

Washington...



Candidates Share Views on Private Education, II

The following is a continuation of presidential candidates' answers to CAPE's questions on issues of interest to private education. Last month's *Outlook* excerpted the responses of candidates Jimmy Carter, George Bush and Ronald Reagan. Below are extracts from the replies of candidates John Anderson and Edward Kennedy.

Private education's role in contributing to the improvement of all education and in reflecting the democratic nature of our society:

Anderson: "Private education provides a diversity in American education. Since it fulfills a useful service and need for many people, it should be preserved as a high quality alternative for Americans, contributing to raising the standards of public education in the U.S."

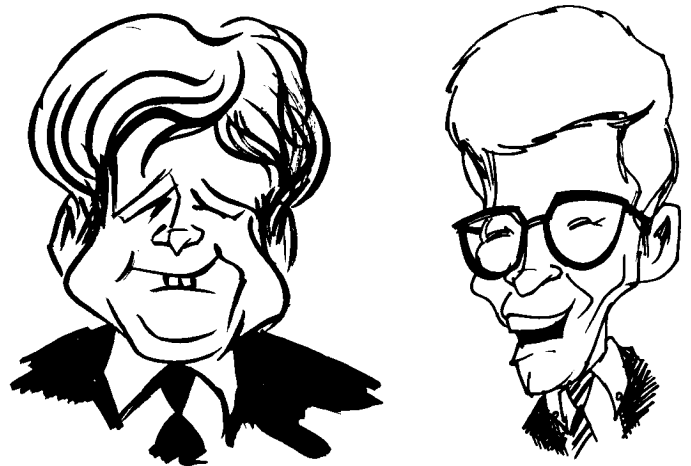
Kennedy: "Private schools have made a tremendous contribution to this nation. . . . Alternatives to our public system of education are essential, for they serve as models of educational diversity, experiment and innovation, and prod our public schools away from conformity and mediocrity. Private schools are necessary to insure the continuing strength of this nation's cultural diversity and deep religious roots; it is this continuing pluralism that makes democracy desirable."

Public aid to private education, in principle and form:

Anderson: "I am reluctant to favor appropriating public funds to private education, although I have gone to bat for private education in the past. The distinct nature of private education should neither be muted nor altered, thereby preserving its independent status. Furthermore, I have testified against IRS regulations which set up, in effect, a

quota system, establishing a certain percentage of minority students who must be admitted to private schools. . . . I oppose tuition tax credit."

Kennedy: "I favor constitutionally permissible aid to private schools which are advancing federally mandated goals of equal opportunity education. Public aid to private education must be carefully administered to insure that there is no violation of the spirit of the establishment clause of the First Amendment. However, the public must recognize that the continuing strength of private alternatives is essential to the health of our basic public system of education. . . . I do not favor tuition tax credits at this time. I would be interested in a program of tuition tax credits which does not amount in effect to a subsidy for the wealthy, but I have not yet seen such a program."



National youth service, registration and draft:

Anderson: "I intend to investigate the National Youth Service. Presently, I am not a proponent. . . . I am against registration and compulsory military service. A citizen's right to choose to serve his or her country is a most laudable aspect of democracy."

Kennedy: "I think it is time to investigate the establishment of a voluntary National Youth Service Corps to perform significant, needed community and national service tasks. . . . I oppose peacetime registration for the draft. The program proposed by President Carter is a symbolic and dangerous attempt to manipulate public opinion."

OSHA and Private Schools

Private school employees and the Occupational Safety and Health Administration must be allowed access to school medical and toxic exposure records beginning August 21, 1980, by virtue of a final standard announced by the Labor Department on May 21. Assistant Secretary Eula Bingham said the rule will enable workers to become involved in their own health management by providing them "with exposure [data] and medical information that they can use to detect, treat and prevent occupational disease. . . [and enabling them] to obtain vital information which previously has been locked away in employers' files."

The new standard applies to all general industry, construction and maritime employers subject to the Occupational Safety and Health Act of 1970. Private schools are considered "general industry," inasmuch as they meet OSHA's definition of "employer" as someone "with one or more employees who is engaged in interstate commerce." Interpreting the commerce clause broadly, OSHA construes school purchase of out-of-state textbooks, films, equipment or supplies as evidence of such trade.

The rule requires no new recordkeeping for employers. The Assistant Secretary stated, "It simply outlines the conditions under which records that employers voluntarily create are to be maintained and made available to employees, their representatives and OSHA."

OSHA's Office of Information and Consumer Affairs will answer questions about the relationship of the standard to private schools. Contact James E. Foster, Chief, Division of News Media Services, OSHA, Dept. of Labor, Room N36-37, Washington, D.C. 20210 (202-523-8151).

Kentucky Ruling Prevails

The U.S. Supreme Court has refused to review the Kentucky Supreme Court's decision prohibiting the state from setting educational standards for private schools. (*Outlook*, April 1980, p.3.)

The Court denied petition for *certiorari* on May 12 in the case of *Kentucky State Board of Elementary and Secondary Education v. Rudasill*. Therefore, the decision of the Kentucky court stands.

Legislative Update

Tuition Tax Credits

More than 50 bills have been introduced. Illustrative is H.R.366 (Gradison, R-OH *et al*), pending before House Ways and Means Committee.

S.1095 (Moynihan, D-NY and Packwood, R-OR) is pending before Senate Finance Committee.

Student Loans

H.R.5192 (Education Amendments of 1980) passed House November 7, 1979, with no provision for loans to parents of secondary school students.

S.1839 (Higher Education Amendments of 1980) reported by Committee on Labor and Human Resources April 30 with no provision for loans to parents of secondary school students. Bill will be considered by Committee to discuss possible amendment and may reach Senate floor by end of June.

Basic Educational Opportunity Grant Program

H.R.5192 (see above) did not extend BEOG program to elementary/secondary school students.

S.1839 (see above) reported by Committee on Labor and Human Resources April 30 with no provision for grants to elementary/secondary school students. May reach floor by end of June.

Youth Act of 1980

H.R.6711 (Perkins, D-KY)

S.2385 (Williams, D-NJ *et al*)

See March *Outlook* for bill descriptions.

House bill reported out of Rules Committee June 10.

Title II of Senate bill (education portion) will have hearing before Senate Subcommittee on Education, Arts and Humanities June 17-18.

School Finance Panel

H.R.6480 (Perkins, D-KY)

To repeal authorization of school finance studies, finance panel and state equalization analysis.

Pending before Subcommittee on Elementary, Secondary and Vocational Education.

Appropriations Subcommittee on Labor-HEW held hearings on request for reprogramming of funds May 29.

Regulatory Reform

H.R.3263 (Rodino, D-NJ)

S.2147 (Culver, D-IA); S.299 (Culver, D-IA); and S.262 (Ribicoff, D-CT)

To establish "tiered" compliance and reporting requirements, taking into account the relative impact of regulation on organizations of varying sizes.

House bill marked up by Judiciary Committee in April and May and is still pending before the Committee awaiting further markup.

Senate bills have been reported out by Judiciary Committee May 7 (S.2147; S.299) and Governmental Affairs Committee April 3 (S.262) and are awaiting committee reconciliation prior to floor action.

Assistant Secretary for Private Education

H.R.6289 (Guarini, D-NJ)

Pending before House Elementary, Secondary and Vocational Education Subcommittee.

Office of Nongovernmental Education, to be headed by Assistant Secretary of Nongovernmental Education.

S.2205 (Moynihan, D-NY)

Pending before Senate Governmental Affairs Committee with no action scheduled.

International Education Programs

To move such programs from National Defense Education Act to Higher Education Act.

H.R.5192, Title VI passed House November 7, 1979.

S.1839, Title VI reported by Labor and Human Resources Committee April 30.

Testing

H.R.4949 (Weiss, D-NY *et al*)

H.R.3564 (Gibbons, D-FL)

See March *Outlook* for bill descriptions.

House Elementary, Secondary and Vocational Education Subcommittee held hearings on H.R.4949 June 5 and 11; H.R.3564 still pending before the Subcommittee.

Asbestos in Schools

H.R.3282 (original version passed House December 13); House passed Senate version May 30

S.1658 (Javits, R-NY) passed Senate May 22

Bill awaiting Presidential action.

Charitable Deductions to Extend to Non-Itemizers

H.R.1785 (Fisher, D-VA and Conable, R-NY)

S.219 (Packwood, R-OR and Moynihan, D-NY)

House bill pending before Ways and Means Committee with 227 co-sponsors.

Senate bill pending before Finance Committee with 42 co-sponsors.

Presidential Commission on National Service

H.R.6868 (Panetta, D-CA)

S.1843, Title II (Tsongas, D-MA)

Hearings held on House bill June 4 by Select Education Subcommittee; bill also pending before Military Personnel Subcommittee.

Senate bill expected to reach floor by end of June.

Sunset Review

H.R.5858 (Long, D-LA)

S.2 (Sasser, D-TN)

See March *Outlook* for bill descriptions.

House bill pending before full Rules Committee.

Senate bill scheduled for markup by Governmental Affairs Committee June 11.

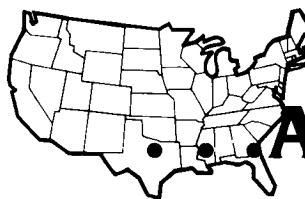
Capenotes

...The Tax Division of the Treasury Department has recently responded to the CAPE organization lawyers' presentation on Revenue Ruling 79-99. The Division's draft of new language for the Ruling will be reviewed by our attorneys. The determination is of vital import to all of private education since it affects the deductibility of gifts to private schools.

...At the request of the Presidential Commission on Options in the 80's, CAPE has submitted a statement on prospects for private education in the decade ahead. An article on this topic was written by Executive Director Robert L. Smith for *Lutheran Education*.

...The Executive Director presided over and addressed NCEA's May Technical Assistance Workshop for Private School Administrators in Hawaii.

...CAPE has submitted a proposal to the Department of Education to fund a study of minority enrollment and staffing in private schools.



And Beyond

Prove Nondiscrimination or Lose Tax-Exempt Status

Mississippi private schools, including church-related schools, must give clear and convincing evidence that their policies and practices are not discriminatory. In the absence of such proof offered by the end of the summer, their tax-exempt status is to be revoked by the Internal Revenue Service.

The Order and Permanent Injunction setting forth these conditions and consequences was issued on May 5 by U.S. District Court Judge George L. Hart, Jr. in the case of *Green v. Miller*. It supplants a 1971 decree and enjoins the Secretary of the Treasury and the Commissioner of Internal Revenue "from according tax-exempt status to, and from continuing the tax-exempt status now enjoyed by, all Mississippi private schools or the organizations that operate them, which have been determined in adversary or administrative proceedings to be racially discriminatory; or were established or expanded at or about the time the public school districts in which they are located or which they serve were desegregating, and which cannot demonstrate that they do not racially discriminate

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in admissions, employment, scholarships, loan programs, athletics, and extra-curricular programs."

To overcome the "inference of present discrimination against blacks," schools could offer "proof of active and vigorous recruitment programs to secure black students or teachers, including students' grants in aid; or proof of continued, meaningful public advertisements stressing the school's open admissions policy; or proof of meaningful communication between the school and black groups and black leaders within the community concerning the school's nondiscrimination policies, and any other similar evidence calculated to show that the doors of the private school and all facilities and programs therein are indeed open to students or teachers of both the black and white races upon the same standard of admission or employment."

The issuance of Judge Hart's Order raises a problem of governmental checks and balances. Since Congress amended the 1980 Treasury Department Appropriations Act specifically to prohibit the IRS from revoking the tax-exempt status of discriminatory private schools, some observers claim that the court order goes beyond judicial prerogative and overturns an act of Congress. Others assert that the federal court has simply produced the "further guidance sought by Congress" in its appropriations amendment. The Justice Department is determining "how to comply with the Order and whether it is necessary to appeal it."

Although the Order at hand is limited to Mississippi, a similar case, *Wright v. Miller*, is pending in the U.S. Circuit Court of Appeals for the District of Columbia. Because *Wright* is a nationwide class-action suit, its settlement will have ramifications for the entire country.

Yes Games, No Crayons

The State of Minnesota may lend its private school students published materials, photographs, prerecorded video programs and tapes, desk maps, games, film strips, prepared slides and other instructional materials, according to the terms of the recently promulgated Individual Instructional Materials Act.

It may not lend such items as pencils, pens, crayons, notebooks, chemicals, wall maps, blackboards, duplicating fluid and paper, and blank tapes.

The distinction between what is allowable and what is impermissible can be categorized in three ways: the items may not be consumable (thus not returnable); they may not be blank (thus available for religious use); and they may not be suitable for

large-group use (thus of benefit to the borrowing school rather than its individual students).

The law was drafted to comply with the Supreme Court's 1977 decision in *Wolman v. Walter* in which the loan of instructional materials to private schools was held unconstitutional. In a concurring opinion, however, Justice Powell added that he "would find no constitutional defect in a properly limited provision lending [materials] to . . . individuals themselves. . . ."

Under the new law, local school districts purchase the materials (\$465,000 is available for this purpose next year) and lend them to the schools. The state department of education must guarantee that the items are "secular, neutral, nonideological and . . . incapable of diversion for religious use." Moreover, the statute stipulates that the articles ". . . shall not be used in religious courses, devotional exercises, religious training or any other religious activity."

Capeline



... a Medieval
footsoldier's helmet

- **Washington Private Schools:** A representative of private schools may now serve as a nonvoting member of Washington's state board of education. According to SB 3321, recently passed by the state legislature, this member will be elected by the directors of the state's private schools.

- **Mathematics and Organizational Processes Grants:** Mid-August deadlines for National Science Foundation/National Institute of Education projects to improve the "teaching and learning of mathematics anticipating information technology [of the] 1980's" and to "fill gaps in knowledge about why schools work the way they do." Space prohibits detail; write CAPE for information.

OUTLOOK is published monthly (September through June) by the Council for American Private Education. Annual subscription \$6. Council members: The American Lutheran Church • American Montessori Society • The Association of Evangelical Lutheran Churches • Association of Military Colleges and Schools of the U.S. • Christian Schools International • Friends Council on Education • Lutheran Church-Missouri Synod • National Association of Episcopal Schools • National Association of Independent Schools • National Association of Private Schools for Exceptional Children • National Catholic Educational Association • National Society for Hebrew Day Schools • Seventh-day Adventist Board of Education, K-12 • Solomon Schechter Day School Association • U.S. Catholic Conference. Associated state organizations in Arizona, California, Connecticut, District of Columbia, Florida, Georgia, Indiana, Kansas, Maryland, Michigan, Minnesota, Missouri, Montana, New Mexico, Oregon, Puerto Rico, Tennessee, Virginia, Washington, and Wisconsin.

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