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## **Education Law and Muslim Students**

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## **Education Law and Muslim Students**

### ***Introduction***

The aim of this paper is to discuss a few pertinent legal issues facing Muslim parents with regard to their children and schooling. Among the most common options for Muslim parents are public schooling, home schooling, and private Islamic schools. Each has its own peculiar concerns for Muslim parents who are concerned about academic quality as well as the unique religious beliefs and identity of their children who are growing up as a religious minority in a predominately Christian society. In this paper we will examine the issue of church/state separation in education and the rights of Muslim students in public schools. We will also consider the options of home schooling, as well as the establishment of private religious schools and finally the feasibility of charter schools. It is important to note that this paper is intended for research purposes and is not to be construed as qualified legal advice. Specific education laws vary by state and locality and I cannot stress strongly enough how much this research has taught me the importance of securing appropriate counsel when encountering legal concerns in school administration.

### ***Compulsory Education and Public Schools***

The first and most obvious option of any parent for schooling their children in the United States is the public school system. State constitutions contain provisions for the establishment and maintenance of public schools. Because states

take responsibility for educating the populace of our country, specific education laws do vary from state to state. However, according to Alexander and Alexander (2001), their underlying principles can generally be summarized as follows: 1) the legislature must enact laws to govern the schools; 2) schools are considered a cohesive unit as organized by the legislature; 3) schools are controlled by the public and governed by the people; 4) schooling is free of charge to the exclusion of none; 5) taxes must be levied to ensure quality and equitable schooling throughout the state.

The state interest in providing a free public education to all children is consistent with the philosophy that at best, a functioning republic requires an educated citizenry, and at the least, it is hoped that education would provide a degree of public safety from the potential threat of the ignorant. To this end, states eventually enacted compulsory attendance laws to ensure that all children were made to take advantage of the opportunity for a free state-sponsored education. In fact, due mainly to widespread child labor abuses in the 1800s, it was determined that the state's interests in educating children would "take precedence over parental rights to govern the activities of the child". While the need to protect children from abuse and neglect does exist, in general, this prevailing interest of the state might seem to contradict basic assumptions about freedom and personal liberty in the United States. On this ground economist Milton Friedman and others have argued against compulsory attendance laws, because they deny parental authority

and weaken the viability of private schools to compete in a free market. While this debate persists, courts have consistently maintained "that education is vital to the welfare of the state", though the prerogative to compel student attendance or not, is left to the individual state legislatures, (Alexander & Alexander, 2001).

The courts have provided the balance between state interests and parental rights by requiring states to demonstrate "a compelling, or at least, rational state interest". In *Pierce V. Society Of The Sisters* (1925) the Supreme Court stated that: "It is not seriously debatable that the parental right to guide one's child intellectually and religiously is the most substantial part of the liberty and freedom of the parent." *Pierce* affirmed the rights of parents to choose private schools in place of public schools to satisfy compulsory attendance laws. However, in *Johnson v. Charles City Community Schools Board of Education* (1985), Iowa's Supreme Court ruled that the state still has a "necessary minimum" duty to ensure that its private schools meet minimum educational standards, thereby ruling against a set of parents who established a religious school and sought to deny the state the power to evaluate their curriculum. The point then, is that parental liberty to educate their children in the manner they choose is balanced against the interest of the state and the belief that education is the necessary right of every child. It is also worth noting that such laws do protect children from abusive or neglectful parents

and conversely, even may protect parents from being liable for uncontrollable children, (Alexander & Alexander, 2001).

### ***Church and State Separation***

Children have the right to be reasonably accommodated within public schools. This is in accord with the First Amendment to the Constitution: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom speech..." Three guarantees of individual rights are cited here"

1. The government cannot establish or endorse any particular religion;
2. The individual has the freedom to exercise her/his beliefs in accordance with her/his own free will and conscience;
3. The individual is free to express these beliefs publicly;

All three are important with respect to public schools. As state institutions, public schools must educate students in a climate of religious neutrality. This guarantees parents that the state is not indoctrinating their children into a certain religion. This guarantee may be strengthened further by individual state constitutions. Attempts by schools or even groups of parents to add a religious element into the official school agenda have been stopped in the courts. Among the most pertinent of cases is *Lemon V. Kurtzman* (1971) where a three-part test, known as the "Lemon Test" has guided courts in ensuring that the first amendment is not violated in schools: 1)

the statute (or policy) must have a secular legislative purpose; 2) its principal or primary effect must be one that neither advances nor inhibits religion, and 3) it must not foster excessive government entanglement with religion, (Alexander & Alexander, 2001).

As shown in *Board of Education of Kiryas Joel Village School District v. Grumet* (1994), the guarantee to keep schools free of religious endorsement extends even to communities where the vast majority or even all of the residents are members of the same religion. It was declared unlawful in *McCullum v. Board of Education* (1948) to accommodate for religious instruction during the school day on school grounds, even if various religions were provided for and parental consent was obtained. Likewise, in *Doe v. Beaumont* (1999), a 5<sup>th</sup> circuit court in Texas ruled that the district could not recruit clergy as volunteers for student counseling, (Alexander & Alexander, 2001).

In fact, court cases in the past forty years have done much to undo historical precedents that allowed a certain degree of religion in public schools. Non-denominational use of the Bible was an essential feature of Horace Mann's conceptions of moral teaching in public schools. Mann's answer to protests about removing religion from schooling was that wherever the Bible went, so too did Christianity, albeit, in general. (Spring, 1986). At that time, the biggest opposition to public schools came from Catholics and fundamentalist Protestants, both having doctrines that conflicted with non-denominational

interpretations of Christianity, (Alexander & Alexander, 2001), (Spring, 1986).

The Supreme Court in *Reynolds v. United States* (1878) first invoked Jefferson's famous dictum calling for the erection of a "wall of separation between church and state". The Reynolds case was not about education, but to erect such a church/state law in schools during the late 1800s coincides with a period characteristic of displacing religion with secularism - a time when scholastic thought was shifting toward concepts related to or influenced by evolution, Spencerism, and quantitative measurements, (Egan, 2002), (Al-Attas, 1978), (Boorstin, 1973).

Perhaps it was the influx of Jewish immigrants after World War II and a more liberal acceptance of non-Christian religions in more recent decades, including atheism, that has brought more court attention to remaining vestiges of religion in public schools. Indeed, Supreme Court Justice Stevens writes in *Wallace v. Jaffree* (1985):

"At one time it was thought that this right [to choose one's own creed] merely proscribed the preference of one Christian sect over another, but would not require equal respect for the conscience of the infidel, the atheist, or the adherent of a non-Christian faith such as Mohammedanism or Judaism. But when the underlying principle has been examined... the Court has unambiguously concluded that... the First Amendment embraces the right to select any religious faith or none at all."

The following cases summarize the extent to which these recent cases have gone to stop prayer and Bible reading in public schools:

- *Engel v. Vitale* (1962) - State Regents prayer found unconstitutional.
- *Schemp and Murray* (1963) prohibited Bible reading in schools, even if students were allowed to be excused upon the written request of their parents. The court also denied that the State was establishing a "religion of secularism", as it was neither endorsing nor hostile to any particular religion. It did allow for study of comparative religion as well as study of the Bible for its historic or literary value.
- *Stone v. Graham* (1980) - a required classroom posting of the 10 Commandments was declared unconstitutional. Later decisions included other permanent religious displays. However, temporary displays used for teaching or for cultural holiday decorations are permitted, (ADL, 2002).
- *Wallace v. Jaffree* (1985) - Statute authorizing a period for meditation or voluntary prayer deemed unconstitutional.
- *Edwards v. Aguillard* (1987) - Legislative requirement to accompany the teaching of evolution with creationism is declared unconstitutional.
- *Lee v. Weisman* (1992) - Non-sectarian prayer at the graduation ceremony is unconstitutional.
- *Santa Fe v. Doe* (2000) - Student led prayer before football games (or other school events) is unconstitutional.

Preceding all of the above, the Supreme Court overturned a previous ruling through *West Virginia State Board of Education v. Barnette* (1943), declaring required participation in the flag salute and pledge of allegiance was unconstitutional. This was based on an argument put forward by Jehovah's Witnesses that coercion to participate in such rituals honoring the flag contradicts the prohibition setting up "graven images" as described in Exodus, Chapter 20, verses 4-5, (Alexander & Alexander, 2001).

### ***Religious Rights***

What we have shown from the preceding is the extent to which the government has attempted to establish religiously neutral schools. Equally important though, are rights of students to the free exercise of their own religious expression. This has placed public schools in the tricky position of allowing for student expression without seeming to endorse their religious views or activities.

In *Zorach v. Clauson* (1952), the Supreme Court affirmed that separation of church and state does not mean that public institutions need be hostile to the religious needs of students. It allowed for public schools to release students for religious instruction, as long as such instruction occurs off school grounds and not at public school expense. This leads us to the concept of "dual enrollment" where according to *Morton v. Board of Education of City of Chicago* (1966) and *Snyder v. Charlotte Public School District* (1984) "dually enrolled" students may

attend public schools part-time for classes or services that are not available in their parochial schools, (Alexander & Alexander, 2001).

Students may also organize their own religious clubs and hold meetings and prayers on school grounds during school hours, if the same allowances are made for other groups. This is in accordance with the Equal Access Act of 1984, which was itself based on the free speech case of *Widmar v. Vincent* (1981) allowing university religious groups equal access to facilities. The Supreme Court affirmed this again in *Westside Community Schools v. Mergens* (1990) when it was applied to a high school Christian club. While supervision of such activities may be necessary, it is not permitted for school personnel to participate in or otherwise endorse the activity. In *Ceniceros v. San Diego Unified School District* (1995), students were permitted to use lunchtime for religious club meetings because it is non-instructional time. The same logic applied earlier in *Lamb's Chapel v. Center Moriches Union Free School District* (1993) allowing non-student religious groups to use public school facilities after school hours, if it is already the policy to allow facility use for other groups. It is important to note that once such a "limited open forum" is created for facility use, it is no longer allowable to discriminate against any other peaceable assemblies as demonstrated in *Colin v. Orange Unified School District* (2000) where the Court ruled that the Gay Straight Student Alliance Club also must be given equal access, (Alexander & Alexander, 2001), (Wiley, 1998/1995).

The clubs themselves though, may discriminate when it comes to leadership positions that are “essential to the... club’s preservation of its purpose and identity”. In *HSU v. Roskyn Union Free School District No. 3* (1996), it was ruled that a student Bible club could exclude non-Christians from being officers. A West Virginia school board was allowed to continue its policy of allowing students to exercise free speech through Bible distribution in school in *Peck v. Upshur County Board of Education* (1998), though it prohibited doing so in elementary schools because of the impressionability of the younger students. Students may also wear religious garb to the same extent that the dress allows for other free speech not in violation of the dress code. This means that religious garb may be disallowed if it violates the dress code. However, the Court found in favor of male Native American students who sued in order to be allowed to keep their hair long based on “deeply rooted traditional Indian religious beliefs” in *Alabama & Coushatta Tribes v. Big Sandy School District* (1993), (Alexander & Alexander, 2001).

### **Public School Staff**

Such rights may not necessarily apply to public school employees though. According to *Commonwealth v. Hert* (1910), which overturned the previous *Hysong v. School District of Gallitzin* (1894) ruling protecting the liberty of nuns to wear their religious garb while teaching in public schools. The ruling in *East Hartford Education Association v. Board of*

*Education* (1977) upheld that the school had the right to compel male teachers to wear neckties, and in *Domico v. Rapides Parish School Board* (1982) the court upheld a school employee dress code forbidding beards. In *Cooper v. Eugene School District No. 4J* (1986), the Supreme Court of Oregon upheld that tenured teachers could have their certificates revoked for violating statutes prohibiting religious garb. A Muslim teacher also lost her Title VII claim in *United States v. Board of Education of School District of Philadelphia* (1990) when the courts concluded that "it would impose an undue hardship on the school board to accommodate the teacher". The main concern is that in allowing teachers to don religious apparel, it may imply a state approval of the particular religious commitment of the teacher. Rulings on this have been inconsistent in other states and a federal district court in Pennsylvania even recognized that it "may no longer be good law", (Rutherford Institute, 2003). In fact, the common practice I have witnessed for both Christian and Muslim teachers is that religious garb is tolerated. Further, a Muslim teacher in Atlanta has even been able to have his schedule rearranged to accommodate his obligation to attend Friday Prayers, (Bixler, 2001).

### ***Public Schools and Muslim Students***

We can infer from the above that public schools are required to accommodate Muslim students' needs. On the one hand, parents are given a constitutional guarantee against their children being officially indoctrinated into the prevailing

religious norms of their community. On the other, students are afforded considerable latitude in exercising their religious rights during school. It is clear from the above discussion that Muslim students may form clubs and meet during non-instructional time, such as lunch to hold Friday prayers or even daily prayers if so desired. It does take some initiative on the part of the students, but my own Internet search for "high school Muslim student association" returned several web references to various Muslim student clubs in public high schools.

Furthermore, in light of *Peck* (1998) cited above, it is even permissible for Muslim students to distribute religious literature within their schools, which may be especially helpful in stemming backlash from post 9-11 stereotypes through education. Some Muslim organizations have undertaken considerable efforts to ensure that a secular presentation of Islam in textbooks and public school classrooms are both accurate and in conformity with the 1<sup>st</sup> Amendment. For example, Islamic Networks Group provides Muslim speakers for presentations, literature specifically for public school educators about Islam, and also seeks to correct textbook inaccuracies, (ING, 2004).

Islamic dress requirements would seem to be an area that could hold less legitimacy in American law, depending on existing dress codes in general. However, it was difficult to find a single case that was not settled to the satisfaction of the Muslim student outside of court. The Council on American-Islamic Relations (CAIR) cites situations from 2001 in Virginia

and Texas where Muslim dress requirements were accommodated to allow girls to wear scarves during the school day as well as loose fitting running gear in order to run track, (CAIR, 2001). A recent Oklahoma case in October of 2003 saw a Muslim girl suspended twice for violating the dress code by wearing a headscarf, but she was allowed to return to class with her scarf within the month, (CAIR, 2003). In a more offensive case, a Louisiana public school teacher was removed from the classroom in February of 2004 when he allegedly made offensive remarks and pulled off the scarf of a Muslim student. At the time of this writing, the incident was under investigation and the teacher was in denial of the allegations, (Associated Press, 2004), (Cook, 2004).

These cases make clear the faithful attempts of public schools to accommodate Muslim religious practices in spite of existing practices and/or prejudices. However, many Muslim parents may still feel that while the law is fair, public schools are simply unable to provide an environment for the development of their children that is conducive with Islam. Much of the issues that would allow for the cultivation of an Islamic identity rely on student initiative alone. This means that such accommodations meet the needs of older students who are mentally developed enough to be religiously conscious, and further, that their personal disposition be suited to standing out and organizing clubs. As noted above, religiously qualified adults would also not be permitted to guide student groups through any religious instruction. Muslim students and their families must

be prepared to request accommodations in situations that commonly prompt religious concern, such as dress code, non-participation in flag ceremonies, holiday celebrations, and even certain aspects of the curriculum pertaining to music and art. For example, based on *Doe v. Duncanville* (1995), religious music is still allowed in choral music programs because of the prevalence of that genre in a *capella* music. Cair has reported that schools have been compliant with allowing students to opt out of music classes (CAIR, 2001). While Muslim views may differ with regard to many of these issues, it still requires some degree of vigilance on the part of Muslim families to sort them out, (Haynes, 1998), (Abou El Fadl, 1997), (Al-Jibali, 1996).

In addition to this, it is also important to consider the pervading culture of the school including the hidden curriculum of schools and the role that school culture plays in fostering the acceptance of societal norms. Rural schools, for example, that are less likely to have had to accommodate religious diversity outside of Christian sects may still carry on certain practices that have yet to be challenged. A good example of this was documented in May of 2001 when a Muslim elementary student refused to accept a Bible from her principal. Apparently, the principal has been distributing Bibles as Christmas presents for the past 35 years. When the student initially refused the gift she alleged that the principal told her to take it anyway until the 11-year old complied. When she told her friends about her objections they responded by informing her that she would "go to hell," that she was a "Jesus-hater," and that her family "would

burn in hell". At Christmas she was also compelled to take part in a quiz game that had to do with Christmas and Jesus. Her and her sister were the only Muslims attending the school. Upon suing the school, a federal court did rule in favor of the girl, (LAACLU, 2001), (LAACLU, 2001).

This case is important because it demonstrates pressure exerted on the student from both outdated school policy as well as intolerant attitudes of fellow students. Obviously, such norms will not be acceptable to Muslim families - indeed, even as the struggle of the Courts to keep church and state separate show, secularism, or what Bellah, etal. (1996) refer to as "civil religion" defines the particular worldview that public education must foster in absence of religion. Along these philosophical lines, Islam is not compatible in any way with secularism (Al-Attas, 1978). This is particularly important in considering the developing worldview of elementary students whom the courts have recognized as not having the power to discriminate in their beliefs, as noted above.

Meanwhile, sociologist James Coleman (1961) argued years ago in his classic study "The Adolescent Society" that students develop their own subcultures within schools. Of particular concern was "the cruel jungle of rating and dating" prevalent amongst students. For this reason, Muslims in the U.K. during the 1970s issued a report calling for the establishment of single-sex schools to allow Muslim boys and girls an educational environment that could provide an equitable education without sexual distractions, (Iqbal, 1975). The movement to revive

single-sex schools in the United States is still just getting off the ground, though new regulations prompted by an allowance for single-sex schools in the No Child Left Behind Legislation have just been released for review in February of 2004, (NASSPE, 2004). Nonetheless, such schools are few and far between and will not come without intense judicial scrutiny, as civil and women's rights groups seek to shut them down, (Datnow and Hubbard, 2002).

### ***Home Schooling***

Some parents, including Muslims, have chosen to opt out of the church-state quagmire in public schools and home school their children instead. It may surprise some parents to discover that compulsory attendance laws may actually stifle their assumed right to educate their children in this way. In fact, in *Null v. Board of Education of County of Jackson* (1993) a U.S. district court ruled that parents have no fundamental right to maintain home instruction for their children and that this has no bearing on the free exercise of religion. Without belaboring the issue, it is crucial then, for parents to home school laws of their own particular state. (See <http://www.arabesq.com/homeschool/laws.html>).

States may require some degree of record keeping pertaining to attendance and/or grades, use of a nationally-normed standardized test, and qualifications for the one who is to offer home instruction. These may range from a high-school equivalency to a teaching license. Additionally, there may be

statutory limits on the number of homeschoolers that may learn collectively. For this reason, it may be wiser for groups of parents to formally organize a private school, especially if their objections to public school are on religious grounds.

### ***Private Religious Schools***

Obviously, in starting a school it will be no less important to be familiar with state laws and regulations for doing so. However, private religious schools in the United States do predate public schools, and as has been noted in *Pierce* above, the Courts have affirmed the rights of parents to choose private education as a legal alternative to public schools. We also noted in *Johnson*, that such schools would not be beyond the scrutiny of meeting minimum state guidelines. Initially, those seeking to open a school should incorporate, obtain the necessary business operating licenses, and register with the IRS.

While not allowing religion in public schools, the Supreme Court has allowed for certain types of assistance to religious schools in the interest of avoiding state hostility to religion. These rulings are controversial in as much as they allow for tax dollars collected from the public to support religious endeavors that the taxpayer may not believe in and thus is not constitutionally compelled to support. However, to the extent that a religious school satisfies the interest of the state in fulfilling the non-sectarian function of general education, certain exceptions have been made as follows:

- *Cochran v. Louisiana State Board of Education* (1930) - allows states to provide textbooks to parochial school students.
- *Everson v. Board of Education* (1947) - use of public funds for transportation of parochial students does not violate the First Amendment.
- *Board of Education of Central School District v. Allen* (1968) - upholds that free distribution of textbooks to parochial students is not unconstitutional since such books are obviously not used to teach religion.

The famous "Lemon Test" referred to above comes about in response to these cases, by drawing the line at teacher salary supplements. Justice White wrote in *Allen*, that "parochial schools are performing, in addition to their sectarian function, the task of secular education". So, the argument goes, why not extend government support from textbooks to teacher salaries, in so far as the teachers are serving a secular function? In 1971 the Supreme Court was called upon in *Lemon v. Kurtzman* to settle this question and drew the line. In doing so, they developed the three-part test referred to above in order to distinguish the constitutionality of state acts pertaining to the establishment of religion. This did curb some future rulings from aiding parochial schools, (Alexander & Alexander, 2001).

However, some were successful in getting funds for reimbursement of general administrative expenses, costs of administering state tests and tax relief. Most notably,

- *Mueller v. Allen* (1983) - allowed tax benefits for parents of parochial school children.
- *Agostini v. Felton* (1997) - allowed Title I teachers to offer remedial services, guidance, and job counseling to qualifying students in parochial schools. This overturned a previous ruling against the same plan in 1985, *Aguilar v. Felton*.
- *Mitchell v. Helms* (2000) - allowed federal funds for acquisition of instructional and educational materials in parochial schools. Both this case and *Agostini*, cited previously, have effectively reset the standard for state aid to parochial schools by establishing a "neutrality principal", which holds that as long as aid to parochial schools is religiously neutral, then the state is not responsible for how the parochial school chooses to use it with regard to religion, (Alexander & Alexander, 2001).
- *Zelman v. Simmons-Harris* (2002) - allowed funds from voucher programs to be used by parochial schools.

The *Zelman* case was hailed for its role in expanding school choice to include religious schools, much to the angst of political watch groups who believe the Supreme Court has gone too far in aiding religious schools. It is important to note

that the practical value of many of these programs still rest with the state to first provide such a program and then be sure that stronger restrictions under state constitutions regarding church and state separation are not violated, For example, at the time of the *Zelman* ruling, only five states had voucher programs, each with varying conditions and stipulations, (Zarzour, 2003), (Zarzour, 2002).

### ***Charter Schools***

One final consideration for Muslim parents is that instead of organizing religious schools, they may organize as a secular entity and establish charter schools. "Charter schools are nonsectarian public schools of choice that operate with freedom from many of the regulations that apply to traditional public schools." The charter is basically a contract between the state and the chartering entity regarding the goals and methods the school around which the school will operate. Once again charter school laws and the efficacy of such laws vary by state, (uscharterschools, 2004).

Obviously, Muslim parents could not legally operate a charter school as a religious institution. However, operating a school under a charter would provide the organizers with the average per pupil expenditure from the state while giving them control over the goals, methods, materials selection, staffing, and cultural environment of the school. Further, as a public school, they would have the same obligation to accommodate the religious needs of their students as any other public school. It

is important to note that they would not be able to discriminate on religious grounds in selecting students or staff, nor would they be allowed to impose religiously motivated policies such as Islamic dress requirements for girls. It would also be important to ensure that the organization of a charter school by Muslim parents not be susceptible to the same pitfalls that befell the Satmar Hasidic Jews in the *Kiryas Joel Village School District v. Grumet* case cited above.

If such a charter school is organized, it does not necessarily need to supplant any existing religious school program either. In fact, while we noted above that religious instruction in a public school facility is not allowed, it is permitted for public schools to hold classes or rent facilities owned by religious groups according to *Citizens to Advance Public Education v. Porter* (1975). With proper and careful attention to the laws regarding the separation of church and state, Muslim parents could conceivably operate a public charter school for meeting the requirements of their state's secular education requirements. Further, such a school necessarily would go beyond isolationist goals and provide a quality education alternative whose philosophy and methods appeal to non-Muslim families as well. Such a school may then legally rent a shared facility with an existing religious school. While the schools must be organized and operated exclusively of one another, according to what we cited above from *Zorach*, *Morton*, and *Snyder*, it would be lawful for some students to dually enroll in both schools.

**Conclusion**

For the intents and purposes of this paper, I have not delved further into all the legalities of establishing a private school. Suffice it to say that Muslim schools have the same administrative legal concerns as other schools pertaining to student records, personnel management, and the contractual obligations inherent in providing an education to the students it enrolls, (Zarzour, 2004). Here, because our focus is on schooling options for Muslim parents, we have spent the bulk of our inquiry on matters pertaining to religion and the law. Further, funding has historically been the biggest constraint for parents wishing to provide a religious education for their children since the inception of public schools in the 1800s. This has no doubt, been the case for Muslim schools as well. However, perhaps through better acquaintance with the law, Muslim parents may access more resources to help sustain these endeavors.

In the preceding pages we have demonstrated the extent to which the law attempts to provide a religiously neutral education to all children. We have also considered parental rights with respect to the education of their children, especially with regard to religion. Further, we have considered public school alternatives available to Muslim parents and the legal ramifications of each. In my estimation, the Courts have made a laudable effort to provide a balance between these competing interests. For committed parents, parental rights are

tantamount, though it is understood that there are cases of neglect and abuse that warrant state intervention. Otherwise, the "bifurcated standard" referred to by Alexander and Alexander (2001), seems justified and logical to me, as does the recent shift away from the "Lemon Test" toward the "neutrality principle". While preserving the secular nature of free state schools, it is equally important that in avoiding hostility to religion, the Courts keep the field level with regard to allowing religious education to compete economically with state-sponsored schools.

**Appendix: Alphabetical Listing of Court Cases Cited**

- Agostini v. Felton, 521 U.S. 203, 117 S.Ct. 1997 (1997).
- Alabama & Coushatta Tribes v. Big Sandy School District, 817 F.Supp. 1319 (E.D.Tex.1993).
- Board of Education of Central School District No. 1 v. Allen, 392 U.S. 236, 88 S.Ct. 1923 (1968).
- Board of Education of Kiryas Joel Village School District v. Grumet, 62 U.S. 4665, 114 S.Ct. 2481 (1994).
- Cenicerros v. San Diego Unified School District, 66 F.3d 1535, 103 Educ.L.Rep. 934 (9th Cir.1995).
- Citizens to Advance Public Education v. Porter, 65 Mich.App. 168, 237 N.W.2d 232 (1975).
- Cochran v. Louisiana State Board of Education, 281 U.S. 270, 50 S.Ct. 335 (1930).
- Colin v. Orange Unified School District, 83 F.Supp. 1135 (C.D.Cal.2000).
- Commonwealth v. Hert, 229 pa. 132, 78 A. 68 (1910).
- Cooper v. Eugene School District No. 4J, 301 Or. 358, 723 P.2d 298 (1986).
- Doe v. Beaumont Independent School District, 173 F. 3d 274 (5th Cir. 1999).
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- Domico v. Rapides Parish School Board, 675 F.2d 100 (5th Cir.1982).

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- Engel v. Vitale, 370 U.S. 421, 82 S.Ct. 1261 (1962).
- Everson v. Board of Education, 330 U.S. 1, 67 S.Ct. 504 (1947).
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- Lemon V. Kurtzman, 403 U.S. 602, 91 S.Ct. 2105 (1971).
- Mitchell v. Helms, \_\_\_ U.S. \_\_\_, 120 S.Ct. 2530, 2000 WL 826256 (2000).
- Morton v. Board of Education of City of Chicago, 69 Ill.App.2d 38, 216 N.E.2d 305 (1966).
- Mueller v. Allen, 463 U.S. 388, 103 S.Ct. 3062 (1983).
- Null v. Board of Education of County of Jackson, 815 F.Supp.937 (S.D.W.Va.1993).

- Peck v. Upshur County Board of Education, 155 F.3d 274 (4th Cir.1998).
- Pierce V. Society Of The Sisters Of The Holy Names Of Jesus And Mary, 268 U.S. 510, 45 S.Ct. 571 (1925).
- Reynolds v. United States, 98 U.S. 145, 1878.
- Santa Fe Independent School District v. Doe, \_\_\_ U.S. \_\_\_, 120 S.Ct. 2266, 2000 WL 775587 (2000).
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- Stone v. Graham, 449 U.S. 39, 101 S.Ct. 192 (1980).
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