

Home Education in Colorado: Clarifying Parents' and Children's Rights (IP-4-1987)

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Issue Paper

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Executive Summary

Home schooling is an educational model whereby the primary academic instruction of children takes place in the child's home, generally by one or both parents but sometimes by another family member or an outside tutor. It was a common means of educating children in early American history.

During much of the twentieth century, home education was practically unheard of in many circles. But during the past decade it has become perhaps the most widely growing phenomenon in American education, including the state of Colorado.

This issue paper argues that home education is a viable and effective means of educating children and should therefore not be discouraged by state law.

The author, an Oklahoma attorney, argues that Colorado's law dealing with home education, while not overly restrictive on its face, has great potential for abuse.

After examining the current trend among state legislatures to recognize and legitimize home schooling, the paper concludes by recommending that Colorado join this trend by adopting new legislation that would legalize home education subject to reasonable restrictions to ensure educational quality.

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I. Brief History of Home Schooling

Home schooling was the primary means of educating children in ancient Israel(1), and also among many of the other early civilizations such as the Chinese, the Persians, the Egyptians, the Romans, and many primitive societies(2). It remained the predominant means of education throughout the Middle Ages and the Refomation(3), and into early American history(4).

With the spread of public education in the late 1800s and early 1900s, little was heard of home schooling. However, even during this period it was not uncommon for wealthy people to employ tutors for their children, or for people living in isolated areas of the country, or serving as missionaries, or in occupations that require extensive travel, to teach their children themselves.

In the 1970s home education began to increase in popularity. Part of the reason is increasing dissatisfaction with public education. Part, also, is the growth of evangelical Christianity.

And another major factor is the advocacy of home education by leading figures like John Holt, author of such works as How Children Learn, How Children Fail, The Underachieving School, and Teach Your Own, and Raymond Moore, author of School Can Wait, Better Late Than Early, Home Grown Kids, Home-Spun Schools, and Home-Style Teaching.

Today home schooling may well be the fastest-growing phenomenon in American education.

II. The Extent of Home Education in the U.S. and Colorado

It is difficult to determine the exact number of children being taught at home in America today. For one thing, the number is growing so fast that any accurate figures would be out of date almost before they are published. Many states do not keep such records either because they do not recognize home schooling or because they do not try to regulate it.

The National Education Association recently released a position paper which stated, with no documentation or support of any kind, that between 10,000 and 30,000 children were being taught at home. The inaccuracy of this estimate may be seen from the mere fact that Christian Liberty Academy of Arlington Heights, Illinois, one of many satellite home school systems, has well over 23,000 students enrolled.

Equally unsupportable, at the other extreme, are the claims of several home school enthusiasts that as many as ten million American children are being home educated.

Looking at the numbers enrolled in the various satellite programs, the numbers who belong to the various home school associations, and making allowances for the many

who are involved in neither of these, a figure of 250,000 to 500,000 children seems realistic--especially if disabled children who are unable to attend school are included.

This writer, in lecturing to home school audiences in many states throughout the country, has observed that the number of home schoolers bears little relationship to the strictness or leniency of state law on the subject. I have spoken to sizeable audiences of home school parents in such states as Iowa, North Dakota, and Michigan, where home education is illegal unless performed by a certified teacher; in such states as Oklahoma and Virginia where home schooling is clearly legal; and in other states such as California where the legal status of home education was at the time unclear. The size of the crowd, or the membership in home school associations, seems unaffected by the legal status.

Home education seems to be especially popular on the West Coast. Nationally, home education seems to be most popular in big cities where concern over the quality of public education seems greatest, and in isolated rural areas where the parents have no private school alternative to public education. Home education seems least common in small and medium-sized towns, though it certainly may be found there also.

Colorado has both: the large Denver metropolitan area, and isolated rural areas. It would seem likely, therefore, that the number of home school children in Colorado is at least proportionate to the nation as a whole. The writer has lectured to home school audiences in Boulder, in Loveland, in Colorado Springs, and in Denver, before crowds ranging from 50 to several hundred. It seems fair to conclude that between 2,500 and 5,000 school-age children are being taught at home in Colorado.

III. Advantages and Disadvantages of Home Education

Those engaged in home education are quick to point out its advantages. One advantage is the freedom to educate ones children in accordance with ones own religious beliefs and value systems.

It is fair to say that the vast majority of those who teach their children at home, do so at least in part for religious and moral considerations. Some want to provide their children with a curriculum that is centered around their own religious faith. Others want to shield their children from drugs, illicit sex, and the belief system often called "secular humanism," which they perceive to be virtually the established religion of the public schools.

While a substantial majority of home educators are conservative people of an evangelical Christian faith, many others are of a much more liberal persuasion: free-thinking academics, "back to nature" types, and even American Indians and other ethnics who see home education as a means of preserving their culture intact.

Among the leading spokesmen for home education, Dr. Raymond Moore is Seventh-Day Adventist, the late John Holt was a free-thinker and a liberal, and the leaders of the Home

School Legal Defense Fund are conservative Protestants.(5) The various curricula produced for home school families come from a wide variety of backgrounds: evangelical Protestant, traditional Catholic, Seventh-Day Adventist, Mennonite, classical secular, more liberal secular.

Despite their diverse backgrounds, all of these home educators would hold one principle in common: That the family, not the state, is responsible for education, and that parents have the right and duty to make primary decisions concerning their childrens education.

Another reason for choosing home education is financial and geographic. Many parents cannot afford to send their children to private schools, especially if there are several children in the family. Others live in areas where there is no private school, or none that is compatible with their religious beliefs. For example, some Roman Catholics could not in good conscience send their children to a Protestant Christian school, and many fundamentalist Protestants could not send their children to a Catholic school. For them, home education is the only viable alternative to public education.

A third reason is academic. Many parents are concerned about the quality of education provided in the public schools and believe they can provide better education at home. They point out the advantages of individualized instruction: closer teacher/pupil relationship, more rapport, more individual responses, opportunity to tailor a curriculum to the child's unique needs. They point out that children develop at different rates, and progress at different levels in different subjects; a 10-year-old child may function at a seventh-grade level in math but at a fourth-grade level in spelling. A home school curriculum can be fashioned to meet his needs so that he does not have to skip over material he doesn't understand to keep up with others, or be held back because of slower children.

Dr. Raymond Moore, a former education professor and dean and graduate programs officer for the U.S. Office of Education who now heads the Hewitt-Moore Research Foundation and specializes in the study of home schools, says standardized testing of home school children nationwide shows them to be achieving at approximately the 80% level, 30 percentage points above the national average(s). Gunnar A. Gustavsen, in a doctoral dissertation prepared at Andrews University in 1980, likewise concludes that home school children on the whole make excellent academic progress(6).

And a fourth reason is familial. Home school families commonly report that home education brings them closer together as a family. The parents know better what the children are thinking as they are drawn together in the learning process.

* * *

Critics of home education object that home school parents lack the necessary training and skills to teach their children effectively. It is true that most parents are not certified teachers. The Gustavsen study concluded that the typical home school parent has completed one to three years of college(7). However, proponents of home education

respond that the qualities one needs to be an effective teacher, particularly at the lower grades -- warmth, responsiveness, ability to perceive student needs, dedication, rapport, clarity -- are not necessarily learned in a teacher training program(8).

Proponents note, further, that teacher training programs are structured to prepare a person to teach in a formal public school classroom setting, and are largely irrelevant to the needs and methodology of private schools and even more irrelevant to home schools(9). They point out that only a highly motivated person would undertake the task of teaching his child at home. The writers personal observation of thousands of home school parents has corroborated that they tend to be energetic persons, avid readers (even if limited in formal educational background), and self-starters.

Proponents of home education point to A Nation at Risk, the 1983 report of the National Commission on Excellence in Education, which concluded that some 26 million American adults are functionally illiterate and an additional 34 million are only semi-literate, despite the fact that most of these have gone through public schools and sat under certified teachers(10). This certainly indicates that teacher certification does not guarantee quality education.

Further, the 1981 Coleman study, a federally funded study of 58,728 public and private high school seniors and sophomores by the National Opinion Research Center, gave students a 1-1/2 hour battery of achievement tests prepared by the Educational Testing Service. "On 20 reading questions, the average public school senior got 10.8 correct, the average Catholic school senior 11.9, and other private school seniors 13. On 27 vocabulary questions, the public sector got 12.9, Catholics 15.1, and other private 15.9. On 32 math questions, the scores were 18.9, 21.1, and 22.4 respectively"(11). This is significant because the laws of most states do not require private school teachers to be certified(12), yet private school students outscored public school students in every category.

And again: James Braley, director of curriculum services for the Western Association of Christian Schools, has released a report on recent Stanford Achievement Test scores for students in schools belonging to that association, showing those students achieving from 6 to 19 months ahead of the national nom(13).

Likewise, 11,000 Maryland students in 66 Christian schools took the California Achievement Test in 1983 and scored 25% higher than the national public school average on the same test(14), despite the fact that Maryland exempts church-related schools from state regulation including teacher certification(15).

The above statistics are not presented as criticism of the public schools. They do indicate, however, that teacher certification does not guarantee quality education and that there is no compelling reason for the state to force such a requirement upon private or home schools.

Critics of home education object that home schools lack the necessary resources to

prepare students for life in today's world. But if today's world has become more complex and demanding, home school resources have likewise expanded dramatically. Dozens of satellite schools are available, typical of which is Christian Liberty Academy of Arlington Heights, Illinois.

Students are enrolled in Christian Liberty Academy but taught at home by their parents using textbooks supplied by the academy. At the time of enrollment the child is tested, and a curriculum is furnished based upon the educational achievement level of the child in each subject. Tests, themes, essays, book reports, etc., are mailed in to the academy to be graded by teachers there and returned to the family. Upon graduation the child receives a diploma from the academy, and over 90% of the graduates go on to higher education(16).

Christian Liberty Academy has over 23,000 students, and it is only one of numerous satellite programs which operate on similar principles. The advent of home computers, complete with a variety of educational programs, means the average home school has at its disposal more information than the average public school library had only a few years ago. Home school families make use of public libraries, university facilities, public athletic programs, and many other resources. Home school associations often have resources that they provide for their members. And many home school families enter into arrangements with private and even public schools to use facilities, participate in athletic and musical activities, and even take certain courses that the parents do not feel equipped to teach.

A third objection is lack of socialization. Critics argue that if children are kept out of school they will lack the necessary interaction with peers to develop socially.

Supporters of home schooling respond that there are many ways of providing socialization other than through a formal classroom setting: Sunday school, 4-H, Scouts, neighborhood friends, home school association activities, etc. They note that an advantage of home schooling is that the parent has more control over the socialization process: he or she can encourage association with desirable persons and prevent association with undesirables.

Supporters also argue that a child who is home-schooled is better able to relate to people of all ages, children and adults alike, whereas a child who is in a formal classroom often has difficulty relating to anyone outside his own immediate age group. They insist that a child who is placed in a school setting too early is likely to become peer-dependent, whereas a child who is kept at home in the early grades is secure in his identity and values and able to stand on his own.

And they point out that many famous persons were home-schooled for all or part of their childhoods, among them George Washington, John Quincy Adams, Abraham Lincoln, Woodrow Wilson, Franklin D. Roosevelt, Jonathan Edwards, John Milton, General George Patton, General Douglas MacArthur, Thomas Edison, Agatha Christie, Pearl Buck, and Supreme Court Justice Sandra Day O'Connor. Those individuals experience

hardly appears to have hindered their social development.

A final objection raised by opponents of home education is that home-schoolers deprive the public schools of much-needed funds. To this we need only respond that the public schools have been relieved of the burden of educating these children, and that every dollar thus withheld is a dollar saved by the taxpayers of Colorado.

Many believe that this financial impact on the education establishment is a major motive for the prosecution of home schools. School districts derive their funding in part from the state, based on the number of students actually enrolled in the public schools of the district. This funding may range from \$1,500 to \$2,000 per child depending on age. If a family with three children takes those children out of the public schools and teaches them at home, that family has just cost the school district-- but saved the taxpayers of Colorado--\$4,500 to \$6,000 per year. And if our earlier estimate of 2,500 to 5,000 home school children in the State of Colorado is correct, then home educators may be saving the taxpayers of Colorado up to \$10 million per year.

Weighing the above advantages and objections, this observer concludes that the advantages are significant and that the objections lack substance.

It is noteworthy further that many of the critics of home education have never really studied home schooling and have never actually visited a home school. It is common for many persons, including public educators, who start with prejudices against home schooling, to change their minds once they visit a home school and start learning about home education.

The evidence indicates that there is no reason for the State of Colorado to discourage its citizens from teaching their children at home.

IV. Colorado Law on Home Education

The basic provision of Colorado law concerning home education is CS 22-33- 104(2)(i). After requiring attendance at public and private schools, this section exempts from the compulsory attendance requirement a student "who is being instructed at home by a teacher certified pursuant to articles 60 and 61 of this title, or under an established system of home study approved by the state board."

The statute provides two ways a home school can meet the requirements of state law: 1) using a certified teacher or 2) using a state-approved system of home study. Either satisfies the statutory requirement by itself: the parent who uses a certified teacher need not use a state-approved system, and the parent who uses a state-approved system need not use a certified teacher.

In 1980 the Colorado State Board of Education adopted a complex set of regulations entitled "Administration of an Established System of Home Study Programs." Among the

provisions, these regulations require state approval of the system of home study (2.01), local approval of the parental application to instruct the children at home (2.02), a statement of the home schools objectives (3.01), faculty qualifications (3.02), curriculum (3.03), instructional materials (3.04), pupil progress evaluations (3.05), record-keeping (3.06), and certain learning conditions including four hours of classroom work per day (3.07-1), 172 classroom days per year (3.07-2), and periodic evaluations and tests (3.07-3).

The regulations require the Colorado Department of Education to make recommendations concerning systems (4.01-1), evaluate systems (4.01-2), develop forms for local approval of home schools (4.01-3), furnish information (4.01-4), and maintain records on home study requests and local board actions (4.01-5).

Local school boards, under these regulations, are required to designate a liaison person to work with home schools (4.02-1), furnish these rules to parents along with other materials (4.02-2), review home school applications to determine that the subjects are appropriate for the child's grade placement and the parents have agreed to meet their responsibilities (4.02-3), approve or disapprove requests for home study (4.02-4), send copies of application forms to the State Department of Education (4.02-5), monitor the home study programs as necessary and notify parents of intent to cancel approval if parents are not meeting their obligations (4.02-6), notify parents to bring children to school for tests (4.02-7), consider past pupil progress on requests for renewal of home study applications (4.02-8), and place pupils entering public school at appropriate grade levels (4.02-9).

The other exemption from public school attendance is for private schools. CS 22-33-104(2)(b) exempts from public school attendance a student "who attends, for the same number of days, an independent or parochial school which provides a basic academic education comparable to that provided in the public schools of the state." Colorado law provides no definition of "independent" or "parochial" schools.

Some Colorado home schools claim to be independent schools within the meaning of the above statute, and thus claim the certified teacher and state approval requirements do not apply to their home schools. The validity of this claim is being weighed in several lower court cases in Colorado at the present time, and the Colorado Attorney General has been asked for a legal opinion as to whether the term "independent school" includes home schools. If home schools could qualify as independent schools, they would be free from the certified teacher and state approval requirements and from the complex set of regulations described above.

V. Practical Application of Colorado Laws and Regulations

As we shall see later, the Colorado statutes concerning home education are neither the most strict nor the most lenient laws of the nation. But they are without equal in their

potential for abuse.

The statute gives the State Board of Education unfettered discretion to approve or disapprove systems of home study, with no criteria as to what factors shall be considered in determining approval. As a result, the board often considers factors that have no bearing on quality education.

For example, at their May 9, 1985, meeting, the board considered whether to approve Christian Liberty Academy as an established system of home study. Provisional approval was granted, but Mildred Ravell, the consultant who had been hired by the board to evaluate Christian Liberty Academy, commented: "...it is difficult, the words, the language is so difficult, that it seems almost preposterous to expect little kids to read words like iniquity, like salvation, you know, things that little kindergartners just have no conceptual base for whatsoever" (17).

Ms. Ravell revealed her bias by telling the board, "Well, my first remark on that subject is this. I have very strong anti-feelings against just home study. I think its the most limiting education in the world"(18). This was the person hired by the State Board of Education to conduct a presumably impartial evaluation of a home system.

At the local level the situation is even more confusing. State regulations require local approval of the parental application for home education (2.02), but while they require the home school parent to submit certain information, they give no clear and definite guidelines as to when to approve a home study application ana when to disapprove it.

As a result, whether one can teach his children at home depends in large part upon where he lives. Some school districts, perhaps the majority, approve home study applications with little difficulty. Others subject home schoolers to substantial harassment, and when they resist, they are threatened with court action. Within the past two years, home study applications have been disapproved for such reasons as "There are just getting to be too many home schoolers...We think all kids should be in public schools" ..., and "This Board doesnt believe in home schooling."(19)

The Aurora School Board adopted a position statement which flatly ignores the state law allowing home schooling, saying that "programs of home study are inadequate substitutions for the quality of educational instruction, curriculum, and environment availaole through Aurora Public Schools," and that the board "does not support the placement of students in such programs and will grant approval for placement only under the most compelling of circumstances."(20)

Under this policy, home Study duplications have been routinely denied, not only in Aurora but also in other districts. This pattern of arbitrary denials may well constitute a conspiracy to violate civil rights as defined by federal law (42 USC 1983).

In the fall of 1986, dozens of home study applications were denied in districts throughout the state, some of which had been submitted by persons whose applications had been approved in previous years and who had complied faithfully with the regulations. When pressed for a reason, school boards have told such applicants that "The board simply is

not approving applications this year.

Most of these disapprovals, it should be noted, have been appealed to the State Board, which has reversed the vast majority of them. However, this reversal has come only after substantial inconvenience and anxiety for the applicants involved, and as a result home educators throughout Colorado live in a state of uncertainty and insecurity about the future. Several home school cases are pending in the courts, and hundreds of home school families wonder whether they will be next.

VI. Constitutional Validity of Colorados Approach

So far as the author can determine, no court of record has ever ruled on the validity of the Colorado statutes and regulations concerning home education. However, there is good reason to believe they are vulnerable on several grounds:

(1) Violation of Parental Rights. The Supreme Court of the United States has never ruled on a home education case, but it has ruled on compulsory attendance statutes four times. Each time, it has struck the statute down as violative of Ninth and Fourteenth Amendment parental rights to direct the education of ones children(22). But while these cases demonstrate the Courts willingness to strike down educational policies that violate constitutional rights, they do not delineate precisely how far a state may go in regulating nonpublic education.

(2) Vagueness. The "due process" clauses of the Fifth and Fourteenth Amendments require that legislation be sufficiently precise so that citizens know with reasonable certainty what conduct is permitted and what is prohibited. This is particularly true in regard to legislation the violation of which carries criminal penalties. The Colorado statutes may be unconstitutionally vague. For one thing, it is not clear whether home schools legally qualify as "independent schools;" a strong argument could be made that they do, and a home school parent could reasonably and in good faith believe that they do. Furthermore, the term "established system of home study" is subject to different interpretations.

(3) Lack of Authority under the Colorado Constitution. Article IX, Section 1, of the Colorado Constitution provides that "the general supervision of the public schools of the state shall be vested in a board of education whose powers and duties shall be as now or hereafter prescribed by law." Note that this supervisory power is limited to public schools. Under the principle of "expressio unius, exclusio alterius" (the expression of one thing is the exclusion of others), it is reasonable to assume that the framers of the Colorado Constitution intended to limit the boards authority to public schools only and not to nonpublic education. Had they intended otherwise, they could have used language like "the general supervision of schools of the state," or "the general supervision of education." Article IX, Section 7, which prohibits aid to church-related schools, is further evidence of a hands-off policy toward nonpublic education. And Article IX, Section 11,

which authorizes the General Assembly to enact compulsory attendance laws requiring "that every child of sufficient mental and physical ability, shall attend the public school during the period between the ages of six and eighteen years, for a time equivalent to three years, unless educated by other means", indicates that the right to alternative education was to be protected.

Neither the General Assembly nor the State Board of Education can act contrary to the limitations of the State Constitution. If the State Constitution limits the Boards authority to public schools only, then CS 22-33-104(2)(i) by which the General Assembly delegates to the State Board the authority to approve established systems of home study, appears to be an invalid delegation of authority that the Constitution has clearly withheld.

(4) Unlawful Delegation of Rule-making Authority. Even if the legislature does have some plenary authority over nonpublic education, the question remains whether the legislature may delegate that authority to the state or local boards, whether it has in fact done so, and whether the set of regulations titled "Administration of an Established System of Home Study Programs" is a valid exercise of that rule-making authority. The general principle of constitutional law on the subject of delegation of legislative authority, is that the legislature may delegate rule-making authority to an administrative agency, provided the legislature gives to that administrative agency sufficiently clear guidelines for the exercise of that rule-making authority⁽²³⁾.

But the Colorado legislative and regulatory scheme does not come even remotely close to the definiteness required by the United States and Colorado courts. The "guidelines" in the delegation of f the other 49 states concerning home education vary greatly. While space does not permit a detailed discussion of each states policies, a general summary is included as an appendix to this issue paper.

The trend nationwide is toward granting more freedom for private and home schools. During the 1980s at least 18 states have adopted new laws which liberalize restrictions on nonpublic education: Washington, Arizona, Montana, Wyoming, New Mexico, Nebraska, Missouri, Arkansas, Louisiana, Mississippi, Alabama, Florida, Georgia, North Carolina, Virginia, West Virginia, Tennessee, and Wisconsin. In addition, many have relaxed their administrative regulations.

Not a single state has moved in the direction of tightening its regulations or laws. In several states where laws are restrictive or uncertain in meaning, bills are being considered to change the laws; among these are Michigan, North Dakota, Iowa, Kansas, and Idaho. In those states which still prohibit or severely restrict home education, the following effects may be found:

(1) Personal freedom is limited. The parents freedom to choose the type of education his children receive is curtailed -- and a restriction on the rights of one citizen sets a precedent to allow further restriction on the freedoms of others. A law requiring teacher certification for home education has the practical effect of prohibiting home schooling for all but the few who are certified teachers or are wealthy enough to hire one. Home schooling then

becomes an elitist privilege instead of a common right.

(2) Many otherwise law-abiding citizens are forced to choose between the law and their religious beliefs. As noted before, the vast majority of those who teach their children at home do so in large part for religious reasons. Home school parents tend to be hard-working, law-abiding, patriotic citizens; but if forced to choose between the dictates of the law and what they perceive to be the commands of God, they will, with Peter and James, "obey God rather than men" (Acts 5:29). Granted, the law cannot always accommodate every persons conscience. But before forcing people to violate their religious beliefs, we should carefully ask: Is this requirement really necessary?

(3) Many home school families actually feel forced to go underground. They and their children come to regard the authorities as their enemies. They isolate themselves, not because they wish to do so, but because they fear being prosecuted or having their children taken away. In such circumstances the lack of socialization predicted by home school critics can become a self-fulfilling prophecy.

(4) As a result, authorities in restrictive states are less likely to know who is home schooling and who is not. Parents are unwilling to volunteer this information when they fear prosecution or harassment.

(5) Restrictive states are experiencing widespread litigation. In one medium-sized school district in Michigan, about 225 cases are pending, awaiting the outcome of the Sheridan Road Baptist case currently before the Michigan Supreme Court. Cases are pending in Texas, Iowa, North Dakota, and elsewhere. This is costly -- costly for the state, costly for the parents as well.

(6) In restrictive states, home school laws are enforced with disparity and discrimination. In another Michigan district of similar size to the one where 225 cases are pending, no one at all is being prosecuted. Several prosecutors in North Dakota have simply refused to press charges, and during the 1983 Nebraska Christian school turmoil, one western Nebraska prosecutor called the situation a disgrace, openly invited home educators to move to his county, and assured them they would be safe there(24). In Iowa two families are teaching their children at home in the Mapleton school district; one has been left alone but the other has been prosecuted. The only reason is that the district lies partly in Monona County and partly in Ida County; one county attorney chose to prosecute while the other refused to do so.

As noted earlier, the same kind of disparity exists in Colorado. Most Colorado home school families are not disturbed by the authorities, but some are. At least one Colorado family felt forced to leave the state temporarily, and another family is considering doing so.

* * *

In contrast, those states which have a more tolerant policy toward home schooling enjoy

many beneficial effects:

- (1) Home educators are out in the open, fully a part of the community. One home school association in Tulsa, for example, sponsors field trips, a choir, roller skating parties, a newsletter, service projects, legislative seminars, and many other activities. Home school children participate in extracurricular and even regular programs at both private schools and public schools. The relationship has been harmonious, and everyone has benefited.
- (2) Freedom of religion, freedom of choice, and the right to privacy in family relationships are preserved. This enhances the freedom of everyone, whether they choose home education or not.
- (3) Authorities know who is home schooling and can distinguish home educators from truants. Most home educators are willing to provide this information if they do not have to fear prosecution or harassment in doing so.
- (4) Diversity is preserved. A state monopoly on education is dangerous, because it can lead to a state monopoly on thought. For that reason the U.S. Supreme Court ruled in the Pierce v. Society of Sisters case (268 U.S. 510, 1925) that "The fundamental theory of liberty upon which all governments in this Union repose excludes any general power of the state to standardize its children by forcing them to accept instruction from public teachers only." But this standardization of children and monopoly of thought can be achieved just as easily by forcing all children to attend schools which are just like public schools, or to learn from teachers whose training and beliefs are just like of those public school teachers.

America is a stronger, freer nation today because we don't all think alike, because we have not all been educated in the same way. The wide variety of educational experiences -- public schools, private schools, religious schools, home schools -- contributes to this diversity. It is worth remembering that one of Hitler's first acts after taking office was the abolition of nonpublic schools(25).

- (5) Home school children receive a good education. As we have seen, standardized testing shows home school children to be averaging about the 80th percentile nationwide, 30 percentage points above the national average -- and all at no expense whatsoever to the state.

VIII. Conclusions and Recommendations

Children are not property; they are human beings with basic rights. But due to their immaturity they are not capable of exercising those rights responsibly, so others must make choices on their behalf. Those who are primarily responsible for making choices for children are their parents.

Families should be given a wide variety of alternatives for the education of their children.

These should include public, private, parochial, and home-based education. Obviously home education is not for everyone, but the option should be available for those who want it.

Colorado law on home education is neither the most restrictive nor the most permissive in the United States. It can be highly restrictive or highly permissive depending upon how state and local school boards choose to administer it. Consequently the law has great potential for abuse. The law should be changed to minimize this potential for abuse.

Parents should not have to ask the states permission to teach their children at home, since parents are primarily responsible for making educational choices for their children. But the State of Colorado does have a need to know that they are teaching their children at home and not just letting them be truant.

The law should therefore be changed to provide that parents shall notify the State Department of Education or the local school board that they are establishing a home school.

The state may demand some type of quality control to make sure home school children are receiving a good education. While the evidence does not establish that such control is necessary, most home educators would accept some quality control so long as it does not duly interfere with their right to operate a home school.

The best form of quality control is one which gives the family the option of proving the quality of its education in one of several ways. The law should, in addition to requiring the parent to notify the authorities of the establishment of his home school, also require the parent to fulfill one of the following requirements:

- (1) Be a certified teacher or
- (2) Pass a basic skills test similar to teacher competency tests; or
- (3) Test his children annually with a nationally-recognized standardized test of his choosing. A provision could be included that the child must perform acceptably on said test; however, allowances should be made for the child who is academically slow; just because a slow child does poorly on a test does not mean he is not working up to potential. The law could provide that if a child performs one grade level below the average for his age for two consecutive years, the local superintendent may order additional testing, remedial help, IQ testing, or other action necessary for the child's education --choosing the course of action that is most consistent with the parents intent unless that would be manifestly contrary to the best interest of the child; or
- (5) Conduct a home-based educational program that is approved and under the supervision of a public, independent, or parochial school; or
- (6) Fulfill any other conditions necessary to obtain the approval of the local superintendent of schools.

In addition, Colorado law should provide that home school children may enroll in certain extracurricular activities or courses in the public schools of the district in which they reside, and that said school district shall receive a pro-rated share of state aid for said child based upon the extent of said child s enrollment.

It is hoped that the Colorado General Assembly will give serious attention to these proposals. Through them educational quality and educational freedom can be preserved.

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Notes

(1) [The Jewish Encyclopedia](#), "Education" (New York: Funk & Wagnalls, 1904, 1916), V:42-43; [The Universal Jewish Encyclopedia](#), "Education" (New York: KTAV Publishing House, 1969), III:62-30; [Encyclopaedia Judaica](#) (Jerusalem: MacMillan, 1971, VI:382-402; [The Catholic Encyclopedia](#), "Education" (New York: The Gilmary Society, 1909, 1913), V:298-299.

(2) Elmer H. Wilds and Kenneth V. Lottich, [The Foundation of Modern Education](#) (New York: Holt, Rinehart & Winston, Inc., 1936, 1961), pp. 10, 24, 30, 39, 88, 112.

(3) *Ibid.*, pp. 135, 186.

(4) Samuel Chester Parker, [A Textbook in the History of Modern Elementary Education](#) (Chicago: Ginn & Company, 1912), p. 54ff.

(5) Dr. Raymond Moore, lecture, Loveland, Colorado, October 23, 1986.

(6) Gunnar A. Gustavsen, "Selected Characteristics of Home Schools and Parents Who Operate Them," A Dissertation Presented in Partial Fulfillment of the Requirements for the Degree of Doctor of Education, Andrews University School of Graduate Studies, July 1980.

(7) *Ibid.*

(8) Dr. Raymond Moore, Stipulation of Expected Testimony, [Minnesota v. Budke](#), Otter Tail County, Minnesota, June 1982.

(9) *Ibid.*

(10) Report of the National Commission on Excellence in Education, quoted in "Mediocrity in Education Termed Threat to Nation," [Tulsa Tribune](#), May 3, 1983.

(11) [Tulsa World](#), April 4, 1981.

(12) Study of Private School Laws of All Fifty States, prepared by Dr. John Eidsmoe with Assistance from Law Students at the O. W. Coburn School of Law, Tulsa, Oklahoma, 1983; Same title and author, 1985 edition.

(13) Dr. Paul Kienel, Executive Director, Western Association of Christian Schools, "The Advantages of a Christian

School Education," [Christian School Comment](#), undated.

(14) Cathy Mentzer, "Students at Christian Schools Score Above Average on Achievement Tests," [Herald-Mail](#), Hagerstown, Md., December 10, 1983, p. A3; cited by Samuel E. Ericsson, "Should Christian Schools Have State-Certified Teachers? No," [Liberty](#), May/June 1984, p. 11.

(15) Maryland Statute 2-206(e)(4).

(16) Testimony of Rev. Paul Lindstrom, Headmaster, Christian Liberty Academy, [Minnesota v. Budke](#), Otter Tail County, Minnesota, June 1982.

(17) Transcript of Regular Meeting of Colorado School Board, Denver, Colorado, May 9, 1985, pp. 2-3.

(18) *Ibid.*, p. 8.

(19) *Ibid.*, p. 7.

(20) [World Book Encyclopedia](#), 1985 edition, "Lenin," XII: 169-171; "Stalin," XVIII:648-648d.

(21) Transcript of Regular Meeting of Colorado School Board, Denver, Colorado, May 9, 1985, generally.

(22) [Meyer v. Nebraska](#), 262 U.S. 390, 1923; [Pierce v. Society of Sisters](#), 268 U.S. 510, 1925; [Farrington v. Tokushige](#), 273 U.S. 284, 1927) and/or the First Amendment guarantee of free exercise of religion ([Wisconsin v. Yoder](#), 406 U.S. 205, 1972).

(23) See, for example, [Schechter Poultry Corp. v. United States](#), 295 U.S. 495 (1935); [Federal Energy Administration v. Algonquin SNG, Inc.](#), 426 U.S. 548 (1976); and [Arizona v. California](#), 373 U.S. 546 (1963). And while legislatures "ordinarily may delegate under broad standards..., (the) area of permissible indefiniteness narrows..., when the regulation..., potentially affects fundamental rights..." according to [U.S. v. Robel](#), 389 U.S. 258 (1967). Directing the upbringing and education of children is a fundamental right; see [Roe v. Wade](#), 410 U.S. 113 (1973). Furthermore, when the regulations involve the granting of permission to do something like teaching, the legislature must provide "narrowly drawn, reasonable and definite standards for the officials to follow..." according to [Niemojko v. Maryland](#), 340 U.S. 268 (1951). Colorado courts take the non-delegation doctrine very seriously, applying perhaps an even stricter standard of definiteness than do the federal courts. In [Colorado Anti-Discrimination Commission v. Case](#), 380 P.2d 34 (1962), the Colorado Supreme Court stated that the legislature may not delegate "carte blanche" authority to an administrative agency. See also [Colorado River Water Conservation District Colorado Water Conservation Board](#), 594, P.2d 570 (1979), and [In re Water v. Rights](#), 510 P.2d 323 (1973), where the Court said legislative delegations will be upheld if sufficient guidelines are given.

(24) [Olathe \(Kansas\) Daily News](#), January 18, 1984; reprinted in [The Parent Educator and Family Report](#), 2:5, June/July 1984, p. 3.

(25) William Shirer, [The Rise and Fall of the Third Reich](#) (New York: Simon and Schuster, 1960), p. 249; see also H.W. Koch, [Hitler Youth: The Duped Generation](#) (New York: Ballantine Books, 1971), p. 104.

Appendix: Home Education Laws of Other States

Home education is legal, though subject to varying restrictions, in all fifty states with the possible exception of Texas. In [Texas](#) the status of home education is unclear. Texas Statutes 21.032 and 21.033 simply require that all children attend public, private, or parochial schools. Texas does not regulate private and parochial schools except for a requirement that they teach a course in citizenship, but the Texas Education Agency has taken the position that home schools do not meet the definition of private school and therefore home education is illegal. Lower courts in Texas have reached differing results, and the Texas Supreme Court has not addressed the issue. A class action lawsuit currently pending in Fort Worth is scheduled for trial in early 1987 and may resolve the question.

Probably the strictest home and private school laws are found in [North Dakota](#), Michigan, and Iowa. North Dakota (N.D.C.C., Title 15, Chapter 34.1-01) and Michigan (Michigan Code, Title 15, 15.1921-1925) require all children, including home school children, to be taught by certified teachers. Iowa law is similar except that members of "recognized" churches with bona fide religious objections to teacher certification are exempt (Section 299.24); however,

the Iowa Supreme Court has interpreted this exemption to apply only to the Amish and similar separatist groups.

Among the states which allow the greatest freedom for nonpublic education are Oklahoma, Illinois, and Mississippi. Oklahoma (70 Oklahoma Stat. 1971, 10-105-a) simply requires that all children attend "some public, private or other school, unless other means of education are provided for the full term the schools of the district are in session." There is no registration, licensing, teacher certification, testing, or other requirement in Oklahoma. Illinois Statute 122, 26-1(1) requires only that private and home school children receive instruction in the same "branches" taught in public schools. Mississippi (Miss. Stat. 37-13-91) does not regulate private schools and expressly allows home schools provided they are "not operated or instituted for the purpose of avoiding or circumventing the compulsory attendance law.

Other states simply impose a general equivalence requirement. Indiana, for example, requires home school parents to provide "instruction equivalent to that given in public schools" (20-8.1-3-34). New Jersey Statute 18A:38-25 requires children to attend public or nonpublic schools unless they "receive equivalent in New Jersey v. Massa, 231 A.2d 252 (1967) where the parent/teacher had only a high school education but standardized tests showed the children to be making good progress.

A few states require local school board approval. These include Ohio (Ohio Rev. Code 3321.04), Pennsylvania (P.S.A. Title 24, 1327), and Massachusetts (G.L.C. 76-1). Louisiana requires home educators to obtain approval from the State Board of Elementary and Secondary Education (17 :236).

A growing number of states, instead of imposing licensing and teacher certification requirements, require only that a home school be in session for a certain number of days or hours. Georgias new law (31-2104, adopted 1984) requires home schools to be in session for 180 days. Wisconsin's new law imposes a requirement that the home school be in session for 875 hours per year (118.15). Both laws were passed pursuant to state supreme court decisions striking down their previous laws as unconstitutional --Wisconsin v. Popanz, 332 N.W.2d 750 (1983), and Roemhild v. Georgia, 308 S.E. 2d 154 (1983). Other states require standardized testing for home school children, among them Arizona (15-802.8) and Arkansas (80.1502).

The policies of states which border on Colorado may be of special interest. As noted earlier, Oklahoma recognizes virtually complete freedom for private and home schools. Kansas Statute 72-1111(a) requires children to attend a public school or a private school "taught by a competent instructor;" there has been substantial litigation in Kansas over what is meant by the terms "private school" and "competent instructor."

Until 1984, Nebraska required all children to be taught by certified teachers in state-approved schools; but after extensive litigation, the jailing of pastors and parents which attracted nationwide publicity in 1983, and a 1983 report by a Governors Christian School Issue Panel which concluded that the state re