

Test-Tube Babies: 1.399 Private Public Schools

By ANEMONA HARTOCOLLIS

AS New York prepares to become the 34th state to operate charter schools, the model of the future may be in Chicago. Last week, a Chicago priest proposed closing down a Catholic parochial school and reopening it as a charter school, financed by taxpayers. Religious instruction could be available before and after the regular classes, he said.

The Chicago plan came just days after an unusual coalition of black and Hispanic ministers and wealthy Wall Street businessmen proposed similar arrangements under a law passed last month allowing 100 charter schools to be set up in New York State.

The first charter school advocates had something else in mind when they sat around a conference table in a lakeside lodge near Brainerd, Minn., in 1988 and dreamed up the idea of public schools freed from the bureaucracy of public schools. Like many parents, educators and policy-makers grappling with ways to improve education, especially in poor neighborhoods, their agendas were more personal than political or religious.

"A lot of us were deeply frustrated," said Joe Nathan, who now heads the Center for School Change at the University of Minnesota's Humphrey Institute. Mr. Nathan, a former public school teacher, recalled sitting with Albert Shanker, the president of the American Federation of Teachers, Seymour Fliegel, a former deputy superintendent of public schools in East Harlem in New York City, lawmakers and P.T.A. and community leaders. Several of them had started small, innovative alternative public schools that thrived by breaking rules but foundered when the local school district demanded conformity.

Ray Budde, a retired teacher and administrator, had coined the term charter in a 1988 Government-financed report, "Education by Charter," to capture the notion of teachers and districts creating innovative

programs. The Minnesota group took his idea one step further to charter schools.

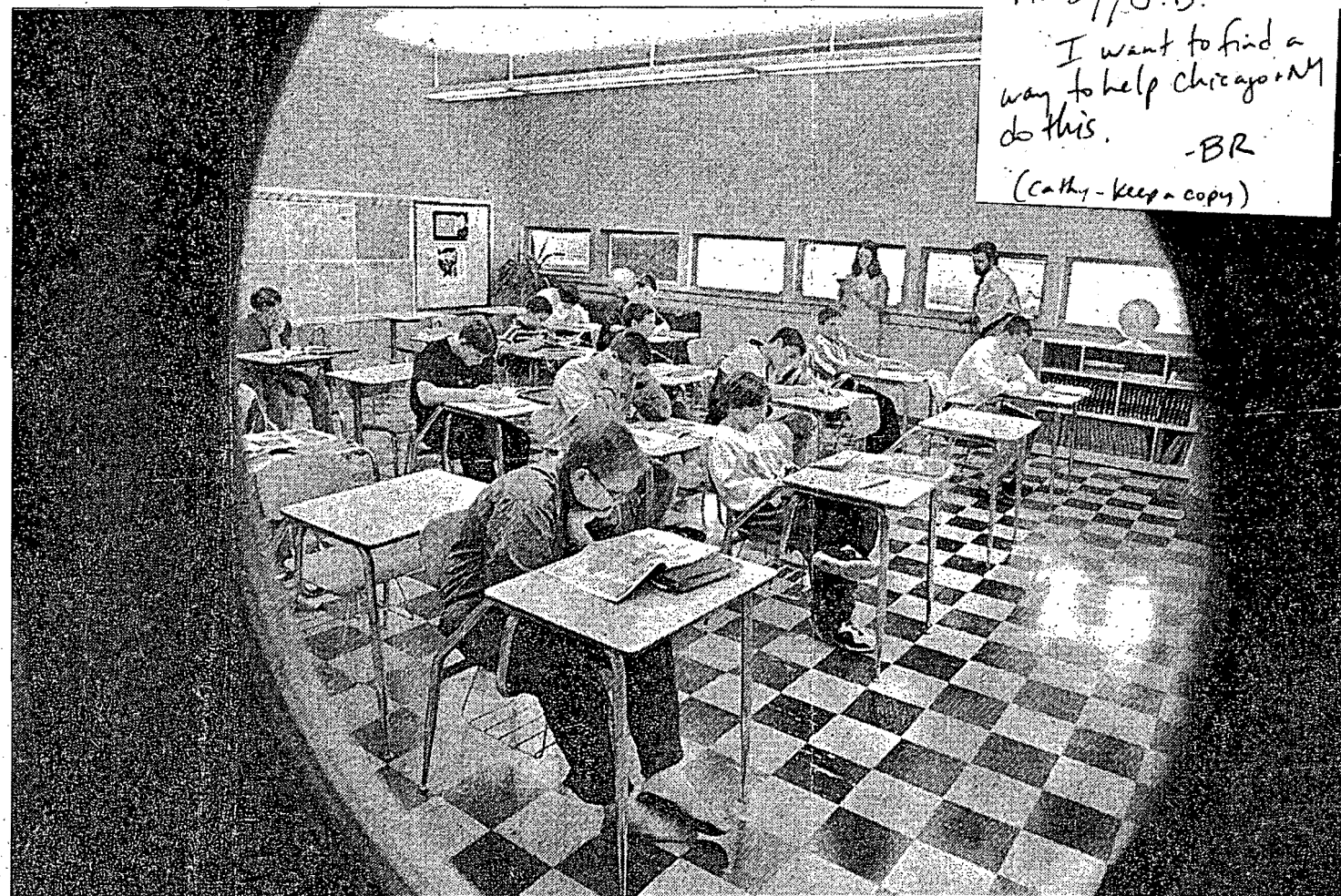
"We liked the term because it talked about mutual responsibilities," Mr. Nathan said. The charter school would receive public money and be independent, but in return it would have to demonstrate that school-children were learning at least as well as they were elsewhere in the system. Otherwise, its charter would be revoked and the school shut down.

In 1991 Minnesota became the first state to adopt charter school legislation, which was written by Ember Reichgott Junge, a Democratic state senator who had sat with Mr. Nathan and others three years earlier. In 1992, the first charter school opened. In less than a decade, the movement has spread to 1,128 schools across the country, enrolling about 250,000 children, according to the Center for Education Reform, an advocacy organization in Washington. About 3 percent of all charters granted have been revoked, center officials said.

SOME of these schools are little more than conventional public schools; others are radically different, with special missions and innovative, even quirky, approaches, like biofeedback to help learning disabled children.

Charter schools receive operating money — the equivalent of tuition — from the public school system. But that doesn't cover construction, renovation or in many cases equipment, and unlike public school systems, charter schools rarely have the ability to issue bonds. To help pay for buildings, desks and computers, charter schools have teamed with philanthropists, local businesses and institutions like the Henry Ford Museum in Dearborn, Mich., and the Y.M.C.A. in Boston.

The need for institutional support has also given rise to a third model — charter schools managed by profit-making companies like the Edison Project, run by the former media entrepreneur Chris Whittle, or the Advantage Schools Company. Mr.



Associated Press

A classroom at the Keystone Education Center in Greenville, Pa., the state's first charter school.

Whittle estimates that profit-making companies run fewer than 10 percent of charter schools in the country. Executives of both companies say they have yet to run enough schools to make an overall profit.

While charter schools obviously are a long way from taking over public education in America, their proponents say their influence has been disproportionate to their numbers.

Worried about losing talented teachers to charter schools, local school superintendents in cities like Boston, Rochester, Minn., and Flagstaff, Ariz., have permitted innovation that they blocked earlier, Mr. Nathan said.

"I think what you absolutely get out of it," Mr. Whittle said, "and I've seen this in city after city, is that competition does raise all boats, period."

Whether clergy join parents and others in the charter-school movement remains to be seen. The Rev. Michael Pfleger's proposal to turn the St. Sabina School in Chicago into a charter school has encouragement from the public schools chief, Paul Vallas.

In New York, legislators have warned that groups that want to start charter schools must meet a series of tests designed to prove they are not trying to receive tax dollars by converting an existing private or parochial school. But ministers like the Rev.

Floyd Flake, a former six-term Congressman who is pastor of the Allen African Methodist Episcopal Church in Queens, say they can create secular schools that meet the test of the law.

New York City's Roman Catholic Archdiocese has expressed little interest in charter schools. But it shares the same goals and speaks the same language as a political action committee that spent more than \$100,000, much of it raised by Wall Street businessmen, to prod lawmakers to vote for New York's charter law. The committee was called School Choice Now. The Catholic Church is still pressing its plan for vouchers, which it calls School Choice.

Additional Charter School Guidance:

May a public charter school be religious in nature or be affiliated with a religious organization?

Charter schools that receive federal start-up funds must be nonsectarian in their programs, admission policies, employment practices and all other operations, and must not be affiliated with a sectarian school or religious institution. The charter school's curriculum must be completely secular and no religious instruction of any kind may be provided by the charter school. In addition, the charter school may not have any formal organizational ties with a religious organization. However, there are a number of ways in which religious organizations may partner with charter schools and members of those organizations may be involved in charter schools.

What are some examples of ways religious organizations and their members may partner with, or be involved in, charter schools?

A faith leader may participate in designing, organizing or operating a charter school in his or her individual capacity—as a member of the community, not as a representative of his or her religious organization. The Department recommends that diverse segments of the local community be included in the initial organization and operation of a charter school, because a charter school that is organized or operated exclusively or primarily by members of one religious organization or group may give rise to questions about the independence and nonsectarian nature of the school.

Likewise, faith leaders or members of religious organizations may work or volunteer in a charter school, as long as the staff and volunteers of the charter school are selected and hired on the basis of secular criteria and not because of religious belief or affiliation with a religious organization.

Finally, like other public schools, charter schools may enter into partnerships with community groups for secular purposes, such as tutoring or recreational activities. Religious groups may be partners for these types of activities, as long as charter schools select partners without regard to their religious affiliation, ensure that no public funds are used for religious purposes and do not engage in or encourage religious activity.

May charter schools use the facilities of a religious organization?

A charter school may use the facilities of a religious organization to the same extent that other public schools may use these facilities. Generally, this means that a charter school may lease space from a religious organization as long as the charter school remains nonsectarian in all its programs and operations, and is not affiliated with the religious organization. A charter school should select space based on its logistical and educational needs, not because the space is located in or near a religious school or institution, or because officials of the charter school are connected to a particular religious organization.

✓ The Department strongly recommends that any space used by a charter school for instructional purposes be free of religious symbols and under the full control of the charter school during school hours.

May charter schools conduct outreach activities in churches or through religious organizations?

A charter school's outreach and recruitment activities should be designed to reach all segments of the parent community. Thus, a charter school may conduct outreach or recruitment activities in churches or through religious organizations as part of a broad-based and balanced effort to inform the parent community about the charter school and recruit a diverse student body. In order to ensure that recruitment efforts reach all members of the community, these activities should not be conducted exclusively in or through religious organizations.

Is religious expression allowed in charter schools?

Religious expression is allowed in charter schools to the same extent as in other public schools. The Secretary has issued Religious Expression in Public Schools (at www.ed.gov/speeches/08-1995/religion.html), guidelines that address many of the issues facing public schools (including charter schools) with respect to religion, including student prayer and religious discussion, teaching values, teaching about religion and student religious clubs. Although charter schools are not singled out in the Secretary's guidelines, as public schools they are subject to the responsibilities and limitations outlined in the guidelines. These guidelines state "two basic and equally important obligations imposed on public school officials by the First Amendment.

- First, schools may not forbid students acting on their own from expressing their personal religious views or beliefs solely because they are of a religious nature."
- Second, "schools may not endorse religious activity or doctrine, nor may they coerce participation in religious activity. . . . school administrators and teachers may not organize or encourage prayer exercises in the classroom."

As stated in the Secretary's guidelines, students have the same right to engage in individual or group prayer and religious discussion during the school day as they do to engage in other comparable activity. For example, "students may read their Bibles or other scriptures, say grace before meals, and pray before tests to the same extent they may engage in comparable nondisruptive activities." In informal settings such as cafeterias and hallways, students "may pray and discuss their religious views with each other, subject to the same rules of order as apply to other student activities and speech." In addition, students may "participate in before or after school events with religious

content, such as 'see you at the flag pole' gatherings, on the same terms as they may participate in other noncurriculum activities on school premises."

The Secretary's guidelines also state that "[t]he right to engage in voluntary prayer or religious discussion free from discrimination does not include the right to have a captive audience listen or to compel other students to participate. Teachers and school administrators should ensure that no student is in any way coerced to participate in religious activity" and "[t]eachers and school administrators, when acting in those capacities . . . are prohibited . . . from soliciting or encouraging religious activity, and from participating in such activity with students."

Charter schools are encouraged to consult the Secretary's guidelines when questions arise concerning religious expression and to ensure that teachers, administrators, students and parents are fully informed about the contents of the guidelines.

Public
Schools
&
Religious
Communities

A FIRST AMENDMENT GUIDE

"Public Schools and Religious Communities:
A First Amendment Guide" is published jointly by:

American Jewish Congress

Christian Legal Society

First Amendment Center

The guide has been co-signed by the
following organizations:

American Association of School Administrators

Association for Supervision and
Curriculum Development

Baptist Joint Committee on Public Affairs

Council on Islamic Education

National Association of Evangelicals

National Association of Elementary
School Principals

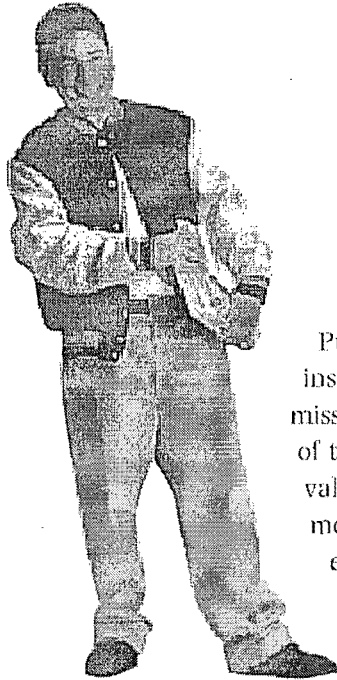
National Association of Secondary
School Principals

National Council of Churches of Christ
in the U.S.A.

National PTA

National School Boards Association

United States Catholic Conference



Public schools and religious institutions have different missions, but they share many of the same civic and moral values. Both are located in most neighborhoods, and each is committed within its own role to the well-being of children. By working together in ways that are

permissible under the First Amendment, as interpreted by the U.S. Supreme Court, schools and religious communities can do much to enhance the mission of public education.

Before any school district enters into a cooperative arrangement with any community organization, including religious groups, school officials must be confident that the group provides a safe and secure place for children. In addition, special constitutional considerations apply to cooperative arrangements with religious institutions. Under the First Amendment, public schools must remain neutral among religions and between religion and non-religion. By contrast, religious institutions exist to propagate religious faith and encourage religious practices.

Clearly, then, public schools must be careful when they work with religious institutions, because in important ways these institutions have differing commitments. Although some of the issues discussed here have not been authoritatively decided by the courts, we believe that the constitutional principles and guidelines outlined in this document will enable schools and religious groups to work together for the common good.

These guidelines focus on arrangements between public schools and religious institutions because of the special constitutional implications of those relationships. This focus is not meant to suggest that schools should only seek out religious institutions or that such institutions are preferred providers of assistance to public-school children. We urge schools to seek out a wide range of community organizations, religious and non-religious, without regard to their views on religious issues.

I. General Principles for Cooperative Arrangements

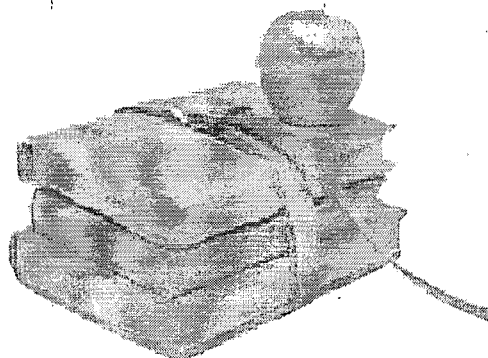
In these guidelines, a "cooperative arrangement" is defined as a shared participation in specific programs and activities in accordance with a written agreement. Before entering into a cooperative arrangement, public schools and religious communities should understand and accept the following principles:

1. Under the First Amendment, public schools must be neutral concerning religion in all of their activities. School officials must take the necessary steps to ensure that any cooperative activities that take place are wholly secular. Persons invited to address students during the school day shall be advised of this requirement and must agree to abide by it before being allowed access to students.
2. Students have the right to engage in, or decline to engage in, religious activities at their own initiative, so long as they do not interfere with the rights of others. School districts are urged to adopt policies that reflect recent consensus

statements on current law concerning religion in public schools. "Religion in the Public Schools: A Joint Statement of Current Law," the U.S. Department of Education's guidelines on "Religious Expression in Public Schools," and other consensus guidelines may be obtained by writing to the publishers of this brochure.

3. Cooperative programs between religious institutions and the public schools are permissible only if:

- Participation in programs is not limited to religious groups. That is, schools must be open to participation by all responsible community groups. Qualifications should not be established which have the practical effect of including only religious groups. Eligibility shall be stated in writing.
- A student's grades, class ranking or participation in any school program will not be affected by his or her willingness to participate or not participate in a cooperative program with a religious institution.
- Student participation in any cooperative program may not be conditioned on membership in any religious group, acceptance or rejection of any religious belief, or participation (or refusal to participate) in any religious activity.



II. Crisis Counseling

In times of sudden crisis (e.g., violent or accidental death of students or teachers), schools may call on a wide range of qualified counselors, including religious leaders, to assist school-employed counselors in helping children cope with the crisis at hand. Of course, religious leaders may not be the only grief counselors invited on campus during a crisis. Religious leaders may not otherwise be given routine access to students during the school day. Even when counseling to deal with a sudden crisis, religious leaders should remember that a public school is not a place for proselytizing or other overt religious activity.

To the extent that schools cooperate with adults who are important in a student's life (parents or other relatives, guardians, foster parents, social workers or neighbors) to help the child deal with school work, behavioral problems, or other issues, schools may also cooperate with an adult acknowledged by a student as his or her religious leader. However, a school may not in any way compel or coerce a student to speak to representatives of religious institutions.

III. Mentoring Programs

Public schools may cooperate with mentoring projects run by religious institutions provided that:

- Other community organizations are given an equal opportunity and are subject to the same secular selection criteria to operate such programs in partnership with the schools.
- Referrals are made without regard to a student's religious beliefs or lack of them.

- Participation in the program is not conditioned on mandatory participation, or refusal to participate, in religious programs operated by a religious institution.
- At no time do school officials encourage or discourage student participation in the religious programs of religious institutions.

IV. Shelters

In order to provide for the safety of students travelling to and from schools, the school district may ask local institutions (e.g., businesses, firehouses, religious institutions) to serve as temporary shelters for students who seek to avoid danger or threatening situations. The school shall provide signs indicating that the place is a shelter available for students.

V. School Use of Facilities Owned by Religious Institutions

Public schools may arrange to use the facilities of private landholders, including churches, temples, mosques, or other religious institutions. Of course, all such facilities must meet applicable health and safety codes. But if the arrangement involves the use of sanctuaries, playgrounds, libraries or other facilities owned by religious groups, then the following First Amendment guidelines must be followed:

1. The schools must have a secular educational purpose for seeking to use the facilities, such as after-school recreation, extended daycare, homework study hall, etc.

2. Where schools lease space from religious institutions for use as regular public-school classrooms, the leased space is in effect a public-school facility. Religious symbols or messages may not be displayed in the leased areas.
3. Cooperative programs using the facilities of religious institutions must not afford an actual opportunity for proselytizing by clergy, school employees, or adult volunteers of any school children during the school-affiliated program.
(Of course, the law is not violated if a cooperative program's use of a religious facility coincidentally results in a student gaining an interest in attending worship services there. But the law prohibits clergy from leading devotions as part of the school program.)
4. As stated above, religious symbols and messages may not be displayed in space leased from religious institutions for use as public-school classrooms. The rules are somewhat different for cooperative programs. A room bedecked with scriptural injunctions about repentance and salvation would not be appropriate for cooperative programs; a room with religious symbols or icons might well be.
5. School officials may neither select nor reject the use of a private religious facility based on the popularity or unpopularity of its religious teachings. Religion-neutral criteria should be employed, e.g., proximity to the schools in question; suitability of the facility for the intended use; health and safety; comparative expenses (if any); accessibility for parent pickup or busing.
6. The school's arrangement for use of a private religious facility should not involve

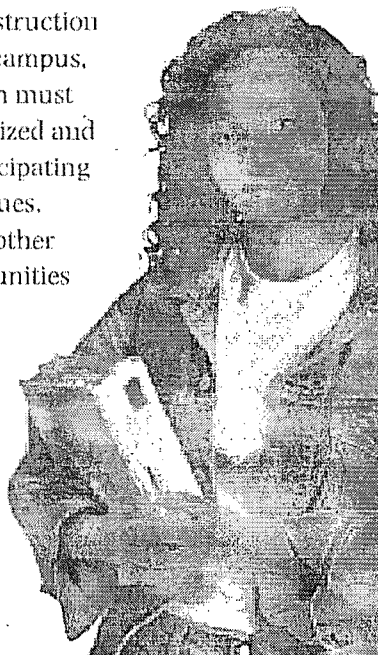
or necessitate an ongoing administrative entanglement between the school district and the religious institution, in which one party ends up exerting influence over the content, scheduling or staffing of the other's activities.

VI. Released-Time Religious Education

Public schools may allow students who have parental permission to leave campus during the school day for religious instruction. (Such released-time programs were ruled constitutional by the U.S. Supreme Court almost 50 years ago.) In released-time religious education, parents must give permission in advance for their child to be transported off campus during the school day to a place designated by participating religious institutions. The parent chooses which faith his or her child is to learn.

If a public school chooses to allow released time, the following guidelines must be observed:

1. The religious instruction must occur off campus, and the program must be wholly organized and run by the participating churches, mosques, synagogues, or other religious communities and not by the schools. The religious communities should make all arrangements for facilities.



transportation, instruction, insurance, parent information and permission, etc. The programs should not involve the expenditure of public funds.

2. In their words and actions, teachers and administrators may not encourage or discourage the participation of students or parents in released-time programs. Teachers should arrange their lesson plans so that students who participate in released-time religious education are not left at a disadvantage by missing instruction, tests, or class parties during that time. Neither should non-participating students be deprived of meaningful classroom activity. Schools must create neither incentives nor penalties for students to participate or not participate in released-time programs.
3. Parental permission must be a prerequisite for participation in any released-time program of religious instruction. To avoid use of government funds or personnel for religious indoctrination, only the religious community should print and only volunteers should distribute any information and parental permission forms to students, as well as take attendance.
4. Participating religious organizations should inform schools of the weekly attendance by each released student.
5. Schools may require liability insurance and other reasonable regulations relating to student health, education and safety, provided such regulations apply neutrally to all participating religious communities.

American Jewish Congress

The American Jewish Congress is an organization dedicated to protecting civil and constitutional rights. It has a special interest in protecting the separation of church and state and religious liberty.

AJCongress chaired the effort to draft and promulgate "Religion and the Public Schools: A Joint Statement of Current Law." In that effort it was joined by numerous other groups, including the Christian Legal Society. These guidelines on cooperative arrangements between religious communities and public schools grew out of a joint effort by CLS and AJCongress to provide guidance for the Chicago public school system as it sought to initiate a series of cooperative programs.

Christian Legal Society

Christian Legal Society is a national association of 3,500 Christian attorneys, law students, judges, and law professors in every state. CLS's legal information and advocacy arm, the Center for Law and Religious Freedom, has since 1975 defended all faiths from excessive government interference with their free exercise of religion.

CLS is indebted to the American Jewish Congress and the Freedom Forum First Amendment Center for their expertise and trailblazing cooperation in the efforts to find common ground, rather than battlegrounds, for the welfare of future generations.

First Amendment Center

The First Amendment Center at Vanderbilt University is an independent operating program of The Freedom Forum. The center's mission is to foster public understanding of and appreciation for First Amendment rights and values.

Through its Religious Freedom Programs, the Center helps schools and communities throughout the nation address issues concerning religion and values in public schools. The center publishes a number of First Amendment guidelines on religious liberty in schools, including "Finding Common Ground" and "Religious Liberty, Public Education, and the Future of American Democracy," a statement of principles sponsored by 24 educational and religious organizations.

For more information and additional copies of this
guide, please contact:

American Jewish Congress

15 East 84th St.
New York, NY 10028
(212) 879-4500

Christian Legal Society

4208 Evergreen Lane, #222
Annandale, VA 22003-3264
(703) 642-1070

First Amendment Center

1207 18th Ave. S.
Nashville, TN 37212
(615) 321-9588
www.freedomforum.org