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TEACHER CERTIFICATION IN HOME SCHOOLS: EMERGING
CONSTITUTIONAL ISSUES

The University of North Carolina at Greensboro

Ed.D. 1986

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TEACHER CERTIFICATION IN HOME SCHOOLS:
EMERGING CONSTITUTIONAL ISSUES

by

Gilbert T. Huffman

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

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Approved by


Dissertation Adviser

APPROVAL PAGE

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This study is designed to examine the legal aspects of teacher certification in home schools in the United States. The following conclusions can be drawn based on a review of literature on the subject and an analysis of state statutes and court decisions.

1. Courts recognize the authority of state legislatures to regulate who teaches in home schools.
2. Statutes must be reasonable and administered in a nondiscriminatory manner to withstand judicial challenges by parents.
3. State statutes which are specific in their requirements fare better when challenged in courts.
4. Courts are willing to declare nonspecific language in statutes unconstitutionally vague.
5. In the absence of statutory requirements for certified personnel, the judiciary will examine the quality of the educational program in home schools to determine teacher competency.
6. Instruction comparable to that available in public schools will be considered the minimum requirement for home schools.
7. Courts will become increasingly concerned with certification at the appropriate level of instruction, especially for older students.
8. Claims that certification of teachers in home schools violates religious rights will usually not be successful in courts.

9. The broad claim that "fundamental rights" are violated by regulation of home school personnel must be supported with specific charges.
10. The burden of proving that regulation of home school personnel is unconstitutional falls on parents who make such charges.
11. The teaching certificate is accepted by courts as a legitimate measure of competency of teachers even though it is not absolute.
12. Standardized tests are generally rejected as an alternative to teacher certification as a measure of competency.
13. The socialization value of public school education has not been determined.
14. Legislatures will be encouraged by home school advocates to relax standards for home school personnel.
15. Home schooling efforts will be assisted by cooperative efforts of groups and individuals who advocate parental rights.
16. Public school officials will be faced with more challenges to compulsory school attendance laws and by parents who are more imaginative in their effort to provide home schooling.
17. The United States Supreme Court has not ruled on the home schooling question. Until it does, parents and school officials must rely on the opinions of lower courts which are conflicting and inconsistent.

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CHAPTER I
INTRODUCTION

A growing number of families in the United States are exercising the prerogative to provide education for children in the home. It has been predicted that by 1990 the number of families choosing this alternative to public schools will reach at least one half million.¹ This will be a significant increase from the 10,000² to 30,000³ families providing home schooling today. The movement toward home schooling is a return to the practice which was the "rule rather than the exception"⁴ prior to the adoption of compulsory school attendance laws throughout the United States.

At the same time that an increasing number of children are being removed from the classrooms of America in favor of home instruction, there is a public call for better instruction for all children. Since the beginning of this decade there have been nearly thirty major national reports and countless state and local studies which have focused on the imperative of improving the quality of education in

¹J. John Harris, III and Richard E. Fields, "Outlaw Generation: A Legal Analysis of the Home-Instruction Movement," Educational Horizons, 61 (Fall 1982), p. 26.

²Richard A. Bumstead, "Educating Your Own Child: The Perchemlides Case," Phi Delta Kappan, 61 (October 1979), p. 97.

³Neal Devins, "A Constitutional Right to Home Instruction?" Washington University Law Quarterly, 62 (Fall 1984), p. 435.

⁴Sue F. Burgess, "The Legal Aspects of Home Instruction," (Ed.D. dissertation, University of North Carolina at Greensboro, 1985), p. 1.

America.⁵ These reports have consistently recognized the need for better teachers in the classroom. One issue states have chosen to focus upon in their efforts to recapture "a sense of quality" through "a return to a common core of shared intellectual experiences"⁶ is the matter of certification standards for teachers. These standards are being examined and revised in an effort to insure the public that teachers are properly trained to provide quality educational experiences in the classroom.⁷

The right of states to regulate who teaches in public schools through the use of the certification process and the right of parents to educate children at home have generally been accepted by the public and the courts. Conant summarized the subject of certification when he said, "There is little doubt that the states possess the ultimate power to regulate schools and to determine the conditions of teacher employment."⁸ The courts have agreed that certification of teachers is a legitimate power of the state to assure that teachers are adequately prepared.

⁵Richard W. Moors, Master Teachers (Bloomington, Indiana: Phi Delta Kappa Educational Foundation, 1984), p. 10.

⁶Fred M. Hechinger, Education Agenda for the 1980's (Bloomington, Indiana: Phi Delta Kappa Educational Foundation, 1981), p. 19.

⁷J. Arthur Taylor, "Quality Assurance for Professional School Personnel: A position Paper," (Unpublished paper).

⁸James Bryant Conant, "The Certification of Teachers: The Restricted State Approval Program Approach." Lecture presented to the Annual Meeting of the American Association of Colleges for Teacher Education, Chicago, February 19, 1964.

"The courts have not recognized the existence of a fundamental right to educate children at home."⁹ However, they have generally ruled in favor of "parents whose fundamental rights have been violated by application of the compulsory attendance law"¹⁰ if "the instruction given is adequate . . . [and provided] by a parent who is competent to teach."¹¹

Recognizing the importance of providing qualified teachers in all schools, some states have regulated who is allowed to teach in home instruction programs. It is the issue of state regulation of teachers in home schools which is addressed in this research.

Statement of the Problem

As the number of parents who choose to provide home instruction grows so will the number of legal questions which need to be answered. Public school officials must be cognizant of the legal issues they will face when parents, with or without the approval of local boards of education, initiate the practice of home schooling.

Nolte points out that if parents want to remove their children from public schools in favor of home instruction, they have a fifty percent chance to successfully meet the legal challenge of public

⁹Burgess, p. 213.

¹⁰Ibid.

¹¹People v. Turner, 98 N.Y.S. 2d. 886 (N.Y. App. Div. 1950).

school officials.¹² Many cases are lost by school officials which could be won if school officials were more knowledgeable of statutory requirements of compulsory attendance laws and alternatives available to parents in fulfilling the requirements of these laws.

Ritter illustrates the problem by saying that "parents are more imaginative than school officials in finding provisions in state laws that permit home education instruction."¹³ Because of parents' determination to provide home instruction and their ability to find legal ways to provide it, school boards are often ill-prepared to challenge the parents. Ritter also contends that boards of education lose cases because they are unprepared, do not know the laws, and make hasty decisions. To emphasize her point, she quotes a parent who was successful in defending his right to educate his child at home as saying, "If school officials had known the laws, they would have avoided a lot of bad publicity."¹⁴

One of the most litigated issues in the area of home schooling is the question of who conducts the instruction and the qualifications and/or certification of the instructor. Court decisions on this matter are an oxymoron. There have been rulings that the lack of a

¹²M. Chester Nolte, "Home Instruction in Lieu of Public School Attendance," in School Law for a New Decade, ed. M. A. McGhehey (Topeka, Kansas: National Organization on Legal Problems in Education, 1982), pp. 5-6.

¹³Marian Ritter, "Read This Before You Veto Home Education Requests," American School Board Journal, 16 (October 1979), p. 38.

¹⁴Ibid.

certificate is evidence of incompetency¹⁵ and rulings that certification requirements can be waived if equivalent training is proven.¹⁶ Courts have ruled that irrespective of other considerations the lack of a certificate is evidence that instruction is insufficient,¹⁷ and in the case of a parent who had a certificate but had not taught for twenty years, that competency must be demonstrated.¹⁸

This study is designed to provide information and guidance to educators who may be faced with requests from parents who want to establish home schools. A heightened awareness of the legal issues of the certification of teachers in home schools will help school administrators be more successful in their defense of state statutes related to home instruction.

Key Questions to be Answered

"Teacher certification is the principal mechanism to assure the public that teachers have received the minimal training necessary to teach a subject"¹⁹ and is designed to protect the children and state against incompetent and inadequately trained teachers."²⁰

¹⁵Kobylski v. Board of Education of Central School District Number 1, 304 N.Y.S. 2d. 453 (New York App. 1969).

¹⁶People v. Turner.

¹⁷In re Shinn, 195 Cal App. 2d 683, 16 Cal Rptr. 165 (1961).

¹⁸Commonwealth v. Kollock, 27 Pa. D and C. 81 (1936).

¹⁹James E. Woodford, Susan M. Presti, Alison Gray, and Ron Goble, Teacher Certification: Out-of Field Teaching in Grades 9-12 (Raleigh, North Carolina: North Carolina Center for Public Policy Research, 1982), p. v.

²⁰Ibid., p. 1.

Many states have extended authority to certify teachers to non-public schools, including instruction by parents or others in home schools. Legal issues have been raised concerning the authority to regulate who teaches in home schools and other nonpublic schools. It is imperative that those interested in home schooling be aware of the legal aspects of certification guidelines in such schools.

This study answers key questions on the subject of certification of teachers in home schools. These questions are as follows:

1. What is the legal status of home schooling in the United States?
2. How widespread is the practice of requiring certification for teachers in home schools?
3. What type of certification is required?
4. What have been the court decisions on the regulation of teachers in home schools?
5. What trends, if any, can be identified from an analysis of state statutes and court decisions in this area?
6. On what grounds have parents based their objections to certification of teachers in home schools?
7. In what other ways have states regulated who teaches in home schools?

Scope of the Study

This is a historical and descriptive study of the practice of requiring certification of teachers in home schools. The research presents the historical background of the practice of requiring certification for home instructors and examines the practice as it exists today in the fifty states. It also examines the extent to which this practice has been litigated, the legal issues addressed, the results of major cases, and the possible effects these decisions may have on the practice of educating children in the home.

Method, Procedures, and Sources of Information

Interest in the topic of home schools was generated in Public School Law, a graduate course at The University of North Carolina at Greensboro. After reviewing literature on the subject and a review of Dissertation Abstracts, it was discovered that there are many unanswered questions on the topic of home schooling. Upon discovering that "Legal Aspects of Home Instruction," a doctoral dissertation, had recently been completed, a need was seen for research into specific areas of home schooling. Since it is accepted that "of all the factors which influence the effectiveness of our schools, teaching is the most important,"²¹ it was decided to focus on certification of teachers in home schools.

²¹North Carolina Commission on Education for Economic Growth, Education for Economic Growth: An Action Plan for North Carolina (Raleigh, North Carolina: North Carolina Commission on Education for Economic Growth, 1984), p. 14.

Letters were sent to the chief state school officer in each of the fifty states requesting information relative to home schooling and certification of teachers in those schools. Also, the National Organization for Legal Problems in Education, the Education Commission of the States, the North Carolina Attorney General's office, and the North Carolina School Boards Association were contacted for relevant information.

A list of resources was received from a computer search from the Educational Resources Information Center (ERIC). These resources were supplemented by resources located through Resources in Education, the Education Index, Current Law Index, Index to Legal Periodicals, Current Index to Journals in Education, and Reader's Guide to Periodical Literature.

The evaluation and categorization of state statutes and an analysis of court decisions was undertaken. Resources for these functions included NOLPE School Law Reporter, West Law Report, National Reporter System, Corpus Juris Secundum, School Law News, School Law Bulletin, Shepard's Citation, and American Digest System.

Definition of Terms

The following programmatic²² definitions apply to terms in this study:

Certificate: A license granted by the state in the form of a document which specifies that the named individual has fulfilled the legal and academic requirements specified by state statutes and enables that individual to enter into a lawfully binding contract to teach.²³

Certification: The process of completing requirements in order to be issued a teaching certificate.

Nonpublic School: A school offering a program of instruction which is not under the control, supervision or management of a local school board.²⁴

School: Any supervised program of instruction designed to provide educational instruction to students in a "particular place, manner, and subject area."²⁵

Compulsory Education: The requirement that the "parent, guardian, or other person having control or charge or custody of a child"²⁶ between certain ages send the child to school.

²²Israel Scheffler, The Language of Education, Seventh Printing (Springfield, Illinois: Charles C. Thomas Publisher, 1968), p. 19.

²³Richard D. Gatti and Daniel J. Gatti, Encyclopedic Dictionary of School Law (West Nyack, New York: Parker Publishing Co., Inc., 1975), p. 45.

²⁴New Mexico, New Mexico Statutes Annotated, Sec. 22-2-2 (1984).

²⁵Ibid.

²⁶Wyoming, Wyoming Statutes Annotated, Sec. 21-4-101 (a)(ii) (1977).

Home School: A program of educational instruction provided in the home to a child by the child's parent or legal guardian or by a person designated by the parent or legal guardian.²⁷

Certified Teacher: An individual who has met the certification requirements of a state and who is licensed to teach.

Public School: A school offering a program of instruction which is under the control, supervision, and management of a local school board.

Significance of the Study

As noted earlier there are two distinct movements afoot in the mid-1980's. The first is the trend for more parents to instruct their children in the home and the second is to insist on better qualified instructors in all schools. As these movements gain momentum, there is the legal question of the qualifications of parents or others who teach children at home.

Zirkel contends that the matter of home instruction depends primarily on interpretation of state statutes.²⁸ A study of state laws on the subject of home schools reveals a great variation of requirements. One area in which the variation is especially noticeable is the area of certification of teachers in these schools. Lines describes

²⁷Pierce v. Society of Sisters, 268 U.S. 510 (1925).

²⁸Perry A. Zirkel and Ivan Gluckman, "Home Instruction: When It's Legal," Principal, 6 (January 1983), pp. 37-38.

the subject of certification of teachers as a "thorn in the side of private [including home] schools."²⁹

The statutory requirements for teaching in home schools vary from certification being required to no requirements at all. Some states require that teachers in all nonpublic schools, including home schools, be certified and other states allow voluntary certification. Some other variations include:

1. Certification of the teacher or the teacher must work under the supervision of a certified teacher.³⁰
2. Certification for teaching of certain types of students.³¹
3. Approval by state officials.³²
4. High school education or equivalent.³³
5. College degree.³⁴
6. Required testing of noncertified teachers.³⁵

²⁹Patricia Lines, Compulsory Education Laws and Their Impact on Public and Private Education (Denver, Colorado: Education Commission of the States, 1984), p. 1.

³⁰Washington, Washington Revised Code, Sec. 28A.27.010 (1981).

³¹Arkansas, Arkansas Statutes Annotated, Supplement, Sec. 42 (1985).

³²Louisiana, West's Louisiana Revised Statutes, Annotated, Sec. 17:236 (1980).

³³Washington

³⁴Tennessee, Tennessee Code Annotated, Supplement, Sec. 49-6-3001 (1985).

³⁵Nebraska, Nebraska Revised Statutes, Sec. 79-201 (1981).

Other state statutes are not as specific. Examples of these vague requirements include, "a person qualified to teach,"³⁶ "of qualifications prescribed by the Board of Education,"³⁷ "a competent person,"³⁸ "comparably instructed,"³⁹ "in any other manner arranged for by the school committee . . . and . . . approved by the commissioner,"⁴⁰ and "proper instruction."⁴¹

The imprecise wording of many state statutes and the lack of consistency from state to state will provide parents with grounds to challenge any opposition to their attempt to teach their own children. They will also challenge educators to seek guidance in the interpretation of many of the laws.

Educators will face more parents demanding more answers to the question of who can teach in home schools. It is imperative that educators be aware of statutory laws and judiciary rulings resulting from these laws. This research provides educators with information on the legal aspects of certification of teachers in home schools.

³⁶Ohio, Ohio Revised Code, Sec. 3321.04(A)(2) (Page Supp. 1981).

³⁷Virginia, Virginia Code, Sec. 22.1-254 (1980).

³⁸Hawaii, Hawaii Revised Statutes, Sec. 298-9(b) (1981).

³⁹Idaho, General Laws of Idaho, Sec. 33-202 (1981).

⁴⁰Maine, Maine Revised Statutes, Annotated, Sec. 911 (3)(a) (West Supp. 1981).

⁴¹Mississippi, Mississippi Code Annotated, Sec. 37-13-9 (Supp. 1982).

Design of the Study

This research is composed of five parts. The first chapter is an overview of the topic of compulsory education and the principle of certification of teachers in home schools. This chapter also includes key questions to be answered and definitions of terms used in the study.

Chapter two is a review of literature relative to compulsory education, home schools, and the certification of personnel. Special emphasis is placed on the legal and judicial issues of the topics.

The third chapter is an analysis of the state statutes which address the topic of home school personnel. The statutes are analyzed and grouped according to requirements.

Chapter four is a discussion of the legal aspects of certification of teachers in home schools. Major issues which surfaced during the review of literature are discussed. Highlights of major judicial decisions through September 1985 are presented and juxtaposed against emerging issues on the topic.

Chapter five is a review and analysis of court cases which have been decided in the area of certification of personnel in home schools. It includes reasons for litigation and decisions which have been handed down.

The last chapter contains a summary of findings and recommendations based on these findings. Answers are given to the questions presented in the first chapter and conclusions reached from a review of the state statutes and court decision are stated.

CHAPTER II
REVIEW OF RELATED LITERATURE

Introduction

We believe that, in the interest of parental right to choose an alternative to public education, [home instruction with safeguards, such as approval of curriculum or testing of the child] . . . should be extended to all jurisdictions because the state's interest in assuring minimum levels of education does not extend to control of the means by which that interest is realized.¹

This statement by the American Civil Liberties Union in the form of Policy No. 71A as reported by Lines is an example of the strong support for home schools in America which comes from private school groups and organizations interested in civil liberties.²

The concept of home schooling is not new. Beshoner sees it as a "closing of the circle"³ which had its beginning in Colonial America when children were educated in the home or not educated at all. However, it is a concept which has seen a revival in the form of a protest against public schools. With the revival of interest in home schools has come a host of legal questions including who can teach in these schools and what qualifications the teachers should possess.

¹Patricia M. Lines, Home Instruction (Update), Education Commission of the States Issuegram, No. 49 (August 1985):1.

²Ibid.

³E. Alice Law Beshoner, "Home Education in America: Parental Rights Reasserted," UMKC Law Review 49 (Winter 1981):191.

Historically parents have had the right and obligation to direct the intellectual and moral upbringing of their children. The right and duty to feed, clothe, and otherwise provide for the basic needs of children have not been questioned.⁴ However, when "basic needs" is expanded to include education, questions arise. No one disputes the fact that all children should be provided an education, but there is disagreement on who is to provide the education, in what manner, and in what setting.

The debate over home schools and the state's right to impose regulations on them has heard such arguments as:

It is almost impossible for a child to be adequately taught in his home. I cannot conceive how a child can receive in the home instruction and experiences . . . in any manner or form comparable to that provided in the public school.⁵

On the other hand, proponents of home schools say:

Any compulsory education statute which does not allow home education when it conforms to the public school curriculum should be struck down as violative of the Constitution.⁶

Opposition to state control of home schools is further expressed by Beshoner when she says:

States that require certification of teachers or the meeting of other criteria that unreasonably restrict parental choice are without constitutional justification to do so.⁷

⁴Ibid.

⁵Stephen v. Bongart, 189 A. 131 (Essex County Ct. 1937), p. 137.

⁶Brendan Stocklin-Enright, "The Constitutionality of Home Education: The Role of the Parent, the State and the Child," Willamette Law Review 18 (1982):611.

⁷Beshoner, p. 206.

In order to understand the strong sentiments toward teacher certification in home schools and the accompanying legal aspects, it is necessary to study three separate topics. This chapter reviews relative literature on these topics of compulsory school attendance, home schooling, and certification of teachers.

Compulsory School Attendance

Introduction

Statutes requiring school attendance within certain ages has long formed the backbone of the American educational system.⁸ The extent to which compulsory school attendance has been accepted in America is seen in the United States Supreme Court's ruling in Brown v. Board of Education. In this historic ruling the court said:

Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity where the state has undertaken to provide it, is a right which must be made available to all on equal terms.⁹

⁸E. Edmund Reutter, Jr. and Robert H. Hamilton, The Law of Public Education, 2nd ed. (Mineola, New York: Foundation Press, Inc., 1976), p. 537.

⁹Brown v. Board of Education, 74 S. Ct. 686 (1954); p. 691.

This section looks at the historical development of compulsory attendance in the United States and the legal aspects of such laws.

History of Compulsory School Attendance

The concept of compulsory attendance originated, according to Ensign, with a statute of Henry IV in 1405. This law required all children to engage in regular employment if they were not attending school. A 1530 statute of Henry VII gave local authorities the power to take idle or begging children between the ages of five and thirteen and to make them apprentices to husbandmen or craftsmen in order that they might be taught a trade. By so doing, the children would be able to earn their own livelihood when they were grown.¹⁰

The rudiments of compulsory school attendance in America are found in a law passed in 1642 in Massachusetts. This statute said that ". . . the selectmen in every town shall have power to take account of all parents and masters as to their children's education and employment," and "They are to see that the children can read and understand the principles of religion and the capital laws of the country."¹¹ This, like the earlier laws in Europe, was a compulsory education law which required that children be educated but said nothing

¹⁰Forest Chester Ensign, Compulsory School Attendance and Child Labor: A Study of the Historical Development of Regulations Compelling Attendance and Limiting the Labor of Children in a Selected Group of States (Iowa City: Athens Press, 1921), p. 231.

¹¹Walter S. Monroe, ed., Encyclopedia of Educational Research: A Project of the American Educational Research Association (New York: Macmillan, 1950), p. 292.

of how or where they were to be educated. It was not until 1852 that Massachusetts passed the first state-wide compulsory attendance law in the United States. Other states followed the lead of Massachusetts; and in 1918, Mississippi became the last of the states to enact such laws.¹²

The study of the growth of compulsory education, compulsory school attendance and the regulation of child labor in the United States are inseparable. Ensign divided the study of these movements into three distinct periods.

The first period began with the colonies and extended into the second and third decades of the nineteenth century. During this time the children of the poor were conceded the rudiments of education, but labor was regarded as desirable and its moral and economic values were stressed.

The second period began during the middle of the nineteenth century and was marked by the uniting of forces which recognized the common interest in children. These forces united to seek legislation to serve the rights of children. However, they were not unopposed. They faced the opposition of those who regarded any interference with parental control over children as undemocratic and those who were afraid that compulsory education would interfere with unrestricted use of child labor in factories.

¹²Lawrence A. Cremin, The Transformation of the School: Progressivism in American Education, 1876-1957 (New York: Vintage Books, 1964), p. 127.

The latter part of the nineteenth century was the beginning of the third period. It was at this time that employers discovered that the labor of young children was not profitable after all, and a beginning was made toward the establishment of systems of education that recognized the industrial and social needs of children. During this period states began to discover and express their own power and to become more aware of the responsibility to educate children.¹³

The purpose of compulsory education changed just as attitudes about it changed. The first compulsory education laws in America were passed to control the labor of children. Later laws were enacted with the realization that "only through compulsory measures can the masses be saved from ignorance"¹⁴ and that the "welfare of the state is served by the creation of an enlightened citizenry."¹⁵

Compulsory school attendance laws have historically made provisions for the exemption of certain children from compulsory school attendance. Benton states that school attendance is not usually required in the following circumstances:

1. When the mental or physical condition of the child is such that school attendance is likely to endanger the well-being of the child.
2. When the child's home conditions are such that the child's attendance at school will endanger the well-being of or work an undue hardship upon the family or individual members of the family.

¹³Ensign, pp. 2-5.

¹⁴Ibid., p. 5.

¹⁵Ibid., p. 2.

3. When the child's attendance at school will require that the child walk an unreasonable distance or travel over a hazardous route.
4. When the child's attendance at school will require that the child attend a school wherein assignments are based upon race, creed, social class, or other factors which indicate an unjustified discrimination between individuals or groups of individuals.
5. When school age youth are legally married.¹⁶

Monroe points out that some statutes make provisions for the exemption of students from compulsory attendance when it is "for the best interest of the child or for good reasons."¹⁷

A trend in compulsory attendance laws has been to increase the number of years children are required to attend. The age span has been increased by lowering the minimum age and by raising the age at which a student is no longer covered by the law. Another trend has been to lengthen the school term from an average of five months in 1914 to nine months in 1950.¹⁸

Legal Aspects of Compulsory Attendance Laws

The growth of compulsory education has not been without litigation. These cases have traditionally been based on the belief that

¹⁶Thomas M. Benton, "Legal Aspects of Compulsory School Attendance," in Legal Issues in Education: Abridged Duke Doctoral Dissertations, ed. Edward C. Bolmeier (Charlottesville, Va.: Michie Company, 1970), p. 13.

¹⁷Monroe, p. 297.

¹⁸Ibid., p. 295.

parents have a natural and constitutional right to determine the manner and place of their children's education¹⁹ and that fundamental rights of parents are abridged by compulsory attendance statutes.²⁰

Early court decisions upheld the rights of parents. The earliest reported legal challenge to compulsory education was in Illinois,²¹ and the court ruled in favor of the parents in the case when it said:

Parents and guardians are under the responsibility of preparing children intrusted to their care and nurture, for the discharge of their duties in life The state has provided the means and brought them within the reach of all to acquire the benefits of a common school education, but leaves it to the parents and guardians to determine the extent to which they will render it available to the children under their charge.²²

This ruling reflected the general philosophy of the mid-nineteenth century; but as public sentiment changed, so did the court rulings. In 1897 a Georgia court ruled that:

The child, at the will of the parent, could be allowed to grow up in ignorance, and become a more than useless member of society, and for the great wrong, brought about by neglect of his parents the common law provided no remedy."²³

¹⁹Edward C. Bolmeier, The School in the Legal Structure, 2nd ed. (Cincinnati, Oh.: W. H. Anderson Company, 1973), p. 232.

²⁰David Schimmer and Louis Fischer, The Rights of Parents in the Education of Their Children (Columbia, Md.: National Committee for Citizens in Education, 1977), p. 83.

²¹Edward C. Bolmeier, Judicial Excerpts Governing Students and Teachers (Charlottesville, Va.: Michie Company, 1977), p. 7.

²²Rulison v. Post, 79 Ill. 567, 28 N.E.68 (1876); p. 573.

²³Board of Education v. Purse, 28 S.E. 896 (Georgia 1897); p. 899.

The complete reversal of earlier decisions was evident in an Indiana ruling in 1901. This decision declared the state's authority to compel school attendance regardless of the wishes of the parents with the ruling that:

The natural rights of a parent to the custody and control of his infant child are subordinate to the power of the state One of the most important natural duties of the parent is his obligation to educate his child If he neglects to perform it or willingly refuses to do so, he may be coerced by law to execute such civil obligation.²⁴

State and federal courts have consistently upheld the constitutionality of compulsory education laws. Typical of the rulings is one by the North Carolina Appeals Court which stated in 1976 that:

The natural and legal right of parents to the custody companionship, control, and bringing up of their children may be interfered with or denied for substantial and sufficient reasons, and it is subject to judicial control when the interest and welfare of children require it.²⁵

Not only have the courts upheld the concept of compulsory education, but the United States Supreme Court, in Brown v. Board of Education, expounded the importance of compulsory attendance.²⁶

The judiciary has consistently ruled that parents must educate their children. However, the courts have been explicit in ruling that it is not necessary to do so in public schools.

²⁴State v. Bailey, 61 N.E. 730 (Ind. 1901); p. 732.

²⁵In re McMillan, 226 S.E. 2d. 693 (N.C. Appeal. 1976); p. 695.

²⁶Brown v. Board of Education, p. 691.

In Pierce v. Society of Sisters, the United States Supreme Court declared that the state has the power "to require that all children of proper age attend some school."²⁷ The Society of Sisters of the Holy Names of Jesus and Mary charged that the Oregon statute requiring attendance in a public school deprived them of a property interest they had in their private schools. The court decided that the statute in question:

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 children by forcing them to accept instruction from public teachers only.²⁸

The United States Supreme Court ruled in Yoder v. Wisconsin that the state's compelling interest in education must be balanced against the parents' rights to direct the religious upbringing of their children and the rights of free exercise of religion as guaranteed by the First Amendment to the Constitution. The court found, based on 300 years of producing self sufficient citizens through Amish tradition, that religion and the Amish mode of life were inseparable and interdependent. Therefore, Amish children were not required to attend school after completion of the eighth grade.²⁹

Burgess points out that observers who thought the Yoder decision would mean the end of compulsory attendance laws were wrong. She

²⁷Pierce v. Society of Sisters, 268 U.S. 510 (1925); p. 532.

²⁸Ibid., pp. 534-535.

²⁹Wisconsin v. Yoder, 406 U.S. 205 (1972).

states that courts have not extended the Yoder doctrine to non-Amish children.³⁰

Benton reports that the question examined in the courts relating to exemptions from compulsory attendance is whether, in a particular case, there is an unreasonable or arbitrary exercise of state authority. Laws are usually considered unreasonable if, in the opinion of the court, "the well-being of the child or members of the child's family will be endangered by his attendance at school."³¹ If there is evidence of discrimination or favoritism in educational opportunity, the courts will find the enforcement of such laws as arbitrary and a denial of equal protection.³²

Summary

All fifty states have enacted compulsory attendance laws. The purpose of these laws is to insure students an education, not to require that they be instructed in a particular manner or place. With few exceptions, the laws have survived constitutional attacks which allege that they prohibit free exercise of religious beliefs or in some other way infringe upon liberties guaranteed in the United States Constitution.

³⁰Sue F. Burgess, "The Legal Aspects of Home Instruction" (Ed.D. dissertation, University of North Carolina at Greensboro, 1985), p. 1.

³¹Benton, p. 14.

³²Ibid.

Parents have a constitutional interest against unreasonable interference by the state in the upbringing and education of their children. However, these rights are subordinate to the power of the state to set minimal educational standards.

Home Schooling in America

Introduction

Educating children in the home is an old practice which is receiving renewed interest in the United States. Prior to the enactment of compulsory school attendance laws, home schools were common. The isolation of families and the scarcity of teachers made public schools impossible for many children. Home schools were the only alternative for many parents who wanted their children to be educated. Lines reports that, even today, in some areas of Alaska, Montana, and other sparsely populated areas home instruction is by necessity rather than choice. In other places parents educate their children at home as a matter of preference. For various reasons they choose home schools rather than public or private schools.³³

This section examines the status of home schools in America and the legal aspects of offering home instruction.

The Status of Home Schools in America

There are numerous reasons parents choose not to send their children to public schools. Among the reasons children are educated in

³³Patricia M. Lines, Compulsory Education Laws and Their Impact on Public and Private Education (Denver, Col.: Education Commission of the States, 1985), p. 42.

alternative settings is that parents find public schools too orthodox in their curriculum and methods,³⁴ to escape racial integration,³⁵ to separate from governmentally controlled education,³⁶ religious and "sociopsychological objectives" to public schools,³⁷ the desire to protect children from exposure to objectionable secular values,³⁸ disagreements with teachers and other school officials,³⁹ and the desire for a quality education.⁴⁰ Gaffey elaborates on the term "quality education." He states that such an education includes religious and moral values, rules and discipline, respect for students, teachers who care about students and who are able to impress on students high levels of expectation, and the ability to make children "so interested in learning that they talk about school at the dinner table."⁴¹

³⁴Organization for Economic Cooperation and Development, Compulsory Schooling in a Changing World (Paris, France: Author, 1983), p. 37.

³⁵John E. Coons and Stephen D. Sugarman, Education by Choice: The Case for Family Control (Berkeley, Cal.: University of California Press, 1978), p. 109.

³⁶Virgil C. Blum, "Why Inner City Families Send Their Children to Private Schools," in Private Schools and the Public Good: Policy Alternatives for the Eighties, ed. Edward McGlynn Gaffey, Jr. (Notre Dame, London: University of Notre Dame Press, 1981), p. 24.

³⁷Delconte v. State, 329 S.E. 2d. 636 (N.C. 1985).

³⁸Duro v. District Attorney, Second Judicial District of N.C., 712 F. 2d. 96 (4th Cir. 1983).

³⁹State v. Peterman, 70 N.E. 505 (Ind. App. 1904).

⁴⁰Blum, p. 24.

⁴¹Ibid.

The legality of alternative schools was determined in 1925 when the United States Supreme Court declared that the state has the power "to require that all children of proper age attend some school."⁴² The law in question was an Oregon statute which required all children to attend public schools. The court ruled that the statute was unconstitutional and declared that the state cannot "standardize children by forcing them to accept instruction from public teachers only."⁴³

The Pierce decision was reinforced by the Yoder ruling in which the United States Supreme Court declared "that the state acts reasonably and constitutionally in requiring education to age 16 in some public or private school meeting the standards prescribed by the state."⁴⁴

Pierce and Yoder clearly established the right of parents to choose alternative schools for children by inserting the word "some" in the rulings.

When parents exercise their prerogative to choose a school setting other than public schools, one choice is a home school. This is a choice which is growing in popularity. Lines points out that there are no accurate figures available on the number of families who operate home schools. Many families who educate their children at home fear that the programs will not be approved and do not report them. She states that the best estimate is that at least 10,000 families now

⁴²Pierce v. Society of Sisters, p. 534.

⁴³Ibid., pp. 534-535.

⁴⁴Wisconsin v. Yoder.

provide instruction in the home.⁴⁵ Beshoner puts the number at 20,000 families,⁴⁶ and Devin contends that as many as 30,000 families now choose this alternative.⁴⁷

The increasing popularity of home schools is evident by the number of states enacting laws permitting the practice. Burgess found that only twenty-six states had such laws in 1976. By 1983 this number had increased to thirty-six, and by 1984 two more states had been added to the growing number of states with such statutes.⁴⁸ Forty-one states now have statutory provisions for home schools. In addition to these forty-one states, home instruction is permitted by case law in two states. The attorney general of another state has ruled that home schools are permitted under existing state laws, and the state board of education of another state has adopted regulations which permit instruction in the home. A total of forty-five states have provisions, statutory or otherwise, for home instruction. Table 1 shows which states permit home instruction.

Statutory requirements for home schools are in a state of change. In Montana "county superintendents are finding some difficulty in enforcing this [home school] law . . . [and] there may be amendments to

⁴⁵Lines, Home Instruction (Update), p. 1.

⁴⁶Beshoner, p. 191.

⁴⁷Neal Devin, "A Constitutional Right to Home Instruction?" Washington Law Quarterly 62 (Fall 1984):435.

⁴⁸Burgess, p. 3.

Table 1
States Which Permit Home Schools

	By Law	By Other Means
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		Case Law
Indiana	X	
Iowa	X	
Kansas		
Kentucky	X	
Louisiana	X	
Maine	X	
Maryland	X	
Massachusetts	X	
Michigan		Attorney General Opinion
Minnesota		
Mississippi	X	
Missouri	X	
Montana	X	
Nebraska		
Nevada	X	

Table 1 - Continued

	By Law	By Other Means
New Hampshire		State Board Regs.
New Jersey	X	
New Mexico	X	
New York	X	
North Carolina		Case Law
North Dakota		
Ohio	X	
Oklahoma	X	
Oregon	X	
Pennsylvania	X	
Rhode Island	X	
South Carolina	X	
South Dakota	X	
Tennessee	X	
Texas		
Utah	X	
Vermont	X	
Virginia	X	
Washington	X	
West Virginia	X	
Wisconsin	X	
Wyoming	X	
Total	41	4

it in the 1989 Legislature."⁴⁹ In August 1985 the Governor of Iowa appointed a three-man task force to make recommendations to the state legislature⁵⁰ on a definition of "equivalent instruction" as required by the federal district court in Fellowship Baptist v. Benton.⁵¹ Also bills are pending before the Kansas legislature to amend existing laws on school attendance and home schools,⁵² and a "legislative committee is considering making several changes during the 1986 session" in Idaho.⁵³

Legal Aspects of Home Schools

Burgess points out that the United States Supreme Court has never heard a home instruction case.⁵⁴ However, decisions by the court have been the basis for decisions by other courts on the subject of home schools.

The decisions in Pierce and Yoder emphasized the principle of public regulation of alternative schools, including home schools. The

⁴⁹Letter received from Claudette Morton, Liaison to County Superintendent, Montana Department of Basic Instructional Services, 18 November 1985.

⁵⁰Letter received from Kathy L. Collins, Administrative Legal Consultant, Iowa Department of Public Instruction, 26 November 1985.

⁵¹Fellowship Baptist v. Benton, 620 F. Supp. 308 (S.D. Iowa 1985).

⁵²Letter received from Rodney J. Bicker, Legal Services Section Director, Kansas State Department of Education, 26 September 1985.

⁵³Letter received from David G. Steadman, Bureau of Instruction Chief, Idaho Department of Education, 24 September 1985.

⁵⁴Burgess, p. 22.

Supreme Court said that the state has the power "to regulate all schools, to inspect, supervise, and examine them, their teachers and pupils,"⁵⁵ "to impose reasonable regulations for the control and duration of basic education,"⁵⁶ and that schools must meet the "standards prescribed by the state."⁵⁷

McCarthy and Deignar point out that in addition to permitting states to regulate education in nonpublic schools, the federal judiciary has deferred to state legislatures to determine how much education is enough and has upheld the use of state standards to assure a basic education for all children.⁵⁸ Their statement is supported by the decision in Scoma v. The Chicago Board of Education which declared that states have the right to prescribe how much education is needed to satisfy the state's interest in assuring an educated citizenry.⁵⁹

The fact that the principle of regulation of alternative schools includes home schools was made clear in Prince v. Massachusetts when the court ruled that generally parents can act in good faith to accomplish the proper education of their own children through their own

⁵⁵Pierce v. Society of Sisters, p. 534.

⁵⁶Wisconsin v. Yoder, p. 213.

⁵⁷Ibid., p. 236.

⁵⁸Martha M. McCarthy and Paul T. Deignar, What Legally Constitutes an Adequate Public Education: A Review of Constitutional, Legislative and Judicial Mandate (Bloomington, Ind.: Phi Delta Kappa Educational Fund, 1982), p. 31.

⁵⁹Scoma v. The Chicago Board of Education, 391 F. Supp. 452 (N.D. Ill. 1974).

efforts at home, but the public, through the school official, can set standards to see that the child is well educated.⁶⁰

The legality of home schools was also upheld in State v. Peterman when the court said:

If a parent employs and brings into his residence a teacher for the purpose of instructing his child or children, and such instruction is given as the law contemplates, the meaning and the spirit of the [compulsory attendance] law has been fully complied with.⁶¹

The North Carolina Supreme Court also upheld the right of parents to provide home instruction. This court ruled that since the legislature of that state did not define school, nor prohibit home schools, it was permissible for parents to provide home instruction.⁶²

The North Carolina ruling is not consistent with the ruling in State v. Garber which declared:

Even if a system of education, consisting essentially of home instruction was considered as instruction equivalent to that given in public, private, denominational, or parochial school . . . such would not constitute excuse for nonattendance at latter, in view of the fact that legislature made no provision for such equivalent instruction as basis for exemption.⁶³

An area of legal concern in the debate over home schools is parental rights.⁶⁴ Schwartz says that there are "no clear guidelines establishing the degree to which states may regulate education without

⁶⁰Prince v. Massachusetts, 321 U.S. 158 64 S. Ct. 438, 88 L. Ed. 2d. 645 (1944).

⁶¹State v. Peterman, p. 551.

⁶²Delconte v. State.

⁶³State v. Garber, 419 P. 2d. 896 (Kansas 1966); p. 896.

⁶⁴Beshoner, p. 198.

infringing upon the rights of parents."⁶⁵ On this subject, Beshoner points out that the Pierce decision is best known for its "dicta about freedom of parents to control their children's education."⁶⁶ In Farrington v. Tokuskige the court spoke of the rights of parents and concluded that parents should be offered alternatives for educating their children. It further stated that the government should not make alternative schools identical to public schools.⁶⁷ Also, the Yoder decision reaffirmed the rights of parents to guide the religious education of their children.⁶⁸

In Olmstead v. United States, the United States Supreme Court dealt with the rights of privacy and defined this right as the right "to be left alone."⁶⁹ This right, based on the Fourteenth Amendment to the United States Constitution, was applied to the parent's personal right to raise his children in the case of Meyer v. Nebraska.⁷⁰ In addition, the court said in Doe v. Bolton that "the freedom of choice is basic decisions of one's life respecting marriage, divorce, procreation, contraception, and the educating and upbringing of children."⁷¹

⁶⁵Bruce H. Schwartz, "Parental Rights: Educational Alternatives and Curriculum Control," Washington and Lee Law Review 36 (1979):277.

⁶⁶Beshoner, p. 198.

⁶⁷Farrington v. Tokuskige, 273 U.S. 284 (1927).

⁶⁸Wisconsin v. Yoder.

⁶⁹Olmstead v. U.S., 277 U.S. 438 (1927); p. 498.

⁷⁰Meyer v. Nebraska, 262 U.S. 390 (1923).

⁷¹Doe v. Bolton, 410 U.S. 179 (1973); p. 211.

Beshoner points out that courts have been inconsistent in their rulings in home school cases and charges that Washington has used a "double-edged sword against home instruction."⁷² She uses two cases, decided in that state, to illustrate her point.

In State v. Counort a Washington court ruled against Mr. Counort, a qualified and experienced teacher. His home school did not meet the court's definition of school as a "regular, organized and existing institution making a business of instructing children of school age in the required studies and for the full time required by the law [of Washington]."⁷³ His home school was found to be illegal on the grounds that the program offered was not "sufficiently institutional."⁷⁴

Another case was decided by the Superior Court of Washington with little notice of the adequacy of instruction. The parents in the case of Shoreline School District Number 412 v. Superior Court lost in their attempts to offer home instruction because they "had the place and pupils, but not a teacher qualified to teach in the state of Washington."⁷⁵

According to Beshoner, each case in the area of home instruction is decided by "careful and sometimes tortured, analysis of the state

⁷²Beshoner, p. 197.

⁷³State v. Counort, 124 p. 910 (Wash. 1912); pp. 911-912.

⁷⁴Beshoner, p. 196.

⁷⁵State ex rel. Shoreline School District Number 412 v. Superior Court for King County, 346 p. 2d. 999 (Wash., 1960); p. 999.

compulsory education statute."⁷⁶ The cases often revolve around the issue of equivalence of instruction in the home school and public schools.⁷⁷

Courts usually uphold standards of equivalence established by the state according to Burgess.⁷⁸ In the absence of state standards it has become the duty of the court to decide equivalence. In People v. Levisen the court ruled that school "included the place and nature of instruction but did not require a certain number of students to qualify as a school."⁷⁹ In Farrington v. Tokuskige the court said the program of study in private schools did not have to be "identical to public schools" to meet the equivalency test.⁸⁰ According to the rulings in Knox v. O'Brien⁸¹ and In re Franz⁸² equivalence is based on several factors. Among these factors are qualifications of the teacher, materials, curriculum and methodology, social intercourse with other children,⁸³ and the presence or absence of the "full advantages supplied by the public schools."⁸⁴

⁷⁶Beshoner, p. 191.

⁷⁷Ibid., p. 193.

⁷⁸Burgess, p. 137.

⁷⁹People v. Levisen, 90 N.E. 2d. 213 (Ill. 1950).

⁸⁰Farrington v. Tokuskige.

⁸¹Knox v. O'Brien, 72 A. 2d. 389 (N.J. 1950).

⁸²In re Franz, 378 N.Y.S. 2d. 317 (New York 1976).

⁸³Ibid.

⁸⁴Knox v. O'Brien, p. 391.

The question of socialization of students in home schools as compared to those in public schools has received conflicting answers from the judiciary. In Perchemilides v. Frizzle the court said that socialization should not be considered when approving home schools because "the parents must be allowed to decide whether public school education, including its socialization aspect, is desirable or undesirable for their children."⁸⁵ On the other hand, the New Hampshire Supreme Court decided that it was not unreasonable to consider socialization in determining the legality of home schools.⁸⁶ This view was upheld in Stephens v. Bongart when the judge said he could not conceive of a home school providing a "social outlook in any form or manner comparable to that provided in the public school."⁸⁷

In the absence of standards for nonpublic schools, the courts have been more inclined to favor the parents.⁸⁸ This is evident from the ruling in State of Florida v. M.M. and S.E. In this case the court ruled that certification of teachers in private schools could not be required since "there are currently no rules or statutes regulating schools in the area of education of teachers."⁸⁹

⁸⁵Perchemilides v. Frizzle, No. 16641 (Mass. Hampshire Cty. Super. Ct. 1978); p. 13.

⁸⁶State v. Hoyt, 146 A. 170 (N.H. 1929).

⁸⁷Stephens v. Bongart, p. 137.

⁸⁸Gary E. Sherma, "Alternatives to Public School: Florida's Compulsory Education Dilemma," Nova Law Journal 6 (Winter 1982):272.

⁸⁹State v. M.M. and S.E., 407 So. 2d. 987 (Fla. 1982).

Summary

Home schooling is an option available to parents in forty-five of the fifty states, and the number of states permitting such instruction is growing. However, Devin states that the legal status of home schools is characterized by "vague statutes, incomplete evidentiary records and very narrow rulings."⁹⁰ He further declares that "it is impossible to provide a hard and fast determination of what the state can and cannot do in its regulation of home study programs."⁹¹

Schwartz is more optimistic and states that "compliance with all state educational requirements is usually sufficient"⁹² for parents who want to establish home schools.

Devin summarizes the legal status of home instruction programs by saying:

Until the Supreme Court chooses to review the issue, it appears that the basic questions concerning parental authority in the instruction of their children will be discussed through an entangled body of state court decisions.⁹³

⁹⁰Devin, p. 464.

⁹¹Ibid., p. 474.

⁹²Schwartz, p. 281.

⁹³Devin, p. 474.

Certification of Teachers

Introduction

In 1983 the National Commission on Excellence in Education issued a strong, almost frightful, challenge to American education when it declared:

Our nation is at risk The educational foundations of our society are presently being eroded by a rising tide of mediocrity that threatens our very future as a nation If an unfriendly foreign power had attempted to impose on America the mediocre performance that exists today, we might well have viewed it as an act of war. As it stands, we have allowed this to happen to ourselves.⁹⁴

This is only one of nearly thirty major national reports and countless state and local studies⁹⁵ which have focused on the imperative to improve the quality of education in America.

These reports and studies have consistently addressed the need for better teachers in the classroom. This is reflected in statements such as "teachers are accused of being mediocre,"⁹⁶ and that improvements in education can be accomplished only through the "availability of teachers carefully educated to do the job."⁹⁷

⁹⁴National Commission on Excellence in Education, "An Open Letter to the American People. A Nation at Risk: The Imperative for Educational Reform," Education Week 27 (April 1983):12-16.

⁹⁵Marvin Cetron, Barbara Soriano, and Margaret Gayle, Schools of the Future: How American Business and Education Cooperate to Serve Our Schools (New York: McGraw-Hill, 1985), p. 146.

⁹⁶Richard W. Moore, Master Teachers (Bloomington, Ind.: Phi Delta Kappa Educational Foundation, 1984), p. 10.

⁹⁷Fred M. Hechinger, Education Agenda for the 1980's (Bloomington, Ind.: Phi Delta Kappa Educational Foundation, 1981), p. 18.

The certification of teachers, a responsibility discharged by each of the fifty states, is a means of meeting the challenge of providing qualified teachers and assuring the public that "professional personnel have the minimum academic and professional skills necessary to meet the objectives of the instructional programs offered to our children."⁹⁸

This section looks at the purpose of certification, the historical development of the practice of certifying teachers, and the legal aspects of teacher certifications.

The Purpose of Teacher Certification

"Universal education is accepted as the right of every child."⁹⁹ The basic obligation to provide this education rests with individual states as mandated by state constitutions to provide education for its citizens on whatever terms and to whatever extent the legislature chooses.¹⁰⁰ One of the terms of education expressed by the legislatures of all fifty states is the certification of education personnel.¹⁰¹

The teaching certificate is "a license granted by the state and it enables a teacher to enter into a lawfully binding contract to

⁹⁸J. Arthur Taylor, "Quality Assurance for Professional School Personnel: A Position Paper." Unpublished paper.

⁹⁹Ibid.

¹⁰⁰William R. Hazard, Lawrence D. Freeman, Stephen Eisdorfer, and Paul Tractenberg, Legal Issues in Teacher Preparation and Certification (Washington, D.C.: ERIC Clearinghouse on Teacher Education, 1977), p. 6.

¹⁰¹Taylor.

teach."¹⁰² Even though it does not carry the assurance that the teacher is properly prepared, it means that the minimum requirements established by the state have been met. Conant summarizes the requirements as the amount of college instruction in professional education courses, and the amount of general education and subject matter specialization.¹⁰³

Taylor points out that the purpose of certification is "to maintain standards of professional competence,"¹⁰⁴ and Kinney says that the public has come to view certification as an "indispensable safeguard of quality education."¹⁰⁵ Certification "protects and promotes . . . [the] legitimate public interest in education"¹⁰⁶ according to Hopkins.

The certificate is designed to permit the holder to teach, not to serve as a guarantee of a job. Hopkins illustrates this by saying,

Just as the state does not examine and license physicians in order to assist the graduate . . . in pursuing his special interest in setting up a practice and making money, so the proper purpose of state procedures for teacher certification is not to assist the graduate of a school of education in pursuing his legitimate, private goal of getting a job.¹⁰⁷

¹⁰²Lucien Kinney, Certification in Education (Englewood Cliffs, N.J.: Prentice-Hall, 1964), p. 36.

¹⁰³James Bryant Conant, The Education of American Teachers (New York: McGraw-Hill, 1963), p. 43.

¹⁰⁴Taylor.

¹⁰⁵Kinney, p. 40.

¹⁰⁶John Hopkins, Basic Legal Issues in N.Y. State on Teacher Certification (Lincoln, Neb.: Study Commission, 1973), p. 4.

¹⁰⁷Ibid.

History of Teacher Certification

Historically the function of certification has been performed by guilds and professional organizations,¹⁰⁸ but teacher certification has been divorced from the historical practice and has become a state function exercised by each of the fifty states.

The states have not always regulated the certification of teachers. Kinney traces the evolution of teacher certification from the Colonial period when, due to scarcity of teachers and the difficulty of communication and travel between settlements, the selection of teachers was a local matter. Local officials were concerned with the teachers' ability to govern the schools, their moral character, and finally their academic attainment. The latter was determined by personal interviews and/or written examinations.¹⁰⁹ Prospective teachers were often "questioned on the orthodoxy of their religious beliefs"¹¹⁰ by local religious leaders. Frequently teachers were

¹⁰⁸Organization for Economic Cooperation and Development, Selection and Preparation in Education and Employment (Paris, France: ECOD, 1977), p. 74.

¹⁰⁹Kinney, p. 36.

¹¹⁰Gerald L. Gutek, Education and Schooling in America (Englewood Cliffs, N.J.: Prentice Hall, 1983), p. 351.

employed, not because of their educational competency, but because of "doctrinal conformity."¹¹¹

In 1686 the General Assembly of Virginia took the first action to assure that teachers were qualified to teach when it requested that every county appoint a person who would be duly fit to examine and license schoolmasters. Even though Vermont and Rhode Island followed Virginia's lead, there was nothing to prohibit local officials from employing teachers other than those approved by the proper officials.¹¹²

The practice of certification actually began in 1825 when the Ohio Court of Common Pleas was directed to appoint three examiners of schools in each county with the major responsibility of certifying teachers.¹¹³ The certification of teachers was accomplished through examinations. Kinney states that the typical examination for teachers in Ohio consisted of five questions on general subjects, and five in each area of reading, orthography, arithmetic, definitions, government, grammar, penmanship, geography, and the theory of teaching.¹¹⁴

Other states followed the lead of Ohio and initiated the practice of certification through examination. This practice was not without problems. Conant notes that often the examiners were too unschooled to develop and evaluate rigorous examinations and that the scarcity of teachers led to the practice of tailoring examinations to

¹¹¹Ibid.

¹¹²Kinney, p. 41.

¹¹³Ibid., p. 45.

¹¹⁴Ibid., p. 49.

the knowledge and experience of the examinee rather than to the requirements of the position. Also, the examining procedure was not free from local politics, religious prejudices, or personal favoritism.¹¹⁵

When rural areas were unable to attract teachers meeting the certification requirements, they were forced to employ individuals who failed to score high on the examination. This led to the practice of establishing levels of certificates. Those examinees with a score of eighty-five percent or higher were given a First Grade Certificate; those who scored between seventy-five and eighty-five percent were given a Second Grade Certificate; and Third Grade Certificates were granted to those scoring between sixty-five and seventy-five percent.¹¹⁶

In the mid-nineteenth century states began to have a chief state school official, and this paved the way for the centralization of the certification of teachers at the state level. Each state, often through a teacher certification board, developed procedures for licensing teachers as a means to regulate entry into teaching.¹¹⁷

The trend toward centralization of teacher certification continued until the beginning of the twentieth century when all fifty states were exercising authority to issue certificates for teachers.¹¹⁸

¹¹⁵Conant, p. 11.

¹¹⁶Kinney, p. 51.

¹¹⁷Gutek, p. 351.

¹¹⁸Kinney, p. 81.

To enforce certification guidelines, state funds were often provided only to school districts which employed certified teachers.¹¹⁹

Prior to 1900 teachers were issued blanket certificates which licensed them to teach any subject at any grade level. During the twentieth century this practice has ended, and certificates have become more subject and level specific.¹²⁰

With centralization of control over the certification process came a change in emphasis. The growth of normal schools and colleges and universities gave rise to the course completion concept of certification. This concept specified the bachelor's degree plus specific courses or courses in specific areas as prerequisites for certification.¹²¹

Gradually the course completion concept gave way to the program approval concept whereby the state establishes guidelines for acceptable teacher education programs, evaluates programs as offered in colleges and universities for compliance, accepts credentials of graduates, and issues certificates based upon the recommendation of the colleges and universities.¹²² The program approval concept is the dominant process of certification today.

¹¹⁹Gutek, p. 351.

¹²⁰Kinney, p. 82.

¹²¹Hazard, p. 111.

¹²²Ibid., p. 112.

An emerging concept is that certification should be based upon the evaluation of teacher competencies as assessed by local school officials. This assessment should take place during student teaching and during the initial teaching experience.¹²³ This approach stresses the joint responsibility of the colleges, universities, and local school districts for the preparation and early performance of teachers.¹²⁴

The evaluation of teacher certification has come to a point at which requirements and procedures are administered by all fifty states with the cooperation of teacher training institutions which prepare "resourceful teachers who are liberally educated and professionally prepared."¹²⁵ The state and colleges and universities "combine theory and practice with a greater focus on clinical experience in the classroom"¹²⁶ to assure the public that teachers are educationally and professionally prepared.

Legal Aspects of Teacher Certification

The certification of teachers is the responsibility of each individual state. Consequently the result is what Grieder describes

¹²³Ibid.

¹²⁴North Carolina Department of Public Instruction, North Carolina Administrative Code, Sec. 1801 (3) (1982); p. 2-469.

¹²⁵Gutek, p. 355.

¹²⁶Ibid.

as "a nationwide crazy quilt"¹²⁷ of certification guidelines. The practice of issuing certificates "has its legal authority in the action of a state legislature [and] its implementation in an appropriate agency."¹²⁸

Different requirements for certification of teachers have been established in the various states. As a minimum requirement, all states require teachers to hold a baccalaureate degree with specified courses in professional education. Several states now require a fifth year of college for earning a certificate.¹²⁹

In states where wide discretion is placed in the examining and certifying agency, the courts are not inclined to interfere with that discretion.¹³⁰ This is echoed by Garber and Edwards who say,

Those to whom the state has delegated authority to determine whether a prospective teacher has met the statutory requirements for a certificate and to issue a certificate in case the requirements have been met, perform a discretionary duty and the courts will not control their discretion unless it is abused.¹³¹

¹²⁷Calvin Grieder, Truman M. Pierce, and K. Forbis Jordan, Public Administration (New York: Ronald Press, 1969), p. 215.

¹²⁸Hazard, p. 7.

¹²⁹Guttek, p. 352.

¹³⁰Reutter, p. 363.

¹³¹Leo O. Garber and Newton Edwards, The Law Governing Teaching Personnel. Casebook No. 3 (Danville, Ill.: Interstate Printers and Publishers, 1962), p. 3.

In the exercise of their power to regulate public education, "the state may prescribe such qualifications for teachers as public policy may demand."¹³² The courts have ruled that:

equal protection clauses . . . do not take from the state the power to classify persons or activities when there is reasonable basis for such classification and for consequent differences in treatment under law.¹³³

The certificate for teachers is a license, and the principle of control by the legislature over a license is well established by judicial decree.¹³⁴ State legislatures have exercised their control over certification of teachers through qualifications such as minimum age, American citizenship, good physical health, and good moral character.¹³⁵

The discretionary act of issuing a certificate cannot be exercised arbitrarily.¹³⁶ If a teacher has met all requirements for a certificate, the "issuance of the certificate is merely a ministerial duty which the officer may not refuse to perform."¹³⁷

Both Edwards and Bolmeier speak of the state's plenary power over the certificate. Edwards states that it is not a property right

¹³²Newton Edwards, The Courts and the Public Schools: The Legal Basis of School Organization and Administration (Chicago: University of Chicago Press, 1955), p. 437.

¹³³Guthrie v. Taylor, 185 S.E. 2d. 193 (N.C. 1971); p. 175.

¹³⁴Gullet v. Sparks, 444 S.W. 2d. 901 (Ky. 1901).

¹³⁵Guttek, p. 352.

¹³⁶Keller v. Hewitt, 41 P. 871 (Cal. 1895).

¹³⁷Reutter, p. 363.

and does not have any elements of a contract between the state and the teacher.¹³⁸ Since it is a license and not a contract, the state may impose additional qualifications upon the certificate holder.¹³⁹

Not only are states empowered to issue certificates but also to revoke them. The United States Supreme Court has ruled that a mere license by a state is always revokable.¹⁴⁰ However, if statutes specify reasons for revoking a certificate, it can be revoked for those reasons and no other.¹⁴¹ Since the revocation of the certificate deprives the teacher of employment in his profession in public education, the courts tend to examine closely the procedures used in such an action. This action is considered as dismissal, and the board of education should act accordingly.¹⁴²

A teacher must hold a certificate before he can enter into a contract to teach. Entry into a contract without a certificate makes the contract void, and the teacher, according to Bolmeier, is a "volunteer"¹⁴³ not entitled to receive a salary.¹⁴⁴

¹³⁸Edwards, p. 439.

¹³⁹Bolmeier, The School in the Legal Structure, p. 190.

¹⁴⁰Douglas v. Continental Insurance Company, 94 U.S. 535, 24 L. Ed. 148 (1876).

¹⁴¹Stone v. Fritts, 82 N.E. 793 (Ind. 1907).

¹⁴²Reutter, p. 368.

¹⁴³Bolmeier, The School in the Legal Structure, p. 190.

¹⁴⁴Floyd County Board of Education v. Slone, 307 S.W. 2d. 912 (Ky. 1957).

The courts have upheld regulations requiring teachers to renew their certificate by saying the practice "cannot be deemed arbitrary" and does "not deny [the] teacher the equal protection of law."¹⁴⁵ In making this ruling, the state court quoted the United States Supreme Court's ruling in Adler v. Board of Education when it said teachers have no right to work for the state in the system on their own terms.¹⁴⁶

Summary

Even though "certification does not necessarily equate with teaching competence in every instance,"¹⁴⁷ it has been generally accepted by the public and courts as a "reasonable and effective means to carry out a legitimate state purpose"¹⁴⁸ of providing an education for all children.

The state may prescribe qualifications for teachers it deems necessary and may require that a teacher hold a certificate which is evidence that he possesses the qualifications prescribed by the state.¹⁴⁹ All fifty states have established certification procedures for teachers, and the qualifications established under these procedures have been generally accepted by the public and the courts.

¹⁴⁵Guthrie v. Taylor, p. 195.

¹⁴⁶Adler v. Board of Education, 342 U.S. 485, 72 S. Ct. 380, 96 L. Ed. 517 (1952).

¹⁴⁷State v. Shaver, 294 N.W. 2d. (N.D. 1980).

¹⁴⁸Sheridan Road Baptist Church v. Department of Education, 348 N.W. 2d. 263 (Mich. App. 1984); p. 268.

¹⁴⁹Bolmeier, The School in the Legal Structure, p. 189.

CHAPTER III
ANALYSIS OF STATE STATUTES RELATING
TO CERTIFICATION OF TEACHERS
IN HOME SCHOOLS

Introduction

An analysis of statutes in states which permit home instruction reveals great variations in qualifications required for teachers in home schools. Legislatures in some states have issued specific mandates on the subject. Other state statutes provide only general guidelines, while others make no mention of the qualifications of instructors in home schools.

Teachers providing home instruction must be certified in some states, while alternative qualifications can be met in lieu of certification in other states. A college education is required for persons teaching in some states, while other states specify that a high school education or its equivalent is sufficient. One state requires that the instructor pass a proficiency examination, and several states simply require that the instructor be "competent" or "qualified."

Newly enacted legislation indicates that the inconsistency in requirements for instructors in home school continues. Not one of the six states which enacted legislation in 1985 permitting home instruction requires certification as an absolute requirement for all persons teaching in home schools. Arkansas enacted a law which requires a

special education certificate for teachers who teach exceptional children in the home.¹ New laws in Florida and Washington specify certification for home school teachers but provide alternative qualifications for such instructors. Parents are permitted to provide home instruction for their own children under newly enacted laws in Oregon and Tennessee, but the statutes do not specify any qualifications parents must meet in order to offer the instruction. The Wyoming legislature enacted a law permitting home instruction but makes no mention of who is to do the teaching.

This chapter analyzes state statutes which relate to certification of teachers who offer instruction in home schools. The text of applicable laws appears in the Appendix.

States Which Require Certification

An analysis of state statutes reveals that forty-one states have enacted legislation permitting home schooling as an alternative to public education. In five other states home schools are permitted through other means. Lines reports that case law allows for home schooling in Illinois; the Michigan Attorney General has ruled that home instruction is a viable alternative; and regulations of the New Hampshire Board of Education permit home instruction of children.² In

¹Arkansas, Arkansas Statutes Annotated - Supplement, Sec. 42 (1985).

²Patricia Lines, Home Instruction, Education Commission of the States, Issuegram, No. 49 (August 1984), p. 1.

addition the Supreme Court of North Carolina has ruled that home instruction is not prohibited in that state.³

Of the forty-five states which permit home instruction through legislative action or other means, only eight make certification an absolute requirement for persons providing such instruction. One of these eight does not require certification for teachers of all students. Four other states have certification requirements which can be waived if other conditions are met. One state requires that home instruction be "supervised by a certified person"⁴ and another one requires that the quality of the curriculum offered in home schools must be verified by a "statement from a teacher certified to teach at the child's grade level."⁵ Table 2 shows which states have the certification requirements mentioned above.

The states in which the home instructor must meet certification requirements are: Alabama, Alaska, California, Colorado, Idaho and Iowa. Statutes in the former three states refer to the person who conducts home instruction as "tutors," while laws in the latter three states refer to them as "teachers." The requirement in Alabama is that children "be instructed by a competent private tutor."⁶ Tutor is defined as "a person who holds a certificate issued by the State

³Delconte v. State, 329 S.E. 2d. 636 (N.C. 1985).

⁴Washington, West's Revised Code of Washington Annotated, Sec. 28A. 02 201, (1985).

⁵Louisiana, West's Louisiana Revised Statutes Annotated, Sec. 236 (1982).

⁶Alabama, Alabama Code, Sec. 16-28-3 (1984).

Table 2
States Which Have Certification Requirements
for Teachers in Home Schools

	Certificate	Certificate Requirement May be Waived	Other
Alabama	X		
Alaska	X		
Arkansas	X ^a		
California	X		
Colorado	X		
Florida		X	
Idaho	X		
Iowa	X		
Louisiana			X ^b
Maryland		X	
Michigan	X ^c		
Nevada		X	
Washington			X ^d

^aTeachers of special education students only.

^bProgram must be verified by certified teacher.

^cAttorney General opinion.

^dMust be supervised by certified teacher.

Superintendent of Education."⁷ California's requirement is similar to that of Alabama. California statute requires that children in home schools be "instructed in study . . . by a private tutor or other person [who] shall hold a valid state credential [certificate] for the grade taught."⁸ The statutory requirement for a child to receive instruction in the home in Alaska is that such instruction be "tutoring by personnel certified."⁹

The laws of Iowa, Colorado, and Idaho specify "certified teachers" for home instruction. In Iowa "in lieu of such attendance [public or private school] such child may attend upon equivalent instruction by a certified teacher elsewhere than at school."¹⁰ Colorado's compulsory attendance law does not apply to a child "who is being instructed at home by a teacher certified."¹¹ Teachers in home schools in Idaho are covered by the law which requires that "every person who is employed to serve any elementary or secondary school in the capacity of teacher . . . shall be required to have and to hold a certificate issued under the authority of the state board of education."¹²

⁷Ibid.

⁸California, Deering's California Code, Sec. 4 8224 (1984).

⁹Alaska, Alaska Statutes, Sec. 14.30.010 (1984).

¹⁰Iowa, Iowa Code Annotated, Sec. 299.1 (1984).

¹¹Colorado, Colorado Revised Statutes, Sec. 22-33-104 (1983).

¹²Idaho, General Laws of Idaho Annotated, Sec. 33-202 (1981).

The seventh state which requires teachers in home schools to be certified is Michigan.¹³ Even though statutes do not address home schools, the attorney general has ruled that such alternatives to public schooling are allowed under the provisions for "state approved nonpublic schools."¹⁴ The attorney general has ruled that "a parent may not provide for his or her child's education without having a certified teacher providing instruction."¹⁵

Arkansas law requires a certificate for instructors of some students but not all. The statute requires that a child who has been "identified . . . as needing special education services," must be instructed by a person "properly certified to teach special education."¹⁶

States Which Require Certification
or Alternative Qualifications

The statutes of three states (Florida, Maryland, and Nevada) address the subject of certification of home instructors but provide alternatives for parents who are not certified.

One condition for conducting home instruction in Florida is that "the parent holds a valid regular Florida certificate to teach the

¹³Lines.

¹⁴Michigan, Michigan Statutes Annotated, Sec. 15.41561 (1984).

¹⁵Frank J. Kelly, Letter to Honorable Kerry Kramer, 27 September 1979.

¹⁶Arkansas.

subjects or grades in which instruction is given."¹⁷ The law provides an alternative for parents who do not meet this requirement. If a parent wants to instruct his child at home and does not hold a certificate, he may legally do so by providing for "an annual educational evaluation" under the direction of "a teacher selected by the parent Such teacher shall hold a valid regular Florida certificate to teach academic subjects at the elementary or secondary level."¹⁸

Maryland statutes likewise provide alternatives for parents who wish to operate home schools. The requirements state that

the teacher of the home instruction program . . . must meet full certification requirements of the State Department of Education for the subjects covered [or] be a graduate of an accredited college with sufficient academic background in subjects and areas being taught to the child and . . . have sufficient academic training to ensure competency in the subjects specified.¹⁹

Even this requirement may be waived by the local superintendent if the parent can justify by "reason of the person's excellence in previous teaching or occupational experience, special preparation, or other acceptable qualifications"²⁰ that he is capable of providing instruction.

¹⁷Florida, West's Florida Statutes Annotated, Sec. 232.01 (1985).

¹⁸Ibid.

¹⁹Maryland, Annotated Code of Maryland, Sec. 292 (1983).

²⁰Ibid.

Nevada also provides alternatives for noncertified parents who wish to provide home instruction. In Nevada home instruction may be provided by:

a teacher . . . who possesses a teaching certificate . . ., the parent, when the parent qualifies for a teaching certificate [or] by the parent in consultation with a person who possesses a teaching certificate issued by the superintendent of public instruction.²¹

Consultation must be provided "in the planning of the educational plan . . . in the development or review of the subject to be taught each day . . . and about any learning problems which may occur."²² The law specifies that the teacher, parent, or consulting teacher must be certified for the appropriate grade level. Another alternative available to parents in Nevada is to enroll their children in "an approved correspondence course."²³

States Which Have Other Statutory

References to Certification

Arkansas and Washington provide opportunities for home instruction, and the statutes address certification in ways not found in any other states. Home instruction is defined by Arkansas statutes as instruction "primarily conducted by parents or legal guardians for their own children."²⁴ To operate a home school, the parent must

²¹Nevada, Nevada Revised Statutes, Sec. 292 (1981).

²²Ibid.

²³Ibid.

²⁴Arkansas.

report "for statistical purposes,"²⁵ information about the school unless the child receiving instruction has been "identified . . . as needing special education."²⁶ As stated earlier, if such a child is receiving instruction, the teacher must be certified in the field of special education.

The statutes of Washington provide several choices for instructing children at home. One choice is that instruction be "provided by a parent who . . . is supervised by a certificated person."²⁷ The second option is to provide instruction by a parent who has "earned forty-five college level quarter hours or its equivalent in semester hours or has completed a course in home-bound instruction."²⁸ A third option is to seek the approval of the superintendent of the local school district. If the parent is "deemed sufficiently qualified"²⁹ by the superintendent, the other options do not have to be met. Finally, the statute declares that the above mentioned provisions "relating to the nature and quantity of instruction and related educational activities should be liberally construed"³⁰ and that parents providing home instruction "shall be

²⁵Ibid.

²⁶Ibid.

²⁷Washington.

²⁸Ibid.

²⁹Ibid.

³⁰Ibid.

subject only to those minimum state laws which are necessary to insure that a sufficient basic educational opportunity is provided."³¹

In Louisiana the home study program must offer a "sustained curriculum of a quality at least equal to that offered by public schools at the same grade level."³² The fact that such a program is being offered in home schools must be verified by a "statement from a teacher certified to teach at the child's grade level that the teacher has examined the program"³³ and found it to meet the standards.

A unique provision is found in the statute of South Dakota. This provision is that "the individuals [who provide home instruction] are not required to be certified but the state superintendent . . . may investigate to determine if the instruction is being provided by a competent person."³⁴

States Which Require "Qualified"
or "Competent" Instructors

The legislative bodies of six states (Hawaii, New York, Ohio, Pennsylvania, South Dakota and West Virginia) address the qualifications of instructors in home schools in less specific terms than certified. While legislators in those states are concerned that children who receive instruction at home are properly taught, statutes require only

³¹Ibid.

³²Louisiana.

³³Ibid.

³⁴South Dakota, South Dakota Codified Laws, Sec. 13-27-3 (1983).

that the person offering instruction be "qualified" or "competent" as shown in Table 3.

Table 3
States Which Require "Qualified" or "Competent"
Teachers in Home Schools

	Qualified	Competent
Hawaii		X
New York		X
Ohio	X	
Pennsylvania	X	
South Dakota		X
West Virginia	X	

West Virginia, Pennsylvania, and Ohio require the home instructor to be qualified as determined by the local superintendent.

New York and Hawaii require instruction by a competent instructor. New York statutes say that "instruction may be given only by a competent teacher,"³⁵ but they do not define competent nor elaborate on how competency is to be determined.

"A competent person"³⁶ is required to provide home instruction in Hawaii. The same law specifies that the instructor must be "approved by the superintendent."³⁷

³⁵New York, McKinney's Consolidated Laws of New York, Sec. 3204 (1984).

³⁶Hawaii, Hawaii Revised Statutes, Sec. 298-9 (1983).

³⁷Ibid.

As stated earlier the South Dakota state superintendent is authorized by law to determine if home instruction is "provided by a competent person."³⁸

States Which Specify Other Requirements
for Home Instructors

As indicated in Table 4, there are five states which have statutory requirements other than "certified," "qualified" or "competent" for persons teaching in home schools. These states are Arizona, Georgia, Tennessee, New Mexico, and Virginia.

Arizona law specifies that a person excused from compulsory school attendance must be "instructed at home by a person passing the reading, grammar, and mathematics proficiency examination."³⁹

In order to provide home instruction in Georgia, the parent must have earned "at least a high school diploma or the equivalent GED certificate."⁴⁰ However, a parent may employ a tutor "who holds at least a baccalaureate college degree"⁴¹ to provide instruction.

The requirements in Tennessee for parents who provide instruction for children in grades K-8 are similar to those in Georgia. "A

³⁸South Dakota.

³⁹Arizona, Arizona Revised Statutes, Sec. 15-802 (1983).

⁴⁰Georgia, Official Code of Georgia, Sec. 20-2-690 (1984).

⁴¹Ibid.

Table 4
States Which Specify Other Requirements
for Teachers in Home Schools

	Requirement
Arizona	Pass proficiency exam
Georgia	High school education or equivalent ^a
New Mexico	Baccalaureate degree ^b
Tennessee	K-8 high school education or equivalent ^b
	9-12 baccalaureate degree ^b
Virginia	Baccalaureate degree, or teacher of qualifications, or child enrolled in correspondence course, or prove parent is able to provide adequate instruction

^aOr a tutor who holds a baccalaureate degree.

^bMay be waived.

high school diploma or GED"⁴² is sufficient preparation to teach these grades. The requirements for teaching secondary students are more strict. The instructor at this level must possess at "least a baccalaureate degree."⁴³ This requirement can be waived by the Department of Education of Tennessee on a "year-to-year basis."⁴⁴

Statutes of Virginia give parents a wide choice on how to provide home instruction. The law says that home instruction is permitted

⁴²Tennessee, Tennessee's Code Annotated, Sec. 49-6-301 (1983).

⁴³Ibid.

⁴⁴Ibid.

if:

he [the parent] (1) holds a baccalaureate degree . . . ; (2) is a teacher of qualificationa . . . ; (3) has enrolled the child . . . in a correspondence course approved by the Board of Education; or (4) . . . provides evidence that the parent is able to provide an adequate education for the child.⁴⁵

New Mexico is another state which mentions a college degree for parents who teach in home schools. The law states that the person providing such instruction shall possess "at least a baccalaureate degree, which requirement may be waived by the state superintendent upon a determination that such waiver is in the child's best interest."⁴⁶

States Which Permit Home Instruction But Have No
Laws on Home Instructors

Table 5 shows the states which permit home instruction but have no statutory qualifications for the person providing the instruction.

The laws of Montana, Wyoming, and Oregon specify who can offer home instruction but do not elaborate on the qualifications the instructors must possess. In Montana the instruction must be "by a parent of his child, stepchild, or ward,"⁴⁷ while the law in Wyoming provides for instruction by the "child's parent or legal guardian or by a person designated by the parent or legal guardian."⁴⁸ The requirement in

⁴⁵Virginia, Code of Virginia, Sec. 22.1-254.1 (1984).

⁴⁶New Mexico, New Mexico Statutes Annotated, Sec. 22-1-2.1 (1984).

⁴⁷Montana, Montana Code Annotated, Sec. 20.5-102 (1984).

⁴⁸Wyoming, Wyoming Statutes Annotated, Sec. 21-4-101 (1984).

Table 5
States Which Do Not Specify Qualifications
for Home Instructors

Connecticut^a

Delaware

Illinois

Indiana^a

Kansas^a

Kentucky

Maine^a

Massachusetts

Mississippi

Missouri^a

Montana

New Hampshire

New Jersey

North Carolina^a

Oklahoma

Oregon

Rhode Island^a

South Carolina^a

Utah

Wisconsin

Wyoming

^a = Address quality of instruction rather than qualifications of instructors.

Oregon is similar and says that home instruction must be "by a parent or a private teacher" with "permission from the executive officer of the resident school district."⁴⁹

In the remaining states which permit home instruction by law or by other means, there is no statutory mention of home instructors.

Eight of these states have statutes which address the quality of instruction rather than the qualifications of the instructors. These requirements are that the instruction be "equivalent," "substantially equivalent," or "substantially to the same extent" as that offered in public schools. States with such requirements are Indiana, South Carolina, New Jersey, Missouri, Maine, Kansas, Connecticut, and Rhode Island.

The home instruction program in Delaware must provide "regular and thorough instruction in subjects prescribed for the public schools."⁵⁰ The requirement in Mississippi is that the home school must provide a "legitimate home instruction program,"⁵¹ and in Massachusetts the child must be instructed "in a manner approved in advance by the superintendent or the school committee."⁵²

Four states do not address the quality of instruction nor qualifications of the instructors. Wisconsin home schools must provide

⁴⁹Oregon, Oregon Revised Statutes, Sec. 339.010 (1983).

⁵⁰Delaware, Delaware Code Annotated, Sec. 2703 (1982).

⁵¹Mississippi, Mississippi Code Annotated, Sec. 37-13-91 (1984).

⁵²Massachusetts, Annotated Laws of Massachusetts, Sec. 76 (1984).

a "progressive curriculum of fundamental instruction."⁵³ Home instructors in Illinois and Utah meet state requirements if they provide instruction in the "proper branches of education." In North Carolina nonpublic schools, including home schools, must "maintain such minimum curriculum standards as are required of public schools."⁵⁴

In the remaining states which have provided for home schools, the requirements are simple. In Oklahoma children not enrolled in public schools must be provided "other means of education."⁵⁵ The laws of Kentucky say that children may be exempt from compulsory attendance in public schools if they are "enrolled and in regular attendance in a private school."⁵⁶

⁵³Wisconsin, West's Wisconsin Statutes Annotated, Sec. 3 118.15 (1983).

⁵⁴North Carolina, The General Statutes of North Carolina, Sec. 115C-378 (1984).

⁵⁵Oklahoma, Oklahoma Statutes Annotated, Sec. 10-105 (1983).

⁵⁶Kentucky, Kentucky Revised Statutes Annotated, Sec. 159.030 (1984).

CHAPTER IV
LEGAL ASPECTS OF CERTIFICATION OF
TEACHERS IN HOME SCHOOLS

Introduction

The increase in the number of states making statutory provisions for home schools has been accompanied by increased state regulation of teachers in such schools. Chapter III presented the number of states which require teachers in home schools to be certified as well as the states which require the teachers to be "qualified," "competent," or able to provide instruction equivalent to that provided in public schools.

A study of judicial decisions arising from statutory requirements for teachers in home schools reveals that the number of cases has increased with the rise in the number of parents who choose alternative settings for educating their children. Statutes regulating teachers in home schools have been challenged on a variety of grounds. Litigation has occurred when parents felt that their religious freedom was violated by state regulations which specified requirements for teachers in home schools. Statutes have also been challenged as being unconstitutionally vague. Other parents have argued that regulation of teachers in home schools violates basic constitutional rights such as equal protection, trial by jury, right to life, privacy, and family integrity. Such regulations have also been challenged as being arbitrary and capricious.

Parents seeking to offer home instruction without regulation by the state have contended in court that certification of teachers does not ensure educational excellence. The same parents have offered as defense of their home schools testimony that uncertified teachers can offer instruction equivalent to that offered in public schools.

The United States Supreme Court has never ruled on a home schooling case. Therefore, the legality of requiring certificates for teachers in such schools will not be determined until such a case is heard by that court. Decisions reached by other courts have been inconsistent and contradictory. However, the judiciary has generally deferred to the state the right to regulate home schools, including who is to offer instruction in them.

This chapter examines legal issues raised by parents in opposition to state regulation of teachers in home schools. Not one case has been based entirely on the right to regulate home school teachers. Each case examined questioned other aspects of home schools such as curriculum, schedule, textbooks, or state reporting requirements. However, this study is limited to issues dealing with teachers in home schools.

Some cases included in this study were brought by parents who enrolled their children in church schools. While these cases do not address the question of home schools, the arguments presented and decisions reached are applicable to all nonpublic schools including those operated in the home.

Religious Objections to Certification of
Teachers in Home Schools

The First Amendment to the United States Constitution states that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof" ¹ This prohibition was extended to the states by the Fourteenth Amendment which says, "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States." ²

Parents who oppose certification of teachers in home schools often base their opposition on religious grounds and contend that the requirement abridges their rights guaranteed by the First and Fourteenth Amendments. These parents contend that they are instructed by the Bible "to raise and educate their children in accordance with its precepts . . . and that they, not the state, are mandated by God to provide their children with an education." ³ According to these parents, to allow the state to certify teachers would be "at the risk of God's displeasure," ⁴ because the "obligation imposed by the law of God is superior to that of the laws enacted by the temporal government." ⁵

¹U.S. Const. Amend. I (1791).

²U.S. Const. Amend. XIV (1868).

³State v. Rivinus, 328 N.W. 2d. 220 (N.D. 1982); p. 222.

⁴Rice v. Commonwealth, 49 S.E. 2d. 342 (Va. 1948); p. 344.

⁵Ibid.

Teachers, according to parents who oppose certification, are "religious teachers called by God to teach,"⁶ and it would violate their religious beliefs to seek state certification "before they could do God's will."⁷ In compliance with this belief, they contend that a person "would be sinning if he or she disobeyed God and did not do God's will by pursuing the work to which he or she had been called."⁸

In one case it was argued that Sunday school teachers were not certified; and since they taught the same students in Sunday school that they taught during the week, they should not be required to be certified to teach in the nonpublic school.⁹

Defendants in another case stated that they had been "commanded by God to send their children to teachers who have not submitted themselves to the state certification process."¹⁰ Objection to certification is often based on the process and the "humanistic education courses which are requisite to obtaining certification."¹¹ Such courses are

⁶Fellowship Baptist Church v. Benton, 620 F. Supp. 308 (S.D. Iowa 1985); p. 314.

⁷Ibid.

⁸Ibid., p. 315.

⁹State v. Shaver, 294 N.W. 2d. 883 (N.D. 1980); p. 886.

¹⁰State v. Rivinus, p. 222.

¹¹Sheridan Road Baptist Church v. Department of Education, 348 N.W. 2d. 263 (Mich. Ct. App. 1984); p. 268.

believed to teach concepts which are "contrary to sincerely held religious beliefs"¹² of parents.

Courts recognize the rights of parents to their religious beliefs but do not see such beliefs to be a "legal justification for violation of a positive law."¹³ The Supreme Court of Appeals in Virginia expressed the opinion which has been generally accepted by other courts when it ruled:

The constitutional protection of religious freedom, while it insures religious equality, on the other hand does not provide immunity from compliance with reasonable civil requirements imposed by the state. The individual cannot be permitted, on religious grounds, to be the judge of his duty to obey the regulatory laws enacted by the state.¹⁴

The same court did not rule out the possibility of religious beliefs being the basis for exemption from statutory requirements imposed by the state. However, it did rule that:

The mere fact that such a claim of immunity is asserted because of religious conviction is not sufficient to establish its constitutional validity.¹⁵

To determine the validity of a charge of violation of religious freedom, courts often apply the guidelines established by the United States Supreme Court in the case of Wisconsin v. Yoder.¹⁶ In this case Jonas Yoder and other members of the Amish faith refused to send their

¹²Fellowship Baptist Church v. Benton, p. 314.

¹³State ex rel. Shoreline School District No. 412 v. Superior Court for King County, 346 p. 2d 999 (1960); p. 1004.

¹⁴Rice v. Commonwealth, p. 347.

¹⁵Ibid.

¹⁶Wisconsin v. Yoder, 406 U.S. 205 (1977).

children to public schools beyond the eighth grade. The Green County Court of Wisconsin convicted them of violating the compulsory school attendance law which requires children to attend school to the age of sixteen. The conviction was upheld by the Circuit Court but was overruled by the Wisconsin Supreme Court on the grounds that the defendants' rights to free exercise of religion had been violated.

The United States Supreme Court, with Chief Justice Burger writing the opinion, upheld the decision of the state Supreme Court. It was ruled that requiring public school attendance beyond the eighth grade would expose Amish children to influences contrary to the sincere religious beliefs of the Amish people. Such influences would interfere with the integration of the youth into the Amish faith and culture at a crucial adolescent stage of life.

The court declared that the absence of one or two years of additional schooling in public schools would not impair the physical or mental health of the children. Because of the emphasis the Amish put on vocational training through practical work experiences, the court said that allowing the children to end their public schooling at the end of the eighth grade would not result in an inability to be self supporting nor place a burden on society to support them.¹⁷

The Yoder decision established a three-pronged test to determine whether or not an action infringes upon religious freedoms. The first determination to be made is whether or not the activity interfered with by the state is motivated by and rooted in a legitimate and sincerely

¹⁷Ibid.

held religious belief.¹⁸ The second decision is whether or not the free exercise of religion has been unduly burdened by the regulation and the impact on the religious practices involved.¹⁹ The final test is whether or not the state has a compelling interest in the regulation which justifies the burden on free exercise of religion and overrides the interest of parents in exercising their religious practices.²⁰

The three-pronged test established in Yoder has been used by other courts to balance the rights guaranteed by the First and Fourteenth Amendments against the state's general interest in the health, safety, and welfare of its citizens. The balancing test is needed because the mere fact that a statute imposes a burden on religion does not automatically make the statute unconstitutional.²¹ Even though the freedom to hold religious beliefs and opinions is absolute, actions motivated by these beliefs and opinions are not immune from regulation.²²

In establishing the first step of the three-pronged test, the Yoder court examined the "religious beliefs they [the defendants] and and their forebears have adhered to for almost three centuries"²³ and found the beliefs and their mode of life to be inseparable and

¹⁸Ibid., pp. 215-216.

¹⁹Ibid., pp. 217-219.

²⁰Ibid., pp. 219-222.

²¹State v. Shaver, p. 888.

²²Ibid.

²³Wisconsin v. Yoder, p. 215.

interdependent.²⁴ The court concluded that:

A way of life, however virtuous and admirable, may not be interposed as a barrier to reasonable state regulation of education if it is based on purely secular considerations; to have the protection of the religious clauses, the claim must be rooted in religious beliefs.²⁵

Lower courts have applied this test when parents objected to requirements that students in nonpublic schools be taught by certified teachers. Some parents have successfully showed that the religious beliefs on which they base their objections to certification are an integral and inseparable part of their ministry,²⁶ that their beliefs are sincere,²⁷ and that their objections are "firmly rooted in religious beliefs."²⁸

In a North Dakota case the Supreme Court of that state assumed that the beliefs of parents were sincere religious beliefs because there was no "contrary showing that the defendants' beliefs are based on anything but religion."²⁹ Even though the defendants in the case gave inconsistent accounts of their beliefs and objections to certification of teachers, the court upheld their belief. The conclusion of the court was that "religious beliefs need not be acceptable, logical,

²⁴Ibid.

²⁵Ibid.

²⁶State v. Shaver.

²⁷Johnson v. Charles City Community Schools Board of Education, 368 N.W. 2d. 74 (Iowa 1985); p. 84

²⁸Sheridan Road Baptist Church v. Department of Education, p. 269.

²⁹State v. Rivinus, p. 225.

consistent or comprehensible to others in order to meet the First Amendment protection."³⁰

All challenges to state regulation of teachers in nonpublic schools have not passed the first part of the test. In Johnson v. Charles City the court found that even though the beliefs were sincere, the "plaintiffs offered no evidence that any principle or tenet of their church is in conflict with"³¹ the regulations and that they "insisted only that their church be able to teach . . . with teachers of its own exclusive choice."³²

In the case of Jernigan v. State the parents failed to show that "their entire way of life is inextricable from their religious beliefs" or that the use of certified teachers "would substantially interfere with their religious practices."³³ The court ruled against parents in another case because they failed "to present any evidence of their religious beliefs or of the manner in which . . . [the law requiring certified teachers] interferes with the exercise of these beliefs."³⁴ In Hanson v. Cushman the court decided that the objection to

³⁰Ibid., pp. 224-225.

³¹Johnson v. Charles City Community Schools Board of Education, p. 84.

³²Ibid.

³³Jernigan v. State, 412 So. 2d. 1242 (Ala. Cr. App. 1982); p. 1245.

³⁴State v. Moorhead, 308 N.W. 2d. 60 (Iowa 1981); p. 64.

certification of teachers did not "rise above a personal or philosophical choice and therefore is not within the bounds of court protection."³⁵

The second prong of the test was formulated when the United States Supreme Court ruled that the impact of compulsory education beyond the eighth grade for Amish children was "not only severe, but inescapable"³⁶ because such a requirement "would gravely endanger, if not destroy, the free exercise of the respondents' religious beliefs."³⁷ The Amish belief would be endangered by "exposing Amish children to worldly influences in terms of attitude, goals and values contrary to beliefs, and by substantially interfering with the religious development of the Amish child."³⁸

Other defendants have not been as successful in demonstrating an undue burden on religious tenets. In the Sheridan Road Baptist Church case, the defendants failed to show that compliance with the requirement of certified teachers would render the mission of the church impractical or impossible.³⁹ In the Shaver case the court ruled against the parents after hearing testimony that "instruction could be conducted by a certified teacher without violating the basic tenets" of their religion as long as the teachers were "saved and born

³⁵Hansen v. Cushman, 490 F. Supp. 109 (W.D. Mich. 1980); p. 114.

³⁶Wisconsin v. Yoder, p. 218.

³⁷Ibid., p. 219.

³⁸Ibid., p. 218.

³⁹Sheridan Road Baptist Church v. Department of Education, p. 270.

again."⁴⁰ In another case the court heard testimony that certified teachers could be used without "compromising religious principles"⁴¹ and, in fact, one teacher in the school was certified. The judge ruled against the parents.

The third part of the test formulated by the Yoder court was to determine whether or not the state has some compelling interest that justifies the burdensome impact of the requirements. In balancing the burden of the person's religious rights with the compelling nature of the state's interest, "alternative means by which the state could achieve its objective through the imposition of a lesser burden on religion"⁴² should be examined.

Prior to the Yoder ruling in 1972, courts generally ruled that the state had absolute power to regulate schools. This is reflected in the decision of the Supreme Court of Appeals of Virginia which declared:

No amount of religious fervor he [the parent] may entertain in opposition to adequate instruction should be allowed to work a lifelong injury to his child. Nor should he, for this religious reason, be suffered to inflict another illiterate citizen on his community or his state.⁴³

This philosophy is reflected in the words of the Supreme Court of Washington which declared that "religious beliefs, whatever they may be, are not a legal justification for violation of a positive law."⁴⁴

⁴⁰State v. Shaver, p. 894.

⁴¹State v. Rivinus, p. 226.

⁴²State v. Shaver, p. 890.

⁴³Rice v. Commonwealth, p. 348.

⁴⁴State ex rel. Shoreline School District No. 412 v. Superior Court for King County, p. 1004.

In balancing the state's rights with that of parents who objected to the requirement that teachers be certified, the Iowa Supreme Court said:

The parents have the clear right to select for them [children in nonpublic schools] teachers with religious convictions which are consistent with the purpose of the school. But it is quite another thing to argue that those same teachers can be devoid of the qualifications of an educator.⁴⁵

In the same ruling the court recognized the "transcendent importance" of education "to all children"⁴⁶ and ruled that the Yoder principle did not apply to defendants in Iowa because:

they [the children] will have to compete with well-educated children, will associate with them in a society very different from the simple rural, and largely isolated one that lies ahead for Amish children.⁴⁷

The religious rights of parents are not "absolute and totally free from legislative restrictions"⁴⁸ according to the Supreme Court of North Dakota, and the "incidental burden on the free exercise of the parents' religion as a result of the state requirement is justified . . . by the state's compelling interest in the regulation [requiring certified teachers]."⁴⁹

⁴⁵Johnson v. Charles City Community Schools Board of Education, p. 81.

⁴⁶Ibid., p. 85

⁴⁷Ibid.

⁴⁸State v. Shaver, p. 897.

⁴⁹Ibid.

In another case the same court looked at the intent of teacher certification and declared the purpose was to "promote and further the education of the children . . . [and] not to impede the observance of one or all religions or to discriminate invidiously between religions."⁵⁰ As such, the requirement for certification did not "unduly impinge on the constitutional rights of the defendants."⁵¹

"The state need not demonstrate a 'compelling interest' but only that it acted 'reasonably' in requiring . . . that children be taught only by certified teachers"⁵² according to a New York court. Consequently the court ruled against uncertified parents who sought to educate their children at home.

The reasonableness principle was also expressed by the Michigan court which ruled that the issue is "whether the individual regulations [requiring certified teachers] are reasonable means to give effect to a broad compelling state interest."⁵³

Even after the Supreme Court set the precedent for allowing religious beliefs as a defense for noncompliance with statutory requirements, other courts have been reluctant to accept religious beliefs as a legitimate defense for failure to utilize certified teachers in non-public schools.

⁵⁰State v. Rivinus, p. 231.

⁵¹Ibid.

⁵²Hanson v. Cushman, p. 114.

⁵³Sheridan Road Baptist Church v. Department of Education, p. 274.

The Court of Appeals in Michigan ruled that requiring certified teachers is not only a recognized interest in providing an education for youth but also "of sufficient urgency to be classified as 'compelling' within the constitutional standard."⁵⁴

Not all religious challenges to certification of teachers have been decided by the Yoder principle. In West Virginia the case against Bobby and Ester Riddle was determined on the ground that no person may disregard the law and then raise First Amendment defenses as to the prosecution for violation of the law. The parents made no effort to seek approval of their home school. The court ruled that to allow such "ad hoc noncompliance with compulsory school attendance laws,"⁵⁵ would lead to hideous results. To permit such would

imply that parents have the right to keep their children in medieval ignorance, quarter them in Dickensian squalor beyond the reach of 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 automators⁵⁶ incapable of coping with life outside their own families.

The court concluded that the Constitution of the United States does not contemplate such a result. Therefore, the parents lost the case.

An issue which has not been addressed by the courts is the religious rights of children. Justice Douglas raised the issue in his lone dissenting opinion in Wisconsin v. Yoder. He stated that "children are

⁵⁴Ibid.

⁵⁵State v. Riddle, 285 S.E. 2d. 359 (W. Va. 1981); p. 367.

⁵⁶Ibid.

'persons' within the meaning of the Bill of Rights"⁵⁷ and should be heard in cases which determine their future. His conclusion was:

While parents, absent dissent, normally speak for the entire family, the education of the child is a matter in which the child will often have decided views It is the future of the student, not the future of the parents, that is imperiled by Toslay's decision.⁵⁸

Vagueness of Statutes

Requirements that teachers in home schools be certified have been challenged as being unconstitutionally vague. Wording which has been challenged include "a person or persons who . . . are qualified to give instruction,"⁵⁹ "equivalent instruction by a certified teacher,"⁶⁰ "teachers whose qualifications are essentially equivalent to minimum standards for public school teachers,"⁶¹ and even "certified teachers."⁶²

When courts are faced with a charge that language in a statute is unconstitutionally vague, they judge the statute by determining if the language gives adequate notice to the ordinary man of what is prohibited by the law.⁶³ A statute will be determined to be vague if a person

⁵⁷Wisconsin v. Yoder, p. 243.

⁵⁸Ibid., pp. 244-245.

⁵⁹West Virginia, West Virginia Code, Sec. 18-8-1 (1951).

⁶⁰Iowa, Iowa Code Annotated, Sec. 299.1 (1983).

⁶¹Minnesota, Minnesota Statutes Annotated, Sec. 120.10(2) (1984).

⁶²Iowa, Iowa Code Annotated, Sec. 299.1 (1983).

⁶³Colten v. Kentucky, 407 U.S. 104 (1972); p. 111.

of common intelligence is left to guess at the meaning of the statute or to its application.⁶⁴

A greater certainty of meaning is required where a statute imposes a criminal penalty. The Supreme Court, in Kolender v. Lawson, declared:

As generally stated, the void-for-vagueness requires that a penal statute define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement.⁶⁵

The Iowa District Court further explained the due process standard for determining the constitutionality of a challenged statute. It ruled that in order for a statute to be constitutional, it "must give a person of ordinary intelligence fair warning of what is prohibited and . . . it must provide explicit standards for those who enforce it."⁶⁶

Courts have reached conflicting decisions on the vagueness of the term "equivalent instruction" when required by a certified or qualified teacher in home schools. In State v. Moorhead the court looked to Webster's Third New International Dictionary for a definition of equivalent and concluded that "equivalent instruction is instruction which is equal to kind and amount to that provided in public schools."⁶⁷

⁶⁴Connally v. General Construction Company, 269 U.S. 385 (1925); p. 391.

⁶⁵Kolender v. Lawson, 461 U.S. 358 (1983); p. 358 n. 8.

⁶⁶Knight v. Iowa District Court, 269 N.W. 2d. 430 (Iowa 1978); p. 432.

⁶⁷State v. Moorhead, p. 64.

A district court in Iowa ruled that "'equivalent instruction' fails to give adequate notice to the ordinary man of what is prohibited by the statute."⁶⁸ The decision was that the term must be further defined before it can be used as a requirement to be met by teachers in home schools.

The West Virginia statute requiring that home instruction be provided by a person "qualified to give instruction in subjects required to be taught in free elementary schools"⁶⁹ was challenged as unconstitutionally vague. In State v. Riddle the court ruled that the wording of the statute was "sufficiently definite."⁷⁰

The term "certified teacher" has been challenged on the vagueness principle. In Iowa parents charged that it could be defined to mean "certified by a licensing agency"⁷¹ and that the legislature had meant for it to mean "competent"⁷² when it required certified teachers for nonpublic schools. In both cases the judiciary concluded that since "certified teachers" is clearly defined elsewhere in Iowa statutes and that the procedure for becoming certified is clearly stated, the term "certified" is not unconstitutionally vague. One court pointed out that the legislature had substituted the word "certified" for "competent" in 1953. In so doing the legislature changed the requirement "from a

⁶⁸Fellowship Baptist Church v. Benton, p. 318.

⁶⁹West Virginia, West Virginia Code, Sec. 18-81-1 (1951).

⁷⁰State v. Riddle, p. 360.

⁷¹State v. Moorhead, p. 64.

⁷²Fellowship Baptist Church v. Benton, p. 314.

subjective factual evaluation to an easily identifiable objective standard."⁷³ The question of vagueness of the term was settled with the declaration that "the term should cause no difficulty for citizens who desire to obey the statute."⁷⁴

The Supreme Court of the state of Minnesota overturned a parent's conviction of violating the compulsory education law and declared the statute unconstitutionally vague.⁷⁵ The Minnesota statute stated that students in home schools must be "taught by teachers whose qualifications are essentially equivalent to the minimum standards for public school teachers."⁷⁶

The state contended that the language meant that the requirements were the same for public and home school teachers. The mother countered that her "experience, knowledge, and performance"⁷⁷ made her instruction equivalent to that offered in public schools. The court agreed with the mother that the term "essentially equivalent" is unconstitutionally vague and reversed her conviction.

In reaching its conclusion the court cited the intent of the legislature and declared, "If the legislature had intended that the

⁷³Ibid.

⁷⁴State v. Moorhead, p. 64.

⁷⁵State v. Newstrom, 371 N.W. 2d. 527 (Minn. 1985).

⁷⁶Minnesota.

⁷⁷State v. Newstrom, p. 527.

qualifications of a nonpublic school teacher be the same as the minimum standards for a public school teacher, it would have said so."⁷⁸ The decision continued with the declaration that:

The legislature chose a term which, while encouraging the certifiability of nonpublic school teachers, permits . . . some flexibility in the employment of teachers who may lack professional education credit but whose preparation in knowledge and background of subject matter may be quite superior.⁷⁹

Violation of Fundamental Rights

Opponents of regulation of home schools, including teacher certification, have argued that such action violates their fundamental rights. Among the alleged violations are the guarantees of equal protection,⁸⁰ and due process,⁸¹ and the rights of trial by jury,⁸² and to life, privacy, and family integrity.⁸³

The judicial response to charges of violation of these rights has generally been the same and can be summarized by the ruling in

⁷⁸Ibid., p. 528.

⁷⁹Ibid., p. 530.

⁸⁰Johnson v. Charles City Community Schools Board of Education, Rice v. Commonwealth, and Hanson v. Cushman.

⁸¹Rice v. Commonwealth and Knox v. O'Brien, 72 A. 2d. 389 (N.J. 1950).

⁸²Rice v. Commonwealth and Grigg v. Commonwealth, 297 S.E. 2d. 799 (Va. 1982).

⁸³Jernigan v. State, 412 So. 2d. 1242 (Ala. Cr. App. 1982).

Hanson v. Cushman which declared:

The plaintiffs' claimed right to educate their children through a program of home study free from the requirement of compliance with state education laws involving teacher certification does not rise above a personal or philosophical choice, and therefore is not within the bounds of constitutional protection.⁸⁴

In the Hanson case the parents raised the issue of equal protection. They argued that the state "treats those who wish to educate their children at home differently depending on whether or not they are certified."⁸⁵ The court responded that the state was acting rationally and reasonably in advancing its interest in insuring the minimum competence of those who teach as justification for requiring that teachers in home schools be certified.⁸⁶

Plaintiffs in Johnson v. Charles City contended that their equal protection rights were violated because they were not given an exemption from the compulsory attendance laws as the Amish were granted in Wisconsin v. Yoder. The court ruled against the parents when it declared that the children in the case faced a future very different from that faced by the Amish. Consequently, the separate classifications for the Amish and the plaintiffs were justified and the equal protection claim was denied.⁸⁷

In response to the due process challenge, the courts have ruled that the regulation of home schools, including requirements for a

⁸⁴Hanson v. Cushman, p. 114.

⁸⁵Ibid., p. 115.

⁸⁶Ibid.

⁸⁷Johnson v. Charles City Community Schools Board of Education.

competent teacher, do no infringe upon any constitutional rights. A New Jersey court stated:

A democracy would fail to meet the challenge if it were not to approve the right of the state to adopt legislation having for its end standards of education which may forever destroy illiteracy, and to clothe its youthful citizens with academic attainment wherewith to enjoy the high cultural and secular heights thus far reached.⁸⁸

The parents in Rice v. Commonwealth argued that a jury should be allowed to determine if the parents were qualified to teach their children at home. The Supreme Court of Appeals in Virginia rejected the argument and said the determination of qualifications could best be made by "competent agencies of the state upon whom has been placed the duty and responsibility of supervising and maintenance of a proper education standard."⁸⁹

Parents in another case contended that their right to a trial by jury had been denied because of the court's failure to classify the proceedings as criminal. The Supreme Court of Virginia ruled that the parents had waived their right to a jury trial when they did not request a trial by jury at the lower level.⁹⁰

An Alabama court heard the argument that the portion of the compulsory school law which requires private tutors to be certified teachers violated their rights of "liberty, privacy, and family integrity,"⁹¹ The court's response was that the state has a "high

⁸⁸Knox v. O'Brien, p. 391.

⁸⁹Rice v. Commonwealth, pp. 348-349.

⁹⁰Griggs v. Commonwealth, p. 803.

⁹¹Jernigan v. State, p. 1246.

responsibility for the education of its citizens . . . [and] the power to impose reasonable regulations for the control and duration of basic education."⁹² Recognizing the importance of qualified instructors, the court decided that there is "ample justification for the state's . . . requirement of board certification for public and nonpublic teachers" and such regulations do not "sweep past the constitutionality permissible interference into the sanctity of the family unit."⁹³

Arbitrary and Capricious

At least two challenges have been made against laws requiring certification of teachers in nonpublic schools on the grounds that such laws can be applied in an arbitrary and capricious manner. In both instances the judiciary overruled the objections of the parents.

In Michigan the court held that "the mere existence of the right to impose teacher certification"⁹⁴ is not unconstitutional. It further declared that if the law is applied in an unconstitutional manner "plaintiffs have the burden of showing an actual infringement on their rights."⁹⁵

The West Virginia Supreme Court issued a similar ruling. It said that the requirement that home instructors be "qualified to give instruction" was "sufficiently definite and that an arbitrary and capricious refusal of the county superintendent and county board of

⁹²Ibid.

⁹³Ibid., p. 1247.

⁹⁴Sheridan Road Baptist Church v. Department of Education, p. 276,

⁹⁵Ibid.

education can be corrected either by an action of declaratory judgment or an action in mandamus."⁹⁶

Challenges to the Value of Certification

Parents who are opposed to certification of teachers in home schools often argue that holding a certificate is not a guarantee of competency to teach. They offer arguments similar to those advanced by Koerner when he charged that:

The certification process in most states involves the mere mechanical adding up of credit hours the applicant has had in education and in other subjects no matter what the quality may be.⁹⁷

He further declared:

Einstein could not be licensed to teach third grade arithmetic . . . or that Leonard Bernstein would not be competent to teach music to any public school student, or that many professors of education . . . could not themselves be licensed to teach in our public schools.⁹⁸

It is generally agreed that the purpose of certification is to provide competent teachers in the classroom. However, Koerner stated:

In view of the quality of teachers who are often certified today with a full complement of education courses and then some, and in view of the quality of persons who are often not certifiable despite a first-rate liberal education and demonstrated intellectual achievement, one wonders just what kind of incompetence public schools are now being saved from by the state departments of education.⁹⁹

⁹⁶State v. Riddle, p. 366.

⁹⁷James D. Koerner, The Miseducation of American Teachers (Boston: Houghton-Mifflin, 1963), p. 207.

⁹⁸Ibid.

⁹⁹Ibid., p. 208.

The arguments against certification are often verified by experts in the field of education who point out that "there are no scientific studies indicating that a teaching certificate did or did not make better teachers,"¹⁰⁰ and that "certification actually produces mediocrity."¹⁰¹ Opponents of certification contend that the "certification requirement relies upon the process (education of the teacher) rather than the product (Is the child learning?)."¹⁰² They provide anecdotal evidence that some untrained persons have become excellent teachers while some certified teachers are incompetent to teach.

The courts, while admitting the fallibility of certification, have accepted certification as a legitimate process. The fact that certification does not guarantee competency is recognized by the courts and is reflected in statements such as: "certification does not necessarily equate with teaching competence in every instance,"¹⁰³ "teacher certification may also have its deficiencies,"¹⁰⁴ and "the certificate is not guarantee that everyone who hold one is a competent teacher."¹⁰⁵ In State v. Rivinus the court ruled that "each method which purports to measure learning can be questioned as to its validity" since such

¹⁰⁰Fellowship Baptist Church v. Benton, p. 316.

¹⁰¹Sheridan Road Baptist Church v. Department of Education, p. 268.

¹⁰²Fellowship Baptist Church v. Benton, p. 316.

¹⁰³State v. Shaver, p. 894.

¹⁰⁴State v. Rivinus, p. 229.

¹⁰⁵Fellowship Baptist Church v. Benton, p. 316.

measurements are "concerned with probabilities" and not "an exact science."¹⁰⁶

While "certification may not be infallible and does not assure that every teacher is a good teacher,"¹⁰⁷ it is generally accepted that certification "appears to be the best method now available to satisfy the state's prime interest in seeing that its children are taught by competent persons."¹⁰⁸ Certification is accepted as a "reliable indicator of the probability of success in [a] particular field,"¹⁰⁹ and "an acceptable method of satisfying part of the constitutional mandate to the legislature to properly provide an education for its youth."¹¹⁰

The value of the certificate is not that it assures competence, but "in the education a person must receive to become eligible for the certificate"¹¹¹ and the consideration of character, adequate educational preparation and general fitness to teach."¹¹² In State v. Rivinus the court declared:

We have serious reservations that anyone truly concerned with educating children would object to the teacher

¹⁰⁶State v. Rivinus, p. 229.

¹⁰⁷Fellowship Baptist Church v. Benton, p. 316.

¹⁰⁸Ibid.

¹⁰⁹State ex rel. Douglas v. Faith Baptist Church, et al., 301 N.W. 2d. 571 (Neb. 1981), p. 579.

¹¹⁰State v. Rivinus, p. 229.

¹¹¹Fellowship Baptist Church v. Benton, p. 316.

¹¹²State v. Rivinus, p. 230.

having the [required] . . . qualifications or would not want the teacher to have them.¹¹³

In order for the state to require certification of teachers in nonpublic schools, the state is not required to "prove conclusively that certification of the teaching profession guarantees excellent performance."¹¹⁴ If such proof were to be required, the legislative authority of the state would be "severely inhibited."¹¹⁵ The futility of proving that certification brings competency was seen in a court decision which said:

We are not suggesting as an absolute that every person who has earned a baccalaureate degree in teaching is going to become a good teacher any more than one who has obtained the appropriate training and education will become a good engineer, lawyer, beauty operator, builder, or pipefitter.¹¹⁶

Parents who question the value of certifying teachers suggest the use of standardized achievement tests to determine teacher effectiveness. Parents see this as a less restrictive and more precise alternative than teacher certification. Courts have been reluctant to accept this proposal.

One objection the judiciary has found to the use of standardized testing in lieu of teacher certification is the question of the validity of such tests.¹¹⁷ One court recognized the value of testing but

¹¹³Ibid.

¹¹⁴Sheridan Road Baptist Church v. Department of Education, p. 273.

¹¹⁵Ibid.

¹¹⁶State ex rel. Douglas v. Faith Baptist Church et al., p. 579.

¹¹⁷State v. Shaver, p. 897.

declared, "it is not sufficient in and of itself to determine whether a student is receiving an adequate education."¹¹⁸

A second objection to testing to measure adequacy of instruction is the timing of the tests. While certification is a process which takes place before the instruction to ensure competency tests are administered after the instruction and can only be a "backward look" to "measure whether a child has been receiving an education."¹¹⁹ The decision in State v. Rivinus included the declaration that:

Standardized testing ordinarily does not result in the discovery of a deficiency in education until after the term, semester, or the school year is over, which would, in effect, result in a child wasting its period of time if the results of the standardized test indicated that the child's education was deficient.¹²⁰

It has been pointed out that "the court is ill-equipped to determine whether or not standardized achievement tests would provide the state with any assurance that children are receiving a good education" and if the legislature "deemed it [standardized testing] as an appropriate means to monitor the work of schools," it would have provided such an alternative.¹²¹

Some parents contend that standardized testing is a less restrictive means to monitor education. The courts have expressed the opposite

¹¹⁸Fellowship Baptist Church v. Benton, p. 316.

¹¹⁹Johnson v. Charles City Community Schools Board of Education, p. 81.

¹²⁰State v. Rivinus, p. 229.

¹²¹State v. Shaver, p. 897.

view. A Michigan court declared:

Standardized testing would very likely be designed to test secular subjects, would have a nonreligious orientation, and would enable the state to become as much or more involved with the manner of teaching courses as the existing regulatory scheme.¹²²

The same thought was expressed in State v. Shaver. A concurring opinion stated:

The testing alternative would appear to give the state the authority to require not only that certain basic subjects must be taught but would vest in the state . . . the authority, through testing, to dictate exactly what will be taught and, as a result to regulate the thought process of the students.¹²³

At least one court disagreed with the general concept of disallowing standardized testing as an alternative to certification of teachers as a tool to monitor nonpublic schools. The Supreme Court of Kentucky ruled that such monitoring could be accomplished by an appropriate testing program. The court concluded:

If the results [of testing] show that one or more [nonpublic] schools have failed to reasonably accomplish the constitutional purpose, the Commonwealth may then withdraw approval and seek to close them for they no longer fulfill the purpose of 'schools.'¹²⁴

¹²²Sheridan Road Baptist Church v. Department of Education, p. 273.

¹²³State v. Shaver, p. 901.

¹²⁴Kentucky State Board of Education v. Rudasill, 589 S.W. 2d. 877 (Ky. 1979), p. 884.

Quality of Instruction Examined

In the absence of statutory requirements for certification of teachers in home schools, the courts have generally been inclined to look at the quality of instruction rather than how it is given or by whom it is given. This philosophy is seen in the declaration of the court in People v. Turner that:

The object of a compulsory educational law is to see that children are not left in ignorance, that from some source they will receive instruction that will fit them for their place in society.¹²⁵

A New York court ruled in favor of parents who wanted to educate their children in home. The court stated:

A parent need not avail himself of formal education facilities for a child . . . it being sufficient that a systematic course of study be undertaken at home and that the parent render qualified instruction.¹²⁶

A court in Indiana said, "The result to be obtained, and not the means or manner of attaining it was the goal which lawmakers were attempting to reach."¹²⁷ The decision further concluded that parents fulfill the compulsory education law when they "place within the reach of the child the opportunity and means of acquiring an education equal to that obtainable in the public schools."¹²⁸

¹²⁵People v. Turner, 98 N.Y. S. 2d. 886 (N.Y. App. Div. 1950); p. 888.

¹²⁶In re Lash, 401 N.Y.S. 2d. 124 (N.Y. Ct. App. 1976); p. 126.

¹²⁷State v. Peterman, 70 N.E. 550 (Ind. App. Ct. 1904); p. 552.

¹²⁸Ibid.

In order to provide the required instruction, it is not always necessary to have a certified teacher. In Kentucky the Supreme Court ruled that certification is an indicator of the level of achievement "but it is not a sine qua non the absence of which establishes that . . . [other] teachers are unable to teach their students."¹²⁹ It was pointed out by another court that "there are teachers today teaching in various schools in New Jersey who are not certified."¹³⁰ The decision was that noncertified teachers could teach in home schools if the state permitted teachers in the public schools to teach without a certificate.

Even though courts have permitted noncertified teachers in home schools, they have insisted on qualified teachers. In Meyer v. Nebraska the court declared, "Education of the young is only possible in schools conducted by especially qualified persons who devote themselves thereto."¹³¹

The importance of the proper qualifications for teachers in home schools was emphasized when the Supreme Court of Virginia ruled:

In order to impart an education to a child, it is self-evident that the instructor must himself 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.¹³²

¹²⁹Kentucky State Board of Education v. Rudasill, p. 884.

¹³⁰State v. Massa, 231 A. 2d. 252 (N.J. Super. 1967); p. 256.

¹³¹Meyer v. Nebraska, 260 U.S. 390 (1923).

¹³²Rice v. Commonwealth, p. 348.

The insistence on a quality education is reflected in the case of a mother who was uncertified and combined babysitting with small children with teaching her two older children in an unstructured home setting. The court declared that such a situation did not constitute a school, and "if such a family arrangement will serve as a substitute for school there is no compulsory school attendance."¹³³

Certification does not always equate with qualified according to judicial decisions. Mrs. O'Brien, a parent certified to teach in secondary schools, who had two years of teaching experience was determined to be unqualified to teach her elementary aged children at home because she "has not now or ever had a certificate to teach in the elementary grades."¹³⁴ The court stated that there are two groups of teachers:

Those qualified and certified to teach in elementary schools and those qualified and certified to teach in the secondary schools. The individual teacher must possess special skills to teach in the separate schools; the qualifications are not interchangeable.¹³⁵

The importance of teachers being qualified for the appropriate level of instruction was echoed in another decision which declared, "Very likely respondents' plan for home instruction up to and including the more advanced grades is doomed to failure."¹³⁶ The same court

¹³³In re Sawyer, 24 Kan. 436 (1983); p. 442.

¹³⁴Knox v. O'Brien, p. 392.

¹³⁵Ibid.

¹³⁶In re Falk, 441 N.Y.S. 2d. 785 (N.Y. 1985); p. 790.

said:

We cannot visualize these caring and concerned parents teaching properly and successfully the intricacies of say Boyle's law, the mysteries of algebra and geometry, or the nuances of the Missouri Compromise.¹³⁷

"There is no substitute for an educated teacher who is capable of answering questions and guiding inquiring minds."¹³⁸ The court which made this declaration went on to say that teachers must be able to lead students into "new and un contemplated directions to which any well-prepared material should inevitably lead."¹³⁹

Courts often look beyond the academic programs of home schools to the social and cultural aspects of education. One parent was convicted of violating the compulsory education law partly because, in the opinion of the court, the "children have not made the acquaintances of any other children in the community" and this was "a disadvantage where the comradeship of other desirable children is available."¹⁴⁰

Another court expressed concern that "home instruction [even by qualified instructors] would leave a great deal to be desired in the social development derived from group education in a public school environment."¹⁴¹ Since the state statutes did not require "courses of

¹³⁷ Ibid.

¹³⁸ State v. Riddle.

¹³⁹ Ibid.

¹⁴⁰ Knox v. O'Brien, p. 392.

¹⁴¹ In re Falk, p. 789.

instruction designed to enhance a student's learning experiences by the free association with other children,"¹⁴² the court upheld the parents' privilege of providing home schooling.

The Supreme Court of Appeals in West Virginia ruled that in order to be qualified to give instruction in the home the instructor must be able to "afford students diverse forms of cultural enrichment ranging from organized athletics, art, music, and literature, to an understanding of the multiple possibilities for careers which this society offers."¹⁴³ To deprive students of the cultural and social opportunities would mean that:

Children can lawfully be sequestered on a rural homestead during all of the formative years to be released upon the world only after the 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.¹⁴⁴

A New Jersey court disagreed that social and cultural aspects should be considered. It insisted only on academic equivalency by a qualified teacher and said:

To hold that the statute requires equivalent social contact and development as well [as academic training] would emasculate this alternative [home schools] and allow only group education, thereby eliminating private tutoring and home education.¹⁴⁵

¹⁴²Ibid.

¹⁴³State v. Riddle, p. 366.

¹⁴⁴Ibid.

¹⁴⁵State v. Massa, p. 257.

A family court in New York upheld the right of parents to educate their handicapped child in the home when it was determined that the parents "provided more education for their son than is required by the state law"¹⁴⁶ even though they did not meet the reporting requirements. The court found that in the home school directed by qualified teachers, the boy had "made progress in all areas."¹⁴⁷

Power to Regulate Home School Teachers

Courts have generally recognized the regulatory power of the state legislatures to determine who can teach in nonpublic schools. "The courtroom is simply not the best arena for the debate of issues of educational policy and the measurement of educational quality"¹⁴⁸ was the conclusion of the Supreme Court of North Dakota in affirming the conviction of parents in a compulsory attendance case.

This philosophy was echoed in such judicial opinions as: "Had the legislature intended such a requirement [certified teachers], it would have so provided";¹⁴⁹ "If a better solution is available . . . it should be through the legislative process";¹⁵⁰ and "If the legislature had intended that the qualifications of a nonpublic school teacher be

¹⁴⁶In re Lash, 401 N.Y.S. 2d. 124 (N.Y. Ct. App. 1976); p. 126.

¹⁴⁷ Ibid.

¹⁴⁸State v. Shaver, p. 900.

¹⁴⁹State v. Massa, p. 256.

¹⁵⁰State v. Rivinus, p. 231.

the same as the minimum standard for a public school teacher, it would have said so."¹⁵¹

The right of the state to make the requirements for home school personnel as stringent or as liberal as they see fit was seen in the statement of a New York Family Court which said:

If a professional educator looks with disfavor upon a home school staffed by noncertified teachers, then it is up to the legislators to tighten up the standards for home instruction.¹⁵²

The absence of statutes requiring instructors to be certified has generally been interpreted by the courts as the intent of the legislators to permit noncertified people to conduct the instruction. In a New York ruling it was held that compulsory education laws were designed to "see that children are not left in ignorance, that from some source they will receive instruction that will fit them for their place in society."¹⁵³ It further stated that if a parent were providing adequate instruction, even without a certificate, the requirement of the law was being met.

The Supreme Court of Massachusetts agreed when it said that the objective of compulsory education laws was to ensure that "all children should be educated, but not that they be educated in any particular way."¹⁵⁴ This same idea is reflected in a ruling of a New York court

¹⁵¹ State v. Newstrom, p. 528.

¹⁵² In re Falk, p. 789.

¹⁵³ People v. Turner, p. 319.

¹⁵⁴ Commonwealth v. Roberts, 38 N.E. 402 (Mass. 1893); p. 413.

which declared:

Provided the instruction given is adequate and the sole purpose of nonattendance at [public] school is not to evade the statute, instruction given to a child at home by its parent, who is competent to each should satisfy the requirement of the education law.¹⁵⁵

Even though courts have generally interpreted the absence of a requirement for certified teachers in home schools as permitting non-certified parents to provide such instruction, they have not interpreted them to allow unqualified home instructors. The Supreme Court of New Hampshire said that the "state must bear the burden of reasonable supervision [of home schools]" and "the power of supervision necessarily involves the power to reject the unfit [as teachers]."¹⁵⁶ Another court pointed out the necessity of reasonable supervision of nonpublic schools when it said, "Absent the approval requirement, the state would have virtually no assurance that children [in nonpublic schools] . . . are receiving and will continue to receive a good education."¹⁵⁷ In Florida, where there is no statutory authority regulating the establishment of private schools, a court ruled that the absence of such regulations did not mean "that Florida parents, unqualified to be private tutors can proclaim their homes to be private schools and withdraw their offspring from public school."¹⁵⁸

¹⁵⁵People v. Turner, p. 320.

¹⁵⁶State v. Hoyt, 146 A. 170 (N.H. 1929); p. 171.

¹⁵⁷tate v. Shaver, p. 897.

¹⁵⁸State v. M.M. and S.E., 407 So. 987 (Fla. 1982); p. 990.

The Supreme Court of Washington elaborated on the lack of requirements for private schools in that state. The court said:

The three essential elements of a school are (1) the teacher, (2) the pupil or pupils, and (3) the place or institution. If the alleged school has no teacher then it does not qualify as a school.¹⁵⁹

Even though the Washington Legislature had not established regulations of private schools, it had declared that:

No person shall be accounted as a qualified teacher within the meaning of the school law, who is not the holder of a valid teacher's certificate or diploma issued by lawful authority of the state.¹⁶⁰

The court ruled that this law was applicable to nonpublic as well as public schools. Therefore, uncertified parents who offered instruction in their home were guilty of violating the compulsory education laws."¹⁶¹

A different conclusion was reached in Kentucky when the Supreme Court ruled that the law applying state accreditation standards (requiring certified teachers) to private schools "must fall."¹⁶² In arriving at this conclusion the court declared that the legislature had made provisions for private schools; and if the state required the same standards for public and private schools, it would be "but to require that the same hay be fed in the field as is fed in the barn."¹⁶³

¹⁵⁹State ex rel. Shoreline School District No. 412 v. Superior Court for King County, p. 1002.

¹⁶⁰Washington, West's Revised Code of Washington Annotated, Ch. 97, Sub. 4., Art. VII. (1909).

¹⁶¹State ex rel. Shoreline School District No. 412 v. Superior Court for King County.

¹⁶²Kentucky State Board of Education v. Rudasill, p. 884.

¹⁶³Ibid.

Burden of Proof

When parents challenge the compulsory education laws, the courts usually place the burden of proof on the parents. In Commonwealth v. Roberts the Supreme Court of Massachusetts said that a parent who chooses to educate his child in a school not approved by the designated officials, "must take the responsibility of being able to prove that he [the child] has been sufficiently and properly instructed there."¹⁶⁴

Even when parents object to certification of teachers in home schools because of religious beliefs, the courts have decided that the parents must prove that "compliance with the law would affect the religion of the parent and their children,"¹⁶⁵ and they must show "an actual infringement of their religious rights."¹⁶⁶

In an Iowa case, Norman and Linda Moorhead contended that the state was required to prove beyond a reasonable doubt that the home instruction provided for their children was not equivalent as specified in Iowa statutes. The court rejected their claim and said the state only had to prove that the children did not attend a public school and that the burden was on the parents to prove that the children were being properly instructed elsewhere.¹⁶⁷

In another case the parents argued that since the proceedings against them were criminal in nature, the state had the burden to prove

¹⁶⁴Commonwealth v. Roberts, p. 403.

¹⁶⁵State v. Shaver, p. 893.

¹⁶⁶Sheridan Road Baptist Church v. Department of Education, p. 266.

¹⁶⁷State v. Moorhead, p. 62.

beyond a reasonable doubt that the compulsory education law was violated.¹⁶⁸ The court ruled that the commonwealth had "showed with almost conclusive effect"¹⁶⁹ that the children were:

Taught at home by persons who were not qualified as tutors or teachers, and that this unlawful practice would have continued indefinitely had not the court intervened and ordered the parent to comply with the school attendance law.¹⁷⁰

The outcome of at least two cases has been determined by the parents' ability or inability to prove that they were providing adequate instruction at home by qualified instructors. In one case the parents "met the burden of proof that they are providing instruction for the child . . . by a competent teacher."¹⁷¹ In the other case the parents who had "the background and qualifications as competent teachers" did not "preponderantly show the home instruction . . . to be substantially equivalent to the instruction given at the district school."¹⁷²

In the former case the mother who was a high school graduate with one year of community college education was able to prove that she was providing equivalent instruction in her home, thereby, meeting the "onus of demonstrating that home instruction equivalent [which] falls on parents."¹⁷³

¹⁶⁸Griggs v. Commonwealth, p. 803.

¹⁶⁹Ibid., p. 805.

¹⁷⁰Ibid.

¹⁷¹In re Falk, p. 791.

¹⁷²In re H., 357 N.Y.S. 2d. 384 (N.Y. Fam. Ct. 1974); p. 391.

¹⁷³In re Falk, p. 785.

In the latter case the court declared that "proof that a minor is not attending upon instruction at a school in the district where the parents reside is prima facie proof that such minor is a neglected child" and the burden is on the parents "to overcome the presumption that the minor is not attending with proof that the minor is attending upon required instruction 'elsewhere.'"¹⁷⁴ The father held two degrees, including an advanced degree in literature, had taught literature in at least three school systems, and was a certified teacher. In addition, the mother had majored in English and literature and had worked as a librarian. In spite of their training and experience they did not present evidence that the instruction provided in their home for their six children was equivalent to that the children would have received in public schools.¹⁷⁵

¹⁷⁴In re H., p. 386.

¹⁷⁵In re H.

CHAPTER V
REVIEW OF SELECTED COURT DECISIONS

Introduction

This chapter contains a review of judicial decisions in the area of certification of teachers in home schools. Since the Supreme Court of the United States has never handed down a decision on this topic, nor any area of home schooling, the cases are taken from local, state, and lower federal courts. Selected for review are cases which are illustrative of the most frequently litigated issues on the topic of home school personnel.

Included in the review are some cases which deal with church supported schools rather than home schools. These cases were selected because the opinions rendered are applicable to all nonpublic schools in the states in which they were heard.

Each of the cases selected for review dealt with components of home schooling other than personnel. However, only the portions of each case addressing qualifications of personnel are reviewed here. In addition, some cases raised more than one objection to regulation of personnel in home schools. In most cases, only one category has been selected as representative of the categories selected for inclusion in this review of cases. In other cases the opinions rendered in more than one category are of sufficient significance to merit inclusion in both categories.

The categories and cases selected for review in this chapter are listed below:

1. Free Exercise of Religion
Rice v. Commonwealth (1948)
State ex rel. Shoreline School District No. 412 v. Superior Court for King County (1960)
State v. Shaver (1980)
Johnson v. Charles City Community Schools Board of Education (1985)
2. State Regulation of Nonpublic Schools
State v. M.M. and S.E. (1982)
State v. Lowry (1963)
In re Falk (1981)
3. Fundamental Rights
Hanson v. Cushman (1980)
Jernigan v. State (1982)
4. Unconstitutionally Vague
State v. Moorhead (1981)
Grigg v. Commonwealth (1982)
State v. Newstrom (1985)
State v. Riddle (1981)
5. Burden of Proof
State v. Moorhead (1981)
Jernigan v. State (1982)

Free Exercise of Religion

Rice v. Commonwealth
 49 S.E. 2d. 342 (Va. 1948)

Facts

The defendants, Spurgeon Rice, C. W. Lewis, and A. C. Bishop, were the fathers of eleven minor children. Deeply religious families, they interpreted the Bible to obligate them to educate their own children. To do otherwise, according to their beliefs, would be to risk the displeasure of God. In compliance with this belief, each defendant

educated his children in the home with disregard to the requirement of the Virginia Legislature that home instruction be provided by "a tutor or teacher of qualifications prescribed by the State Board of Education and approved by the division superintendent."¹

The Circuit Court of Nottoway County heard the case and convicted the defendants of violating the compulsory education law. Each defendant was fined \$5.00. Their conviction was appealed, and the Supreme Court of Appeals of Virginia rendered its decision on September 8, 1948.²

Decision

The conviction was affirmed by the Supreme Court of Appeals. The court recognized the sincere religious beliefs of the defendants but ruled that these beliefs did not provide immunity from compliance with reasonable civil requirements imposed by the state. This point was eloquently stated by Justice Staples who ruled:

No amount of religious fervor he [the parent] may entertain in opposition to adequate instruction should be allowed to work a lifelong injury to his child. Nor should he, for this religious reason, be suffered to inflict another illiterate citizen on his community or his state.³

The court concluded that in order to provide the instruction in a home school, the person must possess adequate learning and training

¹Virginia, Code of Virginia, Sec. 683 (1948).

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

³Ibid., p. 348.

in the art of teaching. Therefore, the regulations established by the state were reasonable and did not violate the free exercise of the religious rights of the defendants.⁴

Discussion

Parents will not be able to use their religious beliefs, regardless of sincerity, as justification of noncompliance with reasonable regulations imposed by the state. The possession of sincere religious beliefs does not permit a person to choose which laws he will obey and which ones he will ignore.

State ex rel. Shoreline School District No. 412
v. Superior Court for King County
346 P.2d. 999 (1960)

Facts

William and Maude Wold removed their daughter, Alta Lee Wold, from public school for instruction in the home. Mrs. Wold, a high school graduate, was the teacher in the nonpublic school established by the parents for their daughter. Pursuant to charges by the school district that the parents were violating the compulsory school attendance law, the Superior Court for King County, Washington ruled in favor of the parents. This court found that the home school qualified as a nonpublic school, and the parents were not guilty of noncompliance with state statutes. The school district was granted a review by certiorari, and the case was presented to the Supreme Court of Washington.

⁴Rice v. Commonwealth.

The defense presented by the parents was that public school attendance violated the religious beliefs of the Seventh Elect Church In Spiritual Israel of which they were members. They contended that Alta Lee Wold was being taught the regular courses required in grade schools by a competent teacher.⁵

Decision

Judge Otto of the Supreme Court of Washington declared that violation of the religious beliefs of the parents was not an adequate defense for violation of compulsory school attendance laws.

The court enumerated the elements which are necessary for the existence of a school. These elements are: "(1) the teacher, (2) the pupil or pupils, and (3) the place of instruction."⁶ In the absence of any of these three elements, the court ruled, the alleged school does not exist.

The legislature of Washington had determined that a person must hold a "valid teacher's certificate or diploma issued by lawful authority" in order to be "accounted as a qualified teacher."⁷ Since Mrs. Wold did not meet these requirements, the school which the parents alleged to have established did not have a teacher, one of the requisites for a school. Therefore, it did not qualify as a nonpublic school

⁵State ex rel. Shoreline School District No. 412 v. Superior Court for King County, 346 P. 2d. 999 (1960).

⁶Ibid., p. 1004.

⁷Washington, Laws, Sec. 97 (1907).

and the child was made a ward of the state "until such time as she is purged of dependency by attendance at either a public or qualified school."⁸

Discussion

The decision in this case illustrates that statutory standards for public schools must be maintained in home schools in order for such schools to qualify as nonpublic schools. In the absence of specified standards for nonpublic schools, minimum standards for public schools must be applied by authorities who are charged with the responsibility of determining if alternative schools qualify as nonpublic schools. Sincerely held religious beliefs are no justification for noncompliance of these regulations.

State v. Shaver
294 N.W. 2d. 883 (N.D. 1980)

Facts

Paul Shaver and Paul Steinwald, defendants, removed their children from the public schools of North Dakota and enrolled them in the Bible Baptist Church School in Bismarck, a nonapproved school established by the fundamental Baptist Church. Neither the principal nor teachers of the school were certified. These fundamental Baptist contended that permitting the state to approve teachers would be placing the state as the head of the school rather than God. The basic

⁸State ex rel. Shoreline School District No. 412 v. Superior Court for King County, p. 1002.

requirement to teach in the school was that the person be "saved and born again."⁹

The defendants were tried and convicted of failure to comply with the requirements of the compulsory education laws of North Dakota. The conviction was appealed to the Supreme Court of the state where it was argued that the defendants' right to free exercise of religion was violated.¹⁰

Decision

The judgment of the lower court was affirmed. In reaching the decision the court applied the three-pronged inquiry formulated by the Yoder case.¹¹ The defendants successfully met the first prong of inquiry by demonstrating the sincerity of their religious beliefs. However, they were unable to provide evidence of undue burden on the free exercise of their religion nor to satisfy the court that the requirement of certificated teachers was unreasonable.

The court recognized the fallibility of the teaching certificate but accepted it as a "reasonable tool and one which the legislature may use . . . to assure . . . quality education for all children."¹² It further declared that the religious rights guaranteed by the First

⁹State v. Shaver, 294 N.W. 2d. 883 (N.D. 1980); p. 887.

¹⁰State v. Shaver.

¹¹Wisconsin v. Yoder, 406 U.S. 205 (1977).

¹²State v. Shaver, p. 894.

Amendment "are not absolute and totally free from all legislative restrictions."¹³

Discussion

Parents who saw the Yoder decision as an indication that they could easily obtain an exemption from provisions of the compulsory attendance laws discovered that it was not to be. To receive such an exemption parents must be able to meet all three inquiries formulated by the case involving the Amish children. Courts may be hesitant to question the sincerity of religious beliefs but will apply the other inquiries, and it will not be easy to use religious beliefs as a vehicle for bypassing compulsory attendance laws.

Johnson v. Charles City Schools Board of Education
368 N.W. 2d. 74 (Iowa 1985)

Facts

Members of a fundamental Baptist Church in Charles City, Iowa organized a parochial school under the leadership of Rev. Randy Johnson, the pastor. When members of the church enrolled their children in the school, they were charged with violating the compulsory school attendance law of the state. They sought declaratory judgment action which challenged portions of the law and applied for an "Amish exception" as established by the United States Supreme Court in Wisconsin v. Yoder.¹⁴

¹³Ibid., p. 897.

¹⁴Wisconsin v. Yoder.

When such action was denied the case reached the Supreme Court of Iowa.

Before the Supreme Court the parents argued that "the selection of a teacher is made by God and a state can have no influence over the matter even through certification or licensing."¹⁵ Rev. Johnson testified that he selected teachers

after prayer and after learning of God's will in the matter, and, therefore, his selection of a teacher is God's selection of a teacher and that a mere state can have no part in either approving or disapproving or controlling or having any influence or licensing or certifying authority as to school teachers in his church school.¹⁶

The parents insisted that compliance with state requirements that the school be staffed by certified teachers would violate their First Amendment rights.¹⁷

Decision

The Supreme Court of Iowa compared the evidence heard with that presented by Amish parents in their case against the state of Wisconsin.¹⁸ It was found that the only similarity in the two cases was the sincerely held religious beliefs. Members of the church in Charles City failed to show that the educational needs of their children were substantially different from those of other children. Neither

¹⁵Johnson v. Charles City Community Schools Board of Education,
368 N.W. 2d. 74 (Iowa 1985); p. 78.

¹⁶Ibid., p. 77.

¹⁷Johnson v. Charles City Community Schools Board of Education.

¹⁸Wisconsin v. Yoder.

were they able to convince the court that their right to educate their children through schooling by uncertified teachers counterbalanced the compelling interest of the state to provide an education for all children. The decision of the lower court was affirmed.¹⁹

Discussion

Once again, parents who depended on the Yoder principle to justify noncompliance with compulsory attendance laws failed to win their case. Courts appear reluctant to establish a precedent whereby parents can easily use religious beliefs as an excuse for noncompliance with reasonable state control. The unique cultural and religious heritage of the Amish tipped the scale in their favor before the United States Supreme Court. Other religious groups will find it difficult to prove such a heritage and to qualify for the Amish exception.

State Regulation of Nonpublic Schools

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

Facts

The Circuit Court of Broward County, Florida ruled that M.M. and S.E., minor children, were not guilty of truancy, because they were being instructed in a nonpublic school located in the family home.

Statutes of Florida specify that the requirement for compulsory school attendance can be met through instruction "at home with a private

¹⁹Johnson v. Charles City Community Schools Board of Education.

tutor who meets all the requirements prescribed by law and regulations of the state board for private tutors."²⁰

The circuit court pointed out that regulations had not been established for nonpublic schools. It was ruled that in the absence of "rules regulating nonpublic schools (in contrast with the numerous statutes controlling public schools)"²¹ parents who did not hold a teaching certificate could teach their children in a school located in the home. The ruling was reviewed by the Fourth District Court of Appeals of Florida on a petition for a writ of common-law certiorari.²²

Decision

Judge Downey stated that the question to be answered by the court was: "Can the parents establish a private school in their home pursuant to Florida statute . . . without certified teacher or tutor?"²³

The court pointed out that the mother was acting as a private tutor to the children and that no one else would be allowed to attend the school. Since she was the sole tutor for her own children, it did not qualify as a nonpublic school within the meaning of the law. The legislature had made provisions for nonpublic schools and for home instruction by private tutors. In so doing the legislature recognized a difference in the two types of schools, and the parents could not

²⁰Florida, West's Florida Statutes Annotated, Sec. 232.01, (1981).

²¹State v. M.M. and S.E., 407 So. 2d. 987 (Fla. 1982); p. 990.

²²State v. M.M. and S.E.

²³Ibid., p. 989.

offer one under guidelines for the other. Since the place of instruction did not meet the requirements for a nonpublic school, and the uncertified teacher did not meet the requirement for home instruction, the Supreme Court overruled the lower court, and the children were guilty of truancy.

Discussion

This decision dispelled the notion that nonpublic schools and home schools are synonymous when the legislature specifies different regulations for the two types. Parents cannot ignore the requirements for qualified tutors in home schools when such requirements are established by the state.

State v. Lowry
383 P. 2d. 962 (Kan. 1963)

Facts

Dr. Ray F. Lowry, a physician, and Mrs. Mildred E. Lowry, a holder of a Kansas teacher's life certificate, chose to instruct their four children at home rather than send them to Kansas public schools. In response to notification that they were violating the truancy act, the parents stated they were operating a school in their home. Prosecution was initiated, and the parents were convicted. They appealed the decision to the Supreme Court of Kansas.²⁴

²⁴State v. Lowry, 383 P. 2d. 962 (Kan. 1963)

Decision

In the decision by Justice Wertz, the court offered some history of home schools in Kansas. Prior to 1919 the general statutes of the state made provisions for home schools as an alternative to public schools, but established no standards for such schools. In 1919 the legislature corrected the deficiency by making certain regulations applicable to all schools in the state, public, private, and parochial. Included in the requirements were standards for curriculum and the requirement that instructors be competent.

There was no question that Mrs. Lowry, who did most of the teaching, was a competent teacher. However, the schedule of home instruction for grades 3, 4, 6, and 7 with one child in each grade did not meet the curricular requirements. Therefore, the conviction was affirmed.²⁵

Discussion

It takes more than having a competent, certified teacher to qualify as a home school. Even though a parent may be certified, as Mrs. Lowry was, other statutory requirements must be met in order for a home school to serve as an alternative to public school attendance. This case is similar to State ex rel. Shoreline School District No. 412 v. Superior Court for King County²⁶ which enumerated the elements of a school. In that case the missing element was the teacher. In this case

²⁵Ibid.

²⁶State ex rel. Shoreline School District No. 412 v. Superior Court for King County.

the curricular requirements were missing. This ruling reaffirmed that all elements must be present.

In re Falk
441 N.Y.S. 2d. 785 (Fam. Ct. 1981)

Facts

The Family Court of Lewis County, New York heard the case in which Raymond Falk, age eight, was alleged to be neglected by his parents because they had not supplied him with an education in compliance with New York statutes. The boy had been removed from public school and taught at home by Mrs. Falk, a high school graduate with one year of community college training.

The respondents, Mr. and Mrs. Falk, contended that they were complying with the statute which requires that home instruction be by a competent person and substantially equivalent to that in public schools.²⁷

Decision

The court agreed that Mrs. Falk was a competent instructor and that the instruction met the statutory requirements of being substantially equivalent to that in public schools. The conclusion was:

If the professional educators look with disfavor upon a home school staffed by noncertified teachers, then it is up to the legislators to tighten up the standards for home instruction.²⁸

²⁷In re Falk, 441 N.Y.S. 2d. 785 (Fam. Ct. 1981).

²⁸Ibid., p. 789.

Discussion

In the absence of requirements that home instructors be certified, the courts are apt to examine the quality of instruction provided by uncertified persons in home schools. State legislatures have the authority to establish requirements for teachers in home schools, but their failure to do so permits the courts to use other criteria to determine the legality of home instruction programs.

Fundamental Rights

Hanson v. Cushman
490 F. Supp. 109 (W.D. Mich. 1980)

Facts

Lowell and Carol Hanson were the parents of four minor children and the legal guardian of another. The Hansons and Charlotte O'Brien sought to instruct the children in the Hanson home through a home study program. Gerald Cushman, superintendent of the school district in which the Hansons resided, informed the parents of the requirement that home schools must be taught by certified teachers.

Action was brought by the Hansons to declare the state compulsory attendance law unconstitutional, because it deprived the parents of the right to educate their children at home. They contended that the right to control the education of their children was "protected by the penumbra of the first nine amendments and the Fourteenth Amendment to the United States Constitution."²⁹ Defendants in the case, Gerald

²⁹Hanson v. Cushman, 490 F. Supp. 109 (W.D. Mich. 1980); p. 112.

Cushman and other officials of the school district, sought a motion to dismiss the case.³⁰

Decision

The United States District Court for the Western District of Michigan cited the United States Supreme Court case of Meyer v. Nebraska which declared that "education of the young is only possible in schools conducted by especially qualified persons."³¹ It then declared that the state of Michigan had acted "reasonably in requiring children to attend school and that children be taught only by certified teachers."³²

According to the decision rendered, the plaintiffs' desire to educate their children at home was a personal and philosophical choice. As such it was not within the bounds of constitutional protection. The Hansons failed to prove that fundamental rights had been abridged, and the action to have the compulsory education law, including the requirement for certified teachers in home schools, declared unconstitutional was dismissed.³³

³⁰Hanson v. Cushman.

³¹Meyer v. Nebraska, 262 U.S. 390 (1923); p. 400.

³²Hanson v. Cushman, p. 115.

³³Hanson v. Cushman.

Discussion

The decision in Hanson v. Cushman indicated that courts will look carefully at challenges to state statutes requiring certified teachers in home schools. Exceptions to compulsory attendance laws, as allowed by the Yoder court,³⁴ will be difficult to obtain. In order to successfully claim such an exception, parents must be prepared to demonstrate that basic rights have been abridged. The general charge of violation of "fundamental rights" will be difficult to prove in courts. Parents must be prepared to specify the rights which they think are being violated.

Jernigan v. State
412 So. 2d. 1242 (Ala. Cr. App. 1982)

Facts

Charles and Ann Jernigan, members of the Catholic Order of the Society of St. Pius X, refused to send their children to public schools in Alabama. They based their refusal on the belief that the education of children is the responsibility of parents. They believed that to allow children to attend public schools would violate their traditional Catholic beliefs and expose the children to nonreligious influences. They contended it would be a mortal sin to expose the children to a secular education. They argued that the requirement that private tutors hold a teaching certificate violated their liberty, privacy, and family integrity. In spite of their charges of violation of

³⁴Wisconsin v. Yoder.

constitutional rights, they were convicted and appealed the conviction to the Court of Criminal Appeals in Alabama.³⁵

Decision

The Court of Criminal Appeals rejected the request for an exemption based on the Yoder³⁶ decision and affirmed the conviction of the parents. Judge Bowen pointed out two important ways this case differed from the case brought by the Amish parents. The Yoder case was dealing with parents who objected to public schooling for students beyond the eighth grade. On the other hand, the Jernigans did not approve any public schooling. The other difference was that the Jernigans did not provide evidence that their home schooling would be successful in preparing the children for life in a modern society while the Amish parents were able to do so.

The court ruled that the state has a high responsibility for the education of its citizens and the power to regulate such education. It cited other court rulings which emphasized the importance of providing instruction by qualified instructors and concluded that the state requirement that private tutors hold a teaching certificate was reasonable and violated no constitutional rights of the parents.³⁷

³⁵Jernigan v. State, 412 So. 2d. 1242 (Ala. Cr. App. 1982).

³⁶Wisconsin v. Yoder.

³⁷Jernigan v. State.

Discussion

Courts generally uphold the right of state legislatures to regulate public and nonpublic schools as long as such regulations are reasonable. Parents will not be able to charge violation of their constitutional rights unless they are able to provide evidence of such violations. The interest of the state in compulsory education is both legitimate and compelling. As such it will be upheld by the courts.

Unconstitutionally Vague

State v. Moorhead
308 N.W. 2d. 60 (Iowa 1981)

Facts

The defendants, Norman and Linda Moorhead, were convicted of violating the compulsory school attendance law of Iowa. They had removed their children, Janese and Kirk, from school and instructed them at home. A jury convicted them of failure to provide "equivalent instruction by a certified teacher elsewhere"³⁸ as required of parents who chose to provide alternatives to public schools. The conviction was appealed on the contention that the law was unconstitutionally vague and that it violated their religious rights.³⁹

³⁸Iowa, Iowa Code Annotated, Sec. 299.1 (1979).

³⁹State v. Moorhead, 308 N.W. 2d. 60 (Iowa 1981).

Decision

The Supreme Court of Iowa ruled against the defendants. The court declared that "literal exactitude or precession is not necessary"⁴⁰ for a statute to be sufficiently definite. The term "certified teacher" was not unconstitutionally vague in light of other statutes which deal extensively with requirements for certification of teachers. Neither was "equivalent instruction" unconstitutionally vague because of other statutes enumerating the curricular requirements for public and nonpublic schools.⁴¹

Discussion

Iowa statutes establish certification and curricular standards for all schools. Even though these issues are not addressed in the compulsory attendance law, parents cannot successfully challenge the law as unconstitutionally vague. As long as terms are defined and explained in some other sections of the general statutes of a state, it is not necessary for them to be explained in other sections of the statutes.

Grigg v. Commonwealth
297 S.E. 2d. 799 (Va. 1982)

Facts

A juvenile court in Chesapeake, Virginia determined that Stephanie and Nicole Grigg were children in need of services, because

⁴⁰ Ibid., p. 64.

⁴¹ State v. Moorhead.

they were not in school. They were placed on probation and ordered to attend "a private, public, denominational or parochial school, or . . . be taught at home by a tutor of qualifications prescribed by the State Board of Education and approved by the Superintendent of Schools."⁴² Their parents, Robert and Vickie Grigg, insisted that the children were receiving instruction at home by the parents. They contended that the term "private school" is not clearly defined in Virginia statutes, and thus the requirement that the tutor in such a school meet state prescribed qualifications did not apply. The Circuit Court of the City of Chesapeake ordered the parents to comply with the compulsory education law, and they appealed to the Supreme Court of Virginia.⁴³

Decision

Chief Justice Carrico wrote the opinion of the court. He noted that the Griggs had not challenged the statute which requires that home instruction be by qualified instructors. Instead they contended they had established a private school in their home. The court ruled that home instruction by parents who are not approved as private tutors does not constitute attendance at a private school. Therefore, whether or not the term "private school" was vague became a moot question. Since the instruction provided by the Griggs was in a home school rather than a private school, it was irrelevant whether the term was vague or

⁴²Griggs v. Commonwealth, 297 S.E. 2d. 799 (Va. 1982); p. 800.

⁴³Griggs v. Commonwealth.

definite. Even though it was unnecessary for the court to rule on the vagueness of the term "private school," it did so. It ruled that the average parent would be able to read the statute and know that home instruction by a person not qualified to teach would not serve as an alternative to public school education.⁴⁴

Discussion

Some state statutes do not differentiate between private schools and home schools. In such cases courts usually consider them to be the same. If statutes do make provisions for the two distinct types of schools, as do the laws of Virginia, parents cannot choose to apply regulations formulated for private schools to their home instruction programs to avoid compliance with home school regulations.

State v. Newstrom
371 N.W. 2d. 525 (Minn. 1985)

Facts

Jeanne Newstrom and her husband were charged and convicted, after a jury trial, of violating the compulsory school attendance laws of Minnesota. They had removed their two children from public school during the afternoons for home instruction. Mrs. Newstrom, who was not a certified teacher, taught the children each afternoon. Their conviction was affirmed by a three-judge district court panel and then appealed to the state supreme court.

⁴⁴Ibid.

The parents argued that the requirements for teachers in non-public schools was unconstitutionally vague. The statutory requirement stated that such schools must be "taught by teachers whose qualifications are essentially equivalent to the minimum standards for public schools."⁴⁵ Defendants in this case contended that "essentially equivalent" was vague and that the court should examine Mrs. Newstrom's training and experience when determining her fitness to conduct home instruction for her children.⁴⁶

Decision

The Supreme Court agreed with the parents. They ruled that the term in question, "essentially equivalent," is ambiguous. It was pointed out that the term has no common law meaning and no established meaning. The opinion further stated:

If the legislature had intended that the qualifications of a nonpublic school teacher to be the same as the minimum standards for a public school teacher, it would have said so. It did not.⁴⁷

The court found that the Newstroms had intended to comply with the law and believed that Mrs. Newstrom possessed the training and experience "essentially equivalent" to that of certified teachers. Based on these findings, the Supreme Court overruled the conviction of the parents.⁴⁸

⁴⁵Minnesota, Minnesota Statutes Annotated, Sec. 120.10(2) (1984).

⁴⁶State v. Newstrom, 371 N.W. 2d. 525 (Minn. 1985).

⁴⁷Ibid., p. 528.

⁴⁸State v. Newstrom.

Discussion

Legislators need to be more specific in their requirements for teachers in home schools. In order for statutory requirements for these teachers to be enforceable they must be written in terms understood by the ordinary citizen. Neither parents who want to offer home instruction nor educators who are expected to enforce compulsory school attendance laws must have questions about the meaning of the statutes.

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

Facts

Defendants in this case, Bobby E. Riddle and Ethel Riddle, appealed their conviction and fine of ten dollars for failing to send their children to school. The children had been enrolled in the Emmanuel Christian Academy but were withdrawn when the parents, who described themselves as "Biblical Christians," became displeased with the religious philosophy of the academy. In order "to have their children totally indoctrinated and educated in their religious beliefs with no smattering of heresy" and to protect them from "the pernicious influence" of public schools,⁴⁹ they chose to educate the children at home. Their appeal was based on their charge that the requirement that

⁴⁹State v. Riddle, 285 S.E. 2d. 359 (W. Va. 1981); p. 361.

teachers in home schools must be "qualified to give instruction"⁵⁰ was unconstitutionally vague.⁵¹

Decision

Justice Neely offered the opinion of the West Virginia Supreme Court which affirmed the conviction. He declared that the requirement for a teacher "qualified to give instruction" was flexible rather than vague. The court recognized that the term is open to interpretation but pointed out that parents who feel the law is administered in an arbitrary and capricious manner can seek to correct the action by a declaratory judgment or an action in mandamus.⁵²

Discussion

Parents do not possess the option of ignoring a statutory requirement because it is open to interpretation by school officials. Fear that a requirement will be interpreted in a way objectionable to parents is no defense for noncompliance.

Burden of Proof

State v. Moorhead
308 N.W. 2d. 60 (Iowa 1981)

Facts

The facts of this case can be found in this chapter under the heading of "Unconstitutionally Vague."

⁵⁰ West Virginia, West Virginia Code, Sec. 18-8-1 (1951).

⁵¹ State v. Riddle.

⁵² Ibid.

Decision

The Supreme Court of Iowa overruled the contention of the Moorheads that the state was required to prove beyond a reasonable doubt that their children were not being instructed in compliance with the laws of Iowa. It was ruled that the issue of equivalency of instruction received "elsewhere" was a defense to the charge of violating the compulsory attendance law rather than part of the offense. As such the burden of proof was on defendants charged with violating the statute and not on the state. The parents did not present evidence that the instruction of their children was equivalent and by a certified teacher. Therefore, the prior conviction was sustained.⁵³

Discussion

Parents who choose to educate their children at home will need to prove to the courts that their instruction meets the statutory requirements established by the state legislature.

Jernigan v. State
412 So. 2d. 1242 (Ia Cr. App. 1982)

Facts

The main issue of this case was the violation of fundamental rights of the parents. For this reason the facts are contained in this chapter under the heading of "Fundamental Rights."

⁵³State v. Moorhead.

Decision

The Supreme Court of Alabama affirmed the lower court's conviction of the parents who refused to send their children to public schools. The court noted that the parents had failed to prove that certification of teachers would in any way tend to harm the children's salvation or interfere with the religious practices of the family. The conclusion of the court was: "The defendants have not demonstrated that they can and will continue to provide an equivalent education, and it is not incumbent upon the state to verify the same."⁵⁴

Discussion

Parents have been put on notice that they must bear the burden of proof in cases when they challenge requirements for personnel in home schools. Courts will accept home schools as an alternative to public schools if parents can prove beyond a reasonable doubt that statutory requirements are being met by those who teach in such schools.

⁵⁴Jernigan v. State, p. 1247.

CHAPTER VI
SUMMARY, CONCLUSIONS AND RECOMMENDATIONS

Home instruction has existed in the United States since colonial times when the isolation of families and the scarcity of teachers made public education impossible for many children. If parents wanted their children to receive an education, the only alternative was for the parents to instruct the children at home. The spread of public schools and the advent of compulsory school attendance legislation resulted in a decline in the number of home schools. The practice of providing home instruction never disappeared in America, and even today in some sparsely populated areas children are taught at home out of necessity rather than by choice. The number of home schools has steadily increased in recent years as many parents, for diverse reasons, have chosen to remove their children from public schools and to educate them in alternative settings, including their own homes.

The increase in the number of home schools has been accompanied by an increase in litigation on the subject. Court cases have been heard on a variety of subjects related to home schools. These subjects include curriculum, scheduling, public funding, textbooks, reporting requirements, and personnel. It is the latter aspect which was chosen for this research.

The purpose of this study was to examine the legal aspects of teacher certification in home schools through analysis of statutory provisions of the fifty states and judicial decisions arising from these

statutes. No attempt was made to determine the desirability of certification of teachers in home schools. Instead, the study examined existing statutes, litigious subjects, and court decisions on the subject.

In Chapter I seven key questions on the subject of teacher certification in home schools were proposed to guide the research. Answers to these questions were sought in books, pamphlets, periodicals, state statutes, legal decisions, dissertations, and correspondence from the chief state school officers in the fifty states. Chapter II contained a review of literature on the three related subjects of compulsory school attendance, home schools, and certification of teachers. The review identified and introduced some of the major legal issues in the area of certification of teachers in home schools. Chapters III, IV, and V provided answers to the questions posed in the first chapter through an examination of state statutes related to teacher certification in home schools, an analysis of judicial decisions on the subject, and a discussion of other legal aspects of home school personnel.

This chapter contains a summary of the findings and recommendations of the researcher based upon these findings. The answers to questions posed in the introductory chapter can guide public school educators as they come in contact with parents who choose not to send their children to public schools and to provide instruction for them in the home.

Summary

Nonpublic schools, including home schools, serve a number of purposes for parents who do not want to send their children to public schools. Among the purposes are the separation of children from racial integration, the protection of students from undesirable influences in public schools, and an opportunity to teach children according to the convictions of the parents.

The introductory chapter of this study identified the historical fact that home schools have existed in the United States since colonial times. The latter half of the twentieth century has witnessed a revival of interest in alternative ways to meet the statutory requirements of compulsory school attendance laws. This renewed desire to provide alternatives to public school is a reflection of the changing social, political, and moral climate in America. One of the alternatives chosen by many parents is home schools.

The growing practice of teaching students in the home has come into conflict with the desire to ensure competency in classrooms through teacher certification. This conflict has resulted in litigation by parents and by school officials. This litigation and the resultant decisions offer answers to the questions posed in the first chapter of this research.

The first question listed in Chapter I concerned the legal status of home schools in the United States. The number of states which recognize home schools as an alternative to public schools continues to grow. In 1985 six states enacted legislation permitting home

schools. This brings to forty-one the number of states with such statutory provisions. In addition to these forty-one states, home instruction is permitted by case law in two states, the attorney general of one state has ruled that home schools are permissible under existing state laws, and another state has adopted regulations which permit instruction in the home. Even though a total of forty-five states now permit home schools through statutory action or other means, the Supreme Court of the United States has not decided a case on the subject. Until that tribunal hears such a case the basic legal questions related to home schools will be answered by decisions of lower courts where the opinions are contradictory and inconclusive.

The second question posed in the introductory chapter related to the practice of requiring certification for teachers in home schools. An analysis of statutory requirements for personnel in home instructional programs reveals that the requirements vary greatly from one state to another. Only seven states have statutory requirements for certification of all home instructors. These states are Alabama, Alaska, California, Colorado, Idaho, Iowa, and Michigan. Arkansas laws require a certificate for teachers of students who have been identified as exceptional students but not for other students. Three additional states, Florida, Maryland, and Nevada, have requirements that teachers in home schools hold a teaching certificate but make provisions for the waiver of the requirement if certain other conditions are met. In addition to these statutory requirements, Louisiana has a law which requires that home schools be supervised by a certified teacher, and Washington requires that a certified teacher verify the quality of home

school programs in that state. Only one state, South Dakota, has specified that teachers in home schools are not required to hold a teaching certificate. Six states have laws which specify that home school instruction be provided by persons who are "competent" or "qualified." These states are Hawaii, New York, Ohio, Pennsylvania, South Dakota, and West Virginia. Five Additional state legislatures have established requirements ranging from a high school education to a baccalaureate degree. States with these specifications are Arizona, Georgia, New Mexico, Tennessee, and Virginia. The remaining twenty-one states which permit home schools have no statutory requirements for instructors in these schools.

The third question asked the type of certification required for teachers of home schools. Five of the eight states which require that teachers in home schools be certified simply state that the teachers must hold a certificate, with no reference to the type or level of certificate needed. These states are Alabama, Alaska, Colorado, Iowa, and Michigan. Two states, California and Michigan, require that the teachers be certified for the grade or subject taught. As stated earlier, Arkansas has a requirement that students identified as exceptional students who are taught in home schools must be instructed by a teacher certified in special education. Teachers of other students in home schools in Arkansas are not required to hold a teaching certificate.

The fourth question listed in the first chapter was: What have been the court decisions on the regulation of teachers in home schools? The United States Supreme Court has never ruled on a home schooling case, and decisions handed down by lower courts have been inconsistent

and contradictory. The judiciary has generally concurred that the regulation of teachers in home schools is a legitimate function of the state legislatures as long as the regulations are reasonable. Courts have, as a rule, decided against parents who failed to meet the requirements for home school personnel established by state legislation. The absence of requirements for home school instructors has traditionally been interpreted by the courts as the intent of the legislature to permit noncertified persons to conduct such instruction. In these instances courts have been inclined to examine the quality of instruction rather than the credentials of the instructors.

Question number five sought to identify trends, if any, which are discernible from an analysis of state statutes and judicial decisions in the area of certification of teachers in home schools. Judging from legislation enacted in 1985, it is apparent that the trend is to permit home schooling without specifying qualifications for teachers. Legislative bodies appear to be more concerned with the quality of instruction than with the certification of personnel who provide the instruction. The trend is to require that all nonpublic schools provide educational opportunities which are comparable to those offered in public schools. To accomplish this purpose, courts look at the quality of individual nonpublic schools and judge each one on its merit rather than to judge all nonpublic schools as a group. Another trend which is evident is for parents to be more imaginative in their challenges to statutes requiring certificates for teachers in home schools. Early judicial decisions were usually decided on the issue of religious freedom while more recent cases have challenged the laws on other

grounds. Parents who desire to provide home instruction are determined to find legal ways to provide it.

Statutory requirements for certified teachers in home schools have been challenged on a variety of grounds. Question number six asked what these grounds have been. The objection offered most frequently by parents who oppose certification of teachers in home schools is that state regulation of instructors who teach in these schools violates the religious rights of parents. Since the Yoder decision, an increasing number of parents have sought exemptions from state regulation of home schools based on the principle of religious freedom set forth in the First Amendment to the Constitution. The laws have also been challenged on the grounds that they are violative of basic rights such as equal protection, due process, trial by jury, and the right to life, privacy, and family integrity. The language of the statutes has been challenged as being unconstitutionally vague, arbitrary, and capricious. Parents have contended that certification does not ensure competency. Arguments have been advanced that, in many cases, noncertified teachers are able to offer instruction which is comparable to or superior to that offered by those teachers who have submitted themselves to the certification process. Opponents of teacher certification have offered standardized testing as an alternative method of ensuring quality of instruction.

The final question in the introductory chapter asked how states have regulated teachers in home schools other than by requiring certification. Two states, Louisiana and Washington, require that home instruction programs be monitored by certified teachers. Statutes

enacted by the Arizona legislature require that home school teachers pass a proficiency examination, and Georgia and Tennessee have statutory requirements that such teachers have a high school education or the equivalent. Two other states, New Mexico and Virginia require a baccalaureate degree for persons offering home instruction. Eight states have enacted statutes which address the quality of the educational programs rather than teacher qualifications. These states are Connecticut, Indiana, Kansas, Maine, Missouri, New Jersey, Rhode Island, and South Carolina. Requirements that teachers in home schools be "competent" or "qualified" are found in the laws of Hawaii, New York, Ohio, Pennsylvania, South Dakota, and West Virginia.

Conclusions

In seeking answers to the questions posed in the first chapter, the researcher reviewed books, pamphlets, periodicals, dissertations, and ERIC documents and analyzed statutes and court rulings. The research revealed conflicting and contradictory court decisions, personal opinions and research findings. However, the following general conclusions can be made concerning the legal aspects of certification of teachers in home schools.

1. Courts will generally uphold the statutory regulation of teachers in home schools as being a legitimate function of the state to provide an education for all students.
2. If statutes regulating teachers in home schools are reasonable and are not interpreted in an arbitrary and capricious manner, the challenges to them will be overruled by the judiciary.

3. State statutes will fare better when challenged by parents if the language is specific rather than broad and general.
4. Courts are becoming more willing to declare language of regulatory statutes requiring certification of home school teachers unconstitutionally vague if they contain terms such as "equivalent," "competent," and "qualified."
5. The absence of statutes requiring home instructors to be certified will probably be interpreted as the intent of the legislature to permit noncertified persons to teach in such schools as long as they can provide the proper instruction.
6. Instruction comparable to that available in public schools will be considered the minimum requirement for home instruction programs.
7. The necessity of teachers being certified for the appropriate level of instruction will be required by the judiciary especially for older students who need more specialized courses.
8. Attempts by parents to evade certification requirements by asserting a First Amendment freedom-of-religion claim will not be successful in the courts.
9. When parents challenge certification requirements because they violate their "fundamental rights," parents must be able to specify which rights are violated by the requirements.
10. Parents who contend that statutory requirements that home teachers possess a certificate violate their rights must be prepared to bear the burden of proving such a contention.

11. The fallibility of the teaching certificate is recognized by the courts. At the same time the judiciary will accept certification as an indicator of educational preparation and a probability of success in the classroom.
12. Standardized testing as an alternative to certification to ensure competent instruction will be rejected in the court room. The rejection will be based on questions of validity of such tests and the timing of the testing.
13. Courts will continue to differ in their opinions of the value of the socialization aspects of education which is usually absent in home schools.
14. Lobbyists for home school groups will continue to petition state legislatures to relax standards for qualifications for home school instructors.
15. Home school advocates will continue to assist parents who challenge requirements that teachers in home schools be certified.
16. Parents will continue to be more imaginative in their challenges to home school regulations and will be more successful in their fights unless public school officials become more knowledgeable of the general statutes, precedent setting court decisions, and procedural due process rights of parents.
17. Local, state, and federal courts will continue to offer conflicting decisions until the United States Supreme Court hands down a decision on the subject of who can offer instruction in home schools.

Recommendations

The purpose of this research was not to determine whether or not the certification of teachers in home schools is desirable or beneficial. Instead, the purpose was to arrive at recommendations for public school officials who increasingly face the likelihood of having to deal with parents who remove children from public schools in favor of home instruction. The following guidelines were formulated through an analysis of pertinent literature, existing state statutes, and judicial decisions.

Recommendations for School Officials

1. It is incumbent upon public school officials to be thoroughly familiar with the statutory requirements for teachers in home schools in their state. They must recognize that the question of home schooling is in a period of change. Consequently, public school officials must be aware of any statutory changes.
2. Public school officials must be familiar with court decisions on subject of home school personnel, especially decisions in their own states. They should be aware of judicial rulings in other states and look for trends which may develop on the subject.
3. Before bringing suit against parents who provide home instruction, public school officials must be cognizant of the procedural due process rights of parents and must honor these rights.

4. Public school officials must be aware of relevant policies, rules, and regulations which have been adopted by state and local officials pursuant to statutory provisions for regulation of personnel in home schools.
5. It is the responsibility of public school officials to report suspected violations of all compulsory school attendance laws, including those establishing criteria for personnel in home schools. They must also be thoroughly familiar with the schools being operated in homes including the program offered, schedule, and qualifications of the instructors.
6. Parents who establish schools in their home should be notified of statutory requirements for personnel in home schools as well as other requirements for such schools.
7. If public school officials challenge parents who offer instruction at home, they must be prepared to prove that the instruction is not comparable to that available in public school.
8. State legislatures should be petitioned by public school administrators to eliminate all ambiguous language from compulsory school attendance laws. The inclusion of such wording opens the door for charges that statutes are unconstitutionally vague.
9. The enforcement of statutes related to home school personnel should be applied in a nondiscriminatory manner in order to preclude litigation based on arbitrary or capricious application of statutes.

10. State legislatures should be encouraged to enact legislation specifying requirements for teachers in all schools, both public and nonpublic.

Recommendations for Further Study

1. This research has been limited to the legal aspects of certification of teachers in home schools under existing statutes and judicial decisions arising from these statutes. Further research should be focused on administrative law in this area. Such a study would examine rules, regulations, and policies of state departments of education, state and local boards of education, and opinions of attorney generals.
2. With the recent emphasis on effective teaching, there is a need for research into the correlation of teacher effectiveness and teacher certification. Courts recognize the fallibility of teacher certification but accept it as the best available measure of competency. Research is needed to determine if it is the best measure and if not, what other measures of competency should be considered.
3. Personnel is only one component of schooling. Other components which comprise the total educational experience include methodology, curriculum, materials, and scheduling. Research is needed in these areas before decisions are made on the effectiveness of home schools.
4. Research is needed to determine the success of students who are educated in home schools. Such a longitudinal study

study should evaluate the academic progress, economic success, ability to adapt in society, and other areas of life.

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APPENDIX A
STATUTORY PROVISIONS FOR PERSONNEL
REQUIREMENTS FOR NONPUBLIC
SCHOOL TEACHERS

Alabama

Sec. 16-384. Private School

- A. The term "private school" as used in this chapter, shall mean and only include such schools as hold a certificate issued by the state superintendent of education, showing that such school conforms to the following requirements:
1. The instruction in such schools shall be by persons holding certificates issued by the state superintendent of education;
 2. Instruction shall be offered in the several branches of study required to be taught in the public schools of this state;
 3. The English language shall be used in giving instructions;
 4. 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.
- B. The term church school, as used in this chapter, shall mean and only include 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. (School Code 1927, Section 302; Code 1940, T. 52, Section 299.)

Sec. 16-283. Ages of Children Required to Attend School

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 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, Code of Alabama 1975. Admission to public school shall be on an individual basis on the application of the parents, legal custodian or guardian of the child to the local board of education at the beginning of each school year, under such rules and regulations as the board may prescribe. (School Code 1927, Section 301; Code 1940, T. 52, Section 297; Acts 1956, 2nd Ex. Sess., No. 117, p. 446, Section 3.)

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

. . . .

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. 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 if 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 BEFORE OR WITHIN SIX MONTHS AFTER BEGINNING HOME INSTRUCTION and the child takes the nationally standardized NORM-REFERENCED achievement test AS PRESCRIBED IN SECTION 15-741 each year. . . .
 2. The child is attending a regularly organized private school. The PERSON WHO HAS CUSTODY of a child attending a private 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 AND THE NAME AND ADDRESS OF THE SCHOOL THAT THE CHILD IS ATTENDING. FOR THE PURPOSES OF THIS PARAGRAPH, "PRIVATE SCHOOL" MEANS A NONPUBLIC INSTITUTION OTHER THAN THE CHILD'S HOME WHERE INSTRUCTION IS IMPAIRED.

Arkansas

Sec. 80-1503.4. Attendance at School or Home School Required for
Children Aged Seven Through Sixteen - Exceptions

Every parent, guardian or other person residing within the State of Arkansas having custody or charge of any child or children between the age of seven (7) through sixteen (16) years, both inclusive, shall enroll such child or children in a public, private or parochial school, or provide a home school for such child or children as described in this Act under such penalty for noncompliance as shall be set by Law. Provided, however, this Section shall not be applicable to any child who has received a high school diploma or its equivalent as determined by the State Board of Education.

Sec. 80-1503.5. Home School Defined

For purposes of this Act, a home school shall be defined as a school primarily conducted by parents or legal guardians for their own children.

Sec. 80-1503.6. Prerequisites to Home Schooling

Parents or guardians desiring to provide a home school for their children must comply with the following requirements:

1. Give written notice to the superintendent of their local school district by August 15 before the commencement of each school year of their intent to provide a home school for their child(ren). Such notice must include the name, date of birth, grade level and the name and address of the school last attended, if any, of each student involved; the location of the home school; the basic core curriculum to be offered; the proposed schedule of instruction; and, the qualifications of the parent/teacher(s). This information may be used only for statistical purposes

Sec. 80-1503.9. Child Needing Special Education Services Enrolled in
Public, Private or Parochial School - Exception

Any student who has been identified pursuant to the provisions of Public Law 94-142, the Education of All Handicapped Children Act, and Act 102 of 1973, as amended, Ark. Stat. Ann. 80-2115, ex. seq., as needing special education services shall not be eligible to meet the requirements of compulsory attendance by participating in a home school program unless the parent/teacher of such child holds a valid certification from the State of Arkansas to teach special education courses in a public or private school.

Any student participating in a home school program whose performance on the tests required by this Act indicates the student may be in need of special education service shall be referred for evaluation in accordance with the provisions of P.L. 94-142 and Act 102 and the regulations promulgated thereunder. If such student is identified as needing special education service, the student shall be enrolled in a public, private or parochial school unless the parent/teacher of such student holds a valid certification from the State of Arkansas to teach special education in a public, private or parochial school and submits procedures for implementing an Individualized Education Plan (IEP) which includes specific goals and objectives.

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 school day 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 school day 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.

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: . . .
 - 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: . . .
 - 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

Each parent or other person having control of a child seven years of age and over and under 16 years of age must send such child to public school in the town in which the child resides unless the parent or other such person is able to show that the child is elsewhere receiving equivalent instruction in the studies taught in the public schools.

Florida

Sec. 232.01. Regular School Attendance Required Between Ages of6 and 16

1. a. All children who have attained the age of 6 years or who will have attained the age of 6 years by February 1 of any school year or who are older than 6 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 in at: . . .

4. A home education program as defined in Sec. 228.041, and which is in compliance with Sec. 229.808, provided that at least one of the following conditions is met:
 - a. The parent holds a valid regular Florida certificate to teach the subjects or grades in which instruction is given and complies with any other requirements prescribed by law or rules of the state board; or
 - b. The parent does not hold a valid regular Florida certificate to teach and complies with the following requirements:
 - (1) Notifies the superintendent of schools of the county in which the parent resides of his intent to establish and maintain a home education program. The notice shall be in writing, signed by the parent, and shall include the names, addresses, and birthdates of all children who shall be enrolled as students in the home education program. The notice shall be filed in the superintendent's office within 30 days of the establishment of the home education program. A written notice of termination of the home education program shall be filed in the superintendent's office within 30 days of said termination.
 - (2) Maintains a portfolio of records and materials. The portfolio shall consist of a log, made contemporaneously with the instruction, which designates by title the reading materials used, and samples of any

writings, worksheets, workbooks, and creative materials used or developed by the student. The portfolio shall be preserved by the parent for two years and shall be made available for inspection by the superintendent, or his agent, upon 15 days written notice.

- (3) Provides for an annual educational evaluation in which is documented the pupil's demonstration of educational progress at a level commensurate with his or her ability. A copy of the evaluation shall be filed annually with the district school board office in the county in which the pupil resides. The annual educational evaluation shall consist of one of the following:
- (a) A teacher selected by the parent shall evaluate the pupil's educational progress upon review of the portfolio and discussion with the pupil. Such teacher shall hold a valid regular Florida certificate to teach academic subjects at the elementary or secondary level. The teacher shall submit a written evaluation to the school superintendent;
 - (b) The pupil shall take any nationally normed student achievement test used by the district and administered by a certified teacher. Such test results shall be reported to the school superintendent;
 - (c) The pupil shall take a state student assessment test. Such test results shall be reported to the school superintendent;
 - (d) The pupil shall be evaluated by an individual holding a valid, active license pursuant to the provisions of Sec. 490.003(3) or (7). Such results shall be reported to the school superintendent; or
 - (e) The pupil shall be evaluated with any other valid measurement tool as mutually agreed upon by the school superintendent of the district in which the pupil resides and the pupil's parent or guardian. Such results shall be reported to the superintendent.

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. . . .
 - c. Parents or guardians may teach their children at home in a home study program which meets the following requirements:
. . . .
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; . . .

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. . . .
- 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 another 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: . . .

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.

Sec. 33-1201. Certificate Required

Every person who is employed to serve in any elementary or secondary school in the capacity of teacher, supervisor, administrator, education specialist, school nurse or school librarian shall be required to have and to hold a certificate issued under authority of the state board of education, valid for the service being rendered; except that the state board of education may authorize endorsement for use in Idaho, for not more than five (5) years, certificates valid in other states when the qualifications therefore are not lower than those required for an Idaho certificate.

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).

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.

Kansas

Sec. 72-1111. Compulsory School Attendance; Exceptions

Subject to the other provisions of this section, every parent or person acting as parent in the state of Kansas, who has control over or charge of any child who has reached the age of seven years and is under the age of 16 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. 1983 Supp. 72-1106, and amendments thereto, 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.

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 provided 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: . . .
 - 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 . . .

Louisiana

Title 17, Sec. 221. Age of Compulsory Attendance; Duty of Parents

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

. . . . Solely for purposes of compulsory attendance in a non-public 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.

Title 17, Sec. 236.1. Approval of Home Study Programs

- C. 1. After the 1984-1985 school year, a renewal application for participation in a home study program shall be approved if the parent submits to the board satisfactory evidence that the program has in fact offered a sustained curriculum of quality at least equal to that offered by public schools at the same grade level. . . .
3. A statement from a teacher certified to teach at the child's grade level that the teacher has examined the program being offered and that in his professional opinion, the child is being taught in accordance with a sustained curriculum of quality at least equal to that offered by public schools at the same grade level or, in the case of children with mental or physical disabilities, at least equal to that offered by public schools to children with similar disabilities. Any such teacher evaluation provided for in this Subsection shall be subject to review and approval of the State Board of Education.

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. 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; . . .

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.

Sec. 13A-10.01. Home Instruction: General Regulations

B. Requirements. The home instructional programs shall:

- (1) Include regular, thorough and comparable instruction of those subjects usually taught in public schools to children of the same age; . . .

Sec. 13A-10.02. Teacher Qualification

- A. The teacher of the home instructional program is that individual providing regular, daily instruction to the child.
- B. Each teacher shall qualify according to one of the following requirements:
 - (1) Meet full certification requirements of the State Department of Education for the subject concerned; . . .
 - (2) Be a graduate of an accredited college, with sufficient academic background in the subjects and areas being taught to the child and in the judgment of the local superintendent of schools, have sufficient academic training to ensure competency in the subjects specified.
- C. Waiver. Upon application to the local superintendent of schools by the parents or guardian, the requirements for teachers may be waived if justified by reason of the person's excellence in previous teaching or occupational experience, special preparation, or other acceptable qualifications. The application for a waiver shall be made in writing and shall include documentation to support the request.

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 approved 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 or 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.

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:
 - . . .
 - 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: . . .
 - c. When a compulsory-school-age child is being educated in a legitimate home instruction program. . . .
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"

Montana

Sec. 20-5-102. Compulsory Enrollment and Excuses

1. Except as provided 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 established 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; . . .
 - 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 EnrollmentExemption

To qualify its students for exemption from compulsory enrollment under 20-5-102, a nonpublic or home school shall: . . .

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.

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. 292.2. Compulsory Attendance Exceptions

A child must be excused from compulsory attendance at public school when the request to the board of trustees of the county school district provides information that the child will receive equivalent instruction and be instructed:

1. By a teacher, other than the parent, who possesses a teaching certificate issued by the superintendent of public instruction for the grade level to be taught;
2. By the parent, when the parent qualifies for a teaching certificate for the grade level to be taught; or
3. By the parent, in consultation with a person who possesses a teaching certificate issued by the superintendent of public instruction for the grade level to be taught. "Consultation" means:
 - a. Participation by the certificated person in the planning of the educational plan for the child;
 - b. Participation by the certificated person in the development or review of the subjects to be taught on each day of teaching; and
 - c. Consultation with the parent about any learning problems which may occur.
4. By the parent when the child is enrolled in an approved correspondence program. An "approved correspondence program" means a program provided by:
 - a. A member of a national or regional accrediting association recognized by the United States Secretary of Education, and that is accredited for elementary or secondary education.

- b. A public school in Nevada offering correspondence study at the elementary or secondary level, or both; or
- c. A private correspondence school licensed by the state board of education under the provisions of chapter 394 of NRS.

Sec. 3.

- 1. To constitute equivalent instruction, the instruction to be given a child outside the public schools must include instruction in the courses of study prescribed by the state board of education pursuant to NRS 385.110.
- 2. The minimum period of instruction which must be provided to the child on each day of instruction is the appropriate period specified in NAC 387.110.

Sec. 4.

In the case of a child receiving the equivalent instruction described in subsection 3 of section 2, at least 25 hours of consultation must take place during the instructional year between the parent and the person possessing a teaching certificate, who must maintain a log including the date and time of each consultation and time educational activities performed. . . .

Sec. 6.

- 1. The request to have a child excused from compulsory attendance at public school on the ground that the child will be given equivalent instruction outside the school must include:
 - . . .
 - c. Evidence that:
 - (1) The teacher, when he is other than the parent, has a teaching certificate issued by the superintendent of public instruction for the grade level to be taught;
 - (2) The parent qualifies for a teaching certificate for the grade level to be taught;
 - (3) The consultant has a teaching certificate issued by the superintendent of public instruction for the grade level to be taught;

- (4) The child is enrolled in an approved correspondence program; or
 - (5) The parent has received a waiver under section 8 of this regulation.
2. For grades 9 through 12, inclusive, the consultant, teacher or parent must have a secondary certificate with an endorsement in at least one of the following: English, language arts, mathematics, social studies, or any of the physical or natural sciences. For grades 1 through 8, inclusive, the consultant, teacher or parent must have an endorsement in elementary education.

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

- U. "Home school" means the operation by a parent, guardian or other person having custody of a school-age person of a home study program which provides a basic academic educational program including but not limited to reading, language arts, mathematics, social studies and science."

Sec. 22-1-2.1. Home School Requirements

Any person operating or intending to operate a home school shall:

. . .

- C. Provide instruction by a person possessing at least a baccalaureate degree, which requirement may be waived by the state superintendent upon a determination that such waiver is in the child's best interest; . . .
- Y. Upon finding that a home school is not in compliance with law, the state board shall have authority to order that a student attend a public school or a private school.

Sec. 22-12-2. Compulsory School Attendance - Responsibility

- A. Any qualified student and any person who because of his (or her) age is eligible to become a qualified student as defined by the Public School Finance Act until attaining the age of majority shall attend a public school, a private school, a home 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; textbooks. Instruction may be given only by a competent teacher

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. . . .

- 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: . . .
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 AttendSchool

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 12 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: . . .

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.
. . .
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

Sec. 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. . . .

Such parent, guardian, or other person having control or charge of any child or children, fifteen to 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. . . .

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 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 fifty dollars (\$50.00) for each day or part of a day that the child fails to attend school, and if the total of such days is more than thirty (30) school days during any school year, then such person shall upon conviction, be imprisoned not exceeding six (6) months or shall be fined not more than five hundred dollars (\$500) or both. Provided, that if the person so charged shall prove that the child has attended for the required period of time a private day school approved by the commissioner of education pursuant to Sec. 16-60-6 subsection (10), or a course of at-home instruction approved by the school committee of the town wherein the child resides . . .

Sec. 16-19-2. Approval of Private Schools - Requirements - Review

For the purposes of this chapter a private school, or at-home instruction, shall be approved, only when it complies with the following requirements, namely: That the period of attendance of the pupils in such school or in such home instruction is substantially equal to that required by law in public schools; that registers are kept and returns 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 . . .

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.

Tennessee

Sec. 49-6-3001. School Age

- 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 nonpublic school, and in event of failure to do so, shall be subject to the penalties hereinafter provided. . . .
- (8) "Non-public school" means a church related school, a private school, or a home school. A "church related school" is a school as defined in Tennessee Code Annotated, Section 49-50-801, or affiliated with Accelerated Christian Education, Inc. A "private school" is a school accredited by, or a member of, an organization or association approved by the State Board of Education as an organization accrediting or setting academic requirements in schools, or which has been approved by the state, or is in the future approved by the Commissioner of Education in accordance with rules promulgated by the State Board of Education. A "home school" is a school defined in Tennessee Code Annotated, Section 49-6-3050.

Sec. 49-6-3050. Home Schools

- a. A "home school" is a school conducted by parent(s) or legal guardian(s) for their own children. In the case of special needs courses, such as laboratory sciences, vocational education, special education, etc., premises approved by the local superintendent of education may be used. Public school facilities may be used by home school participants with the approval of the local superintendent, but this permissive authority shall not be construed to confer any right upon such participants to use public school facilities. If approved, such use shall be in accordance with rules established by the local board of education.
- b. A parent-teacher conducting a home school must comply with the following requirements:
- (1) Notice to the local superintendent by August 1st before the commencement of each school year of his or her intent to conduct a "home school" and, for the

purpose of reporting only, submit the name, number, age, and grade level of children involved, the location of the school, the curriculum to be offered, and the proposed hours of instruction and the qualifications of the parent-teacher relative to (b) (4) or (b) (7). Information contained in such reports may be used only for record keeping and other purposes for which similar information on public school students may be used in accordance with guidelines, rules, and regulations of the State Board of Education.

- (2) Maintenance of attendance records, subject to inspection by the local superintendent, and submission of these records to the superintendent at the end of each school year.
- (3) Instruction for at least four (4) hours per day for the same number of instructional days as are required by state law for public schools.
- (4) Possession of a high school diploma or GED by the parent-teacher conducting classes in grades K-8.
. . .
- (7) Possession of at least a baccalaureate degree, awarded by a college or university accredited by an accrediting agency or association recognized by the State Board of Education, by a parent-teacher conducting classes in grades 9-12; provided, however, that a parent-teacher may request an exemption from this requirement from the State Department of Education on a year-to-year basis.

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: . . .

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: . . .

(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.

Washington

Sec. 28A.02.201. Private Schools - Scope of State Control - Generally

1. All parents in this state of any child eight 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 unless:
. . .
 - b. The child is receiving home-based instruction as provided in subsection (4) of this section; or . . .
4. For the purposes of this chapter, instruction shall be home-based if it consists of planned and supervised instructional and related educational activities, including a curriculum and instruction in the basic skills of occupational education, science, mathematics, language, social studies, history, health, reading, writing, spelling, and the development of an appreciation of art and music, provided for a number of hours equivalent to the total annual program hours per grade level established for approved private schools under RCW 28A.02.201 and 28A.02.240 and if such activities are:
 - a. Provided by a parent who is instructing his or her child only and are supervised by a certificated person. A certificated person for purposes of this chapter shall be a person certified under chapter 28A.70 RCW. For purposes of this section, "supervised by a certificated person" means: The planning by the certificated person and the parent of objectives consistent with this subsection; a minimum each month of an average of one contact hour per week with the child being supervised by the certificated person; and evaluation of such child's progress by the certificated person. The number of children supervised by the certificated person shall not exceed thirty for purposes of this subsection; or
 - b. Provided by a parent who is instructing his or her child only and who has either earned forty-five college level quarter credit hours or its equivalent in semester hours or has completed a course in home-based instruction at a post-secondary institution or a vocational-technical institute; or
 - c. Provided by a parent who is deemed sufficiently qualified to provide home-based instruction by the superintendent of the local school district in which the child resides.

5. The legislature recognizes that home-based instruction is less structured and more experiential than the instruction normally provided in a classroom setting. Therefore, the provisions of subsection (4) of this section relating to the nature and quantity of instructional and related educational activities shall be liberally construed.

Sec. 28A.27. Compulsory School Attendance

The state hereby recognizes that parents who are causing their children to receive home-based instruction under RCW 28A.27.010(4) shall be subject only to those minimum state laws and regulations which are necessary to insure that a sufficient basic educational opportunity is provided to the children receiving such instruction. Therefore, all decisions relating to philosophy or doctrine, selection of books, teaching materials, and curriculum, and methods, timing, and place in the provision or evaluation of home-based instruction shall be the responsibility of the parent except for matters specifically referred to in this chapter.

West Virginia

Sec. 18-8-1. Commencement and Termination of Compulsory SchoolAttendance; 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 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; . . .

Wisconsin

Sec. 1.115.01. Home-Based Private Educational Program

"Home-based private educational program" means a program of educational instruction provided to a child by the child's parent or guardian or by a person designated by the parent or guardian. An instructional program provided to more than one family unit does not constitute a home-based private educational program.

Sec. 3.118.15.

1. a. Except as provided under pars. (b) to (d) and sub (4), unless the child is excused under sub. (3) 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.

Sec. 4.118.15.

4. Instruction in a home-based private educational program that meets all of the criteria under Sec. 118.165 (1) may be submitted for attendance at a public or private school.

Sec. 5.118.165. Private Schools

1. An institution is a private school if its educational program meets all of the following criteria:
 - a. The primary purpose of the program is to provide private or religious-based education.
 - b. The program is privately controlled.
 - c. The program provides at least 875 hours of instruction each school year.
 - d. The program provides a sequentially progressive curriculum of fundamental instruction in reading, language arts, mathematics, social studies, science and health. This subsection does not require the program to include in its

curriculum any concept, topic or practice in conflict with the program's religious doctrines or to exclude from its curriculum any concept, topic or practice consistent with the program's religious doctrines.

- e. The program is not operated or instituted for the purpose of avoiding or circumventing the compulsory school attendance requirement under Sec. 118.15 (1) (a).
 - f. The pupils in the institution's educational program, in the ordinary course of events, return annually to the homes of their parents or guardians for not less than 2 months of summer vacation, or the institution is licensed as a child caring institution under Sec. 48.60 (1).
2. An institution may request the state superintendent to approve the institution's educational program as a private school. The state superintendent shall base his or her approval solely on the criteria under sub. (1).

Wyoming

Sec. 21-4-101. Definitions

- a. For the purposes of this article: . . .
- (3) "Private school" is any nonpublic, elementary or secondary school providing a basic academic educational program for children and may include parochial and church or religious schools and home-based educational programs; . . .
- (5) A home-based educational program means a program of educational instruction provided to a child by the child's parent or legal guardian or by a person designated by the parent or legal guardian. An instructional program provided to more than one (1) family unit does not constitute a home-based educational program; . . .

Sec. 118.15. Compulsory School Attendance

1. a. Except as provided under pars. (b) to (d) and sub. (4), unless the child is excused under sub. (3) 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. . . .
- 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.
5. Home-bound study, including nonsectarian correspondence courses or other courses of study approved by the school board or nonsectarian tutoring provided by the school in which the child is enrolled.

Sec. 118-15. Home Instruction

4. Instruction in a home-based private educational program that meets all of the criteria under sec. 118-165 (1) may be substituted for attendance at a public or private school.

Sec. 118.165. Private Schools

1. An institution is a private school if its educational program meets all of the following criteria:
 - a. The primary purpose of the program is to provide private or religious-based education.
 - b. The program is privately controlled.
 - c. The program provides at least 875 hours of instruction each school year.
 - d. The program provides a sequentially progressive curriculum of fundamental instruction in reading, language arts, mathematics, social studies, science and health. This subsection does not require the program to include in its curriculum any concept, topic or practice in conflict with the program's religious doctrines or to exclude from its curriculum any concept, topic or practice consistent with the program's religious doctrines.
 - e. The program is not operated or instituted for the purpose of avoiding or circumventing the compulsory school attendance requirement under sec. 118.15 (1) (a).

- f. The pupils in the institution's educational program, in the ordinary course of events, return annually to the homes of their parents or guardians for not less than 2 months of summer vacation, or the institution is licensed as a child caring institution under sec. 48.60 (1).