
North Carolina's Educational Wall of Separation

BY HAL YOUNG

In a little-seen corridor of the Department of Administration in Raleigh, North Carolina, near the state ethics board and just around the corner from the Office of Historically Underutilized Businesses (no joking), there is an office that represents a unique turn in state law. The compact quarters of the Division of Non-Public Education (DNPE) are the state's only connection with private, religious, and home schools. That's because, unlike many states, North Carolina effectively separates the public schools and competing educational alternatives, whose independence is a key to their success.

Before the 1970s private education in North Carolina was under the care of the public-school system, first the local school boards and later the state Department of Public Instruction (DPI). With the 1954 *Brown v. Board of Education* decision opening the doors to integration, the state General Assembly passed a bill known as the Pearsall Act to provide vouchers for families to attend nonpublic schools. Since tax money would be flowing toward private institutions, the legislature instituted new standards, supervision, and inspection mechanisms to look after the taxpayers' investment.

The state board appointed a supervisor of nonpublic schools in 1961. The next year the office produced the first "Directory of Non-Public Schools," listing schools both secular and sectarian and ranging from one-teacher operations with five students to a Catholic school with an enrollment approaching 700. Some, like the latter, are still in operation today.

While the voucher provision was never activated and was finally repealed in 1969, the state's new regulations—requiring approval of curriculum, stipulated class sizes, and teacher certification, for example—remained. According to the statute, the state board of education

would "always protect the right of every parent to have his children attend a non-public school by regulating and supervising all non-public schools." This laid the foundation for a small revolution.

It was the rise of Christian schools that brought about a break with DPI. Propelled by a number of considerations, some admittedly more noble than others, private and church-sponsored schools began to proliferate across the country in the 1970s. In North Carolina the state law's provision requiring approval of curriculum became a sticking point for many of the new schools. They correctly contended that the state, a secular authority, had no business passing judgment on privately funded Christian education, which they saw as an expression and logical working out of their religious beliefs.

Although legislative hearings through the early 1970s stirred great interest, there was no legislative solution in place in 1977, when the time came for annual filings by the private schools. That year a number of Christian schools refused to file on the grounds that the state could not intrude into church ministries in that manner. After several months of discussion with no resolution in sight, the state board of education gave the noncompliant schools 21 days to file, then in April 1978 opened a class-action suit, *North Carolina v. Columbus Christian Academy et al.*

A pretrial hearing in Raleigh that spring drew over 5,000 demonstrators in support of the nonpublic schools; other gatherings in the capital attracted upwards of 1,000. While the action was in court, the 1979 session

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of the legislature considered two bills that passed both houses by sizable majorities. The combination of SB 383, the so-called Christian school bill, and SB 586, a nearly identical bill addressing independent schools, created a separate statute for nonpublic schools that removed most of the earlier regulations and restrictions.

Perhaps most critically, the resulting act, Article 39 of chapter 115C, took the Division of Non-Public Education out of the Department of Public Instruction and placed it under the governor.

There it remained until 1998, when a reorganization moved DNPE to the Department of Administration.

The spread of home education reopened some aspects of the debate. Interested families sought to teach their children under the nonpublic-school law by filing with the state as small private schools. Almost immediately after the 1979 statute passed, the state attorney general ruled that a home school did not meet the requirements of the compulsory-attendance statute, and DNPE accordingly took exception to the practice, although traditional nonpublic schools with as few as three students had been approved in the past.

Two cases brought the matter to a head. In 1982 the Duro family of Tyrell County first won, then lost, a suit in federal court (*Duro v. District Attorney*), claiming that compulsory attendance at schools that contradicted their Christian beliefs was abuse of their family's expression of religion. The Fourth Circuit Court of Appeals found that the state's interest in education overruled the family's First Amendment claims; according to the court, the "state demonstrated an interest in compulsory attendance which [was] of sufficient magnitude to override Duro's religious interest."

However, the situation improved when Larry Delconte's case was decided in the state Supreme Court. Delconte, a Harnett County father who began homeschooling his oldest son in his native New York, was denied recognition by DNPE in 1981. Truancy charges from Harnett County, later dropped, brought about his lawsuit, *Delconte v. North Carolina*. The Supreme Court overturned lower-court rulings in its 1985 decision for the Delcontes. The verdict recognized home education as legitimate under the existing law, but suggested the legislature look into the lack of a specific statute governing homeschooling.

North Carolinians for Home Education

During that time several dozen families already quietly homeschooling met at an out-of-state conference and formed North Carolinians for Home Education (NCHE) in 1984 to work toward a better legal situation. Their work began in earnest when the Department of Public Instruction responded to the *Delconte* decision with a call for local superintendents to help shape the needed legislation, expressing a need for legislators "to understand that the present situation is not in the best interests of children."

The legislation introduced in 1987 sought to impose many of the same restrictions on home education that had been taken off the private schools—approval and review by local school officials, specified coursework and schedules, and degree requirements for parent-teachers.

Following a busy season of legislative hearings, newspaper editorials—many of them hostile to the idea—and vigorous grassroots lobbying by NCHE, the General Assembly added the homeschooling option to Article 39 as "part three" (religious schools being part one and independent schools recognized under part two). Requirements for health and safety inspections were waived; as absurd as it appears, fire marshals had actually required homeschooling families to install "EXIT" signs over the exterior doors in their living room, and at least one health department directed a family to install a floor drain to facilitate cleaning their home's bathroom.

Since that time, North Carolina has seen a population of a few hundred homeschooled students in 1987 swell to over 60,000 in 2005. In 2004 NCHE estimated that some 3.8 percent of schoolchildren in the state were being taught at home; in some counties, the number approached 10 percent.

Homeschoolers in particular have found it necessary to maintain watch over the wall between DPI and DNPE. On several occasions legislation has been introduced that would bring some measure of public-school oversight to nonpublic education. Often it has taken the form of programs to reduce dropouts and violence in the public schools, but contains language that fails to recognize the independence, autonomy, and downright difference of nonpublic education.

The idea of folding DNPE back into the Department

of Public Instruction has never truly gone away. Just this year, NCHE and the North Carolina Christian Schools Association received advance warning that the governor's office was quietly proposing such a move during the budgetary process. A 24-hour e-mail blitz and intensive lobbying brought an apology from the governor's office and agreement to protect their existing, 25-year-old independence. It was a close call, though.

Efforts by public-school officials to investigate truancy complaints, an enforcement duty clearly in their jurisdiction, has led to more or less intrusive inquiries and requests for information. Even long-time homeschoolers, including a NCHE vice president, have received letters requesting data on children and families for collection by local school districts. The NCHE and the Home School Legal Defense Association have regular contact with public-school officials to help them understand the boundaries of the law, which, given the schools' enforcement responsibilities, they might be expected to understand better.

Boundaries Blurred More

Expansion of online programs such as virtual charter schools and home-based high-school classes, more so in other states but starting in North Carolina as well, is threatening to blur the boundaries further. The issue of educational tax credits as opposed to vouchers and the legal differences between public-school students outside their classrooms and parent-taught homeschoolers are regular topics of discussion within the homeschooling community.

Even the terminology is guarded. Concepts such as "registration," "certification," and "approval," harking back to older authorities, are turned aside in favor of the simple declaration of a protected right, embodied in the state's "Notice of Intent to Operate a Home School." As a statutory matter, no further permission is necessary.

Meanwhile, nonpublic education has grown to nearly 10 percent of North Carolina's school-aged population. Without government assistance or funding, private and Christian schools have thrived, homeschool support groups have flourished, and a rich assortment of services and opportunities comparable to any offered in the government realm have grown to cover the state. It is a unique success story, also, not only in educational choice, but in the continual fight for civil liberties. That independence is the touchstone for nonpublic education in North Carolina.

In *Democracy in America*, Alexis de Tocqueville wrote that a distinction of American society is the associations of private citizens, undertaking all manner of important projects, whether influencing governmental policy, improving their local communities, protecting their economic interests—or educating their children:

The citizen of the United States is taught from his earliest infancy to rely upon his own exertions in order to resist the evils and the difficulties of life; he looks upon social authority with an eye of mistrust and anxiety, and he only claims its assistance when he is quite unable to shift without it. . . . [I]n the United States associations are established to promote public order, commerce, industry, morality, and religion; for there is no end which the human will, seconded by the collective exertions of individuals, despairs of attaining.

The successful efforts of ordinary North Carolinians to defend their independence from government intrusion, from the initial separation of private education (itself a network of associations) and government schools to the ongoing maintenance of that distinction by homeschoolers and private educators alike, is a testimony to the power of that ideal. 