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WITHDRAWAL SHEET

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File Folder: [Tuition Tax Credits] ³ [6 of 14] OA 9094 Box 8
Bill: Anti Discrimination 10/5/00

Date: 9/18/98

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
1. memo	Theodore Olson to Michael Uhlmann re tuition tax credit 2 p.	5/27/82	<i>PA 10/5/00</i>

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P-1 National security classified information [(a)(1) of the PRA].
- P-2 Relating to appointment to Federal office [(a)(2) of the PRA].
- P-3 Release would violate a Federal statute [(a)(3) of the PRA].
- P-4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA].
- P-5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA].
- P-6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA].

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Freedom of Information Act - [5 U.S.C. 552(b)]

- F-1 National security classified information [(b)(1) of the FOIA].
- F-2 Release could disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA].
- F-3 Release would violate a Federal statute [(b)(3) of the FOIA].
- F-4 Release would disclose trade secrets or confidential commercial or financial information [(b)(4) of the FOIA].
- F-6 Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA].
- F-7 Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA].
- F-8 Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA].
- F-9 Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA].

WITHDRAWAL SHEET

Ronald Reagan Library

Collection: BARR, WILLIAM: Files

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File Folder: [Tuition Tax Credits] ⁽³⁾ ~~11 of 14~~ OA 9094 Box 8
 Bill: Anti-Discrimination Issues

Date: 9/18/98

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
1. memo	Theodore Olson to Barr re June 7, 1982 draft of the administration tuition tax credit bill 3 p.	6/14/82	PS/MS 9/5/00

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

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U.S. Department of Justice

Office of Legal Counsel

Office of the
Assistant Attorney General

Washington, D.C. 20530

May 27, 1982

MEMORANDUM FOR MICHAEL M. UHLMANN
Special Assistant to the President

Re: Tuition Tax Credit

I have the following comments on the proposed language for the tuition credit legislation:

As you know, I disagree with the concept that the disallowance should operate for the year of the judgment and the two succeeding years. This means, in essence, that neither the institution nor the parents of the children claiming the tuition tax credits will be subject to a disallowance for the period during which the actual discrimination took place and has been proven. On the other hand, an institution which eliminates such a practice immediately upon receiving an adverse court decision would nonetheless be subject to the disqualification. Parents placing a child in a school have no incentive to urge policies of non-discrimination on the school in which they are enrolling their children. They need not be concerned with the issue at all unless a petition is filed with the Attorney General, the Attorney General files a court action and the case gets close to a judgment. This anomaly is heightened by the suggestion (it is not clear whether it is mandatory) in part (c)(4)(C)(ii) that an Attorney General's action would not be brought at all if the discriminatory policy "has been abandoned."

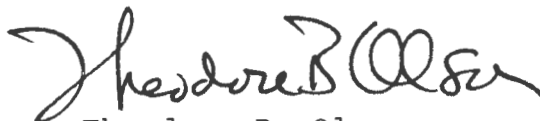
As I mentioned the other day, it has been said by some tuition tax credit proponents that the disallowance of the tuition tax credit availability for a school would be the "death knell" for that school. I have no way of evaluating the accuracy of that assessment. However, if it is true, as soon as a judgment is entered pursuant to one of these actions, the physical plant will undoubtedly be sold to someone not suffering the disability who would simply take over the operation of the school without the impediment. This would not be any kind of subterfuge by the school. It would be simple economics. The school would be worthless to the owner, but of some value to the purchaser. It is a transaction which would be virtually inevitable.

The disallowance provisions are at least partially superfluous in any event to the section 501(c)(3) requirement. Depending upon the outcome of the Bob Jones litigation, they are either duplicative or are subject to the objection that they are not particularly effective.

The provision relative to what the Attorney General must plead refers to an institution which "is following . . . and has . . . discriminated" what if the policy was followed and the institution did discriminate? What is the issue in the court proceedings? Will the Attorney General prevail if he can prove past discrimination, but not discrimination at the time of the filing of the suit?

The term "racially discriminatory policy" is defined in this proposed bill in terms considerably narrower than the legislation proposed by the Administration in January in response to the Bob Jones controversy. Apparently left untouched under this new definition is racial discrimination within programs in a school and racial discrimination in matters relative to faculty. I assume this is unintended, but the language selected certainly leaves the Administration open to charges of being less than completely clear on these points.

The constitutional hurdles which this legislation will have to overcome have been heightened appreciably by apparently allowing eligibility to any primary or secondary school even if it serves no function whatsoever other than religious indoctrination. I am not even sure whether the definition would not permit a credit for payments to a religious training school (or Sunday school) even where that school was not the place where the child received his or her basic education.

A handwritten signature in dark ink, appearing to read 'Theodore B. Olson', with a stylized flourish at the end.

Theodore B. Olson
Assistant Attorney General
Office of Legal Counsel

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File -
Houston tax credits

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For Your Information

California Catholic Conference

926 J Street — Suite 1100, Sacramento, California 95814
(916) 443-4851

May 27, 1983

Letters to the Editor
Los Angeles Times
Times Mirror Square
Los Angeles, California 90053

Dear Editor:

Your May 25th editorial, Clumsiness Exposed, tied together private education, the U.S. Supreme Court's decision to deny tax exempt status to racially discriminatory private schools, pending Court action on a Minnesota law affecting education and the Reagan Administration's support for tuition tax credit legislation. You called the Administration's action "a clumsy attempt to turn back the clock on minority rights."

Speaking for the Catholic Schools of California, wherein 265,000 elementary and secondary school students are educated, I wish to remind you of our own (and other denominational schools') long standing support for, and compliance with, non-discrimination policies. In this state, Catholic schools annually serve a higher percentage of children from minority families than do the public schools.

Your editorial stated that "the Supreme Court soon will rule on a Minnesota law that allows tuition tax credits for families whose children attend private schools." In fact, the Court is considering a 28 year old Minnesota statute which allows parents of both public and private school students to claim a state tax deduction for student transportation, textbooks, tuition and similar educational expenses.

Rather than attempting "to turn back the clock on minority rights", the Reagan Administration's federal tuition tax credit bill (S.528), approved by the Senate Finance Committee on May 24th, contains pages of stringent provisions to assure that no one would be entitled to a federal tuition tax credit for enrollment of a student at discriminatory schools.

Tuition tax credits, as designed by the Administration, are vehicles whereby middle and lower income families, including minorities, now doubly burdened by public

school taxes and private school tuitions, might have some modest and partial tax relief as they exercise freedom of choice in selecting alternative education. Such legislation would assist those families whose quest for quality education in parochial schools in Los Angeles was discussed by your education writer, David Savage, in his comprehensive article, "High Scores at Low Cost", on April 26, 1983.

Sincerely,

A handwritten signature in dark ink, appearing to read "Joseph P. McElligott", with a horizontal line extending to the right.

Joseph P. McElligott, Ed.D.
Director, Division of Education
California Catholic Conference

Past Chairman, California Equal
Educational Opportunities Commission

JPM:gt

Los Angeles Times

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Clumsiness Exposed

In powerful, sweeping language, the U.S. Supreme Court has reaffirmed the nation's "fundamental, overriding interest in eradicating racial discrimination in education." It did so in upholding a longstanding refusal of the Internal Revenue Service to grant tax-exempt status to Bob Jones University in Greenville, S.C., and the Goldsboro Christian Schools in Goldsboro, N.C., both of which the court specifically found guilty of racial discrimination.

Bob Jones University admits a few black students but bans interracial dating and interracial marriage; the Goldsboro schools do not admit blacks. Both argued that their policies reflected sincerely held religious beliefs. But Chief Justice Warren E. Burger, writing for the 8-1 majority, said that the government's interest in ending discrimination is so clear and so compelling that it "outweighs whatever burden denial of tax benefits places on [the schools'] exercise of their religious beliefs."

The federal tax code exempts charitable, educational, religious and scientific organizations from paying federal income taxes, Social Security taxes and unemployment taxes as a means of helping such organizations grow and benefit society. Since 1970 the Internal Revenue Service has held that exempt organizations must not violate fundamental public

policy; the nation's civil-rights laws are as fundamental as public policy can be. As Burger wrote, an institution's "purpose must not be so at odds with the common community conscience as to undermine any public benefit that might otherwise be conferred."

Federal tax exemptions are crucial to many private schools; the decision could therefore have wide effect among academies set up by opponents of desegregation. In another private-school case, the Supreme Court soon will rule on a Minnesota law that allows tuition tax credits for families whose children attend private schools. The Reagan Administration has filed a brief in support of the Minnesota law, in keeping with its own misguided effort to extend tuition tax credits to all states.

Tuesday's Supreme Court decision was in fact a stern reprimand for the Reagan Administration, which set the case in motion by revoking the 1970 policy on tax exemption, arguing that Congress had not given the revenue service specific authority to ban tax breaks for schools that discriminate.

The law is so clear and the court's language so forceful that the Administration's action stands even more visibly exposed for what it was—a clumsy attempt to turn back the clock on minority rights.

Parochial Schools

Education: High Scores at Low Cost

By DAVID G. SAVAGE,
Times Education Writer

There are two schools on a corner of 111th Place in South-Central Los Angeles. One, Figueroa Elementary, spends nearly three times more than the other, Ascension School, for the education of each child—for better-paid teachers and more of them, for aides in each classroom, for extra instructional programs for children with "special needs," and for newer and more varied books and reading materials.

Yet Ascension has a waiting list of children trying to get in.

The same story is repeated in the Latino neighborhoods of East Los Angeles and in every big city in the nation. The schools in such demand are run by Roman Catholic archdioceses. They spend far less, but by every measure of academic achievement, their children do far better, so much so that poor and lower-middle-class parents strive to enroll their children, despite the financial sacrifice.

Money Issue

Though there is a growing consensus that the public schools are badly underfunded, it remains remarkable that the Catholic schools can do so much with so little.

Catholic scholars such as Father Andrew Greeley contend that for practically every minority group that has immigrated to America's big cities—first the Irish, the Italians, the Poles and now the Latinos and, to a lesser degree, blacks—the parochial schools have given the children the solid, fundamental education that helped them move into the mainstream of the American middle class.

The parochial schools have been "islands of hope in the poorest areas of the nation's urban landscape," and despite "precarious funding, have remained in the hearts of American cities, embracing and serving generations of minority children," said the Rev. Virgil Blum, a Marquette University political science professor in an introduction to a recent study of Catholic schools in eight cities, including Los Angeles.

Blunt Analysis

Robert Cervantes, a top official of the state Department of Education, who said he sends his children to Catholic schools in Sacramento, has a more blunt analysis:

"Let me put it this way: If you had twins and sent one to a public school and one to a parochial school, I'd be willing to bet you the parochial school child will do better."

About 11% of elementary and secondary school children nationwide, and in California, go to private schools, and of these, about two-thirds are in Catholic schools. The National Catholic Education Assn. says that just over half of Catholic students are in the 20 large-city dioceses.

The public and parochial schools in Los Angeles have a similar ethnic makeup. Latinos account for 49% of the city school enrollment, 45% in the Catholic schools. Anglos and blacks each make up 22% of the city's students, and Asians are 7.5%. In the parochial schools, blacks account for 10%, Anglos 38% and Asians 7.6%.

Most Catholic schools in the city spend less than \$1,000 per child per

national average, while parochial students in the city were at the 64th percentile.

University of Chicago sociologist James Coleman in 1981 released a federally funded analysis of 58,000 high school students in public and private schools. Coleman concluded, to the displeasure of public school leaders, that the private and parochial students consistently performed better, regardless of the family's income or educational background.

Why? Coleman used further data supplied by the schools and students to come up with an answer. The parochial school students took more academic courses, did more homework, were absent less often and had fewer discipline problems, he said.

A second study by Father Greeley, also at Chicago, found that the greatest benefit of the parochial schools showed up with minority students. If the public schools were doing a good job for the top students—and there was evidence of this—they were failing the poorest and least able student, Greeley said.

Parochial students took more academic courses, did more homework, were absent less often.

year, and several in East Los Angeles spent \$400 or less last year. By contrast, the Los Angeles public schools spent \$2,281 per child in 1982, not counting capital expenditures and various reserve funds.

Standardized Test

Both systems use the Comprehensive Test of Basic Skills produced by McGraw-Hill Inc., a nationally standardized test in which the 50th percentile equals the national norm.

City school students score slightly below the national average. Reading scores in 1982 were 39th percentile in third grade to 40th percentile in the eighth grade, the last grade for which the test is used. In the Catholic schools, reading scores were at 64th percentile in third grade and 66th percentile in seventh grade, the last year for which the test is administered.

Math scores were similar. Los Angeles public students hovered at the 48th percentile, just below the

Both studies had their share of critics, and the U.S. National Center for Educational Statistics took the unusual step of releasing seven rebuttals at the same time. In essence, the critics said public school and parochial school students could not be considered comparable, regardless of the control factors.

Public school officials contend that such comparisons are fundamentally unfair because private schools do not get the poorest of the poor children, those who are most disruptive, the severely handicapped, or those who bounce from school to school because their parents, for one reason or another, cannot provide a stable home.

Moreover, they say, a child from a family that will sacrifice to pay for parochial education will be better motivated, although it may be impossible to measure, than a similar child from an otherwise identical family that chooses to simply send the child to a public school.

SCHOOLS: Few Frills, High Scores

A look at parochial and public schools in minority neighborhoods of Los Angeles reveals that whatever the item, the parochial schools typically have less of it—fewer students, fewer teachers per student, fewer administrators, fewer computers and film projectors, smaller playgrounds, fewer regulations and guidelines.

Teachers in the parochial schools earn on the average only about \$12,000 a year. Los Angeles public school teachers averaged \$24,279 last year.

Our Lady of Guadalupe school in East Los Angeles, like most parochial schools, is starkly simple: a two-story red-brick building, eight classrooms and eight teachers. There are an average of 39 children per class, with no classroom aides. There are no special remedial programs, no faculty lounge, not even a school library.

No Room for Computer

"We are very strapped for space. We were thinking of buying a computer, but we don't have anywhere to put it," said Sister Maura Ryan, the principal. The halls and classrooms are neatly painted and have none of the graffiti of some public school halls. The symbols of Christ and the cross are omnipresent. The wall maps in some classrooms still list French West Africa, the Belgian Congo and other nations that have long since disappeared from new maps.

All 311 students are Latino, and at least half the mothers speak no English, Sister Maura said.

"Our primary teachers speak enough Spanish to get them (children) started, but we immerse them in basic English. We don't believe in bilingual education," she said.

When observed, the teaching of reading and writing appears to be simple hard work. Rather than relying on the mechanistic, pre-packaged reading programs popular in some public schools, the parochial teachers spend most of the class time talking about stories and their meaning.

While the rest of her sixth-grade class reads one story, Sister Julia, one of only three nuns on the staff, works with 15 of the slowest readers in another part of the room, carefully going over a story about French explorers on the Mississippi.

Student Response

"Where are they standing?" she asks. Three hands go up.

"On a cliff," one child answers. "Jose, why are they up on a cliff?" And later, "Where do the Indians carry their arrows? And, 'What does a quiver look like?'"

Catholic schools are perhaps best known for discipline, specifically, the image of a nun using a rule to smack the hand of an offending child.

But in most schools, public and private, discipline seems best where it is least visible. Either because of lack of money or lack of need, rarely do Catholic schools have uniformed security guards, elaborate security systems or even many burly principals and assistant principals.

"We try to teach self-discipline and self-control," Sister Maura said. "We get a lot of cooperation from the parents."

At 10 a.m. on any weekday, the Guadalupe school playground in a whirl of overlapping kickball, handball and basketball games. Only one teacher observes. When the recess bell sounds, the children, in their matching blue and white uniforms, quietly put the balls back in the corner and drift into a line outside their classroom. The doors open, and each class files back in.

Discipline Problems

Public school officials often complain that they get the discipline problems because "Catholic schools don't have to take those kids."

But Catholic school officials often note the reverse of the public school complaint: Parents, when confronted with an unruly child, frequently decide to enroll him or her in a

Catholic school where the discipline is judged to be better.

This year, the Guadalupe school had a per-pupil cost of \$388, about one-sixth the average in the Los Angeles public schools. Its seventh-graders scored at the 55th percentile in reading, 68th percentile in language and 73rd percentile in mathematics.

In Boyle Heights, Our Lady of Talpa school sits at the corner of 4th and Evergreen avenues, a few blocks away from the much larger Euclid Avenue public elementary school. Nearly 100% of the children at both schools are Latino, and more than half the parents do not speak English.

A family pays \$500 a year for its first child at Talpa, \$550 for two and \$600 for three or more. The average class has about 35 children, again with no aides or extra programs.

A Latino child entering in kindergarten or first grade starts out in English at Talpa, helped only by the primary teachers who can speak some Spanish. At Euclid Avenue, about 80% start out in Spanish reading, school officials say.

Easier Transition

"If they learn to read in Spanish, it is much easier for them to learn to read in English," said Rita Cazares, assistant principal at Euclid.

Typically, a 5-year-old in the public schools is tested with a series of pictures. If he responds more in Spanish than English, he is started in a "bilingual" class where he spends most of the day speaking and reading in Spanish. The classes include oral English instruction for a portion of the day. By the third grade, if the students are judged to be reading Spanish adequately, they begin to learn reading English.

In addition, the school has a "compensatory education coordinator," a Spanish reading coordinator who works with seven aides, a "Distar" program for teaching English reading that includes two teachers and seven aides, a "remedial reading" program with one coordinator and one teacher, as well

SCHOOLS: Parochial Students Perform Well With Few Classroom Aids

as several "resource specialists" who work with children with a variety of mental and physical handicaps.

In the third grade, Euclid Avenue pupils scored slightly higher in 1982 on the national reading test than did Talpa students, although the Los Angeles schools admit they do not test students who are not reasonably proficient in English, while the parochial schools test all their students.

By the upper grades, the pattern is reversed, and parochial students score substantially higher in reading and math.

Asked whether starting in Spanish is helping or hurting the Latino children, Cazares said, "I don't have any longitudinal studies, so I can't venture to say. My hope is they would do as well as the others" who started in English.

Strong Belief

She added that her own strong belief in bilingual education stemmed from her years in a Los Angeles parochial school.

"I sat and vegetated for the first couple of years," she said, because the instruction was in English and she went to school speaking Spanish. She said she did not recall when she learned English, although she went on to do well in school and eventually earned a master's degree from California State University, Los Angeles.

Christine Napolitano, a fifth-grade teacher at Talpa, who also taught in several public schools, is convinced that the Catholic school is better, but is not entirely sure why.

"I'm still teaching the same way, but it works better here. I think it may be because of the religion—not the specifics of it, but because it provides a common philosophy and values," she said.

Parochial school students typically get 20 to 40 minutes of religious instruction a day. Nationwide, only 10.6% of Catholic school enrollment is non-Catholic.

The morale among public school teachers is far worse, she said, a

statement echoed by Los Angeles city teachers.

"They get more pressure from the administration, and there just are more administrators and paperwork," she said. "The union rules seems to make it worse too. Other teachers will criticize you for staying late or doing some extra work that's not called for in the contract."

Linda Patterson, a seventh-grade teacher at Ascension, said she began teaching in the public schools of Louisiana.

"The big difference here is the discipline. You don't have to deal with as much and you have more time for teaching.

Becky Bruns, an eighth-grade teacher, drives 30 miles each day to Ascension, but said she has no wish to transfer to a higher-paying public school.

"It's not that public school teachers don't care. They have less opportunity for teaching because

"I think the parents make the sacrifice to send their children here first because of the religious education—the moral development, a sense of religious values. From what our parents say, the Catholics and non-Catholics, that is even more important than a quality academic education," she said.

The cost is \$45 per month for the first child. In addition, the school has informed parents that they must raise \$18,000 in the next year to keep the school alive. Despite the tuition and a subsidy from the Archdiocese, the school is usually facing a deficit.

"This is a very poor parish," the sister said.

California had until 1981 provided \$13 per child in textbook aid for all students, public and private. But the California Teacher Assn. and the American Civil Liberties Union filed suit against the \$3.6-million program, contending it was "draining

At two public schools, parents are paid a \$25 'stipend' to attend 4 'parent education' classes.

they are mired in paperwork, meetings, regulations, pressure from the administration."

Glenda Sheppard, a third-grade teacher at Ascension, said she attends a state university night class with public school teachers and hears plenty of the same complaints.

"The professor asked us a couple of weeks ago about how many felt appreciated in their school. I was the only one who raised my hand," she said.

At both Ascension and its neighbor, Figueroa, about two-thirds of the children are black, one-third Latino, although the percentage of Latino children in the neighborhood has been steadily increasing in recent years.

Most of the parochial school's black students are not Catholic. Two years ago, the school hit a peak of 45% non-Catholics, said Sister Marge Well, the principal.

away funds that would otherwise be available to the public schools" and was a "subterfuge" to get around state bans on aid to religious institutions.

The state Supreme Court agreed in August, 1981, and ended the private school aid program. As a result, parochial school parents were required to pay more or raise more money to help pay for books.

"But they'll do it. Last year, they raised \$15,000. This school is that important to (the parents)," the principal said.

By contrast, at the Figueroa and Euclid Avenue schools, parents are paid a \$25 "stipend" to attend four "parent education" classes at the school, a rather common use of federal funds designed to help disadvantaged children, according to school officials. At Euclid, a parent may enroll four times during the year, earning \$100.

The Ascension school has all lay

teachers (not nuns), and only six of the nine are Catholics.

The Ascension students typically score at about the national average in reading and math. The Figueroa students score considerably lower, and eighth-graders at nearby Gompers Junior High scored in the bottom 25% nationally.

More Academic Work

The Coleman study concluded that one reason Catholic high school students fared better was because they simply did more academic work.

By graduation, a typical student has taken four years of English, math, religion and foreign language, two or three years of science and 3½ years of social studies, said Sister Christopher, the principal.

In recent classes, 88% to 91% of the girls have gone on to some higher education.

A series of education studies since the mid-1970s have identified a series of common-sense factors that typify schools that work, and Chester Finn, a Vanderbilt University education professor, said the profile of such a school "virtually describes the typical Catholic school. They have a clear sense of purpose, strong leadership, discipline, they assign homework, they have high expectations for their students, and they promote based on performance," he said.

Finn noted that private schools as a rule do not enroll the poorest students or those with mental or physical handicaps, a high-cost addition to most public school budgets. "In general, they (private schools) don't get the children from hopelessly disorganized households. But I don't think that detracts from the remarkable job they do" with other poor and minority students, Finn said.

State Supt. of Public Instruction Bill Honig said, "I think it shows what works—high standards, discipline, homework, taking the right courses. There are public schools doing these things, and they are getting the same good results."

Honig added that the per-pupil

cost comparisons are partly unfair, because of the unreasonably low salaries in the Catholic schools.

Cervantes, the state education official who sends his children to parochial school and serves on a governing board for the schools, said he believes a "whole series of subtle factors" explain the achievement gap.

"The learning environment is different. It is more conducive to learning. For example, among the Hispanic kids in the public schools, it is frowned upon to be smart. In the parochial schools, it is rewarded," he said.

In his own analysis of public and parochial schools, he said, "I've never seen a public school that outperforms a comparable parochial school." So convinced is he of their superiority that Cervantes said he "would recommend Hispanic parents try to enroll their children in Catholic schools."

Catholic school enrollments plummeted in the late 1960s and early 1970s and are still slowly sinking. In 1966, Catholic schools nationwide enrolled 5.4 million children. In 1983, the number is 3 million.

The other religiously affiliated private schools have been steadily growing, although their numbers remain tiny in comparison to the Catholic sector. Next in order are the Lutheran schools with 217,000 children; Baptists, with 204,000; Seventh-day Adventists, 148,000; and Jewish, 101,000.

Greeley and William McCready, also of the University of Chicago's National Opinion Research Center, contend that the dropoff in Catholic enrollment is explained by the middle-class flight to the suburbs.

While Catholics, like most Americans, left the central city for the suburbs, the parishes and the Catholic schools remained behind in the heart of the aging cities. Greeley blames the church hierarchy for failing to build new schools where the parishioners are now living, but others applaud the church for not abandoning the old city neighborhoods.



Memorandum



FOR: William P. Barr
Deputy Assistant Director of Policy Development

DATE: JUN 8 1982

FROM: Jackie S. Levinson *JS*
Deputy Tax Legislative Counsel--Designate

SUBJECT: Enforcement of prohibitions against racial discrimination in
tuition tax credit bill

Paul Francis and Tom Tiffany of the Internal Revenue Service and I have developed three options by which the IRS could enforce the disallowance of tuition tax credits because of racial discrimination. We have attached draft language for each of the options, which are summarized below. The options are listed in order of decreasing preference, that is, Option 1 is the most favored. Mr. Chapoton has not reviewed these options.

As you know, we favor methods which reduce as much as possible the screening that must be performed in the Service Centers. We also recommend eliminating the annual statement with the Secretary, or indeed, any annual statement at all. Since the statement must be accepted by the IRS as true, it adds complexity to the administration of the credit without any real enforcement value.

We have indicated the penalties that we have thought appropriate. The penalties have not been discussed at any meeting that I have attended with your group and obviously should be given separate attention.

Option 1

Option 1 does not require any initial screening of returns by the IRS.

The school does not submit annual forms regarding its racial discrimination for the calendar year either to the Secretary or to parents of students. Thus, the section in the bill requiring the school to submit an annual statement to the Secretary would be deleted. When a complaint is filed by the Attorney General, the IRS can request the school to supply information such as names, addresses, and taxpayer identification numbers of parents

	INITIATOR	REVIEWER	REVIEWER	REVIEWER	REVIEWER	SECRETARIAT
OFFICE CODE SURNAME	XLC Levinson					
INITIALS / DATE	<i>JS</i> / 6/8/82					

who pay tuition during the 3-year period of potential disallowance. The IRS would have 3 years to request information for each year. If the school failed to comply with a request for information, it would pay a penalty in an amount equal to the maximum amount of the tax credits that could have been claimed with respect to all students with respect to whom information is not filed. This penalty collects the tax (without interest) that would be due, since the school's records are the only way to determine which credits are to be disallowed.

Pro:

- ° This is the cheapest and easiest option for the IRS to use. Consistent with a voluntary compliance system, it assumes the credit claimed is correct and relies on the audit process and the declaratory judgment proceeding to uncover errors.
- ° It is the most accurate method because returns are not screened manually.
- ° This is the least burdensome method to schools and parents. Schools have a recordkeeping requirement of relatively short duration, while parents merely complete a form as part of their returns, without attachments and without relying on the school for information.

Con:

- ° The school must supply all names of taxpayers who paid tuition, regardless of whether they claimed credits.

Option 2

This option requires the IRS to screen returns for a statement of policy but not for the existence of a suit against the school.

The school would send a form to the parents stating that it had not racially discriminated during the preceding calendar year. The form would be sent during the tax-return filing season by January 31, as is done with wage statements and interest and dividend information returns. The forms would not be sent to the Secretary, since the parent would be required to attach the form to his return in order to claim the credit. When a complaint is filed by the Attorney General, the IRS would be able to request information as in Option 1. The same penalty for failure to furnish such information as in Option 1 would apply. However, we contemplate that if the school had the taxpayer's name, address, and identification number on the annual forms and kept copies of what had been sent to the taxpayers, the school could comply with the information request by giving the IRS the retained copies of the form.

Pro:

- The error rate of this method of screening returns is not decreased substantially from Option 1, since only the presence of the form need be detected at the Service Center.
- The error rate for selecting returns where a suit has been filed is the same as Option 1 (since reliance is still placed on the school's records) and is greater than Option 3.
- The annual statement combined with the recordkeeping requirement on the schools contribute to the perception of a tight enforcement system.

Con:

- All returns will have to be scrutinized for the presence of the form. This makes Option 2 more costly than Option 1.
- The school must supply all names of taxpayers who paid tuition, regardless of whether they claimed credits.

Option 3

This option requires the IRS to screen both for the policy form and for the existence of a pending suit.

The school does not send any form to the Secretary. As in Option 2, the taxpayer must attach a form from the school to his return in order to claim the credit. By January 31, the school must send a form to the taxpayers stating that a racially discriminatory policy had not been followed during the preceding calendar year and whether a declaratory judgment action had been filed against the school during that calendar year or the two preceding calendar years. The school would not have to keep any records. The school would be subject to a penalty for supplying a false statement with respect to the existence of a suit.

Pro:

- The school would not have any responsibility for keeping records.
- The IRS would deal only with those taxpayers who claimed credits.

Con:

- ° Because of the double screening that would have to take place in Service Centers, this option is the most costly and the least accurate of all three options.
- ° There will be a significant error rate in detecting the miniscule number of returns which claim a credit with respect to tuition paid to a school that has a suit filed against it.
- ° The penalty for filing a false statement could almost never be imposed, since a return with a false statement would pass the initial screening and the declaratory judgment proceeding is solely within the jurisdiction of the Justice Department.

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Option 1

Present subsection (d) (1) is deleted, present subsection (d) (2) is redesignated as (d) (1), and the following new subsection (d) (2) is inserted (certain other conforming changes would also be necessary):

"(2) Statements identifying payors of tuition expenses.--

"(A) In general.--If--

"(i) the Attorney General brings an action against an educational institution under section 7408, and

"(ii) the Secretary mails to such institution an information request with respect to the calendar year in which such action is brought or either of the two immediately succeeding calendar years, such institution shall furnish the information requested to the Secretary.

"(B) Time for furnishing information.--An educational institution shall comply with an information request within 90 days after the later of--

"(i) the date on which the Secretary mailed such request, or

"(ii) the close of the calendar year to which the request relates.

"(C) Penalty for failure to comply with information request.--An educational institution which fails to comply with an information request with respect to a calendar year within the time specified in subparagraph (B) shall pay a penalty equal to--

"(i) the maximum amount allowable under subsection (b) (1) as a credit with respect to tuition expenses paid for a dependent during such calendar year, multiplied by

"(ii) the number of full-time students enrolled in such institution during such taxable year with respect to whom such institution fails to comply with the information request.

"(D) Information request.--For purposes of this paragraph, an information request with respect to a calendar year is a written request for the names, addresses, and taxpayer identification numbers of the persons who paid tuition expenses during that calendar year to the educational institution to which the request is mailed.

"(E) Time for mailing information request.--An information request with respect to a calendar year shall be mailed within 3 years after the close of such calendar year."

[(d) (2) is the same as under Option 1 except that the following sentence is added as flush language at the end of subparagraph (C):

"For purposes of this paragraph an educational institution shall be deemed to comply with an information request with respect to a calendar year if it furnishes to the Secretary copies of the statements required under paragraph (1) with respect to such calendar year."]

Option 2

Present subsection (d) (1) is deleted, the following new subsections (d) (1) and (d) (2) are inserted, and other paragraphs of present subsection (d) are redesignated (certain other conforming changes would also be necessary):

"(1) Required annual statement.--

"(A) No credit without statement.--No credit shall be allowed to a taxpayer under subsection (a) for amounts paid to an educational institution during a calendar year unless the taxpayer attaches to the return on which the taxpayer claims the credit with respect to such calendar year a copy of the statement specified in subparagraph (B).

"(B) Content of statement.--The statement referred to in subparagraph (A) is a statement furnished to the taxpayer by the educational institution with respect to a calendar year. Such statement shall declare that such institution has not followed a racially discriminatory policy during such calendar year and shall be in such form, and shall contain such other information, as the Secretary may prescribe. [The institution shall furnish the statement to the taxpayer on or before January 31 of the calendar year succeeding the calendar year to which the statement relates.

Option 3

Present subsection (d) (1) is revised to read as follows (certain other conforming changes would also be necessary):

"(1) Required annual statement.--

"(A) No credit without statement.--No credit shall be allowed to a taxpayer under subsection (a) for amounts paid to an educational institution during a calendar year unless the taxpayer attaches to the return on which the taxpayer claims the credit with respect to such calendar year a copy of the statement specified in subparagraph (B).

"(B) Content of statement.--The statement referred to in subparagraph (A) is a statement furnished to the taxpayer by the educational institution with respect to a calendar year. Such statement shall--

"(i) declare that such institution has not followed a racially discriminatory policy during such calendar year,

"(ii) indicate whether the Attorney General has brought an action against such institution under section 7408 during such calendar year or either of the 2 preceding calendar years, and

"(iii) be in such form and contain such other information as the Secretary may prescribe.

The institution shall furnish the statement to the taxpayer on or before January 31 of the calendar year succeeding the calendar year to which the statement relates.

"(C) Penalty for furnishing false statement.--
An educational institution which furnishes to a taxpayer a statement which falsely or fraudulently states that the Attorney General has not brought an action under section 7408 against such institution during the calendar year to which the statement relates or either of the preceding calendar years shall pay a penalty equal to--

"(i) the maximum amount allowable under subsection (b) (1) as a credit with respect to tuition expenses paid for a dependent during the calendar year to which the statement relates, multiplied by

"(ii) the number of full-time students enrolled in such institution during such calendar year with respect to whom such institution furnished such false or fraudulent statement.



U.S. Department of Justice

Office of Legal Counsel

Office of the
Assistant Attorney General

Washington, D.C. 20530

JUN 1982

MEMORANDUM FOR WILLIAM P. BARR
Deputy Assistant Director
Office of Policy Development

Re: June 7, 1982 Draft of the Administration
Tuition Tax Credit Bill

The June 7 draft contains revised provisions governing disallowance of the tuition tax credit when tuition is paid to a school which follows a "racially discriminatory policy." I have the following comments on the revised provisions:

(1) The definition of "racially discriminatory policy" still leaves a great deal to be desired. It is, of course, a policy decision. However, the differences between the definition here and the bill submitted in January relative to tax-exempt status will surely be noticed. This definition leaves room for critics to assert that it requires "admission" and entry on a nondiscriminatory basis, but would not preclude discrimination within programs or activities.

(2) Under the prior draft, tuition tax credits were not disallowed until the year in which a declaratory judgment that a school had discriminated became final. This gave parents little incentive to oppose discrimination, since they had plenty of time in which to transfer their children to other schools after suit was brought. Moreover, though the disallowance was likely to occur years after the events of discrimination offered as evidence in the court proceedings, its three-year duration seemed likely then to force a disqualified school to close even if it had long since ceased to discriminate. The current draft seeks to rectify this by disallowing the credit for three years starting with the year in which the Attorney General brings the action for a declaratory judgment that the school has discriminated.

This may be an improvement because it brings the "sanction" closer to the time of the misconduct, but may create a new problem. For a family of modest means, waiting for a final judgment to find out whether one to three years of tuition tax credits must be reimbursed to the IRS may be an unacceptable financial gamble. If a final adjudication of discrimination was likely to be the "death knell" for a school under the

prior draft, then the filing of a § 7408 suit is likely to be the "death knell" for a school under the current draft. Therefore, as a practical matter, it seems likely that the Attorney General's decision whether to file a § 7408 action will frequently be determinative of the future of the school. This problem may be inescapable if a final court judgment is to be required before the tuition tax credit can be disallowed and the disallowance is to be for three years. The court proceedings will unavoidably introduce delay, and the potential severity of the penalty for parents means their gamble will often be for high stakes.

I still prefer a penalty which is shorter if a school discriminates for a short time and promptly revises its policies. I think, moreover, that the disallowance ought to be for the years in which the discrimination occurs and is proven. Perhaps the Internal Revenue Service regards such an approach as impossible to administer, however, and, if so, I would have to yield to their superior expertise. If it could be handled from a practical standpoint it would be a better approach because it would give the parents claiming the credit the incentive to encourage the schools not to discriminate.

(3) New § 7408(c) on page 9 of the June 7 draft would require the Attorney General promptly to notify an educational institution when a petition is filed under § 7408(a). Subsection (c) would then require the Attorney General to "give the institution a fair opportunity to comment on all allegations made against it and to show that the racially discriminatory policy alleged in the petition does not exist or has been abandoned." The Attorney General may, "upon finding good cause," bring a declaratory judgment action against the institution within one year.

It is not clear what sort of procedures the Attorney General is expected to establish to receive comments and permit the showing. The procedures for adjudication under § 5 of the Administrative Procedure Act, 5 U.S.C. 554 (1976), would not be applicable since § 7408(c) does not require the determination to be made on the record after hearing and the facts could be tried de novo in a subsequent declaratory judgment action. Since the Department of Justice would presumably establish procedures consistent with what the legislative history indicates is intended, some attention should be given to this in the legislative history.

(4) Despite the ranking of enforcement options in the June 8, 1982 Treasury memorandum, I would think that its Option 3 is preferable. The "error rate" referred to in the memorandum apparently has to do with the error rate for matching up forms within the IRS rather than with the percent of private school compliance with the Act's antidiscrimination provisions or even the percent of unjustified taxpayer claims of the credit. I see the following advantages of Option 3 over Options 1 and/or 2.

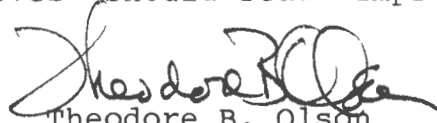
(a) Under Option 3, parents would be regularly reminded that they are entitled to the credit and that the credit will be disallowed if the school discriminates, which should both ensure that parents get the credit and foster parental concern about discrimination.

(b) Parents would be warned when a pending § 7408 suit made it possible that they would have to refund their credit to the IRS: five hundred dollars per child for three years will be a major budget item for many families.

(c) The prospect of having to inform parents of a pending § 7408 suit is likely to give school authorities additional encouragement to stop discriminating when a petition is made to the Attorney General.

(d) Since the credit cannot be disallowed until a suit is filed under § 7408, and such suits may be rare, it may not be important to inform parents of the pendency of a petition to the Attorney General. On the other hand, parents have a very real financial interest in making sure the school takes the action necessary to avert a § 7408 suit. Once the suit is filed it is too late for the parents to avoid the risk of losing the credit for the tuition they have already paid during the calendar year, or to avoid an unwelcome choice between transferring their children to another school or running the risk of later finding out they must refund their credits.

(5) I noticed a minor technical point in reviewing the draft. In section 2(B) "improves" should read "improve."



Theodore B. Olson
Assistant Attorney General
Office of Legal Counsel

SECTION 3. Subchapter A of chapter 76 of the Internal Revenue Code of 1954 (relating to judicial proceedings) is amended by redesignating section 7408 as section 7409 and by inserting after section 7407 the following new section:

"SEC. 7408 DETERMINATIONS AS TO RACIALLY DISCRIMINATORY POLICIES OF SCHOOLS.

(a) In General. -- Under this section, an educational institution is following a racially discriminatory policy if --

(1) a judgment has been entered by a district court of the United States under subsection (b) declaring that such educational institution follows a racially discriminatory policy; and

(2) no court order staying or negating such judgment has been entered, or no order modifying such judgment has been entered under subsection (c).

(b) Declaratory Judgment Action. --

(1) In General. -- Upon finding probable cause to believe an educational institution is following a racially discriminatory policy, the Secretary shall initiate against such institution in the district court of the United States for the district in which such institution is located an action seeking a declaratory judgment that such institution is following a racially discriminatory policy. Upon filing of an appropriate pleading, the district court may make a declaration with respect to whether such institution is following a racially discriminatory policy. Any such

declaration shall have the force and effect of a final judgment of the district court and shall be reviewable as such.

(2) Required Showing. -- The district court may enter a judgment declaring that the educational institution is following a racially discriminatory policy only if the Secretary has established that --

(A) the educational institution has, pursuant to a racially discriminatory policy, committed a racially discriminatory act against a student applicant or student within the two years preceding commencement of the action;

(B) the institution has, within the two years preceding commencement of the action made a communication expressing that it has a racially discriminatory policy against student applicants or students; or

(C) the institution has engaged in a pattern of conduct intended to implement a racially discriminatory policy, and some act in furtherance of this pattern of conduct was committed within two years preceding commencement of the action.

Any district court which makes a declaration under this subsection that an educational institution follows a racially discriminatory policy shall retain jurisdiction of such case to consider changes in circumstances and motions filed under subsection (c).

(c) Discontinuance of Racially Discriminatory Policies. --

(1) Motion and Affidavits. -- At any time after the date which is one year after the date on which a judgment is entered against an educational institution under subsection (b), such institution may file with the district court a motion to modify such judgment to include a declaration that such institution no longer follows a racially discriminatory policy. Any such motion shall contain affidavits --

(A) describing with specificity the ways in which the educational institution has abandoned its previous racially discriminatory policy;

(B) describing with specificity the ways in which such institution has taken reasonable steps to communicate its policy of nondiscrimination to students, to faculty, to school administrators, and to the public in the area it serves;

(C) averring that such institution has not, during the preceding year --

(i) committed a racially discriminatory act against a student applicant or student pursuant to a racially discriminatory policy;

(ii) made a communication expressing that it follows a racially discriminatory policy against student applicants or students; or

(iii) engaged in a pattern of conduct intended to implement a racially discriminatory

policy, and committed some act in furtherance of this pattern of conduct.

(2) Modification Order. -- In a motion under paragraph (1), the district court shall issue an order modifying the judgment unless the Secretary establishes that any affidavit provided by the institution under paragraph (1), or assertion made therein, is false. Any order of the district court granting or denying a motion made under paragraph (1) shall be reviewable.

(d) Special Rule. -- Any educational institution that, on the effective date of this act, is, pursuant to court order, being denied tax exempt status under section 501 on the grounds that such institution follows a racially discriminatory policy shall be treated as if a judgment under subsection (b) has been entered against such institution on the effective date of this act.

(e) Attorneys Fees. -- If an educational institution prevails in an action under this section, the court may award the institution costs and reasonable attorneys' fees in such action.

(f) Definition. -- For purposes of this section, the term 'racially discriminatory policy' has the same meaning given to such term by section 132(a)(6).

SECTION 3. Subchapter A of chapter 76 of the Internal Revenue Code of 1954 (relating to judicial proceedings) is amended by redesignating section 7408 as section 7409 and by inserting after section 7407 the following new section:

"SEC. 7408 DETERMINATIONS AS TO RACIALLY DISCRIMINATORY POLICIES OF SCHOOLS.

(a) Administrative Proceedings To Determine Whether School Has Racially Discriminatory Schools. --

(1) In general. -- To deny an educational institution tax exempt status on the grounds that it has a racially discriminatory policy, pursuant to section 501(j), the Secretary shall, upon finding probable cause to believe that the educational institution has a racially discriminatory policy, initiate an administrative proceeding against the institution in accordance with subsection (c).

(2) Required Showing. -- Upon completion of the proceeding under paragraph (1), an order may be entered, declaring that the educational institution has a racially discriminatory policy only if the Secretary has established that --

(A) the educational institution has, pursuant to a racially discriminatory policy, committed a racially discriminatory act against a student applicant or student within the two years preceding commencement of the proceeding under subsection (a);

(B) the institution has, within the two years preceding commencement of the proceeding under

subsection (a), made a communication expressing that it has a racially discriminatory policy against student applicants or students; or

(C) the institution has engaged in a pattern of conduct intended to implement a racially discriminatory policy, and some act in furtherance of this pattern of conduct was committed within two years preceding commencement of the proceeding under subsection (a).

(b) Administrative Proceedings to Determine Whether School Has Stopped Racially Discriminatory Policy. --

(1) In general. -- At any time after the date which is 1 year after the date on which an order is entered under subsection (a), an educational institution may file with the Secretary a notice that such institution has ceased its racially discriminatory policy.

(2) Affidavit. -- Any notice filed under paragraph (1) shall be accompanied by affidavits --

(A) describing with specificity the ways in which the educational institution has abandoned its previous racially discriminatory policy;

(B) describing with specificity the ways in which such institution has taken reasonable steps to communicate its policy of nondiscrimination to students, to faculty, to school administrators, and to the public in the area it serves;

(C) averring that such institution has not, during the preceding year --

(i) committed a racially discriminatory act against a student applicant or student pursuant to a racially discriminatory policy;

(ii) made a communication expressing that it follows a racially discriminatory policy against student applicants or students; or

(iii) engaged in a pattern of conduct intended to implement a racially discriminatory policy, and committed some act in furtherance of this pattern of conduct; and

(D) averring that such institution has complied with the requirements of section 501(j)(1)(B).

(3) Order. -- If a notice is filed as provided under paragraph (1), the Secretary shall, within 120 days of such filing, issue an order declaring that such institution no longer has a racially discriminatory policy and is no longer ineligible by virtue of section 501(j) to receive tax exempt status, unless the Secretary --

(A) within such 120 days initiates an administrative proceeding against the institution in accordance with subsection (c); and

(B) establishes in such proceeding that --

(i) any affidavit provided by the institution under paragraph (2) is false;

(ii) the institution has, during the preceding year, committed any act, made any communication, or engaged in any pattern of conduct described in paragraph (2) of subsection (a); or

(iii) the institution has not, in fact, complied with the requirements of section 501(j)(1)(B).

(4) If the Secretary establishes any of the elements set forth in clause (B), an order shall be issued declaring that the educational institution has a racially discriminatory policy. Such order shall have the same effect as an original order issued under subsection (a).

(c) Notice and Hearing. -- Proceedings under subsections (a) and (b) shall include notice to the educational institution of all charges it makes and a hearing on the record in accordance with the provisions of 5 U.S.C. 554. The hearing shall be held in the regional office of the Internal Revenue Service for the region in which the educational institution is located.

(d) Judicial Review. --

(1) In general. -- An educational institution or the Secretary may obtain judicial review of the final administrative order entered in proceedings under subsections (a) or (b) by filing, within 60 days of such order, an action for declaratory judgment in the district court of the United States for the district in which an educational institution is located. Upon the filing of an appropriate pleading, the district court may make a declaration with respect to whether such institution has a racially discriminatory policy. Any such declaration shall have the force and effect of a final judgment of the district court and shall be reviewable as such.

(2) Judgment. -- The district court shall review de novo all issues of law and fact and shall declare whether the educational institution has a racially discriminatory policy. When reviewing an order under subsection (a), the district court shall, in determining whether an educational institution has a racially discriminatory policy, apply the standards set forth in paragraph (2) of subsection (a). When reviewing an order under subsection (b), the district court shall, in determining whether an educational institution is continuing a racially discriminatory policy, apply the standards set forth in paragraph (3) of subsection (b).

(3) Special Rules. --

(A) Retention of Jurisdiction. -- If, upon reviewing an order under subsection (a), the district court declares that the educational institution has a racially discriminatory policy, the court shall retain jurisdiction of such case and shall consider any subsequent action to review an order under subsection (b).

(B) Consolidation. -- If an action for review of an order under subsection (b) is filed before judgment has been rendered on an action for review of an order under subsection (a) involving the same educational institution, the court may make such orders concerning proceedings as may promote justice and tend to avoid unnecessary costs or delays.

(C) Validation of Certain Contributions. --

If --

(i) an order is entered against an educational institution under subsection (a); and

(ii) in a subsequent action under subsection (d) to review such order, a judgment is entered declaring that such institution has a racially discriminatory policy,

then, notwithstanding such judgment, for the period during which such action was pending in the district court in such additional period as the court may order, contributions shall be treated as under section 7428(c).

(e) Definitions. -- For purposes of this section, the terms 'racially discriminatory policy' and 'educational institution' have the same meaning given to such terms by section 501(j).