹	X	M	
Exemptions	YES ³⁴⁰		NO		Church Schools ³⁴¹			
Does State law specify subjects which must be taught by non-public schools?	YES ³⁴²		YES		YES ³⁴³		YES	

337. Nonpublic schools must be state-accredited per survey response. Criteria for accreditation include requirements concerning staff, curriculum, administration, and facilities. Admin. R. S.D. 24:03:02:01 (2000).

338. Accreditation is strictly voluntary through a process administered by SACS or some other accrediting agency approved by the state. There are several different categories of schools in Tennessee. Tenn. Comp. R. & Regs. 0520-7-2-.01(1) (2002). Category I schools are approved by the Department of Education. Tenn. Comp. R. & Regs. 0520-7-2-.02 (2002). Category II schools are approved by an accrediting agency. Tenn. Comp. R. & Regs. 0520-7-2-.03 (2002). Category III schools are approved by SACS. Tenn. Comp. R. & Regs. 0520-7-2-.04 (2002). Category IV schools are exempt. Tenn. Comp. R. & Regs. 0520-7-2-.05 (2002). Exempted schools are not state approved unless they seek approval from the state or from an accrediting agency. Category V schools are acknowledged for operation. Tenn. Comp. R. & Regs. 0520-7-2-.06 (2002).

339. Licensure and registration are voluntary, but are required for schools seeking state approval. All schools must obtain state "acknowledgment" per survey response.

340. S. D. Codified Laws Ann. § 13-27-3 (2002) provides a narrow exception for students receiving alternative instruction.

341. Church-related schools may not be regulated, Tenn. Code Ann. § 49-50-801 (2002), but may be considered Category IV exempted schools, *see* Tenn. Comp. R. & Regs. 0520-7-2-.05 (2002).

342. State Board is charged with establishing the minimum curriculum standards for all nonpublic schools. S.D. Codified Laws § 13-1-12.1 (2002). Instruction must be given in U.S. and South Dakota Constitutions. S.D. Codified Laws § 13-33-4 (2002). To graduate from high school, the following subjects are required: English or language arts, U.S. history, U.S. government, geography, mathematics, laboratory science, laboratory computer science, and fine arts. Admin. R. S.D. 24:03:06:06:01 (2002).

343. Only if state approved. *See* Tenn. Code Ann. § 49-60-1202 (2002) stating that every accredited private high school must teach at least one year of American history and government. Category II schools must teach reading, composition, speech, mathematics, social studies, science, art, music, health, and physical education. Tenn. Comp. R. & Regs. 0520-7-2-.03(6)(c)(9)(i)(I) (2002).

Does State law establish a means of determining equivalency between public and non-public school diplomas?	NO		NO		NO
Do State laws require nonpublic schools to conduct classes:					
Specific number of hours/day:	YES ³⁴⁴		YES		YES ³⁴⁵
Specific number of days/year:	YES		YES		YES
Are nonpublic schools required to administer specific tests?	YES ³⁴⁶		YES		YES ³⁴⁷
If tests are required, are they:					
Administered annually?	NO ³⁴⁸				
Reported to the state?					
Must nonpublic schools report attendance or other information to public officials?	YES		YES		YES

344. Each school system must adopt a preliminary calendar scheduling 175 days or more. During a school term in grades 1-3, students must be in attendance 875 hours, exclusive of intermissions. Admin. R. S.D. 24:03:04:15 (2002). In grades 4-12, students must be in attendance for a minimum of 962 1/2 hours. S.D. Codified Laws § 13-26-1 (2002).

345. Only if state approved. Church related schools shall be conducted for the same length of term as public schools. Tenn. Code Ann. § 49-50-801(c) (2002). Category II and V schools must operate for the minimum number of days and hours required of public schools. Tenn. Comp. R. & Regs. 0520-7-2-.03(6)(c)(9)(v)(I), .06 (2002).

346. S.D. Codified Laws § 13-27-3 (2002) requires children who receive alternative instruction to take a nationally standardized achievement test.

347. In Category II schools, a national standardized achievement test is required for grades 2-8 and 10. Tenn. Comp. R. & Regs. 0520-7-2-.03(6)(c)(9)(vi) (2002). Category V schools must administer a nationally standardized achievement test for grades 2-8 and 10. Tenn. Comp. R. & Regs. 0520-7-2-.06(11) (2002).

348. However, S.D. Codified Laws § 13-27-3 (2002) states that test results may be monitored by the local school district.

Are teachers in nonpublic schools required to be certified?	YES ³⁴⁹		YES	YES ³⁵⁰		NO
Are there any other requirements for nonpublic school teachers?	NO		NO	YES ³⁵¹		
Do State laws/rules authorize the creation of charter schools?						
Do State laws/rules provide for a nonpublic school advisory board or commission?	NO		NO	YES ³⁵²		NO

349. S.D. Codified Laws § 13-42-2 (2002) makes it an offense to teach in a nonpublic school without a certificate.

350. Only if state approved. Tenn. Comp. R. & Regs. 0520-7-2-.06(10) (2002).

351. Category II schools require licensure or some "comparable system." Tenn. Comp. R. & Regs. 0520-7-2-.03(6)(c)(9)(iii)(I) (2002). Category V schools require the teacher to have a baccalaureate degree with no more than 25% of the courses obtained from home study or correspondence. Tenn. Comp. R. & Regs. 0520-7-2.06(10) (2002).

352. Survey response says no, but *see* Tenn. Comp. R. & Regs. 0520-7-1-.01(1) (2002), which provides for the appointment of a nine member non-public school advisory board.

	NEW		OLD		NEW		OLD	
	Texas		Texas		Utah		Utah	
Do state law/Rules provide for regulation of non-public schools?	YES		YES		YES			
Types of Regulation	A		S.A.		A ³⁵³ S.A. L			
Mandatory or Voluntary?	V ³⁵⁴	X	M		V ³⁵⁵			
Exemptions			Church Schools		NO			
Does State law specify subjects which must be taught by non-public schools?	YES ³⁵⁶		YES		YES ³⁵⁷			
Does State law establish a means of determining equivalency between public and non-public school diplomas?	NO ³⁵⁸		NO		YES ³⁵⁹			
Do State laws require nonpublic schools to conduct classes:								
Specific number of hours/day:	NO		NO		NO			
Specific number of days/year:	NO		NO					
Are nonpublic schools required to administer specific tests?	NO		NO		NO			

353. Accreditation is voluntary, but private schools must be approved by the local school board to satisfy requirements of the compulsory attendance law. Utah Admin. Code § R277-410-2 (Feb. 13, 2003).

354. Since 1989, the state no longer accredits non-public schools. Accreditation is handled by an approved private organization, TEPSAC (the Texas Private School Accreditation Commission). Letter of Understanding from Dr. James Nelson, Commissioner of Education, to Dr. Michael P. Thomas, Chairman, Texas Private School Accreditation Commission (Oct. 8, 1999) (verifying continuing recognition of TEPSAC) (copy on file with author).

355. Utah Admin. Code § R277-410-2 (Feb. 13, 2003) (addresses voluntary accreditation).

356. Schools must teach good citizenship. Tex. Educ. Code Ann. § 25.086 (2001).

357. Utah Admin. Code §§ R277-700-10, -11 (2000).

358. Accreditation standards used by TEPSAC are comparable to state standards for public schools.

359. Utah Admin. Code § R277-410-4 (Feb. 13, 2003) provides that credit will be accepted if evaluated under the credit approval criteria established by the Board.

If tests are required, are they: Administered annually? Reported to the state?						
Must nonpublic schools report attendance or other information to public officials?	NO		NO	NO		
Are teachers in nonpublic schools required to be certified?	NO		NO	NO		
Are there any other requirements for nonpublic school teachers?	NO	X	YES ³⁶⁰	YES ³⁶¹		
Do State laws/rules authorize the creation of charter schools?				YES ³⁶²		
Do State laws/rules provide for a nonpublic school advisory board or commission?	NO		NO	NO		

360. Health screening. Florida Report, *supra* n. 14, at 84.

361. Teachers are expected to be able to give the same quality of instruction as their public school counterparts. Letter from Walter D. Talbot, Superintendent of Public Instruction, regarding private school standard (Nov. 23, 1977) (attached to and referenced in Informal Attorney General Opinion No. 82-41 (Apr. 28, 1982) (1982 WL 176619 (Utah A.G.))).

362. Utah Code Ann. § 53A-1a-502 (2003).

	NEW	OLD	NEW	OLD
	Vermont	Vermont	Virginia	Virginia
Do state law/Rules provide for regulation of non-public schools?	YES	YES	YES ³⁶³	X NO
Types of Regulation	S.A ³⁶⁴ R	S.A.	A	X
Mandatory or Voluntary?	V/M ³⁶⁵	M	V	X
Exemptions	NO			
Does State law specify subjects which must be taught by non-public schools?	YES ³⁶⁶	YES	NO	NO
Does State law establish a means of determining equivalency between public and non-public school diplomas?	NO	NO	NO	NO

363. Survey response says yes; however, since 1985, the Commonwealth of Virginia has not accredited non-public schools, but has established a board that approves private accrediting agencies from which private schools may voluntarily seek accreditation. Va. Code Ann. § 22.1-19 (2002).

364. Must be either approved or recognized (i.e. registered). Vt. Stat. Ann. tit. 16, § 166 (a) (2002). For approval, see Vt. Stat. Ann. tit. 16, § 166 (b) (2002). For recognition, see Vt. Stat. Ann. tit. 16, § 166 (c) (2002).

365. Private (or "independent") schools must be either approved or recognized. Vt. Stat. Ann. tit. 16, § 166 (2002).

366. Vt. Stat. Ann. tit. 16, § 906 (2002) requires a minimum course of study in: reading, writing, arithmetic, history, civics, government, physical and health education, English and American literature, natural science, and fine arts.

Do State laws require nonpublic schools to conduct classes: Specific number of hours/day: Specific number of days/year:	YES ³⁶⁷ YES		YES	NO NO	NO NO
Are nonpublic schools required to administer specific tests?	YES ³⁶⁸			NO	NO
If tests are required, are they: Administered annually? Reported to the state?					
Must nonpublic schools report attendance or other information to public officials?	YES ³⁶⁹		YES	NO ³⁷⁰	NO
Are teachers in nonpublic schools required to be certified?	YES ³⁷¹		NO	NO	NO

367. Must be equivalent to the amount of time required for public schools. *See* Vt. Stat. Ann. tit. 16, § 166 (c)(1)(A) (2002).

368. However, survey response indicates that publicly funded students must take a new standard reference exam.

369. Must maintain attendance records and report enrollment. *See* Vt. Stat. Ann. tit. 16, § 166 (c) (2002).

370. However, attendance records must be kept and be available for inspection. Va. Code Ann. § 22.1-259 (2002).

371. Certification is required only for special education teachers. Minimum education requirements – but not certification – apply to teachers in approved schools per survey response.

Are there any other requirements for nonpublic school teachers?	YES ³⁷²			NO		NO
Do State laws/rules authorize the creation of charter schools?						
Do State laws/rules provide for a nonpublic school advisory board or commission?	YES ³⁷³	X	NO	NO		NO

372. In approved schools, teachers must be qualified by training and experience in the areas in which they are assigned. Vt. Stat. Ann. tit. 16, § 166 (b) (2002).

373. Council of Independent Schools. See Vt. Stat. Ann. tit. 16, § 166(d) (2002).

	NEW		OLD	NEW		OLD
	Washington		Washington	West Virginia		West Virginia
Do state law/Rules provide for regulation of non-public schools?	YES		YES	YES		YES
Types of Regulation	S.A ³⁷⁴		S.A.	A ³⁷⁵ S.A. R		A R
Mandatory or Voluntary?	M ³⁷⁶		M	M		M
Exemptions	NO ³⁷⁷		NONE	NO ³⁷⁸		NONE
Does State law specify subjects which must be taught by non-public schools?	YES ³⁷⁹		YES	YES ³⁸⁰		YES

374. Wash. Rev. Code § 28A.195.010 (2002); Wash. Admin. Code § 180-90-112 (2002).

375. Private schools must at least be registered, but formal approval or accreditation is voluntary per survey response. For applicable regulatory requirements, see W. Va. Code §§ 18-28-1 *et seq.* (2002).

376. Wash. Rev. Code § 28A.195.010 (2002).

377. *Id.*

378. Survey response says no, but private, parochial, and church schools are subject to minimal regulation. W. Va. Code §§ 18-28-1, 7 (2002).

379. Private school curriculum must include basic instruction in occupational education, science, mathematics, language, social studies, history, health, reading, writing, spelling, art, and music appreciation. These courses must be offered in sufficient units to meet the State Board of Education graduation requirements. Wash. Rev. Code § 28A.195.010(7) (2002).

380. W. Va. Code § 18-2-9 (2002) requires instruction in U.S. and West Virginia history, the U.S. Constitution, and West Virginia government. However, these requirements do not appear to apply to private schools that register with the state under the provisions of W.Va. Code §§ 18-28-1 *et seq.* (2002). For those schools, standardized achievement tests are apparently used instead of a prescribed curriculum.

Does State law establish a means of determining equivalency between public and non-public school diplomas?	NO ³⁸¹	X	YES	NO	NO
Do State laws require nonpublic schools to conduct classes:					
Specific number of hours/day:	YES ³⁸²	X	NO	YES ³⁸³	YES
Specific number of days/year:	YES		YES	YES	YES
Are nonpublic schools required to administer specific tests?	NO		NO	YES ³⁸⁴	YES
If tests are required, are they:					
Administered annually?				YES ³⁸⁵	
Reported to the state?				YES	

381. The curriculum must include the courses listed in footnote 379, *supra*, in sufficient units to meet the State Board of Education graduation requirements. Wash. Rev. Code § 28A.195.010(7) (2002). However, private school students are not required to obtain a certificate of mastery to graduate from high school or to master the essential learning requirements, which indicates no equivalency. See Wash. Rev. Code § 28A.195.010(6) (2002).

382. 180 days a year are required. Wash. Rev. Code § 28A.195.010(1) (2002). The school day must be the same as that required in public schools, but the percentages required for certain types of activities in public schools do not apply to private schools. See Wash. Rev. Code § 28A.195.010(2) (2002).

383. 180 days a year, 5 hours a day of instruction. W. Va. Code § 18-28-2 (2002).

384. Schools may choose from among the California Achievement Test, Stanford Achievement Test, or Iowa Test of Basic Skills. W. Va. Code § 18-28-3 (2002).

385. Must be administered annually. W. Va. Code § 18-28-3 (2002). Survey response says that test results must be reported to the state. However, the statute says that they do not have to be reported to the State unless specifically requested. See W. Va. Code § 18-28-3(b) (2002).

Must nonpublic schools report attendance or other information to public officials?	YES ³⁸⁶		YES	YES ³⁸⁷	YES
Are teachers in nonpublic schools required to be certified?	YES ³⁸⁸		YES	YES ³⁸⁹	NO
Are there any other requirements for nonpublic school teachers?	NO ³⁹⁰	X	YES	YES	YES
Do State laws/rules authorize the creation of charter schools?					
Do State laws/rules provide for a nonpublic school advisory board or commission?	YES ³⁹¹		YES	NO	NO

386. Wash. Rev. Code § 28A.195.060 (2002) requires attendance reports to be furnished to the district superintendent before June 30 of each year.

387. Attendance records must be furnished to the county superintendent of schools. W. Va. Code § 18-8-1 (2002). *See also* W. Va. Code § 13-4-2 (2002) (requiring attendance reports to be furnished to the secretary of education).

388. All teachers must be certified. Wash. Rev. Code § 28A.195.010 (3) (2002). Certification is required except for persons teaching religion courses or persons of unusual competence who are under the supervision of a certified teacher. Wash. Rev. Code § 28A.195.010 (3) (a)-(b).

389. Applies to accredited schools only per survey response.

390. However, Wash. Rev. Code § 28A.195.080 (2002) allows criminal background checks on teachers having unsupervised access to children.

391. Wash. Rev. Code § 28A.195.050 (2002) creates a private school advisory committee that is appointed by the superintendent of public instruction.

	NEW	OLD	NEW	OLD
	Wisconsin	Wisconsin	Wyoming	Wyoming
Do state law/Rules provide for regulation of non-public schools?	YES	YES	YES	YES
Types of Regulation	S.A. ³⁹² E	E	L ³⁹³	L
Mandatory or Voluntary?	V/M	M	M	M
Exemptions		NONE	YES ³⁹⁴	Church Schools
Does State law specify subjects which must be taught by non-public schools?	YES ³⁹⁵	YES	NO ³⁹⁶	NO
Does State law establish a means of determining equivalency between public and non-public school diplomas?	NO	NO	NO	NO

392. Schools must submit enrollment reports, but formal state approval is strictly voluntary per survey response. Wis. Stat. § 118.165 (f)(2) (2002). (I don't see enrollment mentioned in sec. 118.165???)

393. Licenses are required. Wyo. Stat. Ann. § 21-2-401(a) (2002). Application procedures for licenses are set forth in Weil's Code Wyo. R. 005-001-001 § 7 (2000).

394. Exemptions apply to church or religious schools or home-based schools. Wyo. Stat. Ann. § 21-2-406 (2002); Weil's Code Wyo. R. 005-000-018 § 3 (2000).

395. Reading, language arts, mathematics, social studies, science, and health are required. Wis. Stat. § 118.165 (2002).

396. Survey response says no, but instruction is required in U.S. and Wyoming Constitutions according to Weil's Code Wyo. R. 005-000-018 § 9 (2000). Furthermore, students have to meet performance standards set by the school in the following areas: language arts, social studies, mathematics, science, fine and performing arts, physical education, health and safety, humanities, career options, foreign cultures including language, and applied technology. See Weil's Code Wyo. R. 005-000-018 § 7 (2000). The fact that a school must have performance standards in these areas essentially necessitates that these subjects be taught in some form.

Do State laws require nonpublic schools to conduct classes:					
Specific number of hours/day:	NO ³⁹⁷		NO	YES ³⁹⁸	YES
Specific number of days/year:	YES		YES	YES	YES
Are nonpublic schools required to administer specific tests?	NO		NO	YES	X NO
If tests are required, are they:					
Administered annually?				YES	
Reported to the state?				YES ³⁹⁹	
Must nonpublic schools report attendance or other information to public officials?	YES		YES	YES	X NO
Are teachers in nonpublic schools required to be certified?	NO ⁴⁰⁰		NO	YES ⁴⁰¹	X NO

397. However, they do require 875 hours of instruction each school year. Wis. Stat. § 118.165 (2002).

398. Wyo. Stat. Ann. § 21-4-102 (2002) requires a child be in attendance at a private school for the entire time that the public schools are in session.

399. Weil's Code Wyo. R. 005-000-018 § 15 (2000). The school averages for standardized tests must be provided in its annual report to the State Board of Education. This requirement, however, applies only to licensed schools, not to exempt religious schools.

400. Wis. Stat. § 115.28 (2002).

401. Weil's Code Wyo. R. 005-000-018 § 12 (2000). This requirement applies only to licensed schools, and therefore not to exempt religious schools.

Are there any other requirements for nonpublic school teachers?	NO	X	YES ⁴⁰²	NO	NO
Do State laws/rules authorize the creation of charter schools?	YES				
Do State laws/rules provide for a nonpublic school advisory board or commission?	NO		NO		NO

402. Health screening. Florida Report, *supra* n. 14, at 84.