

<sup>Non</sup>  
AID TO PUBLIC SCHOOLS  
WITH Art Quern, David Lissy  
Wednesday, March 31, 1976  
11:00 a.m.

ACTION

THE WHITE HOUSE  
WASHINGTON

March 25, 1976

MEMORANDUM FOR: JIM CANNON  
FROM: DAVID LISSY *DL*  
SUBJECT: Aid to Nonpublic Schools

There are some aspects of this issue (pertaining to HEW regulations) which we should discuss within the next few days. Art should join us if possible.

I am attaching earlier memoranda on this issue to refresh your memory on the background.

Recommendation

That we meet in the next few days to discuss recent developments.

Attachments

cc: Art Quern



THE WHITE HOUSE

WASHINGTON

August 6, 1975

MEMORANDUM TO: ✓ JIM CANNON  
THROUGH: JIM CAVANAUGH  
FROM: ART QUERN  
SUBJECT: Court Rulings on Aid to Nonpublic Schools

You asked for more details on the recent Court decisions dealing with aid to non-public schools referred to in the attached memorandum. I will give you my "non-lawyer's" capsule description of these two rulings. Should you require a more specific, legal explanation, I will have one prepared.

MEEK v. PITTENGER - May 19, 1975

Many of the programs of Federal aid for elementary and secondary education provide for grants to public recipients (local or state school boards or agencies) but require these recipients to assure that children enrolled in private schools in the areas being served will share equitably in the services being funded.

Regulations issued by HEW typically provide that services may be rendered to the private school students on the private school premises. This is most significant to the private school since it is in effect the only way the school itself can benefit from the Federal funds. HEW regulations also permit portable equipment financed by HEW to be left on the premises of the private school. This is significant for the same reason.

Meek v. Pittenger dealt solely with a Pennsylvania statute which provided for:



- 1) The provision of publicly funded auxiliary services by public school personnel on private school premises.

-- These auxiliary services are special services to the handicapped, gifted, educationally deprived and talented students; guidance counseling and testing and other miscellaneous "secular" services.

- 2) The loan of publicly owned instructional equipment and materials for use on private school premises.

Both these items were ruled unconstitutional by Meek v. Pittenger.

Thus, while it did not specifically address Federal statutes, the decision did raise questions which could be applied to current Federal laws and regulations. If so applied, many of the programs currently benefiting nonpublic schools by services to students on the premises of the nonpublic schools would no longer be permitted.

#### June 16 Action on "Barrera"

In 1974, dealing with a case focused on one Federal program (Title I of ESEA), the Supreme Court did not address the "on premises" issue in the Barrera case. On June 16, 1975, the Supreme Court ordered the Barrera case remanded to the District Court. This, in effect, will permit the Meek decision to become part of the considerations in deciding the Barrera case.



THE WHITE HOUSE  
WASHINGTON

8/4/75

MEMO TO : ART QUERN

FROM : JIM CANNON

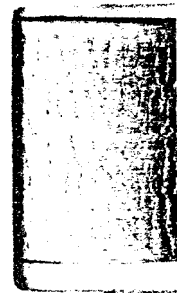
SUBJECT : Aid to Nonpublic  
Elementary and Secondary  
Schools

The attached is forwarded  
for

     Your handling

     FYI

  X   Other Could you explain  
briefly, the 5/19 - 6/16  
Supreme Court decisions?  
Attachment



THE WHITE HOUSE

WASHINGTON

July 30, 1975

MEMORANDUM FOR: JIM CANNON  
THRU: JIM CAVANAUGH  
FROM: ART QUERN *Art Q*  
SUBJECT: Aid to Nonpublic Elementary and  
Secondary Schools

I have been working with HEW to explore:

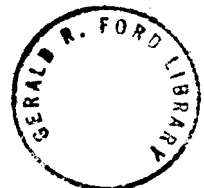
1. What the Federal government currently does to assist nonpublic education.
2. What has been specifically ruled unconstitutional by the Supreme Court.
3. What is the potential of methods of assistance which have not yet been tried and have not yet been ruled out by Court decisions.

There has been a delay in completing the work on these questions because on May 19, 1975 the Supreme Court issued a decision which further restricted State programs. Assessing the decision's implications for Federal programs has been quite difficult and is still not completely resolved. To further confuse the issue the Supreme Court "clarified" another decision on June 16, 1975. The "clarification" had the effect of leaving another aspect of the issue of aid to nonpublic schools on uncertain constitutional grounds.

SUMMARY

Attached is an outline of the analysis I have conducted in conjunction with HEW. Put briefly the following are the main conclusions reached so far:

1. The Federal government, directly or indirectly, currently provides nonpublic school students with \$100 million of assistance.



2. The fiscal problems of the private schools are concentrated in the Catholic schools and these problems will continue regardless of Federal aid because they are due to factors which are not susceptible to public sector involvement.
3. Almost any new form of aid which might be considered (tax credits, tuition reimbursement, vouchers) would only survive a constitutional challenge if they were available to both public and private school students. Making them available to both is fiscally impossible.
4. Recent Court decisions not only restrict any new initiatives but they also may place into jeopardy some of the current programs of assistance.

RECOMMENDATIONS

Given this set of conclusions, I recommend that:

1. The President not give any indication of expanded aid to nonpublic education since almost any course open would either be:
  - a. unconstitutional, or
  - b. too expensive.
2. Current program levels be maintained and that efforts be made to adjust them to insure their continued constitutionality (this reflects the potential threat of the May 19 Supreme Court decision).

Agree \_\_\_\_\_

Disagree \_\_\_\_\_

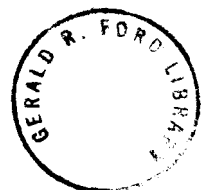
Discuss \_\_\_\_\_

Based on your reaction to these recommendations, I will proceed to draft a memorandum from you to the President.

Proceed \_\_\_\_\_

Discuss \_\_\_\_\_

Attachment



SUBJECT: Aid for Nonpublic Elementary and Secondary Schools

BACKGROUND

The question of financial aid to the nonpublic schools was extensively studied by the President's Commission on School Finance, the President's Panel on Nonpublic Education, and the HEW Task Force on School Finance with the result that reports and recommendations from each group were sent to the President in 1972. The current situation does not differ radically from that in 1972.

Enrollment in nonpublic elementary and secondary schools is declining (a 17 percent drop occurred between 1965 and 1970, and a 9 percent drop between 1970 and 1975). About 75 percent of the nonpublic school enrollment is in Roman Catholic schools and it is this portion which accounts for the decline in nonpublic enrollments. NonCatholic nonpublic schools have increased their enrollments over the last ten years and the Catholic proportion of the total nonpublic enrollment has dropped from 83 percent in 1970 to 74 percent at present.

The closing of Catholic elementary and secondary schools appears to be due to a combination of financial and non-financial factors, including:

1. perception of improved quality of public education by Catholic parents,
2. decreased desire of Catholic parents for their children to receive a "Catholic education,"
3. migration to the suburbs where Catholic schools are scarce,
4. inflation, and
5. decreased supply of religious teachers and the resultant increases in costs due to the necessity of hiring lay teachers.

Some closings of Catholic schools have occurred in the inner-city areas where the parents of children attending would have been unable to afford sufficient tuition to keep the schools open. In general, however, it appears to be the case that the drop in Catholic school enrollment is due to factors other than financial and would not be reversed by financial aid alone.





Other religiously affiliated nonpublic schools appear as a class to be in much healthier financial condition than do the Catholic schools. They serve predominantly middle- and upper-income families.

Independent, nonreligiously affiliated schools as a class are not faced with the short-term financial crises of the Catholic schools and appear to be serving upper-class families who can afford to pay sufficient tuitions to keep fiscally solvent.

#### NATIONAL GOALS SERVED BY NONPUBLIC SCHOOLS

Three public goals can be cited as being fulfilled by nonpublic schools:

1. ensuring diversity by providing parents a choice of the type of schooling their children would receive,
2. relieving the fiscal burdens of taxpayers supporting the public schools -- if all nonpublic schools were to close the fiscal consequences of absorbing these children into the public schools would be staggering, and
3. encouraging families to remain in the big cities by providing schools which are regarded as safe and educationally sound in cities where the public schools have deteriorated.

#### CONSTITUTIONAL ISSUES IN FEDERAL OR STATE AID TO NONPUBLIC EDUCATION

Because the great majority of nonpublic schools are religiously controlled any public aid must be directed in such a way as to avoid conflict with the establishment clause of the First Amendment. The Supreme Court through a series of decisions rendered over the last fifty years has established a three-factor test; namely, to be constitutional a law would have to:

1. reflect a clearly secular legislative purpose,
2. have a primary effect that neither enhances nor inhibits religion, and
3. avoid excessive entanglement between government and religious institutions.



### KEY COURT RULINGS

1. Ancillary services such as transportation, lunches, and textbook loans which are deemed to directly benefit children have been approved by the Court.
2. Direct payments to religiously affiliated schools for teacher salaries, textbooks, administrative services, building maintenance, and tuition reimbursement have been found unconstitutional.
3. Direct payments to parents for tuition, books and other fees have been also ruled unconstitutional.

### THE PRESENT STATUS OF AID TO NONPUBLIC SCHOOLS

Several States provide auxiliary services to students in nonpublic schools. Some States provide released time or dual enrollments while other States provide no aid at all.

At the Federal level benefits estimated at \$100,000,000 are provided for nonpublic school students through Titles I, II, III, and IV of ESEA, and the Handicapped, ESAA, Indian Education, Vocational Education, Follow-Through, and Right to Read programs.

### POLICY ALTERNATIVES

Several policy alternatives are usually presented in any discussion of possible Federal aid to nonpublic schools. These are:

1. Modification of Existing Benefits - It has been suggested that through a combination of encouraging nonpublic school officials and parents to apply for their "fair" share of benefits from Federal programs and insisting that public schools provide these benefits that the Federal government could provide for greater participation of nonpublic school children in existing programs. If nonpublic school students were to receive the same dollar benefits from Federal programs as public students do, it would be theoretically possible to increase these benefits by a factor of 2-1/2 to 3.

-- It is probably impossible to achieve this theoretical limit because a number of



nonpublic school officials do not wish to participate fully in some Federal programs.

-- It should be noted, however, that even though increasing the participation of nonpublic school students in present Federal programs appears worthwhile on its own merits, doing so will not solve the financial problems facing these same schools--that is, because all of these Federal programs are categorical and supplement but do not substitute for the basic expenditures which must be met by the school.

2. A New Act Providing for Secular Services - The notion that the Federal government might provide funds for mathematics teachers, science teachers, or reading instruction has been suggested. However, in order to pass constitutional muster, such a program would have to provide similar benefits to both public and nonpublic school students. Even if a policy decision were made that this was desirable, the cost would be prohibitive.
3. Tax Credits - The provision of a tax credit against the Federal income tax for students or to the parents of students in nonpublic schools for tuition, fees, and related services has been advocated by many as the best alternative for the Federal government to aid nonpublic education. It has a number of drawbacks:
  - a. it probably would not pass constitutional muster unless it were equally available to parents of public school students, and hence, would be prohibitively expensive,
  - b. it is not targeted at those families who most need the help; namely, the lower-income families who can provide no support for education. Most of its benefits would go to families for whom financial considerations do not appear to be paramount in deciding whether or not to send their children to nonpublic schools.



4. Tuition Reimbursement - A program of Federal reimbursement to parents for all or part of the tuition and fees paid for students to attend nonpublic schools has been suggested. The same problems appear here as with tax credits. It seems virtually certain that a tuition reimbursement program limited to nonpublic schools would be unconstitutional and certainly if tuition reimbursement were available to all students, public schools would quickly adopt tuitions.
5. Education Vouchers - While a system of vouchers, if sufficiently regulated, might well prove constitutional, it would be a radical departure from our present educational system. Limited voucher experiments conducted recently have not indicated that promises of great educational advances will be fulfilled and public interest in this concept has diminished. On the basis of current evidence, it would not seem sound to go beyond the experimental stage with vouchers at this time.
6. Status Quo - The consequences of not taking any Federal action at this point seem to be that a number of Catholic elementary and secondary schools will close, and that these closings will occur gradually. The decline in the rate of closings over the last five years might be regarded as a hopeful sign. Certainly, the problem is no more serious now than it was in 1970, at which time many dire warnings were cast about the results of not taking action.

#### RECOMMENDATIONS

While some alternative programs such as modifying benefits of existing programs and experimentation with education vouchers seem worthwhile on their own merit, none appears to solve the real financial problems of the nonpublic schools. No program has yet been suggested which would target funds only to the nonpublic schools and still pass constitutional muster.

