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The University of North Carolina at Greensboro, 1987

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HOME SCHOOL CURRICULA: CONSTITUTIONAL ISSUES

by

Linda Page Fox

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

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APPROVAL PAGE

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The purpose of this study was to analyze the extent to which state statutes offer some regulation of the curricula offered in home schooling situations. A further purpose was to analyze court decisions which have had some impact on the curricula of home schools.

The analysis of statutes showed that all fifty states have provisions which allow home schooling. Twenty-three states have passed laws specifically related to home schooling. Eighteen states allow home schooling by approval of a governmental agency or body. Home schooling is allowed in two states by case law and in one state by Attorney General's ruling. The remaining six states have statutes that allow home schooling by either licensure or registration as a private religious school or "other acceptable means of education."

Curricula are specified for home schools by thirty-five states by statute. Five states use the terms "equivalent or comparable to public schools" in their definitions of curricula. Seventeen states have included the use of standardized testing requirements as a means of controlling the curricula offered in home school situations.

Court decisions have generally involved issues other than curricula offered by home schools. Generally court cases have upheld the statutes that are specific in their wording and intent, whether the act prohibited or allowed a given behavior. To date, no Supreme Court decision regarding home school curricula has been handed down.

Teacher licensure or certification legislation as a means of ensuring acceptable curricula has been enacted in eight states. Three states require all teachers of home schools to be certified. Two states require certification or licensure for the grade or subjects taught. One state requires special education certification for a teacher of any child identified as exceptional.

Textbook selection and use has not been addressed by statute in any of the fifty states. Parents have complete freedom of selection of materials or textbooks to be used so long as the curricula are adhered to.

ACKNOWLEDGEMENTS

To Terry, Athena, and Cynthia, for their love and understanding throughout this study, and to Dr. H. C. Hudgins, Jr., for sharing his wisdom and supporting me in my search for knowledge.

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CHAPTER 1

INTRODUCTION

Overview

In Kotzehu, Alaska, 25 miles north of the Arctic Circle, students do math and English at midnight. In Booneville, California, they read what they choose at a mountaintop ranch, surrounded by sheep and goats. The number of home schoolers is increasing in every state, and dozens of support groups, newsletters and purveyors of curricula and books have sprung up to organize them, inform them, and supply them.

The years remaining in this century could present American education with some of the most critical challenges and dramatic changes in this nation's history. News media have set the stage for an intense self-study of this nation's schools. Three of the most widely known studies have been: A Nation at Risk[1]; High Schools, and

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[1] The National Commission on Excellence in Education, A Nation at Risk: The Imperative for Educational Reform, Washington: U.S. Department of Education (1983).

Making the Grade[2]; and A Place Called School[3], by John Goodlad. These 1983 studies voiced concern that the deterioration of quality in schools and colleges was jeopardizing America's ability to compete in the increasingly technological international marketplace. The reports also added to the weight of evidence that the schools have failed in their mission. Ever since April 1983, when a federal commission warned the nation of a rising tide of mediocrity in its schools, educators, legislators and the public in general have debated how to improve the quality of education in America.

From the studies conducted in the early eighties, states enacted reforms that affected all facets of the educational system. Educators, political leaders, business and industry, as well as citizens, took part in ongoing educational reforms. Efforts to improve the quality of education are not new. The striking characteristic of the ongoing drive is that it encompasses nearly every aspect of schooling. In order that America may function, citizens must be able to reach common

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[2] Making the Grade: Report of the Twentieth Century Fund Task Force on Federal Elementary and Secondary Policy, background paper by Paul E. Peterson (1983).

[3] John I. Goodlad, A Place Called School: Prospects for the Future (New York: McGraw-Hill, 1983).

understandings on complex issues, often on short notice and on the basis of conflicting or incomplete evidence. Education helps form these understandings, a point Thomas Jefferson made long ago:

> I know no safe depository of the ultimate power of the society but the people themselves; and if we think them not enlightened enough to exercise their control with a wholesome discretion, the remedy is not to take it from them but to inform their discretion.[4]

Fundamental upheaval in the society and culture of this country will require new educational outlooks.[5]

One of the most significant developments in education is taking place far from the classroom. There is no danger of school bells or join-in bustle of students in school corridors. Their parents, critical of deteriorating public school systems or driven by religious motives, are educating their children at home--a movement that has been exploding across the country in recent years, with no end of growth in sight. Many conflicts between public schools and non-public schools center on the question of wnere to draw the line between state laws that mandate compulsory education and parents' rights to direct

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[4] The National Commission on Excellence in Education, p. 7.

[5] "The Principal's Perspective," High Tech Schools, (Reston, Va.: National Association of Secondary Schools Principals), 1984, p. 1.

the upbringing of their children. Courts have declared most compulsory attendance laws to be constitutional. It is also clear today that parents can satisfy the intent of those laws by sending their children to private, secular or religious schools.

Home instruction in the United States is not new; it began in colonial America. Home instruction has never disappeared in America. It has been predicted that by 1990 the number of parents choosing home schooling will reach at least one-half million.[6]

This movement may possibly be coupled with a public demand for improved curriculum and instruction for all children. The decade of the 1980s has produced nearly thirty major national reports and countless state and local studies which focused on a dissatisfaction with the present state of education and the necessity for improving the quality of education in America.[7]

The fundamental reason for the future home education movement, according to Toffler, is that the public schools

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

[7] Richard W. Moore, Master Teachers (Bloomington, Indiana: Phi Delta Kappa Educational Foundations, 1984), p. 10.

in their present form are an anachronism, a creature of industrial society.[8]

The future will require students to assume different patterns in their learning, such as individualized instruction, short-term courses and part-time work. What is needed now is preparation for the future "super-industrial" society. Toffler believes that the computer and video recording will encourage home instruction[9] and that there will be an overdue breakdown in the factory model school.[10] The super-industrial society will mean a fundamental shift in the organization of society equally as dramatic as that from agrarian to industrial society:

> The most striking change in Third Wave civilization . . . will probably be in the shift of work from both office and factory back to the home . . . the spread of the electronic cottage, the invention of new organizational structures in business, the automation and de-massification of production. All point to the home's re-emergence as a central unit in the society of tomorrow . . . a unit with enhanced rather than diminished economic, medical, educational, and social functions.[11]

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[8] Alvin Toffler, Future Shock (New York: Random House, 1983), pp. 354-355.

[9] Ibid., p. 360.

[10] Ibid., p. 361.

[11] Ibid. pp. 370-371.

This country has evolved from an industrial to an informational workforce. This dramatic change took place in less than thirty years, whereas the turnover from an agricultural society to the industrial age took almost one hundred years. This increased pace of change produced havoc with social institutions, including educational ones.[12]

The movement from limited choices to multiple options in every aspect of American society must now become an educational concern. The nation's school systems need to recognize the growing demand for alternative schooling.

Not all state and federal courts have recognized that parents have a fundamental right to educate their children at home.[13] As a general rule, however, courts have ruled in favor of parents who have alleged that their fundamental rights have been violated in relation to a compulsory attendance law requiring that their children be educated in a formal school setting.[14]

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[12] High Tech Schools, p. 2.

[13] Sue F. Burgess, "The Legal Aspects of Home Instruction" (Ed.D. dissertation, University of North Carolina at Greensboro, 1985), p. 213.

[14] Ibid.

Most states have established regulations for home schooling regarding curriculum, scheduling, funding, textbooks, and teacher regulations. Legal regulations regarding the curricula area of home schooling in the United States was the general focus of this research.

Statement of the Problem

Legislatures and citizen groups increasingly pressure the public schools to explain and improve both the effectiveness and efficiency of education. For some parents, the satisfaction of watching their children grow in learning under their tutelage is a powerful motivation.

Parental involvement has been a component of these alternative programs. Systematic research has focused on the role of parents and home as a supplement to the efforts of public and private schools. The issue at hand is to determine how to reinforce and mutually adapt home school curricula to families. To meet that challenge, school personnel need a more nearly complete understanding of the nature of family curricula. How children learn in the home environment compared to the school environment centers around curriculum and all aspects of textbooks, teacher certification, acquired scheduling, and follow-up testing of knowledge and achievement. Intense research is needed on the nature of home school curricula, beginning

with a focus on the home school curricula that families plan to teach or are currently teaching their children at home. With an increased understanding of these alternatives, schools and educators, as well as courts, can better approach the task of cooperating with all types of parents in an effort to educate the children.

Specifically, this study was a determination regarding the extent to which state statutes regulate the curricula of home schooling. The study determined further to what extent courts have interpreted statutes providing for the regulation of home schooling.

Public school officials should be cognizant of the legal issues surrounding a parent's choice to provide home instruction for their children. Nolte pointed out that parents who remove their children from public schools in favor of home schooling have a good chance of successfully meeting the legal challenge of school officials. Many such cases are lost by school officials because they lack knowledge regarding current home school laws.[15] This study was designed to provide information and guidance to

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[15] M. 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 of Education, 1982), pp. 5-6.

educators and parents for the establishment of curricula for the children in home schools across the nation.

Limitations

Inherent in any study is a need for clarifying and reducing its scope so that a limited number of issues may be addressed and treated fully. This study is no exception. It was limited in several respects. First, it involved study of a restricted segment of non-public schools. To that end, it eliminated a vast segment of non-public education. This study did not include parochial schools or private schools. Instead, the focus was limited to schools operated by parents in their homes for their children.

A second major limitation involved a study of legal controls of the curriculum of home schools. In realizing this objective, the researcher excluded all other aspects of home schooling, however interesting they may have been.

A third major limitation involved the period of time within which the study was made. The researcher examined statutes of the various states that were current as of October 1986. The case law studied included only those court decisions handed down in this century, including opinions reported up to July 1986.

A fourth major limitation involved the scope of the historical development of schooling in this country. The researcher decided that, to provide sufficient and proper background for an understanding of the emergence, development, and current status of home schools, some understanding was needed of forces affecting the founding of schools in general. As a consequence, the review of literature and research went beyond the very restricted development of home schools and included an overview of the historical and philosophical evolution of education.

Questions to be Answered

The issue of curriculum in the home school setting has taken on new legal emphasis in this decade. All fifty states, as of 1986, have addressed in some way the issue of curriculum of those schools.[16] Some requirements are minimal, while others are more elaborate and inclusive. The Vermont statute represents the more inclusive requirement. It provides that home instruction must provide a "minimum course of study" which includes instruction in: (1) basic communication skills, including

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16 "Summary of the 50 States Home School Laws," Home School Legal Defense Association (Washington, D. C., 1984), pp. 2-55.

reading, writing, use of numbers; (2) citizenship, history of state and United States; (3) physical education and health; (4) English, American, and other literature; and (5) the natural sciences.[17]

Legal issues have been raised concerning who has the authority to regulate the curriculum and who teaches in home schools. Anyone involved in home schooling must understand the legal aspects of curriculum guidelines in his state in order for the school to operate.

This study was designed to provide answers to the following key questions regarding curriculum and associated areas of curriculum:

1. What are the constitutional issues of home schooling in the United States?
2. To what extent do states provide for home schooling?
3. To what extent do states specify exact courses of study?
4. What are decisions of court cases regarding the regulation of curriculum in home schools?
5. What degree of accountability and supervision do the states provide for home school curriculum?

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[17] Vermont, Vermont Statutes Annotated, Title 16, Stat. 1121 (1982).

6. How much freedom do parents have in selecting curricula materials and textbooks?

Coverage and Organization of Issues Involved

This study will be reported in five stages; each will be presented in chapter form. The first chapter contains an overview of the curriculum question in relation to home schooling and the interest of government in the education of the child. Key research questions for the study and pertinent definitions of terms or phrases used in the study are included in this chapter.

Chapter two contains a review of related literature. It includes works that have been completed and the association and legal ties between education and constitutional rights. The connection between individual rights and the responsibility of government for protecting and educating citizens will be discussed and reviewed.

An analysis of state statutes is presented in the third chapter. Tables and data are grouped according to relationship and topic with the analysis presented accordingly.

Chapter four is a discussion of the legal aspects of home school curricula. Major judicial decisions through July 1986 are presented involving all states with recent

court decisions related to home schooling and their significance to the issue of curricula analysis.

The final chapter contains a summary of the general and specific findings from the study and provides answers to the study questions. It also contains conclusions based on these findings. Based on the answers to these questions, recommendations for further study and needed research are offered.

The scope of this research is an historical and descriptive study of the required curriculum, if any, that states mandate in home schools. The research details the extent to which states have addressed this issue through legislation and the extent to which requirements have been litigated. In doing this, legal issues are addressed. These issues include analysis of statutes and court cases and the effects of both on the legal development of a standard curricula for home schools across the United States.

Method, Procedure, and Sources of Information

An intense interest in the topic of home schooling was generated in Seminar in School Law Research, a graduate course at The University of North Carolina at Greensboro, with classes held in Asheville, North

Carolina, at The University of North Carolina at Asheville. Home schooling is a topic that welcomes research since a review of the literature on the subject provided small amounts of current research. Many questions remain unanswered in the area of home school curricula. A need was seen for research in this area since decisions in courts regarding home school curricula are being challenged at the present time.

Letters were sent to the chief state school officer in each of the fifty states requesting information relative to home schooling and the curriculum in those schools. Also, the National Organization on Legal Problems of Education, the Education Commission of the States, the North Carolina Attorney General's office, the Home School Legal Defense Association, The Rutherford Institute, 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 materials 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.

An evaluation and categorization of state statutes and an analysis of court decisions were 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

For the purpose of this study, the following definitions applied. Programmatic[18] definitions used in this study are:

Curriculum--a course of study; a body of knowledge to be considered. May be what each person (adult and student) perceives he or she learns as learning settings are cooperatively created.[19] This study will treat curriculum as a course of study, texts used, state mandated testing, and hours of instruction.

Home School--a program of educational instruction provided in the home to a child by the child's parent or legal

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

[19] Dale L. Brubaker, "A Revisionist View of the Principal as Curriculum Leader," Journal of Instructional Psychology, Vol. III, No. 4 (December 1985), p. 175.

guardian or by a person designated by the parent or legal guardian.[20]

Compulsory Education--the requirement that the "parent, guardian, or other person having control or charge or custody of a child"[21] between certain ages send the child to school.

School--any supervised program of instruction designed to provide educational instruction to students in a "particular place, manner, and subject area."[22]

Non-Public School--a school offering a program of instruction which is not under the control, supervision, or management of a local school board.[23]

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

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

[21] Wyoming, Wyoming Statutes Annotated, Sec. 20-4-101, (a) (ii) (1977).

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

[23] Ibid., p. 2.

state statutes and enables that individual to enter into a lawfully binding contract to teach.[24]

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

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[24] Richard D. Gatti and Daniel J. Gatti, Encyclopedia Dictionary of School Law (West Nyack, New York: Parker Pub. Co., 1975), p. 45

CHAPTER 2

REVIEW OF RELATED LITERATURE

Introduction

In order to provide sufficient and proper background for a better understanding of the emergence, development, and current status of home schools, the review of the literature and research did not restrict itself to the development of home schooling. The review of the literature offers an historical and philosophical evolution of education in this country.

There is an alternative schools movement beginning in this country that could well become the major thrust of reform in the decades ahead. This trend toward educational diversity has mushroomed from decades of frustration and a lack of trust between the public schools and their communities.

The absence of quality education becomes a matter of personal urgency. It is impossible for a monolithic system of public education to respond to the different conceptions of quality education held by a pluralistic society. These differences result in increased confrontations between society and the public school system.

The change that has taken place in the public school sector in the past ten years may be a result of several possible phenomena which may have initiated the change. Teacher disenchantment with the public school system of educating the masses, with needs for security measures, and teaching toward meeting the mandated testing requirements is present in the teaching field today. A conflict of ideologies within public schools today may be a result of the need of the public schools to be all things to all people; and the back-to-basics movement of the eighties makes the taxpayers reluctant to support frills in the public school system and the curriculum has been primarily determined by the mandated competency testing programs adopted by most states across the nation. The economic conditions of the present age, the conservative cutback on federal money for public schools, have caused the serious demise of many programs in the public schools that alternative schools may offer. The ethnic group pressures still active today following the desegregation of the sixties have continued to make the alternative school movement attractive to many influential blacks as well as white citizens.

A trend in education today is toward self-help and not institutional help. Home instruction may be the self-help educational approach of the eighties.

In 1970, Toffler predicted there would be an increase in the number of parents involved in home schooling, as well as an increase in the number of court cases dealing with resistance to the attendance laws. In his book, Future Shock, Toffler explained as follows:

> As levels of education rise, more and more parents are intellectually equipped to assume some responsibilities now delegated to the schools. Near the research belt around Cambridge, Massachusetts, or in science cities as Oak Ridge, Los Alamos, and Santa Monica, California, many parents are clearly more capable of teaching certain subjects to their children than are teachers in local schools. With the move toward knowledge-based industry and the increase in leisure, we can anticipate a small, but significant tendency for highly educated parents to pull their children at least part way out of the public education system . . . . the courts will find themselves deluged with cases attacking the present obsolete compulsory attendance laws. We may witness, in short, a limited dialectical swing back toward education in the home.[1]

The fundamental reason for the future home education movement, according to Toffler, is that the public schools, in their present form, are an anachronism, a creature of industrial society.[2] The structure of school prepares children for life in a world of repetitive indoor toil,

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[1] Alvin Toffler, Future Shock (New York: Random House, 1970), pp. 359-60.

[2] Ibid., pp. 345-355.

noise, machines, crowded living conditions, and collective discipline by the clock.[3]

The future, Toffler believes, will require students to assume different patterns in their schooling (individualized instructions, short-term courses, studies in possible futures, and part-time work), so what is needed now is preparation for the future society. Toffler predicted that computers and video recording will encourage home instruction, and there will be a long overdue breakdown in the factory model school.[4]

The ERIC reference system did not recognize the term "home schooling" until 1982, but has published a steady number of articles since that date. Whitehead predicted that the number of court cases involving home schoolers and alleged attendance law violations has not peaked yet.[5]

Stokes and Splawn predicted that more fundamentalist parents will take their children out of public schools and place them in Christian Alternative Schools.[6] These schools may lead to home schooling.

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[3] Ibid., p. 355.

[4] Ibid, pp. 360-361.

[5] John Whitehead and Endele Bird, Home Education and Constitutional Liberties (Westchester, Illinois: Crossway Publishers, 1984), p. 6.

[6] W. M. Stoker and Robert Splawn, A Study of Accelerated Christian Education Schools in Northwest

The American Civil Liberties Union, in the form of Policy No. 71A, made the following statement as an example of strong support for home schooling in America:

> 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.[7]

Beshoner saw the development of home schooling as an old concept.[8] Home schooling began in colonial America when children had to be educated in the home or not educated at all. Vocational training was the apprenticeship system, which acted as an extension of the family's role, to provide training in a family atmosphere, over a specified number of years. This concept has reappeared today in the form of home schooled children. It is a concept that has been revived in the form of a protest and contest against the public schools. With the revival of interest in home schools have come many legal questions regarding

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Texas (Canyon, Texas: West Texas State University, 1980), p. 7.

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

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

every facet of home schooling and the curriculum involved in every state and its home schools.

Throughout history, things have evolved to the point that in the 1980s many people and fundamentalist groups are calling for a return to the philosophy of the 1620s, when it was considered a duty of parents to give children an education suitable to their station in life.

Historical Perspective of Home Schooling in America

Home schooling is not an idea new and unique to the twentieth century. Parents have had the right and obligation to direct the intellectual and moral upbringing of their children. The right to clothe, feed, and otherwise provide for the basic needs of children has not been questioned.[9] When the notion of "basic needs" is expanded to include education, legal questions are raised.

Discussions regarding home schools and a state's right to impose regulations on them include 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.[10]

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[9] Ibid., p. 191.

[10] Stephen v. Bongart, 189 A. 131, 137 (Essex County Ct. 1937).

Proponents of home schools offer:

> 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.[11]

Beshoner offered further opposition to state control of home schools:

> States that require certification of teachers or the meeting of other criteria that unreasonably restrict parental choice are without constitutional justification to do so.[12]

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.[13]

For the early European settlers in Colonial America, the family assumed the responsibility for transferring the culture, socializing the young, and providing vocational training. Each settlement, intent on ensuring the continuation of its heritage, supported the family as the

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[11] Brendan Stochlin-Enright, "The Constitutionality of Home Education: The Role of the Parent, the State and the Child," Willamette Law Review, 18 (1983), 611.

[12] Beshoner, op. cit., p. 206.

[13] Patricia M. Lines, Compulsory Education Laws and Their Impact in Public and Private Education (Denver, Colorado: Education Commission of the States, 1985), p. 41.

major agent for transmitting the culture across generations. The family was responsible for training the children in learning, particularly in the areas of reading and understanding the principles of religion and the law of the country.[14]

Education was necessary to the Puritan scheme, for Bible reading, and for the maintenance of church and state. The Puritans probably began the earliest of the moves toward not leaving education totally to the home. What was necessary could not be left to individual desire and initiative; it had to be controlled by church and state. Since there was no religious freedom, there was no civil freedom.[15]

Background: The Colonial Period

From the beginning of European colonization of North America through the first fifty years of American independence (1633-1830) formal education was designed for the privileged. It is to be understood at this point that from the earliest settlers fleeing from injustices, all established schools in this country were private, church-related schools.[16]

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[14] Beshoner, op. cit., pp. 191-195.

[15] Harry G. Good and James D. Teller, A History of American Education (New York: Macmillan, 1973), pp. 11-12.

The first "free public" school in America was opened by the New Amsterdam Dutchmen in 1633. The only children who could attend were those whose parents belonged to the Dutch Reformed Church.[17] The New England Puritans founded the first Latin Grammar school in Boston in 1635, and only sons from those families who could afford the tuition were admitted. The curriculum consisted of Latin, Greek, English, arithmetic, and religion. These students were expected to become Congregational ministers. Harvard College was founded a year later in 1636, so that graduates of the Boston Latin Grammar schools could pursue their ministerial studies at a higher level.[18]

Elementary education consisting of reading, writing, and religion was left to families, churches, and communities to control until 1642. Some communities did nothing to promote education. Others hired schoolmasters or designated one of the more educated men to teach.

In colonial times, many schools were not permanent nor were they located in one place, or they were so

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[16] Leonard Everett Fisher, The Schools Holiday House (New York: McGraw Hill, 1983), p. 7.

[17] Ibid., p. 8.

[18] Ibid., pp. 9-10.

located that not all children had access to them. Attendance was irregular; there was no established curriculum in the lower or common schools. Teachers had no formal preparation in regard to how or what to teach, and they made the curriculum from what they knew and what books were at hand.[19]

New England towns' housewives held informal gatherings in their homes to teach the youth their "letters" and church catechism. These were called "Dame Schools." Today, they are called home schools. Typically, the only learning material and curriculum available were a Bible, a "horn book," a paddle-like board with a transparent leaf made from the horn of an animal, and some rhyme.[20]

The "Dame School" was an extension of the family's role in educating children. The dame school was often held in the narrow and perhaps untidy, dark quarters of a kitchen or bedroom. The teacher, ordinarily a housewife, sometimes a widow, collected a small fee for teaching very young children the established curriculum, their letters, syllables, spelling, and reading.[21]

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[19] Good and Teller, op. cit., p. 13.

[20] Fisher, op. cit., p. 8.

[21] Good and Teller, op. cit., pp. 33-34.

When a child had learned to read a little and was ready to learn to write, he was removed from the dame school to a district, a neighborhood, a subscription, an "old field," or a parochial school. These are merely different names for the ordinary elementary school under various forms of management. The district school was controlled by a committee or informally selected trustees.[22]

By 1642, many young people desired a basic education in order that they be familiar with the Bible, be more obedient to civil and church laws, and become better craftsmen, farmers, and shopkeepers. The New England colonies enacted early legislation for the education of children. In 1642, the General Court of Massachusetts passed the first compulsory education law in the western world. The law simply provided that every child had to be taught to read perfectly the English tongue, have knowledge in the laws, and be taught some orthodox catechism.[23]

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[22] Ibid., p. 34.

[23] Fisher, op. cit., p. 8.

In 1647, Massachusetts passed another education law. The General Court decreed that towns of fifty families or more had to establish elementary schools and a teacher. Towns of one hundred or more families had to establish Latin Grammar Schools. Other New England colonies followed the Massachusetts example. The early education laws addressed the basic education of children, not compulsory attendance. The role of the state was one of assisting parents in the task of educating their children by providing state-supported free schools. The issue of compulsory school attendance arose during the first half of the nineteenth century. The demands of parents for schools eventually resulted in the rise of large tax-supported systems of elementary schools in the North.[24]

In 1646, the Virginia Assembly voted public funds to provide education for white children only. Much of education, however, was run by the established churches and town governments.[25]

Examples of formal beginnings of organized schools can be traced in a systematic form. In its educational

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[24] Beshoner, op. cit., p. 226.

[25] Fisher, op cit., p. 12.

management, Holland had devised a form of cooperation between church and state that was carried into New Netherland. The Dutch West India Company had almost complete control of the government of this colony and appointed the schoolmaster and paid his salary.[26]

The 1647 Massachusetts law, set by the general court, was also known as "the old deluder Satan" law requiring towns of fifty families to maintain an elementary school, and towns of one hundred to provide a secondary school to train boys for college. The law set a fine for failure to comply. Some towns found it cheaper to pay the fine than to maintain the school. Early in American history, Americans circumvented regulations and laws to provide schools as set forth in the law. In the seventeenth century all the New England colonies except Rhode Island enacted laws similar to the Massachusetts law of 1647.[27]

In the Southern Colonies, education was offered primarily by tutors in the homes of the aristocracy. Free schools were viewed as being charity institutions operating only for the poor. In the Middle Colonies, there was less of a unified demand for education, and each

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[26] Good and Teller, op. cit., p. 37.

[27] Ibid., pp. 37-38.

religious group tended to develop its own parochial school.[28] This form of education, tutors in the aristocracy's home, was again home schooling.

By the middle of the eighteenth century, America's frontiers had pushed westward, populations had increased, and wealth was enjoyed by many. No longer did the church or British have the same strong influence over most colonials. Many Americans realized that church-controlled education was altogether too narrow for life and survival in their new country. America has digressed since the eighteenth century, for now many people believe the private church schools and home schools hold the answers to education.

In 1775, there were nine major colleges and universities in the country. Eight were founded by religious groups. The strict ways of Puritan Congregationalists no longer served the needs of this new country.[29]

Education in the Nineteenth Century

Until far into the nineteenth century most elementary schools were private or home schools. Most of them,

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[28] R. E. Ebel, Encyclopedia of Educational Research (London: Macmillan, 1969), pp. 421-422.

[29] Fisher, op. cit., p. 13.

whether private or public, were ungraded and unsupervised. The movement for the improvement of public education developed slowly before 1830, but more rapidly thereafter. New York had created its Board of Regents, made a state appropriation for schools before 1800, and established the first American state superintendency of common schools in 1812. Other states followed this example by laying more or less firm foundations for their future systems. By this time, the private and home school concept was giving ground to the public school movement.[30]

Napoleon sold 825,000 square miles of French real estate, the Louisiana Territory, to the United States, and this doubled America's size. There were approximately five million people living in sixteen states in 1800.[31] The vast majority of Americans lived in rural areas and home schooling was the only educational opportunity for many children.

The Industrial Revolution changed the history of the United States and of education. Mechanics, as well as farmers, needed to be trained. A number of farmers left small rural farms and headed to urban areas where factory

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[30] Good and Teller, op. cit., p. 127.

[31] Ibid., pp. 127-128.

jobs attracted them. With this growth came an increase in crime, disease, hunger, and slums . . . a feeding ground for ignorance.

Changes in the growth of the private school sector occurred in response to public school treatment of religious values, which has gone through three overlapping stages. First, there was an evangelical Protestant period, beginning with the development of U.S. public education and lasting well into the nineteenth century. Next came a relatively brief period of non-denominational religious emphasis, an emphasis that never completely permeated American public education before it was overtaken by the third, and current, era of secular education.

The rise of the Roman Catholic schools can be traced to widespread misgivings of Catholics over the proselytizing and Protestant slant that marked the public schools in the nineteenth century. The curriculum centered about this bias of the Catholics, with more than 120 million McGuffey Readers, containing a strong Protestant orientation, sold between 1839 and 1920. The New England Primer was openly anti-Catholic. The waves of Roman Catholic immigrants who landed on U.S. shores throughout the nineteenth century were greeted by pervasive class and racial bias. Catholics rose from a tiny minority to the

single largest religious group in the nation within a fifty-year period of time.[32] The nation's compulsory education laws were in place by the time of the immigration to New York City and the secondary migration to other parts of the country.

As a consequence of this immigration, the working class and Catholics led the opposition to the development of the public education system. The political efforts to stop or alter the development of public education failed; the private education efforts endured. From the middle of the nineteenth century until the mid 1920's, well over 90 percent of the children in private schools were in Roman Catholic schools.[33]

One public response to the new schools was hostility. While the emergence of Catholic schools might have been seen as a clear benefit to overcrowded public schools hard put to accommodate the large numbers of new immigrants, some people saw the growth of new Catholic schools as a threat to public schools as well as undesirable and even unpatriotic. This movement had great influence on the concept of the rebirth of the home school movement.

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[32] Good and Teller, op. cit., pp. 250-260.

[33] Ibid., p. 374.

During the 1820's, slavery and trade unionism became national issues. In labor's view, education was the key to self-improvement. This pressure from public opinion on the conservative elements was enough to create a momentum for tax-supported, free public education. Elementary education, at this point, was still privately funded.

In 1827, the Commonwealth of Massachusetts enacted a law requiring towns of 500 families to establish high schools, one for boys, another for girls. In 1828, the era of the common school began. The grip on government held by wealthy men had begun to loosen; this led to the development of public education.[34]

Between 1830-1860, there emerged a quality and tone of education that would set the pattern of public education in the United States into the twentieth century.

McGuffey and his brother wrote six reading books that set the tone of morality in children until the close of the century. Carter, a Massachusetts legislator, was so concerned about the inability of the poor to receive an education that he gained enough political power and support to create a bill to establish the first State Board

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[34] Fisher, op. cit., p. 32.

of Education. This created a solid footing for the development of the free public schools. He also helped organize America's first school to train teachers called the normal school. Mann became head of the Massachusetts State Board of Education. He believed in a free education to all supported by public taxation.[35] Mann laid the basics for the argument against home schooling. Mann refused to recognize religious influence in the public schools based on the belief that it was a flagrant violation of the United States Constitution. He supported tax support of the public schools and was labeled as being "Godless" in his beliefs. Mann's supporters were the Protestants who feared the rising immigration of Catholics . . . because they might affect the curriculum and weaken the traditional Protestant control of American society.

Mann sparked movements for better trained and better paid teachers. In 1852, Massachusetts became the first state in the Union to enact a compulsory education law. Mann introduced the principle that society had a duty to educate every child, despite parental objection. By 1860, nearly all of America's thirty-two states had effected some central control over public education. This

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[35] Ibid., pp. 33-34.

philosophy of Mann's is still the backbone argument against home schooling and alternative schools in America.[36] During the years 1861-1900, little attention was given to the further development and improvement of schools in America. The Civil War had split the country in two halves.

Congress did enact a piece of legislation during the Civil War that would lay the foundation for publicly-supported higher education throughout the United States. In 1862, it passed the Morrill or Land-Grant Act which gave each state federally-owned land to be used to build state-run institutions devoted to college level programs in agriculture, mechanics, and engineering.[37]

The Commission on Country Life, appointed by Theodore Roosevelt, carried forward the importance of training young people for successful farm living. The Commission saw teaching as having to be visual, direct, and applicable, related always to the immediate needs of farm, home, and community. While this report died in one brief session in Congress, it laid the groundwork for Congress in 1914, to push for a national system of extension work in

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[36] Ibid., pp. 50-54.

[37] Morrill Act, 12 Stat. 503, 26 Stat. 417, 1862.

agriculture and home economics. The Commission's influence was manifest.[38]

During the nineteenth century, approximately five hundred or more independent, self-supporting colleges were established. Howard University, in Washington, D.C., opened its doors to blacks in 1867. Segregation in all forms was to follow into the next century.[39]

Education in the Twentieth Century

In the 1920's, a number of states sought to impose restrictions on private schools. These restrictions were aimed at Catholic schools, German and Japanese-language schools. In 1922, the Ku Klux Klan, which had infiltrated the Scottish Rite Masons, campaigned successfully for a state-wide law to require attendance at public school only.[40] This concept grew out of antipathy toward this country's foes during World War I. The Supreme Court struck down this statute in 1925 in Pierce v. Society of Sisters.[41]

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[38] Report of the Country Life Commission (State Document No. 705, 60th Congress, Washington, 1909).

[39] Fisher, op. cit., p. 57.

[40] Good and Teller, op. cit., pp. 374-375.

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

It should be noted that the underlying principle for a public system today is Jeffersonian. Ordinary people are the best managers of their own affairs. They should not be forced to attend a school planned only by administrators. This concept pushed many home-schooling parents into the home and out of the public schools.

The historical background of our country reveals our traditions and ideas, and has embedded public education in our constitutions and governmental institutions. The founders of this country turned to the idea of public education to build common commitments to their young for their role as self-governing citizens rather than subjects bound to an alien sovereign.

The idea of the common school took root in the nineteenth century and flourished in the twentieth century. The Masons strongly believe in the concept of the complete separation of church and state.

Masons also believe that the American education system is a triune, consisting of family, church, and free public education. The following belief was expressed by the Grand Commander:

> "The American public school" is the cornerstone of our Republic. It is unique among the nations of the world, and has contributed mightily to our stability, equality, and greatness. We have at our hands a demonstrated method of achieving an enlightened and

> unified citizenry--in a traditional American melting pot. Hence, its preservation is of vital concern to our freedom-loving people.[42]

Home schoolers do not believe that it is the responsibility of the state to cultivate an individual's native intelligence. Americans believe in an unusual freedom of learning as a birthright freedom, a pass key to unlock the chest of abilities contained in the 26 letters of the alphabet and in ten numerals of mathematics . . . herein lies the knowledge of the world.

Compulsory Attendance Laws Judicially Applied to Home Schools

Introduction

Early education laws addressed the basic education of children, not compulsory attendance. The role of the state was one of assisting parents in the task of educating their children by providing state-supported free schools. Thus, the issue during the first half of the nineteenth century was whether the state could compel school attendance.[43]

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[42] The Supreme Council 33°, Ancient and Accepted Scottish Rite of Free-masonry of the Southern Jurisdiction, United States of America, The New Age (Washington, D. C., Supreme Council, LXXXIX-No.1 (January 1981), p. 40.

[43] Beshoner, op. cit., pp. 191-193.

The Southern Colonies offered education by tutors, in the homes of the aristocracy. The Middle Colonies contained religious groups which developed their own parochial schools. In none of the colonies was school attendance compelled.[44]

States began enacting compulsory school attendance statutes around the time of the Civil War. In 1852, Massachusetts enacted the first compulsory school attendance law in the United States. The District of Columbia enacted its first compulsory school attendance law in 1864, followed by Vermont in 1867. In the 1870's and 1880's, 24 states had enacted compulsory attendance laws. By 1918, every state in the union had enacted a compulsory attendance law.[45]

Most educational historians agree that two societal developments contributed to the gradual commitment of states to compulsory school attendance. The Industrial Revolution was one development that resulted in the rapid growth of cities and concentrated populations of pupils which made mass education economically feasible. The

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[44] R. E. Ehel, Encyclopedia of Educational Research (London: Macmillan, 1969), pp. 421-422.

[45] A. P. De Boer, "Compulsory Attendance," The Encyclopedia of Education (Vol. 2) (New York: Macmillan, 1979), pp. 375-380.

second development was the post-Civil War wave of immigration to America. The institution charged with socializing the immigrant was the public school.[46]

The newcomers to America were not likely customers for a new private school movement. Mostly Irish and German, with some Slavs, Italians, and others, many were too poor to leave the vicinity of Ellis Island. Most settled in New York City where they lived in overcrowded, unsanitary conditions. They migrated north, south, and west, only after gaining some small economic base.[47]

The states' compulsory education laws were in place by the time of the immigration to New York City and the secondary migration to other parts of the country. Laws designed to enlighten poor Protestant immigrants were now applied to the newcomers. Although poor and poorly educated, Catholic immigrants quickly perceived bias on the part of the authorities at any given point in history and the present has provided the steam needed to run the non-public school engine.[48]

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[46] Lines, op. cit., pp. 119-123.

[47] Good and Teller, op. cit., pp. 374-375.

[48] Ibid., p. 375.

History of Compulsory School Attendance

Statutes requiring school attendance centering on age ranges have acted as the backbone of the American education system.[49] Compulsory school attendance has been accepted in America because of the United States Supreme Court's ruling in Brown v. Board of Education. This famous court ruling 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 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.[50]

The original concept of compulsory school attendance originated in England with Henry IV in 1405. There existed a law which required all children to be employed or to attend school. A 1530 statute of Henry VII provided

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

[50] Brown v. Board of Education, 74 S. Ct. 686, 691 (1954).

authorities the power to seize idle or begging children, ages five to thirteen, and provide them opportunities to work in the local businesses so that they would learn a trade.[51]

The 1852 first state-wide compulsory attendance law in this country was passed in Massachusetts. Mississippi was the last state to enact such a law in 1918.[52]

During the middle of the nineteenth century, uniting forces which recognized the common interest of children searched for legislation to back the rights of children. The opposition to this group were 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.

In the latter part of the nineteenth century employers discovered that labor of young children was not profitable. States began to express their own power and

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[51] Forest Chester Ensing, 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, 1911), p. 231.

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

become aware of their responsibility for educating and caring for their young.[53]

The purpose of compulsory education changed as attitudes about it changed. The first compulsory education laws in America were passed to control child labor; later laws were enacted with the realization that "only through compulsory measures can the masses be saved from ignorance"[54] and that the "welfare of the state is served by the creation of an enlightened citizenry."[55]

Historically compulsory education laws have made provisions for the exemption of certain children from compulsory school attendance. Home schoolers rely heavily on 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.

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

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[53] Ensign, op. cit., pp. 2-5.

[54] Ibid., p. 5.

[55] Ibid., p. 2.

> 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.[56]

Monroe stated that some statutes make provisions for the exemption of students from compulsory education when it is "for the best interest of the child or for other good reason."[57]

Trends in compulsory education laws have been to increase the number of years children are required to attend school. The minimum age has been lowered and the age at which a student no longer is required to attend has been raised. The school term has been lengthened from five months in 1914 to nine months in 1950 with states setting the school year length at difference periods of time.[58]

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

[57] Walter S. Monroe, ed., Encyclopedia of Educational Research: A Project of the American Educational Research Association (New York: Macmillan, 1980), p. 297.

[58] Ibid., p. 295.

Judicial Aspects of Compulsory Attendance Laws

Litigation has followed the growth of compulsory education. Cases have traditionally been litigated on the concept that parents have a natural and constitutional right to determine the manner and place of their children's education[59] and that fundamental rights of parents are abridged by compulsory attendance statutes requiring children be taught in public schools.[60]

Parents' rights were upheld in early court decisions. The earliest reported legal challenge to compulsory education was in Illinois[61] and this court ruled in favor of parents when it said:

> Parents and guardians are under the responsibility of preparing children entrusted 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

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

60 David Schimmel and Louis Fischer, The Rights of Parents in the Education of Their Children (Columbia, Maryland: National Committee for Citizen in Education, 1977), p. 83.

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

> which they will render it available to the children under their charge.[62]

This ruling reflected the general philosophy of the mid-nineteenth century; but as public sentiment changed, so did 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."[63]

An Indiana ruling in 1901 disagreed with this earlier decision by declaring the state's authority to compel school attendance regardless of the wishes of the parents:

> 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 cruel obligation.[64]

The legality of compulsory education laws has been upheld in both state and federal courts. The North

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[62] Rubsin v. Post, 79 ILL. 567, 573, 28 N. E. 68 (1876).

[63] Board of Education v. Purse, 28 S. E. 896, 899 (Georgia, 1897).

[64] State v. Bailey, 61 N. E. 730 (Indiana, 1901); p. 732.

Carolina Appeals Court stated in 1976 that "then natural and legal right of parents to the custody, companionship, control, and bringing up for 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."[65]

The United States Supreme Court, in Brown v. Board of Education, expounded the importance of compulsory education. The Court saw education as the most important function of state and local governments. Compulsory education laws and expenditures for education demonstrate the recognition of the importance of education to a democratic society. The Court saw education to be required in the performance of the basic public responsibilities in the service in the armed forces, and as the very foundation of good citizenship. Education of all children prepared the child for cultural values in preparing for professional training and in helping him to adjust to his environment.[66]

Courts have been explicit in ruling that it is the parents' responsibility to educate their children, but not necessarily in the public schools.

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[65] In re McMillan, 226 S. E. 2d 693, 695 (N.C. Appeal, 1976).

[66] Brown v. Board of Education, 74 S.Ct. 691 (1954).

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."[67] This case was based on a property interest the Sisters had in their private school. 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.[68]

The United States Supreme Court ruled in Wisconsin v. Yoder that a state's interest in education must be balanced against the parents' right to direct the religious upbringing of their children and the right of free exercise of religion as guaranteed by the First Amendment to the Constitution. Amish children refused to attend compulsory school after completion of the eighth grade, a situation in conflict with the state's compulsory education law. The Court based its decision on three hundred

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[67] Pierce v. Society of Sisters, 268 U.S. 510, 532 (1925).

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

years of the Amish tradition producing self-sufficient citizens.[69]

Burgess stated that the Yoder decision was viewed as the end of compulsory education laws. She pointed out that the Yoder decision reaffirmed the rights of parents to guide the religious education of their children.[70]

Courts examine whether there is an unreasonable or arbitrary exercise of state authority when looking at the legality of compulsory attendance laws. A court considers if "the well-being of the child or member of the child's family will be endangered by his attendance at school."[71]

Summary

Today, all fifty states have compulsory education laws. The purpose of these laws is to provide children an education in some established manner. Exemptions to these laws have been granted for only limited reasons such as school suspension or expulsion, quarantine, marriage, or attendance at a private school.[72]

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

[70] Sue F. Burgess, "The Legal Aspects of Home Instruction," Ed.D. Diss., University of North Carolina at Greensboro, 1985, p. 1.

[71] Benton, op. cit., p. 14.

[72] Beshoner, op. cit., pp. 191-206.

There has been an increase in the number of families choosing to exercise these exemptions to compulsory education laws which allow an alternative educational program for their children. Lewis cited 1975 Census Bureau data which estimated that the enrollment in non-Catholic private schools increased from 615,548 in 1965 to 1,433,000 in 1975. These figures probably reflected enrollments in established, accredited schools, not in unaccredited schools or in home schools.[73] Home schools are estimated to be increasing by hundreds every day in the 80's. Between five and ten percent of families in the United States will choose to teach their own children.[74]

Progressivism, Social Change in American Schools

Adler's The Paideia Proposal expressed that there are three common callings to which our children are destined: "To earn a living in an intelligent and responsible fashion, to function as intelligent and responsible citizens, and to make both of these things serve the purpose of leading intelligent and responsible lives--to enjoy fully as possible all the goods that make a human life as

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[73] P. M. Lines, "State Regulations of Private Education," Phi Delta Kappan, 64 (October 1982), 119-123.

[74] John Holt, "Schools and Home Schoolers: A Fruitful Partnership," Phi Delta Kappan, 64 (February 1983), 391-394.

good as it can be."[75] To Adler, education must be general and liberal. He stressed that the course of study to be followed over a twelve-year period would be required with the only exception in the curriculum being a choice of a second language.[76]

Equality of education and the progressive education movement began as part of a vast humanitarian effort to promote the promise of American life to the new urban-industrial civilization that existed in the latter half of the nineteenth century. Dewey was able to foist this mission on the American people, the dream of the desired good life, the American dream.[77]

Progressivism in education was an effort to improve the lives of individuals. According to Cremin:

> First, it meant broadening the program and function of the school. Second, it meant applying in the classroom the pedagogical principles of new research in psychology and social services. Third, it meant tailoring instruction to meet different kinds and classes of children. The revolution of Horace Mann had stressed the idea that everyone ought to be educated. Last, Progressivism implied the faith that

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[75] Mortimer J. Adler, The Paideia Proposal (New York: Macmillan, 1902), p. 18.

[76] Ibid., p. 21.

[77] Lawrence A. Cremin, The Transformation of the School (New York: Vintage Books, 1964), p. VIII.

culture could be democratized without being vulgarized.[78]

Progressive education gained political momentum during the decade before World War I. The movement began to fragment during the 1920's and 1930's and collapsed after World War II.

Progressive education has no definition since it meant different things to different people. This American movement was a response to industrialism and all that evolved from the revolution.

1876-1917

From the beginning, progressivism cast the teacher in an almost impossible role: he was supposed to be an artist in knowledge of his field, meticulously trained in the service of pedagogy, and meet all needs of his students.

Rice's remedy for America's educational ills was adequate professional preparation for all teachers. This involvement had notable effect on teacher-training institutions.

Rice in 1888 conducted a study of American schools. Rice was a New York pediatrician whose interest in

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[78] Ibid., pp. VIII-IX.

prophylaxis led him to search the city schools for a "science of education."[79]

Rice visited classrooms, talked with teachers and interviewed parents. His final essay was published in The Forum, a New York monthly publication under the editorship of Walter Page. The way to the progressive school was for the public school system to divorce itself from politics and scientific supervision.

Criticism mounted concerning the schools and the curriculum being offered. Rice wrote several other books concerning educational reform movements. At his death in 1934, he was unknown except for being one of the founders of the American testing movement.[80]

Mann was the commanding figure of the early public-school movement. He believed that universal education could be the equalizer of the human condition. He believed that poverty would disappear and crime diminish, richness would abode and life for the common man would be longer, better and happier with this universal education. This theory of Mann's was a potpourri of early American progressivism, combining elements of Jeffersonian

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[79] Ibid., p. 4.

[80] Lawrence A. Cremin, The American Common School (New York: Teachers College Press, Columbia University, 1951).

republicanism, Christian moralism, and Emersonian idealism.[81]

Mann appreciated the destructive possibilities of religion, politics, and class differences among the American people. The common school, or school common to all people, was his creation.

In the realm of curriculum in this common school were the usual list of reading, writing, grammar, spelling, math, and geography with the addition of health, music and Bible reading. A heterogeneous group of students could unify the goals set forth in the common school. Self-discipline and self-government as well a self-control would prevail in this school.[82] Mann's common school was fashioned to create an emerging social order governed by a new public philosophy.

Harris was a pragmatic natural-born administrator. His approach to education was centered on curriculum, the course of study. The curriculum served as the means by which a child would be brought into orderly relationship with his environment and with his civilization. Harris's work centered on the graded schools, with students moving

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[81] Ibid., p. 9.

[82] Ibid., p. 11.

through regular exams. He designed a detailed and efficient educational system consisting of attendance, reports, textbooks, maintenance of schools, salaries, and schedules for supervision of instruction. This was the answer to the urban civilization in the schools.[83] Harris's pedagogue had emphasis on order, work, effort and prescription.

The pedagogical protest during the seventies and eighties grew into the nineties bringing a nation-wide torrent of criticism, innovation and reform taking on the earmarks of a social movement at its beginning. The growing self-consciousness more than anything else set the progressivism of the nineties apart from other decades.[84]

The social demand for education from the urban workers, the farmers, and the businessmen transformed the character of the American school.

Education and industry clasped hands in 1882 with the Hatch Act which created federal-assisted agricultural experiment stations to provide practical information to the public centered on agriculture. Vocational training

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[83] "The Pedagogical Creed of William T. Harris," op. cit., p. 37.

[84] Cremin, op. cit., p. 22.

was a strong part of the school systems. The Davis Bill of 1907 sought federal support for school instruction in agriculture, home economics and mechanics. The McLaughlin Bill of 1909 sought federal support for extension work under the auspices of the agricultural colleges. The appointment of a Commission on Natural Aid to Vocational Education in 1914 marked the beginning of the final phase of the campaign. The Smith-Hughes Act confirmed the trend in state legislation for support of vocational studies.[85]

Progressive education was part of the broader program of social and political reform called the Progressive Movement. Its characteristic contribution was that of a socially responsible reformist pedagogue. The Progressives were fundamentally moderate. Mann refashioned the school as an engine to create a new republican American. The Progressives viewed education as an instrument for realizing America's promise.[86]

Commanger compared the nineties to a great watershed in American history, a decade in which "the new America

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[85] William T. Bawding, "Leaders in Industrial Education," Industrial Arts and Vocational Education, XLI (1952), 219-20.

[86] Richard Hofstadter, The Age of Reform (New York: Knopf, 1955); and David W. Noble, The Paradox of Progressive Thought (Minneapolis: University of Minnesota, 1958).

came in as a flood tide."[87] The era was a brilliant one for the development of American scholarship. The influence of science and Darwinism quickened the gain of knowledge in all areas. Psychology, social theory, and philosophy were as affected as physics, chemistry, and biology.[88] New ideas of man and society came together, and pedagogy was caught up in the process of change. James, Spencer, Thorndike, Dewey and Parker took over the century and provided a growing body of theory for the progressives to support the pedagogical reformism.[89]

Dewey had a gift which made him sensitive to the movement of time and changes involved of things passing and things being born. Dewey's role in progressive education was vital to the curriculum of the school then and today. Businessmen and labor unions called for curriculum in the functions of apprenticeship. Settlement workers and municipal reformers called for curriculum in hygiene, domestic science, arts and child care. Patriots wanted Americanization programs, and agrarian publicists wanted

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[87] Henry Steele Commanger, The American Mind (New Haven: Yale University Press, 1950).

[88] Stew Peasons, ed., Evolutionary Thought in America (New Haven: Princeton University, 1950).

[89] Cremin, op. cit., p. 91.

curriculum that would train and give young people a sense of joy for farming that would keep them from moving to the cities. Dewey saw this as the school becoming a legal institution and taking on the traditional duties of the family, neighborhood and shop: his Laboratory School pushed him to publish The School and Society,[90] three lectures to parents and patrons of the school. Dewey laid the blame for the ferment in educational curriculum on industrialism. He bitterly condemned "the old school" for the passivity of its methods and the uniformity of its curriculum. The educational center of gravity had too long been "in the teacher, the textbook, anywhere and everywhere you please except in the immediate instincts and activities of the child himself,"[91] according to Dewey.

Dewey realized that a new society was coming into being, and his vision of a new kind of educational curriculum would spell the difference between success or failure of humans in this society. Dewey became the leading spokesman of progressivism.

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[90] John Dewey, The School and Society (Chicago: University of Chicago Press, 1899), pp. 23-24.

[91] Ibid., pp. 43-44.

Dewey formulated the aim of education in social terms. He was sure that changes in education would be seen in changed behaviors, perceptions and insights of individual human beings. He defined education and curriculum as "that reconstruction or re-organization of experience which adds to the meaning of experience and which increases ability to direct the course of subsequent experience."[92]

Dewey believed that democracy necessitated a reconstitution of culture, and with it the curriculum consisting of scientific and industrial studies making people aware of the life around them. In planning curricula, essentials must be placed first and refinements placed second. Dewey believed that democracy cannot flourish where there is narrowly utilitarian education for one class and liberal education for another. Curricula should deal with things that are socially fundamental.[93]

Dewey referred to Parker as the father of Progressive education. Parker became the Quincy, Massachusetts, superintendent of schools in 1873. Parker made things happen. The old set curriculum was abandoned and with it

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[92] Ibid., pp. 101-102.

[93] Ibid., p. 225.

the speller, reader, and grammar copybook. Children were started on simple words and sentences instead of the alphabet. Magazines, newspapers and teacher-made materials replaced the tests. Math was inductively introduced, and geography began with a series of trips over the local countryside. Drawing was added to the curriculum for expression. The "Quincy System" ignored the fundamentals.[94]

Parker left Quincy in 1880 and became principal of Cook County where he created a curriculum that moved the child toward the center of the educational process and interrelated the several subjects of the curriculum in such a way as to enhance their meaning to the child.[95] This is the practice in curriculum desired and called for in today's school.

1917-1980

World War I marked a division in the history of progressive education. Progressives split sharply on the issue of pacifism, some following Dewey, and others

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[94] Charles Francis Adams, Jr., "Scientific Common-School Education," Harper's New Monthly Magazine LXI (1980), 934-942.

[95] Ibid., p. 943.

sharing a bitter disenchantment with pragmatism in the conflict. Progressivism seemed fragmented and lacking in appeal. The younger generation wanted nothing to do with middle class values. They were tired of moral indignation and wanted only to be answered.[96]

Progressive education again quickened with the Welsonian promise of a new and better world. During the twenties, as the intellectual avant garde became fascinated with the arts in general and Freud in particular, social reform was forgotten in the rhetoric of child-centered pedagogy. During the thirties, groups tried to tie progressive education more closely to political Progressivism. After World War II, the added curse of inertness fell over the enterprise.[97]

In 1924, Bobbitt published a major work called How To Make a Curriculum. Education, he contended, was preparation for adulthood; hence the job of the curriculum maker was to classify and detail a full range of human experience with a view toward building a sound

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[96] Lloyd Morris, Postscripts to Yesterday (New York: Random House, 1947), p. 149.

[97] Howard Ralph Weisy, "Progressive Education and the First World War," Unpublished Master's Thesis, Columbia University, 1960.

curriculum.[98] Teachers began to teach children how to think, not what to think; therefore, the subject matter of the curriculum could never be set in advance. This concept of curriculum shifted the balance of Dewey's pedagogical paradigm to the child.

The Office of Education Commission, established in 1936 to study the American school curriculum, set forth three volumes of a comprehensive blueprint of post-war education in Farmville and American City, both in the mythical state of Columbia. The message of analysis was clear: the organization of a comprehensive public school system concerned with all young people from the age of three through twenty.[99]

The commission reiterated most of the time-honored phrases: life-adjustment education was concerned with physical, mental and emotional health. It recognized the value of responsible work experience in the life of the community.

The first Commission on Life Adjustment Education for Youth turned in a three-year report in 1951; a second

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[98] Franklin Bobbitt, How to Make a Curriculum (Boston: Houghton Mifflin, 1924).

[99] Educational Policies Commission, Education for All American Youth (Washington, D. C.: National Education Association of United States and American Association of School Administrators, 1944), p. 21.

commission followed and issued its report in 1954. Aided by the Office of Education, the movement created by these reports made substantial headway in education and was a forceful thrust of progressivism at the secondary level.[100]

The central effort of the fifties was to define more precisely the school's responsibilities and to delineate those things that the school needed to do since no other institution would or could get them done.

Rickover stated, "The mood of America has changed. Our technological supremacy has been called in question. Parents are no longer satisfied with life-adjustment schools. Parental objectives no longer coincide with those professed by the progressive educationists. The phrase progressive education has lost favor with the professionals."[101]

Russia launched the first space satellite in the late 1950's and a humbled nation began to do some bitter pedagogical soul-searching.

Post-war America was a very different nation from the one that had given birth to progressive education. The

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[100] United States Office of Education, A Look Ahead in Secondary Education: Report of the Second Commission on Life Adjustment Education for Youth (Washington, D.C.: Government Printing Office, 1954).

[101] H. G. Rickover, Education and Freedom (New York: Dutton, 1959), pp. 189-190.

advance of the mass media, the proliferation of social welfare agencies under public sponsorship, and the rapid extension of industry-sponsored education programs literally transformed the balance of forces in education.[102]

The social activism of the 1960's helps to explain some of the social tensions of the 1970's and 1980's. The decade of the sixties is acknowledged to be a time of tremendous changes in the areas of race relations, sex roles and mores, and student activism. Black Americans organized massive civil rights protests in pursuit of legal and social equality.[103]

In 1964, the Civil Rights Act outlawed discrimination in all phases of public accommodation. Many of the "War on Poverty" programs were designed to alleviate the plight of poor blacks and other low-income Americans through food stamps and job training programs. President Johnson counted the votes of blacks and other Americans by

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[102] Harold F. Clark and Harold S. Sloan, Classroom in the Factories (Rutherford, N. J.: Columbia University Press, 1958).

[103] Arthur D. Morse, Schools of Tomorrow--Today (Garden City: Doubleday, 1960).

providing these programs such as Head Start supported by federal dollars. Desegregation of schools by forced busing produced a pattern of extreme social tension.[104]

The advocacy of women's rights parallel a "sexual revolution," a change of standards of conduct. Sexual freedom and permissiveness marked the sixties and seventies.[105] Phyllis Schlafly, founder of STOP ERA in 1972, successfully lobbied against the passage of ERA. The conflict role of the woman in America persisted in the seventies and eighties.[106]

The Vietnam War was a divisive issue for all Americans from 1964 to 1975. It took resources away from the war on poverty. Marches and draft card burnings dramatized the opposition.[107]

The decade of the seventies has been described as the "me decade" when Americans were preoccupied with personal,

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[104] R. G. Collingwood, The Idea of History (Oxford: Clarendon Press, 1967).

[105] John Garraty, A Short History of the American Nation (New York: Harper and Row, 1981), pp. 524-525.

[106] Carol Felsenthal, The Sweetheart of the Silent Majority: The Bibliography of Phyllis Schlafly (New York: Doubleday, 1981).

[107] Christopher Booker, The Seventies (New York: Stein & Day, 1980).

not social issues. Social critic Lasch described America as a "culture of narcissism" in which each person looked out for his own security and survival.[108] Schaeffer described the cultural shift from the optimism of the New Left and the youth culture of the sixties to the fixation on "personal peace and affluences" in the seventies.[109]

Americans lost interest in promoting social change since they were skeptical of their power to change the world for the better. The Vietnam War was humiliating for many people. In 1974, the first resignation in history of an American President occurred after charges of dishonesty and political espionage were substantiated against Richard Nixon and his staff. The price of gasoline quadrupled after an Arab oil embargo. The United States suffered a recession that included high unemployment and double-digit inflation in the seventies. Survival was an individual response.[110]

A fundamental political shift occurred in the eighties with the election of Ronald Reagan to the

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[108] Christopher Lasch, The Culture of Narcissism: American Life in an Age of Diminishing Expectations (New York: Norton, 1979).

[109] Francis Schaeffer, How Should We Then Live? (New Jersey: Flemming H. Rewell, 1976), pp. 208-210.

[110] Booker, op. cit., p. 25.

Presidency supported by a new Republican majority to the United States Senate--an active "religious right" helped elect the Republicans. Many religious spokesmen denounced the Equal Rights Amendment, abortion, and homosexuality. A desire to return to traditional family values and seek individual, not governmental, solutions to problems began to be reflected in the policies of the Reagan administration.[111]

Summary

The social conflicts of the seventies and eighties were visible in the public schools. The quest for racial equality was an ongoing conflict. Litigation continued regarding desegregation issues. Black Americans and women were portrayed differently than in years past.

A majority of the school age population attended public schools despite a growing sense of dissatisfaction with the quality of the education provided. The Gallup Polls from 1969 to 1978 showed a steady decline in the public's regard for school. Declining discipline was a major complaint, as was the decline in scores on standardized tests. Parents worried about drug use and the

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[111] Christopher Pick, "The New Right," What's What in the 1980's (Detroit: Gayle Research, 1982), pp. 226-227.

physical safety of students at school. The "moral breakdown" of the public schools became a public issue.[112] Some parents, unhappy with the public schools, chose private schools. In order to maintain its religious tradition, the Catholic Church operated the largest group of private schools in the United States. Protestants, Jews, and elite, secular groups have maintained schools outside the private sector. The right of these private and parochial schools to exist in America was affirmed by the U.S. Supreme Court, Pierce v. Society of Sisters, 1925.[113]

The ideals of social equality and the desire for freedom from public and private conventional institutions gave rise to new alternative schools in the sixties and seventies.[114]

Racism in the public schools led some black parents to set up their own alternative schools. Thus, in addition to pressing for integration of the public schools,

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[112] Stanley M. Elam, A Decade of Gallup Polls of Attitudes Toward Education, 1969-1978 (Bloomington, Indiana: Phi Delta Kappan, 1978).

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

[114] James M. Wallace, "Alternative Schools," Academic American Encyclopedia (Connecticut: Grolier, 1982), p. 313.

these groups sought to improve the education of their children by creating separate black schools.[115]

New Left Alternative Schools emerged in the sixties as a criticism of American society. Goodman, an influential social critic, became a spokesman for the New Left and with the publication of Growing Up Absurd, created the image of public education as the "establishment."[116]

Illich, a Catholic priest, condemned the public schools for the oppression of the poor. Instead of providing opportunities for the poor, Illich held that the schools were sorting mechanisms that merely perpetuate the existing class structure of society. He argued that the competitive nature of the schools would keep the poor at the bottom of the social ladder.[117]

Many of the New Left schools experimented with alternative teaching methods. They opposed highly structured schooling; Goodman felt that schooling was not necessary for the elementary years and claimed that "there is good evidence that normal children will make up the first seven years of school wich four to seven months of good

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[115] Ibid., p. 315.

[116] Paul Goodman, Growing Up Absurd (New York: Random House, 1960), p. 1.

[117] Ivan Illich, Deschooling Society (New York: Harper & Row, 1971).

teaching."[118] Goodman suggested the use of unlicensed adults as teachers, the decentralization of schools into small storefront operations of twenty to fifty students.[119]

Holt did not want all the creative teaching options to be confined to the private alternative schools. He announced the formation of Holt Associations in 1970 as a reference network for people who wished to apply alternative teaching methods to private schools. Holt published a collection of essays for teachers, What Do I Do Monday?[120]

The alternative school movement contributed to the emergence of home schooling in several ways. Alternative school advocates criticized public schools and created their own options outside the system using non-certified personnel. Alternative schools allowed parents and children a choice among different teaching methods and curricula. Existing alternative schools provided curricular and legal support for an expansion of home schools.[121]

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[118] Paul Goodman, Compulsory Mis-Education (New York: Horizon, 1965), p. 32.

[119] Ibid., p. 33.

[120] John Holt, What Do I Do Monday? (New York: E. P. Dutton, 1970).

[121] Edward Nagel and T. Shannon, "Should Parents Be Allowed to Educate Their Kids at Home?" Instructor, 89 (October 1979), 30.

Holt bemoaned the longevity of compulsory schooling. In place of compulsory schools, he suggested that schools which allowed students a choice of subjects were the only true schools, and teachers who taught students to explore their own interests were the only true teachers.[122]

Holt published a newsletter Growing without Schooling in 1977.[123] It contained testimonials of parents on the success of their efforts at home and legal advice as well as names of sympathetic school districts. Curriculum sources, professors, and creative ideas for home learning activities and bitter criticisms of public school policies filled the pages of this newsletter.

Holt re-affirmed his conviction that children are natural learners and curious and energetic, resourceful and competent in exploring the world around them. Holt also cited Moore's estimate that some 30,000 families in 1981 were already teaching their own children at home.[124]

Parents who followed Holt and wanted to try home teaching could assemble their own materials or purchase

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[122] John Holt, Instead of Education: Ways To Help People Do Things Better (New York: E. P. Dutton, 1976), pp. 22-23.

[123] John Holt, Growing without Schooling (Boston: Holt Associates, 1977-84).

[124] John Holt, Teach Your Own (New York: Delacorte Press, 1981), pp. 1-14.

them commercially for one to four hundred dollars.[125] One standard source of secular home study materials not developed to stress particular religious values was, and is, Calvert School of Baltimore, Maryland. Calvert added a correspondence school to its day school in the early 1900's and became popular with Americans overseas--businessmen, soldiers, and diplomats. It has provided a home study course for kindergarten through the eighth grade. Anyone willing to pay for the material (less than three hundred dollars per child per year) will be enrolled. For one hundred fifty dollars extra, an advisory teacher will be assigned to the students and make periodic visits. The courses are designed for a regular nine-month school year but only a two- to five-hour school day.[126] Alternative schools which began in the sixties as day schools began to allow home schoolers to enroll in their schools in the seventies without actually attending. Their experimentation with different teaching methods led naturally to a tolerance for parental tutoring and independent study.

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[125] Mary Pride, The Way Home: Beyond Feminism, Back to Reality (Illinois: Crossway Publishers, 1985).

[126] Calvert School, 1985. Brochure.

Nagel began to supplement the income of his day-and-boarding school by charging a fee for record-keeping, curricular advice and legal help. Nagel suggested a home study program to Pat Montgomery of Clonlara School in Ann Arbor, Michigan. In 1979, the Clonlara program became official when the State Department of Education decided to formalize the home curriculum. The number of Clonlara home schoolers has risen in the eighties. These families received a basic curriculum designed to cover public school subjects and the assurance that someone would be available for any necessary contacts with local school officials. Clonlara will provide a transcript of grades for any student who wishes to transfer to a conventional school.[127] Alternative schools could naturally accommodate home schooling as one more alternative approach to education.

Home Schooling as Secular Alternative

The social activism of the 1960's helps to explain some of the social tensions of the 1970's and 1980's. The decade of the sixties is acknowledged to be a time of

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[127] Ibid., p. 2.

tremendous changes in the areas of race relations, sex roles and mores, and student activism. Black Americans organized massive civil rights protests in pursuit of legal and social equality.

Federal courts were receptive to calls for equal educational opportunity, and attempts were made to desegregate the public schools. Because of segregated housing patterns, desegregation of schools often took the form of busing. Black and other minority students were often bused to attend formerly all-white schools. The effort at desegregation was not well received by all people. This pattern of social tension persisted in the 1970's: courts ordered the desegregation of public schools and separatists established their own private schools to avoid court orders.

Racial minorities were not alone in their demands for equal treatment. American women began to press for other social changes. "Concern for improving the treatment of minorities encouraged women to speak out more forcefully for their own rights," observed historian Garraty.[128] Women joined the salaried work force in larger numbers in

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[128] John Garraty, A Short History of the American Nation, 3rd ed. (New York: Harper & Row, 1981), p. 520.

the sixties and seventies. By 1975 half the married women in America were holding jobs, and many wanted more opportunities for better-paying jobs.

The advocacy of women's rights paralleled a "sexual revolution," a change in standards of conduct. Sexual freedom and permissiveness marked the sixties and seventies. Contraception and abortion became more acceptable. Feminism--the women's rights movement--had what many regarded as unethical and undesirable consequences.[129]

The Vietnam War was a divisive issue for almost all Americans, beginning when the number of troops committed to the fighting was first significantly escalated in 1964 to the final withdrawal of American forces in 1975. Failure in both war and peace left Americans with a sense of powerlessness to control events.

The civil rights, women's rights, and anti-war movements made American college campuses restless places in the 1960's. Young people were in the forefront of both the fight for the rights of blacks and the women's liberation movement. Many men went to college, it was charged, solely to avoid being drafted for combat in Vietnam. A New Left student movement critical of American

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[129] Ibid., pp. 524-525.

institutions was active in the 1960's. New Left protests extended to the policies of the universities themselves. The Students for a Democratic Society (SDS) organized sit-ins and other disruptive acts against university policies in the late sixties.[130]

In the 1970's, students and other Americans gradually shifted their attention away from activities designed to promote group rights and toward individual goals and interests. The seventies brought more concern for what can "I" get out of life rather than the Kennedy era's appeal for the good of mankind or humanity. Schaeffer noted this shift from the optimism of the youth culture of the sixties to the fixation on "personal peace and affluences" in the seventies.[131]

Many Americans may have lost interest in promoting social change because they were skeptical of their power to change the world for the better. The United States suffered from a world-wide recession that included high unemployment and double-digit inflation in the 1970's. Individual "survivalism" in the face of a seemingly

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[130] Ibid., p. 521.

[131] Schaeffer, op. cit., p. 209.

unstable and uncontrollable world seemed to many a logical response.[132]

A fundamental political shift occurred in 1980, some observers suggest, with the election of Ronald Reagan to the Presidency supported by a new Republican majority to the United States Senate. Inflation rates gradually began to come down and the economy experienced some improvement. An active "religious right" helped elect the Republicans. Many religious spokesmen denounced the Equal Rights Amendment, abortion, and homosexuality. A desire to return to traditional family values and seek individual, not governmental, solutions to problems had been expressed in the campaign of 1980 and was now reflected in the policies of the Reagan administration.[133]

Education

The social conflicts of the 1970's and 1980's were visible as well in the public schools. The quest for racial equality through the integration of students and staff was a source of on-going conflict. Litigation was constant as federal courts established and approved desegregation plans. Black Americans and other minorities

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[132] Ibid., p. 210.

[133] Christopher Pick, The New Right: What's What in the 1980s (Detroit: Gayle Research, 1980), pp. 226-227.

were portrayed more favorably in some textbooks. Women were also portrayed differently, not just as wives and mothers but as professionals and wage earners. Federal laws requiring equivalent course offerings for male and female students (including sports usually reserved for men) were another source of conflict. Millions of federal dollars were targeted at the schools to help low income students gain basic skills. The schools were viewed by policymakers as agents for social change.

The majority of the school age population attended public schools despite a growing sense of dissatisfaction with the quality of the education provided. Declining discipline was a major complaint, as was the decline in scores on standardized tests. Parents worried about drug use and sexual experimentation by students. Concerns over the physical safety of students at school were expressed. The "moral breakdown" of the public schools became a public issue.

Alternative Schools

Some Americans were not satisfied with conventional schools, public or private. The ideals of social equality and the desire for freedom from the "oppressive" conventional institutions gave rise to kinds of schools. To the existing private schools were added new secular

educational options. "Free schools," "freedom schools," "community schools," and "alternative schools" were begun in the sixties and seventies.[134]

Racism in the public schools led some black parents to set up their own alternative schools outside the white-dominated system. Parents and black-led organizations set up new schools in several cities.

> Many of the first alternative schools were free schools established outside the public school system in the 1960's. During that decade black parents in Boston and other cities set up community schools to escape and confront racism in the public schools. The New York Urban League established street academies for dropouts . . . Harlem Prep in New York City and CAM (Christian Action Ministry) Academy in Chicago were notable examples of black alternative schools.[135]

Thus, in addition to pressing for the integration of the public schools, some groups sought to improve the education of their children by creating separate black schools.

New Left Alternative Schools emerged in the 1960's as a criticism of American society as unjust not only to blacks but to the poor generally. The influential social

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[134] James Wallace, "Alternative Schools," Academic American Encyclopedia (Connecticut: Grolier, 1982), p. 313.

[135] Ibid., p. 313.

critic and self-styled "anarchist" Goodman became a spokesman for the New Left in 1960 with the publication of Growing Up Absurd, a searing indictment of the American educational "establishment," the "organized system."[136]

Alternative teaching methods opposed highly structured schooling. Goodman said that formal schooling was not for the elementary years.[137] The use of unlicensed adults as teachers, the decentralization of schools, and the sending of urban children on field trips were Goodman's answers to suitable home schools.[138]

From Alternative School to Home School

The alternative school movement contributed to the emergence of home schooling in several ways. Alternative school advocates criticized public schools and created their own options outside the system using non-certified personnel. Alternative schools allowed parents and children a choice among different teaching methods and

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136 Paul Goodman, Growing Up Absurd (New York: Random House, 1960), p. 1.

137 Goodman, op. cit., pp. 32-33.

138 Ibid., pp. 32-33.

curricula. Existing alternative schools provided curricular and legal support for home schools.[139]

One of the earliest suggestions that a home school was simply another type of alternative school came from Bennet. In the first two pages of his book, No More Public School, he stated his purpose: "This book tells how to take your child out of public school and how to educate him at home yourself." Bennet outlined the form and content of home instruction under the heading "minimal school one." The child would work at learning basic skills for "one or two hours per day," taking field trips "about three hours per week." The trips might include museums, building sites, hardware stores, libraries, and other alternative schools. Free play would be allowed for two hours per day. Bennet noted the advantages and disadvantages of "minimal school one." On the positive side, the child would be "learning at his own pace and in his own style." Learning would "become for the child an individualized and personal process rather than a large group process with very little personal meaning." On the negative side, the experience might be undesirable since parent and child would be together many hours without the

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[139] John Holt, Teach Your Own (New York: Delacorte Press, 1981).

"babysitting" service provided by the schools. Since problems with the compulsory education law might arise, Bennet urged his readers to notify authorities that the child would be enrolled in a private school in order to allay his suspicions and avoid any truancy charges.[140]

By 1976, Holt appeared to have given up on the prospect of changing public schools. In the book Instead of Education: Ways To Help People Do Things Better, he bemoaned the longevity of compulsory schooling: "The chances are we will have universal compulsory education and compulsory schools for at least another generation. Do not waste your energy trying to reform all these schools. They cannot be reformed." Instead of the dull routines of "education" should come the excitement of doing things related to real life, a voluntary association of interests that "doers" have in common.[141]

Holt suggested that student achievements outside compulsory schools might speak for themselves. Children should learn "much faster and better than children in them [public schools], at vastly less public expense, and . . .

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[140] Hal Bennet, No More Public School (New York: Random House, 1972), pp. 24-25.

[141] Holt, op. cit., p. 23.

for reasons of public policy as well as liberty and justice we ought to let parents and children together decide how much, if any, and what kind of schooling they want."[142] Holt had no illusions that it would be easy to break the compulsory school requirements in the face of teacher unions. His suggestion to the reader was to remove himself from public education. "Education--compulsory schooling, compulsory learning--is a tyranny and a crime against the human mind and spirit. Let all those escape it who can, any way they can." The following year, Holt published the first issue of Growing without Schooling (1977),[143] a newsletter for readers wishing to follow his advice and teach their own children at home.

Parents who read Bennet or Holt and wanted to try home teaching could assemble their own materials or purchase them commercially. Supreme Court Justice Sandra O'Connor, as well as entertainers Donnie and Marie Osmond, were Calvert students.

Calvert was not the only source of secular home study materials. Alternative schools which began in the 1960's

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[142] Ibid., p. 222.

[143] John Holt, Growing without Schooling (Boston: Holt Associates, 1977), p. 85.

as day schools began to allow home schoolers to enroll in their schools in the 1970's without actually attending. Perhaps their experimentation with different teaching methods led naturally to a tolerance for parental tutoring and independent study.[144]

Conclusion

It is very difficult to make a formula for the number of hours or the number of days and subjects that a child actually needs. Often children do not appear to learn best in a structured curriculum. The core concept of the alternative school movement is freedom for the learner to choose, to explore, to create. When learning takes place in this way, it would seem unreasonable to impose a state formula. Otherwise a private alternative becomes no different than a traditional public school classroom.

A number of parents believe they are successful home teachers with an unstructured curriculum. Some maintain an egalitarian idealism. Others jokingly refer to many of the home school parents as "flower children gone to seed." The alternative school movement--its experimentation with different teaching methods, its concern for social issues,

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[144] Pride, pp. 25-29.

its use of non-accredited teachers, and above all, its concept of freedom of choice for learners--encouraged experimentation with home schooling. On the other end of the ideological spectrum, however, other parents would adopt the same home study alternative for different reasons.

CHAPTER 3

ANALYSIS OF STATE STATUTES RELATING TO THE CURRICULUM IN A HOME SCHOOL

Introduction

A critical analysis of statutes in states which permit home instruction revealed a myriad of variations in the issues related to curriculum. Some states have curriculum specifically enumerated (English, math, spelling, reading, writing, state and U.S. history, and health), while others have used ambiguous terms such as "comparable to" or "equivalent to" the curriculum of the public schools. The legislators of Mississippi[1] apparently gave up on the issue, for the statutes of that state make no mention of curriculum for a school.

Litigation and an increase in home schooling have created a morass of legislation within the past ten years; but in general, all fifty states currently have some vehicle whereby a child may receive an education other than in the public schools. The form of the kind of education a child may receive varies. The typical instances

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[1] Mississippi, Mississippi Code Annotated, Sec. 37-13-93 (1982).

are in private schools, parochial schools, or home schools. Twenty-three states have home school laws. They include Arizona, Arkansas, Colorado, Florida, Georgia, Louisiana, Minnesota, Mississippi, Missouri, Montana, Nevada, New Mexico, Ohio, Oregon, Rhode Island, Tennessee, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming. The statutes of these states specifically sanction home schools. The remaining twenty-seven allow for home schooling in private or church-related schools.

Many of these twenty-seven states have court-sanctioned interpretations of laws which permit licensing or approval of home schools under private school definition. For example, North Carolina, in Delconte v. North Carolina[2], allows for home schooling, and suits are in process in California and Iowa in which parents seek similar judicial interpretations of the legality of home schooling.

The curriculum of a school seems to have been deemed of more importance than the place where it is taught. More states have dealt with the former issue in a more straightforward manner than with the latter issue.

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[2] Delconte v. North Carolina, 329 S. E. 2d 636 (N. C. 1985).

This chapter contains an analysis of state statutes which relate to curricula offered in home schools, private schools, and church-related schools. The text of applicable state laws appears in the Appendix.

States Which Specify Curricula

A review of Table 1 indicates that thirty-six states have specified curricula which must be taught in any school within the state. Most of these states list a fairly comprehensive curriculum which includes English, math, geography, spelling, state history, U.S. history, reading, writing, hygiene or health.

Some of the states go beyond the requirements of the above curriculum and insist on aesthetic courses. For example, New Jersey[3] requires "humanity" as one of its core courses.

Other states, such as Pennsylvania,[4] have music and art as requisites.

States Which Require Comparable or Equivalent Curricula

The statutes of five states, Alaska, Idaho, Indiana, Michigan and South Carolina, as shown in Table 1, require

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[3] New Jersey, N. J. Annotated Statutes, Sec 18A: 35-4-1 (1965).

[4] Pennsylvania, Pennsylvania Statutes Annotated, Table 24, Sec. 15-15A (1977).

TABLE 1

State Statutory Requirements Regulating School Curriculum

States Requiring Specific Curriculum	States Requiring Comparable or Equivalent Curriculum	Other Statutory Requirements
Alabama	Alaska	California
Arizona	Idaho	Delaware
Arkansas	Indiana	Louisiana
Colorado	Michigan	Minnesota
Connecticut	South Carolina	Montana
Florida		Nevada
Georgia		Oregon
Hawaii		South Dakota
Illinois		
Iowa		
Kansas		
Kentucky		
Maine		
Maryland		
Massachusetts		
Missouri		
Nebraska		
New Hampshire		
New Jersey		
New Mexico		
New York		
North Carolina		
North Dakota		
Ohio		
Oklahoma		
Pennsylvania		
Rhode Island		
Tennessee		
Texas		
Utah		
Vermont		
Virginia		
Washington		
West Virginia		
Wisconsin		
Wyoming		

Mississippi makes no mention of school curricula in its statutes.

that curricula be comparable or equivalent to that of the public schools. These states give minimal guidelines as far as definitions for the terms "comparable" and "equivalent."

Current litigation and court decisions: Roemhild[5], Popang[6], Newstrom[7], Ellis[8], and Fellowship Baptist Church[9] have revolved around the issue of vagueness where the terms comparable and equivalent referred to curricula in home schools. The courts have consistently found these terms to be unconstitutionally vague. New legislation has been enacted in the five states where these cases were litigated, and it was written to favor advocates of home schooling.

The statutes of Alaska use the wording "comparable to that offered in public schools," but state further, "including English, grammar, reading, spelling and math."[10]

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[5] Roemhild v. State, 308 S. E. 2d 154 (Ga. 1982).

[6] State v. Popang, 322 N. W. 2d 750 (Wis. 1981).

[7] Minnesota v. Newstrom, 371 N. W. 2d 525 (Minn. 1985).

[8] Ellis v. O'Hare, 612 F. Supp. 379 (D.Mo. 1985).

[9] Fellowship Baptist Church v. Bentow, 620 F. Supp. 308 (S.D.Iowa 1985).

[10] Alaska, Alaska Statutes, Sec. 14-30-010 (1984).

Idaho statute uses "instruction comparable to public schools."[11] This state may be ripe for litigation, since by policy the local board of trustees approves any instructional setting other than accredited schools. As this is the means of obtaining sanction for home schooling, it logically follows that different boards of trustees may interpret "comparable to public schools" differently.

The statutes of Indiana use the term "instruction equivalent to that given in the public schools--including reading, writing, and computation skills."[12] This state has taken a "hands off" attitude toward home schooling, since there are no requirements for approval by any governing body, nor for interpretation of "equivalent."

Michigan's statute dictates that "a child who is attending regularly and is being taught in a state-approved non-public school, which teaches subjects comparable to those taught in the public schools to children of corresponding age and grade, is therefore directed by

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[11] Idaho, Idaho Code, Sec. 33-202 (1963).

[12] Indiana, Indiana Statutes Annotated, Sec. 20-8334 (1983).

the course of study used in public school."[13] This law has, however, effectively been rendered unenforceable, since the Assistant Attorney General has ruled:

> There's no approved or licensing procedure pursuant to any state statute or administrative rule which requires a private home school, or a private, non-public school of any kind, to be approved or licensed by the Department of Education prior to that school's opening for operation or during the school's ongoing operation; the Michigan Department of Education's authority is limited to disapproval of private, non-public schools pursuant to the administrative procedure under MCLA 388.554C1921 PA 302 based upon non-compliance with the law.[14]

The South Carolina Code requires that instruction "at a place other than a school (public)" be

> substantially equivalent to instruction given in public schools including reading, writing, math, geography, English, U.S. and S.C. history, Constitution of U.S., morals, hygiene, and agriculture.[15]

This statute is fairly explicit in defining curricula, and the Department of Education in 1981 issued some suggestions for steps parents should take to obtain local board approval. There has been no challenge to date of this statute.

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[13] Michigan, Michigan Statutes Annotated, Sec. 15.4156 (3a) (1977).

[14] Harris, Smolls, Gibson v. Runkel, N. 26-55895AW, Circuit Court for County of Ingram (7-10-86).

[15] South Carolina, South Carolina Code, Sec. 59-24-10 (1979).

States Which Specify Other Requirements Regarding Curricula

The statutes of eight states have such different requirements from these previously identified that they need separate elaboration. Table 1 indicates these states as being California, Delaware, Louisiana, Minnesota, Montana, Nevada, Oregon, and South Dakota.

All these states' statutes contain similar language. Examples are: "offer instruction in the several branches of study required to be taught in the public schools,"[16] "instruction in the subjects prescribed for the public schools,"[17] "a curriculum at least equal to public schools,"[18] "common branches as taught in public schools,"[19] "same basic skills as public schools."[20]

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[16] California, California Education Code, Sec. 48200 (1977).

[17] Delaware, Delaware Code, Sec. 14707 (1982).

[18] Louisiana, Louisiana Revised Statutes, Sec. 17:268 (1984).

[19] Minnesota, Minnesota Statutes Annotated, Sec. 120.10 (1986).

[20] Montana, Montana Code Annotated, Sec. 20-7-111 (1983).

States with Statutes Which Require Standardized Testing as a Part of Curricula

The legislatures of eighteen states have included a form of evaluation of quality of education received in home schools. Table 2 indicates these states and the degree of frequency of testing, as well as the grades of required testing.

Seven states, Arizona,[21] Arkansas,[22] Kentucky,[23] Nebraska,[24] New Mexico,[25] Oregon,[26] and South Dakota,[27] require that all students not being educated in public schools must present results of some form of standardized testing each year that they are not in public schools.

Two of these seven states address the issue of testing with specificity. Nebraska legislators saw fit to

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[21] Arizona, Arizona Revised Statutes, Sec. 15-802 (B) (1) (1983).

[22] Arkansas, Arkansas Statutes Annotated, Sec. 80-1503.4 (1985).

[23] Kentucky, Kentucky Revised Statutes, Sec. 158.690 (1980).

[24] Nebraska, Revised Statutes of Nebraska, Sec. 79-201 (5) (1984).

[25] New Mexico, New Mexico Statutes Annotated, Sec. 22-1-2.1 (d) (1985).

[26] Oregon, Oregon Revised Statutes, Sec. 339.030 (6) (1986).

[27] South Dakota, South Dakota Revised Laws, Sec. 13-27-3.

write into law the provision that regular achievement testing is required only "for evidence that such schools are offering instruction in the basic skills, but shall not be used to measure, compare or evaluate the competency of students at such schools."[28]

As indicated in Table 2, four states have statutory requirements for testing to be done at specified grade levels. These states are Alaska, Nevada, North Carolina, and Tennessee.

Alaska law specifies that "testing only be required for grades 4, 6, and 8,"[29] while the other three states require testing in more grades. The Tennessee statute requires "testing for five grades, 2, 3, 6, 8, and 10."[30] North Carolina[31] and Nevada[32] require testing to be completed during six grade levels.

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[28] Nebraska, ibid.

[29] Oregon, State Board of Education, OAR 581-21-026 through 581-21-028 (7-10-86).

[30] Alaska, Alaska Statutes, Sec. 14.45.120 (1984).

[31] Tennessee, Tennessee Code Annotated, Sec. 49-6-3050 (B) (5) (1985).

[32] North Carolina, North Carolina General Statutes, Sec. 1150-549 and 115C-562 (19).

TABLE 2

States with Statutes Which Require Standardized Testing as a Part of Curricula

States	Student Placement	Frequency of Tests	Exception
Alaska	Grades 4, 6, 8		
Arizona	All	Annual	
Arkansas	All	Annual	
Delaware	All	Annual	or certificate from teacher
Florida	All	Annual	or evaluated by a certified teacher
Georgia	All	Triannual	
Kentucky	All	Annual	
Louisiana	All	Annual	or evaluated by a certified teacher
Nebraska	All	Annual	
Nevada	Grades 1, 2, 4, 5, 7, 8	Annual	
New Mexico	All	Annual	
North Carolina	Grades 1, 2, 3, 6, 9, 11	Annual	
Oregon	All	Annual	
South Dakota	All	Annual	
Tennessee	Grades 2, 3, 6, 8, 10	Annual	
Virginia	All	Annual	or progress report
Washington	All	Annual	or evaluated by a certified teacher

The Oregon legislature, on the other hand, was more concerned with quality, since it requires that "home school children at least achieve the 15 percentile which is the minimum standardized test requirement."[33]

[33] Nevada, Nevada Revised Statutes, Sec. 392-6 (1956).

Five states require all students to be tested annually, but offer alternatives to testing by written evaluation. Three states require the written evaluation to be done by "certified teacher or person." The Florida statute gives four alternatives:

> Child must take standardized test to be administered by a certified teacher or be evaluated by any other valid measurement tool as mutually agreed upon between the superintendent and parent or be evaluated by a certified teacher or child may take a state student assessment test.[34]

Louisiana code offers three alternative evaluations:

> Scores at or above the competency level of standardized tests, or scored at or above his grade level on standardized test approved by the board, or progress is verified by a certified teacher.[35]

West Virginia allows home schooling under two exemptions. If parents elect exemption B, then:

> 1. Such instruction shall be in the home of such child (or at some other place approved by the county board of education) and for a term equal to the school term of the county.
>
> 2. Instruction shall be conducted by a person or persons who, in the judgment of the county board of education, is qualified to give instruction in the subject required in the public school.

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[34] Florida, Florida Statutes Annotated, Sec. 232-02 (4) (8) (3) (c) (1985).

[35] Louisiana, Louisiana Revised Statutes, Sec. 17:236, 1(D) (1984).

> 3. Parent must present records of attendance and student progress where it may be inspected by the county superintendent.[36]

If a parent or parents want to qualify as a private school, parochial school, church school, school operated by a religious order or other non-public school, then they must comply with exemption K requirements. These requirements are:

> 1. Policy: It is the public policy of the state in matters of education that no human authority shall, in any case whatever, control or interfere with the rights of conscience or with religious liberty and . . . , the means of education shall ever be encouraged.
>
> 2. An exemption K school must maintain attendance immunizations records. Upon request of the county board of education, the school must furnish the names and addresses of children enrolled. The schools shall be subject to reasonable health and safety inspection.
>
> 3. An exemption K school must annually administer either the Comprehensive Test of Basic Skills, the California Achievement Test, or the Stanford Achievement Test.[37]

The materials presented in this chapter indicate that many of the states have addressed curriculum by spelling out the courses to be taught to home schools and by

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[36] West Virginia, West Virginia Code Annotated, Sec. 18-8-1 (1982).

[37] West Virginia, West Virginia Code Annotated, Sec. 18-28-1 to 3 (1982).

requiring that standardized tests be administered as a means of evaluating curricula.

The text of this analysis will not concern itself with teacher certification as a means of curricula reference, since only three states (Iowa,[38] Michigan,[39] and North Dakota[40]) require all home schools, without exception, to have a certified teacher involved in instruction.

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[38] Iowa, Iowa Code Annotated, Sec. 299.1 (1953).

[39] Michigan, Michigan Statutes Annotated, Sec. 15-41531 (1977).

[40] North Dakota, North Dakota Century Code, Sec. 2.15-41-25 and 15.34.103 (1983).

CHAPTER 4

ANALYSIS OF COURT OPINIONS RELATING TO CURRICULA IN HOME SCHOOLS

Introduction

Lines, a policy analyst for the Department of Education, estimated that there were fifteen thousand home schoolers in the early 1970's; she estimated that in 1986 the number may range up to a million.[1]

There are numerous reasons parents choose to home school their children. Among the reasons children are educated in alternative settings are that parents find the public schools too orthodox in their curricula and procedures,[2] to escape racial integration,[3] to separate from governmentally-controlled education,[4] religious and

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[1] The Wall Street Journal, Vol. CCVII, No. 68 (Charlotte, North Carolina, October 6, 1986), p. 1.

[2] John E. Coons and Stephen D. Sugarman, Education by Choice: The Case for Family Control (Berkeley, California: University of California Press, 1978), p. 37.

[3] Ibid., p. 109.

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

"sociopsychological objections" to public schools,[5] the desire to protect children from exposure to objectionable secular values,[6] disagreements with teachers and other school officials,[7] and the desire for a quality education.[8]

A bewildering array of courses and other material are pouring onto the market, the product of a mini-industry whose booming business is testimony to home schooling's popularity. The Christian Liberty Academy of Arlington Heights, Illinois, the biggest supplier of courses, had 600 enrollees in 1977; it had 23,000 in 1986. The Hewill-Moore Child Development Center in Washougal, Washington, which started in 1983, had approximately 5,000 students three years later. With so many programs and conflicting advice, parents often have to experiment.[9]

Many states have established statutory provisions for home schools and the curricula in their schools. Statutes

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

[6] Duro v. District Attorney, 712 F. 2d 96 (4th Cir. 1983).

[7] State v. Peterman, 70 N.E. 2d 505 (Ind. App. 1904).

[8] Blum, p. 24

[9] Ibid., p. 22.

regulating curricula and teaching in the 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 curricula requirements. Unconstitutionally vague statutes have also been challenged. Parents have also argued that curricula and other state regulations have violated basic constitutional rights such as equal protection, due process, trial by jury, right to life, privacy, and family integrity. These regulations are seen by some parents as being arbitrary and capricious.

The United States Supreme Court has never ruled on a home schooling case. The judiciary has deferred to the state the right to regulate home schools. This chapter examines legal issues raised by parents in opposition to state regulation of home schools. Each case examined questions several aspects of home schools such as teacher certification, specific curriculum schedule, textbooks, and state reporting procedures and requirements, which are all part of the curriculum.

Several cases were initiated by church school parents. The arguments presented and decisions reached are applicable to all non-public schools including those operated as home schools.

Compulsory Attendance Law v. Home Schools

Overview

Statutes requiring school attendance within certain ages have long formed the backbone of the American educational system.[10] The United States Supreme Court's historic ruling in Brown v. Board of Education established the importance of compulsory school attendance.[11]

A law passed in 1642 in Massachusetts held the rudiments of compulsory school attendance in America. The 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 . . . They are to see that the children can read and understand the principles of religion and the capital laws of the country.[12]

The purpose of compulsory education changed as attitudes about it changed. The first compulsory education laws in America were passed to restrict the exploitation of children in labor. The later laws were passed to insure that the masses be saved from ignorance and that

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[10] E. Edmund Reutter, Jr. and Robert H. Hamilton, The Law of Public Education, 3rd ed. (Mineola, New York: Foundation Press, 1985), p. 668.

[11] Brown v. Board of Education, 74 S. Ct. 686 (1954).

[12] Walter S. Monroe, ed., Encyclopedia of Educational Research: A Project of the American Educational Research Association (New York: Macmillan, 1980), p. 292.

the welfare of the state was served by the creation of an enlightened citizen.[13]

Compulsory school attendance laws have historically made provisions for the exemption of certain children from required school attendance. Benton stated that school attendance is not usually required under certain circumstances, such as hardship, discrimination, married student or physical endangerment.[14]

Monroe pointed 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."[15]

Home school litigation has stemmed from the basic concept of the compulsory attendance laws in the fifty states. These cases have been based on the belief that parents have a natural and constitutional right to determine the manner and place of their children's education and that fundamental rights of parents are abridged by compulsory attendance statutes.[16]

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[13] Forest Chester Ensing, 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. 2-5.

[14] Benton, op. cit., pp. 13-14.

[15] Monroe, p. 297.

[16] David Schimmel and Louis Fischer, The Rights of

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.[17]

Compulsory Attendance Court Cases

Courts have ruled that parents must educate their children, but they have not been explicit in ruling that the public schools are the only place to do it.

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."[18] The Society of Sisters of the Holy Name of Jesus and Mary charged that the Oregon statute requiring attendance in a public school deprived them of a property

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Parents in the Education of Their Children (Columbia, Maryland: National Committee for Citizens in Education, 1977), p. 83.

[17] In re McMillan, 226 S.E. 2d 693, 695 (N.C. Appeal 1976).

[18] Pierce v. Society of Sisters, 268 U.S. 510, 532 (1925).

interest they had in their private school. 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.[19]

An Indiana ruling in 1901 declared the state's authority to compel school attendance regardless of wishes of parents with the ruling:

> 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 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.[20]

State and federal courts have upheld the constitutionality of compulsory education laws. The North Carolina Appeals Court stated in 1976 that judicial control may be applied when the parents do not show sincere interest in the welfare of their children's education.[21]

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

[20] State v. Bailey, 61 N.E. 730, 732 (Ind. 1901).

[21] In re McMillan, 226 S.E. 2d 693, 695 (N.C. Appeal 1976).

The United States Supreme Court ruled in Wisconsin v. Yoder[22] that the parents' rights to direct the religious upbringing of their children must be weighed against the state's interest in educating children. The Court based its decision on 300 years of the Amish mode of life which produced self-sufficient citizens.

Burgess stressed that this decision did not end the litigation over compulsory attendance laws. The courts have not extended the Yoder doctrine to non-Amish children.[23]

Benton examined the question regarding the courts' relating exemptions for compulsory attendance. If there is an unreasonable or arbitrary exercise of state authority, the law will usually be 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."[24] If there is evidence of discrimination or favoritism in educational opportunity, the courts will usually find the enforcement of such laws as arbitrary and a denial of equal protection.[25]

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

[23] Sue F. Burgess, "The Legal Aspects of Home Instruction," Ed.D. Diss. University of North Carolina at Greensboro, 1985, p. 1.

[24] Benton, p. 14.

[25] Ibid.

The 1943 ruling in Commonwealth v. Bostlik[26] confirmed that the Compulsory Education Statute does not require children to attend public school. It is the parents' decision to send them to private school, a tutor, or educate them at home.

The Court of Appeals of New Mexico reversed a lower court's decision and held that the exclusion of home instruction from satisfying the requirement of compulsory attendance did not violate equal protection since such statutory classifications were related to those outside their family. As a result the charges against the parents were reinstated, despite the fact that the court found the defendants were providing a supervised program of instruction. The parents' rights to free exercise of religion and privacy were never decided by a court. The state Supreme Court declined to hear the case.[27]

A widely-known case, Hanson v. Cushman,[28] involved a parent's charge that the Michigan compulsory attendance law was unconstitutional as applied since it denied the

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[26] Commonwealth v. Bostlik, 5 Monroe L.R. 24 (1943).

[27] State v. Edgington, 663 P. 2d 374 (1983), Cert. denied 104 S. Ct. 354 (1983).

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

right of parents to educate their children in their homes. The Court of Appeals dismissed the case because the plaintiff parents failed to set forth sufficient facts upon which legal or equitable relief could be granted.

In Roberts, the court found that the goal of the Massachusetts compulsory attendance law was that all the children should be educated, not stating any particular way that they be educated.[29]

In Indiana, the method of child education is not what is to be controlled or regulated. The fact that the child was receiving an "equivalent education" was all that was required. In Peterman,[30] the circuit court acquitted the parent since the child received instruction in all the same studies she would have received in public school.

Truancy has been the most common action brought against home school parents and their children. A possibility exists that a home schooler could also be charged with child abuse.

In the case In re Shinn[31] parents enrolled their children in a correspondence school. The court determined

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[29] Commonwealth v. Roberts, 38 N.E. 403 (Mass. 1893).

[30] State v. Peterman, 70 N.E. 2d 505 (Ind. App. 1904).

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

that home education, regardless of its worth, is not the legal equivalent of attendance in school in absence of instruction by a qualified private tutor. Also the court ruled that the correspondence courses would not entitle children to exemption of compulsory attention laws of California. As a result, the court found the three Shinn children guilty of being habitually truant.

California has allowed alternative learning programs such as independent studies. The State Board of Education makes it clear that the independent studies must be state sponsored and controlled. In other words, a private correspondence course is considered illegal by the State Board of Education, unless the course has been approved and adopted by the local school board as a valid alternative.

Home schoolers have statutory alternatives in being exempted from compulsory public education laws. In Georgia, the state requires only a monthly record of attendance by home schoolers and no teacher certification.[32] In Florida, an old compulsory education statute made it possible for parents to home school only if they

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[32] Georgia, Official Code of Georgia Annotated (1984).

complied with the requirements of Florida Administrative Code and possessed a valid Florida teaching certificate. The new law made it possible for two types of individuals to home school their children: those with valid certificates, and those without certificates who comply with regulations spelled out in the new law itself.[33]

In State v. M.M. and S.E.,[34] the defendant parents had established a system of private instruction in their home for their two children. The parents were not certified teachers. The truancy charge was against the parents since the legislature clearly distinguished between a private school and a home school. The parents attempted to call the home school a private school. The court ruled that Florida parents, unqualified to be private tutors, can proclaim their homes to be private schools and withdraw their children from public school. The new law does express that home school, operated under regulation, may satisfy compulsory education requirements.

In California, a similar case, People v. Turner,[35] set negative precedent which is still relied upon by

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[33] Florida, Administrative Code Annotated, S 232.02 (4)(b)(1)-(3e).

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

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

California courts. The Turners, not properly certified tutors, agreed that their home school was private. The Superior Court of Los Angeles County, however, held that the compulsory education law did not comprehend a parent instructing at home under the private school law. Private tutors were to be held to stricter qualifications than private school instructors. Home schools may not qualify as private schools unless the parents are certified or they associate their home school with a neighboring private school.

In Alabama, a mother attempted to instruct her children at home while holding no certification. The Catholic correspondence course from which she taught was not permitted under the Rules and Regulations of the Alabama State Board of Education. The Alabama Supreme Court held that the state had the power to impose reasonable regulations for controlling and providing an "equivalent" education to all students. The mother was convicted of violating the compulsory school attendance law.[36]

All fifty states have enacted compulsory attendance laws. These laws require that children be educated. They

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

do not require that children be instructed in a particular manner or place. These laws have generally survived constitutional attacks which allege that they prohibit free exercise of religious beliefs or in some manner infringed upon guaranteed liberties found in the United States Constitution.

Summary

The court cases discussed demonstrate the battle between the states' right to require all children of a certain age to attend a school and the parents' right to direct and determine the education and upbringing of their children in that school.

The discussion involving the different states' regulations pointed out that all states have compulsory attendance laws and have placed requirements upon the curricula and application of the curricula in home school settings.

Religious Objections to Curriculum and Methods Used in Public Schools

Overview

Religious motives are behind much of the recent surge in home schooling. The growth of home schools parallels the rise of Christian fundamentalism, which decries a

perceived "godlessness" in the public schools and which includes belief in literal interpretation of the Bible.

Justice William O. Douglas' minority opinion in Wisconsin v. Yoder suggested that the future balance of interests in the courts will be a triad: parent, child, and state.[37] Judging from cases during the 1970-1985 period, the issues on which these cases may well be decided are procedural (gaining approval by the state), religious, and academic. Socialization, defined as a child's contact with peers, will be a factor.

In Commonwealth v. Roberts,[38] 1893, the court interpreted the compulsory school attendance law as permitting home education. A Massachusetts statute stated that, "Every child . . . shall attend a public day school . . . or some other day school . . . but such attendance shall not be required of a child who has been otherwise instructed."[39]

The First Amendment to the United States Constitution states in part that "Congress shall make no law respecting an establishment of religion, or prohibiting the free

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

[38] Commonwealth v. Roberts, 38 N.E. 403 (Mass. 1893).

[39] Massachusetts General Laws, Chapter 76, 1.

exercise thereof . . . ."[40] The Fourteenth Amendment relating this provision to the states says in part, "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States."[41]

Parents who oppose the public school curriculum base their opposition on religious grounds and contend that their First and Fourteenth Amendment rights are violated. These parents may attempt to prove 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."[42]

Court Cases

Teachers of home schools are "religious people/teachers called by God to teach."[43] They also contend that a person "would be sinning if he or she

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[40] U.S. Const. Amend. I (1791).

[41] U.S. Const. Amend. XIV (1868).

[42] State v. Rivinus, 328 N.W. 2d 220, 222 (N.D. (1982).

[43] Fellowship Baptist Church v. Benton, 620 F. Supp. 308, 314 (S.D. Iowa 1985).

disobeyed God and did not do God's will by pursuing the work to which he or she had been called."[44]

Courts recognize the rights of parents to their religious beliefs but do not recognize these beliefs to be a "legal justification for violation of a positive law."[45] An opinion expressed by the Supreme Court of Appeals in Virginia which has been generally accepted by other courts provides:

> The constitutional protection of religious freedom, while it insures religious equality, on the other hand does not provide immunity from compliance with reasonable civic 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.[46]

Religious beliefs being the basis for exemption from statutory requirements imposed by the state were not dismissed by the state; however, the state ruled:

> The mere fact that such a claim of immunity is asserted because of religious connection is not sufficient to establish constitutional validity.[47]

Courts often apply guidelines established by the United States Supreme Court in the case of Wisconsin v.

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[44] Ibid., p. 315.

[45] State ex rel. Shoreline School District No. 412 v. Superior Court for King County, 346 P. 2d 999, 1004 (Wash. 1960).

[46] Rice V. Commonwealth, 49 S.E. 2d 342, 347 (Va. 1948).

[47] Ibid.

Yoder[48] to determine the validity of a charge of violation of religious freedom. Members of the Amish faith refused to send their children to public schools beyond the eighth grade. The Green County Court of Wisconsin convicted them of violating the compulsory attendance law which required 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 ground that the defendant's 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. The Amish children were not required to attend school beyond the eighth grade due to the influences contrary to the sincere religious belief of the Amish people. Because of the emphasis the Amish put on vocational training through practical work experiences, the children would become self supporting and would not be a burden on society to support them.[49]

The Yoder decision established a three-pronged test to establish whether or not an action infringes upon

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

[49] Ibid.

religious freedoms. The first test is to prove or determine if such action is legitimately and sincerely held and based upon religious belief.[50] The second test is to determine if the regulations have unduly burdened the religious practice.[51] The final test is to determine whether the state has a compelling interest in regulating the free exercise of religion which overrides the parents' interests in their religious practices.[52]

Other courts have used this balancing test established by Yoder to guarantee the First and Fourteenth Amendments against the state's general interest regarding its people. Because a statute imposes a burden on religion does not automatically make the statute unconstitutional.[53]

Lower courts have applied this test when parents objected to the regulations regarding curricula. In some cases, parents have proven that their religious belief was the basis of their objections to curricula controls by the state.[54] Others have proven that their beliefs are

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[50] Ibid., pp. 215-216.

[51] Ibid., pp. 217-219

[52] Ibid., pp. 219-222.

[53] State v. Shaver, 294 N.W. 2d 883, 884 (N.D. (1980).

[54] Ibid.

sincere,[55] and that their objections are "firmly rooted in religious beliefs."[56]

A North Dakota Supreme Court assumed that the parent's religious beliefs were sincere because there was no "contrary showing that the defendants' beliefs were based on anything but religion"[57] and concluded that "religious beliefs need not be acceptable, logical, consistent or comprehensible to others in order to meet the First Amendment protection."[58]

The Supreme Court of Appeals of Virginia declared:

> No amount of religious fervor he 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.[59]

The Supreme Court of Washington reflected this philosophy when it stated that "religious beliefs, whatever they may be, are not a legal justification for violation of a positive law."[60]

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[55] Johnson v. Charles City Community School Board of Education, 368 N.W. 2d 74, 84 (Iowa 1985).

[56] Sheridan Road Baptist Church v. Department of Education, 348 N.W. 2d 263, 169 (Mich. Ct. App. 1984).

[57] State v. Rivinus, 328 N.W. 2d 225 (N.D. 1982).

[58] Ibid., pp. 224-225.

[59] Rice v. Commonwealth, 49 S.E. 2d 348 (Va. 1948).

[60] State ex rel. Shoreline School District No. 412

Religious rights of parents are not "absolute and totally free from legislative restrictions,"[61] 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 certain curricula and certification of teachers]."[62]

Wisconsin v. Yoder stated, "Children are persons within the meaning of the Bill of Rights."[63] Children should be heard in cases which determine their future.

> While parents, absent dissents, 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 parents that is imperiled by the decision.[64]

The existence of home schools in Pennsylvania is determined by each district superintendent. In Christian School Association of Greater Harrisburg v. Commonwealth[65] the court upheld religious schools as exempt from state

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v. Superior Court for King County, 346 P. 2d 1004 (Wash. 1960).

[61] State v. Shaver, p. 897.

[62] Ibid.

[63] Wisconsin v. Yoder, p. 243.

[64] Ibid., pp. 244-245.

[65] Christian School Association of Greater Harrisburg v. Commonwealth, 52 D. & C. 2d 420, 93 Dauph. 324 (1971).

licensure. The primary purpose of the school was established to ensure the school children would receive a Christian education whose teachers appealed their Biblical beliefs to all subjects of the curriculum. The key issue with the state was that an adequate course of instruction be approved by the school board before approval was granted to the home school.

The North Carolina court based its holding entirely on its construction of the North Carolina compulsory attendance laws. Such a constitutional challenge of North Carolina's compulsory education statutes was brought in Duro v. District Attorney.[66] Peter Duro and his wife instructed their children at home as an expression of their religious beliefs. They were charged with violating North Carolina's compulsory attendance statutes. Duro sued the state of North Carolina, alleging that the compulsory education statutes in question violated his religious and other liberties. The District Attorney appealed and won.

The Fourth Circuit Court of Appeals in Duro based its decision on the district attorney from the landmark U.S. Supreme Court case Wisconsin v. Yoder[67] in which the Court

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[66] Duro v. District Attorney, Second Judicial Districtof North Carolina, 712 F. 2d 96 (4th Cir. 1983).

[67] Wisconsin v. Yoder (1973).

upheld the rights of parents in an Amish community to keep their high school children out of public schools.

In contrast, reasoned the Fourth Circuit Court in Duro, the Duros were not members of a self-sufficient, long-standing, cohesive religious community, but were members of a pentecostalist church which did not as part of its theology require children to be taught at home.[68] Furthermore, the Duros expected their children "to be fully integrated and live normally in the modern world upon reaching the age of 18."[69] Finally, whereas the Amish people placed their children in public school the first eight grades, the Duros wished to prevent their children from undergoing any public school instruction.[70]

For these reasons the Fourth Circuit Court concluded:

> Duro has not demonstrated that home instruction will prepare his children to be self-sufficient participants in our modern society or enable them to participate intelligently in our political system, which, as the Supreme Court stated, is a compelling interest of the state . . . Despite Duro's sincere religious belief, we hold that the welfare of the children is paramount and that their future well-being mandates attendance at a public or non-public school. Furthermore, we conclude that North Carolina has demonstrated an interest in compulsory education which is sufficient magnitude to override Duro's

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

[69] Ibid., p. 98.

[70] Ibid., pp. 97-98.

religious interest. Accordingly, the judgment of the district court is reversed.[71]

The Duro case articulated binding precedent for federal courts in North Carolina for the present. The Duro case led to several attitudes of the court that were referred to throughout the review of religious-based cases regarding home schools.

Home schools in North Carolina may satisfy compulsory education requirements regarding attendance, certification, and curricula in several ways. They may seek qualifications as non-public schools by adhering to the standards in North Carolina General Statutes, or parents may enroll their children in an out-of-state religious correspondence school. However, the Supreme Court of North Carolina has rendered certain licensure regulations of out-of-state correspondence schools invalid.

Finally, a home school can qualify as a church school or a private school under Article 39, Part 1 of the North Carolina Statutes.[72]

In Michigan, a case was won by home school parents based on the parents' charge of infringement of their

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[71] Ibid., p. 99.

[72] North Carolina General Statutes, id. §§115C-555, 556-558, 560.

religious freedom. In Michigan v. O'Guin,[73] charges were dismissed based on "a good faith" belief by the parents.

In The Matter of Erik Weinburg,[74] a successful free exercise defense resulted in a dismissal of neglect charges based on the fact that no serious damage of the child had occurred, and that the parent held a sincere and authentic religious belief.

A Louisiana Court believed a compromise was possible between the local school board and the parents regarding a home study program with curriculum. The court was willing to give the home school the benefit of the doubt and did not prosecute the parents. The parents made no effort to have their program approved and held their daughter out of school based on their religious beliefs. The parents' argument was that a First Amendment free exercise of religion defense violated their religious beliefs. The court worked out a compromise that satisfied all parties.[75]

Even after the Supreme Court set the precedent for allowing religious beliefs as a defense for non-compliance

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[73] Michigan v. O'Guin, NO MF 734-735, District Court (96th Judicial District 1973) (Rutherford Institute, Virginia).

[74] In the Matter of Erik Weinburg, No. 38071 (6th Judicial District 1981) (Rutherford Institute, Virginia).

[75] Livingston Parish School Board v. Lofton, 422 So. 2d 1357 (La. 1982).

with statutory requirements, other courts have been reluctant to accept religious beliefs as a legitimate defense for failure to regulate the course of study in home schools.

Summary

The courts have shown, by the decisions reached in the religious objections to home school restrictions cases, that courts recognize rights of parents to religious beliefs but do not recognize these beliefs to be a legal justification for violation of positive laws.

Parents' religious beliefs, as seen by the courts, do not have to be acceptable, logical, or comprehensible to others to gain protection under the First Amendment. However, the religious rights of parents are not absolute, nor are they free from legislative restrictions.

Children's opinions were heard in several court findings and the courts pointed out that the future of the child and not the parent was the point in question.

Vagueness of Statutes

Overview

Courts, when faced with a charge that language in a statute is unconstitutionally vague, judge the statute by determining if the language gives adequate notice to the ordinary man of what is prohibited by law.[76] A statute is determined to be vague if a person of common intelligence is left to guess at its meaning or its application.[77]

The Iowa Supreme Court, in Kolendar 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.[78]

An Iowa District Court 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."[79]

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[76] Coltin v. Kentucky, 407 U.S. 104, 111 (1972).

[77] Connally v. General Construction Company, 869 U.S. 385, 391 (1925).

[78] Kolendar v. Lawson, 461 U.S. 358 (1983).

[79] Knight v. Iowa District Court, 269 N.W. 2d 430, 432 (Iowa 1978).

There have been conflicting court decisions regarding the term "equivalent instruction." In State v. Moorhead, Webster's Third New International Dictionary was used to arrive at a definition of equivalent. It was concluded that "equivalent instruction is instruction which is equal in kind and amount to that provided in public schools."[80]

In Iowa, a district court ruled that "equivalent instruction" fails to give adequate notice to the ordinary man of what is prohibited by the statute.[81] The term must be re-defined before it can be used in each case.

In a Minnesota case the Supreme Court overturned a parent's conviction of violating the compulsory education law and declared the statute unconstitutionally vague.[82]

Court Decisions

In Scoma v. Chicago Board of Education[83] home school parents sought to enjoin the Board of Education of the City of Chicago from interfering with their home school.

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[80] State v. Moorhead, 308 N.W. 2d 60, 64 (Iowa 1981).

[81] Fellowship Baptist Church v. Benton, 620 F. Supp. 308, 318 (S.D. Iowa 1985).

[82] State v. Newstrom, 371 N.W. 2d 527 (Minn. 1985).

[83] Scoma v. Chicago Board of Education, 391 F. Supp. 452 (N.D. Ill. 1974).

The court found that the parents failed to meet the traditional requirement for injunctive relief, which is a "showing of irreparable injury." Such injury is measured by the suffering done by the plaintiff who is intimidated by an unconstitutional statute and who chooses to violate it as a means of testing its validity and vagueness.

The Scoma case reinforced the finding that home schools are a type of private school for purposes of some exemptions. The court also found the Illinois compulsory attendance statute to be "reasonable and constitutional." In addition, the court declared that the compulsory attendance statute was not unconstitutionally vague on its face in its use of the phrase "public schools."[84] It must be noted, however, that the court did not rule on whether the remaining parts of the compulsory attendance law were unconstitutionally vague. This could happen in light of its neighboring state of Wisconsin's recent ruling that its own compulsory attendance statute was "void for vagueness."[85]

In Roemhild v. State,[86] which arose under the pre-1984 compulsory attendance law, the parents of three

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[84] Ibid., pp. 452-462.

[85] Wisconsin v. Popany, 332 N.W. 2d 750 (Wis. 1983).

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

school age children decided to instruct their children at home. They understood that since the Georgia compulsory attendance law did not establish minimum guidelines as to what constituted a "private school," the law was unconstitutionally vague as applied to home schools and private schools. As a result of this challenge, the former Georgia compulsory school attendance law was ruled not sufficiently definite to provide a person of ordinary intelligence fair notice of what constituted "private school" and was thus void for vagueness. The law necessitated that local officials apply their own standards concerning education when determining a person's actions.

The Roemhild ruling, combined with the growing number of home schoolers in the country, resulted in this new Georgia statute which has lifted many former prohibitions and restrictions on home schooling and private schooling.

The Supreme Court of Wisconsin in Wisconsin v. Popany[87] declared that the state's compulsory attendance law failed to provide fair notice to those who sought to obey it, lacked sufficient standards for proper enforcement, and was void for vagueness insofar as it failed to define "private school."

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[87] Wisconsin v. Popany (1983), p. 750.

In Griggs v. Commonwealth,[88] Griggs contended that the compulsory attendance statute was "void for vagueness" in that it did not define a "private school" or provide sufficient standards for compliance. The Supreme Court of Virginia rejected these arguments. The Griggs' conviction was subsequently affirmed since they educated their child in their home without being approved. All these convictions were affirmed on the basis of the precedent set by Rice v. Commonwealth.[89]

As a result of the joint sub-committee's recommendations and the intense pressure of private school and home school advocates directed at the legislature, House Bill 535 was passed amending Virginia's compulsory attendance law to allow home education.

The new law imposed three requirements on home schools. The first comprised the instructor requirements. The second requirement was divided into three parts:

1. The parent must notify the division superintendent in August of the intention to home school.
2. The parent must provide a description of the curriculum to be followed.

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

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

3. The parent must provide evidence that he meets one of the four qualifications of the Virginia Code.[90]

In Texas, the statutes are unconstitutionally vague concerning home schools. There have been several lower court decisions that have ruled the Texas compulsory education statute "void for vagueness."

On May 10, 1982, the Justice Court, Precinct Two of Dallas County, Texas, dismissed the Short case by delivering the following order:

> The Court finds that Section 21.033(a)(2) of the Texas Education Code is vague as to its meaning and definition of a private school as an exemption to the compulsory school attendance law and . . . is vague to the extent that it will not support nor justify the prosecution nor conviction of this defendant.[91]

The climate for Texas home schoolers remains favorable, based on recent Texas cases which have held its compulsory attendance statute unconstitutional.

Tennessee has dismissed charges involving several cases regarding home schools based on the compulsory attendance law being found unconstitutionally and impermissibly vague.

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[90] Virginia Code, id., §22.1 - 254.1 (B). (1984).

[91] Short, slip op. at 1. (Nos. m-82-1276, 1277, 1278) (1982).

The home schooling parent in State v. Bowman[92] challenged her criminal conviction for failing to send her child to public school. She charged that the "private school" exemption was unconstitutionally vague. She also charged that the statutory requirements set forth by the State Board of Education to examine home-schooled children's progress was discriminatory.

The Oregon Court of Appeals disagreed and upheld Bowman's conviction. The court admitted that the exemptions for "private school" required clarity. The court held that the required use of a standardized test foreclosed the possibility of discrimination against students educated at home.

On July 5, 1985, a federal district court ruled that Missouri's compulsory education statute, insofar as it required home school instruction to be "substantially equivalent" to that provided in public school, was unconstitutionally vague and overbroad. The court found that the statute "provides conduct terms so vague that persons of 'common intelligence must necessarily guess at its meaning and differ as to its application'" and that it represented "a prime example of legislation which yields

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[92] State v. Bowman. 653 P. 2d 254 (Oregon 1982).

an unacceptable amount of discretion to officials charged with its enforcement.[93]

As a consequence of this ruling, the Missouri home school law was unenforceable. It is now up to the legislature to enact a new one. Home schoolers should take note that the statute was struck down because it was vague and not because it regulated home schools. The legislature could potentially enact a home school law that is more definite in what it requires of home schoolers but at the same time highly restrictive in what it disallows.

Summary

The vagueness of statutes has presented the various state courts with a charge to clarify language in a statute so that the meaning is clear. The courts are then faced with the decision to determine if the statute can be understood by a person of common intelligence.

The courts attempted to make sure that a person of ordinary intelligence could determine what was prohibited in the statute. The term "equivalent instruction" was questioned in the discussed cases regarding the required home school curricula and the minimum guidelines as to what constituted a "private school."

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[93] Ellis v. O'Hara, 612 F. Supp. 379 (D.Mo. 1985).

Statutes were found to lack sufficient standards for proper enforcement of the instructional requirements of home schools in the fifty states.

Violation of Fundamental Rights

Overview

Among the provisions of fundamental rights are the guarantees of equal protection,[94] due process,[95] and to life, privacy, and family integrity.[96]

The regulation for non-chartered, non-tax-supported schools was added to the minimum standards for non-public schools as a result of State v. Whishner.[97] That case and Olin involved parents who sent their children to non-chartered private Christian schools according to their First Amendment right to free exercise of religion. On both occasions, the Supreme Court of Ohio ruled that the application of minimum standards (prior to 83) to parents of children attending non-public religious school abrogated the parents' fundamental freedom, protected by the

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[94] Johnson v. Charles City Community Schools Board of Education, 368 N.W. 2d 74 (Iowa 1985).

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

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

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

liberty clause of the Fourteenth Amendment, to direct the upbringing and education of their children. In Olin the court stated:

> Our decision today demonstrates simply that until such time as the State Board of Education adopts minimum standards which go no further than is necessary to assure the State's legitimate interest in the education of children in private schools, the balance is weighed, ab initio, in favor of a First Amendment claim to religious freedom.[98]

Court Cases

Under present law the legal existence and operation of home schools in Ohio are determined by discretionary power of the local superintendent. An Ohio Attorney General opinion stated:

> A local Board of Education may prescribe the course of study for children excused from compulsory school attendance, and this be based on a judgment by the superintendent that the program will satisfy applicable requirement.[99]

Parents who instruct their children at home in Mississippi are protected by statute from discretionary abuse by the State Board of Education and from unreasonably restrictive regulations. In addition, the U.S. Court of Appeals in Brantley v. Surles[100] upheld a Mississippi

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[98] State v. Olin, 415 N.E. 2d 279 (Ohio 1980).

[99] Ohio Attorney General Opinion No. 79-056 (1979).

[100] Brantley v. Surles, 718 F. 2d 1354 (5th Cir. 1983).

parent's right to direct and control her child's education. The court clearly recognized that the right of parents to direct the education of their children is central to the family's constitutionally protected right to privacy. Furthermore, the court declared in the Brantley opinion, "The state's power to control education of its citizens is secondary to the rights of parents to provide an equivalent education for their children in a privately operated school of their choice."[101] Both the Mississippi courts and legislature are in agreement concerning the preservation and expression of parental rights in home education. The Minnesota Supreme Court in July 1985, Minnesota v. Budhe,[102] carved out an exemption for a family to operate a home school without meeting certain qualifications required by the State Board.

> In essence, the parents took the only course of action available that was consistent with their religious belief. The State in requiring a baccalaureate degree and course of study requirements is not sufficient to over balance the burden placed on their free exercise interest. Therefore, the appellants were exempted from the requirements based on the grounds that it infringes on their free exercise of beliefs.[103]

The conviction of Budhe was reversed because the judge

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[101] Brantley, p. 1359.

[102] Minnesota v. Budhe, 7th District (Minn. 1985) (Rutherford Institute, Virginia).

[103] Budhe, p. 8.

believed that Budhe's First Amendment rights had been infringed.

In Michigan, in Sherbert v. Vernu a test[104] was used to determine whether a fundamental right outweighs a state's compelling interest.

Michigan allows home schooling but instructors must be state certified. The home schoolers' argument using the free exercise clause defense has gone both ways, for the parent, for the state. How a particular home school case will turn out is largely dependent on the home schooler's locality and which judge is presiding.

In Kentucky in State Board v. Rudasill,[105] the state recognized that the commonwealth has the right to prepare its children to exercise intelligently the right of suffrage by compelling attendance. The question the court wrestled with was:

> To what extent does the State's interest in educating citizens to vote in a democracy permit the Commonwealth to control a school outside the free public school system regarding certification of teachers and the basic texts to be used?

Although the court rejected teacher certification, course of study and textbook approval, it did allow the

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[104] Sherbert v. Vernu, 374 U.S. 398 (Mich. 1963).

[105] Kentucky State Board v. Rudasill, 589 S.W. 2d 877 (Ky. 1979).

commonwealth and the State Board of Education certain powers:

> If a legislature wishes to monitor the work of private and parochial schools in accomplishing the constitutional purpose of compulsory attendance, it may do so by an appropriate standardized achievement testing program. Wolman v. Walter[106] . . . If the results show that one or more private schools have failed to accomplish the constitutional purpose, the Commonwealth may withdraw approval and close the schools, for they will no longer fulfill the purpose of schools.[107]

As a result of Rudasill, private and parochial schools have far less restrictive regulations with which to comply. Rudasill made possible the legal operation of home schools, although they were able to operate for the time being, without express legislation.

The Supreme Court of Virginia ruled that parents waived their right to a jury trial when the court did not classify the proceedings as criminal and when they did not request a trial by jury at the lower court.[108]

In a similar case, Rice v. Commonwealth, the Supreme Court of Virginia ruled the determination of qualifications could best be made by "competent agencies of the state upon whom has been placed the duty and

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[106] Wolman v. Walter, 433 U.S. 229 (1977).

[107] Rudasill, 28 N.E. 68 (Ill. 1876).

[108] Griggs v. Commonwealth, p. 803.

responsibility of supervising and maintenance of a proper education standard."[109]

Summary

A violation of fundamental rights is the core reason behind all legal cases involving home school families. Home schoolers wish that they be guaranteed equal protection and equal rights regarding their home school settings.

The courts have clearly recognized that the right of parents to direct the education of their children is central to the family's constitutionally protected right to privacy. As a result, private and parochial schools as well as home schools have far less restrictive regulations with which to comply.

Power to Regulate Home School Curricula

Overview

In 1893, the Supreme Court of Massachusetts held that the objective of compulsory attendance and education laws was to ensure that "all children should be educated, but not that they be educated in any particular way."[110]

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[109] Rice v. Commonwealth, pp. 348-349.

[110] Commonwealth v. Roberts, 38 N.E. 403, 413 (Mass. 1893).

Courts are beginning to consider the regulatory power of state legislatures to regulate curricula. "The courtroom is simply not the best arena for the debate of issues of educational policy and the measurement of educational quality."[111]

Courts often look beyond the academic programs of home schools regarding the social and cultural aspects of education. A parent was convicted of violating the compulsory attendance law because "the children have not made the acquaintances of any other children in the community which was a disadvantage where the comradeship of other desirable children is available."[112]

Court Cases

In re Falk, the court expressed a concern that "home instruction would leave a great deal to be desired in the social development derived from group education in public school environment."[113] Since the state statutes did not require "courses of instruction designed to enhance a student's learning experiences by the free association

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[111] State v. Shaver, p. 900.

[112] Knox v. O'Brien, 72 A. 2d 389, 392 (N.J. 1950).

[113] In re Falk, 441 N.Y.S. 2d 785, 789 (N.Y. 1981).

[114] State v. Riddle, 285 S.E. 2d 359, 366 (W. Va. 1981).

with other children,"[114] a West Virginia court upheld the parents' privilege of providing home schooling.

The court in West Virginia ruled further that teachers in home schools must qualify 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."[115] To deprive students of the social and cultural 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.[116]

A New Jersey court did not believe that social and cultural aspects are consistent with academic equivalency:

> To hold that the statute requires equivalent social contact and development as well as academics, would emasculate home school and allow only group education, thereby eliminating private tutoring and home education.[117]

States stress reasonable regulations to guarantee quality and equivalent education among home educators. All alternative curricula may be approved in most states.

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[115] Ibid.

[116] Ibid.

[117] State v. Massa, 231 A. 2d 252, 257 (N.J. Super. 1967).

In a 1981 Colorado case, the parents' application for home study using the Christian Liberty Academy's curriculum was approved by the local school board but denied by the State Board of Education. This program of study is one that many home schoolers adopt. The parents then established a "private school" while still receiving curriculum and tests from Christian Liberty Academy Satellite Schools. The court did not recognize the school as being a private school and the parents were ordered to comply with the law by using an approved course of study.[118]

The court in Commonwealth v. Renfrew[119] held that "Home education of a child by parents without prior approval of the superintendent did not show a compliance with the statute and bar the prosecution of the complaints."[120] As a result the parents were found guilty of violating the compulsory attendance laws because they did not pursue a course of study which was approved in advance by the superintendent.

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[118] Gunnison Watership School District v. Funk, No. 81-JV-3 (Colo. Dist. Ct. Gunnison County, 1981) (Rutherford Institute, Virginia).

[119] Commonwealth v. Renfrew, 126 N.E. 2d 109 (Mass. 1955).

[120] Ibid., p. 111.

The Massachusetts Supreme Court believed the otherwise instructed exception to permit home schooling. The state required that instruction be provided by a private tutor or parents, and added that the instruction be given in good faith and be sufficient in content. The stipulations and conditions set forth by the state vary greatly.

An Oregon statute of 1925 declared that the state has the power "to require that all children of proper age attend a public school."[121] The Supreme Court ruled that it was unconstitutional to require all children to attend a public school and stated that the state cannot "standardize children by forcing them to accept instructions and curricula from public schools only."[122]

The Pierce and Yoder cases established firmly the parents' right to choose alternative schools for their children.

The definition of "equivalent instruction" was required by the federal district court in Fellowship Baptist Church v. Benton.[123] Many of the states are

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[121] Pierce v. Society of Sisters, 268 U.S. 534 (1925).

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

[123] Fellowship Baptist Church v. Benton, 620 F. Supp. 308 (S. D. Iowa 1985).

working on several changes in their 1986 session to revise present attendance laws regarding home schooling.

The Supreme Court has established and shown its power to "regulate all schools, to inspect, supervise, and examine them, their teachers and pupils,"[124] "to impose reasonable regulations for their control and duration of basic education,"[125] and "that all schools must meet the standards prescribed by the state."[126]

In Scoma v. The Chicago Board of Education,[127] the court decided that the state has the right to prescribe how much education is needed to satisfy the interest of the state in assuring an educated citizenry.

Schwarty stated that there are "no clear guidelines establishing the degree to which states may regulate education without infringing upon the rights of parents."[128] In Doe v. Bolton, the Supreme Court declared that:

> the freedom of choice is a basic decision of one's life in respect to marriage, divorce, procreation,

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[124] Pierce v. Society of Sisters, p. 534.

[125] Wisconsin v. Yoder, p. 213.

[126] Ibid., p. 236.

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

[128] Bruce H. Schwarty, "Parental Rights: Educational Alternatives and Curriculum Control," Washington and Lee Law Review 36 (1979), 277.

contraception, and the educating and upbringing of children.[129]

In the absence of state standards, it has become the duty of each court to establish and define the meaning of equivalence. In People v. Lewison 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."[130] In Farrington v. Tohushige the Supreme Court said the program or course of study in private schools did not have to be "identical to public schools" to meet equivalent test status.[131] Factors of equivalency are based on the qualifications of the teacher, materials, curriculum and methodology and social intercourse with other children, as was established in the cases of Knox v. O'Brien[132] and In re Franz.[133]

In Interest of Sawyer,[134] the Kansas Supreme Court held that a system of home instruction which consisted only of an unaccredited, unplanned, and unscheduled

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[129] Doe v. Bolton, 410 U.S. 179, 211 (1973).

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

[131] Farrington v. Tohushige, 273 U.S. 284 (1927).

[132] Knox v. O'Brien, 72 A. 2d 839 (N.J. 1950).

[133] In re Franz, 378 N.Y.S. 2d 317 (N.Y. 1976).

[134] In Interest of Sawyer, 672 P. 2d 1093 (Kan. 1983).

curriculum administered by a parent with no teaching experience did not satisfy the requirements of compulsory school attendance laws. The holding of the court implied that a home instruction program could satisfy the compulsory attendance law if the minimal requirements for private schools were met. The Sawyers had registered as a private school, but had not met the remaining requirements for operating such a school. As a result, the children were ordered back to their original school.

Home instruction is a volatile issue in Kansas. Home school cases reaching the courts have allowed the courts to uphold convictions against parents.

In State v. Lowry,[135] the Kansas Supreme Court held that a home school was not equivalent to a private denominational or parochial school. The court further noted:

> In order to be classed as a private school, any school in this state must at least meet the course of instruction requirements, and the students must be taught by a competent teacher.[136]

Depending on the factual circumstances, the Iowa courts have gone both ways concerning home schools. In State v. Moorhead,[137] the court upheld the conviction of

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

[136] Ibid., pp. 962-964.

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

the defendant parents who instructed their children at home. The defendants did not provide sufficient evidence to show that the defense of "equivalent instruction" was applicable. They did not supply evidence regarding the quality of the curriculum, broad coverage of the basic skills and the proper qualifications of the teacher. The court rejected the defendants' contention that the compulsory attendance law violated the Free Exercise clause of the First Amendment since the defendants failed to carry the burden of proof showing how the law infringed on their religious beliefs.[138]

In 1983 a more favorable decision was reached in support of home schools. In Muscatine School District v. Shuler,[139] the parents were convicted of violating the state's compulsory attendance law by teaching their three children at home. For four hours per week the Shulers and their children met with a state certified teacher. Judge Weaner noted this fact and held he was not convinced beyond a reasonable doubt that the home study program fell short of meeting the requirements of Iowa law. The court found the instruction to be equivalent and dismissed the case.

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[138] Ibid., pp. 60-64.

[139] Muscatine School District v. Shuler, Muscatine County Dist. Ct. (Iowa 1983) (Rutherford Institute, Virginia).

In Johnson v. Charles City Community Schools Board of Education,[140] an important decision concerning the rights of parents to educate their children viz. the state's interest in setting minimal educational requirements was handed down by Iowa's highest court. The plaintiffs, a pastor and members of a fundamentalist Baptist church, argued that the state had no authority to make an inquiry into the nature and quality of the private school's education. The supreme court rejected this claim because "the state can reasonably regulate the basic educational requirements of all children within its borders." This decision will have a profound impact on those home school parents whose religious beliefs do not permit them to comply with any state regulation of their children's education. The Johnson case effectively precludes a parent from raising successfully a religious freedom defense in Iowa's state courts when he or she refuses to comply with the state's compulsory attendance law as not written.

In Bangor Baptist Church v. Maine,[141] a federal district court held that Maine's compulsory attendance law

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[140] Johnson v. Charles City Community Schools Board of Education, 368 N.W. 2d 74 (Iowa 1985).

[141] Bangor Baptist Church v. Maine, 549 F. Supp. 115 (D. Me. 1982).

requiring equivalent instruction in all non-public schools was neither unconstitutionally over-broad nor facially vague. The court emphasized that when a statute specifically delegates to an administrative agency the power to make rules, the presumption that the rules are automatically valid is rebuttable on showing that the challenged regulations have been unreasonably exercised.

The Association of Christian Schools and Churches challenged the regulations for private schools. As a result, Federal Judge Cyr, who wrote the Bangor opinion, ruled that the state of Maine had no authority to close down "unapproved" Christian schools. This case represents a victory for Christian home schools, home schools associated with Christian private schools, and, most importantly, this case prompted the approval of the Christian correspondence course curriculum.

Another case involving prior approval of home school curriculum was in Maine v. McDonough.[142] The parents were convicted for violating the statutory requirements of prior approval of a home instruction program by not having submitted a home instruction plan to the local board. Rejecting the parent's assertion of their rights, the

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[142] Maine v. McDonough, 468 A. 2d 105 (Me. 1983).

court reasoned that to allow home education without imposing some standards as to quality and duration would be to allow parents to deprive their children of any education whatsoever.

Administrative requirements for Massachusetts home schools were set forth with clarity in the 1978 case, Perchemilides v. Frizzle.[143] The parents, who were educated, submitted to the superintendent the proper papers for establishing a home school. The request was denied and the parents filed suit in the Hampshire Superior Court. The court ruled that the right to home school is not absolute, but is subject to reasonable regulation by the state through the local system.

The court declined to order the local school committee to promulgate written standards for evaluating home programs, but did outline boundaries of permissible conduct, which included: exact subjects to be taught, the number of hours and days of instruction, the adequacy of the textbooks, the availability of periodic tests and measurement of educational growth.

The court also delineated certain factors which should not be considered when evaluating home schools.

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[143] Perchemilides v. Frizzle, No. 16641 (Mass. Hampshire Cty. Super. Ct. 1978) (Rutherford Institute, Virginia).

This restriction severely limited the school committee's discretionary powers to the consideration of purely academic rather than social or environmental factors.

The Perchemilides decision, therefore, guarantees that the state may not set standards that are so difficult to satisfy that they effectively foreclose the home education alternative.

In State of Nebraska v. Faith Baptist Church,[144] the court concluded that the state has power to impose reasonable regulations for the control of basic education. Parents have the right to choose alternative schooling, but they do not have the right to be completely unfettered of reasonable government regulation of the quality of education furnished. Here again, the state's interest in educating its young outweighed the parents' right to educate their children.

In Douglas v. Morrow,[145] the defendant asserted that the state had failed to demonstrate a suitable interest in regulating the education of his children. The Nebraska Supreme Court gave this argument only cursory attention, and affirmed conviction of the father based on issues resolved in previous home school court cases.

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[144] State of Nebraska v. Faith Baptist Church, 301 N.W. 2d 571 (Neb. 1981).

[145] Douglas v. Morrow, 343 N.W. 2d 903 (Neb. 1984).

In Matter of Falk,[146] the court dismissed a neglect charge against parents after finding their instruction was substantially equivalent to the public schools.

The court cited People v. Turner[147] by emphasizing that as long as the sole purpose of instruction is not to evade compulsory attendance, adequate instruction given in a home by parents competent to teach will satisfy the attendance law.

In Matter of Franz,[148] the court upheld the parents' right to educate their child at home. The parents still had to provide the minimum hours of instruction in the twelve basic branches. Since they did not provide such instruction, the instruction was not equivalent according to the statute, and the parents' neglect charges were affirmed.

Also in 1977, the Matter of Lash[149] case was decided, in which the court dismissed charges of neglect against parents who taught their handicapped child at home. The

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[146] In re Falk, 441 N.Y.S. 2d 785 (N.Y. 1985).

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

[148] Matter of Franz, 390 N.Y.S. 2d 940 (1977).

[149] Matter of Lash, 401 N.Y.S. 2d 124 (N.Y. App. Ct. 1974).

parents provided 14 to 20 hours of instruction each week and the court ruled that a parent did not have to be certified for a child to satisfy the requirements of the law, its being a systematic course of study in the home.

In Elhe v. Yonkton,[150] the issuing of free textbooks to home school students or other non-public school students was found by the state supreme court to be in violation of the South Dakota Constitution, which explicitly disallowed any state aid to a sectarian school.

In 1976, the Supreme Court of Vermont decided State v. LaBarge[151] which marked a turning point in Vermont's educational law. In LaBarge the court restrained the state's power to regulate alternative schools by forbidding the state to regulate attendance at approved schools only. The court in LaBarge drew a distinction between the "equivalency" requirement demanded by statute and the meaning of state approval. Thus the state's accreditation controls on alternative schools were removed.

The West Virginia compulsory education statute states that home schoolers may apply for several exemptions. Exemption B explicitly allows home instruction and imposes few restrictions.

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[150] Elhe v. Yonkton, 372 N.W. 2d 113 (S.D. 1985).

[151] State v. LaBarge, 134 A. 2d 110 (Vt. 1976).

As a result of State v. Riddle[152] concerning Exemption B, fundamentalist Christians united to push through the legislature an additional exemption, Exemption K. In 1983 the state senate passed Exemption K, which allowed any alternative school to be exempt from the compulsory education statute.

Exemption B does not allow home schoolers to receive any instructional material, regardless of their quality, from correspondence schools, while Exemption K allows home school correspondence courses as long as the student does well on his annual Stanford Achievement Test.

Home schooling in Rhode Island has received important support from decisions in two recent state cases. In Rothwell v. Smithfield School Committee,[153] parents appealed to the Commissioner of Education from a decision of the local school committee denying their request for approval of private instruction. The parent had no certification and the course of study was the home study curriculum and program provided by the Christian Liberty Academy of Prospects Heights, Illinois. The question was whether the program of study complied with the requirements of the general laws. It was decided that the

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

[153] Rothwell v. Smithfield School Committee, Decision of the Commissioner of Education (R.I. 1980)

requirements were being met through this course of study. The court found the curriculum of the Christian Liberty Academy highly specific and carefully crafted.

A South Carolina court in Calhoun County Department of Education v. Page[154] reversed a decision by a local school board denying parents the right to instruct their children at home. The court held that:

> The Page children shall be allowed to remain at home as long as they remain in a structured school setting at home with a teacher, qualified learning materials, textbooks, work books and as long as the test scores of the children remain substantially equivalent to or exceed those of their peers in the public school setting.[155]

The course of study was from the Pensacola Christian School's correspondence curriculum used by the Pages.

Another case decided in favor of home school parents using a correspondence course of study was Riley v. Middletown School Committee,[156] which involved parents who wanted to teach their two children at home using the Calvert Home Instruction Course of the Calvert School of Baltimore, Maryland. The commissioner found that the

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(Rutherford Institute, Virginia).

[154] Calhoun County Department of Education v. Page, No. 83 DR 966 (S.C. Fam. Ct. 1983) (Rutherford Institute, Virginia).

[155] Ibid., p. 7.

[156] Riley v. Middletown School Committee, Decision

program complied with the requirements of public school. The commissioner also stated, regarding the charge of a lack of socialization, that academic proficiency and not socialization was what or should be primary goals of education.

In Akron v. Lane,[157] the defendant, who was teaching his child at home, failed to obtain the approval of the District Superintendent of Schools for the program. As a result, it was irrelevant whether or not the child was being taught at home in a manner equivalent to state minimum educational standards. The parent was convicted of truancy. This is an example that it is vital to obtain permission and meet standards set by the state statutes.

In North Carolina, Delconte v. State[158] set the standards for home schools. The position that home schools were essentially illegal in North Carolina was reversed by the court of appeals. The court of appeals found that a home school did not qualify as a religious school because it was not affiliated with any church, denomination, or religious ministry. The home school did

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of the Commissioner of Education (R.I. 1981) (Rutherford Institute, Virginia).

[157] Akron v. Lane, 416 N.E. 2d 642 (Ohio 1979).

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

meet the six requirements for non-public schools and it provided instruction in the basic curriculum of reading, mathematics, language skills, science, and social studies. The parents showed they received no state funds.

The North Carolina Supreme Court, in May 1985, reversed the court of appeals in finding that the Delaconte's home instructional program satisfied compulsory education requirements.[159]

Summary

The courts are beginning to decide that the courtroom may not be the best arena for the debate of issues of educational policy. The power and right of the state to regulate home school curricula is a constant battle as each case is reviewed by the states' courts.

The question regarding a child's social development in a home school was seen in several discussed court cases. In most cases, the court did not see this area as a part of the recommended curriculum.

Courts did declare that the state has the right to prescribe how much education is needed to satisfy the interest of the state in assuring an educated citizenry.

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

Most courts said that a program or course of study in home schools did not have to be identical to public schools to meet equivalency test status and to satisfy compulsory education requirements.

Burden of Proof

Overview

Litigation in which parents have challenged a state's rights to prescribe the education of their child has resulted in the court placing the burden of proof on parents, states, or jury. The Supreme Court of Massachusetts first placed the burden of proof on the parents in Commonwealth v. Roberts[160] when it ordered that "parents must take the responsibility of being able to prove that he [the child] has been sufficiently and properly instructed."[161]

When parents object to curricula controls 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 the children.

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[160] Commonwealth v. Roberts, 38 N.E. 403 (Mass. 1893).

[161] Roberts, p. 403.

Court Cases

In In the Matter of Kilroy, the court held that " . . . the parents . . . have no absolute right to educate their children at home, free from all State regulations or control."[162] In this case the court held that the parents had failed to carry the burden of proof to a point that equivalency could be determined for their home schooling situation. Essentially as a result of this case, the parents have a right to educate their child in home situations with the evaluation of the local board of education.

An Iowa case, State v. Moorhead,[163] was reviewed by the court when the parents contended that the state was required to prove beyond a reasonable doubt that home instruction was not equivalent as specified in Iowa statutes.

Their claim was rejected by the court when it ruled that the state had only to prove the students did not attend public schools. The burden of proof rested with the parents, who were required to show that the children were properly instructed in the home school.

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[162] Matter of Kilroy, 467 N.Y.S. 2d 318, 321 (N.Y. 1983).

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

[164] Walker v. Foster, 330 N.Y.S. 2d 8 (1972).

In Walker v. Foster,[164] educational neglect proceedings against parents instructing their children at home were dismissed upon the court's finding that the parents were concerned enough to provide their children with a "sufficient and systematic course of study." The court stated:

> The actions of the superintendent and the local school board cannot be thought of other than an inflexible short-sighted, bureaucratic, and an unnecessary flexing of muscles to show these parents who was 'boss.' One is sadly reminded of the reserve army officer who lost his commission because he failed to supply his zip code.[165]

The only Oklahoma case of relevance is Sheppard v. Oklahoma,[166] in which the Sheppards were convicted of violating the compulsory education laws. The court held that in the absence of evidence that children were not receiving some means of education other than public or private school, the state had failed to prove a violation of compulsory education laws. In Oklahoma, the state has the burden of proving that no other means of education are provided.

As a result of the state's failure to sustain its burden, the judgment against the Sheppards was reversed

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[165] Ibid., p. 13.

[166] Sheppard v. Oklahoma, 306 P. 2d 346 (Okla. Crim. App. 1957).

and charges dismissed. Oklahoma is one of the least restrictive states in the nation concerning home schooling.

In State v. Vaughn,[167] the parents of a school-age child had been convicted as disorderly persons for failing to cause their child regularly to attend public schools. Regarding which party carried the burden of proving "equivalency," the court declared:

> It is therefore incumbent upon the defendant (parents) . . . to introduce evidence from which it could be found that a child . . . is receiving equivalent instruction elsewhere than at school. If there is such evidence, then the ultimate burden of persuasion remains with the State with respect to whether the case comes within the exception.[168]

The ultimate burden of proof always remains with the prosecution. In other words, parents must provide evidence of a thorough curriculum, regular attendance, and academic progress by the children, but the state has the ultimate burden of showing beyond a reasonable doubt that the parents have failed to provide their children with equivalent education.

In State v. Davis,[169] the Missouri Court of Appeals held that the due process clause of the United States

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

[168] Ibid., pp. 537-540.

[169] State v. Davis, 598 S.W. 2d 189 (Mo. 1981).

Constitution requires that the defendant be proven guilty beyond a reasonable doubt of every fact necessary to constitute the crime in order to support a conviction. The court emphasized that the state has the burden of proving all the essential elements of a criminal offense.

The court reversed the parents' conviction of violating the compulsory attendance law because the state failed to prove that the child was not receiving "substantially equivalent" instruction. The Davis case was decided on the same grounds as its predecessor, State v. Pilkington.[170] In Pilkington, the Missouri Court of Appeals held that information charging parents with failing to keep a child in their custody in a public school, but containing no charge that parents did not provide the child with regular and substantially equivalent instruction, was insufficient proof to charge an offense. The court reversed the parents' conviction on the same grounds used in the Davis decision.

In In re Monnig,[171] a mother enrolled her three children in the Christian Liberty Academy correspondence home school program. The equivalency issue brought

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[170] State v. Pilkington, 310 S.W. 2d 304 (Mo. (1958).

[171] In re Monnig, 638 S.W. 2d 782 (Mo. 1982).

neglect charges against the parents. The court declared that the burden of evidence of home school instruction does not rest on the parents. To require the parent to carry the burden of proof imperils the right of the parent against self-incrimination and also disparages the fundamental state of a parent in the educational nurture of a child. The Juvenile Court bore the burden of proof in the evidence. The court failed to provide evidence that the home instruction involved in the case was not substantially equivalent to day school study. The court reversed and remanded the case on these grounds.

In People v. Lewisen,[172] the Supreme Court of Illinois reversed the conviction of home school parents for violation of compulsory attendance laws. The court defined a private school as "a place where instruction is imparted to the young . . . the number of persons being taught does not determine whether a place is a school." The court, in addition, invoked the language of the Indiana Appeals Court in State v. Peterman,[173] declaring, "We think that the number of persons, whether one or many,

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

[173] State v. Peterman, 70 N.E. 2d 505 (Ind. App. 1904).

[174] Lewisen, op. cit., pp. 213-215.

makes a place where instruction is imparted any less or more a school."[174]

The court emphasized that the parents have the burden of proof in showing that they have, in good faith, provided an adequate course of instruction in the prescribed branches of learning. This burden is not satisfied if the evidence fails to show a type of instruction and discipline having the requisite quality and character. The court found this school to be a proper school.

In Matter of Falk,[175] the court dismissed a neglect charge against parents after finding that their instruction was substantially equivalent to that available in public schools. The court rejected the school board's accusation that the children lacked socialization because the Falks had neighborhood children over to socialize. Finally the court concluded that the parents had met the burden of proof by showing they were providing substantially equivalent instruction.

It has been established that when parents challenge the compulsory education laws, the courts usually place the burden of proof on the parents.

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[175] Matter of Falk, 441 N.Y.S. 2d 785 (N.Y. 1985).

Summary

The courts placed the burden of proof on parents in several of the cases reviewed. Parents were told by the courts that they must take the responsibility of being able to prove that their child is being sufficiently and properly instructed. Other cases saw the state bearing the burden of proof against the parents.

The state, however, has the burden of proof in proving all the essential elements of a criminal offense. The due process clause of the United State Constitution requires that the defendant be found guilty beyond a reasonable doubt in order to support a conviction.

The equivalency issue regarding the home schooled child was the focal point of the cases involving "burden of proof." In several cases home instruction was found not equivalent to public school instruction.

CHAPTER 5

SUMMARY, CONCLUSIONS AND RECOMMENDATIONS

Education of children has been of concern to all societies; the United States is no exception. One hardly picks up a daily newspaper or magazine that does not include at least one article concerning some facet of education. More and more, attention has recently been focused on home schooling and related questions of constitutional rights. These questions have involved the right of parents to educate their children at home and, concurrently, the interest of the state in seeing that its citizens are well educated.

Even though home schooling has been a part of American society and culture from the first settlements, we are currently experiencing more difficulty with definition, acceptance, legal auspices, and quality than previously. The first settlers used home schooling as their only recourse; however, today, home schooling is used as well for social, religious, ethical, and philosophical purposes.

This diversity in purpose of home schooling has led to a current enigmatic or nightmarish state of legalese within the educational systems of our states. The amount

of litigation initiated and laws enacted in the past ten years is overwhelming. There have been laws passed and cases decided to legitimize home education, cover funding, provide licensing, provide approval, structure scheduling, standardize curricular expectations, ensure some degree of credentiality of teachers, and about any other issue one could imagine. The concern of this research was essentially that of evaluating state curricular controls for home schools within the states.

The purpose of this study was an examination of state control of curricula offered in home schools. Research for this study was accomplished through a review of literature, an analysis of the statutory provisions of the fifty states, and a study of judicial decisions rendered in relation to the statutes. No attempt was made to create an ideal curriculum for the education of students. Instead, this researcher sought to ascertain the current legal status of what is required and what is allowable in curricula of home schooling. This study involved five chapters; a brief review of what each one contained follows.

Chapter 1 presented seven key questions on the subject of home schools curricula. Answers to these questions were sought from books, periodicals, pamphlets,

dissertations, legal indices, and direct correspondence with the fifty state offices concerning education.

Chapter 2 presented literature related to the overall picture of home schooling and connections between curricula and compulsory attendance. This review led to the identification and introduction of some of the major legal issues in the state's attempt at providing some semblance of quality control of education through curricula.

Chapters 3 and 4 led to partial understanding or answers to the questions presented in Chapter 1 through an examination of the state statutes related to curricula offered by home schools. The analysis of the judicial decisions which were subject related and the discussion of related legal facets or interrelated issues continued the quest for answers to the research questions.

The final chapter provides summation of the findings, conclusions, and recommendations based upon these data. Answers to the research questions provide a framework of information to legislators, administrators, on-the-line teachers, parents, and the community at large, with the hope for more informed decision-making by all.

Summary of Findings

Non-public school attendance has served and continues to serve many purposes for many parents and educators.

Many educators within the public sector have been concerned about the retreat to non-public forms of education rather than seeing this as an opportunity for parents to exercise an option of providing what they believe to be a better educational opportunity for their children. Many of them have retreated to non-public and home schools for purported religious, social, ethical, or philosophical reasons.

The first research question posed at the outset of this study related to the constitutional issues of home schooling in this country. It provided: What are the constitutional issues of home schooling in the United States? The following statements provide answers to that question.

Finding 1. The Free Exercise clause of the First Amendment guarantees to parents the right to have their children educated in non-public schools, including home schools.

Finding 2. The Due Process clause of the Fourteenth Amendment guarantees to parents the right to have their children educated in non-public schools, including home schools.

Finding 3. The Constitution guarantees citizens the right to privacy, including the right of parents to

educate their children in non-public schools, including home schools.

Finding 4. The Constitution guarantees citizens the right to liberty, including the right of parents to educate their children in non-public schools, including home schools.

Finding 5. Courts have upheld the constitutionality of state compulsory attendance statutes.

Finding 6. The right of parents to educate their children in home schools is not absolute under the Constitution, but may be conditioned by the interest of the state in assuring well educated citizenry.

The second question to be answered from the introductory chapter dealt with the states and their specificity of curriculum to be used in home schools. It stated: To what extent do states provide for home schooling? An analysis of state statutes relating to curriculum in non-public schools revealed similarity among the statutes for legitimizing home schools. The following findings apply.

Finding 1. Currently, all fifty states have provisions whereby a child may be home schooled.

Finding 2. Twenty-three states (Arizona, Arkansas, Colorado, Florida, Georgia, Louisiana, Minnesota, Mississippi, Missouri, Montana, Nevada, New Mexico, Ohio, Oregon, Rhode Island, Tennessee, Utah, Vermont, Virginia,

Washington, West Virginia, Wisconsin, and Wyoming) have passed laws making provisions for home school education.

Finding 3. Home instruction is permitted in five states (Illinois, Indiana, Kentucky, Massachusetts and North Carolina) by case law and, in Michigan, by ruling of the Attorney General.

Finding 4. The remaining twelve states have statutes that loosely allow home schools by either license or registration as a private religious school or other acceptable means of education.

Finding 5. To date, legal provisions for home schooling have been addressed at the state level by both statute and court decision.

The third research question addressed the issue of statutory course requirements by the various states. It stated: To what extent do states specify exact courses of study? The findings follow.

Finding 1. Thirty-five states have fairly specific laws which require specific curricula to be taught. These states are: Alabama, Arizona, Arkansas, Colorado, Connecticut, Florida, Georgia, Hawaii, Illinois, Kansas, Kentucky, Maine, Maryland, Massachusetts, Missouri, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, Tennessee, Texas, Utah, Vermont,

Virginia, Washington, West Virginia, Wisconsin, and Wyoming. Three of the thirty-five states have limited curricular requirements. Florida requires only that U.S. Constitution, agriculture, alcohol, and history of Florida be taught. Maine requires U.S. history, government, U.S. Constitution, state history and English, and New Jersey requires only U.S. history, geography, civics, history of New Jersey, and humanity to be taught.

The other thirty-two of the thirty-five states have fairly extensive curricular requirements which include an array of courses such as: state history, U.S. history, English, reading, writing, civics, health, music, art, geography, math, science and spelling.

Finding 2: A wide spectrum of course requirements was found when state statutes were evaluated. The states fell within a range from Mississippi, whose legislature repealed all required subjects in 1984, to Washington and its requirements of "all basic skills" including science, math, language, art, music, history, social studies, occupational education, health, reading, writing, spelling, Washington Constitution and U.S. Constitution.

Finding 3. A majority of the states have statutes that approximate Wyoming, which has flexibility but offers specific guidelines by requiring a "basic academic

educational program" which included reading, writing, math, civics, history, literature, and science. However, some states have statutes that may push constitutional parameters, as Florida did in its requirement that alcohol be taught as a subject, or South Dakota, which specifically calls for moral instruction to be included in subject materials.

The fourth question put forth in the first chapter was: What are decisions of court cases regarding the regulation of curriculum in home schools? The findings follow.

Finding 1. The Supreme Court has never agreed, heard, nor ruled on a case involving home school issues. Lower courts' interpretations and decisions have produced a contradictory and less than consensual body of data.

Finding 2. Eleven states have statutes which contain terms of "equivalent or comparable" in comparing the curriculum of home schools to the curriculum of public schools. These states include Alaska, Idaho, Indiana, Iowa, Louisiana, Michigan, Minnesota, Montana, Nevada, Oregon, and South Carolina.

Finding 3. Current court decisions have held that most of the statutes that use "substantially equivalent" or "comparable to" to be unconstitutional or void due to

"vagueness." These cases have resulted in the passage of legislation that has been favorable to home schoolers.

Finding 4. Recent legislation in many states includes all the aspects of school law. The educational laws in these states have attempted to address the curriculum issue and remain within constitutional bounds.

Question number five stated: What degree of accountability and supervision do the states provide for home school curriculum? The findings follow.

Finding 1. Eighteen states attempt to ensure some standardization of curriculum by the use of requirements for standardized tests to be given to students enrolled in schools other than public. These states include: Alaska, Arizona, Arkansas, Delaware, Florida, Georgia, Kentucky, Louisiana, Nebraska, Nevada, New Mexico, North Carolina, Oregon, South Dakota, Tennessee, Virginia, Washington, and West Virginia. Most require the test on an annual basis, but North Carolina, Alaska, Nevada, and Tennessee require the tests for specific grades only.

Finding 2: Only two states, Arkansas and Florida, have consequences enumerated for failure to achieve on the standardized test. Florida statutes provide that if a student does not perform satisfactorily on annual standardized testing, then the home school is placed on probation.

Arkansas statutes require that if a child falls eight months below the standard, then the child must be schooled in public, private or parochial school.

Finding 3. Nebraska law is unique in that annual testing is required only for evidence of the school's offering of basic skills information, and the test is not to be used for measuring, comparing, or evaluating student competency.

Finding 4. Eighteen states require non-public schools to be licensed, approved or registered within the local school administrative unit. These states are: Arkansas, Colorado, Delaware, Hawaii, Idaho, Louisiana, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, Nevada, North Dakota, Ohio, Pennsylvania, Rhode Island, South Carolina, and Vermont.

Finding 5. Eight states require some degree of teacher certification. Three states require that all home schools, without exception, be taught by a certified teacher. These states are Iowa, Michigan, and South Dakota. Two states, California and Michigan, require that the teachers be certified for the grades or subject taught. Arkansas is specific on one area of competence by requiring that all students identified as being exceptional must be taught by a teacher certified in special education when they are home schooled.

Finding 6. Other states have statutes that require instruction to be monitored by certified teachers, or that the teachers pass a proficiency examination or hold a baccalaureate degree, and still other states ask only that instruction be given by "competent" or "qualified" individuals.

Finding 7. The issue of selecting materials and textbooks in order to plan the curricula of a home school has not been dealt with in any of the fifty states through statute. Parents have complete freedom in the selection and use of materials or textbooks so long as the curriculum is adhered to.

Conclusions

The question posed in the first chapter required that the researcher review books, pamphlets, periodicals, dissertations, ERIC documents, and the statutes of the fifty states, as well as any pertinent court rulings related to home schooling curriculum. The study revealed wide discrepancies between state statutes and conflicting or contradictory court rulings.

The following general conclusions can be made regarding the legal aspects of curriculum in home schools.

1. Courts have generally upheld statutory regulations relating to home schools as being the

legitimate concern of the state in providing for the education of its students.

2. When statutes regulating home school activities are reasonable and are not used or interpreted in an arbitrary or capricious manner, they have been upheld by courts.
3. State statutes that contain specific language are more readily defended in court than are statutes containing nebulous language.
4. State statutes which contain such language as "equivalent" or "comparable to" have generally been stricken down as "vague" and therefore unconstitutional.
5. Parents have a right under the Constitution to have their children educated in public or in non-public schools. This is a fundamental right in which no state may intercede except upon a showing of necessity for protecting the interests of a child.
6. Home schooling is allowed in each of the fifty states, either expressly or implied.
7. The fifty states vary with respect to requirements that specify curricula be taught. State statutes vary from an extensive listing to very limited curricula requirements.

8. The fifty states vary with respect to requirements that specific courses be taught. State statutes vary from an extensive listing to no specific course requirements, as found in the state of Mississippi.
9. Approximately one-third of the states require the use of standardized tests for measuring pupil achievement in home schools.
10. Approximately one-third of the states require that home schools be licensed, approved, or registered within the local public school administrative unit.
11. Most of the states do not require that teachers of home schools be certified.
12. States allow parents in home schools to choose their own curriculum materials.
13. Attempts by parents to evade attendance or structured and specified curricula through the use of First Amendment freedom of religion claim have not been successful in the courts.
14. Curriculum that is of inferior quality will not be condoned by most states due to some requirement for testing, licensing, approval, or certification control.

15. A violation of "fundamental rights" challenge places the burden of proof upon the litigant and specific rights must be enumerated.
16. Proponents of home school education have continued to encourage litigation in any conceivable manner, but will use recent rulings of "vagueness" as their standard for suit initiation.
17. Courts continue to differ in their opinions and legislators continue to rewrite home education laws without a consensus of judicial renderings that is systematized.

Recommendations

This research was undertaken, not for the purpose of evaluating the desirability or need for standard curricula within home school, but rather for the purpose of determining what is legal for a segment of society faced with making informed decisions related to the curricula of home school in relation to the curricula offered by their public counterpart. Parents considering home schooling need to know the legal ramifications of establishing a curriculum. Legislators need to know the judicial aspects of enacting laws relating to the issues of curricula, and public school employees and boards must

be prepared for issues relating to the area of curriculum within their local and immediate purview.

The following recommendations are offered for the above categories of people who are concerned with and affected by home schools.

1. All who have vested interest in education of children should be familiar with statutory requirements for curricula of home schools within their states. An awareness of the current rapidity of change in this area is of paramount importance. Therefore, a complete and thorough understanding of statutory changes is highly recommended.
2. A working understanding of current trends in home school curricula legislation is helpful for planning and implementation of programs, statutes and legal sanction. A familiarity with court decisions on home school curriculum within the state and at a federal level is highly recommended.
3. Before entering suit, litigants are encouraged to be cognizant of the procedural due process rights of parents, and these rights must be honored.

4. Statutory interpretations and their implementation through policies, rules, and regulations need to clearly understood and applied in a non-discriminatory manner. This should prevent litigation based on arbitrary or capricious application of the statutes.
5. It is the responsibility of the home school to abide by statutes governing curricula in a home school, and it is the responsibility of school officials to ensure that the legal implementation of the statutes is adhered to.
6. It is recommended that home schools be licensed so that home school parents and proponents can be notified of statutory requirements for curricula, testing, and all the aspects of home schooling covered by statute.
7. When public officials challenge parents who offer home schooling, they should be prepared to prove that the curriculum is not meeting statutory requirements.
8. Legislators within a state should make every effort to eliminate ambiguity in existing statutes.

Recommendations for Further Study

1. This study was limited to the legal aspects of curriculum required in home school and the testing of students schooled through the use of mandated curricula under the existing statutes and judicial decisions arising from implementation of these statutes. Further research should be focused on policies and procedures that have been used by state departments of education, school boards, and opinions of attorneys general in their attempt to implement the statutes.
2. With the current upheaval in educational institutions, the research needed should correlate curriculum and standardized testing to the demands of society's educational needs.
3. Curriculum and testing are only part of an educational system. Aspects of home schooling include facility, materials, personnel, scheduling, and methodology of emphasis on subject material. Further research is needed in these areas before informed opinion regarding home schooling and its effectiveness can be reached.
4. As academic achievement is believed to be in part based on a student's ability to adapt to society,

further research is needed in the testing of communication and socialization skills of home schooled students. Anecdotal information is available, but statistical data should be collected for valid evaluation of home schooling.

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