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Alternatives to Public School: Florida's Compulsory Education Dilemma

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Abstract

The value of a quality education in our society is unquestioned. However, controversy exists concerning state efforts to insure education for its citizens.

KEYWORDS: public, school, compulsory

Alternatives to Public School: Florida's Compulsory Education Dilemma

A child is a person who is going to carry on what you have started. . . . He will assume control of your cities, states and nations. He is going to move in and take over your churches, schools, universities and corporations. All your books are going to be judged, praised or condemned by him. The fate of humanity is in his hands.¹

Introduction

The value of a quality education in our society is unquestioned. However, controversy exists concerning state efforts to insure education for its citizens. These efforts are reflected in compulsory education laws² which are sometimes challenged by citizens claiming compliance through an unorthodox method of schooling.³

To set the stage for an analysis of Florida's contemporary problems with compulsory school attendance laws, it is appropriate at the outset to briefly discuss some landmarks which have been significant in the origin and development of compulsory education in the United States. The focus of this note will then shift to *State of Florida v. M.M.*,⁴ a recent case involving education at home in the context of

1. Abraham Lincoln. This quote was taken from H.S. Bhola, *A Policy Analysis of Adult Literacy Versus Universal Primary Education*, 55 VIEWPOINT TEACH AND LEARN 22, 24 (Fall 1979).

2. See generally Note, *Home Instruction: An Alternative to Institutional Education*, 18 J. FAM. LAW 353 (1980). All fifty states plus the District of Columbia have compulsory attendance laws.

3. See, e.g., *Wisconsin v. Yoder*, 406 U.S. 205 (1972); *Pierce v. Society of Sisters*, 268 U.S. 510 (1925); *Scoma v. Board of Educ.*, 391 F. Supp. 452 (N.D. Ill. 1974); *People v. Turner*, 121 Cal. App. 2d 861, 263 P.2d 685 (1953); *F. & F. v. Duval County*, 273 So. 2d 15 (Fla. 1st Dist. Ct. App. 1973); *People v. Levisen*, 404 Ill. 574, 90 N.E.2d 213 (1950); *State v. Shaver*, 294 N.W.2d 883 (N.D. 1980).

4. *State of Fla. v. M.M.*, 407 So. 2d 987 (Fla. 4th Dist. Ct. App. 1981).

Florida's compulsory school attendance laws. The examination of *M.M.* will be highlighted by the court's struggle to define the word "school" and followed by an analysis of the potential ramifications of the court's decision. Although the court displayed wisdom in reaching its decision, there remains a legislative void in Florida which is susceptible to future challenge; some recommendations are suggested which can help to fill that gap and clarify Florida's ambiguous compulsory education laws.

Historical Perspective of Compulsory Education

In 1925 the United States Supreme Court in *Pierce v. Society of the Sisters*⁵ recognized the need to balance state power to insure the education of its populace with parental rights to direct their children's upbringing. *Pierce* involved a challenge to an Oregon enactment which required "every parent, guardian or other person having control . . . of a child between eight and sixteen years to send him to a *public school*."⁶ The Court considered the enactment "repugnant to the constitution" because the legitimate business and property interests of private schools were "threatened with destruction through the unwarranted compulsion which [the state exercised] over present and prospective patrons of their schools."⁷ *Pierce* is frequently cited for its dictum acknowledging the parental option to elect private school for their children. This option is a derivative of the parental right to be free from unreasonable governmental interference with respect to their children's upbringing.⁸ Although the parents' right to provide private education prevailed, along with the private schools' business and property interests, the Court cautioned

[n]o question [was] raised concerning the power of the state reasonably to regulate all schools, to inspect, supervise and examine them, their teachers and pupils; to require that all children of

5. 268 U.S. 510.

6. *Id.*, at 530 (emphasis added).

7. *Id.* at 532, 535.

8. *Id.* at 534-35 citing *Meyer v. Nebraska*, 262 U.S. 390 (1923) which stated that legislation prohibiting the teaching of foreign languages to students prior to passing the eighth grade was an unreasonable interference with the right of parents to control the education of their children.

proper age attend some school, that teachers shall be of good moral character and patriotic disposition, that certain studies plainly essential to good citizenship must be taught, and that nothing be taught which is manifestly inimical to the public welfare.⁹

Thus, *Pierce* may be equally significant for its implicit recognition of the state's power to compel and regulate education of its citizens so long as the power is reasonably exercised.

The Supreme Court reaffirmed its position regarding state power to reasonably regulate education in *Wisconsin v. Yoder*,¹⁰ but the Court also recognized that notwithstanding the high priority on education, the state's interest "is by no means absolute to the exclusion or subordination of all other interests."¹¹ In *Yoder*, Amish parents claimed that the compulsory education law in Wisconsin was inapplicable to them because it conflicted with their religious beliefs which are protected by the free exercise clause of the first amendment.¹² The Wisconsin law, which required public or private school attendance between the ages of seven and sixteen, was contrary to the parents' religious practices prohibiting formal education beyond the eighth grade.¹³ This prohibition is rooted in the Amish doctrine which emphasizes that "salvation requires life in a church community separate and apart from the world and worldly influence."¹⁴ Apparently, the Amish community feared that formal education beyond the eighth grade "not only expose[d] themselves to . . . censure of the church community . . . but . . . also endanger[ed] their own salvation . . ." due to the intensity of peer pressures coercing conformity to non-Amish values.¹⁵ The Court, clearly influenced by the longstanding practice of the Amish religion

9. *Id.* at 534.

10. 406 U.S. at 213. The court was emphatic in their position by stating: "There is *no doubt* as to the power of a state, having a high responsibility for education of its citizens, to impose reasonable regulations for the control and duration of basic education." *Id.* (emphasis added).

11. *Id.* at 215.

12. *Id.* at 208-09. The court quoted from the first amendment in footnote four of the opinion: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof. . . ." *Id.* at 209 n.4.

13. *Id.* at 211.

14. *Id.* at 210.

15. *Id.* at 209-11.

coupled with the history of self-reliance demonstrated by its followers, agreed that enforcement of the Wisconsin compulsory education law would threaten the existence of the Amish religion.¹⁶ It is important to realize, however, that the *Yoder* holding is narrow and the Amish parents may have been unsuccessful if their departure from the compulsory education laws had been more substantial¹⁷ or if their beliefs had not been grounded in a religious foundation.¹⁸

Presently, compulsory education laws generally require children to attend school between the ages of six to sixteen.¹⁹ Although this age requirement varies only slightly from state to state, there is great disparity between state statutes regarding the means of achieving compulsory attendance.²⁰ This lack of statutory uniformity, combined with conflicting judicial decisions, brings into focus the competing interests that often collide in compulsory attendance controversies. These interests are those of the state in mandating and regulating the education of its citizens, the parents in directing the upbringing of their children, and the child in being guaranteed educational opportunities.²¹ It is evident that these interests must be carefully weighed if a compulsory ed-

16. *Id.* at 219, 224-25. While there was no evidence concerning the attrition rate in the Amish religion, the Court seemed confident that Amish defectors were not likely to become burdens on society. *Id.* at 224-25.

17. *Id.* at 238 (concurring opinion). Justice White explained why *Yoder* should have limited application: "This would be a very different case for me if respondent's claim were that their religion forbade their children from attending any school at any time and from complying in any way with the educational standards set by the state." *Id.* The Court also seemed impressed with the quality of vocational training provided for the children in lieu of the brief additional period of formal education. *Id.* at 224.

18. *Id.* at 216. Chief Justice Burger who delivered the opinion of the court restricted *Yoder* to claims based on religious beliefs. He hypothesized:

If the Amish asserted their claims because of their subjective evaluation and rejection of the contemporary secular values accepted by the majority, much as Thoreau rejected the social values of his times and isolated himself at Walden Pond, their claims would not rest on a religious basis. Thoreau's choice was philosophical and personal rather than religious and such belief does not rise to the demands of the religion clauses.

Id. Compare F. & F., 273 So. 2d 15, discussed in the Ramifications section of this note.

19. Moberly, *Compulsory Attendance—A Second Look*, THE HIGH SCHOOL J., Feb. 1980, at 197; Note, *supra* note 2, at 357.

20. *Id.* at 379-81; See generally Annot., 65 A.L.R. 3d 1222 (1975).

21. 406 U.S. at 213-15. See also 268 U.S. at 534-35.

ucation dispute is to reach a just resolution.

The state's interests in an educated citizenry was stressed early in our country's history by Thomas Jefferson who believed that education is a cornerstone of democracy²² and it is evident that the state is interested in preparing citizens to become "self-sufficient participants in society."²³ Parental interest in the nurture and education of their children is incontrovertible and to override the parent, a state interest of sufficient magnitude must exist.²⁴ When the parental interest is religiously based, the state's concern must be compelling before the courts will allow intervention, as clearly demonstrated by the *Yoder* decision.²⁵ The interest of the child is obviously the heart of the controversy and should never be overlooked in the balancing process. Justice Douglas in his dissenting opinion in *Yoder*, wrote: "Children themselves have constitutionally protectible interests,"²⁶ and he believed that the *Yoder* majority ignored the interests of the child in reaching its decision. Douglas eloquently stated: "The education of the child is a matter on which the child will often have decided views . . . he may want to be a pianist or an astronaut or an oceanographer . . . if his education is truncated, his entire life may be stunted and deformed."²⁷

Today the controversies continue. In recent years parental dissatisfaction with public schools has manifested in an increased number of

22. 406 U.S. at 221, 225. *See also* Moberly, *supra* note 18 which quoted a forceful statement made by Thomas Jefferson in 1816: "If a nation expects to be ignorant and free in a state of civilization, it expects what never was and never will be" *Id.* at 196.

23. 406 U.S. at 221.

24. *Id.* at 214, 232. *See also* 391 F. Supp. at 460-61. In *Scoma*, the parents asserted fundamental constitutional rights to educate their children as they saw fit and the court held that those interests do not "rise above a personal or philosophical choice and cannot claim to be within the bounds of constitutional protection. *Id.* But *see* *Ohio v. Whisner*, 47 Ohio St. 2d 181 at ___, 351 N.E.2d 750 at 771 (1976). Ohio's minimum standards for private schools were so pervasive they nearly cloned the private schools in the public school image which consequently deprived the parents of their traditional interests in guiding their children's upbringing. *Id.* at ___, 351 N.E.2d at 768.

25. 406 U.S. at 214; 294 N.W.2d at 895; *See also* 47 Ohio St. 2d at ___, 351 N.E.2d at 771; *But cf.* *Prince v. Massachusetts*, 321 U.S. 158 (1944) which explained that the power of the parent, even when related to a religious claim may be subject to limitations when it endangers the welfare of the child.

26. 406 U.S. at 242-44.

27. *Id.* at 244-46.

parents attempting to educate their children at home. There is evidence of this movement in Broward County, Florida, as demonstrated by the establishment of the United Citizens of Broward, a parent group bonded together by their interest in home schooling. "[A]lthough accurate figures are difficult to come by . . . John Holt . . . publisher of *Growing without Schooling*, a newsletter for home schoolers, estimates that upwards of 10,000 families" have established home schools nationwide.²⁸

Dissatisfaction with the public school system frequently stems from school boundary disputes and busing requirements. Certainly many parents are concerned for their children's welfare due to excessively long bus rides to school at unbelievably inconvenient hours,²⁹ but it is significant to note the fact that many other parents are insidiously motivated by racial prejudice. Skepticism regarding the quality of education provided in the public schools also seems to be increasing in recent years, along with concerns about school violence and what some believe to be a "mean spirited, competitive, status oriented"³⁰ atmosphere. As a former teacher, guidance counselor and coach in the Florida public school system³¹ I question whether these concerns are justified or exaggerated. Even if they are well founded, it can be argued that the school atmosphere is merely a reflection of the society in which children must learn to function.³² Certainly parents are entitled to be critical of the education afforded their children. However, regardless of parental motivations for withdrawing children from the public schools, parents should not be exempt from fulfilling *their* responsibility to comply in an acceptable manner with the state's compulsory education requirements.

Home instruction is recognized in many states as an alternative

28. R. A. Bumstead, *Educating Your Child at Home: The Perchemlides Case*, PHI DELTA KAPPAN, Oct. 1979, at 98. Holt has predicted that "[w]ithin a decade half a million U.S. families will be educating their children at home." V. Rustand, *Home Teaching and Herbert*, 58 EDUCATIONAL HORIZONS 75, 75 (Winter 1979).

29. Miami News, Dec. 15, 1981 § B (Lifestyle), at 1-2, col. 2.

30. R.A. Bumstead, *supra* note 27.

31. Dade County: 1972-1975, Collier County: 1976-1977, Broward County: 1977- 1980.

32. R.A. Bumstead, *supra* note 27.

means of compliance with compulsory education laws.³³ In those states permitting education at home, it is not unusual for one or more of the following to be required: (a) certain courses to be included,³⁴ (b) certified or qualified instructors,³⁵ (c) instruction equivalent to that available in public schools³⁶ or (d) instruction for a specified length of time.³⁷ Florida is among those states which statutorily provide for the home education alternative as a means of compliance with compulsory school attendance so long as the child is tutored by a certified instructor.³⁸ Recently, however, a case of first impression arose in the Fourth District Court of Appeal of Florida which provided occasion to review a circuit court determination that parents who are *not* certified teachers may be permitted to educate their children at home.³⁹

State of Florida v. M.M.

When the 1981-82 Broward County School boundaries were re-established, Mr. and Mrs. Pohl objected to the continued busing of their two children to Ely High School in Pompano, Florida.⁴⁰ After the Pohls were denied a transfer for their children by the Hardship Committee of the School Board, they decided to withdraw them from public school.⁴¹ The Pohls removed Scott and Michelle from Ely High School in February 1981 and commenced instruction in their own home which they designated as the Pohl Private School.⁴² The two children were the only pupils and neither of the parents were certified teachers nor was an older sister who also instructed the children on occasion.⁴³ The Stu-

33. See Note, *supra* note 1, at 379-81.

34. In *Re Shinn*, 195 Cal. App. 2d 683, 16 Cal. Rptr. 165 (1961). *Accord, e.g.*, *State v. Lowry*, 191 Kan. 701, 383 P.2d 962 (1963).

35. *E.g.*, *State v. Faith Baptist Church*, 207 Neb. 802, 301 N.W.2d 571 (1981). See *Kentucky State Bd. v. Rudasill*, 589 S.W.2d 877 (Ky. 1979).

36. *State of N.J. v. Massa*, 95 N.J. Super. 382, 231 A.2d 252 (Morris County Ct. 1967); *State v. Hershberger* 103 Ohio App. 188, 144 N.E.2d 693 (1955).

37. FLA. STAT. § § 228.041 (13) and (16) (Supp. 1980).

38. FLA. STAT. § 232.02 (4) (1979).

39. 407 So. 2d at 989-90.

40. In the Interests of Michelle Martin and Scott Evans, Nos. 81-2550 and 81-2552. (Fla. 17th Cir. Ct., ordered June 30, 1981). *Hereinafter* cited as Court Order.

41. *Id.*

42. *Id.*, 407 So. 2d at 989.

43. 407 So. 2d at 990.

dent Welfare and Attendance Department of the School Board initiated an action for dependency⁴⁴ in the Seventeenth Judicial Circuit alleging that the children had been truant from Ely High School in violation of the Florida Compulsory Education Law which mandates regular school attendance between the ages of six and sixteen.⁴⁵ Compliance with Florida's compulsory education law can be accomplished in four alternative ways according to Florida Statute Section 232.02.⁴⁶

Regular school attendance is the actual attendance of the pupil during the school day as defined by law and regulations of the State Board. Regular attendance within the intent of 232.01 may be achieved by attendance at:

- (1) A public school supported by public funds;
- (2) A parochial or denominational school;
- (3) A private school supported in whole or in part by tuition charges or by endowments or gifts;
- (4) At home with a private tutor who meets all requirements prescribed by law and regulations of the State Board of Private Tutors.

Although the fourth alternative allows home instruction under the guidance of a private tutor,⁴⁷ the Pohls did not claim compliance under that provision because a teaching certificate is a pre-requisite for private tutors.⁴⁸ Asserting, instead, that their home was a private school, the Pohls claimed compliance with the third provision which does not explicitly mandate certification of instructors.⁴⁹ The state argued that the Pohl teaching arrangement was similar to the private tutoring relationship contemplated in Section 232.01 (4) and, consequently, the instructors were required to be certified.⁵⁰ Circuit Court Judge Vitale

44. *Id.* and FLA. STAT. § 39.01(9)(d) (Supp. 1980).

45. FLA. STAT. § 232.01 (Supp. 1980).

46. FLA. STAT. § 232.02 (1979).

47. FLA. STAT. § 232.02(4) (1979).

48. Fla. State Bd. of Educ. Admin. Rule 6A-1.951 reads in part: "Private Tutors. Any person who tutors a child of compulsory attendance age, when such tutoring is in lieu of school attendance for the child, shall meet the following requirements: (1) He shall hold a valid Florida certificate to teach the subject or grades in which instruction is given."

49. Petitioners Brief at 1-2; Court Order at 1.

50. Petitioners Brief at 2.

held that the arrangement constituted a private school and therefore the teacher certification requirement did not apply because "[t]here are currently *no* rules or statutes regulating non-public schools in the areas of certification or education of teachers, curriculum, class loads, student assessment and many other areas. . . ." ⁵¹ To comply with the private school provision, the Pohls were required merely to: (a) maintain enrollment and attendance records, ⁵² (b) obtain certificates of immunization for their children, ⁵³ (c) instruct the children for the requisite number of hours per day and days per year ⁵⁴ and (d) file an annual data base survey with the Department of Education. ⁵⁵

The court determined that the Pohls were not strictly in compliance with the Florida Statute because Scott and Michelle were instructed only four hours per day rather than the five hours mandated by law. ⁵⁶ Notwithstanding this deficiency, it was ordered that the children could attend the Pohl Private School and the matter was scheduled to be reviewed at a later date to allow the Pohls an opportunity to enlarge their instructional hours. ⁵⁷

The state petitioned the Fourth District Court of Appeal and the oral argument focused on a frustrating effort to define "school." ⁵⁸ If the Pohl home instruction scheme had constituted a school, then it would have been difficult to deny compliance with the private school provision in the Florida statute. ⁵⁹ If the program had been merely a tutoring arrangement, then the private school provision could not have sheltered the Pohls from the teacher certification requirements applicable to private tutors under the home instruction provision. ⁶⁰

Florida's statute provides virtually no aid in defining the word "school." The state relied on the definition of "school" provided in

51. Court Order at 2. (emphasis added). Judge Vitale noted that "Florida Statute Chapter 247 which set minimum standards for private schools was repealed in 1969." *Id.* Interestingly, compliance with those standards was never mandatory.

52. FLA. STAT. § 232.021 (1979); Court Order at 2.

53. FLA. STAT. § 232.032 (Supp. 1980). Court Order at 2.

54. FLA. STAT. §§ 228.041 (13) and (16) (Supp. 1980). Court Order at 2.

55. FLA. STAT. § 229.808 (1979). Court Order at 3.

56. Court Order at 2.

57. *Id.* at 4.

58. State of Fla. v. M.M.-oral argument tapes.

59. FLA. STAT. § 232.02(3) (1979).

60. FLA. STAT. § 232.02(4) (1979).

Florida Statute Section #228.041 (5): "A school is an organization of pupils for instructional purposes on an elementary, secondary or other public school level approved under regulations of the State Board."⁶¹ The problem with this definition, according to the Pohls, is that since it is found in Chapter 228 of the Florida Statutes entitled *State Plan for Public Education* it applies only to *public* education.⁶² The Pohls, therefore, asserted that the proper definition of school is derived from Florida Statute 229.808 (2) which "defines a non-public school as one which could be run by an individual"⁶³ and "declares itself to be an educational center."⁶⁴ The difficulty with this definition is that its application is expressly limited to organization of the data base survey, a report facilitating maintenance of state records of all private schools in Florida.⁶⁵ This struggle to define the word "school" commanded the appellate court's attention and ultimately influenced the court to reverse "the final order under review in all respects save the adjudication that the minor appellees are dependent children within the jurisdiction of the family division of the circuit court."⁶⁶

Can A Home Be A School?

Several jurisdictions have struggled to define a "school" for purposes of determining compliance with compulsory education laws.⁶⁷ Their experience provides a valuable context for analyzing the Fourth District Court of Appeal's rationale in *M.M.*

Generally, two contrasting positions have emerged reflecting different viewpoints concerning the functions that schools should fulfill.⁶⁸ The first position defines a school as an organization or institution in

61. Petitioners Brief at 3. The petitioners view was consistent with a 1972 Attorney General opinion which recommended use of this definition to determine whether attendance at a private school can satisfy the regular attendance requirement. 072-90 Op. Att'y Gen 154, 156 (1972).

62. State of Fla. v. M.M.-oral argument tapes.

63. Respondent's Brief at 3.

64. State of Fla. v. M.M.-oral argument tapes.

65. *Id.*, Fla. Stat. § 229.808(2) (1979).

66. 407 So. 2d at 991.

67. See generally Annot., 65 A.L.R.3d 1222 (1975).

68. *Id.* at 1232-34; Accord Note, *supra* note 2, at 364-65.

the *business* of education.⁶⁹ Cases advocating this position often recognize the importance of group learning activities and school socialization functions.⁷⁰ The second position considers an arrangement to be a school if *learning is imparted*, regardless of the number of students involved.⁷¹ This view focuses solely on academic functions and denies

69. See *State v. Hoyt*, 84 N.H. 38, 146 A. 170 (1929) where it was held that parents cannot "make use of units of education so small, or facilities of such doubtful quality, that supervision thereof would impose an unreasonable burden upon the state" *Id.* at 41, 146 A. at 171. *Accord City of Akron v. Lane*, 65 Ohio App. 2d 90, 416 N.E.2d 642 (1979). *State v. Counort*, 69 Wash. 361, 124 P. 910 (1912) is often cited to support the proposition that home instruction by parents is not a private school. See, e.g., Petitioner's Brief at 4. Judge Morris wrote a perplexing opinion in the *Counort* case. On one hand he stated that instruction by a parent to a child regardless of the parents competency to teach is not attendance at a private school. 69 Wash. at —, 124 P. at 911. To constitute a private school "means the same character of school as the public school, a regular, organized and existing institution, making a business of instructing children" *Id.* at —, 124 P. at 911-12. On the other hand it seemed contradictory when he stated, "[u]ndoubtedly a private school may be maintained in a private home in which the children of the instructor may be pupils. This . . . is not to be determined by the place where the school is maintained, nor the individuality or number of the pupils who attend it. It is to be determined by the purpose, intent, and character of the endeavor." *Id.* at —, 124 P. at 912. The decision, denying private school status to the *Counort* arrangement seemed to turn on the state's evidence "that his two little girls could be seen playing about the house at all times during the ordinary school hours." *Id.*

70. 195 Cal. App. 2d at —, 16 Cal. Rptr. at 171; *Knox v. O'Brien*, 7 N.J. Super. 608, 72 A.2d 389 (Cape May County Ct. 1950). *Knox* was subsequently overruled by *Massa* which interpreted equivalent instruction merely to be academic equivalency and denied consideration of socialization factors. 95 N.J. Super. at —, 231 A.2d at 257.

71. 404 Ill. 574, 90 N.E.2d 213. The court, in *Levisen* agreed with the parents and held that "[a] school . . . is a place where instruction is imparted to the young . . . [and the] number of persons taught does not determine whether the place is a school." *Id.* at —, 90 N.E.2d at 215. The court reasoned that the end result is determinative rather than the manner in which the education is delivered. *Id.* See generally Comment, *Private Tutoring, Compulsory Education and the Illinois Supreme Court*, 18 U. CHI. L. REV. 105 (1950). See also *State v. Peterman*, 32 Ind. App. 665, 70 N.E. 550 (1904). In *Peterman*, the parent who hired a teacher to instruct his child at the teacher's home was in compliance with the law because "[t]his would be the school of the child . . . and would be as much a private school as if . . . conducted as such." *Id.* at —, 70 N.E. at 551. Compare 191 Kan. 701, 383 P.2d 962. The *Lowry* court held that the home instruction did not constitute a private school but also implied that the result may have been the opposite if the legislature's course of study requirements had been complied with by the parents. *Id.* at —, 383 P.2d at 965. See *State v. Superior Ct.*,

the importance of socialization at school.⁷² While both theories represent accepted descriptions of schools, distinctive ramifications are associated with each perspective. In terms of *M.M.*, if the first theory had been adopted by the appellate court, the Pohls would have had difficulty demonstrating their instructional arrangement was an organization in the business of education.⁷³ If the second theory had been embraced, then the court may have considered the Pohls' arrangement a private school because it imparted learning despite the apparent lack of socialization.⁷⁴

In *People v. Turner*⁷⁵ a California appellate court construed a statute which, like Florida's, provided a home instruction exemption to state compulsory education laws. The *Turner* court held that when children were tutored at home, parents were not entitled to use the private school provision.⁷⁶ Reading the statute's sections *in pari materia* the court concluded "the legislature intended to distinguish between private schools upon the one hand and home instruction by a private tutor . . . on the other."⁷⁷

The Fourth District Court of Appeal in *M.M.* adopted the *Turner* reasoning, concluding "[t]hat there is no statutory authority regulating the establishment of private schools in Florida does not mean that Florida parents, unqualified to be private tutors, can proclaim their homes to be private schools and withdraw their offspring from public schools."⁷⁸ The *M.M.* court applied the following canon of statutory construction to section 232.02 in support of its conclusion:

55 Wash. 2d 177, 346 P.2d 999 (1959). The Washington Supreme Court established "three essential elements of a school . . . (1) the teacher, (2) the pupil or pupils, and (3) the place or institution." *Id.* at —, 346 P.2d at 1002. Washington law required all teachers to be certified and teacher certification appeared to be the only ingredient preventing the home instruction from being a school. *Id.*

72. 95 N.J. Super. at —, 231 A.2d at 257.

73. 69 Wash. at —, 124 P. at 911-12.

74. 404 Ill. at —, 90 N.E.2d at 215.

75. 121 Cal. App. 2d 861, 263 P.2d 685 (1953).

76. *Id.* at —, 263 P.2d at 688.

77. *Id.* Judge Patrosso stated, "[i]f a private school . . . necessarily comprehends a parent or private tutor instructing at home, there was no necessity to make specific provision exempting the latter." *Id.*

78. 407 So. 2d at 990.

In the interpretation of a statute, it will be presumed that the legislature intended every part thereof for a purpose, and that it had some purpose in introducing the particular language used in an enactment. The maxim "ut res magis valeat quam pereat" requires not merely that the statute should be given effect as a whole, but that effect should be given to each of its provisions. Significance and effect should be accorded every part of the statute, if this can be done without destroying or perverting the sense or effect of the law or the general policy that dictated its enactment. In general, therefore, that construction is favored which gives effect to *every* clause and *every* part of the statute, thus producing a consistent and harmonious whole. A construction that would leave without effect *any* part of the language used should be rejected if possible.⁷⁹

To allow the private school designation to be attached to the Pohl home tutoring arrangement would have ignored this rule of statutory construction and obviously rendered Florida's home instruction provision mere surplusage.⁸⁰

Ramifications

It is possible that the Pohls' home instruction would have furnished the children an adequate education; it is even conceivable that the children's education would be superior to that afforded by public schools. However, it is important to consider that the purpose of the compulsory education statute is to insure *all* children receive a satisfactory education. If parents are permitted to claim compliance with the private school provision while instructing children at home, then many children may be deprived of educational opportunities due to the idiosyncrasies of their parents.⁸¹ For example, in *F. & F. v. Duval*

79. *Id.* (citations omitted) (emphasis added).

80. *State of Fla. v. M.M.*—oral argument tapes. To paraphrase one of the judges from the M.M. oral argument, if we were to adopt the position that home tutoring constitutes a private school then why wouldn't a private tutor simply declare the arrangement to be a school. (The judge was candidly suggesting that this would nullify the requirement in Florida that private tutors obtain teaching certificates.) *Accord* Petitioner's Brief at 5.

81. *See* 406 U.S. 205 (dissenting opinion); 391 F. Supp. 452; 404 Ill. 574, 90 N.E.2d 213 (dissenting opinion). In *Levisen*, Justice Simpson was concerned the law may "be thwarted by the whim and caprice of the many who . . . will take advantage

*County*⁸² parents instructing their children at home asserted that it was against their religious beliefs to send the children to school; they claimed compliance with the parochial school provision of Florida's statute.⁸³ The father, a self-ordained minister of the so-called "Covenant Church of Jesus Christ," believed that it was sinful to associate with Blacks and Orientals because they were the product of Eve's copulation with Satan.⁸⁴ The court found the parents not in compliance with the parochial school provision because the religion had not been recognized; this was supported by the fact that no church services were held for *other* people.⁸⁵ This distinction is significant when comparing *F. & F.* to *Yoder*. Even though both cases ostensibly involve religious practice, only in *Yoder* was the claim legitimately grounded in the free exercise clause of the First Amendment. In cases not legitimately based on the free exercise clause, however, there is no guarantee that an exemption from state law will be granted.⁸⁶ There is an "ancient Rabbinic principle first laid down by the Babylonian Jewish Scholar Samuel, and known as *dina de-malkhuta dina*, . . . the law of the country is binding and in certain cases is to be preferred."⁸⁷ This principle describes the course taken by United States courts, which recognize one's right to hold any belief; but when those beliefs lead to practices interfering with the rights or welfare of others, the courts support the state's authority to intervene.⁸⁸

The *F. & F.* court found it unnecessary to consider whether the instructional arrangement could be a private school because the parents only claimed compliance with Florida's school attendance law as a home tutoring arrangement and a parochial school.⁸⁹ This is important because a decision sanctioning the Pohl Private School in *M.M.* would have established a dangerous precedent enabling bizarre situations, as

of the situation. . . ." *Id.* at ___, 90 N.E.2d at 216.

82. 273 So. 2d 15.

83. *Id.* at 17-18.

84. *Id.* at 18.

85. *Id.*

86. *State v. Garber*, 197 Kan. 567, 419 P.2d 896 (1966).

87. *State v. Faith Baptist Church*, 207 Neb. 802 at ___, 301 N.W.2d 571 at 581 (1981) (concurring opinion).

88. 197 Kan. 567 at ___, 419 P.2d 896 at 901; 294 N.W.2d at 888.

89. 273 So. 2d at 17-18.

illustrated by *F. & F.*, to achieve compliance with Florida's private school provision. Moreover, judicial endorsement of such a policy would have undoubtedly resulted in a deluge of public school withdrawals. Many parents, like the Pohls, who are disgruntled with school busing could have used this precedent to thwart school board efforts to effectuate racial integration. Similarly, whenever school policy disputes arise, withdrawals would be encouraged without concomitant assurances that parent-furnished educational alternatives are adequate. In *M.M.* the court adopted a common sense approach recognizing that the Pohl Private School does not fit within the generally accepted meaning of "school."

It is this author's view that the *M.M.* court, by adhering to the teacher certification requirements of the home instruction provision in Florida's statute, wisely avoided opening the proverbial floodgates. Unfortunately, the decision did not fill the void in Florida's compulsory education statute by precisely prescribing the characteristics necessary for an instructional arrangement to be considered a school for purposes of the private school provision. This clearly would have usurped the legislature's power; thus the court elected not to intrude into the legislature's domain. The decision seems narrowly restricted to the facts of the case and it is unclear what result will follow when parents assert private school status by commencing instruction in a clubhouse, garage or storefront with an expanded number of pupils. The question is likely to be presented in the near future since "[s]chool officials [in Broward County] [estimate] that parents of about 30 to 40 students have been following the Pohls' example of keeping their children home or in makeshift private schools to protest busing."⁹⁰

What are the minimum characteristics necessary for an educational facility to be considered a private school? Consider the present arrangement of a Broward County storefront school, housed in Bay X of the North Lauderdale Square Shopping Center. It is called The North Lauderdale Academy and it may very well become the next battleground in the compulsory education arena.⁹¹ This arrangement was

90. Miami Herald, Dec. 17, 1981 § A at 1, col. 1. The "director of student welfare and attendance, said truant officers have found about 60 children this year who are being taught at home by parents." Fort Lauderdale News, Dec. 17, 1981 § B at 1, col. 5.

91. Miami News, Dec. 15, 1981 § B (Lifestyle), at 1-2, col. 2.

born from the same busing controversy as the Pohl Private School and after an unsuccessful first attempt, the storefront school has been operating for several weeks.⁹² The curriculum is provided by the University of Nebraska's High School Independent Study Program.⁹³ Although student enrollment has fluctuated, there are presently fifteen pupils attending the Academy with expectations of additional students in the future.⁹⁴ The program's supervisors are not certified teachers in the State of Florida although two of them have experience in education and one holds an out-of-state expired teaching certificate.⁹⁵ Under the University of Nebraska's independent study program, however, "[s]upervisors are not teachers of courses offered through the Independent Study High School, and to serve effectively, need not have the background to help students with the subject matter in the courses."⁹⁶ The local supervisors are merely monitors or administrators and primary instruction is provided by correspondence with teachers at the University of Nebraska.⁹⁷

Don Samuels, a member of the Broward County School Board, has argued that the North Lauderdale Academy "[i]n the long run, . . . will hurt the kids."⁹⁸ Development of social skills may be hampered if these children are deprived of the opportunity to interact and mature with their peer group.⁹⁹ Due partially to the school's infancy and also to the nature of the endeavor, the facilities and equipment are below par. Yet, while social interaction and adequate facilities are desirable, they are presently of little consequence in determining compli-

92. *Id.* at 2B; Personal Interview with North Lauderdale Academy supervisor, Penny Kaufman.

93. University of Nebraska-Lincoln Division of Continuing Studies. Independent Study High School Bulletin Series 82, No. 10 (1981-82).

94. Miami News, Dec. 15, 1981 § B (Lifestyle), at 1-2, col. 2.

95. Personal interview with North Lauderdale Academy supervisor Penny Kaufman.

96. University of Nebraska-Lincoln Division of Continuing Studies, *supra* note 93, at 6.

97. *Id.* at 6-7.

98. Miami News, Dec. 15, 1981 § B (Lifestyle), at 1-2, col. 2.

99. *Id.* Jim Augustyn, the interim Principal at the University of Nebraska's Independent High School Program admits "they'll have to pick up their socialization skills on the outside somewhere, and there won't be the spontaneous give and take between teacher and pupil that you'd see in a normal school." *Id.*

ance with Florida's statute.¹⁰⁰ Other questions are presented by the establishment of the North Lauderdale Academy. First, does this arrangement fall within the private school provision which does not mandate teaching credentials, or under the home education provision subject to teacher certification requirements? Second, are state certification requirements complied with when children are enrolled in correspondence courses similar to the University of Nebraska Independent Study Program? These questions have not yet been litigated in Florida and it is urgent for the legislature to address the issues during the present session.

Recommendations

M.M. has pointed out alarming shortcomings in Florida's compulsory education statute. There are virtually *no* minimum standards assuring citizens of Florida that the quality of education at private schools will be acceptable.¹⁰¹ Furthermore, founders of new private schools appear uncertain of what minimum standards should be achieved to comply with Florida's private school provisions.¹⁰² It is true that many private schools maintain high standards, but at the same time it is possible that some private schools are substandard and detrimental to student welfare. Understandably, regulations imposing all public school standards upon the private schools are unreasonable because the distinctiveness of private schools would become blurred.¹⁰³ It is also recognized that any possibility of mass state indoctrination of our youth through the schools should be avoided. However, as stated earlier, the right of the state to *reasonably regulate* education is unquestioned¹⁰⁴ and adoption of minimum standards would upgrade or

100. The Florida Statutes make no mention of social interaction or facilities with reference to private educational programs.

101. Court Order at 3.

102. Interview with North Lauderdale Academy supervisor Penny Kaufman.

103. 47 Ohio St. 2d at —, 351 N.E.2d at 768. *Accord* 589 S.W.2d 877. "[T]o say one may not be compelled to send a child to a public school but the state may determine the basic texts to be used in the private . . . schools is but to require that the same hay be fed in the field as is fed in the barn." *Id.* at 884.

104. 406 U.S. at 213; *Accord* *Lemon v. Kurtzman*, 403 U.S. 602 (1971). "A state always has a legitimate concern for maintaining standards in all schools it allows to operate." *Id.* at 613. *But cf.* 589 S.W.2d at 883 n.9. "State controlled homogeneous

eliminate the substandard private schools without burdening those schools already maintaining acceptable standards.

Both the circuit court and the Pohls claimed the legislature intended *not* to regulate or control non-public schools.¹⁰⁵ The legislature, however, did not intend to prohibit all regulations as illustrated by state requirements concerning the number of mandatory school days and hours for compliance with compulsory attendance laws.¹⁰⁶ This is also substantiated by the standards established for non-public colleges and all independent post-secondary vocational, technical, trade and business schools.¹⁰⁷ These standards exist to "protect" the student from deceptive, fraudulent or substandard education.¹⁰⁸ They are not "intended to regulate the stated purpose of a nonpublic college [or post-secondary school] or to restrict any religious instruction or training in a nonpublic college [or post-secondary school]."¹⁰⁹ It is difficult to understand why students in private elementary or secondary schools are not in need of the same protections provided students in private colleges or post-secondary schools.

It is time to establish minimum standards for *all* schools in Florida, and teacher certification should be one of the first requirements adopted. To this former teacher it is incredible that presently there is no certification requirement for those teaching in private schools. Although it has been argued that certification will not guarantee the competency of teachers, it will certainly provide one way to increase the likelihood that teachers are qualified to instruct our children.¹¹⁰

To become a certified teacher in Florida, one must have earned a four-year college degree which includes an emphasis on professional preparation in teaching.¹¹¹ In addition, the Department of Education

schools have provided a fertile field for the growth of totalitarian governments." *Id.*

105. Court Order at 3. *State v. M.M.*—oral argument tapes.

106. FLA. STAT. § § 228.041 (13) and (16) (Supp. 1980).

107. FLA. STAT. § 246.011 (Supp. 1980); FLA. STAT. § 246.201 (1979).

108. FLA. STAT. § 246.011(3) (Supp. 1980).

109. FLA. STAT. § 246.011(4) (Supp. 1980).

110. 294 N.W.2d at 894.

111. Fla. State Bd. of Educ. Admin. Rule 6A-4.04 reads in part:

(2) Regular Certificate. The regular certificate shall be valid for 5 years and may be issued to an applicant who has met the following requirements:

(b) Holds an earned acceptable four-year bachelor's or higher

requires new teacher-applicants to demonstrate specific competencies by means of a written examination.¹¹² The teacher must be competent to write in understandable style, interpret professional material, understand basic mathematics and comprehend patterns of child development.¹¹³ These qualifications are essential if Florida is to achieve a satisfactory standard of education. Finally, the state should also adopt minimum curriculum requirements insuring students in all schools that they will be instructed in those fundamental areas needed for functioning in society.¹¹⁴

degree or a foreign degree that required twelve (12) years of pre-university education combined with four (4) years of higher education. . . .

(c) Has an acceptable major in a single certification subject . . . or has met the specialization and professional preparation requirements for that subject. . . .

112. Fla. State Bd. of Educ. Admin. Rule 6A-4.021 reads in part: Florida Teachers Certification written examination.

(2) Examination required.

(a) Each applicant who applies for a full-time Florida teaching certificate and who does not currently hold a valid regular certificate in the State of Florida shall be required to present a passing score on each sub-test of the Florida Teaching Certificate Examination. . . .

(3) Description; competencies.

(c) The following competencies are to be demonstrated by means of the written examination;

1. The ability to write in a logical and understandable style with appropriate grammar and sentence structure.
2. The ability to read, comprehend, and interpret professional and other written material.
3. The ability to comprehend and work with fundamental mathematical concepts.
4. The ability to comprehend patterns of physical, social and academic development in students, and to counsel students concerning their needs in those areas.

113. *Id.*

114. State of Fla. v. M.M.-oral argument tapes. The necessity for minimum curriculum requirements was apparent from part of the dialogue which occurred at the M.M. oral argument.

Judge: "Supposing the Pohls are illiterate, does that make any difference?

Attorney: "No Sir, not according to the law as we find it now."

Judge: "If all they do for 5 hours a day is teach tennis, does that make any difference?"

Conclusion

M.M. has revealed serious defects in Florida's compulsory education laws. If the Florida legislature "dropped the ball,"¹¹⁵ it is time to recover the fumble. Minimum standards for all Florida schools must be established to guarantee that *no* child is deprived the opportunity to obtain an adequate education.

*Gary E. Sherman**

Attorney: "According to the minimum requirements which have been set up by the State Board of Education . . ., anyone attending a non-public school complies with compulsory attendance laws . . . by attending for 180 school days. They do not establish the curriculum or that the teachers have to be certified."

Judge: "What does your position do with the supposed legislative intention that we shall have compulsory education in this state? Devastates it, does it not?"

Attorney: "Compulsory attendance may be achieved in one of four ways. Number 3 is private school."

Judge: "You need not have a teacher and you need not educate!"

Attorney: "No Sir, it is the legislature that has *dropped the ball* if anybody, not this court or not the lower court. The lower court can only rule by what the law is as we find it."

115. State of Fla. v. *M.M.*-(oral argument tape).

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