

# CAPE OUTLOOK



the basic requirements for the equitable sharing of benefits between public and private school children but to make the necessary changes in these provisions to strengthen and clarify the obvious Congressional intent that all school children be treated equally."

## Church Schools Exempt From FUTA

### Congress Enacts Block Grant Law

The Education Consolidation and Improvement Act recently passed by Congress emphasizes the legislature's intent to serve both public and private school needs while giving increased control to state and local school districts.

This legislation, which merges more than 25 programs, includes a separate, simplified version of Title I. Minority and handicapped programs are excluded. The Act provides for comparable treatment of public and private school children. It also requires that all the by-pass provisions of the laws consolidated under it remain in force. Failure to comply results in the rescinding of state funds by the Secretary of Education until legislative conditions are met.



The Supreme Court has decided that church schools which have no separate existence apart from the church or "convention or association of churches" that operate them do not have to pay unemployment taxes. It arrived at its decision by interpreting the Federal Unemployment Tax Act and its amendments, thereby avoiding a judgment on the constitutional issue of whether the payment of such taxes by church schools would constitute a violation of separation of church and state. "From our reading of the legislation and of its history," the Court said, "we conclude that the only reasonable construction of 26 U.S.C. §3309(b)(1) is one that exempts petitioners' church-run schools, and schools similarly operated, from mandatory state coverage."

The Court's decision, issued on May 26, 1981 in the case of *St. Martin Evangelical Lutheran Church et al v. South Dakota*, coupled with its decisions in early June to let stand two lower court rulings of similar outcome (*Donovan v. Alabama and Nevada* and *Louisiana Department of Labor v. Roman Catholic Church et al.*), ended a period of confusion created by the large number of prior conflicting federal and state decisions.

At issue was the interpretation by the Carter Administration's Secretary of Labor, Ray Marshall, of Congressional action taken in 1976 to broaden FUTA coverage. Marshall had contended that the deletion from the Act of §3309(b)(3), exempting "... a school which is not an institution of higher education," required coverage of services performed in all elementary and secondary schools, including church schools. He said that the remaining exemptions applied only to "those strictly church duties performed by church employees pursuant to their religious responsibilities within the schools." He further narrowed the possibilities for exemption by restricting his definition of "church" to a physical house of worship.

The block grant encompasses such programs as basic skills, metric education, arts education, aid to school libraries and school management, and community school aid. In addition, vocational and adult education and alcohol and drug abuse programs, which were to be liquidated in 1982, are extended until 1984.

Frank Monahan of the U.S. Catholic Conference says of the legislation: "I think it is noteworthy that the Congress has once again seen fit in this most significant revision... not only to maintain

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The Supreme Court disagreed, however, saying "...the repeal of §3309(b)(3) did not alter the meaning of §3309(b)(1)." It also said that "to hold 'church' synonymous solely with a physical building that is a house of worship contradicts the phrasing of the statute. The word 'church' in §3309(b) must be construed, instead, to refer to the congregation or the hierarchy itself, that is, the church authorities who conduct the business of hiring, discharging, and directing church employees."

The Court concluded that when Congress repealed the exemption for a school "which is not an institution of higher education," it intended to remove the exemption for secular educational institutions, particularly public elementary and secondary schools, but to continue exemptions for schools "that have no separate legal existence from a church or 'convention or association of churches.'" Employees of the schools in question (an elementary Christian day school financed, supervised and controlled by a South Dakota Lutheran church and a secondary academy supported and controlled by the Wisconsin Evangelical Lutheran Synod) were judged by the Court clearly to be "in the employ... of a church or convention or association of churches..." and thus exempt from taxation.

## Court Revives Wright Case

The issue of tax-exempt status of racially discriminatory private schools has become judicially viable again. On June 18, 1981, the U.S. Court of Appeals for the District of Columbia held in the case of *Wright et al. v. Regan et al.* that District Judge George Hart had erred in November, 1979, when he dismissed the case as "nonjusticiable." The Appeals Court reversed his judgment and remanded the case back to the lower court.

Hart had based his determination on three grounds: that the plaintiffs lacked standing; that deference to Congress portended against judicial review; and that adjudication of the case was hampered by "nonreviewability." The Court of Appeals took issue with each argument, holding that Hart had been wrong on them all.

A decision on the merits of the Wright case could have far-reaching implications. Looking beyond the judgment in *Green v. Miller* in 1980,

which confined itself to enjoining the IRS from granting tax-exempt status to discriminatory private schools in Mississippi, the Wright plaintiffs seek nation-wide relief. They charge that the IRS has failed, through inadequate monitoring procedures, to limit its grant of tax-exempt status to nondiscriminatory private schools.

The matter is further complicated by the restrictions repeatedly placed on the IRS by Congress. On July 30 the House passed a Treasury Department appropriations bill which included a prohibition by Rep. Robert Dornan (R-CA) against the Service's use of Treasury funds "to carry out... 'Proposed Revenue Procedure(s) on Private Tax-Exempt Schools'..." It went on to amend the bill, as proposed by Rep. John Ashbrook (R-OH), to forbid the use of Treasury money "...to formulate or carry out any rule, policy, procedure, guideline, regulation, standard, court order, or measure which would cause the loss of tax-exempt status to private, religious, or church-operated schools unless in effect prior to August 22, 1978."

## The House Turns to Testing

"Are we shooting the messenger who brings the bad news?" wondered the Congressman. "There's nothing wrong with asking him to sit down and be a little bit more specific about his message," replied the professor of research methodology.

The exchange took place on July 21, the first of two days of hearings on H.R. 1662, the Educational Testing Act of 1981. The bill, sponsored by Rep. Ted Weiss (D-NY), would "require certain information (to) be provided to individuals who take standardized educational admissions tests..." Doing so would, according to Weiss, make the "testing agencies accountable... (or the message more specific) to millions of test-takers every year." Weiss believes the need for federal legislation is attested to by the fact that 21 states are currently considering "truth-in-testing" laws which could lead to a "complex regulatory web for test-givers" and interfere both with standardized testing and the nation's educational process.

The hearings were held jointly by the Subcommittees on Postsecondary Education and Elementary, Secondary and Vocational Education of the House Committee on Education and Labor.

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A coalition of 15 national organizations serving private schools (K-12)

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## Legislative Update

### Tuition Tax Credits

S.550 (Packwood, R-OR; Moynihan, D-NY; Roth, R-DE).

Finance Committee expects credits to be considered as part of second tax bill.

H.R.380 (Luken, D-OH) and others.

Pending before Ways and Means Committee.

### Block Grants

Signed August 13 as part of Omnibus Reconciliation Act of 1981.

### Charitable Deductions to Extend to Non-Itemizers

Signed August 13 as part of Reagan tax package.

### Tax-Exempt Status of Private Schools

House voted July 30 to approve Ashbrook amendment.

(see *Wright* case, p.2).

Bill will go to Senate after August recess.

### Taxation of Fringe Benefits

Ban on taxation of fringe benefits extended until December 31, 1983 as part of tax package.

### Youth Employment

P.L. 97-14 signed by President June 17.

### Guidance for Elementary School Children

S.948 (Stafford, R-VT).

Pending before Subcommittee on Education, Arts and Humanities.

H.R.1598 (Perkins, D-KY).

Pending before Subcommittee on Elementary, Secondary and Vocational Education.

### Foreign Language Training

H.R.3231 (Simon, D-IL).

Subcommittee on Postsecondary Education held hearings July 14-15 and plans a series of nationwide hearings in September. Markup scheduled for October 7.

### Testing

H.R.1312 (Gibbons, D-FL).

H.R.1662 (Weiss, D-NY).

(see *Testing*, p.2).

### Youth Wage Differential

S.348 (Hatch, R-UT); S.430 (Percy, R-IL); S.658

(Nickles, R-OK).

Pending before Labor Subcommittee.

H.R.157 (Campbell, R-SC); H.R.2001 (Simon, D-IL).

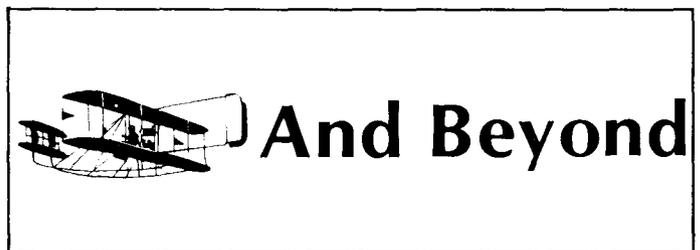
Pending before Subcommittee on Labor Standards.

## Capenotes

... CAPE Director Rabbi Bernard Goldenberg has been named National Director of Torah Umesorah, the National Society for Hebrew Day Schools.

... Former CAPE Director Al Senske, most recently Assistant Secretary for Private Education in the Department of Education, has been appointed Director of Administration for the Concordia Publishing House in St. Louis.

... Comments on private school matters by CAPE Executive Director Robert Smith have appeared in the past month in such diverse publications as *Forbes Magazine*, *Better Homes and Gardens*, *Education Times* and *The Christian Science Monitor*.



## Metrification in Missouri

If the outdoor temperature were 35 degrees Celsius, would you be ice skating or swimming? If a policeman pulled you over on the highway and said you were traveling at 88 km/hr, should you worry that he will give you a ticket?

Students in more than 300 nonpublic schools in Missouri know the answers to those questions. They also know how many centimeters are encompassed by their smiles, frowns and biggest jumps.

This knowledge has come to the students via *Mo. Go Metric*, a metric education project funded by the Department of Education and developed by CEMREL, a regional not-for-profit educational laboratory in St. Louis. The project, which began last November, focuses on Missouri's nonpublic schools and rural public schools. It utilizes the mechanism of the "by-pass," by which a third party delivers to private schools the federal services which, under state law, the LEAs are prohibited from providing. *Mo. Go Metric* hopes to have served 60,000 students, 8,000 teachers and 24,000 parents by the time the project comes to an end in September.

Children and their teachers meet the metric system when a large mobile unit pulls up to their school yard during lunch hour. (90% of the sites have been at nonpublic schools, which then act as hosts to surrounding rural public schools.) They are introduced to the meter tape, litre cube and gram

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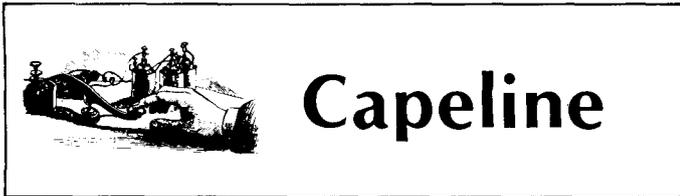
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scale. Children are weighed and measured in kilograms and centimeters. To emphasize the system's organization in units of ten, a child's height measured on a meter stick is translated to familiar currency terms: a 39" child would be "worth a dollar" while his taller classmate would be valued at "a dollar and two dimes."

Project Director James Winter finds that while some adults are reluctant to try the new system, "kids are less resistant to change than adults. They take to it quite readily and work with it quite well."

*N.B.:* You'd be swimming.

No, you shouldn't. 88 kilometers = 55 miles.



● **Fulbright Teacher Exchanges:** November 1 is the deadline for applications both for teaching abroad and attending overseas seminars during the 1982-83 school year. Write Teacher Exchange Branch, Office of International Education, Dept. of Education, ROB-3, Room 3068, Washington, D.C. 20202.

● **ERIC Search:** The ERIC Clearinghouse on Urban Education seeks published or unpublished works on the education of children in urban areas. Materials on multicultural or bilingual programs, sex equity, ethnic and racial discrimination, desegregation, drug abuse, violence, crime, divorce, family crisis and urban intergroup relations are appropriate. Send to Mike Webb, Box 40, Teachers College, Columbia University, NY, NY 10027.



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