

Educational freedom and accountability for school quality in Spain

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Overview

“The first responsibility of the public authorities with respect to education,” writes a distinguished Spanish legal authority, “is to provide for its effective guarantee as an activity which is truly free, which can only be accomplished by ensuring the liberty of the two indispensable poles of this activity: the one teaching and the one being taught.”³ The *Constitution* of 1978, he adds, provides a perfect statement of this radical position in the two brief sentences that make up the first section of article 27, on education:

Everyone has a right to education. Educational freedom is recognized.

In recent decades, Spain has made enormous strides in increasing both access to and the quality of education. The effects of policies designed to increase access and quality can be seen, for example, in the rapid increase in the number of students enrolling in Spanish universities. This increase was made possible by a number of education policy initiatives, all of which point to a significant expansion in the activities of government, both nationally and within Spain’s autonomous communities (regions). Although there have been many positive aspects to these changes in Spanish education, some question the extent to which progress has been traded for educational freedom, be it the freedom of non-state actors and organizations to establish distinctive schools, or the freedom of parents to send their children to a distinctive school of their choice.

This tension between freedom and justice exists in many arenas but is especially evident in the recent history of Spanish education. Efforts to eliminate educational *inequalities* have tended, at some crucial points, to suppress *differences* which have an appropriate place in a pluralistic society. This suppression has come despite recognition, by the Constitutional Court, that educational freedom presupposes the institutionalization of educational pluralism.⁴ “Social solidarity binds every liberty.”⁵

The Structure of Schooling

The Spanish model, which was once geographically centralized, has been replaced with a new model in which other administrative bodies, like the 17 autonomous communities of Spain or the local governments, assume certain responsibilities⁶. Educational legislation contains a detailed division of power between several levels of the state.⁷

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3 Martínez Lopez-Muñiz, 21.

4 1985 decision, discussed below, cited in Riu i Rovira, 180.

5 Martínez Lopez-Muñiz, 26.

6 <http://www.eurydice.com/>

7 Marina Solé, “Education et principe de la subsidiarité en Espagne”, in *Subsidiarity and Education: Aspects of Comparative Educational Law*, edited by Jan De Groof, Leuven (Belgium): Acco, 1994, p. 271-278. José Ortega-Esteban, “Les principes de subsidiarité et diversité regionale en matière d’enseignement”, in *Subsidiarity and Education: Aspects of Comparative Educational Law*, edited by Jan De Groof, Leuven (Belgium): Acco, 1994, p. 279-280.

Under the present model, the overall goals for education are defined by national authorities, but the seventeen autonomous communities have executive responsibility as well as the authority to define additional requirements, especially those which have to do with the promotion of regional language and culture.

National government reserves for itself the authority to 1) grant academic degrees and certificates at all levels, 2) define the national core curriculum (or minimum guidelines for what should be taught in classrooms), 3) plan the investment strategy for education nationally, and 4) regulate the teaching of Spanish nationwide. Provincial authorities oversee the operation of schools and personnel matters.⁸

Most of Spain's autonomous communities have also designed their own educational policies. The government of each community holds administrative title to the establishments in its region and the functions deriving from it. It can create and administer public educational establishments or authorize private educational establishments, as well as administer the personnel and construction of public establishments. In short, most services that affect pupils directly are organized by and within each autonomous community.

Primary education in all of Spain is divided into three two-year cycles. Public schools providing primary education are called *colegios de educación primaria* (primary education schools). All schools providing primary education, whether public or private, must comply with minimum requirements set by the Ministry of Education. Private establishments are subject to authorization by the state, which is granted if these minimum requirements are met. Publicly funded institutions are usually coeducational; private institutions may be single-sex, though most are not.

Lower secondary education, *Educación Secundaria Obligatoria* (ESO), consists of four school years divided into two-year cycles and marks the end of compulsory education. Lower secondary educational institutions may be publicly or privately funded. Most—public and private alike—are coeducational.

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The 2006 Spanish Education Law (*Ley Orgánica educación*, or LOE) stipulates that post-compulsory secondary education be divided into two branches: the academic, or general, branch and the vocational branch. Within the vocational branch, three options exist: courses for professional development, arts and design, and technical sports education. All post-compulsory secondary education establishments, regardless of their nature, must meet minimum government standards. At this level, public and private schools alike are usually co-educational.⁹

Although it did little to affect the general organization of education tracks within the country, the aforementioned decentralization process in Spanish education has provided for the establishment of a third mode of schooling. In addition to government schools, which are subsidized by the state, and independent schools (*centros non concertados*), which are not subsidized by the state and enjoy considerable autonomy, Spanish law now allows for *centros concertados*, schools funded with public money and resources but founded and managed by individuals and non-government organizations. *Centros concertados*, which exist under a contract with government, are set apart from traditional public schools because they have the autonomy to define their own organizational and pedagogical models. These models are defined in each school's *proyecto educativo* (educative project, or mission), a document which outlines the mission of the school, the basic principles on which it will run, and even the school's curriculum and pedagogical approach.¹⁰ *Centros Concertados* served about five percent of pupils nationwide in 2005-06¹¹).

8 Solé, 274-75; a list of laws establishing the scope of authority of each of the autonomous communities may be found in Riu i Rovira, 203.

9 <http://www.eurydice.com/>

10 <http://www.eurydice.com/>

11 Datos referidos a las enseñanzas no universitarias de régimen general (educación oficial reglada), exceto la educación infantil (0 - 6 años): http://www.mec.es/mecd/jsp/plantilla.jsp?id=310&area=estadisticas&contenido=/estadisticas/educativas/eenu/result_det/2005/resultados.html

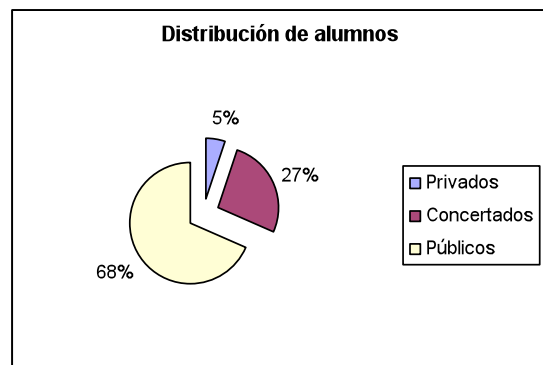
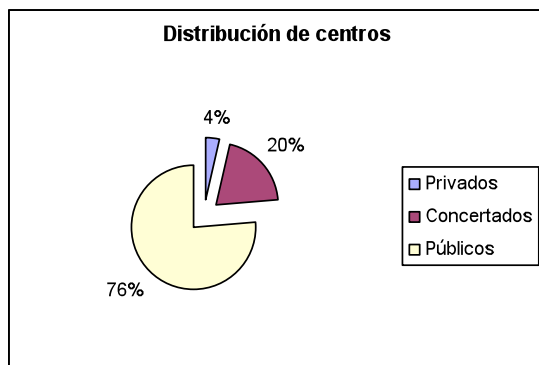
Although they may legally provide education at any level of schooling, *centros concertados* usually provide compulsory level schooling. These schools have many features in common with traditional public schools at the compulsory level, such as teacher, parent, and pupil participation in the management and control of the school, a non-discriminatory system of admissions, and the optional nature of religious education. However, while these schools are publicly subsidized, they do not enjoy the same degree of public financial support as their traditional public school counterparts.

State subsidies do not usually cover the total per pupil cost of education in these schools. In fact, public funding for *centros concertados* is usually half of that enjoyed by traditional public schools. In general, these publicly subsidized private schools must raise money to cover the costs of construction and classroom necessities. Because of this, it is sometimes necessary for these schools to create their own non-profit, fundraising organizations, such as foundations or parent cooperatives, in order to cover the full cost of founding and maintaining a school.

Fully independent (or private schools) known as *centros no concertados* may also provide schooling on any of the established educational levels or stages. They do not receive public subsidies and are comparatively more autonomous than traditional public schools and *centros concertados*. These independent schools are free to establish their own internal rules, select teaching staff, and set admission criteria and procedures, provided that they follow the same general norms of non-discrimination (to be discussed in further detail below) as public schools. It is important to note that these schools are prevented from refusing admission to pupils who cannot afford tuition. Although these schools do charge tuition, it is not legal for them to discriminate against students of low socioeconomic status. Often, these schools establish foundations and/or turn to outside sources to help to fund the cost of education for admitted pupils who cannot afford tuition.

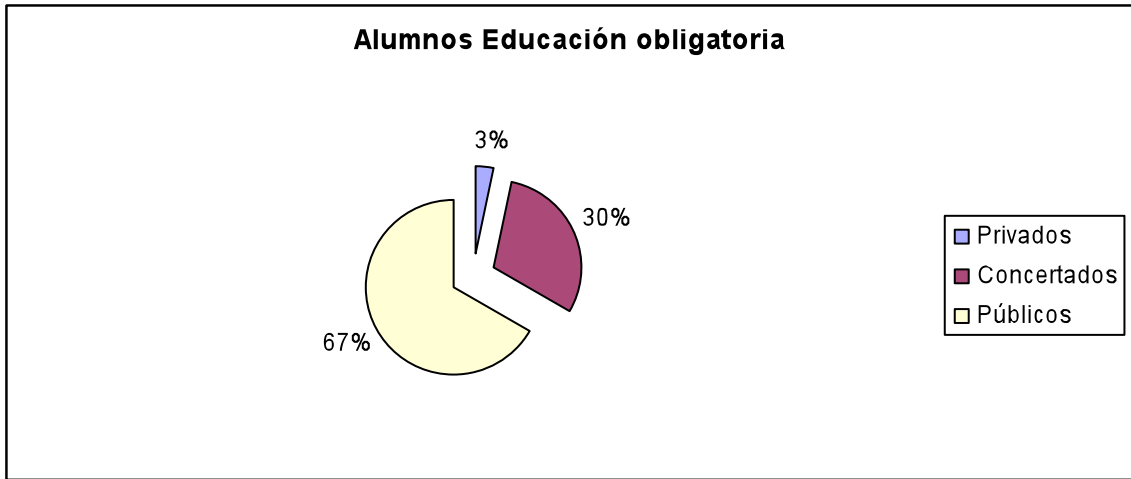
While the overwhelming majority of religious independent schools are Roman Catholic, the government signed agreements in 1992 with Protestant, Jewish, and Muslim leaders that strengthen the rights of schools of these traditions to receive public subsidies through a contract with regional authorities.¹² About one-third of pupils in elementary and lower secondary education attend independent schools; OECD estimates that 16 percent of public education expenditure in Spain goes to independent schools.

Between 1990-91 and 2006-07, the number of teachers in public schools increased from 317,316 to 449,012, and the number in independent schools from 128,026 to 164,070.¹³



¹² Jach, 349.

¹³ http://www.mec.es/estadistica/estadistica/Series/IND_02.html



The Legal Framework

The 1978 Constitution establishes the basic legislative principles for education in Spain. Article 27 provides (in part) that:

1. Everyone has a right to education. Freedom of instruction is recognized.
2. Education will have as its goal the full development of the human personality with respect for the democratic principles of common life and for the fundamental rights and freedoms.
3. The right of parents to ensure that their children receive religious and moral instruction in accordance with their own convictions is guaranteed.
4. Basic education is compulsory and free of charge.
5. The freedom of physical and legal persons to establish schools, subject to respect for constitutional principles, is recognized.
6. Teachers, parents, and (as appropriate) pupils will take part in the control and management of all schools supported by the government with public funds, under the terms established by legislation.
7. Public authorities will inspect and ensure the effectiveness and equity of the educational system in order to guarantee compliance with law.
8. Public authorities will assist schools in meeting legal requirements.¹⁴

Several national laws impact both public and independent schools, including a 1990 law, which restructured compulsory education and a 1995 law, which regulates the evaluation of schools and the participation of teachers, parents, and students in the management of schools (LOPEGCE: *Ley Orgánica de la Participación, la Evaluación y el Gobierno de los centros docentes*). The former applies to all pre-university schools, the latter only to those funded by government.

Legislation passed in 2006 is the most comprehensive, as it includes regulations for community participation, the autonomy and governance of *centros concertados* and *centros no concertados*, school

¹⁴ Text in Riu i Rovira, 28.

evaluations and inspections, as well as regulations that aim to ensure equity across the system. This law, the 2006 Organic Law on Education, completely repeals some previous pieces of legislation.

General reform of the Spanish education system (post Franco) began with the organic law of June 1980, LOECE (*Ley Organica de Estatutos de Centros Educativos*) and the 1983 organic law on University Reform (LRU: *Ley Orgánica de Reforma Universitaria*). Currently, the 2001 organic law regulating universities is still in force, though it underwent several modifications in 2007.

The broad aims of the 2006 Organic Education Law are:

1. To provide a quality education to all citizens at all levels of the educational system, regardless of gender or background and to therefore guarantee equality of educational opportunity;
2. To use the full force of the educational community to obtain the first objective;
3. To meet the educational objectives set by the European Union, including ensuring educational quality and effectiveness, facilitating access to the educational system for all pupils, and ensuring the education is directed to the realization of participation in the labor force and society in general.

Freedom to establish non-state schools

In Spain, private schools are educational establishments founded by private individuals or non-state legal entities. To establish a private school, the individual or organization must register with the appropriate educational authority, such as the Autonomous Community in which the school is to be located. Without authorization, which must be granted if the school meets stated criteria, a school will not be legally recognized (LODE, 23). Criteria for authorization at the compulsory level include: 1) the provision of qualified (certified) teachers, 2) establishment of an appropriate ration of pupils to teachers, 3) proof of the adequacy of instructional and physical facilities, and 3) the number of classes offered.

Private schools soliciting any subsidies from the state must comply with a number of rules, including the establishment of a school council. School councils (as in government-funded schools) consist of a principal elected by council members, four teachers elected by their colleagues, a representative of the administrative staff, four elected parents, and two students. One result of the state's requirement for private schools to establish school councils has been that the Catholic Church, which sponsors a large number of schools in the private sector, has been forced to give up a great degree of control over school management.

In addition to establishing school councils, private schools must be located in buildings used for educational purposes, comply with existing legislation relating to health and safety, and be designed to allow access for physically handicapped pupils, in accordance with the relevant legislation.

Independent schools that seek authorization to operate are, at the same time, seeking recognition of the educational qualifications which they provide and certify. Until 1970, public authorities kept strict control of the student and teacher examination systems and over teacher certification. A revision to education law in 1970 however, provided that authorized private schools will enjoy full autonomy and authority to make decisions pertaining to examinations and certifications.¹⁵

Private schools may apply for a funding agreement with the state (*concierto*) at the same time that they apply for the authorization to operate. At the time that funding is requested, schools must also outline the specific conditions of their proposed academic program, designate a school director, and outline a

15 Díaz Lema, 78.

plan for the provision of qualified teachers. If, however, schools apply only for the authorization, then they must operate for five years before becoming eligible for public funding.¹⁶

Home schooling

According to the Constitution and the General Education Law of Spain, schooling at the primary and lower secondary levels is compulsory in Spain.¹⁷

Home education is allowed only for children who cannot attend school because some special circumstance, such as a mental or physical handicap, makes mainstream schooling difficult or impossible. In practice, only children with severe mental and/or physical handicaps are legally exempted from schooling.

School choice not limited by family income

By providing that basic education is compulsory and free (27.4) and that “public authorities will assist schools that meet the requirements established by law” (27.9), the Constitution provides an opening for the state to allow for parental choice in publicly funded education. However, Spanish law does not comply with international treaties that explicitly assert the obligation of all states to promote the exercise of that right. Article 9.2 of the Spanish Constitution states: “It is incumbent upon the public authorities to promote conditions that allow for the liberty and equality of the individual, and of the groups to which he belongs, to be real and effective, to remove the obstacles which prevent or hinder their full enjoyment, and to facilitate the participation of all citizens in political, economic, cultural and social life.” Article 10.2 further states: “The standards, relative to the fundamental rights and liberties, recognized by the Constitution, shall be interpreted in conformity with the Universal Declaration of Human Rights and the international treaties and agreements thereon ratified by Spain.”

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In Spain, the mechanism chosen for providing public support for parental choice is the “agreement” (*concierto*) that is established between education authorities and the sponsor of an independent school when that school solicits permission to exist and/or funding. This arrangement, which is supposed to allow for the establishment and basic funding of non-state schools (thereby providing parents with educational alternatives and the ability to select and establish non-government schools), was “born in the middle of a great polemic.” That polemic is explicitly modeled upon that in France under the *loi Debré* and the *loi Guermeur*.¹⁸

The purpose of the public funding of independent schools is not to assist the schools but to ensure that the constitutionally-guaranteed right of parental choice is not limited by family background, especially income.¹⁹ Given this, the public funding provided to non-government schools does not cover the full cost of the schooling. Because schools under contract are not allowed to charge tuition, most encounter enormous and constant financial difficulties. Teachers in schools under contract are, on average, paid between 87 and 97 percent of their counterparts in state schools, depending upon the Autonomous Community in which the school is located. Furthermore, teachers in private schools teach, on average, 25 hours a week, compared to their counterparts in the public system, who provide, on average, 18 hours a week of instruction. Through these means, the state ensures that it is less costly to fund private schools.²⁰

16 De los Mozos, 458.

17 The 1970 Law also established compulsory education until 14. La *Ley Orgánica del Ordenación General del Sistema Educativo* (LOGSE), 1990 afirma (art. 5): “1. La educación primaria y la educación secundaria obligatoria constituyen la enseñanza básica. La enseñanza básica comprenderá diez años de escolaridad, iniciándose a los seis años de edad extendiéndose hasta los dieciséis. 2. La enseñanza básica será obligatoria y gratuita.” La LOE (2006) mantiene esta misma estructura.

18 Aisa Sola, 237; de los Mozos, 314-23.

19 Riu i Rovira, 224.

20 Email from Martínez Lopez-Muñiz, March 2002.

Recent legislation at the national level outlines policies meant to rectify inequalities in education that can result from student background and from a lack of quality educational opportunities. Article 1 of the 2006 education law contains two primary principles: 1) that a quality education should be available to each and every student no matter his or her background or circumstance and 2) a guarantee of equality of educational opportunity goes beyond non-discrimination and should include efforts to compensate for social, cultural, economic, physical or other circumstances that can impede a student's ability to access quality education.²¹

Non-subsidized private schools do not operate on the basis of an agreement with government, although they are subject to the approval of the state in which they are established. They enjoy complete freedom of internal organization, are free to hire and fire teachers, set admission requirements and rules of conduct, and conduct their own managerial and financial affairs.²²

In order to be receive public funding, private schools seeking to become *centros concertados* must agree to provide tuition-free education for whatever grades are subsidized, to allow teachers and parents to play a role in the management of the school, to allow pupils to be excused from religious instruction on the grounds of conscience (on the same basis as in non-subsidized schools), to follow the national curriculum objectives, and inform the public about the subsidy and about the school's distinctive character, if any.

The public funding provided to subsidized private schools includes the salaries and benefits of teachers, operating expenses (at a level negotiated with government authorities), and assistance with capital costs. Subsidized schools are required to provide the instruction described in their agreements with the government free of charge²³ (art. 50 LODE).

School distinctiveness protected by law and policy

Spanish law protects the right of parents to select schools other than those created by public authorities (article 4b). Citizens also have a right to create and direct independent schools. In a 1981 decision, the Constitutional Court held that the right to create and direct independent schools was fundamental to the exercise of educational freedom; the Court pointed out, however, that this right only holds so far as it does not interfere with the exercise of other human or Constitutional rights.²⁴

Distinctive character

Efforts to preserve the distinctive character of schools are enshrined in law. The *Ley Organica* calls specifically for *Centros Concertados* to set themselves apart from their traditional public counterparts by defining their distinctive character within the "educational project," or mission statement, that is a part of each *centro concertado's* contract with the state. Law also indicates that these schools should have pedagogical autonomy, which can be facilitate one facet of a school's distinctive character. Unsubsidized private schools, given that they must submit to comparatively little government regulation, are also free to develop distinctive missions—doing so is how such schools set themselves apart from one another within the educational marketplace.

A sociological study in Catalonia found that most teachers in private schools (which form a majority of all schools in Barcelona) strongly agreed that their schools were characterized by an explicit "educational project," or mission. Most teachers further agreed that their schools were managed on the basis of that mission in a way that provided a unity of approach and a coherent commitment on the part of faculty

21 Trayter (1997), 167.

22 <http://www.eurydice.org>

23 Trayter (1998), 142-143.

24 De los Mozos, 263.

and staff. In some cases this direction-setting project was religious, in others it was pedagogical, and; in many cases, it was both.²⁵

A private school is almost inevitably more free to be distinctive than is a public school, and therefore is more likely to expect staff and pupils to conform to a particular worldview and/or educational approach. Of course, the most distinctive Spanish schools do not accept government funding. This suggests that true distinctiveness is only possible within limits and that the strings that are attached to public funding can hamper some schools from offering the distinctive programs that they otherwise might.

Article 1 of the 2006 education law, outlines the pedagogical principles that all schools should use, including:

1. the transmission, in theory and practice, of certain values such as liberty, citizenship, tolerance, and equality
2. the flexibility to tailor education to diverse groups
3. an educative and professional orientation for students
4. education for the prevention of conflicts and for peace

In addition to this, Article 1 also provides that schools, local communities, and autonomous communities should have the autonomy to establish and tailor the curriculum in a manner that reflects the competencies and responsibilities valued by the local community(ies).²⁶

Recent debate in Spain has raised important questions about whether the protection of the distinctive character of an independent school is limited to its provision of religious and moral instruction, and thus whether other aspects of its curriculum and instruction are subject to government prescription. The Constitutional Court rejected this interpretation in 1985, referring to language in its 1981 decision suggesting that the worldview of a school can extend to the ways in which it carries out its various activities.²⁷ After all, the Court reasoned, to require that the religious and moral worldview promoted by the school remain on a theoretical level and not be applied to all aspects of the curriculum and of school life would be to condemn it to irrelevance.²⁸ A school's distinctiveness may well extend to the climate that a school seeks to establish, relationships among adults and children, management practices, and orientation toward the surrounding community.²⁹

In fact, religious practices are an essential part of creating the coherent educational experience that has been chosen by parents when they opt for a faith-based school. If the school is forbidden to make and maintain this connection, it has been argued, the rights of those who prefer such an experience for their children are curtailed. Religious activities are inseparable from the character of certain valued educational alternatives.³⁰ In choosing a school with a religious outlook, it is argued, parents are accepting the religious instruction and related practices on behalf of their children, and these are no longer a voluntary matter as they are in a public school.³¹

If public funding is provided to independent schools in furtherance of a constitutionally-protected right to free choice of schools on the part of parents, does that justify more government regulation of those schools than of non-subsidized private schools? All public financing . . . should be subject to effective public control to ensure that it is applied to the appropriate ends, but it should not permit adding restrictions or limitations, whether direct or indirect, to educational freedom. . . . Public economic assistance, whatever its nature, does not justify its being made an instrument to impose in any way

25 Dardat, 167-68; 51.

26 General Law.

27 Riu i Rovira, 172; text 107.

28 De los Mozos, 176, 264.

29 Riu i Rovira, 197.

30 De los Mozos, 577.

31 Riu i Rovira, 229.

educational models, structures, or options which are not justified in a general way by reasons which are distinct from the provision of resources which fund the costs of the instruction.³²

Decisions about admitting pupils

Decisions about the admission of pupils to public schools are made by the school board (*consejo escolar*) (art. 127e, LOE); in subsidized private schools, they are made by the school board as well. In the case of subsidized private schools, that board must include one member of the local education administration (local government) to ensure that the school has complied with all legal aspects surrounding admissions (arts. 56 y 57 LODE).

Subsidized private schools must admit pupils on the same basis as public schools, which means that they cannot discriminate on the basis of religion or student background. Such schools have the right, however, to demand that pupils and their parents show respect for the school's mission.

In cases of over-subscription of a school, criteria are spelled out to determine which applicants should be given priority, based upon such considerations as siblings already in the school, place of residence or parental place of work, and the financial or physical needs of the family (or of family members). (art. 84.2). In no case may these schools discriminate on the basis of race, sex, religion, opinion, or other personal or social circumstances.

Efforts to establish residential attendance zones for subsidized private schools (the same as those that exist for public schools) have been struck down by the courts as inconsistent with the constitutionally-guaranteed freedom of school choice for parents.³³

Private schools that are not subsidized are free to establish admission criteria, though without illegal discrimination (see "The Structure of Schooling, above).

Under some circumstances, even private schools which are not subsidized by government may be required to admit a pupil if they have space available and if there is no space available in another school at a reasonable distance from the pupil's home. Under such circumstances, the parents may be required to state agreement with the worldview and the educational approach (*al ideario y al proyecto educativo*) of the school.³⁴

A source of tension over the maintenance of the distinctive character of private schools is whether they can make religion classes a regular part of the required curriculum. Existing laws are in conflict on this point: while, on the one hand, they forbid schools to make religious education mandatory, on the other, they protect the right of schools to develop and implement a distinctive character, which is recognized as extending to the entire curriculum. The argument is made that requiring participation in a religion class (in a school which has been chosen voluntarily) is not a violation of the rights of conscience, since it does not require any sort of act of faith or acceptance of particular beliefs.³⁵

Decisions about staff

Private schools have complete freedom concerning the recruitment of teachers, limited only by the requirement that candidates hold the necessary qualifications for teaching a certain subject at the particular level for which they are appointed. The legal status of teachers in private schools is contractual (unlike their public school counterparts). However, some contract workers are required by the school

32 Martínez Lopez-Muñiz, 44-45.

33 Riu i Rovira, 191.

34 De los Mozos, 163.

35 De los Mozos, 568-70.

to participate in a collective bargaining agreement. When collective bargaining applies, as it does in all traditional public schools, remuneration is determined through a specific process:

The level of this remuneration is subject to collective bargaining between the unions and the organizations representing the sponsors [*la patronal*], although a salary scale ultimately depends upon what the [national] Education Administration accepts, since it must approve the annual [salary] model in order to include it in the Budget Act [*Ley de Presupuestos*]: the State (national government) sets the minimum salary level and each Autonomous Community establishes what will be applied in its region, which may not be less than that set by the national government (art.49 LODE). Education Administration (national government) conditions the collective bargaining on working conditions in the schools under contract. The pay of teachers in schools under contract has been progressively approaching that in public schools, so that it is now about entre un 87 y un 97 percent, según las diferencias among Autonomous Communities.³⁶

Teachers in private schools are required to possess the qualifications established for teachers in the public sector (LODE article 25), which include success on competitive examinations. Some critics suggest that this represents a threat to the possibility of real educational freedom.³⁷

Teachers in public schools have a recognized “teaching freedom” (*libertad de cátedra*), though this does not extend to the right to promote any particular ideology through their instruction; they are obligated to maintain a neutral posture. Those in independent schools have an additional obligation, to show respect for the distinctive character or worldview (*proyecto educativo, ideario*) of the school which employs them. The *proyecto educativo* defined by the sponsors of the school is legally significant since it may form the basis for selecting particular teachers and for insisting that teachers not undermine the mission of the school; for example, a teacher mocking Catholic doctrine would be dismissible from a Catholic school, though he or she could not be dismissed for refusing to endorse such doctrine contrary to conscience. [But note that a school’s distinctive character must be consistent with Spain’s constitutional principles of “liberty, equality, justice, pluralism.”]

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There are those who argue that the growing pluralism of beliefs and values in Spanish society should find its counterpart within each school, and that only a morally-neutral school can teach the lessons essential to democracy . . . indeed, that only in such a school is there real educational freedom. This, others counter, is to use the idea of educational freedom to undermine its reality, as expressed in a diversity of educational offerings. It is absurd, they point out, to contend that, in contemporary society, the control of a religious organization over youth can be nearly as influential as that of the state, or that a church could be as much of a threat to freedom as a government with monopoly of the power to tax and to punish.³⁸

The right of the sponsors of private schools to require such respect and to fire teachers who fail to comply with this obligation, has been upheld by the Constitutional Court several times. In 1981, the Court pointed out, in upholding an education law against an attack by the Socialists, that conflict was possible between the distinctive character of a school and the teaching freedom of a teacher, but concluded that

The existence of a worldview [*ideario*], accepted by the teacher upon freely joining the school . . . does not oblige him, obviously, to become an apologist for that [worldview] or to transform his teaching into indoctrination or propaganda . . . [but] the teacher’s freedom does not entitle him to direct open or surreptitious attacks against that worldview. . . . The concrete effect [*virtualidad*] of the worldview will no doubt be greater when it comes to the explicitly educative or formative aspects of the instruction, and less when it has to do with the simple transmission of knowledge . . .

36 Email from Martínez Lopez-Muñiz, March 2002; translation by Glenn.

37 Martínez Lopez-Muñiz, 28-29.

38 De los Mozos, 255-58.

In another decision, in 1985, the Court reiterated that “the existence of the school’s distinctive character obligates the teacher to an attitude of respect and should prevent him or her from attacking the character of or actively undermining the mission of a school.”³⁹ This second decision grew out of a case brought by a teacher who had been fired by a private school because, according to school authorities, he had not conformed his professional activities to the worldview of the school. The teacher complained that he had been discriminated against on ideological grounds, but he lost in the lower courts. The Constitutional Court ordered the teacher reinstated on the grounds that his failure to conform to fundamental aspects of the school’s worldview had not been demonstrated clearly in his public behaviour, but upheld the principle that, with appropriate documentation, this would be an appropriate cause for disciplinary action.⁴⁰

Martínez López-Muñiz points out that “[a]n educational program which is definite and stable will permit a larger degree of identification than will a program in which there can be no single established and permanent orientation, as is the case in public schools, which “must be open to all tendencies of thought and all standards of conduct which are allowed by law.”⁴¹

The freedom of non-public schools to express a distinctive ethos and character is thus the guarantor of the freedom of those teachers who wish to teach in a way consistent with that ethos and character; public school teachers do not have this freedom. As a result, “the internal pluralism of public schools is not a model which guarantees in itself the right to education in its full sense, nor the freedom of those who teach; in this way they are denied the possibility of adhering voluntarily to a specific educational project.” It is therefore possible to speak of “the *collective* freedom of teaching or, what is the same thing, the right to direct the school which belongs to the sponsor of the school” and which supports the freedom of teachers to the extent that they work in a school which corresponds to their own convictions about education.⁴²

Subsidized private schools are required to establish a structure for the participation of teachers, parents and, as appropriate, of pupils. Since 2006, they have also been required to include the school governing board (*consejo escolar*) in certain key decisions. The school board has a right to be consulted about the criteria for selection of new staff. It also has a right to be involved in the process of selecting new staff, which creates ample possibilities for conflict with the school’s founder(s). The latter, exercising its authority to maintain the school’s distinctive worldview and character, may well want to give considerable weight to an applicant’s convictions, for example.⁴³ In the case of disagreements between the school board and the school’s founder(s), an arbitration process gives the third vote to the public education authorities. In such a case the possibility exists for the unconstitutional limitation of the freedom to base the school upon a distinct *mission*. In short, the requirement to consult with the school board with respect to staffing and programming could well compromise the conditions necessary for the exercise of educational freedom on the part of those parents and teachers who want a school that is really distinctive. For this reason, it is significant that the Constitutional Court, in a 1987 decision, recognized that the role of a school board in an independent school, even one subsidized with public funds, could not be identical to that in a public school.⁴⁴

Salaries for teachers in subsidized schools come from the government of the Autonomous Community (though they are subject to the rules of collective bargaining outlined at the beginning of this section), technically making teachers in these schools employees of the state, rather than employees of the local community or school⁴⁵.

39 Text and commentary in Riu i Rovira, 135;

40 Riu i Rovira, 168-69; de los Mozos, 305.

41 Quoted by de los Mozos, 248.

42 Martínez Lopez-Muñiz, 29.

43 De los Mozos, 583-88.

44 Riu i Rovira, 181.

45 <http://www.eurydice.org>

Accountability for school quality

Inspection of both public and independent schools is a responsibility of public education authorities, and includes ensuring compliance with the law, and the rights of all persons participating in the processes of teaching and learning. Inspection is also meant to support the realization of an effective and equitable system of education. School evaluation is regulated by Title IV of the 2006 LOE (education law). Evaluations are carried out by *The Instituto de Evaluación* (present in each autonomous community), which regulates and evaluates teaching and learning processes and student outcomes. The Insitutie also has responsibility to oversee teaching activities, general educational processes in schools, and the administrative and financial functions of subsidized schools. Among other things, the inspection system in Spain is greted toward ensuring quality by facilitating transparency in the educational system.

The State's Higher Inspection Service (an arm of the national government) ensures that plans, curricula and pedagogical guidelines, as well as teaching materials, are suitably adapted to the core curriculum and that the core curriculum is taught in accordance with state regulations. It verifies that the areas of study conform to state legislation for the intents and purposes of issuing academic and vocational diplomas and certificates that are valid nation-wide. It ensures basic conditions guaranteeing the equality of all Spaniards in the exercise of their rights and duties in educational matters, of their linguistic rights and the right to be taught in the official State language⁴⁶.

Publicly-funded private schools must comply with government requirements as to materials and programs, minimum and maximum class sizes, the levels to reach for graduates, and the means of evaluation of graduates.

Actual inspections are carried out through the respective inspectorate of each autonomous community, referred to as the Technical Inspectorate for Education. The nature of inspection can vary from community to community and has a dual purpose: to understand all of the activities that take place in a school and to examine and document the academic, pedagogical and administrative practices of each school(arts. 152 y 153 LOE).

There has been considerable controversy over whether these requirements trespass upon the right of those operating such schools "to define their distinctive character and to ensure effectively that this is carried out as necessary in the educational process."⁴⁷

The issue of the autonomy of private schools (with respect to inspection) was brought before Spain's Constitutional Court, which ruled that the government could set standards but should do so with careful respect to the constitutional guarantee of educational freedom. While the schools were required to "conform to the minimums set by the public authorities with respect to the content of the various subjects, the number of hours of instruction, etc.," they were free to do so in a way that gave expression to the educational concepts on the basis of which the school had been established.⁴⁸

Another form of accountability relates to procedures for advancement from one grade level to the next. Pupils in primary education are promoted from one cycle to the next provided that they have attained the basic competencies for each grade outlined in the common core curriculum. Teachers decide whether or not pupils have attained those competencies.

In lower secondary education, assessment is required by law; it must be continuous and differentiated to address all aspects of the curriculum (art. 28.1 LOE). All of a pupil's instructors must agree as to whether he or she has mastered the curriculum and is able to advance. Pupils who complete lower secondary education are awarded the *Graduado en Educación Secundaria Obligatoria* certificate, which qualifies them for access to Bachillerato (Baccalaureate) and intermediate level Specific Vocational

46 <http://www.eurydice.org>

47 Riu i Rovira, 53.

48 Ruling of the Tribunal Constitucional on February 13th 1981, reprinted by Riu i Rovira, 107.

Training. At the end of this stage, all pupils receive a certificate stating the years of attendance and the grades earned in the various subject areas.

The essential characteristics of pupil assessment in upper secondary education are applicable nation-wide, although each Autonomous Community establishes its own assessment criteria as part of its curriculum. The examinations are single-subject and grades are given.

Pupils may enroll in a 2 course Bachillerato where they are assessed by a group teaching team. Pupils who successfully complete Bachillerato earn their Bachiller diploma, which enables them to pursue special courses of study that constitute one form of post secondary education. To enter into university, students need to pass a national access examination.

Teaching of values

The 2006 education law (LOE) affirms the following principals of education: the transmission and practice of values that favor personal liberty, responsibility, democratic citizenship, solidarity, tolerance, equality, respect for justice, and values that counteract all types of discrimination. Among the objectives of education are also respect for human rights, community life, social cohesion, and respect for all human beings and the environment (in particular, sustainable development).

Furthermore, elementary schools must seek to ensure that pupils know and appreciate the values and norms of coexistence, to learn cultural works that promote such things, and to prepare to actively exercise citizenship and respect human rights in a pluralistic society. The education of values, at this level and all others, should permeate the curriculum.

The second half of this provision—that these values should permeate the curriculum—has the troubling implications that government could seek to assess the values and convictions of pupils (as distinguished from their knowledge and their behaviour). Most democratic societies have sought to avoid what could become a form of “thought control,” as illustrated by controversies in the United States over “outcomes-based education.”⁴⁹

Among the objectives of obligatory secondary education is the development of capacities that permit students to know and exercise their human rights, to practice tolerance, cooperation and solidarity among persons and groups, to engage a dialogue that affirms human rights and common values in a pluralistic society, and prepare to become democratic citizens. Students should also value and respect differences between the sexes as well as rights and equality of opportunity between the sexes. They should reject stereotypes that support discrimination against women and men. Furthermore, they should know, value, and respect the culture, history, and art of the nation.

Under the terms of a 1979 treaty with the Vatican, the government agreed that religious instruction would be included as part of the curriculum at all levels of schooling below the universities. The agreement specifies that other religious activities may also be organized within the school day, but that no teacher may be obligated to teach religion classes.⁵⁰ Education law provides that religious education, while it must be offered, is a voluntary subject for all students.⁵¹

Between 2006 and 2008, a new debate has arisen with regard to the moral education of students. The socialist government has included in the official national curriculum “education for citizenship.” The contents of this aspect of curriculum have caused alarm among some sectors, especially in the world of Catholic schooling, which already considers the curricular prescriptions of the state to be an intrusion on the moral education provided in these schools and by parents: for some Catholic school leaders this is an issue of educational liberty; they accuse the socialist government of attempting to indoctrinate students with a world vision that may run counter to some aspects of religious teaching.

49 See Glenn.

50 Text in Riu i Rovira, 86-95.

51 LOE, disposición adicional segunda, punto 1.

In 2007-08 in some autonomous communities and in Andalucía parental groups have brought a case to the Tribunal Superior Court, asking it to consider that this aspect of the curriculum represents a breach of the right to freedom of education, teaching, and religion. There is also an organized movement at the national level against this aspect of the curriculum.

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