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## Restructuring the Modern Education System in the United States: A Look at the Value of Compulsory Education Laws

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# RESTRUCTURING THE MODERN EDUCATION SYSTEM IN THE UNITED STATES: A LOOK AT THE VALUE OF COMPULSORY EDUCATION LAWS

*Chelsea Lauren Chicosky, M.Ed.\**

No discipline is ever requisite to force attendance upon lectures which are really worth the attending . . . Force and restrain may, no doubt, be in some degree requisite in order to oblige children . . . to attend to those parts of education which is thought necessary for them to acquire during that early period of life; but after twelve or thirteen years of age, provided the master does his duty, force or restraint can scarce ever be necessary to carry on any part of education[.]<sup>1</sup>

## I. INTRODUCTION

While the United States Supreme Court has declined to denote education a fundamental right,<sup>2</sup> all states have provisions for education in their state constitutions,<sup>3</sup> and a majority of states expressly designate education a fundamental

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<sup>1</sup> MILTON FRIEDMAN & ROSE D. FRIEDMAN, *FREE TO CHOOSE: A PERSONAL STATEMENT* 171 (Peggy Brooks ed., Harcourt Brace Jovanovich, Inc. 1980) (citing ADAM SMITH, *WEALTH OF NATIONS*, 253 (vol. II, Book V, Chap. I)).

<sup>2</sup> *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 30 (1973).

<sup>3</sup> *See infra* Table I (citing each state's constitutional provision for education).

right at the state level.<sup>4</sup> Furthermore, with every right—except education—comes an implicit, opposite right. For example, there is a right to freedom of speech,<sup>5</sup> and the inverse is that one may choose to listen.<sup>6</sup> There is a right to bear arms,<sup>7</sup> and yet the opposite right is the choice not to carry a gun. Every person of age who has registered has the right to vote,<sup>8</sup> but no one is required to stand in line at the polls. Unlike the foregoing rights, the right to education mandates compulsory attendance in school.<sup>9</sup> There is no opposite right to forego education and be ignorant.<sup>10</sup>

Furthermore, there is a disconnect among the goals of modern education in the United States and lack of achievement in education by American schoolchildren compared to other countries, along with American compulsory education laws. A change is needed. America's public schools are in dire need of

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<sup>4</sup> See, e.g., *Steffes v. Cal. Interscholastic Fed'n*, 176 Cal. App. 3d 739, 746 (Cal. Ct. App. 1986) (“The right to public education is a fundamental right under the California Constitution.”); *Horton v. Meskill*, 376 A.2d 359, 373 (Conn. 1977), *aff'd*, 445 A.2d 579 (Conn. 1982) (finding “that in the light of the Connecticut constitutional recognition of the right to education (article eighth, s 1) [sic] it is, in Connecticut, a ‘fundamental’ right”); see also John Dayton, *Serrano and Its Progeny: An Analysis of 30 Years of School Funding Litigation*, 157 ED. LAW. REP. 447, 453 (2001) (noting that “most state courts have rejected the *Rodriguez* test of what constitutes a fundamental right”).

<sup>5</sup> U.S. CONST. amend. I (“Congress shall make no law . . . abridging the freedom of speech.”).

<sup>6</sup> *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 576 (1980) (“Free speech carries with it some freedom to listen.”); see also *FCC v. Pacifica Found.*, 438 U.S. 726, 765 (1978) (Brennan, J., dissenting) (arguing that an individual makes “a decision to take part, if only as a listener, in an ongoing public discourse.” The majority and dissent both debated the venues where one is free to choose to listen.); cf. *Paris Adult Theater I v. Slaton*, 413 U.S. 49, 71 (1973) (Douglas, J., dissenting) (“I have yet to be trapped into seeing or reading something that would offend me.”).

<sup>7</sup> U.S. CONST. amend. II (“The right of the people to keep and bear Arms, shall not be infringed.”).

<sup>8</sup> See, e.g., *Ex parte Yarbrough*, 110 U.S. 651, 662 (1884); *Reynolds v. Sims*, 377 U.S. 533, 554 (1964).

<sup>9</sup> See *infra* Table II (citing each state's statute addressing compulsory education).

<sup>10</sup> The United States Supreme Court has acknowledged several goals for public education. *Ambach v. Norwick*, 441 U.S. 68, 76 (1979) (stating that the goals for public education include “the preparation of individuals for participation as citizens, and . . . the preservation of the values on which our society rests.”); *Jacobellis v. Ohio*, 378 U.S. 184, 199 (1964) (Warren, C.J., dissenting) (acknowledging that there is a “right of the Nation and of the States to maintain a decent society”). The Court has also consistently upheld the right to receive information. See, e.g., *Stanley v. Georgia*, 394 U.S. 557, 564 (1969) (ruling that the “right to receive information and ideas, regardless of their social worth, is fundamental to our free society”).

reform. Educational theorists,<sup>11</sup> commentators,<sup>12</sup> politicians,<sup>13</sup> professors,<sup>14</sup> communities,<sup>15</sup> parents,<sup>16</sup> teachers,<sup>17</sup> and students<sup>18</sup>

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<sup>11</sup> See, e.g., JOHN TAYLOR GATTO, *DUMBING US DOWN: THE HIDDEN CURRICULUM OF COMPULSORY SCHOOLING* 87 (New Society Publishers 2005) [hereinafter GATTO, *DUMBING*] (lamenting “[t]hat our schools have failed spectacularly to give our children the education we want for them”); see also Rick Hess, *Advice for the President*, in *THE OBAMA EDUCATION PLAN: AN EDUCATION WEEK GUIDE* 200 (Jossey-Bass 2009) [hereinafter OBAMA EDUCATION PLAN] (labeling current educational policies “anachronistic”).

<sup>12</sup> See, e.g., Arne Duncan, while CEO of the Chicago Public Schools (currently, he serves as the United States Secretary of Education under President Obama), identified that in addition to focusing more on early childhood education; the quality of education must be improved. He cautioned, “[t]his can’t just be babysitting.” OBAMA EDUCATION PLAN, *supra* note 11, at 196. Consider, too, Miriam Kurtzig Freedman, an attorney, expert and author who focuses on education law and strategy, regarding the current state of education as “struggl[ing] and unsustainable.” OBAMA EDUCATION PLAN, *supra* note 11, at 203. See also David Albert, *Introduction* to GATTO, *DUMBING*, at xviii–xix (New Society Publishers 2005) (citing to Alfie Kohn, Thomas Sowell, and other “education writers . . . [who] emphasize . . . the obvious deficiencies of public education . . . not[ing] the boredom, the mindless competition, the enforced social and economic stratification, the lack of any real engagement”).

<sup>13</sup> In an effort to reform the state of America’s educational system, President George W. Bush signed an act to close the achievement gap with accountability, flexibility, and choice, so that no child is left behind (NCLB) in 2002. Additionally, President Obama, in his 2007 campaign for president, proposed to reform the assessment process that determines student achievement in NCLB, as well as to address accountability. OBAMA EDUCATION PLAN, *supra* note 11, at 26–27 (Jossey-Bass 2009). Education is generally a topic that garners presidential attention. See, e.g., President Truman’s “Higher Education for Democracy: A Report of the President’s Commission on Higher Education” (1947), President Eisenhower’s “Committee on Education Beyond the High School” (1956), President Kennedy’s “Task Force on Education” (1960), President Reagan’s “A Nation at Risk” (1983), and President George W. Bush’s “Commission on the Future of Higher Education” (2006).

<sup>14</sup> See, e.g., Kris Guitierrez, professor of social research methodology, UCLA, who advocates a change in education for “the opportunity to develop the habits of mind that foster[s] a love of learning,” OBAMA EDUCATION PLAN, *supra* note 11, at 198; Eric Hanushek, a fellow at Stanford University, assessing, quite plainly, “we can’t just sit back and do things as we’ve been doing” in education, OBAMA EDUCATION PLAN, *supra* note 11, at 199–200; and Kathleen McCartney, Dean of the Harvard Graduate School of Education, citing to “enormous education challenges facing the country.” OBAMA EDUCATION PLAN, *supra* note 11, at 204.

<sup>15</sup> See, e.g., *Education Freedom in Utah: Frequently Asked Questions*, NOCOMPULSORYEDUCATION.ORG, <http://nocompulsoryeducation.org/frequently-asked-questions/> (last visited Sept. 23, 2014); Bob Herbert, *The Plot Against Public Education*, POLITICO (October 6, 2014) available at [http://www.politico.com/magazine/story/2014/10/the-plot-against-public-education-111630.html#\\_VG0xFvnF98F](http://www.politico.com/magazine/story/2014/10/the-plot-against-public-education-111630.html#_VG0xFvnF98F).

<sup>16</sup> Caitlin Emma, *First look: Parents divided on union role – Today: Millennials on the map – Rethinking teacher prep*, POLITICO (Oct. 9, 2014) available at <http://www.politico.com/morningeducation/1014/morningeducation15616.html> (finding that “[t]he poll, released first to Morning Education, also highlights parents’ ambivalence about their local schools. A strong eighty-four percent said they were very or somewhat satisfied with their children’s school. Yet seventy-three percent also worry that schools aren’t preparing their kids for success. And eighty-five percent believe

recognize a problem with the system, and many are demanding change. Moreover, when one compares the United States with other developed countries, the results<sup>19</sup> are deeply concerning. Abolishing compulsory education for all grades is an

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America is falling behind its global competitors. . . . [and that] Only one in three backed a complete overhaul of public education. Strong majorities preferred more modest reforms, such as raising standards, expanding charter schools, adding a vocational track in high schools and using test scores along with other measures in evaluations “to help teachers improve.” Some fifty-four percent had a favorable or somewhat favorable impression of the Common Core, with a big chunk — sixteen percent — undecided. The poll also revealed a strong undercurrent of sympathy for teachers, with respondents citing a “lack of respect and support for teachers” as a top concern.” Additionally, for example, the advent of Charter Schools (*see discussion infra* Part III.B.1.c)—two of which were opened and operational in 1992, then only seven total in 1993—nationwide, has grown to include “42 states and the District of Columbia hav[ing] passed charter school laws. Charters educated 1.7 million students in 5,500 schools as of the 2010–11 school year.” Katie Ash, *Charters Add Competitive Twist to District Governance*, EDUC. WEEK (Jan. 3, 2014), available at <http://www.edweek.org/ew/articles/2014/01/09/16charters.h33.html?intc=EW-QC14-EML> (noting the growth in charter schools).

<sup>17</sup> See, e.g., Valerie Strauss, *Teacher’s Resignation Letter: ‘My Profession. . . . No Longer Exists’*, WASH. POST (April 6, 2013), available at <http://www.washingtonpost.com/blogs/answer-sheet/wp/2013/04/06/teachers-resignation-letter-my-profession-no-longer-exists/> (reporting on a resignation letter of a teacher who had taught for forty years, with his reasons for resignation including failure in the modern educational system).

<sup>18</sup> The Organisation for Economic Co-operation and Development (OECD) reports the Program of International Assessment (PISA) data was gathered from 64 nations and economies. OECD, *Results from the 2012 data collection*, <http://www.oecd.org/pisa/> (last visited Mar. 8, 2014). The OECD further reports that “[s]tudents in the U.S. are largely satisfied with their school and view teacher-student relations positively[;]” however, the report also suggests that “disadvantaged students show less engagement, drive, motivation and self-beliefs.” OECD, *Programme for International Student Assessment (PISA) Results from PISA 2012, Country Note: United States 1* (2013), <http://www.oecd.org/pisa/keyfindings/PISA-2012-results-US.pdf>. [hereinafter OECD Country Note]

<sup>19</sup> According to the most recent data from the PISA, the United States ranks 26th in mathematics, 17th in reading and 21st in science of thirty-four OECD or developed countries and economies. OECD Country Note, *supra* note 18, at 1–2. Author’s Note: The text cites the United States ranked “213” because the “3” is not in superscript, though there is a corresponding footnote in the report to indicate that the number should read “21<sup>3</sup>”. Other sources concur that the appropriate ranking is “21st”. See, e.g. Oliver Staley, *US Students Get Stuck in the Middle of the Pack on OECD Test*, BLOOMBERG (Dec. 3, 2013), available at <http://www.bloomberg.com/news/2013-12-03/asian-teenagers-top-world-in-tests-for-math-reading-and-science.html>; Valerie Strauss, *Key PISA test results for U.S. students*, WASH. POST (Dec. 3, 2013), available at <http://www.washingtonpost.com/blogs/answer-sheet/wp/2013/12/03/key-pisa-test-results-for-u-s-students/> (indicating the United States science scores were average); Sophie Brown, *Shanghai teens top international Education Ranking, OECD says*, CNN (Dec. 3, 2013), <http://www.cnn.com/2013/12/03/world/asia/pisa-education-study/> (noting that the United States has “a score indistinguishable from the average for reading and science”).

impractical solution,<sup>20</sup> and it would not encourage the growth of our Nation's youth.<sup>21</sup> But the attitude toward education in the United States, ingrained in the student from society<sup>22</sup> and home,<sup>23</sup> is disturbing. Students' cavalier attitudes toward school are obvious as students are both tardy<sup>24</sup> and absent.<sup>25</sup> Logic holds that one must be present to learn. Nevertheless, the states' compulsory education laws are ineffective because even when students are present, if there is little or no motivation or desire to learn<sup>26</sup> and do well, these students theoretically will

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<sup>20</sup> The majority of households today require two working parents. The childcare issue alone would create an insurmountable dilemma for modern families who have come to rely on the school-day schedule. Completely abolishing compulsory education would never gain the support needed and a complete turnaround would likely cause more harm to the structure of American society than positive reform.

<sup>21</sup> Even the United Nations Declaration of the Rights of the Child declares that "[t]he child is entitled to receive education, which shall be free and compulsory, *at least in the elementary stages*. He shall be given an education which will promote his general culture, and enable him, on a basis of equal opportunity, to develop his abilities, his individual judgment and his sense of moral and social responsibility, and to become a useful member of society." Declaration of the Rights of the Child, G.A. Res. 1386 (XIV), U.N. Doc. A/RES/1386(XIV) (Nov. 20, 1959) (emphasis added).

<sup>22</sup> Andreas Schleicher, the OECD's special advisor on education policy, commented that "most Asian countries [which performed highest on the PISA] consistently believe that achievement is mainly a product of hard work, rather than inherited intelligence, suggest[ing] that education and its social context can make a difference in instilling values that foster success in education." He further surmised "East Asian education systems have convinced their citizens to make choices that value education, their future, more than consumption today. But placing a high value on education is just part of their equation." Andreas Schleicher, *Opinion: What Asian schools can teach the rest of the world*, CNN (Feb. 3, 2014), <http://www.cnn.com/2013/12/03/opinion/education-rankings-commentary-schleicher/>.

<sup>23</sup> Senator Aaron Osmond, *Accountability for Parents + Respect for Teachers: A Practical Argument for Ending Compulsory Education in Utah*, THE SENATE SITE (July 12, 2013, 9:38 PM), <http://www.senatesite.com/home/compulsory-education/> (arguing that Utah compulsory education laws should be repealed and observing that "[s]ome parents completely disengage themselves from their obligation to oversee and ensure the successful education of their children. Some parents act as if the responsibility to educate, and even care for their child, is primarily the responsibility of the public school system. As a result, our teachers and schools have been forced to become surrogate parents, expected to do everything from behavioral counseling, to providing adequate nutrition, to teaching sex education, as well as ensuring full college and career readiness.").

<sup>24</sup> For example, PISA data reports that 30% of 15-year-old students were tardy at least once in the previous two weeks. OECD Country Note, *supra* note 18, at 5.

<sup>25</sup> For example, PISA data reports that 20% of 15-year-old students were absent at least once in the previous two weeks. *Id.*

<sup>26</sup> Milton Friedman, Nobel Laureate in Economics, noted that in a voucher program (see discussion *infra* Part III.B.1.b), where parents can choose the environment their child is educated, "the children are well behaved, eager to learn[.]" FRIEDMAN, *supra* note 1, at 159. His statement indicates that in the other, typical schools, this behavior is not the case.

not learn.<sup>27</sup> Even if one does not agree with a theoretical premise for abolishing compulsory education laws at the upper levels, he or she should consider the measurable effect that these students are exhausting arguably valuable resources.<sup>28</sup> Moreover, unmotivated and apathetic students often disrupt the learning environment,<sup>29</sup> and in effect, take away from those who embrace education and see education as a privilege, not an obligation. Compulsory education laws are not even effective to keep children in school.<sup>30</sup> Practically speaking, eliminating compulsory education for older students is a feasible solution.<sup>31</sup>

Historically, there has been a common theory for education: education should lead to productive and contributing members of society. As early as 1642, the Massachusetts General Court announced that children were to be educated in order to “read

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<sup>27</sup> Horace Mann, former Secretary of the Massachusetts Board of Education, realized that offering public education to the masses was critical to propelling the Nation forward, and should not be limited to the wealthy. Public education encouraged sifting through the population, as even someone poor may be able to flourish, given the opportunity. But Mann acknowledged that student attitude toward education matters: “[i]f a child appetizes his books, then lesson-getting is free labor. If he revolts at them, then it is slave-labor. Less is done, and the little is not so well done.” HORACE MANN, LECTURES, AND ANNUAL REPORTS ON EDUCATION 49 (Lee, Shepard, Dillingham 1872). Consider, too, Benjamin Franklin. Like Mann, Franklin also observed that:

[s]omething seems wanting in America to incite and stimulate Youth to Study. In Europe the Encouragements to Learning are of themselves much greater than can be given here. Whoever distinguishes himself there, in either of the three learned Professions, gains Fame, and often Wealth and Power: A poor Man's Son has a Chance, if he studies hard, to rise, either in the Law or the Church, to gainful Offices or Benefices; to an extraordinary Pitch of Grandeur; to have a Voice in Parliament, a Seat among the Peers; as a Statesman or first Minister to govern Nations, and even to mix his Blood with Princes.

BENJAMIN FRANKLIN, PROPOSALS RELATING TO THE EDUCATION OF YOUTH IN PENSILVANIA [sic] PHILADELPHIA 7 n. 3 (1749), available at [http://sceti.library.upenn.edu/sceti/printedbooksNew/index.cfm?textID=franklin\\_youth&PagePosition=1](http://sceti.library.upenn.edu/sceti/printedbooksNew/index.cfm?textID=franklin_youth&PagePosition=1).

<sup>28</sup> The OECD reports that the United States per capita GDP is third in the world in 2012, implying more money was spent on education in the United States compared to other nations. OECD Country Note, *supra* note 18, at 4.

<sup>29</sup> See FRIEDMAN, *supra* note 1 and accompanying text

<sup>30</sup> In 2012, OECD data ranked the United States 22nd out of 27 OECD nations and economies for those expected to complete upper secondary education in their lifetime, equivalent to a high school diploma or GED. OECD, *Country Note: United States*, 2 (2013), <http://www.oecd.org/edu/CN%20-%20United%20States.pdf> (last visited Sept. 19, 2014); see also Kavitha Cardoza, *Graduation Rates Increase Around The Globe As U.S. Plateaus: Other countries have pulled ahead, and the U.S. falls behind*, AMERICAN UNIVERSITY RADIO, (Feb. 21, 2012), available at [http://wamu.org/news/morning\\_edition/12/02/21/graduation\\_rates\\_increase\\_around\\_the\\_globe\\_as\\_us\\_plateaus](http://wamu.org/news/morning_edition/12/02/21/graduation_rates_increase_around_the_globe_as_us_plateaus).

<sup>31</sup> See discussion *infra* Part IV.

and understand religion and the laws of the [state].”<sup>32</sup> Horace Mann, who eventually became Secretary of the Massachusetts Board of Education and a champion of the public school system, believed that “education was so important that government had a duty to provide education to every child.”<sup>33</sup> Mann also rationalized that the reason to educate the masses was to ensure that citizens were “fit to be a voter.”<sup>34</sup> Thomas Jefferson’s primary concern for educating the public was for the “preservation of freedom and happiness”<sup>35</sup> and to ensure that everyone could participate and protect the newly formed government.<sup>36</sup> Benjamin Franklin ascertained that the measure of successful education is what one does with his or her skills and knowledge.<sup>37</sup> These early American aspirations and relatively similar approaches to education, in conjunction with the early American economic, political, and social structure, supported the need for compulsory education laws.<sup>38</sup>

Today, the variety of approaches in modern education demonstrates the plea for, and plausibility in, overhauling the current educational system by abolishing compulsory education

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<sup>32</sup> ALLAN C. ORNSTEIN & DANIEL U. LEVINE, AN INTRODUCTION TO THE FOUNDATIONS OF EDUCATION 147 (3d ed., Houghton Mifflin Company 1984).

<sup>33</sup> FRIEDMAN, *supra* note 1, at 153.

<sup>34</sup> MANN, *supra* note 27, at 83.

<sup>35</sup> Letter from Thomas Jefferson To George Wythe (Aug. 13, 1786), in THOMAS JEFFERSON, WRITINGS: LETTERS 859 (Library of America 1984).

<sup>36</sup> Notes on the State of Virginia Query XIV, in THOMAS JEFFERSON, WRITINGS: LETTERS 859, *supra* note 35, at 274–75; see also A Bill for the More General Diffusion of Knowledge, in THOMAS JEFFERSON, WRITINGS: PUBLIC PAPERS 365 (Library of America 1984).

<sup>37</sup> FRANKLIN, *supra* note 27, at 31–32 n. 29 (1749) (citing GEORGE TURNBULL, OBSERVATIONS ON LIBERAL EDUCATION 175–76 (1742)), available at [http://sceti.library.upenn.edu/sceti/printedbooksNew/index.cfm?textID=franklin\\_youth&PagePosition](http://sceti.library.upenn.edu/sceti/printedbooksNew/index.cfm?textID=franklin_youth&PagePosition)

=1 (claiming that “[g]ood Education must of Necessity be acknowledged to mean, *proper Care* to instruct early in the Science of Happiness and Duty, or in the Art of Judging and Acting aright in Life . . . *he is not educated*; he is not prepared for the World; he is not qualified for Society; he is not fitted for discharging the *proper Business of Man*. The Way therefore to judge whether Education be on a right Footing or not, is to compare it with the END; or to consider what it does in order to accomplish Youth for choosing and *behaving well* in the various Conditions, *Relations* and Incidents, of Life. If Education be calculated and adapted to furnish young Minds betimes with proper Knowledge for their Guidance and Direction in the chief Affairs of the World, and in the principal Vicissitudes to which human Concerns are subject, then is it indeed *proper or right Education*.”).

<sup>38</sup> See, e.g., GATTO, DUMBING, *supra* note 11, at 12 (noting that “we’ve had a society essentially under central control in the United States since just after the Civil War, and such a society requires compulsory schooling . . . to maintain itself”).



laws after children obtain an elementary proficiency level. Moreover, even though the states still use compulsory education laws, courts and legislatures are constantly finding exceptions to those laws.<sup>39</sup> Unlike early America, the diversity in modern approaches<sup>40</sup> to education dispels the need for compulsory education laws for older students.<sup>41</sup>

Additionally, today there is no common, stated goal for education.<sup>42</sup> Without a uniform purpose for education, which naturally would lead to a systematic plan to achieve the objective, it is questionable why states continue to enforce compulsory education laws at all. Perhaps states enforce compulsory education laws to effectuate laws such as the No Child Left Behind (NCLB) Act.<sup>43</sup> The NCLB Act indicates that the purpose of education is to ensure that the population has a specific and measurable mastery of certain skills and concepts.<sup>44</sup> Given the global village created by technology, it is arguable that schools are charged with, at the very least, preparing students to enter the international workforce.<sup>45</sup> to

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<sup>39</sup> See discussion *infra* Part III.

<sup>40</sup> See discussion *infra* Part III.

<sup>41</sup> See, e.g., FRIEDMAN, *supra* note 1, at 162–63 (arguing for vouchers and the abolition of compulsory education laws, and citing the tension between the governmental and a parental control as the issue with the modern education system).

<sup>42</sup> Consider, for example, Connor Boyack, president of a public policy think tank, who argues that if one is motivated to pursue an education, it is largely for the purpose of securing employment. *The Purpose and Aim of Modern Education*, CONNOR'S CONUNDRUMS (Oct. 26, 2008), <http://www.connorboyack.com/blog/the-purpose-and-aim-of-a-modern-education>; *but see* Senator John F. Kennedy, Address at Harvard Univ. (Jun. 14, 1956), available at <http://www.jfklibrary.org/Asset-Viewer/LzTyK8kzHUu7X-6WTRXQEA.aspx> (stating that the goal of the institution of education is “the advancement of knowledge and the dissemination of truth”); *see also* G.A. Res. 1386 (XIV), U.N. Doc. A/RES/1386 (Nov. 20, 1959) (stating that a child “shall be given an education which will promote his general culture, and enable him, on a basis of equal opportunity, to develop his abilities, his individual judgment and his sense of moral and social responsibility, and to become a useful member of society”); *but see* FRIEDMAN, *supra* note 1, at 155 (surmising that schools “are still expected to teach the three R’s and to transmit common values . . . however, schools are not regarded as means of promoting social mobility, racial integration, and other objects”).

<sup>43</sup> No Child Left Behind Act of 2001, 20 U.S.C. § 6301 et seq. (2002) [hereinafter NCLB Act].

<sup>44</sup> *Id.* § 6301 (stating that the purpose is to “obtain a high-quality education and reach, at a minimum, proficiency on challenging State academic achievement standards and state academic assessments”).

<sup>45</sup> Nancy Kober & Diane Stark Rentner, *Common Core State Standards: Progress and Challenges in School Districts’ Implementation* (Center on Education Policy 2011), available at <http://www.corestandards.org/about-the-standards/> (The Common Core State Standards, voluntarily adopted by states and implemented in the current 2013–2014 school year, “aim to ensure that high school graduates possess the

contribute to the global community, economy, and marketplace. But while careers today are an amorphous blend of disciplines, schools teach subjects in isolation from application and practice.<sup>46</sup> The international statistics comparing the United States to other countries in math,<sup>47</sup> reading,<sup>48</sup> science,<sup>49</sup> dropout rates,<sup>50</sup> and post-school employment and earnings<sup>51</sup> indicate a struggling educational structure in America. Compulsory education laws are ineffective and unnecessary to educate. Modern changes to the approaches in education, and the goals and measures we appear to embrace, have eliminated the need for compulsory education, particularly for middle and high school students.

This Comment attempts to show that compulsory public education (the norm, but without justification, as the Supreme Court of the United States has declined to hold education a fundamental right<sup>52</sup>) does not align with modern purposes for education. Ultimately, this Comment concludes that

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knowledge and skills needed for college and a globally competitive workforce”); Daniel Arkin, *US teens lag in global education rankings as Asian countries rise to the top*, NBC NEWS (Dec. 3, 2013), <http://www.nbcnews.com/news/us-news/us-teens-lag-global-education-rankings-asian-countries-rise-top-v21733705> (quoting Arne Duncan, currently the Secretary of Education responding to the PISA data, who lamented that the results were at “odds with our aspiration to have the best-educated, most competitive work force in the world.”); see also ROBERT L. LERMAN & STEFANIE R. SCHMIDT, AN OVERVIEW OF ECONOMIC, SOCIAL, AND DEMOGRAPHIC TRENDS AFFECTING THE US LABOR MARKET 55–56 (The Urban Institute 1999), available at [http://www.urban.org/UploadedPDF/dol\\_finalreport.pdf](http://www.urban.org/UploadedPDF/dol_finalreport.pdf) (describing the labor market in light of globalization).

<sup>46</sup> Schleicher, *supra* note 22 (noting “the most impressive performance of Shanghai’s students [the highest scorers according to the PISA results] is actually not on the tasks that ask them to simply reproduce what they have learned, but on tasks where they need to extrapolate from what they know and apply their knowledge creatively in novel situations”).

<sup>47</sup> See *supra* note 19.

<sup>48</sup> See *supra* note 19.

<sup>49</sup> See *supra* note 19.

<sup>50</sup> See *supra* note 30.

<sup>51</sup> See OECD, *supra* note 30.

<sup>52</sup> This Comment does not discuss if education ought to be a fundamental right at the federal level, and the author does not believe the distinction would even matter. Even if the Court held that education is a fundamental right, the author speculates that just as “the rights of free speech and assembly are fundamental, they are not in their nature absolute[,]” that education would not be either. *Whitney v. Cal.*, 274 U.S. 357, 373 (1927), *overruled by* *Brandenburg v. Ohio*, 395 U.S. 444 (1969). For an illuminating argument that education should be a fundamental right, see generally BROOKE WILKINS, NOTE AND COMMENT: SHOULD PUBLIC EDUCATION BE A FEDERAL FUNDAMENTAL RIGHT? 2005 BYU EDUC. & L. J. 261 (2005).

compulsory education laws are unnecessary at the upper grade levels and ineffective for modern educational purposes. In Part II, this Comment considers the background and history of compulsory public education in the United States in an effort to provide the historical context for the development of compulsory education laws. In Part III, this Comment discusses and compares the United States' compulsory education laws among the states and also identifies exceptions the state courts and the United States Supreme Court have made for compulsory education laws. The exceptions found in modern approaches to education illustrate that the compulsory component is superfluous.

In Part IV, this Comment addresses the discord between the general agreement in the value of education and resulting compulsory education laws that supposedly further educational goals, and the glaring reality that educational pursuits are not being sufficiently advanced. Moreover, this Comment proposes a model for a successful educational system, which ultimately eradicates compulsory education for middle and high school students. This Comment's solution will permit the United States to strive for and achieve goals that are appropriate, such as preparing the Nation's youth to apply basic knowledge to complex problems and to contribute to society in a meaningful way. Ultimately, this change may put the United States on par with other developed countries and enable Americans to be more competitive in the international marketplace.<sup>53</sup>

## II. COMPULSORY EDUCATION IN THE UNITED STATES: A BRIEF HISTORY

Education is at the heart of the evolution of American society. Issues that have had the greatest influence on society—from unqualified racial equality<sup>54</sup> to limits on the right to bear arms<sup>55</sup> to first amendment issues<sup>56</sup>—have been brought

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<sup>53</sup> James R. Stone, III, *More than one way: The Case for High-Quality CTE*, AMERICAN EDUCATOR Vol. 38(3) 2014, 4 (acknowledging that “[t]he U.S. economy, in 2009, did lose its spot as the most competitive in the world, and it has continued to fall in rank ever since”).

<sup>54</sup> *Brown v. Bd. of Educ.*, 347 U.S. 483, 495 (1954) (holding “that in the field of public education, the doctrine of ‘separate but equal’ has no place”).

<sup>55</sup> *See, e.g.*, Gun-Free School Zones Act, 20 U.S.C.A. § 7151 (West 2013). Despite the Court striking down the Gun Free Zones Act of 1990 in *United States v.*

before the Court through the lens of education. It should come as no surprise that these and other pertinent issues arise in the context of education. Education is the cornerstone of our nation's success or failure; after all, our present youth will determine our Nation's future.

The duty to educate is well founded in American ideals,<sup>57</sup> but the legal basis for promoting and requiring education is grounded in the Tenth Amendment.<sup>58</sup> The United States Supreme Court has ruled that education is not a fundamental right,<sup>59</sup> but the Court has nevertheless noted that "education is perhaps the most important function of state and local governments."<sup>60</sup> While education should lead to a sense of fulfillment, giving one the ability to contribute to society in a meaningful way, the Fourteenth Amendment includes only "life [and] liberty,"<sup>61</sup> and not the remaining part of the phrase found in the Declaration of Independence: "the pursuit of Happiness."<sup>62</sup> Education does not fall within the parameters of the United States Constitution but has been assigned by default to the States through the Tenth Amendment, a notion well settled in case law.<sup>63</sup> The States have welcomed this charge

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Lopez, 514 U.S. 549 (1995), *superseded by statute*, 18 U.S.C. § 922, *as recognized in* U.S. v. Danks, 221 F.3d 1037 (8th Cir. 1999), for exceeding the limits of the Commerce Clause, the updated Act of 1995 has been upheld by several Circuits. *See, e.g., Danks*, 221 F.3d at 1037; *United States v. Dorsey*, 418 F.3d. 1038 (9th Cir. 2005), *overruled on other grounds by Arizona v. Gant*, 556 U.S. 332 (2009).

<sup>56</sup> *See, e.g., Lemon v. Kurtzman*, 403 U.S. 602, 624–25 (1971) (holding that state statutes that provide financial assistance to non-secular schools violated the Establishment Clause); *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 512–13 (1969) (holding that a student may express his or her opinion so long as he or she does not "materially and substantially interfere with the requirements of appropriate discipline in the operation of the school' and without colliding with the rights of others." (citing *Burnside v. Byars*, 363 F.2d 744, 749 (1966)).

<sup>57</sup> *Meyer v. Nebraska*, 262 U.S. 390, 400 (1923); *see also infra* Table I.

<sup>58</sup> U.S. CONST. amend. X ("The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.").

<sup>59</sup> *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 30 (1973) (clarifying that "[n]othing this Court holds [in this opinion] in any way detracts from our historic dedication to public education . . . [b]ut the importance of a service performed by the State does not determine whether it must be regarded as fundamental").

<sup>60</sup> *Brown v. Bd. of Educ.*, 347 U.S. 483, 493 (1954).

<sup>61</sup> U.S. CONST. amend. XIV, § 1.

<sup>62</sup> Declaration of Independence ¶ 2 (U.S. 1776) ("We hold these Truths to be self-evident, that all Men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness.").

<sup>63</sup> *Pierce v. Soc'y of Sisters*, 268 U.S. 510, 534 (1925) (ruling that it is within

with gusto.<sup>64</sup>

The modern educational system—which includes state compulsory education laws—was developed from the belief that knowledge and learning empower the populace to act as responsible citizens of the Nation.<sup>65</sup> All states, except Iowa,<sup>66</sup> have a provision for education in their state constitutions.<sup>67</sup> The Court has also noted that “some degree of education is necessary to prepare citizens to participate effectively and intelligently in our open political system if we are to preserve freedom and independence.”<sup>68</sup> Most of the states that do not

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“the power [40] of the State reasonably to regulate all schools, to inspect, supervise and examine them, their teachers and pupils; to require that all children of proper age attend some school, that teachers shall be of good moral character and patriotic disposition, that certain studies plainly essential to good citizenship must be taught, and that nothing be taught which is manifestly inimical to the public welfare”; *see also* Meyer v. Nebraska, 262 U.S. 390, 402 (1923) (holding that “[t]he power of the State to compel attendance at some school and to make reasonable regulations for all schools . . . is not questioned. Nor has challenge been made of the State’s power to prescribe a curriculum for institutions which it supports [sic]”).

<sup>64</sup> *See, e.g., infra* Table I (showing that all states have education addressed in their constitutions).

<sup>65</sup> *See infra* Table I: Arkansas (ARK. CONST. art. 14, § 1); California (CAL. CONST. art. IX, § 1); Florida (FLA. CONST. art. IX, § 1); Idaho (IDAHO CONST. art. IX, § 1); Indiana (IND. CONST. art. 8, § 1); Louisiana (LA. CONST. art. VIII, preamble); Maine (ME. CONST. art. VIII, § 1); Massachusetts (MASS. CONST. chapter V, § II); Michigan (MICH. CONST. art. VIII, § 1); Minnesota (MINN. CONST. art. XIII, § 1); Montana (MO. CONST. art. IX, § 1(a)); Nevada (NEV. CONST. art. XI, § 1); New Hampshire (N.H. CONST. art. 83); North Carolina (N.C. CONST. art. IX, § 1); North Dakota (N.D. CONST. art. VIII, § 1); Rhode Island (R.I. CONST. art. XII, § 1); South Dakota (S.D. CONST. art. VIII, § 1); Tennessee (TENN. CONST. art. XI, § 12); Texas (TEX. CONST. art. VII, § 1); Vermont (VT. CONST. Chapter II, § 68); Washington (WASH. CONST. art. IX, § 1).

<sup>66</sup> Iowa is the exception. The original text of article IX of the Iowa Constitution read:

The Board of Education shall provide for the education of all the youths of the State, through a system of Common Schools and such school shall be organized and kept in each school district at least three months in each year. Any district failing, for two consecutive years, to organize and keep up a school as aforesaid may be deprived of their portion of the school fund.

IOWA CONST. art. IX. However, “the board of education was abolished in 1864 by 1864 Acts, ch 52, §1. For statutory provisions, see chapters 256 and 262 of the Code.” *Hist. and the Const.: The Const. of the St. of Iowa*, <http://publications.iowa.gov/135/1/history/7-7.html>.

<sup>67</sup> *See infra* Table I.

<sup>68</sup> *Wisconsin v. Yoder*, 406 U.S. 205, 221 (1972) (The Court mentions that Thomas Jefferson originally pointed this out, possibly referring to Jefferson’s petition that the state adopt public education: “Every government degenerates when trusted to the rulers of the people alone. The people themselves therefore are its only safe depositories. And to render even them safe, their minds must be improved to a certain degree. This indeed is not all that is necessary, though it be essentially necessary. An amendment of our [state] constitution must here come in aid of the public education.”

articulate in their constitution the rationale for a public school system still meet the standard for how a school system should operate: “adequate,”<sup>69</sup> “thorough,”<sup>70</sup> “efficient”<sup>71</sup> and, at the very least, “uniform.”<sup>72</sup> The language in state constitutions reflects the early purposes for public education as well as the state minimum standards for public education.

The states established schools to support their goals for education. In fact, the need to educate the nation’s youth was articulated even before state constitutions were written. As early as 1642, the Massachusetts General Court announced that children should be “able to read and understand the principles of religion and the laws of the Commonwealth.”<sup>73</sup> Just five years later, the first common schools were established by the Massachusetts legislature.<sup>74</sup> Secretary of the Massachusetts Board of Education, Horace Mann, ascertained that the Commonwealth had about 3,000 public schools.<sup>75</sup> And thus, public education for the masses was born.

Early founders of education acknowledged and promoted similar goals for education. Though not in collusion, Horace Mann, Thomas Jefferson, and Benjamin Franklin were among the earliest, most notable proponents of education.<sup>76</sup> Mann spent his life working to achieve a system of common schools, believing that “[e]ducation, beyond all other devises of human

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(quoting THOMAS JEFFERSON, *THE WORKS OF THOMAS JEFFERSON* 64 (Paul Leicester Ford, ed., fed. ed., G.P. Putnam’s Sons 1904)).

<sup>69</sup> See *infra* Table I: Florida (FLA. CONST. art. IX, § 1); Georgia (GA. CONST. art. VIII, § 1).

<sup>70</sup> See *infra* Table I: Maryland (MD. CONST. art. VIII, § 1); Minnesota (MINN. CONST. art. XIII, § 1); New Jersey (N.J. CONST. art. VIII, § 4(1)); Ohio (OHIO CONST. art. VI, § 2); Pennsylvania (PA. CONST. art. III, § 14); West Virginia (W. VA. CONST. art. XII, § 12-1).

<sup>71</sup> See *infra* Table I: Delaware (DEL. CONST. art. X, § 1); Illinois (ILL. CONST. art. X, § 1); Kentucky (KY. CONST. § 183); Maryland (MD. CONST. art. VIII, § 1); Minnesota (MINN. CONST. art. XIII, § 1); New Jersey (N.J. CONST. art. VIII, § 4(1)); Ohio (OHIO CONST. art. VI, § 2); Pennsylvania (PA. CONST. art. III, § 14); West Virginia (W. VA. CONST. art. XII, § 12-1).

<sup>72</sup> See *infra* Table I: Arizona (ARIZ. CONST. art. XI, § 1(A)); Colorado (COLO. CONST. art. IX, § 2); New Mexico (N.M. CONST. art. XII, § 1); North Carolina (N.C. CONST. art. IX, § 2); Oregon (OR. CONST. art. III, § 3); Wisconsin (WIS. CONST. art. X, § 3); Wyoming (WYO. CONST. art. 7, § 1).

<sup>73</sup> ORNSTEIN & LEVINE, *supra* note 32, at 147.

<sup>74</sup> *Lemon v. Kurtzman*, 403 U.S. 602, 645 (1971) (citing E. CUBBERLEY, *PUBLIC EDUCATION IN THE UNITED STATES* 171 (1919)); MANN, *supra* note 27, at 60.

<sup>75</sup> MANN, *supra* note 27, at 46–47.

<sup>76</sup> *Lemon*, 403 U.S. at 645 (citing E. CUBBERLEY, *supra* note 74).

origin, is the great equalizer of the conditions of men—the balance-wheel of the social machinery.”<sup>77</sup> Benjamin Franklin established Philadelphia Academy in 1749,<sup>78</sup> which later became the University of Pennsylvania,<sup>79</sup> instituting value for higher education. Thomas Jefferson wrote extensively on the need for a public schools system in Virginia,<sup>80</sup> citing legislation in Virginia in 1796,<sup>81</sup> and proposing the use of public funds for education in 1806.<sup>82</sup> Jefferson saw education as “by far the most important bill in [Virginia’s] whole code.”<sup>83</sup> Jefferson, envisioned an educational system that allowed all children an opportunity to participate “at the grammar schools one or two years,” but only those who were most qualified—the best genius of the whole selected—to earn additional years of schooling.<sup>84</sup> These early advocates for public education laid the foundation for the modern educational structure.

The theory of public education persisted into the nineteenth century. Through the 1800s, education generally included instruction in religion, mainly from the Bible.<sup>85</sup> Prominent religious organizations<sup>86</sup> were responsible for education because, aside from the few forward-thinking pioneers, states did not commit public funds to educating their youth. Even by the time the Fourteenth Amendment was adopted in 1868,

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<sup>77</sup> Horace Mann, *Report for 1848: The Capacity of the Common-School System to Improve the Pecuniary Condition, and Elevate the Intellectual, Moral, and Religious Character, of the Commonwealth*, in ANNUAL REPORTS ON EDUCATION 669 (Horace B. Fuller & Mary Mann eds., 1868).

<sup>78</sup> *Lemon*, 403 U.S. at 645 (citing E. CUBBERLEY, *supra* note 74).

<sup>79</sup> Univ. of Pa., *Proposals Relating to the Education of Youth in Pensilvania*, PENN UNIVERSITY ARCHIVES & RECORDS CENTER, <http://www.archives.upenn.edu/primdocs/1749proposals.html> (last visited Oct. 8, 2014).

<sup>80</sup> *Lemon*, 403 U.S. at 645 (citing E. CUBBERLEY, *supra* note 74).

<sup>81</sup> A Memorandum (Services To My Country), in JEFFERSON, *supra* note 35, at 703–04.

<sup>82</sup> Sixth Annual Message (Dec. 2, 1806), in JEFFERSON, *supra* note 35, at 529–30.

<sup>83</sup> Letter from Thomas Jefferson to George Wythe (Aug. 13, 1786), in JEFFERSON, *supra* note 35, at 859.

<sup>84</sup> Notes on the State of Virginia Query XIV, in JEFFERSON, *supra* note 35, at 272; see also *A Bill for the More General Diffusion of Knowledge*, in JEFFERSON, *supra* note 35, at 365.

<sup>85</sup> ANDREW J. COULSON, MARKET EDUCATION: THE UNKNOWN HISTORY 81–82 (Transaction Publishers 1999) (noting that in Massachusetts, Horace Mann promised reading the Protestant Bible, and in Maine, the state supreme court affirmed the legality of reading the Bible in school).

<sup>86</sup> *Lemon v. Kurtzman*, 403 U.S. 602, 645 (1971) (citing E. CUBBERLEY, *supra* note 74).

“[t]he curriculum was usually rudimentary; ungraded schools were common in rural areas; the school term was but three months a year in many states; and compulsory school attendance was virtually unknown.”<sup>87</sup> Laws requiring compulsory attendance were imminent.

A more universal, systematic approach to education developed rapidly. By “1900, the mean age for leaving school in states which had such laws was fourteen years and five months . . . .”<sup>88</sup> American society became concerned about child labor,<sup>89</sup> as Child Labor Laws<sup>90</sup> influenced states to enact compulsory education statutes so children would be in school and not forced to work in factories or fields. Charles Allen Prosser’s advocacy for vocational training in his *Report of the National Commission on Aid to Vocational Education* was the basis for the 1914 Smith-Lever Act.<sup>91</sup> The Smith-Hughes

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<sup>87</sup> *Brown v. Bd. of Educ.*, 347 U.S. 483, 490 (1954).

<sup>88</sup> Thomas R. McCambridge, *E. D. Hirsch, Cultural Literacy, and the Possibility of a Common Culture: The Debate Over Common vs. Differentiated Curriculum*, <http://public.callutheran.edu/~mccamb/trmedhirsch.htm> (last visited September 16, 2014).

<sup>89</sup> *Wisconsin v. Yoder*, 406 U.S. 205, 228 (1972) (footnotes omitted) (“The origins of the requirement for school attendance to age 16, an age falling after the completion of elementary school but before completion of high school, are not entirely clear. But to some extent such laws reflected the movement to prohibit most child labor under age 16 that culminated in the provisions of the Federal Fair Labor Standards Act of 1938. It is true, then, that the 16-year child labor age limit may to some degree derive from a contemporary impression that children should be in school until that age. But at the same time, it cannot be denied that, conversely, the 16-year education limit reflects, in substantial measure, the concern that children under that age not be employed under conditions hazardous to their health, or in work that should be performed by adults. The requirement of compulsory schooling to age 16 must therefore be viewed as aimed not merely at providing educational opportunities for children, but as an alternative to the equally undesirable consequence of unhealthful child labor displacing adult workers, or, on the other hand, forced idleness. The two kinds of statutes—compulsory school attendance and child labor laws—tend to keep children of certain ages off the labor market and in school; this regimen in turn provides opportunity to prepare for a livelihood of a higher order than that which children could pursue without education and protects their health in adolescence.”) For a concise description of how child labor encouraged the development of compulsory education, see KERN ALEXANDER & M. DAVID ALEXANDER, *AMERICAN PUBLIC SCHOOL LAW 284–85* (Cengage Learning, 8th ed. 2013).

<sup>90</sup> *Yoder*, 406 U.S. at 228 (footnotes omitted).

<sup>91</sup> JOHN GADELL, *CHARLES ALLEN PROSSER: HIS WORK IN VOCATIONAL AND GENERAL EDUCATION 23* (Washington University 1972); see 7 U.S.C. §§ 341–349; Specifically, the purpose of the Act was meant

[i]n order to aid in diffusing among the people of the United States useful and practical information on subjects relating to agriculture, uses of solar energy with respect to agriculture, home economics, and rural energy, and to encourage the application of the same, there may be continued or inaugurated in connection with



National Vocational Educational Act of 1917<sup>92</sup> replaced the Smith-Lever Act, but continued to provide funding for vocational education in farming and agriculture.<sup>93</sup> By 1918, all states had compulsory education statutes.<sup>94</sup> As a result, by the 1920s, students remained in school until the average age of sixteen years and three months.<sup>95</sup>

As schools became more common, courts began to acknowledge the link between compulsory education and parental control. Courts recognized that parents should have significant control over their children, with the right to raise children as they see best, which included educational choice.<sup>96</sup> For instance, in 1925, the Supreme Court ruled that private schools are acceptable alternatives to the compulsory education mandate because compulsory public education “unreasonably interferes with the liberty of parents and guardians . . . .”<sup>97</sup> However, if the child was outside of the parent’s control, the child was granted an exemption to compulsory education. In 1946, the Louisiana Supreme Court held that a woman’s married status, despite her age—fifteen—exempted her from the state’s compulsory education requirement because, as a married woman, she was no longer subject to parental control like a child.<sup>98</sup> While these exemptions began to emerge, the American drive to educate its youth, and thus to promote American success, persisted.

American attitudes after success in World War II evidenced the continued drive to educate American youth. Victory in World War II solidified the United States’ prestige as the international economic superpower, and emboldened Americans<sup>99</sup> to maintain this status. One result of this

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the college of colleges in each State, Territory, or possession . . . Cooperative Extension, *About Smith-Lever Act*, [http://extension100years.net/en/administration/about\\_us/chancellors\\_office/extension/about-smith-lever/](http://extension100years.net/en/administration/about_us/chancellors_office/extension/about-smith-lever/) (last visited Nov. 10, 2014).

<sup>92</sup> Smith Hughes Vocational Education Act of 1917, Pub. L. No. 64-347, 39 Stat. 929.

<sup>93</sup> *Id.*; 7 U.S.C.A. § 343 (West 2014).

<sup>94</sup> COULSON, *supra*, note 85, at 84.

<sup>95</sup> McCambridge, *supra* note 88.

<sup>96</sup> *Pierce v. Soc’y of Sisters*, 268 U.S. 510, 534 (1925).

<sup>97</sup> *Id.*

<sup>98</sup> *State v. Priest*, 27 So. 2d 173, 174 (La. 1946).

<sup>99</sup> *See, e.g.*, Studs Terkel, “*One hell of a big bang*”, THE GUARDIAN, Aug. 5, 2002, available at <http://www.theguardian.com/world/2002/aug/06/nuclear.japan#> (recalling

superpower status was an American confidence and arrogance in academic abilities that has yet to diminish.<sup>100</sup> Another was the Civil Rights movement, which in part brought to the Court demands and changes in how students were to be educated. Given that students were required to attend school, the Court in *Brown v. Board of Education* required that all students receive an equal education, regardless of their race.<sup>101</sup>

The Court addressed the issue of compulsory education again in the landmark case *Wisconsin v. Yoder*, this time allowing religion as another exception to the compulsory education law.<sup>102</sup> In *Yoder*, the Court held that, given the status and obligations of the Amish culture and religion, Amish parents who did not wish to send their children to school past the eighth grade did not violate the state compulsory education statutes.<sup>103</sup> Like the Court in *Pierce*, the Court in *Yoder* emphasized the rights of parents to dictate their children's upbringing.<sup>104</sup> The *Yoder* Court also recognized that education did not have to consist of the structured academics found in a classroom, and that the Amish's record of producing productive, self-sufficient members of society showed the value of the experiential instruction Amish children received.<sup>105</sup>

Congress, too, addressed educational policies. The notion that separation "denot[es] the inferiority of the Negro

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the feelings of superiority during World War II, and urging action after the World Trade Center bombings).

<sup>100</sup> Given the international statistics of where youth in the United States stand, see OECD, Country Note, *supra* note 18, youth today are disproportionately confident in their abilities. See also OECD, Country Note, *supra* note 18, at 6 ("Despite their below average performance in mathematics, U.S. students feel relatively confident in their own abilities in mathematics compared with their counterparts in other countries. For example, 69% reported that they felt confident in a mathematical task such as calculating the petrol-consumption rate of a car, compared with OECD average of 56%."); Liz Dwyer, *Debunking Education Myths: America's Never Been Number One in Math*, GOOD MAG (Feb. 10, 2011, 12:30 AM), <http://www.good.is/posts/debunking-education-myths-america-s-never-been-number-one-in-math>.

<sup>101</sup> *Brown v. Bd. of Educ.*, 347 U.S. 483, 497 (1954).

<sup>102</sup> *Wisconsin v. Yoder*, 406 U.S. 205, 228 (1972).

<sup>103</sup> *Id.* at 236.

<sup>104</sup> Compare *Pierce v. Soc'y of Sisters*, 268 U.S. 510, 534 (1925). (holding that parents have a right to raise their children as they see fit), with *Yoder*, 406 U.S. at 233–34 (reasoning that "accommodating the religious objections of the Amish by forgoing one, or at most two, additional years of compulsory education will not impair the physical or mental health of the child, or result in an inability to be self-supporting or to discharge the duties and responsibilities of citizenship, or in any other way materially detract from the welfare of society.")

<sup>105</sup> *Yoder*, 406 U.S. at 222–24.

group . . .”<sup>106</sup> was used loosely as justification for the Education of All Handicapped Children Act of 1975, requiring that all students—including those with disabilities—be educated.<sup>107</sup> Students with disabilities were equally expected to abide by compulsory education laws. Congress enacted legislation—currently reauthorized as the Individuals with Disabilities Education Act of 2004—requiring “an explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in the activities.”<sup>108</sup>

As a result of the compulsory education requirement for disabled students, there was an influx of student enrollments, which naturally caused schools to require more funding. Congress passed the National Defense of Education Act in 1958,<sup>109</sup> with an aim to improve educational programs.<sup>110</sup> A few years later, Congress passed the Vocational Educational Act of 1963,<sup>111</sup> allotting funding for vocational studies. The structure of the American educational system continued to change, and Congress passed the Elementary and Secondary Education Act of 1965.<sup>112</sup> This Act has been reauthorized every five years and funds k–12 public education.<sup>113</sup> The current reauthorization is better known as the No Child Left Behind Act of 2001.<sup>114</sup>

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<sup>106</sup> *Brown*, 347 U.S. at 494.

<sup>107</sup> 20 U.S.C. §§ 1401–1461 (1976).

<sup>108</sup> Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1414(A)(i)(V) (2012).

<sup>109</sup> P.L. 85-864; 72 Stat. 1580.

<sup>110</sup> *Id.*

<sup>111</sup> 20 U.S.C. §§ 2301–2308. Amendments were made in 1968, 1972, 1976. Eventually, the Carl D. Perkins Vocational Education Act in 1984 (and amended in 1990 (Perkins II, focusing on the use of technology), 1998 (Perkins III, focusing on accountability and special populations, i.e. disabled individuals), and 2006 (Perkins IV, focusing on creating more continuity between high school and postsecondary education in vocational training) aimed to refine vocational educational program. At the time of publication, Congress is considering the reauthorization of the Perkins Act.

<sup>112</sup> Current reauthorization is under The NCLB Act, *supra* notes 43, § 6301–6304.

<sup>113</sup> *Id.*

<sup>114</sup> *Id.* Note, too, that at the time of writing, Senator Lamar Alexander from Tennessee is likely to assume the chairmanship of the Senate HELP Committee. Senator Alexander intends to rewrite the Elementary and Secondary Education Act (ESEA)/No Child Left Behind act. Among the changes proposed are school vouchers, and “giv[ing] states the option of making Title I funds for low-income children “portable” so the funds follow children to the public schools of their choice. It does not authorize the Obama administration’s signature programs, such as Race to the Top and Investing in Innovation[.]” Maggie Severns, *Even with GOP Senate takeover, education plan could stall* POLITICOPRO (Sept. 15, 2014) available at

A goal for independent citizens who can participate in both society and on the international scale has echoed throughout the late twentieth and early twenty-first century.<sup>115</sup> In 1983, President Ronald Reagan's National Commission on Excellence in Education published *A Nation at Risk*.<sup>116</sup> This sobering report surmised that “[o]ur once unchallenged preeminence in commerce, industry, science, and technological innovation is being overtaken by competitors throughout the world.”<sup>117</sup> Almost immediately, parents began to question the quality of the public school system and curriculum.<sup>118</sup>

In response to this modern goal for education and parental involvement, numerous educational choices have emerged.<sup>119</sup> Parents have repeatedly challenged the content of the public school curriculum,<sup>120</sup> and courts have generally upheld the school's right to implement a curriculum.<sup>121</sup> As a result, school choice became popular in the 1990s: voucher programs<sup>122</sup> and

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<http://www.politico.com/story/2014/09/2014-elections-gop-senate-education-110938.html#ixzz3IxaW27qV>.

<sup>115</sup> See, e.g., GATTO, DUMBING, *supra* note 11, at 19 (commenting that the measure of education is “to learn lessons in self-motivation, perseverance, self-reliance, courage, dignity, and love—and lessons in service to others, too, which are among the key lessons of home and community life.”).

<sup>116</sup> National Commission on Excellence in Education, *A Nation at Risk* (April 1983), <https://www2.ed.gov/pubs/NatAtRisk/risk.html> (noting that the reason for America's decline was that “the educational foundations of our society are presently being eroded by a rising tide of mediocrity that threatens our very future as a Nation and a people . . . If an unfriendly foreign power had attempted to impose on America the mediocre educational performance that exists today, we might well have viewed it as an act of war. As it stands, we have allowed this to happen to ourselves . . . Moreover, we have dismantled essential support systems which helped make those gains possible. We have, in effect, been committing an act of unthinking, unilateral educational disarmament . . . Our society and its educational institutions seem to have lost sight of the basic purposes of schooling, and of the high expectations and disciplined effort needed to attain them.”).

<sup>117</sup> *Id.*

<sup>118</sup> HOWARD GARDNER, *THE UNSCHOOLED MIND* 256 (Basic Books 2004) (“In the past, there was a tendency to support the schools and to give them the benefit of the doubt. By the latter part of the twentieth century, however, such support has waned.”).

<sup>119</sup> See discussion *infra* Part III(B).

<sup>120</sup> See, e.g., Parker v. Hurley, 514 F.3d 87, 107 (1st Cir. 2008) (upholding a school district's choice of texts that acknowledges non-traditional families, including same-sex parents), *cert. denied*, 555 U.S. 815 (2008).

<sup>121</sup> But note that with regard to sex/health education, 20 U.S.C. § 7906 explicitly states that the funding may not be applied to a program that “promote[s] or encourage[s] sexual activity . . .”

<sup>122</sup> See discussion *infra* Part III.B.1.b.

charter schools<sup>123</sup> began to form across the nation. Again, Congress responded to the public concern regarding education and passed the Dropout Prevention Act.<sup>124</sup> This Act provided states with programs and incentives to keep kids in school at the secondary level and also addressed transitions for reentry into school for prior dropouts.<sup>125</sup> Most recently, the focus has begun to narrow on vocational-technical education, also known as Career and Technical Education (CTE).<sup>126</sup>

With so many educators and parents advocating school and curriculum choice, it is hard to imagine that the principled qualifications in state constitutions previously referenced are anything more than idealistic. Many of today's public schools, despite what they profess to be accomplishing, fall drastically short of the state's constitutional minimum<sup>127</sup> (recall "adequate,"<sup>128</sup> "thorough,"<sup>129</sup> "efficient,"<sup>130</sup> and "uniform"<sup>131</sup>). Because schools are not meeting their state's constitutional minimum, it follows that there is little value in punishing students and parents for violating compulsory education laws.

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<sup>123</sup> See discussion *infra* Part III.B.1.c.

<sup>124</sup> Dropout Prevention Act, 20 U.S.C.A. §§ 6551–6553 (West 2002).

<sup>125</sup> *Id.* § 6552 (West).

<sup>126</sup> For a recent, extensive discussion on CTE education, see generally, AMERICAN EDUCATOR vol. 38(3) 2014. This issue offers multiple articles regarding CTE education.

<sup>127</sup> See *infra* Table I; see also OECD, Country Note, *supra* note 18, at 1–2.

<sup>128</sup> See *infra* Table I: Florida (Fla. Const. art. IX, § 1); Georgia (Ga. Const. art. VIII, § 1).

<sup>129</sup> See *infra* Table I: Maryland (MD. CONST. art. VIII, § 1); Minnesota (MINN. CONST. art. XIII, § 1); New Jersey (N.J. CONST. art. VIII, § 4(1)); Ohio (OHIO CONST. art. VI, § 2); Pennsylvania (PA. CONST. art. III, § 14); West Virginia (W. VA. CONST. art. XII, § 12-1).

<sup>130</sup> See *infra* Table I: Delaware (Del. Const. art. X, § 1); Illinois (Ill. Const. art. X, § 1); Kentucky (Ky. Const. § 183); Maryland (Md. Const. art. VIII, § 1); Minnesota (Minn. Const. art. XIII, § 1); New Jersey (N.J. Const. art. VIII, § 4(1)); Ohio (Ohio Const. art. VI, § 2); Pennsylvania (Pa. Const. art. III, § 14); West Virginia (W. Va. Const. art. XII, § 12-1).

<sup>131</sup> See *infra* Table I: Arizona (ARIZ. CONST. art. XI, § 1(A)); Colorado (COLO. CONST. art. IX, § 2); New Mexico (N.M. CONST. art. XII, § 1); North Carolina (N.C. CONST. art. IX, § 2); Oregon (OR. CONST. art. III, § 3); Wisconsin (WIS. CONST. art. X, § 3); Wyoming (WYO. CONST. art. 7, § 1).

### III. REQUIREMENTS AND EXCEPTIONS TO COMPULSORY EDUCATION LAWS

Compulsory education laws have been adopted by every state and the District of Columbia.<sup>132</sup> The United States Supreme Court acknowledged the following nearly a century ago:

The American people have always regarded education and acquisition of knowledge as matters of [16] supreme importance which should be diligently promoted. The Ordinance of 1787 declares [that] ‘Religion, morality, and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged.’ Corresponding to the right of control, it is the natural duty of the parent to give his children education suitable to their station in life . . . .<sup>133</sup>

With this notion for the goal of education articulated, states have formulated requirements for the structure of education, including the duration of a student’s enrollment, the place of enrollment, and the curriculum that must be used to educate students. Nevertheless, for every rule, there are exceptions.

#### A. *State Requirements for the Duration of “Compulsory”*

As previously noted, every state except Iowa has a provision in its state constitution for education.<sup>134</sup> Moreover, every state has enacted statutory provisions for compulsory education.<sup>135</sup> The age requirement to commence one’s education varies throughout the nation. The majority of states require students to begin school at age six.<sup>136</sup> Less than a third of the states have

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<sup>132</sup> See *infra* Table I.

<sup>133</sup> *Meyer v. Nebraska*, 262 U.S. 390, 400 (1923).

<sup>134</sup> See *infra* Table I.

<sup>135</sup> See *infra* Table II.

<sup>136</sup> See *infra* Table II: Alabama (ALA. CODE § 16-28-3 (2014)); Arizona (ARIZ. REV. STAT. § 15-802 (2014)); California (CAL. EDUC. CODE § 48200 (West 2014)); Colorado (COLO. REV. STAT. § 22-33-104 (2013)); (FLA. STAT. § 1003.21(2014)); Georgia (GA. CODE ANN. § 20-2-690.1 (2012)); Hawaii (HAW. REV. STAT. § 302A-1132 (2014)); (IOWA CODE § 299.1A (2013)); Kentucky (KY. REV. STAT. ANN. § 159.010 (West 2013)); Massachusetts (603 MASS. CODE REGS. § 8.02 (2014)); MASS. GEN. LAWS ANN. ch. 76 § 1 (West 2004)); Michigan (MICH. COMP. LAWS ANN. § 380.1561 (West 2010)); Mississippi (MISS. CODE ANN. § 37-13-91 (2014)); Nebraska (NEB. REV. STAT. ANN. § 79-201 (West 2012)); New Hampshire (N.H. REV. STAT. ANN. § 193:1 (2013)); New Jersey (N.J. STAT. ANN. § 18A:38-25 (West 2014)); New York (N.Y. EDUC. LAW § 3205 (McKinney 2014)); Ohio (OHIO REV. CODE ANN. § 3321.01 (West 2013)); Rhode Island (R.I. GEN. LAWS

the age requirement of seven to begin school.<sup>137</sup> A minority of states require schooling to begin at age five.<sup>138</sup> Only two states have the oldest requirement: eight years old.<sup>139</sup>

The upper-age limit of compulsory education requirements also varies considerably from state to state. Slightly less than half of the states and the District of Columbia require that a student attend school until he or she is eighteen years old.<sup>140</sup>

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ANN. § 16-19-1 (West 2014)); South Dakota (S.D. CODIFIED LAWS § 13-27-1 (2014)); Tennessee (TENN. CODE ANN. § 49-6-3001 (2014)); Texas (TEX. EDUC. CODE ANN. § 25.085 (West 2014)); Utah (UTAH CODE ANN. § 53A-11-101 (West 2014)); Vermont (VT. STAT. ANN. tit. 16, § 1121 (2013)); West Virginia (W. VA. CODE ANN. § 18-8-1A (West 2014)); Wisconsin (WIS. STAT. § 118.15 (2014)).

<sup>137</sup> See *infra* Table II: Alaska (ALASKA STAT. ANN. § 14.30.010 (West 2014)); Idaho (IDAHO CODE ANN. § 33-202 (West 2009)); Illinois (105 ILL. COMP. STAT. ANN. 5 / 26-1 (West 2005)); Indiana (IND. CODE ANN. §§ 20-33-2-6, 22-33-2-9(B) (West 2014)), Kansas (KAN. STAT. ANN. § 72-1111 (West 2014)); Louisiana (LA. REV. STAT. ANN. § 17:221 (2011)); Maine (ME. REV. STAT. ANN. tit. 20A, § 3271 (2011)); Minnesota (MINN. STAT. ANN. § 120A.22 (West 2013)); Missouri (MO. ANN. STAT. § 167.031 (West 2009)); Montana (MONT. CODE ANN. § 20-5-102 (West 2013)); Nevada (NEV. REV. STAT. ANN. § 392.040 (West 2011)); North Carolina (N.C. GEN. STAT. ANN. § 115C-378 (West 2009)); North Dakota (N.D. CENT. CODE ANN. § 15.1-20-01 (West 2013)); Oregon (OR. REV. STAT. ANN. § 339.010 (West 2014)); Wyoming (WYO. STAT. ANN. § 21-4-102 (2014)).

<sup>138</sup> See *infra* Table II: Arkansas (ARK. CODE ANN. § 6-18-201 (West 2009)); Connecticut (CONN. GEN. STAT. ANN. § 10-184 (West 2009)); Delaware (DEL. CODE ANN. tit. 14, § 2702 (West 2013)); District of Columbia (D.C. CODE § 38-202 (2013)); Maryland (MD. CODE ANN., EDUC. § 7-301 (West 2012)); New Mexico (N.M. STAT. ANN. §§ 22-8-2, 22-12-2, (West 2009)); Oklahoma (OKLA. STAT. tit. 70, § 10-105 (2014)); South Carolina (S.C. CODE ANN. § 59-65-10 (2013)); Virginia (VA. CODE ANN. § 22.1-254 (2014)).

<sup>139</sup> See *infra* Table II: Pennsylvania (24 PA. STAT. ANN. § 13-1326 (West 2014)); Washington (WASH. REV. CODE ANN. § 28A.225.010 (West 2014)).

<sup>140</sup> See *infra* Table II: California (CAL. EDUC. CODE § 48200 (West 2014)); Connecticut (CONN. GEN. STAT. ANN. § 10-184 (West 2009)); District of Columbia (D.C. CODE § 38-202 (2013)); Hawaii (HAW. REV. STAT. § 302A-1132 (2014)) (but, Hawaii has enumerated different scenarios to exempt children at various ages, so eighteen is not absolute); Kansas (KAN. STAT. ANN. § 72-1111 (West 2014)) (but, “if the child is 16 or 17 years of age, the parent or person acting as parent, by written consent, or the court, pursuant to a court order, may allow the child to be exempt from the compulsory attendance requirements of this section”); Louisiana (LA. REV. STAT. ANN. § 17:221 (2011)); Maryland (MD. CODE ANN., EDUC. § 7-301 (West 2012)) (although currently age sixteen, effective for the 2015–16 school year, the age will raise to seventeen, and effective 2017–18 school year, age eighteen); Nebraska (NEB. REV. STAT. ANN. § 79-201 (West 2012)); Nevada (NEV. REV. STAT. ANN. § 392.040 (West 2011)); New Hampshire (N.H. REV. STAT. ANN. § 193.1 (2013)); New Mexico (N.M. STAT. ANN. §§ 22-8-2, 22-12-2, (West 2009)); Ohio (OHIO REV. CODE ANN. § 3321.01 (West 2013)); Oklahoma (OKLA. STAT. tit. 70, § 10-105 (2014)); Oregon (OR. REV. STAT. ANN. § 339.010 (West 2014)); South Dakota (S.D. CODIFIED LAWS § 13-27-1 (2014)) (but, sixteen if a child enrolls and completes the test or reaches eighteen in a school-based or school-contracted general education development test preparation program); Texas (TEX. EDUC. CODE ANN. § 25.085 (West 2014)); Utah (UTAH CODE ANN. § 53A-11-101 (West 2014)); Virginia (VA. CODE ANN. § 22.1-254 (2014)); Washington (WASH. REV. CODE § 28A.225.010 (West 2014)); Wisconsin (WIS. STAT. § 118.15 (2014)).

Only ten states require students remain until age seventeen.<sup>141</sup> The remaining states enforce compulsory schooling until age sixteen.<sup>142</sup>

As a result, there is no national requirement that students attend school for a specified number of years. States require students to be in school for a total of nine years,<sup>143</sup> ten years,<sup>144</sup>

<sup>141</sup> See *infra* Table II: Alabama (ALA. CODE § 16-28-3 (2014)); Arkansas (ARK. CODE ANN. § 6-18-201 (West 2009)); Colorado (COLO. REV. STAT. § 22-33-104 (2013)); Illinois (105 ILL. COMP. STAT. ANN. 5 / 26-1 (West 2005)); Maine (ME. REV. STAT. ANN. tit., 20A, § 3271 (2011)); Mississippi (MISS. CODE ANN. § 37-13-91 (2014)); Pennsylvania (24 PA. STAT. ANN. § 13-1326 (West 2014)); South Carolina (S.C. CODE ANN. § 59-65-10 (2013)); Tennessee (TENN. CODE ANN. § 49-6-3001 (2014)); West Virginia (W. VA. CODE ANN. § 18-8-1A (West 2014)) (effective for the class of 2015).

<sup>142</sup> See *infra* Table II: Alaska (ALASKA STAT. ANN. § 14.30.010 (West 2014)); Arizona (ARIZ. REV. STAT. § 15-802, (2014)) (or the completion of tenth grade); Delaware (DEL. CODE ANN. tit. 14, § 2702 (West 2013)); Florida (FLA. STAT. § 1003.21 (2014)); Georgia (GA. CODE ANN. § 20-2-690.1 (West 2012)); Idaho (IDAHO CODE ANN. § 33-202 (West 2014)); Indiana (IND. CODE ANN. §§ 20-33-2-6, 22-33-2-9 (West 2014)); Iowa (IOWA CODE § 299.1A (2013)); Kentucky (KY. REV. STAT. ANN. § 159.010 (West 2013)) However, effective 2015–16, local boards may raise upper age from sixteen to eighteen. If or when 55% of all districts have done so, all districts would be required to raise the age to eighteen.; Massachusetts (603 MASS. CODE REGS. § 8.02 (2014); MASS. GEN. LAWS ANN. ch. 76 § 1 (West 2004)); Michigan (MICH. COMP. LAWS ANN. § 380.1561 (West 2010)); Minnesota (MINN. STAT. ANN. § 120A.22 (West 2013)); Missouri (MO. ANN. STAT. § 167.031 (West 2009)); Montana (MONT. CODE ANN. § 20-5-102 (West 2013)); New Jersey (N.J. STAT. ANN. § 18A:38-25 (West 2014)); New York (N.Y. EDUC. LAW § 3205 (McKinney 2014)); North Carolina (N.C. GEN. STAT. ANN. § 115C-378 (West 2009)); North Dakota (N.D. CENT. CODE ANN. § 15.1-20-01 (West 2013)); Rhode Island (R.I. GEN. LAWS ANN. § 16-19-1 (West 2014)) (so long as the student has an alternative learning plan for obtaining a high school diploma or its equivalent); South Dakota (S.D. CODIFIED LAWS § 13-27-1 (2014)) (sixteen if a child enrolls and completes the test or reaches eighteen in a school-based or school-contracted general education development test preparation program, otherwise, eighteen years old); Vermont (VT. STAT. ANN. tit. 16, § 1121 (2013)) (or at the completion of tenth grade); Wyoming (WYO. STAT. ANN. § 21-4-102 (2014)).

<sup>143</sup> See *infra* Table II: Alaska (ALASKA STAT. ANN. § 14.30.010 (West 2014)); Idaho (IDAHO CODE ANN. § 33-202 (West 2014)); Indiana (IND. CODE ANN. § 20-33-2-6 (West 2014)); Minnesota (MINN. STAT. ANN. § 120A.22 (West 2013)); North Carolina (N.C. GEN. STAT. ANN. § 115C-378 (West 2009)); North Dakota (N.D. CENT. CODE ANN. § 15.1-20-01 (West 2013)); Pennsylvania (24 PA. STAT. ANN. § 13-1326 (West 2014)); Wyoming (WYO. STAT. ANN. § 21-4-102 (West 2014)).

<sup>144</sup> See *infra* Table II: Arizona (ARIZ. REV. STAT. § 15-802 (West 2011)) (or the completion of tenth grade); Florida (FLA. STAT. ANN. § 1003.21 (West 2014)); Georgia (GA. CODE ANN. § 20-2-690.1 (West 2012)); Illinois (105 ILL. COMP. STAT. ANN. 5 / 26-1 (West 2005)); Iowa (IOWA CODE ANN. § 299.1A (West 2013)); Kentucky (KY. REV. STAT. ANN. § 159.010 (West 2013)) (However, effective 2015–16, local boards may raise upper age from sixteen to eighteen. If or when 55% of all districts have done so, all districts would be required to raise the age to eighteen.); Maine (ME. REV. STAT. ANN. tit. 20-A, § 5001-A (2011)); Massachusetts (603 MASS. CODE REGS. 8.02 (2014); MASS. GEN. LAWS ANN. ch. 76, § 1 (West 2004)); Michigan (MICH. COMP. LAWS ANN. § 380.1561 (West 2010)); New Jersey (N.J. STAT. ANN. § 18A:38-25 (West 2014)); New York (N.Y. EDUC. LAW § 3205 (McKinney 2014)); Rhode Island (R.I. GEN. LAWS ANN. § 16-19-1 (West



eleven years,<sup>145</sup> twelve years,<sup>146</sup> or even thirteen years.<sup>147</sup> States have yet to agree upon the best age to begin formal education, or how long is needed for students' education to be successful.

The duration for compulsory education has brought numerous court actions challenging compulsory state laws. For instance, the requirements for compliance with compulsory education statutes have been challenged for vagueness,<sup>148</sup> as well as by parents who believe that their child's absences are lawful.<sup>149</sup> State courts have repeatedly ruled in favor of the school in cases of truancy, noting that "it is a parent's responsibility to get their [sic] child to school."<sup>150</sup> As a result,

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2014)); Vermont (VT. STAT. ANN. tit. 16, § 1121 (West 2013)); Washington (WASH. REV. CODE ANN. § 28A.225.010 (West 2014)).

<sup>145</sup> See *infra* Table II: Alabama (ALA. CODE § 16-28-3 (2014)); Colorado (COLO. REV. STAT. ANN. § 22-33-104 (West 2013)); Delaware (DEL. CODE ANN. tit. 14, § 2702 (West 2013)); Kansas (KAN. STAT. ANN. § 72-1111 (West 2014)) (But, "if the child is 16 or 17 years of age, the parent or person acting as parent, by written consent, or the court, pursuant to a court order, may allow the child to be exempt from the compulsory attendance requirements of this section"); Louisiana (LA. REV. STAT. ANN. § 17:221 (2011)); Maryland (MD. CODE ANN., EDUC. § 7-301 (West 2012)); Mississippi (MISS. CODE ANN. § 37-13-91 (West 2014)); Missouri (MO. ANN. STAT. § 167.031 (West 2009)); Montana (MONT. CODE ANN. § 20-5-102 (West 2013)); Nevada (NEV. REV. STAT. ANN. § 392.040 (West 2011)); Oregon (OR. REV. STAT. ANN. § 339.010 (West 2014)); Tennessee (TENN. CODE ANN. § 49-6-3001 (West 2014)); West Virginia (W. VA. CODE ANN. § 18-8-1a (West 2014)) (effective for the class of 2015).

<sup>146</sup> See *infra* Table II: Arkansas (ARK. CODE ANN. § 6-18-201 (West 2009)); California (CAL. EDUC. CODE § 48200 (West 2014)); Hawaii (HAW. REV. STAT. § 302A-1132 (West 2014)) (But, Hawaii has enumerated different scenarios to exempt children at various ages, so eighteen is not absolute); Nebraska (NEB. REV. STAT. ANN. § 79-201 (West 2012)); New Hampshire (N.H. REV. STAT. ANN. § 193.1 (2013)); Ohio (OHIO REV. CODE ANN. § 3321.01 (West 2013)); South Carolina (S.C. CODE ANN. § 59-65-10 (2013)); South Dakota (S.D. CODIFIED LAWS § 13-27-1 (2014)) (sixteen if a child enrolls and completes the test or reaches eighteen in a school-based or school-contracted general education development test preparation program, otherwise, eighteen years old)); Texas (TEX. EDUC. CODE ANN. § 25.085 (West 2014)); Utah (UTAH CODE ANN. § 53A-11-101 (West 2013), Wisconsin (WIS. STAT. ANN. § 118.15 (West 2014)).

<sup>147</sup> See *infra* Table II: Connecticut (CONN. GEN. STAT. § 10-184 (West 2009)); District of Columbia (D.C. CODE § 38-202 (2013)); New Mexico (N.M. STAT. ANN. § 22-8-2; § 22-12-2; (West 2009)), Oklahoma (OKLA. STAT. ANN. tit. 70, § 10-105 (West 2014)); Virginia (VA. CODE ANN. § 22.1-254 (West 2014)).

<sup>148</sup> See, e.g., *In re Jeannette L.*, 523 A.2d 1048, 1054 (Md. 1987); *State v. White*, 509 N.W.2d 434, 436 (Wis. Ct. App. 1993); *Ellis v. O'Hara*, 612 F. Supp. 379, 379 (E.D. Mo. 1985), *rev'd*, 802 F.2d 462 (8th Cir. 1986)); *Jeffery v. O'Donnell*, 702 F. Supp. 516, 521 (M.D. Pa. 1988).

<sup>149</sup> See, e.g., *Commonwealth v. Hall*, 455 A.2d 674, 675-76 (Pa. Super. Ct. 1983) (refusing to entertain the defense that repeated extended vacation/travel noted as "educational trips" be considered excusable).

<sup>150</sup> *In re Welfare of L.Z.*, 380 N.W.2d 898, 903 (Minn. App. 1986), *aff'd in part, rev'd in part In re Welfare of L.Z.*, 396 N.W.2d 214 (Minn. 1986).

truancy actions are generally upheld.<sup>151</sup> States, therefore, have considerable autonomy to direct the length of time that its minor citizens will be educated.

Parents' challenges to modern education suggest that compulsory education laws are superfluous. Courts have generally ruled on challenges to curriculum in favor of schools, giving deference to schools' authority to control curriculum. Parents have attacked school curriculum contradicting the upbringing of their children.<sup>152</sup> In some instances, parents have brought suit arguing whether creationism or evolution should be taught in class.<sup>153</sup> They also have challenged the content of textbooks.<sup>154</sup> Challenges to a school district's curriculum in sex/health education<sup>155</sup> have also been brought,<sup>156</sup> although

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<sup>151</sup> See, e.g., *Jeannette L.*, 523 A.2d at 1050, 1055 (holding that one excuse for the children's absences due to illness and deaths in the family and another excuse that the parent was unable "to control [her children's] conduct . . . were neither excused nor excusable"); *White*, 509 N.W.2d at 436 (giving no deference to the defendant's defense that she was "unable to comply with the law because of her child's disobedience"); *Hall*, 455 A.2d at 675–77 (refusing to entertain the defense that repeated extended vacation/travel noted as "educational trips" be considered excusable).

<sup>152</sup> See, e.g., *Parker v. Hurley*, 514 F.3d 87, 107 (1st Cir. 2008) (upholding a school district's choice of texts that acknowledges non-traditional families, including same-sex parents).

<sup>153</sup> See, e.g., *Epperson v. Arkansas*, 393 U.S. 97, 109 (1968) (holding that a teacher could teach Darwin's theory of Evolution); *but see* *Edwards v. Aguillard*, 482 U.S. 578, 596–97 (1987) (holding that an Act that requires creationism to also be taught if evolution is taught violates the Establishment Clause and is therefore unconstitutional); *see also* *Kitzmiller v. Dover Area Sch. Dist.*, 400 F.Supp.2d 707, 765 (M.D. Penn. 2005) (holding that teaching intelligent design is unconstitutional).

<sup>154</sup> *Mozert v. Hawkins Cnty. Bd. of Educ.*, 827 F.2d 1058, 1063, 1070 (6th Cir. 1987) (reasoning that "exposure to something does not constitute teaching, indoctrination, opposition or promotion of the things exposed" and therefore holding that the curriculum was constitutional).

<sup>155</sup> But note that with regard to sex/health education, the NCLB Act, *supra* note 43, § 7906 explicitly states that the funding may not be applied to a program that "promote[s] or encourage[s] sexual activity."

<sup>156</sup> See e.g., *Fields v. Palmdale Sch. Dist.*, 447 F.3d 1187, 1191 (9th Cir. 2006) (reaffirming that schools may determine what information is "educationally appropriate"); *Leebaert v. Harrington*, 332 F.3d 134, 137, 144–45 (2d Cir. 2003) (affirming a school district's ability to require health education classes despite the plaintiff's assertion that he is competent to teach his child the content of the curriculum, and despite the plaintiff's objections that the mandatory program "deprived him of his right to direct the upbringing and education of his minor child and his right to the free exercise of his religion"); *Parents United for Better Schools, Inc. v. Sch. Dist. of Philadelphia Bd. of Educ.*, 148 F.3d 260, 262, 277 (3d Cir. 1998) (affirming the school district's "consensual program to distribute condoms in public schools to prevent disease"); *Brown v. Hot, Sexy and Safer Production, Inc.*, 68 F.3d 525, 541 (1st Cir. 1995) (affirming the district's decision to present a sex education program that the plaintiffs alleged was racy), *overruled in part as stated in* *Martinez v. Hongyi Cui*, 608

schools often allow opting out of objectionable topics or classes. Nevertheless, if a parent or student does not have an alternate school choice<sup>157</sup> available, the school generally prevails with its prescribed curriculum.

### B. *Exceptions*

Despite federal and state courts' deference to state compulsory curriculum and attendance requirements, both federal and state courts have allowed exceptions in response to parental criticism. In the United States, the Education Commission of the States reports the following:

[N]early half of all states allow children ranging from ages 14–18 to be exempt from the compulsory attendance requirement if they meet one or more of the following stipulations: are employed, have a physical or mental condition that makes the child's attendance infeasible, have passed the 8th-grade level, have their parents' permission, have the permission of the district court or the local school board, meet the requirements for an exit interview, or have attained alternative education such as vocational or technical school.<sup>158</sup>

As a result of modern educational theory and practice, numerous alternatives to compulsory public education—private schools, school vouchers, and charter schools (collectively referred to as “school choice” options), and homeschooling (with regulations across a wide spectrum)<sup>159</sup>—have developed. There are no uniform requirements among the states with school choice options for teacher certification standards, curriculum and assessments accountability standards, or funding standards. The structure of alternatives to public schools falls on a continuum of options: some facets closely mirror the existing structure of today's public education systems, while other aspects operate very differently. But, despite the variety, none of these exceptions have destroyed the education of our Nation's youth.

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F.3d 54, 63 (1st Cir. 2010).

<sup>157</sup> See discussion *infra* Part III.B.1.

<sup>158</sup> Marga Mikulecky, *Compulsory School Age Requirements*, <http://www.ecs.org/clearinghouse/01/07/03/10703.pdf> (last visited Sept. 23, 2014).

<sup>159</sup> See discussion *infra* Part III.B.2.

## 1. School choice

### a. Private or independent schools

Parents have resisted compulsory education laws since their inception, and the Supreme Court made its first major exception to compulsory education law in *Pierce*.<sup>160</sup> In *Pierce*, the Court acknowledged a private school as an acceptable exception to Oregon's Compulsory Education Act of 1933.<sup>161</sup> Private schools today take many forms, but central to their continued existence is educational choice and that the funding for their operation comes from tuition. Private schools do not receive the same state-supported funding as public schools; therefore, they control the admission of students,<sup>162</sup> the qualifications and hiring of educators, and the courses and curriculum content. Private schools may receive vouchers<sup>163</sup> with possible state restrictions. Many private schools require an admissions test<sup>164</sup> and are not obligated to test according to state assessment requirements because private schools rely mostly on private funding: tuition. Even still, many private schools opt for some type of standardized assessment<sup>165</sup> to assure their current and prospective students meet or surpass their public school counterparts.

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<sup>160</sup> *Pierce v. Soc'y of Sisters*, 268 U.S. 510, 534–36 (1925) (holding that parents are entitled to raise their children as they see fit, particularly with regard to educational choice).

<sup>161</sup> In *Pierce*, the two appellees both operated private educational institutions. *Id.* at 531–33. The Society of Sisters was an organization dating back to 1880 that educated children in lieu of a more organized public schooling system with religious tenors. *Id.* The Hill Military Academy was founded in 1908 and was a military school. *Id.*

<sup>162</sup> *But see* *Runyon v. McCrary*, 427 U.S. 160, 172–73 (1976) (holding that private schools may not discriminate applications for admission based on race).

<sup>163</sup> See discussion *infra* Part III.B.1.b.

<sup>164</sup> For example, the Independent School Entrance Exam (ISEE) for grades 2–12. *Independent School Entrance Exam*, <http://erblearn.org/parents/admission/isee> (last visited Sept. 23, 2014).

<sup>165</sup> For example, students in grades 9–12 may take Advanced Placement (AP) classes, and sit for the AP Exam in any subject area. AP classes and AP Exams are offered to students in both the private and public sectors. The College Board, *Advanced Placement Tests*, <http://professionals.collegeboard.com/testing/ap/about> (last visited Sept. 23, 2014).

*b. Vouchers*

The existence of school voucher programs<sup>166</sup> is traced back to as early as 1869 in Vermont.<sup>167</sup> School voucher programs provide tax-based funding that parents may spend to enroll students in public or private schools of their choosing.<sup>168</sup> States allot each eligible student a defined amount of funding,<sup>169</sup> and voucher programs essentially transfer these funds to the school of choice. Vouchers help alleviate the considerable financial burden of (a) moving to another district, (b) moving to another school zone within the same district, or (c) enrolling in a private school. Without voucher programs, impoverished students may be condemned to ill fitted or poorly performing schools.

*c. Charter Schools*

Public charter schools<sup>170</sup> have become an attractive alternative for parents wishing to exercise school choice. Due to their popularity, charter schools admit students based on a lottery,<sup>171</sup> and they are run by a management board rather than

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<sup>166</sup> For a cohesive synopsis of an example of a valid voucher program upheld by the Supreme Court, see *Zelman v. Simmons-Harris*, 536 U.S. 639, 643–48 (2002).

<sup>167</sup> *Vermont – Town Tuitioning Program*, FRIEDMAN FOUNDATION FOR EDUCATIONAL CHOICE, <http://www.edchoice.org/School-Choice/Programs/Town-Tuitioning-Program-1.aspx> (last visited Sept. 30, 2014) (Vermont’s Town Tuitioning Program was established in 1869. As a result, “[m]any towns in Vermont, particularly in rural areas, do not operate public high schools and/or elementary schools. Students in those towns may use public dollars to attend any public or approved independent (private), non-religious school in or outside of Vermont. The ‘tuitioning’ towns pay tuition directly to the ‘receiving’ schools.”).

<sup>168</sup> School voucher programs often come with conditions, as the *Zelman* Court outlined. *Zelman*, 536 U.S. at 645 (demanding that the private schools in *Zelman* adhere to non-discriminatory admission policies and follow state educational standards).

<sup>169</sup> *Id.*

<sup>170</sup> The National Alliance for Public Charter Schools boasts that charter schools operate independently of the school district [but are] . . . tuition-free and open to every student who wishes to enroll, non-sectarian, and do not discriminate on any basis, publicly funded by local, state and federal tax dollars based on enrollment, like other public schools, [and] held accountable to state and federal academic standards[.]

*What Are Public Charter Schools?*, NAT’L ALLIANCE FOR PUB. CHARTER SCHOOLS, <http://archive-org.com/page/2058470/2013-05-10/http://www.publiccharters.org/About-Charter-Schools/What-are-Charter-Schools003F.aspx> (last visited Dec. 5, 2014); see also 20 U.S.C. § 7221.

<sup>171</sup> JOE NATHAN, CHARTER SCHOOLS: CREATING HOPE AND OPPORTUNITY FOR AMERICAN EDUCATION 140 (Wiley, John & Sons, Inc., 1999).

a school district.<sup>172</sup> Charter schools are formed by concerned members of the community—for example, businesses or parents—who want “more flexibility from the rules and regulations that typically govern district-run schools, allowing them to innovate and experiment with new teaching and learning models.”<sup>173</sup> Charter schools are given more independence on how to run their programs and curriculum, which may cost more to operate, but charter schools may have operating boards and investors that may consist of businesses that profit.<sup>174</sup> Alternatively, some states issue municipal debt (bonds)—public funding to privately run schools.<sup>175</sup> Unlike voucher schools that are often private institutions, charter schools are not tuition-based.<sup>176</sup> Funding is identical to the per-student funding that is provided in the public district schools.<sup>177</sup>

Because private entities, and not the school district, form these schools, the private entity may have certain requirements for student achievement.<sup>178</sup> The actual operation and management—for instance, the curriculum—of the charter school does not need to mirror the requirements of a district school.<sup>179</sup> Despite a lack of uniformity found in a school district, charter schools hold themselves accountable for student achievement.<sup>180</sup> States have codified the specific requirements for a charter school, and some have granted district charters that allow an entire school district “greater flexibility and autonomy to experiment with its school models.”<sup>181</sup>

Whether it is a private school, school voucher, or charter

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<sup>172</sup> *Id.* at 146–47.

<sup>173</sup> Ash, *supra* note 16.

<sup>174</sup> *Charter Schools*, in OBAMA EDUCATION PLAN *supra* note 11, at 55.

<sup>175</sup> Brian Chappatta, *Charter Schools Borrow at Record Pace Led by Texas: Muni Credit*, BLOOMBERG (Oct. 20, 2014) available at [http://www.bloomberg.com/news/2014-10-21/charter-schools-borrow-at-record-pace-led-by-texas-muni-credit.html?utm\\_content=buffer9c0f&utm\\_medium=social&utm\\_source=twitter.com&utm\\_campaign=buffer](http://www.bloomberg.com/news/2014-10-21/charter-schools-borrow-at-record-pace-led-by-texas-muni-credit.html?utm_content=buffer9c0f&utm_medium=social&utm_source=twitter.com&utm_campaign=buffer).

<sup>176</sup> NATHAN, *supra* note 171, at 134–35.

<sup>177</sup> *Id.* at 1.

<sup>178</sup> *Id.* at 44.

<sup>179</sup> *Id.*

<sup>180</sup> *Id.* at 18; see, e.g., Hayleigh Colombo, *Closed charter schools have a ripple effect*, CHALKBEAT INDIANA (Sept. 15, 2014) available at <http://in.chalkbeat.org/2014/09/15/closed-charter-schools-have-a-ripple-effect/#.VG7GKpNF98F> (acknowledging “the basic bargain of opening a charter school: perform or close”).

<sup>181</sup> Ash, *supra* note 16.

school, the variety of school choice options are all examples of parents' negative reactions to their assigned public school. These exceptions to compulsory public education laws reiterate that parents see value in education as a process but not in the public school system. School choice reveals parents' desire to choose the means, manner, and duration of their child's education. The advent of so many school choice options should dispel the fear that abolishing unwarranted compulsory education laws will curtail education. With the threat of noncompliance with compulsory education laws lifted, education may no longer be perceived as an obligation forced upon students and their parents. The choice to attend school demands that students actively seek an educational experience,<sup>182</sup> which will require engagement in the educational process. This participation will necessitate a commitment to hard work, which ultimately may foster a greater appreciation for education and eventually lead to higher achievement.

## *2. Homeschooling: Straddling the characteristics of a private school and an opt-out option*

### *a. Parents as Teachers*

In the United States, every state now allows for a child to be homeschooled as a substitute for attending a public school, though the authority to do so differs considerably:<sup>183</sup> a general exemption statute, a specific homeschool exemption statute or regulation, or a private school law.<sup>184</sup> The majority of states have no qualification requirements for parents to act as teachers. In a handful of states, the parent must have a high school diploma, GED, or other certification requirement.<sup>185</sup> In

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<sup>182</sup> JOHN TAYLOR GATTO, WEAPONS OF MASS INSTRUCTION 62 (New Society Publishers 2009) [hereinafter GATTO, WEAPONS] (concluding that “[e]ducation must be largely self-initiated, a tapestry woven out of broad experience . . . a combination of curiosity, patience”).

<sup>183</sup> *Summary of Laws*, HOME SCHOOL LEGAL DEFENSE ASSOCIATION iv–v, [http://www.hslda.org/laws/Summary\\_of\\_Laws.pdf](http://www.hslda.org/laws/Summary_of_Laws.pdf) (last visited Sept. 30, 2014).

<sup>184</sup> *Id.* at iv.

<sup>185</sup> *See, e.g.*, *People v. Bennett*, 501 N.W.2d 106, 117 (Mich. 1993) (finding that a certification requirement is reasonable to “measure, and to some extent ensure, the minimum qualifications”); *State v. M. M.*, 407 So.2d 987, 990–91 (Fla. Dist. Ct. App. 1981) (finding that a parent acting as a private tutor does not amount to students being educated in a private school).

one state, North Dakota,<sup>186</sup> the qualification to act as an educator is met when a licensed teacher oversees the instruction for two years.<sup>187</sup>

Furthermore, states differ on accountability in both curriculum and assessment for homeschooled students. Some require standardized testing; some a portfolio; some an alternative to testing.<sup>188</sup> A few states require that homeschooled instructional time must equal the mandated time in the public school classrooms, and others require courses equivalent to the state's high school graduation requirements.<sup>189</sup>

While there is significant flexibility for parents who choose to homeschool, homeschooling can be expensive. If the state requires the homeschooler have prior approval,<sup>190</sup> it is possible the state could provide some funding. Moreover, some private organizations offer grants. But generally, homeschooling parents are responsible for the costs of books and supplies.

#### *b. Utilizing the Internet and Online Education*

With the Internet, companies have started programs where a student may enroll in “courses online with support from their teacher via phone, online Web meetings, and sometimes even face to face.”<sup>191</sup> Some states even recognize this option as a type of public school, so the program and resources may possibly be paid for by the state.<sup>192</sup> Companies boast certified teachers, and because forty-five states have adopted the Common Core State Standards,<sup>193</sup> it is presumed that the curriculum will be on par with traditional school settings.

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<sup>186</sup> *Summary of Laws*, *supra* note 183.

<sup>187</sup> *Id.*

<sup>188</sup> *Id.* at v–vi.

<sup>189</sup> *Id.* at vi; *see also* *Stephens v. Bongart*, 189 A. 131, 137 (N.J. Juv. & Dom. Rel. 1937) (holding that homeschooling must provide an “instruction equivalent to that provided in the public schools” at the elementary and middle school levels).

<sup>190</sup> *See, e.g.*, *Blount v. Dept. of Educ. & Cultural Servs.*, 551 A.2d 1377, 1384–85 (Me. 1988) (holding that guidelines and restrictions for approval are valid state interests and are not “unusually restrictive”).

<sup>191</sup> *See, e.g.*, *Online Public Schools*, K12, <http://www.k12.com/schools-programs/online-public-schools#.UtY0ECyA0cA> (last visited Oct. 1, 2014) (a company's description of the online public school services offered).

<sup>192</sup> *Id.*

<sup>193</sup> *Standards in Your State*, COMMON CORE STATE STANDARDS INITIATIVE, <http://www.corestandards.org/in-the-states> (last visited Oct. 1, 2014); Kober & Rentner, *supra* note 45 (“The standards are intended to set clear expectations for learning for grades K–12 that are consistent from state to state. The standards also aim to ensure



*c. The Religion Exemption to the Traditional, Four-walls Classroom*

Probably the best example of a homeschooling<sup>194</sup> exemption challenge is the landmark case *Wisconsin v. Yoder*. In *Yoder*, the United States Supreme Court held that the State of Wisconsin's compulsory education law directly conflicted with the established and deep-rooted religious beliefs of the Old Order Amish.<sup>195</sup> The Court ascertained that the Amish culture succeeded in achieving what the school's compulsory laws aimed to accomplish: "productive . . . members of society."<sup>196</sup> Furthermore, the Court recognized that the Amish have adopted a "learning-by-doing"<sup>197</sup> model and curriculum. In response to the State's concern that the Amish would be "ill-equipped" to function in modern society outside the Amish community, the Court acknowledged that additional formal schooling as mandated by compulsory education laws would not guarantee that students would be prepared for the world.<sup>198</sup> This holding is presumably based on the realization that even individuals who attend school are not guaranteed success.

The Amish and homeschoolers are an example of how one's education can not only surpass the walls of a classroom, but can be enriched by interacting with the world. The Court's holding in *Yoder* clarifies a modern goal of education: to

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that high school graduates possess the knowledge and skills needed for college and a globally competitive workforce.").

<sup>194</sup> Christina Sim Keddie, Note, *Homeschools and Public School Facilities: Proposals for Providing Fairer Access*, 10 N.Y.U. J. LEGIS. & PUB. POL'Y, 603, 608–09 (2007).

<sup>195</sup> *Wisconsin v. Yoder*, 406 U.S. 205, 208 (1972) (The Amish children did not attend school after the eighth grade.).

<sup>196</sup> *Id.* at 222. ("Whatever their idiosyncrasies as seen by the majority, this record strongly shows that the Amish community has been a highly successful social unit within our society, even if apart from the conventional 'mainstream.' Its members are productive and very law-abiding members of society; they reject public welfare in any of its usual modern forms.").

<sup>197</sup> *Id.* at 223.

<sup>198</sup> *Id.* at 224–25 ("There is nothing in this record to suggest that the Amish qualities of reliability, self-reliance, and dedication to work would fail to find ready markets in today's society. Absent some contrary evidence supporting the State's position, we are unwilling to assume that persons possessing such valuable vocational skills and habits are doomed to become burdens on society should they determine to leave the Amish faith, nor is there any basis in the record to warrant a finding that an additional one or two years of formal school education beyond the eighth grade would serve to eliminate any such problem that might exist.").

prepare the nation's youth for the world as self-sufficient and contributing members of society.<sup>199</sup> Compulsory education laws require students to clock hours in the confines of a classroom, but homeschool environments provide students with the ability to use the world as a classroom. Compulsory education laws require students to learn subjects and perform skills from the curriculum in isolation from the real world. Ultimately, this prevents students from higher achievement.<sup>200</sup>

As a result of the tension between what parents desire and expect for their child's education and the interest of states to educate youth, state legislatures and courts have made exceptions to public school compulsory education requirements with charter schools, voucher programs, and homeschooling statutes. The Supreme Court, too, has given deference to parents to choose the means and manner by which their children will be educated, both for private schools and for religion. This respect for parents' choice has created a plethora of exceptions to compulsory education laws. These exceptions demonstrate that state compulsory education laws are unneeded to ensure that American youth will be educated, and perhaps even hinder student achievement.

#### IV. A MODEL FOR SUCCESS

The United States should achieve the educated society that the early founders envisioned; however, we cannot continue to ignore that the current system is failing.<sup>201</sup> We cannot remain narrow minded and presume that college, high school, or even middle school culminates in a successful education. We must consider that learning can occur outside of the four walls of a classroom that current compulsory education laws mandate.<sup>202</sup> As a result, we must first define our goals for education<sup>203</sup> in

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<sup>199</sup> *Id.*

<sup>200</sup> Brown, *supra* note 19 (observing that students in Shanghai, who ranked top on the PISA assessment, were adept in applying their knowledge).

<sup>201</sup> See OECD, Country Note, *supra* note 18, at 194; Arkin, *supra* note 45.

<sup>202</sup> Stone, *surpa* note 53, at 4 (asserting that "global competitiveness arguments continue to be used as a means of promoting a strictly academic curriculum in high school—one designed solely to prepare students to pursue a four-year college degree—as the best and only educational program").

<sup>203</sup> Stone, *surpa* note 53, at 5 (identifying "a general consensus that equipping all young people with the knowledge and skills to become productive adults is the implicit goal of public education").

today's world.<sup>204</sup> The ultimate purpose of education should be to empower youth to become meaningful, productive participants and leaders in society.<sup>205</sup> Achieving this goal does not necessitate clocking hours in the classroom as compulsory education laws require, and we must avoid the path to encouraging our children to “become more crippled in their ability to make their own decisions (mom is always around), manage risk (at what age do you become magically able to use a saw?) or overcome a setback (you learn nothing when mom and dad sue the school district to get your grade changed)[,]”<sup>206</sup> or relying on so-called helicopter parents. Instead, we must prepare our nation's children with competence to enter adulthood, and schools must play a role in this preparation.

### A. *The U.S. Education System is Failing*

The majority of states' compulsory education laws require students to be in school between ten and thirteen years total,<sup>207</sup> and the time these students are spending in the classroom does not prepare them for college or, arguably, for success in modern society. The OECD reports that “students of the same age in the United States are more likely than students in other countries to be in different grades (vertical stratification) but are less likely to be streamed into separate programs (horizontal stratification).”<sup>208</sup> However, just because a student is

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<sup>204</sup> GARDNER, *supra* note 118, at 18 (“A concern with educational institutions seems . . . inseparable from the goals they are designed to achieve.”).

<sup>205</sup> See, e.g., Suzanne Lucas, *Why my child will be your child's boss* CBS NEWS: MONEYWATCH (June 21, 2012), available at <http://www.cbsnews.com/news/why-my-child-will-be-your-childs-boss/> (commenting on “the stories of how we're failing to prepare our children for leadership. Many parents in U.S. seem to be convinced that children are incapable of making any of their own decisions or even functioning by themselves at the playground. While a high school principal recently threatened to suspend a group of seniors for the dangerous act of riding their bikes to school, and a group of parents protested that their misbehaving 17–18 year-olds were sent home alone on a train, I looked around me and saw 4-year-olds walking to school by themselves and teenagers also traveling alone across Europe, handling transactions with different currency and in different languages. The leadership at many American companies were raised in a similar way to the Swiss children in my neighborhood. Boys had pocket knives. Everyone rode bikes to school. Kids started babysitting other children at 11- or 12-years-old. Now? We coddle and protect and argue with teachers when our little darlings receive anything worse than an A on a paper.”).

<sup>206</sup> *Id.*

<sup>207</sup> See *supra* notes 143–47 and accompanying text; see also *infra* Table II.

<sup>208</sup> OECD Country Note, *supra* note 18, at 5; In education, vertical stratification refers to a student's progress through grades (i.e., promotion from one grade to the

in a higher grade does not mean he or she has acquired more knowledge. The SAT College Board released the *2013 College and Career Readiness Report* and found that 57% of students did not reach the benchmarks:<sup>209</sup> k-12 education is not preparing students for college.

Additionally, attending college does not ensure completion. While college-bound numbers are up, matriculation rates do not always include college graduation rates, and of recent concern are young adults with student loan debt. “The number of students who don’t complete college is growing. Nearly one-third of students who started college in 2012 didn’t return to a [United States] school the following year[.]”<sup>210</sup> Finally, Americans know that the k-12 system is not preparing students for college. Both the government and the public have begun to take a hard look at colleges, evaluating the amount of money students borrow, the student loan default rate, and graduation rates.<sup>211</sup> In a grassroots attempt to discuss the value of college, young people are posting videos of their thoughts on the question “Do you think you should or should not go to College?”<sup>212</sup> The system is broken, and change is needed.

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next) and is often associated with one’s age. Horizontal stratification refers to a student’s placement in different programs (e.g. a vocational-technical (CTE) program). *Strong Performers and Successful Reformers in Education: Lessons from PISA 2012 for the United States*, OECD Publishing 41 (Dec. 3, 2013), available at <http://browse.oecdbookshop.org/oecd/pdfs/free/9813031e.pdf>.

<sup>209</sup> 2013 SAT Report on College and Career Readiness: Findings from the Class of 2013, THE COLLEGE BOARD 3 (2013), <http://media.collegeboard.com/homeOrg/content/pdf/sat-report-college-career-readiness-2013.pdf> (“The data are clear — college and career readiness matters. When students are prepared, they enter college, persist, and complete at much higher rates than those who are not prepared. Studies show that students who meet the SAT College and Career Readiness Benchmark are more likely to enroll in a four-year college, more likely to earn a higher first-year GPA (FYGPA), more likely to persist beyond the first year of college, and more likely to complete their degree than their peers who did not meet the benchmark.”).

<sup>210</sup> Melissa Korn, *A Bit of College Can Be Worse Than None at All*, THE WALL STREET JOURNAL (Oct. 13, 2014) available at <http://online.wsj.com/articles/a-bit-of-college-can-be-worse-than-none-at-all-1413158511>.

<sup>211</sup> Claidop Sanchez, *Identifying the Worst Colleges in America* NPR (Oct. 14, 2014) available at [http://www.npr.org/blogs/ed/2014/10/14/356062823/identifying-the-worst-colleges-in-america?utm\\_source=facebook.com&utm\\_medium=social&utm\\_campaign=npr&utm\\_term=nprnews&utm\\_content=2038](http://www.npr.org/blogs/ed/2014/10/14/356062823/identifying-the-worst-colleges-in-america?utm_source=facebook.com&utm_medium=social&utm_campaign=npr&utm_term=nprnews&utm_content=2038).

<sup>212</sup> RegularJOE, *Re: College (Request)*, HITRECORD.ORG (Oct. 13, 2014) available at <http://www.hitrecord.org/collaborations/9598?page=1> (last visited Nov. 12, 2014).

### B. *What Top-Ranking Countries Do Differently*

Students in top-ranking countries are not bound by rigid educational models or lengthy compulsory education. For example, students in Shanghai, China rank top in the world in reading, mathematics, and science.<sup>213</sup> China's Ministry of Education reports that compulsory education lasts only nine years, from primary school to junior-secondary schools.<sup>214</sup> Likewise, Singapore has enacted compulsory education laws from ages six to fifteen, or nine years of total schooling.<sup>215</sup> The same is true in Japan,<sup>216</sup> Korea,<sup>217</sup> Liechtenstein,<sup>218</sup> and Switzerland.<sup>219</sup> That is, of the top ten OECD nations,<sup>220</sup> only the Netherlands requires more than nine years of compulsory education.<sup>221</sup> The United States should follow the lead of successful countries and shorten the length of compulsory education.

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<sup>213</sup> The rankings are as follows: Singapore (2d), Hong Kong, China (3d), Chinese Taipei (4th), Korea (5th), Macao, China (6th), Japan (7th), Liechtenstein (8th), Switzerland (9th) and the Netherlands (10th). Other developed countries include Finland (12th), Canada (13th), Poland (14th), Germany (16th), Viet Nam (17th), Australia (18th), and the United Kingdom (26th). *See* OECD, *supra* note 30.

<sup>214</sup> *9-year Compulsory Education*, CHINA.ORG.CN, <http://www.china.org.cn/english/education/184879.htm> (last visited Sept. 17, 2014).

<sup>215</sup> Ministry of Education: Singapore, *Compulsory Education*, <http://www.moe.gov.sg/initiatives/compulsory-education/> (last visited Sept. 17, 2014).

<sup>216</sup> *The Japanese Educational System*, EDUC. JAPAN, <http://www.education-in-japan.info/sub1.html#sub101> (last visited Sept. 17, 2014).

<sup>217</sup> *World Data on Education*, INT'L BUREAU EDUC. UNITED NATIONS EDUC., SCI. AND CULTURAL ORG., 4 (7th ed. Nov. 2010), [http://www.ibe.unesco.org/fileadmin/user\\_upload/Publications/WDE/2010/pdf-versions/Republic\\_of\\_Korea.pdf](http://www.ibe.unesco.org/fileadmin/user_upload/Publications/WDE/2010/pdf-versions/Republic_of_Korea.pdf).

<sup>218</sup> The European Education Directory, *Liechtenstein*, EUROEDUCATION.NET, <http://www.euroeducation.net/prof/liechco.htm> (last visited Oct. 1, 2014).

<sup>219</sup> European Agency, *Legal System – Switzerland*, <http://www.european-agency.org/country-information/> (last visited Oct. 1, 2014) (noting, however, that officially beginning in the 2015–16 school year, the compulsory education total years will rise to eleven, as two years of mandatory preschool will be required. Otherwise, the elementary and middle school models will remain the same as the other top-ten ranking countries).

<sup>220</sup> *See supra* note 213 and accompanying text.

<sup>221</sup> *Compulsory Education*, LENTIZ, <http://www.lentiz.nl/lentiz-english/home/studying-in-holland/education/compulsory-education> (last visited Oct. 1, 2014) (The Netherlands model has required education from ages 4–12. At age 12, students choose a track to pursue pre-vocational training, Vocational Training, Upper Secondary Training, or Pre-University training. A choice of these is mandatory.).

### C. *The Model for Success*

Even though some take education for granted, there is little disagreement that education of a nation's citizens is important for a society to thrive. To best succeed in educating future generations, states should abolish compulsory middle and high school attendance, overhauling the way our nation views education and the outcomes we expect.

The United States must drastically reinvent its educational system. Current academic achievement is dismal.<sup>222</sup> The United States should adopt an early intervention program for preschool, and students should continue to receive mandated elementary-level instruction as in successful countries.<sup>223</sup> Schooling beyond middle school should not be eliminated—just not mandated. Formal academic instruction at the middle and high school levels should be voluntary<sup>224</sup> and provided to those students who want the academic track, as merely allowing students to just drop out, and possibly become a drain on the society, is not a viable option.<sup>225</sup> Conversely, the United States should adopt a stronger vocational-technical track and encourage students to choose to enroll in a vocational-technical skills program as an alternative to the academic track. In fact, echoing a small shift in the way Americans view vocational-technical education, vo-tech has undergone a rebranding and is now being called Career and Technical Education (CTE). We

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<sup>222</sup> See OECD, Country Note, *supra* note 18 and accompanying text.

<sup>223</sup> See United Nations Educational, *supra* note 217, The European Education Directory, *supra* note 218.

<sup>224</sup> GATTO, DUMBING, *supra* note 11, at 18 (suggesting that schools should be “free market . . . one in which *students volunteer for the kind of education that suits them* even if that means self-education”).

<sup>225</sup> Emmeline Zhao, *High School Dropout Rates for Minority and Poor Students Disproportionately High*, HUFFINGTON POST (Feb. 14, 2012), [http://www.huffingtonpost.com/2011/10/20/high-school-dropout-rates\\_n\\_1022221.html](http://www.huffingtonpost.com/2011/10/20/high-school-dropout-rates_n_1022221.html) (One report suggests that “high school dropouts cost between \$320 billion and \$350 billion annually in lost wages, taxable income, health, welfare and incarceration costs. . .and according to a new report by the National Center for Education Statistics, someone who did not complete high school will earn about \$630,000 less over their [sic] lifetime than someone who has earned at least a GED. To add to that, changes to calculations make the situation appear even bleaker. While high school dropouts aren’t eligible for 90 percent of the jobs in the economy, an overhaul of flawed measurement formulas that often undercounted dropouts and inflated graduation rates would lead some states to see graduation rates fall by as many as 20 percentage points.”).

must evolve beyond the notion that to be successful everyone must earn a college degree.<sup>226</sup>

### 1. *Give kids options!*

Currently, the majority of students complete a high school curriculum with college-bound criteria. The United States education system needs a stronger vocational-technical (CTE) program as an alternative to the academic track<sup>227</sup> in order to provide meaningful experiences to every student. Being educated and attending school in a classroom do not always go hand-in-hand.

In modern American society, many see vocational-technical (CTE) or trade school as a second-class option,<sup>228</sup> but this should not be so. Learning a trade requires one to apply “emerging critical capacities”<sup>229</sup> to discern improvements to the taught or observed skill, as well as to work toward an independent

<sup>226</sup> Korn, *supra* note 210 (noting that “Americans have flocked to colleges in unprecedented numbers in the last half-decade, fueled by a conviction that postsecondary education is the surest route to steady employment and higher salaries.”); Notably, proponents are insisting that “vocational education in much of the country has been undergoing a very real transformation, one that extends both to high school students who are career bound and to those who are college bound.” Amy M. Hightower, et al., *Re-envisioning Career and Technical Education*, AMERICAN EDUCATOR, Vol. 38(3) 2014, at 3.

<sup>227</sup> Many have advocated for a stronger vocational-technical (CTE) program. See, e.g., Laura Clawson, *GOP senator: Vocational school is the answer to high student loan debt*, DAILY KOS LABOR (Jul. 17, 2013), <http://www.dailykos.com/story/>; Stone, *supra* note 53.

2013/07/17/1224445/-GOP-senator-Vocational-school-is-the-answer-to-high-student-loan-debt; *Pipe dream: Skip college, become a plumber, NYC Mayor Bloomberg says*, FOX NEWS (May 19, 2013), <http://www.foxnews.com/politics/2013/05/19/pipe-dream-skip-college-become-plumber-nyc-mayor-bloomberg-says/>; see also GATTO, WEAPONS, *supra* note 182, at 73 (“Not only can’t our kids read, write or count very well; now they can’t drive a nail, plane a board, use a saw, turn a screwdriver, boil an egg, or find ways to amuse themselves and stay healthy.”).

<sup>228</sup> HARLOW G. UNGER, BUT WHAT IF I DON’T WANT TO GO TO COLLEGE? 4 (Checkmark Books, 1998) (Many schools offer a choice for an alternative to an academic education, but “a lot of students automatically reject alternative education because well-meaning, both often misguided, friends, teachers, counselors and parents pressure them to stick to traditional academics and go to a four-year college to get a “good” job.”). Consider, too, that many schools in various states have a strong vocational-technical (CTE) option (sometimes known as an “occupational diploma”) for students with disabilities. See, e.g., Jackie Mader & Sarah Butrymowicz, *For special education students, diplomas, jobs increasingly elusive*, CLARION LEDGER (Feb. 3, 2014), <http://www.clarionledger.com/article/20140203/NEWS01/302030011/For-special-ed-students-diplomas-jobs-elusive>.

<sup>229</sup> GARDNER, *supra* note 118, at 122.

mastery: the culmination of the training. Studies show that employers seek occupational skills (“adaptability, communication skills, and the ability to work in groups and solve complex problems”)<sup>230</sup> as well as character traits (“persistence, dependability, self-control, curiosity, conscientiousness, grit, and self-confidence”),<sup>231</sup> and also technical skills. Moreover, a strong vocational-technical (CTE) program provides meaningful experiences (for example, “project-based learning. . . . such as work-based learning and out-of-classroom experiences”)<sup>232</sup> for students who do not wish to pursue an academic track, and will likely retain a significant number of students who otherwise would abandon education entirely because they have been discouraged on the academic track. Finally, other countries that have invested in vocational-technical programs have yielded success,<sup>233</sup> as have schools in the United States that have embraced vocational-technical (CTE) programs.<sup>234</sup>

If students had some ownership and control over their educational track, they may have higher achievement. Not surprisingly, students who are unsuccessful and demonstrate low achievement on an academic track do not like school.<sup>235</sup> Compulsory education laws require American youth to remain in a classroom setting, where failure may be his or her norm. This requirement does nothing but discourage success.<sup>236</sup> Instead, offering a variety of strong programs that allow students a choice in their curriculum, like a strong vocational-technical (CTE) track, could facilitate greater motivation to

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<sup>230</sup> Stone, *supra* note 53, at 6.

<sup>231</sup> *Id.*

<sup>232</sup> *Id.*

<sup>233</sup> Juana Summers, *The Voc-Ed Makeover* NPRED (June 11, 2014) available at <http://www.npr.org/blogs/ed/2014/06/11/320742795/the-voc-ed-makeover> (citing to Germany, Denmark, Switzerland, United Arab Emirates, and Finland).

<sup>234</sup> *Id.* (reporting “that the dropout rate at the state’s [Massachusetts] CTE programs in 2011 was half the dropout rate at its regular/comprehensive high schools”).

<sup>235</sup> MEL LEVINE, *THE MYTH OF LAZINESS* 8 (Simon & Schuster, 2003) (concluding that “feeling productive, showing off a product line in which you can take pride, and reaping recognition for your output are major sources of satisfaction and meaning in your life”).

<sup>236</sup> *Id.* at 155 (“A person’s own record of accomplishment (or lack thereof) strongly influences his current and future output. . . . Those who come to feel they can’t do anything right may stop doing anything at all.”).



learn.<sup>237</sup> We have no need to rely on compulsory education at the middle and high school level if we are allowing students to participate in a curriculum that they are motivated to complete. But in order for such a program to be successful, Americans must let go of the stigma that comes with our blue-collar workers. Consider, for example, that until 2008, society ingrained in Americans that it was the American dream to own a home. When the housing bubble burst, lenders had to turn away prospective buyers.<sup>238</sup> But it was an economic necessity. If we continue to require that everyone follow a path to college, and believe that everyone wants to go to college, it is only a matter of time before the college bubble collapses and college loses its allure.<sup>239</sup>

Success should not be so narrowly tailored that anything less than a college education is seen as a failure. Not every student wants to or should attend college,<sup>240</sup> and Americans

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<sup>237</sup> GARDNER, *supra* note 118, at 124 (calling apprenticeships “highly motivating; youngsters enter directly into the excitement that surrounds an important, complex, and sometimes mysterious undertaking . . .”).

<sup>238</sup> See, e.g., *Housing and Mortgage Trends*, C-SPAN (Dec. 30, 2013), <http://www.c-span.org/video/?316951-3/washington-journal-housing-mortgage-trends> (last visited Oct. 29, 2014) (HOST: How about lending itself. Give us an update on home lending. We read a lot that it's really hard to get a good loan these days. Can you plug that piece of it into the picture . . . GUEST (Lawrence Yun, chief economist for the National Association of Realtors): But what has happened is because of the very tight underwriting standards, we have buyers coming in but 1/3 of the transactions are all cash. They are not able to obtain mortgages, so they're coming in cash.)

<sup>239</sup> Jason Lange, *U.S. student debt burden falling more on top earners, easing bubble fears* REUTERS (Nov. 3, 2014) available at <http://www.reuters.com/article/2014/11/03/us-usa-education-loans-insight-idUSKBN0IN0AC20141103> (noting that “U.S. student loan balances have quadrupled since 2004 to \$1.1 trillion (688.84 billion pounds), prompting credit rating agency Standard & Poor’s and others to express fears the borrowing could crimp consumer spending, especially home buying, and eventually lead to the painful bursting of a bubble. Worries over high loan levels have also been voiced by President Barack Obama and more recently, Federal Reserve Chair Janet Yellen.”).

<sup>240</sup> RUSSELL W. RUMBERGER, *DROPPING OUT: WHY STUDENTS DROP OUT OF HIGH SCHOOL AND WHAT CAN BE DONE ABOUT IT* 20 (Harvard University Press, 2011); UNGER, *supra* note 228, at 3; but see Joey Garrison, *35,000 Tennessee students apply for free community college* THE TENNESSEAN (Oct. 13, 2014) available at <http://www.tennessean.com/story/news/education/2014/10/10/apply-free-tennessee-community-college/17055583/> (reporting that a line formed early for the application process, and that “1,300 students signed up for Tennessee Promise, the new program led by Gov. Bill Haslam that gives Tennessee’s high school seniors free tuition at the state’s two-year community colleges and colleges of applied technology”) and Paul Fain, *Benefits of Free* InsideHigherEd (Oct. 16, 2014) available at <https://www.insidehighered.com/news/2014/10/16/chicago-joins-tennessee-tuition-free-community-college-plan> (discussing Chicago’s Star Scholarship, which requires a high-

must change the attitude that vocational-technical (CTE) or trade school is a degrading option in lieu of high school and college.<sup>241</sup> Some have already recognized the need for a change in mindset for what makes a person successful.<sup>242</sup> However, there is no shame in the electrician who keeps the attorney's office current with technology, running electrical wire for outlets for computers and printers to ensure the attorney's brief can be typed, printed, and submitted. Or the plumbers that ensure these offices are equipped with running water and working restrooms. Or the carpenters, who work on the construction team, building new offices. Indeed, the college graduate would be at a loss without these skilled persons.<sup>243</sup>

But what we currently consider a successful education—the high school student who is college-bound with four years of English, and generally *at least* three years of history, natural science, mathematics,<sup>244</sup> and often a foreign language—foolishly forces students to fit a mold. The United States prides itself on the notion of individuality, but does not encourage middle and high school students to express individuality through choosing an alternative to the college track.<sup>245</sup> Regardless of whether compulsory education laws are meant to keep children in school or to provide an achievement level, compulsory, cookie-cutter education laws are not achieving their goals.<sup>246</sup>

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school GPA of 3.0 and need no remediation in math or English to qualify).

<sup>241</sup> UNGER, *supra* note 228 (noting that many schools offer a choice for an alternative to an academic education, but that “a lot of students automatically reject alternative education because well-meaning, both often misguided, friends, teachers, counselors and parents pressure them to stick to traditional academics and go to a four-year college to get a “good” job.”).

<sup>242</sup> Michelle Rose Gilman, *Harvard, Schmarvard: Why Getting Your Kids Into College Should Be the Least of Your Concerns*, Huffington Post, blog (Sept. 28, 2014, 8:54 pm, updated October 2, 2014, 4:59 pm) available at [http://www.huffingtonpost.com/michelle-gilman/harvard-schmarvard-why-ge\\_b\\_5896976.html](http://www.huffingtonpost.com/michelle-gilman/harvard-schmarvard-why-ge_b_5896976.html); Summers, *supra* note 233 (surmising that [f]or years, voc-ed was written off as Plan B for underachieving kids).

<sup>243</sup> UNGER, *supra* note 228, at 3.

<sup>244</sup> Stone, *supra* note 53 at 4; 2013 *SAT Report*, *supra* note 209, at 5.

<sup>245</sup> Summers, *supra* note 233 (citing a concern among detractors is that “if students focus on a narrow set of technical skills, they’ll miss out on bigger things – like literacy, math, and history – that will serve them well in the long run”).

<sup>246</sup> Zhao, *supra* note 225 (“About a quarter of those who entered high school [in 2012] won’t earn a diploma . . . .”); see also OECD, Country Note, *supra* note 18, at 1–2; President Obama called for Career and Technical Education beyond “old-fashioned ‘vocational education’ – wood shop, mechanics, hair dressing. The call here is for high tech[.]” Tom Ashbrook, OnPoint with Tom Ashbrook (Feb. 14, 2013 at 10:00 AM), available at <http://onpoint.wbur.org/2013/02/14/vocational-training>.

By changing the number of students in different tracks (vocational-technical versus pre-college), schools can lower the student-to-teacher ratios, which may catalyze increased student performance. The number of middle and high school teachers will decrease as the technical employers can become educators in their own right, teaching the skill of their trade.<sup>247</sup> The teachers we have committed to middle and high school education can be shifted to elementary school, lowering the student-to-teacher ratio at both the elementary and upper grade levels, and enabling more individualized attention for students, which studies have shown also increases student achievement.<sup>248</sup>

Moreover, vocational-technical (CTE) tracks will provide hands-on, real-world activities and experiences for students.<sup>249</sup> Educational tracks still encourage specialized practitioners who can offer a meaningful contribution to their community. There is still resistance to vocational-technical (CTE) education, as demonstrated that “federal technical education funds have shrunk by \$140 million over the last two years. And good tech ed. teachers are hard to find because they can make a lot more money being an engineer, instead teaching high schoolers about engineering.”<sup>250</sup> Nevertheless, American corporations and industries have begun to realize the value in an apprenticeship model that offers meaningful learning experiences<sup>251</sup> for high school students,<sup>252</sup> which will enable a highly skilled workforce that can strengthen our economy. For example, programs have emerged supporting non-traditional

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<sup>247</sup> Stone, *supra* note 53, at 6 (asserting that “apprenticeships can be established in almost any area if an employer or union seeks to sponsor them”).

<sup>248</sup> National Education Association, *Class Size*, <http://www.nea.org/home/13120.htm> (last visited Oct. 1, 2014).

<sup>249</sup> Summers, *supra* note 233 (asserting that “[k]ids aren’t taught marketable, professional skills at the expense of traditional academics. In a vibrant CTE program, they get both”).

<sup>250</sup> Sarah Alvarez, *In Michigan District, A New Look For Vocational Education* NPR (Mar. 12, 2013) available at <http://www.npr.org/2013/03/12/174080027/the-new-face-of-vocational-education>.

<sup>251</sup> Summers, *supra* note 233 (noting that “[k]ids aren’t just being educated at schools like Worcester Tech. They’re being engaged.”).

<sup>252</sup> LERMAN & SCHMIDT, *supra* note 45, at 49.

(The report cites to companies (namely, Charles Schwab and CISCO Systems) and industries (namely, the automotive, finance, travel, health, and computer industries) that have joined with high schools to address “career academics” and “school-to-work partnerships.”).

college degrees.<sup>253</sup> These skilled students *apply* their knowledge, one of the key areas lacking for Americans, according to the PISA reports.<sup>254</sup> Employers require “education” beyond just academics, including “work habits, and interpersonal skills.”<sup>255</sup> A stronger vocational-technical (CTE) program would allow students to receive more personalized instruction in these areas: in essence, a more comprehensive education. And vocational-technical (CTE) programs do not necessarily mean a student will not attend college.<sup>256</sup>

Furthermore, this horizontal stratification<sup>257</sup> could allow for more funding to be provided at the preschool level. Less students in traditional classrooms at the upper levels would open more funding for preschool. We would do better to redirect resources to early education programs instead of forcing older, disengaged students to be merely warm bodies in a desk.

## 2. *Attack the achievement gap earlier*

For students in the United States to be able to compete on the international scale, students must have basic knowledge. As the early purposes for education suggested,<sup>258</sup> basic skills—those typically learned in elementary school—are critical for citizens to be able to contribute to their neighborhoods and the global community. It is necessary that America’s youth learn to read, learn basic math skills, and learn to function in their

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<sup>253</sup> See, e.g., Press Release, *AT&T And Udacity To Offer Scholarships To Underserved Students For New Online Tech Training Program*, MarketWatch (Sept. 11, 2014) available at <http://www.marketwatch.com/story/att-and-udacity-to-offer-scholarships-to-underserved-students-for-new-online-tech-training-program-2014-09-11> (students receive scholarships for a “nanodegree” – an online credential in the tech industry in AT&T’s training and talent acquisition model); Eduardo Porter, *A Smart Way to Skip College in Pursuit of a Job*, NYTIMES.COM (June 17, 2014), available at [http://www.nytimes.com/2014/06/18/business/economy/udacity-att-nanodegree-offers-an-entry-level-approach-to-college.html?\\_r=0](http://www.nytimes.com/2014/06/18/business/economy/udacity-att-nanodegree-offers-an-entry-level-approach-to-college.html?_r=0); Tamar Lewin, *Web-Era Trade Schools, Feeding a Need for Code* NYTIMES (Oct. 13, 2014), available at [http://www.nytimes.com/2014/10/14/us/web-era-trade-schools-feeding-a-need-for-code.html?partner=rss&emc=rss&\\_r=1](http://www.nytimes.com/2014/10/14/us/web-era-trade-schools-feeding-a-need-for-code.html?partner=rss&emc=rss&_r=1) (asserting that “trade schools [are] out of fashion” and discussing the tech alternative to college, even boasting they are “unconcerned with SAT scores or diplomas”).

<sup>254</sup> See Schleicher, *supra* note 22; *Wisconsin v. Yoder*, 406 U.S. 205, 224–25 (1972).

<sup>255</sup> LERMAN & SCHMIDT, *supra* note 45, at 79.

<sup>256</sup> Alvarez, *supra* note 250.

<sup>257</sup> See OECD, *supra* note 18; Strong Performers, *supra* note 208.

<sup>258</sup> See discussion *supra* Part II.

earliest community: with classmates in a classroom and on the playground. Therefore, an elementary level<sup>259</sup> of education is necessary.

Studies show that early intervention programs are correlated with future achievement.<sup>260</sup> If we are to consider the success of other nations in light of their compulsory education laws and models,<sup>261</sup> it becomes apparent that the United States is investing its resources on the wrong end of the spectrum.<sup>262</sup> Under the current laws in the United States, the home must nurture the child with pre-academic skills and instill a value for and love of learning. Thus, teachers cannot control the amount of human capital a child is endowed with and brings with him or her to school. A pre-school program may allow schools to fill this gap in human capital.

At present, only a few states and the District of Columbia require that students begin school at age five.<sup>263</sup> The majority of states require students to begin school at age six.<sup>264</sup> President

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<sup>259</sup> See discussion *infra* Part IV.C.2.b.

<sup>260</sup> See, e.g., ERIC JENSEN, TEACHING WITH POVERTY IN MIND 58 (Association for Supervision & Curriculum Development 2009) (“The long-term benefits of high-quality early education programs are well documented. Studies have shown that educational intervention has the potential to narrow or eliminate the socioeconomic performance gap, showing sustained results.” (internal citations omitted)); but see generally David J. Armor, *The Evidence on Universal Preschool: Are Benefits Worth the Cost?* Policy Analysis: Cato Institute Oct. 15, 2014, No. 760 available at <http://object.cato.org/sites/cato.org/files/pubs/pdf/pa760.pdf> (suggesting “a need for more, longer-term studies of children from preschool programs to determine adult behavioral changes”).

<sup>261</sup> See OECD, Country Note, *supra* note 18, United Nations Educational, *supra* note 217, The European Education Directory *supra* note 218.

<sup>262</sup> See OECD, Country Note, *supra* notes 18, at 1–2; United Nations Educational, *supra* note 217; The European Education Directory *supra* note 218.

<sup>263</sup> See *infra* Table II: Arkansas (ARK. CODE ANN. § 6-18-201 (West 2009)); Connecticut (CONN. GEN. STAT. ANN. § 10-184 (West 2009)); Delaware (DEL. CODE ANN. tit. 14, § 2702 (West 2013)); District of Columbia (D.C. CODE § 38-202 (2013)); Maryland (MD. CODE ANN., EDUC. § 7-301 (West 2012)); New Mexico (N.M. STAT. ANN. §§ 22-8-2, 22-12-2, (West 2009)); Oklahoma (OKLA. STAT. tit. 70, § 10-105 (2014)); South Carolina (S.C. CODE ANN. § 59-65-10 (2013)); Virginia (VA. CODE ANN. § 22.1-254 (2014)).

<sup>264</sup> See *infra* Table II: Alabama (ALA. CODE § 16-28-3 (2014)); Arizona (ARIZ. REV. STAT. § 15-802 (2011)); California (CAL. EDUC. CODE § 48200 (West 2014)); Colorado (COLO. REV. STAT. § 22-33-104 (2013)); (FLA. STAT. § 1003.21(2014)); Georgia (GA. CODE ANN. § 20-2-690.1 (2012)); Hawaii (HAW. REV. STAT. § 302A-1132 (2014)); (IOWA CODE § 299.1A (2013)); Kentucky (KY. REV. STAT. ANN. § 159.010 (West 2013)); Massachusetts (MASS. GEN. LAWS ANN. ch. 603, § 8.02 (West 2004); MASS. GEN. LAWS ANN. ch. 76 § 1 (West 2004)); Michigan (MICH. COMP. LAWS ANN. § 380.1561 (West 2010)); Mississippi (MISS. CODE ANN. § 37-13-91 (2014)); Nebraska (NEB. REV. STAT. ANN. § 79-201 (West 2012)); New Hampshire (N.H. REV. STAT. ANN. § 193:1 (2013));

Barack Obama’s State of the Union Addresses to Congress in recent years have stressed the need for preschool, namely with the Preschool for All Initiative, where President Obama proposed a budget for fiscal year 2015 to implement early learning.<sup>265</sup> Early intervention programs offering children the opportunity to learn the foundational, pre-academic skills at age three will enable more children to be successful throughout elementary school and perhaps beyond,<sup>266</sup> motivating more students to continue in the academic track. So, while we cannot change the human capital that exists (or is missing) in many American homes, early intervention will still promote higher achievement.

#### D. *Criticisms of the Proposed Model for Success*

While it is impossible to address all the criticisms that come with the radical suggestion to abolish compulsory education laws at the middle and high school levels, the obvious concerns—the impact on minorities and low socioeconomic groups, and the general effect on society this model would have—can be overcome.

##### 1. *Minorities and the poor*

One of the first critiques is that abolishing compulsory education will have the greatest impact on low socioeconomic

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New Jersey (N.J. STAT. ANN. § 18A:38-25 (West 2014)); New York (N.Y. EDUC. LAW § 3205 (McKinney 2014)); Ohio (OHIO REV. CODE ANN. § 3321.01 (West 2013)); Rhode Island (R.I. GEN. LAWS ANN. § 16-19-1 (West 2014)); South Dakota (S.D. CODIFIED LAWS § 13-27-1 (2014)); Tennessee (TENN. CODE ANN. § 49-6-3001 (2014)); Texas (TEX. EDUC. CODE ANN. § 25.085 (West 2014)); Utah (UTAH CODE ANN. § 53A-11-101 (West 2013)); Vermont (VT. STAT. ANN. tit. 16, § 1121 (2013)); West Virginia (W. VA. CODE ANN. § 18-8-1A (West 2014)); Wisconsin (WIS. STAT. § 118.15 (2014)).

<sup>265</sup> *Early Learning, THE WHITE HOUSE*, <http://www.whitehouse.gov/issues/education/early-childhood> (last visited Dec. 5, 2014); *Early Learning: America’s Middle Class Promise Begins Early*, U.S. DEPARTMENT OF EDUCATION, <http://www.ed.gov/early-learning> (last visited Dec. 5, 2014) (noting that “there is a tremendous unmet need for high-quality early learning throughout the country”).

<sup>266</sup> See, e.g., JENSEN, *supra* note 260 (“Evaluations of well-run prekindergarten programs have found that children exposed to high-quality early education were less likely to drop out of school, repeat grades, or need special education, compared with similar children who did not have such exposure.” (internal citations omitted)); U.S. Department of Education, *supra* note 265 (stating that [s]tudies prove that children who have rich early learning experiences are better prepared to thrive in kindergarten and beyond).

groups and minorities. Minorities are disproportionately represented in low socioeconomic groups. Both minorities and the poor are also disproportionately represented in academic achievement.<sup>267</sup> The biggest criticism is that there is already a gap in the achievement of the socioeconomic groups.

“The real scourge of the U.S. education system—and its greatest competitive weakness—is the deep and growing achievement gap between socioeconomic groups that begins early and lasts through a student’s academic career,” writes Rebecca Strauss, associate director for CFR’s *Renewing America* publications. Wealthy students are achieving more, and the influence of parental wealth is stronger in the United States than anywhere else in the developed world.<sup>268</sup>

The argument that wealthy students are better equipped for achievement stems from the logic that resources and materials are needed for students’ success, and that students from low socioeconomic groups are not provided with the human capital needed for higher achievement.<sup>269</sup> But as discussed, the proposed Model recommends strong early intervention programs, which have been shown specifically to “narrow or eliminate the socioeconomic performance gap.”<sup>270</sup> Thus, a low socioeconomic status does not have to lead to low achievement if we provide an early intervention program.

Additionally, the notion that “the deep and growing achievement gap . . . begins early and lasts through a student’s academic career,”<sup>271</sup> has fueled policymakers to push for higher

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<sup>267</sup> Rebecca Strauss, *Remedial Education: Federal Education Policy*, CFR.ORG (June 2013), [http://www.cfr.org/united-states/remedial-education-federal-education-policy/p30141?cid=otr-marketing\\_use-remedialeducation&cid=nlc-news\\_release-news\\_release-link2-20130617&sp\\_mid=41824468&sp\\_rid=](http://www.cfr.org/united-states/remedial-education-federal-education-policy/p30141?cid=otr-marketing_use-remedialeducation&cid=nlc-news_release-news_release-link2-20130617&sp_mid=41824468&sp_rid=)

<sup>268</sup> *Id.*

<sup>269</sup> JENSEN, *supra* note 260, at 18–19.

<sup>270</sup> *Id.* at 58.

<sup>271</sup> See JENSEN, *supra* note 260 and accompanying text; but note a recent criticism of New York City:

Mayor Bill de Blasio’s push to expand pre-K is benefitting higher-income boroughs and ZIP codes more than low-income areas in the city. . . The analysis didn’t examine the reasons why pre-K expansion in New York City varied by borough and ZIP code. But Berkeley Professor Bruce Fuller offered two thoughts as to why the poorest corners of the city didn’t benefit as much as more affluent ones: Better-off areas had “more ample classroom space . . . along with stronger demand expressed by economically secure families,” Fuller said in a release.

Caitlin Emma, *StudentsFirst picks new president — Regret over inBloom backlash? — White House executive actions: Where are they now?* POLITICO (Oct. 8, 2014) available at

graduation rates. In fact, minorities have shown gains in high school graduation rates.<sup>272</sup> However, as noted,<sup>273</sup> simply obtaining a high school degree does not necessitate college readiness.<sup>274</sup> Therefore, as the Model suggests, a pre-school program could foster the initial inclination toward education at three years old, which in turn would provide strong foundational skills that could promote achievement throughout the duration of the student's education.<sup>275</sup> The argument then turns to limited or inadequate resources and materials for low socioeconomic groups. For instance, in noting the performance of underrepresented minority students, the College Board cites a lack of rigorous course work for minorities as a reason minorities are ill prepared for success in college.<sup>276</sup> But if a strong vocational-technical (CTE) program were in place, as the Model suggests, less students would be on the academic track, freeing up resources and allowing the current resources to be spread more evenly over the schools with varying economic disparity. These resources would be available to those who wish to pursue the academic track, and would simultaneously provide a vocational-technical (CTE) option to those who seek an alternative. Therefore, regardless of the student's socioeconomic status, a reallocation of the educational structure could provide resources to all.

## 2. *A burden on society*

The most obvious concern remains: if the student is not forced to go to school, what will he or she do? The Supreme Court, in holding that the Amish were exempt from compulsory

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<http://www.politico.com/morningeducation/1014/morningeducation15597.html>.

<sup>272</sup> Valerie Strauss, *U.S. High School Graduation Rate Sees Big Minority Gains – Analysis*, WASH. POST (June 6, 2013), <http://www.washingtonpost.com/blogs/answer-sheet/wp/>

2013/06/06/u-s-high-school-graduation-rate-sees-big-minority-gains-analysis/ (The Washington Post reported on the most recent dropout/graduation rates available (2010): “Hispanic graduation rates jumped 16 points over a decade, hitting 68 percent for the class of 2010. Black graduation rates jumped 13 percentage points over a decade, hitting 62 percent in 2010. Whites saw a 6 percent graduation rate increase over the same period, to 80 percent; Asians, a 5 percent increase, to 81 percent. Native Americans saw a 3 percent rise in graduation rates, to 51 percent.”).

<sup>273</sup> See OECD, Country Note, *supra* note 18, at 1–2 and accompanying text.

<sup>274</sup> 2013 SAT Report, *supra* note 209, at 6–7.

<sup>275</sup> See FRIEDMAN, *supra* note 1, at 171.

<sup>276</sup> *Id.* at 6.



education in the eighth grade, defensively noted that because the Amish had “valuable vocational skills and habits[,] [the Court was not afraid the exempt youth would be] doomed to become burdens on society.”<sup>277</sup> A modern goal of education, therefore, is to produce self-sufficient individuals who contribute to society—“productive adults”—not burden it.<sup>278</sup> The abolishment of compulsory education laws at the middle and high school levels will not create individuals who burden society, particularly if parents accept responsibility for their child.

*a. First scenario: A child does not want to be in school, but his or her parent wants him or her to attend.*

Though “[m]any children start to misbehave when they have been made to feel inferior,”<sup>279</sup> as argued, a meaningful learning experience—as a vocational-technical (CTE) track affords—could eliminate a student’s feelings of inadequacy in the academic track, and perhaps curtail misbehavior, but even more powerful is a parent’s influence over his or her child’s attitude toward school. Most parents want more for their children, and it is likely that a child would choose to leave school if given the option. Should a parent want his or her child to remain in school, the parent needs to take more responsibility for raising and controlling his or her child.<sup>280</sup> With the aim to create responsible and contributing members of society, teachers cannot continue to be blamed for disruptive<sup>281</sup> and unmotivated students. Parents of an unruly student should be required to actively participate in keeping the child on track if the child is to remain in school in either a

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<sup>277</sup> *Wisconsin v. Yoder*, 406 U.S. 205, 224-225 (1972) (“[W]e are unwilling to assume that persons possessing such valuable vocational skills and habits are doomed to become burdens on society should they determine to leave the Amish faith, nor is there any basis in the record to warrant a finding that an additional one or two years of formal school education beyond the eighth grade would serve to eliminate any such problem that might exist.”).

<sup>278</sup> Stone, *supra* note 53, at 5.

<sup>279</sup> LEVINE, *supra* note 235, at 41.

<sup>280</sup> *Id.* at 150–51 (Observing that parents “need to take on the sometimes adversarial and perverse authoritarian role of taskmaker . . . many parents perceive themselves as entertainers and recreation coordinators, facilitating play rather than mind work!”).

<sup>281</sup> GATTO, WEAPONS, *supra* note 182, at 79 (observing that “classroom disruption was not deemed, system-wide, *problem of bad teaching*”).

vocational-technical (CTE) or an academic program.

If a student, demonstrated by his or her disruptive behavior in the classroom, does not want to be in school, and his or her parents are unable to compel appropriate behavior, the child should be allowed to leave. Thomas Jefferson, though commenting on the university level, charged that “the disorderly . . . be disabled by expulsion, from infecting with their inconsideration the institution itself, and the sound mass of those which it is preparing for virtue and usefulness.”<sup>282</sup> Should the parent argue the school’s support of the child’s choice to leave school, the Supreme Court has already ruled that “fundamentally fair procedures” must be in place for expulsion as the result of major disciplinary transgressions.<sup>283</sup> The Court articulated due process obligations for long-term school suspensions and expulsions, which could be extended to apply to student dismissal for lack of engagement: “requiring effective notice and [an] informal hearing permitting the student to give his version of the events . . . . [Allowing the student] to summon the accuser, permit cross-examination, and allow[ing] the student to present his own witnesses . . . .”<sup>284</sup> This process will naturally involve the student’s parent, who is key to curtailing behavior counterproductive to the learning process. The student is still making a voluntary choice to leave school, and if his or her parent is unable to compel the child, or is unwilling to take responsibility and ultimately modify the child’s behavior while in school, then the school should allow the student to leave.

*b. What if the child is actually allowed to leave school?*

Under the proposed Model, students will still be provided an elementary-level education, which means simply a level of mastery encompassing basic skills, even if the student leaves school later. Furthermore, the proposed Model does not allow a student to simply abdicate school once he or she reaches a certain age. A basic skills test should be administered before releasing the student from the mandated elementary-level

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<sup>282</sup> “Memorial on the Book Duty” to the Senate and House of Representatives of the United States of America in Congress assembled *in* THOMAS JEFFERSON, WRITINGS: PUBLIC *supra* note 36, at 481.

<sup>283</sup> Goss v. Lopez, 419 U.S. 565, 574 (1975).

<sup>284</sup> *Id.* at 583–84.

education. This testing will require that all citizens acquire a minimum skill set to enable them to participate in society before the compulsory mandate is lifted. Should that student refuse to embrace the opportunity for higher levels of education, the student is prepared for some type of work with the elementary level education mastered. Thus, we are still meeting our goal that everyone becomes productive members of society, even if the work available for an elementary-leveled citizen is less desirable.

If the student chooses to pursue neither the academic nor the vocational-technical (CTE) track, and a parent does not coerce him or her to do either, the question remains as to where the child will end up in the immediate future. Many have written on the so-called “school to prison pipeline.”<sup>285</sup> There is a fear that if we allow students to dismiss themselves from school, their idle hands will find mischievous activities without a “safety net” like school.<sup>286</sup> The Model proposed offers an alternative to completely dropping out, but completely leaving school may still be an outcome.

A parent who instills a value for education in his or her child likely will not fall into the categories of being (a) disruptive in school or (b) apathetic to the educational process. What a child does is ultimately the parent’s responsibility, in or outside of school. An argument is that kids who are not in school “may simply accelerate the course of delinquency by giving a troubled youth with little parental supervision a few extra days to ‘hang’ with deviant peers.”<sup>287</sup> *Parental*

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<sup>285</sup> See, e.g., Linda Darling-Hammond, *Securing the Right to Learn: Policy and Practice for Powerful Teaching and Learning*, 35 EDUCATIONAL RESEARCHER 13 (2006) (noting “inequalities . . . [that] increasingly feeds the ‘school-to-prison pipeline’”); Christine A. Christie, Kristine Jolivet, & C. Michael Nelson, *Breaking the School to Prison Pipeline: Identifying School Risk and Protective Factors for Youth Delinquency*, 13 EXCEPTIONALITY 69 (2005) (identifying “key elements” that lead to the school to prison pipeline).

<sup>286</sup> See, e.g., Johanna Wald & Daniel J. Losen, *Defining and Redirecting a School to Prison Pipeline*, 99 NEW DIRECTIONS FOR YOUTH DEVELOPMENT 9 (Fall 2003) (painting a bleak picture of school for some students, and claiming that students that “[drop] out or [get] pushed out altogether [from school and wind up w]ithout a safety net, the likelihood that these same youths will wind up arrested and incarcerated increases sharply”).

<sup>287</sup> Russ Skiba & Reece Peterson, *The Dark Side of Zero Tolerance: Can Punishment Lead to Safe Schools?*, PI DELTA KAPPA INTERNATIONAL 1, 8 (2006), [http://curry.virginia.edu/uploads/resourceLibrary/dark\\_zero\\_tolerance.pdf](http://curry.virginia.edu/uploads/resourceLibrary/dark_zero_tolerance.pdf) (commenting on suspension and zero tolerance policies).

supervision, then, is critical, and society should hold the parent accountable for the child's behavior inside the classroom or on the street. A school cannot care for a child more than the child's own parent. If the school does, we need to consider the fitness of the parent to raise a child at all, not assume our schools will pick up the parent's slack.

We need to shift our focus from teacher accountability to parent accountability. If a child is inclined to delinquency when not in school, what can be said of that child's behavior tendencies during school? Schools are not babysitting entities. The purpose of schools is to educate. The purpose of education is to learn. If a student is so defiant or apathetic to the learning process that he or she cannot be educated, it follows that school is not the appropriate setting for this child.

Allowing students to leave school in middle or high school does not infringe on their right to an education, it merely respects the student's wishes to decline that right. There is a right to receive information,<sup>288</sup> and some have opined that one cannot be denied information.<sup>289</sup> Either receiving or denying information, however, requires an active effort and desire to access information. This should hold for education. We should allow students to retain the option to return to school should he or she opt to leave school for work,<sup>290</sup> and then change his or her mind. That a student is older than his or her classmates is the direct result of his or her own choices, and the student will perhaps learn the most important lesson: there are

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<sup>288</sup> See, e.g., *Stanley v. Georgia*, 394 U.S. 557, 564 (1969) (ruling that the "right to receive information and ideas, regardless of their social worth, is fundamental to our free society").

<sup>289</sup> See, e.g., *Bd. of Educ. v. Pico*, 457 U.S. 853, 869 (1982) (Brennan, J., plurality) (The plurality, noting that even though the school board, "who attempt[ed] to extend their claim of absolute discretion [to remove books deemed offensive from the school library] beyond the compulsory environment of the classroom, into the school library and the regime of voluntary inquiry that there h[eld] sway[.]" ultimately "reject[ed] petitioners' claim of absolute discretion" for the books allowed, and acknowledged the right for students to have access to information. Blackmon, J., in his concurrence, urged that "the State may not act to deny access to an idea simply because state officials disapprove of that idea . . ." *Id.* at 879 (Blackmon, J., concurring)).

<sup>290</sup> Acknowledging that child labor laws would need to be changed, the concept that children are capable of working is not absurd. Consider that even today it is expected that young people help on farms, or in the family store. See also, e.g., GATTO, WEAPONS, *supra* note 182, at 73–74 (telling the story of David Sarnoff, and in particular noting that "[a]t age nine, Sarnoff self-taught himself into a job; at 14 into a business").

consequences for one's actions. Moreover, all can be assured that a student who returns to school is attending school with want for an education, and therefore will be amenable to the learning process, because he or she is actively pursuing education. This motivation will eliminate the need for bribes,<sup>291</sup> and will ensure students maximize their education because they are already interested—and more motivated—to be there.

## V. CONCLUSION

While it is difficult to disagree with the premise that an educated society will engender a successful nation, there is a disconnect between the need for compulsory education and the actual achievement attained by American youth. The exceptions to classic compulsory public education—school choice, homeschooling, or one's religion—are abundant; these exceptions to compulsory education have not hindered education in American society.

In order for the United States to remain a competitive nation on the international scale, we must raise future generations to be independent, productive members of society. One is hard-pressed to consider advocating the total obliteration of public education. Nevertheless, despite the general agreement in the value of education, compulsory education laws in the United States do not make education more successful. American society, while falling behind on the international scale,<sup>292</sup> still manages to produce individuals capable of competing in the world, at least for the moment. Before we fall further behind, states should consider strengthening vocational-technical (CTE) education, and abolishing compulsory education laws for the types of education we currently mandate at the middle and high school levels.

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<sup>291</sup> See, e.g., Kristin Timperman, *Chalk Talk: Kentucky's No Pass-No Drive Statute: Flawed or Flawless?*, 38 J.L. & EDUC. 205, 205–10 (2009) (explaining that in Kentucky, obtaining and keeping a driver's license depends on school attendance).

<sup>292</sup> See OECD, Country Note, *supra* note 18, at 1–2.

TABLE I  
STATE CONSTITUTIONAL PROVISIONS FOR EDUCATION

Alabama	Ala. CONST. art. 14, § 256	“The legislature shall establish, organize, and maintain a liberal system of public schools throughout the state for the benefit of the children thereof between the ages of seven and twenty-one years. The public school fund shall be apportioned to the several counties in proportion to the number of school children of school age therein, and shall be so apportioned to the schools in the districts or townships in the counties as to provide, as nearly as practicable, school terms of equal duration in such school districts or townships. Separate schools shall be provided for white and colored children, and no child of either race shall be permitted to attend a school of the other race.”
Alaska	Alaska CONST. art. 7, § 1	“The legislature shall by general law establish and maintain a system of public schools open to all children of the State, and may provide for other public educational institutions. Schools and institutions so established shall be free from sectarian control. No money shall be paid from public funds for the direct benefit of any religious or other private educational institution.”

Arizona	Ariz. CONST. art. 11, § 1	<p>“A. The legislature shall enact such laws as shall provide for the establishment and maintenance of a general and uniform public school system, which system shall include:</p> <ol style="list-style-type: none"> <li>1. Kindergarten schools.</li> <li>2. Common schools.</li> <li>3. High schools.</li> <li>4. Normal schools.</li> <li>5. Industrial schools.</li> <li>6. Universities, which shall include an agricultural college, a school of mines, and such other technical schools as may be essential, until such time as it may be deemed advisable to establish separate state institutions of such character.</li> </ol> <p>B. The legislature shall also enact such laws as shall provide for the education and care of pupils who are hearing and vision impaired.”</p> <p>Section 6. Admission of students of both sexes to state educational institutions; tuition; common school system</p> <p>“The university and all other state educational</p>
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		institutions shall be open to students of both sexes, and the instruction furnished shall be as nearly free as possible. The legislature shall provide for a system of common schools by which a free school shall be established and maintained in every school district for at least six months in each year, which school shall be open to all pupils between the ages of six and twenty-one years.”
Arkansas	Ark. CONST. art. 14, § 1	“Intelligence and virtue being the safeguards of liberty and the bulwark of a free and good government, the State shall ever maintain a general, suitable and efficient system of free public schools and shall adopt all suitable means to secure to the people the advantages and opportunities of education.”
California	Cal. CONST. art. IX, § 1	“A general diffusion of knowledge and intelligence being essential to the preservation of the rights and liberties of the people, the Legislature shall encourage by all suitable means the promotion of intellectual, scientific, moral, and agricultural improvement.”
Colorado	Colo. CONST.	“Establishment and



	art. IX, § 2	<p>maintenance of public schools. The general assembly shall, as soon as practicable, provide for the establishment and maintenance of a thorough and uniform system of free public schools throughout the state, wherein all residents of the state, between the ages of six and twenty-one years, may be educated gratuitously. One or more public schools shall be maintained in each school district within the state, at least three months in each year; any school district failing to have such school shall not be entitled to receive any portion of the school fund for that year.”</p>
Connecticut	Conn. CONST. art. 8, § 1	<p>“There shall always be free public elementary and secondary schools in the state. The general assembly shall implement this principle by appropriate legislation.”</p>
Delaware	Del. CONST. art. X, § 1	<p>“The General Assembly shall provide for the establishment and maintenance of a general and efficient system of free public schools, and may require by law that every child, not physically or mentally disabled, shall attend the public school, unless educated by other means.”</p>
Florida	Fla. CONST. art. IX, § 1	<p>“The education of children is a fundamental value of the people of the State of Florida. It is, therefore, a paramount</p>

		duty of the state to make adequate provision for the education of all children residing within its borders. Adequate provision shall be made by law for a uniform, efficient, safe, secure, and high quality system of free public schools that allows students to obtain a high quality education and for the establishment, maintenance, and operation of institutions of higher learning and other public education programs that the needs of the people may require.”
Georgia	Ga. CONST. art. VIII, § 1	“The provision of an adequate public education for the citizens shall be a primary obligation of the State of Georgia. Public education for the citizens prior to the college or postsecondary level shall be free and shall be provided for by taxation. The expense of other public education shall be provided for in such manner and in such amount as may be provided by law.”
Hawaii	Haw. CONST. art. XI, § 1	“The State shall provide for the establishment, support and control of a statewide system of public schools free from sectarian control, a state university, public libraries and such other educational institutions as may be deemed desirable,

		<p>including physical facilities therefor. There shall be no discrimination in public educational institutions because of race, religion, sex or ancestry; nor shall public funds be appropriated for the support or benefit of any sectarian or nonsectarian private educational institution, except that proceeds of special purpose revenue bonds authorized or issued under section 12 of Article VII may be appropriated to finance or assist:</p> <ol style="list-style-type: none"> <li>1. Not-for-profit corporations that provide early childhood education and care facilities serving the general public; and</li> <li>2. Not-for-profit private nonsectarian and sectarian elementary schools, secondary schools, colleges and universities. [Ren and am Const Con 1978 and election Nov 7, 1978; am L 1994, c 280, §4 (HB 2692-94) and election Nov 8, 1994; am HB 2848 (2002) and election Nov 5, 2002]"</li> </ol>
Idaho	Idaho CONST. art. IX, § 1	"The stability of a republican form of government depending mainly upon the intelligence of the people, it shall be the duty

		of the legislature of Idaho, to establish and maintain a general, uniform and thorough system of public, free common schools.”
Illinois	Ill. CONST. art. X, § 1	<p>“A fundamental goal of the People of the State is the educational development of all persons to the limits of their capacities.</p> <p>The State shall provide for an efficient system of high quality public educational institutions and services. Education in public schools through the secondary level shall be free. There may be such other free education as the General Assembly provides by law.</p> <p>The State has the primary responsibility for financing the system of public education.”</p>
Indiana	Ind. CONST. art. 8, § 1	<p>“Knowledge and learning, generally diffused throughout a community, being essential to the preservation of a free government; it shall be the duty of the General Assembly to encourage, by all suitable means, moral, intellectual, scientific, and agricultural improvement; and to provide, by law, for a general and uniform system of Common Schools, wherein tuition shall be without charge, and equally</p>

		open to all.”
Iowa	Iowa CONST. art. IX, § 1	“The Board of Education shall provide for the education of all the youths of the State, through a system of Common Schools and such school shall be organized and kept in each school district at least three months in each year. Any district failing, for two consecutive years, to organize and keep up a school as aforesaid may be deprived of their portion of the school fund.”
Kansas	Kan. CONST. art. 6, § 1	“Schools and related institutions and activities. The legislature shall provide for intellectual, educational, vocational and scientific improvement by establishing and maintaining public schools, educational institutions and related activities which may be organized and changed in such manner as may be provided by law.”
Kentucky	Ky. CONST. art. 183	“The General Assembly shall, by appropriate legislation, provide for an efficient system of common schools throughout the State.”
Louisiana	La. CONST. art. VIII, preamble	“The goal of the public educational system is to provide learning environments and experiences, at all stages of human development, that are humane, just, and designed

		to promote excellence in order that every individual may be afforded an equal opportunity to develop to his full potential.”
Maine	Me. CONST. art. VIII, § 1	“A general diffusion of the advantages of education being essential to the preservation of the rights and liberties of the people; to promote this important object, the Legislature are authorized, and it shall be their duty to require, the several towns to make suitable provision, at their own expense, for the support and maintenance of public schools[.]”
Maryland	Md. CONST. art. VIII, § 1	“The General Assembly, at its First Session after the adoption of this Constitution, shall by Law establish throughout the State a thorough and efficient System of Free Public Schools; and shall provide by taxation, or otherwise, for their maintenance.”
Massachusetts	Mass. CONST. chapter V, § II	“Wisdom, and knowledge, as well as virtue, diffused generally among the body of the people, being necessary for the preservation of their rights and liberties; and as these depend on spreading the opportunities and advantages of education in the various parts of the country, and among the different orders of the people, it shall be the duty of legislatures and magistrates,

		in all future periods of this commonwealth, to cherish the interests of literature and the sciences, and all seminaries of them; especially the university at Cambridge, public schools and grammar schools in the towns; to encourage private societies and public institutions, rewards and immunities, for the promotion of agriculture, arts, sciences, commerce, trades, manufactures, and a natural history of the country; to countenance and inculcate the principles of humanity and general benevolence, public and private charity, industry and frugality, honesty and punctuality in their dealings; sincerity, good humor, and all social affections, and generous sentiments among the people.”
Michigan	Mich. CONST. art. VIII, § 1	Religion, morality and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged.”
Minnesota	Minn. CONST. art XIII, § 1	The stability of a republican form of government depending mainly upon the intelligence of the people, it is the duty of the legislature to establish a general and uniform system of public schools.”
Mississippi	Miss. CONST. art. 8, § 201	“The Legislature shall, by general law, provide for the establishment, maintenance

		and support of free public schools upon such conditions and limitations as the Legislature may prescribe. “
Missouri	Mo. CONST. art. IX, § 1(a)	“A general diffusion of knowledge and intelligence being essential to the preservation of the rights and liberties of the people, the general assembly shall establish and maintain free public schools for the gratuitous instruction of all persons in this state[.]”
Montana	Mont. CONST. art. X, § 1	“(1) It is the goal of the people to establish a system of education which will develop the full educational potential of each person. Equality of educational opportunity is guaranteed to each person of the state.(2) The state recognizes the distinct and unique cultural heritage of the American Indians and is committed in its educational goals to the preservation of their cultural integrity. (3) The legislature shall provide a basic system of free quality public elementary and secondary schools. The legislature may provide such other educational institutions, public libraries, and educational programs as it deems desirable. It shall fund and distribute in an equitable manner to the school districts the state’s share of the cost of



		the basic elementary and secondary school system.”
Nebraska	Neb. CONST. art. VII, § 1	“The Legislature shall provide for the free instruction in the common schools of this state of all persons between the ages of five and twenty-one years. The Legislature may provide for the education of other persons in educational institutions owned and controlled by the state or a political subdivision thereof.”
Nevada	Nev. CONST. art. XI, § 1	“The legislature shall encourage by all suitable means the promotion of intellectual, literary, scientific, mining, mechanical, agricultural, and moral improvements[.]”
New Hampshire	N.H. CONST. art. 83	“Knowledge and learning, generally diffused through a community, being essential to the preservation of a free government; and spreading the opportunities and advantages of education through the various parts of the country, being highly conducive to promote this end; it shall be the duty of the legislators and magistrates, in all future periods of this government, to cherish the interest of literature and the sciences, and all seminaries and public schools, to encourage private and public institutions, rewards, and immunities for the promotion of agriculture, arts,

		sciences, commerce, trades, manufactures, and natural history of the country; to countenance and inculcate the principles of humanity and general benevolence, public and private charity, industry and economy, honesty and punctuality, sincerity, sobriety, and all social affections, and generous sentiments, among the people[.]”
New Jersey	N.J. CONST. art. VIII, § IV	The Legislature shall provide for the maintenance and support of a thorough and efficient system of free public schools for the instruction of all the children in the State between the ages of five and eighteen years.
New Mexico	N.M. CONST. art. XII, § 1	“A uniform system of free public schools sufficient for the education of, and open to, all the children of school age in the state shall be established and maintained.”
New York	N.Y. CONST. art. XI, § 1	“The legislature shall provide for the maintenance and support of a system of free common schools, wherein all the children of this state may be educated.”
North Carolina	N.C. CONST. art. IX, § 1	“Religion, morality, and knowledge being necessary to good government and the happiness of mankind, schools, libraries, and the means of education shall forever be encouraged.”

North Dakota	N.D. CONST. art. VIII, § 1	“A high degree of intelligence, patriotism, integrity and morality on the part of every voter in a government by the people being necessary in order to insure the continuance of that government and the prosperity and happiness of the people, the legislative assembly shall make provision for the establishment and maintenance of a system of public schools[.]”
Ohio	Ohio CONST. art. VI, § 2	“The General Assembly shall make such provisions, by taxation, or otherwise, as, with the income arising from the school trust fund, will secure a thorough and efficient system of common schools throughout the state; but no religious or other sect, or sects, shall ever have any exclusive right to, or control of, any part of the school funds of this state.”
Oklahoma	Okla. CONST. art. 13, § 1	“The Legislature shall establish and maintain a system of free public schools wherein all the children of the State may be educated.”
Oregon	Or. CONST. art. VIII, § 3	“System of common schools. The Legislative Assembly shall provide by law for the establishment of a uniform, and general system of Common schools.”
Pennsylvania	Pa. Const. art. III, § 14	“The General Assembly shall provide for the maintenance and support of a thorough and

		efficient system of public education to serve the needs of the Commonwealth. “
Rhode Island	R.I. CONST. art. XII, § 1	“The diffusion of knowledge, as well as of virtue among the people, being essential to the preservation of their rights and liberties, it shall be the duty of the general assembly to promote public schools and public libraries, and to adopt all means which it may deem necessary and proper to secure to the people the advantages and opportunities of education[.]”
South Carolina	S.C. CONST. art. XI, § 3	“The General Assembly shall provide for the maintenance and support of a system of free public schools open to all children in the State and shall establish, organize and support such other public institutions of learning, as may be desirable. “
South Dakota	S.D. CONST. art. VIII, § 1	“The stability of a republican form of government depending on the morality and intelligence of the people, it shall be the duty of the Legislature to establish and maintain a general and uniform system of public schools wherein tuition shall be without charge, and equally open to all; and to adopt all suitable means to secure to the people the advantages and opportunities of education.”

Tennessee	Tenn. CONST. art. XI, § 12	“[R]ecogniz[ing] the inherent value of education and encourage[ing] its support.”
Texas	Tex. CONST. art. VII, § 1	“A general diffusion of knowledge being essential to the preservation of the liberties and rights of the people, it shall be the duty of the Legislature of the State to establish and make suitable provision for the support and maintenance of an efficient system of public free schools.”
Utah	Utah CONST. art. X, § 1	“The Legislature shall provide for the establishment and maintenance of the state’s education systems including: (a) a public education system, which shall be open to all children of the state; and (b) a higher education system. Both systems shall be free from sectarian control.”
Vermont	Vt. CONST. Chapter II, § 68	“Laws for the encouragement of virtue and prevention of vice and immorality ought to be constantly kept in force, and duly executed; and a competent number of schools ought to be maintained . . . for the convenient instruction of youth.”
Virginia	Va. CONST. art. VIII, § 1	“The General Assembly shall provide for a system of free public elementary and secondary schools for all children of school age throughout the Commonwealth, and shall seek

		to ensure that an educational program of high quality is established and continually maintained.”
Washington	Wash. CONST. art. IX, § 1	“It is the paramount duty of the state to make ample provision for the education of all children residing within its borders[.]”.
West Virginia	W. Va. CONST. art. XII, § 1	“The Legislature shall provide, by general law, for a thorough and efficient system of free schools.”
Wisconsin	Wis. CONST. art. X, § 3	“The legislature shall provide by law for the establishment of district schools, which shall be as nearly uniform as practicable; and such schools shall be free and without charge for tuition to all children between the ages of 4 and 20 years; and no sectarian instruction shall be allowed therein; but the legislature by law may, for the purpose of religious instruction outside the district schools, authorize the release of students during regular school hours.”
Wyoming	Wyo. CONST. art. 7, § 1	“The legislature shall provide for the establishment and maintenance of a complete and uniform system of public instruction, embracing free elementary schools of every needed kind and grade, a university with such technical and professional departments as the public good may require

		and the means of the state allow, and such other institutions as may be necessary.”
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TABLE II  
STATE STATUTORY PROVISIONS FOR COMPULSORY EDUCATION  
REQUIREMENTS

	STATUTE	AGE REQUIRE D TO BEGIN SCHOOL	AGE ALLOWED TO LEAVE SCHOOL	TOTAL YEARS REQUIRED TO REMAIN IN SCHOOL
Alabama	ALA. CODE § 16-28-3	6	17	11
Alaska	ALASKA STAT. § 14.30.010	7	16	9
Arizona	ARIZ. REV. STAT. § 15-802, §15-802-D-2	6	16	10
Arkansas	ARK. STAT. ANN. § 6-18-201	5	17	12
California	CAL. EDUC. CODE § 48200	6	18	12
Colorado	COLO. REV. STAT. § 22-33-104	6	17	11
Connecticut	CONN. GEN. STAT. § 10-184	5	18	13
Delaware	14 DEL. CODE ANN. § 2702	5	16	11
District of Columbia	D.C. CODE ANN. § 38-202	5	18	13



Florida	FLA. STAT. § 1003.21	6	16	10
Georgia	GA. CODE ANN. § 20-2-690.1	6	16	10
Hawaii	HAW. REV. STAT. § 302A-1132	6	18	12
Idaho	IDAHO CODE § 33-202	7	16	9
Illinois	105 ILL. COMP. STAT. ANN. § 5 / 26-1	7	17	10
Indiana	IND. CODE ANN. § 20-33-2-6; § 22-33-2- 9(B)	7	16	9
Iowa	IOWA CODE § 299.1A	6	16	10
Kansas	KAN. STAT. ANN. § 72-1111	7	18	11
Kentucky	KY. REV. STAT. ANN. § 159.010	6	16	10
Louisiana	LA. REV. STAT. ANN. § 17:221	7	18	11
Maine	ME. REV. STAT. ANN. tit. 20A, § 3271	7	17	10
Maryland	MD. CODE ANN., EDUC. § 7-301	5	18	11
Massachusetts	603 MASS. CODE REGS.	6	16	10

	§ 8.02; MASS. GEN. LAWS ANN. ch. 76, § 1			
Michigan	MICH. STAT. ANN. § 380.1561	6	16	10
Minnesota	MINN. STAT. § 120A.22	7	16	9
Mississippi	MISS. CODE ANN. § 37-13-91	6	17	11
Missouri	MO. REV. STAT. § 167.031	7	16	11
Montana	MONT. CODE ANN. ANN. § 20-5-102	7	16	11
Nebraska	NEB. REV. STAT. ANN. § 79-201	6	18	12
Nevada	NEV. REV. STAT. ANN. § 392.040	7	18	11
New Hampshire	N.H. REV. STAT. ANN. § 193.1	6	18	12
New Jersey	N.J. REV. STAT. § 18A:38-25	6	16	10
New Mexico	N.M. STAT. ANN. § 22-8- 2; § 22-12-2; § 22-8-2 m(3)	5	18	13
New York	N.Y. EDUC. LAW § 3205	6	16	10
North Carolina	N.C. GEN. STAT. § 115C-378	7	16	9

North Dakota	N.D. CENT. CODE § 15.1- 20-01	7	16	9
Ohio	OHIO REV. CODE ANN. § 3321.01	6	18	12
Oklahoma	70 OKLA. STAT. tit. 70, § 10-105	5	18	13
Oregon	OR. REV. STAT. § 339.010	7	18	11
Pennsylvania	PA. STAT. ANN. § 13-1326	8	17	9
Rhode Island	R.I. GEN. LAWS § 16-19-1	6	16	10
South Carolina	S.C. CODE ANN. § 59-65-10	5	17	12
South Dakota	S.D. CODIFIED LAWS § 13-27-1	6	18	12
Tennessee	TENN. CODE ANN. § 49-6- 3001 (C)(1)	6	17	11
Texas	TEX. EDUC. CODE ANN. § 25.085	6	18	12
Utah	UTAH CODE ANN. § 53A- 11-101	6	18	12
Vermont	VT. STAT. ANN. tit. 16, § 1121	6	16	10

Virginia	VA. CODE ANN. § 22.1- 254	5	18	13
Washington	WASH. REV. CODE § 8A.225.010	8	18	10
West Virginia	W. VA. CODE § 18-8-1A	6	17	11
Wisconsin	WIS. STAT. § 118.15	6	18	12
Wyoming	WYO. STAT. ANN. § 21-4- 102	7	16	9