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Access of Home Schooled Children to Public School Activities

While it would be inappropriate for The Rutherford Institute to provide you with legal advice at this time and under these circumstances, we are pleased to provide you with the following information which we hope will be useful to you.

I. Introduction

This brief addresses the issue of Ashared time@ instruction for home schoolers.

> As generally used in current literature in the field of education, the term Ashared time@ means an arrangement for pupils enrolled in nonpublic elementary or secondary schools to attend public schools for instruction in certain subjects . . . . The shared time provision is or would be for public school instruction for parochial school pupils in subjects widely (but not universally) regarded as being mainly or entirely secular, such as laboratory science and home economics.
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> As this quotation indicates, shared time is an operation whereby the public school district makes available courses in its general curriculum to both public and nonpublic school students normally on the premises of the public school.[i]

The law addressing the access of home schooled children to public school activities is not uniform across the country. Some states have proactively addressed the issue by passing laws which define the access home schooled children have. Others, however, have not yet addressed the issue.

II. Constitutional Analysis

When fundamental and personal rights are at stake, the Supreme Court has subjected state classification of persons and objects to strict scrutiny. In the early case of *United States v. Carolene Products Co*.,[ii] the Court recognized that a state=s restrictions

on the rights to vote, restraints on free speech, interference with political organizations, freedom of assembly and discrimination against religious, national or racial minorities, require a Amore searching judicial inquiry@ under the Equal Protection Clause.

Since that time, the Court has identified certain classifications as Asuspect@ and other classifications involving Afundamental rights,@ both of which are subject to Astrict scrutiny@ by the Court and which require a showing that there is a compelling state interest Anecessary to the accomplishment of some permissible state objective.@[iii] State classification in the area of race, *religion* and nationality have been deemed suspect because they affect discrete and insular minorities.[iv]

If a fundamental constitutional right or suspect classification is not involved, courts scrutinize governmental action on the basis of the Arational basis test.@[v] Under the Arational basis test,@ as long as the official action is 1) directed to a legitimate or substantial purpose; and 2) is rationally related to achieving that purpose, it is not unconstitutional.[vi]

Home schoolers might claim two fundamental rights in regard to the issue of public school access. First, a student and his parents might claim that the student=s fundamental right to a free public school education was being burdened. Second, those who are home schooled for religious reasons might claim that the refusal to admit non-public school students unconstitutionally burdens their right to the Free Exercise of their religion, although the Supreme Court=s *Smith* decision radically diluted the effectiveness of the Free Exercise Clause.[vii]

III. The Fundamental Right to a Free Public School Education

Various provisions in a state=s constitution can affect a court=s analysis when it makes decisions concerning this issue. In addition, state statutes which provided some access played a role in the court=s reasoning in each of the cases discussed below. State constitutions containing strong right to education provisions and statutes which provide for cooperation between public and traditional private schools may be useful in trying to convince a court to give home schooled children access to public facilities.

A. Education is not a fundamental right under the federal constitution.

A[E]ducation is perhaps the most important function of state and local governments.@[viii] It is, however, not a fundamental right under the federal constitution.[ix] Yet, whenever the state has undertaken to provide education to its people, this right must be made available to all on equal terms.[x]

B. Education may be a fundamental right under the state constitution.

1. Education Generally.

The states are divided on whether their respective state constitutional provisions create a fundamental right to a public school education. Nine-states, Alabama,[xi] Arizona,[xii] Michigan,[xiii] Mississippi,[xiv] Missouri,[xv] Montana,[xvi] New Jersey,[xvii] North Carolina[xviii] and North Dakota,[xix] have clearly held that education is a fundamental right. In the context of school financing issues, Arizona,[xx] California,[xxi] Connecticut,[xxii] Kentucky,[xxiii] Minnesota,[xxiv] North Dakota,[xxv] Virginia,[xxvi] Washington,[xxvii] West Virginia,[xxviii] Wisconsin,[xxix] and Wyoming[xxx] have recognized a Afundamental@ or Aparamount@ right or interest in free public school education created by their respective state constitutions. In a similar context, New Hampshire has recognized that a free public school education Ais at the very least an important, substantive right.@[xxxi] The states of Colorado,[xxxii] Florida,[xxxiii] Georgia,[xxxiv] Idaho,[xxxv] Illinois,[xxxvi] Maryland,[xxxvii] Massachusetts, [xxxviii] Nebraska,[xxxix] New York,[xl] Pennsylvania,[xli] Rhode Island[xlii] and Texas,[xliii] have all determined that education is not a fundamental right under their state constitutions. By inference, Maine,[xliv] Ohio[xlv] and Oklahoma,[xlvi] do not consider education to be a fundamental right.[xlvii]

In those states where free public school education is deemed to be a fundamental constitutional right, it is unlikely that a policy excluding home schoolers from accessing public school activities could withstand Astrict scrutiny@ analysis.

2. Caveat: Extra-Curricular Sports Activities may not be Accessible.

There is a crucial distinction between shared time access to classes and seeking access to extra-curricular activities, such as sports. There is no case law substantiating the position that home schoolers have a right to participate in extra-curricular activities. Case law regarding parochial school students has clearly established that no constitutional right exists to access extra-curricular sports activities,[xlviii] and any right to participate in such activities must arise from some administrative or statutory entitlement.

IV. Refusal of Access as a Violation of Free Exercise of Religion and Equal Protection of the Laws.

The First Amendment states, in part: ACongress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . .@ The Free Exercise Clause guarantees freedom of religion so that individuals may freely exercise religious beliefs in both public and private spheres.[xlix] The Non-Establishment Clause guarantees freedom from a government-imposed religion.[l] The Free Exercise Clause[li] and the Non-

Establishment Clause[lii] place restrictions on state and local governments. Therefore, public schools, as governmental entities, must also comply with the Religion Clauses of the First Amendment.

However, the religious protection of the Free Exercise Clause of the First Amendment happens to be at its lowest ebb thanks to the Supreme Court=s landmark *Smith* decision, in which it severely diminished the strength of its previous free exercise jurisprudence,[liii] and its recent *Boerne* decision, in which it invalidated the Religious Freedom Restoration Act.[liv] Consequently, home schoolers no longer have access to one of their most potent weapons in their efforts to resist governmental regulation and are largely at the mercy of the states as long as regulatory schemes might be deemed reasonable by federal courts. The result of that change is that neutral laws of general applicability that incidentally burden the free exercise of religion need only be reasonably related to the accomplishment of a legitimate government interest.[lv]

A Ruling on the Constitutionality of Denying Homeschoolers Access to Public School Classes and Activities

The parents of Annie Swanson homeschooled her until she reached the seventh grade, at which point they decided she would benefit by taking a few classes at the public school.[lvi] They hoped to get Annie into foreign language, music, and science classes that would be superior to what they could provide.[lvii] Although she was allowed to take the classes at the end of seventh grade and performed well, the school board decided not to allow her to take classes selectively in the eight grade on the basis of its policy that only part-time students that the state recognized for funding purposes would be allowed to enroll in classes.[lviii]

In examining Annie=s free exercise claim, the Tenth Circuit noted that the school board policy was a neutral policy of general applicability and therefore did not violate the Swanson=s free exercise rights without a showing of discriminatory motive.[lix] The court also disallowed the Swanson=s attempt to make a hybrid rights claim based on a combination of free exercise rights and the right of parents to control their child=s education.[lx] Although the hybrid rights claim seemed to be just the sort of claim *Smith* may have intended, the Tenth Circuit stated that, A[I]t cannot be true that a plaintiff can simply invoke the parental rights doctrine, combine it with a claimed free-exercise right, and thereby force the government to demonstrate the presence of a compelling state interest.@[lxi] Instead, the court held that attempting to maximize state funding per student was a legitimate interest of the school board and the policy of limiting part-time attendance to state funded students was a reasonable means of accomplishing that goal.[lxii]

The court finished its opinion with a series of statements devastating to the cause of home-schooled students attempting to gain part-time access to public school classes:

> In the absence of a system of individualized exceptions to the no part-time attendance policy, there is no room for a *Sherbert*-type argument that Plaintiff=s religious reasons for wanting Annie to attend public school only part-time must be given credence.[lxiii]

The Free Exercise Clause . . . is designed to prevent the government from impermissibly burdening an individual=s free exercise of religion, not to allow an individual to exact special treatment from the government.[lxiv]

> [W]e hold that the parental right to control a child=s education does not extend as far as Plaintiff=s would wish. There is no federal parental right that would force a local school board to allow parents to dictate that their children will attend public school for only part of the school day.[lxv]

While the *Swanson* decision is unfavorable, other arguments may be advanced based upon analogies which can be made to private school students= right to access public school activities and classes.[lxvi] As one annotation observes:

> The most essential criteria for the validity of any policy denying private school students access to public school courses or activities are, as might be expected, the United States Constitution=s guaranties of freedom of religion under the First Amendment and equal protection of the laws under the Fourteenth Amendment, balanced against the First Amendment prohibition of the establishment of religion and the dictates of economic and administrative reality. Even decisions as to denials based on statutes, ordinances, regulations, or administrative decisions ostensibly neutral as to religion and directed on their face to Aprivate@ school students generically, must be addressed with concern for First Amendment issues, since the great majority of students enrolled in nonpublic primary and secondary school in a given jurisdiction may be in schools with a particular religious affiliation.[lxvii]

The private school cases are not uniformly favorable, however. Two lines of cases have developed regarding the rights of private school students to access local schools= educational opportunities.

A. Case Law Indicating that Exclusion is Unconstitutional.

An early case addressing these issues was *Traverse City School District v. Attorney General*,[lxviii] wherein the Michigan Supreme Court struck down portions of a state constitutional amendment which denied private school students access to public school courses. The constitutional provision in question,[lxix] in relevant part, stated:

> . . . . No payment, credit, tax benefit, exemption or deductions, tuition voucher, subsidy, grant or loan of public monies or property shall be provided, directly or indirectly, to support the attendance of any student or the employment of any person at such nonpublic school *or at any location or institution where instruction is offered in whole or in part to such nonpublic school students*. . . .[lxx]
>
> Michigan=s Attorney General construed Proposal C to prohibit shared time instruction at public schools.[lxxi]

The Michigan Supreme Court found this to be Aa shocking result@ and struck down the language emphasized above.[lxxii] The Court stated that the question presented was Awhether in certain situations state aid to nonpublic schools or their pupils is mandatory.@[lxxiii]

The Court, following the example of prior race discrimination cases, applied Asuspect classification@ standards and looked to the Aimpact@ of the anti-parochiaid provision rather than its facial neutrality. The court found that the brunt of the Aimpact@ of this Amendment would be felt by religious persons. The Court found that the use of Aprivate school@ as a category was an invidious classification and could only be justified by a compelling state interest. Failing to find any such compelling state interest, the court found the practice violated the Equal Protection Clause.

After concluding that banning shared time instruction would violate the federal Equal Protection clause, the Court stated: AThis does not mean that a public school district must offer shared time instruction or auxiliary services; it means that if it does offer them to public school children at the public school, nonpublic school students also have a right to receive them at the public school.@[lxxiv]

In *State ex rel. School District of Hartington v. Nebraska Board of Education*,[lxxv] the Nebraska Supreme Court recognized the principal that state or local school boards should not be permitted to deny private or parochial school students access to public school courses.[lxxvi] The court, while noting that such an issue was not before it in a case involving the validity of public schools= leasing of private school premises for public school special education courses, nevertheless felt compelled to comment on the principle. The occasion

for the comment was the allegation raised by the school board that the Federal Elementary and Secondary Education Act of 1965 was unconstitutional under the Non-Establishment Clause, because it provided that private school students could participate in the federally funded remedial program on the same basis as children enrolled in the public schools. Because the *Hartington* Court also found that this Aaid@ was directed to private school children, it concluded that it did not violate the federal Non-Establishment Clause.[lxxvii] After rejecting the challenge to the federal law, the court further found that Nebraska=s Constitution prohibited such discrimination. The Nebraska Supreme Court wrote:

> The Constitution of Nebraska specifically provides that no religious test or qualification shall be required of any student for admission to any public school. Art. VII, > 11, Constitution of Nebraska. It would seem that an attempt to prohibit a student enrolled in a parochial school from participating in a program conducted by the public schools, solely because the student was enrolled in a parochial school, would violate this provision of the Constitution of Nebraska.[lxxviii]

The *Hartington* Court, relying on *Traverse City*, also concluded that the federal Equal Protection Clause would be violated if nonpublic school children were excluded from public school programs.[lxxix] Later cases in Michigan,[lxxx] although decided on alternative statutory grounds, speak approvingly of the conclusions in *Traverse City*.

B. Case Law Indicating that Exclusion is Constitutional.

A Maryland state court of appeals reached a contrary determination in the case of *Thomas v. Allegany County Board of Education*.[lxxxi] In *Thomas*, plaintiffs were private school students who had previously participated in an extra-curricular all-county music program offered by the public school. In 1980, the board limited participation to only public school students. The parochial school students, who had musical activities provided by their own school, nonetheless claimed that they were being deprived the benefits of Athe experience of performing under pressure and in a competitive atmosphere, enhanced resume value by citing involvement in the band, and finally, exposure to individuals who can provide information as to college level music programs.@[lxxxii] Plaintiffs raised challenges identical to those raised in *Traverse City* and *Hartington*. The Maryland court of appeals concluded that the plaintiffs= rights under the Free Exercise, Educational Choice and Equal Protection Clauses had not been violated.

The court found that:

> . . . The decision to confine participation in the All-County Band to public school students does not infringe upon the private school students= freedom of religion. The rule neither prohibits a parent from enrolling the child in a private school, nor deters the students from following the practices of their faith. The rule merely prevents a child from reaping the benefits of a public school activity once the constitutional right to a private school education is exercised. The impact of the rule on freedom of religion is minimal. As we have stated each of the appellants testified that he chose to attend Bishop Walsh [High School] in view of its superior academic program. Further, each indicated that he did not intend to transfer to the public school system merely to become eligible to participate in the All-County Band.[lxxxiii]

Thus, the court concluded that the religious students= rights appeared to have been only minimally infringed. The court determined that there existed a compelling state interest to justify the board=s exclusionary policy:

> On the other side of the scale, it appears that the Board has a legitimate interest in confining public school programs to public students. Although the administrative impact of a decision mandating the participation of the private students into this public school program appears to us to be trivial, the precedent as it affects the broader spectrum of school administration is of a far more deleterious nature. With the opening of such APandora=s box@, there would be no device to preclude, for example, a private school having difficulty securing a qualified chemistry teacher from unilaterally deciding to transport the entire student body to a nearby public school for their chemistry education. The potential for administrative disruption is obvious. Thus, while we may agree that little if any administrative hardship would inure to the Board in permitting these three students to participate in the All-County Band, it is not for this Court to hold that the Board *must* admit them, in view of the broader implications involved. We think the school administrators and not courts, should decide how much administrative disruption is too much.[lxxxiv]

The *Thomas* court similarly dismissed the Equal Protection claims referencing the fact that the court concluded in it=s Free Exercise analysis that Athe compelling state interest test was met in view of the *de minimi* burden on the appellant=s freedom of religion and the legitimate interest in avoiding administrative inefficiency.@[lxxxv] Therefore, a similar analysis was applicable to the Equal Protection claims.[lxxxvi]

V. The Allowance of Access would not be a violation of the Non-Establishment Clause.

Courts often use the *Lemon v. Kurtzman*[lxxxvii] three part test when plaintiffs challenge a State=s action under the Non-Establishment Clause. However, several Supreme Court justices have criticized this test,[lxxxviii] and the Court has applied other tests such as the endorsement,[lxxxix] neutrality[xc] and coercion[xci] tests with increasing frequency in recent cases. Because the Supreme Court has not overruled *Lemon*, this brief will focus on the *Lemon* test. The *Lemon* test states that a government practice will not violate the Non-Establishment Clause if it meets the following requirements:

(1) The statute must have a secular legislative purpose;
(2) Its principal or primary effect must be one that neither advances nor inhibits religion; and
(3) The statute must not foster excessive government entanglement with religion.[xcii]

The courts have declared unconstitutional several dual enrollment programs that provided private schools with access to the resources of the public school district.[xciii] These cases found the practice of providing direct financial aid to religious schools violated the Establishment Clause of the Constitution. These and similar cases give the impression that public schools and the resources of the public schools are closed off to everyone who is not in the public schools. Recent decisions have illustrated that this perception is in error.

The Supreme Court has repeatedly found that the Non-Establishment clause does not compel the exclusion of religious persons or groups from governmental benefits programs that are generally available to a broad class of participants.[xciv]

Supreme Court decisions establish the principle that special Non-Establishment Clause dangers exist where the government makes direct money payment[xcv] or other types of direct aid,[xcvi] to sectarian institutions. Aid to a sectarian institution may be upheld if it is performing both a secular and a sectarian function and it can be shown that the institution keeps the secular activities separate from its sectarian ones.[xcvii] Additionally, indirect aid to religion or religious institutions has been found constitutional when a program provides benefits to individuals on a religion-neutral basis and the aid reached religious institutions Aonly as a result of the genuinely independent and private choices of aid recipients.@[xcviii]

In the case of a home school student, who seeks to attend a release time class at a public school, these concerns are irrelevant. There is no sectarian institution which would benefit from allowing them access to the school.

Only one court has addressed these issues in the context of parochial students attending share time classes in the public schools. In *Snyder v. Charlotte Public School District*.,[xcix] the Michigan Supreme Court concluded that the practice does not violate the Non-Establishment clause of the United States Constitution. The Court said:

> There are three significant differences between shared time and direct financial aid to nonpublic schools (also known as parochiaid):
>
> First, under parochiaid the public funds are paid to a private agency whereas under shared time they are paid to a public agency.
>
> Second, parochiaid permitted the private school to choose and to control a lay teacher whereas under shared time the public school district chooses and controls the teacher.
>
> Thirdly, parochiaid permitted the private school to choose the subjects to be taught, so long as they are secular, whereas shared time means the public school system prescribes the public school subjects. These differences in control are legally significant. Obviously, a shared time program offered on the premises of the public school is under the complete control of the public school district.[c]

A. Allowing Access Has a Secular Purpose.

In *Snyder*, the court noted that A[t]he purpose is clearly secular--to provide educational opportunities at public schools to all resident school-aged children who are statutorily entitled to them and who are not currently receiving them.@[ci] The fact that shared time may incidentally defray the cost of educational expenses incurred by parents and enable nonpublic schools to continue or upgrade their present curriculum are also legitimate secular purposes.[cii]

B. Allowing Access Does Not Have the Primary Effect of Advancing Religion.

Snyder also examined the issue of whether shared time classes had a secular primary effect and whether any non-secular effect was remote, incidental or indirect. The court concluded that:

> [t]he primary effect of shared time instruction is to provide secular public instruction to part-time nonpublic school students. . . . Shared time is merely one way to guarantee each child his or her statutory right to a public school education. This

> right extends to all non-public school children regardless of whether they are enrolled in a sectarian or secular non-public school. Ordinarily, benefits or assistance made available to a broad spectrum of citizens without regard to religious affiliation satisfy the Aprimary effect@ test.[ciii]

Additionally, the court found that Anot every law that confers an >indirect,= >remote,= or >incidental= benefit upon [religion] is, for that reason alone, constitutionally invalid.@[civ] The court noted that Aa clear distinction [exists] between programs that provide aid directly to non-public school students (the so-called >child benefit theory=) and those that either in form or substance provide direct assistance to parochial schools themselves.@[cv] Additionally, the court found that a distinction exists between programs offered in parochial schools and those offered off non-public school premises. Those programs offered on the premises of non-public schools were more constitutionally suspect than those offered off of the premises.[cvi] Since, in *Snyder* the shared time instruction occurred in the public school, the court found that it passed the Aprimary effect@ test.

C. There is No Excessive Entanglement between Government and Religion.

The *Snyder* court concluded that there would be no excessive entanglement, noting that:

> Public school instructors will teach purely secular subjects to classes composed of both public and nonpublic school students. . . . [T]here is no need to supervise public school teachers to insure the secular content of their instruction. Although occasional communications between public and nonpublic school officials concerning the administrative details involved in shared time instruction will be necessary, such contacts do not violate the Establishment Clause.[cvii]

Thus, home schooled children, who are in a different situation than the cases involving parochial schools, should not be prevented from having access to the public schools under the Non-Establishment Clause rationale. Providing such access would not create Non-Establishment Clause problems as did the programs where parochial schools were the recipients of direct or indirect aid at the parochial school=s location. The dual enrollment programs which the courts have found to violate the Establishment Clause involved providing public school teachers in the parochial school building for classes where only the parochial school students attended. Permitting access for home schooled children involves the home schooled children joining public school classes rather than a public school sending a teacher out to provide a course for home schooled children.

VI. State Statutes

Several states have passed laws defining the access home schooled children have to public school activities. The amount of access granted by the statute varies depending on the wording of the law. A state by state listing that describes the access various states have provided is located at the end of this document.

A few states have laws providing full access to all the courses and activities a public school offers.[cviii] This includes access to courses offered at the public school as well as involvement in various activities the school offers to children in the same age group or grade as the home schooled child.Several states allow Adual enrollment.@[cix] Under dual enrollment, students can take courses from a private school and also register for courses at a public school. Home schooled children are often not mentioned in these laws as they usually refer to private or parochial schools. However, there is a strong argument that the terms Anonpublic,@ Aprivate,@ and Aparochial@ school students should also include home schooled students.[cx] Additionally, some state statutes even state explicitly that a home school is a Anonpublic@ school. Many legislatures passed statutes using these terms before home schooling became a widespread phenomenon, and therefore home schooled students should be covered by these statutes because they are similarly situated to the other students in the private and parochial schools mentioned in the statute.

Several of the states provide children with access to public school courses while other states place limitations on this access. Most all require that the home schooled student be a resident of the district where the public school is located. A few provide that the State Board of Education, the local school board, or the school superintendent has the discretion to decide whether or not dual enrollment will be allowed.[cxi] The law may also impose other requirements for access to public school activities. Check the relevant law in your state to determine what these requirements are.

ARIZONA - Arizona allows a child participating in a non-public home-based instructional program to participate on an equal basis in any interscholastic activity offered by a public school in the child=s district.[**cxii**]

COLORADO - Colorado allows a child participating in a non-public home-based instructional program to participate on an equal basis in any extracurricular or interscholastic activity offered by a public school in the child=s district.[cxiii]

FLORIDA - Florida=s statute outlines rules for providing materials for students in dual enrollment programs implying that dual enrollment is acceptable in the state.[cxiv]

IDAHO - Idaho allows a child participating in a non-public home-based instructional program to register in a public school for dual enrollment purposes. For any non-public student to participate in non-academic public school activities, the student must achieve a minimum score on the achievement test required annually by the state board of education.[cxv]

ILLINOIS - Illinois law allows students enrolled in non-public schools to attend the regular education program of the district in which the child resides if there is sufficient space in the school. The law requires that the principle of a nonpublic school submit a request to the public school by May 1. It is not clear whether a parent instructing a home schooled child can submit a request.[cxvi]

IOWA - Iowa allows students receiving competent private instruction to register in a public school for dual enrollment if a request is submitted. A child in the dual enrollment program can participate on the same basis as public school children in any extracurricular activities available to children of the same grade or age group.[cxvii]

MAINE - Maine allows a child participating in a non-public home-based instructional program to participate on an equal basis in any academic, cocurricular, extracurricular and special education activities offered by a public school in the child=s district under certain circumstances.[cxviii]

MICHIGAN - Michigan law states that Michigan does not prohibit a home schooled child from enrolling the child in any curricular offering available to other children at his grade level or age group so long as the child is in compliance with the same requirements that apply to the participation of full-time students.[cxix]

NEW HAMPSHIRE - The New Hampshire statute states that a student may met public school enrollment requirements by attending more than one school and may include attendance at a nonpublic school. 193:1-b allows the state board of education to adopt rules concerning dual enrollment.[cxx]

NEW YORK - New York allows districts to establish schools to teach the trades and provide instruction in industrial, agricultural, and homemaking subjects to supplement public school instructions. Section 4808 outlines the requirements for admittance to this school and the requirements do not exclude home schooled children.[cxxi]

NORTH DAKOTA - This state=s law implies that there is access to public school activities by requiring parents to list the courses or extracurricular activities in which the child wishes

to participate in the statement the parent must file with the superintendent of the public school district in which the child resides.[cxxii]

OREGON - Oregon forces school districts to allow a child participating in a non-public home-based instructional program to participate on an equal basis in any interscholastic activity offered by a public school in the child=s district.[cxxiii]

TENNESSEE - Tennessee law says that for special needs courses such as laboratory sciences, vocational education, and special education the superintendent can approve the use of public school premises. Also, home schooled children can use public school facilities with the approval of the local superintendent, but this is permissive and not a right.[cxxiv]

UTAH - Utah allows a child participating in a non-public home-based instructional program to participate on an equal basis in any extracurricular or interscholastic activity offered by a public school in the child=s district.[cxxv]

WASHINGTON-- Washington law requires school districts to admit home schooled students to courses at the public schools of that district.[cxxvi]

WEST VIRGINIA-- West Virginia allows those attending nonpublic schools to participate in any state operated or state sponsored program made available to them by law.[cxxvii]

WYOMING-- The law in Wyoming states that schools must be free and accessible to all children resident within the district. However, this access is subject to the regulations of the board of trustees. The law is also ambiguous and therefore may not provide access for home schooled students.[cxxviii]

VII. Case Law Interpreting State Statutes.

The most complete analysis in which courts found state statutes to affirmatively mandate shared-time instruction occurs in the Michigan Supreme Court case of *Snyder v. Charlotte Public School District*.[cxxix] The Court determined that nonessential elective courses offered to public school students must also be offered to resident nonpublic school students on a shared-time basis. The Court also determined that the provision of nonessential elective courses to resident nonpublic school students on a shared-time basis does not violate the non-establishment clause where shared time instruction is conducted on public school premises. In *Snyder*, the plaintiffs enrolled their daughter in a private nondenominational school. The school did not offer a band course and the plaintiffs attempted to enroll their daughter in a sixth grade band class in the local public school.

She had her own musical instrument and her parents were willing to transport her to and from class. She would attend band at the time and place which this course was provided to full-time public school students. It was undisputed that there was room in the class for her, and that the school district would receive state school aid for her part-time attendance. The school refused to permit her enrollment, although it did allow its public school students to attend classes at the local community colleges during the school day for credit.[cxxx]

In *Snyder* the plaintiffs filed suit to compel the school district to enroll their daughter in the band class. They argued that Brenda=s exclusion violated her statutory right to attend public school in the school district in which she resided.[cxxxi] Additionally, the plaintiffs claimed that the school district=s policy violated their First Amendment right to freely exercise their religious beliefs and their Fourteenth Amendment right to equal protection under the law.

However, the court did not determine whether the private school student had a fundamental constitutional right to the band class. Instead, it based its decision on Michigan statutes that said that a school district had to provide educational services to its residents. Because the school already allowed its students to enroll at the local community college on a part-time basis, the court refused to credit the argument that the school would have administrative difficulties if it allowed private school students to have access to these classes.

In *Commonwealth ex rel. Wehrle v. School District of Altoona*,[cxxxii] a state statute prohibited Aadditional schools,@ if voluntarily established by a school system, from refusing admission by reason of an applicant=s elementary or academic education having been received in a school other than a public school. The court interpreted the statute to require the admission of a student who was at that time a pupil in a private school into a Amanual-training school@ (*i.e.*, a vocational school). The court concluded that:

> . . . The benefits and advantages of these additional schools and means of education and improvement are not restricted to the pupils in regular attendance at the elementary public schools and pursuing the entire prescribed elementary courses, but are intended to be free to all Apersons residing in such district,@ subject, of course, to reasonable rules and regulations consistent with the spirit of the school laws and the necessity for their effective and orderly administration.[cxxxiii]

A different view was taken in *Thomas v. Allegany County Board of Education*.[cxxxiv] In this case, a private school student wanted to participate in an all-county band that was

sponsored by the local board of education. The private school students had been allowed to participate in this activity in the past. However, the board decided to restrict participation in the band to public school students only that year. The court found that the government had a legitimate reason for denying access to the private school students. They accepted the school district=s argument that the opening of the schools to nonpublic school students would create too great of an administrative challenge. They mentioned that administrators should decide about access to their district=s activities rather than having the courts decide. Maryland had a statute similar to the one cited by the Michigan court when it allowed access. However, the Maryland court thought that Michigan=s reading of the statute was strained[cxxxv] and unacceptable.

VIII. States with Attorney General Opinions Approving Access

Although no access is provided by statute in some states, various attorneys general have written opinions stating that dual enrollment programs would be constitutional under their interpretation of their state=s laws and constitution. These are useful to persuade courts and officials when requesting or defending access programs; however, they are not binding and have no precedential value in court. Below is a list of states with attorney general opinions approving of such access.

KENTUCKY - A 1974 opinion states that dual enrollment programs are legally permissible.[cxxxvi]

NEW JERSEY - A 1965 opinion agrees that local school board can adopt dual enrollment or shared time programs.[cxxxvii]

NORTH CAROLINA - This opinion says that local boards of education can release students to attend private schools part-time; however, the school board can choose not to release students and no rights would be violated. An argument can be made that if the board approves the release of its students to private schools, it should also provide access to home schooled children.[cxxxviii]

For More Information

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ENDNOTES

i. *Snyder v. Charlotte Public Sch. Dist.*, 421 Mich. 517, 365 N.W.2d 151, 154 (1984).

ii. *United States v. Carolene Products Co*., 304 U.S. 144 (1938).

iii. *Loving v. Virginia*, 388 U.S. 1, 11 (1967).

iv. *See Stauder v. West Virginia*, 100 U.S. 303 (1880); *Hirabayashi v. United States*, 320 U.S. 81 (1943); *Korematsu v. United States*, 323 U.S. 214 (1944); *Takahashi v. Fish & Game Commission*, 334 U.S. 410 (1948); *Brown v. Board of Education*, 347 U.S. 483 (1954); *McLaughlin v. Florida*, 379 U.S. 184 (1964); *Loving v. Virginia*, 388 U.S. 1 (1967); *Hunter v. Erickson*, 393 U.S. 385 (1969); *Widmar v. Vincent*, 454 U.S. 263 (1981).

v. *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 38-40 (1973).

vi. *Plyler v. Doe*, 457 U.S. 202, 224 (1982); *Williamson v. Lee Optical of Okla., Inc.*, 348 U.S. 483, 491 (1955).

vii. *Employment Division, Dep=t of Human Resources of Oregon v. Smith,* 494 U.S. 872 (1990).

viii. *Brown v. Topeka Bd. of Educ.*, 347 U.S. 483, 493 (1954).

ix. *Plyler v. Doe*, 457 U.S. 202, 221 (1982); *San Antonio Independent Sch. Dist. v. Rodriguez*, 411 U.S. 1, 30 (1973).

x. *Brown*, 347 U.S. at 484; *San Antonio*, 411 U.S. at 29-30; *Snyder*, 421 Mich. at 517, 365 N.W.2d at 155.

11. *Alabama Coalition for Equity, Inc. v. Hunt*, Civ. A. Nos. CV-90-883-R, CV-91-0117-R, 1993 WL 204083, at *55 (Cir. Ala. Apr. 1, 1993).

12. *Roosevelt Elementary Sch. Dist. Number 66 v. Bishop*, 877 P.2d 806, 817 (Ariz. 1994).

13. *Lintz v. Alpena Pub. Sch. of Alpena and Presque Isle Counties*, 325 N.W.2d 803, 805 (1982).

14. *Board of Tr. of Pascagoula Mun. Separate Sch. Dist. v. T. H.*, 681 So.2d 110, 114 (Miss. 1996).

15. *State ex rel. Roberts v. Wilson*, 297 S.W.419, 420 (1927).

16. *State of Montana v. Bd. Of Tr. Of Sch. Dist. No. 1*, 726 P.2d 801, 804 (1986) (noting that Avarious aspects of education under our Montana Constitution could be classified as >fundamental=@ without specifying those aspects).

17. *Board of Educ. of the City of Plainfield v. Cooperman*, 507 A.2d 253, 276 (N.J. 1986) (citing *Robinson v. Cahill*, 351 A.2d 713 (1975), *cert. den. sub nom.*, *Klein v. Robinson*, 423 U.S. 913 (1975)).

18. *Britt v. North Carolina State Bd. of Educ.*, 357 S.E.2d 432, 436 (1987).

xix. *State v. Rivinius*, 328 N.W.2d 22, 228 (N.D.1982), *cert. denied*, 460 U.S. 1070 (1983).

xx. *Roosevelt Elementary Sch. Dist. v. Bishop*, 179 Ariz. 233, 238, 877 P.2d 806 (1994);

Shofstall v. Hollins, 110 Ariz. 88, 89-90, 515 P.2d 590 (1973).

xxi. *Serrano v. Priest*, 18 Cal.3d 728, 761, 765-769, 135 Cal. Rptr. 345, 557 P.2d 929 (1976), *cert. denied sub nom. Clowes v. Serrano*, 432 U.S. 907 (1977).

xxii. *Horton v. Meskill*, 172 Conn. 615, 691 n. 2, 645-649, 376 A.2d 359 (1977).

xxiii. *Rose v. Council for Better Educ., Inc.*, 790 S.W.2d 186, 205-206 (Ky. 1989).

xxiv. *Skeen v. State*, 505 N.W.2d 299, 302, 313 (Minn. 1993).

xxv. *Bismarck Pub. Sch. Dist. 1 v. State*, 511 N.W.2d 247, 250, 256 (N.D. 1994).

xxvi. *Scott v. Commonwealth*, 247 Va. 279, 384-386, 443 S.E.2d 138 (1994).

xxvii. *Seattle Sch. Dist. No. 1 v. State*, 90 Wash.2d 476, 510-513, 585 P.2d 71 (1978).

xxviii. *Pauley v. Kelly*, 162 W.Va. 672, 707, 255 S.E.2d 859 (1979).

xxix. *Kukor v. Grover*, 148 Wis.2d 469, 496, 498, 436 N.W.2d 568 (1989).

xxx. *Washakie County Sch. Dist. No. 1 v. Herschler*, 606 P.2d 310, 315, 333 (Wyo. 1980), *cert. denied sub nom*. *Hot Springs County Sch. Dist. No. 1 v. Washakie County Sch. Dist. No. 1*, 449 U.S. 824 (1980).

xxxi. *Claremont Sch. Dist. v. Governor*, 138 N.H. 183, 192, 635 A.2d 1375 (1993).

xxxii. *Lujan v. Colorado State Bd. of Educ.*, 649 P.2d 1005, 1018 (Colo. 1982).

xxxiii. *Coalition for Adequacy and Fairness in Sch. Funding, Inc. v. Chiles*, 680 So.2d 400, 402 (Fla. 1996) (affirming a Florida trial court decision without specifying whether they agreed with the determination by the trial court that Florida=s Constitution does not create a fundamental right to a particular level of funding for education).

xxxiv. *McDaniel v. Thomas*, 248 Ga. 632, 647, 285 S.E.2d 156 (1981).

xxxv. *Idaho Sch. for Equal Educ. v. Evans*, 123 Idaho 573, 582, 850 P.2d 724 (1993).

xxxvi. *Committee for Educ. Rights v. Edgar*, 641 N.E.2d 602, 606 (Ill. 1994).

xxxvii. *Hornbeck v. Somerset County Bd. Of Educ.*, 458 A.2d 758, 786 (1983).

xxxviii. *Doe v. Superintendent of Sch. of Worcester*, 421 Mass. 117, 130, 653 N.E.2d 1088 (1995).

xxxix. *Gould v. Orr*, 506 N.W.2d 349, 350 (Neb. 1993) (affirming in part and reversing in part a Lancaster County trial court decision).

xl. *Bd. of Educ., Levittown v. Nyquist*, 57 N.Y.2d 27, 43, 453 N.Y.S.2d 643, 439 N.E.2d 359 (1982), *appeal dismissed*, 459 U.S. 1138 (1983).

xli. *Lisa H. v. State Bd. of Educ.*, 447 A.2d 669, 673 (1982).

xlii. *City of Pawtucket v. Sundlun*, 662 A.2d 40, 55 (R.I. 1995).

xliii. *Kirby v. Edgewood Indep. Sch. Dist.*, 761 S.W.2d 859, 863-864 (Tex. Ct. App. 1988), *rev=d on other grounds*, 777 S.W.2d 391 (Tex. 1989).

xliv. *School Admin. Dist. No. 1 v. Commissioner, Dep=t of Educ.*, 659 A.2d 854 (Me. 1995).

xlv. *Bd. of Educ. of City Sch.Dist. of Cincinnati v. Walter*, 58 Ohio St.2d 368, 376, 390 N.E.2d 813, 819 (1979), *cert. denied*, 444 U.S. 1015 (1980).

xlvi. *Fair Sch. Fin. Council of Okla. v. State*, 746 P.2d 1135, 1150 (Okla. 1987).

xlvii. In each of these states, the courts have refused to apply the strict scrutiny standard, but

have applied the rational basis review instead, indicating an unwritten conclusion that these courts do not consider education to be a Afundamental@ right in the same way that First Amendment guarantees are deemed fundamental. *See Doe*, 421 Mass. at 130 n. 4, 653 N.E.2d at 1096.

xlviii. *See* Don F. Vaccaro, Annotation, *Validity of Regulation of Athletic Eligibility of Students Voluntarily Transferring from One School to Another*, 15 ALR4th 885 (1982). *See e.g.*, *Christian Brothers Institute of New Jersey v. Northern New Jersey Interscholastic League*, 86 N.J. 409, 432 A.2d 26 (1981); *Walsh v. Louisiana High School Athletic Assoc.*, 616 F.2d 152 (5th Cir. 1980), *reh. denied*, 621 F.2d 440 (5th Cir.), *cert. denied*, 449 U.S. 1124 (1980)*; Valencia v. Blue Hen Conference*, 476 F.Supp. 809 (D. Del. 1979), *aff=d without opinion*, 615 F.2d 1355 (3d Cir. 1980); *Denis J. O=Connell High Sch. v. Virginia High Sch. League*, 581 F.2d 81 (4th Cir. 1978), *cert. denied*, 440 U.S. 936 (1979). *See also Windsor Park Baptist Church v. Ark. Activities Ass=n*, 658 F.2d 618 (8th Cir. 1981).

xlix. *See Sherbert v. Verner*, 374 U.S. 398 (1963) (state unemployment compensation statute held to be an unconstitutional burden as applied to private employee=s free exercise of religion, because she was denied compensation for refusing to work on Saturday for religious reasons); *Wisconsin v. Yoder*, 406 U.S. 205 (1972) (Amish parents= free exercise rights were violated by a state law that required school attendance until age sixteen since the Amish religion opposed their children=s attendance at high school).

l. *See Everson v. Bd. of Educ*., 330 U.S. 1, 15-16 (1947).

li. *Cantwell v. Connecticut*, 310 U.S. 296 (1940).

52. *Everson*, 330 U.S. at 8.

liii. *Smith*, 494 U.S. at 879.

liv. *City of Boerne v. Flores*, 117 S. Ct. 2157 (1997).

lv. *Smith*, 494 U.S. at 879.

lvi. *Swanson v. Guthrie Independent School District No. 1-L*, 135 F.3d 694, 696 (10th Cir. 1998).

lvii. *Id.*

lviii. *Id* at 697.

lix. *Id* at 698.

lx. *Id* at 699.

lxi. *Id* at 700.

lxii. *Id.*

lxiii. *Id* at 701.

lxiv. *Id* at 702.

lxv. *Id.*

lxvi. Russell G. Donaldson, Annotation, *Validity of Local or State Denial of Public School Courses or Activities to Private or Parochial School Students*, 43 ALR 4th 776 (1986).

lxvii. 43 ALR 4th at 777.

lxviii. *Traverse City Sch. Dist. v. Attorney General*, 384 Mich 390, 185 N.W.2d 9 (1971).

lxix. Mich. Const.1963, art. 8, ' 2.

lxx. Mich. Const.1963, art. 8, ' 2 (emphasis added).
lxxi. OAG, 1969-1970, No. 4715, p. 183 (November 3, 1970).
lxxii. *Traverse City*, 384 Mich at 412, 185 N.W.2d at 9.
lxxiii. *Traverse City*, 384 Mich at 431, fn. 19, 185 N.W.2d at 9.
lxxiv. *Traverse City*, 384 Mich at 433, 185 N.W.2d at 9.
lxxv. *State ex rel. Sch. Dist. of Hartington v.Nebraska Bd. of Educ*.,188 Neb. 1, 195 N.W.2d 161 (1972), *cert. den.* 409 U.S. 921 (1972).

lxxvi. 43 ALR 4th at 780.
lxxvii. *Id.*, 188 Neb. at 5, 195 N.W.2d 161.
lxxviii. *Hartington*, 188 Neb. at 4, 195 N.W.2d 161.
lxxix. *Hartington*, 188 Neb. at 5, 195 N.W.2d 161.
lxxx. Sn*yder v. Charlotte Public Sch. Dist.*, 421 Mich. 517, 365 N.W.2d 151, 158 (1984). *Cf*. *Durant v. State Bd. of Educ.*, 424 Mich. 364, 381 N.W.2d 662, 672 (1985) (A*Snyder* stands for the proposition that *if a district chooses to offer certain courses, it must make them available to all students in the district*.@)
lxxxi. *Thomas v. Allegany County Bd. of Educ.*, 51 Md.App. 312, 443 A.2d 622 (1982).
lxxxii. *Id*., 443 A.2d at 624.
lxxxiii. *Thomas*, 443 A.2d at 625.
lxxxiv. *Id*., 443 A.2d at 626.
lxxxv. *Id*., 443 A.2d at 626. The court noted that AGenerally, where private schools have been excluded from participation in public school extra-curricular activities, courts have applied a rational relationship test to determine whether the private school students= constitutional rights have been infringed upon.@ *Id*. The *Thomas* court then cited several court cases dealing with private school students= challenges to restrictions on participation in inter-scholastic athletics. *Id*. *See Denis J. O=Connell High School v. Virginia High Sch.*, 581 F.2d 81 (4th Cir. 1978), *cert. denied*, 440 U.S. 936 (1979); *Valencia v. Blue Hen Conference*, 476 F.Supp. 809 (1979).
lxxxvi. *Id*.

lxxxvii. *Lemon v. Kurtzman*, 403 U.S. 602 (1971).
lxxxviii. *See Lamb=s Chapel v. Center Moriches Union Free Sch. Dist.*, 508 U.S. 384, 389 (1993) (Scalia, J., and Thomas, J., concurring); *Allegheny County v. American Civil Liberties Union, Greater Pittsburgh Chapter*, 492 U.S. 573, 655-657 (1989) (Kennedy, J., concurring in judgment in part and dissenting in part); *Corp. of Presiding Bishop of Church of Jesus Christ of Latter-day Saints v. Amos*, 483 U.S. 327, 346-349 (1987) (O=Connor, J., concurring); *Wallace v. Jaffree*, 472 U.S. 38, 107-113 (1985) (Rehnquist, J., dissenting).
lxxxix. The endorsement test was first proposed by Justice O=Connor in her concurring opinion in *Lynch v. Donnelly*, 465 U.S. 668 (1984). She suggested that the endorsement test should

be applied in the following manner:

> The purpose prong of the *Lemon* test asks whether government=s actual purpose is to endorse or disapprove of religion. The effect prong asks whether, irrespective of government=s actual purpose, the practice under review in fact conveys a message of endorsement or disapproval. An affirmative answer to either question should render the challenged practice invalid.

Lynch, 465 U.S. at 690 (O=Connor, J., concurring). The Court=s plurality opinion in *Allegheny County* also applied the endorsement test to disallow a creche placed inside a county courthouse, while allowing a Hanukkah menorah to be placed outside the same courthouse.

xc. *Rosenberger v. Rector and Visitors of Univ. of Virginia*, 515 U.S. 819 (1995).

xci. *Lee v. Weisman*, 505 U.S. 577 (1992).

xcii. *Lemon*, 403 U.S. at 612-13 (cites omitted).

xciii. See, for example, *Citizens to Advance Pub. Educ. v. Porter*, 237 N.W.2d 232 (Mich. App. 1975).

xciv. *Rosenberger v. Rector and Visitors of Univ. of Virginia*, 515 U.S. 819 (1995); *Zobrest v. Catalina Foothills Public Sch. Dist*., 113 S.Ct. 2462, 2466 (1993); *Lamb=s Chapel v. Center Moriches Union Free Sch. Dist.*, 508 U.S. 384, 389 (1993); *Bd. of Educ. of Westside Community Schools (Dist. 66) v. Mergens*, 496 U.S. 226 (1990); *Texas Monthly, Inc. v. Bullock*, 489 U.S. 1 (1989); *Bowens v. Kendrick*, 487 U.S. 589 (1988); *Witters v. Washington Dep=t of Serv. for Blind*, 474 U.S. 481 (1986); *Mueller v. Allen*, 463 U.S. 388 (1983) and *Widmar v. Vincent*, 454 U.S. 263 (1981).

xcv. *Rosenberger*, 515 U.S. at 821; *Roemer v. Bd. of Pub. Works of Md*., 426 U.S. 736, 747 (1976); *Bowen v. Kendrick*, 487 U.S. 589, 614-615 (1988); *Hunt v. McNair*, 413 U.S. 734, 742 (1973); *Tilton v. Richardson*, 403 U.S. 672, 679-680 (1971); *Bd. of Educ. of Central Sch. Dist. No. 1 v. Allen*, 392 U.S. 236 (1968).

xcvi. *School Dist. of Grand Rapids v. Ball*, 473 U.S. 373, 395 (1985) (striking programs providing secular instruction to nonpublic school students on nonpublic school premises because they are Aindistinguishable from the provision of direct cash subsidy to the religious school that is most clearly prohibited under the Establishment Clause@), *overruled by Agostini v. Felton*, 521 U.S. 203 (1997); *Wolman v. Walter*, 433 U.S. 229, 254 (1977) (striking field trip aid program because it constituted Aan impermissible direct aid to sectarian education@), *overruled by Mitchell v. Helms*, 433 U.S. 793 (2000); *Meek v. Pittenger*, 421 U.S. 349, 365 (1975) (striking material and equipment loan program to nonpublic schools because of the inability to Achanne[l] aid to the secular without providing direct aid to the sectarian@), *overruled by Mitchell v. Helms*, 433 U.S. 793 (2000); *Committee for Public Education v. Nyquist*, 413 U.S. 756, 774 (1973) (striking aid to nonpublic schools for maintenance and repair of facilities because A[n]o attempt is made to restrict payments to those expenditures related to the upkeep of facilities used exclusively for secular purposes@); *Levitt v.*

Committee for Public Educ. & Religious Liberty, 413 U.S. 472, 480 (1973) (striking aid to nonpublic schools for state-mandated tests because the state had failed to Aassure that the state supported activity is not being used for religious indoctrination@); *Tilton v. Richardson*, 403 U.S. 672, 683 (1971) (plurality opinion) (striking as insufficient a 20-year limit on prohibition for religious use in federal construction program for university facilities because unrestricted use even after 20 years Ais in effect a contribution of some value to a religious body@).

xcvii. *Bowen v. Kendrick*, 487 U.S. 589, 614-615 (1988) (upholding grant program for services related to premarital adolescent sexual relations on ground that funds cannot be Aused by the grantees in such a way as to advance religion@); *Roemer v. Board of Pub. Works of Md*., 426 U.S. 736, 746-748 (1976) (plurality opinion) (upholding general aid program restricting uses of funds to secular activities only); *Hunt v. McNair*, 413 U.S. 734, 742-745 (1973) (upholding general revenue bond program excluding from participation facilities used for religious purposes); *Tilton v. Richardson*, 403 U.S. 672, 679-682 (1971) (plurality opinion) (upholding general aid program for construction of academic facilities as A[t]here is no evidence that religion seeps into the use of any of these facilities@) and *Bd. of Educ. of Central Sch. Dist. no. 1 v. Allen*, 392 U.S. 236, 244-248 (1968) (upholding textbook loan program limited to secular books requested by individual students for secular educational purposes).

xcviii. *Zobrest v. Catalina Foothills Sch. Dist.*, 113 S.Ct. 2462, 2467-2469 (1993) (provision of interpreter for deaf student at Roman Catholic high school under state act aiding individuals with disabilities upheld); *Witters v. Washington Dep=t of Serv. for Blind*, 474 U.S. 481, 487-488 (1986) (aid used to attend private Christian college under a state program for assistance to handicapped persons upheld); and *Mueller v. Allen*, 463 U.S. 388, 487-488 (1983) (tax deduction for expenses incurred by parents for their children=s private religious schooling upheld where program was generally available for parents of both public and nonpublic school children).

xcix. *Snyder v. Charlotte Pub. Sch. Dist*., 421 Mich. 517, 365 N.W.2d 151, 163-168 (1984).

c. *Snyder*, 421 Mich at 517, 365 N.W.2d at 154 (quoting *Traverse City School Dist. v. Attorney General*, 384 Mich 390, 413-414, 185 N.W.2d 9 (1971)).

ci. *Snyder*, 421 Mich. 517, 365 N.W.2d at 163.

cii. *Id.*, 421 Mich. 517, 365 N.W.2d at 163-164 n. 15.

ciii. *Id*., 421 Mich. 517, 365 N.W.2d at 164; *Citizens to Advance Public Education v. State Superintendent of Public Instruction*, 65 Mich.App. 168, 176, 237 N.W.2d 232 (1975), *leave. denied*, 397 Mich. 854 (1976) (citations omitted).

civ. *Id*., 421 Mich. 517, 365 N.W.2d at 164.

cv. *Id*., 421 Mich. 517, 365 N.W.2d at 165.

cvi. *Id*., 421 Mich. 517, 365 N.W.2d at 166-167.

cvii. *Id*., 421 Mich. 517, 365 N.W.2d at 168.

cviii. See Colo. Rev. Stat. Ann. 22-33-104.5 and Iowa 299A.8.
cix. See Fla. 233.63 and Mich. 388.1766b.
cx. However, at least one state, Pennsylvania, explicitly excludes home education programs from the definition of nonpublic schools. 24 P.S. '13-1327.1(a) (West 1992).
cxi. New Hampshire 193:1-a (providing for dual enrollment) and 193:1-b (giving state Board of Education control over dual enrollment). See also Tenn. 49-6-3050 (allowing access to public schools but with approval of local superintendent).
cxii. Ariz. Rev. Stat. Ann. ' 15-802.01 (West 1995 supp.).
cxiii. Colorado Revised Statutes 22-33-104.5 (6)(a)(b) (1994 Supp.).
cxiv. Fla. Stat. Ann. Ch. 233.63 (Harrison 1993 supp.).
cxv. Idaho Code ' 33-203 (Michie 1999).
cxvi. 105 Ill. Ann. Stat. 5/10-20.24 (Smith-Hurd West=s 1993).
cxvii. Iowa Code Ann. ' 299A.8 (West 1995 supp.).
cxviii. Me. Rev. Stat. Ann. tit. 20-A, ' 5021 (West 1993).
cxix. Mich. Comp. Laws. Ann. ' 388.1766b (West 1995 supp.).
cxx. N.H. Rev. Stat. Ann. ' 193:1-a (Equity 1989).
cxxi. N.Y. Educ. Law ' 4801 (McKinney 1981).
cxxii. N.D. Cent. Code ' 15-34.1-06 (Michie 1993).

cxxiii. Or. Rev. Stat. ' 339.460 (1995).
cxxiv. Tenn. Code Ann. ' 49-6-3050 (Michie 1990).
cxxv. Utah State Bd. of Educ. Reg. R277-438-4.
cxxvi. Wash. Rev. Code Ann. ' 28A.150.350 (West 1995 supp.).
cxxvii. W. Va. Code ' 18-28-4 (Michie 1994).
cxxviii. Wyo. Stat. ' 21-4-301 (1992).
cxxix. *Snyder v. Charlotte Public Sch. Dist*., 421 Mich. 517, 365 N.W.2d 151 (1984).
cxxx. *Snyder*, 421 Mich. at 517, 365 N.W.2d at 153.
cxxxi. *Id*. *See also* M.C.L. ' 380.1147; M.S.A. ' 15.41147.
cxxxii. *Commonwealth ex rel. Wehrle v. School Dist. of Altoona*, 241 Pa. 224, 88 A. 481 (1913).
cxxxiii. *Commonwealth ex rel. Wehrle,* 241 Pa. 224, 88 A. at 483.
cxxxiv. *Thomas*, 51 Md.App. 312, 443 A.2d 622 (1982).
cxxxv. *Thomas*, 51 Md.App. 312, 443 A.2d at 627
cxxxvi. OAG 74-331.
cxxxvii. Atty. Gen. F.O. 1965, No.4.

cxxxviii. 57 N.C.A.G. 26 (1987).