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REVIEW & OUTLOOK

Reagan, Discrimination and Private Schools

By CHESTER E. FINN JR.
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The Reagan administration recently brought a torrent of criticism upon itself for its flip-flopping decisions on the issue of racial discrimination in private schools, most notably involving Bob Jones University and the Goldsboro Christian Schools.

Besides making itself look confused and insensitive, the administration's rapid policy shifts at least are causing a reluctant Congress to focus on a knotty issue. Indeed, hearings on the legislation began yesterday in the Senate. But the outcome will not likely be any better than the jerry-built structure of laws, court decisions, appropriations riders and Internal Revenue procedures that was in place until Jan. 8. It may be worse.

The underlying issues are straightforward. It is important to most private schools to be exempt from federal taxation. For many, it is crucial.

Islands of Freedom

What makes private schools worth having is their freedom from many constraints government places on public schools. Private schools can impart values, teach religion, enforce whatever disciplinary standards they like, hire the teachers they wish to, and insist on sustained academic achievement. That is the essence of their privateness—and their appeal.

Few of the nation's 20,000 private schools are segregated by race as a matter of policy. The Internal Revenue Service is aware of about 100. (Others, of course, may never have sought tax exemption.) Some others are not integrated in practice, occasionally because of veiled racism, more often because their location, idiosyncratic curriculum or other admissions limitations (such as at a Brooklyn school for Orthodox Jewish boys). But most private schools are open to anyone with the price of tuition, and many are integrated. Many also provide minority youngsters with excellent educations.

The key question in this controversy is whether a private school that discriminates on the basis of race is entitled to a tax exemption. The Internal Revenue Code is unclear, but a series of court interpretations and IRS procedures beginning in 1970 established that such a school may not obtain a tax exemption. The lingering questions had to do with criteria and procedures for enforcing that rule, and with the special situation of a school that claimed a religious basis for its discriminatory practices.

But the Supreme Court was already scheduled to consider the religious claim before the Reagan administration acted. And while the administration inherited a vigorous dispute over IRS enforcement procedures, resolving it did not require

new legislation or a suspension of the underlying policy.

Until 1978, the IRS generally took a school at its word. If it said it didn't discriminate, and published that policy in its literature, the government ordinarily granted the exemption. But a series of lawsuits, court decisions and Civil Rights Commission reports cast doubt on this practice and the IRS was under pressure to develop stricter standards. The issue of "white flight" to private schools linked up with public-school desegregation policy. And under this boiling pot was placed yet another political flame: The Carter administration was bitterly fighting against

myriad other "beneficiaries" of the hundreds of exemptions, deductions and exclusions that permeate the tax code, in time possibly converting that code into the major source of federal social regulation.

However the specific issue is resolved, and especially if it is not resolved, the uproar of the past three weeks has done lasting damage to private education. An administration that came to office pledged to aid non-governmental schools has unleashed the one force in contemporary society most certain to harm them: the specter of racism. Intentionally or not, it has also struck a mighty blow against the very tuition tax credits that were endorsed in

times no overt discrimination, they tend to appeal to the members of individual church congregations that are themselves homogeneous. They were particularly stung by the Carter administration's attempt to monitor their admissions policies and understood Ronald Reagan to be speaking to them when he promised not to use the tax code as an instrument of social reform or institutional regulation.

Hence the administration came into office with a pair of incompatible commitments. Not even a political genius could pass legislation to aid private schools while simultaneously allowing racist behavior by a small number of them.

Congress cannot repair all the damage but it could help by restating the general policy that discriminatory schools are not to be aided in any way by the federal government. It is not necessary to classify a tax exemption as "aid" in order to incorporate into the Internal Revenue Code the stipulation that any school or college seeking one must espouse non-discrimination. But Congress should also admonish the IRS to develop enforcement procedures that abjure quotas and presumptions of guilt. A school that says it doesn't discriminate should be believed until and unless someone informs the IRS it has discriminated against him. Such a complaint should trigger a closer examination. If, after due consideration, the IRS revokes the exemption, the school is free to go to court. If the exemption remains, the aggrieved individual has the same recourse.

Function of the Courts

We can expect any new proscription to be challenged on constitutional grounds by a school that claims a religious basis for its unsavory practices. But resolving such conflicts between rights is a function of the courts.

All three branches should tread lightly. The singular characteristic of private education is diversity that sometimes verges on eccentricity. So the definition of acceptable behavior by tax-exempt private schools should be broad. But there are limits beyond which no institution may go if it seeks the slightest succor or approval by the society. Racial discrimination is beyond those limits. Not many schools engage in it, to be sure, but President Reagan should not have given them even momentary encouragement.

As a lifelong friend of private schools observed the other day, "No matter how this comes out, the only beneficiaries will be the opponents of private education." And, he might have added, opponents of the administration that needlessly ignited its own firestorm.

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moves to grant any government aid to private education, especially aid in the form known as tuition tax credits.

In August 1978, the IRS announced new criteria for tax exemptions that were tantamount to a quota system for private schools whose minority enrollments were not proportionate to the populations of their communities, and embodied a presumption of discrimination by schools that couldn't prove otherwise.

This produced a storm of protest almost as great as the one Mr. Reagan generated. The House and Senate held hearings, but all Congress did was bar use of the new IRS procedures, effectively restoring the old policy, namely that private schools are ordinarily to be believed when they profess nondiscrimination. At no point did Congress suggest that a discriminatory school should receive tax exemption. It merely overturned the Carter administration's zealous enforcement plans.

Mr. Reagan has now challenged Congress to write into law an explicit prohibition on the granting of tax exemptions to racially discriminatory schools, and has sent to Capitol Hill a tough bill to amend the Internal Revenue Code to that effect.

Civil rights groups find themselves in the odd position of opposing such legislation (on the grounds that the law is already clear and Mr. Reagan is wrong), and the "Christian right" is also bitterly opposed to what it sees as government regulation of religious belief. House Democrats have hinted that they may not pass it. Hence there is considerable risk of stalemate and of enacting a toothless law. And there is the contrary risk of going too far and defining a tax exemption as federal "aid."

That would bring every imaginable government regulation to bear on private schools—and would set a precedent for

the Republican platform and by a presidential candidate named Ronald Reagan.

One of the central issues in the tuition tax credit debate has always been whether such credits would assist "segregation academies." Congressional sponsors such as Senators Packwood and Moynihan have said no, and have cited as proof the requirement that a tax credit could be claimed only for tuition fees paid to a private school that was itself exempt from taxation. So long as such exemption carried with it reasonable assurance of non-discrimination, that was a persuasive reply. Now it is a hollow statement.

The "mainstream" schools represented by the Council for American Private Education are deeply upset. They have worked for decades to build a convincing case for federal aid. On Jan. 11, the council denounced the administration's initial decision as "a highly regressive step" and advised Treasury Secretary Regan that it "strengthens the insidious myth that private education is essentially racist" and "puts into serious jeopardy, indeed will probably eliminate, the possibility of passing tuition tax credit legislation."

The newer fundamentalist Protestant schools have a somewhat more conflicted view. This is the one fast-growing sector of private education, numbering at least 3,000 schools at present (though no precise count exists), but it is not nearly so eager for government support as it is fearful of government control. It includes the two institutions—Bob Jones University and Goldsboro Christian Schools—whose policies triggered the Supreme Court case the Reagan administration evidently wanted to forestall, as well as a large proportion of the schools whose applications for tax exemption were denied by the IRS under the old policy. Though most fundamentalist schools prac-