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THE LEGAL ASPECTS OF HOME INSTRUCTION

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THE LEGAL ASPECTS OF HOME INSTRUCTION

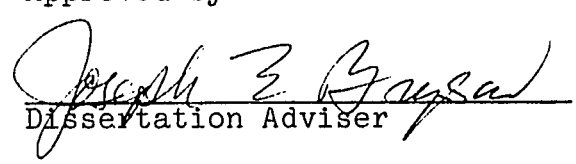
by

Sue F. Burgess

A Dissertation Submitted to
the Faculty of the Graduate School at
The University of North Carolina at Greensboro
in Partial Fulfillment
of the Requirements for the Degree
Doctor of Education

Greensboro
1985

Approved by



Dissertation Adviser

APPROVAL PAGE

This dissertation has been approved by the following committee of the Faculty of the Graduate School of The University of North Carolina at Greensboro.

Dissertation Adviser Joseph E Bryson

Committee Members

March 25, 1985
Date of Acceptance by Committee

March 25 1985
Date of Final Oral Examination

BURGESS, SUE F., Ed.D. The Legal Aspects of Home Instruction. (1985) Directed by Dr. Joseph E. Bryson. 293 pp.

This study is designed to identify and discuss major legal aspects of home instruction for school-aged children in the United States. Based on the review of the literature and on an examination of state statutes and case law, the following conclusions can be drawn:

1. Courts generally uphold compulsory attendance laws.

2. Courts rule in favor of parents if fundamental rights are violated.

3. Courts have not recognized a constitutional right to home instruction.

4. Parents find very little protection from compulsory attendance laws based on the First Amendment's freedom of religion.

5. Parents seldom find relief from attendance laws based on the Fourteenth Amendment's equal protection of the laws.

6. An effective legal strategy for parents in states where home instruction is legal is to claim they were denied due process.

7. A current judicial trend is to declare that terms in attendance laws such as "private school" are unconstitutionally vague.

8. Courts uphold reasonable regulations for home instruction.

9. Courts will help clarify the meaning of the statutory terms "otherwise" and "equivalent."

10. In assessing equivalence of home instruction to school attendance, judges focus on curriculum, competence of instructors, adequacy of materials, and regularity of instruction.

11. The burden of proof may be placed on the state, the parents, or be split between the two parties.

12. Future court strategies by home-schoolers are likely to concentrate on the right to privacy, procedural due process rights, and challenges of vagueness against statutory wording.

13. Home instruction lobbyists will actively seek changes in compulsory attendance laws in these eleven states (which did not permit home instruction as of January, 1985): Arkansas, Kansas, Minnesota, Nebraska, New Mexico, North Carolina, North Dakota, Tennessee, Texas, Washington, and Wyoming.

14. In the thirty-nine states where home instruction is permitted by statutory law, case law, attorney general opinion, state department of education policy, or by state or local school board policy, home instruction lobbyists will seek relaxation of any strict regulations, such as the requirement for a certified teacher.

15. Public school administrators will increasingly come into contact with home-schoolers throughout the 1980's.

ACKNOWLEDGMENTS

I would like to express my appreciation to Dr. Joseph E. Bryson for serving as my dissertation adviser. Other members of my dissertation committee to whom I am indebted are Dr. Dale Brubaker, Dr. John Humphrey, and Dr. Fritz Mengert.

The successful completion of this study would not have been possible without the cooperation of administrators in the Davidson County Schools, especially Dr. E. Lawson Brown, Dr. W. Max Walser, Clate F. Huffman, Glenn L. Compton, and Paul V. Yarborough.

The following friends and relatives sent me pertinent newspaper clippings, pamphlets, and magazine articles: Larry Jones, Phil Mobley, Kay Shebs, Sarah Fisher, and John Bost. E. Michael Fisher and Davidson Burgess assisted me in obtaining copies of court decisions.

To my husband, Davidson Burgess, I express my deepest gratitude. His support, encouragement, and affection made it possible for me to finish this study.

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CHAPTER I

INTRODUCTION

The idea of teaching children at home rather than sending them to a school may sound like an unprecedented experiment in the history of American education, but it is not.[1] Until compulsory school attendance laws were passed in every state between 1852 and 1918,[2] home instruction was the rule rather than the exception. As if in the "closing of a circle,"[3] a growing number of parents in the 1980's are returning to the practice of educating their own offspring.

A variety of possible reasons have been advanced to explain why some parents select home instruction instead of school attendance for their children. In what Lines has called "a rejection of the idea of the United States public school as a melting pot," some parents feel that public and nonpublic

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[1]Francis Roberts, "The Home-Schooling Question," Parents, July 1984, p. 112.

[2]Lawrence A. Cremin, The Transformation of the School (New York: Random House, 1964), p. 127.

[3]A. Beshoner, "Home Instruction in America: Parental Rights Reasserted," University of Missouri at Kansas City Law Review, vol. 49, (Winter, 1981), p. 191, cited by M. Chester Nolte, "Home Instruction in Lieu of Public School Attendance," School Law in Changing Times, ed. M. A. McGhehey (Topeka, Kansas: National Organization on Legal Problems of Education, 1982), p. 3.

schools are too conservative in approach, while other parents (including fundamentalist Christians) find the schools to be too liberal.[4] There are assertions that the public schools promote "secular humanism"[5] and that attendance at schools can result in a "social cancer" called "peer dependency."[6] A tide of discontent with public schools followed publicity about falling scores on standardized tests, leading some parents to the conclusion that attendance at any school (including a home school) would produce an education at least equal in quality to that available in the public schools.[7] In Megatrends: Ten New Directions Transforming Our Lives, John Naisbitt wrote that the widespread interest in home schools is part of a movement featuring increased reliance on oneself and less dependency on social institutions.[8]

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[4]Patricia M. Lines, "State Regulation of Private Education," Phi Delta Kappan, vol. 64, October, 1982, p. 119.

[5]Charles E. Rice, "Conscientious Objection to Public Education: The Grievance and the Remedies," Brigham Young Law Review, vol. 18, 1978, p. 848.

[6]Raymond S. Moore, America's Greatest Educational System, U.S. Educational Resources Information Center, ERIC Document ED 192 873, 1979, p. 9.

[7]Rice, "Conscientious Objection to Public Education," p. 888.

[8]John Naisbitt, Megatrends: Ten New Directions Transforming Our Lives (New York: Warner Books, Inc. 1982), pp. 131, 142-143.

The increasing popularity of home schools is evident. A 1976 study of compulsory attendance laws found that twenty-six states permitted home instruction.[9] Studies in 1982[10] and 1983[11] revealed that ten more states had condoned home instruction as an alternative learning arrangement. A statement in a 1984 newspaper article that North Carolina is one of only twelve states which bars home instruction[12] suggested that two more states have made concessions for home-schoolers since 1983. The issue of equivalence of education outside the aegis of compulsory school attendance was litigated twenty-five times during the first seventy years of this century, but the next twenty-eight cases occurred in a time span of only ten years. In 1980 to 1981 alone, the issue was litigated ten times.[13]

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[9]William F. Aikman and Lawrence Kotin, Legal Implications of Compulsory Education - Final Report, U. S., Educational Resources Information Center, ERIC Document ED 130 387, 1976, pp. 110-113.

[10]James W. Tobak and Perry A. Zirkel, "Home Instruction: An Analysis of the Statutes and Case Law," University of Dayton Law Review, vol. 8, Fall 1982, pp. 6-10.

[11]Patricia M. Lines, "Private Education Alternatives and State Regulation," Journal of Law and Education, vol. 12, April 1983, pp. 220-226.

[12]Associated Press Dispatch, The Winston-Salem [North Carolina] Journal, April 29, 1984, p. B7, col. 4.

[13]Martha M. McCarthy and Paul T. Deignan, What Legally Constitutes an Adequate Public Education? A Review of Constitutional, Legislative, and Judicial Mandates, U.S., Educational Resources Information Center, ERIC Document ED 226 518, 1982, pp. 111-112.

STATEMENT OF THE PROBLEM

In fifty-three cases involving the issue of home instruction between 1893 and 1981, M. Chester Nolte found that parents lost twenty-nine cases, but won twenty-four cases.[14] However, Ritter found that due to determined, "imaginative" legal tactics employed by parents, there is a tendency for some judges to find in favor of the parents.[15] Advice for home-schoolers is readily available in books like No More Public School (1972) by Harold Bennett, Better Than School: One Family's Declaration of Independence (1983) by Nancy Wallace, and Teach Your Own: A Hopeful Path for Education (1981) by John Holt, whose fourteenth chapter is entitled "Legal Strategies." Holt also publishes a newsletter called "Growing Without Schooling," which features home-school success stories and current legal tips. With the advent of advocacy and support groups for home-schoolers, it is even more important for supporters of public education to become informed, interested, and involved in the issue of home instruction.

One purpose of this study is to call to the attention of administrators the importance of becoming aware of developments

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[14]M. Chester Nolte, "Home Instruction in Lieu of Public School Attendance," School Law in Changing Times, ed. M. A. McGhehey (Topeka, Kansas: National Organization on Legal Problems of Education, 1982), pp. 14-15.

[15]Marion Ritter, "Read This Before You Veto Home-education Requests," American School Board Journal, vol. 166, October, 1979, p. 38.

in the legality of home instruction. Those administrators who have never before had to deal with home instruction should be prepared to handle requests for exemption from or cases of noncompliance with compulsory attendance laws. Marion Ritter has warned that some school officials "learned too late that it takes only one hasty uninformed decision to create a lengthy, aggravating, costly controversy."[16] John Holt's advice to prospective home schoolers who fear legal clashes includes a statement of encouragement to the effect that many public school administrators are not aware of the laws regarding home instruction.[17]

In the 1982 Monnig case in Missouri, parents who were operating a home school won an appeal because the local public school principal had not familiarized himself with the home study program the parents were using. Therefore, the principal could not testify as to whether or not the student in question was receiving an equivalent education, as required by Missouri statutes.[18] Heightened awareness on the part of administrators of legal requirements such as the burden of proof is necessary to increase their success ratio in litigation concerning home instruction.

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[16]Ibid.

[17]John Holt, Teach Your Own: A Hopeful Path for Education (New York: Delacorte Press/Seymour Lawrence, 1981), p. 271.

[18]In re Monnig, 683 S.W. 2d 782 (Mo. App. 1982).

QUESTIONS TO BE ANSWERED

The purpose of the study is to examine and analyze legal issues related to home instruction, so that public school administrators may prepare themselves to address this growing area of concern. Following are key questions that are answered in an attempt to develop practical, legal guidelines for dealing with home-schoolers.

1. What are the major legal issues regarding home instruction?

2. Which of these issues are likely to be included in court cases related to the legality of home instruction?

3. Does an analysis of court cases reveal any specific trends?

4. According to current statutory and case law, which states permit home instruction?

5. Based on the established legal precedents, what are the legally acceptable criteria for home instruction?

SCOPE OF THE STUDY

This is a study of the legal aspects of home instruction. It examines current statutory provisions and the history of litigation involving home instruction since 1893. Special emphasis is placed on recent trends as they are revealed from an analysis of court decisions. The relative merits or deficiencies of home instruction in lieu of

compulsory school attendance are not discussed, although opinions of participants in the judicial process regarding same are reported in summaries of legal proceedings.

METHODS, PROCEDURES, AND SOURCES OF INFORMATION

In order to determine if a need existed for the study, the researcher obtained a computer search of recent dissertation topics related to home instruction, compulsory attendance, and state regulation of nonpublic schools. Summaries of the dissertations so located were read in Dissertation Abstracts. Complete copies of pertinent dissertations were borrowed and read.

Journal articles and other literature relevant to the subject being studied were located by using research tools such as the Index to Legal Periodicals, the Education Index, Current Law Index, Reader's Guide to Periodical Literature, Current Index to Journals in Education, and Resources in Education. The investigator also received a list of related sources through a computer search from the Educational Resources Information Center (ERIC).

In order to locate federal and state home instruction court cases, the researcher reviewed copies of the NOLPE School Law Reporter, School Law News, School Law Bulletin, Corpus Juris Secundum, Shepard's Citations, West's Education Law Reporter, the National Reporter System, and the American

Digest System. Cases were read and categorized according to which legal issues of home instruction were involved.

DEFINITION OF TERMS

For the purposes of this study, the following selected terms are defined:

Parent: Any person having responsibility for a school-aged child.

Home instruction: A program of learning for a school-aged child offered by one or both of his or her parents in place of public or nonpublic school attendance. Students so enrolled are physically capable of attending a public or nonpublic school.

Home school: A residence where parents are undertaking a program of home instruction.

Home-schooler: An operator of a home school.

Compulsory attendance laws: Statutes that compel parents or guardians to send their children of certain ages to a public or nonpublic school.

Public school: An educational institution established by state law and open to the children of all residents of a particular area.

Nonpublic school: An educational institution featuring facilities, materials, and personnel of sufficient magnitude to serve a student population that is not limited to members of a single family or several families. The term is used

by the researcher to indicate all of the following types of schools, as they may be designated in statutes, court decisions, or professional literature: private schools, parochial schools, independent schools, church schools, private Christian academies, fundamentalist Christian schools, and schools of religious charter. The researcher does not refer to a home school as a nonpublic school.

Fundamentalist Christian school: A nonpublic school operated by persons who believe in a literal interpretation of the Bible.

Religious home school: A home school which is established because of the religious convictions of its operator(s).

Private tutor: A person employed by a parent for the purpose of instructing his child or children who are not otherwise in attendance at a school.

Certified teacher: An instructor who has been endorsed to teach in the public schools of a certain state.

Competent teacher: As associated with the state statutes, an instructor, who may or may not be certified, who is deemed to possess sufficient knowledge and skills concerning a particular field or fields of study.

Police power: The right of the state (derived from the Tenth Amendment of the United States Constitution) to make and enforce regulations necessary for the general welfare of the state and its citizens.

Parens patriae: The state's power to protect minors and others who cannot take care of themselves.

Burden of proof: The requirement of presenting sufficient evidence to persuade a court to make a favorable ruling.

Compelling state interest: A reason for which a state may limit a person's constitutional rights.

Vagueness: An invalidating quality of a law which is written so imprecisely that a citizen must guess as to its meaning.

SIGNIFICANCE OF THE STUDY

As previously noted, there has been a dramatic increase in the frequency of litigation about home instruction, yet Lines has asserted that judicial opinion rendered thus far on the subject is merely "the tip of the iceberg."[19] One issue that has yet to be resolved by the courts is whether or not a home school is a nonpublic school.[20] In 1925, in the case of Pierce v. Society of Sisters, the United States Supreme Court ruled that attendance at a nonpublic school

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[19]Patricia M. Lines, "State Regulation of Private Education," p. 122.

[20]Kern Alexander and K. Forbis Jordan, Legal Aspects of Educational Choice: Compulsory Attendance and Student Assignment, U.S. Educational Resources Information Center, ERIC Document ED 082 273, 1973, p. 26.

was a legally acceptable alternative to compulsory attendance at a public school.[21] Therefore, there is a tremendous incentive for home-schoolers to attempt to have their home declared to be a nonpublic school. Even in states that explicitly permit home instruction, sometimes there are more stringent regulations of home schools than of nonpublic schools, again providing a motive for parents to seek recognition of their home as a nonpublic school.[22] Attempts to have the statutory term "private school" declared unconstitutionally vague have sometimes met with defeat,[23] but in a 1983 case, the Supreme Court of Wisconsin agreed with the plaintiffs that the term "private school" was not sufficiently defined by the state legislature or by published rules and regulations of the state department of public education. The Popanz case suggests the need for preparing for further challenges of state laws on the issue of vagueness.[24]

Some public school systems are voluntarily cooperating with home-schoolers by providing them with textbooks or other materials.[25] Lines has predicted that if the school systems

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[21]Pierce v. Society of Sisters, 268 U.S. 510 (1925).

[22]Tobak and Zirkel, "Home Instruction," p. 51.

[23]State v. Bowman, 653 P. 2d 254 (Ore. Ct.App. 1982).

[24]State v. Popanz, 332 N.W.2d 750 (Wis. 1983).

[25]Diane Divoky, "The New Pioneers of the Home-Schooling Movement," Phi Delta Kappan, vol. 64, February, 1983, p. 395.

are to be reimbursed for such services, local officials will have to be ready to assume responsibility for approving home instruction programs.[26] An implication of material support and official approval of home instruction by public school officials is the eventual issuance of high school diplomas to home-schoolers, suggested Tanya Magers.[27]

Whether through litigation or cooperation, the contact between public school administrators and home-schoolers is likely to increase. Administrators need to recognize the importance of keeping abreast of the rapidly changing case law and statutory law in the area of home instruction. This study will provide public school educators with an up-to-date account of the legal aspects of home instruction, including the rights of home-schoolers and the obligations of administrators.

DESIGN OF THE STUDY

The remainder of the study is divided into four major parts. Chapter II contains a review of related literature that traces the development of compulsory school attendance

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[26]Patricia M. Lines, Private Education Alternatives and State Regulation, U.S. Educational Resources Information Center, ERIC Document ED 218 801, 1983, p. 2.

[27]Tanya A. Magers, "Problems Associated With Unaccredited Private Schools and Home Instruction Programs and Solutions To The Problems As Perceived By State Education Officials," (Doctoral dissertation, Ball State University, 1983), p. 206.

laws and examines the history of litigation concerning home instruction that followed the adoption of compulsory attendance laws. The review of the literature also serves to reveal the legal issues that are examined in depth later in the study.

Chapter III presents a summary of the statutes (current as of September, 1984) of the fifty states and the District of Columbia pertaining to home instruction vis-a-vis compulsory school attendance. State statutes are grouped according to similarities of wording and requirements for fulfilling the compulsory attendance laws. The chapter reveals which states permit home instruction by statutes, explicitly or implicitly. Existing statutory requirements for home instruction are summarized. Appropriate excerpts from the statutes of each state and the District of Columbia are included in the Appendix.

Chapter IV contains a narrative discussion of the legal aspects of home instruction. The history of major legal issues that surfaced during the review of the literature is presented. Highlights of relevant case law through November, 1984, are included in the narrative.

Chapter V is a review and analysis of selected landmark and recent court decisions discovered in Chapters II and IV. For each case included in Chapter V, there is a

description of the facts of the case, a summary of the decision of the court, and a discussion of the effects of the decision.

The concluding chapter of the study summarizes information gleaned through a review of the literature and through the examination of statutory and case law. The questions that were posed in Chapter I are reviewed and answered. Findings are reported and recommended guidelines are offered for public school administrators who come into contact with home-schoolers.

CHAPTER II

REVIEW OF RELATED LITERATURE

INTRODUCTION

> We, the people of the United States, in order to form a more perfect Union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.[1]

Even though the topic of education is not specifically mentioned in the United States Constitution, "[a] need for education...can be implied to achieve each of the six precepts--unity, justice, tranquility, defense, welfare, and liberty--of the Preamble of the Constitution."[2] Thomas Jefferson wrote in a letter to Charles Yancey in 1816, "If a nation expects to be ignorant and free, in a state of civilization, it expects what never was and never will be."[3]

In the nineteenth century, the controversy raged over whether or not the state should control education. John

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[1]U.S. Constitution, Preamble, 1787.

[2]Douglas R. Pierce, "Satisfying the State Interest in Education with Private Schools," Tennessee Law Review, 49(1982), p. 956.

[3]John P. Foley, ed., The Jeffersonian Cyclopedia (New York: Funk and Wagnalls Company, 1900), p. 274.

Stuart Mill, writing in his famous essay On Liberty, had this to say:

> An education, established and controlled by the State should only exist, if it exist at all, as one among many competing experiments, carried on for the purpose of example and stimulus, to keep the others up to a certain standard of excellence.[4]

At the root of the controversy surrounding compulsory school attendance was the conflict between the desirability of educating the populace and deferring to individual rights. This troubling dilemma posed an intricate problem. In a democratic society, are individuals completely free to educate their children in whatever manner they choose, or not to educate them at all? State legislators had to grapple with this difficult question during the latter nineteenth and early twentieth centuries, the time period in which compulsory education laws were passed. If it were not for the existence of compulsory school attendance laws, there would be few, if any, legal issues surrounding the topic of home instruction. Therefore, it is appropriate to trace the development of compulsory school attendance laws in the United States. Even though the idea of compulsion was extremely controversial, increased interest in social reforms tipped the scales in favor of those who sought the passage of

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[4]John Stuart Mill, On Liberty, ed. Alburey Castell (1859); rpt. (New York: Appleton, Century, Crofts, Inc. 1947), p. 108.

compulsory attendance laws. Two related issues were the assimilation of large numbers of immigrants who arrived in America in the latter half of the nineteenth century and the movement to abolish child labor.

Massachusetts, the first state to enact a compulsory attendance law,[5] was also the site of the first court case concerning home instruction.[6] Early instances of litigation tended to focus on judicial interpretations of the legislative intent behind compulsory attendance laws. When judges felt that the lawmakers designed such laws so that youths could merely escape ignorance, they were likely to rule in favor of home instruction programs. On the other hand, when judges felt that legislators had also endorsed socialization through group education, they were likely to rule against home-schoolers. As the frequency of home instruction cases began to increase steadily, starting in the 1950's, the issues of academic proficiency and socialization were joined by challenges based on an ever-widening range of issues such as statutory construction, procedural due process rights, religious freedom, and impermissible vagueness of statutes.

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[5]Forest Chester Ensign, Compulsory School Attendance and Child Labor (Iowa City: The Athens Press, 1921), p. 52.

[6]Commonwealth v. Roberts, 38 N.E. 402 (Mass. 1893).

THE DEVELOPMENT OF COMPULSORY ATTENDANCE LAWS

The Movement Toward Universal Education

In primitive societies, education of the young was accomplished without schools. Adults passed group organization, customs, and tools to the next generation. Weapon-making, hunting, and fishing were taught through "acculturation, imitative learning, and incidental apprenticeship."[7] Formal education was reserved for learning about taboos (disapproved actions considered unsafe or harmful to unity) and totems (action conducive to survival).[8] With the development of complex societies featuring competing groups and their value systems, education became less casual and was increasingly relied upon for social control. Education emerged as "...the institution which developed out of man's need to control his world and his recognition that intelligence is indispensable to such control."[9] Formal education developed when informal education was no longer sufficient to meet the demands of socialization. "This [was]

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[7]Daniel H. Kulp, II, Educational Sociology (New York: Longmans, Green, and Co., 1932), p. 30.

[8]Ibid., p. 31.

[9]George Barnett and Jack Otis, Corporate Society and Education: The Philosophy of Elijah Jordan (Ann Arbor: The University of Michigan Press, 1961), p. 120.

the case when it [was] necessary for an individual to learn to act in ways that [were] not natural or that [might] be unpleasant."[10] Formal education became a way to shape persons to fit the social order and to develop restraints so that people would conform to culture patterns. As education assumed some of the tasks that the church in the Middle Ages had performed (such as preparing for the state a loyal group of subjects),[11] it became more universal and eventually compulsory.

William C. Bagley identified three movements that led to universal education: 1) Luther's insistence that individuals should be able to read and interpret the Bible for themselves; 2) the first Industrial Revolution; and 3) extension of suffrage by political democracy.[12] The problem of vagrancy in England during the reign of Edward III (1327-1377) led to a law mandating compulsory employment (with no mention of age limits), but during Henry IV's reign, youngsters' attendance at school was made a legally

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[10]John A. Bartky, Social Issues in Public Education (Boston: Houghton Mifflin Company, 1963), p. 20.

[11]Paul H. Landis, Social Control: Social Organization and Disorganization in Process (Chicago: J. B. Lippincott Company, 1939), pp. 256-261.

[12]William C. Bagley, A Century of the Universal School (New York: The Macmillan Company, 1937), p. 3.

acceptable alternative to employment.[13] England's Poor Laws of 1597 and 1601 called for the mandatory apprenticing of pauper children. The principles of public control that were then being developed in England were ideas that would be taken to America by the early English colonists. These principles were the following:

1. The state may control the movements and employment of the poor.
2. The state may compel the local community to care for its poor, and may require that funds for these purposes be raised by general tax.
3. The state recognizes the value of employment of youth for economic independence and moral development of the individual.
4. The state can require all children to be employed and may specify the kind of employment.
5. Attendance at school is a satisfactory substitute for employment.
6. The state can require industrial education.
7. The state can remove pauper children from their parents' care and apprentice them.
8. The state can require local communities to tax their members to support industrial education.[14]

Colonial Background

Between 1628 and 1640, around 20,000 English people settled at the Massachusetts Bay Colony. Most were Puritans who were progressives or liberals by English standards. They extended the idea of compulsion "...so as to bring the entire population under various forms of control formerly

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[13]Ensign, Compulsory School Attendance and Child Labor, pp. 8-10.

[14]Ibid., p. 16.

reserved for certain [lower] classes."[15] The year 1642 was a famous landmark in the history of American compulsory education. It was the first time that literary (as opposed to vocational) education had been required for children of English heritage. Five years later, the Massachusetts Bay Colony set another precedent with the passage of the Old Deluder Satan Act, which required all communities of fifty or more families to employ a master to teach reading and writing. Communities of more than 100 families were required to establish grammar schools to be financed by local taxes.[16] Thus the Massachusetts Bay Colony set forth these principles upon which modern school systems are in part based: 1) universal education is essential to the well-being of the state; 2) parents are obligated to educate their children; 3) the state can enforce the parental obligation; 4) the state can fix educational standards; 5) the state can levy a tax for education; and 6) the state can supply education above the elementary level.[17]

Two pertinent ideas that were not yet established in 1647 were the ideas of requiring attendance at the schools and eliminating child labor.[18] It has been observed that

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[15]Ibid., p. 19.

[16]Ibid., pp. 20-23.

[17]Ibid., p. 23.

[18]Ibid.

throughout history, there is a "...very remarkable parallelism between periods of grave national crises and the beginning of major educational advances."[19] Cases in point are the development of German universal schools after the disasters of the Napoleonic wars, the establishment of land-grant colleges after the Civil War, the appointment of Horace Mann as Secretary of the Massachusetts State Board of Education after the economic panic of 1837,[20] and the attention given to the study of science after the launching of Sputnik in 1957. The "disasters" that precipitated the adoption of compulsory attendance laws were two by-products of America's industrialization period: massive immigration and child labor. Social reformers gradually began to support compulsory school attendance as a means of combatting both problems.

Social Reforms: Dealing with Immigration and Child Labor

In the last quarter of the nineteenth century, large numbers of immigrants from southern and eastern Europe arrived in the United States. They brought with them their unique languages, customs, and traditions, which were very quickly subjected to criticisms by members of the dominant

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[19]Bagley, A Century of the Universal School, p. 30.

[20]Ibid., p. 31.

culture in America. Lawrence Cremin's book, The Transformation of the School, attributed to a Stanford University professor the assertion that the first task of American education was to implant in immigrant children "...the Anglo-Saxon conception of righteousness, law and order, and popular government, and to awaken in them a reference for our democratic institutions and for those things in our national life which we as a people hold to be of abiding worth."[21] Indeed, Americanization of the immigrants by the schools was favored by Progressives, who expected schooling to uplift and to develop the immigrants morally; by industrialists, who desired increased stability; and by Russian Jewish immigrants, who expected to receive greater social mobility. [22] After every state in the Union had passed compulsory attendance laws between 1852 and 1918,[23] two zealous reformers of 1917 hailed the new law's merits, "The importance of the compulsory attendance law as a means of help

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[21]Lawrence A. Cremin, The Transformation of the School (New York: Random House, 1964), p. 68.

[22]Ann Parker Parelius and Robert J. Parelius, The Sociology of Education (Englewood Cliffs, NJ: Prentice Hall, Inc., 1978), pp. 58-59.

[23]Cremin, The Transformation of the School, p. 127.

and protection to the immigrant families cannot be over-estimated."[24] Reiterating that the public school, more than any other institution, has a better opportunity for success in the mammoth task of Americanization, Edith Abbott and Sophonisba Breckinridge recommended through their book Truancy and Non-Attendance in the Chicago Schools: A Study of the Social Aspects of the Compulsory Education and Child Labor Legislation in Illinois, that the state must make an effort to get the immigrants' children to public schools at the "earliest possible moment and [compel] them to attend with regularity...[for] ...the future welfare of the state."[25] It is interesting to note the urgency of Abbott's and Breckinridge's recommendations in light of the fact that in Chicago, the "vast majority" of the inhabitants were immigrants or the children of immigrants, causing the authors to claim that the "compulsory education law is indispensable as a means of safeguarding the state."[26]

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[24]Edith Abbott and Sophonisba P. Breckinridge, Truancy and Non-Attendance in the Chicago Schools: A Study of the Social Aspects of the Compulsory Education Law and Child Labor Legislation of Illinois (Chicago: University of Chicago Press, 1917), p. 164.

[25]Ibid., p. 266.

[26]Ibid., p. 164.

For the reformers, promoting the cause of Americanization of the immigrants proved to be an easier task than promoting the idea that children should not be allowed to hold jobs in factories. The utilization of child labor was a foregone conclusion in America even before industrialization was fully accomplished. In 1791, Alexander Hamilton's report to the House of Representatives concerning the feasibility of operating textile mills specified that the mills could be operated by women and children, thereby rendering those two groups more "useful" to society.[27] Samuel Slater, a cotton manufacturer in Rhode Island, sometimes known as "the father of American manufacturing," once manned an entire factory with children between the ages of seven and twelve.[28] From a businessman's point of view, there were certain profitable advantages to employing children, who were cheaper, more "tractable, reliable and industrious, quicker, neater, and more careful, and as labor unions developed, less likely to strike."[29] Industrialists were not alone in their propensity toward child labor.

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[27]Ensign, Compulsory School Attendance and Child Labor, pp. 31-32.

[28]Walter I. Trattner, Crusade for the Children: A History of the National Child Labor Committee and Child Labor Reform in America (Chicago: Quadrangle Books, 1970), p. 26.

[29]Ibid., p. 27.

Poor families desired the extra income brought in by working children, and religious families believed that keeping children busy would give them less opportunity to stray from parental religious beliefs and practices.[30]

F. C. Ensign (who studied child labor and compulsory school attendance in the states of Massachusetts, Connecticut, New York, Pennsylvania, and Wisconsin) stated that child labor was more of a problem in the highly industralized northern part of the United States, but with the cotton mills that developed after the Civil War, child labor plagued the southern part of the nation as well. By 1900, 25,000 children below the age of fifteen were working in textile mills. Ninety percent of them worked in North Carolina, South Carolina, Georgia, or Alabama where there were no child labor or compulsory education laws. The illiteracy rates of children between the ages of ten and fifteen were three times as high in mill districts as in the rest of the country. Seventy-five percent of all persons who worked as spinners in the state of North Carolina were under the age of fourteen.[31]

The first widespread attention to the disadvantages or "evils" of child labor practices occurred at the same

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[30]Parelius and Parelius, The Sociology of Education, p. 58.

[31]Trattner, Crusade for the Children, p. 40.

time that many other social ills were being exposed. The Progressive Era movements for social welfare legislation gained momentum partly through a new journalistic fad called muckraking. Following the lead of the attack by McClure's magazine on Standard Oil and urban political machines, "a small army of professional writers was soon flooding the periodical press with denunciations of the insurance business, the drug business, college athletics, prostitution, sweatshop labor, political corruption, and dozens of other subjects,"[32] such as child labor. Reformers of the period tended to use emotional rhetoric that would appeal to middle class self-righteousness. Progressives believed that women, children, paupers, and seriously ill persons must be protected from corruption in government and big business. "The 'people,' by which the progressives usually meant the comfortable middle class, must assume new responsibilities toward the unfortunate."[33]

In the book Children in Bondage: A Complete and Careful Presentation of the Anxious Problem of Child Labor--Its Causes, Its Crime, and Its Cure, Edwin Markham and others offered some sound arguments against the practice of child

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[32]John A. Garraty, The American Nation: A History of the United States (New York: Harper and Row, 1966), pp. 646-647.

[33]Ibid., p. 648.

labor but laced the book heavily with sensationalism. In one particularly emotional chapter, the authors repeated a "rumor" that in Delaware, dogs were afraid to leave their kennels at night for fear that during their absence a child laborer from a local cannery might covet and take over their shelter.[34] The authors used as an illustration a reproduction of a 1913 newspaper advertisement from Choctaw County, Alabama, that was recruiting for the town's new cotton mill. The advertisement asked for families with children around the age of twelve to move to their town for employment.[35]

Public attention was also being attracted to the physical abuses of child labor including tuberculosis, heart strain, anemia, curvature of the spine, permanent bone and muscular damage, stifled moral and physical growth, and a higher probability for a life plagued by infirmity, dependency, and delinquency.[36] Trattner attributed the increased interest in the welfare of children to the fact that the child is the key to social control. He listed

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[34]Edwin Markham, Benjamin B. Lindsey, and George Creel, Children in Bondage: A Complete and Careful Presentation of the Anxious Problem of Child Labor--Its Causes, Its Crime, and Its Cure (New York: Hearst's International Library Company, 1914), p. 351.

[35]Ibid., p. 39.

[36]Trattner, Crusade for the Children, p. 49.

these programs as part of the resulting child-saving campaign: children's aid societies; concern for the infant mortality rate; correction houses; juvenile courts; probation systems; parks, playgrounds, and public baths; widow's pensions; improved schools; compulsory attendance; and the crusade against child labor.[37]

In 1903, the American Federation of Labor formed a committee to study the questions of apprenticeship and child labor.[38] By 1909, Charles Horton Cooley wrote in Social Organization: A Study of the Larger Mind that "labor unions have probably done more than all other agencies together to combat child-labor, excessive hours, and other inhumane and degrading kinds of work..."[39] Along with child labor laws, unions began to see compulsory education in a favorable light. Union leaders began to think that access to public education could build a less stratified society.[40] According to Howard S. Patterson and others, organized labor began

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[37]Ibid., p. 47.

[38]Walter Robinson Smith, An Introduction to Educational Sociology (Boston: Houghton Mifflin Company, 1917), p. 117.

[39]Charles Horton Cooley, Social Organization: A Study of the Larger Mind (New York: Schocken Books, 1909), p. 286.

[40]Parelius and Parelius, The Sociology of Education, p. 57.

to favor the enforcement of compulsory attendance laws and the raising of the age at which one could legally leave school in order to reduce unemployment of the adult workers. Compulsory school attendance was seen as an alternative preferable to keeping surplus workers in large standing armies as was done in Europe.[41]

The first child labor law was passed in Alabama in 1887, partly due to the efforts of Edgar Gardner Murphy, an Episcopal clergyman who became a champion of child-labor legislation in the South.[42] The National Child Labor Committee was organized in 1904 to work for national solutions to the problem.[43] When the United States Children's Bureau became a reality in 1912, President Taft gave the pen he used to sign the bill to Alexander McKelway, a leader of the cause from Charlotte, North Carolina.[44] By 1914, reformers in nearly every state had obtained laws "banning the employment of young children (the minimum age varied from twelve to sixteen) and limiting the hours of older

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[41]Howard S. Patterson, Ernest A. Choate, and Edmund de S. Brunner, The School in American Society (Scranton: International Textbook Company, 1936). pp. 294-295.

[42]Trattner, Crusade for the Children, pp. 50-51.

[43]Garraty, The American Nation, p. 652.

[44]Trattner, Crusade for the Children, p. 119.

children to eight or ten per day."[45] Dangerous jobs and nighttime jobs were also outlawed in many states, but the laws were far from uniform and were weakly enforced. In 1916, Congress passed a federal child labor law, but the Supreme Court declared the law unconstitutional, saying that only the individual states have the right to regulate their business or trade.[46] In 1919, Congress tried to regulate child labor again by putting a tax on employers who hired young laborers, but the Supreme Court found such a tax unconstitutional.[47] In 1924, a movement to make a prohibition against child labor into the Twentieth Amendment to the United States Constitution was begun, but it failed to achieve ratification by the necessary three-quarters of the states.[48] Its opponents argued that adopting an amendment to the constitution against child labor was nothing less than a communist plot, and that the amendment would prevent parents from getting their children to help with the chores at home.[49] The latter argument prompted the National Child Labor Committee

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[45]Garraty, The American Nation, p. 652.

[46]Ibid., p. 653.

[47]Rhoda Cahn and William Cahn, No Time For School, No Time For Play: The Study of Child Labor in America (New York: Julian Messner, 1972), p. 52.

[48]Garraty, The American Nation, p. 653.

[49]Trattner, Crusade for the Children, pp. 170-171.

to publish a pamphlet delineating the distinction between child labor and child work. While child work was described as the normal chores (having educational value) done around a home or farm by a child, child labor was defined as:

> The work of children [on the farm as well as in the factory] under conditions that interfere with the physical development, education and opportunities for recreation that children require. It is the working of children at unfit ages, or unreasonable hours, or under unhealthy conditions.[50]

Nevertheless, many reformers slowly changed strategies by turning their zeal toward obtaining well-enforced compulsory attendance laws, which would preclude the absolute necessity (but not the desirability) of a national child labor law.[51]

The Influence of Educational Pioneers

In addition to the social reformers who looked to education to improve the lot of the immigrants and the poor, there was a band of zealous educational pioneers who saw a free universal education as a means of assuring the continuation of the young nation's democratic system of government. According to Lawrence Cremin, the "great pre-Civil War architects of universal schooling" were "Horace Mann

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[50]Kulp, Educational Sociology, p. 456.

[51]Abbott and Breckinridge, Truancy and Non-Attendance in the Chicago Schools, p. 74.

in Massachusetts, Henry Bernard in Connecticut, John Pierce in Michigan, and Samuel Lewis in Ohio."[52] Advocates of universal schooling reiterated the advice of statesmen such as Thomas Jefferson, George Washington, Francis Marion, John Jay, James Madison, John Hancock, and John Adams.[53]

In his first address to Congress in 1790, President George Washington said, "Knowledge is in every country the surest basis of public happiness."[54] Later, in his farewell address of 1796, Washington said,

> Promote then, as an object of primary importance, institutions for the general diffusion of knowledge. In proportion as the structure of a government gives force to public opinion, it is essential that public opinion should be enlightened.[55]

President James Madison also maintained that an educated citizenry was necessary for the survival of a democracy. He said that

> [a] popular government without popular information or the means of acquiring it is but a prologue to a farce or a tragedy, or, perhaps both. Knowledge will forever govern ignorance; and a people who mean to be their own governors must arm themselves with the power which knowledge gives.[56]

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[52]Cremin, The Transformation of the School, p. 8.

[53]Ellwood P. Cubberley, Public Education in the United States (Boston: Houghton Mifflin, 1934), pp. 89-90.

[54]Ibid., p. 89.

[55]Ibid.

[56]Kern Alexander and K. Forbis Jordan, Legal Implications of Compulsory Education-Final Report, U.S., Educational Resources Information Center, ERIC Document ED 130 837, May, 1976, p. 1.

John Jay and John Adams both stressed the value of a free public education to the nation's poor. Jay wrote to a friend that "...nothing should be left undone to afford all ranks of people the means of obtaining a proper degree of [education]..."[57] Adams said,

> The education here intended is not merely that of the children of the rich and noble, but of every rank and class of people, down to the lowest and poorest... Laws for the liberal education of youth, especially of the lower classes of people, are so extremely wise and useful that, to a humane and generous mind, no expense for this purpose would be thought extravagant.[58]

The ideas of these famous statesmen were adopted by Horace Mann, Secretary of the Massachusetts State Board of Education. Mann felt that a free public education could serve as the "great equalizer" of society.[59] Mann advanced a free public education as a solution to poverty, social conflict between classes, crime, and sickness.[60] Mann also praised education in groups, in opposition to Rousseau's contention in Emile that the ideal teaching and learning

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[57]Cubberley, Public Education in the United States, p. 90.

[58]Ibid.

[59]Cremin, The Transformation of the School, p. 9.

[60]Ibid.

situation was the one-to-one relationship shared by a child and his tutor.[61] Mann felt that group education in common schools would produce a much greater unifying result.[62]

After Mann died in 1859, William T. Harris became a leading spokesman for universal education.[63] Harris was joined by Barnas Sears, J. L. M. Curry, Edward Sheldon, and John Eaton as the "crusading pioneers" of the post-Civil War Era.[64] Harris served as the United States Commissioner of Education from 1889 to 1906.[65] Representative of Harris' views is his assertion that "[a]n ignorant people can be governed, but only a wise people can govern itself."[66]

A third group of educational pioneers, leaders of progressive education, featured members such as Francis W. Parker and John Dewey.[67] Dewey felt that democracy and education were naturally attracting ingredients in an idea of progress that would make society more "worthy, lovely

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[61] Ibid., p. 11.

[62] Ibid.

[63] Ibid., pp. 14-15.

[64] Ibid., p. 14.

[65] Ibid.

[66] Seventeenth Annual Report of the Board of Directors of the St. Louis Public Schools (St. Louis, 1872), p. 58, cited by Cremin, The Transformation of the School, p. 16.

[67] Cremin, The Transformation of the School, p. 21.

and harmonious."[68] Dewey wrote that

> [t]he devotion of democracy to education is a familiar fact. The superficial explanation is that a government resting upon popular suffrage cannot be successful unless those who elect and who obey these governors are educated. Since a democratic society repudiates the principal of external authority, it must find a substitute in voluntary disposition and interest; these can be created only by education.[69]

Later, historians Charles and Mary Beard wrote that the same concept of progress that Dewey and other educational pioneers had espoused was the

> ...most dynamic social theory ever shaped in the history of thought - the idea of progress or the continual improvement in the lot of mankind by the attainment of knowledge...[70]

The Adoption of Compulsory Attendance Laws

Despite the favorable image of free universal education that was promoted by educational pioneers, compulsory school attendance for the children of all classes of citizens was an issue loaded with emotional beliefs over whether or not the government could tell parents how to raise their children. Edward Searing, a Wisconsin state superintendent of education, felt that compulsory attendance was "un-American and

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[68] John Dewey, The School and Society (Chicago: University of Chicago Press, 1899), p. 44.

[69] John Dewey, Democracy and Education (New York: The MacMillan Company, 1916), pp. 101-102.

[70] Charles Beard and Mary Beard, The Rise of American Civilization (New York: The MacMillan Company, 1927), p. 443.

intolerable." He stated his indignation for any law that would mandate how he was to clothe, dress, feed, or educate his children.[71] A group of manufacturers was opposed to the age of sixteen as the minimum requirement for compulsory attendance, claiming that using age sixteen (instead of a lower age, such as fourteen) ignored the individual interests and aptitudes of students and would contribute to higher rates of delinquency.[72] If left to their own devices, in spite of parental mandates or desires, it was found that "nine out of ten child workers prefer their toil to school attendance," saying they preferred "hard drudgery" to "dull monotony."[73] Helen Todd, a factory inspector in Chicago, found that 412 out of 500 child workers she studied would rather remain in a factory than attend school. The reasons they gave to her included being paid for work, having jobs that were easier to learn than school tasks, not being ridiculed for not knowing something, not having corporal punishment, not liking learning, not being called names by the other school children, being liked by parents for bringing money home, and not having any homework. Two

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[71]Ensign, Compulsory School Attendance and Child Labor, p. 207.

[72]Raymond G. Fuller, Fourteen Is Too Early: Some Psychological Aspects of School-Leaving and Child Labor (New York: National Child Labor Committee, 1927), p. 2, p. 36.

[73]Markham et al., Children in Bondage, p. 372.

other reasons often given were that things learned in school were of no practical use and that children who had been to school did not receive any more pay than those who had not.[74] Although the children in Todd's study mentioned lack of corporal punishment as an advantage of work over school, Samuel Slater's plant in Rhode Island had a "whipping room" to help reduce discipline problems among its young employees.[75] Also, Raymond G. Fuller found a higher incidence of delinquents among working children than school children.[76]

With the development of the child advocacy movement (and with the influx of immigrants sorely in need of Americanization), middle class resistance to compulsory attendance weakened. Since compulsory attendance laws fared better with the Supreme Court than did child labor laws, they were more effective at dealing with the ills that social reformers sought to conquer. In 1852, Massachusetts, which had been the first state to require communities to establish schools, became the first state to adopt a compulsory attendance law. The law required that all children between

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[74]Ibid., pp. 373-374.

[75]Ensign, Compulsory School Attendance and Child Labor, p. 27.

[76]Fuller, Fourteen is Too Early, p. 36.

the ages of eight and fourteen attend a public school twelve weeks a year, with at least six weeks being consecutive. Exceptions were made for those already enrolled in other schools, for those who could prove they were "already educated," for the handicapped, and for those whose poverty required them to work. It was left for the city treasurers to prosecute offenders for the fine, which was not to exceed twenty dollars.[77] Like most early attendance laws, it was poorly enforced and exempted those who needed it most, i.e., the poverty stricken.

In 1872, Connecticut adopted a compulsory attendance law. The state secretary of the Board of Education there publicly changed his stance on compulsory attendance laws, declaring them to be "the legal expression of the public will" rather than an undemocratic violation of parents' rights.[78] New York's 1874 law required public school attendance for fourteen weeks a year unless the child was taught at home for the same amount of time. The law required employers to check for a "certificate of schooling" before hiring a person under fourteen years of age.[79] Pennsylvania's 1901 revision of an 1895 law required children

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[77]Ensign, Compulsory School Attendance and Child Labor, p. 52.

[78]Ibid., p. 97.

[79]Ibid., p. 120.

between the ages of eight and thirteen to attend school for the entire term rather than for sixteen weeks a year, but an exemption was made for anyone living farther than two miles away from a school.[80] Wisconsin's first compulsory attendance law was "unenforceable," but it increased public school enrollment by 10,000 students, or two percent of Wisconsin's previous enrollment.[81] Efforts to enforce the early laws were meager. In the first year of compulsory attendance in Illinois, not one arrest was made in Chicago for violation of the law. The Board of Education prided itself for not interfering with parental authority.[82] The Chicago School Board also recognized the fact that the acquisition of more school buildings would have to precede the enforcement of compulsory attendance, since there was not enough space to accommodate the students if all of them actually attended.[83] With the enforcement of compulsory attendance laws came two new problems, truancy and discipline problems caused by those who did not want to be in attendance. Despite the management problems caused by enforcement of compulsory attendance laws, all states had

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[80]Ibid., pp. 181-183.

[81]Ibid., p. 208.

[82]Abbott and Breckinridge, Truancy and Non-Attendance in the Chicago Schools, p. 61.

[83]Ibid., pp. 54-55.

passed at least one attendance law by 1918.[84] The machinery for creating a "homogenous citizenry" through compulsory attendance at schools was thus established.[85]

CONTINUING CONFLICTS OVER COMPULSORY ATTENDANCE LAWS

Introduction

The controversy surrounding the state's right to compel attendance at schools did not end with the adoption of compulsory attendance laws. The original question of whether or not compulsory attendance laws should be adopted was transformed into a new debate over whether or not compulsory attendance laws should be repealed. A major disagreement exists over whether or not the state unnecessarily infringes upon the rights of parents to control their children. On one side of this argument, wrote E. C. Bolmeier, are those who maintain that because of the importance of education to the welfare of individuals and of society, the state has the right and is obligated "to take such action as is reasonable and necessary to provide every child with adequate

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[84] Cremin, The Transformation of the School, p. 127.

[85] Donald A. Hansen and Joel E. Gerstl, eds., On Education - Sociological Perspectives (New York: John Wiley and Sons, Inc., 1967), p. 86.

educational opportunity."[86] On the other side are those who believe that parents "have a natural and constitutional right to determine the manner and place of their children's education."[87]

State's Interest v. Parents' Rights

A 1973 study by Alexander and Jordan outlined these three separate areas of state interest in education: social equality, cultural equality, and economic equality. Benefits obtained from compulsory education for the cause of social equality include increased social mobility, a low illiteracy rate, and a relatively high per capita income. Class barriers, though not eradicated, are partly broken down through a common educational experience.[88] Among the cultural benefits derived from required education are the promotion of citizenship, moral and ethical character, an appreciation of civilization and of organized society, and a knowledge of the accumulated culture of man.[89] Economic

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[86]Edward D. Bolmeier, School in the Legal Structure (Cincinnati: The W. H. Anderson Company, 1973), p. 232.

[87]Ibid.

[88]Alexander and Jordan, Legal Implications of Compulsory Education, p. 3.

[89]Ibid., p. 2.

dividends to society would include a better-educated labor force, increased demand for consumer goods, lower crime and delinquency rates, and lower welfare costs.[90]

The conflict between the state and parents concerning who should direct the education of children has been described by a 1976 study as a contest between collectivist and pluralistic values. The Michigan Law Review project report, entitled, "Education and the Law: State Interests and Individual Rights," stated that the "collectivist function" of public education is one of "promoting equality of attitude and of experience, thus advancing social uniformity and cohesion."[91] Pluralistic values revolve around individuals' interests in "being free from the standardizing effects of state-imposed educational requirements."[92]

> In all cases involving state-individual conflicts over compulsory education and access to education, the courts must accommodate the collectivist' interest of achieving academic and socialization goals and the pluralistic interest of preserving autonomous spheres free from the uniformity of universal public education.[93]

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[90] Ibid.

[91] Robin Ellsberg Neuman, ed., "Project: Education and the Law: State Interests and Individual Rights - Part II: The State's Requirement of Compulsory Education and the Individual's Right of Access to Education," Michigan Law Review, 74 (June, 1976), p. 1384.

[92] Ibid., p. 1386.

[93] Ibid., pp. 1385-1386.

The tenet that parents have "primary authority" over their children's education is a principle upheld by early legal precedents.[94] For example, in a 1719 dispute over whether a student would attend Oxford (as he wished) or Cambridge (as his guardian wished), the court ruled in favor of the guardian.[95] In the modern era of compulsory education, three examples of Supreme Court decisions that affirm parents' rights in the education of their children are Pierce v. Society of Sisters,[96] Meyer v. Nebraska,[97] and Yoder v. Wisconsin.[98] The Pierce case established that parents may elect to educate their children at a nonpublic, rather than a public, school. In Meyer v. Nebraska, a Nebraska law that forbade the teaching of the German language prior to the eighth grade was deemed an intrusion into

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[94]Alexander and Jordan, Legal Implications of Compulsory Education, p. 6.

[95]Tremain's Case, 1 Strange 167 (1719), cited by Alexander and Jordan, Legal Implications of Compulsory Education, p. 6.

[96]Pierce v. Society of Sisters, 268 U.S. 510, 45 S.Ct. 571 (1925).

[97]Meyer v. Nebraska, 262 U.S. 390, 43 S.Ct. 625, 67 L.Ed. 1042 (1923).

[98]Wisconsin v. Yoder, 406 U.S. 205, 92 S.Ct. 1526, 32 L.Ed. 2d 15 (1972).

parents' rights to educate their children.[99] The 1972 case of Wisconsin v. Yoder established that Amish parents had the right to withdraw their children from school at the completion of the eighth grade (age fourteen), rather than at age sixteen.

Parents' rights are not unrestrained, however. "Police power," parens patriae, and "state's compelling interest" are three legal phrases that illustrate governmental authority to intercede on behalf of the child or of society as a whole. O'Hara has defined "police power" as the "sovereign prerogative of...the state to impose restrictions upon private rights which are reasonably related to the public welfare."[100] Similarly, according to the doctrine of parens patriae, the state has authority to protect the rights of minors or other persons who cannot protect themselves. Also, the government's legitimate interest in providing for the education of its next generation of voting citizens is said to be a "compelling state interest," meaning that

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[99]Joseph E. Bryson and Elizabeth W. Detty, The Legal Aspects of Censorship of Public School Library and Instructional Materials (Charlottesville: The Michie Company, 1982), p. 85.

[100]Julia Underwood O'Hara, "State Accreditation of Non-Public Schools: Quality Regulations and the First Amendment," West's Education Law Reporter, 1 (1982), p. 5.

the state may override the constitutional rights of individuals in some instances where conflicts arise over children's education.

"[T]he earliest judicial expression of the collectivist precept that education is a societal rather than a parental function"[101] came, from the 1839 Crouse[102] case. Another illustration of the concept of parens patriae is provided by the 1944 declaration of the United States Supreme Court that "[p]arents may be free to become martyrs themselves..." but they are not free "to make martyrs of their children before they have reached the full and legal discretion when they can make that choice for themselves."[103] The West Virginia Supreme Court, in State v. Riddle, also referred to the limitations on parents' rights.

> If we are to accept their reasoning, our holding would imply that parents have the right to keep their children in medieval ignorance, quarter them in Dickensian squalor beyond the

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[101]Robert P. Baker, "Statute Law and Judicial Interpretation," Legal Aspects of compulsory Schooling (Menlo Park, California: The Institute of Human Studies, Inc., 1975), p. 70, cited in Ralph O. Lyons, "Compulsory School Attendance Laws and Their Application to Students in Christian Schools" (Doctoral Dissertation, Northern Arizona University, (1983), p. 95.

[102]Crouse, ex parte (54 Pennsylvania - 4 Whart. - 9, 11), 1839, cited by Lyons, "Compulsory School Attendance Laws and Their Applications to Students in Christian Schools," p. 95.

[103]Prince v. Commonwealth, 321 U.S. 158 at 170 (1944).

> reach of the ameliorating influence of the social welfare agencies, and so to separate their children from organized society in an environment of indoctrination and deprivation that the children become mindless automatons incapable of coping with life outside their own families.[104]

Thus, even though parents may exercise considerable discretion in directing the education of their children, the state may invoke its authority to provide for an educated citizenry and to protect children from negligent parents.

Overview of Home Instruction Cases

After compulsory attendance laws were adopted, parents who did not accept the state's role in determining the education of their children sought relief in the courts. The first judicial challenge dealing specifically with home instruction was Commonwealth v. Roberts.[105] In a decision that established a liberal constructionist view, the Supreme Court of Massachusetts ruled that since the child in question was receiving an education (albeit at home rather than at a school), that the spirit and aim of the compulsory attendance laws were being fulfilled.[106] "The great object of provisions of the statutes has been that all children

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[104]State v. Riddle, 285 S.E. 2d 359 at 367 (W.Va. 1981).

[105]Commonwealth v. Roberts, 38 N.E. 402 (Mass. 1893).

[106]M. Chester Nolte, "Home Instruction in Lieu of Public School Attendance," School Law in Changing Times, ed. M. A. McGhehey (Topeka, Kansas: National Organization on Legal Problems of Education, 1982), p. 4.

be educated, not that they be educated in any particular way,"[107] was the court's phrase that emphasized the importance of the ends over the means.

Another related landmark case previously mentioned is that of Pierce v. Society of Sisters.[108] Although Pierce was not a case that dealt with home instruction per se, it was "one of the most influential decisions in perpetuating nonpublic schools."[109] The part of Oregon's 1922 compulsory attendance statute that required all children between the ages of eight and sixteen to attend public schools was overturned by the United States Supreme Court, thereby upholding parents' rights to send their children to nonpublic schools.[110]

Three famous New Jersey cases decided over a time span of thirty years yielded one victory and two defeats for home-schoolers. In the 1937 case of Stephens v. Bongart,[111] the court was faced with the question of whether or not an education received at home amounted to "equivalent" instruction "elsewhere" as required by New Jersey law. In an explanation of why he thought home instruction could

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[107] Commonwealth v. Roberts, p. 403.

[108] Pierce v. Society of Sisters.

[109] Bolmeier, Education in the Legal Structure, p. 62.

[110] Ibid.

[111] Stephens v. Bongart, 189 A. 131 (N.J. 1937).

not be "equal in worth or value, force, power, effect, import and the like,"[112] Judge Siegler wrote:

> I incline to the opinion that education is no longer concerned merely with the acquisition of facts; the instilling of worthy habits, attitudes, appreciations, and skills is far more important than mere imparting subject matter....This brings me to the belief that, in a cosmopolitan area such as we live in, with all the complexities of life, and our reliance upon others to carry out the functions of education, it is almost impossible for a child to be taught adequately in his home. I cannot conceive how a child can receive in the home instruction and experiences in group activity and in social outlook in any manner or form comparable to that provided in the public school.[113]

Also denying the possibility that home instruction could be equivalent to that received in a school, Judge Tenenbaum wrote in the 1950 decision of Knox v. O'Brien:

> Cloister and shelter have its place, but not in the every day give and take of life. Research discloses that even the siblings of royalty were encouraged under supervision to have contact with the commoner.... The entire lack of free association being denied to [the two children involved in the case], by design or otherwise, which is afforded them at public school, leads me to the conclusion that they are not receiving education equivalent to that provided in the public schools....[114]

In the case of State v. Massa,[115] however, the court departed from the precedents of Stephens v. Bongart and Knox v. O'Brien.

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[112] Arval A. Morris, The Constitution and American Education (St. Paul, MN: West Publishing Co., 1980), p. 109.

[113] Stephens v. Bongart, 189 A. 131 at 137 (1937).

[114] Knox v. O'Brien, 72 A. 2d 389 at 392 (1950).

[115] State v. Massa, 231 A. 2d 252 (N.J. 1967).

In the words of Kotin and Aikman, the New Jersey court "finally decided to pay more attention to the words in the statute than to explicating some philosophy of child development."[116] Recognizing that the New Jersey law specifically provided for children to receive an equivalent education "elsewhere than at school," the court ruled that the mere absence of a large group of other students would always make the alternatives of tutoring or home instruction impermissible. The decision in State v. Massa returned to the concept of academic equivalency from Commonwealth v. Roberts.[117]

Ralph Mawdsley and Steven Permuth have elaborated on the confusing web of conflicting legal precedents surrounding the issue of state regulation of nonpublic (and especially religious) schools. The authors postulated that many controversies concerning religious schools could be avoided if the Supreme Court clarified its "elastic guidelines."[118] Indeed, an examination of recent literature reveals an array of contradictory decisions. William D. Valente has called the Whisner[119] case the "strongest modern

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[116]Kotin and Aikman, Legal Foundations of Compulsory School Attendance, p. 148.

[117]Ibid., pp. 146-147.

[118]Ralph D. Mawdsley and Steven Permuth, "State Regulation of Religious Schools: A Need for Direction," NOLPE School Law Journal, 11 (1983), p. 55.

[119]State v. Whisner, 351 N.E. 2d 750 (Ohio 1976).

judicial statement applying the natural rights theory of [Pierce v. Society of Sisters] as a limitation on state regulation of private schools."[120] Kotin and Aikman identified the New Hampshire case of State v. Hoyt[121] as the "most decidedly state-oriented" case in the area of state approval of private home instruction.[122]

A Supreme Court decision that prompted many observers to predict the end of compulsory attendance laws was made in the Yoder[123] case. In the years after the 1972 decision exempted Amish children from compulsory school attendance after age fourteen (because of the burden of their freedom of religion), many other plaintiffs have attempted to obtain exemptions on religious grounds. Patricia M. Lines wrote that if only Amish children were to be excused from compulsory attendance on religious grounds that clearly such favoritism would constitute an establishment of religion, which is forbidden in the First Amendment of the United States Constitution. Lines felt that the Supreme Court's

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[120]William D. Valente, Overview of Constitutional Developments Affecting Individual and Parental Liberty Interests in Elementary and Secondary Education, U.S., Educational Resources Information Center, ERIC Document ED 168 174, December, 1978, p. 25.

[121]State v. Hoyt, 146 A. 170 (N.H. 1929).

[122]Kotin and Aikman, Legal Foundations of Compulsory School Attendance, p. 157.

[123]Wisconsin v. Yoder.

exemption could be extended to other religions, "perhaps even to non-theistic, non-traditional 'religions'."[124] However, John Elson, writing about the topic of state regulation of nonpublic schools, declared that it was very unlikely that state regulation could be avoided on religious grounds, unless the plaintiffs were "Amish or Amish-like."[125] Wisconsin v. Yoder was hailed as a victory for parents' rights, but Marc Folladori called the decision "regressive" in that "children may be subjected to a life chosen for them by another."[126]

A decision which is frequently extolled by home-schoolers is Perchemlides v. Frizzle.[127] Judge Greaney of the Hampshire County Superior Court in Massachusetts provided guidelines along which applications for home instruction approval requests could be processed. Judge Greaney's

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[124]Patricia M. Lines, Private Education Alternatives and State Regulation, U.S., Educational Resources Information Center, ERIC Document ED 218 801, 1981, p. 5.

[125]John Elson, "Legal Dimension of State Regulation of Nonpublic Schools," Super-Parent: An Analysis of State Educational Controls, ed. Donald A. Erickson, U.S., Educational Resources Information Center, ERIC Document ED 096 770, October, 1983, pp. 24-25.

[126]Marc H. Folladori, "The Amish Prevail Over Compulsory Education Laws: Wisconsin v. Yoder," Southwestern Law Journal, 26 (December, 1972), p. 919.

[127]Perchemlides v. Frizzle, No. 16641 (Mass. Hampshire Cty. Super Ct. 1978).

decision invalidated these reasons for denying approval of a home instruction program: improper reasons for wanting to teach children at home, a lack of a curriculum identical to that of the public schools, and the creation of a precedent by approval.[128] Regardless of the publicity the case has received, Tobak and Zirkel cautioned that the "significance of the Perchemlides [v. Frizzle] decision shouldn't be overstated," since it was an unreported Massachusetts lower court decision with extremely limited application as a binding precedent, and because it lends itself to many different interpretations. As Tobak and Zirkel pointed out, both sides claimed victory.[129]

From the abundant samples of recent home instruction court challenges, Neal Devins cited two North Carolina cases as being particularly significant. "The most important of these cases, Duro v. District Attorney,[130] was the first home-schooling case to be heard in a federal court of

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[128]Nolte, "Home Instruction in Lieu of Compulsory Attendance," pp. 8-9.

[129]James W. Tobak and Perry A. Zirkel, "Home Instruction: An Analysis of the Statutes and Case Law," University of Dayton Law Review, 8 (Fall, 1982), p. 27.

[130]Duro v. District Attorney, Second Jud.Dist. of N.C., 712 F.2d 96 (Fourth Cir., 1983), cert. denied 104 S.Ct. 998 (1984).

appeals."[131] The second case, Delconte v. State,[132] sought recognition of the Delconte home as a private school. Two reasons that make the North Carolina cases pivotal, according to Devins, are that North Carolina is a state that prohibits rather than regulates home instruction, and that since the case of Duro v. District Attorney

> has gone as far as the federal appeals-court level, it will serve as a strong precedent even though the Supreme Court decided not to hear it. Thus, the North Carolina lawsuits will help establish the parameters of legitimate state authority over home instruction. The Supreme Court's refusal to hear the Duro case means that, for now, any state in the fourth circuit clearly can prohibit home instruction. The fact that a federal appeals court upheld North Carolina's absolute prohibition of home instruction suggests that states that do permit home instruction have absolute authority to regulate it.[133]

Additional Issues of Home Instruction

The legal issues surrounding home instruction are varied and complex. Issues previously alluded to in this chapter include parents' rights to direct the education and upbringing of their children, the state's authority to compel and regulate education, strict constructionist v. liberal

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[131]Neal Devins, "The Limits of 'Compelling Interest' In The Education of Young Citizens," Education Week, 3 (February 1, 1984), p. 20.

[132]Delconte v. State, 308 S.E.2d 898 (N.C.Ct.App. 1983).

[133]Devins, "The Limits of 'Compelling Interest' In The Education of Young Citizens," p. 20.

constructionist interpretation of statutes, permissibility of attendance at nonpublic schools, equivalency of alternative learning situations, socialization, academic proficiency, state regulation of nonpublic schools, burden on freedom of religion, whether or not a home can be considered a nonpublic school, and the problem of contradictory precedents. Other issues that surfaced during the review of the literature are constitutional protection, due process, equal protection of the laws, fundamental right to privacy, the burden of proof, children's rights, unconstitutional vagueness of statutes, and wide discrepancies among the states' statutes with regard to permissibility of home instruction and the regulation of nonpublic schools.

In the history of litigation over home instruction, parents have often tried to claim protection by the United States Constitution. As seen earlier in this chapter, parents have frequently relied upon the First Amendment's guarantee of religious freedom. Other constitutional issues that have been raised include substantive and procedural due process (based upon the Fourteenth Amendment) and a fundamental right to privacy (based upon the Ninth Amendment). Mawdsley and Permuth described the

constitutional status of home instruction as "uncertain."[134] Zirkel and Gluckman found that most courts rejected arguments of a constitutional, nonreligious right to educate children at home.[135] Nolte's opinion was that "[o]n a constitutional level, parents who choose home instruction in lieu of public or private school attendance should be advised their choice does not rise above a personal or philosophical preference and, therefore, is not within the ambit of constitutional protection."[136] Schimmel and Fischer proclaimed that the answer to the question of whether or not parents have the right to educate their children at home depended on state laws and on the local court's interpretation of the word "school."[137]

Wording of state compulsory attendance statutes has become the crucial factor in home instruction cases. Tobak

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[134]Ralph D. Mawdsley and Steven Permuth, "Home Instruction for Religious Reasons: Parental Right or State Option?" West's Education Law Reporter, 1 (1982), p. 951.

[135]Perry A. Zirkel and Ivan B. Gluckman, "It's the Law: Home Instruction: When It's Legal," Principal, 62 (January, 1983), p. 38.

[136]Nolte, "Home Instruction in Lieu of Compulsory Attendance," p. 12.

[137]David Schimmel and Louis Fischer, The Rights of Parents In The Education of Their Children (Columbia, MD: The National Committee for Citizens in Education, 1977), p. 83.

and Zirkel have outlined three types of state laws pertaining to home instruction: 1) statutes that forbid home instruction; 2) statutes that explicitly provide for home instruction; and 3) statutes that implicitly allow home instruction through provision for "equivalent" or "comparable" instruction received "elsewhere" or "otherwise."[138] The type of statute prevalent in a particular state will shape the nature of home instruction litigation. In states that prohibit home instruction, cases likely will concern whether or not a home school is a nonpublic school. The largest amount of litigation originates in states that implicitly allow home instruction by broad language in compulsory attendance statute exemptions. Among the many issues typical of such debates are whether or not education can be equivalent without extensive social contacts and whether the burden of proof of equivalence rests on the parents or the state.[139] Harold Punke's article, "Home Instruction and Compulsory School Attendance,"[140] is devoted almost entirely to explicating where lies the burden of proof in home instruction cases. In states that explicitly permit

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[138]Tobak and Zirkel, "Home Instruction," p. 11.

[139]Ibid., pp. 57-58.

[140]Harold H. Punke, "Home Instruction and Compulsory School Attendance," NOLPE School Law Journal, 5 (1975), pp. 77-109.

home instruction, court challenges may revolve upon the regulatory devices and procedures adopted by the state.

Supporters of nonpublic schools object to state regulation because excessive regulations may prevent them from achieving their "distinctive goals."[141] Courts have consistently held, however, that while parents have the right to choose alternative means of educating their children, they do not have a right to education unregulated by the state. John F. Walther's study of state regulation of nonpublic schools found a wide range of state regulatory policies. According to Walther's 1982 study, Nebraska and Michigan had the most stringent regulations (of the six states he studied), while Indiana and Illinois had the most lenient requirements.[142] North Carolina's 1979 deregulation of religious nonpublic schools has been condemned as an example of "legislative laxity"[143] by Benjamin Sendor. But Evenson

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[141]O'Hara, "State Accreditation of Non-Public Schools," p. 5.

[142]John F. Walther, "State Regulation of Nonpublic Schools" (Doctoral dissertation, University of Illinois at Urbana-Champaign, 1982), p. 99.

[143]Benjamin Sendor, "Advice for Lawsuit-Weary Board Members: Learn These Lessons About Labor Relations, Liquor, and Legislative Laxity," American School Board Journal, 170 (January, 1983), p. 35.

hailed the state's action as a model for other states to follow.[144] Walther identified the issue of teacher certification as the most controversial aspect of state regulation of nonpublic schools.[145] In Walther's opinion, states should refrain from regulating accreditation, teacher certification, and curriculum of nonpublic schools, but should regulate admission requirements, school calendar, and ages of children required to attend.[146] Mawdsley and Permuth wrote that the "state's selection of a few mandated requirements, such as teacher certification or high cost curriculum offerings, while far short of a substantial and suffocating number of state standards, may render home instruction not only impractical, but impossible."[147]

The "developing constitutional right of privacy" may become a popular defense against compulsory attendance statutes.[148] In the 1965 case of Griswold v.

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[144]J. Eric Evenson, II, "State Regulation of Private Religious Schools in North Carolina - A Model Approach," Wake Forest Law Review, 16 (1980), pp. 405-437.

[145]Walther, "State Regulation of Nonpublic Schools," p. 96.

[146]Ibid., pp. 99-107.

[147]Mawdsley and Permuth, "Home Instruction for Religious Reasons," pp. 950-951.

[148]Neuman, ed., Michigan Law Review, p. 1395.

Connecticut,[149] "Justice Goldberg argued that the integrity of the family is protected by the ninth amendment."[150] Two abortion cases of 1973[151] further extended the idea that the education of children, along with other decisions regarding childbearing and child rearing, is a parental activity protected by the fundamental right to privacy.[152]

Another increasingly popular method of attack on compulsory attendance laws or state regulations is to assert that the statutes are impermissibly vague. Vague laws are prohibited because they "may trap the innocent by not providing fair warning."[153] Two terms from compulsory attendance statutes that have been challenged on the grounds of vagueness are "certified teacher" and "private school." In the case of State v. Riddle, the West Virginia Supreme Court ruled that the phrase of the West Virginia statutes that required teachers to be "qualified to give instruction in subjects required to be taught in free elementary schools"

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[149]Griswold v. Connecticut, 381 U.S. 479 at 495-496 (1965).

[150]Stephen T. Knudsen, "The Education of the Amish Child," California Law Review, 62 (December, 1974), p. 1529.

[151]Roe v. Wade, 510 U.S. 113(1973), Doe v. Bolton, 410 U.S. 179, 211(1973), cited in Neuman, ed., Michigan Law Review, p. 1395.

[152]Neuman, ed., Michigan Law Review, p. 1395.

[153]Grayned v. City of Rockford, 408 U.S. 104 at 108, 92 S. Ct. 2294 at 2298, 33 L.Ed. 2d 222 (1972).

was not unconstitutionally vague.[154] Most challenges to the clarity of the term "private school" have ended in defeat for home-schoolers. For example, in the 1982 case of Grigg v. Commonwealth, the Supreme Court of Virginia ruled that the state's compulsory attendance law was not void by virtue of its lack of a definition of "private school."[155] However, in a 1983 ruling by the Supreme Court of Wisconsin, Justice Abrahamson agreed with the plaintiffs that there was no adequate definition of the term "private school" to be found in state statutes, administrative rules and regulations, or official publications of the state's department of public instruction. In reversing the conviction of the home-schooler, Justice Abrahamson advised that the legislature should define the term "private school" so that citizens and courts would not have to speculate as to the legislature's intent.[156]

In addition to the major recurring legal themes of home instruction litigation previously identified in this chapter, a number of minor related issues were discussed in the 1981-82 issue of the NOLPE Case Citation Series that dealt with home instruction. These

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[154]State v. Riddle, 285 S.E. 2d 359 (W.Va. 1981).

[155]Grigg v. Commonwealth, 297 S.E. 2d 799 (Va. 1982).

[156]State v. Popanz, 332 N.W. 2d 750 (Wis. 1983).

topics included the admissibility of attendance records in court, assessing the monetary value of damages sustained by plaintiffs, disorderly persons charges, handicapped children, juvenile court jurisdiction, race-mixing as an excuse for truancy, and suspension.[157]

SUMMARY

A review of pertinent literature demonstrates that the issue of compulsory school attendance has been shrouded in controversy since its inception. Although not mandated throughout the entire land until 1918, the beginnings of the compulsory education movement can be traced back at least as early as fourteenth-century England.

Forcing American citizens to send their children to school was an idea that was not readily embraced. The writings of respected statesmen, philosophers, and even some educational pioneers reflect the inflammatory nature of compulsion. The compulsory school attendance movement received a boost from reactions to eighteenth-century immigration patterns, the spreading problem of child labor, and from the growing belief that universal education was a prerequisite for the continued existence of a democratic nation.

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[157] National Organization on the Legal Problems of Education, "Cases on Home Instruction," Case Citation Series (Topeka, KS: NOLPE, 1981-82), pp. 1-20.

The debate over compulsory school attendance has persisted to the present day. The first home instruction case, Commonwealth v. Roberts, was tried in Massachusetts in 1893. A recent and dramatic increase in the rate of home instruction cases has revealed a labyrinth of legal issues, at the center of which is the ever-present contest between the parents' right to direct the education of their children and the state's right to provide for the welfare of its citizens.

CHAPTER III

STATUTORY PROVISION FOR HOME INSTRUCTION

As interest in the home education movement grows, so does the number of states specifically permitting home instruction as an alternative to compulsory school attendance. Since 1976, when the statutes of eight states referred to home instruction,[1] the number of states making explicit exemptions for home-schoolers has grown by six states. Currently, fourteen states explicitly list home instruction as an alternative to compulsory attendance. Six other states and the District of Columbia permit instruction by private tutor. Fifteen other states implicitly permit home instruction, bringing the total number of states whose statutes allow home instruction to thirty-five. The statutes of the remaining fifteen states require attendance at public or nonpublic schools. Table I lists the fifty states and indicates whether or not their statutes allow home instruction. (The texts of the pertinent statutes of all fifty states appear in the Appendix.)

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[1]Barry Dean Walker, Sr., "Compulsory School Attendance: Alternatives and Exemptions Provided by Statutory and Case Law in Each of the Fifty States," (Doctoral dissertation, University of Cincinnati, 1976), p. 101.

TABLE I

Statutes Permitting Home Instruction

States	Yes	No
Alabama	X	
Alaska	X	
Arizona	X	
Arkansas		X
California	X	
Colorado	X	
Connecticut	X	
Delaware	X	
Florida	X	
Georgia	X	
Hawaii	X	
Idaho	X	
Illinois		X
Indiana	X	
Iowa	X	
Kansas		X
Kentucky		X
Louisiana	X	
Maine	X	
Maryland	X	
Massachusetts	X	
Michigan		X
Minnesota		X
Mississippi	X	
Missouri	X	
Montana	X	
Nebraska		X
Nevada	X	
New Hampshire		X
New Jersey	X	
New Mexico		X
New York	X	
North Carolina		X
North Dakota		X
Ohio	X	
Oklahoma	X	
Oregon	X	
Pennsylvania	X	
Rhode Island	X	
South Carolina	X	
South Dakota	X	

Table 1 (Continued)

States	Yes	No
Tennessee		X
Texas		X
Utah	X	
Vermont	X	
Virginia	X	
Washington		X
West Virginia	X	
Wisconsin	X	
Wyoming		X
Totals	35	15

STATE THAT PERMIT HOME INSTRUCTION BY STATUTE

As previously stated, thirty-five states have statutes that condone home instruction as a learning arrangement. The following three categories of such statutory provisions are discernible: 1) states which explicitly authorize home instruction; 2) states not included in the first category but which approve instruction by a private tutor; and 3) states which implicitly allow home instruction through the authorization of learning situations described in broad terms such as "equivalent," "comparable," "elsewhere" and "otherwise." Table II lists the thirty-five states with statutes allowing home instruction and shows into which of the three categories each state falls.

Explicit Provisions for Home Instruction

States selected for this category are those states that specifically sanction home instruction under phrases including: "home instruction," "home school," "home study," "at home," "in the home," or "taught...by a parent." The fourteen states in this category are Arizona, Colorado, Georgia, Louisiana, Mississippi, Missouri, Montana, Nevada, Ohio, Oregon, Utah, Vermont, Virginia, and West Virginia.

TABLE II

Three Categories of Statutes That

Permit Home Instruction

States	Explicit Provision	Private Tutor Allowed	Implicit Provision
Alabama		X	
Alaska			X
Arizona	X		
California		X	
Colorado	X		
Connecticut			X
Delaware			X
Florida		X	
Georgia	X		
Hawaii		X	
Idaho			X
Indiana			X
Iowa			X
Louisiana	X		
Maine			X
Maryland			X
Massachusetts			X
Mississippi	X		
Missouri	X		
Montana	X		
Nevada	X		
New Jersey			X
New York			X
Ohio	X		
Oklahoma			X
Oregon	X		
Pennsylvania		X	
Rhode Island		X	
South Carolina			X
South Dakota			X
Utah	X		
Vermont	X		
Virginia	X		
West Virginia	X		
Wisconsin			X
Totals	14	6	15

Table III reveals which of the key phrases above were used by each state that makes explicit statutory provisions for home instruction.

Mississippi, Virginia, and Vermont are three states that utilize the phrase "home instruction."[2] Mississippi specifies that the term "nonpublic school" includes "home instruction programs."[3] Six other states, including Arizona, Colorado, Missouri, Nevada, Ohio, and West Virginia, use a form of the word "instruct" in the same phrase with the word "home."[4] The state of Utah uses the phrase "taught at home."[5]

In Montana, statutes direct parents to enroll a child in a public school unless the child is "enrolled in a non-public or home school..."[6] Furthermore, the Montana legislature has provided this definition of a home school: "the

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[2]Virginia, Code of Virginia, Sec. 22.1-254 (1984); Vermont, Vermont Statutes Annotated, Title 16, Sec. 1121 (1984); Mississippi, Mississippi Code Annotated, Sec. 37-13-91(1984).

[3]Mississippi, Mississippi Code Annotated, Sec. 37-13-91 (1984).

[4]Arizona, Arizona Revised Statutes, Sec. 15-802 (1983); Colorado, Colorado Revised Statutes, Sec. 22-33-103 (1983); Missouri, Vernon's Annotated Missouri Statutes, Sec. 392.070 (1981); Ohio, Page's Ohio Revised Code Annotated, 3321.04 (1983); West Virginia, West Virginia Code, Sec. 18-8-1 (1984).

[5]Utah, Utah Code Annotated, Sec. 53-24-1 (1983).

[6]Montana, Montana Code Annotated, Sec. 20-5-102 (1984).

TABLE III

States That Explicitly Permit Home Instruction: Key Phrases in Statutes

States	Home Instruction	Home School	Home Study	At Home or In the Home	Taught By A Parent
Arizona				X	
Colorado				X	
Georgia			X		
Louisiana			X		
Mississippi	X				
Missouri				X	
Montana		X			
Nevada				X	
Ohio				X	
Oregon					X
Utah				X	
Vermont	X				
Virginia	X				
West Virginia				X	
Totals	3	1	2	7	1

instruction by a parent of his child, stepchild, or ward in his residence..."[7] Two states, Georgia and Louisiana, use the phrase "home study."[8]

The state of Oregon includes among those exempt from compulsory attendance "children being taught for a period equivalent to that required of children attending public schools by a parent or private teacher the courses of study usually taught in grades 1 through 12 in the public school."[9]

Home Instruction by Private Tutor

Six states and the District of Columbia were placed into this category because their statutes did not explicitly permit home instruction but did allow for private instruction or instruction by a private tutor. States that permit home instruction by some other means than instruction by private tutor were not included in this category. The six states are Alabama, California, Florida, Hawaii, Pennsylvania, and Rhode Island. In these six states and in the District of Columbia, home instruction would be legal if it met the requirements for private instruction or if a parent could be declared a tutor.

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[7]Ibid.

[8]Georgia, Official Code of Georgia, Annotated, Vol. 17, Title 20, Sec. 20-2-690 (1984); Louisiana, West's Louisiana Revised Statutes, Annotated, Title 17, Sec. 236 (1982).

[9]Oregon, Oregon Revised Statutes, Sec. 339.010 (1983).

Two states, Alabama and Hawaii, specify that the tutor must be "competent." In Alabama, the compulsory attendance statute requires that "every child between the ages of seven and sixteen years shall be required to attend a public school, private school, church school, or be instructed by a competent private tutor..."[10] However, this private tutor must hold "a certificate issued by the state superintendent of instruction."[11] The state of Hawaii makes an exception to the compulsory school attendance law "where a competent person is employed as a tutor in the family wherein the child resides and proper instruction is thereby imparted as approved by the superintendent."[12]

Pennsylvania's statutes state that "regular daily instruction...by a properly qualified private tutor" is a form of compliance with compulsory attendance laws, so long as the instruction is "satisfactory to the...superintendent of schools."[13] California allows instruction by a "private tutor or other person" but requires the instructor to hold "a valid state credential for the grade taught."[14]

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[10]Alabama, Alabama Code, Sec. 16-28-3 (1984).

[11]Alabama, Alabama Code, Sec. 16-28-5 (1984).

[12]Hawaii, Hawaii Revised Statutes, Sec. 298-9 (1983).

[13]Pennsylvania, Purdon's Pennsylvania Statutes Annotated, Title 24, Sec. 13-1327 (1984).

[14]California, Deering's California Codes, Sec. 48224 (1984).

In Florida's compulsory attendance laws, it is stated that compliance with the statutes may be achieved by attendance at a public school, at a parochial or denominational school, at a private school, or "at home with a private tutor who meets all requirements...for private tutors."[15]

All five states selected for this category place restrictions on the tutoring situation. Hawaii, Pennsylvania, and Alabama require approval by a superintendent. Alabama, California, Florida, and Pennsylvania require credentials for tutors. Parents in these five states, however, who could meet the requirements for private tutors, could implement programs of home instruction.

In Rhode Island and the District of Columbia, the school term of private instruction must coincide with or be equal to that of the public schools and attendance records must be kept. In the District of Columbia, curriculum specifications are that private instruction be equivalent to that given in the public schools, while in Rhode Island, a list of required subjects is provided in the statutes. Rhode Island's statutes also state that private instruction must be given in the English language.

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[15]Florida, West's Florida Statutes Annotated, Sec. 232.02 (1984).

Implicit Provisions for Home Instruction

Table IV shows that, in addition to the nineteen states which permit home instruction by explicit provisions for home instruction and by the legalization of private tutoring, there are fifteen states whose statutes allow home instruction implicitly, through the use of broad terms such as "equivalent," "comparable," "substantially equal," "elsewhere," "other," or "otherwise." These fifteen states are Alaska, Connecticut, Delaware, Idaho, Indiana, Iowa, Maine, Maryland, Massachusetts, New Jersey, New York, Oklahoma, South Carolina, South Dakota, and Wisconsin. Table IV shows which of the key words mentioned above are used in the statutes of each of the fifteen states in this category.

The broad language used in the statutes of these states frequently leads to litigation. According to Tobak and Zirkel, states where home instruction is permitted implicitly have more issues to contest and therefore experience the highest amount of litigation over home instruction.[16] For example, the statutes of Indiana declare that "it is unlawful for a parent to fail...to send his child to a public

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[16]James W. Tobak and Perry A. Zirkel, "Home Instruction: An Analysis of the Statutes and Case Law," University of Dayton Law Review, 8 (Fall, 1982), pp. 57-58.

TABLE IV

States That Implicitly Permit Home Instruction: Key Words in Statutes

States	"Equivalent" "Comparable," or "Substantially equal"	"Otherwise" or "Other"	"Elsewhere"
Alaska	X		
Connecticut	X		X
Delaware			X
Idaho	X	X	
Indiana	X		
Iowa	X		X
Maine		X	
Maryland		X	
Massachusetts		X	
New Jersey	X		X
New York		X	
Oklahoma		X	
South Carolina	X	X	
South Dakota		X	
Wisconsin	X		X
Totals	8	8	5

school...unless the child is being provided with instruction equivalent to that given in the public schools..."[17] Legal issues that arise from such wording of statutes include the questions of whether or not home schools can provide equivalent instruction without the socialization experience of larger schools and who will determine equivalence.[18] In all, eight states allow for alternate instruction that is "equivalent," "comparable," or "substantially equal." In addition to Indiana, the other states are Alaska, Connecticut, Idaho, Iowa, New Jersey, South Carolina, and Wisconsin.

Eight states either permit "other" instruction or instruction that is "otherwise" imparted. In South Dakota, for example, the law states that "a child shall be excused from school attendance...because the child is otherwise provided with competent alternative instruction..."[19] The remaining states using the words "otherwise" or "other" are Idaho, Maine, Maryland, Massachusetts, New York, Oklahoma, and South Carolina.

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[17]Indiana, Burns Indiana Statutes Annotated, Sec. 20-8.1-3-34 (1984).

[18]Tobak and Zirkel, "Home Instruction," p. 58.

[19]South Dakota, South Dakota Codified Laws, Sec. 13-27-3 (1983).

The word "elsewhere" is a key word in the statutes of five states that implicitly permit home instruction. The statutes of Delaware stipulate that the compulsory school attendance law will not apply if a "child is elsewhere receiving regular and thorough instruction..."[20] Other states using the word "elsewhere" to permit alternate instruction are Connecticut, Iowa, New Jersey, and Wisconsin.

STATES THAT DO NOT PERMIT HOME INSTRUCTION BY STATUTE

In fifteen states, there are no statutory provisions for home instruction. These states are Arkansas, Illinois, Kansas, Kentucky, Michigan, Minnesota, Nebraska, New Hampshire, New Mexico, North Carolina, North Dakota, Tennessee, Texas, Washington, and Wyoming. The statutes of these states require attendance either at public schools or at nonpublic schools which may be called "private," "parochial," "denominational," "church," "private church," "nonpublic" schools or schools "of religious charter," depending on the terminology chosen by the legislatures of the individual states involved. Table V lists the statutory names for

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[20]Delaware, Delaware Code Annotated, Title 14, Sec. 2703 (1982).

TABLE V

Statutory Names of Schools Which May Be Attended to Satisfy Attendance Laws in States Which Do Not Make Statutory Provisions for Home Instruction

States	"Public"	"Private"	"Parochial"	"Denominational"	"Private Church" or "Church"	"Non-public"	"Of religious charter"
Arkansas	X	X	X				
Illinois	X	X	X				
Kansas	X	X	X	X			
Kentucky	X	X	X		X	X	
Michigan	X						
Minnesota	X	X					
Nebraska	X	X	X	X			
New Hampshire	X	X					
New Mexico	X	X					
North Carolina	X				X	X	X
North Dakota	X	X	X				
Tennessee	X	X					
Texas	X	X	X				
Washington	X	X	X				
Wyoming	X	X	X				
Totals	15	13	9	2	2	2	1

schools which may be attended to satisfy attendance laws in states which do not make statutory provisions for home instruction.

The compulsory attendance statute of New Mexico is unique in two ways. First of all, it requires students to attend "a public school, a private school or a state institution."[21] No other state mentions being in a state institution as a means of satisfying the compulsory attendance requirement. More significantly, the statute defines "public school," "private school," and "state institution." The definition of the term "private school" reads: "a school offering programs of instruction not under the control, supervision, or management of a local school board exclusive of home instruction offered by the parent, guardian or one having custody of the student."[22] (Emphasis added.) Although some other states include a definition of "private school" in their statutes, New Mexico is the only state which uses a statutory definition to forbid home instruction. The existence of a definition of the term "private school" in the statutes is important in that it could preclude litigation over whether or not a home school constitutes a private

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[21]New Mexico, New Mexico Statutes Annotated, Sec. 22-12-2 (1984).

[22]New Mexico, New Mexico Statutes Annotated, Sec. 22-1-2 (1984).

school, as occurred in the 1983 Popanz[23] case in Wisconsin. In that case, Justice Abrahamson ruled in favor of the home-schooler and suggested that the legislature define the term "private school."[24]

Statutory Requirements for Home Instruction

For the purpose of examining statutory requirements of home instruction, all thirty-five of the states which permit home instruction are discussed together, regardless of whether their statutes permit home instruction explicitly, implicitly, or by the sanctioning of instruction received from private tutors. In the statutes of these thirty-five states, a variety of statutory requirements may be found. Six major areas that are regulated are curriculum; qualifications of the instructor; approval or permission to operate; attendance or enrollment records; length of school day or term; and testing or other evaluation of student progress.

Table VI shows which states have statutory requirements for home school curriculum and instructors. Nineteen states' statutes stipulate that the curriculum of home schools must be equivalent to that of the local public schools. Those states are Alabama, Alaska, Delaware, Idaho,

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[23]State v. Popanz, 332 N.W. 2d 750 (1983).

[24]Ibid.

TABLE VI

States With Statutory Curriculum Requirements or Instructor Qualifications for Home Instruction

	Curriculum		Instructor				
States	Equivalent to Public Schools	Prescribed Subjects	Certified	Coll. Grad.	H.S. Grad.	Pass Test	Qualified/ Competent
Alabama	X		X				
Alaska	X		X				
Arizona						X	
California			X				
Colorado			X				
Connecticut		X					
Delaware	X						
Florida			X				
Georgia		X			X		
Hawaii							X
Idaho	X						
Indiana	X						
Iowa	X						
Louisiana	X						
Maryland	X						
Missouri	X						
Montana	X						
Nevada	X						
New Jersey	X						
New York	X						X
Ohio	X						X
Oregon	X						
Pennsylvania			X				
Rhode Island		X					
South Carolina	X						
South Dakota		X					X
Utah	X						
Virginia				X			
West Virginia	X						X
Wisconsin	X						
	19	4	6	1	1	1	5

Indiana, Iowa, Louisiana, Maryland, Missouri, Montana, Nevada, New Jersey, New York, Ohio, Oregon, South Carolina, Utah, West Virginia, and Wisconsin. The District of Columbia also requires that the curriculum be equivalent to that of the public schools.

The statutes of four states list certain subjects that must be offered. Connecticut requires that these subjects be taught: reading, writing, spelling, English grammar, geography, arithmetic, United States history, citizenship, and government.[25] Georgia requires coverage of reading, language arts, mathematics, social studies, and science.[26] In Rhode Island, these subjects must be taught: reading, writing, geography, mathematics, United States history, Rhode Island history, and American government.[27] South Dakota simply requires that language arts and mathematics be taught.[28]

Fourteen states' statutes mention qualifications for instructors. In these six states, the teacher or tutor

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[25]Connecticut, Connecticut General Statutes, Sec. 10-184(1983).

[26]Georgia, Official Code of Georgia, Annotated, Sec. 20-2-690 (1984).

[27]Rhode Island, General Laws of Rhode Island, Sec. 16-9-2 (1983).

[28]South Dakota, South Dakota Codified Laws, Sec. 13-27-3 (1983).

must be certified: Alabama, Alaska, California, Colorado, Florida, and Pennsylvania. Virginia requires that the person hold a baccalaureate degree.[29] Georgia permits home instruction by a high school graduate or a person who passes a high school equivalency test.[30] Arizona's statutes require that the teacher must pass a proficiency examination in reading, grammar, and mathematics.[31] These five states require that the teacher or tutor be "qualified" or "competent": Hawaii, New York, Ohio, South Dakota, and West Virginia.

Table VII shows which states have statutory regulations for home instruction approval, attendance or enrollment records, length of school day or term, and testing or other evaluation. These thirteen states require the approval or permission of local superintendents, school boards, or school committees: California, Georgia, Louisiana, Maine, Massachusetts, Montana, Ohio, Oregon, Pennsylvania, Rhode Island, South Dakota, Virginia, and West Virginia. Attendance or enrollment reports must be made in these eight states and in the District of Columbia: Alabama, Delaware, Georgia, Iowa, Mississippi, Montana, Rhode Island, and

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[29]Virginia, Code of Virginia, Sec. 22.1-254.1 (1984).

[30]Georgia, Official Code of Georgia, Annotated, Sec. 20-2-690 (1984).

[31]Arizona, Arizona Revised Statutes, Sec. 15-802 (1983).

TABLE VII

States With Statutory Regulations of Home Instruction Approval, Attendance Records, Length of School Day or Term, and Testing

States	Approval	Attend. Records	Length of Term	Length of Day	Testing
Alabama		X	X	X	
Arizona					X
California	X		X	X	
Delaware		X			
Georgia	X	X	X		X
Iowa		X			
Louisiana	X				
Maine	X				
Maryland				X	
Massachusetts	X				
Mississippi		X			
Missouri				X	
Montana	X	X	X		
Ohio	X				
Oklahoma			X		
Oregon	X		X		X
Pennsylvania	X			X	
Rhode Island	X	X	X		
South Dakota	X		X		X
Utah			X	X	
Virginia	X				X
West Virginia	X	X			
Wisconsin			X		
Totals	13	8	10	6	5

West Virginia. The length of the school term is specified by the statutes of the District of Columbia and these ten states: Alabama, California, Georgia, Montana, Oklahoma, Oregon, Rhode Island, South Dakota, Utah, and Wisconsin. The regularity of instruction or the length of the school day is regulated in these six states: Alabama, California, Maryland, Missouri, Pennsylvania, and Utah. Testing or other means of evaluation of student progress is required by Arizona, Georgia, Oregon, South Dakota, and Virginia.

In addition to the information shown in Tables VI and VII, five states require that the instruction be in English. They are Alabama, California, New York, Pennsylvania, and Rhode Island. Additionally, Montana has immunization requirements and building safety codes for home-schoolers.[32] Virginia's laws require that correspondence courses used in conjunction with home instruction be approved by the state board of education.[33]

SUMMARY

An examination of compulsory attendance laws reveals that the statutes of thirty-five states and the District of Columbia permit home instruction, while the statutes of

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[32]Montana, Montana Code Annotated, Sec. 20-5-109.

[33]Virginia, Code of Virginia, Sec. 22.1-254.1.

fifteen states do not. According to statutory law, home instruction is permissible in states with explicit provisions for home instruction, in states with provisions for instruction by private tutor (where the parent could meet requirements for becoming a tutor), and in states with implicit provisions for "equivalent" or "other" instruction "elsewhere" than at a school.

The states of Arkansas, Illinois, Kansas, Kentucky, Michigan, Minnesota, Nebraska, New Hampshire, New Mexico, North Carolina, North Dakota, Tennessee, Texas, Washington, and Wyoming do not make statutory provisions for home instruction. Instead, the statutes of these states require attendance at public or nonpublic schools.

The statutes of the thirty-five states which do allow for home instruction have a variety of requirements for it, mainly in the areas of curriculum; qualifications of the instructor; approval or permission to operate; attendance or enrollment records; length of school day or term; and testing or other evaluation of student progress.

CHAPTER IV

THE LEGAL ASPECTS OF HOME INSTRUCTION

Surrounding the topic of home instruction is an arena of complex legal issues, extending to constitutional law, statutory law, case law, and administrative law. A detailed discussion of statutory law relating to home instruction was presented in Chapter III. However, in four of the fifteen states that have made no statutory provisions for home instruction, such learning arrangements have become legal by other means. Illinois has permitted home instruction through case law, since the Levisen[1] decision equated home instruction with nonpublic school attendance. Michigan has permitted home instruction since the state attorney general ruled that home instruction by a certified teacher was the equivalent of instruction in a nonpublic school.[2] In addition, the state school boards of Kentucky and New Hampshire

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[1]People v. Levisen, 90 N.E. 2d 213 (Ill. 1950).

[2]Opinion, Michigan Attorney General No. 5579, September 27, 1979; cited in Michigan, Michigan Statutes Annotated, Sec. 15.41561 (1984).

have adopted regulations that would permit the operation of approved home instruction programs.[3]

In court cases dealing with home instruction, the wording of the particular state statutes heavily influenced which legal issues of home instruction have been litigated. In states that have barred home instruction, most cases have revolved around whether or not a person's home could be considered a nonpublic school.[4] In states that have explicitly permitted home instruction, a major issue has been whether parents or the state should bear the burden of proof concerning any alleged inadequacies of the home program.[5]

Efforts by parents to circumvent strict regulations for home schools, such as the requirement of a teacher's certificate where no such requirement was made of nonpublic schools, have led to cases similar to those that have been characteristic of states which have banned home instruction. That is, parents may have attempted to have their homes declared to be nonpublic schools, thereby avoiding the

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[3]"State Home-Instruction Laws As of August 1984," Education Week, January 30, 1985, pp. 14-15.

[4]James W. Tobak and Perry A. Zirkel, "Home Instruction: An Analysis of the Statutes and Case Law," University of Dayton Law Review, 8(Fall, 1982), p. 57.

[5]Ibid., p. 50.

necessity of obtaining a teacher's certificate.[6] Another issue that has surfaced is whether or not parents whose home instruction requests were denied received due process during the consideration of their application.

In states that allowed instruction by a private tutor, the qualifications of the tutors were likely targets for litigation, along with any requirements concerning curriculum and schedules of instruction. Equivalence of education has been the major issue most likely to arise in states whose statutes have permitted a child to receive instruction elsewhere than at school.[7] The questions that had to be answered included a clarification of standards that must be satisfied in order to create an educational setting that was "equivalent" to that available in the local public schools; who would determine which learning arrangements were equivalent and which ones were not; and who should have to prove that the home instruction was equivalent or not.[8]

Other major issues that have arisen in all states, regardless of the wording of the statutes, have included freedom of religion, equal protection of the laws, the

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[6]Ibid., p. 51.

[7]Ibid., p. 57.

[8]Ibid.

right to privacy, parents' rights concerning the upbringing and education of their children, impermissible vagueness of statutes, state regulation of nonpublic education, the state's police power, the state's role as parens patriae, and the state's compelling interest in education. These issues have been litigated quite frequently despite the assertion by Chief Justice Erickstad of the North Dakota Supreme Court that "courts are ill-equipped to act as school boards...The courtroom is simply not the best arena for the debate of educational policy and the measurement of educational quality."[9]

The discussion that follows provides the reader with a summary of the major legal issues of home instruction as gleaned from the review of the literature and from the study of over 125 court decisions. Approximately one-half of the judicial decisions examined dealt specifically with home instruction cases. The remainder dealt with important peripheral issues that have had a direct bearing on or strong implications for home instruction.

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[9]State v. Shaver, 294 N.W. 2d 883 (N.D. 1980); pp. 899-900.

PARENTS' RIGHTS TO DIRECT THE EDUCATION OF THEIR CHILDREN

Overview

Although the United States Supreme Court has never heard a case concerning the permissibility of home instruction, decisions from four cases litigated before the nation's highest court have combined to provide a "constitutional backdrop" for home instruction cases.[10] These four landmark cases, Meyer,[11] Pierce,[12] Tokushige,[13] and Yoder,[14] deal directly or indirectly with parents' rights to direct the education of their children.

The 1923 Meyer decision invalidated a Nebraska law that prohibited teaching foreign languages to students who had not yet completed the eighth grade. The Supreme Court ruled that the law interfered with "the power of parents to control

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[10]Tobak and Zirkel, "Home Instruction," p. 19.

[11]Meyer v. Nebraska, 262 U.S. 390, 43 S.Ct. 625, 67 L.Ed. 1042 (1923).

[12]Pierce v. Society of Sisters, 268 U.S. 510, 45 S.Ct. 571 (1925).

[13]Farrington v. Tokushige, 273 U.S. 234, 47 S.Ct. 406 (1927).

[14]Wisconsin v. Yoder, 406 U.S. 205, 92 S.Ct. 1526, 32 L.Ed. 2d 15 (1972).

the education of their own."[15] Two years later, the Court heard the Pierce[16] case, in which it struck down Oregon's legislative attempt to require that all students attend only public schools.[17] Relying on Meyer,[18] the Pierce[19] Court stated that Oregon's law

> 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.[20]

The case of Farrington v. Tokushige[21] originated in the United States Territory of Hawaii in 1927. Hawaiian laws enacted in 1923 and 1925 limited enrollment in foreign language schools to those who had finished the first two grades in an American public school, where instruction would be conducted in English, rather than in Japanese or Chinese.

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[15]Meyer v. Nebraska, 262 U.S. 390 at 401 (1923).

[16]Pierce v. Society of Sisters.

[17]Ibid.

[18]Meyer v. Nebraska.

[19]Pierce v. Society of Sisters.

[20]Ibid., pp. 534-535.

[21]Farrington v. Tokushige, 47 S.Ct. 406 (1927).

The Supreme Court struck down the legislative enactments, saying that the "Japanese parent has the right to direct the education of his own child without unreasonable restrictions."[22]

The most recent of these four landmark decisions was the 1972 case of Wisconsin v. Yoder.[23] The litigious dispute in Yoder centered around Wisconsin's compulsory attendance law, which required schooling until age sixteen. People of the Amish religion claimed that school attendance beyond the eighth grade (usually age fourteen) violated their religious beliefs. The Yoder court devised a tripartate test to be used when the state's compelling interest came into conflict with the free exercise of religion. The three questions formulated were 1) whether or not the disputed action was based on a sincere religious belief, 2) whether or not the state's requirement interfered with the free exercise of that religious belief, and 3) whether or not the state's compelling interest justified interference with the free exercise of religious beliefs.[24] Wisconsin's compulsory attendance law was found to be unconstitutional when applied to Amish students who had completed the eighth grade.

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[22]Ibid., p. 409.

[23]Wisconsin v. Yoder, 406 U.S. 205 (1972).

[24]Ibid., p. 214.

As already indicated, the above four landmark cases have been cited frequently as precedents in court cases concerning home instruction. Recurring constitutional issues have been the free exercise of religion (based on the First Amendment[25]); due process of law, equal protection of law, and constitutional guarantee of liberty (based on the Fourteenth Amendment[26]); and the right to privacy (based on the Ninth Amendment[27]).

Free Exercise of Religion

The First Amendment to the United States Constitution says, in part,

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof...[28]

The First Amendment's guarantee of religious freedom was thus accomplished through the establishment clause and the free exercise clause. The latter has been more often disputed in home instruction cases.

Supreme Court cases that were useful in tracing the history of free exercise litigation included Reynolds v.

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[25]U.S. Const. amend. I (1791).

[26]U.S. Const. amend. XIV (1868).

[27]U.S. Const. amend. IX (1791).

[28]U.S. Const. amend. I (1791).

United States,[29] Cantwell v. Connecticut,[30] Prince v. Commonwealth,[31] Braunfeld v. Brown,[32] and Sherbert v. Verner.[33] The 1879 Reynolds[34] case established the belief-action dichotomy, in which the Court espoused that a person was absolutely entitled to hold any religious beliefs whatsoever, but he was not absolutely free to act in accordance with those beliefs. Accordingly, the 1879 Reynolds decision stated that a Mormon could not practice polygamy.[35] In the 1940 Cantwell v. Connecticut case, the Court ruled in favor of a Jehovah's Witness who was playing recordings of religious messages on public street corners. More significantly, the Court ruled that the First Amendment's restriction on acts of the United States Congress also were made applicable to the states by virtue of the Fourteenth Amendment.[36]

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[29]Reynolds v. United States, 98 U.S. 145, 25 L.Ed. 244 (1879).

[30]Cantwell v. Connecticut, 310 U.S. 296, 60 S.Ct. 900, 84 L.Ed. 1213 (1940).

[31]Prince v. Commonwealth, 321 U.S. 158, 64 S.Ct. 438, 88 L.Ed. 2d 645 (1944).

[32]Braunfeld v. Brown, 366 U.S. 81 S.Ct. 1144, 6 L.Ed. 2d 563 (1961).

[33]Sherbert v. Verner, 374 U.S. 398, 83 S.Ct. 1790 (1963).

[34]Reynolds v. United States.

[35]Ibid.

[36]Cantwell v. Connecticut.

The 1944 Prince[37] case also involved a Jehovah's Witness engaged in street-corner evangelism. The Supreme Court decided that although an adult was entitled to distribute religious pamphlets on city streets, her nine year-old niece could not do the same. The opinion of the majority stated,

> Parents may be free to become martyrs themselves. But it does not follow they are free, in identical circumstances, to make martyrs of their children before they have reached the age of full and legal discretion when they can make that choice for themselves.[38]

In the 1961 Braunfeld v. Brown case, Jewish merchants lost their bid to remain open on Sunday, despite prevailing blue laws.[39] In the 1963 Sherbert[40] case, the Court indicated that a member of the Seventh Day Adventist faith was found to be entitled to continued unemployment benefits, even though she had refused to consider accepting a job that would require her to work on Saturday. The Court ruled that the state's compelling interest in the unemployment compensation was not sufficient to deny Adele Sherbert's religious freedom.[41] William B. Ball, Yoder's winning attorney who began with no favorable precedent cases involving Amish defiance

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[37]Prince v. Commonwealth, 321 U.S. 158 (1944).

[38]Ibid., p. 170.

[39]Braunfeld v. Brown, 366 U.S. 599 (1961).

[40]Sherbert v. Verner.

[41]Ibid.

of compulsory attendance laws, later declared the Sherbert[42] decision to be a "golden nuggett."[43] As previously discussed, the Yoder[44] case involved the free exercise of religion. Similarly to Sherbert,[45] the Yoder[46] Court found that the state's compelling interest in two additional years of schooling did not outweigh the resulting burden on the free exercise of religion by the Amish people.[47]

Home instruction cases that have involved the free exercise of religion have generally ended in defeat for home schoolers. The single exception was the 1979 case, People v. Nobel,[48] that was litigated in Michigan. The case followed an opinion from the state's attorney general that home instruction would comply with the compulsory attendance laws if home instruction met all requirements for nonpublic schools, including having a certified teacher. Mrs. Nobel qualified for a Michigan teacher's certificate but did not

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[42]Sherbert v. Verner.

[43]William B. Ball, "Building A Landmark Case: Wisconsin v. Yoder," Compulsory Education and the Amish: The Right Not To Be Modern, ed. Albert M. Keim (Boston: Beacon Press, 1975), pp. 115-116.

[44]Wisconsin v. Yoder.

[45]Sherbert v. Verner.

[46]Wisconsin v. Yoder.

[47]Ibid.

[48]People v. Nobel, No. S 791-0114-A, S 791-0115-A (Mich.Allegan Cty. Dist. Ct. 1979).

wish to apply, and her religious beliefs compelled her not to apply. Moreover, her religious beliefs commanded her to teach her children. Judge Gary Stewart of the Allegan County District Court applied Yoder's[49] three-pronged test and concluded that since Mrs. Nobel was obviously entitled to a certificate in spite of the fact that her religious beliefs prevented her from applying for one, the state's interest in Mrs. Nobel's certification was outweighed by the free exercise of her sincere religious beliefs.[50]

It should be noted, however, that the Nobel case did not involve the issue of a constitutional right to engage in home instruction on religious grounds. The state of Michigan had already conceded, through the opinion of the attorney general, that home instruction that met certain standards would be permitted. Parents lost all cases studied that involved noncompliance with compulsory attendance laws based on the free exercise of religion. For example, in the 1950 Commonwealth v. Bey[51] case, Mohammedans were not permitted to keep their children home from school on every Friday. Examples of home instruction cases that dealt

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[49]Wisconsin v. Yoder.

[50]People v. Nobel.

[51]Commonwealth v. Bey, 70 A. 2d 693 (Pa. Super.Ct. 1950).

with a claimed denial of free exercise of religion are Rice,[52] State v. Superior Court,[53] Kasuboski,[54] F. & F. v. Duval County,[55] Riddle,[56] Jernigan,[57] and Duro.[58]

In the 1948 Rice[59] case, the Supreme Court of Appeals of Virginia ruled against three families who asserted freedom of religion as a reason for wanting to teach their children at home without meeting the state's requirements for home instruction.[60] Also, in the 1959 State v. Superior Court[61] case, the Washington Supreme Court found for the state and against the members of the Seventh Elect Church in Spiritual Israel, who did not believe in public school attendance. In

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[52]Rice v. Commonwealth, 49 S.E. 2d 342 (Va. 1948).

[53]State v. Superior Court, 346 P. 2d 999 (Wash. 1959), sub nom State ex rel. Shoreline School Dist. No. 412 v. Superior Court for King Cty., 346 P. 2d 999 (1960), cert. denied 363 U.S. 814 (1960).

[54]State v. Kasuboski, 275 N.W. 2d 101 (Wis. Ct. App. 1978).

[55]F. & F. v. Duval Cty., 273 So. 2d 15 (Fla. Dist. Ct. App. 1973).

[56]State v. Riddle, 285 S.E. 2d 359 (W.Va. 1981).

[57]Jernigan v. State, 412 So. 2d 1242 (Ala. Cr.App. 1982).

[58]Duro v. District Attorney, Second Jud. Dist. of N.C., 712 F. 2d 96 (Fourth Cir. 1983), cert. denied 104 S.Ct. 998 (1984).

[59]Rice v. Commonwealth.

[60]Ibid.

[61]State v. Superior Court, 346 P. 2d 999 (Wash. 1959).

Kasuboski,[62] a Wisconsin case, members of the Life Science Church did not send their eight children to public schools because, as they maintained, the public schools featured racial integration and Jewish influences, both of which they opposed on religious grounds.[63] In a Florida case, F. & F. v. Duval County, a similar assertion of religious opposition to "race-mixing" was made by plaintiffs who called their home instruction program the Ida M. Craig Christian Day School.[64] In the 1981 case of State v. Riddle, the opinion of the Supreme Court of Appeals of West Virginia advised that the Riddles should have attempted to have their home instruction efforts approved by the county superintendent. Instead, the Riddles had simply ignored the compulsory attendance law and had later asserted a religious right to do so. But the court ruled that even sincerely held religious convictions did not justify totally ignoring the compulsory attendance law.[65]

A 1982 home instruction case from the Court of Criminal Appeals of Alabama was Jernigan v. State.[66] The Jernigans

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[62]State v. Kasuboski.

[63]Ibid.

[64]F. & F. v. Duval Cty.

[65]State v. Riddle, p. 365.

[66]Jernigan v. State, 412 So. 2d 1242 (Ala. Cr. App. 1982).

were Catholics who did not live within commuting distance of a parochial school, so they obtained a Catholic correspondence course by which to teach their children at home. The Alabama court's unanimous decision distinguished Jernigan from Yoder,[67] even though it recognized the sincerity of the Jernigans' beliefs. The Amish sent their children to public schools for the first eight grades. Furthermore, the Jernigans had not demonstrated, as had the Amish, that their education plan would be successful in preparing their children for life in the society in which they would live.[68]

Another unsuccessful bid to claim a constitutional right to educate children at home because of religious freedom was waged by Larry Duro of North Carolina. In the Duro[69] case, the United States Court of Appeals for the Fourth Circuit also found significant differences from Yoder.[70]

> ...Duro refuses to enroll his children in any public or nonpublic school for any length of time, but still expects them to be fully integrated and live normally in the modern world upon reaching age 18.[71]

The court applied Yoder's[72] three tests and found that

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[67]Wisconsin v. Yoder.

[68]Jernigan v. State.

[69]Duro v. District Attorney.

[70]Wisconsin v. Yoder.

[71]Duro v. District Attorney, p. 98.

[72]Wisconsin v. Yoder.

Duro's beliefs were sincere, but that "North Carolina has demonstrated an interest in compulsory education which is of sufficient magnitude to override Duro's religious interest."[73]

The religious freedom of children has not been addressed in a home instruction case. It should be remembered, though, that the Prince[74] ruling held that a nine year-old did not herself have the necessary maturity to make a decision to distribute religious literature on public streets.[75] In Yoder,[76] Supreme Court Justice William O. Douglas' dissenting opinion lamented the fact that the Amish children did not testify.[77] Interestingly, no state compulsory attendance law has referred to any children's rights to attend school or to receive instruction. Only California and New Mexico have referred to a child as a "person,"[78] even though the Supreme Court case of Tinker v. DesMoines established that students were "persons" who did not "shed their

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[73]Duro v. District Attorney, p. 99.

[74]Prince v. Commonwealth.

[75]Ibid.

[76]Wisconsin v. Yoder.

[77]Ibid.

[78]William F. Aikman and Lawrence Kotin, Legal Implications of Compulsory Education - Final Report, U. S. Educational Resources Information Center, ERIC Document ED 130 387, May 1976, pp. 78-79.

constitutional rights...at the schoolhouse gate."[79] No education case involving a difference of opinion between parent and child has been heard by the United States Supreme Court, but in abortion cases, minors have been able to obtain abortions despite parents' objections.[80]

Due Process of Law

The Fourteenth Amendment to the United States Constitution states,

> ...nor shall any state deprive any person of life, liberty, or property without due process of law...[81]

The term "due process" has come to stand for guarantees of fair treatment by a state government and any of its agencies. Two types of due process are substantive and procedural.[82] "Substantive due process requires that all legislation be in furtherance of a legitimate governmental objective."[83] Procedural due process requires that a person be afforded

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[79]Tinker v. DesMoines Independent Community School District, 393 U.S. 503 at 505, 89 S.Ct. 733 at 736. 21 L.Ed. 2d 731 (1969).

[80]Ralph D. Mawdsley and Steven Permuth, "Home Instruction for Religious Reasons: Parental Right or State Option?" West's Education Law Reporter 1 (1982), p. 948.

[81]U.S. Const. amend. XIV (1868).

[82]Steven H. Gifts, Law Dictionary. (New York: Barron's Educational Services, Inc.,1984), p. 145.

[83]Ibid.

with notice and a right to a fair hearing before being deprived of life, liberty, or property.[84] The Pierce[85] case was litigated on the issue of substantive due process, but most modern cases involving due process have concerned the procedural type.

Of all the types of constitutional protection claimed by home-schoolers, due process of law has been the most successful. Judges have been likely to be sympathetic toward parents who have sought to gain approval of their home instruction through proper channels but who were treated unfairly.[86]

Perchemlides v. Frizzle,[87] although an unreported trial court decision that has little precedential power, has become an important case for those who are interested in the topic of home instruction. The thirty-page opinion by Justice John M. Greaney of the Superior Court of Hampshire County, Massachusetts, not only discussed the case at hand, but suggested a list of guidelines for the local school system to

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[84]Ibid., p. 146.

[85]Pierce v. Society of Sisters.

[86]William D. Valente, Overview of Constitutional Development Affecting Individual and Parental Liberty Interests in Elementary and Secondary Education, U. S., Educational Resources Information Center, ERIC Document ED 168 174, December, 1978,p. 30.

[87]Perchemlides v. Frizzle, No. 16641 (Mass. Hampshire Cty. Super. Ct. 1978).

use in handling home instruction request. The Perchemlides family home instruction application was rejected by Superintendent Donald Frizzle for several reasons, one of which was that the curriculum plan submitted was not detailed enough. The Perchemlides responded with a twenty-four page proposal. Frizzle appointed a school committee to discuss the Perchemlides' application, and the Perchemlides were permitted to attend one committee meeting, but the committee's final rejection merely reiterated Frizzle's original decision, without considering the additional information supplied by the Perchemlides. Judge Greaney agreed that the Perchemlides had been denied due process of law, but noted that the plaintiffs erred in keeping their son out of school while their application was being processed. Judge Greaney ruled that the Perchemlides should resubmit their application and spelled out what criteria could and could not be used in judging its merits.[88]

An increasingly popular means of attacking laws that prohibit or regulate home instruction has been to charge that such laws are unconstitutionally vague. Protection against vague laws is a due process consideration in that it involves the issue of fair warning that certain actions are prohibited.[89] In the case of Grayned v. City of Rockford,

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[88]Ibid.

[89]Gifts, Law Dictionary, p. 509.

the United States Supreme Court ruled that "[v]ague laws may trap the innocent by not providing fair warning."[90] According to the Grayned decision, laws must be written so that a "person of ordinary intelligence" had a "reasonable opportunity to know what is prohibited..."[91]

Early attempts by home-schoolers to declare terms such as "private school" and "certified teacher" unconstitutionally vague were usually unsuccessful. In recent years, however, somewhat of a trend has developed to declare the term "private school" vague in absence of a state's legislature defining the term. The Supreme Court of Wisconsin ruled in the 1983 Popanz[92] case that the Wisconsin legislature should define the term "private school" since "citizens or the courts should not have to guess as to its meaning."[93] Accordingly, the Supreme Court of Wisconsin then reversed the White[94] decision of the Wisconsin Court of Appeals, which had previously declared that the term "private school" was not unconstitutionally vague.

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[90]Grayned v. City of Rockford, 92 S.Ct. 2294 at 2299 (1972).

[91]Ibid., pp. 2298-2299.

[92]State v. Popanz, 332 N.W. 2d 750 (Wis. 1983).

[93]Ibid., p. 755.

[94]State v. White and White, 325 N.W.2d 76 (Wis.App. 1982), rev'd. 332 N.W.2d 756 (Wis. 1983).

The year after Popanz,[95] the Supreme Court of Georgia, in the Roemhild[96] case, echoed the opinion of Wisconsin's highest court that the term "private school" was impermissibly vague. A dissenting opinion suggested that anyone of ordinary intelligence who desired to determine the meaning of "private school" need only consult a dictionary or rely on common sense.[97]

Disputed terms and court decisions in which they were found not to be impermissibly vague have included: "private school" in the Grigg[98] and the Bowman[99] cases; "qualified" teacher in the Riddle[100] case; "private tutor" in the Bowman[101] case; "certified teacher" in the Moorhead[102] case; and "equivalent instruction," also from the Moorhead[103] case.

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[95]State v. Popanz.

[96]Roemhild v. State, 308 S.E.2d 154 (Ga. 1983).

[97]Ibid., pp. 159-160.

[98]Grigg v. Commonwealth, 297 S.E. 2d 799 (Va. 1982).

[99]State v. Bowman, 653 P. 2d 254 (Ore.Ct.App. 1982).

[100]State v. Riddle, 285 S.E. 2d 359 (W.Va. 1981).

[101]State v. Bowman.

[102]State v. Moorhead, 308 N.W. 2d 60 (Iowa 1981).

[103]Ibid.

Equal Protection of the Laws

Another clause of the Fourteenth Amendment states, "No state shall...deny to any person within its jurisdiction the equal protection of the laws."[104] Equal protection of laws means that legislative actions should be fairly applied to all groups of people rather than selectively enforced in a discriminatory manner. Any differential treatment that is provided citizens must be predicated on a legitimate state interest.[105]

An illustrative case is Hanson v. Cushman.[106] The plaintiffs wished to teach their children at home, but they did not want to comply with the insistence of Michigan's attorney general that teachers of home instruction must be certified. The Hansons argued that the attorney general's opinion provided certified teachers the privilege of engaging in home instruction, thus denying the same opportunity to uncertified teachers. The United States District Court for the Western District of Michigan found that Michigan's requirement for a certified teacher applied equally to public schools, nonpublic schools, and home schools. Furthermore,

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[104]U.S. Const. amend. XIV (1868).

[105]Gifts, Law Dictionary, pp. 157-158.

[106]Hanson v. Cushman, 490 F.Supp. 109 (W.D. Mich. 1980).

the state's requirement for instruction by certified teachers was justified in order to help minimize state costs in supervising the larger number of widely scattered home schools that might appear should the requirement be dropped.[107]

Similarly, in State v. Bowman, the Court of Appeals of Oregon insisted the state's differential treatment of students enrolled in nonpublic schools and those taught at home was reasonable. In light of the greater potential for abuse in home schools than in nonpublic schools, stricter regulations for home instruction were justified.[108]

New Mexico's statutory prohibition of home instruction by specifically excluding it from a definition of nonpublic schools has been upheld. In the 1983 Edgington[109] case, the Court of Appeals of New Mexico ruled that the state had a legitimate interest in forcing children to associate with persons other than their immediate family members. Thus, the questionable statute did not amount to an equal protection violation.

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[107] Ibid.

[108] State v. Bowman, 653 P. 2d 254 (Ore. Ct. App. 1982).

[109] State v. Edgington, 663 P. 2d 374 (N.M. Ct.App. 1983), cert. denied 104 S.Ct. 354, 78 L.Ed. 2d 318 (1983).

Constitutional Guarantee of Liberty

It has already been noted that the Fourteenth Amendment specified that a person cannot be deprived of "life, liberty, or property without due process of law..."[110] The Supreme Court case of Meyer v. Nebraska helped define the concept of "liberty" which has since been cited by parents as a reason that they should be allowed to educate their children in accordance with their own wishes. The Meyer[111] court explained that "liberty"

> denotes not merely freedom from bodily restraint but also the right of the individual...to marry. establish a home and bring up children...[112]

The Meyer[113] liberty dicta have been cited as a relevant precedent by home-schoolers in Stephens v. Bongart,[114] in State v. Hoyt,[115] and in Hanson v. Cushman,[116] for example.

Right to Privacy

In the 1965 case of Griswold v. Connecticut,[117] the United States Supreme Court struck down Connecticut's law

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[110]U.S.Const. amend. XIV (1868).

[111]Meyer v. Nebraska, 43 S.Ct. 625 (1923).

[112]Ibid., p. 626.

[113]Meyer v. Nebraska.

[114]Stephens v. Bongart, 189 A. 131 (N.J. 1937).

[115]State v. Hoyt, 146 A. 170 (N.H. 1929).

[116]Hanson v. Cushman, 490 F.Supp. 109 (W.D. Mich. 1980).

[117]Griswold v. Connecticut, 85 S.Ct. 1678 (1965).

against teaching or using birth control methods. A concurring opinion by Justice Arthur Goldberg maintained that the Ninth Amendment was written by James Madison to alleviate fears that citizens would lose specific rights not mentioned in the first ten amendments.[118] The Ninth Amendment therefore guaranteed that "the enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."[119] The right to privacy in family matters was thus guaranteed by the Ninth Amendment.[120] The abortion cases of Roe v. Wade[121] and Doe v. Bolton[122] advanced the idea that education of children was a parental activity protected by the right to privacy.[123] An example of a home instruction case in which parents claimed protection by the Ninth Amendment was Hanson v. Cushman,[124] which the parents lost. However, Judge John Greaney's

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[118]Ibid., p. 1684.

[119]U.S. Const. amend. IX (1791).

[120]Griswold v. Connecticut, p. 1685.

[121]Roe v. Wade, 410 U.S. 113, 93 S.Ct. 705, 35 L.Ed. 2d 147 (1973).

[122]Doe v. Bolton, 410 U.S. 179, 93 S.Ct. 739, 35 L.Ed. 2d 201 (1973).

[123]Robin Ellsberg Neuman, ed., "Project: Education and the Law: State Interests and Individual Rights - Part II: The State's Requirement of Compulsory Education and the Individual's Right of Access to Education," Michigan Law Review, 74 (June, 1976), p. 1395.

[124]Hanson v. Cushman, 490 F.Supp. 109 (W.D. Mich. 1980).

Perchemlides[125] decision stated that "the right to choose alternative forms of education" was protected by the right of privacy.[126]

Conclusion

As already indicated, the Supreme Court has never decided a case encapsulating parents' rights in home instruction. Yet, relevant constitutional issues have been discussed in the landmark cases of Meyer,[127] Pierce,[128] Tokushige,[129] and Yoder.[130] The constitutional issues of home instruction have included the free exercise of religion, due process of law, equal protection of the law, the guarantee of liberty, and the right to privacy. However, parents' rights in the education of their children have never been judged to be absolute. Very frequently, such rights have been overridden by the state's compelling interest in compulsory school attendance.

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[125]Perchemlides v. Frizzle.

[126]Ibid., p. 9.

[127]Meyer v. Nebraska.

[128]Pierce v. Society of Sisters.

[129]Farrington v. Tokushige.

[130]Wisconsin v. Yoder.

THE STATE'S COMPELLING INTEREST IN COMPULSORY SCHOOL ATTENDANCE

The state's compelling interest in compulsory school attendance is based on the need for an educated citizenry that is capable of sustaining a system of democratic self-government. John Elson wrote that

> because education is so closely identified with the welfare of society and with the state's role as the ultimate guardian of the welfare of the children, the state is allowed enormous discretion in regulating all aspects of education...[131]

The language used in judicial decisions pertaining to home instruction has affirmed the necessity of mandatory education that is either provided by and/or regulated by the state. "It is obvious," wrote Judge Moser in State v. Kasuboski, "that compulsory education is a reasonable state regulation..."[132] In the 1982 Rivinius[133] case in North Dakota, Justice Sand reiterated that

> the state has a compelling interest in requiring minimum standards of education to insure adequate education of the children of the state to enable them to be viable citizens in the community.[134]

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[131]John Elson, "Legal Dimension of State Regulation of Nonpublic Schools," Super-Parent: An Analysis of State Educational Controls, ed. Donald A. Erickson, U.S. Education Resources Information Center, ERIC Document ED 096 770, October, 1983, p. 17.

[132]State v. Kasuboski, p. 105.

[133]State v. Rivinius, 328 N.W. 2d 220 (N.D. 1982).

[134]Ibid., p. 228.

Likewise, Justice Staples, writing the opinion of the Virginia Supreme Court's majority opinion in Rice,[135] declared:

> In the first place, the legitimate interest of the State in the welfare and education of its children is universally recognized....There is nothing which contributes more to the development of the highest type of citizenship....It is, therefore, recognized by the authorities...that to accomplish this end the State may resort to what is generally referred to as compulsory education or school attendance of children.[136]

The Rice[137] opinion went on to state that "no amount of religious ferver" entitled a parent to ignore his obligation to send a child to school or "to inflict another illiterate citizen on his community or his State."[138]

When parents have chosen home instruction rather than public school attendance for their children, there has been a question as to whether or not the state could be expected to supervise such learning arrangements effectively so as to protect the state's compelling interest in education. In the Hoyt[139] case, Chief Justice Peaslee of the New Hampshire Supreme Court wrote

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[135]Rice v. Commonwealth.

[136]Ibid., p. 348.

[137]Rice v. Commonwealth.

[138]Ibid., p. 348.

[139]State v. Hoyt.

> The state must bear the burden of reasonable supervision, and the parent must offer educational facilities which do not require unreasonable supervision. If the parent undertakes to make use of units of education so small...that supervision thereof would impose an unreasonable burden upon the state, he offends against the reasonable provisions for schools which can be supervised without unreasonable expense.[140]

As Chief Justice Peaslee explained, the existence of small, separate educational facilities maintained for the members of individual families could create an unmanageable network of home schools that could not be efficiently supervised by state officials who would need to establish whether or not children were being instructed and what they were being taught. According to Hoyt,[141] the state could insist upon "educational facilities" that could be supervised without "unreasonable" costs to the state. "Anything less than this would take from the state all-efficient authority to regulate the education of the voting population."[142]

In a more recent case, State v. Bowman,[143] the Hoyt[144] judicial dicta concerning the possibility of home schools were expanded. The State v. Bowman decision emphasized

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[140]Ibid., p. 171.

[141]State v. Hoyt.

[142]Ibid., p. 171.

[143]State v. Bowman, 653 P. 2d 254 (Ore.Ct.App. 1982).

[144]State v. Hoyt.

potential abuse of home instruction. The opinion of the majority of the court, written by Judge Richardson, explained that the Oregon legislature had properly assigned more stringent regulations to instruction received at home than to instruction received at a nonpublic school, since the opportunity to neglect children's education without detection was greater in separate homes than in established schools.[145] Judge Richardson wrote,

> The legislature apparently believed that private schools, as institutions established for educational purposes, will satisfy the legislative purpose with minimal state oversight, while teaching by a parent or private teacher may be abused by some parents in avoidance of both the legislative purpose and their responsibility to educate their children.[146]

Related Concepts: Police Power and Parens Patriae

Two concepts related to the state's compelling interest in education are the state's "police power" and the state's role as parens patriae. The Tenth Amendment to the United States Constitution maintains:

> The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.[147]

From the Tenth Amendment is derived the state's police power, which is defined as

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[145] State v. Bowman.

[146] Ibid., p. 258.

[147] U.S. Const. amend. X (1791).

> inherent power of state governments...to impose upon private rights those restrictions that are reasonably related to promotion and maintenance of the health, safety, morals, and general welfare of the public.[148]

Because of the link between education and the general welfare of society, the state may invoke police power to require school attendance and to regulate schools that are attended to satisfy compulsory attendance laws.

The term parens patriae literally means "parent of his country," and it "refers traditionally to the role of the state as sovereign and guardian of persons under legal disability," such as "minors and incompetent persons."[149] When children are abused or neglected, the state, under the concept of parens patriae, may assume custody of children or require that parents modify objectionable behavior. In the 1944 Prince v. Commonwealth case,[150] the United States Supreme Court ruled that the State of Massachusetts, as parens patriae, could prevent a guardian from allowing her nine year-old niece to distribute religious literature on street corners despite the fact that such evangelism was required by their religion. The decision was written by Justice Rutledge who stated that

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[148]Gifts, Law Dictionary, p. 350.

[149]Ibid., p. 334.

[150]Prince v. Commonwealth, 64 S.Ct. 438 (1944).

> neither rights of religion nor rights of parenthood are beyond limitation. Acting to guard the general interest in youth's well being, the state as parens patriae may restrict the parents' control by requiring school attendance, regulating or prohibiting the child's labor, and in many other ways.[151]

Child Neglect Charges

Acting as parens patriae, local authorities may file child neglect charges against parents who do not educate their children in accordance with state law. Parents who engage in home instruction have often been charged with child neglect and/or truancy. Judicial decisions have yielded mixed results, depending on individual circumstances of the particular cases. Two cases ended in convictions for American Indians who chose not to send their children to public schools and who did not provide their children with alternative instruction. The difficulties in the Baum[152] case began over remarks written by an English teacher on a book report about the life of Geronimo. Siba Baum and her mother, descendants of the Blackfoot Indian tribe, interpreted the teacher's comments as racial slurs. A conference with the principal, an apology from the teacher, and the scheduling of guest speakers who made presentations on Indian heritage and culture still did not appease the parent.

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[151]Ibid., p. 442.

[152]In re Baum, 401 N.Y.S. 2d 514 (N.Y. App. Div. 1978).

Mrs. Baum did not bring her daughter back to school. The appellate division of the New York Supreme Court found against the parent, declaring that defiance of compulsory attendance laws was not a legitimate method of attempting to modify a school's policies or curriculum. Siba Baum was judged to be a neglected child.[153]

In the 1976 McMillan[154] case in North Carolina, the parents were likewise convicted of child neglect for refusing to send their two children (ages ten and thirteen) to school, because the subjects of Indian heritage and culture were not taught. The North Carolina Court of Appeals insisted that the Indian heritage of Shelby and Abe McMillan would not be threatened in any way by public school attendance. Moreover, since the children were neither permitted to attend school nor provided with alternate instruction in a nonpublic school, they were neglected children.[155]

In the Matter of Thomas H., a New York couple decided to teach four of their six children at home on a 100-acre farm.[156] The father, who was unemployed at the time of the

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[153]Ibid.

[154]In re McMillan, 226 S.E. 2d 693 (N.C. Ct. App. 1976).

[155]Ibid.

[156]In re H., 357 N.Y.S. 2d 384 (N.Y. Fam.Ct. 1974).

suit, listed his occupation as a college teacher and held a valid New York English teaching certificate for grades seven through twelve. The mother had attended college for two years. Although New York permits children to receive equivalent instruction outside of a school setting, testimony in the instant case indicated that the fourteen subjects prescribed by law were not covered thoroughly. The parents' own testimony indicated that the topics of New York history, United States history, and geography were not approached in a systematic way. Despite the father's protestation that "schools can't touch creativity in our way,"[157] the children were declared neglected by the court.

Frequently, however, parents have been cleared of child neglect charges, when it has been demonstrated that equivalent or appropriate instruction was indeed provided for children. In the 1974 Davis[158] case, Justice Griffith of New Hampshire Supreme Court wrote that

> the parents have provided tutors for their children and...their difficulty with the school authorities stems from their extreme concern with [rather than the neglect of] the children's education.[159]

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[157]Ibid., p. 388.

[158]In re Davis, 318 A. 2d 151 (N.H. 1974).

[159]Ibid., p. 152.

Even though New Hampshire law did not provide for instruction by tutor, the court ruled that since the charges were made under child neglect statutes rather than compulsory attendance statutes, the parents could not be convicted.[160]

In another New York case, In re Lash, the parents of a handicapped child were cleared of child neglect charges when it was shown that they had hired two certified teachers to tutor their son at home for twenty hours per week.[161] However, the parents were directed by the Family Court of Nassau County to notify school authorities of intentions to provide alternate instruction for their son and to file a copy of the curriculum as required by the regulations of the Commissioner of Education.[162]

In an earlier New York case, In re Richards, the court ruled in favor of a mother who kept her daughter at home and taught her to the best of her ability rather than let her child walk one and four-tenths miles over steep and treacherous icy paths to the nearest school bus stop.[163] Judge Brown's decision found that

> it is apparent that the refusal to send the daughter to school was not prompted by any spirit of defiance

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[160] In re Davis.

[161] In re Lash, 401 N.Y.S. 2d 124 (N.Y. Fam. Ct. 1977).

[162] Ibid., p. 127.

[163] In re Richards, 2 N.Y.S. 2d 608 (N.Y. Fam. Ct. 1938).

> or willfulness, but rather from a conviction that it would not be safe...to travel from the home in order to attend school.[164]

In finding that eight year-old Alice Richards was not a neglected child, Judge Brown reasoned that the girl's absence from school during bad weather conditions might "postpone the day of graduation," but it would not "imperil the welfare of the child," since she was being taught at home when not able to attend school.[165]

STATE REGULATION OF NONPUBLIC EDUCATION

The 1925 Supreme Court case of Pierce v. Society of Sisters established that attendance at nonpublic schools could satisfy the state's compelling interest in education. The Pierce[166] ruling also declared that the state had the authority "to regulate all schools, to inspect, supervise and examine them, their teachers and pupils..."[167] In the 1968 Allen[168] case, the Supreme Court acknowledged power of the state to reasonably regulate nonpublic schools.

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[164]Ibid., p. 610.

[165]Ibid., p. 611.

[166]Pierce v. Society of Sisters, 45 S.Ct. 571 (1925).

[167]Ibid., p. 573.

[168]Board of Education of Central School District No. 1 v. Allen, 88 S.Ct. 1923 (1968).

Justice Byron White, writing the majority opinion maintained:

> a substantial body of case law has confirmed the power of the State to insist that attendance at private schools, if it is to satisfy state compulsory-attendance laws, be at institutions which provide minimum hours of instruction, employ teachers of specified training, and cover prescribed subjects of instruction.[169]

The rulings of most state courts have upheld the validity and reasonableness of regulations for nonpublic schools.[170] An early ruling cited by Justice White in the Allen[171] decision was the 1922 case of State v. Hoyt[172] in New Hampshire. Oscar Hoyt and several other defendants kept their children at home where they were instructed by a private tutor. The court insisted that unsupervised instruction did not comply with the compulsory attendance statute.[173] Justice White also referred to the 1962 Meyerkorth[174] case, in which the Nebraska Supreme Court

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[169]Ibid., pp. 1927-1928.

[170]Lawrence Kotin and William F. Aikman, Legal Foundations of Compulsory School Attendance (Port Washington, NY: Kennikat Press, 1980), p. 154.

[171]Board of Education v. Allen.

[172]State v. Hoyt, 146 A. 170 (N.H. 1929).

[173]Ibid., p. 171.

[174]Meyerkorth v. State, 115 N.W. 2d 585 (Neb. 1962), appeal dismissed 372 U.S. 705, 83 S.Ct. 1018, 10 L.Ed. 2d 125 (1963).

upheld the state's right to supervise "parochial schools" and to require that teachers be certified.[175]

The 1980's has witnessed a number of cases in which operators of fundamentalist Christian schools have sought to avoid state regulation by asserting a belief that applying for state approval violated their religious convictions. Some state courts have upheld state regulations of nonpublic schools and have issued injunctions forbidding the operation of unauthorized schools. One such case was that of State ex rel. Douglas v. Faith Baptist Church, heard by the Supreme Court of North Dakota.[176] The defendents, led by Pastor Everett Sileven, objected to Nebraska's system of approving nonpublic schools. Pastor Sileven was especially upset over the inspection of "God's property" by the county superintendent and the requirement for certified teachers.[177] The church school operators suggested that the state could monitor quality of their educational program by administering standardized tests. The school's curriculum consisted of booklets called PACE (Packet of Accelerated Christian Education), which students completed individually and at

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[175]Ibid.

[176]State ex rel. Douglas v. Faith Baptist Church, 301 N.W. 2d 571 (Neb. 1981), appeal dismissed 454 U.S. 803, 102 S.Ct. 75, 70 L.Ed. 2d (1982).

[177]Ibid., p. 574.

their own rate. Justice Hastings observed that, "One gets the impression that the method of instruction is not unlike a correspondence course, with the addition of helping supervisors."[178] The court upheld Nebraska's approval plan for nonpublic schools, including the requirement that teachers must be certified. "The problem with testing," wrote Justice Hastings, "is that it sometimes comes too late."[179] In the 1984 Kandt v. North Platte Baptist Church[180] case, Nebraska's Supreme Court insisted the church could not operate an unapproved school. In the 1984 Sheridan Road Baptist Church v. Department of Education[181] case, two churches filed a suit to prevent the state of Michigan from enforcing teacher certification and curriculum requirements for nonpublic schools. However, the Michigan Court of Appeals sustained the legislative enactment.[182]

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[178]Ibid.

[179]Ibid., p. 579.

[180]State ex rel. Kandt v. North Platte Baptist Church of North Platte, 345 N.W. 2d 19 (Neb. 1984).

[181]Sheridan Road Baptist Church v. Department of Education, 348 N.W. 2d 263 (Mich. Ct. App. 1984).

[182]Ibid.

The preceding judicial examples have demonstrated that courts generally have upheld state regulations of nonpublic schools. On the other hand, judicial decisions that limit the state's regulatory power have usually been made when the prescribed regulations were "so detailed and burdensome as to affect the very viability of the organization."[183] The 1927 Supreme Court case of Farrington v. Tokushige was an example of a situation in which extensive regulations of Japanese schools in Hawaii were judged as likely to destroy them. Not only were schools and teachers required to obtain annually a permit and to pay a fee, but students were allowed to attend only for an hour each day and only if they had completed the first and second grades in an American public school.[184]

A more recent example was provided by the 1976 Whisner[185] case in Ohio. The Ohio State Board of Education had promulgated fifteen pages of minimum standards for nonpublic elementary schools. Furthermore, the State Board of Education specified that eighty percent of the school day was to be spent on certain required academic subjects and the remaining twenty percent of the school day spent

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[183]Kotin and Aikman, Legal Foundations of Compulsory School Attendance, p. 154.

[184]Farrington v. Tokushige, 47 S.Ct. 406 (1927).

[185]State v. Whisner, 351 N.E. 2d 750 (Ohio 1976).

on physical education, art, and other specific activities. As operators of the Tabernacle Christian School pointed out, strict adherence to the Board's daily curriculum plan left no time at all to be devoted to religious studies. The Ohio Supreme Court agreed, saying,

> In our view, these standards are so pervasive and all-encompassing that total compliance with each and every standard would effectively eradidate the distinction between public and nonpublic education...[186]

In another 1971 case, the Supreme Court of Vermont ruled, in LaBarge,[187] that "equivalent" education might be obtained in a school that had not been approved by the Department of Education. Truancy charges were dropped.[188]

Advocates of nonpublic religious schools scored major victories in landmark cases in Kentucky and Maine. In Kentucky State Board for Elementary and Secondary Education v. Rudasill, the Kentucky Supreme Court ruled that the state could not specify which textbooks must be used in nonpublic schools, nor could it require that teachers be certified.[189] The court suggested that the state implement a standardized

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[186] Ibid., p. 768.

[187] State v. LaBarge, 357 A. 2d 121 (Vt. 1976).

[188] Ibid.

[189] Kentucky State Bd., Etc. v. Rudasill, 589 S.W. 2d 988 (Ky. 1979), cert. denied 100 S.Ct. 2158 (1980).

testing program to determine if nonpublic schools were achieving the aims of compulsory education.[190] The Bangor Baptist Church[191] case in Maine established that nonpublic schools did not have to obtain state approval before admitting students. Additionally, pastors or administrators of church schools could not be charged with inducing truancy by "preaching" their belief "that the Bible commands fundamentalist Christians to send their children to schools regulated solely by fundamentalist Christians..."[192]

STATE REGULATION OF HOME INSTRUCTION

Introduction

The status of state regulation of nonpublic schools is important to the study of the legal aspects of home instruction because, in states where home instruction is permitted in lieu of compulsory school attendance, then the home instruction is subject to regulation by the state. As previously discussed, the Supreme Court ruled in the Allen[193]

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[190]Ibid.

[191]Bangor Baptist Church v. State of Maine, etc., 576 F. Supp. 1299 (D. Me. 1983).

[192]Ibid., p. 1334.

[193]Board of Education v. Allen.

case that states have the authority to establish minimum standards for nonpublic schools, such as insisting that certain subjects be taught for a minimum number of hours per day or week by "teachers of specified training."[194] Justice Byron White wrote,

> Indeed, the State's interest in assuring that these standards are being met has been considered a a sufficient reason for refusing to accept instruction at home as compliance with compulsory education statutes.[195]

Commonly disputed aspects of state regulation of home instruction are qualifications of teachers of home instruction; qualifications of private tutors, permissibility of correspondence courses, equivalence of home instruction to public or nonpublic school attendance, and the burden of proof.

Qualifications of Teachers of Home Instruction

Walther found that a requirement for teacher certification was the most controversial aspect of state regulation of nonpublic schools.[196] So it has been with home instruction, where requirements for instruction only by certified

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[194]Ibid., p. 1928.

[195]Ibid.

[196]John F. Walther, "State Regulation of Nonpublic Schools" (Doctoral dissertation, University of Illinois at Urbana-Champaign, 1982), p. 96.

or otherwise approved teachers have severely limited the number of households eligible to conduct home instruction programs. Together with certain curriculum demands, Mawdsley and Permuth cited the requirement for a certified teacher as one that could make home instruction very "impractical" or even "impossible."[197] Depending on the wording of state statutes and the individual circumstances of particular cases, state courts have ruled both for and against teacher certification and approval requirements for instructors in home schools.

In the 1948 case of Rice v. Commonwealth, the Supreme Court of Appeals of Virginia upheld that state's requirement that home teachers be approved by the division superintendent of schools. Justice Staples wrote that

> in order to impart an education to a child, it is self-evident that the instructor must have adequate learning and training in the art of teaching. Obviously, an illiterate parent cannot properly educate his child, nor can he, by attempting to do so, avoid his obligation to send it to school.[198]

Many other state courts have followed the example of Rice.[199] For example, in the 1960 State v. Superior Court case, the Supreme Court of Washington found that a mother

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[197]Mawdsley and Permuth, "Home Instruction for Religious Reasons," p. 951.

[198]Rice v. Commonwealth, p. 348.

[199]Rice v. Commonwealth.

who did not hold a teacher's certificate was not qualified to teach in the state of Washington, thereby rendering invalid the claim that she was operating a nonpublic school for her daughter.[200] In another example, the Iowa Supreme court upheld the statutory requirement for a certified teacher in the 1981 Moorhead[201] case, despite the defendent's claim that the meaning of the term "certified teacher" was unclear.

In the 1984 Morrow[202] case, a father claiming to be a school administrator operated a program of home instruction for his three children. By his own admission, Roland Morrow did not possess a valid Nebraska certificate for being a teacher or an administrator. The decision of the Nebraska Supreme Court reiterated that state statutes required attendance at public or nonpublic schools as well as certification for teachers and administrators.[203]

State courts have not been unanimous in support of teacher certification requirements. Home instruction by a mother who was only a high school graduate was permitted in the 1967 Massa[204] case in New Jersey, even though an

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[200]State v. Superior Court.

[201]State v. Moorhead.

[202]State ex rel. Douglas v. Morrow, 343 N.W. 2d 903 (Neb. 1984).

[203]Ibid.

[204]State v. Massa, 231 A. 2d 252 (N.J. 1967).

assistant school superintendent testified that only a certified teacher could provide "equivalent" education. The Morris County Court maintained that since the New Jersey Legislature had not mentioned the requirement of having a certified teacher, it must not have intended to impose such as a minimum standard.[205]

The case of People v. Nobel, previously discussed under the topic of free exercise of religion, was an unusual case involving the lack of teacher certification of a Michigan woman. Michigan statutory law has not made provision for home instruction, but an opinion by the state's attorney general has indicated that "comparable" instruction at home by a "certificated" teacher would satisfy parental obligation.[206] The Nobel[207] decision went one step further. The case involved a program of home instruction offered by Peter and Ruth Nobel for their children. Mrs. Nobel had received a college degree in elementary education, but she had never applied for a teacher's certificate because she said that to do so would violate her religious beliefs. Judge Gary Stewart of the District Court of Allegan County considered the aforementioned opinion of the attorney general, but

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[205]Ibid., p. 256.

[206]Opinion, Michigan Attorney General No. 5579, September 27, 1979; cited in Michigan, Michigan Statutes Annotated, Sec. 15.41561 (1984).

[207]People v. Nobel.

found that it had not addressed the issue of certification when it conflicted with religious beliefs. Judge Stewart observed that Mrs. Nobel was qualified to obtain a certificate but, because of her religion, did not want to apply for one. He concluded that in Mrs. Nobel's case, obtaining certification would not make her a better teacher nor facilitate her children's learning, but it would interfere with her religion.[208]

Qualifications for Private Tutors

Concerning requirements for persons eligible to provide home instruction, qualifications of "private tutors" and the acceptability of instruction by "private tutors" have been two other controversial issues. In the 1982 case of State v. M.M. and S.E.,[209] a Florida court ruled that a mother who was teaching her two children at home was not operating a "private school" and that she did not qualify as a private tutor as prescribed by Florida law.[209] On the other hand, an Oklahoma attorney general opinion issued in 1973 postulated that a private tutor would not have to hold a teacher's certificate.[210] In the 1904 Indiana case of

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[208] Ibid.

[209] State v. M.M. and S.E., 407 So. 2d 987 (Fla. 1982).

[210] Opinion, Oklahoma Attorney General No. 73-129, February 13, 1973; cited in Oklahoma, Oklahoma Statutes Annotated, Title 70, Sec. 10-105 (1983).

State v. Peterman, Clarence Peterman's employment of a former teacher to instruct his child was allowed despite the fact that Indiana law at that time required attendance at "public, private, or parochial schools."[211] As Judge Peaslee wrote,

> The law was made for the parent who does not educate his child, and not for the parent who employs a teacher and pays him out of his private purse, and so places within the reach of the child the opportunity and means of acquiring an education equal to that obtainable in the public schools of the state.[212]

Oklahoma compulsory attendance laws have since been expanded to allow for "other means of education" in addition to public or nonpublic school attendance.[213] The state of Texas, however, reworded its compulsory attendance laws in 1923 to delete the phrase "or who is being instructed by a private tutor," thereby requiring attendance at public or nonpublic schools.[214] Two New Hampshire cases, Hoyt[215] and Davis,[216] ended with similar results. Both courts ruled that having provided instruction at home by a private tutor

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[211]State v. Peterman, 70 N.E. 550 (Ind. App. Ct. 1904).

[212]Ibid., p. 552.

[213]Oklahoma, Statutes Annotated, Title 70, Sec. 10-105 (1983).

[214]Texas, Vernon's Texas Code Annotated, Title 2, Sec.21.033 (1983), p. 86.

[215]State v. Hoyt.

[216]In re Davis.

was not an acceptable defense to the state's compulsory attendance laws.

Permissibility of Correspondence Courses

The acceptability of courses taken from correspondence schools has been another example of a disputed aspect of studies undertaken at home. Opinions by the attorneys general of Minnesota[217] and Maine[218] have advised that enrollment in correspondence courses does not constitute enrollment in a nonpublic school within the meaning contemplated by legislative enactment related to compulsory school attendance laws. Two states that do permit enrollment in correspondence schools in lieu of compulsory attendance are Montana and Colorado. Montana's statutes permit "supervised home study" and "supervised correspondence study" but do not offer a definition of "supervised" nor a list of approved correspondence schools.[219] In Colorado, the State Board

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[217]Opinion, Minnesota Attorney General No. 169-B, November 13, 1947; cited in Minnesota, Minnesota Statutes Annotated, Sec. 120-10 (1984), p. 43.

[218]Maine, Attorney General's Report 1963-64; cited in Maine, Maine Revised Statutes Annotated, Title 20-A, Sec. 5001 (1983), p. 160.

[219]Montana, Montana Code Annotated, Sec. 20-5-102 (1984).

of Education will provide a list of approved correspondence courses for home study.[220]

In four court cases studied, attempts to satisfy compulsory attendance requirements through the use of correspondence courses were unsuccessful. In the 1961 Shinn[221] case, a California court ruled that a correspondence school was not a nonpublic school. The Kansas Supreme Court, ruling before the 1972 Yoder[222] case, decided that for a fifteen year-old Amish girl who had completed the eighth grade, a correspondence course did not suffice to satisfy the compulsory attendance law.[223] In 1981, the Supreme Court of Iowa affirmed a lower court's finding that, in the Moorhead[224] case, enrollment in a home correspondence course did not amount to "equivalent instruction" by a "certified teacher." In the Riddle[225] case, the West Virginia Supreme Court of Appeals ruled that enrollment in a correspondence

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[220]M. Chester Nolte, "Home Instruction in Lieu of Public School Attendance," School Law in Changing Times, ed. M. A. McGhehey (Topeka, Kansas: National Organization on Legal Problems of Education, 1982), p. 10.

[221]In re Shinn, 16 Cal. Rptr. 165 (Cal. Dist. Ct. App. 1961).

[222]Wisconsin v. Yoder.

[223]State v. Garber, 419 P. 2d 896 (Kan. 1966).

[224]State v. Moorhead.

[225]State v. Riddle.

school did not fulfill the statutory requirement that instruction in home schools be provided by "persons" who were "qualified to give instruction."

Equivalence of Home Instruction to Public School Attendance

Equivalence of home instruction to public school attendance has been a major issue in court cases that have originated primarily (but not exclusively) in states whose statutes have permitted children to attend upon "equivalent" instruction "elsewhere." If standards for equivalency were specified in state statutes or by an administrative agency designated by the legislature, courts generally upheld those regulations.[226] When statutes have failed to define equivalence, judges have had to decide the matter.[227] Such equivalency has been measured against the offerings of the public schools in the districts wherein the home-schoolers resided.

The first home instruction case heard in the United States was Commonwealth v. Roberts.[228] The decision by Judge Allen of the Supreme Judicial Court of Massachusetts stated that the intent of compulsory attendance laws was "that all the children shall be educated, not that they

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[226]Tobak and Zirkel, "Home Instruction," p. 46.

[227]Ibid.

[228]Commonwealth v. Roberts, 38 N.E. 402 (Mass. 1893).

shall be educated in any particular way."[229] Although Roberts[230] was decided in favor of the home-schoolers on the basis of academic equivalence, subsequent decisions in other jurisdictions indicated a temporary trend disallowing home instruction for lack of either academic or social equivalence. Two notable illustrations were provided in the 1937 Stephens v. Bongart[231] case and the 1950 Knox v. O'Brien[232] case, both of which occurred in New Jersey. In the former case, evidence showed that instruction at the Bongart household was frequently interrupted for errands and by guests. No regular schedule of daily instruction was followed. Teaching materials were not comparable to those available in the local New Jersey public schools. These and other factors pointed to a lack of academic equivalence. Also, Justice Siegler emphasized that because of a lack of a group experience, the Bongarts' instruction was not equivalent to the program provided in the public schools.[233] In Knox v. O'Brien, Judge Tenenbaum devised a three-pronged test to measure equivalency: teacher certification, comparable materials, and the presence or absence of the "full

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[229]Ibid., p. 403.

[230]Commonwealth v. Roberts.

[231]Stephens v. Bongart, 189 A. 131 (N.J. 1937).

[232]Knox v. O'Brien, 72 A. 2d 389 (N.J. 1950).

[233]Stephens v. Bongart.

advantages supplied by the public schools."[234] The home instruction provided by the O'Briens failed to meet two of the three tests. Although Justice Tenenbaum acknowledged that teaching materials used were adequate, he found that Mrs. O'Brien's teacher training in secondary education some twenty years earlier did not qualify her currently to teach elementary school subjects. Justice Tenenbaum ended his decision with a discussion on the advantages of children associating with other children in a common educational experience.[235]

In 1967, another New Jersey case, State v. Massa, was decided on the issue of equivalence. The decision encapsulated the former standard of academic equivalence and added a new dimension. Judge Collins maintained that since the relevant New Jersey statute permitted "equivalent" instruction to be received "elsewhere than at school," insistence upon group education or social equivalency could not be continued.[236] Since Massa,[237] judicial interpretations of equivalence have disregarded the socialization aspects of public school education and have permitted home instruction that was academically equivalent.[238]

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[234]Knox v. O'Brien, p. 391.

[235]Ibid., p. 392.

[236]State v. Massa. 231 A. 2d 252 (N.J. 1967).

[237]State v. Massa.

[238]Tobak and Zirkel, "Home Instruction," p. 58.

Two New York cases of the 1970's were examples of home instruction programs that did not feature academic equivalence in the views of their respective courts. In the 1977 Franz[239] case, home instruction was disallowed because the instructional program lasted only about one and a half hours per day and the curriculum was decided mainly by assessing the children's interests.[240] The 1974 In re H.[241] case was decided against the home-schoolers when it was shown that the father, who had an advanced degree in literature, systematically taught his children only the subject of math, leaving the rest of the curriculum to be covered by field trips or to be woven into daily life situations on their farm. Since the home curriculum did not provide adequate coverage in all fourteen branches of education required under New York law, the home curriculum was flawed as not equivalent to instruction provided by public schools.[242]

However, parents' conscientious efforts providing coverage of all subjects required by law have been sustained

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[239]In re Franz, 390 N.Y.S. 2d 940 (N.Y. App. Div. 1977).

[240]Ibid.

[241]In re H., 357 N.Y.S. 2d 384 (N.Y. Fam. Ct. 1974).

[242]Ibid.

by New York courts. In the 1972 Foster[243] case, the home instruction provided two daughters was judged equivalent. Moreover, in the 1974 Myers[244] case, Mrs. Myers demonstrated that she had a baccalaureate degree and a teacher's certificate. Mrs. Myers also used the same textbooks provided in the fourth grade of the local public schools. Additionally, she took her daughter to ballet, art, and music lessons. The Myers' program was found to be equivalent. However, the Myers were ordered to provide the local board of education with regular reports concerning their home instruction efforts.[245]

Burden of Proof Requirements

In cases involving the equivalence issue, a major factor influencing the outcomes has been assignment of the burden of proof either on the parents or on the state. Two elements of burden of proof are the presentation of evidence and persuasion of the court.[246] Although there are

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[243]In re Foster, 380 N.Y.S. 2d 8 (N.Y. Fam. Ct. 1972).

[244]In re Myers, 119 N.Y.S. 2d 98 (N.Y. Fam. Ct. 1953).

[245]Ibid.

[246]Mawdsley and Permuth, "Home Instruction for Religious Reasons," p. 62.

exceptions to the rule, courts have frequently placed the burden of proof on the state when statutes have made home instruction or equivalent instruction part of the basic compulsory attendance requirement. Conversely, the burden of proof has been placed on the parents when statutes have made home instruction or equivalent instruction an exemption from the basic compulsory attendance requirements.[247]

In Sheppard v. State[248] and Wright v. State,[249] two Oklahoma cases, the burden of proof was placed on the state to show that the school-aged children were not receiving equivalent instruction at home. Parents won both cases since the state could not prove that equivalent instruction was not provided at home. In the Sheppard case, the school principal, testifying for the state, indicated that twins were not receiving equivalent instruction. Yet the principal admitted that he had never observed the home instruction program.[250]

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[247]Patricia M. Lines, "Private Education Alternatives and State Regulation," Journal of Law and Education, 12(April, 1983), p. 212.

[248]Sheppard v. State, 306 P. 2d 346 (Okla. Crim. Ct. App. 1957).

[249]Wright v. State, 209 P. 179 (Okla. Crim. Ct. App. 1922).

[250]Sheppard v. State, p. 254.

In the 1957 Cheney[251] case, a court in Kansas City ruled that since home instruction was allowed by the basic compulsory attendance statute, the state must prove that children were not being taught at home before a conviction of compulsory attendance law violation could be reached. In the 1958 Pilkinton[252] case, the state lost because the warrant that was issued did not charge parents with failure to teach their child at home. The 1982 Monnig[253] case, similarly to the Sheppard[254] case from Oklahoma, showed that a school principal who had never observed a home instruction program was not qualified to testify about its alleged deficiencies.

Other cases have placed the burden of proof on the parents, such as the 1959 Washington case of State v. Superior Court.[255] Also, the Iowa Supreme Court, in Moorhead,[256] placed the burden of proof on the parents to establish that home instruction was equal "in kind and amount" to that provided in the public schools.[257]

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[251]State v. Cheney, 305 S.W. 2d 892 (Mo. 1957).

[252]State v. Pilkinton, 310 S.W. 2d 304 (Mo. Ct.App. 1958).

[253]In re Monnig, 683 S.W. 2d 782 (Mo. App. 1982).

[254]Sheppard v. State.

[255]State v. Superior Court, 346 P. 2d 999 (Wash. 1959).

[256]State v. Moorhead.

[257]Ibid., p. 64.

The courts of New Jersey and New York have sometimes split the burden of proof. The judicial decisions required the state to prove that the children were not attending a school and yet required the parents to prove that children were instead receiving equivalent instruction at home. The 1965 Vaughn[258] decision in New Jersey held that it was too difficult for the state to prove that home instruction did not meet the requirement of "equivalent" instruction "elsewhere" since the parents themselves were the parties most knowledgeable about particular facets of their home instruction program. Concerning the state's requirment of proving nonattendance, the Kelly V.[259] case established that official transcripts of a child's absences were admissible as evidence in court, thus eliminating the necessity for public school teachers to testify in person. In re H.,[260] a case previously discussed, provided another example of a split burden of proof. The state proved that the children were not attending public schools. The parents lost when they failed to demonstrate that the home instructional program was equivalent to that provided by the public schools.

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[258]State v. Vaughn, 207 A. 2d 537 (N.J. 1965).

[259]In re Kelly V., 405 N.Y.S. 2d 207 (Fam. Ct. 1978).

[260]In re H., 357 N.Y.S. 2d 384 (N.Y. Fam. Ct. 1974).

Equivalence of Home Instruction to Nonpublic School Attendance

In states that have made no statutory provisions for home instruction, parents have sometimes attempted to have their homes declared nonpublic schools, thereby benefitting from the Supreme Court's Pierce[261] doctrine that permits nonpublic school attendance in every state. Even in states that have made explicit statutory provisions for home instruction, parents have tried to avoid strict regulations for home schools, such as instruction by a certified teacher, by claiming to be operating a nonpublic school.[262] Key elements affecting the outcomes of such cases have been the educational level of the parents and the regularity of the time of the instruction.[263] Other important factors have been 1) whether or not parents have sought approval of their home as a nonpublic school, 2) whether or not parents were certified teachers or persons of obvious competence, and 3) whether or not instruction was given in all subjects required to be taught by local public and nonpublic schools.[264]

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[261]Pierce v. Society of Sisters.

[262]Tobak and Zirkel, "Home Instruction," p. 51.

[263]Kern Alexander and K. Forbis Jordan, Legal Aspects of Educational Choice: Compulsory Attendance and Student Assignment, U.S., Educational Resources Information Center, ERIC Document ED 096 770, October 1973, p. 26.

[264]Kotin and Aikman, Legal Foundations of Compulsory School Attendance, p. 166.

An early case in which instruction by a private tutor was ruled to be the equivalent of enrollment in a nonpublic school was State v. Peterman.[265] The court's opinion stated that a

> school in the ordinary acceptation of its meaning, is a place where instruction is imparted to the young...We do not think that the number of persons, whether one or many, make a place where instruction is imparted any less or more a school.[266]

In the Counort[267] case, the ruling went against the parents, but one passage of the court's opinion stated that, "Undoubtedly a private school may be maintained in a private home in which the children of the instructor may be pupils."[268]

Even though Illinois has no statutory provisions for home instruction, the Illinois Supreme Court established home instruction by case law in the 1950 Levisen[269] case. Using the language of Peterman,[270] the Illinois Supreme Court agreed with the parents' contention that they were providing

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[265]State v. Peterman, 70 N.E. 550 (Ind. App. Ct. 1904).

[266]Ibid., p. 551.

[267]State v. Counort, 124 P. 911 (Wash. 1912).

[268]Ibid., p. 912.

[269]People v. Levisen.

[270]State v. Peterman.

their daughter with a nonpublic school education by teaching her at home.[271]

Most courts, however, have been unwilling to conclude that home instruction is another form of nonpublic school instruction. The Supreme Court of Kansas ruled in 1916, in the State v. Will case, that home instruction programs were not the equivalent of nonpublic school attendance.[272] The court noted that the state legislature had deleted an explicit statutory provision for home instruction in 1903. In another Kansas case of 1963, the state Supreme Court's Lowry[273] decision ruled against a physician and a certified teacher who withdrew their four children from public schools, claiming to enroll them in their own nonpublic school at home. The court ruled that the Lowry's nonpublic school was nothing more than scheduled home instruction.

In the 1912 State v. Counort case, the Supreme Court of Washington, in a unanimous decision, insisted that home instruction was not within the nonpublic school concept.

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[271]People v. Levisen.

[272]State v. Will, 160 P. 1025 (Kan. 1916).

[273]State v. Lowry, 383 P. 2d 962 (Kan. 1963).

Judge Morris declared:

> We do not think that the giving of instruction by a parent to a child...is within the meaning of the law "to attend a private school." Such a requirement means more than home instruction.[274]

Two California cases, Shinn[275] and Turner,[276] also resulted in refuted claims of conducting nonpublic schools. The Shinns additionally asserted, to no avail, that their children were too precocious to be properly educated in the public schools. The Turner[277] court insisted that instruction by a parent or tutor at home was not a form of nonpublic school attendance. A Florida ruling previously mentioned, State v. M. M. and S. E., held that instruction by a parent at home was not the equivalent of enrollment in a nonpublic school.[278]

North Carolina has very staunchly resisted efforts by home-schoolers to operate legally. In 1969 and in 1979, opinions were issued from the attorney general's office indicating that home instruction did not comply with North Carolina's compulsory attendance laws.[279]

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[274]State v. Counort, p. 911.

[275]In re Shinn.

[276]People v. Turner, 263 P. 2d 685 (Cal. 1953).

[277]People v. Turner.

[278]State v. M.M. and S.E., 407 So. 2d 987 (Fla. 1982).

[279]"Legal Update: Home Instruction," Attorney General's Office, Raleigh, N.C., January, 1984, p. 1.

The 1983 Duro[280] case, previously mentioned, showed that no claims to a religious basis for operating a home school would be honored. Another 1983 decision in North Carolina, Delconte v. State, found that Larry Delconte's Hallelujah School was not a "private church school" or "school of religious charter."[281]

Conclusion

Because of the state's compelling interest in education, the legislature of any state may regulate or prohibit home instruction in lieu of compulsory school attendance. Where home instruction is permitted, it is subject to reasonable state regulations, which may properly be more stringent than those assigned to nonpublic schools. Common state regulations of home instruction include curriculum requirements, teacher qualifications, and length of the school day and term.

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[280]Duro v. District Attorney.

[281]Delconte v. State, 308 S.E. 2d 898 (N.C. Ct. App. 1983).

SUMMARY

The legal aspects of home instruction are evident in statutory law, case law, constitutional law, and administrative law. Two competing elements are the parents' rights to direct the education of their children and the state's compelling interest in education, which gives it the authority to ban or regulate home instruction.

Parents are protected from unreasonable state regulations by the United States Constitution. The First Amendment assures citizens of the right of free exercise of religion. From the Fourteenth Amendment come the rights of liberty, due process of law, and equal protection of the laws. The right to privacy is derived partly from the Ninth Amendment. Parents' attempts to claim a First Amendment religious right to educate their children at home usually fail. Most court victories for parents have been won in the area of procedural due process. A strategy that has recently become effective for parents is to attack the vagueness of certain segments of compulsory attendance laws. Another strategy that is gaining in popularity is to rely on the right to privacy in the matters of educating children.

The state uses its police power to regulate nonpublic schools and home instruction. A wide variety of strict and lenient requirements are found in statutory provisions.

Frequently litigated regulations of home instruction include qualifications for teachers or private tutors, permissibility of correspondence courses, and the academic or social equivalence of home instruction to public or nonpublic school attendance. There is a trend to focus on academic, rather than social equivalence. Determinations of academic equivalency usually depend a great deal on the curriculum, teaching materials, regularity of instruction, and the credentials of the teacher.

As was shown in Chapter III, thirty-five states have made statutory provisions for home instruction. Chapter IV has shown that four additional states, Illinois, Michigan, New Hampshire, and Kentucky, also have legalized home instruction by other methods. The remaining eleven states that do not permit home instruction are Arkansas, Kansas, Minnesota, Nebraska, New Mexico, North Carolina, North Dakota, Tennessee, Texas, Washington, and Wyoming.

CHAPTER V
REVIEW OF SELECTED COURT DECISIONS

This chapter presents a review of nineteen key court cases in seven categories of frequently litigated issues. Although the United States Supreme Court has never heard a home instruction case, four decisions by the nation's highest court have served as strong precedents in the related areas of the free exercise of religion and parents' rights to direct the education of their children. The other fifteen cases reviewed dealt specifically with home instruction. An effort was made to select relatively recent or unique home instruction cases in six categories that have shown a high incidence of litigation. Issues that have mostly been abandoned (such as the requirement for social equivalency in alternative learning arrangements), and issues that have not been well-developed by the case law of home instruction (such as the right to privacy), were excluded from this review, as were cases dealing with the state regulation of nonpublic schools. The categories and cases included in Chapter V are listed below:

1. Parents' Rights to Direct the Education of Their Children

   Meyer v. Nebraska (1923)

   Pierce v. Society of Sisters (1925)

   Farrington v. Tokushige (1927)

2. Free Exercise of Religion

   Yoder v. Wisconsin (1972)

   Duro v. District Attorney (1983)

   State v. Riddle (1981)

   People v. Nobel (1979)

3. Due Process of Law

   Perchemlides v. Frizzle (1978)

   State v. Popanz (1983)

4. Equal Protection of the Laws

   State v. Edgington (1983)

   Hanson v. Cushman (1980)

   State v. Bowman (1982)

5. Equivalence of Home Instruction to Public School Attendance

   State v. Massa (1967)

   In re H. (1974)

6. Equivalence of Home Instruction to Nonpublic School Attendance

   People v. Levisen (1950)

   Delconte v. State (1983)

7. Burden of Proof

In re Monnig (1982)

State v. Moorhead (1981)

State v. Vaughn (1965)

PARENTS' RIGHTS TO DIRECT THE EDUCATION OF THEIR CHILDREN

Meyer v. Nebraska
262 U.S. 390, 43 S.Ct. 625, 67 L.Ed. 1042 (1923)

Facts

Robert T. Meyer, an instructor at Zion Parochial School, disobeyed a 1919 Nebraska statute that prohibited the teaching of foreign languages to children who had not yet completed the eighth grade. Meyer had taught reading of Biblical stories in the German language to a ten year-old boy. Meyer was convicted in a district court and by the Nebraska Supreme Court. He appealed.[1]

Decision

The United States Supreme Court found that the Nebraska statute unreasonably interfered with Meyer's liberty interest, guaranteed to him by the Fourteenth Amendment. "Mere knowledge of the German language cannot reasonably

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[1]Meyer v. Nebraska, 260 U.S. 390, 43 S.Ct. 625, 67 L.Ed. 2d 1042 (1923).

be regarded as harmful," wrote Justice J. C. McReynolds in the majority's opinion.[2]

The Court also expounded on the concept of liberty, saying that

> ...it denotes not merely freedom from bodily restraint but also the right of the individual...to acquire useful knowledge, to marry, establish a home and bring up children...[3]

The Nebraska state legislature, by passage of the challenged statute, had violated the Fourteenth Amendment by interfering

> with the calling of modern language teachers, with the opportunities of the pupils to acquire knowledge, and with the power of parents to control the education of their own.[4]

Discussion

The decision in Meyer v. Nebraska has become the leading precedent establishing parents' rights to direct the education of their children. Subsequently, the Meyer[5] case has been cited in the great majority of court challenge of compulsory attendance laws or state regulations of nonpublic schools.

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[2]Ibid., p. 627.

[3]Ibid., p. 626.

[4]Ibid., p. 627.

[5]Meyer v. Nebraska.

Pierce v. Society of Sisters

Pierce v. Hill Military Academy
268 U.S. 510, 45 S.Ct. 571 (1925)

Facts

In 1922, the legislature of Oregon amended its compulsory attendance law, requiring that all students attend public schools in grades one through eight. Nonpublic school attendance in the primary grades would no longer satisfy the compulsory attendance law. (Although it had no bearing on the Pierce[6] decision, it is interesting to note that the amended law of 1922 did permit home instruction, provided that prior approval was obtained from the county superintendent and the children attained satisfactory scores on examinations given once every three months.)[7]

The original plaintiffs in Pierce[8] were corporations that operated two nonpublic schools, a parochial school and a military academy, both of which were threatened with extinction in 1926 when enforcement of the new law was to begin. The United States District Court for the District of Oregon had granted an injunction restraining Governor Pierce and other state officials from enforcing the compulsory law. The state officials appealed.

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[6]Pierce v. Society of Sisters, 268 U.S. 510, 45 S.Ct. 571 (1925).

[7]Ibid., p. 531.

[8]Pierce v. Society of Sisters.

Decision

The Supreme Court found that both corporations owned a considerable amount of property devoted to the operations of their schools. Enrollment at the schools had dropped steadily since the law was passed in 1922, even though it was not scheduled for enforcement until 1926. The Court reasoned that adherence to the new compulsory attendance law would amount to "arbitrary, unreasonable and unlawful interference with their patrons and the consequent destruction of their business and property."[9]

Additionally, the Court relied on the Meyer[10] decision in stating

> ...we think it entirely plain that the Act of 1922 unreasonably interferes with the liberty of parents and guardians to direct the upbringing and education of children under their control...The fundamental theory of liberty upon which all governments in this Union repose excludes any general power of the State to standardize its children by forcing them to accept instruction from public teachers only.[11]

Even though the Supreme Court ruled that Oregon's 1922 compulsory attendance law was unconstitutional because of the Fourteenth Amendment's guarantee of liberty and substantive due process, the Court recognized the state's authority to regulate (rather than to prohibit) nonpublic education.

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[9]Ibid., p. 536.

[10]Meyer v. Nebraska.

[11]Pierce v. Society of Sisters, pp. 534-535.

> 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 attend some school...[12]

Discussion

The most important legacy of the Pierce[13] decision is its affirmation of the rights of parents to select alternative schools for their children. That Oregon's law was found unconstitutional by the Supreme Court prevented other states from following suit at a time when distrust of foreigners and fear of Bolshevism prompted many legislative attempts to combat the perceived threats through laws designed to promote Americanization. Thus, Pierce[14] prevented states from disallowing the operation of nonpublic schools. More recently, in states which have not made statutory provisions for home instruction, the Pierce[15] doctrine has provided home-schoolers with an incentive to have their homes recognized as nonpublic schools, attendance at which constitutes compliance with the compulsory attendance laws of every state in the country. The case also has served as a strong precedent in establishing the

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[12]Ibid., p. 534.

[13]Pierce v. Society of Sisters.

[14]Ibid.

[15]Ibid.

state's authority to regulate nonpublic schools and any other learning arrangements undertaken by parents of school-aged children in lieu of public school attendance.

Farrington v. Tokushige
273 U.S. 234, 47 S.Ct. 406 (1927)

Facts

In 1927 there were 163 foreign language schools in the Territory of Hawaii. One hundred and forty-seven of these schools conducted instruction in Japanese. Instruction in the remaining sixteen schools was in the Chinese and Korean languages.[16] Seeking to promote Americanization of the population, the territorial legislature passed a law requiring all students in the first and second grades to attend American schools, in which the language of instruction would be English. Thereafter, students could attend foreign language schools for a maximum of one hour per day or six hours per week.[17] New textbooks chosen after September 1, 1924, were to be selected "upon the principle that the pupil's normal medium of expression is English..."[18]

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[16]Farrington v. Tokushige, 273 U.S. 234, 47 S.Ct. 406 (1927).

[17]Ibid., p. 407.

[18]Ibid.

T. Tokushige and others were successful in obtaining a temporary injunction preventing Governor Wallace R. Farrington, the attorney general, and the superintendent of public instruction from enforcing the new law. The decree was ordered by the United States District Court for Hawaii and affirmed by the Circuit Court of Appeals. Farrington and others appealed to the United States Supreme Court.[19]

Decision

Justice J. C. McReynolds, delivering the opinion of the Court, noted that there was a "grave problem incident to the large alien population of the Hawaiian Island,"[20] but cautioned that "the limitations of the constitution must not be transcended."[21] The Court ruled that enforcement of the Hawaiian law in question would lead to the destruction of the foreign language schools and would deprive parents of the right to obtain instruction which was important to them and which had not been proven to be harmful to the territory.[22] Since the Fourteenth Amendment prevented only states from depriving persons of liberty without due process of law, the Court relied on the Fifth

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[19]Ibid., p. 406.

[20]Ibid., p. 409.

[21]Ibid.

[22]Ibid.

Amendment's similar restriction of the federal government, which would be applicable in the Territory of Hawaii. The laws regulating foreign language schools were found to be unconstitutional.

Discussion

The decision in Farrington v. Tokushige was the third stone in the constitutional foundation of parents' rights to direct the education of their children. Following the Meyer[23] and Pierce[24] decisions, Farrington v. Tokushige helped firmly establish the doctrine that even though parents' rights were subject to regulation by the government, unreasonable regulations could not be upheld. The issue of parents' rights in making decisions about the education of their children is a constantly recurring theme in litigation involving home instruction.

FREE EXERCISE OF RELIGION

Wisconsin v. Yoder

406 U.S. 205, 92 S.Ct. 1526, 32 L.Ed. 2d 15 (1972)

Facts

Jonas Yoder and other members of the Old Order Amish religion refused to send their children, ages fourteen and

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[23]Meyer v. Nebraska.

[24]Pierce v. Society of Sisters.

fifteen, to school after completion of the eighth grade, despite Wisconsin's compulsory attendance law, which required school attendance until age sixteen.[25] The Amish maintained that school attendance after the eighth grade threatened the continued existence of the Amish religion and the Amish way of life. Especially repugnant to the Amish were increasing emphasis in high school on sports and on competition in classes, along with the danger of peer pressure to conform.[26] The Amish claimed protection from the compulsory attendance law by the First and Fourteenth Amendments to the United States Constitution. The Amish were convicted in Green County Court, but the decision was reversed by the Wisconsin Supreme Court. The State of Wisconsin appealed.[27]

Decision

The United States Supreme Court ruled 6-1 in favor of the Amish. The majority opinion, written by Chief Justice Warren E. Burger, agreed that the portion of Wisconsin's compulsory attendance law that required graduates of the eighth grade to continue school attendance until age sixteen was unconstitutional when applied to members of the

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[25]Wisconsin v. Yoder, 406 U.S. 205, 92 S.Ct. 1526, 32 L.Ed. 2d 15 (1972), p. 207.

[26]Ibid., p. 211.

[27]Ibid., p. 213.

Amish faith. Justice Burger recognized that the state had a compelling interest in education, but found that such interest must be balanced against the parents' rights to direct the religious upbringing of their children and the parents' First Amendment rights to free exercise of religion.[28]

Justice Burger devised a test with three questions to use when balancing a compelling state interest against a free exercise claim. The Court would look for 1) sincere religious beliefs; 2) a burden on the free exercise of those beliefs; and 3) "a state interest of sufficient magnitude to override the interest claiming protection..."[29]

The majority of the Supreme Court found that the Amish religion and mode of life were indeed "inseparable and interdependent."[30] The Court distinguished a mode of life based on religious beliefs from a way of life based on philosophical beliefs, which would not be protected by the First Amendment.[31] Answering the first two questions of the test it had devised, the Court found that

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[28]Ibid., p. 214.

[29]Ibid.

[30]Ibid., p. 215.

[31]Ibid., p. 216.

refusal by the Amish to comply fully with the compulsory attendance law was based on sincere religious beliefs, the free exercise of which was severely burdened by the law. The remaining determination was to decide if the state's compelling interest in education was strong enough to override the burden on the Amish free exercise of religion. Considering the 300-year history of the Amish in producing self-sufficient citizens, the Court determined that the state's interest in the two disputed years of schooling was outweighed by the potential damage of those two years of schooling to the Amish free exercise of religion.

Discussion

The decision in the case of Wisconsin v. Yoder caused some observers to predict the end of compulsory attendance laws, but the experience of the intervening thirteen years has shown that courts have not been willing to grant extensions of the Yoder[32] doctrine to non-Amish plaintiffs. It is exceedingly difficult to duplicate the Amish circumstances of preparing for a life totally divorced from the mainstream of American society. The case offers limited, if any, protection for home-schoolers, since the Amish

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[32]Wisconsin v. Yoder.

willingly sent their children to school in grades one through eight. None of the cases studied resulted in court-approved permission for home-schoolers to operate (where such permission had not already been authorized by other means) based on either a First Amendment claim or the Yoder[33] ruling. Lest state officials become complacent, it should be remembered that prior to Wisconsin v. Yoder, the Amish had never won a legal battle over compulsory attendance laws.

Duro v. District Attorney
712 F.2d 96 (Fourth Cir., 1983),
cert. denied 101 S.Ct. 998 (1984)

Facts

Mr. and Mrs. Peter Duro and their children resided in Tyrrell County, North Carolina. The Duros were Pentecostalists.[34] Mr. Duro refused to send any of his five school-aged children to public or nonpublic schools because of his objections to the "unisex movement," "secular humanism" and the "use of physicians."[35] Instead, the children were taught by their mother, who used the

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[33]Ibid.

[34]Duro v. District Attorney, 712 F.2d 96 (Fourth Cir., 1983), cert. denied 101 S.Ct. 998 (1984).

[35]Ibid., p. 97.

Alpha Omega Christian Curriculum, a "self-teaching" program utilized by a nearby nonpublic school, the Cabin Swamp Christian School.[36]

North Carolina compulsory attendance laws required that children between the ages of seven and sixteen attend a public or nonpublic school.[37] Accordingly, on February 10, 1981, four charges of compulsory attendance violations were brought against Duro. The charges were later dropped because of technical flaws in the warrants. Duro, however, filed suit against the district attorney, claiming that the compulsory attendance law "violated the First and Fourteenth Amendments to the United States Constitution because his religious beliefs prohibit[ed] him from sending his children to a public or nonpublic school."[38] The United States District Court for the Eastern District of North Carolina, relying on Yoder,[39] ruled in favor of Duro. The district attorney appealed.[40]

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[36]Ibid.

[37]North Carolina, The General Statutes of North Carolina, Sec. 115C-378 (1980).

[38]Duro v. District Attorney, p. 97.

[39]Wisconsin v. Yoder.

[40]Duro v. District Attorney, p. 97.

Decision

The United States Court of Appeals for the Fourth Circuit found that facts in Duro[41] were "readily distinguishable"[42] from Wisconsin v. Yoder. For example, the Amish people sent their children to public schools for the first eight grades and thereafter used Amish vocational training to prepare children for life in Amish society. Duro did not send his children to any school and had no proven means of preparing his children for life in the "modern world" that they would enter upon attainment of age eighteen.[43] Furthermore, the Amish successfully demonstrated that two additional years of high school for Amish youths burdened the Amish free exercise of religion. In contrast, most members of the Pentecostalist Church the Duros attended willingly sent their children to public schools.[44] Using the Yoder[45] tests, the court found that any burden on Duro's sincere religious beliefs

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[41]Duro v. District Attorney.

[42]Ibid., p. 98.

[43]Ibid.

[44]Ibid., p. 97.

[45]Wisconsin v. Yoder.

was overridden by North Carolina's compelling interest in compulsory school attendance, despite the state's deregulation of nonpublic schools in 1979.[46]

Discussion

This case was the first home instruction case to be heard in a federal court of appeals.[47] Since the Supreme Court would not agree to hear the case, then the Duro[48] decision serves as a binding precedent in all states of the Fourth Circuit, which are Maryland, North Carolina, South Carolina, Virginia, and West Virginia. North Carolina is the only one of those five states which currently bans home instruction. Home instruction is permitted implicitly by the statutes of Maryland[49] and South Carolina.[50] Explicit permission is granted by the statutes of Virginia[51] and West Virginia.[52] Since North Carolina's "absolute

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[46]Duro v. District Attorney, pp. 98-99.

[47]Neal Devins, "The Limits of 'Compelling Interest' In the Education of Young Citizens," Education Week, 3(February 1, 1984), p. 20.

[48]Duro v. District Attorney.

[49]Maryland, Annotated Code of Maryland, Sec. 7-301 (1983).

[50]South Carolina, Code of Laws of South Carolina, Sec. 59-65-40(1983).

[51]Virginia, Code of Virginia, Sec. 22.1-254.1 (1984).

[52]West Virginia, West Virginia Code, Sec. 18-8-1 (1984).

prohibition" of home instruction was upheld, the decision in Duro v. District Attorney indicated that other states in the Fourth Circuit had "absolute authority to regulate" home instruction.[53] It also established that similar claims to a constitutional right to teach children at home based on the freedom of religion were not likely to meet with success in the Fourth Circuit.

State v. Riddle
285 S.E.2d 359 (W.Va. 1981)

Facts

Because of their religious beliefs, Bobby and Esther Riddle objected to public schools, which they perceived to be a "pernicious influence on the young."[54] For a while, the Riddles sent their children, Tim and Jill, to the Emmanuel Christian Academy. Later the parents withdrew the children because of an objectionable religious doctrine. The Riddles then embarked on a program of home instruction. They did not obtain approval of the county superintendent prior to commencing their home instruction, because they mistakenly believed that a teacher's certificate was a prerequisite.[55]

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[53]Devins, "The Limits of 'Compelling Interest' In the Education of Young Citizens," p. 20.

[54]State v. Riddle, 285 S.E.2d 359 (W.Va. 1981), p. 361.

[55]Ibid., p. 363.

Esther Riddle obtained a course of study from a correspondence school in Prospect Heights, Illinois. Testimony indicated that the correspondence school provided lesson plans, made homework assignments, and graded them. The children were taught from 8:30 a.m.-3:00 p.m. daily for 180 days per school year.[56]

The Riddles did not apply for permission to operate a program of home instruction, despite encouragement from employees of the Harrison County Board of Education. The Riddles were tried and convicted in Harrison County Circuit Court for violating the compulsory school attendance law. They appealed on First Amendment grounds, claiming that the law interfered with the free exercise of their religion.

Decision

The West Virginia Supreme Court of Appeals ascertained that circumstances in the case of State v. Riddle were quite different from those of Wisconsin v. Yoder. In the latter case, only two years of schooling were in dispute. The court reasoned that since the Wisconsin case had dealt with "near adults, the balance tipped slightly in the direction of free exercise," but that in State v. Riddle,

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[56]Ibid.

"the balance is decidedly the other way."[57] Also, the court referred to the Amish 300-year history of preparing Amish youngsters for adulthood. The court insisted the Riddles were not entitled to constitutional protection from the compulsory attendance law. Justice Neeley, writing the opinion of the court said,

> We find it inconceivable that in the twentieth century the free exercise clause of the first amendment implies that children can lawfully be sequestered on a rural homestead during all of their formative years to be released upon the world after their opportunities to acquire basic skills have been foreclosed and their capacity to cope with modern society has been so undermined as to prohibit useful, happy or productive lives.[58]

The court upheld the Riddles' compulsory attendance violation conviction, saying that even sincere religious beliefs could not excuse "total noncompliance with the compulsory attendance law."[59] The Riddles were wrong in assuming they could ignore the law, "await criminal prosecution, and then assert a first amendment defense."[60]

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[57]Ibid., p. 362.

[58]Ibid., p. 366.

[59]Ibid., p. 365.

[60]Ibid., p. 364.

Discussion

Just as the North Carolina case of Duro v. District Attorney showed that claims to a constitutional right to conduct home instruction based on the free exercise of religion were unlikely to succeed in states that prohibited home instruction, the decision in State v. Riddle showed that even in states that explicitly allowed home instruction, religious freedom could not be used to circumvent compliance with compulsory attendance laws. Home-schoolers seeking to avoid prosecution should comply with whatever local regulations have been adopted by school boards.

People v. Nobel
No. S 791-0114-A, S 791-0115-A
(Mich. Allegan Cty. Dist. Ct. 1979)

Facts

Home instruction became legal in Michigan after the state's attorney general declared that home instruction by a certified teacher was the equivalent of nonpublic school attendance. Peter and Ruth Nobel, however, kept their children at home for instruction by Mrs. Nobel, who was not a certified teacher. Mrs. Nobel had a degree in elementary education and would automatically have qualified for a teaching certificate had she applied for one. Her religious beliefs mandated that parents must teach their children, so she felt "that for her to accept...

certification would...be placing her responsibilities for education of her children in a position subservient to that of the State..."[61] The Nobels were charged with breaking the compulsory attendance law.

Decision

Judge Gary Stewart of the Allegan County District Court applied Yoder's[62] balancing test and decided in favor of the defendants. Since Mrs. Nobel clearly was entitled to a teacher's certificate, the mere application would not enhance her teaching performance. However, application for teacher certification would burden her First Amendment freedom of religion. In this case, Judge Stewart felt that the state's compelling interest in seeing that teachers involved in home instruction were certified was outweighed by Mrs. Nobel's First Amendment rights.[63]

Discussion

The Nobel[64] case was unique among all the cases studied in that it was the only ruling in favor of home-schoolers that was decided either on First Amendment

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[61]People v. Nobel, No. S 791-0114-A, S 791-0115-A (Mich. Allegan Cty. Dist. Ct. 1979), p. 2.

[62]Wisconsin v. Yoder.

[63]People v. Nobel, p. 11.

[64]People v. Nobel.

grounds or by application of the Yoder[65] test. However, the case did not establish a fundamental right to teach children at home if such learning arrangements had not already been legalized.

DUE PROCESS OF LAW

Perchemlides v. Frizzle
No. 16641 (Mass. Hampshire Cty. Super.Ct. 1978)

Facts

Peter and Susan Perchemlides were experienced home-schoolers who had instructed two of their sons at home for four years before returning them to the public schools. In 1977, the Perchemlides became dissatisfied with the progress of a younger child, Richard (whom they had previously instructed at home), in the second grade at Marks Meadow Elementary School. Therefore, the Perchemlides decided to return Richard to home instruction and obtained an application form. The Perchemlides' application was denied by Superintendent Donald Frizzle, who found the request inadequate since it did not substantiate the Perchemlides' training, did not specify curricular sequence, did not reveal what group experiences would be provided

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[65]Wisconsin v. Yoder.

for Richard, and because Richard's prior instruction at home had not prepared him for the second grade.[66]

The superintendent then referred the matter to a school committee for further consideration. Meanwhile, the Perchemlides, who were permitted to attend only one of the meetings of the school committee, prepared a revised curriculum plan that was twenty-four pages in length. The school committee rejected the plan. The school system initiated truancy proceedings against the Perchemlides, who filed a motion stating that they had a statutory right to educate their child at home. Moreover, they said they had been denied due process of law.[67]

Decision

Judge John M. Greaney of the Superior Court of Hampshire County found that since the state legislature had not taken steps to delete the phrase "otherwise instructed" from compulsory attendance laws after the home instruction case of Commonwealth v. Roberts,[68] then the lawmakers had intended to "preserve home education as one

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[66]Perchemlides v. Frizzle, No. 16641 (Mass. Hampshire Cty. Super. Ct. 1978), p. 3.

[67]Ibid., p. 4.

[68]Commonwealth v. Roberts, 38 N.E. 402 (Mass. 1893).

of the alternatives available to Massachusetts parents..."[69] The Perchemlides thus were entitled by Massachusetts law to operate a program of home instruction, subject to regulation by the state under its police power. Judge Greaney determined that his role was to weigh the "substantive standards used by the superintendent and the school committee" against the parents' constitutional rights and to "analyze the procedural due process aspects of the case..."[70]

Accordingly, Judge Greaney examined the school committee's reasons for denying the Perchemlides' request and found that most members relied on "impermissible standards" such as insistence on group education.[71] Concerning procedural due process, Judge Greaney ruled that applicable standards included the "right to be heard, presence of counsel if desired, some transcription of a record, [and] compliance with public meeting laws...," all of which could have been accomplished through school committee meetings.[72] Despite the amount of time and

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[69]Perchemlides v. Frizzle, p. 9.

[70]Ibid., p. 15.

[71]Ibid., p. 19.

[72]Ibid., p. 24.

attention devoted to the Perchemlides' application by the superintendent and the school committee, denial of due process was evident by the fact that the only reasons ever given to the Perchemlides for rejecting their request were written by the superintendent "before the single school committee meeting which the Perchemlides were permitted to attend...and before the Perchemlides had an opportunity to submit their expanded proposal."[73]

Judge Greaney directed the Perchemlides to resubmit their application for home instruction. He then specified what should and should not be considered by the school committee in processing the application. The factors that the committee should concern itself with included the competency of the teachers, the presence or absence of required subjects in the curriculum, teaching methods, time of instruction, adequacy of texts, and evaluation procedures. The committee was instructed not to consider

> the parents' reasons for wanting to educate their child at home; the lack of a curriculum identical to that provided in the public schools; the lack of group experience;...the creation of a precedent, if any, if the plan is approved; and any other factors that deviate from the substance of the plan in relation to whether it is an adequate, home education alternative.[74]

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[73]Ibid., p. 25.

[74]Ibid., p. 28.

Even though Judge Greaney ruled in favor of the Perchemlides, he chastised them for removing Richard from school before the home instruction request could be approved. Judge Greaney specified a deadline by which Richard must return to school in the event that the second home instruction request were still being processed.[75]

Discussion

Even though the case of Perchemlides v. Frizzle was tried in a lower court and has extremely limited precedential value, it is an important case to study for those who have an interest in the topic of home instruction. Especially in states that permit home instruction by implicit or explicit statutory law or by rules and regulations of administrative agencies, it is very important to afford parents with procedural due process. Judge Greaney's thirty-page homily provided a thorough discussion of minimum standards for procedural due process. Although it seems ironic to read a judge's instructions to the committee members to disregard the possibility of creating a precedent by their decisions, all of the standards should be useful to school administrators who desire to provide due process to home-schoolers.

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[75]Ibid., p. 30.

State v. Popanz
332 N.W.2d 750 (Wis. 1983)

Facts

In 1980, Lawrence Popanz decided to teach his children at home. Subsequently, he notified school authorities that his three daughters would be attending the Free Thinker School in Avoca, Wisconsin, administered by the Agency for the Church of the Free Thinker, Inc. Popanz and a local school administrator then became involved in a long series of disputes regarding proper procedure for securing approval of a nonpublic school. Later, the administrator and the principals of the two public schools where the girls would have been enrolled initiated proceedings against Popanz for violating the compulsory attendance law. Popanz was convicted but appealed on the grounds that the term "private school" was unconstitutionally vague.[76]

Decision

As a precedent regarding the issue of vagueness, the Supreme Court of Wisconsin relied on the Grayned[77] decision of the United States Supreme Court. According to the

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[76]State v. Popanz, 332 N.W.2d 750 (Wis. 1983).

[77]Grayned v. City of Rockford, 408 U.S. 104, 92 S.Ct. 2294, 33 L.Ed. 2d 222 (1972).

Grayned decision, a vague law did not provide fair warning of prohibited behaviors to persons seeking to avoid legal penalties.[78] Additionally, vague laws would have the effect of impermissibly delegating determinations of violations to many different officials who, forced to rely on subjective judgments, would make such determinations in arbitrary and discriminatory decisions.[79] Therefore, the Popanz[80] court reasoned, it must be decided whether or not the use of the term "private school" in Wisconsin's compulsory attendance law afforded fair notice to those who wished to comply with the statute and whether or not sufficient standards existed to prevent local school authorities throughout the state from "creating and applying their own standards."[81]

The Supreme Court of Wisconsin agreed with Lawrence Popanz that there was no definition of "private school" provided by statutes or by administrative rules and regulations of the Department of Public Instruction.

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[78] Ibid., p. 108.

[79] Ibid.

[80] State v. Popanz.

[81] Ibid., p. 754.

Eschewing definitions later suggested by the State Superintendent of Public Instruction, Justice Abrahamson wrote,

> We are not convinced that these definitions are the only ones a citizen, an administrator, or a court using dictionary definitions, court decisions and the statutes could deduce. In any event the legislature or its delegated agent should define the phrase "private school;" citizens or the courts should not have to guess at its meaning.[82]

Since the term "private school" was not defined, the court found that too much discretion had been delegated to local school authorities who would rely on subjective standards to determine what constituted a "private school" and what did not. The resultant arbitrary and discriminatory enforcement of the law would violate the principles of due process. Because the statute failed "to provide fair notice" to those who wanted to obey it and because it lacked "sufficient standards for proper enforcement," the Supreme Court of Wisconsin reversed the decision of the Circuit Court of Iowa County, finding in favor of Lawrence Popanz.[83]

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[82] Ibid., p. 754.

[83] Ibid.

Discussion

The Popanz[84] decision means that state legislatures should not assume the judiciary will uphold compulsory attendance laws that lack a definition of the term "private school" or of any other type of "school" which state statutes name as the kind that may be attended to comply with the law. To avoid litigation based on the challenge of vagueness, state legislatures should follow the advice of the Supreme Court of Wisconsin to define "private school" in order to eliminate guesswork on the part of citizens and courts.

EQUAL PROTECTION OF THE LAWS

State v. Edgington
663 P.2d 374 (N.M.Ct.App. 1983), cert. denied 104 S.Ct. 354, 78 L.Ed. 2d 318 (1983)

Facts

Don and Paula Edgington taught their two school-aged children at home with materials obtained from the Illinois-based Christian Liberty Academy. New Mexico statutes, however, specifically excluded home instruction from the definition of "private school." The Edgingtons claimed that such exclusion was arbitrary, unreasonable, and

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[84]State v. Popanz.

violative of the equal protection clause of the Fourteenth Amendment. The District Court of Socorro County agreed with the Edgingtons and ruled in their behalf. The state appealed.[85]

Decision

The Court of Appeals of New Mexico decided to judge the merits of the compulsory attendance law by whether or not it bore a "rational relation to a legitimate state interest."[86] The court ruled that the state did indeed have a legitimate interest in seeing that children were educated outside their homes.

> By bringing children into contact with some other person, other than those in the excluded group, those children are exposed to at least one other set of attitudes, values, morals, lifestyles and intellectual abilities. Therefore...[t]he statute in question does not present an equal protection violation.

Discussion

New Mexico is the only state that has specifically excluded home instruction by statutory definition. The Edgington[88] decision indicated that such a statutory

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[85]State v. Edgington, 663 P.2d 374 (N.M. Ct. App. 1983), cert. denied 104 S.Ct. 354, 78 L.Ed. 2d 318 (1983).

[86]Ibid., p. 377.

[87]Ibid., p. 378.

[88]State v. Edgington.

provision did not violate the equal protection clause of the Fourteenth Amendment. Legislatures in other jurisdictions that do not wish to allow home instruction or in jurisdictions where the term "private school" has been ruled unconstitutionally vague could follow New Mexico's example, thereby avoiding court challenges by home-schoolers on the issue of vagueness.

Hanson v. Cushman
490 F.Supp. 109 (W.D. Mich. 1980)

Facts

Lowell and Carol Hanson had four school-aged children who were taught at home in the Clonlara School by their mother and Charlotte O'Brien, an adult who lived in the Hanson residence. An opinion by Michigan's attorney general required certified teachers for home schools. Neither Mrs. Hanson nor Mrs. O'Brien was certified. The Hansons filed suit, seeking to have the state compulsory attendance law declared unconstitutional. Defendants included Gerald Cushman, an assistant superintendent of the Greenville School District, and other school officials whose duty it was to report violations of the compulsory attendance law.[89]

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[89]Hanson v. Cushman, 490 F.Supp. 109 (W.D. Mich. 1980).

Decision

The United States District Court for the Western District of Michigan declared that there were no legal precedents indicating that parents had "a fundamental constitutional right to educate their children at home..."[90] The court found that the plaintiffs' desire to educate their children at home did not rise above a philosophical choice such as the Yoder[91] Court had excluded from constitutional protection. As to the plaintiffs' arguments that they were denied equal protection of the laws because they were not certified school teachers, the court ruled that the state had a legitimate and reasonable goal in mind in requiring that home instruction be conducted only by certified teachers.[92]

Discussion

The decision in Hanson v. Cushman indicated that home schoolers might find it difficult to avoid teacher certification requirements by asserting the right to equal protection of the laws. Other courts might be equally inclined to rule that the distinction made between certified teachers and other citizens who were not certified teachers was based on a rational state interest.

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[90]Ibid., p. 112.

[91]Wisconsin v. Yoder.

[92]Hanson v. Cushman, p. 115.

State v. Bowman
652 P.2d 254 (Ore.Ct. App. 1982)

Facts

Kay Bowman was a home-schooler who resided in Oregon. After she moved from the Roseburg school district to Josephine County, she became upset by the stricter regulations placed on home instruction in her new school district. In the past, Mrs. Bowman had alternately placed her children in public schools for a while and then instructed them at home for a while. Upon returning to the public schools, the children had always received full credit for work they had done at home; that is, they were placed in the grade to which other students of their ages were assigned. School officials in Josephine County, however, indicated that they would not grant Mrs. Bowman's child high school credits for subjects studied at home. They cautioned that the child would be considered a first semester freshman should he return to the public school. Mrs. Bowman thereupon stopped cooperating with school authorities and failed to present her son for testing. Subsequently, she was convicted of violating the compulsory attendance law.[93]

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[93]State v. Bowman, 653 P.2d 254 (Ore.Ct. App. 1982), pp. 254-256.

Mrs. Bowman appealed, seeking to have Oregon's compulsory attendance law ruled to be unconstitutional. First of all, she maintained that the terms "private or parochial school" and "parent or private teacher" were impermissibly vague.[94] For the current discussion, however, the pertinent part of Mrs. Bowman's defense was her assertion that she was denied equal protection of the laws. Mrs. Bowman claimed that the law unconstitutionally placed harsher regulations on students who were taught at home than on students who were taught in nonpublic schools.[95]

Decision

The Court of Appeals of Oregon ruled that the state had a legitimate interest to protect when it had created two distinct categories of students, those taught in nonpublic schools and those taught in home schools. Justice Richardson, writing the opinion of the court, stated,

> The legislature apparently believed that private schools, as institutions established for educational purposes, will satisfy the legislative purpose with minimal state oversight, while teaching by a parent or private teacher may be abused by some parents in avoidance of both the legislative purpose and their responsibility to educate their children.[96]

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[94] Ibid., p. 257.

[95] Ibid.

[96] Ibid., p. 258.

Discussion

Differential treatment for students in nonpublic schools and students taught at home was thus held not to violate the Fourteenth Amendment's guarantee of equal protection of the laws. Together with State v. Edgington and Hanson v. Cushman, the decision in State v. Bowman has shown that relying on equal protection of the laws has been a relatively ineffective legal strategy employed by home-schoolers. However, school administrators should be cautioned to apply any existing requirements for approval of home instruction programs equally to all petitioners. Discriminatory enforcement of written policies would abridge citizens' constitutional rights to fair treatment.

EQUIVALENCE OF HOME INSTRUCTION TO PUBLIC SCHOOL ATTENDANCE

State v. Massa
231 A. 2d 252 (N.J. 1967)

Facts

Frank Massa and his wife were charged with failing to send twelve-year-old Barbara Massa to public or nonpublic schools or to provide her with equivalent education elsewhere than at school. Mrs. Massa, a high school graduate, taught her daughter at home. Exhibits introduced by the defense indicated that the home instruction program gave

adequate coverage to the subjects taught to children of the same age in the local schools, and that Barbara's achievement exceeded the median on standardized tests except in the subject of mathematics.[97]

David MacMurray, the Assistant Superintendent of the Pequannock Schools, testified that the education given to Barbara Massa by her mother was not equivalent to that provided by the public schools since Mrs. Massa had no background in teaching and since solitary instruction inherently precluded social equivalence.[98]

Decision

The Morris County Court carefully examined the New Jersey compulsory attendance law. The crucial phrase of the law was the part that directed parents who did not send their children to public or nonpublic schools to "cause such child...to receive equivalent instruction elsewhere than at school."[99] Judge Collins departed from the Knox[100] rationale, which required both social and academic equivalence of home instruction programs. Since the legislature

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[97]State v. Massa, 231 A.2d 252 (N.J. 1967), pp. 253-254.

[98]Ibid., p. 254.

[99]Ibid.

[100]Knox v. O'Brien, 72 A.2d 389 (N.J. 1950).

had specifically authorized education that took place "elsewhere than at school," it must not have intended to require social equivalence as a standard of measurement, Judge Collins reasoned. The court thus decided to base its decision solely on academic, rather than social, equivalence. The Massas were found not guilty.

Discussion

The decision in State v. Massa marked the abandonment of the social equivalence standard, which has not since been successfully used in any case originating in any of the sixteen states which permit "equivalent" instruction "elsewhere." Protesting the lack of group socialization or the social equivalency of home schools is not likely to be an effective means of attacking home instruction in court.

In re H.
357 N.Y.S. 2d 384 (N.Y. Fam. Ct. 1974)

Facts

A New York couple was charged with neglecting their three children because they were not sending them to school. The parents said they were providing their children at home with an adequate education. The father held a graduate degree in literature and had a permanent New York teacher's certificate in secondary (grades seven through

twelve) English. The mother had attended a small college for two years and had job experience as a librarian. In August, 1973, the father left a teaching position and the family moved to a 100-acre farm, where the program of home instruction was undertaken.[101]

Decision

Judge Frederick D. Dugan of the Family Court of Yates County found that the children were indeed being neglected since they were not being provided with an education that was equivalent to that available in the public schools, where the fourteen branches required by law were taught. The home-schoolers had admitted that New York history and United States history did not receive very much coverage. Testimony also indicated that there was no systematic approach to the study of geography.[102] The parents instead insisted upon the educational value to be derived from everyday life on the farm and from a series of field trips the family took. Because of their failure to cover adequately all fourteen of the required branches of learning, the home-schoolers lost.

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[101] In re H., 357 N.Y.S. 2d 384 (N.Y. Fam. Ct. 1974), pp. 384-388.

[102] Ibid., p. 389.

Discussion

Despite Judge Dugan's assessment of the parents as "competent" instructors,[103] he found their program not equivalent because it did not cover all of the prescribed subjects. Other factors Judge Dugan noted included the lack of formal textbooks for some subjects. The In re H. case would be important to remember for school administrators in states where "equivalent" instruction "elsewhere" than at school is allowed. Though the burden of proof was placed on the parents in this case, administrators should be prepared to address the issue of whether or not all required subjects were being covered by home-schoolers.

EQUIVALENCE OF HOME INSTRUCTION TO NONPUBLIC SCHOOL ATTENDANCE

People v. Levisen
90 N.E. 2d 213 (Ill. 1950)

Facts

Marjorie Levisen and her husband were Seventh Day Adventists who taught their seven year-old daughter at home despite Illinois' statutory requirement for attendance at public or nonpublic schools. The Levisens were convicted by the Greene County Court of violating the

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[103]Ibid., p. 391.

compulsory attendance law. They appealed, using the language of the Peterman[104] decision and by maintaining that "by receiving instruction in the manner shown by the evidence that the child was attending a private school."[105]

Decision

The Supreme Court of Illinois agreed with the Levisens that instruction at home was equivalent to nonpublic school attendance. The Levisens' daughter was being instructed regularly in the subjects taught to third-graders in the local schools. The child demonstrated a "proficiency comparable with average third-grade students."[106] The court cautioned that no parents should attempt to use the decision in People v. Levisen as a means of evading "their responsibility to educate their children," and placed the burden of proof on the parents to show "that they have in good faith provided an adequate course of instruction in the prescribed branches of learning."[107]

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[104]State v. Peterman, 70 N.E. 550 (Ind. App. Ct. 1904).

[105]People v. Levisen, 90 N.E. 2d 213 (Ill. 1950), p. 215.

[106]Ibid.

[107]Ibid.

Discussion

The People v. Levisen decision was an important one in that it effectively legalized home instruction in Illinois, a state whose legislature did not make provisions for home instruction. Courts in other jurisdictions, however, have been very reluctant to equate home instruction with nonpublic school attendance. Illinois is the only state in which home instruction is legal solely because of case law.

Delconte v. State
308 S.E. 2d 898 (N.C.Ct.App. 1983)

Facts

Before moving to North Carolina in 1981, the Delconte family lived in New York, where they engaged in a program of home instruction as permitted by law. Other members of the fundamentalist Christian group to which the Delcontes belonged sent their children to both public and nonpublic schools. The Delcontes, however, believed in a biblical obligation to teach their children at home, which they continued to do, even after moving to North Carolina, a state which does not permit home instruction.[108]

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[108]Delconte v. State, 308 S.E. 2d 898 (N.C. Ct. App. 1983).

Several months after the Delcontes moved to Harnett County, North Carolina, they were visited by the local public elementary school principal, who inquired about the status of the two school-aged children. Later, Larry Delconte notified the school superintendent that he planned to teach his children at home due to his religious beliefs. Delconte then applied to the Office of Nonpublic Education for permission to operate the Hallelujah School.[109] The request was rejected by the coordinator of nonpublic education, since the state's attorney general had stated that home instruction was not a nonpublic school.

Delconte then filed a complaint seeking relief from the compulsory attendance law. The Superior Court of Harnett County ruled in Delconte's favor, saying he had a protected religious right to educate his children at home and that the Hallelujah School was a nonpublic school.[110] The state appealed.

Decision

The Court of Appeals of North Carolina reversed the ruling of the Harnett County Superior Court. North Carolina

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[109]Ibid., p. 901.

[110]Ibid., p. 898.

law permitted attendance at a "private church school" or a "school of religious charter," defining the same as schools "operated by any church or other organized religious group or body as part of its ministry."[111] Yet Delconte testified that his family did not belong to a church or organized religious group. North Carolina law also permitted attendance at "qualified nonpublic school[s]."[112] The court pointed out that there was no precedent case in North Carolina interpreting the word "school," but that most other jurisdictions had held "that home instruction cannot reasonably be considered a school."[113] The North Carolina Court of Appeals also referred to two opinions from the attorney general's office that home instruction did not comply with the compulsory attendance law. Since there had been no "legislative action in response to those opinions," the court held that "'school' means an educational institution and does not include home instruction."[114]

Concerning Delconte's contention that he had a First Amendment right to conduct home instruction, the Court

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[111]North Carolina, The General Statutes of North Carolina, Sec. 115C-554 (1980).

[112]Ibid., Sec. 115C-556 (1980).

[113]Delconte v. State, p. 902.

[114]Ibid., p. 903.

of Appeals applied the Yoder[115] test, but found that it was not clear whether Delconte's objections to school attendance was based on religious or philosophical beliefs. According to Wisconsin v. Yoder, actions based on philosophical beliefs are not protected by the First Amendment.[116] The court insisted that even if Delconte's beliefs were ones that could have been constitutionally protected, North Carolina's compelling interest in education would override those rights.[117]

Discussion

Delconte's claim to a First Amendment right to educate his children at home was made before the Duro[118] decision, which clearly indicated that attempts, based on religious grounds, to avoid compliance with compulsory attendance laws would not work in North Carolina or anywhere else in the Fourth Circuit. However, the Delconte[119] decision did contain an element not addressed by the Duro[120]

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[115]Wisconsin v. Yoder.

[116]Ibid., p. 216.

[117]Delconte v. State, p. 904.

[118]Duro v. District Attorney.

[119]Delconte v. State.

[120]Duro v. District Attorney.

court; namely, whether or not a home school could be considered a nonpublic school. Statutory definitions precluded declaration of the Delconte home as a "church school" or "school of religious charter." Lacking a statutory definition of "school," the court relied on precedents from other jurisdictions and on opinions by the attorney general that home instruction did not qualify as attendance at a school. Delconte made no challenge as to the vagueness of the term "school," nor did he claim denial of due process during his application to have the Hallelujah School approved.

BURDEN OF PROOF

In re Monnig
683 S.W. 2d 782 (Mo.App. 1982)

Facts

At the time of this case, the relevant Missouri compulsory attendance statute required persons who had control of children between the ages of seven and sixteen to send the children regularly to

> some day school...or [to] provide the child at home with regular daily instructions...at least substantially equivalent to the instruction given... in the day schools in the locality in which the chid resides.[121]

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[121] Missouri, Vernon's Annotated Missouri Statutes, Sec. 167.031 (1981).

The Monnigs taught their children Stanley, Suzanne, and Tammy at home using a correspondence course obtained from the Christian Liberty Academy. Neither the juvenile officer nor the school principal involved in the case had ever made an attempt to ascertain the equivalency of the Monnigs' program to that of the local schools. Nevertheless, the juvenile court declared the children to be neglected. The Monnigs appealed, contending that the state should have had to prove not only that the children were not attending public school but that the children were not receiving equivalent instruction at home.[122]

Decision

The Court of Appeals for the Western District of Missouri found that evidence proved that the parents had not complied with the first component of the compulsory attendance law, namely, to send children under their control to a school. However, the court found insufficient evidence to convict the parents of the second component of the law, which allowed alternate instruction to be given at home.[123] Furthermore, the court ruled that the

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[122]In re Monnig, 683 S.W. 2d 782 (Mo.App. 1982).

[123]Ibid., pp. 786-787.

burden of proof in the matter rested on the state. The decision of the juvenile court was reversed and remanded with orders for a new trial.[124]

Discussion

Missouri's compulsory attendance law made home instruction an integral part of the basic law rather than an exception to the law. Consequently, the burden of proof rested on the state to demonstrate that the Monnig children were not receiving instruction equivalent to that provided in the public school. The testimony of the school principal did nothing to help the state's case, since he had not observed the Monnigs' home instruction and did not know what subjects were taught or what materials were used. Especially in states where home instruction is included in the basic compulsory attendance requirement, rather than in exemptions from compulsory attendance, local school authorities should not initiate truancy or neglect proceedings against home-schoolers that they have not observed or investigated.

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[124]Ibid., p. 789.

State v. Moorhead
308 N.W. 2d 60 (Iowa 1981)

Facts

Norman and Linda Moorhead taught two of their children, Janese and Kirk, at home. They were convicted in the Warren District Court of violating Iowa's compulsory attendance law. The defendants appealed to the Supreme Court of Iowa, maintaining that the state should have borne the burden of proving that Janese and Kirk were not receiving "equivalent" instruction "elsewhere" from a "certified teacher."[125]

Decision

The Supreme Court of Iowa determined that the issue of "equivalent" instruction "elsewhere" was a defense to the charge of violating the compulsory attendance statute, rather than being part of the offense itself. Therefore, it was up to the parents to prove that they were providing "equivalent" instruction by a "certified teacher."[126] The court sustained the defendants' prior convictions, despite their additional contentions that the terms "equivalent" and "certified teacher" were unconstitutionally vague.[127]

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[125]State v. Moorhead, 308 N.W. 2d 60 (Iowa 1981), p.62.

[126]Ibid.

[127]Ibid.

Discussion

Even though Iowa's statutes implicitly made home instruction a part of the basic attendance requirement rather than an exception to it, the court ruled that the burden of proof was on the parents to show, as they offered in their own defense, that they were providing equivalent instruction elsewhere by a certified teacher. The issue of the burden of proof has been and will most likely continue to be frequently contested in home instruction cases, particularly in states which implicitly permit home instruction through the legalization of "equivalent" instruction "elsewhere."

State v. Vaughn
207 A.2d 537 (N.J. 1965)

Facts

Leroy and Carmen Vaughn were convicted in the Englewood Municipal Court of failing to send their child to public schools. After several appeals, the case came under the jurisdiction of the Supreme Court of New Jersey, where the parents hoped to have their convictions of disorderly persons charges overturned. The Vaughns maintained that the burden of proof was on the state to show that the child, who had not been in attendance at school, had not been provided with "equivalent instruction elsewhere."[128]

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[128]State v. Vaughn, 207 A.2d 537 (N.J. 1965), p. 539.

Decision

The New Jersey Supreme Court split the burden of proof. The state would be required to prove that the child was not attending a public school, but the parents would be required to prove whether or not the child was attending any other day school or was being provided with equivalent instruction at home, since "the facets relating to both of these alternatives would necessarily be peculiarly within the knowledge of the party to be charged."[129] The Vaughns did not win their appeal.

Discussion

The issue of the burden of proof in home instruction cases has been blurred by many conflicting precedents. Previously, it was pointed out that whether statutory provisions for home instruction were included as part of the basic attendance requirement or as an exception to it would usually be a major factor in determining which party, the parents or the state, would bear the burden of proof.[130] However, all three of the cases just reviewed were tried in states whose statutes made "equivalent" instruction received "elsewhere" a basic part of

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[129]Ibid., p. 540.

[130]Patricia M. Lines, "Private Education Alternatives and State Regulation," Journal of Law and Education, 12 (April, 1983), p. 212.

their compulsory attendance requirements. In the Monnig[131] case from Missouri, the burden of proof was judged to rest entirely on the state. In the Moorhead[132] case from Iowa, the burden of proof was placed on the parents. Yet in the Vaughn[133] case from New Jersey, the burden of proof was split. In the latter ruling, the parents drew the more difficult part of the split burden, being required to substantiate the equivalency of their home instruction to that available in the public schools. The three above decisions have demonstrated that there has been no definitive solution to the issue of the burden of proof in home instruction cases. While general rules may be of some value, it should be remembered that there have been many exceptions to those rules, evident in an array of contradictory precedents.

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[131] In re Monnig.

[132] State v. Moorhead.

[133] State v. Vaughn.

CHAPTER VI

SUMMARY, CONCLUSIONS, AND RECOMMENDATIONS

Home instruction has existed in America since colonial times, but it did not become a litigious subject until the states adopted compulsory attendance laws. Today, thirty-nine states and the District of Columbia permit home instruction, by virtue of statutory provisions, case law, attorney general's opinions, or policies of the state school boards. Home instruction litigation, however, is not confined to the eleven remaining states which do not currently condone home instruction. Indeed, a large number of cases has arisen in states that have made explicit or implicit statutory provisions for home instruction.

The purpose of this study was to determine the legality of home instruction for school-aged children in the United States, through analyses of general statutory provisions and of judicial decisions. The study has dealt with legal issues and not with the desirability of home instruction in lieu of compulsory school attendance.

In Chapter I, five questions were proposed to guide the research. Chapter II was a review of the literature, which served to identify and introduce some of the major legal issues pertinent to home instruction. The answers

to most of the five original questions were found in Chapters III, IV, and V, in the examination of the statutory provisions, the analysis of case law, and the discussion of other legal aspects of home instruction. The answers to the five research questions can be used by school administrators who come into contact with home-schoolers. Recommendations by the researcher for administrators were based upon the answers to the five basic research questions.

SUMMARY

The introductory chapter stated several purposes for the study, including making public school administrators aware of the growing magnitude of home instruction litigation. Additionally, related legal issues were examined and analyzed so that administrators could prepare themselves to address this area of concern.

The review of the literature emphasized the identification of the major legal issues of home instruction that would be examined primarily in Chapters IV and V. Since the adoption of compulsory attendance laws precipitated home instruction litigation, a brief review of the history of the compulsory attendance movement was presented merely as background material. Also, as stated in the introductory chapter, the major techniques employed to investigate the legal aspects

of home instruction were examinations of statutory law and case law. Although administrative law was mentioned in that it served to authorize home instruction in two states where statutory and case law did not, no detailed examination of state or local school boards' rules and regulations for home-schoolers was made. Repeating a statement made in the introductory chapter, no attempt was made to determine the desirability of home instruction as opposed to school attendance, although the opinions of others, especially participants in the judicial system, were necessarily discussed in the review of landmark and recent court cases related to home instruction.

The first key research question listed in Chapter I called for the identification of the major legal issues surrounding the topic of home instruction. The major legal issues are parents' rights to direct and control the education of their children; free exercise of religion; due process of law (including impermissible vagueness of statutes); equal protection of the laws; the constitutional guarantee of liberty; the right to privacy; the state's compelling interest in education; the state's police power; the state's role as parens patriae; child neglect charges; state regulation of nonpublic education (including home instruction); qualifications for teachers of home instruction (including tutors); permissibility of correspondence

courses, equivalence of home instruction to public or nonpublic school attendance, and burden of proof requirements.

The second research question asked which of the issues are likely to be litigated. All of the major issues have been included in numerous court cases. Typically, several of the main issues identified above are contested in the same case. Seldom does a case revolve around only one of the main issues of home instruction. As Chapter V showed, seven of the most frequently litigated issues are parents' rights to direct the education of their children; free exercise of religion; due process of law; equal protection of the laws; equivalence of home instruction to public school attendance; equivalence of home instruction to nonpublic school attendance; and the burden of proof.

The third research question asked if the analysis of court cases revealed any specific trends. An examination of early cases revealed emphases on parents' rights, particularly their liberty interests, and on equivalence of home instruction to school attendance. Recent cases have shown home-schoolers are opting to rely on privacy rights and due process rights, particularly the impermissible vagueness of statutes. "Private school" and "certified teacher" are two terms from state statutes that have been challenged as being unconstitutionally vague, meaning that they do not provide adequate guidance to citizens who are seeking to obey compulsory attendance laws. At first, challenges as

to the clarity of "private school" met with defeat, but recently, judges have been more likely to side with parents in cases where the term was not defined in state statutes. None of the cases studied presented a successful challenge to the clarity of the term "certified teacher."

Equivalence of home instruction to school attendance has continued to be a frequently litigated issue. Judicial decisions of the early twentieth century tended to disqualify home instruction as equivalent to school attendance for the lack of socialization experiences comparable to those of public or nonpublic schools. In 1967 this trend was reversed when a New Jersey court ruled, in the case of State v. Massa, that insistence upon equivalent group experiences would render all private instruction unacceptable. Since then, courts in states that permit home instruction that is "equivalent" to public or nonpublic school attendance have tended to concentrate on the academic aspects of the case, even though some judges have made negative remarks concerning the effects of isolating children from those outside their immediate family.

The fourth research question asked for the identification of states which permit home instruction based on statutory and case law. The statutes of these thirty-five states currently permit home instruction: Alabama, Alaska, Arizona, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Indiana, Iowa, Louisiana,

Maine, Maryland, Massachusetts, Mississippi, Missouri, Montana, Nevada, New Jersey, New York, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Utah, Vermont, Virginia, West Virginia, and Wisconsin.

Those thirty-five states were divided into these three categories: states whose statutes explicitly provided for home instruction; states not included in the first category whose statutes allowed instruction by a private tutor; and states whose statutes implicitly authorized "equivalent" instruction to take place "otherwise" or "elsewhere" than at school. The fourteen states that explicitly allow home instruction are Arizona, Colorado, Georgia, Louisiana, Mississippi, Missouri, Montana, Nevada, Ohio, Oregon, Utah, Vermont, Virginia, and West Virginia. These six states and the District of Columbia permit home instruction by private tutor: Alabama, California, Florida, Hawaii, Pennsylvania, and Rhode Island. The fifteen states whose statutes implicitly permit home instruction are Alaska, Connecticut, Delaware, Idaho, Indiana, Iowa, Maine, Maryland, Massachusetts, New Jersey, New York, Oklahoma, South Carolina, South Dakota, and Wisconsin.

Case law from across the country has contributed significantly to the rights of home-schoolers, but Illinois is the only state that has authorized home instruction solely on the basis of case law, following the decision

in People v. Levisen. Although the fourth research question asked only about states that permitted home instruction according to statutory and case law, it has been stated for the record that Michigan, New Hampshire, and Kentucky also permit home instruction. Michigan's attorney general authorized home instruction that met all the requirements for nonpublic schools. State school board policies in New Hampshire and Kentucky have authorized home instruction. The eleven remaining states that do not currently permit home instruction are Arkansas, Kansas, Minnesota, Nebraska, New Mexico, North Carolina, North Dakota, Tennessee, Texas, Washington, and Wyoming.

The fifth research question asked for an explanation of the legally acceptable criteria for home instruction. An examination of the legal precedents has revealed that because of the case of Pierce v. Society of Sisters, home instruction would be legal in any state if a person could have his home declared to be a nonpublic school. Factors that have been shown to sway judges in that direction have included the academic equivalence to educational programs available in public or nonpublic schools, the qualifications or competence of the instructors, the adequacy of materials, and the regularity of instruction. Primarily, however, courts have relied on the wording of state statutes to determine whether or not home instruction was legal. When legislatures have specified requirements for

home instruction, courts have generally been willing to back them up. The legal precedents then, have shown a great amount of respect for statutory law. Current specific statutory regulations for home instruction were identified in Chapter III. The criteria regulated by statute included curriculum requirements, instructor qualifications, prior approval or permission by a superintendent or school board, reports of attendance or enrollment, length of school day or term, testing or evaluation requirements, that instruction be given in English, immunization requirements, and building safety codes.

CONCLUSIONS

In order to answer the five research questions outlined above, the investigator reviewed over 100 pertinent books, ERIC documents, journals, periodicals, newspapers, and dissertations; the compulsory attendance statutes of fifty states and the District of Columbia; and over 125 court decisions. From this examination of the pertinent literature, statutory law, and case law, the answers to the five basic research questions were formed. In turn, conclusions drawn and recommendations made by the researcher were developed in pursuing the answers to those five questions.

Conflicting precedents are the rule rather than the exception in litigation involving home instruction. No

home instruction case has been tried before the United States Supreme Court. In 1984, the Court refused to review the case of Duro v. District Attorney, in which the United States Court of Appeals for the Fourth Circuit upheld North Carolina's prohibition of home instruction. With no major Supreme Court decision on home instruction to serve as a precedent, legal precedents from across the nation are even more varied than the state statutes themselves. Even decisions that were made using the very same statutes as guides have produced different results, depending on the individual circumstances of the case and on trends set or followed by the particular courts. However, based on the review of literature, examination of state statutes, and analysis of case law, the following general conclusions concerning the legal aspects of home instruction can be drawn.

1. Courts will generally uphold state compulsory attendance laws, because of wide judicial acceptance of the state's compelling interest in education.

2. Because of intense judicial respect for parents' constitutional rights, courts will rule in favor of parents whose fundamental rights have been violated by application of the compulsory attendance law.

3. Courts have not recognized the existence of a fundamental constitutional right to educate children at home rather than sending them to a school.

4. Attempts by parents to seek constitutional protection from the application of compulsory attendance laws by asserting a First Amendment freedom of religion claim are almost always unsuccessful.

5. Attempts by parents to claim protection from the application of compulsory attendance laws based on the right to equal protection of the laws are not generally successful.

6. Parents' most effective legal strategy has been to assert that, in their attempts to comply with the compulsory attendance statutes by providing an alternative program of home instruction, they were denied procedural due process of law.

7. Courts are becoming increasingly willing to rule that undefined terms in compulsory attendance statutes, particularly the term "private school," render the statute impermissibly vague.

8. Where specific standards for home instruction are mandated by law, courts will uphold these requirements, as long as they bear a rational relationship to legitimate state interests and that they are applied equally to all persons.

9. When legislatures have authorized alternative instruction by the use of broad terms such as "equivalent" or "otherwise," and when the meanings of these terms are

disputed between parents and local authorities, the courts will help decide the meanings of these terms.

10. Judicial assessments of the equivalence of home instruction will focus on the academic aspects of said instruction, including the curriculum, competence of the instructors, adequacy of instructional materials, and regularity of instruction.

11. The burden of proving that an alternative educational program such as a home instruction program is "equivalent" may fall on the state, on the parents, or be split between the two parties. While it had been previously suggested by other researchers that the assignment of the burden of proof would depend a great deal on whether home instruction was listed as a basic part of the compulsory attendance law or as an exception to it, there are enough exceptions to this generalization to blur the distinction.

12. Future court strategies by home-schoolers are likely to concentrate on the right to privacy, procedural due process rights, and challenges of vagueness against statutory wording such as "private school," "equivalent," "otherwise," "elsewhere," "private tutor," "competent," and "qualified."

13. Interest in home schooling will remain high throughout the 1980's. Home instruction advocates and

support groups will lobby in the legislatures of the eleven states where home instruction is prohibited, seeking changes in the law.

14. In states where home instruction is already permitted, home-schooling lobbyists will likely seek relaxation of any strict regulations, such as the requirement for a certified teacher.

15. Public school administrators will increasingly come into contact with home-schoolers throughout the 1980's.

RECOMMENDATIONS

As stated in the introductory chapter, it was not the purpose of this study to form opinions concerning the relative merits or deficiencies of home instruction or to recommend whether or not home instruction should be allowed. Rather, this study was designed to make public school administrators realize the importance of becoming familiar with the home instruction movement, because of the growing likelihood of coming into contact with home-schoolers. Another stated purpose of this study was to provide public school administrators with a practical list of guidelines to use when they do come into contact with home-schoolers. The guidelines suggest how administrators can meet their own legal obligations and respect parents' rights.

Based on the findings of this study, which examined pertinent literature, statutory law, and case law, the following guidelines concerning the handling by public school administrators of home instruction requests have been formulated. These guidelines are based on established legal precedents discernible in case law and on current statutory law and judicial trends.

GUIDELINES FOR USE BY PUBLIC SCHOOL ADMINISTRATORS WHEN DEALING WITH HOME-SCHOOLERS

1. Before contact with home-schoolers, public school administrators should study the state's compulsory attendance law. An effort should be made to refer to the most recent version of the statute, since legislatures are continually making revisions of laws pertaining to education. It should be remembered that home instruction advocacy groups are active lobbyists.

2. Public school administrators must stay abreast of case law, particularly in their own states. Sometimes courts will depart from previously honored legal precedents, so it is important for public school administrators to watch for new judicial trends. Administrators should also be cognizant of case law in other states whose statutory provisions regarding home instruction are similar. In the event of pending judicial decisions in the same

circuit of the federal court system or in the United States Supreme Court, administrators must follow such cases closely, since previous legal precedents can be invalidated as new ones are set.

3. Public school administrators in the thirty-nine states (or the District of Columbia) where home instruction is permitted should be thoroughly familiar with and must follow any relevant and existing policies, rules, or regulations that have been adopted by state school boards, state departments of instruction, or local school boards.

4. In states allowing home instruction, public school administrators must be careful to honor the procedural due process rights of parents who seek to embark on a program of home instruction. It would be beneficial to obtain a copy of the case of Perchemlides v. Frizzle, available for the cost of reproduction from the Office of the Clerk of the Courts, Northampton, Massachusetts 01060. Although this decision is not binding outside of the jurisdiction of the Hampshire County Superior Court, it offers an excellent discussion of ways that administrators can afford parents with procedural due process. Another good reason for becoming acquainted with this case is that home-schoolers are very likely to cite the case in the event of due process disputes.

5. Public school administrators in the eleven states that do not permit home instruction are obligated by law to report violations of compulsory school attendance statutes, regardless of their personal feelings about the desirability or legitimacy of home instruction. Efforts should be made to inform parents of the law and why they are in violation of it. Administrators should explain what parents must do to comply with the law and give them a certain date by which their children must report to school to avoid prosecution. Care should be taken to document all such contact with parents and to carry through with announced plans according to whatever schedule is adopted by the administrator. Usually the steps to pursue and time requirements concerning notification are specified in compulsory attendance statutes. These statutes should be followed explicitly.

6. In states whose statutes permit "equivalent" instruction to take place "otherwise" or "elsewhere" than at school, administrators should be wary of bringing charges against home instruction programs that they know nothing about. Administrators should make efforts to become familiar with the home instruction program, particularly the curriculum, qualifications of the instructor, adequacy of teaching materials, and the regularity of

instruction. School administrators' testimony that a home instruction plan is not equivalent is meaningless if the administrators are not acquainted with the questioned program of instruction.

7. As a precautionary measure, administrators who anticipate becoming involved in litigation regarding home instruction should assume the burden of proof will be on themselves. The legal precedents on the burden of proof are contradictory between jurisdictions and even within jurisdictions. Even though school board counsel will undoubtedly request that the court rule that the burden of proof be placed on parents or at least be split between the state and the parents, administrators who hope to be on the winning side in court should proceed as if they will have to prove that the children are not attending school, that the children are not being instructed elsewhere as provided by law, or that the parents clearly have violated the state compulsory attendance law.

8. Public school administrators should encourage their state legislators to include in the compulsory attendance statutes definitions of terms such as "private school," "nonpublic school," "equivalent," "competent," and "qualified." The existence of precise statutory definitions could preclude litigation based on assertions of impermissible vagueness.

9. Public school administrators should also suggest to the General Assemblies that they include a definition of "home instruction" in the compulsory attendance statutes and then specify whether or not home instruction will comply with the state's compulsory attendance law. This practice would relieve the courts of the task of determining legislative intent and should serve to reduce the potential amount of litigation.

10. School administrators should apply any existing requirements for approval of home instruction programs equally to all petitioners. Discriminatory enforcement of written policies would abridge citizens' constitutional right to equal protection of the laws.

CONCLUDING STATEMENT

If a school administrator becomes involved in a dispute with home-schoolers, conscientious efforts should be made to resolve the controversy without litigation. In all instances, the state statutes must be followed, with due consideration given to prevalent case law and any existing policies of the state or local school board or of the state department of instruction.

At all times, administrators must respect the constitutional rights of home-schoolers. Providing due process

to all home instruction applicants is an ethical course of action and a wise legal tactic, since persons who could prove that they were arbitrarily deprived of constitutional rights by the actions of school administrators could be entitled to financial remuneration.

Administrative awareness of the potential problems associated with processing home instruction requests and adherence to established guidelines will not serve as an absolute guarantee against involvement in home instruction litigation. However, school administrators can reduce the likelihood of costly (in terms of time, expense to the state, and possibly personal expense) involvement in such litigation by studying fully the legal aspects of home instruction and by formulating, adopting, and following a set of guidelines when dealing with home-schoolers.

RECOMMENDATIONS FOR FURTHER STUDY

This study concentrated on the legal aspects of home instruction according to statutory law and case law. A closely related topic that was mentioned, but not explored, is the area of administrative law of home instruction. A study of the administrative law of home instruction would concentrate on policies, rules, and regulations of state departments of education, state school boards, and local school boards. Such a study would be useful, since some states permit or regulate home instruction by administrative law, rather than by statutory or case law.

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APPENDIX

STATUTORY PROVISIONS FOR COMPULSORY SCHOOL ATTENDANCE AND EXEMPTIONS AS RELATED TO HOME INSTRUCTION

ALABAMA

Sec. 16-28-5. Private Tutor.

Instruction by a private tutor means and includes only instruction by a person who holds a certificate issued by the state superintendent of education and who offers instruction in the several branches of study required to be taught in the public schools of this state, for at least three hours a day for 140 days each calendar year, between the hours of 8:00 A.M. and 4:00 P.M., and who uses the English language in giving instruction. Such private tutor shall, prior to beginning the instruction of any child, file with the county superintendent of education, where his place of instruction is in territory under the control and supervision of the county board of education, or the city superintendent of schools, where his place of instruction is in territory under the control and supervision of a city board of education, a statement showing the child or children to be instructed, the subjects to be taught and the period of time such instruction is proposed to be given. Such tutor shall keep a register of work, showing daily the hours used for instruction and the presence or absence of any child being instructed and shall make such reports as the state board of education may require.

Sec. 16-28-1. Definitions.

For purposes of this chapter, the following words, terms and phrases shall have the following respective meanings, unless clearly indicated otherwise:

(1) Private School. Includes only such schools as hold a certificate issued by the state superintendent of education, showing that such school conforms to the following requirements:

a. The instruction in such schools shall be by persons holding certificates issued by the state superintendent of education;

b. Instruction shall be offered in the several branches of study required to be taught in the public schools of this state;

c. The English language shall be used in giving instruction;

d. A register of attendance shall be kept which clearly indicates every absence of each child from such school for a half day or more during each school day of the school year.

(2) Church School. Includes only such schools as offer instruction in grades K-12, or any combination thereof including the kindergarten, elementary, or secondary level and are operated as a ministry of a local church, group of churches, denomination, and/or association of churches on a nonprofit basis which do not receive any state or federal funding.

Sec. 16-28-3. Ages of children required to attend school; church school students exempt from operation of this section.

Every child between the ages of seven and 16 years shall be required to attend a public school, private school, church school, or be instructed by a competent private tutor for the entire length of the school term in every scholastic year except that every child attending a church school as defined in Section 16-28-1 is exempt from the requirements of this Section, provided such child complies with enrollment and reporting procedure specified in Section 16-28-7.

ALASKA

Sec. 14.30.010. When attendance compulsory.

(a) Every child between seven and 16 years of age shall attend school at the public school in the district in which the child resides during each school term. Every parent, guardian or other person having the responsibility for or control of a child between seven and 16 years of age shall insure that the child is not absent from attendance.

(b) This section does not apply if a child
(1) is provided an academic education comparable to that offered by the public schools in the area, either by

(A) attendance at a private school in which the teachers are certificated according to AS 14.20.020;
(B) tutoring by personnel certificated according to AS 14.20.020; or
(C) attendance at an educational program operated in compliance with AS 14.45.100 - 14.45.140 by a religious or other private school;

(2) attends a school operated by the federal government;

(3) has a physical or mental condition which a competent medical authority determines will make attendance impractical;

(4) is in the custody of a court or law enforcement authorities;

(5) is temporarily ill or injured;

(6) has been suspended or denied admittance according to AS 14.30.045;

(7) resides more than two miles from either a public school or a route on which transportation is provided by the school authorities, except that this subsection does not apply if the child resides within two miles of a federal or private school which the child is eligible and able to attend;

(8) is excused by action of the school board of the district at a regular meeting or by the district superintendent subject to approval by the school board of the district at the next regular meeting;

(9) has completed the 12th grade;

(10) is enrolled in a full-time program of correspondence study approved by the department; in those school districts providing an approved correspondence study program, a student may be enrolled either in the district correspondence program or in the centralized correspondence study program;

(11) is equally well-served by an educational experience approved by the school board as serving the child's educational interests despite an absence from school, the request for excuse is made in writing by the child's parents or guardian, and approved by the principal or administrator of the school that the child attends.

b. Instruction shall be offered in the several branches of study required to be taught in the public schools of this state;

c. The English language shall be used in giving instruction;

d. A register of attendance shall be kept which clearly indicates every absence of each child from such school for a half day or more during each school day of the school year.

(2) Church School. Includes only such schools as offer instruction in grades K-12, or any combination thereof including the kindergarten, elementary, or secondary level and are operated as a ministry of a local church, group of churches, denomination, and/or association of churches on a nonprofit basis which do not receive any state or federal funding.

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(B) tutoring by personnel certificated according to AS 14.20.020; or

(C) attendance at an educational program operated in compliance with AS 14.45.100 - 14.45.140 by a religious or other private school;

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(3) has a physical or mental condition which a competent medical authority determines will make attendance impractical;

(4) is in the custody of a court or law enforcement authorities;

(5) is temporarily ill or injured;

(6) has been suspended or denied admittance according to AS 14.30.045;

(7) resides more than two miles from either a public school or a route on which transportation is provided by the school authorities, except that this subsection does not apply if the child resides within two miles of a federal or private school which the child is eligible and able to attend;

(8) is excused by action of the school board of the district at a regular meeting or by the district superintendent subject to approval by the school board of the district at the next regular meeting;

(9) has completed the 12th grade;

(10) is enrolled in a full-time program of correspondence study approved by the department; in those school districts providing an approved correspondence study program, a student may be enrolled either in the district correspondence program or in the centralized correspondence study program;

(11) is equally well-served by an educational experience approved by the school board as serving the child's educational interests despite an absence from school, the request for excuse is made in writing by the child's parents or guardian, and approved by the principal or administrator of the school that the child attends.

ARIZONA

Sec. 15-802. Compulsory school attendance; exceptions; violation; classification.

A. Every person who has custody of a child between the ages of eight and sixteen years shall send the child to a school for the full time school is in session within the school district in which the child resides, except that if a school is operated on an extended school year basis each child shall regularly attend during school sessions which total not less than one hundred seventy-five days, or the equivalent as approved by the superintendent of public instruction, during the school year.

B. A person is excused from the duty prescribed by subsection A of this section when it is shown to the satisfaction of the county school superintendent that:

1. The child is instructed at home by a person passing the reading, grammar, and mathematics proficiency examination as provided in section 15-533 in at least those subjects as reading, grammar, mathematics, social studies and science and the child takes the nationally standardized achievement test each year. The parent or guardian of a child being instructed at home satisfies the condition of this paragraph by filing with the county school superintendent a copy of the child's achievement test results each year and an affidavit stating that the child is being taught at home. The nationally standardized achievement test which shall upon request be provided by the department of education may be administered by a public or private school and all costs incurred in administering the test shall be charged to the person who has custody of the child. If the public school administers the nationally standardized achievement test as provided in this paragraph, the test results shall not be included in the summary report as provided in Sec. 15-743. The department of education shall upon request provide any information which the department provides to teachers and parents of public school children relating to the nationally standardized achievement test to the person who has custody of the child. If the information is written, all costs incurred in printing the information shall be charged to the person who has custody of the child.

2. The child is attending a regularly organized private or parochial school. The parent or guardian of a child attending a private or parochial school satisfies the condition of this paragraph by filing an affidavit with the county school superintendent stating that the child is attending a school for the full time that the schools of the school district are in session.

ARKANSAS

Sec. 80-1502. Attendance required of children aged seven to fifteen.

Every parent, guardian, or other person residing within the State of Arkansas and having in custody or charge any child or children between the ages of seven [7] and fifteen [15], (both inclusive) shall send such child or children to a public, private, or parochial school under such penalty for noncompliance with this section as hereinafter provided.

CALIFORNIA

Sec. 48200. Children between ages of 6 and 16 years.

Each person between the ages of 6 and 16 years not exempted under the provisions of this chapter is subject to compulsory full-time education. Each person subject to compulsory full-time education and each person subject to compulsory continuation education not exempted under the provisions of Chapter 3 (commencing with Section 48400) of this part shall attend the public full-time day school or continuation school or classes for the full time designated as the length of the schoolday by the governing board of the school district in which the residency of either the parent or legal guardian is located and each parent, guardian, or other person having control or charge of such pupil shall send the pupil to the public full-time day school or continuation school or classes for the full time designated as the length of the schoolday by the governing board of the school district in which the residence of either the parent or legal guardian is located.

Sec. 48222. Attendance in private school.

Children who are being instructed in a private full-time day school by persons capable of teaching shall be exempted. Such school shall, except under the circumstances described in Section 30, be taught in the English language and shall offer instruction in the several branches of study required to be taught in the public schools of the state. The attendance of the pupils shall be kept by private school authorities in a register, and the record of attendance shall indicate clearly every absence of the pupil from school for a half day or more during each day that school is maintained during the year.

Exemptions under this section shall be valid only after verification by the attendance supervisor of the district,

or other person designated by the board of education, that the private school has complied with the provisions of Section 33190 requiring the annual filing by the owner or other head of a private school of an affidavit or statement of prescribed information with the Superintendent of Public Instruction. The verification required by this section shall not be construed as an evaluation, recognition, approval, or endorsement of any private school or course.

Sec. 48224. Instruction by tutor.

Children not attending a private, full-time, day school and who are being instructed in study and recitation for at least three hours a day for 175 days each calendar year by a private tutor or other person in the several branches of study required to be taught in the public schools of this state and in the English language shall be exempted. The tutor or other person shall hold a valid state credential for the grade taught. The instruction shall be offered between the hours of 8 o'clock a.m. and 4 o'clock p.m.

COLORADO

Sec. 22-33-104. Compulsory school attendance.

(1) Every child who attained the age of seven years and is under the age of sixteen years, except as provided by this section, shall attend public school for at least one hundred seventy-two days during each school year, or for the specified number of days in a pilot program which has been approved by the state board under section 22-50-103 (2).

(2) The provisions of subsection (1) of this section shall not apply to a child:

(a) Who is temporarily ill or injured or whose absence is approved by the administrator of the school of attendance;

(b) Who attends, for the same number of days, an independent or parochial school which provides a basic academic education comparable to that provided in the public schools of the state;

(c) Who is absent for an extended period due to physical, mental, or emotional disability;

(d) Who has been suspended, expelled, or denied admission in accordance with the provisions of this article;

(e) To whom a current age and school certificate or work permit has been issued pursuant to the "Colorado Youth Employment Opportunity Act of 1971";

(f) Who is in the custody of a court or law enforcement authorities;

(g) Who is pursuing a work-study program under the supervision of a public school;

(h) Who has graduated from the twelfth grade; or

(i) Who is being instructed at home by a teacher certified pursuant to articles 60 and 61 of this title, or under an established system of home study approved by the state board.

CONNECTICUT

Sec. 10-184. Duties of parents.

The parents and those who have the care of children shall bring them up in some lawful and honest employment and instruct them or cause them to be instructed in reading, writing, spelling, English grammar, geography, arithmetic and United States history and in citizenship, including a study of the town, state and federal governments. Each parent or other person having control of a child seven years of age and over and under sixteen years of age shall cause such child to attend a public day school regularly during the hours and terms the public school in the district wherein such child resides is in session, or while the school is in session in which provision for the instruction of such child is made according to law, unless the parent or person having control of such child is able to show that the child is elsewhere receiving equivalent instruction in the studies taught in the public schools.

DELAWARE

Sec. 2702. Public school compulsory attendance requirements.

(a) Every parent, guardian or other person in the State having control of a child between the ages of 6 and 16 shall send such child to a free public school, in the district of the residence of the parents, except as determined in accordance with Chapter 6 of this title, and shall send him to that school each day of the minimum school term of 180 days beginning the first day of the school year in the calendar year in which the child reaches the age of 6, unless the local school authorities determine that such beginning is not in the best interest of the child. In the event of parental objections to a decision of the local school authorities, an appeal may be made to the State Board of Education whose decision shall be final.

Sec. 2703. Private school attendance or other educational instruction.

(a) Section 2702 of this title shall not apply if it can be shown, and witnessed by written endorsement, to the satisfaction of the superintendent of school districts, to the satisfaction of an official designated by the State Board of Education, and by a written examination, that a child is elsewhere receiving regular and thorough instruction in the subjects prescribed for the public schools of the State, in a manner suitable to children of the same age and stage of advancement.

DISTRICT OF COLUMBIA

Sec. 31-401. Regular school instruction required.

Every parent, guardian, or other person residing permanently or temporarily in the District of Columbia who has custody or control of a child between the ages of 7 and 16 years shall cause said child to be regularly instructed in a public school or in a private or parochial school or instructed privately during the period of each year in which the public schools of the District of Columbia are in session: Provided, that instruction given in such private or parochial school, or privately, is deemed equivalent by the Board of Education to the instruction given in the public school.

Sec. 31-405. Daily record of attendance.

An accurate daily record of the attendance of all children between the ages of 7 and 16 years shall be kept by the teachers of every public, private, or parochial school and by every teacher giving instruction privately. Such record shall at all times be open to the school-attendance officers or other persons authorized to enforce Sections 31-401 to 31-410, who may inspect and copy the same.

FLORIDA

Sec. 232.01. Regular school attendance required between ages of 7 and 16; permitted at age of 6; exceptions.

(1) (a) All children who have attained the age of 7 years or who will have attained the age of 7 years by February 1 of any school year or who are older than 7 years of age but who have not attained the age of 16 years, except as hereinafter provided, are required to attend school regularly during the entire school term.

Sec. 232.02. Regular school attendance.

Regular attendance is the actual attendance of a pupil during the school day as defined by law and regulations of the state board. Regular attendance within the intent of Sec. 232.01 may be achieved by attendance at:

(1) A public school supported by public funds;
(2) A parochial or denominational school;
(3) A private school supported in whole or in part by tuition charges or by endowments or gifts; and
(4) At home with a private tutor who meets all requirements prescribed by law and regulations of the state board for private tutors.

GEORGIA

Sec. 20-2-690. "Educational entities" listed; requirements for private schools and home study programs.

(a) This subpart recognizes the existence of public schools, private schools, and home study programs as educational entities.

(b) As used in this subpart, the term "private school" means an institution meeting the following criteria or requirements:

(1) The primary purpose of the institution is to provide education or, if the primary purpose of the institution is religious in nature, the institution shall provide the basic academic educational program specified in paragraph (4) of this subsection:

(2) The institution is privately controlled and operates on a continuing basis;

(3) The institution provides instruction each 12 months for the equivalent of 180 school days of education with each school day consisting of at least four and one-half school hours;

(4) The institution provides a basic academic educational program which includes, but is not limited to, reading, language arts, mathematics, social studies, and science;

(5) Within 30 days after the beginning of each school year, it shall be the duty of the administrator of each private school to provide to the superintendent of schools of each local public school district which has residents enrolled in the private school a list of the name, age, and residence of each resident so enrolled. At the end of each school month, it shall be the duty of the administrator of each private school to notify the superintendent of each local public school district of the name, age, and residence of each student residing in the public school district who

enrolls or terminates enrollment at the private school during the immediately preceding school month. Enrollment records and reports shall not be used for any purpose except providing necessary enrollment information, except with the permission of the parent or guardian of a child or pursuant to the subpoena of a court of competent jurisdiction; and

(6) Any building used by the institution for private school purposes meets all health and safety standards established under state law and local ordinances.

(c) Parents or guardians may teach their children at home in a home study program which meets the following requirements:

(1) The parent, parents, or guardian must submit within 30 days after the establishment of a home study program and by September 1 annually thereafter a declaration of intent to utilize a home study program to the superintendent of schools of the local school district in which the home study program is located;

(2) The declaration shall include a list of the names and ages of the students who are enrolled in the home study program, the address where the home study program is located, and a statement of the 12 month period that is to be considered the school year for that home study program. Enrollment records and reports shall not be used for any purpose except providing necessary enrollment information, except with the permission of the parent or guardian of a child or pursuant to the subpoena of a court of competent jurisdiction;

(3) Parents or guardians may teach only their own children in the home study program provided the teaching parent or guardian possesses at least a high school diploma or the equivalent GED certificate, but the parents or guardians may employ a tutor who holds at least a baccalaureate college degree to teach such children;

(4) The home study program shall provide a basic academic educational program which includes, but is not limited to, reading, language arts, mathematics, social studies, and science;

(5) The home study program must provide instruction each 12 months to home study students equivalent to 180 school days of education with each school day consisting of at least four and one-half school hours unless the child is physically unable to comply with the above rule;

(6) Attendance records for the home study program shall be kept and shall be submitted at the end of each month to the superintendent of schools of the local school district in which the home study program is located. Attendance records and reports shall not be used for any purpose

except providing necessary attendance information, except with the permission of the parent or guardian of a child or pursuant to the subpoena of a court of competent jurisdiction;

(7) Students in home study programs shall be subject to an appropriate nationally standardized testing program administered in consultation with a person trained in the administration and interpretation of norm reference tests to evaluate their educational progress at least every three years beginning at the end of the third grade and records of such tests and scores shall be retained but shall not be required to be submitted to public educational authorities; and

(8) The home study program instructor shall write an annual progress assessment report which shall include the instructor's individualized assessment of the student's academic progress in each of the subject areas specified in paragraph (4) of this subsection, and such progress reports shall be retained by the parent, parents, or guardian of children in the home study program for a period of at least three years.

(d) Any person who operates a private school without complying with the requirements of subsection (b) if this Code section or any person who operates a home study program without complying with the requirements of subsection (c) of this Code section shall be guilty of a misdemeanor and upon conviction thereof, shall be punished by a fine not to exceed $100.00.

(e) The State Board of Education shall devise, adopt, and make available to local superintendents of schools, who shall in turn make available to administrators of private schools and parents or guardians with children in home study programs such printed forms and procedures as may be reasonably necessary to carry out efficiently the reporting provisions of this Code section, but such printed forms and procedures shall not be inconsistent with or exceed the requirements of this Code section.

Sec. 20-2-690.1. Mandatory education for children between ages 7 and 16.

(a) Every parent, guardian, or other person residing within this state having control or charge of any child or children between their seventh and sixteenth birthdays shall enroll and send such child or children to a public school, a private school, or a home study program that meets the requirements for a public school, a private school, or a home study program; and such child shall be responsible for enrolling in and attending a public school, a private school, or

a home study program that meets the requirements for a public school, a private school, or a home study program under such penalty for noncompliance with this subsection as is provided in Chapter II of Title 15, unless the child's failure to enroll and attend is caused by the child's parent, guardian, or other person, in which case the parent, guardian, or other person alone shall be responsible; provided, however, that tests and physical exams for military service and the National Guard and such other approved absences shall be excused absences.

(b) Any parent, guardian, or other person residing in this state who has control or charge of a child or children and who shall violate this Code section shall be guilty of a misdemeanor and, upon conviction thereof, shall be subject to a fine not to exceed $100.00 or imprisonment not to exceed 30 days, or both, at the discretion of the court having jurisdiction. Each day's absence from school in violation of this part shall constitute a separate offense.

(c) Local school superintendents in the case of private schools or home study programs and visiting teachers and attendance officers in the case of public schools shall have authority and it shall be their duty to file proceedings in court to enforce this subpart.

HAWAII

Sec. 298-9. Attendance compulsory; exceptions.

Unless excluded from school or excepted from attendance, all children who will have arrived at the age of at least six years, and who will not have arrived at the age of eighteen years, on or before December 31 of any school year, shall attend either a public or private school for and during such school year, and any parent, guardian, and aother person having the responsibility for or care of a child whose attendance at school is obligatory shall send the child to some such school. Such attendance shall not be compulsory in the following cases:

(1) Where the child is physically or mentally unable to attend school (deafness and blindness excepted) of which fact the certificate of a duly licensed physician shall be sufficient evidence;

(2) Where a competent person is employed as a tutor in the family wherein the child resides and proper instruction is thereby imparted as approved by the superintendent....

IDAHO

Sec. 33-202. School attendance compulsory.

The parent or guardian of any child resident in this state who has attained the age of seven (7) years at the time of the commencement of school in his district, but not the age of sixteen (16) years, shall cause the child to be instructed in subjects commonly and usually taught in the public schools of the state of Idaho. Unless the child is otherwise comparably instructed, as may be determined by the board of trustees of the school district in which the child resides, the parent or guardian shall cause the child to attend a public, private or parochial school during a period in each year equal to that in which the public schools are in session; there to conform to the attendance policies and regulations established by the board of trustees, or other governing body, operating the school attended.

ILLINOIS

Sec. 26-1. Compulsory school age--Exemptions.

Whoever has custody or control of any child between the ages of 7 and 16 years shall cause such child to attend some public school in the district wherein the child resides the entire time it is in session during the regular school term, except as provided in Section 10-19-1; Provided, that the following children shall not be required to attend the public schools.

1. Any child attending a private or a parochial school where children are taught the branches of education taught to children of corresponding age and grade in the public schools, and where the instruction of the child in the branches of education is in the English language...

INDIANA

Sec. 20-8.1-3-17 [28-5321]. Compulsory attendance.

Subject to the specific exceptions under this chapter, each child shall attend either a public school which the child is entitled to attend under IC 20-8.1-6.1 or some other school which is taught in the English language. A child is bound by the requirements of this chapter from the earlier of the date on which he officially enrolls in a school or he reaches the age of seven [7], until the date on which he reaches the age of sixteen [16]. A child less than seven [7] years of age who is withdrawn from school is not subject to the requirements of this chapter until

he is re-enrolled or reaches age seven [7]. A child for whom education is compulsory under this section shall attend school each year:

(1) For the number of days public schools are in session in the school corporation in which the child is enrolled in Indiana; or

(2) If the child is enrolled outside Indiana, for the number of days the public schools are in session where the child is enrolled.

Sec. 20-8.1-3-34 [28-5338]. Compulsory attendance for full term.

It is unlawful for a parent to fail, neglect or refuse to send his child to a public school for the full term as required under this chapter unless the child is being provided with instruction equivalent to that given in the public schools...

IOWA

Sec. 299.1. Attendance requirement.

Any person having control of any child over seven and under sixteen years of age, in proper physical and mental condition to attend school, shall cause said child to attend some public or private school for at least 120 days in each school year, commencing with the first week of school after the first day of September, unless the board of school directors shall determine upon a later date, which date shall not be later than the first Monday in December.

The board may, by resolution, require attendance for the entire time when the schools are in session in any school year.

In lieu of such attendance such child may attend upon equivalent instruction by a certified teacher elsewhere than at school.

Sec. 299.4. Reports as to private instruction.

Any person having the control of any child over seven and under sixteen years of age, who shall place such child under private instruction, not in a regularly conducted school, upon receiving notice from the secretary of the school district, shall furnish a certificate stating the name and age of such child, the period of time during which such child has been under said private instruction, the details of such instruction, and the name of the instructor.

KANSAS

Sec. 72-1111. Compulsory school attendance; exemptions.

(a) Every parent, guardian or other person in the state of Kansas, having control over or charge of any child who has reached the age of seven years and is under the age of sixteen years, shall require such child to attend continuously each school year (1) a public school for the duration of the school term provided for in K.S.A. 72-1106, or (2) a private, denominational or parochial school taught by a competent instructor for a period of time which is substantially equivalent to the period of time public school is maintained in the school district in which the private, denominational or parochial school is located...

(d) When a recognized church or religious denomination that objects to a regular public high school education provides, offers and teaches, either individually or in cooperation with another recognized church or religious denomination, a regularly supervised program of instruction which is approved by the state board of education for children of compulsory school attendance age who have successfully completed the eighth grade, participation in such a program of instruction by children who have successfully completed the eighth grade and whose parents or guardians are members of the sponsoring church or religious denomination shall be regarded as acceptable school attendance within the meaning of this act. Approval of such programs shall be granted by the state board, for two year periods, upon application from recognized churches and religious denominations, under the following conditions: (1) Each participating child shall be engaged, during each day on which attendance is legally required in the public schools in the school district in which the child resides, in at least five hours of learning activities appropriate to the adult occupation that the child is likely to assume in later years;

(2) Acceptable learning activities, for the purposes of this subsection, shall include, parent (or guardian)-supervised projects in agriculture and home-making, work-study programs in cooperation with local business and industry, and correspondence courses from schools accredited by the national home study council, recognized by the United States office of education as the competent accrediting agency for private home study schools;

(3) At least fifteen hours per week of classroom work shall be provided, at which time students shall be required to file written reports of the learning activities they have pursued since the time of the last class meeting, indicating the length of time spent on each one, and the teacher shall

examine and evaluate such reports, approve plans for further learning activities, and provide necessary assignments and instruction;

(4) Regular attendance reports shall be filed as required by law, and students shall be reported as absent for each school day on which they have not completed the prescribed minimum of five hours of learning activities;

(5) The teacher shall keep complete records concerning instruction provided, assignments made, and work pursued by the students, and these records shall be filed on the first day of each month with the state board of education, and the board of education of the school district in which such child resides;

(6) The teacher shall be capable of performing competently the functions entrusted to the teacher;

(7) In applying for approval under this subsection a recognized church or religious denomination shall certify its objection to a regular public high school education and shall specify, in such detail as the state board of education may reasonably require, the program of instruction that it intends to provide and no such program shall be approved unless it fully complies with standards therefor which shall be specified by the state board of education;

(8) If the sponsors of an instructional program approved under this subsection fail to comply at any time with the provisions of this subsection, the state board of education shall, after a written warning has been served and a period of three weeks allowed for compliance, rescind approval aof the programs, even though the two year approval period has not elapsed, and thereupon children attending such program shall be admitted to a high school of the school district.

KENTUCKY

Sec. 159.010. Parent or custodian to send child to school-age limits for compulsory attendance. Written permission for withdrawal before eighteenth birthday.

(1) Except as aprovided in KRS 159.030, each parent, guardian or other person residing in the state and having in custody or charge any child between the ages of six (6) and sixteen (16) shall send the child to a regular public day school for the full term that the public school of the district in which the child resides is in session, or to

the public school that the board of education of the district makes provision for the child to attend. A child's age is between six (6) and sixteen (16) when the child has reached his sixth birthday and has not passed his sixteenth birthday.

Sec. 159.030. Exemptions from compulsory attendance.

(1) The board of education of the district in which the child resides shall exempt from the requirement of attendance upon a regular public day school every child of compulsory school age:

(a) Who is a graduate from an accredited or an approved four (4) year high school; or

(b) Who is enrolled and in regular attendance in a private, parochial, or church regular day school. It shall be the duty of each private, parochial or church regular day school to notify the local board of education of those students in attendance at the school. If a school declines, for any reason, to notify the local board of education of those students in attendance, it shall so notify each student's parent or legal guardian in writing, and it shall then be the duty of the parent or legal guardian to give proper notice to the local board of education; or

(c) Who is less than seven (7) years old and is enrolled and in regular attendance in a private kindergarten-nursey school; or

(d) Whose physical or mental condition prevents or renders inadvisable attendance at school or application to study; or

(e) Who is enrolled and in regular attendance in private, parochial, or church school programs for exceptional children; or]

(f) Who is enrolled and in regular attendance in a state supported program for exceptional children;

(g) For purposes of this section, "church school" shall mean a school operated as a ministry of a local church, group of churches, denomination, or association of churches on a nonprofit basis.

LOUISIANA

Title 17, Sec. 221. Age of compulsory attendance; duty of parents.

A. Every parent, tutor, or other person residing within the state of Louisiana, having control or charge of any child between the ages of seven and fifteen, both inclusive, i.e., from the seventh to the sixteenth birthday, shall send such child to a public or private day school, provided that any child below the age of seven who legally enrolls in school shall also be subject to the provisions of this Subpart shall also assure the attendance of such child in regularly assigned classes during regular school hours established by the school board.

Title 17, Sec. 236. Definition of a school.

For the purpose of this Chapter, a school is defined as an institution for the teaching of children, consisting of an adequate physical plant, whether owned or leased, instructional staff members, and students. For such an institution to be classified as a school, within the meaning of this Chapter, instructional staff members shall meet the following requirements: if a public day school or a nonpublic school which receives local, state, or federal funds or support, directly or indirectly, they shall be certified in accordance with rules established by the Board of Elementary and Secondary Education; if a nonpublic school which receives no local, state, or federal funds or support, directly or indirectly, they shall meet such requirements as may be prescribed by the school or the church. In addition, any such institution, to be classified as a school, shall operate a minimum session of not less than one hundred eighty days. Solely for purposes of compulsory attendance in a nonpublic school, a child who participates in a home study program approved by the Board of Elementary and Secondary Education shall be considered in attendance at a day school; a home study program shall be approved if it offers a sustained curriculum of a quality at least equal to that offered by public schools at the same grade level.

MAINE

Title 20-A, Sec. 5001. Compulsory attendance.

The following provisions apply to compulsory attendance.

1. Requirement. Persons 7 years of age or older and under 17 years shall attend a public school during its regular annual session.

2. Exceptions. Compulsory attendance shall not apply to the following.

A. Persons who graduate from high school before their 17th birthday;

B. Persons who have:
(1) Reached the age of 15 or completed the 9th grade;
(2) Permission to leave school from their parent or legal guardian;
(3) Permission to leave school from the school board or its designee; and
(4) Agreed in writing with their parent or legal guardian and the school board or its designee to meet annually until their 17th birthday to review their educational needs;

2. Equivalent instruction is as follows:
(1) A child shall be excused from attending a public day school if he obtains equivalent instruction in a private school or in any other manner arranged for by the school committee or the board of directors and if the equivalent instruction is approved by the commissioner; and
(2) If any request to be excused is denied by a local school committee or board of directors, an appeal may be filed with the commissioner. The commissioner shall review the request to be excused to determine whether the local school committee or board of directors has been correct in its finding that no equivalent instruction is available to the child, he shall approve the request to be excused; or

Children shall be credited with attendance at a private school only if a certificate showing their names, residence and attendance at the school, signed by the person or persons in charge of the school, has been filed with the school officials of the administrative unit in which the children reside.

MARYLAND

Sec. 7-301. Compulsory attendance.

Who must attend.--Each child who resides in this State and is 6 years old or older and under 16 shall attend a public school regularly during the entire school year unless the child is otherwise receiving regular, thorough instruction during the school year in the studies usually taught in the public schools to children of the same age.

MASSACHUSETTS

Chapter 76, Sec. 1. School Attendance Regulated.

Every child between the minimum and maximum ages established for school attendance by the board of education, except a child between fourteen and sixteen who meets the requirements for the completion of the sixth grade of the public school as established by said board and who holds a permit for employment in private domestic service or service on a farm, under section eighty-six of chapter one hundred and forty-nine, and is regularly employed thereunder for at least six hours per day, or a child between fourteen and sixteen who meets said requirements and has the written permission of the superintendent of schools of the town where he resides to engage in non-wage-earning employment at home, or a child over fourteen who holds a permit for employment in a cooperating employment, as provided in said section eighty-six, shall, subject to section fifteen, attend a public day school in said town, or some other day school approved by the school committee, during the number of days required by the board of education in each school year, unless the child attends school in another town, for said number of days, under sections six to twelve, inclusive, or attends an experimental school project established under an experimental school plan, as provided in section one G of chapter fifteen, but such attendance shall not be required of a child whose physical or mental condition is such as to render attendance inexpedient or impracticable subject to the provisions of section three of chapter seventy-one B or of a child granted an employment permit by the superintendent of schools when such superintendent determines that the welfare of such child will be better served through the granting of such permit, or of a child who is being otherwise instructed in a manner approved in advance by the superintendent or the school committee.

MICHIGAN

Sec. 15.41561. Compulsory education. Sec. 1561.

Except as aprovided in subsections (2) and (3), every parent, guardian, or other person in this state having control and charge of a child from the age of 6 to the child's sixteenth birthday, shall send that child to the public schools during the entire school year...

Children not required to attend school.

A child shall not be required to attend the public schools in the following cases:

(a) A child who is attending regularly and is being taught in a state approved nonpublic school, which teaches subjects comparable to those taught in the public schools to children of corresponding age and grade, as determined by the course of study for the public schools of the district within which the nonpublic school is located...

MINNESOTA

Sec. 120.10. Compulsory attendance.

Subdivision 1. Ages and term. Every child between seven and 16 years of age shall attend a public school, or a private school, during the entire time that the school is in session during any school year. No child shall be required to attend a public school more than 200 days or their equivalent, during any school year.

Subd. 2. School. A school, to satisfy the requirements of compulsory attendance, must be one: (1) in which all the common branches are taught in the English language, from textbooks written in the English language, and taught by teachers whose qualifications are essentially equivalent to the minimum standards for public school teachers of the same grades or subjects and (2) which is in session each school year for at least 175 days aor their equivalent; provided that in a program of instruction for children of limited English proficiency, instruction and textbooks may be in the primary language of the children of limited English proficiency enrolled therein. Any other language may be taught as provided in section 126.07. As used in this subdivision, the terms "children of limited English proficiency" and "primary language" shall have the meanings ascribed to them in section 126.262.

Subd. 3. Legitimate exemptions. A parent, guardian, or other person having control of a child may apply to a school district to have the child excused from attendance for the whole or any part of the time school is in session during any school year. Application may be made to any member of the board, a truant officer, a principal, or the superintendent. The school board of the district in which the child resides may approve the application upon the following being demonstrated to the satisfaction of that board:

(1) That the child's bodily or mental condition is such as to prevent his attendance at school or application to study for the period required; or

(2) That the child has already completed the studies ordinarily required in the tenth grade; or

(3) That it is the wish of the parent, guardian, or other person having control of the child, that he attend for a period or periods not exceeding in the aggregate three hours in any week, a school for religious instruction conducted and maintained by some church, or association of churches, or any Sunday school association incorporated under the laws of this state, or any auxiliary thereof. This school for religious instruction shall be conducted and maintained in a place other than a public school building, and in no event in whole or in part, shall be conducted and maintained at public expense. However, a child may be absent from school on such days as the child attends upon instruction according to the ordinances of some church.

MISSISSIPPI

Sec. 37-13-91. Compulsory school attendance.

(1) This section shall be referred to as the "Mississippi Compulsory School Attendance Law."

(2) The following terms as used in this section are defined as follows:

(a) "Parent" means the father or mother to whom a child has been born, or the father or mother by whom the child has been legally adopted.

(b) "Guardian" means a guardian of the person of a child, other than a parent, who is legally appointed by a court of competent jurisdiction.

(c) "Custodian" means any person having the present care or custody of a child, other than a parent or guardian of said child.

(d) "School day" means not less than five (5) and not more than eight (8) hours of actual teaching in which both teachers and pupils are in regular attendance for scheduled schoolwork.

(e) "School" means any public school in this state or any nonpublic school in this state which is in session each school year for at least one hundred fifty-five (155) school days, except that the "nonpublic" school term shall be the number of days that each school shall require for promotion from grade to grade.

(f) "Compulsory-school-age child" means a child who has attained or will attain the age of six (6) years on or before September 1 of the calendar year and who has not attained the age of fourteen (14) years on or before September 1 of the calendar year. Provided, however, that to allow for an orderly implementation of this subsection, this subsection shall take effect in a staggered fashion:

(i) Beginning with the school year 1983-1984, every child who has attained the age of six (6) years but has not attained the age of eight (8) years on or before September 1, 1983, shall attend school.

(ii) Each school year after 1983-1984, one (1) year of age shall be added to the age of pupils who shall be required to attend school as hereinabove provided, so that by the school year 1989-1990, every child who shall be between the ages specified in this subsection shall attend school as hereinabove required.

(g) "School attendance officer" means any full-time employee of the youth court or family court assigned to monitor compulsory public school attendance, to investigate nonattendance of compulsory-school-age children and to counsel all school-age children to attend school. Such officer shall possess the qualifications required for those persons employed by the Mississippi Department of Youth Services and who are assigned duties and responsibilities primarily related to youth counseling, probation and aftercare programs.

(h) "Appropriate school official" means the superintendent of the school district or his designee or, in the case of a nonpublic school, the principal or the headmaster.

(i) "Nonpublic school" for the purposes of this section shall mean an institution for the teaching of children, consisting of a physical plant, whether owned or leased, including a home, instructional staff members and students, and which is in session each year. This definition shall include, but not be limited to, Private, church, parochial and home instruction programs.

(3) A parent, guardian or custodian of a compulsory-school-age child in this state shall cause such child to enroll in and attend a public school or legitimate nonpublic school for the period of time that such child is of compulsory school age, except under the following circumstances:

(a) When a compulsory-school-age child is physically, mentally or emotionally incapable of attending school as determined by the appropriate school official based upon sufficient medical documentation.

(b) When a compulsory-school-age child is enrolled in and pursuing a course of special education, remedial education or education for handicapped or physically or mentally disadvantaged children.

(c) When a compulsory-school-age child is being educated in a legitimate home instruction program.

The parent, guardian or custodian of a compulsory-school-age child described in item (a), (b), or (c) of this subsection, or the parent, guardian or custodian of a compulsory-school-age child attending any nonpublic school, or the appropriate school official for any or all such children attending such school shall complete a "certificate of enrollment" in order to facilitate the administration of this section.

The form of the certificate of enrollment shall be prepared by the state board of education and shall be designed to obtain the following information only:

(i) The name, address and date of birth of the compulsory-school-age child;

(ii) The name and address of the parent, guardian or custodian of the compulsory-school-age child;

(iii) A simple description of the type of education the compulsory-school-age child is receiving and, if such child is enrolled in a nonpublic school, the name and address of such school; and

(iv) The signature of the parent, guardian or custodian of the compulsory-school-age child or, for any or all compulsory-school-age child or children attending a nonpublic school, the signature of the appropriate school official and the date signed.

The state board of education shall furnish a sufficient number of such certificates of enrollment to each school attendance officer in the state.

The certificate of enrollment shall be returned to the school attendance officer for the youth court or family court where such child resides on or before September 15 of each year. Any parent, guardian or custodian found by the school

attendance officer to be in noncompliance with this section shall, after written notice of such noncompliance by the school attendance officer, comply with this subsection within fifteen (15) days after such notice or be in violation of this section.

For the purposes of this subsection, a legitimate non-public school or legitimate home instruction program shall be those not operated or instituted for the purpose of avoiding or circumventing the compulsory attendance law...

(9) Notwithstanding any provision or implication herein to the contrary, it is not the intention of this section to impair the primary right and the obligation of the parent or parents, or person or persons in loco parentis to a child, to choose the proper education and training for such child, and nothing in this section shall ever be construed to grant, by implication or otherwise, to the State of Mississippi, any of its officers, agencies or subdivisions any right or authority to control, manage, supervise or make any suggestion as to the control, management or supervision of any private or parochial school or institution for the education or training of children, of any kind whatsoever that is not a public school according to the laws of this state; and this section shall never be construed so as to grant, by implication or otherwise, any right or authority to any state agency or other entity to control, manage, supervise, provide for or affect the operation, management, program, curriculum, admissions policy or discipline of any such school or home instruction program.

MISSOURI

Sec. 167.031. School attendance compulsory, who may be excused.

Every parent, guardian or other person in this state having charge, control or custody of a child between the ages of seven and sixteen years shall cause the child to attend regularly some day school, public, private, parochial or parish, not less than the entire school term of the school which the child attends or shall provide the child at home with regular daily instructions during the usual school hours which shall, in the judgment of a court of competent jurisdiction, be at least substantially equivalent to the instruction given children of like age in the day schools in the locality in which the child resides; except that

(1) A child who, to the satisfaction of the superintendent of schools of the district in which he resides, or if there is no superintendent then the chief school officer,

is determined to be mentally or physically incapacitated may be excused from attendance at school for the full time required, or any part thereof; or

(2) A child between fourteen and sixteen years of age may be excused from attendance at school for the full time required, or any part thereof, by the superintendent of schools of the district, or if there is none then by a court of competent jurisdiction, when legal employment has been obtained by the child and found to be desirable, and after the parents or guardian of the child have been advised of the pending action.

MONTANA

Sec. 20-5-102. Compulsory enrollment and excuses.

(1) Except as aprovided in subsection (2), any parent, guardian, or other person who is responsible for the care of any child who is 7 years of age or older prior to the first day of school in any school fiscal year shall cause the child to be instructed in the program prescribed by the board of public education pursuant to 20-7-111 until the later of the following dates:

(a) the child's 16th birthday;

(b) the date of completion of the work of the 8th grade;

(2) Such parent, guardian, or other person shall enroll the child in the school assigned by the trustees of the district within the first week of the school term or when he establishes residence in the district unless the child is:

(a) enrolled in a school of another district or state under any of the tuition provisions of this title;

(b) provided with supervised correspondence study or supervised home study under the transportation provisions of this title;

(c) excused from enrollment in a school of the district when it is shown that his bodily or mental condition does not permit his attendance and the child cannot be instructed under the special education provisions of this title;

(d) excused from compulsory school attendance upon a determination by a district judge that such attendance is not in the best interest of the child;

(e) excused by the board of trustees upon a determination that such attendance by a child who has attained the age of 16 is not in the best interest of the child and the school; or

(f) enrolled in a nonpublic or home school that complies with the provisions of 20-5-109. For the purposes of this subsection (f), a home school is the instruction by a parent of his child, stepchild, or ward in his residence and a nonpublic school includes a parochial, church, religious, or private school.

Sec. 20-5-109. Nonpublic school requirements for compulsory enrollment exemption.

To qualify its students for exemption from compulsory enrollment under 20-5-102, a nonpublic or home school shall:

(1) maintain records on pupil attendance and disease immunization and make such records available to the county superintendent of schools on request;

(2) provide at least 180 days of pupil instruction or the equivalent in accordance with 20-1-301 and 20-1-302;

(3) be housed in a building that complies with applicable local health and safety regulations;

(4) provide an organized course of study that includes instruction in the subjects required of public schools as a basic instructional program pursuant to 20-7-111; and

(5) in the case of home schools, notify the county superintendent of schools of the student's attendance at the school.

NEBRASKA

Sec. 79-201. Compulsory education; attendance required; length of school term.

Every person residing in a school district within the State of Nebraska who has legal or actual charge or control of any child, not less than seven nor more than sixteen years of age, shall cause such child to attend regularly the public, private, denominational, or parochial day schools each day that such schools are open and in session except when excused by school authorities, unless such child has been graduated from high school...

NEVADA

Sec. 392.040 Child between 7 and 17 years of age: Attendance in public school.

1. Except as otherwise provided by law, each parent, guardian, or other person in the State of Nevada having control or charge of any child between the ages of 7 and 17 years shall send such child to a public school during all the time such public school is in session in the school district in which such child resides...

Sec. 392.070. Children receiving equivalent, approved instruction exempted from attendance.

Attendance required by the provisions of NRS 392.040 shall be excused when satisfactory written evidence is presented to the board of trustees of the school district in which the child resides that the child is receiving at home or in some other school equivalent instruction of the kind and amount approved by the state board of education.

NEW HAMPSHIRE

Sec. 193:1. Duty of Pupil.

Every child between 6 and 16 years of age shall attend the public school within the district or a public school outside the district to which he is assigned or an approved private school during all the time the public schools are in session, unless he has been excused from attending on the ground that his physical or mental condition is such as to prevent his attendance or to make it undesirable...

NEW JERSEY

Sec. 18A:38-25. Attendance required of children between six and 16; exceptions.

Every parent, guardian or other person having custody and control of a child between the ages of six and 16 years shall cause such child regularly to attend the public schools of the district or a day school in which there is given instruction equivalent to that provided in the public schools for children of similar grades and attainments or to receive equivalent instruction elsewhere than at school.

NEW MEXICO

Sec. 22-1-2. Definitions.

As used in the Public School Code.

A. "state board" means the state board of education;
B. "state superintendent" means the superintendent of public instruction;
C. "department of education" means the state department of public education;
D. "certified school instructor" means any person holding a valid certificate authorizing the person to teach, supervise an instructional program, counsel or provide special instructional services in the public schools of the state;

E. "certified school administrator" means any person holding a valid certificate authorizing the person to administer in the public schools of the state;
F. "certified school personnel" means certified school instructors and certified school administrators;
G. "certificate" means a certificate issued by the state board authorizing a person to teach, supervise an instructional program, counsel, provide special instructional services or administer in the public schools of the state;
H. "chief" or "director" means the director of public school finance unless the context clearly indicates otherwise;
I. "private school" means a school offering programs of instruction not under the control, supervision or management of a local school board exclusive of home instruction offered by the parent, guardian or one having custody of the student;
J. "school district" means an area of land established as a political subdivision of the state for the administration of public schools and segregated geographically for taxation and bonding purposes;
K. "local school board" means the governing body of a school district;
L. "public school" means that part of a school district which is a single attendance center where instruction is offered by a certified school instructor or a group of certified school instructors and is discernible as a building or group of buildings generally recognized as either an elementary, secondary, junior high or high school or any combination thereof;
M. "school year" means the total number of teaching days offered by public schools in a school district during a period of twelve consecutive months;
N. "consolidation" means the combination of part or all of the geographical area of an existing school district with part or all of the geographical area of one or more contiguous existing school districts;
O. "consolidated school district" means a school district created by order of the state board by combining part or all of the geographical area of an existing school district with part or all of the geographical area of one or more contiguous existing school districts;
P. "state institution" means the New Mexico military institute, the New Mexico school for the visually handicapped, the New Mexico school for the deaf,

the New Mexico boys' school, the New Mexico youth diagnostic center, the Los Lunas hospital and training school, the Fort Stanton hospital and training school, the New Mexico state hospital or the Carrie Tingley crippled children's hospital...

Sec. 22-12-2. Compulsory school attendance; responsibility.

A. Any qualified student and any person who because of age is eligible to become a qualified student as defined by the Public School Finance Act [22-8-1 to 22-8-42 NMSA 1978] until attaining the age of majority shall attend a public school, a private school or a state institution.

NEW YORK

Sec. 3204. Instruction required.

1. Place of instruction. A minor required to attend upon instruction by the provisions of part one of this article may attend at a public school or elsewhere. The requirements of this section shall apply to such a minor, irrespective of the place of instruction.

2. Quality and language of instruction; text-books. Instruction may be given only by a competent teacher. In the teaching of the subjects of instruction prescribed by this section, English shall be the language of instruction, and text-books used shall be written in English, except that for a period of three years, which period may be extended by the commissioner with respect to individual pupils, upon application thereof by the appropriate school authorities, to a period not in excess of six years, from the date of enrollment in school, pupils who, by reason of foreign birth or ancestry have limited English proficiency, shall be provided with instructional programs as specified in subdivision two-a of this section and the regulations of the commissioner. The purpose of providing such pupils with instruction shall be to enable them to develop academically while achieving competence in the English language. Instruction given to a minor elsewhere than at a public school shall be at least substantially equivalent to the instruction given to minors of like age and attainments at the public schools of the city or district where the minor resides.

NORTH CAROLINA

Sec. 115C-378. Children between seven and 16 required to attend.

Every parent, guardian or other person in this State having charge or control of a child between the ages of seven and 16 years shall cause such child to attend school continuously for a period equal to the time which the public school to which the child is assigned shall be in session. No person shall encourage, entice or counsel any such child to be unlawfully absent from school.

The principal, superintendent, or teacher who is in charge of such school shall have the right to excuse a child temporarily from attendance on account of sickness or other unavoidable cause which does not constitute unlawful absence as defined by the State Board of Education. The term "school" as used herein is defined to embrace all public schools and such nonpublic schools as have teachers and curricula that are approved by the State Board of Education.

All nonpublic schools receiving and instructing children of a compulsory school age shall be required to keep such records of attendance and render such reports of the attendance of such children and maintain such minimum curriculum standards as are required of public schools; and attendance upon such schools, if the school refuses or neglects to keep such records or to render such reports, shall not be accepted in lieu of attendance upon the public school of the district to which the child shall be assigned: Provided, that instruction in a nonpublic school shall not be regarded as meeting the requirements of the law unless the courses of instruction run concurrently with the term of the public school in the district and extend for at least as long a term...

Sec. 115C-548. Attendance; health and safety regulations.

Each private church school or school of religious charter shall make, and maintain annual attendance and disease immunization records for each pupil enrolled and regularly attending classes. Attendance by a child at any school to which this Part relates and which complies with this Part shall satisfy the requirements of compulsory school attendance: Provided, however, that such school operates on a regular schedule, excluding reasonable holidays and vacations, during at least nine calendar months of the year. Each school shall be subject to reasonable fire, health and safety inspections by State, county and municipal authorities as required by law.

Sec. 115C-549. Standardized testing requirements.

Each private church school or school of religious charter shall administer, at least once in each school year, a nationally standardized test or other nationally standardized equivalent measurement selected by the chief administrative officer of such school, to all students enrolled or regularly attending grades one, two, three, six and nine. The nationally standardized test or other equivalent measurement selected must measure achievement in the areas of English grammar, reading, spelling and mathematics. Each school shall make and maintain records of the results achieved by its students. For one year after the testing, all records shall be made available, subject to the provision of G.S. 115C-196, at the principal office of such school, at all reasonable times, for annual inspection by a duly authorized representative of the State of North Carolina.

Sec. 115C-550. High School competency testing.

To assure that all high school graduates possess those minimum skills and that knowledge thought necessary to function in society, each private church school or school of religious charter shall administer at least once in each school year, a nationally standardized test or other nationally standardized equivalent measure selected by the chief administrative officer of such school, to all students enrolled and regularly attending the eleventh grade. The nationally standardized test or other equivalent measurement selected must measure competencies in the verbal and quantitative areas. Each private church school or school of religious charter shall establish a minimum score which must be attained by a student on the selected test in order to be graduated from high school. For one year after the testing all records shall be made available, subject to the provision of G.S.115C-196, at the principal office of such school, at all reasonable times, for annual inspection by a duly authorized representative of the State of North Carolina.

NORTH DAKOTA

Sec. 15-34.1-01. Compulsory attendance.

Every parent, guardian, or other person who resides within any school district, or who resides upon any government base or installation without any school district, and has control over any educable child of an age of seven years to sixteen years who does not fall under the provisions of sections 15-34.1-02 or 15-34.1-03, shall send or take such child to a public school each year during the entire time such school is in session.

Sec. 15-34.1-03. Compulsory attendance--Exceptions.

The parent, guardian, or other person having control of a child required to attend school by the provisions of this chapter shall be excused by the school board from causing the child to attend school whenever it shall be shown to the satisfaction of the board, subject to appeal as provided by law, that one of the following reasons exists:

1. That the child is in attendance for the same length of time at a parochial or private school approved by the county superintendent of schools and the superintendent of public instruction. No such school shall be approved unless the teachers therein are legally certificated in the state of North Dakota in accordance with section 15-41-25 and chapter 15-36, the subjects offered are in accordance with sections 15-38-07, 15-41-06, and 15-41-24, and such school is in compliance with all municipal and state health, fire, and safety laws...

OHIO

Sec. 3321.04. Compulsory attendance.

Every parent of any child of compulsory school age who is not employed under an age and schooling certificate must send such child to a school or a special education program that conforms to the minimum standards prescribed by the state board of education, for the full time the school or program attended is in session, which shall not be for less than thirty-two weeks per school year. Such attendance must begin within the first week of the school term or program or within one week of the date on which the child begins to reside in the district or within one week after his withdrawal from employment.

For the purpose of operating a school or program on a trimester plan, "full time the school attended is in session," as used in this section means the two trimesters to which the child is assigned by the board of education. For the purpose of operating a school or program on a quarterly plan, "full time the school attended is in session," as used in this section, means the three quarters to which the child is assigned by the board of education. For the purpose of operating a school or program on a pentamester plan, "full time the school is in session," as used in this section, means the four pentamesters to which the child is assigned by the board of education.

Excuses from future attendance at or past absence from school or a special education program may be granted for the causes, by the authorities, and under the following conditions:

(A) The superintendent of schools of the city, exempted village, or county school district in which the child resides may excuse him from attendance for any part of the remainder of the current school year upon satisfactory showing of either of the following facts:

(1) That his bodily or mental condition does not permit his attendance at school or a special education program during such period; this fact is certified in writing by a licensed physician or, in the case of a mental condition, by a licensed physician, a licensed psychologist, licensed school psychologist or a certificated school psychologist; and provision is made for appropriate instruction of the child, in accordance with Chapter 3323. of the Revised Code;

(2) That he is being instructed at home by a person qualified to teach the branches in which instruction is required, and such additional branches, as the advancement and needs of the child may, in the opinion of such superintendent, require. In each such case the issuing superintendent shall file in his office, with a copy of the excuse, papers showing how the inability of the child to attend school or a special education program or the qualifications of the person instructing the child at home were determined. All such excuses shall become void and subject to recall upon the removal of the disability of the child or the cessation of proper home instruction; and thereupon the child or his parents may be proceeded against after due notice whether such excuse be recalled or not...

OKLAHOMA

Title 70, Sec. 10-105. Neglect or refusal to compel child to attend school.

A. It shall be unlawful for a parent, guardian, custodian or other person having control of a child who is over the age of seven (7) years and under the age of eighteen (18) years, and who has not finished four (4) years of high school work, to neglect or refuse to cause or compel such child to attend and comply with the rules of some public, private or other school, unless other means of education are provided for the full term the schools of the district are in session; and it shall be unlawful for any child who is over the age of sixteen (16) years and under the age of eighteen (18) years, and who has not finished four (4) years of high school work, to neglect or refuse to attend and comply with the rules of some public, private or other school, or receive an education by other means for the full term the schools of the district are in session...

OREGON

Sec. 339.010. School attendance required; age limits.

Except as provided in ORS 339.030, all children between the ages of 7 and 18 years who have not completed the 12th grade are required to attend regularly a public full-time school of the school district in which the child resides.

Sec. 339.020. Duty to send children to school.

Except as provided in ORS 339.030, every person having control of any child between the ages of 7 and 18 years who has not completed the 12th grade is required to send such child to and maintain such child in regular attendance at a public full-time school during the entire school term.

Sec. 339.030. Exemptions from compulsory school attendance.

In the following cases, children shall not be required to attend public full-time schools:

(1) Children between the ages of 16 and 18 years who are lawfully employed full time, who are lawfully employed part time and in school part time, who are attending a community college, or are engaged in activities equivalent to the preceding.

(2) Children being taught in a private or parochial school in the courses of study usually taught in grades 1 through 12 in the public schools and in attendance for a period equivalent to that required of children attending public schools.

(3) Children proving to the satisfaction of the district school board that they have acquired equivalent knowledge to that acquired in the courses of study taught in grades 1 through 12 in the public schools.

(4) Upon determination pursuant to criteria of the State Board of Education that a child is suffering from physical or mental illness or disease of such severity as to make his presence in a school facility or his travel to and from such facility impossible or dangerous to his health or the health of others, the public schools shall provide the child either home, hospital, institutional or other regularly scheduled and suitable instruction meeting standards of the State Board of Education unless such child is receiving suitable instruction in a state or regional facility or institution.

(5) Children between the ages of 7 and 10 years whose parents live more than one and one-half miles, and children over 10 years of age whose parents live more than three miles, by the nearest traveled road, from some public school

and for whom the school district does not provide transportation over the distances specified in this subsection.

(6) Children being taught for a period equivalent to that required of children attending public schools by a parent or private teacher the courses of study usually taught in grades 1 through 12 in the public school.

(a) Before the children are taught by a parent or private teacher, the parent or teacher must receive written permission from the executive officer of the resident school district. The permission shall not extend beyond the end of the school year in which permission is granted. If permission is not granted, the person having legal custody of the children may appeal the decision to the school board of the resident district.

(b) Children being taught by a parent or private teacher must be examined in the work covered. Such examinations shall be prepared by the State Board of Education and provided to school districts upon request. If the executive officer of the administrative office determines after examination that the children are not being taught properly, he shall order the person having control of the children to send them to school for the remainder of the school year...

PENNSYLVANIA

Section 13-1327. Compulsory school attendance

Every child of compulsory school age having a legal residence in this Commonwealth, as provided in this article, and every migratory child of compulsory school age, is required to attend a day school in which the subjects and activities prescribed by the standards of the State Board of Education are taught in the English language. In lieu of such school attendance, any child fifteen years of age with the approval of the district superintendent and the approval of the Superintendent of Public Instruction, and any child sixteen years of age with the approval of the district superintendent of schools, may enroll as a day student in a private trade school or in a private business school licensed by the Department of Public Instruction, or in a trade or business school, or department operated by a local school district or districts. Such modified program offered in a public school must meet the standards prescribed by the State Board of Education or the State Board for Vocational Education. Every parent, guardian, or other person having control or charge of any child or children of compulsory school age is required to send such child or children to a day school in which the subjects and activities prescribed by the

standard of the State Board of Education are taught in the English language. Such parent, guardian, or other person having control or charge of any child or children, fifteen or sixteen years of age, in accordance with the provisions of this act, may send such child or children to a private trade school or private business school licensed by the Department of Public Instruction, or to a trade or business school, or department operated by a local school district or districts. Such modified program offered in a public school must meet the standards prescribed by the State Board of Education or the State Board for Vocational Education. Such child or children shall attend such school continuously through the entire term, during which the public schools in their respective districts shall be in session, or in cases of children of migrant laborers during the time the schools are in session in the districts in which such children are temporarily domiciled. The financial responsibility for the education of such children of migrant laborers shall remain with the school district in which such children of migrant laborers are temporarily domiciled; except in the case of special schools or classes conducted by an intermediate unit and approved by the Department of Public Instruction or conducted by the Department of Public Instruction. The certificate of any principal or teacher of a private school, or of any institution for the education of children, in which the subjects and activities prescribed by the standards of the State Board of Education are taught in the English language, setting forth that the work of said school is in compliance with the provisions of this act, shall be sufficient and satisfactory evidence thereof. Regular daily instruction in the English language, for the time herein required, by a properly qualified private tutor, shall be considered as complying with the provisions of this section, if such instruction is satisfactory to the proper district superintendent of schools.

RHODE ISLAND

Sec. 16-19-1. Attendance required--Excuses for nonattendance.

Every child who has completed seven (7) years of life and has not completed sixteen (16) years of life shall regularly attend some public day school during all the days and hours that the public schools are in session in the city or town wherein the educational facilities are approved by the school committee of the city or town wherein the child resides; and every person having under his control a child as above described in this section shall cause such child to

attend school as required by the above stated provisions of this section, and for every neglect of such duty the person having control of such child shall be fined not exceeding twenty dollars ($20.00); provided, that if the person so charged shall prove or shall present a certificate made by or under the direction of the school committee of the city or town wherein he resides, setting forth that the child has attended for the required period of time a private day school or received instruction approved by the school committee of the city or town where said private school was located or where said private instruction was given; or that the physical or mental condition of the child was such as to render his attendance at school inexpedient or impracticable; or that the child was excluded from school by virtue of some general law or regulation--then such attendance shall not be obligatory nor shall such penalty be incurred; but nothing in this section shall be construed to allow the absence or irregular attendance of any child who is enrolled as a member of any school, or of any child sent to school by the person having control of such child.

Sec. 16-19-2. Approval of private schools -- Requirements -- Review.

For the purposes of this chapter the school committee shall approve a private school or private instruction only when it complies with the following requirements, namely: That the period of attendance of the pupils in such school or on such private instruction is substantially equal to that required by law in public schools; that registers are kept and returned to the school committee, the superintendent of schools, truant officers and the department of education in relation to the attendance of pupils, are made the same as by the public schools; that reading, writing, geography, arithmetic, the history of the United States, the history of Rhode Island, and the principles of American government shall be taught in the English language substantially to the same extent as such subjects are required to be taught in the public schools, and that the teaching of the English language and of other subjects indicated herein shall be thorough and efficient; provided, however, that nothing herein contained shall be construed or operate to deny the right to teach in such private schools or on such private instructions any of said subjects or any other subject in any other language in addition to the teaching in English as prescribed herein; provided, further, that any interested person resident in any city or town aggrieved by the action of the school committee of such city or town either in approving or refusing to approve such private school or

such private instruction, may appeal therefrom to the department of education. The department of education, after notice to the parties interested of the time and place of hearing, shall examine and decide the same without cost to the parties. The decision of the board of regents for education shall be final.

SOUTH CAROLINA

Sec. 59-65-10. Responsibility of parent or guardian.

All parents or guardians shall cause their children or wards who are in the age group of seven to sixteen years, inclusive, to regularly attend a public or private school of this State which has been approved by the State Board of Education or a member school of the South Carolina Independent Schools' Association or some similar organization, or a parochial or denominational school, or other programs which have been approved by the State Board of Education.

Sec. 59-65-40. Instruction at place other than school.

Instruction during the school term at a place other than a school may be substituted for school attendance; provided, such instruction is approved by the State Board of Education as substantially equivalent to instruction given to children of like ages in the public or private schools where such children reside.

SOUTH DAKOTA

Sec. 13-27-1. Responsibility of person controlling child--Ages of compulsory attendance--Entire school term.

Every person having under his control a child of the age of seven years and not exceeding the age of sixteen years, shall annually cause such child to regularly attend some public or nonpublic elementary school for the entire term during which the public school in the district in which such person resides, or the school to which such child is assigned to attend, is in session, until the child shall have completed the first eight grades, or shall have reached the age of sixteen years, unless excused as hereinafter provided.

Any child under age seven enrolled in any elementary school shall be subject to the compulsory attendance statutes of this state.

Sec. 13-27-3. Child excused if provided competent instruction --Application--Restrictions--Testing--Visitation.

A child shall be excused from school attendance, pursuant to Sec. 13-27-2, because the child is otherwise provided with competent alternative instruction for an equivalent period of time, as in the public schools, in the basic skills of language arts and mathematics. The parent or guardian of the child shall identify in the application the place where the child shall be instructed and the individual or individuals who will instruct the child. The individuals are not required to be certified but the state superintendent of elementary and secondary education may investigate and determine if the instruction is being provided by a competent person. Failure to provide instruction by a competent person shall be grounds for the school board, upon thirty days notice, to revoke the excuse from school attendance. No individual may instruct more than twenty-two children. All instructions shall be given so as to lead to a mastery of the English language. The child shall annually take a nationally standardized achievement test of the basic skills. The test shall be the same test designated to be used in the public school district where the child is instructed and may be monitored by a designee from the local school district where the child is instructed. The test shall be provided by the school district where the child is instructed. The superintendent of elementary and secondary education or his designee may visit any alternative education program at reasonable times during the school year.

TENNESSEE

Sec. 49-6-3001. School age.

(a) The public schools shall be free to all persons above the age of six (6) years, or who will become six (6) years of age on or before September 30th, residing within the state.

(b)(1) Any child residing within the state who is six (6) years of age of who will become six (6) years of age on or before September 30th may enter at the beginning of the term the public school designated by the local board of education having appropriate jurisdiction; provided, he enters within thirty (30) days after the opening day of the term.

(2) Any child who will not become six (6) years of age until after December 31st shall not enter school during that school year, provided, however, that school systems having semiannual promotions may admit at the beginning of

any semester children who will become six (6) years of age within sixty (60) days following the opening of the semester.

(3) Where a pupil meets the requirements of the state board of education for transfer and/or admission purposes, as determined by the state commissioner of education, such pupil may be admitted by a local board of education, notwithstanding any other provision or act to the contrary.

(c)(1) Every parent, guardian or other person residing within the state of Tennessee, having control or charge of any child or children between the ages of seven (7) and sixteen (16) years, both inclusive, shall cause such child or children to attend public or private day school, and in event of failure to do so, shall be subject to the penalties hereinafter provided.

Sec. 49-50-801. Church-related schools.

(a) As used in this section, unless the context otherwise requires, "church-related school" means a school operated by denominational, parochial or other bonafide church organizations, which are required to meet the standards of accreditation or membership of the Tennessee Association of Christian Schools, the Tennessee Association of Independent Schools, the Southern Association of Colleges and Schools, or the Tennessee Association of Non-Public Academic Schools.

(b) The state board of education and local boards of education are prohibited from regulating the selection of faculty or textbooks or the establishment of a curriculum in church-related schools.

(c) The state board of education and local boards of education shall not prohibit or impede the transfer of a student from a church-related school to a public school of this state. Local boards may, however, place students transferring from a church-related school to a public school in a grade level based upon the student's performance on a test administered by the board for that purpose. In local school systems where the local board of education requires tests for students transferring to that system from another public school system, the same test shall be administered to students transferring to such system from church-related schools. Provided, however, church-related schools shall be conducted for the same length of term as public schools.

(d) Nothing in this section shall be interpreted as prohibiting church-related schools from voluntarily seeking approval by the state board of education, nor prohibiting the state board of education from extending such approval when it is voluntarily sought.

TEXAS

Sec. 21.032. Compulsory Attendance.

Unless specifically exempted by Section 21.033 of this code or under other laws, every child in the state who is as much as seven years of age, or who is less than seven years of age and has previously been enrolled in first grade, and not more than 17 years of age shall be required to attend the public schools in the district of his residence or in some other district to which he may be transferred as provided or authorized by law a minimum of 165 days of the regular school term of the district in which the child resides or to which he has been transferred...

Sec. 21.033. Exemptions.

(a) The following classes of children are exempt from the requirements of compulsory attendance:

(1) any child in attendance upon a private or parochial school which shall include in its course a study of good citizenship...

UTAH

Sec. 53-24-1. Minimum time--Exceptions, excuses and exemptions.

Every parent, guardian or other person having control of any minor between six and eighteen years of age shall be required to send such minor to a public or regularly established private school during the regularly established school year of the district in which he resides; provided:

a. That any minor over the age of sixteen years, who has completed the eighth grade or whose services are required for the support of a mother or invalid father may be legally excused to enter employment, but if such minor is so excused, the parent, guardian or other person shall be required to send such minor to a part-time school or class at least one hundred forty-four hours per year.

b. That in each year the parent, guardian or other person having control of any such minor may be excused by the board of education of the district from sending such minor to a public, regularly established private or part-time school or class for any of the following reasons:

(1) That such minor has already completed the work of a senior high school.

(2) That such minor is taught at home in the branches prescribed by law for the same length of time as children

are required by law to be taught in the district schools; provided, that a minor legally excused to enter employment may be excused from attending a part-time school or class for the reason that such minor is taught at home the required number of hours...

VERMONT

Sec. 1121. Attendance by children of school age required

A person having the control of a child between the ages of seven and sixteen years shall cause the child to attend an approved public school or an approved or reporting private school for the full number of days for which that school is held, unless:

(1) the child is mentally or physically unable so to attend; or

(2) is being furnished with an approved program of home instruction; or

(3) has completed the tenth grade; or

(4) is excused by the superintendent or a majority of the school directors as provided in this chapter.

VIRGINIA

Sec. 22.1-254. Ages of children required to attend.

Every parent, guardian, or other person in the Commonwealth having control or charge of any child who will have reached the fifth birthday on or before October 31 of the 1980-1981 school year and September 30 of any school year thereafter and who has not passed the seventeenth birthday shall, during the period of each year the public schools are in session and for the same number of days and hours per day as the public schools, send such child to a public school or to a private, denominational or parochial school or have such child taught by a tutor or teacher of qualifications prescribed by the Board of Education and approved by the division superintendent or provide for home instruction of such child as described in Sec. 22.1-254.1.

Instruction in the home of a child or children by the parent, guardian or other person having control or charge of such child or children shall not be classified or defined as a private, denominational or parochial school.

Sec. 22.1-254.1. Declaration of policy; requirements for home instruction of children.

A. When the requirements of this section have been satisfied, instruction of children by their parents in their home is an acceptable alternative form of education under the policy of the Commonwealth of Virginia. Any parent of any child who will have reached the fifth birthday on or before September 30 of any school year and who has not passed the seventeenth birthday may elect to provide home instruction in lieu of school attendance if he (i) holds a baccalaureate degree in any subject from an accredited institution of higher education; or (ii) is a teacher of qualifications prescribed by the Board of Education; or (iii) has enrolled the child or children in a correspondence course approved by the Board of Education; or (iv) provides a program of study or curriculum which, in the judgment of the division superintendent, includes the standards of learning objectives adopted by the Board of Education for language arts and mathematics and provides evidence that the parent is able to provide an adequate education for the child.

B. Any parent who elects to provide home instruction in lieu of school attendance shall annually notify the division superintendent in August of his intention to so instruct the child and provide a description of the curriculum to be followed for the coming year and evidence of having met one of the criteria for providing home instruction as required by paragraph A of this section. The division superintendent shall notify the Superintendent of Public Instruction of the persons approved to provide home instruction.

C. The parent who elects to provide home instruction shall provide the division superintendent by August 1 following the school year in which the child has received home instruction with either (i) evidence that the child has attained a composite score above the fortieth percentile on a battery of achievement tests which have been approved by the Board of Education for use in the public schools or (ii) an evaluation or assessment which, in the judgment of the division superintendent, indicates that the child is achieving an adequate level of educational growth and progress.

In the event that evidence of progress as required in this paragraph is not provided by the parent, home instruction shall cease and the parent shall make other arrangements for the education of the child which comply with Sec. 22.1-254 of the Code of Virginia.

D. For purposes of this section, "parent" means the biological parent or adoptive parent, guardian or other person having control or charge of a child.

Nothing in this section shall prohibit a pupil and his parents from obtaining an excuse from school attendance by reason of bona fide religious training or belief pursuant to Sec. 22.1-257 of this Code.

E. Any party aggrieved by a decision of the division superintendent may appeal his decision within thirty days to an independent hearing officer. The independent hearing officer shall be chosen from the list maintained by the Executive Secretary of the Supreme Court for hearing appeals of the placements of handicapped children. The costs of the hearing shall be borne by the party appealing.

WASHINGTON

Sec. 28A.27.010. Attendance mandatory--Age--Persons having custody shall cause child to attend public school unless excused--Excused temporary absences

All parents, guardians and the persons in this state having custody of any child eight years of age and under fifteen years of age shall cause such child to attend the public school of the district in which the child resides for the full time when such school may be in session or to attend a private school for the same time unless the school district superintendent of the district in which the child resides shall have excused such child from attendance because the child is physically or mentally unable to attend school, is attending a residential school operated by the department of social and health services, or has been excused upon the request of his or her parents, guardians, or persons in this state having custody of any such child, for purposes agreed upon by the school authorities and the parent, guardian or custodian: Provided, That such excused absences shall not be permitted if deemed to cause a serious adverse effect upon the student's educational progress: Provided further, That students excused for such temporary absences may be claimed as full time equivalent students to the extent they would otherwise have been so claimed for the purposes of RCW 28A.41.130 and 28A.41.140, as now or hereafter amended, and shall not affect school district compliance with the provisions of RCW 28A.58.-754, as now or hereafter amended.

All parents, guardians and other persons in this state having custody of any child fifteen years of age and under eighteen years of age shall cause such child to attend the public school of the district in which the child resides for the full time when such school may be in session or to attend a private school for the same time excepting when the

school district superintendent determines that such child is physically or mentally unable to attend school or has already attained a reasonable proficiency in the branches required by law to be taught in the first nine grades of the public schools of this state, or the child has been temporarily excused in accordance with this section, or the child is regularly and lawfully engaged in a useful or remunerative occupation, or the child is attending a residential school operated by the department of social and health services, or the child has already met graduation requirements in accordance with state board of education rules and regulations, or the child has received a certificate of educational competence under rules and regulations established by the state board of education under RCW 28A.04.135.

An approved private and/or parochial school for the purposes of this section shall be one approved under regulations established by the state board of education pursuant to RCW 28A.04.120 as now or hereafter amended.

WEST VIRGINIA

Sec. 18-8-1. Commencement and termination of compulsory school attendance; exemptions.

Compulsory school attendance shall begin with the seventh birthday and continue to the sixteenth birthday.

Exemption from the foregoing requirements of compulsory public school attendance shall be made on behalf of any child for the following causes or conditions, each such cause or condition being subject to confirmation by the attendance authority of the county:

Exemption A. Instruction in a private, parochial or other approved school.--Such instruction shall be in a school approved by the county board of education and for a time equal to the school term of the county for the year. In all such schools it shall be the duty of the principal or other person in control, upon the request of the county superintendent of schools, to furnish to the county board of education such information and records as may be required with respect to attendance, instruction and progress of pupils enrolled between the ages of seven and sixteen years.

Exemption B. Instruction in home or other approved place.--Such instruction shall be in the home of such child or children or at some other place approved by the county board of education and for a time equal to the school term of the county. The instruction in such cases shall be conducted by a person or persons who, in the judgment of the county superintendent and county board of education, are

qualified to give instruction in subjects required to be taught in the free elementary schools of the State. It shall be the duty of the person or persons giving the instruction, upon request of the county superintendent, to furnish to the county board of education, such information and records as may be required from time to time with respect to attendance, instruction and progress of pupils enrolled between the ages of seven and sixteen years receiving such instruction...

Exemption K. Alternative private, parochial, church or religious school instruction.--In lieu of the provisions of Exemption A hereinabove, exemption shall be made for any child attending any private school, parochial school, church school, school operated by a religious order, or other nonpublic school which elects to comply with the provisions of article twenty-eight [Sec. 18-18-1 et seq.], chapter eighteen of the Code of West Virginia.

The completion of the eighth grade shall not exempt any child under sixteen years of age from the compulsory attendance provision of this article: Provided, that there is a public high school or other public school of advanced grades or a school bus providing free transportation to any such school the route of which is within two miles of the child's home by the shortest practicable route or path as hereinbefore specified under Exemption D of this section.

WISCONSIN

Sec. 118.15. Compulsory school attendance

(1)(a) Except as provided under pars. (b) and (c), unless the child is excused under sub. (3) or (4) or has graduated from high school, any person having under control a child who is between the ages of 6 and 18 years shall cause the child to attend school regularly during the full period and hours, religious holidays excepted, that the public or private school in which the child should be enrolled is in session until the end of the school term, quarter or semester of the school year in which the child becomes 18 years of age...

(b) Upon the child's request of the school board and with the written approval of the child's parent or guardian, any child who is 16 years of age or over may attend, in lieu of high school or on a part-time basis, a vocational, technical and adult education school. Where such a request is made and approved by the school board, the district board of the vocational, technical and adult education district

in which the child resides must admit the child and must enter into the contract specified in sub. (2). Every district board must offer day class programs satisfactory to meet the requirements of this paragraph and sub. (2) as a condition to the receipt of any state aid.

(c) Upon the child's request and with the written approval of the child's parent or guardian, any child who is 16 years of age or over shall be excused by the school board from school attendance. A child who is excused from school attendance under this paragraph shall be informed by the school board of the availability of programs within the vocational, technical and adult education system and of the child's right to be readmitted to school upon request. The school board may specify when the child will be excused or readmitted after being excused from school attendance.

(d) Any child's parent or guardian, or the child if the parent or guardian is notified, may request the school board to provide the child with program or curriculum modifications, including but not limited to:

1. Modifications within the child's current academic program.

2. A school work training or work study program.

3. Enrollment in any alternative public school or program located in the school district in which the child resides.

4. Enrollment in any nonsectarian private school or program, located in the school district in which the child resides, which complies with the requirements of 42 USC 2000d. Enrollment of a child under this subdivision shall be pursuant to a contractual agreement which provides for the payment of the child's tuition by the school district.

Instruction during the required period elsewhere than at school may be substituted for school attendance. Such instruction must be approved by the state superintendent as substantially equivalent to instruction given to children of like ages in the public or private schools where such children reside...

WYOMING

Sec. 21-4-102. When attendance required; exemptions.

(a) Every parent, guardian or other person having control or charge of any child who is a resident of this

state and whose seventh birthday falls on or before September 15 of any year and who has not yet attained his sixteenth birthday or completed the eighth grade shall be required to send such child to, and such child shall be required to attend, a public or private school each year, during the entire time that the public schools shall be in session in the district in which the pupil resides...