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| titte | Come ory Education Laws and Their lmpact on public and: vate Education. |
| INSTITUTION | Education Commission of the states, Denver, Colo. Eat and Ed, ation Center. |
| SPONS AGENCY | National Inst. of Education (ED) , Washington, DC, |
| REPORT NO | [EC-84-1] |
| PUB DATE | 85 |
| GRANT | N1E-G-83-0007; NIE-G-83-0021 |
| NOTE | Slp. |
| PUB TYPE | Viewpoints (120) - information hanlyses coso |
| EDRS PRICE | MF01/PC04 Plus postage. |
| DESCRIPTORS | *Compulsory Education; Court litigation; Educational |
|  | Change; Elementary Secondary Education; *Covernment |
|  | School Relationship; Home Schooling: Politics of |
|  | Education; Private Education; Public Education; |
|  | *School Attendance Legislation; *School Law: *School |
|  | Folicy: State Legislation; State Standards; Tables |
|  | (Data) |

## ABSTRACT

This paper, the thirt in a series, explores some of the implications of compulsory educu'ion for public schools, private schools, and home instruction. Based on prior studies and on interviews with 120 education leaders in 15 states, the paper reviews compulsory education policies thruughout th. nation. It concludes with a recommendation that compulsory education requirements be kept at a minimum and that reforms be achieved through a public education program that is so enticing that students will want to take advantage of it. After a brief introduction, a series of tables compares compulsory education laws and policies in the 50 states, the District of Columbia, and the tiust territories. Thereafter, compulsory education laws are discussed in relation to public and private schools, respectively. Another set of table illustrates state regulation of private schools throughout the nation, followed by a brief survey of court challenges. The third section discusses compulsory education laws in celation to home instruction, and likewise presents comparative tables for the states and territor. 5 . along with a survey of litigation. Remaining sections discuss political considerations, examples of revised compulsory education in selected states, and conclusions. Suggested legislation based on this review is presented in the appendix. References and selected court cases are listed. (TE)

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# COMPULSORY EDUCATION LAWS AND THEIR mPACT ON PUBLIC AND PRIVATE EDUCATON <br> by Patricis Lines, Divector <br> Law and Education Center Education Commission of the States 

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December, 1484

This mper was produced with assistance from the National Institute of Education (NIE grants no. NIE-G-83-007 and NIE-G-83-0021). The recommendations contained in this paper are the author's and do not necessarily reflect the views of Education Cominission of the States or NIE.
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The tables contained in this report are based on a review of state statutes that was completed in May, 1984. Longer tables (identified at the end of each table printed here) are availabel at $\$ 3.00$ per table; they include citations and quoted or paraphrased statutory languge. In a few cases, the short tables pubished here contain some additional corrections not available in the long tables.

ECS is making every effort to keep these tables accurate and up to date. However, bectuse of the voluminous information invoived, errors may pecur. If you identify an error or omitted information for your state, please write to Pat Lines, ECS, Law and Education Center, including your address and telephone n mber, a citation to pertinent statutory material and copies of regulations or other policies that we shoud concuit. We will be most grateful.

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# COMPULSORY EDUCATION LAWS AND T' EIR IMPACT ON PUBLIC AND PRIVATE EDUCATION 

by Patricia Lines

## INTRODUCIION

"Compulsory education" presents a startling oxymoron. Here are two words that bike jumbo shrimp) create internal tension. Education encompasses the transmission of values, culture and beliefs from one generation to the next. One hopes the next generation will receive with eagerness the best our education system can offer. One wonders whether this process can be compelled. Yet, compulsory education laws are the primary legal tool for regulating private schools and home instruction, and they often set the rules for much of the public school program as well.

Many current recommendations for education reform depend on compulsion in one form or another. Multiple warnings from the Commission on Excellence in Education, the ECS Task Force on Education for Economic Growth, the Carnegie Commission, and a bevy of other political and academic groups all suggest it is time to make our children buckle down. Without doubt, these national bodies are right to call attention to the serious neglect of young minds. They are right to call on educators to prepare children for a new age and the demands of an information society. They are right to urge this country to reclaim its position as a leader in technology in the world. The temptation to pursue these popular reforms through complusion is great. Yet, we do not want these children to all turn out the same. Nor do we want all our schools to be alike. Requiring the same program for everyone has its limitations.

Tnis paper is the third in a series. The first two papers deal with constitutional issues surrounding regulation of private education, and the historical treatment of religion in public schools and compulsory education, and the combined impact of these two factors on the development of private schoois. This third paper ther explores some of the implications of compulsion in education, for public scho "or private schools and for home instruction. In particular, this paper comprehensively reviews the policies in the 50 states, American Samoa, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands. This paper is based upon the prior papers and interviews witiz state officials on how compulsory education laws are working. For the interviews, we chose officials in states representing extremes in policy choices: longest or shortest school year, most or least-severe sanctions, and so forth. We interviewed approximately 120 education leaders in 15 states. Those interviewed included legislators, state school chiefs, state school board members, staff serving state officials, private educators and parents engaged in home instruction.

Suggested legislation based on this review is presented in the Appendix. The paper recommends that compulsory education requirements be kept at a minimum, and that reforms be achieved through a public education program that is so enticing that students will want to take advantage of it.

## COMPULSORY EDUCATION LAWS: A REVIEW

Compulsory education laws typically are criminal laws, setting minimum requirements to protect children from parental neglect or from their own thoughtlessness. They generally aim to assure the state that children receive the education they need to
become self-sufficient adults and responsible citizens.
The typical state law requires parents of children aged 7 through 15 to educate their children or send them to school, or isce a fine and a jail sentence. The accompanying tables provide greater detail on these requirements, along with information derived from interviews of state officials about how the reguirements work in practice.
Table 1 provides information on the ages of childrer subject to the compulsory education laws, common alternative ways to satisfy the lav's requirements, and exceptions. Most states require education to begin at age 6 or $7: 30$ jurisdictions specify age $7 ; 17$ specify age 6. Arizona has set the beginning age at 8 , in deference to Mormons who run "kitehen schools" for younger children. lowa, Pennsylvania, Puerto Rico, and Washington also have set the starting age at 8 . None of the people interviewed in states with an older beginning age for compulsory education had difficulty with the law. In some cases parents kept their 6- or 7-year old child at home, but these decisions seemed to be based on realistic assessments of the actual maturity of the child, and could not be regarced as promoting truancy. At the other end of the spectrum, Guarm and Virginia set the age at 5 ; the Virgin tslands, at 4 or 5 (depending on the birthday of the child). While such early starting ages would seem to cause more problems for immature children, none of those interviewed reported a problem. A teacher from the Virgin islands ouserved that most parents seem happy to have the children in school, and seem to regard it as a day-care center. Most likely, schools serving these younger children redesign the program to meet their needs.

The upper age at which children are still subject to compulsory education laws ranges from 15 to 18. In 32 states, the upper age limit is 15 ; in 10, it is age 16; and the Virgir Islands specifies 15 or 16 (depending on birthday). States with higher covered ages include American Samoa (age 18); Califorria, Hawail, New Mexico, Ohio, Oklahoma, Oregon, Utah and Wisconsin (age 17). Mississippi and Puerto Rico end the requirement after age 13; and Washington, after age 14.

Table 1 reveals that many states require public schools to serve a broader age range than the age range specified for compulsory education. Thus, parents have the option of sending their 5-or 6-year old to kindengarten, but they are not compelied to do so under penalty of law. Likewise, some children may appropriately be ready for the world of work at an earlier age, but children over the maximum age of compulsory education still have the right to attend school until graduation. A large number of states do not specify an upper age for those the public schools must serve. This strongly suggests that even adults are entitled to a public elementary and secondary school education, but there has been no case law on the point.

Flexibility of ten takes the forms of alternative ways to meet the education requirement, or exceptions. Completion of a particular grade is of ten accepted in lieu of an upper age imit. Seventeen jurisdictions exempt children from the requirement, regardless of age, after they graduate from grade 12. Another $20 \%$ exempt children after they complete a specified grade, from 8th through 10th grade. Exemptions based on walking distances (often only two miles), work requirements, and handicap are also frequent. A wide range of other exemptions is shown in Table 2. Home instruction, discussed below, is of ten officially recognized in state statutes and presents yet another alternative to school attendance.

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| New Jey sey | 6ils | 5120 | 12 | yes | * | yes | sos | : $\%$ | no |
| Now Mexico | 6117 | $311 \%$ | id; <br> 10with approval | $1200^{4}$ | 14* | yes | yes | 18 | yes |
| New York | $6 / 15$ | $3 / 12$ | 18 | yes | $1{ }^{\prime \prime}$ | yes | yes | 14) | no |
| North Corolino | 7115 | $\begin{gathered} 5 \text { by } \\ \text { Oet. } 151 \\ 10 \end{gathered}$ | (1) | 15 | $1{ }^{3}$ | ne | yes | 15) | nes |
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| Ohio | 6/17 | $3 / 17$ | WP | yes | 13) | res | res | * | res |
| Oklahorna | $7 / 17$ | 5/20 | NP | yes | $N$ | (\#) | yes | $N$ | yes |
| Oregon | 7/17 | W/adulis | $12 *$ | yes | yes <br> 1.5 miles, oye 7-9; 3 miles, 10 Rup | yes | yes | $1 \mathbb{}$ | yes |



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## NOTES:

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2 The state bourd se ts the requirements.
3 Kindergarten oplionhlif where there is no kinteryon ter of is the oye of atmisstom.


6 The (state or local) beard of educotion sets regurennents.

8 Agex 23 for the exceptional chate!.


## A. THANK YOU

 prolile for each of the 55 juristictions on this chart and asked a knowledgeoble state olficiol io review it ondiantily us of etrors. We are
 questions of compulsory age- requirmenents.

TAble 2

## STATE COMPULSORY EDUCATIONLAWS: DETAILS ON OTHER BASES FOR EXCUSAL

## - Alabama

Alaska

American 50 moo

Arizonc

Arkonses
Cohfornio
Connecticu:
Colorado

Connecticut
Delaware
District of Columbia

Florida
-
Georgia

## Guum

## Howaii

When excused by school board; or in custory of court on low orforcement outhonities

When excused or excluded for good reasons by the director of education

For reasons satisfactory to the local boord, teacher ond probotion officer probation officer of superior county court

When services are needed to support widowed mother
For pupils over oge 16 , when state proticiency stondords are net
Certain gifted children; for pupils over is, travel
When in custody of the court or other law enforcement outhorities; when suspended or expelled; when not immunizod

When child has contagious disease
For reasons defined by the board of education

When student is regnant or is a parent and has no child core; upon recommendotion of a circuit judge, with the superintendent's spproval; when pupil has general educotion degree when parent cannot afford clothing for child

In accordance with general policies promulgated by the state board and according to rules of local board

When open investigation by the farnily court or district judge shows any dther reason for non-attendance; when the child is enrolled in an alternative, approved program

Idoho
When expelled as a habitual truant
lllinois
Incione
lowa

Kansas

Kentucky
Lovisiano

## Maine

## Maryland

Massachusetts
Michigon
Ninnesota
Mississippi
Missouri

Nebraska
Nevario
New Hampshire

New Jersey
New Mexico
New York
North Carolina
North Dakota

When a page or messenger in the legislature

Montana When a district judge or local board determines that attenconce is not in the child's best interest; when attendance by indion children is prohibited by tribal laws or treaties
When in service as a page for the 'ndiana General Assembly When excused for sufficient reasor by any court of record or judge; when "educational qualifications" are at 8 th grade level.

Partial excusal from those public schoo! activities that are. "contrary to the tecching of such child"

When child and porent have agreed to meet annually with the school boord until child's ! 7in birthday to review educationol needs children is prohibited by tribol

Whenthe district maintains no high school and child over 14 has completed elementary schocl; when the welfare of the child is best served by withdrawal, as deierinined by local superintendent

Child under 8 may be excused by the local superintendent

Ohio :

## South Dokota

Tennessee

Texas
Utah

Vermont
Virginio

Virgin Islands
Washington

West Virginio

Wisconsin

Wyoming

Oklahoma

Oregon

Pennsylvonia
Puerto Rico

Rhode Island
South Carolina

Child of 16 may be excused if in the best interest of the child and/or the community on written, ioint agreement wher child has "equivalent knowledge" of a H.S. graduate

When excused by the fistrict school board; when age 16 or 17 with consent of the school administration or parent

When age 16 and enrolled in a trade or business school
When parents show geod and sufficient cause for withdrewal; when child is dismissed for cause

When child is excluded under some general law or reguiction
When child is married; when unmarried and pregnont or has child out of wedlock; when a child age 10 or older has been obsent from school for three years

When over age 15 and oftendance results in detriment to good order and discipline and is not of substantial benefit

When expelled in accordance with the law
Upon recommenciation of the school superintendent, with approval of the district board of education

When suffering from contogious disease, or not immunized; when chid cannot benefit; when excused because of reasonable apprehension for personal safety as justified by court

When child is age 15 and has received a certificate of educationai competence or has attained 9th grade proficiency

When hazardous conditions jeopardize life, heolth or safety of child; because of extreme destitution

When 16 years old and attending vocational, technical or adult education school or with parent's permission

When attendance would work undue hardship

Source: Private Education Table II(E).

Tanctions: Table 3 outlines the sanctions available for violation of compulsory education laws. As can be seen, most states /mpose a fine and a jail sentence for noncompliance. Kansas is an exception, with no pernalties for parents. Seventeen states provide for a fine alone. Mississippi has the longest jail term, at 1 year, and, with Vermont, the highest cash fine, $\$ 1,000$. Mississippi had no sanctions until two year ago, and seems now to be compensating for this. While Mississippi does not yet have complete data on truancy statewide, its data on "dropouts" (i.e. children who were once enrolled and then became fulltime truants) indicates no significant changes in the dropout rate among children in the age range covered by the law, after one year of the new law. When asked, one official in that state expressed an opinion that the new sanctions were not too important in attracking truancy, but that a provision for attendance of ficers should prove to be extremely helpful. Attendance of ficers in Mississippi have a legal mandate to obtain compliance through student and family counseling and similar alternatives before initiating criminal proceedings. Michigan, with the second-largest jail term, imposes a 90 -day maximum.

Among states that have both fines and jail sentences as sanctions, Pennsylvania has the least severe penalties: - $\$ 2$ for the first offense, $\$ 5$ for subsequent of fenses, and a jail sentence of five days if the fine is not paid. An attorney in the office of the Attorney General in Kansas reported no problem with the lack of criminal penalties for parents; another disagreed. The of ficials interviewed in Pennsylvania said that the light penalties posed no problem. None of the of ficials interviewed in states with no or few penalties believed that the lack of sanctions led to increased truancy. In contrast, in other states. some of ficials and prosecutors were reluctant to enforce the law against parents, especially where parents were making an effort to educate their children.

All in all, most of the officials interviewed were of the opinion that the severity of the sanction had little impact on truancy. Further, jailing a parent because the parent has failed to meet the law's requirements always runs the danger of injuring the one to be protected - the child. A few states have developed other alternatives, such as student or family . iseling in California and Mississippi and alternative programs in Tennessee.

## TABLE 3

## STAIE COMPU.SORYEUUCATIONIAWS; SANCTIUNS



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| Aricome | $\times(15000)$ |  |  |
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| Califormo | $\begin{gathered} (\$ 100151 \\ 01 \% .3250 \\ \text { subseci.) } \end{gathered}$ |  |  |
| Colorodo |  | $x$ Obeld in jail until he of stre complies) |  |
| Commecticut | $\times 1 \$ 5$ for euch week of viol.) |  |  |
| Delawore | $\begin{aligned} & \times(\$ 5 \text { Irsi } \\ & \text { off. } \$ 50, \\ & \text { subseq. } \end{aligned}$ | $\times 2$ days Ist off., 5 doys subseq., if fire not paid) |  |
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| Mississipui | $\times(\$ 1000)$ | $x(1) y r$. |  |  |  |  |
| Missouri | $\times(525)$ | $\times(10)$ |  | x |  | subject to ourest and phocement in sthool, home on ploce of Wetention |
| Montana. | $\times(\$ 20)$ | $\begin{gathered} \times 10 . \\ 11 \\ \text { fine } \\ \text { not } \\ \text { yeid) } \end{gathered}$ | give bond with sureties of altemdance |  |  |  |
| - intruska | $\times(5000)$ | $\times(1 \mathrm{mos})$ |  |  |  |  |
| Nevada | $\times$ ( 61000$)$ | $\times$ (6 maos). |  | « |  |  |
| New Itompshive | $\times(\$ 100)$ |  | probotions; conditional discharge | $\times$ |  | districts determine discipline of irvonts |
| New Jersey | $\begin{gathered} x(\$ 25 \\ \text { Ist off.; } \\ \$ 200 \text { subseq. }) \end{gathered}$ |  |  |  | $x$ |  |
| New Mexico | $\times \$ 500\}$ | $\times(6 \mathrm{mos})$ | guilly of a "pelly misdemecnor" |  |  | child considered suyglected or in need of soupervision |
| New York | $\begin{gathered} \times(\$ 10 \\ 1 \text { st off.; } \\ \$ 50 \text { subseq. }) \end{gathered}$ | $\begin{gathered} \times(10, \text { iss } \\ \text { off; } \\ 30 \text { days } \\ \text { subseq. } \end{gathered}$ | $\cdots$ | x |  | suspension, Ironsfer |
| North Carolino | $\times(\$ 50)$ | $\times(30)$ |  |  |  |  |
| North Dokoto | $\times(\$ 500)$ | $\times(30)$ |  |  |  |  |


| Onio | $\times(\$ 20)$ | $\times 130$ <br> days if fine not puid) | give bond with sureties of child's athendmos |  | $x$ | chossified as 0 depertent child |
| :---: | :---: | :---: | :---: | :---: | :---: | :---: |
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| Oregon | $\times \$ 100$ | $\times(3)$ | $\times$ |  |  |  |
| Pelursptuario | $\times 1 \$ 2$ <br> Ist off.i $\$ 5$ subseta): | $\times$ (S days <br> if fire <br> trat poses? |  | $\times$ | * | suhiect <br> to ortest; <br> tectared insotrigibie |
| Puerto kices | $\times 155$, znd off.i \$10, subseq.) |  |  |  |  |  |
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| South Dakolo | $\begin{gathered} \times(\$ 50 \\ 1 \text { si off. } \\ \$ 100, \text { subseq. } \end{gathered}$ | $x(30)$ doys. zad off.) |  |  |  |  |
| Termessee | $\times(\$ 10)$ |  |  |  |  | repoited to county or juvenile juctye |
| Texas | $\begin{aligned} & \times(\$ 25 \text { Ist off.; } \\ & \$ 502 \mathrm{nd} \text { off.; } \\ & \$ 100 \text { subseg. } \end{aligned}$ |  |  | $\times$ |  | committed <br> to state Ircining or other suitoble school |
| Utoh | $\times(\$ 299)$ | $\times(6 \mathrm{mos}$. |  | $\times$ |  | juvenile courl has jur isdictions alter oge 16 expulsion from school |


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berters proverile cownt

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FOOItNOLS

2 Jail sentence only opplies if obsance is due to participation in in unouthorized dernonstration.
3 I mitad to truoncy
4 In Massachusetis, literate minars age 16 and 17 are suhjert to line; in Oklahoma children 16 and over subject to live.
3 Applies only to making a false statement regarding ony mottey required umder the compulsory attentance law.


Length of School Day and. School Year: Table 4 provides information on state minimum requirements for the school day and school year. The most typical school term is 180 days, with 22 states setting the term to this length by statute or regulation. Twelve states set the term at 175 to 179 days. The shortest school year is in lowa, which requires " 24 weeks" ( 120 days), but permits the state board to require a longer school year for both public and private schools, which it has dore. The next lowest minimum is in Arkansas, at 150 days. Three jurisdictions specify a maximum compulsory school year: Puerto Rico, 10 months; Rhode Island, 190 days; and South Dakota, 190 days. The longest instructional school year is difficult to determine, because some states include noninstructional days in the school-term mandate, but 180 days appears typical.

States specifying the minimum length for the school day tend to require between 5 und 6 hours. Texas requires the longest school day, 7 hours. A large number of states vary the requirement according to grade level: a 2.5- or 3-hour day appears to be the minimum requirement for kindergarten. Manys states have no statutory provision for the length of the school day.

## MINIMUM REQUHTEMENTS

LENGIHIO SCI IOOL DAY ANH SCIOOL YEAR; PUBLIC ANW PIRIVATE SCI TOOLS ANOIHME INSTIXUCTION

## Public School

Privote School
Home linstricition
Other Repurements


| Idatio | N |  | $N W(180)$ | W | for a period "equal" to the pritlic schools | N | (1) |
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| Ilimois | $\begin{gathered} N \\ (2.5-4 \\ \text { by regs. }) \end{gathered}$ |  | 1761185 | W | $N$ | 15 | 11] |
| Intiama | +15 |  | (\#) | $11^{3}$ | $11^{3}$ | (1) | 13 |
| towa | (1) ${ }^{2}$ |  | 24 consecutive weeks or 4 longer (180) | must be "equivalent" to pubiic schools | must be "equivolent" to public schoals | mus: be <br> "equivalent" to prebtic setrools | nust be <br> "equivatequ" to public scheore |
| Kansos | 5 (grade 12) <br> 6 (grades $1-11$ ) <br> .5 (kindergorten) |  | $\begin{gathered} 180 \\ \text { or } 1080 \mathrm{hr} 5 . \end{gathered}$ | 5 (yn odes 12$)$ <br> 6 (grokles 1.11) <br> 2.5 (kindergarten) | 180 | 114 | 112 |
| Kentucky | 6 hrs min. 9 tris mox. | \% | 179/185 | for "full term" of public school | same as public | 6 | 13 |
| Lovisiona | 5 |  | 180 | W | 180 | i ${ }^{\prime}$ | 180 |
| Maine | WP 15 <br> by regs.) |  | 175/180 | long enough to altow implenemtation of progrom; | $175 / 180$ | 11 | $\begin{aligned} & \{H=(180 \\ & b y(6 . j s) \end{aligned}$ |
| Marylond | 3 hours |  | $\begin{aligned} & 190 \text { or } \\ & 1080 \text { hours } \end{aligned}$ | (1) | in ${ }^{2}$ | WA | [ $3^{3}$ |
| Massochusetts | INP |  | 180 | 143 | 13 | (H) | t ${ }^{\prime \prime}$ |
| Michigan | $N$ |  | 180 | W | atiendance must be some os public scihools | 14 | $1{ }^{\prime \prime}$ |
| Minuesota | $N$ |  | 135 | W0 | 175 | 1WA | in |
| Mississippi | 5 min. 8 max. |  | 135 | . ${ }^{\text {P }}$ | 14 | 18) | 17* |
| Missouri | 6 |  | $1{ }^{1}$ | W | 1\% | "usuol sehool hours" | "usual srhezel hours" |
| Montana | ```6(grodes 4-12) 4 (grodes 1-3) 2(kinderg.)``` |  | 180 | sume os public | 180 ot equivalent | $N$ | 180 or rquivalent |
| Nebraska | $\begin{gathered} 6.2(9-12)^{6} \\ 5.9(\mathrm{~K}-8) \end{gathered}$ |  | 175 | $\begin{gathered} 6.2(9-12)^{6} \\ 5.9(k-8) \end{gathered}$ | 175 | NA | 1NA |

$\begin{array}{cc}\text { Nevadu } & \left.\left.\begin{array}{c}N P \\ (2-5.5 \\ b y \\ \\ \\ \\ \end{array}\right] . e y s\right)\end{array}$

| Nevada | $\begin{gathered} N P \\ (2-5.5 \\ \text { by reys. }) \end{gathered}$ | 180 | $N$ | N | N | N |  |
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| New Ituruphtire | $\cdots \quad 6$ | $180^{3}$ | N0 | $1 W^{2}$ | $W \Lambda$ | WA |  |
| New Jersey | (*) | N) $\left(180^{\text {i }}\right.$ ) | some os public | same as public | NF | 10 | samer as public |
| New Mexico | T ${ }^{\prime}$ | 14* | 18 | some as public | 13 | ( ${ }^{\text {l }}$ |  |
| New York | $\begin{gathered} \text { N2: } 5(K-6) \text { to } \\ 5.5(7.12) \\ \text { by regs. } \end{gathered}$ | $180{ }^{\circ}$ | some us public | 180 | same as public | 180 |  |
| North Curolino | 6 <br> (grode à (am! : | 180 | (1) | "at leasi nime colentor rmonthes | idA | $\because \cap$ |  |
| North Dakota | $10^{2}$ | $175 / 180$ | 13 | 180 |  | $1 \$ \mathrm{~A}$ |  |
| Onio | 5 | 1761182 | some os poblie | surte as public | 1年 | 14* |  |
| Oklinoma | 6 | 179/180 | some os publer | sumbe is phetie | sumber as pentic | same as puther | $z$ |
| Oregon | 1 ${ }^{3}$ | (14 (1/3) | some os public | some as poolic | 17) | 13) |  |
| Pemnsylvanio | 5.5 | 180 | sonve o public | some os public | sume us public | samie as puoblir |  |
| Puertoldico | 119 | 8 mos. min. 10 :mos. max. | $t{ }^{2}$ | 14* | 13' | N ${ }^{3}$ | length af school sholl be lixed by the sec. ofld. |
| Rhoode Istond | $N$ | 190 misk. | "substomtially equal" to publie: sehools | "substantially equal" to public schools | same os public | sumbe us public |  |
| South Carolina | NP | 18 | 10 | N | N" | W |  |
| South Dokota | $51 / 2$ | 175 mii. 190 max. | "for a like period as in public schools | "for a like periad" as in public sehools | "for a like period" os in peblitic schools | "for o like period" os in public selwools |  |
| Tennessee | N3 | 175 | $N$ | some os public | NA | NA |  |
| Texas | 7 | 165 | 19 | $1 p$ | INA | NA |  |

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| Virginio | (H) | N4 | sarne us public | some as public | sume as public | some as public |  |
| Virgin istands | 6 | school year beyins first Monday in Seplernbeq, ends last Friday in lume | N | no more there 90 days vocution allowed in one school year | (11) | (11) | the school year shall begin the the lirst Mondey in Sept., and and lest Friday in June |
| Wastington | $\begin{gathered} 8.5(k) \\ 10 \\ 6(\mathrm{grodes} 9-12)^{6} \end{gathered}$ | 180 | sume as pothic | sume as pollic | 13 | 13A |  |
| West Virginia | NP | 180 min. 185 mox. | some as publir | some as public | "equal to the scheol term" of local schools | "pqual to the schrool tem" of lecel schrools | - |
| Wisconsin | $N$ | 180 | $N$ | N | N8 | 3/P |  |
| Wyorning | N1P | 175 | sume as poblic | some as public | NA | N/A | attendancerequired tor the entire time thot the problie: schools ufe in session |

Sources: Privale ficucation Tables II (D) (1) \& (2); III (B) (1) \& (2); and IV (D) (1) \& (2).
NOTES
"Np" indicates no statutary provision. Where state officiols have supplied us with regulations we also indicate that, in the foothote.
"NA" indicates the question is not applicable lor lack of any express statutory provision for nonschool education options.

I Where iwo figures are given, the first is instructional days, and the second, the term. Many states allow districts to use up to a specified number of days for teacher training, conferences with parents, emergencies, or holidays. Sonve states allow additional noninstructional days for specific purposes, but that is not reflected here. Beard regulations that deviate from the statutory provision are in the parenthesis. Where board regulations are fewer than the statutory minimum, the baard has apporently set a lid an the number of unspecified emergency days that may be excluded from the requirement.

2 Varies by grade and status.
3 The local board may reduce this, upon state board approval.
4 A.G. Op. sets the year of 180 days.
5 There is provision for a shorter duration if instruction is equivalent.
${ }^{6}$ For Nebraska, his is stuted in terms of total requirements of 1080 hours for grades $9.12 ; 1032$ hours tor K-8. This is stated in terms of total requirements af 450 tor kindergarten; 2,700 for grades 1-3; 2,970 for grades 4-6; 1,980 for grades 7-8; and 4; 320 for grotes 9.12
7 The state boord may require o longer term.

## PUBLIC SCHOOLS AND COMPULSORY LAWS

Compulsory education laws, in place for approximately 100 years (more in the northeastern states), represent the first attempt to exercise state control over local education policy. By now, states have enacted many other laws regulating many aspects of education, but the compulsory education laws continue to play a role. In addition to setting the length of the school day and year, compulsory education laws typically specify the basic curriculum. These laws have sometimes been the target of education reformers, who would alter them to require more hours a day and more days a year in school, to extend the age span for compulsory education upward or downward, or to eliminate "soft" courses and replace them with required "hard" courses.

Ironically, few of the recent reforms focus on the problem of truancy, and the related problem of dropping out. It is even greater irony that most enforcement efforts pursuant to compulsory education laws are directed at parents and schools that are making a goodfaith attempt to educate their children, and not at truancy in the classic sense. Truant children seem to slip beyond the vision of most public educators. For example, a study in Boston several years ago revealed large numbers of young children, particulary Spanishspeaking children, on the streets during school hours. Because children who have taken to the streets usually present greater-than-average problems to the educator, there is a suspicion that public school officials wouid rather not face the difficult task of educating them.

Statistics on truancy are extremely unreliable. One class of truants - those enrolled and attending school (the occasional truant) can be counted with some confidence. The Institute for Social Research at the University of Michigan polls high school seniors annually, and reports that for 1983 (the most recent year for which they have data), 34\% of high school seniors skipped a class once in a 4 week period; $28 \%$ skipped a whole day in that period. Full-time truants are harder yet to count, but they may account for around $9 \%$ of the school aged population - around 5 million nationally. There is evidence that the truancy rate is persistently higher among minority populations. The population of truant children exceeds the population of children in home instruction or fundamentalist Christian schools (many of which have met compulsory education requirements) by a factor of 10 , and by the most conservative estimates exceeds the population of children in unapproved education settings by a factor of 100 or more. Yet, enforcement efforts appear to be directed at families who place their children in unapproved education settings, mere than at truants enrolled in school and full time truants on the street.

On the other side of the coin, expanding compulsory education requirements to advance education excellence for students who do come to school has met political obstacles. While most of the people directly affected - parents, teachers, and students - seern happy with most of the reform movement, extending these requirements has not won their support. Educators seem surprised at the resistance to the recommendation for more time in school, the least popular of all the recommendations for reform made in the past year. But parents know how much children yearn for the last day of school. Some also know of more exciting education opportunities outside the sehool setting. Some parents have sized up their youngsters and decided, usually correctly, that an immature child would best be kept at home another year.

Questions about compulsion are emerging out of the reform movement itself. An opposite movement towards choice in education seems to be emerging. The Minnesota Business Partnership, for example, has recently recommended an elective education system, possibly including vouchers, for 11th and 12th graders. Education leaders in Colorado, Minnesota and Tennessee have also begun to urge examination of limited
tuition-voucher programs.


#### Abstract

Although they may find it tempting, public policy makers oiv not have to utilize compulsory education laws to reform education. They could restrict increased requirements for time in school to public schools. In fact, as shown in Table 4, many states presently do this. They have different requirements for compulsory education and for public school operations. One is a minimum, and typically enforceable by criminal sanctions. The other represents what public schools must offer and what a student enrolled in public school must follow if he or she wishes to graduate.


Rather than requiring longer day, public schools might achieve the same ends by offering a longer day, in which they could use the extra hours in bold new ways. They could offer special courses in the extra hours, enticing children with new and interesting subjects, less formality, different teachers, or in other ways varying it from the regular program. (These extended hours could also be made available to children in private schools and home instruction.) Some of these special courses could be designed to appeal to the dropout and the potential dropout as well as average and above-average children. They could be made available regardless of whether the child is enrolled in a school. If welldesigned, such special courses might help lure the dropout back into school on a full-time basis. Experimentation in the extra hours might lead to more reform of the regular curriculum with, for example, courses that can help those vulnerable to dropping out. Of course, an extra hour for study hall would probably be a more of a nuisance than a benefit; everything depends on the willingness of educators to use the time to rope students into new education activities.

To be sure, there are some problems with this approach. First, the compulsory education laws were once seen as necessary complements to child labor laws, and even today, some agricultural interests would like to keep school hours to a minimum in order to assure cheap child labor. Some of the opposition to North Carolina's experiment with a 200-day year is believed to stem from such considerations. Poor children are the likely victims. Second, children from disadvantaged families may not participate in voluntary extra programs, although most wouid benefit from the experience.

The solution here is to attack each problem more directly. Child labor laws should specifically address the issue of how many hours a child should be allowed to work. Special programs have always been needed to assure that disadvantaged children are fully served by the education program. Finally, we must realize that for some children, more schooling is not quite the right approach. Some are ready for the world of work, and existing compulsory education laws reflect this through frequent provisions for excusal from the law's requirements after a certain age.

## PRIVATE SCHOOLS AND COMPULSORY LAWS

Altering compulsory education laws has a more profound impact on private schools because these laws are, in most states, the only existing vehicle for regulation of private schools. Stricter laws may become unenforceable, if the experience in those states with relatively strict laws is a.guide. Throughout this group of states, parents have placed their children in unapproved schools despite the risk. Their reasons vary. Some have overriding religious concerns and others are dissatisfied with or mistrust the public school system. Occasionally they seek only to escape the effects of public school desegregation programs. In some states, parents and individuals operating unapproved private schools have received or are faced with jail sentences. In one case, a fundamentalist Christian clergyman in Nebraska refused to comply with court orders
directing him to either obtain state approval for his school or cease operating, and he was jailed twice. His church was padlocked to enforce the law. Nebraska ultimately changed its law to accomodate citizens seeking more education options. Other states are also experiencing pressure to expand choices under the compulsory eduation laws.

## A Brief Descriplion of Private Schools Today

Private schools in America present a picture as diverse as the nation itself. For the purposes of analyzing compulsory education policies, it is important to know how many children are enrolled in private schools and whether they are in fact achieving the skills they need for the future. While the proportion of children in these schools has remained fairly steady in relation to those in public schools, a major shift has occurred within the nonpublic school population. While Catholic school enrollments declined from the 1960's until the early 1980's, other nonpublic school enrollments rose sharply.

Public school enrollments declined from approximately 45.9 million in 1970 to 42.6 million in 1978. Catholic school enrollments have also declined from almost 5 million at their peak in the mid-sixties, to a little more than 3 million today. The U.S. Bureau of the Census has estimated that as of 1975 there were close to 1.4 million children in nonCatholic, private schools. Most likely the census bureau counted only traditional and aceredited schools. A more careful study for the National Center for Education Statistics suggests there are about 15,000 non-Catholic private schools serving approximately 2 million students, and that this population is increasing by 100,000 students per year. If present trends continue, in a few years, Catholics will not represent a majority of the private school population. (Potential explanations for this shift are explored in Cooper et al, 1982; and Lines, 1984.)

As a general rule, children in private schools perform better then children in public schools on nationally standardized tests. Considerable debate continues over whether this is due to the quality of the schools or to the socioeconomic status of the students. For purposes of considering compulsory education policies, this issue is unimportant. It is enough to observe that, by available measures, children in private schools are developing the skills they need.

Some policy makers are concerned that some private schools - especially newer fundamentalist Christian schools - are not performing adequately. The data is scant, but where it exists, children in these schools also test at or above national norms, on average. Several states exempt private schools from normal state requirements if they or the families have religious objections to these requirements; some of these states also test the children. Officials in these states report children perform at or above national averages.

## State Regulation of Private Schools

Tables 5 and 6 outline the most significant state rules for private schools. Virtuaily all states require some record-keeping and/or reporting of data. nlinois has no statutory requirement, but after review, its state board decided that its voluntary reporting system worked well, enough, and the few private schopls that failed to report data represented a insignificant number of children. Licensing, perhaps the strictest form of regulation, is required in a few jurisdictions - American Samoa, the District of Columbia and Hawaii (where the state supime court has upheld the system), Nevada and Puerto Rico. Licensing is also requited in Maryland, Pennsylvania and Wyoming, but the law exempts
church schools. Accreditation is required in scme of these same states, as well as in Idaho, Kansas, Michigan, and Tennessee. Accredition is required for all but church schools in Nebraska (if parents object to acereditation) and Nopth Carolina. Some form of approval, falling chort of licensing or accredition is required in Alaska, Delaware, Maine, Massachusetts, New Hampshire, North Dakotas Ohio, Pennsylvania, Rhode Island, South Dakota, the Virgin Islands, Washington, and Wyoming. Alabama and New Jersey require state approval, but exempt church schools.

There are few sanctions applied to private schools when they fail to comply with any of these rules. State statutes rely, instead, on prosecution of parents under the compulsory education laws. In Nebraska, state officials proceeded against the of ficials operating private schools as well as parents, but the legal authorization to do remains an open question. The defendants did not raise the issue in their appeals to courts of record.

Teacher certification has long been a thorn in the side of some private schools. Some elite schools prefer to emoloy teaching personnel who are proficient in particular fields, regardless of certification. The newer Christian schools believe, as a principle of faith, that certifying a teacher is tantamount to certifying the clergy, and would violate their religious principles. Nonetheless, 13 jurisdictions require certified teachers in all private schools. In a few additional states, certification of private sehool teachers is a voluntary matter. Washington law requires certification, but allows an outstanding individual to teach under the supervision of a certified teacher; and Nebraska requires certification except where parents sign a statement that state requirements for certified teachers violate their religious beliefs. Louisiana law specifies some form of state approval of teachers, but not certification.

Typically, state law lists the subjects that must be taught in private schools. Marry. states require only history, constitutional principles and citizenship, trusting private schools to make appropriate choices for the remaining curriculum. English, mathematics, and science are mentioned in a number of statutes. Almost half the jurisdictions specify that English be the language of instruction.

A few states require the testing of teachers or students, usually as an alternative to less rigorous requirements, such as teacher certification. Alaska requires students to be tested if teachers are not certified, while lowa requires, student tests if the school does net meet approval requirements. Nebraska, as noted above, allows the state board to make this requirement in the absence of accreditation and certification for some church schools. Eight states require student testing without qualification. Two more have a voluntary program. Nebraska also requires testing of teachers who do not obtain certificates. Nevada tests all teachers. Oklahoma requires testing of private school teachers if a school desires accreditation.

Sixteen states prohibit raşe discrimination in private schools. Sometimes this prohibition is tied to state aid. Typically the prohibition appears in the state's law dealing with public accommodations. In some cases schools are specifically included within the definition of public accommodation, and in other cases, the definition is very broad and seems to include private schools.

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## NOTES:

I "Val." means voluntary, as certain church schonls are exempl. In Aloska ony private school thay elect an optional protedure ond have students tested if teochers are not certilied.

2 "Apprat means state approval of teachers is required, although the statute does not require a cersificole.
${ }^{3}$ Teacher testing is required for schools which do not have certified teachers.
Parents inust state religious objections to ienchers certilication. The state board has authority to require student testing in these schools.

[^1]
## Court Challenges

As noted, the primary vehicle for regulation of these schools is through the compulsory education laws. Rulings from the U.S. Supreme Court indicate that some of these requirements can go too far. In the 1920's the Court struck down laws in three states. In Pierce v. Society of Sisters (1925), the court struck down an Oregon law that required attendance at public schools only. In Mever y. Nebraska (1923), the court struck down a Nebraska law that prohibited the teaching of foreign language to younger children. Finally, in Farrington v. Tokushiga (1927) it struck down a Hawail law that involved excessive regulation of hours and textbooks of private language schools. These early cases indicate the Court's acceptance, however ill-defined, of parental rights to determine their chilGren's education, derived largely from the freedom of speech and religion.

In the $1960^{\prime}$ s, in a landmark case, Yoder v. Wisconsin, the high court narrowly ruled that Wisconsin's compulsory attendance law could not be applied to the Amish (a religious community). The Court held that the state cannot compel children to attend school in the face of strong religious objections, as long as the children were adequately educated in an alternative setting. Lower courts have extended Yoder only when traditional religious beliefs are involved. Decisions outside of this narrow realm have been mixed, with most cases turning on state constitutional or statutory grounds.

Recent litigation over the status of private education has culminated in court rulings in a number of states, including Florida, Hawaii, Iowa, Kentucky, Maine, Michigan, Nebraska, North Dakota, Ohio, Washington, West Virginia and Wisconsin. Generally those states facing litigati on require school attendance (rather ihan education) and certification of private school teachers. These requiremerts tend to generate the kind of regulation that makes life most difficult for private schools. In a few states the central issue is state approval of curriculum or facilities, or zoning rules. Given the growth of fundamentalist Christian schools and other nontraditional private schools, states that require school attendance and set standards for the school will probably be challenged in the near future.

The litigation receiving the most attention from the media appears to be State v. Faith Baptist Church, dealing with the refusal of Rev. Everett Silevan to obtain approval from Nebraska for any aspect of his church-run school. The school uses a series of booklets called the Packet of Accelerated Christian Education (PACE), which includes instructional information and self-administered tests. The school does not use statecertified teachers, a requirement under Nebraska's former compulsory school attendance law. The Nebraska high court found the materials adequate, but upheld the state's requirement for certified teachers. The U.S. Supreme Court summarily dismissed an appeal because, based on the papers filed before it, it could not identify an important constitutional issue. This decision may be due to the posture in which the case went to the Court. Two Supreme Court cases dealing with private postsecondary institutions (NLRB v. Catholic Bishop of Chicago (1979) and St. Martin Evangelical Lutheran Church y. South Dakota (1981)) strongly suggest that regulation of private sohools presents some serious constitutional issues.

Lower-court decisions are mixed. For example, lower courts have upheld various state requirements in Florida, Hawaii, North Dakota, and Wisconsin. In some of these cases, parents refused to provide any evidence about their children's schooling. In other cases, state courts have ruled in favor of parents. In Ohio, the state supreme court struck down a system of state regulation that, by its literal terms, left no time for religious instruction in a private school. In a Kentucky case, the state court applied a unique state
constitutional provision that prohibits requiring a child to attend a school that perents find objectionable for conscientious reasons.

## HOME INSTRUCTION AND COMPULSORY EDUCATION LAWS

Throughout the history of education, home instruction has appealed to some families. John Stuart Mill received his early education from his father. Harvard recently admitted a young man who had been entirely taught at home. In isolated places in early America, home instruction was of ten the only choice. Today, in a few places in Alaska, Montana and other sparsely populated areas, this is still true. On the whole, however, families who now teach their children at home do so as a matter of choice, of ten a value-laden choice.

## A Brief Description of Home Schooling Today

Like those choosing private schools, families choose home instruction for a wide variety of reasons. Some disagree with the political or religious values they perceive in the public school program. Some are strongly committed to a family-centered life and extended time with small children. Others believe they know best how to educate a particular child and will enroll all their children in school except for the one child believed to have unique education needs. Home-schoolers are more likely to keep younger childiren at home and send older children to school. Of ten parents "burn out," regardless of the age of their home-schooled child.

No one knows how many families teach their children at home. Many parents do not register their programs, of ten for fear that the programs will not be approved by state or local authorities. The most informed estimate is probably that of John Holt, an author and educator who assists families who choose home instruction. He estimates that about 10,000 families are trying home instruction in the ted States today. Other estimates are higher. The total number of families attemptir, nome instruction probably is small, and the growth of the movement is probably also small. What appears to be changing, however, is the number of parents who are willing to become more open about their choice and who lobby for recognition for home instruction in states where it is not clearly allowed. Indeed, judging by the inquiries directed to staff at the Education Commission of the States, interest in home instruction is on the rise.

Many educators have expressed concern that children educated at home will fail academically and socially. The evidence does not support this concern. Parents typically think through their teaching methods. Many were former teachers. Some parents believe children should be self-directed and offer little or no supervision; others maintain a strict schedule. All in all, parents generally try to design home programs to meet the individual needs of their children. States such as Alaska and Arizona, which test homeschooled children, report that these children perform above average, as measured by nationally standardized tests. One study of children in a home tutorial network in Los Angeles showed that children in the network scored higher on standardized national tests than the children in L.A. public schools. But the children's test scores before they enrolled in the home program were unavailable, and children in the program were compared with all children in public schools rather than with children from the same socioeconomic backgrounds. It appears that the average home-schooled child does not fail by most academic standards. The concern should be, therefore, for those few who do, and should be tempered by the knowledge that more children are failing academically in public schools.

Home instruction and very small private schools raise additional issues of adequate resources and opportunities for socialization. However, in most cities, home schoolers find each other, through formal or informal associations, and offer each other mutual support. Institutionalized support is also available.* The Alaska Department of Education provides extensive assistance, assigning teachers to supervise the work of home schoolers.

## State Policies

Tables 7 and 8 provide information on state policies and home instruction. These tables show that compulsory education laws in 38 jurisdictions expressly permit home instruction or require simply that children be educated in lieu of schcol attendance. Nonschool edrication obviously includes education at home, and it may include other options as well.

Seventeen states have no statutory provision for home instruction. In Illinois, the state supreme court has ruled that if a home qualifies as a school - and the requirements for private schools in Illinois are very flexible - then attendance at that home school satisfies the state school attendance law. Following this decision, the llinois Department of Education organized a supportive of fice for the home schools throughout the state. Michigan's attorney general has issued a similar ruling. But teachers in private schools in Michigan must have a teacher's certificate, which few parents have. State education agencies in a number of other states where statutes do not specifically mention home instruction take a similar position. Courts in West Virginia and North Carolina have upheld state requirements that greatiy restrict home instruction and may effectively prohibit it. In some states, such as Washington and Kansas, parents are actively lobbying for legal recognition of home schooling.

Table 8 provides detail on nonschool options for meeting the law's requiremerits. Nonschool instruction typically means home instruction. As can be seen, the typical law requires education, not school attendance. Instruction that is "equivalent" or "comparable" to public school instruction is an acceptable way to meet the compulsory education law's requirements in many states.

Vague terms such as "equivalency" usually invite legal problems, but to date, there have been no legal challenges to such wording. In contrast, two state supreme courts have declared compulsory education laws void for vagueness, for failure to define school (a much more specific term", where the law required "school attendance" as the only means of satisfying the law. Perhaps the more broadiy worded laws have escaped challenge
*Holt Associates in Boylston, Massachusetts, assists home schoolers and can provide considerable information on the state of home instruction. Some correspondence schools help parents teach children at home. Parents often obtain material from the Calvert School in Baltimore, Maryland; the Seventh-Day Adventists' Home Study Institute in Takoma Park, Maryland; the Christian Liberty Academy in Prospect Heights, lllinois; and Accelerated Christian Education, Inc., in Louisuille, Texas. The Home Basej Education Program (c/o Clonlara School) in Ann Arbor, Michigan, will help parents design an individualized curriculum.
because states interpret them liberally, and do not use them to preclude home instruction or the operation of unaccredited private schools. A lower court in Maryland has held that "equivalent" instruction encompasses home instruction, and many state departments of education take the same view.

Four of the 38 states and territories that expressly allow nonschool instruction require that home teachers be certified. (Presumably a certificate is not necessary where state law is silent on the subject.) Some of the states that allow home instruction because the home qualifies as a school (e.g., Michigan) require teachers to have certificates. Arizona, Oregon, and some other states require that children educated at home be tested to provide assurance that they are progressing. Where certification or other restrictive requirements exist, parents often go "underground," that is, they operate home schools in violation of the law. Other parents have moved to more permissive states. In short, restrictive laws do not eliminate home instruction, they simply change where and how it is done.

A number of states require that state or locel of ficials approve home programs. Some require that home programs cover the same subjects taught in tne public schools. Many have some kind of "equivalency" or "comparability" requirement that is generally construed to mean that the same subjects must be taught. A fair number also specify the subject matter that must be taught, with reading, English or language arts mentioned most frequently.

|  | is nonschool instruction expressly permitted? | Where home instruction is permitted, is it part of bosic requirement or exception? | Must teacher be certified | Must progrom be approved? | Dows statute specify curriculum? | Other requirements? |
| :---: | :---: | :---: | :---: | :---: | :---: | :---: |
| Alabama | yes | basic | yes | $N P$ | yes, some as public schools | keep 0 register; troke reporis |
| Alaska | yes | exception | yes | yes, by focal off. | $\cdots{ }^{2}$ | must show program meets needs of child |
| American Samoo | NP | NA | NA | NA | NA |  |
| Arizona | yes | exception | no | yes, by county supt. | NP | lesting of teacher and child |
| Arkansas | NP | NA | NA | NA | NA |  |
| California | yes | exception | yes | NP | $N P$ | instr. in English languoge; hours between 88.4 |
| Colorado | yes | exception | not if a parent | yes, by state | NP |  |
| Connecticut | yes | basic | $N$ | NP | must be equivalent |  |
| Deloware | yes | exception | No | yes, by stote | yes, same os public schools |  |
| District of Columbio | yes | basic | $N P$ | $N P$ | yes, must be equivalent |  |

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```
riorico
yes
bosuc
NP, but
gives local
board approval
    responsibility
```

must keap attendance and
report data

| Georgio | yes | basic | no | no | yes, reoding lang. orts, math, soc. stud., sci. | registrotion: lesting of child; onnval progress report |
| :---: | :---: | :---: | :---: | :---: | :---: | :---: |
| Guam | yes | exception | NP | NP | yes, same os putilic schools | instruction in English |
| Hawail | yes | exceptio: | no | $\begin{aligned} & \text { yes, by } \\ & \text { state } \end{aligned}$ | NP |  |
| Idaho | yes | bosic | yes | yes, by local board | yes, same os public schools |  |
| Illinois | NP, but court cose permits it | NA | NA | NA | NA |  |
| Indiana | yes | excep:ion | NP | NP | NP |  |
| lowo | yes | bosic | yes | yes, by stote | yes, must be equivalent |  |
| Konsas | NP | NA | NA | NA | NA |  |
| Kentucky | NP* | * | * | * | * |  |
| Lovisiona | yes | bosic | NP | yes, by state | NP |  |
| Maine | yes | exception | NPiregs soy no | $\begin{gathered} \text { yes, by } \\ \text { state } \end{gathered}$ | NP (state regs. require English math, soc, studies and science) |  |


| Maryland | yes | basic | NP | $N P$ | NP |  |
| :---: | :---: | :---: | :---: | :---: | :---: | :---: |
| Massachusetts | yes | exception | $N P$ | yes, by local | $N P$ | nonreligious corresp. schools muet be … ansed |


| Michigan | NP, but A.G. op. court coses allow it | NA | yes | NA | $N P$ |  |
| :---: | :---: | :---: | :---: | :---: | :---: | :---: |
| Minnesota | $N$ | NA | NA | NA | NA |  |
| Mississippi | yes | exception | no | yes, by locals | yes, language orts umath | testing of all children of ter oge 8 |
| Missouri | yes | bosic | NP | yes, by court | yes, must be equivalent; ${ }^{\boldsymbol{z}}$ incl. fed. \& state const., Am. hist., \& Arm. insits. |  |
| Montano | yes | exception | $N P$ | yes, by locals | yes, some as public | must notify county sup.; must be under local supervision |
| Nebrasko | $N P$ | NA | NA | NA | NA |  |
| Nevado | yes | exception | N\% | yes, by locals | NP |  |
| New Hompshire | NP, but state board regs allow it | NA | under reos, no | under regs, yes, by local boord | NA <br> Regs specily Eng., math, hist., gov., hygiene, 8 fed. \& stote const. |  |
| New Jersey | yes | basic | $N P$ | $N$ | NP | nonreligious corresp. schools must poy tee and be approved |
| New Mexico | No** |  | NP | $N P$ |  | NP |
| New York | yes | basic | no | NP | yes, must be equivalent |  |
| North Carolino | NP*** | *** | -* | *** | *** |  |
| North Dokota | $N P$ | 1', | NA | NA | NA |  |
| Onio | yes | exception | no | yes, by locals | NP |  |


| Oklahoma | yes | basic | NP | NP | $N P$ |  |
| :---: | :---: | :---: | :---: | :---: | :---: | :---: |
| Oregon | yes | exception | $N$ | yes, by locals | courses usually tought in pub. school | testing of child by local officials |
| Pennsylvonia | yes | basic | no, but local dist. must opprove it | yes, by locols | NP |  |
| Puerto Rico | $N P$ | NA | NA | $N P$ | NA |  |
| Hhode Islond | yes | exception | NP | yes, by locols | yes, reoding writing, geog. math, hist., P.I. hist. Arn. gov. |  |
| South Caroling | yes | basic | $N$ | yes, by state | must be equivalent |  |
| South Dokota | yes | exception | no | yes, by lacals | Inngunge orts, math | "competent" teachers; conumal testing of child; limit of 22 students |
| Tennessee | $N P$ | NA | NA | NA | NA |  |
| Texas | NP | NA | NA | NA | NA |  |
| Uloh | yes | exception | $N$ | N* | - NP |  |
| Vermont | yes | exception | NP | yes, by state | yes, reading writing, numbers, citizenship, hist., U.S. \& Vi. gov. phys. ed., lii., nat. sci, healith, tobocce, alcohol, drugs | no more then two students who do not live of the home sehool; report enröliment; onnual renewal of approval |
| Virginio | yes | bosic | yes | yes, by locals | NP |  |
| Virgin Islonds | yes | exception | NP | $\begin{gathered} \text { yes, by } \\ \text { v.l. } \end{gathered}$ <br> Comm'r | NP | lesting af oplion of V.I. Commir. |


| Washington | NP* | - | * | * | * |  |
| :---: | :---: | :---: | :---: | :---: | :---: | :---: |
| West <br> Virginia | yes | exception | no | yes, by locals | yes, sarme as public schools | correspondence schools must have stote permit |
| Wisconsin | yes | exceplion | $N$ | yes, by stote | yes, reoding, long. arts, math, soc. stud., sci. E heolth |  |
| Wyorning | NP | NA | $N A$ | NA | NA |  |
| NOTES: |  |  |  |  |  |  |
| "NP" indicates no statutory provision. For teacher certification of parents, "NP" probobly means "no". |  |  |  |  |  |  |
| "NA" indicates question is not opplicable, becouse there is no statutory provision. |  |  |  |  |  |  |
| - State vory | State board staff say they will approve "hane schools" if they meet state requirements for schools. Requirements for private schools vory by state. |  |  |  |  |  |
| The definition of school excludes home instruction, the law requires school ottendance. |  |  |  |  |  |  |
| **s Court cose indicates it moy be olmost impossible to conduct legal home instruction in North Corolino. |  |  |  |  |  |  |

## TABLE 8

## ACCEPIABE NONSCHOOL OPTIONS TO MEET COMPURSORY EDUCATIONLAWS

What forms of non-school instruction are specified by statute as occeptable compliance within the compulsory education kaw, either as meeting the basic requirements, or as an exemption?

|  | No Provision | Insfruction In the I tome | Instruction by a Private Tutor | Equivalent Instruction | Comparable instruction | Correspondence Study | Other Key. Pheose Describing Instruction |
| :---: | :---: | :---: | :---: | :---: | :---: | :---: | :---: |
| Alabrimo |  |  | $\times$ |  |  |  |  |
| Alaska |  |  | $\times$ |  | $x$ | $\times$ |  |
| Americon Somoo | $\times$ |  |  |  |  |  |  |
| Arizono |  | $\times$ | $\times$ |  |  |  |  |
| Arkansos | $\times$ |  |  |  |  |  |  |
| California | * |  | $\times$ |  |  |  |  |
| Colorado |  | * | * |  |  |  |  |
| Commecticut |  |  | $\times$ | $\times$ |  |  |  |
| Delowore |  |  |  | - |  |  | Instruction in the subjects prescribed for public schools |
| District of Columbia |  |  | $\times$ | $\times$ |  |  |  |
| Florida |  | * | $\times$ |  |  |  |  |
| Georgio |  | $\times$ | $\times$ |  |  |  |  |
| Guam |  |  | * |  |  |  |  |
| Howoii ldaho | 8 |  | x |  | $\times$ |  |  |
| Illinois | * | $x^{1}$ |  |  |  | , |  |
| Indione |  | . |  | $x$ |  |  |  |
| Jowo |  |  | x | - $\times$ |  |  |  |
| Kansos | * |  |  |  |  |  |  |
| Kentucky | * |  |  | $67$ |  |  |  |

Mairve $\because \times x$


Instruction in the stivies usually tenglit in public schools

Instructed in o monuer
. approved in advancea ,

Marylond

## Massachusselts

Attend at o public school or elsewhere

North Corolina $x$
North Dokoto $x$
Ohio $x$
Oklahoma x
Oregon $x$ ..... $x$
Pennsyivanio ..... $x$
Puerto Rico ..... $\times$
.

| South Corolimo |  |  |  | $x$ |  |
| :---: | :---: | :---: | :---: | :---: | :---: |
| Soull Dakota |  |  |  |  | Provided with competent olternotive instruclion |
| Tennessee | $\therefore$ |  |  |  |  |
| Texas | $\times$ |  |  |  |  |
| Ulion |  | $x$ |  |  |  |
| Vermont |  | $x$ |  |  |  |
| Virginia |  |  | $x$ |  |  |
| Virgin Islands |  |  | $\times$ |  |  |
| Washington | x |  |  |  |  |
| West Virginio |  |  | $x$ |  | Tought by persons "qualilied" to give insiruction in subjects required |
| Wisconsin |  |  |  | x |  |
| Wyoming | $x$ |  |  |  |  |

1 N.......rot in Michigon and Illinois, case law, rother than statute, provides this response.
2 Note that the Montara provision is limited to students for whom transportation is not available.
3 Note that home instruction in New Mexico is mentioned us excluded from the definition of private schools. As the compulsory educolion law requires school attendonce, this seems to preclude home instruction.

## Litigation

Yoder, discussed above, has some relevance to home instruction. Indeed, the Amish children exempted from the education requirements in that case continued their education in their communities. Decisions outside this narrow realm have been mixed, with most cases turning on state constitutional or statutory grounds. In Perchemlides v. Frizzle (1978), a lower Massachusetts court has held that there is a right to home instruction. Legal scholars tend to agree, although they also agree that the state has the authority to set some rules for how it is accomplished. On the other hand, in Duro v. District Attorney (1984), the U. S. Court of Appeals for the Fourth Circuit upheld North Carolina's prohibition of a home instruction program, despite religious objections of the parents. In the most recent case on the issue, Burrow v. State (Arkansas 1984) a state supreme court found parenis guilty of violating the compulsory schooling lew. A similar result was reached in State v. Shaver (North Dakota, 1980), State v. Riddle (West Virginia, 1981), and Jernigan v. State (Alabama, 1982) (Alabama has since adopted legislation expressly allowing home instruction). Except for the Arkansas case, which flatly rejected home instruction, one might conclude from each of these cases that the particular home instruction program before the court was not satisfactory, and that better-prepared parents might meet state requirements. The issue has never been definitively resolved by the Supreme Court, and the Court declined to review Duro, the most recent case to be appealed.

## POLITICAL CONSIDERATIONS

Changes in a state's compulsory education policies usually become controversial, especially when they affect private schools and home instruction. As one legislative leader expressed it, when her state determined expressly to allow home instruction, "Our fundamentalist population became very paranoid, just because we were looking at compulsory education laws, even though we had no intention of touching their schools."

Organizations and individuals urging more flexible compulsory education laws argue that flexibility is required to preserve the free exercise of religion. These groups argue that parents know what is best for the child. They include those participating in nontraditional choices, fundamentalist Christians, and more traditional private schools. Organizations and individuals concerned with civil liberties are likely to side with home schoolers, but have not yet taken up the cause of fundamentalist Christians. The national ACLU, for example, in its Policy \#71A, states: "We believe that, in the interest of parental right to choose an alternative to public education, thome instruction with safeguards, such as approval of curriculum or testing of the child] . . . should be extended to all jurisdictions because the state's interest in assuring minimum leveis of education does not extend to control of the means by which that interest is realized."

Organizations and individuals urging retention or adcpion of stricter requirements for private education generally argue that these regulations are needed to assure the best interests of the child, and to prevent balkanization of society. These groups include teachers' organizations and public school administrators. Critics of deregulation most frequently cite lack of accountability. In small districts superintendents and teachers also tear loss of per-pupil state aid. The exodus of just one or two children in such districts has an impact; and administrators may fear that formation of a new private school will seriously impair their judgets.

## REDESIGNING A COMPULSORY EDUCATION LAW: EXAMPLES FROM SELECTED STATES

Redesigning compulsory education policies is not an easy task. A pragmatic approach would be to borrow language from a state that has adopted a policy similar to the one desired, and has implemented it with few problems. There is much variety among compulsory education policies. As a result, a state considering a change in its compulsory education policy can often look to sister states for models.

Tennesse, Vermont and Washington: Sorie states have imposed limits on the state board's regulatory power. Tennessee, for example, prohibits the state board and local boards from regulating faculties, textbooks, or curricula in church-affiliated schools. Washington prevents state agencies from expanding on statutory provisions, but these provisions set minimum standards as to length of school year, length of day, subjects to be taught, and teacher qualifications. Teacher certification is required, except for courses in religion and other subjects not taught in the public schools. State law in Washington allows persons of "unusual competence" to tebich, if they are supervised by certified teachers. Vermont law indicates that the statute alone sets the rules, and the state board is not to expand upon it. This approach recognizes the tendency of state boards to gradually increase regulation of private education over time, in response, perhaps, to an ideal of professionaliim in education. Such an approach permits the legislature to keep compulsory education requirements at a minimum.

New Hampshire and lowa: Where statutory requirements are flexible, imeginative administrative solutions to the issue become possible. In New Hampshire, for example, state officials reached a somewhat fragile agreement with fundamentalists that required information to be submitted on church stationery rather than on official state forms. This fulfills the state's need for certain information, but recognizes the fundamentalists' tenet that they should not submit to state regulatory - wstems. In Iowa, the state aceepts reports from parents instead of the turstamentalist school. The fundamentalists involved felt individual reporting was no different than fling an income tax foim, while a church report was tantamount to church submission to state regulation.

North Carolina and Nebraska: North Carolina and several other states have two levels of approval. North Carolina requires only that private schools keep records on pupil attendance and disease immunization and that they select and administer a nationally standardized test to students each year. The schools keep the tests on file and make them available to state i. spectors. Schools also must meet fire, health, and safety standards established by other laws. However, if a private school wishes, it can seek state approval of its education program as well. Many do, because they believe state approval helps them attract students.

Nebraske followed this pattern most recently, Its new law allows exemption from the relatively strict regulatory scheme in that state if parents sign a statement indicating a religious objection to state certification of teachers. It has alternative approval requirements for these schools. Teachers must be tested, and the state board may require testing of the children. It appears the board will require testing of children.

Alaska: Alaska not only allows home instruction on a liberal basis, but it provides extensive support services to families that request them. The state spends almost as much per pupil on children instructed at home, in the state home instruction program, as on it does on those in public schools. The state enrolls 800 to 900 (depending on the time of year) in its year-round home instruction program. A teacher, assigned to about 50 pupils, makes assignments, collects tests and papers and returns critiques to the child, all by mail. Other options include home instruction supported through a local district, rather than the state office, or independent instruction by parents. Many other children are in other home school programs that do not receive local or stace supported services.

Although the Alaskan system developed in obvious response to the needs of children in remote areas, families within a reasonable distance to a school also take advantage of it. The home instruction option has proven especially beneficial to isoiated Indians and Eskimos who would otherwise be required to be boarded away from home. The boarding option has often resulted in social withdrawal of the child and a high dropout rate. In addition to isolation in wintertime, families choose home instruction for religious reasons, social preferences (junior high students elect to avoid peer pressure), or work (high school students).

Arizona and Oregon: In both states, statutes expressly permit home instruction by a parent. Arizona requires the parent providing home instruction to be tested. Both states requi'e periodic testing for the homeschooled child. There are some problems in $t$ oth states, since requirements for private schools are even more permissive. To avoid testing, some families have argued that their home is a private school. The argument has been accepied (e.g. in Illinois and Michigan) where the statute does not provide for home schools. Where the statutes do provide for home schools, it seems most likely that courts wili distinguish between home and private schools and accept differences in treatment between them. Care must be taken to define both, however, to avoid charges of vagueness that led courte to strike down compulsory education laws in Wisconsin and Georgia.

Another possible consideration: Oregon has delegated responsibility for testing to local sehool districts. Local districts set only pass/fail standards and are not required to report results to the state. The result seems to be that no one at the state level knows how many children are instructed at home, c. whether tests are taking place, much less how the children are doing. In states with a strong tradition of local district automony, this may be appropriate. Other states may wish to have more information.

California and Florida: These states are among those that allow home instruction by a tutor who is certified by the state. While the statutes do not expressly indicate it, state boards generally require less preparation for certification of tutors than for teachers. But even here, parents, who are typically the tutors, do not always meet the requirements. Both states have had parents teaching in violation of the requirement and have experienced some litigation on this issue.

Kansas and Washington: These states are in the minority, and representative of those states where the statutes make no provision for home instruction. Unlike nlinois and Michigan, they have no authoritati-e ruling recognizing
home schools as "schools" for compulsory education purposes. Although the Washington Department of Education has said it will recognize home schools if they meet the requirements for private schqols, most parents believe they must operate underground. Moreover, Washington is relatively tough on private schools, requiring, for example, teacher certification except in unusual cases. As a result of the restrictive policies in both states, scme parents have gone underground, while others are openly lobbying for new laws. In December, 1981, the executive director of the Washington Association of Prosecuting Attorneys severely criticized the law: "It doesn't seem to be advancing the cause of justice particularly to prosecute parents who care enough about their kids' education that they're willing to pay for it - especially if the prosecutor has got a bunch of rapists, murderers and burglars he's trying to get." Several prosecutors said they would not prosecute such cases. Both states have special bodies studying the issue. Meanwhile, home instruction continues.

## CONCLUSIONS

There are many ways a state can design its compulsory education law. Constitutional principles and practical considerations suggest that such laws should state the minimum needed to produce a self-sufficient adult. This means as narrow as possible an age range, sanctions that are no more than necessiry, and a wide variety of options outside the public school syster.. Futher, the evidence suggests that the highest priority for enforcement efforts under these laws should be locating and educating the child who has taken to the streets, not the child who is educated at home or in private schools, even when the school fails to meet state standards. On average, children in these settings are few in number and are demonstrating skills that meet or surpass national norms. Testing and remediation might be made available to serve those children who nonetheless fail in these settings.

Many questions still need answers. This paper cannot deal with all the issues, but the following provides a list of additional considerations for policy makers as they adjust their compulsory education laws:

* Do existing consumer protection laws assure that parents are evaluating small nontraditional sehools on the basis of adequate and correct information?
* How should a state deal with the practical implications of a relatively large exodus from public schools in a local school district that is dependent on state aid based on enrollment or attendance? Is there a need to provide short-term assistance to such a district?
* Should enforcement of these laws be left to local law enforcement agencies? - local education officials? -- state education of ficials? Who can best identify truants and offer the services needed to solve the problem of truancy?
* Does the state have adequate data on children instructed outside the public school system? Are these children acquiring what they need for good citizenship and self-sufficiency? If not, what should be the state's responsibility to these children?
* Are children instrusted at home or in very small religious schools really insulated from the mainstream of society or do they have adequate
opportunities for gaining social skills and a broader knowlecge of society? If social isolation is a problem, what are the best ways to correct it? To what extent should states provide support to home-schoolers?
* If local officials provide support, should states permit them to count hometutored children in their enrollment figures?


## APPENDIX

SUGGBSTED LEGISLATION: A COMPULSORY RDUCATION LAW

## 1. Bducation Requirements;

The parent or guardian shall provide for the education of a child from age 7 through 15, by pursuing any of the following options:
(a) Enrollment in public sehool;
(b) Enrollment in a private school meeting the requirements specified in section 2(b) of this act;
(c) Instruction by the parent or guardian, provided that the program is stbmitted to the superintendent or other designated local official of the school district where the child resides, and he or she has found that the program includes the subject matter required of children of the same grade in public schools; or
(d) Instruction by a tutor who meets minimal requirements established by the state board of education. Requirements for certification of tutors may not exceed four years of postsecondary study. A demonstration of competency shall be accepted in lieu of formal education attainments.
2. Reporting Requirements.
(a) Public school officials shall keep records of name, age, address and number of children enrolled in public school, and daily attendance.
(0) Private sehool officials shall make the following reports to the state department of education: (i) at the start of the school term, the names, ages, addreases, and number of children enrolled, and a brief statement of the curriculum to be followed for each child or grade; (ii) quarterly, attendance records, including a report on any child who is absent without excuse for more than 10 days.
(c) Parents or guardians who teach their children at home must make the following reports to local school offirials of the school district in which the child revidess $(i)$ at the start of the school term the names, ages and number of children to be taught, and a brief statement of the curriculum to be followed; (ii) during the school year, any change in status within one week of the change; (iii) at the clowe of the year, or earlier if requested, a brief report of attendance, showing actual days of instruction and subjects covered for any day of instruetion that deviates from the curriculum outlined at the start of the year.
3. Instruction for compulsory edveation purposes must oceur at least 1080 hours per year, and include (1) basic communication skills including reading and writing; (2) use of numbers; (3) citizenship, history and government of the state and the United States; (4) physical education and principles of health, including effects of tobacco, alcohol and drugas (5) English, American and other literatures and (6) the natural sciences.
4. Testing requirements. All children shall take a natiraicily standardised test at the end of the 1st, 6th, 9th, and 11th grade. Public school officials shail administer the test to ell chindren residing in the distriet, at a publie school site, and shall prescribe a remedial course for children who fall to demonstrate minimum competency for their age. Remediation for children not enrolled in public schools may be ensured through attendance at public schools, or through evidence of remedial services elsewhere. In no case shall children not enrolled in publie sehool be required to take remedial courses not required of children enrolled in public schooks. Local school officials for each district shall be responsible for selection of the test, and shall provide for at least two test options where parents or representatives from private schools object to first selection. Parents shall receive a copy of the assessment for their child within 20 days of testing.
5. (a) Any parent, gurdian, or other person having control or charge of any pupil who fails to coraply with the provisions of this chapter, unless excused or exempted therefrom, is guilty of an infraction, and shall be punished as follows:
(1) Upon a first conviction, by a fine of not more than one hundred dollars (\$100).
(2) Upon second and each subsequent conviction, by a fine of not more than two hundred fifty dollars (\$250).
(3) In lieu of imposing the finss prescribed in subparagraphs (1) and (2), the court may order such person to be placed in a parent education and counseling program.
(b) A judgment that a person convicted of an infraction be punished as prascribed in subdivision (a) may also provide for the payment cf the fine within a specified time or in specified installments, or for participation in the program noted in $5(a)(3)$ above. A judgment granting a defendant time to pay the fine or preseribing the days of attendance in a program shall order that if the defendiant fails to pay the fine, or any installment thereof, on the date that it is due, or fails to attend a program on a preseribed date, he or she shall appear in court on that date for further proceedings. Willful violation of the order is punishable as contempt.
6. Local school districts shall provide counseling to families with children who are truant, and shall establish alternative education programs for children who are habitually truant, and who have not improved attendance patterns after counseling and other efforts have failed.
7. Local school officials shall provide the state department of education with data collected under sections 2 and 4.

## Comments on the Recommended Language

Whatever language is chosen for a statute, it is preferable to keep it short, clear and simple. The above draft was prepared with this in mind. Parents, teachers and other nonlawyers may be using the law as a guide, and it should be clear to
them. For the same reason, extensive cross-refere.ces and delegation to agencies of very basic policy (such as curriculum requirements) should be avoided.

Section 1 sets out the basic rules. provides several education options, allowing for flexibilty in meeting the needs of individual families. The options make it very clear that home instruction is legitimate. (Some states require the child to attend school or be otherwise educated, leaving a question, perhaps, in the minds of those who do not know the case law, regulations or practice, about the status of home instruction). Expressly providing for home instruction should also encourage school-home cooperation, and keep avenues of support, information and communication open.

The choice of ages 7 through 15 as the age for compulsory education is based upon the modal state response, coupled with the fact that these policy choices appear to cause few problems.

Sections 2 and 3 provide for reporting requirements and curriculum. If a state allows home instruction, these requirements probably should be the same as requirements for in-school instruction, unless education officals are prequred to monitor home schools and private schools and enforce different rules. Another choice would be to adopt fewer restrictions on instruction by a parent of his or her own child. There should be little confusion over what is in-school instruction and instruction by a parent. (Otherwise some schools may try to escape stricter private school requirements by declaring themselves home programs.)

The curriculum requirements for all private options should be kept simple, to avoid Constitutional problems. Many states require "equivalent" instruction, but then a parent must discover what public schools are doing. Some state laws allow state or local boards to add to the requirements. But the simplest approach is to keep minimum requirements in the compulsory statute, and provide elsewhere for an expanded public school curricuium and board authority to add to the public school curriculum. The requirements in section 3 are derived from Vermont's law. The draft section above clearly states these requirements so that the reader is not obliged to consult another section of the statutes.

The school year and school day requirement is kept low and flexible, to allow private and home schools to make choices different from those made for public sehools.

Section 4 includes an option for states that wish to test the children. Testing requirements are not recommended, but if it seems desirable to a state, then the author recommends that they apply the rules evenly to all children, with remediation as the goal if children fail. In the option below, the requirement applies evenly to all children, including private school children. This is not a constitutional requirement; it is recommended only because it seems fair. This also avoids the difficulties arising when orly home-instruction children are tested, tempting some to avoid the requirement by declaring the home a school. Many states may decide to test oniy home-schoolers, preferring to face the administrative task of sorting out home schools from other schools, and avoiding the expense of testing of all non-public school students. There is probably no. constitutional papblem with this choice, but, given what is known on achievement of home-schoolers generally, it is unclear why this group should be tested and not others. To enhance the remedial value of the testing program, the grades chosen should probably be those that will permit timely remediation. One early grade -
the end of first grade or second grade - would help identify children in need of special help before it is too late. After this, there are certajn benchmarks the last year of elementary school, the last year of middie or private school, and the year prior to high school graduation.

While church-state problems have arisen because of state testing programs for private school children, the type of program outlined here avoids them. Thus, the option suggests universal testing for all children, including those in public and private schools, at a public school site. Sectarian schools would not have direct access to the data. It is possible that some parents would turn the data over to a private school, but that choice belongs to the parents. It is unlikely that courts will see such state-supported testing programs as assisting or promoting religion in any way. They are no more an aid to parochial schools than are publie library and perk services.

Section 5 provides for sanctions. It is based on California's law, which provides for fines only, and which provides for counseling in appropriate cases. As shown in Table 3 a large number of states provide for lower fines (which may be more appropriate), and two states have no sanctions. The choice of only civil penalties, along with counseling, is based upon an assessment of practical concerns. Prosecutors often refuse to prosecute in all but the worst cases of truancy. And counseling seems more to the point than immediate sanctions. Section 6 requires local districts to make an alternative education program available to the habitually truant ehild when all other enforcement efforts fail.

Sections 2 and 4 make local school officials responsible for receiving and reviewing the curriculum for the home-schooled child, and for the testing program, in deference to the widespread preference for keeping sensitive education decisions as close to the people affected as possible. Section 7 allows state officials to obtain the data whenever they feel a need to review it.

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Note: The research for this paper was supported by a grant No. NIE-G-83-0021 from the National Institute of Education. The recommendations contained in this paper are the author's and do not necessarily reflect the views of ECS or NIE.

Some of the material for this paper was based on our interviews with state of ficials an . parents. Appreciation is extended to all the state officials who cooperated in this effort, and to Judith Bray and Grace Belsches-Simmons, who assisted in these interviews.

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[^1]:    4 Required of private schools seeking exemptions lor other requirements.

