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STATE OF IOWA • DEPARTMENT OF PUBLIC INSTRUCTION

GRIMES STATE OFFICE BUILDING • DES MOINES IOWA 50319-0146

ROBERT D. BENTON, Ed.D., STATE SUPERINTENDENT
 David H. Bechtel, M.S., Administrative Assistant
 JAMES E. MITCHELL, Ph.D., DEPUTY SUPERINTENDENT

DECLARATORY RULING #37

(Cite as 1 D.P.I. Dec. Rul. 103)

July 29, 1985

Mr. Norman Gunsolley
 Administrator
 Community Christian Schools
 3058 10th Avenue North
 Fort Dodge, Iowa 50501

Dear Mr. Gunsolley:

On June 12, 1985 we received your Petition for Declaratory Ruling filed on behalf of Community Christian School's proposed Home-Satellite Ministry. In the Petition you acknowledged that Community Christian School has been given approval status by this department pursuant to Iowa Code section 257.25.

In order to cooperate with parents who prefer to have their children educated in the home, you propose a plan to facilitate home instruction for children of compulsory attendance age enrolled in Community Christian School. Your proposal was outlined in the Petition as follows:

1. Students and families will meet the same requirements for admission to the school which are required of any student who requests admission into the regular classroom program at Community Christian School (CCS).
2. Parents will pay tuition and fees commensurate with the services rendered.
3. Students will use textbooks and materials which are identical or similar to those found in the regular classroom at CCS and which will also follow the scope and sequence of curriculum determined by the CCS curriculum guides, thereby fulfilling the conditions of Iowa Educational Code 257.25, paragraphs 3 and 4.
4. Textbooks will remain the property of the school. Students may retain consumable materials.
5. Community Christian School will provide a Home-Satellite Coordinator certificated in Elementary Education who will serve as a teacher-supervisor of the students enrolled in the

home-satellite program, thereby meeting the qualifications found in 299.1 of the Iowa Educational Code. The Community Christian School administration will have the directorship of each home satellite program in the same manner in which it directs all other school functions.

6. The Home Satellite Coordinator will meet the same requirements as those teachers who teach in the regular classroom setting at CCS.
7. Designated members of the professional staff of CCS will serve as "consultants" with the Home-Satellite Coordinator as may be determined as needed by students enrolled in the program.
8. The duties of the parents will include the following:
 - a. Be responsible for keeping detailed records of all work completed by the students, including homework papers, which become the basis of the Home-Satellite Coordinator's evaluations.
 - b. Work with the Home-Satellite Coordinator in planning the general schedule for each school day.
 - c. Keep current lesson plan books which include all the activities of each school day.
 - d. Set goals for character-guidance growth, spiritual enrichment, and academic achievements.
 - e. Plan extra-curricular activities and field trips, and keep accounts of these events along with their records of other social and academic progress and achievements.
9. Students cum folders and permanent records will be kept at Community Christian School and follow the same procedures for students recordkeeping as is outlined for students in the regular classroom. The Home-Satellite Coordinator will maintain these records.
10. Students will participate in a standardized testing program conducted on the school's premises to verify student progress by comparing student scores with nationally established academic norms.
11. Progress reports will be kept on a regular basis and maintained by the Home-Satellite Coordinator.
12. Students can transfer into and out of the traditional classroom setting without penalty on the same basis as students enrolled in the regular classroom. All creditable academic achievements apply toward promotions into advanced academic grades or subjects.
13. Parents must attend seminars conducted by the school to help them understand their responsibilities in the Home-Satellite Ministry so that parents who enroll their children into this ministry may comply with the Iowa compulsory attendance laws.

You then pose two questions on which you seek a ruling based upon the facts supplied:

1. Is a parent who enrolls a child between the ages of seven and sixteen in Community Christian School Home-Satellite Ministry, as outlined in numbers 1-13, in compliance with the Iowa compulsory attendance laws?
2. Should the answer to the first question be "NO," how must Community Christian school revise its Home-Satellite program so that parents who enroll their children into this ministry may comply with the Iowa compulsory attendance laws?

I shall answer your questions following a brief recitation of recent legal developments under Iowa Code section 299.1.

Despite the fact that this statute withstood a constitutional attack on vagueness grounds, (See State v. Moorhead, 308 N.W.2d 60 (Iowa 1981)) the same challenge was raised again, unsuccessfully, at the trial court level in Johnson v. Charles City Community School District. Factual distinctions exist between those two cases, in that the former involved parents who sought to educate their two children at home without any involvement with a school, and the more recent Charles City case primarily concerned this department's denial of a religious exemption under Iowa Code section 299.24 to a non-public, nonapproved school. Nevertheless, the same statute was at issue, and in both cases the Court was called upon to construe the term "equivalent instruction" as used in section 299.1.

In Charles City, decided in May of this year, the Iowa Supreme Court strongly implied that although the Court was not the appropriate body to do so, minimum standards defining "equivalent instruction" should be promulgated. "Before the school can be required to submit to reasonable minimum regulations, it is obvious the state is bound to place private schools on notice of the nature and extent of the necessary minimum standards." Johnson v. Charles City Community Schools, 368 N.W.2d ____, ____ (Iowa 1985). The Court went on to cite with approval several cases to the effect that "There is a special duty given the state department of public instruction to define equivalent education under its regulatory authority. . . ." Id. at ____, (quoting State v. La Barge, 357 A.2d 121, 125 (Vt. 1976)).

This department accepted the Court's invitation, and on July 11, 1985, the Iowa State Board of Public Instruction adopted by emergency rule I.A.C. Chapter 63 -- "Equivalent Instruction Standards." The effective date of the rules was July 15, 1985.

With these standards in place, we proceeded to evaluate your proposed program for a Home-Satellite Ministry against the requirements of Chapter 63. Although the Department of Public Instruction is not the entity authorized to determine compliance with the compulsory attendance laws, I shall answer your question from an advisory viewpoint. Based upon the information you supplied in the Petition, and notwithstanding the presumption in favor of approved non-public schools, the answer to your first question appears to be no. In answer to your second question, I shall detail the areas of information which appeared to be insufficient in light of the new rules.

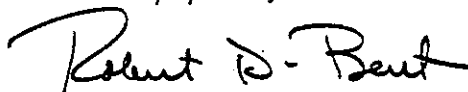
Your paragraph number five states that "a Home-Satellite Coordinator certificated in Elementary Education who will serve as a teacher-supervisor of the students enrolled in the . . . program" will be provided. The hiring of a properly certified teacher is only the first step toward providing equivalent instruction. Paragraph six states that the certificated teacher "will meet the same requirements as those teachers who teach in the regular classroom setting at CCS." Even reading these two paragraphs together, I still lack sufficient information to determine whether the duties of the "Coordinator"/"teacher-supervisor" will mirror those delineated in I.A.C. 570--63.3(2). I quote from 63.3(3): "Supervision or consultation shall not be construed as a sufficient substitute for the instructional duties" defined in 63.3(2).

Therefore, paragraphs five and six do not provide sufficient information on which to evaluate the proposed program. On their face, they do not appear to eliminate the program from approval, and if further information is supplied the result of this Ruling could change.

In conjunction with those two paragraphs, I call your attention to paragraph number 8 wherein you identify the duties of the parents. In reality the duties of parents are irrelevant to our determination. The newly adopted rules are not intended to affect the role of parents in home instruction. We encourage parental involvement and participation, of course, as we do for parents of public school children. However, for a proper determination of your program in light of the rules, a more appropriate category would be "duties of the teacher."

As these three cited paragraphs seem to fail to meet the standards iterated in I.A.C. 670--63, albeit due to a lack of relevant information, I must answer your Petition question one in the negative. In so doing, please be assured that this status may change if appropriate information is proffered in a petition for reconsideration pursuant to I.A.C. 670--53.4.

Sincerely yours,



Robert D. Benton, Ed.D.
State Commissioner of Public Instruction

RDB:kp