

Home Schools Are They Legal? How Should You Relate to Them?

The parents sitting before you are earnest Christians and dedicated church members. You have no reason to doubt their sincerity as they explain their conviction that children should be taught at home until they are old enough to resist peer pressure and are thoroughly grounded in their parents' theological beliefs and world view. Therefore, they are withdrawing their children from your school and plan to establish a home school.

But there's a problem: Your state's laws allow home instruction only as a satellite of an approved school. They want their home school to operate as a satellite of the local church elementary school. Can you help them?

Due to a variety of social and economic factors beyond the scope of this article, the home school movement continues to grow, and the likelihood of Adventist educators being involved in such a discussion continues apace. But before you say Yes to such a request, consider the legal ramifications.

Whether a home school satisfies compulsory school attendance laws depends on the state. An Arkansas court held in 1984 that home study conducted by parents did not satisfy that state's requirements.¹ The next year a North Carolina court held that a law accepting attendance at a "private church school or school of religious character" as satisfying school attendance did not preclude home instruction.²

State rulings prohibiting home schools have been appealed—without success—on constitutional grounds. Federal appellate courts, upheld by the U.S. Supreme Court, have decided that state interest in compulsory education sufficiently outweighs any violation to the parents' right of free exercise of religion³ or their right to equal protection under the law.⁴ A novel effort to gain recognition for a supposed constitutional right of parents to direct their children's education, based on the first nine and the fourteenth amendments to the U.S. Consti-

tion was given short shrift by a federal court in Michigan.⁵

But where court challenges have failed, political activity has accomplished the goal of home school advocates: The North Carolina, Arkansas, and New Mexico statutes at issue in the cases mentioned above have all been changed by legislatures to specifically allow home school attendance.

While previous cases have challenged the right of states to enforce curriculum requirements and health, fire, and safety codes, the most recent case takes a different tack. In *State of North Dakota v. Patzer*,⁶ three Adventist couples (including the pastor of the Jamestown, North Dakota, church, which operates a three-teacher elementary school), and a Lutheran couple, all of whom were educating their children, ages 7 through 10, in home schools, were found guilty of violating the state compulsory attendance statute. They did not challenge the constitutionality of the statute, but held instead that requiring certified teachers for all schools imposed a substantial burden on their religious freedom. As parents, they do not have (and cannot obtain without substantial hardship) the educational requirements necessary for certification.

State's Interest Versus Parents' Rights

In resolving the conflict between the state's interest in compulsory education and the parents' right of free exercise of religion, the court asked three questions: First, was the parents' action motivated by sincerely held religious belief? The state conceded that it was. Next, was the parents' free exercise of religion actually burdened by the state regulation? The court found that the parents had shown such a burden, albeit an indirect one. Finally, the real issue: Does the state have a sufficiently compelling interest to justify the burden on religion?

Finding that such a state interest does indeed exist, the court said, "There is no doubt that parents do not have the right to be completely unfettered by reasonable

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governmental regulations as to the quality of education furnished their children." Justice Levine then quoted a seminal 1925 U.S. Supreme Court case. This ruling held that although parents have a right to send their children to schools other than public institutions, the state nevertheless has the power "reasonably to regulate all schools (and) to inspect, supervise and examine them, their teachers and pupils."⁷ Subsequent Supreme Court opinions have described the state interest in education as "perhaps the most important function of state and local governments,"⁸ ranking it "at the very apex of the function of a state."⁹

Although the basis of the state's interest is rarely stated clearly, it amounts to this: in a modern welfare state the government makes certain financial guarantees to its citizens. In return, the state has a right to demand that all children receive education that prepares them to become economically self-supporting. This concern is reflected in the court's observation that "the state has a compelling interest in requiring minimum standards of education to insure adequate education of the children of the state to enable them to become *viable citizens* in the community."

How Shall the State Ensure Its Interest?

The parents then reminded the court that even when such a compelling state interest is shown, the state must use the least intrusive method of ensuring its interest. They suggested that the use of standardized tests was less intrusive on their religious freedom than that of certified teachers and would just as adequately guarantee an acceptable level of education. In rejecting this suggestion, the court relied on an Iowa decision, which found standardized testing as an alternative to teacher certification to be "wholly inadequate to protect the state's rightful interests."¹⁰ It also referred to a previous North Dakota decision that although neither method is perfect, because testing does not reveal deficiencies until the end of a school term, it does not "satisfy the state's interest in educating its youth."¹¹

Although more litigation in this area seems inevitable, some guidelines for school administrators can be drawn.

1. The state has a legitimate interest in education. This is now beyond challenge.

2. Nevertheless, parents who wish to educate their children at home are sincere in their belief and deserve the same support we give to all who stand up for deeply held conviction. Although we place no religious significance on covering the head, we respect an orthodox Jew who surrenders his military commission rather than remove his yamulke. We do not hesitate to salute the flag or recite the Pledge of Allegiance, yet we uphold the rights of those who conscientiously oppose such activities. While we do not condone or encourage law-breaking, neither do we belittle sincere belief.

3. Laws concerning home schools vary widely among

the states. No school should commit itself to any relationship with a home school without first investigating all local and state statutes. The church's education and public affairs departments will assist in such an investigation.

4. Attention should be given to "Guidelines for Pre-school, Informal Home Training, and Satellite Church Schools," approved by the 1982 Annual Council, which discusses requirements for local involvement in such undertakings. □

FOOTNOTES

¹ *Burrow v. State*, 669 SW2d 441 (1984).

² *Delconte v. State*, 329 SE2d 636 (1985).

³ *Duro v. District Attorney*, 712 F2d 96 (1983) cert. Denied 465 US 1006 (1984). See also *Burrow v. State*, supra.

⁴ *State v. Edgington*, 663 02d 374 (1983) cert. denied, 464 US 940 (1983).

⁵ *Hanson v. Cushman*, 490 F. Supp. 109 (1980).

⁶ *State of North Dakota v. Patzer, et. al.*, 382 NW2d 631, North Dakota Supreme Court, Feb. 20, 1986.

⁷ *Pierce v. Society of Sisters*, 268 US 518 (1925).

⁸ *Brown v. Board of Education*, 347 US 483 (1954).

⁹ *Wisconsin v. Yoder*, 406 US205 (1972).

¹⁰ *Johnson v. Charles City*, 368 NW2d 74 (1985).

¹¹ *State v. Rivinius*, 328 NW2d 220 (1982), cert. denied 460 US 1070 (1983). See also *Fellowship Baptist Church v. Benton*, 382 NW2d 631 (Iowa, 1985), *Sheridan Road Baptist Church v. Dept. of Education*, 348 NW2d 263 (Michigan, 1984), and *State v. Faith Baptist Church*, 301 NW2d 571 (Nebraska, 1981) appeal dismissed, 454 US 803 (1981).

COMPUTING

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Is the tutorial application running anywhere? Not to my knowledge. The only thing standing in its way is programming. Any course that can be tutored with multiple choice, true or false, or one-or two-word answers that can be spelled out is fair game.

The computer could print on demand which students are using the system, their grades on quizzes, or the amount of extra credit they have earned. The system could be programmed to respond to various incorrect answers so as to guide the student into a broader understanding of the topic.

Preprogrammed quizzes and tutorials would eliminate the need for teachers to do their own programming—unless they wanted to. Such software could be marketed for \$20 to \$30 a program, thus making it affordable even for small schools.

Educators who like to program could be enlisted in the development of the software. Royalties could also be paid for quizzes and tutorials submitted by teachers.

If you or your school would be interested in seeing this type of software developed, or if you would be interested in helping to develop short tutorial packages that would fit into this format, write to Computer Tutor, JOURNAL OF ADVENTIST EDUCATION, 6840 Eastern Ave. NW, Washington, DC 20012.—Dave Ruskjer. □

The author is publisher of the Journal of AMCA (Advanced Microcomputer Concepts and Applications).