A state's department of education routinely accredits public and private schools, licenses their teachers, sets strict curriculum guidelines, and provides funds for busses and secular extracurricular activities. A private high school in the state receives all of these benefits and enforces a strict "whites only" admissions policy.

A group of parents whose children were denied admission to the private school solely because they are minorities brought suit in federal court. The parents sought to enjoin the private school from continuing its admissions policy on the ground that it violates the Fourteenth Amendment equal protection clause. The private school's sole defense is that it is not bound by this constitutional provision.

What is the parents' strongest argument that the private school must comply with the equal protection clause?

A. Education is a traditional public function.

B. Racial segregation is not allowed in any school.

C. The private school employs teachers licensed by the state.

D. The private school is subject to pervasive state regulation and support.

Explanation:

State-action doctrine

Traditional government function	• Private actor performs traditional & exclusive government function (eg, running elections)
Significant government involvement	• Government & private actor have *mutually beneficial* relationship (eg, joint activity or venture) • Government creates *nexus* by affirmatively facilitating or authorizing private action (eg, police officer acting under color of law) • Government is *pervasively intertwined* in private entity's management or control

Constitutional claims must typically be asserted against government entities—not private actors.* But under the **state-action doctrine**, a **private actor** can be treated as a government entity and similarly **bound by the Constitution** when the **government is pervasively intertwined** in the control or management of the private actor.

Here, the parents sought to enjoin the *private* school from continuing its racially segregated admissions policy on the ground that it violates the Fourteenth Amendment equal protection clause. Therefore, the strongest argument that the private school must comply with this clause is that the school is subject to pervasive state regulation and support—eg, through state accreditation, teacher licensing, curriculum guidelines, funding for busses and secular extracurricular activities.

*The Thirteenth Amendment's prohibition against slavery is the only constitutional provision that directly applies to private conduct.

(Choice A) Private entities can be treated as state actors if they perform a function that has traditionally and *exclusively* been performed by the state. Although education is a public function, it has long been undertaken by private entities—not just the state. Therefore, the private school will not be treated as a state actor on this basis.

(Choice B) States are constitutionally obligated to eliminate segregation in all *public* schools within their borders. However, racial segregation is allowed in *private* schools that do not have significant government involvement.

(Choice C) The fact that the private school employs state-licensed teachers does not, by itself, require the school to comply with the equal protection clause. That is because the Supreme Court held in *Moose Lodge No. 107 v. Irvis* that issuing a license—without more—does not amount to significant government involvement.

Educational objective:

The Constitution generally applies to government (not private) entities. But under the state-action doctrine, a private entity will be bound by the Constitution when the government is so pervasively intertwined in its control or management that the private entity is essentially a government actor.

References

- Brentwood Acad. v. Tenn. Secondary Sch. Athletic Ass'n, 531 U.S. 288, 298–302 (2001) (recognizing that a private association's regulatory activity amounted to state action due to the state's pervasive entwinement).
- Moose Lodge No. 107 v. Irvis, 407 U.S. 163, 176–77 (1972) (explaining that mere licensure does not amount to significant government involvement).