

Strong Catholic Identity in Catholic Schools: What Does Law Have to Do With It?

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Catholic schools, a very important ministry of the Catholic Church, are crucial to its evangelization efforts. Some parents indeed choose Catholic schools for their academic or other excellence, and more than a few students do not profess the Catholic faith, yet the imprint of Catholic education can last a lifetime. While Catholic schools and those who minister in them should always seek academic excellence, each Catholic school must also be concerned with the faith life and growth of all members of the community, with a special emphasis on students. Faculty and staff have the obligation to model lives of faith in God. Not every employee must be Catholic, but each must be willing to support the teachings of the Catholic Church and to encourage student and colleague growth in faith and Gospel-centered action. In other words, a strong Catholic identity.

What does the law have to do with Catholic schools and Catholic identity? Much has changed over the 33 years I've been writing regular legal articles/updates for *Momentum*. Few religious women, men and members of the clergy are employed in most Catholic schools today. However, developing faith in our students and ourselves has never been the sole responsibility of vowed religious and clergy. Catholic school educators, administrators and parents all have taken on the responsibility of Catholic identity using the *National Standards and Benchmarks for Catholic Elementary and Secondary Schools* (NSBECS) as a guide for faith development along with the Five Essential

Marks of Catholic Schools, as presented in *The Holy See's Teaching on Catholic Schools* (2006, pages 17-59). As for the law and Catholic identity, Catholic schools must rely on contract law alone.

Education in Catholic Schools is Contractual

Public schools are governed by both statutory and Constitutional law. Catholic schools are governed by statutory law. In 1925 the United States Supreme Court in *Pierce vs. Society of Sisters*, 269 U.S. 510 recognized the right of Catholic and other private schools to exist and of parents to choose private and/or religious, rather than public, education for their children. While public schools must not promote or practice religion in any way, Catholic schools, their parents and students have a First Amendment right to practice religion.

Contract Law

The parent/student handbook is generally the contract between the parent and the school, although often there will be a separate contract document, one provision of which is that the parents agree that they and their children will follow the provisions of the handbook. If a parent wishes to dispute a Catholic school administrator's decision, he or she will have to rely on contract law arguments as there are no Constitutional rights in a Catholic school other than the right to attend the school. Freedom of speech, part of the First Amendment to the U.S. Constitution, for example, is not

protected in the Catholic school. There have been no legal cases in which parents have been successful in alleging that students in private schools have Constitutional rights that Catholic and other private school administrators must respect. When parents of students in Catholic schools have brought lawsuits challenging actions of administrators, the court looks to the handbook and any other contractual agreement to decide the merits of the case.

There are five elements to a legal contract: (1) *two or more parties* enter into an (2) *agreement* for (3) *consideration* (each side receives something, a *benefit*, and each gives something, a *detriment* in terms of time and/or money) to (4) *subject matter* that is *legal* in a (5) *form of agreement* that is *legal* in the state in which the agreement was reached and signed. So, parents agree to pay tuition and to follow the rules and regulations of the school in return for their children's education. The school agrees to provide a Catholic education in return for payment of tuition and following the school handbook and its rules and regulations. While some schools have simply stated that "In enrolling your child in the school, you agree to follow the rules and regulations of the school," it is best practice to have parents sign a separate agreement stating that "we have read and agree to be governed by the handbook."

Catholic Identity

Catholic identity is both a defining characteristic of the Catholic school and the bedrock of the entire educational





experience. What makes a Catholic school or program Catholic?

Defining Characteristics of Catholic Schools

The NSBECS, originally developed by Dr. Lorraine Ozar of the Greeley Center for Catholic Education at Loyola University Chicago and Dr. Patricia Wetzel-O'Neill of the Roche Center for Catholic Education at Boston College, first offered a blueprint for following the Defining Characteristics of Catholic Schools (2023, pages 7-10). The NCEA NSBECS Advisory Council (NNAC) in 2023 published the second, revised edition of the NSBECS.

These characteristics should be found in every Catholic school. They are:

(1) Centered in the Person of Jesus Christ

Years ago, there was a poster prominent in many Catholic schools. It read, "Be it known to all who enter here that Jesus is the reason for this school. He is the unknown but ever-present teacher. He is the model of its faculty and the inspiration of its students" as quoted by the Catholic Diocese of Lansing. If we are not centered in the person of Jesus, our whole reason for being is suspect.

(2) Contributing to the Evangelizing Mission of the Church

Our mission is to both teach and evangelize. While we certainly welcome students and families of other faith traditions, we require

students to take religion classes and to attend Mass and other religious events. We seek to help our students and all members of our school communities to grow in faith in God.

(3) Distinguished by Excellence

Our teaching and evangelization, indeed everything we do, should be characterized by excellence. Academic excellence is crucial to our success as is fidelity to the Catholic Church. There is no place for mediocrity in Catholic education.

(4) Committed to Educate the Whole Child

The education of our students involves the total person. We are not just providing an academically excellent education. We offer a holistic view of life in all its facets. We promote healthy minds, bodies and spirits.

(5) Steeped in a Catholic Worldview

We offer a view of life that is centered in a Catholic worldview while expressing respect for those who do not believe as we do.

(6) Sustained by Gospel Witness

The gospels are our roadmap and Jesus, His apostles and the Communion of Saints are our guides as we witness to our faith in God and each other.

(7) Shaped by Communion and Community

We seek to foster both communion and community in our school and in the experiences we offer to our students. The Eucharist, the real presence of Jesus Christ, is our sustenance, encouragement and model as we strive to live faithful, faith-filled lives.

(8) Accessible to All Students

We strive, insofar as we are able, to make our schools and their programs accessible to all who wish to attend. We realize that we cannot be all things to all people, but we strive to be more inclusive and as accessible as possible in our facilities and offerings.

(9) Established by the Expressed Authority of the Bishop.

Canon Law 801 tells us that no school may call itself Catholic without the approval of the local bishop. Catholic schools are one ministry of the Catholic Church that prepares young persons for adult lives of faith and action.

The above characteristics constitute what those who administer and teach in every Catholic school and program should acknowledge and practice. It is not enough to be academically excellent if we are not centered in Jesus Christ, evangelizing our students, offering a Catholic worldview, fostering communion and community and seeking to be accessible to all students to the best of our ability. These elements are part of the consideration the school gives in return for enrollment of the students and payment of tuition.

A Concluding Thought

When we think of the contract between a Catholic school and the parents of its students, it is tempting to think of *consideration* as the school providing an education and the parents agreeing to follow the handbook and to pay tuition. That is certainly an important part of the consideration. The Catholic education we offer is, as we know, more than academic excellence. It is a way of life that we present and model. Providing that Catholic education is what we contract with parents to provide for their children, this writer contends that we should judge our fidelity to the Defining Characteristics of Catholic Schools by making full use of them and evaluating our success by utilizing the NSBECS' four domains: *Mission and Catholic Identity, Governance and Leadership, Academic Excellence and Operational Vitality*. Together with *The Holy See's Teaching on Catholic Schools*, we have been provided a map for today's Catholic school teachers and administrators.

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