



# COMMONWEALTH of VIRGINIA

Office of the Attorney General

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The Honorable Elliot S. Schewel  
Member, Senate of Virginia  
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My dear Senator Schewel:

You ask several questions concerning the application of the religious belief exception to Virginia's compulsory school attendance statutes.

I. Applicable Statutes and Case Authority  
Develop Broad Test for Religious Belief Exception

Sections 22.1-254 through 22.1-269 of the Code of Virginia are Virginia's compulsory school attendance statutes.

Section 22.1-254 requires parents, guardians and other persons in the Commonwealth who have control or charge of a school-aged child to (1) send such child to a public school, (2) send such child to a private, denominational or parochial school, (3) have such child taught by a qualified tutor or teacher, or (4) provide for home instruction of such child, as described in § 22.1-254.1. After detailing the educational requirements for the home instruction of children, § 22.1-254.1(C) further provides:

The parent who elects to provide home instruction shall provide the division superintendent by August 1 following the school year in which the child has received home instruction with either (i) evidence that the child has attained a composite score above the fortieth percentile on a battery of achievement tests which have been approved by the Board of Education for use in the public schools or (ii) an evaluation or assessment which, in the judgment of the division superintendent, indicates that the child is achieving an adequate level of educational growth and progress.

In the event that evidence of progress as required in this subsection is not provided by the parent, home instruction shall cease and the parent shall make other arrangements for the education of the child which comply with § 22.1-254 . . . .

Section 22.1-257(A)(2) requires that a school board "excuse from attendance at school any pupil who, together with his parents, by reason of bona fide religious training or belief, is conscientiously opposed to attendance at school." Section 22.1-257(C) further provides that a "bona fide religious training or belief" does not include essentially political, sociological or philosophical views or a merely personal moral code."

The religious belief exception in § 22.1-257 was enacted by the General Assembly to assure that the free exercise of religion, which is guaranteed by the Constitution of the United States and the Constitution of Virginia, is respected by government. The mere assertion, however, of a religious objection to public school attendance does not automatically constitute a "bona fide religious belief." *Rice v. Commonwealth*, 188 Va. 224, 49 S.E.2d 342 (1948). The Commonwealth has a fundamental interest in an educated citizenry which cannot be undervalued. See *San Antonio School District v. Rodriguez*, 411 U.S. 1, 29-30 (1973); *Wisconsin v. Yoder*, 406 U.S. 205, 213 (1972); *McCullum v. Board of Education*, 333 U.S. 203, 212 (1948); *Pierce v. Society of Sisters*, 268 U.S. 510, 519 (1925); *Meyer v. Nebraska*, 262 U.S. 390, 400-01 (1923).

In determining whether a belief is religious in nature and, therefore, constitutionally protected, the Supreme Court of the United States has held that the term "religion" refers to one's views of his relation to his Creator, and the obligations they impose to revere His being and character and to obey His will. It is distinguishable from the form of worship of a particular sect. *Davis v. Beason*, 133 U.S. 333, 342 (1890).

There is no legal requirement, therefore, that a religion or religious belief meet organizational or doctrinal tests in order to qualify for constitutional protection. See *United States v. Seeger*, 380 U.S. 163, 165-66 (1965) ("religious training and belief" includes sincere and meaningful beliefs which "occup[y] a place in the life of its possessor parallel to that filled by the orthodox belief in God"); *Sequoyah v. Tennessee Valley Authority*, 620 F.2d 1159 (6th Cir. 1980) (Cherokee Indians' beliefs constitute a "religion" which is constitutionally protected despite the absence of written creeds or buildings for worship).

The determination of what constitutes a religious belief "is not to turn upon a judicial perception of the particular belief or practice in question; religious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection." *Thomas v. Review Bd., Ind. Empl. Sec. Div.*, 450 U.S. 707, 714 (1981). Further, a believer's articulation of his religion should not be dissected and rejected simply because it is not as sophisticated as it might be, nor should interfaith differences determine what is a religious belief and what is merely a personal philosophical belief. *Id.* at 715. "[T]he guarantee of free exercise is not limited to beliefs which are shared by all the members of a religious sect." *Id.* at 715-16.

## II. Membership in Particular Religion or Church Is Factor, But Not Conclusive Factor, in Determining Whether Bona Fide Religious Belief Exists

You first ask what role the pupil's or parent's membership in a particular religion or church plays in determining the existence of a bona fide religious belief to satisfy the exception in § 22.1-257(A)(2) and (C).

Although the difference between a "religious" belief and a purely political, sociological or philosophical code often is unclear, it is the responsibility of the local school board to make the determination whether the religious belief exception in § 22.1-257 applies to the facts of a particular case.

Various factors may be considered as evidence of a religious belief. Courts have considered an individual's beliefs compared to those generally held by the members of the sect to which the individual claims to belong, when determining whether the individual's beliefs are grounded in religion. See *Duro v. Dist. Atty., Second Jud. Dist. of N.C.*, 712 F.2d 96 (4th Cir. 1983) (Pentecostalist parents' beliefs were divergent from the more commonly accepted practices of Pentecostal faith; children's school attendance required); *State v. Riddle*, 168 W. Va. 429, 432, 285 S.E.2d 359, 361 (1981) ("Biblical Christians" who were members of Methodist "Wesley" sect were separate from the Methodist communion; children's school attendance required). Membership in an organized or recognized religion, in itself, does not, however, conclusively demonstrate that a religious exemption is warranted. It must be shown that the religious tenets of that group are equally held by the pupil and parents seeking protection. *Fiedler v. Marumsco Christian Sch.*, 631 F.2d 1144 (4th Cir. 1980).

Other factors may supplement or supplant organizational membership as evidence of a bona fide religious training or belief, including whether the belief is a merely social response to changing times, or whether the belief, if contested, would change. *Fiedler*, 631 F.2d at 1152. The existence of, and adherence to, a written religious creed also may be a factor, although it is not a conclusive one. *Id.*

It is my opinion, therefore, that any analysis of whether a "bona fide religious training or belief" exists to form the basis for a claim of religious exemption pursuant to § 22.1-257 requires a thorough assessment of all the facts on a case-by-case basis. Membership in a particular church or religion may be considered, but it is not conclusive in determining whether a bona fide religious belief exists to support a religious exemption from the compulsory school attendance.

### III. Religious Exemption Exists When (1) Bona Fide Religious Belief Is Not Essentially Political, Sociological or Philosophical View or Merely Personal Code and (2) Statutory Alternatives to School Attendance Do Not Accommodate Belief

You next ask what specific and essential criteria a school board should consider in determining whether a pupil and his parents have a bona fide religious belief that makes public school attendance and its statutory equivalents objectionable.

As discussed above, § 22.1-257(C) requires that a religious belief not be "essentially political, sociological or philosophical views or a merely personal moral code." Prior Opinions of this Office recognize the further requirement that parents who, for religious reasons, seek a religious belief exemption from school attendance or home instruction also must show that school attendance and its statutory equivalents, including home instruction, do not accommodate their bona fide religious beliefs. See Att'y Gen. Ann. Rep.: 1984-1985 at 255, 256; 1983-1984 at 305-06. I am in agreement with the conclusions in these Opinions that these are the criteria that should be applied in determining whether a religious exemption is warranted pursuant to § 22.1-257.

### IV. Pupil's Religious Training or Belief Must Be Considered; Weight Given Child's Belief or Training Will Vary

You next ask how much consideration should be given to the pupil's religious beliefs or training in determining whether a religious exemption should be granted.

The compulsory school attendance statutes impose obligations for school attendance upon both parents and children. See § 22.1-262. The exemptions to these statutes in §§ 22.1-256 and 22.1-257 extend to the "children" or "pupil." Section 22.1-257(A)(2) requires an exemption on religious grounds for any "pupil who, together with his parents, by reason of bona fide religious training or belief, is conscientiously opposed to attendance at school." (Emphasis added.)

It is my opinion, therefore, that compliance with the statutory provisions of § 22.1-257(A)(2) requires that the pupil's religious beliefs or training be considered, along with the beliefs or training of the parents, in determining whether a religious exemption to compulsory school attendance should be granted. The weight to be given to the child's beliefs in this determination necessarily depends upon the facts in each particular case. The age and intellectual ability of the child also may be considered.

There can be no question that local school boards must respect a bona fide religious objection to school attendance made by parents on behalf of their children. Parents have the right to direct the religious growth of their children, and there are no facts presented that would outweigh this parental right.

V. School Board, as Accommodation, May Allow Parents to Use Statutory Alternatives to School Attendance When Parents Qualify for Such Alternatives

You next ask whether a school board which, while considering a request for a religious exemption, discovers that parents meet the requirements and qualifications for home instruction may offer to allow the parents to use home instruction as an accommodation of the parents' religious beliefs. You also ask whether parents would lose their home instruction status if they fail to provide the school system with the test scores or evaluation of progress by the August 1 deadline imposed by § 22.1-254.1(C).

Section 22.1-254.1(A) declares that it is the policy of the Commonwealth to allow, as an acceptable alternative form of education, the instruction of children by their parents in their home, when the requirements of the home instruction provisions in § 22.1-254.1 are satisfied. See 1984-1985 Att'y Gen. Ann. Rep. 257. This statute does not require that parents "specifically request" home instruction; its terms, instead, refer to a parent who "elects" home instruction. See § 22.1-254.1(B). There is nothing in the compulsory school attendance statutes which precludes a local school board from offering to permit home instruction as an accommodation to a child and parents who have requested a religious belief exemption pursuant to § 22.1-257, nor is there anything in the statutory scheme for home instruction which precludes parents from electing home instruction after it is offered by a school board as an accommodation to the parents' religious beliefs.

Section 22.1-254.1(C) does require that a parent who elects home instruction must provide the division superintendent by August 1 following the school year in which the child has received home instruction with either (i) evidence that the child has attained a composite score above the fortieth percentile on a battery of achievement tests approved by the Board of Education or (ii) an evaluation or assessment which, in the judgment of the division superintendent, indicates that the child is achieving an adequate



level of educational growth and progress. This statute further provides that "[i]n the event that evidence of progress as required in this subsection is not provided by the parent, home instruction shall cease and the parent shall make other arrangements for the education of the child which comply with § 22.1-254." It is my opinion, therefore, that a parent forfeits the home instruction status unless the information required by § 22.1-254.1(C) is furnished to the division superintendent by the August 1 deadline. This deadline may be extended by the division superintendent when the parent's failure to supply the required information is not due to parental neglect or simply the refusal to meet the August 1 deadline. See 1984-1985 Att'y Gen. Ann. Rep. 259.

VI. Granting of Religious Exemption Does Not Preclude School System from Periodically Monitoring Whether Basis for Exemption Continues; Exemption Does Preclude Regular Testing to Monitor Educational Growth of Child, Unless Home Instruction Requirements Apply

You next ask whether, if a school board determines that a pupil and his parents have a bona fide religious belief that makes school attendance or its alternatives objectionable and the school board grants a religious exemption, the school system has the authority to implement procedures to monitor the subsequent education of the pupil to determine if the child is receiving an adequate level of educational growth and progress, or whether the granting of a religious exemption precludes the school system from any additional monitoring of the child's education.

Parents having an exemption from school attendance for their children due to religious training or belief pursuant to § 22.1-256(A)(4) are not bound by the requirements of compulsory school attendance. See 1983-1984 Att'y Gen. Ann. Rep., *supra*. This religious belief exemption, however, is not permanent. A prior Opinion of this Office concludes that the religious exemption is subject to annual monitoring by the local superintendent of schools. *Id.* I am in agreement with this Opinion. It is further my opinion that such monitoring should be reasonable and for the purpose of determining whether the basis for the religious exemption continues.

Reasonable basic educational monitoring is not constitutionally prohibited when a religious exemption is claimed. See *Wisconsin v. Yoder*, 406 U.S. 205. Under the provisions of § 22.1-256(A)(4), however, the General Assembly has provided a complete exemption from compulsory school attendance for a child excused on religious grounds. It is my opinion, therefore, that a school system lacks the authority to monitor the educational growth of a child through regular testing, unless the home instruction provisions of § 22.1-254.1, as quoted above, apply.

With kindest regards, I am

Sincerely,



Mary Sue Terry  
Attorney General