



Nebraska and the Freedom to Educate

By Dick Clark

Nebraska may be considered “fly-over country” by some, but every American law student pays at least one visit to the Cornhusker State in the course of their constitutional law studies. The decision in *Meyer v. Nebraska* (1923)¹ by the Supreme Court of the United States is taught as an important early example of “substantive due process” reasoning by the high court.² While the evolution of this vein of constitutional interpretation has since resulted in many controversial court rulings,³ the holding in the *Meyer* case is viewed as an essential statement about the traditional freedom of parents to rear their children according to their own personal convictions.

In *Meyer*, the Court examined the constitutionality of the Siman Act, a reactionary law from the post-World War I era banning the instruction of children in languages other than English. The law prohibited classroom teaching conducted in other languages, and students were not even allowed to learn about other languages until they reached high school. Though not explicitly singled out in the statute, the many German speakers among Nebraska’s immigrant population were clearly of central concern, and it was instruction in the German language that triggered the prosecution of Robert Meyer, a school teacher in Hampton, Nebraska.

The Court took the opportunity to make a powerful statement about the constitutional rights of parents, holding that the Fourteenth Amendment’s Due Process Clause, “without doubt... denotes not merely freedom from bodily restraint but also the right of the individual... to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men.”⁴

The impact of the *Meyer* decision is hard to overstate. It was crucial to the outcome of *Pierce v. Society of Sisters* (1925),⁵ an education freedom case originating in Oregon that has been

¹ *Meyer v. Nebraska*, 262 U.S. 390 (1923)

² Bybee, Jay S. "Substantive Due Process and Free Exercise of Religion: Meyer, Pierce and the Origins of Wisconsin v. Yoder." Scholarly Works. Paper 352. 1996. [URL: <http://scholars.law.unlv.edu/facpub/352>]

³ See, e.g., *Roe v. Wade*, 410 U.S. 113 (1973) and *Lawrence v. Texas*, 539 U.S. 558 (2003).

⁴ *Meyer* at 399.

⁵ *Pierce v. Society of Sisters*, 268 U.S. 510 (1925).

referred to as the “Magna Carta of parental rights in education.”⁶ In that case, a 1922 amendment to Oregon’s compulsory public education law removed the exemption for private schooling, causing parents to withdraw their children from religious and non-religious private schools alike in response to the newly effective government monopoly on primary and secondary education. Relying on *Meyer*, the Supreme Court again found that broad interference in parental decision-making about education violated the United States Constitution.

“The fundamental theory of liberty upon which all governments in this Union repose excludes any general power of the State to standardize its children by forcing them to accept instruction from public teachers only. *The child is not the mere creature of the State; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations.*”⁷ [emphasis added]

The Court recognized that among the liberties protected by the United States Constitution was the freedom of parents to direct their children’s education and upbringing. These strong statements of parental supremacy in child-rearing have had far-reaching consequences. However, Nebraska has been slow in facilitating this parental freedom to choose.

The Mercatus Institute’s *Freedom in the 50 States* recommends expanding educational freedom in Nebraska by dialing back the regulatory burden on private schools, including home schools.⁸ Policy reforms recommended by Mercatus include elimination of mandatory registration, approval, curricular, and licensure requirements that affect private schools. For homeschoolers, relaxing initial and ongoing state notification requirements would move Nebraska up in the rankings.⁹ Limiting the application of teacher licensure regulations for teachers providing supplemental instruction to homeschooled students would also be an improvement.¹⁰

Private schools currently face burdensome initial and annual paperwork requirements, whether accredited or unaccredited.¹¹ Unlike those in other states, homeschoolers in Nebraska are treated like unaccredited brick-and-mortar private schools. This means that they are subject to the same bureaucratic workload. For purposes of completing the mandated filings, they must either assert religious or non-religious objections to state requirements, with different forms required depending on which objection is made. Parents must annually file a notarized parent or guardian form indicating either that state requirements “interfere with the decisions in directing my child’s education” or “violate my sincerely held religious beliefs,” and affirming that the

⁶ Hervey, Lenore. *The Law of Church and State in America*. First Amendment Center. 2008. p. 13. [URL: <http://www.firstamendmentcenter.org/madison/wp-content/uploads/2011/03/vol3ch2.pdf>]

⁷ *Society of Sisters* at 534.

⁸ “#22 Nebraska.” *Freedom in the 50 States*. Mercatus Center. 2011. [URL: <http://freedominthe50states.org/overall/nebraska>]

⁹ *Ibid.*

¹⁰ “Nebraska.” *Homeschooling in the United States: A Legal Analysis, 2014–2015 Edition*. Home School Legal Defense Association. [URL: <http://www.hslda.org/laws/analysis/Nebraska.pdf>]

¹¹ “Nebraska: Private Schools Laws and Regulations.” Friedman Foundation for Educational Choice. [URL: <http://www.edchoice.org/Documents/SchoolChoice/Private-Schools-Laws-and-Regulations/nebraska.pdf>]

education program they carry out includes content mandated by the state.¹² Another notarized form, usually completed by parents, must be submitted annually to affirmatively accept responsibility for submitting information on student enrollment, attendance, and compliance with other state rules. Before even getting started, an information summary must be filed to set out the school calendar with a minimum number of instructional hours, as well as a list of names and credentials for adults involved in instructing students.¹³ These and other restrictions on private schools are the reason why a 2008 report published by the Friedman Foundation for Educational Choice assigned Nebraska an “F” grade for its cumbersome regulations governing private schools. Only five states had worse numerical scores: North Dakota, New York, Maryland, Tennessee, and Alabama.¹⁴

Nebraska is also one of only a handful of states that do not allow charter schools or offer private school choice programs such as tax credit scholarships or vouchers.¹⁵ In states that offer them, these programs make some education options available that might otherwise be cost-prohibitive, especially when targeted to assist families located in the most troubled school districts.¹⁶ They also present creative solutions to the question of how to finance expanded educational services, such as early childhood education.¹⁷

As discussions continue about giving Nebraska families more educational freedom, it is important to conduct a comprehensive review of regulations on private schools in order to remove potential obstacles to alternative educational opportunities. It is inevitable that implementation of private school choice programs will mean that private school regulations will continue to develop over time. A pro-active review of education laws and regulations now would mean more effective and efficient administration of new programs later.¹⁸ Regrettably, Nebraska is behind the curve on letting parents make decisions about how their children should be educated. It is time that policymakers take action to bring the state up to speed.

¹² HSLDA.

¹³ *Ibid.*

¹⁴ Hammons, Christopher. *Fifty Educational Markets: A Playbook of State Laws and Regulations Governing Private Schools*. Friedman Foundation for Educational Choice. 2008. [URL: http://www.edchoice.org/CMSModules/EdChoice/FileLibrary/295/private_schools_laws®s.pdf]

¹⁵ “Education Policy Brief: School Choice 101.” Platte Institute for Economic Research. July 21, 2014. [URL: <http://www.platteinstitute.org/research/detail/education-policy-brief-school-choice-101>]

¹⁶ Clark, Dick. “Kansas’s New Scholarship Tax Credits Worth a Look.” Platte Institute for Economic Research. June 25, 2014. [URL: <http://www.platteinstitute.org/research/detail/kansass-new-scholarship-tax-credits-worth-a-look>]

¹⁷ Weinberg, Adam and Dick Clark. “Paying for Early Childhood Priorities.” Platte Institute for Economic Research. July 31, 2014. [URL: <http://www.platteinstitute.org/research/detail/paying-for-early-childhood-priorities>]

¹⁸ Catt, Andrew. *Public Rules on Private Schools: Measuring the Regulatory Impact of State Statutes and School Choice Programs*. Friedman Foundation for Educational Choice. May 30, 2014. [URL: <http://www.edchoice.org/Research/Reports/Public-Rules-on-Private-Schools--Measuring-the-Regulatory-Impact-of-State-Statutes-on-School-Choice-Programs.aspx>]