The Council for American Private Education

CAPE OUTLOOK

Number 83 September 1982

White House Launches Tax Credit Bill

The President's tuition tax credit bill, the Educational Opportunity and Equity Act of 1982, was unveiled before a small gathering of private education representatives at a White House ceremony on June 22.

In his letter transmitting the bill to Congress, President Reagan declared, "It is of great importance to the continued vitality of our society that parents have a meaningful choice between public education and the many forms of private education that are available. . . . But those parents who wish their children to attend nonpublic schools. . . also bear the additional burden of paying private school tuition. . . . If we are to provide a meaningful choice to those who have not had it in the past, and preserve a choice for those for whom it is in danger of becoming an illusion, we must find a way to lighten the "double burden" these families bear. . . . If it becomes financially impossible for many of the families now sending their children to nonpublic schools to continue to do so, the resulting increase in public school attendance will place large and unwelcome new tax burdens on state and local taxpayers. . . ."

The plan would allow a tax credit of 50% of the annual tuition expenses incurred by a family whose children attend a private, nonprofit elementary or secondary school. The credit would begin at $100 in 1983, rise to $300 in 1984, and reach the limit of $500 per child in 1985. Should a taxpayer's adjusted gross annual income exceed $50,000, the amount of the credit would drop, and disappear altogether for incomes over $75,000.

The bill clearly disallows tax credits for tuition paid to racially discriminatory schools. It employs the tax-exempt standard [501(3)(c)] of the Internal Revenue Code of 1954, and, in addition, introduces a procedure for declaratory judgment under which the Attorney General is authorized to bring action against a school which a parent claims has acted in a racially discriminatory manner. Further, in order to receive a credit under the bill, a parent must attach a copy of a school's statement of nondiscrimination to his tax form.

CAPE, and a large majority of its member organizations, reiterated its support for the President's bill. In a statement released after the White House meeting, it said:

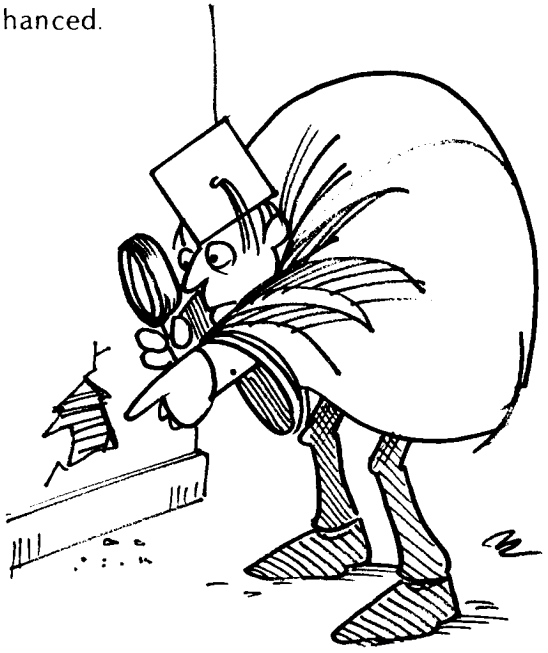
> *We fully support (the bill's) major purpose of advancing the goal of equal education opportunity for school children which is now achievable to students only at the college and university levels. The legislation recognizes the critical current reality that for millions of American families the right of educational choice is increasingly negated by educational cost.*
>
> *Through its focus on the educational costs to taxpaying families of moderate and low incomes, its clear denial of tax credits to families who choose to educate their children in racially discriminatory schools and its minimization of cost effects in a stringent budget period through a three-year phase-in, the plan meets three issues of central importance to member organizations.*
>
> *CAPE's support of tuition tax credits does not preclude its continued support of and interest in the well-being of public schools. A strong system of diverse schools, both public and private, which meets the needs of our highly pluralistic and educationally demanding society is a crucial cornerstone of the American system. This legislation will broaden participation in that system and increase the commitment of all American families to improved schools of every kind.*

A CAPE-formed coalition, Parents and Educators for Tuition Tax Credits, held a major national meeting in Chicago in early July. CAPE Executive Director Robert L. Smith commented, "The existence of this coalition speaks to the impressive display of unity realized in the course of the evolution of this bill, and bodes well for its success."

Schools to Conduct Asbestos Inspections

The Environmental Protection Agency, in an effort to protect school users from exposure to asbestos-containing materials, has issued a final "Rule for Identification and Notification of Friable Asbestos-Containing Materials in Schools." The regulation, which became effective on June 28, 1982, must be complied with by June 28, 1983.

Asbestos, a known human carcinogen, has been widely used in school buildings as a material for fireproofing, insulation and decoration. It is a substance inclined to separate readily into fibers which can remain airborne for long periods of time. Thus suspended, the fibers can be easily inhaled. If the material containing the asbestos is soft and crumbly (the technical term is "friable," defined in the regulations as "all materials that when dry may be crushed, pulverized, or reduced to powder by hard pressure"), the likelihood that the fibers will be released into the air is greatly enhanced.



Under the rule, each local educational agency and every private school must "(1) inspect all areas of each school building. . .for friable materials applied to structural surfaces in the building; (2) take at least three samples of each distinct type of friable material found; and (3) have those samples analyzed for their asbestos content using polarized light microscopy augmented by x-ray diffraction if necessary." Schools must also keep records of the findings of all inspections, sampling and analyses conducted in accordance with the regulation.

If inspection, sampling and analysis turn up no friable asbestos-containing material, a school's obligation under the rule is satisfied. But if such materials are located, the school containing them must use a formal Notice to School Employees (§ 763.111(a & b) of the rule) to inform all its employees of the location of these materials and must provide each custodial or maintenance employee with a copy of "A Guide For Reducing Asbestos Exposure" (§ 763.111(c) of the rule). Parent-teacher groups must also be notified of the presence of friable asbestos, and if no such body exists, the school must notify parents directly.

Since March 1979, the EPA has operated a Technical Assistance Program to help schools identify and correct potential asbestos hazards, but it believes that many schools have not responded adequately to its overtures, estimating that a possible 33,000 public and private schools remain uninspected. The program, still available to schools under the final rule, provides trained personnel in each EPA regional office to help school officials locate the services necessary to deal with their asbestos problems. In addition, the agency provides schools with a list of laboratories capable of conducting analyses of friable materials. (To obtain this information, a school may place a toll-free call to the agency at 800-334-8571, ext. 6741.) By the end of June, the agency will have sent a copy of the new rules and two guidance documents to every private school and school district in the country. Schools which have not received these booklets may call 800-424-9065.

Supreme Court Vacates Lower Tribunal's FUTA Decision on Religious Schools

The Supreme Court sidestepped the First Amendment in an unemployment tax case involving religious schools unaffiliated with churches, and chose instead to treat the case as a problem in federal court jurisdiction.

Justice Sandra Day O'Connor, writing on June 18, 1982, for a 7-member majority of the Court in the case of *California et al. v. Grace Brethen Church et al.*, explained, "We do not reach (the) substantive question (of whether certain state and federal statutes violate the Establishment and Free

COUNCIL FOR AMERICAN PRIVATE EDUCATION/1625 Eye Street, N.W., Washington, D.C. 20006 **(202) 659-0016**
A coalition of 15 national organizations serving private schools (K-12) [ISSN 0271-1451]
Robert L. Smith, *Executive Director;* Carla Gelband, *Editor;* Jay Roudebush, *Art Editor;* Tara Kalagher, *Reporter*

OUTLOOK is published monthly (September through June) by the Council for American Private Education. Annual subscription $8. 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, Nebraska, New Mexico, Oregon, Puerto Rico, Rhode Island, Tennessee, Texas, Virginia, Washington and Wisconsin.

Exercise clauses of the First Amendment by requiring religious schools unaffiliated with any church to pay unemployment insurance taxes). . .holding instead that the Tax Injunction Act deprived the District Court of jurisdiction to hear these challenges."

That court, the U.S. District Court for the Central District of California, had ruled in April 1981 that imposing unemployment taxes on such schools represented an unconstitutional government entanglement with religion.

The case, having been remanded to the District Court to be dismissed for lack of jurisdiction, will wend its way through the state administrative and court system. Assessing the Court's decision, school counsel William Ball told *Outlook*, "We're out in the cold."

Capenotes

. . .We have received a $10,000 check from Mrs. George D. O'Neill covering the first half of a matching grant met by gifts to CAPE during the first half of 1982. We welcome gifts to meet the second half of the O'Neill challenge grant.

And Beyond

Virginia Discriminatory Schools

The State of Virginia has barred tax deductions for contributions to schools that discriminate on the basis of race. It did so by way of an emergency regulation signed by Governor Charles S. Robb last April.

Since Virginia's income tax laws track federal laws, and are affected by changes in federal tax interpretations, the governor decided that his decree was necessary in the face of the Reagan Administration's announcement last January that the federal government would no longer enforce its rule denying deductions for contributions to racially discriminatory schools. Robb said, "It will not be the public policy of the Commonwealth of Virginia to sanction subsidized racial discrimination."

The regulation states, in part, "If the (State Tax) Commissioner, upon hearing, determines that a school has a racially discriminatory policy such school shall not be exempt from Virginia income tax and, in addition, no contributions to such school shall be allowed as a deduction in computing Virginia taxable income."

Connecticut Approval Criteria

The Connecticut State Board of Education adopted in April a Criteria and Procedures for Public and Nonpublic School Approval and Agency Recognition.

The document, described as a "set of guidelines and procedures for the voluntary approval of public and nonpublic schools," was prepared by the State Advisory Council on School Approval, formed by the State Department of Education and composed of representatives from the public, private and independent sectors.

Rev. James Fanelli, Connecticut CAPE representative, said, "One of the distinctive features of this document is that it is intended to be applied to public and nonpublic schools in Connecticut on a voluntary basis. Some public schools have already indicated their desire to undergo state approval in this format, and of course many nonpublic schools will also continue to do so. The State Advisory Council is now attempting to develop a procedure for implementing the process. . . ."

The guidelines declare that "parents have the primary right to provide for the education of their children, and to choose the schools which they judge best for them. . . . This includes the sending of their children to nonpublic schools provided that any such school offers equivalent instruction to that offered in the public schools. . . ."

The document continues, "The state recognizes it has no jurisdiction over religious instruction and religious values as they pertain to religiously oriented or church-related schools. To safeguard the constitutional separation of church and state, and to preserve the integrity of nonpublic schools that voluntarily seek approval from the State Board of Education, these criteria shall be applied to the school's program according to the interpretation of the educational purpose and standards of the individual school. . .or of the school and its recognized agency. . . ."

Maryland High School Bands

Private school children may rightfully be excluded from participating in a county-wide high school music program, according to an April decision of the Court of Special Appeals in Maryland. In the case of *Lowell Thomas et al v. Allegany County Board of Education et al* the court rejected the notion that academically qualified private school students are entitled to participate in any program or instructional classes offered by the county.

The specific issue at hand was the board's decision to limit participation in the All-County High

(continued on page 4)

(continued from page 3)

School Band to students enrolled in the public school system.

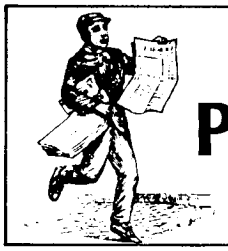
The court held that the ". . .right to attend parochial school does not. . .necessarily establish a concomitant right. . .to remain eligible for participation in public school programs" and further declared that exclusion from such programs impacted only minimally on students' freedom of religion.

Alluding to the hazard of opening a "Pandora's box" of private school requests for inclusion in public school programs, the court wrote, ". . .there would be no device to preclude, for example, a private school having difficulty securing a qualified chemistry teacher from unilaterally deciding to transport the entire student body to a nearby public school for their chemistry education."

Nebraska Teacher Certification

Time ran out on a controversial bill in Nebraska which would have brought significant change to the relationship between church schools and the state. LB 652 would have established a voluntary waiver system under which a lay governing body or parent organization of a church-affiliated school would have been allowed to hire teachers without regard to state certification requirements. The schools would have had to claim that such requirements interfered with their religious instruction.

In the absence of such legislation, private schools are still bound by statutory provisions requiring school-aged youngsters to be enrolled in "approved schools," i.e. those which meet, among other criteria, the condition that all teachers be certified by the state. Certification requires a college degree with credits earned in education as well as a field of subject specialty.



Public Notice

CAPE OUTLOOK
COUNCIL FOR AMERICAN PRIVATE EDUCATION
1625 Eye Street, N.W.
Washington, D.C. 20006