

## **INFORMATION TO USERS**

**This manuscript has been reproduced from the microfilm master. UMI films the text directly from the original or copy submitted. Thus, some thesis and dissertation copies are in typewriter face, while others may be from any type of computer printer.**

**The quality of this reproduction is dependent upon the quality of the copy submitted. Broken or indistinct print, colored or poor quality illustrations and photographs, print bleedthrough, substandard margins, and improper alignment can adversely affect reproduction.**

**In the unlikely event that the author did not send UMI a complete manuscript and there are missing pages, these will be noted. Also, if unauthorized copyright material had to be removed, a note will indicate the deletion.**

**Oversize materials (e.g., maps, drawings, charts) are reproduced by sectioning the original, beginning at the upper left-hand corner and continuing from left to right in equal sections with small overlaps. Each original is also photographed in one exposure and is included in reduced form at the back of the book.**

**Photographs included in the original manuscript have been reproduced xerographically in this copy. Higher quality 6" x 9" black and white photographic prints are available for any photographs or illustrations appearing in this copy for an additional charge. Contact UMI directly to order.**

# **U·M·I**

University Microfilms International  
A Bell & Howell Information Company  
300 North Zeeb Road, Ann Arbor, MI 48106-1346 USA  
313/761-4700 800/521-0600



**Order Number 9302637**

**Legal aspects of certification requirements for private elementary  
and secondary school teachers**

**Ford, Donald Junior, Ed.D.**

**The University of North Carolina at Greensboro, 1992**

**U·M·I**  
300 N. Zeeb Rd.  
Ann Arbor, MI 48106





LEGAL ASPECTS OF CERTIFICATION REQUIREMENTS  
FOR PRIVATE ELEMENTARY AND SECONDARY  
SCHOOL TEACHERS

by

Donald Junior Ford

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

Greensboro  
1992

Approved by

  
Dissertation Advisor

APPROVAL PAGE

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

Dissertation Adviser Joseph E. Bryson

Committee Members Robert J. Emmons  
C. A. Shuman

June 18, 1992  
Date of Acceptance by Committee

June 18, 1992  
Date of Final Oral Examination

FORD, DONALD JUNIOR, Ed.D. Legal Aspects of Certification Requirements for Private Elementary and Secondary School Teachers. (1992)  
Directed by Dr. Joseph E. Bryson. 241 pp.

The purpose of this research was to determine the legal basis and statutory requirements for certification of private elementary and secondary school teachers. An analysis of state statutes was done based on examination of appropriate code sections of the fifty states, responses to letters sent to all chief state school officers, and follow-up telephone interviews with department of education officials in seventeen states. The legal basis for certification of private school teachers was ascertained through an analysis of relevant state and federal court cases.

The results of the study indicate that certification is required for all private school teachers in nine states and for all teachers in licensed, approved, or accredited private schools in thirteen states. Certification is not required for teachers in private elementary and secondary schools in twenty-eight states. In five of the nine states requiring certification, enforcement of the requirement is accomplished through compulsory attendance laws.

Although there are some exceptions, legal challenges to certification requirements have not generally been successful. Such challenges most frequently have come from church schools or parents providing home schooling. The most frequent basis for such challenges has been a claim of violation of free exercise of religion.

## ACKNOWLEDGMENTS

Dr. Joseph E. Bryson, my dissertation advisor, has provided counsel, encouragement, and direction in my research and writing, and I wish to express my sincere gratitude to him. My appreciation is also extended to Dr. O. Terry Ford, Dr. Chiranji L. Sharma, and Dr. Robert T. Tomlinson, members of my dissertation committee.

Anita Hawkins and Yvonne Howard, staff members at the University of North Carolina at Greensboro, provided invaluable assistance in meeting timelines and filing proper forms. To them I express my appreciation.

Finally, to my family goes much credit for completion of my dissertation. My wife Fran typed for many hours and aided in my research. My son Jeff assisted in the arduous search of state statutes. My daughter Amy was a constant encouragement. To them I dedicate this dissertation.

## TABLE OF CONTENTS

	Page
APPROVAL PAGE . . . . .	ii
ACKNOWLEDGMENTS . . . . .	iii
<b>CHAPTER</b>	
I. INTRODUCTION . . . . .	1
Statement of the Problem. . . . .	3
Questions to be Answered. . . . .	5
Scope of the Study. . . . .	7
Methods, Procedures, and Sources of Information . . . . .	8
Definition of Terms . . . . .	10
Significance of the Study . . . . .	12
Design of the Study . . . . .	13
II. REVIEW OF RELATED LITERATURE . . . . .	16
Private Schooling in America. . . . .	16
History of Teacher Certification. . . . .	54
Compulsory Attendance . . . . .	72
III. ANALYSIS OF STATE STATUTES RELATING TO CERTIFICATION REQUIREMENTS FOR TEACHERS IN PRIVATE SCHOOLS . . . . .	87
Introduction. . . . .	87
Purpose for Certification Requirements. . . . .	89
Role of Compulsory Attendance Laws. . . . .	91
States Which Require Private School Teachers to be Certified. . . . .	96
States Which Do Not Require Private School Teachers to be Certified. . . . .	107
Summary . . . . .	115
IV. LEGAL ASPECTS OF TEACHER CERTIFICATION IN PRIVATE SCHOOLS . . . . .	117
Introduction. . . . .	117
Control of Education. . . . .	120
Religious Objections. . . . .	124
Efficacy of Certification . . . . .	134
Testing as a Measure of Competence. . . . .	137
Compulsory Attendance Challenges. . . . .	140

Vagueness . . . . .	146
Excessive Regulation of Private Schools . . . . .	146
Burden of Proof . . . . .	148
Summary . . . . .	150
V. REVIEW OF SELECTED COURT CASES . . . . .	151
Overview. . . . .	151
Foundational Cases. . . . .	152
Free Exercise of Religion and State	
Compelling Interest . . . . .	160
VI. SUMMARY, CONCLUSIONS, AND RECOMMENDATIONS. . . . .	183
Summary . . . . .	183
Conclusions . . . . .	191
Recommendations . . . . .	193
BIBLIOGRAPHY. . . . .	199
APPENDIX A. State Statutes: Certification. . . . .	214
APPENDIX B. State Statutes: Compulsory Attendance. . . . .	226

CHAPTER I  
INTRODUCTION

The prominence of the issues of educational "choice" and "vouchers" has reignited debate in America over how education should be accomplished and who should provide educational services. Such controversies are far from new. Thomas Jefferson's "Bill for the More General Diffusion of Knowledge" was based in part on his belief that the state was responsible for providing schools. Yet Jefferson's philosophy was embraced by too few legislators to get the bill passed by the 1779 Virginia General Assembly.<sup>1</sup> During the same time period support for public education was strong in some other states. The state constitutions of Pennsylvania, North Carolina, Vermont, and Massachusetts, all adopted between 1776 and 1780, provide for the establishment of schools paid for with public funds.<sup>2</sup>

Half a century later leaders in the common school movement of the nineteenth century stressed the need for a system of schools, supported by the public through taxes,

---

<sup>1</sup>Harold Gutek, Education in the United States: An Historical Perspective (Englewood Cliffs, N.J.: Prentice-Hall, Inc., 1986), pp. 73-74.

<sup>2</sup>James Mulhern, A History of Education, (New York: The Ronald Press Company, 1946), p. 473.

that would be available to American children with diverse backgrounds.<sup>3</sup> Yet strong sentiments against such a system existed. Consider John Stuart Mills' words, written in 1859:

Education established and controlled by the state should only exist, if it exists at all, as one among many competing experiments, carried on for the purpose of example and stimulus to keep the others up to a certain standard of excellence.<sup>4</sup>

In 1948 Justice Felix Frankfurter wrote, "... the public school is at once the symbol of our democracy and the most pervasive means for promoting our common destiny."<sup>5</sup> More recently Charles Finn, a former Assistant U.S. Secretary of Education, expressed a very different attitude.

The truth is that the emperor we know as public schooling, despite its expensive wardrobe, has worn his present garments so long that most of them need cleaning if not replacing .... Educating the public is part of the social contract; institutions called public schools are not.<sup>6</sup>

It is obvious from the above that questions and controversy have accompanied the development of state supported

---

<sup>3</sup>Guttek, pp. 77-78.

<sup>4</sup>John Stuart Mills. Quoted by Ronald T. Bowes, "Reaction to the 'Publicization of the Private School'," Education Week, 5 February 1992, p. 26.

<sup>5</sup>McCullum v. Board of Education, 333 U.S 203, 68 S.Ct. 461.

<sup>6</sup>Chester E. Finn, Jr., "Does 'Public' Mean 'Good'?", Education Week, 12 February 1992, p. 30.



education. Today the private school - public school debate continues, fueled by critics of public schools, publicized by advocates of "choice," and on occasion litigated by religious school leaders who resist and resent state controls. One of the issues appearing often in this debate, certification requirements for private school teachers, is the subject of this dissertation.

#### Statement of the Problem

Many state department and public school officials insist that the State's interest in the proper education of children demands that government insure the proper qualifications for private school teachers by requiring state certification. A substantial number of private school officials and parents, particularly those associated with fundamentalist schools, argue that they should be able to determine for themselves the qualifications of the teachers who teach their children. The issue of state regulation is sometimes compounded by questions about the efficacy of certification in general. A document from the National Center for Education Information states, "No area of education is under more severe attack than teacher education and

certification."<sup>7</sup> There is great support for the view expressed by Woodford, et al.

Teacher certification is the principal mechanism to assure the public that teachers have received the minimal training necessary to teach a subject .... [and] is designed to protect the children and the state against incompetent and inadequately trained teachers.<sup>8</sup>

Donald Erickson, on the other hand, succinctly argues the antagonist view.

Good teachers and bad teachers often had the same personal attributes. What differentiated them was not what they were, but how they performed in the classroom. State regulators seem not to have learned that lesson. In the face of the vast preponderance of evidence on good teaching, they still seek to guarantee good teaching to every child by demanding a teacher attribute that has no demonstrated relationship to teaching quality - namely, teacher certification.<sup>9</sup>

Because of the large number of students being educated in private schools, and the potential for that number to increase dramatically if educational choice becomes public

---

<sup>7</sup>Emily C. Feistritzer, The Making of a Teacher: A Report on Teacher Education and Certification (Washington, D.C.: The National Center for Education Information, 1984), p. ix.

<sup>8</sup>James E. Woodford, Susan M. Presti, Alison Gray, and Ron Goble, Teacher Certification: Out-of-field Teaching in Grades 9-12 (Raleigh, N.C.: North Carolina Center for Public Policy Research, 1982), pp. v-1.

<sup>9</sup>David A. Erickson, "A Libertarian Perspective on Schooling," in Private Schools and Public Policy: International Perspectives, eds. William L. Boyd and James G. Cibulka (Philadelphia: The Falmer Press, 1988), p. 38.

policy in the United States, concerns about qualifications of private school teachers are important. Policy makers, school officials, and parents need specific answers to the questions of who will teach the private school children and what will their qualifications be. This study will provide information for both private and public school officials about the State's legitimate right to regulate the certification of private school teachers, as well as the circumstances under which that right has been limited either by legislative or court action. Parents considering the private school alternative and those who have already chosen that alternative, as well as teachers who currently work in or are considering working in a private school should also find the results of this study beneficial. It is important that all those interested in private education have a clear understanding of the legal requirements for teacher certification in private schools.

#### Questions to be Answered

In the famous Pierce v. Society of Sisters case the United States Supreme Court made the following statement,

No question is raised concerning the power of the state reasonably to regulate all schools, to inspect, supervise, and examine them, their teachers and pupils; to require that all children of proper age attend some school, that teachers shall be of good moral character and patriotic disposition, that certain studies plainly essential to good citizenship must be taught, and that

nothing be taught which is manifestly inimical to the public welfare."<sup>10</sup>

This case, while affirming the right of private schools to exist, seems clearly to give states certain regulatory powers, including "inspecting, supervising, and examining" teachers, phraseology which might be interpreted as synonymous with certification. However, the issue is not that clear cut according to William B. Ball, a constitutional lawyer who has been involved in numerous court cases related to regulation of private schools by the government. Ball states,

The Supreme Court, to this hour, has not taken up for full review any case which has turned on the power of the state to regulate curriculum, textbooks, teacher qualifications, teaching methodology, pupil testing or class size.<sup>11</sup>

Many legal issues exist concerning the regulation of teachers in private schools. This study will answer the following key questions on the subject of certification of private school teachers:

1. What is the legal status of private schools in the United States?
2. What is the historical background for certification requirements?

---

<sup>10</sup>Pierce v. Society of Sisters, 268 U.S. 510 (1925).

<sup>11</sup>William B. Ball, "False Assumptions on Voucher Programs and the Law," Education Week, 12 February 1992, p. 31.

3. By what authority can states impose certification requirements?
4. Which states have specific certification requirements for private school teachers?
5. Do certification requirements differ for public and private school teachers?
6. Do certification requirements for religious school teachers violate constitutional requirements for the separation of Church and State?
7. What have been the outcomes of court cases regarding regulation of private school teachers?
8. What trends are identifiable based on historical development, state statutes and court decisions in the area of certification of private school teachers?

#### Scope of the Study

This study is an historical and descriptive overview of licensing or certification requirements for private school teachers, and an analysis of the current legal basis for such requirements. Appropriate court cases and state laws are discussed. A foundation for discussion of current certification issues is laid by tracing broadly the history of private schools, teacher certification, and compulsory attendance in America. No attempt is made to provide a comprehensive discussion of either the history of private

education or the merits of certification, although the efficacy of certification is considered generally in relation to specific court cases. Though regarded by many to be a part of the private school arena, home schools are not included in this study since two recent doctoral dissertations have specifically addressed this area.<sup>12</sup>

#### Methods, Procedures, and Sources of Information

This study was originally begun because of the author's interest in state regulation of private schools. This interest was heightened during the early stages of research when "vouchers" and "choice" became prominent national issues. However, in order to make the topic manageable, it was necessary to narrow the broad topic of legal aspects of state regulation of private schools to focus specifically on one aspect of state regulation, teacher certification. After an initial review of the literature on the subject, including searching through Dissertation Abstracts, it was determined that the topic was appropriate for research.

A more extensive review of the literature was conducted to gain an historical perspective on licensing and certification requirements, an understanding of the right of

---

<sup>12</sup>Sue F. Burgess, "The Legal Aspects of Home Instruction," (Ed.D. dissertation, University of North Carolina at Greensboro, 1985). Gilbert T. Huffman, "Teacher Certification in Home Schools: Emerging Constitutional Issues," (Ed.D. dissertation, University of North Carolina at Greensboro, 1986).

private schools to exist, and the relationship of compulsory attendance regulations to private schooling.

Letters were sent to the chief state school officers of the fifty states and the District of Columbia to ascertain the current status of certification requirements for private school teachers in each state. In those cases in which responses were not received, telephone calls were made to appropriate state officials and telephone interviews were conducted. Information concerning specific code requirements for each state was gathered by examining the codes of all fifty states.<sup>13</sup> These codes were analyzed and a copy of applicable code sections are included in the Appendix A.

Books, periodicals, and other written materials containing pertinent information were found using the following resources: Educational Resources Information Center (ERIC), UMI ProQuest Periodicals Abstracts, Virginia Tech's VTLS system, Resources in Education, Education Index, Current Index to Journals in Education, and Readers Guide to Periodical Literature.

Specific information dealing with legal aspects of the study was obtained utilizing the following resources: Current Law Index, Index to Legal Periodicals, NOLPE School Law Reporter, West Law Report, Corpus Juris Secundum,

---

<sup>13</sup>Washington and Lee University's Law Library contained all state codes and the author is grateful to the staff there for permitting him to utilize those resources.

National Reporter System, Shepherd's Citations, School Law News, School Law Bulletin, American Digest System, American Law Reports, and Westlaw and Legaltrac data bases.

Assistance in finding sources of information was provided by librarians at the University of North Carolina-Greensboro, Virginia Tech University (Blacksburg, Virginia), Washington and Lee University (Lexington, Virginia), Roanoke College (Salem, Virginia), and Virginia Western Community College (Roanoke, Virginia). Materials were also obtained from public libraries in Salem, Virginia; Reidsville, North Carolina; and Roanoke, Virginia.

#### Definitions of Terms

The following definitions are applicable in this study:

Certificate: A license granted by the state in the form of a document which specifies that the named individual has met legal and academic requirements and that he or she may enter into a lawfully binding contract to teach.<sup>14</sup>

Certification: "A process of legal sanction, authorizing the holder of a credential to perform specific services in the public schools,"<sup>15</sup> and in some cases the private schools of the state.

---

<sup>14</sup>Richard D. Gatti and Daniel J. Gatti, Encyclopedic Dictionary of School Law (West Nyack, New York: Parker Publishing Co., Inc., 1975), p. 45.

<sup>15</sup>Lucien B. Kinney, Certification in Education (Englewood Cliffs, New Jersey: Prentice-Hall, Inc.), p. 3.



Choice: Process by which parents within a school district may select any school within the district, whether public or private, to enroll their children.

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

Compulsory Attendance Laws: State statutes requiring that children of specified ages be sent by their parents to school.

License: A permission granted by the state to engage in a business, occupation or activity, i.e. teaching. License is used synonymously in this work with certificate.

Public School: An educational institution established by state law, open to the children of all residents of a particular area, supported by public funds, supervised and managed by public officials, and whose purpose is to meet educational needs of students primarily in Kindergarten through the twelfth grade.<sup>16</sup>

Private School: A school offering a program of instruction which is not under the control of a local public school board, and which is managed and supported by individuals or a private organization. Some common names given to private schools include private, independent, parochial,

---

<sup>16</sup>See further Jayson Kraut, et al., eds., American Jurisprudence, 2d ed., (Rochester, New York: The Lawyers Co-operative Publishing Co., 1972), p. 361.

sectarian, nonpublic, church, Christian, fundamentalist, denominational, or religious.

Police Power: The right of a state to make and enforce regulations necessary for the general welfare of the state and its citizens.

Voucher: Document made available to parents of school-aged children entitling bearer's children to receive an education at a public or private school. The school would subsequently receive cash from the government in exchange for the voucher.

#### Significance of the Study

Although the rise of public schools during the last half of the nineteenth century was phenomenal, private schools became neither extinct nor endangered. In 1900 1,351,722 children, 8.02 percent of students attending school in the United States, went to private schools. By the middle of the twentieth century that number increased to 4,339,163, approximately thirteen percent of all children enrolled in elementary and secondary schools.<sup>17</sup> The National Center for Statistics reported in 1983 that there were 27,700 private schools throughout America, 24.6 percent of the total number of all schools. The same report estimated enrollment in those schools at 5,700,000, or 12.6

---

<sup>17</sup>Fred F. Beach and Robert F. Will, The State and Non-public Schools, (Washington: U.S. Government Printing Office, 1958), p. 1.

percent of the 46,200,000 students in all schools in the United States.<sup>18</sup> Private school enrollment declined during the last half of the 1980s, yet the number of students attending still exceeds 4.5 million students, over 10.5 percent of all American students.<sup>19</sup>

With such a significant number of American students receiving all or part of their elementary and secondary education in private schools, and with the great probability that enrollments in such schools will swell if "vouchers" and "choice" become public policy, issues related to regulation of such schools are both timely and relevant. Legal aspects of certification requirements for private school teachers is such an issue. This study will provide those involved in both private and public education a compilation and analysis of important information related to the topic, and should prove valuable both in debate and decision making.

#### Design of the Study

This dissertation is divided into six parts. Chapter one introduces the topic, poses key questions to be considered, defines the scope of the study and the methods and

---

<sup>18</sup>National Center for Educational Statistics, U.S. Department of Education, December, 1984, cited in Beach and Will, p. 1.

<sup>19</sup>Curtis O. Baker, ed., The Condition of Education, 1989 (Washington, D.C.: U.S. Government Printing Office, 1989), p. 109.

materials used in the research, defines terms, and states the significance of the study.

Chapter two is a review of literature related to the history and development of private schools, teacher certification, and compulsory attendance in the evolution of American education. In addition to providing an historical perspective, legal issues relating to these three areas are also presented. Information concerning the regulation of private schools generally and questions which have been raised about this regulation are given.

The third chapter is a review and analysis of current state certification regulations which affect private school teachers. Tables grouping the states according to the content of their statutes and degree of their regulation are included.

Chapter four contains a discussion of the legal aspects of certification of teachers in private schools. Major issues which surfaced during the literature review are examined. Both state and federal cases which are significant and necessary to understand past practices and current trends are discussed generally.

An in depth analysis of selected court cases which have either directly or indirectly addressed the issue of certifying private school personnel are reviewed and analyzed in Chapter five. Reasons for the litigation and decisions of the courts are presented.

The study concludes with chapter six, a summary of findings on the topic of teacher certification in private schools. Recommendations based on these findings and answers to questions posed in chapter one will be given. Moreover, recommendations for further research will be detailed.

CHAPTER II  
REVIEW OF RELATED LITERATURE  
Private Schooling in America  
Introduction

From the beginning of American history, private schools have been an important part of our national life. One of the problems faced in tracing the historic development of such schools is the difficulty of distinguishing private schools from public schools during the colonial era and well into the nineteenth century. Cubberley traced the roots of public education to seventeenth century New England, asserting that the Massachusetts School Laws of 1642 and 1647 were the foundation for "compulsory education of all children and the compulsory town maintenance of schools."<sup>1</sup> Likewise, Commager states that the Massachusetts School Law of 1647, often referred to as the Old Deluder Satan Act, established the first system of public education in the American colonies.<sup>2</sup> Other authors claim that the beginning of free public schools can be traced distinctly to the early Dutch

---

<sup>1</sup>Elwood P. Cubberley, Public Education in the United States (Cambridge: The Riverside Press, 1919; reprint ed., Boston: Houghton Mifflin Co., 1962), p. 14.

<sup>2</sup>Henry S. Commager, ed., Documents of American History, 8th ed. (New York: Appleton-Century-Crofts, 1968), p. 29.

colonies in America.<sup>3</sup> Yet revisionists such as Bernard Bailyn and Lawrence Cremin deny these assertions, claiming that "the modern conception of public education, with a clean line of separation between private and public, was unknown before the eighteenth century."<sup>4</sup> In a reference to the 1647 law, Kinney states, "Yet to assume that a school system was established and supported at once in accordance with this law, and maintained continuously thereafter, would be naive."<sup>5</sup> Mulhern confirms the confusion by stating that private schools antedate many of New England's town schools and were sometimes supported by towns to avoid the penalties prescribed by the law of 1647.<sup>6</sup>

In light of the above, it seems appropriate to trace the development of schooling in America from a very general perspective, at least to the point where clear lines of demarcation can be found between private and public education.

---

<sup>3</sup>Richard G. Boone, Education in the United States (n.p., 1889; reprint ed., Freeport, New York: Books for Libraries Press, 1971), p. 6.

<sup>4</sup>Shelton S. Cohen, A History of Colonial Education: 1607-1776 (New York: John Wiley and Sons, Inc., 1974), p. 42.

<sup>5</sup>Kinney, p. 37.

<sup>6</sup>James Mulhern, A History of Education (New York: The Ronald Press Company, 1946), p. 471.

### Colonial Period

Colonial schools were largely a product of the forces at work in the European countries from which the colonists came. Political, social, and religious struggles were apparent from New England to Georgia, and colonial education tended to reflect these conflicts. In the seventeenth and early eighteenth centuries schools in America were so similar to their European counterparts that Graves describes the period as the "transplantation of schools."<sup>7</sup> Private and religious groups established schools, but authority to start and operate these was political, coming from either the king of England, a proprietor or a colonial legislature.<sup>8</sup>

#### New England Colonies

The education of children in Puritan New England was almost uniformly based on Calvin's view of the nature of the child as being inherently evil. Filling the child with the fear of the consequences of his actions, i.e. the wrath of God, was the best way to control him. The instillation of such fear became the responsibility of the family and the

---

<sup>7</sup>Frank P. Graves, A Student's History of Education (New York: The McMillan Company, 1915; reprint ed., Westport, Conn.: Greenwood Press, Publishers, 1963), p. 252.

<sup>8</sup>Freeman R. Butts and Lawrence A. Cremin, A History of Education in American Culture (New York: Holt, Rinehart, and Winston, Inc., 1953), p. 13.



school to insure obedience, good behavior, and ultimately salvation.<sup>9</sup>

The schools' responsibilities formally began in Massachusetts with the passage of the School Act of 1642, considered by many the beginning of elementary education in America.<sup>10</sup> In essence the law indicated that parents and incompetent masters were failing to educate children, that fines could be levied for such neglect, that a chosen group of men could examine children to test their ability to "read and understand the principles of religion and the capital laws of this country," and that after appropriate warning children could be taken from their parents and placed with someone who could accomplish this.<sup>11</sup> This law did not require school attendance; it was a requirement that parents either educate their children or provide for their proper education.

The provisions of the above act were subsequently adopted by most adjoining colonies. However, failure to enforce the law in Massachusetts led to the passage of more stringent legislation in 1647, the famous Old Deluder Satan Act. This law required that as soon as a town had fifty families, a teacher must be appointed to teach reading and

---

<sup>9</sup>Ibid., pp. 66-67.

<sup>10</sup>Tom E. C. Smith, Introduction to Education (St. Paul, Minn.: West Publishing Company, 1987), p. 36.

<sup>11</sup>Boone, pp. 16-17.

writing. Further, a town of one hundred or more families was required to set up a grammar school to prepare students for entrance into the university.<sup>12</sup> Connecticut followed suit with a similar law in 1650 and New Hampshire in 1680.<sup>13</sup> It is important to note that these laws were not popular and that despite the financial support of schools by the towns, students were still charged tuition or fees in order to attend. According to Power, "... the free school idea had not yet matured. Nowhere in New England-not even in the famous Boston Latin School-was free schooling a fact."<sup>14</sup>

Three levels of pre-university schooling developed in New England. The first level for instruction of young children included home instruction by parents, apprenticeships, and dame schools, taught by women in their homes. The second level was the town school, the elementary schools of the day. The final level was the Latin grammar school, which was the secondary school.<sup>15</sup>

---

<sup>12</sup>James W. Noll and Sam P. Kelley, Foundations of American Education in America: An Anthology of Major Thoughts and Significant Actions (New York: Harper and Row, Publishers, 1970), p. 162.

<sup>13</sup>Smith, p. 36.

<sup>14</sup>Edward J. Power, Main Currents in the History of Education (New York: McGraw-Hill, Inc., 1970), p. 544.

<sup>15</sup>Smith, p.36.

### Middle Colonies

Education in the middle colonies was substantially different than in New England where church and state were inextricably linked and public responsibility for education, even if not popular or complete, can be clearly seen. No common religion was found in the middle colonies. Pulliam describes the region as follows:

Disparity in religion was even more pronounced than differences in nationalities, so that the colonies became a potpourri of faith, languages, and ethnic cultures .... So many different religious denominations were represented in the region that toleration soon became a necessity .... No single sect had the numerical power to force its will on the others.<sup>16</sup>

It is not surprising, then, that unlike the Puritans of New England, no single group controlled education. In fact, the educational policy of most middle colony governments was one of laissez faire.<sup>17</sup> Pulliam indicates that "except for insisting on the right to license teachers, practically no laws were made concerning schools."<sup>18</sup>

Schooling was primarily a private or denominational concern, and as a result parochial systems of schools developed. Educational practices supportive of their own doctrines were established by Mennonites, Quakers, Lutherans,

---

<sup>16</sup>John D. Pulliam, History of Education in America, 4th ed. (Columbus, Ohio: Merrill Publishing Company, 1987), p. 27.

<sup>17</sup>Power, p. 553.

<sup>18</sup>Pulliam, p. 28.

Calvinists, Moravians, Huguenots, Separate Baptists, and Episcopalians.<sup>19</sup>

Like other sections of colonial America, private tutors were present in the middle colonies, and children received early instruction in the home, but the majority of schooling occurred in denominational schools, usually tied directly to the church in the community. For example, the Lutheran parish school had been transplanted from Europe to America. This was basically an elementary school established to provide religious training. Subjects included reading, singing, religion, and sometimes writing. The Dutch, Swedes, and German settlers established Lutheran schools in the communities in which they settled. A clear indication of the private nature of these schools as compared to public schools today is that the school teacher was very often the pastor of the local church.<sup>20</sup>

The Quaker schools emphasized religion, reading, writing, and arithmetic. These schools were the Quaker way of providing for the "guarded education of their own children and for the free education of the poor of Quaker and other faiths."<sup>21</sup>

---

<sup>19</sup>Ibid.

<sup>20</sup>Cubberley, Public Education in the United States, p. 26.

<sup>21</sup>Mulhern, p. 282.

In New York the Dutch Reformed Church established schools in which the curriculum consisted of reading, writing, and religion.<sup>22</sup> The Anglican Church, the official church of England, was likewise established in the middle colonies by early English settlers. A reformation within the church in the late 1600s resulted in the beginning of the Society for the Propagation of the Gospel in Foreign Parts (SPG). The SPG was active in starting schools to teach reading, writing, and the Anglican catechism throughout the colonies, but most prominently in Pennsylvania, New York, and the Southern colonies.<sup>23</sup>

Latin grammar schools were the most common form of secondary education in the middle colonies. New Amsterdam, New Jersey, and Pennsylvania had such schools established under the auspices of the Dutch Reformed Church, the Quakers, and other religious groups. The Quakers also added another dimension by establishing English grammar schools which were more utilitarian than the Latin grammar schools.<sup>24</sup>

Perhaps the most important type of school to develop in the middle colonies during this early period in American history was the academy. These schools were formed to

---

<sup>22</sup>Smith, p. 37.

<sup>23</sup>Mulhern, pp. 281-282.

<sup>24</sup>Ibid., p. 289.

prepare students for specific occupations or trades and thus a more practical curriculum was followed. The Philadelphia Academy, the most famous though perhaps not the first academy, was established by Benjamin Franklin in 1751. Even though the school did not continue the utilitarian purpose intended by Franklin, the academy model was to dominate secondary education during the nineteenth century.<sup>25</sup>

### Southern Colonies

Of the three sections of the colonies, the southern colonies experienced the greatest dearth of educational opportunities for its people. Although the well-to-do plantation owners could afford private tutors or could send their children away to school, blacks and poor white children had few educational opportunities.<sup>26</sup> Some free schools developed as a result of provisions in the wills of wealthy individuals, but these were the exception rather than the rule.<sup>27</sup> Though normally without schools, orphans and poor children were often trained as a result of apprenticeship laws. Virginia passed such laws in 1643, 1646, and

---

<sup>25</sup>Smith, p. 37.

<sup>26</sup>Smith, p. 37.

<sup>27</sup>Pulliam, p. 23.

1672, and records from 1695, 1703, and 1716 show similar practices in North Carolina.<sup>28</sup>

To a large extent the above conditions occurred because of the wide distribution of the population in the South. This was a land of large plantations, not of farming villages or small towns. Few areas had sufficient populations of families living in close enough proximity to establish united school endeavors.<sup>29</sup>

Education in the South was initially accomplished in three ways: instruction in the home by the landowner, instruction by private tutors (in many cases indentured servants), and, where numbers were sufficiently large, instruction in reading schools taught by school dames, masters, or ministers of the Church of England.<sup>30</sup>

Some other types of schooling subsequently developed as populations increased. In some cases tutor hired to teach the children of the plantation owners also taught children of other higher plantation employees, and as a result plantation schools arose.<sup>31</sup> Charity schools, mentioned previ-

---

<sup>28</sup>Elwood P. Cubberly, Readings in Public Education in the United States (Boston: Houghton Mifflin Company, 1934; reprint ed., Westport, Conn.: Greenwood Press, Publishers, 1970.), pp. 30-32.

<sup>29</sup>Smith, p. 37.

<sup>30</sup>H. W. Button and E. H. Provenzo, History of Education and Culture in America (Englewood Cliffs, N.J.: Prentice Hall, 1983), p. 17.

<sup>31</sup>Pulliam, p. 24

ously, served some of the poor children. "Old field schools," elementary schools built on fallow, overworked, and, therefore, unproductive fields, were occasionally established. These schools were generally controlled by communities but were greatly influenced by the Anglican Church which oversaw the licensure of the teachers.<sup>32</sup>

Latin grammar schools existed but were few in number and never became as widespread as in the areas to the north.<sup>33</sup>

Academies, which had begun in the middle colonies, spread into the South in the late colonial period.

#### Summary

Religious motivation was the impetus for the development of schools in New England, and to a large extent in the middle colonies also. Though not as great a factor in motivating southerners, religion still played an important role due to their close ties to England politically and to the state church of England religiously. Some early colonial legislation, particularly in New England, attempted to establish at least a public mindset for community responsibility for education, but the establishment of truly public schools was still very foreign both in philosophy and practice.

---

<sup>32</sup>Susie M. Ames, Reading, Writing, and Arithmetic in Virginia, 1607-1699 (Williamsburg, Va.: 350th Anniversary Celebration Company, 1957), p. 14.

<sup>33</sup>Pulliam, p. 26.



Nowhere in the colonies was there a greater variety of denominationally controlled schools than in the middle colonies. That tradition led Gutek to write:

If the precedents for the American public school system were established in New England, the roots of the private and parochial schools were planted in the middle colonies.<sup>34</sup>

Private tutors, plantation schools, old field schools, reading schools, home instruction, and occasional Latin grammar schools were the means of education in the southern colonies. Though some governmental control existed, particularly in conjunction with the Anglican Church in the matter of licensing teachers, education was more private in nature than public.

#### National Period

The period of time from the American Revolution to the beginning of the twentieth century is referred to by many authors as the "National Period."<sup>35</sup> In order to understand differences between private and public education, it is essential to have an understanding of the rise of public education and the subsequent changes in what constituted private education. Without giving a detailed historical

---

<sup>34</sup>Gerald Gutek, Education in the United States: An Historical Perspective (Englewood Cliffs, N.J.: Prentice-Hall, Inc., 1986), p. 69.

<sup>35</sup>Smith, p. 32.

description of schooling during this period, an overview of the progress and direction of educational thought and practice is presented.

### Schooling in the Early National Period

The question of locus of control of education in the new nation emerging in the late 1700s was settled by omission rather than specific decree. Under the Articles of Confederation, Congress passed the Land Ordinance of 1785 and the Northwest Ordinance of 1787, both of which had provisions for education.<sup>36</sup> Yet despite discussion of education by its framers, the present Constitution of the United States contains no specific reference to education. Because the Tenth Amendment reserves to the states powers not specifically relegated to the national government, education became a state function.<sup>37</sup> Not until 1867, when the Federal Department of Education was created, did a federal agency dealing with education exist. The first year of existence for this agency was so unproductive that it was reduced to an "office," which it remained until Congress established the Department of Education in 1979.<sup>38</sup> Without

---

<sup>36</sup>Clarence L. Ver Steeg and Richard Hofstadter, A People and a Nation (New York: Harper and Row, Publishers, 1971), pp. 87-89.

<sup>37</sup>United States Constitution. Amendment X (1791).

<sup>38</sup>Smith, pp. 79-80.

centralized control the development of education took many paths during the course of American history.

Though the federal constitution is quiet on the subject of education, state constitutions are not. Provisions for schools were made in the state constitutions of Pennsylvania and North Carolina in 1776, Georgia in 1777, Massachusetts in 1780, New Hampshire in 1784, and Delaware in 1792.<sup>39</sup>

Educational theorists of this period sought to develop an education that would meet the needs of a new republic, provide a foundation for American cultural identity, and prepare Americans for their roles as citizens in a republic. James Madison wrote in 1801,

In a government founded on the sovereignty of the people the education of youth is an object of the first importance ... [and] in such a government knowledge should be diffused throughout the whole society, and for that purpose the means of acquiring it made not only practicable but easy to every citizen.<sup>40</sup>

Benjamin Franklin, Thomas Jefferson, Benjamin Rush, and Noah Webster were among the great spokesmen for education during the early national period.<sup>41</sup>

The types of schools prevalent during the national period varied greatly. Diverse forms of elementary schools

---

<sup>39</sup>Ibid., p. 38.

<sup>40</sup>S.M. Hamilton, ed., Writings of James Monroe (n.p., 1801), pp. 306-307, quoted in Harry Ammon, James Monroe: The Quest for National Identity (New York: n.p., 1971), p. 177.

<sup>41</sup>Guttek, pp. 31-54.

from the colonial period continued, and academies were the predominant form of secondary education during the first half of the nineteenth century.<sup>42</sup> The number of academies increased from just over 100 in 1800 to over 1000 in 1830.<sup>43</sup> That number had increased to 6000 by 1861.<sup>44</sup> These schools, though considered public by many, would certainly fail to meet any modern criteria of being free and open to all, and thus might more appropriately be considered semi-public.

Infant schools, forerunners of daycare centers, appeared in the early part of the century. These nursery schools had their beginning in Scotland. They were formed for children ages two through six.<sup>45</sup> Smith reports that beginning in 1818, Boston financed these schools with public funds.<sup>46</sup>

Charity schools, founded in an attempt to eliminate crime and poverty, grew rapidly in the 1790s and early 1800s. Spring indicates that these schools laid the "founda-

---

<sup>42</sup>James Monroe Hughes and Frederick Marshall Schultz, Education in America, 4th ed. (New York: Harper and Row, Publishers, 1976), p. 329.

<sup>43</sup>Button and Provinzo, p.

<sup>44</sup>Hughes and Schultz, p. 329.

<sup>45</sup>Guttek, p. 77.

<sup>46</sup>Smith, p. 39.

tion for later public schooling ...."<sup>47</sup> Kaister concurs. In his description of New York City schools in the early nineteenth century, he writes, "Meanwhile, the city's public school system arose from the charity schools, which had played a traditional but numerically slight role in the colonial period."<sup>48</sup>

The monitorial school, or system, devised by Joseph Lancaster, was introduced in the United States in 1806 and remained popular until about 1830. Large classes were possible in schools under this system. Monitors were taught a lesson and they in turn taught the lesson to groups.<sup>49</sup>

Generally, all of the schools of the nineteenth century mentioned thus far were private schools, or if supported in part by public funds, still much more like private schools than public schools as we know them today. Many had admissions requirements and fees to attend were common.

#### Rise of Public Education

The common school movement of the nineteenth century marks the beginning of the modern American public school

---

<sup>47</sup>Smith, p. 52.

<sup>48</sup>Carl F. Kaestle, The Evolution of an Urban School System: New York City, 1750-1850 (Cambridge, Mass.: Harvard University Press, 1973), p. 187.

<sup>49</sup>Cubberly provides a detailed discussion of monitorial schools in Public Education in the United States, pp. 128-137.

system.<sup>50</sup> The movement resulted in the establishment of publicly supported schools with a generally common curriculum. In 1827 Massachusetts adopted compulsory taxation to support the common schools and other New England and mid-western states soon followed suit.<sup>51</sup> Local districts were given power by the states to tax themselves to support schools,<sup>52</sup> state boards of education were created,<sup>53</sup> and school districts were formed.<sup>54</sup> Horace Mann and Henry Barnard were the prominent spokesmen for the common schools and many consider them to be the founders of the movement.<sup>55</sup> Between 1830 and 1860 the "struggle for free public schools [was] fought and won and the right to support and control education [was] vested in the people."<sup>56</sup> Lee Soltow and Edward Stevens, in The Rise of Literacy and the Common School, describe the period as follows:

By mid-nineteenth century basic literacy had become a cultural imperative in the United States. Evangelical Protestant morality, a fervent nationalism, and an ethic of capitalism which recognized the commercial

---

<sup>50</sup>Joel Spring, The American School, 1642-1985 (New York: Longman, Inc., 1986), p. 70.

<sup>51</sup>Gutek, pp. 77-78.

<sup>52</sup>Pulliam, p. 71.

<sup>53</sup>Mulhern, p. 71.

<sup>54</sup>Gutek, p. 79.

<sup>55</sup>Ibid.

<sup>56</sup>Mulhern, p. 472.

value of a literate public had made literacy a high-priority social cause. Literacy was viewed as both a prerequisite to proper socialization among the young and as an asset in the forward march of democracy.<sup>57</sup>

By 1860 approximately half of all children who were elementary age were attending public schools.<sup>58</sup>

The birth of the American high school occurred in Boston in 1821. In that year the English Classical School opened. The school was renamed the "English High School" in 1824 and its purpose was that of "fitting for practical life."<sup>59</sup> The Massachusetts Law of 1827 required towns with more than five hundred families to establish a high school.<sup>60</sup> Although growth of these schools was initially slow, the high school became the dominant secondary institution during the second half of the nineteenth century, replacing private and publicly supported academies.<sup>61</sup> By 1870 over five hundred high schools existed, and that number increased to over ten thousand in 1910.<sup>62</sup> The Kalamazoo<sup>63</sup>

---

<sup>57</sup>Lee Soltow and Edward Stevens, The Rise of Literacy and the Common School in the United States (Chicago: The University of Chicago Press, 1981), p. 193.

<sup>58</sup>Smith, p. 41.

<sup>59</sup>Graves, p. 367.

<sup>60</sup>Smith, p. 42.

<sup>61</sup>Guttek, p. 84.

<sup>62</sup>Ver Steeg and Hofstadter, p. 467.

<sup>63</sup>Stuart et al. v. School District No. 1 of Kalamazoo, (1874).

case of 1872, which upheld the right of districts to use taxation to establish high schools, served as the impetus for the proliferation of these schools.

#### Private School Development

The rapid expansion of public schools in the mid to late nineteenth century resulted in two noteworthy changes in private schools. The first change affected those nonsectarian academies and schools which had been in existence for some time before public schools appeared. As these schools lost students to the public schools, their survival depended on their ability to take on a certain character that would continue to attract students whose parents would be willing to pay for their education. Military academies and college preparatory schools are examples of such schools which developed clear missions. A common distinction adopted by many of these schools was their strong emphasis on providing a quality of education which they proclaimed to be superior to the common schools or public high schools. A large number of these schools at the secondary level have continued to this day with reputations as remaining true to their historic purpose.

The second area of major change was sectarian schooling, and more particularly schooling for Catholic children. Bryson and Houston indicate that separation of church and state had occurred in every state by 1840, and the appropri-



ateness and necessity of such a separation in public schools was supported by educational leaders of the day.<sup>64</sup> But the Roman Catholic population increased dramatically in the mid-nineteenth century, and the public schools available to their children had taken on a distinctly Protestant character. Unable to secure accommodations to their faith, American Catholics began a system of parochial schools that grew rapidly.<sup>65</sup> Between 1880 and 1920 the number of Catholic schools in the United States nearly tripled (from 2200 to 5800) and the number of students increased from 400,000 to 1,700,000.<sup>66</sup> Lutheran, Quaker, and other denominational schools made up the majority of the remaining private schools during this period. The Lutheran educational philosophy that secular and sacred learning cannot be separated, and that the Bible should be at the center of all cur-

---

<sup>64</sup>Joseph E. Bryson and Samuel H. Houston, Jr., The Supreme Court and Public Funds for Religious Schools: The Burger Years, 1969-1986 (Jefferson, N.C.: McFarland & Company, Inc., Publishers, 1990), pp. 21-22.

<sup>65</sup>Robert J. Janosik, ed., Encyclopedia of the American Judicial System, vol. 1 (New York: Charles Scribner's Sons, 1987), p. 1217.

<sup>66</sup>U.S. Department of Education, Office of Educational Research and Improvement, National Center for Educational Statistics, Private Schools in the United States: A Statistical Profile with Comparisons to Public Schools (Washington, D.C.: Government Printing Office, 1991), p. 1.

riculum<sup>67</sup> reflected the raison d'etre of many of these private schools.

### Summary

Although the National Period began with famous men such as Thomas Jefferson, George Washington, Francis Marion, John Jay, John Hancock, John Adams, and James Madison recommending education as crucial in the new nation, the Constitution is silent on the issue.<sup>68</sup> Many of the types of schools prominent during the colonial period continued with distinctly private characters during the first quarter of the nineteenth century. Public schools, available to the masses without charge, developed during the common school movement of the second quarter of the century, and by the end of the century were the centers of elementary and secondary education for ninety-two percent of American children attending school.<sup>69</sup>

Private schools went through a period of transition during the mid-1800s as schooling became primarily a public endeavor. Non-sectarian schools which survived took on specific missions or purposes that appealed to supporting

---

<sup>67</sup>Edd Doerr and Albert J. Menendez, Church Schools and Public School Money: The Politics of Parochialism (Buffalo, New York: Prometheus Books, 1991), pp. 27-28.

<sup>68</sup>Bryson and Houston, p. 11.

<sup>69</sup>Fred F. Beach and Robert F. Will, The State and Nonpublic Schools (Washington, D.C.: U.S. Government Printing Office, 1958), p. 1.

parents. Sectarian schools became the prominent form of private education, particularly as the number of Catholic schools grew. The denominational schools were rooted in the philosophy that their religious beliefs could not be accommodated in the public school system. By the beginning of the twentieth century 1,351,722 students, 8.02 percent of the children attending school in the United States, were enrolled in private schools.<sup>70</sup>

#### The Twentieth Century

Although the twentieth century began with an overwhelming majority of American children attending public schools, an important minority of parents continued to elect private education for their children. Both the number of private schools and the number of private school students increased dramatically. By 1980 private schools numbered approximately 20,000, enrolling five million students.<sup>71</sup> During the decade of the 1980s student numbers hovered around 5.5 million<sup>72</sup> and the number of private schools during the

---

<sup>70</sup>Ibid.

<sup>71</sup>U.S. Department of Education, Office of Educational Research and Improvement, National Institute of Education, The Private High School Today (Washington, D.C.: Government Printing Office, 1980), p. 1.

<sup>72</sup>U.S. Department of Education, Office of Educational Research and Improvement, National Center for Educational Statistics, Projections of Educational Statistics to 2001: An Update (Washington, D.C.: Government Printing Office, 1990), p. 5.

1985-86 school year was 25,616, twenty-four percent of all elementary and secondary schools.<sup>73</sup> The most recent estimates of enrollment indicate that 5.2 million students attended private schools during both the 1990-91 and 1991-92 school years.<sup>74</sup> Table 2.1 on the following page shows the number of private schools by professional association and the student enrollment in these schools in 1987.

Without discounting the significant accomplishments of nonsectarian private schools and many sectarian schools, this section will focus particularly on Catholic schools and the rise of evangelical Christian schools. The writer recognizes that a strong tradition of preparatory schools and military academies exists in states such as Delaware, Virginia, Maryland, New Hampshire, and New York.<sup>75</sup> In fact, schools such as these are usually members of the National Association of Independent Schools, an association of private schools which serve nearly half a million students.<sup>76</sup>

---

<sup>73</sup>U.S. Department of Education, Private Schools in the United States: A Statistical Profile with Comparisons to Public Schools, p. 12.

<sup>74</sup>Vance Grant, Office of Educational Research and Improvement, U.S. Department of Education, 1992. Information provided to author in telephone conversation with Mr. Grant on April 23, 1992.

<sup>75</sup>Doerr and Menendez, p. 52.

<sup>76</sup>U.S. Department of Education, Office of Educational Research and Improvement, National Center for Educational Statistics, Schools and Staffing Survey, 1987-88 (Washington, D.C.: Government Printing Office, 1988), p. 11.

TABLE 2.1

**ESTIMATED PRIVATE SCHOOL NUMBERS AND ENROLLMENT  
BY ASSOCIATION MEMBERSHIP**

Association	No. of Schools	Standard Error	Enrollment	Standard Error
Accelerated Christian Education	1347	255.3	78,007	13,370
American Association of Christian Schools	1360	175.7	151,214	15,804
American Montessori	683	119.2	88,168	14,542
Assoc. of Christian Schools International	1930	197.2	348,912	36,773
Assoc. of Military Colleges and Schools	--	--	--	--
Assoc. of Evangelical Lutheran Churches	--	--	--	--
Christian Schools	311	49.4	93,429	16,897
Evangelical Lutheran Church in America	--	--	--	--
Friends Council	64	5.7	15,201	1,132
General Conference of Seventh-Day Adventists	1046	80.7	62,694	7,268
Jesuit Secondary Education Association	--	--	--	--
Lutheran Church, Mo.	1218	57.7	189,856	11,904
National Assoc. of Episcopal Schools	268	21.2	68,696	8,475
National Assoc. of Independent Schools	1284	89.9	434,734	34,335
National Assoc. of Private Schools for Exceptional Children	308	68.0	30,442	10,472
National Catholic Education Association	8672	175.8	2,624,550	62,478

(Continued on next page)

TABLE 2.1 (Continued)

Association	No. of Schools	Standard Error	Enrollment	Standard Error
National Coalition of Alternative Community Schools	--	--	--	--
National Federation of Church Schools	--	--	--	--
National Independent Private School Assoc.	324	72.4	92,585	19,017
National Society for Hebrew Day Schools	287	36.9	74,691	11,910
Solomon Schechter Day Schools	--	--	--	--
Other	4712	344.7	1,009,350	81,552

--Too few sample cases (fewer than 30) for a reliable estimate.  
 Note: Detail does not sum to total because of multiple responses.

Source: U.S. Department of Education, National Center for Educational Statistics, Schools and Staffing Survey, 1987-88, p. 11.

It is further acknowledged that Amish, Jewish, Seventh-Day Adventist, and many other schools of religious nature exist, but these will not be discussed. Catholic schools represent the largest group of students being educated in private schools. Evangelical Christian schools represent the fastest growing segment of the private school sector, both in numbers of schools and numbers of students.

#### Catholic Schools

Catholic schools continued to numerically dominate the private school sector during the first half of the twentieth century. Bryson and Houston point out that five percent of

American elementary and secondary students in 1900 were enrolled in Catholic schools.<sup>77</sup> By 1940 that number had increased to seven percent.<sup>78</sup> During the 1953-54 school year, 4,339,163 students were enrolled in private schools. 3,859,002, approximately eighty-nine percent, of these were in Catholic schools.<sup>79</sup> Growth continued for the next decade, with enrollment peaking at 5.9 million in 1963, but then a dramatic enrollment loss began. Patterson indicates that enrollment declined fourteen percent by 1969.<sup>80</sup> This pattern continued during the 1970s and 1980s. In 1969-70 Catholic school enrollment stood at 4,688,059. By 1989-90 it had decreased to 2,711,782, a loss of nearly two million students in twenty years.<sup>81</sup>

The purpose of Catholic schools was stated succinctly by the Reverend Neil G. McCluskey, dean of teacher education at Lehman College of the City University of New York,

... the function of the Catholic school is not merely to teach the formulas of the Catholic religion ... but

---

<sup>77</sup>Bryson and Houston, p. 25.

<sup>78</sup>Ibid.

<sup>79</sup>Beach and Will, p. 1.

<sup>80</sup>Benton Patterson, "What's Behind the Shutdowns - and What's Ahead," School Management 13 (April 1969): p. 49.

<sup>81</sup>Doerr and Menendez, p. 50.

'to impart in a thousand ways, which defy formularization, the Catholic attitude toward life as a whole.'<sup>82</sup>

John L. McKenzie, a professor of theology at Notre Dame University, has also clearly presented the schools' purpose:

The Roman Catholic schools have always placed religious education as the primary purpose of the schools .... Children also learn the way of worship; they are taught respect and reverence for prelates, clergy, and religion. They are daily reminded of their identity as Catholics. They grow up in an atmosphere of Roman Catholic traditions and attitudes ....<sup>83</sup>

The question of not only the direction but the survival of Catholic schools is legitimate. The steady decline in enrollment during the last twenty-five years do not bode well for a continued healthy system of Catholic education. The implementation of "educational choice" may be the only savior for this American institution.

### Rise of Christian Schools

In the last three decades the largest growth in the private school sector has occurred among evangelical Protestants (also referred to as fundamentalist Christians or the New Right). James C. Carper characterized this movement as follows:

---

<sup>82</sup>Neil J. McCluskey, Catholic Viewpoint on Education (New York: Image Books, 1962), p. 78.

<sup>83</sup>John M. McKenzie, The Roman Catholic Church (New York: Doubleday, 1971), pp. 294-95.



Since the mid-1960s, evangelical Protestants and their churches have been establishing Christian day schools at a phenomenal rate. Several proponents of these institutions have claimed, perhaps with some exaggeration, that Christian schools are being established at the rate of nearly two per day. Not only do these schools currently constitute the most rapidly expanding segment of formal education in the United States, but they also represent the first widespread secession from the public school pattern since the establishment of Catholic schools in the nineteenth century.<sup>84</sup>

By the end of the 1970s over 900,000 students were enrolled in these schools, about one-fifth of the total private school enrollment in the United States and this number continued to increase during the 1980s, though exact figures are difficult to obtain.<sup>85</sup>

The American Association of Christian Schools (AACCS) and the Association of Christian Schools International (ASCI) are the two umbrella organizations to which the majority of Christian schools belong. ASCI reported in 1992 a worldwide membership of 2,863 schools and 545,320 students.<sup>86</sup> The purpose of these organizations is reflected in the writings of Paul Kienel, executive director of ACSI.

---

<sup>84</sup>James C. Carper and Thomas C. Hunt, Religious Schools in America (Birmingham, Ala.: Religious Education Press, 1984), quoted in Doerr and Menendez, p. 31.

<sup>85</sup>Jeremy A. Rabkin, "Taxing Discrimination: Federal Regulation of Private Education by the Internal Revenue Service," in Public Values, Private Schools, ed. Neal E. Devins (London: The Falmer Press, 1989), p. 144.

<sup>86</sup>Paul Kienel, Executive Director of ACSI, to Administrators, Pastors, and Board Members of member schools. Letter regarding annual membership fees.

Kienel continually focuses on the centrality of Jesus Christ and the Bible in all aspects of the Christian school, including its curriculum, teachers, administrators, students, textbooks, and activities.<sup>87</sup>

### Summary

Private school enrollments have increased significantly during the twentieth century. The greatest increases in the last twenty years have occurred as a result of the Christian school movement which brought a proliferation of evangelical Christian schools. It has been from this sector that most recent challenges to state regulation of private schools have come, including significant cases on the issue of teacher certification.

By far, Catholic schools have been the most numerous and have educated the largest number of students among private schools in this century. These schools have traditionally sought state certification for their teachers. Substantial decreases in numbers of Catholic schools and in the enrollments of remaining schools raise serious questions about their future.

---

<sup>87</sup>Paul Kienel, "Christian School Comment," p. 1. The "Christian School Comment" is the monthly publication of the Association of Christian Schools International. The purpose of Christian schools stated above is a common theme stated in that publication frequently.

### Legal Aspects of Private Schools

The area of public controls for private schools has been litigated frequently in the twentieth century. Most often these cases have involved sectarian schools and have been based broadly on the question of separation of church and state. The magnitude of recent church-state cases is clearly seen in Bryson and Houston's statement, "From 1969 to 1986, the U.S. Supreme Court handed down more church-state decisions than in the entire 179 years prior to 1969."<sup>88</sup> A significant number of these cases either directly or indirectly involved private schools.

In the following pages the legal foundation for the existence of private schools is presented, and then a less detailed discussion of broad topic of the regulation of private schools. In Chapters three and four additional discussion will be provided concerning such controls because of their relationship to the subject of teacher certification in private schools.

#### Legal Foundation for Private Schools

One of the earliest Supreme Court decisions in the area of private schools was Dartmouth College v. Woodward.<sup>89</sup> In this case the Court ruled that the college's charter constituted a contract between a corporation and the state, and

---

<sup>88</sup>Bryson and Houston, p. 1.

<sup>89</sup>Dartmouth College v. Woodward, 4 Wheat. 518 (1819).

therefor the state of New Hampshire could not make the school a public institution. Of importance to the present discussion was the question raised concerning whether a state should have absolute control of education. Chief Justice John Marshall wrote concerning this issue:

That education is an object of national concern, and a proper subject of legislation, all admit. That there may be an institution, founded by the government, and placed entirely under its control, the officers of which would be public officers, amenable exclusively to government, none will deny. But is Dartmouth College such an institution? Is education altogether in the hands of government? Does every teacher of youth become a public officer, and do donations for the purpose of education become public property, so far that the will of the legislature, not the will of the donor, become the law of the donation? These questions are of serious moment to society, and deserve to be well considered.<sup>90</sup> (Italics mine.)

A century after Justice Marshall posed the above highlighted question, the courts spoke clearly with a negative answer. Though few question the states' right to regulate education, that right is tempered by individual and parental rights. In State ex rel. Kelley v. Ferguson the Supreme Court of Nebraska said in 1914,

The public school is one of the main bulwarks of our nation, and we would not knowingly do anything to undermine it; but we should be careful to avoid permitting our love for this noble institution to cause us to regard it as 'all in all' and destroy both the God-given and constitutional right of a parent to have some

---

<sup>90</sup>Ibid., pp. 302-303.

voice in the bringing up and education of his children.<sup>91</sup>

Less than ten years later the United States Supreme Court considered a case in which the teaching of foreign language to students who had not completed the eighth grade was forbidden by state statute. A parochial school teacher convicted of teaching reading in German was convicted under the law and subsequently appealed. The Court reversed the conviction declaring that the statute infringed on the liberty guaranteed in the Fourteenth Amendment. In part of the decision Justice McReynolds wrote,

Evidently the legislature has attempted materially to interfere with the calling of modern language teachers, with opportunities of pupils to acquire knowledge, and with the power of parents to control the education of their own.<sup>92</sup>

The Court recognized the right of parents to direct the education of their children. This principle, which became the basis for the existence of private schools, was reaffirmed by the court just two years later in Pierce v. Society of Sisters.<sup>93</sup>

The focal point in the legal history of private education in the twentieth century is without doubt the Pierce

---

<sup>91</sup>State ex rel. Kelley v. Ferguson, 95 Neb. 63, 144 N.W. 1039 (1914).

<sup>92</sup>Meyer v. Nebraska, 262 U.S. 390, 43 S.Ct. 625 (1923).

<sup>93</sup>Pierce v. Society of Sisters, 268 U.S. 510 (1925).

case, decided by the Supreme Court in 1925.<sup>94</sup> That case resolved the fundamental question concerning the right of existence for private schools. The matter brought before the Justices was a challenge to the compulsory attendance law of Oregon. Oregon's statute would have required all students to attend public schools in their districts as the only means of complying with compulsory attendance regulations. The result of enforcement of the law would have been to close all private schools and establish a state monopoly in education.

In striking down the Oregon law, the Court's ruling clearly established the right of private schools to exist, and the right of parents to send their children to private schools to be educated. Two cardinal principles were enunciated that have repeatedly been invoked by parties in controversies involving regulation of private schools since that day. These principles are, 1) the State has the right to reasonably regulate all schools,<sup>95</sup> and 2) parents have a Constitutional right to send their children to schools of their choice.<sup>96</sup>

---

<sup>94</sup>Ibid.

<sup>95</sup>Ibid., p. 534.

<sup>96</sup>Ibid., p. 535. See also J. Stephen O'Brien and Richard S. Vacca, The Supreme Court and the Religion-Education Controversy: A Tightrope to Entanglement (Durham, N.C.: Moore Publishing Company, 1974), pp. 10-12.

Since Pierce, no other state has attempted to do away with private schools through legislative fiat.<sup>97</sup> In Griswold v. Connecticut in 1965 the Court reaffirmed Pierce as follows:

The right to educate a child in a school of parents' choice - whether public or private or parochial - is also not mentioned [in the Constitution nor in the Bill of Rights] .... Yet the First Amendment has been construed to include certain of those rights.

By Pierce v. Society of Sister, supra, the right to educate one's children as one chooses is made applicable to the States by force of the First and Fourteenth Amendments. By Meyer v. Nebraska, supra, the same dignity is given the right to study the German language in a private school. In other words, the State may not, consistently with the spirit of the First Amendment, contract the spectrum of available knowledge.<sup>98</sup>

#### Legal Basis for Regulation of Private Schools

State control of education generally is based on the Tenth Amendment to the United States Constitution, "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."<sup>99</sup> The Constitution mentions powers delegated to the United States and powers denied to the states. Since education is mentioned

---

<sup>97</sup>Patricia Lines, "Private Education Alternatives and State Regulation," Journal of Law and Education 12 (1982): 198.

<sup>98</sup>Griswold v. Connecticut, 85 S.Ct. 1678 (1965).

<sup>99</sup>United States Constitution. Amendment X (1791).

in neither category, it became a power reserved to the states.

The importance of education as a function of state government and as a prerequisite for success in life was stated in the landmark Brown v. Board of Education decision. The Court said,

Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education.<sup>100</sup>

The courts have consistently recognized that education is a state function and that as such the state may impose reasonable regulations affecting all children of the state, including those in private schools.

Just as Pierce<sup>101</sup> is looked to as the foundation for the right of private schools to exist, it is also the centerpiece of any discussion on regulation of such schools. In practically the same breath that the Court validated private schools, it reaffirmed the plenary power of the

---

<sup>100</sup>Brown v. Board of Education, 347 U.S. 483 (1954).

<sup>101</sup>Pierce v. Society of Sisters.



state, "No question is raised concerning the power of the State reasonably to regulate all schools, to inspect, supervise and examine them, their teachers and pupils ...."<sup>102</sup>

Two years earlier the Court had said in Meyer v. Nebraska, "The power of the State to compel attendance at some school and to make reasonable regulations for all schools...is not questioned."<sup>103</sup>

Two decades later the Court was again faced with the issue of parental control versus state powers in the case Prince v. Massachusetts.<sup>104</sup> Parents of a nine-year-old child were found guilty of contributing to the delinquency of a minor because they permitted the child to sell religious publications in violation of Massachusetts' child labor laws. In upholding the parents' conviction, the Court said:

[T]he family is not beyond regulation in the public interest ... acting to guard the general interest in youth's well being, the state as parens patriae may restrict the parent's control by requiring school attendance, regulating or prohibiting the child's labor and in many other ways.<sup>105</sup>

---

<sup>102</sup>Pierce v. Society of Sisters, p. 534.

<sup>103</sup>Meyer v, Nebraska, p. .

<sup>104</sup>Prince v. Massachusetts, 321 U.S. 158, 64 S.Ct. 38 (1944).

<sup>105</sup>Prince v Massachusetts, p. 166.

Though this case was not a "school" case, the Court's ruling had broad implications for the overall power of the state to limit parental rights. It is therefore important in the discussion of regulation of private schools since a significant number of the challenges to state regulation of such schools have been based on the parents' arguments that parental rights must supersede state powers.

In 1968 in Board of Education v. Allen,<sup>106</sup> a case in which the Supreme Court ruled that textbooks loaned to private school students at public expense did not violate the Establishment Clause of the First Amendment, the Court referred back to Pierce to reaffirm State power in education:

Since Pierce, a substantial body of case law has confirmed the power of the States to insist that attendance at private schools, if it is to satisfy state compulsory attendance laws, be at institutions which provide minimum hours of instruction, employ teachers of specific training, and cover prescribed subjects of instruction.<sup>107</sup>

### Summary

The above cases are representative of legal decisions which have confirmed the State's power to reasonably regulate private schools, as well as established clearly the right of private schools to exist and the right of parents

---

<sup>106</sup>Board of Education v. Allen, 392 U.S. 236 (1968).

<sup>107</sup>Ibid., p. 245-246.

to send their children to such schools. However, what constitutes reasonable regulation and when are parental rights abridged continue to be questions for litigation.

As stated earlier, a thorough discussion of the issue of certification requirements for private school teachers must be based on an appropriate historic foundation. In previous pages a general overview of the development of private schools has been presented. Two other areas which must be addressed to complete that foundation are historic overviews of teacher certification and of compulsory attendance. One could scarcely discuss current legal issues in private school teacher certification requirements without knowing generally the record of certification development. Likewise, the entire issue might be moot if parents were not required to send their children to school, and, further, if the option of complying with compulsory attendance laws were not available through enrollment in private schools.

The remaining portion of the review of the literature will focus on the development of teacher certification and the history of compulsory attendance. Both subjects will be reviewed sufficiently in order to provide the context for a much more thorough examination of court case and state statutes affecting certification of teachers in private schools.

## History of Teacher Certification

### European Roots

#### Middle Ages

The roots of requiring specific qualifications and licensing for teachers can be traced back to Western Europe during medieval times when the Catholic Church was very powerful. Informal education was provided within the family, where the child learned about morality, religion and his environment, and where he received his vocational training.<sup>108</sup> Formal education was provided almost exclusively for those who would become clergymen in the Catholic Church; by 1200, though, the Church began also making available education to those other than future clerics.<sup>109</sup> Monastic schools and cathedral schools became places of learning for future leaders of both the church and the state.<sup>110</sup> "Song schools" were developed to train boys to sing in choirs, but reading and math were also offered to the students.<sup>111</sup> Early licensure of teachers is seen in the fact that in order to teach song and grammar, medieval priests were

---

<sup>108</sup>Cohen, p. 7.

<sup>109</sup>power, p. 292.

<sup>110</sup>Ibid., pp. 287-294.

<sup>111</sup>Button and Provinzo, pp. 7-8.

required to be licensed by the Catholic Church based on their competency and on their oath of fealty.<sup>112</sup>

As commerce expanded, cities grew and guilds increased. The need for some basic literacy among merchants and other laymen became apparent.<sup>113</sup> Municipal or town schools, as well as private schools sprang up to meet this need. Yet the control of the Church remained for "no school could operate and no private teacher ... instruct without the Church's permission."<sup>114</sup>

The early Latin grammar schools which were the secondary schools of the day, were also controlled by the Church. In general, across this spectrum of types of schools, the Church licensed the schoolmasters and stringently controlled the subject matter and instructional practices.<sup>115</sup>

### Renaissance/Reformation

As the middle ages drew to a close, at least three factors contributed to the erosion of the Catholic Church's control of education. First, strong monarchs came to power who resisted Church control in many areas, including education. Second, the Renaissance was in full bloom with its study of classical writers, emphasis on humanness, and

---

<sup>112</sup>Ibid.

<sup>113</sup>Power, p. 297.

<sup>114</sup>Ibid.

<sup>115</sup>Button, p. 7.

heightened awareness of the spirit of individuality.<sup>116</sup> Humanists of the fourteenth century debated the question of whether the church or the state should control education, and the conclusions generally favored laymen as teachers and schools free of Church domination.<sup>117</sup> The third factor was the Reformation, led by Martin Luther. Beginning in 1517, Luther defied ecclesiastical authority, attacked Church abuses, and subsequently proclaimed that faith alone was needed for salvation. The Germans adopted Luther's point of view and the revolt spread throughout much of Western Europe, as Zwingli, Calvin and Knox's teachings also took root.<sup>118</sup> The concepts of salvation through faith alone and individual responsibility to God were later to impact education in Colonial America as the Puritans and others settled there.

#### Sixteenth Century England

Although England also revolted against the Catholic Church, it was more for political than religious reasons.<sup>119</sup> Consequently, the Anglican Church, which replaced the Catholic Church after the English Act of Supremacy in

---

<sup>116</sup>power, p. 336.

<sup>117</sup>Ibid., pp. 339-340.

<sup>118</sup>Cubberly, Public Education in the United States, pp. 6-7.

<sup>119</sup>Elwood P. Cubberly, The History of Education (Cambridge: The Riverside Press, 1920), p. 319.

1534 cut off England's tie to Rome,<sup>120</sup> assumed the practice of licensing teachers.<sup>121</sup> In 1581, a statute was established by the English crown requiring teachers to be licensed by a bishop in order to teach. Part of this process required teachers to be examined for their religious beliefs.<sup>122</sup> Bishops had a responsibility to discover those teachers who were unsound in the faith. Nonconformists had their teaching positions taken away.<sup>123</sup> After James I became king in 1603, parliament earnestly sought the dismissal of unlicensed and incompetent teachers. The result was that in early 1600s England's elementary schools and their teachers were among the best in all of Europe. Many of these teachers had attended, though perhaps not completed, English universities.<sup>124</sup>

The following sequence of dates describes English laws passed regarding teachers during this time:

- 1580 - fine of ten pounds for employing a schoolmaster of unsound faith. The teacher would be imprisoned.
- 1603 - a license from the bishop required to teach.

---

<sup>120</sup>Cohen, p. 12-14.

<sup>121</sup>C. J. Heatwale, A History of Education in Virginia (New York: The Macmillan Company, 1916), p. 10.

<sup>122</sup>Ibid.

<sup>123</sup>Cubberly, p. 324.

<sup>124</sup>Cohen, pp. 21-22.

- 1662 - all schoolmasters and private tutors required to declare their conformity to church liturgy, or else be fined and imprisoned.
- 1665 - dissenters forbidden to teach with a penalty of a fine for disobedience.
- 1665 - bishops to make sure all teachers attended public prayers of the Church.<sup>125</sup>

In effect, then, the Anglican Church became England's educational agent, and remained as such until the late nineteenth century.<sup>126</sup>

### Summary

From the early middle ages through the sixteenth century the face of education changed. The time period began with formal education being available to future clerics. It ended with education being available to a wide spectrum of Europe's citizens.<sup>127</sup> Good summarizes as follows:

The Renaissance and the Reformation helped to develop two types of schools: the Latin and Greek secondary schools for the classes; the vernacular, elementary school for the masses. The elementary school taught the catechism, prayers, and the psalms to prepare for confirmation; and arithmetic, handwriting, and business skills. Both schools were later introduced into England and her colonies.<sup>128</sup>

---

<sup>125</sup>Ibid.

<sup>126</sup>Mulhern, p. 281.

<sup>127</sup>Ibid., p. 277.

<sup>128</sup>Harry G. Good and James D. Teller, A History of American Education (New York: The Macmillan Company, 1973), pp. 5-6.



Throughout most of the middle ages the Catholic Church controlled education and licensed teachers. After the Reformation, that control ceased in Protestant countries. In England, which would soon send colonists to America, the Anglican Church assumed much the same control of education, including licensing teachers, as the Catholic Church had throughout Europe in earlier centuries.

#### Colonial America

Although recognizing contributions from other European countries, Butts and Cremin conclude that "the foundations of American culture and education took their character in the colonial period largely from North European sources and particularly from the British Isles."<sup>129</sup> Thus, it is not surprising that many of the early licensing qualifications or requirements for teachers in America were similar to those in England. For example, teachers in the old "field schools" of Virginia had to be licensed to teach by the Bishop of London and the royal governor.<sup>130</sup> Until 1686 the teachers in these schools had to travel to Jamestown to receive their licenses. After that time authority was given to the county court to issue teacher licenses.<sup>131</sup>

---

<sup>129</sup>Butts and Cremin, p. 4.

<sup>130</sup>Ames, p. 14.

<sup>131</sup>Ames, p. 14.

### New England Colonies

Qualifications of teachers in the early New England schools varied. The Old Deluder Satan Act had specified that in large towns a grammar school be set up and that "the master thereof being able to instruct youth as far as they may be fitted for the university . . . ." (Emphasis mine.)<sup>132</sup> Thus, as early as 1647 teachers in the grammar schools had to have the competence to teach what would be required for entrance into Harvard.

The seventeenth century Latin grammar schools boasted the best teachers, usually well-educated and faithful to the church. Ezekiel Cheever, a graduate of Cambridge, taught in New England for seventy-one years and was head of the Boston Latin School for thirty-eight years. Elizah Corlett was head of the Cambridge Latin School for forty-three years.<sup>133</sup> These two are examples of the most prominent teachers.

The town schools usually settled for lesser qualified teachers. Initially the masters both taught and served as assistants to local ministers. More and more frequently, however, college students and itinerant teachers became common. As populations increased, towns multiplied and

---

<sup>132</sup>Noll and Kelley, p. 162.

<sup>133</sup>Cubberly, Public Education in the United States, pp. 51-52.

finding competent teachers to staff the ever increasing number of schools became problematic.<sup>134</sup>

Button and Provinzo indicate that there is little evidence that specific college requirements existed for early schoolmasters. They state:

The earliest masters of the smaller towns were a varied group. In Dedham, sixteen miles south of Boston, there were nine masters between 1644 and 1672, teaching English, writing, Latin grammar, and arithmetic to boys. One started to teach at twenty, another at sixty. Four had attended college. One ... had been trained as a weaver's apprentice. Two of the masters later became ministers; one stayed on as a respected farmer. The first masters of New Haven, Dorchester, and even Boston showed the same range of education, and, usually, the same brief service as masters.<sup>135</sup>

In 1701 Massachusetts passed a law requiring school masters to be approved "by the minister of the town and the two next adjacent towns or any two of them."<sup>136</sup> Shortly after 1700 two governor's royal commissions in New Hampshire provided that schoolmasters be licensed by the governor, and that schoolmasters from England also be licensed by the Bishop of London. Still, town officials hired whomever they wanted for public schoolmasters, and private teachers were often not licensed.<sup>137</sup> Many of these early teachers were

---

<sup>134</sup>Ibid., p. 52.

<sup>135</sup>Button and Provinzo, p. 20.

<sup>136</sup>Cohen, p. 96.

<sup>137</sup>Ibid., p. 97.

untrained or poorly trained. Providence, for example, hired as its first schoolmaster William Turpin, an innkeeper. The shortage of qualified teachers continued past the colonial period.<sup>138</sup>

In Dedham, Massachusetts, teachers between 1700 and 1750 were nearly all Harvard graduates awaiting calls to the ministry. During the decade of the 1750's only half of the towns' schoolmasters were college graduates and in the next decade the numbers declined to a third. During the 1750's records indicate that women also began teaching in Dedham.<sup>139</sup>

Licensing of teachers in New England appears to have been focused on two primary criteria: soundness of faith and knowledge of Latin. Though it might be assumed that the teachers had some educational qualification, ministers and selectmen examined applicants, and fines could be levied for keeping a school without a license.<sup>140</sup>

Teacher qualifications in the middle colonies were usually determined by the denomination which established the school. The teachers in the schools of New Netherland (later to become New York) were licensed by a committed

---

<sup>138</sup>Ibid., p. 96.

<sup>139</sup>Button and Provinzo, pp. 33-34.

<sup>140</sup>Cubberly, Public Education in the United States, p. 55.

composed of Dutch Reformed ministers in Holland.<sup>141</sup> When the English gained control of the area, royal governors became responsible for insuring that schoolmasters coming from England were licensed by the (Anglican) Bishop of London.<sup>142</sup> Schoolmasters working under the auspices of the Society for the Propagation of the Gospel in Foreign Parts were screened as follows:

1. That no person be admitted as Schoolmaster till he bring certificate of the following particulars: (1) his age, (2) his condition of life whether single or mary'd, (3) his temper, (4) his prudence, (5) his learning, (6) his sober and pious conversation, (7) his zeal for the Xtian [Christian] Religion and diligence of his calling, (8) his affection to the present government, and (9) his conformity to the doctrines and disciplines of the Ch. of England.

2. That no person shall be sent as a Schoolmaster by the Soc. till he has been tryed and approved by 3 members appointed by the Soc. or Committee, who shall testify by word or writing his ability to teach reading, writing, the Catechism of the Ch. of England and such exposition thereof as the Soc. shall order.  
(Adopted, Feb. 15, 1711.)<sup>143</sup>

This same society directed the governors of New York as follows:

And wee doe further direct that noe schoolmaster bee hereaforth permitted to come from England & to keep school within our province of New York, without the license of the said Archbishop of Canterbury; and that noe other person now there or that shall come from

---

<sup>141</sup>Boone, p. 11.

<sup>142</sup>Cohen, p. 164.

<sup>143</sup>Cubberly, Public Education in the United States, p. 24.

other parts, be admitted to keep school without your license first had.<sup>144</sup>

Quaker teachers were also required to be licensed by their church. Pulliam cites an example of an individual who taught in a Quaker school without a license and was subsequently rebuked by the Council of Philadelphia. A somewhat unique feature of preparing to become a Quaker teacher was a requirement that the teacher have apprenticeship training.<sup>145</sup>

Thus, in the middle colonies, as in New England, teachers were required to be licensed. An important difference was the licensing agency. In New England Puritan government and church were inseparable and licensing requirements could be construed as having governmental sanction. In the middle colonies no single church dominated government and licensing of teachers was controlled by the denominations in their own schools with only minimal state interference. This varied somewhat in New York after England gained control from the Dutch. There, royal governors were appointed by the crown and teachers were subsequently licensed by the Church of England.

---

<sup>144</sup>Ibid., p. 53.

<sup>145</sup>pulliam, p. 29.

### Southern Colonies

Generally, the colonists of the South had come to the New World for economic, not religious, reasons. They maintained close ties to England, including religious affiliation with the Anglican Church. Since the church had extensive control over education in England, it is not surprising that similar control was extended to England's Southern colonies. Teachers were required to be licensed by the Bishop of London and the royal governors.<sup>146</sup> However, in reality, teacher shortages resulted in inconsistent enforcement of licensing requirements. Cohen indicates that southern teachers came from a variety of backgrounds. Some were indentured servants, some young college graduates waiting for a ministerial call or a better career opportunity, and some simply self-proclaimed teachers who were uneducated and unqualified.<sup>147</sup> Maryland Governor John Hart pondered in 1714 that,

Good schoolmasters are very much wanting; what we have are very insufficient and of their being qualified by the Bishop of London or governor's license, it has been entirely neglected.<sup>148</sup>

Kinney refers to the action of the Virginia General Assembly in 1686 calling for the appointment in each county of some-

---

<sup>146</sup>Ames, p. 14.

<sup>147</sup>Cohen, p. 140.

<sup>148</sup>Ibid.

one to examine and license teachers as an early move toward certification.<sup>149</sup>

### Summary

There are conflicting estimates of colonial teachers abilities.<sup>150</sup> Records abound concerning the intellectual capacity and the accomplishments of some of New England's teachers.<sup>151</sup> On the other hand uneducated and unqualified teachers were not uncommon. Kinney indicates that teachers were chosen on the basis of capacity to govern a school, moral character, and academic attainment, commonly in that order of importance.<sup>152</sup> Religious qualifications were nearly universal in the colonies. These were set by the Puritans of New England, the various denominations in the middle colonies, and the Anglican Church in the south and in New York. Licenses were required from New England to the southern colonies. Though Kinney may be technically correct in concluding that no certification practices occurred during the colonial era,<sup>153</sup> there can be no doubt that these early licensing practices were the forerunners of more

---

<sup>149</sup>Kinney, p. 41.

<sup>150</sup>Ibid.

<sup>151</sup>Cubberly, Public Education in the United States, p. 51.

<sup>152</sup>Kinney, p. 40.

<sup>153</sup>Ibid., pp. 36-43.



formal certification practices to be developed during the nineteenth century.

#### Teacher Qualifications in the 1800s

The common school movement not only affected the availability of schooling for the masses, it affected the qualifications of teachers. As seen previously, the colonial period was characterized as having a range of teachers from those who could hardly read or write themselves to those who were university graduates. Licensing requirements sometimes existed but were enforced inconsistently at best. This situation continued into the early 1800's, and even later in some parts of the country. However, leaders of the common school movement like Horace Mann and Henry Barnard recognized that competent, prepared teachers were essential to the success of their common school proposals.<sup>154</sup> Perkinson states that Mann held two fundamental conditions for success of his educational program; qualified teachers who could provide moral education and compulsory attendance requirements.<sup>155</sup> Reverend Samuel Hall is believed to have provided the first formal teacher training in the United States when he established a private school for preparing teachers

---

<sup>154</sup>Gutek, p. 12.

<sup>155</sup>Henry J. Perkinson, Two Hundred Years of Educational Thought, (New York: David McKay Company, Inc., 1976), pp. 76-77.

in 1823 in Vermont.<sup>156</sup> The first normal school began in Massachusetts in 1839<sup>157</sup> and by 1870, normal schools became the established means for preparing elementary teachers.<sup>158</sup> By 1900 colleges and universities joined in this effort. However, even though over 300 normal schools were operating by the turn of the century, Goss contends that the majority of teachers were entering the profession upon graduation from high school, academy or college, or by passing a test given in the district in which they were to be employed.<sup>159</sup>

#### Rise of Certification in the 1800s

Kinney traces the beginning of certification of teachers as we know it today to the second quarter of the nineteenth century when counties with states began examining and licensing teachers.<sup>160</sup> Gutek describes the era as a time when "... a confusing array of local government units, such as districts, townships, and counties, licensed teachers ...."<sup>161</sup> Problems included lack of mobility for teachers since their certificates might not be honored elsewhere and

---

<sup>156</sup>Richard E. Goss, ed., Heritage of American Education (Boston: Allyn and Bacon, Inc., 1962), p. 414.

<sup>157</sup>Cubberly, Public Education in the United States, pp. 323-324.

<sup>158</sup>Gutek, pp. 12-13.

<sup>159</sup>Goss, p. 414.

<sup>160</sup>Kinney, p. 44.

<sup>161</sup>Gutek, p. 19.

a lack of standards for entry into the profession.<sup>162</sup> The key component to being licensed was the ability of the teacher applicant to pass an examination. This examination was initially administered by a committee of examiners. By 1860 county superintendents became common, and they then assumed the examining and licensing duties. Examining boards consisting of experienced teachers and administrators helped the superintendent prepare and administer the tests.<sup>163</sup> The process of using an examination to certify teachers was not always satisfactory in terms of resulting in qualified teachers, but it did help weed out those thoroughly unqualified or unfit. Conant writes that before 1850 state departments of education had started certifying teachers who graduated from normal schools. By 1850 teachers were being certified either through examination or by completing approved courses of study.<sup>164</sup>

The demand for teachers, though, outstripped the number of professionally trained students graduating from normal schools or colleges and thus many lesser qualified teachers continued to be employed. In these cases it became a common practice to begin using different grades (commonly three) of certificates, depending on scores on examinations. First

---

<sup>162</sup>Ibid.

<sup>163</sup>Kinney, pp. 45-49.

<sup>164</sup>James B. Conant, The Education of American Teachers (New York: McGraw Hill Book Company, 1963), p. 10.

grade certificates were usually valid for three years, second for two years, and third for one year.<sup>165</sup>

#### Certification in the Twentieth Century

As the twentieth century began, the number of students and schools grew rapidly. Universities and colleges with traditional academic orientations became the sources of supply for needed teachers. Two changes occurred which affected these schools. First, laws were passed which required prospective teachers to have certain "teaching" courses in order to be certified, and secondly, state certification officers began requiring "teaching majors" for certification. Professors of education were added to the faculties of these institutions of higher education to accomplish the above.<sup>166</sup>

In 1900 over 3000 teacher certification agencies existed in the United States.<sup>167</sup> County control of certification, which had begun in Ohio in 1825<sup>168</sup>, gave way to joint state and county control in the late 1800s<sup>169</sup> and ultimate-

---

<sup>165</sup>Kinney, pp. 49-52.

<sup>166</sup>Conant, p. 11.

<sup>167</sup>Edgar Fuller and Jim B. Pearson, eds., Education in the United States: Nationwide Development Since 1900 (Washington, D. C.: National Education Association of the United States, 1969), p. 389.

<sup>168</sup>Kinney, pp. 45-46.

<sup>169</sup>Ibid., p. 69.

ly was transferred to the states during the first half of the twentieth century.<sup>170</sup> The control of certification became progressively more centralized. Table 2.2 shows the change which occurred.

Table 2.2

NUMBER OF STATES WITH VARIOUS TYPES OF  
CERTIFICATION CONTROL, 1898-1937

	Number of States					
	1898	1911	1921	1926	1933	1937
1. <u>Centralized</u> : State issues all certificates	3	15	26	36	39	41
2. <u>State Controlled</u> : State prescribes rules, issues questions, examines papers. County issues some certificates	1	2	7	4	3	3
3. <u>Semi-State Control</u> : State makes regulations and issues questions. County corrects papers and issues certificates	17	18	10	5	3	1
4. <u>Joint Control</u> : Both state and county issue certification. County retains full control over examinations for one or more types of certificate	18	7	3	2	2	2
5. <u>State-Local Systems</u>	0	0	2	1	1	1

SOURCE: Lucien B. Kinney, Certification in Education (Englewood Cliffs, N.J.: Prentice-Hall, Inc., 1964), p. 70.

Today certification of teachers is uniformly a state function. Certificates are typically issued by a division

---

<sup>170</sup>Ibid., p. 81.

of certification within the state department of education or by a department of standards and licensing. Standards for obtaining a teaching certificate are set either by state statute or by state boards of education which are given that responsibility by state statute. Details of these regulations will be presented in Chapter three.

### Compulsory Attendance

#### Foundation of Compulsory Education

When English colonists arrived in the New World, the precedent for compulsory education had already been established in the English "Poor Laws" of 1563 and 1601. These laws provided for compulsory apprenticeship of poor and unemployed children in order for them to learn a trade.<sup>171</sup>

In 1642 Massachusetts became the first colony to enact a compulsory education law. In essence the law stated that parents and incompetent masters were failing to educate children; that fines could be levied for such neglect; that a chosen group of men could examine children to test their ability to read and to understand religious principles and laws; and that, after appropriate warning, children could be taken from their parents and placed with someone who could accomplish these requirements.<sup>172</sup> This law did not estab-

---

<sup>171</sup>Lawrence Kotin and William F. Aikman, Legal Foundations of Compulsory School Attendance (Port Washington, New York: Kennikat Press Corporation, 1980), p. 9.

<sup>172</sup>Commager, pp. 28-29.

lish schools nor require compulsory attendance, but it did require parents to educate their children. All children were included, not just the poor, and both academic and vocational education were mentioned.<sup>173</sup>

Massachusetts followed up the law of 1642 with the "Old Deluder Satan Act," passed in 1647. The framers of this law implemented a system of public education based on the need of the people to be educated in order to understand the Scriptures and thus avoid being deluded by Satan.<sup>174</sup> The act required that as soon as a town had fifty families, a teacher was to be appointed to teach reading and writing. Further, a town of one hundred families was to required to set up a grammar school to prepare students for entrance into the university.<sup>175</sup> Connecticut followed suit with a similar law in 1650 and New Hampshire passed a comparable law in 1680.<sup>176</sup> Of the colonies in this region, only Rhode Island did not pass a compulsory education law during this period.<sup>177</sup>

According to Cubberly, the roots of public education in the United States can be traced to seventeenth century New

---

<sup>173</sup>Kotin and Aikman, p. 11.

<sup>174</sup>Commager, pp. 28-29.

<sup>175</sup>Noll and Kelley, p. 162.

<sup>176</sup>Smith, p. 36.

<sup>177</sup>Power, p. 543.

England. He asserts that the Massachusetts laws of 1642 and 1647 laid the foundation for the compulsory education of all children.<sup>178</sup>

Unfortunately, the auspicious beginnings of compulsory education lost momentum in the late 1600s as compulsory education laws were repealed. Indian wars, the expansion of the frontier, economic depression, and enforcement problems were cited by Kotin and Aikman as possible reasons for the loss of interest in education until after the Revolutionary War.<sup>179</sup> Power summarizes the end of the period as follows:

Thus as the seventeenth century came to a close, the seeds sown for popular education had been uprooted, and the traditions shaped by the Massachusetts Act of 1642 were sidetracked and stalled.<sup>180</sup>

Following the Revolutionary War Thomas Jefferson was one of many who recognized that for the new nation to succeed as a democracy, its citizens must be educated. Jefferson's goals were not immediately realized. It was several years later, in the early 1800s, that the common school movement, the vehicle by which education for literacy and citizenship would be accomplished, began. Common schools

---

<sup>178</sup>Cubberly, Public Education in the United States, p. 14.

<sup>179</sup>Kotin and Aikman, pp. 20-24.

<sup>180</sup>Power, p. 544.



were free, public elementary schools, open to all children.<sup>181</sup>

Despite the availability of educational opportunities, children were still not required to attend school. This was perplexing to Horace Mann, who saw compulsory attendance as a fundamental condition for the success of the common schools.<sup>182</sup>

#### Development of Compulsory Attendance

The first compulsory attendance law in the United States, the Massachusetts School Attendance Act, was passed in 1852. This statute required all persons having children between the ages of eight and fourteen to send their children to school for at least twelve weeks a year.<sup>183</sup> By 1900 over thirty states and the District of Columbia had established compulsory attendance laws,<sup>184</sup> and by 1919, when Mississippi became the last state to do so, all fifty states had enacted compulsory attendance statutes.<sup>185</sup>

Adoption of early compulsory attendance laws were not without controversy or problems. Complaints against the

---

<sup>181</sup>Power, pp. 264-67.

<sup>182</sup>Perkinson, pp. 76-77.

<sup>183</sup>Kirp and Yudof, p. 12.

<sup>184</sup>Kotin and Aikman, p. 12.

<sup>185</sup>Lawrence A. Cremin, The Transformation of the School: Progressivism in American Education, 1876-1957 (New York: Vintage Books, 1964), p. 127.

laws included charges that they were un-American, that they took away the rights of parents, that states were assuming undelegated and unreasonable powers, and that the laws violated the Fourteenth Amendment.<sup>186</sup> Burgess observed:

At the root of the controversy ... was the conflict between the desirability of educating the populace and deferring to individual rights. This troubling dilemma posed an intricate problem. In a democratic society, are individuals completely free to educate their children in whatever manner they choose, or not to educate them at all?<sup>187</sup>

Officials initially encountered many difficulties enforcing early compulsory attendance laws. Poorly worded laws, insufficient funds for enforcement, inadequate penalties for violations, understaffed departments of education, and resistant parents proved to be major obstacles.<sup>188</sup> Tyack called this stage in the history of compulsory attendance, lasting from the mid-1800s to 1890, the "symbolic age."<sup>189</sup>

As attitudes changed and enforcement efforts improved, a second stage began. This stage, called the "bureaucratic stage," began in 1890 and continues to the present. It has

---

<sup>186</sup>Kotin and Aikman, p. 27.

<sup>187</sup>Sue F. Burgess, "The Legal Aspects of Home Instruction," (Ed.D. Dissertation, University of North Carolina at Greensboro, 1985), p. 16.

<sup>188</sup>Fuller and Pearson, p. 29.

<sup>189</sup>D. Tyack, "Ways of Seeing: An Essay on the History of Compulsory Schooling," *Harvard Review* 46 (1976):355.

been characterized by an increase in the number of schools and in the bureaucracy controlling schools, an increase in the awareness of the value of having educated citizens, and a decrease in groups and individuals opposed to compulsory attendance.<sup>190</sup>

By the 1950s compulsory attendance laws had been firmly established both legislatively and judicially. However, that decade brought the famous desegregation case Brown v. Board of Education.<sup>191</sup> In the year following this decision several southern states repealed compulsory attendance laws in an effort to thwart integration efforts. These actions failed and by 1968 all of these states had reenacted their laws except Mississippi, which waited until the early 1980s to enact a new attendance law.<sup>192</sup>

#### Impact of Child Labor Laws

Concurrent with the development of compulsory attendance laws were major developments in child labor laws. Huffman states that "the study of the growth of compulsory education, compulsory school attendance and the regulation of child labor in the United States are inseparable."<sup>193</sup>

---

<sup>190</sup>Ibid.

<sup>191</sup>Brown v. Board of Education.

<sup>192</sup>Fuller and Pearson, p. 30.

<sup>193</sup>Gilbert T. Huffman, "Teacher Certification in Home Schools: Emerging Constitutional Issues," (Ed.D. dissertation, University of North Carolina at Greensboro, 1986), p. 18.

Before the mid-1800s it was expected that children would work as apprentices, in family businesses, or on family farms where help was always needed. The rise of industry resulted in the employment of large numbers of children. This trend was opposed by many child advocates who bemoaned the practice as harmful to the children's health. Of perhaps more significance than health concerns was the fact that thousands of young children were working in factories instead of attending school.<sup>194</sup>

Laws setting minimum age requirements, usually between nine and fourteen, and maximum workday lengths, usually ten hours, were enacted in the 1840s and 1850s, but enforcement was difficult. Labor leaders began calling for restrictions on the use of child labor, but some historians question whether their motives were altruistic or generated by the fact that the employment of children tended to keep wages low and prevented many adults from working.<sup>195</sup>

By 1914 most states had established fourteen as the minimum age for employment and had limited working hours. Still, state laws were varied and inconsistent, and enforcement was difficult. Calls for federal legislation were made and Congress responded with two child labor laws, the Keating-Owen Federal Child Labor Bill in 1916 and the Federal

---

<sup>194</sup>Kotin and Aikman, p. 36.

<sup>195</sup>Ibid, pp. 37-49.

Child Labor Tax Bill in 1919, but both bills were subsequently declared unconstitutional.<sup>196</sup>

The next step, a proposed constitutional amendment to regulate child labor, failed to garner needed support, but it became unnecessary when Congress passed the Fair Labor Standards Act in 1938. The law established an eight hour workday, a forty hour work week, and a minimum employment age of sixteen in covered jobs.<sup>197</sup> Though challenged in court, in U.S v. Darby Lumber Co. the Supreme Court upheld the law.<sup>198</sup>

The presence or absence of child labor laws historically had a direct impact on compulsory attendance. If the ages and hours of work for children were unregulated, compelling them to attend school instead of working was ineffectual. However, when labor laws provided restrictions in these areas, school attendance was much easier to regulate. Today, most states vest the authority to issue work permits in local school officials. Thus children of school age must secure permission from school authorities to work. In this

---

<sup>196</sup>Ibid., pp. 57-60.

<sup>197</sup>Ibid., pp. 60-65.

<sup>198</sup>U.S. v. Darby Lumber Co., 312 U.S. 100, 61 S.Ct. 451 (1941).

way child labor law and compulsory attendance regulations are brought directly together.<sup>199</sup>

#### Exceptions and Choice of Schools

Exceptions are granted to compulsory attendance laws when it is "for the best interest of the child or for good reasons."<sup>200</sup> Commonly accepted reasons for not attending include excessive distance to school or to the closest bus stop, suspension or expulsion from school, quarantine, marriage, and attendance at a private school or receiving other acceptable forms of instruction.

Since 1925 it has been clear that attendance at a public school may not be required as the sole means of fulfilling compulsory attendance laws. In the famous decision rendered in Pierce v. Society of Sisters,<sup>201</sup> discussed previously in this chapter, the Supreme Court firmly established the right of parents to send their children to schools of their own choice by overturning an Oregon statute which required that children be educated in a public school in the district in which they lived. The effect of the law would have been to eliminate private schools in the state.

---

<sup>199</sup>E. Edmund Reutter, Jr., Schools and the Law (Reston, Va.: National Association of Secondary School Principals, 1981), p. 46.

<sup>200</sup>Walter S. Monroe, ed. Encyclopedia of Educational Research: A Project of the American Educational Research Association (New York: Macmillan, 1980), p. 297.

<sup>201</sup>Pierce v. Society of Sisters.

As a result of the Court's decision the right of private schools to exist was confirmed.<sup>202</sup>

#### Legal Aspects of Compulsory Attendance

Both federal and state courts have rendered decisions in which the validity of compulsory attendance laws have been challenged. As noted previously, questions in both the areas of child labor and compulsory attendance law have been raised since their first passage concerning the right of government to abridge parental control of their children. Huffman concluded that courts of the mid-nineteenth century favored parental rights when compulsory attendance was challenged, but by the beginning of the twentieth century the laws were normally upheld the courts.<sup>203</sup> Fuller states that "most state courts [have] upheld compulsory attendance laws."<sup>204</sup>

State v. Bailey is often cited as an example of the state's power to compel school attendance. In that case the court ruled:

One of the most important natural duties of the parent is his obligation to educate his child, and this duty he owes not only to the child, but to the Commonwealth.

---

<sup>202</sup>J. Stephen O'Brien and Richard S. Vacca, The Supreme Court and the Religion-Education Controversy: A Tightrope to Entanglement (Durham, North Carolina: Moore Publishing Company, 1974), pp. 10-11.

<sup>203</sup>Huffman, pp. 21-22.

<sup>204</sup>Fuller, p. 30.

If he neglects to perform it or willingly refuses to do so, he may be coerced by law to execute such civil obligation.<sup>205</sup>

In making this decision the Indiana Supreme Court in 1901 upheld the state's compulsory attendance law and invalidated the parents' claim that their natural rights to have sole control over their child's education was being violated. The decision further clarified that state control over education is valid because education is necessary to the welfare of the state. More recently, in 1976 the North Carolina Appeals Court confirmed the right of the state to interfere with the parents' right to control their children when the welfare of the child was at stake.<sup>206</sup>

One would be mistaken, however, to assume that the courts have given carte blanche to the state in the matter of parental rights in education. Consider again Pierce:

The child is not the mere creature of the state; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations."<sup>207</sup>

In 1918 in State v. O'Neil, another Indiana case, the Indiana Supreme Court ruled:

---

<sup>205</sup>State v. Bailey, 61 N.E. 732 (Ind. 1901).

<sup>206</sup>In re McMillan, 226 S.E. 2d. 695 (N.C. App. 1976).

<sup>207</sup>Pierce v. Society of Sisters, p. 534.



Statutes such as the compulsory attendance statutes do not invade the right of the parent to govern and control his own children and they are to be given a reasonable interpretation to the end that the best interests of the child and the state alike may be served.<sup>208</sup>

And in 1958 a New York court made the following statement:

These parents have the constitutionally guaranteed right to elect no education for their children rather than to subject them to discriminatorily inferior education.<sup>209</sup>

The purpose of compulsory attendance is normally related to the need for an educated citizenry to insure the welfare of the state. This concept was expounded in People v. Turner:

The object of the compulsory attendance law is to see that children are not left in ignorance, that from some source they will receive instruction that will fit them for their place in society.<sup>210</sup>

Similarly, in Pennsylvania, the state's compulsory attendance laws had as their purpose to enable children to have "adequate preparation for the independent and intelligent exercise of their privileges and obligations as citizens in a free democracy."<sup>211</sup> The purpose of California's educa-

---

<sup>208</sup>State v. O'Neil, 118 N.E. 529 (Ind. 1918).

<sup>209</sup>In re Skipworth, 180 N.Y.S. 2d 873 (1958).

<sup>210</sup>People v. Turner, 98 N.Y.S. 2d 888 (1950).

<sup>211</sup>Commonwealth ex rel Bey, 166 Pa. Super. Ct. 136, 140, 70 A.2d 693 (1950).

tional system was stated as follows, "... to train school children in good citizenship, patriotism, and loyalty to the state and nation as a means of protecting the public welfare."<sup>212</sup>

The two most famous Supreme Court cases dealing with the issue of compulsory attendance are Pierce v. Society of Sisters,<sup>213</sup> referred to previously, and Wisconsin v. Yoder.<sup>214</sup> While Pierce overturned Oregon's compulsory attendance law because it would have allowed public school attendance as the only means of educating children, the court nevertheless clearly stated, "... no question is raised concerning the power of the state ... to require that children of proper age attend some school."<sup>215</sup>

In the 1970s the Supreme Court was asked to hear a case from Wisconsin in which Amish parents had been convicted of violating the state's compulsory attendance law by not sending their fourteen and fifteen year old children to high school. In Wisconsin v. Yoder the Court overturned the conviction of the parents, thus allowing a very narrow exclusion to Wisconsin's law on the basis that it violated the religious beliefs of the Amish parents, beliefs which

---

<sup>212</sup>In re Shinn, 195 Cal. App. 2d 686 (1963).

<sup>213</sup>Pierce v. Society of Sisters.

<sup>214</sup>Wisconsin v. Yoder, 406 U.S. 205 (1972).

<sup>215</sup>Pierce v. Society of Sisters, p. 532.

are protected by the First Amendment. The Court seemed to take great pains, though, to emphasize the long history of the Amish way of life, the informal vocational training received by the children, and the work ethic and self-reliance of the Amish people. These attributes were inseparable from their religious beliefs.<sup>216</sup>

The Court's exception of the Amish from compulsory attendance beyond the eighth grade on the basis of their religious beliefs has not resulted in mass challenges to compulsory attendance laws based on First Amendment claims. Kotin and Aikman were correct in their conclusion:

In summary, the holding in Yoder was so tailored to the facts in the trial record that Yoder might not be a sufficient basis for a Free Exercise claim for an exemption from compulsory attendance, absent substantial supporting evidence to the effect that the lifestyle being presented as an alternative to public school, was both intimately connected to the religious beliefs of the claimants and was a form of 'education.'<sup>217</sup>

Any claims for exception based on religion must be determined "... on a case by case basis with Yoder providing little in the way of general standards for decision.<sup>218</sup>

---

<sup>216</sup>Wisconsin v. Yoder.

<sup>217</sup>Kotin and Aikman, p. 252.

<sup>218</sup>Ibid., p. 254.

### Summary

All fifty states now have compulsory attendance laws. These laws have been instrumental in the percentage of seventeen-year-olds attending schools increasing from eleven percent in 1900 to ninety percent in 1968.<sup>219</sup> A review of the historical development of education in the United States in the nineteenth and twentieth centuries bears out Reutter's observation, "One of the keystones of education in the United States is the state compulsory education law."<sup>220</sup>

The power of states to compel students to attend school has been firmly established. However, that compulsion cannot require attendance at public schools exclusively. Parents may choose to comply with compulsory attendance laws by enrolling their children in private schools. But states can and do frequently insist that those schools must employ certified teachers. Sending children to schools which fail to provide such qualified teachers is a violation of compulsory attendance laws in many states and has resulted in prosecution of parents. In summary then, both compulsory attendance and teacher certification march hand in glove in American education, fulfillment of the first often being dependent on the presence of the second.

---

<sup>219</sup>Fuller and Pearson, p. 31.

<sup>220</sup>Reutter, p. 45.

CHAPTER III  
ANALYSIS OF STATE STATUTES RELATING TO  
CERTIFICATION REQUIREMENTS FOR TEACHERS  
IN PRIVATE SCHOOLS

Introduction

Few people would seriously question the necessity of a good education to prepare children to become good citizens and to enhance the prospect of their future economic success. Yet disagreements abound concerning how that education should be accomplished.

It is a settled matter that both the state and the parents have rights and responsibilities in the education of young people. Pierce<sup>1</sup> pointed out clearly that states may compel students to be educated, but parents retain the right to choose between public and private school alternatives, thus fulfilling responsibility to the state while retaining parental rights to direct the education of children. Neither the right of the state nor the right of the parent is absolute in the all-important matter of how a child will be educated.

In the struggle, and sometimes even fierce battle, between states and parents or private schools over state

---

<sup>1</sup>Pierce v. Society of Sisters, 268 U.S. 510 (1925).

regulation of nonpublic schooling endeavors, no issue surfaces more frequently than teacher qualifications, and more specifically, teacher certification. Many state officials believe that certification is the best means available to assure that students are taught by competent instructors. Critics counter that no evidence is available that shows certified teachers to be more effective than those without certificates. Further, many contend that such regulations violate constitutionally protected rights.<sup>2</sup>

Drawn into the center of this arena of debate have been state legislatures. These bodies bear responsibility for deciding how this issue should be addressed so that parental rights are not infringed yet state responsibilities are fulfilled. The method by which the legislatures effect decisions is through either passing or not passing legislation. In fact, without legislative enactment, the practice of certification would have no legal basis.<sup>3</sup> Against this backdrop the following analysis of state statutes is presented. The purpose of certification, the role of compulsory attendance laws, and a determination of which states

---

<sup>2</sup>See Anne H. Strickland in Donald A. Erickson, ed., Public Controls for Nonpublic Schools (Chicago: The University of Chicago Press, 1969), pp. 225-230. Further information on this issue will be presented in a discussion of Wisconsin v. Yoder, 406 U.S. 205 (1972), and other court cases in Chapters 4 and 5.

<sup>3</sup>William R. Hazard et al., Legal Issues in Teacher Preparation and Certification (Washington, D.C.: ERIC Clearinghouse on Teacher Education, 1977), p. 7.

require certification for private school teachers are considered in this chapter. Compulsory attendance statutes occupy a central role since states often use these statutes as the vehicle for enforcement of certification requirements. Legal issues which arise during the discussion will be addressed in Chapter 4.

#### Purpose for Certification Requirements

In an analysis of the 1981 State ex rel. Douglas v. Faith Baptist Church, et al.<sup>4</sup> Christian school case, David Moshman accepts for argument's sake the assumption that

the certification process makes potential teachers more effective in communicating important and accurate information, in encouraging children to think about and discuss associated ideas, and, overall, in facilitating both specific learning and the development of general intellectual skills.<sup>5</sup>

He then uses the context to discuss children's rights.

The purpose given in state statutes for certification is also generally couched in terms related to insuring the competent education of the children of the state. Not all states give a purpose. Florida, Oklahoma, and Montana are representative of states which specify in their statutes why certification of teachers occurs.

---

<sup>4</sup>State ex rel. Douglas v. Faith Baptist Church, et al., 301 N.W. 2d 571 (Neb. 1981).

<sup>5</sup>David Moshman, "Faith Christian v. Nebraska: Parent, Child, and Community Rights in the Educational Arena," Teachers College Record 86 (Summer 1985): 563.

Florida's code has a specific, separate section in its laws to define the reasons the Legislature requires certification for teachers in the state's public schools. That section, in part, declares:

The purpose of school personnel certification is to protect the educational interests of students, parents, and the public at large by assuring that teachers in this state are professionally qualified. In fulfillment of its duty to the citizens of this state, the Legislature has established certification requirements ....<sup>6</sup>

With such a patronic view, it is difficult to reconcile the Legislature's near total lack of control over or requirements for the qualifications of teachers in private schools. Surely these teachers also affect the welfare of the state and its citizens.

In Title 70, Article 6 of the Oklahoma Statutes Annotated, the following statement occurs:

It is hereby declared to be the intent of the Legislature to establish qualification of teachers in the accredited schools of the state through licensing and certification requirements to ensure that the education of the children of Oklahoma will be provided by teachers of demonstrated ability.<sup>7</sup> (Emphasis mine.)

It is quite clear that the Oklahoma Legislature sees certification as evidence of a teacher's qualification to teach

---

<sup>6</sup>Florida Statutes Annotated, sec. 231.145 (West, 1992).

<sup>7</sup>Oklahoma Statutes Annotated, sec. 70-6-151 (1989).



children in the state and that children are the focus of attention.

Though not requiring certification for private school teachers, Montana's statutes pose two reasons for establishing a system of certification: 1) to provide quality education uniformly throughout the state and, 2) to maintain appropriate professional standards.<sup>8</sup> Evidently, the legislature looks to certification to ensure that students in all parts of the state receive a good quality education, provided by competent, professional instructors. This attitude reflects Kinney's conclusion that certification is viewed by the public as an "indispensable safeguard of quality education."<sup>9</sup>

#### Role of Compulsory Attendance Laws

As noted in the previous chapter, all states now have compulsory attendance laws in effect. These laws generally state the ages of children required to attend school, the length of time in the school year, and the place of acceptable attendance. Monroe has pointed out that the trend in compulsory attendance has been to increase the number of

---

<sup>8</sup>Montana Code Annotated, sec. 20-4-101(1) (1991).

<sup>9</sup>Lucien B. Kinney, Certification in Education (Englewood Cliffs, New Jersey: Prentice-Hall, Inc., 1964), p. 40.

years children are required to attend school, as well as to increase the length of the school term.<sup>10</sup>

It is, though, in the third area, place of acceptable attendance, that compulsory attendance and certification requirements for private school teachers become inextricably intertwined in some states. Lines notes,

Traditionally, the mechanism for enforcement of minimum standards for private education has been through a state compulsory attendance law, with punitive action for parents and children .... The law almost always provides for fines and jail sentences for parents who fail to comply, and often truancy charges and possible institutionalization of the child.<sup>11</sup>

At least four states specify in their compulsory attendance laws that instruction must be provided by a "certified," "licensed," or "certificated" teacher in order for the student's attendance to be counted as complying with the law. Other states may have less specific language, but comparing their compulsory attendance state statutes with their definitions of private schools would yield an appropriate basis for Lines' statement.

Dr. Joseph Miller, an official with the Alabama Department of Education, notes that all teachers in Alabama, including private school teachers, are required to hold

---

<sup>10</sup>Walter S. Monroe, ed., Encyclopedia of Educational Research: A Project of the American Educational Research Association (New York: Macmillan, 1980), p. 297.

<sup>11</sup>Patricia M. Lines, "Private Education Alternatives and State Regulation," 12 (April, 1983): 194.

teaching certificates.<sup>12</sup> The state code defines "private school" in its compulsory attendance section and specifies that "the instruction in such schools shall be by persons holding certificates issued by the state superintendent of education."<sup>13</sup> Some confusion may occur because the same section defines "church schools" separately, without giving qualification requirements for their teachers. According to Dr. Miller, even church school teachers are required to hold certificates. The requirement is basically unenforceable, though, because in the early 1980s the state legislature removed from church schools all reporting requirements. Technically, no one from the state department of education exercises supervision or oversight of private or church schools in the state today.<sup>14</sup>

Iowa's compulsory attendance law requires children of appropriate ages to attend "... some public school, an accredited nonpublic school, or competent private instruction in accordance with the provisions of chapter 299A ...."<sup>15</sup> Chapter 299A defines competent private instruction as that which is provided by a "... practitioner [who] shall possess

---

<sup>12</sup>Telephone interview with Joseph Miller, Alabama Department of Education, 18 May 1992.

<sup>13</sup>Code of Alabama, sec. 16-28-1(a) (1991).

<sup>14</sup>Joseph Miller, Alabama Department of Education.

<sup>15</sup>Code of Iowa, sec. 299.1 (1991).

a valid license or certificate which has been issued by the state board of education ...."<sup>16</sup>

In Maine, it would seem at first glance that the language of the code is clear. The first section of the compulsory attendance law requires that children between the ages of seven and seventeen must attend "... a public day elementary or secondary school or an approved private school ...."<sup>17</sup> An approved private school for attendance purposes is then in part defined as one which "employ[s] only certified teachers."<sup>18</sup> However, Maine's compulsory attendance law has been amended to include alternatives to public day schools called "equivalent instruction alternatives." Although private schools approved for attendance purposes are included in the list of instructional alternatives, so are other options which do not specify certified teachers.<sup>19</sup> Part of the legislative history for the alternative instruction provisions in Maine's laws undoubtedly comes from the 1983 Bangor Baptist Church v. State of Maine case.<sup>20</sup> in the early 1980s. After several years of con-

---

<sup>16</sup>Ibid., sec. 299A.2.

<sup>17</sup>Maine Revised Statutes Annotated, sec. 20-A 3271.1 (1991).

<sup>18</sup>Ibid., sec. 20-A 2902.5.

<sup>19</sup>Ibid., sec. 20-A 5001-A 3.A.

<sup>20</sup>Bangor Baptist Church v. State of Maine, 576 F. Supp. 1299 (D. Maine 1983).

flict between Maine's Commissioner of Education and the state's Christian schools, an attempt was made to close some of the state's unapproved schools. In an important decision for the private schools of the state the court ruled that the legislature had not authorized the Commissioner to close private schools which did not seek state approval. Further, the court specified that parents of students which attend unapproved schools could not be prosecuted for violating the compulsory attendance law.<sup>21</sup>

No state compulsory attendance statute is more lucid than North Dakota's. Chapter 15-34.1-01 succinctly states the responsibility of parents to send or take their children between the ages of seven and sixteen to a public school.<sup>22</sup> Exceptions are listed just one page later in the code. The private school exception states:

... the child is in attendance for the same length of time at a parochial or private school approved by the county superintendent of schools and the superintendent of public instruction. No school shall be approved unless the teachers therein are legally certificated in the state of North Dakota ....<sup>23</sup>

Based on this brief examination of the compulsory attendance statutes of Alabama, Iowa, Maine, and North Dakota, the connection of teacher certification, compulsory

---

<sup>21</sup>Ibid.

<sup>22</sup>North Dakota Century Code, sec. 15-34.1-01 (1981).

<sup>23</sup>Ibid., sec. 15-34.1-03 (1991 Pocket Supplement).

attendance, and private schools becomes obvious. States which have chosen to require certification for private school teachers may utilize compulsory attendance laws as a leverage. The line of reasoning in such states seems to be as follows: 1) compulsory attendance is required, 2) parents may be fined or even imprisoned for violating compulsory attendance laws, 3) private schools fulfill compulsory attendance requirements only when certified teachers provide instruction, 4) parents must, therefore, send their children to private schools which employ certified teachers or risk prosecution for violating compulsory attendance laws, 5) private schools will hire only certified teachers because without them parents will not send their children, and 6) the state's interest in having only certified teachers teach in the state's schools is thus fulfilled. In the following chapter legal challenges to states' compulsory attendance laws and to the above line of reasoning will be considered.

#### States Which Require Private School Teachers to Be Certified

Certification of private school teachers is required in twenty-two states (see Table 3.1). These states are distributed geographically throughout the United States, with the notable exception of most of New England. Thirteen states specify that certification is required for teachers in those schools which are either licensed, accredited, or approved. The other nine states take the position that all

teachers in their schools, whether public or private, should be certified to demonstrate competence to teach the children of the state. Despite this position, enforcement is not always possible or pursued, and in some of these states exceptions are available.

TABLE 3.1

**STATES WHICH HAVE CERTIFICATION REQUIREMENTS  
FOR PRIVATE SCHOOL TEACHERS**

Alabama	Michigan	Oklahoma
Hawaii	Mississippi	Pennsylvania
Idaho	Nebraska	South Dakota
Indiana	Nevada	Tennessee
Iowa	New Mexico	Utah
Kansas	North Dakota	Washington
Kentucky	Ohio	Wyoming
Maine		

**States Requiring Certification in Accredited,  
Approved, or Licensed Schools**

Many states make a distinction between those private schools which seek state accreditation or approval and those which do not desire state acknowledgement. An overview of states having certification requirements for teachers in licensed, approved, or accredited private schools is provided in Table 3.2.

Six states, Indiana, Kansas, Mississippi, New Mexico, Oklahoma, and Utah require certification for teachers in private schools which are accredited by the state. In

Maine, state laws mandate certified teachers in schools approved by the state.<sup>24</sup> According to state department of education officials in Idaho and Tennessee, teachers must be certified if they work in either approved or accredited nonpublic schools.<sup>25</sup>

TABLE 3.2

**STATES WHICH REQUIRE CERTIFICATION FOR TEACHERS  
IN ACCREDITED, APPROVED, OR LICENSED  
PRIVATE SCHOOLS**

	Accredited	Approved	Licensed
Hawaii			X
Idaho	X	X	
Indiana	X		
Kansas	X		
Maine		X	
Mississippi	X		
Nevada			X
New Mexico	X		
Oklahoma	X		
Pennsylvania			X
Tennessee	X	X	
Utah	X		
Wyoming			X

---

<sup>24</sup>Maine Revised Statutes Annotated, sec 20-A 13003.1.B (1991 Cumulative Pocket Part).

<sup>25</sup>Telephone interviews with Jerry Hershue, Idaho Department of Education, 13 May 1992; Jean Sharpe, Employment Standards Division, Tennessee Department of Education, 19 May 1992.



In Hawaii, Nevada, Pennsylvania, and Wyoming the term used to identify private schools which must have certified teachers is "licensed." Nevada recognizes only two categories of private schools, licensed and exempted. Exempted schools are those which are sectarian. Although not required to have certified teachers, many do. All other private schools must be licensed, and all teachers employed therein must have appropriate Nevada licenses.<sup>26</sup>

Pennsylvania actually recognizes three levels of private schools. Licensed schools must have certified teachers. Religiously affiliated schools are exempt from teacher licensing standards, but teachers employed therein may seek certification on the same basis as all other teacher candidates. The third level, schools accredited by state or regional agencies, are recognized by the state without further requirements for the teachers than those imposed by the accrediting agency. Those standards commonly include certification requirements, but not in all cases.<sup>27</sup>

---

<sup>26</sup>Telephone interview with Holly Walton-Buchanan, Private School Consultant, Nevada Department of Education, 19 May 1992. See also Nevada Revised Statutes, sect. 394.211 and sect. 394.241.

<sup>27</sup>Telephone interview with Judy Green, Private School Specialist, Pennsylvania Department of Education, 15 May 1992.

Wyoming adopted new regulations for non-religious private schools in 1989.<sup>28</sup> These rules were designed to establish minimum standards for licensing all private schools which did not fall under the umbrella of "religious school." Section 7 of those rules is very specific in its requirement:

Except as provided in (c) all professional staff members assigned to the private school's educational program shall have certificates with the necessary endorsements covering specific assignment(s) and all educational staff members must be assigned in accordance with the certificates and endorsements as specified in the certification regulations set by the State Board of Education.<sup>29</sup>

The exception alluded to is one of the most interesting of all the state statutes or regulations. Schools with any professional staff members who fail to qualify for certification must notify both the parents and the public that their teachers are not certified by the state.<sup>30</sup> The power of negative publicity could certainly be a strong motivator.

---

<sup>28</sup>Wyoming, Department of Education, Chapter XVIII, Rules and Regulations on Private School Licensing for Students in Non-Religious Elementary and Secondary Schools, (1989).

<sup>29</sup>Ibid., p. 2.

<sup>30</sup>Ibid.

**States Requiring All Private School  
Teachers to Be Certified**

Only eighteen percent of the states require all teachers, whether private or public, to hold state teaching certificates. The nine states which fall into this category are listed in Table 3.3.

TABLE 3.3

**STATES WHICH REQUIRE CERTIFICATION FOR TEACHERS  
IN ALL PRIVATE SCHOOLS**

	Enforced through Compulsory Attendance laws	Special Private School Certificate	Enforcement not Consistent
Alabama <sup>1</sup>			X
Iowa	X		
Kentucky <sup>2</sup>			X
Michigan	X		
Nebraska	X		
N. Dakota	X		
Ohio <sup>3</sup>		X	
S. Dakota	X		X
Washington <sup>4</sup>			X

<sup>1</sup>Authority of Dept. of Ed. to require reports of or supervise private schools has been removed.

<sup>2</sup>Kentucky State Board v. Rudasill, 589 S.W. 2d 877 (Ky. 1979).

<sup>3</sup>Non-tax certificate issued.

<sup>4</sup>Exceptions granted. Most frequent is for teacher of "unusual competence."

Except for possibly Michigan, the most stringent private school regulations in the nation can be found in a

concentration of states in the upper Midwest. Iowa, Nebraska, North Dakota, and South Dakota provide little flexibility in the area of teacher certification. Officials from these states uniformly declare that teachers in private schools must meet the same certification requirements as are required for public school teachers.<sup>31</sup>

Iowa's code requires that "[a] person employed as a practitioner shall hold a valid license for the type of service for which the person is employed."<sup>32</sup> To fulfill the state's compulsory attendance law other than through attendance at a public school, a child must receive "equivalent instruction by a licensed teacher elsewhere."<sup>33</sup> To insure that the certification law, as well as other private

---

<sup>31</sup>Consider the following statements from state officials. "You will find that all private schools are required to meet the same certification regulations as public school teachers." (Wayne G. Sanstead, State Superintendent, North Dakota Department of Public Instruction, Personal letter, 6 January 1992); "The State of South Dakota does not have separate certification rules governing private school teachers. All teachers wishing to certify in our state must meet the requirements for certification under ARSD 24:02 ...." (Charlotte Hoyt, Director, Teacher Education and Certification, South Dakota Department of Education and Cultural Affairs, Personal letter, 27 January 1992); "The requirements are the same ...." (Orrin Nearhof, Executive Director, Board of Education Examiners, Iowa Department of Public Instruction, Personal letter, 6 January 1992); "All teachers, except those in home schools, must be certified. The same requirements apply ...." (Telephone interview with Mary Watson, Teacher Certification, Nebraska Department of Education, 13 May 1992).

<sup>32</sup>Iowa Code Annotated, sec. 260.7 (1991 Cumulative Annual Pocket Part).

<sup>33</sup>Ibid., sec. 299.1.

school regulations, are being followed, private schools are required to respond within ten days to requested reports from the state.<sup>34</sup>

South Dakota's requirement for certification is clearly delineated:

... no person shall be permitted to teach in any non-public school any of the courses prescribed to be taught in the public schools unless such person shall hold a certificate entitling him to teach the same courses in the public schools of this state.<sup>35</sup>

Since almost all of the courses taught in the private schools are also taught in the public schools, with the exception of specific religious courses, very few teachers would be considered as exempt from the statute.

Nebraska's law is equally straightforward. Section 79-1233 of the Revised Statutes of Nebraska states:

No person shall be employed to teach in any public, private, denominational, or parochial school in this state who does not hold a valid Nebraska certificate or permit issued by the Commissioner of Education legalizing him to teach the grade or subjects to which elected ...<sup>36</sup>

The validity of Nebraska's law was confirmed in a bitter court case which pitted state and local school officials

---

<sup>34</sup>Ibid., sec. 299.3.

<sup>35</sup>South Dakota Codified Laws, sec. 13-4-2 (1991).

<sup>36</sup>Revised Statutes of Nebraska, sec. 79-1233 (1987).

against parents and the principal (who was also the church pastor) of a church school operated in the state.<sup>37</sup>

As discussed previously, North Dakota's strict certification requirement appears in its compulsory attendance law.<sup>38</sup> Like Nebraska, North Dakota's statute has been subjected to legal challenges. Discussion of these challenges will be presented in Chapters 4 and 5.

Michigan requires all of its private school teachers to be certified. Both in scope and clarity, the state law is very similar to those of North and South Dakota. The Michigan statute states:

No person shall teach or give instruction in any of the regular or elementary grade studies in any private, denominational or parochial school within this state who does not hold a certificate such as would qualify him or her to teach in like grades of the public schools of the state.<sup>39</sup>

All schools which are not exclusively controlled and supervised by public school officials and which give "instruction to children below the age of 16 years, in the first 8 grades as provided for the public schools of the state"<sup>40</sup> are covered by the certification requirement.

---

<sup>37</sup>State ex rel. Douglas v. Faith Baptist Church, 301 N.W. 2d 571 (Neb. 1981).

<sup>38</sup>North Dakota, sec. 15-34.1-01.

<sup>39</sup>Michigan Compiled Laws Annotated, sec. 388.553-3 (1983).

<sup>40</sup>Ibid., sec. 388.552.-2.

In the four remaining states which require certification, anomalies exist. Ohio's private school teachers who work in schools that receive no state or federal funds receive "non-tax certificates," which are different than certificates issued to public school teachers. These teaching certificates are based on graduation from a regionally or nationally accredited college, or a similarly qualified foreign college, without any additional educational requirements.<sup>41</sup>

Title 28 of the Revised Code of Washington Annotated specifies that all teachers must hold state teaching certificates.<sup>42</sup> In the private school portion of the code, additional confirmation is provided: "All classroom teachers shall hold appropriate Washington state certification ...."<sup>43</sup> The difficulty encountered by state officials who believe strongly in certification is that the code allows three exceptions: 1) teachers who teach religion only, 2) teachers who teach courses not offered in public schools, and 3) teachers of unusual competence.<sup>44</sup> Barbara Mertins, an official with the Washington Department of Education, says that requests for exemptions based on "unusual compe-

---

<sup>41</sup>Ohio Revised Code, sec. 3301.071 (1991).

<sup>42</sup>West's Revised Code of Washington Annotated, sec. 28A.405.010 (1992).

<sup>43</sup>Ibid., 28A.195.010.(3).

<sup>44</sup>Ibid.

tence" are increasing from both independent preparatory schools and Christian schools. Approximately thirty percent of private school teachers currently are exempted from certification requirements based on this exception.<sup>45</sup>

A certification consultant for the state of Kentucky has written, "We must note that private school teachers are subject to the same certification requirements as public school teachers."<sup>46</sup> However, even though this may be consistent with state laws or regulations, the requirement has been significantly modified by the Kentucky Supreme Court. The Court found that the certification requirements of the state, as well as several other private school regulations, violate for many parents their state constitutional right not to send their children to schools to which they are conscientiously opposed.<sup>47</sup> The result has been that most Christian schools and some other private schools are not subject to the state's mandates.

The final state with a requirement that all private school teachers must be certified is Alabama.<sup>48</sup> In prac-

---

<sup>45</sup>Telephone interview with Barbara Mertins, Certification Specialist, Washington Department of Education, 15 May 1992.

<sup>46</sup>John Ledford, Consultant, Division of Certification, Kentucky Department of Education, Personal letter, 6 January 1992.

<sup>47</sup>Kentucky State Board v. Rudasill, 589 S.W. 2d 884 (Ky. 1979).

<sup>48</sup>Code of Alabama, sec. 16-28-1 (1992).



tice, though, the Alabama statute may be the least effective of all state statutes purporting to require certification. In the early 1980s the Alabama legislature removed reporting requirements from church schools, as well as the authority of department of education officials to supervise the schools. The result has been that the certification law is largely ignored and state supervision of any of the private schools is practically nonexistent.<sup>49</sup>

States Which Do Not Require Private School  
Teachers To Be Certified

States in which private school teachers can legally teach without holding state teaching certificates easily outnumber those states in which certification is required. Twenty-eight states, fifty-six percent of all states, do not have statutes mandating certification or licenses for these teachers (see Table 3.4).

TABLE 3.4

STATES WHICH DO NOT REQUIRE CERTIFICATION  
TO TEACH IN PRIVATE SCHOOLS

Alaska	Louisiana	North Carolina
Arizona	Maryland	Oregon
Arkansas	Massachusetts	Rhode Island
California	Minnesota	South Carolina
Colorado	Missouri	Texas
Connecticut	Montana	Vermont
Delaware	New Hampshire	Virginia
Florida	New Jersey	West Virginia
Georgia	New York	Wisconsin
Illinois		

<sup>49</sup>Joseph Miller, Alabama Department of Education.

Generally, these states fall into two categories, 1) those which have statutes which specifically exempt private school teachers or expressly limit state control of private schools, and 2) those which do not have requirements because no enabling legislation exists, or if such authority exists, no requirements have been promulgated. In the second group it is sometimes difficult to tell whether the state lacks authority or chooses not to exercise it.

#### States With Exempting Statutes

Seven states have passed laws which severely limit state intrusion into most aspects of private school operations, including certification. These states are shown in Table 3.5.

TABLE 3.5

#### STATES WHICH HAVE SPECIFIC STATUTES WHICH ELIMINATE CERTIFICATION REQUIREMENTS FOR PRIVATE SCHOOL TEACHERS

	Teachers Specifically Exempted	State Board Has Little or No Au- thority Over Pri- vate Schools
Alaska	X	
Arizona		X
Colorado		X
Florida		X
North Carolina		X
Missouri		X
Wisconsin	X	

In Alaska the state department of education is granted authority to accredit private schools which request it, but the department is specifically restrained from requiring religious or other private schools to be licensed.<sup>50</sup>

The wording of Missouri's law addressing control of private school curriculum is very strong:

Nothing in this section shall require a private, parochial, parish, or home school to include in its curriculum any concept, topic, or practice in conflict with the school's religious doctrines or to exclude from its curriculum any concept, topic, or practice consistent with the school's religious doctrines. Any other provision of the law to the contrary notwithstanding, all departments or agencies of the state of Missouri shall be prohibited from dictating through rule, regulation or other device any statewide curriculum for private, parochial, parish, or home school.<sup>51</sup>

The same reluctance to control curriculum has also been extended to other areas of control for private schools. Certification is not required for private school teachers. Robert E. Bartman, Commissioner of Education in Missouri, indicates that,

The Missouri State Board of Education and the Department of Education do not have authority with respect to private schools or home schools. In fact,

---

<sup>50</sup>Alaska Statutes, sec. 14.07.020.(a)(10) (1987).

<sup>51</sup>Missouri Statutes, Annotated, sec. 107.031(3) (Vernon, 1991).

there is no governmental authority over private schools in Missouri.<sup>52</sup>

Arizona, Colorado, and Florida have also taken firm positions on the autonomy of private schools. Their statutes state, respectively:

Nothing in this title shall be construed to provide the state board of education or the governing boards of school districts control or supervision over private schools.<sup>53</sup>

Nothing in this article, except for the provisions of section 22-33-104(2)(b) [compulsory attendance] and the attendance records required under section 22-1-114, shall be construed to give the state board of education or any board of education jurisdiction over the internal affairs of any nonstate independent or parochial school in this state.<sup>54</sup>

It is the intent of the Legislature not to regulate, control, approve, or accredit nonpublic education institutions .... It is not the intent of the Legislature to regulate, control, or monitor, expressly or implicitly, churches, their ministries, or religious instructions, freedoms or rites.<sup>55</sup>

Despite the lack of requirements for certification, all three of the above states have sizable numbers of private

---

<sup>52</sup>Robert E. Bartman, Commissioner of Education, Missouri Department of Elementary and Secondary Education, Personal letter, 8 January 1992.

<sup>53</sup>Arizona Revised Statutes, Annotated Edition, sec. 15-161 (1990).

<sup>54</sup>Colorado Revised Statutes, sec. 22-33-110 (1988).

<sup>55</sup>West's Florida Statutes Annotated, sec. 229.808(8) (1992).

schools which still individually require their teachers to meet the same qualifications which would be necessary for their teachers to teach in state operated schools.

Chapter 115C of the General Statutes of North Carolina contains the school laws of the state. Subchapter X was added in 1979, and had as its effect the removal of private schools in the state from practically all controls by the state officials. Schools are still expected to meet minimal standards related to fire, health, safety, and immunization requirements. Additionally, attendance records must be maintained and standardized tests must be administered.<sup>56</sup> However, nothing in the statutes require teacher certification. The statutes clearly state that apart from the general requirements listed above, private schools are not "subject to any other provisions of law relating to education ...."<sup>57</sup>

Wisconsin allows and encourages teachers in its private schools to seek state certification. The state superintendent is authorized to issue certificates to private school teachers on the same basis that they are issued to public school teachers, provided the private schools in which the teachers teach offer "an adequate educational program." Despite making the opportunity available to secure certifi-

---

<sup>56</sup>General Statutes of North Carolina Annotated, secs. 115C-547 through 115C-562 (1991).

<sup>57</sup>Ibid., secs. 115C-554 and 115C-562.

cation, the same section of the code also contains a very clear statement denying the necessity for such certificates: "Private schools are not obligated to employ only licensed or certified teachers."<sup>58</sup> Herbert J. Grover, State Superintendent of Public Instruction, has indicated that even though no authority is granted to the Department of Public instruction to require licensure of private school teachers, many private schools nevertheless require teachers to be certified and the state is supportive of such actions.<sup>59</sup>

#### States Without Exempting Statutes

The overwhelming majority of states which do not require private school teachers to be certified have either indefinite or no statutes addressing the matter. Indeed, a common theme among most of these states appears to be rule by omission rather than by commission. In some cases, no specific authority has been given to the department of education or the state board of education to regulate private schools. James Turner, a member of the staff of the South Carolina Office of Education Professions, states, "In South Carolina, the State Board of Education has no authority over the operation of private schools; therefore, there

---

<sup>58</sup>Wisconsin Statutes Revised, sec. 115.28(7)(b) (West, 1991).

<sup>59</sup>Herbert J. Grover, State Superintendent, Wisconsin Department of Public Instruction, Personal letter, 10 January 1992.

are no mandated State certification requirements."<sup>60</sup> In other cases statutes requiring certification of teachers contain the words "public schools" and make no reference at all to teachers in private schools. An example is New Hampshire. Judith Fillion, Director of the Division of Standards and Certification, writes:

There are no certification requirements for teachers in New Hampshire private schools. The laws and rules make specific reference to public school teachers and by omission private school teachers are exempted.<sup>61</sup>

The result in both cases has been that state officials have taken the position that without enabling legislation, no authority over qualifications of private school teachers exists.

In at least two states the responsibility for issuing certificates has been transferred from the department of education to other agencies. In Georgia, the Professional Standards Commission now issues certificates.<sup>62</sup> In California the task is assigned to the Commission on Teacher

---

<sup>60</sup>James H. Turner, Office of Education Professions, South Carolina Department of Education, Personal letter, 6 January 1992.

<sup>61</sup>Judith D. Fillion, Division Director, Division of Standards and Certification, New Hampshire Department of Education, Personal letter, 8 January 1992.

<sup>62</sup>Candace J. Norton, Associate Executive Secretary, Professional Standards Commission, Personal letter, 15 January 1992.

Credentialing.<sup>63</sup> However, in both case the agencies do not have regulations requiring certification for private school teachers.<sup>64</sup>

In many states in which certification is not required, one important exception occurs. Special education students who are served in private facilities but have their tuition paid with public funds are normally required to be taught by certified teachers. Connecticut and Massachusetts are examples of states with such stipulations. Federal government regulations provide the basis for this requirement. Special education laws contain language which states that teachers serving special education students must meet the highest requirements applicable to public school teachers under state law.<sup>65</sup> Several of Vermont's private school leaders decry such regulations and are anxious about the effect such regulations will have on private school autonomy. Some headmasters are looking for a way to compromise, but others seem prepared to abandon special education pro-

---

<sup>63</sup>Bill Honig, Superintendent of Public Instruction, California Department of Education, Personal letter, 8 January 1992.

<sup>64</sup>Marilyn Errett, Commission on Teacher Credentialing, State of California, Personal letter, 27 January 1992 and Candace J. Norton, Georgia Professional Standards Commission, 15 January 1992.

<sup>65</sup>Susan M. Lloyd, "Collision Courses, Safer Places: Teacher Licensure, Private Schools, and the Making of a Profession," Teachers College Record 92 (Spring 1992): 451. See also U.S. Department of Education, 34 S300.401(a)(3) and 34 CFR 300.153.



grams rather than hire certified teachers, an action that would eliminate many highly respected placements for the state's special education students.<sup>66</sup>

#### Summary

State legislatures have the responsibility for deciding whether private school teachers should or should not be required to possess certificates in order to teach. The purpose generally given to justify requiring certification is the need to protect the children of the state, and thus the state itself, from being taught by unqualified teachers.

Compulsory attendance laws are vehicles by which some states enforce their certification requirements. Schools employing uncertified teachers when certification is mandated are not considered appropriate to meet the compulsory attendance law. Parents who send their children to such schools would risk prosecution for violating the law.

Twenty-two states require private school teachers to be certified. In thirteen states this requirement applies only to accredited, approved, or licensed schools. Nine states require all teachers, public and private, to hold certificates, but four of these have particular circumstances which limit enforcement. Four of the remaining five states which have the most stringent requirements are located in the Midwest.

---

<sup>66</sup>Ibid., pp. 456-459.

In twenty-eight states teachers in private schools are not required to hold certificates. An exception is that in some of these states teachers in private special education facilities funded with public money must hold certificates. At least seven states have specific statutes exempting private school teachers from certification. In the remaining twenty-one states the absence of certification generally results from omission of reference to private school teachers in the certification statutes, or the lack of specific enabling legislation for the state board of education or the state department of education to have authority over private schools.

CHAPTER IV  
LEGAL ASPECTS OF TEACHER CERTIFICATION  
IN PRIVATE SCHOOLS

Introduction

The entire area of state regulation of nonpublic schools is no more clear today than when the United States Supreme Court handed down its monumental Wisconsin v. Yoder decision in 1972. That decision may well mark the high water mark restricting state incursion into nonpublic schools.<sup>1</sup>

Though the above statement was made ten years after the Yoder<sup>2</sup>, there remains today, twenty years after the decision, significant questions concerning the power of the State to control many aspects of private schools. The practice of requiring certification for private school teachers is one of the most frequent areas of debate. It likewise has been the central issue in numerous court challenges to state statutes or regulations. As larger numbers

---

<sup>1</sup>Ralph D. Mawdsley and Steven P. Permuth, Legal Problems of Religious and Private Schools (Topeka, Kan.: National Organization on Legal Problems of Education, 1983), p. 80.

<sup>2</sup>Wisconsin v. Yoder, 406 U.S. 205 (1972). This Supreme Court case, discussed later in this chapter, is one of the most important school cases decided in the last fifty years. The Amish challenged Wisconsin's compulsory attendance law as an infringement of their constitutionally protected First Amendment right. The Court found that the state's interest was satisfied for Amish children upon completion of the eighth grade and thus refused to require Amish young people to attend school beyond the eighth grade.

of parents have opted for private education alternatives to the public schools, conflicts between the state and private schools and subsequent litigation have increased.

This chapter is a analysis of judicial decisions resulting from the certification battle between parents, private schools, and the state. The question of control of education is addressed first, including both the rights of parents and powers of the State. Religious objections to teacher certification are strong among patrons of many private schools. A look at these objections and the courts' diverse rulings is presented.

A crucial question raised in some cases concerns the efficacy of teacher certification. Does certification ensure the competent education of children or is it a chaotic, bureaucratic process which mistakenly assumes a relationship to competent teaching? The answer to this question seems to be unclear, even among jurists.<sup>3</sup>

Other issues raised in litigious challenges have been vagueness, excessive regulation, testing as an alternative to certification, validity of compulsory attendance, rights under state constitutions, and burden of proof. In discuss-

---

<sup>3</sup>See, for example, *State ex rel. Douglas v. Faith Baptist Church*, 301 N.W. 2d 571 (Neb. 1981), in which the majority found certification a reasonable indicator of probable success but the court's chief justice found such a requirement illogical.

ing these issues, a variety of judicial decisions will be examined. Although the focus of this dissertation has generally excluded home schools, some court cases involving such alternatives will be explored because of the application of the cases to certification of private school teachers.

Certification is a method by which a state seeks to ensure competent, qualified teachers. Beckham and Zirkel state that it "ensures that the holder has met state requirements and is therefore qualified for employment in the specialization for which certification is granted."<sup>4</sup> Simply holding a certificate is never considered a guarantee of employment for the holder. As early as 1907 an Indiana court said, "A license has none of the elements of a contract, and does not confer an absolute right, but only a personal privilege to be exercised under existing restrictions ...."<sup>5</sup> The court then upheld the authority of a county superintendent to revoke a teacher's license. Nearly thirty years later a New Hampshire court heard a case involving a school board's by-law which made marriage of a woman teacher grounds for dismissal. Though ruling the regulation unlawful, the court rebuffed a part of the plain-

---

<sup>4</sup>Joseph Beckham and Perry A. Zirkel, eds., Legal Issues in Public School Employment (Bloomington, Indiana: Phi Delta Kappa, 1983), p. 4.

<sup>5</sup>Stone v. Fritts, 82 N.E. 794 (Ind. 1907).

tiff's claim by ruling that a teaching certificate is neither a constitutional right nor a contract.<sup>6</sup> In another school case a court ruled that "the absence of appropriate certification has been viewed as sufficient legal evidence of a finding of incompetency."<sup>7</sup> The crucial question is to what extent should such a construction be applied to private school teachers?

### Control of Education

Before any substantive discussion can be held on whether government can regulate certification of teachers in private schools, a determination must be made concerning who controls the education of America's children. As noted earlier, by virtue of omission in the United States Constitution, education became a power reserved to the states. Yet the history of parental direction and control of a child's education is long and strong. The locus of control was addressed in three court cases in the 1920s. These cases became the foundation for practically all private school decisions by the courts for the last sixty years.

In Meyer v. Nebraska<sup>8</sup> the Supreme Court heard a case in which Meyer had been convicted of teaching German to a

---

<sup>6</sup>Coleman v. School District of Rochester, 183 A 586 (N.H. 1936).

<sup>7</sup>Kobylski v. Board of Education of Central School District No. 1, 304 NYS 2d 453 (1969).

<sup>8</sup>Meyer v. Nebraska, 262 U.S. 390 (1923).

student who had not passed the eighth grade, a violation of Nebraska law. Meyer taught in a parochial school. The Court reversed the conviction finding that it violated the Fourteenth Amendment. Two particular parts of the decision address the issue of control. First, the Court found that the state legislature had "attempted materially to interfere with ... the power of parents to control the education of their own."<sup>9</sup> Citing with disdain ancient practices in which young children were taken from parents and educated by the state, the Court cautioned against excessive state power. Nevertheless the Court stated, "The power of the State to compel attendance at some school and to make reasonable regulations for all schools ... is not questioned."<sup>10</sup>

The outcome of Meyer was that both state control and parental rights were recognized as legitimate in the education of children. This dichotomy was further clarified in Pierce v. Society of Sisters<sup>11</sup> two years later. Overturning an Oregon statute which would have effectively closed all private schools in the state, the Court once again confirmed the state's power to:

---

<sup>9</sup>Ibid., p. 401.

<sup>10</sup>Ibid., p. 402.

<sup>11</sup>Pierce v. Society of Sisters, 268 U.S. 510 (1925).

... reasonably regulate all schools, to inspect, supervise and examine them, their teachers, and pupils; to require that all children of proper age attend some school, that teachers be of good moral character and patriotic disposition ....<sup>12</sup>

However, the Oregon legislature had gone too far in exercising its power. The Court said:

Under the doctrine of Meyer v. Nebraska, 262 U.S. 390, we think it entirely plain that the Act of 1922 unreasonably interferes with the liberty of parents to direct the upbringing and education of children under their control.<sup>13</sup>

In a statement that has become the cornerstone of private education in America, the Court continued:

The fundamental theory upon which all governments in the Union repose excludes any general power of the State to standardize its children by forcing them to accept instruction from public teachers only. The child is not the mere creature of the State; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations.<sup>14</sup>

In essence, the right of private schools to exist, as well as the right of parents to choose between public and private school alternatives, was unequivocally confirmed in Pierce. But equally important was the endorsement of the State's power to reasonably regulate private schools, including

---

<sup>12</sup>Ibid., p. 534.

<sup>13</sup>Ibid., p. 534-535.

<sup>14</sup>Ibid., p. 535.



teachers employed in the schools. States with certification requirements have relied on this aspect of the Pierce decision to justify the right to impose such requirements.

The third significant case related to control of private schools was Farrington v. Tokushige.<sup>15</sup> In this case the Supreme Court held unconstitutional a foreign language act in Hawaii which would have required all instruction to be done in English. Avoiding the practice declared illegal in Pierce, i.e. required attendance at public schools, the state allowed attendance at private schools but then regulated the schools to such a degree that they would be unable to survive. In invalidating the law, the court said concerning the effect of the statute:

They give affirmative direction concerning intimate and essential details of such schools, entrust their control to public officers, and deny both owners and patrons reasonable choice and discretion in respect of teachers, curriculum and textbooks. Enforcement of the act would destroy most, if not all, of them; and certainly it would deprive parents of fair opportunity to procure for their children instruction which they think is important and we cannot say is harmful.<sup>16</sup>

Although these three cases do not clearly define the limits of state power nor the extent of parental rights, they establish the context for consideration of other legal issues in private school teacher certification. If the

---

<sup>15</sup>Farrington v. Tokushige, 273 U.S. 284, 47 S.Ct. 406 (1927).

<sup>16</sup>Ibid., p. 298.

Court had found totally in favor of parents, voiding all state regulations, or totally in favor of the state, subjugating all parental rights in educating children, debate could not occur and conflict would not arise. Such was not the case, however.

In no recent litigation has a court considered the control issue more intently than in Wisconsin v. Yoder.<sup>17</sup> Once again the Court cited the Pierce decision as it concluded:

There is no doubt as to the power of a State, having a high responsibility for education of its citizens, to impose reasonable regulations for the control and duration of basic education .... [But] the values of parental direction of the religious upbringing and education of their children in their early and formative years have a high place in our society .... Thus, a State's interest in universal education, however highly we rank it, is not totally free from a balancing process when it impinges on fundamental rights and interests, such as those specifically protected by the Free Exercise Clause of the First Amendment, and the traditional interest of parents with respect to religious upbringing of their children so long as they, in the words of Pierce, prepare [them] for additional obligations.<sup>18</sup>

#### Religious Objections

Emotions run high when courts must decide cases which have religion as the nexus. The 1962 Supreme Court decision in Engel v. Vitale<sup>19</sup> outlawing the daily recitation of a

---

<sup>17</sup>Wisconsin v. Yoder, 406 U.S. 205 (1972).

<sup>18</sup>Ibid., pp. 213-214.

<sup>19</sup>Engel v. Vitale, 370 U.S. 421 (1962).

prescribed prayer in New York schools produced a public outcry in America. When the same Court confirmed that required Bible reading and recitation of the Lord's prayer in the public schools of Pennsylvania were also unconstitutional,<sup>20</sup> many Americans were outraged. Although cases decided in which state regulation of private schools conflicted with religious beliefs of parents have not generated the national publicity nor the emotion evoked by the above decisions, the litigants involved have not lacked similar strong feelings.

#### First and Fourteenth Amendments

More frequently than on any other basis, challenges to state certification requirements for private school teachers have been brought on claims of violation of First Amendment rights. The First Amendment declares, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof ...."<sup>21</sup> Any question about the applicability of the First Amendment to the states was answered in 1940. The Supreme Court declared in Cantwell v. Connecticut<sup>22</sup>, in what has become known as the absorption theory, that the First Amendment is made applicable to the

---

<sup>20</sup>Abington School District v. Schempp, 374 U.S. 203 (1963).

<sup>21</sup>United States Constitution. Amendment I (1791).

<sup>22</sup>Cantwell v. Connecticut, 310 U.S. 296 (1940).

states by the Fourteenth Amendment. The Fourteenth Amendment says, "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States."<sup>23</sup>

#### Belief and Action Issues

The right of parents, private school administrators, and teachers to hold sincere religious beliefs is beyond question. While guaranteed the right to hold religious beliefs, actions based on those beliefs are subject to government regulation. In State v. Rivinius the Supreme Court of North Dakota said,

Although the freedom to hold religious beliefs is absolute, the freedom to act, even if the action is in accord with religious convictions, is not totally free from legislative restrictions.<sup>24</sup>

That court's position reflected an early U.S. Supreme Court decision which has been confirmed in other jurisdictions.

During the latter part of the nineteenth century a prohibition against polygamy was upheld, even though the practice was a part of the religious beliefs of the Mormons.<sup>25</sup>

Jehovah's Witnesses take seriously missionary endeavors, yet the practice of using children of that faith to sell reli-

---

<sup>23</sup>United States Constitution. Amendment XIV (1868).

<sup>24</sup>State v. Rivinius, 328 N.W. 2d 223 (N.D. 1982).

<sup>25</sup>Reynolds v. United States, 98 U.S. 145 (1879).

gious materials was held unlawful and not a violation of the free exercise of religion.<sup>26</sup> Closing stores on Sundays, a day of rest in the Christian religion, was not a violation of a Jewish businessman's religion who did not believe Sunday to be of religious significance.<sup>27</sup>

More recently the Supreme Court decided the Bob Jones University case.<sup>28</sup> The Court upheld a lower court decision removing the university's tax exempt status because school regulations did not permit interracial dating or marriage. Simultaneously the Court approved the same action against Goldsboro Christian Schools which refused to admit black students. In both cases the schools' racial policies were claimed to be based on religious beliefs. Finding eradication of racial discrimination a "fundamental public policy" the Court said, "... the government interest substantially outweighs whatever burden denial of tax benefits places of petitioners' exercise of their religious beliefs."<sup>29</sup>

These decisions form a basis to demonstrate that even if state teacher certification requirements are opposed because of religious beliefs, subsequent actions (i.e. not

---

<sup>26</sup>Prince v. Commonwealth of Massachusetts, 321 U.S. 158 (1944).

<sup>27</sup>Braufeld v. Brown, 366 U.S. 599 (1961).

<sup>28</sup>Bob Jones University v. United States, 103 S.Ct. 2017 (1983).

<sup>29</sup>Ibid., p. 2035.

becoming certified or, if a private school, not hiring certified teachers) are not necessarily protected by the Constitution. In Rice v. Commonwealth<sup>30</sup> parents in Virginia sought to teach their children at home, despite lack of qualifications required by the state. They claimed that their religious beliefs forbade seeking state approval (certification). The court said,

The constitutional protection of religious freedom, while it insures religious equity, on the other hand does not provide immunity from compliance with reasonable civil requirements imposed by the state. The individual cannot be permitted, on religious grounds, to be the judge of his duty to obey the regulatory laws enacted by the state.<sup>31</sup> (Emphasis mine).

In a North Dakota case the state Supreme Court, while recognizing the guarantee of First Amendment religion rights, said that such rights were "not absolute and totally free from all legislative restrictions."<sup>32</sup>

An important point is that the court, not the individual, in the American system of government must decide when religious grounds justify disobedience to civil laws. The Supreme Court of Nebraska spoke tersely in a case in which a pastor persisted in operating a church school after the same court had found the school could not operate without comply-

---

<sup>30</sup>Rice v. Commonwealth, 49 S.E. 2d 342 (Va. 1948).

<sup>31</sup>Ibid., p. 347.

<sup>32</sup>State v. Shaver, 294 N.W. 2d 887 (N.D. 1980).

ing with state regulations, including using certified teachers. The court said:

We specifically found that the state's right to regulate schools, ... did not impose an unreasonable burden upon Sileven's religious beliefs .... Sileven is simply wrong if he believes that he may ... flout the law by merely declaring that it is contrary to his religious beliefs, no matter how sincerely held. The extent to which the state must set aside its laws in order to accommodate religious beliefs is not to be determined ... by the individual but, rather, by the court; .... Those tactics [individuals determining whether or not to obey the court] are better suited for those who would promote anarchy.<sup>33</sup>

In another home school case involving a parent without a certificate in violation of a state law the court ruled that a parent's religious beliefs, even though sincere, could not be a "legal justification for violation of a positive law."<sup>34</sup>

#### Guidelines from Yoder<sup>35</sup>

Balancing the rights of individuals guaranteed by the First and Fourteenth Amendments with the necessary exercise of power by a state to protect the state's citizens is not easy. For a wide spectrum of reasons the scales may tip in one direction or another. Judicial decisions have certainly

---

<sup>33</sup>Sileven v. Tesch, 326 N.W. 2d 854 (Neb. 1982).

<sup>34</sup>State ex rel. Shoreline School District No 412 v. Superior Court for King County, 346 P. 2d 1004 (Wash. 1960).

<sup>35</sup>Wisconsin v. Yoder.

not always been consistent in such cases. In Wisconsin v. Yoder<sup>36</sup> the Supreme Court established a three-pronged test which has been useful to other courts in deciding religious/state conflicts.

To decide if a particular state action violates religious beliefs, three questions must be addressed. First, does the state action interfere with an activity motivated by and rooted in a legitimate, sincerely held religious belief? Second, is the free exercise of religion unduly burdened by the state action and to what extent are religious practices affected? Third, and very importantly, does the state have a compelling interest in its action which justifies the burden placed on the free exercise of religion by the individuals affected?<sup>37</sup>

In Yoder, the Court found the answer to the first two questions to be yes, but a compelling state interest was not established. Consequently, Amish young people were not required to attend public school beyond the eighth grade.

#### Religious Claims v. Compelling Interest

Despite claims that certification requirements violate first amendment religious rights, particularly the free exercise clause, state regulations have more frequently been upheld than overturned. Some beliefs commonly presented by

---

<sup>36</sup>Ibid.

<sup>37</sup>Ibid., pp. 215-222.



parents or private school officials in many cases are that spiritual qualifications supersede any state imposed teaching qualifications,<sup>38</sup> God's law is higher than man's law,<sup>39</sup> and certification requirements place individuals in a position in which religious beliefs must be compromised by allowing man rather than God to dictate what is best in the education of children.<sup>40</sup>

The courts have generally accepted the sincerity of such religious beliefs. This was true in State v. Rivinius,<sup>41</sup> Fellowship Baptist Church v. Benton,<sup>42</sup> State v. Shaver,<sup>43</sup> State ex rel. Douglas v. Faith Baptist Church,<sup>44</sup> State ex rel. Kandt v. North Platte Baptist Church,<sup>45</sup> People v. DeJonge,<sup>46</sup> and Sheridan Road Baptist Church v. Department of Education.<sup>47</sup> In all of these cases state required

---

<sup>38</sup>Fellowship Baptist Church v. Benton, 620 F. Supp. 308 (S.D. Iowa 1985).

<sup>39</sup>State v. Rivinius, 328 N.W. 2d 222 (N.D. 1982).

<sup>40</sup>Ibid., p. 223.

<sup>41</sup>Ibid.

<sup>42</sup>Fellowship Baptist Church v. Benton.

<sup>43</sup>State v. Shaver.

<sup>44</sup>State ex rel. Douglas v. Faith Baptist Church.

<sup>45</sup>State ex rel. Kandt v. North Platte Baptist Church, 345 N.W. 2d 19 (Neb. 1984).

<sup>46</sup>People v. DeJonge, 449 N.W. 2d 889 (Mich. App. 1989).

<sup>47</sup>Sheridan Road Baptist Church v. Department of Education, 396 N.W. 2d 373 (1986).

certification was challenged on religious grounds. In all of the cases the courts upheld the certification requirements. Despite finding in most cases that religious beliefs were burdened, State v. Shaver being an exception, the states' compelling interest was found to justify that burden. In North Dakota the state Supreme Court said that the compelling state interest in education "outbalances the resulting strain or imposition on the defendant's religious beliefs."<sup>48</sup> The same court in another case where certified teachers was an issue said similarly, "... the incidental burden of the parents' religion ... is justified ... by the states' compelling interest in the regulation."<sup>49</sup> In Nebraska the state Supreme Court found that the actions of Faith Baptist Church in trying to operate without complying with state regulations, including certification requirements, was "an unreasonable attempt to thwart the legitimate reasonable, and compelling interests of the State in carrying out its educational obligations ...."<sup>50</sup> The same court also said, "We believe that it goes without saying that the State has a compelling interest in the quality and ability of those who are to teach its young people."<sup>51</sup> And in

---

<sup>48</sup>Ibid., p. 229.

<sup>49</sup>State v. Shaver, p. 897.

<sup>50</sup>State ex rel Douglas v. Faith Baptist Church, p. 580.

<sup>51</sup>Ibid., p. 579.

Michigan the Court said, "We conclude that the state has a compelling interest which justifies the burden in the DeJonge's religious freedom imposed by teacher certification."<sup>52</sup>

Of course, not all claims that religious beliefs form the basis for objections to certification or other state regulations have been accepted by the courts. When objections do not "rise above a personal or philosophical choice"<sup>53</sup> the court will not invalidate certification. So also will the court rule when certification requirements do not interfere with the exercise of beliefs.<sup>54</sup>

In Everson v. Board of Education the Court defined the establishment clause of the First Amendment by stating in part that

neither a state nor the Federal Government can force [a person] to profess a belief or disbelief in any religion. No person can be punished for entertaining or professing religious beliefs or disbeliefs ....<sup>55</sup>

The establishment clause has not been used as a challenge to certification nearly as often as free exercise. In one major case, though, the court reviewed the establishment

---

<sup>52</sup>People v. DeJonge, p. 904.

<sup>53</sup>Hansen v. Cushman, 490 F. Supp. 114 (W.D. Mich. 1980).

<sup>54</sup>Jernigan v. State, 412 So. 2d 1242 (Ala. Ct. App. 1982); and State v. Moorhead, 308 N.W. 2d 60 (Iowa 1981).

<sup>55</sup>Everson v. Board of Education, 330 U.S. 15 (1947).

test formulated in Lemon v. Kurtzman<sup>56</sup> and then ruled, "... it is clear that requiring all teachers to be certified does not impermissibly tangle government with religion."<sup>57</sup> The court thus differed with a lower court ruling which had found that the Michigan statute requiring curriculum approval and teacher certification had indeed created an excessive entanglement.

#### Efficacy of Certification

It is not surprising that the value of certification is raised as an issue in courts since the topic is debated so vigorously outside the courts. Generally, certification is considered a method by which states attempt to assure competent, qualified teachers. But both the process and the results have been questioned. Many critics have called for the end of the entire certification process, which has been described by one author as "chaotic, varying enormously from state to state".<sup>58</sup>

Though usually hedging on the issue somewhat, the courts have most frequently looked with favor on certification. One court noted,

---

<sup>56</sup>Lemon v. Kurtzman, 403 U.S. 602 (1971).

<sup>57</sup>Sheridan Road Baptist Church v. Department of Education, p. 383.

<sup>58</sup>Emily C. Feistritz, The Making of a Teacher: A Report on Teacher Education and Certification (Washington, D.C.: The National Center For Education Information, 1984), p. 56.

State licensure does not guarantee quality teachers. But one cannot ignore the high likelihood that a person who meets the qualifications for certification has absorbed the knowledge a competent teacher should have.<sup>59</sup>

Another court expressed similar feelings:

We are not suggesting as an absolute that every person who has earned a baccalaureate degree in teaching is going to become a good teacher .... However ... we believe it is ... a reliable indicator of the probability of success in that particular field.<sup>60</sup>

In Sheridan Road Baptist Church, the court said, "Indeed, the effectiveness of certification ... is somewhat open to question."<sup>61</sup> The court also quoted extensively from The Miseducation of American Teachers<sup>62</sup> to illustrate some of the people, like Einstein or Leonard Bernstein who could not teach because they were not certified. In Rivinius the court said "... we are cognizant that teacher certification may also have its deficiencies ...."<sup>63</sup> Yet in both cases the courts still concluded that certification was a reasonable way for the state to insure a proper educa-

---

<sup>59</sup>People v. DeJonge, p. 904.

<sup>60</sup>State ex rel. Douglas v. Faith Baptist Church, p. 579.

<sup>61</sup>Sheridan Road Baptist Church v. Department of Education, p. 272.

<sup>62</sup>James D. Loerner, The Miseducation of American Teachers (Boston: Houghton Mifflin, 1963) p. 207.

<sup>63</sup>State v. Rivinius, p. 229.

tion for the state's children. Although upholding certification requirements, the court in Shaver took the interesting position that "The courtroom is simply not the best arena for the debate of issues of educational policy and the measurement of educational quality."<sup>64</sup>

The above opinions are by no means universally held by court officials. Chief Justice C. J. Krivosha of the Nebraska Supreme Court wrote in a dissenting opinion in State ex rel. Douglas v. Faith Baptist Church:

... I must respectfully dissent from that portion of the majority opinion which in effect upholds the States' requirement that all elementary and secondary teachers, public or private, hold a baccalaureate degree before a student's attendance ... satisfy compulsory attendance laws.... I have some difficulty with a law which results in requiring that those who teach must have a baccalaureate degree, but those who teach those who teach need not. The logic of it escapes me.<sup>65</sup>

On the issue of teacher certification the high court of Kentucky said,

It cannot be said as an absolute that a teacher in a non-public school who is not certified ... will be unable to instruct children to become intelligent citizens .... [a] bachelors degree ... is not a sine qua non the absence of which establishes that private and parochial school teachers are unable to teach their

---

<sup>64</sup>State v. Shaver, p. 900.

<sup>65</sup>State ex rel. Douglas v. Faith Baptist Church, pp. 581-583.

students to intelligently exercise the elective franchise."<sup>66</sup>

The issue of efficacy is no more settled in court than it is in educational circles. Perhaps the position stated in Fellowship Baptist Church v. Benton most accurately reflects the opinions of most courts:

[While] certification may not be infallible and does not assure that every teacher is a good teacher ... it appears to be the best method now available to satisfy the states prime interest in seeing that children are taught by competent persons.<sup>67</sup>

Many states have in place today alternate routes to certification which enable well qualified individuals who lack certification to begin teaching and simultaneously work in a specially developed program to secure a teaching certificate. In light of the willingness of many states to allow individuals to teach without certificates in such alternative programs, courts may begin to consider more closely the validity and efficacy of certification and the process involved in securing a teaching certificate.

#### Testing as a Measure of Competence

A frequent argument brought before the courts has been that a state's interest in assuring that children are

---

<sup>66</sup>Kentucky State Board v. Rudasill, 589 S.W. 2d 884 (Ky. 1979).

<sup>67</sup>Fellowship Baptist Church v. Benton, p. 316.

receiving quality education could be appropriately accomplished through standardized testing of the students to measure achievement rather than through certification requirements for teachers. There is certainly merit to the reasoning that if students are achieving satisfactorily without a certified teacher providing the instruction, then the state's interest in an educated citizenry would be fulfilled and certification would be unnecessary. But courts have found difficulty with this concept.

In the Rivinius case the defendants specifically contended that standardized testing was more precise as a measure of quality than certification and that testing did not infringe upon their religious beliefs. The court refused to sanction testing as a reasonable alternative, stating:

Standardized testing ordinarily does not result in the discovery of a deficiency in education until after the term, semester, or the school year is over, which would, if effect, result in a child wasting its period of time if the results of the standardized test indicated that the child's education was deficient. We do not believe such a result would satisfy the state's interest in educating its youth.<sup>68</sup>

The Sheridan Road Baptist Church court reached a similar conclusion, stating that "the tests may be adminis-

---

<sup>68</sup>State v. Rivinius, p. 229.



tered too late to remedy the harm they are meant to prevent."<sup>69</sup> Additionally, the court interjected the opinion that such testing conceivably could result in even more state involvement with the teaching in the school than what currently existed.<sup>70</sup> A Nebraska court echoed the concern that testing occurs too late with the possibility of a wasted school year,<sup>71</sup> and an Iowa court called testing a "backward look."<sup>72</sup>

In contrast, the Kentucky Supreme Court took a much broader and more positive view of testing, seeing it as more than just an alternative to certification. That court suggested that

[i]f the Legislature wished to monitor work of private and parochial schools in accomplishing the constitutional purpose of compulsory education, it may do so by an appropriate standardized achievement testing program.<sup>73</sup>

In the view of the Kentucky Supreme Court, the state's interest in securing an education for children in private schools could be properly monitored through standardized

---

<sup>69</sup>Sheridan Road Baptist Church v. Department of Education, p. 273.

<sup>70</sup>Ibid.

<sup>71</sup>State ex rel. Douglas v. Faith Baptist Church, p. 579.

<sup>72</sup>Johnson v. Charles City Community Schools Board of Education, 368 N.W. 2d. 81 (Iowa 1981).

<sup>73</sup>Kentucky State Board v. Rudasill, p. 884.

testing of the students, eliminating the need for most of the state's private school regulations.

#### Compulsory Attendance Challenges

As noted earlier, compulsory attendance laws have frequently been the vehicles by which teacher certification requirements have been enforced by the states. Both private schools and parents have, therefore, frequently attacked compulsory attendance laws in an attempt to be freed from teacher certification and other regulations affecting private schools.

Among the earliest challenges to compulsory attendance was an action brought in 1901 in Indiana. A parent convicted of not sending his son to school appealed his conviction to the Indiana Supreme Court. The court ruling, which rebuffed the parent's challenge and upheld the conviction and the law, said:

The natural rights of a parent to the custody and control of his infant children are subordinate to the state...to secure to the child the opportunity to acquire an education.<sup>74</sup>

Certification was not an issue in this case, but the precedent for upholding compulsory attendance as a legitimate exercise of state power, though not followed in every case, had been set for courts elsewhere.

---

<sup>74</sup>State v. Bailey, 61 N.E. 732 (1901).

In the important case Board of Education v. Allen<sup>75</sup> the Supreme Court approved the loan of textbooks purchased with public funds to private schools. Of note here was the following statement made by the Court in that case:

Since Pierce, a substantial body of case law has confirmed the power of the state to insist that attendance at private schools, if it is to satisfy state compulsory attendance laws, be at institutions which provide minimum hours of instruction, employ teachers of specified training, and cover prescribed subjects of instruction.<sup>76</sup> (Emphasis mine).

The compulsory attendance law of North Dakota has quite possibly been the most frequently challenged of all such laws in the United States. Attendance at a public school or an "approved" private school is required. To be approved private schools must employ certified teachers.<sup>77</sup> Certification was a crucial issue in State v. Shaver.<sup>78</sup> Defendants contended that state "approval and teachers' certification infringed their right to free exercise of religion,<sup>79</sup> but the court did not agree. The parents' conviction for violating the compulsory attendance law and the law itself were upheld.

---

<sup>75</sup>Board of Education of Central School District No. 1 v. Allen, 392 U.S. 236 (1968).

<sup>76</sup>Ibid., pp. 245-246.

<sup>77</sup>North Dakota Century Code, sec. 15-34.1-03(1).

<sup>78</sup>State v. Shaver.

<sup>79</sup>Ibid., p. 227

In 1982 North Dakota was faced with a another challenge to the attendance law in State v. Rivinius,<sup>80</sup> but once again the court ruled against the parents and upheld the law. However, this case did not end litigation of North Dakota's law. In 1986 and in 1988 the compulsory attendance law was assailed again, with particular denuncements of the certification requirement being made by the challengers of the law. In a model of consistency the state high court continued to find in favor of the state. Both cases were appealed unsuccessfully to the United States Supreme Court.<sup>81</sup>

In Michigan both the state Supreme Court and a court of appeals heard cases challenging the certification requirement found in the compulsory attendance law.<sup>82</sup> As in North Dakota, the courts found that the "requirement of compulsory school attendance law that nonpublic schools use state certified teachers [bears a] rational relationship to [a] legitimate state purpose,"<sup>83</sup> and therefore passed constitutional muster. Similar decisions have been rendered in Iowa and Nebraska.

---

<sup>80</sup>State v. Rivinius.

<sup>81</sup>State v. Patzer, 382 N.W. 2d 631 (N.D. 1986), cert. denied 479 U.S. 825; State v. Anderson, 427 N.W. 2d 631 (N.D. 1986), cert. denied 458 U.S. 965.

<sup>82</sup>Sheridan Road Baptist Church v. Department of Education; People v. DeJonge.

<sup>83</sup>People v. DeJonge, p. 899 (West Key note 4).

In the state of Washington parents were found guilty of violating the compulsory attendance law. The court reasoned that fulfillment of the law could only be accomplished at a school, to be a teacher under Washington law required certification, the parents were not certified to teach, and, therefore, their home could not be construed to be a school since it had no teacher.<sup>84</sup>

Although Massachusetts does not require certified teachers in private schools, in one case a court ruled that if attendance at a private school was to satisfy compulsory education laws, the state could require minimum hours of instruction and supervision of teachers with specified training.<sup>85</sup>

Like previously mentioned states, Maine required private schools to be approved in order to meet compulsory attendance laws. Unlike previously cited cases, the court in Banger Baptist Church v. State of Maine ruled that the schools could operate without approval and that parents whose children attended non-approved schools could not be prosecuted for violating compulsory attendance laws.<sup>86</sup> The

---

<sup>84</sup>State ex rel. Shoreline School District No 412 v. Superior Court for King County, p. 1002.

<sup>85</sup>Braintree Baptist Temple v. Holbrook Public Schools, 616 F. Supp. 81 (1984).

<sup>86</sup>Banger Baptist Church v. State of Maine, Department of Educational and Cultural Services, 576 F. Supp. 1299 (D. Maine 1983).

basis for the decision was the court's determination that the state legislature never intended that non-approved schools should be closed and, therefore, since it was permissible for the schools to operate, it followed that students should be allowed to attend, thus fulfilling compulsory mandates.

In Illinois the compulsory attendance statutes are considered valid under the state's police power. A court there has ruled that the state need not prove a "compelling interest" in requiring students to attend school, but only that the state act "reasonably" in its requirement.<sup>87</sup> Yet that compulsion may legitimately be fulfilled in places other than public schools. In People v. Levisen the Illinois Supreme Court found that the object of the compulsory attendance law was that children be educated, not that this be accomplished in any particular manner or place.<sup>88</sup>

A Minnesota court refused to allow the imposition of criminal liability in a compulsory attendance case. The court said that the term "essentially equivalent" in requiring that teacher's qualifications be essentially equivalent to minimum standards for public school teachers of the same grade or subject was unconstitutionally vague.<sup>89</sup>

---

<sup>87</sup>Scoma v. Chicago Board of Education, 391 F. Supp. 452 (Ill. 1974).

<sup>88</sup>People v. Levisen, 90 N.E. 2d 213 (1950).

<sup>89</sup>State v. Newstrom, 371 N.W. 2d 525 (Minn. 1985).

Parents and private schools which sought injunctive relief from the state in the enforcement of compulsory attendance laws in Kentucky found an ally in the Kentucky Supreme Court.<sup>90</sup> That court stated clearly that the parents' rights under the Kentucky Constitution would be violated by enforcement of the law, including specifically the teacher certification requirement.

In a home school case in Michigan, which had certification requirements upheld in previously cited cases, the state prosecuted the Nobels for violating compulsory attendance laws. These parents were educating their children at home, but neither parent was certified. However, Mrs. Nobel had met all requirements essential to being certified but refused on religious grounds to obtain a certificate. The district court found no violation of the compulsory attendance law.<sup>91</sup>

In Ohio, the state Supreme Court found in one case that Ohio's compulsory attendance law exceeded the bounds necessary to assure that the state's interest in education of children was being met.<sup>92</sup> Application of the compulsory attendance law which required attendance at a school having

---

<sup>90</sup>Kentucky v. Rudasill.

<sup>91</sup>State v. Nobel, Nos S 791-0114-A, S 791-0115-A (Mich. Dist. Ct., Allegan Co., Jan. 9, 1980).

<sup>92</sup>State ex rel. Nagle v. Olin, 415 N.E. 2d 279 (Ohio 1980).

certified teachers was overruled when applied to a non-Amish attending an Amish school much closer to her home.<sup>93</sup>

#### Vagueness

"Vagueness" has been used to challenge certification requirements with mixed success. In Minnesota<sup>94</sup> and Iowa,<sup>95</sup> courts found that the language of the statutes was indeed vague. In Wisconsin the term "private school" was found impermissibly vague.<sup>96</sup> On the other hand, courts in West Virginia,<sup>97</sup> Virginia,<sup>98</sup> Iowa,<sup>99</sup> and Michigan<sup>100</sup> have found state statutes upon examination to be sufficiently clear, and have rejected attempts to use "vagueness" as an excuse not to be certified.

#### Excessive Regulation of Private Schools

In three jurisdictions courts have accepted arguments that the state exceeded reasonable exercise of its police power in its adoption and enforcement of private school

---

<sup>93</sup>Ibid.

<sup>94</sup>State v. Newstrom.

<sup>95</sup>Fellowship Baptist Church v. Benton.

<sup>96</sup>State of Wisconsin v. Pompanz, 332 N.W. 2d 750 (Wis. 1983).

<sup>97</sup>State v. Riddle, 285 S.E. 2d 359 (W.Va. 1981).

<sup>98</sup>Gregg v. Commonwealth, 297 S.E. 2d 799 (Va. 1982).

<sup>99</sup>State v. Moorhead.

<sup>100</sup>People v. DeJonge..



regulations. The state of Ohio sought to regulate not only curriculum but how much time was being spent teaching each subject "almost to the minute."<sup>101</sup> Church schools would have been left with no time during the school day for religious instruction or teaching of other subjects which were felt essential. The Court ruled this was totally unreasonable:

In our view, these standards are so pervasive and all-encompassing that total compliance with each and every standard by a nonpublic school would effectively eradicate the distinction between public and nonpublic education and thereby deprive these appellants of their traditional interest as parents to direct the upbringing and education of their children.<sup>102</sup>

The Court continued:

It has long been recognized that the right of a parent to guide the education, including the religious education, of his or her children is indeed a "fundamental right" guaranteed by the due process clause of the Fourteenth Amendment.<sup>103</sup>

In Maine, the Commissioner of Education threatened to close several unapproved schools. After tracing extensively the history of conflict between Maine's Commissioner of Education and the state's Christian schools over state approval, a federal court reached two important decisions.

---

<sup>101</sup>State v. Whisner, 351 N.E. 2d 750 (Ohio 1976).

<sup>102</sup>Ibid., p. 768.

<sup>103</sup>Ibid., p. 769.

First, the legislature had not authorized the Commissioner to seek to close those private schools which refused to request state approval. Unapproved state schools could remain in operation without fear of state action under current regulations. Second, students could fulfill compulsory attendance requirements at such schools without risk of prosecution of parents for violations and without danger of schools being charged with inducing truancy.<sup>104</sup>

Public school officials in Vermont sought to require private schools to seek state approval. The basis for the action was the requirement in the compulsory attendance law that education outside the public school system be equivalent to that received in the public schools. The Vermont Supreme Court, though not addressing some of the constitutional issues raised, ruled that approval was not required and that state officials were exceeding the intent of the law as passed by the Legislature.<sup>105</sup>

#### Burden of Proof

The outcome of many court cases hinges on the placement of burden of proof. In criminal proceedings the state bears the burden of proving beyond any doubt that a defendant has violated a law. This assignment of burden of proof has not always been true in cases involving disputes between parents

---

<sup>104</sup>Bangor Baptist Church v. State of Maine.

<sup>105</sup>State v. LaBarge, 357 A. 2d 121 (Vt. 1976).

or private schools and states. Four home school cases provide insight into this issue.

In Alabama and Iowa courts have placed the burden on parents to show that equivalent instruction was taking place in home schools operated by the parents. Such equivalence was not shown and the courts ruled in favor of the states.<sup>106</sup> In a Missouri case, In re Monning,<sup>107</sup> the court found that the state must prove whether home instruction was occurring, and if so, whether the instruction met the standard of equivalency. In similar fashion in the case State v. White,<sup>108</sup> a Wisconsin court ruled that a lower court had erred in placing the burden on proof on the parents. The state should have been required to prove that the parents were not complying with compulsory attendance laws in a home school. However, because the parents had entered a plea of guilty in the lower court before the appeal, the parents' conviction was upheld.

These case illustrate that where the court places the burden of proof is very important. However, placing that burden on the state does not insure a victory by parents, nor does placing the burden on the parent necessarily result in defeat.

---

<sup>106</sup>Hill v. State, 410 So. 2d 431 (Ala. Crim. App. 1982); Iowa v. Moorhead, 308 N.W. 2d 60 (Iowa 1981).

<sup>107</sup>In re Monning, 638 S.W. 2d 782 (Mo. Ct. App. 1982).

<sup>108</sup>State v. White, 325 N.W. 2d 76 (Wis. Ct.App. 1982).

### Summary

Courts have been far from predictable in deciding cases involving challenges by parents or private schools to state certification requirements for private school teachers. In the states of North Dakota, Nebraska, Iowa, and Michigan the majority of such challenges have been turned back by the courts. Judicial decisions in other states on certification requirements, often embodied in compulsory attendance laws, have been mixed. Some of the common bases for such challenges have included violations of religious rights, vagueness, usurping parental control, and inadequacy of certification to guarantee competent teaching. Additionally, questions concerning exceeding or abusing state power, as well as the possible use of testing as an alternative to certification have been raised.

Although some trends and possible directions for states, schools, and courts will be discussed in Chapter Six, the cases considered demonstrate that the individual facts of each case will generally determine the outcome of challenges to certification requirements, despite a seeming predisposition of some of the Midwestern courts to lean heavily in favor of state requirements.

CHAPTER V  
REVIEW OF SELECTED COURT CASES

Overview

The purpose of this chapter is to examine more thoroughly selected court cases which either directly or indirectly address issues related to the power of the state to require certification for private school teachers. These cases are representative of the body of judicial decisions which exist on the topic.

Categorizing the cases is extremely difficult because every case contains multiple issues. Because of this the cases are arbitrarily placed in general categories with the realization that most could be discussed under other headings.

The first cases reviewed are those which deal with the right of the government to regulate various aspects of private schools. Included are the preeminent case on both the right of private schools to exist, the right of parents to send their children to private schools, and the right of the state to regulate such schools; a case on discrimination; and a case establishing the validity of compulsory attendance laws. None of these cases raises the certification issue specifically. They were chosen for review because they clearly establish the premise that states may

regulate many aspects of private schools and this is the foundation upon which certification requirements rest.

The second set of cases, and the most numerous, examines the conflict between free exercise of religion and the state compelling interest. The vast majority of cases in which teacher certification has been challenged have been based at least in part on First Amendment claims.

The final three cases, though also argued on religious grounds, consider the issues of vagueness, value of certification, and state constitutional requirements.

#### Foundational Cases

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

#### Facts:

The Oregon Legislature passed a compulsory education act in 1922 which required all children in the state between the ages of eight and sixteen to attend a public school in the district in which they resided. A criminal penalty would be imposed on parents who failed to comply. The owners of two private schools, one a military academy and the other a sectarian school operated by the Society of Sisters of the Holy Names of Jesus and Mary, challenged the law in court.

The defense presented by the state was that the action was a proper exercise of the police power of the state, that

no due process, religious or contractual rights were being interfered with, and that the state in the position of parens patriae held great power over the children of the state. The state further injected the "patriotic" argument that:

...if the Oregon School Law is declared unconstitutional there will be nothing to prevent the establishment of private schools, the main purpose of which will be to teach disloyalty to the United States....<sup>1</sup>

The plaintiffs contended that conducting private schools was a useful occupation protected by the Fourteenth Amendment, that the act violated a contract with the state secured by the schools' charters, that the state was exceeding legitimate exercise of police power, and that the right of parents to control their children was being violated.

Decision:

The Court decided for the plaintiffs in the case, finding that the rights of the owners of the private schools were Constitutionally protected and thus granting the owners "protection against arbitrary, unreasonable and unlawful interference with their patrons and the consequent destruction of their business and property."<sup>2</sup>

---

<sup>1</sup>Pierce v. Society of Sisters, p. 528.

<sup>2</sup>Ibid., p. 536.

Although the Court protected the existence of the private schools in this case, the right of the state to exercise reasonable control of schools was affirmed:

No question is raised concerning the power of the State to reasonably regulate all schools, to inspect, supervise and examine them, their teachers and pupils; to require that all children of proper age attend some school, that teachers shall be of good moral character and patriotic disposition, that certain studies plainly essential to good citizenship must be taught, and that nothing be taught which is manifestly inimical to the public welfare.<sup>3</sup>

Finally, the Court's statement confirming the rights of parents, even though parents were not participants in the challenge to Oregon's law, has had far reaching impact. The Court said:

The fundamental theory upon which all governments in this Union repose excludes any general powers or the state to standardize its children by forcing them to accept instruction from public teachers only. The child is not the mere creature of the state; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations.<sup>4</sup>

#### Discussion:

This case is discussed in some detail here, despite having been cited previously on numerous occasions, because of its tremendous importance. No Supreme Court case has had greater impact on private schools in American history than

---

<sup>3</sup>Ibid., p. 534.

<sup>4</sup>Ibid., p. 534.



Pierce. The decision in essence guaranteed the right of private schools to exist, as well as the right of parents to choose to send their children to private schools as alternatives to public schools. No state through legislative fiat can eliminate private schools or abridge the right of parents.

Equally apparent in the case is the Court's confirmation of the right of the state to reasonably regulate private education, including imposing standards for private school teachers. Based largely on this case, many challenges to states' certification requirements have been withstood. Despite one or two anomalies,<sup>5</sup> courts have been consistent in ruling that requiring certification is a proper exercise of state power.

Runyon v. McCrary  
427 U.S. 160 (1976)

Facts:

Parents of Michael McCrary and Colin Gonzales, Negro children, sought admission for their children in two private schools. In 1969 Mr. and Mrs. Gonzales, in response to an advertisement, sought first admission to Fairfax-Brewster School in Fairfax, Virginia and then to Bobbe's School in Arlington, Virginia. Both schools refused to admit Colin

---

<sup>5</sup>See, for example, *Kentucky State Board v. Rudasill*, 589 S.W. 2d 877 (Ky. 1979) and *Bangor Baptist Church v. State of Maine*, 576 F.Supp. 1299 (D. Maine 1983).

because he was black and the schools were not integrated. In 1972 Mrs. McCrary sought admission to Bobbe's School for her son, Michael, but was told that the school was not integrated. The parents filed suit and the District Court found in their favor, ruling that the schools' racially discriminatory admissions policies violated Title 42 U.S.C. sec. 1981 which states in part that "[all] persons within the jurisdiction of the United States shall have the same rights in every state ... to make and enforce contracts ... as is enjoyed by white citizens ...." The court further enjoined the two schools, as well as member schools of the Southern Independent School Association from discriminating against applicants on the basis of race. Issues of damages and attorneys fees were also decided in favor of the students.

The Court of Appeals of the Fourth Circuit confirmed the District Court's decision, ruling that discrimination had occurred when the parents sought to enter into a contract. The court further rejected the schools argument that their "racially discriminatory policies are protected by a constitutional right of privacy."<sup>6</sup> Certiorari was granted to the United States Supreme Court. The case was argued on April 26, 1976 and decided June 25, 1976.

---

<sup>6</sup>Runyon v. McCrary, p. 167.

**Decision:**

The Court upheld fully the Appeals Court ruling. Section 1981 of the Civil Rights Act was found applicable to "private, commercially operated, non-sectarian schools," and therefore, racially discriminatory admissions policies were impermissible because they resulted in discrimination in making and enforcing private contracts.<sup>7</sup> Further, the Court ruled that Section 1981 does not violate constitutional rights of free association, privacy, or parental rights to direct children's education. The Court stated,

The Court has repeated stressed that while parents have a constitutional right to send their children to private schools and a constitutional right to select private schools that offer specialized instruction, they have no constitutional right to provide their children with private school education unfettered by reasonable government regulation .... Indeed, the Court in Pierce expressly acknowledged "The power of the State to regulate all schools, to inspect, supervise and examine them, their teachers and pupils ...."

**Discussion:**

Although Furst states, "Any court decision which ... allows government involvement in the school's operation tends to subvert the very purpose for which nonpublic schools are established,"<sup>8</sup> racial discrimination in admissions policies of nonsectarian schools is not only inappro-

---

<sup>7</sup>Ibid., pp. 168-172.

<sup>8</sup>Lyndon G. Furst, "Judicial Involvement in Nonpublic Schools," Contemporary Education 50 (Summer 1979): 205.

priate but also illegal. Further, practicing racial discrimination under the auspices of "free exercise of religion" is likewise reprehensible. Since the Brown<sup>9</sup> decision a new course in race relations has been charted, even though that course has not been smooth. The Runyan decision helped remove only one of the many obstacles to equality in America.

State or federal intervention into the affairs of private schools should occur sparingly, but this was a case in which regulation was proper. Courts will not accept flagrant disregard of the civil rights of minorities under the guise of rights to privacy, free association, or parental control, nor should they.

State v. Bailey  
61 N.E. 730 (Ind. 1901)

Facts:

Sheridan Bailey was convicted by a justice of the peace for violating Indiana's compulsory attendance law, passed in 1897. He appealed to the circuit court which overturned his conviction. The state appealed to the state Supreme Court.

Bailey had appealed his conviction to the circuit court based on his contention that the compulsory attendance law, titled "An act concerning the education of children," was unconstitutional because it was improperly titled, because

---

<sup>9</sup>Brown v. Board of Education, 347 U.S. 483 (1954).

it was amended without full reference to its title, and "because it invades the natural right of a man to govern and control his own children."<sup>10</sup>

Decision:

The state high court considered both questions of violation of the state constitution and found the statute violated neither. On the question of parental rights the court said,

The natural rights of a parent to the custody and control of his infant children are subordinate to the power of the state, and may be restricted and regulated by municipal laws. One of the most important natural duties of the parent is his obligation to educate his child, and this duty he owes not to the child only, but to the commonwealth. If he neglects to perform it or willfully refuses to do so, he may be coerced by law to execute such civil obligations. The welfare of the child and the best interests of society require that the state ... secure to the child the opportunity to acquire an education.<sup>11</sup>

The court further made it clear that requiring attendance at "public or private schools" was constitutional and necessary. The legislature had imposed proper regulations and invested much money to educate the state's children and, "No parent can be said to have the right to deprive his child of the advantages so provided ...."<sup>12</sup>

---

<sup>10</sup>State v. Bailey, p. 730.

<sup>11</sup>Ibid., p. 732.

<sup>12</sup>Ibid.

Thus the court reversed the circuit court and upheld Bailey's conviction.

Discussion:

This early decision in which compulsory attendance was upheld as a legitimate exercise of state power relative to the education of the children of the state foreshadowed the majority of subsequent court rulings on the issue. Though Meyer<sup>13</sup> and Pierce<sup>14</sup> afforded more emphasis to parental rights than did Bailey, the state's right to compel attendance at some school has been nearly universally upheld. Even parents choosing home schooling as an alternative to public or traditional private schools are subject to the same underlying foundation for compulsory attendance laws, i.e. the need for children to be educated. Courts will not tolerate the neglect of a child's education by parents.

Free Exercise of Religion and  
State Compelling Interest

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

Facts:

Jonas Yoder and several other Amish parents were convicted under Wisconsin's compulsory attendance law for

---

<sup>13</sup>Meyer v. Nebraska, 262 U.S. 390 (1923).

<sup>14</sup>Pierce v. Society of Sisters.

failing to send their fourteen and fifteen year old children to high school. The children had all finished the eighth grade.

The contention of the parents was that the law violated their right, guaranteed by the First Amendment, to freely practice their religion. The Amish believed that sending their children to high school would expose them to worldly ideas, result in sanctions from their church, and jeopardize salvation for both parent and child. No objection was raised by the parents to elementary education.

The convictions by the Green County Court of Wisconsin were upheld by a circuit court. An appeal was made by counsel for the parents to the Wisconsin Supreme Court, which reversed the lower court on the basis that the parents' free exercise of religion was violated. The state then appealed the case to the United States Supreme Court.

Decision:

The Supreme Court agreed with the Wisconsin high court, invalidating the state's attempt to force the Amish children to attend school beyond the eighth grade. In making a determination concerning the disposition of the case the Court applied a three-fold test. First, is the activity interfered with by the state motivated by and rooted in legitimately and sincerely held religious beliefs? Second, is the free exercise of religion unduly burdened by the

state action and to what extent? And third, is the burden placed upon the free exercise of religion by the individuals affected justified by a compelling state interest?

The Court cited the long history and tradition of the Amish people to easily conclude the sincerity of their beliefs. Further, there was no doubt in the mind of the Court that the compulsory attendance law unduly burdened the parents' right of free exercise of religion. The answer to the third question was crucial. The Court confirmed the "power of a State, having a high responsibility for education of its citizens, to impose reasonable regulations for the control and duration of basic education."<sup>15</sup> But the Court dismissed the state's claim that a compelling interest existed, finding that:

...accommodating the religious objections of the Amish by forgoing one, or at most two, additional years of compulsory education will not impair the physical or mental health of the child, or result in an inability to be self-supporting or to discharge the duties and responsibilities of citizenship, or in any other way materially detract from the welfare of society.<sup>16</sup>

The Courts conclusion was that Wisconsin could not force compulsory attendance for the Amish children beyond the eighth grade in violation of the Free Exercise Clause of the First Amendment.

---

<sup>15</sup>Wisconsin v. Yoder, p. 213.

<sup>16</sup>Ibid., p. 204.



Discussion:

As noted in Chapter two, this decision allowed a very narrow exclusion to Wisconsin's law. The Court seemed to take great pains to emphasize the long history of the Amish way of life, the informal vocational training received by the children, and the work ethic and self-reliance of the Amish people. These attributes were inseparable from their religious beliefs.

The Court's exception of the Amish from compulsory attendance beyond the eighth grade on the basis of their religious beliefs has not resulted in mass challenges to compulsory attendance laws based on First Amendment claims. The majority of instances in which the three pronged test enunciated above has been used in challenging teacher certification requirements has resulted in the courts finding both sincere religious beliefs and a burden to those beliefs, but a state compelling interest to justify such a burden has been accepted.

Sheridan Road Baptist Church v.  
Department of Education  
396 N.W. 2d 373 (Mich. 1986)

Facts:

Sheridan Road Baptist Church and Faith Baptist Church of Bridgeport operated Christian schools containing grades kindergarten through twelfth. The curricula of both schools included a variety of secular, academic subjects. Both

certified and uncertified teachers were employed. The schools refused to submit to the state school records for the 1979-1980 school year which were required by state law. In response to expected administrative action from the state, the churches filed a complaint in Circuit Court to prevent enforcement of state required curriculum standards and teacher certification requirements for teachers in nonpublic schools because such requirements violated their fundamentalist Christian beliefs. The trial judge in a bench trial agreed that the regulations interfered with plaintiffs' beliefs and that the state did not prove that certification was "a reasonable or effective means to carry out a legitimate state purpose."<sup>17</sup>

The state appealed to the Court of Appeals of Michigan which reversed the trial judge's decision. The appeals court found that the state curriculum and teacher certification requirements did not violate first amendment rights, nor were the curriculum requirements vague. Besides, "no matter how specific the curriculum requirements might be, plaintiffs would object to being subjected to them," the court said.<sup>18</sup> The churches appealed to the state supreme court.

---

<sup>17</sup>Sheridan Road Baptist Church v. Department of Education, 348 N.W. 2d 263 (Mich. Ct. App. 1984), p. 276.

<sup>18</sup>Ibid., p. 276.

**Decision:**

By an equally divided court, the Michigan Supreme Court affirmed the appeals court decision. (Certiorari was denied by the U.S. Supreme Court on further appeal, 107 S.Ct. 2183.)

The Michigan Supreme Court ruled that certification furthers education and is a compelling state interest. "The state's interest in education necessarily extends to an interest in teachers because a primary and vital ingredient to a good education is good teachers."<sup>19</sup> Further, any "... infringement on free exercise rights is minimal and is outweighed by the state's interest."<sup>20</sup>

The appellants had proposed standardized testing as a method by which the state could satisfy its interest in education in place of teacher certification requirements, but the court rejected this as no less intrusive and "an inadequate substitute because deficiencies would be discovered only after the damage has occurred."<sup>21</sup>

**Discussion:**

The decision by the Michigan Supreme Court was split evenly three to three, thus sustaining the appeals court

---

<sup>19</sup>Sheridan Road Baptist Church v. Department of Education, 396 N.W. 2d 381 (Mich. 1986).

<sup>20</sup>Ibid., p. 382.

<sup>21</sup>Ibid.

ruling. Because of the split decision, the value of using the case as a precedent is suspect. However, the case illustrates well the divided opinion which exists among jurists concerning permissible state regulation of private schools.

The appeals court ruling in the case demonstrates again that state interest can be and is used to limit freedom of religion rights. That interest must be a compelling interest, though, and such has been the determination of the courts in many similar cases. Also decided in this case was that certification, though imperfect, is reasonable; that testing is not an acceptable substitute for certification; and, that claims of vagueness find little support from courts when the only reason for making such a claim is to avoid doing something undesired.

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

Facts:

North Dakota's compulsory attendance law provided for compliance by parents when their children attended a parochial or private school approved by the state on the basis of employing legally certified teachers, offering subjects prescribed by the state, and complying with local and state health, fire, and safety laws.<sup>22</sup>

---

<sup>22</sup>State v. Shaver, p. 893.

Paul Shaver and Dennis Steinward, members of Bible Baptist Church, did not send their children to either a public or approved private school. Instead the children attended Bible Baptist School, an unapproved fundamentalist Baptist school. The parents were convicted of violating the state compulsory attendance law. They appealed based on the allegation that the law violated their religious beliefs and prevented them from educating their children accordingly.

Decision:

The court applied the three-fold analysis used in Yoder. First, is the activity interfered with by the state motivated by sincere, legitimate religious beliefs? The court agreed that Shaver and Steinward met this criteria. Second, to what extent has the individual's right to free exercise of religion been burdened, if at all? For the sake of argument the court assumed some burden existed. Third, did the state have a compelling interest that justified the burden? On this point the court said clearly that such an interest existed. "The burden on the parents' free exercise of religion in the present case is minimal, and is far outweighed by the state's interest in providing an education for its people."<sup>23</sup> The lower court decision was thus affirmed.

---

<sup>23</sup>Ibid., p. 897.

**Discussion:**

Many private school advocates, particularly those in sectarian schools, had heralded the Yoder<sup>24</sup> decision as their savior from state regulation. Their optimism was ill-founded. In most cases, as in this one, courts have been willing to recognize both a sincere religious belief and a burden placed on that belief, yet the state's compelling interest has normally been preeminent.

While upholding the conviction of the defendants and thus the state's compulsory attendance law requirement for certified teachers, this court seemed to look ahead to possible changes. Judge C. J. Erickstad concluded his majority opinion as follows:

We recognize that courts are ill-equipped to act as school boards and determine the need for discrete aspects of a compulsory school education program. ... The courtroom is simply not the best arena for the debate of issues of educational policies and the measurement of educational quality. Although North Dakota's minimum requirements for state approval of a private or parochial school may be imperfect, without the regulations the state would have no reasonable assurance that its recognized interest or education for its youth is being protected. In time, other means of assuring quality education under circumstances which provide safety and health may evolve, but until such time, this means appears to us to be proper.<sup>25</sup>

---

<sup>24</sup>Wisconsin v. Yoder.

<sup>25</sup>Ibid., pp. 899-900.

State ex rel. Shoreline School District No. 12  
v. Superior Court for King County  
346 P. 2d 999 (Wash. 1960)

Facts:

William and Maude Wold, parents of Alta Lee Wold, were convicted of contributing to their daughter's delinquency because of her violation of the state compulsory attendance law. Mrs. Wold, a high school graduate, was providing instruction for Alta at home and claimed this was a private school. The parents objected to attendance at the public school on religious grounds. The tenets of their church, Seventh Elect Church in Spiritual Israel, forbade eating meat, fish or fowl; listening to music, or dancing; or being present when these things occurred. In 1955 a juvenile court made Alta a ward of the court, disallowing the claim that the Wold home constituted a private school. However, the court permitted Alta to stay with her parents, stipulating they must conform with state education laws. For two years the parents continued home schooling before being brought back to the court. At that time a new judge ruled that the home school now qualified as a private school. The school district was granted a review by certiorari by the Washington Supreme Court.

Decision:

The Supreme Court of Washington reversed the lower court. Three components were said to be necessary for a

school: 1) the teacher, 2) the pupil or pupils, and 3) the place or institution. The Court said, "If the alleged school has no teacher, then it does not qualify as a school."<sup>26</sup> The 1909 Laws of Washington stated in part, "No person shall be accounted as a qualified teacher within the meaning of the school law, who is not the holder of a valid teacher's certificate ...."<sup>27</sup> Citing the above statute, the Court confirmed that a teacher must be certified, and since Mrs. Wold was not certified, a private school did not exist.

Discussion:

This case was decided before the three pronged test enunciated in Yoder had been formed,<sup>28</sup> but the Washington court demonstrated here that it is within the power of courts to strictly enforce certification requirements despite religious objections.

Actions taken by the lower courts in this case suggest a reluctance to substantially disrupt the family unit despite a violation of the state law. This has not always been true, as seen in State ex rel. Douglas v. Faith Baptist

---

<sup>26</sup>State ex rel. Shoreline School District v. Superior Court, p. 1002.

<sup>27</sup>Laws of Washington, sec. 97-4.7(1) (1909).

<sup>28</sup>Wisconsin v. Yoder.



Church<sup>29</sup> where parents were threatened with jail terms and the church pastor was actually incarcerated.

Meyerkorth v. State  
115 N.W. 2d 585 (Neb. 1962)

Facts:

Lila Meyerkorth and other members of an association of Christian parents who were members of a church following the doctrines of the Emmanuel Association hired Eleanor Berry to tutor their children. Ms. Meyerkorth said that she believed Ms. Berry "to be a qualified Christian teacher, qualified to educate her children spiritually and intellectually in a religious atmosphere, and pursuing the religious doctrines and beliefs of the members of the Association ...."<sup>30</sup>

State and local school officials sought to close the school and enforce compulsory attendance laws because the teacher was not certified. The plaintiffs brought action against the state in district court seeking a declaratory judgment that state regulations concerning compulsory attendance, certification of teachers, and operations and supervision of parochial schools were unconstitutional on the basis of the First and Fourteenth Amendments of the federal constitution and Article I, section four of the state constitution. In addition to the claim that her constitutional

---

<sup>29</sup>State ex rel Douglas v. Faith Baptist Church.

<sup>30</sup>Meyerkorth v. State, p. 587.

right to educate her children according to religious beliefs was being violated, Meyerkorth said state provisions should be declared "a void attempt to exercise the police power of the state."<sup>31</sup> Plaintiffs received an adverse judgment in the District Court of Lancaster County and appealed.

Decision:

The Supreme Court of Nebraska affirmed the district court ruling. The Court cited appropriate references from the state code which clearly stated compulsory attendance requirements, the responsibility of the state to issue teaching certificates, and the requirement for all teachers, public and private, to hold teaching certificates to teach in any of the state's schools.<sup>32</sup> The statutes were found to contain

... nothing arbitrary, unreasonable, or unconstitutional relating to the qualifications of teachers to teach in the parochial, denominational, private, or public schools of the state or with the requirements of compulsory education and attendance at such schools.<sup>33</sup>

After citing cases from other states upholding state interest and denying religious infringement, the court concluded:

The right of religious freedom is not involved in this case. The defendants do not deny the plaintiffs have

---

<sup>31</sup>Ibid., p. 586.

<sup>32</sup>Ibid., pp. 590-591.

<sup>33</sup>Ibid., 593.

the right to worship God as their conscience dictates as provided for under the Constitution of the United States and of this state. What the defendants insist upon is a qualified teacher under reasonable statutes providing for such qualifications to teach school. The statutes complained of by the plaintiffs are not arbitrary or unreasonable nor an invalid attempt to exercise the police power of the State, nor are the regulations governing the approval and accreditation of Nebraska non-public schools issued by the Nebraska Department of Education.<sup>34</sup>

Discussion:

As in the majority of cases cited in this chapter, violations of religious rights were offered as a primary reason for seeking to invalidate state certification requirements. Like the result in the majority of those other cases, here, too, that argument failed.

Another important point raised by parents was that the state was abusing or overstepping the boundaries of its power. As noted in the previous chapter, this argument found merit with courts in Maine and Ohio. The court's decision in this case, however, reflects a substantial number of other rulings which found that requiring certification is within the bounds of legitimate exercise of state powers as described in Pierce<sup>35</sup> nearly seventy years ago.

---

<sup>34</sup>Ibid., p. 596.

<sup>35</sup>Pierce v. Society of Sisters.

State ex rel. Douglas v. Faith Baptist Church  
301 N.W. 2d 571 (Neb. 1981)

Facts:

The State of Nebraska sought to close the elementary and secondary school operated by Faith Baptist Church because the Church refused to comply with state school laws. Particularly, the Church (1) refused to provide required reports enabling the state to insure compliance with compulsory attendance laws, (2) refused to have their program of instruction approved by the state, and, (3) refused to hire only certified teachers. The basis for this refusal as stated by Everett Silevan, pastor of the defendant church, was that the Bible mandates Christian education, that the church was fulfilling this mandate through Faith Christian School, that the State Department of Education was not Christian and therefore was not capable of judging the school, and that the church (school) was God's property and the church could not submit to its inspection by the State.<sup>36</sup> The district court decided for the State and the defendants appealed.

Decision:

The State Supreme Court upheld all state statutes and rules being contested, including teacher certification, and

---

<sup>36</sup>State ex. rel. Douglas v. Faith Baptist Church, p. 574.

rejected the argument that defendants first and ninth amendment rights were violated. The court cited Meyerkorth v. State,<sup>37</sup> Meyer,<sup>38</sup> and Pierce<sup>39</sup> to confirm the state's right to reasonably regulate schools, including teachers in the schools.<sup>40</sup>

On the issue of whether Yoder<sup>41</sup> established that a more compelling state interest must be shown in determining reasonableness, the state court concluded that a large difference exists between excusing the Amish children from compulsory attendance after eighth grade and allowing on the basis of religious claims the right of individuals to forego compliance with all state educational standards. On the issue of teacher certification the court said,

We are not suggesting as an absolute that every person who has earned a baccalaureate degree in teaching is going to become a good teacher .... However, we think it cannot fairly be disputed that such a requirement is neither arbitrary nor unreasonable; additionally, we believe it is also a reliable indicator of the probability of success in that particular field. We believe that it goes without saying that the State has a com-

---

<sup>37</sup>Meyerkorth v. State, 173 Neb. 889, 115 N.W. 2d 585 (1962).

<sup>38</sup>Meyer v. Nebraska.

<sup>39</sup>Pierce v. Society of Sisters.

<sup>40</sup>State ex. rel. Douglas v. Faith Baptist Church, p. 576.

<sup>41</sup>Wisconsin v. Yoder.

elling interest in the quality and ability of those who are to teach its young people.<sup>42</sup>

The decision was summarized as follows:

The refusal of the defendants to comply with the compulsory education laws of the State of Nebraska as applied in this case is an arbitrary and unreasonable attempt to thwart the legitimate, reasonable, and compelling interests of the State in carrying out its educational obligations, under a claim of religious freedom.<sup>43</sup>

Discussion:

The court ruled forcefully on the state's right to reasonably regulate schools, including private schools. Teacher certification requirements fell within the category of reasonable regulations. It must be noted, however, that Chief Justice Krivosha raised objections to the court's finding on the appropriateness of requiring a baccalaureate degree to be certified. He stated,

Under our holding today, Eric Hoffer could not teach philosophy in a grade school, public or private, and Thomas Edison could not teach the theories of electricity. While neither of them could teach in the primary or secondary grades, both of them could teach in college. I have some difficulty with a law which results in requiring that those who teach must have a baccalaureate degree, but those who teach those who teach need not. The logic of it escapes me. The experience of time has failed to establish that requiring all teach-

---

<sup>42</sup>Ibid., p. 579.

<sup>43</sup>Ibid., p. 580.

ers to earn a baccalaureate degree from anywhere results in providing children with a better education.<sup>44</sup>

The Chief Justice's lengthy and insightful dissent points out the need to make significant changes in the certification processes in place in most states. Several state boards and departments of education have already begun the change process, but many deficiencies yet remain. Consider three examples. In some states certification continues to depend primarily on completing a prescribed number of credit hours without sufficient attention being given to other criteria. Forty eight states have some kind of alternative certification, with varying degrees of success being experienced, but such programs have come under fire from teacher unions and teachers who entered the profession through the traditional route, casting a shadow on the possibility of some very competent individuals becoming classroom instructors.<sup>45</sup> Reciprocity between states is still incomplete, resulting in difficulty for many teachers moving from one state to another.

The distinction made by the court between the Amish in the Yoder<sup>46</sup> case and the defendants in this case raise some

---

<sup>44</sup>Ibid., pp. 582-583.

<sup>45</sup>Susan M. Lloyd, "Collision Courses, Safer Places: Teacher Licensure, Private Schools, and the Making of a Profession," Teachers College Record 92 (Spring 1991):464-465.

<sup>46</sup>Wisconsin v. Yoder.

concerns. Though the members of Faith Baptist Church held sincere religious beliefs, these were not assigned the same value as those of the Amish because of the long history of Amish beliefs. Using longevity of belief as the criteria to determine what weight or value to assign to such a belief is a precarious course of action, endangering the fundamental nature of the First Amendment.

The padlocking of the church doors except during worship services to prevent the school from operating and the jailing of the church pastor, despite his obstinacy, seem rather extreme measures. Every effort should be made on the part of private schools and state officials to avoid similar confrontations in the future, for truly there are no winners in such cases.

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

Facts:

Norman and Linda Moorhead were found guilty of a simple misdemeanor for violating Iowa's compulsory attendance law by a jury in the Magistrate Division of the Warren District Court. On appeal, the Warren District Court affirmed the lower court ruling. The defendants then appealed to the state Supreme Court.

The Moorhead's two children had been withdrawn from school and were being instructed at home. The section of



the attendance law challenged stated that an alternative to public school attendance is "equivalent instruction by a certified teacher elsewhere."<sup>47</sup> The parents' contention was that the phrase is unconstitutionally vague, and that, the state should have been required "to prove beyond a reasonable doubt that their children were not attending school by receiving equivalent instruction from a certified teacher."<sup>48</sup>

Decision:

The Supreme Court of Iowa upheld the convictions of the Moorheads, declaring that "equivalent instruction" and "certified teacher" are not unconstitutionally vague. The court found that the terms were sufficiently explained in other sections of the Code and that the term "certified teacher" "should cause no difficulty for citizens who desire to obey the statutes."<sup>49</sup>

Discussion:

The approach taken by the court in this case is reminiscent of an English or reading class in which instructors often say, "Consider the context" or "look for contextual clues." The court in essence said to the Moorheads, "Con-

---

<sup>47</sup>Iowa Code Annotated, Sec. 299.1 (1979).

<sup>48</sup>State v. Moorhead, p. 68.

<sup>49</sup>Ibid., p. 64.

sider the context of the entire body of statutes, for therein the terms challenged are made perfectly clear." Challengers to certification requirements claiming "vagueness" should be certain to look for clarification in other parts of the state code, for this is what they may expect the court to do. Lack of specific definition of a term in a particular part of a statute is permissible if that term is explained or clarified elsewhere, or if the term has such a commonly accepted meaning that a reasonable person would have no difficulty understanding it.

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

Facts:

The Kentucky Association of Christian Schools, Inc., several pastors and their churches, and private school parents sought to have Kentucky's standards for approving private church schools invalidated. Injunctive relief from the state was sought in the enforcement of the compulsory attendance laws. State approved standards included using state approved textbooks, requiring instruction in the subjects required in public schools, and requiring that church school teachers be certified. The Franklin Circuit Court held that the requirements and threatened prosecutions under the compulsory attendance laws violated the first

amendment of the federal constitution and section five of Kentucky's constitution.

The case was appealed directly to the Kentucky Supreme Court.

Decision:

After discussing at length the history of the adoption of that portion of section five of the Kentucky Constitution which states, "... nor shall any man be compelled to send his child to any school to which he may be conscientiously opposed . . . .," the court agreed with the circuit court that state approval of textbooks and requirements that church school teachers be certified by the state violated the state constitution. The court permitted the commonwealth to require instruction in the "several branches of study required to be taught in the public schools," but cautioned that these must be "rationally related to the education of children to exercise their right of suffrage and to participate in the democratic system."<sup>50</sup>

On the issue of teacher certification the court said,

It cannot be said an absolute that a teacher in a non-public school who is not certified under KRS-161.030(2) will be unable to instruct children to become intelligent citizens. Certainly, the receipt of 'a bachelor's degree from a standard college or university' is an indicator of the level of achievement, but it is not a sine qua non the absence of which establishes that private and parochial school teachers are

---

<sup>50</sup>Kentucky State Board v. Rudasill, p. 883.

unable to teach their students to intelligently exercise the elective franchise."<sup>51</sup>

The court further noted that teachers in private or parochial schools could voluntarily seek certification. Certiorari was denied by the U.S. Supreme Court (446 U.S. 938 [1980]).

Discussion:

This case is unique because the decision to overrule state certification and other requirements was based on a stronger statement of rights in the state constitution than that which exists in the First Amendment of the federal constitution. If a challenge to certification is made in any state which similarly guarantees to parents the right of not sending their children to schools to which they conscientiously object, the court will uphold that challenge. Whenever a state constitution or law holds the state to a higher standard than is required by federal regulation, courts will hold the state to the higher standard.

---

<sup>51</sup>Ibid., p. 884.

CHAPTER VI  
SUMMARY, CONCLUSIONS, AND RECOMMENDATIONS

Summary

Children in the United States have long been considered the nation's greatest resource. Appropriately developing the academic potential in children may be America's most noble task. Teachers performing such a high calling must never be chosen cavalierly, and lack of appropriate qualifications for teachers is intolerable. For more than a century certification has been considered the primary method by which states seek to assure citizens that teachers are competent. Yet numerous challenges to certification requirements for private school teachers have occurred in recent years.

Private schools educate nearly 4.5 million students in America annually. The purpose of this study has been to examine teacher certification in private schools from an historical, statutory, and legal perspective. To accomplish this several key questions were posed in Chapter One which will now be addressed. An appropriate understanding of the issues raised in certification debates, and particularly the legal issues, are important to present and future decisions to be made in certification matters.

### Legal Basis for Private Schools

The first guiding question presented in this study concerned the legal status of private schools in the United States. The United States Supreme Court provided the answer in the Pierce v. Society of Sisters case in 1925. Private schools have a legal right to exist that has not been questioned since that time. Sorgen wrote concerning this case that "the Supreme court established a zone of protection from government regulation for private education and for the family unit." Despite having the right to exist, private schools are not free from reasonable government regulations.

### Historical Perspective

Question two asked for the historic background for certification requirements. Through a review of related literature, the background for certification requirements was traced extensively, along with the development of private schools and adoption of compulsory attendance laws. The three topics are interdependent for purposes of this study. This is so because compulsory attendance laws are the vehicles by which certification requirements for private school teachers are enforced in many states. Removal of the legal basis for any of the three would remove the topic as an issue in America. Presented here is a synopsis of the history presented in Chapter Two.

Although formal requirements for possession of a teaching certificate in order to teach in public schools developed in the 1800s, the practice of requiring a license attesting to the fitness of instructors can be traced to medieval Europe, where religious requirements were preeminent. The Puritans of New England took the first steps in America to establish public responsibility for education by passing two school laws in the 1640s. A portion of a 1647 law described a teacher as "being able to instruct youth as far as they may be fitted for the university . . . ." The demand for qualified teachers during the colonial period outstripped the supply, and though many colonial schools had excellent teachers, others were taught by poorly trained masters.

As the common school movement of the 1800s gained impetus, leaders of the movement emphasized the need for well-qualified teachers and compulsory attendance laws for the movement to be successful. By the early part of the 1900s both certification and compulsory attendance laws were common throughout the United States.

Public schools became the overwhelming choice of parents for educating children during the last half of the nineteenth century, but a significant minority opted for private schools. Despite financial difficulties, criticism, and even an attempt in Oregon to eliminate the schools altogether, private schools have remained viable and have

continued their historic purpose. Today private school enrollment accounts for approximately 10.5 percent of all students in the United States.

The debate over certification requirements for private school teachers is a relatively recent phenomenon, with the greatest number of challenges occurring within the last thirty years. States with the most stringent certification requirements encounter the greatest amount of resistance.

#### State Requirements

Questions three, four, and five directed attention to state authority and practice. The authority by which states may impose certification requirements on private schools is grounded in the concept of state police power. Each state has the authority to pass laws designed to protect and serve the general welfare of citizens of the state. The United States Constitution does not include education as a power of the federal government, and by that omission control of education became a power reserved to the states under the Tenth Amendment. The exercise of that power must not violate other provisions or rights protected by the federal constitution. Thus the authority for setting certification requirements in any state rests with the state legislature, guided by state constitution and other statutes, and restricted by the federal government only to the extent that violations of constitutional rights do not occur.



In chapter three a series of tables illustrated state certification requirements. Twenty-two states require teachers to be certified (see Table 3.1). In thirteen of these states the requirement applies to teachers in accredited, approved, or licensed schools only (see Table 3.2). Of the nine remaining states with certification requirements, Iowa, Michigan, Nebraska, North Dakota, and South Dakota have the greatest degree of enforcement and all five use a compulsory attendance law as the basis for enforcement (see Table 3.3). In the twenty-eight states without certification requirements for private school teachers (see Table 3.4), an exception is sometimes made to require teachers of special education students in private facilities which receive public funds to be certified.

Both in those states which require certification and in those which do not, private school teachers who seek certification must almost always meet the same prerequisites as public school teachers who obtain certificates. These typically include graduation from an accredited college, completion of a prescribed course of study, and student teaching experience. A notable exception is Ohio, which requires only graduation from an accredited college and adds no additional educational requirements.

### Court Cases

Question six asked if certification requirements violate First Amendment provisions and question seven sought the outcome of court cases regarding the regulation of private school teachers. Challenges to certification on the basis of the Establishment Clause of the First Amendment are not common. However, nearly every challenge to certification of private school teachers in the last thirty years has included Free Exercise questions. These questions have been answered on a case by case basis after the courts have reviewed the facts of each case. Most frequently the courts have been willing to accept that a burden on free exercise of religion exists when such claims are made and when the sincerity of belief is established. However, based on the Yoder decision, which established that such burdens are permissible if a compelling state interest exists, courts have generally refused to overturn certification requirements on claims of violation of religious rights. Two notable exceptions are in Kentucky, which through the state constitution grants stronger religious rights than guaranteed by the First Amendment, and Maine, where Christian schools gained exemption from most state regulations, including teacher certification.

Other court challenges have been mounted on claims of vagueness, usurping parental rights, abuse of state police power, efficacy of certification, and testing as an alterna-

tive to certification. On the issue of vagueness, as long as terms are understandable to the average person and some explanation is given, even if that explanation occurs elsewhere in the statutes, courts have generally ruled in favor of the state. In cases where violations of parental rights to direct education of children have been claimed, the courts have rendered mixed decisions. Courts have tended to accept such claims, and have thus allowed uncertified teachers, more frequently in home school cases than in cases involving formally organized private schools. Abuse of state power has not generally been used successfully as a challenge.

In most cases involving the efficacy of certification the courts have not found absolutely that certification is a guarantor of competent teaching, but have said that the likelihood of a certified teacher having the qualities necessary to successfully teach is great enough to warrant state imposed certification requirements. On this issue there have been some strong contrary opinions in which judges have found such certification requirements illogical or unnecessary.

Of the cases reviewed, only in the Kentucky decision has a court taken a proactive position on standardized testing as a substitute for certification. There the court considered such a testing program as an acceptable way to meet many of the state's requirements. That same approach

has been taken by many states which no longer require teachers in private schools be certified. More typically in the courts, the concept of standardized testing as an alternative to certification has been rejected on the basis that the testing of the child occurs after damage has already been done.

#### Trends

The final question posed in Chapter One asked for the identification of trends in the area of certification of private school teachers. Except for requiring certification of special education teachers, the overall trend for the last several years has been for legislatures to deregulate private schools, imposing only minimal requirements relating to fire, health, and safety. Keeping records of attendance and immunization, and keeping the school in session for a prescribed number of days or months are also common requirements. Certification of teachers is not. However, some states have not followed this path. Indiana has passed a school reform act replacing optional certification with required certification for teachers in accredited private schools, and the Michigan Department of Education sent private school administrators a letter in 1990 warning that teachers in the schools must be certified.

This study has revealed conflicting court decisions, marked differences in state statutes, and a wide variety of opinions expressed in the literature review. Such diversity makes it imperative that participants in the controversy over state certification regulations have a basic understanding of state statutes and relevant court cases if intelligent, meaningful decisions are to be made.

### Conclusions

Based upon an analysis of the data the following conclusions are presented.

1. The number of states not requiring certification already exceeds the number which do and will increase.
2. Pressure for reduction in state regulations will continue to come from the growing number of schools in the Christian school movement.
3. Since the number of home schools continues to increase, additional court challenges to certification requirements for parents will be forthcoming.
4. Parents choosing to send children to private schools are responsible for selecting schools with certified teachers in states where certification is required. Failure to do so often results in violation of compulsory attendance laws and subjects parents to prosecution.

5. Claims that certification violates the free exercise of religion will continue to be ineffective in arguments before the courts.
6. The issue of efficacy of certification will become a more prominent issue. If courts place the burden of proof on the state to show the value of certification, successful challenges to certification will increase.
7. Standardized testing as an alternative to state regulation will become more prominent as private schools are deregulated. Courts may, however, continue to express reluctance to accept testing as an alternative to certification.
8. Standards for determining what constitutes a compelling state interest in the area of education will be sought more vigorously in future cases.
9. Private school teachers will be encouraged by states to pursue available alternate certification routes being implemented across the nation.
10. Adoption of a system of school choice or vouchers will significantly increase the number of students attending private schools and will result in increased calls for accountability of teacher qualifications, particularly from public school officials and teacher organizations.

11. A great need exists for public and private school officials to seek understanding of varying positions taken on certification requirements. Discussion and compromise need to replace antagonism and inflexibility.
12. Until a Supreme Court decision addresses in a substantive way the power of the state to regulate teacher qualifications, lower courts will continue to reach varying conclusions on the issues of certification requirements.

#### Recommendations

The likelihood of continued conflict between state and local public school officials and private school officials and patrons is great. A large degree of mistrust exists on both sides. Public officials question, and rightly so in some instances, the competence of instructors and the quality of instruction received by private school children. Religious school patrons and officials seek near total freedom from state control, based frequently on the belief that Christian schools are in fact church ministries which should not be regulated. In some states headmasters and board members of independent schools worry that the very purpose for the schools' existence is threatened by imposition of certification requirements. Although no quick or easy solution can be posed to eliminate the inevitable

controversy arising from such diverse perspectives, the following recommendations are made as possible ways to facilitate communication and avoid unwelcome and unsure court decisions.

1. All states should consider the establishment of an ongoing commission on nonpublic schools, with a membership composed equally of public and nonpublic school administrators. The commission's function would be to advise governors and legislatures of potential conflicts as well as common ground.
2. The issue of standardized testing should be reviewed thoroughly. If states use standardized tests in the spring of the year to measure student progress, and the results become the basis for program or personnel changes, the argument that similar testing in private schools comes "too late" is suspect.
3. Before arbitrarily violating state teacher certification requirements, private school officials should give serious thought to the cost and consequence of court cases. In the majority of cases on this issue the state has prevailed.
4. State legislatures should set specific parameters of control for the state boards or departments of education to avoid unauthorized interference into private school governance.



5. The legal reason for certification requirements is to insure competent teachers. Although courts have upheld the power of the state to impose such requirements, there is a great need to explore alternatives to certification which could have the same effect. Competency testing, approval of college programs of study from which private school teachers graduate, and student outcomes are possible areas for exploration.
6. Before prosecuting parents for violating attendance laws requiring instruction by certified teachers, states should consider making every effort first to determine that such action is necessary for the well-being of the child.
7. Advocates of certification should seek to develop empirical data to demonstrate a correlation between licensure requirements and student outcomes. If such a correlation cannot be demonstrated, the implications are great for both public and private schools.
8. Although state autonomy in the area of education is highly prized in America, officials of states with certification requirements should examine practices of states without requirements to determine if the state's compelling interest in education has been

compromised in those states, and if not, whether certification should be eliminated.

9. Private school associations must take a more active role in monitoring and improving the quality of education offered in all member schools. The reputations of many fine private schools are sometimes soiled by the deficient performance or personnel practices of a minority of schools.

The completion of an extensive study or research project invariably raises additional questions to be studied. The answers to those questions may either enhance or invalidate the results of the initial study. In either case, suggestions for further research are appropriate. The following recommendations for additional research grew out of the present study.

1. An extensive study comparing achievement of students taught by certified teachers and uncertified teachers should be done.
2. The criteria for certification of teachers by private school organizations and the number of schools and teachers which participate in such programs should be examined to determine the appropriateness of such a credential being used as a substitute for state certification.
3. A study of state constitutions should be done to

- determine if certification challenges based on state constitutional rights would be successful.
4. Possibilities for regional or nation certification boards should be explored. Would private schools be willing to accept certification from such boards?
  5. During the last twenty-five years a significant decline in Catholic school enrollment has occurred, while tremendous growth has occurred in the fundamentalist Christian school sector. What has generated this change and what impact will this have on education in the United States?
  6. Certification requirements for special education teachers are motivated in part by federal regulations. What impact have such regulations had on private schools? Are federal regulations prescribing teacher qualifications an encroachment on states' rights?
  7. In Wisconsin v. Yoder the Court considered the long history of the Amish beliefs. Is longevity of religious beliefs an appropriate legal test?
  8. The requirement that beginning public school teachers take the National Teachers Examination or a similar test is being implemented in almost all states. Would such a test be an appropriate substitute for certification in situations where

individuals object to state certification requirements?

9. What impact will the expenditure of public funds on vouchers or a school choice program have on certification requirements for private school teachers?
10. The final recommendation, and perhaps the central issue for future court cases, concerns the efficacy of certification. Empirical evidence is needed to show whether certification affects student outcomes.

## BIBLIOGRAPHY

A. Primary Sources

## Table of Cases

- Abington School District v. Schempp, 374 U.S. 203 (1963).
- Bangor Baptist Church v. State of Maine, 576 F. Supp. 1299 (D. Maine 1983).
- Board of Education of Central School District No. 1 v. Allen, 392 U.S. 236 (1968).
- Bob Jones University v. United States, 103 S. Ct. 2017 (1983).
- Braintree Baptist Temple v. Holbrook Public Schools, 616 F. Supp. 81 (1984).
- Braufeld v. Brown, 366 U.S. 599 (1961).
- Brown v. Board of Education, 347 U.S. 483 (1954).
- Cantwell v. Connecticut, 310 U.S. 296 (1940).
- Coleman v. School District of Rochester, 183 A. 586 (N.H. 1936).
- Commonwealth ex rel Bey, 166 Pa. Super. Ct. 136, 70 A.2d 693 (1950).
- Dartmouth College v. Woodward, 4 Wheat. 518 (1819).
- Engel v. Vitali, 370 U.S. 421 (1962).
- Everson v. Board of Education, 330 U.S. 1 (1947).
- Farrington v. Tokushige, 273 U.S. 284, 47 S. Ct. 406 (1927).
- Fellowship Baptist Church v. Benton, 620 F. Supp. 308 (S.D. Iowa 1985).
- Gregg v. Commonwealth, 297 S.E. 2d 799 (Va. 1982).
- Griswold v. Connecticut, 85 S.Ct. 1678 (1965).

- Hansen v. Cushman, 490 F. Supp. 114 (W.D. Mich. 1980).
- Hill v. State, 410 So. 2d 431 (Ala. Crim. App. 1982).
- In re McMillan, 226 S.E. 2d 695 (N.C. App. 1976).
- In re Monning, 638 S.W. 2d 782 (Mo. Ct. App. 1982).
- In re Shinn, 195 Cal. App. 2d 686 (1963).
- In re Skipworth, 180 N.Y.S. 2d 873 (1958).
- Jernigan v. State, 412 So. 2d 1242 (Ala. Ct. App. 1982).
- Johnson v. Charles City Community Schools Board of Education, 368 N.W. 2d. 81 (Iowa 1981).
- Kentucky State Board v. Rudasill, 589 S.W. 2d 877 (Ky. 1979).
- Kobylski v. Board of Education of Central School District No. 1, 304 NYS 2d 453 (1969).
- Lemon v. Kurtzman, 403 U.S. 602 (1971).
- McCullum v. Board of Education, 333 U.S 203, 68 S. Ct. 461 (1948).
- Meyer v. Nebraska, 262 U.S. 390, 43 S.Ct. 625 (1923).
- Meyerkorth v. State, 173 Neb. 889, 115 N.W. 2d 585 (Neb. 1962).
- People v. DeJonge, 449 N.W. 2d 889 (Mich. App. 1989).
- People v. Levisen, 90 N.E. 2d 213 (1950).
- People v. Turner, 98 N.Y.S. 2d 888 (1950).
- Pierce v. Society of Sisters, 268 U.S. 510, 45 S.Ct. 571 (1925).
- Prince v. Commonwealth of Massachusetts, 321 U.S. 158, 64 S.Ct. 38 (1944).
- Lemon v. Kurtzman, 403 U.S. 602 (1971).
- Reynolds v. United States, 98 U.S. 145 (1879).
- Rice v. Commonwealth, 49 S.E. 2d 342 (Va. 1948).

- Runyon v. McCrary, 427 U.S. 160 (1976).
- Scoma v. Chicago Board of Education, 391 F. Supp. 452 (Il. 1974).
- Sheridan Road Baptist Church v. Department of Education, 396 N.W. 2d 373 (1986).
- Sileven v. Tesch, 326 N.W. 2d 854 (Neb. 1982).
- State ex rel. Douglas v. Faith Baptist Church, et al., 301 N.W. 2d 571 (Neb. 1981).
- State ex rel. Kandt v. North Platte Baptist Church, 345 N.W. 2d 19 (Neb. 1984).
- State ex rel. Kelley v. Ferguson, 95 Neb. 63, 144 N.W. 1039 (1914).
- State ex rel. Nagle v. Olin, 415 N.E. 2d 279 (Ohio 1980).
- State ex rel. Shoreline School District No 412 v. Superior Court for King County, 346 P. 2d 1004 (Wash. 1960).
- State v. Anderson, 427 N.W. 2d 631 (N.D. 1988).
- State v. Bailey, 61 N.E. 732 (Ind. 1901).
- State v. LaBarge, 357 A. 2d 121 (Vt. 1976).
- State v. Moorhead, 308 N.W. 2d 60 (Iowa 1981).
- State v. Newstrom, 371 N.W. 2d 525 (Minn. 1985).
- State v. Nobel, Nos. S 791-0114-A, S 791-0115-A (Mich. Dist. Ct., Allegan Co., Jan. 9, 1980).
- State v. O'Neil, 118 N.E. 529 (1918).
- State v. Patzer, 382 N.W. 2d 631 (N.D. 1986).
- State v. Riddle, 285 S.E. 2d 359 (W.Va. 1981).
- State v. Rivinius, 328 N.W. 2d 222 (N.D. 1982).
- State v. Shaver, 294 N.W. 2d 883 (N.D. 1980).
- State v. Whisner, 351 N.E. 2d 750 (Ohio 1976).
- State v. White, 325 N.W. 2d 76 (Wis. Ct. App. 1982).

State of Wisconsin v. Pompanz, 332 N.W. 2d 750 (Wis. 1983).  
Stone v. Fritts, 82 N.E. 794 (Ind. 1907).  
Stuart et al. v. School District No. 1 of Kalamazoo, (1874).  
United States v. Darby Lumber Co., 312 U.S. 100, 61 S.Ct. 451 (1941).  
Wisconsin v. Yoder, 406 U.S. 205 (1972).

#### Statutes

Alabama. Code of Alabama. (1992).  
Alaska. Alaska Statutes. (1991).  
Arizona. Arizona Revised Statutes, Annotated Edition. (1990).  
Arkansas. Arkansas Code of 1987 Annotated. (Amended 1991).  
California. West's Annotated California Codes. (1978);  
Deering's California Codes Annotated. (1992).  
Colorado. Colorado Revised Statutes. (1988).  
Connecticut. Connecticut General Statutes Annotated. (1986).  
Delaware. Delaware Code Annotated. (1991).  
Florida. West's Florida Statutes Annotated. (1992).  
Georgia. Official Code of Georgia Annotated. (1987).  
Hawaii. Hawaii Code Annotated. (1991).  
Idaho. Idaho Code. (1991).  
Illinois. Illinois Annotated Statutes. (1989).  
Indiana. Burns Indiana Statutes Annotated. (1992).  
Iowa. Iowa Code Annotated. (1991).  
Kansas. Kansas Statutes Annotated. (1985).  
Kentucky. Kentucky Revised Statutes Annotated. (1990).



- Louisiana. West's Louisiana Revised Statutes Annotated.  
(1981).
- Maine. Maine Revised Statutes Annotated. (1991).
- Maryland. The Annotated Code of the Public General Laws of Maryland. (1985).
- Massachusetts. Massachusetts General Laws Annotated.  
(1982).
- Michigan. Michigan Compiled Laws Annotated. (1983).
- Minnesota. Minnesota Statutes Annotated. (1992).
- Mississippi. Mississippi Code. (1991).
- Missouri. Missouri Statutes Annotated. (1991).
- Montana. Montana Code Annotated. (1991).
- Nebraska. Revised Statutes of Nebraska. (1987).
- Nevada. Nevada Revised Statutes. (1991).
- New Hampshire. New Hampshire Revised Statutes Annotated.  
(1991).
- New Jersey. New Jersey Statutes Annotated. (1989).
- New Mexico. New Mexico Statutes Annotated. (1991).
- New York. McKinney's Consolidated Laws of New York Annotated. (1981).
- North Carolina. General Statutes of North Carolina Annotated. (1991).
- North Dakota. North Dakota Century Code. (1991).
- Ohio. Ohio Revised Code. (1991).
- Oklahoma. Oklahoma Statutes Annotated. (1992).
- Oregon. Oregon Revised Statutes. (1991).
- Pennsylvania. Pennsylvania Code Reporter. (1991).
- Rhode Island. General Laws of Rhode Island. (1988).
- South Carolina. Code of Laws of South Carolina. (1990).

- South Dakota. South Dakota Codified Laws. (1991).
- Tennessee. Tennessee Code Annotated. (1990).
- Texas. Vernon's Texas Codes Annotated. (1991).
- Utah. Utah Code Annotated. (1991).
- Vermont. Vermont Statutes Annotated. (1989).
- Virginia. Code of Virginia. (1985).
- Washington. West's Revised Code of Washington Annotated. (1992).
- West Virginia. West Virginia Code. (1988).
- Wisconsin. West's Wisconsin Statutes Annotated. (1991).
- Wyoming. Wyoming Statutes Annotated. (1986).

#### B. Secondary Sources

##### Books

- Ames, Susie M. Reading, Writing, and Arithmetic in Virginia, 1607-1699. Williamsburg, Va.: 350th Anniversary Celebration Company, 1957.
- Beach, Fred F. and Will, Robert F. The State and Nonpublic Schools. Washington, D.C.: U.S. Government Printing Office, 1958.
- Beckham, Joseph and Zirkel, Perry A., eds. Legal Issues in Public School Employment. Bloomington, Indiana: Phi Delta Kappa, 1983.
- Boone, Richard G. Education in the United States. n.p., 1889; reprint ed., Freeport, New York: Books for Libraries Press, 1971.
- Bryson, Joseph E. and Houston, Samuel H., Jr. The Supreme Court and Public Funds for Religious Schools: The Burger Years, 1969-1986. Jefferson, N.C.: McFarland & Company, Inc., Publishers, 1990.
- Button, H. W. and Provenzo, E. H. History of Education and Culture in America. Englewood Cliffs, N.J.: Prentice Hall, 1983.

- Butts, Freeman R. and Cremin, Lawrence A. A History of Education in American Culture. New York: Holt, Rinehart, and Winston, Inc., 1953.
- Carper, James C. and Hunt, Thomas C., eds. Religious Schooling in America. Birmingham, Alabama: Religious Education Press, 1984.
- Cohen, Shelton S. A History of Colonial Education: 1607-1776. New York: John Wiley and Sons, Inc., 1974.
- Commager, Henry S., ed. Documents of American History. 8th ed. New York: Appleton-Century-Crofts, 1968.
- Conant, James B. The Education of American Teachers. New York: McGraw Hill Book Company, 1963.
- Cremin, Lawrence A. The Transformation of the School: Progressivism in American Education, 1876-1957. New York: Vintage Books, 1964.
- Cubberley, Elwood P. The History of Education. Cambridge: The Riverside Press, 1920.
- Cubberley, Elwood P. Public Education in the United States. Cambridge: The Riverside Press, 1919; reprint ed., Boston: Houghton Mifflin Co., 1962.
- Cubberley, Elwood P. Readings in Public Education in the United States. Boston: Houghton Mifflin Company, 1934; reprint ed., Westport, Conn.: Greenwood Press, Publishers, 1970.
- Doerr, Edd and Menendez, Albert J. Church Schools and Public School Money: The Politics of Parochialism. Buffalo, New York: Prometheus Books, 1991.
- Erickson, David A. "A Libertarian Perspective on Schooling." In Private Schools and Public Policy: International Perspectives, p. 38. Edited by William L. Boyd and James G. Cibulka. Philadelphia: The Falmer Press, 1988.
- Fuller, Edgar and Pearson, Jim B., eds. Education in the United States: Nationwide Development Since 1900. Washington, D.C.: National Education Association of the United States, 1969.
- Gatti, Richard D. and Gatti, Daniel J. Encyclopedic Dictionary of School Law. West Nyack, New York: Parker Publishing Co., Inc., 1975.

- Good, Harry G. and Teller, James D. A History of American Education. New York: The Macmillan Company, 1973.
- Goss, Richard E., ed., Heritage of American Education. Boston: Allyn and Bacon, Inc., 1962.
- Graves, Frank P. A Student's History of Education. New York: The Macmillan Company, 1915; reprint ed., Westport, Conn.: Greenwood Press, Publishers, 1963.
- Gutek, Harold. Education in the United States: An Historical Perspective. Englewood Cliffs, N.J.: Prentice-Hall, Inc., 1986.
- Hamilton, S. M., ed. Writings of James Monroe. n.p., 1801. Quoted in Harry Ammon, James Monroe: The Quest for National Identity, p. 177. New York: n.p., 1971.
- Hazard, William R., et al. Legal Issues in Teacher Preparation and Certification. Washington, D.C.: ERIC Clearinghouse on Teacher Education, 1977.
- Heatwale, C.J. A History of Education in Virginia. New York: The Macmillan Company, 1916.
- Hughes, James Monroe and Schultz, Frederick Marshall. Education in America. 4th ed. New York: Harper and Row, Publishers, 1976.
- Janosik, Robert J., ed. Encyclopedia of the American Judicial System. Vol. 1. New York: Charles Scribner's Sons, 1987.
- Kaestle, Carl F. The Evolution of an Urban School System: New York City, 1750 - 1850. Cambridge, Massachusetts: Harvard University Press, 1973.
- Kinney, Lucien B. Certification in Education. Englewood Cliffs, New Jersey: Prentice-Hall, Inc., 1964.
- Kirp, David L. and Yudof, Mark G. Kirp and Yudof's Educational Policy and the Law: Cases and Materials. 2d ed. Berkley, California: McCutchan Publishing, 1982.
- Kotin, Lawrence and Aikman, William F. Legal Foundations of Compulsory School Attendance. Port Washington, New York: Kennikat Press Corporation, 1980.

- Kraut, Jayson, ed. American Jurisprudence. 2d ed. Rochester, New York: The Lawyers Co-operative Publishing Co., 1972.
- Loerner, James D. The Miseducation of American Teachers. Boston: Houghton Mifflin, 1963.
- Mastain, Richard K., ed. The NASDTEC Manual: Manual on Certification and Preparation of Educational Personnel in the United States. Sacramento, California: National Association of State Directors of Teacher Education and Certification, 1988.
- Mawdsley, Ralph D. and Permuth, Steven P. Legal Problems of Religious and Private Schools. Topeka, Kansas: National Organization on Legal Problems of Education, 1983.
- McCluskey, Neil J. Catholic Viewpoint on Education. New York: Image Books, 1962.
- McKenzie, John M. The Roman Catholic Church. New York: Doubleday, 1971.
- Monroe, Walter S., ed. Encyclopedia of Educational Research: A Project of the American Educational Research Association. New York: Macmillan, 1980.
- Mulhern, James. A History of Education. New York: The Ronald Press Company, 1946.
- Noll, James W. and Kelley, Sam P. Foundations of American Education in America: An Anthology of Major Thoughts and Significant Actions. New York: Harper and Row, Publishers, 1970.
- O'Brien, Stephen and Vacca, Richard S. The Supreme Court and the Religion-Education Controversy: A Tightrope to Entanglement. Durham, N.C.: Moore Publishing Company, 1974.
- Perkinson, Henry J. Two Hundred Years of Educational Thought. New York: David McKay Company, Inc., 1976.
- Power, Edward J. Main Currents in the History of Education. New York: McGraw-Hill, Inc., 1970.
- Pulliam, John D. History of Education in America. 4th ed. Columbus, Ohio: Merrill Publishing Company, 1987.

- Rabkin, Jeremy A. "Taxing Discrimination: Federal Regulation of Private Education by the Internal Revenue Service." In Public Values, Private Schools, p.144. Edited by Neal E. Devins. London: The Falmer Press, 1989.
- Reutter, E. Edmund, Jr. Schools and the Law. Reston, Virginia: National Association of Secondary School Principals, 1981.
- Soltow, Lee and Stevens, Edward. The Rise of Literacy and the Common School in the United States. Chicago: The University of Chicago Press, 1981.
- Sorgen, Michael S. State, School, and Family. New York: M. Bender, 1973.
- Spring, Joel. The American School, 1642-1985. New York: Longman, Inc., 1986.
- Smith, Tom E. C. Introduction to Education. St. Paul, Minn.: West Publishing Company, 1987.
- U.S. Department of Education, Office of Educational Research and Improvement, National Center for Educational Statistics. Private Schools in the United States: A Statistical Profile with Comparisons to Public Schools. Washington, D.C.: Government Printing Office, 1991.
- U. S. Department of Education, Office of Educational Research and Improvement, National Center for Educational Statistics. Projections of Educational Statistics to 2001: An Update. Washington, D.C.: Government Printing Office, 1990.
- U.S. Department of Education, Office of Educational Research and Improvement, National Center for Educational Statistics. Schools and Staffing Survey, 1987-88. Washington, D.C.: Government Printing Office, 1988.
- U. S. Department of Education, Office of Educational Research and Improvement, National Institute of Education. The Private High School Today. Washington, D.C.: Government Printing Office, 1980.
- Ver Steeg, Clarence L. and Hofstadter, Richard. A People and a Nation. New York: Harper and Row, Publishers, 1971.

## Journals, Periodicals, and Pamphlets

- Baker, Curtis O. ed. The Condition of Education, 1989. Washington, D.C.: U.S. Government Printing Office, 1989.
- Ball, William B. "False Assumptions on Voucher Programs and the Law." Education Week XI (12 February 1992): 31.
- Bowes, Ronald T. "Reaction to the 'Publicization of the Private School'." Education Week XI (5 February 1992): 26.
- Feistritzer, Emily C. The Making of a Teacher: A Report on Teacher Education and Certification. Washington, D.C.: The National Center for Education Information, 1984.
- Finn, Chester E. Jr. "Does 'Public' Mean 'Good'?" Education Week XI (February 1992):30.
- Furst, Lyndon G. "Judicial Involvement in Nonpublic Schools." Contemporary Education. 50 (Summer 1979): 205-209.
- Kienel, Paul. Christian School Comment. Monthly newsletter published by Association of Christian Schools International.
- Lines, Patricia. "Private Education Alternatives and State Regulation." Journal of Law and Education 12 (1982): 189-234.
- Lloyd, Susan M. "Collision Courses, Safer Places: Teacher Licensure, Private Schools, and the Making of a Profession." Teachers College Record 92 (Spring 1991): 451-469.
- Moshman, David. "Faith Christian v. Nebraska: Parent, Child, and Community Rights in the Educational Arena." Teachers College Record 86 (Summer 1985):553-571.
- Patterson, Benton. "What's Behind the Shutdowns - and What's Ahead." School Management 13 (April 1969):49.
- Tyack, D. "Ways of Seeing: An Essay on the History of Compulsory Schooling." Harvard Educational Review 46 (1976): 355-389.

Woodford, James E.; Presti, Susan M.; Gray, Alison; and Goble, Ron. Teacher Certification: Out-of-field Teaching in Grades 9-12. Raleigh, N.C.: North Carolina Center for Public Policy Research, 1982.

Wyoming, Department of Education. Rules and Regulations on Private School Licensing for Students in Non-Religious Elementary and Secondary Schools. (1989).

### Legal Research Aids

American Jurisprudence. By the Publisher's Editorial Staff. Rochester, New York: The Lawyers Cooperative Publishing Company.

American Law Reports. By the Publisher's Editorial Staff. Rochester, New York: Lawyers Cooperative Publishing Company.

Corpus Juris Secundum. Edited by Frances J. Ludes and Harold J. Gilbert. New York: American Law Book Company.

National Reported System. Decisions of the courts of record of the various states, and of the federal courts. St. Paul, Minnesota: West Publishing Company, 1897, and published to date with weekly advance sheets. The system consists of the following "reporters":

The Atlantic Reporter, est. 1895. Decisions of court of last resort of Maine, New Hampshire, Vermont, Connecticut, Rhode Island, New Jersey, Pennsylvania, Delaware and Maryland.

The Federal Reporter, est. 1888. Decisions of the United States Circuit and District Courts, and Circuit Court of Appeals.

The New York Supplement, est. 1888. Decisions of the Supreme Court and lower courts of record in New York State.

The Northeastern Reporter, est. 1885. Decisions of courts of last resort of New York, Massachusetts, Ohio, Illinois and Indiana and the intermediate Appellate Court of Indiana.



The Pacific Reporter, est 1883. Decisions of courts of last resort of California, Colorado, Idaho, Oregon, Montana, Nevada, New Mexico, Kansas, Arizona, Utah, Washington, and Wyoming.

The California Reporter, est. 1961. Cases decided in the Supreme Court, District Courts of Appeal Appellate Department and Superior Court.

The Southeastern Reporter, est. 1887. Decisions of courts of last resort of Georgia, South Carolina, North Carolina, Virginia and West Virginia.

The Southern Reporter, est 1886. Decisions of the courts of last resort of Alabama, Florida, Louisiana and Mississippi.

The Southwestern Reporter, est. 1886. Decisions of courts of last resort of Missouri, Arkansas, Indiana Territory, Texas, Kentucky and Tennessee and intermediate courts in Missouri and Texas.

The Supreme Court Reporter, est. 1882. Decisions of the United States Supreme Court.

United States Reports, est. 1885. Decisions of the United States Supreme Court (annotating included).

Nolpe School Law Reporter. Topeka, Kansas: National Organization on Legal Problems in Education.

School Law Journal. Vols. 4-11. Topeka, Kansas: National Organization on Legal Problems in Education, 1974-1983.

Shepherd's Citations. Colorado Springs, Colorado: Shepherd's Citations, Inc., 1991.

West's Education Law Reports. Vols. I-XXI. St. Paul, Minnesota: West Publishing Company, January 1982 to January 1985.

#### Unpublished Sources

Bartman, Robert E. Missouri Department of Elementary and Secondary Education, Commissioner of Education. Letter to Author, 8 Jan 1992.

- Errett, Marilyn. State of California, Commission on Teacher Credentialing. Letter to Author, 27 January 1992.
- Fillion, Judith D. New Hampshire Department of Education, Division of Standards and Certification, Division Director. Letter to Author, 8 January 1992.
- Grant, Vance. Office of Educational Research and Improvement, U.S. Department of Education. Telephone Interview, 23 April 1992.
- Green, Judy. Pennsylvania Department of Education, Private School Specialist. Telephone Interview, 15 May 1992.
- Grover, Herbert J. Wisconsin Department of Public Instruction, State Superintendent. Letter to Author, 10 January 1992.
- Hershue, Jerry. Idaho Department of Education. Telephone Interview, 13 May 1992.
- Honig, Bill. California Department of Education, Superintendent of Public Instruction. Letter to Author, 8 January 1992.
- Hoyt, Charlotte. South Dakota Department of Education and Cultural Affairs, Teacher Education and Certification. Letter to Author, 27 January 1992.
- Kienel, Paul, Executive Director of ACSI. Letter to administrators, pastors, and board members of member schools.
- Ledford, John. Kentucky Department of Education, Division of Certification, Consultant. Letter to Author, 6 January 1992.
- Mertins, Barbara. Washington Department of Education, Certification Specialist. Telephone Interview, 15 May 1992.
- Miller, Joseph. Alabama Department of Education. Telephone Interview, 18 May 1992.
- Nearhof, Orrin. Iowa Department of Public Instruction, Board of Education Examiners. Letter to Author, 6 January 1992.
- Norton, Candace J. Georgia Professional Standards Commission, Associate Executive Secretary. Letter to Author, 15 January 1992.

Sanstead, Wayne G. North Dakota Department of Public Instruction, State Superintendent. Letter to Author, 6 January 1992.

Sharpe, Jean. Tennessee Department of Education, Employment Standards Division. Telephone Interview, 19 May 1992.

Turner, James H. South Carolina Department of Education, Office of Education Professions. Letter to Author, 6 January 1992.

Walton-Buchanan, Holly. Nevada Department of Education, Private School Consultant. Telephone Interview, 19 May 1992.

Watson, Mary. Nebraska Department of Education, Teacher Certification. Telephone Interview, 13 May 1992.

#### Dissertations

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

Huffman, Gilbert T. "Teacher Certification in Home Schools: Emerging Constitutional Issues." Ed.D. dissertation, University of North Carolina at Greensboro, 1986.

## APPENDIX A

## STATE STATUTES: CERTIFICATION

The following excerpts from state statutes summarize general state requirements for employment of certified teachers.

## ALABAMA

No person shall be employed in the public schools of the state as county superintendent of education, city superintendent of schools, assistant superintendent, supervisor, principal, teacher or attendance officer unless such person shall hold a certificate issued by the state superintendent of education. Code of Alabama, sec. 16-23-1 (1975).

## ALASKA

A person may not be employed as a teacher in the public schools of the state unless that person possesses a valid teacher certificate .... Alaska Statutes, sec. 40.20.010 (1987).

## ARIZONA

A teacher shall not be employed if the teacher has not received a certificate for teaching, granted by the proper authorities. Arizona Revised Statutes Annotated, sec. 15-502 (1990).

## ARKANSAS

No teacher shall be employed in any public school of the state who is not licensed to teach in the State of Arkansas by a license issued by the State Board of Education. Arkansas Code Of 1987 Annotated, sec. 6-17-401 (Amended 1991).

**CALIFORNIA**

A governing board of a school district shall employ for positions requiring certification qualifications, only persons who possess the qualifications therefor prescribed by law. Deering's California Codes Annotated, sec. 44830 (1992).

**COLORADO**

The board of a school district shall not enter into an employment contract with any person as a teacher, except in a junior college district or in an adult education program, unless such person holds a teacher's certificate or letter of authorization issued pursuant to the provisions of article 55 of this title. Colorado Revised Statutes, sec. 22-63-201 (1991 Cum. Supp.).

**CONNECTICUT**

No teacher, supervisor, administrator, special service staff member or school superintendent shall be employed in any of the schools of any local or regional board of education unless such person possesses an appropriate state certificate .... Connecticut General Statutes Annotated, sec. 186.10-145 (1986).

**DELAWARE**

Every employee of a reorganized school district must meet standards for qualification as adopted by the State Board of Education, and be certified or otherwise licensed in accordance with these standards in order to be placed on the official payroll of the reorganized school district. Delaware Code Annotated, sec. 14.1092 (1991 Supp.).

**FLORIDA**

To be eligible for appointment in any position in any district school system, a person shall ... hold a certificate or license issued under rules of the State Board of Education or the Department of Health and Rehabilitative Services .... West's Florida Statutes Annotated, sec. 231.02 (1992 Cum. Pocket Part).

## GEORGIA

The Professional Standards Commission shall provide, by regulation, for certifying and classifying all certificated professional personnel employed in the public schools of this state. No such personnel shall be employed in the public schools of this state unless they hold certificates issued by the commission certifying their qualifications and classification in accordance with such regulations. Official Code of Georgia Annotated, sec. 20-2-200 (1992 Cum. Supp.).

## HAWAII

No person shall serve as a teacher in any school without first having obtained a certificate from the department of education .... Hawaii Revised Statutes, sec. 18.297-2 (1985)

## IDAHO

Every person who is employed to serve in any elementary or secondary school in the capacity of teacher, supervisor, administrator, education specialist, school nurse or school librarian shall be required to have and to hold a certificate issued under authority of the state board of education .... Idaho Code, sec. 33-1201 (1991 Cum. Pocket Supp.).

## ILLINOIS

No one may teach or supervise in the public schools nor receive for teaching or supervising any part of any public school fund, who does not hold a certificate of qualification granted by the State Board of Education or by the State Teacher Certification Board and a regional superintendent of schools .... Illinois Annotated Statutes, sec. 21-1 (1989).

## INDIANA

The [state] board is responsible for the licensing of teachers. The board shall issue licenses through the state superintendent. Sec. 20-6.1-3-1.

Computation of minimum salary shall be made each year on the basis of the teacher's training, experience, and degree, completed as of the first day of service .... [for] a teacher [who] is licensed by the commission on the first

day of service in the current school year or on another date as agreed by the school employer .... Burns Indiana Statutes Annotated, 20-6.1-5-1 (1992).

#### IOWA

A person employed as a practitioner shall hold a valid license for the type of service for which the person is employed. Iowa Code Annotated, sec. 260.7 (1991 Supp.).

[See also compulsory attendance statute in Appendix B.]

#### KANSAS

The state board of education, in accordance with law, is authorized to adopt rules and regulations providing for the issuance, renewal, reinstatement and registration of certificates for teachers and other personnel in the state department of education and in schools and institutions under the general supervision of the state board of education. Sec. 72-1388.

It shall be unlawful for the board of education of any school district to issue an order for payment of the salary of any certificated employee who does not hold a certificate which is valid in the state of Kansas for the particular kind of work to be performed. Kansas Statutes Annotated, 72-1390 (1991 Cum. Supp.).

#### KENTUCKY

No person shall be eligible to hold the position of superintendent, principal, teacher, supervisor, director of pupil personnel, or other public school position for which certificates may be issued, or receive salary for services rendered in such position, unless he holds a certificate of legal qualifications for such position. Kentucky Revised Statutes Annotated, sec. 161.020 (1990 Supp.).

#### LOUISIANA

The State Board of Education shall prescribe the qualifications and provide for the certification of the teachers of elementary, secondary, trade, normal and collegiate schools. West's Louisiana Revised Statutes Annotated, sec. 17.411 (1992 Supp.).

**MAINE**

A person must be certified by the commissioner under section 13002 in order to teach in any public elementary or secondary school in the State; or teach in any private school receiving basic approval under section 2901.

Private schools approved for attendance purposes by the department shall ... employ only certified teachers. Maine Revised Statutes Annotated, sec. 20-A.13003 (1991 Pocket Supp.).

**MARYLAND**

Unless he is eligible to be issued a certificate by the State Superintendent, an individual may not be employed as a county superintendent, assistant superintendent, supervisor, principal, or teacher. The Annotated Code of the Public General Laws of Maryland, sec. 6-101 (1985).

**MASSACHUSETTS**

No person shall be eligible for employment by a school committee as a teacher, principal, supervisor, director, guidance counselor and director, school psychologist, school librarian, audio-visual media specialist, unified media specialist, school business administrator, superintendent of schools or assistant superintendent of schools unless he has been granted by the board a certificate with respect to the type of position for which he seeks employment. Massachusetts General Laws Annotated, sec. 71.38G (1982).

**MICHIGAN**

... the board of a school district or intermediate school district shall not permit a teacher who does not hold a valid teaching certificate to teach in a grade or department of the school, or a teacher without an endorsement by the state board to serve in a counseling role as the role is defined by the state board. Michigan Compiled Laws Annotated, sec. 380.1233 (1991 Pocket Supp.).



## MINNESOTA

A person who is providing instruction to a child must meet at least one of the following requirements:

- (1) hold a valid Minnesota teaching license in the field and for the grade level taught;
- (2) be directly supervised by a person holding a valid Minnesota teaching license;
- (3) successfully complete a teacher competency examination;
- (4) provide instruction in a school that is accredited by an accrediting agency ... or recognized by the state board of education;
- (5) hold a baccalaureate degree; or
- (6) be the parent of a child who is assessed according to the procedures in subdivision 8.

Any person providing instruction in a public school must meet the requirements of clause (1). Minnesota Statutes Annotated, sec. 120.101-7 (1992 Pocket Part).

## MISSISSIPPI

It shall be unlawful for any superintendent, principal or teacher to be employed or contracted with to teach or serve in any of the public schools of this state who does not hold a proper certificate which is valid at the time of such employment or execution of such contract. Mississippi Code, sec. 37-9-7 (1991 Pocket Part).

## MISSOURI

No person shall be employed to teach in any position in a public school until he has received a valid certificate of license entitling him to teach in that position .... Vernon's Annotated Missouri Statutes, sec. 168.011 (1991 Pocket Part).

## MONTANA

... no person shall be permitted to teach in the public schools of the state until he has obtained a teacher certificate or specialist certificate or the district has obtained an emergency authorization of employment from the state. Montana Code Annotated, sec. 20-4-101 (1991).

**NEBRASKA**

No person shall be employed to teach in any public, private, denominational, or parochial school in this state who does not hold a valid Nebraska certificate or permit issued by the Commissioner of Education legalizing him to teach the grade or subjects to which elected, .... Revised Statutes of Nebraska, sec. 79-1233 (1987).

**NEVADA**

It is unlawful for the board of trustees of any school district to employ any teacher who is not legally qualified to teach all the grades which the teacher is engaged to teach. Nevada Revised Statutes, sec. 391.120 (1991).

**NEW HAMPSHIRE**

Superintendents shall nominate and school boards elect all teachers employed in the schools in their school administrative unit, providing such teachers hold a valid educational credential issued by the state board of education. New Hampshire Revised Statutes Annotated, sec. 189.39 (1991).

**NEW JERSEY**

No teaching staff member shall be employed in the public schools by any board of education unless he is the holder of a valid certificate to teach, administer, direct or supervise the teaching, instruction, or educational guidance of, or to render or administer, direct or supervise the rendering of nursing service to, pupils in such public schools and of such other certificate, if any, as may be required by law. New Jersey Statutes Annotated, sec. 18A.26-2 (1989).

**NEW MEXICO**

Any person teaching, supervising an instructional program, counseling or providing special instructional services in a public school or state agency and any person administering in a public school shall hold a valid certificate authorizing the person to perform that function. New Mexico Statutes Annotated, sec. 22-10-3 (1991).

## NEW YORK

No person shall be employed or authorized to teach in the public schools of the state who is ... not in possession of a teacher's certificate issued under the authority of this chapter or a diploma issued on the completion of a course in a state college for teachers or state teachers college of this state. McKinney's Consolidated Laws of New York Annotated, sec. 3001 (1981).

## NORTH CAROLINA

All teachers employed in the public schools of the State or in schools receiving public funds, shall be required either to hold or be qualified to hold a certificate in compliance with the provision of the law or in accordance with the regulations of the State Board of Education. General Statutes of North Carolina Annotated, sec. 115C-295 (1991).

## NORTH DAKOTA

No person who is not the holder of a valid teacher's certificate shall be permitted or be employed to teach in any of the public schools of the state .... North Dakota Century Code, sec. 15-36-11 (1991).

[See also compulsory attendance statute in Appendix B.]

## OHIO

... no person shall receive any compensation for the performance of duties as teacher in any school supported wholly or in part by the state or by federal funds who has not attained a certificate of qualification for the position .... Ohio Revised Code, sec. 3319.30 (1991).

## OKLAHOMA

Except as otherwise provided by law, no board of education shall have authority to enter into any written contract with a teacher who does not hold a valid certificate issued or recognized by the State Board of Education authorizing said teacher to teach the grades or subject matter for which the teacher is employed. Oklahoma Statutes Annotated, sec. 70.6-101 (1992).

## OREGON

After January 15, 1992, the Teacher Standards and Practices Commission shall issue licenses to teachers and administrators who possess the minimum competencies, knowledge and skills to teach and administer in the public schools of the state.

In addition to a teaching or administrative license, a person may obtain certification, indicating a higher degree of competency, knowledge and skill based on work experience and advanced study .... However, a teaching certificate or administrative certificate shall not be required to teach or administer in a public school of this state. Oregon Revised Statutes, sec. 342.121 (1991).

## PENNSYLVANIA

State certificates shall be issued as provided in this chapter and teachers shall not perform professional duties in the schools of the Commonwealth in any area for which they have not been properly certificated. Sec. 22.49.2.

Only teachers holding a valid Pennsylvania professional certificate issued under Chapter 49 (relating to certification of professional personnel), a private academic teaching certificate or a private academic temporary approval certificate may teach in a licensed private school. Pennsylvania Code Reporter, sec. 22.51.34 (1991).

## RHODE ISLAND

No person shall be employed to teach, as principal or assistant, in any school supported wholly or in part by public money unless the person shall have a certificate of qualification issued by or under the authority of the state board of regents for elementary and secondary education. General Laws of Rhode Island, sec. 16-11-1 (1988).

## SOUTH CAROLINA

The State Board of Education, by rules and regulations, shall formulate and administer a system for the examination and certification of teachers. Code of Laws of South Carolina, sec. 59-25-110 (1990).

**SOUTH DAKOTA**

A teacher may sign a contract only upon exhibition of a valid certificate to teach the courses and grades in the school contemplated under the said contract and to qualify such school for accreditation. Sec. 13-43-5.

... no person shall be permitted to teach in any non-public school any of the courses prescribed to be taught in the public schools unless such person shall hold a certificate entitling him to teach the same courses in the public schools of this state. South Dakota Codified Laws, sec. 13-4-2 (1991).

**TENNESSEE**

No person shall be employed to teach in any public elementary or high school or receive pay for teaching out of the public funds of any school system until he shall have received a license from the commissioner or state board of education, as prescribed by this title. Tennessee Code Amended, sec. 49-5-403 (1990).

**TEXAS**

Any person who desires to teach in a public school shall present his certificate for filing with the employing district before his contract with the board of trustees of the district shall be binding.

A teacher or superintendent who does not hold a valid certificate or emergency permit shall not be paid for teaching or work done before the effective date of issuance of a valid certificate or permit. Vernon's Texas Codes Annotated, sec. 13.045 (1991).

**UTAH**

The State Board of Education may issue certificates for teachers, supervisors, administrators, and other professionals. A person employed in a position that requires certification by the state board shall hold the appropriate certificate. Utah Code Annotated, sec. 53A-6-101 (1991).

## VERMONT

A person shall not teach in a public school without having a license then in force. Vermont Statutes Annotated, sec. 16.1692 (1989).

## VIRGINIA

No teacher shall be regularly employed by a school board or paid from public funds unless such teacher holds a certificate or provisional certificate issued by the Board of Education. Code of Virginia, sec. 22.1-299 (1985)

## WASHINGTON

No person shall be accounted as a qualified teacher within the meaning of the school law who is not the holder of a valid teacher's certificate or permit issued by lawful authority of this state. West's Revised Code of Washington Annotated, sec. 28A.405.010 (1992).

## WEST VIRGINIA

Any professional educator ... who is employed within the public school system of the state shall hold a valid teaching certificate licensing him or her to teach in the specializations and grade levels as shown on the certificate for the period of his or her employment. West Virginia Code, sec. 18A-3-2 (1988).

## WISCONSIN

Any person seeking to teach in a public school or in a school or institution operated by a county or the state shall first procure a certificate or license from the department. Sec. 118.19.

Private schools are not obligated to employ only licensed or certified teachers. West's Wisconsin Statutes Annotated, sec. 115.28 (1991).

## WYOMING

No person shall teach or supervise in a public school in this state and receive compensation therefor out of any public fund who at the time of rendering such services is

not a holder of or a candidate and qualified for a certificate issued or to be issued under the laws of this state and the rules and regulations of the state board of education. Wyoming Statutes Annotated, sec. 21-7-303 (1986).

## APPENDIX B

## STATE STATUTES: COMPULSORY ATTENDANCE

Attendance at private schools is accepted in all states as a method of fulfilling compulsory attendance laws. The following excerpts from state statutes indicate compulsory attendance requirements and private school exemptions.

## ALABAMA

Every child between the ages of seven and 16 years shall be required to attend a public school, private school, church school, or be instructed by a competent private tutor for the entire length of the school term in every scholastic year except that every child attending a church school as defined in section 16-28-1 is exempt from the requirements of this section, provided such child complies with enrollment and reporting procedure specified in section 16-28-7. Code of Alabama, sec. 16-28-3 (1991).

## ALASKA

Every child between seven and 16 years of age shall attend school at the public school in the district in which the child resides during each school term. Every parent, guardian or other person having the responsibility for or control of a child between seven and 16 years of age shall maintain the child in attendance at a public school... [unless] a child is provided an academic education comparable to that offered by the public schools in the area, either by (a) attendance at a private school in which the teachers are certificated ... (b) tutoring by personnel certificated ... or (c) attendance at an educational program operated ... by a religious or other private school. Alaska Statutes, sec. 14.30.010 (1991).

## ARIZONA

Every person who has custody of a child between the ages of six and sixteen years shall send the child to a



school for the full time school is in session within the school district in which the child resides, except that if a school is operated on a year-round basis each child shall regularly attend during school sessions which total not less than one hundred seventy-five days, or the equivalent as approved by the superintendent of public instruction, during the school year.

A person is excused from the duty prescribed by subsection A of this section if it is shown to the satisfaction of the county school superintendent that: (1) The child is instructed at home in at least the subjects of reading, grammar, mathematics, social studies and science by a person passing the reading, grammar and mathematics proficiency examination as provided in section 15-533 before or within six months after beginning home instruction and the child takes a nationally standardized norm-referenced achievement test. (2) The child is attending a regularly organized private school. The person who has custody of a child attending a private school satisfies the condition of this paragraph by filing an affidavit with the county school superintendent stating that the child is attending a school for the full time that the schools of the school district are in session and the name and address of the school that the child is attending. For the purposes of this paragraph, "private school" means a nonpublic institution other than the child's home where instruction is imparted. Arizona Revised Statutes, sec. 15-802 (1991).

#### ARKANSAS

Every parent, guardian, or other person residing within the State of Arkansas having custody or charge of any child or children age five (5) through seventeen (17) years on October 1 of that year, both inclusive, shall enroll and send the child or children to a public, private, or parochial school or provide a home school for the child .... Arkansas Code of 1987 Annotated, sec. 6-18-201 (Amended 1991).

#### CALIFORNIA

Children who are being instructed in a private full-time day school by persons capable of teaching shall be exempted [from other compulsory attendance laws]. Such school shall ... by taught in the English language and shall offer instruction in the several branches of study required to be taught in the public schools of the state. West's Annotated California Codes, sec. 48222 (1978).

**COLORADO**

Every child who has attained the age of seven and is under the age of sixteen years, except as provided by this section, shall attend public school for at least one thousand fifty-six hours if a secondary school pupil or nine hundred sixty-eight hours if an elementary school pupil during each school year; except that in no case shall a school or schools be in session for fewer than one hundred sixty days without the specific prior approval of the commissioner of education.

The provision of subsection one of this section shall not apply to a child .... Who is enrolled for a minimum of one hundred seventy-two days in an independent or parochial school which provides a basic academic education. Colorado Revised Statutes, sec. 22-33-104 (1991).

**CONNECTICUT**

Each parent or other person having control of a child seven years of age and over and under sixteen years of age shall cause such child to attend a public day school regularly during the hours and terms the public school in the district wherein such child resides is in session, or while the school is in session in which provision for the instruction of such child is made according to law, unless the parent or person having control of such child is able to show that the child is elsewhere receiving equivalent instruction in the studies taught in the public schools. Sec. 10-184.

Attendance of children at a school other than a public school shall not be regarded as compliance with the laws of the state requiring parents and other persons having control of children to cause them to attend school, unless the teachers or persons having control of such school keep a register of attendance .... Connecticut General Statutes Annotated, sec. 10-188 (1986).

**DELAWARE**

Except as otherwise set forth in this section, every person in the State having control of a child between 5 years of age and 16 years of age shall send such child to a free public school, in the district of the residence of the parents, except as determined in accordance with Chapter 6 of this title, and shall send the child to such school each day of the minimum school term of 180 days beginning on the first day of the school year of the calendar year in which the child reaches 5 years of age, unless the local school

authorities determine that such beginning is not in the best interests of the child. Sec. 2702.

Section 2702 of this title shall not apply if it can be shown, and witnessed by written endorsement, to the satisfaction of the superintendent of school districts, to the satisfaction of an official designated by the State Board of Education, and by a written examination, that a child is elsewhere receiving regular and thorough instruction in the subjects prescribed for the public schools of the State, in a manner suitable to children of the same age and stage of advancement. Delaware Code Annotated, sec. 2703 (1991 Supp.)

#### FLORIDA

All children who have attained the age of 6 years or who will have attained the age of 6 years by February 1 of any school year or who are older than 6 years of age but who have not attained the age of 16 years, except as hereinafter provided, are required to attend school regularly during the entire school term. West's Florida Statutes Annotated, sec. 232.01 (Cum. Pocket Part 1992).

#### GEORGIA

(a) This subpart recognizes the existence of public schools, private schools, and home study programs as educational entities.

(b) As used in this subpart, the term "private school" means an institution meeting the following criteria or requirements: (1) The primary purpose of the institution is to provide education, if the primary purpose of the institution is religious in nature, the institution shall provide the basic academic educational program specified in paragraph (4) of this subsection; (2) The institution is privately controlled and operates on a continuing basis; (3) The institution provides instruction each 12 months for the equivalent of 180 school days of education with each school day consisting of at least four and one-half school hours; (4) The institution provides a basic academic educational program which includes, but is not limited to, reading, language arts, mathematics, social studies, and science.

Every parent, guardian, or other person residing within this state having control or charge of any child or children between their seventh and sixteenth birthdays shall enroll and send such child or children to a public school, a private school, or a home study program that meets the requirements for a public school, a private school, or a home study

program .... Official Code of Georgia Annotated, sec. 20-2-690, 20-2-690.1 (1987).

#### HAWAII

Unless excluded from school or excepted from attendance, all children who will have arrived at the age of at least six years, and who will not have arrived at the age of eighteen years, on or before December 31 of any school year, shall attend either a public or private school for and during such school year, and any parent, guardian, and other person having the responsibility for or care of a child whose attendance at school is obligatory shall send the child to some such school. Hawaii Code Annotated, sec. 298-9 (1991 Supp.).

#### IDAHO

The parent or guardian of any child resident in this state who has attained the age of seven (7) years at the time of the commencement of school in his district, but not the age of sixteen (16) years, shall cause the child to be instructed in subjects commonly and usually taught in the public schools of the state of Idaho. Unless the child is otherwise comparably instructed, as may be determined by the board of trustees of the school district in which the child resides, the parent or guardian shall cause the child to attend a public, private or parochial school during a period in each year equal to that in which the public schools are in session; there to conform to the attendance policies and regulations established by the board of trustees, or other governing body, operating the school attended. Idaho Code, sec. 33-202 (1991 Supp.).

#### ILLINOIS

Whoever has custody or control of any child between the ages of 7 and 16 years shall cause such child to attend some public school in the district wherein the child resides the entire time it is in session during the regular school term .... Provided, that the following children shall not be required to attend the public schools: 1. Any child attending a private or a parochial school where children are taught the branches of education taught to children of corresponding age and grade in the public schools, and where the instruction of the child in the branches of education is in the English language. Illinois Annotated Statutes, sec. 26-1 (1989).

## INDIANA

(a) Subject to the specific exceptions under this chapter, each child shall attend either a public school ... or some other school which is taught in the English language. (b) A child is bound by the requirements of this chapter from the earlier of: (1) The date on which the child officially enrolls in a school; or (2) Except as provided in subsection (g), the beginning of the fall school term for the school year in which the child becomes seven (7) years of age; until the date on which the child graduates, reaches the age of seventeen (17) years, or reaches the age of sixteen (16) years and a parent or guardian provides written consent for the child to withdraw from school. ... (g) If the parents of a child who would otherwise be subject to compulsory school attendance under subdivision (2), upon request of the superintendent of the school corporation, certify to the superintendent of the school corporation that the parents intend to: (1) Enroll the child in a non-accredited, nonpublic school ... the child is not bound by the requirements of this chapter until the child reaches seven (7) years of age. Burns Indiana Statutes Annotated, sec. 20-8.1-3-17 (1992).

## IOWA

The parent, guardian, or custodian of a child who is over seven and under sixteen years of age by September 15, in proper physical and mental condition to attend school, shall enroll the child in some public school .... A child shall attend an accredited or approved school for at least one hundred twenty days each school year. In lieu of such attendance such child may attend upon equivalent instruction by a licensed teacher elsewhere. Iowa Code Annotated, sec. 299.1 (1991 Supp.).

## KANSAS

Subject to the other provisions of this section, every parent or person acting as parent in the state of Kansas, who has control over or charge of any child who has reached the age of seven years and is under the age of 16 years, shall require such child to attend continuously each school year (1) a public school for the duration of the school term ... or (2) a private, denominational or parochial school taught by a competent instructor for a period of time which is substantially equivalent to the period of time public school is maintained in the school district in which the

private, denominational or parochial school is located. Kansas Statutes Annotated, sec. 72-1111 (1985).

#### KENTUCKY

Except as provided in KRS 159.030, each parent, guardian, or other person residing in the state and having in custody or charge any child who has entered the primary school program or any child between the ages of six (6) and sixteen (16) shall send the child to a regular public day school for the full term that the public school of the district in which the child resides is in session, or to the public school that the board of education of the district makes provision for the child to attend. Sec. 159.010.

The board of education of the district in which the child resides shall exempt from the requirement of attendance upon a regular public day school every child of compulsory school age ... who is enrolled and in regular attendance in a private, parochial, or church regular day school. Kentucky Revised Statutes Annotated, sec. 159.030 (1990 Supp.).

#### LOUISIANA

Every parent, tutor, or other person residing within the state of Louisiana, having control or charge of any child between the ages of seven and fifteen, both inclusive, ... shall send such child to a public or private day school .... West's Louisiana Revised Statutes Annotated, sec. 17:221 (1981).

#### MAINE

Persons 7 years of age or older and under 17 years shall attend a public day school during the time it is in regular session.

A person shall be excused from attending a public day school if the person obtains equivalent instruction in: (a) A private school approved for attendance purposes .... (b) A private school recognized by the department as providing equivalent instruction ....

A student shall be credited with attendance at a private school only if a certificate showing the name, residence and attendance of the person at the school, signed by the person or persons in charge of the school, has been filed with the school officials of the administrative unit in which the student resides. Maine Revised Statutes Annotated, sec. 20-A.5001-A (1964).

**MARYLAND**

Each child who resides in the State and is 6 years old or older and under 16 shall attend a public school regularly during the entire school year unless the child is otherwise receiving regular, thorough instruction during the school year in the studies usually taught in the public schools to children of the same age. The Annotated Code of the Public General Laws of Maryland, sec. 7-301 (1985).

**MASSACHUSETTS**

Every child between the minimum and maximum ages established for school attendance by the board of education ... shall ... attend a public day school ... or some other day school approved by the school committee .... For the purposes of this section, school committees shall approve a private school when satisfied that the instruction in all the studies required by law equals in thoroughness and efficiency, and in the progress made therein, that in the public schools in the same town .... Massachusetts General Laws Annotated, sec. 76.1 (1982).

**MICHIGAN**

... every parent, guardian, or other person in this state having control and charge of a child from the age of 6 to the child's sixteenth birthday, shall send that child to the public schools during the entire school year ... [except] a child who is attending regularly and is being taught in a state approved nonpublic school, which teaches subjects comparable to those taught in the public schools to children of corresponding age and grade, as determined by the course of study for the public schools of the district within which the nonpublic school is located. Michigan Compiled Laws Annotated, sec. 380.1561 (1983).

**MINNESOTA**

For the purpose of compulsory attendance, a "school" means a public school, ... or a nonpublic school, church or religious organization, or home-school in which a child is provided instruction .... For the 1988-1989 school year and the school years thereafter, every child between seven and 16 years of age shall receive instruction for at least 170 days each year. Minnesota Statutes Annotated, sec. 120.101 (1992 Pocket Part).

## MISSISSIPPI

"Nonpublic school" for the purposes of this section shall mean an institution for the teaching of children, consisting of a physical plant, whether owned or leased, including a home, instructional staff members and students, and which is in session each school year. This definition shall include, but not be limited to, private, church, parochial and home instruction programs.

A parent, guardian or custodian of a compulsory-school-age child in this state shall cause such child to enroll in and attend a public school or legitimate nonpublic school for the period of time that such child is of compulsory school age .... Mississippi Code, sec. 37-13-91 (1991 Pocket Part).

## MISSOURI

Every parent, guardian or other person in this state having charge, control or custody of a child not enrolled in a public, private, parochial, or parish school and between the ages of seven and sixteen years is responsible for enrolling the child in a program of academic instruction which complies with subsection 2 of this section. Vernon's Annotated Missouri Statutes, sec. 167.031 (1991).

## MONTANA

(1) Except as provided in subsection (2), any parent, guardian, or other person who is responsible for the care of any child who is 7 years of age or older prior to the first day of school in any school fiscal year shall cause the child to be instructed in the program prescribed by the board of public education pursuant to 20-7-111 until the later of the following dates: (a) the child's 16th birthday; (b) the date of completion of the work of the 8th grade.

(2) A parent, guardian, or other person shall enroll the child in the school assigned by the trustees of the district within the first week of the school term or when he establishes residence in the district unless the child is ... enrolled in a nonpublic or home school .... For the purposes of this subsection, ... a nonpublic school includes a parochial, church, religious, or private school. Montana Code Annotated, sec. 20-5-102 (1991).



## NEBRASKA

Every person residing in a school district within the State of Nebraska who has legal or actual charge or control of any child not less than seven nor more than sixteen years of age shall cause such child to attend regularly the public, private, denominational, or parochial day schools which have met the requirements for legal operation .... Revised Statutes of Nebraska, sec. 79-201 (1987).

[See also certification statute in Appendix A.]

## NEVADA

Except as otherwise provided by law, each parent, guardian, or other person in the State of Nevada having control or charge of any child between the ages of 7 and 17 years shall send the child to a public school during all the time the public school is in session in the school district in which the child resides. Sec. 392.040.

Attendance required ... shall be excused when satisfactory written evidence is presented to the board of trustees of the school district in which the child resides that the child is receiving at home or in some other school equivalent instruction of the kind and amount approved by the state board of education. Nevada Revised Statutes, sec. 392.070 (1991).

## NEW HAMPSHIRE

A parent of any child at least 6 years of age and under 16 years of age shall cause such child to attend the public school to which the child is assigned in his resident district. Such child shall attend full time when such school is in session unless the child is attending a public school outside the district to which he is assigned or an approved private school for the same time .... New Hampshire Revised Statutes Annotated, sec. 193:1 (1991 Supp.).

## NEW JERSEY

Every parent, guardian or other person having custody and control of a child between the ages of six and 16 years shall cause such child regularly to attend the public schools of the district or a day school in which there is given instruction equivalent to that provided in the public schools for children of similar grades and attainments or to

receive equivalent instruction elsewhere than at school. New Jersey Statutes Annotated, sec. 18A:38-25 (1989).

#### NEW MEXICO

Any qualified student and any person who because of his age is eligible to become a qualified student ... until attaining the age of majority shall attend a public school, a private school, a home school or a state institution. New Mexico Statutes Annotated, sec. 22-12-2 (1991).

#### NEW YORK

In each school district of the state, each minor from six to sixteen years of age shall attend upon full time instruction. Sec. 3205.

If a minor ... attends upon instruction elsewhere than at a public school, he shall attend for at least as many hours, and within the hours specified therefore. McKinney's Consolidated Laws of New York Annotated, sec. 3210 (1981).

#### NORTH CAROLINA

Every parent, guardian or other person in this State having charge or control of a child between the ages of seven and 16 years shall cause such child to attend school continuously for a period equal to the time which the public school to which the child is assigned shall be in session. The term "school" as used herein is defined to embrace all public schools and such nonpublic schools as have teachers and curricula that are approved by the State Board of Education. Sec. 115C-378.

Each private church school or school of religious charter shall make, and maintain annual attendance and disease immunization records for each pupil enrolled and regularly attending classes. Attendance by a child at any school to which this Part relates and which complies with this Part shall satisfy the requirements of compulsory school attendance: Provided, however, that such school operates on a regular schedule ... during at least nine calendar months of the year. The General Statutes of North Carolina Annotated, sec. 115C-548 (1991).

#### NORTH DAKOTA

Every parent, guardian, or other person who resides within any school district, or who resides upon any govern-

ment base or installation without any school district, and has control over any educable child of an age of seven years to sixteen years ... shall send or take such child to a public school each year during the entire time such school is in session. Sec. 15-34.1-02.

The parent, guardian, or other person having control of a child required to attend school ... shall be excused by the school board from causing the child to attend school whenever it shall be shown to the satisfaction of the board ... that the child is in attendance for the same length of time at a parochial or private school approved by the county superintendent of schools and the superintendent of public instruction. No such school shall be approved unless the teachers therein are legally certificated in the state of North Dakota .... North Dakota Century Code, sec. 15-34.1-03 (1991 Supp.).

#### OHIO

Except as provided in this section, the parent of a child of compulsory school age shall cause such child to attend a school ... to participate in a special education program ..., or to otherwise cause him to be instructed in accordance with law. Sec. 3321.03.

If any child attends upon instruction elsewhere than in a public school such instruction shall be in a school which conforms to the minimum standards prescribed by the state board of education. The hours and term of attendance exacted shall be equivalent to the hours and term of attendance required of children in the public schools of the district. Baldwin's Ohio Revised Code Annotated, sec. 3321.07 (1991).

#### OKLAHOMA

Beginning with the 1991-92 school year, it shall be unlawful for a parent, guardian, custodian or other person having control of a child who is over the age of five (5) years ... and under the age of eighteen (18) years, to neglect or refuse to cause or compel such child to attend and comply with the rules of some public, private or other school, unless other means of education are provided for the full term the schools of the district are in session. Oklahoma Statutes Annotated, sec. 10-105 (1992 Pocket Part).

#### OREGON

All children between the ages of 7 and 18 years who have not completed the 12th grade are required to attend

regularly a public full-time school of the school district in which the child resides ... [except] children being taught in a private or parochial school in the courses of study usually taught in grades 1 through 12 in the public schools and in attendance for a period equivalent to that required of children attending public schools. Oregon Revised Statutes, sec. 339.010, 339.030 (1991).

#### PENNSYLVANIA

A child of compulsory school age regularly attending full-time a nonpublic school ... or an accredited or licensed private school, in which the instruction prescribed by statute and this part is taught, shall be in compliance with the compulsory attendance requirements. Pennsylvania Code Reporter, sec. 11.32 (1991).

#### RHODE ISLAND

Every child who has completed or will have completed six years of life on or before December 31 of any school year and has not completed sixteen (16) years of life shall regularly attend some public day school during all the days and hours that the public schools are in session in the city or town wherein the child resides ... [unless the person having control of the child] shall prove that the child has attended for the required period of time a private day school approved by the commissioner of elementary and secondary education ... then attendance shall not be obligatory .... General Laws of Rhode Island, sec. 16-19-1 (1988).

#### SOUTH CAROLINA

All parents or guardians shall cause their children or wards to regularly attend a public or private school or kindergarten of this State which as been approved by the State Board of Education or a member school of the South Carolina Independent Schools' Association or some similar organization, or a parochial, denominational, or church-related school, or other programs which have been approved by the State Board of Education from the school year in which the child or ward is five years of age before November first until the child or ward attains his seventeenth birthday or graduates from high school. Code of Laws of South Carolina, sec. 59-65-10 (1990).

## SOUTH DAKOTA

Every person having under his control a child who is six years old by the first day of September and who has not exceeded the age of sixteen, shall cause the child to regularly and annually attend some public or nonpublic school for the entire term during which the public school in the district in which the person resides, or the school to which the child is assigned to attend, is in session, until the child reaches the age of sixteen years .... South Dakota Codified Laws, sec. 13-27-1 (1991).

[See also certification statute in Appendix A.]

## TENNESSEE

Every parent, guardian, or other person residing within this state having control or charge of any child or children between the ages of seven (7) and sixteen (16) years, both inclusive, shall cause such child or children to attend public or non-public school, and in event of failure to do so, shall be subject to the penalties hereinafter provided. "Non-public school" means a church related school, home school or private school. "Public school" means any school operated by a local education agency or by the state with public funds. Tennessee Code Annotated, sec. 49-6-3001 (1990).

## TEXAS

Unless specifically exempted ... every child in the state who is as much as seven years of age, or who is less than seven years of age and has previously been enrolled in first grade, and who has not completed the academic year in which his 16th birthday occurred shall be required to attend the public schools in the district of his residence .... [except] any child in attendance upon a private or parochial school which shall include in its course a study of good citizenship .... Vernon's Texas Codes Annotated, sec. 21.032, 21.033 (1991).

## UTAH

A person having control of a minor between six and 18 years of age shall send the minor to a public or regularly established private school during the school year of the

district in which the minor resides. Utah Code Annotated, sec. 53A-11-101 (1991 Supp.).

#### VERMONT

A person having the control of a child between the ages of seven and sixteen years shall cause the child to attend an approved public school, an approved or recognized independent school or a home study program for the full number of days for which that school is held .... Vermont Statutes Annotated, sec. T16.1121 (1989).

#### VIRGINIA

Every parent, guardian, or other person in the Commonwealth having control or charge of any child who will have reached the fifth birthday on or before September 30 of any school year and who has not passed the eighteenth birthday shall, during the period of each year the public schools are in session and for the same number of days and hours per day as the public schools send such child to a public school or to a private, denominational or parochial school or have such child taught by a tutor or teacher of qualifications prescribed by the Board of Education and approved by the division superintendent or provide for home instruction of such child .... Code of Virginia, sec. 22.1-254 (1985).

#### WASHINGTON

All parents in this state of any child eight years of age and under eighteen years of age shall cause such child to attend the public school of the district in which the child resides and such child shall have the responsibility to and therefore shall attend for the full time when such school may be in session unless the child is attending an approved private school for the same time or is enrolled in an extension program .... West's Revised Code of Washington Annotated, sec. 28A.225.010 (1992).

#### WEST VIRGINIA

Compulsory school attendance shall begin with the seventh birthday and continue to the sixteenth birthday. Exemption from the foregoing requirements of compulsory public school attendance shall be made on behalf of any child for the following causes or conditions, each such

cause or condition being subject to confirmation by the attendance authority of the county:

Exemption A. Instruction in a private, parochial or other approved school. Such instruction shall be in a school approved by the county board of education and for a time equal to the school term of the county for the year. In all such schools it shall be the duty of the principal or other person in control, upon the request of the county superintendent of schools, to furnish to the county board of education such information and records as may be required with respect to attendance, instruction and progress of pupils enrolled between the ages of seven and sixteen years. West Virginia Code, sec. 18-8-1 (1988).

#### WISCONSIN

Except as provided ... any person having under control a child who is between the ages of 6 and 18 years shall cause the child to attend school regularly during the full period and hours, religious holidays excepted, that the public or private school in which the child should be enrolled is in session until the end of the school term, quarter or semester of the school year in which the child becomes 18 years of age. West's Wisconsin Statutes Annotated, sec. 118.15 (1991).

#### WYOMING

Every parent, guardian or other person having control or charge of any child who is a resident of this state and whose seventh birthday falls on or before September 15 of any year and who has not yet attained his sixteenth birthday or completed the eighth grade shall be required to send such child to, and such child shall be required to attend, a public or private school each year, during the entire time that the public schools shall be in session in the district in which the pupil resides .... Wyoming Statutes Annotated, sec. 21-4-102 (1986).