

# **A “NEW” IDEA ENDANGERS PA PRIVATE SCHOOLS**

## **A BRIEFING TO PACAPE TO COUNTER THAT IDEA THROUGH KNOWING THE “WHY” AND “WHAT” BEHIND PA’S ACT 1978 OF 1986**

**Rev. Ted Clater, Pd.D., Keystone Christian Education Association  
Attorney Philip Murren, Ball, Murren & Connell  
Mr. Tom Shaheen, Pennsylvania Family Institute**

DR. MERLE SKINNER. The Pennsylvania Council on American Private Education group is a group of associations. So, seven or eight of us have gotten together to work together and be an affiliate of the national CAPE. So, we work together on the principle that what we can all agree on, we are going to work on.

At our last meeting, we recognized that a current push is to make whatever is good for public schools, ought to be good for private schools. Some in the legislature, even some friends in the legislature are starting to say this. And so, they have introduced kind of a new model at the end of last year, they are going to just create something and tell all schools to follow a new mandate. That has not been the way Pennsylvania has worked in the past.

So, at this point, I am going to introduce Attorney Phil Murren, who by all stretches of any kind of imagination is considered the constitutional expert of Pennsylvania education law in the state or in the world, I suppose. And Ted Clater, who is the Executive Director of the Keystone Christian Education Association; and Ted was a key part of getting into place the protections that we have.

So, we have asked them to spend up to an hour to share with us. We will stop at two o'clock, and they are going to promise us some time for questions. So, Ted and Phil, do you want to go ahead and take it away?

ATTORNEY PHIL MURREN. I am going to defer to Ted on his excellent PowerPoint. And I think I have met most everybody here. And thanks for the introduction, Merle.

Yes, I am Phil Murren. And I am an attorney with Ball, Murren and Connell. The Ball of the firm name is William Bentley Ball. Ted will be saying a few things about my late senior partner, who was indeed the preeminent First Amendment religious liberty constitutional lawyer of his era and a mentor to many of us in matters of religious liberty and especially as it relates to school mandates and school regulation.

So, Ted has put together, as I said, an excellent PowerPoint that he is going to share. And it really does encapsulate and organize chronologically and in terms of its importance and analytical accuracy, all of the things that we are concerned about, have been concerned about historically and now contemporaneously.

So, Ted, with that, I will turn it over to you.

PA RELIGIOUS/PRIVATE  
SCHOOLS AND ACT 178  
OF 1986

WHY? WHAT?

Ted Clater, KCEA, 1/2025

DR. TED CLATER. Thank you, sir Phil.

Just this note for everybody. I cannot see all of those in attendance. So, if there is reason

for somebody to jump in, flag me however you choose to do so.

I have created a title for this slide series, Pennsylvania Religious, and frankly, Private Schools and Act 178 of 1986. I first seek to address "why," then I seek to address "what." I am going to move through 45 slides, and I am going to attempt to do so with cognizance of time.

2025 RELEVANCE

Timeless principles for the wellbeing of society  
(and religious/private schools)

NOT

Just old law

being of religious and private schools. It is not, as one legislative staff member described recently, just old law. No, it is not just old any more than the Constitution is old.

Can I also go ahead and say many of us have come to Pennsylvania from other states. We are going to talk specifically about Pennsylvania's statute, although there are a lot of principles that bleed into other states, and some of the history is going to come through there as well.

2025 Relevance. All of this history stuff is clear back in 1986. But we are talking of timeless principles for the well-being of society. And frankly, it is also for the well-

CONTEXT CIRCA 1980

1. Diverse religious liberty Court decisions throughout decades.
2. Court decisions on prayer/Bible reading in public schools <sup>(1962-3)</sup>.
3. Estimate that 15,000 church schools operated in the US in 1980, a 10-fold increase in 20 years.
4. A 1980 report of "175 court cases in 26 states" involving church schools.

Number two, one of the influences was court decisions on prayer and Bible reading in the public schools dated 1962 and 1963.

There is attestation that an estimated 15,000 church schools operated in 1980, a tenfold increase in 20 years. I find that very significant for documentation.

Context for, and I am choosing 1980. There are different years, but I have chosen 1980.

There have been diverse religious liberty court cases through the decades that influenced what life was like for us all in 1980.

At the same time, a report indicates that there were supposedly 175 court cases in 26 states involving church schools in 1980.

#### RELIGIOUS LIBERTY LITIGATION

1. PA Attorney William Bentley Ball and team pressed liberty issues involving diverse faiths – Amish, Baptist, Brethren, Catholic, Orthodox Jewish, even public school students.
2. Observe the dates of major liberty / standards / curriculum-related cases – Wisconsin (1972), Ohio (1976), N. Carolina (1979), Kentucky (1980), Maine (1983), Michigan (1986)

Religious Liberty Litigation. Mr. Murren has already commented a bit on attorney William Bentley Ball. Mr. Ball was not just a constitutional attorney for Pennsylvania. He was the eminent First Amendment constitutionalist nationwide. He was not just for his own faith. I have listed several examples. He thought it important for Amish

to have religious liberty, and Baptists, Brethren, Catholics, Orthodox Jews, even public school students. I can remember him consulting me with a situation at Erie, Pennsylvania, in a public school with some required but spiritually offensive reading curriculum. Observe, please, the dates of some of Mr. Ball's major liberty, standards, curriculum-related cases. Wisconsin, that is Yoder, that is 1972. Ohio, things like Wisner in 1976. North Carolina 1979. Radasill in Kentucky, 1980, State of Maine 1983, Michigan 1986. Very interesting cases. Mr. Ball was deeply involved in not only multiple faiths, he was also very, very involved in multiple geographic locations.

#### WHAT WAS THE "RUB?"

1. The Court allowed states to have enactments as long as there was a purpose – reasonable regulation toward an educated citizenry.
2. The trend was for a state to determine what was deemed appropriate for all schools based upon their oversight of public schools.

What Was the "Rub"? What was this conflict? I am going to address a couple here. The courts had allowed, in my layman language, states to have enactments as long as there was a purpose, a reasonable regulation toward an educated citizenry. Now, a lot of this rub comes, "What in the world is a reasonable regulation?"

Number two, the trend was for states to determine what they thought was appropriate, what they thought was reasonable for all schools based upon their oversight of the public school. If it was good for the public schools, it was good for all.

3. Some states were imposing various regulation including of course content, state testing, state faculty certification, minimum standards, state-selected textbooks.

4. Issues of parental rights in child rearing and education were a part of the "rub."

Three. Some states were imposing various regulations, including course content, state testing, state faculty certification, developing minimum standards, developing state-selected textbook lists, etc. I pause. This area of course content. We face this in Pennsylvania with Pre-K, where these academic programs in our schools do not have the same protections as K-12. State testing. You had states that were requiring that the state test be used by the religious schools. For example, in Maine, the court ended up finding, in my layman terms, if you want to control content, the most effective way to do it is through a mandated state test.

You had different states attempting to control the activity of education through different faculty certifications, mandatory state certification -- or you could not be a

school. You had minimum standards. Wisner, there you had, as I remember, 16 families that were attending a school that the state found did not meet the state's "minimum standards." You had other states mandating that while non-public schools could exist,

they had to teach using state-approved textbooks. That is part of the rub.

Number four, issues of parental rights in child rearing and education were part of this rub. It is rather impossible to miss it.

STATUS OF PA RELIGIOUS SCHOOLS,  
CIRCA 1980

1. General applicable laws for all schools – health/safety, fraud.
2. Statutes of curricular mandates tied to implementation by the State Board regulations.
3. Private-licensed schools under a separate Board of Private Academic Schools.

Pennsylvania's status while all these things were going on in other states. Again, you can see it is in the 1970s and the 1980s. We come to 1980. Where is Pennsylvania? We had generally applicable laws for all schools, health, safety, etc., etc., etc.

Number two, we had statutes mandating curricular ideas, content, and they were tied to implementation by the state board of education. That is going to come up some more.

Number three, you had private licensed schools that were under a separate board, the Board of Private Academics.

Here is the actual language of what Pennsylvania religious schools were required to sign in 1980 if they desired to operate.

4. DEBE – 1536 required: "I certify that this school is a day school for the education of children in which the subjects and activities prescribed by the regulations of the State Board of Education are taught in the English language and in which the work of said school is in compliance with the Compulsory School Attendance provisions of the Public School Code of 1949 (Sections 1326, 1327, and 1328)."

[Please read the PowerPoint slide. We did.]

5. Examples of objectionable intrusions into curricula at this time:
- a. Curricular details of subject matter violated the values of some faiths.
  - b. Methodological details of when and how to teach some subjects violated some pedagogy.
  - c. The certificate was "open-ended," signing a blank check, totally subjugating a school with its mission to government.

Number five, examples of objectionable intrusions. When a school signed that they were going to do all of these subjects and activities, the rub came in that some of the mandates went against different aspects of religious institutions.

Letter A, there were curricular details of subject matter that violated the faith of different religious faiths. That is subject matter, content.

B, Methodological details of when and how to teach certain subjects violated the methodology, the pedagogy. Let us consider one example. We have had the Montessori folks concerned at times that other techniques or methodologies do not fit with them. Well, there were any number of examples in the 1980s where different schools within their structure found that the state's mandates were a rub.

C, the certificate that we just read is open-ended. It was perceived by many as being very objectionable, that it was signing a blank check. It was total subjugation of a school with its unique mission to whatever the state dictated or said. In summary, those three were actually examples of objectionable

intrusion as perceived by different religious or private institutions.

6. Example of curricular tug-of-war, circa 1983:
- PSEA complained that the State Board of Ed was “watering down” education and the Board should demand more of all schools.
  - Catholic Conference lamented endangerment through imprecision, suggested that the regs should be limited to core subject matter, and spoke of the harmful impact of the regs on values of Catholic students in public schools.

I go to number six. Examples of the curricular tug-of-war of 1983. Now, why do I choose 1983? In 1983, there was a major state board of education hearing with proposed new mandates, new instructions for all schools. So, I can read from my files that the PSEA complained that the State Board of Education was, in their terms, “watering down” education, and the board should demand more of all schools. I can also read the testimony of the Pennsylvania Catholic Conference, where they lamented the endangerment that they felt through imprecision in the language. They suggested that the regulations should be limited to core course subject matter.

The PCC also spoke in their written testimony of the harmful impact of the content of the proposed regulations on the values of Catholic kids in the public schools.

- c. In the background, some vocalized that government should have no say in any aspect of operating a religious school. Some rallied and lobbied at Harrisburg against this legislation.
- d. In the background, some saw nothing wrong with the system or what the statutes and regs contained, that government was supposed to set curricular standards for all schools (a form of compulsory education with all of its dangers).

In the background, during all of this period of time, and we are talking of six, eight years, some vocalized that government should have no say in any aspect of operating a religious school. Some even rallied and lobbied. I can recall busloads of people coming to Harrisburg complaining about our legislation.

Let us take note of that. That also occurred in some of the litigations that we listed previously. The courts did not embrace the concept that the state has no authority. Those angles did not prevail. I cannot find or remember any place where that mentality prevailed.

D, also in the background, some saw absolutely nothing wrong with the current system or what the statutes or the regulations contained, that in their mind, government was supposed to set curricular standards for all schools. Parenthetically, as soon as that occurs, that is a form of compulsory education, and that is a danger.

7. It should not be overlooked that the State had written curricular “Goals of Education” that reached beyond academics, including content addressing “work,” “family living,” “environment,” “self-esteem,” ....
8. As church schools fussed to legislators, Douglass Boelhouwer of the Department circulated a list of official curricular mandates that he would waive.

Seven, it should not be overlooked that the state had written curriculum or goals of education. I have a copy of a three-page version. At that point in time, the goals of education clearly reached beyond academics, including chapter contents addressing correct views of work, family living, environment, self-esteem. That was part of the system.

Number eight, I thought it very interesting as this unfurled, as church schools fussed to legislators, a very important person of that period from the Department of Ed, Non-public School Section, Doug Boelhouwer became engaged. Doug was very concerned that we might gain enough traction to change the statute. Doug circulated back to any number of us, including in meetings, a list of things that he would officially waive, a major effort to get us to stay under the State Board. He would just ease some problem areas.

ABOUT THIS 6-YEAR LEGISLATIVE EFFORT

1. Attorney Ball and KCEA's Ted Clater shaped the proposal.
  - a. PA's endangering approach to religious schools was parallel to multiple other states.
  - b. The constant drum beat from the PA Board of Ed was to apply all mandates to all schools.
  - c. The cost of litigation was high and success could not be guaranteed.

About this 6-Year Legislative Effort, frankly, Mr. Ball and I shaped this proposal, meeting on the second floor of his office on 2nd Street in Harrisburg. I do not think Mr. Ball ever said this, but can I guess by his actions that Mr. Ball was very frustrated at always having to fight for religious liberty on the battlefield shaped by our opponents? He did not prefer to have to always be going to them and fighting on their terms, constantly being on the defensive. He could take on and win court cases, but....

So I go to A. What was it like in that period of time? A. Pennsylvania's endangering approach to religious schools was parallel to what was happening in other states. I have already described that. The presumption is that the PA State Board, highly influenced by public schools, deems what is important for kids. If it is important for kids in the public school, then it is important for kids in the religious school also.

B. There is a constant drumbeat from the PA Board of Education that it needed to apply all mandates to all schools.

Now, one of the things Mr. Ball and I talked about is point number C. Litigation is expensive. While Mr. Ball was good, while his whole team was good, there is no guarantee we are going to win.

2. Mr. Ball carried the proposal to the Catholic bishops and they supported the legislation.
3. The six-year effort was carried by these two groups of church-sponsored schools (assistance from Pennsylvania Family Institute).
4. The private academic schools added their desired, important language in the last days before enactment.

Mr. Ball, in his wisdom, carried our proposal that we had drafted over to the Catholic bishops, and the Catholic bishops supported this legislation.

Point number three, the six-year effort was carried by KCEA, Catholic Conference, and, very frankly, Pennsylvania Family Institute was very valuable in the process as well.

Point number four, the private academic schools of Pennsylvania did not really converse with us much about this; but in the last days before enactment, they added some language to the whole bill. Thus, my presentation today is not just about religious schools, but it also impacts private schools.

5. The liberty-protecting provisions were not confined to the sponsoring groups, and did not favor the sponsoring groups.
6. The public school establishment opposed this legislation, lobbying for all schools in the state to be under the same mandates, arguing that this was especially important because religious schools received abundant state funding (books, instructional supplies, bussing, etc.)

Number five, the liberty protecting provisions were not confined to the sponsoring groups and did not favor the sponsoring groups. We did not create a bill that would save the hide or liberties of Catholics and KCEAers. We created legislation for one and all, for every organizational style of legitimate religious school in the state of Pennsylvania.

Number six, the public school establishment systematically opposed our legislation, lobbying for all schools in the state to be

under the same mandates, arguing that this was especially important because religious schools received abundant state funding. They asserted that the schools received books and instruction materials and busing. If you transport it to today, it is the same argument that we are hearing at Harrisburg. The schools are receiving EITC. Can I anecdotally say that the more you and I talk about books and instructional medias and buses and EITC as benefits to schools, the more we give ammunition to those who oppose us.

7. With the enactment of Act 178 of 1986, Attorney Ball wrote that the language was Magna Carta legislation.
8. More recently, Catholic references have declared it to be the Holy Grail, protections to be treasured.

Seven and eight. With the enactment of Act 178 of 1986, Attorney Ball wrote that the language that we won in this Act was Magna Carta legislation. It established key legal principles. It protected against unjust rule. More recently, Catholic references have declared it to be a Holy Grail, protections to be treasured.

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Now, that covers a lot of "WHY." Why do we have an Act 178 of 1986? Yes, 1986 was a couple decades ago., but we can study history just as expect our students to do so.

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VIEWING THE PARTS  
OF ACT 178 OF 1986

See the School Code of 1949,  
Sections 1327(b) and 1613(b).

Now the "WHAT."

To view it now, we are going to actually go to the School Code of 1949. We are going to look at Section 1327, and we are going to look at Section 1613. You are going to see that I have placed the language of the actual statute in blue when we get to it.

1. The Act protected our citizens and institutions by linking with Compulsory Attendance (not compulsory education). Historically, nationwide the state's interest in an educated citizenry occurs via attendance among schooling options. The mandates of education are carried by the students and parents, not the religious /private institution. (Similarly, the state does not have mandates for education in churches.)

The Act protects our citizens and our institutions by linking with compulsory attendance, not linking to compulsory education. Historically, nationwide, the state's

interest in an educated citizenry occurs via attendance among schooling options. We do not have any historic precedence for Pennsylvania or the United States adhering to compulsory education. The choices in education are carried by the students and the parents, not by the religious or not by the private institutions. It is a strikingly important concept. The state does not have mandates for education or content in a church. Why should they have it in a religious school?

Section 1327(b) "The child enrolled in a day school which is operated by a bona fide church or other religious body, and the parent, guardian or other person having control or charge of any such child or children of compulsory school age shall be deemed to have met the requirements of this section if....." (underline added throughout for emphasis)

Here is Section 1327, parenthesis B. By the way, you will notice there are different underlinings. Those are mine.

[Please read the PowerPoint slide. We did.] Notice who is responsible. It does not say the school. It is the child and the parent.

2. The Act purposely defined a qualifying religious day school to include the full range and variety of bona fide religious institutions, including whether by belief/faith or by organizational preference.

school, it can be a parent-run school, as long as it is genuinely a religious institution.

At 1327, we are now going to repeat those same words as the last paragraph with different emphasis. [Please read the PowerPoint slide with the underlined emphasis. We did.]

Number two, the Act purposely defined a qualifying religious day school to include the full range and variety of bona fide religious institutions, including whether it was immaterial of what faith, it was immaterial of how they were organized. So if we use today's jargon, it can be a church school, a denominational school, it can be a board-run

Section 1327(b) "The child enrolled in a day school which is operated by a bona fide church or other religious body, and the parent, guardian or other person having control or charge of any such child or children of compulsory school age shall be deemed to have met the requirements of this section if....."

3. The Act purposely recognized different aspects of the state's interest in an educated citizenry.

First, the Act recognized the state's interest in Compulsory Attendance for those of school age, regardless of their aptitude, achievement level, learning style preferences, interests, future plans or dreams, or any other life-related factor. This Act is positioned at the heart of the PA Compulsory Attendance statute, requiring student attendance.

Number three, the Act purposely recognized different aspects of the state's interest in an educated citizenry. Remember clear back at the start of our presentation, the legislatures and courts seemingly approved state mandates as long as there were reasonable aims towards an educated citizenry. We are going to identify nine things in this statute regarding the state's interest.

First, the Act recognized the state's interest in compulsory attendance for those of school age. There are people in our culture who do fight against that. They do not think the state should have any interest. That was not our position. We placed in our statute that the state does have an interest in kids attending some school option. That is true of every child, regardless of the child's aptitude, his achievement level, his learning style

preferences, his interest, his future plans, his dreams, or any other life-related factor. The child needs to attend via some school option.

Our Act 178 is positioned at the heart of the compulsory attendance statute. Our Act requires student attendance.

Second, the Act recognized the state's interest in the length of an instructional year.

year at the elementary level, 990 hours per year of instruction at the secondary level. We did not have a beef with saying that the state had an interest in the length of a school instructional year.

Second of nine, the Act recognized the state's interest in the length of an instructional year. To read the statute, a condition of satisfying Compulsory Attendance is that the school provides a minimum of 180 days of instruction or 900 hours of instruction per

"... if that school provides a minimum of one hundred eighty (180) days of instruction or nine hundred (900) hours of instruction per year at the elementary level, or nine hundred ninety (990) hours per year of instruction at the secondary level and: ....."

Third, the Act recognized the state's interest in core academic instruction (as opposed to any other type), subjects of universally accepted state interest.

Observe that there is no designation of "who," "when," "how," "how much," etc. of each core subject.

"... (1) At the elementary school level, the following courses are taught: English, to include spelling, reading and writing; arithmetic; science; geography; history of the United States and Pennsylvania; civics, safety education, including regular and continuous instruction in the dangers and prevention of fires; health and physiology; physical education; music; and art."

Third, the Act recognizes the state's interest in core academic instruction, as opposed to some other type of instruction. We did not see the state having no interest in core academics. Notice the next key phrase, because it was part of the debate and conversations, that the subjects that were going to be listed are universally accepted as being within the state's interest.

Here is your statute at 1327 listing subject matter. At the elementary level, which for us is up through grade eight, the following courses are taught. Taught. [Please read the PowerPoint slide. We did.] Every school should be able to establish that in their academic scope and sequence, they are doing this.

In the second sentence here, observe that in Pennsylvania, there is no designation of who is teaching, when it is taught, how it is taught, how much it is taught of each of these core subjects. This and the other provisions have proven to be problem free for 40 years.

"... (1) At the secondary school level, the following courses are offered: English, to include language, literature, speech and composition; science, to include biology and chemistry; geography; social studies, to include civics, economics, world history, history of the United States and Pennsylvania; a foreign language;

mathematics, to include general mathematics and statistics, algebra and geometry; art; music; physical education; health and physiology; and safety education, including regular and continuous instruction in the dangers and prevention of fires."

At the secondary school level, the following courses are offered. Offered. Now the difference between those two is not

accidental. [Please read the PowerPoint slides. We did.]

These details serve as designations that this is an academic institution, not just a dance studio, not just a basket weaving site. This is an academic institution that meets society's interest in compulsory attendance. At the same time, there is allowance for institutions to fulfill a different academic purpose compared to one down the street.

Fourth, the Act recognized that state curricular mandates on religious institutions were not an area of state interests.

Number four, the Act recognized state curricular mandates on religious schools were not an area of state interest. So we established a negative in the statute.

[Please read the PowerPoint slide. We did.]  
1511 and 1605 were statutory mandates

"... The requirements in sections 1511 and 1605 of this act shall not apply to such schools."

applying to all schools. All schools had to do these things, and this is where the State Board was getting its authority to develop the increasingly broad regulations that were incrementally problematic to some religious institutions.

Fifth, the Act recognized a responsibility for religious schools to inform the state (a) of their existence, (b) of their academic nature, (c) of their teaching in English, (d) of their non-profit status, and (e) of their compliance with the School Code (as applicable); but the Act protected against governmental intrusiveness.

Fifth, the Act recognized responsibility for the religious schools to inform the state of several things: of their existence, of their academic nature, of their teaching in English, of their non-profit status, of being otherwise in compliance with the school code. [Please read the PowerPoint slide. We did.]

"...The notarized affidavit of the principal of any such school, filed with the Department of Education and setting forth that such subjects are offered in the English language in such school, whether it is a nonprofit organization, and that such school is otherwise in compliance with the provisions of this act, shall be satisfactory and sufficient evidence thereof."

But the Act also protected against governmental intrusion. Let me give an actual example. In that list, you have that we establish our non-profit status. Why did we put that in there? By the way, it was not in the early versions. We added that because

we had some public schools actually demanding that they have access to audit the financial books of the religious schools or

they would not provide transportation (and similar) to students. We added that protective provision.

Sixth, the Act recognized a limit to the state's interest through including a pointed, broad policy statement protecting parental rights in education and childrearing.

Sixth, the Act recognized a limit to the state's interest through including a very pointed broad policy statement protecting parent

rights in education and child rearing. Look at this in our statute. [Please read the PowerPoint slide. We did].

"...It is the policy of the Commonwealth to preserve the primary right and the obligation of the parent or parents or persons in loco parentis to a child, to choose the education and training for such child."

Seventh, the Act recognized a limit to the state's interest through excluding the state from involvement in institutional decision making in liberty-sensitive areas.

Observe that the Act did not exclude government from interest in areas such as health/safety, fraud.

Seventh, the Act recognized the limit of the state's interest through excluding the state from involvement in four key liberty-sensitive areas. Observe that the Act did not

"...Nothing contained in this act shall empower the Commonwealth, any of its officers, agencies or subdivisions to approve the course content faculty, staff or disciplinary requirements of any religious school referred to in this section without the consent of said school."

exclude government from interest in areas such as health and safety, fraud, etc. [Please read the PowerPoint slide. We did].

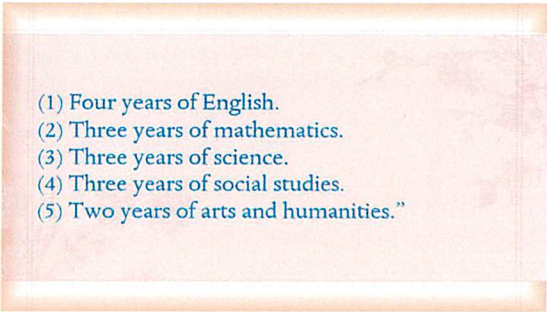
Eighth, the Act recognized the state's interest in deterring fraudulent high school diplomas.

Observe that the Act avoided tying religious schools to a credit or Carnegie system while positioning against fraud.

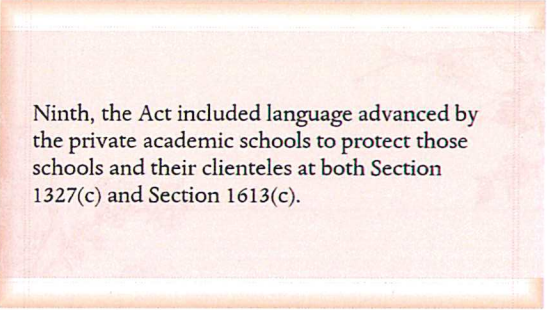
Eighth, the Act recognized the state's interest in deterring fraudulent high school diplomas. Second sentence, observe that the Act avoids tying religious schools to a credit or Carnegie system while positioning against fraud. Now you are switching over to Section 1613.

Section 1613(b) "For those pupils graduating at the close of the school year 1989-1990, and each school year thereafter, the following minimum courses in grades nine through twelve as established as a requirement for high school graduation in schools operated by a bona fide church or other religious body:

[Please read the PowerPoint slide. We did]. The academic areas listed were a commonly understood education idea of that time period. That is the old Reagan period 4-3-3-3; and then there is a whole story as to how we achieved agreement with adding arts and

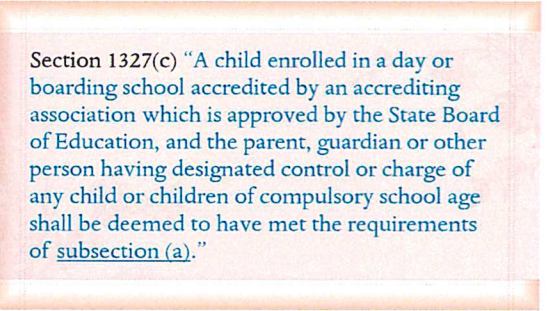
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- (1) Four years of English.
  - (2) Three years of mathematics.
  - (3) Three years of science.
  - (4) Three years of social studies.
  - (5) Two years of arts and humanities."
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humanities. The Reagan period 4-3-3-3 was deemed to be too few. "Electives" was deemed to be too flexible for qualifying the desired academics. "Arts and humanities" was seen as an established academic term.



Ninth, the Act included language advanced by the private academic schools to protect those schools and their clientele at both Section 1327(c) and Section 1613(c).

Ninth, the Act included language advanced by the private academic schools to protect those schools and their clientele at Sections 1327 and 1613. So remember please, these were added in the last days because the private licensed schools evidently felt some need, some opportunity, some vulnerability. They wanted their parents and schools protected, too. [Please read the PowerPoint slide. We did].

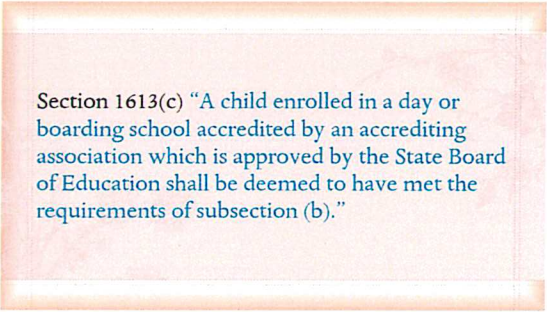


Section 1327(c) "A child enrolled in a day or boarding school accredited by an accrediting association which is approved by the State Board of Education, and the parent, guardian or other person having designated control or charge of any child or children of compulsory school age shall be deemed to have met the requirements of subsection (a)."

The parents and the guardians, they satisfy compulsory attendance. They met the requirements of subsection (a), different from meeting subsection (b) dealing with religious schools. So they were meeting state requirements by being accredited by Chicago

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or Philadelphia. Those students, those parents meet all of the obligations of the state.



Section 1613(c) "A child enrolled in a day or boarding school accredited by an accrediting association which is approved by the State Board of Education shall be deemed to have met the requirements of subsection (b)."

Coming on over then to 1613. [Please read the PowerPoint slide. We did]. They thought it wise to add their own subsection regarding diplomas. The diploma from their accredited schools met the requirements of subsection (b). I was not part of any of those conversations within the private schools. I can very much guess that they argued that their accreditation status surpassed the 4-3-3-3 formula and that they could very well have been uncomfortable with the State Board of Private Academic Schools and the potential for that board to intrude in the mission of the private schools. I can guess that they evidently had more faith in the neutrality of Chicago and Philadelphia than they had faith in the Pennsylvania-based Board that would otherwise control them. And can I go ahead and say, I cannot blame them.

PA RELIGIOUS/PRIVATE  
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OF 1986

AN ACTION SUMMARY

So can I give an action summary for School Code Section 1327(b) and (c) and School Code Section 1613(b) and (c). These exist to protect, assure, enhance, promote religious liberty but also pluralism, innovation, variety, preferences.

School Code Sections 1327(b) (c) and 1613(b) (c):

1. Know it.
2. Treasure it.
3. Obey it.
4. Oppose forgetting, overlooking, compromising, minimizing, altering, or deleting it.

We who are involved in private education, we need to know it. We need to know what the law says. You know, its protections.

We need to treasure the liberties that we have. Many of us have come from other states, but it does not matter what other states have. This is our treasure.

We need to be ready to obey the laws.

And we need to oppose forgetting, overlooking, compromising, minimizing, altering, or deleting.

This we fought for on behalf of private and religious schools. Know it, treasure it, obey it, defend it.

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And with that, I have completed slide number 45. Merle, Phil, you are up next.

DR. MERLE SKINNER. Yeah, an amazing job. I feel like I have been in a Pennsylvania law education 101 class. And thank you for sharing the information.

Phil, I am sure you may have some things to add or comment on here. And then we can maybe open it for questions and comments.

ATTORNEY PHIL MURREN. Certainly, Merle. And that was not Religious Liberty 101. That was the postgraduate course in Religious Liberty Struggles.

Let me say that the struggle for religious liberty in religiously affiliated schools predated Pennsylvania's struggle and postdate Pennsylvania's struggle. The impulses toward authoritarianism in educational regulation were not completely eradicated in 1986. They exist today and in some ways are amplified in today's conditions. The lessons of the past are important. You always hear it said, if you do not know the past, you are doomed to repeat it. And that is precisely because these authoritarian impulses never go away. They are always present. They always have to be faced.

To me, the portion of Act 178 that does best represent its characterization as Magna Carta is that one sentence that Ted read to you that says that "Nothing contained in this Act shall empower the Commonwealth, any of its officers, agencies, or subdivisions [and subdivisions

include school districts by the way] to approve the course content, faculty, staff, or disciplinary requirements of any religious school.” And the introductory phrase was carefully chosen there. Nothing contained in this Act. That is not just Act 178. Act 178 was an amendment to the Public School Code. So that means wherever they might put something in the Public School Code, that will not be construed to empower the Commonwealth to intrude upon these primary religiously sensitive areas such as content and who shall teach and what be taught. That is basically the summary of that language.

This was buttressed and reinforced when we were able to obtain the passage of the Pennsylvania Religious Freedom Protection Act, which is a more general guarantee of religious liberty. The passage of this second Act does not guarantee the outcome of any case, but it guarantees that the most rigorous legal test possible must be applied to protect religious liberty and to put the state to its proof that whatever it is that they are seeking to do that burdens religious liberty must be justified by a compelling state interest and must be the least restrictive means available of achieving that compelling state interest.

So we do read Act 178 in tandem with the Pennsylvania Religious Freedom Protection Act, and that is Magna Carta plus religious liberty on steroids. So those two Acts, I think, are very important as our charter of liberties in statute in Pennsylvania. So once again, thank you, Ted, for reminding us all of what we had to face and overcome and must still, as you say, be alert and vigilant to defend it at all costs.

DR. MERLE SKINNER. Perhaps some of us have a little bit of a sense of the current legislative pushback, which started last year. Well, it has been there, but I mean, it kind of got exacerbated last year with the economics education piece being introduced. But so my question would be, I guess, when the legislature does decide, hey, we are going to add economics education, or we are going to add financial literacy or competency to, through the legislature, would your position be that we could argue that in court because of your previous conversation, or does that automatically superimpose that on top of this?

ATTORNEY PHIL MURREN. Well, I think, first of all, we have to redouble our efforts to amend that financial literacy mandate before it goes into full effect, to neutralize its impact, and to place it in the context of the protections of Act 178.

If that does not come to pass and we are required to go to litigation to try to challenge Section 1551, the financial literacy mandate, we do have this language that I just quoted you from Act 178 that says that nothing in the School Code, and that would include 1551, empowers the Commonwealth to approve course content. So we do feel that Act 178's language should prevail over any general prescription about what should be taught in a financial literacy course. We do not want to get to that point.

DR. MERLE SKINNER. Right. Which is part of this effort, right? Part of this effort to actually broaden the understanding of this legislative Act. I think we have a few minutes for questions.

Is that okay, Ted, Phil, if we just, does anybody have questions? Any questions for anybody or comments? And then I would like to reserve at least a minute, or maybe even take it now. Tom, if you have anything to add, because Pennsylvania Family Institute has been a big, big,

big player in keeping our educational and religious rights. But Tom, do you want to take it? Do you have anything that you want to say?

TOM SHAHEEN. Yes, thanks. Thank you both, Phil and Ted. The only thing I will add to what others said about current status of the legislature, I will just add quickly.

It is important for all of us, those on this call, to remind legislators and key legislative staff, especially education committee members, who likely do not have this history that was presented here. And some may offer good ideas that have merit, but not understand why they should not apply to us. We have learned that recently with the author of the financial literacy bill.

But there are others that will come our way. And a lot of it is because they just do not know. And so I think it is on all of us, especially those in Christian school community, Catholic school community, other religious schools, to educate and remind members.

And certainly, we have many members who support EITC, even within both parties. But many of them do not understand how EITC and the schools that parents choose can be threatened by this. And so they need to understand the connection between that.

And Pennsylvania's Family Institute is entirely in support of the protection. Because we know, as you know, parents choose the religious school. They choose to send their child there because of the distinction. If you lose the distinction, then the parents actually have lost a real choice. And that is all I will say. Thank you.

DR. MERLE SKINNER. Thanks, Tom. Again, for anybody out there who is not aware of the groups that are presenting here, these are our key coalition members that have fought for and continue to fight daily for our protection.

So we really do need to educate our folks on how we are regulated, how we are governed. And we do need probably a full court press before rather than after. Because us coming back and saying, now we would like to change 27 instances after the legislature has already enacted them, is much more difficult than us acting at the time of the early instances. And by the way, can we work on this together? That may be an easier fight.

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